Ngāti Mutunga o Wharekauri Cultural Redress Position Paper

February 2017

1. Introduction

Early in the Settlement negotiation process, Ngāti Mutunga o Wharekauri was provided with the paper titled **Cultural Redress Instruments, Crown presentation to Ngāti Mutunga o Wharekauri**, dated 19 April 2016 (*without prejudice*). That paper summarised a wide range of general instruments that have been used by agreement in other Settlements that may be considered for use today. These precedents are interesting but the Ngāti Mutunga o Wharekauri and Moriori Settlements are unique in the extent and intensity of the overlapping claims and interests of the two iwi. This situation requires a customised approach to the selection and configuration of cultural redress instruments considered for the two Chatham Island Settlements.

It is the view of Ngāti Mutunga o Wharekauri that the uniqueness of the situation on the Chatham Islands necessitates a similarly unique Settlement solution there. It is our position that offering fee simple title or exclusive control of Crown-owned land to one iwi over areas where the other iwi has any cultural interest without the agreement of both iwi will entrench conflicts between people which are avoidable. These avoidable adverse consequences are of concern to Ngāti Mutunga o Wharekauri and this concern has been communicated from the outset of negotiations. That concern lies behind the Ngāti Mutunga o Wharekauri position on cultural redress to date which is to decline to seek such exclusive redress. The risks we have highlighted to the prospect of achieving a durable Settlement that promotes a mutually respectful and co-operative Chatham Island Community as a result of that Settlement have been discounted by officials. However, we believe these concerns to be very reasonable.

A redress proposal that offers a fee simple title or exclusive control of Crown-owned land to one iwi over areas where the other iwi has any cultural interest would, in our view, fail to recognise the unique complexity of Chatham Island relationships. Our advice would be that the reality of those relationships must shape any intervention in those relationships by the Crown and any action that might disturb the encouraging progress made in those relationships in the past few months should be avoided.

This position paper (which is also prepared on a without prejudice basis) has been produced in the hope that information gained by eye may make more impression that information gained by ear. Before getting to a more detailed description of why offering fee simple land title or exclusive control of land as cultural redress is problematic, a brief summary of the cultural redress instruments that are both appropriate and under development is provided.

2. Supported Cultural Redress Instruments

As indicated above, not all of the cultural redress instruments that contained in Settlements negotiated in other circumstances is considered appropriate for Wharekauri. However, very satisfactory progress has been made to date on particular arrangements under the proposed Settlement that might be implemented over places and natural resources on Wharekauri. These arrangements require substantial detailed development but have been actively, creatively and reasonably supported by Ngāti Mutunga o Wharekauri and include:

i. A new set of customary fishing regulations for Wharekauri/Rekohu
ii. The establishment of a Planning Committee comprising Ngāti Mutunga o Wharekauri/Moriori and Chatham Island County Council to prepare future draft regional plans and policies under the Resource Management Act
iii. 50:50 ownership of the bed of Te Whaanga Lagoon by Ngāti Mutunga o Wharekauri/Moriori and the establishment of a Management Committee comprising representation from Iwi/Imi/Council and Department of Conservation (DoC) with explicit powers to set policies for the environmental management of the lagoon and to plan its long-term rehabilitation
iv. The possible establishment of a Waahi Tapu Reserve Committee comprising equal Ngāti Mutunga o Wharekauri/Moriori representation to better provide for the recognition and protection of waahi tapu of both iwi/imi located within the DoC estate or upon Crown land.

In addition, a relationship agreement with the Ministry of Culture and Heritage that would (amongst other things) aim to retain the presence of taonga on Wharekauri (insofar as this is compatible with their preservation) is important to Ngāti Mutunga o Wharekauri.

