



# Deed of Settlement

Between the Crown  
and Ngāti Tuwharetoa  
(Bay of Plenty)

## General Background

Ngāti Tuwharetoa Bay of Plenty (Ngāti Tuwharetoa (Bay of Plenty)), also known as Tuwharetoa ki Kawerau, are from the Kawerau and Matatā area. Ngāti Tuwharetoa (Bay of Plenty) descend from their tūpuna, Tuwharetoa, who lived near Kawerau. Tuwharetoa had 17 children, many of whom led migrations to Taupo and other areas. Others remained in the Kawerau area.

The history of the interaction of Ngāti Tuwharetoa (Bay of Plenty) with the Crown was detailed in the Waitangi Tribunal's Ngāti Awa Raupatu Report, published in 1999. The Ngāti Tuwharetoa (Bay of Plenty) claims relate in general terms to breaches by the Crown of its obligations under the Treaty of Waitangi. In particular, these are the confiscation of most of the land within the tribe's traditional territory, the inadequacies of the Compensation Court process, and the subsequent alienation of the remaining lands that were subject to the native land laws and Crown purchasing.

An account of the historical background agreed between the Crown and Ngāti Tuwharetoa (Bay of Plenty) is included in the Deed of Settlement, along with acknowledgements of Crown breaches of the Treaty of Waitangi and a Crown Apology for those breaches. Summaries are included in the attached material.

Negotiations on a settlement package began in 1998. In February 2001, the Crown and Ngāti Tuwharetoa (Bay of Plenty) agreed the settlement offer. The Crown and the mandated iwi representatives initialled a draft Deed on 17 October 2002. Just over half (55%) of eligible members voted on the Deed of Settlement, and 95% of those members endorsed it. The Deed of Settlement signed today sets out in detail the Crown offer to settle all the historical claims of Ngāti Tuwharetoa (Bay of Plenty) against the Crown. The Deed of Settlement will be given effect following the ratification and establishment by the tribe of a governance entity to receive and manage the settlement redress, and the passage of settlement legislation.

Ngāti Tuwharetoa (Bay of Plenty) was represented in negotiations by Te Rūnanga o Tuwharetoa ki Kawerau. The Office of Treaty Settlements, with the support of Treasury and the Department of Conservation, represented the Crown in day-to-day negotiations. The Minister in Charge of Treaty of Waitangi Negotiations, Hon Margaret Wilson, represented the Crown in high-level negotiations.

## Summary of Historical Background to the Claims by Ngāti Tuwharetoa (Bay of Plenty)

The principal grievance for which Ngāti Tuwharetoa (Bay of Plenty) sought redress is the confiscation of land by the Crown in 1866, under the *New Zealand Settlements Act 1863*.

A total of 448,000 acres were confiscated in the Eastern Bay of Plenty, including approximately 87,000 acres within the traditional rohe of Ngāti Tuwharetoa (Bay of Plenty).

Hostilities occurred in the Bay of Plenty during the first half of 1864 relating to the outbreak of war between Crown and Māori in the Waikato. Following a period of unrest, Crown official James Fulloon and three crew members of the vessel *Kate* were killed by some local Māori at Whakatane in July 1865. A Crown expeditionary force of approximately 500 men was mounted in August 1865 to execute an arrest warrant for those involved in the murders. This force raided livestock, pillaged crops and food supplies, and was involved in skirmishes in which some Ngāti Tuwharetoa (Bay of Plenty) people were killed.

In September 1865, the Crown issued a Proclamation of Peace declaring that the war, occurring between the Crown and Māori in a number of areas in the North Island, was at an end. The proclamation pardoned those who had fought against the Crown, but excluded people responsible for the killing of Fulloon and others. It stated that if those responsible for the killings were not given up, the Crown would take parts of the lands of tribes who concealed them.

Crown forces laid siege to pā in the Eastern Bay of Plenty. The conflict ended in October 1865 when those at Te Kupenga pā, including some individuals named in the arrest warrant surrendered to the Crown force. Governor George Grey deemed the Bay of Plenty tribes to have been in rebellion and confiscated land. More than 20,000 acres was later returned to Ngāti Tuwharetoa (Bay of Plenty) through the compensation process, but this land was returned to individuals rather than to iwi or hapū and did not reflect customary forms of tenure. The traditional tribal estate of Ngāti Tuwharetoa (Bay of Plenty) was further reduced by land transfers under the native land laws, including Crown purchasing.

