

Ngāti Whātua Ōrākei Claims Settlement Bill

Government Bill

As reported from the Māori Affairs
Committee

Commentary

Recommendation

The Māori Affairs Committee has examined the Ngāti Whātua Ōrākei Claims Settlement Bill and recommends that it be passed with the amendments shown.

Introduction

The Ngāti Whātua Ōrākei Claims Settlement Bill would give effect to the deed of settlement entered into by Ngāti Whātua Ōrākei and the Crown on 5 November 2011 for the final settlement of historical claims for breaches of the Treaty of Waitangi. The bill also records the acknowledgements and the apology offered by the Crown to Ngāti Whātua Ōrākei.

The bill includes only those parts of the redress in the settlement package that require legislative authority. The deed of settlement sets out in full the redress provided to Ngāti Whātua Ōrākei in settlement of all its historical Treaty of Waitangi claims.

Ngāti Whātua Ōrākei is the collective group comprising individuals descended from the ancestor Tuperiri and members of the hapū of Te Tāōū, Ngā Oho, and Te Uringutu who exercised customary rights in the area of interest of Ngāti Whātua Ōrākei after 6 February 1840. Ngāti Whātua Ōrākei's area of interest runs across Auckland's North Shore, and through the Manukau and Waitematā harbours, and includes all the land in between. This area overlaps with the areas of interest of Ngāti Whātua o Kaipara, Te Kawerau ā Maki, Marutūāhu, and the Waiohua tribes.

Our commentary covers the amendments we propose to clause 10 and Schedule 2 of the bill. The remainder of our commentary discusses the settlement issues we considered.

Te Tāōū

Te Tāōū is one of the three constituent hapū of Ngāti Whātua Ōrākei. A representative of Te Tāōū expressed concern that, as he did not consider Te Tāōū to be part of Ngāti Whātua, the hapū would not benefit from the settlement. Clause 11 of the bill makes it clear, however, that members of Te Tāōū are included in the settlement. We also note that the Waitangi Tribunal found that Te Tāōū would benefit from the Tāmaki Makaurau settlements including Ngāti Whātua o Kaipara and any future settlement that may be negotiated with Te Runanga o Ngāti Whātua. We do not support the assertion that Te Tāōū would be excluded from benefiting from this settlement.

Defence reserve at Narrow Neck

Clause 53 provides for Ngāti Whātua Ōrākei to purchase 3.2 hectares of land on the Narrow Neck headland on the North Shore as commercial redress. We heard strong opposition to the inclusion of this land in the settlement from a number of submitters on the grounds that the land has reserve status and it is of considerable value to the wider Devonport community. We acknowledge that the land at Narrow Neck is of historical and cultural significance to many in Tāmaki Makaurau, and New Zealand more generally. The headland has been utilised for various defence purposes since its purchase by the army in 1886, including as a detention camp for conscientious objectors primarily from Waikato-Tainui and Maniapoto during World War One.

The 3.2 hectares of land currently has reserve status for defence purposes and is occupied by the Navy's Officer Training School. If Ngāti Whātua Ōrākei purchases the land, we understand that it would lease back the land to the New Zealand Defence Force for a minimum of 15 years, with a right of renewal for up to 150 years.

Commercial redress

We are aware of concern about the land being offered as commercial rather than "cultural" redress. We understand that Ngāti Whātua Ōrākei had no desire to acquire the site as a recreational reserve, and its commercial value is fundamental to the settlement redress as negotiated. If the trustees purchase the site, the iwi may develop it after the New Zealand Defence Force vacates it. It could also be developed by the New Zealand Defence Force if it retains ownership. Ngāti Whātua Ōrākei would be subject to the same regulatory constraints on commercial development as any other developer.

Revocation of reserve status

Clause 54 provides that, should the Crown transfer the land at Narrow Neck to Ngāti Whātua Ōrākei, its status under the Reserve Act 1977 as a reserve for defence purposes would be revoked. We received many submissions expressing concern about the revocation of the land's reserve status. It was argued that the land is protected by the Hauraki Gulf Marine Park Act 2000 and should therefore revert to public ownership once vacated by the defence force.

Clause 14 of the Hauraki Gulf Marine Park Act expressly provides that the ability of any person or group to make a claim arising out of the application of the Treaty of Waitangi relating to the area within the Hauraki Gulf, and the ability of the Crown to offer redress, are not limited. We are assured that the Crown has considered thoroughly the removal of the land from the Hauraki Gulf Marine Park, and considers it to be consistent with the objectives of the Hauraki Gulf Marine Park Act. The sale of the land would not limit coastal access.

Playing field access

We are aware of concern about public access to the New Zealand Defence Force playing fields via a walkway on the southern boundary of the land in question. We understand that the current access

arrangement between the Defence Force and the Auckland Council can, in fact, be terminated with three months' notice. The post-settlement governance entity, the Ngāti Whātua Ōrākei Trust, has guaranteed that it will make this public access permanent as part of the lease with the New Zealand Defence Force. We consider that this approach would benefit the community generally.

Definition of commercial property

We recommend that the definition of commercial property in clause 10 be amended to clarify that it catches only those properties listed in part 3 of the property schedule of the deed of settlement that are in fact transferable in accordance with the deed. This amendment takes account of the fact that certain of those properties require preconditions to be met before a transfer may take place.

Definition of Ngāti Whātua Ōrākei Trust

We recommend an amendment to the definition of the Ngāti Whātua Ōrākei Trust in clause 10, to make it clear that this term means the trust with that name established by a deed of trust dated 3 November 2011.

Legal description of property

We recommend an amendment under Schedule 2 to the land description of the Narrow Neck property to remove an inapplicable computer interest register description.

Consultation with the public

We have considered the adequacy of the Crown's consultation with the local community and the Auckland Council. The Hauraki Gulf Forum, constituted under the Hauraki Gulf Marine Park Act, was informed of the Crown's intention to include the purchase and lease-back provision for the site at Narrow Neck in the settlement package in April 2011. The Auckland Council is a member of the Hauraki Gulf Forum. We understand that the forum did not provide any comment in response.

We note that settlement negotiations are generally conducted in confidence, which limits the public consultation the Crown can practically

undertake. Nevertheless, the inclusion of naval defence properties as commercial redress was publicly signalled when the Agreement in Principle was agreed in 2006 and again when the Deed of Settlement was initialled in 2011.

Wakakura block

The Mary Barrett Glade in the southern area of the Wakakura block is currently accessible by means of a public walkway. The accessible parts of the glade and the walkway would be within the marginal strip to be created when the site is transferred to Ngāti Whātua Ōrākei. The strip is to be administered by the Department of Conservation. The Wakakura block also includes the remains of historical brickworks, and this site is also included in the marginal strip. We encourage all parties to preserve the archaeological heritage on the Wakakura block.

Support for the bill

We were pleased that a number of submitters expressed support for the settlement as provided for in the bill. We were, however, disheartened by those submitters who opposed the bill largely on grounds that stem from mistrust and misunderstanding. We encourage members of the Devonport community who have reservations about the settlement to work towards a positive relationship with Ngāti Whātua Ōrākei. We consider that effective communication between affected parties, particularly as they could be neighbours in the future, would improve understanding of differences and avoid mistrust.

Appendix

Committee process

The Ngāti Whātua Ōrākei Claims Settlement Bill was referred to the committee on 8 March 2012. The closing date for submissions was 18 April 2012. We received and considered 99 submissions from interested groups and individuals. We heard 23 submissions, which included holding a hearing in Auckland.

We received advice from the Office of Treaty Settlements.

Committee membership

Hon Tau Henare (chairperson)

Te Ururoa Flavell

Hone Harawira

Brendan Horan

Hon Parekura Horomia

Katrina Shanks

Rino Tirikatene

Metiria Turei

Nicky Wagner

Louisa Wall

Louise Upston

Jonathan Young

Te Pire Whakataunga i ngā Kerēme a Ngāti Whātua Ōrākei

Pire Kāwanatanga

Tērā nā te Komiti Whiriwhiri Take Māori i
whakatakoto

Ngā Kōrero

Tūtohutanga

Kua āta tirohia e te Komiti Whiriwhiri Take Māori te Pire Whakataunga i ngā kerēme a Ngāti Whātua Ōrākei me tana tūtohu kia whakaaetia i te taha o ngā whakatikatika kua oti te whakaatu.

Kupu Whakataki

Ka whakamana Te Pire Whakataunga i ngā Kerēme a Ngāti Whātua Ōrākei i te whakaaetanga whakataunga i uru atu rā te Karauna me Ngāti Whātua Ōrākei ki roto i te 5 o Whiringa-ā-rangi 2011, mō te whakataunga oti atu o ngā kerēme o neherā mō ngā whatinga o Te Tiriti o Waitangi. E mau ana hoki i roto i te pire ngā whakaaetanga me te whakapāha i hoatu e te Karauna ki a Ngāti Whātua Ōrākei.

Kei roto i te pire aua wāhanga whakatika hapa anake i te mōk-ihi whakataunga ka hiahiatia rā he whakamanatanga ā-ture. Whakatakoto ai te whakaaetanga whakataunga i te katoa o te whakatika hapa i hoatu ki a Ngāti Whātua Ōrākei, hei whakataunga i ōna kerēme Tiriti o Waitangi hītori katoa.

Ko Ngāti Whātua Ōrākei te kohinga ohu o aua hunga takitahi i heke mai i te tupuna a Tuperiri, ā, i ērā hoki o ngā hapū o Te Tāōū, o Ngā Oho, o Te Uringutu, a rātou mā i whakamahi nei i ō rātou tika tukunga iho i te pānga wāhi pānga o Ngāti Whātua Ōrākei, mai anō i te 6 o Hui-tanguru i te tau 1840. Whakawhiti haere ai te pānga wāhi o Ngāti Whātua Ōrākei ki Te Pae Rakiwhenua o Tāmaki-makau-rau, puta atu ai ki ngā wahapū o Waitematā me Manukau, ā, uru atu ai hoki ngā whenua katoa o waenganui ki roto. Inaki ai te wāhi nei i ngā pānga wāhi o ngā iwi o Ngāti Whātua-o-Kaipara, o Te Kawerau-ā-Maki, o Marutūāhu, ā, o Waiōhua hoki.

Kapi ai i ā mātou kōrero ngā whakatikatika kei te whakaaroarohia e mātou mō rara 10, ā, mō Pukapuka Āpiti 2 hoki o te pire. Matapaki ai te toenga o ā mātou kōrero i ngā take e pā ana ki te whakataunga i whakaaroarohia e mātou.

Te Tāōū

Ko Te Tāōū tētahi o ngā wāhanga hapū e toru o Ngāti Whātua Ōrākei. Nā, ka whakapuaki tētahi māngai o Te Tāōū i tōna māharahara ka mea ki a ia nei, kāore he whai painga o te hapū i roto i te whakataunga nā te mea, kāore he paku Te Tāōū i roto i a Ngāti Whātua. Heoi anō, mārama ana te whakaatu a rara 11 o te pire, he ngā tāngata o Te Tāōū kei roto i te whakataunga. Kua kite hoki mātou, e ai ki Te Rōpū Whakamana i te Tiriti o Waitangi he painga anō hoki o Te Tāōū kei ngā whakataunga a Tāmaki-makau-rau, tae atu ki a Ngāti Whātua o Kaipara, ā, he whakataunga kei mua i te aroaro, ka whiriwhiria pea i te taha o Te Rūnanga o Ngāti Whātua. Kīhai mātou e tautoko i te kōrerotanga e pā ana ki te waiho atu i a Te Tāōū ki waho o te whakataunga nei, kīhai hoki e whiwhi painga.

Whenua rāhui waonga i Narrow Neck

Hoatu wāhi ai a rara 53 mā Ngāti Whātua Ōrākei, kia hokoa ai he whenua e 3.2 heketea i te mātārae o Narrow Neck, i Te Raki Pae-whenua, hei whakatika hapa arumoni. He tino kaha te whakahēnga i rongo mātou mai i ētahi kaiwhakatako tāpaetanga mō te whakarunga o te whenua nei ki roto i te whakataunga nā te mea, he tūranga whenua rāhui tō te whenua, ā, arā noa atu tōna uara ki te hapori whānui o Devonport. Ka whakaae mātou, he wāhi nui te hītori me te tikanga tuku iho o te whenua i Narrow Neck ki te tini maha i Tāmaki-makau-rau,

i Aotearoa noa hoki. Nō mai anō i te hokonga o te mātārae e ngāti tūmatauenga i te tau 1886 ngā momo take wawaonga e whakamahia ana, tae atu hoki ki te whakamahia hei puni tautāwhi mō te hunga whakahē ā-ngākau whakatohu nō mai i a Waikato-Tainui me Maniapoto i te tuatahi, i te Pakanga Tuatahi o te Ao.

He tūranga whenua rāhui tō te whenua e 3.2 heketea nei mō ngā take waonga, ā, he Kura Whakangungu Āpiha o Te Taua Moana o Aotearoa kei runga e tū ana. Ki tō mātou mōhio, ki te hokoa mai e Ngāti Whātua Ōrākei te whenua, ka rīhitia anōtia te whenua ki Te Ope Kaatua o Aotearoa mō tētahi itinga rawa tau e 15, ā, me te hoatu i tētahi tika ki te whakahoungia anōtia mō ngā tau e 150 piki atu.

