



Deed of Settlement

BETWEEN THE CROWN AND TE WHĀNAU A APANUI

General background

Te Whānau a Apanui are a hapū-centric iwi with over 16,000 members, according to 2018 census data. The members are affiliated to twelve hapū:

- Te Whānau a Haraawaka
- Te Whānau a Hikarukutai (also known as Ngāti Horomona)
- Te Whānau a Tutawake (also known as Ngāti Paeakau and Te Whānau a Tuahiawa)
- Te Whānau a Nuku (also known as Ngāti Horowai)
- Te Whānau a Rutaia (also known as Ngāti Terewai)
- Te Whānau a Hinetekahu (also known as Te Whānau a Toihau)
- Te Whānau a Te Ehutu
- Te Whānau a Kaiaio
- Te Whānau a Kahurautao (including Te Whānau a Te Rangi-i-runga)
- Te Whānau a Pararaki
- Te Whānau a Maruhaeremuri
- Te Whānau a Kauaetangohia.

Te Whānau a Apanui have whakapapa links to Apanui Ringamutu and related ancestors. They are based in an isolated part of the eastern Bay of Plenty, with an area of interest covering approximately 190,000 hectares between Hāwai and Pōtikirua. Te Whānau a Apanui traditional practices, stewardship of, and affinity with, the environment have remained strong.

Negotiation of Agreement in Principle

On 16 August 2017 the Crown recognised the dual mandate of Te Whānau a Apanui Negotiation Team to represent Te Whānau a Apanui in Treaty settlement negotiations and to engage on takutai moana matters with the Crown. The Negotiation Team's mandate was conferred on them by each of the hapū of Te Whānau a Apanui in accordance with their tikanga. The Crown and Te Whānau a Apanui signed an Agreement in Principle on 28 June 2019.

Initialled deed of Settlement

On 26 September 2023, the Crown and Te Whānau a Apanui initialled a Deed of Settlement. The Deed is subject to ratification by Te Whānau a Apanui members and is conditional on the enactment of the settlement legislation.

The Office for Māori Crown Relations – Te Arawhiti, with the support of other government agencies, represented the Crown in day-to-day negotiations.

Former Ministers for Treaty of Waitangi Negotiations, the Honourable Christopher Finlayson, and the Honourable Andrew Little, represented the Crown in high-level negotiations.

Summary of the historical background to the claims of Te Whānau a Apanui

Before 1840, Te Whānau a Apanui had in place full systems of self-government and were in control of their own affairs. Through Te Tiriti o Waitangi/the Treaty of Waitangi, the Crown promised to protect the rangatiratanga of Te Whānau a Apanui. However, the Crown then implemented laws and policies which sought to promote colonisation and assimilate Māori into European culture. Through its acts and omissions, the Crown has caused prejudice to generations of Te Whānau a Apanui people, which continues to be strongly felt to the present day.

The Crown had little contact with Te Whānau a Apanui before the 1860s, but still promoted legislation intended to begin the establishment of de facto authority. During the New Zealand Wars in 1865 some Te Whānau a Apanui swore an oath of allegiance to the Crown under the duress of an armed force offshore. Soon after, the Crown proclaimed the confiscation of an area that included some Te Whānau a Apanui lands. Although the confiscation was ultimately not enforced over Te Whānau a Apanui lands, it created trepidation and uncertainty for the iwi.

In 1862 the Crown introduced a new system of native land laws to facilitate the opening up of Māori land to British colonisation, and promote the detribalisation and eventual assimilation of Māori. Te Whānau a Apanui were not consulted about this, and had no choice but to participate in the Native Land Court system to protect their land from others and integrate it into the modern economy.

In 1867, the Native Land Court excluded Te Whānau a Apanui from the legal title for Whakaari after they had not been involved in Court processes. Te Whānau a Apanui sometimes had to sell land such as Kapuarangi 2 in 1898 to pay for the costs of Court processes. Court processes for the Tunapahore block, including multiple re-hearings, lasted over sixty years. In 1882 the Crown took advantage of the financially straitened circumstances of the iwi to pay a lower price for Puketauhini than it had originally agreed. The operation and impact of the native land laws contributed to the erosion of ngā hapū o Te Whānau a Apanui tribal structures which were based on the collective ownership of land.

