

Hearings on Proposal to Vest the Taia Historic Reserve in the Hokotehi Moriori Trust

The hearings were heard before Kevin O'Connor, as Commissioner under the Reserves Act 1977, via Teams from DOC's Kapiti Wellington office, on the 9th and 10th February 2022.

DOC staff supporting the Commissioner were; Joe Harawira. (Pouwhakahaere), James Hardy (Senior Solicitor), Chris Visser (Statutory Manager) and Dinah Wakelin (Senior SLM Advisor).

A summary of the presentations at the hearing:

Wednesday 9th February 2022

Gail Amaru

Requested that the vesting process not trample on Ngāti Mutunga's mana which has been established in relation to Taia since 1835. DOC is required to give effect to the principles of the Treaty of Waitangi and follow Crown guidelines for engagement with Māori: of informing, consulting and collaborating. Ngāti Mutunga o Wharekauri(NMOW) rangatiratanga and tikanga is not being recognised in this process and is a breach of the Treaty.

Spoke of the close relationships between Moriori and Ngāti Mutunga in previous generations. The Crown through this vesting process is creating divisions where previously the community lived in harmony. If NMOW is not included as part of the vesting, it will create a contemporary Treaty grievance. It will set aside Treaty rights and over 100 years of relationships. Colonial legislation should not be used to decide matters of kaupapa

Vesting needs to be inclusive of NMOW. Joint control of other areas has been agreed through Treaty processes and there could be a similar protocol here. Urge decision take into consideration Māori lore/law as it relates to mana whenua, mana motuhake, te tino rangatiratanga, tikanga and kawa.

Apologies from whānau members who would have liked to be there.

Deena Whaitiri

Supports the NMOW submission opposing the vesting in HMT. Shared her experiences of growing up on Wharekauri where iwi and imi all got along. Her mother urged her to tell the Commissioner that she and her friends carved trees at Hāpūpū so how can anyone determine if the rākau momori are authentic?

Crown action as Treaty partner has divided this small remote community and DOC's vesting process is widening the gap. Ownership of Taia should remain with DOC under joint management which must include Ngāti Mutunga as mana whenua and HMT as tangata whenua.

Expressed concerns over the lengthy vesting process (since 2002) and that the move to a virtual hearing had prevented some from expressing their views. Face to face hearings would have been preferable. Not a fair process if some submitters aren't able to be heard as they so wish.

Hopes the Minister receives sound advice so she can repair the damage which has been done in dividing the community.

Beth Janes (due to technical issues this was read by Tom McClurg)

Supports the Ngāti Mutunga submission. Ngāti Mutunga's mana whenua rights to Wharekauri were established through take raupatu (title by conquest) in 1835. Referred to Hirini Moko Mead's framework for defining mana whenua, which is included in Ngāti Mutunga's submission. Understands this is difficult for people to hear in the 21st century, but that is how mana whenua is established under tikanga. The ringa kaha (force of arms) claim is stronger than that of ancestral rights. Establishment of mana whenua is key when determining relationships with the Crown, particularly under the Treaty.

Ngāti Mutunga was open to other ideas and philosophies eg Christianity. Some supported Parihaka, by sending food, including from Taia, in support. Referred to a story where Henry Hough presented a petition that had been organised by Tommy Solomon, to Maui Pōmare, Minister of Health. Pōmare rebuked Hough for putting Moriori interests ahead of Māori but Hough reminded him that on the Chathams Ngāti Mutunga and Moriori lived and worked together. Spoke of a primary teacher who had questioned her students, who were from a range of backgrounds, about their identity. All identify as Chatham Islanders.

Moriori momori still exist in a large part due to the care of the Ngāti Mutunga people who respect their remains anywhere in the island. No one should fear Ngāti Mutunga having input to the management of the Taia reserve, they have every reason to respect Article II rights. Requires joint care by Ngāti Mutunga and Moriori.

While Ngāti Mutunga has some dissenting voices the Trust has the mandate to speak for the majority.

