

Deed of Settlement between the Crown and Te Ākitai Waiohua

General background

Te Ākitai Waiohua is an iwi whose area of interest centres on Māngere and the wider South Auckland area. Te Ākitai Waiohua's principal marae, Pūkaki, is located near Auckland Airport in Mangere on the shores of the Manukau Harbour. Te Ākitai Waiohua also claim customary interests across a wider area extending from the Waikato River in the south to the Whangaparoa Peninsula and Kaipara Harbour in the north.

Te Ākitai Waiohua are a beneficiary of the Waikato Raupatu Claims Settlement Act 1995 and the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010. Te Ākitai are also a party to the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014.

In July 2011, the Crown recognised the mandate of Te Ākitai Waiohua Iwi Authority to negotiate a comprehensive settlement of the historical Treaty of Waitangi Claims of Te Ākitai Waiohua.

The Crown signed Terms of Negotiation with Te Ākitai Waiohua in December 2012. On 16 December 2016, the Crown and Te Ākitai Waiohua signed an Agreement in Principle which formed the basis for this settlement.

On 23 December 2020 Te Ākitai Waiohua and the Crown initialled a deed of settlement. The deed of settlement is subject to ratification by Te Ākitai Waiohua members and conditional on the enactment of the settlement legislation.

Te Arawhiti, with the support of the Department of Conservation, Land Information New Zealand, and other government agencies, represented the Crown in day-to-day negotiations.

The Minister for Treaty of Waitangi Negotiations, Hon Andrew Little (and his predecessor the Hon Christopher Finlayson), represented the Crown in high-level negotiations with Te Ākitai Waiohua.

Summary of the historical background to the claims

Prior to the signing of Te Tiriti o Waitangi/the Treaty of Waitangi, Te Ākitai Waiohua engaged in transactions with Pākehā settlers to establish peaceful occupation and use of the Tāmaki and Waimai Blocks. Crown-appointed Old Land Commissioners investigated the pre-Treaty transactions and it was found the Crown took approximately 75,900 acres of both blocks as 'surplus'. None of this 'surplus' was returned to Te Ākitai Waiohua, despite an agreement with the settler for the return of a large portion of the Tāmaki block.

The Crown continued to purchase land within the Te Ākitai Waiohua rohe but did not always account for Te Ākitai Waiohua interests in land when it conducted transactions with other iwi. Instead, the Crown presented the transaction to Te Ākitai Waiohua as a completed purchase, providing Te Ākitai Waiohua with no opportunity to retain the land. By the end of 1854 the Crown had purchased all Te Ākitai Waiohua land in the Manukau area, aside from a handful of small reserves. Te Ākitai Waiohua's experience of land transactions with the Crown led them to become supporters of the Kīngitanga after the movement began in 1858.

Although Te Ākitai Waiohua remained friendly with Pākehā, the Crown increasingly began to perceive the Kīngitanga as a challenge to its authority. In July 1863, as the Crown prepared to invade the Waikato, it issued a proclamation requiring Māori in the South Auckland region to swear an oath of allegiance or to vacate their settlements. Most Te Ākitai Waiohua began to leave, gathering at Kirikiri on the road to the Waikato. This group included Te Ākitai Waiohua rangatira Mohi te Ahi a te Ngu and Ihaka Takaanini. A Crown official visited the pā at Kirikiri, where he was told that Ihaka had understood the proclamation as an order to leave. Once told that they could stay if they swore an oath of allegiance to the Crown, Mohi refused, but Ihaka agreed to take the oath. However, before he could do so, the Governor ordered their arrest. Mohi and a party of 80 men escaped into the bush but Ihaka was captured, along with 22 others.

The prisoners were held in military custody for over four months without charge or trial. Conditions were harsh and Ihaka's father and two of his children died while in custody. The Attorney General advised that there were insufficient grounds for charging Ihaka, but the prisoners remained in custody due to fears that their release would compromise the Crown. Eventually they were moved to the island of Rakino (north-east of Motutapu Island in the Hauraki Gulf) and released. Ihaka Takaanini died a short time after his arrival on the island.

