



Deed of

Deed of Settlement
between the
Crown and Waitaha

Settlement

General Background

Waitaha are an ancient iwi that descends from the waka Te Arawa. Their area of interest extends from Waimapu to Mauao along the coastline to Maketū, and inland to Ōtanewainuku. The Waitaha beneficiary register has approximately 2000 members.

The Crown entered into joint Terms of Negotiations with the Waitaha Raupatu Trust and the Ngāti Mākinō Heritage Trust in February 2008. These Terms of Negotiation were subject to the Waitaha Raupatu Trust having their mandate approved by the Crown. In April 2008, the Crown recognised the mandate of the Waitaha Raupatu Trust to negotiate on behalf of Waitaha the settlement of their historical Treaty of Waitangi Claims.

On 20 July 2011, Waitaha and the Crown initialled a Deed of Settlement based on their Agreement in Principle. The Deed of Settlement was ratified by the people of Waitaha and signed on 20 September 2011 at Hei Marae in Te Puke. The settlement will be implemented following the passage of settlement legislation.

The Waitaha Negotiating Team represented Waitaha in day-to-day negotiations and included Tame McCausland, Punohu McCausland, Maru Tapsell and Whareoteriri Rahiri as well as Mike Nahu, Raheera Ohia, Shane Ashby and Areta Gray up to Agreement in Principle. The Office of Treaty Settlements, with the support of the Department of Conservation and other government agencies, represented the Crown in day-to-day negotiations. The Minister for Treaty of Waitangi Negotiations, Hon Christopher Finlayson, represented the Crown in high-level negotiations with Waitaha.

Summary of the Historical Background to the Claims by Waitaha

By the 1840s, Waitaha primarily occupied the land between Tauranga harbour and Te Puke. During the 1840s and 1850s, the Waitaha leader and prophet, Hakaraia Mahika, preached peaceful engagement with Pākehā.

When Crown forces invaded the Waikato in July 1863 a number of Waitaha fought for the Kingitanga, while some sided with the Crown. Others remained neutral. These internal divisions created enmity amongst Waitaha and also with neighbouring iwi.

War came to Tauranga in 1864. Hakaraia was a spiritual leader for the Māori force that defeated Crown troops at Pukehinahina (Gate Pā) in April. When Crown troops defeated Kingitanga Māori at Te Ranga in June, Waitaha men were among the casualties.

The Crown regarded those Māori who fought at Gate Pā and Te Ranga as rebels. In May 1865, the Crown confiscated 214,000 acres of land around Tauranga including land where Waitaha had customary interests. The Crown announced that it would retain only a quarter of the confiscated land and that the remainder would be returned to Māori.

Hakaraia rose to prominence as a leader of the resistance to the survey of confiscation land. In January 1867, government forces assaulted Waitaha settlements near Te Puke, destroying houses, crops and livestock as 'a special punishment' for Hakaraia. Using scorched earth tactics the Crown pursued Hakaraia to his death in 1870.

In 1868 the Crown extended the boundary of the confiscation district by 75,000 acres to include much land claimed by Waitaha and also Ōtawa, a maunga sacred to Waitaha. The Crown accepted the ancestral claims of Waitaha to approximately 25,000 acres in the confiscation district but withheld much of this 'in payment for the sin' of Hakaraia.

The Crown opened negotiations with Waitaha for Te Puke in 1873 before the Native Land Court had determined the block's ownership. The Court, which was created under the native land laws introduced by the Crown in the 1860s, was established to convert customary title, which was communal and fluid, into individualised and permanent titles derived from the Crown.

Waitaha did not initially wish to sell or lease Te Puke. However, in September 1873, rival claims over the land motivated Waitaha to sell part of the block. The Crown pressured Waitaha into selling more land and told Waitaha the block would be mortgaged to the government if they did not sell, on account of a survey debt owed by another claimant to Te Puke.

Waitaha were by this time suffering great economic hardship and wanted the Crown to pay the balance of the purchase money without waiting for the Court to determine title. When the Crown refused, Waitaha tried to withdraw from the sale in order to sell to a private party. The Crown would not relinquish its purchase and barred private parties from attempting to acquire the land. The Native Land Court eventually awarded title to Te Puke to Waitaha in October 1878. The Crown completed its purchase over the next eight years.

Waitaha took part in many Native Land Court hearings in the 1880s and early 1890s. Most of the land Waitaha were awarded was sold in the 1880s and 1890s, largely to the Crown.

By the end of the nineteenth century Waitaha had insufficient land and resources to sustain the tribe. According to Waitaha, this forced some members of the iwi to follow other tribal affiliations. Waitaha express this impact in the whakatauki "Ko Waitaha Te iwi, he tangata ngakaurua": Waitaha was once a powerful tribe, but because of the loss of land they became fragmented and have never been able to unite again.

Settlement

Summary of the Waitaha Settlement

Overview

The Waitaha Deed of Settlement is the final settlement of all historical Treaty of Waitangi claims of Waitaha 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 Waitaha;
- cultural redress; and
- financial and commercial redress.

Throughout the package is redress which specifically recognises the Waitaha tupuna Hakaraia.

No private land is affected by the redress, only Crown land.

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

Crown Acknowledgments and Apology

The Crown acknowledges its actions arising from interaction with Waitaha whereby it breached the Treaty of Waitangi and its principles.

