Subject to WAI 1811

NGĀTI MUTUNGA O WHAREKAURI

and

[*Ngāti Mutunga o Wharekauri governance entity*]

and

THE CROWN

DEED OF SETTLEMENT OF HISTORICAL CLAIMS

[*date*]

PURPOSE OF THIS DEED

This deed –

- sets out an account of the acts and omissions of the Crown before 21 September 1992 that affected Ngāti Mutunga o Wharekauri and breached te Tiriti o Waitangi / the Treaty of Waitangi and its principles; and

- provides an acknowledgement by the Crown of te Tiriti / the Treaty breaches which caused prejudice to Ngāti Mutunga o Wharekauri and an apology by the Crown for those breaches and their consequences; and

- specifies:

  - the cultural redress including recognition of Ngāti Mutunga o Wharekauri's particular cultural, spiritual, historical and traditional association with Wharekauri –

    (1) for a statutory acknowledgement in respect of the coastal statutory acknowledgment area;

    (2) for a deed of recognition over the recognition area;

    (3) as part of a statement of interest in respect of specified islands, islets, and reefs located offshore from Wharekauri and Pitt Island (Rangiauria); and

  - the financial and commercial redress,

  to be provided in settlement to the governance entity that has been approved by Ngāti Mutunga o Wharekauri to receive the redress; and

- includes definitions of –

  - the historical claims; and

  - Ngāti Mutunga o Wharekauri; and

- provides for other relevant matters; and

- is conditional upon settlement legislation coming into force.

TABLE OF CONTENTS

SCHEDULES

GENERAL MATTERS

1. Implementation of settlement
2. Interest
3. Tax
4. Notice
5. Miscellaneous
6. Defined terms
7. Interpretation

PROPERTY REDRESS

1. Disclosure information and warranty
2. Deferred selection properties
3. Deferred purchase
4. Terms of transfer for purchased deferred selection properties
5. Notice in relation to deferred selection properties
6. Definitions

DOCUMENTS

1. Statement of association
2. Deed of Recognition
3. Protocols
4. Whakaaetanga Tiaki Taonga
5. Relationship agreements
6. Ngā Taonga Sound & Vision letter of introduction
7. Statement of Interest in specified islands, islets, and reefs
8. Right of first refusal deed over Quota

ATTACHMENTS

Area of interest

Deed plans

Shared RFR area

Shared RFR list

Specified island, islets, and reefs map

Statement of association attachment: placenames and maps

Draft settlement bill

DEED OF SETTLEMENT

THIS DEED is made between

NGĀTI MUTUNGA O WHAREKAURI

and

[***Ngāti Mutunga o Wharekauri governance entity***]

and

THE CROWN

1 TE TŪĀPAPA – BACKGROUND

NEGOTIATIONS

1.1 Ngāti Mutunga o Wharekauri gave the trustees of the Ngāti Mutunga o Wharekauri Iwi Trust a mandate to negotiate a deed of settlement with the Crown on 28 March 2014, following a series of mandating hui and a postal ballot.

1.2 The Crown recognised the mandate on 16 March 2015.

1.3 The mandated negotiators and the Crown –

1.3.1 by terms of negotiation dated 20 March 2015, agreed the scope, objectives, and general procedures for the negotiations; and

1.3.2 by agreement dated 25 November 2022, agreed, in principle, that Ngāti Mutunga o Wharekauri and the Crown were willing to enter into a deed of settlement on the basis set out in the agreement; and

1.3.3 since the agreement in principle, have –

(a) had extensive negotiations conducted in good faith; and

(b) negotiated and initialled a deed of settlement.

VISION OF NGĀTI MUTUNGA O WHAREKAURI

1.4 Ngāti Mutunga o Wharekauri have, since initialling, reviewed the deed of settlement and consider that it captures their values and aspirations as set out below:

1.4.1 The vision of Ngāti Mutunga o Wharekauri is that the Treaty settlement will contribute to the development and support of a healthy and economically sustainable community of Ngāti Mutunga o Wharekauri people on Wharekauri that continues to strengthen and deepen the cultural connections between Ngāti Mutunga o Wharekauri and the rohe of Wharekauri for ever. This vision is captured by an analogy of maintaining and expanding a whare for the iwi that is supported by four pillars (pou).

1.4.2 The four pou – Ngā Pou o te Hunga Whare o Ngāti Mutunga o Wharekauri – are –

(a) **Tātou Ake** (focus on our iwi);

(b) **Herenga Moana, Herenga Motu, Herenga Tangata** (reconnection to sea, land and people);

(c) **Ngāti Mutungatanga** (cultural revitalisation and development); and

(d) **Hanga te Whare o Ngāti Mutunga** (economic development).

1.4.3 In turn, these strong pillars and the whare they support form a place of iwi unity, iwi identity, iwi growth and development and the ongoing expression of te tino rangatiratanga by Ngāti Mutunga o Wharekauri as follows:

(a) **Kia mana te tupu o Ngāti Mutunga**

Hei paihere i te rangatiratanga me te oranga o te iwi.

This speaks to the ongoing and certain growth of Ngāti Mutunga, united and self-determining for our long-term wellbeing.

(b) **Mutunga tuputupu nunui, Mutunga tuputupu roroa, Mutunga rau tāpatu**

This speaks to the growth and dynamism of Ngāti Mutunga and captures the desire for Ngāti Mutunga uri to be united, strong in our identity, to grow together and for Mutungatanga to be widespread among our whānau.

(c) **Mutunga reo tuku, Mutunga mouri ora**

This reflects the importance of our reo, our mita and our voice (influence) to provide life and wellbeing.

RATIFICATION AND APPROVALS

1.5 Ngāti Mutunga o Wharekauri have, since the initialling of the deed of settlement, by a majority of –

1.5.1 [*percentage*]%, ratified this deed; and

1.5.2 [*percentage*]%, approved its signing on their behalf by [the governance entity][a minimum of [number] of] the mandated signatories]; and

1.5.3 [*percentage*]%, approved the governance entity receiving the redress.

1.6 Each majority referred to in clause 1.5 is of valid votes cast in a ballot by eligible members of Ngāti Mutunga o Wharekauri.

1.7 The governance entity approved entering into, and complying with, this deed by [*process (resolution of trustees etc)*] on [*date*].

1.8 The Crown is satisfied –

1.8.1 with the ratification and approvals of Ngāti Mutunga o Wharekauri referred to in clause 1.5; and

1.8.2 with the governance entity's approval referred to in clause 1.7; and

1.8.3 the governance entity is appropriate to receive the redress.

AGREEMENT

1.9 Therefore, the parties –

1.9.1 in a spirit of co-operation and compromise wish to enter, in good faith, into this deed settling the historical claims; and

1.9.2 agree and acknowledge as provided in this deed.

OFFICIAL OR RECORDED GEOGRAPHIC NAMES

1.10 The place names referred to in this deed that are not official or recorded geographic names, within the meaning of the New Zealand Geographic Board (Ngā Pou Taunaha o Aotearoa) Act 2008, are listed in paragraph 5.5 of the general matters schedule.

2 HISTORICAL ACCOUNT

[TE REO VERSION TO BE INSERTED]

2.1 The Crown's acknowledgement and apology to Ngāti Mutunga o Wharekauri in part 3 are based on this historical account.

HISTORICAL ACCOUNT

Te Hekenga o Ngāti Mutunga to the Crown's Annexation of Wharekauri

Te Hekenga o Ngāti Mutunga

2.2 The 1820s and 1830s were a time of significant upheaval for Māori across Aotearoa. During this time the acquisition of firearms by iwi through trade with Europeans meant that the impact of conflict became much more severe. Some groups suffered large-scale loss of life during this period, and many people migrated from their traditional homelands in search of security. In many cases, these migrations led to further conflict with the original inhabitants of territories where migrating iwi sought to establish themselves. The deaths of prominent chiefs with wide whakapapa connections often contributed to further cycles of hostility that drew in increasing numbers of descent groups over time.

2.3 The people of Taranaki began to experience the pressures of musket-bearing taua (war parties) from the north from about 1818. Ngāti Mutunga and other Taranaki groups fought against invading iwi, sometimes with the aid of related groups. In 1821, chiefs of Ngāti Mutunga and allied groups inflicted a heavy defeat upon an invading tribe at Motunui in northern Taranaki. Despite their victory, the continuing threat of armed reprisals convinced some Taranaki hapū to join a heke (migration) south the following year. This included related iwi who were under the leadership of the chief Te Rauparaha.

2.4 This journey itself brought considerable risk. While some communities assisted the Taranaki heke, there were also a number of conflicts with communities who sought to resist their encroachment. Eventually, Ngāti Mutunga and the other Taranaki migrants were among a group of allied tribes who established themselves on Kapiti Island at this time. In 1824 this group was attacked, unsuccessfully, by a large taua from both sides of Cook Strait. The Kapiti allies then undertook a series of successful attacks on tribes on both sides of the strait. These victories, and the peace-making arrangements that followed, established Ngāti Mutunga and others on the Kapiti coast and in Te Whanganui-a-Tara.

2.5 Meanwhile, those hapū who had chosen to remain in Taranaki continued to face armed incursions. While they were sometimes successful in repelling these attacks, the constant threat of retribution convinced many to join their relatives in the south. In 1824 and 1825, groups of Ngāti Mutunga left Taranaki, first establishing themselves at Waikanae before later moving on to Te Whanganui-a-Tara . In 1832, following a series of major battles with a powerful invading iwi, most of those hapū who had remained in Taranaki decided to

leave their traditional lands. Those Ngāti Mutunga who left Taranaki in the 1820s and 1830s did not, however, abandon all their connections to the land and their relatives who remained on it.

2.6 However, not even the relocation of Taranaki communities to the Kapiti coast and Te Whanganui-a-Tara provided them lasting security. Their migration resulted in significant conflict with the original inhabitants of those lands, and led to later tensions with other migrating tribes. These tensions were exacerbated by resource shortages, and in 1834 a major inter-tribal conflict erupted at Haowhenua, south of Ōtaki, involving Taranaki hapū on one side, opposed by some of their former allies, who were supported by two other large iwi who had been called in as reinforcements. By that time most groups had access to firearms. The fighting continued for some months with no group holding a clear advantage. Most participating groups suffered serious casualties before peace was negotiated and the non-resident reinforcements departed. In the wake of this conflict which eroded the wider alliance, several of the Taranaki groups chose to move once again. Some Ngāti Tama sought to establish themselves in the northern South Island, while some of those in Kapiti joined their relatives in Wellington.

Migration to the Chatham Islands

2.7 In 1835, at a hui on Matiu / Somes Island in Wellington Harbour / Port Nicholson, Ngāti Mutunga leaders decided that the Chatham Islands, lying 800 kilometres off the east coast of the South Island, offered the best prospect for the long term survival and security of their people.

2.7.1 After having experienced almost a generation of constant migration and conflict, Ngāti Mutunga took every measure to ensure that their relocation to the Chatham Islands would be successful. Along with members of Ngāti Tama, Kekerewai and Ngāti Haumia, they gathered 70 tons of seed potatoes, quantities of other seeds, pigs, dogs, tools, canoes and many other items required to establish themselves on the islands and to enable trade with visiting whaling ships and other visitors. Some chiefs laid claim to particular resources on the Chathams even before they had left Wellington. Ngāti Mutunga and Ngāti Tama also took 40 muskets, a cannon, along with other traditional and modern weapons to the Chatham Islands.

2.7.2 Ngāti Mutunga migrated to the Chatham Islands with their Taranaki kin in two voyages on the brig *Lord Rodney*. The first voyage, carrying an estimated 500 men, women and children of Ngāti Mutunga, Ngāti Tama, and Ngāti Haumia, left Wellington on 14 November 1835 and made landfall at Whangatete on 17 November, before disembarking at Whangaroa Harbour. Despite prior agreements that no land should be claimed on the Chathams until all of the migrants had arrived, some members of the first shipment immediately scouted the main island and began to establish themselves at Waitangi and around Kaingaroa Harbour. The second voyage, carrying an estimated 400 people of Ngāti Mutunga, Kekerewai, Ngāti Tama and Ngāti Haumia, left Wellington on 30 November and arrived in the Chatham Islands on 5 December 1835. They began to establish a settlement at Whangaroa, building a pā and planting seed potatoes.

2.7.3 The original inhabitants of the Chatham Islands did not react aggressively to the new arrivals. Initially, the Taranaki migrants also appear to have acted peacefully. According to one source, the Ngāti Mutunga chief Pomare gave the Island's inhabitants £500 worth of property including muskets, clothing, and pigs "as a compensation for the land which he and his tribe intended to take possession of."

2.7.4 In response to tensions with the newcomers, a large number of the island's original inhabitants gathered at Te Awapātiki to discuss how to respond to the new arrivals. Ngāti Mutunga and the other newcomers became aware of this meeting and moved to immediately secure complete control of the island through the process of takahi (walking the land). The takahi was quickly completed according to Ngāti Mutunga tikanga. In 1870 the Ngāti Mutunga rangatira Toenga testified to the Native Land Court that:

> I took possession of the land and also the people. Some of those we had taken ran away. Some of those who ran away into the forest we killed according to the ancient customs from this I knew the land was ours. We kept the people for ourselves.

2.8 Another Ngāti Mutunga rangatira Rakatau testified that:

> . . . having arrived at Wangaroa (sic) we took possession of the land in accordance with our customs and we caught the people. We caught all the people not one escaped . . . some ran away from us these we killed and others were killed but what of that, it was in accordance with our custom.

2.8.1 Ngāti Mutunga o Wharekauri said all the original inhabitants were captured and subjugated. The precise number of people killed in that process is not known, but, a witness for the original inhabitants testified in 1870, that around one sixth of their number were killed over the days and weeks following the meeting at Te Awapātiki.

2.9 According to Ngāti Mutunga tikanga, the conquest of the original inhabitants, the takahi and the subsequent establishment of permanent settlements gave Ngāti Mutunga enduring customary interests over the entirety of the Chatham Islands (which they subsequently referred to as Wharekauri) and its offshore islands.

2.9.1 Ngāti Mutunga o Wharekauri, nevertheless, continued to value their whakapapa links to their mainland kin, and ancestral lands in Taranaki. On some occasions they returned to the mainland to represent their interests in that land. Since 1835 the Chatham Islands have been the homeland for those who give their primary identity as Ngāti Mutunga o Wharekauri.

The Colonisation of New Zealand

Normanby's Instructions and the Treaty of Waitangi

2.10 In the 1830s, the British Government became aware of growing interest in New Zealand by rival powers, and reports of lawless behaviour by British subjects in New Zealand. In 1839, the British Government authorised Captain William Hobson "to treat with the Aborigines of New Zealand for the recognition of Her Majesty's sovereign authority over the whole or any part of those islands which they may be willing to place under Her Majesty's dominion".

2.11 The Treaty of Waitangi was the means by which the Crown sought to obtain Māori consent to its intended assertion of sovereignty over New Zealand. Te Tiriti o Waitangi/the Treaty of Waitangi was first signed in the Bay of Islands in February 1840. Hobson did not immediately issue a proclamation of British sovereignty. He wished to gather further signatures from other parts of New Zealand before issuing any proclamation. Further copies of the Treaty were made, and signatures were obtained by chiefs in other parts of New Zealand over the next seven months. In April and May 1840, some Ngāti Mutunga rangatira who had remained in Wellington and in the northern South Island signed copies of the Treaty. However, these chiefs were not signing on behalf of Ngāti Mutunga o Wharekauri.

2.12 No copies of the Treaty were taken to Wharekauri. In May and June 1840, when the Crown proclaimed sovereignty over New Zealand, Wharekauri/the Chatham Islands was not included in the area covered by the proclamation.

The Annexation of Wharekauri, 1842

2.13 The question of sovereignty over the Chatham Islands soon came to the attention of Crown officials. In October 1841, the Crown was informed of a plan by the New Zealand Company to sell the Chatham Islands – which it purported to have purchased from chiefs of Ngāti Mutunga and Ngāti Tama in March 1840 – to German investors who intended to establish a colony there. In response, the Colonial Secretary sought clarification from officials about "whether Sovereignty over the Chatham Islands belongs to Great Britain." The Admiralty advised that a Royal Navy Lieutenant "took possession of the Island" in 1791 "on the presumption of his being the first discoverer". The Admiralty was not aware of any other discovery or occupation that interfered with the Crown's prior right to claim sovereignty. The Colonial Office told the New Zealand Company in November 1841 that no other European state could be allowed to establish a colony on the Chatham Islands.

2.14 In late March 1842, British officials became aware of further correspondence about the proposed German colony. The Colonial Office wrote again to the New Zealand Company to state, among other things, that the Crown intended to inform the German consortium that "the Chatham Islands will henceforth form part of the colony of New Zealand, and will be subject to all the laws in force there regarding land purchased from the natives", including those that declared all previous purchases null and void unless found to be valid by a Commission and approved by the Crown. The purported purchase of the Chatham Islands was abandoned by the New Zealand Company, and never validated.

2.15 The following week, on 4 April 1842, the British government issued Letters Patent that redefined the boundaries of the colony of New Zealand to include Wharekauri/the Chatham Islands. This was done in part to correct earlier proclamations of sovereignty that had included incorrect definitions of New Zealand's geographical extent.

2.16 As a result of this change, the Crown's sovereignty over New Zealand was extended to include Wharekauri. The Crown's annexation of Wharekauri was carried out without any effort to consult with Ngāti Mutunga o Wharekauri. Ngāti Mutunga o Wharekauri consider that this represents a profound failure to recognise or respect their mana and te tino rangatiratanga, and is the root of all Ngāti Mutunga o Wharekauri Treaty grievances and consequent relationship difficulties with the Crown.

2.17 The Crown took no steps to exercise any substantive authority in Wharekauri/the Chatham Islands until 1855, when it appointed a collector of customs for the islands. While Wharekauri/the Chatham Islands were legally part of New Zealand between 1842 and 1855, they remained, during that period, under the practical authority of Ngāti Mutunga o Wharekauri.

Auckland Islands, 1842-1856

2.18 The Auckland Islands (62,500 hectares) were included within the boundaries of the Colony of New Zealand on 4 April 1842 through the same Letters Patent that had declared the Crown's sovereignty over Wharekauri/the Chatham Islands. The Crown's claim to the Auckland Islands was said to be based on "discovery" by a British ship and the absence of permanent occupation by any settlers.

2.19 Ngāti Mutunga were unaware of the Crown's annexation when in late 1842 a group of Chatham Islands Māori, led by the Ngāti Mutunga rangatira Tauru Matioro, moved to the Auckland Islands with a number of their slaves. Matioro had likely visited the islands during a sealing or whaling expedition in the 1830s. He persuaded a number of other chiefs, including his father-in-law Patikumikumi, Toenga Te Poki and Manature to come with him to settle. The group later told an official visiting the islands that they had migrated in order to find "a Country where they might live free from any kind of subjection".

2.20 The group of approximately 40 Ngāti Mutunga and 25 of their slaves left Wharekauri/the Chatham Islands in the *Hannah*, a hired brig. It was a long and demanding journey; the Auckland Islands were in the Southern Ocean, 1500 kilometres south-west of Wharekauri/the Chatham Islands. When they reached the Auckland Islands Ngāti Mutunga began to exercise their rangatiratanga over the uninhabited island according to their tikanga. Almost immediately after landing at Port Ross, in the north of the main island, a party proceeded to takahi (walk the land in order to take possession of it). The Ngāti Mutunga settlers then used whaleboats to visit and lay claim to other parts of the islands. Shortly afterwards they dispersed and established several kāinga around Port Ross and Enderby Island.

2.21 The subantarctic environment of the Auckland Islands presented the Ngāti Mutunga settlers with a number of challenges. The seas were often rough, the climate was wet, cold, and windy, and the terrain and vegetation made moving around on land extremely difficult. There were difficulties in cultivating crops, and opportunities to re-supply from visiting ships were limited. In the face of these difficulties Ngāti Mutunga proved hardy and resourceful: they managed to maintain their population numbers, and within a few years had brought substantial tracts of land under cultivation in potatoes and flax.

2.22 In 1847, without reference to Ngāti Mutunga, the Crown granted a 30-year lease of the Auckland Islands to Enderby Brothers, a private firm, who subsequently transferred the lease to the Southern Whale Fishery Company. In January 1849 the Crown granted a Royal Charter, to the company whose purpose was to colonise the islands and hunt whales and seals in the surrounding seas. The Crown would have no financial responsibility towards the colony which was to be fully funded by the Company. In June 1849 the Crown appointed Charles Enderby, the company's Commissioner, as Lieutenant-Governor of the Auckland Islands. In this role Enderby was to report directly to the Secretary of State for the Colonies in London, rather than the Governor of New Zealand. Enderby exercised sovereign powers including implementing and enforcing laws (rather erratically) and issuing a currency. There were consistent complaints from colonists that he acted as both prosecutor and judge, and his decisions could not be appealed.

2.23 Enderby's commission did not cite any authority for separating the Auckland Islands from the Colony of New Zealand, as it had been constituted by the 1842 Letters Patent. On 30 June 1852 the Auckland Islands were removed from New Zealand's boundaries by the New Zealand Constitution Act. By that stage, the Enderby Settlement was failing and the Charter was inoperable. It was not until 8 June 1863 that the Auckland Islands were re-incorporated into the boundaries of New Zealand by the New Zealand Boundaries Act that amended the New Zealand Constitution Act 1852.

