



He Toa Takitini

HTT Counter Offer to the Crown

28 February 2014

Hon. Christopher Finlayson
Minister for Treaty of Waitangi Negotiations
Parliament Buildings
Wellington

E te Minita, tēnā koe

Haaro ake rā e taku kaahu, kanohi hōmiromiro, mataia rā ngā ararau e takahia tonuhia te iwi o Heretaunga Tamatea. Nei rā, ko Ngāti Kahungunu – Ngai Te Whatuiāpiti e mihi atu nei ki ō tāua mate, ki te mana o te Karauna e whakahaerehia tonuhia e te Minita, ā, ki ā tāua mahi tae noa mai ki tēnei wā.

Heoi, he mahi anō kei te toe tonu mai. Nei rā tā mātou e tuku atu rā, kia āta whakaarongia e koutou. Mā reira pea, ka tohia atu ki tohi nuku ki tohi rangi, kia ora ai te iwi.

He Toa Takitini (HTT) is pleased to engage further on the quantum component of the proposed redress package for Heretaunga-Tamatea. Although surprised that the first offer was considerably lower than anticipated, we are delighted that the package is otherwise largely agreed and we are confident this final matter can be resolved fairly quickly. Before proceeding, however, we wish to acknowledge the constructive efforts of your officials in bringing the negotiation to this juncture, particularly the sterling work of Rewiti Wiki. It is commendable.

The framework of this paper is as follows:

1. A short analysis of the Crown position which culminated in the first formal offer set out in your letter of 27 November 2013 (the First Offer);
2. It identifies areas where there is scope within the settlement framework for the Crown to increase the offer, i.e. special factors that have not properly been taken into account;
3. It then pitches the importance of an alignment between the offer and the regional context, in particular the prospect of investing in, and influencing, regional development in a significant way. This latter element is informed by the second of the Crown's objectives of settlement, which is to provide a platform for development; and
4. A concluding proposition that to be accepted as final, any settlement must bear some correlation with the expectations of the claimants.

HTT has also commissioned four reports that provide context for its position. These reports are attached as Appendices to this paper, together with our submission on population:



- APPENDIX A. An Economic Development Strategy: The Potential of Heretaunga-Tamatea; BERL Economics, February 2014;
- APPENDIX B. Advisory Proposal for He Toa Takitini; Cranleigh Merchant Bankers, February 2014;
- APPENDIX C. The Native Land Court Purchases; Tony Walzl, February 2014;
- APPENDIX D. Summary of “The Native Land Court 1862-1887: A Historical Study”; by Professor Richard Boast, September 2013.
- APPENDIX E. HTT Population Submission

THE CROWN POSITION

Our analysis of the Crown position has identified the following areas for review: -

- a. The most startling area is the expressed Crown position that there is no material difference between our experience of the Crown purchase programme and the Native Land Court regime and that of other “non-raupatu” Iwi;
- b. The significance of certain key factors which has been severely understated; and
- c. The population element, which in our view, has not been properly considered and it remains unresolved.

NO MATERIAL DIFFERENCE FROM OTHER NON-RAUPATU IWI

The Heretaunga experience was the prompt for the 1873 Amendment to the Native Land Act 1865 and by itself makes the Crown position difficult to sustain; this is substantiated by the apologetic judicial commentary that the amendment came too late to benefit the Heretaunga hapū.¹

UNDERSTATEMENT OF THE SIGNIFICANCE OF KEY FACTORS

1. **THE PACE OF LAND LOSS:** The fast pace of the land loss undoubtedly distinguishes the HTT experience from that of other Iwi but the significance of the land loss during the period was not just the pace but the scale of it (almost total) which was devastating. *(Only 2.8% of 576,780 hectares currently remains in Maori hands; 50% of this loss occurred within 8 years of the first Crown purchase and 90% within 5 years of Native Land Act 1865).* The combination crystalized the instantaneous destruction of the existing Maori economy which was shown to be thriving.
2. **OPEN RECEPTION TO SETTLERS WAS NOT RECIPROCATED AND MAORI WERE DISENFRANCHISED FROM THEIR LAND:** The significance of this factor was more fundamental than an absence of reciprocation. Effectively there was a contractual breach whereby the Crown failed to deliver on its promise to effect the benefits of settlement in return for the land sales. This position was argued in the Ahuriri Tribunal proceedings as “The Treaty of Ahuriri”. This is a significant legal argument that ought to be properly considered by the Waitangi Tribunal; and

Whilst the open reception to settlement avoided military intervention, the HTT position is that confiscation was otherwise inevitable; this is borne out by the experiences of Kahungunu-Tangoio and

¹ Refer Summary of the Native Land Court, Richard Boast, 2013 at Appendix D.



