

DEED OF SETTLEMENT

IN THE MATTER

of the Treaty of Waitangi Act 1975.

BETWEEN

HER MAJESTY THE QUEEN ("the Crown")
represented by the Honourable Douglas Graham, Her Majesty's Minister of Justice.

AND

THE CLAIMANTS George Hakaraia of Russell and Matutaera Clendon of Manurewa acting on behalf of themselves and the other Trustees of the Hauai Trust ("the claimants").

BACKGROUND

- A In 1971 the Trustees of the Hauai Trust, hereafter referred to as "the Hauai Trustees" held land on the Hauai Peninsula in the Bay of Islands comprising 25.4932 hectares on which they proposed to carry out a "residential subdivision".
- B The Crown opposed subdivision wishing instead to set aside the land as a public reserve. In the event the Commissioner of Crown Lands proposed an exchange of land, an exchange into which the Hauai Trustees felt they were pressured by the Crown.
- C In August 1976 an exchange agreement was signed between the Hauai Trustees and the Commissioner of Crown Lands which provided for the exchange of Maori land at Hauai in return for part of Felix Farm (28.2 hectares) in Kamo and three sections at Eastern Beach, Auckland.
- D The sale of these sections was to meet the expenses the Hauai Trustees had incurred in their subdivision proposals for the Hauai block and to provide immediate funds to enable them to develop a residential subdivision at Felix Farm.
- E The appropriate orders were made in the Maori Land Court on 11 March 1977.
- F As a result the Crown acquired part of the Hauai block for the purpose of a reserve and undertook to make up any shortfall on the sale price of the Eastern Beach sections.
- G The Eastern Beach sections failed to sell at the valuation price advised by the then Department of Lands and Survey. They fetched a total of only \$54,500, a shortfall of \$19,500.
- H In August 1978 the Whangarei District Council became aware of a possible risk

of subsidence in areas in Kamo which had been mined for coal, included in which was Felix Farm. The Hauai Trustees at this point considered the land totally unsuited to their needs. They were unable to proceed with their original plans.

- I At the time the Minister of Lands rejected both liability for meeting the shortfall on the sale of the three Eastern Beach sections and for the difficulties with subdividing Felix Farm because of potential land subsidence.
- J Following an application to the Chief Judge of the Maori Land Court for review of the decision for ordering the exchange and a report by Judge Spencer of the Maori Land Court, the parties attempted unsuccessfully to achieve a settlement and on 28 February 1991 the Hauai Trustees lodged a claim with the Waitangi Tribunal under Wai 200.
- K On 13 May 1991 Judge P.J. Trapski, a member of the Waitangi Tribunal, was appointed as mediator to take such steps as may be necessary to have the matter brought either to a hearing or to a mediation.
- L Following subsequent negotiations the parties have now agreed to settle the claim. As part of that settlement the Crown has introduced legislation vesting Hauai 2D8 Block in the Hauai Trustees and vesting Felix Farm in the Crown. This legislation also:
- i removes the reserve status of the Hauai 2D8 Block;
 - ii provides that section 24 of the Conservation Act (which requires the reservation of a marginal strip when land is disposed of by the Crown) shall not apply to the vesting of Hauai 2D8 Block in the Hauai Trustees but that subject to sub-paragraph (iii) of this paragraph, an area equivalent to that otherwise covered by a marginal strip shall be held by the Hauai Trustees as a Maori reservation for the common use and benefit of all New Zealanders;
 - iii excludes a wahi tapu area from the Maori reservation for the common use and benefit of all New Zealanders referred to in sub-paragraph (ii) of this paragraph and provides that the wahi tapu area is to be held by the Hauai Trustees as a reservation for the protection of wahi tapu;
 - iv preserves public access along the coastline of Hauai 2D8 Block by providing that a strip of land three metres wide, adjacent to, but around the landward side of the wahi tapu site referred to in sub-paragraph (ii) of this paragraph is to be held by the Hauai Trustees as a walkway for the general public.

