

Rongowhakaata Hui a Iwi

17 Feb 2007

Te Kuri a Tuatai Marae

Claims Coordinator Report

DIRECT NEGOTIATIONS PROGRESS REPORT

Introduction

1. The Rongowhakaata claim (Wai 684) was heard by the Waitangi Tribunal over a 2 year period and concluded in 2003. The Tribunal released its report on the Turanga grievances including those of Rongowhakaata in 2004. In addition to discussing the Turanga grievances, the report set out the Tribunal's recommendations about how the Crown should redress the injury and loss suffered by Rongowhakaata and the other Turanga groups. Since then, the Rongowhakaata and Negotiators in conjunction with the Claims Committee and Charitable Trust have been progressing toward negotiating a settlement to the Rongowhakaata grievances on behalf of the iwi.
2. This report is intended to briefly explain and set out the:
 - a. Stages of the negotiations process Rongowhakaata is participating in;
 - b. Turanga negotiations model;
 - c. Issues for Rongowhakaata;
 - d. Process moving forward; and
 - e. The hui a iwi resolution required

Direct Negotiations Process

3. The Direct Negotiations process is essentially divided into four distinct phases:
 - a. Mandating;
 - b. Pre-negotiations;
 - c. Negotiations; and
 - d. Ratification
4. **Mandating:** Rongowhakaata has completed the mandating phase of the process. The Rongowhakaata Deed of Mandate provides that the Rongowhakaata Negotiators supported by the Rongowhakaata Claims Committee and Charitable Trust have the authority from the iwi to negotiate a settlement to the Rongowhakaata grievances on their behalf. The Crown accepted the Rongowhakaata Deed of Mandate in 2005.
5. **Pre -Negotiations:** In this phase the Crown and the mandated representatives produce documents setting out the Framework and Terms for the Negotiations. These documents essentially set out the matters to be discussed and the general ground rules for the negotiations. Rongowhakaata are part way through this phase of the process having completed the Negotiations Framework Document as part of the Turanga collective body for all the Turanga groups (Rongowhakaata, Ngai Tamanuhiri and Te Pou a Haokai).
6. Rongowhakaata are currently progressing the Terms of Negotiation Document as part of that Turanga collective for all the Turanga groups.

7. **Negotiations:** Once the pre-negotiations documents have been completed, the Claimants will raise with the Crown, the various interests they wish to protect and promote in a settlement package. The parties will attempt to agree on particular proposals for settling the claim(s).
8. Throughout the negotiations the Crown and the mandated representatives will work towards establishing an Agreement in Principle or signing a Heads of Agreement to signal their initial agreement on the monetary value of the settlement (the “settlement quantum”) and the scope and nature of other redress to be provided. In particular the parties will need to work through:
 - a. Developing an account of the historical basis of the claims;
 - b. Confirming the matters the Crown acknowledges as breaches of the Treaty and its principles;
 - c. The wording of the Crown’s apology;
 - d. The commercial settlement assets to be transferred, if any, and the terms of any such transfer(s);
 - e. The items of cultural redress to be sought, such as the return of significant lands or taonga; and
 - f. Any other matters the Crown and/or Claimants wish to discuss.
9. Previous settlements between the Crown and numerous other iwi and claimant groups confirm that the Crown’s approach to compensation is to pay a lump sum to claimants for the settlement of all its claims. The sum paid is not based on the total losses suffered by iwi and hapu, it is an amount that the Crown considers is politically acceptable and affordable in the present circumstances.
10. Once the above matters are agreed, a Deed of Settlement confirming the same will be finalised and initialled by the Claimant group and the Crown.
11. **Ratification:** The Deed of Settlement initialled between the Crown and the mandated representatives must be clearly approved by the wider claimant group before it becomes binding. This approval process is called ratification.
12. The Rongowhakaata Deed of Mandate prevents the negotiators from binding the iwi to any agreement without first receiving the appropriate approval from Rongowhakaata at every necessary stage. In addition, iwi members will have an opportunity to review and ratify the proposed governance entity for the settlement. The term “governance entity” simply refers to the legal entity that will be used to hold and manage settlement assets, and exercise the forms of cultural redress provided in the settlement package.