Whakatika hapa arumoni

Kei te mārama mātou ki te māharahara mō te whenua e tukua ā-arumoningia nei, ka mahara hei whakatika hapa “tikanga tuku iho”. Ki tō mātou mōhio, kore rawa atu a Ngāti Whātua Ōrākei i te hiahia whiwhi i te tūnga rā hei whenua rāhui hākinakina, ā, ko tōna uara arumoni te pūtake o tērā e whiriwhiria rā i te whakatika hapa whakataunga. Ki te hokoa mai e ngā kaitiaki te tūnga rā, tērā pea ka riro mā te iwi e whakawhanake, ka wehe atu ana Te Ope Kaatua o Aotearoa i taua wāhi. Ka taea anō hoki e ia te whakawhanake ki te noho tonu a ia hei rangatira mō taua wāhi. Pērā anō ki tētahi atu kaiwhakawhanake, ka rite anō hoki ngā herenga ā-ture ārahi mō te whanaketanga arumoni, ki te utaina ki runga i a Ngāti Whātua Ōrākei.

Whakakorenga o te tūranga whenua rāhui

Ko tā rara 54, ki te whakawhitia e te Karauna te whenua i Narrow Neck ki a Ngāti Whātua Ōrākei, ka whakakorea tōna tūranga i raro i te Ture Rāhui Whenua o te tau 1977 hei whenua rāhui mō ngā take waonga. He huhua ngā tāpaetanga i whiwhi i a mātou e whakapuaki ana i te māharahara mō te whakakorenga o te tūranga whenua rāhui o te whenua. Ko tērā i tohengia, kei te tiakina te whenua i raro i te maru o te Ture Papa Rēhia o Te Pātaka Kai o Tīkapa Moana o te tau 2000, ā, nā runga i tērā, me hoki anō te rangatiratanga ki te marea ka wehe atu ana te ope waonga.

Ko tā rara 14 o Te Ture Papa Rēhia o Te Pātaka Kai o Tīkapa Moana, ka tino whakapuaki, kīhai e whakawhāitingia te kaha o tētahi tangata, tētahi kohinga rānei ki te whakatakoto kerēme i ara ake mō tētahi

wāhi i roto ake i Te Pātaka Kai o Tīkapa Moana nā te whakamahinga o Te Tiriti o Waitangi, ā, e whakawhāitingia rānei te kaha o te Karauna ki te tuku whakatika hapa. Nā te kōrero nei mātou i whakatūturu, arā, kua āta whakaaroarohia e te Karauna te tangohanga mai o te whenua i Te Papa Rēhia o Te Pātaka Kai o Tīkapa Moana, ā, ko tāna hoki ka whakatau, e ōrite ana tērā ki ngā whāinga o Te Ture Papa Rēhia o Te Pātaka Kai o Tīkapa Moana. Kīhai te urunga ki te taha moana e whakawhāitingia e te hokonga o te whenua.

Urunga papa tākaro

Kei te mārama mātou ki te māharahara mō te urunga marea ki ngā papa tākaro o Te Ope Kaatua o Aotearoa mā tētahi ara hīkoi i te taha tonga o te whenua e kōrerotia ake nei. Ki tō mātou mōhio, ka tino taea te whakaritenga urunga i waenganui i Te Ope Kaatua me te Kaunihera o Tāmaki-makau-rau o te wā nei, te whakakorea i roto i ngā marama e toru o te pānuitanga. Kua oati te hinonga whakahaere tiaki kaupapa mō te whakataunga-whai muri, ko Te Poutiaki o Ngāti Whātua Ōrākei tērā, ka whakatūturingia te urunga marea nei e ia mō ake tonu atu hei wāhanga o te rīhi mā Te Ope Kaatua o Aotearoa. Ko te āhua nei ki a mātou, he painga kei roto i tēnei aronga mā te marea.

Whakamāramatanga o te pito whenua arumoni

Ka tūtohu mātou kia whakatikaina te whakamāramatanga o te pito whenua arumoni i rara 10 kia mārama ai te kite atu, ko aua pito whenua anake ērā e whakarārangitia ake rā i wāhanga 3 o te kupu āpiti o te whakaaetanga whakataunga, ka whakawhitia e ai ki te whakaaetanga. Ka tā tēnei whakatikatika ka tino whakaaroarotia, me āta tutuki e ētahi o aua pito whenua rā ētahi ake ritenga tōmua i mua o te whakawhitinga.

Whakamāramatanga o Te Poutiaki o Ngāti Whātua Ōrākei

Ka tūtohu mātou kia whakatikaina te whakamāramatanga o Te Poutiaki o Ngāti Whātua Ōrākei i rara 10 kia mārama ai te kite atu, ko te tikanga o tēnei kītanga e mea ana, ko te poutiaki me taua ingoa i whakatūria e tētahi whakaaetanga poutiaki i te rā 3 o Whiringa-ārangi i te tau 2011.

Whakaahuatanga ā-ture o te pito whenua

Ka tūtohu whakatikatika mātou i raro Kupu Āpiti 2 ki te whakaahuatanga o tētahi pito whenua i Narrow Neck, ina rā, kia mukua atu tētahi whakaahuatanga rēhita pānga ā-rorohiko kore-hāngaitanga.

Rūnangatanga whakaaro i te taha o te marea

Kua whakaaroarohia e mātou te pai rawa o te rūnangatanga whakaaro a te Karauna i te taha o te haporī hau kāinga, me te Kaunihera o Tāmaki-makau-rau. I whakamōhiohia atu ki Te Wānanga o Te Pātaka Kai o Tīkapa Moana, tērā rangatōpū i whakaturengia i raro i Te Ture Papa Rēhia o Te Pātaka Kai o Tīkapa Moana, te hiahia o te Karauna ki te whakauru i te ritenga hoko mai, rīhitia anōtia hoki mō te tūnga i Narrow Neck ki roto i te mōkihi whakataunga i te marama o Paenga-whāwhā 2011. He mema o Te Wānanga o Te Pātaka Kai o Tīkapa moana te Kaunihera o Tāmaki-makau-rau. Ki tō mātou mōhio, kāore taua wānanga i whakautu mai.

Ki a mātou nei, nā te muna o te āhua o ngā whiriwhiringa whakataunga, ka itiiti te wā mō te marea me te Karauna ki te rūnangatanga whakaaro, ā, nā runga i tērā kua kore te marea e tino whai wāhi. Ahakoa tērā, i puta te tohu ki te marea mō te whakaurunga o ngā pito whenua waonga a te taua moana hei whakatika hapa aru-moni i te manakohanga o te Whakaaetanga Mātāpono i te tau 2006, ā, i te wā anō hoki i whakaretangia te Whakaaetanga Whakataunga i te tau 2011.

Poronga Wakakura

I te wā nei, mā tētahi ara hīkoi te marea e uru atu ai ki te Ahaaha o Mary Barrett i te taha tonga o te poronga o Wakakura. Ka noho ngā wāhanga urunga o te Ahaaha me te ara hīkoi ki roto iho i te tapa haurokuroku, ā tōna wā te tūnga ka whakawhitia ki a Ngāti Whātua Ōrākei. Ka riro mā Te Tari Papa Atawhai e whakahaere te tapa. Kei roto hoki te toenga o ngā ahumahi pereki hītori i te poronga o Wakakura, ā, kei roto hoki te tūnga nei i te tapa haurokuroku. Ka akiaki mātou i ngā taha katoa ki te tiaki i ngā huakanga tukunga iho kei runga i te poronga o Wakakura.

Tautoko mō te pire

Āhuareka ana mātou ki te huhua kē nei o te hunga whakatakoto tāpaetanga i whakapuaki tautoko mō te whakataunga i hōmaitia rā i roto i te pire. Hēoi anō, i heke anō hoki ō mātou wairua nā te whakahēnga o aua hunga whakatakoto tāpaetanga i te pire, i te nuinga o te wā, nā te hotohoto, nā te pōhēhē. Ka akiaki mātou i ērā o te hāpori o Devonport, he nguengue o rātou mō te whakataunga, kia kaha te whakapiri atu ki a Ngāti Whātua Ōrākei, kia puāwai ai he hononga whai kiko. Ki a mātou nei, mā te pai ake o te whakawhitiwhiti whakaaro, o te whakawhitiwhiti kōrero hoki i waenganui i ngā taha e pā ana i te mea, he wā kei mua i te aroaro e noho kiritata ai rātou, tētahi ki tētahi. Mā tērā hoki e pai ake ai ngā rerekētanga i waenganui i a rātou, e kore ai hoki te hotohoto.

Tāpiritanga

Hātepe o te komiti

Nō te 8 o Poutū-te-rangi 2012 te Pire Whakataunga i ngā Kerēme a Ngāti Whātua Ōrākei i tonoa ki te komiti. Ko te 18 o Paenga-whāwhā 2012 te rā kati mō ngā tāpaetanga. E 99 ngā tāpaetanga a ngā kohinga whai pānga me te hunga takitahi i whiwhi, i whakaaroarohia e mātou. E 23 ngā tāpaetanga i rongō mātou, tae atu ki tētahi whakawātanga i whakatūria i Tāmaki-makau-rau.

I whiwhi whakamaherehere mātou mai i Te Tari Whakatau Take e pā ana ki Te Tiriti o Waitangi.

Ko ngā mema o te komiti, ko

Hōnore Tau Hēnare (Heamana)

Te Ururoa Flavell

Hone Harawira

Brendan Horan

Hōnore Parekura Horomia

Katrina Shanks

Rino Tirikātene

Mētīria Tūrei

Nicky Wagner

Louisa Wall

Louise Upston

Jonathan Young

Ngāti Whātua Ōrākei Claims Settlement Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Christopher Finlayson

Ngāti Whātua Ōrākei Claims Settlement Bill

Government Bill

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Schedule 5
Consequential amendments to enactments

65

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Ngāti Whātua Ōrākei Claims Settlement Act **2012**.
- 2 Commencement** 5
- (1) This Act, except **sections 54 and 55**, comes into force on the first day of the third month after the month in which the Act receives the Royal assent.
- (2) **Sections 54 and 55** come into force on a date appointed by the Governor-General by Order in Council. 10
- (3) A date may be appointed pursuant to **subsection (2)** only if the Governor-General is satisfied, at the time of the making of the Order, that the Crown has not received a notice from the trustee under clause 6.6 of the deed of settlement specifying that the trustee no longer wishes to purchase the Narrow Neck 15 property.

Part 1
Preliminary provisions and settlement of
historical claims

- 3 Purpose** 20
The purpose of this Act is to give effect to certain provisions of the deed of settlement, which is a deed that settles the historical claims of Ngāti Whātua Ōrākei.
- 4 Act binds the Crown** 25
This Act binds the Crown.

5 Outline

- (1) This section is a guide to the overall scheme and effect of this Act. It does not affect the interpretation or application of the other provisions of this Act or the deed of settlement.
- (2) This Part—
- (a) sets out the purpose of this Act and specifies that it binds the Crown; and
 - (b) records the acknowledgements and the apology given by the Crown in the deed of settlement; and
 - (c) sets out the timing of actions or matters occurring or taking effect under this Act; and
 - (d) defines terms used in this Act, including key terms such as Ngāti Whātua Ōrākei and historical claims; and
 - (e) provides that the settlement of the historical claims is final; and
 - (f) provides for the effect of the settlement on the jurisdiction of a court, tribunal, or other judicial body in respect of the historical claims; and
 - (g) provides for a consequential amendment to the Treaty of Waitangi Act 1975 and removes the application of certain other statutory provisions; and
 - (h) provides for the effect of the settlement on certain memorials recorded on land registers; and
 - (i) provides to the trustee of the Ngāti Whātua Ōrākei Trust a mandate for negotiating outstanding claims; and
 - (j) preserves the right of Ngāti Whātua Ōrākei to participate in certain proceedings before the Waitangi Tribunal; and
 - (k) preserves the right of the Crown to provide redress to other persons; and
 - (l) provides for the exclusion of the law against perpetuities; and
 - (m) provides for access to the deed of settlement.
- (3) **Part 2** provides for the following cultural redress:
- (a) the issuing of protocols to the trustee of the Ngāti Whātua Ōrākei Trust by the Minister of Conservation, the Minister of Energy and Resources, and the Minister for Arts, Culture and Heritage; and

- (b) a statutory acknowledgement by the Crown of the statement made by Ngāti Whātua Ōrākei of their cultural, spiritual, historical, and traditional associations with certain land (the statutory area, as defined in **section 28(2)**); and 5
- (c) the vesting of the Pourewa Creek site in the trustee of the Ngāti Whātua Ōrākei Trust; and
- (d) the assignment of an official geographic name to Pourewa Creek.
- (4) **Part 3** provides for commercial redress and authorises the Crown to transfer commercial properties to give effect to the deed of settlement, including the Narrow Neck property. 10
- (5) **Part 4** relates to the Ōrākei Block (as described in **Schedule 3**). Parliament has previously partly addressed Ngāti Whātua Ōrākei grievances in relation to this block through the enactment of the Orakei Block (Vesting and Use) Act 1978 and the Orakei Act 1991. Those Acts— 15
- (a) provided for the recognition of rights secured to Ngāti Whātua Ōrākei in relation to the Ōrākei Block by the Treaty of Waitangi; and 20
- (b) gave effect to parts of an agreement reached between the Crown and Ngāti Whātua Ōrākei to implement, with modifications, certain of the recommendations made by the Waitangi Tribunal in November 1987 in the *Report of the Waitangi Tribunal on the Orakei Claim* (Wai 9); and 25
- (c) established the Ngāti Whātua of Orakei Māori Trust Board and continued it under the name of the Ngāti Whātua o Orakei Māori Trust Board (the **Board**); and
- (d) provided for the re-vesting of further portions of the Ōrākei Block in the Board, and for the extension of the Board's functions and powers; and 30
- (e) provided for the setting aside of certain other land as reserves, and their administration jointly by the Auckland City Council and the Board; and 35
- (f) protected land vested in the Board by imposing certain restrictions on the disposal of the land; and

