

# Treaty settlement negotiations update

## KIA ORA E TE WHĀNAU,

The Trustees are pleased to advise you that, after three years of litigation which has delayed our Treaty settlement, we have agreed to a comprehensive and much better settlement with the Crown, that will see a Deed of Settlement signed later this year. This is in addition to the settlement offer ratified in 2018.

It has been a complex process to this point, and we have been working through some challenges both inside and out of court relating to the package.

But the Trust has been focused on the mahi, with its sights set on building a better future, and getting the best deal for our people – past, present and future.

The **enhanced deal** we are asking you to vote on includes:

- Everything included in the initialled Deed of Settlement ratified in 2018,
- Enhanced financial redress, with a \$22 million increase from \$93 million to \$115 million.
- An additional \$5 million to improve the wellbeing of Wairarapa Moana,
- An amendment to the Crown’s apology redress, better acknowledging landlocked lands and the circumstances of the taking of land at Pouākani, and
- An amendment to He Kawenata Hou to include focus on whānau at Mangakino.

We want you to have your say now on this enhanced deal.

Voting opens on 26 July and closes on 24 August at noon. We do not want there to be any further delay to our settlement and so we ask you to cast your vote on this enhanced deal during this period. This means our iwi can finally receive the settlement you endorsed three years ago with the additional benefits noted above.

This is a lot to take in, but rest assured we will be keeping you informed every step of the way.

Following us on Facebook by searching “Ngāti Kahungunu ki Wairarapa Tāmaki Nui-a-Rua Settlement Trust” is a start. But we’ll also be sending out pānui, and hosting hui along the way.

We acknowledge this will bring up some questions, considering we’ve already voted ‘yes’ to a deal. Please keep reading through this booklet, as it may answer your pātai about how our mahi led to this point.

The time is now, whānau. Your Trustees believe they have secured the best deal for you, which includes enhanced financial, cultural, and commercial redress.

Cast your vote, and we will continue this journey to settlement for our people.

Nāku noa, nā



**ROBIN POTANGAROA**  
Chairman

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# WHAT YOU ARE VOTING ON

As a reminder the package Ngāti Kahungunu ki Wairarapa Tāmaki nui-a-Rua already voted in support of included:

## Apology Redress

- Historical Account, Crown Acknowledgements and Apology.

## Cultural Redress

- 9,000 hectares of gifted culturally significant land, including 90 percent of the bed of Lake Wairarapa,
- Natural resources redress including the establishment of the Wairarapa Moana Statutory Board, permanence for Te Upoko Taiao (Wellington Regional Council Natural Resources Committee) and a seat on the Manawatu River Advisory Board, and
- The development of a new Te Tiriti relationship with the Crown including He Kawenata Hōu (a new covenant) through which we will work with the Crown to establish a social and economic revitalisation strategy.

## Financial and Commercial Redress

- Financial Redress of \$93 million, and interest from the date of signing the Agreement in Principle (AIP), including an on-account payment of \$51.15 million, paid on the signing of the Deed of Settlement. In addition to this on-account payment, the interest that has accrued on the settlement quantum from the signing of the AIP to the date of signing will also be paid,
- Transfer of 70 percent of Ngāumu Crown Forest Land - the transfer value of the forest is deducted from the quantum, but this is then offset by the accumulated rentals received for the forest land,
- Transfer of Landcorp Farms (Rangedale Station and Wairio Station),
- Transfer of the Whareama property (1.6465 hectares) on Settlement Date,
- Deferred selection over 28 Treaty Settlement Landbank properties,
- Deferred selection sale and leaseback of five Ministry of Education properties, and
- Right of First Refusal over 100 properties.

## KEY DATES

26 JULY	Voting opens.
TBC	Hui-a-iwi to discuss this. Please note this will be livestreamed so those outside the rohe can be involved in those talks.
24 AUGUST, NOON	Voting closes.
1 SEPTEMBER	Results will be publicised.

## In addition to this package, we have managed to negotiate:

- A further \$22 million bringing our total quantum to \$115 million,
- \$5 million to improve the wellbeing of Wairarapa Moana,
- Additions and clarifications to the historical account, Crown acknowledgments and apology concerning the circumstances of our loss of lands at Pouākani and our ongoing struggles with landlocked land, and
- Specific mention of our whānau at Mangakino in He Kawenata Hōu.

This is the result of decades of mahi to progress our Ngāti Kahungunu ki Wairarapa Tāmaki Nui-a-Rua historical Treaty claims. This journey was started by our elders, some of whom have passed before seeing this historical settlement achieved.



# OUR JOURNEY TO THIS POINT

We have previously updated you on the resumption application, Waitangi Tribunal's initial determination of 24 March 2020 and the progress of High Court litigation. We have also told you that our strong preference was to reach a settlement with the Crown by negotiation not a long drawn-out legal process.

You will recall from our previous updates that the Waitangi Tribunal's initial determination of 24 March 2020 said that the Ngāumu Forest in Wairarapa, and Pouākani in the central North Island, should be returned to Ngāti Kahungunu as a remedy for historic breaches of the Treaty of Waitangi.

