

Heads of Agreement between the Crown and Te Uri o Hau

**Minister in Charge of Treaty of Waitangi
Negotiations
Sir Douglas Graham**

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General Background

Te Uri o Hau is a Northland hapu of Ngati Whatua whose rohe is located in the Northern Kaipara region (see attached map). Te Uri o Hau has approximately 6000 members.

An account of the historical background agreed between the Crown and Te Uri o Hau is included in the Heads of Agreement. A summary of this is included in the attached material. The claim relates in general terms to alleged breaches by the Crown of its obligations under the Treaty of Waitangi in relation to land purchases prior to 1840, Crown land purchases, the operation of the Native Land Court, and land administration structures and practices in the 20th century.

Negotiations on a settlement package with Te Uri o Hau began in August 1999. 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 Te Uri o Hau on the details of the settlement provisions there will be a formal Crown offer to Te Uri o Hau. This offer will then be put to Te Uri o Hau members for their consideration. If they ratify 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.

Te Uri o Hau was represented in negotiations by its mandated negotiators Sir Graham Latimer, Morehu Kena, Jimmy Connelly, Harry Pomare, Russell Kemp, Rawson Wright and Taphana Shelford (Minister). The Office of Treaty Settlements headed by Ross Philipson, 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 Te Uri o Hau.

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Summary of Historical Background to the Claims by Te Uri o Hau.

Crown Policy – Crown Purchases and Native Land Laws

The Crown has accepted that it had a duty under the Treaty of Waitangi to

- Ensure European settlement occurred in an orderly fashion,
- Respect Maori preferences concerning land ownership,
- Act in the utmost good faith toward Maori,
- Ensure Maori retained sufficient land for sustenance and growth.

And, that the alienation of Maori land and the operation and impact of the native land laws had a number of consequences, including

- a significant loss of land by some Maori communities, with some becoming virtually landless,
- The removal of a key resource, contributing to a breakdown of Maori communities and hindering their effective participation in society,
- Community dispersal, resulting from the fragmentation of land ownership.

Te Uri o Hau's Claims

The specific claims made by Te Uri o Hau concern the actions of the Crown in reviewing land purchases prior to 1840, Crown purchases prior to 1865, the operations of the Native Land Court in the 19th century and land administration structures and practices in the 20th century.

In 1842 the Chiefs of Te Uri o Hau and Ngapuhi ceded to the Crown between 2,200 and 3000 hectares as punishment for Maori action against a storekeeper believed to have desecrated an urupa and removed human remains. No payment was made for the land.

Crown purchases between 1854 and 1865 saw 110,000 hectares alienated from Te Uri o Hau, around 60% of the hapu's total land holdings in the Otamatea and Pouto areas. Only three reserves were established following these purchases and, of those, two were alienated soon after.

Te Uri o Hau also believe the operation of the Native Land Court in Te Uri o Hau's rohe was prejudicial to Maori land owners wishing to retain their land. Reserves set aside following sales often included wahi tapu, but were inadequately protected from alienation in spite of their owners' wishes. A Validation Court was employed in the area that sought to 'validate' incomplete dealings in Maori land. A disputed sale of 815 hectares was resolved in favour of purchasers and against the wishes of Te Uri o Hau.

Taonga were also removed from wahi tapu in the Wairoa-Kaipara District and the Pouto Peninsula without permission prior to enactment of legislation aimed at protecting taonga in 1901.

In the 20th century Te Uri o Hau believe they were disadvantaged by land administration structures and practices that saw some Te Uri o Hau land owners retain few legal powers over their own property. Land development schemes in operation during this century also saw further alienation and produced results that fell well below the land owners' expectations.

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Heads of Agreement - Te Uri o Hau

The Te Uri o Hau 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 Te Uri o Hau.
2. Cultural Redress
3. Commercial Redress

Only Crown assets are involved in the redress offered to Te Uri o Hau, except for a .5ha site (the location of Whakahuranga Pa) purchased from a private owner on a willing seller/willing buyer basis that will be transferred to Te Uri o Hau.

The benefits of the settlement will be available to all members of Te Uri o Hau wherever they may live.

Crown Apology

The Crown's apology to Te Uri o Hau will cover the actions and omissions of the Crown in relation to validation of land purchases prior to 1840, Crown purchases before 1865, the operation of the Native Land Court, and the impact of land administration structures and practices in the 20th century.

