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Ngāti Mutunga o Wharekauri

Special Factors (2) Relevant to Ngāti Mutunga o Wharekauri Settlement Redress

The Annexation of Wharekauri and the Subsequent Treaty Relationship between Ngāti Mutunga o Wharekauri and the Crown

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February 2017

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The Ngāti Mutunga o Wharekauri Iwi Trust represents the collective interests of Ngāti Mutunga o Wharekauri, and is a mandated iwi authority for the purposes of the Resource Management Act 1991 and the Māori Fisheries Act 2004. Although the Ngāti Mutunga o Wharekauri Iwi Trust speaks for Ngāti Mutunga o Wharekauri on a number of matters, the mana and decision-making powers remain with Ngāti Mutunga o Wharekauri, according to Ngāti Mutunga o Wharekauri tikanga/kawa.

Our Purpose

- To be the repository of the collective Tino Rangatiratanga of Ngāti Mutunga o Wharekauri
- To represent the collective interest of Ngāti Mutunga o Wharekauri and be the legal representative of Ngāti Mutunga o Wharekauri in relation to the collective interest
- To make and pursue the settlement of claims on behalf and for the benefit of Ngāti Mutunga o Wharekauri under the provisions of the Treaty of Waitangi Act 1975
- To be the mandated iwi organisation for Ngāti Mutunga o Wharekauri

Benefit Provision

To advance the social and cultural development of Ngāti Mutunga o Wharekauri beneficiaries and distribute benefits directly or indirectly to beneficiaries, irrespective of where they may reside, when and where the Trust may decide.

Tikanga

To promote and preserve, protect and maintain the identity, mana, Tino Rangatiratanga, culture, history, traditions, arts and crafts, tikanga, reo, and taonga tuku iho of Ngāti Mutunga o Wharekauri.

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Introduction

The first Special Factors paper addressed the uniquely damaging impacts of the Native Land Court on Ngāti Mutunga o Wharekauri between 1870 and 1900. This second paper develops the wider Treaty relationship in which those particular harmful effects were generated. By definition, all Treaty settlement negotiations acknowledge Crown culpability for breaches to the solemn undertakings made within the Treaty of Waitangi, but there are several aspects to these breaches that are unique to Ngāti Mutunga o Wharekauri which taken together indicate that the Treaty relationship has never functioned on Wharekauri as its Articles envisage. The Crown established kawanatanga over Wharekauri by a unique process (annexation) and for the remainder of the 19th Century it did not provide the resources to meet its responsibilities under Articles II and III. Rather, the Crown committed a number of significant breaches of the Treaty during this period:

- The Crown extended its authority over Wharekauri by a unilateral act of annexation in 1842 which was not in accordance with the 1840 Treaty of Waitangi.
- The appointment of the first Crown official to Wharekauri did not occur until 1855 and was made without notification or consultation with Ngāti Mutunga o Wharekauri about the respective role of the resident magistrate and the impact of this on the established role of chiefs.
- Wharekauri was used as a penal colony from 1866 to 1868 without notification or consultation with Ngāti Mutunga o Wharekauri.
- Following the confiscation of all Ngāti Mutunga lands in Taranaki, Ngāti Mutunga o Wharekauri were regarded as potentially dangerous and hostile people who should be kept from returning to Taranaki and who were

treated as 'disloyal' unless proven otherwise by the Compensation Court in 1866 and 1869.

In the 20th Century, the kawanatanga framework applied to Ngāti Mutunga o Wharekauri was unique in that it was primarily delivered through a single Government Department with the powers to micro-manage all Wharekauri affairs but which did not employ those powers to meet its responsibilities under Articles II and III of the Treaty of Waitangi.

- The destruction of traditional Ngāti Mutunga o Wharekauri society as a result of the actions of the Native Land Court and the Compensation Court reflected a deliberate policy of assimilation that was reinforced by Ngāti Mutunga o Wharekauri being denied access to government programmes to assist Māori elsewhere in New Zealand in the 20th century.
- While regarded as assimilated and therefore not dealt with as Māori, Ngāti Mutunga o Wharekauri people were not accorded the rights of non-Māori citizens, being denied the opportunity to vote in general elections until 1922 and made subject to administrative processes and structures that were designed for application to off-shore dependencies of New Zealand rather than Māori communities within New Zealand protected by the Treaty of Waitangi.

19th Century Annexation, Unilateralism and Neglect

The relationship between the Crown and Ngāti Mutunga o Wharekauri started on the wrong foot with the process used to annex Wharekauri and never recovered. This initial unilateral action was followed by several more including the confiscation of all Ngāti Mutunga Taranaki lands by raupatu in 1865. Rather than addressing the content of well-founded Ngāti Mutunga o Wharekauri complaint and opposition to these actions, the Crown reaction compounded these relationship difficulties by regarding Ngāti Mutunga o Wharekauri as troublesome, potentially dangerous and disloyal. These negative Crown attitudes would not have developed if the Crown was in possession of information and understanding that would be inevitably gained under a Treaty relationship of any substance.

Annexation

In *Wai 64*, the Tribunal strains to identify reasons why the commencement of Crown responsibilities on the Chatham Islands could be argued to predate their annexation which was proclaimed on 1 November 1842, based upon letters patent that had received royal approval on 4 April 1842. These efforts fail and the Tribunal acknowledges "*We think it is clear that Britain assumed no administrative or legal responsibility for the Chatham's before 4 April 1842 and had indicated no intention to assume responsibility for the inhabitants before then*… furthermore (with respect to annexation) "*it is clear that no action was taken to treat with or to inform the local inhabitants*"[1] Surprisingly, this observation leads to no finding or recommendation by the Tribunal whereas it is plain that this failure to treat with or (even) inform the local inhabitants about annexation was a serious failing that established a recurring pattern of Crown behaviour toward Ngāti Mutunga o Wharekauri, some instances of which were also noticed by the Tribunal but also without associated redress recommendations.

The annexation of Wharekauri was not carried out at the request of the inhabitants but because the British Government was determined to stymie the possible establishment of a German Colony there. In 1841, the New Zealand Company claimed to have an agreement with Māori chiefs that they would transfer land interests in Wharekauri in return for certain goods and the reservation of certain areas. Rather than proceeding as usual with the on-sale of these interests to British settlers on the basis of this rather vague 'agreement', the New Zealand Company planned to sell all of its Wharekauri 'interests' to the Hamburg-based German Colonisation Company for £10,000.

Under an agreement signed in September 1841 by John Ward (New Zealand Company) and Karl Sieveking (Chief Magistrate, Hamburg) the (yet to be established) German Colonisation Company would have been entitled to offer sovereignty over Wharekauri to a German town or state. On learning about this proposed transaction, Lord Stanley, the Colonial Secretary (and later three time Prime Minister of the UK) informed the New Zealand Company that the Colonial Office did not recognise the legitimacy of the purported sale of land in Wharekauri by Māori to the New Zealand Company and that furthermore

[1] WAI 64 page 60.

Wharekauri was beyond the geographic bounds of the New Zealand Company's colonisation charter.

Having quashed the New Zealand Company's questionable land dealings, the subsequent British annexation was treated as a largely technical and cartographic matter. This was in marked contrast to the more careful and principled approach that supported the earlier annexation of the remainder of New Zealand. Writing to Governor William Hobson on the 14 August 1839, the Marquis of Normanby (Colonial Secretary, 20 February – 30 August 1839) declared that the British Crown could only pursue formal annexation of New Zealand '*with the free and intelligent consent of the natives according to their own usages*'. For all its alleged faults the Treaty of Waitangi drafted in February 1840 did have a Māori translation and signings were generally preceded by lively debate. No 'free and intelligent consent of Ngāti Mutunga o Wharekauri according to their own usages' was sought prior to the annexation of Wharekauri, however. Neither was there any subsequent effort by the Crown to explain the implications of the Treaty of Waitangi and how the Articles of the Treaty might be applied in practice on Wharekauri.

Annexation had no immediate effect on the exercise of mana motuhake over Wharekauri by Ngāti Mutunga who by 1842 had established themselves as the pre-eminent subgroup within those Māori groups comprising the successful invaders of 1835. Annexation was not driven by a desire to benefit local inhabitants, but to protect British prestige. This objective was achieved simply by the act of annexation in 1842 itself and no practical interest in exercising the role and responsibilities of sovereign was shown by the Crown for thirteen years.

The Appointment of Archibald Shand 1855

As with annexation itself, the appointment of the first Crown official to the island as Collector of Customs and Resident Magistrate was similarly undertaken without consultation or notification. It also was undertaken by the Crown in pursuit of its own perceived interests on the islands following the receipt of a petition from a small number of European residents in Wharekauri. The reaction of Wharekauri Māori of initially not allowing the official to land his goods shows their protest in response to this extension of authority without consultation or notification. In their 1 September 1855 letter of protest to the Governor, written soon after Shand's arrival, Wharekauri Māori noted that once they asked of Shand the nature of his instructions, they responded "No we are not willing". When Shand landed at Waitangi he had no letters from the Governor or documents explaining his appointment to which the chiefs responded: "No, we highly disapprove of such conduct." Their rejection of the presumed authority was total:

"What harm have we done that he should invoke evil upon us; that he should call upon the winds, the rain and the sea to burst in upon us and overwhelm our land."

