



Deed of

Deed of Settlement
between the Crown
and Ngāti Kuia

Settlement

General Background

Ngāti Kuia has customary interests in the Te Tau Ihu, or northern South Island, region. Around 1,600 people registered an affiliation to Ngāti Kuia in the 2006 Census.

The Waitangi Tribunal heard the Te Tau Ihu claims of all iwi with interests in the northern South Island between August 2000 and March 2004, and released preliminary reports in 2007 and a final report in November 2008.

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 Kurahaupō Ki Te Waipounamu Trust to represent Ngāti Kuia and two other 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.

On 20 August 2010, Ngāti Kuia and the Crown initialled a detailed Deed of Settlement based on this agreement. The Deed was then ratified, and signed on 23 October 2010. The settlement will be implemented following the passage of settlement legislation.

Ngāti Kuia was represented in their negotiations by Te Rūnanga o Ngāti Kuia Trust, chaired by Waihaere Mason. Day to day negotiations were led by Mark Moses. 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 and Ngāti Kuia.

Summary of the Historical Background to the Claims by Ngāti Kuia

Ngāti Kuia have resided in Te Tau Ihu for generations. By 1820 Ngāti Kuia were established primarily in the Kaituna, Te Hora, Te Hoiere (the Pelorus area), Rangitoto (D'Urville Island), Whangarae, Whakapuaka and Whakatū (Nelson) districts. In the 1820s and 1830s iwi from the North Island invaded and settled in Te Tau Ihu. Although Ngāti Kuia no longer had exclusive possession of all their territory they retained their tribal structures, chiefly lines and ancestral connections to the land.

In 1839 the New Zealand Company signed deeds with Māori that purported to purchase the entire northern South Island. Ngāti Kuia were not consulted. In 1844 a Crown-appointed Commissioner investigated the Company's purchases and deemed that the Company had made a limited purchase of land in Te Tau Ihu. However the Crown failed to investigate the rights of Ngāti Kuia before granting land to the Company and Ngāti Kuia did not receive any payment for their interests or a share in the Nelson Tenth's reserves that were set aside from the Company's land.

Between 1847 and 1856 the Crown sought to purchase the remaining Māori land in Te Tau Ihu. The 1853 Te Waipounamu deed purported to purchase all remaining Māori land in the region. Ngāti Kuia were not signatories to the deed. In 1854 Ngāti Kuia at Te Hoiere disputed the idea the Waipounamu deed had acquired their interests in the land and demanded a fair payment directly from the Government. The Crown used the 1853 deed to pressure resident Te Tau Ihu Māori, including Ngāti Kuia, to agree to the alienation of their land. In 1856 Ngāti Kuia signed a deed and received £100 for their interests in Te Tau Ihu and were granted reserves in the Te Hoiere district.

The 790 acres of reserves were insufficient for Ngāti Kuia to either maintain their customary practices of resource use or develop effectively in the new economy. As a result Ngāti Kuia became economically marginalised. In 1889 the Native Land Court awarded title to the reserves to individual Ngāti Kuia. Over time, through sales and succession to titles, the reserves became increasingly fragmented and uneconomic. By the end of the twentieth century Ngāti Kuia retained less than 230 acres of their reserves.

In 1883 and 1892 the Native Land Court investigated the ownership of land that had been excluded from Crown purchases and the Nelson Tenth's reserves. Ngāti Kuia made several claims before the Court. In the Te Tai Tapu and Nelson Tenth's ownership investigations the Court deemed that Ngāti Kuia did not have rights and they were excluded from ownership. Ngāti Kuia unsuccessfully protested against the Court's Nelson Tenth's decision.

Ngāti Kuia also claimed that islands in Pelorus Sound had not been sold. These included the Titi Islands, which were an important mahinga kai for Ngāti Kuia. From 1918, under an agreement with the Crown, Ngāti Kuia were able to harvest titi (muttonbirds) and other resources from the islands. From 1960 the Crown denied Ngāti Kuia permission to land on the islands owing to declining numbers of titi. Ngāti Kuia expressed strong opposition to this decision.

