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Moriori AIP Acknowledgements

Tena koe e Fran,

During our last negotiation meeting we indicated the existence of problems that Ngāti Mutunga o Wharekauri have with the wording of certain of the acknowledgements in the Moriori AIP. Time did not allow a careful explanation of these issues and so I attempt to set them out below.

It is one of the unique features and difficulties of the Chathams settlements that acknowledgements or statements made about one iwi/imi regularly impact upon the other. It is apparent that some of these impacts have not been thought through by the officials who drafted the Crown acknowledgements contained within the Moriori AIP.

The problematic acknowledgements are 4.3.4 a. and d., 4.3.5 and 4.3.6. These all relate to acknowledgements about land ownership.

4.3.4: the Crown acknowledges that:

It did not consult Moriori about the introduction of the land laws, which provided for the land awarded to Moriori by the Native Land Court to be held on the basis of individual title, rather than traditional collective tenure;

Its failure to take steps to adequately protect the traditional tribal structures of Moriori, which were based on collective imi and hapu custodianship of land that had been held in peaceful occupation for many generations, had a prejudicial effect on Moriori and was a breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles;

4.3.5: the Crown further acknowledges Moriori were virtually landless from 1870 and its failure to ensure Moriori retained sufficient lands for their present and future needs was a breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles. This landlessness hindered the cultural, social and economic development of Moriori, most of whom live outside their rohe today. This compromised the ability of Moriori to manage their taonga and their wahi tapu (sacred sites), and to fulfil their t'chieki (guardian) and manawarekatanga (manaakitanga) responsibilities, all of which contributed to the erosion of mana Moriori and Moriori identity;

4.3.6: the Crown acknowledges that its failure to devise a just solution for Moriori in regard to land on the Chatham Islands following the Native Land Court's determination of land title was a breach of te Tiriti o Waitangi/the Treaty of Waitangi;

The essence of these acknowledgements is that the Crown failed to ensure that Moriori owned more Wharekauri land than the extent of land ownership that actually eventuated. The fundamental difficulty with these acknowledgements is that Moriori could only have got more land at the expense of Ngāti Mutunga o Wharekauri who were recognised by the Crown (through the Native Land Court) as the customary owners of all Wharekauri lands. To say that Moriori should have got more land is therefore the exactly same as saying that Ngāti Mutunga o Wharekauri should have got less land. To say or infer that Moriori were entitled to land is to say or infer that Ngāti Mutunga o Wharekauri were not entitled to that land i.e. were not the customary owners of that land and did not have mana whenua status over it.

In these acknowledgements, the Crown is saying that the recognition of Ngāti Mutunga o Wharekauri customary title to land on Wharekauri was a breach of the Treaty of Waitangi! The Crown does not have to mention Ngāti Mutunga o Wharekauri for this extraordinary position to be crystal clear. We could not disagree more strongly with this contention. It is deeply offensive and a contemporary grievance against the Crown for it to declare this position in acknowledgements intended to form part of a New Zealand statute.

Turning to the individual acknowledgements. 4.3.4. acknowledges that the Crown did not consult Moriori about the introduction of native land laws. In fact,

this is an acknowledgement that all iwi are entitled to. However, there is a circularity to this acknowledgement that leads nowhere.

Suppose the Crown did decide to engage with Maori about the introduction of native land laws after 1842, that engagement would have to be conducted according to the terms of the Treaty of Waitangi and with customary land owners. Moriori were not the customary land owners on Wharekauri after 1836 according to all conventional understanding of Maori custom and would properly have been excluded from consultation.

If the purpose of that consultation (hypothetically) was part of a Crown process to re-define Maori custom, then that process would have been contrary to the Treaty of Waitangi unless the resulting definition enjoyed wide or universal Maori support. There is no realistic prospect that Maori would have had rejected raupatu and ringa kaha as being accepted and determinative elements of pre-Treaty customary control over land.

4.3.4 d. asserts that the Crown were obliged to protect the tribal custodianship of land by Moriori (and did not do so). The word 'protect' in this acknowledgement is not apt because it also carries the meanings of defend, guard, keep and shelter, all of which imply the existence of something extant to be protected, preserved, kept etc. The history of Wharekauri is well enough known that the Crown should not perpetuate the fiction that Moriori held tribal custodianship or ownership of land on Wharekauri after 1842 which the Crown had a duty under the Treaty of Waitangi to protect. Moriori tribal custodianship of all Wharekauri land was lost totally in 1836.