- (g) granted exemptions to the Board in relation to the payment of rates, reserves contributions, land tax, and other charges.
- (6) **Part 4** builds on the settlements reached in those earlier Acts by carrying over those matters of continuing relevance (either with or without amendment) and specifying the powers to be exercised and the functions to be performed by Ngāti Whātua Ōrākei in relation to the Ōrākei Block. 5
- (7) **Part 5** provides for transitional provisions, consequential amendments, and other similar matters, including the dissolution of certain Ngāti Whātua Ōrākei governance entities, the transfer of their assets and liabilities to the trustee of the Ngāti Whātua Ōrākei Trust, and the repeal of the Orakei Act 1991. 10
- (8) There are 5 schedules, as follows:
- (a) **Schedule 1** describes the Pourewa Creek site: 15
- (b) **Schedule 2** describes the Narrow Neck property:
- (c) **Schedule 3** describes the hapū land within the Ōrākei Block:
- (d) **Schedule 4** sets out matters relating to the procedures of the Ngāti Whātua Ōrākei Reserves Board and its members: 20
- (e) **Schedule 5** sets out consequential amendments to enactments.
- 6 Text of acknowledgements**
- The text of the Crown’s acknowledgements set out in the deed of settlement is set out in the following subsections: 25
- Ngā Whakaaetanga*
- (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. 30 35

- (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 Ōrākei ka riro ki a rātou, nā runga i te hononga.
- (3) E whakaae ana te Karauna, mai i te tau 1840, nui tonu ngā whenua o Ngāti Whātua 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 Ōrākei mō ngā rā kei te tū.
- (4) E whakaae ana te Karauna, kua kāwetoweto te āheitanga o Ngāti Whātua Ōrākei ki te whakahaere i tōna mana motuhake, nā runga i ngā mahi whakawehe i ngā hapū o Ngāti Whātua i ōna whenua.
- (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.
- (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.
- (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 o rātou uri whakatupu ā Ngāti Whātua Ōrākei.
- (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 whakawāteatanga 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 whakati-

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

- (9) E whakaae ana te Karauna, i puta he momo whakamau ki a Ngāti Whātua 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. 5

Acknowledgements

- (10) 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. 10 15
- (11) 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.
- (12) 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. 20 25
- (13) The Crown acknowledges that land alienation has diminished the ability of Ngāti Whātua Ōrākei to exercise mana whenua.
- (14) The Crown acknowledges that certain regulations to protect Māori interests in the pre-emption waiver period were not applied correctly by the Crown. 30
- (15) 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. 35
- (16) The Crown acknowledges that its failure to set aside (entrusted to a board or committee) one-tenth of the lands transferred dur-

ing 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.

- (17) 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. 5 10
- (18) 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. 15

7 Text of apology

The text of the Crown’s apology set out in the deed of settlement is set out in the following subsections: 20

Whakapāha

- (1) Ka tuku whakapāha te Karauna ki a Ngāti Whātua Ōrākei, ki ō rātou tūpuna, me ō rātou uri whakatupu.
- (2) E aro ana te Karauna, mai i te tau 1840 i whai a Ngāti Whātua 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. 25
- (3) E tino āwhiti ana, e kaha pouri ana hoki te Karauna mō āna mahi tango whenua, i tata whenua kore ai a Ngāti Whātua 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 Ōrākei, ā, e rangona tonutia ana te pānga o aua pehitanga i ēnei rangi. 30
- (4) E tino whakapāha ana te Karauna mō tana kore whakahōnore i ōna here ki a Ngāti Whātua 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 nāiane, me tana tī- 35

mata i te hohau te rongō. E rika ana te Karauna ki te whakapai i tōna hononga me Ngāti Whātua Ōrākei i runga i te ngākau whakawhirinaki, mahi ngātahi, me te aro tuturu mō te Tiriti o Waitangi me ōna mātāpono.

Apology

- (5) The Crown makes this apology to Ngāti Whātua Ōrākei and to their ancestors and descendants. 5
- (6) 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. 10
- (7) 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. 15
- (8) 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. 20

8 Timing of actions or matters

- (1) Actions or matters occurring or taking effect under this Act occur or take effect on the settlement date. 25
- (2) However, if a provision of this Act requires an action or matter to occur or take effect on a date other than the settlement date, the action or matter occurs or takes effect on and from that other date. 30

Interpretation

9 Interpretation of Act generally

It is the intention of Parliament that the provisions of this Act are interpreted in a manner that best furthers the agreements expressed in the deed of settlement. 35

10 Interpretation

In this Act, unless the context requires another meaning,—

affected person has the meaning given by section 2AA(2) of the Resource Management Act 1991

Auckland Council means the local authority established by section 6(1) of the Local Government (Auckland Council) Act 2009 5

business day means a day of the week other than—

- (a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign’s birthday, and Labour Day; and 10
- (b) a day in the period starting on 25 December in a year and ending on 15 January in the following year; and
- (c) the day observed as the anniversary of the province of Auckland or the province of Wellington 15

commercial property—

- (a) means a property listed in part 3 of the property schedule of the deed of settlement, including the Narrow Neck property; but
- (b) does not include a property referred to in **paragraph (a) that is specified in a notice given under clause 6.6 of the deed of settlement unless and until the property is transferable in accordance with the deed of settlement** 20

conservation documents means—

- (a) any conservation management strategy (within the meaning of section 2(1) of the Conservation Act 1987) affecting the conservation protocol area: 25
- (b) any conservation management plan (within the meaning of section 2(1) of the Conservation Act 1987) affecting the conservation protocol area: 30
- (c) any freshwater fisheries management plan (within the meaning of section 2(1) of the Conservation Act 1987) affecting the conservation protocol area: 30
- (d) any management plan (within the meaning of section 2 of the National Parks Act 1980) affecting the conservation protocol area 35

conservation protocol—

- (a) means the protocol issued by the Minister of Conservation under **section 22(1)(a)**; and
- (b) includes any amendments made to the protocol under **section 22(1)(b)**

5

conservation protocol area means the area shown on the map attached to the conservation protocol

Crown has the meaning given by section 2(1) of the Public Finance Act 1989

Crown minerals protocol—

10

- (a) means the protocol issued by the Minister of Energy and Resources under **section 22(1)(a)**; and
- (b) includes any amendments made to the protocol under **section 22(1)(b)**

deed of settlement—

15

- (a) means the deed of settlement for Ngāti Whātua Ōrākei dated 5 November 2011, entered into by the Crown, the Statutory Trust Board (on behalf of Ngāti Whātua Ōrākei), and Ngati Whatua Orakei Trustee Limited; and
- (b) includes any schedules of or attachments to the deed; and
- (c) includes any amendments to the deed

20

effective date means the date that is 6 months after the settlement date

encumbrance means a lease, tenancy, licence, licence to occupy, easement, covenant, or other right or obligation affecting a property

25

Historic Places Trust means the New Zealand Historic Places Trust (Pouhere Taonga) continued by section 38 of the Historic Places Act 1993

30

historical claims has the meaning given by **section 12**

land holding agency,—

- (a) for the commercial property at 99 Owens Road, means LINZ;
- (b) for any other commercial property, means the New Zealand Defence Force

35

LINZ means Land Information New Zealand

Narrow Neck property means the land described in **Schedule 2**

Ngāti Whātua Ōrākei has the meaning given in **section 11**

Ngāti Whātua Ōrākei Reserves Board or **Reserves Board**

means the Ngāti Whātua o Orakei Reserves Board established by section 20 of the Orakei Act 1991 and continued (but re-named) by **section 66** of this Act 5

Ngāti Whātua Ōrākei Trust means the Ngāti Whātua Ōrākei Trust established for the benefit of Ngāti Whātua Ōrākei by a deed of trust dated 3 November 2011 10

Pourewa Creek Recreation Reserve means the reserve—

- (a) created by **section 42(3)**; and
- (b) named by **section 42(4)**

Pourewa Creek site means the land described in **Schedule 1**

primary area of interest of Ngāti Whātua Ōrākei means the primary area of interest shown in attachment 1 to the deed of settlement 15

protocol—

- (a) means a protocol issued under **section 22(1)(a)**; and
- (b) includes any amendments made to the protocol under **section 22(1)(b)** 20

Registrar-General means the Registrar-General of Land appointed under section 4 of the Land Transfer Act 1952

representative entity means—

- (a) the trustee; and 25
- (b) a person (including the trustee) acting for, or on behalf of,—
 - (i) the collective group referred to in **section 11(1)(a)**; or
 - (ii) 1 or more members of Ngāti Whātua Ōrākei; or 30
 - (iii) 1 or more of the whānau, hapū, or groups referred to in **section 11(1)(c)**

resource consent has the meaning given by section 2(1) of the Resource Management Act 1991

responsible Minister means,— 35

- (a) for the conservation protocol, the Minister of Conservation:

- (b) for the Crown minerals protocol, the Minister of Energy and Resources:
- (c) for the taonga tūturu protocol, the Minister for Arts, Culture and Heritage:
- (d) any other Minister of the Crown authorised by the Prime Minister to exercise powers, and perform functions and duties, in relation to a protocol 5

settlement date means the date of commencement of this Act

statutory acknowledgement has the meaning given by **section 28(1)** 10

Statutory Trust Board has the meaning given by **section 77(1)**

taonga tūturu—

- (a) has the meaning given by section 2(1) of the Protected Objects Act 1975; and 15
- (b) includes ngā taonga tūturu (as defined by section 2(1) of that Act)

taonga tūturu protocol—

- (a) means the protocol issued by the Minister for Arts, Culture and Heritage under **section 22(1)(a)**; and 20
- (b) includes any amendments made to the protocol under **section 22(1)(b)**

trustee means the trustee or trustees of the Ngāti Whātua Ōrākei Trust in its or their capacity as trustee or trustees of the Ngāti Whātua Ōrākei Trust. 25

11 Meaning of Ngāti Whātua Ōrākei

(1) In this Act, **Ngāti Whātua Ōrākei**—

- (a) means the collective group composed of individuals— 30
 - (i) who are descended from the ancestor Tuperiri; and
 - (ii) who are members of 1 or more hapū of Ngā Oho, Te Uringutu, and Te Tāōū that exercised customary rights predominantly in relation to the primary area of interest of Ngāti Whātua Ōrākei at any time after 6 February 1840; and 35
- (b) includes those individuals; and

- (c) includes every whānau, hapū, or group to the extent that it is composed of those individuals.
- (2) In this section, **customary rights** means rights according to tikanga Māori, including—
- (a) rights to occupy land; and 5
 - (b) rights in relation to the use of land or other natural or physical resources.
- 12 Meaning of historical claims**
- (1) In this Act, **historical claims**—
- (a) means the claims described in **subsection (2)**; and 10
 - (b) includes the claims described in **subsection (3)**; but
 - (c) does not include the claims described in **subsection (4)**.
- (2) The historical claims are every claim that Ngāti Whātua Ōrākei or a representative entity had on or before the settlement date, or may have after 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 20
 - (iv) from a fiduciary duty; or
 - (v) otherwise; and
 - (b) arises from, or relates to, acts or omissions before 21 September 1992— 25
 - (i) by, or on behalf of, the Crown; or
 - (ii) by or under legislation.
- (3) The historical claims include—
- (a) every claim to the Waitangi Tribunal that relates exclusively to Ngāti Whātua Ōrākei or a representative entity, including each of the following claims, to the extent that **subsection (2)** applies to the claim: 30
 - (i) Wai 186—Hurstmere Road, Takapuna claim:
 - (ii) Wai 253—Pukapuka claim:
 - (iii) Wai 261—4 Domett Avenue claim: 35
 - (iv) Wai 276—Sylvia Park claim:
 - (v) Wai 388—Tāmaki Makaurau claim:

- (vi) Wai 1063—Uruamo Orakei Block Alienation claim:
- (vii) Wai 1128—Te Tāōū Alienation claim; and
- (b) every other claim to the Waitangi Tribunal, including each of the following claims, to the extent that the claim relates to Ngāti Whātua Ōrākei or a representative entity and **subsection (2)** applies to the claim: 5
- (i) Wai 187—Awataha claim:
- (ii) Wai 279—Te Tāōū Reweti Charitable Trust claim: 10
- (iii) Wai 756—Southern Kaipara Lands and Resources claim:
- (iv) Wai 887—Ngawaka Tautari Lands (Auckland/Kaipara) claim:
- (v) Wai 1045—Ngati Mauri Land and Resources claim: 15
- (vi) Wai 1114—Te Runanga o Te Tāōū Lands and Resources claim; and
- (c) every claim to which **subsection (2)** applies that— 20
- (i) relates to the Ōrākei Block; and
- (ii) arises from, or relates to, acts or omissions by, or on behalf of, the Crown on or after 9 December 1991 and before 21 September 1992.
- (4) However, the historical claims do not include— 25
- (a) a claim that a member of Ngāti Whātua Ōrākei, or a whānau, hapū, or group referred to in **section 11(1)(c)**, had or may have that is founded on—
- (i) being descended from an ancestor other than Tuperiri; or
- (ii) a customary right exercised by members of 1 or more hapū of Ngā Oho, Te Uringutu, and Te Tāōū predominantly outside the primary area of interest of Ngāti Whātua Ōrākei at any time after 6 February 1840; or 30
- (b) a claim in relation to the Ōrākei Block to the extent that the claim was settled by section 19(2) of the Orakei Act 1991; or 35