At the same time, in the same letter, Wharekauri Māori communicated their willingness to discuss matters with the right level of authority in the correct manner and so they simply ended their letter: "To Governor Wynyard. If you are inclined to visit us, we shall bid you welcome". The Governor did not come then, or thereafter.

The general political and legal context within which the appointment of Shand was made was confused and inconsistent with any reasonable interpretation of the Treaty of Waitangi. Three years before his appointment, the New Zealand Constitution Act 1852 established both general and provincial assemblies funded by taxes (including a large proportion collected from Māori). However, the associated franchise test meant that few Māori qualified to vote. The practical result was that within the orbit of the assemblies, settlers got self-government, partially funded by taxes paid by disenfranchised Māori.

The New Zealand Constitution Act 1852 recognised the limited geographic extent of European settlement at the time and the fact that settler government was only interested in, and barely capable of, extending influence over settled areas[2]. Section 71 of the Act therefore allowed the Governor to proclaim native districts in which "*the laws, customs and usages of the aboriginal or native inhabitants of New Zealand, so far as they are not repugnant to the general Principles of Humanity, should for the present be maintained for the Government of themselves*". Section 71 would therefore formally recognise boundaries between areas governed by the assemblies and areas governed by the exercise of rangātiratanga or mana motuhake.

Wharekauri would have been an obvious candidate for proclamation as a native territory. There are a number of questions raised by section 71 such as what would have happened to any taxes raised in native districts, what laws and customs were 'repugnant, and what would the Crown actually do in practice if something was determined to be 'repugnant'. These questions were moot because section 71 was never used in Wharekauri or anywhere else, even though it remained available until 1986. The failure to proclaim native territories meant that Māori governance over areas where sales of land to European settlers had been slight (such as Wharekauri) had no positive recognition under the Constitutional law of the day even though entirely consistent with the Articles of the Treaty of Waitangi. A very watered-down recognition of Māori input into 'minor' matters was provided for under the Native District Regulations Act 1858. Under this statute Māori influence (such as it was) derived from the statute itself rather than from rangātiratanga protected and guaranteed by the Treaty of Waitangi.

By the mid-1850s, the Treaty was seen as a hindrance by many settlers, that if it could not be repudiated, should be ignored while the expansion of land sales and European settlement progressively extinguished any exercise of Māori 'law, custom and usage'. With hindsight, failure to use section 71 meant that there was no agreed relationship between Māori and the general and provincial assemblies on the one hand nor between Maori and the Governor or the Crown on the other. This unclear situation and an evident reluctance of the Crown to engage with Māori to provide an urgently needed reconciliation between the political developments of the day and the earlier Treaty of Waitangi gave impetus to the Kingitanga movement and other Māori initiatives to resist the erosion of rangātiratanga.

The general background to Shand's appointment was therefore one of escalating conflict between Māori and the Crown rather than the relationship envisaged by

[2] Part of the pretext for the invasion of the Waikato in 1863 was that (in the absence of a pre-emptive military strike and conquest) Māori there were capable of over-running and destroying Auckland.

the Treaty signed fifteen years before. Shand's initial role was effectively to collect taxes from Māori who had no effective franchise in the assemblies that would spend those taxes and, as Resident Magistrate, he also presumed to exercise an ill-defined jurisdiction over matters that were being dealt with to the satisfaction of Ngāti Mutunga o Wharekauri according to mana motuhake even though he had no capacity to enforce his presumed jurisdiction. This unpromising context was not helped by the fact that (by all accounts) Shand was of very limited competence.[3]

In 1860, the runanga (including at least one Moriori signatory) gave written notice of complaint against Shand and they asked that Shand appear before the runanga to answer to various charges. This did not happen but a Collector of Customs (William Seed) was sent to Wharekauri in 1861 to investigate the situation and Shand's performance.[4] Contrary to the comment of the Tribunal that Seed found nothing to complain about following his inspection, Seed's written and oral report led to Shand's replacement by Captain William Thomas in 1863.

The Use of Wharekauri as a 'Prison Island' 1866-1868

Captain William Thomas was a more forceful and competent person than his predecessor but after a rather blustering start he quickly resigned himself to the realities of his limited influence over Ngāti Mutunga o Wharekauri. In 1864, an official runanga under the auspices of the Native District Regulations Act 1858 was established with six members including Hirawanu Tapu, a Moriori. It is not clear whether this was the same runanga that had complained about Shand in 1860, but it seems to have a similar Ngāti Mutunga o Wharekauri/Moriori composition.

The event that defined the tenure of Thomas was the declaration of a penal colony on Chatham Island and his eventual (temporary) incarceration by the escaping prisoners of that colony. Following the familiar pattern set by the Crown during annexation and the appointment of Shand, the establishment of the penal colony was also done without consultation or notification. This act by the Crown both betrayed and reinforced negative attitudes towards Wharekauri and its inhabitants.

"*It was on the prison-island of Wharekauri, the largest of the Chatham's, that Te Kooti Rikirangi, the outstanding figure in the later New Zealand wars, first became prominent as a leader of his people*."[5] The term 'prison-island' was not mere rhetoric but a factual description of the result of the first major piece of particular Government policy and activity affecting Ngāti Mutunga o Wharekauri in which the entirety of Wharekauri was employed by the government as a prison. It was the ocean that effectively defined the confines of the prison and all inhabitants of the island were therefore residents of that prison while it was used for that purpose.

[3] See page 6 and 7 of Special Factor paper 1, Impact of the Māori Land Court (1870 to 1900) for further information on Archibald Shand and his replacement, Captain William Thomas.
[4] Wai 64, page 77.
[5] Cowan, James. *The New Zealand Wars: A History of the Māori Campaigns and the Pioneering Period: Volume II: The Hauhau Wars. 1864-72*. Publisher: R.E. Owen, Wellington, 1956. Page 222.

Between 14 March 1866 and 28 December 1866, five batches of political prisoners arrested on the East Coast of the North Island were landed on Wharekauri under a small military guard of 25. Although their 'sentence' was ostensibly for 12 months, the prisoners remained on the island until their escape following the seizure of the schooner "Rifleman" on 4 July 1868. Most prisoners were affiliated with the Pai Marire (Hauhau) religion, established by the Taranaki prophet Te Ua. On the island, Te Kooti Arikirangi Te Turuki (Te Kooti) would emerge as their leader while founding the Ringatu faith. To the extent that they had embraced Christianity, most Ngāti Mutunga on Wharekauri at that time were Anglicans. The prisoners and the local population were therefore characterised by distinct tribal and religious differences.

The best estimate of the total number of Hauhau prisoners is provided by Judith Binney "*While Thomas and the others were still locked in the gaol, the whakarau went in orderly fashion on board the* Rifleman*. The women went first, some carrying children. In total, 298 people – 163 men, 64 women and 74 children – went out to the ship in small boats launched from Tikitiki Point. Four of the whakarau chose to stay behind including Keke and his wife.*"[6] Twenty-eight prisoners are known to have died during their incarceration on Wharekauri and nine chiefs were repatriated to New Zealand[7] meaning that the total number of prisoners and associates was 339 (298+4+28+9). In March 1864, a census organised by Captain Thomas (Resident Magistrate) recorded the total Māori and Moriori population of the Chatham Islands as 522 (390 Māori and 132 Moriori). By 1866–1868, this number would have declined and it is likely that the number of male Hauhau prisoners would have outnumbered the equivalent Ngāti Mutunga male population on the island.

The exile of the Hauhau prisoners on Chatham Island was hurriedly planned and executed. The prisoners were required to build their own barracks and to gather or grow their own food to supplement their rations. Some prisoners worked for European settlers on the island and security arrangements on the island were lax as was evidenced by the ease and scale of the escape in 1868. Inadequate preparation not only caused great hardship to the prisoners but meant that no consultation occurred with the population of the Island about its use as a prison.

The first arrival of the prisoners and their military guard was reported by John Amery, a correspondent for the Hawkes Bay Herald. People came from all over the island to Waitangi to learn what was happening. "*When all were assembled, the instructions of the government were communicated to the inhabitants, and a great korero was made, but no voice was raised in opposition, nor was any impediment thrown in the way; in fact, they made a merit of necessity. The guards at once disembarked with their captives, who were welcomed ashore with the usual dismal and inharmonious Māori greeting; nevertheless, it was very perceptible that the Chatham Island Māoris were anything but at ease under the infliction. They had their misgivings as to what might occur, old men and beldames shook their heads, and prophesied about it dangerously; in fact, they considered the peace and security of their little island in some measure undermined by such close proximity to dangerous neighbours…*"[8]

[6] Binney, Judith "*Redemption Songs*", Auckland University Press, 1995 (666 pages). Page 84.
[7] Ibid. page 79
[8] Evening Post, Volume II, Issue 122, 2 July 1866, p.2. (From: Richards, Rhys and Carter, Bill: *A Decade of Disasters: the Chatham Islands from 1866 to 1875*, Paremata Press 2009 (196 pages). Page 17.

