CHAPTER 15

THE CHATHAM ISLANDS

15.1 Principal Data

15.1.1 Estimated total land area for the district

The two main islands within the Chatham Islands group are Chatham Island (approximately 222,399 acres, including Te Whanga Lagoon of almost 40,000 acres) and Pitt Island (approximately 15,635 acres). The principal smaller islands are South East Island (539 acres), Mangere Island (279 acres), Little Mangere, the Castle, the Sisters, the Forty Fours, Star Keys, and the Pyramid.

15.1.2 Total percentage of land in Maori ownership

The total percentage of land in Maori ownership in district 15 was 41 percent in 1890 (as calculated from *Historical Atlas* maps held in the Alexander Turnbull Library) and 11 percent in 1994 (according to evidence held on the record of documents for Wai 64 at the Waitangi Tribunal).

15.1.3 Principal modes of land alienation

The principal mode of land alienation was private purchase under the Native Land Acts.

15.1.4 Population

The population of district 6 was approximately 90 Moriori and 900 Maori in 1840 (estimated figure), 40 Moriori and 148 Maori in 1891 (estimated from census figures), and 10 Moriori and 303 Maori in 1936 (also estimated from census figures).

15.2 Main Geographic Features Relevant to Habitation and Land Use

The group of islands collectively referred to as the Chatham Islands (or 'Rekohu') lie in the southern Pacific Ocean, approximately 700 kilometres east of New Zealand. All the islands, and their outlying reefs and rocks, are volcanic in origin,

constituting the ridge of a submarine mountain known as the East Chatham Rise. Chatham Island rises steeply from the sea as basaltic cliffs along its southern coast. It slopes upward into a table-land, which was covered in a tarahinau forest, with a variety of broadleaf trees, tree ferns, and nikau palms commonly found in the gullies running down to the coast. Further north, the land falls away in a series of small hills and valleys, intersected by rivers and streams. This area was formerly covered in mixed forests.

The centre of the island is flat and is made up of limestone and old sand bars, much of which is overlaid with peat. Trees such as kopi, coprosma, and akeake grow in the better-drained areas. The predominant feature of the centre of the island is Te Whaanga Lagoon, which covers about one-fifth (18,200 ha) of the island's area. The northern coast is mainly low lying schist, topped with dunes and peat and dotted with volcanic cones on the western side.

Pitt Island is less varied in appearance. It slopes from a southern volcanic upland down to a sandstone northern coast.

The islands are situated at the convergence of the warm East Coast current from the north and the cold Southland current. They also lie at the convergence of two wind patterns, the Trade Wind Drift and the West Wind Drift. The combination of these conditions produces the islands' climate and weather, which Michael King describes as 'almost incessant wind, near-constant cloud cover, low sunshine hours, wet winters and humid summers'.[1]

15.3 Main Tribal Groupings

15.3.1 Moriori

The first inhabitants of the Chatham Islands were the *tchakat henu* or Moriori.[2] According to Moriori, the ancestor, Kahu, was the first to sail a canoe to Rekohu from the homeland of Aotea. He found the islands in an unsettled state and joined up the disparate fragments and anchored them in the positions they appear today. Three further canoes followed him back to the homeland, namely Rangihoua and Rangimata, and later Oropuke.

Other accounts refer to two autochthonous ancestors created on the island and resident when Kahu arrived, namely Te Aomarama and Rongomaiwhenua. Their origin is not clear, but the islands are said to have been 'planted' when the first people appeared.

King states that the ancestors of the Moriori are the same people as the ancestors of the New Zealand Maori. He states that they were east Polynesians whose ancestors had entered the Pacific from the region now called South-East Asia and the South China Sea and, after migrating around the Pacific, arrived at New

1. M King, *Moriori: A People Rediscovered*, Auckland, Viking Press, 1989, p 17
2. The term 'Moriori' is said to have been adopted *after* contact with Europeans and Maori and, as with the word 'Maori', means 'normal'. Moriori are not a different 'race' of people as once thought but are an early wave of the same east Polynesian people as Ngati Mutunga and Ngati Tama.

Figure 24: District 15 (the Chatham Islands)

Zealand. Archaeological evidence evinces the final migration of Moriori was from the east coast of the South Island of New Zealand. Estimates of the time of their arrival on the Chatham Islands vary from the ninth to the sixteenth centuries.[3]

In regard to the population distribution on the island, Moriori themselves identified seven tribal districts in 1791, including one in the north-west of Chatham Island (which held about 200 people); two on the western side (containing 330 and 230 respectively); one in the south-east (made up of 360 members); and one more on Pitt (around 300 people). This gave a population density of about 2000 on a total of 266,878 acres of land. The numbers within each settlement are said to have ranged from 10 to 50 people, with each grouping exercising territorial rights over definite tracts of country.

The groupings and location of the Moriori were disrupted following the arrival of Ngati Mutunga and Ngati Tama, and the total disregard they showed towards Moriori and any rights to land they may have held. King describes a process whereby:

> Parties of warriors armed with muskets, clubs and tomahawks, led by their chiefs, walked through Moriori tribal territories and settlements without warning, permission or greeting. If the districts were wanted by the invaders, they curtly informed the inhabitants that their land had been taken and the Moriori living there were now vassals.[4]

In instances where Moriori contested this process, they were slain.

