

MEMORANDUM

DATE: 30 APRIL 2014

Doc number: RDC-447338

TO: ALL COUNCILLORS

FROM: KARLA KEREOPA, TE ARAWA PARTNERSHIP PROJECT MANAGER

SUBJECT: UPDATE ON TE ARAWA PARTNERSHIP PROJECT

Tēnā koutou katoa,

This memorandum provides an update on the Te Arawa Partnerships project and provides an overview of the project brief and 'model options paper' drafted by Tama Hovell (Solicitor of Atkins Holms Majurey) who is undertaking our Cultural Engagement Audit.

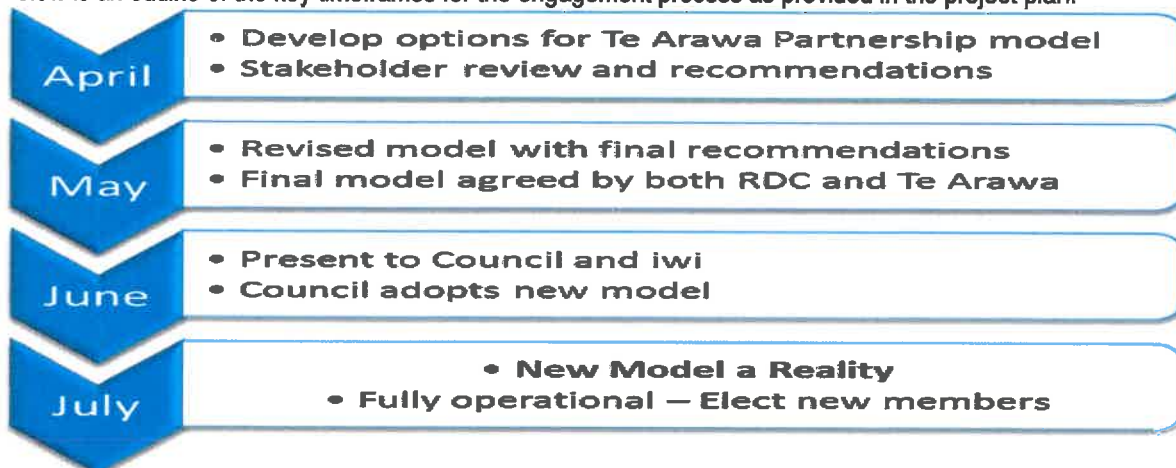
BACKGROUND

A report was provided to Council in December 2013 regarding an update of the Te Arawa Standing Committee review. The report recommended that Council noted that the previous Te Arawa Standing Committee had not been confirmed as a Standing Committee for this triennium and that the Te Arawa Standing Committee iwi members (iwi members) support Te Arawa lead discussions on new partnership arrangements between Te Arawa and Council.

In order to provide an independent model on new partnership arrangements the initial scope of the Cultural Engagement Audit was widened to include the Te Arawa Standing Committee review and for a 'Model options paper' to be drafted that can then be presented to Council and Te Arawa ('stakeholders'). The first draft of the model options is attached to this memorandum for your review prior to the upcoming Councillors forum.

TIMELINE OF KEY EVENTS

Below is an outline of the key timeframes for the engagement process as provided in the project plan:



Essentially the timeframes are based around the drafting and distribution of the 'Models option paper' referred to above. The first round of discussion will take place in April and May and all stakeholder feedback will be provided to Tama Hovell by the end of this month. Tama Hovell will then make the necessary amendments and we will distribute the final amended paper to all stakeholders in May for the final sign off. (Please see attached project timeline)

A forum for all Councillors has been scheduled for tomorrow to allow time for discussion and for feedback to be provided. All feedback can be provided to Tama directly at the workshop. If you need any further information or clarification please do not hesitate to contact me.