A copy of the legislation is attached to this deed of settlement. The remaining matters of agreement are set out below.

Document

It is agreed:

1. That excepting that the Crown makes no acknowledgement that the effects of town planning legislation on the claimants' land amounted to a breach of the principles of the Treaty of Waitangi, the Crown acknowledges the validity of the Hauai Trustees claim and agrees to provide redress set out herein. The Hauai Trustees acknowledge that the settlement recorded herein is accepted in full and final settlement of their claim, Wai 200 and any other claim against the Crown, whether arising at law or otherwise, relating to the Wai 200 claim;
2. That the Crown will not oppose any planning proposals or applications for planning and/or resource consent, relating to subdivision and/or papakainga housing proposals in respect of the Hauai lands, the subject of this agreement;
3. That the Crown agrees that the Hauai Trustees shall retain the proceeds from the sale of the Eastern Beach sections of \$54,500;
4. That the Crown will pay forthwith to the Trustees;
 - (a) an ex gratia payment of \$350,000 that the Crown understands from the Commissioner of Inland Revenue will not attract GST on the understanding that the payment is in substance an ex gratia payment;
 - (b) the sum of \$135,000 (GST inclusive) by way of contribution towards expenses, other than legal expenses incurred by the Hauai Trustees to date;
 - (c) the sum of \$90,000 (GST inclusive) as a contribution towards the legal expenses including disbursements of the Hauai Trustees, that sum to be paid to Messrs Vallant Hooker & Partners;
 - (d) the sum of \$21,938 (GST inclusive) being the shortfall on the sale of the three Eastern Beach sections.
5. That the Crown will pay forthwith to the Whangarei District Council all outstanding rates in respect of Felix Farm, the sum agreed to between the Crown and the Whangarei District Council in satisfying that debt being \$100,000.
6. That the Crown will pay a maximum of \$25,000 (GST inclusive) to the Hauai Trustees towards the development or other costs incurred by them consequent on the settlement, subject to the receipt of supporting invoices.

ated this 30th day of October 1993 at Te Rawhiti Marae, Bay of Islands.

SIGNED BY:

Signed by Honourable Douglas Graham
Minister of Justice

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for and on behalf of the Crown in the
presence of:

COPY

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Amelia Hanson

(Witness)

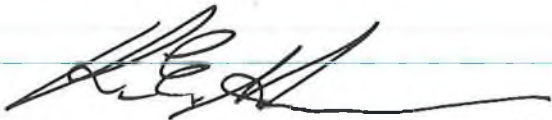
Name Amelia Hanson
Address Wellington
Occupation legal Adviser

Signed by George Hakaraia and
Matutaera Clendon as claimants

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acting on behalf of themselves and the
other trustees of the Hauai Trust
in the presence of:

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)
)



(Witness)

Name Anelland
Address Barrois
Occupation Barrois

signed by the following Trustees of the Hauai Trust whose names and signatures are written below:

Te Aroha Beaumont

Karani Kauhā

Te Aroha Peacocks (Hepi)

Henry Titove

J. Mitchell

J. B. S. Smith

Hon. W. Rob Storey

RESERVES AND OTHER LANDS DISPOSAL (NO. 2)

ANALYSIS

Title	
1. Short Title	<i>Hawai Land Claim</i>
<i>Auckland Area Health Board Endowments</i>	3. Oke Bay Scenic Reserve
2. Validating sale and purchase agreements in respect of certain former Auckland Area Health Board land	4. Wahi tapu site
	5. Felix Farm
	6. Revocations
	<i>Entries in Registers</i>
	7. Entries in registers

A BILL INTITULED

An Act to provide for various matters relating to Crown land and other land held for public or special purposes
BE IT ENACTED by the Parliament of New Zealand as follows:

5 **1. Short Title**—This Act may be cited as the Reserves and Other Lands Disposal Act (No. 2) 1993.

