

NGĀTI WHĀTUA O ŌRĀKEI MAORI TRUST BOARD

and

HER MAJESTY THE QUEEN

In right of New Zealand

**SUPPLEMENTARY AGREEMENT TO THE AGREEMENT
IN PRINCIPLE FOR THE SETTLEMENT OF THE
HISTORICAL CLAIMS OF NGĀTI WHĀTUA O ŌRĀKEI**

12 February 2010

Background

- A. In October 2002, the Crown recognised the statutory mandate of the Ngāti Whātua o Ōrākei Māori Trust Board (**the Trust Board**) under section 19 of the Ōrākei Act 1991 to negotiate, on behalf of Ngāti Whātua o Ōrākei, an offer for the settlement of the Historical Claims of Ngāti Whātua o Ōrākei.
- B. On 2 May 2003, the parties entered into Terms of Negotiation which specify the scope, objectives and general procedures for negotiations.
- C. On 9 June 2006, the Crown and the Trust Board entered into an Agreement in Principle (**the AIP**) for the settlement of Historical Claims of Ngāti Whātua o Ōrākei.
- D. Since then there has been a report of the Waitangi Tribunal dated 12 June 2007 being a report on Urgent Inquiry named the Tāmaki Makaurau Settlement Process Report.
- E. Both before and after the said Waitangi Tribunal Report, the Trust Board and the Crown have been in discussions with other iwi and hapū groups who claim interests in the Auckland area. Most recently those discussions have been facilitated by Sir Douglas Graham.
- F. The Trust Board and the Crown are now in agreement as to how the AIP might be modified to enable negotiations to be concluded through a Deed of Settlement and, subsequently for appropriate legislation to be passed in the New Zealand Parliament.

NOW THIS SUPPLEMENTARY AGREEMENT PROVIDES:

Historical Sections of AIP

- 1. For avoidance of any doubt the headings in Attachment B of the AIP relating to the historical accounts sections of the AIP shall be varied as follows:
 - a. The heading "Agreed Historical Account" where it appears immediately after the words "Attachment B" and immediately before the words "A. BACKGROUND", shall be deleted.
 - b. The heading "B. Preamble: Ngāti Whātua o Ōrākei before 1840" shall be amended to read "B. Preamble: Ngāti Whātua o Ōrākei Statement of their Situation before 1840".
 - c. In Section C the heading "5. Harbour and Reclamations" shall be amended to read "5. Ngāti Whātua o Ōrākei – Harbours and reclamations".

Cultural Redress Properties

- 2. The provisions in clauses 14-15 and 17-18 of the AIP are deleted and replaced with the following clauses:
 - a. "The Deed of Settlement and Settlement Legislation will provide for the vesting in the Governance Entity on the Settlement Date of the fee simple estate of Pūrewa

Creek Conservation Area, following consultation with the Auckland Transition Agency/Auckland Council in light of the Auckland governance reforms.

- b. Pūrewa Creek Conservation Area to become a recreation reserve on Settlement Date, subject to all applicable provisions of the Reserves Act 1977 including those preserving public access, with its existing reserve classification, to be administered by a joint iwi-local council body. ”
3. Clause 16 is amended so reference made to “Cultural Redress Properties” is deleted and replaced with “Pūrewa Creek Conservation Area”. Clause 16 relates only to Pūrewa Creek Conservation Area.
4. Clauses 21 b. – 21 f. are deleted.
5. Reference made to “Mount Victoria” in clause 22 is deleted.
6. There shall be a new clause 26A that shall read: “The Crown offers to explore any aspirations that Ngāti Whātua o Ōrākei has for co-governance with the Department of Conservation over those public conservation lands which are not transferred to Ngāti Whātua o Ōrākei. This matter will be the subject of further consideration and discussion between Ngāti Whātua o Ōrākei and the Crown in early 2010. The implications of these discussions for the Protocol with the Minister of Conservation proposed in the 2006 AIP will be considered in due course.”
7. Clauses 5-18 of the Ngā Mana Whenua o Tāmaki Makaurau and Crown Framework Agreement ¹provide for redress relating to the maunga.
8. Clauses 30-35 of the Ngā Mana Whenua o Tāmaki Makaurau and Crown Framework Agreement provide for the development of redress relating to the Manukau and Waitematā harbours.
9. Clause 19 of the Ngā Mana Whenua o Tāmaki Makaurau and Crown Framework Agreement provide for the development of redress relating to the motu.

Financial and Commercial Redress

Quantum

10. Clause 36 of the AIP is amended so as to read “The Financial and Commercial Redress Amount is \$18 million, which includes \$2 million redress received by the Trust Board as an on-account payment in the 1993 Railways settlement, referred to in paragraph 59.”
11. There shall be a new clause 36A that shall read: “The Deed of Settlement will provide for the Crown to pay the Trust Board interest on the principle amount of quantum from (and including) the date of signing the AIP to settlement date. This will be paid on the \$10 million quantum (less \$2 million for the 1993 on account payment) from 9 June 2006. If agreement is reached on the current offer to amend the agreement in principle on 12 February 2010, then interest will be paid on the \$18 million (less \$2 million for the 1993 on account payment) from 13 February 2010 until settlement date. All interest from both time periods will be paid on Settlement Date.”