- (c) a claim that a representative entity had or may have that is, or is founded on, a claim described in **paragraph (a)**.
- (5) A claim may be a historical claim whether or not the claim has arisen or been considered, researched, registered, notified, or made on or before the settlement date. 5

Settlement of historical claims

13 Settlement of historical claims final

- (1) The historical claims are settled.
- (2) The settlement of the historical claims is final and, on and from the settlement date, the Crown is released and discharged from all obligations and liabilities in respect of those claims. 10
- (3) **Subsections (1) and (2)** do not limit the acknowledgements expressed in, or the provisions of, the deed of settlement.
- (4) Despite any other enactment or rule of law, on and from the settlement date, no court, tribunal, or other judicial body has jurisdiction (including the jurisdiction to inquire or further inquire or to make a finding or recommendation) in respect of— 15
- (a) the historical claims; or
- (b) the deed of settlement; or 20
- (c) this Act; or
- (d) the redress provided under the deed of settlement or this Act.
- (5) **Subsection (4)** does not exclude the jurisdiction of a court, tribunal, or other judicial body in respect of the interpretation or implementation of the deed of settlement or this Act. 25

14 Amendment to Treaty of Waitangi Act 1975

- (1) This section amends the Treaty of Waitangi Act 1975.
- (2) In Schedule 3, insert in its appropriate alphabetical order “Ngāti Whātua Ōrākei Claims Settlement Act **2012, section 13(4) and (5)**”. 30

Protections no longer apply

15 Certain enactments do not apply

- (1) The enactments listed in **subsection (2)** do not apply—

- (a) to the Pourewa Creek site; or
- (b) to a commercial property, but only on and from the date that the property is transferred in accordance with the deed of settlement; or
- (c) for the benefit of Ngāti Whātua Ōrākei or a representative entity. 5
- (2) The enactments are—
- (a) sections 8A to 8HJ of the Treaty of Waitangi Act 1975:
- (b) sections 27A to 27C of the State-Owned Enterprises Act 1986: 10
- (c) sections 211 to 213 of the Education Act 1989:
- (d) Part 3 of the Crown Forest Assets Act 1989:
- (e) Part 3 of the New Zealand Railways Corporation Restructuring Act 1990.
- 16 Removal of memorials** 15
- (1) The chief executive of LINZ must issue to the Registrar-General 1 or more certificates that specify the legal description of, and identify the computer register that contains, each allotment—
- (a) that is all or part of the Pourewa Creek site or all or part of a commercial property; and 20
- (b) that is contained in a computer register that has a memorial recorded under any enactment listed in **section 15(2)**.
- (2) The chief executive of LINZ must issue a certificate under **subsection (1)**— 25
- (a) for the Pourewa Creek site as soon as is reasonably practicable after the settlement date; and
- (b) for a commercial property as soon as is reasonably practicable after the date on which the property is transferred in accordance with the deed of settlement. 30
- (3) A certificate must state that it is issued under this section.
- (4) The Registrar-General must, as soon as is reasonably practicable after receiving a certificate,—
- (a) register the certificate against each computer register identified in the certificate; and 35
- (b) remove each memorial recorded under an enactment listed in **section 15(2)** from each computer register

identified in the certificate, but only in respect of each allotment described in the certificate.

Other matters

- 17 Trustee to negotiate outstanding claims of Ngāti Whātua Ōrākei** 5
- (1) The trustee may negotiate with the Crown, or any other body or authority concerned, for the settlement of any outstanding claims relating to the customary rights and usages of Ngāti Whātua Ōrākei, including those matters that derive from the mana whenua of Ngāti Whātua Ōrākei in the Tāmaki isthmus. 10
- (2) The trustee has the sole authority to conduct negotiations on any claim referred to in **subsection (1)** in respect of Ngāti Whātua Ōrākei, or of any particular whānau, hapū, or group within Ngāti Whātua Ōrākei.
- (3) This section is subject to **section 13**. 15
- 18 Participation in certain Waitangi Tribunal matters unaffected**
- (1) Nothing in this Act limits or affects the rights of Ngāti Whātua Ōrākei to participate in any proceedings before the Waitangi Tribunal in order to— 20
- (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.
- (2) This section is for the avoidance of doubt. 25
- 19 The Crown not prevented from providing other similar redress**
- (1) The provision of the specified cultural redress does not prevent the Crown from doing anything that is consistent with that cultural redress, including— 30
- (a) providing, or agreeing to introduce legislation providing or enabling, the same or similar redress to any person other than Ngāti Whātua Ōrākei or the trustee; or
- (b) disposing of land.

- (2) However, **subsection (1)** is not an acknowledgement by the Crown or Ngāti Whātua Ōrākei that any other iwi or group has interests in relation to land or an area to which any of the specified cultural redress relates.
- (3) In this section, **specified cultural redress** means both of the following: 5
- (a) the protocols:
 - (b) the statutory acknowledgement.

20 Rule against perpetuities does not apply

- (1) The rule against perpetuities and the provisions of the Perpetuities Act 1964 do not— 10
- (a) prescribe or restrict the period during which—
 - (i) the Ngāti Whātua Ōrākei Trust may exist in law; or
 - (ii) the trustee may hold or deal with property (including income derived from property); or 15
 - (b) apply to a document entered into to give effect to the deed of settlement if the application of that rule or the provisions of that Act would otherwise make the document, or a right conferred by the document, invalid or ineffective. 20
- (2) However, if the Ngāti Whātua Ōrākei Trust is, or becomes, a charitable trust, the application (if any) of the rule against perpetuities or any provision of the Perpetuities Act 1964 to that trust must be determined under the general law. 25

21 Access to deed of settlement

The chief executive of the Ministry of Justice must make copies of the deed of settlement available—

- (a) for inspection free of charge, and for purchase at a reasonable price, at the head office of the Ministry of Justice in Wellington during working hours on any business day; and 30
- (b) free of charge on an Internet site maintained by or on behalf of the Ministry of Justice.

Part 2 Cultural redress

Subpart 1—Protocols

- 22 Authority to issue, amend, or cancel protocols**
- (1) Each responsible Minister may— 5
- (a) issue a protocol to the trustee in the form set out in part 2 of the documents schedule of the deed of settlement at the settlement date; and
- (b) amend or cancel that protocol.
- (2) A protocol may be amended or cancelled under **subsection (1)** at the initiative of either— 10
- (a) the trustee; or
- (b) the responsible Minister.
- (3) The responsible Minister may amend or cancel a protocol only after consulting, and having particular regard to the views of, the trustee. 15
- 23 Protocols subject to rights, functions, and obligations**
- Protocols do not restrict—
- (a) the ability of the Crown to exercise its powers and perform its functions and duties in accordance with the law and Government policy, which includes the ability to— 20
- (i) introduce legislation and change Government policy; and
- (ii) interact with or consult a person the Crown considers appropriate, including any iwi, hapū, marae, whānau, or other representative of tangata whenua; or 25
- (b) the responsibilities of a responsible Minister or a department of State; or
- (c) the legal rights of Ngāti Whātua Ōrākei or a representative entity. 30
- 24 Enforceability of protocols**
- (1) The Crown must comply with a protocol while it is in force.
- (2) If the Crown fails, without good cause, to comply with a protocol, the trustee may, subject to the Crown Proceedings Act 1950, enforce the protocol. 35

- (3) Despite **subsection (2)**, damages or any form of monetary compensation are not available as a remedy for a failure by the Crown to comply with a protocol.
- (4) To avoid doubt,—
- (a) **subsections (1) and (2)** do not apply to guidelines developed for the implementation of a protocol; and 5
- (b) **subsection (3)** does not affect the ability of a court to award costs incurred by the trustee in enforcing the protocol under **subsection (2)**.
- 25 Limitation of rights** 10
- (1) The conservation protocol does not have the effect of granting, creating, or providing evidence of—
- (a) rights relating to the common marine and coastal area (as defined by section 9(1) of the Marine and Coastal Area (Takutai Moana) Act 2011); or 15
- (b) an estate or interest in land held, managed, or administered under the Conservation Act 1987 or any enactment listed in Schedule 1 of that Act; or
- (c) an interest in, or rights relating to, flora or fauna managed or administered under the Conservation Act 1987 20 or any enactment listed in Schedule 1 of that Act.
- (2) The Crown minerals protocol does not have the effect of granting, creating, or providing evidence of an estate or interest in, or rights relating to, Crown-owned minerals.
- (3) The taonga tūturu protocol does not have the effect of granting, creating, or providing evidence of an estate or interest in, or rights relating to, taonga tūturu. 25
- (4) In **subsection (2)**, **Crown-owned mineral** means a mineral (as defined by section 2(1) of the Crown Minerals Act 1991)—
- (a) that is the property of the Crown under section 10 or 11 of that Act; or 30
- (b) over which the Crown has jurisdiction under the Continental Shelf Act 1964.
- 26 Noting of conservation protocol**
- (1) A summary of the terms of the conservation protocol must be noted in the conservation documents. 35

- (2) The noting of the conservation protocol is—
- (a) for the purpose of public notice only; and
 - (b) not an amendment to the conservation documents for the purposes of section 17I of the Conservation Act 1987 or section 46 of the National Parks Act 1980. 5
- 27 Noting of Crown minerals protocol**
- (1) A summary of the terms of the Crown minerals protocol must be noted in—
- (a) a register of protocols maintained by the chief executive of the Ministry of Economic Development; and 10
 - (b) the minerals programmes affecting the Crown minerals protocol area when those programmes are replaced.
- (2) The noting of the Crown minerals protocol is—
- (a) for the purpose of public notice only; and
 - (b) not an amendment to the minerals programmes for the purposes of the Crown Minerals Act 1991. 15
- (3) In this section,—
- Crown minerals protocol area** means the area shown on the map attached to the Crown minerals protocol, together with the adjacent waters 20
- minerals programme** has the meaning given by section 2(1) of the Crown Minerals Act 1991.

Subpart 2—Statutory acknowledgement

- 28 Interpretation**
- (1) In this Act, **statutory acknowledgement** means the acknowledgement made by the Crown in **section 29** in respect of the statutory area, on the terms set out in this subpart. 25
- (2) In this subpart,—
- statement of association** means the statement—
- (a) made by Ngāti Whātua Ōrākei of their particular cultural, spiritual, historical, and traditional association with the statutory area; and 30
 - (b) that is in the form set out in part 1 of the documents schedule of the deed of settlement at the settlement date

statutory area means—

- (a) the land owned by the Crown, and vested for control and management in the Auckland Council, at Kauri Point (as shown marked “A” on deed of settlement plan OTS–121–02); and 5
- (b) the land owned by the Crown and held for defence purposes at Kauri Point (as shown marked “B” on deed of settlement plan OTS–121–02).

29 Statutory acknowledgement by the Crown

The Crown acknowledges the statement of association. 10

30 Purposes of statutory acknowledgement

(1) The only purposes of the statutory acknowledgement are—

- (a) to require the Auckland Council, the Environment Court, and the Historic Places Trust to have regard to the statutory acknowledgement, as provided for in **sections 31 to 33**; and 15
- (b) to require the Auckland Council to provide summaries of resource consent applications, or copies of notices of resource consent applications, to the trustee, as provided for in **section 35**; and 20
- (c) to enable the trustee and members of Ngāti Whātua Ōrākei to cite the statutory acknowledgement as evidence of the association of Ngāti Whātua Ōrākei with the statutory area, as provided for in **section 36**.

(2) This section does not limit **sections 38 to 40**. 25

31 Auckland Council to have regard to statutory acknowledgement

(1) On and from the effective date, the Auckland Council must have regard to the statutory acknowledgement relating to the statutory area in deciding, under section 95E of the Resource Management Act 1991, whether the trustee is an affected person in relation to an activity within, adjacent to, or directly affecting the statutory area and for which an application for a resource consent has been made. 30

(2) **Subsection (1)** does not limit the obligations of the Auckland Council under the Resource Management Act 1991. 35

32 Environment Court to have regard to statutory acknowledgement

- (1) On and from the effective date, the Environment Court must have regard to the statutory acknowledgement relating to the statutory area in deciding, under section 274 of the Resource Management Act 1991, whether the trustee is a person who has an interest in proceedings that is greater than the interest that the general public has in respect of an application for a resource consent for activities within, adjacent to, or directly affecting the statutory area. 5 10
- (2) **Subsection (1)** does not limit the obligations of the Environment Court under the Resource Management Act 1991.