Dr David Williams

Has visited Taia twice and thinks it is an impressive place which needs to be protected and the most obvious people to do that protection are Moriori. Wants to add oral submissions in addition to the seven points made in his written submission.

Firstly, the Crown acquired the land from a Ngāti Mutunga farmer who explicitly desired that Moriori guardianship of the rākau momori area should be implemented and it's a pity it has taken over 18 years for that desire even to reach this stage.

Secondly, Moriori customary rights remained intact in 1835, in 1870 and remain intact today (read three paragraphs from his submission to the select committee considering the Moriori Treaty claims settlement Bill). The argument that Ngāti Mutunga established mana whenua over Wharekauri through take raupatu, is only valid if tikanga Māori had been the only legal order in place, as it was on mainland NZ prior to colonisation.

However, this is not a historical fact. There was a prior legal order based on tikane Moriori that had been in place for many centuries prior to 1791- the 1st European contact and prior to 1835 contact with Ngāti Mutunga, Ngāti Tama and others. Within the legal order of tikane Moriori there was no concept of take raupatu but rather an absolute prohibition on resorting to force as a legitimate means to settle disputes or alter allocations of land and resources.

This very different historical context has led to a conflict of law situation. The primary factor to be considered is historical priority. If contemporary principles of fairness and justice were in play as well, then a very strong argument could be made that the covenant of Nunuku was the fundamental norm of the prior legal order and that that norm had not been invalidated in

a lawful manner. Therefore, tikane Moriori should be the sole basis for ascertaining indigenous entitlements on Rēkohu to this day.

The Commissioner should recommend to the Minister that the vesting in the HMT proceed.

Ian Barber

Elaborated on his archaeological report that was provided with his written submission.

Archaeological survey and excavation evidence shows the leeward region of northern and eastern Rēkohu is a highly significant cultural landscape for Moriori. It has the greatest number of *in situ* rākau momori. They were once in their 100s but are now in 10s *in situ*. Radio-carbon dating puts them from the early 17th century to 1830s. There is no archaeological indication of non-Moriore settlement before the historic-era pastoralism.

There have been extensive studies since the 19th century which enables recent carvings to be distinguished from authentic ones. Mapping of rākau momori shows a strong association with Moriori middens dated to before 1835 and there is no doubt that the rākau of the Taia region are authentic. It is therefore appropriate to recognise the interest and jurisdiction over that cultural heritage of Moriori and HMT.

Believes that the archaeological evidence and recognition of Moriori cultural heritage should inform not divide the community. Made a comparison with Te Waipounamu and Ngāi Tahu- where there is respect and understanding of their cultural heritage not division within the communities within or adjacent to that cultural heritage.

Rick Thorpe

Had worked on Rēkohu first as a wildlife ranger and more recently on waste diversion.

Emphasised the conservation efforts of HMT generally. That HMT has initiated work in the reserve and brought in massive resources through its networks and charitable status. The wind shelters and other work has had very positive ecological consequences.

Knows from working for DOC how important it is to find a partner who can use meagre conservation funds to generate greater outcomes for reserves. A hallmark of HMT is their inclusive style of working. It invites people from a wide range of backgrounds to contribute ideas to what is possible for the future of the reserve. HMT is the most amazing partner DOC could ever want and would be great managers of the Taia reserve and HMT have the ability to pull in resources to protect its values.

Thursday 10th February 2022

Tom McClurg, Ngāti Mutunga o Wharekauri Trust

Introductory comments mentioning the respect that previous generations of Moriori and Ngāti Mutunga had for each other. Can accept any undertakings given by Ngāti Mutunga o Wharekauri Trust. Would have preferred meeting kanohi ki te kanohi. Issues raised in 2020 submission still stand.

Criticised DOC for not engaging with Ngati Mutunga since they made their submission. Iwi Trust has unwavering support of it is iwi members. Considers the appointment of the Commissioner is proof of DOC's failing as a Treaty partner and that it does not understand its Treaty partnership responsibilities.

On Wharekauri there are overlapping interests of iwi and imi everywhere. Ngāti Mutunga has expressed its rangatiratanga by generally shunning the pursuit of exclusive redress over land.

