



Deed of Settlement

BETWEEN THE CROWN AND WHAKATŌHEA

General background

Whakatōhea is an iwi with over 16,000 members. It comprises six hapū – Ngāi Tamahaua, Ngāti Ira, Ngāti Ngahere, Ngāti Patumoana, Ngāti Ruatākena and Ūpokorehe, and has an area of interest covering around 200,000 hectares in the eastern Bay of Plenty.

Negotiation of Agreement in Principle

Between May and June 2016, Whakatōhea voted to mandate the Whakatōhea Pre-Settlement Claims Trust (WPCT) to represent Whakatōhea in comprehensive historical Treaty of Waitangi settlement negotiations. In December 2016, the Crown recognised the WPCT's mandate. Negotiations began in January 2017 and in August 2017, the Crown and Whakatōhea signed an Agreement in Principle.

Initialled deed of settlement

In December 2021, the Crown and Whakatōhea initialled a Deed of Settlement. The Deed was ratified by Whakatōhea members in 2022 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.

The former Minister for Treaty of Waitangi Negotiations, the Honourable Christopher Finlayson, and the current Minister for Treaty of Waitangi Negotiations, the Honourable Andrew Little, represented the Crown in high-level negotiations.

Summary of the historical background to the claims by Whakatōhea

In May 1840 seven Whakatōhea rangatira signed Te Tiriti o Waitangi. Whakatōhea had, by 1864, developed a thriving agricultural economy; constructing a shipping fleet and trading extensively with the growing Auckland settlement. Whakatōhea embraced technology, built infrastructure, and developed political organisations to deal with economic and social change.

After Crown forces landed at Tauranga in early 1864, Whakatōhea joined other iwi in an expedition to support the Kingitanga. The iwi expedition was defeated and Whakatōhea rangatira Te Āporotanga, Apanui, Tūtakahiao and Mikaere Pihipihi were killed, creating a considerable leadership vacuum for Whakatōhea.

Carl Völkner, of the Church Missionary Society, was hanged at Ōpōtiki in March 1865, after a meeting called by visiting Pai Mārire emissaries had demanded his death. Whakatōhea rangatira unsuccessfully argued Völkner should be spared. The Crown held Whakatōhea responsible for Völkner's death.

Crown forces invaded the Whakatōhea rohe in September 1865, following a declaration of martial law. The military killed many Whakatōhea, including non-combatants such as Tio Te Kāhika. After the battle at Te Tarata, Crown troops buried the Whakatōhea dead in an unmarked mass grave. Whakatōhea casualties amounted to approximately ten percent of the iwi population.

Crown troops adopted a scorched earth approach; looting, plundering and destroying crops, animals, houses, equipment and taonga. The Whakatōhea economy and its infrastructure were destroyed.

In 1866 Mokomoko, a Whakatōhea rangatira, was convicted and executed for Völkner's murder. Mokomoko maintained his innocence to the end and questions were raised over the prosecution evidence. Mokomoko's body was buried within prison grounds and only returned to his family in 1989. In 1992 the Governor-General granted Mokomoko a free pardon, but the Crown's failure to consult the Mokomoko descendants on the wording of the pardon caused the whānau further pain.

The Crown confiscated most of the Whakatōhea productive lands in 1866. The Crown established the Ōpape Native Reserve on land confiscated from Ngāti Rua, forcing members of other Whakatōhea hapū to relocate there. Most Whakatōhea were forcibly removed from their whenua, awa, maunga, and wāhi tapu, resulting in the loss of traditional knowledge.

The Compensation Court, sitting in Ōpōtiki in 1867, granted successful claimants individual titles to Whakatōhea land. A Special Commissioner made out-of-court settlements with some Whakatōhea individuals and groups. These processes eroded Whakatōhea traditional land ownership, social structures, mana and rangatiratanga.

In 1869 and 1870 Crown forces pursued Te Kooti and his followers through the Whakatōhea rohe. Crown troops looted crops, burned houses and executed Whakatōhea prisoners.