Naku noa, na
Karla Kereopa
Policy Analyst Māori Research Officer
(Te Arawa Partnership Project Manager)

MEMORANDUM

FROM: Tama Hovell

DATE: 28 April 2014

**TE ARAWA & ROTORUA DISTRICT COUNCIL
RELATIONSHIPS OPTIONS PAPER**

(DRAFT)

INTRODUCTION

- 1) This paper sets out a proposed model for Te Arawa participation in Rotorua District Council decision-making.
- 2) Rotorua District Council has a long history of recognising the importance of positive and proactive relationships with tāngata whenua to the strategic focus of Council and assisting Council to achieve its legislative requirements. Rotorua District Council's commitment to a partnership relationship is reflected in its Coat of Arms as well as its motto 'Tatou Tatou' meaning 'we together'.
- 3) In this vein, the Te Arawa Standing Committee ("**TASC**") was originally established in 1993 in response to an initiative by Te Arawa to be involved in Council decision-making processes. On some accounts, the TASC was revolutionary for its time.
- 4) While the TASC has been modified over its history to reflect changing circumstances, it has largely retained its same structure since its inception. On the other hand, the Te Arawa iwi/hapū entities context has radically changed in recent times following Treaty settlements, as has the appreciation of mechanisms to provide for tāngata whenua participation in Council decision-making. In light of this context, Rotorua District Council has made a commitment through the 2030 vision to create a new partnership with Te Arawa. A review has been initiated to consider a new fit for purpose structure to provide for Te Arawa participation in Council decision-making.

BENEFITS

- 5) Clear and direct participation in Council decision-making by Te Arawa recognises Te Arawa as partners in the future vision of Rotorua, as well as recognising Te Arawa as tāngata whenua to assist Council in carrying out their kaitiaki responsibilities.

- 6) Similarly, it assists Council achieve its various legislative obligations to tāngata whenua / Māori and directly facilitates Māori capacity to participate in Council decision-making, which is also a statutory requirement.
- 7) Direct and upfront input into decision-making will provide real benefits, and is likely to realise savings and efficiencies in other parts of Council's operations (for example, compliance costs, avoiding potential litigation costs, meeting legislative obligations).

BACKGROUND

- 8) The TASC was established as a Council standing committee, and on its current composition, comprises six Te Arawa representatives and three elected Council members. The six Te Arawa representatives are elected at Hui-a-lwi.
- 9) While Te Arawa preferred the committee be chaired by a kaumatua, standing order requirements as a Council committee meant the Mayor or a Councillor had to chair the committee.¹ On this basis, the TASC sought that the Mayor be the chair as this allowed any views to be authoritatively represented in Council.
- 10) The terms of reference for the TASC provide for it to represent the interests of 'Te Arawa whānui' at Council for matters of particular interest to Te Arawa whānui. This provides some scope for the role of the TASC, and also affirms it is not a substitute for individual Te Arawa iwi/hapū.
- 11) The TASC has provided a means for input into Council decision-making since its inception. However, TASC members and Te Arawa entities have recently highlighted limitations in its role which they wish to address. The Council has also committed to a review of the TASC to provide a more fit for purpose and updated mechanism for Te Arawa participation in Council decision-making.

Changed context

- 12) Since its inception, the number of entities representing Te Arawa whānui has increased markedly. Treaty settlements have confirmed a number of Te Arawa iwi / hapū entities and other entities (such as the Te Arawa Lakes Trust) as mandated entities to represent Te Arawa interests for particular groups or specified resources.
- 13) Further, the mechanisms for Māori participation in Council decision-making have evolved. Two current examples in particular which reflect direct participation in Council decision-making include the Auckland Independent Māori Statutory Board (which was created by special legislation as part of the Auckland Council reforms) and the mechanisms in place for the Wellington Regional Council (which have been adopted under existing legislation).

TASC review & Te Arawa stakeholder hui

¹ RDC Te Arawa Standing Committee June 2010 – paragraph 4.9.