2.24 The Crown did not consult Ngāti Mutunga about any of these steps. Ngāti Mutunga only became aware that the Crown planned to exercise authority over the Auckland Islands when European colonists, employees of the Southern Whale Fishery Company, arrived at the Auckland Islands (which they presumed were uninhabited) in December 1849.

2.25 The European settlers were welcomed by Māori, who they found "peaceable and well-disposed". In 1850, Enderby reported to the Southern Whale Fishery Company that the Māori settlers had "surrendered all their claims to land, enclosures, pigs, &c., upon condition of being allowed to collect their growing crops", and in return had been paid "a small sum". This agreement, Enderby claimed, had been "regularly drawn up and signed" after being explained to Māori by a colonist who spoke their language. There is no mention of any such agreement, however, in the correspondence between Enderby, in his capacity as Lieutenant-Governor of the Auckland Islands, and the Colonial Office.

2.26 Enderby's assistant recorded the "agreement" differently, stating that he, not Enderby, "made the Native Chiefs clearly understand that they had no claim whatever to any land on these Islands". He further told Māori that their pigs were "now the property of the Company and that they are to capture none without orders". There is no mention in the diary of any agreement being written down and signed, any compensation paid for the land and resources that had been taken, or any lands being reserved for Māori residence or cultivation.

2.27 A number of Māori were subsequently employed by the Southern Whale Fishery Company. Matioro and another Ngāti Mutunga rangatira, Ngatere, were taken on as constables, while others worked as boatmen, whalers, labourers, and road-builders. Māori also supplied the European colonists, who had little success in gardening, with fresh vegetables.

2.28 The colony of the Southern Whale Fishery Company failed after only two years. Enderby resigned his Lieutenant-Governorship of the Auckland Islands. The European colonists made plans to leave the islands. They offered to take Māori with them, but were turned down. Matioro wrote to Governor Grey telling him that "we have declined the offer, preferring to remain here". The European colonists abandoned the Auckland Islands in August 1852.

2.29 Ngāti Mutunga continued to exercise their rangatiratanga on the Auckland Islands for several more years. In 1854 Matioro led some of his followers and their slaves to Stewart Island before most returned to Wharekauri/the Chatham Islands. In 1856 the last Ngāti Mutunga returned to the Chatham Islands on the *Lalla Rookh*, which had been chartered for that purpose by their Wharekauri-based relatives.

Ngāti Mutunga and the Crown from the 1840s to the early 1860s

2.30 The Crown's annexation of Wharekauri/the Chatham Islands had no immediate practical impact on how Ngāti Mutunga o Wharekauri exercised rangatiratanga over their own affairs. The Crown did not send any officials to Wharekauri/the Chatham Islands before 1855, and Ngāti Mutunga continued to adapt to life on the islands according to their own tikanga.

2.31 For Ngāti Mutunga o Wharekauri the 1840s and 1850s were a welcome period of peace after many years of continuous warfare. They extended settlement and cultivation across the islands, and prospered. They grew large crops of potatoes and wheat at Waitangi and elsewhere, traded with visiting whaling vessels, and later exported produce in great quantities. Between 1845 and 1856 an estimated 8000 tonnes of potatoes were sent from Wharekauri/the Chatham Islands to Wellington, Auckland, Sydney, and San Francisco. The export trade was so successful that Wharekauri/the Chatham Islands came to be known as the 'Garden of the Pacific'. However by the mid-1850s the number of whaling vessels visiting the islands had become less frequent, and it started being difficult to export produce from the islands.

2.32 In 1854 the Crown received a request from the small number of Europeans living on Wharekauri/the Chatham Islands to appoint one or two of them to a commission of the peace to enforce the Resident Magistrate's Ordinance with the help of Māori assessors and one or two police constables. A missionary also informed the Crown that a trader was landing alcohol and tobacco without paying any duties. He urged the Crown to enforce customs laws, and prevent the unrestrained sale of alcohol.

2.33 Although Ngāti Mutunga o Wharekauri were an overwhelmingly larger population on Wharekauri/the Chathams than the settlers, the Crown did not consult the iwi before appointing an official to be collector of customs there in December 1854. The Crown subsequently made no effort to communicate this decision to Ngāti Mutunga o Wharekauri before the official arrived on the island in August 1855. This Crown behaviour offended Ngāti Mutunga o Wharekauri. Toenga Te Poki and other Ngāti Mutunga o Wharekauri rangatira objected to the official's arrival after he went ashore, but permitted the collector and his large family to take up residence.

2.34 Ngāti Mutunga o Wharekauri opposed the collector establishing a customs office on Wharekauri/the Chatham Islands. He took no steps towards that purpose. In September 1855 Ngāti Mutunga o Wharekauri rangatira sent a letter to Acting Governor Robert Wynyard protesting against the manner of the collector's appointment without any written instructions from the Government. They wrote: 'He [the collector] informed us that he had been ordered here by you ... 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.' In October 1855 the Collector reported to senior officials on the mainland that Ngāti Mutunga o Wharekauri rangatira told him they would 'be their own Governors'.

2.35 In December the 1855 the Crown decided to send another official to Wharekauri/the Chathams to negotiate with Ngāti Mutunga o Wharekauri about the terms on which the Collector would be able to start work. In January 1856 the Wellington Collector of Customs arrived in Wharekauri/the Chatham Islands with an interpreter and Māori from the mainland to assist his negotiations. The Crown also directed the Wellington Collector to swear in the Wharekauri/Chatham Islands collector as Resident Magistrate.

2.36 The Wellington collector quickly discovered that Ngāti Mutunga o Wharekauri had developed a very low opinion of the proposed customs collector/Resident Magistrate. Shortly after arriving on Wharekauri/the Chathams in November 1855, this official moved to a section occupied by other Europeans at Te Whakaru which was on the other side of the island to the designated port of entry at Waitangi. The Wellington collector subsequently reported that Ngāti Mutunga "invariably spoke" of the proposed collector/resident magistrate as "the bad man" or "the fool". The Wellington Collector had to conduct negotiations for the establishment of customs and the acceptance of British law on the Chathams in the complete absence of the official who was to have responsibility for these functions.

2.37 On 16 and 18 January 1856, Ngāti Mutunga o Wharekauri attended hui at Waitangi and Kaingaroa with the Wellington collector and the rangatira from mainland New Zealand who were assisting him. Ngāti Mutunga o Wharekauri agreed to accept the establishment of customs in Wharekauri/the Chatham Islands and a Resident Magistrates Court after the Wellington Collector made several promises on behalf of the Crown that were recorded in writing in Te Reo on 16 January 1856. These promises included:

(a) Should the Governor receive a petition signed by a number of Māori making complaints of improper conduct towards them by the Collector of Customs/Resident Magistrate that were not unfounded, he would be superseded in his appointments.

(b) Whenever the Revenue of Wharekauri/the Chatham Islands would afford it, the Crown would send a doctor, fluent in Te Reo, to Chatham Islands to attend the medical needs of Ngāti Mutunga o Wharekauri. If at the time of the doctor's appointment, Ngāti Mutunga were dissatisfied with the Resident Magistrate, the doctor would also be appointed as Resident Magistrate. His predecessor would remain as collector.

(c) The Crown would appoint Ngāti Mutunga o Wharekauri Assessors who would assist the Resident Magistrate in cases involving Māori.

2.38 Ngāti Mutunga o Wharekauri nominated Toenga Te Toki, Wi Naera Pomare and five others to be the assessors assisting the Resident Magistrate.

2.39 The Wellington collector also reported that the numerous landing places on Wharekauri/the Chathams meant it would be impossible for customs to be collected there without the support of Ngāti Mutunga. As part of the arrangements to secure this support, he agreed on behalf of the Crown that Ngāti Mutunga would receive half of the proceeds of the sale of any goods seized through customs enforcement. The Wellington Collector also agreed to appoint three Ngāti Mutunga rangatira (Toenga Te Poki, Wi Naera Pomare, and Reni Taupatu) as customs officers to assist in this work.

2.40 On 19 January 1856 Wiremu Kingi Meremere wrote to the Governor describing how Ngāti Mutunga o Wharekauri had appointed assessors and customs officials to assist the Resident Magistrate/Customs Collector. He stated that Ngāti Mutunga wished no more European officials to be sent to Wharekauri. If they found the conduct of the resident magistrate/customs collector improper, they would 'send him back', and request another official in his place.

2.41 Wiremu Kingi Meremere also requested in his 19 January letter that the Crown send a doctor to Wharekauri/the Chatham Islands. The rangatira did not link this request to the Crown being able to fund a doctor out of the revenue it derived from Wharekauri/the Chathams as provided for in the Wellington Collector's written promise of 16 January. Wiremu Kingi Meremere said that Ngāti Mutunga o Wharekauri would send the doctor back to the Crown if he was not a "good" doctor. The Crown did not act on Meremere's request.

2.42 Governor Browne was greatly displeased with the arrangements negotiated by the Wellington collector which significantly qualified the power of the Crown official on Wharekauri/the Chathams. However Browne concluded that the Crown had little choice but to uphold the promises the Wellington Collector had made to Ngāti Mutunga.

2.43 Browne initially considered that the Crown should replace the Resident Magistrate/Customs Collector due to his unsatisfactory relationship with Ngāti Mutunga. Browne ultimately concluded, though, that the expense of replacing him, and a desire to give him a "fair trial", meant he should stay in his role.

2.44 The newly minted customs collector was unable to collect much revenue over the next few years as economic conditions on the islands deteriorated. There was a steep decline in trade as fewer whaling ships called in, and those that did landed few dutiable goods. The Crown's imposition of customs is likely to have contributed to this decline. The previously strong export of potatoes declined precipitously, and the entire Chatham Islands crop of about two thousand tons in 1859 rotted in the ground with no one to purchase it. In 1862 a visiting customs official reported that, with the exception of tobacco, he could find "no evidence of any dutiable goods having been landed" on the main island for some time.

2.45 This meant that the Crown derived little revenue from Wharekauri/the Chathams, and did not send a doctor as it had promised in 1856 if one could be funded out of the revenue it received from the islands.

2.46 Ngāti Mutunga oral tradition records that that they continued to deeply dislike the Customs Collector/Resident Magistrate. In March 1860 they invoked the 1856 agreement with the Crown, and requested that the official be removed from Wharekauri/the Chathams. Ngāti Mutunga wrote to the Governor protesting that the Resident Magistrate ignored the Ngāti Mutunga assessors appointed in 1856, and made other serious allegations of misconduct against him. The Crown did not remove the Resident Magistrate in response to this petition, and it is not clear whether the Crown investigated the allegations to see if they were unfounded.

2.47 In 1862 the Crown decided to replace the Customs Collector/Resident Magistrate. According to evidence presented in a later Supreme Court case this decision was taken in response to ongoing controversy arising from an 1856 transaction he had entered into to acquire land Ngāti Mutunga had previously allowed other Pākehā to occupy. The Resident Magistrate negotiated this transaction with the other Pākehā rather than with Ngāti Mutunga, and it was entangled with the performance of his official duties. He was able to continue occupying the land at Te Whakaru, but was unable to acquire a legal title for it until after the Native Land Court awarded it to Ngāti Mutunga o Wharekauri.

2.48 The Crown advised the official he would be replaced in October 1862, and he was transferred to another district in August 1863.

Taranaki Land Confiscations and the Compensation Court

2.49 Ngāti Mutunga o Wharekauri had ancestral customary rights in Taranaki as well as rights in Wharekauri established following its conquest in accordance with Ngāti Mutunga o Wharekauri tikanga. The Crown recognised Ngāti Mutunga o Wharekauri rights in Taranaki in 1856, when it sought their agreement to land sales in Taranaki. Thereafter the Resident Magistrate recorded small groups of Māori from the islands "visiting" Taranaki. The cumulative effect of Crown purchases in Taranaki during the 1840s and 1850s created tensions that had a significant impact on Ngāti Mutunga o Wharekauri.

2.50 In 1859 - 1860 Wiremu Kingi Te Rangitāke a rangatira of high status and reputation among Te Ati Awa and Ngāti Mutunga, objected to Crown negotiations to purchase the Pekapeka block in Waitara. Despite Kingi being widely acknowledged as the principal rangatira of Waitara, the Crown executed a purchase deed without his consent, and took military possession of the block. Fighting began in March 1860 when Crown forces attacked a pā Kingi's supporters had erected to command road access to Pekapeka..

2.51 Ngāti Mutunga o Wharekauri did not participate in the ensuing wars. In April 1861 a peace agreement provided that the Waitara purchase would be investigated, and in April 1863 Governor Grey decided to renounce the purchase. However the Crown did not announce this decision until May 1863 by which time fighting in Taranaki had recommenced. Warfare in continued in Taranaki until 1869, but there was little fighting in north Taranaki.

2.52 In 1863, the Crown promoted legislation which was enacted by parliament as the New Zealand Settlements Act, 1863. It enabled the Crown to confiscate the land of any North Island Māori it deemed to have been in rebellion. Under the New Zealand Settlements Act the Crown could confiscate Māori land in areas it declared as confiscation districts and sites eligible for settlement. The Crown intended to allot or sell this land to settlers, with

revenue from the sales being used to recoup the costs of its wars against Māori and to develop settlements.

2.53 In 1864, the British Colonial Office expressed concern regarding the scope and application of the New Zealand Settlements Act, "considering it capable of great abuse". The British Colonial Office allowed the Act to remain in operation, as final authority for confiscation lay with the Governor who was instructed to withhold consent to any confiscation that was not "just and moderate".

2.54 Government statements made at the time reflected the punitive nature of the New Zealand Settlements Act. On 17 December 1864, Governor Grey issued a proclamation declaring that he would punish those "guilty of further violence" and, within the "Province of Taranaki", could take possession of and retain "such land belonging to the Rebels as he may think fit".

2.55 In 1865, the Crown applied the New Zealand Settlements Act to proclaim three large confiscation districts in Taranaki: "Middle Taranaki", "Ngatiawa", and "Ngatiruanui". Within these districts the Governor designated "Oakura", "Waitara South" "Ngatiawa", "Ngatiruanui", "Ngatiawa Coast" and "Ngatiruanui Coast" as eligible settlement sites and confiscated all land within them that could be confiscated. As a result, the Crown confiscated much of the land to which Ngāti Mutunga o Wharekauri had a deep ancestral connection in north Taranaki, including the entire rohe of Ngāti Mutunga and the southern portion of the Ngāti Tama rohe.

2.56 The Crown confiscations in Taranaki deprived both "loyal" and "rebel" Māori of the ownership and use of their lands, despite the declaration in the confiscation proclamation of 2 September 1865 that the land of "loyal inhabitants" would be taken only where "absolutely necessary for the security of the country". The Crown acted indiscriminately as the confiscations greatly exceeded the minimum necessary for achieving the purpose of the New Zealand Settlements Act.

2.57 The Crown established a Compensation Court under the New Zealand Settlements Act to compensate Māori whose lands were confiscated but who had not fought against the Crown. Ngāti Mutunga living on Wharekauri had not fought against the Crown, and had never relinquished their claims to their ancestral lands in Taranaki. Wi Naera Pomare later testified that the Crown gave Ngāti Mutunga on Wharekauri notice to send their claims to the Compensation Court for consideration. In 1866 the Compensation Court, which sat in New Plymouth, received 158 claims from Māori on the Chatham Islands for title to the "Oakura" block and 206 claims for title to the "Ngatiawa Coast" block.

2.58 In July 1866 the Court rejected Ngāti Mutunga o Wharekauri claims that were based on their ancestral connections to Ōakura. It laid down and applied a rule that title should be awarded to those who possessed the land in 1840. The Court concluded that, Ngāti Mutunga o Wharekauri who lived on Wharekauri in 1840 could have no title interest or claim to land in Ōakura which they were not physically occupying. In September and October 1866 the Compensation Court also applied this reasoning to Ngāti Mutunga o Wharekauri claims to the Ngatiawa block.

2.59 The Crown made out of Court arrangements to return land to two Ngāti Mutunga o Wharekauri rangatira who were not considered to be absentees from Taranaki. These provided for Te Rakatau and Pamariki to be granted 500 acres and 200 acres respectively in the Ngatiawa block. These agreements were confirmed by the Compensation Court in 1869, but it was not until almost twenty years later, in 1885, that the Crown issued grants. By this time Te Rakatau and Pamariki were both deceased.

2.60 Pomare could not understand why the Taranaki Compensation Court declined to recognise claims from Ngāti Mutunga o Wharekauri on the Chathams for lands in Taranaki after the Crown had given notice to his people on Wharekauri to send those claims in. In the aftermath of the Compensation Court hearings in Taranaki, Ngāti Mutunga o Wharekauri were amongst petitioners who urged the Crown to reconsider claims that had been rejected by the Compensation Court on the grounds of their absence from Taranaki. In 1867, the Native Minister met with a group of absentee claimants in Wellington, representing approximately 755 absentee-claims. At the meeting, the Crown promised a total of five awards to absentee claimants. These totalled 12,200 acres, calculated on a basis of 16 acres per claimant, and included 3,000 acres for Ngāti Mutunga absentees.

2.61 The Crown attempted to persuade Ngāti Mutunga o Wharekauri not to return to Taranaki. In April 1867, an official stated at a hui with Ngāti Mutunga o Wharekauri that they would have nothing to gain by returning to Taranaki, and that the Crown would consider their claims together with those of other absentees and would award them compensation.

2.62 Many Ngāti Mutunga o Wharekauri were not persuaded by this Crown argument. In January 1868, approximately 120 people of Ngāti Mutunga o Wharekauri arrived in Taranaki from the Chatham Islands aboard the *Despatch.* The Crown was concerned that the presence of Ngāti Mutunga o Wharekauri returnees in Taranaki would complicate an already delicate situation. However officials were unsuccessful in preventing a second large contingent of Ngāti Mutunga o Wharekauri from chartering the *Collingwood* to take them back to Taranaki later in 1868. En-route to Taranaki this group of 150 people stopped in Wellington to meet with the Crown, and promised "to go back to the Ngatimutunga District and settle upon any land that the Crown would award to them."

2.63 In 1868, approximately 200 Māori from the Chatham Islands began occupying land adjoining the Urenui and Mimitangiatua rivers near Urenui. The Crown intended that this would be a temporary arrangement and promised to set aside land for this group in the future. However, Chatham Islanders were still located near Urenui in 1880. During the 1870s many Ngāti Mutunga o Wharekauri at Urenui lived in poverty stricken conditions, and their numbers "seriously decreased through sickness".

2.64 The movement for peace and independence established at Parihaka under the leadership of Te Whiti and Tohu Kakahi during the 1860s became very important to Ngāti Mutunga o Wharekauri. Many began living at Parihaka where they found support in the face of their socio economic deprivation. Wi Naera Pomare was present in 1881 when Crown troops invaded Parihaka to dismantle the community. During the invasion a horse stepped on the foot of his five year old son Maui. The Resident Magistrate on the Chatham Islands reported in 1885 that nearly all Ngāti Mutunga o Wharekauri supported Te Whiti. The people of Ngāti Mutunga o Wharekauri sent a large amount of material support to Parihaka including preserved eels, ducks, mutton birds, albatross and money.

2.65 In 1880, the Crown established the West Coast Commission to inquire into promises made by the Crown to Māori in Taranaki regarding land confiscated by the Government. The Governor urged all Māori living in the area, including members of Ngāti Mutunga o Wharekauri, to bring their claims and grievances before the Commission. The Commission recommended that reserves be made for Māori to settle outstanding grievances. The Commission estimated that 10,000 acres would be needed for Chatham Islands Māori, at Urenui. However the Commission later found there was not 10,000 acres of useable land available to give them.

2.66 In response to the recommendations of the first West Coast Commission, the Crown granted several reserves, totalling approximately 1,412 acres, to Hami te Maunu, Riwai Taupata and a number of other Chatham Islands Māori in 1884 and 1885.

2.67 The Crown established a second West Coast Commission in December 1880. It identified 3000 acres for return to Ngāti Mutunga absentees. This land had first been promised by the Crown in 1867 when the Native Minister met with absentee claimants. However, by 1884 the commission was not able to identify those entitled to receive the award and the lands were subsequently put up for sale. Trying to explain why they had not identified recipients, some officials said that due to the individual allotment being so small at "only 16 acres each" that Māori might consider it "hardly worth claiming."

2.68 In 1905, following receipt of two petitions from Heni Te Rau who was the daughter of Kahe te Rau o Te Rangi, as well as the sister-in-law of Wi Naera Pomare, and the adopted daughter of Apitea, a Royal Commission commenced an investigation into the Ngāti Mutunga absentee award. The Royal Commission found that Ngāti Mutunga absentees or their successors who had not already received land grants were entitled to receive land or payment. It recommended awards totalling 1,168 acres for more than 100 individuals from Ngāti Mutunga, including "Chatham Islands people". The Crown did not act on the Royal Commission's findings, which were later upheld in a Native Affairs investigation in 1922, following two petitions earlier that year.