John Amery could not interpret the korero that took place that day and generally appears to place more weight on colour and length in his florid despatches than on rigorous accuracy. However, his sense of the mixed feelings and disquiet felt by Ngāti Mutunga o Wharekauri when confronted with this fait accompli was certainly correct. There was undoubtedly an element of sympathy for the prisoners but there was also no certainty about how their deep resentments might be expressed once they were established ashore. To the extent that protection of Ngāti Mutunga o Wharekauri safety or security from any Hauhau threat was available, its primary source was from Ngāti Mutunga o Wharekauri themselves and the relative calm with which this unwelcome development was greeted was probably an expression of confidence in their own capabilities rather than those of the government. It was evident from the beginning that security arrangements provided by the government were inadequate and actually declined over time.

In January 1868, William Rolleston, then Under Secretary for Native Affairs, visited the Island and produced a report critical of what he observed there. "*Rolleston's report makes clear that the standard of the military guard had markedly deteriorated, and that drunkenness and attendant abuses had become common…From the beginning of April, the military guard was discontinued; Rolleston had described it as a 'public nuisance'. In its place were half the number of Armed Constabulary men: that is, a senior sergeant, a corporal and nine constables. Edmund Tuke commented later that all surveillance was taken off the prisoners and they were allowed to go where they liked on the island. Roll calls were dispensed with and they were no longer forced to work. Tom Ritchie said the same: 'the Hauhau no more to work for settlers' but were expected to grow all their own food and grind their own wheat. According to Tuke, however, most were left with nothing to do except 'concoct mischief.'*[9]

The government had removed a threat to peace from the mainland without any obvious regard for the consequences to the peace of Wharekauri. The 800 kilometre distance to the mainland and the assumed impossibility of the Hauhau prisoners crossing that distance of ocean constituted the main element of the security arrangement of the prison. No consultation with Ngāti Mutunga o Wharekauri occurred prior to the arrival of the first batch of Hauhau prisoners. No plans or arrangements for the repatriation of the bulk of the prisoners were communicated to Ngāti Mutunga o Wharekauri. The prisoners were a cheap source of labour that constrained both employment opportunities and rates of remuneration available to Ngāti Mutunga o Wharekauri people.

As a demonstration of the mentality, competence and humanity of the Crown (and its agents in the person of the guard), the use of Wharekauri as a prison was a very disappointing introduction of Ngāti Mutunga o Wharekauri to the actual exercise of Article I powers by the Crown and its practical protection of Article II and III rights. The lack of respect shown by the government for Ngāti Mutunga o Wharekauri interests and concerns invited a reciprocal lack of regard and the abject failure of the government to prevent the escape of 298 prisoners and associates invited derision. This was a very unpromising example of the supposed Treaty relationship in action.

[9] [9] Binney, Judith "*Redemption Songs*", Auckland University Press, 1995 (666 pages). Page 78.

Raupatu

Following the conquest and settlement in Wharekauri by the groups Ngāti Mutunga, Ngāti Tama, Kekerewai, Ngāti Haumia, and Atiawa in 1835, the establishment of this new turangawaewae and refuge did not immediately create separate tribal identities from those whanaunga who had not voyaged on the Rodney. Rather, Wharekauri Māori took a very close interest in developments in their traditional Taranaki rohe and there was close communication and also journeying between the two areas. The groups now covered by the contemporary title of Ngāti Mutunga o Wharekauri for the purpose of these negotiations clearly wished to re-establish their full occupation of traditional lands in Taranaki when it was safe to do so. This goal should not be mis-described as a desire to evacuate Wharekauri as soon as it was safe to return. In the mid-19th century Ngāti Mutunga was a single iwi with two turangawaewae with different histories and associations. Whakapapa was the highway that connected mainland and Wharekauri turangawaewae. From the Wharekauri side, the highway led back to the possibility of re-connection with traditional lands in Taranaki. From the mainland side, the highway led to possible refuge in Wharekauri if survival on the mainland was under threat of some kind.

In 1865, the confiscation of the entire Ngāti Mutunga rohe in Taranaki effected the total confiscation of all Ngāti Mutunga o Wharekauri interests in Taranaki. The history of this raupatu is documented in the Taranaki Report (WAI 143). However, the impacts of this raupatu on Ngāti Mutunga o Wharekauri were not catalogued or analysed by either WAI 143 or WAI 64. Furthermore, the population who now identify themselves as Ngāti Mutunga o Wharekauri in censuses was not included in the base factors underpinning the Ngāti Mutunga Settlement in Taranaki. As a result, the Taranaki Settlement inadvertently affirms the disenfranchisement of Ngāti Mutunga o Wharekauri from their Taranaki land interests rather than providing redress for it. The same is true for Ngāti Mutunga o Wharekauri people whose ancestors may have chosen to identify themselves as Ngāti Tama or Atiawa. They suffered as a result of the raupatu of their Taranaki lands in 1865.

The meagre success of Ngāti Mutunga o Wharekauri in the Compensation Court nonetheless confirmed the legitimacy of Ngāti Mutunga o Wharekauri interests in Taranaki. The same meagre success also confirmed the extensive nature of the raupatu suffered by Ngāti Mutunga o Wharekauri in 1865 that has never been redressed or compensated.

The Compensation Court: Guilty Until Proven Innocent

Following the first Taranaki land wars, and particularly following the raupatu of Taranaki lands in 1865 the Crown showed distinct signs of anxiety, or even fear, about the possible consequences of Ngāti Mutunga o Wharekauri people returning to the mainland of New Zealand to re-assert their traditional interests there. As Ralph Waldo Emerson observed "fear always springs from ignorance" and the failure by the Crown to engage with Ngāti Mutunga o Wharekauri up to that time in any fashion other than unilateral and self-serving meant that the Crown was woefully ignorant of the evolving values, attitudes, arrangements and aspirations of its erstwhile subjects during the 1840s, 50s and 60s. Consequently, the fear of Ngāti Mutunga o Wharekauri sprang from a collection

of mutually reinforcing 'associations' rather than any investigation of their real thoughts and intentions.

1. It was well known, that Ngāti Mutunga o Wharekauri remained strongly attached to their traditional rohe in Northern Taranaki and maintained a very close interest in developments there and that the return of Te Atiawa (with whom Ngāti Mutunga are very closely related) from Wellington/Waikanae to Waitara in the 1850s triggered fighting within that iwi between land holding and land selling factions led by Wiremu Kingi and Tiera respectively. Wiremu Kingi opposed the sale of the Waitara block on the basis that it was tribal land in which all Atiawa had an occupancy right and that such tribal land could only be sold with the agreement of all. Teira asserted that he had a divisible interest in the Waitara block that could be surveyed off and sold. Governor Gore-Brown ordered the military seizure of the Waitara block so as to effect its survey and sale which led to the 'first' Taranaki war of 1860/61. The association between 'returning' Taranaki Māori (including Ngāti Mutunga o Wharekauri potentially) and the outbreak of conflict and war was thereby established.

2. Having been the recipient of Crown military aggression, Wirimu Kingi attracted support from Taranaki and Ngāti Ruanui fighters but also Ngāti Maniapoto and Waikato for his cause. This established a connection between Te Atiawa and the Kingitanga movement with Wirimu Kingi ultimately placing himself under the protection of the Māori King during the uneasy truce that followed the cessation of Taranaki hostilities in 1861. By this stage the Kingitanga movement was being portrayed crudely and inaccurately as a straightforward challenge to, or repudiation of, the sovereignty of Queen Victoria. An indirect association was therefore made between the Kingitanga/disloyalty to the Crown and Ngāti Mutunga o Wharekauri through its close whakapapa relationship with Te Atiawa. At a time when Māori were being crudely categorised as 'loyal' or 'disloyal', Ngāti Mutunga o Wharekauri were suspected of fitting the 'disloyal' pigeon hole.

