

THE
NGAI TAHU REPORT
1991

THREE VOLUMES • VOLUME THREE

WAI 27

WAITANGI TRIBUNAL REPORT 1991



The cover design by Cliff Whiting invokes the signing of the Treaty of Waitangi and the consequent interwoven development of Maori and Pakeha history in New Zealand as it continuously unfolds in a pattern not yet completely known

A Waitangi Tribunal report
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List of Abbreviations

AJHR	Appendices to the Journals of the House of Representatives
ATL	Alexander Turnbull Library
BPP/CNZ (IUP)	British Parliamentary Papers/Colonies New Zealand (Irish University Press)
<i>Compendium</i>	<i>A Mackay A Compendium of Official Documents Relating to Native Affairs in the South Island</i> (Nelson, 1872)
DOSLI	Department of Survey and land Information
JPS	Journal of the Polynesian Society
MAFFish	Ministry of Agriculture and Fisheries, Fisheries Division
NA	National Archives
NZC	New Zealand Company
NZLR	New Zealand Law Reports
NZFIA	New Zealand Fishing Industry Association
NZFIB	New Zealand Fishing Industry Board
NZPD	New Zealand Parliamentary Debates
NZS	New Zealand Statutes

References in brackets refer to documents produced in evidence during the hearing of the claim, eg (C1:12) refers to page 12 of document C1. A complete record of documents is set out in appendix 6.

Chapter 13

Arahura

13.1. Introduction

While Europeans, whether whalers, sealers, traders or itinerants, were to be found in various parts of Ngai Tahu territory east of the Southern Alps from early on in the nineteenth century, the west coast of Te Wai Pounamu remained largely undisturbed by such newcomers. Europeans knew little about the west coast. Occasional sealing gangs worked a certain way up from Foveaux Strait from the early nineteenth century, but for the most part they ventured no further north than Piopiotahi (Milford Haven). European exploration of any significance dates from the mid-1840s. Heaphy, Brunner and Fox were active at this time. Their reports did not excite further exploration or settlement. Between 1848 and 1857 there was little European contact with the Poutini (western) coast. In 1857 a young man, James Mackay Jr, ventured south from Nelson. He was more favourably impressed with west coast prospects. In 1858 and 1859 several sheep runs were selected there, but none were actually stocked at the time. Coal was known to be abundant and the presence of gold became known, but not its likely quantity.

The growing interest of Europeans in possibly settling in the area forced the Native Land Purchase Office to give serious thought to extinguishing all remaining Maori title in the area. Initially it was thought the Crown had acquired the land by Kemp and other purchases, but little of the purchase price had gone to Poutini Ngai Tahu and no reserves had been set aside for their benefit. Quite apart from these uncertainties several tribes from the Nelson area had invaded, and for a time occupied, the Poutini coast during the 1830s. By the end of this decade however, Ngai Tahu had regained control of much of their territory and progressed northwards to Kawatiri and beyond in the 1840s.

Between 1853 and 1856 Donald McLean, the chief native land purchase commissioner, entered into a series of agreements buying out the respective interests of Ngati Toa, Ngati Awa, Ngati Tama, Ngati Rarua and Rangitane. These tribes purported to sell their interests in the various parts of the northern South Island and extending down

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to the west coast. Poutini Ngai Tahu heard of these sales and were greatly incensed. In 1857 James Mackay Jr was given a letter from leading Poutini chiefs offering to sell the land from West Wanganui in the north, to Piopiotahi in the south, for £2500. They made it clear they would oppose any European settlement unless they first received payment.

McLean, in the belief that there was a mere remnant of 25 or so Poutini Ngai Tahu on the west coast, felt no need to act hastily. Finally, however, James Mackay was appointed by McLean to purchase both the Kaikoura and Arahura blocks. After purchasing the Kaikoura block Mackay traversed the alps, arriving on the Poutini coast in May 1859. He was authorised to pay no more than £200 for the 7.5 million acres on the west coast, and to set aside no more than 500 acres as reserves for Ngai Tahu. Despite spending over four months on protracted negotiations Mackay failed to persuade Poutini Ngai Tahu to accept such parsimonious terms. Werita Tainui treated the offer with contempt, describing the sum offered as no more than the price of a horse.

On 25 October 1859, following a visit by Mackay to Auckland, where he saw McLean's deputy and Governor Browne, McLean issued fresh instructions. Mackay now had authority to offer up to £400 and set aside 10,000 acres in reserves, plus a further 2000 acres to meet surveying costs. By this time gold had been discovered in the Buller River. Poutini Ngai Tahu were well aware of the discovery as the survey party which found the gold included several Ngai Tahu from Mawhera. At this early stage it was not known how extensive the gold deposits might prove to be. But the possibility of a gold rush gave the renewed negotiations a certain impetus.

Just as they had done in 1859, Poutini Ngai Tahu in 1860 emphasised their concern to retain ownership of the Arahura River and access to its banks. This was an important source of their taonga, pounamu (greenstone). They sought not only to keep the river but a substantial reserve of some 8000 acres on either side of the river, so they could access the pounamu. In the event, Mackay agreed that the Arahura River should remain the property of Poutini Ngai Tahu, but he declined to set aside the 8000 acres requested and instead allocated only 2000 acres. This was insufficient to extend the whole way up either side of the Arahura. To meet this contingency Mackay agreed that Ngai Tahu would have the right to repurchase additional land from the Crown at 10 shillings an acre. This proved to be 12,000 times more than the Crown paid for an acre of land.

A deed of purchase was signed on 21 May 1860. The purchase price was £300. A total of 6724 acres in various parts were reserved for

Arahura

individual allotment, a further 3500 acres for religious, social and moral purposes (in effect, as an endowment), and 2000 acres in the Mawhera valley as Crown land to meet survey costs. Included in the 6724 acres was a reserve of 524 acres for Ngati Apa. On the south bank of the Mawhera or Grey River, in the vicinity of the Mawhera pa site, 500 acres were reserved for Poutini Ngai Tahu. This was to be the future site of Greymouth. In return Ngai Tahu surrendered their claim to land from Kahurangi Point in the north, to Piopiotahi (Milford Sound) in the south. Fourteen chiefs signed the deed, including Tarapuhi, Werita Tainui, and Makariri of Poutini Ngai Tahu, and Puaha te Rangi of Ngati Apa.

The claimants have 11 grievances arising out of the Arahura purchase. Of these, seven relate directly to the purchase and will be considered here. The principal issues arising from these grievances are:

- Should a protector have been appointed to assist Ngai Tahu?
- Did the Crown wrongfully use the Ngati Toa and other purchases to put pressure on Ngai Tahu to sell?
- Did the Crown fail to ensure that Ngai Tahu retained sufficient land for an economic base? Associated with this is a complaint that the Crown failed to permit Ngai Tahu to exclude from the sale such lands as they wished to exclude.
- Did the Crown fail to protect the right of Ngai Tahu to retain possession and control of all pounamu?
- Did the Crown pay an inadequate price and in particular fail to protect Ngai Tahu by not revealing the value of gold bearing land?

13.2. **Statement of Grievances**

1. The Crown failed to appoint a Protector to ensure that Ngai Tahu were independently advised of their Treaty and other rights.
2. The Crown wrongfully used the Ngati Toa and other purchases to put pressure on Ngai Tahu to consent to the sale.
3. The Crown failed to permit Ngai Tahu to exclude from the sale such lands as they wished to exclude.
4. The Crown wrongfully imposed a price on land that Ngai Tahu had wanted to exclude from the sale.
5. The Crown failed to protect the right of Ngai Tahu to retain possession and control of all pounamu.
6. The Crown failed to protect Ngai Tahu by ensuring that they had kept enough land to provide an economic base and so preserve their Tribal Estate.
7. The Crown failed to protect Ngai Tahu by passing legislation imposing perpetual leases without the consent of Ngai Tahu, and without provision to protect them from economic loss.

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8. The Crown failed to protect Ngai Tahu by not revealing the value and importance of gold bearing land which was a breach of the duty of good faith.

9. The Crown failed to protect Ngai Tahu by later causing or permitting lands that had been excluded from the sale to be reduced in area (for example, within the town of Greymouth; D3:65).

10. The South Island Landless Natives Act 1906 and other legislation was inadequate to remedy the landlessness caused by the sale to the Crown.

11. The Crown has failed to protect Ngai Tahu by not implementing the recommendations of the Commission of Enquiry into Maori Reserved Lands, [1975]. (W6)

13.3. Background to the Purchase

Early history

13.3.1 The evidence before us, particularly that of the Crown historian Dr Donald Loveridge, traversed the early history of Poutini Ngai Tahu. It seems likely their ancestors were in occupation of the west coast of the South Island from as early as the seventeenth century, having subdued the original occupiers, Ngati Wairangi. During much of the first four decades of the nineteenth century Tuhuru appears to have been the leading Poutini Ngai Tahu chief (N2:4–5).

During the 1830s Poutini Ngai Tahu suffered some set-backs but appear to have retrieved their former position a year or two before 1840. The events of the 1830s and 1840s have been summarised by Dr Loveridge.

- Poutini Ngai Tahu in the Mawhera-Hokitika district had been defeated in battle in the early 1830s by Ngati Rarua and Ngati Tama;
- the district was occupied for about six years (1832–1837) during which time Niho, a Ngati Rarua chief, and his followers exacted tribute from the Poutini Ngai Tahu who remained in residence;
- in December 1836 or January 1837, at Tuturau in Murihiku, Tuhawaiki and Taiaroa led Ngai Tahu to a victory over a Ngati Tama fighting unit headed by Te Puoho. It was shortly after this that Niho left the west coast. Although he never returned, Niho continued to claim authority over the whole of the west coast. Poutini Ngai Tahu probably did not recognise his claims to the south of Kahurangi Point; and
- a decade after their “liberation”, Poutini Ngai Tahu living in the Mawhera area were taking steps to occupy and cultivate land on the Kawatiri River (N2:6–11).

*Arabura****Crown purchases 1848–1856***

13.3.2 As we indicated in our discussion of the Kemp purchase, it cannot be stated with any certainty whether or not any Poutini Ngai Tahu (apart from Werita Tainui who was resident at Kaikanui on the Waimakariri River) participated in that purchase. Werita Tainui received part of the initial payment of £500, a small part of which may have gone to his kinsmen on the west coast. While Mantell allotted portions of the second and third instalments for Poutini Ngai Tahu, it is unlikely they received any part of it. We agree with Dr Loveridge’s conclusion, that since Poutini Ngai Tahu did not receive any significant sum of money from the Crown, and Mantell made no effort to lay out any reserves for them on the west coast, they had every right to believe that any agreement to sell their interests in the land on the west coast was of no effect (N2:13). The Kemp deed was effective only as disposing to the Crown the interests of the east coast Ngai Tahu in the west coast.

13.3.3 In the 10 years following Kemp’s purchase the Crown did, however, make a number of other purchases affecting the west coast. These purchases were all made from tribes other than Poutini Ngai Tahu. In the early 1850s, Donald Mclean, the government’s chief land purchase commissioner, set out to extinguish all outstanding Maori claims to land in the northern part of the South Island.

- On 10 August 1853 Ngati Toa signed a deed of sale with the Crown transferring all their land in Te Wai Pounamu. The purchase price was £5000, of which £2000 was paid that day to Ngati Toa. Under the deed the balance of £3000 was to be paid to Ngati Toa, “and to the Ngatiawa, the Ngatikoata, the Ngatirarua, Rangitane and Ngaitahu”, who jointly with Ngati Toa “claim the land” (A8:I:307–308)¹. In a letter of 7 April 1856 to the colonial secretary, McLean explained why all these tribes were included in the deed:

their relative rights, through inter-marriage, the declining influence of the chiefs, and other causes, had [become] so entangled, that, without the concurrence both of these occupants and of the remnants of the conquered Rangitane and Ngaitahu Tribes, no valid title could have been secured. (A8:I:301)²

In December 1854 it was agreed that, instead of the remaining £3000 being paid by yearly instalments of £500, one sum of £2000 would be paid forthwith. The receipt specified the extent of the purchase as including all Ngati Toa claims “to Wairau and Hoiere, and Whakapuaka, and Taitapu, and Arahura and the Waipounamu, including all our lands which we have not sold in former times . . .” (A8:I:311–312).³ While Taiaroa of Ngai Tahu appears to have been present, and possibly Werita Tainui and others (R4:6), there is no evidence that Ngai Tahu chiefs received any part of the £2000.

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- On 10 March 1854 Ngati Awa agreed, for £500, to give up their claims to “the whole of the lands to which we lay claim in the Middle Island, or Wai Pounamu”, including the area from “Whanganui, to Paturau, Te Awaruato, and from thence to Arahura” (A8:I:309–310).⁴
- On 10 and 13 November 1855 Ngati Tama and Ngati Rarua, for £600, transferred all their lands from “Wairau, and thence to Arahura, continuing until it joins the land sold by the Ngaitahu” (A8:I:312–313).⁵
- On 1 February 1856 Rangitane accepted payment of £100 “for all our claims on the Island, that is for all the lands of the Rangitane from Wairau to Arahura, running inland as far as the claims of the tribe of the Rangitane extend” (A8:I:313).⁶

Following these various transactions McLean submitted a comprehensive report, dated 7 April 1856, to the colonial secretary. In it he noted:

The only tribe having claims upon this purchase, whom it was impossible for me to visit, are a small remnant of the Ngaitaha [sic], about twenty-five in number, residing at Arahura, on the West Coast, a remote and as yet almost inaccessible part of the country. From a settlement of their claim I do not apprehend any difficulty; but, as a matter of justice, if the district is occupied by Europeans, a revenue [sic] of 300 or 400 acres should be secured to them, together with a small amount of compensation for their claims. (A8:I:303)⁷

While McLean here recognised that Poutini Ngai Tahu had a claim to lands on the west coast which should be attended to, it is apparent that he regarded it as a minor matter, of no urgency.

Growing interest in the Arahura region

- 13.3.4 Early in 1857 McLean was being urged by W J W Hamilton of the desirability of settling the Poutini Ngai Tahu claim (A8:II:17).⁸ On 5 February 1857, in a further report concerning his recently completed North Canterbury purchase, Hamilton told McLean that the Ngai Tahu vendors:

claimed no right over the land to the westward of the watershed of this portion of the Middle Island. They stated that the Arahura, or Putini [sic], Natives own it. (A8:II:20)⁹

In February 1857 James Mackay Jr, then a settler from the Collingwood district, went on an exploratory journey down to the west coast. The first Ngai Tahu settlement he encountered was at the mouth of the Kawatiri. It consisted of only three inhabitants, “the sole survivors of the inhabitants—they had all died of the measles and influenza” (N2:25–26).¹⁰ The first Poutini Ngai Tahu settlement of any substance reached by Mackay was near the mouth of the Mawhera,

Arabura

on its south bank. On 7 March 1857, as Mackay noted in his journal, he:

Had a long conversation with the natives today, when they stated that they would not allow white people to settle on the land till they were paid for it, and on my telling them that the land had been sold, they said that the Ngatittoa tribe had no right to sell it; some of them proposed that I should not be allowed to go any further, but this was not agreed to. They asked me if I would take a letter to Mr McLean for them. I said I would, but at the same time assured them that they might save themselves the trouble of writing, as they would get nothing from him for the land. (N2:26)¹¹

The letter from Poutini Ngai Tahu was dated 15 March 1857. Translated it read:

Friend McLean, salutations to you,

We have heard from the white man Mackay that the land we inhabit has been sold by the Ngatittoa tribe, they are thieves, as their feet have never trodden on this ground, they are equal to rats which when men are sleeping climb up to the storehouses and steal the food.

Let the money which Rawiri Puaha has received be placed against Onepaka, and Martins (aupouri) go against Moetoa.

We do not wish white people to come here unless they pay for the land as it is our property. We are quite willing to sell to the Government the whole of the land along the Coast, from West Wanganui to Piopiotai, from the latter place the boundary proceeds inland to the Mountains, Tiori Patea, Teraotama, Kaimata, Taiwaniuta, Maruia, Maungawaripa, Otutaki, Porehia, Matakītaki, Te Ikahapuku, Te Rotoroa, Wangapeka, Aoraki (Mt Arthur), Onetoke, Rangiora (Snowy ranges between Takaka and Aorere[]) Wakamarama, (Range to the west of Aorere Valley) Te Hapu (about 6 Miles South of the entrance to West Wanganui).

We desire the sum of Two thousand five hundred pounds (£2500) for this block of land. We are living in poverty, as we have never received any money, it will also complete the purchase of all land in this island. We will make arrangements with you when you come to purchase the land about Reserves for ourselves, this is all we have to say. (N3:71)¹²

Mackay forwarded this letter to McLean with a covering letter of 18 June 1857 (N3:72–73)¹³ He noted:

- that while at the Grey (Mawhera) River he made friends with Tarapuhi and was able to explore the Mawhera valley;
- he thought the country, as far as he had seen it, extending five or six miles south of the Grey, as being very suitable for European settlement; and
- there were very few Maori on the west coast. He understood there to be only 87 from West Wanganui to Foveaux Strait, but they expected an accession in numbers from Port Cooper.

McLean did not acknowledge this correspondence from Mackay, nor a letter from Mackay's father, until 22 December 1857, when he told

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James Mackay Sr that he was anxious to have James Mackay Jr settle a land question at Arahura. In February 1858 Mackay Jr was appointed assistant native secretary at the Collingwood gold-fields (N2:30).