This loss of land had an impact on the access of Ngāti Tuwharetoa (Bay of Plenty) to resources such as the coast and the swamp that traditionally provided food, medicine, and shelter. They also lost control over some of their urupā and significant sites. Ngāti Tuwharetoa (Bay of Plenty) were further aggrieved in the twentieth century by the draining of the Rangitaiki swamp lands and other environmental modification and pollution, which had an adverse impact on the traditional lands and wāhi tapu (sacred sites) of Ngāti Tuwharetoa (Bay of Plenty). They also lost control of and access to the geothermal resources at Kawerau.

# Settlement

## Summary of the Ngāti Tuwharetoa (Bay of Plenty) settlement

### Overview

The Ngāti Tuwharetoa (Bay of Plenty) Deed of Settlement is a package that includes:

1. An agreed historical account and Crown acknowledgements, that form the basis for a Crown Apology to Ngāti Tuwharetoa (Bay of Plenty);
2. Cultural Redress;
3. Financial and 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 Ngāti Tuwharetoa (Bay of Plenty), wherever they live.

### Crown Apology

The Crown apologises to Ngāti Tuwharetoa (Bay of Plenty) for past dealings that breached the Crown's obligations under the Treaty of Waitangi, including the confiscation of land, the compensation process, the impact of the native land laws, and the cumulative impact of these events on Ngāti Tuwharetoa (Bay of Plenty), which eroded traditional structures and left Ngāti Tuwharetoa (Bay of Plenty) virtually landless.

### Cultural redress

1. **Restoration of Ngāti Tuwharetoa (Bay of Plenty) access to traditional foods and food gathering areas, including a camping licence or nohoanga**

An area of up to one hectare will be established in the Matatā Wildlife Refuge Reserve to provide access to traditional sources of food. Iwi members will have the right to use this entitlement for non-commercial, lawful fishing and food gathering for up to 210 days a year.

2. **Recognition of the traditional, historical, cultural and spiritual associations to places and sites owned by the Crown within the rohe of Ngāti Tuwharetoa (Bay of Plenty). This allows Ngāti Tuwharetoa (Bay of Plenty) and the Crown to protect and enhance the conservation values associated with these areas and sites, and includes:**

#### 2(A) STATUTORY ACKNOWLEDGEMENTS

Statutory Acknowledgements register the special association Ngāti Tuwharetoa (Bay of Plenty) has with an area and will be included in the settlement legislation. They are recognised for certain purposes relating to standing and notification under the *Resource Management Act* and the *Historic Places Act*.

There are five Statutory Acknowledgements over the following: Rotoma Forest Conservation Area, Lake Rotoma Scenic Reserve, Lake Tamarenui Wildlife Management Reserve, parts of the Tarawera and Rangitaiki Rivers.

There is a sixth Statutory Acknowledgement over geothermal water and geothermal energy located in the Kawerau Geothermal System.

#### 2(B) DEEDS OF RECOGNITION

Deeds of Recognition require the Crown to consult Ngāti Tuwharetoa (Bay of Plenty) and have regard for their views regarding the special association of Ngāti Tuwharetoa (Bay of Plenty) with a particular Crown-owned site. The Deeds of Recognition also specify the nature of input by Ngāti Tuwharetoa (Bay of Plenty) into management of those areas by the Department of Conservation or the Commissioner of Crown Lands.

There are five Deeds of Recognition, covering the Rotoma Forest Conservation Area, Lake Rotoma Scenic Reserve, Lake Tamarenui Wildlife Management Reserve, and those parts of the beds of the Tarawera and Rangitaiki Rivers under Crown ownership.

#### 2(C) PROTOCOLS WITH GOVERNMENT DEPARTMENTS

The Deed of Settlement provides for the establishment of protocols to promote good working relationships on matters of cultural importance to Ngāti Tuwharetoa (Bay of Plenty) with the Ministry of Fisheries, the Department of Conservation and the Ministry of Culture and Heritage.

#### 2(D) OVERLAY CLASSIFICATION OR OWHAKATIHI

The Overlay Classification or Owhakatihī will acknowledge the traditional, cultural, spiritual and historical values and associations of Ngāti Tuwharetoa (Bay of Plenty) with the Parimahana Scenic Reserve. The Owhakatihī will cover that part of the Parimahana Scenic Reserve not vested in Ngāti Tuwharetoa (Bay of Plenty) (40 hectares).