3. During the Taranaki truce of 1861 both Māori and Pakeha factions braced themselves for more confrontation. Governor Grey replaced Gore-Brown in 1861 and commenced a major military build-up and the construction of the Great South road as a practical prelude to the invasion of the Waikato in 1863. Parallel Māori preparations were more spiritual and much less practical. In 1862, an obscure 'prophet' Horopapera Tuwhakararo (Te Ua) founded the Pai Marire faith movement which promised the expulsion of Europeans from New Zealand through spiritual power that would also make Hauhau fighters immune to European weapons. The leaders of the Kingitana adopted this religion and the second Taranaki war of 1864 was marked by some grisly episodes inspired by Pai Marire beliefs but regarded as evidence by Europeans of the barbarity and fanaticism of all Māori who opposed the military invasion of Māori land. The success of Titokowaru in Taranaki sustained Hauhau belief and in 1868 he approved the revival of the practice of cannibalism of slain enemies. In 1869, his followers abandoned Titokowaru after a breach of tikanga by him. Many of his acolytes then transferred their loyalty to Te Whiti at Parihaka – as did Titokowaru personally. Meanwhile on Chatham Island, Te Kooti (who claimed not to have been a Hauhau) became the leader of the Hauhau

political prisoners incarcerated there, evolving Pai Marire or Hauhau beliefs into the Ringatu religion. This new religion gave a spiritual overtone to the bloody settlement of personal grievances by Te Kooti on his return to Poverty Bay before he sought refuge in the Urewera and ultimately the King Country. These events therefore established a jumble of possible associations between Ngāti Mutunga o Wharekauri, Taranaki prophets dedicated to the expulsion of Europeans, Hauhauism, cannibalism, Te Kooti, Te Whiti and the Kingitanga (once again).

These associations were theoretical rather than actual and real in the mid-1860s. The very strong connection between Ngāti Mutunga o Wharekauri and Te Whiti/Parihaka did not develop until after the disappointments of the Taranaki Compensation Court hearings of 1869 for which Ngāti Mutunga o Wharekauri had invested such faith and economic resource with scant reward. However, the fact that the associations were spurious does not mean that the related mistrust and fear were not influential in the construction of a negative and harsh Crown attitude to Ngāti Mutunga o Wharekauri which was contrary to the Treaty relationship. "Neither a man nor a crowd nor a nation can be trusted to act humanely or to think sanely under the influence of a great fear" (Bertrand Russell) and the distortionary effect of fear was real as evidenced by the efforts by Rolleston and Thomas to dissuade Ngāti Mutunga o Wharekauri from returning to New Zealand and when persuasion failed, the Government drafted a Bill to prohibit such return. As mentioned in Special Factor Paper 1, that Bill failed to pass into law. A second piece of evidence for this climate of fear is the hysterical reaction of Thomas's replacement as Resident Magistrate (R. J. Lanauze) to the return of a small number of Ngāti Mutunga o Wharekauri from Taranaki to Wharekauri in 1872.

In the absence of an understanding of the Ngāti Mutunga o Wharekauri mind-set, the fear of Ngāti Mutunga o Wharekauri has a somewhat understandable basis:

- Ngāti Mutunga (and particularly Ngāti Tama) had a formidable reputation as fighters reinforced by association with Te Rauparaha in the 1820s and 1830s.
- Ngāti Mutunga had conquered a much larger population of Moriori and had maintained control over that population. The 19th century history of Ngāti Mutunga demonstrated an impressive capability for planning and implementation of complex collective undertakings requiring considerable adaptability and resolve.
- Ngāti Mutunga had annexed the Chatham Islands in practice (if not in name) in 1835 whereas the Crown had annexed the Chatham Islands in name (but not in practice) in 1842.
- Ngāti Mutunga o Wharekauri had demonstrated significant flexibility and resilience in responding to the waxing and waning economic opportunities available in Wharekauri.
- The evidence from the Taranaki and Waikato wars from 1860 was that relatively small numbers of Māori fighters were very difficult and costly to defeat and that settlers and whole towns were vulnerable to attack by them. The hugely costly Waikato war had failed in one of its key objectives which was to crush the Kingitanga.

The fact that something is understandable, does not make it true however. By the time that Rolleston and Thomas were trying to dissuade Ngāti Mutunga o

Wharekauri from returning to New Zealand in 1868, both the Waikato and second Taranaki wars had ended in defeat for Māori and the entire Taranaki rohe of Ngāti Mutunga had been confiscated along with the southern portion of the Ngāti Tama. rohe[10] Although Titokowaru's guerrilla campaign in Southern Taranaki continued until 1869, there was no war to join in 1867 and 1868 that was directly relevant to the recovery of the Ngāti Mutunga Taranaki rohe when Ngāti Mutunga o Wharekauri started to plan their second round of representations in front of the Compensation Court there.

The close scheduling of the Taranaki Compensation Court and Wharekauri Native Land Court hearings have already been discussed as a special factor. However, it is important to remember that the first experience of most Ngāti Mutunga o Wharekauri people with these Crown processes was with the Compensation Court. "*The New Zealand Settlements Act 1863 provided for the establishment of a Compensation Court to determine claims for compensation filed by 'loyal' Māori. Later amendments modified or clarified aspects of the process by which recompense was to be delivered…Poor record keeping by the court means only very limited information is available. But what is all too evident is that early, unequivocal promises that the lands of loyalists would remain untouched quickly went out the window. Expediency ruled, and even if applicants met the requirements for compensation most of them received back only a fraction of what they had owned before the war. In many cases the land returned was in a completely different location to the land confiscated, and it was granted in a way that facilitated rapid on selling to European settlers or speculators. It was a farcical process that failed to deliver meaningful compensation to those wrongfully deprived of their lands*."[11]

Both the Chief Judge of the Compensation Court (Francis Dart Fenton) and the Judge who presided over the Taranaki hearings (John Rogan) were Native Land Court Judges. Rogan subsequently sat on the Wharekauri Native Land Court hearing of 1870. The problems with the Native Land Court from a Māori perspective are well known in that it delivered individual titles which disenfranchised customary land owners who were not named. Those individuals who succeeded in having their individual interests confirmed were confronted with survey costs in order to benefit from this new form of land ownership and title. However, at least Native Land Court decisions were usually based upon public testimony and investigation of the prior or extant customary entitlement to land. Given the overlap of personnel, it might be expected that the Compensation Court would base its findings on a similar investigation of customary title. This did not happen for a number of reasons:

- The basic task of the Court was not to affirm ownership of land but to award compensation for lost land.
- Unlike the Native Land Court, there was not even limited involvement by Māori in assisting the Compensation Court to understand the customary title over particular areas of confiscated land.
- The initially preferred form of compensation (if any) was cash rather than land.

[10] This difference is the explanation for the apparent difference in strategy noticeable between Ngati Mutunga and Ngati Tama with regard to the return to Taranaki. Ngati Mutunga clearly 'hedged their bets' whereas Ngati Tama were more committed to re-establishing themselves on their un-confiscated lands. The repeated description of the Ngati Mutunga actions at that time by the Tribunal as an 'evacuation' is simply incorrect.

[11] O'Malley, Vincent "*The Great War for New Zealand Waikato 1800-2000*", Bridget Williams Books Ltd, publisher 2016, page 471.

- Much of the land that had been confiscated had already been sold or used for military settlements and was not available by the time hearings were held.
- The Crown (as the funder of all compensation) was an interested party in all claims and this created an incentive to deny or limit compensation.
- The first task of the Compensation Court was to verify that the claimant was not a 'rebel' (even though what constituted 'rebellion' was not defined).

1905 Commission of Inquiry into the Claims of Absentee Ngāti Mutunga to Taranaki Land

As mentioned, the outcome of the 1866 Compensation Court hearing was greeted with dismay by Ngāti Mutunga o Wharekauri. *"When the non-resident Natives heard that they were excluded by the Court, they threatened at once to return to Taranaki in order to maintain their rights. This promised a new and dangerous complication, and the Government were compelled to take the matter up. In September 1867, a meeting of the absentees took place in Wellington, when Mr Richmond, Native Minister in Sir Edward Stafford's Administration drew up a scheme for admitting them to compensation on the same scale as the Whanganui judgement had fixed… Sir George Grey told his Ministers that he had made a promise to 'those natives who obeyed his orders and did not go to Taranaki that they should in any future settlement have their claims adjusted upon at least as favourable a footing as those who, by going to Taranaki, had greatly increased the embarrassments and difficulties of the Government,' and he would only 'acquiesce in any arrangements by his Ministers if he understood from them that they had considered and made allowance for his promise.' But the Ministry refused to reopen the question, and the end was that, upon a calculation being made of the quantity required to meet 755 absentee claims of 16 acres each, the Government awarded 12,200 acres to five of the tribes"*[12] (including 3,000 acres for absentee Ngāti Mutunga). No awards had been made to Ngāti Mutunga by 1905, at which time Heni Te Rau applied to have the entire 3,000 acres transferred into the customary ownership of Ngāti Mutunga to 'partition as it pleased amongst themselves'. This claim was reported on by Commissioner James MacKay who rejected it but made awards of up to 16 acres to individual Ngāti Mutunga claimants.

The total number of claimants was 269 and 62 full shares of 16 acres were recommended for award (or the equivalent value of £10 for 16 acres). The reasons why some claims succeeded and others failed is not always clear and generally, the inquiry seemed to reject as many claims as possible. The lists of claimants are also somewhat chaotic. For example, the list drawn up by Alexander Shand of the Kawhe family at the written request of the Commissioner includes names that are unrecognisable to people in that family, excludes names that should be there and confuses generations. It excludes the information the Commissioner required such as whether individuals were alive, minors or had living parents.

