

Heads of Agreement between the Crown and Ngati Tama

General Background

Ngati Tama 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 1000 members.

The history of Ngati Tama'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 Tama 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 Tama 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 Tama on the details of the settlement provisions there will be a formal Crown offer to Ngati Tama. 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 Tama 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 Tama.

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Summary of Historical Background to the Claims by Ngati Tama.

The outbreak of war in Taranaki in 1860 which affected Ngati Tama 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 that 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 74,000 acres (27,400 hectares) of land within the rohe of Ngati Tama. 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.

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 Tama was also adversely affected by this conflict.

In the case of Ngati Tama, the adverse consequences of the Compensation Court decisions and conflict were magnified by a Native Land Court decision

in 1882. The Court ruled that Ngati Tama did not retain an interest in two large blocks north of the confiscation line, which were considered to be Ngati Tama's ancestral lands.

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 reserves 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 Tama

The Ngati Tama 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 Tama.
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 Tama 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 Tama that left the iwi virtually landless.

Cultural Redress

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

1(a). Customary Fisheries

Ngati Tama will be appointed as an Advisory Committee to the Minister of Food, Fibre Biosecurity and Border Control and the Minister of Conservation. This Committee will provide advice on the management of fisheries in the Ngati Tama rohe, including the customary interest of Ngati Tama 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 Tama and safeguard Ngati Tama'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) 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 Tama's rohe if these species become part of the quota management system.

- De-commercialisation of fishing for Waikoura (freshwater crayfish).
- Should tendering for coastal space for marine farming occur, Ngati Tama will have the preferential right to buy, at the tender price, authorisations to apply for up to 10% of the allocated space. Ngati Tama retains the right to participate in other tenders for coastal space authorisations.
- A commitment from the Crown to consider a proposal from Ngati Tama to extend the prohibition on commercial fishermen using trawl nets and set nets to certain parts of Ngati Tama'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 Tama's customary non-commercial interest in paua should this species become commercially viable in the Ngati Tama rohe.

1(b). Camping licences or Nohoanga.

This is an area of up to one hectare near a waterway that gives access to traditional sources of food. Ngati Tama 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 Jones Point Conservation Area and the Purupuru Conservation area is being transferred to Ngati Tama for nohoanga purposes.

2. Recognition of Ngati Tama's traditional, historical, cultural and spiritual associations to places and sites owned by the Crown within their rohe. This allows Ngati Tama 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 Tama 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 sixteen such acknowledgements;

Part of the Mimi-Pukearuhe Coast Marginal Strip, part of Mt Messenger Conservation Area, Moki Conservation Area, Tongaporutu Conservation Area, Mokau Conservation Area, Mohakatino Swamp Conservation Area, Mokau River Scenic Reserve, Panirau Island Conservation Area, Mohakatino River (no 1) Marginal Strip, Mohakatino Coastal Marginal Strip, the Mohakatino River (no 2) Marginal Strip, the Mokau River Marginal Strip, the Coastal Marine Area adjoining the Ngati Tama rohe, the Mokau River, the Mohakatino River, the Tongaporutu River.

2(b). Deeds of Recognition

Obliges the Crown to consult Ngati Tama and have regard for its views regarding Ngati Tama's special association with a site and specifies the nature of Ngati Tama's input into management of those areas by the Department of Conservation. There will be ten Deeds covering most of the areas receiving Statutory Acknowledgements.

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

The Heads of Agreement provides for the establishment of protocols to develop good working relationships between Ngati Tama and the Ministry of Fisheries, the Ministry of Commerce, the Department of Conservation and the Department of Internal Affairs on cultural matters of importance to Ngati Tama. A protocol will also be developed between Ngati Tama and Land Information New Zealand regarding the process for the disposal of paper roads.

The Crown has also agreed to facilitate the development of memoranda of understanding between Ngati Tama and the Taranaki Regional Council, the New Plymouth District Council, the Taranaki/Wanganui Conservation Board, 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 Tama's rohe.

2(d). Placenames

A total of 4 existing placenames will, in future, also have an official Maori name. These are; Te Hawera/Mt Davidson, Te Hawera/Mt Davidson Scenic Reserve, Parininihi/Mt Messenger, and Parininihi/Mt Messenger Scenic Reserve.

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

2(e). Sites Transferred to Ngati Tama

Nine areas of special significance to Ngati Tama will be returned to the iwi. A variety of arrangements are being entered into to ensure ongoing protection of values associated with these areas.

The Kawau Pa Historic Reserve, the Pou Tehia Historic Reserve, the Pukearuhe Historic Reserve and a pa site within the Mohakatino Conservation Area are being returned to Ngati Tama. Where appropriate these areas will have covenants to protect natural values.

An integrated management regime is to be established to cover the Whitecliffs Conservation Area, the Uruti Conservation Area, the proposed marine reserve at Parininihi and parts of the Mt Messenger Scenic Reserve and Mt Messenger Conservation Area. A board made up of equal numbers of Ngati Tama and staff of the Department of Conservation will manage the area for conservation purposes. Under this management regime ownership of approximately 2100 hectares of land within the area confiscated under the New Zealand Settlements Act of 1863 will be transferred to Ngati Tama. Natural values and public access will continue to be protected and ownership will be subject to an easement for the existing natural gas pipeline and the preservation of the existing walkway at the Whitecliffs Conservation Area.

In addition, Ngati Tama will become the administrator of the Umukaha Pt Recreation Reserve. The Department of Conservation may provide technical assistance with the management on a basis to be agreed between Ngati Tama and the Department.

The Mimi-Pukearuhe Coast marginal strip will also become an Historic Reserve.

The Crown has also agreed to discuss with the New Plymouth City Council the possible transfer of the ownership of the Tongaporutu Recreation Area to Ngati Tama subject to safeguards on public access and existing leases granted by the Crown or the Council.

2(f). Cultural Materials

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

Commercial Redress

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

1. A total of **\$14.5 million** in cash or a combination of cash and Crown properties up to that value.
2. **Right of First Refusal** - Ngati Tama will also have, for a period of 50 years, a Right of First Refusal to buy, at full market value, properties in the Ngati Tama 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

- The camping licence site or Nohoanga, which is similar to other concessions granted by the Department of Conservation, will be for the exclusive use of Ngati Tama for up to 210 days a year. A site is up to 1 hectare in size. It will not affect public access to waterways.
- Some very small parcels of land of historic significance to Ngati Tama (including Pa sites) totalling just over 16 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 Ngati Tama 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?

A total of 4 existing placenames will, in future, also have an official Maori name. These are; Te Hawera/Mt Davidson, Te Hawera/Mt Davidson Scenic Reserve, Parininihi/Mt Messenger, and Parininihi/Mt Messenger Scenic 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 Tama?

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 Tama 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 Tama's historical or pre 1992 claims in the Taranaki area. The settlement legislation, once passed, will prevent Ngati Tama from re-litigating the claim before the Waitangi Tribunal or the Courts. The Heads of Agreement does not cover the question of compensation for loss of rentals since the mid 1970s to the owners of Maori reserved land, represented in Taranaki by the Parininihi Ki Waitotara Incorporation.

If approved, the settlement package will still allow Ngati Tama or members of Ngati Tama 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 Tama. 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 Tama, wherever they may now live.

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