NGĀTI WHĀTUA ŌRĀKEI

and

NGĀTI WHĀTUA ŌRĀKEI TRUSTEE LIMITED

and

THE CROWN

DEED OF SETTLEMENT OF HISTORICAL CLAIMS

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5 NOVEMBER 2011

PURPOSE OF THIS DEED

This deed –

- sets out an account of the acts and omissions of the Crown before 21 September 1992 that affected Ngāti Whātua Ōrākei and breached the Treaty of Waitangi and its principles; and
- provides an acknowledgment by the Crown of the Treaty breaches and an apology; and
- settles the historical claims of Ngāti Whātua Ōrākei; and
- specifies the cultural redress, and the financial and commercial redress, to be provided in settlement to the governance entity that has been approved by Ngāti Whātua Ōrākei to receive the redress; and
- includes definitions of –
  - the historical claims; and
  - Ngāti Whātua Ōrākei; and
- provides for other relevant matters; and
- is conditional upon settlement legislation coming into force.

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DEED OF SETTLEMENT

THIS DEED is made between

NGĀTI WHĀTUA ŌRĀKEI

and

NGĀTI WHĀTUA ŌRĀKEI TRUSTEE LIMITED

and

THE CROWN

1 BACKGROUND

NEGOTIATIONS

1.1 The Board has a statutory mandate under section 19 of the Orakei Act 1991 to negotiate, on behalf of Ngāti Whātua Ōrākei, a deed of settlement with the Crown.

1.2 The Board, the Crown and Te Rūnanga o Ngāti Whātua signed a deed of settlement in June 1993 relating to claims of Ngāti Whātua in respect of surplus railway lands in the Auckland region.

1.3 The Board and the Crown –

1.3.1 by terms of negotiation dated 2 May 2003, agreed the scope, objectives, and general procedures for the negotiations; and

1.3.2 by agreement dated 9 June 2006, agreed, in principle, that Ngāti Whātua Ōrākei (then known as Ngāti Whātua o Ōrākei) and the Crown were willing to enter into a deed of settlement on the basis set out in the agreement; and

1.3.3 by supplementary agreement dated 12 February 2010, agreed, in principle, how the agreement dated 9 June 2006 should be amended to reflect the negotiations that took place after the Waitangi Tribunal's Tāmaki Makaurau Settlement Process Report; and

1.3.4 since the supplementary agreement, have –

(a) had extensive negotiations conducted in good faith; and

(b) negotiated and initialled a deed of settlement.

RATIFICATION AND APPROVALS

1.4 Ngāti Whātua Ōrākei have, since the initialling of the deed of settlement, by a majority of –

1.4.1 89%, ratified this deed and approved its signing on their behalf by the Board; and

1.4.2 87%, approved the governance entity receiving the redress.

1.5 Each majority referred to in clause 1.4 is of valid votes cast in a ballot by eligible members of Ngāti Whātua Ōrākei.

1.6 The governance entity approved entry into, and complying with, this deed on 4 November 2011.

1.7 The Crown is satisfied –

1.7.1 with the ratifications and approvals of Ngāti Whātua Ōrākei referred to in clause 1.4; and

1.7.2 with the governance entity's approval referred to in clause 1.6; and

1.7.3 the governance entity is appropriate to receive the redress.

AGREEMENT

1.8 Therefore, the parties –

1.8.1 in a spirit of co-operation and compromise, wish to enter, in good faith, into this deed settling the historical claims; and

1.8.2 agree and acknowledge as provided in this deed.

2 TREATY OF WAITANGI, NGĀTI WHĀTUA ŌRĀKEI STATEMENT, AND AGREED HISTORICAL ACCOUNT

THE TREATY OF WAITANGI

2.1 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 moana.

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 waru rau e wa te kau o to tatou Ariki.

Ko nga Rangatira o te wakaminenga.

2.2 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.]

2.3 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.

NGĀTI WHĀTUA ŌRĀKEI STATEMENT OF ITS OWN POSITION

2.4 Constitution

Ngāti Whātua Ōrākei ("Ngāti Whātua") state that at their signing of the Treaty of Waitangi, 1840, the several segments of what is now called the Ōrākei hapū of Ngāti Whātua, namely, Te Tāōū, Ngā Oho and Te Uringutu, occupied settlements scattered across the North Shore and around the margins of the Waitematā 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 Tāōū and the local Waiohua of Tainui. It had begun with one of the principal Te Tāōū 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, Ngā Oho, who had hitherto occupied much of the Tāmaki 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 Tāōū, Ngā Oho and Te Uringutu who, over the remainder of the 18th and early 19th centuries maintained the ahi kaa of the Ōrākei hapū throughout the Isthmus. Like all Ngāti Whātua hapū, Ōrākei 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 structured by the recognition of ties of descent and kinship.

2.5 Ahi Kā

Maintaining ahi kā, however, was not a passive exercise. It was the outcome of the hapū's 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.

2.6 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 Ōrākei 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 Tāmaki 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 Waitematā and Manukau harbours. The practice of shifting cultivation and the working of fishing grounds had been routinely and effectively determined by their maramataka (calendar).

2.7 Political Relations

External to the hapū and more particularly external to the iwi Ngāti Whātua, friendly relations were even more stringently governed by notions of 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 Tāmaki had, through tuku rangatira, made substantial blocks of land available to neighbouring iwi through their chiefs Tomoaure, Uruamo and Te Kawau.

2.8 Contact

(i) In contrast, external relations with the European had been very limited prior to 1840. Circumstances in the Tāmaki 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 Tāmaki Isthmus. The first recorded visitor to the Waitematā had been Rev. Samuel 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 not 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 relocate from Kororāreka to Waitematā. It has been transmitted orally within the Ngāti Whātua of Tāmaki 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 pūpūtarakihi ki uta
E tikina atu e au te kotiu
Koia te pou, te pou whakairo ka tū ki Waitematā
Ka tū ki Waitematā i ōku wairangitanga
E tū nei, e tū 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 pūpūtarakihi (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 Waitematā

The claims of Ngāti Whātua Ōrākei

2.9 The claim

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'.

2.10 Loss of land and control

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 Tāmaki, a sharing however, which would leave intact their collective rangatiratanga, their mana whenua.

Finally, from having been in control of the Tāmaki 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 and the 20th century still to come.

AGREED HISTORICAL ACCOUNT

2.11 The Crown's acknowledgement and apology to Ngāti Whātua Ōrākei are based on this agreed historical account.

Ngāti Whātua and the Crown at 1840

2.12 At 1840, the three hapū of what is now Ngāti Whātua Ōrākei ("Ngāti Whātua"), namely Te Tāōū, Ngā Oho and Te Uringutu, occupied settlements and used resources across the Tāmaki Isthmus, the North Shore, the upper Waitematā 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 Ōrākei, Karangahape (Cornwallis), Horotiu (Queen Street), Onehunga and other places in the Tāmaki Isthmus from about 1835.

2.13 Prior to 1840, Ngāti Whātua had very limited contact with Europeans. Ngāti Whātua had, from the 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 Ngāti Whātua were equally uninformed in Ngāti Whātua idiom, custom and political relations.

2.14 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, he began to consider the appropriate site for the seat of government.

2.15 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.

2.16 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 Tāmaki 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.

2.17 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 Waitematā. 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".

2.18 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.

2.19 In September 1840, government officials travelled to the Waitematā 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".

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

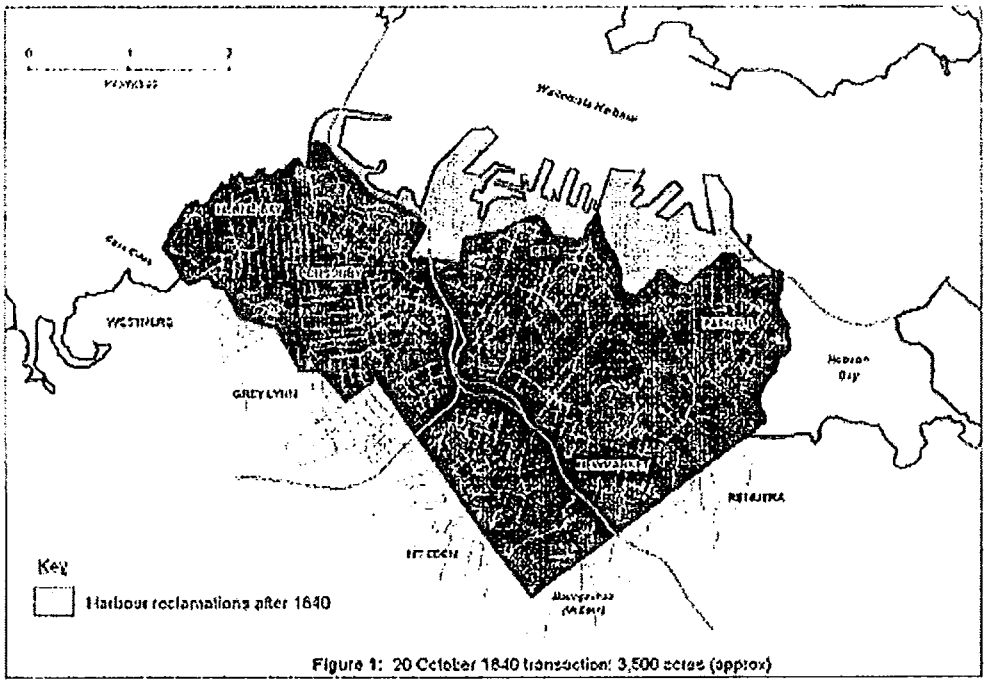

Figure 1: 20 October 1840 transaction: 3,500 acres (approx)

2.21 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.

