

28 April 2017

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Tēnā koutou

### **Crown settlement offer to Ngāti Mutunga o Wharekauri**

I am pleased to have reached the point in our negotiations where I can make an offer on behalf of the Crown for the settlement of Ngāti Mutunga o Wharekauri historical Tiriti o Waitangi/Treaty of Waitangi claims. This offer remains subject to Cabinet approval.

In my view this offer responds to many of the issues identified and discussed over the course of negotiations. While I acknowledge we have not agreed on some important issues, the negotiation is ongoing and I am hopeful those matters can be resolved in a way that addresses the interests of all parties in a fair and reasonable manner.

### **Redress offered to Ngāti Mutunga o Wharekauri**

Attached to this letter are schedules which set out the Crown offer of redress for the settlement of all Ngāti Mutunga o Wharekauri's historical Tiriti o Waitangi/Treaty of Waitangi claims comprising:

- Crown Apology redress (*Schedule One*);
- Cultural redress (*Schedule Two*); and
- Financial and Commercial redress (*Schedule Three*).

I hope that this offer will lay the groundwork for the re-establishment of a relationship between the Crown and Ngāti Mutunga o Wharekauri based on te Tiriti o Waitangi/the Treaty of Waitangi and its principles, and provide a foundation for the further social, cultural and economic development of Ngāti Mutunga o Wharekauri.

## **Next steps**

If Ngāti Mutunga o Wharekauri accept the Crown offer, the redress will be recorded in an Agreement in Principle, to be agreed and signed by representatives of Ngāti Mutunga o Wharekauri and the Crown. The latest an Agreement in Principle can be signed, given the Minister for Treaty of Waitangi Negotiations availability ahead of the September general election, is 15 August 2017.

As you are aware, Agreements in Principle are subject to the resolution of any overlapping claims, and the Crown's strong preference is for claimant groups to resolve these issues themselves. I am encouraged by the agreements that have been reached between Ngāti Mutunga o Wharekauri and Moriori on customary fisheries, commercial properties and natural resources, and encourage you to continue engagement on outstanding issues. The Crown is willing to provide support for that engagement such as an independent facilitator.

In the interests of moving forward I ask you to provide a formal response to the Crown offer at our next negotiations hui scheduled for 15 or 16 May on Wharekauri. If, after considering the Crown offer, Ngāti Mutunga o Wharekauri wishes to proceed to Agreement in Principle before the general election, we only have until 9 June to further discuss and agree the Crown offer. After 9 June the process for final approval of the Agreement in Principle will be underway and it will not be possible for further negotiation to occur. However, discussions will continue on the Agreement in Principle drafting.

Nāku noa, nā



Dame Fran Wilde DCNZ QSO  
Chief Crown Negotiator

## **SCHEDULE ONE:**

### **CROWN APOLOGY REDRESS**

1. The Crown offers to include in the Deed of Settlement an agreed Historical Account that outlines the historical relationship between the Crown and Ngāti Mutunga o Wharekauri.
2. On the basis of the Historical Account, the Crown will acknowledge in the Deed of Settlement that certain actions or omissions of the Crown breached te Tiriti o Waitangi/the Treaty of Waitangi and its principles, and that these have caused loss, resentment and grief for Ngāti Mutunga o Wharekauri.
3. The Crown will then offer an apology to Ngāti Mutunga o Wharekauri in the Deed of Settlement for the acknowledged breaches of te Tiriti o Waitangi/the Treaty of Waitangi and its principles.
4. Prior to agreeing the Historical Account and initialling a Deed of Settlement, the Crown offers to include the acknowledgements outlined below in the Agreement in Principle. These acknowledgements are provisional and without prejudice, and endeavour to acknowledge as many as possible of the grievances that Ngāti Mutunga o Wharekauri have indicated are significant to them.
5. Feedback is welcome, and it is anticipated that the acknowledgements will be refined in the process of negotiations. Where there is supporting evidence, additional breach acknowledgements will be included where appropriate. Substantive changes to the provisional acknowledgements or new breach acknowledgements will require further ministerial approval.
6. The Crown acknowledgements provided in this offer include three breach acknowledgements and one non-breach acknowledgement. Officials are undertaking research into a potential fourth breach acknowledgement, concerning public works takings.