2.69 In 1925, the Crown promoted legislation which became the Native Land Amendment and Native Land Claims Adjustment Act, 1925. Section 28 of the Act empowered the Native Land Court to "ascertain and determine who are the persons entitled to participate in any relief that may be granted" in respect of earlier petitions. While the Court was not bound by findings of previous commissions, the Crown was given "full discretion... to consider what, if any, relief shall be granted."

2.70 In 1928, Cabinet approved a payment of £2,000 to settle the claims of Ngāti Mutunga absentees and their descendants. This money was subsequently paid to the Aotea Māori District Land Board to allocate to the 19 named Ngāti Mutunga individuals identified by the Native Land Court in 1928 and their successors.

2.71 Parihaka and its message of peace and independence continued to resonate with Ngāti Mutunga o Wharekauri after many had returned to the Chatham Islands. For many years the followers of Te Whiti refused to sign legal documents, or participate in Native Land Court hearings. As late as 1900 there were some Ngāti Mutunga o Wharekauri who refused to participate in Native Land Court hearings in relation to Kekerione.

Prisoners Detained without Trial on Wharekauri/the Chatham Islands

2.72 In 1866, the Crown decided to detain prisoners from other iwi without trial on Wharekauri/the Chatham Islands. These prisoners had been captured as a consequence of fighting on the East Coast of New Zealand. The Crown's plan required Ngāti Mutunga to make land available for the prisoners as the Crown itself did not possess any land on Wharekauri. However, the Crown did not consult Ngāti Mutunga about this plan before officials turned up in Wharekauri with a ship load of prisoners in March 1866.

2.73 The Crown's actions placed Ngāti Mutunga in a challenging position. The iwi not only had to find land for the prisoners, but also had to balance their relationship with the Crown with their relationship with the prisoners who had fought against the Crown and were accompanied by women and children.

2.74 The first batch of 39 male prisoners, accompanied by 10 women and 19 children, as well as 27 guards were left on board the *St Kilda* the night after they arrived at Wharekauri while officials went ashore to discuss what was to be done with them. Ngāti Mutunga o Wharekauri asked for time to consider where the prisoners were going to be placed and for messengers to be sent to other Māori on the island, requesting them to meet "to discuss the question". The following day, 200-300 members of Ngāti Mutunga o Wharekauri gathered for a hui which lasted the whole day.

2.75 Ngāti Mutunga opinion was divided about how to respond to the situation the Crown had put them in. A Crown official reported that some agreed to have the detainees distributed among them, and others expressed surprise that the Government had transported the prisoners to Wharekauri without first informing them. They pragmatically agreed, though, that now the prisoners had arrived, the Resident Magistrate had to decide what was to be done with them. The Crown accepted Toenga's suggestion of housing the prisoners on land the rangatira offered "free of cost". Toenga subsequently wrote to the senior Crown official Donald McLean that:

> They (the prisoners) have settled down peaceably together with us the inhabitants of the Island. We have given them a welcome, a home, food and land to cultivate for their necessities. They are well satisfied and have quietly settled down here – that is to say to Waitangi.

2.76 Ngāti Mutunga o Wharekauri consider that the provision of a welcome, a home, food and land to cultivate for the prisoners' necessities was the practical expression of their tino rangatiratanga when faced with the unexpected arrival of their "guests".

2.77 In April 1866, a further 47 prisoners, accompanied by 30 women and 11 children, arrived on Wharekauri. Ngāti Mutunga o Wharekauri welcomed them with a feast, despite their strong misgivings at the Crown using Wharekauri to detain prisoners without trial.

2.78 By early May 1866 the Crown had made a one-off payment of 2s 6d per acre to lease land which could be cultivated by the prisoners. Ngāti Mutunga also provided the prisoners with boats, free of charge, for the purpose of fishing. The Crown hoped, the prisoners would become self-sufficient, but this was never achieved. Even so, Crown supplies of

food and seed wheat were continually reduced. The Crown directed the Resident Magistrate to make up any shortfall by procuring supplies on the Islands.

2.79 In June, 30 more prisoners arrived accompanied by nine women and eight children. Concerned about the ratio of prisoners to guards, the Resident Magistrate noted that the 115 prisoners nearly equalled the 151 male Māori living on the islands. The Crown sent further detainees in October and December. At the height of the penal colony, the Crown detained more than 300 East Coast Māori on the Chatham Islands.

2.80 In May 1866 a Crown official reported that Toenga had asked McLean to allow Ngāti Mutunga to take charge of the prisoners. In June, the Crown instructed the Resident Magistrate to withdraw a number of guards as the prisoners could be placed under the charge of Ngāti Mutunga. However Toenga had not consulted widely among Ngāti Mutunga, and the large majority did not wish to take charge of the prisoners.

2.81 A number of Ngāti Mutunga o Wharekauri were concerned that the Crown was endangering their physical safety by sending the prisoners to the Chathams without adequately providing for their security. In July, four rangatira joined with European settlers to petition the Defence Minister for guards to be retained. The petition stated "should an outbreak occur, we are actually without the means of defence. We therefore humbly pray you, Honourable Sir, to grant us the protection necessary for our safety." The Crown continued to maintain a guard, but in October 1866 sent 20 rifles and 2,000 rounds of ammunition to be "issued to such adult Europeans as wish to receive them" but the Resident Magistrate declined to distribute these for fear of the effect of this on the prisoners.

2.82 A census of the population, as of 1 April 1867, indicated that the 184 men imprisoned outnumbered the 130 men of Ngāti Mutunga o Wharekauri then on the Chatham Islands. When accounting for women and children, the 302 "prisoners" numbered similarly to 339 individuals from Ngāti Mutunga o Wharekauri.

2.83 In February 1868 the Under Secretary of Native Affairs reported, after inspecting the condition of the prisoners, that many of the guards were a "public nuisance" who were responsible for "drunkenness and other lawless habits" having "sprung up in a previously quiet and orderly locality". In April 1868, the Crown informed the Resident Magistrate that the existing guards were to be withdrawn, and he should recruit "one senior sergeant, one corporal, and nine constables" to replace them.

2.84 These Crown arrangements were insufficient to safely guard the prisoners. On 4 July 1868, all of the prisoners escaped from Wharekauri aboard the schooner *Rifleman*.

Native Land Court

2.85 In the first half of the 1860s, the Crown promoted the Native Lands Acts of 1862 and 1865 to address failures in its previous system of purchasing land. This had become immensely controversial in Taranaki and other places. The legislation established the Native Land Court, and provided for it to investigate and determine the owners of Māori land according to Māori custom. Having determined the customary owners, the Court was then to award legal ownership to individuals. The Crown did not consult Ngāti Mutunga o Wharekauri

about the development of this legislation which it anticipated would facilitate the alienation of land to settlers. Although Ngāti Mutunga traditionally held their land collectively, the Native Land laws did not provide for a collective title at this time.

2.86 In 1863, the Resident Magistrate of the Chatham Islands explained the Native Lands Act 1862 to Ngāti Mutunga o Wharekauri. The legislation provided that any individual who claimed customary rights in Māori land could apply to the Court for a title, but no application was made before 1866.

2.87 By this time the Crown was keen for Ngāti Mutunga o Wharekauri to remain in the Chathams rather than return to Taranaki where the Crown had confiscated much of their ancestral land. In late 1866 the Crown took steps to encourage claims to the Native Land Court for the land in Wharekauri/the Chatham Islands. It sent the Resident Magistrate twenty copies of the Native lands Act 1865, fifty "forms of application for the investigation of title", and, as an example, a "statement shewing[sic] the History of a claim in its passage through the Native Lands Court".

2.88 Ngāti Mutunga o Wharekauri were keen to generate income from their land through leases to Pākehā settlers, and in April 1867 a Crown official reported that at least 120,000 acres on Wharekauri/the Chatham Islands had already been leased. However the Native land legislation provided that alienations of customary land were legally void. Ngāti Mutunga o Wharekauri stood to receive higher rents from their leases if they held their land in titles awarded by the Native Land Court, and could offer the lessees the certainty of legally valid leases.

2.89 In April 1867 a senior Crown official came to Wharekauri/the Chatham Islands after the Native Land Court had received several claims to the land in the islands. The Crown was keen for these claims to progress efficiently, and the official urged Ngāti Mutunga o Wharekauri to consent to the Crown surveying their land into blocks for which the Court could then award titles. The applicants to the Court would be required to pay for these surveys.

2.90 At a hui at Paremata pā near Waitangi over two days, Māori responses to the Crown were mixed and complicated by kōrero about their ancestral land in Taranaki to which many wanted to return. The Crown sought to persuade Ngāti Mutunga o Wharekauri not to return to Taranaki where it had confiscated their ancestral lands, and was beginning to arrange compensation for Māori who had not been in rebellion. It wanted them to remain in Wharekauri/the Chatham Islands, and argued that the Native Land Court would end disputes about the ownership of the land that came before it. Some of the rangatira present opposed the proposed surveying, but eventually all agreed to it. Toenga, the last to agree, said to the Crown official "you have caught your fish".

2.91 By June 1870 Crown surveyors, and a surveyor arranged by Ngāti Mutunga o Wharekauri had split Wharekauri/the Chatham Islands into six large blocks: Te Matarae, Kekerione, Te Awapātiki, Otonga, Wharekauri, and Rangiauria (Pitt Island). The remaining portion of land at Rangatira Island (South East Island) would not be surveyed for many years.

2.92 The Native Land Court sat on Wharekauri/the Chatham Islands in June 1870. At the time of the hearing most Ngāti Mutunga o Wharekauri were in Taranaki, and engaged with

processes around the Compensation Court to secure their ancestral lands. The Judge who presided over the hearing had sat on the bench for the Compensation Court hearing in 1866 which rejected Ngāti Mutunga o Wharekauri claims to Ōakura.

2.93 The Chief Judge of the Native Land Court requested that the Crown pay for Māori who had gone to Taranaki to return to Wharekauri/the Chatham Islands for the hearings. The Crown declined this request, but notified those in Taranaki of the hearing, and arranged for the vessel taking the Native Land Court Judge out to Wharekauri/the Chathams to stop at Taranaki and take on board any who could pay their way back to Wharekauri.

2.94 The Court held hearings for eight days at Waitangi in a courthouse of just four by six metres. The hearings for four of the blocks were contested. Kekerione, Te Awapātiki and Rangiauria were contested between Ngāti Mutunga o Wharekauri and the people on the Chathams before 1835 and their descendants, while Te Matarae was contested between different Māori claimants. The hearings for two of the blocks, Otonga and Wharekauri were uncontested, and a claim for Rangatira Island was dismissed due to a survey not having been completed.

2.95 Ngāti Mutunga o Wharekauri claims to Wharekauri/the Chatham Islands were founded on raupatu and occupation. During his evidence for the Kekerione block, the Ngāti Mutunga o Wharekauri rangatira, Wi Naera Pomare, described the conquest of the islands and the original inhabitants as follows: "We came and found this place inhabited and took possession, when we took it we took their mana from them and from that time to this I have occupied this land. This is the basis of my claim."

2.96 Toenga testified similarly that:

> I took possession according to ancient custom and I retained possession of the land for myself. I took possession of the land & also the people. Some of those we had taken ran away. Some of those who ran away into the Forest we killed according to the ancient customs. From this I knew the land was ours. We kept the people for ourselves.

2.97 The Native land legislation provided for the Court to make awards to the persons of the tribe the Court ascertained by "such evidence as it shall think fit" had rights in the land under consideration according to "Native custom". The presiding judge sat with an assessor who, in this case, was a rangatira from another mainland iwi. The legislation provided that there could be no decision by the Court unless the judge and the assessor concurred with the decision. The assessor played a very active role in the 1870 hearings on Wharekauri/the Chatham Islands, and questioned witnesses for the different claimants very closely.

2.98 The Court's reasons for its decisions were most fully set out in the judgement for Kekerione. The Court concluded "that Wi Naera Pomare and his co-claimants have clearly shown that the original inhabitants of these islands were conquered by them and the lands were taken possession of by force of arms". The Court added that Ngāti Mutunga had "maintained their conquest by actual occupation without having subsequently given up any part of the estate to the original owners." The Court therefore concluded that "Wi Naera

Pomare and Ngāti Mutunga are the rightful owners of this block" according to Māori custom.

2.99 The Court awarded Ngāti Mutunga o Wharekauri more than 97% of the land it adjudicated. The rest of the land was awarded as reserves for the pre-1835 inhabitants of the Chatham Islands. Ngāti Mutunga o Wharekauri witnesses had testified during Court hearings for Kekerione, Te Matarae, Otonga and Wharekauri that they had already given land to the original inhabitants, or had agreed to do so. Ngāti Mutunga did not present any type of agreement for such a reserve during the hearings for Awapātiki, but acknowledged there was a community of the pre-1835 inhabitants living on this block. The Court concluded that Ngāti Mutunga were the "rightful owners" of the block, but set aside a reserve of 2,000 acres for the pre-1835 inhabitants.

2.100 The Court awarded all of Rangiauria to Ngāti Mutunga. Rangatira Island was eventually awarded to Ngāti Mutunga in 1900.

2.101 The Chief Judge of the Native Land Court wrote to the Crown that the hearings had passed off satisfactorily. In the late 1870s the Crown declined a request from the pre-1835 inhabitants for a rehearing with officials noting that the time for a rehearing had passed, and the Government was unwilling to promote legislation to reconsider the 1870 decisions.

The Ten Owner Rule

2.102 In 1870 Ngāti Mutunga o Wharekauri asked the Native Land Court to include large numbers of individuals in the titles they were to be awarded. However the Native Land Court awarded titles in accordance with the "ten owner rule" of the native land laws which had been introduced by the Native Land Act 1865, and restricted the maximum number of owners to be recorded on a Crown grant to ten. Anemikera Te Haumaruoa later explained to the Crown that the Court "gave them [Ngāti Mutunga o Wharekauri] to understand that those whose names were in the Crown grants should look after the shares of those whose names were not in the Crown grants."

2.103 The Court advised Ngāti Mutunga o Wharekauri in 1870 to only nominate people they could trust as the representative owners. However, as Hamuera Koteriki (himself a grantee), Rawiri Rakatau and Tamati Te Ura wrote to the Crown in 1887, "We only regret that these statements were not written down at the time owing to the assurance that the so appointed grantees were to be trustees for the rest of the people."

2.104 There were no provisions in the native land laws which compelled the named grantees to act as trustees for the wider communities of owners. Some of the named owners did so, but others treated the land awarded to them as private property which they could dispose of without regard to other customary rights holders. Between 1870 and 1900, many blocks were partitioned and parts sold off. Some Ngāti Mutunga o Wharekauri opposed the sales, but had no legal means of preventing these sales if they were not named on title.

2.105 The most significant impact of the ten owner rule occurred in the Kekerione block. This had been the principal settlement area for Ngāti Mutunga o Wharekauri and contained the best land on the island. Following the Native Land Court's 1870 decision a certificate of title for 39,200 acres for Kekerione 1 was awarded to four individuals in 1873.

2.106 The Native Land Act 1873 repealed the ten owner rule, and provided for all individuals with customary interests in a block to be recorded in the title. However the Act did not provide any means for titles previously awarded under the ten owner rule to be re-considered.

2.107 There were no further Native Land Court hearings until 1885 when the Court received applications for 24 subdivisions, affecting 22,000 acres, in Kekerione. Wi Naera Pomare, who was one of the four grantees named on the title, claimed ten of these subdivisions in his own right, and supported applications for the other 14 subdivisions by four claimants he noted he was a trustee for. The Court accepted Pomare's statement that he was a trustee for these other claimants and made the partition orders requested.

2.108 In 1886 the Crown promoted the Native Equitable Owners Act. This provided for customary rights holders excluded from titles by the ten owner rule to apply to be added to these titles. However, in 1887, when the Court reheard the partitions made in 1885, this legislation was not discussed in the Court.

2.109 The re-hearings in March 1887 took place after Pomare who led the applications for subdividing the block in 1885 had passed away. The Court cancelled all the 1885 orders made in a favour of those not on the original title, unless they were successors to the original grantees. It also struck out recently received applications from non-grantees. The Court awarded thirteen of the subdivisions to the successors of Pomare, and the remaining 11 subdivisions to three of his relatives.

2.110 By 1891 Europeans had purchased four of the partitions in Kekerione, totalling some 1800 acres, from the successors of Pomare. Inia Tuhata later told the Native Land Court of those who had sold that, "If they were acting for the tribe, they showed the tribe no consideration. They did not distribute the money to the tribe, though they may have made presents to their children or near relatives. Nor did the tribe object to these actions, or these sales."

2.111 In 1893, Manuera Dix made an application to the Native Land Court for a re-hearing of the Kekerione block under the Native Equitable Owners Act 1886. However, according to provisions in the Act, it could only be applied to blocks where no land had been sold. The Court ruled that it did not have jurisdiction to apply this Act because some areas in the Kekerione block had already been sold.

2.112 Nevertheless the Judge suggested that the applicant apply for a remedy under section 13 of the Native Land Act 1889 which provided for any person prejudicially affected by a Native Land Court decision to apply for a re-hearing. Dix and those who had been awarded subdivisions in 1885 but lost them in 1887, applied under section 13 and, in February 1894, were heard by the Native Land Court in Wellington. The Court concluded that the four grantees awarded title in 1870 were intended to be trustees, but that the 1889 Act was not the proper method for admitting new people to the title.

2.113 In 1894 Parliament enacted legislation which provided that the Native Land Court could investigate whether the owners of any unsold Māori land were intended to be trustees for other customary rights holders. The Court could add those rights holders to the title of the affected land. This legislation provided that the Crown had to proclaim an order in council allowing such an inquiry. In 1898 the Crown proclaimed such an order in relation to the

Kekerione block, but excluded the sections awarded in 1887 to Pomare's children from this order. This meant that, when the Native Land Court reconsidered Kekerione in 1900, only 17,000 acres of the 39,200 acre block was available to be awarded to 150 claimants.

2.114 At a hearing in January 1900 the Native Land Court concluded that the four original grantees for Kekerione had been intended to be trustees for the other rights holders. The Court considered a list of 150 names it received from the applicants, rejecting 47 of these individuals because they had never lived on the island or because they would inherit through some of the larger landholders. In response to claims for specific parts of Kekerione the Court made awards for 60 blocks comprising more than 7,500 acres. Almost half of these special claims were for blocks of 19 acres or less, and half of these claims were for blocks under five acres. The Court then addressed a general tribal claim for which it awarded 9,632 acres in 96 shares to individuals in 28 groups of claimants.

2.115 By the time of Native Land Court hearings in 1900, approximately forty percent of Wharekauri/the Chatham Islands had passed out of Māori ownership. Over time, successions to individualised landholdings led to Ngāti Mutunga o Wharekauri shareholdings in Kekerione and other blocks becoming small and fragmented. This process undermined the economic values of many landholdings.

Political Engagement and Government Services

2.116 In the years following 1842 the Crown had showed no interest, in political engagement with Ngāti Mutunga o Wharekauri. It was not until 1855 that the Crown sent an official to be based in Wharekauri/the Chatham Islands.

2.117 For many decades after 1855, the Crown's political engagement with Wharekauri/the Chatham Islands continued to be extremely low, and it provided few services or resources for Ngāti Mutunga o Wharekauri and other residents. The Crown appointed Resident Magistrates were responsible for most Crown services on the islands with little support from any other officials. A Resident Magistrate who was appointed in 1891 later wrote of his duties that:

> Besides being Resident Magistrate, I was postmaster, collector of customs, registrar of birth deaths and marriages, receiver of wrecks, licensing officer, and paymaster; and I had not been on the Islands very long before I was the principal doctor, engineer of wharfs, bridges and roads, referee of all connubial disputes and quarrels, etc., etc.

Parliamentary Representation and Provincial Governments to the 1880s

2.118 In 1852 the British Parliament enacted legislation which created a new constitution for the government of New Zealand. The New Zealand Constitution Act 1852 established six provinces to be responsible for local government, and a General Assembly responsible for government at a national level. The Governor was empowered to delineate the boundaries of the provinces, and proclaim "convenient electoral districts" which would elect representatives to the House of Representatives that would be a central part of the General Assembly. In 1854 the House of Representatives sat for the first time with

members elected by individual male land owners, and representing most districts in the North and South Islands.

2.119 However, the Crown did not include Wharekauri/the Chatham Islands inside the boundaries of any of the provinces or electoral districts. Although the provinces continued to be responsible for local government until their abolition in 1876, none was ever made responsible for affairs on the islands. Meanwhile laws enacted by the General Assembly applied to the islands even though they had no representation in Parliament. Even if the Crown had included Wharekauri/the Chatham Islands in an electoral district during this era, Ngāti Mutunga o Wharekauri would have been completely excluded from voting as none owned land individually.

2.120 In 1867 the Crown promoted legislation which provided for Māori to elect four Members of the House of Representatives. However, due to an oversight by the Crown, Māori living on Wharekauri/the Chatham Islands were not included in any of the four Māori electorates.

2.121 In 1880 the Premier John Hall acknowledged the lack of representation in Parliament for Wharekauri/the Chatham Islands as an issue that should be addressed. In 1881 the Crown promoted legislation to create a process by which residents of the islands could decide which laws enacted by Parliament would apply to Wharekauri/the Chatham Islands. The Chatham Islands Act 1881 provided that, if a majority of adult males resident on the islands requested it, the Governor could proclaim that any Act of the General Assembly or any Provincial Ordinance was to come into operation on the islands.