- 13.3.5 McLean, by the end of 1857, had come to realise the desirability of resolving the Arahura land question. But delays in the appointment of Mackay Jr as an assistant native secretary, and lack of funds, led him to wait until the following summer. In the meantime, European interest in the west coast was growing. Leonard Harper, in November 1857, was the first European to cross the island to the far coast, with the assistance of Tarapuhi and Werita Tainui, among others. In 1857 the Nelson Provincial Government accepted applications for pastoral leases on the west coast, and the Canterbury Provincial Council followed suit in 1858. James Mackay Sr was involved with several such applications between December 1857 and February 1858, including one in December, filed in his son's name. This covered some 24,000 acres in the Mawhera district. Dr Loveridge's investigations suggest that James Mackay Jr later retracted or cancelled this application. In February 1858 he made a new application for a cattle-run, at West Wanganui to the north, and down the west coast for some 25 miles to Kahurangi Stream (N2:34–35).¹⁴

Dr Loveridge gave us details of other applications made in December 1857 for land in the Mawhera valley. These were for substantial areas ranging from 10,000 to 60,000 acres. Other applications were made in 1858 (N2:36–37).

Whereas in 1857 Mackay Jr found no indication of gold on the west coast, specimens of gold in small amounts were found by a European, Lee, on a trip to the coast with Tarapuhi and Tainui early in 1858. The gold was in the vicinity of the Whakapoi or Heaphy River. As Loveridge notes, Poutini Ngai Tahu were aware of the presence of gold by this time (N2:37).¹⁵

James Mackay Jr is instructed to purchase the west coast

- 13.3.6 On 3 November 1858 McLean instructed Mackay Jr to effect two purchases. He was to go first to Kaikoura to settle outstanding claims of Ngai Tahu there, and once these duties were completed Mackay was told to:

have the goodness to proceed to Arahura on the west coast for the purpose of carrying out similar arrangements at that place by marking off a reserve, or reserves, not exceeding if possible, a total area of about 500 acres, which it appears, would be sufficient for the few Natives residing there.

You will have a conveyance of all their claims duly executed by Tuhuru and the other Chiefs and people residing on the west coast, to whom you will pay on surrendering their rights, a sum of £150, or £200.

Arabura

... Great reliance is placed on your own judgment and discretion as to the carrying out of the details of this arrangement including the extent of the necessary reserves for the Natives. (A8:II:33–34)¹⁶

Mackay evidently contemplated some difficulty in settling with Poutini Ngai Tahu on the niggardly basis proposed by McLean.

On 19 November 1858 he wrote to McLean seeking directions as to whether he should purchase the whole of the west coast and advising:

From what I recollect of the conversation I had with Tarapuhi (son of the late Tuhuru) [in 1857], I believe he claimed the whole of land from West Wanganui (Province of Nelson) to Dusky Bay, Piopiotai (Province of Otago), for this he asked £2500; he, however, admitted that the Port Cooper Natives and Taiaroa had received payment for the west coast, and to a certain extent allowed the conquest of part of the district by the Ngatitōa tribe. I do not anticipate any difficulty in persuading them to sell the land, as they were willing to do so when I was there two years ago, but I think it probable they may wish for a larger sum of money for it than the Government are willing to give. (A8:II:34)¹⁷

The 1859 negotiations

- 13.3.7 Mackay's negotiations with the Kaikoura Ngai Tahu took some time. He finally reached Mawhera, via an arduous journey over Harpers Pass, on 19 May 1859. Some time elapsed while a message was sent to the southern-based Poutini Ngai Tahu requesting them to come to Mawhera. It was 25 July before the southern Maori arrived and negotiations could start. After some initial differences between the Mawhera, Arahura and Taramakau Ngai Tahu on the one hand and the Waitangi, Mahitahi and Jackson Bay Ngai Tahu on the other were settled, the Poutini Ngai Tahu maintained a consistent stance. They were prepared to sell their land from Mawhera north to Te Hapu and from Okitika (Hokitika) south to Milford Haven (Piopiotahi), but they wished to retain the block between the Mawhera (Grey) and Kotukuwakaoka (Arnold) Rivers, and the Okitika. Mackay's record of the discussions on 30 July includes the following:

Werita Tainui, one of the principal Chiefs of Kaipoi, and brother of Tarapuhi offered the land in the Nelson Province (stipulating for Reserves at Karuroha, and Kawatiri (Buller River)) and the land situated in the province of Canterbury to the Southward of the river Okitika, and from there to Milford Haven, retaining the block between the river Okitika and the rivers Mawhera and Kotukuwakaho (this contains quite 200,000 acres of heavily timbered and tolerable level country).

I said I could not agree to this as they wished to retain the best of the land, and receive payment for bluffs like Otahu, Tauparekaka, Te Miko, and paripako—and I refused to pay for the land at all unless [they] chose to except reasonable reserves. It was then argued that they would lose the Arahaura River (Note. The Arahaura River is between the Okitika and

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Tarawakau) from which the much coveted Green stone is procured if they sold the land on each side of it.

I informed them that the Greenstone was of no use to the Government, and if it was all they wanted, they might have the whole of the Arahaura River bed, that it was of no use to any one and even if they sold it to the Government, no objection would be raised as to their procuring Greenstone from it.

Little more was done this day, the Natives contenting themselves with offering the land from Mawhera to Te Hapu, and from Okitika to Milford Haven, and demanding the price. I objected to this course and offered a Reserve of 500 acres of land at Arahaura, and the river bed, This was indignantly rejected. (N3:16)¹⁸

Two days later Mackay offered to set aside 800 acres in reserves in a variety of places and to pay a purchase price of £200. But this offer was also rejected. Poutini Ngai Tahu still insisted on retaining the block of land between the Rivers Mawhera, Kotukuwakaoka and Okitika, while accepting £200 for the remainder. Werita Tainui was particularly contemptuous of the price offered, asking Mackay whether he had “come to pay for the land with the price of a horse” (N3:18).¹⁹

On 3 August 1859 there was more fruitless discussion, with Mackay recording that Poutini Ngai Tahu were unwilling to alter their terms at all:

and after some more arguments Taetae and his people made a start for Waitangi telling me to return to the Governor, and if I came back with four or five hundred pounds, they would sell the land. This ended the negotiations with the Natives. (N3:21)²⁰

The failure of the 1859 negotiations

13.3.8 Mackay reported the unsuccessful outcome of his negotiations in a letter of 27 September 1859 to the native secretary. He noted that the Poutini Ngai Tahu numbered 101 people and the block which he sought to purchase contained at least 7.5 million acres. He found the Ngai Tahu title to the west coast district to be good (N3:23–24).²¹ He related the impasse in his negotiations in this way:

The Ngaitahu refused to surrender the whole of their claim for the sum of two hundred (200) pounds offered by me wishing to retain the block of land intervening the rivers Mawhera and Kotukuwakaho, and the river Okitika. They expressed their willingness to dispose of their lands in the province of Nelson, and those to the Southward of the Okitika in the province of Canterbury for the sum of two hundred pounds (£200) (being £100 for each block) but they could not be brought to give up the centre piece of land also for that amount (£200) – As my instructions were to pay them on the surrender of the whole of their claims to land, I did not consider myself justified in paying them unless they did so, and the same urgent necessity did not exist as at Kaikoura, there being no European settlers as yet in the Arahaura district.

Arabura

I used every exertion to induce the Natives to part with the country laying between the Mawhera and Kotukuwakoha, and the Okitika – but as the highly prized Greenstone is procured from the Arahaura River, which is situated within this block, and as it has been the scene of many bloody contests I found it impossible, from the value attached to its possession, to extinguish the Native title with the sum of money at my disposal for that purpose – It is my opinion that if I had been empowered to pay three hundred pounds (£300) that I could have purchased, with the exception of 800 acres required for reserves, the whole of the land claimed by this division of the Ngaitahu. (N3:11)²²

Mackay returned to Nelson on 19 September and immediately embarked on the *Airedale* for Auckland, which he reached on 24 September. He submitted his report three days later. During the following week he had discussions with McLean's deputy, Thomas Smith, and with Governor Browne. Dr Loveridge suggested, we think correctly, that in addition to proposing the need for an increase in the purchase price, Mackay stressed the necessity for an increase in the reserves to be left with Ngai Tahu (N3:57–59).²³

Mackay receives fresh instructions

- 13.3.9 On 25 October 1859 Thomas Smith, on behalf of McLean, sent fresh instructions to Mackay. Smith enclosed Mackay's 27 September report, with annotations by the governor, the minister for native affairs and the Native Department. These annotations cannot now be found, but Smith appears to have summarised them in his covering letter:

You will perceive that it is intended that 6000 acres should be reserved for individual allotment, as proposed in the minute of the Assistant Native Secretary, that 4000 acres should be reserved to be brought under the Native Reserves Act; and that an additional reserve should be made for the purpose of providing a fund for defraying the expense of surveying the individual allotments above referred to when required. 2000 acres will probably be sufficient for the last named purpose. All these reserves should be defined with as much precision as may be found practicable, without actual survey and cutting the lines on the ground, and in the case of those set apart for individual allotment, it will be well to indicate the names of the persons in a schedule to be attached to the Deed, to whom portions out of each block are assigned. As for instance in a block estimated to contain 1000 acres, the names of the proposed allottees should be specified as entitled to certain portions out of such particular reserve, according to the scale proposed in the minute above referred to.

His Excellency relies much on your own judgment in making such arrangements as may practically carry into effect the objects in view, as set forth in the minutes on your report.

Instructions have been issued to the Sub-Treasurer at Nelson to advance to you on requisition a further sum of £280, making with the £120 now in your hands a sum of £400 at your disposal for this purchase. You

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are authorised to pay to the Ngaitahu Natives a sum not exceeding the above in full satisfaction of all their claims. (A8:II:39)²⁴

Mackay was now in a more favourable position to negotiate a settlement. He could pay up to £400 and set aside reserves totalling 12,000 acres.

13.4. **The Purchase**

13.4.1 In December 1859, only a month or so after receiving his new instructions, Mackay learned that significant quantities of gold had been found in the Buller River the previous month by his friend John Rochfort. This news was first published in the *Nelson Examiner* on 21 December 1859. Mackay had sent news of the discovery on to McLean four days earlier. He remarked that:

this forms an additional reason why the purchase of the lands should be terminated as speedily as possible. I have no doubt but if the above important fact becomes generally known that the Natives will endeavour to get more money for their claims to the land. (N3:38)²⁵

In commenting on this passage Dr Loveridge, the Crown historian, said:

This statement could be interpreted as a desire on Mackay's part to conceal from the Poutini Ngai Tahu the fact that gold had been discovered. Such was not the case. Rochfort's survey party included a large number of men from Mawhera pa. Indeed, he had not been able to start work until they arrived at the Buller River, after the crops at Mawhera had been sown. The local Maori already knew what had happened, and Mackay must have been aware of this. His comment to McLean undoubtedly refers to the possibility of a gold rush on the Coast, if and when "the above important fact" became "generally known" to Europeans. The presence of a large number of them in Poutini Ngai Tahu territory could have complicated his task enormously. (N2:63)

The claimants challenged this interpretation. They invoked a statement by Hamilton to McLean on 6 August 1857 that:

The recent gold discoveries at Nelson [on the Aorere River] are so likely to raise the value of the land in the eyes of the Maoris to the most extravagant pitch, that I fear any delay in accepting their proposals to treat may end in totally preventing the acquisition of the land sought for by us. (A8:II:27)²⁶

And, in more general terms, they cited from an article by Mackay in the *Nelson Examiner* of 26 August 1857, that prompt action should be taken to acquire the west coast from Poutini Ngai Tahu because:

I was informed that several of the Port Cooper natives intend settling at Mawera, and it would be easier to deal with the few at present residing there, than with a more numerous and wideawake population. (N2:28)²⁷

This evidence, the claimants said, indicates a consistent intention to acquire the Poutini coast for a great deal less than its value (O49:9).

Arabura

We agree with Dr Loveridge's response to this comment, that it is unrealistic to think that Mackay was attempting to conceal from Poutini Ngai Tahu the fact the gold had been discovered by Rochfort in November 1859. Ngai Tahu already knew about the discovery and Mackay must have been aware of this. But Dr Loveridge rightly conceded that the Crown's hope to acquire the Poutini coast with a nominal payment is clear from all the available evidence. Moreover, he drew attention to his earlier evidence, that there was scant justification for the Crown applying this policy to either the Kaikoura or Arahura purchases (R4:12).

The negotiations begin

- 13.4.2 James Mackay Jr and others left Collingwood on 16 January 1860 for the west coast. The journey proved to be an arduous one. Mackay seriously injured his knee and finally limped into Mawhera on 2 March 1860 (A8:II:40).²⁸ While detained at Mawhera waiting for his injured knee to improve, James Mackay appears to have had some discussions with Poutini Ngai Tahu chiefs. In his belated report to McLean of 21 September 1861, Mackay said:

On the 28th March, I left the Pah at Mawhera, and, accompanied by Mr S. Mackley, and the Chiefs Tarapuhi te Kaukihi, Taetae and Werita Tainui, and the Natives of that place, proceeded southwards with the intention of collecting as many of the Ngaitahu as possible at Poherua (Poera on charts), the residence of the Chief Taetae, for the purpose of discussing the question. It had, however, been previously arranged that the payment was to be made on our return to Mawhera, after all questions relative to the lands to be reserved for the use of the Natives had been finally arranged. We reached Poherua (distant 70 miles) on the 5th April. (A8:II:40)²⁹

There are hints here of a tentative agreement that the sale would proceed when all questions of reserves were settled.

From Poherua Mackay proceeded further and laid out reserves at Mahitahi, at Makawiho, at Manakaiaiu, and other small reserves "at various places" on the way back to Poherua. His party reached Poherua later on 20 April:

On the 21st the land question was recommenced, I found the Natives still desirous as on the former occasion to retain all the land intervening the rivers Mawhera and Kotukuwhakaho, and the river Hokitika, comprising some 200,000 acres of valuable country, unless they received £300 in compensation for their claims to the whole district extending from Kaurangi point to Piopiotai (Milford Haven), and larger reserves than had on my first visit been offered to them (800 acres was offered at that time). After some days spent in discussing the question, and on my having informed them of the very liberal provision in that respect ordered by His Excellency the Governor, they agreed, on the 26th April, 1860, to accept the sum of £300, as compensation for the whole of their

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claims to land in the Arahura or Poutini districts, excepting over such portions as were reserved for their own use or benefit.

It was specially stipulated that a very large reserve should be made at the river Arahura or Brunner, and that the reserves should be taken in a strip up each side of the river with a view of giving them a right to its bed, from which is obtained the highly prized greenstone, which gives the name Wahi Pounamu, – place of greenstone, – to the Middle Island, it was also arranged that there should be a reserve or reserves of 1000 acres at the Mawhera or Grey, which was assented to, the locality to be fixed on our arrival there, and [previous] to the payment being made. (A8:II:40)³⁰

The total area of reserves made for individual allotment was 6724 acres, 724 acres more than authorised by the governor. Mackay explained that two Poutini Ngai Tahu chiefs were jealous that in following his instructions, he had awarded 500 acres to three superior chiefs, namely, Tarapuhi, Taetae and Werita Tainui. He compromised by giving Hakiaha and Koeti 250 acres each instead of 100 acres. This accounted for an additional 300 acres. The remaining 424 acres were allocated to Puaha Te Rangi as compensation for certain claims of Ngati Apa to lands in the Buller and Kawatiri districts. Mackay reported that the majority of Poutini Ngai Tahu admitted the justice of Puaha Te Rangi's claim, and so he allotted reserves to Te Rangi and a few other Ngati Apa (A8:II:41).³¹

- 13.4.3 Having reached an agreement on 26 April 1860, Mackay set off for Mawhera accompanied by all the Poutini Ngai Tahu except Taetae (who was seriously ill and later died). On the way north Mackay laid out various reserves. At Mawhera further reserves were agreed on. Mackay relates that a dispute arose over the site for a reserve of 500 acres at Mawhera for individual allotment:

. . . I wishing the Natives to select it up the river, but they objected to do so preferring to have it near the landing place. As this spot had always been their home, and on the hill above it in a cave repose the remains of Tuhura and others of their ancestors; nothing could move them to give up this place, which I much regretted, as it enables them to retain the best landing place. I however found that further argument would have endangered the whole arrangement entered into at Poherua, on the 26th April, and therefore deemed it politic to acquiesce in their demand. It may be imagined from the position of this reserve that it would be a suitable site for a town, but the whole flat portion of it is liable to be flooded, of which we had practical demonstration by finding on our return from the south that several of the houses at the Pah had been carried away by a flood which took place in our absence. (A8:II:41)³²

The deed is signed

- 13.4.4 On 21 May 1860, a deed of sale was signed by some 13 Poutini Ngai Tahu, including Tarapuhi and Werita Tainui, and also by Puaha te Rangi for Ngati Apa. Ngai Tahu transferred to the Crown for the sum

Arabura



Figure 13.1: The map of the Arahura purchase was on the deed itself. The detail of the boundaries of the purchase contrasts dramatically with that of the Kemp deed map. Reproduced by permission of Archives New Zealand, Wellington, ABWN 8102 W5279/9 (Westland 1).

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of £300 all their land except that reserved from sale and described in two schedules to the deed (see appendix 2.9).

The boundaries of the land sold were succinctly described by Mackay in his report as being:

all the portion of the West Coast district lying between Kaurangi Point in the Province of Nelson, and Piopiotai, or Milford Haven, in the Province of Otago, and bounded inland by the watershed range of the east and west coast of the Middle Island. (A8:II:41)³³

The English translation of the deed transferred the land described “with its trees minerals waters rivers lakes streams and all appertaining to the said Land or beneath the surface of the said Land” to the Crown.

