

EXPLORATORY REPORT TO THE
WAITANGI TRIBUNAL

Wai 181: Kekerione No 1 (subdivision No 62)

Chatham Islands

by Buddy Mikaere

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Introduction and disclaimer

My name is Buddy Mikaere and I am the Director of the Waitangi Tribunal. I have held this position for the last three years. I am a published author specialising in New Zealand history.

This report deals with the 1925 acquisition of a block of land by the North Canterbury Hospital Board on Chatham Island, the main island of the Chatham Islands group. The block of land is known as Kekerione No 1 (subdivision 62) and/or Mauturuhia No 1. It was taken and vested in the hospital board under the Public Works Act 1908.

The Claim

The claim (Wai 181: Kekerione) was lodged by Ngawhata Eliza Page on 16 October 1990, on behalf of herself, Mrs Honey Thomas and George Tokomaru Tuuta as successors to Mitai Pupu.¹ The claim was registered and research commissioned by direction of the Tribunal dated 13 March 1991.²

In their statement of claim the claimants allege that the block of land known as Kekerione No 1 (subdivision 62) situated on the Chatham Islands and consisting of approximately 23 acres, 1 rood, 13 perches, was formerly owned by Mitai Pupu. The claimants allege that in 1925 the land was taken by the Crown pursuant to the compulsory acquisition provisions of the Public Works Act 1908 for the purpose of establishing a hospital.

The claimants claim that the Crown action in compulsorily acquiring the land is a Treaty breach.

¹ Statement of claim, Document Bank p 1

² Tribunal directions, Document Bank p 2

Historical Background³

Ownership

Mitai Pupu was awarded title to Kekerione No 1 (No 62) as a result of a sitting of the Maori Land Court on 27 March 1900.⁴

On 1 September 1914 Mitai Pupu leased the block to C W Heslop for a term of 21 years. Ten years later Heslop sold his lease to a Mr A Porter.

Crown acquisition

The initial actions which resulted in the eventual acquisition of Kekerione No. 1 (62) for a hospital had their genesis in 1918 when the local Anglican Minister Reverend B G Fox, raised with the minister of public health the need for a resident government nurse and a cottage hospital. The population of the islands at that time was 477, of whom 287 were Maori. It was said that a trained nurse was needed to treat Maori patients unfamiliar with the proper treatment of serious illness.

It was noted that there were little or no facilities to treat such cases and that a trained nurse working amongst Maori might save lives.

In 1924 Mr Seton Henderson, a leading resident, wrote to the prime minister about the need for a hospital on the Chathams. He said that despite the fact that residents were paying hospital rates, there was no hospital. He also suggested that because the resident medical officer was living alone in a seven-room government house it might be possible to use the house as a combined cottage hospital and doctor's residence.

At a public meeting in 1924 Chatham Island residents adopted resolutions favouring the setting up of a hospital and set about raising money to secure a site.⁵

A committee established to find a suitable site decided that Kekerione No 1 (subdivision 62) near Waitangi was ideal for the purpose because it had a good water supply and drainage. It was also close to the medical officer's residence and was near the junction of the islands main roads.⁶

The committee proceeded to acquire an option over the 23-odd acres for £400, with the bulk of the land being required for grazing cows and horses. The cows were

³ The bulk of this information comes from the Canterbury Area Health Board historical notes. CH 3H 433, HC 384/4/1, ³161, National Archives. Document Bank p 51

⁴ Chatham Islands Minute Book 4, p 35. Document Bank p 9

⁵ See n3

⁶ See n3

required for milk supply purposes and the horses for transport.

It was recognised that because of the unexpired lease over the land it might be necessary to acquire the land under the Public Works Act 1908 and compensation might be required for the lessee as well as the owner. Because it was Maori land, the involvement of the Native Land Court was also necessary.

Mitai Pupu, as owner, was apparently willing to sell, but the lessee, Porter, was unwilling to surrender the unexpired lease. Acquisition under the Public Works Act 1908 therefore became the only option for securing the land to enable the establishment of the hospital.

Accordingly an application was made to obtain ministerial approval for the North Canterbury Hospital Board to secure the land under s18 of the Public Works Act 1908.⁷

The government valuation of the block at June 1925 was £305.⁸ Mitai Pupu objected to acquisition of the land by the board at that price and sought an additional 10% on valuation. This was agreed to by the board which subsequently ordered payment of £335.10 to Pupu in late September 1925, the payment being effected through the local policeman.⁹

The appropriate gazette notice appeared in December 1925¹⁰ and the hospital was subsequently established.

⁷ Consent of the minister of health was required under the Hospitals and Charitable Aid Act 1909 s59

⁸ Government Valuation No 29457, 29 June 1925. It is noted that on the copy available the actual date of valuation is obscured. Without seeing the original it is impossible to state the date of valuation. Document Bank p 19

⁹ Secretary, North Canterbury Hospital Board to inspector of police, Christchurch, dated 26 September 1925. Document bank p 40

¹⁰ New Zealand Gazette 1925, p 3390. Document Bank p 22

Subsequent developments

Following the 1925 acquisition, pieces of the land have been acquired from the hospital board for other uses. Some land was taken by the local county for roading and some was acquired by the Ministry of Works for "buildings of the General Government" under s32 of the Public Works Act 1928.¹¹

In June 1989 the Department of Lands advised the Maori Land Court that part of Mitai Pupu's original block, which had been held by the Ministry of Works for a works depot and houses, was surplus to the government's requirements and was to be offered back to the successors of Mitai Pupu.¹² The offer-back was to be made pursuant to s40 of the Public Works Act 1981 which provides for the sale of Crown land no longer required for public works. The offer was not taken up by the claimants or other successors of Mitai Pupu, possibly because the valuation on the land was in excess of \$400 000, and the offer subsequently lapsed when it was found that other government departments were interested in the land.