By 1900, Ngāti Kuia were landless. Ngāti Kuia petitioned the Government for additional land and described themselves as "the poorest tribe under the Heavens." The Crown attempted to alleviate their position through the provision of 'Landless Natives Reserves'. The reserves, however, were in isolated locations, of poor quality and generally unable to be developed for effective economic use. Ngāti Kuia were also allocated land on Stewart Island but the Crown never granted them title to the land. Ultimately these reserves did little to alleviate the landless position of Ngāti Kuia in Te Tau Ihu.

Settlement

Summary of the Ngāti Kuia Settlement

Overview

The Ngāti Kuia Deed of Settlement is the final settlement of all historical claims of Ngāti Kuia resulting from acts or omissions by the Crown prior to 21 September 1992 and is made up of a package that includes:

- an agreed historical account and Crown acknowledgements, which form the basis for a Crown Apology to Ngāti Kuia;
- cultural redress; and
- 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 Kuia, wherever they live.

Crown Apology

The Crown apologises to Ngāti Kuia for past dealings that breached the Crown's obligations under the Treaty of Waitangi. These were the failure of the Crown to adequately recognise the customary rights of Ngāti Kuia in its resolution of New Zealand Company transactions and its pre-1865 purchases of land, the exclusion of Ngāti Kuia from the Nelson and Motueka tenths, and Crown's failure to set aside adequate reserves and to ensure that Ngāti Kuia retained sufficient lands for their future needs.

Cultural redress

1. **Recognition of the traditional, historical, cultural and spiritual association of Ngāti Kuia with places and sites owned by the Crown within their area of interest. This allows Ngāti Kuia and the Crown to protect and enhance the conservation values associated with these sites, and includes:**

1(A) SITES TRANSFERRED TO NGĀTI KUIA

Eight sites totalling approximately 16 hectares to be vested in Ngāti Kuia, subject to specific conditions including protection of public access where appropriate:

- Canvastown School
- Cullen Point (Havelock)
- Kawai (World's End)
- Moenui
- Tarakaipa Island urupā
- Titirangi Bay
- Titiraukawa (Pelorus Bridge)
- Waimea Gardens

One site at Mātangi Āwhio (Nelson), of 0.2061 hectares, is to be vested in Rangitāne o Wairau, Ngāti Apa ki te Rā Tō, Ngāti Kuia, Ngāti Tama manawhenua ki te Tau Ihu, Ngāti Rarua, Te Atiawa o te Waka-a-Maui and Te Pataka a Ngāti Koata.

1(B) 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 Ngāti Kuia with certain sites of significance.

The declaration of an area as an overlay classification provides for the Crown to acknowledge iwi values in relation to that area.

The settlement provides overlay classifications over Titi Island Nature Reserve and Chetwode Islands Nature Reserve, and Maud Island (Tom Shand Scientific Reserve).

1(C) STATUTORY ACKNOWLEDGEMENTS AND DEEDS OF RECOGNITION

A Statutory Acknowledgement registers the association between iwi and a particular site or area and enhances the iwi's ability to participate in specified Resource Management Act processes. Deeds of Recognition oblige the Crown to consult with Ngāti Kuia on specified matters and have regard to their views regarding their special associations with certain areas.

The Crown offers a Coastal Statutory Acknowledgment over all the Te Tau Ihu coastal marine area north of the Ngāi Tahu takiwā.

The Crown offers Statutory Acknowledgements and Deeds of Recognition in relation to the following rivers within Ngāti Kuia's area of interest:

- Waimea River (including Wairoa River and Wai-iti River as its tributaries) – jointly with Ngāti Apa and Rangitāne.
- Maitai River (or Mahitahi River near Nelson), Kaituna River (near Havelock) – jointly with Rangitāne
- Pelorus River (or Te Hoiere River near Havelock)
- Anatoki River; and
- Motueka River

There are 15 further acknowledgements and deeds in the agreement relating to:

- Titi Island Nature Reserve and Chetwode Islands Nature Reserve and associated rocks
- Pelorus Sound
- Takapourewa (Stephens Island)
- Parikarearea (Maungatapu)
- French Pass Scenic Reserve
- Titirangi Bay, Marlborough Sounds
- Te Matau (Separation Point)

Jointly with other iwi:

- Tarakaipa Island
- Paroroirangi (Kenepuru Sound)
- Te Ope o Kupe (Anamahanga/Port Gore)
- Puhikereru/Mt Furneaux
- The Brothers Islands
- Kohi te Wai (Nelson)
- Lake Rotoiti
- Lake Rotoroa

2. Recognition of Ngāti Kuia’s traditional, historical, cultural and spiritual association in their area of interest:

2(A) KAITIAKI INSTRUMENT

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

2(B) PAKOHE (ARGILLITE)

The Crown acknowledges Ngāti Kuia association with Pakohe through a Statement of Cultural Association. Ngāti Kuia will have the right to remove Pakohe boulders by hand in agreed rivers on Crown land.

