



## **Ngāti Paoa Iwi Trust Submission on the Ngāti Paoa Claims Settlement Bill**

**2 August 2023**

Tuia ki te rangi, Tuia ki te papa  
Tuia te ira atua, te ira tangata  
Ka rongo te po, Ka rongo te ao  
Paoa ki uta, Paoa ki tai  
Kia pono, kia tika, kia aroha  
Kia tau iho mai ngā manaakitanga ki runga i a tātou  
Haumie, hui e, taiki e!

Bind the sky, bind the earth  
Bind the heavenly essence, bind the human essence  
The night senses, the light senses,  
Paoa of the land, Paoa of the sea  
Be true, show integrity and compassion,  
Let blessings descend upon us  
Bound, together, as one!

### **PURPOSE AND SUMMARY**

- 1) The Ngāti Paoa Claims Settlement Bill (the Bill) gives effect to the Deed of Settlement of Historical Claims (Deed of Settlement) signed by the Crown, the Ngāti Paoa negotiators, and the trustees of the Ngāti Paoa Iwi Trust on 20 March 2021, after over a decade of negotiations.
- 2) Key points made in this submission are:
  - i) the Bill gives effect to the Crown's commitments in the Deed of Settlement, as negotiated in good faith with Ngāti Paoa, and as the Ngāti Paoa people understood the Crown's settlement offer through the ratification process;
  - ii) the Bill is the cornerstone of the Ngāti Paoa Treaty settlement arrangements, which also involve collective redress with other iwi, and will provide assets for the entire Ngāti Paoa community that need to be carefully governed and managed;

- iii) the speedy passage of the Bill through Parliament will help the Ngāti Paoa community overcome the deleterious impact of a protracted Treaty settlement process, which has been corrosive for Ngāti Paoa as a community;
  - iv) Ngāti Paoa needs Ngāti Paoa to thrive, not a divided whare – the Ngāti Paoa Iwi Trust today is a credible, appropriately structured, and coherent governance entity with capable leadership elected by the Ngāti Paoa community, that can manage Treaty settlement assets and represent Ngāti Paoa as an iwi in all areas, including with the Crown, local government, tertiary institutes, NGOs and community organisations;
  - v) any change to the Bill that would prevent Waiheke Station from being managed by the Ngāti Paoa Iwi Trust as the post settlement governance entity for Ngāti Paoa, alongside all other Ngāti Paoa settlement assets, would foster division within the iwi and be unjust, contrary to the wishes of the great majority of Ngāti Paoa people, and fly in the face of judicial decisions that have confirmed the robustness of the ratification process undertaken for the Ngāti Paoa Deed of Settlement.
- 3) On this basis, the Iwi Trust does not seek any changes to the Bill.
  - 4) The balance of this submission provides information for the Māori Affairs Committee on Ngāti Paoa, the Ngāti Paoa Treaty settlement itself, plus relevant mandate, ratification and governance matters that have been part and parcel of the Treaty settlement process. Concerns voiced by a minority within the Ngāti Paoa community in relation to the Waiheke Station are also addressed.
  - 5) The Ngāti Paoa Iwi Trust wishes to appear before the Committee to speak to this submission.

## BACKGROUND

### Ngāti Paoa

- 6) Ngāti Paoa is an iwi of the Tāmaki and Hauraki regions, with interests in north-east Waikato too. The background section of the Deed of Settlement provides an overview of the whakapapa, traditions and rohe of Ngāti Paoa, from the ancestor Paoa himself to his many descendants (and their hapū), and to the Ngāti Paoa today who will become beneficiaries of the Treaty settlement when the settlement legislation is passed.
- 7) Ngāti Paoa is also an iwi of the Marutūāhu confederation, along with Ngāti Maru, Ngāti Tamaterā, Ngāti Whanaunga and Te Patukirikiri.
- 8) The background section of the Deed of Settlement opens with the following, which draws on the maritime and waka-building traditions of Ngāti Paoa to reflect on the purpose of the settlement, and to look to the future for the iwi:

The ancestral waka taua (war canoe) of Ngāti Paoa, *Kotūiti*, provides the conceptual framework for this Deed of Settlement. At the front of the waka the pītau whakareia (the adorned figurehead) symbolises the face of the Paoa descendants at the bow of the

canoe. Paoa descendants look simultaneously to the past and to the future. Within the takere o te waka (the hull of the canoe) sits the Ngāti Paoa nation paddling the ebbs and flows of the ocean guided by their rangatira and tohunga waka. Trailing behind the stern of waka taua are puhiairiki (plume feathers). As the paddlers of *Kotūiti* arrive at Karaka Bay, at the mouth of the Tāmaki River, they meet Crown officials waiting on the bank. The rangatira of the Crown and Ngāti Paoa congregate on the shores of this ancestral river to address historical grievances and to move forward from a past of colonial trauma to a future of healing and collective wellbeing:

“Ngāti Paoa ki uta, Ngāti Paoa ki tai, Ngāti Paoa ki tua o te pae o Matariki.”

This whakatauhākī has two meanings in this context. First, this whakatauhākī signifies the long-standing existence of the Ngāti Paoa collective as a prosperous maritime and coastal nation. Through history, Ngāti Paoa maintained their prowess on the water in Tāmaki and Hauraki. Historically Ngāti Paoa have exercised their mana throughout the western shores of Tīkapa Moana. Ngāti Paoa ancestors expanded their rangatiratanga to the north and west, establishing a rohe which extended out from the North Shore to the islands of the Waitematā, and through Tāmaki. From the western inland areas of Tīkapa Moana, Ngāti Paoa ancestors reached deep into the plains of Hauraki and the surrounding hills. Today, the waka taua *Kotūiti II* pays tribute to the ancient maritime history of Ngāti Paoa ancestors. The final part of the whakatauhākī – *Ngāti Paoa ki tua o te pae o Matariki* – refers to the ongoing aspirations of Ngāti Paoa to reaffirm the prosperity and holistic wellbeing of their people. These aspirations are expressed in this whakatauhākī through the analogy of Ngāti Paoa *transcending the horizons of Matariki*.

- 9) The Ngāti Paoa customary rohe is extensive, joined more by water than by land. This traditional tribal pepeha records the Ngāti Paoa ‘boundary’ settlements:

Ko te pou ki mua ko Te Hoe o Tainui, Ko te pou ki tua ko Kawau, ko te pou ki waho ko Waiheke, ko te pou ki uta ko Mokoia, ko Whakatiwai te poutokomanawa, ko Paoa te poutangata.

The foremost pillar is Te Hoe o Tainui, the distant pillar is Kawau, the outer pillar is Waiheke, the inner pillar is Mokoia, Whakatiwai is the pillar of heart, Paoa is the pillar for his descendants.

- 10) The Ngāti Paoa ‘area of interest’ map is provide as **Attachment A** to this submission (below).

#### **Ngāti Paoa people are the beneficiaries of the settlement**

- 11) The Deed of Settlement provides a definition of Ngāti Paoa for the purpose of the settlement, as “the collective group composed of individuals who descend from a Ngāti Paoa tupuna” (sections 10.5 to 10.6). A Ngāti Paoa tupuna is defined as an individual who exercised customary rights by virtue of being descended from Paoa himself, or a recognised tupuna of the 56 Ngāti Paoa hapū listed in the Deed at 10.5.2.
- 12) This definition was carefully considered during the negotiation process, accepted by the Ngāti Paoa community through the ratification process, and sits behind clause 13 of the Bill. It is

inclusive and allows for all Ngāti Paoa to be beneficiaries of the settlement. It is also a definition that is consistent in form with most other Treaty settlements.

### **Long-standing historical grievances of Ngāti Paoa**

- 13) Ngāti Paoa as a people have suffered grievous harm at the hands of the Crown, including loss of life and whenua through warfare and raupatu (confiscation), and numerous other forms of land alienation that have left Ngāti Paoa virtually landless. All this and more has culminated in the disempowerment and dislocation of Ngāti Paoa as a people. In this there is no question. There is also no question that the historical grievances of Ngāti Paoa are long-standing.
- 14) By way of illustration of the impact of land-loss on Ngāti Paoa, today the active Ngāti Paoa marae are Wharekawa Marae at Kaiaua by the western shores of Tikapa Moana, Makomako Marae near Pūkorokoro, and inland at Waiti Marae, Tāhuna. These marae are all clustered around small areas of land that remained in Ngāti Paoa ownership after colonisation.
- 15) Noticeably, however, there is no Ngāti Paoa marae at Kawakawa Bay, or at Tāmaki (the name previously used for the eastern side of the Tāmaki River), or at Kohimarama (the western side of the Tāmaki River), or at Taurarua (in central Auckland), or at Takapuna or the North Shore generally, or at Whangaparāoa, or at Mahurangi, or at Waihehe Island. These are all areas where land alienation meant it became impossible for Ngāti Paoa to sustain a meaningful presence as a community, although Ngāti Paoa people have of course continued to live in such areas, and regularly visit there.
- 16) A great aspiration of the Ngāti Paoa settlement is to re-establish marae and communities in areas where Ngāti Paoa used to prosper, starting in the Tāmaki / Kohimarama area.

### **Early negotiations with the Crown and the transfer of Waiheke Station to Ngāti Paoa**

- 17) Ngāti Paoa has long sought justice and has, at different times, challenged the Crown to address Ngāti Paoa grievances. So it is difficult to say exactly when ‘negotiations’ with the Crown began.
- 18) In the 1980s, as the Crown began to take Treaty grievances seriously, Hariata Gordon of Ngāti Paoa lodged the ‘Waiheke Island Claim’ (Wai 10), the tenth claim ever made to the Waitangi Tribunal, in a fight to secure whenua for the iwi on Waiheke Island. Waiheke has been a Ngāti Paoa stronghold in the Hauraki Gulf from well before the Treaty was signed, but almost no land remained in Ngāti Paoa ownership there by the twentieth century.
- 19) On the back of a recommendation by the Waitangi Tribunal in 1987, what is known as the ‘Waiheke Station Farm’ transferred to Ngāti Paoa (‘Waiheke Station’). This can be considered the first step in the modern Treaty settlement process for the iwi.
- 20) Through the 1990s and 2000s Ngāti Paoa organisations and individuals lodged various claims with the Waitangi Tribunal, and became associated with many other claims. Clause 14(3) of the Bill lists ten Wai claims that relate exclusively to Ngāti Paoa, which will be settled fully by the Bill. Clause 14(4) lists 29 claims that relate in part to Ngāti Paoa, and which will also be

settled insofar as they involve Ngāti Paoa. Many of these claims were inquired into through the Waitangi Tribunal's Hauraki inquiry.

