

## Settlement Update: October 2018

The Crown and Ngāti Mutunga o Wharekauri are endeavouring to agree the key elements of a broadly acceptable offer by the end of 2018. If such an offer, in the form of a draft Agreement in Principle (AIP) is received, it is expected that consultation hui will be organised for February 2019 to seek feedback on whether the AIP should be signed. There are many details of the AIP that have yet to be finalised but there are two areas of negotiation that pose a serious threat to any agreement being achieved. These are the extent and composition of exclusive land offers made to Moriori by the Crown in their settlement and the level of quantum (cash) offered to Ngāti Mutunga o Wharekauri.

These two matters go to the heart of the negotiation mandate that we have strictly followed:

- Honour our tupuna
- Provide for our mokopuna

These objectives cannot be realised if the Chathams settlements contain elements that are irreconcilable with Ngāti Mutunga o Wharekauri mana whenua status or does not contain sufficient quantum to provide a meaningful foundation for future development of Ngāti Mutunga o Wharekauri.

A great deal of time has been lost in these negotiations because of a refusal of the Crown to engage in a proper examination of mana whenua status and its implications for our Treaty Settlement. This obdurate position by the Crown has also meant that the approach to the resolution of overlapping claims and interests by iwi/imi has been misguided. The unfortunate reality of this is that it has now become apparent that several elements offered by the Crown in the Moriori AIP (although marked as subject to the resolution of overlapping claims) were premature. The decision by the Crown to push forward with a Moriori AIP out of step with our negotiations has meant that the Crown has 'over promised and under delivered' to Moriori.

The distress caused by this will no doubt be blamed by the Crown on the 'unreasonable attitudes and positions' of Ngāti Mutunga o Wharekauri negotiators. Of course, what was unreasonable was the 'Moriori first' strategy of the Crown. We do not consider it to be the least bit unreasonable to insist on the relevance of mana whenua status to Treaty settlements and to defend an utterly conventional understanding of how mana whenua status is gained and maintained.

## Moriori Exclusive Land Ownership

Location	2016 (hectares)	2017 (Moriori AIP) (hectares)	2018 (hectares)
Wharekauri Station Wāhi Tapu.	CLAIMED BY MORIORI	OFFERED BY CROWN	CURRENT STATUS
100	61.8	61.8	0.0
102	192.0	192.0	0.0
103	15.5	0.0	0.0
104	18.2	0.0	0.0
107	0.5	0.5	0.0
108	0.3	0.3	0.0
109	2.0	2.0	2.0
110	15.3	0.0	0.0
111	14.9	0.0	0.0
112	5.3	0.0	0.0
113	0.3	0.0	0.0
114	0.7	0.0	0.0
<b>Total Wharekauri Station</b>	<b>326.8</b>	<b>256.6</b>	<b>2.0</b>
Tikitiki	4.0	0.0	0.0
Ocean Mail	831.2	831.2	0.0
Te Awatea	46.6	46.6	0.0
Owenga	1.3	1.3	1.3
<b>Total Other Chatham Island</b>	<b>883.1</b>	<b>879.1</b>	<b>1.3</b>
Waipaua	692.0	101	1.0
Rangiaura	41.0	41.0	41.0
Canister Cove	615.0	0.0	0.0
<b>Total Pitt Island</b>	<b>1,348.0</b>	<b>142.0</b>	<b>42.0</b>
Glory	1,282.7	0.0	1,282.7
Taia	1,098.8	1,098.8	1,098.8
<b>Total 'non-Settlement'</b>	<b>2,381.5</b>	<b>1,098.8</b>	<b>2,381.5</b>
<b>Te Whānga Lagoon</b>	<b>18,200.0</b>	<b>0.0</b>	<b>0.0</b>
<b>Total</b>	<b>23,139.4</b>	<b>2,376.5</b>	<b>2,426.8</b>

Shared Ownership
Crown Ownership
Disputed/Unresolved

The 2017 Moriori AIP contained eight exclusive ownership offers of Wharekauri lands that were objected to by Ngāti Mutunga o Wharekauri. In addition (outside of the Settlement) Ngāti Mutunga o Wharekauri Iwi Trust is opposing the vesting of Taia on an exclusive basis in Hokotehi Moriori Trust by the Department of Conservation. Of the eight exclusive Settlement offers, seven appear to have been subsequently withdrawn or adjusted to address objections raised by Ngāti Mutunga o Wharekauri negotiators. Against this slow but satisfactory progress, one backward step occurred.