The Crown apologises to Waitaha for its acts and omissions which have breached the Crown's obligations under the Treaty of Waitangi. These include the outbreak of the Tauranga war, the Crown's treatment of Waitaha during the Tauranga Bush Campaign, the impact of the Tauranga confiscation, including the treatment of Waitaha chief Hakaraia, the operation and impact of the native land laws, the Crown's land purchasing techniques, and the failure to ensure Waitaha retained sufficient land for their future needs.

Cultural redress

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

1(A) SITES TRANSFERRED TO WAITAHA

The following sites will be vested in Waitaha. Where the sites are reserves, existing protection of public access and conservation values will be preserved.

- Hine Poto, Lenihan Drive, Te Puke, (2.8 hectares);
- Ohineangaanga, on the corner of Jellicoe Rd and Dunlop St, Te Puke (0.514 ha);
- Part Ōtara Scenic Reserve (Up to 5 ha);
- Maungaruahine Pa Historic Reserve (Up to 17.32 ha); and
- Two areas at Te Houhou, Papamoa, comprising Te Whitikiore (10.5 ha) and Te Haehae (2.25 ha).

In addition, the Kaumātua Flats (buildings only) at Manoeka Road, Te Puke will be vested in Waitaha.

1(B) TE WHAKAIRINGA KŌRERO

Overlay classifications provide for the Crown to acknowledge Waitaha values in relation to areas owned by the Crown. The settlement provides two areas, including:

- Te Ara a Hei – an area within the Ōtanewainuku Forest Reserve (115 ha); and
- Ōtawa Maunga (20 ha)

1(C) DEED OF RECOGNITION

A Deed of Recognition will oblige the Crown to consult with Waitaha on specified matters and have regard to their views in relation to their special associations with certain areas. The Deed of Recognition for Waitaha includes the following areas:

- Department of Conservation areas adjoining Te Raparapa-ā-hoe Stream;
- Hakako Creek;
- Paraiti Creek;
- Popaki Creek; and
- Kaokaonui.

1(D) STATUTORY ACKNOWLEDGEMENTS

A Statutory Acknowledgement recognises the association between Waitaha and a particular site or area and enhances the ability of Waitaha to participate in specified Resource Management Act processes.

The settlement provides statutory acknowledgements over:

- Ōtanewainuku Peak
- Paraiti Creek
- Popaki Creek
- Hakako Creek
- Kaokaonui Kāinga
- Waimapu River
- Part of Kaituna River
- Waiari Stream
- Te Raparapa-ā-Hoe Stream
- Ohineangaanga Stream
- Te Rerenga Stream
- Te Kopuaroa Stream
- Kaiate River
- Wairakei Stream; and
- coastal area from Maketū to Mauao.

2. Cultural revitalisation and recognition

Funding of \$3 million for an education endowment fund in the name of Hakaraia (a Waitaha prophet and ancestor/tupuna).

Funding of \$300,000 for an historical account fully documenting the story of Waitaha and of Hakaraia (paid in July 2009).

Funding of \$500,000 to contribute towards restoration of Hei Marae and cultural revitalisation of the people (paid in December 2008).

Funding of \$500,000 to fund a needs assessment and a whole-of-government facilitator (paid in December 2008).

3. Relationship Redress

3(A) LETTERS REGARDING MARANGA WAITAHA

The Minister for Treaty of Waitangi Negotiations has written to the Minister of Māori Affairs and Minister of Social Development encouraging their officials to support Maranga Waitaha, a link to Government initiatives to assist the social, economic and cultural needs of Waitaha.

3(B) LETTERS OF INTRODUCTION TO LOCAL AUTHORITIES

The Minister for Treaty of Waitangi Negotiations will write to Bay of Plenty Regional Council, Tauranga City Council and Western Bay of Plenty District Council introducing members of the Waitaha governance entity Te Kapu Ō Waitaha to those authorities.

3(C) PROTOCOLS ISSUED BY MINISTERS

The deed provides for protocols to be issued by the Minister for Arts, Culture and Heritage, the Minister of Conservation, and the Minister of Energy and Resources. The protocols set out how these government agencies will interact and consult with Waitaha when carrying out statutory duties and functions within the Waitaha area of interest.

Financial and commercial redress

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

4(A) FINANCIAL REDRESS

Waitaha will receive \$7.5 million plus interest that has been accumulating since the signing of the Agreement in Principle.

4(B) COMMERCIAL REDRESS

Waitaha will have the opportunity to purchase three landbank properties, and to purchase and lease back to the Crown five education properties in Te Puke.

Waitaha will have a second right of purchase over eight remaining OTS landbank properties and one New Zealand Police property that are included in another settlement, if the other iwi decide not to take these properties.





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 \$11.8 million, including the cultural redress and revitalisation payments listed above, plus interest accrued on \$7.5 million since the signing of the Agreement in Principle, and the value of the cultural properties to be vested and transferred for nil consideration.

2. Is there any private land involved?

No.

3. Are the public's rights affected?

No.

4. Are any place names changed?

No.

5. What happens to memorials on private titles?

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.

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

No. If the Deed of Settlement is passed into law, both parties agree it will be a final and comprehensive settlement of all the historical (relating to events before 21 September 1992) Treaty of Waitangi claims of Waitaha. The settlement legislation, once passed, will prevent Waitaha from re-litigating the claim before the Tribunal or the courts.

The settlement package will still allow Waitaha 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.

7. Who benefits from the settlement?

All members of Waitaha, wherever they may now live.

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