



Deed of

Between the Crown and the
Port Nicholson Block Claims Team

Settlement

General Background

Taranaki Whānui ki Te Upoko o Te Ika is a collective that comprises people of Te Ātiawa, Taranaki, Ngāti Ruanui, Ngāti Tama and others including Ngāti Mutunga from a number of Taranaki iwi whose ancestors migrated to Wellington in the 1820s and 30s and who signed the Port Nicholson Block Deed of Purchase in 1839. The Port Nicholson Block runs from the Rimutaka Summit to the South Coast at Pipinui Point (Boomrock) around the coastline to Turakirae in the east and up the Rimutaka ridgeline to the summit. Taranaki Whānui ki Te Upoko o Te Ika, represented by the Port Nicholson Block Claims Team, have over 17,000 registered members.

The history of the interaction between Taranaki Whānui ki Te Upoko o Te Ika and the Crown has been outlined in The Waitangi Tribunal's *Te Whanganui a Tara Me Ona Takiwā* report on the Wellington District Inquiry, published in 2003. The claims of Taranaki Whānui ki Te Upoko o Te Ika relate to breaches by the Crown of its obligations under the Treaty of Waitangi, particularly the Crown's dealings over, and eventual acquisition of, the Port Nicholson Block, long delays in ensuring there was appropriate administration of the lands reserved for Taranaki Whānui ki Te Upoko o Te Ika in the Port Nicholson Block, and the Crown's compulsory acquisition and endowment of Taranaki Whānui ki Te Upoko o Te Ika lands for public purposes.

An account of the historical background agreed between the Crown and Taranaki Whānui ki Te Upoko o Te Ika is included in the Deed of Settlement, along with acknowledgments of Crown breaches of the Treaty of Waitangi, a Crown Apology for those breaches, and a statement of forgiveness by Taranaki Whānui ki Te Upoko o Te Ika.

On 28 January 2004, the Crown recognised the mandate of the Port Nicholson Block Claims Team to negotiate the settlement of the historical claims of Taranaki Whānui ki Te Upoko o Te Ika. Negotiations on the settlement package commenced with the signing of Terms of Negotiation on 27 July 2004. On 13 December 2007 the Crown and Taranaki Whānui ki Te Upoko o Te Ika signed an Agreement in Principle. A Deed of Settlement based on this agreement was initialled on 26 June 2008.

The Deed was then ratified by members of Taranaki Whānui ki Te Upoko o Te Ika and signed on 19 August 2008. The Deed of Settlement will be implemented following the passage of legislation.

The Port Nicholson Block Claims Team is led by Professor Ngātata Love, and represented in negotiations by Sir Paul Reeves, Neville Baker, Kara Puketapu, June Jackson, Liz Mellish, Mark Te One, Dawn McConnell, Dr Catherine Love, Spencer Carr and Kevin Amohia. The Minister in Charge of Treaty of Waitangi Negotiations, Hon Dr Michael Cullen, represented the Crown in high-level negotiations with Taranaki Whānui ki Te Upoko o Te Ika, as did his predecessors Hon Mark Burton and Hon Margaret Wilson.

Summary of the Historical Background to the Claims by Taranaki Whānui ki Te Upoko o Te Ika

In September 1839, the New Zealand Company, a private land-settlement company, sought to purchase land in Wellington harbour and its environs from Taranaki Whānui ki Te Upoko o Te Ika. Before the arrival of its representatives in New Zealand, the Company had sold nearly 100,000 acres in the Port Nicholson area to prospective settlers and held a lottery in London to allocate the land to them.

The Company's representatives negotiated the "Port Nicholson Deed", signed on 27 September 1839, with Taranaki Whānui ki Te Upoko o Te Ika in an attempt to purchase a large district at Port Nicholson and its environs (the Port Nicholson Block). The 1839 Deed was, however, only drafted in English and did not include a map of the boundaries. This transaction was later found to be seriously flawed by a Crown-appointed Land Claims Commissioner. In 1841, the Crown assumed ownership of the harbour islands despite the Deed's flaws and also proclaimed the town belt a public reserve without compensation.

The 1839 Deed provided that a tenth portion of the land conveyed by it would be reserved for Taranaki Whānui ki Te Upoko o Te Ika. The Company intended that some of these tenths reserves be occupation reserves, while the remaining tenths reserves would provide an endowment fund. Despite the initial findings of the Land Claims Commissioner, the Crown established a process by which the Company could validate its 1839 purchase. In return for payment of £1500, negotiated between the Company and a Crown representative, Taranaki Whānui ki Te Upoko o Te Ika signed several Deeds of Release in early 1844, so that the Company could complete its purchase. It was uncertain, however, how much land had been transacted by these Deeds of Release.

The Crown subsequently treated all of the land in the district covered by the 1839 Deed as if Taranaki Whānui ki Te Upoko o Te Ika title to it had been extinguished by the Deeds of Release. In order to finally secure the lands for the Company, the Crown instructed Colonel McCleverty in 1846 to find Taranaki Whānui ki Te Upoko o Te Ika alternative lands in exchange for their reserve lands around Wellington harbour. As a result of these exchanges, many Taranaki Whānui ki Te Upoko o Te Ika were pressured to move from their traditional lands to lands that proved inadequate to sustain their way of life.

