

17 April 2017

Tom McClurg, Hariroa Daymond, Geoff Mullen
Negotiators
Ngāti Mutunga o Wharekauri Iwi Trust
PO Box 50
Waitangi
Chatham Islands 8942

iwitrust@nmow.iwi.nz

Tēnā koutou

Thank you for meeting with us on 6 April and for your subsequent letter of 10 April 2017. We appreciate the time you took at the meeting to explain your special factors and settlement aspirations to us in more depth and consider that it was a useful and productive discussion. At the meeting the Crown agreed to provide a written response to the 'Ngāti Mutunga o Wharekauri Cultural Redress Position Paper' dated February 2017. This letter also responds to your 10 April letter.

As I understand the paper, and your position from negotiations over the past 12 months, Ngāti Mutunga o Wharekauri assert mana whenua over all of Wharekauri and its surrounding islands. You also assert customary interest over the islands, which derives from mana whenua.

Crown recognition of Ngāti Mutunga o Wharekauri as tangata whenua

The Crown did not recognise Ngāti Mutunga o Wharekauri mana whenua at the hui on 6 April. The Crown recognises Ngāti Mutunga o Wharekauri as tangata whenua on the Chatham Islands and that you assert mana whenua and mana moana over the same. This is what was acknowledged at our meeting on 6 April. At the hui it became clear that there were different interpretations of what the Crown had said in relation to mana whenua and I regret not making this point more clearly at the time. Irrespective of your understanding of what was said at the hui, this letter sets out the Crown's position.

Importantly, the Crown does not consider mana whenua to be a necessarily exclusive concept. Further, the Crown has never considered mana whenua determinative for Treaty settlement purposes. The Crown also recognises that Moriori are tangata whenua on the Chatham Islands and they are free to assert mana whenua and mana moana. As noted in my letter to you of 27 June 2016, the Crown does not consider the status of either iwi/imi as tangata whenua or their tikanga to be predominant over the other.

In this regard I note the Crown agrees with your statements on page three of your position paper that 'Moriori is an iwi with equal iwi status to Ngāti Mutunga o Wharekauri' and 'Moriori interests in the Chatham Islands have the same geographic extent as Ngāti Mutunga o Wharekauri.'

Cultural redress

The Crown has been clear throughout the negotiation with Ngāti Mutunga o Wharekauri that cultural redress is driven by interests, and that redress can be offered over sites where claimant groups can communicate the cultural interests they wish to protect and promote. In response, and in your position paper, you have stated by virtue of holding mana whenua, there is no part of the Chatham Islands in which you do not have customary rights and interests. In general you have chosen not to provide site-specific information about associations and cultural interests that need protecting or promoting. The Crown does not accept that a general assertion of mana whenua provides the level of information about the protection and promotion of customary interests required to progress discussions with the Crown about redress over specific cultural sites.

As discussed at our negotiations hui on 6 April, the Crown does not apply 'the 1840 rule' in determining who has cultural interests for the purposes of providing cultural redress through Treaty settlements. The Crown considers both Ngāti Mutunga o Wharekauri and Moriori have cultural interests and associations with sites on the Chatham Islands that can and should be recognised by cultural redress through a Treaty settlement with the Crown. The Minister for Treaty of Waitangi Negotiations made it clear to you at a hui in February that he considers it reasonable for Moriori to receive ownership of some cultural redress sites.

Ownership of cultural redress sites

In your position paper you refer to the exclusive nature of 'vestings in fee simple' and highlight that such vestings give the ability of the owner to exclude others. What you are referring to is the transfer of sites with no encumbrances (such as conservation covenants or reserve classifications). Normally in Treaty settlements the ownership of cultural redress sites is transferred subject to either conservation covenants or reserve classifications. At our negotiations hui on 13 March, the Crown provided you with a schedule of possible cultural redress over Crown-owned land on the Chatham Islands. You will note that this schedule contained only a small number of sites where transfer without statutory encumbrance may be possible. The vast majority of sites where transfer of ownership may be possible would be subject to a reserve classification under the Reserves Act 1977.

You will be aware that the reserve classifications proposed require public access to be maintained to the sites, and that the Reserves Act 1977 requires the values of all members of the community – including Ngāti Mutunga o Wharekauri – be taken into consideration in the management of the reserves. Further, the Crown is clear that if it transferred ownership of a cultural redress site to Moriori, Ngāti Mutunga o Wharekauri's association with that place as tangata whenua is not extinguished. Similarly, if Moriori acquired a commercial redress property through the settlement, you would still have status as tangata whenua in that place.

In relation to kōiwi/kōimi on the Chatham Islands, the Crown considers that where there is a high level of certainty as to their provenance, it is appropriate that redress be provided to enable the iwi/imi to whom they belong to be able to manage the site in accordance with their tikanga. Transfer of ownership is appropriate in some cases. Generally such transfers would be subject to the protection of conservation values and other interests. We do not accept the proposition that in every instance kōiwi/kōimi should be jointly managed, which we understand is your position.

The Crown acknowledges the unique situation on the Chatham Islands in having two iwi/imi with identical areas of interest. However, the Crown has reached settlements with iwi elsewhere in the country where there are overlapping interests. For example, in the settlements with Ngāti Kahungunu ki Wairarapa Tāmaki Nui-ā-Rua and Rangitane o Wairarapa and Rangitāne o Tāmaki Nui-ā-Rua the Crown has provided both exclusive and joint cultural redress sites to each iwi. Similarly in the settlements with Te Tau Ihu iwi, the Crown transferred exclusive and joint ownership of cultural redress sites to all Te Tau Ihu iwi, including Ngāti Apa ki te Rā Tō who no longer had exclusive possession of all their territory after it had been invaded by North Island iwi in the 1820s and 1830s. Importantly, in both of these regions the Crown does not consider provision of cultural redress property to a particular iwi diminishes the standing of other iwi in that place as tangata whenua.

Resolution of overlapping claims

In relation to the Crown offers that are scheduled to be made at the end of April to both Ngāti Mutunga o Wharekauri and Moriori, I want to stress that both the offers, and any agreements in principle subsequently reached, remain subject to the resolution of overlapping claims. Both groups will have the opportunity to make submissions to the Crown on any agreements in principle reached, and the Crown will continue to encourage and support engagement between the two iwi/imi to reach agreement. As previously advised, in the event the two groups cannot reach agreement between themselves, the Minister may make final determinations.

In your position paper, you refer to Ngāti Mutunga o Wharekauri's proposal to establish a Wāhi Tapu Reserves Committee through the settlements to better provide for the protection and recognition of wāhi tapu on Crown land on the Chatham Islands. Your letter also outlines the three conditions upon which you consider cultural redress to Moriori could proceed. I note you have not yet reached agreement to either of these proposals in discussions with Moriori. The Crown considers it necessary for agreement to be reached before the proposals are able to be progressed further.

Cultural revitalisation

Your position paper also identifies cultural revitalisation redress as something you expect to be included in your Crown offer. We would appreciate it if you could provide details of what the specific redress might be and what specific needs of Ngāti Mutunga o Wharekauri you consider it would address. However, I do note the Crown provided cultural revitalisation support to Moriori outside of the Treaty settlement process. The provision of this support to Moriori is not sufficient justification for the same to be provided to Ngāti Mutunga o Wharekauri.

Thank you again for your presentation and I look forward to making Ngāti Mutunga o Wharekauri a Crown offer on 28 April.

Nāku noa, nā

Fran Wilde
Chief Crown Negotiator