

Rāhina, 7 Whiringa-ā-rangi, 2016

Māori Affairs Select Committee
Parliament Buildings
Wellington

Tēnā koutou,

New Plymouth District Council (Waitara Lands) Bill 2016

Tuia te rangi e tū nei, tuia te papa e takoto nei, ka rongo te pō, ka rongo te ao, i te kōrero, i te wānanga, puata i te mārāma ahunuku, te mārāma ahurangi, te mārāma ka takoto i te āio, tuia te rangi tokona te rangi ki te whai ao ki te ao mārāma, E mihi ana ki te mana o te kaunihera, ōna tupua me ōna tawhito, me ōna whare tūranga kōrero e tū nei, te taunga o ngā kōrero taumaha i rangona ai a mamae nui, a mamae roa, i ngā hē o te Kāwanatanga me ngā kaunihera i roto i ngā tau – e tangi ana ki te hunga kāore i te kite, i te rongo i ngā whakataunga o ngā mamae i ēnei rā, Heoti anō te wāhi ki a rātou, atu i te mea, ka nui rā te tangi ana kia rātou. Huri te pō, hāere mai te ao mārāma...

Introduction

1. This submission is presented on behalf of Te Kotahitanga o Te Atiawa Trust ('**Te Kotahitanga**') opposing the New Plymouth District Council (Waitara Lands) Bill 2016 ('**Bill**').
2. Te Kotahitanga Trustees oppose this Bill as we believe that the provisions of the Bill are not in the best interests of Te Atiawa. The rationale for opposing the Bill is set out in our submission below.
3. Te Kotahitanga is the post-settlement governance entity for Te Atiawa. It is a private trust that has the purpose of receiving Treaty settlement assets and holding, managing and administering the Trust Fund for the benefit of members of Te Atiawa.

Background

4. In August 2014, Te Atiawa signed their Deed of Settlement for the historical Treaty of Waitangi Claims. The return of lands in Waitara were not included in this Deed of Settlement.
5. Also in August 2014 the New Plymouth District Council ('**NPDC**') and Te Kotahitanga entered into a Heads of Agreement regarding the Waitara Endowment Lands. This was partly in recognition of the significance of the lands in Waitara to Te Atiawa and the nation, as well as

a way to have some Waitara land returned to Te Atiawa.

6. At the time the Heads of Agreement was entered into, the Trustees believed that the following high level principles of the proposal had the potential to provide some benefit to Te Atiawa and the broader Waitara community:
 - The transfer of some land in Waitara to Te Atiawa;
 - The right of leaseholders to freehold their properties;
 - The lifting of restrictions on how proceeds from the endowment lands can be utilised; and
 - The establishment of a Statutory Board to determine how proceeds can be distributed for the benefit of Waitara.
7. It is noted that the timeframes for entering into the Heads of Agreement did not allow time for the Trustees to engage in any meaningful way with Te Atiawa on what was being proposed. The Heads of Agreement was signed on the basis that it was a non-binding agreement and that there would be time for Te Kotahitanga to discuss the proposal with Te Atiawa prior to any finalisation of the proposal.
8. Te Kotahitanga Trustees engaged with NPDC in good faith to work through the high level principles upon which the proposal for the Bill had been developed. However, it was clear from the outset that there were significant limitations on what Te Kotahitanga could achieve through this engagement, as a decision by NPDC as to what land would be available for transfer has been made prior to the Heads of Agreement being signed.
9. While it was the preference of Te Kotahitanga to have significantly more land in Waitara transferred to it, the decision was made by NPDC that the only land available for transfer to Te Atiawa are those lands set out in the Bill.
10. In parallel to the engagement with NPDC, Te Kotahitanga Trustees were also engaging with representatives from both Manukorihi and Otaraua Hapū. Engagement with these hapū was focused on the high level principles of the proposal.
11. Despite being engaged throughout the development of the high level principles of the proposal Te Kotahitanga was not engaged in the drafting of the Bill and the detailed provisions set out in it. A draft Bill was provided to Te Kotahitanga prior to its release for public consultation, but there was not sufficient time or ability to make any significant changes to the draft Bill at this point.
12. While there was initial agreement of Te Kotahitanga with the high level principles of this proposal, there are a number of components to the proposal and specific clauses in the Bill where Te Kotahitanga was not in agreement with NPDC.
13. Upon the public notification and consultation by NPDC of the Bill, Te Kotahitanga prepared and submitted a substantial submission and presented that submission at the NPDC public hearing.
14. Following the public hearing process, NPDC met to consider the final form of the Bill. Decisions were made regarding subsequent amendments to Bill based on the submissions received. Many of the submissions of Te Kotahitanga were not included in the final Bill approved by NPDC for introduction to the House of Representatives.