Cultural Redress

1. Restoration of Te Uri o Hau access to traditional foods and food gathering areas, including

1(a). Customary Fisheries

Te Uri o Hau will be appointed as an Advisory Committee to the Minister of Food, Fibre Biosecurity and Border Control. This Committee will provide advice on the management of fisheries in the Te Uri o Hau rohe, including the customary interest of Te Uri o Hau in those fisheries generally and the shark, ray, flounder, snapper, kahawai and mullet fisheries in particular.

Other provisions include

- The Ministry of Fisheries will consult with Te Uri o Hau and safeguard Te Uri o Hau's existing customary fishing rights if the numbers of toheroa, 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, tuatua, paddlecrab and toheroa in the quota management area

covering Te Uri o Hau's rohe if these species become part of the quota management system.

- A commitment by the Crown to consult with Te Uri o Hau should they propose to include the Pouto Lakes eel fisheries within the application of the Fisheries (Kaimoana Customary Fishing) Regulations.
- A commitment to consider restrictions on certain eel fishing methods in the Pouto Lakes
- An agreement by the Crown to make regulations defining the existing oyster reserves (established as a reserve exclusive to Te Uri o Hau in 1913), and provide for a management structure nominated by Te Uri o Hau to manage the reserves.

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. Te Uri o Hau members will have the right to use this entitlement for non-commercial, lawful fishing and food gathering for up to 210 days a year.

Three licences are being offered and will be located in the Pouto Stewardship Area.

2. Recognition of Te Uri o Hau's traditional, historical, cultural and spiritual associations to places and sites owned by the Crown within their rohe. This allows Te Uri o Hau 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 Te Uri o Hau 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 five such acknowledgements;

The Mangawhai Marginal Strip, Oruawharo River Stewardship Area, the Pouto Stewardship Area, the Pukekararo Scenic Reserve, the Kaipara Harbour and the Mangawhai Harbour.

2(b). Deeds of Recognition

Obliges the Crown to consult Te Uri o Hau and have regard for its views regarding Te Uri o Hau's special association with a site and specifies the nature of Te Uri o Hau's input into management of those areas by the Department of Conservation.

There will be four Deeds covering the Mangawhai Marginal Strip, the Oruawharo River Stewardship Area, the Pukekararo Scenic Reserve and the Pouto Stewardship Area.

2 (c) Special Areas or Kirihipi

This is an additional status for some existing conservation areas which acknowledges Te Uri o Hau's traditional, cultural, spiritual and historic values and associations.

Special Area status requires the Minister of Conservation and Te Uri o Hau to develop and publicise a set of principles which will assist the Minister to avoid harming or diminishing Te Uri o Hau values in each of the Special Areas. The NZ Conservation Authority and Northland Conservation Board will also be required to have regard to the principles and consult with Te Uri o Hau. (It is the same concept as a Topuni in the Ngai Tahu settlement and Nga Poipoia o Ruanui in the Ngati Ruanui Heads of Agreement.)

There are two such areas proposed for the Te Uri o Hau rohe; the Tapora Government Purpose (Wildlife Management) Reserve and the Pouto Stewardship Area.

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

The Heads of Agreement provides for the establishment of protocols to develop good working relationships between Te Uri o Hau and the Ministry of Fisheries, the Ministry of Commerce, the Department of Conservation and the Ministry of Culture and Heritage on cultural matters of importance to Te Uri o Hau.

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 Crown has also agreed to encourage the development of memoranda of understanding between Te Uri o Hau and the Kaipara District Council, the Rodney District Council, the Northland Regional Council and the Auckland Regional Council.

2(e). Placenames

A total of 5 existing place names will, in future, also have an official Maori name. These are; Whakapirau Point/ Rocky Point, Lake Karoro/Lake Mathews, Puke pohatu/Bald Rock, Pou Tu O Te Rangi/ Mt Wesley.

In addition, Maungaturoto Scenic Reserve will be renamed the Pukeareinga Scenic Reserve, Tapu Bush will also be known as Whakapaingarara, the name of Waikere Creek will be changed to Waikeri Creek, and the Tapora

Government Purpose (Wildlife Management) Reserve will be known as Manukapua Wildlife Reserve.

Nine sites not currently named will receive official names.