- 14) The TASC and Rotorua District Council have initiated a review of the TASC to consider options to reflect the current context and provide a more 'fit for purpose' structure for Te Arawa involvement in Council decision-making.
- 15) In February 2014, the TASC met with a number of Te Arawa stakeholders to consider the role of the TASC.
- 16) The hui discussed the existing arrangement and how it could be improved. Some themes and insights arising from this hui included:
 - a) The need for a clear purpose, role and functions for the committee;
 - b) The need for a strengthened voice within Council decision-making;
 - c) Affirmation of iwi/hapū tino rangatiratanga – noting that the committee was not a substitute for iwi/hapū autonomy;
 - d) The need for Te Arawa mandate and a link to Te Arawa iwi/hapū, including the ability for Te Arawa iwi/hapū to present to the Te Arawa committee and advise it of particular Council issues they are dealing with;
 - e) The need for the committee to control its own business and composition and to convey its own views within Council committees;
 - f) The need to understand and assist the achievement of legislative obligations to Māori;
 - g) The need for a budget to enable the committee to operate effectively and carry out its purpose and functions.
- 17) The TASC has ceased operation while the review takes place.

PROPOSED MODEL

- 18) A proposed model has been developed to be considered by Te Arawa and Rotorua District Council in partnership.

Relevant considerations

- 19) Considerations which have contributed to the model discussed below include:
 - a) The benefits in providing for tāngata whenua participation in Council decision-making.
 - b) The views of Te Arawa stakeholders as recorded at the stakeholder hui. The views and themes expressed at the hui provide insights into the values important to Te Arawa iwi/hapū and mandated entities to the establishment of a fit for purpose forum for Te Arawa participation in Council decision-making.

- c) The Te Arawa context. Namely, the unique features of Te Arawa with multiple mandated entities for iwi/hapū, and entities with responsibility for specific resources (such as Te Arawa Lakes Trust and the Te Arawa Fisheries) (among others).
- d) Reference to other existing structures in place for tāngata whenua participation in council decision-making, for example:
 - i) The Auckland structure provides a template for measures that are consistent with some Te Arawa views, such as the need for a clear purpose and functions, as well as creating a forum with some independence while having a clear role in Council functions / decision-making and a link with iwi/hapū;
 - ii) The Wellington structure provides a 'best practice' example of joint decision-making on resource management matters as well as roles on other committees and demonstrates what can be achieved within existing legislative requirements, which equally apply to Rotorua District Council.
 - iii) The Bay of Plenty Region Council established three Maori constituencies (seats) under the Bay of Plenty Regional Council (Māori Constituency Empowering) Act 2001. This 2001 Act was brought about after extensive public consultation led by Retired Chief Family Court Judge Peter Trapski establishing the Mauāo, Ōkurei and Kōhi constituencies.
- e) Meeting Council's legislative roles and obligations. These include obligations and functions under the Resource Management Act 1991 ("RMA") and requirements under the Local Government Act 2002 (among others). Specific settlement statutes also contain additional obligations.
- f) Legislative constraints and statutory mechanisms to provide for involvement in decision-making.
- g) Cost considerations; It is proposed that Te Arawa entities cover the costs of the collective body and the process for appointments to the Board, while Council would cover the costs of the Board, including member's participation on committees, the development of the strategic plan, and the executive officer / support staff. It is considered that these costs are justified by the benefits that the arrangement would realise for Council and tāngata whenua.

Proposed model components

- 20) A diagram of the proposed model is provided below.
- 21) The diagram includes different components. While some components will be considered absolutely necessary, the ultimate model may include all or some of the components shown in the diagram. It may also include some with other components to be developed in stages (eg, it may be that the

planning committee is brought into this scheme after completion of the current plan review process).

