

Departmental Disclosure Statement

Ahuriri Hapū 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 Te Arawhiti.

Te Arawhiti certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

5 December 2019.

Contents

Contents.....	2
Part One: General Policy Statement.....	3
Part Two: Background Material and Policy Information	7
Part Three: Testing of Legislative Content.....	9
Part Four: Significant Legislative Features	11

Part One: General Policy Statement

This Bill–

- records the acknowledgements and apology given by the Crown to the Ahuriri Hapū in the Deed of Settlement (the Deed) dated 2 November 2016 between the Crown and the Ahuriri Hapū; and
- gives effect to the Deed in which the Crown and Ahuriri Hapū agree to a final settlement of all historical Treaty of Waitangi claims of Ahuriri Hapū.

Scope of settlement

Ahuriri Hapū comprise approximately 1,505 registered members. The seven Ahuriri Hapū are: Ngāti Hinepare, Ngāti Māhu, Ngāti Matepū, Ngāti Paarau (which includes Ngāi Tahu Ahi), Ngāi Tāwhao, Ngāti Tū and Ngāti Te Ruruku.

Ahuriri Hapū are based in and around Napier, in the Hawke's Bay region. Their area of interest is bounded by the sea to the east, the Kaweka ranges to the west and the Ngaruroro River to the south and the Esk River to the North. The Ahuriri Hapū is one of six large natural groups negotiating the settlement of the historical Treaty of Waitangi claims of Ngāti Kahungunu. Ngāti Kahungunu is the third largest tribal group in New Zealand.

Clause 13 of this Bill defines the Ahuriri Hapū.

The settlement settles all of the historical claims of the Ahuriri Hapū. 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 first submission to the Waitangi Tribunal was made by members of the Ahuriri Hapū in 1988 as part of the Te Whanganui-a-Orotu claim. Following this inquiry the Waitangi Tribunal began its first district casebook inquiry in November 1996 concluding with the Mohaka ki Ahuriri Report published on 11 May 2004.

On 23 August 2006, a hui was held at Te Puni Kokiri, Hastings, with representatives of the Wai 55, Wai 168, and Wai 400 claims. Representatives of the three claims agreed to join together to form a Large Natural Grouping for Treaty settlement purposes, and agreed a Heads of Agreement for this purpose. Mana Ahuriri Incorporated was formed.

The historical claims of the Ahuriri Hapū are significant and include widespread land loss through early land purchasing, including the 1851 Ahuriri purchase which saw the loss of half their rohe, warfare and subsequent detention of their men on the Chatham Islands, the Crown's acquisition of Te Whanganui ā Orotu and the effects of native land laws and social and economic developments which led to poverty within the iwi.

Negotiations and ratification process

The Crown recognised the mandate of Mana Ahuriri Incorporated to represent Ahuriri Hapū in Treaty settlement negotiations on 2 February 2010.

On 19 December 2013 Ahuriri Hapū and the Crown signed the Agreement in Principle to settle all of their historical Treaty claims. On 19 June 2015 the Ahuriri Hapū and the Crown initialled a deed of settlement. The Deed of Settlement and the Ahuriri Hapū post-settlement governance entity, the Mana Ahuriri Trust, were ratified in August and September 2015, through a six-week ratification process and seven hui.

Of the total eligible voting population 33% participated in the ratification process. The Deed of Settlement and the post-settlement governance entity were approved by 60% and 56% of eligible votes cast. The Deed was signed on 2 November 2016. A Deed to Amend was signed on 24 February 2017.

Summary of settlement

The Deed of Settlement will be the final settlement of all the historical Treaty of Waitangi claims of the Ahuriri Hapū resulting from acts or omissions by the Crown before 21 September 1992. This Bill contains provisions related to settlement redress that require legislation for their implementation. Other aspects of the settlement are provided for only in the Deed of Settlement 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. Some of the unique aspects of the Bill include:

- the establishment of Te Komiti Muriwai o Te Whanga, a stand-alone statutory multiparty arrangement including Mana Ahuriri Incorporated, the Department of Conservation, and relevant local authorities to manage the Ahuriri Estuary; and
- the Kaweka and Gwavas Crown Forest Licensed lands will transfer to the Kaweka Gwavas Forestry Company Limited. The Company is held 56.66 percent by the Heretaunga Tamatea Settlement Trust, 33.34 percent by the Mana Ahuriri Trust and 10 percent of the company's shares will be held by the Crown for up to eight years, for potential use in future settlements where groups establish a well-founded claim to the CFL lands.