By the time the deed was signed Mackay had settled the individual allotments for 6724 acres of reserved land. He had laid off the reserves between Mahitahi and Mawhera Valley (nos 4 to 35). Three reserves further south, at Jackson’s Bay and Paringa (nos 1–3), had been “distinctly described” but not “defined on the ground”. Twelve to the north of the Mawhera Valley (nos 36–47) would be laid out after the deed was signed (N2:71).³⁴

In addition, Mackay made provision for a further 3500 acres to be reserved “for the benefit of the aboriginal inhabitants of the West Coast, and for the promotion of social, moral, and religious objects among them”.³⁵ In fact, the governor had ordered 4000 acres to be reserved for these purposes. But, as Mackay had exceeded the authorised allocation of 6000 acres for individual allocation by 724 acres, he make a compensatory reduction in the second category of reserves. Finally, as instructed, he set aside a block of 2000 acres at Totara Bush in the Mawhera Valley as a general government reserve. This was intended to be sold later, to defray the costs of surveying the 54 reserves scheduled in the deed. Copies of the plans of the reserves were supplied to Ngai Tahu with the names of persons allotted land noted on each (N2:76).

The deed was defective in that it did not mention an agreement between Mackay and Poutini Ngai Tahu concerning the Arahura riverbed and the adjacent land between the Arahura reserve and Mount Tuhua. We discuss this later in connection with the grievance concerning pounamu.

13.5. **Ngai Tahu’s Grievances**

Having related the principal events leading up to the sale we now consider various of the claimants’ grievances. Some, which relate to after-sale events, we consider in other contexts.

*Arahura****Grievance no 2: Crown pressure on Ngai Tahu to sell***

13.5.1 The claimants stated that:

The Crown wrongfully used the Ngati Toa and other purchases to put pressure on Ngai Tahu to consent to the sale. (W6)

We have earlier discussed (13.3.3), the Crown purchases between 1848–1856, made at the instigation of the chief commissioner for land purchases, Donald McLean. The following points are clear from our discussion.

- Donald McLean attached a much higher priority to the desirability of purchasing the interests of the conquering tribes in the northern part of Te Wai Pounamu. As Professor Ward commented, the relative size and power of each tribe was taken into account when determining the purchase price.
- According to the terms of several deeds signed from 1853 on, the Crown acquired rights of a number of northern tribes in the whole of the South Island. In 1853 Ngati Toa sold all their remaining interests in Te Wai Pounamu for £5000. The following year the land involved was more specifically described to include Arahura; the 1854 agreement with Ngati Awa for £1000 disposed of their land in Te Wai Pounamu including their claims to Arahura; in November 1855 Ngati Tama and Ngati Rarua transferred all their lands including that at Arahura for £600. Finally, in 1856, Rangitane were paid £100 for their interest in land from Waiau to Arahura. At this point the only remaining interest not extinguished by the Crown was that of Poutini Ngai Tahu.
- McLean reported in April 1856 that if the inaccessible area where Ngai Tahu lived was ever required for European occupation, their claims could be settled for a small cash sum and a reserve of 300–400 acres.
- Political considerations (including security) appear to have had considerable influence in McLean's dealings with Ngati Toa and Ngati Awa.
- By 1857 McLean was being urged by Hamilton and others to settle the Poutini Ngai Tahu claim. The imminent prospect of more settlers, possible migration of some east coast Ngai Tahu, and rumours of the discovery of gold, were said to make a settlement desirable.
- In May 1857, after his exploratory journey to the west coast, James Mackay Jr brought back with him a letter from leading Poutini chiefs offering to sell the land from West Wanganui to Piopiotahi for £2500. The letter expressed their anger that McLean had purchased from others the land on which Poutini Ngai Tahu were

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living. They expressed opposition to any European settlement of their land unless they received payment.

- McLean was slow to act on the Poutini offer. Some 18 months went by before James Mackay was instructed to settle the Arahura claim.
- During the abortive 1859 negotiations with Poutini Ngai Tahu Mackay had several discussions with them about the claims of Ngati Toa and other iwi to the west coast. On 30 July he reported:

We then got into a discussion about the Ngatitoo and Ngatirawa [sic], the Ngaitahu denying their claims, and I contending they were just, but at the same time telling them that the Government were willing to pay them as well as the Ngatitoo. If we acted according to Native law we could take the ground from them, as we had paid for it, but the Government wished to act fairly by them, and had deputed me to purchase the land, I recommended them to surrender there [sic] claims to the Crown, and take the Reserves offered by me, as it was possible that if they obstinately persisted in refusing to dispose of the land, that the Government would ask the Ngatitoo to put them in possession. (N3:16)³⁶

On 1 August Mackay records that he told Ngai Tahu that:

The Sun was then shining on them, it was fine weather to cut the ripe corn, if they did not do it at once, it might rain and they would lose it all, it would all be spoiled. (N3:33)³⁷

This, Mackay said:

they at once took as meaning that the Ngatitoo would put us [the Crown] in possession, and they said they were not the slaves of the Ngatitoo. They then rose in a body and said that they would write to the Governor for more money, they would not accept two hundred pounds. (N3:33)³⁸

Notwithstanding their 1857 offer to sell, Poutini Ngai Tahu refused in 1859 to accept what they no doubt regarded as a miserly offer of £200 and 800 acres for reserves. After much wrangling, negotiations were broken off and Mackay returned to Nelson. His threats failed to intimidate Poutini Ngai Tahu.

In 1860 Mackay returned to the west coast and a much more generous offer by way of reserves, plus an increase in the purchase price of £100 to £300, resulted in an agreement. By this time a gold rush was imminent and Mackay was anxious to complete the purchase.

- 13.5.2 It is not easy to judge the effect on Poutini Ngai Tahu of the earlier purchases from Ngati Toa, Ngati Awa and other tribes. Clearly they resented the Crown's apparent recognition of other tribes' interest in their land. Not surprisingly they expressed willingness to sell in 1857. But, that they were not prepared to accept what must have seemed to them a contemptuous offer in 1859, indicates that, while willing to sell, they were prepared to insist on terms which they found acceptable. Nor were they willing to bow down to Mackay's

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threats. The tribunal finds it difficult to accept that McLean adopted a purchase strategy which was deliberately designed to pressure Poutini Ngai Tahu into selling, and selling cheaply. Rather, McLean appears to have almost entirely disregarded Ngai Tahu in his dealings with the more northern tribes, on the basis that they (Ngai Tahu) were a mere “remnant”; remote, few in number and hence of very little consequence.

At the same time, we note that the Crown, in a series of agreements with the more northern tribes, had in some cases at least paid substantial sums to extinguish any claims the tribes might have in Arahura. This would have made Poutini Ngai Tahu very anxious to have their mana over their lands recognised, which an acceptable sale would do. It is to their credit, however, that, keen as they were to assert their mana, they were not prepared to accept what they clearly regarded as a derisory offer in 1859. As Dr Loveridge said at the conclusion of his evidence:

The fact that the final agreement was as good as it was, owed more to the bargaining skills of the Poutini Ngai Tahu leaders rather than the generosity of the Crown. (N2:88)

Finding on grievance no 2

- 13.5.3 Having carefully weighed all the factors we have enumerated, the tribunal is unable to find that the Crown wrongfully used the Ngati Toa and other purchases to put pressure on Ngai Tahu to consent to the sale. While in 1859 Mackay did use threats, these proved of no avail. We believe Poutini Ngai Tahu agreed to sell in 1860 because, while no doubt disappointed that the price was not higher, the Crown had increased both the price and the area of land to be retained as reserves. It follows that the claimants’ grievance no 2 is not sustained.

Grievance no 8: Crown failure to reveal to Ngai Tahu the value of gold-bearing land

- 13.5.4 In their eighth grievance the claimants alleged that:

The Crown failed to protect Ngai Tahu by not revealing the value and importance of gold bearing land which was a breach of the duty of good faith. (W6)

We infer from this grievance that the claimants were saying that, had Poutini Ngai Tahu been aware of the value and importance of gold-bearing land, they would have insisted on a higher price than they received. We propose to consider this grievance under two heads. First, as to the state of Crown knowledge regarding the potential for gold mining on a commercial scale and Ngai Tahu’s knowledge in 1860. Secondly, the implications of the discovery of gold and wider considerations on the adequacy of the price paid.

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13.5.5 The extent of the Crown knowledge is, we believe, fairly stated by Dr Loveridge as follows:

Rochfort, of course, had found gold at several points along the Buller River in 1859. The Poutini Ngai Tahu were well aware of this event, but it cannot have come as a surprise. Even assuming that they had never seen any trace of gold in their rivers themselves, (Rochfort's, incidentally, was found "lying upon the surface of the ground" in 1859), the Whakapoi finds of 1857 were a recent memory. Neither they, nor James Mackay Jr. nor anyone else, could tell if there was enough gold to support commercial mining, but it was fairly certain that many prospectors would descend upon the coast in the near future. Indeed, news that a party of fifteen men from Canterbury were digging on the Buller reached Mawhera shortly before the Deed was signed. (N2:84-85)

We have no evidence of the extent to which Poutini Ngai Tahu appreciated the potential significance of a major gold find. They were actively associated with the Whakapoi finds in 1857 and no doubt something of the excitement of the Europeans involved would have rubbed off on them. In the absence of such evidence it is not possible to say whether, at the time they agreed to sell in 1860, Poutini Ngai Tahu were aware that, should gold be discovered in commercial quantities, this would, in the short term at least, significantly enhance the value of some of their land. This we suggest demonstrates the value of an official protector. While Mackay was unlikely to go out of his way to emphasise the potential significance of the discovery of gold, an independent protector would certainly have done so. In the absence of a protector we believe Mackay was under a duty to ensure that Poutini Ngai Tahu were fully and fairly informed.

13.5.6 However, the adequacy or otherwise of the price can be judged by other factors besides the gold-yielding possibilities of the land. We recall that in 1853 the Crown agreed to pay Ngati Toa £5000 to extinguish their title. In 1854 £500 was paid to Ngati Awa and in 1855 £600 to Ngati Tama and Ngati Rarua, again for much smaller interests than the 7.5 million acres on the west coast. As we have seen, Murihiku Ngai Tahu were paid £2600 for a somewhat similar area of land in 1853.

The Crown's historian, Dr Loveridge, was critical of the price paid by the Crown:

The Crown's final offer, however, cannot be described as a generous one. The Governor himself called the cash payment an "almost nominal sum". He was referring, mistakenly, to £200, but £300 was hardly an improvement when more than seven million acres of land (by Mackay's reckoning) were being ceded to the Crown. This sum constituted 72,000 pence: the payment thus works out to about 100 acres per penny. I noted in respect to the Kaikoura Purchase (M10:52-53) that the Crown's policy of paying a nominal gratuity for Maori lands could not be justified when the lands in question had acquired a specific commercial value by virtue

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of European settlement and agricultural development. Although the Arahura District had not yet been physically occupied by such settlers at the time of the Purchase, applications for pastoral leases on the Grey River had apparently been accepted by both the Canterbury and Nelson Provincial Government. Both Donald McLean and James Mackay Jr. were aware of the 1857–58 Nelson applications, at least. They were also aware, by the time negotiations were resumed in 1860, that gold was definitely present in the District – although the actual extent and value of these deposits remained to be determined. I would suggest that this information should have been given much greater weight in determining the monetary compensation due to the Poutini Ngai Tahu from the Crown. (N2:86–87)

It seems clear that, by the time the sale was completed, the Crown officials responsible were aware that the 7.5 million acres was potentially of considerable value not only for settlement, in part at least, but on account of the presence of gold. The price paid was miserly, the more so as Mackay had in his possession £400, up to which sum he was authorised to settle. Perhaps the crowning insult was Mackay's verbal agreement that, having purchased in excess of 7 million acres of land for £300 or one penny per 100 acres, he agreed they could repurchase certain of that land at the rate of 10 shillings an acre, or 12,000 pence per 100 acres; land moreover which they had strongly urged should be excepted from the sale in the first place (A8:II:50). Expressed in another way, the Crown, in 1860, purchased 7.5 million acres for £300; in 1873, when Werita Tainui and other Poutini Ngai Tahu exercised their option to buy back a small portion of their land from the Crown at 10 shillings an acre, they bought 1050 acres for £500 (N4:27).

Finding on grievance no 8

- 13.5.7 We find that the Crown was under a duty to advise Poutini Ngai Tahu that, if gold was discovered in commercial quantities, this would enhance the value of their land. Moreover, the Crown was aware that European settlement on the west coast was imminent. In offering to pay no more than a nominal price for land which had the potential for a very early substantial rise in value we believe the Crown failed to act with the degree of good faith required of one Treaty party to the other. We find the Crown acted in breach of its Treaty obligation in this respect. We sustain the claimants' grievance no 8.

Grievances nos 3 and 4: Crown failure to reserve lands requested by Ngai Tahu

- 13.5.8 The claimants stated both that:

The Crown failed to permit Ngai Tahu to exclude from the sale such lands as they wished to exclude;

and that:

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The Crown wrongfully imposed a price on land that Ngai Tahu had wanted to exclude from the sale. (W6)

We propose to discuss grievances no 3 and 4 together as the difference, if any, between them is not readily apparent. The grievances appear to relate to two separate areas of land. First, an area of some 8000 acres which Ngai Tahu sought at the Arahura River. Secondly, the area of some 200,000 acres already discussed, between the Mawhera and Kotukuwakaoka Rivers and the Hokitika River.

Request for 8000 acres at the Arahura River

13.5.9 In a memorandum of 6 June 1866 James Mackay Jr noted:

The question of the reserve at Arahura or Brunner River, was the great stumbling block in completing the purchase of the west coast district. Natives wished for a reserve which would have contained about 8000 acres. I objected to this, but agreed that they could have 2000 acres and the whole of the river bed, and entered into a verbal agreement that they should be allowed to purchase at 10s per acre, any land lying between the eastern extremity of the 2000 acres and Mount Tuhua. (A8:II:50)³⁹

Poutini Ngai Tahu had requested this reserve as they wished to have a strip of land adjoining either side of the Arahura River from its source at Mount Tuhua right down to its junction with the sea. The purpose, of course, was to protect their access to the cherished pounamu. As we have seen, Mackay noted in his report on the abortive 1859 negotiations that, after he declined Ngai Tahu's request for the 200,000 acres between the Mawhera and Hokitika Rivers, Ngai Tahu argued that they would lose the Arahura River from which the "much coveted greenstone" was procured if they sold the land on either side of it. Mackay's response at the time was to say that the greenstone was of no use to the government and, if it was all they wanted, they might as well have the whole of the Arahura riverbed. During the 1860 negotiations Mackay declined to grant the reserve of 8000 acres requested and instead allotted 2000 acres only, together with an option to purchase more at 10 shillings an acre.

Mackay's reason for granting no more than 2000 acres was that he was constrained by his instructions from Governor Browne from granting more than 6000 acres for individual allotment. The 8000 requested was not only considerably in excess of this maximum but, had it been acceded to, would have prevented Mackay from granting any of the other 46 reserves, amounting to some 4724 acres. While this explains Mackay's action, it does not justify it.

13.5.10 By imposing a limit on the maximum area of the three categories of reserves which Mackay might settle on for Poutini Ngai Tahu, Governor Browne and his officials were acting in clear breach of the Treaty. As we have seen, article 2 of the Maori version of the Treaty preserved

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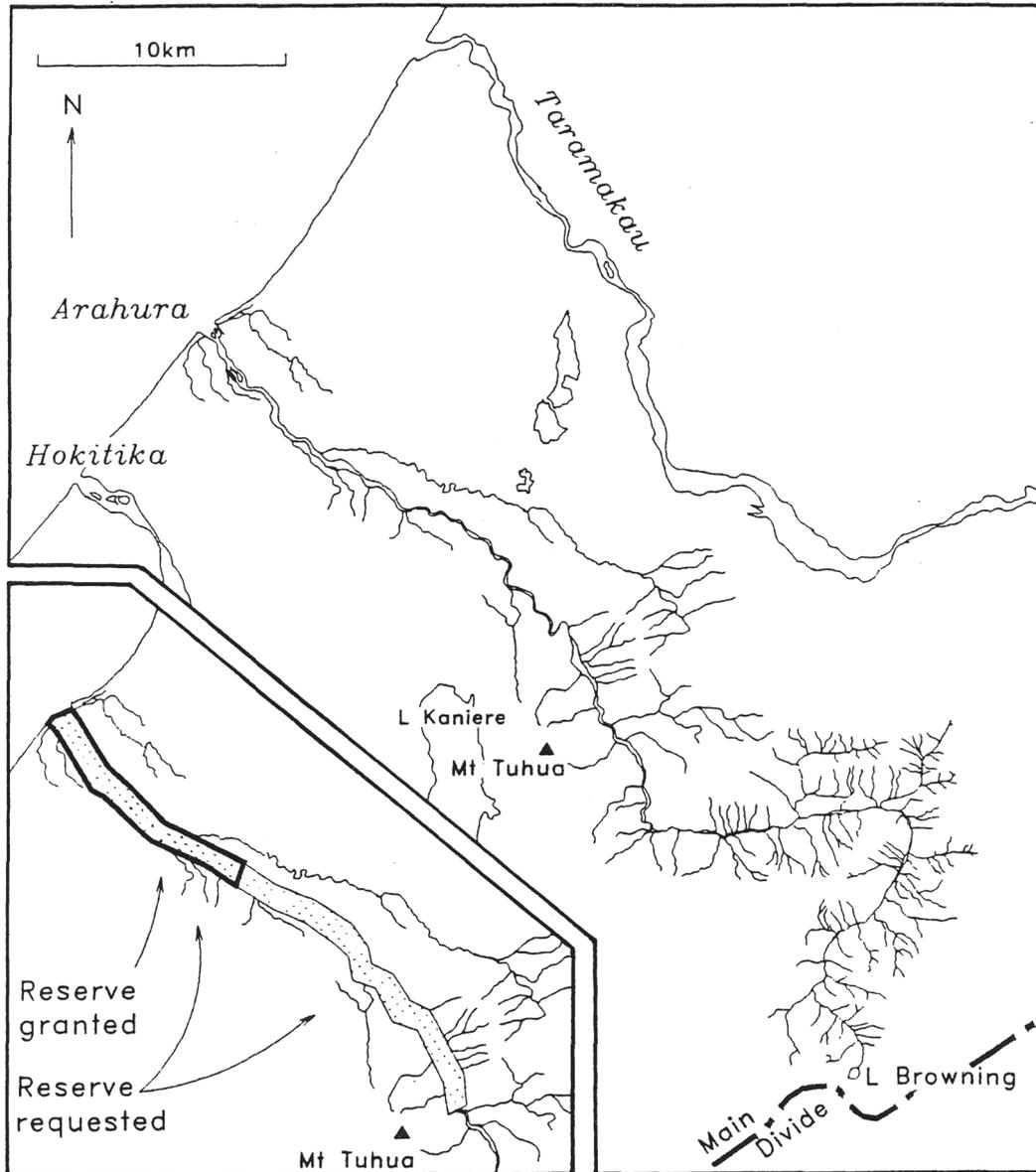


Figure 13.2: The Arahura River showing the reserve requested by Ngai Tahu and the lesser area granted by Mackay. The map also shows the river and its tributaries. In 1976 the Mawhera Incorporation was given title to the main course of the river from Lake Browning to the sea, but this did not include the river's tributaries.

to Poutini Ngai Tahu their rangatiratanga over their land. The English version of the same article confirmed and guaranteed to them the full, exclusive and undisturbed possession of their land so long as they

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wished to retain it. It is abundantly clear that Poutini Ngai Tahu wished to retain tino rangatiratanga over the area of land on either side of the Arahura River from its mouth at the sea to its source in the alps. Mackay estimated this to be of the order of 8000 acres. In fact he allocated only 2000 acres.

