Kurahaupō Ki Te Waipounamu Letter of Agreement


Office of Treaty Settlements, 11 February 2009

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Background to the Letter of Agreement

The Kurahaupō Ki Te Waipounamu Trust (the “Kurahaupō Trust”) comprises Ngāti Apa Ki Te Ra To, Ngāti Kuia and Rangitāne o Wairau. The combined tribal area of the three Kurahaupō iwi covers the top of the South Island.

4,000 people registered an affiliation to the three Kurahaupō iwi in the 2006 Census.

The historical claims of the Kurahaupō iwi primarily relate to the failure of the Crown to adequately recognise the customary rights of Ngāti Apa Ki Te Ra To, Ngāti Kuia and Rangitāne o Wairau in pre-1865 purchases of land. This impacted on the operation of the native land laws, including the exclusion of Ngāti Apa Ki Te Ra To, Ngāti Kuia and Rangitāne from the Nelson and Motueka tenths. Their claims also relate to the Crown’s failure to set aside adequate reserves and to ensure that the Kurahaupō iwi retained sufficient lands for their future needs.


On 23 November 2005, the previous Minister in Charge of Treaty of Waitangi Negotiations and the Minister of Māori Affairs recognised the mandate of the the Kurahaupō Ki Te Waipounamu Trust to represent the three Kurahaupō iwi in negotiating a comprehensive historical Treaty settlement. The Crown signed Terms of Negotiation with the Kurahaupō Trust in June 2006.

On 11 February 2009, the Crown and the Kurahaupō Trust co-signed a Letter of Agreement. The parties will now develop a detailed Deed of Settlement based on this agreement, and also the post-settlement governance arrangements to receive and manage the redress. The members of the Kurahaupō iwi will have the opportunity to vote on whether or not to accept the Crown’s offer as set out in the Deed of Settlement, and on the post-settlement governance arrangements. If ratified, the Deed will be signed and the settlement will be implemented and the redress transferred following the passage of settlement legislation.

The Kurahaupō Trust carried out negotiations on behalf of the Kurahaupō iwi. The Office of Treaty Settlements, with the support of Department of Conservation, Land Information New Zealand, the Treasury and other government agencies, represented the Crown in day-to-day negotiations. The Minister for Treaty of Waitangi Negotiations, Hon Christopher Finlayson, and his predecessor Hon Dr Michael Cullen, represented the Crown in high-level negotiations with the Kurahaupō Trust.
Summary of the Redress

Historical Account and Crown Apology

The historical account, Crown acknowledgment and Crown apologies will outline the basis on which the Crown is settling the historical claims.

The historical accounts will outline the historical relationship between the Crown and Kurahaupō. On the basis of the historical accounts, the Crown will acknowledge that certain actions or omissions of the Crown were a breach of the Treaty of Waitangi and its principles. The Crown will then offer apologies to Kurahaupō for the acknowledged breaches of the Treaty of Waitangi and its principles.

The claims of Kurahaupō relate to the failure of the Crown to adequately recognise the customary rights of Ngāti Apa Ki Te Ra To, Ngāti Kuia and Rangitāne o Wairau in its resolution of New Zealand Company transactions and its pre-1865 purchases of land. This impacted on the operation of the native land laws, including the exclusion of Ngāti Apa Ki Te Ra To, Ngāti Kuia and Rangitāne from the Nelson and Motueka tenths. Their claims also relate to the Crown’s failure to set aside adequate reserves and to ensure that the Kurahaupō iwi retained sufficient lands for their future needs.

Cultural Redress

Cultural redress recognises the traditional, historical, cultural and spiritual associations Kurahaupō has with places and sites within their rohe or area of interest. The cultural redress package includes:

Vesting and gift back

The Crown offers to vest the beds of five Alpine Tarns in Nelson Lakes National Park in Ngāti Apa, subject to Ngāti Apa gifting these lake beds back to the Crown for the benefit of all New Zealanders:

- Blue Lake/Rotomairewhenua
- Lake Constance/Rotopohuera
- Lake Angelus/Rotomaninitua; and
- the two Lake Arnst Tarns, Paratitahi and Paraumu.