The Crown undertook extensive confiscation of Te Ākitai Waiohua land under the New Zealand Settlements Act 1863. Some members of Te Ākitai Waiohua were able to claim compensation for their confiscated land, but others, unfairly labelled as rebels by the Crown, were unable to do so.

By 1880 Te Ākitai Waiohua was virtually landless. The iwi rebuilt a community on 50 acres of land at Pūkaki, which had been awarded to Ihaka Takaanini's widow, Riria, by the Compensation Court in 1866. However, the small landholding was insufficient to meet the needs of the community. Many lived in poor conditions and experienced discrimination from the wider community. Repeated efforts in the 1940s and 1950s to have the land defined as a reserve failed. By 1985, only 7.8 acres of Te Ākitai's former lands remained in their ownership.

Overview

The Te Ākitai Waiohua Deed of Settlement will be the final settlement of Te Ākitai Waiohua historical Treaty of Waitangi claims 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, Crown acknowledgments and apology;
- cultural redress; and
- financial and commercial redress.

The benefits of the settlement will be available to all members of Te Ākitai Waiohua wherever they may live.

Crown acknowledgements and apology

The deed of settlement contains acknowledgements that historical Crown actions or omissions caused prejudice to Te Ākitai Waiohua or breached the Treaty of Waitangi and its principles.

The deed of settlement also includes a Crown apology to Te Ākitai Waiohua for its acts and omissions which breached Crown obligations under Te Tiriti o Waitangi/the Treaty of Waitangi and the resulting damages to Te Ākitai Waiohua. This includes an apology for the manner in which the Crown conducted purchases of Te Ākitai Waiohua land and for not returning the surplus that was taken during a private transaction. The Crown also apologises for the treatment of members of Te Ākitai Waiohua as rebels, confiscating lands and forcing Te Ākitai Waiohua from their lands, as well as the imprisonment without good cause of many Te Ākitai Waiohua rangatira. The Crown's apology acknowledges that these acts have led to the virtual landlessness of Te Ākitai Waiohua as well as hindered socio-economic development of Te Ākitai Waiohua as an iwi.

Cultural redress

Cultural redress recognises the traditional, historical, cultural and spiritual associations of Te Ākitai Waiohua with sites owned by the Crown within the Te Ākitai Waiohua area of interest.

Vesting of sites

The deed of settlement provides for the vesting of seven cultural redress sites to Te Ākitai Waiohua:

- Matukutūreia Local Purpose (Marae, Pou Whenua and Cultural Purposes) Reserve;
- Waimahia Recreation Reserve;
- Wiri Lava Cave Scientific Reserve;
- Te Ngahere o Papakura Scenic Reserve;
- Patumahoe Scenic Reserve;
- Te Ngahere o Pukekohe Scenic Reserve; and
- Reremoana Recreation Reserve.

STATUTORY ACKNOWLEDGEMENTS

The deed of settlement provides for a statutory acknowledgement over 26 areas and a coastal statutory acknowledgement. A statutory acknowledgement recognises the association between Te Ākitai Waiohua and a particular site or area and enhances Te Ākitai Waiohua's ability to participate in specified resource management processes.

Other cultural redress provided for in the deed of settlement is:

- cultural revitalisation fund of \$2.4 million;
- eight official geographic name changes;
- three un-official original Māori name changes; and
- a statement of association with Māngere Mountain.

Relationship Redress

RELATIONSHIP AGREEMENTS AND PROTOCOLS

The deed of settlement also provides for Te Ākitai Waiohua to enter into relationship agreements with the Department of Conservation and the Ministry for the Environment. The relationship agreements will outline how these agencies will engage with the Te Ākitai Waiohua governance entity.

