

Relevant Treaty settlements

Waikato-Tainui has signed two treaty settlements with the Crown. The first related to Waikato-Tainui's lands claim, and the second related to its Waikato River claim. Both settlements have now been enacted into legislation, as follows:

- Waikato Raupatu Claims Settlement Act 1995 (lands claim); and
- Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 (Waikato River claim).

The site is within the area covered by an additional treaty settlement, being the Ngāti Hauā Claims Settlement Act 2014.

A summary of the relevant principles and provisions in those settlements is as follows:

1. Waikato Raupatu Claims Settlement Act 1995

The Waikato Raupatu Claims Settlement Act 1995 ("1995 Settlement Act") was the first historical Treaty of Waitangi grievance settled with the Crown.

The purpose of the Act is to:

- a) record the apology given by the Crown to Waikato in the deed of settlement signed on 22 May 1995 by both representatives of the Crown and representatives of Waikato, being an apology by the Crown for, among other things, sending its forces across the Mangatawhiri river in July 1863, unfairly labelling Waikato as rebels, and subsequently confiscating their land; and
- b) give effect to certain provisions of that deed of settlement, being a deed that settles the Raupatu claims.

Part 1 of the 1995 Settlement Act sets out the Crown's acknowledgements of its past failings and of Waikato's grievances, including an apology. Part 2 of the Act deals with the provisions relating to settlement, discussing, among other things, the settlements relating to land and trusts and the appointment of members to the Conservation Board.

The preamble sets out Waikato's long-established principles of the 1995 Settlement Act, which are:

- "Land for land"
 - "'i riro whenua atu, me hoki whenua mai" ("as land was taken, land must be returned")
- "Ko te moni hei utu mo te hara"
 - "The money is the acknowledgment by the Crown of their crime"

The key provisions of the 1995 Settlement Act are:

- The formal apology from the Crown, acknowledging its wrongdoing; and
- A settlement valuation of \$170 million, which includes the return of land, cash payments, a right of first refusal, and a relativity clause.

While the site is located within the treaty settlement catchment area of interest, there are no statutory acknowledgement areas in the 1995 Settlement Act, and the project area does not include any land subject to this settlement. Te Whakakitenga o Waikato (formerly known as Te Kauhanganui) is the relevant post-settlement governance entity for the 1995 Settlement (as trustee for the Waikato Raupatu Lands Trust).

2. Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010

Waikato-Tainui's claim to the Waitangi Tribunal (Wai 30) included a claim to the Waikato River as well as its lands claim in the 1995 Settlement Act. However, the Waikato River claim was expressly excluded from the 1995 Settlement. The Waikato River claim was settled through the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 (the "2010 Settlement Act"). The overarching purpose of the 2010 Settlement Act is to restore and protect the health and wellbeing of the Waikato River for future generations.

Part of the purpose of the 2010 Settlement Act is to have regard to the principles described in the Kiingitanga Accord. The relevant principles, as described in the Kiingitanga Accord under Schedule 1 of the 2010 Settlement Act, are:

- Te mana o te awa (the spiritual authority, protective power, and prestige over the river): To Waikato-Tainui, the Waikato River is a tūpuna which holds mana and in turn represents the mana and mauri of the tribe. To Waikato-Tainui, the Waikato River is a single, indivisible being that flows from Te Taheke Hukahuka to Te Pūaha o Waikato.
- Mana whakahaere (authority and rights of control): Mana whakahaere embodies the authority that Waikato-Tainui and other River tribes have established in respect of the Waikato River over many generations to exercise control, access to, and management of the Waikato River and its resources in accordance with tikanga (values, ethics and norms of conduct). Loss of their lands mean Waikato-Tainui also lost the ability to exercise mana whakahaere in respect of the Waikato River and accordingly, the ability to ensure the River's health and wellbeing.
- Health and wellbeing: The principle of health and wellbeing reflects the overarching purpose of the settlement, which is to restore and protect the health and wellbeing of the Waikato River. The health and wellbeing of Waikato-Tainui and its special relationship with the Waikato River is inherently connected with the health and wellbeing of the Waikato River.
- Co-management: The principle of co-management included the highest level of good faith engagement with consensus decision-making as a general rule while having regard to statutory frameworks and the mana whakahaere of Waikato-Tainui and other Waikato River iwi. To be effective, co-management must be implemented and achieved at a number of levels and across a range of management agencies, bodies, and authorities. Co-management must also include provisions for effective Waikato-Tainui input and participation through engagement at an early stage in statutory and management processes and other actions that may affect the health and wellbeing of the Waikato River.
- Integration: Arising from the principles of te mana o te Awa and mana whakahaere, and inter-related to the principle of co-management, is the principle of integration. The health and wellbeing of the Waikato River and successful co-management require effective integration of management between the relevant government agencies, Crown entities, local authorities and non-governmental agencies who have roles and responsibilities in respect of the Waikato River.
- Treaty of Waitangi: Te Tiriti o Waitangi/the Treaty of Waitangi and its principles apply to the Kiingitanga Accord and the relationship between the Crown and Waikato-Tainui reflected in the Kiingitanga Accord.
- Honour and integrity: Underpinning the settlement is the principle of honour and integrity. Waikato-Tainui and the Crown have entered into the settlement in good faith relying on the commitments of each other contained in the 2008 deed and the Kiingitanga Accord with the intention of achieving a full, fair and durable settlement of the raupatu claims of Waikato-Tainui in relation to the Waikato River.