As early as 1862, the Crown was aware of the dangerous roads and river crossings in the Te Whānau a Apanui rohe, but it was slow to provide infrastructure in the region in part due to the low number of Pākehā settlers in the district. Tragedy struck in 1900 when sixteen schoolchildren and two adults drowned after their waka capsized while crossing the dangerous but unbridged Mōtū River. Despite requests from Te Whānau a Apanui and the local council, the Crown did not construct a bridge until 1929.

Te Whānau a Apanui contributed to the construction of infrastructure in their rohe by helping establish a telephone line and working on road improvements. Te Whānau a Apanui also established their own medical clinics, and made a significant contribution to the defence of New Zealand.

The hapū of Te Whānau a Apanui have a sacred relationship with te ao tūroa (the natural world). However, Crown land purchases and several legislative enactments, about which Te Whānau a Apanui were not consulted, restricted their customary usage of te ao tūroa. Te Whānau Apanui have also been denied their rangatiratanga and their ability to exercise decision-making authority over the Raukūmara Range, and the awa and moana in their rohe within the parameters of the law. The Crown's management has left Raukūmara in a critical state of environmental decline.

Crown acts and omissions have severely impacted Te Whānau a Apanui social, economic, justice and wellbeing systems. The Crown aimed to assimilate Te Whānau a Apanui into British culture and introduced laws and policies that have sought to replace, undermine or render obsolete the traditional social, cultural and economic structures on which the iwi depended for its cohesion and wellbeing. For example, Native Schools established by the Crown in the late nineteenth and early twentieth centuries promoted assimilation. The education system's long held low expectations for Māori students has contributed to the poorer socio-economic circumstances of many Te Whānau a Apanui.

For over 15 generations Te Whānau a Apanui sustained themselves in their own rohe according to their tikanga. Te Whānau a Apanui today have long endured socio-economic deprivation. They have suffered higher rates of unemployment, worse health and poorer housing conditions than other New Zealanders. The services provided by the Crown have not met Te Whānau a Apanui needs. Institutional racism continues to be a feature of the care and protection system. Although the Te Whānau a Apanui rohe is among the poorest districts in New Zealand, the Crown has not provided the same level of funding for health services as for other more urbanised areas.

Limited employment opportunities in their rohe resulted in many Te Whānau a Apanui moving to urban centres, which weakened their connections to their tikanga, whenua and reo. Nevertheless, Te Whānau a Apanui have remained resilient, have actively sought to uphold their rangatiratanga, and have pressed the Crown to honour its obligations under Te Tiriti o Waitangi/the Treaty of Waitangi.

Overview

The Te Whānau a Apanui Deed of Settlement is the final settlement of all the historical Treaty of Waitangi Claims of Te Whānau a Apanui resulting from the Crown's acts and omissions prior to 21 September 1992.

The settlement package includes:

- a statement on sovereignty;
- an agreed historical account, Crown acknowledgements and apology;
- bespoke natural resource and conservation arrangements;
- arrangements for the return of land including the vesting of twelve sites of significance, the transfer of two Crown properties;
- the right to purchase one further property within a two-year deferred selection period and rights of first refusal over Crown land;
- an integrated relationship redress arrangement;
- financial redress of \$30 million, a cultural redress fund totalling \$1.1 million; and
- the reservation of 5,000 hectares of marine space for aquaculture and a fisheries right of first refusal over quota.

The benefits of the settlement will be available to all Te Whānau a Apanui members, regardless of where they live.

Toitū te Mana Motuhake

The Deed records that:

- Te Whānau a Apanui consider they are a sovereign nation who did not cede sovereignty to the Crown when they signed te Tiriti o Waitangi in 1840, and that they retain sovereignty today.
- The Crown considers its sovereignty was established by a process of constitutional and jurisdictional steps in 1840, and that its sovereignty today is incontrovertible.

