

13 June 2022

REF: OIA 83378

Mike Patrick
FYI Website

By email: fyi-request-19326-a3958fd6@requests.fyi.org.nz

Tēnā koe Mike

Request for official information

Thank you for your email of 12 May 2022 to Hon Kelvin Davis requesting under the Official Information Act 1982 (the Act) information relating to annual leasing cost to the Crown of properties sold to iwi as part of Treaty settlement commitments. On 13 May 2022, you were advised that your request had been transferred to the Office of Māori Crown Relations: Te Arawhiti for response. Specifically, you requested:

As part of the redress provided to iwi under treaty settlements the crown often offers iwi the opportunity to buy properties owned and used by the crown for things like police stations, courts, schools provided the crown can lease those properties back from the iwi so it can still be used as a police station etc.

- 1. Can you please tell me the number of properties sold and leased back by the crown to iwi every year since the year 2000, the sale price of those properties and the annual rents paid by the crown. Ideally please provide this information for each property, but if that is too difficult then just the total sale value each year and the total amount of rent paid by the crown each year.*
- 2. I understand two iwi have as part of their treaty settlements with the crown a relativity mechanism arrangement where once the value of all treaty settlements exceeds one billion dollars they receive 16 or 17% of the amount over one billion dollars paid directly to the iwi. Can you please tell me how much additional money under this relativity mechanism has been paid to each iwi, and what if any estimates you have for the amount of payments in future years. Please also advise how much of the annual rent payable for properties sold by the crown to iwi and leased back to the crown has and is contributing to the amount of additional money the two iwi receive to retain relativity with other treaty settlements.*

In response to part one of your request, we refuse your request under section 18(e) of the Act, on the grounds that Te Arawhiti has no document containing this information. While Te Arawhiti leads the Treaty settlements negotiation process for the Crown, we do not administer post-settlement property

portfolio transactions. That responsibility sits with other agencies such as the Ministry of Education. We can, however, provide some general information on sale and leaseback arrangements. Sale and leasebacks either occur on settlement date as part of the properties transferred in settlement, or as deferred selection properties. The transfer of deferred selection properties takes place after settlement date and is a matter between the land holding agency and the settling iwi. Information on sale and leaseback properties transferred on settlement date are publicly available online under the relevant settlement at: <https://www.govt.nz/browse/history-culture-and-heritage/treaty-settlements/find-a-treaty-settlement/>

In response to part two of your request, we note you ask three questions, which we address below.

First question: "Can you please tell me how much additional money under this relativity mechanism has been paid to each iwi?"

The relativity mechanism is a contractual obligation entered into by the Crown as part of the 1995 Waikato-Tainui (raupatu) settlement and the 1997 Ngāi Tahu settlement. The relativity mechanism provides for additional payments to be claimed by these two iwi every five years to maintain their settlements at a certain percentage of total settlement expenditure (17% for Waikato-Tainui and around 16.1% for Ngāi Tahu).

The amounts paid to date are approximately \$293 million to Waikato-Tainui and \$301 million to Ngāi Tahu. Further details are available on the following web-pages, under the heading "supporting documents".

<https://www.govt.nz/browse/history-culture-and-heritage/treaty-settlements/find-a-treaty-settlement/waikato-tainui-raupatu/>

<https://www.govt.nz/browse/history-culture-and-heritage/treaty-settlements/find-a-treaty-settlement/ngai-tahu/>

Second question: "what if any estimates do you have for the amount of payments in future years?"

These estimates are confidential for two reasons:

1. they depend in part on the amounts for future settlements that are yet to be negotiated; and
2. they are subject to an ongoing dispute resolution process between the Crown and the two iwi.

The next five-yearly payments can be claimed by the iwi at the end of this year. Payments made in response to any claim will be released publicly, and the website will be updated accordingly.

The information you seek is therefore withheld under:

1. Section 6(c) (prejudice to the maintenance of the law); and
2. Section 9(2)(j) of the Act to enable negotiations to continue without prejudice or disadvantage. We have considered section 9(1) of the Act and do not consider that the withholding of that information is outweighed by other considerations which render it desirable, in the public interest, to make that information available.

You have the right to seek an investigation and review by the Ombudsmen of this decision. Information about this process is available at www.ombudsman.parliament.nz or phone 0800 802 602

Third question: "How much of the payments relate to rent on properties sold by the Crown to iwi and then leased-back?"

Relativity mechanism payments are not based on rental payments, but on the value of the property transferred in settlement. As noted above, in some cases, the settling iwi are given the opportunity to purchase sale and leaseback properties as deferred selection properties after the settlement date, and outside the financial and commercial amount. These properties are not part of the settlement value accounted for in the relativity mechanism.

Nāku noa, nā



Matthew Andrews
Chief Legal Advisor