



## Departmental Memo

DOCCM: 6917892

**Date:** 11 May 2022

**To:** Mike Slater - Deputy Director General of Conservation

**From:** Kevin O'Connor, Reserves Act Commissioner

**Subject:** **Vesting of Taia Historic Reserve in Hokotehi Moriori Trust – summary and consideration of submissions pursuant to section 26 of the Reserves Act 1977**

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### Executive summary – Whakarāpopoto ā kaiwhakahaere

1. The Minister of Conservation is to make a final decision on the intention to vest Taia Historic Reserve on Rēkohu/Wharekauri/Chatham Island in the Hokotehi Moriori Trust (HMT).
2. The original intention to vest Taia in HMT was premised on the close cultural and historic values for which the land was purchased and protected. The Minister's decision will be the final step in a statutory vesting process under the Reserves Act 1977 which has been underway since 2001.
3. Moriori have been seeking this vesting be finalised for many years.
4. Ngāti Mutunga o Wharekauri (Māori) oppose the vesting of Taia to Moriori.
5. This report recommends that the intended vesting of Taia Historic Reserve in Hokotehi Moriori Trust proceed to completion and that the vesting occur.
6. Moriori demonstrate strong cultural and historic connections to the Historic Reserve.
7. The status of Ngāti Mutunga o Wharekauri as (also) tangata whenua of Rēkohu/Wharekauri/Chatham Island would not be severed through the vesting of the Reserve in Hokotehi Moriori Trust.
8. We are not appraised of sufficient evidence to make determinations on their respective mana whenua status. Yet, the Minister is required to consider the submissions and decide on the vesting application when each other challenges the others' rights. So, ultimately the Minister bears the burden of the problem. The Minister may take some confidence in the Courts' comments that the mana of Ngāti Mutunga could not be given or taken away by the Minister; or their right to enjoy culture be abrogated by the Minister in a vesting of the Taia Historic Reserve in Moriori. Nor was there any

suggestion such a vesting would curtail Ngāti Mutunga's access to the Taia land following any vesting in Moriori, given the statutory public access rights will be maintained.

9. I am not convinced the submissions of Ngāti Mutunga are such that the Reserve should not be vested in Moriori, given the very particular associations at place of Moriori to the rakau momori in particular.
10. It is my view that a vesting of Taia in HMT would be entirely reasonable and would complete the original intention that Taia would be purchased and vested in Moriori.
11. Should the ultimate decision be to vest Taia in HMT, the s 4 rights of Ngāti Mutunga will endure. HMT, as the administering body, would be required to "give effect" to Treaty principles in its administration of the reserve. The "give effect to" language is a strong directive creating firm obligations on those subject to it. This requires more than procedural steps and may extend to requiring substantive outcomes in particular cases.
12. Any decision made on this matter will be closely scrutinised by either iwi or imi, and there are legal and relationship risks that will arise regardless of whether the Minister decides to vest or not.

## I recommend that you ... (Ngā tohutohu)

	Decision
Endorse my recommendation to proceed with the vesting of Taia Historic Reserve in Hokotehi Moriori Trust pursuant to section 26 of the Reserves Act and subject to the terms of conditions of vesting set out in the public notice of intention to vest, September 2003	Yes / <del>Ne</del>
If you endorse my recommendation, forward this paper to the Minister of Conservation so that she can give full consideration to every objection and submission received on the intention to vest the Taia Historic Reserve on Rēkohu/Wharekauri/Chatham Island in Hokotehi Moriori Trust	Yes / <del>Ne</del>



Michael Slater  
DDG Operations  
For Director-General of Conservation

### Purpose – Te aronga

13. This report is prepared by me (with the support of Departmental staff), as designated Commissioner, following the hearing of submissions regarding the intended vesting of Taia Historic Reserve on Rēkohu/Wharekauri/Chatham Island in the Hokotehi Moriori Trust (**HMT**).
14. Its purpose is to support the Minister of Conservation's full consideration of every objection and submission received on the intention to vest the Taia Historic Reserve on Rēkohu/Wharekauri/Chatham Island in HMT, before deciding whether to proceed with the proposed vesting.
15. This report provides a summary and analysis of all submissions received both written and oral.
16. This report includes:
  - Background and context regarding the proposal to vest Taia Historic Reserve in Hokotehi Moriori Trust;
  - A summary of all objections and submissions/comments received and on matters raised by objectors and submitters relevant to the Minister's decision; and
  - My conclusions and recommendations regarding the vesting.

17. I note that any analysis and recommendations that I make as Commissioner do not fetter the Minister's discretion in considering all relevant issues and giving full consideration to every objection and submission.

## **1. Background and context – Te horopaki**

### ***Moriari Settlement of Rēkohu***

18. The Moriari Claims Settlement Bill<sup>1</sup> sets out that Moriari karāpuna (ancestors) were the waina-pono (original inhabitants) of Rēkohu, Rangihaute, Hokoreero (South East Island), and other nearby islands (making up the Chatham Islands). They arrived sometime between 1000 and 1400 CE and all Moriari hokopapa to (are descended from) the founding ancestor Rongomaiwhenua. Moriari developed an egalitarian society where there was little differentiation of rank, and warfare and killing were outlawed. Moriari lived undisturbed for many centuries until their first contact with Pākehā, in 1791.
19. In late 1835, about 900 people of 2 Māori iwi (tribes) sailed on a British ship to Rēkohu after hearing of the islands' attractiveness for settlement and believing Moriari would offer little resistance. The newcomers were welcomed and fed by Moriari in accordance with tikane Moriari (Moriari custom). The newcomers soon began to walk the land. Some Moriari wanted to resist the invaders, but the elders Torea and Tapata urged the people to obey Nunuku's law of peace, arguing that to violate it would be contrary to their ancient beliefs and customs. Upon returning to their villages they were attacked, and many were killed. Māori accounts put the number of Moriari killed in 1835–36 at around 300, or about one-sixth of the population. Those Moriari who survived the invasion were enslaved and forced to do manual labour. Slavery was foreign to and totally at odds with tikane Moriari. In 1842, Rēkohu and the surrounding islands were annexed to New Zealand, as the Chatham Islands<sup>2</sup>.
20. Both Moriari and Ngāti Mutunga have customary and cultural interests to Rēkohu/Wharekauri/Chatham Island.

### ***Ownership of Taia prior to Crown Purchase in 2001***

21. In 1870 the Native Land Court awarded 171,188 acres (comprising 97.3 percent) of land on Rēkohu/Wharekauri/Chatham Island to Ngāti Mutunga. This land included the area known as Taia.
22. At the same time, the Native Land Court awarded Moriari title to blocks comprising 4,100 acres (2.2 percent).

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<sup>1</sup> <https://www.legislation.govt.nz/bill/government/2020/0238/latest/whole.html#LMS238062>

<sup>2</sup> Ibid

23. From 1870 the land has been under various forms of lease and title. In 1974 title for the land was acquired by a Sunday Hough, who was a senior kaumatua of Ngāti Mutunga. In 1987 the land transferred to his son Theodore (Ted) Hough. Members of the Hough family occupied the Taia lands in various capacities for over 100 years.
24. Sunday Hough and Ted Hough appreciated the historic and cultural significance of Taia to Moriori. This recognition led to Sunday Hough subdividing part of his land and transferring 32 ha, which has a number of rākau momori (tree carvings), to the Crown in 1976. It was declared a reserve for scenic purposes in 1979 and then classified as an historic reserve in 1981. It is called “Taia Bush Historic Reserve” and is located in the middle of Taia.
25. In a letter dated May 1988 sent to all residents of Rēkohu/Wharekauri/Chatham Island, Sunday Hough expressed his view that Moriori were tangata whenua of Rēkohu. He said that his efforts were designed to do “*something to preserve some of the history of the Moriori*”.
26. Ted Hough continued his father’s wishes when in 2000 he offered to sell additional land at Taia to the Crown and expressed that it should be protected as a reserve.