These positions are not reconciled by the Deed of Settlement. Further, it was agreed that nothing in the Deed can be interpreted as relinquishing or extinguishing the Te Whānau a Apanui claim to on-going mana, rangatiratanga or sovereignty.

Toitū Te Tiriti o Waitangi

CROWN ACKNOWLEDGEMENTS AND APOLOGY

The Te Whānau a Apanui Deed of Settlement contains Crown acknowledgements and a Crown apology for well-founded breaches of the Treaty of Waitangi and its principles and other Crown acts and omissions which have caused prejudice to Te Whānau a Apanui. These include:

- the Crown's undermining of the tino rangatiratanga of the hapū of Te Whānau a Apanui;
- the Crown's assimilation policies negatively impacted the hapū of Te Whānau a Apanui;
- the Crown's undermining of Te Whānau a Apanui tikanga and causing or contributing to the alienation of land;
- the Crown's failure to protect Te Whānau a Apanui tribal structures from the impact of the native land laws;
- the Crown's failure to provide a legal means for Te Whānau a Apanui to hold their land in collective title before 1894;
- the Crown's failure to act in good faith and protect Te Whānau a Apanui interests when purchasing the Puketauhīnu block;
- the Crown's compulsory acquisition of "uneconomic" Te Whānau a Apanui land interests;

- the Crown's discrimination when declining funding for a bridge over the Mōtū River despite the tragic loss of life that occurred in 1900;
- the sense of grievance within Te Whānau a Apanui as a result of the degradation of the Raukūmara Range and sedimentation of some of the awa;
- the Crown's assimilation agenda within schools and failure to actively protect te reo Māori;
- the lack of consultation with Te Whānau a Apanui about Crown policies that might be detrimental to their health, education, economic development or cultural practices; and
- Crown discrimination in the payment of pensions during the first four decades of the twentieth century.

COMMITMENT GOING FORWARD

The Crown and Te Whānau a Apanui agree that Te Tiriti o Waitangi/the Treaty of Waitangi lays an important foundation for the conduct of the present and on-going relationship between the parties. It is acknowledged that they look forward to building an enduring relationship of mutual trust and co-operation based on Te Tiriti o Waitangi/the Treaty of Waitangi.

Toitū te Ao Tūroa

TE AO TŪROA FRAMEWORK

The settlement will implement Te Ao Tūroa framework, an extensive iwi-led set of arrangements for managing natural resources across the Te Whānau a Apanui rohe. The framework involves the Bay of Plenty Regional Council, Ōpōtiki District Council and Gisborne District Council.

The key elements of the framework are a:

- Local Authority Agreement – to strengthen relationships between Te Whānau a Apanui and local authorities and facilitate effective implementation of the framework;
- Statement of Te Whānau a Apanui values – to aid interpretation of the framework by decision makers;
- Te Whānau a Apanui rohe document – to express Te Whānau a Apanui views on respecting the mana of the natural world. The Bay of Plenty regional policy statement, as it applies to the Te Whānau a Apanui rohe, must be consistent with this document; and
- Freshwater management group – to prepare a freshwater management plan which will set objectives, flows, and limits for six freshwater catchments and play a leading role in freshwater management across the rohe.

RIVERBED ACKNOWLEDGEMENTS

The riverbed acknowledgements state that the Crown acknowledges Te Whānau a Apanui have an unbroken and enduring relationship with lands, waters and other resources within their rohe, and have kaitiaki responsibilities to protect these taonga.

RAUKŪMARA CONSERVATION REDRESS

The settlement will implement a comprehensive conservation redress package over the Raukūmara Range (the Raukūmara), a central focus of the Te Whānau a Apanui Treaty settlement negotiations. The redress enables partnership between Te Whānau a Apanui, Ngāti Porou and the Department of Conservation at a governance, management and operational level, and provides Te Whānau a Apanui and Ngāti Porou a greater role in statutory decision making over the Raukūmara.