Turanga Negotiations Model

13. Historically the Crown have dealt with iwi and or smaller entities individually to settle their respective grievances. In recent times, the Crown have adopted a policy of preferring to enter into negotiations with one large group representing as many iwi of an area as possible to settle the largest number of grievances as quickly and cost effectively as it can.
14. The Crown has insisted on using this collective model in Turanga proposing that the groups negotiate on issues concerning all of them together and individually only where matters are specific to the particular group. For example, in negotiations regarding the commercial and cultural redress to be provided by the Crown due to the operation of the Native Land Court the associated legislation and the subsequent loss of land, the Crown will expect to hear from the Turanga groups together because all Turanga iwi and hapu were affected. However, Rongowhakaata would expect to deal with the Crown alone in relation to cultural redress matters concerning Te Hau ki Turanga because only Rongowhakaata were substantially affected by its confiscation.
15. From the outset Rongowhakaata requested individual negotiations because the Claims Committee and Negotiators considered that the Crown proposed model could cause friction between our whanaunga and us, delay negotiations progress and ultimately disadvantage the iwi.
16. The Crown did not accept those requests, but although individual negotiations remains our clear preference to settle the Rongowhakaata grievances, the Claims Committee and Negotiators in conjunction with our Turanga whanaunga have been investigating the possibility of advancing to negotiations within the Crown model without compromising our separate identities, histories and interests.

Issues for Rongowhakaata

17. As stated, Rongowhakaata and the other Turanga groups are currently attempting to finalise the Terms of Negotiation Document. The Crown has insisted on inserting terms related to the allocation of the negotiated settlement quantum and completing settlement documents. In particular
 - a. **Quantum:** The Crown proposes to pay one lump sum quantum to the Turanga collective leaving the individual groups, including Rongowhakaata to sort out the allocation ourselves. The concern with this is that it could potentially lead to each group comparing the nature and gravity of their grievances to justify receiving a larger allocation. Such an exercise would only serve to further damage relations between Rongowhakaata and the other negotiating groups; and
 - b. **Single documents:** The Crown proposes a single Agreement in Principle, Deed of Settlement and Legislation for all the groups. Our concern is that

this would create an acceptable level of co-dependence between the groups, as it would likely mean that if Ngai Tamanuhiri and/or Te Pou a Haokai were delayed for any reason, Rongowhakaata would not be able to progress. This point is of particular significance because Te Aitanga a Mahaki and Ngai Tamanuhiri have interests in Crown owned Forests which are likely to be subject to cross claims and require further hearings to be settled.

Moving Forward

18. The Negotiators and Claims Committee consider that if the Turanga groups including Rongowhakaata are able to work together and agree on the following, the drawbacks of the Crown's proposed model will largely be supplanted:
 - a. The common and specific matters to be negotiated for each group;
 - b. A methodology for deciding the allocation of the settlement quantum; and
 - c. a provision detailing a process to continue negotiations when other groups are delayed.
19. Over the next several months, the Negotiators supported by the Claims Committee and the Charitable Trust will confirm the final Terms of Negotiation. That confirmation will not be given by the Rongowhakaata Negotiators unless together with the Claims Committee they are satisfied that the concerns raised with the current Terms of Negotiation have been addressed. The Crown has requested that the Terms of Negotiation be finalised by 31 March 2007.
20. Once the Terms of Negotiation are final and the above concerns have been satisfactorily addressed, the negotiators for all the groups will likely begin negotiating on those common issues. Rongowhakaata will not compromise on dealing with its specific matters such as Te Hau ki Turanga individually. Nga Uri o Te Kooti negotiators will negotiate their specific matters, however Rongowhakaata will assist them in any and every way possible.
21. Accordingly, the Negotiators, Claims Committee with the support of the Rongowhakaata whanui will undertake the necessary work to liaise with Ngai Tamanuhiri and Te Pou a Haokai to foster and develop a relationship of trust and openness and to adequately prepare to settle Rongowhakaata grievances through Direct Negotiations with the Crown.
22. A report on the progress of the above matters will be presented at the next Rongowhakaata hui a iwi at Manutuke Marae, beginning at 11am on Sunday 29 April 2007.

Resolution

23. Before the Negotiators supported by the Claims Committee and Charitable Trust can undertake the above attendances, a hui a iwi resolution confirming that:
 - a. The Rongowhakaata Negotiators are authorised to finalise the Turanga Terms of Negotiations on behalf of Rongowhakaata when they are satisfied with the same.

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