

Ngāti Mutunga o Wharekauri Special Factors

Summarised Headings

- *Annexation without Consultation*
- *Post-Annexation and the Treaty Relationship*
- *Raupatu*
- *Incorrect Use of the 1840 Rule to Limit Compensation*
- *Full Compensation made available for raupatu not received*
- *Migration a Key Impact of the Crown's Raupatu Compensation Process*
- *Crown's Compensation Process was not executed in a Timely Manner*
- *Prolonged Absence affected Land Rights on Wharekauri*
- *Penal Colony*
- *Undermining of Effective Representation in 1870*
- *The Distortions of the 10-owner Rule*
- *Redress to the 10-Owner Rule was not Timely or Effective*
- *Redress to the 10-Owner Rule was not Equitable and not based in Custom*
- *There was no full redress to the operation of the 10-Owner Rule*
- *Redress to the 10-Owner Rule created new significant Land Tenure Impacts*
- *Possible solutions to Land Tenure Problems were not attempted*
- *Inadequate Land Administration Processes*
- *Resulting Absenteeism brings new Impacts*
- *Ineffective Crown Administration*
- *Problematic Devolution Process*
- *Impacts of Fisheries Management Policies not Addressed*
- *Delayed Political Enfranchisement and taxation without Representation:*
- *Inadequate Provision of Medical Services*
- *Inadequate Provision of Education Services*
- *Inadequate Provision of Housing Services*
- *Mismanagement of Te Whaanga*
- *Failure to Establish ongoing relationship under the Fisheries Settlement*
- *Failure to Recognise Ngāti Mutunga o Wharekauri mana whenua*
- *Unilateral Crown Commitments to Moriori Potentially Limit Settlement Redress*
- *Vilification and Stigmatization of Ngāti Mutunga o Wharekauri*

Explanatory Notes

- *Annexation without Consultation*: that, in 1842, the Crown annexed Wharekauri without consultation or notification to the resident mana whenua Ngāti Mutunga o Wharekauri who exercised temporal control over Wharekauri equivalent to sovereignty. This is a unique special factor to Wharekauri.
- *Post-Annexation and the Treaty Relationship*: that there is no evidence of post-annexation notification. Despite requests during the 1850s and 1860s from Ngāti Mutunga o Wharekauri rangātira for the Governor to visit the island, there never was subsequent engagement with the Crown to explain the implications of the Treaty of Waitangi and how the Articles might be applied in practice on Wharekauri. Ngāti Mutunga o Wharekauri have always felt the burden of this lack of engagement and ascribe to it many of the subsequent difficulties in their Treaty relationship with the Crown.
- *Raupatu*: that in 1865 the Crown confiscated land in Taranaki in which Ngāti Mutunga o Wharekauri had interests despite the iwi never having taken up arms against the Crown.
- *Incorrect Use of the 1840 Rule to Limit Compensation*: that the level of compensation made available to Ngāti Mutunga o Wharekauri for their confiscated lands was materially lessened by the incorrect imposition of the 1840 rule. The rule was incorrectly applied in deeming that those who resided in Wharekauri no longer had rights in Taranaki even though Taranaki had not been occupied and settled by Waikato and Maniapoto and that some Mutunga had remained in Taranaki.
- *Full Compensation made available for raupatu not received*: that Ngāti Mutunga o Wharekauri have never received the compensation for their confiscated lands in Taranaki that the Crown has made available to other groups through various 20th century settlements.
- *Migration a Key Impact of the Crown's Raupatu Compensation Process*: that the processes adopted by the Crown during the 1860s for the granting of compensation for confiscated land in Taranaki resulted in Ngāti Mutunga o Wharekauri having to make the decision that they needed mass representation to negotiate for their land rights in Taranaki and therefore the majority of the population, (other than 28 representatives appointed to represent mana whenua and maintain ahi kaa), at great expense, left the islands in 1867/68 for that representative purpose. Lack of success in the Compensation Court meant many were left without the means to return to Wharekauri.
- *Crown's Compensation Process was not executed in a Timely Manner*: that the process adopted by the Crown to provide reserve land in Taranaki did not proceed in a timely manner keeping those Ngāti Mutunga o Wharekauri who had left the islands away from their homes for almost two decades in which time many died. In Taranaki, Ngāti Mutunga o Wharekauri faced great expense and hardships, whilst in Wharekauri their absence disrupted any possibility of social and economic continuity there.
- *Prolonged Absence affected Land Rights on Wharekauri*: that the prolonged absence of Ngāti Mutunga from Wharekauri in Taranaki as they dealt with Crown processes for compensation over confiscated lands created a situation where some died away from the islands and others, having to adapt to their changed circumstances as they waited for Crown action, did not return to the islands with the effect that they and their descendants ultimately lost their land rights on the islands. For others, Crown processes determined the timing for those Ngāti Mutunga o Wharekauri who

returned to the islands. Ultimately, this materially affected their landholding on the islands as during the 1900 rehearing of the Kekerione block (see below), the date of return was used as a key benchmark by the Land Court to determine the quantity of shares in land that were allocated.