¹ Ngā Mana Whenua o Tāmaki Makaurau and Crown Framework Agreement is an agreement signed between the Crown and the collective mana whenua of Tāmaki Makaurau on 12 February 2010.

12. Interest under clause 36A will:
 - a. be at the Official Cash Rate calculated on a daily basis;
 - b. not compound;
 - c. be paid to the Governance Entity on the Settlement Date; and
 - d. be subject to normal taxation law.

Right of First Refusal

13. The present provisions in clauses 38 and 39 of the AIP are deleted.
14. Clauses 20-29 of the Ngā Mana Whenua o Tāmaki Makaurau – Crown Framework Agreement provide redress relating to the to Right of First Refusal (RFR) redress.

Commercial Properties for Purchase and Leaseback

15. Clauses 43-45 will be amended and substituted by the following provisions:
 - a. “The Crown and Ngāti Whātua o Ōrākei will determine the commercial mechanism by which up to a total unencumbered freehold value of \$80 million of New Zealand Defence Force (NZDF) blocks of residential land in the North Shore as Commercial Redress Properties will be transferred to Ngāti Whātua o Ōrākei, subject to leaseback (the “transfer and leaseback arrangements”);
 - b. The transfer and leaseback must be on commercial terms mutually agreed to by the parties and may involve deferred payment;
 - c. Ngāti Whātua o Ōrākei and the Crown intend to agree by 30 June 2010 all the commercial terms of the transfer and leaseback arrangements, including finalising an appropriate ground lease; and
 - d. The Crown and Ngāti Whātua o Ōrākei will also explore, without prejudice, the possibility of entering into a public private partnership for the redevelopment of NZDF housing at Devonport.”

Additional clauses to be added to the AIP

16. Additional clauses shall be inserted between clause 47 and 48. These shall read:
 - a. *“Additional Commercial Properties for Purchase*
 - i. Ngāti Whātua o Ōrākei may purchase any of the properties held in the Office of Treaty Settlements’ landbank that are situated in the North Shore or Auckland Cities, subject to resolving any shared interests in these sites from other iwi/hapū. The Crown will work with Ngāti Whātua o Ōrākei and other iwi/hapū to develop a process to address these shared interests.

- b. *Commitment to Explore Properties for Purchase and Leaseback*
- i. The Ministry of Education is unable, at this point, to agree to enter into a transfer and leaseback arrangement over Ministry of Education sites, but is willing to explore the option of providing education sites for transfer and leaseback. Should the Crown be able to make Ministry of Education sites available for transfer and leaseback, it would be limited to a maximum of up to six Ministry of Education held sites.
 - ii. The Crown will also explore the option of a purchase by Ngāti Whātua o Ōrākei and leaseback to the Crown of the land under Mt Eden Prison. The Crown notes this is a strategic asset and presents some challenges, but is committed to exploring whether it can be made available as potential redress.
 - iii. All commercial redress offered by the Crown under clause 16 is subject to further discussions with Ngāti Whātua o Ōrākei and final confirmation from the Crown that the properties referred to are available. The Crown will undertake that investigation process in good faith. In the event any property referred to in clause 16 is not available, the Crown will be under no obligation to substitute that property with another property."

Consequential Amendments


17. The following items are deleted from the AIP:
 - a. "The definition of Specified Area in clause 70; and
 - b. Attachment H."
18. The following items are varied in the AIP:
 - a. The Area of Interest in Attachment A is varied by incorporating Rangitoto Island and Motutapu Island within the hatched Area of Interest and acknowledging it includes the waters of the Waitematā and Manukau harbours, Inner Hauraki Gulf and Tasman Sea by the hatched land areas; and
 - b. The protocol Area in Attachment G is varied by incorporating Rangitoto Island and Motutapu Island within the Protocol Area and acknowledging it includes the waters of the Waitematā and Manukau harbours, Inner Hauraki Gulf and Tasman Sea by the hatched land areas.

SIGNED

this day

of 2010

For and on behalf of the Crown:



Hon Christopher Finlayson
Minister for Treaty of Waitangi Negotiations



Hon Dr Pita R Sharples
Minister of Māori Affairs

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



Grant Hawke
Chairperson Ngāti Whātua o Ōrākei Māori Trust Board



Rangimārie Rawiri
Deputy Chairperson of Ngāti Whātua o Ōrākei Māori Trust Board

Ramcke Louste

~~Joe~~ Joe

Joe Hawke
Bastion Point
Taka Parawha

Joe

Mayer of Tamaki
Joe

~~Joe~~ Joe

Reseta Sam Lotu-Igi

Bob Hawke

MPD

Patrick Smooren

PATRICK SMOOREN

David Williams
(David Williams)

James Kumpara.

John Williams *James Moore*

Le Kahui - iai Mokohe
TE TAO Ū

W. R. Oakes - Oakes

Hagard. J. Kewhan.

Zen te Hikoī Kawharu

Otene P. Reweti

Manama W. Keldhaayen

Rocky

Eraper Cheamo.

Arohancu Hawke.

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