### **Proposal to Vest Taia Historic Reserve in Hokotehi Moriori Trust 2001-2022**

#### **Land Purchase**

27. In 2000, Te Kotahi Moriori (now Hokotehi Moriori Trust / HMT) applied to the Ngā Whenua Rāhui Fund and the Nature Heritage Fund for the Crown to purchase Taia for the purpose of establishing a reserve on that land.
28. The Nature Heritage Fund recommended the Crown purchase the land using Nature Heritage Funds, classify it as a historic reserve under the Reserves Act and vest it in Te Kotahi Moriori, subject to certain conditions. The Hon Sandra Lee approved the recommendation from the Nature Heritage fund for the purchase of Taia on 29/11/01; *'99/25 Hough, Taia Property, Chatham Islands (Private) To purchase 1,198 ha of low altitude wetland communities forming a moderately complex wetland coastal ecosystem principally freshwater in character around dune lakes and Te Whanga Lagoon on the Chatham Islands, to be protected as historic reserve under the Reserves Act 1977, to be vested in Te Kotahi Moriori (a unification committee consisting of members of Te Iwi Moriori Trust Board and Moriori Tchakat Henu Association of Rēkohu Trust Inc).* (Attachment 1(A))
29. On this basis, the Crown purchased the land from its owner, Theodore Hough, on 14 December 2001.

#### **Taia Historic Reserve**

30. Following the purchase, Taia was classified Historic Reserve by notice published in the *New Zealand Gazette* in May 2002 for the purpose, outlined in section 18(1) Reserves Act 1977, *of protecting and preserving in perpetuity such places, objects, and natural features, and such things thereon or therein contained as are of historic, archaeological, cultural, educational, and other special interest.*
31. The Reserve consists of 1198 hectares of farm and wetland coastal ecosystems. Historically and culturally, the Reserve is significant to Moriori including being one of

the last remaining areas with intact rākau momori. It contains Moriori urupā and evidence of occupation. It includes a low altitude wetland ecosystem containing high freshwater values and rare and endangered plant species.

32. A map of Taia Historic Reserve is attached as Attachment 1(b).

### ***Vesting process 2001 to 2020***

33. Ngāti Mutunga Wharekauri Iwi Trust (**Ngāti Mutunga**) objected to the Reserve being vested in Moriori from the outset of the proposal. Their reasons stated in a letter dated 5 August 2001 to DOC included a lack of consultation, lack of consideration of Ngāti Mutunga's relationship with the Reserve, use of public funds, and because Treaty settlements had not been negotiated on the Chatham Islands.
34. The purchase of Taia was settled on 25 January 2002, and DOC took steps to implement the intention of the Minister to vest the Reserve in Moriori, including engaging with the relevant Conservation Board and, at the Board's request, publicly notifying the Minister's intention to vest the Reserve in Moriori in November 2003 with submissions closing in January 2004.
35. Despite there being no submissions or objections received to the intention to vest in 2003, the vesting proposal did not proceed at this time and has been subject to continual and substantive delays (over 20 years now). The reasons for the delays include changes in government, changes in policy concerning Crown Māori Relationship instruments, and more recently the legal proceedings brought by the Trustees of the Ngāti Mutunga o Wharekauri Iwi Trust.
36. During this delayed period, HMT has been working with DOC to undertake protection works of the remaining rākau momori and has secured funding to support and carry out this and other restoration and protection work on the Chathams generally, including on public conservation land. The removal of stock and boundary fencing was an initial priority for both DOC and HMT.

### ***Objections to the proposed vesting***

37. Despite not submitting an objection on the original notification of the Minister's intention to vest the reserve in HMT, as time has progressed Ngāti Mutunga has expressed their concerns that any sole vesting in Moriori would be contrary to their status as mana whenua.
38. In 2017 Ngāti Mutunga o Wharekauri Iwi Trust sought a declaratory judgement from the High Court, that such a vesting would undermine their mana whenua and breach their right to property, culture and free movement under the New Zealand Bill of Rights Act 1990. The High Court refused to issue declarations.
39. Ngāti Mutunga appealed the decision to the Court of Appeal. In that Court they also made Treaty of Waitangi (s4 of the Conservation Act 1987) arguments. The Court dismissed the appeal, finding that the evidence as to Ngāti Mutunga's mana whenua status was insufficient, the declaratory procedure was inapt to address questions of mana whenua; and there were no property rights engaged in the dispute for which protection under s 21 of the New Zealand Bill of Rights Act (NZBORA) 1990 was available. Essentially, the Court agreed with the High Court that neither of these were 'property' capable of protection under the NZBORA. The Court considered the

application to be premature and that the Treaty consistency of the proposed vesting could not be assessed until after the Minister had settled the terms and conditions of the vesting.

### ***Re-notification of intention to Vest 2020***

40. Given the time which had elapsed since the initial public notification of the proposed vesting in HMT, in June 2020 the then Minister of Conservation agreed that public notice should be given again.
41. Public Notice was placed in the *New Zealand Herald*, *Dominion Post*, *The Press* and *Otago Daily Times* on 26 September 2020 and on the Department of Conservation website from that date.
42. 214 objections and submissions were received following public notification of the proposal. These comprised 57 objections to vesting, 156 in support of it and 1 submission of qualified support. 22 submitters requested to be heard, including a number who indicated 'depending on location', 'maybe' and 'no but willing to appear if it would be useful'.

### ***Details of Hearings February 2022***

43. Hearing of submissions took place on 9 and 10 February 2022 online, via Microsoft Teams. 10 submissions were heard.
44. The intention was to conduct these hearings *kanohi ki te kanohi* on Rēkohu/Wharekauri/Chatham Island on these dates. However, given the difficulties in getting a date suitable to all submitters and objectors, the uncertainties created by the COVID situation in February 2022 and to ensure that hearings on this matter would not be further delayed, the hearings were moved onto an online format (Microsoft Teams). This still enabled any person who had requested to be heard a *reasonable opportunity of appearing before the Commissioner*.<sup>3</sup>
45. I consider that the hearing of submissions in an online format, given the very particular circumstances, to be reasonable and to not have unduly prejudiced any party.
46. I acknowledge two individual submitters who had requested to be heard declined to be heard via Microsoft Teams, on the basis they preferred to be heard *kanohi ki te kanohi*. I acknowledge comments made by some submitters I did hear from, that the online process felt clumsy and foreign to them, and that the hearing of submissions was not a fair process as some people could not be heard as they wished. I also note

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<sup>3</sup> Reserves Act 1977 s 120 (1)(c) "*where the objector or person or organisation making the submission so requests in his or her or its objection or submission, the Minister or administering body, as the case may be, shall give the objector or that person or organisation a reasonable opportunity of appearing before the Commissioner (in the case of a notice given by the Minister) or, as the case may be, before the administering body or a committee thereof or a person nominated by the administering body in support of his or her or its objection or submission*"

that both Ngāti Mutunga and HMT were represented and gave verbal submissions at the online hearing.