Finding on grievance no 3 as it relates to Ngai Tahu's request for 8000 acres at the Arahura River

- 13.5.11 By imposing on the Crown's agent Mackay a limit on the quantity of land he might agree to being reserved to Ngai Tahu, Governor Browne acted in clear breach of article 2 of the Treaty. Mackay was forced to deny Ngai Tahu's rangatiratanga over their land and to refuse to reserve to them land they very much wished, and were entitled, to retain. As we will see when we discuss grievance no 5 relating to pounamu, Ngai Tahu have suffered serious loss ever since.

It follows that Ngai Tahu's grievance no 3 is in this respect sustained.

Request by Ngai Tahu to retain 200,000 acres between the Mawhera and Kotukuwakaoka Rivers and the Hokitika River

- 13.5.12 This is the second limb of grievances no 3 and 4. As we have seen, Poutini Ngai Tahu consistently maintained during the 1859 negotiations that they wished to retain this land. They feared that if they agreed to sell it they would lose access to the Arahura River and the associated pounamu, as the Arahura was north of the Hokitika and hence within the limits of the 200,000 acre block. Because he was instructed to provide, if possible, no more than "about 500 acres" by way of a reserve or reserves, Mackay was unable to meet the understandable desire of Poutini Ngai Tahu to protect their treasured pounamu. This, and the nominal nature of the price of £200 offered by Mackay appear to be the principal reasons for Ngai Tahu's refusal to sell. We have earlier cited Mackay's note, that on 3 August 1859 Poutini Ngai Tahu would not alter their terms at all and Taetae and his people departed, telling Mackay to return to the governor and come back with £400 or £500 and they would sell the land. Although Mackay does not here say so, it became apparent from his subsequent actions that he also realised he would have to obtain authority to agree to substantially larger reserves.
- 13.5.13 When Mackay returned in 1860 to re-open negotiations with Poutini Ngai Tahu he had less restrictive instructions. He could now pay up to £400 and set aside three categories of reserves totalling 12,000 acres. Following preliminary discussions at the Mawhera pa, Mackay met with the assembled Poutini Ngai Tahu at Poherua on 20 April. As we have earlier recorded, Mackay noted:

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On the 21st the land question was recommenced, I found the Natives still desirous as on the former occasion to retain all the land intervening the rivers Mawhera and Kotukuwhakaho, and the river Hokitika, comprising some 200,000 acres of valuable country, *unless* they received £300 in compensation for their claims to the whole district extending from Kaurangi point to Piopiotai (Milford Haven), and larger reserves than had on my first visit been offered to them (800 acres was offered at that time). After some days spent in discussing the question, and on my having informed them of the very liberal provision in that respect ordered by His Excellency the Governor, they agreed, on the 26th April, 1860, to accept the sum of £300, as compensation for the whole of their claims to land in the Arahura or Poutini districts, excepting over such portions as were reserved for their own use or benefit. (A8:II:40)⁴⁰ (emphasis added)

Immediately after citing this passage in his evidence Mr McAloon commented:

In terms of Article Two of the Treaty, the Crown did not have the right to pressure Ngai Tahu to give up the block between the Mawhera, Hokitika, and Kotukuwhakaho Rivers. The statement by Ngai Tahu, on two separate occasions, that they wished to keep the block, should have been enough to guarantee it to them. The Crown was not in the position of trying to strike a deal with a sectional interest group; it was negotiating with the other party to the Treaty, and the independence and equality of that party was guaranteed. It was not for the Governor to make 'very liberal provision' of reserves, but to accept what was offered. (D3:6-7)

It is unnecessary for us to rule on the point of principle raised by Mr McAloon.

In the particular case in question Mr McAloon appears to be on somewhat shaky grounds. Poutini Ngai Tahu, in the passage cited by him, did not in fact decline to sell the land in question. Rather they made it a condition of their willingness to sell that they received £300 and not the £200 previously offered by Mackay in 1859, and also that they received larger reserves than previously offered. In the event, the Crown met both these conditions and a deed of sale was concluded.

Findings on grievances no 3 and 4

- 13.5.14 We have already found that the governor, in imposing an arbitrary limit on the size of the reserves which might be granted, was acting in breach of the Treaty. But in the case of the 200,000 acre block at present under discussion, we are satisfied that provided Poutini Ngai Tahu received £300 and larger reserves, they were willing to sell the block. And, in the circumstances, we are satisfied that the Crown did not impose a price on the 200,000 acre block which Ngai Tahu wanted to exclude from the sale. For the reasons given above (13.5.13) we find grievances nos 3 and 4 regarding Ngai Tahu's

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request to retain 200,000 acres between the Mawhera and Kotukuwakaoka Rivers and the Hokitika River are not sustained.

Grievance no 6: Crown failure to reserve Ngai Tahu sufficient land

13.5.15 In their sixth grievance the claimants stated that:

The Crown failed to protect Ngai Tahu by ensuring that they had kept enough land to provide an economic base and so preserve their Tribal Estate. (W6)

The question here is whether the Crown failed to ensure, as it was obliged by Treaty principles to do, that Poutini Ngai Tahu retained sufficient land for their present and reasonably foreseeable needs, or as the claimants put it, sufficient land for an economic base.

Poutini Ngai Tahu sold some 7.5 million acres of land for which they received £300. Some 6724 acres were scheduled as reserves for individual allotment (D5:18, schedule A). Poutini Ngai Tahu accepted that Ngati Apa should be allocated 424 acres leaving a nett acreage of 6300. An additional 3500 acres was reserved to be conveyed to the Crown in trust for Poutini Ngai Tahu under the provisions of the Native Reserves Act 1856. Poutini Ngai Tahu were promised exclusive control over the bed of the Arahura River and were to be permitted to purchase any land lying between the 2000 acre reserve at Arahura and Mount Tuhua at 10 shillings per acre. A further 2000 acres were set aside as a general government reserve to meet the cost of surveying the other reserves.

Just as in the Murihiku purchase, which involved a roughly similar area of land purchased by the Crown, so here a quite infinitesimal area of land – 6300 acres – was set aside for the direct use of the 100 or so Poutini Ngai Tahu.

Dr Loveridge, the Crown historian, presented to us a comprehensive and thoroughly researched account of the Arahura purchase. We cite his conclusion on the provision of reserves:

As for the 12,224 acres of reserved land and the promises respecting the Arahura River which made up the territorial component of the compensation, there are few signs of a spirit of generosity here either. The 6724 acres set aside for individuals – the only portion of the reserved acreage left under the direct control of the owners – represented about 66 acres apiece, on average, for the 101 people involved. This might have been adequate for the immediate requirements of the Poutini Ngai Tahu, but their future requirements apparently received scant consideration. The evidence indicates that James Mackay did his utmost to reduce the acreage reserved to the bare minimum which the owners could be induced to accept. Both Donald McLean and the Governor approved of this approach. It is very difficult to understand why it was deemed to be appropriate-particularly with respect to the Arahura River. (N2:87)

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In fairness to the Crown it should be recognised that the various reserves were well sited at Poutini Ngai Tahu kainga and included some 500 acres at the mouth of the Mawhera (the present town of Greymouth). But, as we discuss in the following chapter, the value of this land has been adversely affected by being perpetually leased. While on average an allocation of 66 acres per person might be thought relatively generous compared with those allowed on the east coast, we are satisfied, particularly having regard to the nature of the land and climatic conditions that the reserves were inadequate to provide a sustainable economic base for the future. We reserve for our discussion of the claimants' grievance no 5 the very unsatisfactory situation concerning pounamu.

- 13.5.16 Quite apart from the failure of the Crown to provide adequate land to enable Poutini Ngai Tahu to engage in agricultural, pastoral or (later) dairy farming on an equal basis with European settlers, little thought appears to have been given to the need to ensure continued access by Poutini Ngai Tahu to mahinga kai. As with earlier purchases we have discussed, the Crown failed, in considering the present and future needs of Poutini Ngai Tahu, to have any real regard to ensuring their continued access to important food resources. We agree with Dr Loveridge's considered conclusion about reserves that the future requirements of Poutini Ngai Tahu apparently received scant attention. Given the size of the area acquired – 7.5 million acres – the land retained from Ngai Tahu was little more than nominal and, again to quote Dr Loveridge, "the bare minimum which the owners could be induced to accept".

Findings on grievance no 6

- 13.5.17 The tribunal finds that grievance no 6 is sustained for the reasons given above (13.5.16).

The tribunal further finds that the Crown's failure to ensure that Poutini Ngai Tahu were left with sufficient land for an economic base and to provide reasonable access to their mahinga kai was in breach of article 2 of the Treaty, which required the Crown to ensure that each tribe was left with a sufficient endowment for its present and future needs. Ngai Tahu were detrimentally affected by such failure.

Grievance no 5: Crown failure to protect Ngai Tahu rights to pounamu

- 13.5.18 The claimants stated that:

The Crown failed to protect the right of Ngai Tahu to retain possession and control of all pounamu. (W6)

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In his final reply on behalf of the claimants Mr Temm, after criticising Mackay, the Crown purchase agent, for failing to protect Ngai Tahu's interests in pounamu, went on to say that:

the pounamu is and always was intended to be ours. It has been taken by other people and exploited for years. It has been taken for nothing, stealthily by helicopters from inaccessible places and sold commercially in the market place. It is our taonga and belongs to us. It has always been for us a valuable asset not only for cultural purposes but as a means of trade. We have traded pounamu up and down New Zealand for centuries. We say that we are entitled to pounamu and that it should be a recommendation of this Tribunal that all pounamu in the South Island should be the property of the Ngai Tahu and that they should be allowed to use it for traditional purposes in any way Ngai Tahu see fit. (X1:121-122)

The tribunal notes that the grievance refers to the right of Ngai Tahu to retain *all* pounamu. Mr Temm in his submission referred to all pounamu in the South Island. We interpret this to mean all pounamu in Ngai Tahu's territory in the South Island. Whether this would include all pounamu in the South Island we have not been told. The tribunal is aware however that there is pounamu in South Westland, for example, outside the Arahura block and within the Kemp and Murihiku blocks.

It is convenient to consider first the pounamu in and adjacent to the Arahura River and its tributaries; secondly, elsewhere in the Arahura block; and thirdly, in Murihiku and any other Ngai Tahu sale areas in which pounamu is to be found.

Pounamu in and adjacent to the Arahura River and its tributaries

- 13.5.19 In his report of 21 September 1861 to the chief land commissioner, Mackay said:

It was specially stipulated that a very large reserve should be made at the river Arahura or Brunner, and that the reserves should be taken in a strip up each side of the river with a view of giving them a right to its bed, from which is obtained the highly prized greenstone, which gives the name Wahi Pounamu, – place of greenstone, – to the Middle Island. (A8:II:40)⁴¹

As we have seen in our discussion on grievance no 3 (13.5.9), Mackay in 1866 characterised the question of the reserves at Arahura “the great stumbling block” in completing the west coast purchase. He declined the Ngai Tahu request for a reserve going the whole way up both sides of the Arahura River, which he said would have contained about 8000 acres, but agreed they could have 2000 acres and the whole of the river bed. He further verbally agreed they could purchase at 10 shillings an acre “any land lying between the eastern extremity of the 2000 acres and Mount Tuhua” (N3:93).⁴² We have

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earlier found that the failure of the Crown to reserve the 8000 acres requested by Ngai Tahu to be a breach of article 2 of the Treaty (13.5.11).

Two maps were made of this reserve by Mackay, of which copies were produced in evidence. One (N19A) marks the strips of land reserved on each side of the river. It purports to show the respective strips of 1000 acres each stretching the whole way along each side of the Arahura River from the sea up to Mount Tuhua. A notation on the plan gives Ngai Tahu the right of purchase at 10 shillings an acre, as mentioned above. Given Mackay's 1866 statement that a reserve of 8000 acres would have been required to secure the land on each side of the Arahura up to Mount Tuhua, his map (N19A) seems to be misleading. It may well have induced Poutini Ngai Tahu to believe that reserves on either side had been secured up to Mount Tuhua.

The other map, (N19B), shows the river (as part of the same map (N19A)) extending up to Mount Tuhua and as being reserved to Ngai Tahu. Unfortunately the river bed was not made a formal "reserve" under the terms of the deed but there can be no doubt that both Mackay and Poutini Ngai Tahu considered it to be part of the agreement.

After referring to these two maps Mackay, in his 8 June 1866 report, concluded by saying:

I think, as a vast territory was acquired by the Government for a very small sum of money, and it has since become very valuable, and the reserves, though much enhanced in value, are very small in comparison with the whole block ceded, that the Provincial Government would be justified in giving to the Natives the land at Arahura which forms the subject of Mr Bealey's letter. (N3:93)⁴³

It appears Mr Bealey's letter is not now available. But Mackay is here recommending that additional reserves in the Arahura area should be provided for Ngai Tahu.

- 13.5.20 In 1873 Werita Tainui and some others, in exercise of their right of pre-emption granted by Mackay, acquired 1050 acres near Mount Tuhua for £500, that is to say, at a cost 12,000 times more than the Crown paid for it 13 years earlier. The land was subsequently sold (N4:27).

In 1876 some 14,150 acres commencing at the eastern boundary of the 2000 acre Arahura reserve (MR30) was vested in the Hokitika Harbour Board. This land was subsequently disposed of by the harbour board. Most is now owned by Tasman Forestry Limited (N5:28–32). Mr Blanchard, in his evidence for the Crown, argued that due to the operation of the rule against perpetuity, the option to

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purchase the land adjoining the Arahura up to Mount Tuhua is now inoperative. He stressed that he was merely attempting to assess the present legal position rather than making any submission as to what ought to be the outcome in terms of the Treaty (N5:33–34).

The bed of the Arahura River within the Arahura reserve (MR30) is now vested in the Mawhera Incorporation and the balance of the Arahura riverbed from the eastern boundary of MR30 to Lake Browning (the source of the Arahura) is now also vested in the Mawhera Incorporation by section 27, Maori Purposes Act 1976 (N4:5). As Crown counsel Mr Blanchard pointed out, the title purports to be to the bed of the river, but if the river shifts its course the title boundaries do not follow it (N4:35).

Crown counsel, in submissions on Poutini Ngai Tahu mining issues (N8:13), after referring to certain provisions of section 8, Mining Act 1971 and section 59, Land Act 1948, submitted that it could be argued that the pounamu did not vest in the Mawhera Incorporation when section 27 of the Maori Purpose Act 1976 was passed, since that section is silent concerning minerals on or under the land. Mr Blanchard thought the doctrine of aboriginal title would apply, but said that if the tribunal felt the point remained doubtful the Crown would be prepared formally to undertake to vest the pounamu in the incorporation.

We strongly urge that this should be done to avoid any future doubts. The tribunal's recommendation to this effect is in 13.5.31.

13.5.21 Mr Blanchard, in his closing address, discussed the Arahura River in some detail. We cite the following passage from his submissions:

The Crown accepts that the intention of Mackay was that the bed of the river and the tributaries, together with their banks, were to be vested in Poutini Ngai Tahu.

Certificates of Title have been issued to the Mawhera Incorporation in respect of the river bed itself from the Arahura reserve to Lake Browning pursuant to s27 of the Maori Purposes Act 1976 but those titles are inadequate to give effect to Mackay's promise because:

- (a) The tributaries are not included.
- (b) The banks of the river and the tributaries are not included.
- (c) Changes in the course of the river are unable to be accommodated by the fixed lines of the Certificate of Title boundaries.

They are not, however, merely centre line titles: their apparent lack of breadth is because of the scale of the title diagrams.

The Crown accepts that it would be proper for the Tribunal to recommend that Poutini Ngai Tahu should have the exclusive right to control the taking of pounamu but that, in accordance with the views expressed by the tribe, pounamu should not be commercially exploited

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by any person and thus the Poutini Ngai Tahu right to take it should be for non-commercial purposes. (X2:5:24–25)

Although not expressly stated, we understand the Crown's concession that Poutini Ngai Tahu should have the exclusive right to control the taking of pounamu to extend to all pounamu in the Arahura River and its tributaries, and the banks of the Arahura and its tributaries. In other submissions on Poutini Ngai Tahu mining issues (N8) Crown counsel, after noting that under the deed of sale minerals passed to the Crown, submitted that Ngai Tahu's rights to pounamu were extinguished in lands other than the bed of the Arahura River and the other reserves. We will consider this submission when we discuss the claimants' claim to *all* pounamu. In the meantime we note that the Crown's concession is to be understood as confined to the Arahura River, its tributaries and their banks.