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

- letters from the Director of the Office of Treaty Settlements introducing the Mana Ahuriri Trust to the following entities and agencies
 - Hawke's Bay District Health Board:
 - Housing New Zealand Corporation:
 - KiwiRail:
 - New Zealand Transport Agency.
- letters from the Minister for Treaty of Waitangi Negotiations to each of the following Ministries and departments, to provide a platform for the Mana Ahuriri Trust and each Ministry or department to better engage with each other:
 - Te Puni Kōkiri:
 - Ministry of Education:
 - Ministry of Justice:
 - Ministry of Social Development:
 - Minister of Finance and Minister for Social Housing.
- a relationship agreement with the Ministry for the Environment and the Museum of New Zealand Te Papa Tongarewa;
- a partnership agreement with the Department of Conservation a letter of commitment with the Department of Internal Affairs;
- payment of \$15,000 to the Mana Ahuriri Trust on the settlement date to erect pouwhenua or interpretation panels.; and
- a total financial and commercial settlement package to the value of \$19.5 million. Of this total, \$702,000 has been paid as on-account to effect the transfer of 170 Waghorne Street. The remainder (\$13,849,223) will be transferred to the post-settlement governance entity on settlement date along with a 33.34 percent interest in Kaweka and Gwavas Crown Forest Licensed land (valued at \$4,700,940), and the balance of cultural redress properties (\$247,837).

The benefits of the settlement will be available to all members of the iwi and hapū of the Ahuriri Hapū wherever they live.

Removal of courts' jurisdiction and of resumptive memorials

The Ahuriri Hapū and the Crown have agreed to the removal of the jurisdiction of the courts and the Waitangi Tribunal in respect of the Ahuriri Hapū historical claims, the deed, the settlement redress, and this Bill (but not in respect of the interpretation or implementation of the deed or Bill).

The Waitangi Tribunal's jurisdiction to make binding recommendations in relation to Crown Forest Licensed land will no longer apply with the exception of a ten percent Crown held share of the Kaweka Gwavas Forestry Company Limited.

Resumptive memorials no longer apply:

- to a deferred selection property (other than a deferred selection property that is also Right of First Refusal land) on and from the date of its transfer under section 79; or

- to the Right of First Refusal land; or
- for the benefit of the Ahuriri Hapū or a representative entity.

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?	YES
<p><i>Te Whanganui-A-Orotu Report 1995 -</i> https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68457298/Te%20Whanganui-a-Orotu%201995.pdf</p> <p><i>The Mohaka Ki Ahuriri Report 2004</i> https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68598011/Wai201.pdf</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	NO
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
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

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
2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	

(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
---	----

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
--	----

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	NO
---	----

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
--	----

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
---	----

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
--	----

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(c) the size of the potential costs and benefits?	NO
(d) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(c) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(d) the nature and level of regulator effort put into encouraging or securing compliance?	NO

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 Ahuriri Hapū negotiators engaged with iwi and 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 historical 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 was 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
---	-----------

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>Ahuriri Hapū have been consulted on the content of this Bill.</p> <p>Stakeholder groups (e.g. overlapping iwi and councils) 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.</p> <p>Overlapping groups: Heretaunga Tamatea, the Ngāti Hinemanu me Ngāti Paki, Maungaharuru Tāngitu, and Ngāti Tūwharetoa.</p> <p>Councils: Napier City Council, Hastings District Council and Hawke's Bay Regional Council.</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>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 the Ahuriri Hapū before the Deed of Settlement was signed on 2 November 2016.</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
---	----

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
---	----

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
--	----

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
--	----

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
---	----

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
--	----

4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
---	----

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
---	----