47. I found all submitters that I heard via Microsoft Teams to be articulate and clear, as they spoke in support of their written objections and submissions.
48. On 9 February oral submissions were heard from:
  - Gail Amaru and whānau;
  - Deena Whaitiri;
  - Beth Janes (Tom McClurg in support);
  - Dr David Williams;
  - Ian Barber; and
  - Rick Thorpe.
49. On 10 February verbal submissions were heard from:
  - Tom McClurg on behalf of Ngāti Mutunga o Wharekauri;
  - Chris Griggs on behalf of Hoketehi Morori Trust;
  - Susan Thorpe; and
  - Maui Solomon.
50. Hearing notes prepared by DOC staff and approved by me are attached as Attachment 2.

### ***Taia Site Visit by Hearing Commissioner March 2022***

51. I always intended to visit Taia so that I could see the site first-hand and better understand the historic and cultural connections of the imi and iwi to the historic reserve. It was originally anticipated that I would visit Taia immediately prior to the hearings but the change to an online format and the COVID situation meant that I was not able to visit Taia at this time.
52. On 11 February 2022 (directly after the hearing of submissions) I asked HMT and Ngāti Mutunga if they would like to take me to Taia during my proposed visit dates of 8 – 11 March 2022. HMT responded to my request a week later and offered to take me to Taia.
53. On 7 March I received response from Ngāti Mutunga suggesting they might meet me at Taia, however the following day they advised they could not as there were COVID cases on the Chathams, and so we agreed to a 'virtual' site visit the following week Tuesday 15 March.
54. I visited Taia on 9 March 2022 accompanied by representatives of HMT, two Biodiversity Rangers employed by HMT, and two DOC staff. I was taken to kōpi groves and shown rākau momori which are being actively protected by the actions of HMT and shown the extensive conservation work and investments they have made on the land. It is clear to me that Moriori have a strong and enduring cultural and historical connection to Taia and a strong commitment to protecting the biodiversity values on the land. It is also clear to me that they have, and intend to continue to, exercise their connection and commitment to that land.



55. On the virtual site visit with representatives of Ngāti Mutunga I heard that they have oral history of Māori urupā on Taia (which I also note is recorded in written submissions) and a clear general connection to food gathering at Taia.
56. I heard that for Ngāti Mutunga Taia was no more or no less important to them than the entirety of Wharekauri. They told me their interest and connection over Wharekauri is in entirety. Their analogy was that being asked for specifics regarding Taia, was akin to being asked 'who is your favourite child' and that 'some questions are meaningless and cannot be answered'.

### **Relevant Legislative Provisions**

57. The proposed vesting is subject to the provisions of the Reserves Act 1977 and the Conservation Act 1987.

#### Reserves Act 1977

58. Under section 26(1) of the Reserves Act,  
*For the better carrying out of the purposes of any reserve (not being a government purpose reserve) vested in the Crown, the Minister may, by notice in the Gazette, vest the reserve in any local authority or in any trustees empowered by or under any Act or any other lawful authority, as the case may be, to hold and administer the land and expend money thereon for the particular purpose for which the reserve is classified.*
59. The intention to vest was publicly notified pursuant to section 26(3), which provides the Minister '*shall ...publicly notify the intention to vest*', and '*shall give full consideration to relevant objections and submissions received*'.
60. The rights of objection and making submissions are set out at section 120 of the Reserves Act, which includes at section 120(1)(c) the requirement that submitters and objectors be given a reasonable opportunity of appearing before the Commissioner (in the case of a notice given by the Minister) in support of his or her or its objection or submission.
61. Section 26(2) provides that '*all land so vested shall be held in trust for the particular purpose for which the reserve is classified*' and that the Minister '*may make the vesting subject to special conditions and restrictions*'.
62. Should a reserve be vested in an administering body, section 27 of the Reserves Act contains provisions whereby the vesting of a reserve may be cancelled by the Minister.
63. Section 40 of the Reserves Act outlines the functions of an administering body, which is to administer, manage and control the reserve in accordance with the appropriate provisions of the Act and in terms of its appointment and the means at its disposal, to ensure the use, enjoyment, development, maintenance, protection and preservation, as the case may require, of the reserve for the purpose for which it is classified.
64. Section 41 of the Reserves Act requires an administering body to prepare a management plan for the reserve within five years of its appointment. The plan is then submitted for approval by the Minister of Conservation

## Conservation Act 1987

65. Section 4 of the Conservation Act 1987 is a relevant and mandatory consideration for the Minister on the vesting. It also requires an administering body to *give effect to the principles of the Treaty of Waitangi* in interpreting and administering the conservation legislation, which includes the Reserves Act 1977 (being an Act listed in the First Schedule of the Conservation Act).

## **2. Summary and comment on objections and submissions**

66. The proposed vesting of Taia is clearly a matter of great significance to both imi and iwi.
67. 214 written objections and submissions were received following public notification of the proposal. These were made up of 57 objections to the vesting, 156 submissions in support of it and 1 submission of qualified support.
68. All written submissions have been summarised and attached as Attachment 3. Notes of the hearing of verbal submissions 9 and 10 February are attached as Attachment 2.
69. A full set of complete submissions is available. I draw attention in particular to the formal submissions from HMT and Ngāti Mutunga attached as Attachments 4 and 5 respectively.
70. I have read all submissions and objections received. I consider that all matters raised in written and oral submissions are relevant to the Minister's considerations.
71. To assist the Minister's full consideration of these matters I have grouped these matters into general headings;
- Submissions regarding manawa henu / mana whenua.
  - Submissions regarding historical and cultural associations to Taia.
  - Submissions regarding *suitability of HMT as an administering body and submissions re better carrying out of the purposes of any reserve.*
  - Submissions regarding obligations of the Treaty of Waitangi / Section 4 of the Conservation Act 1987.
  - Submissions regarding the judicial process to date.
72. I provide comment on these matters to assist the Minister's considerations.

### **2.1 Submissions regarding manawa henu / mana whenua <sup>4</sup>**

73. The Reserves Act 1977 defines mana whenua as *customary authority exercised by an iwi or hapu or individual in an identified area.* This statutory definition is helpful and

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<sup>4</sup>Submissions 1, 52, 66, 67, 69-77, 79-83, 94-98, 100, 102, 105-110, 112-125, 130-134, 137, 138, 142-150, 162-164, 167-179, 180-189, 191, 193-199, 201-207, 209-212,

guides but not does not constrain a s4 analysis. Also, I note that the concept of mana whenua on the Chathams could be considered vexed, as Moriori and Ngāti Mutunga have differing views on their respective status, including as mana whenua/ manawa henu and/or tangata whenua/tchakat henu.