Referred to Te Arawhiti's "Red Book" guidelines that Treaty settlements should not create further injustices and that the Crown must deal fairly and equitably with all groups. Believes DOC has not adhered to these guidelines and has dismissed contrary views. The process to date has been unfair. The Minister is pre-determined to vest the land in Moriori and that this has not been debated with Ngati Mutunga, nor has there been fair or equitable treatment. If DOC disregards Ngāti Mutunga's views and approves the vesting in HMT it will crystallise a contemporary Treaty grievance. High and Appeal Courts have not found that Ngāti Mutunga does not have mana whenua status or found fault with its core arguments. The way that DOC engages with Ngāti Mutunga's mana whenua status can still be scrutinised by the courts. The draft Ngāti Mutunga Claims Settlement Acknowledgement states that the Crown's 1842 annexation of Wharekauri did not give appropriate recognition to the mana and te tino rangatiratanga of NMOW. There are no significant differences within Maoridom about the meaning of te tino rangatiratanga, mana and mana whenua.

The 1835 conquest ended Moriori authority and supplanted it with te tino rangatiratanga o Ngāti Mutunga, which is secured by the Treaty. Therefore, the Minister cannot proceed to exclusively vest the Taia historic reserve in another iwi against the strong opposition of the iwi which holds tino rangatiratanga and mana whenua over the reserve. If the Minister decides this is not a relevant factor in the vesting decision, she will not be upholding the Crown's sec 4 responsibilities. Any past agreements with HMT cannot justify this breach.

Read the final three paragraphs of their 2020 submission.

Exclusive vesting is a bad idea, serves private interests and breaches s4 and the principles of the Treaty. It has alienated a large portion of the Chatham's community that might otherwise be willing to contribute to preserving the reserve. Could vest Taia equally in iwi/imis as with the Te Whanga lagoon.

Hokotehi Moriori Trust

Introduction by **Maui Solomon**

Vesting should have happened years ago, particularly when there were no objections following the first public notice of the proposal in 2002. Outlined the history of ownership of the land which is covered in their written submission, including criticism of the award of the lands to Ngati Mutunga in 1870 by the Native Land Court and the immediate lease and then sale of the Taia lands 16 years later to a European settlor. Both most recent previous owners were Ngāti Mutunga kaumatua who recognised the importance of the rakau momori and believed the land should come back to Moriori. They took steps such as fencing off and planting pines to protect the rakau momori.

Moriori are the indigenous inhabitants, the first settlers, and have customary rights and their mana intact. Taia lands include an urupa and there are bones throughout the site, some are being exposed in the dune areas.

Moriori approached the Crown to purchase Taia from private ownership to preserve the cultural and spiritual significance to Moriori.

Believes DOC is holding Taia in a fiduciary capacity for Moriori, since the purchase by the Crown in 2000.

Previous Ministers of Conservation had agreed to return Taia to Moriori. The Waitangi Tribunal Report, in its WAI64 Report into the Chatham Islands/Rekohu, considered vesting the land in Moriori to be the right and just thing to do.

Chris Griggs, Hokotehi Moriori Trust

Emphasised that Moriori are a distinct indigenous people with a distinct language and that a s4 analysis needs a different lens on the Chathams for Moriori. Described the history of occupation on the Chathams (covered in written submission). The Crown took no action before late 1850 to deal with Moriori slavery which by that time was unlawful throughout the British empire.

In 1870 the Native Land Court gave particular weight to pre 1840 conquest where it was accompanied by subsequent occupation and awarded over 97% of the Chathams to recently arrived Māori. In Moriori tikane conquest is not recognised as a means of obtaining land rights and they adhered to their own ancient law of peace. Moriori land rights derive from ancestral occupation.

Moriori were left landless with many forced to abandon the island (covered in their Treaty Claims Settlement Act). This is not a matter for debate and is the bedrock on which any other consideration such as the vesting, rests.