## **Provisional Crown Acknowledgements**

### *Tangata Whenua*

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

### *The Ten Owner Rule*

2. The Crown acknowledges that:
  - a. 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;
  - b. in 1870 the Native Land Court awarded title to a number of Wharekauri land blocks, each to ten or fewer Ngāti Mutunga o Wharekauri individuals who were able to act as absolute owners, rather than for or on behalf of Ngāti Mutunga o Wharekauri;
  - c. the native land laws did not prevent the alienation of much Ngāti Mutunga o Wharekauri land without the consent of the wider community of rights-holders who were thereby dispossessed of their interests in these lands;
  - d. it did not take effective steps to prevent this dispossession before most of these lands had been alienated; and
  - e. this meant the operation of the native land laws on Wharekauri did not reflect the Crown's obligation to actively protect the interests of Ngāti Mutunga o Wharekauri in lands they may otherwise have wished to retain, and this was a breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

### *The Native Land Laws*

3. 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.

### *The Compulsory Acquisition of Uneconomic Land Interests*

4. The Crown acknowledges that it promoted legislation which, between 1953 and 1974, empowered the Māori Trustee to compulsorily acquire Ngāti Mutunga o Wharekauri interests in lands which the Crown considered uneconomic. This deprived some Ngāti Mutunga o Wharekauri individuals of their tūrangawaewae, further undermined tribal structures, and was a breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

## SCHEDULE TWO:

### CULTURAL REDRESS

The Crown offers the following cultural redress:

#### **Cultural Properties**

##### *Te Whānga Lagoon and related sites*

1. The Crown offers to transfer the fee simple of the bed of Te Whānga Lagoon as tenants in common in equal shares with Moriori subject to the following conditions:
  - a. the title of the bed of Te Whānga Lagoon will be inalienable and its owners will not be able to mortgage or give a security interest in Te Whānga Lagoon;
  - b. the administering body for Te Whānga Lagoon will be the Te Whānga Lagoon Management Board;
  - c. all rights and responsibilities over Te Whānga Lagoon will be held by the Te Whānga Lagoon Management Board; and
  - d. third party rights will be protected and public access maintained.
2. Ownership of the airspace above the water, and the space occupied from time to time by the waters at their highest level without overflowing the banks, is subject to ongoing negotiations.
3. Any liabilities transferring with ownership and/or management will be determined prior to reaching deeds of settlement and is subject to ongoing negotiations.
4. The Crown offers to transfer the fee simple of the following cultural redress sites as tenants in common in equal shares with Moriori to be added to the bed of Te Whānga Lagoon, and therefore subject to the same conditions as the bed of Te Whānga Lagoon:
  - a. site 110, ex Wharekauri Station;
  - b. site 111, ex Wharekauri Station;
  - c. site 112, ex Wharekauri Station;

- d. site 113, ex Wharekauri Station; and
  - e. site 114, ex Wharekauri Station.
5. The Crown offers to appoint the Te Whānga Lagoon Management Board under the Conservation Act 1987 to manage the following marginal strips:
- a. Waikawa Islands Marginal Strip;
  - b. Te Awainanga River – Te Whānga Marginal Strip; and
  - c. Te Whānga Lagoon Marginal Strip (part).

*Other cultural sites*

6. The Crown offers to either transfer the fee simple of, or provide an exclusive Right of First Refusal, over site 106, ex Wharekauri Station.
7. The Crown offers to transfer the fee simple, without conservation encumbrance, of the following cultural redress sites as tenants in common in equal shares with Moriori:
- a. Tikitiki Hill Conservation Area – white house (land and buildings), subject to there being no historic values to be protected;
  - b. Tikitiki Hill Conservation Area – Ministry of Education house area (land only); and
  - c. Tikitiki Hill Conservation Area – paddocks.
8. The Crown offers to transfer the fee simple of the following cultural redress site as tenants in common in equal shares with Moriori, subject to reserve status and an appropriate administering body being agreed with the Crown:
- a. Tikitiki Hill Conservation Area – conical hill.

*Statutory Acknowledgments and Deeds of Recognition*

9. The Crown offers Statutory Acknowledgments and Deeds of Recognition over the following marginal strips:
- a. Pacific Ocean Marginal Strip;
  - b. Pitt Strait Marginal Strip;
  - c. Owenga Marginal Strips;
  - d. Hanson Bay South Marginal Strips;

- e. Waitangi Marginal Strip;
- f. Petre Bay Marginal Strips; and
- g. Lake Huro Marginal Strips.

#### *Statutory Acknowledgments*

10. The Crown offers Statutory Acknowledgments over the following sites:
  - a. Waipaua Conservation Area (grazing leases);
  - b. Waipaua Scenic Reserve;
  - c. Canister Cove Scenic Reserve;
  - d. Rangatira Nature Reserve;
  - e. Mangere Island Nature Reserve; and
  - f. Tikitiki Hill Conservation Area – Department of Conservation staff house and land.

