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15 August 2017

Hon Christopher Finlayson
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Moriori Agreement in Principle

Tena koe e te Minita,

Yesterday you provided an outline of the cultural redress contained in the Agreement in Principle (AIP) you intend to sign with Moriori. Our understanding is that this AIP is to be signed tomorrow. As you know, all areas of Crown land are subject to overlapping claims by Ngāti Mutunga o Wharekauri and we have asked that cultural redress offers be dealt with on a 'cards on the table basis' so that overlapping claims can be dealt with before AIP signing as far as possible. It was our fear that offers of land to one iwi but not the other, will create contemporary grievances and avoidable disharmony within the Chatham Island community.

You have chosen to ignore this advice. Our fears have now been realised. The resolution of outstanding claims issues has been made all the more difficult by what we see as the clumsy approach by the Office of Treaty Settlements (OTS) as a consequence. Furthermore, the approach seems to disregard established OTS guidelines. As indicated in our Customary Redress Paper (attached) it might well be possible to gain Ngāti Mutunga o Wharekauri support for exclusive Moriori redress of small and discrete areas of land currently in Crown ownership. However:

1. The Ocean Mail Scenic Reserve of 831 hectares is not a 'small and discrete' area. Neither are sites 100 and 102 (154 hectares) on Wharekauri Station. We have previously informed you that Cape Young is the site of a Ngati Mutunga o Wharekauri kainga and whare wananga (Customary Redress Paper page 5.). It should not be vested in Moriori.

2. The areas on Pitt Island are not obviously 'small and discrete'. We will consult with the Pitt Island community about their view on the proposed exclusive vestings to Moriori and if they are supported, Ngāti Mutunga o Wharekauri would be guided by that view.

3. The sites at Tikitiki Hill are really commercial redress (with the exception of the hilltop itself) and should be shared. Ngāti Mutunga o Wharekauri have not agreed to the removal of the Owenga School Site from the Commercial Schedule. Your letter is the first notification we have received of this alteration.

The continuing failure of OTS to address the salient fact of the existence of Ngāti Mutunga o Wharekauri mana whenua over the entirety of Wharekauri has been as source of exasperation to us. There can be no settlement with Ngāti Mutunga o Wharekauri without appropriate Crown acknowledgement of this fact. Acknowledgement of Ngāti Mutunga o Wharekauri mana whenua, in turn, indicates the untenable nature of some elements of the cultural redress offer you intend to make to Moriori in the proposed AIP.

We ask you to withdraw the three components of your offer (identified above) to Moriori, pending further negotiations. Ngāti Mutunga o Wharekauri mana whenua has been acknowledged by the Crown yet the incidents of that Ngati Mutunga o Wharekauri status have been overridden or ignored. That consequence is unfair, unjust and unreasonable: and a cause of further Crown breach of the Treaty.

Naku noa na,

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Attachments

1. Customary Redress Position Paper
2. Letter to Maui Solomon

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*

[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)

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)
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]

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[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.

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

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 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.

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

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

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.

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[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

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12 January 2017

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Waahi Tapu Sites on Crown Lands

Tena koe Maui,

Thank you for your email of 22 December 2016 that followed our discussion on 20 December. In that discussion you offered to relinquish Moriori claim to 100% ownership of Te Whanga lake bed in exchange for Ngati Mutunga agreeing to the transfer of exclusive ownership or control to Moriori by the Crown of all Moriori waahi tapu areas located on Crown land in Wharekauri and associated islands. These Moriori waahi tapu areas were not identified exactly but would include urupa (although not confined to urupa). I indicated that your suggested trade-off was unlikely to be accepted by Ngati Mutunga for two reasons:

1. Ngati Mutunga are unlikely to agree to any arrangement over the ownership of the bed of Te Whanga lagoon that is less than 50:50 in any circumstances.
2. Ngati Mutunga have a customary interest in every part of Wharekauri and are likely to oppose the transfer of exclusive ownership or control of land currently in Crown ownership for that reason. Ngati Mutunga reject any suggestion that the Crown is entitled to ignore or over-ride the existence of those customary interests in particular places on Wharekauri.