- 21) At other times Ngāti Paoa negotiated directly with the Crown, such as for the July 1996 payment of \$1.0 million to the Ngāti Paoa Whanau Trust in relation to surplus railway lands in Auckland. This sum is being deducted from the Ngāti Paoa Treaty settlement quantum of \$23.5 million (see 6.1 in the Deed of Settlement), so is effectively treated as an early on-account payment.
- 22) This meant that in 2009, when the Crown proposed a comprehensive settlement approach for the Hauraki, Tāmaki and south Kaipara Areas (under the Sir Douglas Graham proposal), Ngāti Paoa had already passed through a long period of partial engagements with the Crown, none of which dealt with the totality of Ngāti Paoa grievances. Ngāti Paoa were ready and keen to reach a comprehensive settlement.

#### **Individual iwi and collective negotiations since 2009**

- 23) The Sir Douglas Graham proposal of 2009 saw both collective and individual negotiations take place in Tāmaki Makaurau (i.e., Auckland) and Hauraki, as well as in south Kaipara. From this approach Ngāti Paoa became party to three collective negotiations, as well as their own individual settlement arrangements which this Bill covers:
  - i) Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Deed, signed in December 2012 by 13 iwi, and empowered through Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014. Ngāti Paoa participates in this settlement arrangement with Ngāi Tai ki Tāmaki, Ngāti Maru, Ngāti Tamaoho, Ngāti Tamaterā, Ngāti Te Ata, Ngaati Whanaunga, Ngāti Whātua Ōrākei, Ngāti Whātua o Kaipara (Ngā Maunga Whakahii o Kaipara), Te Ākitai Waiohua, Te Kawerau ā Maki, and Te Patukirikiri.
  - ii) Pare Hauraki Collective Redress Deed, signed in August 2018 by 12 iwi (with the Pare Hauraki Collective Redress Bill introduced into the House, awaiting a first reading). Ngāti Paoa participates in this settlement arrangement with Hako, Ngāi Tai ki Tāmaki, Ngāti Hei, Ngāti Maru, Ngāti Porou ki Hauraki, Ngāti Pūkenga, Ngāti Rāhiri Tumutumu, Ngāti Tamaterā, Ngāti Tara Tokanui, Ngaati Whanaunga, and Te Patukirikiri.
  - iii) Marutūāhu Iwi Collective Redress Deed, initialled by 4 Marutūāhu iwi in July 2018, but not initialled yet by Ngāti Paoa (noting the Ngāti Paoa Iwi Trust is presently reviewing the Marutūāhu arrangements and engaging with the other Marutūāhu iwi, before consulting with the Ngāti Paoa community on this last component of the Ngāti Paoa Treaty settlement package). Ngāti Paoa participates in the Marutūāhu Iwi Collective Redress Deed alongside Ngāti Maru, Ngāti Tamaterā, Ngaati Whanaunga, and Te Patukirikiri.
- 24) Section 7 of the Ngāti Paoa Deed of Settlement summarises the redress contained in these collective arrangements.

- 25) While this Bill deals with Ngāti Paoa specific settlement redress (as provided through the Deed of Settlement), and while this forms the heart of the Ngāti Paoa settlement, the totality of redress provided to Ngāti Paoa includes these important collective arrangements.
- 26) Because these collective arrangements are being progressed through separate deeds and Bills (or have already been enacted), no significant further comment is made in this submission about them.

## **THE DEED OF SETTLEMENT**

### **Historical account, acknowledgements and apology**

- 27) Section 2 of the Deed of Settlement provides an agreed Historical Account, which is followed in Section 3 by Crown Acknowledgements and an Apology.
- 28) These sections were negotiated with great care and concern for historical accuracy, and sit at the heart of the Ngāti Paoa Treaty settlement. They are underpinned by years of historical research, including the 1987 report by the Waitangi Tribunal on the Waiheke Island Claim (Wai 10), and the three volume 2006 Waitangi Tribunal report on the Hauraki Claims. The latter was a monumental historical inquiry that, between 1998 and 2002, saw the Tribunal hold 26 weeks of hearings.
- 29) Although the Waitangi Tribunal never completed a district inquiry for the Tāmaki area, extensive historical research was undertaken that informed settlement negotiations, the provision of redress, and the Ngāti Paoa historical account.
- 30) Clause 8 of the Bill provides a summary of the historical account; while Clauses 9 and 10 record in full the Crown’s acknowledgements and apology respectively from the Deed. The Ngāti Paoa Iwi Trust does not seek any changes to these fundamental aspects of the Deed of Settlement and Bill.

### **Cultural redress**

- 31) Part 2 of the Bill provides for the cultural redress components of the Deed of Settlement.
- 32) Foremost of the cultural redress are transfers of land, both in fee simple (two sites), and in fee simple to be administered as reserves (eleven sites) (clause 22). Detailed provisions for each site are set out from clauses 23 to 46. These provisions reflect the specific circumstances of each site, including what existing public interests exist, how the land is to be managed (if a reserve), and other factors. A considerable amount of work went into these provisions to optimise how the properties are administered into the future.

#### *Waka Highway*

- 33) From a Ngāti Paoa perspective, the cultural redress properties must be viewed as part of a network, or a lattice of places along what is informally known as the ‘waka highway’. Although a significant factor in negotiations was the availability of Crown land that could be returned,

the cultural redress sites are all predominantly coastal, and were carefully selected to re-connect Ngāti Paoa to, and enable Ngāti Paoa to utilise traditional whenua along the waka highway.

- 34) The aim is, at a time when the settlement legislation is passed, Ngāti Paoa will be able to travel by waka from the south at Pūkoro / Miranda Taramaire Government Purpose Reserve Wildlife Management Area, north a short way up the coast to Kaiaua where Tauwhare Koiora is found. A somewhat longer journey is required north-west along the coast to Te Iwi Rahirahi at Kawakawa Bay.
- 35) Leaving Te Iwi Rahirahi, the waka would pass Ponui Island to the north, before reaching Pokai Wawahi Ika at Otakawhe Bay at the south-east end of Waiheke Island. The waka crew might stay overnight there, as Pokai Wawahi Ika will transfer with an established whare, before travelling westwards along the south coast of Waiheke Island to Huhuri Bay, where again the crew might disembark to stay at Te Waeroa Awe Houkura in the modern-day suburb of Blackpool. If weather was favourable, a visit to Māwhitipana on the north coast of Waiheke Island (Palm Beach) may be in order.
- 36) The waka could then travel west from Waiheke, to Motuihe Island where Paoa Ururoa and Paoa Ururua are situated. From there it is a short trip to the Ngāti Paoa 'down town' in Tāmaki Makaurau – an area on either side of the Tāmaki River known respectively as Kohimarama and Tāmaki, with historical places such as Te Tauoma, Mauinaina and Mokoia Pā being of great importance to Ngāti Paoa. The Ngāti Paoa travellers would not only draw their waka up to facilities at Omaru Recreation Reserve on the Tāmaki River, but stay at the papakāinga Hine-nui-o-te-paua and the nearby Paoa Whanake marae. The waka crew might walk to nearby Maungarei (which is shared with other iwi through the Tāmaki Collective arrangements), and indeed visit other maunga around Tāmaki where Ngāti Paoa have interests.
- 37) By waka it is only a short trip from the Tāmaki River to Maungauika and Takarunga on the North Shore, and to other places of importance there to Ngāti Paoa. From Takapuna, the waka could travel northwards to Whangaparaoa and Tiritiri Matangi Island. At the northern end of Tiritiri Matangi, the Papakura Pā surveys the waterways of the Mahurangi coast, including Te Haupa Island at the mouth of the Mahurangi Harbour.
- 38) It should be noted that the statutory acknowledgements in the Bill, which are largely for lands the Crown was either unable or unwilling to return to Ngāti Paoa, provide further connections to places on the waka highway network (subpart 5), as do sites provided through the Marutūāhu Iwi Collective Deed.

#### *Reserve administration*

- 39) There is a mixture of arrangements for cultural redress properties returned to Ngāti Paoa as reserves. Some will be administered solely by the Ngāti Paoa Iwi Trust. One property - Tauwhare Koiora Recreation Reserve – will be administered by a special body involving Ngāti Paoa and the Hauraki District Council.

- 40) Other properties will be administered by Auckland Council, with a requirement for a reserve management plan to be jointly developed and agreed with Ngāti Paoa. This creates a form of co-governance and co-management that Ngāti Paoa and the council can together to decide how best to structure.
- 41) Although formal conversations are yet to take place, one possibility is that the relevant local board forms a sub-committee for the reserve (with shared membership with Ngāti Paoa nominees), then delegates to the sub-committee responsibility for developing and agreeing the relevant reserve management plan, while also agreeing what kind of ongoing management relationship is appropriate. The latter will vary from property to property, depending on the level of ongoing management required – some properties require less than more, and the Ngāti Paoa Iwi Trust wants to be pragmatic about this.

#### *Vest and vest-back*

- 42) Vest and vest-back provisions are generally seen as the lowest form of Treaty settlement redress, since they confer only symbolic value to the iwi. They take place when the Crown believes land must remain in Crown ownership, typically to protect high conservation values.
- 43) The Bill provides for two such arrangements, the Pūkoro / Miranda Taramaire Government Purpose Reserve Wildlife Management Area, and Te Haupa Island Scenic Reserve (Part 2, Subpart 3). The former is a significant coastal stretch of land along the south-west coast of the Firth of Thames, while the latter is an island off the Mahurangi Harbour, named after one of the most esteemed Ngāti Paoa rangatira of the pre-Treaty period.
- 44) Although Ngāti Paoa disagrees with the Crown policy that underpins this redress, this was a reality the negotiators faced, and the Deed of Settlement was signed in good faith to provide the redress. If the Crown was ever open to changing its mind in relation to these sites (and in relation to management of Papakura Pā on Tiritiri Matangi Island), Ngāti Paoa would be happy to have that conversation. Ngāti Paoa is nonetheless able to erect Pou on Te Haupa Island and at Papakura Pā on Tiritiri Matangi Island.

