NGĀTI WHĀTUA O ŌRĀKEI
MĀORI TRUST BOARD

and

HER MAJESTY THE QUEEN
in right of New Zealand

Agreement in Principle for the Settlement of the Historical Claims of Ngāti Whātua o Ōrākei

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9 June 2006

Negotiations to Date

1 In October 2002, the Crown recognised the statutory mandate of the Ngāti Whātua o Ōrākei Māori Trust Board (the **Trust Board**) under section 19 of the Orakei Act 1991 to negotiate, on behalf of Ngāti Whātua o Ōrākei, an offer for the settlement of the Historical Claims of Ngāti Whātua o Ōrākei.

2 On 2 May 2003, the parties entered into Terms of Negotiation which specify the scope, objectives and general procedures for negotiations.

3 Negotiations have now reached a stage where the parties wish to enter into this Agreement in Principle recording that the Crown and the Trust Board are willing in principle to settle the Historical Claims by a Deed of Settlement on the basis outlined in this Agreement in Principle.

General

4 This Agreement in Principle contains the nature and scope, in principle, of the Crown's offer to settle the Historical Claims.

5 The redress offered to Ngāti Whātua o Ōrākei to settle the Historical Claims will comprise three main components. These are:

a Historical Account, Crown Acknowledgements and Crown Apology;

b Cultural Redress; and

c Financial and Commercial Redress.

6 Following the signing of this Agreement in Principle, the parties will work together in good faith to develop, as soon as reasonably practicable, a Deed of Settlement. The Deed of Settlement will include the full details of the redress to settle the Historical Claims and all other necessary matters. The Deed of Settlement, will be conditional on the matters set out in paragraph 64.

7 The Crown and the Trust Board each reserve the right to withdraw from this Agreement in Principle by giving written notice to the other party.

8 This Agreement in Principle is entered into on a without prejudice basis. It:

a is non-binding and does not create legal relations; and

b may not be used as evidence in any proceedings before, or be presented to, the Courts, the Waitangi Tribunal and any other judicial body or tribunal.

9 The Terms of Negotiation continue to apply to the negotiations except to the extent affected by this Agreement in Principle.

Agreed Historical Account, Crown Acknowledgements, and Crown Apology

10 The agreed Historical Account outlines the historical relationship between the Crown and Ngāti Whātua o Ōrākei. The agreed Historical Account, Crown Acknowledgements and Apology are the cornerstone of the Crown's settlement offer.

11 On the basis of the agreed Historical Account, the Crown acknowledges that certain actions or omissions of the Crown were a breach of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles. The Crown will make an Apology to Ngāti Whātua o Ōrākei in the Deed of Settlement for the acknowledged Crown breaches of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles. The Crown Apology will be developed following the signing of this Agreement in Principle.

12 A draft of a substantively agreed Historical Account is attached as **Attachment B**. The draft Crown Acknowledgements are attached as **Attachment C**. The attached Historical Account and Crown Acknowledgments may be subject to further editing and amendment as the Crown and the Trust Board agree is necessary.

Cultural Redress

Overview

13 The value of the cultural redress is not off-set against the Financial and Commercial Redress Amount.

14 Maps for each of the Cultural Redress Properties are included in **Maps 1 - 4**

Cultural Redress Properties

15 The Deed of Settlement and Settlement Legislation will provide for:

a the vesting in the Governance Entity on the Settlement Date of the fee simple estate in each of the following Cultural Redress Properties (as described in **Table 1**):

i One Tree Hill Domain (Maungakiekie);

ii Mount Eden Historic Reserve (Maungawhau);

iii Winstone Park Domain (Mount Roskill (Puketapapa)); and

iv Purewa Creek Stewardship Area;

b Purewa Creek Stewardship Area to become a recreation reserve on Settlement Date and each of the other Cultural Redress Properties to remain a reserve, subject to all applicable provisions of the Reserves Act

1977 including those preserving public access, with its existing reserve classification;

c the ongoing arrangements for each of the Cultural Redress Properties set out in paragraph 16; and

d all other necessary matters.

16 The Deed of Settlement and Settlement Legislation will provide, in relation to the Cultural Redress Properties, that:

a their reserve status may not be revoked;

b the Governance Entity may not dispose of, exchange, transfer, mortgage or charge any of them;

c the Minister of Conservation is to retain all functions and powers under the Reserves Act 1977 (except where expressly provided);

d that a statutory body is established, or the jurisdiction of an existing statutory body varied, (the **Joint Management Body**) and that body will be the administering body under the Reserves Act 1977 of the Cultural Redress Properties with all the functions and powers of an administering body in which a reserve is vested;

e the Joint Management Body is to:

i be composed of an equal number of members appointed by the Governance Entity and the Auckland City Council with the Chair to be appointed by the Governance Entity and to have a casting vote;

ii be able to delegate any of its functions and powers including decisions on operational matters; and

f the Auckland City Council will retain ultimate control over spending decisions.

17 The Joint Management Body will have the ability to provide advice in relation to the management of the following properties:

a Mount Albert Domain (Owairaka);

b Mount Hobson Domain (Ohinerau);

c Mount Saint John Domain (Te Kopuke); and

d Big King Recreation Reserve (Taurangi).

18 The sites listed in paragraph 17 above will remain vested in the Auckland City Council under the Reserve Act 1977, and the Crown will remain the responsible administering body. The proposed advisory function will be achieved through a Memorandum of Understanding to be entered into between the Governance Entity and the Auckland City Council.

Conditions for Cultural Redress Properties

19 The vesting of the Cultural Redress Properties is subject to (where relevant):

a further identification and survey of sites where appropriate;

b confirmation that no prior offer back or other third party right, such as those under the Public Works Act 1981, exists in relation to the site and that any other statutory provisions that must be complied with before the site can be transferred are able to be complied with;

c any specific conditions or encumbrances included in **Table 1** below;

d any rights or encumbrances (such as a tenancy, lease, licence, easement, covenant or other right or interest whether registered or unregistered) in respect of the site to be transferred, either existing at the date the Deed of Settlement is signed, or which are advised in the disclosure information as requiring to be created;

e the rights or obligations at the Settlement Date of third parties in relation to fixtures, structures or improvements;

f the creation of marginal strips where Part IVA of the Conservation Act 1987 so requires. The Trust Board intend to seek an exemption to this requirement in relation to the vesting in fee simple estate of Purewa Creek Stewardship Area;

g sections 10 and 11 of the Crown Minerals Act 1991;

h any other specific provisions relating to Cultural Redress Properties that are included in the Deed of Settlement

20 Following the signing of this Agreement in Principle, the Crown will prepare disclosure information in relation to each site, and will provide such information to the Trust Board. If any sites are unavailable for transfer for any of the reasons given in paragraph 19(b) above, the Crown has no obligation to substitute such sites with other sites but, in good faith, will consider alternative redress options.

Table 1 – Cultural Redress Properties

Site	Description	Specific conditions or encumbrances (known at the time of the Agreement in Principle)
One Tree Hill Domain (Maungakiekie)	48.5370 hectares, more or less, being Parts Allotments 11 and 54, Section 12, Suburbs of Auckland. All Gazette Notice No. 596717 (Gazette 1980 page 313). **Map 1**	Cornwall Park Trust holds a statutory right to maintain monument and gravesite at the summit of One Tree Hill Domain. Cornwall Park Trust manages grazing on One Tree Hill Domain. Auckland Archery Club holds a lease over part of One Tree Hill Domain. Lease to Sorrento Group (Sorrento Reception Lounge). Lease to Auckland Observatory Trust. Watercare Services is responsible for One Tree Hill Domain reservoirs, water reticulation pipes and associated electricity/signal cables under the Local Government Act. Easement entitles Watercare to carry out routine maintenance and enter onto the Domain by vehicle.
Mount Eden Historic Reserve (Maungawhau)	10.4900 hectares, more or less, being Part Allotment 1A, Section 6, Suburbs of Auckland, as shown "A" on SO 55658. All Gazette 1983 page 272. **Map 2**	Grazing licence
Winstone Park Domain (Mount Roskill/Puketapapa)	9.1444 hectares more or less being Lot 1476 DP 22826 and Lots 94 and 211 DP 42694. All Gazette 1962 page 261. **Map 3**	Grazing licence

Purewa Creek Stewardship Area	33.70 hectares, approximately, being Sections 18, 19 and 20, Part Sections 21, 22 and 23, Block VIII, and Section 15 and Part Section 14, Block IX, Rangitoto Survey District, Part Orakei 1E, 1F1, 1F2, 1G, 3A2 East, 3A2 West, 3C, 3D and 3G, Part Section 636, Town of Orakei and Parts Lot 2 Crown Grant 14422. Section 62 of the Conservation Act 1987. Subject to survey. **Map 4**	Lease to Vodafone to operate a telecommunication station on the site. Concession granted to St Heliers Bay Pony Club by way of a licence under s 59A Reserves Act 1977 over site.

Statutory Acknowledgements

21 The Deed of Settlement and Settlement Legislation will provide for statutory acknowledgements to be made in relation to:

a Mount Albert Domain (Owairaka);

b Mount Hobson Domain (Ohinerau);

c Mount Saint John Domain (Te Kopuke);

d Big King Recreation Reserve (Taurangi);

e Mount Richmond Domain (Otahuhu);

f North Head Historic Reserve; and

g the land held for Defence purposes at Kauri Point, subject to further analysis of potential implications for the continued operations of the New Zealand Defence Force in relation to this land, and consideration of any potential impact on the adjacent North Shore City Council land.

22 The Crown will explore offering a statutory acknowledgement over Mount Victoria and Kauri Point Domain. The Crown will seek the views of the North Shore City Council in relation to this issue.

23 Statutory acknowledgements provide for the Crown to acknowledge a statement by Ngāti Whātua o Ōrākei of their cultural, spiritual, historical and traditional association with a particular area. They further provide for:

a relevant consent authorities, the New Zealand Historic Places Trust and the Environment Court to have regard to the statutory acknowledgments for certain purposes;

b relevant consent authorities to forward to the Governance Entity summaries of resource consent applications for activities within, adjacent to, or impacting directly on, the area in relation to which a statutory acknowledgement has been made;

c the Governance Entity and any member of Ngāti Whātua o Ōrākei to cite to consent authorities, the New Zealand Historic Places Trust and the Environment Court the statutory acknowledgement as evidence of the association of Ngāti Whātua o Ōrākei with the area in relation to which the statutory acknowledgment has been made.

24 The statutory acknowledgements provided to the Governance Entity will, in substance, be on similar terms to those provided in previous Treaty settlements.

25 The statutory acknowledgements provided to the Governance Entity:

a will not affect the lawful rights or interests of a person who is not a party to the Deed of Settlement; and

b will not prevent the Crown from providing a statutory acknowledgement to persons other than Ngāti Whātua o Ōrākei or the Governance Entity with respect to the same area.

Protocols

26 A protocol is a statement issued by a Minister of the Crown setting out how a particular government agency intends to:

a exercise its powers and perform its functions and duties, in relation to specified matters within its control in the Protocol Area; and

b interact with the Governance Entity on a continuing basis and enable that group to have input into its decision-making processes.

27 The Deed of Settlement and the Settlement Legislation will provide for the following Ministers to issue protocols to the Governance Entity:

a the Minister of Conservation;

b the Minister of Fisheries; and

c the Minister for Arts, Culture and Heritage.

28 The contents of the draft protocols have been agreed between the parties and have been developed to comply with the applicable legislation. The draft protocols are included in **Attachments D, E, and F**. The agreed protocols will be included in the Deed of Settlement.

29 A map of the Protocol Area is included as **Attachment G**. The Protocol Area includes the adjacent coastal waters, to the extent that the adjacent waters are covered by the applicable legislation.

Place Name Changes

30 The Crown will explore, for inclusion in the Deed of Settlement, changing the:

a existing place name One Tree Hill to a dual place name Maungakiekie/One Tree Hill;

b existing place name Mount Eden to a dual place name Maungawhau/ Mount Eden; and

c spelling of the existing place name Purewa Creek to Pourewa Creek.

31 The changes proposed under this clause will be explored in consultation with the New Zealand Geographic Board Nga Pou Taunaha o Aotearoa and Ngāti Whātua o Ōrākei.

32 The Crown acknowledges that Ngāti Whātua o Ōrākei has indicated that, following the signing of the Agreement in Principle, they may wish to request further place name changes or dual place names, following further research and consultation with other iwi who may also have associations with the original place names.

Promotion of Relationship between Ngāti Whātua o Ōrākei and Local Authorities

33 The Deed of Settlement will record that the Minister in Charge of Treaty of Waitangi Negotiations will write to the Auckland City Council, Auckland Regional Council, North Shore City Council, Manukau City Council and Waitakere City Council encouraging each Council to enter into a memorandum of understanding (or a similar document) with the Governance Entity in relation to the interaction between the Council and the Governance Entity.

Hamlin's Hill (Mutukaroa)

34 Ownership and management arrangements in relation to Hamlin's Hill (Mutukaroa):

a are not to form part of the Treaty settlement with, or redress to, Ngāti Whātua o Ōrākei; and

b will be addressed by the Crown with the Governance Entity and other claimant groups with an interest in the site.

Rangitoto and Motutapu Islands

35 Ngāti Whātua o Ōrākei has indicated an historical and cultural relationship with Rangitoto and Motutapu, and is seeking to have this relationship recognised. The Crown and the Trust Board have agreed to discuss non-exclusive redress relating to these sites following the signing of an Agreement in Principle. The Crown will consult with other relevant claimant groups on this matter.

Financial and Commercial Redress

Overview

36 The Financial and Commercial Redress Amount is $10 million, which includes $2 million redress received by the Trust Board as redress for the 1993 Railways settlement, referred to in paragraph 59.

37 The Deed of Settlement and Settlement Legislation will provide for the Crown to transfer to the Governance Entity on Settlement Date the Cash Settlement Amount (being the total value of the Financial and Commercial Redress Amount less the transfer value of the Commercial Redress Properties).

Right of First Refusal

38 The Deed of Settlement will provide for the Governance Entity to have a Right of First Refusal (**RFR**), based on similar terms and conditions as in other recent settlements but with variations to be negotiated, for a period of 100 years from Settlement Date over:

a Crown-owned properties in the RFR Area (a map showing the RFR Area is attached as **Attachment H**);

b properties owned by Transit New Zealand in the RFR Area;

c properties owned by the Auckland District Health Board in the RFR Area;

d the blocks of Naval housing on the North Shore over which the sale and leaseback is not applied (i.e. the Naval housing on the North Shore but excluding the Commercial Redress Properties);

e the following additional specific Crown-owned properties:

i Henderson Police Station;

ii Te Atatu Police Station;

iii Massey Police Station; and

iv New Lynn Police Station.

39 Housing New Zealand Corporation will explore the possibility of offering Ngāti Whātua o Ōrākei an RFR over some of Housing New Zealand Corporation's properties within the RFR Area

Commercial Redress Properties: Sale and Leaseback

40 The Deed of Settlement and the Settlement Legislation will provide for the Crown to transfer to the Governance Entity on Settlement Date selected Commercial Redress Properties which will immediately be leased back to the Crown.

41 The Trust Board will have the opportunity to the Commercial Redress Properties.

42 The process for selecting Commercial Redress Properties is to commence as soon as possible after this Agreement in Principle is signed, and is as follows:

a the Crown will provide the Trust Board with a list of the blocks of residential properties owned by the New Zealand Defence Force in the North Shore, Auckland; and

b after advice from the New Zealand Defence Force concerning their housing requirements relating to those properties, the Trust Board and the Crown will negotiate the inclusion of blocks of properties up to a total unencumbered freehold value of $80 million as Commercial Redress Properties.

43 On Settlement Date, immediately after transfer to the Governance Entity of the Commercial Redress Properties, the Governance Entity will grant to the Crown a registrable ground lease in respect of each block of Commercial Redress Properties on commercial terms to be agreed before the Deed of Settlement is signed and to be included as a schedule to the Deed of Settlement.

44 As soon as possible after the Agreement in Principle is signed and before the valuation process commences, the Crown and Trust Board will agree the terms of the ground leases. The ground leases will be perpetual and will include a rent free period of up to 35 years.

45 The ground leases will also include provisions designed to ensure the interest created by the lease equates as nearly as possible to freehold ownership, retain flexibility for the Crown in terms of future-decision making in relation to the residential properties owned by the New Zealand Defence Force in the North Shore and that the transaction is value-neutral to the Crown.

46 The Crown and Trust Board will establish the transfer value for the selected Commercial Redress Properties. The transfer value for each block of Commercial Redress Properties will be at fair market value. The effective date of valuation will be the date of the signing of the Deed of Settlement.

47 The valuation process will involve the Crown and the Trust Board instructing separate registered valuers to determine the market value of the Commercial Redress Properties subject to the terms of the agreed ground lease. If the two assessments differ in respect of any property, the Crown and Trust Board will attempt to agree the value through discussions, and failing that, will refer the matter for final determination by an independent arbitrator.

Protocol with the Minister of Defence

48 The New Zealand Defence Force (NZDF) is currently preparing a comprehensive Defence Estate Strategic Plan which will incorporate the Housing and Accommodation Assistance Programme as it relates to the Naval housing portfolio in the North Shore, Auckland. The Minister of Defence will enter into a protocol with Ngāti Whātua o Ōrākei which will provide for the NZDF to interact and share information with Ngāti Whātua o Ōrākei in relation to the Defence Estate Strategic Plan and the Housing and Accommodation Assistance

Programme as it relates to the Naval housing portfolio in the North Shore, Auckland.

49 The terms of the protocol with the Minister of Defence will be drafted between signing this Agreement in Principle and signing the Deed of Settlement and will be included as a schedule to the Deed of Settlement.

Conditions for Commercial Redress Properties

50 The transfer of the Commercial Redress Properties will be subject to (where relevant):

a confirmation that no prior offer back or other third party rights and obligations, such as those under the Public Works Act 1991, exist in relation to this property and any other statutory provisions which must be complied with before the property can be transferred are able to be complied with;

b standard terms of transfer and specific terms of transfer applicable to the specific property;

c any express provisions relating to specified properties that are included in the Deed of Settlement;

d any rights or encumbrances (such as tenancy, lease, licence, easement, covenant or other third party right or interest whether registered or unregistered) in respect of the property to be transferred, either existing at the date the Deed of Settlement is signed, or which are advised in the disclosure information to be provided to the Trust Board as requiring to be created;

e the creation of marginal strips where Part IVA of the Conservation Act 1987 so requires, except as expressly provided; and

f sections 10 and 11 of the Crown Minerals Act 1991.

51 The Crown will prepare disclosure information in relation to each of the Commercial Redress Properties and will provide such information to the Trust Board. If any properties are unavailable for transfer for the reasons set out in paragraph 50(a) above, the Crown has no obligation to substitute such sites with other sites but, in good faith, will consider alternative redress options.

Other Issues

Claimant Definition

52 The Deed of Settlement will specify who is covered by the settlement, that is, whose claims are being settled and therefore who can benefit from the settlement.

53 The definition of Ngāti Whātua o Ōrākei will include:

a those that descend from Tuperiri and the Ngāti Whātua o Ōrākei hapu of Nga Oho, Te Uringutu and Te Taoū to the extent that customary interests from these hapū were exercised after 1840 predominantly in the areas of Central Auckland, West Auckland, North Shore and Tamaki isthmus.

54 The definition of Ngāti Whātua o Ōrākei will be further developed and discussed in the process of finalising a draft Deed of Settlement.