The Crown reversed its earlier assurance to Ngāti Mutunga o Wharekauri that the Glory Block was not available as settlement redress and would remain in Crown ownership.

We are aware that discussions are currently underway between the Crown, Moriori and the Pitt Island community about the exclusive vesting of the Glory block in Moriori as part of the Settlement. Ngāti Mutunga o Wharekauri negotiators have not been part of these discussions and the exclusive vesting of such a large block of land in Moriori would be contrary to the position we have maintained since the commencement of settlement negotiations with the Crown in May 2016 which is that the ownership of land such as Glory should either be shared between iwi/imi or remain with the Crown. Nevertheless, the views of the Pitt Island community, when they are made known to us, are matters that we would take into account in deciding whether we maintain, or depart from, our general position in this instance. Meantime, litigation over Taia is continuing.

The third remaining point of contention about land is the former Owenga school site comprising 1.3 hectares, the school building and two houses. This land was originally included in the schedule of potential commercial redress properties on Wharekauri and we agreed that the ownership of this land should be shared 50:50 between iwi:imi. The value of commercial redress properties is deducted from the cash quantum of any agreed Treaty settlement. We were taken aback that the Crown (against our objections) removed this property from the commercial property schedule available to both iwi/imi and included it in the Moriori AIP as exclusive cultural redress. Our position is that this offer should be withdrawn and the original proposal re-instated.

In summary, Glory and Owenga are the only areas of land within the settlement over which agreement has not been reached. Presumably, the current Glory vesting proposal would not proceed without Pitt Island community support and would still be contentious even if such support was to be expressed. The Owenga school site is not a place of exclusive customary or historical interest to Moriori and it is characteristically insensitive of the Crown to treat it as such.

The Owenga school site provides one small example of the general failure of the Crown to adopt a balanced perspective on the unique and complex history of the Chatham Islands in spite of the opportunity the settlement process provides the Crown to study and reflect on this history. In turn, that failure leads inevitably to Crown positions within settlement negotiations that form potential barriers to achieving the kind of future for the Chatham Islands that most residents, particularly younger generations, hope for. In short, the Crown does not 'get' the Chathams and continually tries to impose elements from other settlements that are not appropriate for Wharekauri.

Not least of these has been the clumsy approach to the issue of overlapping interests between iwi/imi. As indicated by table above, much of the time taken in these negotiations has been consumed by reversing clumsy, divisive and unsound elements of the 2017 Moriori AIP. Naturally, Moriori and the Crown strongly resist this reversal. This process is distressing and painful for everyone but essential if a pair of settlements is to be achieved that are not simply a foundation for division and conflict.

The second way in which the lack of engagement by the Crown with the historical information presented by Ngāti Mutunga o Wharekauri in our Special Factors and Customary Interests papers is in the absence of any recognition of those special factors in the initial quantum offer made by the Crown to Ngāti Mutunga o Wharekauri. The process by which the Crown asserted sovereignty over Wharekauri was unique and uniquely bad. There can be no real question that the outcome of that unique process must be to place the Ngāti Mutunga o Wharekauri settlement into a similarly unique category. So far, the Crown has not properly acknowledged this fact or its consequences.

In addition to history, demographics are the other Chathams reality the Crown has failed to grapple with. The table below shows the census data for iwi/imi from the last three available censuses.

### Iwi/Imi Census Data

	Census Population	% as Sole Iwi Affiliation	Chathams residents	% Converse in Te Reo	Cash Settlement Offered /Person
<b>Moriori</b>					
<b>2001</b>	585				
<b>2006</b>	942				
<b>2013</b>	738	14.2%	36	15.9%	\$24,390
<b>Ngāti Mutunga o Wharekauri</b>					
<b>2001</b>	813				
<b>2006</b>	1,392				
<b>2013</b>	1,641	32.7%	198	20.6%	\$5,484
<b>Ngāti Mutunga (Taranaki)</b>					
<b>2001</b>	1,206				\$12,438
<b>2006</b>	2,091				\$7,174
<b>2013</b>	2,514	29.4%	18	20.7%	\$5,967

The census records that the number of people identifying themselves as Moriori fell 22% between 2006 and 2013. In contrast Ngāti Mutunga o Wharekauri and Ngāti Mutunga increased 18% and 20% respectively.

