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14 December 2012

By email only

Christopher Finlayson,
Minister of Treaty Settlement Negotiations
Parliament Buildings
Wellington

Pita Sharples
Minister of Māori Affairs
Parliament Buildings
Wellington

Tēnā kōrua e ngā minita

Muaūpoko Mandate strategy and process

1. This letter is written to bring to your attention serious deficiencies in the Mandate process that is being implemented by the Muaūpoko Tribal Authority. We act for several claimants who are members of the Muaūpoko Claimant Cluster, specifically Wai 52, 237, 493, 1490, 1621, 1629, and 2326. We are writing to you today in order to avoid claims that our concerns are a function of the mandate vote.

Conditions of Mandate Strategy Approval Not Met

2. We, other counsel, and some claimants have written to various OTS and TPK staff complaining about a potential mandate of the MTA both on substantive and procedural grounds. When the mandate strategy was recently released for review, our clients unequivocally objected to that mandate strategy and set forth very strong reasons why it should not go forward. Included in these objections were issues relating whakapapa (claimant definition) and the open hostilities between the two groups. MCC claimants have also asserted their right to hearing and their ultimate objective to embark on their own mandate after hearing. In short, they object to both MTA as a representative and to mandate at this time.
3. As you may know, the MTA mandate strategy was approved subject to two conditions: 1) to rework the whakapapa and 2) to meet with claimants. At a 19 October 2012 hui with claimants, TPK and OTS informed those in attendance,

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including counsel, that there were 3 themes to be discussed at a claimant hui: a) the possibility of progressing a dual process; b) whakapapa and c) representation or how can the two groups (MTA and MCC) work together.

4. At the Waitangi Tribunal's 1 November Judicial conference in the Porirua ki Manawatu inquiry, we were quite astounded to hear that the MTA mandate was set to commence in November inasmuch as the conditions to mandate strategy acceptance had not been met, to our knowledge.
5. On 15 November a published notice in the Horowhenua Mail announced the Proposed Mandate of the Muaūpoko claims. This notice included reference to whakapapa that our clients had never seen before. One of our objections to the whakapapa originally proposed was that it was overbroad. The published whakapapa was even worse—it added tupuna that are not Muaūpoko tupuna and included 7 hapū that are not Muaūpoko hapū. Our clients cannot fathom whose these additional 7 hapū really are. It was certainly not done under the auspices of the Kuia Kaumatua Kaunihere because this group hasn't met in over a year. This unilateral act by the MTA has so expanded the definition of Muaūpoko as to be unrecognisable and overbroad. It has allowed people who are not Muaūpoko to vote on the future of Muaūpoko claims.
6. On 19 November, at 7:25 p.m., *after* the voting had opened for this mandate, I received an email message from Mr. Moses, a contractor for MTA. He transmitted a letter inviting MCC to a facilitated hui—one of the conditions to the mandate strategy approval, but in this case commenced *after* the mandate process had begun. I wrote a complaint to Mr. White of TPK and he referred me back to Mr. Moses. One of the features of this “invitation” was the lack of detail—no time or place for a hui. When asked about the meeting details, Mr. Moses suggested that our respective groups could meet on 16 December at 1 p.m. This is *after* the mandate voting is closed. When asked about the lack of detail for a hui, the response was that it was that the original letter was intended to determine our interest and then establish a date. This however was not mentioned in the original letter.

7. The letter also invited us to discuss the mandate strategy. This is an extremely cynical effort to comply with Crown conditions for a claimant meeting.

Voting Process has been Unfairly Manipulated

8. In addition to a complete failure to comply with the conditions of the mandate strategy, we are writing to express our profound objections and outrage about the way the voting process has been manipulated to prevent votes by those who oppose the mandate.
9. We note that the 15 November published notice states: “There will be special votes for those who are not currently registered with MTA or for those who do not wish to register with MTA but wish to vote.” The notice is silent about how those special votes are to be obtained. We understand a flyer was sent out that listed the Freephone number of ElectionNZ as a way to obtain a ballot. However, this flyer was mailed to people who are on the MTA register—those least likely to need that information inasmuch as they received ballots in the post. The flyer was not made available to those not on the MTA register until the 8 December information hui.
10. Ballot papers for unregistered Muaūpoko were also available for the first time at the MTA hui on 8 December. These hui were quite poorly attended. To the best of our reckoning, there were no more than 70 people at the Palmerston North and Levin hui; about 30 of those were non-registered people who opposed the mandate. This is hardly the way to reach a broad number of unregistered people. It is quite obvious that the MTA had no interest whatsoever in making sure everyone who may have wanted to vote against the mandate actually had that opportunity. Rather, the process was made to *look* like it was open to all to vote.
11. At the information hui, MTA speakers plainly stated that all ballots had to be “received” by noon 16 December. MTA urged people to bring their ballots to a hui set for Sunday—a special meeting of the MTA and submit the ballots at that time. Our clients and others like them are extremely disinclined to give their ballots to the MTA, so we contacted ElectionNZ to determine whether a mailbox rule was being observed. The answer was, Yes, all ballots postmarked on or before 16 December that were received by ElectionNZ by 19 December would be counted. This

information is not available to all voters. Quite obvious, this misinformation will discourage people from voting. To those who do not know about the mailbox rule, it certainly shortens the period of voting; to be received by ElectionNZ on Sunday at noon, the ballot must have been posted by Thursday, possibly even Wednesday. Given that ballots weren't made available until Saturday 8 December, this has given those not registered with the MTA a total of 5 days within which to vote.

12. The post-vote review of the vote by MTA under the guise of whakapapa review is another form of abuse of a democratic system. Those on the MTA register did not have their whakapapa reviewed, certainly not in connection with a contested mandate. It is hardly an impartial exercise to allow those who seek the mandate to review the votes of those who oppose—particularly since these are presumably the people who managed to generate 7 new hapū and two additional tupuna. If there is to be a whakapapa review it should have been managed in an impartial way.

Conclusion

13. This process is not just unfair, it has been subject to outrageous manipulation. This is not a democratic process; it is a process that has been put in the hands of people who are not afraid to engineer the outcome. It is one thing for a group to go to such lengths to claim a mandate, it is quite another for a government to sanction this conduct. Accordingly we are writing to demand that the Crown immediately disaffirm this process.
14. Please do not hesitate to contact me with any questions you may have.

Very truly yours,

Kathy Ertel & Co.



Linda Thornton
Associate

cc: Mr. Tom White
Ms. Jaclyn Williams