Scope of Settlement

55 The Deed of Settlement will settle all the **Historical Claims** of Ngāti Whātua o Ōrākei.

56 **Historical Claims** means

a (subject to paragraph 58), every claim (whether or not the claim has arisen or been considered, researched, registered, notified or made by or on the Settlement Date) that Ngāti Whātua o Ōrākei (or any representative entity of Ngāti Whātua o Ōrākei) had at, or at any time before, the Settlement Date, or may have at any time after the Settlement Date, and that:

i is, or is founded on, a right arising:

A from Te Tiriti o Waitangi/the Treaty of Waitangi or its principles;

B under legislation;

C at common law (including in relation to aboriginal title or customary law);

D from a fiduciary duty; or

E otherwise; and

ii arises from or relates to acts or omissions before 21 September 1992:

A by or on behalf of the Crown; or

B by or under legislation;

b every claim to the Waitangi Tribunal that relates specifically to Ngāti Whātua o Ōrākei, including:

i Wai 186

ii Wai 253

iii Wai 261

iv Wai 276

v Wai 388

vi Wai 1128

c Every other claim to the Waitangi Tribunal to which paragraph 56(a) applies so far as it relates to Ngāti Whātua o Ōrākei or a representative entity of Ngāti Whātua o Ōrākei including:

i Wai 187

ii Wai 279

iii Wai 756

iv Wai 887

v Wai 1045

vi Wai 1114

57 Paragraph 56(a) is not limited by paragraphs 56(b) and (c).

58 The term Historical Claims does not include the following claims:

a any claim that a Member of Ngāti Whātua o Ōrākei, or a representative entity of Ngāti Whātua o Ōrākei may have that is, or is founded on, a right arising as a result of being descended from:

i a recognised ancestor of the Ngāti Whātua hapu of Nga Oho, Te Uringutu and Te Taoū to the extent that customary rights were exercised after 1840 predominantly outside the areas of Central Auckland, West Auckland, North Shore and Tamaki isthmus; and/or

ii an ancestor of a tribal group other than Ngāti Whātua o Ōrākei;

b any claim that a Member of Ngāti Whātua o Ōrākei, or a representative entity of Ngāti Whātua o Ōrākei may have in relation to the Orakei Block as these have been settled on a full and final basis by the Orakei Act 1991.

Previous Settlement

59 In 1993 the Crown, the Trust Board and Te Runanga o Ngāti Whātua signed a deed of settlement (the 1993 Railways Settlement) settling the claims of Ngāti Whātua in respect of surplus railway lands in the Auckland region. The Crown paid the Trust Board $2 million as redress under the 1993 Railways Settlement. This settlement was on the basis that the redress under it would be taken into account in determining the amount of financial and commercial redress under any final settlement of the Historical Claims of Ngāti Whātua o Ōrākei.

Terms of the Deed of Settlement

Acknowledgements concerning the settlement and the redress

60 The Crown and Ngāti Whātua o Ōrākei will acknowledge in the Deed of Settlement that:

a the settlement represents the result of intensive negotiations conducted in good faith and in the spirit of co-operation and compromise;

b it is not possible to fully compensate Ngāti Whātua o Ōrākei for all the loss and prejudice suffered;

c this foregoing of full compensation is intended by Ngāti Whātua o Ōrākei to contribute to the development of New Zealand; and

d taking all matters into consideration (some of which are specified in this clause) the settlement is fair in the circumstances.

Acknowledgements concerning the settlement and its finality

61 The Crown and Ngāti Whātua o Ōrākei will acknowledge (amongst other things) in the Deed of Settlement that the settlement of the Historical Claims:

a is intended to enhance the ongoing relationship between the Crown and Ngāti Whātua o Ōrākei (both in terms of Te Tiriti o Waitangi/the Treaty of Waitangi and otherwise);

b except as expressly provided in the Deed of Settlement, will not limit any rights or powers the Crown or Ngāti Whātua o Ōrākei might have arising from Te Tiriti o Waitangi/the Treaty of Waitangi or the principles of Te Tiriti o Waitangi/the Treaty of Waitangi, legislation, common law (including aboriginal title and customary law), fiduciary duty or otherwise;

c does not extinguish any aboriginal title, or customary rights, that Ngāti Whātua o Ōrākei may have;

d does not imply an acknowledgement by the Crown that aboriginal title, or any customary rights, exist; and

e is not intended to affect any actions or decisions under the:

i deed of settlement between Maori and the Crown dated 23 September 1992 in relation to Maori fishing claims;

ii the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, the Maori Fisheries Act 2004, the Maori Commercial Aquaculture Claims Settlement Act 2004, the Fisheries Act 1996, the Foreshore and Seabed Act 2004, the Resource Management Act 1991 or the Marine Reserves Act 1971.

62 Ngāti Whātua o Ōrākei will acknowledge and agree (amongst other things) in the Deed of Settlement, and the Settlement Legislation will provide that, with effect from the Settlement Date:

a the Historical Claims are settled;

b the settlement of the Historical Claims is final;

c the Crown is released and discharged from any obligations, liabilities and duties in respect of the Historical Claims;

d the Courts, the Waitangi Tribunal and any other judicial body or tribunal do not have jurisdiction (including the jurisdiction to inquire into or to make a finding or recommendation) in respect of:

i the Historical Claims;

ii the Deed of Settlement;

iii the redress provided to Ngāti Whātua o Ōrākei and the Governance Entity in the settlement; and

iv the Settlement Legislation,

(except in respect of the interpretation and enforcement of the Deed of Settlement and the Settlement Legislation); and

e any proceedings in relation to the Historical Claims are discontinued.

63 The Deed of Settlement will provide for Ngāti Whātua o Ōrākei acknowledging and agreeing the following:

a the Crown has acted honourably and reasonably in respect to the settlement;

b it is intended that the settlement is for the benefit of Ngāti Whātua o Ōrākei and may be for the benefit of particular individuals or any particular iwi, hapu, or group of individuals as is determined appropriate between the Trust Board and the Crown;

c the settlement is binding on Ngāti Whātua o Ōrākei and the Governance Entity (and any representative entity of Ngāti Whātua o Ōrākei);

Removal of statutory protections and termination of landbanking arrangements

64 The Deed of Settlement will provide for Ngāti Whātua o Ōrākei acknowledging and agreeing the following:

a the Settlement Legislation will provide that the following legislation does not apply to land in the Specified Area (which will be the same as the RFR Area), namely:

i Sections 8A-8HJ of the Treaty of Waitangi Act 1975;

ii Sections 27A to 27C of the State Owned Enterprises Act 1986;

iii Sections 211 to 213 of the Education Act 1989;

iv Part III of the Crown Forests Assets Act 1989; and

v Part III of the New Zealand Railways Corporation Restructuring Act 1990;

b the Settlement Legislation will provide for the removal of all resumptive memorials from land in the Specified Area;

c the landbank arrangements in relation to Ngāti Whātua o Ōrākei will cease;

d that neither Ngāti Whātua o Ōrākei nor any representative entity of Ngāti Whātua o Ōrākei have, from the Settlement Date, the benefit of the legislation referred to in paragraph 64(a) above in relation to land outside the Specified Area; and that,

e that neither Ngāti Whātua o Ōrākei nor any representative entity of Ngāti Whātua o Ōrākei will object to the removal by legislation of the application of the legislation referred to in paragraph 64(a) above in relation to any land outside the Specified Area, or to the removal of memorials with respect to such land.

Conditions

65 Entry by the Crown into the Deed of Settlement will be subject to the following conditions:

Overlapping Interests

a the Crown confirming that overlapping interests from other tribal groups in relation to any part of the settlement redress have been addressed to the satisfaction of the Crown in respect of that item of redress;

Cabinet agreement

b Cabinet agreeing to the settlement and the redress to be provided to Ngāti Whātua o Ōrākei;

Ratification

c the Trust Board obtaining a mandate from the members of Ngāti Whātua o Ōrākei (through a process agreed by the Trust Board and the Crown) authorising it to:

i enter into the Deed of Settlement on behalf of Ngāti Whātua o Ōrākei; and

ii in particular, settle the Historical Claims on the terms provided in the Deed of Settlement;

Governance Entity

d the establishment of an entity (the Governance Entity) either before, or after the Deed of Settlement is signed, that the Crown is satisfied:

i is an appropriate entity to receive the settlement redress;

ii has a structure that provides for:

A representation of Ngāti Whātua o Ōrākei;

B transparent decision-making and dispute resolution processes; and

C full accountability to Ngāti Whātua o Ōrākei; and

iii has been ratified by the members of Ngāti Whātua o Ōrākei (through a process agreed by the Trust Board and the Crown) as an appropriate entity to receive the settlement redress; and

e the Governance Entity signing a Deed of Covenant to provide for it, among other things, to be bound by the terms of the Deed of Settlement.

f The Crown and Trust Board:

i agree to work towards developing a single Governance Entity (either by the creation of a substituted entity or by reconstitution of the existing Trust Board) for both settlement assets, and assets managed by the Trust Board;

ii agree that the current rights and powers associated with the Trust Board would be maintained, in relation to its existing assets, and its existing status; and

iii acknowledge that the current accountabilities of the Trust Board do not currently address all of the matters that governance entities need to address.

Settlement Legislation

66 This Agreement in Principle and the Deed of Settlement will be subject to the passing of Settlement Legislation to give effect to parts of the settlement and Ngāti Whātua o Ōrākei supporting the passage of Settlement Legislation.

67 The Crown will propose Settlement Legislation for introduction into the House of Representatives only after the Governance Entity has been established and ratified and has signed a Deed of Covenant.

68 The Crown will ensure that the Trust Board or Governance Entity has appropriate participation in the process of drafting the Settlement Legislation and such drafting will commence once the Deed of Settlement has been signed.

Taxation

69 The Deed of Settlement will provide for the following taxation matters:

a subject to obtaining the consent of the Minister of Finance, the Governance Entity will be indemnified by the Crown against income tax and GST arising from the transferring, crediting or payment of Financial and Commercial Redress by the Crown to the Governance Entity;

b this indemnity does not extend to any tax liability arising in connection with the acquisition of property by the Governance Entity after Settlement Date, whether it uses its own funds or uses the Financial and Commercial Redress for such acquisition;

c subject to obtaining the consent of the Minister of Finance, the Governance Entity will also be indemnified by the Crown against income tax, Goods and Services Tax (GST) and gift duty arising from the transfer of Cultural Redress by the Crown to the Governance Entity; and

d neither the Governance Entity nor any other person shall claim a GST input credit or tax deduction in respect of any Cultural Redress or Financial and Commercial Redress provided by the Crown to the Governance Entity.

Definitions

70 Key terms used in this Agreement in Principle are defined as follows:

Area of Interest means the area shown in **Attachment A**.

Cash Settlement Amount is the amount referred to in paragraph 37.

Commercial Redress Properties means those properties referred to in paragraphs 40 - 47.

Crown:

a means the Sovereign in right of New Zealand; and

b includes all Ministers of the Crown and all Departments; but

c does not include:

i an Office of Parliament;

ii a Crown Entity; or

iii a State Enterprise named in the First Schedule to the State-Owned Enterprises Act 1986.

Cultural Redress Properties means the properties listed in Table 1.

Financial and Commercial Redress Amount means the total dollar value of the financial and commercial redress offered as set out in paragraph 36.

Governance Entity means an entity established in accordance with paragraphs 65(d) – (f).

Historical Claims has the meaning set out in paragraphs 55 - 58.

Ngāti Whātua o Ōrākei means the collective group, and groups and individuals, to be defined in the Deed of Settlement in accordance with paragraphs 52 – 54.

Protocol Area means the area shown in **Attachment G**.

RFR Area means the area shown in **Attachment H.**

Settlement Date means the date that is 20 business days after the date the Settlement Legislation comes into force, being the date on which the settlement redress is to be transferred to the Governance Entity.

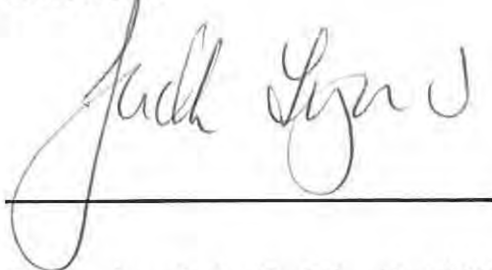
Settlement Legislation means the Bill or Act, if the Bill is passed, to give effect to the Deed of Settlement.

Specified Area means the same area as the RFR Area.

Trust Board means the Ngāti Whātua o Ōrākei Māori Trust Board referred to in section 9 of the Orakei Act 1991, which is the mandated body recognised to represent Ngāti Whātua o Ōrākei in negotiations with the Crown.

SIGNED this 9th **day of** June **2006**

For and on behalf of the Crown:



Hon Mark Burton
Minister in Charge of Treaty of Waitangi Negotiations

WITNESS:

For and on behalf of the Ngāti Whātua o Ōrākei Māori Trust Board:

Chairperson

Deputy Chairperson

WITNESSES:

Agreed Historical Account

A. BACKGROUND

The Treaty of Waitangi

The text in Māori

Te Tiriti o Waitangi

KO WIKITORIA te Kuini o Ingarani i tana mahara atawai ki nga Rangatira me nga Hapu o Nu Tirani i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga me to ratou wenua, a kia mau tonu hoki te Rongo ki a ratou me te Atanoho hoki kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira - hei kai wakarite ki nga Tangata maori o Nu Tirani - kia wakaaetia e nga Rangatira Maori te Kawanatanga o te Kuini ki nga wahikatoa o te wenua nei me nga motu - na te mea hoki he tokomaha ke nga tangata o tona Iwi Kua noho ki tenei wenua, a, e haere mai nei.

Na ko te Kuini e hiahia ana kia wakaritea te Kawanatanga kia kaua ai nga kino e puta mai ki te tangata Maori ki te Pakeha e noho ture kore ana.

Na kua pai te Kuini kia tukua a hau a Wiremu Hopihona he Kapitana i te Roiara Nawi hei Kawana mo nga wahi katoa o Nu Tirani e tukua aianei amua atu ki te Kuini, e mea atu ana ia ki nga Rangatira o te wakaminenga o nga hapu o Nu Tirani me era Rangatira atu enei ture ka korerotia nei.

Ko te Tuatahi

Ko nga Rangatira o te wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu - te Kawanatanga katoa o o ratou wenua.

Ko te Tuarua

Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira ki nga hapu - ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te Wenua - ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

Ko te Tuatoru

Hei wakaritenga mai hoki tenei mo te wakaaetanga ki te Kawanatanga o te Kuini - Ka tiakina e te Kuini o Ingarani nga tangata maori katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.

(Signed) W. Hobson,
Consul and Lieutenant-Governor.

Na ko matou ko nga Rangatira o te Wakaminenga o nga hapu o Nu Tirani ka huihui nei ki Waitangi ko matou hoki ko nga Rangatira o Nu Tirani ka kite nei i te ritenga o enei kupu, ka tangohia ka wakaaetia katoatia e matou, koia ka tohungia ai o matou ingoa o matou tohu.

Ka meatia tenei ki Waitangi i te ono o nga ra o Pepueri i te tau kotahi mano, e waru rau e wa te kau o to tatou Ariki.

Ko nga Rangatira o te wakaminenga.

The Text in English

HER MAJESTY VICTORIA Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorised to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those islands - Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorise me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant-Governor of such parts of New Zealand as may be or hereafter shall be ceded to her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

Article the First

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole sovereigns thereof.

Article the Second

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

Article the Third

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

W. HOBSON, Lieutenant Governor,

Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof in witness of which we have attached our signatures or marks at the places and the dates respectively specified.

Done at Waitangi this Sixth day of February in the year of Our Lord one thousand eight hundred and forty. [Here follow signatures, dates, etc.]

English Translation of the Māori Text by Sir Hugh Kawharu

Victoria, the Queen of England, in her concern to protect the chiefs and the subtribes of New Zealand and in her desire to preserve their chieftainship and their lands to them and to maintain peace and good order considers it just to appoint an administrator one who will negotiate with the people of New Zealand to the end that their chiefs will agree to the Queen's Government being established over all parts of this land and (adjoining) islands and also because there are many of her subjects already living on this land and others yet to come.

So the Queen desires to establish a government so that no evil will come to Māori and European living in a state of lawlessness.

So the Queen has appointed me, William Hobson, a Captain in the Royal Navy to be Governor for all parts of New Zealand (both those) shortly to be received by the Queen and (those) to be received hereafter and presents to the chiefs of the Confederation chiefs of the subtribes of New Zealand and other chiefs these laws set out here.

The first

The Chiefs of the Confederation and all the Chiefs who have not joined that Confederation give absolutely to the Queen of England for ever the complete government over their land.

The second

The Queen of England agrees to protect the chiefs, the subtribes and all the people of New Zealand in the unqualified exercise of their chieftainship over their lands, villages and all their treasures. But on the other hand the Chiefs of the Confederation and all the Chiefs will sell land to the Queen at a price agreed to by the person owning it and by the person buying it (the latter being) appointed by the Queen as her purchase agent.

The third

For this agreed arrangement therefore concerning the Government of the Queen, the Queen of England will protect all the ordinary people of New Zealand and will give them the same rights and duties of citizenship as the people of England.

(Signed) W. Hobson
Consul and Lieutenant-Governor

So we, the Chiefs of the Confederation and of the subtribes of New Zealand meeting here at Waitangi having seen the shape of these words which we accept and agree to record our names and our marks thus.

Was done at Waitangi on the sixth of February in the year of our Lord 1840.

B. Preamble: Ngāti Whātua before 1840

1. Constitution

Ngāti Whātua state that at their signing of the Treaty of Waitangi, 1840, the several segments of what is now called the Orakei hapū of Ngāti Whātua, namely, Te Taou, Ngaoho and Te Uringutu, occupied settlements scattered across the North Shore and around the margins of the Waitemata and Manukau harbours, and all the land in between. These segments had evolved out of the Ngāti Whātua raupatu c. 1740, and represented the intermarriage between the invading Te Taou and the local Waiohua of Tainui. It had begun with one of the principal Te Taou chiefs, Tuperiri, adding to his tactical skills in warfare the organisational skills required for developing an occupational force based on his pā, Hikurangi, on Maungakiekie. Then following his four sons' strategic marriages with Waiohua he revived i) the name of his mother's people, Ngaoho, who had hitherto occupied much of the Tamaki Isthmus and southern margins of the Kaipara harbour, and ii) that of a Mangere segment of Waiohua, Te Uringutu. Accordingly, it is these three, Te Taou, Ngaoho and Te Uringutu who, over the remainder of the 18th and early 19th centuries maintained the ahi kaa of the Orakei hapū throughout the Isthmus. Like all Ngāti Whātua hapū, Orakei was corporate in character in having a systematic recruitment of its members, a limited domain, a body of lore and a common history. Its social organisation was structure by the recognition of ties of descent and kinship.

2. Ahi Kaa

Maintaining ahi kaa, however, was not a passive exercise. It was the outcome of the hapū need to survive. Thus, internal to the hapū, rights over people and over property were governed by the reciprocal rights and duties between kin, supported by the constraints of tapu. In land tenure in particular there were i) rights of administration (including the allocation of rights of use out of the hapū for agreed political purposes) held by the chiefs, and ii) rights of use held by the heads of families who occupied the land and applied their labour to it. All shared in maintaining the cohesion and political integrity of the hapū. In this context, therefore, the individual was subordinate to the hapū and owed his or her identity to it. In general, the complementary character of relationships between male and female, between the young and their elders, and the people and their leaders made for an efficient political economy.

3. Social Organisation

i) Personal possessions were few – clothing, utensils, weapons and so on, with prized heirlooms, like land itself entrusted on behalf of the hapū or a section of it, rather than owned by an individual. The giving of gifts and the rendering of services with the consequent obligation to receive and ultimately to repay, were effective in moderating tensions between the divisive consequence of reckoning status by descent and the inclusive character of kinship. It was here that material items, such as prized weapons, or even elements of the abstract, like chants, proverbs and myths acquired the character and status of taonga, valued for their symbolic as much as for their functional purpose. And associations with a particular taonga by a number of individuals and groups over time served to intensify the mauri or life principle of the taonga as well as to enhance the relationships it had entailed.

ii) Where survival of the three segment Orakei hapū was paramount, leadership was required to secure it. It was therefore sought from among those who had shown ability in a relevant field and who was of a senior line of descent in the tribe. Nevertheless the one recognised as a chief or rangatira at whatever level in the hapū had to combine an entrepreneurial skill with that of trustee and mentor. Its demonstration was the exercise of rangatiratanga.

iii) Ngāti Whātua's view of their mana whenua in Tamaki extended over land and water. The resources of each were vital to survival and were thus conserved and protected with equal care and determination. For good reason they were valued as taonga.

iv) For almost a century before the signing of the Treaty in 1840, Ngāti Whātua had organised their economic activities across a network of major and subsidiary settlements located about the margins of the Waitemata and Manukau harbours. The practice of shifting cultivation and the working of fishing grounds had been routinely and effectively determined by their maramataka (calendar).

4. Political Relations

External to the hapū, and more particularly external to the iwi Ngāti Whātua, friendly relations were even more stringently governed by notions or utu or reciprocity than within the hapū itself. Typically, such relations were mediated by women of rank in marriage, or by land. In the latter instance use rights were of the character of a "license to occupy". In either case, however, the crucial factor was the relationship between the groups: a marriage (and its issue recognised as belonging to both groups) or the sharing of land, being the means of initiating a relationship or of sustaining it. Qualified transfers of land were known as "tuku rangatira", with the mana or title being retained by the donor rangatira. For example, in the decades prior to 1840 Ngāti Whātua in Tamaki had, through tuku rangatira, made substantial blocks of land available to neighbouring iwi through their chiefs Tomoaure, Uruamo and Te Kawau.