#### *Overlay Classifications and Protocols*

- 45) The Bill provides various relationship instruments, as set out in the Deed of Settlement. These include an Overlay Classification by the Department of Conservation, and protocols with the Ministry for Primary Industries, and a Taonga tūturu protocol.

#### *Name changes*

- 46) The Bill provides for name changes to certain Crown protected areas, which more appropriately recognise Ngāti Paoa associations with those places.

### **Commercial redress**

- 47) Part 3 of the Bill provides the commercial redress component of the Ngāti Paoa settlement, giving effect to items set out in section 6 of the Deed.



- 48) The headline Ngāti Paoa settlement quantum is \$23.5 million. No iwi is ever entirely satisfied with their settlement quantum, and Ngāti Paoa is no exception to this. However, the settlement was negotiated in good faith and, facing the immutable constraints of the Crown's policy framework, Ngāti Paoa has agreed to it.
- 49) Clause 6.1 of the deed lists out various 'deductions' from the headline quantum, leaving a cash balance of \$4,242,833 that will be paid to the Iwi Trust on settlement date (adjusted by the cash rate).
- 50) This cash amount will increase with accumulated rentals from Crown Forest Licence lands, which will transfer as an outcome of the Pare Hauraki Deed, alongside other cash components within aspects of the overall settlement arrangements.
- 51) Clauses 6.4 to 6.7 of the Deed allow Ngāti Paoa to purchase two commercial properties in Auckland from the Crown at settlement date. These properties are referred to in the Kawenata Ngāti Paoa has with Ngāti Whātua Ōrākei. They are a good development opportunity, and were hard fought to secure.
- 52) Clauses 6.8 to 6.16 of the Deed provide a key commercial opportunity to Ngāti Paoa, being a second right to purchase certain deferred selection school properties. As discussed later in this submission, this redress was negotiated as an alternative to commercial housing development at Point England.
- 53) There is a long list of school sites available to chose from. Selections are made first by the Marutūāhu Iwi collectively. Ngāti Paoa then has a second right, individually, to purchase remaining properties, with a cap of \$41 million (the cap being based on 2018 values, but purchase at current values). There is an ample sufficiency of school sites to be acquired within the budget cap. All properties will be purchased on the basis they will be leased back to the Crown on a long-term basis.
- 54) This redress gives a long-term investment opportunity for Ngāti Paoa which will require partnership with a third party (or parties) to raise the necessary capital to purchase the properties from the Crown. In time they will be a cornerstone asset for the iwi.
- 55) A significant 'deduction' of \$15.625 million from the Ngāti Paoa headline quantum is for the on-account arrangement for the Pouarua Farm. Ngāti Paoa have around a 29% share in the farm with four other Hauraki iwi. This is discussed later in this submission, but it is worth noting that at the end of the financial year ending 30 June 2023, the Ngāti Paoa Iwi Trust's equity in Pouarua Farm Limited Partnership was \$24.959 million, being an increase of around 60% since the farm was acquired in late 2013. This is a considerably better return on investment than if the settlement quantum had remained with the Crown, index-linked to the official cash rate, which for much of the period has been very low indeed.
- 56) A considerable proportion of the commercial value of the overall Ngāti Paoa settlement package is not cash, or the properties mentioned above dealt with through the individual Ngāti Paoa Deed (or with Pouarua through the Pare Hauraki Collective Deed), but in collective redress provided through the Pare Hauraki Deed, and potentially also through the Marutūāhu Deed. For instance, under the Pare Hauraki Deed, Ngāti Paoa will jointly own Crown Forest

Licence land in the Hauraki-Coromandel area, including receiving surplus accumulated rentals. Under the Marutūāhu Deed, Ngāti Paoa will be able to purchase NZDF properties on the North Shore, and other properties both individually and collectively.

- 57) Overall, the Ngāti Paoa commercial redress provides a base for the iwi, with good stewardship, to grow financially. This in turn will allow the Iwi Trust to invest in its people. The commercial package is not as great as Ngāti Paoa may have wished, but as stated previously, Treaty settlements never are.

## **OTHER KEY ASPECTS OF THE SETTLEMENT PROCESS**

### **Mandate for Treaty settlement and the role of the Ngāti Paoa negotiators**

- 58) Under the June 2011 Ngāti Paoa Deed of Mandate (Deed of Mandate), the Ngāti Paoa community approved a process for settlement negotiations and ratification.<sup>1</sup> As an outcome of hui-a-iwi in March 2011, it was agreed the Ngāti Paoa Trust Board (Trust Board) should act as the mandated entity for Ngāti Paoa for negotiation purposes. (Noting that negotiations with the Crown had already started with 'interim negotiators', as the formal mandating process with extensive consultation took time to complete). The Deed of Mandate was recognised and endorsed by the Crown.<sup>2</sup>
- 59) The Trust Board had been established by a deed of trust on 20 November 2004 under the Charitable Trusts Act (not as an Ahu Whenua Trust under Te Turi Whenua Māori Act 1993 as is sometimes wrongly stated). At the time it was established, the intention was for the Trust Board to be the single representative body for Ngāti Paoa (there had been various whānau and other trusts in existence prior to then, which sometimes caused difficulty and confusion).
- 60) Under the 2011 Deed of Mandate the Trust Board was not to undertake negotiations, rather it was to oversee negotiations and appoint negotiators to do the work required. The Trust Board chose to allow the wider Ngāti Paoa community to determine who the negotiators would be. An election process was undertaken at a Trust Board hui-a-iwi on 30 April 2011, which resulted in the unanimous approval of two negotiators – Hauāuru Eugene Raymond Rawiri and Anthony Dean Morehu Wilson.
- 61) Section six of the Ngāti Paoa Deed of Mandate delegates responsibility for negotiations to the negotiators, and states that the mandated negotiators' responsibilities include presenting initialled Deeds of Settlement for ratification to Ngāti Paoa.
- 62) The Trust Board was not to have the final say on negotiation outcomes. Section five of the Deed of Mandate states that:

the Trust [Board] does not have the authority to conclude, agree to or sign-off on any settlement with the Crown for Ngāti Paoa whanui or any hapū. That authority rests with

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<sup>1</sup> For the Deed of Mandate, see: <https://www.ngatipaoaiwi.co.nz/uploads/8/4/5/7/84576074/appendices.pdf>

<sup>2</sup> For 29 June 2011 Crown letter of recognition of mandate, see: <https://www.govt.nz/assets/Documents/OTS/Ngati-Paoa/2011-06-29-N-Paoa-Recognition-of-Mandate.pdf>

the hapū and whānau of Ngāti Pāoa who will exercise this authority through a vote on the settlement.

- 63) These provisions were carefully and deliberately put in place. To summarise, a governance entity – the Trust Board – was tasked with supporting the Ngāti Paoa negotiators, who had the responsibility placed on them by the iwi of negotiating directly with the Crown. The governance entity itself could not decide whether to agree a settlement or not. That was the job of all Ngāti Paoa, who would let their voice be known through ratification processes.
- 64) The approach was both pragmatic and principled. Pragmatic because it is a near impossibility for an entire board to negotiate effectively with the Crown, including participation in collective negotiations that included up to 12 other iwi parties: there are simply too many meetings, too much work to do, and too much to consider for a board to attempt.
- 65) The approach was principled because the Ngāti Paoa community selected two of their most trusted leaders, through an election involving six candidates, to be their negotiators, and to put their best foot forward for the iwi. In doing so the community laid a great burden on the negotiators personally, but it also retained the ultimate decision to agree the settlement, or not.
- 66) It is, therefore, the voice of the Ngāti Paoa community that is key to the negotiations process, not which entity supported the negotiators, nor indeed the views of the negotiators beyond their efforts to secure as good a deal for Ngāti Paoa as circumstances allowed and with all the constraints of the Crown's Treaty settlement framework.

#### **Requirements for a Post Settlement Governance Entity**

- 67) The 2011 Deed of Mandate recorded: "the role of the mandated entity [i.e., Trust Board] does not mean that the Trust will be the recipient of any settlement assets. Decisions as to the post-settlement arrangements for the management of assets are matters to be decided by Ngāti Pāoa iwi." This was a signal to the iwi that the structure of the Trust Board meant it was unlikely to be a suitable 'Post Settlement Governance Entity' for Ngāti Paoa, which proved to be the case.
- 68) It is quite common in Treaty settlements for new 'post settlement governance entities' to be created, due to the Crown's requirements for the structure of those entities to support transparency and accountability, and to be able to operate independently. Charitable trusts are not considered by the Crown to be suitable, and as a rule common law trusts are preferred.
- 69) 'Post settlement governance entities' are usually ratified at the same time a deed of settlement is ratified. However, it is not unusual for them to be created earlier, particularly if the Crown agrees to provide 'on-account redress', being redress that is transferred ahead of settlement. That was the case for Ngāti Paoa.

### **Creation of the Ngāti Paoa Iwi Trust in 2013, triggered by Pouarua on-account opportunity**

- 70) In 2013 an opportunity arose for Pare Hauraki iwi to purchase a large dairy farm on the Hauraki Plains owned by the state owned enterprise Landcorp Farming Limited. The property is known generally as 'Pouarua Farm'.
- 71) Under a June 2013 'Deed recording Pouarua On-Account Arrangements in relation to Pare Hauraki Collective Deed', Ngāti Paoa joined with Ngāti Maru, Ngāti Tamaterā, Ngāti Tara Tokanui and Te Patukiri, and the Crown committed to make payment of \$53.5 million to enable the five Pare Hauraki iwi to purchase Pouarua. Under the deed, each iwi purchased a share of the farm based on what they wanted and what they could afford. Ngāti Paoa committed \$15.625 million of the \$16.0 million that had been agreed would come to them under the Pare Hauraki Collective arrangements, which gave them a 29.172% share.
- 72) The Pouarua Farm On-Account Deed of Settlement was ratified by the Ngāti Paoa community between August and September 2013, receiving 93.5 percent in support.
- 73) In concert, the Ngāti Paoa negotiators took a proposal to ratify then establish a new legal entity for Ngāti Paoa, one that could function properly as a 'post settlement governance entity' – being the Ngāti Paoa Iwi Trust. The Trust Board supported the Ngāti Paoa negotiators in both process.
- 74) At the time there were 955 eligible voting members on the Trust Board's register, of which 213 voted, meaning a participation rate of 22% (which is not unusual for Treaty settlements). Of those who voted, 96% voted in support of the Ngāti Paoa Iwi Trust being the 'Post Settlement Governance Entity and the recipient of Ngāti Paoa Treaty settlement redress'.
- 75) On 25 September 2013 the Minister for Treaty of Waitangi Negotiations and the Minister of Māori Affairs advised the ratification results demonstrated sufficient support from the Ngāti Paoa community to establish the new entity.
- 76) On that basis, the Iwi Trust was constituted. Soon after establishment, and following provisions under its deed of trust, the Iwi Trust established the necessary commercial subsidiary to hold shares in the farm.
- 77) The Pouarua Farm Limited Partnership (PFLP) was formed in November 2013 as the entity to receive and manage the farm on behalf of the five iwi shareholders, and in December 2013 a deed of covenant was signed by PFLP to bind it to the commitments in the on-account deed. Ngāti Paoa Iwi Trust remains a shareholder in PFLP today.

