

Heads of Agreement between the Crown and Ngati Mutunga

General Background

Ngati Mutunga is one of eight generally recognised iwi of Taranaki. It is located in Northern Taranaki (see attached map of the iwi of Taranaki). The iwi has approximately 1500 members.

The history of Ngati Mutunga's interaction with the Crown has been detailed in the Waitangi Tribunal's Taranaki Report published in 1996. An account of the historical background agreed between the Crown and Ngati Mutunga is included in the Heads of Agreement. A summary of this is included in the attached material. The claim relates in general terms to breaches by the Crown of its obligations under the Treaty of Waitangi and in particular the waging of war resulting in loss of life, the confiscation of land and other land dealings

Negotiations on a settlement package with Ngati Mutunga began in April 1998. The Heads of Agreement signed today is an agreement in principle and not legally binding. The Heads of Agreement records the main components of the settlement. After further discussion with Ngati Mutunga on the details of the settlement provisions there will be a formal Crown offer to Ngati Mutunga. This offer will then be put to iwi members for their consideration. If the iwi ratifies the formal Crown offer, the two parties will then sign a binding Deed of Settlement conditional only on the approval of Parliament to the settlement legislation.

Ngati Mutunga was represented in negotiations by the Claims Progression Team. The Office of Treaty Settlements headed by Ross Philipson and Chief Crown Negotiator Hekia Parata, with the support of Treasury, Ministry of Fisheries and the Department of Conservation, represented the Crown in day to day negotiations. The Minister in Charge of Treaty of Waitangi Negotiations Sir Douglas Graham chaired the Ministerial group that represented the Crown in high level negotiations with Ngati Mutunga.

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Summary of Historical Background to claims by Ngati Mutunga.

The outbreak of war in Taranaki in 1860 that affected Ngati Mutunga followed disputed land purchases by the Crown of large areas of Te Atiawa and Taranaki Iwi land in North and Central Taranaki. The Crown had failed to obtain the general agreement of the Rangatira and hapu concerned, and strongly expressed opposition by some hapu members to the sales was ignored by the Crown.

From the late 1840s, as pressures to accommodate settlers on land mounted, Taranaki Maori opposition to sales north and south of New Plymouth became more evident. The flashpoint for the wars in Taranaki was the Crown's purchase of lands at Waitara. The prevention of the survey of this block by unarmed Maori was viewed as rebellion by the Crown, and it proclaimed martial law throughout Taranaki. War finally broke out when the Crown attacked the pa of Wiremu Kingi and his supporters which had been built on the Waitara block.

While the Crown subsequently renounced the Waitara purchase, it was too late to halt the continuing conflict and the Crown continued armed campaigns in Taranaki until 1869. Conflict also spread to other parts of the Central North Island.

Under the New Zealand Settlements Act of 1863 the Crown confiscated all the land (75,000 acres/27,700 hectares) within the rohe of Ngati Mutunga. Confiscations were indiscriminate with land being taken from "rebels" and "loyals" alike.

Subsequent redress through the compensation provisions of the NZ Settlements Act and the West Coast Commissions resulted in the award of meagre entitlements of poor quality land. Very few awards were properly implemented and customary forms of tenure were ignored in the awards, almost all of which were made to individuals.

Between 1872 and 1881, the Crown purchased substantial areas of land in the rohe of Ngati Mutunga. All of the land involved had been confiscated, giving rise to doubt as to whether the confiscation was still in force. In such circumstances Ngati Mutunga could not be confident that they would retain land if they refused to sell it. The execution of these purchases was further flawed in that the Crown failed to investigate customary title, the negotiations were not conducted openly, and minimal consideration was paid to vendors.

Acts of passive resistance to the confiscations by the ploughmen and fencers organised by Te Whiti and Tohu were followed by the invasion of Parihaka in

the Taranaki iwi rohe by an armed force of almost 1600 in 1881. More than 1500 men, women and children were arrested, crops were burnt and homes destroyed. Ngati Mutunga was also adversely affected by this conflict.

Reserves allocated to Maori were placed under the control of the Public Trustee and a large portion of this land was subject to perpetually renewable leases to settlers without the consent of owners. By 1974 more than 63% of the reserved land vested in the Public Trustee had been sold.