22) Brief explanations of the components are as follows:

a) **Māori Board ("Board")**. A Board is proposed to be established as a body corporate, or 'Māori Advisory Board'² independent of Council and Te Arawa entities. The Board will be the key group to participate in Council decision-making and essentially replaces the TASC. The Board's role in decision-making is proposed to occur through appointments to Council committees. The Board also provides an entity to develop positions and prepare a strategic plan to guide the members input into Council decision-making and functions, and for iwi/hapū to liaise with the Board as appropriate.

b) **Te Arawa selection of Board members**. It is suggested that Te Arawa select the representatives that go onto the Board. The method for selection will be a matter for Te Arawa to discuss and determine.

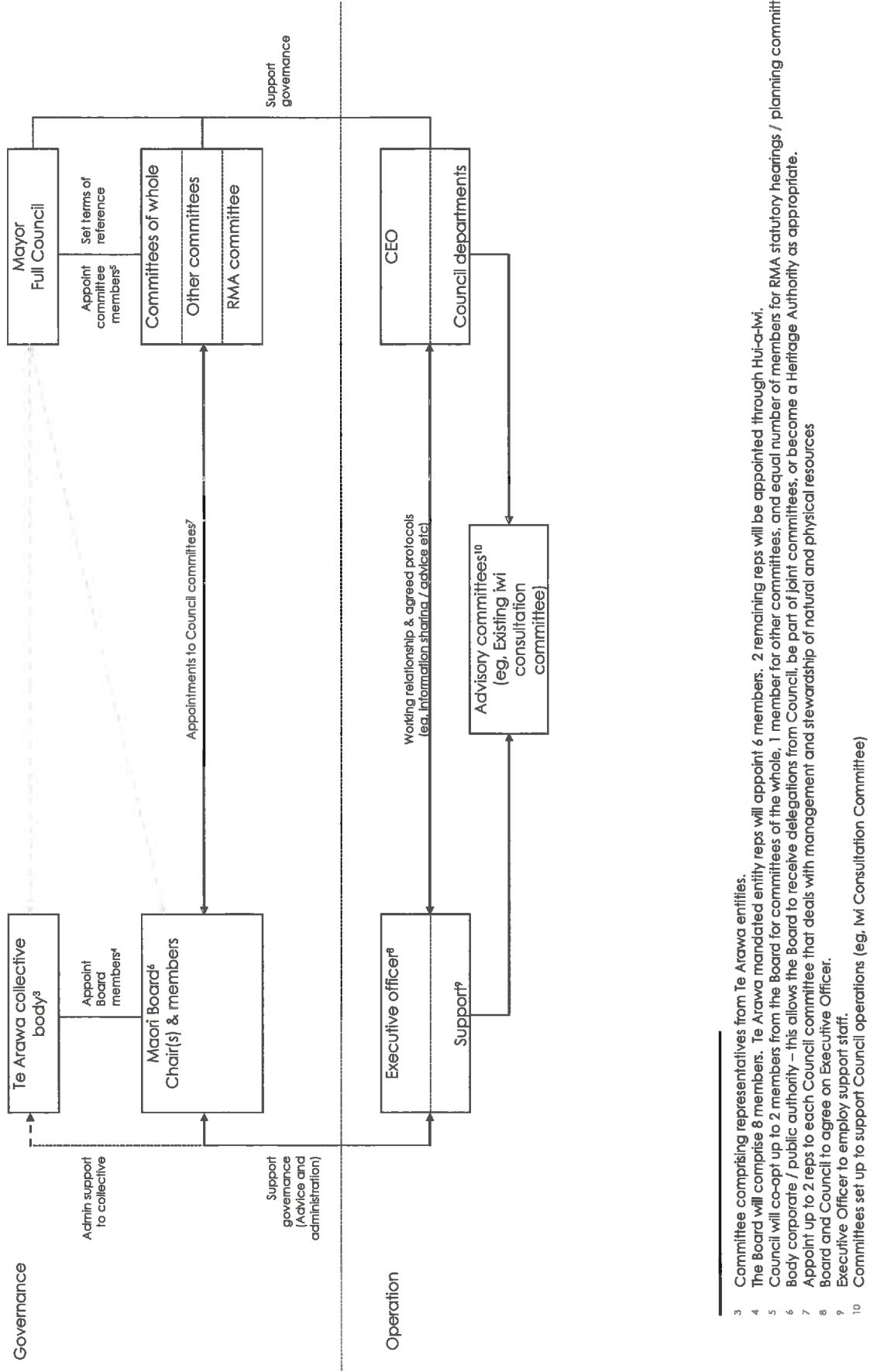
The recommended option is to establish a body comprising representatives from the various Te Arawa mandated entities, being a collective body of representatives. The core function of this collective body would be to appoint the members to the Board, at this stage the recommended option is 6 appointed by the Te Arawa body and 2 appointed through Hui-a-Iwi. The entities to be represented on the body would be a matter for discussion with Te Arawa.

