

Settlement Update: December 2018

On 6 December 2018, Minister Little presented us with a Revised Initial Settlement Offer. Three days earlier he had met with Moriori to confirm a Crown offer to them that contained a number of elements that we have previously objected to. This continues the very unsatisfactory “Moriori First” approach of The Crown to the two Chatham Island settlement negotiations which has handicapped the achievement of timely and fair outcomes.

The key components of the Crown’s revised initial offer to Ngāti Mutunga o Wharekauri included:

- a further range of provisional acknowledgments from its initial offer in 2017 (these fall well short of the acknowledgements that we seek. In particular, they do not acknowledge our manawhenua status or the multi-faceted harm that arose from the unique process by which annexation was extended over Wharekauri);
- cultural redress consisting of a \$2.7 million-dollar contribution towards the construction of a new pa complex, \$300,000 for a commissioned general Ngāti Mutunga o Wharekauri history, a range of statutory acknowledgements, and a joint overlay classification with Moriori over part of ex-Wharekauri Station (this funding is a parallel of the \$6m of cultural revitalisation funding received by Moriori outside of their settlement. Our view is that our cultural revitalisation funding should be treated the same way);
- financial redress consisting of \$13 million dollars (this is \$4m more than the original Crown offer but \$5m less than what has been offered to Moriori. Our view is that our financial redress should not be less than that provided to Moriori and that, having already agreed the Moriori redress, the Crown would be wise to avoid actions that suggest that it favours one iwi over the other);
- revisions to the previous offers to both Ngāti Mutunga o Wharekauri and Moriori in respect of overlapping issues that sees Moriori offered the transfer of Waihere and Glory blocks on Pitt Island and confirmation of the offer of the Owenga school site as exclusive customary redress. (Although we have indicated a willingness to consider exclusive vesting in Moriori over small and discrete wāhi tapu areas, both of these offers are opposed by Ngāti Mutunga o Wharekauri. Owenga school is not regarded by us as a Moriori wāhi tapu and Waihere/ Glory blocks are not small and discrete).
- a draft Agreement-In-Principle for our consideration (this draft has many deficiencies and gaps. In our view it reflects the comparative lack of effort that the Crown has put into our settlement compared to Moriori. In our opinion, it is a document that needs substantial development before it is fit to use as the basis of wider consultation.

In earlier correspondence from the Office of Treaty Settlements we were advised this revised offer would be made on a take it or leave it basis. We protested in writing about this high-handed approach and received a written response from Dame Fran Wilde acknowledging that the Crown wording in that correspondence was “ill-advised” and that it is the intention of the Crown that “negotiations will continue following the Crown offer with our focus guided by your response”

In spite of these assurances, we were shocked by the manner in which the Crown delivered the revised initial offer to us on 6 December. The tone in which the offer was made was disrespectful to the mana of Ngāti Mutunga o Wharekauri and discourteous to our representatives. We have responded to the Minister by setting out our understanding of what we consider to be appropriate behaviour by our Treaty partner. An important objective in these negotiations is to establish a proper and ongoing Treaty partnership with the Crown for the first time in our history. The principles of the Treaty apply not only to the outcome of these negotiations but to the process by

which those outcomes are agreed. To that end you can be assured that your representatives have conducted themselves with high levels of professionalism throughout the negotiations.

The problem with the Crown's behaviour is that it is indicative of their overall historical attitude towards us that has been continued throughout these negotiations. If a Treaty Settlement is about re-setting the relationship between Iwi and the Crown for mutual benefit, why would we ever want to enter a relationship that isn't even based on mutual respect? We will update you should we receive a response from the Crown.

From previous hui rounds we have a very clear mandate and understanding from whanau regarding expectations as to what might be an acceptable offer. We consider that the Crown's offer above clearly did not meet those expectations of whanau and have indicated that we are not willing to incur the trouble and expense of presenting a Crown offer that predictably will be regarded as a calculated insult to Ngāti Mutunga o Wharekauri.