2.22 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 Tāmaki for the best part of a century.

2.23 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.

2.24 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.

2.25 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...".

Ngāti Whātua and Governor Hobson - Land Transactions 1841 -1842

2.26 Ngāti Whātua welcomed Governor 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.

2.27 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.

2.28 From June 1841, Ngāti Whātua and the Crown entered into land transactions that covered significant parts of the North Shore and central Tāmaki 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	"Waitematā 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**

2.29 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 Waitematā to Manukau block and the Manukau Road transaction are depicted in **Figure 3**.

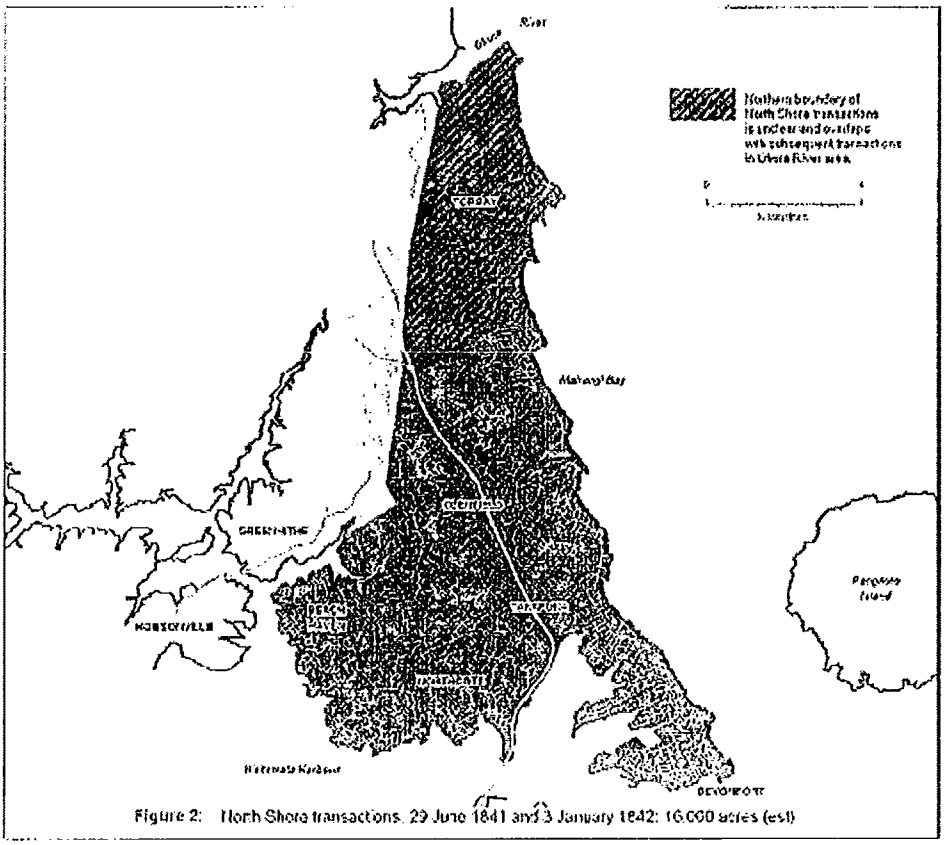

Figure 2: North Shore transactions, 29 June 1841 and 3 January 1842: 16,000 acres (est)

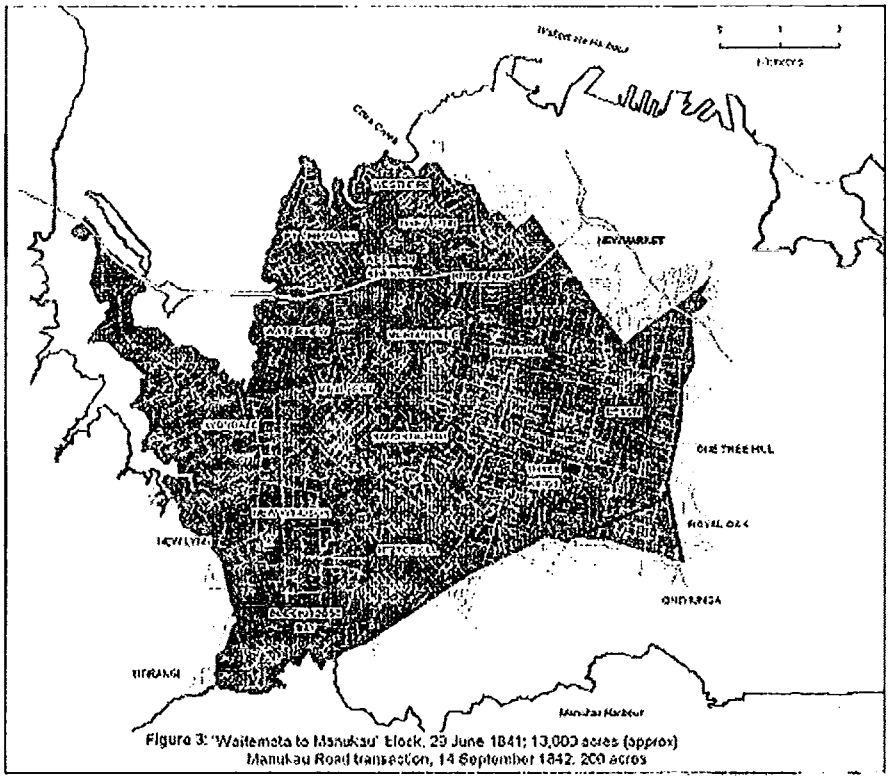

Figure 3: 'Waitemata to Manukau' Block, 29 June 1841; 13,000 acres (approx)
Manukau Road transaction, 14 September 1842, 200 acres

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

2.31 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.

2.32 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.

2.33 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 Waitematā district, outnumbering Ngāti Whātua resident in Tāmaki.

2.34 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.

2.35 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".

2.36 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.

2.37 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".

2.38 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.

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

2.39 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.

2.40 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

2.41 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 Waitematā 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 this agreed historical account.

2.42 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.

2.43 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.

2.44 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".

2.45 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.

2.46 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.

2.47 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

2.48 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.

2.49 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. Ngāti Whātua 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.

2.50 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.

2.51 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 Ōrākei.

2.52 In total, Ngāti Whātua transferred around 47,000 acres to settlers during the pre-emption waiver period (see Figure 4) across the central Tāmaki Isthmus, West Auckland, the upper Waitematā 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.