The Native Land Court individualised the titles to the remaining Whakatōhea lands, while imposing survey and court costs. The Crown purchased most of this land, while Whakatōhea owners sold land to cover expenses and provide for their families. The Crown then acquired more of the remaining land through public works takings. Whakatōhea were left virtually landless, with most of their economic base removed, along with traditional sites that were sources of mātauranga and wellbeing.

Environmental degradation through Pākehā settlers logging, farming and polluting the rivers and ocean severely damaged Whakatōhea traditional food sources and mahinga kai.

With insufficient arable land and limited work opportunities, Whakatōhea struggled to survive economically. They endured the impacts of poverty, including sub-standard housing and poor health. Whakatōhea suffered disease outbreaks, while having little access to adequate healthcare.

The Crown's education system strongly discouraged the use of Te Reo Māori. Crown policy was to dispense with using Te Reo in native schools. Whakatōhea elders remember being punished for speaking Māori in school.

The lack of employment in Ōpōtiki forced Whakatōhea into urban migration in the mid- twentieth century. Ninety percent of Whakatōhea lived outside their traditional rohe by 2020, with many disconnected from their whanaunga, reo, tikanga and whenua.

Overview

The Whakatōhea Deed of Settlement is the final settlement of all the historical Treaty of Waitangi Claims of Whakatōhea resulting from the Crown's acts and omissions prior to 21 September 1992. The settlement comprises a package that includes:

- an agreed historical account, Crown acknowledgements and apology;
- financial redress and cultural and commercial funds totalling \$100 million (plus interest);
- cultural redress including the vesting of 33 sites of significance, bespoke natural resource and conservation arrangements and relationship redress; and
- commercial redress, including the transfer of 18 Crown properties; the reservation of 5,000 hectares of marine space for aquaculture; the right to purchase a further ten properties within a two-year deferred selection period; and rights of first refusal over Crown land and fisheries quota.

The benefits of the settlement will be available to all Whakatōhea members, regardless of where they live.

Crown acknowledgement and apology

The Whakatōhea Deed of Settlement contains Crown acknowledgements and a Crown apology for well-founded breaches of the Treaty of Waitangi and its principles. These include:

- failure to act in good faith by unjustifiably invading and occupying parts of the Whakatōhea rohe;
- failure to return the body of Tio Te Kāhika after he had been killed and desecrated which caused great distress and offence to his whānau and Whakatōhea;
- failure to act in good faith in its treatment and execution Mokomoko, a Whakatōhea rangatira, and the subsequent stigmatisation of Te Whānau a Mokomoko for generations;
- failure to protect Whakatōhea from becoming virtually landless due to the cumulative effect of the Crown's acts and omissions;
- failure to actively protect Te Reo Māori and encourage its use; and
- failure to actively protect Whakatōhea from widespread displacement, causing their subsequent separation from whanaunga, reo and tikanga.

Raurunui: Cultural redress

Cultural redress is intended to recognise the cultural, historical and traditional associations of Whakatōhea within their area of interest. This recognition is achieved through a range of mechanisms.

FUNDING FOR CULTURAL PURPOSES

Whakatōhea will receive the following funding as part of the settlement's cultural redress package:

- \$5 million for a cultural revitalization fund
- \$1 million for a Te Reo revitalization fund
- \$2 million for an education endowment fund

TRANSFER OF LAND

Thirty-three sites will be transferred to Whakatōhea 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 Whakatōhea Deed of Settlement.