2.122 The Act remained in force until it was repealed in 1891. However there is no record of the Crown proclaiming any legislation as applying to Wharekauri/the Chatham Islands during the ten years this Act was in force.

The Dog Tax

2.123 In the late 1880s the Crown attempted to apply legislation enacted in 1880 providing for the collection of a dog tax on Wharekauri/the Chatham Islands.

2.124 The Crown was acting in the interests of European settlers rather than Ngāti Mutunga o Wharekauri. In December 1887 some of the island's leading settlers petitioned for this tax to take effect on Wharekauri/the Chatham Islands. A month later the Crown appointed a dog tax registrar for the islands.

2.125 However the Resident Magistrate believed the dog tax legislation could not be applied on Wharekauri/the Chatham Islands unless it was proclaimed in accordance with the terms of the Chatham Islands Act 1881. He noted that this Act required that half the male population of the islands support legislation proposed to be applied there, and advised that Ngāti Mutunga o Wharekauri, who were more than half the islands' population, strongly opposed the tax. The Resident Magistrate asked officials in Wellington whether Ngāti Mutunga o Wharekauri were to be considered as part of the male adult population for the purposes of the Act, or if anything else could be done to bring the dog tax into effect.

2.126 The Resident Magistrate's report was referred to the Solicitor General who advised that the dog tax legislation already applied to the islands as part of the colony of New Zealand.

The Solicitor General thought the Chatham Islands Act 1881 had little utility, and the best course would be to repeal it forthwith.

2.127 The subsequent application of the dog tax to Wharekauri/the Chatham Islands caused a great deterioration in relations between Pākehā advocates of the tax and Ngāti Mutunga o Wharekauri. Most Ngāti Mutunga o Wharekauri refused to pay the tax. In July 1889 the Wharekauri/Chatham Islands Police Constable and an interpreter unsuccessfully attempted to arrest a number of Ngāti Mutunga o Wharekauri who had refused to register their dogs for the purposes of the tax.

2.128 In a September 1889 letter to the Native Minister, the Police Commissioner discussed the difficulties of collecting the dog tax on Wharekauri/Chatham Islands. The Commissioner suspected attempts to enforce the dog tax might encounter active resistance from Ngāti Mutunga o Wharekauri women. However, he acknowledged that Ngāti Mutunga o Wharekauri men who refused to pay the tax were engaged in "passive resistance."

2.129 Despite this, the Commissioner predicted "Parihaka on a small scale" and asked the Permanent Artillery to provide "powerful men" to accompany him as the force might encounter "rough and tumble." The Commissioner also requested that each of the Permanent Artillery men be armed with a revolver and 12 rounds of ammunition, and not be informed of the expedition until the last moment. On 20 September 1889 the Police Commissioner and four members of the army sailed to the islands to enforce collection of the tax.

2.130 Some of those refusing to pay the tax were sentenced to imprisonment on the islands after also refusing to pay fines imposed by the Resident Magistrate. Two Ngāti Mutunga o Wharekauri men, Wi Te Tahuhu and Heta, were imprisoned on the mainland after they refused to pay the fines. They were released shortly into their sentences after agreeing to pay the fines. A mainland newspaper reported that about half the tax levied in 1889 on Ngāti Mutunga o Wharekauri dog owners was collected.

2.131 Soon after the return of the Police Commissioner's force to the mainland, the Resident Magistrate on Wharekauri/Chatham Islands informed the Minister of Justice that he had briefly imprisoned several Ngāti Mutunga o Wharekauri who refused to pay the tax, though their fines were paid by settlers. The Magistrate noted that he was unable to enforce the law without assistance, and that Māori continued to resist paying the tax. Consequently, the magistrate kept two members of the Police Commissioner's force that had remained on the island beyond their schedule return date. He claimed this was necessary as he would have to imprison on Wharekauri/Chatham Islands those who continued to resist payment.

2.132 In 1890 Ngāti Mutunga o Wharekauri still declined to pay, and a number were summonsed to appear before the Magistrate. However they refused to appear, and the Magistrate took no further action against them.

2.133 In 1891, during which year the Chatham Islands Act 1881 was repealed, the Magistrate enrolled several Pākehā settlers as special constables, and made renewed efforts to collect the tax. Ngāti Mutunga o Wharekauri, though, strongly protested the resulting arrests, and the prosecutions were abandoned. Attempts to collect the tax were also

subsequently abandoned, and in 1891 the Crown issued a proclamation that Wharekauri/the Chatham Islands was excluded from the operation of the dog tax.

2.134 In 1895, Parliament amended the 1880 Dog Registration Act. The amended Act permitted the Governor to exclude by proclamation Wharekauri/the Chatham Islands from the Dog Registration Act or portions thereof. Richard Seddon told Parliament that this was on the recommendation of the resident magistrate because Ngāti Mutunga o Wharekauri "absolutely set the law at defiance, and could not be fined for breaches of it."

2.135 In 1896, the Crown issued a proclamation excluding Wharekauri/the Chatham Islands from the operation of the certain sections of the Dog Registration Act 1880. The proclamation removed the legal obligation of dog owners on Wharekauri/the Chatham Islands to register their dogs.

The Beginnings of Local Government

2.136 In 1900 Maui Pomare of Ngāti Mutunga o Wharekauri was one of the main advocates of the Māori Councils Act. This provided legislative support for a limited measure of Māori self-government. Elected Māori councils were to have power to enact by-laws for local government, and to give effect to them. In 1901 Ngāti Mutunga o Wharekauri petitioned for a council to be established on Wharekauri/the Chatham Islands.

2.137 The Wharekauri Māori Council was established in 1902, and made a number of by-laws early the following year. Pomare focused the Council's work on general welfare rather than politics. The work of the Council was praised at the time by a visiting Member of the House of Representatives for the good work it was doing especially in the health field. However the Council's effectiveness was undermined by a lack of funding. It operated for a number of years, but had largely disappeared from official records by 1911.

2.138 In 1901 Parliament enacted legislation constituting Wharekauri/the Chatham Islands as a county under the Counties Act 1886. This Act empowered the Governor to appoint a time and place for the election of a County Council. However a proposal to elect a council was opposed by Ngāti Mutunga o Wharekauri and defeated by a vote on Wharekauri/the Chathams in 1902.

2.139 It was not until 1924 that a county council was elected on Wharekauri/the Chatham Islands.

2.140 The isolation of Wharekauri/the Chatham Islands also affected the ability and willingness of the Māori Land Court to address the islands' land issues. The Court did not sit on Wharekauri/the Chatham Islands between 1936 and 1981.

Crown Political Engagement with Wharekauri/the Chathams in the Twentieth Century

2.141 During the late nineteenth century, Wharekauri/the Chatham Islands was sometimes characterised as a "dependency" of New Zealand in public discourse. The grievance of Ngāti Mutunga o Wharekauri and other Chatham Islanders in relation to their non-representation in Parliament continued to be unresolved at the beginning of the twentieth

century. In 1902, a Member of the House of Representatives noted in Parliament that residents of Wharekauri/the Chatham Islands had "taxation without representation."

2.142 In response, the Native Minister acknowledged that Wharekauri/the Chatham Islands should have representation in Parliament. Yet the Crown took no immediate steps to resolve this grievance. During the first decades of the twentieth century, Wharekauri/the Chatham Islands continued to be characterised in some public discourse as a "dependency" of New Zealand.

2.143 By 1919 the Crown had still taken no steps to provide for Ngāti Mutunga o Wharekauri and other residents of Wharekauri/the Chatham Islands to have representation in Parliament. In May of that year some members of Ngāti Mutunga o Wharekauri joined a petition to the Crown calling for Parliamentary representation. The covering letter for the petition argued that the Crown's neglect of Wharekauri/the Chatham Islands was such that the League of Nations might not have awarded New Zealand the mandate to administer Samoa had it been aware of it. Cabinet decided nothing could be done in the current session of Parliament to grant the petitioners' request. They were advised the matter would be re-considered at a later date.

2.144 In 1921 a deputation on behalf of residents of Wharekauri/the Chatham Islands called on the Minister of Internal Affairs to again press for representation in Parliament. Finally in 1922 legislation was enacted to provide for Wharekauri/the Chatham Islands representation in Parliament. The Legislature Amendment Act 1922 enfranchised Ngāti Mutunga o Wharekauri tribally in the Western Māori electorate, and provided that the electorate of Lyttleton would henceforward include the Chatham Islands. Residents of Wharekauri/the Chatham Islands were legally able to vote for the first time in the general election of December 1922.

2.145 Meanwhile the Crown took very limited steps to enlarge its establishment on Wharekauri/the Chatham Islands during the first decades of the twentieth century. Early in the twentieth century the Crown Medical Officer on the Chathams was also appointed as Resident Magistrate. This was something Ngāti Mutunga o Wharekauri had requested in 1856. Nevertheless, the new magistrate, who had no legal training, had to rely on the help of local settlers who also had no legal training to conduct any cases that came up. It was not until the 1930s that the offices of Resident Magistrate and Medical Officer were separated again, and held by different officials.

2.146 In the 1950s officials acknowledged that, during the first half of the twentieth century, the economic development of the island had been "seriously retarded". The islands' administration had been the responsibility of various Crown departments with each responsible for its own affairs on the island. In 1950 the Crown recognised that these arrangements were unsatisfactory. Following the death of the then Resident Magistrate he was replaced by a Resident Commissioner who was an official of the Department of Island Territories.

2.147 The administration of the Wharekauri/the Chatham Islands by the same department that was responsible for New Zealand's relations with other island territories in the Pacific Ocean was also unsatisfactory. In 1955 a Member of Parliament told the House that the Resident Commissioner did not have sufficient authority to deal with issues that required

the attention of different Crown departments among which there was a serious lack of co-operation in relation to Wharekauri/the Chatham Islands.

2.148 In 1959 a commissioner for the Māori Land Court who had been to Wharekauri/the Chatham Islands on Court business wrote to the Resident Commissioner complaining that the Crown's attitude to Wharekauri/the Chatham Islands appeared to be that, "those who choose to live in remote places like the Chathams cannot expect the amenities of those who are wiser and choose to live in civilisation". The Court commissioner commented that this attitude failed to take into account that most of the people who lived on Wharekauri/the Chatham Islands did so because they had been born there. The Crown's Minister for Māori Affairs, Ralph Hanan, told Parliament in 1961 that people may have to leave Wharekauri/the Chatham Islands "rather than living in sub-standard conditions without gainful employment."

2.149 In 1961 an interdepartmental committee comprising officials from Internal Affairs, Island Territories and Treasury was formed to investigate and report on the administration of Wharekauri/the Chathams. Following the committee's recommendations, local government was left under the control of the County Council, and the Resident Commissioner came to be an official of the Department of Internal Affairs rather than the Department of Island Territories.

2.150 The committee's recommendations also led to the establishment of a Standing Advisory Committee comprising officials from Internal Affairs, the Ministry of Works, Treasury, the Department of Island Territories, and the Marine Department and Māori Affairs. After another ten years in 1971 the Crown decided that the Resident Commissioner should be replaced by a Chatham Islands Commissioner based in Wellington. In 1973 the Crown appointed a Resident Agent on the Islands to assist the Commissioner. In 1975 the Resident Agent was re-designated as the "Government Representative, Chatham Islands", and the Commissioner in Wellington became the "Co-ordinator Chatham Islands – Wellington."

2.151 In 1984 the Crown initiated a review of Wharekauri/the Chatham Islands and the needs of the islands' residents. However, the Crown did not include any islanders or representatives of the County Council in the review team. The terms of reference included examining Wharekauri/the Chatham Islands economic and social activity, and the adequacy of central and local government arrangements and services. However, none of the team members represented government departments responsible for environment and social services on Wharekauri/the Chatham Islands.

2.152 In 1985, the review team argued that the Department of Internal Affairs had been never responsible for the overall development of Wharekauri/the Chatham Islands and that the islands' residents could not expect the involvement of central government unless development could "stand the test of economic soundness." On the recommendation of the review team, the position of Resident Agent was abolished in 1986.

2.153 This latest Crown review led to little concrete action to improve development on the islands. By the late 1980s the Crown's repeated review processes were widely distrusted by the residents of Wharekauri/the Chatham Islands. In 1989 the Crown announced another review this time to be carried out by independent consultants. A mainland

newspaper reported that residents of Wharekauri/the Chathams reacted to the announcement with "fury". Islanders, including Ngāti Mutunga o Wharekauri, were "sick of Government reviews", and wanted "action" on improving their future prospects.

2.154 In 1990, following the independent review, the Crown appointed an interim board for the Chatham Islands Local Authority Trading Enterprise (LATE). This included several residents of Wharekauri [including at least one member of Ngāti Mutunga o Wharekauri]. In 1991 the Board was transformed into a Trust (the Chatham Islands Enterprise Trust which still operates).

Public Works

The Taking of the Hospital Block

2.155 In the early 1920s a hospital committee was formed by Chathams Islands residents to raise funds for a hospital. By 1924 the committee had raised £200 for this purpose. A Ngāti Mutunga o Wharekauri landowner, Rihania, had offered to gift land at Te One to the North Canterbury Area Hospital Board for a hospital. However the Crown's medical officer on the Chathams considered this site too far away from the main population centres for a hospital.

2.156 In May 1924 the medical officer advised the Hospital Board that he and the other residents were arranging to purchase a more central site of 23 acres in the Kekerione block from Mitai Pupu (Tini) of Ngāti Mutunga o Wharekauri for £400. This indicated that the purchase could be completed on a willing buyer/willing seller basis at this price with the Crown subsidising the purchase price on a pound for pound basis.

2.157 The owner of the 23 acres was prepared to make that whenua available for the hospital. A complication was that those 23 acres were, at that time, leased to a Pākehā resident who was only willing to give up five acres for the hospital. The Secretary of the Canterbury Hospital Board, though, was advised by the local member of parliament that it was necessary for the hospital to have 23 acres. The lessee's insistence on his rights under the lease to access the remaining 18 acres led the Crown to decide to use public works legislation to compulsorily acquire all 23 acres.

2.158 Sometime between December 1924 and July 1925 Mitai agreed to accept the government valuation plus ten percent as payment for the 23 acres from the Canterbury Hospital Board. In 1925 the Crown valued the block at £305. Officials initially advised that this payment would be for both Mitai's interests and those of the lessee. However, after Mitai insisted on receiving the government valuation plus ten percent, the Crown agreed to his request. The Crown appears to have paid Mitai £335 on 5 November 1925. On 17 December 1925 the Crown proclaimed the taking of 23 acres to vest in the North Canterbury Hospital Board under the Public Works Act 1908.

2.159 In 1927 a hospital was opened on the land acquired from Mitai. However the hospital was located on just four of the 23 acres compulsorily acquired, and the Health Board continued to lease out the balance of the block.

2.160 In the 1960s and 1970s the Crown acquired much of the land in the hospital block from the Health Board.

(a) In 1965 the Ministry of Works compulsorily acquired a small section from the Health Board for the purpose of erecting several buildings.

(b) In 1969-70, the Health Board declared the 3.47 hectare Kekerione 1 Part 62 (i.e. section 6 of the Hospital Block) surplus to their requirements and proposed transferring it to the Crown. The Crown purchased the property for $8,000 from the Health Board in 1974 and placed it under the administration of the Department of Internal Affairs. It was not until 1981 that legislation was enacted requiring that Māori land compulsorily taken under public works legislation be offered back to the Māori owners from whom it was taken or their successors.

(c) In 1978 the Ministry of Works compulsorily acquired approximately 12 more acres from the Health Board for the purposes of general government buildings.

2.161 This land was used by the Ministry of Works for depots or staff housing, by the Ministry of Education, the Ministry of Agriculture and Fisheries, the Ministry of Māori Development, New Zealand Post, Telecom, and by local authorities.

2.162 In 1989 a Crown official in the Department of Lands and Survey (DOSLI) informed the Māori Land Court that part of Kekerione 1 No 62 was no longer required for public purposes, and asked the Court to help organise a meeting of the "numerous" successors of Mitai Tini in order to enable the Department to meet its offer-back obligations under Section 40 of the Public Works Act 1981.

2.163 In July 1990, Mrs Ngawhata Page and Mrs Honey Thomas of Ngāti Mutunga o Wharekauri wrote to the Department of Lands and Survey asking to lease some of the now vacant government buildings on the block. They stated that while the Māori Land Court had identified that Mitai Tini had 75 successors, they were the only two still resident on the island and should therefore be able to "retain the property and have an option on the buildings." Two weeks later, the Crown advised it did not wish to lease the properties but would instead offer them back to the descendants of the original owners under Section 40 of the Public Works Act 1981. Mrs Page and Mrs Thomas were also informed that the Department of Conservation had expressed interest in the properties.

2.164 In response, Mrs Page and Mrs Thomas advised the Crown of their intention to file a Waitangi Tribunal claim in relation to the property", and to seek a Court injunction to stop the Crown from disposing of the property before their claim could be heard. In September 1990 an official at the Department of Lands and Survey informed Mrs Page and Mrs Thomas that the land had been identified by another Crown agency, the Iwi Transition Authority, as a potential Kokiri Centre. The Crown official asserted that the Public Works Act 1981 provided that the land in question could be transferred to the Authority for this purpose without being offered back. The official continued that, in the light of this, the land would not be sold, and neither would it be offered back to the owners. Rather it would remain in Crown ownership, and be available as settlement redress "for some time to come."

2.165 In October 1990, Mrs Page and Mrs Thomas lodged the Wai 181 claim with the Waitangi Tribunal. They stated that their claim "arises in regard to Crown actions with regard to the [Hospital Block] and all buildings thereon". The claim stated that it needed to be addressed urgently because the claimants believed the Crown were planning to sell the land and buildings.

2.166 The Crown did not sell this land, and did not offer it back to the successors of Mitai Tini. The process of identifying the successors had ceased in 1990. In the years following 1990 the Department of Lands and Survey decided to await the outcome of the Waitangi Tribunal's Chatham Islands inquiry before proceeding with any offer back. Ngāti Mutunga o Wharekauri knew that, under the recognised rules of Māori succession, Mitai Tini had successors to whom they consider an offer should have been made. However in 1999 the Crown placed the land in the Treaty settlement land-bank without making an offer back.

Roading

2.167 In 1865 and 1873 Parliament enacted native land legislation which empowered the Crown, for the purposes of road building, to compulsorily acquire up to five percent of any Māori land block without paying compensation to the owners. At first this power had to be exercised within ten years of the owners receiving a Crown grant, but in 1878 this period was extended to fifteen years. Between 1882 and 1884 the Crown surveyed and took land for roads across five Ngāti Mutunga o Wharekauri land blocks. The surveyed roads extended into most corners of Wharekauri/the Chatham Islands.

2.168 However most of these roads were no more than paper roads for more than 80 years. Before 1945 there was no road system on Wharekauri/the Chatham Islands. In the years immediately after this the Crown constructed about 30 miles of roads connecting farming and fishing centres. In 1970 the Crown increased its subsidies to help the County Council improve the roads. By 1977 there were about 150 miles of shingle roads on the islands most of which were constructed after 1970.

2.169 During the 1960s and 1970s the process of improving old roads and building new ones proved challenging. The "underlying bog" under much of the land on which roads had to be built meant unusually substantial quantities of rock were required to form these roads. Some roads could not be built on lines that followed the paper roads surveyed in the nineteenth century. There is a lack of documentation in relation to whether landowners whose land was used for roads that deviated from the paper roads agreed to these variations.

Socio Economic Issues

Farming and fragmented Ngāti Mutunga o Wharekauri land tenure

2.170 Farming has been the main land-based industry on Wharekauri/the Chatham Islands since 1840. Given the islands' isolation, the cost of imported materials and poor infrastructure, farming is a riskier and marginal business than elsewhere in New Zealand, increasing the impact of cyclical economic depressions and variations in market conditions.

2.171 The legacy of native land laws the Crown designed and promoted in the nineteenth century compounded the significant challenges for Ngāti Mutunga o Wharekauri. With each generation a larger number of individuals shared ownership of land. The ownership of Ngāti Mutunga o Wharekauri land by a multitude of individuals as a consequence of the native land laws made decision making and the raising of development finance very challenging if not impossible. From the mid-1940s Crown officials began to recognise this as a serious impediment to the future development of Ngāti Mutunga o Wharekauri land.

2.172 At this time Crown officials considered that about half of the land retained by Ngāti Mutunga o Wharekauri was capable of being developed. On the mainland the Crown operated a number of land development schemes between the 1930s and 1980s that aimed to efficiently and economically develop Māori land. However there were no such schemes on Wharekauri/the Chatham Islands.

2.173 In 1963 the Crown's interdepartmental committee overseeing Wharekauri/the Chatham Islands again reported that the multiple ownership of Ngāti Mutunga o Wharekauri land as a "pressing problem". Between 1953 and 1974 the Crown sought to address the national problem of fragmented Māori land ownership by empowering the Māori Trustee to compulsorily acquire what the Crown considered to be uneconomic interests in Māori land. Examples of blocks on Wharekauri/the Chatham Islands in which uneconomic interests were compulsorily acquired by the Māori Trustee included Kekerione 1H2, Kekerione 1M2, Kekerione 39, Kekerione 56, and Wharekauri 1J.