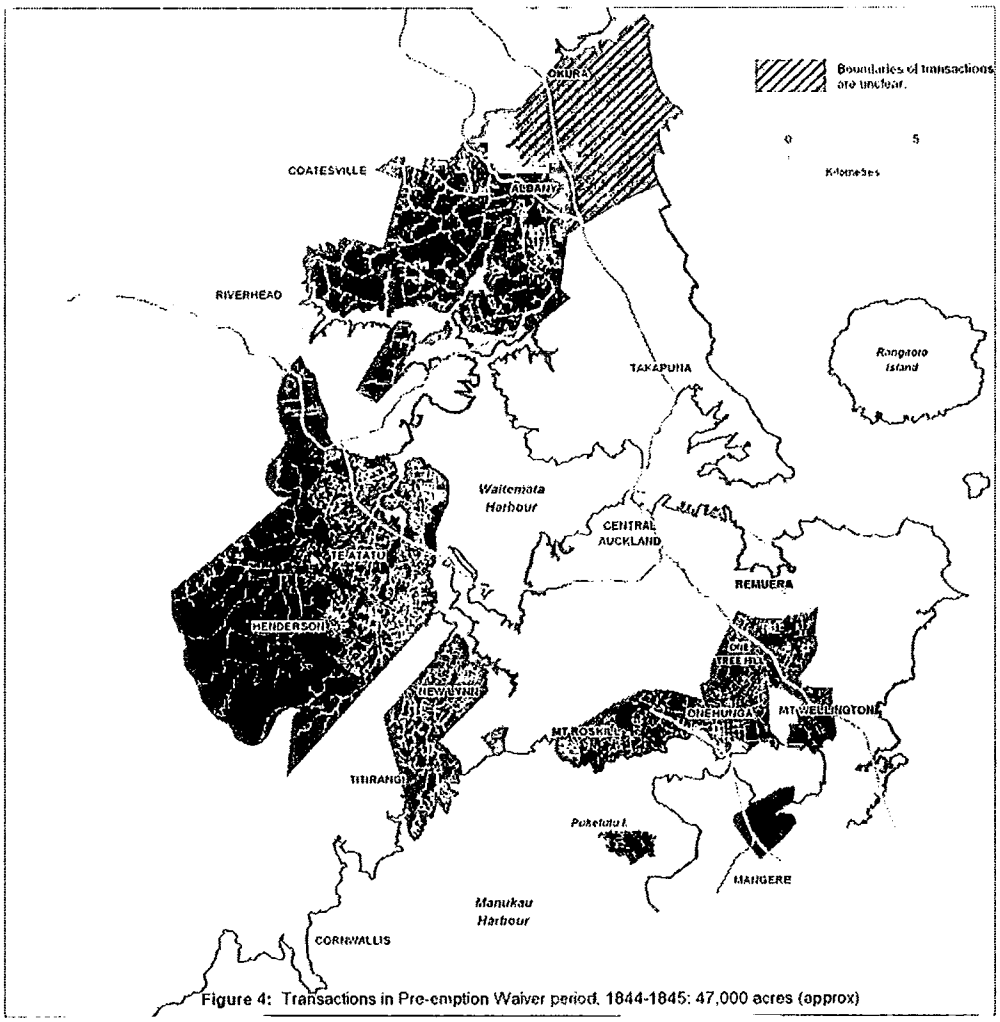

Figure 4: Transactions in Pre-emption Waiver period, 1844-1845: 47,000 acres (approx)

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

2.53 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.

2.54 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..."

2.55 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.

2.56 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.

2.57 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.

2.58 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.

2.59 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.

2.60 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.

2.61 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".

2.62 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 Māori and settlers.

2.63 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.

2.64 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 Ōrākei. Ngāti Whātua 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 Ngāti Whātua ownership.

McConochy transaction

2.65 In 1844, the Crown became aware that a settler, McConochy, and Ngāti Whātua rangatira had conducted a transaction in the area north of Tāmaki 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?..."

2.66 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.

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

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

2.68 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.

2.69 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.

2.70 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".

2.71 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.

2.72 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

2.73 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".

2.74 Within the scope of the Crown's land purchase policy, Ngāti Whātua entered into further transactions with the Crown in West Auckland, the upper Waitematā 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 Ōrākei: the only lands they retained were 700 acres at Ōrākei.

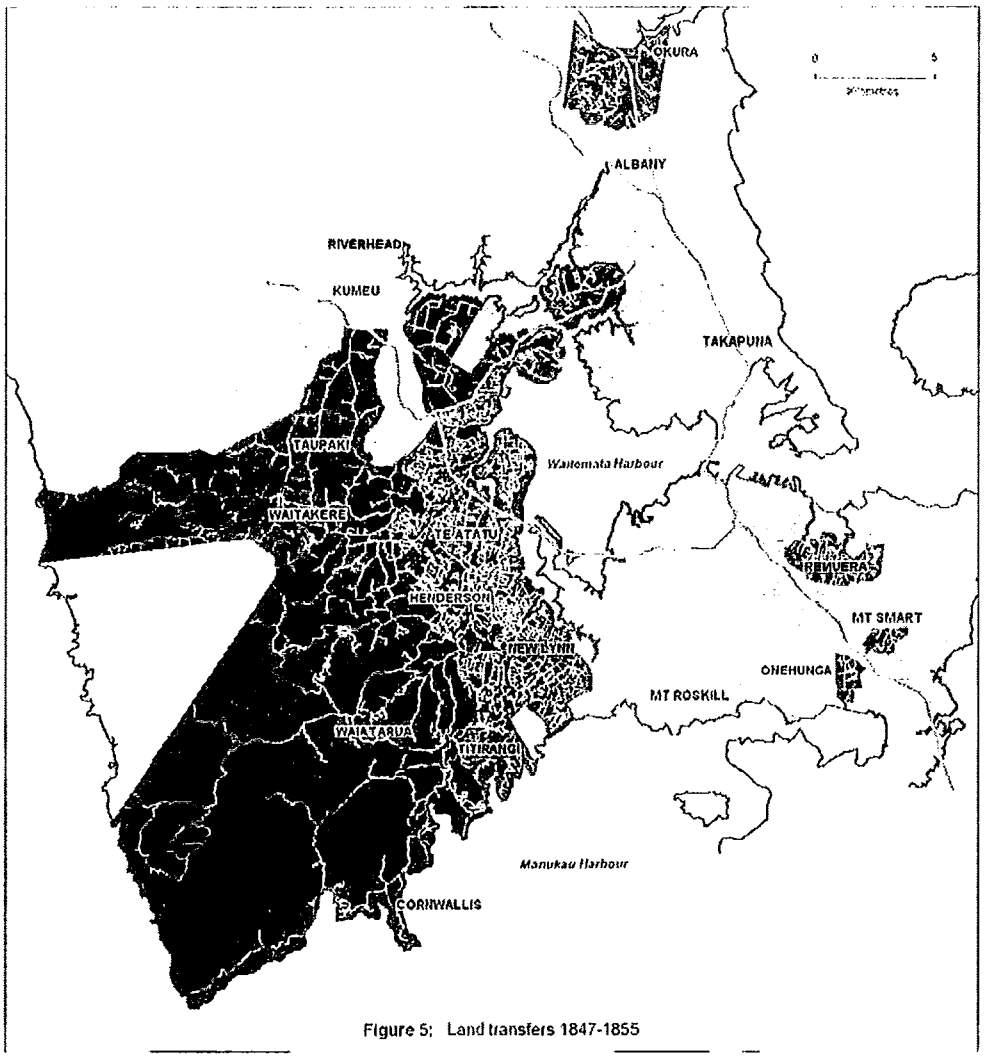

Figure 5: Land transfers 1847-1855

2.75 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 Waitematā) was not properly explained to Ngāti Whātua before it was executed.

2.76 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.

2.77 Many transactions in West Auckland and the upper Waitematā 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.

2.78 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 a 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.

2.79 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".

2.80 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."

2.81 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 Ōrākei 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 Ōrākei Bridge and fund administration.

2.82 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 Tāmaki Isthmus at Ōrākei. 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).

2.83 From the 1850s Ngāti Whātua strove to protect their remaining land at Ōrākei. Apihai Te Kawau asked Governor Grey to let land at Ōrākei "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 Ōrākei. This was issued in 1873. What then happened in respect of the Ōrākei Block is set out in the Waitangi Tribunal's Ōrākei 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

2.84 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".

2.85 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".

2.86 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.

2.87 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.

2.88 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.

2.89 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.

2.90 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.

2.91 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.

2.92 In the late 1870s and 1880s, Ngāti Whātua concerns were again aired at a series of conferences, or "Parliaments", held at Otamatea and Ōrākei. 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.

Harbours and Reclamations

2.93 Prior to 1840, Ngāti Whātua lived on and around the Waitematā 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 Waitematā, commonly referred to sites included Whanganui, Okahu, Ōrākei, 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.

2.94 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 Waitematā were Otahuhu and Te Whau, while Pitoitoi connected the Waitematā with Kaipara.

2.95 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.

2.96 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.

2.97 The Crown granted the Auckland provincial government the ownership of large portions of the Waitematā and Manukau harbours under the royal prerogative. Titles for seabed issued by the Crown in the Waitematā 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.

2.98 During the nineteenth century Ngāti Whātua had very little, if any, involvement in decisions regarding the development and management of the Waitematā 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.

2.99 The Ōrākei 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."

2.100 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".

2.101 Ngāti Whātua's concerns about reclamations and harbour developments continued to be strongly expressed in the 1880s. It was reported that the 1881 Ōrākei 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 Ōrākei Parliament in 1886, Ngāti Whātua rangatira protested that the Treaty had been dishonoured by the contamination of the sea.

