



# Deed of

Deed of Settlement  
between the Crown and  
Ngāti Whātua o Kaipara

# Settlement

## General Background

Ngāti Whātua o Kaipara is the name chosen by the hapū and whānau of the five marae of south Kaipara (Reweti, Haranui, Kākānui, Araparera and Puatahi). The term Ngāti Whātua o Kaipara is not traditional but has been adopted to avoid confusion between Ngāti Whātua in Orakei and Ngāti Whātua in south Kaipara. Within this context, Ngāti Whātua o Kaipara means not only Ngāti Whātua but also Ngāti Whātua Tūturu, Te Tao Ū, Ngāti Rango (sometimes referred to as Ngāti Rongo), Ngāti Hine and Te Uri o Hau who exercised customary rights predominantly within the Ngāti Whātua o Kaipara area of interest depicted overleaf.

Ngāti Whātua o Kaipara and the Crown negotiated an Agreement in Principle which was signed 22 December 2009. On 24 June 2011, Ngāti Whātua o Kaipara and the Crown initialled a detailed Deed of Settlement based on this agreement, which was then ratified by the Ngāti Whātua o Kaipara community, and signed on 9 September 2011. The settlement will be implemented following the passage of settlement legislation.

Ngāti Whātua o Kaipara were initially represented in their negotiations by the Ngāti Whātua o Kaipara Claims Committee. In November 2010 Ngāti Whātua o Kaipara approved a post-settlement governance entity comprising two private trusts, Ngā Maunga Whakahii o Kaipara Development Trust and Ngā Maunga Whakahii o Kaipara Tari Pupuritaonga Trust, to receive and manage the settlement assets. From the establishment of the two trusts in April 2011, the mandate to negotiate their claims passed from the Ngāti Whātua o Kaipara Claims Committee to the trustees of the Ngā Maunga Whakahii o Kaipara Development Trust.

The Office of Treaty Settlements, with the support of the Department of Conservation, Land Information New Zealand, the Treasury 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 o Kaipara.

## Summary of the Historical Background to the Claims by Ngāti Whātua o Kaipara

Ngāti Whātua signed the Treaty of Waitangi at Manukau on 20 March 1840, beginning a long tradition of Ngāti Whātua o Kaipara commitment to and support for the Crown.

From 1844 to 1845, the Crown allowed direct dealings in land between settlers and Māori. A substantial amount of land bordering the upper Waitemata Harbour was alienated at this time. Regulations put in place by the Crown were not correctly applied and later investigations did not always protect Māori interests. The Crown retained a “surplus” of around 24,000 acres.

From 1848 to 1868, the Crown embarked on a substantial land purchasing programme in south Kaipara from Ngāti Whātua o Kaipara (Ngāti Whātua), acquiring around 281,000 acres of land. While Crown agents stressed that the low prices offered would be off-set by the benefits of colonisation, the Crown failed to ensure that Ngāti Whātua were reserved sufficient lands. Many of the benefits promised, such as roads, hospitals and schools, were also slow to arrive or were not always realised.

From 1864, the Native Land Court began hearings in south Kaipara. The awarding of land to individuals, rather than to iwi and hapū, made those lands more susceptible to partition, fragmentation, and alienation. Significant costs were also carried by Ngāti Whātua. By 1880, Ngāti Whātua were no longer selling land as a strategic move to promote development, but using it as a means of repaying debts and as a source of much-needed income.

Ngāti Whātua leaders sought equal participation for Māori in central and local government. The four Māori seats established in 1867 to represent Māori in Parliament did not meet Ngāti Whātua expectations.

To encourage European settlement in the south Kaipara, Ngāti Whātua made lands available for public purposes, including 10 acres at Te Awaroa (Helensville) and land for the Riverhead to Helensville railway. The Crown did not adhere to all conditions accompanying these gifts, including returning those lands when they were no longer needed for the purposes given.

By 1900 only around ten percent of south Kaipara lands remained in Ngāti Whātua ownership. Much of this was sandhills or marginal country. Lands at Puketapu and elsewhere were also acquired by the Crown for sand-dune reclamation purposes.