- *Penal Colony*: that the Crown established a penal colony on the island from 1866 to 1868 without notification of or consultation with Ngāti Mutunga o Wharekauri and without any restrictions being placed on the prisoners or protections put in place for the local populace. The availability of prisoner labour undercut the local labour market.
- *Undermining Effective Representation in 1870*: that the holding of the first significant Native Land Court hearing to investigate titles on the islands at a time when the bulk of the population was away dealing with the processes of the Compensation Court, created an insuperable barrier to the effective presentation of Ngāti Mutunga o Wharekauri interests in both of these Courts. Ngāti Mutunga o Wharekauri were only able to send back a delegation to Wharekauri. Although presumably appointed and therefore representative, representation by delegation did not allow Ngāti Mutunga o Wharekauri, individually, and as a group, to respond to any developments that arose during the hearings.
- *The Distortions of the 10-owner Rule*: that a land tenure system was brought into effect, the specific aspects of which were not fully perceived by Wharekauri Māori especially as these aspects were altered over time without explanation to Wharekauri landholders. The awarding of title by the Native Land Court proceeded under legislation which limited the recording of names of grantees on land awards - a process that has become known as the 10-owner rule. Available evidence from the hearing, and the years thereafter, indicates that the representative grantees recorded on titles in 1870 were viewed by Ngāti Mutunga o Wharekauri as being trustees for the wider group of beneficiaries who were interested in the land. The awarding of land to trustees was contrary to an emergent interpretation in Land Court jurisprudence that grantees were not representatives but owners in their own right. It was not until the partitioning of land in 1887, that Wharekauri interest holders became aware that grantees were deemed to be absolute owners. Protest was immediate with the first occurring while the 1887 hearing was still in progress.
- *Redress to the 10-Owner Rule was not Timely or Effective*: that the Crown provision for redress to owner complaint over the 10-owner rule was not timely as a rehearing did not occur until 1900 despite legislation such as the 1886 Equitable Owners' Act being in place at the time the first protests were made. Instead of the 1887 partition hearing being suspended as a result of the protests, it went ahead with titles only being awarded to the grantees of 1870 or their descendants. Despite protests having been lodged, and the Crown actively considering how to respond, title registration processes proceeded in relation to the awards of 1887. In 1898, an Order in Council was passed removing significant areas of land from review by the Court. Over half of the Kekerione block, the main occupation area on Wharekauri, was no longer available for possible restoration to owners. A rehearing was held in 1900. It has been recognised that by this time, the series of sales, successions and partitions that had occurred meant that it would not be possible to restore a reasonable allocation to all who were entitled.
- *Redress to the 10-Owner Rule was not Equitable and not based in Custom*: that the effect of the 1887 partitions and the 1898 Order in Council shaped how the Court approached the rehearing of title to the Kekerione block in 1900. The Court, finding itself under pressure to award a remnant of land to a multitude of owners, introduced a raft of hotch-potch compromises and deals to ensure that most people with rights received some land. Awards depended on whether people stayed or returned to Wharekauri and the length of their residence; mana claims were rejected but whanau/hapu leaders were given double or treble the award of others; tribal claims were accepted

over certain land only, and pragmatic horsetrading over the awards to various individuals was based on value rather than tikanga. The overall result of the 1900 awards was the imposition of titles that further undermined the tenets of traditional landholding. Areas formerly used by communities were awarded amongst small groups of individuals; the broader role of rangātira and leaders had been converted into land awards that were disjointed away from the wider community. Resources that over time may have been utilised by the wider community were now permanently locked down to one group of interestholders only. The overall effect of the 1900 rehearing of Kekerione was to further attack, immediately and as an ongoing process, the economic, social and cultural structures that had been in place on the islands since 1835. The 1900 hearing was the final and fatal blow in a 30-year process to extinguish Ngāti Mutunga o Wharekauri mana motuhake on Wharekauri.