The settlement will establish a new Crown/iwi Raukūmara joint body (Te Whakahaere Takirua mō Te Raukūmara) with members appointed by Te Whānau a Apanui, Ngāti Porou and the Director-General of Conservation.

The functions of Te Whakahaere Takirua mō Te Raukūmara will include:

- preparing a new Raukūmara conservation management strategy over the Raukūmara and the wider East Cape with the Director-General;
- performing functions in relation to the preparation and approval of a conservation management plan over the Raukūmara;
- issuing an annual statement of priorities to the Director-General in relation to the Raukūmara;
- approving the annual operational plan prepared by the Director-General in relation to the Raukūmara; and
- performing decision making functions that are delegated by the Minister of Conservation or Director-General to Te Whakahaere Takirua mō Te Raukūmara in relation to the Raukūmara.

TAKUTAI MOANA

The Deed of Settlement will deliver aspects of the 2008 Heads of Agreement between Te Whānau a Apanui and the Crown (under the Foreshore and Seabed Act 2004), which cannot be given effect through the Marine and Coastal Area (Takutai Moana) Act 2011. These aspects are:

- Conservation processes in respect of ngā rohe moana o ngā hapū;
- Permission right for petroleum related activities resource consents; and
- Customary fishing regulations.

Te Whānau a Apanui must still apply separately for recognition of their customary rights under the Takutai Moana Act.

STATUTORY ACKNOWLEDGEMENTS AND DEEDS OF RECOGNITION

A statutory acknowledgement recognises the particular cultural, spiritual, historical and traditional association between Te Whānau a Apanui and a particular site. It enhances the ability of Te Whānau a Apanui to participate in specified resource management processes. A deed of recognition obliges the Crown to consult with Te Whānau a Apanui on specified matters and to have regard to Te Whānau a Apanui views on their special associations with certain areas.

The Te Whānau a Apanui Deed of Settlement provides a deed of recognition over Hawaii River and its tributaries, and a coastal statutory acknowledgement.

APPOINTMENT TO CONTROL AND MANAGE HAWAII SCENIC RESERVE

An appointment to control and manage acknowledges association of Te Whānau a Apanui with sites of significance and provides them with a decision-making role over the land.

The settlement provides for the appointment of the Te Whānau a Apanui post-settlement governance entity (PSGE) as the administering body of Hawaii Scenic Reserve, with underlying ownership retained by the Crown.

CULTURAL MATERIALS PLAN

The settlement will provide for a cultural materials plan covering the customary take of flora material in conservation protected areas within the Te Whānau a Apanui area of interest and the possession of dead protected fauna that is found within the area.

Toitū te Whenua

CULTURAL REDRESS PROPERTIES

Twelve sites will be transferred to Te Whānau a Apanui as cultural redress. Some sites will transfer subject to certain conditions which will protect existing third-party rights and existing values such as public access and conservation.

Below is a list of the sites and conditions of transfer. Images of each site can be found in the Deed Plans in the Attachments Schedule to the Te Whānau a Apanui Deed of Settlement.

Sites transferring to Te Whānau a Apanui as scenic reserves:

- Hawaii site A
- Tokata property

Sites transferring to Te Whānau a Apanui as recreation reserves:

- Maraetai property
- Ōmaio Bay property
- Oruaiti Beach property
- Taheke property
- Waihou Beach Recreation Reserve

Sites transferring to Te Whānau a Apanui as historic reserves:

- Whanarua Bay site B

Sites transferring to Te Whānau a Apanui as local purpose reserves:

- Whangaparāoa beach property
- Hawaii site B

Sites transferring to Te Whānau a Apanui in fee simple:

- Whanarua Bay site A
- Otamatohirua
- Tamatari

The settlement will provide for the Te Whānau a Apanui PSGE to be the administering body for eight of these reserves and will establish a Joint Management Board between Te Whānau a Apanui and the Ōpōtiki District Council to be the administering body for the Whanarua Bay site B historical reserve. Tamatari will remain subject to the continuation of public access to the boat ramp.