In 1906, the last substantial area of land remaining in Māori ownership in south Kaipara, the Otakanini block, was compulsorily vested in the Tokerau District Māori Land Board without consultation with the owners. This denied the owners any meaningful role in the administration of the land for fifty years. Leases over the block were not properly administered and upon the return of Otakanini block in 1958, the owners carried significant burdens.

Poor economic circumstance forced many Ngāti Whātua to move to Auckland and other urban centres in search of work, particularly from the 1950s onwards. Living conditions for those who remained in the south Kaipara resembled rural slums.

The Crown failed to monitor the ongoing impact of land purchases on Ngāti Whātua and, by the 1940s, Ngāti Whātua had been rendered virtually landless. This, and the cumulative effect of the Crown's breaches of the Treaty of Waitangi and its principles, has significantly undermined the tino rangatiratanga of Ngāti Whātua, their economic and social development and physical, cultural and spiritual well being, with effects that continue to be felt to the present day.

# Settlement

## Summary of the Ngāti Whātua o Kaipara Settlement

### Overview

The Ngāti Whātua o Kaipara Deed of Settlement is the final settlement of all historical Treaty of Waitangi claims of Ngāti Whātua o Kaipara 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 o Kaipara;
- cultural redress; and
- financial and commercial redress.

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

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

### Crown Acknowledgments and Apology

The deed contains a comprehensive series of acknowledgements by the Crown where its actions arising from interaction with Ngāti Whātua o Kaipara have breached the Treaty of Waitangi and its principles.

The Crown apologises to Ngāti Whātua o Kaipara 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 o Kaipara, which has had devastating consequences for the social, cultural, economic, spiritual and physical well being of Ngāti Whātua o Kaipara that continue to be felt today.

The apology records that the Crown intends to improve and strengthen its historically close relationship with Ngāti Whātua o Kaipara 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 o Kaipara with places and sites owned by the Crown within their area of interest. This allows Ngāti Whātua o Kaipara and the Crown to protect and enhance their conservation values associated with these sites, and includes:

#### 1(A) SITES TRANSFERRED TO NGĀTI WHĀTUA O KAIPARA

The settlement vests nine sites in Ngāti Whātua o Kaipara totalling approximately 675 hectares, subject to specific conditions including protection of public access and conservation values:

- Atuanui Scenic Reserve
- Mairerahi Landing
- Mauiniu Island
- Moturemu Island
- Tīpare
- Makarau
- Makarau Bridge Reserve
- Parakai; and
- Ten Acre Block Recreation Reserve.

#### Joint vesting of Parakai Recreation Reserve

Parakai Recreation Reserve (approximately 18.4 hectares) will vest, in trust, jointly in Ngāti Whātua o Kaipara and the Auckland Council. A board, the Parakai Recreation Reserve Board, will be established to administer the reserve. The reserve status will continue and public access will be maintained.

#### 1(B) STATUTORY ACKNOWLEDGEMENTS

A Statutory Acknowledgement recognises the special association between Ngāti Whātua o Kaipara and a particular site and enhances Ngāti Whātua o Kaipara's ability to participate in specified Resource Management Act processes.

The settlement provides Statutory Acknowledgements over:

- Papakanui Conservation Area and Papakanui Spit Wildlife Refuge;
- Rototoa Conservation Area and Lake Rototoa Scenic Reserve;
- Motutara Settlement Scenic Reserve and Goldie Bush Scenic Reserve; and
- a Coastal Statutory Acknowledgement area.

#### 1(C) KAIPARA HARBOUR

The Deed does not provide for cultural redress in relation to Kaipara Harbour, as that is to be developed in negotiations with the Crown that will include Ngāti Whātua o Kaipara at a future date.

### 2. Relationships

#### 2(A) RELATIONSHIP AGREEMENTS

Te Kawenata Taiao o Ngāti Whātua o Kaipara (a Co-management Agreement) will be entered into on settlement between the Department of Conservation and Ngā Maunga Whakahii o Kaipara Development Trust. Te Kawenata Taiao o Ngāti Whātua o Kaipara provides a framework for how Ngāti Whātua o Kaipara and the Department of Conservation will establish and maintain a positive and enduring partnership regarding public conservation land within the Ngāti Whātua o Kaipara area of interest.