33 Historic Places Trust and Environment Court to have regard to statutory acknowledgement

- (1) This section applies if, on or after the effective date, an application is made under section 11 or 12 of the Historic Places Act 1993 for an authority to destroy, damage, or modify an archaeological site within the statutory area. 15
- (2) The Historic Places Trust must have regard to the statutory acknowledgement relating to the statutory area in exercising its powers under section 14 of the Historic Places Act 1993 in relation to the application, including in determining whether the trustee is directly affected by an extension of time. 20
- (3) The Environment Court must have regard to the statutory acknowledgement relating to the statutory area in determining under section 20 of the Historic Places Act 1993 an appeal against a decision of the Historic Places Trust in relation to the application, including in determining whether the trustee is directly affected by the decision. 25
- (4) In this section, **archaeological site** has the meaning given by section 2 of the Historic Places Act 1993. 30

34 Recording statutory acknowledgement on statutory plans

- (1) On and from the effective date, the Auckland Council must attach information recording the statutory acknowledgement to all statutory plans that wholly or partly cover the statutory area. 35

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- (2) The information attached to a statutory plan must include—
- (a) the provisions of **sections 29 to 33** in full; and
 - (b) the description of the statutory area; and
 - (c) the statement of association for the statutory area.
- (3) The attachment of information to a statutory plan under this section is for the purpose of public information only and, unless adopted by the Auckland Council as part of the statutory plan, the information is not—
- (a) part of the statutory plan; or
 - (b) subject to the provisions of Schedule 1 of the Resource Management Act 1991.
- (4) In this section, **statutory plan**—
- (a) means a district plan, regional plan, regional coastal plan, regional policy statement, or proposed policy statement (as defined by section 43AA of the Resource Management Act 1991); and
 - (b) includes a proposed plan (as defined by section 43AAC of that Act).
- 35 Provision of resource consent applications to trustee**
- (1) The Auckland Council must, for a period of 20 years starting on the effective date, provide the following to the trustee for each resource consent application for an activity within, adjacent to, or directly affecting the statutory area:
- (a) if the application is received by the Auckland Council, a summary of the application; or
 - (b) if notice of the application is served on the Auckland Council under section 145(10) of the Resource Management Act 1991, a copy of the notice.
- (2) The information provided in a summary of an application must be the same as would be given to an affected person by limited notification under section 95B of the Resource Management Act 1991, or as may be agreed between the trustee and the Auckland Council.
- (3) A summary of an application must be provided under **subsection (1)(a)**—
- (a) as soon as is reasonably practicable after the Auckland Council receives the application; and

- (b) before the Auckland Council decides under section 95 of the Resource Management Act 1991 whether to notify the application.
- (4) A copy of a notice of an application must be provided under **subsection (1)(b)** no later than 10 business days after the day on which the Auckland Council receives the notice. 5
- (5) This section does not affect the Auckland Council’s obligation,—
- (a) under section 95 of the Resource Management Act 1991, to decide whether to notify an application, and to notify the application if it decides to do so; or 10
- (b) under section 95E of that Act, to decide whether the trustee is an affected person in relation to an activity.
- 36 Use of statutory acknowledgement**
- (1) The trustee and any member of Ngāti Whātua Ōrākei may, as evidence of the association of Ngāti Whātua Ōrākei with the statutory area, cite the statutory acknowledgement that relates to the area in submissions to, and in proceedings before, the Auckland Council, the Environmental Protection Authority (**EPA**) or a board of inquiry under Part 6AA of the Resource Management Act 1991, the Environment Court, or the Historic Places Trust concerning activities within, adjacent to, or directly affecting the area. 15 20
- (2) The content of the statement of association is not, by virtue of the statutory acknowledgement, binding as fact on— 25
- (a) the Auckland Council:
- (b) the EPA or a board of inquiry under Part 6AA of the Resource Management Act 1991:
- (c) the Environment Court:
- (d) the Historic Places Trust: 30
- (e) parties to proceedings before the bodies specified in **paragraphs (a) to (d)**:
- (f) any other person who is entitled to participate in the proceedings specified in **paragraph (e)**.
- (3) However, the bodies and persons specified in **subsection (2)** may take the statutory acknowledgement into account. 35
- (4) To avoid doubt,—

- (a) neither the trustee nor members of Ngāti Whātua Ōrākei are precluded from stating that Ngāti Whātua Ōrākei has an association with the statutory area that is not described in the statutory acknowledgement; and
- (b) the content and existence of the statutory acknowledgement do not limit any statement made. 5

37 Trustee may waive rights

- (1) The trustee may waive the right to be provided with summaries, and copies of notices, of resource consent applications under **section 35** in relation to the statutory area. 10
- (2) Rights must be waived by written notice to the Auckland Council stating—
 - (a) the scope of the waiver; and
 - (b) the period for which it applies.
- (3) An obligation under this subpart does not apply to the extent that the corresponding right has been waived under this section. 15

38 Exercise of powers and performance of duties and functions

- (1) The statutory acknowledgement does not affect, and may not be taken into account by, a person exercising a power or performing a function or duty under legislation or a bylaw. 20
- (2) No person, in considering a matter or making a decision or recommendation under legislation or a bylaw, may give greater or lesser weight to the association of Ngāti Whātua Ōrākei with the statutory area than that person would give if there were no statutory acknowledgement for the area. 25
- (3) **Subsection (2)** does not limit **subsection (1)**.
- (4) This section is subject to the other provisions of this subpart.

39 Rights not affected

- (1) The statutory acknowledgement does not affect the lawful rights or interests of a person who is not a party to the deed of settlement. 30
- (2) This section is subject to the other provisions of this subpart.

40 Limitation of rights

- (1) The statutory acknowledgement does not have the effect of granting, creating, or providing evidence of an estate or interest in, or rights relating to, the statutory area.
- (2) This section is subject to the other provisions of this subpart. 5

41 Amendment to Resource Management Act 1991

- (1) This section amends the Resource Management Act 1991.
- (2) In Schedule 11, insert in its appropriate alphabetical order “Ngāti Whātua Ōrākei Claims Settlement Act **2012**”.

Subpart 3—Vesting of Pourewa Creek site 10

42 Vesting of Pourewa Creek site

- (1) The Pourewa Creek site ceases to be a conservation area under the Conservation Act 1987.
- (2) The fee simple estate in the Pourewa Creek site then vests in the trustee. 15
- (3) The Pourewa Creek site is then declared a reserve and classified as a recreation reserve subject to section 17 of the Reserves Act 1977.
- (4) The reserve created by **subsection (3)** is named Pourewa Creek Recreation Reserve. 20

43 Pourewa Creek site must remain vested in trustee

- (1) This section applies to the Pourewa Creek site once it is—
 - (a) vested in the trustee under **section 42(2)**; and
 - (b) declared a reserve under **section 42(3)**.
- (2) The trustee must not— 25
 - (a) transfer the fee simple estate in the site to any person; or
 - (b) mortgage, or give a security interest in, the site.
- (3) To avoid doubt, **subsection (2)** applies even if the reservation under **section 42(3)** is revoked in relation to all or part of the site. 30
- (4) Despite **subsection (2)**, the trustee may transfer the fee simple estate in the site if—
 - (a) the transferor of the site is or was the trustee; and

- (b) the transferee is the trustee of the same trust, after any new trustee has been appointed to the trust or any transferor has ceased to be a trustee of the trust; and
- (c) the transfer instrument is accompanied by a certificate given by the transferee, or the transferee’s solicitor, verifying that **paragraphs (a) and (b)** apply. 5

44 Pourewa Creek site vests subject to or together with encumbrances

- (1) The Pourewa Creek site vests in the trustee under **section 42(2)** subject to, or together with, the encumbrances listed in **Schedule 1** (whether as an existing encumbrance that continues to affect the property after the vesting or as a new encumbrance that first affects the property immediately after the vesting). 10
- (2) For the purposes of **subsection (1)**, the concessions apply— 15
 - (a) as if the trustee were the grantor of the concession; and
 - (b) with any other necessary modifications; and
 - (c) despite the change in status of the land in the site on the settlement date.
- (3) In **subsection (2)**, **the concessions** means the encumbrances listed in **Schedule 1** relating to Bellsouth New Zealand Limited (now Vodafone New Zealand Limited) and the St Heliers Bay Pony Club Incorporated. 20

45 Application of certain enactments to vesting

- (1) The vesting of the Pourewa Creek site in the trustee under **section 42(2)** (the **vesting**) is a disposition for the purposes of Part 4A of the Conservation Act 1987, but sections 24, 24A, and 24AA of that Act do not apply to the disposition. 25
- (2) If the reservation under **section 42(3)** of the Pourewa Creek site is revoked in relation to all or part of the site,— 30
 - (a) then the vesting is no longer exempt from section 24 of the Conservation Act 1987 (other than subsection (2A)) in relation to all or that part of the site (as the case may be); and
 - (b) section 25 of the Reserves Act 1977 (except subsection (2)) does not apply to the revocation. 35

- (3) Section 11 and Part 10 of the Resource Management Act 1991 do not apply to—
- (a) the vesting; or
 - (b) any matter incidental to, or required for the purpose of, the vesting. 5
- (4) The vesting does not—
- (a) limit section 10 or 11 of the Crown Minerals Act 1991; or
 - (b) affect other rights to subsurface minerals.
- 46 Administration of Pourewa Creek Recreation Reserve and application of Reserves Act 1977 10**
- (1) The Ngāti Whātua Ōrākei Reserves Board is the administering body of the Pourewa Creek Recreation Reserve for the purposes of the Reserves Act 1977 as if—
- (a) the reserve were vested in the Reserves Board under section 26 of that Act; and 15
 - (b) the Reserves Board were a local authority within the meaning of section 2(1) of that Act.
- (2) However, the Reserves Board must still submit its management plan for the reserve to the Minister for approval under section 41(13) of the Reserves Act 1977. 20
- (3) Section 10 of the Reserves Act 1977 applies to the Reserves Board as if it were a local authority in respect of the reserve.
- (4) The Reserves Board is not required to comply with section 88 of the Reserves Act 1977 in respect of the reserve. Instead, it must comply with **clause 5(1) of Schedule 4**. 25
- (5) To avoid doubt, sections 48A, 114, and 115 of the Reserves Act 1977 apply to the reserve.
- (6) The Minister must not change the name of the reserve under section 16(10) of the Reserves Act 1977 without the written consent of the Reserves Board, and section 16(10A) of that Act does not apply to any proposed change. 30
- (7) All costs and expenses incurred in and incidental to the administration of the reserve must be paid by the Auckland Council to the extent that any income arising from the reserve is insufficient to defray those costs and expenses. 35
- (8) **Subsection (7)** is subject to **clause 6 of Schedule 4**.

47 Pourewa Creek Recreation Reserve not Crown protected area

The Pourewa Creek Recreation Reserve is not a Crown protected area, despite section 4 of the New Zealand Geographic Board (Ngā Pou Taunaha o Aotearoa) Act 2008.

5

48 Registration of ownership and recording of application of enactments

(1) The Registrar-General must, in accordance with a written application by the Director-General of Conservation,—

(a) create 1 computer freehold register for the fee simple estate in the Pourewa Creek site in the name of the trustee; and

10

(b) record on the register any encumbrances that are registered, notified, or notifiable and that are described in the application; and

15

(c) record on the register that—

(i) **section 43** applies to the site; and

(ii) the site is subject to Part 4A of the Conservation Act 1987, but that section 24 of that Act does not apply; and

20

(iii) the site is subject to **section 45(2)**.

(2) **Subsection (1)** is subject to the completion of any survey necessary to create a computer freehold register.

(3) A computer freehold register must be created under this section as soon as is reasonably practicable after the settlement date, but no later than—

25

(a) 24 months after the settlement date; or

(b) any later date that may be agreed in writing by the Crown and the trustee.

(4) A notification made under **subsection (1)(c)(ii)** that the land is subject to Part 4A of the Conservation Act 1987 is to be treated as having been made in compliance with section 24D(1) of that Act.

30

(5) If the reservation of the Pourewa Creek site under **section 42(3)** is revoked in relation to—

35

(a) all of the site, then the Director-General must apply in writing to the Registrar-General to remove from any computer freehold register for the site—

- (i) the notification that section 24 of the Conservation Act 1987 does not apply to the site; and
- (ii) the notification that the site is subject to **section 45(2)**; or
- (b) part of the site, then the Registrar-General must ensure 5
that the notifications referred to in **paragraph (a)** remain only on any computer freehold register for the part of the site that remains a reserve.
- (6) The Registrar-General must comply with an application received in accordance with **subsection (5)(a)**. 10

Subpart 4—Assignment of official geographic name to Pourewa Creek

49 Interpretation

In this subpart,—

New Zealand Geographic Board means the board continued 15
by section 7 of the NZGB Act

NZGB Act means the New Zealand Geographic Board (Ngā Pou Taunaha o Aotearoa) Act 2008

official geographic name has the meaning given by section 4
of the NZGB Act. 20

50 Official geographic name assigned to Pourewa Creek

- (1) The name specified in the first column of the table in clause 5.11 of the deed of settlement is assigned to the feature described in the other columns of that table.
- (2) The assignment is to be treated as if it were the assignment 25
of an official geographic name by a determination of the New Zealand Geographic Board under section 19 of the NZGB Act that takes effect on the settlement date.

51 Publication of new name

The New Zealand Geographic Board must, as soon as practicable after the settlement date,— 30

- (a) give public notice of the assignment of the Pourewa Creek name under **section 50** in accordance with section 21(2) and (3) of the NZGB Act; but

- (b) state in the notices that the assignment took effect on the settlement date.