2.174 The impact of the Crown's approach to uneconomic interests on the affected Ngāti Mutunga o Wharekauri was severe. Their connections to their ancestral land were severed, and they were deprived of their turangawaewae.

2.175 Furthermore the compulsory acquisition of uneconomic interests did not solve the problem of fragmented land tenure. In 1979 a Crown official in the Lands and Survey Department described the islands as "grossly underdeveloped" and noted that the confused and complicated titles of Ngāti Mutunga o Wharekauri land had "long been seen as a major impediment to the economic use of the large tracts of Māori land". This report, though, did not lead the Crown to take any action to remedy the land tenure complexity affecting Ngāti Mutunga o Wharekauri.

The Crown and infrastructure on Wharekauri/the Chatham Islands

2.176 The development of Ngāti Mutunga o Wharekauri suffered greatly from a lack of economic infrastructure throughout much of its history after the Crown's annexation of Wharekauri/the Chatham Islands in 1842. Although the Crown compulsorily took land for roads from five Ngāti Mutunga o Wharekauri land blocks in 1884, its subsequent expenditure building roads on Wharekauri/the Chatham Islands was minimal in comparison to many other parts of New Zealand. For example, in 1897 the Crown appropriated £424,272 for building roads and bridges nationally, but only £100 of this money was intended for Wharekauri/the Chatham Islands. It would be decades before the surveyed roads were constructed.

2.177 Local government usually played a key role in road building, but Parliament did not enact legislation providing for the establishment of a Chatham Islands County until 1901. The Council was not actually established until 1925.

2.178 In the first years of the twentieth century the Wharekauri Māori Council tried to take the initiative in raising funds for the construction of some roads on the Islands. However a Council loan application for this purpose was opposed by Pākehā. After the Chatham Islands County Council was finally established in 1925, it did not have enough income from rates to fund the construction of roads. Māori owned land on Wharekauri/the Chatham Islands was not rated between 1936 and 1982.

2.179 In 1945 Wharekauri/the Chatham Islands still had no proper road system. A Crown investigation concluded that the lack of roads was a significant obstacle to land development on the islands. The poor roading had wider socio economic impacts. For example the lack of roads made it difficult for children to get to school.

2.180 In 1946 the Ministry of Works commenced building roads on Wharekauri/the Chathams, but progress was slow. By 1955 about thirty miles of metalled, or partly metalled roads, including one between Waitangi and Owenga, had been constructed. However these roads were soon in a poor state. The crayfish boom of the late 1960s particularly exposed lightly constructed roads on poor subsoils which quickly turned into muddy farm tracks. Some Ngāti Mutunga o Wharekauri described the roads on the islands at around this time as like "cow tracks to the bails".

2.181 Though the county council built an improved wharf at Waitangi in the 1930s, there was no regular shipping to Wharekauri/the Chatham Islands before 1959. It was only in the late 1950s that seaplanes were contracted to provide passenger services (landing in Te Whanga Lagoon). An airstrip was not developed until 1968 when a grass runway opened at Hāpūpū. At this time the Crown gave its support for a regular weekly air service. A sealed runway and terminal was completed in 1981 at Karewa Point where the Inia William Tuuta airport is located.

2.182 During the 1970s the Crown increased subsidies for road construction on Wharekauri/the Chatham Islands. In 1970 the Chatham Islands County Council entered into new contracts for the construction of 24 miles of new roads, and the improvement of 25 miles of existing roads. By 1977 there were 150 miles of shingle roads on the islands.

2.183 Dirt and dust from the unsealed roads of Wharekauri/the Chatham Islands were still identified as a health issue in the 1980s. In 1984 the Crown agreed to seal Wharf Road in Waitangi to stop dirt and dust from the road contaminating cargo that moved over the road.

Housing

2.184 The housing conditions for many Ngāti Mutunga o Wharekauri have been atrocious well into the twentieth century. Land sales in the nineteenth century meant that, when the fishing industry emerged from the turn of the twentieth century, Ngāti Mutunga o Wharekauri employed in this industry lived in squatter shanties in Owenga, Te One and Kaingaroa.

2.185 Living conditions for many Ngāti Mutunga o Wharekauri did not improve during the first decades of the twentieth century. In the 1940s Crown officials described the homes of many Ngāti Mutunga o Wharekauri as shanties, shacks or hovels. These dwellings were generally overcrowded and did not include baths, toilets, or water storage.

2.186 In the middle of the twentieth century the Crown began to implement a national policy of providing loans to assist Māori into better housing. From the late 1940s, the Crown increasingly encouraged Māori to move to urban areas where prospective home owners would have better employment opportunities. In 1961 Crown officials at the Department of Māori Affairs found that 17 applications from Wharekauri for housing assistance that had been requested in 1949 were still languishing in department files.

2.187 During the 1960s and 1970s the Crown considered several schemes to improve housing on Wharekauri/the Chatham Islands in response to continuing reports of the unsatisfactory nature of housing on the islands. However none of these was implemented. For example in 1973 the Crown began developing plans to exempt applicants living on Wharekauri/the Chatham Islands from the normal criteria for loans. This idea, though, was shelved due to an international economic downturn which affected New Zealand.

Education

2.188 The first European education on the islands was provided by missionaries in the nineteenth century. It was not until 1885 that the Crown established its first school for children on Wharekauri/the Chatham Islands. The Crown funded this school from its budget for "native schools". It had a starting roll of 22 students five of whom were Ngāti Mutunga o Wharekauri. One of the Crown's objectives in establishing "native schools" for Māori children was to promote their eventual assimilation into European culture, and teaching in "native schools" was conducted as much as possible in English. Ngāti Mutunga o Wharekauri followers of Te Whiti were deeply distrustful of Crown education and reluctant to attend these schools.

2.189 Nevertheless, by 1932 the Crown administered five mainly one teacher schools on Chatham Island, and one on Pitt Island. These taught with 146 primary school students 81 of whom were Māori. By the 1940s there were seven primary schools, but the number reduced as roads were improved and school buses introduced. Throughout the many years during which these schools operated, Ngāti Mutunga o Wharekauri whānau had to contribute greatly to establish and maintain these schools. For example, a student at Pitt Island's school in the late 1940s remembered that the Crown only paid half the salary of the school's teacher, and his father had to pay the other half.

2.190 The schools strictly applied the Crown's policy that teaching should only be in English. Ngāti Mutunga o Wharekauri remember that speaking in Te Reo "just wasn't allowed." Ngāti Mutunga o Wharekauri also remember their children being strapped at school for doing so. Some parents did not speak Te Reo Māori to their own children because of the punishment they had received at school.

2.191 By the end of the 1950s officials were reporting that were very few Te Reo speakers left on Wharekauri/the Chatham Islands. In 1959 the Wharekauri Tribal Committee and the Māori Women's Welfare League urged that Te Reo be taught in schools for one hour every

day. However officials replied that it would be very difficult to find a suitable teacher, and there had been no licensed interpreter on the island for some years.

2.192 There has never been a secondary school on Wharekauri/the Chatham Islands. The only option for members of Ngāti Mutunga o Wharekauri to receive in-person secondary education was to attend boarding schools on the mainland. In the 1960s the Crown began to subsidise boarding fees for Māori children. It also provided one return air fare that assisted some Ngāti Mutunga o Wharekauri students get to the mainland for secondary schooling.

2.193 In 1969 Crown officials reported that the low standard of education the Crown provided on the islands prevented students educated only on the islands from accessing trade training programmes. This inevitably limited the socio economic opportunities of those islanders who were unable to attend secondary school on the mainland.

2.194 Decades of Crown policies for housing, education and economic development have contributed to the migration of the large majority of Ngāti Mutunga o Wharekauri to the mainland.

Health Outcomes and Services

2.195 The limited employment options, and their poor housing, has strongly contributed to the poor health among Ngāti Mutunga o Wharekauri on the islands. Many Ngāti Mutunga o Wharekauri suffered from diseases of poverty during the twentieth century. In the 1940s tuberculosis was believed to affect 40% of the Ngāti Mutunga o Wharekauri population.

2.196 Although Ngāti Mutunga o Wharekauri first requested that the Crown send a trained doctor to Wharekauri/the Chatham Islands in 1856, it was not until 1904 that the Crown appointed a doctor as a resident medical officer. Nevertheless, the Crown found it difficult to recruit suitable candidates to go the remote Wharekauri/the Chatham Islands, and most who did go did not stay long. Although the Crown sent district nurses to remote districts throughout New Zealand from 1911, no district nurses were sent to Wharekauri/the Chathams.

2.197 In 1925, a local committee built a cottage hospital with room for two patients. In 1927 the North Canterbury Hospital Board took over the provision of medical services on Wharekauri/the Chatham Islands, but it was still difficult to find suitable staff who were willing to say on Wharekauri/the Chatham Islands. In 1937 the Board began to appoint medical registrars from Christchurch Hospital. In 1949 the hospital was handed to the Sisters of the Society of Mary and its services began to improve. Sisters from the society continued to staff the cottage hospital until 1999.

Te Whanga and Wharekauri/the Chatham Islands Fisheries

Te Whanga

2.198 Te Whanga lagoon has long been a site of great importance to Ngāti Mutunga who consider it a taonga. It is 24 kilometres long and covers about 18,600 hectares. This is approximately 20% of the area of Wharekauri/ Chatham Island. The water in Te Whanga is brackish, due to the presence of both freshwater and seawater. Under natural

conditions the lagoon was sometimes cut off from the sea by the formation of a sand berm, while at other times an outlet channel was formed through the berm and its waters discharged into the ocean. There was a natural 'ebb and flow" of the waters'.

2.199 Following their arrival on Wharekauri/the Chatham Islands Ngāti Mutunga o Wharekauri found vast flocks of ducks and other birds at Te Whanga. The lagoon quickly became a significant resource for Ngāti Mutunga o Wharekauri, 'the place that fed [them]', which could be accessed at all times of the year. In addition to waterfowl, Te Whanga has been home to an abundance of species including cockles, tuna (eels) patiki (flounder), inanga (whitebait). Ngāti Mutunga recall easily picking crayfish from pools in the Te Whanga lagoon before the crayfish "boom" of the late 1960s. Others describe how Ngāti Mutunga children cut their first teeth on dried paua on strings hung around their necks. In 1841 ducks' eggs were a particular favourite food obtained at Te Whanga, particularly its inland islands which Ngāti Mutunga called *titiokai*, and duck fat was used to preserve food.

2.200 At this time the lagoon would periodically open to the sea through natural processes. In 1841 it was noted that the last time this happened was in 1837. Changes in its environmental conditions, including the artificial opening of its sand berm have impacted weed growth in the lagoon.

2.201 In 1870, the Native Land Court excluded Te Whanga from its title determination for the surrounding land. There had been no investigation into the ownership of Te Whanga by 1936 when George Tuuta and 34 others petitioned Parliament to enact legislation empowering the Court to determine this issue.

2.202 The petitioners wrote that Ngāti Mutunga owned those areas of land that had been exposed by the drying of Te Whanga since 1870. The petition explained:

> Since the date of the titles of 1870 the waters of the said Lagoon have greatly reduced, leaving a considerable area of fertile land. This uncovered area is now used by the persons who have the titles to the adjoining lands, and is claimed by them as being an accretion their original holding although their titles expressly defined the boundaries as being the then margin of the lagoon.

2.203 The petitioners considered it "not right" that the uncovered areas should pass into the possession of Europeans who purchased the surrounding lands, but never paid for the lagoon.

2.204 In 1938, in response to this petition, the Crown sent an official out to Wharekauri/the Chatham Island to investigate whether Te Whanga could be classified as a lake or an arm of the sea. If it was an arm of the sea, the law provided that it would be Crown land. The official concluded that Te Whanga was an 'arm of the sea'. The Crown maintained its view that Te Whanga was an arm of the sea, and therefore belonged to the Crown, for many decades.

2.205 Meanwhile the environment of Te Whanga has changed over the past century. In 1882 an artificial opening to the sea was created for the first time at Te Awapātiki in order to drain water from the lagoon which otherwise flooded nearby farmland. Such artificial openings continued to be made periodically into the twentieth century, and became much

more common from the 1960s. These openings have contributed significantly to an increase in salinity in the lagoon.

2.206 In 1890, black swans were introduced by a European visitor. They have since become extremely numerous, and have largely displaced the ducks which used to be a favourite source of food for Ngāti Mutunga o Wharekauri. The black swans have different impacts from ducks on the weed beds that are part of the lagoon's ecology.

2.207 Since 1992 there have been new studies (in 1995 and 2004) which have disagreed with the findings of the 1938 report that Te Whanga was an arm of the sea, and therefore Crown land.

Fisheries

2.208 The seas around Wharekauri/the Chatham Islands have been a vital resource for Ngāti Mutunga o Wharekauri. Fishing was crucial to their economy, and they relied on it for their sustenance. In Article II of te Tiriti o Waitangi/the Treaty of Waitangi the Crown guaranteed that Māori should have "full, exclusive and undisturbed possession of their fisheries for so long as they wished to retain them.

2.209 Since the nineteenth century several legislative enactments have included provisions in relation to Māori fishing rights. The first comprehensive fisheries control legislation enacted by Parliament, the Fish Protection Act 1877, included a broad statement that nothing in the Act should be deemed to "take away, annul or abridge" any Māori fishing rights "secured to them" under te Tiriti o Waitangi/the Treaty of Waitangi. The Fisheries Act 1908, the fisheries control legislation which remained in place for most of the twentieth century, included no reference to te Tiriti/the Treaty, instead providing that "nothing in this Act shall affect any existing Māori fishing rights". The Fisheries Act 1983, which eventually replaced the 1908 Act, removed "existing" from its equivalent clause providing that "nothing in this Act shall affect any Māori fishing rights."

The Blue Cod Fishing Industry

2.210 In 1910, two Wellington-based companies established fishing bases at Owenga and Kaingaroa. Blue cod (Rāwaru) fishing became a key industry for Ngāti Mutunga o Wharekauri, and a number became prominent members of the fishing community.

2.211 Blue cod fishing was the largest employer on Wharekauri/the Chatham Islands, and the main commercial activity in the seas off islands until the 1960s. There were, though, significant fluctuations in the fortunes of the industry during these years. From 1933 during the depression to 1947 two cod freezing works on Wharekauri/the Chatham Islands closed, re-opened and closed again. The tonnage of fish caught declined precipitously during the 1930s and 1940s.

2.212 In 1946 Crown officials were warned about the living conditions of fishers living at Kaingaroa where they endured low standards of living in bad housing. However officials did little to address these conditions.

2.213 After 1946 the industry began to recover with significant increases in catches. Fishers on Wharekauri/the Chatham Islands, though, were concerned that their livelihoods were being jeopardised by mainland fishers. Islanders found that their small launches were no match for trawlers from the mainland, and Ngāti Mutunga o Wharekauri fishers were unable to secure development finance from the Crown.

Overexploitation

2.214 In 1913 Te Tapuhi Arapata and nine other Ngāti Mutunga wrote to the Crown calling for Petre Bay, 'the seas of our forefathers', to be reserved for Māori fishing. The petitioners wanted the area reserved solely for fishing for local consumption, not for commercial operations. They wrote 'We are afraid that the fishing grounds will be fished out by the fishing company and trawlers, who are fishing to make money'.

2.215 The Crown did not establish the requested reserve. Despite the petition from members of Ngāti Mutunga, an official reported that they did not often fish in Petre Bay. He recommended that, if any reserve was created for Ngāti Mutunga, it should be much smaller than the one the petitioners had requested. Another Crown official stated that the law did not give authority to reserve any fishing place for the sole use of Māori.

2.216 In 1937 Parliament's, Sea Fisheries Investigation Committee, thought it likely that more fish were being caught each year than the grounds could sustain. Nevertheless from the 1930s to the 1960s the Crown did not act in response to additional requests from Wharekauri/the Chatham Islands fishers, including Ngāti Mutunga o Wharekauri, to establish closed seasons on blue cod to help sustain the fishery.

2.217 The resurgence in the industry after the second world war led to more than 12,000 tonnes of blue cod being caught off Wharekauri/the Chatham Islands in 1948. In the 1960s the over exploitation of inshore fisheries caused the fishing industry on Wharekauri/the Chatham Islands to decline. Today the Crown's total allowable commercial catch of blue cod off Wharekauri/the Chatham Islands is just 759 tonnes.

The Crayfish Boom

2.218 In 1959, a Crown official noted an abundance of crayfish at Wharekauri/the Chatham Islands, and thought shellfish were also plentiful. He reported, though, that shellfish were extensively used by the local population, and commercial exploitation could rapidly reduce the available stocks. Nevertheless he concluded that "protection is easier to ask for than achieve". The Crown took no immediate steps to protect crayfish and shellfish stocks at Wharekauri/the Chatham Islands.

2.219 In 1965, crayfish began to be fished commercially off the Chatham Islands/Wharekauri, and a "crayfish boom" soon developed. By 1969 there were over one hundred and eighty boats operating off the Chatham Islands/ Wharekauri, of which the vast majority were from mainland New Zealand. Ngāti Mutunga o Wharekauri and other residents of Wharekauri/the Chatham Islands gained some economic benefits from the boom, but most of the profits went off shore from Wharekauri/the Chatham Islands.

2.220 During the "boom" Ngāti Mutunga o Wharekauri and other Chatham Islanders called for conservation of crayfish stocks. In November 1967 the Chatham Island County Council, banned the building of any more crayfish processing plants on Wharekauri/the Chatham Islands and wrote to the Minister of Marine calling for catch restrictions. The same year the New Zealand Fishing Industry Board produced a report calling for tighter control regulations. Newspapers also drew attention to the need for conservation measures.

2.221 However the Crown took little action to conserve the fishery before 1969. By this time the Crown had finally recognised that there was a danger over-exploitation could destroy the crayfish fishery. New regulations were introduced to preserve crayfish, and improve the quality of exported crayfish. Even so, in 1969 the Crown did not even have a fisheries inspector resident on the islands.

2.222 Over-fishing led to the end of the "boom", and by 1970 it was over. At the height of the boom in 1968 some 5,958 tonnes of crayfish were landed on Wharekauri/the Chatham Islands. This declined to 1,751 tonnes in 1970. It has taken many years for crayfish stocks on Wharekauri/the Chatham Islands to recover. Today the Crown's total allowable commercial annual catch in this fishery is just 360 tonnes.

2.223 In 1968 members of Ngāti Mutunga o Wharekauri were instrumental in establishing a paua fishing industry on Wharekauri/the Chatham Islands. Through to the mid-1970s most fishers diving for paua were Ngāti Mutunga o Wharekauri who also worked other jobs on land. However in the late 1970s the price of paua meat declined, and contract divers from mainland New Zealand became involved in the industry. Some of the Ngāti Mutunga o Wharekauri divers temporarily withdrew from the industry, and Ngāti Mutunga o Wharekauri became a minority in the industry they had pioneered.

The Quota Management System

2.224 In 1977 New Zealand established an exclusive economic zone of 200 miles around its coastline. This led to an expansion of New Zealand's fishing industry, which in turn helped ignite widespread concern about the sustainability of valuable inshore fisheries. In 1982 the Crown introduced a moratorium on the issue of all further fishing permits.

2.225 In 1983 a new Fisheries Act consolidated laws in relation to fishing for the first time since 1908. Later in 1983 the Crown cancelled all unused and "part time" commercial fishing permits.

2.226 These actions severely affected many Ngāti Mutunga o Wharekauri fishers. The Fisheries Act 1983 provided that nothing in it should affect any Māori fishing rights, but the Crown did not consider Māori had a right to commercial fishing permits. Some Ngāti Mutunga o Wharekauri fishers had temporarily left the industry in the late 1970s, and now found they could not re-enter it. Many others had long relied on fishing to supplement their incomes from a range of activities, but now found they could not get licenses because they were deemed part time fishers. The Chatham Islands lifestyles routinely combined fishing with other sources of income and these lifestyles had strong customary roots. The Crown paid no compensation for the licenses it cancelled, and the affected fishers could not obtain new licenses due to the moratorium the Crown had imposed in 1982.

2.227 In 1984 the Crown, which was increasingly concerned about the decline in fishing stocks, began planning a quota management system which was introduced in 1986. This provided for fishers to have an Individual Transfer Quota (ITQ) which permitted them to catch a specified tonnage of any particular fish based on records of the fishers' previous catches. The Crown awarded most of the quotas for fishing at Wharekauri/the Chatham Islands to fishers who were not from the islands, but who were classified as full time fishers there.

2.228 The Crown's exclusion of Ngāti Mutunga o Wharekauri fishers from the fishing industry, created a significant grievance. In June 1986 Te Wharekauri Māori Council protested to the Crown about young Māori fishers being left out of the industry. The chair of the Council wrote to Crown officials that "Our situation here on the Chatham Islands, if left unattended, will be disastrous to this Māori community."