COMMERCIAL REDRESS PROPERTIES

The Te Whānau a Apanui Deed of Settlement provides for commercial redress including:

- the transfer of two Crown properties;
- a right to purchase one property within a two-year deferred selection period; and
- a right of first refusal over 13 Crown properties within their exclusive area.

WHITUARE BAY – MARAENUI HILL

The settlement will establish a Māori reservation at Whituare Bay – Maraenui Hill to enable the land to be held in a manner reflects the ancestral significance and cultural values attributed to it by the hapū of Te Whānau a Apanui.

WHAKAARI / WHITE ISLAND

The settlement provides for the Department of Internal Affairs to consult with, and have regard for, the views of ngā hapū o Te Whānau a Apanui if it conducts a review of the local government administration of Whakaari / White Island.

Toitū te Oranga Whānui

RELATIONSHIP REDRESS

The settlement includes a range of relationship redress instruments that reflect the Crown relationship aspirations of Te Whānau a Apanui. The Deed provides for:

- a joint relationship agreement between the Ministry of Justice; Department of Corrections – Ara Poutama Aotearoa; New Zealand Police; Oranga Tamariki; Ministry for Business, Innovation and Employment; Ministry of Education; Tertiary Education Commission; Manatū Hauora – Ministry of Health, Te Whatu Ora – Health New Zealand; Te Aka Whai Ora – Māori Health Authority; Ministry of Housing and Urban Development; Ministry of Social Development; Ministry for Primary Industries; Waka Kotahi – New Zealand Transport Agency; Ministry of Transport – Te Manatū Waka; Department of Internal Affairs (responsible for Te Puna Mātauranga o Aotearoa – the National Library and Te Rua Mahara o Te Kāwanatanga – Archives New Zealand); Manatū Taonga – Ministry for Culture and Heritage; Te Papa Tongarewa – Museum of New Zealand; Pouhere Taonga – Heritage New Zealand, and Statistics New Zealand;
- a bespoke relationship agreement with the Department of Conservation; and
- a letter of introduction from the Chief Executive of the Office of Māori Crown Relations – Te Arawhiti to the Chief Executive of Ngā Taonga Sound & Vision.

Te Whānau a Apanui will also have an annual meeting with a Minister of Education.

REBUILDING THE TE WHĀNAU A APANUI ECONOMIC BASE

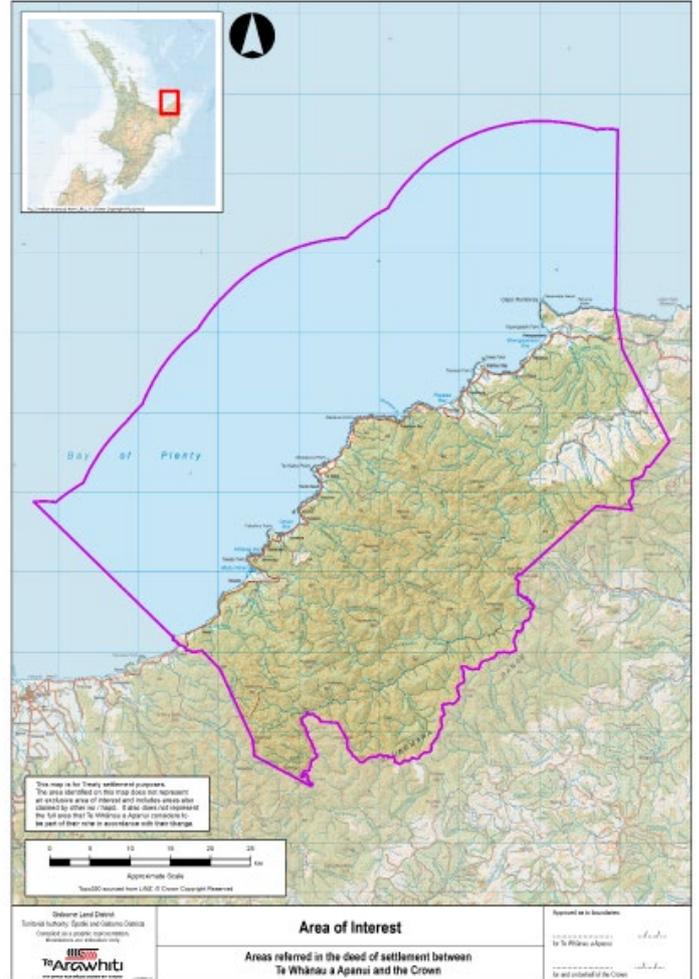
Te Whānau a Apanui will receive financial redress of \$30 million in recognition of historical claims.