#### *Coastal Statutory Acknowledgment*

11. The Crown offers a Coastal Statutory Acknowledgment over coastal areas of the Chatham Islands.

#### *Memorial*

12. The Crown offers the ability to erect a marker on the Auckland Islands, subject to overlapping claims discussions with Ngāi Tahu.

#### *Cultural property redress subject to conditions*

13. The proposed cultural property redress offer is subject to any specified conditions from the relevant landholding agencies.

### **Relationship Redress**

14. The Crown offers relationship redress with the following agencies:
  - a. Department of Conservation (relationship agreement);
  - b. Ministry of Business, Innovation and Employment (Crown Minerals protocol);
  - c. Ministry for Primary Industries (Primary Industries protocol);
  - d. Ministry for Culture and Heritage (Taonga Tūturu protocol); and

- e. Department of Internal Affairs/Te Papa Tongarewa (letter of commitment with a commitment to explore the proposed joint relationship agreement across cultural agencies).
15. The Crown offers a commitment to explore an arrangement for the natural resources sector agencies<sup>1</sup> to hold an annual joint meeting with Ngāti Mutunga o Wharekauri and Moriori where all parties could discuss issues, upcoming agency consultation and other matters any party wishes to raise.
16. The Crown offers to provide letters of introduction to organisations that are to be identified and agreed prior to initialling a Deed of Settlement.

#### *Relationship redress with the Ministry for Primary Industries*

17. The relationship redress with the Ministry for Primary Industries will take the form of the Primary Industries protocol. The Crown offers to consider including in it a commitment to work with Ngāti Mutunga o Wharekauri and Moriori to better integrate the recreational and commercial sectors with the customary fisheries regime on Wharekauri/Rēkohu/ to give better effect to the Crown's Fisheries Settlement obligations.

### **Geographic Name Changes**

18. The Crown offers to provide for the geographic name changes that have been submitted by Ngāti Mutunga o Wharekauri subject to the agreement of the New Zealand Geographic Board Ngā Pou Taunaha o Aotearoa.

### **Customary fisheries**

#### *Regulations*

19. The Crown offers that the settlement legislation will provide that within 80 business days of settlement date Ngāti Mutunga o Wharekauri, Moriori and the Ministry for Primary Industries will agree a work programme to develop customary non-commercial fishing regulations for the Wharekauri/Rēkohu fisheries area (the whole of the Chatham Islands to 320 kilometres offshore) that will apply to the management of fisheries subject to the Fisheries Act 1996. The regulations will:
- a. make provision for the Ngāti Mutunga o Wharekauri and Moriori post settlement governance entities to appoint kaitiaki that can authorise the taking of fish for customary purposes over the whole of the Wharekauri/Rēkohu fisheries area;

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<sup>1</sup> Ministry for the Environment, Te Puni Kōkiri, Department of Conservation, Land Information New Zealand, Ministry for Primary Industries, Department of Internal Affairs, Ministry for Business Innovation and Employment and the Treasury

- b. require people fishing under customary authorisations to provide information to kaitiaki on location of fishing activities and on the species, quantity and size of fish taken and for this information to be collated and reported to the Ministry for Primary Industries;
- c. revoke regulation 5B of the Fisheries (South-East Area Commercial Fishing) Regulations 1986 under which 15 areas are closed to commercial fishing (rāhui areas) on Wharekauri/Rēkohu, and make provision to re-establish them;
- d. make provision for the post settlement governance entities to recommend to the Minister for Primary Industries bylaws restricting or prohibiting fishing in the 15 rāhui areas that would apply to all fishers; and
- e. make provision for tools to enable the active management of the rāhui areas through the application of the regulations or through any bylaws created under the regulations.

#### *Rāhui areas*

- 20. The Crown offers to explore whether the current location of rāhui areas established under regulation 5B of the Fisheries (South-East Area Commercial Fishing) Regulations 1986 is consistent with the requirements of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 to provide for the special relationship between tangata whenua and those places that are of customary food gathering importance.
- 21. The boundaries of the rāhui areas could be altered and/or new areas created so long as any alterations or new areas do not prevent fishers taking their legal entitlements (as per the requirement for mataitai reserves in the Fisheries (Kaimoana Customary Fishing) Regulations 1998).