Cultural Revitalisation that will assist Ngāti Mutunga o Wharekauri to rebuild, reclaim and promote tikanga and te reo is a prominent aspiration for the Settlement. Section D of the paper above states that funding for this purpose "*is sourced from the financial and commercial redress amount (quantum)*". Ngāti Mutunga o Wharekauri notes that this form of redress is actually meaningless unless that quantum contained additional funding ear-marked for cultural revitalisation. It is common knowledge on Wharekauri that Moriori have received very substantial funding for this purpose already and Ngāti Mutunga o Wharekauri people regard the Settlement as the opportunity for the Crown to restore some overdue equality in treatment of the two iwi in this area.

Note that the general feature of the cultural redress instruments relating to natural resource management which have Ngāti Mutunga support is that they all operate from a principle of equal status between two iwi with totally overlapping (but different) interests. A nuanced feel for a Chatham Island solution to the Chatham Island problem of overlapping claims is essential if the fruits of any Settlement are to be peace and co-operation rather than grievance and conflict.

3. Overlapping Interests

In *Healing the Past, Building a Future*, under the section headed Overlapping claims or shared interests,[1] it is stated:

> *The settlement process is not intended to establish or recognise claimant group boundaries. Such matters can only be decided between claimant groups themselves… Nor is it intended that the Crown will resolve the question of which claimant group has the predominant interest in a general area. That is a matter that can only be resolved by those groups themselves… Disagreements relating to overlapping claims may arise from the Crown proposing a particular form of redress, such as the transfer of a site or property to one claimant group to the exclusion of another. Where there are such overlapping claims, such exclusive redress may not always be appropriate. Often both groups have an interest, such as historical or cultural association, in a site or property and these interests can be accommodated by a form of redress which is non-exclusive. This allows the interests of different groups to be recognised and accommodated.*

We are not privy to the base factors that have been agreed with Moriori, but we are operating on the assumption that the Moriori rohe is regarded by the Crown as including all of Chatham, Pitt and the small outlying islands of the Chatham Group. In other words, our assumption is that the Crown has, in fact, (and contrary to the averral above in the OTS Guide) recognised completely overlapping claim boundaries to the Chatham group by Moriori and Ngāti Mutunga o Wharekauri.[2]

Crown decisions to confirm iwi status on Moriori and to recognise a Moriori rohe with boundaries identical to the Ngāti Mutunga o Wharekauri rohe in the Chatham group of islands are now historical decisions that have been made without either adequate consultation with or consent by Ngāti Mutunga o Wharekauri. These decisions by the Crown cannot simply be 'deduced' or 'projected' from the pragmatic arrangements that constitute the fisheries settlement as it applies to the Chatham Islands. Be that as it may, Ngāti Mutunga o Wharekauri has participated in the Settlement process to date operating consistently from two pragmatic principles:

i. Recognition that Moriori is an iwi with equal iwi status to Ngāti Mutunga o Wharekauri.
ii. Recognition that Moriori interests in the Chatham Islands have the same geographic extent as Ngāti Mutunga o Wharekauri.

Ngāti Mutunga o Wharekauri has also consistently maintained three associated positions:

i. There is no part of its rohe where Ngāti Mutunga o Wharekauri does not maintain a customary interest (and assumes that the same is true of Moriori)

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[1] *Healing the Past, Building a Future, A Guide to Treaty of Waitangi Claims and Negotiations with the Crown.* Office of Treaty Settlements, March 2015,156 pages (page53 &54)

[2] If this assumption is correct, then the basis for this Crown decision is of intense interest to Ngāti Mutunga o Wharekauri. As has been explained previously, the Ngāti Mutunga o Wharekauri position is that it holds ongoing mana whenua over the whole Chatham Group established by raupatu, maintained initially by ringa kaha and mana motuhake, affirmed by the Maori Land Court and uninterrupted by relinquishment or abandonment.

ii. Ngāti Mutunga is prepared to work on a wide range of matters with Moriori but never on a less than equal basis
iii. Ngāti Mutunga recognises that the customary interests of both iwi are different, that the definition of the cultural interests of one iwi is solely a matter for that iwi, but that differences in cultural interest do not establish either a hierarchy of interest or a right to exclude the other from a particular location except by agreement between the iwi.[3]