Evidence shows that Moriori were taken as 'slaves'[5] from their traditional places of habitation to the areas that had subsequently been claimed by their 'masters'. It was not until a 'general manumission' (as referred to by King[6]) by the Government in 1863 declaring the end of slavery that Moriori started to re-establish themselves closer to their traditional tribal homes. In some instances, however, Moriori simply settled in the areas where their masters had settled. A census taken in 1864 reveals the distribution of Moriori at that time: 92 were living in the Waitangi and Owenga areas, 25 at Kaingaroa, 9 at Wharekauri, and 6 at Tupuangi.

15.3.2 Maori

Alexander Shand provides an account of Maori occupation on the Chatham Islands, starting from a heke of 540 'Ngatiawa' in 1831. Shand explains that the Ngatiawa who travelled down consisted of members of Ngati Mutunga, Ngati Tama, and Te Kekerewai. The heke started at Taranaki, travelled down the south-western coast of the North Island, and settled for a time around Wellington (some also travelled to the north of the South Island) before leaving for the Chatham Islands in 1835.

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3. King, p 22
4. Ibid, p 60
5. Ballara uses the word 'tangata' for the subjugated groups and war captives on mainland New Zealand: see Angela Ballara, *Iwi*, Wellington, Victoria University Press, in press.
6. King, ch 6, particularly pp 118–122

Shand's published history of Maori occupation on the island mainly identifies three major groupings: namely, Ngati Tama, Ngati Mutunga, and Te Kekerewai.[7] Resident Magistrate Thomas, in his 1864 census, makes a distinction only between Ngati Tama, Ngati Mutunga, and Te Kekerewai.[8] Other hapu identified in addition to these, however, include Ngatiaurutu, Ngatikura, Ngatitupawhenua, and Ngati Haumia. In respect of Te Kekerewai, Tony Walzl identifies evidence of 'the ambivalence of their position' and suggests that, initially, Te Kekerewai were closely linked, probably by descent, to Ngati Mutunga.[9] Over time, however, because of their history and experiences with Ngati Mutunga, a stronger linkage developed with Ngati Tama.

Prior to the *Rodney*'s first voyage, Ngati Tama and Ngati Mutunga chiefs agreed that no land claims to the island would be made until the whole heke had arrived at the island and matters could then be discussed. This, however, did not eventuate. Upon arrival, Ngati Tama set out for Waitangi, Ngati Kura for Otonga, Ngati Tupawhenua for Matarae, and Ngati Haumia for the north of Waitangi.

As stated earlier, the settlement of Otonga was undertaken from Whangaroa by a group of Ngati Mutunga under Te Wharepa. Ngati Mutunga's move into Otonga left other iwi members behind. An account from a land court hearing in 1870 describes how 'the people who had been left behind at Whangaroa had taken possession of land up to the Waitangi river'.[10] Walzl submits that it is likely that it is Ngati Tama who were the people mentioned as being left behind. Ngati Tama were resident in the area of Waitangi until their 'expulsion' by Ngati Mutunga around 1842.[11]

Evidence of the occupation of Maori from Waitangi to Whangaroa is provided in the land court minutes of the 1900 Kekerione hearing.[12] Ngati Haumia were located north of 'Ngati Tama's land'. The boundaries between Ngati Tama and Ngati Haumia were agreed to by both groups. To the east of Ngati Tama's land at Waitangi was the area later to be known as the Te Matarae block. Evidence from the 1870 hearing describes how Te Kekerewai took possession of parts of these lands.

By the time the second group of Maori had arrived, the earlier group had left the Whangaroa area. This second group included a mixture of Ngati Mutunga, Ngati Tama, Kekerewai, and Ngati Haumia. Shand claimed that the latter had no claim to the island nor any rights of their own but lived among their relatives on sufferance.[13]

By this time, the various groups who were located in the vicinity of Whangaroa began to spread into the surrounding countryside with 'competitive results'.[14] In

7. A Shand, 'The Occupation of the Chatham Islands by the Maoris in 1835', *Journal of the Polynesian Society*, 1892, vol 1 (cited in T Walzl, 'Chatham Islands Maori Tribal History to 1870', Wai 64 rod, doc n2, p 14)
8. Walzl, p 14
9. Ibid, p 15
10. Ibid, p 4
11. Ibid, p 5
12. For a more detailed discussion of Maori occupation at this time from Waitangi to Whangaroa, see Walzl, pp 5–6.
13. Shand, p 158 (cited in Walzl, p 7)
14. Walzl, p 7

1868, Pamariki Raumoa described how Ngati Mutunga, shortly after their landing, 'went and cultivated the narrow strips of bush along the coast to Ocean Bay'.[15] Raumoa was later referred to by Resident Magistrate Thomas as being a member of Kekerewai, a section of Ngati Mutunga.[16] This occupation was, however, contested by Piritaka (Pomare's father), described as a member of Ngatikura, another section of Ngati Mutunga. Shand recorded in 1900 that the group who were eventually vanquished from this area later came to be known as Te Kekerewai. He describes how:

> The Kekerewai were driven out of Whangaroa by Toenga's people assisted by the Tupuangi people. Toenga's people were chiefly N[gati] Kura a hapu of N[gati] Mutunga. The Kekerewai people joined their N[gati] Tama friends at Waitangi.[17]

Competition for land around Whangaroa at this time was 'acute'. For example, in 1842 Ngati Tama and Ngati Mutunga fought over the Waitangi area, resulting in the expulsion of Ngati Tama and Te Kekerewai from Waitangi to the north-eastern coast in the vicinity of Kaingaroa. Notwithstanding this departure, the rights of those located in neighbouring areas were apparently not affected.