2.229 The Crown began implementing the Quota Management System, but in 1987 the New Zealand Māori Council obtained an interim High Court injunction preventing the Crown from expanding it due to Māori claims that the system breached rights protected by the Fisheries Act 1983. After the injunction was granted the Crown entered into lengthy negotiations with Māori representatives to address their grievances.

2.230 These developments were of great importance to Wharekauri/the Chatham Islands for which a Crown official recognised in the late 1980s that "no other part of the country relies to such an extent on fishing for its livelihood." In 1988 the negotiations for the fishing claims were the catalyst for the establishment of Te Rūnanga o Wharekauri-Rekohu which said it represented "all indigenous people on the Chatham Islands". In May 1987 the runanga distributed a letter to senior Crown figures which urged:

> That the iwi of the Chatham Islands be given total control to manage administer and facilitate all future development of the Chathams resources namely people, land internal and external waters. We are indivisible from the land and oceanic resources which surround the Chatham Islands.

2.231 In 1989 the Crown and Māori reached an interim arrangement that was given effect by the Māori Fisheries Act 1989. This established the Māori Fisheries Commission to better develop and protect Māori rights in commercial fisheries which were protected by Te Tiriti o Waitangi/ Treaty of Waitangi. The Crown agreed to buy ten percent of the ITQ in each fish stock, and transfer it to the Commission. It took the Crown four years to negotiate the acquisition of this ten percent.

2.232 In September 1992 the Crown and representatives of Māori entered into a deed of settlement for all claims in relation to fisheries. The deed provided that a distribution system to determine which iwi had fishing interests should be developed in order to achieve a fair allocation of the settlement's benefits among Māori. Ngāti Mutunga o Wharekauri did not sign the deed which settled all fisheries claims. They engaged in considerable litigation and negotiation before legislation establishing a framework for the allocation of settlement assets among iwi was enacted in 2004.

3 ACKNOWLEDGEMENT AND APOLOGY

[TE REO VERSION TO BE INSERTED]

ACKNOWLEDGEMENT

Ngāti Mutunga o Wharekauri are Tangata Whenua of Wharekauri/the Chatham Islands

3.1 The Crown acknowledges Ngāti Mutunga o Wharekauri as tangata whenua of Wharekauri (the Chatham Islands).

Annexation of Wharekauri/the Chatham Islands

3.2 The Crown acknowledges that:

3.2.1 members of Ngāti Mutunga o Wharekauri had strong whakapapa connections, and were part of iwi and hapū with whom the Crown entered into relationships in 1840 through te Tiriti o Waitangi/the Treaty of Waitangi;

3.2.2 its annexation of Wharekauri in 1842 was carried out without any effort to consult with Ngāti Mutunga o Wharekauri. This represented a profound failure to give appropriate recognition or respect to the mana and te tino rangatiratanga of Ngāti Mutunga o Wharekauri;

3.2.3 its failure to seek the consent of Ngāti Mutunga o Wharekauri did not meet the standards of conduct set out in the instructions given to Governor Hobson when he was sent from England to establish sovereignty over New Zealand; and

3.2.4 while it did not have any responsibilities under te Tiriti o Waitangi/the Treaty of Waitangi in relation to Wharekauri /the Chatham Islands, or towards Ngāti Mutunga o Wharekauri as an iwi, until the annexation was completed in 1842, this failure occurred in the context of the Crown agreeing in 1840 as part of te Tiriti o Waitangi/the Treaty of Waitangi that chiefs and tribes, including Ngāti Mutunga o Wharekauri, would retain te tino rangatiratanga.

Te Tiriti o Waitangi/the Treaty of Waitangi applies to Wharekauri/the Chatham Islands

3.3 The Crown acknowledges that the undertakings it made to Māori in te Tiriti o Waitangi/the Treaty of Waitangi apply and have always applied to Ngāti Mutunga o Wharekauri from the date of annexation.

The pattern of Crown engagement with Wharekauri/the Chatham Islands

3.4 The Crown acknowledges that its 1842 annexation of the remote Wharekauri/the Chatham Islands without consulting Ngāti Mutunga o Wharekauri began a long and regrettable

history of limited engagement about the Crown's role in their rohe. In particular the Crown acknowledges that:

3.4.1 the Crown established no presence on the islands until after several European settlers requested it to do so in 1854;

3.4.2 having waited thirteen years since the annexation before establishing a presence on the islands, the Crown sent an official to Wharekauri/the Chatham Islands in 1855 without consulting Ngāti Mutunga o Wharekauri;

3.4.3 in 1856, after Ngāti Mutunga o Wharekauri opposed this official starting work, the Crown found the iwi willing to engage with it about the services the official would perform on Wharekauri/the Chatham Islands;

3.4.4 the availability of government services on Wharekauri/the Chatham Islands since then has always been limited with only a small Crown presence on the islands;

3.4.5 the Crown provided little assistance to develop economic infrastructure, and even though the Crown compulsorily acquired land for a road network in the 1880s it was not until after 1945 that a road network began to be constructed on the islands;

3.4.6 in 1950 the Crown recognised that the economic development of the islands was seriously limited by their isolation, and in response provided for Wharekauri/the Chatham Islands to be administered by the Department of Island Territories which also administered Pacific Island dependencies that were not part of New Zealand;

3.4.7 this department was ineffective in administering Government services on Wharekauri/the Chatham Islands, and in 1961 the responsibility for co-ordinating government activity was transferred to the Department of Internal Affairs;

3.4.8 in 1985 a Crown review concluded that Internal Affairs was never responsible for the overall development of Wharekauri/the Chatham Islands; and

3.4.9 the Crown's repeated reviews of its administration for the islands during the 1980s caused deep frustration to Ngāti Mutunga o Wharekauri who considered these reviews did little to improve their future prospects.

Auckland Islands

3.5 The Crown acknowledges that:

3.5.1 it annexed the Auckland Islands in April 1842 on the basis of discovery, and information previously provided to it by visiting British ships that the islands were uninhabited;

3.5.2 the members of Ngāti Mutunga o Wharekauri who migrated to the Auckland Islands had no way of knowing about the British annexation. They went there

seeking to live in security in accordance with their own view of te tino rangatiratanga, and remained on the islands until 1856;

3.5.3 in 1847 the Crown leased the Auckland Islands to private European interests. When it did so the Crown mistakenly believed that the islands were still uninhabited;

3.5.4 by June 1848 it was aware that a small population of Ngāti Mutunga o Wharekauri were living on the islands;

3.5.5 in 1849 the Crown appointed the lessee's Commissioner as Lieutenant-Governor, and, until 1852 when the British abandoned their settlement on the islands, failed to have regard to the mana and te tino rangatiratanga of Ngāti Mutunga o Wharekauri by not giving him any instructions to take any account of Ngāti Mutunga o Wharekauri interests including their te tino rangatiratanga; and

3.5.6 there was no investigation into the assertion by the lessee's commissioner that Ngāti Mutunga "surrendered all their claims to land, enclosures, pigs, &c., upon condition of being allowed to collect their growing crops" in return for being paid a "small sum".

Taranaki raupatu

3.6 The Crown acknowledges that members of Ngāti Mutunga o Wharekauri were affected by war and raupatu in Taranaki. In 2001 and 2005 the Crown settled the historical claims of Ngāti Tama and Ngāti Mutunga at Taranaki. In these settlements, the Crown acknowledged that the wars and confiscations in Taranaki had breached te Tiriti o Waitangi/the Treaty of Waitangi and its principles, and that the inadequacies in the Compensation Court process compounded the prejudicial effects of confiscation.

Detention without trial of mainland prisoners on Wharekauri/the Chatham Islands

3.7 The Crown acknowledges that:

3.7.1 it did not consult Ngāti Mutunga o Wharekauri before bringing prisoners to Wharekauri/the Chatham Islands in March 1866 who the Crown would detain without trial;

3.7.2 Ngāti Mutunga o Wharekauri responded to the arrival of the prisoners with manaakitanga by making resources available for them; and

3.7.3 the Crown did not make adequate security arrangements to guard the prisoners who were detained without trial, and escaped to the mainland in July 1868.

Native land laws

3.8 The Crown acknowledges that:

3.8.1 it introduced the native land laws which provided for the individualisation of title to Ngāti Mutunga o Wharekauri lands previously held in collective tenure without consulting Ngāti Mutunga o Wharekauri;

3.8.2 in 1870, the Native Land Court awarded legal ownership of nearly all the land in each of six land blocks, comprising most of the land on Wharekauri/the Chatham Islands, to ten or fewer individuals who Ngāti Mutunga o Wharekauri understood would act on behalf of the large number of individuals Ngāti Mutunga o Wharekauri had wanted to receive legal ownership;

3.8.3 the native land laws allowed the title holders of each block to alienate it as their private property, even if it had been intended that the owners would act on behalf of others. The Crown took no steps before 1886 to prevent iwi members being dispossessed of all their legal interests in the land when the title holders alienated the title;

3.8.4 the 1886 Act did not apply to land blocks awarded under the "ten owner rule" that had been wholly or partly alienated. It was not until 1894 that the Crown promoted legislation which provided for intended trust beneficiaries to be included on certificates of title or Crown grants awarded under the ten-owner rule as legal owners; and

3.8.5 the Crown's failure to actively protect the interests of Ngāti Mutunga o Wharekauri who were dispossessed of land they wished to retain by the operation of the "ten owner rule" breached te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

3.9 The Crown further acknowledges that the operation and impact of the native land laws, in particular the awarding of land to individuals rather than to iwi or hapū, was inconsistent with tikanga Ngāti Mutunga o Wharekauri, and made Ngāti Mutunga o Wharekauri lands more susceptible to partition, fragmentation, and alienation. This contributed to the erosion of the tribal structures of Ngāti Mutunga o Wharekauri, which were based on collective iwi custodianship of land. The Crown's failure to actively protect the iwi structures of Ngāti Mutunga o Wharekauri was a breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

Compulsory acquisition of uneconomic interests

3.10 The Crown acknowledges that:

3.10.1 it promoted legislation which, between 1953 and 1974, empowered the Māori Trustee to compulsorily acquire what the Crown considered uneconomic interests in Ngāti Mutunga o Wharekauri land;

3.10.2 this deprived some Ngāti Mutunga o Wharekauri individuals of their tūrangawaewae in in various places where they had customary interests including blocks such as Kekerione, Otonga and Wharekauri; and

3.10.3 it further undermined the tribal structures of Ngāti Mutunga o Wharekauri, and was a breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

Political rights

3.11 The Crown acknowledges that it failed to provide for Ngāti Mutunga o Wharekauri residents of Wharekauri to vote in parliamentary elections until 1922, despite the establishment of Parliament in 1852, and Māori electoral districts in 1867. The Crown further acknowledges that:

3.11.1 as a result Ngāti Mutunga o Wharekauri were subject to taxation without representation;

3.11.2 in 1888 the Crown acted in the interests of Pākehā settlers when it agreed to their request to apply a dog tax on Wharekauri that the Resident Magistrate reported was strongly opposed by Ngāti Mutunga o Wharekauri who were more than half the population on the islands. Several members of Ngāti Mutunga o Wharekauri were imprisoned for refusing to pay this tax before the Crown abandoned attempts to collect it in 1891 due to Ngāti Mutunga o Wharekauri opposition; and

3.11.3 the Crown's unjustified failure, until 1922, to ensure that Ngāti Mutunga o Wharekauri could exercise the right to vote, a fundamental right and privilege of British subjects, was a breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

Te Whanga Lagoon

3.12 The Crown acknowledges the changes to the environment of Te Whanga since 1842 including:

3.12.1 greater salinity in the waters of Te Whanga due to the lagoon periodically being artificially opened;

3.12.2 the introduction of wildlife such as black swans in 1890 which have replaced the ducks which used to be a favourite source of food for Ngāti Mutunga o Wharekauri; and

3.12.3 the Crown further acknowledges scientific studies since 1992 have contradicted the Crown's long held view that Te Whanga is an arm of the sea.

Crown provision of health services

3.13 The Crown acknowledges that

3.13.1 in 1856 Ngāti Mutunga o Wharekauri requested that the Crown send a trained doctor to Wharekauri/the Chatham Islands, but it was not until nearly 50 years later that the Crown appointed a trained doctor to be the resident medical official on the islands; and

3.13.2 it was not until 1925 that arrangements were made for the construction of a cottage hospital on Wharekauri/the Chatham Islands.

The compulsory taking of land for the hospital

3.14 The Crown acknowledges that:

3.14.1 in 1925 the Crown compulsorily took 23 acres for a hospital which was subsequently located on four acres of the taken block with the balance of the land being leased to a farmer;

3.14.2 it began using much of the land for other public purposes in the 1960s and 1970s, but by 1989 had concluded that some of the land was no longer required for public purposes; and

3.14.3 in 1990 the Crown received a request for the unused land to be returned to successors of the original owner who were resident on Wharekauri/the Chatham Islands, but the Crown identified another public purpose for the unused land which meant it would remain available for use in future Treaty settlements.

Te reo Māori

3.15 The Crown acknowledges that:

3.15.1 in the nineteenth century many Ngāti Mutunga o Wharekauri followers of Te Whiti were reluctant to submit their children to Crown education;

3.15.2 for many years one of the objectives of Crown schools teaching Māori students was to promote their assimilation into European culture;

3.15.3 Crown policy required schools to teach students only in English, and many Ngāti Mutunga o Wharekauri children were subject to corporal punishment for speaking in te reo Māori; and

3.15.4 its failure to actively protect te reo Māori and encourage its use by Ngāti Mutunga o Wharekauri was a breach of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

Crown education services

3.16 The Crown acknowledges that:

3.16.1 the contributions made by parents of Ngāti Mutunga o Wharekauri to enable their children to receive primary education; and

3.16.2 there has never been a secondary school on Wharekauri/the Chatham Islands.

Socio-economic outcomes

3.17 The Crown acknowledges that some of its policies and actions contributed to the socio-economic underdevelopment of Ngāti Mutunga o Wharekauri. For example:

3.17.1 the Crown's promotion of native land laws in the nineteenth century fragmented land ownership for Ngāti Mutunga o Wharekauri and this remained an impediment to their economic development deep into the twentieth century;

3.17.2 the slow provision of infrastructure on Wharekauri/the Chatham Islands, such as roads, limited Ngāti Mutunga o Wharekauri economic development;

3.17.3 the limited educational opportunities in state schools on Wharekauri/the Chatham Islands denied many Ngāti Mutunga o Wharekauri access to education and employment opportunities, thereby limiting their socio economic opportunities; and

3.17.4 the Crown further acknowledges that the economic underdevelopment of Ngāti Mutunga o Wharekauri led to its socio-economic deprivation. For too long many members of Ngāti Mutunga o Wharekauri endured poverty, poor health, poor housing and low educational achievement.

APOLOGY

3.18 To Ngāti Mutunga o Wharekauri, your tūpuna, your tamariki and your mokopuna, the Crown makes this long overdue apology for breaches of te Tiriti o Waitangi/the Treaty of Waitangi and other acts and omissions which have caused you prejudice.

3.19 The Crown is deeply sorry that it annexed Wharekauri/the Chatham Islands in 1842 without any effort to consult you, which was a profound failure to give appropriate recognition or respect to your mana and te tino rangatiratanga, and that this began a long and regrettable history of limited engagement with you and your rohe. This history of limited services on Wharekauri/the Chatham Islands and the painfully slow development of economic infrastructure has meant that many Ngāti Mutunga o Wharekauri long felt they lived in a dependency of New Zealand rather than a fully integrated part of the country.

3.20 The Crown is remorseful for its breaches of te Tiriti o Waitangi/the Treaty of Waitangi, and the prejudice they caused you. Among these the Crown's failure to arrange for Ngāti Mutunga o Wharekauri to exercise voting rights in Parliamentary elections until the 1920s was all too symptomatic of how the Crown has treated you. The individualisation of Ngāti Mutunga o Wharekauri land tenure in the nineteenth century has had a legacy of undermining your tribal structures, depriving many Ngāti Mutunga of their interests in tribal lands, and making the administration of the remaining lands far more complex than it should have been.

3.21 The Crown deeply regrets the impacts land tenure reform and the lack of economic infrastructure have had on the quality of life for many Ngāti Mutunga o Wharekauri. For too long the economy of your rohe was seriously underdeveloped, and, as late as the 1980s, the Crown's constant reviews of how it engaged with Wharekauri/the Chatham Islands caused deep frustration among your people.

3.22 The Crown is profoundly sorry for the intergenerational loss of knowledge suffered by Ngāti Mutunga o Wharekauri due to Crown policies of cultural assimilation by which te reo Māori

was not protected, and its use was not encouraged. This has been a tragedy for Ngāti Mutunga o Wharekauri which should not have happened.

3.23 The Crown acknowledges that Ngāti Mutunga o Wharekauri are fully-fledged citizens of New Zealand. Through this settlement it pledges to build a relationship with Ngāti Mutunga o Wharekauri that is based on respect for te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

4 SETTLEMENT

ACKNOWLEDGEMENTS

4.1 Each party acknowledges that –

4.1.1 in negotiating this settlement within the context of wider Crown policy for the settlement of historical Treaty of Waitangi claims, including the need by the Crown to consider the rights and interests of others, the parties have acted honourably and reasonably in relation to the settlement; and

4.1.2 it is not possible –

(a) to assess the loss and prejudice suffered by Ngāti Mutunga o Wharekauri as a result of the events on which the historical claims are, or could be, based; or

(b) to fully compensate Ngāti Mutunga o Wharekauri for all loss and prejudice suffered; and

4.1.3 Ngāti Mutunga o Wharekauri intends their foregoing of full compensation shall contribute to New Zealand's development; and

4.1.4 the settlement is intended to enhance the ongoing relationship between Ngāti Mutunga o Wharekauri and the Crown (in terms of the Treaty of Waitangi, its principles, and otherwise).

4.2 Ngāti Mutunga o Wharekauri acknowledge that, taking all matters into consideration (some of which are specified in clause 4.1), the settlement is the best that can be achieved in the circumstances and, in that sense, is fair.

SETTLEMENT

4.3 Therefore, on and from the settlement date, –

4.3.1 the historical claims are settled; and

4.3.2 the Crown is released and discharged from all obligations and liabilities in respect of the historical claims; and

4.3.3 the settlement is final.

4.4 Except as provided in this deed or the settlement legislation, the parties' rights and obligations remain unaffected.

REDRESS

4.5 The redress, to be provided in settlement of the historical claims, –

4.5.1 is intended to benefit Ngāti Mutunga o Wharekauri collectively; but

4.5.2 may benefit particular members, or particular groups of members, of Ngāti Mutunga o Wharekauri if the governance entity so determines in accordance with the governance entity's procedures.

IMPLEMENTATION

4.6 The settlement legislation will, on the terms provided by sections 15 to 21 of the draft settlement bill, –

4.6.1 settle the historical claims; and

4.6.2 exclude the jurisdiction of any court, tribunal, or other judicial body in relation to the historical claims and the settlement; and

4.6.3 provide that the legislation referred to in section 17 of the draft settlement bill does not apply –

(a) to land within the shared RFR area; or

(b) for the benefit of Ngāti Mutunga o Wharekauri or a representative entity; and

4.6.4 require any resumptive memorial to be removed from any record of title for any allotment solely within the shared RFR area; and

4.6.5 provide that the maximum duration of a trust pursuant to the Trusts Act 2019 does not –

(a) apply to a settlement document; or

(b) prescribe or restrict the period during which –

(i) the trustee of the [*name*] Trust, being the governance entity, may hold or deal with property; and

(ii) the [*name*] Trust may exist; and

4.6.6 require the chief executive of the Office of Treaty Settlements and Takutai Moana – Te Tari Whakatau to make copies of this deed publicly available.

4.7 Part 1 of the general matters schedule provides for other action in relation to the settlement.

5 CULTURAL REDRESS

STATUTORY ACKNOWLEDGEMENT

5.1 The settlement legislation will, on the terms provided by sections 29 to 37 and 40 to 42 of the draft settlement bill, –

5.1.1 provide the Crown's acknowledgement of the statement by Ngāti Mutunga o Wharekauri of their particular cultural, spiritual, historical, and traditional association with the Coastal statutory acknowledgement area (as shown on deed plan TTW-063-02); and

5.1.2 require relevant consent authorities, the Environment Court, and Heritage New Zealand Pouhere Taonga to have regard to the statutory acknowledgement; and

5.1.3 require relevant consent authorities to forward to the governance entity –

(a) summaries of resource consent applications for an activity within, adjacent to or directly affecting the statutory area; and

(b) a copy of a notice of a resource consent application served on the consent authority under section 145(10) of the Resource Management Act 1991; and

5.1.4 enable the governance entity, and any member of Ngāti Mutunga o Wharekauri, to cite the statutory acknowledgement as evidence of Ngāti Mutunga o Wharekauri's association with that area.

