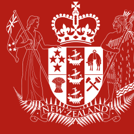


Deed of Settlement

Deed of Settlement between the Crown and Rangitāne o Wairau

General Background

Rangitāne o Wairau has customary interests in the Te Tau Ihu or northern South Island region. Around 1,000 people registered an affiliation to Rangitāne in the 2006 Census.

The Waitangi Tribunal heard the Te Tau Ihu claims of all iwi with interests in the northern South Island between August 2000 and March 2004, and released preliminary reports in 2007 and a final report in November 2008.

On 23 November 2005, the previous Minister in Charge of Treaty of Waitangi Negotiations and the Minister of Māori Affairs recognised the mandate of the Kurahaupō Ki Te Waipounamu Trust to represent Rangitāne and two other iwi in negotiating a comprehensive historical Treaty settlement. The Crown signed Terms of Negotiation with the Kurahaupō Trust in June 2006. On 11 February 2009, the Crown and the Kurahaupō Trust co-signed a Letter of Agreement.

On 27 August 2010, Rangitāne and the Crown initialled a detailed Deed of Settlement based on this agreement. The Deed was then ratified, and signed on 4 December 2010. The settlement will be implemented following the passage of settlement legislation.

Rangitāne was represented in their negotiations by the Rangitāne o Wairau Settlement Trust, chaired by Judith MacDonald. Day to day negotiations were led by Richard Bradley. The Office of Treaty Settlements, with the support of Department of Conservation, Land Information New Zealand, the Treasury and other government agencies, represented the Crown in day-to-day negotiations. The Minister for Treaty of Waitangi Negotiations, Hon Christopher Finlayson, and his predecessor Hon Dr Michael Cullen, represented the Crown in high-level negotiations with the Kurahaupō Trust and Rangitāne.

Summary of the Historical Background to the Claims by Rangitāne o Wairau

Rangitāne have resided in the northern South Island for many generations. Rangitāne occupied and used resources within a territory stretching from the Waiau-toa (Clarence) River in the south to the Wairau (Marlborough), including the Nelson Lakes, and north to Kaituna and the Marlborough Sounds and west into the Whakatu (Nelson) area. In the 1820s and 1830s iwi from the North Island invaded and settled in the northern South Island. Although Rangitāne no longer had exclusive possession of all their territory they retained their tribal structures, chiefly lines and ancestral connections to the land. In 1840 their rangatira Ihaia Kaikoura signed the Treaty of Waitangi at Horahora Kākahu Island in Port Underwood.

In 1839 the New Zealand Company signed deeds with Māori that purported to purchase the entire northern South Island. Rangitāne were not consulted. In 1844 a Crown-appointed Commissioner investigated the Company's purchases and deemed the Company had made a limited purchase of land in the northern South Island. However the Crown failed to investigate the rights of Rangitāne before granting land to the Company. Rangitāne did not receive any payment for their interests or a share in the Nelson Tenths reserves that were set aside from the land granted to the Company.

Between 1847 and 1856 the Crown sought to purchase the remaining Māori land in Te Tau Ihu. In 1847 the Crown purchased the Wairau district from three North Island chiefs. The Crown did not identify other right-holders in the region and the rights of Rangitāne were ignored. The 1853 Te Waipounamu deed purported to purchase all remaining Māori land in the region. Rangitāne were not signatories to the deed. The Crown used the 1853 deed to pressure resident Māori, including Rangitāne, to agree to the alienation of their land. In 1856 Rangitāne were paid £100 for their interests in Te Tau Ihu and granted reserves in the Wairau district.

Despite considering that an appropriate reserve in the Wairau comprised a block of around 13,400 acres, the two reserves established by the Crown were wholly inadequate. The Pukatea and Wairau reserves were shared between three iwi and were insufficient for Rangitāne to either maintain their customary practices of resource use or be developed effectively in the new economy. As a result Rangitāne became economically marginalised. In 1889 the Native Land Court awarded title to the reserves to individual Rangitāne. Over time the reserves became increasingly fragmented and uneconomic as individuals sold their shares and as titles became crowded through succession.

In 1883 and 1892 the Native Land Court investigated the ownership of land that had been excluded from Crown purchases and the Nelson Tenths reserves. In the Te Tai Tapu and Nelson Tenths cases the Court deemed that Rangitāne did not have rights and they were excluded from ownership. Rangitāne also made several claims for land they did not think had been included in the 1856 transaction but these claims were dismissed by the Court.