### **Ngāti Paoa Iwi Trust transitions to become the representative entity for Ngāti Paoa katoa**

- 78) When the Iwi Trust was established the chair of the Trust Board became the new chair for the Iwi Trust. The Trust Board fell into abeyance and ceased to operate, such that in the period 2015 to 2017 it was legally inoperative. When ceasing to operate, the Trust Board also ceased supporting the Ngāti Paoa negotiators, or providing mandate reports to the Crown.
- 79) For its part, the new Iwi Trust began to support the Ngāti Paoa negotiators, and otherwise represent Ngāti Paoa on local government and RMA matters. The Iwi Trust also began to

actively explore commercial opportunities for Ngāti Paoa, including as part of the Treaty settlement negotiations.

- 80) In August 2014 the Iwi Trust received an on-account payment of \$500,000 to help establish itself as a post settlement governance entity. In August 2015, the Ngāti Paoa negotiators and Iwi Trust reached an agreement with the Crown to purchase 14 landbank properties as 'early release properties' (noting this had been agreed to by other Marutūāhu iwi through the Marutūāhu Iwi Collective negotiations, where these properties had been offered by the Crown). Then in October 2016 an opportunity to purchase part of Point England Reserve for the development of housing was agreed with the Crown.
- 81) On 22 December 2016 the Ngāti Paoa negotiators initialled the Pare Hauraki Collective Redress Deed, and the Ngāti Paoa community ratified the deed between February and March 2017. This process was led by the Ngāti Paoa negotiators, supported by the Iwi Trust. Through the ratification process the negotiators were authorised to sign the Pare Hauraki deed for and on behalf of Ngāti Paoa.

#### **Initial governance and management under the Ngāti Paoa Iwi Trust**

- 82) When established the Ngāti Paoa Iwi Trust started with two initial trustees, rather than a full board, and did not require elections until one year after settlement legislation was enacted. This was a feature of the trust deed on the basis that the settlement was considered imminent. The trust deed, including these provisions, had been vetted and approved by the Crown.
- 83) Unfortunately, settlement negotiations took considerably longer than was expected. In April 2017, following a resolution at a Special General Meeting, the Iwi Trust amended its deed of trust to allow the appointment of additional trustees to a full board of seven members. Five further members were appointed, although a full board of trustees was only convened in November 2018.
- 84) In retrospect, the delay in appointing a full board was an error and the Iwi Trust should have moved more quickly to do this. Moreover, it would have been better if the Iwi Trust had been constituted from the beginning with a full elected board, and the Crown should have provided better guidance to ensure this happened.
- 85) What eventuated as a lengthy period with only two initial trustees caused concern among some iwi members, who felt there was not sufficient transparency and accountability. That said, and despite the trust deed not specifically requiring the Iwi Trust to commence formal reporting to Ngāti Paoa until the conclusion of the settlement, regular reports were initially provided to the iwi, as were audited financial statements.
- 86) In December 2018 the Iwi Trust's trust deed was amended further, to allow trustee elections to be held prior to the completion of the comprehensive settlement. Full elections were held in October 2020, with trustees taking office on the Iwi Trust's 20 December 2020 annual general meeting in accordance with the trust deed.

- 87) Again, with hindsight, the Iwi Trust might have moved more quickly to hold full elections, and it is regrettable that it did not. This observation is not meant to suggest impropriety –the Iwi Trust complied with its trust deed, and a full set of trustees were in office from November 2018. But it is an acknowledgement by the Iwi Trust today to the wider Ngāti Paoa community that matters could have been managed better. Covid-19 lockdowns also had an impact on engagement and communications.
- 88) Since December 2020 the Iwi Trust’s board has worked hard to revive the Iwi Trust operationally, to provide good communications with the Ngāti Paoa people, and to build governance and financial robustness. Elections are scheduled for October 2023, with newly elected trustees taking office on the date of the anticipated November 2023 AGM.

### **Ngāti Paoa Trust Board is revived and begins to litigate**

- 89) In March 2017 the Trust Board was ‘revived’ by the election of trustees at a special general meeting held at the Manukau Rugby League Club, Mangere. Voting was by a show of hands. Forty two people voted in favour of the ten people who accepted nomination, with none voting against. The new trustees had not been involved in settlement negotiations between 2009 and 2017, and had not previously been on the Trust Board or Iwi Trust.<sup>3</sup>
- 90) Re-constituted, the Trust Board began to engage with the Crown, seeking to re-establish itself as the representative body for Ngāti Paoa. This unsurprisingly caused conflict with the Iwi Trust, which by then had become deeply involved, working with the Ngāti Paoa negotiators on the matters summarised above, and representing Ngāti Paoa in RMA and local government matters.
- 91) The Crown attempted to help reconcile the entities, but this was unsuccessful. Later the Māori Land Court did the same, with the same result. The Trust Board particularly opposed the transfer of Waiheke Station to the Iwi Trust under Treaty settlement legislation (more on this below).
- 92) The Trust Board soon became inveterate litigators, seeking solutions through the courts rather than on marae or through more appropriate tikanga processes. Litigation extended across both Treaty settlement and non-settlement matters.
- 93) Arguably there was an opportunity at around 2018 for the Crown to have worked with the Iwi Trust to run a mandating process that would have formally transferred the 2011 mandate for Treaty settlement negotiations purposes from the Trust Board to the Iwi Trust. The Crown thought doing so was not required, as negotiations were largely complete. With the benefit of hindsight, the Crown should have acted, and if it had almost six years of distracting, time-consuming and expensive litigation by the Trust Board might have been avoided, with accompanying divisiveness for the Ngāti Paoa community.

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<sup>3</sup> Drawn from the affidavit of Susan Leah Campbell, Regional Director in the Office of Crown Māori Relations – Te Arawhiti, 19 March 2021, para 49, filed by Crown Law as part of the High Court’s consideration of the Ngāti Paoa Trust Board’s judicial review appeal against the Minister for Treaty of Waitangi Negotiations’ decision to sign a Ngāti Paoa deed of settlement, CIV-2021-404-422.

- 94) It is not the purpose of this submission to go into detail of the excruciating legal exchanges that resulted, including endless argument over the meaning of a section 30 order by the Māori Land Court, except to note that the Trust Board has not succeeded in any meaningful way in a single challenge.<sup>4</sup>
- 95) Why the Trust Board has persisted with litigation is a wonder; how they have afforded to is a mystery.
- 96) In January 2021, when declining an application by the Trust Board for an urgent inquiry, the Waitangi Tribunal usefully summarised its understanding of the board's status and claim to relevance for the wider Ngāti Paoa community (drawing as it did on extensive evidence provided to it by Crown witnesses, the Iwi Trust, and the Trust Board itself):<sup>5</sup>

The dispute here is largely between the Trust Board and the Iwi Trust. They are merely representatives of Maori and acting in that capacity. Much more important are the Maori who they say they represent. It is those whom they represent who must have their interests, rights and Treaty protection focused upon, not their representatives. All too often a claim such as this, said to be against the Crown, is an internal dispute and a dispute between representatives.

The Trust Board had a mandate, however they simply ceased to hold it. Ngati Paoa has now moved on and can be seen to firmly support the Iwi Trust. The progress to settlement has now reached the point where the mandate of the Trust Board is nothing more than historical. The Crown could not be seen to be breaching the principles of the Treaty by dealing with the Iwi Trust.

Numbers matter and in this context the Trust Board has been unable to disclose any substantial support. The support for the Iwi Trust is overwhelming.

- 97) The tragedy is that the Trust Board's penchant for litigation has come at great financial cost to the Iwi Trust, draining settlement resources, and distracting the Iwi Trust from the business of advancing Ngāti Paoa as a people.
- 98) Also relevant to this submission on the Bill, the Trust Board challenged the signing of the Ngāti Paoa Deed of Settlement. The High Court's judgment of 12 December 2022 declining this challenge can be read for further details, and is referred to later below.<sup>6</sup>
- 99) The Trust Board appealed the High Court decision to the Supreme Court, which recently declined their appeal. The Supreme Court states:<sup>7</sup>

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<sup>4</sup> *Ngāti Paoa Iwi Trust v Ngāti Paoa Trust Board* [2018] 173 Waikato Maniapoto MB 5; *Ngāti Paoa Trust Board v Ngāti Paoa Iwi Trust* (2020) Māori Appellate Court MB 318; *SKP Incorporated v Auckland Council* [2019] NZEnvC 199; *SKP Incorporated v Auckland Council* [2020] NZHC 1390; *SKP Inc v Auckland Council* [2020] NZCA 610, (2020) 22 ELRNZ 268; *SKP Incorporated v Auckland Council* [2021] NZSC 35; *Ngāti Paoa Trust Board v Heritage New Zealand Pouhere Taonga* [2021] NZEnvC 075; Waitangi Tribunal, Decision on Application for an Urgent Hearing (Wai 2982, 20 January 2021).

<sup>5</sup> Waitangi Tribunal, Decision on Application for an Urgent Hearing (Wai 2982, 20 January 2021), p14

<sup>6</sup> *Roebeck & Ors v The Attorney-General* [2022] NZHC 3341.

<sup>7</sup> SC 10/2023 [2023] NZSC 95, para 18

... the applicant's own submission demonstrates first, that this proceeding does not seek to vindicate extant substantive rights whose existence is not bound up in the settlement process. Rather it is a direct challenge to the proposed legislation itself. Second, implementing legislation is not a mere future possibility in this case; rather it is in concrete form and under active consideration by a Select Committee. At this stage, the forum before which the applicants must express their views is the Māori Affairs Select Committee.