The question for Ngāti Mutunga o Wharekauri to consider now is what next steps it should take in these negotiations with the Crown. There are four broad options available to Ngāti Mutunga o Wharekauri at this point.

1. Accept (after a round of consultative hui) the Crown's offer and move forward to reaching settlement as quickly as possible; or
2. Withdraw (after a round of consultative hui) from Negotiations with the Crown; or
3. Litigate our manawhenua status through the Courts or seek judicial review of the settlement process; or
4. Continue to negotiate an Agreement-In-Principle with the Crown.

The first option compromises our Mutungatanga as it fails to adequately recognise, address and recompense the range of Special Factors that are at the heart of Ngāti Mutunga o Wharekauri's historical claims with the Crown. It would also accept that the Crown is entitled to elevate Moriori interests in various ways above the interests of Ngāti Mutunga o Wharekauri within Wharekauri. These outcomes are contrary to the negotiation mandate and guidance we have received which is why we have not accepted them.

The second option would immediately terminate this settlement process meaning that this mahi would be passed on to our tamariki and mokopuna. The Crown frequently threatens us with this outcome (not really the action of a Treaty partner) and states that it is willing to proceed with a stand-alone Moriori settlement. It would betray a dreadful ignorance of the reality for the Chathams community if the Crown carries through this threat. We are reluctant to take responsibility for the ensuing conflict and division that would follow from a Moriori-only Treaty settlement on Wharekauri unless we have made every possible effort to avoid this outcome. Our view is that it is too early to give up.

The third option has the same general consequence as the second. Any litigation related to the settlement process would be accompanied by the Crown terminating that process (and assigning us to the back of the settlement queue). Generally, the settlement process is very slanted to protect the Crown from judicial review. We do have an existing legal action against the Crown outside of the settlement process over Taia that has a clear focus on gaining recognition of our manawhenua status. The Court of Appeal hearing for this matter is scheduled for 17 April 2019. One variant of the legal options sometimes suggested is for us to return to the Waitangi Tribunal seeking a review of some of its findings in the Rekohu Report (WAI64). There is no doubt that this Report has some serious deficiencies but there are three reasons against taking this course at present. First, we

currently have the opportunity to put historical information and its implications directly to the Crown and have been making modest progress as a result of these efforts. Second, it is unlikely that the Waitangi Tribunal will be very open to issuing stinging criticism of itself and a former Tribunal head. Third, in such a review it is hard to avoid an implied criticism of all of those Ngāti Mutunga o Wharekauri people who did their best to uphold our mana in the original process. They are owed our gratitude not a post-mortem of their efforts with twenty year's hindsight.

The fourth option means taking Dame Fran Wilde at her word that the revised initial offer we have received is only a step in continuing negotiations. The Crown expectation was that our next step would be to take that offer to hui for consultation. This expectation is surprising given that we had accurately predicted the problems with it and had advised the Crown that the most productive action from them would be to provide us with an offer that is fit for presentation and discussion. Our preference is to continue to continue negotiations in the New Year to see if this can be achieved.

As we have relayed to the Crown on many occasions, the view of the Trust and the Negotiators is that an offer that does not offer parity to Ngāti Mutunga o Wharekauri and Moriori will neither meet our aspirations for social and economic development, nor provide a sustainable outcome that is beneficial to the future of the Island community and that we should continue to press for a better settlement.

Although we haven't held any recent hui, from the previous hui rounds we have a very clear mandate and understanding from whanau regarding expectations as to what might be an acceptable offer. We consider that the Crown's offer did not meet those expectations of whanau but before we respond to the Crown about the content of their offer (as opposed to the style of their behaviour), we want to hear your whakaaro regarding its offer.

In particular, if any of you disagree with our preferred course of action (option 4 above) please contact the Trust of the Lead Negotiator directly.

Kia ora koutou katoa,

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