



WHAKATŌHEA
PRE SETTLEMENT CLAIMS TRUST

Vote YES to continuing the Whakatōhea Settlement Process



CONTENTS

| | |
|---|-----------|
| PURPOSE OF THIS DOCUMENT | 3 |
| THE VOTING QUESTIONS | 4 |
| THE DIRECT NEGOTIATION PROCESS | 5 |
| The Agreement in Principle | 6 |
| Advantages of the current negotiation process | 7 |
| The potential disadvantages of the current negotiation process | 7 |
| What will happen if we continue the direct negotiation process after this vote? | 7 |
| What will happen if we take an alternative course of action? | 7 |
| ALTERNATIVE ACTIONS: | 8 |
| A new mandate for direct negotiations | 8 |
| • The advantages of re-mandating | 8 |
| • The potential disadvantages of re-mandating | 8 |
| A district inquiry | 9 |
| • A Waitangi Tribunal inquiry | 9 |
| • The advantages of a Tribunal inquiry | 9 |
| • The potential disadvantages of a Tribunal inquiry | 9 |
| • What will happen if we decide to pursue a Waitangi Tribunal district inquiry? | 10 |
| CONCLUSION | 10 |

PURPOSE OF THIS DOCUMENT

The Whakatōhea Pre Settlement Claims Trust is pleased to finally be able to have a vote on whether to continue the current Settlement process, re-mandate, or hold a Waitangi Tribunal Inquiry.

The vote was recommended by the Waitangi Tribunal following its inquiry into the Trust's mandate to negotiate a Treaty settlement on behalf of Whakatōhea. The Tribunal found that the Crown had breached the principles of the Treaty of Waitangi by recognising the mandate and recommended that settlement negotiations be paused while Whakatōhea vote on how to proceed. In doing so, the Tribunal recognised the package in the Agreement in Principle (AIP) was worth preserving.

The Whakatōhea Pre Settlement Claims Trust, together with Kahui Legal and Te Roopu Awhina, have put together this 'analysis of voting options' document, to outline the advantages and disadvantages of each of the options you are being asked to vote on, in order to give you the additional information you may need to support your decision.

THE VOTING QUESTIONS

The Waitangi Tribunal has proposed the following voting questions:

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

Or

QUESTION 2(a) – Do you wish to see the current Treaty negotiations stopped in order that a mandate process be re-run from the start? **(Yes/No)**

