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To all WAI 1382 and WAI 2279 claimants

## **Matarakau and Wharekauri Claims,**

Tena koutou katoa

First, thank you to everyone who met with Geoff Mullen and myself at Wharekauri on 10 May 2016 to provide us some initial background information about these claims and some feedback about your hopes for the outcome of the settlement process we are entering. The purpose of this letter is to try and summarise what we have heard so far and to set out the general process steps from here as we understand them.

### **Background**

As you know, the Crown has recognised the mandate of Ngati Mutunga o Wharekauri Iwi Trust (NMOWT) to enter into Treaty Settlement negotiations of all claims on behalf of Ngati Mutunga o Wharekauri:

- “Ngati Mutunga o Wharekauri” in this sense includes those hapu who migrated alongside Ngati Mutunga (to Wharekauri in 1835) including (but not limited to) hapu with affiliation to Ngati Haumia, Kekerewai and Ngati Tama.
- “All claims” in this sense includes all historical claims which are made on the basis of Ngati Mutunga o Wharekauri whakapapa (as defined above) whether registered or unregistered. These include WAIs, 65, 54, 181, 480, 1382 and 2279.

The Crown has appointed its negotiation team led by Fran Wilde and NMOWT has established a Settlement Governance Group (SGG), chaired by Phil Seymour and (with the advice of the SGG) NMOWT then appointed three negotiators: Tom McClurg, Hariroa Daymond and Geoff Mullen. So far there have been 2 meetings between the Crown and NMOWT negotiators:

1. Ministry of Justice, Wellington, 19 April 2016. This meeting included a presentation by officials on the Marine and Coastal Area (Takutai Moana) Act 2011, which is a separate process to the negotiation of claims. A draft negotiation work programme and timetable was agreed along with future meeting dates. Tentatively, this timetable envisages 12 months to reach an Agreement in Principle and then a further 6 months for ratification.
2. Whakamaharatanga Marae, Wharekaui, 12 May 2016. This meeting included a presentation of the various parcels of Crown land in the Chatham Islands that were available to be claimed as part of a Treaty redress package. Most of these parcels of land are owned by the Department of Conservation (DoC) and many had been gifted to DoC by Ngati Mutunga landowners.

At the second meeting, Crown representatives were keen to obtain a list of Crown properties that Ngati Mutunga would seek ownership of through the Treaty settlement. We have not yet identified any blocks of land to them at this stage. You may be interested to know that at this meeting the Crown representatives did provide some information on the status of Wharekaui station which we are informed is land in private ownership. However, the land is also still subject to section 27B of the State-Owned Enterprises Act 1986. Under this section, a Waitangi Tribunal claimant can seek a binding recommendation from the Tribunal that land that has been transferred to a State-owned enterprise should be resumed by the Crown and returned to Maori ownership (this has never actually happened in all of the time that this provision has been in the law). No section 27B claim to the Tribunal has been made and Ngati Mutunga o Wharekaui Iwi Trust has no intention of lodging such an application.

Officials commented that the claims process referred to in section 27B is entirely separate from the general claims negotiation process that has just commenced, and that were a section 27B claim to be made, the Crown would halt the general claim negotiation process.

## **The relationship between Claims and Redress**

The negotiation mandate held by the NMoWT covers all claims whether registered or not made by any of the groups listed above as being under the umbrella term of Ngati Mutunga o Wharekaui. The position of the Crown is that any and all redress negotiated as settlement of the claim would be transferred (in the first instance) to the Ngati Mutunga o Wharekaui Post Settlement Governance Entity (PSGE) under a Deed of Settlement that must be ratified through a process involving all members of the Ngati Mutunga o Wharekaui iwi.

Generally, the content of the redress package offered by the Crown as Settlement for a bundle of claims is not linked to specific statements of claim. Accordingly, the normal procedure is for all redress to be transferred to the PSGE and any variation to this procedure would require both the agreement of the PSGE and ratification by the Ngati Mutunga o Wharekaui iwi. I raise this matter now in case you have any alternative thoughts about the allocation or treatment of any particular items of redress if we succeed in obtaining them from the Crown. For instance, if your aspiration is to secure from the claim negotiation process certain redress available only to a subset of Ngati Mutunga o Wharekaui members, then the earlier that is known the better.



Your view should be formed in the knowledge of the great difficulties that are likely. It is likely that obtaining support from Iwi members for the subdivision or separation of settlement redress will be difficult for a number of reasons. One practical difficulty in achieving a binding agreement about the allocation of any component of the redress package is that the PSGE does not presently exist and the outcome of the ratification process is unavoidably uncertain. The Ngati Mutunga o Wharekauri Trust, which has the mandate to negotiate the claim, is not presently structured in a way that complies with the Crown requirements for a PSGE. Either the existing Trust will have to be reconstituted or an entirely new organisation created to be the PSGE. In the former case, there could be some continuity in the identity of the Trustees but it is conceivable that there would be no such continuity if an entirely new organisation is set up.

The establishment of a new PSGE will require the approval of the members of the claimant group (Ngati Mutunga o Wharekauri as defined above). The level of approval for the new representative body structure and the ratification of the Settlement agreement are similar and the normal thing is for the ratification of the PSGE and any associated settlement to be part of a single process of ratification. The implication of this is that the PSGE would not be formally established until after such ratification.

## Next Steps

Please inform us as soon as possible whether:

- You are happy that any redress obtained from the claim negotiations (to the extent that such redress can be linked to your particular claims) should be transferred to the PSGE for future management on behalf of Ngati Mutunga o Wharekauri iwi, or whether;
- You do not wish that to happen. In which case, support for an alternative would have to be built over the coming months so that it could be both clearly understood and ratified by iwi members.

I hope you find this update and information helpful. I look forward to receiving your guidance on any particular redress that you believe we should be seeking from the Crown as well as information about any variation from the norm in terms of the future ownership and management of any redress assets that you intend to advocate to Iwi members. As negotiator, I will do my best at all times to work for outcomes that both address historical grievances and secure a better and more united future for Ngati Mutunga o Wharekauri. Please contact me if you have any questions or if I can be of assistance.

Naku noa na,



Tom McClurg