5. Contact

i) In contrast, external relations with the European had been very limited prior to 1840. Circumstance in the Tamaki isthmus were markedly different, for example, from those in the Bay of Islands, or those in the south of the South Island. Prior to the Treaty, no Europeans had settled with Ngāti Whātua in the Tamaki isthmus. The first recorded visitor to the Waitemata had been Rev. Samuel Marsden in 1820. He was followed by other CMS missionaries only after some fifteen years.

ii) They were then joined in their limited proselytising endeavours by a small number of Wesleyan catechists, and the two groups set about their initial goal of bringing peace and good order among the various tribal groups in the wider region. For their part, however Ngāti Whātua extended their experience of bartering, but little else. By 1840 they had still been able to recruit a trader, even the elements of a cash economy remained beyond their experience, and in the absence of sustained instruction remained unconverted and illiterate. On the other hand the Crown's agents who were shortly to present themselves and their Treaty to Ngāti Whātua were equally uninformed in Ngāti Whātua idiom, custom and political relations.

iii) As much to the point the latter were not to know that their arrival had been predicted some years earlier by a matakite or seer, Titahi. The following tauparapara foreshadows Apihai Te Kawau's initiative in inviting Captain Hobson and his administration to relocated from Kororareka to Waitemata. It has been transmitted orally within the Ngāti Whātua of Tamaki for almost 200 years.

He aha te hau e wawa rā, e wawa rā?
He tiu, he raki, he tiu, he raki
Nana i a mai te puputara ki uta
E tikina e au te kotiu
Koia te pou whakairo ka tu ki Waitemata
Ka tu ki Waitemata i oku wairangitanga
E tu nei, e tu nei!

What was the wind that was roaring and rumbling?
It was a wind in the north (the Treaty at Waitangi)
A wind that exposed the mollusc puputara (symbolising the unfolding of a new order)
And in my dreams I saw that
I (Ngāti Whātua) would fetch the 'wind' from the north
To support the mana whenua (pou whakairo) at Waitemata

The Claims Of Ngāti Whātua O Ōrākei

This claim is about the Crown's role in the sale and purchase of Auckland, 1840-1860.

Ngāti Whātua claim that the Crown by its actions in certain cases, including the abrogation of the Crown's right of pre-emption, by its failure to act in certain other cases, and by its failure to fulfil explicit promises made to Ngāti Whātua, breached its Treaty guarantee to protect the exercise of their rangatiratanga over their lands, estates and other valued necessities of life, or 'taonga'.

In particular, Ngāti Whātua claim that the Crown obtained their agreement to enter into contracts about which they were ignorant and the outcome of which left them virtually landless and their fisheries and waterways polluted. In the spirit of the Treaty this was contrary to the expectation in Ngāti Whātua's invitation to the Crown to share in the use of their land in Tamaki, a sharing however, which would leave intact their collective rangatiratanga, their manawhenua.

Finally, from having been in control of the Tamaki Isthmus at the time of their signing of the Treaty, Ngāti Whātua claim that they were thereafter denied any constitutional role in the civil government exercised over the Isthmus, any way in which they might have averted the disastrous social, economic and cultural consequences of their land loss which they suffered throughout the remainder of the 19th century and the 20th century still to come.

C. Agreed Historical Account

1. Ngāti Whātua and the Crown at 1840

1.1 At 1840, the three hapū of what is now Ngāti Whātua o Ōrākei ("Ngāti Whātua"), namely Te Taoū, Ngaoho and Te Uringutu, occupied settlements and used resources across the Tamaki isthmus, the North Shore, the upper Waitemata Harbour and the Waitakere area. These groups had gained rights in these areas from approximately 1740 by way of conquest and ahi kā. Following the inter-tribal conflicts of the 1820s, which saw Ngāti Whātua temporarily relocate to Waitakere and then the Waikato, settlements were re-established at Orakei, Karangahape (Cornwallis), Horotiu (Queen Street), Onehunga and other places in the Tamaki isthmus from about 1835.

1.2 Prior to 1840, Ngāti Whātua had very limited contact with Europeans. Ngāti Whātua had, from 1820s, come into contact with missionaries who set about bringing peace and good order among the various tribal groups in the region, and traders who sought to exploit timber and gain land on the isthmus. However, no Europeans had permanently settled among Ngāti Whātua. Consequently, Ngāti Whātua had not been exposed to the full impact of a cash economy, and remained unconverted and illiterate as an iwi. The Crown agents who were shortly to present themselves and their Treaty to Ngati Whatua were equally uninformed in Ngati Whatua idiom, custom and political relations.

1.3 Captain William Hobson, British Consul and Lieutenant Governor for New Zealand, arrived at the Bay of Islands on 29 January 1840. Shortly after his arrival, Hobson began to consider the appropriate site for the seat of government.

1.4 Ngāti Whātua signed a copy of the Māori text of the Treaty of Waitangi on 20 March 1840, when chiefs Apihai Te Kawau, Te Reweti and Te Tinana signed or placed their marks on the document. The Treaty provided for the establishment of British rule over New Zealand, a Crown monopoly for purchasing land ("pre-emption"), an equal standard of citizenship for British and Māori, and (in the Māori text) for the protection of chiefs' trusteeship over their lands, villages and treasures. The Māori and English texts of the Treaty differ in some respects. In relation to Article 2, the Māori version refers to the unqualified exercise of rangatiratanga (chieftainship) while the English text refers to possession rights only. The English and Māori texts of the Treaty, along with an English translation of the Māori text, have been included in the background to this Agreed Historical Account.

1.5 Around this time, paramount chief Te Kawau sent a delegation of seven chiefs under Te Reweti to the Bay of Islands to offer land to Hobson to settle in the Tamaki isthmus. This delegation represented a bid for power and mutual benefit from the establishment of a European settlement and a desire for peace across the isthmus following a period of inter-tribal conflict.

1.6 By June 1840, Hobson and his officials had explored a number of sites for the capital. Hobson decided in the middle of July that the capital would be located at Waitemata. This location had the advantages of a deep port, easy access,

flat land and rich soil: in Hobson's view it was "geographically the best site in New Zealand".

1.7 One year earlier, the British Government had instructed Hobson to protect Māori in relation to the purchasing of land. The Secretary of State for War and the Colonies, the Marquis of Normanby, had stated that all land dealings with Māori should be conducted on the principles of "sincerity, justice and good faith", adding that Māori "must not be permitted to enter into any contracts in which they might be the ignorant and unintentional authors of injuries to themselves". Further, the acquisition of land for European settlements "must be confined to such districts as the natives can alienate, without distress or inconvenience to themselves". The appointment of a Protector of Aborigines was intended to fulfil this duty.

1.8 In September 1840, government officials travelled to the Waitemata Harbour and negotiated with Ngāti Whātua for the transfer of land for a town site. A principal chief raised concerns with the proposed transfer. The Governor reassured the chief that Māori and Pakeha would be treated justly in respect of land dealings. Te Kawau, Te Tinana, Te Reweti and Te Hira then signed or made their mark on a provisional agreement or "puka-puka".

1.9 On 20 October 1840, officials drew up a formal deed for the transfer of an estimated 3000 acres (3500 acres by modern calculation) between approximately Hobson Bay (Mataharehare), Coxs Creek (Opou) and Mt Eden (Maungawhau). This area is depicted on **Figure 1**.

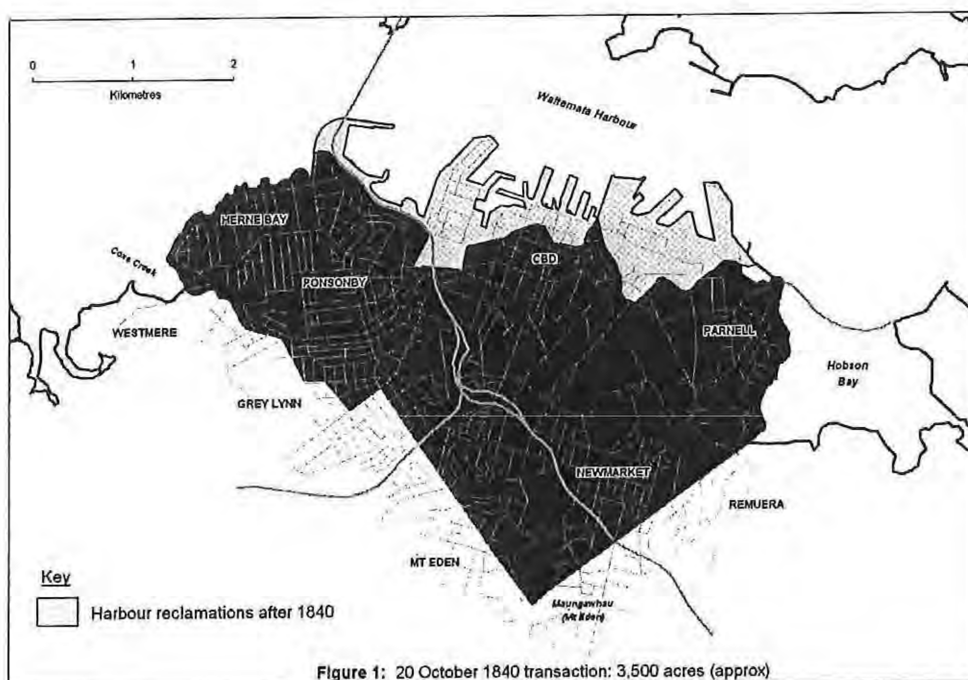


Figure 1: 20 October 1840 transaction: 3,500 acres (approx)

1.10 The deed signed by the parties recorded that £50 in coin and goods amounting to approximately £215 were "te utu mo taua wahi wenua koia tenei". This was translated into English as "the payment for the said land". From Ngāti Whātua's point of view, the term "utu" in 1840 represented a broader concept of

reciprocity, ongoing mutual obligation and the maintenance of balance between groups.

1.11 At this time, Ngāti Whātua and the Crown had very different systems of property exchange. Ngāti Whātua had no experience of the consequences of transfer of title under English land law. They were also unfamiliar with the British institutions of government that would come with the establishment of the capital. For their part, Crown officials did not understand Ngāti Whātua, their history and their systems of land tenure that had prevailed in Tamaki for the best part of a century.

1.12 This transaction enabled the establishment of the town of Auckland, which soon became the main European settlement, the leading commercial port and the seat of government in the colony. Ngāti Whātua and the Crown entered the transaction with a view to a mutually beneficial and enduring relationship.

1.13 George Clarke, Chief Protector of Aborigines, recorded that the chiefs promised to sell a still larger tract of country when the Governor finally resided amongst them.

1.14 Hobson then commissioned Clarke to "treat with the Ngatiwhatua tribe, on behalf of Her Majesty the Queen, for the possession of the largest portions of their territory, if possible in a continuous section, taking care to reserve for the Natives an ample quantity of land for their own support..."

2. Ngāti Whātua and Governor Hobson – Land Transactions 1841-1842

2.1 Ngāti Whātua welcomed Hobson to Auckland at Okahu Bay on 14 March 1841, with Te Kawau stating:

> *"Governor, Governor, welcome, welcome as a father to me! There is my land before you ... go and pick the best part of the land and place your people, at least our people upon it!"*

This welcome signalled the reciprocal relationships that Ngāti Whātua anticipated with the Crown and European settlers.

2.2 The Crown signed the Mahurangi Purchase Deed in April 1841 with other iwi who claimed interests in a very large area from Takapuna to Te Arai Point and inland to Riverhead. Ngāti Whātua were not involved in this transaction. This is a source of grievance because Ngāti Whātua consider they held a significant interest in the land. The Crown subsequently dealt with Ngāti Whātua for their interests in the land described in the Mahurangi Deed.

2.3 From June 1841, Ngāti Whātua and the Crown entered into land transactions that covered significant parts of the North Shore and central Tamaki isthmus.

Ngāti Whātua – Crown transactions, 1841-1842

Date	Area	Acreage (approx)	Payment
29 June 1841	North Shore	6,000	£100, one horse with bridle and saddle and a boat
29 June 1841	"Waitemata to Manukau" Block	13,000	£200, 4 horses, 30 blankets, 10 cloaks one tent and a desk
3 January 1842	North Shore	10,000	£300, 3 horses, 2 bridles and saddles and 40 blankets
14 September 1842	Manukau Road	200	£40
TOTAL		**29,200**	**£640 plus other goods**

2.4 The blocks on the North Shore were not surveyed nor were their boundaries described, but they incorporate the approximate area depicted in **Figure 2**. The Waitemata to Manukau block and the Manukau Road transaction are depicted in **Figure 3**.

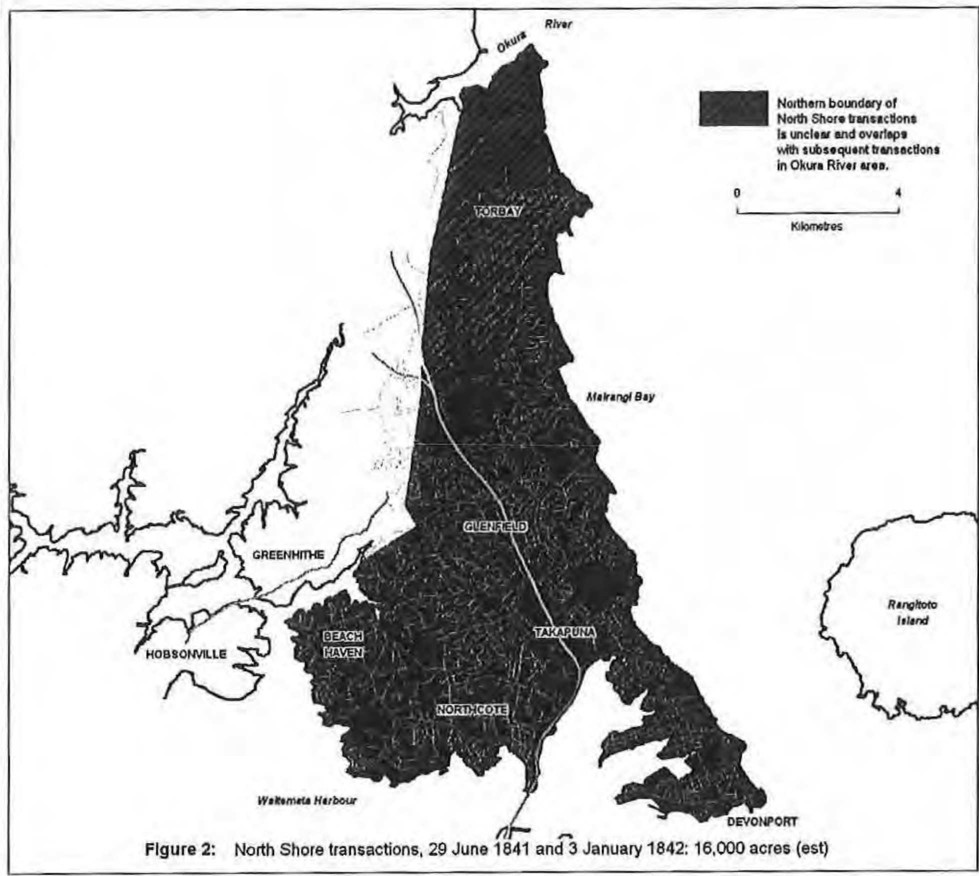


Figure 2: North Shore transactions, 29 June 1841 and 3 January 1842: 16,000 acres (est)

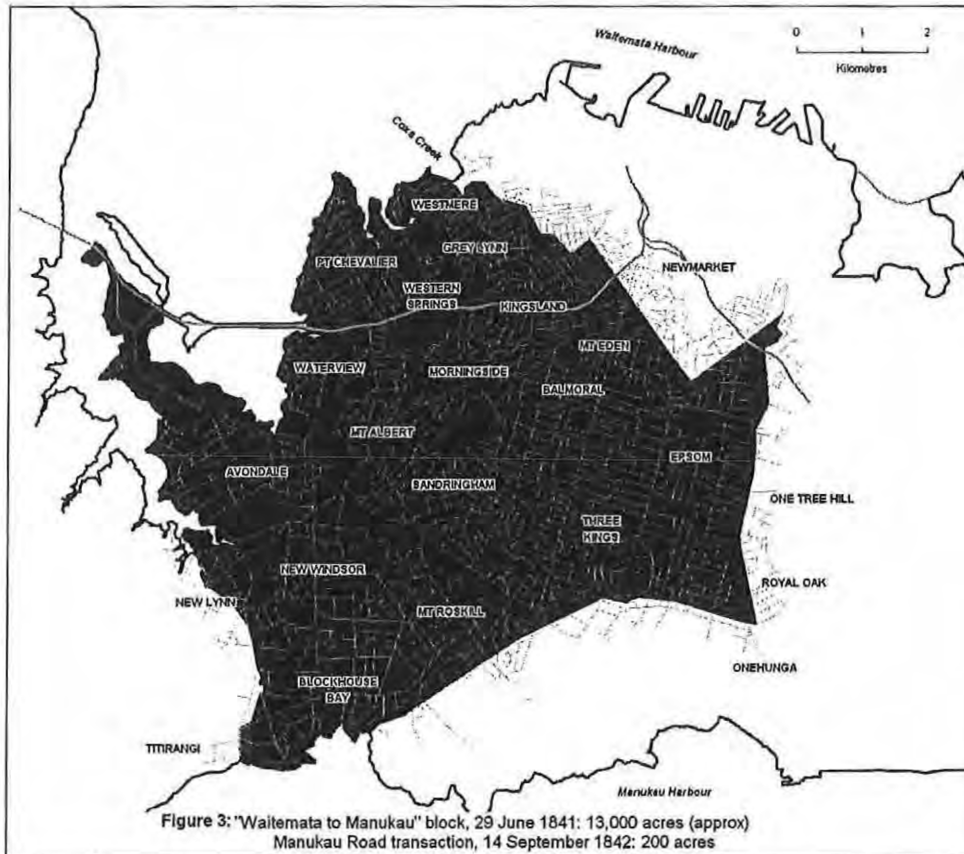


Figure 3: "Waitemata to Manukau" block, 29 June 1841: 13,000 acres (approx)
Manukau Road transaction, 14 September 1842: 200 acres

2.5 From 1840, Ngāti Whātua had explicitly excluded Remuera and other lands between Orakei and Manukau from any dealings with the Crown. Protector Clarke recommended that these lands be made inalienable. Ngati Whatua also objected to the western boundary of the Kohimarama Block encroaching upon their kainga at Orakei.

2.6 While the Protector of Aborigines initially negotiated land transactions on behalf of the Crown, by mid 1842, it was clear that his dual roles were potentially incompatible. Clarke was relieved of his land purchasing role at the end of December 1842.

2.7 So long as Ngāti Whātua maintained land holdings in the area around the growing European settlement at Auckland, they gained significant benefits through trade. They were described by Crown officials and settlers as being of great service to the Auckland settlement for providing food and other necessities at very reasonable prices.

2.8 Much of the land transferred by Ngāti Whātua to the Crown between 1840 and 1842 was promptly on-sold for high prices. At one auction in 1841, the Crown received £24,475 for 44 acres of the 3500-acre block for which it had paid Ngāti Whātua £273 only six months before. Before 1845, Crown auctions of 796 properties within the areas transferred by Ngāti Whātua netted £68,865. These on-sales resulted in the arrival of many settlers who were unknown to Ngāti Whātua and were unfamiliar with Ngāti Whātua custom. From 1842, there were

around 3000 European settlers in the Waitemata district, outnumbering Ngāti Whātua resident in Tamaki.

2.9 Crown policy was that Māori land would be bought as cheaply as possible and would be on-sold for high prices. Profits from these on-sales (the "Land Fund") were intended to subsidise immigration and finance infrastructure and other developments in the colony. The "Land Fund" was also intended to produce direct benefits (such as health care and education) for Māori. How much Ngāti Whātua understood of this policy is unknown.

2.10 The British Government had instructed Hobson that he must set aside between 15 and 20 per cent of the revenue from the on-sales of land to pay for the establishment of the Protector of Aborigines and to promote the "health, civilisation, education and spiritual care of the natives".

2.11 Some of the government's land revenue for the period 1840-1845 was spent on the establishment and subsequent administration of the Protectorate. Hobson also appointed Bishop Selwyn and William Martin as trustees of the endowment fund. The government did not, however, place any money in the endowment fund, nor did it spend 15 to 20 per cent of its total land revenue on services and benefits for Māori.

