



# WAITANGI TRIBUNAL EXPLANATORY STATEMENT

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Kārangaranga Te Muri Hei Rangaranga Te Mua - Whakatōhea Settlement Process



## Introduction

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- 1 This document has been sent to you because you are being asked to vote on two important questions which will decide the future of claims made by members of Te Whakatōhea against the Crown.
- 2 This document explains why those questions are being asked, what you are being asked to vote on, and the voting process to be followed. Please read it carefully before voting. You will also have an opportunity to find out more if you decide to attend information hui to be held in early October.

## Why are we being asked to vote?

- 3 The people of Whakatōhea have been trying for many years to get the Crown to agree to put right its serious wrongs committed against them dating back to the mid-19th century. The Crown waged war against the Whakatōhea people and took or confiscated their land (raupatu). In legal terms the Crown's actions were breaches of the Treaty of Waitangi – it broke its lawful promises to Whakatōhea.
- 4 The Crown paid some compensation in 1947 and in 1952, and the Whakatōhea Maori Trust Board was then set up. In 1989 Whakatōhea lodges its first historical claim (more will be said about this process later) with the Waitangi Tribunal. Eventually, in 1996, the Crown made an offer to pay \$40 million to put right its wrongs. That offer was rejected by Whakatōhea and was later withdrawn.
- 5 Since 2003 new groups have been formed within Whakatōhea to push ahead with its claims against the Crown. Each group developed what are known as mandate strategies. They are plans for settling Whakatōhea's claims which require approvals or authority from Whakatōhea to act on its behalf, to speak for its people. By 2010 two major groups had emerged. One group was the Whakatōhea Raupatu Working Party. The other was the Tū Ake Whakatōhea Collective which represented four of the six hapū recognised in the Trust Board structure, and was supported by the Board. Both of these groups submitted mandate strategies to the Crown.
- 6 In December 2016 the Crown recognised or accepted Tū Ake as having Whakatōhea's mandate or authority to negotiate. A legal document was signed, and the Whakatōhea Pre-settlement Claims Trust (the Claims Trust) was formed from Tū Ake.
- 7 The Crown's decision to recognise the Claims Trust's mandate, and accept it as Whakatōhea's representative for negotiations, was based on the results of an iwi wide ballot conducted in June 2016. There had been postal and online voting using a register of Whakatōhea members which the Trust Board had prepared. A large majority of those who voted supported the Claims Trust's mandate.
- 8 However, several Whakatōhea groups including whānau, hapū and iwi challenged the Crown's decision to recognise the Claims Trust's mandate. They asked the Waitangi Tribunal to conduct an urgent inquiry into the June 2016 voting process. Those whānau, hapū and iwi groups were as follows:
  - 1) Kahukore Baker for and on behalf of herself and Ngā Uri o Te Ūpokorehe iwi (Wai 2563);
  - 2) Tāwhirimatea Williams for and on behalf of himself and Ngāti Ruatakena hapū (Wai 2589);
  - 3) Te Rua Rakuraku for and on behalf of himself, the late John Kameta, and Ngāti Ira o Waioweka hapū (Wai 2591);
  - 4) John Hata, Russell Hollis, and John Brown for Moutohorā Quarry (Wai 2592);
  - 5) John Hata and Russell Hollis for Ngāti Patumoana hapū (Wai 2593);
  - 6) Wiremu Te Kahika and Joseph Te Kahika for Te Whānau o Te Kahika, Kahika, Kahikatea, Kahikaroa, and Wharekahika (Wai 2594);
  - 7) Christina Rolleston, Christina Davis, Patricia McMurtrie, and Adriana Edwards for and on behalf of themselves and Ngāti Muriwai hapū (Wai 2595);
  - 8) Ruiha Edna Stirling and Parehuia Herewini for and on behalf of themselves, the late Maruhaeremuri Stirling, and the whānau and hapū of Te Whānau ā Apanui and Whakatōhea (Wai 2605);
  - 9) Tracey Hillier and Rita Wordsworth for and on behalf of themselves and the whānau and hapū of Ngāi Tamahaua (Wai 2606);
  - 10) Pita Biddle and Karen Mokomoko for and on behalf of themselves, the late Tuiringa Mokomoko, and the other uri of the rangatira Mokomoko (Wai 2609);
  - 11) Nikora Curtis Tautau and Nanette Kernohan, William Peter Hatu, Dr Guy Naden, Takaparae Papuni, John Kahui Hillman, Lee Ann Martin, and Ngarangi Naden, representing various historical Waitangi Tribunal claims (Wai 2610); and
  - 12) Adriana Edwards, Barry Kiwara, and Dean Flavell, for and on behalf of themselves and Whakatōhea hapū (Wai 2657).
- 9 In April 2018 the Waitangi Tribunal released its report after conducting a lengthy inquiry into the mandate recognition and June 2016 voting process. It decided that the Crown's recognition of the Claims Trust's mandate was not fair, reasonable or made in good faith – that is, honestly and sincerely. The Tribunal was satisfied that the evidence in support of the result was insufficient. That was because the Crown relied only on the Trust Board's voting register, which meant that about 3,000 eligible voters did not receive voting information. Also, the Tribunal was satisfied that the state of the register itself was not reliable.
- 10 The Tribunal found that the voting process did not properly recognise hapū rangatiratanga. It also found that Whakatōhea tikanga required that mandated representatives should be approved through hapū postal and web voting. Votes should have been recorded on a hapū basis. It also found that Ngāti Muriwai should not have been excluded from the mandate voting process.
- 11 However, in the meantime, in August 2017, the Crown and the Claims Trust had negotiated what was called an agreement in principle to settle the existing claim. An agreement in principle sets out what the parties agree should happen but is not legally binding and cannot be enforced. The Crown agreed to pay cash, return land, give marine space and take other steps. That agreement is now on hold while the people of Whakatōhea decide how they wish to proceed from here.