[12] **Claims of Heni Te Rau and Others**: Report of Mr Commissioner James MacKay on the Claims of Heni Te Rau (Mrs Brown) on Behalf of Certain of the Ngati Mutunga hapu to Section 6, Block VIII, Waitara Survey District, 58 Pages (excluding Māori Translation of 21 pages). Page 30.

In conclusion, the result of this entire exercise was far removed from the simple promise made by Governor Grey thirty-eight years before.

The early experience of Ngāti Mutunga o Wharekauri people with Land Court Processes was therefore that they were treated formally as objects of suspicion who had to somehow prove their loyalty to the Crown and could often only do this by evidence that invalidated their claim for compensation. The starting point for the 1905 Commission process was equally unsatisfactory from a Ngati Mutunga o Wharekauri perspective in that the Crown had both all of the power over the process and already owned all of the land on which customary title had already been irrevocably destroyed. Even when claims for compensation succeeded, awards of land made were often not deliverable in practice because the land was unavailable. All of this was irreconcilable with the Treaty of Waitangi. In protecting its own interests, the Crown proved to be both very solicitous and powerful. In protecting the interests of its subjects (Ngāti Mutunga o Wharekauri) the Crown proved to be uncaring and ineffectual.

The West Coast Reserves and Cancellation of Uneconomic Shares

Under the Māori Purposes Bill 1963, the Māori Affairs Act 1953 was amended so that interests in Māori land that were deemed to be less than £10.00 in value could be distributed to other beneficiaries without any payment being required therefor. Under this provision the meagre historical land interests of many Ngāti Mutunga o Wharekauri obtained in Taranaki that had the status of Māori land were forcibly transferred to entities such as the Taranaki Māori Trust Board.

20th Century Assimilation and the Denial of Ngāti Mutunga o Wharekauri Māori Identity

The purpose of the Native Land Acts was not simply to make Māori land available to settlers but to thereby achieve the assimilation of Māori by destroying the customary social and political fabric of Māori society. "*the de-tribalisation of the natives – to destroy, if it were possible – the principle of communism which ran through their institutions, upon which their social system was based, and which stood as a barrier in the way of all attempts to amalgamate the native race into our own social and political system. It was hoped that by the individualisation of titles to land, giving them the same individual ownership which we ourselves possessed…that their social status would become assimilated to our own*"[13] This explanation of government policy provided by Henry Sewell was made in the same year as the Native Land Court hearings on Wharekauri (1870).

Henry Sewell was one of the few politicians to have voted against the New Zealand Settlements Act in 1863 but by 1870 he was Minister of Justice in a 'settler Government' which had successfully invaded, seized (but not successfully settled) much of Waikato and Taranaki. There are many examples in his life where it is clear that Sewell opposed the use of force against Māori but if the views above of this 'mild' person had been presented to Ngāti Mutunga as being the outcome of annexation and the Treaty of Waitangi, there is no doubt that they would not have been regarded as agreeable.

As described in Special Factor Paper 1, the destruction of mana motuhake on the Chathams and the amalgamation and assimilation of Ngāti Mutunga o Wharekauri was not effectively achieved until after the Land Court hearings of 1900. The Tribunal Report provides a summary of land sales in the 19th Century and WAI 64 provides information about events up to 1900 including a map of the Kekerione sub-blocks awarded in 1900.[14] The map by itself does not convey the economic implications or consequences of those awards:

- of the 47 blocks created almost half were under 20 acres and as such could only be subsistence, rather than economic, blocks. A third of these small blocks were held by more than one owner.

- of the blocks ranging from 20 to 100 acres few were really workable units as by 1900 already half had multiple ownership.

- only six persons were supported as single owners on land between 20 and 100 acres. Only three owners had properties larger than 250 acres. For those lands that were owned singularly or with few owners only, the effects of succession would soon mean the blocks were held under multiple ownership.

[13] New Zealand Parliamentary Debates, 1870, vol. 9, p 361.
[14] Wai 64, page 205

- the tribal estate, which made up half of the land dealt with in 1900, included the poorer land in Kekerione held under multiple ownership.

This fragmentation and individualisation of land title within the Kekerione Block which was the outcome of the 1900 Māori land Court hearing was only the starting point for a process of further fragmentation, alienation and associated impoverishment that was not documented by the Tribunal. At least there was a re-hearing on Kekerione by the Māori Land Court.

The other blocks on the island that had also been affected by the imposition of the 10-owner rule in 1870 were never reheard despite applications for rehearings being lodged for both Te Awapatiki and Te Matarae. Thereby no redress was provided for the impacts of the 1870 Court decisions. Instead, these blocks remained with the grantees and their successors and, over time were alienated especially as successors abandoned the informal 'trustee' role sometimes honoured by the original grantees:

- Te Awapatiki block (30,876 acres): despite there being 20 claimants identified in 1870 only four names were placed in the Crown Grant. Te Awapatiki 1B (23,544 acres) had been sold in 1886. Te Awapatiki 1A (7,161 acres) was held by the family of only one grantee. After 1900 the block experienced further alienation, increased subdivisions and the rise of multiple ownership.

- Te Matarae (6,400 acres) had been granted to ten persons despite 17 claimants having been identified. By 1900, the vast majority of the block, which had been under a series of leases since 1866, had been alienated to European purchasers. Only 1,199 acres remained. Over time, the four remaining sections experienced the rise of multiple ownership

- Otonga (40,257 acres): By 1900, 35,763 acres remained held by the successors to the original grantees. Subdivision and multiple ownership occurred which lead to land alienation. By 1955 75% of the block had been sold to Europeans.

Kekerione was the only block that those Ngāti Mutunga o Wharekauri who had returned to the island could occupy. Land in Kekerione was held onto as very few land sales occurred. Those that took place primarily involved the small sections of under ten acres that were located in and immediately around what is now the township of Waitangi. Several small sections were sold to European who primarily required them as commercial town sections. Also some interests within the poor quality and multiply-held tribal blocks were sold. Other land sales involved blocks held by the grantee family. There is some evidence of absenteeism being linked with the few sales in Kekerione especially as successions increasingly took ownership off the Island. Nevertheless, by 1950, only 14% of the Kekerione block as at 1900 had been alienated. In total less than a third of the original Kekerione block has been sold.

Facing small or irregular-shaped land plots, titles with multiple-ownership or larger blocks of land with lower economic potential, several Kekerione owners

were forced to make alternative arrangements other than occupy the land. Some blocks were leased with Pakeha farmers having to acquire several adjacent blocks to make a substantive economic holding. Other strategies adopted by resident Ngāti Mutunga including the occupation of land under informal agreements or formal leases or the purchasing out of the interests of others in order to ensure a sustainable share in the land. Those who had their land primarily under lease, and with little other land to occupy, were forced to leave Wharekauri. The land tenure pattern that would hinder the development of the island and its lands - absentee ownership - began from this time.

From 1900 through to the end of the 1940s, small land holders or those who held poorer quality land only, eked a marginal subsistence living with little spare cash and operating in an economy that was often fragile. Despite resident Ngāti Mutunga landholders seeking to be involved in the predominant sheep farming economy developing on the Chatham Islands. the use of land was necessarily restricted to being at a near subsistence level.

20th Century Land Loss and Impoverishment of Ngāti Mutunga o Wharekauri: the Crown Response

Following the Māori Land Court Re-hearing in 1900, the accumulating problems faced by Ngāti Mutunga o Wharekauri living on the islands and seeking to use their land were communicated to the Crown over a long period:

- In February 1932, Maui Pomare wrote to Native Minister Ngata noting: "The greater bulk of our lands are useless as one sheep would not live on 100 acres of it." Pomare noted that after paying stock and freight costs there was "very little to live on."

- In a May 1936 report from Judge Harvey to the Native Minister it was noted that many of the people were indebted to stock firms on the mainland."

- Also in the 1930s a firm of lawyers who wrote to the Minister of Native Affairs observed: "The native population of the Chathams is almost entirely dependent upon their lands for their means of livelihood..."

- In March 1938, Judge Harvey explained that if there had not been some fishing work available, Māori would have been destitute during the Depression.

- In September 1950, the Resident Commissioner reported that most Māori were running 200 to 300 sheep whereas a good flock size on the Island was thought to be 1500.

- By 1962, it was estimated that of the 83 holdings on the main island only 47 had the potential to be economic units.

- In 1969, it was viewed that the smallest economic unit for the Chatham Islands on the better soils was 250 acres. Few Māori blocks were anywhere near that size.

- By 1972, the Department of Industries and Commerce accepted that from 1900 the land within Kekerione had been "fragmented into small uneconomic units" which were also described as "narrow, undersized strips expensive to farm and fence."

Due to these various and numerous limitations on Māori land use in the Chatham Islands, impacts on the community were soon recorded. After World War II, there was a decline in population on the Islands until the 1960's due largely to outwards migration.