2.12 The government's failure to set aside money for the endowment fund was criticised by Bishop Selwyn, who stated:

> "By this fund, we hoped that schools, hospitals, hostelries, would be built; that every useful art would be taught; every habit of civilization introduced; and the whole social character of the people changed for the better...I am sorry to be obliged to state that not one of these objects has been accomplished, or rather that not one has been attempted".

2.13 This criticism was repeated by Governor George Grey in 1846 when he noted that, although the government funded the Protectorate, at the end of 1845, not a single hospital, school, or institution of any kind supported by the Government was in operation for the benefit of Māori.

3. Ngāti Whātua and Governor FitzRoy - The Pre-emption Waivers 1843-1845

3.1 By 1843, the government of New Zealand was almost bankrupt. Recent Crown auctions had revealed a collapse of demand for property at the fixed minimum prices set by the Crown. As a result, the Crown lost a significant amount of revenue and there was economic stagnation. The Crown's land purchases in the Auckland region also had ceased, partly due to its lack of funds and partly due to the reluctance of Māori to transfer land on the terms offered by the government.

3.2 Robert FitzRoy arrived in Auckland at the end of 1843 to become the new Governor of New Zealand. Ngāti Whātua and other local rangatira welcomed him. He received a letter from Te Kawau, Te Tinana and others, stating that they had understood the Treaty to mean that the Queen had the right of first offer to purchase their lands. The chiefs asked to bargain directly with settlers.

They also expressed their concerns whether Hobson's promises at Waitangi, which included fair treatment and protection for Māori, would be honoured. FitzRoy responded that if pre-emption was to the disadvantage of Māori then it should be discontinued. In the first months of his governorship there was frequent contact between FitzRoy and Ngāti Whātua over matters related to affairs of the colony. FitzRoy also received requests from settlers to purchase land directly from Māori.

Regulations

3.3 FitzRoy subsequently decided to issue a proclamation waiving the Crown's right of pre-emption over certain limited portions of land. However, direct land transactions between Māori and settlers were to be subject to a number of conditions. His proclamation, dated 26 March 1844 stated that:

- the Governor would consult the Protector of Aborigines for each transaction to ensure that Māori retained sufficient land;
- waiver transactions were not to include pā or urupā;
- one tenth of all land purchased ("tenths") was to be conveyed to the government for public purposes, especially for the future benefit of Māori;
- no waivers would be issued for land between the Tamaki Road and the Waitemata Harbour;
- purchasers were required to pay 10 shillings per acre to the Land Fund.

Transactions between settlers and Māori would be legally invalid until confirmed by a Crown grant, while grants would not be issued if any of the proclamation's conditions had been contravened. The full text of FitzRoy's pre-emption waiver proclamation is included as a Schedule to the Agreed Historical Account.

3.4 At a hui the same day at Government House in Auckland, FitzRoy outlined his new policy to local rangatira. He stated to them that although he was "very desirous that you should not part with much land, for your own sakes and for that of your children", the Crown would allow direct sales of "small portions of it, which you can well spare" to Europeans as long as his permission was previously sought. He told rangatira that he would "not consent to your selling your pahs, or your sacred places, or any land about them which you want for your own purposes". He also advised rangatira to "see that you get a fair price, and as much as the land will sell for" and to be very cautious in making land bargains to protect against future misunderstandings.

3.5 FitzRoy affirmed to rangatira that one tenth of the land purchased would be "set apart for, and chiefly applied to, your future use, or for the special benefit of yourselves, your children, and your children's children." FitzRoy explained that income from tenths would "be applied by Government to building schools and hospitals, to paying persons to attend these, and teach you not only religious and moral lessons, but also the use of different tools, and how to make many things for your own use." He repeated these sentiments on other occasions. The management of tenths would be entrusted to a committee consisting of the Governor, senior Crown officials and the Bishop. However, the committee was never brought into operation and the tenths were never established.

3.6 One chief endorsed the regulations to protect land and provide reserves and reminded the Governor of the Crown's protective responsibilities by stating: "we shall still look to you as our shepherd – our guardian; it will be necessary for you to have a very watchful eye over your own people, as well as for the chiefs over their people".

3.7 The Colonial Office subsequently approved the pre-emption waiver policy but warned FitzRoy to exercise great care in its use, and eventually to increase the 10 shilling per acre fee in order to boost the Land Fund.

3.8 On 10 October 1844 FitzRoy issued another proclamation reducing the fee for a pre-emption waiver to 1 penny an acre. Further regulations issued in late 1844 stipulated that "limited" portions of land meant no more than "a few hundred acres", and also that waiver applications and the Governor's response would be published in the *Gazette* to open those portions of land to public competition.

3.9 The pre-emption waiver regulations reflected protective elements laid out in the Colonial Office instructions to Hobson in 1839. Māori would "not be permitted to enter into any contracts in which they might be the ignorant and unintentional authors of injuries to themselves." This included a prohibition on alienation of lands that were essential for their comfort, safety and subsistence. From Ngāti Whātua's point of view, the regulations appeared to offer protection to Māori in their trustee role to provide for future generations.

Waiver system in practice

3.10 Between late March 1844 and November 1845, Ngāti Whātua participated in approximately 65 pre-emption waiver transactions. Few of the waiver transactions were surveyed at the time, which meant that the intentions of the parties, and the acreages involved, were not always clearly recorded.

3.11 Ngāti Whātua assert that the transactions were akin to the principle of tuku rangatira in that chiefs wished to create mutually beneficial relationships with Europeans and enhance their mana by making land available for settlement. Ngati Whatua consider that, consistent with their cultural practice of qualified transactions with other Māori groups, the pre-emption waiver transactions conveyed occupancy and use rights only.

3.12 The Crown failed to apply all the protective regulations correctly. Approval was given to all transactions that pre-dated the application for a waiver; approvals to waive pre-emption were not published; and despite the regulation about "limited" portions of land, some of the transactions involved more than a thousand acres.

3.13 The prohibition on alienation of pā and urupā also was not always upheld. Lands approved for waiver transactions included Maungakiekie (One Tree Hill), a pā and urupā of historical and spiritual significance to Ngāti Whātua o Ōrākei.

3.14 In total, Ngāti Whātua transferred around 47,000 acres to settlers during the pre-emption waiver period (see **Figure 4**) across the central Tamaki isthmus, West Auckland, the upper Waitemata Harbour and northern Manukau Harbour areas. The total includes a transaction between Ngāti Whātua and settlers over

modern-day Henderson that, when surveyed, covered almost 18,000 acres. This transaction did not proceed through the pre-emption waiver system.

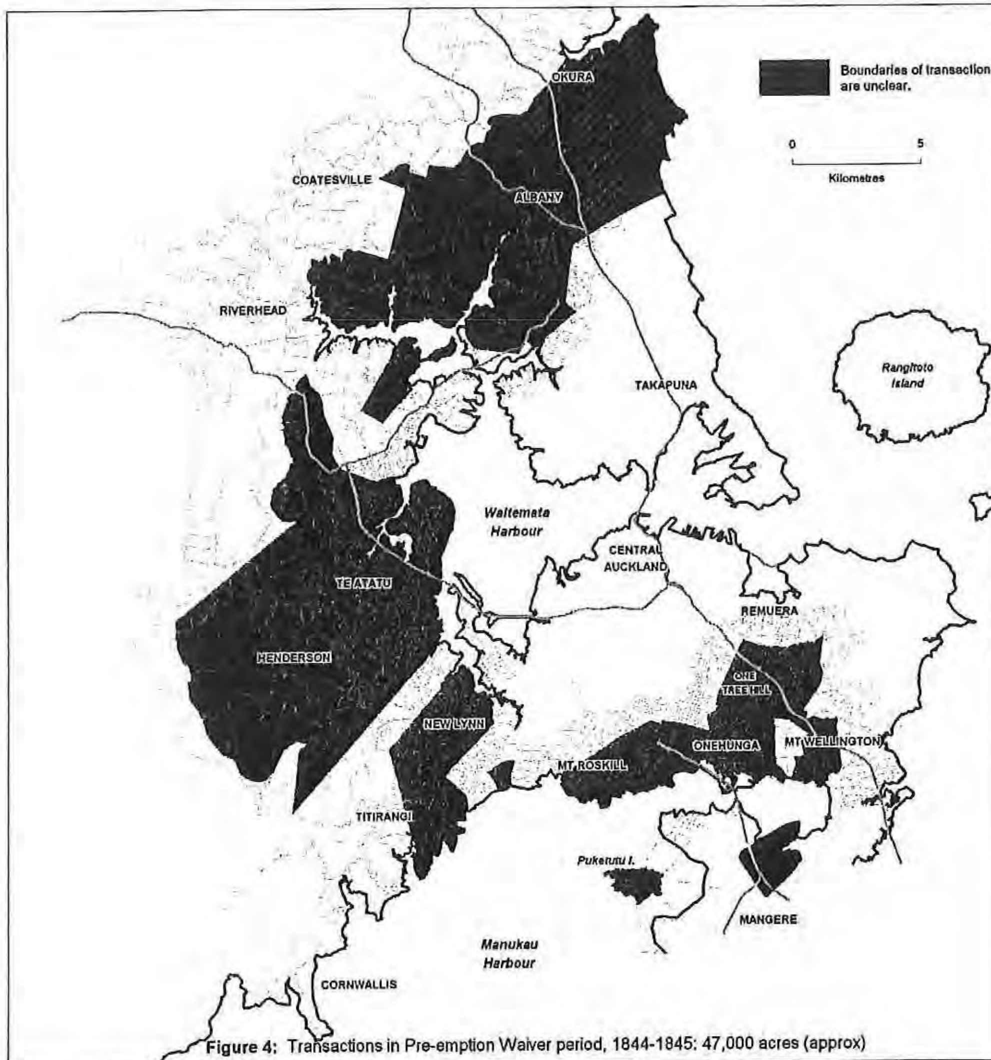


Figure 4: Transactions in Pre-emption Waiver period, 1844-1845: 47,000 acres (approx)

Ngāti Whātua and Governors Grey and Browne – The Cancellation and investigation of waivers 1845-56

3.15 FitzRoy was recalled to England in April 1845. His successor, George Grey arrived in November, with instructions from the Colonial Office to fulfil the conditions of the Treaty of Waitangi. Grey also had instructions to re-establish Crown pre-emption, if possible, in order to satisfy settlers' land demands and revitalise the colonial economy.

3.16 Grey immediately stopped issuing pre-emption waivers. Over the following year, he made a number of criticisms of the policy and administration of the waivers. With regard to some transactions, Grey was of the view that:

"It is a mistake to suppose that, because in some instances large tracts have been disposed of to Europeans, and the natives have not yet contested the sale, that they will never do so. In most of these circumstances the natives are yet allowed the free use and occupation of the greater portion of the land, and no possession has been taken of it by Europeans, nor have any other European purchasers appeared; but I am quite satisfied that so soon as a re-sale of these lands is attempted by Europeans, and new settlers go upon them, that the natives will resist the occupation of them..."

3.17 Grey abolished the Protectorate in March 1846 in favour of establishing a Native Secretariat. It was reported by the Colonial Secretary that the savings were earmarked for schools, hospitals and other institutions for Māori.

3.18 Grey announced in June 1846 that waiver transactions would be investigated. The Land Claims Compensation Ordinance 1846 provided the terms for the investigation. Before Crown grants could be issued, a Commissioner had to ascertain whether: the purchases had been made from the correct owners of the land; whether those owners' rights had been extinguished; and whether the purchasers had complied with the terms and conditions of the waiver proclamation. The Ordinance did not empower the Commissioner to inquire into the background to the transactions from a Māori perspective.

3.19 The Ordinance also eliminated the requirement for tenths reserves to be set aside. It stated that the reserves "cannot in many cases be conveniently made". European purchasers were able to buy the tenths at £1 per acre. All tenths were subsequently purchased by settlers or retained by the Crown. None of the money received from settlers to purchase the tenths was set aside in a separate fund. As a result, no lands or money were set aside from the waiver transactions for educational, health or other benefits for Ngāti Whātua or any other Māori.

3.20 The Ordinance further indicated that any land not granted to settlers or returned to Māori would be retained by the Crown. This was consistent with the Crown's "surplus lands" policy: where Māori stated before the Commission that they had sold land to a settler, customary title was deemed to have been extinguished. The Crown could then choose to issue a land grant to the settler or retain land for itself.

3.21 Henry Matson was appointed as the investigating commissioner and commenced his inquiry in February 1847. His investigation proceeded after the finding in *R v Symonds* that pre-emption waiver certificates and the transactions conveyed no title until and unless ratified by a Crown grant. By the time of Matson's investigations some of the initial pre-emption waiver purchasers had on-sold their claims to other European settlers.

3.22 Full transcripts of Matson's inquiry do not exist, but there is evidence that Māori were asked whether they had sold the land to the claimant, as well as to verify the location of the transaction and receipt of payment. There is no evidence that Matson inquired into whether the protective regulations had been fulfilled: for instance whether the transaction included pā and urupā, nor whether Māori retained sufficient land.

3.23 Over half the applications investigated by Matson failed to meet the procedural requirements that had been set down for obtaining a Crown grant for the full area of the transaction, such as timely survey plans. Some land purchasers wished to receive compensation only and did not pursue a land grant. In both cases, the Crown retained "surplus land".

3.24 Over a decade after the pre-emption waiver transactions had begun, land ownership and boundaries were still unclear in some areas. Between 1856 and 1862, Francis Dillon Bell investigated approximately ten large pre-emption waiver transactions involving Ngāti Whātua on the North Shore and west Auckland under the provisions of the Land Claim Settlement Act 1856. The Act did not require Bell to investigate the background to the transactions between Maori and settlers.

3.25 The Crown provided an incentive for land claimants to survey the whole of the original area they claimed, rather than just the 1000 acres that Bell could award, by promising them an extra allowance of land. Bell later stated that 'if the Government had attempted to survey the claims themselves, the claimants ... would only have felt called upon to point out as much as was actually to be granted to them. The residue would, practically, have reverted to the natives, and must at some time or other have been purchased again by the Government...". None of the lands investigated by Bell reverted to Ngāti Whātua.

3.26 As a result of Matson's and Bell's inquiries, the Crown acquired approximately 15,000 acres of "surplus lands" from the pre-emption waiver transactions involving Ngāti Whātua o Ōrākei. Ngati Whatua consider that if the transactions were found to be invalid or otherwise flawed, customary title had not been extinguished and the land should have been returned to Ngati Whatua ownership.

McConochy transaction

3.27 In 1844, the Crown became aware that a settler, McConochy, and Ngāti Whātua rangatira had conducted a transaction in the area north of Tamaki Road that had been prohibited under the pre-emption waiver proclamation. In 1847-1848, the Crown used provisions in the Native Land Purchase Ordinance to evict McConochy from the land. The Crown also intended to take the land under the provisions of that ordinance which provided for illegally transacted lands to revert to the Crown. The Ngāti Whātua chief, Paora Tuhaere, objected to the Crown's actions and wrote to the Auckland settler community:

> "The Governor is unjustly taking the lands of the white people. Now I say this law of the Governor is wrong. Because I have sold the land to the white man. The money has been received by us, our eyes have seen the payment and we were glad. But the Governor's payment we have not seen, his claims are shallow, therefore I said this principle is wrong, is it not friends?..."

3.28 Tuhaere also refunded the money paid by McConochy and took possession of his house and cattle. He stated that the "*ture* [the law] is above the Governor, and the law will not allow him to take my land". Te Reweti also told the

Governor that the land would not be given up. The Crown decided not to punish Tuhaere by taking the land.

4. Ngāti Whātua and Governor Grey and his successors 1845 to 1870s

4.1 As at 1845, within five years of Ngāti Whātua signing the Treaty, over 78,000 acres had been alienated from their original estate in Tamaki as a result of Crown and pre-emption waiver transactions. In modern Auckland City, Ngāti Whātua retained less than 3000 acres.

4.2 During Grey's governorship (1845-1853) the government received further revenue from the on-sale of land as well as considerable grants-in-aid from Britain, and was able to resume purchasing land from Ngāti Whātua and other iwi.

4.3 Grey promised to remedy the deficiencies of the previous years and to produce more practical and lasting benefits for Māori. Unlike his predecessors, in Grey's governorship there was some government expenditure in Auckland and elsewhere on education, medical services and other benefits specifically for Māori.

4.4 Ngāti Whātua and other Māori in Auckland initially made considerable use of the government health services but by the late 1850s their use of these services had declined. Another of Grey's policies was to improve the educational facilities available for Māori, largely through subsidising existing church schools. They also initially supported and attended the schools, stating to Grey: "you are kind to build the schools for Māori children, to let the Māori men be chiefs...to build the School, you are laying the large Stone of the corner..." But from the mid 1850s there was official concern about the success of the church schools. Paora Tuhaere expressed his dissatisfaction in 1867 that "there was too much of the bible taught and too little of other subjects; that they were taught in their own language whereas their great desire was to learn English".

4.5 Grey also developed close relationships with leading chiefs throughout New Zealand, through meetings, correspondence, gifts and loans. Prominent rangatira were appointed as Native Assessors, conferring powers to resolve disputes between Māori. These forms of benefits were intended to attach chiefs to the Crown and to secure their future loyalty to the government. In 1852, Te Kawau, Te Tinana and Te Reweti were appointed as Native Assessors.

4.6 Ngāti Whātua had regular contact with the governor and his senior officials. They believed that they had a close relationship with Grey. However they had no formal decision-making role in the Executive Council.

Further Land Loss

4.7 Crown purchase agents were instructed to impress upon Māori that the profits from the on-sale of land were to finance European settlement, which would increase the value of remaining Māori land and provide a ready market for Māori produce. This money would also finance the development of infrastructure and public amenities as well as direct benefits (such as health

and education) for Māori. Such expenditure would form the "real payments for their lands".

4.8 Within the scope of the Crown's land purchase policy, Ngāti Whātua entered into further transactions with the Crown in West Auckland, the upper Waitemata area and central Auckland between 1847 and 1855 (see **Figure 5**). The Land Fund policy could only have benefited Ngāti Whātua over the long term if they still had land close to the land being transacted but as at 1855, the Crown had purchased almost all of the land of Ngāti Whātua o Ōrākei: the only lands they retained were 700 acres at Orakei.

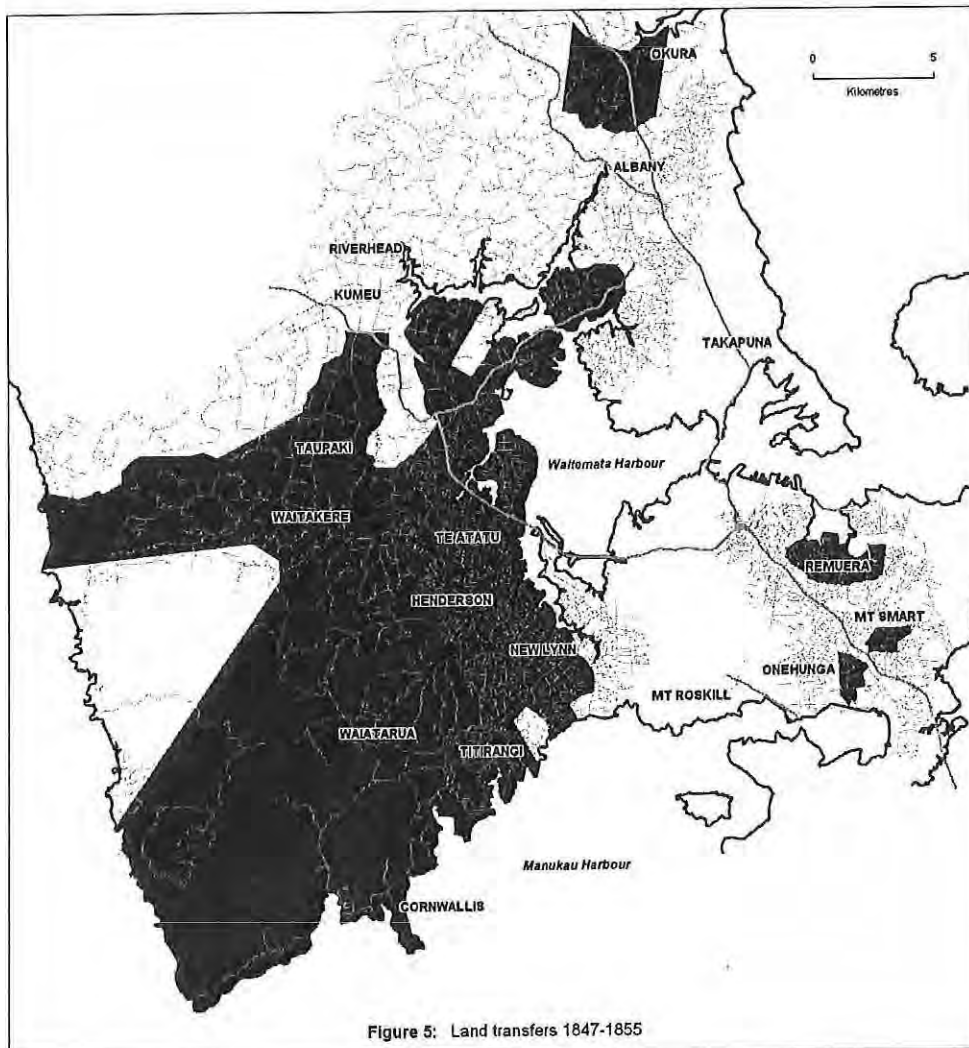


Figure 5: Land transfers 1847-1855

4.9 Some of the deeds were not accompanied by surveys or deed plans, and therefore the boundaries of the transactions were not always clearly recorded. Paora Tuhaere later protested that the deed for the Kumeu block (in the upper Waitemata) was not properly explained to Ngāti Whātua before it was executed.