- 13.5.22 Crown counsel did not, however, define what land was intended to be encompassed by the "banks" of the various rivers. If, as envisaged by the Crown, Ngai Tahu should have the exclusive right to control the taking of pounamu, should they not have vested in them a reasonable amount of land on either side of the Arahura River and its tributaries, to their respective sources, if such land can be acquired by negotiation by the Crown? At present, as the evidence made clear, there are formidable problems in policing the unlawful taking of pounamu from the Arahura. Further, the whole purpose of Ngai Tahu seeking the extensive reserves on either side of the Arahura was not only to ensure its continued ownership of the Arahura River and its tributaries, but also the pounamu within such rivers and on land adjacent to them. Pounamu is often to be found on such adjacent land and is more readily taken than pounamu in the river itself. Pounamu was and remains a cherished taonga of Ngai Tahu. The Crown clearly acted in breach of its Treaty obligations in failing to meet the wishes of Ngai Tahu to retain ownership of the pounamu in and adjacent to the Arahura and its tributaries. Although we are conscious of the fact that some of the adjacent land is no longer in Crown hands we consider the Crown should accept responsibility and make every effort to redeem its long-standing Treaty breach by negotiating for the repurchase of appropriate blocks of land adjacent to the Arahura and its tributaries, and if successful, settling such land on Ngai Tahu in addition to Crown owned land.
- 13.5.23 In accepting that it would be proper for the tribunal to recommend that Poutini Ngai Tahu should have the exclusive right to control the taking of pounamu, the Crown suggested, "in accordance with the views expressed by the tribe", that such pounamu should not be commercially exploited by any person and therefore Poutini Ngai Tahu's right to take it should be for non-commercial purposes. The

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Crown may well have gained the impression that Ngai Tahu was opposed to the commercial exploitation of pounamu from the evidence of Mr Maika Mason, a leading spokesperson for Poutini Ngai Tahu and then deputy chairperson of the management committee of the Mawhera Incorporation. Mr Mason did, however, make it clear that the views he expressed were his, and not necessarily those of the committee of management.

Mr Mason told the tribunal that at Mawhera Incorporation meetings the commercial exploitation of pounamu by Pakeha is seen as being destructive of his people's mana. This, he said, is seen as the most crucial issue in Arahura, more important even than the question of the leases. "In the old days", Mr Mason said, "the pounamu and the carvings made from it enshrined everything that our people were and was a source of trade for them" (P4:4). For these reasons, we were told, Ngai Tahu have consistently tried to obtain control of this resource.

Mr Mason referred to a decision of the District Court in an application by Westland Greenstone Limited for a road licence under section 93 of the Mining Act 1971. The purpose of the application was to enable a road to be formed to give vehicular access to certain land over which the applicant held a mining licence to extract pounamu. The application was opposed by the Mawhera Incorporation in whom the river bed was vested. Judge Fraser stated the tenor of the Mawhera Incorporation's case to be as follows:

1. The Poutini Ngaitahu attach a special traditional and cultural status to greenstone.
2. The Arahura Valley is an important source of greenstone.
3. For those reasons when the Poutini Ngaitahu sold their land to the Crown in 1860 they sought to exclude the valley from the sale.
4. The vesting of the bed of the Arahura River in Mawhera (as representative of the Poutini Ngaitahu) is only partial recognition of that claim.
5. The Arahura Valley because of its significance as a major source of greenstone ought to be kept free of commercial operation.
6. The partial construction of the access track was a trespass onto Mawhera land and an un-authorized disturbance.
7. The valley ought to be kept as far as possible in its natural state. The proposed road is ecologically undesirable. (D5:658)⁴⁴

The judge commented that the views summarised in 1 to 5 above – at least in their entirety – did not seem to have been shared or regarded as binding by all Ngai Tahu at all times. He cited the late Mr Walter Tainui, a member of Ngai Tahu and a man of standing, as having been one of the original shareholders of Westland Greenstone and as being supportive of the applicants' commercial operation. The judge also

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noted that Mr Tipene O'Regan (a principal spokesperson for Ngai Tahu) had acknowledged that the spirit of the agreement with the Crown in 1976 (to vest the Arahura River in Ngai Tahu), included the understanding that Mawhera would respect all existing mining licences. Mr Mason cited to us the following conclusions by Judge Fraser:

The balancing of the historical and cultural beliefs and views of the people represented by Mawhera on the one hand and the commercial interests of Westland Greenstone and the economy generally on the other is a question of public interest of some importance. It is not readily susceptible of judicial evaluation.

. . . I consider that the continued existence of the mining and the business based thereon in today's economic circumstances outweighs the limited detriment to the beliefs and wishes of the proprietors of Mawhera. I recommend that the objection be declined. (D5:661-662)⁴⁵

Mr Mason expressed the view that this decision demonstrated the inadequacies and insensitivities of the Mining Act at least so far as it relates to pounamu and Maori values. He went on to express his belief that the value of pounamu to his people was so great that, as a minimum, there should be a special statutory control over its extraction and use (D4:5).

We note that, according to Mr Mason, and we accept his evidence, Ngai Tahu traditionally traded in pounamu and pounamu carvings. We will defer our final consideration of the various Crown proposals we have discussed and any recommendations we might make until we have considered the wider aspect of grievance no 5, that is, that the Crown failed to protect the right of Ngai Tahu to retain possession and control of all pounamu. We turn next to consider all other pounamu within the boundaries of the Arahura deed of sale and not just that in and adjacent to the Arahura River and its tributaries.

Pounamu in the Arahura block other than that in and adjacent to the Arahura River and its tributaries

13.5.24 Mr Maika Mason, whose objection to the commercial exploitation of pounamu by Pakeha we have already noted, prefaced these comments by the following observations. We quote them at length for the insight they give on the basis for the Ngai Tahu grievance we are considering:

The Tribunal will have already heard that when James Mackay was negotiating the purchase of Arahura, our people wanted to reserve from the sale all the land between the Rivers Mawhera, Hokitika and Kotukuwhakaoho. Their reason was that it is between those rivers that the pounamu was found. The pounamu was the most important resource for our people in Arahura and was a major source of their mana and of trade.

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Even today many people consider the riverbeds, especially the Arahura, to be the source of the pounamu, and in the sense that the stone is brought down the riverbeds by water action that is true. Nevertheless, then and now, the most accessible source of pounamu is the land onto which the stone was washed over the centuries. In particular, the richest source is the land lying between the rivers I have named.

I believe that at the time of the sale our people were insisting on the reservation of the pounamu to them, by which Mackay and other Pakeha understood them to mean the need to reserve a river or rivers for that purpose. These Pakeha did not understand, as many do not understand now, that when the stone is in the river, it is covered by water and therefore difficult to find and extract. Our people knew that the best and most easily recovered pounamu was on the land.

I believe that our people on one side, and Mackay and his assistants on the other, never really understood what each was talking about when it came to pounamu. This misunderstanding was almost certainly coloured by the fact that neither side could [foresee] the day when the Arahura lands were fully settled and the pounamu found on the land might become the property of the landowner or lessee, and therefore inaccessible to the Maori people.

The result is that today our people have little lawful access to the pounamu. That is a tragedy for both our culture and our mana. Today we see cheap gimcrack pounamu ornaments being sold to tourists, much of the carving being done by Pakeha working in factories and with no knowledge at all of the spiritual values which our people enshrine in their carving. Our people are not entirely blamefree in this, some of them are also involved in that trade, but that is almost an inevitable result of the debasement of our heritage. They see Pakeha making money out of this business and almost inevitably some will try to do the same. (D4:2-3)

Mr Mason here claimed that the reason why Poutini Ngai Tahu wanted to reserve from the sale all the land between the Rivers Mawhera and Kotukuwakaoka and Hokitika was that it was between those rivers that the pounamu was found.

- 13.5.25 In our earlier discussions of the 1859 purchase negotiations (13.3.7) we cited a lengthy passage from Mackay's report. In this he referred to Ngai Tahu's wish to retain the area of some 200,000 acres between the three rivers. His response was that this was the best land, and he was being offered various bluffs, which he named. He then noted Ngai Tahu's response, which was that they would lose the Arahura River, from which the much coveted pounamu was procured, if they sold the land on either side of it. In the course of his lengthy report, which he described as "minutes of proceedings" Mackay nowhere records that the reason Poutini Ngai Tahu were standing out for the whole of the 200,000 acre block between the named rivers was that they wished, thereby, to retain ownership of the pounamu. It was clearly his understanding, however, that they did wish to retain the Arahura River and access to it. When Taetae departed and the negotiations were terminated, as we have seen, he told Mackay to return to

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the governor, “and if I came back with four or five hundred pounds they would sell the land”. This would appear to include the 200,000 acres apart from the Arahura River and its adjoining land.

We also recall Mackay’s 1861 report in which he noted that, as part of the oral agreement reached on 26 April 1860, “it was specially stipulated that a very large reserve should be made at the River Arahura . . . and that the reserves should be taken in a strip up each side of the river”. This would give them a right to the river bed “from which is obtained the highly prized greenstone”. That Ngai Tahu were insistent on retaining ownership of the Arahura River and adjacent land was confirmed by Mackay in his 1866 memorandum, to which we have earlier referred. There Mackay commented that the question of the reserve at Arahura River “was the great stumbling block in completing the purchase of the west coast district”, as Ngai Tahu wanted to retain about 8000 acres and Mackay was able to agree to only 2000 acres.

It is difficult for the tribunal, in the absence of any contemporary or later evidence from any Poutini Ngai Tahu, to know whether Mr Maika Mason is correct in asserting that the reason Ngai Tahu stood out in 1859 for the retention of the 200,000 acre block was because only by this means would they retain ownership of all pounamu in the whole of the block. But the tribunal accepts that pounamu was treasured by Ngai Tahu and would have been of very great concern to them.

- 13.5.26 The Crown submitted that because all minerals (which term it says would include pounamu) passed to the Crown under the deed of sale, Ngai Tahu’s rights to pounamu were extinguished in lands *other* than the bed of the Arahura River and the other reserves. The tribunal has carefully examined the Maori text of the Arahura deed of purchase as signed by Poutini Ngai Tahu rangatira (see appendix 2.9). We would say at the outset that neither the Maori or English version recognises the value attached by Poutini Ngai Tahu to pounamu. The Maori text refers to “kowhatu” (stones), translated in the English version as “minerals”. But there is no mention of pounamu as such in the deed. The tribunal is satisfied that there would have been a clear demarcation in Ngai Tahu thinking between ordinary stones and greenstone, so great were the spiritual and cultural values attached to its possession. Was not the island inhabited by Ngai Tahu known as Te Wai Pounamu? We believe that since pounamu was not mentioned by name in the deed and since Ngai Tahu were so clearly concerned to retain it, there is every reason to believe that Ngai Tahu did not realise they might be thought to be assigning it to the Crown. The tribunal is satisfied that Poutini Ngai Tahu did not consciously agree to part

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with their pounamu and that the language of the deed was not sufficient to convey it to the Crown.

This is another instance where the presence of a protector to advise Ngai Tahu would have ensured that they were not put in the position where they might inadvertently part with their so greatly treasured possession. The tribunal finds that Ngai Tahu did not sell or assign to the Crown their interest in pounamu within the Arahura purchase block. Had the Crown appointed a protector as it should have done, the tribunal believes this would have been discussed with the Crown's purchasing agent, Mackay, and specific provisions would have been made to make clear that Ngai Tahu retained ownership of all pounamu.

Pounamu in areas other than the Arahura block

- 13.5.27 As we have indicated, Mr Temm sought a recommendation that all pounamu in the South Island should be the property of Ngai Tahu. We have interpreted this as all those parts of the South Island formerly owned and occupied by Ngai Tahu. The tribunal was advised that pounamu is to be found in parts of South Westland, in the Murihiku purchase block and in parts of the Kemp block, in addition to the Arahura block. The tribunal has examined the Murihiku deed and all other deeds of sale between Ngai Tahu and the Crown. In none of these does pounamu appear in the Maori text signed by Ngai Tahu, nor in the respective English translations. Given the high intrinsic value of this taonga to all Ngai Tahu, the tribunal considers for the reasons already discussed in the case of Poutini Ngai Tahu, that specific mention of pounamu in each deed would have been required to signify Ngai Tahu's intention to part with their pounamu. The tribunal finds that in none of the deeds of sale did Ngai Tahu agree to part with any pounamu to be found in the respective purchase blocks.
- 13.5.28 Pounamu is an irreplaceable treasure. Once mined and commercially exploited much of it (at present sold to foreign tourists) is gone for ever. The tribunal believes that the unique nature of pounamu and its deep spiritual significance in Maori life and culture is such that every effort should now be made to secure as much as possible of the steadily declining supply to Ngai Tahu ownership and control.

Unfortunately the tribunal did not receive any significant evidence or submissions as to the proportion of pounamu which is owned by the Crown, on the one hand, and privately on the other. Our understanding is that the greater part is on Crown owned land. This should present no problem. We believe all such pounamu and any other owned by the Crown should be returned by the Crown to Ngai Tahu. Any such action would of course have to be on the basis that any

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current mining licences relating to pounamu should run their normal course, to ensure that those licence holders are not adversely affected. The same protection should be afforded any licensees of pounamu in the state forests which have been excepted from the provisions of the Mining Act 1971. The aim should be for the Crown as expeditiously as possible to return to Ngai Tahu ownership and control all such pounamu within its traditional boundaries.

Some pounamu we understand is the property of proprietors of privately owned land. The tribunal considers that it would be appropriate for an order in council to be made in respect of such pounamu pursuant to section 7 of the Mining Act 1971, and that an appropriate amendment be made to ensure that mining privileges should be granted only to Ngai Tahu under that section.

Finding on grievance no 5

13.5.29 The tribunal finds that the Crown failed to protect the right of Ngai Tahu to retain possession and control of all pounamu:

- (a) in and adjacent to the Arahura River and its tributaries;
- (b) in the remainder of the Arahura purchase block; and
- (c) in the Murihiku and any other Ngai Tahu blocks purchased by the Crown where pounamu was to be found.

Finding regarding breach of Treaty principles

13.5.30 The tribunal has already found, in relation to grievance no 3, that the Crown acted in breach of article 2 of the Treaty in failing to reserve to Ngai Tahu the 8000 acres requested at the Arahura River (13.5.11). The principal purpose of this request was to ensure continued Ngai Tahu ownership and control of the pounamu in the Arahura River and its tributaries. In refusing to meet the expressed wish of Ngai Tahu to retain such possession and control of all pounamu in the Arahura River and its tributaries and land adjacent thereto, and thereby failing to respect the tino rangatiratanga of Ngai Tahu over their taonga, the Crown acted in breach of article 2 of the Treaty.

The tribunal further finds that although Ngai Tahu wished and intended to retain possession and control of all pounamu both throughout the remainder of the Arahura block and in all other blocks sold to the Crown, the Crown failed in breach of the Treaty principle requiring it to protect Ngai Tahu's right to retain this taonga and further failed to respect the tino rangatiratanga of Ngai Tahu over their taonga, contrary to article 2 of the Treaty.

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Recommendations in respect of pounamu

- 13.5.31 1 That to remove doubts as to the ownership of the pounamu in or on the land described in section 27(6) of the Maori Purposes Act 1976 the Crown take appropriate legislative action to vest all such pounamu in such body or bodies as may be nominated by Ngai Tahu.
- 2 That section 27 of the Maori Purposes Act 1976 be amended so as to vest the beds of all tributaries of the Arahura River in the Mawhera Incorporation or such other body as may be nominated by Ngai Tahu.
- 3 (a) That the Crown, after consultation with Ngai Tahu, negotiate for the purchase of a reasonable amount of land on either side of the Arahura River and its tributaries to their respective sources. Such land to include the banks of the rivers and to be sufficient in area to include any changes in course of such rivers and to provide access to reasonable quantities of pounamu where such may exist in or on such adjacent land.
- (b) That the Crown transfer ownership of all such land so acquired and any such land already owned by the Crown to the Mawhera Incorporation or such other body as may be nominated by Ngai Tahu.
- 4 That the Crown transfer ownership and control (including the right to mine) to Ngai Tahu or such other body as may be nominated by Ngai Tahu of:
- (a) all pounamu owned by it in land within the boundaries described in the Arahura deed of purchase dated 26 May 1860, other than any pounamu already vested in Ngai Tahu or which is vested in Ngai Tahu pursuant to our recommendations numbered 1 to 3; and
- (b) all other pounamu owned by it in the Murihiku and all other blocks purchased from Ngai Tahu by the Crown.
- Such transfers to be subject to the condition that all existing mining or other licences should run their normal course, to ensure that the holders of such licences are not adversely affected.
- 5 (a) That the Crown pursuant to section 7 of the Mining Act 1971 by order in council declare in respect of all pounamu which is the property of proprietors of privately owned land, on or under the land in the districts described in the preceding paragraph 4 (a) and (b), that pounamu on or under such land shall be prospected for or mined only pursuant to the said section 7.
- (b) An appropriate amendment should be made to the Mining Act that no prospecting, exploration, mining or other licence relating

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to pounamu shall be granted under that or any other Act to any person or body other than Ngai Tahu or such other body or person as may be nominated by Ngai Tahu.

Grievance no 1: Crown failure to provide a protector

13.5.32 The claimants stated that:

The Crown failed to appoint a protector to ensure that Ngai Tahu were independently advised of their Treaty and other rights. (W6)

In our discussion of the Murihiku purchase we discussed an identical grievance. We there found that the failure of the Crown to appoint a protector was in breach of the Treaty principle which required the Crown actively to protect Maori Treaty rights. Just as in Murihiku so here, the tribunal believes that Ngai Tahu were seriously disadvantaged in their negotiations with the Crown's agent James Mackay Jr. As we have indicated, a protector would surely have impressed on Poutini Ngai Tahu the potential value of a major gold discovery and its effect on land values. A protector would have been able to ensure that they retained the right to ownership and control of all pounamu. A protector would surely have encouraged them to demand substantially greater reserves, and emphasised that they were entitled to retain whatever land they did not wish to sell. Mackay, anxious as he was to report a successful mission, and circumscribed as he was by the very restrictive terms he could offer, was in no position to perform the role of a protector.

