

23 December 2019

Hon. Andrew Little, Minister for Treaty Negotiations
Parliament
Wellington 6140

Ngāti Mutunga o Wharekauri Settlement

Tena koe e te Minita,

At a meeting with Glenn Webber and John Armstrong on 19 December 2019, Glenn relayed your invitation to meet with me on 27 January 2020. I am pleased to accept your invitation.

We have found the three-month process involving Glenn and John that you initiated to be very constructive and hoped that a meeting before Christmas might be possible. We are anxious that the 27 January meeting is now awkwardly squeezed between the deadline imposed on us by your officials of 12 January 2020 (see attached email) and your proposed visit to Moriori on 14 February 2020.

The email states that by 12 January we were to either, engage with Moriori on property allocation, or provide you with further information to inform any decisions you might make about the properties. To our sight, this timetable runs the risk of pre-emptive decisions being made about the Hospital Block before appropriate steps and solutions that might arise from the Webber process have been properly considered. In particular, we think it is vital that no pre-emptive decisions be made or positions adopted before our meeting on 27 January.

As you are aware, you have already made two earlier decisions to allocate the Glory Block and Owenga School to Moriori as exclusive customary redress. These decisions were contrary to strong Ngāti Mutunga o Wharekauri submissions that there were significant overlapping interests in both of those sites and, accordingly, they should comprise shared redress.

Those decisions are the source of deep resentment within Ngāti Mutunga o Wharekauri that can (ironically) now only be assuaged by some parallel exclusive customary redress for Ngāti Mutunga o Wharekauri. Having set a course of exclusive redress (against our advice and wishes) we are now required to go deeper down that path to achieve a pair of workable Settlements on Wharekauri. The Hospital Block is the only thing remaining in your hands that can provide appropriate exclusive customary redress to Ngāti Mutunga o

Wharekauri. Please do not belatedly apply the previously rejected principle of shared redress to it when it is no longer apt to do so.

The reasons why the Hospital block, and any land and property that may become surplus to Crown requirements from that block in future, should be regarded treated as exclusive customary redress are as follows:

1. The Hospital Block was a central part of Ngāti Mutunga o Wharekauri claims to the Waitangi Tribunal made by Ngawhata Page (now deceased) and others.
2. The Tribunal in WAI64 addressed this specific claim: *"We also think that in so far as Maori land was customarily held by the residents in a tribal area, the land should be entrusted to Ngawata Page and Honey Thomas, who are the only successors still resident. It would be held upon trust for the use, occupation and benefit of such of the successors of Mr Pupu (Tini) as may reside on Chatham Island from time to time. Such would be consistent with the Treaty. To accommodate modern circumstances, there should be a power of alienation, by sale or lease unrestricted as to the alienee, the proceeds to be used at the trustee's discretion. The trustees would hold as joint tenants with a power of appointment... We recommend that, to the extent the law allows, the land should return to Mrs Page and Mrs Thomas upon the Trusts described..."*¹
3. The Hospital Block (originally some 23 acres) was land awarded by the Native Land Court to Ngāti Mutunga o Wharekauri and held in Ngati Mutunga o Wharekauri ownership (lastly by Mitai Tini) until it was taken by the Crown under the Public Works Act.
4. The Crown then used the land for a range of purposes unrelated to the purpose of the original taking. *"Since 1965, 23 sites have been cut out of the block, mainly for Government and local body buildings reserves and houses."*²
5. Mitai Tini had no children but numerous successors to his Māori land interests. The Tribunal was mistaken in stating that Ngawhata Page and Honey Thomas were the only successors resident on the Island. The exact number of successors to Mitai Tini is not known but is probably at least 300 i.e. a sizeable proportion of Ngāti Mutunga o Wharekauri settlement beneficiaries represented by the present Trust or its successor PSGE. We have been recently informed by LINZ at a hui on Chatham Island that the way in which succession is currently interpreted under sections 40 and 41 the Public Works Act means that those Māori successors to the Maori land interests of Mitai Tini are not successors to the residual rights and interests of Mitai Tini under the Public Works Act. Understandably, the successors of Mitai Tini find this distinction artificial and prejudicial. LINZ has undertaken to provide this legal analysis to the successors of Mitai Tini in Wellington and Christchurch but has not had the opportunity to organise these two hui.

¹ WAI 64, pages 215 and 217.