15. Prior to the final decision of NPDC on the Bill, Te Kotahitanga sought to present a deputation to NPDC regarding our dissatisfaction with those aspects of our submission not adopted, but this request was declined.
16. Having reviewed our position following the public hearing process, it is our strong view that even if all of the suggested amendments to the Bill were adopted, the proposal would still fall short of where it should be. The base position of NPDC was not in the spirit of clause 117 of our Te Atiawa Deed of Settlement, and did not acknowledge the history of the land.

Opposition to the Bill

17. The decision of Te Kotahitanga to oppose the Bill, following good faith engagement with NPDC on its high level principles, was not a decision made lightly. As such, our submission sets out our views based on the following rationale:
 - A. Te Atiawa people deserve to have more land returned;
 - B. The Waitara community deserves certainty and prosperity; and
 - C. New Zealand deserves to know the truth about Waitara.

A. Te Atiawa people deserve to have more land returned

18. The Trustees of Te Kotahitanga are elected by the people of Te Atiawa; we are accountable to them and must act in their interests and benefit.
19. We have held hui with Te Atiawa hapū leaders, with Te Atiawa people living in Waitara, with Te Atiawa people living outside Taranaki. We have listened with an open mind to views on the Bill.
20. The consistent messages we have heard are:
 - a) NPDC is in possession of lands that were confiscated from Waitara whanau and hapū in 1865;
 - b) The Waitara lands were taken illegally, which successive Governments have acknowledged, and therefore must be returned (*I riro whenua atu me hoki whenua mai*);
 - c) Returning as much of the land as possible will start the healing of the mamae from the 1860s land wars and recognise the principled stand taken by our tupuna who fought to hold onto the land;
 - d) The return of land and resolution of historical Waitara land grievances ought to take priority over freeholding rights for Waitara leaseholders;
 - e) Waitara leaseholders ought to be able to freehold their property;
 - f) The current freehold pricing mechanism in the Bill is not affordable and will cause hardship to Waitara leaseholders, some of whom are Te Atiawa;

- g) NPDC and Taranaki Regional Council (“TRC”) should not profit from the sale of the freehold titles;
 - h) TRC’s portion of income from freehold sales should only be spent in Waitara;
 - i) Income from freehold sales will be significantly reduced by administrative fees and will not offer significant benefit to Te Atiawa people;
 - j) Under the Bill, land transfer to Te Kotahitanga is minimal, is mostly public reserve land still controlled by NPDC, and is unable to be developed for Te Atiawa benefit; and
 - k) Te Kotahitanga settlement money should not be used to purchase stolen land at commercial rates.
21. The minimal transfer of land to Te Kotahitanga in the Bill falls well short of Trustees’ expectations and the Office of Treaty Settlement (“OTS”) expectations as expressed in submissions to NPDC on the proposed Bill:

...it was the preference of the Trust to have significantly more land in Waitara transferred to it, but it was the decision of Council that the only land available for transfer to the Trust are those lands set out in the Bill.

The negotiation for the inclusion of clause 117 in the Settlement Bill, signaled an intention to negotiate the return of some land to Te Atiawa and to provide an incentive to the Council to deal with Te Atiawa in this respect – the incentive being that should the Crown sell or transfer land to Te Atiawa that the proceeds from that land would be freed from restriction. What has evolved from discussions is that the Council are only prepared to offer the Transfer Land, Brown Road Land and RFR Land to Te Atiawa but are still seeking the lifting of restrictions regarding the distribution of proceeds over all endowment land in Waitara.

- Te Kotahitanga submission to NPDC, 30 May 2016

22. The OTS submission to NPDC dated 20 May 2016 on the proposed Bill stated:

Our assessment of the Local Bill is that of 165 hectares of land, approximately 13 hectares transfer to Te Atiawa for their own use, 30 hectares of land is to be transferred to Te Atiawa in name only. Some of this land is given first refusal status and the rest is leasehold land which NPDC will be able to sell without reference to Te Atiawa.

The purpose of Clause 117 of the Settlement Bill is to facilitate the return of all endowment land to Te Atiawa and to enable Te Atiawa to have a say in its further use. This includes all endowment land subject to this Local Bill. Conversely this Local Bill limits Te Atiawa’s input to the future sale of the Council’s lessor interests for much of the endowment land and limits the land to be returned to Te Atiawa.

The land Te Atiawa will receive through this Local Bill is offered with significant restrictions on Te Atiawa’s ability to use the land. As the drafting of the Local Bill stands, the leaseholders, including the leaseholders of the land included in the right of first refusal (RFR) have first option to freehold ahead of Te Atiawa. If leaseholders choose not to freehold, or the Council determines to sell the lessor interest, Te Atiawa have no preferred

standing, and the Council is free to sell the lessor interest on the open market. This is in direct conflict to the intention of Clause 117 Settlement Bill.