5.2 The statement of association is in part 1 of the documents schedule.

DEED OF RECOGNITION

5.3 The Crown must, by or on the settlement date, provide the governance entity with a copy of the deed of recognition signed by the Minister of Conservation and the Director-General of Conservation, in relation to the recognition area which comprises the following sites (shown on deed plan TTW-063-03):

5.3.1 Cannon – Peirce Scenic Reserve:

5.3.2 Chudleigh Conservation Area:

5.3.3 Hāpūpū / J M Barker Historic Reserve:

5.3.4 Harold Peirce Memorial Scenic Reserve:

5.3.5 Henga Scenic Reserve:

5.3.6 Manauea / Ocean Mail Scenic Reserve:

5.3.7 Mangape Creek Conservation Area:

5.3.8 Mangere Island Nature Reserve:

5.3.9 Marginal Strip - Hanson Bay North:

5.3.10 Marginal Strip - Hanson Bay South:

5.3.11 Marginal Strip - Lake Huro:

5.3.12 Marginal Strip - Lake Kaingarahu:

5.3.13 Marginal Strip - Lake Makuku:

5.3.14 Marginal Strip - Lake Taia:

5.3.15 Marginal Strip - Owenga:

5.3.16 Marginal Strip - Pacific Ocean:

5.3.17 Marginal Strip - Petre Bay:

5.3.18 Marginal Strip - Pitt Strait:

5.3.19 Marginal strip - Te Awainanga River - Te Whanga Lagoon:

5.3.20 Marginal Strip - Te Whanga Lagoon:

5.3.21 Marginal Strip - Waikawa Islands:

5.3.22 Marginal Strip - Waitangi:

5.3.23 Nikau Bush Conservation Area:

5.3.24 Part Tikitiki Hill Conservation Area:

5.3.25 Rangatira Nature Reserve:

5.3.26 Scenic Reserve - Chudleigh:

5.3.27 Scenic Reserve - Lake Rotokawau:

5.3.28 Scenic Reserve - Lower Nikau Bush:

5.3.29 Scenic Reserve - Owenga:

5.3.30 Scenic Reserve - Punakokowai/Tangepu:

5.3.31 Scenic Reserve - Tioriori/Green Swamp:

5.3.32 Scenic Reserve - Wharekauri coastal strip:

5.3.33 Taia Bush Historic Reserve:

5.3.34 Te Awatea Scenic Reserve:

5.3.35 Te One Base:

5.3.36 Te One Conservation Area:

5.3.37 Thomas Mohi Tuuta (Rangaika) Scenic Reserve:

5.3.38 Tuku Nature Reserve:

5.3.39 Waikokopu / Canister Cove Scenic Reserve:

5.3.40 Waipaua Conservation Area:

5.3.41 Waipāua Scenic Reserve:

5.3.42 Waitangi Conservation Area.

5.4 The recognition area includes only those parts owned and managed by the Crown.

5.5 The deed of recognition will provide that the Minister of Conservation and the Director-General of Conservation must, if undertaking certain activities within the recognition area, –

5.5.1 consult the governance entity; and

5.5.2 have regard to its views concerning Ngāti Mutunga o Wharekauri's association with the recognition area as described in the statement of association set out in the deed of recognition.

5.6 The relationship agreement which the Department of Conservation and the governance entity will enter into under clause 5.19 of this deed contains a cross reference to the deed of recognition to be entered into under clause 5.3. The section in which the cross-reference occurs (clause 1.17 of Schedule 4 of the relationship agreement) describes how the Department of Conservation will consult with the governance entity under the relationship agreement in relation to conservation land not covered by the deed of recognition.

PROTOCOLS

5.7 Each of the following protocols must, by or on the settlement date, be signed and issued to the governance entity by the responsible Minister:

5.7.1 the Crown minerals protocol:

5.7.2 the primary industries protocol.

5.8 A protocol sets out how the Crown will interact with the governance entity with regard to the matters specified in it.

FORM AND EFFECT OF DEED OF RECOGNITION AND PROTOCOLS

5.9 The deed of recognition will be –

5.9.1 in the form in part 2 of the documents schedule; and

5.9.2 issued under, and subject to, the terms provided by sections 38 to 41 of the draft settlement bill.

5.10 Each protocol will be –

5.10.1 in the form in part 3 of the documents schedule; and

5.10.2 issued under, and subject to, the terms provided by sections 22 to 25 of the draft settlement bill.

5.11 A failure by the Crown to comply with the deed of recognition or a protocol is not a breach of this deed.

WHAKAAETANGA TIAKI TAONGA

5.12 The Culture and Heritage Parties and the governance entity must, by or on the settlement date, sign the Whakaaetanga Tiaki Taonga.

5.13 The Whakaaetanga Tiaki Taonga sets out how the Culture and Heritage Parties will interact with the governance entity with regard to the matters specified in it.

5.14 The Whakaaetanga Tiaki Taonga will be in the form in part 4 of the documents schedule.

5.15 A failure by the Crown to comply with the Whakaaetanga Tiaki Taonga is not a breach of this deed.

5.16 Appendix B of the Whakaaetanga Tiaki Taonga sets out how Manatū Taonga - Ministry for Culture and Heritage will interact with the governance entity with regard to matters relating to taonga tūturu.

5.17 Appendix B of the Whakaaetanga Tiaki Taonga is issued pursuant to the terms provided by section 28 of the draft settlement bill.

5.18 A failure by the Crown to comply with Appendix B of the Whakaaetanga Tiaki Taonga is not a breach of this deed.

RELATIONSHIP AGREEMENTS

5.19 On or before the settlement date, each Crown agency listed in clause 5.20 and the governance entity must enter into a relationship agreement.

5.20 The Crown agencies are:

5.20.1 the Department of Conservation:

5.20.2 the Ministry of Health – Manatū Hauora and Health New Zealand – Te Whatu Ora:

5.20.3 the Ministry of Housing and Urban Development -Te Tūāpapa Kura Kāinga:

5.20.4 Kāinga Ora – Homes and Communities:

5.20.5 the Ministry for the Environment.

5.21 Each relationship agreement for each Crown agency sets out how it will interact with the governance entity with regard to the matters specified in it and will be in the relevant form set out in part 5 of the documents schedule.

5.22 A failure by the Crown or a Crown agency to comply with a relationship agreement referred to in clause 5.19 is not a breach of this deed.

LETTER OF INTRODUCTION

5.23 No later than six months after the settlement date, the Chief Executive (Tumu Whakarae) of the Office of Treaty Settlements and Takutai Moana – Te Tari Whakatau must write a letter of introduction in the form set out in part 6 of the documents schedule to Ngā Taonga Sound & Vision to raise the profile of Ngāti Mutunga o Wharekauri in relation to the work of Ngā Taonga Sound & Vision.

NGĀTI MUTUNGA O WHAREKAURI NOMINATION OF A MEMBER TO THE CHATHAM ISLANDS CONSERVATION BOARD

5.24 The settlement legislation will, on the terms provided by section 47 of the draft settlement bill, provide that –

5.24.1 the Minister of Conservation must, on the nomination of the governance entity, appoint one member of the Chatham Islands Conservation Board for a term of three years; and

5.24.2 the Minister of Conservation must only appoint a nominee recommended under clause 5.24.1 but may discuss the nomination and, if necessary, seek a replacement nominee.

STATEMENT OF INTEREST IN SPECIFIED ISLANDS, ISLETS, AND REEFS

5.25 The statement of interest in part 7 of the documents schedule is a description of Ngāti Mutunga o Wharekauri's ancestral, spiritual, cultural, and historical associations with specified islands, islets, and reefs located offshore from Chatham Island and Pitt Island (Rangiauria) and identified by name and position on the map at part 5 of the attachments. The settlement legislation will, on the terms provided by section 49 of the draft settlement bill, require the Director-General to consult with the governance entity and to have regard to the statement of interest when proposing to undertake operational activities on the specified islands, islets, and reefs.

5.26 The settlement legislation will, on the terms provided by section 50 of the draft settlement bill, require the Director-General to attach the statement of interest to the Chatham Islands Conservation Management Strategy.

CULTURAL REVITALISATION PAYMENT

5.27 The Crown must pay $5,000,000 to the governance entity on the settlement date as a cultural revitalisation payment for initiatives including the development of pā, marae, whare and tari.

OFFICIAL GEOGRAPHIC NAMES

5.28 The settlement legislation will, on the settlement date, provide for each of the names listed in the second column to be the official geographic name for the features set out in columns 3 and 4.

Existing Name	Official geographic name	Location (NZTopo50 Map and grid references)	Geographic feature type
Karewa	Kārewa	CI02 039 476	Area
Lake Marakapia	Lake Mārakāpia	CI02 956 437	Lake
Lake Rangitai	Lake Rangitai	CI03 124 524	Lake
Lake Rotoparaoa	Rotoparāoa	CI02 927 469	Lake
Mairangi	Mairangi	CI02 895 586	Locality
Te Roto	Te Roto	CI02 932 461	Lake
Tupuangi	Tupuangi	CI06 245 998	Locality
Waihere Bay	Waihere Bay	CI06 206 965	Bay

Existing Name	Official geographic name	Location (NZTopo50 Map and grid references)	Geographic feature type
Waikanae	Waikanae	CI02 847 465 to CI02 833 466	Historic site (pā)
Unnamed	Pā Tangaroa	CI04 955 313	Historic site (pā)
Unnamed	Pīpītarawai	CI04 946 232	Hill
Unnamed	Hourangi	CI05 067 325 to CI05 079 263	Beach
Unnamed	Pana	CI02 956 506	Area
Unnamed	Rotokawau	CI02 928 457	Historic site (ex-lake)
Unnamed	Roto Pouaka	CI02 936 460	Lake
Unnamed	Te Roto Kāinga	CI02 934 465	Historic site (kāinga)
Unnamed	Te Roto Urupā	CI02 937 465	Historic site (urupā)

5.29 The settlement legislation will provide for the official geographic names on the terms provided by sections 43 to 46 of the draft settlement bill.

ORIGINAL MĀORI NAMES

5.30 By or on the settlement date, the Minister for Treaty of Waitangi Negotiations must write a letter to the New Zealand Geographic Board Ngā Pou Taunaha o Aotearoa requesting the Board, in respect of each of the following geographic names, to list the Māori name set out opposite it in the Gazetteer as an unofficial original Māori name:

Existing Name	Requested unofficial original Māori place name	Location (NZTopo50/250 Map and grid references)	Geographic feature type
Cape Pattisson	Tupuangi	CI01 757 545	Cape
Mangere Island	Māngere	CI06 165 962	Island

Existing Name	Requested unofficial original Māori place name	Location (NZTopo50/250 Map and grid references)	Geographic feature type
Motuhara (Bertier or The Forty Fours)	Motuhara	NZTopo250-31 553 130	Island group
Nairn River	Mangatūkārewa	CI04 947 234 to CI04 954 315	River
Ohira	Ōhira	CI02 883 476	Bay
Port Hutt (Whangaroa Harbour)	Whangaroa	CI02 837 467	Bay
Rabbit Island	Wharekai ki te Motu	CI06 175 995	Island
South East Island (Rangatira)	Rangatira	CI06 259 877	Island
Star Keys (Motuhope)	Motuhope	NZTopo250-31 540 101	Island group
The Pyramid (Tarakoikoia)	Tarakoikoia	CI06 208 781	Island
The Sisters (Rangitatahi)	Rangitātahi	CI01 751 745	Island group
Cape L'Eveque	Kahewa	CI04 890 130 to CI04 894 126	Cape
Matarakau	Matarākau	CI03 123 556	Hill
Owenga	Ōwēnga	CI05 109 233	Locality
Point Somes	Operau	CI01 693 439	Point
Pana / Blind Jims Creek	Tanawaru	CI02 941 494 to CI02 956 506	Stream
Point Durham	Waihora	CI04 853 250	Point
Point Munning	Tokakaroro	CI03 236 564	Point

Existing Name	Requested unofficial original Māori place name	Location (NZTopo50/250 Map and grid references)	Geographic feature type
Round Rock (Rangituka)	Rangituke	CI06 137 852	Rock
Taupeka Point	Taupeka	CI02 006 572	Point
Te Rangaapene	Te Ranga a Pene	CI05 134 216	Hill
Unnamed	Matarākau Kāinga	CI03 123 554	Historic site (kāinga)

CULTURAL REDRESS GENERALLY NON-EXCLUSIVE

5.31 The Crown may do anything that is consistent with the cultural redress, including entering into, and giving effect to, another settlement that provides for the same or similar cultural redress.

6 FINANCIAL AND COMMERCIAL REDRESS

FINANCIAL REDRESS

6.1 The Crown must pay the governance entity on the settlement date $10,400,000, being the financial and commercial redress amount of $13,000,000 less $2,600,000, being the on-account payment to be paid on account of the settlement pursuant to clause 6.2.

ON-ACCOUNT PAYMENT

6.2 Within 10 working days of the date of this deed, the Crown will pay $2,600,000 to the governance entity on account of the financial and commercial redress amount.

DEFERRED SELECTION PROPERTIES

6.3 The governance entity may during the deferred selection period for each deferred selection property, give the Crown a written notice of interest in accordance with paragraph 3.1 of the property redress schedule.

6.4 Part 3 of the property redress schedule provides for the effect of the notice and sets out a process where the property is valued and may be acquired by the governance entity.

6.5 As soon as reasonably practicable after an election notice has been given under paragraph 3.3 of the property redress schedule to purchase a deferred selection property, the Minister for Treaty of Waitangi Negotiations must give notice to the relevant persons in accordance with section 91 of the Moriori Claims Settlement Act 2021 that each property for which the notice has been given, ceases to be shared RFR land for the purposes of that Act.

SETTLEMENT LEGISLATION

6.6 The settlement legislation will, on the terms provided by sections 51 to 55 of the draft settlement bill, enable the transfer of the deferred selection properties.

RIGHT OF FIRST REFUSAL OVER QUOTA

6.7 The Crown agrees to grant to the governance entity a right of first refusal to purchase certain quota as set out in the RFR deed over quota provided for under clauses 6.8 to 6.11 (**RFR deed over quota**).

Delivery by the Crown of a RFR deed over quota

6.8 The Crown must, by or on the settlement date, provide the governance entity with two copies of the RFR deed over quota on the terms and conditions set out in part 8 of the documents schedule and signed by the Crown.

Signing and returning RFR deed over quota by the governance entity

6.9 The governance entity must sign both copies of the RFR deed over quota and return one signed copy to the Crown by no later than 10 working days after the settlement date.

Terms of RFR deed over quota

6.10 The RFR deed over quota will:

6.10.1 relate to the RFR deed over quota area (being the area identified at schedule 1 of part 8 of the documents schedule);

6.10.2 be in force for a period of 50 years from the settlement date; and

6.10.3 have effect from the settlement date as if it had been validly signed by the Crown and the governance entity on that date.

Crown has no obligation to introduce or sell quota

6.11 The Crown and the governance entity acknowledge that:

6.11.1 nothing in this deed, or the RFR deed over quota, requires the Crown to:

(a) purchase any provisional catch history, or other catch rights, under section 37 of the Fisheries Act 1996;

(b) introduce any applicable species (being the species referred to in clause 1 of the RFR deed over quota) into the quota management system (as defined in the RFR deed over quota); or

(c) offer for sale any applicable quota (as defined in the RFR deed over quota) held by the Crown; and

6.11.2 the inclusion of any applicable species (being the species referred to in clause 1 of the RFR deed over quota) in the quota management system may not result in any, or any significant, holdings by the Crown of applicable quota.

SHARED RFR WITH MORIORI

6.12 In clauses 6.13 and 6.14, **RFR date** means 17 February 2025, being the RFR date established under section 89 of the Moriori Claims Settlement Act 2021.

6.13 The governance entity and the trustees of the Moriori Imi Settlement Trust are to have a shared right of first refusal in relation to the shared RFR land, being:

6.13.1 land within the shared RFR area that on the RFR date –

(a) is vested in the Crown; or

(b) the fee simple for which is held by the Crown; and

6.13.2 land listed in part 4 of the attachments as shared RFR land that on the RFR date is held in fee simple by Health New Zealand; and

6.13.3 includes –

(a) land obtained in exchange for a disposal of shared RFR land in the circumstances specified in sections 71(1)(c) or 72 of the draft settlement bill; and

(b) any land that, before the settlement date, was obtained in exchange for a disposal of shared RFR land under section 105(1)(c) or 106 of the Moriori Claims Settlement Act 2021; but:

6.13.4 does not include any land within the meaning of clauses 6.13.1 or 6.13.2, if, on the settlement date, the land –

(i) has ceased to be shared RFR land in any of the circumstances described in section 90(2)(a), (b), (c) or (d) of the Moriori Claims Settlement Act 2021; or

(ii) is subject to a contract formed under section 98 of the Moriori Claims Settlement Act 2021.

6.14 The shared right of first refusal is –

6.14.1 to be on the terms provided by sections 56 to 88 of the draft settlement bill; and

6.14.2 in particular, to apply –

(a) for a term of 179 years from the RFR date; but

(b) only if the shared RFR land is not being disposed of in the circumstances provided by sections 65 to 75 or under a matter referred to in section 76(1) of the draft settlement bill.

6.15 The governance entity may participate in the shared right of first refusal, but only on and from the settlement date.

7 SHARED REDRESS

BACKGROUND

7.1 In this part 7 -

7.1.1 Moriori Deed of Settlement means the deed of settlement as defined in the Moriori Claims Settlement Act 2021; and

7.1.2 shared redress legislation means legislation to give effect to the shared redress.

7.2 Part 7 of the Ngāti Mutunga o Wharekauri agreement in principle and Part 7 of the Moriori Deed of Settlement each -

7.2.1 recorded shared redress on the terms and conditions set out in those documents; and

7.2.2 provided for the mutual intention that Ngāti Mutunga o Wharekauri and Moriori will be party to a shared redress deed between themselves and the Crown.

7.3 This part 7 records further shared redress arrangements.

7.4 The Crown owes Ngāti Mutunga o Wharekauri a duty consistent with the principles of the Treaty of Waitangi to negotiate a shared redress deed in good faith.

7.5 The Crown intends to work with Ngāti Mutunga o Wharekauri and Moriori to give effect to the proposal set out in clauses 7.13 and 7.14.

7.6 The parties acknowledge while the Crown is negotiating a shared redress deed in good faith, the Crown is not in breach of this deed if a shared redress deed is not agreed by Ngāti Mutunga o Wharekauri, Moriori and the Crown.

7.7 As recorded in clause 7.10 of the Moriori Deed of Settlement, the Crown acknowledges that the transfer of the shared redress properties for any purpose other than as shared redress for Ngāti Mutunga o Wharekauri and Moriori would be inconsistent with both clauses 7.4 and 7.5, unless alternative arrangements are otherwise agreed by the Crown, Ngāti Mutunga o Wharekauri, and Moriori.

7.8 Clause 7.8 and 7.9 of the Moriori Deed of Settlement provide that if the parties had not signed the shared redress deed by certain timeframes, the Crown would -

7.8.1 consider if there are other ways to give effect to the redress in clauses 7.5 and 7.6 of the Moriori Deed of Settlement (being the shared redress reflected in clauses 7.13.1, 7.13.2 and 7.13.5 of this part 7); and

7.8.2 explore other ways to establish the management board and joint planning committee in clause 7.7 of the Moriori Deed of Settlement (being the shared

redress reflected in clauses 7.13.3 and 7.13.4 of this part 7), while still providing for Moriori and Ngāti Mutunga o Wharekauri representation and participation.

7.9 The timeframes in clauses 7.8 and 7.9 of the Moriori Deed of Settlement have passed. Therefore, and as a result of the consequential Crown commitments noted above, a shared redress deed [has been/will be] negotiated by Ngāti Mutunga o Wharekauri, Moriori and the Crown (with each party participating to the extent they wish to do so).

7.10 The shared redress deed will be entered into concurrently or shortly after this deed and will provide for:

7.10.1 receipt of shared redress properties for both Moriori and Ngāti Mutunga o Wharekauri;

7.10.2 representation and participation for Moriori and Ngāti Mutunga o Wharekauri on the joint planning committee and Te Whanga Management Board and enable these entities to be formed and operate (even in the absence of any one party);

7.10.3 participation of the Crown and the Chatham Islands Council in the entities described in clause 7.10.2 as agreed;

7.10.4 Ngāti Mutunga o Wharekauri, Moriori and the Crown to sign the shared redress deed;

7.10.5 the Crown to introduce legislation (the shared redress legislation), after the shared redress deed has been signed by the Crown and at least one of the other parties;

7.10.6 accession by any party that has not previously signed; and

7.10.7 the shared redress legislation to give effect to the shared redress so long as the Crown and at least one of the other parties have signed, and/or acceded to, the shared redress deed.

7.11 The shared redress legislation will provide for all matters for which legislation is required to give effect to the shared redress deed.

7.12 In the event of any conflict in terms between this part 7 and the shared redress deed, the shared redress deed prevails.

