



Deed of Settlement

BETWEEN THE CROWN AND TE KAWERAU Ā MAKI

General background

Te Kawerau ā Maki is an iwi with customary interests that extend from the Tāmaki Isthmus, northwards through Hikurangi (West Auckland) and lands around the upper Waitematā Harbour and North Shore, and into the south Kaipara and Mahurangi.

In 2008, the Crown recognised the mandate of the Te Kawerau Iwi Authority to represent Te Kawerau ā Maki in negotiating a comprehensive settlement of their historical Treaty claims. The Crown signed Terms of Negotiation with Te Kawerau ā Maki on 7 August 2008.

In June 2009, Sir Douglas Graham delivered a proposal to the iwi and hapū of the Kaipara, Mahurangi, Makaurau, Hauraki and Coromandel regions that all iwi and hapū in those regions, including Te Kawerau ā Maki, enter direct negotiations with the Crown for the settlement of their historical Treaty claims. In February 2010, the Crown and Te Kawerau ā Maki negotiated an Agreement in Principle which formed the basis for this settlement.

On 12 December 2013, Te Kawerau ā Maki and the Crown initialled a deed of settlement. The deed was then ratified by the Te Kawerau ā Maki community and signed on 22 February 2014. The settlement will be implemented following the passage of settlement legislation.

The Office of Treaty Settlements, 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 Christopher Finlayson, represented the Crown in high-level negotiations with Te Kawerau ā Maki.

Summary of the historical background to the claims by Te Kawerau ā Maki

In the 1840s Te Kawerau ā Maki had little direct contact with the Crown. However, pre-Treaty land transactions between other iwi and early European settlers saw the alienation of certain Te Kawerau ā Maki lands. From 1841 the Land Claims Commission investigated these pre-Treaty transactions. There is no evidence Te Kawerau ā Maki chiefs were involved in these transactions and, when resolving them, the Crown failed to consider Te Kawerau ā Maki's interests, granted settlers certain lands, and retained a 'surplus' of land for itself.

In 1841 the Crown purchased an extensive area called 'Mahurangi and Ōmaha', which included land in which Te Kawerau ā Maki held shared interests with other 'Te Kawerau' groups. Te Kawerau ā Maki was not consulted about the sale. The Crown did not conduct an investigation of customary rights when it purchased these lands. Nor did it provide adequate compensation and reserves when it later learned of Te Kawerau interests in the area.

Between 1844 and 1845 the Crown waived its right of pre-emption (being the sole purchaser of Māori land), to allow private individuals to negotiate directly with Māori. However, the Crown did not apply the regulations it had established to protect Māori. Through these transactions Te Kawerau ā Maki lost land in which they had interests in West Auckland and around the upper Waitematā Harbour.

From 1848 the Crown commenced a systematic programme of land purchasing to the west and immediate north of Auckland to provide land for settlers and to gain control of the rich timber resources there. In 1853 and 1854 the Crown acquired around 100,000 acres in the Waitākere Ranges, in the heart of Te Kawerau ā Maki's rohe. The Crown did not conduct an adequate investigation of customary rights in this area and only dealt with Te Kawerau ā Maki after purchasing land from other iwi. No reserves were set aside for Te Kawerau ā Maki in the large Hikurangi block, and the Piha and Waitākare Native reserves, which were created for Te Kawerau ā Maki, were not protected from later alienation.

From the mid 1860s the individualisation of title through the native land laws made Te Kawerau ā Maki lands, including their reserve lands, more susceptible to partition, fragmentation and alienation. This process continued throughout the 20th century for the very limited areas of land Te Kawerau ā Maki had left. Between 1920 and 1951 the Crown acquired the remaining Te Kawerau ā Maki interests in the Kōpironui and Puketapu blocks (south Kaipara) by compulsory purchases and Public Works Act takings for sand-dune reclamation, despite Te Kawerau ā Maki protest.

The Crown's actions and omissions have meant that Te Kawerau ā Maki is virtually landless, and today holds title only to the inaccessible Taitomo Island at Piha and a five acre residue at Kōpironui. Te Kawerau ā Maki presently has no marae or urupā of their own. The Crown's failure to ensure Te Kawerau ā Maki was left with sufficient land for their present and future needs has hindered the social, economic and cultural development of Te Kawerau ā Maki as a tribe. This failure has also undermined the ability of Te Kawerau ā Maki to protect and manage their taonga and wāhi tapu, and to maintain spiritual connections to their lands.

Summary of the Te Kawerau ā Maki settlement

Overview

The Te Kawerau ā Maki Deed of Settlement is the final settlement of all historical Treaty of Waitangi claims of Te Kawerau ā Maki 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, acknowledgments and apology
- cultural redress
- financial and commercial redress.

No private land is affected by the redress, only Crown land. The benefits of the settlement will be available to all members of Te Kawerau ā Maki wherever they may live.

Crown acknowledgements and apology

The deed contains a series of acknowledgements by the Crown where its actions arising from interaction with Te Kawerau ā Maki have breached the Treaty of Waitangi and its principles.