52 Alteration of new name

- (1) The New Zealand Geographic Board need not comply with the requirements of sections 16, 17, 18, 19(1), and 20 of the NZGB Act in making a determination to alter the official geographic name of the feature named by this subpart. 5
- (2) Instead, the Board may make the determination as long as it has the written consent of the trustee.
- (3) To avoid doubt, the Board must give public notice of the determination in accordance with section 21(2) and (3) of the NZGB Act. 10

**Part 3
Commercial redress**

53 The Crown may transfer commercial properties 15

The Crown (acting by and through the chief executive of the land holding agency) is authorised to do the following to give effect to the deed of settlement:

- (a) transfer the fee simple estate in a commercial property:
- (b) sign a transfer instrument or other document, or do anything else, to effect the transfer. 20

54 Narrow Neck property reserve status revoked

- (1) The reservation of the Narrow Neck property as a reserve for defence purposes subject to the Reserves Act 1977 is revoked.
- (2) Sections 24 and 25 of that Act do not apply to the revocation of its reserve status. 25

55 Hauraki Gulf Marine Park Act 2000 amended (to remove Narrow Neck property from its jurisdiction)

- (1) This section amends the Hauraki Gulf Marine Park Act 2000.
- (2) In Schedule 4, Part 2, replace the item with: 30
“All that land comprising 5.0024 hectares, more or less, being Section 2 SO 448861 and Sections 1, 2, and 3 SO 355498.”

56 Registrar-General to create computer freehold register

- (1) To the extent that a commercial property is not all of the land contained in a computer freehold register, or there is no computer freehold register for all or part of the property, the Registrar-General must, in accordance with a written application by a person authorised by the chief executive of the land holding agency,—
- (a) create a computer freehold register for the fee simple estate in the property in the name of the Crown; and
 - (b) record on the computer freehold register any encumbrances that are registered, notified, or notifiable and that are described in the application; and
 - (c) omit any statement of purpose from the computer freehold register.
- (2) **Subsection (1)** is subject to the completion of any survey necessary to create a computer freehold register.
- (3) The authorised person may grant a covenant to arrange for the later creation of a computer freehold register for any land that is to be transferred to the trustee or any other person for the purposes of **section 53(a)**.
- (4) Despite the Land Transfer Act 1952,—
- (a) the authorised person may request the Registrar-General to register the covenant under the Land Transfer Act 1952 by creating a computer interest register; and
 - (b) the Registrar-General must register the covenant in accordance with **paragraph (a)**.

57 Application of other enactments

- (1) Section 11 and Part 10 of the Resource Management Act 1991 do not apply to—
- (a) the transfer of a commercial property for the purposes of **section 53(a)**; or
 - (b) any matter incidental to, or required for the purpose of, the transfer.
- (2) The transfer of a commercial property for the purposes of **section 53(a)** does not—
- (a) limit section 10 or 11 of the Crown Minerals Act 1991; or
 - (b) affect other rights to subsurface minerals.

- (3) The transfer of a commercial property for the purposes of **section 53(a)** is a disposition for the purposes of Part 4A of the Conservation Act 1987, but sections 24(2A), 24A, and 24AA of that Act do not apply to the disposition.
- (4) **Subsection (5)** applies if a commercial property— 5
- (a) is transferred for the purposes of **section 53(a)** to a person other than the trustee; and
- (b) immediately before the transfer, was held for a public work (within the meaning of section 2 of the Public Works Act 1981). 10
- (5) An application may be made under section 42A of the Public Works Act 1981 by a person referred to in that section in relation to the commercial property as if it were land returned to Māori ownership.
- (6) In exercising the powers conferred by **section 53**, the Crown 15 is not required to comply with any other enactment that would otherwise regulate or apply to the transfer of a commercial property.
- (7) **Subsection (6)** is subject to **subsections (2) to (5)**.
- (8) The permission of a council under section 348 of the Local Government Act 1974 is not required for laying out, forming, granting, or reserving a private road, private way, or right of way required to fulfil the terms of the deed of settlement in relation to the transfer of a commercial property. 20
- 58 Certificate to accompany certain instruments for registration 25**
- (1) This section applies if—
- (a) a commercial property is transferred for the purposes of **section 53(a)** to a person other than the trustee; and
- (b) the person presents a transfer instrument for the transfer 30 to the Registrar-General for registration.
- (2) The instrument must be accompanied by a certificate given by the person or the person's solicitor verifying that the transfer is for the purposes of **section 53(a)**.
- (3) The Registrar-General must, upon receiving the transfer instrument and the certificate, and any other document required 35

for registration of the transfer instrument, register the person as the proprietor of the fee simple estate in the property.

Part 4 Ōrākei Block

- 59 Interpretation** 5
- In this Act, unless the context requires another meaning,—
- development land** means the land described in **Part 1 of Schedule 3**
- hapū land** means the papakāinga and the whenua rangatira and includes any relevant land to which **section 70** applies 10
- hapū reservation** means the land described in **Part 2 of Schedule 3**
- papakāinga**—
- (a) means— 15
- (i) the development land; and
- (ii) the hapū reservation; and
- (iii) the land described in **Part 3 of Schedule 3**; and
- (b) includes any relevant land to which **section 70** applies
- pūtea** means the assets vested in the trustee under **section 79**
- whenua rangatira** means the land described in **Part 4 of Schedule 3** and includes any relevant land to which **section 70** applies. 20

Vesting and status of hapū land

- 60 Vesting and status of hapū land** 25
- (1) The fee simple estate in the hapū land is vested in the trustee.
- (2) To avoid doubt, the hapū land continues to be deemed to be Maori freehold land within the meaning of section 4 of Te Ture Whenua Maori Act 1993.
- (3) To avoid doubt, the whenua rangatira continues to be— 30
- (a) deemed to be set apart as a Maori reservation for the common use and benefit of Ngāti Whātua Ōrākei and the citizens of Auckland (but exempt from sections 338(3) and (5) to (14), 340, and 341 of Te Ture Whenua Maori Act 1993); and

- (b) treated as if it were a recreation reserve under the Reserves Act 1977.

61 Hapū reservation

The hapū reservation is held by the trustee—

- (a) for the common use and benefit of Ngāti Whātua Ōrākei; and 5
 (b) for the purposes of a marae, church, urupā, and related amenities.

Duties and powers of trustee in relation to hapū land and pūtea

10

62 Trustee duties and powers in respect of hapū land and pūtea

(1) The trustee must—

- (a) hold, conserve, administer, and develop the hapū land as a perpetual estate and tūrangawaewae for Ngāti Whātua Ōrākei; and 15
 (b) hold, conserve, administer, and develop the pūtea for Ngāti Whātua Ōrākei; and
 (c) provide services and amenities in relation to the hapū land and the pūtea. 20

(2) Subject to this Act and any other enactment, the trustee has and may exercise all the powers and authorities as may be necessary to enable it to perform its duties under **subsection (1)** in the interests of Ngāti Whātua Ōrākei.

63 Permissible dealings with hapū land and pūtea that is land 25

(1) The trustee may grant 1 or more easements—

- (a) to any person over any part of the hapū land;
 (b) to the Auckland Council over any pūtea that is land.

(2) An easement may be granted under **subsection (1)**—

- (a) for valuable consideration or otherwise; and 30
 (b) in gross or otherwise.

(3) The trustee may—

- (a) use the development land for housing or other non-commercial purposes; or

- (b) subdivide the development land for housing purposes;
or
 - (c) lease the development land for commercial purposes—
 - (i) as if the land were General land within the meaning of section 4 of Te Ture Whenua Maori Act 1993; and
 - (ii) on the terms it thinks fit.
- (4) However, at any time, no more than one-fifth of the development land may be leased by the trustee under **subsection (3)(c)**. 10
- (5) The trustee must transfer to the Auckland Council any road formed as part of a subdivision and development under **subsection (3)(b)**. 10
- (6) To avoid doubt, land used or subdivided in accordance with **subsection (3)(a) or (b)** is not development land for the purposes of **subsection (4)** regardless of whether any improvements on the land are leased, tenanted, or otherwise occupied. 15

64 Prohibited dealings with hapū land

Except as provided in **section 63**, the trustee must not sell, lease, mortgage, charge, or otherwise dispose of any hapū land. 20

Naming of whenua rangatira

65 Naming of whenua rangatira

- (1) The trustee may give the whenua rangatira the name or names it considers appropriate and notify the Minister of Māori Affairs of its decision. 25
- (2) The Minister must, by notice in the *Gazette*, publish any name given to the whenua rangatira by the trustee that is notified to him or her.

Ngāti Whātua Ōrākei Reserves Board

30

66 Ngāti Whātua Ōrākei Reserves Board

- (1) The Ngāti Whatua o Orakei Reserves Board established by section 20 of the Orakei Act 1991 is continued.

- (2) As from the settlement date, the Reserves Board is to be known as the Ngāti Whātua Ōrākei Reserves Board.
- (3) **Schedule 4** applies to the Reserves Board and its members.
- (4) The Reserves Board may regulate its own procedure subject to— 5
- (a) this Act; and
 - (b) any regulations made under **section 76**; and
 - (c) any regulations made under Te Ture Whenua Maori Act 1993 relating to trustees of Maori reservations that do not conflict with the provisions of this Act. 10

Duties and powers of Reserves Board in relation to whenua rangatira

67 Duties and powers of Reserves Board in relation to whenua rangatira

- (1) The Reserves Board must control and manage the whenua rangatira. 15
- (2) For the purposes of **subsection (1)**, the Reserves Board has, subject to this Act,—
- (a) the powers conferred on the trustees of a Maori reservation by any regulations made under section 338 of Te Ture Whenua Maori Act 1993; and 20
 - (b) the powers conferred by the Reserves Act 1977 on the administering body of a recreation reserve to control and manage a reserve.
- (3) Section 10 of the Reserves Act 1977 applies to the Reserves Board as if it were a local authority in respect of the whenua rangatira. 25
- (4) To avoid doubt, the Reserves Board must prepare and maintain a management plan, in accordance with section 41 of the Reserves Act 1977, to provide for the uses to which the whenua rangatira may be put. 30

68 Power to grant leases and licences

- (1) The Reserves Board may, on behalf of the trustee or in its own name, grant, in writing, leases or licences over any part or parts of the whenua rangatira to enable 1 or more members of Ngāti 35

Whātua Ōrākei to carry on farming activities or to conduct any tribal, community, or cultural activities.

- (2) **Subsection (1)**—
- (a) overrides any enactment to the contrary; but
 - (b) is subject to the management plan prepared in accordance with **section 67(4)**. 5

Costs of managing whenua rangatira

69 Costs of management of whenua rangatira

- (1) All costs and expenses incurred in and incidental to the control and management of the whenua rangatira must be paid by the Auckland Council to the extent that any income arising from the whenua rangatira is insufficient to defray those costs and expenses. 10
- (2) This section is subject to **clause 6 of Schedule 4**.

Miscellaneous matters 15

70 Stopped roads to vest in trustee

- (1) In this section, **road** means a road or access way, or any part of a road or access way, that is—
- (a) vested in the Auckland Council; and
 - (b) adjoining any part of the hapū land. 20
- (2) **Subsection (3)** applies if the Auckland Council stops a road.
- (3) On and from the stopping of the road, the road—
- (a) vests in fee simple in the trustee; and
 - (b) becomes part of the adjoining hapū land (as papakāinga or whenua rangatira, as the case may be). 25

71 Application of Resource Management Act 1991

- (1) **Section 63(3)(a)** applies despite anything in the relevant district plan or regional plan.
- (2) Any subdivision of the development land under **section 63(3)(b)** is subject to the Resource Management Act 1991. 30

72 Exemption from payment of rates and other charges

The whenua rangatira, the hapū reservation, and, to the extent that it remains undeveloped, the development land—

- (a) are not rateable under the Local Government (Rating) Act 2002; and
- (b) are exempt from all other taxes and charges from time to time imposed by the Auckland Council.

73 No reserves contribution to be required on subdivision 5

- (1) In respect of any subdivision of hapū land permitted by this Act, the trustee is not liable to—
 - (a) make provision for reserves; or
 - (b) pay any sum in lieu of making provision for reserves.
- (2) **Subsection (1)** applies despite anything to the contrary in the Resource Management Act 1991 or any regional plan or district plan. 10

74 Exemption from payment of land tax

The trustee is not liable to pay any land tax in respect of the hapū land or any pūtea that is land. 15

75 Registrars to give effect to provisions of this Part

- (1) The Registrar-General and the Registrar of the Maori Land Court must, without fee, make entries in any register or other record kept by him or her, and do all other things, that are necessary to give full effect to the provisions of this Part. 20
- (2) In the performance of any duty under **subsection (1)**, the Registrar-General and the Registrar of the Maori Land Court must, on request and without fee, issue to the trustee a computer freehold register or other instrument of title in respect of any land vested in the trustee by this Part. 25
- (3) This section overrides any other enactment.