The Pukatea reserve was mainly leased by the Crown. Because of its isolation and poor quality it provided only a small return to its owners. Most of the reserve was purchased by the Crown in the 1950s. The Wairau reserve was subject to frequent flooding. In the 1930s it was included in a land development scheme, which was ineffective at preventing flooding, and the reserve became encumbered with debt. The Wairau reserve was eventually released from the scheme between 1955 and 1970.

By the late nineteenth century, Rangitāne were landless. The Crown attempted to alleviate their position through the provision of 'Landless Natives Reserves'. The reserves, however, were in isolated locations, of poor quality and generally unable to be developed for effective economic use. Rangitāne were also allocated land on Stewart Island but the Crown never granted them title to the land. Ultimately the reserves did little to alleviate the landless position of Rangitāne in the northern South Island.

Settlement

Summary of the Rangitāne o Wairau Settlement

Overview

The Rangitāne o Wairau Deed of Settlement is the final settlement of all historical claims of Rangitāne resulting from acts or omissions by the Crown prior to 21 September 1992 and is made up of a package that includes:

- an agreed historical account and Crown acknowledgements, which form the basis for a Crown Apology to Rangitāne;
- cultural redress; and
- financial and commercial redress.

No private land is involved in the redress, only Crown assets.

The benefits of the settlement will be available to all members of Rangitāne o Wairau, wherever they live.

Crown Apology

The Crown apologises to Rangitāne for past dealings that breached the Crown's obligations under the Treaty of Waitangi. These were the failure of the Crown to adequately recognise the customary rights of Rangitāne in its resolution of New Zealand Company transactions and its pre-1865 purchases of land, the exclusion of Rangitāne from the Nelson and Motueka tenths reserves and the Crown's failure to set aside adequate reserves and to ensure that Rangitāne retained sufficient lands for its future needs.

Cultural redress

1. Recognition of the traditional, historical, cultural and spiritual association of Rangitāne with places and sites owned by the Crown within their area of interest. This allows Rangitāne and the Crown to protect and enhance the conservation values associated with these sites, and includes:

1(A) OVERLAY CLASSIFICATION

The overlay classification (known as a Tōpuni or Whenua Rāhui in some other settlements) acknowledges the traditional, cultural, spiritual and historical association of Rangitāne with certain sites of significance.

The declaration of an area as an overlay classification provides for the Crown to acknowledge iwi values in relation to that area.

The settlement provides overlay classifications over Lake Rotoiti and Lake Rotoroa (jointly with Ngāti Apa), and Wairau Lagoons and Boulder Bank.

1(B) SITES TRANSFERRED TO RANGITĀNE

The settlement vests nine sites totalling approximately 20 hectares in Rangitāne, subject to specific conditions including protection of public access where appropriate:

- Endeavour Inlet
- Momorangi
- Ngakuta Bay
- Picton Recreation Reserve
- Rarangi
- Robin Hood Bay (Waikutakuta)
- Tuamatene Marae, Grovetown
- Wairau Lagoons/Boulder Bank (Te Pokohiwi)
- Wairau Lagoons (reinterment site)

Two sites, Horahora Kakahu and Pukatea (Whites Bay) are to be vested in Rangitāne jointly with other iwi.

One site at Mātangi Āwhio (Nelson), of 0.2061 hectares, is to be vested in Rangitāne o Wairau, Ngāti Apa ki te Rā Tō, Ngāti Kuia, Ngāti Tama manawhenua ki te Tau Ihu, Ngāti Rarua, Te Atiawa o te Waka-a-Maui and Te Pataka a Ngāti Koata.

1(C) STATUTORY ACKNOWLEDGEMENTS AND DEEDS OF RECOGNITION

A Statutory Acknowledgement registers the association between iwi and a particular site or area and enhances the iwi's ability to participate in specified Resource Management Act processes. Deeds of Recognition oblige the Crown to consult with Rangitāne on specified matters and have regard to their views regarding their special associations with certain areas.

The Crown offers a Coastal Statutory Acknowledgment over all the Te Tau Ihu coastal marine area north of the Ngāi Tahu takiwā.