74. The historical events of occupation of Rēkohu/Wharekauri/Chatham Island in 1835 by Ngāti Mutunga were summarised by the Waitangi Tribunal in 2001 as follows;<sup>5</sup>

*In 1835, some 900 (of Ngāti Mutunga and Ngāti Tama) in two trips on a British trading brig landed on Rēkohu with guns. Moriori numbered about 1600 as the time. They made no objection and, it seems, were willing to have the newcomers amongst them. Later, the insurgents attacked. Moriori offered no resistance. A peaceful people, with plentiful food and no competitors, Moriori had outlawed warfare centuries before, after parting from mainland Māori and settling on Rēkohu. The rule of peace was described to us as 'Nunuku's law'.*

75. What has been submitted to the Minister, however, are two different views as to whether, as a result of these events, Moriori or Māori today hold manawa henu / mana whenua to Taia.
76. A number of submissions oppose the vesting of Taia Historic Reserve in Hokotehi Moriori Trust on the basis that HMT do not hold mana whenua to Taia. It is submitted by Ngāti Mutunga that the mana whenua of Moriori on Rēkohu/Wharekauri/Chatham Island was effectively extinguished in 1835 by the arrival of Māori and the subsequent killing and enslavement of Moriori by Māori. Accordingly, it is the submission of Ngāti Mutunga, it would be wrong to exclusively vest Taia in Moriori, as tikanga dictates that mana whenua or customary authority lies with Māori.
77. Submissions in support of the vesting submit that the manawa henu (mana whenua) of Moriori was not and could not be extinguished by the actions of Māori. Moriori did not oppose or resist the occupation and conquest by Māori, because it was not the tikane (tikanga) of Moriori to do so. I note here that it is not the view of Moriori – as noted in the Rēkohu report – that they were 'conquered' by Māori, as Moriori held to Nunuka's law and did not engage in combat. Moriori held to their practice of peace and non-resistance. As such they held to their tikane and thus their manawa henu as the original inhabitants of Rēkohu/Wharekauri/Chatham Island.

#### Comment

78. The Waitangi Tribunal, in its Rēkohu report (Wai 64)<sup>6</sup>, expressed the view that 'mana whenua' was an unhelpful nineteenth century innovation that is at odds with cultural

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<sup>5</sup> Rēkohu. A Report on Moriori and Ngāti Mutunga Claims in the Chatham Islands. Wai 64 Waitangi Tribunal Report 2001 s. 1.1.1

<sup>6</sup> Rēkohu – A report on Moriori and Ngāti Mutunga Claims in the Chatham Islands - Wai 64 Waitangi Tribunal Report 2001 **Rēkohu Report**;

integrity, and found this term so problematic in its interpretation/application that it recommended it be removed from legislation<sup>7</sup>. The Waitangi Tribunal found that both Moriori and Ngāti Mutunga are tangata whenua of Rēkohu.

79. I note the statement of the Waitangi Tribunal; *mana is personal to persons or to peoples, and it comes and goes – it is not an institutional power given by history and then entrenched for all time. Were it the case that mana is irretrievably lost by conquest and enslavement, then many tribes, including Ngāti Mutunga, would have no mana today. If it were true that mana went for all time when people were displaced from the land, then most Māori would be without mana today in light of the land losses and the outcome of the wars that followed European colonisation.*<sup>8</sup>
80. The Tribunal also stated; *Adopting a customary approach, we would say that Moriori are tangata whenua of Rēkohu beyond all doubt, and may be described as ‘tangata whenua tuturu ake’ (described as ‘the true tangata whenua’).....We consider, however, that Ngāti Mutunga are also tangata whenua of Rēkohu by virtue of the fact that they have lived there for a long time, have buried their whenua (placenta) and their dead in the land, and now also revere sites that are sacred to them.*<sup>9</sup>
81. At 13.2.4 of the Rēkohu report the Tribunal notes; *Moriori and Maori each have customary authority in their own spheres, for the simple reason that they both exist on Rēkohu and manage their own affairs. The authority is in respect of themselves. The authority over land and seas is with the gods. Moriori and Maori have customary use rights and ancestral associations with the lands and seas.*
82. I note that in 2018 Ngāti Mutunga sought declaratory judgements against the proposed vesting, essentially asserting that if the Minister vests Taia in the Hokotehi Moriori Trust, then she will unreasonably seize its property in breach of s 21 of New Zealand Bill of Rights Act 1990 (NZBORA). In its decision, the High Court found Ngāti Mutunga had failed to satisfy the evidential requirements for issuing the declaration it has sought under s 21 of NZBORA. This is because it has not satisfactorily established its mana whenua over Taia or that any mana whenua it has will be extinguished if the Crown vests Taia in the Hokotehi Moriori Trust.<sup>10</sup>
83. As to the contention of unreasonable seizure of property, the Judge recorded that Ngāti Mutunga had accepted its mana could not be given or taken away by the Minister, so even if their allegation that mana whenua resided with Ngāti Mutunga was accepted, it could not have been seized.<sup>11</sup>

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[https://forms.justice.govt.nz/search/Documents/WT/wt\\_DOC\\_94018669/Wai%2064%2C%20A016.pdf](https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_94018669/Wai%2064%2C%20A016.pdf)

<sup>7</sup> At 1.2.2 (2)

<sup>8</sup> At 2.6.1

<sup>9</sup> At 2.6.1

<sup>10</sup> *Kamo v Minister of Conservation* [2018] NZHC 1983, [2018] NZAR 1334 at [95]

<sup>11</sup> At [77]

84. In relation to the right to enjoy culture, this too could not have been abrogated if the proposal could have no effect on mana whenua.<sup>12</sup>
85. As to freedom of movement, there was no suggestion in the vesting proposal that Ngāti Mutunga’s access to the Taia land would be curtailed following vesting in Moriori.<sup>13</sup> On the contrary, the terms of the Reserves Act required public access to be maintained.<sup>14</sup>
86. Finally, the Judge considered the application was in any event premature. The terms upon which the vesting would take effect had yet to be settled and it could not be known what they might ultimately be until decisions are made in relation to the Ngāti Mutunga submission.<sup>15</sup>
87. Ngāti Mutunga appealed the decision to the Court of Appeal, where they also raised Treaty arguments, including that any such vesting would be contrary to the s4 Conservation Act obligation. Ngāti Mutunga claimed they have a property right as “an inherent part of” its Treaty relationship with the Crown — not the relationship itself.<sup>16</sup>
88. The Court of Appeal, in dismissing the appeal, agreed with the High Court Judge that this is not a case in which the declarations sought should be granted.<sup>17</sup> In relation to the Treaty arguments, the judge considered that whether the proposed vesting in Moriori might be inconsistent with Ngāti Mutunga’s Treaty rights must depend on the terms and conditions of the vesting. Though Ngāti Mutunga did not expressly say so, their argument is essentially that vesting in Moriori on any terms is Treaty-breaching primarily because it is inconsistent with Ngāti Mutunga’s mana whenua.<sup>18</sup>
89. Mana whenua is clearly a vexed and complex issue. The High Court and/or Court of Appeal didn’t make any findings as to whether Ngāti Mutunga had mana whenua over Taia, as it required full affidavit evidence and submissions to make a proper determination. The judge in the Court of Appeal commented that “*these are complex factual questions to be assessed on the evidence against the applicable principles of tikanga Māori, or tikane Moriori, or indeed both. They are certainly not matters capable of resolution on the basis of untested affidavit evidence in an application for declarations.*”<sup>19</sup>

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<sup>12</sup> At [86]

<sup>13</sup> At [92]

<sup>14</sup> Section 18(2)(b)

<sup>15</sup> At [93]

<sup>16</sup> *Kamo v Minister of Conservation* CA519/2018, [2020] NZCA 1 at [20]

<sup>17</sup> At [25]

<sup>18</sup> at [35]

<sup>19</sup> At [27]

90. As such, the difficulty DOC and the Minister have is that they are similarly not appraised of sufficient evidence to make determinations on mana whenua status. Yet, the Minister is required to consider the submissions and decide on the vesting application when each other challenges the others' rights. So, ultimately the Minister bears the burden of the problem, but I believe she can take some confidence in the Courts' comments that Ngāti Mutunga's mana could not be given or taken away by the Minister; or their right to enjoy culture be abrogated by the Minister in a vesting of the Taia Historic Reserve in Moriori. Nor was there any suggestion such a vesting would curtail Ngāti Mutunga's access to the Taia land following any vesting in Moriori, given the statutory public access rights will be maintained.