In its apology the Crown recognises the grievances of Te Kawerau ā Maki are long-held and acutely felt. The Crown acknowledges that for too long it failed to appropriately respond to Te Kawerau ā Maki claims for redress and justice. The apology records the Crown's profound regret for its breaches of the Treaty of Waitangi and its principles which resulted in the alienation of much Te Kawerau ā Maki land by 1856. The Crown also expresses sorrow for its subsequent failure to protect lands which were reserved for Te Kawerau ā Maki. Through the apology and settlement the Crown seeks to atone for its wrongs and lift the burden of grievance for Te Kawerau ā Maki so the process of healing can begin.

Cultural redress

Recognition of the traditional, historical, cultural and spiritual associations Te Kawerau ā Maki has with places and sites owned by the Crown within their area of interest. This allows Te Kawerau ā Maki and the Crown to protect and enhance the conservation values associated with these sites.

SITES TRANSFERRED TO TE KAWERAU Ā MAKI

Nine sites will be vested in Te Kawerau ā Maki totalling approximately 31 hectares. Included is land for Te Kawerau ā Maki to establish a marae at Te Onekiritea Point (Hobsonville) and a contribution of \$300,000 towards establishment costs of the marae. Land is also provided at Te Henga for Te Kawerau ā Maki to establish an urupā.

Other lands at Muriwai, Parihoa, Opareira, and Wai Whauwhaupaku will be vested in Te Kawerau ā Maki. Many of these areas are Department of Conservation lands and will come with covenants or reserve status. As well as the return of sites through the West Auckland area, Te Kawerau Pā on Tiritiri Matangi Island will be vested in Te Kawerau ā Maki. In addition, the appropriate owners for an area of 39.7 hectares of the former Kopironui block will be considered by the Māori Land Court under a special jurisdiction.

OVERLAY CLASSIFICATION

An overlay classification acknowledges the traditional, cultural, spiritual and historical association of Te Kawerau ā Maki with certain sites of significance. The declaration of an area as an overlay classification provides for the Crown to acknowledge iwi values in relation to that area. The settlement provides an overlay classification over Te Henga Historic Reserve.

STATUTORY ACKNOWLEDGEMENTS AND DEEDS OF RECOGNITION

A statutory acknowledgement recognises the association between Te Kawerau ā Maki and a particular site or area and enhances the iwi's ability to participate in specified resource management processes. The Crown provides statutory acknowledgements over the following areas:

- Taumaihi (part of Te Henga Recreation Reserve)
- Goldie Bush Scenic Reserve and Motutara Settlement Scenic Reserve
- Swanson Conservation Area and Henderson Valley Scenic Reserve
- Motutara Domain (part of Muriwai Beach Domain Recreation Reserve)
- Whatipu Scientific Reserve and Waitākere River
- Kumeu River
- Rangitopuni Stream
- Te Wai-o-Pareira/Henderson Creek
- Te Kawerau ā Maki coastal area.

Deeds of recognition oblige the Crown to consult with Te Kawerau ā Maki on specified matters and have regard to their views regarding their special associations with certain areas. Deeds of recognition are provided over the Motutara Settlement Scenic Reserve and Goldie Bush Scenic Reserve.

PLACE NAME CHANGES

Seventeen geographic names will be assigned or altered on settlement.

TĀMAKI COLLECTIVE SETTLEMENT

Te Kawerau ā Maki will also receive cultural redress through Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Deed (the Tāmaki Collective), including:

- vesting of particular Crown-owned portions of maunga in Tāmaki Makaurau and motu of the inner Hauraki Gulf
- governance arrangements relating to four motu of the inner Hauraki Gulf
- a relationship agreement relating to other public conservation land
- changing particular geographic names of sites of significance in Tāmaki Makaurau.

Relationships

PROTOCOLS

The Deed of Settlement will provide for protocols to facilitate good working relationships between Te Kawerau ā Maki and the Ministry of Business, Innovation and Employment and the Ministry for Culture and Heritage.

LETTERS OF INTRODUCTION

The Deed of Settlement provides for the Minister for Arts, Culture and Heritage to write to museums (including Te Papa Tongarewa), libraries, and other organisations to introduce Te Kawerau ā Maki and invite each to enter into a relationship with Te Kawerau ā Maki in regard to Te Kawerau ā Maki taonga.

Financial and commercial redress

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

FINANCIAL REDRESS

Te Kawerau ā Maki will receive financial redress to the value of \$6.5 million plus interest through their settlement.

On settlement date Te Kawerau ā Maki will receive selection units 1, 2, 3 and 4 of Riverhead Forest Crown Forest Licence Land (comprising around 86% of that Forest) and the accumulated rentals. The transfer value of Riverhead Forest is \$6.5 million and on transfer it will be subject to the current forest licence.

COMMERCIAL REDRESS

For two years after settlement date, four schools are available for purchase (land only) by Te Kawerau ā Maki to be leased-back to the Crown. Te Kawerau ā Maki will also have a non-exclusive deferred selection right to purchase the Paremoro housing block.