The deed of settlement provides for the Minister of Energy and Resources to issue a protocol setting out how it will interact with and consult Te Ākitai Waiohū when carrying out statutory duties and functions.

The deed of settlement will also provide for a “Whakaaetanga Tiaki Taonga” with: Te Tari Taiwhenua Department of Internal Affairs – the agency responsible for the National Library Te Puna Mātauranga o Aotearoa and Archives New Zealand Te Rua Mahara o Te Kāwanatanga; The Museum of New Zealand Te Papa Tongarewa; Heritage New Zealand Pouhere Taonga; and Manatū Taonga Ministry for Culture and Heritage. The Whakaaetanga Tiaki Taonga sets out how the above agencies will interact with Te Ākitai Waiohū.

LETTER OF RECOGNITION AND APPOINTMENT AS AN ADVISORY COMMITTEE

The deed of settlement provides for a letter of recognition from the Director General of the Ministry for Primary Industries to facilitate a good working relationship with the Te Ākitai Waiohū governance entity. The Minister for Fisheries will appoint the trustees of the Te Ākitai Waiohū governance entity as an advisory committee in relation to the area identified by Te Ākitai Waiohū as an area of significance to them.

LETTERS OF INTRODUCTION

The deed of settlement will provide for the Crown to write letters of introduction on behalf of Te Ākitai Waiohū to 20 core and non-core Crown agencies, local authorities, museums and libraries.

Financial and commercial redress

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

FINANCIAL REDRESS

Te Ākitai Waiohū will receive financial redress of \$9.7 million plus interest. This will include an on-account payment of \$3.6 million (40%) of the financial and commercial redress total value.

The deed of settlement records the opportunity to work with the Ministry of Housing and Urban Development for a housing development opportunity at the land located at Kerrs Road and Great South Road, Manukau.

COMMERCIAL REDRESS

Te Ākitai Waiohua will receive the right to purchase:

- one Treaty Settlements Landbank property on settlement date;
- 14 Treaty Settlements Landbank properties on a deferred selection basis;
- two school sites (land only) as Selection properties on a deferred selection basis, to be leased back to the Crown; and
- the Archives New Zealand site in Richard Drive, Mangere as a Selection property, to be leased back to the Crown.

Questions and Answers

1. *What happens next?*

The initialled Deed of Settlement is subject to the approval of Te Ākitai Waiohua 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 Ākitai Waiohua. The Crown will then introduce legislation to Parliament to give effect to the settlement.

2. *What is the total settlement package?*

- Crown acknowledgement and apology for historical breaches of the Treaty of Waitangi;
- an agreed historical account;
- cultural redress including the return of seven sites throughout the Te Ākitai Waiohua area of interest;
- financial redress of a total of \$9.7 million plus interest; and
- commercial redress involving a right to purchase sites from the Treaty Settlements Landbank, the Ministry of Education and the Department of Internal Affairs.

3. *Is there any private land involved?*

No.

4. *Are the public's rights affected?*

In general, all existing public access rights in relation to areas affected by the settlement will be preserved.

5. *Are any place names changed?*

Yes, please refer to clauses 5.31 and 5.33 of the Te Ākitai Waiohua Deed of Settlement.

6. *What are statutory acknowledgements?*

Statutory acknowledgements acknowledge areas or sites with which iwi have a special relationship, and will be recognised in any relevant proceedings under the Resource Management Act. These provisions aim to avoid past problems where areas of significance to Māori, such as burial grounds, were simply cleared or excavated for public works or

similar purposes without permission or consultation with iwi. Statutory acknowledgements do not convey a property right and are non-exclusive.

7. *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.

8. *When will the settlement take effect?*

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

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

No. When the deed 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 Ākitai Waiohua. The settlement legislation, once passed, will prevent the iwi re-litigating the claim before the Waitangi Tribunal or the courts.

The settlement will still allow Te Ākitai Waiohua 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 Ākitai Waiohua wherever they may now live.