4.10 Further, the acreage of the lands transferred was not clear in some cases. For example, the Hikurangi block in West Auckland was estimated at the time of the transaction to comprise 12,000 acres but when later surveyed was found to contain over 57,000 acres.

4.11 Many transactions in West Auckland and the upper Waitemata overlapped transactions from the pre-emption waiver period. These offers of land indicated that Ngāti Whātua considered that it retained interests in certain areas that had been previously deemed "surplus land". For its part, the Crown sought to provide certainty about the extinguishment of customary title.

4.12 Ngāti Whātua had earlier told the Crown that they wished to retain Remuera as a "nest-egg". However, between 1847 and 1855 the Crown and Ngāti Whātua entered into transactions in Remuera and further south at Mount Smart that covered 1820 acres. The Crown paid Ngāti Whātua an average of £1 14s per acre for these lands, then on-sold them for between £20 and £200 per acre. Ngāti Whātua received only one reserve as an land endowment in Remuera. This grant had no restriction on alienation and subsequently was sold. Ngāti Whātua were not allocated any reserves in West Auckland.

4.13 In 1856, Paora Tuhaere expressed concern about the revenue gained from the on-sale of land and the explanations given by government officials about the land fund: "The natives do not know what is done with the money. I have heard that it is spread out upon roads, and a part upon schools. The natives are suspicious, and say that this statement is only put forth in order to get the land at a cheap rate from the natives".

4.14 In the same year, Governor Browne observed that:

> "The Natives are fully aware that they contribute large sums (probably more than one third) to our customs and they observe that the land they have sold for prices varying between a penny and a shilling is never resold under ten shillings, and that it often produces more than £10 per acre, while the Europeans who purchase these lands accumulate what appears to them an enormous wealth, they continue to dwell in hovels and sleep in blankets."

4.15 Three of the deeds in Remuera and West Auckland included an obligation for the Crown to devote ten per cent of the on-sale profits to certain benefits and services for Māori: schools, hospitals, medical assistance, annuities and the construction of mills. This "ten per cents" fund was not drawn upon until 1862, when part of it was used to build a bridge between Orakei and Remuera (which was also of general benefit to all Auckland residents). No further payments from the fund were made until 1874 when the Crown met with Ngāti Whātua to allocate the accumulated fund between direct payments, schools and hospitals, retrospective charges for the Orakei Bridge and fund administration.

4.16 Despite the Crown's obligations to protect a sufficient land base for the future needs of Māori, by 1855 Ngāti Whātua held only 700 acres of land on the Tamaki isthmus at Orakei. Up to this time, Ngāti Whātua continued to take advantage of trade opportunities, by providing settlers with produce and other agricultural requirements. However, as a consequence of the loss of the vast majority of their original estate, and the rise of the settler population, Ngāti

Whātua's stake in the expanding settlement declined. They could not benefit from the continually rising market in land. They had also lost connection with important pre-1840 sites such as Horotiu (Queen Street) and Waiariki (Official Bay).

4.17 From the 1850s Ngāti Whātua strove to protect their remaining land at Orakei. Apihai Te Kawau asked Governor Grey to let land at Orakei "be reserved for our own use for ever and let us have a Deed for it so that it may be safe". In the mid 1860s Ngāti Whātua applied for a Crown title for Orakei. This was issued in 1873. What then happened in respect of the Orakei Block is set out in the Waitangi Tribunal's *Orakei Report* (WAI 9), 1987. These issues were settled by the Orakei Act 1991 and do not form part of the present settlement.

A Changing Relationship

4.18 Throughout the governorships of Grey and his successor, Thomas Gore Browne, Ngāti Whātua expressed a great deal of loyalty to the Crown and to the Governor personally. When the government convened the Kohimarama Conference of 1860, in response to the development of war in Taranaki and the activities of the Māori King movement in support of Māori autonomy, Ngāti Whātua was called on to host the event. Earlier that year, Ngāti Whātua had met the Māori King and his supporters and had advocated the continuance of friendship with European settlers and loyalty to the Queen. At the Kohimarama conference, in the context of possible war against tribes considered by the government to have formed 'land leagues' preventing sales of land to the Crown, Paora Tuhaere affirmed that "mine is a land-selling tribe" and reminded the Governor that "we have always firmly adhered to you and to the Queen's sovereignty".

4.19 Around this time, Ngāti Whātua also expressed a desire to be involved in the governance of New Zealand. From 1852, elected representative government had been established, and from 1856, authority for Māori affairs was gradually transferred to Parliament, which at this time was dominated by settlers' interests. At Kohimarama, Tuhaere was "desirous that the minds of the Europeans and the Maories should be brought into unison with each others ... This is the point I intend to press now, namely, the admission of my fellow chiefs into the council with Europeans to explain matters for them".

4.20 Ngāti Whātua requests for participation in governance went largely unheeded. At the conclusion of the Kohimarama Conference, the Crown agreed with Māori that the meeting should be made a permanent institution. Paora Tuhaere hoped that future discussions would be held in order that "we may be near to convey our wishes to the Governor, that the Europeans may see them, and also that the European Assembly may be near to us sitting here. This conference is a proper means by which we may come under the protection of the Queen". This was an important gathering revealing strong concerns of a loyal iwi and a determination not to go to war but to find peaceful means of co-existence beneficial to both races.

4.21 However, proposals to call another meeting were subsequently rejected by Governor Grey, who thought it would not be "wise to call a number of semi-barbarian Natives together to frame a Constitution for themselves." Instead, Grey initiated a system for district and village rūnanga in Māori districts to

propose by-laws to the Governor. No such rūnanga were established in Auckland.

4.22 In 1863, rumours of a Māori attack upon Auckland provoked deep suspicion and harassment of Māori in Auckland by some settlers. Ngāti Whātua and other loyal Māori were subject to curfew restrictions, and were provided with identification badges made of deep scarlet-coloured chevroned cloth which they wore on the right arm of their coats.

4.23 Along with many tribes north of Auckland (and in other parts of New Zealand), Ngāti Whātua did not join the fighting against the Crown. Māori south of Auckland had been required by a proclamation to take an oath of allegiance or leave the area. Ngāti Whātua were so trusted by the government that they were not required to surrender their arms or take the oath.

4.24 Ngāti Whātua had provided the land for the Governor to reside amongst them and establish the capital but after 25 years, in 1865, the seat of government was shifted permanently from Auckland to Wellington. The first Māori representatives in Parliament were not elected until 1868. Ngāti Whātua later called for the capital to be shifted back to Auckland.

4.25 In the Native Land Court in 1868, Judge Fenton asked paramount chief Te Kawau: "Who were the people who sold Auckland. To the Europeans?" Apihai replied, "I did not sell it, I gave it to them." When asked again, "Did not the Gov[ernmen]t. give you and your people payment for it afterwards?" Apihai answered, "No. I have been looking constantly for payment but have not got it." From Ngāti Whātua's point of view, the reference to "payment" indicates that, from 1840, Ngāti Whātua had expected a reciprocal relationship with the Crown, but this relationship had not eventuated.

4.26 In the late 1870s and 1880s, Ngāti Whātua concerns were again aired at a series of conferences, or "Parliaments", held at Otamatea and Orakei. Here, Ngāti Whātua expressed concerns about the effects of land alienation and requested involvement in governance with reference to the Treaty of Waitangi. Government officials attended some, but not all, of these Parliaments. Altogether ten such Parliaments were held between 1877 and 1889.

5. Harbours and Reclamations

5.1 Prior to 1840, Ngāti Whātua lived on and around the Waitemata and Manukau Harbours. They had an association with settlements and camp sites on the Manukau from Te Whau to Karangahape where there were considerable beds of pipi and cockle in each of the coastal bays. Ngāti Whātua fished from the opposite shore between Ihumatao, Pukaki and around Mangere, taking flatfish, mullet and cockle on the inshore mud banks, mud-oyster and scallops. Sharks and harbour fish were taken everywhere. On the Waitemata, commonly referred to sites included Whanganui, Okahu, Orakei, Purewa, Whakatakataka, Waiariki, Horotiu, Whau, Pitoitoi, Tauhinu, Onewa, as well as Takapuna and Mahurangi where gardening and shellfish gathering took place. Fishing grounds were located close to each site further out into the harbours, recognised by inland markers and in some cases linked to family groups.

5.2 In the 1840s and 1850s Ngāti Whātua provided much of the fresh seafood and other produce for the city of Auckland. The sea was vital as a highway before roads were built, and Ngāti Whātua canoes carried a significant proportion of the trade goods into the Auckland market. Main portages between the Manukau and Waitemata were Otahuhu and Te Whau, while Pitoitoi connected the Waitemata with Kaipara.

5.3 From 1840, the Crown envisaged reclamations and the construction of wharves in the harbours around Auckland. The first pier was built in 1851-52, and from 1859 reclamations were carried out, mainly by the Auckland provincial government for development and raising revenue.

5.4 Early developments had a destructive effect upon the harbours and their resources. Reclamations and wharves prevented Ngāti Whātua from collecting fish and shellfish in certain places. Urban developments such as the Queen Street sewer also led to pollution, siltation and loss of traditional food sources for Ngāti Whātua.

5.5 The Crown granted the Auckland provincial government the ownership of large portions of the Waitemata and Manukau harbours under the royal prerogative. Titles for seabed issued by the Crown in the Waitemata and Manukau Harbours exceeded 28,370 acres. From Ngāti Whātua's point of view, the grants involved the transfer of rights far greater than the provincial authorities required for regulation and management, and unnecessarily interfered with Ngāti Whātua's rights under the Treaty of Waitangi. Unlike the Crown's approach to the transfer of dry land from Māori to non-Māori, there is no evidence of discussion between the Crown and Ngāti Whātua regarding lands below the high water mark.

5.6 During the nineteenth century Ngāti Whātua had very little, if any, involvement in decisions regarding the development and management of the Waitemata and Manukau Harbours. The only opportunity for Ngāti Whātua involvement was the appointment of Paora Tuhaere, in 1867, to the Auckland Provincial Executive as advisor to the superintendent on Māori affairs. His input into decisions regarding harbour management, however, is unknown.

5.7 The Orakei Parliaments provided an opportunity for Ngāti Whātua rangatira Paora Tuhaere to state that the Treaty of Waitangi had protected the relationship between Māori and their fisheries:

> "When the Queen established her authority in this Island she promised that the chieftainship of the Maori people should be preserved to them. She has not deprived the chiefs of their mana ... She also left the fisheries to the Maoris. She did not deprive us of those. She also left us the places where the pipis, mussels, and oysters, and other shell-fish are collected."

5.8 At the same time, Ngāti Whātua rangatira considered that this relationship had been negatively affected by the actions of the Crown. At the Parliament, Patoromu declared: "It was I that brought the Government here, and through that we have been deprived of our mana over the land, and over those fisheries that have been spoken of. Now, in my opinion we should apply to the Government to restore our mana, and that all our fisheries be returned to us."

Likewise, Eramiha Paikea declared: "Let the foreshores be left in the possession of the Maoris. I have heard that the Govt claim the land down to low-water mark".

5.9 Ngāti Whātua's concerns about reclamations and harbour developments continued to be strongly expressed in the 1880s. It was reported that the 1881 Orakei Parliament discussed "the taking by the Harbour Boards of the foreshore in front of Māori lands" and also that the government had not adhered to the Treaty by interfering with Māori fishing grounds. At a subsequent Orakei Parliament in 1886, Ngāti Whātua rangatira protested that the Treaty had been dishonoured by the contamination of the sea.

5.10 Ngāti Whātua also petitioned Parliament in this period, stating that their shellfish and fisheries, which were secured to them by the Treaty of Waitangi, had been buried by reclamations, and praying for their return in accordance with the Treaty. The Native Affairs Committee recognised that Māori rights to coastal and other fisheries presented serious difficulties in the progression of settlement. The Committee recommended that the Government should "as soon as possible, institute a searching inquiry, and try to have the rights of the Natives defined and secured as far as possible". The matter was subsequently referred to the Native Land Court for inquiry. It appears that the Government took no other direct action following the committee's recommendation.

5.11 Reclamations and other harbour developments intensified in both harbours from the early 1900s. Major works included railways, wharves, sewer extensions and the construction of roads such as Tamaki Drive. In the late 1930s, a boat harbour was constructed next to Ngāti Whātua's settlement at Okahu Bay.

5.12 Twentieth century harbour developments added to the pollution of the harbours and had destructive effects for harbour resources including fisheries, seabirds and mangrove swamps. From 1914, crude sewage was discharged off Okahu Bay, onto the shellfish beds of Ngāti Whātua, in spite of strong protests from members of Ngāti Whātua that the discharge would kill off their food supply and breed disease in the foreshore.

5.13 There continued to be no formal provision for Ngāti Whātua or other Māori interests to be taken into account in the development and reclamation of harbours. Ngāti Whātua made their relationship with the harbours clear in a petition to Parliament in 1920, where they claimed that reclaimed lands and foreshore areas in Waitemata Harbour belonged to Māori under the provisions of the Treaty, until properly purchased by the Crown. The petition also requested representation for Ngāti Whātua on an official enquiry into the reclaimed lands. For unknown reasons, this petition was withdrawn at the request of the principal petitioner.

5.14 The concerns expressed continued to be significant. From the 1970s central and local government showed a greater awareness of tangata whenua concerns and the need for environmental protection of harbours and waterways when undertaking reclamations and other development works.

5.15 On the Waitemata Harbour, Certificates of Title for 1105 acres of entirely reclaimed land and 693 acres of part-reclaimed land were issued. On the Northern side of the Manukau Harbour, Certificates of Title for 414 acres of

entirely reclaimed land and 254 acres of partly-reclaimed land were issued. Selected reclamations are depicted on **Figure 6** and **Figure 7**.

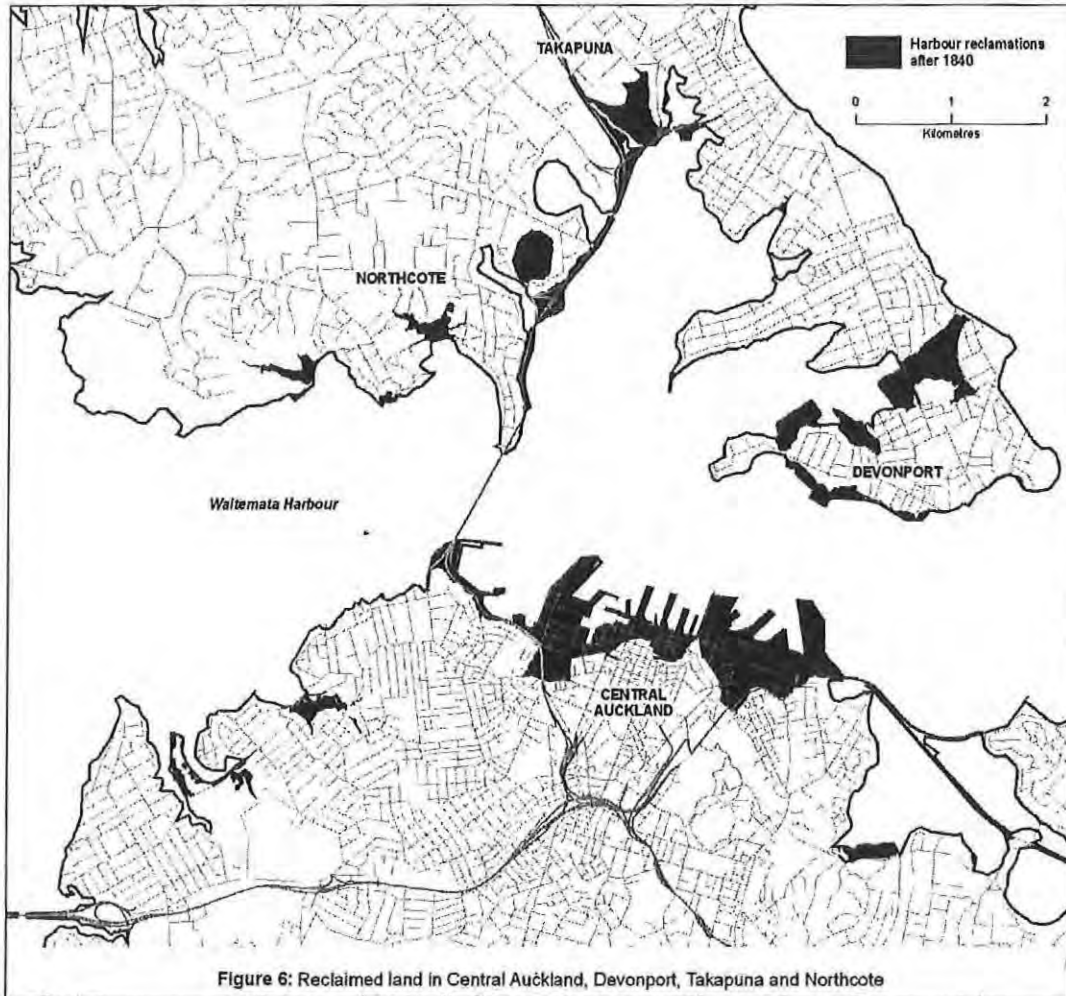


Figure 6: Reclaimed land in Central Auckland, Devonport, Takapuna and Northcote

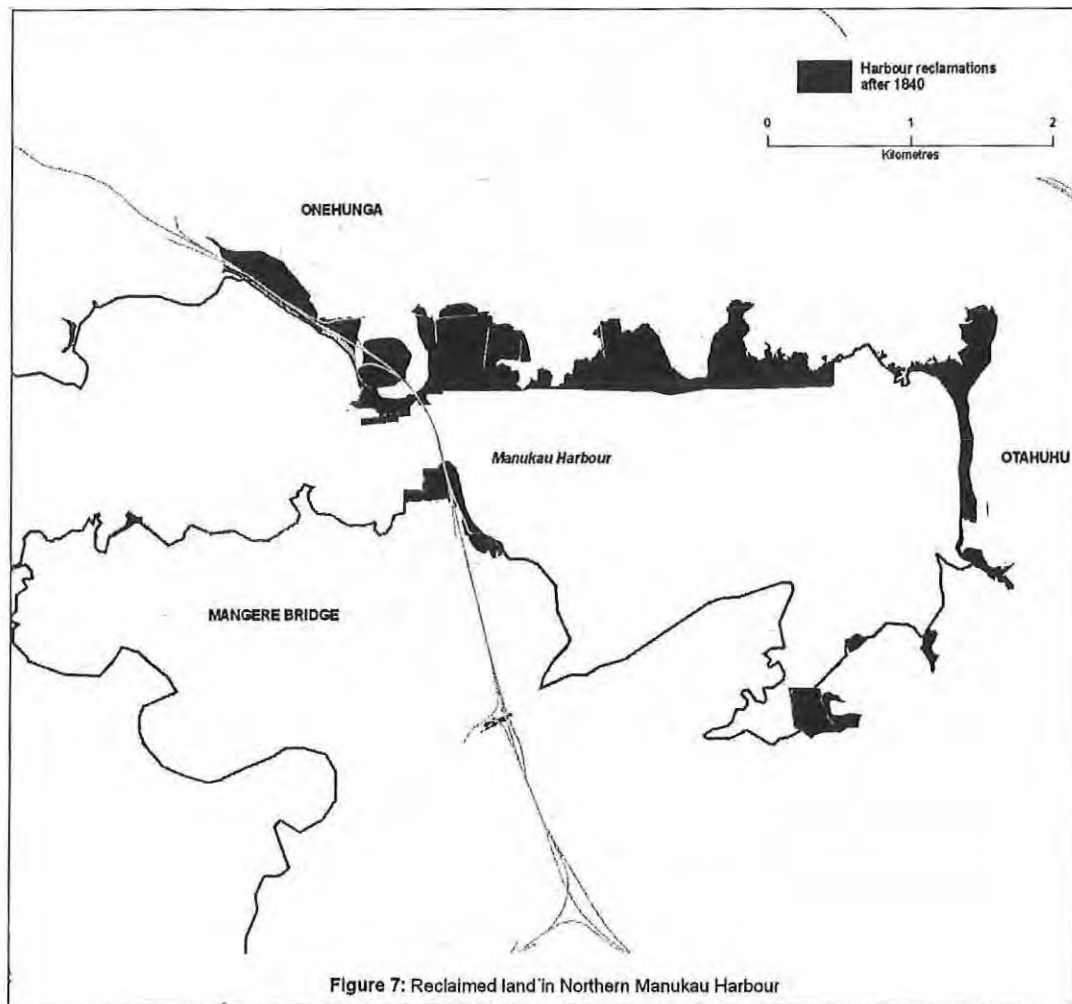


Figure 7: Reclaimed land in Northern Manukau Harbour

SCHEDULE TO AGREED HISTORICAL ACCOUNT

Proclamation

By His Excellency ROBERT FITZROY Esquire, Captain in Her Majesty's Royal Navy, Governor and Commander-in-Chief in and over the Colony of New Zealand and Vice Admiral of the same, &c, &c, &c

From this day – until otherwise ordered- I will consent – on behalf of Her Majesty the Queen – to waive the right of Pre-emption over certain limited portions of land in New Zealand, on the following conditions.