#### **Joint Planning Committee**

- 22. The Crown offers to establish a planning committee in legislation comprising Ngāti Mutunga o Wharekauri, Moriori and the Chatham Islands Council. The committee will be deemed to be a committee under schedule 7 of the Local Government Act 2002. Its role will relate to natural resource planning processes that affect the Chatham Islands. It is intended:
  - a. the committee comprise four Chatham Islands Council representatives, two Ngāti Mutunga o Wharekauri representatives and two Moriori representatives;
  - b. the committee's role will relate to natural resource planning processes that affect the Chatham Islands and include recommending to the Chatham

Islands Council plan and policy changes that affect natural resources on the Chatham Islands;

- c. the committee will oversee development of the natural resources plan as required by the Chatham Islands Council Act 1995;
  - d. the Chatham Islands Council retains final decision making powers; and
  - e. settlement legislation will be used to ensure the committee is permanent and define its role and procedures.
23. The detail of the committee, including its terms of reference, roles and membership, will be determined before settlement date.
24. It is expected that the terms of reference will be agreed to at the first committee meeting.
25. The Crown offers a commitment to explore establishment funding for the committee in line with Cabinet guidelines.
26. The Crown's offer to establish a Joint Planning Committee remains subject to Ministerial approval.

#### **Te Whānga Lagoon Management Board**

27. The Crown offers to establish a permanent statutory management board whose purpose is to coordinate and oversee the delivery of management for Te Whānga Lagoon.
28. It is intended the functions of the board are to:
- a. fulfil the functions of owner of the bed of Te Whānga Lagoon;
  - b. implement natural resources policies and plans set by the Joint Planning Committee of the Chatham Islands Council as they relate to Te Whānga Lagoon;
  - c. seek opportunities to raise funds and support for the ongoing health and wellbeing of Te Whānga Lagoon;
  - d. prepare, approve and implement a management plan for Te Whānga 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.

29. The Te Whānga Lagoon Management Board will adopt terms of reference at its first meeting that will set out the procedures that it must operate within. This will be the subject of further negotiations.
30. The Crown commits to exploring membership of the Te Whānga Lagoon Management Board as follows:
  - a. two members appointed by the Ngāti Mutunga o Wharekauri post settlement governance entity;
  - b. two members appointed by the Moriori post settlement governance entity;
  - c. one member appointed by the Chatham Islands Council; and
  - d. one member appointed by the Department of Conservation.
31. The Crown's offer to establish a Joint Planning Committee remains subject to Ministerial approval.

## **SCHEDULE THREE:**

### **FINANCIAL AND COMMERCIAL REDRESS**

The Crown offers the following commercial redress:

#### **Financial Redress**

1. The Crown offers a total financial redress amount of \$9 million plus interest from the date of the Agreement in Principle to the day before the settlement date.

#### **Commercial Properties Redress**

##### *Sale of properties to Chatham Islands Housing Partnership Trust*

2. The Crown offers a commitment to explore the early release and sale of six Treaty Settlement Landbank (Landbank) and Land Information New Zealand (LINZ) properties to the Chatham Islands Housing Partnership Trust (CIHPT);
  - a. Depot and Yard - Waitangi-Tuku Road, Chatham Island (LINZ);
  - b. 4 Meteorological Lane, Chatham Island (House and Workshop) (LINZ);
  - c. 6 Wilson Place, Chatham Island (LINZ);
  - d. 7 Wilson Place, Chatham Island (LINZ);
  - e. 9 Wilson Place, Waitangi, Chatham Island (Landbank); and
  - f. Highet Place, Waitangi, Chatham Island (Landbank).
3. If the sale of the above Landbank and LINZ properties to the CIHPT does not go ahead, the Crown offer Ngāti Mutunga o Wharekauri and Moriori an opportunity to purchase them on settlement date or under deferred selection for a period of one year.

##### *Owenga school*

4. The Landbank property 2151 Waitangi Wharf Owenga Road, Owenga, Chatham Island (the former Owenga School) has been sought by Moriori as cultural redress and the Crown has agreed to explore this. Any transfer will be subject to addressing overlapping claims with Ngāti Mutunga o Wharekauri.

### *Sale and Leaseback Properties*

5. The Crown offers one of the two following sites (land only) for purchase on settlement date or under deferred selection for a period of one year; subject to a lease back to the Crown:
  - a. Kaingaroa School site (land only) Kaingaroa Road, Chatham Island; or
  - b. Pitt Island School site (land only) Glory Road, Pitt Island.

### *Right of First Refusal*

6. The Crown offers a shared Right of First Refusal (**RFR**) with Moriori over specified core Crown properties in the Ngāti Mutunga o Wharekauri area of interest (to be set out in the Agreement in Principle).
7. The RFR will include certain public conservation land held by the Crown on settlement date (to be set out in the Agreement in Principle).
8. The Crown offers to explore the inclusion of Canterbury District Health Board properties on the RFR list subject to further discussion and agreement.

### *Commercial redress subject to conditions*

9. The proposed commercial property redress offer is subject to any specified conditions from the relevant landholding agencies.