Overlay Classification

Overlay classifications over:

- The five alpine tarns listed above
- Lakes Rotoiti and Rotoroa
- Titi Island and the Chetwode Islands and associated rocks; and
- the Wairau Lagoon.

The declaration of an area as an overlay classification provides for the Crown to acknowledge Kurahaupō values in relation to that area. Overlay classifications are common cultural redress instruments in historical settlements and are known as Tōpunī in the Ngāi Tahu settlement and Whenua Rāhui in the Affiliate Te Arawa settlement, for example.

Vesting of sites

17 sites totalling approximately 27 hectares to be vested, subject to specific conditions including protection of public access.

- Massey St, St Arnaud site
- Anamahanga/Port Gore, Tinui Bay
- Titiraukawa (Pelorus Bridge)
• Cullen Point (Havelock)
• Wairau Lagoon
• Moenui
• Robin Hood Bay (Waikutakuta)
• Kawai (World’s End)
• Recreation Reserve, Picton
• Waimea Gardens
• Canvastown School
• Tuamatene Marae, Grovetown
• Rārangi
• Ngākuta Bay
• Tarakaipa Island urupā
• Te Tai Tapu, near Anatori River
• Momorangi Bay

Certain commercial properties will be vested as cultural redress, subject to deduction from Kurahaupō’s existing fund for the gifting of commercial properties with cultural associations, up to a total aggregate value of $5 million.

Three sites to be vested in Kurahaupō jointly with one or more other Te Tau Ihu groups:
• Part of Whites Bay Recreation Reserve
• Horahora Kākahu Island Historic Reserve
• Queen’s Road Recreation Reserve, Nelson

Statutory Acknowledgements and Deeds of Recognition

A Statutory Acknowledgement registers the association between Kurahaupō and a particular site or area and enhances Kurahaupō’s ability to participate in specified Resource Management Act processes. There are 19 acknowledgements in the agreement relating to:

• Lake Rotoiti
• Lake Rotoroa
• Te Ope o Kupe (Anamahanga/Port Gore)
• Puhikereru (Anamahanga/Port Gore)
• Pororoirangi (Kenepuru Sound)
• Kohi te Wai (Nelson)
• Whatamango (Picton)
• Kaiteriteri Scenic Reserve
• Tarakaipa Island
• Titi Island Nature Reserve and Chetwode Islands Nature Reserve and associated rocks
• Wairau Lagoon
• Farewell Spit
• The Brothers Islands
• Pelorus Sound
• Parikarearea (Maungatapu)
• Takapourewa (Stephens Island)
• French Pass Scenic Reserve
• Southernmost part of Te Tai Tapu Block
• Westhaven (Te Tai Tapu) Marine Reserve and Westhaven (Whanganui Inlet) Wildlife Reserve

Deeds of Recognition oblige the Crown to consult with Kurahaupō on specified matters and have regard to their views regarding their special associations with certain areas. A Deed of Recognition will be made between Kurahaupō and the Crown in relation to 17 sites:

• Lake Rotoiti
• Lake Rotoroa
• Te Ope o Kupe (Anamahanga/Port Gore)
• Puhikeru (Anamahanga/Port Gore)
• Pororoirangi (Kenepuru Sound)
• Kohi te Wai (Nelson)
• Whatamango (Picton)
• Kaiteriteri Scenic Reserve
• Tarakaipa Island
• Titi Island Nature Reserve and Chetwode Islands Nature Reserve and associated rocks
• Wairau Lagoon
• Farewell Spit
• The Brothers Islands
• Pelorus Sound
• Parikarearea (Maungatapu)
• Takapourewa (Stephens Island)
• French Pass Scenic Reserve

The Crown offers statutory acknowledgements and deeds of recognition in relation to the following rivers within Kurahaupō’s area of interest, subject to specific further negotiations:

• Maitai River (or Mahitahi River near Nelson)
• Wairau River (including Omaka River as its tributary)
• Waimea River (including Wairoa River and Wai-iti River as its tributaries)
• Anatori River (South of the Whanganui Inlet)
• Kaituna River (near Havelock)
• Motupiko River
• Pelorus River (or Te Hoiere River near Havelock)

Kaitiaki Instrument

The Crown proposes to acknowledge the association of Kurahaupō iwi with Titi Island, the Chetwode Islands and associated rocks and the tīti species on these islands. The instrument provides for kaitiaki appointed by Kurahaupō iwi to provide advice directly to the Minister of Conservation on the management of tīti on the islands and to harvest tīti in the event that the Minister of Conservation decides that the tīti population can withstand ecologically sustainable harvesting.

