



Deed of

Deed of Settlement
between the Crown and
Ngāti Whātua Ōrākei

Settlement

Ngāti Whātua Ōrākei represents those who descend from Tuperiri and are members of the Te Tāōū, Ngā Ōho and Te Uringutu hapū who exercised customary rights predominately within the Ngāti Whātua Ōrākei rohe which is depicted on the primary area of interest map on the next page.

The Ngāti Whātua o Ōrākei Māori Trust Board holds the statutory mandate under section 19 of the Ōrākei Act 1991 to negotiate, on behalf of Ngāti Whātua Ōrākei, the settlement of all outstanding Treaty of Waitangi claims with the Crown.

On 2 May 2003 the Crown and the Ngāti Whātua Ōrākei o Māori Trust Board signed terms of negotiation agreeing the scope, objectives, and general procedures for the negotiations for redress to settle all historical claims. An agreement in principle was signed between the Crown and the Ngāti Whātua Ōrākei o Māori Trust Board on 9 June 2006.

Negotiations were subsequently suspended as a consequence of a Waitangi Tribunal inquiry into the proposed settlement and the situation more generally in the wider Tamaki Makaurau region. In June 2009 Sir Douglas Graham, on behalf of the Crown, delivered a proposal to Ngāti Whātua Ōrākei and the other iwi/hapū of the Kaipara, Mahurangi, Tāmaki Makaurau and Hauraki to enable the Ngāti Whātua Ōrākei settlement to be completed and other settlements to progress in the region.

On 12 February 2010 the Crown and the Ngāti Whātua o Ōrākei Māori Trust Board, agreed how the 2006 agreement in principle should be varied. The Crown and Ngāti Whātua Ōrākei initialled a Deed of Settlement on 29 September 2011. The Deed was then ratified by the people of Ngāti Whātua Ōrākei, and signed on 5 November 2011. The settlement will be implemented following the passage of settlement legislation.

The Office of Treaty Settlements, with the support of the New Zealand Defence Force, the Treasury, Department of Conservation, Land Information New Zealand, and other government agencies, represented the Crown in day-to-day negotiations. The Minister for Treaty of Waitangi Negotiations, Hon Christopher Finlayson, represented the Crown in high-level negotiations with Ngāti Whātua Ōrākei.

Summary of the Historical Background to the Claims by Ngāti Whātua Ōrākei

Ngāti Whātua chiefs signed a copy of the Māori text of the Treaty of Waitangi on 20 March 1840, after which a delegation of chiefs invited Captain William Hobson, the new Governor, to settle in the Tāmaki isthmus. In July 1840 Hobson decided to locate the capital at Waitemata, which had the advantages of a deep port, easy access, flat land and rich soil. In September 1840 government officials successfully negotiated with Ngāti Whātua Ōrākei for the transfer of around 3500 acres of land, which today covers the central city area of Auckland.

Over the next two years Ngāti Whātua Ōrākei transferred a further 29,000 acres to the Crown to facilitate European settlement on the Tāmaki isthmus. In return they received around £640 plus other goods.

Ngāti Whātua Ōrākei had anticipated reciprocal relationships from these transactions. Ngāti Whātua also sought to strengthen their relationship with the Crown by expressing loyalty.

Much of the land transferred by Ngāti Whātua to the Crown between 1840 and 1842 was promptly sold for high prices. Before 1845, the Crown profited from its sales of some of this land by an amount of £68,865. The benefits and protection that Ngāti Whātua Ōrākei expected to flow from its relationship with the Crown were not always realised.

Between 1844 and 1845 the Crown waived its right of pre-emption to allow direct dealing in land between Māori and settlers and provided regulations to protect Māori in these transactions. However, the Crown did not apply many of the regulations correctly. It did not protect pā and urupā such as Maungakiekie, a site of historical and spiritual significance to Ngāti Whātua Ōrākei. The Crown also failed to set aside one-tenth of the lands transferred for the future use or special benefit of the original owners of the land and their descendants. In total around 47,000 acres of land in which Ngāti Whātua Ōrākei had interests were so alienated.

A commission of inquiry later found that around half of the transactions failed to meet requirements set by the Crown, including timely and proper surveys. When they were disallowed the Crown took the land as "surplus", rather than returning it to the original owners.

From 1846 the Crown carried out further purchases, including around West Auckland. 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. Ngāti Whātua Ōrākei wished these lands to "be reserved for our own use for ever", but almost all of the land was later lost. (The loss of these 700 acres were settled by the Ōrākei Act 1991 and do not form part of the present settlement).

For Ngāti Whātua Ōrākei, their state of virtual landlessness diminished their ability to exercise mana whenua and participate meaningfully in the growing colony. In particular, Ngāti Whātua requests for a greater level of participation in governance went largely unheeded. Ngāti Whātua Ōrākei are also aggrieved over reclamations and other forms of development of the Waitemata and Manukau Harbours, which had a damaging effect upon fisheries and other harbour resources.