The Crown offers Statutory Acknowledgements and Deeds of Recognition in relation to the following rivers within Rangitāne's area of interest:

- Waimea River (including Wairoa River and Wai-iti River as its tributaries) – jointly with Ngāti Apa and Ngāti Kuia.
- Maitai River (or Mahitahi River near Nelson)
- Kaituna River (near Havelock) – jointly with Ngāti Kuia
- Motupiko River – jointly with Ngāti Apa; and
- Wairau River (including Omaka River as its tributary)

There are eight further acknowledgements and deeds in the agreement relating to:

- Wairau Lagoons

Jointly with other iwi

- Paroroirangi (Kenepuru Sound)
- Te Ope o Kupe (Anamahanga/Port Gore)
- Puhikereru/ Mt Furneaux
- The Brothers Islands
- Kohi te Wai (Nelson)
- Lake Rotoiti
- Lake Rotoroa

2. Recognition of Rangitāne's traditional, historical, cultural and spiritual association in their area of interest:

2(A) PAKOHE/ARGILLITE

The Crown will acknowledge Rangitāne's association with Pakohe through a Statement of Cultural Association and offering Rangitāne the right to remove Pakohe boulders by hand in agreed rivers on Crown land.

2(B) CUSTOMARY USE OF TITI

The Deed makes provision for the governance entity to apply for authorisation for the iwi to hunt or kill for customary use titi on Titi Island and the Chetwode Islands.

2(C) FOSSICKING

The settlement provides a right to access public conservation land in Te Tau Ihu above the Ngāi Tahu takiwā to look for and take by hand any sand, shingle or natural material from a river bed within conservation land without being required to obtain an access permit.

2(D) TE TAU IHU RIVER/FRESHWATER ADVISORY COMMITTEE

The settlement establishes a stand-alone iwi advisory committee providing input into local authority planning and decision making under the Resource Management Act at review, preparation and notification stages.

2(E) ENDEAVOUR INLET

Crown acknowledgement of Rangitāne's historical association with Endeavour Inlet.

2(F) PLACE NAME CHANGES

Together the settlements with iwi who have interests in Te Tau Ihu include a total of 65 geographic name changes. The full list of place name changes is included in the Deed of Settlement, available on www.ots.govt.nz

3. Relationships

3(A) PROTOCOLS

Protocols will be issued by the Minister of Conservation, the Minister of Fisheries, the Minister of Energy, and the Minister for Arts, Culture and Heritage. These set out the way in which certain government agencies will exercise their functions within the protocol area and enable Rangitāne to have input into decision-making processes.

3(B) RELATIONSHIP AGREEMENT

The Crown will write to relevant local authorities encouraging them to enter into a Memorandum of Understanding with the Rangitāne governance entity.

Financial and commercial redress

4. This redress recognises the economic loss suffered by Rangitāne arising from breaches by the Crown of its Treaty obligations. It is aimed at providing Rangitāne with resources to assist them to develop their economic and social well-being. It includes:

4(A) FINANCIAL REDRESS

The financial and commercial redress package totals $25.374 million, including $12.24 million redress in lieu of licensed Crown Forest Land and interest that has been accumulating since the signing of the Letter of Agreement.

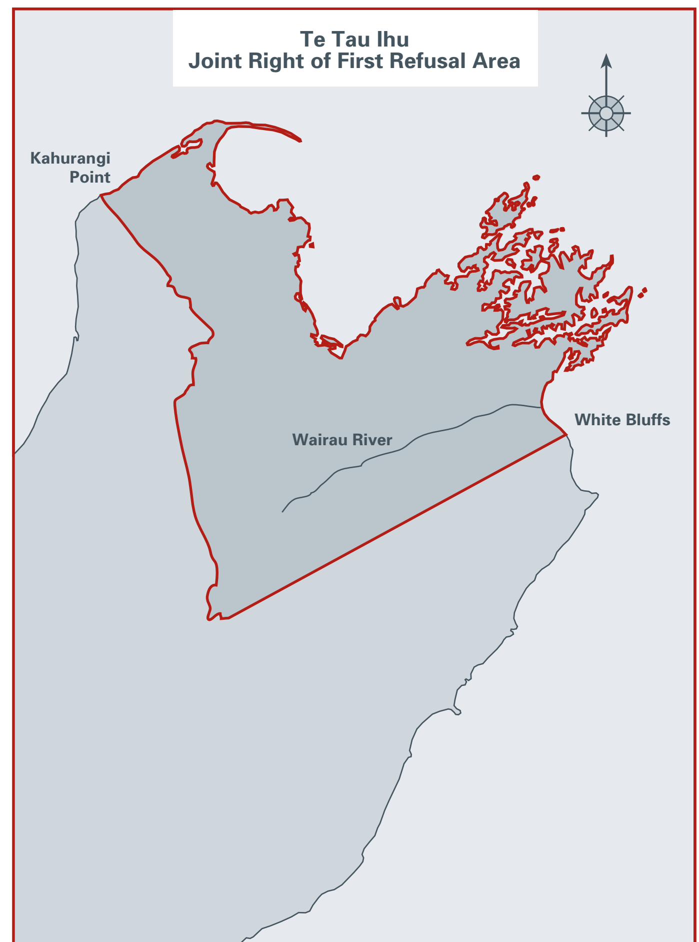
The sum includes the value of any Crown land purchased as part of the settlement, as outlined below.