2.102 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.

2.103 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.

2.104 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.

2.105 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 Waitematā 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.

2.106 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.

2.107 On the Waitematā 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.

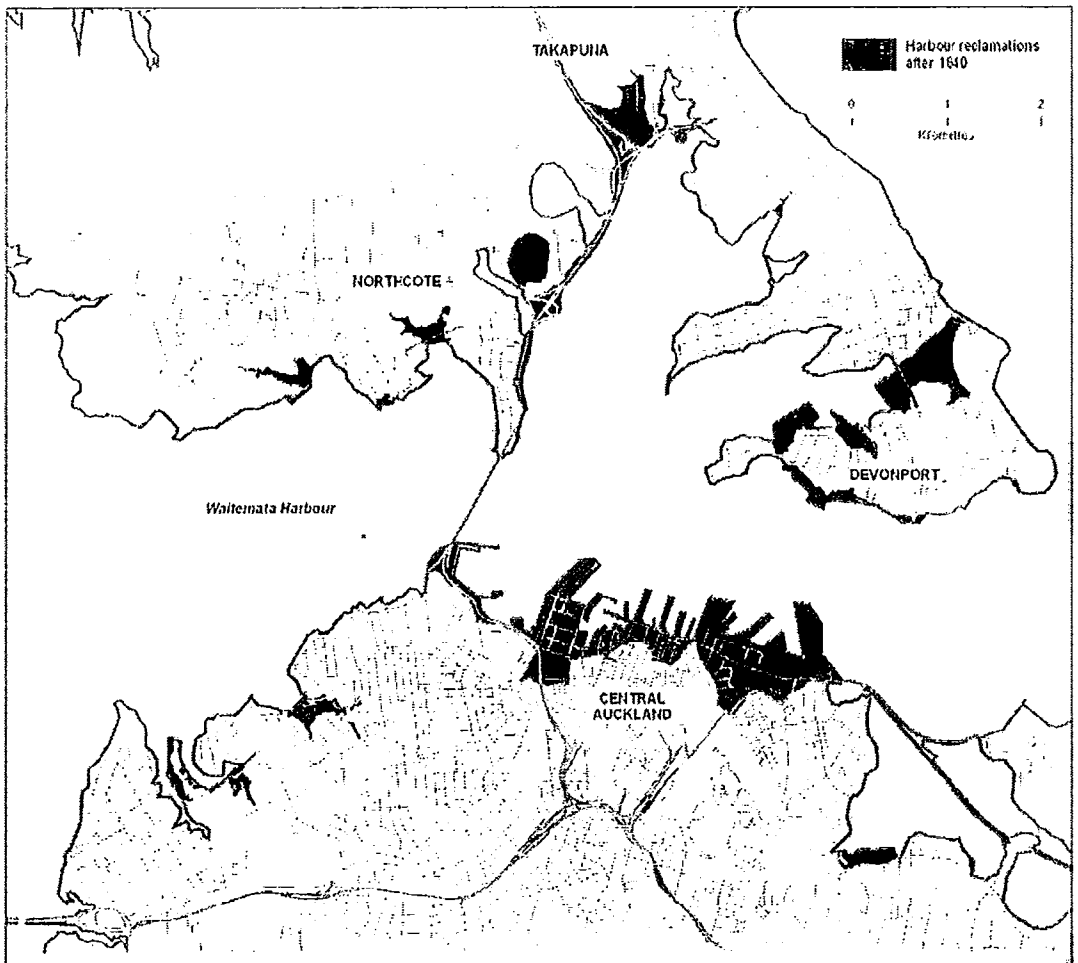

Figure 6: Reclaimed land in Central Auckland, Devonport, Takapuna and Northcote

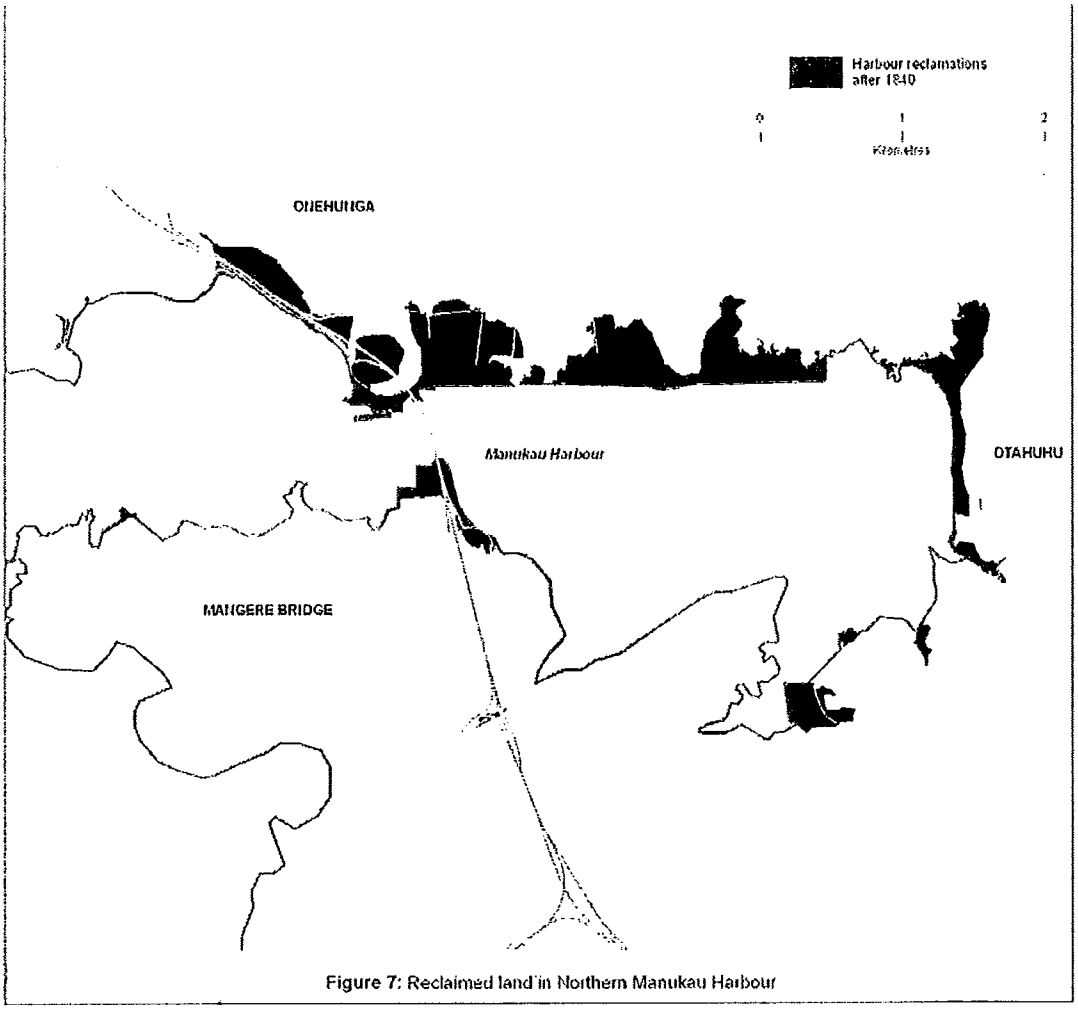

Figure 7: Reclaimed land in Northern Manukau Harbour

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 Pā 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 Tāmaki 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 from 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

3 NGĀ WHAKAAETANGA ME TE WHAKAPĀHA / ACKNOWLEDGEMENTS AND APOLOGY

NGĀ WHAKAAETANGA

3.1 E whakaae ana te Karauna, mai anō i te tau 1840 i whai a Ngāti Whātua Ōrākei ki te whakatū hononga me te Karauna me tā rātou huri ki te whakakaha i tēnei hononga mā te whakawhiti whenua mō ngā nohanga te take. I whai wāhi ēnei whenua ki te whanaketanga o Aotearoa, tae noa ki te whanaketanga o Tāmaki Makaurau. Ka whakaae anō hoki te Karauna, i rapu a Ngāti Whātua ki te whakakaha i te hononga nei mā te whakaputa i tōna ngākau pono ki te Karauna.

3.2 E whakaae ana te Karauna, kāore i puta ngā hua me te whakamarumarutanga i ngā wā katoa, e ai ki tērā i mana nei e Ngāti Whātua o Ōrākei ka riro ki a rātou, nā runga i te hononga.