I note that in your email, you describe the present Ngati Mutunga position as claiming an interest in Moriori waahi tchap (tapu) areas. This is disappointing as I had explained as carefully as I could why this language is not an accurate description of the Ngati Mutunga position and is therefore unhelpful. Ngati Mutunga have not claimed, and are not claiming, ownership or control of anything that is Moriori. This is true whether 'claim' is used as a verb or a noun. Ngati Mutunga are not demanding or requesting a cultural interest in Wharekauri from the Crown. Such a cultural interest is not in the power of the Crown to establish or confer. Neither is Ngati Mutunga demanding, requesting or asserting that it owns something that is culturally (or otherwise) Moriori.

As I have previously described, the pragmatic Ngati Mutunga position underpinning the current Treaty Settlement negotiations is that:

1. There are two iwi on Wharekauri/Rekohu (Ngati Mutunga[7] and Moriori);
2. The rohe of the two iwi overlap completely there;
3. The nature and extent of the customary interests in those rohe are unique to each iwi and the way in which those interests should be recognised and protected is properly a matter for the two iwi to determine - not the Crown. In developing structures and processes to provide for such cultural recognition and protection, the starting point must be one of mutual respect and equality in status between Ngati Mutunga and Moriori.

To be clear, Ngati Mutunga do not seek to veto, or even influence, processes within Moriori to designate the location and nature of places that are waahi tchap to Moriori. Neither do Ngati Mutunga expect that Moriori would attempt to veto or influence such processes within Ngati Mutunga. In the event that waahi tapu were to overlap, this could be addressed respectfully through actions such as the erection of twin pou to mark particular sites as was discussed at Te Kopinga. However, the identification of a particular site as a waahi tapu by one iwi does not automatically extinguish the cultural interest of the other in that location even though that interest may not have the status of waahi tapu. Neither is there any sound independent basis by which customary interests can be arranged in a hierarchy whereby one interest could be determined to predominate over the other. In the special context of Wharekauri/Rekohu, all parameters of the structure and processes for the future management and control of waahi tapu sites must be parameters agreed by iwi/imi.

You may recall, Maui, when we were at Te Ohu Kai Moana and we were required to wrestle with the issues of who were the iwi of Aotearoa and what are their respective coastal interests? The answer to these questions was delivered successfully over a relatively short time by Te Ohu Kai Moana implementing a policy of establishing iwi status through mutual recognition (an iwi is an iwi if iwi say it is an iwi) followed by negotiation of coastline based shares between properly mandated organisations (facilitated if need be by mediation or arbitration). I have always thought that the success of this approach reflected the wisdom of Te Ohu Kai Moana in not intruding into these matters beyond what was necessary to establish a devolved process (notwithstanding its potential status as an expert Maori entity). If it was unwise for Te Ohu Kai Moana to make such judgements it would be positively foolish for the Crown to do so in my opinion.

Unfortunately, our reading of the 'overlapping claims letter' dated 27 June 2016 signed by Fran Wilde leaves this course of action open (I assume that you received a similar or identical letter at that time). In it, two contradictory positions are set out. First "*it is not*

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[7] Ngati Mutunga in this sense means the descendants of the Maori passengers on the two voyages of the Rodney to Wharekauri in 1835 who were Ngati Mutunga, Ngati Tama, Kekerewai, Ngati Haumia and may also have identified themselves as Atiawa. Irrespective of how they chose to identify themselves in 1835 and however their descendants choose to identify themselves today, all are included within the ambit of the use of the term 'Ngati Mutunga'.

intended for the Crown to resolve or determine 'predominance' in interests, if any – that is a matter that can only be addressed by the groups themselves. Rather, the Crown recognises that a number of groups may have interests in the same general area. The basis for these interests can be different and derive from different tikanga. The Crown does not make a judgement about the hierarchy of either group's tikanga and respects both equally." This is contradicted by two prior statements in the letter. *"The Crown's preference is that groups decide between them how best to deal with overlapped interests. If this is not possible, a Ministerial decision may be necessary"* and *"During the Treaty settlement process the Crown needs to satisfy itself that asserted interests are legitimate..."*

Ngati Mutunga are the sole arbiter of the nature and extent of their customary interests. I would be surprised if the Moriori position is different. Ngati Mutunga completely reject the proposition that our customary interests need be 'legitimised' by the Crown or that a Minister of the Crown should decide how overlapping claims between iwi should be dealt with. The 27 June letter has been posted on the Ngati Mutunga o Wharekauri iwi Trust website and has understandably contributed to a marked reluctance by Ngati Mutunga individuals to contribute sensitive information on customary interests to the settlement negotiation process when that information could possibly be rejected as 'illegitimate' by Crown representatives or discounted or ignored under a Ministerial decision of some kind. When tested on this point, OTS representatives maintain that these two offensive possible outcomes remain 'on the table'.