4(B) COMMERCIAL REDRESS

Rangitāne will have:

- the opportunity to purchase certain Crown-owned properties within Te Tau Ihu, either at the time of settlement or through a deferred selection process
- The opportunity to purchase certain Crown-owned properties and lease them back to the Crown; and
- The opportunity to purchase at market value surplus Crown-owned properties within Te Tau Ihu, for a period of up to 169 years from Settlement Date, through a Right of First Refusal.

The proposed return of surplus Crown-owned properties is subject to any offer back requirements under section 40 of the Public Works Act.



Q&A

Questions and Answers

1. What is the total cost to the Crown?

The total cost to the Crown of the settlement redress outlined in the Deed of Settlement is $25.374 million, which includes interest, the value of commercial properties with cultural association, and payment in lieu of the ability to purchase licensed Crown forest land.

2. Is there any private land involved?

No.

3. Are the public's rights affected?

Generally, no. Sites at the Wairau Bar, Rarangi, Tuamatene Marae and Picton, totalling approximately three hectares, are being returned to Rangitāne without provision for future public access. These sites are of particular cultural significance, and are not subject to regular public use.

4. What are Statutory Acknowledgments and Deeds of Recognition?

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

Deeds of Recognition set out an agreement between the administering Crown body (the Minister of Conservation) and a claimant group in recognition of their special association with a site as stated in a Statutory Acknowledgement, and specify the nature of their input into the management of the site.

5. What is an Overlay Classification?

The Overlay Classification (known as a Tōpuni or Whenua Rāhui in some other settlements) acknowledges the traditional, cultural, spiritual and historical association of an iwi with certain sites of significance administered by the Department of Conservation.

An Overlay Classification status requires the Minister of Conservation and the settling group to develop and publicise a set of principles that will assist the Minister to avoid harming or diminishing values of the settling group with regard to that land. The New Zealand Conservation Authority and relevant Conservation Boards will also be required to have regard to the principles and consult with the settling group.

6. Are any place names changed?

The Te Tau Ihu iwi have requested 65 geographic name changes under the usual statutory provisions followed by the New Zealand Geographic Board/ Ngā Pou Taunaha o Aotearoa, which the Board had no concerns with.

7. Are any National Parks affected by the Settlement?

The settlement includes Statutory Acknowledgments and Deeds of Recognition over Lakes Rotoiti and Rotoroa in Nelson Lakes National Park. This redress will not affect the conservation values of those sites or public access to them.

8. Does the settlement create any special rights for the iwi?

No new statutory rights are being created by this agreement. Provisions in relation to conservation, such as Statutory Acknowledgements, give practical effect to existing provisions of both the Resource Management Act and the Conservation Act that provide for Māori participation in conservation and planning matters.

9. Does Rangitāne have the right to come back and make further claims about the behaviour of the Crown in the 19th and 20th centuries?

No. Both parties agree that the Deed of Settlement is fair in the circumstances and will be a final settlement for all Rangitāne's historical or pre-1992 claims. The settlement legislation, once passed, will prevent Rangitāne from re-litigating the claims before the Waitangi Tribunal or the courts.

The settlement will still allow Rangitāne to pursue claims against the Crown for acts or omissions after 21 September 1992, including claims based on the continued existence of aboriginal title or customary rights. The Crown also retains the right to dispute such claims or the existence of such title rights.

The settlement does not address claims relating to Rangitāne customary interests in the North Island, which will be addressed in separate settlements.

10. Who benefits from the settlement?

All members of Rangitāne o Wairau, wherever they may now live.