3.3 E whakaae ana te Karauna, mai i te tau 1840, nui tonu ngā whenua ō Ngāti Whātua o Ōrākei i wehea, i whakawhiti whenua hoki mā te whakatahanga a te Karauna i tōna mana hoko whenua, tae noa ki ngā tangohanga "whenua tuwhene" a te Karauna. He takahitanga o te Tiriti o Waitangi me ōna mātāpono te kore eke a te Karauna ki te tiaki i ngā whenua, me te hoatu he rawa matua, kia rawaka tonu, hei whakamahi, hei huanga hoki mā Ngāti Whātua o Ōrākei mō ngā rā kei te tū.

3.4 E whakaae ana te Karauna, kua kāwetoweto te āheitanga o Ngāti Whātua o Ōrākei ki te whakahaere i tōna mana motuhake, nā runga i ngā mahi whakawehe i ngā hapū ō Ngāti Whātua i ōna whenua.

3.5 E whakaae ana te Karauna, kāore i tika te whakahāngai a te Karauna i ētahi ture i te wā o te whakatahanga whakawāteatanga, hei tiaki i ngā pānga Māori.

3.6 E whakaae ana te Karauna, takarepa ana ngā mahi ki te tiaki tika i ngā pā, i ngā urupā hoki, tae noa ki a Maungakiekie, tētahi wāhi tāpua o nehe ā-wairua hoki, i te wā o te whakatahanga whakawāteatanga ā, he takahitanga o te Tiriti o Waitangi me ōna mātāpono tēnei hapa ki te tiaki kia tika.

3.7 E whakaae ana te Karauna, he takahitanga o te Tiriti o Waitangi me ōna mātāpono tōna kore nganā ki te tāpui (ki te hoatu ki tētahi poari, komiti rānei hei tautiaki) i te hautekau o ngā whenua i whakawhitia i te wā o te whakatahanga whakawāteatanga, hei whakamahi i ngā rā kei te tū, hei hua motuhake rānei mā ngā hunga taketake o taua whenua me ō rātou uri whakatupu ā Ngāti Whātua o Ōrākei.

3.8 E whakaae ana te Karauna, he takahitanga o te Tiriti o Waitangi me ōna mātāpono tōna kaupapahere tango "Whenua Tuwhene' mai i ngā hokona whakatahanga whakawateatanga i whakakorea, nā tōna hē ki te kore whakarite i tētahi rautaki ki te aromatawai kia rawaka te pupuri a Ngāti Whātua i ētahi whenua mā rātou ake. Ka whakaae anō hoki te Karauna, i kaha ake te hē nā runga i ngā tōrōkiri i roto i te

āhua whakatinana a te Karauna i te kaupapahere, he takahitanga anō o te Tiriti o Waitangi me ōna mātāpono.

3.9 E whakaae ana te Karauna, i puta he momo whakamau ki a Ngāti Whātua o Ōrākei, ā, whakamau tonu nei i ēnei rangi, i ngā mahi whakawhenua anō, me ētahi atu momo mahi whanaketanga ki ngā whanga o Waitematā me Manuka i pā ai te kino ki runga i ngā taunga ika me ētahi atu rawa o ngā whanga nei.

ACKNOWLEDGEMENTS

3.1 The Crown acknowledges that Ngāti Whātua 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.

3.2 The Crown acknowledges that the benefits and protection that Ngāti Whātua Ōrākei expected to flow from its relationship with the Crown were not always realised.

3.3 The Crown acknowledges that a large amount of Ngāti Whātua 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 Ōrākei was a breach of the Treaty of Waitangi and its principles.

3.4 The Crown acknowledges that land alienation has diminished the ability of Ngāti Whātua Ōrākei to exercise mana whenua.

3.5 The Crown acknowledges that certain regulations to protect Māori interests in the pre-emption waiver period were not applied correctly by the Crown.

3.6 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 Ōrākei, and that this failure of active protection was a breach of the Treaty of Waitangi and its principles.

3.7 The Crown acknowledges that its failure to set aside (entrusted to a board or committee) one-tenth of the lands transferred during the pre-emption waiver period for the future use or special benefit of the original owners of that land and their descendants (including Ngāti Whātua Ōrākei) was a breach of the Treaty of Waitangi and its principles.

3.8 The Crown acknowledges that its policy of taking "surplus lands" from disallowed pre-emption waiver purchases breached the Treaty of Waitangi and its principles when it failed to ensure any assessment of whether Ngāti Whātua Ōrākei retained adequate lands for their needs. The Crown also acknowledges that this failure was compounded by flaws in the way the Crown implemented the policy in further breach of the Treaty of Waitangi and its principles.

3.9 The Crown acknowledges that reclamations and other forms of development of the Waitematā and Manukau Harbours, which had a damaging effect upon fisheries and other harbour resources, caused a sense of grievance for Ngāti Whātua Ōrākei that is still held today.

WHAKAPĀHA

3.10 Ka tuku whakapāha te Karauna ki a Ngāti Whātua o Ōrākei, ki ō rātou tūpuna, me ō rātou uri whakatupu:

E aro ana te Karauna, mai i te tau 1840 i whai a Ngāti Whātua o Ōrākei i tētahi hononga tata, pai hoki, ki te taha o te Karauna, ā, mā te mahi whakawhiti whenua me ētahi atu huarahi, i tuku whenua rātou hei nohanga kāinga Pākehā.

E tino āwhiti ana, e kaha pouri ana hoki te Karauna mō āna mahi tango whenua, i tata whenua kore ai a Ngāti Whātua o Ōrākei i te tau 1855. Ka kino kē ngā putanga o te noho whenua kore kua puta ake mō te oranga pāpori, oranga ōhanga me te oranga wairua ō Ngāti Whātua o Ōrākei, ā, e rangona tonutia ana te pānga o aua pehitanga i ēnei rangi.

E tino whakapāha ana te Karauna mō tana kore whakahōnore i ōna here ki a Ngāti Whātua o Ōrākei i raro i te Tiriti o Waitangi. Mā tēnei whakataunga, e hiahia ana te Karauna ki te whakahāngai ēnei hara ōna, inā rā te taea i nāianei, me tana tīmata i te hohau te rongo. E rika ana te Karauna ki te whakapai i tōna hononga me Ngāti Whātua o Ōrākei i runga i te ngākau whakawhirinaki, mahi ngātahi, me te aro tuturu mō te Tiriti o Waitangi me ōna mātāpono.

APOLOGY

3.10 The Crown makes this apology to Ngāti Whātua Ōrākei and to their ancestors and descendants:

The Crown recognises that from 1840, Ngāti Whātua Ōrākei sought a close and positive relationship with the Crown and, through land transactions and other means, provided lands for European settlement.

The Crown profoundly regrets and is deeply sorry for its actions which left Ngāti Whātua Ōrākei virtually landless by 1855. This state of landlessness has had devastating consequences for the social, economic and spiritual well-being of Ngāti Whātua Ōrākei that continue to be felt today.

The Crown unreservedly apologises for not having honoured its obligations to Ngāti Whātua Ōrākei under the Treaty of Waitangi. By this settlement the Crown seeks to atone for its wrongs, so far as that is now possible, and begin the process of healing. The Crown looks forward to repairing its relationship with Ngāti Whātua Ōrākei based on mutual trust, co-operation and respect for the Treaty of Waitangi and its principles.

4 SETTLEMENT

ACKNOWLEDGEMENTS

4.1 Each party acknowledges that –

4.1.1 the other parties have acted honourably and reasonably in relation to the settlement; but

4.1.2 full compensation of Ngāti Whātua Ōrākei is not possible; and

4.1.3 Ngāti Whātua Ōrākei intend their foregoing of full compensation to contribute to New Zealand's development; and

4.1.4 the settlement is intended to enhance the ongoing relationship between Ngāti Whātua Ōrākei and the Crown (in terms of the Treaty of Waitangi, its principles, and otherwise).

4.2 Ngāti Whātua Ōrākei acknowledge that, taking all matters into consideration (some of which are specified in clause 4.1), the settlement is fair in the circumstances.

SETTLEMENT

4.3 Therefore, on and from the settlement date, –

4.3.1 the historical claims are settled; and

4.3.2 the Crown is released and discharged from all obligations and liabilities in respect of the historical claims; and

4.3.3 the settlement is final.

4.4 Except as provided in this deed or the settlement legislation, the parties' rights and obligations remain unaffected.

REDRESS

4.5 The redress, to be provided in settlement of the historical claims, –

4.5.1 is intended to benefit Ngāti Whātua Ōrākei collectively; but

4.5.2 may benefit particular members, or particular groups of members, of Ngāti Whātua Ōrākei if the governance entity so determines in accordance with the governance entity's procedures.