## **2.2 Submissions regarding cultural and historic associations to Taia**

91. Submissions supporting the vesting of Taia in HMT point out that Taia is of great cultural and historical significance to HMT. The reserve contains Moriori urupā and cultural sites, especially rākau momori kōpi groves. The bones and spirits of ancestors are prized and treasured taonga and Moriori wish to protect them for future generations. The Taia reserve and surrounding landscape is culturally significant to Moriori and important to the preservation of their culture. Moriori consider themselves the traditional guardians of this land and point to the name 'Taia' and the Moriori names of other features in the landscape as evidence of their long association with the reserve.
92. Submissions in support of the vesting note that the cultural and historic significance of Taia to Moriori was recognised and acknowledged by the Crown when the Crown, on application from HMT, purchased Taia in 2001 for the purpose of establishing a historic reserve to protect Moriori cultural sites including rākau momori and wahi tchap'.
93. It is also submitted that if Taia was indeed of cultural significance to Ngāti Mutunga, why did Ngāti Mutunga sell the land in 1886?
94. Written objections by Ngāti Mutunga to the vesting state that Taia was a customary kai collection site and that many features have Māori, rather than Moriori names. There is also believed to be a Ngāti Mutunga urupā within the Taia reserve, although the location is unknown. Objectors write that Ngāti Mutunga has kaitiaki responsibilities under the Treaty for all taonga species, including kōpi trees with rākau momori, and that this right and obligation cannot be held or bestowed by the Crown.
95. Ngāti Mutunga submit that the court proceedings taken by them to prevent the vesting demonstrates Taia's importance to them.

### Comment

96. I consider that HMT have clearly demonstrated the close and significant cultural associations of Moriori to Taia and acknowledge they have also exercised tchiekitanga (guardianship) on this site for a number of years (see points in section 2.3 below *Submissions Regarding Suitability of Hokotehi Moriori Trust as an Administering Body and Better Carrying out of the Purposes of the Reserve*).

97. The Ngāti Mutunga submissions focus primarily on mana whenua (e.g., the events of 1835 and the subsequent Native Land Court allocations) to establish their association with Taia.
98. I have considered the suggestion that if Taia had been of critical cultural importance to Ngāti Mutunga 'they would never have sold it'. I consider this decision made in a different time and context by those individuals cannot be reasonably extrapolated into a conscious and deliberate admission that Taia was, and thus is, of no significance to Ngāti Mutunga. The reasons for the sale at the time are unknown to the Department and were not expanded on in submissions.
99. I acknowledge the view expressed by Ngāti Mutunga that their connection to Taia is entirely encompassed within their connection to Wharekauri as an entirety. On that basis, I understand and appreciate the reluctance on the part of Ngāti Mutunga to articulate 'specifics' in respect of Taia as they have been invited to do so at various times throughout this process <sup>20</sup>.
100. Moriori submissions focus on their significant cultural and historic associations with Taia, including as a place of historic settlement/use, the few remaining groves of rākau momori, and the existence of burial sites amongst the coastal area. These are essentially the historic values for which the land was classified and intended to be vested in Hokotehi Moriori Trust.
101. I am not convinced the submissions of Ngāti Mutunga are such that the Reserve should not be vested in Moriori, given the very particular associations at place of Moriori to the rakau momori in particular.

### **2.3 Submissions Regarding Suitability of Hokotehi Moriori Trust as Administering Body<sup>21</sup> and 'for the Better Carrying out of the purposes of the Reserve' <sup>22</sup>**

102. Submissions in support of the vesting in HMT state that HMT has demonstrated its capacity to actively manage and restore Taia through the Kōpi Advisory group formed with DOC, the 2015 biodiversity management plans for kōpi groves, commissioning an ecological study for a proposed Taia reserve management plan, developing a predator control programme for the wider area, working with DOC to impose rāhui, establishing the wind break filter, planting shelter belts, restoring the house in the

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<sup>20</sup>specifically – letters MOC Barry 2018 and MOC Sage 2019.

<sup>21</sup>Submissions 2,3,4,5,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21,22,24,25,26,27,29,31,32,33,34, 35,36,37,38,39,40,43,44,45,46,47,48,49,53,54,55,56,58,59,61,62,63,64,75,76,78,79,84,85,86,87,88,89,90,91,92,93,94,99,100,103,104,105,106,107,108,109,110,111,112,113,114,115,118,120,121,122,123,126,127,128,129,130,132,134,135,136,139,140,141,151,152,153,154,155,156,157,158,159,160,161,162,163,166,167,179,184,185,186,188,190,192,194,196,199,200,201,203)

<sup>22</sup> Reserves Act 1977 S26(1)

reserve, employing rangers, organising wānanga and developing a global network of experts they can call on for advice on managing the reserve. It is pointed out that HMT have invested considerable resources in exercising tchiekitanga in recognition of the importance of Taia to Moriori.

103. Submissions opposing the vesting state that past expenditure by Moriori on Taia is irrelevant.
104. Submissions in support of the vesting in HMT say that such a vesting would allow Moriori to continue their connection and cultural associations with Taia and enable their people to learn about their hokopapa (whakapapa), and realise tchieki (kaitiaki) of the henu (whenua) on behalf of their karapuna and their future generations. Some consider the Taia reserve to be Moriori's rightful heritage.
105. Objections to the vesting say that exclusive vesting in HMT is not necessary to protect Taia's cultural and natural heritage and are concerned about comments in the vesting information sheet that HMT seeks to 'restore indigenous tāngata whenua rights' and 'restor(e) cultural integrity of the land'. There is concern that HMT is only interested in promoting Moriori's interests.
106. One specific submission expressed that as HMT had proposed an afforestation project in a wetland within the Reserve, without the apparent knowledge of DOC, this demonstrates that HMT are unsuitable to manage the Reserve.

#### Comment

107. The Hokotehi Moriori Trust (HMT) is a tribal trust representing the indigenous Moriori people and is based at Kopinga Marae on Rēkohu.
108. I have read and heard in submissions, and seen for myself, the particular connection that Moriori have to Taia. The land was essentially purchased to protect these values. Moriori have been an active tchiek (kaitiaki) of Taia and have, over the last 20 or so years, worked closely with the Department of Conservation and led management actions on the Reserve to protect and enhance its historic and ecological values.
109. The special connection of Moriori to Taia, in combination with the resources, capacity and capabilities they have access to enables the better carrying out of the purposes of the historic reserve, which is a consideration of the section 26 vesting decision.