An Overlay Classification requires the Minister of Conservation and Ngāti Tuwharetoa (Bay of Plenty) to develop and publicise a set of principles that will assist the Minister to avoid harming or diminishing Ngāti Tuwharetoa (Bay of Plenty) values within the Parimahana Scenic Reserve.

The New Zealand Conservation Authority and relevant Conservation Boards will also be required to have regard to the principles and consult with Ngāti Tuwharetoa (Bay of Plenty) on the management of the Parimahana Scenic Reserve.

The Overlay Classification instrument is known as a Tōpuni in the Ngāi Tahu settlement and as a Taki Poipoia in the Ngāti Ruanui settlement.

## 2(E) SITES TO BE TRANSFERRED AND ADVISORY BODY

Five areas of special significance to Ngāti Tuwharetoa (Bay of Plenty) will be returned to the iwi. These are:

- Te Atua Reretahi (in the Rotoma Forest Conservation Area);
- Otitapu Lookout (in the Lake Rotoma Scenic Reserve);
- Te Wahieroa (in the Western Whakatane Coastal Recreation Reserve);
- Te Kaukahiwi o Tirotirowhetu (in the Parimahana Scenic Reserve); and
- Whakapaukorero (in the Matatā Scenic Reserve).

These sites total approximately 66 hectares. Te Wahieroa, Parimahana and Whakapaukorero will remain reserved under the *Reserves Act* in order to protect the conservation values of the sites and maintain public access. Otitapu Lookout will be subject to a Protected Private Land Agreement to protect conservation values. Te Atua Reretahi will be subject to a conservation covenant to protect conservation values.

In addition, a Joint Advisory Committee will be established over the Matatā Scenic Reserve and the Matatā Wildlife Refuge Reserve. This committee will be made up of equal numbers of members nominated by Ngāti Tuwharetoa (Bay of Plenty) and the Department of Conservation. The committee will provide for the exchange of advice regarding each body's management of land under its respective ownership.

## Financial and Commercial Redress

3. This redress recognises the economic loss suffered by Ngāti Tuwharetoa (Bay of Plenty) arising from breaches by the Crown of its Treaty obligations. It is aimed at providing Ngāti Tuwharetoa (Bay of Plenty) with resources to assist them to develop their economic and social well-being. It includes;

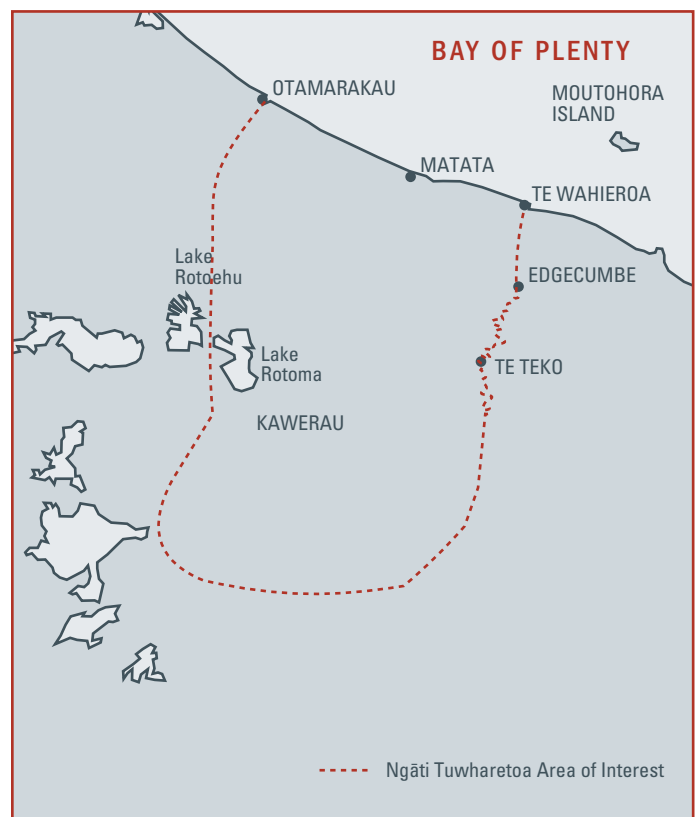
### 3(A) CASH AMOUNT

Ngāti Tuwharetoa (Bay of Plenty) will receive a total of \$10.5 million in cash or a combination of cash and Crown properties up to that value. The settlement includes the right to purchase approximately 844 hectares of licensed Crown forest land within the Rotoehu West Crown Forestry Licence.