Discussed what a vesting is (in written affidavit) and disagrees with comment that the Crown retains the underlying title. The title is conveyed to the Trust although there is a mechanism for the Crown to resume the title if the terms of the trust are not complied with or admin body fails to comply with the Reserves Act.

Agrees with Rick Thorpe that HMT would be a particularly good partner to manage the conservation estate.

Referred to paragraphs 38-59 of HMT hearing submission. Under international law, common law and tikane Moriori, Moriori retained *dominium* or customary title to the land following the 1835 invasion. Under international law tikanga Maori and take raupatu does not replace local customary law ie tikane Moriori. The Wai 64 report applied a tikanga Maori lens and even then, recognised Moriori customary ownership. The Ngāti Mutunga claim for mana whenua status that has been made to the tribunal and the courts has been unsuccessful. The Court of Appeal in the *Kamo* case determined that there was insufficient evidence of Ngati Mutunga having mana whenua status over Taia.

The Sec 4 requirement to give effect to the Treaty principles and in particular, the duty to actively protect the rights of customary owners is important. The conclusion after applying international law and common law is that Moriori are still the customary owners of all Rēkohu and the Article 2 requirement to protect customary rights is owed to Moriori.

Other than mana whenua rights there are three grounds to vest in HMT:

1. Substantive legitimate expectation

- It was the wish of the two previous Ngāti Mutunga owners that the land is managed by Moriori
- The recommendation to the Minister when the land was acquired, included the intention to vest in Moriori trustees and Moriori made the initial application for funding.
- the Crown did not buy Taia to keep itself, but to vest in Moriori.
- Promise: Three Ministers of Conservation have said Taia will be vested in Moriori. The courts have found that such promises can give rise to a substantive legitimate expectation that the vesting will occur.
- Reliance on the Promise: Since 2016, with reliance on a Ministerial assurance, HMT has spent over \$1M on restoration works, including to preserve rākau momori, to restore the house at Taia, and other work (covered in Susan Thorpe's written submission).

2. Cultural Importance to Moriori

- Rākau momori, burial places, middens
- Occupied by Moriori over many generations. Managed kōpi forests.
- No evidence of non-Moriori settlement/recorded sites.
- Work undertaken with DOC to remove and protect some rākau momori, Restoration of ecology.
- Numerous Moriori place names within Taia landscape.

3. Non-Treaty reasons

- Strong community expectation that vesting will occur. 75% of submissions on vesting proposal were in support.
- Vesting in Moriori is a win/win for all Chatham islanders and NZ to ensure extensive work to conserve this important cultural landscape will continue.
- Will preserve public access.
- Will not prevent Ngāti Mutunga exercising kaitiakitanga over any Ngāti Mutunga wahi tapu found.
- Can have mutual respect but joint management would not be acceptable.
- Extremely culturally offensive to Moriori not to receive tchiekitanga over Taia after all these years.

Susan Thorpe

Would have preferred to have hearing at Taia. Wanted to summarise four key points from her submission:

1. The exclusive cultural provenance to Moriori demonstrated through archaeology, rākau momori and place names. Archaeological investigations over many decades (covered in her written submission) have shown a clear association between Moriori middens, tree groves and rākau momori.

Jefferson had recorded 75 engravings in the 1940/50s and Simmons photographed 140 more but today only 12 of the internationally significant rākau momori remain in situ. Recordings of these engravings were made by ethnographers from the 1860s onwards so

while there have been modern marks made on some trees, it is clear there were hundreds of rākau momori pre 1900s.

Also discussed the prevalence of Moriori place names as evidence of early settlement and connection to the land.

2. Background to purchase and vesting.

Emphasised the importance Sunday and Ted Hough placed on Taia going to Moriori to be a Moriori sanctuary.

In her experience as an archaeologist has never seen an instance where there would be sharing of sacred places or urupa. Can think of no situations where this would be tolerated.

