

Hon Andrew Little

Minister for Treaty of Waitangi Negotiations

Proactive release –Whakatōhea Claims Settlement Bill: Approval for Introduction

Date of issue: 25 July 2023

The following documents have been proactively released in accordance with Cabinet Office Circular CO (18) 4.

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

No.	Document	Comments
1	Whakatōhea Claims Settlement Bill: Approval for Introduction <i>Cabinet committee paper</i> Office of the Minister for Treaty of Waitangi Negotiations <i>08 June 2023</i>	Released in full.
3	Whakatōhea Claims Settlement Bill: Approval for Introduction <i>Cabinet committee minute</i> LEG-23-MIN-0096 <i>Meeting date: 08 June 2023</i>	Released in full.
2	Report of the Cabinet Legislation Committee: Period Ended 9 June 2023 <i>Cabinet committee minute</i> CAB-23-MIN-0235 <i>Meeting Date: 12 June 2023</i>	Some information has been withheld due to it being outside of the scope of this release.

In Confidence

Office of the Minister of Treaty of Waitangi Negotiations

Cabinet Legislation Committee

Whakatōhea Claims Settlement Bill: Approval for Introduction

Proposal

- 1 This paper seeks approval to introduce the Whakatōhea Claims Settlement Bill (the Whakatōhea Bill), subject to the Minister for Treaty of Waitangi Negotiations and the Whakatōhea signing the Deed of Settlement.
- 2 The Whakatōhea Bill gives effect to a Deed of Settlement (the **Deed**) that has been agreed between the Whakatōhea Pre-settlement Claims Trust (WPCT) and ratified by Whakatōhea.
- 3 The Whakatōhea Bill also provides for the dissolution of the Whakatōhea Māori Trust Board, and transfers its functions and assets, including its Mandated Iwi Organisation (MIO) and Iwi Aquaculture Organisation (IAO) status, to the post-settlement governance entity, Te Tāwharau o Te Whakatōhea (the PSGE).

Relation to government priorities

- 4 This proposal relates directly to the Government's priority: Making New Zealand Proud: Build closer partnerships with Māori: Working to settle all historical Treaty settlements. This priority was emphasised in the Labour Party's 2020 Election Manifesto and the speech from the throne.

Background

- 5 Whakatōhea are an iwi of over 12,000 people, according to 2013 Census data. Their area of interest covers 192,158 hectares (ha) in the eastern Bay of Plenty.
- 6 The most serious Whakatōhea grievances relate to, and arise from, the invasion and confiscation of Whakatōhea land. In 1865, following the murder of the missionary Carl Volkner, the Government declared Whakatōhea rebels against the Crown. The Crown imposed martial law in the eastern Bay of Plenty and Crown troops invaded Ōpōtiki.
- 7 In 1866 the Crown confiscated around 58,000 ha of Whakatōhea land, encompassing most of the fertile and productive land in the district. The Crown forced hapū onto insufficient reserves which led to intra-iwi conflict. Later Crown purchases alienated Whakatōhea from much of their land in the inland hill country, most of which was ultimately designated public conservation land.

Te Whakatōhea Treaty settlement negotiations

- 8 The Crown initialled a deed of settlement with Whakatōhea in 1996. Whakatōhea negotiators and iwi members had significant concerns about the sufficiency of the settlement package and the deed was never put to Whakatōhea for ratification. The Crown terminated the deed in 1998 [CAB (98) M 12/3B refers].

- 9 In December 2016 the Crown recognised the mandate of the Whakatōhea Pre-settlement Claims Trust to represent Whakatōhea in negotiations. An Agreement in Principle was signed in August 2017. On 28 February and 11 June 2021 Cabinet approved the final redress package [CAB-21-MIN-0037 and CAB-21-MIN-0216 refer]. The Deed of Settlement was initialled on 23 December 2021.
- 10 Ratification was delayed so that WPCT could address petitions submitted by members of Whakatōhea who are opposed to the settlement. In July and August 2022 Whakatōhea undertook a process initiated by some members of Te Ūpokorehe hapū to have Te Ūpokorehe excluded from the Treaty settlement. The process did not demonstrate sufficient support to exclude Te Ūpokorehe, and WPCT commenced ratification in October 2022.
- 11 The ratification results demonstrate sufficient support amongst Whakatōhea to sign the Deed of Settlement. I signed the Deed of Settlement with Whakatōhea on 27 May. I seek your agreement to introduce the settlement legislation to the House of Representatives on the first available date after Cabinet has approved introduction.