### 3(B) RIGHT OF REFUSAL

Ngāti Tuwharetoa (Bay of Plenty) will have a right of refusal over Crown geothermal assets associated with the supply of steam to the Tasman Pulp and Paper Mill, should they be offered for sale and the owners of the mill do not exercise their pre-emptive rights to the assets. Ngāti Tuwharetoa (Bay of Plenty) will also have a Right of First Refusal over a Crown-owned geothermal bore and associated land.

## Ngāti Tuwharetoa Area of Interest



This and other settlement summaries are also available at [www.beehive.govt.nz](http://www.beehive.govt.nz) & [www.ots.govt.nz](http://www.ots.govt.nz)

# Q&A

## Questions and Answers

### 1. What is the total cost to the Crown?

\$10.5 million plus interest from the date of the signing of the Deed of Settlement, and the cost of the cultural sites returned, as listed at 2(e).

### 2. Is there any private land involved?

No.

### 3. Are the public's rights affected?

Generally, no, but:

- The camping entitlement or nohoanga within the Matatā Wildlife Refuge Reserve is the same as other camping entitlements granted in other Treaty settlements. That is, the entitlement will provide for the exclusive use by Ngāti Tuwharetoa (Bay of Plenty) of a one hectare site for up to 210 days a year. The entitlement will not affect public access to waterways within the reserve.
- The sites of Otitapu Lookout and Te Atua Reretahi, totalling approximately 16 hectares, will no longer be available for public access as of right. However public access to the remainder of the Lake Rotoma Scenic Reserve and Rotoma Forest Conservation Area will be unaffected.

### 4. What is a Statutory Acknowledgement?

Statutory Acknowledgements acknowledge areas, sites or water bodies with which the claimant group have a special relationship and will be recognised in any proceedings under the *Resource Management Act* and the *Historic Places 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 cleared or excavated without permission or consultation. It does not give the group 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 claimant group, which recognises the group's special association with a site as stated in a Statutory Acknowledgement, and specifies the nature of the group's input into the management of the site.

### 5. What is an Overlay Classification or Owhakatihī?

The Overlay Classification recognises the cultural, spiritual and historical values of a claimant group with a particular site or area. In this case it gives Ngāti Tuwharetoa (Bay of Plenty) the right to be consulted in the management of that area of Parimahana Scenic Reserve not transferred to Ngāti Tuwharetoa (Bay of Plenty), but does not override the existing reserve classification or associated protections. It is the same concept as a topuni in the Ngai Tahu settlement and a taki poipoia in the Ngāti Ruanui Deed of Settlement.

### 6. Are any place names changed?

No.

### 7. Are any National Parks affected by the Settlement?

No.

### 8. What happens to memorials on private titles?

In other settlements, parts of the claimant group's area of interest that are not subject to overlapping claims by other iwi, the legislative restrictions (memorials) placed on the title of Crown properties and some former Crown properties now in private ownership are removed. In the Ngāti Tuwharetoa (Bay of Plenty) settlement, because other iwi have expressed interests in the Ngāti Tuwharetoa (Bay of Plenty) area of interest, memorials will not be lifted. Ngāti Tuwharetoa (Bay of Plenty) will not be able to benefit from these memorials, because their historical claims will be settled.

### 9. Does the Settlement create any special rights for Ngāti Tuwharetoa (Bay of Plenty)?

No new rights are being created. Provisions in relation to the environment and its conservation, such as Statutory Acknowledgements and the Overlay Classification, give practical effect to existing provisions of both the *Resource Management Act* (section 6) and the *Conservation Act* (section 4) which provide for Māori participation in conservation and planning matters.

### 10. Does Ngāti Tuwharetoa (Bay of Plenty) have the right to come back and make further claims about the behaviour of the Crown in the 19th and 20th Century?

No. A Deed of Settlement is a full and final settlement for the historical or pre 1992 claims of Ngāti Tuwharetoa (Bay of Plenty). The settlement legislation, once passed, will prevent Ngāti Tuwharetoa (Bay of Plenty) from re-litigating their historical claims before the Waitangi Tribunal or the Courts.

The settlement package will still allow Ngāti Tuwharetoa (Bay of Plenty), or members of Ngāti Tuwharetoa (Bay of Plenty), 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. Who benefits from the settlement?

All members of Ngāti Tuwharetoa (Bay of Plenty), wherever they may now live.