- *There was no full redress to the operation of the 10-Owner Rule:* that those who held beneficial interests in Te Awapatiki, Te Matarae and Otonga, but who were not recognised as owners under the 10-owner rule, did not receive any redress as the 1870 titles were not reheard despite applications for rehearings being lodged for both Te Awapatiki and Te Matarae. Instead, these blocks remained with the grantees and their successors and, over time were alienated.
- *Redress to the 10-Owner Rule created new significant Land Tenure Impacts:* that aside from the 1900 hearing ending traditional land tenure, the new titles were not suitable to support future aspirations. With small titles that were not commercially viable for farming, larger titles of poorer quality land, lands that were held under multiple ownership, or irregular-shaped land plots that could not be effectively utilised, the result for a number of owners was that they could not directly occupy the land they had been awarded. Increasingly, owners left the island thereby beginning the process of absentee ownership which undermined effective land ownership and the retention of whanau and community during the 20th century.
- *Possible solutions to Land Tenure Problems were not attempted:* that ongoing land utilisation impacts from the 1900 rehearing were not addressed by the Crown despite Crown officials documenting the existence of these impacts for more than 50 years from the 1930s onwards; despite Māori land remaining a dominant land tenure on the island; despite the majority of the island population being of Māori ethnicity; and despite there being consolidation and development policies and programmes for Māori land being implemented over this period by the Crown in New Zealand
- *Inadequate Land Administration Processes:* that the unique land tenure problems arising from the 1900 hearing were exacerbated by the Land Court's administration practices. As the Land Court only visited Wharekauri five times over 80 years, successions, partitions and alienations had to be processed off the Island significantly increasing costs faced by owners. Other costs associated with the maintenance of land tenure were prohibitive - a reported example was that survey liens often absorbed the total value of the land. Not receiving island-based services from the Land Court significantly worsened already existing land tenure problems on the islands. Rather than face such expenses, owners could not engage and therefore could not protect their interests or pursue land-based opportunities.
- *Resulting Absenteeism brings new Impacts:* that land tenure problems resulting from the 1900 rehearing of Kekerione, exacerbated by the inadequacy of Court services and costs associated with land tenure often undermined land use resulting in broader impacts such as the decline in population on the islands from after World War II until the 1960's due largely to outwards migration. Depopulation meant the consequent rise of absentee owners which increasingly took ownership off the Island. Absenteeism and inadequate Court administration led to the increase of

informal occupation which Crown officials reported led to many disputes that in turn undermined community cohesion. Occupation without clear and secure titles undermined development and the ability of occupiers to source finance. Crown officials also reported that these problems affected the Chatham Islands Māori land more than other areas of New Zealand.

- *Ineffective Crown Administration*: that in 1940 the affairs of the Chathams were directly brought under a central Crown agency (initially the Department of Island Territories and subsequently the Department of Internal Affairs) and this remained the situation for the next 50 years. Ngāti Mutunga o Wharekauri, therefore, would have been the only Māori community who were subjected to localised administration without the representation offered by other forms of local government. Under the system of Crown administration, subsidies were developed for transport costs and the provision of utilities. This form of funding, although significant, was ineffective due to the land tenure problems noted above undermining the ability of Ngāti Mutunga O Wharekauri landowners to participate in the economy fully and benefit from the available subsidies in the same way that other landholders on the islands might.
- *Problematic Devolution Process*: that the Crown devolved its central administrative role on the islands without due consideration being given to key Treaty principles including acknowledgement of rangatiratanga, the pursuit of partnership and the requirement for effective consultation despite these being actively sought by Ngāti Mutunga o Wharekauri. The evidence suggests that it was the Crown's reaction to divisions between tangata whenua on the Island which led to the rejection of representation for iwi groups in any management or policy institutions on the Island. That there were problems on the Island and competing interests there is no doubt. However, the response of a Treaty partner should not have been to abandon its Treaty responsibilities in favour of expediency. None of the reviews attempted to take a Māori frame of reference into consideration. The existing financial and management structures which currently operate on the Island are devoid of iwi representation. Ngāti Mutunga o Wharekauri have little input or control as an iwi into decisions that are made on the Island. This has handicapped Ngāti Mutunga o Wharekauri efforts at economic self-determination.
- *Impacts of Fisheries Management Policies Not Addressed*: that socio-economic impacts arising from the implementation of the Crown's fisheries management policies on Ngāti Mutunga o Wharekauri were not adequately assessed either at the time of the cray boom or at the time of the introduction of the Quota Management System. Although the unusual level of dependency of Ngāti Mutunga o Wharekauri on fishing for domestic and commercial purposes was known, no monitoring was undertaken of the impacts of significant policy changes on Ngāti Mutunga o Wharekauri nor were any plans for amelioration put in place despite similar programmes operating in New Zealand during the state sector restructuring of the 1980s.
- *Delayed Political Enfranchisement and Taxation without Representation*: that for all of the 19th century, Ngāti Mutunga o Wharekauri experienced taxation without representation. Despite the collection of excise tax from 1855 and the notorious dog tax from 1889, political representation, available for other Māori from 1867, was not extended to the islands until 1922 when the Chatham Islands were included in the Lyttleton and Western Māori electorates.
- *Inadequate Provision of Medical Services*: that during the 19th century Ngāti Mutunga O Wharekauri did not receive state assisted medical services that were provided to other Māori communities with no resident medical officer being appointed before 1904. There is no record of district nurses, a mainstay of public health in New Zealand, being sent to the islands. Although a cottage hospital was built in Waitangi in 1925, only those deemed indigent initially received free treatment. Over the years, the hospital did not offer the full range of services that could be