The percentage of Moriori identifying themselves solely as Moriori is very low (14.2%). This is less than half of the rates for Ngāti Mutunga o Wharekauri and Ngāti Mutunga (Taranaki) being 32.7% and 29.4% respectively. The attachment to the Ngāti Mutunga o Wharekauri identity is evidently unusually strong as many are also affiliated to Ngāti Mutunga (Taranaki). It is also highly likely that many Taranaki Ngāti Mutunga people have affiliations to the Chathams. The result of this is that it is also highly likely that the census-based population base factors in the Taranaki and Chathams Ngāti Mutunga settlements are both 20-25% too low.

The Moriori population resident on the Chathams is 5.5 times smaller than the Ngāti Mutunga o Wharekauri population residing there. It is also common knowledge that those Moriori families continuously resident on Wharekauri also have Ngāti Mutunga o Wharekauri connections. We do not know what proportion of the 18 Ngāti Mutunga (Taranaki) people recorded as living on Wharekauri also identified themselves as Ngāti Mutunga o Wharekauri, but it is unsafe to assume that all did so (these have not been included in the 5.5X). This picture affirms the view that Ngāti Mutunga o Wharekauri are the iwi with mana whenua over Wharekauri, a status maintained since 1835 (183 years). Our view is that the census data understates the numbers of people affiliated to Ngāti Mutunga o Wharekauri both on and off the island. However, one thing is clear and that is the Chathams community is very strongly Ngāti Mutunga o Wharekauri in its make up.

On a per capita basis, the Moriori Settlement is over twice as big as the Ngāti Mutunga (Taranaki) Settlement. (\$24,390/person compared with \$12,438/person). This is extraordinary given that

Ngāti Mutunga lost all of their lands by Crown raupatu. In contrast, Moriori who were landless from 1835, gained land under the Native Land Court processes of 1870.

The settlement calculations of quantum used by the Crown are kept secret from us, but it is known that those calculations use the iwi affiliation data from the 2013 census. The Moriori AIP included a cash offer of \$18m (\$24,390 per Moriori affiliate or \$500,000 per Moriori resident on the Chathams). If the cultural strengthening Crown Grant to Moriori of \$6m is also considered then the per capita value of Crown transfers to Moriori rises to around \$32,520 per person. This grant is controversially classified by the Crown as 'outside the settlement process'.

In comparison, Ngāti Mutunga o Wharekauri were offered \$9m (\$5,484 per Ngāti Mutunga o Wharekauri affiliate or \$45,455 per Ngāti Mutunga o Wharekauri resident on the Chathams). The \$9m offer was rejected in 2017 as being inadequate. According to the census, it is almost 4.5X lower on a per capita basis and over 11X lower per resident compared to the Moriori AIP.

Even if the quantum offered to Ngāti Mutunga o Wharekauri were doubled to \$18m it would still be far less on a per capita and per resident basis. Of course, the basis for the two settlements is very difficult but wildly different per capita settlement outcomes for two iwi/imi with completely overlapping rohe and extensively overlapping whakapapa – at least for many Chathams residents - will obviously cause tensions within a small community that already suffers a residue of tension traceable to the Fisheries Settlement.

So, in summary, as at late October 2018, we have two overlapping interests issues to resolve with respect to land (Owenga school site and the Glory 'grazing block' on Pitt Island). We are somewhat frustrated that the Glory block has been placed on the table by the Crown a year after the Moriori AIP was signed. We remain hopeful that a principled resolution to these issues can be achieved. With respect to quantum, the Crown has signalled that they are prepared to lift their offer above \$9m. Our position is that any offer less than what is offered to Moriori would be so unacceptable to Ngāti Mutunga o Wharekauri that negotiators would not be willing to present it to the iwi for consideration.

In focussing on what is yet to be done, it is easy to lose sight of the very significant progress we have made since the initial offer we received and rejected over a year ago. As this update shows, we are, in fact, close to reaching an AIP with the Crown worthy of presentation to Ngāti Mutunga o Wharekauri for consideration. In the course of these negotiations, your negotiation team have not wavered from the negotiation mandate above given to us in 2016 and will not do so at this late stage. We are most appreciative of the support that has kept us strong and on course to the end.