The settlement legislation will reserve 5,000 hectares of space in the coastal marine area, in which only Te Whānau a Apanui may apply for permits for aquaculture activities.

Te Whānau a Apanui will receive a right of first refusal over fisheries quota under the Fisheries Act 1996.

Toitū te Mana o Ngā Hapū

Acknowledging the desire of Te Whānau a Apanui to maintain and restore hapū mana over their lands, narratives and cultural landscape, on the settlement date, the Crown will pay Te Whānau a Apanui \$1,100,000 in cultural redress funding.



Questions and Answers

1. What happens next?

The initialled Deed of Settlement is subject to the approval of Te Whānau a Apanui members by a vote (known as ratification). If the Deed of Settlement receives sufficient support, then it will be signed by the Crown and Te Whānau a Apanui. The Crown will then introduce legislation to Parliament to give effect to the settlement.

2. What does the settlement package include?

The settlement package includes:

- a statement on sovereignty;
- an agreed historical account, Crown acknowledgements and apology;
- bespoke natural resource and conservation arrangements;
- arrangements for the return of land including the vesting of twelve sites of significance, the transfer of two Crown properties;
- the right to purchase one further property within a two-year deferred selection period and rights of first refusal over Crown land;
- an integrated relationship redress arrangement;
- financial redress of \$30 million, a cultural redress fund totalling \$1.1 million; and
- the reservation of 5,000 hectares of marine space for aquaculture and a fisheries right of first refusal over quota.

3. Is there any private land involved?

No.

4. Are the public's rights affected?

Where land is transferred with a reserve classification then the relevant provisions of the Reserves Act, including those concerning public access, will continue to apply. In some instances the settlement provides for specific arrangements around how public access to those reserves is managed. Any sites transferring in fee simple will become private property and public access will be at the discretion of the landowner. In some instances, the hapū of Te Whānau a Apanui have indicated that, in accordance with their tikanga, public access will be allowed.

5. What is a statutory acknowledgement?

A statutory acknowledgement acknowledges areas or sites with which iwi have a special relationship. A statutory acknowledgement will be recognised in any relevant proceedings under the Resource Management Act 1991. These provisions aim to avoid past problems where areas of significance to Māori, such as burial places, were simply cleared or excavated for public works or similar purposes without permission or consultation with iwi. A statutory acknowledgement does not convey a property right and is non-exclusive.

6. What is a deed of recognition?

A deed of recognition sets out an agreement between the Minister of Conservation and a claimant group in recognition of its special association with a site and specifies the nature of iwi/hapū input into the management of the site.

7. What happens to memorials on private title?

The legislative restrictions (memorials) placed on the title of Crown properties and some former Crown properties now in private ownership will be removed once all Treaty claims in the area have been settled.

8. When will the settlement take effect?

The settlement will take effect following the enactment of the settlement legislation.

9. Do Te Whānau a Apanui have the right to come back and make further claims about the behaviour of the Crown in the nineteenth and twentieth centuries?

No. When the Deed of Settlement is signed, and settlement legislation is passed, it will be a final and comprehensive settlement of all historical (relating to events before 21 September 1992) Treaty of Waitangi claims of Te Whānau a Apanui. The settlement legislation, once passed, will prevent Te Whānau a Apanui from re-litigating the claim before the Waitangi Tribunal or the courts.

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

10. Who benefits from the settlement?

All members of Te Whānau a Apanui wherever they may now live.

This and other settlement summaries are also available at www.govt.nz