Regulations

76 Regulations

The Governor-General may, by Order in Council, make regulations for 1 or more of the following purposes: 30

- (a) facilitating the ability of the Reserves Board to grant leases or licences over the whenua rangatira pursuant to **section 68**:

- (b) prescribing any act or thing necessary to render more effectual the administration of the Reserves Board, or its management of the whenua rangatira:
- (c) providing for any other matters that are contemplated by or necessary for giving full effect to the provisions of this Part or necessary for the due administration of this Part. 5

Part 5 Transitional provisions, consequential amendments, etc 10

Subpart 1—Governance entities

77 Interpretation

- (1) In this subpart and **subpart 2**,—

assets means assets of any kind, whether real or personal property, money, rights, or interests 15

Charitable Trust Board means the Ngati Whatua o Orakei Maori Trust Board incorporated as a Board under the Charitable Trusts Act 1957 on 20 November 1992 (registration number 570546)

exempt income has the meaning given by section YA 1 of the Income Tax Act 2007 20

Inland Revenue Acts has the meaning given by section 3(1) of the Tax Administration Act 1994

liabilities includes debts, charges, duties, and other obligations, whether present, future, actual, contingent, payable, or to be observed or performed in New Zealand or elsewhere 25

Statutory Trust Board means the Ngati Whatua o Orakei Maori Trust Board continued by section 9(1) of the Orakei Act 1991

subsidiaries means— 30

- (a) Ngati Whatua o Orakei Corporate Limited and its subsidiary Corporate Property Investments Limited; and
- (b) Orakei Retirement Care Limited; and
- (c) Orakei Management Services Limited; and
- (d) Tamaki Retirement Care Limited; and 35
- (e) Tamaki Management Services Limited; and

- (f) Ngati Whatua o Orakei Tourism Limited
taxable income has the meaning given by section YA 1 of the Income Tax Act 2007
transferred employee means a person to whom **section 89** applies. 5
- (2) In this subpart and **subpart 2**, unless the context requires another meaning, terms used and not defined in this subpart, but defined in the Inland Revenue Acts, have the meanings given in those Acts.
- Dissolution of Statutory Trust Board* 10
- 78 Dissolution of Statutory Trust Board**
- (1) On the commencement of this Act, the Statutory Trust Board is dissolved and—
- (a) the term of office of the members of the Statutory Trust Board expires; and 15
- (b) proceedings by or against the Statutory Trust Board may be continued, completed, or enforced by or against the trustee (without amendment to the proceedings); and
- (c) a reference to the Statutory Trust Board (express or implied) in any enactment (other than this Act), or in any instrument, register, agreement, deed, lease, application, notice, or other document in force or in effect immediately before the commencement of this Act must, unless the context requires another meaning, be read as a reference to the trustee. 20 25
- (2) A person holding office as a member of the Statutory Trust Board immediately before the commencement of this Act is not entitled to compensation as a result of the expiry under this section of his or her term of office.
- 79 Vesting of assets and liabilities of Statutory Trust Board** 30
- (1) On the commencement of this Act, the assets and liabilities of the Statutory Trust Board vest in the trustee and become the assets and liabilities of the trustee.
- (2) In this section, **assets** and **liabilities**—

- (a) means the assets and liabilities owned, controlled, or held by the Statutory Trust Board immediately before the commencement of this Act; but
- (b) does not include the land vested in the trustee by **Part 4**.

80 Final report of Statutory Trust Board 5

- (1) As soon as practicable after the commencement of this Act, the trustee must prepare a final report (as if the report were an annual report required under section 31 of the Maori Trust Boards Act 1955) to show the financial results of the operations of the Statutory Trust Board for the period beginning on the day after the last day covered by the previous annual report and ending on the day before the commencement of this Act. 10
- (2) As soon as practicable after the completion of the final report, the trustee must provide it to the Minister of Māori Affairs, who must present it to the House of Representatives as soon as practicable after receiving it. 15

Dissolution of Charitable Trust Board

81 Dissolution of Charitable Trust Board

- (1) On the commencement of this Act, the Charitable Trust Board is dissolved and— 20
 - (a) the term of office of the members of the Charitable Trust Board expires; and
 - (b) proceedings by or against the Charitable Trust Board may be continued, completed, or enforced by or against the trustee (without amendment to the proceedings); and 25
 - (c) a reference to the Charitable Trust Board (express or implied) in any instrument, register, agreement, deed, lease, application, notice, or other document in force or in effect immediately before the commencement of this Act must, unless the context requires another meaning, be read as a reference to the trustee. 30
- (2) A person holding office as a member of the Charitable Trust Board immediately before the commencement of this Act is not entitled to compensation as a result of the expiry under this section of his or her term of office. 35

82 Vesting of assets and liabilities of Charitable Trust Board

- (1) On the commencement of this Act, the assets and liabilities of the Charitable Trust Board vest in the trustee and become the assets and liabilities of the trustee.
- (2) **Subsection (1)** is subject to **subsection (3)**. 5
- (3) To the extent that any asset or liability of the Charitable Trust Board is owned or held subject to any charitable trusts, the asset or liability vests in the trustee—
- (a) freed of those charitable trusts; but
- (b) subject to the trusts expressed in the Ngāti Whātua Ōrākei Trust deed of trust. 10
- (4) In this section, **assets** and **liabilities** means the assets and liabilities owned, controlled, or held, wholly or in part, by the Charitable Trust Board immediately before the commencement of this Act. 15
- (5) To avoid doubt, the assets and liabilities of the subsidiaries continue to be the assets and liabilities of the subsidiaries.

83 Assets and liabilities of subsidiaries freed of charitable purposes

- (1) To the extent that immediately before the commencement of this Act any asset or liability of a subsidiary is held subject to any charitable purposes, on the commencement of this Act,—
- (a) the asset or liability is freed of those charitable purposes; and
- (b) the constitution of the subsidiary is deemed to have been amended to the extent necessary to give effect to **paragraph (a)**. 20 25
- (2) If, on the commencement of this Act, a subsidiary is a tax charity for the purposes of the Inland Revenue Acts, the subsidiary ceases to be a tax charity at that time. 30
- (3) To avoid doubt, nothing in this section has the effect, of itself, of causing a subsidiary to be a different person for the purposes of the Inland Revenue Acts.

*General matters relating to dissolution of
Statutory Trust Board and Charitable Trust
Board*

84 Matters not affected by transfer

- Nothing given effect to or authorised by this subpart— 5
- (a) places the Statutory Trust Board, the Charitable Trust Board, the trustee, the Crown, or any other person or body in breach of a contract or confidence, or makes them guilty of a civil wrong; or
 - (b) gives rise to a right for any person to terminate or cancel any contract or arrangement, to accelerate the performance of an obligation, to impose a penalty, or to increase a charge; or 10
 - (c) places the Statutory Trust Board, the Charitable Trust Board, the trustee, the Crown, or any other person or body in breach of an enactment, rule of law, or contract that prohibits, restricts, or regulates the assignment or transfer of an asset or a liability or the disclosure of information; or 15
 - (d) releases a surety, wholly or in part, from an obligation; or 20
 - (e) invalidates or discharges a contract.

85 Status of contracts and other instruments

- (1) In **subsection (2)**, **instruments** means contracts, agreements, conveyances, deeds, leases, licences, undertakings, notices, and other instruments entered into by, made with, given to or by, or addressed to, the Statutory Trust Board or the Charitable Trust Board (whether alone or with another person) before the commencement of this Act and in effect immediately before that date. 25 30
- (2) Instruments are binding on, and enforceable by, against, or in favour of, the trustee as if the instruments had been entered into by, made with, given to or by, or addressed to or by, the trustee and not the Statutory Trust Board or the Charitable Trust Board. 35

86 Status of existing securities

- (1) A security held by the Statutory Trust Board or the Charitable Trust Board as security for a debt or other liability to the Statutory Trust Board or the Charitable Trust Board incurred before the commencement of this Act— 5
- (a) is available to the trustee as security for the discharge of that debt or liability; and
- (b) if the security extends to future or prospective debts or liabilities, is available as security for the discharge of debts or liabilities to the trustee incurred on or after the commencement of this Act. 10
- (2) The trustee is entitled to the same rights and priorities, and is subject to the same liabilities, in relation to the security as the Statutory Trust Board or the Charitable Trust Board would be if this Act had not been passed. 15

87 Books and documents to remain evidence

- (1) A document, matter, or thing that would have been admissible in evidence for or against the Statutory Trust Board or the Charitable Trust Board is, on and after the commencement of this Act, admissible in evidence for or against the trustee. 20
- (2) For the purposes of this section, **document** has the same meaning as in section 4(1) of the Evidence Act 2006.

88 Registers

- (1) The Registrar-General or any other person charged with keeping books or registers is not required to change the name of the Statutory Trust Board or the Charitable Trust Board to the name of the trustee in the books or registers or in a document solely because of the provisions of this subpart. 25
- (2) If the trustee presents an instrument to a registrar or other person, the presentation of that instrument is, in the absence of evidence to the contrary, sufficient proof that the property is vested in the trustee, as specified in the instrument. 30
- (3) For the purposes of **subsection (2)**, the instrument need not be an instrument of transfer, but must—
- (a) be executed or purport to be executed by the trustee; and 35

- (b) relate to assets or liabilities held, managed, or controlled by the Statutory Trust Board or the Charitable Trust Board, or any entity wholly or partly owned or controlled by the Statutory Trust Board or the Charitable Trust Board, immediately before the commencement of this Act; and 5
- (c) be accompanied by a certificate given by the trustee or its solicitor stating that the property was vested in the trustee by or under this Act.

*Employees of Statutory Trust Board and
Charitable Trust Board* 10

89 Transfer of employees

On the commencement of this Act, each employee of the Statutory Trust Board or the Charitable Trust Board ceases to be an employee of the board and becomes an employee of the trustee. 15

90 Protection of terms and conditions of employment

(1) The employment of a transferred employee must be on terms and conditions no less favourable to the transferred employee than those applying to him or her immediately before the commencement of this Act. 20

(2) **Subsection (1)**—

- (a) continues to apply to the terms and conditions of employment of a transferred employee until the terms and conditions are varied by agreement between the transferred employee and the trustee; and 25
- (b) does not apply to a transferred employee who accepts any subsequent appointment with the trustee.

91 Continuity of employment

For the purposes of any enactment, rule of law, determination, contract, or agreement relating to the employment of a transferred employee, the transfer of the person's employment from the Statutory Trust Board or the Charitable Trust Board to the trustee does not, of itself, break the employment of that person, and the period of his or her employment by the Statutory 35

Trust Board or the Charitable Trust Board is to be regarded as having been a period of service with the trustee.

92 No compensation for technical redundancy

A transferred employee is not entitled to receive any payment or any other benefit solely on the ground that— 5

- (a) the position held by the employee with the Statutory Trust Board or the Charitable Trust Board has ceased to exist; or
- (b) the employee has ceased, as a result of his or her transfer to the trustee, to be an employee of the Statutory Trust Board or the Charitable Trust Board. 10

Reserves Board

93 Reserves Board

- (1) Each member of the Reserves Board in office immediately before the commencement of this Act continues in office for the residue of the term for which he or she was appointed. 15
- (2) The members holding office as chairperson and deputy chairperson of the Reserves Board continue in office for the residue of the term for which they were appointed.
- (3) The first meeting of the Reserves Board under this Act must be held no later than 6 months after the last meeting held by the Reserves Board under the Orakei Act 1991. 20

Subpart 2—Transitional taxation provisions

94 Application of this subpart

This subpart applies, by virtue of the vestings under **Part 4** and the reorganisation of the governance of Ngāti Whātua Ōrākei under **subpart 1**, for the purposes of the Inland Revenue Acts. 25

Statutory Trust Board

95 Taxation in respect of transfer of assets and liabilities of Statutory Trust Board

- (1) On and from the date on which the assets and liabilities of the Statutory Trust Board vest in the trustee under **Part 4 and section 79**,— 30

- (a) the trustee is deemed to be the same person as the Statutory Trust Board; and
 - (b) everything done by the Statutory Trust Board before the assets and liabilities vest in the trustee is deemed to have been done by the trustee on the date that it was done by the Statutory Trust Board. 5
- (2) Income derived or expenditure incurred by the Statutory Trust Board before the assets and liabilities vest in the trustee does not become income derived or expenditure incurred by the trustee just because the assets and liabilities vest in the trustee under **Part 4 or section 79**. 10

Charitable Trust Board

96 Taxation in respect of transfer of assets and liabilities of Charitable Trust Board

- (1) On and from the date on which the assets and liabilities of the Charitable Trust Board vest in the trustee under **section 82(1)**,— 15
- (a) the trustee is deemed to be the same person as the Charitable Trust Board; and
 - (b) everything done by the Charitable Trust Board before the assets and liabilities vested in the trustee is deemed to have been done by the trustee on the date that it was done by the Charitable Trust Board. 20
- (2) Income derived or expenditure incurred by the Charitable Trust Board before the assets and liabilities vest in the trustee does not become income derived or expenditure incurred by the trustee just because the assets and liabilities vest in the trustee under **section 82(1)**. 25
- (3) If income of the Charitable Trust Board derived from a financial arrangement, trading stock, revenue account property, or depreciable property is exempt income of the Charitable Trust Board but is not exempt income of the trustee, the trustee is to be treated as having acquired the financial arrangement, trading stock, revenue account property, or depreciable property— 30
- (a) on the day that it becomes the trustee’s property; and 35
 - (b) for a consideration that is its market value on that day.