Why is the Bill required?

- 12 Some of the components of the settlement package rely solely on the Deed of Settlement, but a substantive portion relies on legislation to be enacted and implemented.

The Whakatōhea Māori Trust Board will be dissolved through an Order in Council

- 13 In 2010, Cabinet approved the use of settlement legislation to remove charitable status from assets held by an established trust and transfer those assets to a post-settlement governance entity. Cabinet agreed that other iwi may use settlement legislation in this way in the interests of good governance [CAB Min (10) 37/7A refers].
- 14 The Bill provides for the dissolution of the Whakatōhea Māori Trust Board (WMTB) and for the transfer of its functions and assets, including MIO and IAO status, to Te Tāwharau. However, these provisions, contained in Part 5 of the Bill, will only come into effect through an Order in Council when certain conditions are met.
- 15 At ratification, the vote for the PSGE to replace WMTB as the MIO/IAO for the purposes of the Māori Fisheries Act 2004 and Māori Commercial Aquaculture Claims Settlement Act 2004, did not reach the 75% threshold of support required under those Acts. Te Ohu Kaimoana will not support the use of settlement legislation to transfer the MIO/IAO until the 75% threshold is reached. Therefore, WMTB cannot be dissolved because it would leave the MIO/IAO orphaned. The Bill has been drafted to provide for the dissolution to occur at a later date, when a successful vote for the transfer has occurred and the Minister for Treaty of Waitangi Negotiations has been notified.
- 16 When that Order in Council is presented, WMTB will be dissolved, their charitable status removed, and its current assets will transfer to the PSGE, including MIO and IAO status.
- 17 Whakatōhea intend to hold a vote in November 2023 on the transfer of the MIO/IAO responsibilities. If that vote is successful, the Bill will be amended through a supplementary order paper for the dissolution, and the remainder of Part 5, to come into force on commencement date. If that vote is unsuccessful, the Bill will continue

IN CONFIDENCE

through the House as is, WMTB and the PSGE will maintain their respective responsibilities and Whakatōhea will have to consider next steps going forward for the MIO/IAO, and governance arrangements.

- 18 I do not propose a time limit in which the Order In Council must be passed. This is to allow Whakatōhea to exercise rangatiratanga in making decisions about their governance.

Possible contentious issues

- 19 Issues which may be raised during the select committee process are challenges to the WPCT mandate, overlapping interests and litigation.

Mandate challenges

- 20 The WPCT mandate and negotiations process has been subject to two inquiries in the Waitangi Tribunal, led by Wai claimants opposed to settlement negotiations. Waitangi Tribunal recommendations have been addressed, including by:
- 20.1 holding a vote in 2018 which showed support to continue with negotiations; and
 - 20.2 allowing the North Eastern Bay of Plenty District Inquiry to continue after settlement, with a modified jurisdiction that will allow the Waitangi Tribunal to make findings, but not recommendations, on historical claims.
- 21 There are some that maintain opposition to the settlement. I am comfortable the ratification result demonstrates sufficient support from Whakatōhea to proceed, and that the opposition has had sufficient opportunity to voice their views both in the Waitangi Tribunal and through the ratification process.

Overlapping interests

- 22 The Whakatōhea area of interest is overlapped with a number of iwi, including Ngāti Awa and Tūhoe. WPCT undertook extensive overlapping interests engagement over the course of negotiations.
- 23 While most issues that arose during these discussions were resolved between iwi, both Ngāti Awa and Tūhoe did not agree to some aspects of the redress. In these cases, I made final decisions on overlapping interests which included concessions to the settled iwi. Neither Ngāti Awa nor Tūhoe litigated against these decisions however both indicated they were not satisfied with them.
- 24 Overall, the overlapping claims process has been robust and overlapping claims have been addressed to the Crown's satisfaction.