In late 1842, the population of Maori decreased when Matioro led a colonising expedition of 60 to the Auckland Islands for the purpose of settlement. King states that 30 Moriori were compelled to accompany this group, but it is not clear whether they are included in the 60 or not. It was not until 1856 that word was received at Waitangi that the Auckland Island 'colonists' wanted to return to the Chatham Islands. Approximately 47 returned from the Auckland Islands, described as being 'mostly Maoris', and arrived at Waitangi in February 1856.[18]

During the period from 1860 to 1863, another round of boundary adjustments occurred on the islands. These were described by Shand in 1900.[19] He first describes the setting of the northern boundary of Kekerione as being from 'Te Awahohonu to Kikowhero, thence to the North coast at Waitaha'.[20] The object of the boundary was to separate the Tupuangi people from the Whangaroa people and from Ngati Mutunga. The land to the south of the boundary was described as 'the land of Pomare's section'.[21]

A re-adjustment of the boundary between Otonga and Kekerione occurred around the same time. Thus, the line set at that time was virtually the same as it existed in 1900: namely, from Te Awahau through the island to Te Awatapu. The Kekerione–Te Awapatiki boundary was also set during 1860 to 1863.

15. 30 April 1868, submission of Pamariki Raumoa, coffee claim (Wai 64 rod, doc c3, 8.3), pp 1–2 (cited in Walzl, p 7)
16. Submission of Pamariki Raumoa (cited in Walzl, p 8)
17. Evidence presented by Shand at a Native Land Court hearing on 13 February, 1900, Native Land Court minute book 3, pp 52–53 (cited in Walzl, p 9)
18. King, p 87; D Loveridge, 'The Settlement of the Auckland Islands in the 1840s and 1850s: The Maungahuka Colony, the Enderby Colony and the Crown' (Wai 64 rod, doc j5), pp 44–46
19. 13 February 1900, evidence of Shand, Native Land Court minute book 3, p 50 (cited in Walzl, p 12). Shand states in his evidence that this readjustment of boundaries was the wish of 'the Maories'.
20. Ibid
21. Ibid

15.4 Principal Modes of Land Alienation

15.4.1 Pre-1840 land purchases (including approved old land claims and surplus lands)

There were no pre-1840 land purchases in district 15.

15.4.2 Crown purchases before 1865

Save possibly for the site of the Government offices at Waitangi, there were no Crown purchases before 1865 in district 15.

15.4.3 Pre-emption waiver purchases

There were no pre-emption waiver purchases in district 15.

15.4.4 Confiscations

There were no confiscations in district 15.

15.4.5 Purchases under the Native Lands Acts (Crown and private as indicated)

In preparation for the expected sitting of the Native Land Court in 1870, Chatham Island was surveyed into five large blocks, representing both the territories taken by the five major chiefs in 1835 and the old tribal districts. These blocks came to be known as Kekerione, Te Matarae, Te Awapatiki, Otonga, and Wharekauri.

A Government agent at the time estimated that by 1868 approximately 120,000 acres of land on Chatham Island had been leased to Europeans (approximately 60 percent of the total land area).[22] This was the case for all the blocks from about 1865, with the exception of Otonga, where it seems that no leases had been negotiated prior to the 1870 hearing.

The first Native Land Court sittings on the Chatham Islands, presided over by Judge Rogan, began on 16 June 1870 and lasted 10 days. Claims brought by Maori were generally based on rights of ownership conferred by their 'conquest' in 1834 to 1836. Moriori counterclaims affirmed their original occupation and asserted their mana whenua over the island. Moriori were in fact awarded only 3 percent of the land in the form of occupation reserves, rather than in recognition of ownership.

The main feature of this hearing, at least as far as Ngati Mutunga is concerned, was the application of the '10-owner rule', whereby, in all instances, only 10 or fewer individuals were admitted on the certificates of title for the blocks. In so doing, the court chose not to apply section 23 of the Native Lands Act 1865, whereby lands exceeding 5000 acres could be corporately vested in a tribal group.

22. Henry Halse, 'Report on the Chatham Islands', AJHR, a-4, pp 3–8 (cited in T Wazl, Wai 64 rod, doc i1, p 2)

The evidence given at the 1870 hearing shows that, for all the blocks, the number of claimants exceeded the number allowed in the Crown grant. In places such as Te Matarae and Otonga, those put in the Crown grant were nearly half the number identified as being claimants. Whereas for Kekerione and Wharekauri, the several hundred claimants that were identified in 1870 were represented by only a few names entered on the Crown grants.