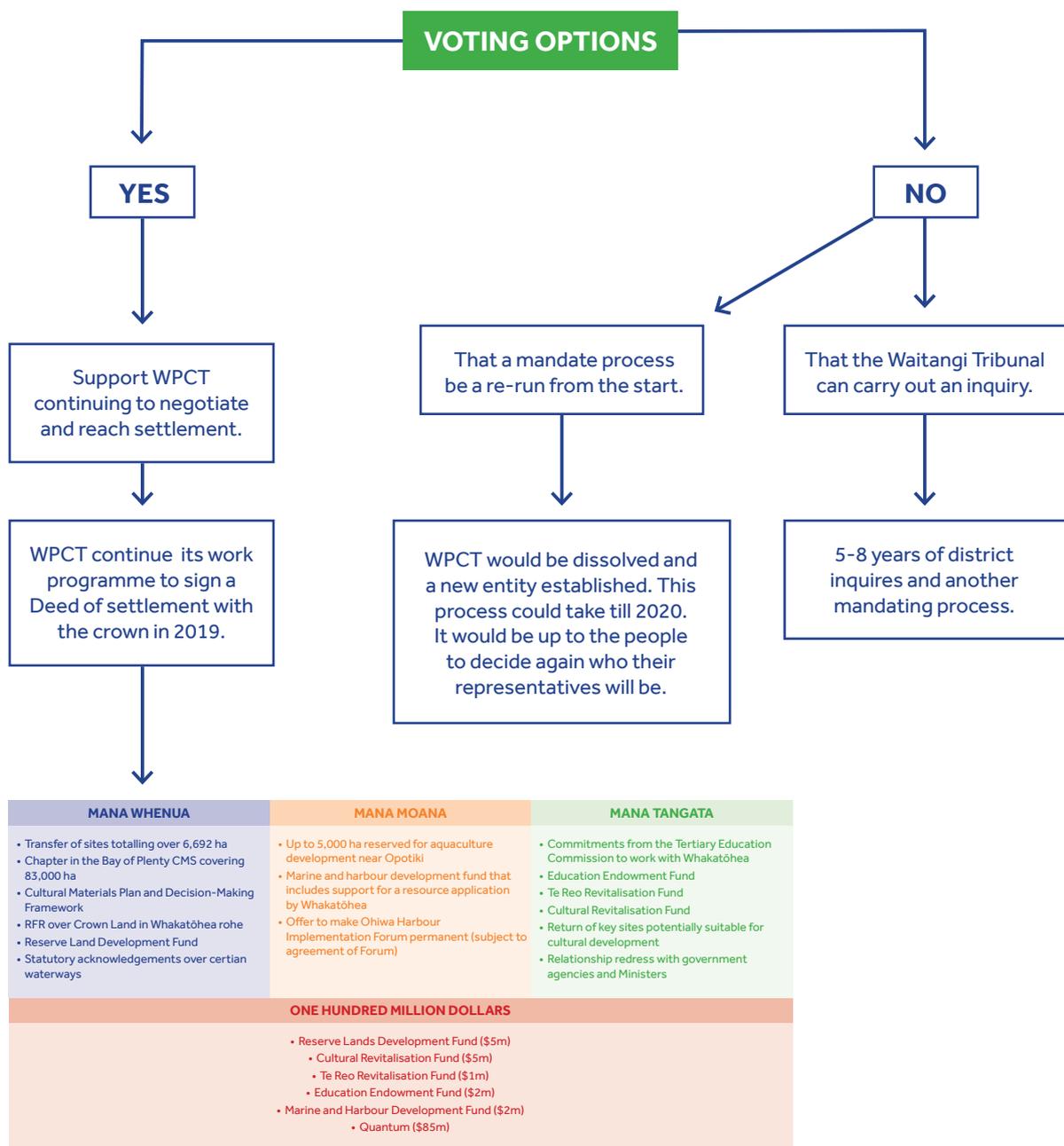
and/or

QUESTION 2(b) – Do you wish to see the current Treaty negotiations stopped in order that the Waitangi Tribunal can carry out an inquiry into the historical grievances of Whakatōhea? **(Yes/No)**

THE VOTING QUESTIONS

The voting questions proposed by the Tribunal relate to two general propositions.

1. whether the current Treaty settlement negotiations between the Crown and the Pre Settlement Claims Trust should continue under the current mandate.
2. whether the current negotiations should cease and a new mandating process commenced, and/or a Tribunal Inquiry carried out.



THE DIRECT NEGOTIATION PROCESS

The direct negotiation process involves engaging directly with the Crown to reach an agreement to settle historical Treaty claims. The Whakatōhea Pre Settlement Claims Trust has been negotiating on behalf of Whakatōhea.



This direct negotiation process can take a number of years to complete.

However, because the Whakatōhea Pre Settlement Claims Trust has already signed an Agreement in Principle, it is over half-way through the direct negotiation process.

Dates have not been set for the remaining stages. However, if the outcome of this vote is that Whakatōhea wish the current negotiations to continue, Whakatōhea Pre Settlement Claims Trust anticipates that a Deed of Settlement will be signed **by June 2019**, with Treaty settlement legislation to be introduced into Parliament soon thereafter.

Depending on how quickly our Treaty settlement legislation could be enacted, Whakatōhea Pre Settlement Claims Trust is planning to conclude the direct negotiation process **by December 2019**.