c) **Executive officer**. It is suggested that the Board have an executive officer to assist it to carry out its purpose and functions. The IMSB legislation provides a template for such arrangement, whereby the person is employed by Council, but has a specific role of being directed by and working for the Board independently of Council. Similar arrangements may extend to other support staff. It is proposed that Council staff assist members in their roles on Council committees (as staff would do with all members), while the Executive Officer would manage the independent functions of the Board.

d) **RMA committee**. In addition to the Committee appointments, it is suggested that the model include a committee to deal specifically with resource management functions. This would be a committee of council but would include an equal number of appointments from the Board. This recognises the importance of these functions to tāngata whenua. The Wellington Regional Council - Te Upoko Taiao provides a template for this arrangement.

² While it may be constituted as an advisory board, this is not a reflection of its role.

PROPOSED RELATIONSHIP MODEL DIAGRAM



3 Committee comprising representatives from Te Arawa entities.
 4 The Board will comprise 8 members. Te Arawa mandated entity reps will appoint 6 members. 2 remaining reps will be appointed through Hui-a-Iwi.
 5 Council will co-opt up to 2 members from the Board for committees of the whole, 1 member for other committees, and equal number of members for RMA statutory hearings / planning committee.
 6 Body corporate / public authority – this allows the Board to receive delegations from Council, be part of joint committees, or become a Heritage Authority as appropriate.
 7 Appoint up to 2 reps to each Council committee that deals with management and stewardship of natural and physical resources.
 8 Board and Council to agree on Executive Officer.
 9 Executive Officer to employ support staff.
 10 Committees set up to support Council operations (eg. Iwi Consultation Committee)

TE ARAWA BOARD ESTABLISHMENT, PURPOSE AND FUNCTIONS

1. Board composition

- 1.1. The board consists of 8 members.
- 1.2. The membership is composed of—
 - (a) 6 representatives appointed by the Te Arawa mandated entity body; and
 - (b) 2 representatives appointed at Hui-a-Iwi.
- 1.3. For completeness, all members have equal standing on the board regardless of their method of appointment.

2. Purpose of board

- 2.1. The purpose of the board is to assist Rotorua District Council decision-making, exercise of functions, and exercise of powers by—
 - (a) promoting cultural, economic, environmental, and social issues of significance for Māori.
 - (b) advising on best practice measures to enable Council to meet the relevant statutory provisions that refer to the Treaty of Waitangi or that include responsibilities towards Māori; and
 - (c) assisting Māori to effectively participate in Council decision-making and Council functions.

3. Board as separate entity

- 3.1. The board is to be established as a body corporate distinct from—
 - (a) the Rotorua District Council; and
 - (b) the Te Arawa mandated entity body; and
 - (c) the entities represented on the Te Arawa mandated entity body.
- 3.2. The board is independent of—
 - (a) the Rotorua District Council; and
 - (b) the Te Arawa mandated entities.
- 3.3. Such independence will allow the board to determine its business and methods of achieving its purpose and allow the members of the board, when acting as members of the board, to act in the interest of achieving the board's purpose and not any other interest.
- 3.4. Where a members particular interests are consistent with the board's purpose this does not give rise to a conflict (where the member does not advocate for his or her particular interests to the detriment of other interests which are consistent with the Board's purpose).