B. The Waitara community deserves certainty and prosperity

23. The Trustees are aware that the Bill has created a lot of uncertainty and tension in the wider Waitara community and the way the Bill was proposed has pitted Te Atiawa and Waitara hapū against the Waitara leaseholders, despite the Statement of Proposal intentions:

For many years, Te Atiawa have fought for the return of land confiscated in 1865 by the Crown and Waitara leaseholders have sought to purchase the freehold title to their properties. This Bill proposes a way forward to address these competing interests in a manner that benefits the whole Waitara community.
(NPDC Statement of Proposal April 2016)

24. Te Kotahitanga Trustees attended the public hearing held by the NPDC and listened closely to the Waitara community submissions before presenting our own submission on the proposed Bill.
25. The Trustees were disappointed with the final Bill which had minimal substantive changes, which failed to address the freehold pricing concerns of the community (supported by Te Kotahitanga), and which failed to take seriously the submissions of the Waitara hapū for the return of confiscated land.
26. The Trustees are aware that some leaseholders feel threatened. They are concerned that they will lose their homes if developers are able to buy the freehold titles from the Council, raise the cost of the lease so high that they are forced to sell their leasehold and relinquish their homes of 50 plus years.
27. The Trustees consider that the Waitara community deserves to be treated with more respect by NPDC and TRC and that better solutions can be found that do not polarise one section of the community against another but allow everyone to participate in finding livable and practical solutions for all in Waitara to prosper.
28. Waitara lies at the heart of the land confiscations in Taranaki. The Waitara hapū (Manukorihi and Otaraua) are acknowledged as mana whenua in Waitara. A prosperous future for the Waitara community must include solutions driven by these hapū, the leaseholders, residents, business owners, and others with vested interests in Waitara.
29. Currently the benefits of the Bill are weighted too highly in favour of NPDC and TRC with too high a social and economic cost to the Waitara community.

C. NZ deserves to know the truth about Waitara.

30. The current Bill does not (nor was it intended to) address the historical grievances related to the confiscations of Waitara lands and other Crown breaches. Those grievances are intended to be addressed in the Te Atiawa Claims Settlement Bill currently awaiting a third and final reading before Parliament.

31. The Trustees noted in their submission to NPDC on the proposed Bill:

The Trust wishes to state that this Bill does not settle the historic grievances for Te Atiawa and our hapū within Waitara. The provisions in the Bill will never be enough to compensate Te Atiawa for the trauma our people have been exposed to over time, and they are not sufficient to right the wrongs or satisfy every iwi member. We also understand that it is not the intention of Council to settle these historic grievances either.

32. During the process of making submissions on this Bill, it has become clear to the Trustees that the history of the Waitara lands and the injustices suffered by Te Atiawa people as a result of losing control of those lands is not well understood by local people living on these lands, by the two councils, and by the New Zealand public.
33. Recent peace marches in Taranaki and the decision by the Government to commemorate October 28 as Rā Maumahara / National Day of Commemoration of the wars has raised awareness of the land wars but the focus has been largely in the Waikato, not in Taranaki.
34. In Waitara, where the first shots of war were fired on 17 March 1860, there is a pressing need for a truth and reconciliation process and renewed community relationships based on mutual understanding and respect.
35. The Bill misses a prime opportunity to enable truth and reconciliation to be an integral part of the Waitara lands freeholding process. Apart from minor mention in the Preamble, the Bill pays no attention to how the lands were endowed / vested in the Council, instead the primary purpose of the Bill is to allow leaseholders to freehold and to remove restrictions on how income is spent.

Conclusion

36. Te Kotahitanga Trustees cannot, and do not, support this Bill as we believe that the provisions of the Bill are not in the best interests of Te Atiawa.
37. Our Te Atiawa iwi members and Waitara hapū are overwhelmingly opposed to this Bill and to ignore this opposition would go against the very reason that Te Kotahitanga was established.
38. Te Kotahitanga Trustees recommend that the NPDC withdraw the Bill and /or that the Select Committee do not recommend the passing of this Bill.
39. Te Kotahitanga Trustees are willing to work with NPDC, TRC and the Crown to seek a more enduring and satisfactory solution.
40. Te Kotahitanga seeks an opportunity to be heard in support of this submission to the Māori Affairs Select Committee.
41. It is understood that there is a request for Select Committee submissions to be heard in Waitara and this is fully supported by Te Kotahitanga.
42. Furthermore, we respectfully request that any Select Committee hearing dates avoid the

following culturally significant days in Taranaki prior to the end of March 2017:

- Ngā Rā Karanga o Parihaka (18 and 19 of every month);
- Te Rangihiroa Day (26 November 2016); and
- Land Wars Commemoration (17 March 2017).

43. If you have any queries or require any further information, please do not hesitate to contact us.

Noho ora mai



Liana Poutu
Chairperson