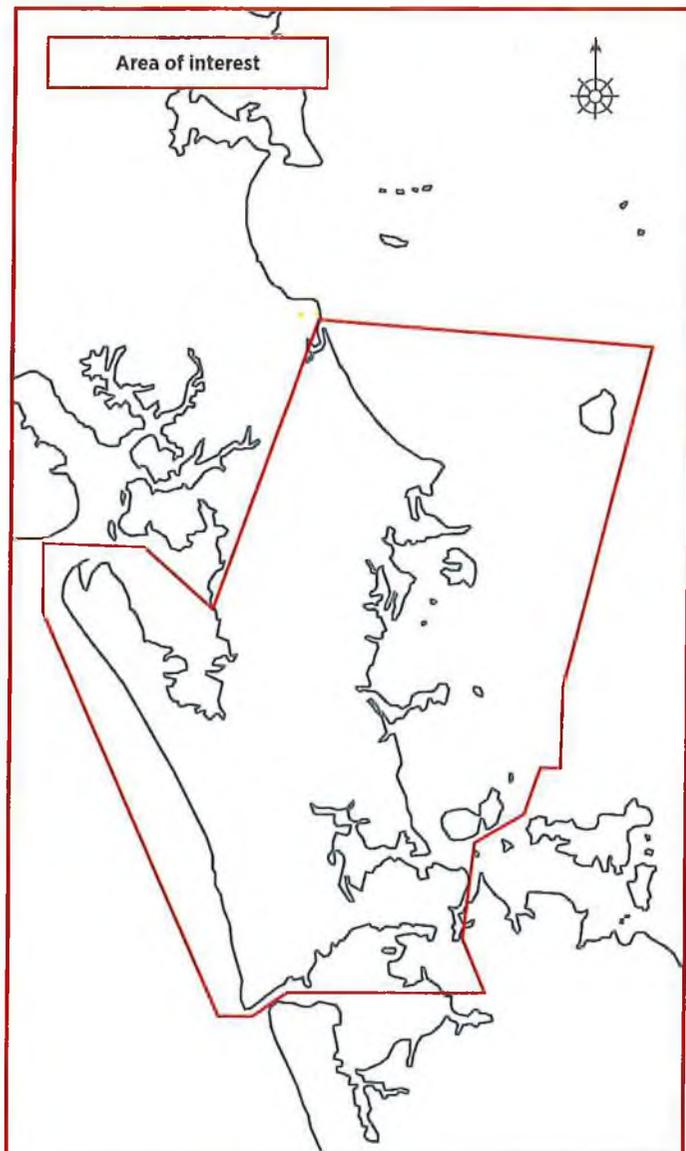
Right of first refusal

Te Kawerau ā Maki will receive:

- exclusive right of first refusal over Clarke House and Te Onekiritea Point at Hobsonville
- non-exclusive right of first refusal for 173 years for surplus Crown-owned properties in an area around the Mahurangi coast
- non-exclusive right of first refusal for 170 years over Paremoro Prison.

3(C) TĀMAKI COLLECTIVE SETTLEMENT

Te Kawerau ā Maki will also receive commercial redress through Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Deed (the Tāmaki Collective), including a non-exclusive right of first refusal for 172 years over lands around Tāmaki Makaurau.



Questions and answers

What is the total cost to the Crown?

The total cost to the Crown of the settlement redress outlined in the deed is \$6.5 million plus interest, \$300,000 as a contribution by the Crown to costs associated with establishing a marae at Te Onekiritea Point (Hobsonville), and the value of the cultural redress properties to be vested in Te Kawerau ā Maki.

Is there any private land involved?

No.

Are the public's rights affected?

Public access to the sites that are currently public conservation land that will vest in Te Kawerau ā Maki will be maintained, except the future urupā site at Te Henga and the Wai Whauwhaupaku site (at Swanson). These are both 1 hectare sites that adjoin larger conservation land sites.

Are any place names changed?

Fourteen existing geographic names will change and three sites which do not currently have official names will be assigned geographic names.

What are statutory acknowledgements and deeds of recognition?

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 1991. 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.

Deeds of recognition set out an agreement between the administering Crown body (the Minister of Conservation) and a claimant group in recognition of their special association with a site and specify the nature of their input into the management of the site.

What is an overlay classification?

An overlay classification acknowledges the traditional, cultural, spiritual and historical association of an iwi with certain sites of significance administered by the Department of Conservation.

An overlay classification status requires the Minister of Conservation and the settling group to develop and publicise a set of principles that will assist the Minister to avoid harming or diminishing values of the settling group with regard to that land. The New Zealand Conservation Authority and relevant conservation boards will also be required to have regard to the principles and consult with the settling group.

When will the settlement take effect?

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

Does Te Kawerau ā Maki have the right to come back and make further claims about the behaviour of the Crown in the 19th and 20th centuries?

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 Kawerau ā Maki. 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 Kawerau ā Maki 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.

Who benefits from the settlement?

All members of Te Kawerau ā Maki wherever they may now live.

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