



The Whakatōhea Treaty settlement and the North-Eastern Bay of Plenty District Inquiry

Whakatōhea is in the unique position that the Waitangi Tribunal inquiry into Whakatōhea historical claims can be conducted after those claims are settled. Historical claims relate to matters before 21 September 1992.

In October 2018, Whakatōhea voted on how they wanted to proceed with their historical claims. The options were to continue negotiations between the Whakatōhea Pre-Settlement Claims Trust (WPCT) and the Crown, to have a Waitangi Tribunal district inquiry into their historical claims, or to begin a new settlement negotiations mandate process for Whakatōhea. Results showed strong support for both continuing negotiations and commencing a district inquiry, with a slim majority of voters opting to continue negotiations.

In June 2019, the Tribunal began the North-Eastern Bay of Plenty District Inquiry. In September 2019, the Crown resumed negotiations with the WPCT for a Treaty settlement of Whakatōhea's historical claims (negotiations had been paused in April 2018). This is an exception to the Crown's usual policy of not negotiating with claimant groups while they are before the Tribunal.

On the basis of the 2018 vote, WPCT advocated that both processes – the settlement negotiations and the Waitangi Tribunal inquiry – should proceed with Whakatōhea support. The Crown agreed that the district inquiry could continue after the Whakatōhea Treaty settlement is complete, with a modified jurisdiction. This proposal has been referred to as the 'parallel process' or 'dual process'.

A district inquiry is not needed to have a Treaty settlement

A Waitangi Tribunal district inquiry is separate from the Treaty settlement negotiations process. The Tribunal inquires into and determines whether claims that the Crown has breached the principles of the Treaty are well founded.

Where the Tribunal finds claims are well-founded, it can make recommendations for how claims can be remedied in a Treaty settlement, including recommendations that the group and Crown enter settlement negotiations.

Settlements of historical claims are negotiated between the settling group and the Crown. Generally speaking, settlements are comprehensive, in that they settle all historical claims of the settling group, whether or not those claims are registered as Wai claims and regardless of subject matter.

A deed of settlement is only possible through direct negotiations with the Crown. Several groups have chosen to settle without a district inquiry, including Waikato-Tainui and Ngāti Porou. The Crown has an obligation to ensure that settlements are fair and equitable for all groups, whether or not there has been a district inquiry.



Historical Treaty settlements are not full compensation for Crown breaches of the Treaty. Through the deed of settlement, both parties acknowledge that full compensation is not possible due to the scale of loss caused by Crown actions. Instead, historical Treaty settlements are meant to recognise the impacts of the Crown's acts and omissions, and provide a basis for establishing a new relationship with the Crown, and partnership in the future.

The district inquiry would be able to continue on a modified basis after settlement

Ordinarily, a settlement removes the ability of the Tribunal to continue an inquiry into historical claims covered by the settlement. To respect the outcome of the 2018 vote, WPCT and the Crown agreed that the settlement would not stop the North-Eastern Bay of Plenty District Inquiry from continuing after the settlement is complete, with two amendments to the Tribunal's jurisdiction:

- if Whakatōhea agree to ratify the deed of settlement, the Tribunal will not be able to recommend additional redress for Whakatōhea historical claims and the settlement will not alter based on Tribunal findings about historical claims; and
- the Tribunal will not be able to inquire into the settlement or the settlement process, which is standard across all Treaty settlements.

The Tribunal will be able to make findings and recommendations related to any contemporary claims relating to matters after September 1992, including claims relating to the 1990s settlement negotiations.

The Tribunal may need to pause its inquiry into historical claims and claims about the settlement process while the legislation for Whakatōhea's settlement is being passed through Parliament.

The Tribunal would not be able to make recommendations on historical claims

If Whakatōhea agree to the Treaty settlement package as redress for their historical claims, the settlement legislation would remove the Tribunal's powers to make recommendations on Whakatōhea's historical claims. This will include removal of the Tribunal's power to make recommendations on historical claims for the return of certain properties and Crown forestry land that are binding on the Crown.

There are a few minor resurable properties within the Whakatōhea area of interest, but no Crown Forest Licensed Land. Some Whakatōhea Wai claims include claims to Crown Forest Licensed Land outside of the Whakatōhea area of interest, to which other iwi also have claims.

Why is the settlement being ratified when the district inquiry hasn't finished?

Settlement negotiations are complete, and the Treaty settlement package is ready to be considered by the people of Whakatōhea through a ratification vote. Whakatōhea, through WPCT and the 2018 vote, have indicated they wish to have the opportunity to ratify the settlement.



A district inquiry process can take up to 10 years to complete. The district inquiry is in early stages and, based on previous inquiries, is unlikely to be completed with all reports published for several years.

In the 2018 Mandate Inquiry claimants expressed the importance of the district inquiry as supporting a process of truth and reconciliation. The WPCT support the value of the inquiry to Whakatōhea independently of the settlement.

Delaying ratification until the district inquiry is complete would also mean that Whakatōhea would not be able to access settlement redress and use the settlement resources during this time.

After the district inquiry, Whakatōhea will meet with the Crown to discuss the report

When the district inquiry is finished the Tribunal will make its report setting out its findings as to whether Whakatōhea's claims against the Crown are well-founded.

The Whakatōhea Treaty settlement includes commitments from Crown agencies to meet with the PSGE after the report is published to discuss the findings and recommendations on contemporary claims.