A subsequent investigation of the confiscations by the Sim Commission of 1926-27 was limited and did not fully investigate the return of land, wahi tapu and other taonga. The Commission recommended an annuity of 5000 pounds to compensate all Taranaki iwi for the confiscations. A sum of 300 pounds was paid to compensate for loss of property at Parihaka. These payments were not discussed with iwi, nor did they accept them as adequate. Sums due in the early 1930s were not fully paid.

The compensation was enshrined in the Taranaki Maori Claims Settlement Act 1944 which states that Maori had agreed to accept the sums as full settlement for the confiscations and the actions of the Crown at Parihaka. There is no evidence iwi agreed to this and the settlement sums, as with the rents on reserved lands, were not protected from the effects of inflation.

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Heads of Agreement - Ngati Mutunga

The Ngati Mutunga Heads of Agreement is made up of a package that includes;

1. An agreed historical account which forms the basis for a Crown Apology to Ngati Mutunga.
2. Cultural Redress
3. Commercial Redress

No private land is involved in the redress, only Crown assets.

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

Crown Apology

The Crown's apology to Ngati Mutunga will cover the Waitara Purchase, the subsequent wars, land confiscation, reserve lands and perpetual leases, Parihaka and the cumulative impact of these events on Ngati Mutunga.

Cultural Redress

1. Restoration of Ngati Mutunga access to traditional foods and food gathering areas, including

1(a). Customary Fisheries

Ngati Mutunga will be appointed as an Advisory Committee to the Minister of Food, Fibre Biosecurity and Border Control and the Minister of Conservation. The Committee will provide advice on the management of fisheries in the Ngati Mutunga rohe, including the customary interest of Ngati Mutunga in those fisheries and in a specified list of taonga species contained in those fisheries.

Other provisions include

- The Ministry of Fisheries will consult with Ngati Mutunga and safeguard Ngati Mutunga's existing customary fishing rights if the numbers of specified customary or taonga species (Waikoura, Korama/Cats Eyes, Kakahi/Freshwater mussels, Kotoretore/Sea Anenome, Karengo/Sea Lettuce, Kina, Piharau/Lamprey) rise to levels that make a commercial catch possible.

- A Right of First Refusal to buy a proportion of surplus Crown quota for surf clams and kina in the quota management area covering Ngati Mutunga's rohe if these species become part of the quota management system.
- Should tendering for coastal space for marine farming occur, Ngati Mutunga will have the preferential right to buy, at the tender price, authorisations to apply for up to 10% of the allocated space. Ngati Mutunga retains the right to participate in other tenders for coastal space authorisations.
- De-commercialisation of fishing for Waikoura (Freshwater Crayfish).
- A commitment from the Crown to consider a proposal from Ngati Mutunga to extend the prohibition on commercial fishermen using trawl nets and set nets to certain parts of Ngati Mutunga's rohe.
- Provision for the taking of undersized tuna (eel) as part of stocking or re-stocking of waterways and aquaculture projects.
- Protection of Ngati Mutunga's customary non-commercial interest in paua should this species become commercially viable in the Ngati Mutunga rohe.

1(b). Camping licences or Nohoanga.

This is an area of up to one hectare near a waterway which gives access to traditional sources of food. Ngati Mutunga members will have the right to use this entitlement for non-commercial, lawful fishing and food gathering for up to 210 days a year. One licence is being offered, at the Uruti Domain Scenic Reserve and the Mataro Road Conservation Area is being transferred to Ngati Mutunga for nohoanga purposes.

2. Recognition of Ngati Mutunga's traditional, historical, cultural and spiritual associations to places and sites owned by the Crown within their rohe. This allows Ngati Mutunga and the Crown to protect and enhance the conservation values associated with these areas and sites and includes;

2(a). Statutory Acknowledgements

These register the special association Ngati Mutunga has with an area and will be included in the settlement legislation. They are recognised under the Resource Management Act and the Historic Places Act.