Litigation

- 25 In May 2023, litigation was filed by both legal counsel for Ngāti Ira, and legal counsel for Te Upokorehe.
- 26 The application by Ngāti Ira was in the High Court and sought an interim orders preventing the signing of the deed for tikanga reasons. On 25 May the High Court dismissed the application as the Court considered it was being asked to interfere in

IN CONFIDENCE

parliamentary decision-making, and because it did not consider the case was arguable.

- 27 Te Upokorehe filed for urgency in the Waitangi Tribunal on 25 May, stating the inclusion of Te Upokorehe in the settlement was a breach of Te Tiriti o Waitangi. I consider the factual situation shows Whakatōhea support proceeding with the deed, and that the urgency application is also asking the judiciary to interfere with parliamentary decision-making.
- 28 I will consider the views of the Waitangi Tribunal before deciding when to introduce the Bill.

Impact analysis

- 29 The Office for Māori Crown Relations – Te Arawhiti is not required to prepare a Regulatory Impact Statement as the Bill does not alter the regulatory regime.

Compliance

- 30 The Bill complies with the:
- 30.1 principles of the Treaty of Waitangi;
 - 30.2 rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 30.3 principles and guidelines set out in the Privacy Act 1993;
 - 30.4 Legislation Advisory Committee Guidelines: Guidelines on Process and Content of Legislation; and
 - 30.5 relevant international standards and obligations.

Consultation

- 31 The Office for Māori Crown Relations – Te Arawhiti has consulted with and incorporated the views of the Treasury, Department of Conservation, Ministry for the Environment, Ministry of Education, Ministry of Business, Innovation and Employment, Department of Internal Affairs, Ministry for Culture and Heritage, Ministry for Primary Industries, Te Puni Kōkiri, Inland Revenue Department, Te Ohu Kaimoana, and Land Information New Zealand in the development of the Bill.
- 32 The Crown Law Office and the Parliamentary Counsel Office were also consulted in the preparation of the Bill.
- 33 Te Tāwharau o Te Whakatōhea has received a copy of the Bill and supports its introduction.

Binding on the Crown

- 34 The Bill will be binding on the Crown.

Allocation of decision-making powers

- 35 Not applicable.

Associated regulations

36 Not applicable.

Other instruments

37 Not applicable.

Key Definitions

38 The Bill includes the following definitions:

- a. **administering body** has the meaning given in section 2(1) of the Reserves Act 1977;
- b. **Commissioner of Crown Lands** means the Commissioner of Crown Lands appointed in accordance with section 24AA of the Land Act 1948;
- c. **consent authority** has the meaning given in section 2(1) of the Resource Management Act 1991;
- d. **conservation area** has the meaning given in section 2(1) of the Conservation Act 1987;
- e. **conservation management plan** has the meaning given in section 2(1) of the Conservation Act 1987;
- f. **conservation management strategy** has the meaning given in section 2(1) of the Conservation Act 1987;
- g. **Crown** has the meaning given in section 2(1) of the Public Finance Act 1989;
- h. **Director-General** means the Director-General of Conservation;
- i. **LINZ** means Land Information New Zealand;
- j. **Registrar-General** has the meaning given to Registrar in section 5(1) the Land Transfer Act 2017;
- k. **reserve** has the meaning given in section 2(1) of the Reserves Act 1977; and
- l. **resource consent** has the meaning given in section 2(1) of the Resource Management Act 1991.

Commencement of legislation

39 The Act will come into force on the day after the date on which it receives Royal Assent. Many of the actions or matters occurring under the Bill will occur or take effect on settlement date which is the date that is 40 working days after the date on which the Act comes into force.

Parliamentary stages

40 The Deed of Settlement contains a provision stating it is unconditional upon legislation coming into force and the Crown will propose the settlement legislation for introduction.

- 41 I recommend the Bill be introduced on the first available date after confirmation by the Māori Affairs Select Committee and be passed by mid-2024.