(1) *Kekerione block*

Claims to the Kekerione block were the first to be heard, whereby the court awarded 38,352 acres of the block to Maori and 594 acres (for occupation) to Moriori (including the settlements of Hawaruwaru and Rangatira on Te Whaanga Lagoon). Following the 1870 award, much of the block was leased to Europeans.

When the court sat in 1885, a series of subdivision claims were made, totalling 22,000 acres and accounting for more than half the block. Approximately 24 partitions went through the court, with Wi Naera Pomare claiming 10 of these himself. The orders that were initially made at this hearing, however, were not confirmed, because many blocks were in the names of people who were not on the original Crown grant or had not succeeded those on the Crown grant. Subsequently, the partition applications were reheard in March 1887 and orders that were made in favour of the non-grantees were cancelled, Pomare's children instead being admitted to the grant (presumably, therefore, receiving the full 22,000 acres). By 1891, four of the blocks partitioned in 1887, totalling 1800 acres, had been sold to European purchasers.

In February 1894, the court heard claims to the Kekerione block under section 13 of the Native Equitable Owners Act 1886. The claims included some by persons who had previously been awarded blocks within Kekerione in 1885 and had subsequently lost them in 1887. The court found at that hearing that 'the grantees were trustees but an application under section 13 was not the proper method of admitting fresh persons into the title'.[23] Later that year, however, the Native Land Court Act was passed, which amended and consolidated the law relating to the court's operation. And as a result of section 14(10) of this Act, which empowered the court to further inquire into and determine the beneficiaries to any land under an implied trust, and to include their names on the certificate of title, most of the original 1885 grantees had their land returned, with new orders being made in December 1895 (with the exclusion of the Pomare blocks, which had already been awarded to Pomare's children in 1887 and therefore did not come under this section of the 1894 Act).

Another hearing for Kekerione took place at Waitangi on 30 January 1900. One of the issues at that sitting was whether the four original grantees of the Kekerione block were intended to be 'trustees' and, in the event that they were, who else was then able to be added to the title. The court found that the original grantees were trustees only and that other people had interests in the land. Thus, the court

23. Chatham Island minute book 2, p 153 (cited in Walzl, p 13)

announced that it would hear further applications. On 19 March 1900, the court gave its decision and noted that although the Pomare family had possibly obtained more than its fair share of the block, those lands that were being claimed lay outside the jurisdiction of the court. Of the 150 names submitted for consideration, 50 were rejected, leaving a list of beneficial owners of about 103 persons in 43 whanau groups. After hearing all the claims in respect of this block, the court eventually allocated 28 groups 96 shares of the tribal land held. The total land available for relocation by this time was only 9632 acres, and therefore each share in the tribal land represented approximately 100 acres.

Sales of the Kekerione block before 1910 amounted to approximately 4000 acres and were mainly the result of four larger blocks being sold from the Pomare family estate. Up until 1955, there were no further alienations of the Pomare blocks and only 14 percent (less than a third) of the original block had been alienated. This is markedly less in comparison to alienations that had occurred within the other blocks by this time.

In total, an estimated 13,085 acres of the block were alienated from Maori title through private purchases and all but 1374 acres of that total were sold after 1900. An application under the public works legislation resulted in the alienation of a further 72 acres. Some 3593 acres were removed from Maori freehold title under the Maori Affairs Act 1953, and a further 2929 acres were sold by the Maori Trustee. A further 7102 acres were made European land under the Maori Affairs Amendment Act 1967.

Of the original area awarded to the Maori claimants, an estimated 15,449 acres remain in Maori freehold title.

(2) *Te Matarae*

In 1870, the court awarded 6326 acres of the Te Matarae block to Maori and 198 acres to be held in reserve for two individual Moriori. A 21-year lease was subsequently signed on 30 June of that year between the grantees of the Matarae block and Alexander Shand and Felix Arthur Douglas Cox. The lease was for the Matarae block (no 1434), excluding the Whareama Moriori reserve.

By 1893, the interests of the 10 original grantees had been ascertained and nearly the entire block had been partitioned and sold (thereby precluding a re-investigation of the title, which would have been allowed under the 1894 native land legislation). By 1898, even more of the block had been alienated either by sale or by lease to Europeans, with only four blocks remaining in Maori ownership. After 1900, no further subdivisions occurred, although one of the Te Matarae blocks (no 4.5) changed from sole ownership to multiple ownership through several successions.

In summary, some 4414 acres of the block had been alienated through private purchase transactions that occurred in the 1900s, including the reserves originally awarded to Moriori. Almost 1000 acres were alienated under the Maori Affairs Amendment Act 1967. Approximately 201 acres remain in Maori freehold title.

(3) *Te Awapatiki*

In the case of Te Awapatiki, 32,495 acres were awarded to Maori and 1977 acres to Moriori (most of the land was alienated under the Maori Affairs Amendment Act 1967). Soon after the awards were made, part of the block was leased to Thomas Ritchie.

A subdivision claim by Wi Naera Pomare was made on 7 February 1885 and the block was subsequently divided into Te Awapatiki 1a (of 7161 acres) and Te Awapatiki 1b (of 23,544 acres). By 1898, Wi Naera Pomare had passed away and Te Awapatiki 1a was leased to Shand and Cox, while Te Awapatiki 1b was owned by Ronald MacDonald.