This initial determination rejected the application by Ngāi Tūmapūhia-ā-Rangi for the return of the Ngāumu Forest. It also said that the Tribunal would not order the return of the Pouākani lands to Wairarapa Moana Incorporation (WMI) for its shareholders as that would be disproportionate to the Treaty breaches suffered by those shareholders in relation to the land in 1949 when it was compulsorily acquired by the Crown. Additionally, the disparate shareholdings in WMI meant that returning the land to WMI "would not be a just outcome".

On receipt of the initial determination, we continued to negotiate with the Crown to see if we could finalise a comprehensive Treaty settlement.

This initial determination was challenged in the High Court by the Crown, Mercury Energy and Raukawa Settlement Trust.

A hearing was held on this in late October and early November 2020.

On 31 March 2021, the High Court released its decision in response to the challenge to the Waitangi Tribunal's initial determination. It upheld most of the challenge and said that the Waitangi Tribunal had made several errors. These included:

- In order to succeed in a resumption application, the claimants must show a well-founded claim that concerns the land to be returned and provide the foundation for its return. This contemplates a Treaty breach in relation to the Crown acquisition of that land. Claims that do not concern the land cannot be used as a reason to return the land in question.

- It was a breach of the Treaty, and inconsistent with tikanga, to direct that particular land be transferred to an iwi that does not have mana whenua in that land and the Tribunal cannot order such a transfer.
- The Tribunal did not adequately address issues in relation to the interest payable on compensation for the Ngāumu Forest.

The High Court set aside the Waitangi Tribunal's initial determination and required the Tribunal to reconsider the issues.

We did not agree with the High Court decision and decided to appeal it to the Court of Appeal while continuing to negotiate with the Crown (as we have been doing the last two years) to see if we could move forward on our settlement without the need for further litigation.

The appeal was lodged on 30 April 2021, and negotiations with the Crown continued after that.

Litigation is a lengthy process. No Court of Appeal hearing has been set yet. At best, a hearing would be held early in 2022 with a judgment unlikely to be released before the third quarter of 2022. All parties to the litigation accept that an appeal to the Supreme Court is inevitable which would mean the litigation would not end until late 2023 at the earliest. It may then be necessary for further Waitangi Tribunal hearings once the Courts have clarified the relevant law.

It is also important to note: there is no guaranteed end to litigation. The Trust always maintained it would continue to kōrero outside of court, while the litigation continued.

As a result of continued negotiations, the Crown has put forth the offer we present to you today, and it is an enhanced package for several reasons. The Trustees consider this enhanced settlement is entirely better than continuing the litigation.

We need you to vote on this new package - and voting opens on 26 July.



## HOW CAN I VOTE?



Post back your completed Voting paper



Vote online at [www.kkwtnr.org.nz](http://www.kkwtnr.org.nz)

## FREQUENTLY ASKED QUESTIONS



### Who is this settlement for?

The Ngāti Kahungunu ki Wairarapa Tamaki nui-ā-Rua Settlement Trust has negotiated a comprehensive settlement for all historical Treaty of Waitangi claims

across the Wairarapa and Tāmaki District.

The benefits of the settlement will be available to all members of Ngāti Kahungunu ki Wairarapa Tāmaki Nui-a-Rua. This settlement allows us to achieve a number of aspirations for our iwi. This settlement will see whenua restored to us that is culturally and spiritually significant and will see our role as kaitiaki of the land, rivers, lakes and resources acknowledged.

### What happens if we do not vote 'yes' to this deal?

We unfortunately face further delays to the already lengthy process, because the settlement will not go ahead. We have agreed to vote on this enhanced package, which Trustees are confident will provide significantly for our people – past, present, and future.

This package provides us with an opportunity to build a strong future for Ngāti Kahungunu ki Wairarapa Tāmaki-nui-ā-Rua, but we need your votes to do that.

If the settlement does not go ahead, the next steps for Ngāti Kahungunu ki Wairarapa Tāmaki-nui-ā-Rua Settlement Trust will be to analyse why there wasn't enough support, and report back to members. This includes outlining the options going forward.

### Who can vote?

All adult registered Ngāti Kahungunu ki Wairarapa Tāmaki Nui-a-Rua members (18 years old and over) can vote in the ratification process. Unregistered adult members and those who turn 18 years of age during the voting period will be able to register and cast a special vote.

### Why has the original deed of settlement not been signed?

The Crown refused to sign the Deed of Settlement because of the resumption applications lodged by WMI and Ngāi Tūmapūhia-ā-Rangi. The Crown was concerned that it was unclear how the resumption applications might affect the redress in the settlement negotiated to that point. Furthermore, the Crown said it could not enter a deed to transfer the Ngāumu forest lands to the Ngāti Kahungunu ki Wairarapa Tamaki nui-ā-Rua Settlement Trust, when claimants had sought potentially binding recommendations from the Tribunal that might require the Crown to return those lands to another entity.

After a process in the Waitangi Tribunal, the High Court, and kōrero, the Crown put forth this enhanced deal we are asking you to vote on now, so the journey to settlement can be realised.