Taranaki Whānui ki Te Upoko o Te Ika had no role in the administration of their remaining tenths reserves until 1985. There were long delays in establishing proper administration for the Wellington tenths reserves, including delays in the passing of legislation to establish an administration and in determining the list of beneficiaries.

The Crown-appointed trustee also appropriated tenths reserve land for public purposes. Much of the tenths reserve land was alienated under the Crown-appointed trustees' administration.

In order to generate income from the reserves, the Crown-appointed trustee established a regime of perpetual leases. Perpetual leasing at fixed prices reduced rental returns from the remaining tenths reserves. Despite criticism, perpetual leasing remained in place until 1985 when the Wellington Tenths Trust took over the administration of the tenths reserves. Under heavily-criticised legislation, the Trustee also acquired 'uneconomic' interests in land from the owners without their consent, which were later returned after protest by the owners.

As another consequence of settlement, Wellington harbour, an important food and trade resource for Taranaki Whānui ki Te Upoko o Te Ika, was adversely affected by the pollution and sewage generated by the urban and industrial development, as well as the reclamations around the harbour to provide land for public purposes. The Crown also took a significant amount of Taranaki Whānui ki Te Upoko o Te Ika land under public works legislation for housing, river protection and reclamation.

Settlement

Summary of the Taranaki Whānui ki Te Upoko o Te Ika Settlement

Overview

The Taranaki Whānui ki Te Upoko o Te Ika Settlement is the final settlement of all Taranaki Whānui ki Te Upoko o Te Ika historical 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 and Crown acknowledgements, which form the basis for a Crown Apology to Taranaki Whānui ki Te Upoko o Te Ika, as well as a Statement of Forgiveness from Taranaki Whānui ki Te Upoko o Te Ika to the Crown;
- Cultural redress; and
- Financial and commercial redress.

The benefits of the settlement will be available to all members of Taranaki Whānui ki Te Upoko o Te Ika, wherever they live.

Crown Apology

The Crown apologises to Taranaki Whānui ki Te Upoko o Te Ika for past dealings that breached the Crown's obligations under the Treaty of Waitangi. These include: the Crown's failure to consistently protect Taranaki Whānui ki Te Upoko o Te Ika's interests during the process by which the Crown and its agents acquired the interests of Taranaki Whānui ki Te Upoko o Te Ika in the Port Nicholson block; the compulsory acquisition and endowment of their lands for public purposes; the delay in implementing legislation and administration of their reserves; and the undermining of Taranaki Whānui ki Te Upoko o Te Ika tino rangatiratanga.

The Deed of Settlement includes a statement of forgiveness by Taranaki Whānui ki Te Upoko o Te Ika, in response to the Crown apology.

Cultural Redress

1. This redress recognises the traditional, historical, cultural and spiritual association of Taranaki Whānui ki Te Upoko o Te Ika with places and sites owned by the Crown within their area of interest. This allows Taranaki Whānui ki Te Upoko o Te Ika and the Crown to protect and enhance the conservation values associated with these sites, and includes:

1(A) SITES VESTED IN TARANAKI WHĀNUI KI TE UPOKO O TE IKA

Eighteen sites, including local authority land and a parcel of Meridian Energy land, will be vested in Taranaki Whānui ki Te Upoko o Te Ika.

A number of these sites are currently reserves:

- Matiu/Somes Island, Mokopuna Island and Makaro/Ward Island
- The lakebeds of Lake Kohangatera and Lake Kohangapiripiri (the Parangarahu Lakes, commonly referred to as the Pencarrow Lakes) and two esplanade reserves (the space occupied by water in the lakes and the space occupied by the air above the water remains in Crown ownership)
- Wi Tako Scenic Reserve (with a name change to Wi Tako Ngātata Scenic Reserve); and
- Point Dorset Recreation Reserve.

Under the settlement legislation, the existing reserve status will be maintained (except for the lakebeds and esplanade reserves, which will instead have a conservation covenant on their title). The sites' natural values will be protected, and public access to the sites as currently provided for will be retained, as well as existing third party rights.

The Korokoro Gateway site (on the harbour at Petone) will be vested in Taranaki Whānui ki Te Upoko o Te Ika and become the Honiana Te Puni Reserve.

Taranaki Whānui ki Te Upoko o Te Ika will enter into Memoranda of Understanding with local authorities in respect of the Wi Tako Ngātata Scenic Reserve, the Point Dorset Reserve, the Honiana Te Puni Reserve site and the beds of Lake Kohangatera and Lake Kohangapiripiri, their associated esplanade strips and the surrounding area. In addition, the settlement legislation will provide for the establishment of a Harbour Islands Kaitiaki Board to administer Makaro Scientific Reserve, Mokopuna Scientific Reserve, Matiu Scientific Reserve and Matiu Historic Reserve. The Board will consist of an equal number of representatives from both the Department of Conservation, who will continue to carry out the day to day management of the islands, and Taranaki Whānui ki Te Upoko o Te Ika.