SHARED REDRESS VIA SHARED REDRESS LEGISLATION

7.13 The shared redress deed and shared redress legislation, on the basis of, and subject to the terms and conditions in the agreement in principle, will provide for -

7.13.1 the following properties to be vested in undivided equal shares in the governance entity and the trustees of the Moriori Imi Settlement Trust as tenants in common, and to be administered by Te Whanga Management Board:

(a) Te Whanga Lagoon and related sites, the bed of the Lagoon in fee simple;

(b) Site 110, ex Wharekauri Station, in fee simple;

(c) Site 111, ex Wharekauri Station, in fee simple;

(d) Site 112, ex Wharekauri Station, in fee simple;

(e) Site 113, ex Wharekauri Station, in fee simple;

(f) Site 114, ex Wharekauri Station, in fee simple;

7.13.2 the following properties to be vested in undivided equal shares in the governance entity and the trustees of the Moriori Imi Settlement Trust as tenants in common:

(a) Tikitiki Hill Conservation Area – white house (land and buildings), in fee simple, subject to there being no historic values to be protected;

(b) Tikitiki Hill Conservation Area – southern site, in fee simple, subject to a lease in favour of the Crown;

(c) Tikitiki Hill Conservation Area – paddocks, in fee simple;

(d) Tikitiki Hill Conservation Area – conical hill, in fee simple, as a reserve; and

7.13.3 the establishment of a permanent statutory board whose purpose is to coordinate and oversee the delivery of management for Te Whanga Lagoon comprising representatives of the governance entity, the Moriori Imi Settlement Trust, the Chatham Islands Council and one appointee of the Minister of Conservation and/or Director-General of Conservation. The functions of the Board will be to:

(a) fulfil the function of the owner of the bed of Te Whanga Lagoon;

(b) implement natural resources policies and plans set by the Joint Planning Committee of the Chatham Islands Council as they relate to Te Whanga Lagoon;

(c) seek opportunities to raise funds and support for the ongoing health and wellbeing of Te Whanga Lagoon;

(d) prepare, approve and implement a natural resources management plan for Te Whanga Lagoon which integrates with conservation and fisheries management; and

(e) take any other action that is considered by the board to be appropriate to achieve its purpose; and

7.13.4 the establishment of a permanent joint planning committee of the Chatham Islands Council, deemed to be a committee under schedule 7 of the Local Government Act 2002. It is intended that:

(a) the committee will comprise four Chatham Islands Council representatives, two Ngati Mutunga o Wharekauri governance entity representatives and two Moriori Imi Settlement Trust representatives;

(b) the committee's role will relate to resource management planning processes that affect the Chatham Islands and include recommending to the Chatham Islands Council plan and policy changes that affect the sustainable management of natural and physical resources on the Chatham Islands;

(c) the committee will oversee development of the single resource management document as required by the Chatham Islands Council Act 1995;

(d) the Chatham Islands Council retains final decision making powers; and

(e) shared redress legislation will be used to ensure the committee is permanent and to define its role and procedures; and

7.13.5 the sale and leaseback of the Kaingaroa School site (land only) as a [commercial redress / deferred selection] property. Such redress would be subject to equivalent terms and conditions as those relating to school sites in both agreements in principle.

7.14 The shared redress deed and shared redress legislation will also provide for the recognition of certain names of features as official geographic names.

*[**Drafting note**: the text of clauses 7.8 to 7.14 will be finalised post initialling of the deed of settlement, and may be subject to change as the shared redress deed and shared redress legislation is developed].*

8 NGĀ TURE - SETTLEMENT LEGISLATION, CONDITIONS, AND TERMINATION

SETTLEMENT LEGISLATION

8.1 The Crown must propose the draft settlement bill for introduction to the House of Representatives.

8.2 The settlement legislation will provide for all matters for which legislation is required to give effect to this deed of settlement.

8.3 The settlement legislation will provide that the [governance entity] is not a trust constituted in respect of:

8.3.1 any Māori land for the purposes of section 236(1)(b) of Te Ture Whenua Māori Act 1993; or

8.3.2 any general land owned by Māori for the purposes of section 236(1)(a) of Te Ture Whenua Māori Act 1993.

8.4 The draft settlement bill proposed for introduction to the House of Representatives –

8.4.1 must comply with the drafting standards and conventions of the Parliamentary Counsel Office for Government Bills, as well as the requirements of the Legislature under Standing Orders, Speakers' Rulings, and conventions; and

8.4.2 must be in a form that is satisfactory to Ngāti Mutunga o Wharekauri and the Crown.

8.5 Ngāti Mutunga o Wharekauri and the governance entity must support the passage of the draft settlement bill through Parliament.

SETTLEMENT CONDITIONAL

8.6 This deed, and the settlement, are conditional on the settlement legislation coming into force.

8.7 However, the following provisions of this deed are binding on its signing:

8.7.1 clauses 8.5 to 8.7 and clauses 8.11 to 8.14:

8.7.2 [paragraph 1.3, and parts 4 to 7, of the general matters schedule].

DISSOLUTION OF NGĀTI MUTUNGA O WHAREKAURI IWI TRUST

8.8 The settlement legislation will, on the terms provided in sections 90 - 92 of the draft settlement bill, –

8.8.1 dissolve the Ngāti Mutunga o Wharekauri Iwi Trust;

8.8.2 vest the assets and liabilities of the Ngāti Mutunga o Wharekauri Iwi Trust in the governance entity;

8.8.3 provide, to the extent that any assets and liabilities of Ngāti Mutunga o Wharekauri Iwi Trust are held subject to any charitable trusts, that those assets and liabilities vest in and become the assets and liabilities of the governance entity, freed of all charitable trusts, but subject to trusts expressed in the governance entity trust deed;

8.8.4 provide that upon the vesting of the shares in the Ngāti Mutunga o Wharekauri Asset Holding Company Limited of the Ngāti Mutunga o Wharekauri Iwi Trust to the governance entity, to the extent that any asset or liability of the relevant subsidiary is owned or held subject to any charitable purposes -

(a) the asset or liability is freed of those charitable purposes;

(b) the company's constitution is deemed to have been amended to the extent necessary to give effect to clause 8.8.4(a); and

(c) if that company is a tax charity for the purposes of the Inland Revenue Acts, the company ceases to be a tax charity; and

8.8.5 provide for various transitional arrangements in respect of the Ngāti Mutunga o Wharekauri Iwi Trust and relevant subsidiaries, including transitional taxation arrangements.

RECOGNITION OF NEW MANDATED ORGANISATION AND VESTING OF FISHERIES AND AQUACULTURE ASSETS

8.9 In clause 8.10, **mandated organisation** means –

8.9.1 for the purposes of the Maori Fisheries Act 2004, a mandated iwi organisation; and

8.9.2 for the purposes of the Maori Commercial Aquaculture Claims Settlement Act 2004, an iwi aquaculture organisation.

8.10 The settlement legislation will, on the terms provided in sections 93 to 95 of the draft settlement bill, –

8.10.1 recognise that the governance entity is, and is recognised by Te Ohu Kai Moana Trustee Limited as, the new mandated organisation for Ngāti Mutunga o Wharekauri in place of the Ngāti Mutunga o Wharekauri Iwi Trust;

8.10.2 confirm that Ngāti Mutunga o Wharekauri Asset Holding Company Limited is the asset holding company of the governance entity under the Māori Fisheries Act 2004 and the Māori Commercial Aquaculture Claims Settlement Act 2004;

8.10.3 provide that the governance entity's trust deed is approved as if it were approved under section 17 of the Māori Fisheries Act 2004 and section 33 of the Māori Commercial Aquaculture Claims Settlement Act 2004;

8.10.4 provide that Te Ohu Kai Moana Trustee Limited is not liable, and no action may be brought against it, for any act described in this deed of settlement that it does or omits to do, in so far as the act or omission is done or omitted in good faith, and with reasonable cause; and

8.10.5 include other provisions to give better effect to the fact that the governance entity is the new mandated organisation.

EFFECT OF THIS DEED

8.11 This deed –

8.11.1 is "without prejudice" until it becomes unconditional; and

8.11.2 may not be used as evidence in proceedings before, or presented to, the Waitangi Tribunal, any court, or any other judicial body or tribunal.

8.12 Clause 8.11.2 does not exclude the jurisdiction of a court, tribunal, or other judicial body in respect of the interpretation or enforcement of this deed.

TERMINATION

8.13 The Crown or the governance entity may terminate this deed, by notice to the other, if –

8.13.1 the settlement legislation has not come into force within 30 months after the date of this deed; and

8.13.2 the terminating party has given the other party at least 40 working days' notice of an intention to terminate.

8.14 If this deed is terminated in accordance with its provisions –

8.14.1 this deed (and the settlement) are at an end; and

8.14.2 subject to this clause, this deed does not give rise to any rights or obligations; and

8.14.3 this deed remains "without prejudice"; but

8.14.4 the parties intend that the on-account payment is taken into account in any future settlement of the historical claims.

9 GENERAL, DEFINITIONS, AND INTERPRETATION

GENERAL

9.1 The general matters schedule includes provisions in relation to –

9.1.1 the implementation of the settlement; and

9.1.2 the Crown's –

(a) payment of interest in relation to the settlement; and

(b) tax indemnities in relation to redress; and

9.1.3 giving notice under this deed or a settlement document; and

9.1.4 amending this deed.

HISTORICAL CLAIMS

9.2 In this deed, historical claims –

9.2.1 means every claim (whether or not the claim has arisen or been considered, researched, registered, notified, or made by or on the settlement date) that Ngāti Mutunga o Wharekauri, or a representative entity, had at, or at any time before, the settlement date, or may have at any time after the settlement date, and that –

(a) is, or is founded on, a right arising –

(i) from the Treaty of Waitangi or its principles; or

(ii) under legislation; or

(iii) at common law, including aboriginal title or customary law; or

(iv) from fiduciary duty; or

(v) otherwise; and

(b) arises from, or relates to, acts or omissions before 21 September 1992 –

(i) by, or on behalf of, the Crown; or

(ii) by or under legislation; and

9.2.2 includes every claim to the Waitangi Tribunal to which clause 9.2.1 applies that relates exclusively to Ngāti Mutunga o Wharekauri or a representative entity, including the following claims:

(a) Wai 65 – Chatham Islands and Fisheries claim:

(b) Wai 181 – Kekerione No. 1 Hospital Land claim:

(c) Wai 460 – Chatham and Auckland Islands claim:

(d) Wai 1382 – Matarakau Wharekauri Public Works claim:

(e) Wai 2279 – Pamariki Lands; and

(f) Wai 2403 – the Kekerione Land Blocks; and

9.2.3 includes every other claim to the Waitangi Tribunal to which clause 9.2.1 applies, so far as it relates to Ngāti Mutunga o Wharekauri or a representative entity.

9.3 However, historical claims does not include the following claims:

9.3.1 a claim that a member of Ngāti Mutunga o Wharekauri, or a whānau, hapū, or group referred to in clause 9.9.2, may have that is, or is founded on, a right arising as a result of being descended from a tupuna who is not referred to in clause 9.9.1:

9.3.2 a claim that a member of Ngāti Mutunga o Wharekauri, or a whānau, hapū, or group referred to in clause 9.7.2, had or may have as a result of a loss of interest in land in New Zealand, or in the natural or physical resources in that land, if the land is outside the area of interest:

9.3.3 a claim that a representative entity may have to the extent the claim is, or is founded, on a claim referred to in clause 9.3.1.

9.4 To avoid doubt, clause 9.2.1 is not limited by clauses 9.2.2 or 9.2.3.

9.5 To avoid doubt, this settlement does not affect applications by any group for the recognition of customary interests under the Marine and Coastal Area (Takutai Moana) Act 2011.

9.6 To avoid doubt, without limiting clause 4, nothing in this deed or the settlement legislation will:

9.6.1 extinguish or limit any aboriginal title or customary right that Ngāti Mutunga o Wharekauri may have; or

9.6.2 constitute or imply an acknowledgement by the Crown that any aboriginal title, or customary right, exists; or

9.6.3 except as provided in this deed or the settlement legislation affect a right that Ngāti Mutunga o Wharekauri may have, including a right arising –

(a) from te Tiriti o Waitangi/the Treaty of Waitangi or its principles; or

(b) under legislation; or

(c) at common law (including in relation to aboriginal title or customary law); or

(d) from a fiduciary duty; or

(e) otherwise.

9.7 Clause 9.6 does not limit clause 4.3.

NGĀTI MUTUNGA O WHAREKAURI IDENTITY

9.8 Ngāti Mutunga o Wharekauri is an iwi identity that coalesced after the heke of 1835 from Te Whanganui-a-Tara to Wharekauri. At that time, the participants in the heke did not have a single umbrella term describing themselves but would have used a variety of tribal identity names including Ngāti Mutunga, Ngāti Tama, Kekerewai, Ngāti Haumia or the names of their hapū. The roots of those identities are generally closely entwined within the history of northern Taranaki and the information below is provided to indicate the length and depth of that Taranaki back story. While not all heke participants would have identified themselves as Ngāti Mutunga in 1835 and their descendants still cherish their distinctive whakapapa, Mutunga is the eponymous ancestor lending his name to Ngāti Mutunga o Wharekauri and therefore the origins of Ngāti Mutunga also provide a very important part of the background to Ngāti Mutunga o Wharekauri. The text below is taken from the Preface to the Ngāti Mutunga Deed of Settlement (2005) and is used with the permission of the Ngāti Mutunga.

The Origins of Ngāti Mutunga

9.8.1 According to Ngāti Mutunga tradition, Ngāti Mutunga descends from a number of ancestors who lived in the area occupied today by ngā uri o ngā tūpuna o Ngāti Mutunga. These ancestors include Tokauri, Tokatea, Mihirau, Heruika, Pūrakino, Rakaupounamu, Uenuku (son of Ruawahia), Hineweo, Hinenō, Te Hihiotū, Kahukura and Mutunga. Ngāti Mutunga also descends from ancestors who arrived on the Tokomaru, Tahatuna and Ōkoki waka such as Taitaawaro, Manaia and Ngānganarūrū. Over generations the descendants of these tupuna intermarried and became generally known as Ngāti Mutunga:

Tokauri

(a) Tokauri was a man of great mana and resided in the Urenui district. He married Hinemangi and from this union came Tokatea and Te Kawatūmoana. The descendants of Tokauri occupied the rohe of Ngāti Mutunga. Tokauri is acknowledged in the pepeha "*Kua marara ngā uri o*

Tokauri ki te whenua" (the descendants of Tokauri are spread throughout the land). Tokauri was one of the original ancestors of the Ngāti Mutunga tribe from which ngā uri o ngā tūpuna o Ngāti Mutunga are able to trace descent.

Mihirau

(b) From Tūrangatipua came Tūrangawhenua, then from Tūrangawhenua came Tūrangahine and from Tūrangahine came Mihirau. Mihirau lived in the Mimi district and the traditional name given to the Mimi River was Te Wai o Mihirau. Mihirau was regarded as a woman of mana and is identified as one of the original ancestors of the Ngāti Mutunga tribe. From Mihirau came Mangungu, then from Mangungu came Tūrakatia, then from Turakatia came Te Kaha, from Te Kaha came Tūpohutu and from Tūpohutu came Heruika. Heruika married Pūrakino and from this union came Te Aitanga a Karoro, Te Aitanga a Kahukore, Te Aitanga a Kōpaki and Te Aitanga a Ikapaēarau. Ngāti Mutunga descends from these tūpuna. Heruika lived at Ōkoki Pā and is buried there at Taurangakuku. His house was named Waitarariki. The descendants of Heruika and Pūrakino lived in many kainga at Te Motunui, namely: Te Waipuna, Raranui, Waitoetoe, Te Motunui, Kaiwaru, Ringaringa, Te Araotetaumutu, Te Taumutu, Te Ararata, Puketara, Ngatokorua, Tarainoa, Te Aratotara, Moepo, Te Miro, Te Umuhai, Wharekeikei, Matakanakana, Whatarangi and Te Hakari.

Manaia

(c) Ngāti Mutunga history also records the arrival of the waka Tahatuna commanded by Manaia. Manaia is acknowledged as one of the principal ancestors of Ngāti Mutunga. The area now known as Urenui was named by Manaia after his son Tū-Urenui.

Taitaawaro

(d) The waka Ōkoki arrived at Ngamotu and the captain was Taitaawaro. The Ōkoki fighting Pā perpetuates the Ōkoki canoe. Taitaawaro settled in the Taranaki land area north to Mokau. Taitaawaro's three brothers Paranehu, Tamaki and Pohokura were great explorers. Taitaawaro's descendants became known as Te Tini o Taitaawaro and intermarried with the Te Kāhui Mounga tribes of Taranaki. Ngāti Mutunga trace descent from these ancestors. Pohokura is remembered by the pā that stands at the mouth of the Urenui River that bears his name.

Ngānganarūrū

(e) Ngāti Mutunga history records the arrival of the waka Tokomaru at Mohakatino from the ancestral homeland Hawaiiki. The crew of this waka are recognised as the progenitors of the iwi of Tokomaru being Te Ati Awa, Ngāti Tama, Ngāti Maru and Ngāti Mutunga. Ngāti Mutunga traditions identify an ancestor named Ngānganarūrū, one of the commanders of the canoe, who is acknowledged as one of the principal ancestors of Ngāti Mutunga. Mutunga, the eponymous ancestor, lived 13 generations after Ngānganarūrū.

Mutunga

(f) Mutunga, the son of Hinemoe and Kahukura, was born at Te Kāweka (Urenui) and is acknowledged by Ngāti Mutunga as the paramount and principal identifying ancestor from which nga uri o nga tūpuna o Ngāti Mutunga can trace descent. Mutunga's elder brothers were named Rangimariu, Kokotaua, Tautupane, Tuhikura and Kuramaori. As often happens, the youngest brother was the most prominent member of the family, and gave his name to the tribe.

(g) Mutunga married Te Rerehua and from this union came Tiwhakopu, Angarua, Hinekopa, Hinepūeru and Tūwhareiti. Te Rerehua was the daughter of Hinetuhi and Tūkaitao. Hinetuhi was a descendant of Ruaputahanga and came from Waikato to Mimi, and there married Tūkaitao, the son of Kahuiao. Te Rerehua was the eldest child of this union.

(h) The descendants of Te Rerehua's brother Te Hihiotū, took the name of Ngāti Hinetuhi. Te Hihiotū married Pūngaiti and from this union came Tūmakawerangi, Koreroparae, Tūpito and Te Pokaia. The descendants of Te Hihiotū occupied the Urenui and Kaipikari areas of the Ngāti Mutunga rohe.

NGĀTI MUTUNGA O WHAREKAURI

9.9 In this deed, **Ngāti Mutunga o Wharekauri** means –

9.9.1 the collective group composed of individuals who descend from a tupuna of Ngāti Mutunga o Wharekauri; and

9.9.2 every whānau, hapū, or group to the extent that it is composed of individuals referred to in clause 9.9.1, including:

(a) Ngāti Mutunga, including:

(i) Ngāti Tupawhenua:

(ii) Ngāti Aurutu:

(iii) Ngāti Kura;

(b) Kekerewai:

(c) Ngāti Haumia:

(d) Ngāti Tama; and

9.9.3 every individual referred to in clause 9.9.1.

9.10 For the purposes of clause 9.9.1 –

9.10.1 a person is descended from another person if the first person is descended from the other by –

(a) birth; or

(b) legal adoption; or

(c) Māori customary adoption in accordance with Ngāti Mutunga o Wharekauri's tikanga (customary values and practices); and

9.10.2 **tupuna of Ngāti Mutunga o Wharekauri** means an individual who:

(a) exercised customary rights by virtue of being descended from:

(i) Mutunga, Hinetuhi, Hineweo, Haumia, Whata, Rakaeiora, Tamaariki; or

(ii) a recognised ancestor of any of the groups listed in clause 9.9.2; and

(b) exercised customary rights in relation to the area of interest after 1 November 1842; and

9.10.3 **customary rights** means rights according to tikanga Māori (Māori customary values and practices), including –

(a) rights to occupy land; and

(b) rights in relation to the use of land or other natural or physical resources.

MANDATED NEGOTIATORS AND SIGNATORIES

9.11 In this deed –

9.11.1 **mandated negotiators** means the following individuals:

(a) Thomas McClurg, Wellington, Director, Toroa Strategy Limited; and

(b) Hariroa Ngarangi Daymond, Chatham Islands, Trustee; and

9.11.2 **mandated signatories** means the following individuals:

(a) Monique Croon:

(b) Deena Ngawhata Whaitiri:

(c) Melodie Michaelina Pare Eruera:

(d) Megan Louise Lanauze-King:

(e) John Charles Preece:

(f) Dianne Kay Grennell:

(g) Paula Ann Page:

(h) Thomas McClurg:

(i) Hariroa Ngarangi Daymond.

ADDITIONAL DEFINITIONS

9.12 The defined terms in part 6 of the general matters schedule apply to this deed.

INTERPRETATION

9.13 Part 7 of the general matters schedule applies to the interpretation of this deed.

SIGNED as a deed on [*date*]

SIGNED for and on behalf
of **NGĀTI MUTUNGA O WHAREKAURI**
by
the mandated signatories in the
presence of –

_____
[*name*]

_____
[*name*]

WITNESS

_____

Name:

Occupation:

Address:

SIGNED by [*appropriate signing provisions for the governance entity*] in the presence of –

_____
[*name*]

_____
[*name*]

WITNESS

_____

Name:

Occupation:

Address:

SIGNED for and on behalf of **THE CROWN** by –

The Minister for Treaty of Waitangi Negotiations in the presence of –

_____
Hon [Name]

WITNESS

_____

Name:

Occupation:

Address:

The Minister of Finance (only in relation to the tax indemnities) in the presence of –

_____
Hon [Name]

WITNESS

_____

Name:

Occupation:

Address: