

Departmental Disclosure Statement

Ngāti Tamaoho Claims Settlement Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Justice (Office of Treaty Settlements).

The Ministry of Justice (Office of Treaty Settlements) certify that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

21 June 2017

Contents

Contents.....2

Part One: General Policy Statement.....3

Part Two: Background Material and Policy Information6

Part Three: Testing of Legislative Content.....7

Part Four: Significant Legislative Features9

Part One: General Policy Statement

This Bill–

- records the acknowledgements and apology given by the Crown to Ngāti Tamaoho in the deed of settlement (the **Deed**) dated 30 April 2017 between the Crown and Ngāti Tamaoho; and
- gives effect to the Deed in which the Crown and Ngāti Tamaoho agree to a final settlement of all Ngāti Tamaoho's historical Treaty of Waitangi claims.

Scope of settlement

Ngāti Tamaoho, a small group of approximately 1,100 registered members, are part of the Waiohū confederation in Tāmaki Makaurau and whakapapa to Waikato-Tainui. The Ngāti Tamaoho area of interest spans from the Manukau Harbour to Franklin, the Hūnua Ranges, Awhitū Peninsula, the Waikato wetlands, Tīkapa Moana (Firth of Thames) and north to central Auckland including Remuera and Ellerslie. Historically the tribe also maintained ancestral connections (through their Ngariki and Ngaiwi antecedents) with the North Shore and Waiheke Island.

Clause 13 of this Bill defines Ngāti Tamaoho.

The settlement settles all of the historical claims of Ngāti Tamaoho. These claims include all claims that are, or are founded on, a right arising–

- from the Treaty of Waitangi or its principles; or
- under legislation; or
- at common law (including aboriginal title or customary law); or
- from a fiduciary duty;
- or otherwise; and

that arise from, or relate to, acts or omissions before 21 September 1992–

- by or on behalf of the Crown; or
- by or under legislation.

The Crown is released and discharged from all obligations and liabilities in respect of those claims.

History of the claim

The Ngāti Tamaoho Trust, the mandated body, was registered as a charitable trust in 2009. The Crown invited Ngāti Tamaoho to negotiate in June 2009 when Sir Douglas Graham presented a framework for negotiations in Tāmaki Makaurau.

The grievances of Ngāti Tamaoho include the pressure applied by the Crown on Ngāti Tamaoho to sell land, branding of Ngāti Tamaoho as 'rebels' thus alienating them from the ability to retain kaitiaki of their rohe, its failure to protect Ngāti Tamaoho tribal structures, and the failure to protect Ngāti Tamaoho from becoming virtually landless.

Negotiations and deed of settlement

Ngāti Tamaoho members have given the Ngāti Tamaoho Trust a mandate to negotiate a deed of settlement settling the historical claims of Ngāti Tamaoho. The Crown

recognised this mandate on 23 April 2010. The Ngāti Tamaoho Trust and the Crown agreed the scope, objectives, and general procedures for the negotiations in the Terms of Negotiation on 1 October 2010. The agreement in principle was signed on the 20 December 2012.

Ngāti Tamaoho is a beneficiary of Ngā Mana Whenua o Tāmaki Makaurau settlement and signed Ngā Mana Whenua o Tāmaki Makaurau Redress Deed with the Crown on 8 September 2012. Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Bill received royal assent on 31 July 2014. The redress provided for in that settlement includes maunga, motu and the “right of first Refusal” (RFR) within Tāmaki.

Ngāti Tamaoho is also a beneficiary of the Waikato Raupatu Claims Settlement Act 1995 and the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010.

Ngāti Tamaoho has unsettled raupatu grievances in the East Wairoa block and unsettled non-raupatu grievances in the Waiuku block, both excluded from the Waikato Raupatu Act, as well as unsettled non-raupatu grievances within the Waikato-Tainui right of first refusal ('RFR') area of the Waikato Raupatu Act.

On 9 December 2016 the Crown, the Ngāti Tamaoho Trust and the Ngāti Tamaoho Settlement Trust initialled a Deed. Following ratification of the Deed by the claimant community the Deed was signed on 30 April 2017.