Southern redress

The Crown will facilitate discussions between Kurahaupō and Ngāi Tahu regarding the southernmost cultural interests of Kurahaupō iwi.

Special Redress

- Pakohe (argillite)

The Crown proposes to acknowledge Kurahaupō association with Pakohe through a Statement of Cultural Association and offering Kurahaupō the right to remove Pakohe boulders by hand in agreed rivers on Crown land.

- Eels

The Crown also proposes to acknowledge the association of Ngāi Apa with eels within the Nelson Lakes National Park and confirm in legislation that Ngāi Apa has the right to apply to the Minister of Conservation to take eels for cultural purposes from the park in certain circumstances. The Minister of Conservation may grant such applications that meet certain criteria.

- Te Tau Ihu Input into Waterway Management
The Crown offers to explore the possibility of redress that will provide Te Tau Ihu groups input into the management of waterways in Te Tau Ihu. Any redress would be consistent with the existing statutory framework.

**Relationship redress**

- **Protocols**

The Deed of Settlement will provide for protocols setting out the way in which specific government agencies will exercise its functions within the protocol area and enable Kurahaupō to have input into decision-making processes. Protocols will be issued by the Minister of Conservation, the Minister of Fisheries, the Minister of Energy; and the Minister for Arts, Culture and Heritage.

**Promotion of relationship with local authorities**

The Crown will write to relevant local authorities encouraging them to enter into a Memorandum of Understanding with Kurahaupō in respect of matters within the Kurahaupō Area of Interest north of the Ngāi Tahu takiwā.

- **Place name changes**

The Crown invites the three Te Tau Ihu mandated groups to work together on a joint list of proposed place name changes, to be discussed with Ngāi Tahu where appropriate, for submission to the New Zealand Geographic Board/ Ngā Pou Taunaha o Aotearoa.

**Financial and Commercial Redress**

The financial and commercial redress package is made up of:

- A financial quantum of $30.65 million in cash, less the value of the on-account payments and less the market value of any commercial properties selected for transfer on Settlement Date.
- An on-account payment of $2 million, to be deducted from the quantum.
- Interest on $24.25 million to Kurahaupō for the period from the signing of this letter to Settlement Date.
- A cash amount of $3 million in addition to quantum, specifically for Ngāti Apa to purchase land in their area or invest in their cultural development.
- In lieu of redress over licensed Crown forest land:
  a) a payment of $3 million;
  b) a sum equivalent to three eighths of foregone accumulated rentals (estimated to be approximately $21 million);
  c) a sum equivalent to three eighths of the value of the New Zealand Emission Units allocated to former Crown Forest Licensed land in Te Tau Ihu (estimated at approximately $13 million); and
  d) The opportunity to buy parts of Woodbourne Airbase subject to the satisfactory accommodation of the operational interests of the New Zealand Defence Force;
- Sale and leaseback arrangements over certain Crown-owned properties within the Kurahaupō area of interest;
- The opportunity to purchase certain Crown-owned properties within the Kurahaupō area of interest;
- The opportunity to purchase at market value surplus Crown-owned properties within the Kurahaupō area of interest, for a period of up to 169 years from Settlement Date, through a Right of First Refusal. The proposed return of Crown-owned properties is subject to any offer-back requirements under section 40 of the Public Works Act.

**Next steps**

The Letter of Agreement is subject to the Crown confirming that those groups who also claim overlapping interests (in relation to the settlement redress outlined above) have been addressed to the satisfaction of the Crown. A large number of these overlapping issues were resolved prior to the signing of the Letter of
Agreement, but there are a number that are still to be addressed and these will be a priority for the next stage of negotiations.