² WAI 64, page 213

In summary, this is Ngāti Mutunga o Wharekauri land that was taken by the Crown, that was not used for the stated purpose of the taking, was not offered back to successors of Mitai Tini and, contrary to the recommendations of the Waitangi Tribunal, is now being offered to another Iwi as Settlement redress. This offer must not proceed if further injustice to Ngāti Mutunga o Wharekauri and associated social discord on Wharekauri are to be avoided.

Note that this position only applies to the Hospital Block lands taken from Mitai Tini. The attached map does not distinguish between Hospital Block land which we say should comprise exclusive Ngāti Mutunga o Wharekauri customary redress and other lands appropriately part of the Commercial Redress Schedule. My understanding is that boundary between these two categories of land is Meteorological Lane. If that understanding is correct, then the two areas of land marked as '1' on the map are therefore commercial redress property. The Ngāti Mutunga o Wharekauri position on such commercial redress land is that it should be transferred to Moriori and Ngāti Mutunga o Wharekauri in common with 50: 50 interests.

The recommendations of the Tribunal are no longer practical in that Ngawhata Page and Honey Thomas are deceased. The mechanism suggested by the Tribunal was of doubtful practicality in any event which explains why it was hedged with the caveat "*to the extent the law allows*". However, the thrust of those recommendations can still be achieved by substituting the proposed special trust for the Ngāti Mutunga o Wharekauri PSGE and transferring the properties that are surplus now (or become surplus at any time to the future to Crown requirements located within the original hospital block to that PSGE as cultural redress.

Given, the history of the Hospital Block and the recommendations of the Tribunal, it is clearly inappropriate that any of the Hospital Block land would be offered to Moriori as redress in their settlement without the agreement of Ngāti Mutunga o Wharekauri. It is wrong that this prospect has already been raised by the Crown with Moriori and is an example where the Crown is cherry picking parts of WAI 64 that support redress to Moriori while ignoring those parts supporting redress to Ngāti Mutunga o Wharekauri.

To be perfectly clear, we do not agree that Moriori should receive any interest in the Hospital Block as settlement redress and, given the decisions already made about Glory and Owenga, there is now no prospect of obtaining such agreement in the future.

We ask that when you make your decision relating to the Hospital Block that you do so in a way that gives practical effect to the clear overall direction of the Tribunal and thereby settle the long-standing grievances of Ngāti Mutunga o Wharekauri relating to that land. This would require the offer of all lands surplus to present or future Crown requirements within the Hospital Block being transferred at the appropriate time to the Ngāti Mutunga o Wharekauri PSGE as cultural redress.

I would be pleased to discuss this matter further with you on 27 January if you would find that helpful. I would appreciate the opportunity to explain further why your impending decision about the Hospital Block is critical in achieving an overall settlement agreement with Ngāti Mutunga o Wharekauri.

Please feel free to contact me at any time between now and 27 January 2020.

Naku noa na,



Tom McClurg, Lead Negotiator,
Ngāti Mutunga o Wharekauri Iwi Trust.

Tom McClurg

From: generalmanager@nmow.co.nz
Sent: Friday, 20 December 2019 10:25 AM
To: Tom McClurg
Subject: FW: Waitangi commercial properties
Attachments: Waitangi_Commercial_Properties.jpg

Kia ora Tom,

This email received from BW, regarding information to be submitted by 12 January 2020 to inform the Min. decision. If NM hui with the Min is on the 27th January there is little to no opportunity to have a meaningful conversation to influence the Min thinking prior to his officials mudding the waters.

Ngā mihi

Gail Amaru
General Manager
generalmanager@nmow.co.nz

Ngāti Mutunga o Wharekauri Iwi Trust

PO Box 50 | Wharekauri | Chatham Islands 8942 | Aotearoa
Freecall: 0800 WHAREKAURI (0800 942 735) | Ph: 03 305 0500 | Fax: 03 305 0566
Website: www.nmow.co.nz Facebook: www.facebook.com/nmowiwi

The views expressed in this email and any accompanying attachments do not necessarily reflect those of Ngāti Mutunga o Wharekauri Iwi Trust. Ngāti Mutunga o Wharekauri Iwi Trust does not accept any responsibility whatsoever for any loss or damage that may result from reliance on or the use of the information contained in this email or any accompanying attachments. This email together with any accompanying attachments may be confidential and subject to legal privilege. It may be read, copied and used only by the intended recipient(s). If you have received this message in error, please notify the sender immediately by return email, telephone or facsimile and delete this message. You may not copy, disclose or use the contents in any way. Thank you.