1. Application is to be made in writing to the Governor, through the Colonial Secretary, to waive the Crown's right of Pre-emption over a certain number of acres of land at, or immediately adjoining a place distinctly specified: such land being described as accurately as may be practicable.

2. The Governor will give, or refuse his consent to waive the Crown's right of pre-emption to a certain person, or his assignee, as His Excellency may judge best for the public welfare; rather than for the private interest of the applicant. He will fully consider the nature of the locality – the state of the neighbouring and resident natives; their abundance or deficiency of land; their disposition towards Europeans, and towards Her Majesty's Government; – and he will consult with the Protector of the Aborigines before consenting, in any case, to waive the right of pre-emption.

3. No Crown title will be given for any Pa or native burying ground, or land about either; however desirous the owners may now be to part with them: and, as a general rule, the right of pre-emption will not be waived over any land required by the aborigines for their present use; although they themselves may now be desirous that it should be alienated.

4. The Crown's right of pre-emption will not be waived over any of that land near Auckland which lies between the Tamaki road and the sea to the northward.

5. Of all the land purchased from the aborigines in consequence of the Crown's right of pre-emption being waived, - one-tenth part, of a fair average value, as to position and quality, is to be conveyed, by the purchaser, to Her Majesty, her heirs and successors, for public purposes, especially the future benefit of the aborigines.

6. All transactions with the sellers; - all risks attendant on misunderstandings: on sales made improperly; or on incomplete purchases; must be undertaken by the buyers until their respective purchases have been allowed, and confirmed by grants from the Crown.

7. As the Crown has no right of Pre-Emption over the Land already sold to any person not an Aboriginal Native of New Zealand: - and whose claim is or may be acknowledged by a Commissioner of Land Claims; - no grant will be issued to any other than the original claimant or his representative, whose claims have been, or may be investigated by a Commissioner, and recommended by him to the Governor for a grant from the Crown.

8. As a contribution to the Land Fund, and for the general purposes of Government – Fees will be demanded in ready money, at the rate of four shillings per acre for nine-tenths of the aggregate quantity of Land over which it may be requested that the Crown's right of pre-emption may be waived.
   These fees will be payable into the Treasury on receiving the Governor's consent to waive the right of pre-emption.

   And on the issue of a Crown Grant, after an interval of at least twelve months fro the time of paying the abovementioned fees; additional payments will be required, at the rate of six shillings per acre, in ready money, to be applied to the Land Fund, and for the general purposes of Government.

9. Land so obtained is to be surveyed, at the expense of the purchaser, by a competent surveyor, licensed or otherwise approved of by Government, - who will be required to declare to the accuracy of his work, to the best of his belief, and to deposit certified copies of the same at the Surveyor General's Office previous to the preparation of a Crown Grant.

10. Copies of the Deed or Deeds, conveying such Lands, are to be lodged at the Surveyor General's Office as soon as practicable, in order that the necessary enquiries may be made; and notice given in the Maori, as well as in the English *Gazette*, that a Crown Title will be issued; - unless sufficient cause should be shewn for its being withheld, for a time; or altogether refused.

11. The Government, on behalf of the Crown and the Public, will reserve the right of making and constructing roads and bridges for public purposes, through or in Lands so granted; - the owners being fairly compensated by other equivalent Land; as settled by arbitration.

12. No Crown Grants will be issued under the foregoing arrangements to any person or persons who may be found to have contravened any of these regulations; - and the Public are reminded that no title to land in this Colony, held or claimed by any person not an aboriginal native of the same, is valid in the eye of the Law, or otherwise than null and void unless confirmed by a Grant from the Crown.

Given under my Hand, and issued under the Public Seal of the Colony, at Government House, Auckland, this twenty-sixth day of March, in the year of Our Lord One thousand eight hundred and forty-four.

ROBERT FITZROY

Governor
By Command,

ANDREW SINCLAIR
Colonial Secretary

God Save the Queen

Attachment C

Crown Acknowledgements

- The Crown acknowledges that Ngāti Whātua o Ōrākei endeavoured to establish a relationship with the Crown from 1840 and sought to strengthen this relationship, in part, by transferring lands for settlement purposes. These lands have contributed to the development of New Zealand and Auckland in particular. The Crown also acknowledges that Ngāti Whātua sought to strengthen the relationship by expressing loyalty to the Crown.
- The Crown acknowledges that the benefits and protection that Ngāti Whātua o Ōrākei expected to flow from its relationship with the Crown were not always realised.
- The Crown acknowledges that a large amount of Ngāti Whātua o Ōrākei land was alienated from 1840 by way of Crown purchase and pre-emption waiver transactions, including the acquisition of "surplus lands" by the Crown. The Crown's failure to protect lands and provide adequate endowments for the future use or benefit of Ngāti Whātua o Ōrākei was a breach of the Treaty of Waitangi and its principles.
- The Crown acknowledges that land alienation has diminished the ability of Ngāti Whātua o Ōrākei to exercise mana whenua.
- The Crown acknowledges that certain regulations to protect Māori interests in the pre-emption waiver period were not applied correctly by the Crown.
- The Crown acknowledges that inadequate protections were applied to pā and urupā in the pre-emption waiver period, including Maungakiekie, a site of historical and spiritual significance to Ngāti Whātua o Ōrākei, and that this failure of active protection was a breach of the Treaty of Waitangi and its principles.
- The Crown acknowledges that its failure to set aside one tenth of the lands transferred under the pre-emption waiver period in trust for the benefit of the original owners of that land (including Ngāti Whātua o Ōrākei) was a breach of the Treaty of Waitangi and its principles.
- The Crown acknowledges that reclamations and other forms of development of the Waitemata and Manukau Harbours, which had a damaging effect upon fisheries and other harbour resources, caused a sense of grievance for Ngāti Whātua o Ōrākei that is still held today.

Attachment D

Department of Conservation Protocol

A PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER OF CONSERVATION REGARDING DEPARTMENT OF CONSERVATION INTERACTION with NGATI WHATUA O ORAKEI ON SPECIFIED ISSUES

1. INTRODUCTION

1.1 Under the Deed of Settlement dated [ ] between Ngāti Whātua o Ōrakei and the Crown, the Crown, through the Minister of Conservation, agreed to issue a Protocol setting out how the Department of Conservation ("the Department") will interact with the Ngāti Whātua o Ōrakei Governance Entity on specified issues.

1.2 Both the Department and Ngāti Whātua o Ōrakei are committed to establishing and maintaining a positive and collaborative relationship that gives effect to the principles of the Treaty of Waitangi as provided for in section 4 of the Conservation Act 1987. Those principles provide the basis for the ongoing relationship between the parties to the DOC Protocol to achieve over time the conservation policies, actions and outcomes sought by both the Governance Entity and the Department, as set out in this Protocol.

1.3 The purpose of the Conservation Act 1987 is to enable the Department to manage natural and historic resources under that Act and to administer the Acts in the First Schedule to the Act. The Minister and Director-General are required to exercise particular functions, powers and duties under that legislation.

2. PURPOSE OF THE PROTOCOL

2.1 The purpose of this Protocol is to assist the Department and Ngāti Whātua o Ōrakei to exercise their respective responsibilities with the utmost co-operation to achieve over time the conservation policies, actions and outcomes sought by both.

2.2 The Protocol sets out a framework that enables the Department and Ngāti Whātua o Ōrakei to establish a healthy and constructive working relationship that is consistent with section 4 of the Conservation Act. It provides for Ngāti Whātua o Ōrakei to have meaningful input into certain policy, planning and decision-making processes, management of conservation lands and fulfilment of statutory responsibilities within the Protocol Area.

3. **PROTOCOL AREA**

3.1 This Protocol applies across the Ngāti Whātua o Ōrakei-DOC Protocol Area which means the area identified in the map included in Attachment A of this Protocol.

4. **TERMS OF ISSUE**

4.1 This Protocol is issued pursuant to section [ ] of the Ngāti Whātua o Ōrakei Claims Settlement Act [20--] and clause [ ] of the Deed of Settlement. The provisions of the Settlement Legislation and the Deed of Settlement specifying the terms on which this Protocol is issued are set out in Attachment B of the Protocol.

5. **IMPLEMENTATION AND COMMUNICATION**

5.1 The Department will seek to establish and maintain communication with Ngāti Whātua o Ōrakei on a continuing basis by:

5.1.1 Maintaining information on the Governance Entity's office holders, and their addresses and contact details;

5.1.2 Providing a primary departmental contact for the Governance Entity being the Area Manager who will act as a liaison person with other departmental staff;

5.1.3 Providing reasonable opportunities for the Governance Entity to meet with Departmental managers and staff;

5.1.4 Holding alternate meetings at the Area Office and a Ngāti Whātua o Ōrakei marae or other venue chosen by the Governance Entity to review implementation of the Protocol every six months, unless otherwise agreed. Ngāti Whātua o Ōrakei may, when such meetings

are held at a Ngāti Whatua o Ōrakei marae or other venue chosen by the Governance Entity, arrange for an annual report back to the Ngāti Whātua o Ōrakei people at such meetings; and

5.1.5 Training relevant staff on the content of the Protocol and briefing the Auckland Conservation Board members on the content of the Protocol.

5.2 Within the first year of this Protocol being issued, and on a continuing basis, the Department and the Governance Entity will identify practical ways in which:

5.2.1 Ngāti Whātua o Ōrakei can exercise kaitiakitanga over ancestral lands, natural and historic resources and other taonga managed by the Department;

5.2.2 The Department can manage wahi tapu, and taonga tapu and other places of historic or cultural significance to Ngāti Whātua o Ōrakei in a manner which respects Ngāti Whātua o Ōrakei tikanga and values;

5.2.3 The Department can acknowledge the Governance Entity's interest in training and employment opportunities with the Department and the Governance Entity's role as a trainer for the Department; and

5.2.4 Ngāti Whātua o Ōrakei can actively participate in conservation management and activities including the Department's volunteer and conservation events programmes.

6. SPECIFIC PROJECTS

6.1 The Department and the Governance Entity will on an annual basis identify priorities for undertaking specific projects requested by the Governance Entity. The identified priorities for the upcoming business year will be taken forward by the Department into its business planning process and considered along with other priorities.

6.2 The decision on whether any specific projects will be funded in any business year will be made by the Conservator and General Manager Operations, after following the co-operative processes set out above.

6.3 If the Department decides to proceed with a specific project requested by the Governance Entity, the Governance Entity and Department will

meet again, if required, to finalise a work plan and timetable for implementation of the specific projects in that business plan.

7. CULTURAL MATERIALS

7.1 Cultural materials for the purpose of this Protocol are plants, plant materials, and materials derived from animals or birds for which the Department is responsible in the Protocol Area. Some of these materials are of importance to Ngāti Whātua o Ōrakei in maintaining its culture, including medicinal practices, toi mahi and gathering of mahinga kai in accordance with Ngāti Whātua o Ōrakei tikanga.

7.2 Current legislation means that generally some form of concession or permit is required for any gathering and possession of cultural materials.

7.3 The Minister and/or Director General will:

7.3.1 Consider requests from the Governance Entity for the customary use of cultural materials in accordance with the relevant legislation;

7.3.2 Agree, where appropriate, for the Governance Entity to have access to cultural materials which become available as a result of departmental operations such as track maintenance or clearance, or where materials become available as a result of road kill; and

7.3.3 Consult with the Governance Entity in circumstances where there are competing requests from persons or entities other than Ngāti Whātua o Ōrakei for the use of cultural materials, for example for scientific research purposes.

7.4 The Department will work with the Governance Entity to develop procedures for monitoring sustainable levels and methods of use of cultural materials in accordance with the relevant legislation.

8. HISTORIC RESOURCES / WAHI TAPU

8.1 Ngāti Whātua o Ōrakei consider that Te Tiriti o Waitangi / the Treaty of Waitangi covered wahi tapu, including urupa, wahi taonga, and other places of historic significance as taonga (priceless treasures) for all the hapu and iwi of Aotearoa. The Department will respect the great

significance of these taonga by fulfilling the obligations contained in this section of the Protocol.

8.2 The Department has a statutory role to conserve historic resources in protected areas and will endeavour to do this for sites of significance to Ngāti Whātua o Ōrakei in association with the Governance Entity and according to Ngāti Whātua o Ōrakei tikanga.

8.3 The Department accepts that non-disclosure of locations of places known to Ngāti Whātua o Ōrakei may be an option that the Governance Entity chooses to take to preserve the wahi tapu nature of places. The responsibility for identifying and assessing Ngāti Whātua o Ōrakei heritage values rests largely with Ngāti Whātua o Ōrakei. There may be situations where the Governance Entity will ask the Department to treat information it provides on wahi tapu in a confidential way. The Department and the Governance Entity will work together to establish processes for dealing with information on wahi tapu sites in a way that recognises both the management challenges that confidentiality can present and respects the views of Ngāti Whātua o Ōrakei.

8.4 To assist in this process, the Governance Entity will notify the Area Manager of any concerns with the Department's management of wahi tapu areas and the Department will take all reasonable steps to address the situation.

8.5 The Department will work with the Governance Entity at the Area Office level to respect Ngāti Whātua o Ōrakei values attached to identified wahi tapu, wahi taonga and places of historic significance on lands administered by the Department by:

8.5.1 Managing sites of historic significance to Ngāti Whātua o Ōrakei according to standards of conservation practice which care for places of cultural heritage value, their structures, materials and cultural meaning, as outlined in the International Council on Monuments and Sites (ICOMOS) New Zealand Charter 1993;

8.5.2 Undertaking protection and conservation of wahi tapu and other sites of significance in co-operation with Ngāti Whātua o Ōrakei;

8.5.3 Consulting with the Governance Entity before any work is carried out by a party other than the Department or the Governance Entity (eg a community restoration trust) on land administered by the Department;

8.5.4 Ensuring as far as possible that when another entity (e.g. community trust) is undertaking work on land managed by the Department the work undertaken is consistent with the standards of conservation practice outlined in the ICOMOS New Zealand Charter 1993;

8.5.5 Informing the Governance Entity if wheua tangata are found; and

8.5.6 Assisting in recording and protecting wahi tapu and other places of cultural significance to Ngāti Whātua o Ōrakei where appropriate, to ensure that they are not desecrated or damaged.

9. INDIGENOUS FLORA AND FAUNA

9.1 One of the Department's primary objectives is to ensure the survival of species and their genetic diversity. An important part of this work is to prioritise recovery actions in relation to the degree of threat to a species. The Department prioritises recovery actions at both a national and local level.

9.2 In recognition of Ngāti Whātua o Ōrakei's cultural, spiritual, historic and traditional association with indigenous flora and fauna occurring naturally within the DOC Protocol Area for which the Department has responsibility, the Department will in relation to any of those species that Ngāti Whātua o Ōrakei may identify as important to them through the processes provided under clauses 5 and 6:

9.2.1 Where a national recovery programme is being implemented within the DOC Protocol Area, inform and, where it is practicable to do so, provide opportunities for the Governance Entity to participate in that programme;

9.2.2 Provide opportunities for the Governance Entity to input into any Conservation Management Strategy reviews, or the preparation of any statutory or non-statutory plans, policies or documents that relate to the management of those species within the DOC Protocol Area;

9.2.3 Inform the Governance Entity before commencing any research and monitoring projects being carried out by the Department within the

DOC Protocol Area, and, where reasonably practicable, provide opportunities for the Governance Entity to participate in those projects.

9.2.4 Advise the Governance Entity of the receipt of any research reports relating to indigenous species within the DOC Protocol Area, and provide copies or the opportunity for the Governance Entity to study those reports.

10. MARINE MAMMALS

10.1 The Department administers the Marine Mammals Protection Act 1978 and the Marine Mammals Regulations 1992. These provide for the establishment of marine mammal sanctuaries, for permits in respect of marine mammals, the disposal of sick or dead specimens and the prevention of marine mammal harassment. All species of marine mammal occurring within New Zealand and New Zealand's fisheries waters are absolutely protected under the Marine Mammals Protection Act 1978. Under that Act the Department is responsible for the protection, conservation and management of all marine mammals, including their disposal and the health and safety of its staff and any volunteers under its control, and the public.

10.2 The Department believes that there are opportunities to meet the cultural interests of Ngāti Whātua o Ōrakei and to facilitate the gathering of scientific information. This Protocol is intended to meet both needs by way of a co-operative approach to the management of whale strandings and to provide general guidelines for the management of whale strandings in the DOC Protocol Area, and for the recovery by Ngāti Whātua o Ōrakei of bone and other material for cultural purposes from dead marine mammals.

10.3 In achieving these objectives, the Protocol also aims to enable the Department to give effect to the principles of Te Tiriti o Waitangi / the Treaty of Waitangi as expressed in section 4 of the Conservation Act as well as assisting the conservation of cetacean species by contribution to

the collection of specimens and scientific data of national and international importance.

10.4 There may be circumstances during a stranding in which euthanasia is required, for example if the animal is obviously distressed or if it is clear that a refloating operation is unsuccessful. The decision to euthanase is the responsibility of the Department's stranding control officer. The Department will make every effort to inform the Governance Entity before any decision to euthanase. If Ngāti Whātua o Ōrakei representatives are not available at the time a decision is made to euthanase, it will be the responsibility of the stranding control officer to make decisions in the best interests of the marine mammals and public safety.

10.5 Both the Department and Ngāti Whātua o Ōrakei acknowledge the scientific importance of information gathered at strandings. Decisions concerning the exact nature of the scientific samples required and the subsequent disposal of any dead animals, including their availability to Ngāti Whātua o Ōrakei, will depend on the species.

10.6 The following species ("category 1 species") are known to strand most frequently on New Zealand shores. In principle these species should be available to the Governance Entity for the recovery of bone once scientific data and samples have been collected. If there are reasons why this principle should not be followed, they must be discussed between the parties to this Protocol. Category 1 species are:

10.6.1 Common dolphins (Delphinus delphis)

10.6.2 Long-finned pilot whales (Globicephala melas)

10.6.3 Sperm whales (Physeter macrocephalus).

10.7 The following species ("category 2 species") are either not commonly encountered in New Zealand waters, or may frequently strand here but are rare elsewhere in the world. For these reasons their scientific value has first priority. In most instances, bone from category 2 species will be made available to the Governance Entity after autopsy if requested.