The Agreement in Principle

The Pre-Settlement Trust signed an Agreement in Principle on 18 August 2017. The Agreement in Principle sets out the general settlement redress that both the Crown and Pre-Settlement Trust have agreed on.

The Agreement in Principle provides for a historical account of the relationship between Whakatōhea and the Crown since 1840 and acknowledgement and an apology from the Crown for its historical breaches of Te Tiriti o Waitangi/ the Treaty of Waitangi. It also aligns with the aspirations of the iwi, including recognition by the Crown of Whakatōhea’s mana whenua, mana moana, and mana tangata.

More than 300 of our whānau joined us in Wellington back in August 2017 to witness and celebrate in the signing of our Agreement in Principle. This agreement remains in place and the interest earned since the signing of this agreement adds an additional \$2M to our settlement.

The Agreement in Principle includes redress of \$100 million comprising;

- \$85 million for financial and commercial redress,
- \$5 million for a reserve lands development fund,
- \$5 million cultural revitalisation fund,
- \$1 million Te Reo revitalisation fund,
- \$2 million education endowment, and
- \$2 million marine and harbour development fund.

The Agreement in Principles also returns significant land once held by Whakatōhea. This involves the transfer of sites totalling over 6,692 hectares, rights of first refusal over Crown land in Whakatōhea rohe, and statutory acknowledgements over certain waterways. It also includes the allocation of 5,000 hectares of marine space to enhance Whakatōhea aquaculture opportunities.

Relationship redress with government agencies and Ministers is also included, as well as commitments from the Tertiary Education Commission to work with Whakatōhea.

Further details regarding the redress agreed on by both Whakatōhea Pre Settlement Claims Trust and the Crown can be found in the Agreement in Principle. This can be accessed on the New Zealand Government website:

<https://www.govt.nz/treaty-settlement-documents/whakatohea>

Comprehensive Offer

| MANA WHENUA | MANA MOANA | MANA TANGATA | | | | | | | | | | | | | | |
|---|--|--|--------------------------------|-------------|------------------------------|-------------|----------------------------|-------------|--------------------------|-------------|-------------------------------------|-------------|---------|--------------|-----------------------------|--|
| <ul style="list-style-type: none"> • Transfer of sites totalling over 6,692 ha • Chapter in the Bay of Plenty CMS covering 83,000 ha • Cultural Materials Plan and Decision-Making Framework • RFR over Crown land in Whakatōhea rohe • Reserve Land Development Fund (Opape & Hiwarau) • Statutory acknowledgements over certain waterways | <ul style="list-style-type: none"> • Up to 5,000 ha reserved for aquaculture development near Opotiki • Marine and harbour development fund that includes support for a resource application by Whakatōhea • Offer to make Ohiwa Harbour Implementation Forum permanent (subject to agreement of Forum) | <ul style="list-style-type: none"> • Commitments from the Tertiary Education Commission to work with Whakatōhea • Education Endowment Fund • Te Reo Revitalisation Fund • Cultural Revitalisation Fund • Return of key sites potentially suitable for cultural development • Relationship redress with government agencies and Ministers | | | | | | | | | | | | | | |
| <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: right;">Reserve lands development fund</td> <td style="text-align: left;">\$5,000,000</td> </tr> <tr> <td style="text-align: right;">Cultural revitalisation fund</td> <td style="text-align: left;">\$5,000,000</td> </tr> <tr> <td style="text-align: right;">Te Reo revitalisation fund</td> <td style="text-align: left;">\$1,000,000</td> </tr> <tr> <td style="text-align: right;">Education endowment fund</td> <td style="text-align: left;">\$2,000,000</td> </tr> <tr> <td style="text-align: right;">Marine and harbour development fund</td> <td style="text-align: left;">\$2,000,000</td> </tr> <tr> <td style="text-align: right;">Quantum</td> <td style="text-align: left;">\$85,000,000</td> </tr> <tr> <td colspan="2" style="text-align: center;">TOTAL \$ 100,000,000</td> </tr> </table> | | | Reserve lands development fund | \$5,000,000 | Cultural revitalisation fund | \$5,000,000 | Te Reo revitalisation fund | \$1,000,000 | Education endowment fund | \$2,000,000 | Marine and harbour development fund | \$2,000,000 | Quantum | \$85,000,000 | TOTAL \$ 100,000,000 | |
| Reserve lands development fund | \$5,000,000 | | | | | | | | | | | | | | | |
| Cultural revitalisation fund | \$5,000,000 | | | | | | | | | | | | | | | |
| Te Reo revitalisation fund | \$1,000,000 | | | | | | | | | | | | | | | |
| Education endowment fund | \$2,000,000 | | | | | | | | | | | | | | | |
| Marine and harbour development fund | \$2,000,000 | | | | | | | | | | | | | | | |
| Quantum | \$85,000,000 | | | | | | | | | | | | | | | |
| TOTAL \$ 100,000,000 | | | | | | | | | | | | | | | | |