#### **2.4 Submissions regarding obligations of the Treaty of Waitangi / Section 4 of the Conservation Act 1987 <sup>23</sup>**

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<sup>23</sup>Submissions 1, 3, 19, 38, 40, 43, 44, 49, 52, 60, 66, 67, 69-77, 79, 80, 82, 83, 94-100, 102, 105-125, 130, 131, 132, 134, 137, 138, 142-150, 162-164, 167-179, 180-189, 191-193, 195, 196, 199, 201, 202, 204-207, 209-212, 217, 218)



110. Section 4 of the Conservation Act 1987<sup>24</sup> requires decisions taken under the Reserves Act 1977 to give effect to the principles of the Treaty of Waitangi.
111. Submissions opposing the vesting in HMT state that Ngāti Mutunga have rights to Taia under Article II of Te Tiriti o Waitangi which are more significant and outweigh those of any other party. The Crown cannot *'reinstate or recognise'* the customary rights of Moriori, it is submitted, without breaching its obligations to, and Te Tiriti rights of, Ngāti Mutunga.
112. Ngāti Mutunga comment specifically that the process regarding the vesting of Taia to date has failed to recognise them as a Treaty Partner. They state that the Crown, including DOC, has demonstrated a biased approach when dealing with iwi on Wharekauri and that the rights and interests of Moriori have received priority attention.
113. Ngāti Mutunga submit that they have been treated 'as any other member of the public' in respect of consultations and that this a breach of the Crown's obligations to them. Ngāti Mutunga (and others) submit that Māori have rights under Article II of Te Tiriti, but Moriori do not, as Wharekauri was under the sovereignty of Ngāti Mutunga when Te Tiriti came into effect.<sup>25</sup>
114. Submissions opposing the proposed vesting say that recognising Moriori's customary rights exclusively (that is – through an exclusive vesting in HMT as is currently proposed) would breach the Crown's Treaty obligations to Ngāti Mutunga as it would fail to recognise customary rights of Māori.
115. An alternative is offered, that the Crown retain Taia and the Department create a management plan with Moriori and Ngāti Mutunga, or alternatively, that the Reserve is jointly vested in both.

### Comment

116. The application of s 4 to statutory decision making was considered in *Ngāi Tahu Maori Trust Board v Director-General of Conservation* [1995] 3 NZLR 553 (CA) (the *Whales* case), and more recently in the 2019 Supreme Court Judgment in *Ngāi Tai Ki Tāmaki Tribal Trust v Minister of Conservation* [2019] 1 NZLR 368 (SC) (*Ngai Tai*).
117. While those cases essentially considered the granting of permits and concessions under the conservation legislation, the findings and comments of the courts do have application in terms of the application of s 4 in statutory decision making more generally.
118. *Ngai Tai* confirmed s 4 is a powerful Treaty clause, not to be narrowly construed; and that Treaty principles, properly considered, allow for an accommodation of interests between the Crown's Article I functions – which include taking steps for the protection and management of the conservation estate in the interests of all New Zealanders -

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<sup>24</sup> S 4 Conservation Act 1987: *Act to give effect to Treaty of Waitangi - This Act shall so be interpreted and administered as to give effect to the principles of the [Treaty of Waitangi](#).*

<sup>25</sup> 1842 in respect of Rēkohu/Wharekauri/Chatham Island

and the protection of Article II interests. Further, in taking steps to protect Article II interests the Crown is not required to go beyond what is reasonable in the circumstances and an unreasonable restraint on the exercise of legitimate Article I functions is, in itself, not consistent with Treaty principles.

119. In applying the relevant statutory and other legal considerations, the Minister (in this case) must apply these considerations in a manner that “so far as possible” gives effect to the principles of the Treaty - as per paragraph [53] of the Ngāi Tai Judgment:

*To this can be added the general requirement that, in applying s 4 to a decision relating to a concession application, DOC must, so far as is possible, apply the relevant statutory and other legal considerations in a manner that gives effect to the relevant principles of the Treaty.*

120. Although the Court’s statement above was limited to concessions, the language of s 4 necessarily points to an exercise in reconciliation as being required, where possible, across the conservation legislation.
121. In considering whether it is reasonable to vest Taia in HMT, the strength of the association of HMT to the purposes for which the land was purchased and protected as Historic Reserve are clearly relevant. The associations of Ngāti Mutunga are also relevant.
122. I note the Waitangi tribunal found that Moriori and Māori each have customary authority in their own spheres<sup>26</sup> and did not accept that there was an absolute right by conquest<sup>27</sup>. The Crown recognises both imi and iwi as tchakat henu/ tangata whenua and has Treaty obligations to both.
123. The original intention to vest Tai in HMT was premised on the close cultural and historic values for which the land was purchased and protected. That is not to discount Ngāti Mutunga’s interests and associations. As the Courts have noted, Ngāti Mutunga’s mana cannot be given or taken away by the Minister; or their right to enjoy culture be abrogated by the Minister in a vesting of the Taia Historic Reserve in Moriori. Nor was there any suggestion such a vesting would curtail Ngāti Mutunga’s access to the Taia land following any vesting in Moriori, given the statutory public access rights will be maintained.
124. It is not just iwi/imi interests involved here, the administering body would need to hold and administer the land for the purposes for which the reserve is classified, being also in the interests of all New Zealanders.
125. I do not accept that the Department has treated Ngāti Mutunga as any other member of the public in respect of the vesting. The Department advised Ngāti Mutunga separately and prior to the re-notification of vesting public notice in 2019, Operations Managers have had meetings with Ngāti Mutunga, and in 2017 the Minister of Conservation specifically requested Ngāti Mutunga provide information about their connection to Taia.

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<sup>26</sup> At p261

<sup>27</sup> At p7

126. In recent years the Department has made considerable effort to communicate with Ngāti Mutunga to understand their views, seek information and inform them of developments in the vesting process. Both the Minister and DOC staff have asked Ngāti Mutunga for information about their connection with the Taia Historic Reserve. Operations Managers have also had meetings with Ngāti Mutunga over the vesting. No information has been provided other than through the public notice process and court proceedings.
127. In respect of submissions that Moriori do not have Article II rights over Taia or anything on it as their interests in Taia pre-date the Treaty, I recommend that this is not accepted. The strength of Moriori interests in Taia have already been addressed; and the Waitangi Tribunal stated that Moriori are beneficiaries of the Treaty and are entitled to separate recognition as a distinct section of the Māori people. In 2016 the Minister for Treaty of Waitangi Negotiations reconfirmed that the Crown recognised HMT as having the mandate to represent Moriori in Treaty negotiations. Moriori and the Crown initialled a Deed of Settlement of Treaty claims in 2019, which confirms they have rights under the Treaty. The Moriori Claims Settlement Act 2021 was passed in November 2021.
128. DOC recognises both Moriori and Ngāti Mutunga as Treaty partners. It has taken steps to act reasonably and in good faith by keeping both imi/iwi informed of developments with this vesting process. Moriori have had an expectation that the reserve will be vested in them since the purchase of the land for the reserve was approved. This, however, does not fetter the Minister's discretion and she must turn her mind to all of the submissions and objections.
129. Consideration of the Treaty principle of active protection is required for Article II interests. However, this is not an absolute obligation, but one qualified by reasonableness and context. As was made clear by the Court of Appeal in the *Whales* case, this is a matter of applying the principles of the Treaty to the facts of the particular case. In the present case, that involves the consideration of the tangata whenua and mana whenua status of both imi and iwi in relation to Taia, the strength of association of imi and iwi interest, whether HMT would be an appropriate body to manage Taia, as well as the other relevant considerations mentioned in this paper.
130. The Treaty principles of partnership and of active protection has seen the Department take steps together with HMT to protect the Moriori urupā and cultural sites, and especially the few remaining rākau momori kōpi groves.
131. Ngāti Mutunga opposes the vesting. Their position could be summarised as that it would be wrong to exclusively vest Taia in Moriori, as tikanga dictates that mana whenua or customary authority lies with Māori.
132. Section 4 of the Conservation Act requires the Minister to properly inform herself of the relevant Treaty interests and to actively protect Treaty interests as is reasonable in the circumstances, but it does not give rise to a right of veto or unreasonable restraints on the administration of the conservation estate in the public interest - that would in itself be inconsistent with Treaty principles. Both the *Whales* and *Ngai Tai* cases rejected the proposition that s 4 Treaty principles could operate as some form of veto over statutory decision-making under the Conservation Act; the principles are more nuanced than that.