It is subject to the background communicated on the 20th of December and at previous meetings and with the thoughts above in mind that I undertook to try and identify how the management and control of waahi tapu sites on Crown lands anywhere on Wharekauri might be controlled and managed in future by Ngati Mutunga and Moriori. Briefly, the structure and process I would suggest for consideration is that outlined by the Department of Conservation (DoC) at our last joint meeting with them. The key features would be along these lines:

- Land presently in the DoC estate or owned by LINZ would remain in Crown ownership with the two iwi having equal rights of first refusal to acquire any land declared surplus by the Crown at any future time.
- Waahi tapu and Waahi tchap sites in the DoC/LINZ estate would be identified and defined by the two iwi individually. The boundaries of these sites could be extended in future or new sites added. These sites would not be subject to any 'legitimacy' test by any third party and both iwi would show respect for each other's tikanga by supporting the outcome of the identification process of the other.
- All waahi tapu and waahi tchap areas identified and defined above would have reserve status conferred on them and be placed under the management of a Waahi Tapu Reserve Board with equal Ngati Mutunga and Moriori representation. My suggestion is that a Board of six would be sufficient, with a majority of participants being island based. Decision making would be by majority (therefore usually consensus in practice given the presumed structure above). Board members would be appointed and supported by the two PSGEs and selection of Board members should consider both the cultural knowledge and a willingness to work constructively with all fellow board members of applicants.
- The main function of the Board would be to ensure the effective recognition and protection of all cultural values associated with waahi tapu/waahi tchap with reserve status. Those cultural values would be simply as stated by the relevant individual iwi and the appropriate practical means of achieving effective recognition and protection of those values would also be identified in the first instance by the same iwi. One function of the Board would be to ensure that the means of recognition and protection adopted to protect one set of values did not prevent the effective recognition and protection of any overlapping cultural interests.
- The over-arching principle to be followed by the Board (and therefore endorsed by both iwi) would be that the responsibility for the definition and protection of Ngati Mutunga interests lies with Ngati Mutunga and the responsibility for the definition and protection of Moriori interests lies with Moriori. It follows from this, that where there is no overlap in interests, that responsibility lies solely with one or other iwi.

Where there is an overlap of interests the objective would be to achieve maximum protection of all interests by means that do not sacrifice the effective protection of any.

- Consistent with the over-arching principle above, it follows that the financial responsibility for the means of achieving protection and recognition of cultural interests in reserve areas would rest on individual iwi in proportion to the extent that those means are employed at the behest of that iwi. Third party or government funding obtained by the Board to support its function would be allocated to the protection of the cultural interests of both iwi transparently, but this allocation would not be on a fifty:fifty basis, rather it would be prioritised according to pre-agreed analysis of the risk to particular waahi tapu/waahi tchap if protective measures were not taken.

Obviously, these thoughts would require considerable development and elaboration that must involve discussion between Ngati Mutunga, Moriori, DoC, LINZ and OTS (assuming it is given full effect through our respective settlement legislation). I note your concerns about lack of certainty and the timeframe for this process. All I can say is that the sooner we implement this (or a similar) approach together, the faster these concerns will be allayed. As far as I am concerned there is nothing that would prevent an immediate start to the development of this concept so that there will be a high level of certainty about its content long before we get to the ratification stage of the settlement process.

Finally, I am personally committed to the creative and energetic resolution of this crucial issue in a spirit of good faith and mutual respect. In that regard, my own view is that the essential foundation of mutual respect is an acceptance of the equal legitimacy of the interests and status of both parties by the other.

I hope you find these suggestions helpful. Please contact me at any time if there are any aspects of this letter that you may wish to discuss.

Naku noa na,

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