accessed by most Māori communities in the second half of the twentieth century. There was no adequate maternity facility for instance. Most secondary health care could only be accessed off the island. This lack of medical facilities has damaged the ability of the whanau to maintain cohesion and to properly support sick or dying family members.

- *Inadequate Provision of Education Services:* that in relation to education, government schools were not established on the island until the 1890s. Despite frequent requests, no effective provision for secondary school education has ever been made on the island. Secondary school children either have to board at New Zealand schools or study with the Correspondence school. For those whanau who chose the former, an expensive cost was faced and the cohesion of the whanau was broken. For those who chose the latter, there was no support available on the Island to supervise and assist students undertaking the correspondence courses. In the second half of the 20th century the lack of access to local secondary education became a key reason why whanau left the islands to live in New Zealand.
- *Inadequate Provision of Housing Services:* that despite the direct link between adequate housing and health long being understood, and despite Crown officials consistently reporting during the latter half of the twentieth century on the appalling housing conditions experienced by Ngāti Mutunga o Wharekauri, the tenets of the state housing programme developed in New Zealand generally and for Māori particularly did not work on the islands because of the land tenure difficulties, the absence of an urban housing situation or the absence of Crown land on which to build state housing. As a result, despite the dire and documented need, state assisted housing was never provided on anywhere near the level of need nor at the level it was being provided in New Zealand. Unique solutions for Wharekauri housing issues, although proposed from time to time, were not introduced.
- *Mismanagement of Te Whaanga:* that despite Ngāti Mutunga o Wharekauri never having sold or appropriated Te Whaanga, which has always been of central cultural, social and economic significance to all whanau, the Crown assumed the right of ownership and control, wrongly declaring it to be an 'arm of the sea'. The Crown's exclusive management of Te Whaanga has caused prejudicial effects.
- *Failure to Establish an ongoing relationship under the Fisheries Settlement.* The 1992 Deed of Settlement requires the establishment and maintenance of an ongoing relationship between Ngāti Mutunga o Wharekauri and the Crown so that the Crown is able to develop policies to help recognise use and management practices and provide protection for and scope for the exercise of rangatiratanga in respect of traditional fisheries. This relationship has not been properly animated and various fisheries management concerns such as the sustainable management of the bluenose fishery around Wharekauri have not been adequately addressed.
- *Failure to Recognise Ngāti Mutunga o Wharekauri mana whenua.* In its dealings with Ngāti Mutunga o Wharekauri, the Crown has failed to recognise Ngāti Mutunga o Wharekauri mana whenua over Wharekauri and its implications.
- *Unilateral Crown Commitments to Moriori Potentially Limit Settlement Redress.* Against the opposition of Ngāti Mutunga o Wharekauri, the Crown has entered into commitments to, or made offers to, Moriori outside of formal settlement negotiations which have the effect of curtailing the potential settlement address available to Ngāti Mutunga o Wharekauri. Notable examples include offers to transfer land on Pitt Island (the Glory Block) and Taia Farm on Wharekauri totalling some 2,400 hectares to Hokotehi Moriori Trust.

- *Vilification and Stigmatization of Ngāti Mutunga o Wharekauri.* Since 1989, processes to promote the 'rediscovery' and recognition of Moriori have been associated with the vilification and stigmatization of Ngāti Mutunga o Wharekauri people. This unique level of vilification has been based upon the polemical treatment of historical events and practices that are by no means unique to Wharekauri or Ngāti Mutunga o Wharekauri. The Crown has not resisted this behaviour, rather the Treaty relationship between the Crown and Ngāti Mutunga o Wharekauri has been adversely affected by it.