There are to be fourteen such acknowledgements;

The Mimi-Pukearuhe Coast Marginal Strip, part of Mt Messenger Conservation Area. Taramakou Conservation Area. Waitoetoe Beach

Recreation Reserve, Mimi Scenic Reserve, Mimi Gorge Scientific Reserve, Mataro Scenic Reserve, Onaero River Scenic Reserve, Onaero Coast Marginal Strip, Onaero River Marginal Strip, Urenui River Marginal Strip, the Coastal Marine Area adjoining the Ngati Mutunga rohe, the Urenui River and the Waitara River.

2(b). Deeds of Recognition

Obliges the Crown to consult Ngati Mutunga and have regard for its views regarding Ngati Mutunga's special association with a site and specifies the nature of Ngati Mutunga's input into management of those areas by the Department of Conservation. There will be ten Deeds covering the first eight listed Statutory Acknowledgements, the Urenui River and the Waitara River .

2(c). Protocols with Other Government Departments and Third Parties

The Heads of Agreement also provides for the establishment of protocols to develop good working relationships between Ngati Mutunga and the Ministry of Fisheries, the Ministry of Commerce and the Department of Conservation on matters of cultural importance to Ngati Mutunga. There will also be protocols with the Department of Internal Affairs (for the protection of newly found taonga/antiquities) and Land Information New Zealand (for the process of disposing of paper roads).

The Crown has also agreed to facilitate the development of memoranda of understanding between Ngati Mutunga and the Taranaki Regional Council and the New Plymouth District Council, the Taranaki/Wanganui Conservation Board and Taranaki Fish and Game Council, Landcare Research and the National Institute of Water and Atmospheric Research.

The protocols with Government departments will be developed in detail between the signing of a Heads of Agreement and the final Deed of Settlement.

The Ministry for the Environment will also have a role in monitoring local government and the application of the Resource Management Act in Ngati Mutunga's rohe.

2(d). Place names

One existing place name will, in future, also have an official Maori name. This is; Parininihi/Mt Messenger Scenic Reserve. Te Urinui Pa Historic Reserve will be known in future as Te Urenui Pa Historic Reserve.

Ngati Mutunga will also be notified by the New Zealand Geographic Board about future name proposals in their rohe.

2(e). Sites Transferred to Ngati Mutunga

Six areas of significance to Ngati Mutunga will be returned to the iwi. They are; Onaero Recreation Reserve, Pukemiro Historic Reserve, Te Rau o te Huia Pa Historic Reserve, Ngapapa Local Purpose Reserve (Roadmans Cottage) Urenui Conservation Area and the Mataro Road Conservation Area. The total area involved is 115.9 ha.

Ownership of 114 ha of this land, contained within the Pukemiro Historic Reserve and the Urenui Conservation Area, will be subject to covenants protecting natural values and public access.

In addition, Ngati Mutunga will receive the title to Te Urenui Pa Historic Reserve and the Otoki Pa Historic Reserve and they will administer them as reserves under the Reserves Act. The Department of Conservation may provide technical assistance on a basis to be agreed between Ngati Mutunga and the Department.

2(f). Cultural Materials

The Heads of Agreement provides for the legal use by Ngati Mutunga of existing materials in their possession derived from plants, animals, marine mammals and birds that are of importance in the maintenance of its culture.

Financial and Commercial Redress

This redress recognises the economic loss suffered by Ngati Mutunga arising from breaches by the Crown of its Treaty obligations. It is aimed at providing Ngati Mutunga with resources to assist it to develop its economic and social well being. It includes;

1. The return of certain Crown owned lands as selected by Ngati Mutunga up to a value of **\$14.5 million** or a combination of land and cash.
2. **Right of First Refusal** - Ngati Mutunga will also have, for a period of 50 years, a Right of First Refusal to buy, at full market value, properties in the Ngati Mutunga rohe currently owned by the Crown should they be declared surplus.

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Mount Taranaki

There is no specific redress proposed in the Heads of Agreement relating to the confiscation of Mount Taranaki. This matter will be addressed at a later date in the settlement process in Taranaki when all the iwi of Taranaki are in a position to negotiate on this issue.

There will be no additional financial or commercial redress in relation to the mountain. Any cultural redress and apology agreed with Ngati Tama will recognise the traditional, cultural, historical and spiritual significance of Mount Taranaki to all iwi of Taranaki.