The existence of these land retention and utilisation problems was acknowledged by the Crown but no efforts were forthcoming from the Crown to address them within a Māori framework. Two avenues of Crown support were available:

1. The Native Land Court[15]
2. Assistance Programmes to support Māori Land Development

Practical access to the first was obstructed and assistance programmes developed to benefit Māori elsewhere were not made available on Wharekauri.

Access Barriers to the Māori Land Court Experienced by Ngāti Mutunga o Wharekauri in the 20th Century

The Land Court's administration practices uniquely impacted Ngāti Mutunga landholders. After 1900, the Court only visited Wharekauri in 1901, 1906 and 1907. Thereafter there were no further local sittings until 1936 and 1981. Successions, partitions and alienations were processed at sittings of the Court off the Island at various points around the South Island, (especially Kaiapoi), at Wellington, Otaki, New Plymouth and other areas. As a licensed interpreter resident at Waitangi noted on 18 March 1921, Ngāti Mutunga on the island often did not receive notices of Court sittings dealing with Chatham Island lands: "....it is by mere chance that they hear of it, and then it is too late to apply for a rehearing, and in many cases too late to appeal, except by petitioning Parliament, which is an expensive concern...." Almost thirty years later, the problems of not receiving island-based services from the land Court had significantly worsened the already existing land tenure problems on the islands. By the 1950s, the lawyer Morison recorded that there were ": ... a number of blocks on the Islands where the owners desire to make provision for alienation, family consolidation or partition, but are reluctant to take the necessary steps when that appears to involve a journey to the mainland. Some have been waiting a number of years for a Court sitting in the Chatham Islands and have abandoned their proposals when it did not appear a sitting would eventuate...."

The Tribunal notes that over one period of 45 years, from 1936 to 1981, not one judge of the Court visited the Chatham Islands. It declines to criticise the Māori Land Court or its predecessor for this. Indeed, it makes the extraordinary remark that "it would have been better had the court never sat there at all"[16] Unless this is a reference to the original 1870 hearing, Ngāti Mutunga o Wharekauri strongly disagrees with this remark. It is not a good thing that the mode of operation of the Māori Land Court for most of the 20th Century denied

[15] From 1954, the name of the Native Land Court was changed to the Maori Land Court
[16] WAI 64 page 237

access of many Ngāti Mutunga o Wharekauri to judicial services that they needed.

The impacts of costs such as survey liens associated with the land tenure system also adversely affected Ngāti Mutunga o Wharekauri. Survey liens particularly affected Te Awapatiki, Wharekauri and parts of Kekerione. By 1962, survey liens on Māori land on Wharekauri were estimated as being £2,278. In some cases, the liens absorbed the total value of the land. In 1962, the survey liens were commented on by the Wharekauri Tribal Committee and the Māori Women's Welfare league who asked the Minister of Māori Affairs to cancel the liens "as incentive to taking up of lands [was] made uneconomical by the value of the liens." The infrequency of Court services and costs associated with land tenure led to the increase of informal occupation and 'unofficial' partition with the result by 1963 "that all and sundry's stock range over big areas." This continued for decades with Crown agents knowing of the effects but offering no assistance. By 1980, Māori Affairs officials noted that many partitions had not been surveyed and therefore, as a consequence, much land was farmed informally: "Thus there is no motivation for the occupier to make a greater effort to develop." Informal occupation meant that owners tried to cooperate in their use of the land, stocking sheep in proportion to their ownership. It was reported, however, that this lead to many disputes and became a "root cause of many of the people's problems." Lack of government assistance on Wharekauri, which was being offered elsewhere to Māori land owners across New Zealand, was undermining community cohesion.

Te Whaanga Lagoon

Crown policies over land on Wharekauri that comprise a special factor within the claims of Ngāti Mutunga o Wharekauri are not confined to matters associated with the Māori Land Court. Ngāti Mutunga o Wharekauri has long fought to retain ownership from Crown control of Te Whaanga Lagoon and other lakes and waterways of Wharekauri. Ngāti Mutunga o Wharekauri have never sold or appropriated Te Whaanga, yet the Crown has assumed the right of ownership and control. The Ngāti Mutunga o Wharekauri claim to the ownership of the bed of Te Whaanga Lagoon was rejected on the false ground that Te Whaanga is an 'arm of the sea'. The Tribunal have rejected the Crown's arguments of ownership. Furthermore, the Tribunal also has found that the Crown's exclusive historical control and management of Te Whaanga has brought prejudicial effects.

Lack of Government Māori Land Development Assistance to Ngāti Mutunga o Wharekauri

In the absence of timely and accessible Crown action to address landholding issues internally through the Māori Land Court, the negative effects of the land tenure system, experienced elsewhere in New Zealand, were exacerbated in the Chatham Islands. These negative effects were well documented as indicated by the representative examples above in this paper, but documentation elicited no helpful Crown response. Despite the Crown being informed over a long period of the problems with land utilisation on the islands, and despite the majority of the island population being of Māori ethnicity, the policies from the 1920s onwards

being implemented elsewhere in New Zealand, of title consolidation and state funds being made available for development were not introduced to any degree.

The Wharekauri specifics were also ignored by the Waitangi Tribunal although the general issues of Māori Land fragmentation and loss were noted. The specific evidence suggests that negative effects on Wharekauri were unusually severe even though Ngāti Mutunga o Wharekauri doggedly retained ownership of a higher proportion of land than some other iwi although many of these owners were forced to support themselves and their families off-island. This outward migration combined with the natural consequence of succession caused rising levels of both multiple and off-island ownership of remaining Ngati Mutunga o Wharekauri lands.

By 1946, the impact of multiple and absentee ownership was noted by officials as being a serious impediment to the development of Māori land. By 1949, officials noted that there would be some difficulty in tracing the whereabouts of the absentee owners. By 1955, it was reported that there were "a very large number of owners, many of whom were not resident on the Islands, who possessed very small shares." The rise of multiple and absentee ownership had impacts on land use well known of by Crown officials. In 1951, the Resident Commissioner of the Chathams recorded that multiple ownership was the main factor responsible for undeveloped land. In 1955, the Commissioner further noted that succession had so reduced the land available to individuals or resident whanau "that in most instances Māori owned properties here are uneconomic units." In 1959, the District Officer noted that the "imperfections and multiple ownership" affected the Chatham Islands Māori land more than other areas of New Zealand because of the people's basic dependence on sheep farming. In 1965, Māori Affairs Department officials were informed by local Māori that it was very difficult to negotiate a credit transaction if a block was multiply owned. In 1972 officials noted that in many cases those using Māori land - Māori and European - often did not know who all the Māori owners were. In 1974, the effect of absentee ownership on resident owner occupiers was noted as being that "there is little incentive for them to organise and implement a programme of development." In 1980, Māori Affairs officials, commenting on the extent of informal occupation, noted that "fragmentation and current occupation means there is only limited potential to introduce large scale development."

By the time these repetitively hand-wringing comments were being made in 1980 (without any associated practical assistance) government programmes to fund and promote the development of Māori land elsewhere in New Zealand were over fifty years old. A policy framework external to the Native Land Court had long been developed and applied elsewhere in New Zealand to mitigate the general negative effects of Native Land Court processes and decisions on Māori in New Zealand but those policies and programmes bypassed Wharekauri. These initiatives were championed by Apirana Ngata and could have been a crucial support to such diversification and development initiatives as the establishment of the Te One Cheese factory in 1924. In spite of the absence of such support, dairying continued through the 1930s until the factory was forced to close in 1938 which with hindsight we now know was almost the end of the Great Depression.

Contrary to the impression in WAI 64 that the tenure reforms of 1870 led to a rapid collapse of Ngāti Mutunga o Wharekauri mana motuhake, a more careful

consideration of the evidence suggests that these traditional societal arrangements were not finally shattered until after 1900 by the comprehensive individualisation of titles by the Māori Land Court, particularly within the Kekerione block where vestigial communal land arrangements had persisted. Only after 1900 could the Crown justifiably claim that the assimilation objectives of tenure reform had been finally realised on Wharekauri (if indeed it wished to advertise the achievement of this objective). In the terms of the times, Ngāti Mutunga o Wharekauri were now 'Māori living as Pakeha', rather than 'Māori living as Māori'.

This did not stop Ngāti Mutunga o Wharekauri people identifying themselves as such but they were no longer in possession of effective collective structures and processes to govern their own affairs as per their custom. However, the complete absence of Government assistance to Ngāti Mutunga o Wharekauri (as Māori) in contrast to assistance offered elsewhere is evidence that the Government considered the Wharekauri population as assimilated. The Māori identity had been subsumed by the identity of the 'Chatham Islander'. To Ngāti Mutunga, the "Chatham Islander" identity is fundamentally a Māori identity that also reflects the absorption of Moriori and Pakeha strains by intermarriage. However, in accordance with assimilationist views and policies of the time, the "Chatham Islander" identity was seized upon by the Crown as evidence that the Māori identity and associated societal structures had been extinguished and there was no longer any need to engage with Māori as Māori on Wharekauri (not that this required any practical adjustment of Crown attitudes or activities).