3. Hokotehi has a collaborative approach to management. Wants to see the Taia peninsula managed as one landscape, integrating ecological and heritage values. Outlined work and instruments already in place; laser scanning rākau momori with DOC and Otago survey school, kopi advisory group and management plan, commissioned Geoff Walls to write ecological plan, worked with Perception Planning and DOC on a landscape plan for all of Taia, employed biodiversity rangers who have developed a predator-free plan.
4. Described the current work that has been undertaken by Moriori appointed Biodiversity Rangers in the reserve and which has seen significant improvement to the reserve – fencing, fire breaks, wind-break fences, predator control, conservation lab, slow-release fertiliser, vegetation management; as well as other works in the general area including cattle removal.

The gates to Taia have never been locked

The significant delay in the vesting process represents a lost opportunity for further gains. She also noted that DOC's financial contribution to the Taia reserve had reduced over the last two years and its contribution is limited to JM Barber Hapupu reserve.

Maui Solomon

Spoke of his grandfather Tommy Solomon and the times he lived in when Moriori culture had almost been obliterated, including genocide, slavery, and being disallowed to speak the language or to intermarry. Moriori were forced to leave the Chatham Islands after being left virtually landless. Because of the stigma attached, Moriori often hid their identity. 'We are here taking a stand for Moriori'.

The past close relationships between his grandfather, Tommy Solomon and Ngāti Mutunga are irrelevant to vesting proposal.

Any community has its divisions but generally they all get on well. Requested that no weight is given to the notion that vesting will cause a greater division. There is a lot of joint ancestry within the community and while that should lead to mutual respect, there is not a lot of respect for Moriori. During Treaty settlement negotiations there had been a lot of arguments

put forward that the Moriori settlement would lead to civil unrest. Considers this untrue and irrelevant.

It is the expectation of Moriori that there will be an exclusive vesting of Taia in HMT. Moriori have been undertaking their kaitiakitanga responsibility at Taia for the past 10 years, based on this expectation.

The Waitangi tribunal's Wai 64 report concluded that the Native land court got it wrong, had breached the principles of the Treaty and that at least 50% of the land should have gone to Moriori. Under the Moriori Treaty settlement, less than 3% is coming back and if Taia is vested that will be another 1-2% but that this is still such a small percentage. Referred to the Waitangi Tribunal's comments concerning Taia that the Crown is challenged to do what is right and just.

HMT is not prepared to share this sacred landscape containing culturally and spiritually important wāhi tchap'. They have agreed to jointly share elsewhere but not at Taia. Evidence presented clearly supports exclusive vesting. Tchiekitanga or kaitiakitanga are not just words they are actions. It is Moriori who have taken action to preserve Taia because we care about that place, it is sacred to us and has the remains of our ancestors throughout the coastline.

The fact Ngāti Mutunga claim to have conquered Moriori shouldn't be relevant to protecting Moriori historic values in Taia. In considering the Minister's sec.4 (Conservation Act) responsibilities, special weight should be given to the findings of Wai 64 as there has been no other such extensive investigation into the application of the Treaty principles.

Moriori challenge that Ngāti Mutunga ever held mana whenua over Taia. The Native land court was obliged by statute to apply the native custom of the land which was tikane Moriori but it applied Māori tikanga and the concept of take raupatu. Traditionally Māori and Moriori belonged to the land, rather than asserting ownership and the Treaty uses tino rangitiratanga rather than mana whenua. Moriori customary rights have not been extinguished. Manawa henu – we are the heart of the land. There is no traditional concept of ownership.

Vesting does not extinguish any mana whenua claim Ngāti Mutunga might make eg Ngāi Tahu claim mana whenua over all Te Waipounamu, even though they own very little of the rohe. Referred to Appeal court comments on mana whenua and the close kinship between Moriori and Ngāti Mutunga. Although 20% of Moriori also whakapapa to Ngāti Mutunga this should not influence vesting decision.

HMT supports the vesting occurring as soon as possible, which will be doing what is right and just. Moriori have demonstrated enormous patience over twenty years. HMT wants to continue to grow a positive relationship with DOC and develop a mutually respectful relationship with Ngāti Mutunga but there needs to be an honest and just resolution of historical issues and reciprocity of respect, not one iwi trying to dominate.

Concluded with a waiata.