### **Ratification of the Ngāti Paoa Deed of Settlement**

- 100) On 18 August 2017 the Ngāti Paoa negotiators initialled the Ngāti Paoa Deed of Settlement. Significantly, this version of the Deed is different to that signed 3 years and 8 months later on 20 March 2021, and which this Bill gives effect to, as it contained the commercial redress opportunity of housing development at Point England Reserve (facilitated by the then recently-passed Point England Development Enabling Act 2017). The initialled deed was made public, and put up on the government's website in the usual way.
- 101) In August 2017 the Ngāti Paoa negotiators thought they had finally 'got there', after eight long years of negotiations, and they thought a ratification process for the deed could be run.
- 102) That was not to be. The 23 September 2017 general election resulted in the formation of a Labour and New Zealand First minority coalition government, with a confidence and supply agreement with the Green Party. The expected ratification process for the initialled deed never happened. Before the end of 2017, the Ngāti Paoa negotiators were approached by Ministers with a request to consider an alternative approach to the Point England redress, which they agreed to consider.
- 103) The alternative Point England redress, and what was finally agreed, is discussed in more detail later below. It is nevertheless relevant to the timing of the ratification process for the Ngāti Paoa deed of settlement. In December 2019 the Crown confirmed its final offer for the alternative redress at Point England, which effectively concluded negotiations. This allowed ratification to take place between January and March 2020.
- 104) The ratification process itself was somewhat unusual, with the Iwi Trust and the Ngāti Paoa negotiator Morehu Wilson (now deceased) each running separate processes. Although less than ideal, the votes tallied under both processes demonstrated significant support from the Ngāti Paoa community for all components of the Deed of Settlement, including the alternative Point England redress and the consolidation of the Waiheke Station.
- 105) The percentages of valid votes received are summarised (see also clause 1.37 of the Deed):

<b>Resolution</b>	<b>Process led by Governance Entity</b>	<b>Process led by Mandated Negotiator</b>
Deed of Settlement	91% (379 of 415)	86% (190 of 219)
Waiheke Farm transfer to Governance Entity	84% (350 of 378)	76% (169 of 219)
Point England alternative offer	84% (360 of 378)	85% (187 of 219)



106) The Supreme Court has recently summarised the ratification process and its results:<sup>8</sup>

[10] ... in March 2020 the Iwi Trust and one negotiator, Mr Wilson, ran separate, overlapping, but not identical, ratification processes. Both separately sought ratification of the Ngāti Pāoa settlement deed and invited the iwi to advise whether trusteeship of Waiheke Station should be transferred from the Trust Board to the Iwi Trust. The Iwi Trust also sought re-confirmation of its proposed role as Ngāti Pāoa's post-settlement governance entity.

[11] Mr Wilson and the Iwi Trust created separate voter rolls. Those rolls were not identical and they were not consolidated. There were, in effect, two referendums of overlapping but distinct voter bases. As trustee of Waiheke Station, the Trust Board had long maintained its own beneficiary roll, but would not make it available to either Mr Wilson or the Iwi Trust. Voting was independently administered by Electionz, a firm that specialises in the management of electoral events, using the rolls the Iwi Trust and Mr Wilson provided. The ratification process was advertised in the public notices sections of various newspapers and on Iwi Trust related websites and social media.

[12] The settlement deed was well supported by those on both rolls whose votes were accepted as valid, as was the proposed transfer of trusteeship of Waiheke Station to the Iwi Trust. The Iwi Trust's post-settlement role was also supported.

107) On 1 July 2020 the Minister for Treaty of Waitangi Negotiations and the Minister for Māori Development wrote to the Ngāti Paoa negotiators, the Iwi Trust and the Trust Board, confirming they had carefully considered the ratification results, and that they 'show sufficient support from Ngāti Paoa iwi members for the Crown and Ngāti Paoa to enter into a deed of settlement'.<sup>9</sup>

108) The Crown also confirmed that the Ngāti Paoa negotiators were supported to sign the Deed, along with the Ngāti Paoa Iwi Trust as the post-settlement governance entity for Ngāti Paoa.

109) It should be noted that the ratification process was challenged by the Trust Board, whose view that the process was flawed was tested by the High Court. Suffice it to say, the High Court did not find merit in the arguments made by the Trust Board, and has effectively given additional confirmation that the ratification results demonstrate the wishes of the Ngāti Paoa community.<sup>10</sup>

### **Lengthy settlement negotiations come at great personal cost, and a cost to the iwi**

110) It is a tragedy that the Ngāti Paoa settlement negotiations from 2009 took so long to complete, and that they became so fraught – including at times disagreement between the Iwi Trust and the negotiators. It is a tragedy which took a great personal toll on those involved, particularly the Ngāti Paoa negotiators and their whānau.

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<sup>8</sup> SC 10/2023 [2023] NZSC 95, para 10-12

<sup>9</sup> <https://www.govt.nz/assets/Documents/OTS/Ngati-Paoa/2020-07-01-N-Paoa-Ratification-Results.pdf>

<sup>10</sup> *Roebeck & Ors v The Attorney-General* [2022] NZHC 3341

- 111) The Ngāti Paoa Iwi Trust wishes to acknowledge that toll, and to state that, at key times, things could and should have been done better.
- 112) Settlement negotiations with the Crown, with its greater resources and reach, were always going to be hard for Ngāti Paoa and for those directly involved in advancing the claims, no matter what. The presence of a 'revived' Ngāti Paoa Trust Board from 2017 added stress to the negotiations generally, as the negotiators and the Iwi Trust had to contend with a small but highly litigious group of iwi members.
- 113) Stress was also added by litigation from another Auckland iwi to stop aspects of the Crown's commercial redress offer to Ngāti Paoa. The litigation was largely resolved, at least between Ngāti Paoa and that iwi, but it continued against other iwi until recently with a significant impact on tribal relationships in Auckland, including an impact on the timely completion of Treaty settlements for many who are whanaunga to Ngāti Paoa. The Ngāti Paoa Iwi Trust does not want to be divided between whanaunga, and is keen for these divisions to stop.
- 114) The need in late 2017, following the change of government, for Ngāti Paoa to re-negotiate the Point England Reserve commercial opportunity was difficult and created significant stress, particularly since the deed of settlement had been initialled immediately prior to the election and was close to being ratified after an already long journey. Although the final outcome, as provided through this Bill, appears largely positive for Ngāti Paoa, as well as for the wider Tāmaki community who will be close neighbours and able to access reserve lands that Ngāti Paoa will own and manage jointly with Auckland Council, a great cost was paid by Ngāti Paoa to get there.
- 115) All the above matters prolonged negotiations, drained resource, and made it difficult for the Ngāti Paoa Iwi Trust to focus on good governance and communications with the Ngāti Paoa community they represented, when it should have. It also exhausted people and led some to despair.
- 116) That negotiations are now completed, with the Deed signed in March 2021, is a great relief to Ngāti Paoa. That the Ngāti Paoa Claims Settlement Bill is passing through the House is to be celebrated. The Iwi Trust also appreciates the timely process being followed by the Māori Affairs Committee to facilitate this, and hopes the other Pare Hauraki and the remaining Tāmaki Makaurau settlements will benefit from the same treatment.

## **REMAINING ISSUES**

- 117) This part of the submission provides information on specific issues that have been of contention or concern within the Ngāti Paoa community, and sometimes externally (such as with Omaru Recreation Reserve at Point England).
- 118) In some instances there is misinformation circulating, which is regrettable. The submission looks to clear such misinformation up, both for the benefit of the Committee, and for others who may be interested.

- 119) An unfortunate but necessary focus of this part of Iwi Trust's submission is to push back against unfounded statements by the Trust Board, particularly in regard to Waiheke Station. It is unfortunate as the trustees of the Trust Board are Ngāti Paoa people too. Through their passions they say they want the best for the iwi; however the views they espouse and actions they take have the opposite effect.
- 120) It should be noted the Iwi Trust relies on the Departmental Report, which will be provided to the Committee in due course, to furnish further technical information as may be required by the Committee on these matters.

### **Early release properties**

- 121) On 7 December 2015 the Crown transferred to the Iwi Trust, on terms and conditions agreed in a counter-signed letter dated 5 August 2015, fourteen 'early release' commercial properties. The properties were a mixture of mostly residential sites around Greenhithe, Forest Hill, Panmure, Orewa and Red Beach which had been held in the Crown's 'land bank'. The Ngāti Paoa Iwi Trust's commercial arm borrowed money at commercial rates to purchase the properties, and negotiated a near-immediate on-sale to private parties, which generated over \$3 million.
- 122) The intention behind the early release and on-sale was to help the Ngati Paoa Iwi Trust raise cash to invest in commercial opportunities ahead of settlement date, including retaining and developing at least one key property that had initially been offered. Litigation from another Auckland iwi prevented the latter from happening, although that and another property have been retained as a settlement date properties.
- 123) The need for capital applied also to what was then being explored as a housing development at Point England Reserve. However, as outlined soon below, the change of government in late 2017 meant an alternative approach to housing development at Point England Reserve ended up being taken.
- 124) Regrettably, the time it took to negotiate a commercial alternative for the Point England redress from 2018, plus delays caused by litigation by other iwi and the length of settlement negotiations generally, meant profit from the early release properties came largely to be spent on operations, advisors, and legal costs, rather than being invested as capital.
- 125) This has rightly been a matter of concern to a number of Ngāti Paoa, which the Iwi Trust acknowledges. A better approach to managing profits from the early release properties should have been taken. It has also created the false view that the Iwi Trust would consider selling the Waiheke Station, which is incorrect – this matter is addressed further below.

### **Omaru Recreation Reserve (Point England)**

- 126) In 2015 Ngāti Paoa Iwi Trust began exploring the possibility of housing development at Point England Reserve, which is a large reserve on the Tāmaki River administered by Auckland Council, and the place where land had already been offered to Ngāti Paoa as cultural redress for a marae.