Finding on grievance no 1

13.5.33 The grievance is sustained. The failure of the Crown to appoint a protector to ensure that Ngai Tahu were independently advised of their Treaty and other rights was a breach of the principle of the Treaty which required the Crown to actively protect Maori Treaty rights. As a result Ngai Tahu were denied the right to retain certain lands they wished to retain and were left with insufficient land for their present and future needs. As a further result Ngai Tahu lost their right to ownership and control of all their pounamu.

Remaining grievances

13.5.34 The claimants' remaining grievances were:

7. The Crown failed to protect Ngai Tahu by passing legislation imposing perpetual leases without the consent of Ngai Tahu, and without provision to protect them from economic loss.

9. The Crown failed to protect Ngai Tahu by later causing or permitting lands that had been excluded from the sale to be reduced in area (for example, within the town of Greymouth).

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10. The South Island Landless Natives Act 1906 and other legislation was inadequate to remedy the landlessness caused by the sale to the Crown.

11. The Crown has failed to protect Ngai Tahu by not implementing the recommendations of the Commission of Enquiry into Maori Reserved Lands, [1975]. (W6)

Grievance nos 7 and 11 will be considered in the next chapter dealing with the reserved lands.

Grievance no 9 will be considered in our further report on ancillary claims.

Grievance no 10 will be considered in chapter 20.

References

- 1 Translation of Ngatitōa deed of sale, *Compendium*, vol 1, p 308
- 2 McLean to colonial secretary, 7 April 1856, *Compendium*, vol 1, p 301
- 3 Translation of receipt for £2000 paid to Ngatitōa tribe, *Compendium*, vol 1, p 311
- 4 Translation of receipt for £500 paid to Ngatiawa tribe, *Compendium*, vol 1, p 309
- 5 Translation of deed of sale by the Ngatitama tribe, *Compendium*, vol 1, p 313
- 6 Translation of receipt for £100 paid to Rangitane, *Compendium*, vol 1, p 313
- 7 see n 2, p 303
- 8 Hamilton to McLean, 8 January 1857, *Compendium*, vol 2, p 17
- 9 Hamilton to McLean, 5 February 1857, *Compendium*, vol 2, p 20
- 10 "Notes of a Journey from Pakarau, Massacre Bay, to the Mawhera, or Grey River, on the West Coast, February and March, 1857", *Nelson Examiner*, 26 August 1857, pp 3–4
- 11 *ibid*
- 12 Tarapuhi (and others) to McLean (translation), 15 March 1857, ms papers 32 (McLean) folder 681A, ATL, Wellington
- 13 J Mackay Jr to McLean, 18 June 1857, ms papers 32 (McLean) folder 681A, ATL, Wellington
- 14 J Mackay Sr to McLean, 15 February 1858, ms papers 32 (McLean) folder 420, ATL, Wellington
- 15 For evidence of this see report in *Lyttelton Times*, 3 April 1858, p 4
- 16 McLean to J Mackay Jr, 3 November 1858, *Compendium*, vol 2, p 33
- 17 J Mackay Jr to McLean, 19 November 1858, *Compendium*, vol 2, p 34
- 18 Minutes of proceedings enclosed in J Mackay Jr to native secretary, 27 September 1859, MA Collingwood 2/1 Outwards Letterbook, 1858–1863, pp 57–58, NA, Wellington
- 19 *ibid*, pp 59–60
- 20 *ibid*, p 62

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- 21 J Mackay Jr to native secretary, 27 September 1859, MA Collingwood 2/1, Outwards Letterbook, 1858–1863, NA, Wellington
- 22 *ibid*
- 23 For supporting evidence see J Mackay Sr to McLean, 16 August 1859, ms papers 32 (McLean) folder 420, letter 10
- 24 Smith (for McLean) to J Mackay Jr, 25 October 1859, *Compendium*, vol 2, p 39
- 25 J Mackay Jr to McLean, 17 December 1859, MA Collingwood 2/1 letters, NA, Wellington
- 26 Hamilton to McLean, 6 August 1857, *Compendium*, vol 2, p 27
- 27 see n 10
- 28 J Mackay Jr to McLean, 21 September 1861, *Compendium*, vol 2, p 40
- 29 *ibid*
- 30 *ibid*
- 31 *ibid*, p 41
- 32 *ibid*
- 33 *ibid*
- 34 *Nelson Examiner*, 30 June 1860, p 3, “The West Coast”, for a copy of a letter of 20 June 1860 from J Mackay Jr to J Mackay Sr, which refers to his “seeing about native reserves” in the Buller area on way back to Collingwood.
- 35 see n 28, p 41
- 36 see n 18, p 58
- 37 see n 18, p 59
- 38 see n 18, p 59
- 39 J Mackay Jr, memorandum, 8 June 1866, *Compendium*, vol 2, p 50
- 40 see n 28
- 41 see n 28
- 42 see n 39
- 43 see n 39
- 44 *Re Westland Greenstone Limited*, (unreported, District Court, Greymouth, 9 July 1981) p 23
- 45 *ibid*, p 26–27

Chapter 14

The Perpetual Leases Of Ngai Tahu Reserves

14.1. Introduction

This section of the report deals with the claimants' grievance that the Crown, in breach of the Treaty, unilaterally imposed perpetual leases containing unjust terms over lands reserved from the Arahura purchase of 1860.

We shall be referring to a number of submissions presented to the tribunal as well as a volume of other relevant evidence. Submissions were made not only by counsel for the claimants and counsel for the Crown, but also on behalf of the Maori Trustee. Comprehensive submissions were made on behalf of the West Coast (South Island), Maori Leaseholders Association Incorporation, and certain lessees of Mawhera Incorporation, by Dr Willie Young. The tribunal also had before it the overview report of Professor Alan Ward.

We received in evidence the Report *of the Commission of Inquiry into Maori Reserved Land* that was set up in 1973, completed its investigations by the end of 1974, and published its findings in early 1975. Evidence was also given to the tribunal by Ngai Tahu owners and by other residents of Greymouth including the mayor, Dr B Dallas. We shall be referring to the views of these various persons, bodies and organisations where relevant during this examination of the Greymouth leases. We shall be primarily concerned with the reserve known as MR 31 or the Mawhera Reserve, comprising originally 500 acres on the south bank of the river Mawhera or Grey, as this reserve highlights the main issues and events on the perpetual lease question.

During the course of a hearing held at Greymouth in September 1988 the tribunal allowed three Maori authorities to tender submissions in support of the claimants' grievance. These were lodged on behalf of:

- 1 Parininihi-ki-Waitotara Incorporation of Wanganui (N10)
- 2 Wakatu Incorporation of Nelson (N11), and
- 3 Wellington Tenths Trust and Palmerston North Maori Reserves Trust of Wellington (N12)

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These three bodies have vested in them lands reserved from other deeds of sale entered into by their respective iwi with the Crown. Grievance claims have been lodged with the tribunal in respect of these other tribal areas and include inter alia similar allegations concerning imposition of perpetual leases. Although there is a common thread between the claimants and these other three bodies in certain areas of their respective claims, nevertheless there are factual distinctions in the respective backgrounds which have an important bearing on the crucial question of whether there has been a breach of Treaty principles in each case.

One of these factual differences relates to the question of whether or not consent was given or obtained. It will therefore be necessary for the tribunal to examine separately each of the iwi claims. However, the submissions have been useful to the tribunal and indicate the wide area of dissatisfaction with the present leases. The tribunal also notes there is a difference between the claimants and the other three supporting groups on the statutory remedy sought from the Crown although no doubt this may be a reconcilable matter.

It was explained to the tribunal by counsel appearing for the Maori Trustee that government was aware of the need for statutory changes, and remedial legislation was proposed. An interdepartmental committee was set up to complete proposals for legislation by October 1988, but the Minister of Maori Affairs had indicated his intention to consult with lessees and Maori owners before enactment of legislation (N32:8).

We had hoped rather optimistically when it was stated that legislation was intended for introduction in 1988 that there would be no need to address the claimants' grievances over the reserved land perpetual leases. Despite a press statement by the Minister of Maori Affairs on 18 January 1990 that legislation would be introduced in 1990 it would seem necessary in the light of continuing delay in government action that we must deal with Ngai Tahu's grievance. Whether in due course the grievances of other iwi will need inquiry by the tribunal will depend on government moves to address the question.

We propose therefore to look at this grievance and in so doing will deal with the claim under the following headings:

- 1 A brief history of the reserves and legislation affecting them
- 2 Ngai Tahu's grievances
- 3 Ngai Tahu evidence
- 4 The response of the Crown to the claim
- 5 The response of the lessees to the claim
- 6 The response of the Maori Trustee

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- 7 The tribunal's examination of the evidence and its findings
- 8 The tribunal's views on remedies

14.2. **History of Mawhera Reserve and Legislation Affecting It**

14.2.1 The Mawhera reserve comprising 500 acres was one of the portions of lands reserved under the 1860 Arahura deed of sale. It formed part of schedule A of the deed being one of those blocks reserved for individual allotment. The purchase was negotiated on behalf of the Crown by James Mackay who was very much aware that this reserve was the site of a future town. Because of the importance of the land to Poutini Ngai Tahu, however, he was compelled to set it aside as a reserve. James Mackay, describing the site of the reserve, had this to say:

On the 17th May, a dispute arose as to the site of a reserve of 500 acres for individual allotment at the Mawhera or Grey, I wishing the Natives to select it up the river, but they objected to do so preferring to have it near the landing place. As this spot had always been their home, and on the hill above it in a cave repose the remains of Tuhura and others of their ancestors; nothing could move them to give up this place, which I much regretted, as it enables them to retain the best landing place. I however found that further argument would have endangered the whole arrangement entered into at Poherua, on the 26th April, and therefore deemed it politic to acquiesce in their demand. It may be imagined from the position of this reserve that it would be a suitable site for a town, but the whole flat portion of it is liable to be flooded, of which we had practical demonstration by finding on our return from the south that several of the houses at the Pah had been carried away by a flood which took place in our absence. (D5:13)¹

Giving evidence one of the Maori owners, Andrew Maika Mason, gave four reasons why the Maori owners insisted on the reservation. These were:

- a) It was the traditional site of their principal pah. It was strategically located as the gateway to the pounamu for those coming down from the North. Control of Mawhera gave control over the pounamu.
- b) There were two urupa there. The chiefs were buried in a urupa on a hill over what is now Greymouth and there was another urupa in what is now Blaketown. The bones have now been removed from the latter.
- c) It was an ideal landing place for the canoes of fishermen or travellers.
- d) Mackay and the Maori people all realized that it was the best natural site for any town in the area. The Maori certainly wished to preserve the area for the reasons given above, but they were not fools, and they could see the additional economic advantage which would accrue following any Pakeha settlement there. (D4:8)

Professor Ward had this to say about the development of the Mawhera site:

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By the mid 1860s the reserve there had acquired considerable commercial value. In 1865 a new town had been founded in the wake of the discovery of gold in the Mawhera River. At the beginning of that year the small European settlement of Blaketown, on the north bank of the river had been in decline. Almost overnight the discovery of gold transformed the area and the town started spilling over on to the land on the south bank. The overflow, a commercial centre in its own right, was dubbed Greymouth. A shortage of flat land around the harbour put a premium on suitable building sites, including much of the Maori reserve. Faced with a dearth of suitable Crown land, merchants leased parts of the reserve directly from its Maori owners. By July 1865, four thousand feet of the Mawhera River frontage was occupied, 37% leased from Poutini Ngai Tahu. The majority of these leases seem to have been short term ones of no more than three years. Miners were also reported to be paying Poutini Ngai Tahu for the right to prospect on other reserves. (T1:301)

This state of affairs did not last long. In August 1865 the Native Minister instructed Alexander Mackay, the resident magistrate at Nelson, to go to Greymouth and investigate the leasing arrangements. The minister anticipated that problems would arise from the informal leases and considered intervention necessary to ensure the orderly development of the town and the provision of necessary amenities such as roads and other public services.

Mackay's trip resulted in the reserve at Mawhera being placed under the Native Reserves Act 1856 and thereafter it was administered by the government through a succession of trustee arrangements. At various times throughout the following years other Poutini Ngai Tahu lands were also placed in this category. In 1882, when the public trustee took over the administration of the reserves previously under the 1856 Act, it became responsible for 5,936 acres of Maori owned land in Westland.

Native Reserves Act 1856

- 14.2.2 This Act was passed to provide a means of efficient management of lands set aside for the benefit of Maori. The Act applied to a variety of reserves including those set aside under the New Zealand Company tenths, land that had never been sold such as the reserve at Mawhera and land granted by the government. The Act gave the governor authority to appoint commissioners, who were given extensive powers to deal with the reserves. They were empowered to exchange, sell or otherwise dispose of the lands, subject to the assent in writing of the governor, however no consent was required if the term of the lease did not exceed 21 years. The commissioners, with the consent of the governor, had power to set aside lands and administer these for special endowments for schools, hospitals and charitable purposes for the benefit of the aboriginal inhabitants. The consent of owners was required to place land under the Act. Ms Catherine J Nesus, a solicitor in the legal division of the Department

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of Maori Affairs, in a summary of legislation, had this to say about the 1856 Act:

There was little debate over the Bill when it passed through the Legislative Chamber and the House of Representatives. It was described as an instrument of practical good to the Native race and seen as a mechanism to ensure those reserves created by the New Zealand Company were used to the best advantage. (N36:8)

The effect of this Act was to vest land in the Crown once the owners' consent was obtained and a conveyance made. It is interesting to note in this legislation that, although the consent of owners was required to place land under the Act, there was no provision for Maori owners to take part in any matters relating to the control of the land, nor was there any provision for consultation once their land had been transferred.

Native Reserves Amendment Act 1862

- 14.2.3 The 1862 amendment to the Native Reserves Act 1856 abolished the position of commissioners created under the earlier Act and all the powers that they previously held. The administration of the reserves was put into the hands of the governor, who was given a power of delegation. One of the features of this Act was that it empowered the governor by order-in-council to declare that assent had been obtained from the owners, whereupon the land became vested in the Crown as if ceded or conveyed. The result was that management of the reserves passed from the local commissioners back to the Native Department.

Mawhera leases brought under 1856 Act

- 14.2.4 Consequent upon Alexander Mackay's investigations into the problems affecting the township leases, he reported:

that a number of persons had unadvisedly entered into arrangements with the Native owners for the occupation of the land adjacent to the river frontage, without being aware that such agreements were invalid. The agreements entered into were mostly for a short time, with a right of renewal, and as all the occupants had paid the full sum that had been demanded by the owners for the use of the land, it was considered advisable, in order to rectify any difficulties that might eventually occur if this state of affairs was allowed to continue, as well as to protect the interests of all concerned, to bring the reserve under the operation of "The Native Reserves Act, 1856". with the consent of the Native owners. (N7:30)²

Mackay had this to say:

This proposition was willingly assented to by the Natives, as they foresaw the difficulties that were likely to ensue through the irregular occupation of their land, as well as their own incapacity to deal with the question. (N7:30)³

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The reserve was brought under the Native Reserves Act 1856 by order-in-council of the 3rd February 1866.⁴ A system of leasing thereupon commenced.

At this point it should be mentioned that there were two schedules attached to the Arahura deed. Schedule A listed 39 blocks totalling 6724 acres which were set aside as “Lands Reserved for Individual Allotments”, and schedule B listed seven blocks totalling 3,500 acres as “Lands Reserved for Religious, Social, and Moral Purposes”. The whole of the lands in schedule B were brought under the 1856 Act but only seven of the blocks in schedule A, including Mawhera 31 totalling 3498 acres, were similarly vested (D5:18).

It is clear from the reports of Professor Ward (T1:304–305) and the Crown researchers Messrs Armstrong and Walzl, (N6:8–24) that Alexander Mackay, who had been appointed commissioner and had day to day control of the reserves, managed those reserves in a conscientious way with the interests of the owners and lessees at heart. Mackay was undoubtedly interested in promoting the development of the town, deliberately setting low rentals to compensate lessees for the work incurred in creating commercial properties from unimproved land. In his 1873 report Mackay says:

The object in letting this land at what may be considered a low rate of rental, was to encourage settlement, and enable the occupants to reimburse themselves for the outlay expended on reclaiming land covered with a very heavy growth of timber, and on making permanent improvements, such as clearing and forming streets, etc. (N7:16)⁵

Professor Ward had this to say of the position of Ngai Tahu during the 1860s and 1870s:

Poutini Ngai Tahu were comparatively well served during the 1860s and 1870s. They had come out of the initial purchase negotiations with the Crown with proportionally larger reserves than their east coast relatives and through an accident of geography, part of their land acquired considerable commercial value. (T1:305)

While Alexander Mackay managed their estate, Poutini Ngai Tahu had an administrator who was conscientious and with whom they had a long-standing personal relationship. A little further in his report Professor Ward referred to various actions of Mackay in administering the leases and said:

Poutini Ngai Tahu’s regard for Mackay was such that in 1884 and 1885, following Mackay’s removal from the post of Native Reserves commissioner they petitioned Parliament for his return. (T1:306–307)

At the same reference Professor Ward also said:

During the period 1865–82, Poutini Ngai Tahu may not have been permitted to manage their own land but it is not at all clear that they

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wished to do so. Under the trustee arrangements made with the Crown they were spared the landlessness which was the fate of other tribes who sold, or were forced to sell, land in the flurry of shady dealing which followed the passage of the 1865 Native Lands Act.