Summary of the Ngāti Whātua Ōrākei Settlement

Overview

The Ngāti Whātua Ōrākei Deed of Settlement is the final settlement of all historical claims of Ngāti Whātua Ōrākei resulting from acts or omissions by the Crown prior to 21 September 1992 and is made up of a package that includes:

- an agreed historical account and Crown acknowledgements, which form the basis for a Crown apology to Ngāti Whātua Ōrākei;
- cultural redress; and
- financial and commercial redress.

No private land is affected by the settlement, only Crown land.

The benefits of the settlement will be available to all members of Ngāti Whātua Ōrākei, wherever they live.

Acknowledgements and Apology

The Crown acknowledges where its actions arising from interaction with Ngāti Whātua Ōrākei whereby it breached the Treaty of Waitangi and its principles.

The Crown apologises to Ngāti Whātua Ōrākei for its acts and omissions which have breached the Crown's obligations under the Treaty of Waitangi. These include an apology for Crown actions which have resulted in the virtual landlessness of Ngāti Whātua Ōrākei. This state of landlessness has had devastating consequences for the social, cultural, economic, spiritual and physical well-being of Ngāti Whātua Ōrākei that continue to be felt today.

The apology records that the Crown intends to improve and strengthen its historically close relationship with Ngāti Whātua Ōrākei based on the Treaty of Waitangi and its principles so as to create a solid foundation for the future.

Cultural Redress

1. Recognition of the traditional, historical, cultural and spiritual association of Ngāti Whātua Ōrākei with places and sites owned by the Crown within their area of interest. This allows Ngāti Whātua Ōrākei and the Crown to protect and enhance their conservation values associated with these sites, and includes:

1(A) SITES TRANSFERRED TO NGĀTI WHĀTUA ŌRĀKEI

The settlement vests the Pourewa Creek Conservation Area (33.64 hectares) in Ngāti Whātua Ōrākei, as a recreation reserve to be administered by the Ngāti Whātua Ōrākei Reserves Board (the joint Ngāti Whātua Ōrākei-Auckland Council body that administers the Whenua Rangatira at Bastion Point).

1(B) REDRESS OVER MAUNGA ON THE TĀMAKI ISTHMUS

Ngāti Whātua Ōrākei will receive redress over the maunga on the Tāmaki isthmus through the Nga Mana Whenua o Tāmaki Makaurau (Tāmaki Collective) deed of settlement.

1(C) REDRESS OVER MOTU IN THE HAURAKI GULF

Ngāti Whātua Ōrākei will receive redress over the inner Hauraki Gulf motu (islands) through the Tāmaki Collective deed of settlement.

1(D) STATUTORY ACKNOWLEDGEMENTS

The settlement provides Statutory Acknowledgements over:

- Crown land held for Defence purposes at Kauri Point, North Shore, and
- Crown land vested for control and management in the Auckland Council at Kauri Point, North Shore

A Statutory Acknowledgement recognises the special association between Ngāti Whātua Ōrākei with Kauri Point and enhances Ngāti Whātua Ōrākei's ability to participate in specified Resource Management Act processes that relate to that site.

1(E) PLACE NAME CHANGES

The geographic name of the Purewa Creek will be changed to Pourewa Creek through the settlement.

2. Relationships

2(A) LETTERS OF INTRODUCTION

The settlement provides for the Minister for Treaty of Waitangi Negotiations to write to the Auckland Council encouraging the furthering of their relationship with Ngāti Whātua Ōrākei as well as letters introducing the Ngāti Whātua Ōrākei Trust to particular museums.

2(B) PROTOCOLS

The settlement provides for relationship protocols with Ngāti Whātua Ōrākei issued by the Minister of Conservation, Minister for Culture and Heritage and Minister of Economic Development.

2(C) FISHERIES REDRESS

The settlement provides for a letter of recognition from the Ministry of Fisheries and for Ngāti Whātua Ōrākei to be an advisory committee in relation to fisheries resources within their primary area of interest.

Financial and Commercial Redress

3. This redress recognises the economic loss suffered by Ngāti Whātua Ōrākei arising from breaches by the Crown of its Treaty obligations. The financial and commercial redress is aimed at providing Ngāti Whātua Ōrākei with resources to assist them to develop their economic and social well-being.

