

## NMOW Trust Administrator

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**From:** Tom McClurg <Tom@torostrategy.co.nz>  
**Sent:** Monday, 29 July 2019 2:50 p.m.  
**To:** Stephanie Forrest; maui@xtra.co.nz; Trust Chair (trustchair@nmow.co.nz); Gail Amaru; NMOW Trust Administrator; Monique Croon ; hnhdaymond1@gmail.com; Ward Kamo; Tony Tumoana  
**Cc:** Jacob Taulealea  
**Subject:** RE: Chatham Islands Properties

Stephanie,

We would like to meet to discuss the schedule provided below as soon as possible but before doing so request some further information.

As covered by earlier correspondence from us, what you say about succession is correct under section 40, but properties subdivided from the original taking from Mitai Tini) must be dealt with under section 41 pertaining to land that was Freehold Maori land or general land owned by a Maori. As you must be aware, the succession rules relating to such Maori land are different to those applying to section 40. By these legal Maori succession rules (applying under section 41) three successors to Mitai Tini were identified formally after his death. The relevant successors today are the successors of those three Maori who are also deceased and a full list of contemporary successors would need to be identified by the Maori Land Court.

Our expectation is that LINZ would apply section 41 properly and cease the ridiculous pretence that Mitai Tini was not Maori and therefore subject to section 40. It is our view that none of the former Mitai Tini land should be land banked prior to an offer back process to his Maori successors and it is remiss that this is occurring. Please do not compound this error. We are astonished that we were not consulted prior to the decisions made on 2 June 2017 given our well-known views on this topic.

For the record, it plainly not our position that former hospital block land should be sold directly by private treaty to as yet un-named successors as is described in the table below. To my knowledge that has not been either proposed or supported by us in our Treaty negotiations. In particular, you will note that we have never mentioned the option of a private treaty sale under s42(1)(d) in either the letter to Andrew Crisp or the subsequent letter signed by Johnny Kamo. All of our correspondence makes very clear that what we favour is an offer back to successors determined according to the appropriate (Maori) rules of succession under the Public Works Act.

We believe the next appropriate step for LINZ to take is to request the Maori Land Court to compile a list of extant successors of Mitai Tini to whom an offer back (or offer backs) can be made. If you are unwilling to apply Maori succession rules in this instance, please provide a fuller explanation as to why section 41 is not being applied. In our view, this is the first topic for discussion at the meeting you propose, and depending on the outcome of that discussion, other options will unfold logically.

We do not agree that an offer back need not be made simply on the grounds that the land use has changed significantly since it was taken. Surely this is the very purpose of the taking and in this case opens the very sensitive issue about how that original purpose was unilaterally replaced with others to support other Government agencies over time. Such abuse of process is not a sound reason to deny the rights of successors.

We have no issue with other land that was not derived from Mitai Tini being land banked following an unsuccessful offer-back (Meteorological Lane and the Depot).

Thank you,

Tom McClurg, Lead Negotiator

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**From:** Stephanie Forrest <StForrest@linz.govt.nz>  
**Sent:** Monday, 29 July 2019 12:40 PM  
**To:** Tom McClurg <Tom@toroastrategy.co.nz>; mauis@xtra.co.nz  
**Cc:** Jacob Taulealea <jtaulealea@linz.govt.nz>  
**Subject:** Chatham Islands Properties

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Kia ora Mr McClurg/Mr Solomon

Late last year I was appointed as the new Group Manager, Land & Property Wellington in Crown Property at LINZ. I am responding on LINZ behalf in respect of decisions LINZ have made pursuant to section 40 of the Public Works Act 1981 ("the PWA").

I have recently been advised by Te Arawhiti that both Ngāti Mutunga and Moriōri imi are reconsidering their agreement with the Chatham Islands Housing Partnership Trust (CIHPT) in terms of a purchase of specific LINZ sites outside of the Treaty settlement negotiations between the Crown and the respective iwi/imi groups.

One of those properties is at Hight Place which I understand was the centre of discussions regarding offer-back under the Public Works Act 1981 between both of you and senior management within LINZ mid last year. The main issue that is still pertinent today is the decision by LINZ not to offer the land back to the former owner or to his successors under the provisions of the PWA. This was not a decision made in error and there is case law which supports the LINZ reasons for not carrying out the offer-back process. The Courts have clarified that for the purposes of Section 40 "successor" is interpreted as the "immediate successor" of the former owner.

In any event an alternative was proposed by my colleagues last year, which would require a possible waiver in writing from both Ngāti Mutunga and Moriōri imi saying that they waive their right to offer of commercial redress in circumstances where the Crown could instead sell to whānau. The alternative approach relates to the land at Hight Place being sold specifically to Ngāti Mutunga whānau under s.42(1)(d) of the PWA which could possibly be the best outcome for all parties. However, our records indicate that in July 2018 Maui Solomon made it clear to LINZ that Moriōri were not agreeable to the proposed solution advised to Tom McClurg.

Since that date LINZ has been liaising with Te Arawhiti and their Negotiations team – Ben White and Sam Ritchie and reiterated the LINZ position.

Ngāti Mutunga have also requested further detail around a number of other properties being considered for the CIHPT. Our files indicate that the public works acquisition relating to #4 Meteorological Lane, #6 and #7 Wilson Place were part of the same 'taking' as 9 Wilson Place and the Hight Place property. We advise in relation to these sites:

**6 & 7 Wilson Place: LINZ properties where the disposal process started in 2016**

Iwi questions	LINZ response
Whether LINZ has determined no offer-back to successors was required;	Yes – LINZ made the Sec 40(2)(a) decision on 2 June 2017. The reason for LINZ not carrying out the offer-back process for the properties at 6 and 7 Wilson Place to the former owner was because these properties were acquired from the same former owner as Hight Place. The response for not proceeding with the offer-back is consistent with the Hight Place property.
Under what basis this decision was made for each site;	Ngawhata Page and Honey Thomas are successors appointed by the Waitangi Tribunal, however they do not constitute “immediate successors” under Sec 40(5) for the purposes of Section 40. As noted above the reasons for LINZ not carrying out the offer-back process for this property to the former owner is the same basis for the decision on Hight Place - as this property was also acquired from the same former owner.
Whether LINZ consider these sites could be offered back to the whānau of the original owner, subject to the agreement of both iwi;	Please note any actions proposed by LINZ <i>if agreed by Ngāti Mutunga and Morioiri imi</i> would not be an offer-back to the former owner in terms of the PWA. The proposal put forward by LINZ is that we dispose/sell the land directly to the whānau- which is allowed for under the PWA if the section 40 process is completed – which in our view was concluded in 2017. As part of the process, the direct sale option under the PWA includes a current valuation for the land and a purchase price agreed between LINZ and the relevant parties.
Whether LINZ are considering re-running the offer-back process in relation to these sites.	No – but a person with sufficient interest in a property can request a judicial review of the LINZ decision.

**#9 Wilson Place - is a Landbank property disposal which commenced in 2018:**

Iwi questions	LINZ response
Whether LINZ has determined no offer-back to successors was required;	This property has been in the Landbank since 2014. The section 40 decision was made in 1995 after the Ministry of Agriculture and Fisheries had decided they no longer needed the land for the purpose. The acquisition history shows that it was also acquired from the same former owner as Hight Place.
Under what basis this decision was made for each site;	The reason for LINZ not carrying out the offer-back process for this property at 9 Wilson Place is because the land had significantly changed from being bare land at its initial acquisition to having improvements at the time of offer-back.

Whether LINZ consider these sites could be offered back to the whānau of the original owner, subject to the agreement of both iwi;	Please note any actions proposed by LINZ <i>if agreed by Ngāti Mutunga and Morioiri imi</i> would not be an offer-back to the former owner in terms of the PWA. The proposal put forward by LINZ is that we dispose/sell the land directly to the whānau – which is allowed for under the PWA if the section 40 process is completed – which in our view was concluded in 1995. As part of the process, the direct sale option under the PWA includes a current valuation for the land and a purchase price agreed between LINZ and the relevant parties.
Whether LINZ are considering re-running the offer-back process in relation to these sites.	No – but a person with sufficient interest in a property can request a judicial review of the LINZ decision.

**#4 Meteorological Lane – is a Landbank property disposal which commenced in 2015:**

<b>Iwi questions</b>	<b>LINZ response</b>
Whether LINZ has determined no offer-back to successors was required;	Yes – LINZ made the Sec 40(2)(a) decision on 2 June 2017. The reason for LINZ not carrying out the offer-back process for the property at 4 Meteorological Lane to the former owner is based on previous case law. As these properties were acquired from the same former owner as Hight Place the response for not proceeding with the offer-back is consistent with the Hight Place property and Wilson Place properties.
Under what basis this decision was made for each site;	As noted above the reasons for LINZ not carrying out the offer-back process for this property to the former owner is the same basis for the decision on Hight Place - as this property was also acquired from the same former owner.
Whether LINZ consider these sites could be offered back to the whānau of the original owner, subject to the agreement of both iwi;	Please note any actions proposed by LINZ <i>if agreed by Ngāti Mutunga and Morioiri imi</i> would not be an offer back to the former owner in terms of the PWA. The proposal put forward by LINZ is that we dispose/sell the land directly to the whānau – which is allowed for under the PWA if the section 40 process is completed – which in our view was concluded in 2017. As part of the process, the direct sale option under the PWA includes a current valuation for the land and a purchase price agreed between LINZ and the relevant parties.
Whether LINZ are considering re-running the offer-back process in relation to these sites.	No – but a person with sufficient interest in a property can request a judicial review of the LINZ decision.

**Depot Yard, Waitangi-Tuku Road – is a LINZ property disposal which commenced in 2017:**

<b>Iwi questions</b>	<b>LINZ response</b>
Whether LINZ has determined no offer-back to successors was required;	Yes – LINZ made the Sec 40 decision in June 2018 that there were successors to the former owner and an offer was made to those successors based on a current market valuation (CMV) for the property.
Under what basis this decision was made for each site;	There were successors to the former owner who were still alive at the time the section 40 process started. LINZ made an offer of the land at CMV in Nov 2018 to named successors to the former owner who had a statutory 40 working days timeline to accept or decline the offer terms. The successors of the former owner responded to the s.40 offer-back with a counter offer for the property and while this was considered by LINZ, it was not accepted. The s.40 process effectively closed after the expiry of the 40 working day period.
Whether LINZ consider these sites could be offered back to the whānau of the original owner, subject to the agreement of both iwi;	This property was offered back to the successors of the former owner as required under the PWA. The circumstances surrounding the sale of this property on the basis of a preferential sale to the whānau of Mitai Pupu would not apply in this case as Mitai Pupu was not the former owner in the case of this property. To be fair to the successors of the former owner for this property LINZ would not be able to sell the property to any other person(s) <i>at any price lower than the offer price made to the successors of the former owner for this property</i> . Otherwise LINZ would be seen as not being fair and reasonable to the successors of the former owner for this property.
Whether LINZ are considering re-running the offer-back process in relation to these sites.	No – the decision made was to offer back the land to the successors of the former owner and it was carried out by LINZ so there would be no basis for a judicial review because an offer-back was completed.

Jacob Taulealea and I would be keen to meet with you both at a mutually convenient time/venue to further clarify the processes regarding the PWA if necessary and explore the private treaty sale option under s.42(1)(d) of the Act for Hight Place as noted above and whether we can secure the agreement of both Ngāti Mutunga and Moriori imi to the proposal by LINZ.

I look forward to hearing from you as to when you might both be available to meet.

**Best regards**

**Stephanie Forrest**  
**Group Manager, Land & Property Wellington**  
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