133. It is my view that a vesting of Taia in HMT would be entirely reasonable and would complete the original intention that Taia would be purchased and vested in Moriori. That is not to suggest the decision is predetermined but is based on a thorough analysis of the relevant statutory and other considerations.
134. Should the ultimate decision be to vest Taia in HMT, the s 4 rights of Ngāti Mutunga will endure. HMT, as the administering body, would be required to “give effect” to Treaty principles in its administration of the reserve. The “give effect to” language is a strong directive creating firm obligations on those subject to it. This requires more than procedural steps and may extend to requiring substantive outcomes in particular cases.
135. The conflict between iwi and imi concerning this intention to vest is long standing. Essentially, the position of Ngāti Mutunga is that any vesting solely in HMT would undermine their manawhenua. This paper considers the complex and vexed matter of manawhenua in the commentary under the heading at 2.1 above. In short, it is my view that the Minister is not apprised of sufficient evidence nor is this the appropriate format to make declarations as to the respective manawhenua status of iwi and imi. These are matters better explored on a marae than by the Crown in a Ministerial decision. Importantly, neither imi or iwi contend that any determination as to mana whenua would obviate the other layers of customary interests of the other iwi/imi.
136. I note that the High Court in *Ngāti Whātua Ōrākei Trust v Attorney-General* CIV-2015-404-2033 [2022] NZHC 843 recently considered different iwi views on manawhenua, in Justice Palmer’s decision released on 28 April 2022. This case considered the Crown’s proposal to offer land in central Auckland to the Marutūāhu Collective as redress for breaches of the Treaty of Waitangi. Ngāti Whātua Ōrākei’s claim challenged this proposal, arguing that they were the sole mana whenua for the land at issue and it was therefore inappropriate to return the land to other iwi. At the heart of the dispute was whether mana whenua is an exclusive or non-exclusive concept at tikanga.
137. Justice Palmer was satisfied that according to Ngāti Whātua Ōrākei’s own tikanga, they had mana whenua over the land in question. However, he declined to make a declaration that would suggest that the “tikanga, tribal histories and traditions” of other iwi were “subject or inferior to the mana whenua of Ngāti Whātua Ōrākei”. Instead, his Honour recognised that tikanga was unique to each iwi.
138. The same observation could be applied to the unique situation on the Chathams with each iwi/imi having their own views on their respective manawhenua status and each having their own tikanga in this regard.

## **2.5 Submissions Regarding process to date<sup>28</sup>**

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<sup>28</sup>*Submissions* 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 27, 32, 33, 38, 39, 40, 42, 43, 44, 45, 48, 49, 50, 51, 53, 54, 55, 59, 62, 63, 65, 75, 76, 78, 79, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 99, 100, 105, 107, 108, 109, 110, 111, 112, 113, 114, 118, 120, 121, 122, 123, 126, 127, 128, 129, 130, 132,

139. Moriori submit they have a substantive legitimate expectation that Taia will be vested in them, evidenced by a number of undertakings and communications from the Crown starting in 2001, including written assurances from previous Ministers of Conservation<sup>29</sup>.
140. On the basis on these assurances HMT advise they have invested '*countless hours of labour and over a million dollars fulfilling Moriori's ancient role as tchieki of Taia*'<sup>30</sup>
141. Many supporters of the vesting wrote that they were unhappy that the vesting had still not happened when the Crown had intended to vest the reserve in Moriori in 2002. It is felt that the Crown should not bow to pressure to change what was promised. One submitter said that if the proposed vesting in HMT is declined, it will create another grievance.
142. Ngāti Mutunga submit that the outcome of the vesting has been predetermined.

Comment:

143. It is suggested in submissions opposing the vesting in HMT that Sandra Lee as Minister of Conservation did NOT form an intention to vest Taia exclusively in Moriori and that exclusive vesting was a creation of officers of the Department of Conservation. This is incorrect. As noted above, the Hon Sandra Lee approved the recommendation from the Nature Heritage fund for the purchase of Taia on 29/11/01; '*99/25 Hough, Taia Property, Chatham Islands (Private) To purchase 1,198 ha of low altitude wetland communities forming a moderately complex wetland coastal ecosystem principally freshwater in character around dune lakes and Te Whanga Lagoon on the Chatham Islands, to be protected as historic reserve under the Reserves Act 1977, to be vested in Te Kotahi Moriori (a unification committee consisting of members of Te Iwi Moriori Trust Board and Moriori Tchakat Henu Association of Rēkohu Trust Inc).*
144. It is clear from the decades-long correspondence over this issue, that there was an intention for Taia to be vested in HMT.
145. Two separate public notices have been issued calling for submissions and objections to the proposal – one in 2003 (which received no submissions) and another in 2019 (which received 214 submissions).
146. The Minister of Conservation could have proceeded to vest Taia in HMT after the initial public notification in 2003, on the basis that no submissions and objections had been raised. The fact that the Minister did not do so was largely the result of various

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134, 139, 140, 141, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 166, 167-179, 184, 185, 186, 188, 190, 193, 194, 196, 199, 201

<sup>29</sup> Chris Carter 2003, Maggie Barry 2015 and 2017.

<sup>30</sup> Summarised in submissions on behalf of Hokotehi Moriori Trust from Chris Griggs presented at hearing 10 February 2022.

changes in policy around Crown Māori Relationship Instruments, what appears to be changing work priorities within the department, and more recently there have been Court cases taken by Ngāti Mutunga as described above.

147. In respect of the submission of Ngāti Mutunga that the outcome of vesting has been predetermined, the statutory process is not complete until the Minister of Conservation has given her full consideration of the submissions and objections as per s 26(3)(b) of the Reserves Act 1977. The purpose of this report is to support the Minister in her considerations.
148. There are grounds for Moriori to claim a legitimate expectation that the Reserve will be vested in HMT. There has been correspondence from the Department and Ministers over many years indicating that the reserve would be vested in HMT, which HMT have acted on by securing and expending funds on the management of Taia. While there is some merit to their claim of legitimate expectation, the Minister needs to follow the process in the Reserves Act 1987 with an open mind and make a decision based on the section 26 vesting provisions and the information available to her.

### **3. Conclusions and recommendations regarding the vesting**

149. I consider the 3 options available to the Minister of Conservation are:

1. To proceed with the vesting of Taia in HMT pursuant to section 26 of the Reserves Act and subject to existing terms of conditions of vesting set out in the public notice of intention to vest September 2003
2. To proceed with the vesting of Taia in HMT pursuant to section 26 of the Reserves Act and subject to additional conditions of vesting
3. Determine not to proceed with vesting in HMT and consider alternatives.