12 In its report the Waitangi Tribunal recommended that a new voting process be carried out to answer two main questions ( more will be said about them shortly ), and made a number of related recommendations. The Tribunal was concerned that delays from a new voting process might cause Whakatōhea financial disadvantage. So it recommended that, whatever happened in the voting process, the Crown should at the very least keep alive its existing offer to settle made in the 'agreement in principle'. It also recommended that the Crown should pay interest on its cash offer at commercial rates until the new voting process was completed.

13 The Tribunal then recommended that:

- 1) a suitably qualified independent returning officer (the IRO) should be appointed. (Anthony Morton has since been appointed as the IRO). The IRO should have access to the Trust Board register which is to be updated. The officer should also have access to registers or rolls held by claimant groups which hold those registers;
- 2) the access provided to the IRO to these rolls would only be to allow all adult members of Whakatōhea to vote on the two main questions;
- 3) all voting should be through hapū, postal and web voting, and providing Ngāti Muriwai agrees to make its register available, all who whakapapa back to Whakatohea and are over 18 years old should be able to vote according to their main affiliation to these hapū – Ngāti Ira, Ngāti Muriwai ( the Tribunal did not make a finding on whether

Ngāti Muriwai was an actual hapu), Ngāti Ngahere, Ngāti Patumoana, Ngāti Ruatakena, Ngai Tamahaua and Upokerehe. Votes shall be recorded on a hapū basis;

- 4) a panel of kaumatua representatives, who are able to act as scrutineers or counters and settle any whakapapa issues, should be set up. The panel will assist the IRO;
  - 5) if the IRO considers that any of the registers or rolls is not suitable for the purposes of a vote, the officer will have power to compile the final combined register.
- 14 The Tribunal recommended that all adult members of Whakatōhea should be able to vote on these questions:
- 1) Do you support the Claims Trust continuing to negotiate to reach a settlement with the Crown of the historical Treaty grievances of Whakatōhea? (Yes / No)
  - 2) Or do you wish to see the current Treaty negotiations stopped in order that :
    - a) a mandate process be re-run from the start (Yes / No); and/or
    - b) the Waitangi Tribunal can carry out an inquiry into the historical grievances of Whakatōhea (Yes / No).
- 15 These are the questions you are being asked to vote on. You can answer either question (1) or question (2). Or you can answer both questions. So, even if you answer question (1) with a "Yes" ,you can still answer question (2), where you have the two choices found in question (2)(a) and question (2)(b).

## QUESTION (1)

16 To repeat, this question is:

- 1) Do you support the Claims Trust continuing to negotiate to reach a settlement with the Crown of the historical Treaty grievances of Whakatōhea? (Yes / No)

17 It is important to realise that this question does not require you to approve (or ratify) or disapprove (or reject) the Crown's existing offer to settle in the 'agreement in principle' with the Claims Trust. It is simply the limited question of whether you support the Trust continuing to negotiate with the Crown.

18 However, you cannot ignore reality: if you vote 'Yes' in answer to question (1), and the Crown accepts the Tribunal's recommendation to keep its existing offer alive ( the Crown would be most unlikely to withdraw it ), then the Claims Trust and the Crown are likely to confirm the essential parts of the 'agreement in principle'. That 'agreement in principle' presently includes:

- 1) That all Whakatohea's claims will be settled;

- 2) a historical account or record of the relationship between Whakatōhea and the Crown since 1840. The Crown will acknowledge and apologise for its historical breaches of the Treaty. It will also recognise Whakatōhea's mana whenua, mana moana and mana tangata;
  - 3) the Crown's payment of \$100 million, most of which will be financial and commercial compensation;
  - 4) the Crown's return of significant land once owned by Whakatōhea comprising 6,690 hectares, rights of first refusal over Crown land in Whakatōhea rohe and acknowledgements over certain waterways;
  - 5) the Crown's allocation of 5,000 hectares of marine space to and through Whakatōhea's aqua-culture opportunities;
  - 6) commitment from the Tertiary Education Commission to work with Whakatōhea.
- 19 Even if the Crown and the Claims Trust confirm the agreement in principle, it will not be binding unless and until it is approved by the adult members of Whakatōhea following a full postal vote.