If it is acknowledged that 'protect' is not the correct word, but what was really meant in the acknowledgement was better represented by the word 'restore', then formidable problems also arise. The restoration of Moriori custodianship of land could only be achieved by the repudiation and extinguishment of Ngāti Mutunga o Wharekauri custodianship or mana whenua over that land. The customary redress proposals for large areas of land to be awarded to Moriori on an exclusive basis suggest that this is precisely what the Crown intends.

4.3.5. makes a very unpromising beginning with a statement that is a simple factual error. Moriori were not virtually landless from 1870. Moriori were <u>completely</u> landless from 1836 and from 1870 were awarded significant lands by the Native Land Court at the behest of the recognised customary owners of those lands (Ngāti Mutunga o Wharekauri). It then compounds this error by adding a totally imaginary Treaty obligation on the Crown. The Crown (through the Native Land Court) had no obligation under statute or the Treaty of Waitangi "*to ensure Moriori retained sufficient lands for their present and future needs*".

The first objection is to the use of the word "retain" in this context. This suggests that Moriori were landowners in 1870. They were not. The second is that Article II of the Treaty of Waitangi does not confirm and guarantee the provision of lands to Māori on the basis of their present and future needs, it confirms and guarantees the secure possession of what was theirs when the Treaty came into effect (in the case of Wharekauri 1842 at the earliest). The Crown struggles to honour the actual Articles of the Treaty of Waitangi without OTS officials concocting new and completely unrealistic obligations.

Finally, 4.3.6 is an enigma. What does a "just solution for Moriori" actually mean? What would the implications for Ngāti Mutunga o Wharekauri of such a "just solution" be? We do not know. All we can judge by is the proposed cultural redress offered to Moriori in the AIP. This suggests a Crown judgement that there are parts of Wharekauri where Ngāti Mutunga o Wharekauri do not have (and presumably in the view of the Crown) never had significant customary interests. This view is mistaken, offensive and the source of a new grievance if acted upon.

A Treaty of Waitangi settlement between the Crown and Moriori cannot be at the expense of the Treaty rights of Ngāti Mutunga o Wharekauri. The Crown must abide by the terms of the Treaty of Waitangi when settling with Moriori and Ngāti Mutunga o Wharekauri. This requires a more considered approach to the Treaty rights of Ngāti Mutunga o Wharekauri than has been evidenced so far in these negotiations.

We recognise that the Moriori AIP document has been issued. It would have been far better if more thought went into it and acknowledgements were considered from all relevant perspectives. However, as suggested above, the main thing now is that regrettable words are not translated into regrettable (and far more harmful) actions.

Naku noa na,

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people, was a breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles;

4.3.4 the Crown acknowledges that:

a. it did not consult Moriori about the introduction of the native land laws, which provided for the land awarded to Moriori by the Native Land Court to be held on the basis of individual title, rather than traditional collective tenure;

b. in 1870 the Native Land Court awarded titles for seven reserves to Moriori, each in the names of nine or fewer individuals;

c. the individualisation of Moriori land tenure made the small amount of land remaining in Moriori ownership more susceptible to fragmentation, partition, and alienation, and further eroded Moriori tribal structures; and

d. its failure to take steps to adequately protect the traditional tribal structures of Moriori, which were based on collective imi and hapū custodianship of land that had been held in peaceful occupation for many generations, had a prejudicial effect on Moriori and was a breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles;

4.3.5 the Crown further acknowledges Moriori were virtually landless from 1870, and that its failure to ensure Moriori retained sufficient lands for their present and future needs was a breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles. This landlessness hindered the cultural, social, and economic development of Moriori, most of whom live outside their rohe today. This compromised the ability of Moriori to manage their taonga and their wāhi t'chap (sacred sites), and to fulfil their t'chieki (guardian) and manawarekatanga (manaakitanga) responsibilities, all of which contributed to the erosion of mana Moriori and Moriori identity;

4.3.6 the Crown acknowledges that its failure to devise a just solution for Moriori in regard to land on the Chatham Islands following the Native Land Court's determination of land title was a breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles;

4.3.7 the Crown acknowledges that kōimi t'chakat (human remains) are tchap' (sacred), and that the removal from Rēkohu, collection, and trade of kōimi karāpuna Moriori (ancestral remains) violated the tchap' of these taonga and caused Moriori great distress;

4.3.8 the Crown further acknowledges that the collection and trade of kōimi karāpuna Moriori by the Colonial Museum were actions undertaken by or on behalf of the Crown, and was a breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles;

4.3.9 the Crown acknowledges its contribution, through the dissemination of school journals, to the stigmatisation of Moriori as a racially inferior people who became extinct, and acknowledges the suffering and hardship these myths have caused to generations of Moriori through to the present day; and