Governance entity

In June 2012, the Ngāti Tamaoho Trust established the post-settlement governance entity (**PSGE**), the Ngāti Tamaoho Settlement Trust, to enable effective participation in the Ngā Mana Whenua o Tāmaki Makaurau Collective Deed of Settlement process. The PSGE will receive the settlement assets and administer other redress provided in the Ngāti Tamaoho settlement package upon enactment of the Bill.

The ratification process for the Ngāti Tamaoho PSGE took place from 16 July 2012 to 20 July 2012 in parallel with the Tāmaki Collective ratification process. The Ngāti Tamaoho ratification process resulted in 38% (153) of registered members voting and 97% (147) of those voters giving their support to the Ngāti Tamaoho Settlement Trust.

Summary of settlement

The Deed will be the final settlement of all the historical Treaty of Waitangi claims of Ngāti Tamaoho resulting from acts or omissions by the Crown before 21 September 1992. The Bill contains provisions related to the settlement redress that require legislation for their implementation. Other aspects of the settlement are provided for only in the deed (because they do not require legislative authority).

This Bill contains the typical features of a Treaty settlement bill as set out in the clause by clause analysis.

Key aspects of redress in the Deed that do not appear through provisions in the Bill include:

- relationship agreements with the Department of Conservation and the Ministry for the Environment;
- a letter of recognition from the Ministry of Primary Industries regarding Ngāti Tamaoho input into sustainability processes and decisions covering fisheries resources;

- letters of introductions to a number of Crown agencies, and to specific district health boards, Museums and local authorities; and
- financial redress of \$10.3 million.

The benefits of the settlement will be available to all members of Ngāti Tamaoho, wherever they live.

Removal of courts' jurisdiction and of resumptive memorials

Ngāti Tamaoho and the Crown have agreed to the removal of the jurisdiction of the courts and the Tribunal in respect of the Ngāti Tamaoho historical claims, the Deed, the settlement redress, and the Bill (but not in respect of the interpretation or implementation of the Deed or Bill), and to the removal of resumptive memorials from computer registers in relation to land within the Right of First Refusal areas.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	NO
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Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	NO
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2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
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2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
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(a) the size of the potential costs and benefits?	NO
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(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
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2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
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(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
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(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO
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Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

No steps have been undertaken.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

During the settlement negotiations, the Office of Treaty Settlements and Ngāti Tamaoho negotiators engaged with hapū whose interests are directly affected by the settlement. The redress given effect by this Bill is consistent with Treaty principles and Treaty of Waitangi settlement policy.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

Advice provided to the Attorney-General by the Crown Law Office, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/>

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

YES

The Bill settles historic Treaty claims and removes the jurisdiction of courts, tribunals and other judicial bodies into the claims, deed of settlement and redress provided. (clauses 15, 16, 17 and 18).

3.4.1. Was the Ministry of Justice consulted about these provisions?

YES

The provisions were developed by the Office of Treaty Settlements which is part of the Ministry of Justice.

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
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External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p><i>Stakeholder groups (e.g. overlapping iwi, councils, affected individuals, recreation groups) were informed of the key relevant provisions contained in the Bill as the settlement was negotiated and agreed, and were invited to comment on relevant parts of the Bill affecting them.</i></p> <p><i>Overlapping groups: Waikato-Tainui, the Hauraki Collective, the Matutūāhu Collective (Ngāti Paoa, Ngaati Whanaunga, Ngāti Tamatera, Ngāti Maru and Patukirikiri), Ngāti Whātua o Ōrakei, Te Runanga o Ngāti Whātua, Ngāi Tai ki Tāmaki, Te Ākitai Waiohua, Te Kawerau ā Maki, Ngāti Te Ata, and Ngāti Koheriki, Tūpuna Taonga o Tāmaki Makaurau Trust and Mahurangi Wai Claims Collective.</i></p> <p><i>Councils: Auckland Council and Waikato Regional Council</i></p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p><i>The proposed provisions are tested throughout the negotiations process through consultation with key stakeholders and engagement with third parties. The deed of settlement provisions were ratified by Ngāti Tamaoho before the deed of settlement was signed on 30 April 2017.</i></p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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