Questions and Answers

1. What is the total cost to the Crown?

\$14.5 million plus interest from the date of the signing of the Deed of Settlement plus the cost of the land returned under 2 (e).

2. Is there any private land involved?

No

3. Are the public's rights affected?

Generally, no, but

- A camping licence or Nohoanga, is similar to other concessions granted by the Department of Conservation, and will be for the exclusive use of Ngati Mutunga for up to 210 days a year. A camping licence site is up to 1 hectare in size. This will not affect public access to waterways.
- Some small sites of historic significance to Ngati Mutunga totalling approximately 2 hectares will be returned to the iwi.

4. What is a camping licence or Nohoanga?

It is a licence to temporarily occupy a piece of land of up to one hectare near a traditional Ngai Mutunga food gathering area such as a river or a lake. It is set back from the marginal strip and does not impede public access to or along a waterway. It is the same concept as a nohoanga in the Ngai Tahu settlement.

5. What is a Statutory Acknowledgement?

These acknowledge areas or sites with which iwi have a special relationship and will be recognized 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 iwi, such as burial grounds, were simply cleared or excavated without either permission or consultation. It does not give iwi any specific property rights.

A **Deed of Recognition** sets out an agreement between the administering Crown body (The Minister of Conservation or the Minister of Crown Lands) and the iwi which recognises the iwi's special association with a site as stated in a Statutory Acknowledgement and specifies the nature of the iwi's input into the management of the site.

6. Are any place names changed?

One existing place name will, in future, also have an official Maori name – Parininihi/Mt Messenger Scenic Reserve. And, Te Urinui Pa Historic Reserve will be known in future as Te Urenui Pa Historic Reserve.

7. What about Mt Taranaki?

Because of the significance of the mountain to all eight Taranaki iwi the question of an apology and redress for the unjust confiscation of the mountain is to be deferred until all eight iwi are in a position to negotiate. Redress in relation to the mountain will consist of an apology and cultural redress. No further financial or commercial redress will be involved.

8. Are any National Parks affected in the Settlement?

No

9. What happens to memorials on private titles?

The settlement will remove the legislative restrictions (memorials) placed on the title of Crown properties and some former Crown properties now in private ownership.

10. Does the Settlement create any special rights for Ngati Mutunga?

No new rights are being created. Provisions in relation to conservation, such as Statutory Acknowledgements and Special areas, give practical effect to existing provisions of both the Resource Management Act - section 6 - and the Conservation Act - section 4 – which provide for Maori participation in conservation and planning matters.

11. Does Ngati Mutunga have the right to come back and make further claims about the behaviour of the Crown in the 19th Century?

No. If the Heads of Agreement signed today proceeds to settlement both parties agree it will be a fair and final settlement for all Ngati Mutunga's historical or pre 1992 claims in the Taranaki area. The settlement legislation, once passed, will prevent Ngati Mutunga from re-litigating the claim before the Waitangi Tribunal or the Courts.

The Heads of Agreement does not cover the question of claims for loss of rentals since the mid 1970s by the owners of Maori reserved land, represented in Taranaki by the Parininihi Ki Waitotara Incorporation.

If approved, the settlement package will still allow Ngati Mutunga or members of Ngati Mutunga to pursue claims based on the continued existence of aboriginal title or customary rights, or claims against the Crown for acts or omissions after 21 September 1992. The Crown also retains the right to dispute such claims or the existence of such title rights.

12. What about the Taranaki Claims Settlement Act of 1944 ? Wasn't that final?

The settlement of 1944 was made unilaterally, without agreement with Ngati Mutunga. Taranaki iwi have never regarded the 1944 Act as adequate redress for Treaty breaches. The Crown also accepts the compensation under the Act was inadequate.

13. What happens next?

The Heads of Agreement is an agreement in principle and is not legally binding on either party. The next step for the Crown and iwi is to develop a formal Deed of Settlement which, if ratified by the full Iwi membership, will be enshrined in a Bill to be submitted to Parliament for its approval.

14. Who benefits from the settlement?

All members of Ngati Mutunga, wherever they may now live.

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