4. Board's name

- 4.1. The board will choose its own name.
- 4.2. If the board changes its name, it must tell the Rotorua District Council the new name as soon as practicable.

5. Board's functions and strategic plan

- 5.1. The board's general functions are to—
 - (a) act in accordance with its purpose and functions;
 - (b) develop a strategic plan for the board to guide the board in carrying out its purpose and functions;
 - (c) include in the strategic plan a schedule of issues of significance to Māori of Rotorua and keep the schedule up to date;
 - (d) include in the strategic plan measures for accountability to Te Arawa mandated entities of Rotorua;
 - (e) advise the Rotorua District Council on matters affecting Māori of Rotorua;
 - (f) work with the Council on the design and execution of documents and processes to implement the Council's statutory responsibilities towards Māori of Rotorua.
- 5.2. The board and the Council must meet at least 2 times in each financial year to discuss the board's performance of its functions.

6. Board powers

- 6.1. The board may consult any person who the board considers is likely to help the board in carrying out its purpose.
- 6.2. The board may establish the sub-committees it considers necessary to enable it to carry out its purpose.
- 6.3. The board may seek the advice it requires to enable it to carry out its purpose.
- 6.4. The board has any other powers that it needs to carry out its purpose and that are consistent with its purpose.

7. Resource management committee

- 7.1. The Rotorua District Council agrees to review the terms of reference for its committees so that:
 - (a) a committee may be established in relation to resource management matters which comprises half of its members being elected Councillors and half of its members being appointed from the Board, with provision for co-chairs;
 - (b) the committee will be responsible for resource management matters, including district planning, designations and heritage orders, and resource consent matters;

- (c) the committee would appoint hearing committees or hearing panels for the above.

8. Council committees

8.1. The board must appoint persons to sit as members on the following Rotorua District Council committees:

- (a) Up to 2 members for committees of the whole; and
- (b) 1 member for other committees; and
- (c) Equal number of members for the resource management committee.

8.2. If the Rotorua District Council asks the board to appoint a person or persons to sit as members on any other of the Council's committees, the board may do so.

8.3. The board must,—

- (a) before making the appointments, seek the views of the Rotorua District Council as to the skills and experience that the Council would like the appointees to have; and
- (b) when making the appointments, take the views of the Rotorua District Council into account.

8.4. The board may choose to co-opt members for the above appointments, particularly where it considers it necessary to provide the skills and experience that the Council would like the appointees to have.

9. Delegations

9.1. The Rotorua District Council may seek to delegate any of its functions to the board by request to the board where the Council has statutory powers to do so.

9.2. The board must consider a request by the Rotorua District Council that the board accept the delegation of a function by the Council.

9.3. For completeness, the board must act in accordance with a delegation that it has accepted.

10. Council support

10.1. The Rotorua District Council agrees to—

- (a) provide the board with the information that the board needs to identify business of the Council that relates to the board's purpose:
- (b) consult the board on matters affecting Māori:
- (c) take into account the board's advice on ensuring that the input of Māori is reflected in the Council's strategies, policies, and plans:
- (d) take into account the board's advice on other matters:
- (e) work with the board on the design and execution of documents and processes that relate to seeking the input of Māori.

- 10.2. Where the Council does not accept any advice from the board, the Council will provide written reasons to the board for not accepting any advice in whole or in part.
- 10.3. The Council's commitments in this section do not relieve it of any duties it has under any other enactment to consult Māori or provide for Māori values and interests.
- 10.4. The Council and the board agree to meet at least 4 times in each financial year to discuss the performance of these commitments.