10.7.1 All baleen whales

10.7.2 Short-finned pilot whale (Globicephala macrorhynchus)

10.7.3 Beaked whales (all species, family Ziphiidae)

10.7.4 Pygmy sperm whale (Kogia breviceps)

10.7.5 Dwarf sperm whale (Kogia simus)

10.7.6 Bottlenose dolphin (Tursiops truncatus)

10.7.7 Maui's dolphin (Cephalorhynchus hectori maui)

10.7.8 Dusky dolphin (Lagenorhynchus obscurus)

10.7.9 Risso's dolphin (Grampus griseus)

10.7.10 Spotted dolphin (Stenella attenuata)

10.7.11 Striped dolphin (Stenella coeruleoalba)

10.7.12 Rough-toothed dolphin (Steno bredanensis)

10.7.13 Southern right whale dolphin (Lissodelphis peronii)

10.7.14 Spectacled porpoise (Australophocoena dioptrica)

10.7.15 Melon-headed whale (Peponocephala electra)

10.7.16 Pygmy killer whale (Feresa attenuata)

10.7.17 False killer whale (Pseudorca crassidens)

10.7.18 Killer whale (Orcinus orca)

10.7.19 Any other species of cetacean previously unknown in New Zealand waters.

10.8 If Ngāti Whātua o Ōrakei does not wish to recover the bone or otherwise participate the Governance Entity will notify the Department whereupon the Department will take responsibility for disposing of the carcass.

10.9 Because the in-situ recovery of bones involves issues relating to public safety, including the risk of infection from dead and decaying tissue, it needs to be attempted only by the informed and skilled. Ngāti Whātua o Ōrakei bone recovery teams will also want to ensure that the appropriate cultural tikanga is understood and followed. However, both parties acknowledge that generally burial will be the most practical option.

10.10 Subject to the prior agreement of the Conservator, where disposal of a dead stranded marine mammal is carried out by the Governance Entity, the Department will meet the reasonable costs incurred up to the

estimated costs that would otherwise have been incurred by the Department to carry out the disposal.

10.11 The Department will:

10.11.1 Reach agreement with the Governance Entity on authorised key contact people who will be available at short notice to make decisions on the desire of Ngāti Whātua o Ōrakei to be involved when there is a marine mammal stranding;

10.11.2 Promptly notify the key contact people of all stranding events;

10.11.3 Discuss, as part of the disposal process, burial sites and, where practical, agree sites in advance which are to be used for disposing of carcasses in order to meet all the health and safety requirements and to avoid the possible violation of Ngāti Whātua o Ōrakei tikanga; and

10.11.4 Consult with the Governance Entity should the Department wish to prepare plans for research and monitoring of the seal population within the Protocol Area.

10.12 In areas of over-lapping interest, Ngāti Whātua o Ōrakei, will work with the Department and the relevant iwi to agree on a process to be followed when managing marine mammal strandings.

11. RESOURCE MANAGEMENT ACT 1991

11.1 Ngāti Whātua o Ōrakei and the Department both have concerns with the effects of activities controlled and managed under the Resource Management Act 1991. Areas of common interest may include riparian management, effects on freshwater fish habitat, water quality management, and protection of indigenous vegetation and habitats.

11.2 From time to time, the Governance Entity and the Department will seek to identify further issues of likely mutual interest for discussion. It is recognised that their concerns in any particular resource management issue may diverge and that the Department and the Governance Entity will continue to make separate submissions in any Resource Management Act processes.

11.3 In carrying out advocacy under the Resource Management Act the Department will:

11.3.1 Discuss with the Governance Entity the general approach that may be taken by Ngāti Whātua o Ōrakei and the Department in respect of advocacy under the Resource Management Act, and seek to identify their respective priorities and issues of mutual concern.

11.3.2 Have regard to the priorities and issues of mutual concern identified in making decisions in respect of advocacy under the Resource Management Act;

11.3.3 Make non-confidential resource information available to the Governance Entity to assist in improving their effectiveness in resource management advocacy work.

12. FRESHWATER FISHERIES

12.1 Freshwater Fisheries are managed under two sets of legislation: The Fisheries Act 1983 and 1996 (administered by the Ministry of Fisheries) and the Conservation Act 1987. The Conservation Act deals specifically with the conservation of non-commercial freshwater fisheries and habitat. The whitebait fishery is administered under the Whitebait Fishing Regulations 1994, made under the Conservation Act 1987.

12.2 The Department and the Governance Entity will work together to ensure that the Department is aware of relevant tikanga relating to freshwater fisheries.

12.3 The Department will work at an Area Office level to provide for active participation by the Governance Entity in the conservation, management and research of customary freshwater fisheries and freshwater fish habitats by:

12.3.1 Seeking to identify areas for co-operation focusing on fish passage, minimum flows, protection of riparian vegetation and habitats, water quality improvement and in the restoration, rehabilitation or enhancement of customary freshwater fisheries and their freshwater habitats;

12.3.2 Consulting with the Governance Entity where the Department is developing or contributing to research and monitoring programmes that aim to improve the understanding of the biology of customary freshwater fisheries and their environmental and habitat requirements; and

12.3.3 Considering the Governance Entity as a possible science provider or collaborator for research projects funded or promoted by the Department in the same manner as other potential providers or collaborators.

13. PEST CONTROL

13.1 A key objective of and function of the Department is to prevent, manage or control threats to natural, historic and cultural values from pests. This needs to be done in a way that maximises the value from limited resources available to do this work.

13.2 The Department will:

13.2.1 Seek and facilitate early consultations with the Governance Entity on pest control activities within the Protocol Area, particularly in relation to the use of poisons; and

13.2.2 Provide the Governance Entity with opportunities to review and assess programmes and outcomes.

14. VISITOR AND PUBLIC INFORMATION

14.1 The Department has a role to share knowledge about natural and historic heritage with visitors to satisfy their requirements for information, increase their enjoyment and understanding of this heritage, and develop an awareness of the need for its conservation. In providing public information and interpretation services and facilities for visitors on the land it manages, the Department will recognise the importance to Ngāti Whātua o Ōrakei of their cultural, traditional and historic values and the association of Ngāti Whātua o Ōrakei with the land the Department administers within the Protocol Area.

14.2 The Department will work with the Governance Entity at the Area Office level to encourage respect for Ngāti Whātua o Ōrakei values by:

14.2.1 Seeking to raise public awareness of positive conservation partnerships developed between the Governance Entity, the Department and other stakeholders, for example, by way of publications, presentations and seminars;

14.2.2 Consulting on the provision of interpretation and visitor facilities (if any) at wahi tapu, wahi taonga and other places of historic or cultural significance to Ngāti Whātua o Ōrakei within the Protocol Area; and

14.2.3 Ensuring that information on new panels, signs and visitor publications includes Ngāti Whātua o Ōrakei perspectives and references to the significance of the sites to Ngāti Whātua o Ōrakei where appropriate, including the use of traditional Ngāti Whātua o Ōrakei place names.

15. CONCESSION APPLICATIONS

15.1 The Department will work with the Governance Entity to identify categories of concessions that may impact on the cultural, spiritual or historical values of Ngāti Whātua o Ōrakei.

15.2 In relation to the concession applications within the categories identified under clause 15.1, the Minister will:

15.2.1 Consult with the Governance Entity with regard to any applications or renewals of applications within the Protocol Area;

15.2.2 When a concession is publicly notified, the Department will at the same time provide separate written notification to the Governance Entity;

15.2.3 Prior to issuing concessions to carry out activities on land managed by the Department within the Protocol Area, and following consultation with the Governance Entity, the Minister will advise the concessionaire of Ngāti Whātua o Ōrakei tikanga and values and encourage communication between the concessionaire and the Governance Entity if appropriate; and

15.2.4 Ensure as far as possible when issuing and renewing concessions that give authority for other parties to manage land administered by the Department, that those parties:

(a) Be required to manage the land according to the standards of conservation practice outlined in the ICOMOS New Zealand Charter 1993; and

(b) Be encouraged to consult with the Governance Entity before using cultural information of Ngāti Whātua o Ōrakei.

16. APPOINTMENTS TO BOARDS

16.1 The Department will recommend that the Minister consult the Governance Entity when carrying out consultation with tangata whenua for the purpose of appointing tangata whenua members to the Hauraki Gulf Forum under s 16(2)(e) of the Hauraki Gulf Marine Park Act 2000.

16.2 The Department will notify the Governance Entity when nominations are invited for appointments to the Auckland Conservation Board, and will provide the Governance Entity with any information or material that will assist in making a nomination or nominations.

17. CONSULTATION

17.1 Where the Department is required to consult under *clauses [ ]* of this Protocol, the basic principles that will be followed by the Department in consulting with the Governance Entity in each case are:

17.1.1 Ensuring that the Governance Entity is consulted as soon as reasonably practicable following the identification and determination by the Department of the proposal or issues to be the subject of the consultation;

17.1.2 Providing the Governance Entity with sufficient information to make informed discussions and submissions in relation to any of the matters that are the subject of the consultation;

17.1.3 Ensuring that sufficient time is given for the effective participation of the Governance Entity in the decision making process and the preparation of submissions by the Governance Entity in relation to any of the matters that are the subject of the consultation;

17.1.4 Ensuring that the Department will approach the consultation with the Governance Entity with an open mind, and will genuinely consider

any concerns that the Governance Entity may have in relation to any of the matters that are the subject of the consultation.

Attachment E

Ministry of Fisheries Protocol

A PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER OF FISHERIES REGARDING INTERACTION WITH NGATI WHATUA O ORAKEI ON FISHERIES ISSUES

1. INTRODUCTION

1.1 Under the Deed of Settlement dated [ ] between Ngati Whatua O Orakei and the Crown (the "Deed of Settlement"), the Crown agreed that the Minister of Fisheries (the "Minister") would issue a protocol (the "Fisheries Protocol") setting out how the Ministry of Fisheries (the "Ministry") will interact with the Ngati Whatua O Orakei Governance Entity (the "Governance Entity") in relation to matters specified in the Fisheries Protocol. These matters are:

1.1.1 recognition of the interests of Ngati Whatua O Orakei in all species of fish, aquatic life or seaweed that exist within the Fisheries Protocol Area;

1.1.2 development of sustainability measures, fisheries regulations and fisheries plans;

1.1.3 customary non-commercial fisheries management;

1.1.4 research planning;

1.1.5 nature and extent of fisheries services;

1.1.6 contracting for services;

1.1.7 employment of staff with customary non-commercial fisheries responsibilities;

1.1.8 rahui;

1.1.9 changes to policy and legislation affecting this Protocol.

1.2 For the purposes of this Fisheries Protocol, the Governance Entity is the body representative of the whānau of Ngati Whatua O Orakei who have an interest in all species of fish, aquatic life and seaweed that exist within the Fisheries Protocol Area. Ngati Whatua O Orakei has a responsibility in relation to the preservation, protection and management of its customary non-commercial fisheries through its tino rangatiratanga and kaitiakitanga. This derives from the status of Ngati Whatua O Orakei as tangata whenua in the Fisheries Protocol Area and is inextricably linked to whakapapa and has important cultural and spiritual dimensions.

1.3 The obligations of the Ministry in respect of fisheries are to ensure ecological sustainability, to meet Treaty of Waitangi and international obligations, to enable efficient resource use and to ensure the integrity of fisheries management systems.

1.4 The Ministry and the Governance Entity are seeking a relationship consistent with the Treaty of Waitangi and its principles. The principles of the Treaty provide the basis for the

relationship between the parties to this Fisheries Protocol, as set out in this Fisheries Protocol.

1.5 The Minister and the Chief Executive of the Ministry (the "Chief Executive") have certain functions, powers and duties in terms of the Fisheries Legislation and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. With the intention of creating a relationship that achieves, over time, the fisheries policies and outcomes sought by both Ngati Whatua O Orakei and the Ministry consistent with the sustainable utilisation of fisheries, this Protocol sets out how the Ministry, the Minister and Chief Executive will exercise their functions, powers and duties in relation to matters set out in this Protocol. The Governance Entity will have the opportunity for meaningful input into the policy, planning and decision-making processes relating to the matters set out in this Protocol.

1.6 The Ministry will advise the Governance Entity whenever it proposes to consult with another iwi or hapū with interests inside the Protocol Area, on matters that could affect Ngati Whatua O Orakei interests.

2. PROTOCOL AREA

2.1 This Fisheries Protocol applies across the Fisheries Protocol Area, which means the area identified in the map included in Attachment A of this Protocol, together with the adjacent waters.

3. TERMS OF ISSUE

3.1 This Protocol is issued pursuant to section [ ] of the [ ] Claims Settlement Act [ ] (the "Settlement Legislation") and clause [ ] of the Deed of Settlement and is subject to the Settlement Legislation and the Deed of Settlement.

3.2 This Protocol must be read subject to the terms of issue set out in Attachment B.

4. IMPLEMENTATION AND COMMUNICATION

4.1 The Ministry will maintain effective consultation processes and communication networks with the Governance Entity by:

4.1.1 maintaining, at national and regional levels, information provided by the Governance Entity on Ngati Whatua O Orakei's office holders, addresses and contact details and;

4.1.2 providing reasonable opportunities for the Governance Entity to meet with Ministry managers and staff.

4.2 The Ministry will:

4.2.1 meet with the Governance Entity to review implementation of this Protocol at least once a year, unless otherwise agreed, at a location agreed to in advance by the Governance Entity and the Ministry;

4.2.2 as far as reasonably practicable, train relevant staff on this Protocol and provide on-going training as required;

4.2.3 as far as reasonably practicable, inform fisheries stakeholders about this Protocol and the Ngati Whatua O Orakei settlement, and provide on-going information as required.

5 SPECIES OF FISH, AQUATIC LIFE AND SEAWEED

Taonga Fish Species

5.1 The Crown, through the Minister and Chief Executive, recognises that Ngati Whatua O Orakei have a special relationship with, all species of fish, aquatic life and seaweed found within the Fisheries Protocol Area and managed by the Ministry under the Fisheries Legislation.

5.2 The Ministry also recognises the special interest of Ngati Whatua O Orakei in the Taonga Fish Species (Ministry of Fisheries) specified in Attachment C.

6 DEVELOPMENT OF SUSTAINABILITY MEASURES, FISHERIES REGULATIONS AND FISHERIES PLANS AND CONSULTATION

6.1 If the Ministry is exercising powers or functions, under the Fisheries Legislation or the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, relating to the setting of sustainability measures, or the making of fisheries regulations, or the development/implementation of a fisheries plan for the purposes of section 11A of the Fisheries Act 1996 (a "Fisheries Plan"), for any species of fish, aquatic life or seaweed within the Fisheries Protocol Area, that person must:

6.1.1 provide the Governance Entity with all reasonably available background information in relation to the setting of sustainability measures, the making of fisheries regulations, and the development/implementation of Fisheries Plans;

6.1.2 inform the Governance Entity, in writing, of any proposed changes in relation to:

6.1.2.1 the setting of sustainability measures;

6.1.2.2 the making of fisheries regulations, and

6.1.2.3 the development/implementation of Fisheries Plans

as soon as reasonably practicable to enable Ngati Whatua O Orakei to respond in an informed way;

6.1.3 provide the Governance Entity at least 30 working days from receipt of the written information described in clause 6.1.2 in which to respond, verbally or in writing to any such proposed changes;

6.1.4 as far as reasonably practicable, meet with the Governance Entity to discuss any proposed changes to sustainability measures, fisheries regulations, or Fisheries Plans, if requested by the Governance Entity to do so;

6.1.5 incorporate the views of the Governance Entity into any advice given to the Minister or other stakeholders on proposed changes to sustainability measures, fisheries regulations, or Fisheries Plans, that affect the Governance Entity's interests and provide a copy of that advice to the Governance Entity; and

6.1.6 report back to the Governance Entity within 20 working days of any final decision in relation to sustainability measures, fisheries regulations, or Fisheries Plans.

Regional Iwi Forums

6.2 The Ministry is working with iwi to establish regional iwi forums to enable iwi to have input into and participate in processes to address sustainability measures, fisheries regulations, fisheries plans and the establishment of marine protected areas. Where the Ministry is seeking to establish a regional iwi forum in an area that will include the Fisheries Protocol Area, the Ministry will ensure that the Governance Entity will have an opportunity to participate in the development and operation of that forum. Where a regional iwi forum is established and Ngati Whatua ki Orakei are members of that forum, both parties acknowledge that the forum will be the venue to address those matters set out in clauses 5 to 11 of this protocol.

MANAGEMENT OF CUSTOMARY NON-COMMERCIAL FISHERIES

7.1 The Ministry undertakes to provide the Governance Entity with such information and assistance as may be necessary for the proper administration of the Fisheries (Kaimoana Customary Fishing) Regulations 1998. This information and assistance may include but is not limited to:

7.1.1 discussions with the Ministry on the implementation of the regulations within the Fisheries Protocol Area; and

7.1.2 provision of existing information, if any, relating to the sustainability, biology, fishing activity and fisheries management within the Fisheries Protocol Area.

RESEARCH PLANNING PROCESS

8.1 The Ministry will provide the Governance Entity with all reasonably available background information to participate in the processes, timelines and objectives associated with the research planning process of the Ministry.

8.2 The Ministry will consult with the Governance Entity on all research proposals for fisheries within the Fisheries Protocol Area.

8.3 The Ministry will provide the Governance Entity, within 30 working days of the execution of the Fisheries Protocol, with information on the requirements for becoming an 'Approved Research Provider'. Should the requirements for becoming and remaining an 'Approved Research Provider' change over time, the Ministry will inform the Governance Entity about those changes.

NATURE AND EXTENT OF FISHERIES SERVICES

9.1 The Ministry will each year consult with the Governance Entity on the Ministry's annual business plan.

9.2 The Ministry will provide the Governance Entity with the opportunity to put forward proposals for the provision of services that the Governance Entity deem necessary for the management of fisheries within the Fisheries Protocol Area.

CONTRACTING FOR SERVICES

10.1 The Ministry will consult with the Governance Entity in respect of any contract for the provision of services that may impact on the management of customary fisheries within the Fisheries Protocol Area, if the Ministry is proposing to enter into such a contract.

EMPLOYMENT OF STAFF WITH CUSTOMARY FISHERIES RESPONSIBILITIES

11.1 The Ministry will consult with the Governance Entity on certain aspects of the employment of Ministry staff if a particular vacancy directly affects the fisheries interests of Ngati Whatua O Orakei.

11.2 The level of consultation shall be relative to the degree to which the vacancy impacts upon the interests of other iwi as well as those of Ngati Whatua O Orakei, and may be achieved by one or more of the following:

11.2.1 consultation on the job description and work programme;

11.2.2 direct notification of the vacancy;

11.2.3 consultation on the location of the position; and

11.2.4 input into the selection of the interview panel.

RĀHUI

12.1 The Ministry recognises that rāhui is a traditional use and management practice of Ngati Whatua O Orakei and supports the right of Ngati Whatua O Orakei to place traditional rāhui over their customary fisheries;

12.2 The Ministry and Ngati Whatua O Orakei acknowledge that a traditional rāhui placed by Ngati Whatua O Orakei over their customary fisheries has no force in law and cannot be enforced by the Ministry, and that adherence to any rāhui is a matter of voluntary choice;

12.3 Ngati Whatua O Orakei undertakes to inform the Ministry (contact person to be decided) of the placing and the lifting of a rāhui by Ngati Whatua O Orakei over their customary fisheries;

12.4 The Ministry undertakes to inform a representative of any fishery stakeholder groups that fish in the area to which the rāhui has been applied, to the extent that such groups exist, of the placing and the lifting of a rāhui by Ngati Whatua O Orakei over their customary fisheries, in a manner consistent with the understandings outlined in clause 12.2 above;

12.5 As far as reasonably practicable, the Ministry undertakes to consider the application of section 186A of the Fisheries Act 1996 to support a rāhui proposed by Ngati Whatua O Orakei over their customary fisheries for purposes consistent with the legislative requirements for the application of section 186A of the Fisheries Act 1996, noting these requirements preclude the use of section 186A to support rāhui placed in the event of a drowning.

CONSULTATION

13.1 Where the Ministry is required to consult under clauses 5.4, 8.2, 9.1 and 10.1 of this Protocol, the basic principles that will be followed by the Ministry in consulting with the Governance Entity in each case are:

13.1.1 ensuring that the Governance Entity is consulted as soon as reasonably practicable following the identification and determination by the Ministry of the proposal or issues to be the subject of the consultation;

13.1.2 providing the Governance Entity with sufficient information to make informed decisions and submissions in relation to any of the matters that are the subject of the consultation;

13.1.3 ensuring that sufficient time is given for the participation of the Governance Entity in the decision making process including the preparation of submissions by the Governance Entity in relation to any of the matters that are the subject of the consultation; and

13.1.4 ensuring that the Ministry will approach the consultation with the Governance Entity with an open mind, and will genuinely consider the submissions of the Governance Entity in relation to any of the matters that are the subject of the consultation.