Further partitions and subdivisions occurred between 1899 and 1915, with parts of the block alienated to Europeans, including N R A Cox and Ernest Day. By 1955, three blocks remained in Maori ownership with no further subdivisions having occurred, although there had been several successions.

In total, nearly 25,000 acres of the block have been alienated through private sale and almost 4357 acres were made European land under the Maori Affairs Amendment Act 1967. Approximately 1111 acres remain in Maori freehold title.

(4) *Otonga*

In the case of Otonga, 39,657 acres were originally awarded to Maori. Moriori were awarded two reserves. One was for 600 acres near Tuku which was alienated through a private transaction in 1943. The other was for 50 acres around the settlement at Waikarepe, which remains in Maori freehold title.[24]

Sales of the block began shortly after the hearing with, for example, part of the interest of one of the grantees, totalling approximately 2000 acres, being acquired by Robert Kerr on 8 April 1876. As a result of the 1887, 1893, and 1894 hearings, the block had been further subdivided into five blocks, and by 1898, much of the area had been sold. By 1900, Otonga had experienced a series of partitions, all of which had gone to the original grantees (under the 10-owner rule) and their successors. All the Otonga blocks experienced some partitioning and subdividing, which eventually led to sales to Europeans.

By 1936, comparatively little land remained in Maori ownership. From 1937, it appears there were no further subdivisions in the remaining Maori-owned Otonga blocks, although by now several had become multiply owned, with interests in some being vested with the Maori Trustee, such as those in Otonga 1e12 in 1962.

As a result of further private transactions, approximately 28,767 acres had been alienated by 1953. Nearly 8000 acres were converted to 'general land' under the Maori Affairs Amendment Act 1967, leaving approximately 2100 acres in Maori freehold title.

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24. See B Mikaere and J Ford, 'A Preliminary Report to the Waitangi Tribunal on the Claims Relating to the Chatham Islands', report commissioned by the Waitangi Tribunal (Wai 64 rod, doc a8), for these figures.

(5) *Wharekauri*

The court had awarded the entire Wharekauri block to the Maori claimants. However, two reserves were promised to Moriori: 49 acres at Te Whakaru and 593 acres around Wairua.[25]

Purchases of the block began after the 1870 sitting with, for example, Thomas Ritchie acquiring the interests of two grantees of over 1000 acres of the block. At a sitting of the court in September 1881 (which was presided over by Resident Magistrate Samuel Deighton), a succession claim was brought by Riwai Te Ropiha and Hirawanu Tapu for the 50-acre block set aside as Wharekauri 3. The claim was based solely on ancestry, and succession was eventually awarded to both. A further five subdivisions also occurred over the period between 1885 and 1887.

The block was inquired into under equitable owners' provisions at the March 1900 sitting. The court was informed at this sitting that, of the 10 original grantees, six had already disposed of what amounted to a large part of the block. It was later revealed that these interests added up to 25,000 acres, which, by that time, lay outside the court's jurisdiction because it had already been sold. The court, therefore, heard claims to the two substantial strips of land that they still had jurisdiction over (about 13,300 acres and 6670 acres) and awarded 2100 acres to the new claimants with the remainder going to the successors of the original four claimants. The 12 blocks eventually awarded became known as Wharekauri 1g to Wharekauri 1s.

By 1936, there had been very few further partitions within the Wharekauri Maori blocks, the primary exception being Wharekauri 1g, which had been subdivided into 10 blocks. Of these, three had been sold and three had been leased to Europeans, with the remainder used for settlement purposes. Between 1937 and 1955, Wharekauri 1g was subjected to further partitions and, along with Wharekauri 1a, was also subject to survey liens. Most of the other Wharekauri blocks remaining became multiply owned, a trend which continued through to the 1960s.

In total, about 83 percent of the block had been alienated by 1955. Of this, approximately 17,572 acres had been alienated by nine private sales that occurred between 1897 and 1916, and 177 acres had become European land under the Maori Affairs Act 1953. Almost 8500 acres had been converted to 'general land' under the Maori Affairs Amendment Act 1967. The remaining 6001 acres have been retained by Maori under Maori freehold title.

(6) *Summary*

In total, 148,651 acres had been under claim at the 1870 sitting. Maori had been awarded approximately 144,599 acres and Moriori approximately 4053 acres. In almost every case, Maori had retained land suitable for grazing and leasing, while the bulk of Moriori land was forests or wetlands. Of the total area first awarded to

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25. It should be noted that the Mikaere and Ford report, from which the information in this section relating to the alienation of the Wharekauri block has been drawn, states that 'Maori Land Court records do not exist for approximately 28,833 acres of the Wharekauri block, [therefore] making a comprehensive estimation [of alienation] impossible': see Mikaere and Ford, p 52.

Maori, approximately 25,170 acres (approximately 17 percent) are thought to be held as Maori freehold land today.

(7) *Outlying islands*

Moriori claims to Pitt (Rangiauria) and South-East Islands at the 1870 hearing were dismissed because, according to Judge Rogan, their rights had been extinguished by Maori conquest and by the fact that no Moriori had cultivated on either island for at least 20 years. The court therefore awarded Rangiauria (15,630 acres) to Maori. By 1900, 6510 acres (41.65 percent) had been purchased through private transactions. A further 874 acres (5.59 percent) were sold directly by their Maori owners between 1900 and 1990.