Other sites that will be vested in Taranaki Whānui ki Te Upoko o Te Ika are:

- The site of Pipitea Marae, subject to an arrangement with the existing lessees, the Ngāti Poneke Māori Association
- Two Crown-owned properties on Thorndon Quay (land plus improvements)
- A site on the corner of Waiwhetu Road/Whites Line East
- The former Wainuiomata College, former Wainuiomata Intermediate School, and former Waiwhetu Primary School; and
- An urupā site at Makara and two dendroglyph areas near the Parangarahu Lakes (which will be vested as Māori Reservations).

1(B) STATUTORY ACKNOWLEDGEMENTS

Statutory Acknowledgements register the special association Taranaki Whānui ki Te Upoko o Te Ika has with an area, and will be included in the settlement legislation. Statutory Acknowledgements are recognised under the Resource Management Act 1991 and the Historic Places Act 1993. The acknowledgements require that consent authorities provide Taranaki Whānui ki Te Upoko o Te Ika with summaries of all resource consent applications that may affect the areas named in the acknowledgements.

There are to be Statutory Acknowledgements over the following thirteen sites: Kaiwharawhara stream; Coastal Marine Area adjoining the Taranaki Whānui ki Te Upoko o Te Ika area of interest; Hutt River; Waiwhetu Stream; Wellington Harbour; Riverside Drive marginal strip; Seaview marginal strips; Government Buildings Historic Reserve; Turnbull House Historic Reserve; Rimutaka Forest Park; Wainuiomata Scenic Reserve; Turakirae Head Scientific Reserve; and Kelburn Local Purposes (Community and Administrative Buildings) Reserve.

Statutory Acknowledgements are non-exclusive redress, meaning more than one iwi can have a Statutory Acknowledgement over the same site.

Q&A

Questions and Answers

1. What is the total cost to the Crown?

\$25.025 million plus interest from the date of the signing of the Agreement in Principle, and the value of the cultural redress properties to be returned, as listed at 1(A).

There has also been a contribution of \$4.859 million to the costs incurred by Taranaki Whānui ki Te Upoko o Te Ika in settling their claims. This has not been offset against their quantum.

2. Is there any private land involved?

No. The Greater Wellington Regional Council, Hutt City Council and Meridian Energy have agreed to transfer sites as part of the settlement.

3. Are the public's rights affected?

No. Where properties that the public currently has access to and use of are being vested in Taranaki Whānui Ki Te Upoko o Te Ika as cultural redress, that use and access will continue. For example, public access and use of Matiu/Somes Island will continue in the future as it exists now.

Where leases or licenses to occupy exist, the leaseholders or licensees will retain exactly the same set of rights. For example, the water-ski clubrooms at the Korokoro Gateway will not be affected by the transfer of the land to Taranaki Whānui ki Te Upoko o Te Ika.

4. What are Statutory Acknowledgments and Deeds of Recognition?

Statutory Acknowledgements acknowledge areas or sites with which claimant groups have a special relationship, and will be recognised in any proceedings under the Resource Management Act. This provision aims to avoid past problems with land development for roading and other purposes when areas of significance to Māori, such as burial grounds, were simply cleared or excavated without either permission or consultation. It is not a property right. Neither is it exclusive.

Deeds of Recognition set out an agreement between the administering Crown agency and a claimant group in recognition of their special association with a site as stated in a Statutory Acknowledgement, and specify the nature of their input into the management of the site.

5. What happens to memorials on private titles?

Settlement legislation, once passed, will remove the ability of Taranaki Whānui ki Te Upoko o Te Ika to seek the resumption of properties with s27B memorials on the titles. The memorials will be removed when all other groups with interests in the Wellington area have settled their claims.

6. Will the settlement settle all the historical claims of all the iwi in the collective?

The Deed of Settlement will settle all the historical claims of the Taranaki Whānui ki Te Upoko o Te Ika collective in the Port Nicholson Block. The collective includes the following iwi: Te Atiawa, Taranaki, Ngāti Tama and Ngāti Ruanui. The Deed of Settlement also provides for the exclusion from the Taranaki Whānui ki Te Upoko o Te Ika settlement of any Ngāti Tama who achieve a Crown recognised mandate and negotiate their historical claims with the Crown separately.

7. Does Taranaki Whānui ki Te Upoko o Te Ika have the right to come back and make further claims about the behaviour of the Crown in the 19th and 20th centuries?

Both parties agree that the Deed of Settlement is fair in the circumstances and will be a final settlement for all the historical or pre-1992 claims of Taranaki Whānui ki Te Upoko o Te Ika. The settlement legislation, once passed, will prevent Taranaki Whānui ki Te Upoko o Te Ika from re-litigating the claims before the Tribunal or the courts.

The settlement package will still allow Taranaki Whānui ki Te Upoko o Te Ika or members of Taranaki Whānui ki Te Upoko o Te Ika 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.

8. Who benefits from the settlement?

All members of Taranaki Whānui ki Te Upoko o Te Ika, wherever they may now live.