2(C) FOSSICKING

The settlement provides a right to access public conservation land in Te Tau Ihu above the Ngāi Tahu takiwā to look for and take by hand any sand, shingle or natural material from a river bed within conservation land without being required to obtain an access permit.

2(D) TE TAU IHU RIVER/FRESHWATER ADVISORY COMMITTEE

The settlement establishes a stand-alone iwi advisory committee providing input into local authority planning and decision making under the Resource Management Act at review, preparation and notification stages.

2(E) PLACE NAME CHANGES

Together the settlements with iwi who have interests in Te Tau Ihu include a total of 65 geographic name changes. The full list of place name changes is included in the Deed of Settlement, available on www.ots.govt.nz

3. Relationships

3(A) PROTOCOLS

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. These set out the way in which certain government agencies will exercise their functions within the protocol area and enable Ngāti Kuia to have input into decision-making processes.

3(B) RELATIONSHIP AGREEMENT

The Crown will write to relevant local authorities encouraging them to enter into a Memorandum of Understanding with the Ngāti Kuia governance entity.

Financial and commercial redress

4. This redress recognises the economic loss suffered by Ngāti Kuia arising from breaches by the Crown of its Treaty obligations. It is aimed at providing Ngāti Kuia with resources to assist them to develop their economic and social well-being. It includes:

4(A) FINANCIAL REDRESS

The financial and commercial redress package totals \$24.874 million, including \$12.24 million redress in lieu of licensed Crown Forest Land and interest that has been accumulating since the signing of the Letter of Agreement.

The sum includes the value of any Crown land purchased as part of the settlement, as outlined below.

4(B) COMMERCIAL REDRESS

- The opportunity to purchase certain Crown-owned properties within Te Tau Ihu, either at the time of settlement or through a deferred selection process
- The opportunity to purchase certain Crown-owned properties and lease them back to the Crown; and
- The opportunity to purchase at market value surplus Crown-owned properties within Te Tau Ihu, for a period of up to 169 years from Settlement Date, through a Right of First Refusal

The proposed return of surplus Crown-owned properties is subject to any offer back requirements under section 40 of the Public Works Act.



Q&A

Questions and Answers

1. What is the total cost to the Crown?

The total cost to the Crown of the settlement redress outlined in the Deed of Settlement is \$24.874 million, which includes interest, the value of commercial properties with cultural association, and payment in lieu of the ability to purchase licensed Crown forest land.

2. Is there any private land involved?

No.

3. Are the public's rights affected?

Generally, no. One site at Kawai (World's End), totalling approximately 1.7 hectares, is being returned to Ngāti Kuia without provision for future public access. This site is of particularly high cultural significance, and is not located in an area subject to regular public use.

4. 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 roading 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.

5. 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.

6. What is the Kaitiaki Instrument?

The 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.

7. Are any place names changed?

The Te Tau Ihu iwi have requested 65 geographic name changes under the usual statutory provisions followed by the New Zealand Geographic Board/ Ngā Pou Taunaha o Aotearoa, which the Board had no concerns with.

8. Are any National Parks affected by the Settlement?

The settlement includes Statutory Acknowledgments and Deeds of Recognition over Lakes Rotoiti and Rotoroa in Nelson Lakes National Park. This redress will not affect the conservation values of those sites or public access to them.

9. Does the settlement create any special rights for the iwi?

No new statutory 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.

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

No. Both parties agree that the Deed of Settlement is fair in the circumstances and will be a final settlement for all Ngāti Kuia's historical or pre-1992 claims. The settlement legislation, once passed, will prevent Ngāti Kuia from re-litigating the claims before the Waitangi Tribunal or the courts.

The settlement will still allow Ngāti Kuia 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.

11. Who benefits from the settlement?

All members of Ngāti Kuia, wherever they may now live.

This and other settlement summaries are also available at www.ots.govt.nz