Professor Ward outlined how monies were outlaid from the rental income to help finance public works such as roads and flood protection works and said:

Apart from the question of what proportion of the income from the estate should be distributed to the beneficial owners, there was no evidence that Poutini were unhappy with the fact that the reserve at Mawhera was being leased to Europeans. However the European influx did alter their use of the area. As the European community became more dominant, that is, as Mawhera gave way to Greymouth, the town became less congenial to Poutini Ngai Tahu. In 1869 the hapu, with the exception of Werita Tainui who stayed in Mawhera until his death, moved to Arahura. Following this shift the sections which had been set aside at Mawhera for Maori to live on were also leased. The area which Poutini Ngai Tahu had refused to abandon in 1860 because of its ancestral importance was becoming a European preserve. (T1:307)

Report of commissioner of native reserves, 1870

- 14.2.5 This report of Major Charles Heaphy describes fully the period of transition undergone by the Greymouth Maori on the arrival of the European. This section of the report was first published in the *Report of the Commission of Inquiry into Maori Reserved Land* in 1975:

Independently of the great value attaching to many of the Reserves from the discovery of gold deposits in their vicinity, the land is, from its position and fertility, of great worth. The Native estate is quite equal in value, town for town, and farm for farm, to the crown lands of the County.

In 1846, the Natives of the West Coast were about seventy in number, and, of all the tribes in New Zealand, had benefited least by the coming of Europeans to the country.

Ships had never frequented the coast, and the Dusky Bay sealers who, forty years ago, had occasionally pushed a boat through in the surf at the Teremakau or the Mawhera, had then long since disappeared. When Mr Brunner and myself walked from Nelson to Arahura, in 1846, we found the Natives at the latter place without either pigs or goats. Potatoes they had, but neither melons, cabbage, pumpkins or maize. Their clothing was the coarse Native koka, and the dog skin, and they were almost destitute of iron implements for cooking purposes, or for clearing the bush. Of boats or sea-going canoes they had none, and Dreading to be seen by the northern natives, they lived in the remote Arahura country, partly from the security it afforded, and partly to work the greenstone which was to be found in the river bed. But, poor as their condition was, they were hospitable almost to improvidence, towards their white visitors. Beyond seeking to obtain an iron pot or an axe in exchange for a meri pounamu, their life appeared to be without aim or purpose. They now derive a rental of nearly 4,000 a year from white tenants. They had

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weatherboarded cottages with chimneys and glass windows, and their children are educated in English schools.

It may be without the limits of a Report on Reserves to touch upon circumstances of this nature, but when it has been so often written in England that the Maori suffers materially and socially by contact with the settler, it is but proper, I think, to show that even in the midst of a gold digging community-proverbially rough, and not disposed to regard a dark skin with much sentiment-the Maori has improved in social condition, and is well cared for. (N7:4)⁶

Lessees' grievances leading to a report of Commissioner Heaphy 5 June 1872

14.2.6 In their submission for the Crown, Messrs Armstrong and Walzl noted that a committee of leaseholders, in a letter of January 15 1872, had complained of heavy ground rent and stated that:

after the payment of insurance premiums, taxes, and ground rent, very little profit in the best instances, and no profit at all in most instances, is realized by the owner (of the lease). (N7:8)⁷

About this time the leaseholders mounted pressure for the sale of the Mawhera reserves. They claimed there was a need to replace wooden buildings with brick and stone, not only to improve the town, but to prevent fire damage and reduce insurance premiums. Heaphy reported:

On all gold fields there is a great amount of social hurry, and the absence of a lasting tenure to land must tend to increase this. Nothing that could be done by the government would conduce more to the benefit of the Town of Greymouth than the judicious conversion of the existing leases into absolute conveyances. (N7:8)⁸

The Ward report also confirmed the pressure to freehold:

Equally serious was the fact that the land also became vulnerable to pressure group politics. Under the 1856 Act decisions relating to the future of the reserves were in the hands of the Governor-in-Council. During the 1870s and 1880s, the Executive Council, that is, the government of the day, was subjected to intensive lobbying with regard to the Greymouth reserve. Many leaseholders wished to buy the Maori out, or alternatively for the government to buy out the Maori and resell the land to them at 'a fair valuation'.

The lessees' campaign reached a pitch in the early 1870s, died down a little until the end of the decade and then intensified again in response to changes in the administration of the reserves. During these years Poutini Ngai Tahu consistently opposed sale, emphasising the importance of the land to them for what were described by Mackay as 'the ground of sentiment'. (T1:308)

Heaphy reported on 5 June 1872 (N7:7-10).⁹ His report indicated that, as at 1872, 181 acres had been laid off in town allotments, leaving a balance of 319 acres on a steep and densely wooded hill which was unsuitable for building purposes.

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In his report Heaphy discussed in some detail the attitude of the owners to selling and rejected the leaseholders' contention that Maori owners were not justly entitled to the enjoyment of the increased value that had accrued to the property as a result of the settlement. The following is an extract from the report, which indicates the Maori owners' attitude:

The resident natives participating in the revenue derived from the reserve are adverse to the idea of a sale. Some who were present at the discussion of the subject had come from so far as Bruce Bay, and all appeared much interested.

Inia, their spokesman, said, In their minds it was fixed, the present order and system had only been arrived at after considerable time, and they did not want to see it changed.

In respect to longer leases being granted, he (Inia) said, The white people get a lease at a small rent from the commissioner, then they let it at a higher rent, then again at a higher to another, and so on. And how do we gain? If longer leases were granted the price might still be increasing, but not for us. (N7:9)¹⁰

However Heaphy noted that:

Notwithstanding the opinion of the natives it might be judicious to sell portions of the reserve, from time to time, if a sufficient price were offered – one that would yield a permanent revenue equal to, or not much less, than the present rental. (N7:10)¹¹

There is a further very clear indication of Heaphy's attitude embodied in his recommendation:

That it is desirable that the land in the Reserve should be made available for purchase without any restrictions by the original lessees or their representatives, at a price that would yield at 7 per cent, a revenue not less than 5/6 of the present rental.¹²

It is interesting to note that in a report dated 14 June 1872 concerning the Arahura reserve, just nine days after the report on the Mawhera lands, Heaphy considered the Arahura settlers, in asking to be allowed to purchase the freeholds did not have as strong a case as the Greymouth tenants. He recommended against sale but thought that longer terms of lease might be granted.(N7:12)¹³

These two reports of Heaphy are in contrast to each other, but seem to show Heaphy was in favour of freeholding in certain situations that would not expose the Maori owners to significant pecuniary disadvantage. However, it is also significant that he was prepared to recommend freeholding even when this was against the express wishes of the Maori owners. The Heaphy reports were presented to Parliament. The government's attitude was to refuse to agree to freehold land unless the full consent of the Maori owners was first

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obtained. The following is a report of a statement by Mr McLean in the House:

there had been no desire on the part of the government that any alienation should take place unless it was for the benefit of the Natives, and with their full concurrence. (D5:106)¹⁴

Alexander Mackay's report of 30 July 1873

14.2.7 In his report Mackay expressed his firm view against the sale of the freehold and noted:

The disposition manifested by a few of the tenants about a year ago to acquire the fee simple of the land has evidently subsided, and another cause of disquietude has been circulated. (N7:15)¹⁵

Mackay goes on to refer to a resolution passed by the Greymouth Borough Council to borrow £7,000 by rating all property in the borough, in order to carry out certain improvements in the township. Apparently the borough council had expressed concern about the renewal of leases held by the trust and the right of the owners to ask a higher rental at the expiration of the leases (N7:15).¹⁶ Mackay had for some years indicated to the tenants that they would get a renewal of their leases when the original leases expired. In his report he comments:

With regard to the renewal of the leases, no practical difficulty exists, and that fact must be generally known, as assurance has been given over and over again, although a right of renewal cannot be inserted in the leases, that the intention is to let the land in perpetuity for the benefit of the Natives, and that whoever is in possession at the expiration of any of the terms of the lease, provided the occupant would agree to pay an equitable rent for the premises in proportion to the increased value of the property, that an extension of lease would be granted him. (N7:15)¹⁷

Mackay then goes on to make this significant statement:

This principle is based on an old established practice in England, where it is considered that those who are in possession of leases for lives or years, particularly from the Crown, have an interest beyond the subsisting term which is usually denominated 'the tenant's right of renewal.' This interest, although it is not a certain or contingent estate, there being no means to compel a renewal, yet it influences the price in sales and conduces to the security of the tenure beyond the fixed term.

One argument adduced in favour of the views held by the residents of Greymouth, is, that there could be no right of property in land that remained unsubdued to the purposes of man.

If this principle was maintained in regard to the right of property in land irrespective of to whom it might belong, it might possibly be admissible, but why it should be specially applied to the case of the Greymouth Reserve it is difficult to understand; and it may be argued, in opposition to this doctrine, that if the right of property go along with labour, how can the land of persons who have bestowed but little labour

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upon the soil, be usurped by civilized people from a distance, who have only laboured on it with the permission of its recognized owners.

The weakness and ignorance of the Native owners demand a more scrupulous fidelity from their civilized guardians, and any attempted infringement of their rights as British subjects, should be carefully guarded against.

Did the land belong to the same number of Europeans no allusion would have been made to such heterodox principles, nor would legislative intervention be continually sought to cure imaginary grievances. (N7:15)¹⁸

Native Reserves Act 1873

- 14.2.8 In late 1873 an Act was passed which allowed for longer leases and more involvement by the Maori owners. Control of the reserves was reinstated to the local district level by establishing district commissioners. Three local Maori assistant commissioners together with the commissioner formed the Board of Direction for the management of reserves in the district. Provided the board assented, the commissioner, under section 19 of the Act, could let land in any native reserve for building purposes, for any term of years not exceeding 60 years. Leases for other than building purposes continued to have the limit of 21 years imposed. In his report Professor Ward commented that Mackay was opposed to the Act because he felt it was unworkable. He objected to the commissioner being “so hampered with the restrictions that he cannot act without the consensus of the Board” (T1:313).¹⁹

Professor Ward commented that the provisions of this Act did not seem to have been brought into operation (T1:313).

Alexander Mackay’s report of July 1877

- 14.2.9 In this memorandum Mackay again discloses the concern of Ngai Tahu at the move to have their land sold:

The principal cause of uneasiness that prevails among the Native owners is owing to the opinion expressed that the Governor would sell the land under the provisions of The Native Reserves Act, 1876, coupled with the efforts continually being made by the tenants to obtain the fee of the land. The feeling is also considerably augmented by injudicious statements, made by thoughtless individuals, that the government is disposed to sell the land-statements which the Natives, unfortunately, place full confidence in. The Governor, it is true, is empowered to dispose of property vested in him under the provisions of the Native Reserves Act, by absolute sale or otherwise; but the Act forbids the alienation of the land except for the benefit of the Natives interested, and, as it is not probable that adverse action would be taken against the expressed wishes of the owners, there is no real cause of apprehension that the sale of the Greymouth estate would have been sanctioned. Moreover, the Natives, if for no other reason, would oppose the alienation of the reserve on the ground of sentiment, even if the sale would actually secure to

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them in perpetuity an income far in excess of the amount they now receive.

The most equitable mode of procedure for all concerned would be to repeal the Act empowering the Governor to sell, and pass a fresh measure enabling leases to be issued for sixty years with the assent of the owners (where such assent was necessary), to persons who are desirous of improving the land by erecting a permanent class of buildings of brick and stone, as would be the case at Greymouth if the tenants were secured in possession. (N7:31)²⁰

Young commission report 1879

- 14.2.10 Despite Alexander Mackay's assurance to Ngai Tahu that their land would not be sold, they endeavoured to protect their position by applying for a Crown title to the land (N7:31)²¹ and in 1879 the Young commission was set up to establish ownership of the land preparatory to the issue of a title. In his report Thomas Young stated:

that the general wish of all the Native owners, who are the persons for whose benefit the lands were set apart, is that alienation by sale or by mortgage should be absolutely prevented. (N7:34)²²

This move by Ngai Tahu to seek a Crown grant of title prompted the citizens to take a deputation to the minister of mines who was on a visit to Greymouth in September 1879. The deputation had this to say:

What we ask for, therefore, is a diminution of rent and longer leases, with a right of continual renewal; but we freely admit that, whatever arrangement is made, it should be fair to the Natives as well as to ourselves, and, as this might be a matter very difficult to adjudicate, we would suggest that perhaps, upon the whole, it might be found most just and practical that the Crown should in the first place purchase from the Natives, at a reasonable price, and then resell or let the land to us at a fair valuation. (N7:28)²³

Again we see the pressure that is being applied for the freehold to be sold, in this instance to the Crown.

Alexander Mackay's report of 14 May 1881

- 14.2.11 In this report Mackay commented on the difficulties being experienced by the lessees, mainly due to economic depression caused by a downturn in goldmining and its effect on trade. Mackay emphasised the need for security of tenure and suggested new terms of leasing. He says:

For instance, a twenty-one years' lease should be granted for arable or pastoral purposes, and for building purposes a lease for twenty years, renewable for two further periods of twenty years, a reassessment of the rent to be made at each renewal; the tenant to have the right to call in the aid of a neutral authority to arbitrate in cases where a difference of opinion existed as to the fairness of the rent imposed. (N7:174)²⁴

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Native Reserves Act 1882

- 14.2.12 A significant change in the management of reserves came with the passing of the 1882 Act. Management of the reserves was vested in the public trustee. Other changes also occurred. The definition of reserve was extended but more importantly the public trustee was empowered to lease reserves for 30 years for agricultural or mining purposes, and 63 years in 21-year terms for building purposes. Apparently this change of administration was not universally welcomed. Professor Ward said:

The public trustee, in contrast with the commissioner of Native Reserves, had little discretionary authority with regard to the management of the reserves. Lessees were later to complain about the legalistic approach of the Trustee and the fact that the centralisation of administration frequently made it necessary to refer matters to Wellington creating extra expense and delays. (T1:315)

The Act set up a system of disposing of leases by way of public tender or auction with the rent reserved to be the best improved rent obtainable at the time. Previously, the tenants in possession were considered to have the right of a new lease over strangers. This was not the position under the new Act. It thus became obvious to the tenants that they not only risked being outbid for their lease and losing it, but also losing the improvements that they had made to the property. It would seem therefore that neither the tenants nor the Maori owners were satisfied with the statutory provisions.

This Act brought about another important change. Under section 8 title to the reserves was vested away from the Crown to the public trustee.

South Island Native Reserves Act 1883

- 14.2.13 This Act made provision for compensation for improvements. Section 4 of the Act provided that control and management of the reserve should remain with the Public Trustee. Under this Act the leases of the Greymouth reserve were confined to a term of 21 years, whereas leases in respect of other reserves were to be 30 years or 63 years as the case might be. The effect of the 1883 legislation was to ensure that the value of improvements would be paid to tenants on the expiry of their then leases. However there was still opposition from the lessees, who said that the provision to allow the leases to be competed for by tender would prejudice their interest. We shall return a little later to discuss this 1883 legislation in order to see the reaction of Ngai Tahu owners.

In 1884 the west coast Members of Parliament endeavoured to get legislation passed which would give the existing lessees a right of renewal, and petitions were also lodged in the House seeking confir-

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mation of rights of renewal. This activity and the general complaints of the lessees led to the Kenrick commission.

Report of the 1885 Royal commission

14.2.14 On 14 July 1885, Henry Kenrick, Gerhard Mueller, and James Catley were appointed commissioners to inquire into and investigate the condition of settlers on Maori reserves on the west coast of the South Island. The commission found that the lessees suffered serious damage to their interests as a result of the legislative enactments of 1882 and 1883. The commission made it clear also that it accepted the statements of the tenants that they counted upon Commissioner Mackay's assurances of a renewal of their leases. The commission examined the possibility of freeholding the land but noted that the owners unanimously and strongly protested against any such alienation and considered that:

leases for sixty-three years given at a fair rental, with a compensation clause for improvements, most, if not all, of the benefits expected to be derived from the sale of the land would accrue to the tenants under this improved tenure. The Native grantees favour this course. (N7:186)²⁵

Attached to the report was Alexander Mackay's translation of a letter addressed by Maori with interests in Greymouth and other Maori reserves to the native minister. It stated their opposition to the sale of these lands, and their willingness to grant long leases. The following is the text of that letter:

The Native Minister, Mr Ballance. Arahura, October, 1885

We, the persons whose names are hereto appended, desire to place this letter before you and the government in case good may be derived from it for both parties, through the continual crying of the persons occupying the reserves. The government have appointed a commission to inquire whether the reserves can be sold.

We, the owners of the land, earnestly state that we will not sanction the sale, but are willing to consider what else can be done to improve matters for the benefit of both Maori and pakeha.

We therefore propose that the original leases should be renewed for sixty-three years and when that term is ended a further renewal of sixty-three years be granted.

It is provided by subsection (2) of section 15 of the Act of 1882 that leases be issued for a period not exceeding sixty-three years, to encourage the erection of houses on the land: let this period be enlarged.

A grant has been issued under the Act of 1883 to prevent the sale of the land.

We believe that the plan we suggest – ie, the lengthening the terms of lease, is one that will best conserve the interests of all concerned.

That is all from your friends.

Ihaia Tainui, Kinehe te Kaoho, Hoani Tainui, Moroati Pakapaka, Inia Tuhuru, Henare Meihana, Teoti Tauwhare (N7:189)²⁶

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14.2.15 For reasons that will become apparent later in this report we think it desirable also to set out the full text of three letters presented to the Kenrick commission at Hokitika during the course of its inquiry.