IMPLEMENTATION

4.6 The settlement legislation will, on the terms provided by sections 13 to 16 and section 21 of the draft settlement bill, –

4.6.1 settle the historical claims; and

4.6.2 exclude the jurisdiction of any court, tribunal, or other judicial body in relation to the historical claims and the settlement; and

4.6.3 provide that the legislation referred to in section 15(2) of the draft settlement bill does not apply –

(a) to a settlement property; or

(b) for the benefit of Ngāti Whātua Ōrākei or a representative entity; and

4.6.4 require any resumptive memorials to be removed from the certificates of title to, or the computer registers for, the settlement properties; and

4.6.5 require the Secretary for Justice to make copies of this deed publicly available.

4.7 Part 1 of the general matters schedule provides for other action in relation to the settlement.

REDRESS TO BE PROVIDED THROUGH THE TĀMAKI MAKAURAU COLLECTIVE DEED

4.8 Ngāti Whātua Ōrākei and the Crown acknowledge and agree that this deed does not provide for the following redress which is to be provided through the Tāmaki Makaurau collective deed –

Cultural Redress

4.8.1 cultural redress in relation to particular Crown-owned portions of maunga of the Tāmaki isthmus and surrounds and exploration of redress over motu of the inner Hauraki Gulf; and

4.8.2 governance arrangements relating to other public conservation lands; and

4.8.3 changing particular place names of sites of significance in Tāmaki Makaurau; and

Commercial Redress

4.8.4 the participation of Ngāti Whātua Ōrākei in a right of first refusal over land in Tāmaki Makaurau for a period of 170 years from the date on which the right becomes operative.

4.9 Ngāti Whātua Ōrākei and the Crown acknowledge and agree that the development of the redress, referred to in clause 4.8, under the Tāmaki Makaurau collective deed will be in accordance with the provisions of a Framework Agreement dated 12 February 2010 between Ngā Mana Whenua o Tāmaki Makaurau and the Crown.

4.10 Ngāti Whātua Ōrākei acknowledge that the Crown is not in breach of this deed if the redress referred to in clause 4.8 has not been provided by any particular date if, on that date, the Crown is still negotiating in good faith in an attempt to provide the redress.

HARBOURS

4.11 Ngāti Whātua Ōrākei and the Crown acknowledge and agree that cultural redress in relation to the Manukau and Waitematā harbours is not provided for in the deed, as it is to be developed in negotiations between the Crown and others, including Ngāti Whātua Ōrākei.

4.12 Ngāti Whātua Ōrākei acknowledge that the Crown is not in breach of this deed if the redress referred to in clause 4.11 has not been provided by any particular date if, on that date, the Crown is still negotiating in good faith in an attempt to provide the redress.

CROWN ACKNOWLEDGEMENTS RELATING TO FURTHER REDRESS

4.13 The Crown acknowledges that, even though the historical claims are settled by this deed and the settlement legislation:

4.13.1 Ngāti Whātua Ōrākei will not have received full redress until Ngāti Whātua Ōrākei enters into an arrangement with the Crown, either through the Tāmaki Makaurau collective deed or otherwise, providing:

(a) redress in relation to maunga, motu and harbours; and

(b) a right of first refusal over land owned by the Crown in the primary area of interest; and

4.13.2 therefore, the Crown owes Ngāti Whātua Ōrākei a duty consistent with the principles of Te Tiriti o Waitangi/the Treaty of Waitangi to negotiate in good faith with Ngāti Whātua Ōrākei until that arrangement is entered into.

WAITANGI TRIBUNAL

4.14 The Crown and Ngāti Whātua Ōrākei record that –

4.14.1 introduction of the settlement legislation to the House of Representatives is not intended to limit or affect Ngāti Whātua Ōrākei's right to participate in any proceeding before the Waitangi Tribunal in order to –

(a) inform the Tribunal of the Ngāti Whātua Ōrākei position in respect of matters before the Tribunal; or

(b) protect the rights and interests of Ngāti Whātua Ōrākei against other parties before the Tribunal; and

4.14.2 the Crown considers Ngāti Whātua Ōrākei have an interest in the matters referred to in clause 4.13.1 apart from any interest in common with the public.

4.15 The settlement legislation will, on the terms provided in section 18 of the draft settlement bill, affirm Ngāti Whātua Ōrākei's rights to participate in proceedings before the Tribunal.

5 CULTURAL REDRESS

STATUTORY ACKNOWLEDGEMENT

5.1 The settlement legislation will, on the terms provided by sections 28 to 41 of the draft settlement bill, –

5.1.1 provide the Crown's acknowledgement of the statements by Ngāti Whātua Ōrākei of their particular cultural, spiritual, historical, and traditional association with the following areas:

(a) land owned by the Crown, and vested for control and management in the Auckland Council, at Kauri Point (as shown marked "A" on deed plan OTS-121-02):

(b) land owned by the Crown and held for defence purposes at Kauri Point (as shown marked "B" on deed plan OTS-121-02); and

5.1.2 require –

(a) the Auckland Council, the Environment Court, and the New Zealand Historic Places Trust to have regard to the statutory acknowledgement; and

(b) the Auckland Council to forward to the governance entity summaries of resource consent applications and copies of notices served under section 145(10) of the Resource Management Act 1991 and affecting the area; and

5.1.3 enable the governance entity, and any member of Ngāti Whātua Ōrākei, to cite the statutory acknowledgement as evidence of Ngāti Whātua Ōrākei's association with any of the areas.

5.2 The statement of association is in the documents schedule.

PROTOCOLS

5.3 Each of the following protocols must, by or on the settlement date, be signed and issued to the governance entity by the responsible Minister:

5.3.1 the conservation protocol:

5.3.2 the Crown minerals protocol:

5.3.3 the taonga tūturu protocol.

5.4 A protocol sets out how the Crown will interact with the governance entity with regard to the matters specified in it.

FORM AND EFFECT OF PROTOCOLS

5.5 A protocol will be —

5.5.1 in the form in the documents schedule; and

5.5.2 issued under, and subject to, the terms provided by sections 22 to 27 of the draft settlement bill.

5.6 A failure by the Crown to comply with a protocol is not a breach of this deed.

POUREWA CREEK SITE

5.7 The settlement legislation will vest in the governance entity on the settlement date the fee simple estate in the Pourewa Creek site as a recreation reserve under the Reserves Act 1977 with the Ngāti Whātua Ōrākei Reserves Board as the administering body.

5.8 The settlement legislation will, on the terms provided by section 46 of the draft settlement bill, appoint the Ngāti Whātua Ōrākei Reserves Board as the administering body of the Pourewa Creek site.

5.9 The Pourewa Creek site will be —

5.9.1 as described in schedule 1 of the draft settlement bill; and

5.9.2 vested on the terms provided by sections 42 to 45 and sections 47 and 48 of the draft settlement bill; and

5.9.3 subject to any encumbrances in relation to that property provided by schedule 1 of the draft settlement bill.

5.10 Parts 1 and 2 of the property schedule apply in relation to the vesting of the Pourewa Creek site.

ASSIGNED GEOGRAPHIC NAME

5.11 The settlement legislation will, from the settlement date assign the following geographic name to the location set opposite it:

Assigned geographic name	Location (topographic map and grid references)	Geographic feature type
Pourewa Creek	BA32 639183 - BA32 621185	Stream

5.12 The settlement legislation will assign the geographic name, on the terms provided by sections 49 to 52 of the draft settlement bill.

PROMOTION OF RELATIONSHIPS WITH LOCAL AUTHORITY

5.13 The Minister for Treaty of Waitangi Negotiations will write to the Auckland Council encouraging it to enter into a memorandum of understanding (or a similar document) with the governance entity and in relation to the interaction between the Council and the governance entity.

PROMOTION OF RELATIONSHIPS WITH MUSEUMS AND OTHER INSTITUTIONS

5.14 By or on the settlement date, the Minister for Treaty of Waitangi Negotiations must write letters to the following museums and other institutions, encouraging each museum to establish a co-operative ongoing relationship with the governance entity:

5.14.1 the Museum of New Zealand Te Papa Tongarewa, the Museum of Transport and Technology, and the Voyager New Zealand Maritime Museum; and

5.14.2 the Far North Regional, Te Ahu, Whangarei, Dargaville, Matakohe, Albertland and Districts, Warkworth, Helensville, Auckland, Whanganui, and Canterbury museums; and

5.14.3 the MacMillan Brown Library (Canterbury University), and Hocken Collections (Otago University), the University of Auckland libraries, and public libraries within Auckland; and

5.14.4 the New Zealand Film Archive.