Kahungunu ki Wairoa. Our experience also shows that we lost a far greater proportion of our lands through Crown purchases and the Native Land Court than other Iwi lost through Raupatu.

3. ***GREATER IMPACT DUE TO HIGH PRODUCTIVE LAND VALUE:*** The real significance of the high productive land value was:
- a. the comparably greater loss of opportunity consequentially experienced by our people, which necessarily suggests a correlation between this lost opportunity and the quantum offer;
 - b. the settlers in the Hawke's Bay were comparably better positioned to grow their livelihoods as the land required less preparatory work;
 - c. the scandalous land grabbing practices during the period where the Crown officials, in particular McLean and Ormond, effected sales for their own personal gain; particularly profound in the Hawke's Bay; and
 - d. the productive value of the land was not unrecognised by Heretaunga-Tamatea Maori. The period is reknown however for the conspiracy between Crown agents and estate owning Pākeha settlers (the 12 Apostles) to actively destroy the thriving Maori economy by a land sales programme that involved debt, mortgage, alcohol and the inducement of minors - deception on a grand scale.

POPULATION

HTT has never received a response to our November population estimate of 43,297, considerably higher than the Census 2006 figure of 10,245. Invariably the Crown will have formed a view. This should properly be the subject of further discussion and ideally agreement. For a full analysis, refer Appendix E.

SPECIAL FACTORS NOT PROPERLY CONSIDERED

HTT draws your attention to the Special Factors presentation² and factors which, in our view, have either been overlooked and/or have not been taken into account properly. These are summarised below.

IMPACT OF THE NATIVE LAND COURT REGIME

The impact of the Native Land Court and the Native Land Act legislation was catastrophic in the Hawke's Bay, reaching its zenith which prompted the 1873 Amendment. These amendments were of no use to Heretaunga-Tamatea Māori as the bulk of our lands had been alienated by that time. This impact was “unconscionable and incomparable to any other non-raupatu Iwi”³

A SUCCESSION OF SYSTEMATIC POLITICAL RESPONSES OF HAWKE'S BAY MAORI

No other Iwi can demonstrate having adopted a succession of systematic, political responses to preserve lands and prevent further land sales, directly opposing government policy whilst promoting peace. The peaceful response was preferred despite clear capacity to mount a military campaign against the Crown. These non-military responses were:

- a. **Te Whata Te Hērunga:** a chiefly agreement not to sell more land;

² 23 October 2013

³ Refer Richard Boast: “Summary of the Native Land Court” at Appendix D.



- b. **The Rūnanga system of the Kingitanga:** local committees dedicated to law and order, hygiene, education and the prevention of land sales;
- c. **The Komiti system of the Repudiation movement:** a regional anti-government network of political activism directed at central government and the Native Land Court; and
- d. **The Kotahitanga movement:** an extension of the Repudiation movement principles nation-wide in the pursuit of tribal independence and the maintenance of the remaining tribal estate under communal ownership.

LOYALTY TO THE CROWN

Loyalty to the Crown and the loss of land in pursuit of that loyalty is synonymous with the hapū of Heretaunga-Tamatea.

- a. Central Hawke's Bay leader Henare Matua proclaimed a "no violence zone" in 1865, effectively preventing the southern Hauhau people from crossing his territory to get to Gisborne where the Crown were engaged in war with 'rebel' Hauhau.
- b. In 1866 Kahungunu chiefs of considerable rank⁴ lined up alongside their 200 strong army with Whitmore's recently disbanded and dispirited Hawke's Bay Division of the Colonial Defence Force (who numbered 25). The final battle of the 1865/66 Hauhau insurgency was won by Māori soldiers.
- c. In 1868, Henare Tomoana led Heretaunga-Tamatea troops in the pursuit of Te Kooti in Wairoa and then Taupō in 1869. The Crown refused to pay either his expenses (for horses and rifles for his troops) or their full entitled pay, subsequently forcing him to sell his share of the Heretaunga Block to settle this debt. This was the most valuable land in Hawke's Bay and Tomoana's capitulation led to the eventual loss of the entire Heretaunga block where Hastings now stands.
- d. After perceiving the 1873 Commission of Inquiry as a hollow promise, all of the said Chiefs joined Henare Matua in the Repudiation movement, anti-government though not anti-Crown. Despite vigorous advocacy to 'repudiate' unfair land sales, the Chiefs persisted with their policy of non-violence towards the Crown.