Approximately 18 acres of Rangiauria were compulsorily acquired under public works legislation. Some 1098 acres were sold by the Maori Trustee acting as agent for the Maori owners, while 1115 acres were alienated by way of the Maori Affairs Amendment Act 1967. As a result of these alienations, of the 15,630 acres originally awarded by the court, only 50 acres have been retained by Maori, although Maori might still own land declared 'European'.

At a court sitting in 1885, a claim by Hirawanu Tapu, for Moriori, was heard for those outlying islands that had not been specifically dealt with in the 1870 hearing. Motuhara became a test claim for other islands. A counterclaim was lodged by Wi Naera Pomare, who argued that the original Maori claim in 1870 had been for the whole Chathams group of islands and that, since that claim had been successful, these outer islands were also included in the Maori ownership that was determined at that hearing. Deighton agreed that the adjacent islands were included in the 1870 judgment, and the certificate was awarded jointly to Wi Naera Pomare, Mere Naera Pomare, and Piripi Niho.

The Motuhara claim, however, was reheard in a sitting on 10 March 1887. Wi Pomare had since passed away, and therefore Mere Naere, his daughter, was claiming his share on behalf of his children. Judge Samuel Deighton and assessor Tamati Taituhi presided once again, with Alexander Shand as interpreter. The only other speaker in respect of this claim was Hamuera Koteriki; however, he agreed to a joint share with the children. Thus, with no further evidence or opposition to her claim, a certificate was granted jointly in favour of the children of Wi Naera Pomare and Koteriki.

15.4.6 Private purchases, 1900–96

Evidence suggests that approximately 37,161 acres were privately purchased on the Chatham Islands between 1900 and 1996.[26] These purchases came from most of the larger blocks in the district.

26. J Ford, 'A Revised Title History of Land in the Chatham Islands' (Wai 64 rod, doc c6(a), app)

15.4.7 Land taken for public purposes

According to Buddy Mikaere and Janine Ford, almost all public works alienations occurred in the Kekerione block, from which an estimated 73 acres were taken.[27] Mikaere and Ford also refer to approximately 18 acres compulsorily taken from Rangiauria under the Public Works Act 1928.[28]

15.5 Outcomes for Main Tribes in the Area

In 1907, a Government survey officer reported the state of landholdings on the Chatham Islands. He noted that 93,413 acres had been sold to Europeans (this total included sales on Pitt Island and sales of Moriori land). Of the five blocks belonging to Maori on the main island, approximately 75,000 acres had been sold, leaving 97,604 acres in Maori hands. Of this, 38,692 acres had been leased.[29]

In terms of Maori involvement in the economy of the Chathams, Walzl notes that from the turn of the century Maori sought to be involved in sheep farming, although this was hampered by the fact that, for many, the use of their land was restricted to being near subsistence level. Through to the 1950s, those with small land holdings or poorer quality land could only make a marginal living from the land. Maori sheep flock sizes did not come near to the flock size held by other farmers.[30]

A 1949 report noted that, of the 175,000 acres (excluding Pitt Island and Te Whanga Lagoon), 85,000 acres had been sold to Europeans. Of the 90,000 acres in Maori ownership, 9000 acres were leased to Europeans.[31] In 1961, it was noted that Maori still held 76,857 acres, with 36,122 acres of it being leased to Europeans.[32]

A 1972 report on the economy of the Chatham Islands concluded that the Native Land Court process had conferred land rights on so many Maori that:

> some of the Wharekauri block and most of the rich Kekerione block (from Port Hutt to Waitangi) were fragmented into small uneconomic units. To make matters worse the surveyors strove to ensure that even the smallest blocks should have, wherever possible, both sea and lagoon frontages. Consequently, previous grazing leases over much of the best farming land were subdivided into narrow, undersized strips expensive to farm and fence.[33]

Furthermore, large areas of land remained undeveloped, with approximately 100 titles with 1200 individual owners and much of the land occupied by part owners or relatives of part owners. Many of the blocks were too small to be self-supporting and were scattered widely over much of the main island. This fragmentation and

27. Mikaere and Ford, p 53
28. Ibid, p 59
29. Ibid, p 36
30. T Walzl (Wai 64 rod, doc k15), pp 75–76
31. Ibid, p 41
32. Ibid
33. Ibid, p 36

occupation meant there was only limited potential to introduce large-scale development.

The Native Land Court's investigation of title in 1870 saw only 4100 acres awarded to Moriori. Approximately 1381 acres were alienated by private sale between 1930 and 1943. An estimated 1516 acres were 'Europeanised' under Part 1 of the Maori Affairs Amendment Act 1967.[34]

15.6 Examples of Treaty Issues Arising

Several claims have been lodged with the Tribunal by Moriori and Maori in respect of the Chatham and outlying islands. In general, the claims concern the legislative measures or acts, omissions, policies, or practices of the Crown that have prejudicially affected the claimants and those on whose behalf they claim. The Treaty issues outlined in the various claims concern land (particularly the alienation of land through the Native Land Court process), fisheries, and resources on or around the Chatham Islands. There were also claims made that deal with issues of 'self-determination' for Maori on the islands.