- 127) In 2016 these discussions progressed significantly with the Crown. Auckland was experiencing a 'housing crisis' with a shortage of housing supply, and the development of around 500 new dwellings, with a mix of social, affordable and commercial housing was attractive. Work by the Tāmaki Regeneration Company was already underway, with need for 'green field' sites to build initial homes that would allow existing state house tenants to be relocated while older homes were redeveloped.
- 128) At the time the Iwi Trust spotted a commercial opportunity for Ngāti Paoa. The Iwi Trust's commercial arm had been established. Some capital had been raised by the on-sale of the early release properties, although due to litigation from another Auckland iwi, the opportunity to retain and develop two key properties that had been part of the 'early release' package had been stopped. The potential for development at Point England filled that gap.
- 129) There was a significant cultural driver for Ngāti Paoa too. As noted, the Crown had offered a cultural redress site at Point England Reserve for Ngāti Paoa to build a marae on. This had been a longstanding aspiration of Ngāti Paoa and a priority for the Ngāti Paoa negotiators: to leverage the Treaty settlement to grow a Ngāti Paoa community in one of the Ngāti Paoa customary strongholds in Tāmaki Makaurau, specifically across the suburbs known today as St Heliers, Glendowie, Glen Innes, Point England, Tāmaki, Panmure and Mount Wellington.
- 130) It should be noted that a key historical grievance for Ngāti Paoa was that the Crown never set aside reserves from key early land transactions which had enabled the foundation and growth of the city of Auckland – in this instance the 1841 'Kohimarama block', which was defined on survey plans by a line running south from Mission Bay to the Panmure Basin, and which included all lands east of this line to the Tāmaki River.
- 131) This wider 'Kohimarama' area had been the real 'down town' of Tāmaki Makaurau in the early decades of the nineteenth century, housing by far the largest Māori community on the isthmus. Ngāti Paoa rangatira were the recognised leaders of the community, although there were of course others.
- 132) This was disrupted in 1821 when Ngāti Paoa (and members of allied iwi) suffered a significant military defeat by Hongi Hika at Mokoia Pā, modern-day Panmure. Those who escaped from the battle and siege left the region for a while. Within a decade, though, Ngāti Paoa began to re-occupy the area, but cautiously. This process was interrupted by the arrival of Governor Hobson in 1840, the signing of the Treaty by Ngāti Paoa and others, the foundation of Auckland as the colony's new capital, and the 'sale' of the Kohimarama block to the Crown in 1841 without any reserves being set aside.
- 133) So when the Ngāti Paoa negotiators sought settlement redress at Point England, they had in their minds a 'once in 200 year opportunity'. They also knew a marae can only prosper if there is a large and vibrant community nearby to support it. The idea was, therefore, that part of the commercial housing development at Point England would be used to support Ngāti Paoa people into affordable houses, in effect creating a papakāinga near the marae.
- 134) Ngāti Paoa representatives lobbied hard directly with ministers. The Point England housing proposal got legs and came to be supported by key ministers within the then National

government. It was decided that an approach outside the Treaty settlement framework was required, and hence the Point England Development Enabling Bill was drafted, put into the House and later passed, with a commencement date of 29 June 2017.

- 135) When the housing proposal was made public, though, it generated significant community opposition. In public meetings the Ngāti Paoa negotiators sought to explain their aspirations for the site, including improving the balance of Point England Reserve, which was then in a pretty sorry state. But this was not sufficiently persuasive to many in the community, who were concerned about environmental impacts and availability of open space, and fearful of housing development. A related factor was that opposition was also being voiced against the Tāmaki Regeneration Company, meaning housing development generally was contentious. Opposition parties capitalised on this and committed to undo the Point England Development Enabling Act if they came to power.
- 136) The rest, as is said, is history. In late 2017, with the new government in place, the Crown approached Ngāti Paoa with an ‘alternative’ approach to Point England. The alternative involved a significant departure from large-scale housing development, but also met many Ngāti Paoa aspirations to build a living papakāinga community to support the marae.
- 137) In summary, the following was agreed, which was incorporated into the Deed and is provided for by this Bill:
- i) the Point England Development Act 2017 commercial opportunity is withdrawn and the Act repealed through the Ngāti Paoa settlement legislation;
  - ii) 2.0 hectares of the former development land under the 2017 Act will be transferred to Ngāti Paoa as cultural redress, at no cost, for the development of a papakāinga (noting the land will transfer with the designation Mixed Housing Urban Zone in place, which is the designation given to the development land subject to the 2017 Act). This site will take the name ‘Hine-nui-o-te-paua’;
  - iii) the 2.0 hectare marae site, to be called ‘Paoa Whanake’, as had been previously agreed, will transfer as cultural redress to Ngāti Paoa as a local purpose (marae) reserve, administered by the Iwi Trust;
  - iv) the balance of Point England Reserve (and the development land subject to the 2017 Act), will transfer to Ngāti Paoa as a recreation reserve, with administration by Auckland Council. The reserve will take the name ‘Omaru’. The settlement legislation will require Auckland Council to ‘jointly develop and agree’ the required reserve management plan for the reserve, establishing a kind of co-governance partnership between council and Ngāti Paoa;
  - v) a right of way easement will be provided from Elstree Avenue to both Paoa Whanake and Hine-nui-o-te-paua, allowing a road to be built and other services delivered. It should be noted that previous Auckland Council planning for the site had identified the benefit of building a road from Elstree Avenue to service the northern extent of the sports fields, so a new road will serve multiple purposes for the reserve.

- 138) As an alternative ‘cultural redress’ approach to Point England Reserve, this was readily welcomed by the Ngāti Paoa negotiators.
- 139) Negotiations for substitute commercial opportunity proved more complex, with a range of possibilities being explored. In time, the Crown proposed and the Ngāti Paoa negotiators (and Iwi Trust) agreed to a second right to purchase deferred selection school properties offered through the Marutūāhu Iwi Collective deed.<sup>11</sup> Under this agreement, Ngāti Paoa will have the right to purchase up to a cap of \$41 million of schools (with the cap based on 2018 values, but purchase at current values), with the properties being leased back to the Crown on a long-term basis. There is an ample sufficiency of school sites to be selected from, and the Iwi Trust is confident this commercial opportunity will be taken up. Capital will need to be raised to make the purchases, but this can be done through long-term arrangement that will see, at a future time, Ngāti Paoa owning and receiving rents from the properties.

<sup>11</sup> See clauses 6.8-6.16 of the Ngāti Paoa Deed of Settlement, and parts 4 and 5 of the Property Redress Schedule.

- 140) The Ngāti Paoa vision for the former Point England Reserve is clear. The fundamental aim is to build a living, papakāinga-based Māori community, which is sustainable, and which can play a significant role in the wider community of Tāmaki / Kohimarama (including Gl, Panmure, Glendowie and elsewhere).
- 141) A papakāinga will be built and Ngati Paoa whānau will live and grow their families there. There will be a road to the papakāinga from Elstree Avenue (built by Auckland Council). There will be a marae complex built, serviced by the same road, which will also service the northern parts of the playing fields. The marae complex will have multi-purpose facilities that can serve the wider community too, including a whare taonga.
- 142) There will also be a new reserve management plan for the wider reserve, developed and agreed jointly between Auckland Council and Ngati Paoa, which integrates planning for the reserve with the design and function of the papakāinga and marae, and supports environmental and public use values. As is normal, the reserve management plan will be consulted on with the wider public.
- 143) This vision aligns with Ngāti Paoa values, which are also social and environmental values. There are large parts of the reserve that will not be developed, but which are nevertheless in poor environmental shape today, including around the Omaru Stream. Presently there are significant areas of open space in the reserve that are covered with dense mats of kikuyu as a legacy of former grazing land. Part of this area could be re-planted to form urban ngahere, or otherwise modified to provide better habitat for foreshore birds. And there are wetlands to be properly reconstituted.
- 144) Finally, it should be noted the Iwi Trust is currently engaging constructively with officials at TPK and MHUD, to secure funding from existing government programmes to help support masterplanning and design work required to reach resource consent for the papakāinga and marae. While the Treaty settlement did not come with additional funding for the planning and construction of the papakāinga and marae, these outcomes align with government policy outcomes to increase housing supply in Auckland, and help provide housing in particular to Māori.

#### **Effect of delay on the state of cultural and commercial redress properties**

- 145) There are two properties in the Ngāti Paoa settlement package where the time taken to conclude negotiations has meant existing buildings have deteriorated or become inhabitable.
- 146) One is the cultural redress property Pokai Wawahi Ika, at Otakawhe Bay, Waiheke Island. That property was to transfer with a functioning and habitable 'lodge', which Ngāti Paoa had significant plans for as part of the 'waka highway' of cultural redress properties referred to earlier in this Submission. Unfortunately the building is no longer habitable and will not serve the purpose intended.
- 147) The other is the commercial redress property at 136 Dominion Road, Mt Eden, where the existing dwelling there has been steadily deteriorating without maintenance by LINZ.

- 148) The Iwi Trust is bringing this to the attention of the Māori Affairs Committee as an example of the time-cost of settlement. Ngāti Paoa expects the Crown to honour its commitments in the Deed, and ensure both properties are transferred in a proper state, or that an equivalent outcome is negotiated. The Iwi Trust has every confidence the relevant government departments will follow through on this and do the right thing.

### **Waiheke Station**

- 149) The Iwi Trust is aware the Ngāti Paoa Trust Board has been trying for some time to have provisions relating to the Waiheke Station removed from the Deed of Settlement and Bill, despite this being the wishes of the Ngāti Paoa community as demonstrated through the ratification process.
- 150) It should be noted that Treaty settlement legislation has been used a good number of times to consolidate iwi assets and provide for good governance. Examples include Ngāti Awa, Ngāti Tama ki Te Tau Ihu, Ngāti Whātua Ōrākei, Te Aupōuri and Te Rarawa. So the use of provisions in this Bill to consolidate the Waiheke Station as a settlement asset to be administered by the Iwi Trust as the sole representative body for Ngāti Paoa is not unusual.
- 151) What is really going on is that a small minority within the Ngāti Paoa community, being trustees on the revived Ngāti Paoa Trust Board, are desperate to retain relevance after the Ngāti Paoa settlement arrangements are legislated for. They believe they can do this by controlling the Waiheke Station. This is not the best outcome for Ngāti Paoa as a community and must not be allowed.