Sites transferring to Whakatōhea as scenic reserves:

- Kiwikipi and Te Tawa Flats property
- Kōtare property

- Marawaiwai
- Matekerepu
- Matepuritaka
- Meremere property
- Ōhiwa property
- Oroi property
- Pakihi site 2
- Pātāua Island property
- Raetakohia property
- Tirohanga Dunes site 2
- Toatoa property
- Tukainoke
- Waiaua property
- Tutaetoko property
- Mātiti
- Waioweka property
- Waiōtahe property
- Whitikau property

Sites transferring to Whakatōhea as recreation reserves:

- Whenua Maumahara o Hukutaia
- Te Papa Tākaro o Ōhui property
- Te Ngaio property
- Te Papa Tākaro o Whitikau property

Sites transferring to Whakatōhea in fee simple:

- Pakihikura property
- Tawhitinui
- Urupā Tawhito
- Pakihi site 1
- Tirohanga Dunes site 1
- Te Roto Urupā
- Te Papa property
- Paerātā property
- Tāwai

The settlement will establish a Joint Management Board allowing Whakatōhea and the Ōpōtiki District Council to control and manage four coastal reserves – Tirohanga Dunes site 2, Te Ngaio property, Hukuwai Recreation Reserve and an unnamed Local Purpose (Esplanade) Reserve. Two of these reserves will continue to be owned by Ōpōtiki District Council and two will be vested in Whakatōhea under the settlement.

STATUTORY ACKNOWLEDGEMENTS AND DEEDS OF RECOGNITION

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

The Whakatōhea Deed of Settlement provides a statutory acknowledgement and deeds of recognition from the Commissioner of Crown Lands and from the Minister of Conservation and the Director-General of Conservation over each of the following rivers and catchments within the Whakatōhea area of interest, to the extent that those areas are owned by the Crown:

- Ōtara River and its tributaries
- Waioweka River and its tributaries within the area of interest
- Waiaua River and its tributaries within the area of interest

- Opape Stream and its tributaries
- Waiotaha River and its tributaries within the area of interest
- Nukuhou River and its tributaries within the area of interest

RAUMAIROA: NATURAL RESOURCES ARRANGEMENTS

The settlement will provide for the following natural resource arrangements over the rivers and their catchments in the Whakatōhea area of interest:

- the establishment of a non-regulatory Whakatōhea Kaitiaki Forum, which will operate as a permanent joint committee of the Bay of Plenty Regional Council; and
- the ability to enter into one or more Joint Management Agreements with Ōpōtiki District Council or Bay of Plenty Regional Council.

FISHERIES MANAGEMENT ADVISORY COMMITTEE

The settlement provides for the Whakatōhea PSGE’s appointment as an advisory committee to the Minister for Oceans and Fisheries. The committee will provide input on fisheries management matters in relation to areas of special significance to Whakatōhea.

CONSERVATION REDRESS

The settlement will provide for:

- a co-authored place in the Bay of Plenty Conservation Management strategy;
- the development of a decision-making framework that applies to decisions under Part 3B (concessions) of the Conservation Act 1987; and
- a cultural materials plan covering the customary take of flora material in conservation protected areas within the Whakatōhea area of interest and the possession of dead protected fauna that is found within the area.



AHUMANIA: RELATIONSHIP REDRESS

The settlement will provide for the Minister for Energy and Resources and Minister for Oceans and Fisheries, the Minister of Agriculture, the Minister of Forestry and the Minister of Biosecurity to issue protocols that set out how their respective agencies will interact with and consult Whakatōhea when carrying out statutory duties and functions.

It will also provide for a Whakaaetanga Tiaki Taonga agreement to facilitate a positive working relationship between Whakatōhea, the Ministry for Culture and Heritage, the Department of Internal Affairs and other culture and heritage agencies.

The Whakatōhea PSGE will enter into relationship agreements with the following agencies:

- Department of Conservation;
- Ministry of Justice, Department of Corrections and New Zealand Police Department;
- Ministry for the Environment;
- Ministry of Education;
- Oranga Tamariki – Ministry for Children;
- Statistics New Zealand;
- Ministry of Business, Innovation and Employment;
- the Tertiary Education Commission;
- Ministry of Social Development;
- Manatū Hauora - Ministry of Health, Te Whatu Ora and Te Aka Whai Ora; and
- Te Hiringa Hauora/Health Promotion Agency.