DESTRUCTION OF A THRIVING MAORI ECONOMY

Tony Walz⁵ demonstrates the thriving Maori economy that existed in the Hawke's Bay before the 1865 Native Land Act, largely agriculture-based and the cropping of remaining lands - a wealthy Iwi. Against this backdrop is the clear collaboration of greedy, large estate owners, corrupt Crown purchase agents, debt-facilitating local businessmen, translators who did not provide clarity, surveyors with unfairly high fees and the Crown with a succession of changing laws that were poorly promulgated. The scale of this conspiratorial behaviour, described at the time as scandalous, was never experienced by any other Iwi. The outcome was the acquisition by McLean and Ormond of the largest landholdings which remain within their families today. Under today's law these officials would be considered corrupt and their actions "actively conspiratorial". This inequity and overt disadvantage cannot be claimed by any other Iwi.

RAUPATU BY LEGAL DEVICE

HTT has no doubt that the concept of Raupatu by legal device is raised consistently by all Iwi unaffected by the New Zealand Settlements Act 1863. Be that as it may, the distinction in effect is difficult to sustain with the

⁴ Tareha Te Moananui, Karaitiana Takamoana, Renata Kawepo, Paora Kaiwhata and Te Hapuku of Heretaunga and other Kahungunu chiefs from Wairoa

⁵ Appendix C



Hawke's Bay experience and the fatalistic impact of the Native Lands Act 1865. Hawke's Bay Māori were unable to benefit from the subsequent remedial law changes once the Crown recognised the shortcomings of the Native Lands legislation. There is something disconcerting to not therefore recognise our experience of "raupatu by legal device" in an appropriate way. We alluded earlier to the scale of our land loss which exceeded all but one of the "Raupatu" Iwi, the inevitability of confiscation that was borne out by both the Tangoio and Wairoa experiences and the ever present threat presented by the increasing presence of the colonial troops in the Hawke's Bay at that time.

EXISTING BENCHMARKS

HTT accepts that parameters are being set successively by preceding settlements within a broad settlement framework. One such parameter is the notion of "Iwi" and its potential to constrict the Heretaunga-Tamatea settlement within a notional "Kahungunu 'Iwi' settlement".

THE WHATUIĀPITI CONNECTION

The hapū of Heretaunga-Tamatea certainly share a loyalty to the eponymous Kahungunu and strong relationships with other large natural "Kahungunu" groupings and although this is based on an ancient whakapapa, Ngāti Kahungunu has never operated as a single Iwi. The people of Heretaunga-Tamatea, in fact, derive from Ngai Te Whatuiāpiti, which is a separate and single Iwi analogous to the Iwi of Ngāti Pāhauwera⁶. This is reflected in many of the claims where Te Whatuiāpiti is the named ancestor of significance. He was a man who spent his life in battle against Ngāti Kahungunu to the north and Rangitāne to the south. The distinction is profound and there is significant merit to properly acknowledge this distinctive Iwi.

OTHER IWI

The treatment of the Raukawa, Maniapoto and potentially Rereahu groupings presents a dichotomy in terms of the Crown view of Iwi. All three Iwi descend from the eponymous Tūrongo of Waikato-Tainui and Mahina-a-Rangi of Takitimu. As well the southern Raukawa Iwi is yet to settle. There is little prospect that the respective settlements of these Iwi will be constricted within a notional "Waikato-Tainui" settlement.

NGATI POROU BENCHMARK

From the outset we have viewed the recent Ngāti Porou settlement as a reasonable benchmark from which to predicate the settlement for Heretaunga-Tamatea. This is because the scale of our land loss was larger (576,780 ha vis-a-vis 522,000 ha) and the remaining lands were smaller (2.8% vis-a-vis 30%). We also share the common and important element of loyalty to the Crown. The total financial value for Ngāti Porou was \$110,000,000.

EQUITY AMONG SETTLEMENTS

It is not unreasonable to expect "equity among settlements". As matters stand, there seems to be none. Our analysis shows that settlements can be categorised into three groups, which show a clear and progressive decline in real value:

- a. Ngai Tahu and Waikato-Tainui;
- b. Post Ngai Tahu/Waikato-Tainui and pre-Total Financial Value groups; and
- c. Total Financial Value groups.

⁶ Another of the Kahungunu LNGs.