Auckland Area Health Board Endowments

2. Validating sale and purchase agreements in respect of certain former Auckland Area Health Board land—

10 (1) Notwithstanding anything in the Reserves, Endowments, and Maori Lands Exchange, Sale, Disposal, and Enabling Act 1898 or any other enactment, the agreements for sale and purchase in respect of the lands to which this section relates that were entered into in 1992 between the Auckland Area
15 Health Board and the respective lessees of those lands are hereby declared to be and always to have been valid and effectual.

20 (2) The lands to which this section relates are hereby freed from all prohibitions and restrictions imposed in respect of such lands by the Reserves, Endowments, and Maori Lands Exchange, Sale, Disposal, and Enabling Act 1898.

(3) The section relates to the following lands:

meaning of the Maori Land Act 1993 for the common use and benefit of the people of New Zealand.

5 (5) This section relates to all the piece of land comprising 25.1180 hectares, more or less, being Hauai 2D8 Block, situated in Block XV, Bay of Islands Survey District, and being all the land comprised and described in *Gazette* Notice B. 138640.1 (North Auckland Registry) (*New Zealand Gazette*, 1982, page 3627). (M.L. Plan 15060).

10 (6) For the purpose of this section, "foreshore" means such parts of the bed, shore, or banks of a tidal water as are covered and uncovered by the flow and ebb of the tide at mean high-water mark.

15 **4. Wahi tapu site**—(1) Notwithstanding section 3 of this Act, the piece of land described in subsection (3) of this section, which is a wahi tapu site and which would otherwise be held by the trustees of the Hauai Trust pursuant to that section shall be held by the trustees of the Hauai Trust as a reservation for the protection of wahi tapu.

20 (2) Notwithstanding section 3 of this Act, a piece of land 3 metres wide, adjacent to but around the landward side of the wahi tapu site to which this section relates, shall be held by the trustees of the Hauai Trust as a walkway for the general public.

25 (3) The wahi tapu site to which this section relates is all that piece of land containing 6800 square metres, more or less, being part Hauai 2D8 Block, situated in Block XV, Bay of Islands Survey District; as shown marked "A" on S.O. Plan 66958.

30 **5. Felix Farm**—(1) The vesting in the trustees of the Hauai Trust of the land described in subsection (2) of this section is hereby cancelled and that land is hereby vested in the Crown as Crown land subject to the Land Act 1948.

35 (2) This section relates to all the piece of land comprising 28.2000 hectares, more or less, being Allotment 221, Parish of Whangarei, situated in Block VIII, Purua Survey District, and being the balance of the land comprised and described in Register Book 43B/275 (North Auckland Registry) (S.O. Plan 51857).

40 **6. Revocations**—(1) The Proclamation by which the land described in section 3 (5) of this Act was declared to be Crown land subject to the Land Act 1948, which Proclamation was published in the *Gazette* of the 7th day of December 1978 at page 3344, is hereby revoked.

4 *Reserves and Other Lands Disposal (No. 2)*

- (2) The following notices, namely,—
- (a) The notice by which the land described in section 3 (5) of this Act was set apart, pursuant to the Land Act 1948, as a reserve for recreation purposes, which notice was published in the *Gazette* of the 11th day of April 1979 at page 1095; and 5
- (b) The notice by which the Bay of Islands Maritime and Historic Park Board was, under the Reserves Act 1977, appointed to control and manage, as a reserve for recreation purposes, the land described in section 3 (5) of this Act, which notice was published in the *Gazette* of the 18th day of October 1979 at page 3021; and 10
- (c) The notice by which the land described in section 3 (5) of this Act was, under the Reserves Act 1977, declared to be classified as a reserve for scenic purposes and to be thereafter known as the Oke Bay Scenic Reserve, which notice was published in the *Gazette* of the 4th day of November 1982 at page 3627,— 15
- are hereby revoked. 20

Entries in Registers

7. Entries in registers—District Land Registrars and Registrars of the Maori Land Court are hereby authorised and directed to make such entries in their respective registers, and to do such other things, as may be necessary to give full effect to the provisions of this Act. 25