Te Uri o Hau will also be notified by the New Zealand Geographic Board about future name proposals in their rohe.

2(f). Sites Transferred to Te Uri o Hau

Nine areas of special significance to Te Uri o Hau will be returned to them. A variety of arrangements are being entered into to ensure ongoing protection of values associated with these areas, where appropriate.

These include; an urupa which is currently part of the Pukekaroro Scenic Reserve, that part of the Whakahuranga Pa site in the Oruawharo River Stewardship Area, that part of the Humuhumu Lake Bed not already owned by members of Te Uri o Hau, an ancestral burial site in the Pouto North Stewardship Area, the Whakapirau Cliffs which are part of the Rocky Point Marginal Strip, the Horokako Stewardship Area, 0.6 hectares at the Pouto Road End, wahi tapu sites in the Pouto Forest, a pa site on an Historic Reserve in Dargaville and a site in the Okahukura Stewardship Area. A total of approximately 30 hectares is involved.

The Crown has also agreed to discuss with the Kaipara District Council transferring the management of an Historic Reserve in Dargaville from the Council to Te Uri o Hau. The Reserve is the site of the pa of Te Uri o Hau's eponymous ancestor, Haumoewaarangi.

Commercial Redress

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

1. The return of certain Crown or SOE owned lands as selected by Te Uri o Hau up to a value of **\$15.25 million** or a combination of land and cash. Among the properties from which Te Uri o Hau may select are two Crown Forests. The accumulated rentals from these forests will also be available should they be selected for purchase.
2. **Right of First Refusal** - Te Uri o Hau will also have, for a period of 50 years, a Right of First Refusal to buy, at full market value, any properties in the Te Uri o Hau rohe currently owned by the Crown which become surplus.

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Questions and Answers

1. What is the total cost to the Crown?

\$15.25 million plus interest from the date of the signing of the Deed of Settlement plus the cost of the land returned under 2 (f) and any accumulated rentals on forests purchased by Te Uri o Hau.

2. Is there any private land involved?

Yes. The Crown has purchased an approximately .5 hectare pa site from a private individual and this will be transferred to Te Uri o Hau.

3. Are the public's rights affected?

Generally, no, but

- The 3 camping licence sites or Nohoanga, which are similar to other concessions granted by the Department of Conservation, will be for the exclusive use of Te Uri o Hau 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 Te Uri o Hau (including Pa sites) totalling approximately 30 hectares will be returned to them.

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 Te Uri o Hau 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 or hapu have a special relationship and places notification requirements on local bodies when considering resource consent applications. This provision aims to avoid past problems with land development for roading and other purposes when areas of significance to iwi or hapu, such as burial grounds, were simply cleared or excavated without either permission or consultation. It does not give iwi or hapu any specific property rights.

A **Deed of Recognition** sets out an agreement between the administering Crown body through the Minister of Conservation or the Minister of Crown Lands and the iwi or hapu which recognises the iwi's or hapu's special

association with a site as stated in a Statutory Acknowledgement and specifies the nature of the iwi or hapu's input into the management of the site.

6. What is a Special Area or Kirihipi?

A Special Area classification recognises the cultural, spiritual and historical values of a site or area. It gives Te Uri o Hau the right to be consulted in the management of an area or site but does not override existing classifications or protections, such as National Park status. It is the same concept as a Topuni in the Ngai Tahu settlement and Nga Poipoia o Ruanui in the Ngati Ruanui Heads of Agreement.

7. Are any National Parks affected in the Settlement?

No

8. 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.

9. Does the Settlement create any special rights for Te Uri o Hau?

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.

The settlement legislation will clarify that the existing exclusive right to take oysters from a specific area is exercisable by Te Uri o Hau rather than "Maori" generally.

10. Does Te Uri o Hau 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 Te Uri o Hau's historical or pre 1992 claims in their rohe. The settlement legislation, once passed, will prevent Te Uri o Hau from re-litigating the claim before the Waitangi Tribunal or the Courts.

If approved, the settlement package will still allow Te Uri o Hau or members of Te Uri o Hau 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.

11. 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 Te Uri o Hau is to develop a formal Deed of Settlement which, if ratified by Te Uri o Hau's membership, will be enshrined in a Bill to be submitted to Parliament for its approval.

12. Who benefits from the settlement?

All members of Te Uri o Hau, wherever they may now live.

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