- (4) The trustee must identify the undistributed charitable amount, using the following formula:

$$a - b$$

where—

- a is the total of the amounts derived by the Charitable Trust Board that, but for the application of sections CW 41 and CW 42 of the Income Tax Act 2007, would have been taxable income derived by the Charitable Trust Board before the commencement of this Act 5
- b is the total of the amounts described in variable a that have been distributed before the commencement of this Act. 10
- (5) The undistributed charitable amount described in **subsection (4)** is excluded from the corpus of the Ngāti Whātua Ōrākei Trust for the purposes of the Income Tax Act 2007, to the extent to which it is otherwise included but for this subsection. 15
- (6) If the trustee distributes any of the undistributed charitable amount to a person, that amount is treated as beneficiary income for the purposes of the Income Tax Act 2007, unless **subsection (7)** applies. 20
- (7) If the trustee distributes any of the undistributed charitable amount for a charitable purpose, the distribution is exempt income of the recipient.

Election by trustee to be Maori authority

- 97 Election by trustee to be Maori authority** 25
- (1) If the trustee makes an election under section HF 11 of the Income Tax Act 2007 to become a Maori authority, to the extent that the amount referred to in **section 94(4)** is distributed in an income year, that distribution will be—
- (a) exempt income if the distribution is applied for a charitable purpose; or 30
- (b) a taxable Maori authority distribution.
- (2) If this section applies, the distribution must be disregarded for the purposes of section HF 8 of the Income Tax Act 2007.

*Subsidiaries***98 Taxation in respect of assets and liabilities of subsidiaries**

- (1) This section applies if income of a subsidiary derived from a financial arrangement, trading stock, revenue account property, or depreciable property is exempt income of the subsidiary before the commencement of this Act and ceases to be exempt income as a result of the application of **section 83**. 5
- (2) The subsidiary is to be treated as having acquired the financial arrangement, trading stock, revenue account, or depreciable property for a consideration that is its market value on the commencement of this Act. 10

99 Election by subsidiary to be Maori authority

- (1) If a subsidiary makes an election under section HF 11 of the Income Tax Act 2007 to become a Maori authority, income derived by the subsidiary before the commencement of this Act that was exempt income under sections CW 41 and CW 42 of that Act must be treated as a taxable Maori authority distribution if, after the commencement of this Act, it is distributed by the subsidiary in an income year. 15
- (2) If this section applies, the distribution must be disregarded for the purposes of section HF 8 of the Income Tax Act 2007. 20

Subpart 3—Repeal of Orakei Act 1991
and consequential amendments to other
enactments

100 Orakei Act 1991 repealed 25

The Orakei Act 1991 (1991 No 122) is repealed.

101 Consequential amendments to other enactments

Amend the enactments specified in **Schedule 5** as set out in that schedule.

Schedule 1**ss 10, 44****Pourewa Creek site: Land description**

Land Description	Encumbrances
<i>North Auckland Land District—Auckland City</i>	
6.8250 hectares, more or less, being Section 1 SO 445650	Recreation reserve subject to section 17 of the Reserves Act 1977
26.8000 hectares, more or less, being Section 2 SO 445650. Part computer freehold registers NA646/33 and NA974/199	Subject to a right to convey and drain stormwater. Created by deed of easement 5486019.5 (affects Section 1 SO 445650 only)
	Easements created by deed of easement 5486019.5 are subject to section 243(a) of the Resource Management Act 1991
	Subject to an unregistered deed of authority (to use the site for a station for the transmission, emission, or reception of any form of radio, electric, or electronic communication) to Bellsouth New Zealand Limited (now Vodafone New Zealand Limited), dated 20 June 1995 as renewed by deed of authority dated 11 February 2008 (affects Section 2 SO 445650 only)
	Subject to an unregistered concession for a lease and licence to St Heliers Bay Pony Club Incorporated, dated 10 May 2001 as renewed and varied by concession document numbered AK-0041-GRA and dated 10 August 2011

Schedule 2

s 10

Narrow Neck property: Land description

North Auckland Land District—Auckland City

3.2085 hectares, more or less, being Section 1 SO 448861: ~~Part com-~~
~~puter interest register 330050~~

5

Schedule 3**s 59****Ōrākei Block: Hapū land description****Part 1****Development land (papakāinga)**

1.7414 hectares, more or less, being Lots 1 to 8 and 10 to 19 DP 40823. Balance computer freehold register NA99C/181	5
809 square metres, more or less, being Lot 9 DP 40823. All computer freehold register 515541	
5 309 square metres, more or less, being Lots 30 to 34 DP 37786. All computer freehold register NA99C/182	10
1.1429 hectares, more or less, being Section 810 Town of Orakei. All computer freehold register NA99C/183	
8 410 square metres, more or less, being Section 1 SO 446761. Part computer freehold register NA99C/205	
5.9007 hectares, more or less, being Sections 2 to 6 SO 446762. Part computer freehold registers 366906, NA99C/185, NA99C/186 and NA99C/189	15
288 square metres, more or less, being Lot 1 DP 391385 together with a 1/16 share in 955 square metres, more or less, being Lot 100 DP 391385. All computer freehold register 366897	20
233 square metres, more or less, being Lot 2 DP 391385 together with a 1/16 share in 955 square metres, more or less, being Lot 100 DP 391385. All computer freehold register 366898	
233 square metres, more or less, being Lot 3 DP 391385 together with a 1/16 share in 955 square metres, more or less, being Lot 100 DP 391385. All computer freehold register 366899	25
262 square metres, more or less, being Lot 4 DP 391385 together with a 1/16 share in 955 square metres, more or less, being Lot 100 DP 391385. All computer freehold register 366900	
284 square metres, more or less, being Lot 13 DP 391385 together with a 1/16 share in 955 square metres, more or less, being Lot 100 DP 391385. All computer freehold register 366901	30
222 square metres, more or less, being Lot 14 DP 391385 together with a 1/16 share in 955 square metres, more or less, being Lot 100 DP 391385. All computer freehold register 366902	35

Part 1—*continued*

221 square metres, more or less, being Lot 15 DP 391385 together with a 1/16 share in 955 square metres, more or less, being Lot 100 DP 391385. All computer freehold register 366903	
321 square metres, more or less, being Lot 16 DP 391385 together with a 1/16 share in 955 square metres, more or less, being Lot 100 DP 391385. All computer freehold register 366904	5
2 477 square metres, more or less, being Lot 17 DP 391385 together with a 1/16 share in 955 square metres, more or less, being Lot 100 DP 391385. All computer freehold register 366905	
1 103 square metres, more or less, being Lot 3 DP 50515. All computer freehold register NA99C/187	10
3 285 square metres, more or less, being Lots 2 to 4 DP 39988. All computer freehold register NA99C/188	
573 square metres, more or less, being Section 2 SO 63269. All computer freehold register NA99C/190	15
5 895 square metres, more or less, being Section 3 SO 63269. All computer freehold register 557119	
5 641 square metres, more or less, being Lot 1 DP 92924. All computer freehold register NA99C/193	
7 473 square metres, more or less, being Lot 2 DP 92924. All computer freehold register NA99C/194	20
3 460 square metres, more or less, being Lot 3 DP 92925. All computer freehold register NA99C/195	

Part 2

Hapū reservation (papakāinga)	25
4 535 square metres, more or less, being Section 722 Town of Orakei. All computer freehold register NA99C/196	
1.2157 hectares, more or less, being Section 790 Town of Orakei. All computer freehold register NA99C/197	
9 square metres, more or less, being Section 793 Town of Orakei. All computer freehold register NA99C/198	30
94 square metres, more or less, being Section 794 Town of Orakei. All computer freehold register NA99C/199	

Part 2—*continued*

1 229 square metres, more or less, being Section 1 SO 63269. All computer freehold register NA99C/200	
1 721 square metres, more or less, being Section 792 Town of Orakei. All computer freehold register NA99C/201	
2 012 square metres, more or less, being Section 802 Town of Orakei. All computer freehold register NA99C/202	5
1 644 square metres, more or less, being Orakei No 1 Reserve C. All computer freehold register NA99C/203	

Part 3

Stopped road (papakāinga)	10
232 square metres, more or less, being Stopped Road shown marked “F” on SO 63269. All computer freehold register 557699	

Part 4

Whenua rangatira

2.1047 hectares, more or less, being Section 1 SO 63319. All computer freehold register NA99C/204	15
37.8620 hectares, more or less, being Section 2 SO 446761. Balance computer freehold register NA99C/205	
1.5200 hectares, more or less, being Section 1 SO 446762. Part computer freehold registers 366906, NA99C/185, NA99C/186 and NA99C/189	20
5.9994 hectares, more or less, being Section 1 SO 63318. All computer freehold register NA99C/206	
5 817 square metres, more or less, being Section 24 Block VIII Rangitoto Survey District. All computer freehold register NA99C/207	25
234 square metres, more or less, being Section 815 Town of Orakei. All computer freehold register NA99C/208	
1.3568 hectares, more or less, being Section 2 SO 65657. All computer freehold register NA99C/209	

Note: The computer freehold registers specified in this schedule are the registers that exist on the settlement date.

Schedule 4**s 66(3)****Ngāti Whātua Ōrākei Reserves Board****1 Membership of Reserves Board**

- (1) The Reserves Board comprises—
- (a) 6 individuals; or 5
 - (b) any greater even number of individuals as may be fixed by written agreement between the Auckland Council and the trustee.
- (2) One-half of the members must be appointed in writing by the trustee. 10
- (3) One-half of the members must be appointed in writing by the Auckland Council.
- (4) Subject to **clause 2**, members are appointed for a term of 3 years and may be reappointed.

2 Removal, resignation, etc, of members and extraordinary vacancies 15

- (1) The body by which a member of the Reserves Board is appointed may, at any time in its discretion, by notice in writing to the member, remove the member from office.
- (2) A member of the Reserves Board may at any time resign his or her office by written notice addressed to the body by which the member was appointed. 20
- (3) If a member of the Reserves Board dies or resigns or is removed from office, his or her office becomes vacant and the vacancy is an extraordinary vacancy. 25
- (4) An extraordinary vacancy must be filled in the manner in which the appointment to the vacant office was originally made.
- (5) A person appointed to fill an extraordinary vacancy must be appointed for the residue of the term for which the vacating member was appointed. 30
- (6) The powers of the Reserves Board are not affected by any vacancy in its membership.

3 Appointment of chairperson and deputy chairperson

- (1) The trustee must appoint a member of the Reserves Board as chairperson of the Reserves Board.
- (2) The Auckland Council must appoint a member of the Reserves Board as deputy chairperson of the Reserves Board. 5
- (3) Appointments made under **subclause (1) or (2)** must be made triennially or following the vacation of either office.

4 Meetings

- (1) The Reserves Board must hold meetings at successive intervals of no more than 6 months. 10
- (2) Each meeting must be held at a time and place fixed by the Reserves Board.
- (3) At each meeting, a quorum consists of one-half of the members, but no meeting may be held or continue unless—
 - (a) the chairperson or the deputy chairperson is present; and 15
 - (b) at least 1 member appointed by the trustee and 1 member appointed by the Auckland Council are present.
- (4) The chairperson must chair all meetings at which he or she is present.
- (5) The deputy chairperson must chair any meeting from which the chairperson is absent. 20
- (6) All resolutions to be considered by the Reserves Board must be proposed by a member and must be seconded by another member.
- (7) A resolution is passed or rejected according to the voting, by a show of hands, of the members present at the meeting. 25
- (8) The person presiding over a meeting has a deliberative vote, and, in the case of an equality of votes, also a casting vote.
- (9) The proceedings and resolutions of every meeting of the Reserves Board must be recorded in a minute book to be kept for the purpose. 30

5 Accounting and auditing of Reserves Board

- (1) No later than 4 months before the end of each financial year of the Auckland Council, the Reserves Board must give the Council an estimate of the income and expenditure of the Re- 35

serves Board, in relation to the Pourewa Creek Recreation Reserve and the whenua rangatira, in the next financial year.

- (2) The Reserves Board must keep full and accurate accounts of all money received and paid by it.
- (3) At the close of each financial year, the Reserves Board must have its accounts audited by a chartered accountant. 5
- (4) The Reserves Board must give a copy of the accounts audited under **subclause (3)** to the trustee and the Auckland Council, together with a report of the financial position of the Reserves Board and its financial operations during the period to which the accounts relate. 10

6 Remuneration of members appointed by trustee

A member of the Reserves Board who is appointed by the trustee must be paid, in accordance with the Fees and Travelling Allowances Act 1951, out of money appropriated by Parliament for the purpose,— 15

- (a) remuneration by way of fees, salary, or allowances for the member's services as a member of the Reserves Board; and
 - (b) travelling allowances and expenses in respect of time spent travelling in the service of the Reserves Board. 20
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Schedule 5

s 101

Consequential amendments to enactments

Fees and Travelling Allowances Act 1951 (1951 No 79)

In Schedule 1, replace the item relating to Ngati Whatua o Orakei Reserves Board with:

5

Ngāti Whātua Ōrākei Reserves Board (previously known as Ngati Whatua o Orakei Reserves Board)	Established by the Orakei Act 1991 and continued by the Ngāti Whātua Ōrākei Claims Settlement Act 2012 .
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Maori Trust Boards Act 1955 (1955 No 37)

Repeal the cross-heading above section 6A.

Repeal section 6A.

Legislative history

5 March 2012
8 March 2012

Introduction (Bill 5–1)
First reading and referral to Māori Affairs
Committee