13.2 Where, the Ministry has consulted with the Governance Entity as specified in clause 13.1, the Ministry will report back to the Governance Entity on the decision made as a result of any such consultation.

CHANGES TO POLICY AND LEGISLATION AFFECTING THIS PROTOCOL

14.1 If the Ministry consults with iwi on policy development or any proposed legislative amendment to the Fisheries Legislation which impacts upon this Protocol the Ministry shall:

14.1.1 notify the Governance Entity of the proposed policy development or proposed legislative amendment upon which iwi will be consulted; and

14.1.2 make available to the Governance Entity the information provided to iwi as part of the consultation process referred to in this clause; and

14.1.3 report back to the Governance Entity on the outcome of any such consultation.

ISSUED on [ ]

SIGNED for and on behalf of **HER MAJESTY THE QUEEN** in right of New Zealand by the Minister of Fisheries

WITNESS

____

Name:
Occupation:
Address:

ATTACHMENT A

FISHERIES PROTOCOL AREA

ATTACHMENT B

TERMS OF ISSUE

1. Definitions

In this Fisheries Protocol:

Crown means Her Majesty the Queen in right of New Zealand and includes, where appropriate, the Ministers and Departments of the Crown that are involved in, or bound by the terms of the Deed of Settlement to participate in, any aspect of the redress under the Deed of Settlement;

Fisheries Legislation means the Fisheries Act 1983 and the Fisheries Act 1996;

Governance Entity means *[insert name and description once entity established in accordance with the Deed];*

Ngati Whatua O Orakei has the meaning set out in clause 1.4 of the Deed of Settlement;

Protocol means a statement in writing, issued by the Crown through the Minister to the Governance Entity under the Settlement Legislation and the Deed of Settlement and includes this Fisheries Protocol.

2. Authority to Issue, Amend or Cancel Protocols

2.1 Section [ ] of the Settlement Legislation provides that:

2.1.1 subject to clause 2.1.2(b), the Minister may issue a Protocol and may amend or cancel that Protocol; and

2.1.2 a Protocol may be amended or cancelled at the initiative of:

(a) the Governance Entity; or

(b) the Minister only after consulting with, and having particular regard to the views of, the Governance Entity.

3. Protocols Subject to Rights and Obligations

3.1 Section [ ] of the Settlement Legislation provides that the Protocol will not:

3.1.1 restrict the ability of the Crown to:

(a) perform its functions and duties, and exercise its powers, in accordance with the law and government policy; and

(b) introduce legislation (including amending legislation) and change government policy; or

3.1.2 detract from the responsibilities of the Minister or the Ministry; or

3.1.3 restrict the legal rights of Ngati Whatua O Orakei.

3.2 The Protocol does not restrict the ability of the Crown to interact or consult with any person or persons the Crown considers appropriate including, without limitation, any other iwi, hapū, marae, whanau or other representatives of tangata whenua.

4. **Noting of Protocols**

4.1 Section [ ] of the Settlement Legislation provides that:

4.1.1 the existence of the Fisheries Protocol (once issued, and as amended from time to time), together with a summary of the terms of issue of the Fisheries Protocol, must be noted in fisheries plans from time to time affecting the Fisheries Protocol Area; and

4.1.2 the noting of the Fisheries Protocol under clause [ ] of the Deed of Settlement:

(a) is for the purpose of public notice only; and

(b) is not an amendment to the relevant plans for the purposes of section 11A of the Fisheries Act 1996.

5. **Enforceability of Protocols**

5.1 Section [ ] of the Settlement Legislation provides that:

5.1.1 the Crown must comply with its obligations under a Protocol as long as the Protocol is in force; and

5.1.2 if the Crown fails, without good cause, to comply with its obligations under a Protocol, the Governance Entity may, subject to the Crown Proceedings Act 1950, enforce the Protocol, but may not recover damages, or any form of monetary compensation (other than any costs related to the bringing of proceedings awarded by a Court), from the Crown.

5.2 The provisions included in the Settlement Legislation under clause [ ]and []of the Deed of Settlement will not apply to any guidelines developed in relation to a Protocol.

6. **Breach of Protocols Not Breach of Deed**

6.1 The Deed of Settlement provides that a failure by the Crown to comply with its obligations under a Protocol is not a breach of the Deed of Settlement.

7. **LIMITATION OF RIGHTS**

7.1 Section [ ] of the Settlement Legislation provides that the Fisheries Protocol does not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, any assets or property rights held, managed or administered under the Fisheries Legislation (including fish, aquatic life or seaweed).

ATTACHMENT C

Taonga Fish Species

The Ministry also recognises the special relationship of Ngati Whatua Ki Orakei in the Taonga Fish Species (Ministry of Fisheries) specified in the following table

Shell Fish Name	**Latin Name**
Karahu, Titiko	*Amphibola crenata*
Kina	*Evechinus chloroticus*
Kokota	*Paphies australis*
Kutai, green-lipped mussel	*Perna canaliculus*
Pipi	*Austrovenus stutchburyi*
Pupu, cat's eye	*Turbo smaragdus*
Tio, rock oyster	*Saccostrea cucullata*
Paua	*Haliotis iris*
Fish Name	**Latin Name**
Kupae, sprats	*Sprattus antipodum, S.muelleri*
Patiki, sand flounder & yellow-belly flounder	*Rhombosolea plebeian, R.leporina*
Pakiri/Paketi, spotty	*Notolabrus celidotus*
Ihe, piper	*Hemiramphidae spp.*
Haku, yellowtail kingfish	*Seriola lalandi*
Hapuku, groper	*Polyprion oxygeneios*
Tamure, snapper	*Pagrus auratus*
Aua, kanae, mullet	*Mugil cephalus*
Parore	*Girella tricuspidata*
Maroro	*Cypselurus lineatus*
Mahimahi	*Coryphaena hippurus*

Attachment F

Ministry for Arts, Culture and Heritage Protocol

ANTIQUITIES PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER FOR ARTS, CULTURE AND HERITAGE REGARDING INTERACTION WITH NGĀTI WHĀTUA O ŌRĀKEI ON ANTIQUITIES ISSUES

1 INTRODUCTION

1.1 Under the Deed of Settlement dated [ ] between Ngāti Whātua o Ōrākei and the Crown (the "Deed of Settlement"), the Crown agreed that the Minister for Arts, Culture and Heritage (the "Minister") would issue a protocol (the "Antiquities Protocol") setting out how the Minister and the Chief Executive for the Ministry for Culture and Heritage (the "Chief Executive") will interact with the Governance Entity on matters specified in the Antiquities Protocol. These matters are:

1.1.1 newly found Artifacts;

1.1.2 the removal of Artifacts from New Zealand; and

1.1.3 the Antiquities Act 1975 and any substitution or amendment (the "Act").

1.2 The Minister and the Chief Executive or other such persons acting in those capacities, and Ngāti Whātua o Ōrakei are seeking a relationship consistent with the Treaty of Waitangi and its principles. Those principles provide the basis for the relationship between the parties to this Antiquities Protocol, as set out in this Antiquities Protocol.

1.3 The purpose of the Act is to 'provide for the better protection of antiquities, to establish and record the ownership of Māori artifacts, and to control the sale of artifacts within New Zealand' found after the commencement of the Act, namely 1st April 1976.

1.4 Ngāti Whātua o Ōrakei has an interest in relation to the preservation, protection and management of its Artifacts through its tino rangatiratanga and kaitiakitanga. This derives from Ngāti Whātua o Ōrākei's status as tangata whenua in the Antiquities Protocol Area and is inextricably linked to whakapapa and has important cultural and spiritual dimensions.

1.5 The Minister and the Chief Executive have certain functions, powers and duties in terms of the Act. In exercising such functions, powers and duties, the Minister and the Chief Executive will provide the Governance Entity with the opportunity for input in the policy and decision-making processes as set out in this Protocol.

2 PROTOCOL AREA

2.1 This Protocol applies across the Antiquities Protocol area which is identified in the map included in Attachment A of this Protocol together with adjacent waters (the "Antiquities Protocol Area").

3 TERMS OF ISSUE

3.1 The Antiquities Protocol is issued pursuant to section [ ] of the [insert name of settlement legislation] ("the Settlement Legislation") that implements clause XXX of the Deed of Settlement, and is subject to the Settlement Legislation and the Deed of Settlement.

3.2 This Protocol must be read subject to the terms of issue set out in Attachment B.

4 THE ROLE OF THE CHIEF EXECUTIVE UNDER THIS PROTOCOL

4.1 The Chief Executive has certain functions, powers and duties in terms of the Act and will consult, notify and provide information to the Governance Entity within the limits of the Act. The Chief Executive will:

4.1.1 provide the Governance Entity on request with information (including information on any Artifact identified as being of Ngāti Whātua o Ōrakei origin, including items found within the Antiquities Protocol Area or found anywhere else in New Zealand) in accordance with the Official Information Act 1982;

4.1.2 notify the Governance Entity in writing of any registered Artifact found within the Antiquities Protocol Area and of any registered Artifacts identified as being of Ngāti Whātua o Ōrakei origin found anywhere else in New Zealand from the date of signing this Protocol;

4.1.3 notify the Governance Entity of its right to apply to the Maori Land Court for determination of the actual or traditional ownership, rightful possession or custody of any Artifact, or for any right, title, estate, or interest in any Artifact found within the Antiquities Protocol Area or identified as being of Ngāti Whātua o Ōrākei origin found anywhere else in New Zealand;

4.1.4 notify the Governance Entity of any application to the Maori Land Court from other persons or entities for determination of the actual or traditional ownership, rightful possession or custody of any Artifact, or for any right, title, estate, or interest in any Artifact found within the Antiquities Protocol Area or identified as being of Ngāti Whātua o Ōrākei origin found anywhere else in New Zealand;

4.1.5 if no application is made to the Maori Land Court by the Governance Entity or any other persons:

(a) consult the Governance Entity before a decision is made on who may have custody of an Artifact found within the Antiquities Protocol Area or identified as being of Ngāti Whātua o Ōrākei origin found anywhere else in New Zealand;

(b) notify the Governance Entity in writing of the decision made by the Chief Executive on the custody of an Artifact where the Governance Entity has been consulted; and

(c) consult the Governance Entity where there are requests from persons for the custody of Artifacts found within the Antiquities Protocol Area or identified as being of Ngāti Whātua o Ōrākei origin found anywhere else in New Zealand;

4.1.6 seek from the Governance Entity an expert opinion on any Artifacts of Ngāti Whātua o Ōrākei origin for which a person has applied to the Chief Executive for permission to remove from New Zealand; and

4.1.7 notify the Governance Entity in writing of the decision made by the Chief Executive on an application to remove an Artifact from New Zealand where the expert opinion was sought from the Governance Entity.

4.2 The Chief Executive will also:

4.2.1 discuss with the Governance Entity concerns and issues notified by the Governance Entity about the Act;

4.2.2 review the implementation of this Protocol from time to time, or at the request of the Governance Entity, unless otherwise agreed in writing by both the Governance Entity and the Chief Executive; and

4.2.3 the Chief Executive will as far as reasonably practicable train relevant employees within the Ministry on this Protocol to ensure that they are aware of the purpose, content and implications of the protocol.

5 THE ROLE OF THE MINISTER UNDER THIS PROTOCOL

5.1 The Minister has functions, powers and duties under the Act and will consult, notify and provide information to the Governance Entity within the limits of the Act. The Minister will consult with the Governance Entity where a person appeals the decision of the Chief Executive to:

5.1.1 refuse permission to remove any Artifact, or Artifacts, from New Zealand; or

5.1.2 impose conditions on the approval to remove any Artifact, or Artifacts, from New Zealand;

in the circumstances where the Governance Entity was originally asked for an expert opinion by the Chief Executive.

5.2 The Ministry will notify the Governance Entity in writing of the Minister's decision on an appeal in relation to an application to export an Artifact where an expert opinion was sought from the Governance Entity.

6 CONSULTATION

6.1 Where the Chief Executive is required to consult under clause 4.1.5 of this Protocol, the basic principles that will be followed in consulting with the Governance Entity in each case are:

6.1.1 ensuring that the Governance Entity is consulted as soon as reasonably practicable following the identification and determination by the Chief Executive of the proposal or issues to be the subject of the consultation;

6.1.2 providing the Governance Entity with sufficient information to make informed decisions and submissions in relation to any of the matters that are the subject of the consultation;

6.1.3 ensuring that sufficient time is given for the participation of the Governance Entity in the decision making process including the preparation of submissions by the Governance Entity in relation to any of the matters that are the subject of the consultation;

6.1.4 ensuring that the Chief Executive will approach the consultation with the Governance Entity with an open mind, and will genuinely consider the submissions of the Governance Entity in relation to any of the matters that are the subject of the consultation; and

6.1.5 report back to the Governance Entity, either in writing or in person, on any decisions made that relate to that consultation.

7 CHANGES TO POLICY AND LEGISLATION AFFECTING THIS PROTOCOL

7.1 If the Chief Executive consults with Māori generally on policy development or any proposed legislative amendment to the Act that impacts upon this Protocol, the Chief Executive will:

7.1.1 notify the Governance Entity of the proposed policy development or proposed legislative amendment upon which Māori generally will be consulted;

7.1.2 make available to the Governance Entity the information provided to Māori as part of the consultation process referred to in this clause; and

7.1.3 report back to the Governance Entity on the outcome of any such consultation.

8 DEFINITIONS

In this Protocol:

Artifact has the same meaning as in section 2 of the Act, being:

> any chattel, carving, object, or thing which relates to the history, art, culture, traditions, or economy of the Maori or other pre-European inhabitants of New Zealand and which was or appears to have been manufactured or modified in New Zealand by any such inhabitant, or brought to New Zealand by an ancestor by any such inhabitant, or used by any such inhabitant, prior to 1902;

Chief Executive means the Chief Executive of the Ministry for Culture and Heritage and includes any authorised employee of the Ministry for Culture and Heritage acting for and on behalf of the Chief Executive;

Crown means Her Majesty the Queen in right of New Zealand and includes, where appropriate, the Ministers and Departments of the Crown that are involved in, or bound by the terms of the Deed of Settlement to participate in, any aspect of the redress under the Deed of Settlement;

Found has the same meaning as in section 2 of the Act, which is as follows:

> in relation to any artifact, means discovered or obtained in circumstances which do not indicate with reasonable certainty the lawful ownership of the artifact and which suggest that the artifact was last in the lawful possession of a person who at the time of finding is no longer alive; and 'finding' and 'finds' have corresponding meaning.

Governance Entity means *[Insert name and description]*;

Protocol means a statement in writing, issued by the Crown through the Minister to the Governance Entity under the Settlement Legislation and the Deed of Settlement and includes this Antiquities Protocol; and

Ngāti Whātua o Ōrākei has the meaning set out in clause XXX of the Deed of Settlement.

ISSUED on this day of 200

SIGNED for and on behalf of HER MAJESTY THE QUEEN in right of New Zealand by the Minister for Arts, Culture and Heritage in the presence of: ____________________

WITNESS ____________________

Name:

Occupation:

Address:

ATTACHMENT A

NGĀTI WHĀTUA O ŌRĀKEI

ANTIQUITIES PROTOCOL AREA

ATTACHMENT B

TERMS OF ISSUE

This Protocol is issued subject to the provisions of the Deed of Settlement and the Settlement Legislation. These provisions are set out below.

1 Provisions of Deed of Settlement relating to Protocol

1.1 The Deed provides that:

1.1.1 a failure by the Crown to comply with a Protocol is not a breach of the Deed of Settlement (**clause XXX**); and

1.1.2 this Protocol does not restrict the ability of the Crown to interact or consult with any person the Crown considers appropriate including any iwi, hapū, marae, whānau or other representative of tāngata whenua (**clause XXX**); and

1.1.3 this Protocol does not override or diminish:

(a) the requirements of the Antiquities Act 1975;

(b) the functions and powers of the Minister for Arts, Culture and Heritage or the Chief Executive for the Ministry for Culture and Heritage under that Act; or

(c) the rights of Ngāti Whātua o Ōrākei, or a Representative Entity, under that Act (**clause XXX**).

1.2 **Representative Entity** has the same meaning in this Protocol as it has in **clause XXX** of the Deed.

2 Authority to issue, amend or cancel Protocols

Section [ ] of the Settlement Legislation provides that:

[Quote the section of the Settlement Legislation included in accordance with clausesXXX of the Deed of Settlement]

3 Protocols subject to rights and obligations

Section [ ] of the Settlement Legislation provides that:

[Quote the section of the Settlement Legislation included in accordance with clause XXX of the Deed of Settlement]

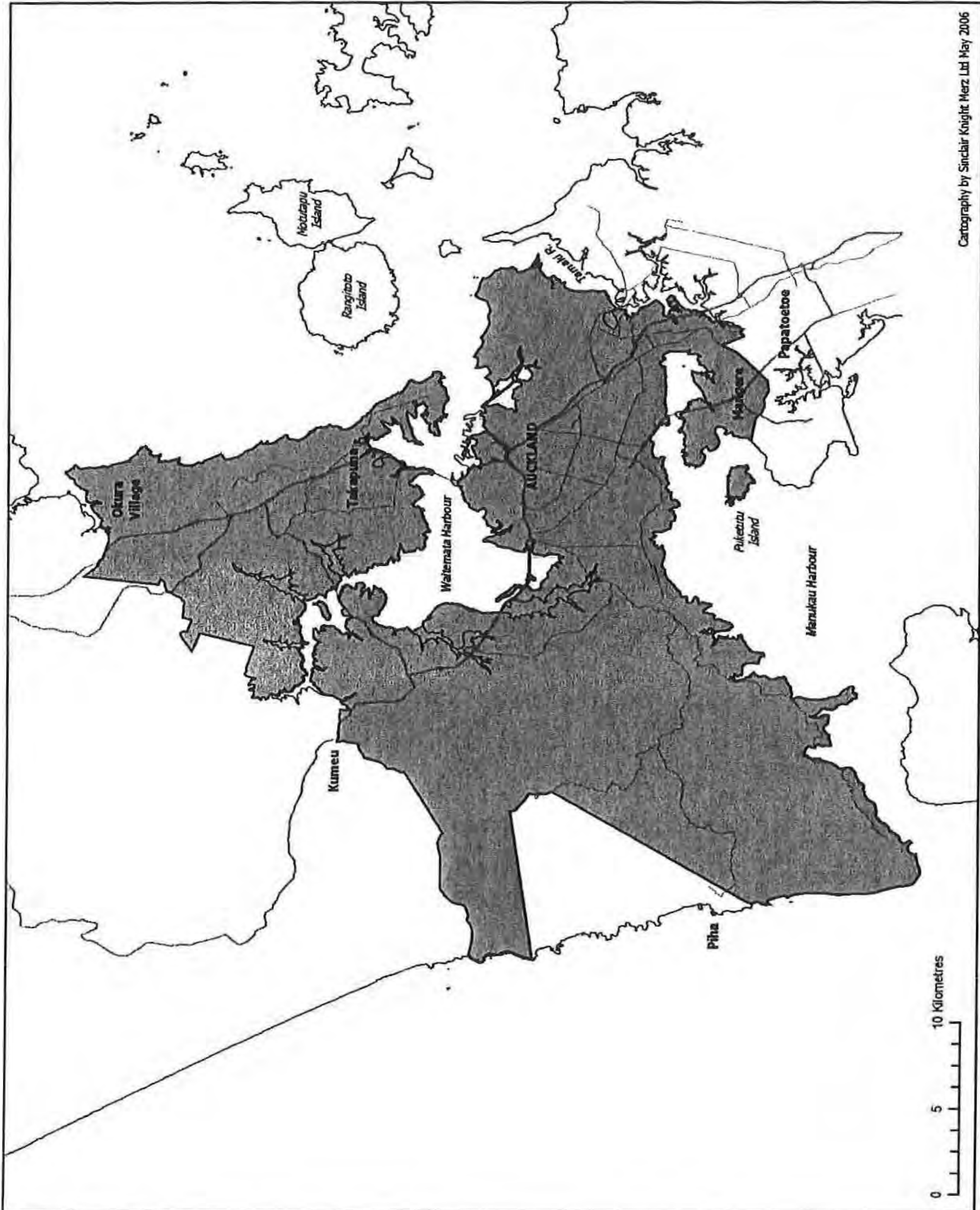
4 Enforcement of Protocols

Section [ ] of the Settlement Legislation provides that:

[Quote the section of the Settlement Legislation included in accordance with clause XXX of the Deed of Settlement]

Attachment G

Ngāti Whātua o Ōrākei Protocol Area



Attachment H

Ngāti Whātua o Ōrākei Right of First Refusal Area