4. Customary Interests and Wāhi Tapu

Ngāti Mutunga o Wharekauri has held mana whenua over Wharekauri and its islands for 182 years or around eight generations. Ngāti Mutunga o Wharekauri occupied all of the Chatham's. Although Ngāti Mutunga people arrived with different technology and economic options than Moriori, there was also substantial cultural and economic overlap in the relationship between people and natural resources. These similarities meant that places favoured by Moriori for occupation were also frequently favoured by Ngāti Mutunga o Wharekauri and there are many records of Ngāti Mutunga o Wharekauri or Ngāti Tama kāinga co-located with Moriori dwellings (and later cultivations). As a result, Ngāti Mutunga o Wharekauri:

i. Settled in the same places as Moriori
ii. Hunted, fished and collected food in the same places as Moriori
iii. Died (often of the same European diseases) in the same places as Moriori
iv. Were buried in the same places as Moriori
v. Intermarried with Moriori (there are no longstanding Moriori families on Wharekauri who do not share Moriori whakapapa and many Ngāti Mutunga o Wharekauri families share Moriori whakapapa)

As a consequence, after eight generations, every part of the island is imbued with some level of cultural or historical significance to both iwi.

5. Wharekauri Station and Overlapping Interests (a Case Study)

The extensive nature of overlapping interests arising from long-standing Ngāti Mutunga o Wharekauri presence is evidenced in several ways by using Wharekauri Station land currently owned by DoC and Land Information New Zealand (LINZ) as a case study. Moriori have emphasised the presence of numerous kōimi in sandy areas of the coast of Wharekauri Station and also along parts of the Te Whaanga lagoon shore. Ngāti Mutunga o Wharekauri agrees that the appropriate recognition and protection of sites where there are ko mi/kōiwi is of utmost importance. We do not agree that the appropriate way to achieve that protection is from a foundation of exclusive Moriori ownership or control.

Maori Place Names

Ngāti Mutunga o Wharekauri gave names to places of significance to them. Many of these names are still used and provide a very dense record of associations.

Traditional Kāinga and Pā

Coastal areas with adjacent land suitable for cultivation were favoured sites for Ngāti Mutunga kāinga. For instance, around the Wharekauri Station coast moving from the north

[3] See also letter to Fran Wilde for Ngāti Mutunga position on Overlapping Claims

eastern to south western corners, there were kāinga at Taupeka, Te Awamutu, Cape Young, Mairangi and Tangipu. The activities of people based at these kāinga would have occupied the entire coast and would also have overlapped in some instances (fishing and food gathering)

Urupā

Kāinga are associated with burials, only some of which are known to be in recognised urupā (as at Te Awamutu).

Maori Land Court Awards

The entire area of Wharekauri Station was awarded to Ngāti Mutunga and Ngāti Tama in recognition of their customary title and occupation. These awards were made on the basis of evidence presented in open Court and therefore open to challenge.

Areas of Special Use

Cape Young is the site of a whare wananga. Part of the Te Whaanga lagoon shore is used for an annual ceremony that continues to this day.

Existing Waahi Tapu Identification

When Wharekauri Station was sold by the Crown, both iwi were involved in a process of identifying areas that should be set aside for sale on the grounds that they were Waahi Tapu. Both iwi identified very similar locations for the same reasons.

Burial Practices

It has been stated that Ngāti Mutunga o Wharekauri did not bury people in the sand dunes and therefore any kōiwi present in coastal sand dunes would be Moriori. This is not true. There are formal urupā in sand dunes on Wharekauri (e.g. close to Te One) and when the sea eroded the urupā in the sand adjacent to the Pā at Waitangi exposing kōiwi they were collected and re-interred at the urupā west of the hospital block. Reportedly thirty sacks of bones were re-interred there. There are also numerous references to this burial practice in Taranaki and the Kapiti Coast. DoC personnel have also noted the presence of small coloured pebbles with kōimi which is also a Māori practice.