Proactive Release

- 42 I intend to release this paper proactively, making any necessary redactions, within 30 business days of final Cabinet decisions, or following the introduction of the Bill.

Recommendations

- 43 The Minister for Treaty of Waitangi Negotiations recommends that the Committee:
1. **note** the Whakatōhea Deed of settlement has been ratified by Whakatōhea;
 2. **note** the Whakatōhea Claims Settlement Bill gives effect to aspects of the Whakatōhea Deed of Settlement, signed on 27 May 2023;
 3. **note** Te Tāwharau o Te Whakatōhea supports the introduction of the Whakatōhea Claims Settlement Bill into the House;
 4. **note** the Whakatōhea Claims Settlement Bill provides for disestablishment of the Whakatōhea Māori Trust Board, remove charitable status, and transfer its assets and functions including the Mandated Iwi Organisation and Iwi Aquaculture Organisation status to Te Tāwharau o Te Whakatōhea through an Order in Council;
 5. **agree** the Whakatōhea Claims Settlement Bill be introduced on the first available date after Cabinet approval; and
 6. **agree** the government propose the Whakatōhea Claims Settlement Bill be:
 - 6.1. referred to the Māori Affairs Select Committee for consideration;
 - 6.2. enacted, if possible, by mid-2024.

Authorised for lodgement

Hon Andrew Little

Minister for Treaty of Waitangi Negotiations



Cabinet Legislation Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Whakatōhea Claims Settlement Bill: Approval for Introduction

Portfolio **Treaty of Waitangi Negotiations**

On 8 June 2023, the Cabinet Legislation Committee:

- 1 **noted** that the Whakatōhea Deed of settlement has been ratified by Whakatōhea;
- 2 **noted** that the Whakatōhea Claims Settlement Bill (the Bill) gives effect to aspects of the Whakatōhea Deed of Settlement, signed on 27 May 2023;
- 3 **noted** that Te Tāwharau o Te Whakatōhea supports the introduction of the Whakatōhea Claims Settlement Bill into the House;
- 4 **noted** that the Bill provides for disestablishment of the Whakatōhea Māori Trust Board, remove charitable status, and transfer its assets and functions including the Mandated Iwi Organisation and Iwi Aquaculture Organisation status to Te Tāwharau o Te Whakatōhea through an Order in Council;
- 5 **approved** the Whakatōhea Claims Settlement Bill [PCO 21173] for introduction, subject to final approval of the government caucus, and sufficient support in the House of Representatives;
- 6 **agreed** that the Bill be introduced on the first available date after Cabinet approval;
- 7 **agreed** that the government propose the Whakatōhea Claims Settlement Bill be:
 - 7.1 referred to the Māori Affairs Select Committee for consideration;
 - 7.2 enacted, if possible, by mid-2024;
- 8 **noted** that the Bill will be substituted between the Cabinet Legislation Committee meeting and Cabinet to accommodate pre-introduction checks by the Parliamentary Counsel Office (PCO);
- 9 **authorised** PCO to continue to make minor and technical changes to Bill up until its introduction.

Rebecca Davies
Committee Secretary

Attendance: see over

Present:

Hon Kelvin Davis
Hon Michael Wood
Hon Andrew Little
Hon Kieran McAnulty (Chair)
Hon Willow-Jean Prime
Hon Dr Duncan Webb
Hon Dr Deborah Russell
Tangi Utikere, MP (Chief Government Whip)

Officials present from:

Office of the Prime Minister
Officials Committee for LEG

Proactively released by the
Minister for Treaty of Waitangi Negotiations



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Report of the Cabinet Legislation Committee: Period Ended 9 June 2023

On 12 June 2023, Cabinet made the following decisions on the work of the Cabinet Legislation Committee for the period ended 9 June 2023:

Out of Scope



LEG-23-MIN-0096 **Whakatōhea Claims Settlement Bill: Approval for Introduction** CONFIRMED
Portfolio: Treaty of Waitangi Negotiations

Out of Scope



Out of Scope



Secretary of the Cabinet