The relevant provisions are discussed in the subsequent paragraphs.

The 2010 Settlement Act has been included in the Waikato Regional Policy Statement, and the Vision and Strategy for the Waikato River has been created for present and future generations. Section 5 identifies that the Vision and Strategy is intended by Parliament to be the primary direction-setting document for the Waikato River and activities within its catchment affecting the Waikato River. Section 9 of the 2010 Settlement Act outlines the scope of the Vision and Strategy and confirms that the Vision and Strategy applies to the Waikato River and activities within its catchment affecting the Waikato River.

While it is recognised that the site and proposed activities are within the catchment of the Waikato River, the application is not for an activity related to the Waikato River, and the proposal will not affect the health and wellbeing of the Waikato River. Nevertheless, the applicant believes that it is in the best interests that the proposal does not compromise the Vision and Strategy.

Pursuant to section 39 of the 2010 settlement, the Trust may prepare a Waikato-Tainui environmental plan. The effect of this plan is that a consent authority considering an application for a resource consent under

section 104 of the Resource Management Act 1991 must have regard to the Waikato-Tainui environmental plan if it considers that section 104(1)(c) applies to the plan.

There are no statutory acknowledgement areas in the 2010 Settlement.

Te Whakakitenga o Waikato is also the relevant post-settlement governance entity for the 2010 Settlement (as trustee for the Waikato Raupatu River Trust).

3. Ngāti Hauā Claims Settlement Act 2014

The Ngāti Hauā claims were settled with the Crown through the Ngāti Hauā Claims Settlement Act 2014. The purpose of the Act is to:

- a) To record in English and te reo Māori the acknowledgements and apology given by the Crown to Ngāti Hauā in the deed of settlement; and
- b) To give effect to certain provisions of the deed of settlement that settles the non-raupatu historical claims of Ngāti Hauā.

The key provisions of the Act relate to:

- Cultural and commercial redress, with the right of first refusal; and
- Statutory acknowledgement, and a deed of recognition for the statutory areas.

The project is within the overall interest area for the 2014 Settlement but will not involve activity occurring within a statutory area as described in Schedule 1, an overlay area as described in Schedule 1 or the cultural redress properties as described in Schedule 3.

Ngāti Hauā Iwi Trust is the relevant post-settlement government entity for the 2014 Settlement.

For completeness, it is noted that the Treaty of Waitangi Act 1975, section 6(4A), states that the Waitangi Tribunal shall not recommend the return to Maori ownership of any private land or the acquisition by the Crown of any private land. The site is on privately owned land. Consequently, the site cannot be subject to a treaty settlement claim, at present or in the future (see Treaty of Waitangi Act 1975, section 6(4A)).

Consultation with Treaty Settlement Entities

Consultation with Te Whakakitenga o Waikato (as the relevant post settlement entity for the 1995 and 2010 Settlement) and Ngāti Hauā Iwi Trust (as the relevant post settlement entity for the 2014 Settlement) regarding the project is occurring concurrently via Mr Norm Hill, as outlined above.