11. Information sharing

- 11.1. The board and The Rotorua District Council will agree an information sharing protocol.
- 11.2. The Rotorua District Council agrees to provide to the board any information relevant to the board's purpose.
- 11.3. In exercising any of its powers, the board shall not disclose information that—
- (a) is known to the board because the Rotorua District Council provided it to the board; and
 - (b) is information that the Rotorua District Council would consider withholding under the Local Government Official Information and Meetings Act 1987 or the Privacy Act 1993 if the Council received a request for it.
- 11.4. When the Rotorua District Council decides that clause 11.3(b) applies to information that the Council provided to the board, it must tell the board of its decision and the reasons for its decision, and the board must not disclose the information without the prior written consent of the Council.

12. Te Arawa body establishment and function

- 12.1. Te Arawa will agree the entities that are to be represented on the Te Arawa collective body.
- 12.2. A Te Arawa body is established when the persons chosen as representatives meet for the first time.
- 12.3. If a person on the Te Arawa body wishes to resign, the person must notify the relevant entity that nominated the person, and the relevant entity must nominate a replacement.
- 12.4. The Te Arawa body's core function is to appoint members to the board.
- 12.5. In appointing members to the board, the Te Arawa body—
- (a) must be guided by the board's purpose, functions, and powers; and
 - (b) is not subject to directions from the Rotorua District Council or any of its committees or councillors; and
 - (c) may seek advice from any source it considers appropriate.

- 12.6. The Te Arawa body must choose 6 of the board's representatives.
- 12.7. The Te Arawa body may choose people on the Te Arawa body for the board.
- 12.8. Nothing in these terms prevents the Board or Council from dealing with individual entities that may be represented on the body.

13. Costs of selection process

- 13.1. Each Te Arawa entity must meet the costs of mandating its representatives as persons on the Te Arawa body.
- 13.2. The Rotorua District Council agrees to meet the costs of selecting the 2 members of the board which are voted at Hui-a-Iwi.

14. Qualifications of members

- 14.1. To be a member of the board, a person must—
 - (a) be a natural person; and
 - (b) consent to being appointed to the board; and
 - (c) not be disqualified under subclause (2).
- 14.2. The following persons are disqualified from being members:
 - (a) a person who is under 18 years of age;
 - (b) a person who is an undischarged bankrupt;
 - (c) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Companies Act 1993, or the Securities Act 1978, or the Securities Markets Act 1988, or the Takeovers Act 1993;
 - (d) a person who is subject to a property order under the Protection of Personal and Property Rights Act 1988;
 - (e) a person in respect of whom a personal order has been made under that Act that reflects adversely on the person's—
 - (i) competence to manage his or her own affairs in relation to his or her property; or
 - (ii) capacity to make or to communicate decisions relating to any particular aspect or aspects of his or her personal care and welfare;
 - (f) a person who has been convicted of an offence punishable by imprisonment for a term of 2 years or more, or who has been sentenced to imprisonment for any other offence;
 - (g) a current member of Parliament;
 - (h) a current Rotorua District councillor or current local board member;
 - (i) a person who is disqualified under another Act.

15. Process for appointing members

- 15.1. A person who wishes to be appointed to the board must give a written certificate to the Te Arawa body stating that the person—
- (a) is not disqualified under clause 14; and
 - (b) consents to being appointed to the board.
- 15.2. The Te Arawa body must give the members it chooses a certificate of appointment that—
- (a) states the date on which the appointment starts; and
 - (b) is signed by at least 2 persons on the body.
- 15.3. The Te Arawa body must give copies of the certificates of appointment to the Rotorua District Council.
- 15.4. The Te Arawa body will complete this process at least 2 months before the ending of the terms of office of the members of the board.
- 15.5. Subject to the above, the Te Arawa body will determine its own process for selecting the members to the Board.