FISHERIES REDRESS

5.15 By or on the settlement date, the Director-General of the Ministry of Agriculture and Forestry must write a letter to the governance entity advising –

5.15.1 that the Ministry recognises Ngāti Whātua Ōrākei –

(a) as tāngata whenua within their primary area of interest; and

(b) have a special relationship with all species of fish, aquatic life, and seaweed within the primary area of interest; and

5.15.2 how Ngāti Whātua Ōrākei are able to –

(a) have input into, and participate in, the fisheries planning processes of the Ministry; and

(b) implement the Fisheries (Kaimoana Customary Fishing) Regulations 1998 within their primary area of interest.

5.16 By or on the settlement date, the Minister of Fisheries and Aquaculture must appoint the governance entity as an advisory committee under section 21 of the Ministry of Agriculture and Fisheries (Restructuring) Act 1995.

5.17 The advisory committee may propose advice to the Minister of Fisheries and Aquaculture that could cover any matter relating to the sustainable utilisation of fisheries resources managed under the Fisheries Act 1996, within the primary area of interest.

FURTHER CULTURAL REDRESS

5.18 Ngāti Whātua Ōrākei and the Crown acknowledge that further cultural redress will be provided in the Tāmaki Makaurau collective deed in accordance with clauses 4.8 to 4.13.

CULTURAL REDRESS GENERALLY NON-EXCLUSIVE

5.19 The Crown may do anything that is consistent with the cultural redress, including entering into, and giving effect to, another settlement that provides for the same or similar cultural redress.

6 FINANCIAL AND COMMERCIAL REDRESS

FINANCIAL REDRESS

6.1 The financial and commercial redress amount is $18,000,000, comprising —

6.1.1 $2,000,000, being the payment made in 1993 to the Board under the Railways deed; and

6.1.2 $16,000,000, which the Crown must pay the governance entity on the settlement date.

RAILWAYS DEED

6.2 Ngāti Whātua Ōrākei and the Crown acknowledge that the redress under the Railways deed was taken into account, and treated as on-account redress, for the purposes of determining the redress under this deed.

NZDF PROPERTIES

6.3 Subject to clauses 6.6 and 6.7, the Crown must sell, and the governance entity must purchase, the NZDF properties on the terms of transfer set out in part 6 of the property schedule.

6.4 The NZDF properties are described in part 3 of the property schedule.

6.5 Each NZDF leaseback property is to be leased back to the Crown, in accordance with the terms of part 6 of the property schedule, on the terms and conditions provided by the lease for that property in part 3 of the documents schedule.

6.6 The governance entity may, at any time during the period of 30 business days commencing on the date the settlement legislation receives the Royal assent (time being of the essence), give the Crown a written notice specifying any one or more of the NZDF leaseback properties it no longer wishes to purchase.

6.7 Clause 6.3 and the property schedule no longer apply to each NZDF leaseback property specified in a notice given under clause 6.6.

99 OWENS ROAD

6.8 The governance entity may elect to purchase, 99 Owens Road on, and subject to, the terms of transfer set out in part 4 of the property schedule.

PLYMOUTH CRESCENT SITE

6.9 The governance entity may, for 4 years after the date of this deed, purchase the Plymouth Crescent site on, and subject to, the terms and conditions in part 5 of the property schedule.

SETTLEMENT LEGISLATION

6.10 The settlement legislation will, on the terms provided by sections 53 to 56 of the draft settlement bill, enable the transfer of the commercial properties.

RIGHT OF FIRST REFUSAL

6.11 Ngāti Whātua Ōrākei and the Crown acknowledge that a right of first refusal over land in Tāmaki Makaurau will be provided in the Tāmaki Makaurau collective deed in accordance with clauses 4.8 to 4.13.

7 SETTLEMENT LEGISLATION, CONDITIONS, THE BOARD'S ASSETS AND TERMINATION

SETTLEMENT LEGISLATION

7.1 Within 12 months after the date of this deed, the Crown must propose the draft settlement bill for introduction to the House of Representatives.

7.2 The bill proposed for introduction, and the settlement legislation, may include changes:

7.2.1 of a minor or technical nature; or

7.2.2 agreed in writing by the governance entity and the Crown.

7.3 Ngāti Whātua Ōrākei and the governance entity must support the passage through Parliament of the settlement legislation.

SETTLEMENT CONDITIONAL

7.4 This deed, and the settlement, are conditional on the settlement legislation coming into force.

7.5 However, the following provisions of this deed are binding on its signing:

7.5.1 clauses 7.7 to 7.10:

7.5.2 paragraph 1.3 and parts 4 to 7 of the general matters schedule:

7.5.3 paragraphs 4.2 to 4.4 of the property schedule:

7.5.4 part 5 (other than paragraph 5.6) of the property schedule.

DISSOLUTION OF THE BOARD, VESTING OF ASSETS AND MISCELLANEOUS

7.6 The settlement legislation will on the terms provided in parts 4 and 5 of the draft settlement bill –

7.6.1 dissolve the Board; and

7.6.2 vest the assets and liabilities of the Board in the governance entity; and

7.6.3 vest the assets and liabilities of the charitable trust board in the governance entity; and

7.6.4 alter, in the Orakei Act 1991, –

(a) the description of development land and hapū reservations; and

(b) the powers of the Reserves Board in relation to the development land; and

(c) the powers and functions of the Reserves Board more generally; and

7.6.5 incorporate the provisions referred to in clause 7.6 and other provisions of the Orakei Act 1991 that have continuing relevance (with or without amendment).

EFFECT OF THIS DEED

7.7 This deed –

7.7.1 is "without prejudice" until it becomes unconditional; and

7.7.2 in particular, may not be used as evidence in proceedings before, or presented to, the Waitangi tribunal, any court, or any other judicial body or tribunal.

7.8 Clause 7.7 does not exclude the jurisdiction of a court, tribunal, or other judicial body in respect of the interpretation or enforcement of this deed.

TERMINATION

7.9 The Crown or the governance entity may terminate this deed, by notice to the other, if –

7.9.1 the settlement legislation has not come into force within 36 months after the date of this deed; and

7.9.2 the terminating party has given the other party at least 20 business days notice of an intention to terminate.

7.10 If this deed is terminated in accordance with its provisions, it –

7.10.1 (and the settlement) are at an end; and

7.10.2 does not give rise to any rights or obligations; but

7.10.3 remains "without prejudice".

8 GENERAL, DEFINITIONS, AND INTERPRETATION

GENERAL

8.1 The general matters schedule includes provisions in relation to –

8.1.1 the effect of this deed and of the settlement ; and

8.1.2 the Crown's payment of interest in relation to the settlement; and

8.1.3 the taxation of redress, including indemnities from the Crown in relation to taxation; and

8.1.4 the giving of notice under this deed or a settlement document; and

8.1.5 amending this deed.

HISTORICAL CLAIMS

8.2 In this deed, **historical claims** –

8.2.1 means every claim Ngāti Whātua Ōrākei or a representative entity had on or before the settlement date, or may have after the settlement date (whether or not the claim has arisen or been considered, researched, registered, notified, or made by or on the settlement date) and that –

(a) is, or is founded on, a right arising –

(i) from the Treaty of Waitangi or its principles; or

(ii) under legislation; or

(iii) at common law, including aboriginal title or customary law; or

(iv) from fiduciary duty; or

(v) otherwise; and

(b) arises from, or relates to, acts or omissions before 21 September 1992 –

(i) by, or on behalf of, the Crown; or

(ii) by or under legislation; and

8.2.2 includes every claim to the Waitangi Tribunal to which clause 8.2.1 applies that relates exclusively to Ngāti Whātua Ōrākei or a representative entity, including the following claims:

(a) Wai 186 – Hurstmere Road, Takapuna claim; and

(b) Wai 253 – Pukapuka claim; and

(c) Wai 261 – 4 Domett Avenue claim; and

(d) Wai 276 – Sylvia Park claim; and

(e) Wai 388 – Tāmaki Makaurau claim; and

(f) Wai 1063 – Uruamo Orakei Block Alienation claim; and

(g) Wai 1128 – Te Tāōū Alienation claim; and

8.2.3 includes every other claim to the Waitangi Tribunal to which clause 8.2.1 applies, so far as it relates to Ngāti Whātua Ōrākei or a representative entity, including the following claims:

(a) Wai 187 – Awataha claim; and

(b) Wai 279 – Te Tāōū Reweti Charitable Trust claim; and

(c) Wai 756 – Southern Kaipara Lands and resources claims; and

(d) Wai 887 – Ngawaka Tautari Lands (Auckland/Kaipara) claim; and

(e) Wai 1045 – Ngati Mauri Land and Resources claim; and

(f) Wai 1114 – Te Runanga o Te Tāōū Lands and resources claim; and

8.2.4 includes any claim to which clause 8.2.1 applies that a member of Ngāti Whātua Ōrākei may have in relation to the Ōrākei Block that arises from, or relates to, acts or omissions from or after 9 December 1991 and before 21 September 1992.