The following agencies will provide the Whakatōhea PSGE with letters of commitment, formalising their undertaking to engage with Whakatōhea on specific matters:

- The Office for Māori Crown Relations – Te Arawhiti; and
- Te Puni Kōkiri – the Ministry for Māori Development.

The Chief Executive of the Office for Māori Crown Relations – Te Arawhiti will write letters of introduction to the following organisations to raise the profile of Whakatōhea, advise of matters of particular importance and encourage better engagement with Whakatōhea:

- Ministry for Primary Industries;
- Ministry of Housing and Urban Development;
- Department of Internal Affairs;
- New Zealand Transport Agency – Waka Kotahi;
- New Zealand Trade and Enterprise – Te Taurapa Tūhono; and
- Auckland War Memorial Museum.

GEOGRAPHIC NAME CHANGES

Place names recognise associations with geographic areas. Three place names and one reserve name will be changed through the settlement legislation:

| Existing name | New official name |
|----------------------------------|-------------------------------|
| Waioeke River | Waioweka River |
| Waioeke | Waioweka |
| Ōpōtiki Harbour (local use name) | Pakihikura Harbour |
| Waioeke Gorge Scenic Reserve | Waioweka Gorge Scenic Reserve |

Tahurua ma te Paepaekura: Financial and commercial redress

This redress addresses the losses suffered by Whakatōhea arising from Crown's breaches of its obligations to Whakatōhea under the Treaty of Waitangi and its principles. It will provide Whakatōhea with the resources to assist with the developments of its members' economic and social wellbeing.

FINANCIAL REDRESS

Whakatōhea will receive financial redress of \$85 million (plus interest) in recognition of historical claims.

Whakatōhea will receive:

- \$5 million for the purpose of a reserve land development fund; and
- \$2 million for the purpose of marine and harbour development.

COMMERCIAL REDRESS - PROPERTY

The Whakatōhea Deed of Settlement provides for commercial redress including:

- the transfer of 18 Crown properties;
- a right to purchase 10 properties within a two-year deferred selection period;
- a right of first refusal over Crown properties in an exclusive area; and
- a right of first refusal over 35 Crown properties outside the exclusive area.

AQUACULTURE AND FISHERIES

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

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

Questions and Answers

1. What is the total settlement package?

- Crown acknowledgements and apology for historical breaches of the Treaty of Waitangi;
- an agreed historical account of the relationship between Whakatōhea and the Crown;
- financial redress and cultural and commercial funds totalling \$100 million (plus interest);
- cultural redress including the vesting of 33 sites of significance, bespoke natural resource and conservation arrangements and relationship redress; and
- commercial redress including the transfer of 18 Crown properties; the reservation of 5,000 hectares of marine space for aquaculture; the right to purchase a further ten properties within a two-year deferred selection period; and rights of first refusal over Crown land and fisheries quota.

2. Is there any private land involved?

No.

3. Are the public's rights affected?

Generally, no. 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. However, any sites transferring in fee simple will become private property and the public will no longer have access.

4. What are the statutory acknowledgement and deeds of recognition?

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.

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.

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. When will the settlement take effect?

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

7. Do Whakatōhea 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 Whakatōhea. The settlement legislation, once passed, will prevent Whakatōhea from re-litigating the claim before the Waitangi Tribunal or the courts.

The settlement will still allow Whakatōhea 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.

8. Who benefits from the settlement?

All members of Whakatōhea wherever they may now live.

9. How will the settlement affect the Wai 1750 North Eastern Bay of Plenty District Inquiry?

In June 2019 the Waitangi Tribunal commenced the North Eastern Bay of Plenty District Inquiry into Whakatōhea claims. Normally, a Treaty settlement would remove the jurisdiction of the Waitangi Tribunal to inquire into settled claims. The Whakatōhea Treaty settlement will not remove this jurisdiction.

The Waitangi Tribunal will retain its ability continue the inquiry and make findings, but not recommendations, on historical claims. The Waitangi Tribunal will retain its full jurisdiction to make findings and recommendations on post-1992 claims, except for claims relating to the settlement.

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