Advantages of the current negotiation process

A Treaty settlement can only occur through a negotiation process with the Crown. Even if we decide to wait for a Waitangi Tribunal hearing into our historical Treaty claims, following that hearing we would still need to enter into a negotiation process with the Crown to settle our historical Treaty claims.

Direct negotiations usually refers to the decision to negotiate before the Waitangi Tribunal holds an historical inquiry. **This is the path that Whakatōhea chose when it voted in support of the mandate process.**

The advantages of the current negotiation process include the following:

- We have already completed the mandate process and have established a representative entity.
- We have signed an Agreement in Principle which has the potential to deliver significant value for Whakatōhea.
- We can reach settlement much sooner and finally start moving forward and building for the future of our tamariki and mokopuna.

The potential disadvantages of the current negotiation process

The disadvantages of the process of direct negotiations with the Crown include the following:

- We do not have an opportunity to air our grievances before the Waitangi Tribunal as an independent body to consider all of the evidence put before it.
- We do not have the benefit of our research being tested through the Tribunal process, or the opportunity to test the Crown's evidence through that process.
- We do not have the benefit of a Tribunal report, as a permanent record of the Crown's acts or omissions against us since 1840, or any findings of Crown breaches of the Treaty and recommendations about how to address those breaches.

During the negotiations, the Crown acknowledged that it had unjustly confiscated and retained a significant portion of land that Whakatōhea had interests in.

The Crown also acknowledged that Whakatōhea suffered considerable loss of life and the destruction of property during the Crown's attack and that widespread looting by Crown troops devastated the Whakatōhea economy. These factors were considered in the Agreement in Principle.

What will happen if we continue the direct negotiation process after this vote?

Dates have not been set for the remaining stages however, if we decide to continue negotiations to reach a settlement with the Crown, **it is possible that we will agree a Deed of Settlement with the Crown by June 2019.**

At that point, you will be given the opportunity to vote on whether the settlement should proceed.

If Whakatōhea decides to accept the Deed of Settlement and the associated Crown settlement offer, the settlement (if ratified) will be given effect through legislation. Once that is done, the Treaty settlement redress will be provided to an entity to be established to receive that redress (this entity is commonly referred to as a "post-settlement governance entity" or "PSGE" for short) and our settlement will be complete.

If we continue on our current path, this could happen as early as December 2019.

What will happen if we take an alternative course of action?

If we decide not to continue with the current negotiations, then it is likely that more time will be required for a Treaty settlement to be completed.

ALTERNATIVE ACTIONS:

A new mandate for direct negotiations

If we decide to re-run a mandate process, there would need to be broad agreement on how a new mandate process would be run.

If that process is successful, then the negotiation process would start all over again.

There is no guarantee that the current Crown settlement offer (including a quantum package of \$100 million) will be maintained. However, it seems unlikely that the Crown would withdraw the offer if a mandate process is able to be re-run within a reasonably short timeframe.

It is also difficult to say when we would reach a Treaty settlement under this course of action, but we can expect that it would add at least two years to the process.