In April 1990 Works Consultancy Services (formerly the Ministry of Works) advised that if the property was not acquired by another government department or by the former owner's successors it would be offered for sale on the open market.¹³

In July 1990 Mrs Page wrote to DOSLI seeking to lease vacant buildings on the hospital site land, based on the fact that she was one of the seventy five successors to Mitai Pupu. Mrs Page claimed that because most of these persons were not resident on the islands the land could eventually be lost to local ownership. As she and Mrs Thomas were the only successors resident on the island she wished to retain the property and have an option on the buildings.¹⁴

In reply DOSLI (Christchurch district office) advised that the former MOW depot and houses were no longer required by Works Consultancy Services and that accordingly DOSLI would look at its statutory obligations under s40 of the Public Works Act 1981, i.e. the "offer back" provisions. In addition Mrs Page was told that her application to lease the property would be considered and that the Department of

¹¹ See for example CT 370/115, Document Bank p 5

¹² District manager, Department of Lands, Christchurch to registrar, Maori Land Court, Christchurch, dated 20 June 1989. Document Bank p 43

¹³ Branch manager, Works Consultancy Services, Christchurch to W F Tuuta, dated 5 April 1990. Document Bank p 44

¹⁴ Claimant Mrs N E Page to manager lands and property, DOSLI, head office Wellington, dated 16 July 1990. Document Bank p 45

Conservation had also expressed an interest in the properties.¹⁵

Then in September 1990 DOSLI (head office) replied to Mrs Page and Mrs Thomas, who stated they were considering injunctive action to stop the Crown from disposing of the property.¹⁶ It appears the claimants understood that the property was to be offered for sale on the open market. DOSLI advised that while "it was not government policy to withhold the sale of Crown properties ahead of any proven claim before the [Waitangi] Tribunal",¹⁷ in any event the land was not going from Crown ownership. The Iwi Transition Authority (later Te Puni Kokiri) had now identified a requirement for the land as a kokiri centre and arrangements were under way to transfer the land for this purpose using s52 of the Public Works Act 1981. DOSLI advised that the land would therefore remain in Crown ownership and available for settlement of a Waitangi Tribunal claim for the time being.¹⁸

The transfer to Te Puni Kokiri has not been completed and since the middle of 1992 the property, now known as the ex-Works Depot and houses, has been the subject of a tug of war between various government departments. Te Puni Kokiri still wishes to have the property transferred to it for the purposes of a kokiri centre, for the sum of \$100. A paper seeking Cabinet approval was submitted on 25 June 1992.¹⁹

On 3 July 1992 a second paper was submitted to Cabinet by Te Puni Kokiri, this time outlining alternative finance options to acquire the property. It carries a current government valuation of \$430,000.²⁰

A decision is still awaited.

¹⁵ Manager lands and property, DOSLI Christchurch district office to N E Page, dated 31 July 1990. Document Bank p 46

¹⁶ Director property, DOSLI head office, Wellington to Mrs H Thomas, dated 27 September 1990. Document Bank p 47

¹⁷ *ibid*

¹⁸ *ibid*

¹⁹ Manager lands and property, DOSLI Wellington District Office to Waitangi Tribunal Division, dated 20 January 1993. Document Bank p 49

²⁰ *ibid*

Comment

In their statement of claim the claimants allege Treaty breach arising from the compulsory acquisition of the land under the Public Works Act 1908.

This preliminary investigation suggests that the compulsory acquisition issue cannot form the basis of this claim. It appears from the available evidence that the owner Mitai Pupu was willing to sell the land, provided his asking price was met. The compulsory acquisition procedure was used to circumvent opposition from the lessee not the owner. Apart from the reference to his concerns about the compensation price, there is no documented record of Mitai Pupu lodging any objection to the acquisition.

In addition, the claimant Mrs Page has stated that it was her understanding, based on what she was told years ago by her father, that Mitai Pupu in fact donated the land to the hospital board upon its request.²¹ Accordingly, the possibility that Mitai Pupu had the land taken from him unwillingly or without compensation is not supported by the available evidence. One question which remains unanswered, and may warrant further investigation, is whether the price paid was in fact a fair market price at the time of sale.²²

Clarification of the claimants' concerns has been sought. It seems the claimants understood the land was going to be put on the open market for sale and they were concerned that this might extinguish any chance of Mitai Pupu's descendants regaining the land.

From the evidence available it does not appear that DOSLI has initiated any move to put the property on the open market. It has simply indicated that the property would be offered for sale if not taken either by another government department or by the owner's successors.

Section 40 of the Public Works Act 1981 clearly applies if the land were again to become surplus to the government's requirements. This provision would ensure the consultation and the right of first option the claimants seek. It is noted that under s40(2) of the Act DOSLI has the discretion to offer land back at less than its current market value. For the time being however, as explained above, s40 is not applicable as at least one government department has expressed interest in the land and there is apparently now no intention by the Crown to dispose of it. At present therefore an "offer-back" situation as provided for by s40 does not exist.

It is suggested that the question of the possible leasing of vacant buildings on the land by the claimants is not a matter for Tribunal investigation but rather one which the claimants themselves should take up again with DOSLI. It is noted that Te Puni Kokiri has an interest in the acquisition of the property and as at January 1993 this interest was still current.

²¹ See n1

²² See n8 concerning contemporary valuation

Recommendation

That this report be issued in draft form to the claimants and other interested parties for comment.

Depending on the nature of any comments received, the Tribunal could consider no further investigation of the claim, or, as proposed in the direction of 13 March 1991, join this claim for hearing with other Chatham Island claims.