150. My recommendation is that option 1 is the preferred option, that is - **to proceed with the vesting of Taia in HMT pursuant to section 26 of the Reserves Act and subject to existing terms of conditions of vesting set out in the public notice of intention to vest September 2003.** (Attachment 6)

151. I have come to this view because submissions have confirmed to me that vesting in HMT will enable the better carrying out of the purposes of Taia Historic Reserve as I have set out in section 2.3 above.

152. I consider the cultural and historical connections of Moriori to Taia Historic Reserve to be more strongly demonstrated than those held by Ngāti Mutunga. These connections manifest as active tchiekitanga (kaitiakitanga) of Taia Historic Reserve and have resulted in substantial protection and enhancement by Moriori of the Reserve over the last 20 years.

153. I accept that Ngāti Mutunga have interests in Taia Historic Reserve. However, I am satisfied that the special and unique cultural and historical associations of Moriori to Taia are such that a vesting in HMT is entirely appropriate. As mentioned, the mana of Ngāti Mutunga cannot be given or taken away by the Minister; or their right to enjoy culture be abrogated by the Minister in a vesting of the Taia Historic Reserve in Moriori. In addition, the s 4 rights of Ngāti Mutunga will endure. HMT, as the administering body, will be required to give effect to Treaty principles in its administration of the Reserve.

154. I consider that the interests of Ngāti Mutunga would also need to be recognised in the requirements of the management plan to be prepared pursuant to s41 of the Reserves Act in respect of Taia. The Administering body (in this case, HMT) will be required to take into account the views of Ngāti Mutunga as part of preparation of the Reserve Management Plan they would be required to prepare for the Minister's approval.
155. In respect of this management plan, I note that HMT have drafted a plan and that in 2006 it was notified for public comment on the Chatham Islands. As far as I am aware no submissions were received on this draft plan. Given the passage of time and that the Minister is now aware of particular concerns raised by Ngāti Mutunga, I consider it would be reasonable for the Minister to request that any draft management plan be re-visited and re-advertised for public submission and comment and consideration of submissions prior to the plan being presented to her for approval.
156. The process of preparing the plan, just as with any plan prepared by the Department, would need to demonstrate that reasonable attempts had been made to understand and accommodate the views of all parties and particularly that of tangata whenua (in this case comprising both Moriori and Ngāti Mutunga).
157. Noting that the Minister will be required to approve the management plan pursuant to s 41(1) of the Reserve Act 1987, I consider that it would be reasonable for the Minister to suggest that the management plan consider how the tangata whenua status of both Moriori and Māori be reflected in that plan, for example via;
- Provisions regarding consultation with Ngāti Mutunga before closing any part or parts of the Taia Historic Reserve;
  - Seeking to find practical ways for involving Ngāti Mutunga and the public in the management of the reserve; and
  - Where appropriate, ensure the tangata whenua status of both Moriori and Ngāti Mutunga is reflected in any signage or information regarding the reserve.

### ***Proposed conditions of vesting***

The 2020 proposed conditions of vesting<sup>31</sup> reiterate the provisions of the Reserves Act 1987 in respect of ensuring appropriate public use, enjoyment, development, maintenance, protection and preservation of the reserve, preparation of a Reserve Management Plan to be submitted to the Minister of Conservation for approval, complying with the conditions of vesting and using the means at ( the administering body's) disposal to manage the reserve, and complying with the conditions of vesting. Specific conditions were proposed as follows;

#### *'Proposed Conditions of the vesting*

*Conditions of the vesting are proposed as follows:*

- *The cultural and ecological integrity of Taia is preserved and restored,*
- *No grazing or other farming,*

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<sup>31</sup> Attachment 6

- *Wild animals such as feral cats, feral cattle and pigs and invasive plant species shall be controlled and reduced. Populations of other species including black swans and gamebirds may be maintained if there is evidence of long standing harvest, and subject to appropriate conditions around access and their populations being controlled to levels that do not damage conservation or cultural values,*
- *Access for eco-tourism may be permitted by the Adminstrating Body subject to appropriate conditions,*
- *Vehicle use is restricted to management or other approved purposes,*
- *Open fires are prohibited because of the fire risk,*
- *Public access for purposes consistent with the reserve status will not be unduly restricted*
- *Planting projects to be jointly agreed by HMT and the Department by the Adminstrating Body and the Department of Conservation.*

### **Risk assessment – Aronga tūraru**

158. As noted above, any decision the Minister of Conservation makes in regard to the vesting will be closely scrutinised by either iwi and imi. There are medium to high legal and relationship risks that will arise regardless of whether the Minister decides to vest or not.
159. Given the strength of submissions and concerns from iwi and imi over the past 20 years, it is my view that these risks cannot be eliminated. However, should the Minister accept my recommendation to proceed with Option 1, it would be prudent for the Minister to write to both HMT and Ngāti Mutunga to explain the rationale for her decision, and to provide assurances that the Department is committed to effective engagement with both Moriori and Ngāti Mutunga as a Treaty partner on Rēkohu/Wharekauri/Chatham Islands, and to confirm that the s 4 rights of Ngāti Mutunga will endure over Taia, as the administering body, would be required to “give effect” to Treaty principles in its administration of the reserve.

Kevin O’Connor

13 May 2022



## Attachments – Ngā tāpiritanga

### Attachment 1 – Background and Context

1(a) Minister of Conservation signed approval for purchase, protection and vesting Taia Property Chatham Islands 29/11/2001



Taia MOC Approval  
to purchase protect

<https://doccm.doc.govt.nz/wcc/faces/wccdoc?dDocName=DOC-6986765>

1(b) Map of Taia Historic Reserve



Taia\_Historic\_Reser  
ve\_portrait\_300dpi.p

### Attachment 2 – Hearing Notes



SLM - Reserves Act  
1977 -Vesting -Taia t

<https://doccm.doc.govt.nz/wcc/faces/wccdoc?dDocName=DOC-6925167>

### Attachment 3 – Summary of Written Submissions



Attachment 2  
Proposed vesting Ta

<https://doccm.doc.govt.nz/wcc/faces/wccdoc?dDocName=DOC-6981832>

### Attachment 4 – Submission of Hoketehi Moriori Trust

4(a) Submission from Hokotehi Moriori Trust, 30 October 2020



Submission on Taia  
Vesting 30 October

4(b) Affidavit of James Brent Parker, 21 June 2018



Affidavit of James  
Brent Parker with Ex

4(c) MS08 Letter from Ted Hough, November 2000



MS08 Ltr from Ted  
Hough.pdf

4(d) Affidavit of Thomas Henry Lanauze



Affidavit TH  
Lanauze (004).pdf

4(e) Geoff Walls, Taia Farm Historic Reserve, Ecological Assessment, June 2010



walls.pdf

4(f) Letter from Associate Professor Ian Barber, 30 October 2020



SLM - Reserves Act  
1977 -Vesting - Taia

4(g) Associate Professor Ian Barber, Unpublished Report to Hokotehi Moriori Trust,  
February 2018



Barber report.pdf

**Attachment 5 – Submission Ngāti Mutunga o Wharekauri**

5(a) Letter from Ngāti Mutunga o Wharekauri Iwi Trust, 30 October 2020



Ngati Mutunga o  
Wharekarui Iwi Trus

5(b) Submission from Ngāti Mutunga o Wharekauri Iwi Trust, 27 October 2020



NMoWIT  
Submission - Propos

**Attachment 6 – Background information available Public Notice Intention to Vest  
September 2020 (including proposed conditions of vesting)**



background info  
Taia Vesting 2020 - I