The Deed of Settlement also provides for a protocol regarding the interaction between Ngāti Whātua o Kaipara and the Ministry for Culture and Heritage and letter of recognition issued by the Director-General of the Ministry of Agriculture and Forestry.

#### 2(B) LETTERS OF INTRODUCTION

The settlement provides for the Minister for Treaty of Waitangi Negotiations to write to certain Ministers/Crown agencies, organisations, and the Auckland Council introducing the trustees of Ngā Maunga Whakahii o Kaipara Development Trust.

#### 2(C) PLACE NAME CHANGES

Six existing geographic names will change and nine sites which do not currently have official names will be assigned geographic names.

## Financial and commercial redress

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

### 3(A) FINANCIAL REDRESS

Ngāti Whātua o Kaipara will receive financial redress to the value of \$22.1 million plus interest through their settlement.

### 3(B) COMMERCIAL REDRESS

Ngāti Whātua o Kaipara will purchase at market value:

- Woodhill Forest (Crown Forest Licensed land), which is subject to the forest licence, and will receive the accumulated rentals;
- the land under Kaipara College, Kaukapakapa School, Parakai School, Tauhoa School, Waimauku School and Woodhill School, which will all be leased back to the Crown; and
- properties at 8, 16 and 20 Old Woodcocks Rd, Kaipara Flats.

The Deed of Settlement provides for Ngāti Whātua o Kaipara to purchase available selection units of Riverhead Forest (Crown Forest Licence land) up to a value of approximately \$6.4 million following notification from the Crown and for Ngāti Whātua o Kaipara to have a non-exclusive deferred selection right to purchase the Paremoremo Housing Block.

#### *Right of first refusal*

Ngāti Whātua o Kaipara will receive:

- exclusive right of first refusal redress for 169 years over surplus Crown owned properties in the area and list specified in the Deed;
- non-exclusive right of first refusal redress for 169 years over surplus Crown owned properties listed in the Deed; and
- non-exclusive right to first refusal redress for 170 years over Paremoremo Prison.

#### *Ten Acre Block*

In 1864, Te Otene Kikokiko, of Te Tao Ū, gifted to the Crown a ten acre block of land in Te Awaroa for public purposes on the condition that the land be returned if it was no longer required for those purposes. The Crown alienated parts of the block to private parties rather than returning it to Ngāti Whātua when it was no longer required for public services. Accordingly, two sites from within the Ten Acre Block will be returned to Ngāti Whātua o Kaipara:

- Ten Acre Block Recreation Reserve as a reserve (approximately 0.02 hectares) as cultural redress; and
- 24 Commercial Road, Helensville under the terms of the Crown's gifted lands policy.

The Deed of Settlement recognises the Ngā Maunga Whakahii o Kaipara Trusts as the appropriate bodies to receive land from the Ten Acre Block.



# Q&A

## 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 \$22.1 million plus interest and the value of the cultural redress properties to be vested.

### 2. Is there any private land being transferred?

No.

### 3. Are the public's rights affected?

Public access to the sites that will vest in Ngāti Whātua o Kaipara will be maintained, except for Moturemu Island, where it will be limited to the three metre marginal strip. Public access beyond the three metre marginal strip would have negative implications for the island's pest free status, conservation values and the limited and fragile access points.

### 4. What are Statutory Acknowledgments?

Statutory Acknowledgements acknowledge areas or sites with which claimant groups have a special relationship, and will be recognised in any relevant proceedings under the Resource Management Act. This provision aims to avoid past problems with land development for roading and other purposes when areas of significance to Māori, such as burial grounds, were simply cleared or excavated without either permission or consultation. A Statutory Acknowledgement is not a property right. Neither is it exclusive.

### 5. Are any place names changed?

Yes. Six existing geographic names will change and nine sites which do not currently have official names will be assigned geographic names.

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

No. Both parties agree that the Deed of Settlement is fair in the circumstances and will be a final settlement of all of Ngāti Whātua o Kaipara's historical or pre-1992 claims. Under the settlement legislation Ngāti Whātua o Kaipara will not be able to re-litigate Wai claims before the Waitangi Tribunal or the courts.

The settlement does not affect Ngāti Whātua o Kaipara'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 o Kaipara wherever they may now live.

This and other settlement summaries are also available at [www.ots.govt.nz](http://www.ots.govt.nz)