8.3 However, **historical claims** does not include the following claims that a member of Ngāti Whātua Ōrākei, or a whānau, hapū, or group referred to in clause 8.5.2, may have –

8.3.1 a claim that is, or is founded on, a right arising as a result of being descended from an ancestor other than Tuperiri:

8.3.2 a claim that is, or is founded on, a customary right exercised by one or more of the hapū of Ngā Oho, Te Uringutu and Te Tāōū predominantly outside the primary area of interest at any time after 6 February 1840:

8.3.3 a claim in relation to the Ōrākei Block to the extent it was settled by section 19(2) of the Orakei Act 1991:

8.3.4 a claim that a representative entity may have to the extent the claim is, or is founded, on a claim referred to in clauses 8.3.1 to 8.3.3.

8.4 To avoid doubt, clause 8.2.1 is not limited by clauses 8.2.2 to 8.2.4.

NGĀTI WHĀTUA ŌRĀKEI

8.5 In this deed, **Ngāti Whātua Ōrākei** –

8.5.1 means the collective group composed of individuals:

(a) who are descended from the ancestor Tuperiri; and

(b) who are members of one or more of the hapū of Ngā Oho, Te Uringutu and Te Tāōū that exercised customary rights predominantly in relation to the primary area of interest at any time after 6 February 1840; and

8.5.2 includes every whānau, hapū, or group to the extent that it is composed of individuals referred to in clause 8.5.1.

8.6 For the purposes of clause 8.5.1 **customary rights** means rights according to tikanga Māori (Māori customary values and practices) including –

8.6.1 rights to occupy land; and

8.6.2 rights in relation to the use of land or other natural or physical resources.

ADDITIONAL DEFINITIONS

8.7 The definitions in part 7 of the general matters schedule apply to this deed.

INTERPRETATION

8.8 The provisions in part 8 of the general matters schedule apply to the interpretation of this deed.

SIGNED as a deed on 5 November 2011

SIGNED for and on behalf of
NGĀTI WHĀTUA ŌRĀKEI by
the Ngāti Whātua o Ōrākei Maori Trust Board
by affixing its common seal in the presence of
the Secretary:

NGATI WHATUA O ORAKEI MAORI TRUST BOARD
The Common Seal of

Secretary

Trustee

Trustee

SIGNED for and on behalf
of **NGĀTI WHĀTUA ŌRĀKEI TRUSTEE LIMITED**

Director

Director

People of Ngāti Whātua Ōrākei signed below to indicate their support for the settlement

Margaret Waters (Maddy)

Gianni waters

Maurice Waters

Watea Areiteripaie Letitia Watson

[illegible]

Dana Ronga Hawke & whanau

Ngapine Kemp McKenzie

[illegible] Hawke Kenton-walle

Ataahua Tureti

Ngahuia Rahi

Kaaterama Ote Haahi Atatana Morehu

Te Kahui-iti Morehu no Kaipara ahau.

Leo Clay Orakei

Nellie TePora Clay Orakei

Ashleigh Kelly

Kahlala Rose Johnstone (10 Yrs)

Arohanui Hawke

Tautoko with (Heta / Te Warati / Tini / Te Amiri.)

Temapara OHR Morehu.

For Mum + Dad

Eruini Hawke

Pui Pui Hawke

[illegible signature]

[illegible signature]

Ann Te Harinui Tanga [illegible]

Te Kakaroa Ron Micheal [illegible].

Wairui Linda Hall

Acer Ah-chee

Dahleen Ah Chee.

Rangimarie Hall

Maurice John Faiers

Kiwa Marino

Tyler

[illegible signature]

Will S. [illegible]

Jamie

Aterete Warbrick Arnold

[illegible signature]

Jayden E

Danielle [illegible] [illegible]

Julia Peters Lisa Kilkelly
Kerry ann Petera

RICHARD 'BUNCHI' PETERS

[illegible] for Koia o Kia Moa Waitere

[illegible]

Bernadette Papa-Cullen-Tahana XXXX

Peter Mark [illegible]

Tamaariki, Donna [illegible]

Tamaariki-Pohe, Moana Moana.

Pickrang-Tamaariki Natalia

Logan-Tamaariki-Pohe

[illegible]

[illegible]

[illegible]

N. A. [illegible] [illegible]

Jeremy Benjamin [illegible]

Jeremiah Millar 9
Lavinia Millar 6
Caine Taihia 9
Lacey Bartlett
Geordie Bartlett.
Te Tae Awatea Danni-Lee Hawke (one)
Hana Hawke
Manea-Mabel Te Puaaitanga Ruby Hauke. 10
Jay Uhenua. Rawiri Davis.
Mercer
Iana Davis
Davis
Paul Davis
Neeson Cory Andriyana Harriman
Atamai Harriman
Mauri Te Kawau Harriman
David Anaru Ngawaka Harriman

Kerry Hotu

Eva

Pari Tumahai

REBECCA REID.

Mihi Hamahana Te Aroha Shaw ; Whanau

Maia-Joanne meiha maramatanga Royal
8 year old
Sarah Rosalyn maha pihemai 9 YEARS OLD
Fiona Marie Smith nee Johnston Makoare.

Pounamu - Pearl Smith 10 years old
Elexsus waaka - 10 years old.
Elisana Waaka
Lisa Elizabeth Davis
Otene Reweti
Mareata & Maea Reweti
Katarina Witika.
Tazmyn-Alisha Witika.

Margaret e Payne

VIANDY CORVETTE

OLIVE TERA PETERS CORVETTE

C. Kparama

Kelly Warbrick

Andrea Tuaana

Clifford Christopher Mahanga

Te Whrea Pearl Witika

te rau

[illegible]

Turoa Waitere.

NOTORIOUS MONGREL MOB
NEW ZEALAND

Linda Taka Mangatangi

Tania Patricia Tangahoe (Te Tai) no Mongere!

Arunika Mathur-Saini

Nandita Mathur

Katherine Mura

Leanne Taylor.

[illegible signature]

[illegible signature]

[illegible signature]

[illegible signature]

[illegible signature]

H.T.K. Tunohai

Moerea Rosie Peteko

Hamua - O - Te - Rangi o Ngawii - iti [illegible]

Te Irimaurimaramamarei Raaginui

Gregory - Nawte Whanau.

Michelle Nawte.

Sharlene Makoare.

Jamie Warbrick

Lindsay Makoare.

Daley Makoare.

Awana Warbrick

Jahna Warbrick

Tu Ariki Warbrick

Kema, Manea-Mabel, Hana, Huia Hawke.

Shanara Tauhia

Kasey Tauhia

Wendy, Owen, Takutai Watts

Taki, David-Dylan Carroll

Mērekaraka Mere Kupa

Teehoro Arky

Merekaraka Talbot

Ngahia Hawke

Kani Harrison

Manawa Rei Harrison

Tahuiri Harrison

Nyahia Harrison

Ari Marie Harrison

Kauri O te moananui Hawke

Mark Dane Iuhaha Hawke

Phthonga.

Mrs. Aaren Skipwith Hawke

Sam James Hawke

FOR ALL OF US WHO SUPPORTED OUR WHANAU at Bastion. Point. I sign for all OF US.

PATRICIA PRECIOUS Promise Ngamoti CLARK. NEE HAWKE.

Jacqui Tuatara.

Maraea Heremaia Robb [signature]

Campbell Riley Green

Joshua Joel Tomai

Trisha Arahanga.

Leah Aroha Moana Harrison

Tatum Atareta Martin

Autumn Grace Martin

Te Pakihona Jai Gene Grant Hawke

PiuPiu Raewyn Cindy Mehana

Kurapa Rahera Raewyn Hawke-Gardyne

Hitemapuna Mokorua Charlotte Anne Hawke-Gardyne

Dayna Hawke

Anahera Rameri

Katene Hawke

Tishan Hawke

Maharatia-Reo Pahau

Kelly Pahau

Gerera Pahau

Jaran Pahau.

Paraharaiki Pukaramaine Whetumarama Mohona Hawke

Te Marama Tanga Ngaoho Whalebaiajal

Pani Gleeson Tessa Gleeson Phyana Gleeson

Spencer Joseph Ngaroto Gleeson

Robert Hugh Hovell
Taiaha Joseph Hawke.