Centralised 20th Century Government Administration of the Treaty Relationship with Ngāti Mutunga o Wharekauri

The apparent destruction of Ngāti Mutunga o Wharekauri social structures in the early years of the 20th Century also appeared to relieve the Crown of a range of responsibilities under Article II of the Treaty of Waitangi that had hitherto been honoured in the breach. However, if Ngāti Mutunga o Wharekauri were regarded as "successfully assimilated" British subjects they were still entitled to the rights and privileges guaranteed by Article III. It is a special factor that the Crown failed to deliver on this undertaking even though it created a centralised administrative framework that could have efficiently targeted appropriate Government support that reflected Ngāti Mutunga o Wharekauri and overlapping general Wharekauri needs or priorities.

The fact that standard Government programmes were by-passing the Chatham Islands was noted by the Resident Magistrate, Mr R.S. Florance as early as 1900. "*The Liberal Government in 1894 introduced a successful land policy through the Advances to Settlers Act. By the Act the Government offered farmers loans at relatively low interest rate. The Government, however, did not extend this aid to the Chatham Islands and Florance complained bitterly about this discrimination. "The fact remains" he wrote, "that our sons are leaving us to seek fortunes elsewhere. Thousands of acres are lying unremunerative and if the price of mutton falls below what will give a fair price on shipment, the islands will become bankrupt." "Why" he continued. "should we be differently treated to the rest of New Zealand in terms of settlement, no advance to settlers, no roads or*

public works of much importance generally. No reserves for Education, Recreation or Hospitals and charitable aids."[17]

The Tribunal dismissed this pattern as simply a consequence of isolation. Florance (who was in a better position to make an informed assessment) describes it unambiguously as discrimination. Such discrimination is contrary to Article III of the Treaty of Waitangi and is a special factor.

In 1940, the Crown placed Chatham Islands under a single administrative agency, the Department of Island Territories. The Department administered Territories where the Treaty of Waitangi did not apply (such as Tokelau). The relationship between the Crown and the population of New Zealand Territories is not the same as the relationship that is supposed to apply between the Crown and Ngāti Mutunga o Wharekauri however no such distinction appeared to affect the way the Department discharged its bureaucratic role. This administration arrangement continued until 1962 and to some extent accounts for the continued high-handed and insensitive way in which the Crown approached Chatham Island affairs during the mid-20th Century.

In 1961, a comprehensive Interdepartmental Report on the future administration of the Chatham Islands was produced[18]. This report dwelt mainly on the relationships between the various Government departments and agencies involved in the Chatham Islands with a view to achieving better control over expenditure[19] and subsidies and also addressed the question of whether land rating by the Council should be re-introduced. As a result of this report, the centralised administrative role on behalf of the Crown passed to the Department of Internal Affairs in 1962. This change did not alter the government approach to Ngāti Mutunga o Wharekauri and the Department of Internal Affairs distinguished itself by a refusal to engage with Ngāti Mutunga o Wharekauri as an iwi long after such consultation was regarded as necessary and routine by other Government Departments and Ministries in the rest of New Zealand.

It is a special factor of Ngāti Mutunga o Wharekauri that it was subject to this centralised delivery (non-delivery) of government services promised by the Crown under Articles I and III of the Treaty of Waitangi. The Tribunal seeks to lay the responsibility for a catalogue of government housing, education and health service deficiencies ultimately at the door of land tenure reform. However, to the extent that these matters contain elements that are Article III rights (as was the case for much of the 20th Century in mainland New Zealand) this simply will not do. Article III rights are independent of land ownership status. Ngāti Mutunga o Wharekauri and Moriori have the same Article III rights under the Treaty of Waitangi.

[17] The Chatham Islands in Perspective. G.A. Arbuckle 1971, Hicks Smith & Sons publisher, 113 pages (page 8.)

[18] Report of the Inter-Departmental Committee on the Future Administration of the Chatham Islands (to the Minister of Island Territories) 1961 (107 pages).

[19] Interestingly, the Māori Affairs Department, responsible for Māori housing, Māori Land Court hearings and Māori welfare in association with Tribal Committees and Māori Women's Welfare Leagues, recorded an annual expenditure attributable to the Chatham Islands of £42. (ibid. page 96).

Economic Support and Subsidies Provided to Ngāti Mutunga o Wharekauri

Ngāti Mutunga o Wharekauri participation in pastoral agriculture was severely handicapped by the consequences of Māori Land Court decisions in the 19th and 20th Century. As mentioned these consequences and problems were brought to the attention of the Crown and should have been addressed directly through decisions and policies addressing Māori land ownership and development directly. Rather than addressing these issues at their root, Government Support targeted associated services in the form of subsidised shipping and infrastructure services. This strategy of addressing symptoms rather than causes, contributed to the creation of the myth that Wharekauri was an economic basket case. This myth has been exploded by the recent Martin Jenkins Report that showed Wharekauri per capita GDP production was one of the highest in New Zealand[20]. Ngāti Mutunga o Wharekauri rejects any suggestion that Crown subsidies and financial support for the Islands of the 1940-1990 period fulfilled its responsibilities to Ngāti Mutunga O Wharekauri. By having the Chatham Islands as part of New Zealand, the country has benefited from having an extended international sea boundary and the Crown has benefited from claiming ownership of the resources within that boundary. Ngāti Mutunga o Wharekauri respond by saying that the funding level should have been to ensure that, as far as possible, Chatham Islanders enjoyed a standard of government services equivalent to that of the mainland. In Ngāti Mutunga o Wharekauri's view, this was the minimum requirement flowing from the Crown's annexation of the islands. The Crown failed to meet this minimum requirement:

Health Services

The cottage hospital in Waitangi was built in 1925 but patients were expected to pay for treatment unless they could convince the doctor that they were indigent. The hospital did not offer the full range of services which other New Zealand communities expect from their hospitals. There was no adequate maternity facility. 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 provide support at times when such support is badly needed.

Housing

Pages 231 and 232 of WAI 64 lists the myriad excuses from the 1940s to the 1970s why government housing schemes available on the mainland were not available to Ngāti Mutunga o Wharekauri. The condition and availability of housing on Wharekauri was not only a source of hardship but was a very significant factor in the high death rate from tuberculosis there. The best explanation for the failure to make New Zealand housing assistance available to Ngāti Mutunga o Wharekauri was a simple lack of will to do so.

Education

The first government school on Wharekauri was opened in 1890. Despite frequent requests, no effective provision for secondary school education has ever

[20] Chatham Islands Economic Profile 2014. Martin Jenkins, December 2014, 88 pages

been made on the island. The Crown failed to ensure the maintenance of the Ngāti Mutunga o Wharekauri whanau by not providing adequate secondary schooling on the Chatham Islands. Secondary school children either have to board at New Zealand schools or study with the Correspondence school. The former breaks up the cohesion of the whanau and is an expensive cost for each family to face. In respect of the latter there was no support available on the Island to supervise and assist students undertaking the correspondence courses.

Franchise

Ngāti Mutunga o Wharekauri were not enfranchised to vote in a general election until 1922 when the Chatham Islands were included in the Lyttelton and Western Māori electorates. The Tribunal makes light of this situation but it is an obvious, fundamental and inexcusable failure by the Crown that once more illustrates the scant regard of the Crown for the views, rights and welfare of Ngāti Mutunga o Wharekauri. The Crown introduced a Collector of Customs to tax Ngāti Mutunga o Wharekauri 67 years before Ngāti Mutunga o Wharekauri were afforded the opportunity to vote on how those tax revenues might be spent. This difference illustrates a general disparity between the Crown's eagerness to exercise Article I prerogatives and its lethargy in exercising associated Article III responsibilities.

The Dog Tax

Under the Dog Registration Act 1880, provision was made for the registration of dogs and the payment of an annual tax of five shillings per dog. Edward Chudleigh, Justice of the Peace and grazier, championed the introduction of the dog tax on the Chatham Islands by petition. In the late 1880s he was in dispute with his Māori neighbours at Mairangi who had refused to sell or lease land to him (the accumulation of debt arising from the inability of Māori living outside of the mainstream cash economy to pay rates and taxes (such as the dog tax) was a commonly used technique to encourage land sale or lease by Māori owners). The petition signed by a small number of settlers requested an annual tax of ten shillings with proceeds to be used for improvements on the Island. Neither of these provisions were consistent with the statute which limited the maximum rate to five shillings and required money collected in the absence of a Borough Council, County Council or Road Board to be submitted to the Governor (the Consolidated Fund).