Kurahaupō and the Crown will now draft a detailed Deed of Settlement, which will be subject to ratification by the Kurahaupō claimant community. All eligible registered members of Kurahaupō will have the opportunity to vote on whether to accept the Crown’s offer as set out in the Deed of Settlement. Kurahaupō will also develop governance arrangements for holding and managing the settlement redress, which members will also have the opportunity to ratify.

If the Kurahaupō claimant community ratifies the Deed of Settlement and the governance arrangements, the Deed will be signed by the Crown and the Kurahaupō Trust, and the settlement will be implemented through legislation. The settlement will be for the benefit of all members of Kurahaupō.

Questions and Answers

1. What is the total cost to the Crown?

The cost to the Crown of redress offered to Kurahaupō is $42.41 million, which includes interest, the payment for Ngāti Apa, and the value of commercial properties with cultural association. The value of the interest and properties included in the total is estimated, and will be confirmed as negotiations progress. An additional cost to the Crown is the $37.2 million the Crown will pay to Kurahaupō in lieu of the ability to purchase licensed Crown forest land and to receive the accumulated rentals and New Zealand Emission Units associated with that land.

2. Is there any private land involved?

No. No private properties are included in the settlement, including those with section 27B memorials under the State-Owned Enterprise Act.

3. What happens to memorials on private titles?

Memorials were included on the titles of land sold by State-Owned Enterprises and some other Government entities following the passage of the State Owned Enterprise Act 1987. These memorials alert buyers that this land may be used in historical settlements. The Settlement legislation, once passed, will remove the ability of Kurahaupō to seek the use of properties with s27B memorials on the titles for historical settlements. The memorials will be removed when all other groups with interests in the area have settled their claims.

4. Are the public’s rights affected?

Five conservation sites, totalling approximately three hectares, are being returned to Kurahaupō without provision for future public access. These sites are of particular cultural significance, for example urupā (gravesites), and are not located in areas subject to regular public use.

5. 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 relevant proceedings under the Resource Management Act. This provision aims to avoid past problems with land development for road 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 body (the Minister of Conservation) 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.
Statutory Acknowledgements and Deeds of Recognition are included in most historical cultural redress packages.

6. What is an Overlay Classification?

The Overlay Classification (known as a Tōpuni or Whenua Rāhui in some other settlements) 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.

7. What is a Kaitiaki Instrument?

A Kaitiaki Instrument provides the settling group with the right to provide advice on key cultural issues relating to the management of specific flora and/or fauna on Department of Conservation land directly to the Minister of Conservation.

8. Are any place names changed?

The three Te Tau Ihu mandated groups are invited to work together on a joint list for submission to the New Zealand Geographic Board/ Ngā Pou Taunaha o Aotearoa, to be processed under the usual statutory provisions followed by the Board.

9. Are any National Parks affected by the Settlement?

The agreement proposes redress relating to several lakes in Nelson Lakes National Park, including the vesting of five alpine tarns and their subsequent gift back to the Crown for the benefit of all New Zealanders. This redress will not affect the conservation values of those sites or public access to them.

10. Does the settlement create any special rights for Kurahaupō?

No new rights are being created by this agreement. Provisions in relation to conservation, such as Statutory Acknowledgements, give practical effect to existing provisions of both the Resource Management Act and the Conservation Act that provide for Māori participation in conservation and planning matters.

11. When will the settlement take effect?

A Deed of Settlement based on this agreement will be drafted in the course of this year. If ratified, and settlement legislation is passed to implement it, the Deed of Settlement will become unconditional and the terms of the settlement will take effect. This could occur in 2009.

12. Does Kurahaupō have the right to come back and make further claims about the behaviour of the Crown in the 19th and 20th centuries?

No. If a Deed of Settlement is ratified and passed into law, both parties agree it will be a final and comprehensive settlement of all the historical (relating to events before 21 September 1992) Treaty of Waitangi claims of Kurahaupō and its constituent iwi. The settlement legislation, once passed, will prevent Kurahaupō from re-litigating the claim before the Tribunal or the courts.

The settlement package will still allow Kurahaupō 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.

13. Who benefits from the settlement?

All members of Kurahaupō, wherever they may now live.

Office of Treaty Settlements, 11 February 2009, at: