

Ngāti Mutunga o Wharekauri Iwi Trust

Purpose: Hui-ā-iwi

Venue: Whakamaharatanga Marae, Te One, Wharekauri

Date: Wednesday, 17 May 2017

Subject: Initial offer by the Crown to Ngāti Mutunga o Wharekauri

Attendees:

Eileen Cameron, Raana Tuuta, Lois Croon, Val Croon, Elanor Amaru, Kathy Daymond, George Goomes, Jeanette Page, Tom McClurg (Lead negotiator), Hariroa Daymond (Negotiator), Geoff Mullen (Negotiator), Paula Page (Iwi Trust Co-Chair), John Kamo (Iwi Trust Co-Chair), Monique Croon (Iwi Trust trustee), Mahara Gilsenan (Iwi Trust trustee), Steve Tuuta (Iwi Trust trustee), Gail Amaru (Iwi Trust GM), Tony Tumoana (Negotiations support).

Apologies:

Melodie Eruera-Fraser (Iwi Trust trustee), Iwiroa Wairua (Iwi Trust trustee), Phil Seymour (SGG Chair), Nick Cameron (SGG).

Hui:

The hui commenced with karakia at 6.20pm. This was followed an introduction on the kaupapa for the hui. The hui was conducted in a relaxed manner and attendees were encouraged to ask questions or make comments during the presentation.

Attendees were provided with copies of the PowerPoint presentation, the Special Factors papers, Summary of Special Factors, and a copy of the Crown's Initial Offer dated 28 April 2017.

The presentation agenda was:

- Settlement Aspirations
- Components of the Initial Crown Offer 28 April 2017
 - Covering letter content
 - Covering letter comments
- Schedule 1 Crown Apology redress
- Schedule 2 Cultural redress
 - Te Whaanga

- Customary Fishing
- Joint Planning Committee
- Cultural Sites
- Statutory Acknowledgements
- Relationship Redress with Crown Agencies
- Name Changes
- Auckland Islands
- Schedule 3 Financial and Commercial redress
 - Financial Redress
 - Commercial Redress
- Unresolved Issues
- Unaddressed Issues
- Ngāti Mutunga o Wharekauri response?

Questions and Comments

Tom McClurg spoke to the PowerPoint presentation on the Initial Offer by the Crown. His general comments included:

- the proposed Agreement in Principle timeframe by the Crown is unrealistic as it hasn't addressed any of Ngāti Mutunga o Wharekauri (NMOW) 30 Special Factors in its Initial Offer;
- the desire of NMOW to move forward in a negotiations environment where significant information is shared between parties;
- NMOW mana whenua remains an outstanding issue with the Crown;
- Schedule 1 acknowledges only a few of the problems the Crown has created on-island;
- Moriori settlement has already had its Special Factors acknowledged by the Crown and it forms part of the redress offered to it by the Crown;
- the establishment of a Management Arrangement with Moriori, NMOW, Chatham Islands Council, and Department of Conservation requires initial funding;
- the development of new customary fishing regulations presents NMOW with a long-term opportunity;
- the offering of Wharekauri 106 raises concerns about what has been offered to Moriori in fee simple title;
- inclusion of Ministries of Education, Health, and Justice to the Relationship Agreements;
- seeking suggestions for replacement names;
- erecting a Pou on the Auckland Islands;
- Schedule 3 – Financial and Commercial;
- Mana whenua;
- Raupatu;
- Special factors;
- Crown response; and
- seeking champions to act as subject matter experts.

The cemetery [Wharekauri 106] is where they buried all the people that don't come from here. Do you know who is buried there?

Tom McClurg: I don't know

Geoff Mullen: I understand that it is whalers, Māori, and Moriori

But it's not really our people

Geoff Mullen: It's a bugger this is Chathams history rather than NMOW

We were told it is where strangers were buried so we didn't go there

Tom McClurg: It is not a well-defined area. We have heard that people who died during the epidemic are buried there. It is not a site that NMOW has sought the return of but we know that urupā need to be protected and maintained. The Leach report contains wahi tapu sites of significance to Moriori and NMOW. It is unclear why the Crown would award this to us. The Leach report also assumes kōiwi buried in the sand dunes are Moriori. We can accept small and discreet areas in fee simple that do not block access to the sea or the lagoon.

What about Taia?

Tom McClurg: We have written to the Minister of Conservation and the Ombudsman complaining about the process of the vesting of Taia Block in the Hokotehi Moriori Trust, the lack of information around this process, and the lack of engagement with NMOW over the process. We are hoping to have an impact on this process as we feel Taia should be made available to both iwi as redress.

Geoff Mullen: A wahi tapu committee would be able to manage this for both iwi.

Do we know the Tikitiki cultural value and significance to NMOW?

Tom McClurg: Hill to the road.

Does this require further research?

Tom McClurg: We should enter a 50/50 partnership and then ask what people want to do. Moriori will say yes as they are more liberal in expressing their cultural values.

Geoff Mullen: The pūrākau and the use as a signal fire represent the significance to both iwi.

Wharekauri and the marginal strips – erosion is having an effect. How is this managed?

Geoff Mullen: By moving the fences.

Tom McClurg: The fences weren't on the original marginal strips – if it happens again it may lead to arguments with the land owners. Denny has done a great job erecting fences and we should support this work to continue.

Geoff Mullen: The customary redress doesn't come off the quantum.

Can further Departments be added to the Relationship agreement? If so I'd like to see the Ministries of Education, Health, and Justice added.

Tom McClurg: Yes – are there any others? We can add others later if anyone considers we should do this. It should also be remembered that these Relationship agreements are a lot of work for minimal result. Usually Departments only confirm delivery of services that they are already legally required to provide.

I'd like to see Ministries of Education, Health, and Justice added to the list.

Tom McClurg: Noted

Do you have an update about the Hospital block?

Tom McClurg: We have struggled to obtain reliable information regarding what is available, what is surplus, and what is offered back. The process is that it is offered back the original owners, then the Housing Partnership, and if either of these options are not taken, it will be offered to either Iwi.

When will the offer be made?

Tom McClurg: I will clarify this matter with the Crown and get back to you.

Mana whenua

Tom McClurg: Sharing ownership 50/50 of the bed of the lagoon with Moriori is an expression of NMOW mana whenua. In saying that we are mindful of the need for a whole-of-island outcome that fits with NMOW aspirations. Wi Naera made an offer to Moriori for both Iwi to “eat from the same bowl”. This was rejected by Moriori.

What year was that in?

Tom McClurg: It was made in 1870 during the Native Court hearings. Mana whenua is problematic for the Crown and it is not getting any easier. There is a way forward for the Crown if it accepts overlapping interests are everywhere. Our preference is for the Iwi to resolve outstanding matters but the Crown wishes to intervene if it considers that sufficient progress is not being made.

How long was the meeting with the Crown this week?

Tom McClurg: It was about 2 hours and it was similar to tonight’s presentation. There was little reaction from the Crown.

Geoff Mullen: The negotiators are seeking assistance from anyone who can feed information into the Special Factors.

Tom McClurg: It’s a matter of Special Factors vs compliance. Through this process we need to stick to the Treaty of Waitangi and the promises that it makes. While Moriori may have grievances, in comparison to ours they are narrow. When talking to Tony Walzl, our historian, he was surprised with the number of special factors that we have. In his experience, most Iwi struggle to identify more than a handful of special factors.

Hairoa Daymond: The letter that attached the Crown’s offer do not address the significant NMOW issues – mana whenua, 1840 rule, annexation, raupatu, and therefore the redress offered does not reflect this – or am I wrong?

Tom McClurg: No – you are not wrong. It is what the Crown is struggling to address – Treaty of Waitangi, Mana whenua, and the 1840 rule are all issues that are troubling the Crown. The historical truth is based on the 1840 rule as it is a compact between two people then. The Treaty of Waitangi sets out guarantees, which for NMOW start in 1842. That start date cements in place what is was here on Wharekauri at that time. The Treaty of Waitangi doesn’t retrospectively guarantee land on the grounds we now think it is fair for someone else to have it. It is a case of a 21st century perspective being applied to mid-1800s injustices.

It is extraordinary that the Crown will try settle with both Iwi while ignoring the Treaty of Waitangi – the settlement process is debased in that way. Cabinet sets a prescribed value which moves towards a prescribed

outcome. NMOW is remaining focussed on the Treaty of Waitangi and it is the basis of our discussions with the Crown. Hariroa is totally right and the Crown is wriggling like crazy around these issues.

Geoff Mullen: The basis of the Moriori claim is through Article 3.

Tom McClurg: If the Crown came in 1842 for a Treaty of Waitangi discussion then they would have had to have had that discussion with NMOW and would have been required to engage with us, or in particular, the representatives of the land owners. Therefore, NMOW would not have allowed Moriori to sign the Treaty of Waitangi. This view is based on mana whenua, it reflects the actual dynamics of the relationship, meaning that the only possible signatories to the Treaty of Waitangi would be NMOW. NMOW relationship with the Crown may be based on this and as part of the settlement we are required to honour our tupuna. The Crown has not yet got their heads around this point.

Hariroa Daymond: It feels like we are being bullied into accepting an AIP before we are ready. Often, we have heard from the Crown that if we don't comply we will go to the back of the line. Should we tolerate this behaviour?

Are they trying to do this before the election?

Tom McClurg: We are negotiating with the Crown – not the National Party and we are engaging with them in good faith but it is a Crown run process. We must continue to act in good faith as it stops the Crown from walking away from the table while saying that they are acting in good faith. Their threats are bluster. We should remember that Fran Wilde likes to get things done but she hasn't come into this with a clear understanding of the Chathams and its history. Her efforts have been to make agreements.

Were you able to express those feelings to her today?

Hariroa Daymond: I suppose I did.

Tom McClurg: The Crown is finding us difficult to bully. Fran has said to me that I am unreasonable. I replied how would you know how unreasonable I am until you use reason. How are people feeling about this? It's a bit of an emotional rollercoaster but there are opportunities for NMOW in this process.

You are doing an amazing job. Some of the work is complex but I feel that you and the team are doing an amazing job. Stick to our settlement aspirations.

Don't give up but stay in at the table for us.

It would be good if people could read the Special Factors papers as many people would be able to understand the issues and be able to discuss them.

Gail Amaru: They are on the Trust's website and copies are available from the Trust's office.

I was delighted to read the Special Factors papers as they capture the stigmatisation that I experienced when I worked at [the Hospital in New Zealand] and when I was identified as coming from the Chathams I was immediately identified as a Moriori. I had to explain that I was NMOW and our customs as they were during the 1830s.

A lot of work has been done and I am trying to get my head around this information but I know that the Crown is dodgy due to the overlapping issues they have created yet are asking you to resolve. The whakapapa is a

matter that needs to be resolved and should be an outcome of the settlement. NMOW mana whenua and mana moana stood at 1842 and we need to fight this otherwise it is a problem that will continue to pop up all the way through. This process should return the mana to the whenua. Do you see it this way?

Tom McClurg: Yes

The issue with the whakapapa needs to be resolved. It seems that the Crown has made the most of this situation for its own purposes. The whakapapa issue needs to be taken to Moriori and they need to be asked the question about who they are. It is true that NMOW invaded Wharekauri in 1835 and our tupuna had their reasons for undertaking this. But it should also be noted that the Broughton was here in 1791 and there had been interaction between European and Moriori for 30 years before NMOW arrived. This had an impact some of which NMOW has been blamed for. My research shows that the tangata whenua killed two people in 1835 and that set in motion the consequences that Moriori suffered. From these actions NMOW has been stigmatised without the full story being told. However, for those who are aware of the full story, there is a lot of sympathy for NMOW. We see things like Moriori wanting to change place names e.g. Nunuku's Cave. The Crown is dodging the overlapping issue and this needs to be put on the table.

Tom McClurg: Have a read of the Special Factors papers. We are interested in your views and if we have missed anything please let us know. Michael King's book is 25 years of propaganda against NMOW.

The resources that Moriori are drawing on for their story are narrow. If there are problems with this story then these issues need to be explored.

Tom McClurg: We are very pleased that you are interested in this.

The other claims – are they part of NMOW claim?

Tom McClurg: Yes – there are five.

Geoff Mullen: Each whānau needs to put their histories forward.

Tom McClurg: The Crown has put in an offer that is way off the mark and there is a long way to go before we get to the point where we bring an offer to the people that we feel is ready for their consideration. The next step in the process for us is to reach that point.

Harioa Daymond: I acknowledge your comments. We need more people to consider this information and comment, even if they disagree with what is being discussed.

I think that we need to be careful about being pushed by another iwi into to receiving nothing. It's important that we avoid this happening.

Paula Page: Office of Treaty Settlements thought that they had made us a good offer but they have hit a brick wall. After acknowledging our mana whenua they have attempted to pull back from that acknowledgment. We do need our people to have an input into the negotiations and we are continuing to hui with them. Tony Walzl put to bed some of the Crown's theories at the last hui (6 April 2017) and we are excited to have him involved in the next stage. Tom has done a lot of work on the Special Factors along with the input from the negotiation team. It's important to note that the Crown has yet to address our special factors in the negotiations and I think they were surprised that NMOW did not bow down to them following their initial offer.

I'm disappointed with the Crown's offer but I'm interested in what is happening in negotiations.

Harioa Daymond: There are lots of people like you who have not participated but are interested in progress and the outcome.

Paula Page: Moriori are shocked that we are being so open in sharing this information with our people. We hope this will lead to meaningful overlapping claims discussions between us. The Special Factors papers explain why things are the way they are on-island. The Minister for Treaty Negotiations has copies of these documents. We are not rushing this process.

Tom McClurg: It's fair to say that this process is a marathon rather than a sprint. The history of negotiations and the toll it can take is something the team is aware of and needs to be managed carefully. Not a lot of this will play out between us but we need to remain focussed on the Crown.

Geoff Mullen: As negotiators, we are taking an inclusive approach for a tūturu result.

With full and final settlement being reached and the NMOW claim being about injustice – how far does the settlement extent to?

Tom McClurg: The Crown set a cut-off date for historical claims in 1992. Special Factors Paper 3 brings the claim up to the present day. The Treaty relationship is from 1842 to today.

I consider the Fisheries settlement and Sealords deal as being injustices suffered by NMOW. How are these addressed through the settlement?

Tom McClurg: The Crown says the Fisheries settlement is full and final and the Special Factors papers do not address this. While the Fisheries settlement maybe full and final, the settlement also established an on-going relationship between Māori, and in our case NMOW, and the Crown, the benefit of which you are not yet getting for example the Blue-nose fishery. The Crown thinks that this has been done and dusted but the Treaty of Waitangi is a living document. The settlement changes the attitude and the behaviours of both Treaty partners and currently all that is happening is that the bill is being run up.

Harioa Daymond: Relationship agreements wouldn't be required if the Crown understood the concept of mana whenua.

Tom McClurg: Relationship agreements are telling in that Crown officials only engage to undertake what legal responsibilities they are already required to provide.

Mahara Gilsenan: Legislation allowed the Māori Trustee to acquire uneconomical blocks of land which effectively alienated whānau from their whenua – is any specific research being done on this matter?

Tom McClurg: What we need to do is to get as much redress as we possibly can – the basis of this are the Special Factors papers but these papers can be added to.

Mahara Gilsenan: I wonder how many people were disadvantaged through this process by removing their economic base with the end result being that they had to leave the Island?

Tom McClurg: I think a lot of people were affected by this.

The consequence has been to sever the whakapapa through a disconnection with the whenua.

Mahara Gilsenan: I think it is important that this take is addressed as part of the settlement.

Tom McClurg: A series of case studies would be useful.

I thought that you could take a claim up until 1992 but I choose not to.

The hui concluded with karakia at 8.30pm.