16. Cessation of membership

- 16.1. The term of office of a member of the board is 3 years.
- 16.2. A member of the board remains a member until the earliest of the following:
- (a) he or she becomes disqualified under clause 14;
 - (b) he or she is removed under clause 17;
 - (c) his or her term of office ends;
 - (d) he or she dies;
 - (e) he or she resigns.
- 16.3. A member may resign from the board by giving 4 weeks' written or electronic notice to—
- (a) the board; and
 - (b) the Te Arawa mandated entity body.
- 16.4. If a member of the board dies or resigns or is removed, the Te Arawa body must appoint a replacement member.
- 16.5. However, if the member dies or resigns or is removed less than 12 months before polling day for the next election of the Rotorua District Council, the remaining members of the board may choose not to have a replacement member appointed before polling day.
- 16.6. A replacement member's term of office is the uncompleted term of the member he or she replaces.
- 16.7. Members may be reappointed.

17. Removal of members

- 17.1. A majority of the board may make a request to the Te Arawa body that it, at any time for just cause,—
- (a) remove a member of the board:
 - (b) remove a member appointed as a member of a Council committee.
- 17.2. In sub-clause (1), just cause includes misconduct, inability to perform the functions of office, neglect of duty, and breach of any of the collective duties of the board or the individual duties of members (depending on the seriousness of the breach).
- 17.3. The removal must be made by written notice to the member (with a copy to the board and the Rotorua District Council).
- 17.4. The notice must—
- (a) state the date on which the removal takes effect, which must not be earlier than the date on which the notice is received; and
 - (b) state the reasons for the removal.
- 17.5. The Te Arawa body may remove a member with as little formality and technicality, and as much expedition, as is permitted by—
- (a) the principles of natural justice; and
 - (b) a proper consideration of the matter.

18. Chairperson and deputy

- 18.1. The board must appoint a member to act as chairperson and a member to act as deputy chairperson at the first meeting after each ending of a term of appointment. The board may choose to appoint co-chairs if it wishes.
- 18.2. The chairperson and the deputy chairperson (or co-chairs) each hold office until the earlier of—
- (a) the passage of 3 years:
 - (b) polling day for the Rotorua District Council.
- 18.3. When a member's term of appointment as chairperson ends, the member may be reappointed as chairperson, or may be appointed as deputy chairperson, more than once.
- 18.4. When a member's term of appointment as deputy chairperson ends, the member may be appointed as chairperson, or may be reappointed as deputy chairperson, more than once.

[To insert further clauses as appropriate based on Code of Conduct / meetings etc]

Te Arawa Partnership project timeline of key dates

When	Who	What
Monday 14 April	Tama Hovell	First draft of model options paper released
Thursday 17 April	Combined Project Governance Group/ Working Party meeting	Meeting agenda: <ul style="list-style-type: none"> • Process/Revised project timeframes • Communications plan
Thursday 1 May	Councillors	Tama to present options paper Workshop: <ul style="list-style-type: none"> • Tama to introduce and develop Councillors understanding of the 'model' that will be taken to the Te Arawa Stakeholders and iwi Process focused
Tuesday 6 – Friday 9 May	Te Arawa Stakeholder groups	Workshop: <ul style="list-style-type: none"> • Tama to present model options paper Receives direct feedback
Sunday 11 May	(First) Te Arawa Iwi	Hui-a-iwi: <ul style="list-style-type: none"> • Tama to present model options paper Receives direct feedback
Monday 19 May	Tama Hovell	Develop revised model <ul style="list-style-type: none"> • Analyse feedback • Make any necessary amendments Final draft of model options paper released
Monday 19 May	Karla Kereopa	Email final draft to Working group and Te Arawa Stakeholders (prior to hui-a-iwi)
Wednesday 21 May	Councillors	Draft memo/report for Councillors (prior to SP&F)
Sunday 25 May	(Second) Te Arawa Iwi	SP&F Committee meeting: Tama to present final model options
Monday 26 May	Combined Te Arawa Stakeholder and Te Arawa Iwi hui	Hui-a-iwi: Tama to present final model options
Thursday 5 June	Tama Hovell	Complete final recommendations to Council
Monday 9 June	Councillors	Report to Council re final model options Annual Plan deliberations Te Arawa Iwi endorse final model options and present to Council