Re-mandating will likely involve designing a different process by which Whakatōhea can decide who should represent us in negotiations with the Crown, then implementing that process.

A mandated entity needs to demonstrate that it represents the claimant group, and the claimant group needs to feel assured that the entity legitimately gained the right to represent them. This can only be achieved through a process that is fair, robust and open.

For Whakatōhea, it would also have to be consistent with process outlined in the Te Ara Tono document. The mandating process usually involves a series of publicly notified hui that allow members of the claimant community to express their views about who would represent them in negotiations with the Crown.

It is difficult to say how long it may take to design a new mandate process for us, but it could take some time.

THE ADVANTAGES OF RE-MANDATING

Undertaking a re-mandating process makes sense if we decide we want to change the representation model for our mandated entity.

If we decide we want a new entity to represent us in negotiations with the Crown, then the advantages of re-mandating include the following:

- We will have the opportunity to design a new mandate process in accordance with our tikanga and the Te Ara Tono document.
- Undertaking a re-mandating process is likely to take less time than the previous mandating process or waiting for a Tribunal inquiry into our historical Treaty claims.
- It is possible that, if we can complete a re-mandating process quickly, the current Crown settlement offer may still be on the table.
- A new mandating process will give us an opportunity to further consider how we should be represented - by hapū, marae or on some other basis.

THE POTENTIAL DISADVANTAGES OF RE-MANDATING

The potential disadvantages of re-mandating include the following:

- Re-mandating will take time. It may take some time to agree how the mandate process should be re-run, because there are a lot of factors that must be considered and reaching agreement on those matters may prove difficult.
- There is no guarantee that another mandating process will achieve a better outcome than the process that we have already followed.
- A new mandating process could be challenged. We might end up in the Waitangi Tribunal again anyway.
- There is no guarantee that our current Crown settlement offer will still be on the table.

A district inquiry

If we decide to wait until the Waitangi Tribunal holds an inquiry into our historical Treaty claims, then the timeframes are subject to a number of other factors.

The Tribunal would need to put us into its hearings schedule, and the Tribunal may not hold a hearing into our claims for a number of years. Once a Tribunal district inquiry process is commenced, there are different options that could be adopted to enable the Tribunal to report on our claims. In terms of timing, much will depend on the process that is actually adopted to hear our claims.

Other district inquiries have taken between two and six years to complete their reports (some have taken longer).

At the end of the Tribunal inquiry process, we would still need to enter into negotiations with the Crown to settle our claims. This would involve a mandating process, so the information above relating to the length of time it may take to run that process would also be relevant here. Then, we would then need to negotiate a settlement package with the Crown.

If we choose a Tribunal inquiry approach, it is possible that the current Crown settlement offer (including a quantum package of \$100 million) will be withdrawn. It is possible that a subsequent negotiation could maintain or even improve an offer. The Agreement in Principle provides that the Crown will maintain the redress offer contained in the agreement for as long as the Agreement in Principle remains operative. If the Agreement in Principle is terminated at some point in the future, the Crown would then need to assess whether it can or should commit to maintaining the baseline redress contained in the Agreement in Principle.

It is also very difficult to predict when we might reach a settlement if we decide to wait for a Tribunal inquiry into our claims. **However, it is safe to assume that it could take us at least 5 or more years to reach the point we are at now (with a Crown offer on the table) and there is also no guarantee that a direct negotiation process with the Crown at that time will result in a better settlement offer than what we currently have.**

A WAITANGI TRIBUNAL INQUIRY

A Waitangi Tribunal inquiry involves the Tribunal holding hearings into our historical Treaty claims. Any further research into our claims would be conducted and the Tribunal would be hosted in our rohe. The Tribunal would hear directly from us and professional historians about our history and the Crown breaches of the Treaty since 1840. The Tribunal would assess that research and other evidence (including from the Crown) to make findings on how the Crown has breached the Treaty in dealing with us and what should be done about it.