### *Background*

- 152) As described earlier in this submission, Hariata Gordon of Ngāti Paoa lodged the 'Waiheke Island Claim' (Wai 10), the tenth claim ever made to the Waitangi Tribunal, in a fight to secure whenua for the iwi on Waiheke Island. The Tribunal heard and, on 2 June 1987, reported on the claim. The Crown then made an early 'Treaty settlement' arrangement, involving transfer of the Waiheke Station Farm (Waiheke Station) to Ngāti Paoa.
- 153) The procedural history of the Waiheke Station is complex.<sup>12</sup> What it illustrates is an overall desire for the Station to be owned and administered by an entity representing all Ngāti Paoa (although acknowledging of course there are specific Ngāti Paoa hapū who affiliate more directly with Waiheke Island than others), and the trouble that was gone through over the years to ensure that happened.
- 154) In 1989 Cabinet directed the Minister of Māori Affairs to transfer the Farm as redress to a trust to be held for the benefit of all members of Ngāti Paoa. The Minister determined the Farm should transfer as Māori freehold land to reduce the chance of it being sold.
- 155) As an interim measure, an entity called the Ngāti Paoa Development Trust Board (Development Trust) was charged with overseeing the management of the Station, with

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<sup>12</sup> The following paragraphs draw on the 7 November 2022 affidavit of Rick Barker, Lead Crown Negotiator, filed with the High Court in relation to the Ngāti Paoa Trust Board challenge to the signing of the Ngāti Paoa Deed of Settlement (CIV-2021-404-422).



assistance by the Ngāti Paoa Whanau Trust (Whanau Trust). The latter had been formed as a charitable trust in 1989 to administer a gift of \$1.4 million from the Methodist Church for the benefit of Ngāti Paoa.

- 156) On 13 December 1989, following an application for orders from the Minister of Māori Affairs, the Māori Land Court vested the Station in 'Paoa as eponymous ancestor', declared the Crown land as Māori freehold land, and appointed investigatory trustees under section 438 of the Māori Affairs Act to administer the land in the interim. The role of the Development Trust ceased, and the court vested the Station as general land to be held and administered by an interim trust under section 437(4) of the Māori Affairs Act, known as the Waiheke Station Trust. The court lacked jurisdiction to establish a trust under section 438 of the Māori Affairs Act or change the status of the land to Māori freehold land.
- 157) Seven of the trustees on the Development Trust moved across to be seven of the ten trustees of the Waiheke Station Trust. The Whanau Trust continued to assist with administration, noting that in 1995, as part of the 1993 Auckland Railway settlement, the Whanau Trust received \$1 million from the Crown to hold for Ngāti Paoa, as the interim representative of the iwi.
- 158) After this a number of steps took place. First, in early 1998 the Māori Land Court ordered the Station to be changed to Māori Freehold Land, for the Waiheke Station Trust to be terminated, and for a whenua topu trust to be created to hold the Farm for the beneficiaries under sections 216 and 219 of the Te Ture Whenua Māori Act 1993. However, this was appealed, and in late 1998 the Māori Appellate Court undid this decision (due to an irregularity in the with the trust order), and instead ordered for the Station to be continued to be held by the Waiheke Station Trust. The Māori Appellate Court nevertheless confirmed the status of the land as Māori Freehold Land.
- 159) Approximately twelve years later, on 13 October 2011, the Māori Land Court ordered the Station and its assets be vested in the Ngāti Paoa Trust Board as a responsible trustee (under s239(3) of TTWMA). This was part of an ongoing process consolidate Ngāti Paoa governance and assets into a single representative body for the iwi. However, the Waiheke Station continued to exist, and there remain two separate trusts.
- 160) Technically, the Trust Board, as sole trustee of the Waiheke Station Trust, is presently the 'legal owner' the Station. But this is as a trustee, with the trust property being held and administered for the benefit of those who whakapapa to the eponymous ancestor Paoa. So the real 'owners' of the Station are all Ngāti Paoa. The Trust Board are only acting custodians for the iwi, and even they are just the latest step in an evolving story of governance for Ngāti Paoa.

*The proposed transfer of the Station to the Iwi Trust*

- 161) The Crown's view expressed during negotiations, which is a view shared by the Iwi Trust, is that the Waiheke Station forms part of the redress provided to Ngāti Paoa for the full and final settlement of Ngāti Paoa claims. In 2014 the Ngāti Paoa negotiators made a request for the Crown to assist in consolidating the Station into the post settlement governance entity for

Ngāti Paoa, the Iwi Trust. At this point in the negotiations, the Iwi Trust was supporting the negotiators, and the Trust Board was largely inactive (and soon became legally inoperative).

- 162) In 2015 Crown officials worked technically on how a consolidation could take place, using the Ngāti Paoa Treaty settlement legislation. At the time it was thought the Māori Land Court might be given special jurisdiction to hear an application by the trustees of the Iwi Trust on the Station's status – that is, whether its status as Māori Freehold Land was appropriate. The Crown was clear that needed to be a decision of the Māori Land Court, not something that was simply achieved through legislation. However, after considerable reflection by all parties in negotiations, it was agreed that was not appropriate, and the idea was put aside.
- 163) The Crown nevertheless insisted that the proposal to consolidate the Station with other Treaty settlement assets the Iwi Trust will hold, needed to be put to the Ngāti Paoa community, who are of course both the beneficiaries of the settlement and owners of the Station. The Ngāti Paoa negotiators (and Iwi Trust) agreed this was the best and most transparent way to proceed, and so the proposal became part of the ratification process for the Ngāti Paoa deed of settlement.
- 164) It should be noted that, in mid 2016, a Crown-facilitated hui was held with the Ngāti Paoa negotiators, the Iwi Trust, and the remaining trustees on the Trust Board (noting the Trust Board was not then legally operative). All parties agreed the sensible approach was for a single entity to hold all assets for the iwi, and that it should be the Iwi Trust. The point of contention at the meeting was that the Iwi Trust only had two interim trustees, which was later rectified. It was only when the Trust Board was 'revived' in 2017, with a different set of trustees, that opposition to the proposal was voiced.

#### *Ratification by the Ngāti Paoa community*

- 165) As outlined earlier, between January and March 2020 the Ngāti Paoa deed of settlement was taken to the Ngāti Paoa people for ratification. Two ratification processes were run, and both asked whether people supported the consolidation of the Waiheke Station.
- 166) There was a strong vote in support of this outcome, being 84% (or 350 of 378 valid votes) in support by those who voted in the process run by the Iwi Trust, and 76% (or 169 of 219 valid votes) in support by those who voted in the process run by the Ngāti Paoa negotiator. On 1 July 2020 Ministers approved the outcome of ratification process and agreed to move to sign the Ngāti Paoa Deed.

#### *Trust Board boycott and later litigation*

- 167) As the ratification process was being planned, the Trust Board was asked to contribute the list of Ngāti Paoa beneficiaries they held, so as to allow as many Ngāti Paoa as possible to vote. They declined to do this without having control, effectively boycotting their participation in the ratification process.
- 168) In July 2020 the Trust Board applied to the Waitangi Tribunal for an urgent inquiry into the Crown's negotiations to settle the Ngāti Paoa claims (Wai 2982). Affidavits and a substantial body of evidence was filed by the Crown and Iwi Trust, and submissions made. On 21 January

2021 the Tribunal released its decision, refusing urgency essentially on the ground of insufficient arguability. As part of its decision, the Tribunal wrote:<sup>13</sup>

102. There is no question that the Iwi Trust will be the PGSE. Ngāti Paoa is on the brink of settlement. The numbers support the settlement, even given that the Trust Board says that the Farm, a settlement asset, is with them and stays with them. The effect of that would be the existence of two settlement bodies at loggerheads with each other.

103. It seems to me that it does not matter if the Farm vesting was set up as an interim arrangement or something more permanent. The Trust Board is, in effect, saying ‘we are the trustees, the legal owners and you cannot take that from us except by breach of the principles of the Treaty’.

104. From my perspective the Trust Board is solely a trustee. A Trust is a body of duties and obligations attended only by the powers and rights necessary to fulfil those obligations. Much more important are the beneficiaries, the true and equitable owners. Ngāti Paoa have shown they wish for the Iwi Trust to have the obligation to administer the Farm for them.

105. Again, one has to ask why, as a matter of logic, would the Farm being separately administered have positive effects for Ngāti Paoa. It seems to me that it is irrelevant whether the vesting of the Farm in the Iwi Trust is achieved through the Maori Land Court or by legislation. It is the wish of the owners.

169) On the eve of the signing of the Ngāti Paoa deed of settlement (which took place on 20 March 2021), the Trust Board lodged an injunction with the High Court, seeking orders declaring the Crown should not sign the Deed of Settlement, and prohibiting the Iwi Trust from doing the same. The court dismissed the Trust Board’s application for interim orders, and the signing fortunately went ahead.<sup>14</sup>

170) The substantive case was heard in the High Court in November 2022, along with other proceedings then underway. The High Court provided judgment on 12 December 2022, again declining the Trust Board’s case (and noting that the Minister for Treaty of Waitangi Negotiations soon afterwards lodged this Bill). In its comprehensive decision, the Court pointed out:<sup>15</sup>

[197] ... it also seems to me that the Trust Board and the Kauahi hapū made a strategic choice in early January [2020] to not participate in the ratification process, despite an invitation from the Iwi Trust to do so. I accept they held the view that the Iwi Trust’s process was illegitimate. But they could have marshalled their members, encouraging them to vote against the resolutions, both for ratification of the Deed of Settlement and the mandate. This may have been a more effective strategy than holding a position of principle and threatening litigation against the Crown. I also observe that there have been years in which the parties could have resolved their differences, but they have not

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<sup>13</sup> Waitangi Tribunal, *Decision on application for an urgent hearing* (Wai 2982, 2021), p.14

<sup>14</sup> [2021] NZHC 580

<sup>15</sup> *Roebeck & Ors v The Attorney-General* [2022] NZHC 3341

done so. While responsibility for that clearly falls on all involved, it is in my view relevant that the Trust Board did not respond to the Iwi Trust's letter given that it and the Kauahi hapū are now seeking discretionary relief from this Court, of which the goal is said to be conducting a tikanga-based process to ascertain a combined register of the Ngāti Pāoa claimant community.

- 171) From the perspective of the Iwi Trust, it is impossible for the Trust Board to have it both ways: to complain that its beneficiaries were unable to vote on the Waiheke Station proposal during the ratification process, while at the same time having refused to participate in that process, and thus disenfranchising the very beneficiaries they allege exist and support them.