The tax was introduced in 1889. Most Māori refused to pay. The alleged non-paying ring leaders (Wi Tahuhu and Heta) were imprisoned for three months in Lyttelton Gaol. Others were briefly incarcerated on the island. This heavy handed approach to enforcement of the dog tax only stiffened Māori resolve not to pay. In 1891, the S.S. Kahu was sent to the Chathams to collect another batch of dog tax 'delinquents' but local protests were so strong that the Court never convened and the Kahu returned to Lyttelton without any prisoners. Another attempted clamp down in 1901 also ended in farce when prisoners were released after a short period of government hospitality in Waitangi. "*The Māories had stretchers and mattresses and blankets provided for them in the prison, and they went there to sleep and went to the hotel to eat and drink, and between meals played quoits and enjoyed themselves as they pleased. They were never*

so well off before, and there was no need to lock them in, for it was the last of their thoughts to run away."[21]

Behind the farce was a serious dysfunctionality in the relationship between the Crown and Ngāti Mutunga o Wharekauri. The Crown used its powers (including the power to imprison persons) against a large population of Ngāti Mutunga o Wharekauri at the request of a very small number of settlers and against the clear opposition of Māori. That request was motivated, not by the public good, but to pressure Māori into alienating land and also to teach Māori a lesson in the extent of sovereign power. Māori had no influence over the purpose to which dog tax monies were to be put and it was therefore a new example of taxation without representation. To the extent that the enforcement of the dog tax taught Ngāti Mutunga o Wharekauri a lesson about the exercise of sovereign power it was that such great power was wielded by the Crown in an arbitrary and petty fashion in practice.

Devolution of Government Services provided to Ngāti Mutunga o Wharekauri

When the failure of the Crown to deliver appropriate Government Services to Ngāti Mutunga o Wharekauri through the centralised portals of the Department of Island Affairs and the Department of Internal Affairs became undeniable, the Crown switched its approach from extreme centralisation to the other end of the delivery spectrum (devolution). The Crown's post-1984 period of review which led to the Crown's ending of involvement in the direct subsidisation of the Chatham Islands was contrary to several Treaty principles that were increasingly well-understood and applied in the ten years before the devolution transition occurred.

The first Government review of Chatham Islands administration took place during the years 1984-1986. During the 1984 review, consultation of Ngāti Mutunga o Wharekauri was minimal and inappropriately delivered. Meetings were public with little effort to meet Māori within their own cultural framework. Reflecting their views of Chatham Island Māori, the Review Team, confidently asserted in their final report that "identity as a Māori or a Pakeha has been second to an overriding sense of identity as a Chatham Islander." Ngāti Mutunga o Wharekauri have always considered themselves as tangata whenua.

From August 1986 until November 1987, a four-person Advisory Group dealt with Chatham Island affairs to try and advance some of the recommendations made by the Review Team. There is no evidence that the Advisory Group approached its task either by taking account of a Māori framework or by consulting effectively with Ngāti Mutunga o Wharekauri. Instead, government were only prepared to accept the County Council as a representative group for Chatham Islanders. Ngāti Mutunga o Wharekauri reject that the Council was ever viewed by them as being mandated to speak on iwi issues or for the iwi.

During 1989 the last and most important review of Chatham Islands administration took place. The recently formed Runanga supported the Review and demanded a role for Māori in the policy making for the Island. A 1988 petition called for local self-determination and effective consultation. The Treaty

[21] Evening Post, 13 July 1901

was continually brought forward by the Runanga who claimed a right to ensure that a tribal perspective featured during the review and that there was "appropriate and substantial" Māori input. The Runanga requested involvement in negotiating the Terms of Reference and in selecting the consultants. The Runanga saw this as part of the Treaty partnership process, something not surprising for a review of an Island where nearly 50% of the people were an iwi population. Instead officials sought to play down the role of the Treaty. Whilst a limited role was acknowledged, this did not extend to aspects of policy on financial matters. Instead iwi issues were compartmentalised under a cultural development heading that had no formalised links into public administration or financial management of Island affairs. The Runanga's call for the recognition of the iwi right of rangātiratanga and the need for consultation largely went unheeded before, during and after the 1989 Review.

Over the next two years after the release of the Review team's report, government agencies debated its recommendations. In the months after the receipt of the report, Island interests and government agencies debated future institutional arrangements for the Island. The issue of iwi representation in bodies responsible for commercial and non-commercial management of the Islands was a central part of this debate. The whole discussion of institutional arrangements proceeded in Wellington without Island consultation. This occurred despite a submission from the Runanga requesting that iwi be actively involved in implementing and further investigating the recommendations of the consultants. In the absence of Runanga participation Crown agencies, such as ITA and Manatu Māori, clearly pointed out the Crown's obligations to iwi when considering the implementation of the review's recommendations. These were, however, ignored. The evidence suggests that it was the Crown's reaction to divisions that were expressed on the Island which lead 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 was no doubt. However, the response of a Treaty partner should not have been to abandon its Treaty responsibilities in favour of expediency.

The Ngāti Mutunga o Wharekauri position is that the Crown’s agents did not come close to fulfilling consultative requirements. None of the reviews attempted to take a Māori frame of reference into consideration. The cultural and spiritual relationships between Ngāti Mutunga o Wharekauri and their turangawaewae was never explored or recognised in any of the Crown reviews. Therefore, these factors did not feature as part of the review process. Iwi issues were an adjunct to the review process - something that could be compartmentalised and side-lined. Until the 1989 review the Crown did not attempt to consult with Ngāti Mutunga o Wharekauri as an iwi at all. All of the consultation took place through public meetings. Overall, the Crown made little attempt to fulfil its protective responsibilities towards Māori by ensuring their concerns were specially acknowledged and dealt with. The resultant prejudice was that the administration of the Island proceeded in such an inappropriate fashion so that the cultural integrity and economic base of Ngāti Mutunga o Wharekauri was severely damaged. The Crown has not ensured and protected Ngāti Mutunga o Wharekauri's existing and future rangātiratanga on the Islands. 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's efforts at economic self-determination.

Crown Fisheries Policies and Impacts on Ngāti Mutunga o Wharekauri

A clear sign that the Crown had not absorbed the lessons from to be learned from the ultimately devastating cultural and economic impacts on Ngāti Mutunga o Wharekauri of imposing a land tenure regime in the 19th Century was provided by the way in which radical changes to the fisheries regime applying to Wharekauri were made in the 1980s. The uncanny parallels were recognised by the Waitangi Tribunal: "In so far as a foreign regime was imposed without consultation or consent, that which happened to the Chathams, Māori fisheries was no different to that which was done to their land more than 100 years before." [p.242] The Crown's national fisheries management policies had an important negative impact on the Chatham Islands because the local conditions at the Chatham Islands were not taken into account when applying national policy. Ngāti Mutunga o Wharekauri became involved in all commercial fisheries developed off the islands, participating in fishing in accordance with tikanga and customary law. Unfortunately, participation in commercial fisheries was always required to occur under Crown regulation. Fisheries around the island have been used in a way that was contrary to Māori concepts of sustainability or rangātiratanga with the Crown not protecting or conserving fishery resources. Although the settlement of Treaty matters associated with commercial fisheries meant that the Tribunal was not able to make findings or recommendations they did record:

- that Wharekauri tangata whenua were more dependent on the ocean's resources than other Māori;
- that there have been several rounds of commercial fishermen plundering the resources;
- that Crown licensing or quota management systems were brought in without consultation or consent.

Widespread negative effects of the introduction of the Quota Management System.

- those who had been a part of the fishing economy, especially in the case of paua, were removed from the industry or were forced to become workers harvesting inshore fisheries that they had always seen as their own.
- the link of the fishing resource with the Island was broken when paua and crayfish quota was taken offshore.
- fishing skills were not being passed on to a next generation of new entrants who became shut out from the industry.
- people forced out of fishing activities by licensing or quote policies left the Island to seek new opportunities.

The importance of fishing to the local population and economy of the Chatham Islands was widely acknowledged by government agencies. For example, on 9 January 1986, Treasury officials described fishing as "obviously the most important growth industry for the Chathams." In 1989, consultants reviewing Islands' subsidization reported to government: "...the viability of the Island community is closely linked to the state of the fishing sector. This alone means that the Chathams Islands are different to the rest of New Zealand…" No monitoring was undertaken of the increasing impacts or any plan for amelioration was put in place despite similar programmes operating in New Zealand during the state sector restructuring of the 1980s. These warnings echo those made about land use and agriculture earlier in the century with similar lack of response.

Ngāti Mutunga o Wharekauri acknowledge the full and final Settlement of fisheries claims embodied in the 1992 Deed of Settlement, The Treaty of Waitangi Fisheries Claims Act 1992 and the Māori Fisheries Act 2004. However, the full and final Settlement entails an on-going relationship between the Crown and the Ministry of Primary Industries on one hand and the Mandated Iwi Fisheries Organisation for Ngāti Mutunga o Wharekauri (the Ngāti Mutunga o Wharekauri Iwi Trust) on the other. The focus of this relationship is to ensure that the evolution of the fisheries regime gives better effect to the Settlement. That relationship is not being maintained by the Crown to the satisfaction of Ngāti Mutunga o Wharekauri and requires substantial upgrading and diligent maintenance. Ngāti Mutunga o Wharekauri has made detailed submissions and proposals for the better management and conservation of the bluenose fishery around the Chatham Islands without adequate response.