Because of the higher population and longer period of Moriori occupation on Rekohu, it is likely that most kōimi/kōiwi are Moriori but they are not exclusively so and in many cases the identity of kōimi/kōiwi that appear from time to time could only be established with certainty by scientific analysis. Ngāti Mutunga o Wharekauri do not support the routine implementation of such analysis and prefers to maintain the present custom which is that human remains that appear should be respectfully re-interred close to the site where they are found.

Proper and respectful treatment of the dead is a core element of cultural safety to Ngāti Mutunga o Wharekauri and this is true whether the dead are Ngāti Mutunga or Moriori. In fact, Ngāti Mutunga has played a very prominent role in the organisation and conduct of Moriori tangi for generations. The photo of the 1933 tangi for Tommy Solomon in *Moriori a People Rediscovered*[4] shows George Tuuta who was both the primary organiser and lead pall bearer at the tangi for his friend. This was not unusual but normal.

[4] *Moriori a People Rediscovered*, Michael King, 1989, (226 pages), page 188

6. Conclusion

Every area in the DoC/LINZ estate that is outside of the Commercial Property Schedule is of customary interest to Ngāti Mutunga o Wharekauri. This includes areas that are also considered waahi tapu by Moriori. This fact simply reflects the unique extent of overlapping claims and interests on Wharekauri/ Rekohu. In these circumstances the only sensible course of action available for the delivery of cultural redress by the Crown to Moriori and Ngāti Mutunga o Wharekauri is to limit itself to redress instruments that do not require the Crown to either determine boundaries that differentiate allegedly exclusive cultural interests of the two iwi or to make a determination about the priority of the cultural interests of one iwi over the other. The Crown's own information papers and booklets set out the reasons why it should not do this anyway.

That same information makes it clear that one of the key reasons for vesting in fee simple is that it confers upon one iwi *the right to exclude others*[5]. If that right is conferred by the Crown (as opposed to established by agreement between iwi) it is unavoidable that it will create resentment and grievance and it should be unnecessary to add that full and final Settlements are not possible if the process of Settlement itself creates new grievances. The Ngāti Mutunga o Wharekauri position is that cultural redress instruments must focus on the ongoing relationship between the two iwi. The development and formalisation of relationship agreements between Moriori and Ngāti Mutunga o Wharekauri can be encouraged, but not dictated by the Crown. The appropriate stance of the Crown on all matters relating to overlapping claims in these particular Settlements is to maintain the strict position that the resolution of these matters are for iwi alone.

We are aware (on the basis of a presentation by Moriori to us at Te Kopinga Marae) that Moriori intend to claim fee simple title to a large proportion of the DoC estate on Chatham and Pitt Islands, including extensive lengths of marginal strips along coastline and lagoon foreshore. The scale, location and existence of overlapping claims to these areas all contravene explicit reasons given in OTS material why such claims should not be entertained by the Crown. The willingness of officials to indulge these claims both mystifies and frustrates us. It maintains a range of options that are a diversion from those which are actually viable. It fosters an environment of competition and suspicion between the two iwi when it is clear to all Chatham Islanders that a joint and co-operative approach to the management of overlapping interests is the only pathway forward[6].

Finally, Ngāti Mutunga o Wharekauri does not completely dismiss the use of vesting in fee simple of particular waahi tapu sites to iwi. However, unlike the proposals evidently under consideration these would have three features (that actually accord with the Crown's stated policies):

i. The areas would be small and discrete (a few hectares not hundreds or thousands of hectares)
ii. The areas would not include marginal strips
iii. The areas would be defined by mutual agreement between the two iwi.

[5] **Cultural Redress Instruments, Crown presentation to Ngāti Mutunga o Wharekauri**, dated 19 April 2016 (*without prejudice*). A4.
[6] See also Letter to Maui Solomon dated 12 January 2017