*Iwi Trust aspirations for the Waiheke Station*

- 172) Myth-making propagated by the Trust Board, particularly on social media, is that the Waiheke Station is at risk of being sold by the Iwi Trust. This is not correct.
- 173) The Iwi Trust wishes to take the opportunity of this submission to state, in no uncertain terms, that there is no plan or intention to sell the Waiheke station. Rather, the Iwi Trust wishes to ensure the Station prospers so it can support Ngāti Paoa, and be a place of pride and comfort for the iwi. The struggle the Ngāti Paoa community went through in the 1980s to secure the Station, and the struggle that followed over many years, has been too long and too hard for the Station to be put at risk of alienation.
- 174) For that a better future to develop, though, there is likely a need to diversity the Station away from only dry stock farming. As a rule Waiheke Island is a difficult place to farm, as there are significant transport costs, and as the island dries out badly in summer. But there is potential for environmental and cultural tourism, which align with the island's economy and values, and other opportunities for primary production that should be explored.
- 175) Significantly too, development of the Station has been historically constrained because it is a stand-alone asset, and as Māori land it has been difficult to raise capital for. In a future where the Station is part of a group of assets managed by the Iwi Trust (including other farming and forestry assets), the Iwi Trust will at minimum be able to bring expertise gained elsewhere to the Station. The Iwi Trust could also draw on other iwi revenue streams to invest in the Station. At this stage, though, this is exploratory only – the reality is that a careful examination of options needs to take place, business cases built, and the wider Ngāti Paoa community (and the Ngāti Paoa community directly affiliated to Waiheke in particular) consulted extensively.

*Current relationship between the Iwi Trust and the Trust Board*

- 176) It should be noted the Iwi Trust has in the past tried to reconcile with the Trust Board, including through formal mediation, but all efforts to do this have failed. At present, ongoing and expensive litigation by the Trust Board, which borders on vexatious, makes it difficult for the Iwi Trust to think any further effort at reconciliation would be fruitful.
- 177) As an illustration of this, at a recent Court of Appeal hearing in relation to a non-Treaty settlement matter, the Trust Board went to great lengths to disparage the work of Morehu

Wilson, who is now deceased and unable to defend himself, as a representative Ngāti Paoa leader and historical expert for the Iwi Trust.<sup>16</sup>

- 178) Further, when questioned by the Court on what function the Trust Board might play if Treaty settlement legislation was passed and the Waiheke Station transferred to the Iwi Trust, legal counsel for the Trust Board argued that Ngāti Paoa people would be happy with having two representative bodies, and that the Trust Board could focus on RMA matters, presumably leaving the Iwi Trust to manage Treaty settlement assets.
- 179) This is an absurdity and runs counter to good sense. As a rule, Treaty settlements deliver a rare and precious opportunity for iwi to re-establish a financial base, and to advance the wellbeing of their community. Yet the post-settlement world can be even more challenging than settlement negotiations, and many post-settlement iwi have commented that the ‘real work’ started when their legislation was passed.
- 180) Success post settlement requires good governance and strategy by iwi leadership, excellent stewardship of iwi assets, and ongoing communication and engagement between the representative body of an iwi and the iwi community. Post Settlement Governance Entities need to be accountable and transparent to their beneficiaries, but they also need to be able to lead with confidence, and to speak on behalf of their people.
- 181) The existence of multiple representative bodies expressing divergent views makes this a near impossibility, and indeed would be a recipe for disaster.

*No change to the Bill in regard to the Waiheke Station*

- 182) On that basis, any change to the Bill that would see the Waiheke Station not be consolidated with the Trust, and remain administered by the Trust Board, would be a travesty and injustice. It would fundamentally undermine at a governance level the ability of the Iwi Trust to represent, advocate for, and advance the wellbeing of all Ngāti Paoa into the future.
- 183) To reiterate what has been described previously, in 2013 the Trust Board went to considerable effort, consistent with its Deed of Mandate, to draw up the deed of trust for a post settlement governance entity for Ngāti Paoa, including working closely with Crown officials. It was well understood at the time that the Trust Board, as a charitable trust, did not have the appropriate legal structure to take Ngāti Paoa forward as a community, and that a new entity was required. This outcome was anticipated in the Deed of Mandate signed by the Trust Board. And through a ratification process the wider Ngāti Paoa community voted to establish the new body, with 96.2% in support.
- 184) At no point in this lengthy and considered process did anyone from Ngāti Paoa propose that the iwi required two representative bodies into the future. That idea was never put to the community to vote on, as indeed everyone knew it would be absurd.
- 185) The answer the Trust Board’s lawyer *should* have provided the Court of Appeal during the recent hearing just referred to, is that the Trust Board can serve no useful function for the

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<sup>16</sup> CA256/2022, Submissions for the Ngāti Paoa Iwi Trust, 21 June 2023

Ngāti Paoa community, and will formally disestablish itself when its role as the responsible trustee for the Waiheke Station Trust passes to the Iwi Trust as an outcome of Treaty settlement legislation.

- 186) Until that fine day happens, the Trust Board should focus its energies on managing the Waiheke Station, keeping it debt and pest free, and nothing else. The Trust Board should also, without reservation or condition, share the details of its beneficiary register with the Iwi Trust, so the Iwi Trust can contact those Ngāti Paoa beneficiaries individually to give them the choice of registering with the Iwi Trust. The Iwi Trust has resource to undertake this work now, and would welcome the opportunity to extend the franchise to any Ngāti Paoa who wishes to formally register.

## NGATI PAOA FUTURE

- 187) The Ngāti Paoa Iwi Trust is optimistic for the future of Ngāti Paoa as enabled through this Bill. The Iwi Trust looks to a future Ngāti Paoa community that is prosperous, active, supportive and creative, and which provides housing and jobs opportunities for its people.
- 188) The Iwi Trust also wishes to uphold the mana of Ngāti Paoa, and ensure lasting and strong whanaunga relationships are maintained with other iwi.
- 189) The Treaty settlement put in place through this Bill is just a beginning. The real work for the Iwi Trust, and the Ngāti Paoa community, is yet to start.

## ACKNOWLEDGEMENTS

Ka papā te whatitiri  
Ka hikohiko te ūira  
Ki runga o Kohukohunui  
Ka tārehurehu te whenua  
Ka ngārurue te papa  
Ka hopo, ka tangi kau  
Āwhiowhio ana i ngā kōtiritiri o Hūnua  
Me ngā wai pūwhero te heke o roimata  
Ki Te Moana-tīkapakapa-o-Hauraki  
Haere atu rā te ihi me te wehi  
Koutou kua hao nei i te kūpenga o Taramainuku  
E ngā tau kua pahemo ki muri  
Hei whetu e kānapanapa mai ana  
E kore rawa mātou e wareware  
He mea tītī ki te ngākau mō ake tonu atu  
Whārikihia tō korowai o te aroha  
Kia hoe tōtika tō tātou waka ki te pae tawhiti  
Tukutuku kei te ihu  
Paoa kei te kei  
Ko tātou ngā kei waenganui  
Hou!

- 190) The Ngāti Paoa Iwi Trust would like to acknowledge the many iwi, and the numerous organisations and individuals who have been involved in and supported the Ngāti Paoa Treaty claims and settlement negotiations.
- 191) To the many iwi who are whanaunga to Ngāti Paoa, who have travelled with Ngāti Paoa from the outset, and will continue to do so in the future: Kei ngā totara pū, kei ngā pākaihu, koutou ngā ihorei o te kei o te waka, kāre i āriarika ngā mihi maioha ki a koutou e tautoko ana tō mātou nei kerēme kia eke panuku, eke Tangaroa ki te ikeikenga o Rātāroa, o Kohukohunui e tū ake rāia.
- 192) For the Crown, the Iwi Trust wishes to acknowledge both Ministers for Treaty of Waitangi Negotiations who led engagement with Ngāti Paoa on settlement matters: the Hon Christopher Finlayson and the Hon Andrew Little. There were many Crown officials (or Ministerial appointees) involved at different times who deserve recognition. The following are a small selection: Sir Douglas Graham, Michael Dreaver, and Rick Barker (as Chief Crown Negotiators), and the officials Lil Anderson, Ryan Bogardus, Leah Campbell, Sophie Chrisp, Barry Hughes, Deborah Jackson, Paul Jackson, Hannah McGreggor, Leigh McPhail, Talei Pasikale and Jake Pollock.
- 193) The Iwi Trust also recognises the support of local government, their elected leaders and staff, and looks forward to strong relationships with all councils and council organisations in the Ngāti Paoa rohe. These include Auckland Council (including its various local boards and CCOs), the Hauraki District Council, Thames-Coromandel District Council, Matamata-Piako District Council, and Waikato Regional Council.
- 194) Various tertiary institutes, NGOs and other non-Crown organisations have worked closely with the Ngāti Paoa Iwi Trust at different times. Although they have not been directly involved in settlement negotiations, the Iwi Trust looks forward to ongoing relationships with all into the future. A particular acknowledgement is made to AUT and the University of Waikato, both of whom the Iwi Trust is working with on projects at present.
- 195) As this submission has outlined, the Ngāti Paoa community has walked every step of the Treaty settlement journey with its representative organisations – first with the Ngāti Paoa Trust Board to 2013, then with the Ngāti Paoa Iwi Trust to today. The Iwi Trust would like to acknowledge all Ngāti Paoa who took up leadership roles through this time, and their whānau who supported them.
- 196) The Iwi Trust would also like to acknowledge the many Ngāti Paoa who attend mandate hui, wānanga, settlement update hui, AGMs, and all the other hui that were held during settlement negotiations. Equally, the Iwi Trust appreciates the many Ngāti Paoa who took the time to consider the information provided to them on the Treaty settlement package, and to vote during various ratification processes.
- 197) The Iwi Trust was heartened to hear to the recognition given by all speakers in Parliament during the first reading of this Bill to the Ngāti Paoa negotiators, Hauauru Rawiri and the late

Morehu Wilson. The Iwi Trust adds its thanks to them, and to their whānau, who carried the burden of negotiations and the expectations of the iwi for so long.

- 198) Finally, the Iwi Trust acknowledges the work of the Māori Affairs Committee, and the time and attention of its members on this Bill.

## **CONCLUSION**

- 199) The Ngāti Paoa Iwi Trust supports the Ngāti Paoa Claims Settlement Bill and does not seek any changes to it.



## Attachment 1: Ngāti Paoa “Area of Interest” map

Please note this map is not intended to identify exclusive claim, rather, to illustrate the area where Ngāti Paoa considers its interests exist.