From: White, Benjamin <Benjamin.White@tearawhiti.govt.nz>
Sent: Thursday, 28 November 2019 2:45 PM
To: Tom McClurg <Tom@torostrategy.co.nz>
Cc: hnhdaymond1@gmail.com; tonytumoana@nmow.co.nz; iwitrust@nmow.co.nz; Gail Amaru <generalmanager@nmow.co.nz>; trustchair@nmow.co.nz; Ritchie, Samuel <Samuel.Ritchie@tearawhiti.govt.nz>; kopichats1@gmail.com
Subject: Waitangi commercial properties

Tēnā koe Tom,

As you are aware, there are six properties in Waitangi available as commercial redress for Ngāti Mutunga o Wharekauri and Moriori (shown on the **attached** map). On 15 July 2019, you met with the lead negotiator for Moriori and the Chief Crown Negotiator to discuss next steps for the Waitangi commercial properties and agreed in principle to work together to agree their allocation to Ngāti Mutunga o Wharekauri and Moriori.

The Minister for Treaty of Waitangi Negotiations has agreed to offer these properties to Ngāti Mutunga o Wharekauri and Moriori as deferred selection properties, and agreed to allow time for Ngāti Mutunga o Wharekauri and Moriori to agree the allocation of the properties between the initialling of the Moriori Deed of Settlement and the signing of the Moriori Deed of Settlement.

When properties are offered as deferred selection properties in Treaty settlements, the usual process is if iwi decide to purchase a property, the Crown would get the property valued and the iwi would separately get the property

valued, and the two valuations provide a range where the principals can negotiate and agree a transfer value (price) for the property. Another option is for iwi to agree to just accept the Crown valuation at the beginning of the process. Either way, Crown valuations remain commercially sensitive and confidential.

However, to aid your decision making, I am able to provide you with an indicative value range we might expect the valuations might fall within. To be clear, these are not valuations, rather a range where we think the values would currently sit.

I've also added the 2015 & 2018 QV valuations, which are publicly available; however, I note the Crown has sometimes found these to have been an inaccurate indication of value in past negotiations.

Map no.	Site name	Size (ha)	QV valuation (2015)	QV valuation (2018)	indicative value range at 2019
1	3 Met. Lane	1.6284	\$260,000	\$305,000	\$330,000 - \$380,000
2	4 Met. Lane	0.2364	\$240,000	\$290,000	\$240,000 - \$280,000
3	6 Wilson Place	0.1142	\$215,000	\$260,000	\$190,000 - \$220,000
4	7 Wilson Place	0.1248	\$210,000	\$250,000	\$200,000 - \$230,000
5	9 Wilson Place	0.1128	\$165,000	\$200,000	\$140,000 - \$170,000
6	Highet Place	3.4219	\$190,000	\$275,000	\$190,000 - \$220,000

The Minister further agreed that if Ngāti Mutunga o Wharekauri and Moriori are unable to agree the allocation of the properties ahead of the Moriori Deed of Settlement signing, the Minister will decide the allocation.

Officials need to report to the Minister regarding this redress in mid-January 2020, which gives Ngāti Mutunga o Wharekauri and Moriori six weeks to agree the allocation of the properties.

Please let me know if you would like to me to organise a meeting with Moriori Chief Negotiator Maui and/or officials in Wellington to discuss the Waitangi commercial properties in the coming weeks.

If you do not wish to meet to discuss the allocation of the properties, please provide any further information relative the Ngāti Mutunga o Wharekauri position regarding the allocation of the properties, to inform the Minister's decision, by **12 January 2019**.

I am mindful of the discussions you are currently engaged in with Glenn Webber and am open to feedback about any interaction between those discussions and the allocation of the Waitangi commercial properties. I also understand officials from LINZ recently met with members of Mitai Pupu's whānau to discuss the properties that are part of the former Hospital Block.

As always, happy to discuss.

Ngā mihi, nā Ben



THE OFFICE FOR MĀORI CROWN RELATIONS

Ben White

REGIONAL DIRECTOR TE RAWHITI (ACTING)
TE KĀHUI WHAKATAU (TREATY SETTLEMENTS)

CELL: 027 290 0423

tearawhiti.govt.nz

Commercial Properties



0 15 30 60 90 120
Metres

Source: Esri, DeLorme, Garmin, IGN, Intermap, iSD, GeoEye, USDA, USGS, AeroGRID, IGN, and the GIS User Community