The Tribunal has previously indicated that an inquiry and report into our claims would take around 2 and a half years from when it starts. (Report dated 8 November 2016). It is not unusual for a Tribunal inquiry to take longer than that. A re-mandating process could also be conducted alongside a Tribunal process, however this has usually been towards the end of a Tribunal process.

THE ADVANTAGES OF A TRIBUNAL INQUIRY

The advantages of holding a Tribunal inquiry include the following:

- A Tribunal report will act as a valuable and permanent record of how the Crown engaged with Whakatōhea iwi and hapū since 1840.
- A Tribunal report can usually assist in direct negotiations with the Crown, because the findings represent a balanced view of an independent commission of inquiry. However, the Tribunal's findings will likely be non-binding on the Crown.
- A Tribunal inquiry gives us an opportunity to "have our day in court".

THE POTENTIAL DISADVANTAGES OF A TRIBUNAL INQUIRY

The potential disadvantages of a Tribunal inquiry include the following:

- A Waitangi Tribunal inquiry will not be completed for a number of years.

- Even once the Tribunal inquiry process is finished, we will still have to complete a mandating process and enter into negotiations with the Crown to settle our claims.
- Some say that it is better to speak directly to the Crown regarding its Treaty breaches than to address them through a third party such as the Waitangi Tribunal.

WHAT WILL HAPPEN IF WE DECIDE TO PURSUE A WAITANGI TRIBUNAL DISTRICT INQUIRY?

If we decide to pursue a Waitangi Tribunal district inquiry, we may have to walk away from our current Crown settlement offer.

We would then need to encourage the Tribunal to hold an inquiry into our claims as soon as possible. Once the Tribunal agrees to hear our claims, we would then need to work out an appropriate process for that to occur.

1. A full inquiry will take a number of years.
2. It may be possible to undertake a staged inquiry that will enable us to enter into direct negotiations before the Tribunal has completely finished its inquiry, but this may still involve us entering into direct negotiations with the Crown without having the benefit of a full Tribunal report. If this is able to be done, we may be able to re-enter into negotiations with the Crown sooner.

SUMMARY

Whakatōhea Pre Settlement Claims Trust and its representatives from Ngai Tamahaua, Ngati Rua, Ngati Patu, Ngati Ngahere, Ngati Ira, Upokorehe, Opape marae, Omarumutu marae, Waiaua marae, Terere marae, Opeke marae, Kutarere marae, and Maromahue marae all support a **VOTE YES** for continuing the settlement.

The Trust does not support the remandating option. The Trust has representatives from Whakatōhea hapū and marae. We believe this is an appropriate form of representation for our Iwi.

Remandating would take a couple of years to consult with iwi about what kind of new model would be used and for that new mandate strategy to then be ratified by an iwi vote. There is no guarantee a new entity would be able to improve the offer that is already on the table.

The Trust does not support the option of having a full district inquiry. The independent explanatory statement states that on average a Tribunal District Inquiry takes "between two and six years to complete but it may be longer depending on how much time is necessary to complete the research programme". This would need to be followed by a new mandating process and negotiation, so overall, it could take between five and ten years.

The wide range of discussions the Trust has had through the Raupatu working party and Tu ake Whakatōhea led to the decision to go to direct negotiations. Whakatōhea whānau agreed to this when they strongly supported the mandate strategy.

The Trust supports continuing direct negotiations because a Historic Inquiry is unlikely to result in a better settlement offer than the one we currently have on the table. The Crown accepted that all our whenua was taken and that they need to apologise for their actions. Our Settlement offer (\$100m, return of 6692ha whenua, and 5000ha of marine space) was based on this.

The additional value of an inquiry in terms of getting research and telling our stories can be done in other ways. Our settlement does not have to wait for an inquiry to create a strong foundation for our future.

We encourage all Whakatōhea whānau to vote, as they did two years ago, in support of the mandate, when 91.6% of those who participated in the vote, voted in favour of the mandate.