15.6.1 Land alienation

In a 23 December 1993 amendment to their original statement of claim, the claimants for Wai 64 and Wai 308 alleged that the Crown failed to recognise and protect Moriori customary rights to their lands on Rekohu and outlying islands. In particular, they alleged that the Crown omitted to provide the adequate legislative machinery to guide the Native Land Court in its investigations of claims in respect of Rekohu and that the Crown applied the '1840 rule' (which effectively deprived the claimants of interests in 97 percent of their customary lands), and they complained of the failure of the Native Land Court to correctly apply the customary lore of Moriori in making its determinations in respect of Rekohu and the outlying islands.

The claimants alleged that the Crown failed to protect Moriori rangatiratanga over their lands and that it failed to set aside or make available sufficient land to allow Moriori to establish an adequate economic base for themselves.[35] It is further alleged that the Crown failed to import to Moriori ancestors the rights and privileges of British subjects because, from 1840, Moriori were subjected to a life of 'unremitting enslavement while supposedly under the protection of the Crown'.[36]

It is alleged that the Treaty was breached by the application of the 1840 rule by the Native Land Court in 1870, and the alleged refusal of the Crown to reconsider the land ownership issue after 1870, despite requests by Moriori for it to do so. The claimants submit that the Native Land Court, in making awards of land at the 1870

34. Mikaere and Ford, p 54
35. Gary Alister Solomon for the Moriori Tchaket Henu Association (Wai 308 claimants), 4 September 1992
36. Ibid

hearing based on take raupatu, 'failed to look critically at the efficacy of raupatu as a source of right at 1840 but relied upon occupation since 1840'.[37] The claimants allege, however, that it was during this period that Moriori were denied Treaty protection and that they were, therefore, unfairly prejudiced at the Native Land Court sitting in 1870.

Claimants have also alleged that the Crown failed to give proper statutory guidance to the Native Land Court, failed to ensure that appointments to the court were made on the basis of an understanding of Maori and Moriori tikanga and custom, and failed to intervene in performance of the Treaty guarantee, when it was evident that the application of the 1840 rule, in relation to the Chatham Islands, was not in accordance with the principles of the Treaty of Waitangi.

In regard to the Native Land Court, the claimants asserted that the underlying rationale for the court's decision in 1870 is only valid if one assumes that Moriori had lost all rights at that date. They allege that the court did not explore, in terms of custom, why Moriori rights were not revived when their state of subjugation was lifted or when Maori virtually abandoned the Chathams in 1868. Instead, according to claimants, the 1870 Native Land Court determinations were based upon principles of conquest and evidence of occupation to 1870. Nowhere, they state, is it questioned whether raupatu followed by occupation for only five to seven years was sufficient to displace entirely the rights of tangata whenua who remained on the land.

Thus, in regard to this aspect of their claim, the claimants submit that if Treaty principles had been properly applied:

(a) the tika of the raupatu would have been judged according to Moriori and Maori custom;

(b) the raupatu would have been judged according to the principles of the Treaty and its promise to bring the law and to settle wars that in the post-contact period were outside the range of what had been customary; and

(c) the length of time of the raupatu, unsupported by occupation (since a large number of Maori returned to Taranaki during the 1860s), would not, according to Maori custom, have displaced tangata whenua still on the land. To the extent that Moriori had been enslaved and precluded from exercising rights over their lands since 1835, their reoccupation of those lands (or at least parts thereof) within three generations would, according to Maori custom, have maintained their entitlement.[38]

In general, the claimants for Wai 65, namely James Pohio and other descendants of Ngati Mutunga o Wharekauri, and Wai 460, namely Albert Tuuta (on behalf of Te Runanga o Wharekauri Rekohu Incorporated and Ngati Mutunga ki Wharekauri), allege that they have been prejudicially affected by, inter alia, the negligent manner in which lands were designated by the Native Land Court and, in particular, the application by that court of the '10 owner rule'.[39] The claimants state that their claim, and the evidence in support of it, seeks to advance the rangatira-

37. Outline of opening submissions on behalf of claimants (Wai 64 rod, doc c1), p 12
38. Closing submissions on behalf of claimants (Wai 64 rod, doc g14), p 19

tanga of Ngati Mutunga, but not to the detriment of the mana of any other group.[40] In regard to the Native Land Court, the claimants do not seek to challenge the decisions that resulted from the 1870 hearing. Rather, it is the events subsequent to the awards made at that time, and the appropriateness of the individualisation of title, which are called into question. In relation to claims by Moriori, they say that 'it is the function of the Tribunal to report on both cases as distinct claims involving a connected factual matrix'.[41]

The claimants also allege that they were prejudicially affected by, inter alia, the policy of the Crown to individualise iwi or hapu rights via the Native Land Court awards and the omission of the Crown to prevent the ongoing effects of the land court system in the Chatham Islands, which has consequently been a hindrance to iwi economic and social development.[42] Counsel for the claimants also referred to the '10-owner rule' and the 'devastation that it wrought on Ngati Mutunga', and specifically referred to the disruption of the Ngati Mutunga tribal estate, the fractionalisation leading to land loss, and the dispossession of those not named (and their descendants) in the 1870 and 1900 Native Land Court investigations.[43] The claimants allege that the title issued by the court was deficient in naming only a few who had rights to that land and in not accurately giving effect to the subtleties and complexities of the Maori land tenure system.[44]

15.6.2 Other Treaty issues arising

In addition to the grievances concerning land and the actions of the Native Land Court, the claimant groups raised matters concerning fisheries, resources, wahi tapu, and other taonga.