Irrespective of the merits, the effect of the ratchet clause⁷ has been to establish a notional upper limit on subsequent settlements. Any objective analysis might well be discouraged and there is little incentive for any correlation between the quantum and common base factors.

The reduction in real value is compounded further with the recent redefinition of quantum which now includes any financial component of cultural redress, i.e. Total Financial Value. There is also the inflation argument and its variable effect by reason of the sequencing of settlements.

APPROPRIATE REDRESS AND A PLATFORM FOR DEVELOPMENT

The claimants have long held notions, passed from generation to generation that the settlement would provide the “fix all”. Whilst the hope extended to constitutional change, there remains considerable optimism that the settlement can position the Ngai Te Whatuiāpiti Iwi to effect development at all levels, including social, cultural, educational and economic. Our expectation then suggests a correlation between the quantum and the capacity to engage as *an investor and an influencer in the regional development of the Hawke’s Bay*. It is with this in mind that from the settlement we seek to: -

1. restore the thriving economy once established by the Maori owners;
2. spearhead our development from an investment perspective recognising the redress being sought is completely cash-based;
3. develop a pathway towards being a self-sustaining people who are increasingly free of state dependency;
4. foster high end education including Te Reo me ona tikanga, building marae capacity and capability for financial literacy and business acumen, providing for Rangatiratanga in Hawke’s Bay society and the resumption of the role of kaitiaki in the management of natural resources;
5. drive an innovative educational strategy partnering with the Crown and its goals around Maori achievement and the utility of high speed internet download connectivity;
6. increase the visibility of mana whenua in the decision-making framework and the investment configuration of Hawke’s Bay, and in its personal form - the pride of an individual in their cultural revival, educational success, employment status and freedom from state dependency;
7. be active participants in the emerging infrastructure opportunities that, alongside our kaitiaki obligation, will result in the creation of new wealth and social capital;
8. invest in the local infrastructure currently presented by the Ruataniwha Water Storage Scheme (RWSS) in both Rangatiratanga and Kaitiaki roles, subject to appropriate due diligence; and
9. the development of a sustained political relationship with local government and the security of capital funding associated with the RWSS.

CLAIMANTS’ EXPECTATIONS

From the outset the claimants’ expectations in respect of the financial settlement have been significant but this comes as no surprise given their views of the Special Factors set out above which are strongly held. Equally unsurprising is their lack of sympathy for the Crown justification for discounting the compensatory element in

⁷ Ngai Tahu and Waikato-Tainui

favour of redress when over the years they have witnessed the increasing wealth of the current owners derived from lands that were once the tribal estate. The claimant continue to be disillusioned by the degradation of the waterways, which they are powerless to influence in any meaningful way and the ongoing subordination of their tikanga and values in deference to *[their words]* less noble considerations associated with natural resources. Within this context it is important that the settlement therefore offer hope if it is to be acceptable and the real scope rests in the quantum that is offered.

The negotiation team is very clear that the offer must be cognitive of the expectations of the claimants. These are currently in the realm of \$150 - \$180 million, which you may see as excessive but the Crown should know there has been significant movement from earlier expectations that far exceeded \$200 million. You should also know that the negotiation team initially abandoned the standard “oscillating” negotiating technique in the hope of receiving a single, respectable offer respectful of the mana of the negotiating parties. It was on this basis that we proposed a starting point of \$120 million. Whilst perceivably naive and/or ambitious, it is regrettable that this was seen as a top-end aspiration.

OUTSTANDING CLAIMS - THE AORANGI MAORI TRUST BOARD AND TE AUTE COLLEGE

The accelerated negotiation process has left little scope to resolve either of the above outstanding claims with any certainty. At this juncture it is important for both parties to be creative and to explore innovative ways to settle these matters. Both cases are quite special and we look forward to making good progress as soon as possible.

FINAL COMMENTS

In conclusion, HTT is keen to achieve full and final settlement of its historical Treaty grievances. The Crown is called upon to think expansively to settle with this Iwi group of Ngai Te Whatuiāpiti, which has the 3rd largest land loss in the country. You will agree that HTT has maximised the Crown’s scope for flexibility and discretion when it comes to quantifying the next quantum offer.

We look forward to meeting you in good time.

Nāhaku noa, na

A handwritten signature in blue ink, appearing to be "D. Tipene-Leach".

Dr David Tipene-Leach
Chairman

A handwritten signature in black ink, appearing to be "L. Munroe".

Liz Munroe
Lead Negotiator