3(A) CASH AND ASSETS TRANSFERRED TO NGĀTI WHĀTUA ŌRĀKEI

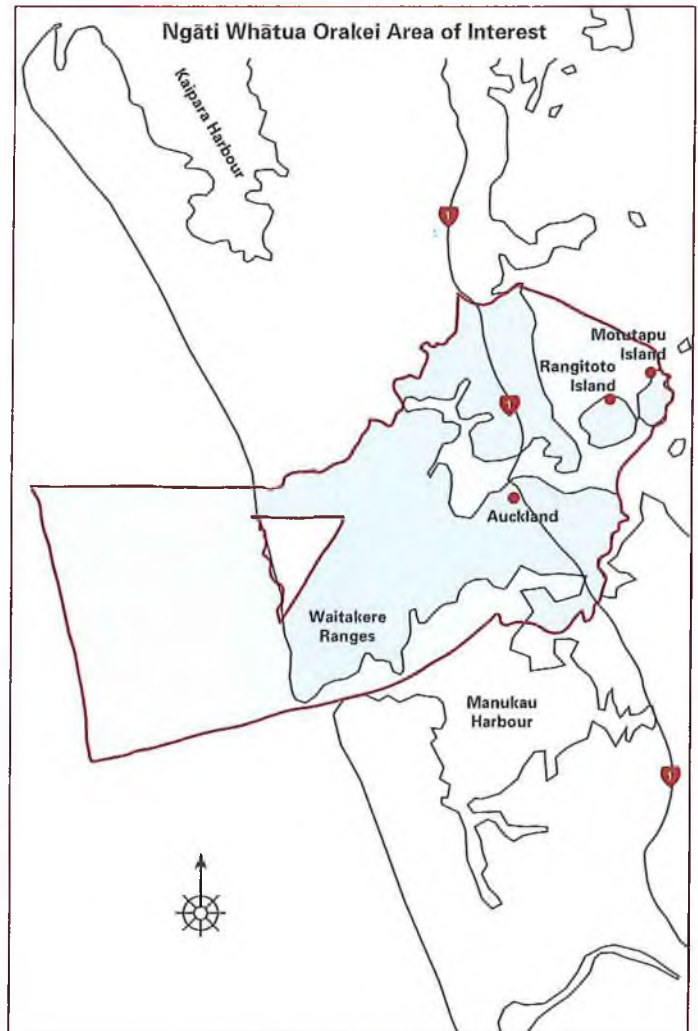
Ngāti Whātua Ōrākei will receive financial redress to the value of \$18 million plus interest through their settlement. \$2 million of the \$18 million was received by Ngāti Whātua Ōrākei as an on-account payment through the Railways Settlement in 1993.

Using the cash transferred through their settlement and their own funds Ngāti Whātua Ōrākei will:

- purchase the property at 99 Owens Rd, Epsom
- purchase the Wakakura block on the North Shore;
- purchase and long-term leaseback to the Crown of the Narrow Neck block on the North Shore; and
- purchase and leaseback for five years to the Crown the Beresford, Birchfield, Hilary, Marsden and Plymouth housing blocks on the North Shore.

Right of first refusal

Ngāti Whātua Ōrākei will participate in right of first refusal redress for 170 years over surplus Crown owned properties and other specified properties in the Tāmaki Makaurau region through the Tāmaki Collective deed of settlement.



NOTES:

- The bold line shows the area of "primary interest". Wider "layers of interest" through whakapapa and pre-1840 history are much broader, covering the greater part of the Auckland region and the inner gulf islands of Tikapa Moana.
- Areas of both "primary interest" and "layers of interest" include the waters of the Waitemata and Manukau Harbours, inner Hauraki Gulf, and Tasman Sea by the dry land areas.

Questions and Answers

1. What is the total cost to the Crown?

The total cost to the Crown of the settlement redress outlined in the Deed of Settlement is \$18.00 million plus interest. \$2 million of the \$18 million was received by Ngāti Whātua Ōrākei as an on-account payment through the Railways Settlement in 1993 so the value received through this settlement is \$16 million plus interest and the value of the Pourewa Creek site to be vested.

2. Is there any private land being transferred?

No.

3. Are public rights affected?

No.

4. Will the transfer of public conservation sites affect public access?

The extent of present public access to the Pourewa Creek site will be maintained.

5. Are any National Parks affected by the Settlement?

No.

6. Does Ngāti Whātua Ōrākei have the right to come back and make further claims about the behaviour of the Crown in the 19th and 20th centuries?

Both parties agree that the Deed of Settlement is fair in the circumstances and will be a final settlement of all of Ngāti Whātua Ōrākei's historical pre-1992 claims. Irrespective of the settlement of all claims the deed of settlement states that redress is still to be provided in relation to the maunga on the Tāmaki isthmus, motu of the Hauraki Gulf and the Waitematā and Manukau Harbours. Under the settlement legislation Ngāti Whātua Ōrākei will not be able to re-litigate Wai claims before the Waitangi Tribunal or the courts. However, they will have a right to participate in any hearings before the Waitangi Tribunal relating to the maunga, motu or harbours.

The settlement does not affect Ngāti Whātua Ōrākei's right to pursue claims against the Crown for acts or omissions after 21 September 1992, including claims based on the continued existence of aboriginal title or customary rights. The Crown also retains the right to dispute such claims or the existence of such title rights.

7. Who benefits from the settlement?

All members of Ngāti Whātua Ōrākei wherever they may now live.

This and other settlement summaries are also available at www.ots.govt.nz