Both Moriori and Maori claimant groups made claims in respect of fisheries on the Chatham Islands. The Chatham Island fishery was described as including the area within and including the 200-mile exclusive economic zone, and also the inshore waters, beaches, inlets, lagoons, tidal rivers, and estuaries.[45] The Treaty issues that arose related primarily to the effects on the claimants of fisheries legislation (including the Fisheries Act 1877, the Fisheries Act 1983, and the Maori Fisheries Act 1988), the 'quota management system' (which was established by the Fisheries Act 1983), and the actions of Te Ohu Kaimoana, the Treaty of Waitangi Fisheries Commission.[46] In general, it was claimed that the Crown's application to

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39. Statement of claim for Wai 65 (Wai 64 roi, claim 1.3) and Wai 460 (Wai 64 roi, claim 1.8). It should be noted, however, that the evidence presented to the Tribunal by the claimants for Wai 65 did not address all the matters outlined in their statement of claim.
40. Statement of position of Wai 65 claimants (Wai 64 rod, doc h5), p 1
41. Ibid, p 5
42. Preliminary opening submissions of Wai 65 claimant counsel (Wai 64 rod, doc f19)
43. Opening submissions of Wai 65 claimant counsel (Wai 64 rod, doc i2), p 3
44. Ibid
45. See Wai 64 roi, claim 1.2(b)
46. For a further discussion of the Chatham Island fishery and the application of the above-mentioned fisheries legislation, see T Walzl 'The Crown's Administration of the Chatham Islands', report commissioned by the Waitangi Tribunal (Wai 64 rod, doc h1).

the Chatham Islands of legislation and policies concerning fisheries was not in accordance with the claimant's rangatiratanga and manamoana over their fisheries.[47] Furthermore, it was claimed that the Crown failed to recognise, respect, and protect the claimants' traditions associated with their customary fisheries.

Claimants raised issues concerning resources and taonga within their respective rohe. In general, the claimants allege that the Crown failed adequately to provide for the protection and preservation of areas of customary significance for mahinga kai and cultural harvest, and the traditions associated with these areas.[48] The claimants alleged that legislation (such as the Wildlife Act 1953, the Marine Mammals Act 1978, and the Resource Management Act 1991) and policies (including the conservation management strategy) failed to adequately provide for the interests of the tangata whenua. Further issues arose concerning the management and, in some cases, harvesting of resources on the Chatham Islands. Some examples of the species referred to by the claimants were the titi, toroa, puhia, and tahora.

Another important resource over which claims were made is the Te Whaanga Lagoon. The claimants asserted that Te Whaanga was a revered and treasured taonga, over which they exercised rangatiratanga and kaitiakitanga.[49] In general, the claimants alleged that they never relinquished title to the lagoon and that they were and continue to be prejudicially affected as a result of the title of the lagoon being vested in the Crown. The claimants further alleged they were prejudicially affected by legislation, including the Resource Management Act 1991, which directly or indirectly affects Te Whaanga Lagoon and the management of it. A significant issue that arose during the hearing of evidence concerning Te Whaanga was whether or not it was an 'arm of the sea'.[50]

The claimants, particularly the Maori claimants, raised issues concerning their alleged right of self-determination and right of development in respect of the islands.[51] The claimants relied on the Treaty of Waitangi as governing their relationship with the Crown. They alleged that the Crown failed to provide greater political autonomy, failed to give tangata whenua an opportunity to participate in the decision-making concerning the government of the islands, and failed to support tangata whenua in 'devis[ing] and implement[ing] their own economic development strategy'.[52] The claimants further alleged they were prejudicially affected by the Crown's failure adequately to provide services, including health and education services, and 'basic amenities' (such as sealed roads, street lighting, and proper sewerage systems) to the islands.

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47. For a further discussion, see Wai 64 roi, claims 1.2, 1.2(b), 1.3, 1.3(d), 1.5.
48. For further details on the claims made in respect to conservation matters, see Wai 64 roi, claims 1.7, 1.8, and Wai 64 rod, docs g14, m2.
49. For further details on the claims made in respect to Te Whaanga, see Wai 64 roi, claim 1.7, and Wai 64 rod, docs g14, m2 (for claims by Moriori), and Wai 64 roi, claims 1.3, 1.8, and Wai 64 rod, doc i-2 (for claims by Maori).
50. For a further discussion on whether or not Te Whaanga can be described as an 'arm of the sea', see the historical report by G Williams (Wai 64 rod, doc k10).
51. See Wai 64 roi, claim 1.8, and Wai 64 rod, docs i2 and m4, for a further discussion on these matters.
52. See Wai 64 roi, claim 1.8

15.7 Additional Reading

For additional reading, see:

M King, *Moriori: A People Rediscovered*, Auckland, Viking Press, 1989; and the Wai 64 record of documents.