## QUESTION (2)

20 However, if you answer question (1) with 'No', you have two choices when answering question (2). Both mean that the current Treaty negotiations will be stopped. You can decide whether the existing mandate process should start again. Or you can ask the Waitangi Tribunal to carry out an inquiry into Whakatōhea's historical grievances.

21 The first of these two options is self-explanatory. It simply means that the mandate process will start again. Any group which considers it should have the authority to negotiate for Whakatōhea will have to seek a mandate from the people. . Another vote will be necessary to satisfy the Crown about which group truly represents or speaks for Whakatohea. It is not possible to give a timeframe for that process.

22 The second option requires a little more explanation. The Waitangi Tribunal has the power to carry out a historical inquiry into the Crown's breaches of its Treaty obligations to Whakatōhea. The inquiry is an investigation, to find the truth of the past. The Tribunal will first complete a research programme into the claims. Then it will hold an inquiry on

Whakatōhea rohe and listen to the arguments of interested parties, hear evidence and consider reports. Its purpose is to make findings and recommendations which should be used to help settle long-held grievances or complaints, restore wellbeing and reconcile or bring a state of peace to relations between Whakatōhea and the Crown.

23 The Tribunal's report following a historical inquiry is a permanent record of the Crown's relationship with Whakatōhea, of its breaches of the Treaty and, sometimes, it recommends how the breaches should be corrected.

The terms of a report often provides a basis or foundation for a negotiated settlement with the Crown .Because the process is thorough and careful, it may take some years to complete. On average, the Tribunal's district historical inquiries have taken between two and six years to complete but it may be longer, depending on how much time is necessary to complete the research program.

24 The choice on how you answer the questions is for you alone, after deciding what you believe is the best course for the future of Whakatōhea's claims.

## The Voting Process

25 The IRO will be directly responsible for conducting the voting process. However, the process will be overseen by the Honourable Rhys Harrison QC , a retired judge of the Court of Appeal. Like the IRO, he is independent of the parties and does not take sides.

26 The voting process allows all adult members of Whakatōhea to vote by hapū through a confidential ballot. A confidential ballot means that the completed voting papers go directly to the IRO. Nobody else has any access to or is allowed to see the voting papers; and nobody else will know how you voted unless you tell them. The IRO will destroy the voting papers 90 days after voting closes.

27 To assist you in the voting process, information hui will be held as shown in the table below.

28 These hui will give members of Whakatōhea a chance to learn more about the voting process, and the issues. Mr Harrison will chair the hui and settle the agenda. His role will be to make sure the hui are conducted fairly, follow the agenda, and allow for informed and balanced discussion about the questions.

29 The IRO will have a number of iwi and hapū registers so he can make sure as many Whakatōhea people as possible are provided with voting information and forms. This explanatory statement and the voting pack have been sent to all adult members named on the registers.

30 All adult members of Whakatōhea who are 18 years of age and on the registers are able to vote. Two other groups can also vote. One group is those who meet the Tribunal's test to whakapapa back to Whakatohea (and have the necessary affiliations to the six identified hapū as the Tribunal requires). The other group is those who turn 18 years of age during the voting period. They will be able to vote either by:

- 1) completing a registration form from the IRO and receiving a special voting pack; or
- 2) making a special vote without registering for the purposes of this vote, by asking for a special voting pack from the IRO or at an information hui.

Each voting pack will contain a freepost envelope, so voters can submit a postal vote, and information on electronic voting. A kaumatua committee will confirm whether a voter who is not on a register is able to whakapapa back to Whakatōhea as the Tribunal requires.

31 The voting period will begin on 1 October 2018, and will end on 26 October 2018. So you have nearly four weeks to cast your vote. The IRO will then declare the result within a further two weeks. Once it is notified to the Tribunal, the result will be published on the Claims Trust website (<http://www.whakatoheaPresettlement.org.nz>).

### Information Hui Timetable (06 -14 October 2018)

Date	Time	Venue
Saturday 06 October 2018	10.30am	Opotiki RSA, St John St Opotiki
Monday 08 October 2018	6.00pm	Club Mt Maunganui, 25 Kawaka St, Mt Maunganui
Tuesday 09 October 2018	6.00pm	Taharangi Marae, Tarewa Road, Rotorua
Wednesday 10 October 2018	6.00pm	Eastbay REAP, 21 Pyne St, Whakatane
Friday 12 October 2018	6.00pm	Waikato University, Room KG11, K Block, Gate 1 off Knighton Road, Hillcrest Hamilton
Saturday 13 October	10.00am	Glen Eden Primary School, 3 Glenview Road, Glen Eden, Auckland
Sunday 14 October 2018	10.00am	Lyll Bay School Hall. Opposite 27 Freyberg Street, Lyall Bay, Wellington