Inia Tuhuru told the commission:

I am one of the owners of the Greymouth Reserve and have also an interest in the Arahura Reserve. We object to the alienation of the freehold: we could not agree to it though the revenue derived from the purchase money were equivalent to the rent we are now receiving. We shall be agreeable to the extension of the existing leases. The tenants should have the first right of renewals before putting the leases to public competition: if they do not accept, then strangers should be admissible. If a lease goes to public competition and a stranger gets it, we feel the improvements belong to the tenant but are not prepared to say whether the incoming should pay the outgoing tenant for them. We think that while the tenant pays his rent, as fairly assessed, *all land not required for our own use should be leased in perpetuity.*

We send a copy of a letter to the Native Minister relative to the future dealings with our lands. (N7:322)²⁷ (emphasis added)

Teoti Tauwhare also gave evidence:

I appear on behalf of my wife. We don't agree to alienate our freehold but will extend the leaseholds to 63 years on the Greymouth Reserve. We are willing at the end of the first 63 years to grant another lease of 63 years: *in fact we wish the leasing system perpetuated.* Leases for agricultural and other purposes should be for a shorter period but, in regard to them also, we wish the same principle carried out. (N7:323).²⁸ (emphasis added)

Henare Meihana spoke briefly:

I have heard what the other witnesses who preceded me have stated and I agree entirely with what they have said, and also with the tenor of the letter we are forwarding to the Native Minister. (N7:324)²⁹

The Kenrick commission recommended that a special reserves commissioner be appointed with power, subject to the direction of the Public Trustee to:

- negotiate a final settlement of all conflicting interests of lessees or sublessees on the Greymouth lands; and
- appoint one or more valuers to assess the improvements effected by lessees or sublessees on their respective holdings.

The special commissioner so appointed was to be given power to decide who was entitled to a renewed lease in fulfilment of the promise or agreements reported by the Royal commissioners to have been entered into by Commissioner Mackay.³⁰

Bunny report

14.2.16 Henry Bunny was subsequently appointed as a special commissioner and reported to the Public Trustee on May 29 1886 (N7:191–192).

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Bunny reported that he had interviewed about 80 lessees and sublessees. On the question of acquiring the freehold, Bunny had this to say:

It may be, however, that the government might itself be able to acquire the freehold from the Native owners, and, by placing the reserve under local control, give the persons interested some voice in deciding the future management of the estate. This seems upon the whole the best course, if feasible.

When I visited the Arahura Reserve I saw some of the Native owners, and had a long conversation with them as regards selling their interests in the Greymouth Reserve, but I have found the strongest objection on their part to disposing of them. I did not fail to point out that, if they sold, the interest on the purchase-money would far exceed the amount of the rentals now received. They appeared to be entirely indifferent to the amount of rentals or interest, so long as they retained the ownership of the land. They expressed themselves perfectly willing that leases for sixty-three years should be granted, with a right of renewal for another sixty-three years. (N7:192)³¹

We shall come back a little later to this portion of the Bunny report.

Westland and Nelson Natives Reserves Act 1887

- 14.2.17 There is no doubt that the Kenrick commission report and the Bunny report led to the passing of this Act in 1887. Although the Act did not put into effect directly the recommendations of either the Kenrick commission or the Bunny report, the need to address the grievances of the tenants forced the introduction of the new law. The Act repealed the South Island Native Reserves Act 1883 and largely focused on the terms of reserved land leases. In place of the old 30-year and 63-year terms a new term was substituted which was standardised at 21 years. In all leases a perpetual right of renewal was granted to the lessee. This perpetual lease fixed the rights of the parties in the original contract and gave the lessee perpetual rights of use of the land. The rent was reviewed at the end of every 21-year term. Effectively the land was removed from the control, use, or occupancy of the Maori owners. Provisions were inserted in the Act for arbitration of any questions relating to the valuation of improvements. In respect of the Arahura and Motueka reserves where buildings had been erected or the land improved, the trustee was obliged to offer a new lease to those who were in occupation and only then, if the offer was refused, were the leases to be put up for sale.

The new law continued the administration by the Public Trustee. Professor Ward gave a very useful summary of the passage of the Act:

The legislative history of this Act is rather complicated. It began in May 1887 as the South Island Native Reserves Bill. The Bill was introduced in the House of Representatives by the Premier, Sir Julius Vogel, on 17 May. On 8 June it received its second reading and was considered in Commit-

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tee on the 9th. The Bill was reported on the same day and read for a third time. It then went to the Legislative Council where it lapsed because an election was called. A similar measure titled this time the Westland and Nelson Native Reserves Bill was introduced in the new Parliament in November 1887. The Bill was read in the House for a first time on the 9th of November. No further action appears to have been taken until the pre-Christmas legislative rush had started. The Bill was read for a second time, committed, reported on, the report considered and the third reading given all on the 20th of December. During this week the House was sitting after midnight every night, including a marathon effort to 2.50am on the 20th. On the 21st the Bill was amended by the Legislative Council and the amendments approved by the House. The Bill was amended again by the Governor on the 22nd, and the amendment agreed to by the House and the Legislative Council. It then became law. (T1:322)

This then was the legislation which introduced the perpetual lease with its 21-year terms of renewal, and with review of rent at the expiration of each 21 years.

We will shortly be looking at the debate in Parliament on the passage of the Bill and in particular the reactions of the Maori Members of Parliament and Legislative Council.

In addition to the rights of perpetual renewal and 21-year rental review, the Act also contained provisions for the valuation of improvements and the fixing of rentals. The Ward report stated that:

In practice this arrangement does not seem to have resulted in fair rents being set. Because such a high proportion of the Greymouth community were leaseholders it was difficult to get real competition for the leases. Lessees were effectively enabled to set their own rent. (T1:326-327)

The 1909 petition and the Poynton report

- 14.2.18 In 1909 Felix Campbell and 476 other residents of Greymouth petitioned Parliament over the Greymouth reserves. They complained of having to pay heavy ground rent and as well having to meet capital improvements. The lessees again demanded to acquire the freehold of the sections and proposed that steps be taken to buy out Maori owners at a fair valuation. During examination by a committee of the House, Mr Joseph William Poynton, Public Trustee, produced a brief history of the reserve which strongly criticised the lessees' complaints. His report tabled a schedule of the annual amounts collected from the Greymouth rents from 1874 to 1909, a period of 36 years. This table showed that the tenants were paying no more in 1909 than they had in 1874. Poynton said:

The concessions from time to time given to the lessees in allowing them their improvements, security of tenure, and an equal voice in fixing the rents, though of enormous benefit to the receivers, have brought no corresponding advantage to the givers.

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The Natives particularly desire me to impress upon the members of the Committee that this Reserve differs from most others in the Dominion. Many of these were set apart by the Crown out of lands purchased from the owners. But this was never parted with at all. (N7:207)²³

Following the examination by the Public Trustee, four of the Maori owners gave evidence to the committee. They were Piripi Tauwhare, John Tainui, John Uru and Tu Meihana. These were the same persons who signed a letter on behalf of the owners of the Greymouth reserves objecting to the statements made by the Mayor of Greymouth to Apirana Ngata who was then Member for Eastern Maori.

The letter signed by these four owners was produced to the tribunal in evidence. In their letter the four Maori owners said this about the leases granted under the 1887 Act:

the leases are exceptionally fair, and could not be bettered without injustice to the owners. The tenants own absolutely all improvements, and their leases are perpetual, with an adjustment of ground-rent every twenty-one years, which is a reasonable term. (N40:70)³³

The letter went on to say:

The Greymouth lessees have nothing to complain about. The only thing they lack is an appreciation of the advantages they enjoy. The naive admission in the circular, The Lessees wish to acquire the freehold of their sections, and propose that steps should be taken to buy out the Native owners, at a fair valuation, explains everything.

In considering this demand these facts should be borne in mind:

- a) To give the tenants the right to convert their leases into freehold would be a violation of the promise to the Native owners, given that this Reserve would be for them and their descendants for ever.
- b) The Reserve is not in the same position as Crown lands leased to tenants. The Crown and the tenants only are concerned in that case, and the contract can be varied when both parties are agreed by allowing the tenant to acquire the freehold instead of continuing to hold the lease. In this case third parties, the Native owners, are concerned, and no alteration should be made without the consent of a majority of them. At present they are unanimously opposed to giving the freehold, but on further consideration may be disposed to consider the proposal favourably. (N40:71)³⁴

This was a plea from those four owners, on behalf of the wider group, that the small remnant of land which they still held should be specially excluded from sale to the Crown. We make the observation that this letter, written ostensibly by those four owners, appears to this tribunal to have been actually written by the Public Trustee himself. We shall be examining this correspondence along with other evidence shortly, when we are considering the submissions by the

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Crown and by Dr Young on behalf of the West Coast (South Island) Maori Leaseholders Association.

1913 commission of inquiry into the Public Trust Office

- 14.2.19 A commission was set up in 1913 to look at the work of the Public Trust Office in relation to Maori reserved lands. The commission consisted of Alexander Macintosh and John Henry Hosking. The commission was asked to consider whether Maori affairs were being carefully and satisfactorily managed and whether this business, managed by the Public Trustee, should be separated from the Public Trust Office and managed instead by a board or trustee especially appointed for the purpose (N37:285).³⁵

The commissioners expressed their opinion that all Maori reserves and their administration should be vested in an independent body and suggested the setting up of a Native Reserves Trustee.

This report led to the introduction of legislation for the appointment of the Native Trustee. A Bill was prepared in 1914 but the war intervened. Six years later the Native Trustee Act 1920 established the Office of the Native Trustee as a corporation sole with perpetual succession and a seal of office.

All Maori reserves that had been vested in the Public Trustee were vested in the Native Trustee who also inherited the former's powers, duties, and functions.

The Maori Reserved Land Act 1955

- 14.2.20 This Act was an attempt to create a common code in respect of Maori reserves by incorporating the provisions of 43 statutes into one piece of legislation. It was also directed to stopping further fragmentation of the interests of beneficial owners in reserve lands and standardising those leases held by lessees of this land (N36:78).

In her excellent submission to the tribunal backgrounding all of the legislation and reports affecting the Maori Trustee, counsel Ms Nesus referred to the 1955 Act, stating that fragmentation of interests were perceived to be the greatest obstacle to the administration of reserved land (N36:78–79). While the smallest of these interests did not affect the leasing of the land, the Minister of Maori Affairs of that time, Mr Corbett, was reported in Hansard as saying:

it has made a very onerous task for the administration, and one which, because of Audit, has to be carried out with the greatest care and accuracy. (N36:79)³⁶

Part II of the Act was intended to deal with this problem. Hansard provides an insight into the thinking of government at that time:

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Many of these minor amounts are so small that they are not worth collecting. Another factor is that the original beneficiaries were small in number and in a confined area. Over the years such tribes as the Taranaki and Ngaitahu, which hold reserves, have spread out over New Zealand, and their members have gone into the cities and taken up other interests. They have practically no knowledge of their Maori Land interests and they just do not care. (above)³⁷

This part of the Act provided that uneconomic interests in the reserves could be vested in the Maori Trustee by the Maori Land Court. An uneconomic interest in reserved land meant a beneficial freehold, the value of which did not exceed £25, ascertained in a manner prescribed by this legislation. These interests would be paid for out of the conversion fund established under the Maori Affairs Act. There was no obligation to pay for those interests which were less than five shillings.

We therefore see the introduction of a form of compulsory acquisition of Maori interests through this statutory provision relating to uneconomic interests.

In Part II of the Act power was given to the Maori Trustee to convert term leases to leases with a right of renewal in perpetuity. We thus have the position, after a period of almost 70 years, of all leases being made to conform with those which were created in Westland under the 1887 Act. Another important provision was the introduction of a prescribed rental of 4 per cent of the unimproved value of the land for any substituted or renewed lease of urban land, and 5 per cent in the case of rural land. This provision, under section 34 of the Act, therefore introduced a new contractual term between the Maori beneficial owners and the lessees, by which rentals were fixed by statute.

Section 9 of the Act specified that the Maori Trustee could not sell reserved land although there was an exception in the case of land which could not be profitably used in the interest of the beneficiaries when the land could be sold or gifted with the consent of the Minister of Maori Affairs. In neither situation was the consent of the owners required. We received no evidence or submissions from the claimants, or the Crown or from any other body concerning the attitude of the Maori owners to the provisions of the 1955 Act.

Maori Affairs Amendment Act 1967

- 14.2.21 Sections 155 and 156 of the 1967 amendment introduced two new sections, 9A and 9B, into the Maori Reserved Land Act 1955. Under section 9A the Maori Trustee was enabled to sell settlement or township land or any land in a prescribed renewable lease to lessees where the lessees desired to acquire the freehold of the land. They

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were required to give notice to the trustee together with details of the purchase price determined by special valuation. The trustee had the authority to act in his absolute discretion to determine whether a particular sale was impractical or inexpedient. Again, section 9B set up a situation where the Maori Trustee in his absolute discretion could sell to lessees the land leased to them instead of granting prescribed leases. These 1967 amendments were heavily criticised by the Commission of Inquiry into Maori Reserved Lands which said that, "A total of nearly 18,000 acres has been disposed of and obviously the areas sold would be the choicest sections" (D1:51).³⁸

A table attached to the commission's report at page 52 showed that 35 sections had been sold at Greymouth since the 1967 amendment. The commission recommended that the legislative provisions allowing the sale to lessees of the freehold of Maori reserved land be repealed, and this was later given effect to in the Maori Purposes Act 1975.

The report of the Commission of Inquiry into Maori Reserved Land

14.2.22 This commission of inquiry was established in 1973 to inquire into and report upon seven terms of reference but in particular, and in relation to our inquiry, into:

(d) Whether the provisions of existing leases of the land as to rights of renewal, and as to the frequency of the review of rentals and the methods of reassessment of rentals are satisfactory. (D1:6)³⁹

The commission reported in 1975, making 66 recommendations. Many of these have been given effect to by government, but there has been no implementation of those recommendations relating to perpetually renewable leases, fixed rentals, and rent reviews.

The commission stated that:

Many submissions were made which were critical of the perpetual nature of the leases prescribed under the Maori Reserved Land Act 1955. The general feeling informing this criticism appeared to be that these lands are forever removed from the control, use, or occupancy of the beneficial owners. For some beneficial owners this destroyed any concept of the lands being regarded as ancestral lands. Indeed, should the owners walk thereon they would in fact be trespassers.

Many witnesses had no idea where the lands in which they held an interest were situated. The impression was left with the commission that this was one of the contributing reasons to the willingness of so many of the beneficiaries to sell their interests in these lands. (D1:62)⁴⁰

The commission had this to say about the perpetually renewable leases:

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- a) It must be said that the aims of our forbears in granting perpetually renewable leases were entirely good. It was to give to the lessees such security of tenure that there would be no hesitation to improve the land to a maximal degree. The lessee did this knowing that he had unassailable rights of occupancy for himself and his descendants, and if possible, it made even more secure the ownership and enjoyment of his improvements.
- b) This applied with special force to those improvements such as clearing and draining land which appear in time to merge in the land itself. In the rural lands it is even doubtful if less secure tenure would have encouraged the development of virgin lands at all. There is no doubt, however, that a terminating lease for a long term of years offers adequate security for the maximal development possible of urban lands and the commission received convincing evidence on this point both in Auckland and in Wellington.
- c) Perpetually renewable leases may possibly be appropriate for the Crown or a Municipal corporation to grant because these are immortal legal entities and the revenues received are a very minor part of their total income. This however, is by no means true of the Maori beneficial owners of reserved land who endure the uncertainties of human life and whose revenues are derived in the main from the labour of their hands.
- d) To secure the maximal use and development of lands, even rural lands, the security offered by the perpetual right of renewal is by no means necessary. It gives a degree of security curiously incongruous with our mortality and one that endures not only through the lessee's life but the lifetime of his descendants from generation to generation. While extending certain advantages to children yet unborn it imposes serious disadvantages on the living, namely the Maori beneficial owners whom the Maori Trustee represents. (D1:64)⁴¹

The commission reviewed the situation as it applied to perpetually renewable leases in the United Kingdom, and reported that this type of tenure was abolished in that country by the Law of Property Act 1922. The English statute abolished copyhold and a whole cluster of mediaeval tenures. It also abolished leaseholds for life and perpetually renewable leases. It is interesting that the 1975 commission, although it was heavily critical of the provision for perpetually renewable leases and of the unfairness of their operation on the Maori owners, in fact did not give a clear recommendation that the perpetual lease should be broken. The commission clearly felt that the right of sale of land should be repealed, but did not recommend statutory change to the perpetual term. Instead, the commission recommended procedures to review rent at periods of not less than five years, to provide for indexation of rentals, and also for rents to be fixed at a basic rent of 1 per cent above that for government stock (D1:124–125)⁴². To be fair to the commission, it did recommend that in all new leases of Maori reserved land the term be fixed relative to the span of human life, or to the economic life of the improvements on the land, and that no new leases containing a perpetual right of renewal be granted.

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This, of course, would not affect any of those leases currently in existence.

We shall refer later to the work of the 1975 commission.

Formation of Mawhera Incorporation

- 14.2.23 The Mawhera Incorporation was created by The Mawhera Incorporation Order 1976 following the 1975 commission's recommendation and administers just over 900 leases of its land. These leases are subject to the provisions of the Reserved Lands Act 1955.

14.3. **Claimants' Grievances**

Preliminary statement of grievances

- 14.3.1 The first statement of Ngai Tahu's grievances in respect of their leased lands were contained in their amended claim of 2 June 1987. They stated that the Crown:

(e) Without the consent of its Ngai Tahu owners has converted freehold land into leases in perpetuity and fixed unrealistically low rentals for their leased lands.

(f) Without the consent of its Ngai Tahu owners has fixed unrealistically low rentals for their leased lands.

(g) Without the consent of its Ngai Tahu owners has fixed unrealistically long rests between rent reviews in respect of their leased lands. (appendix 3.4)

Further statement of grievances

- 14.3.2 In their amended claim of 5 September 1987 the claimants filed this further statement of their grievances:

It is the applicant's position that the Crown acted in a manner contrary to the spirit and intent of the Treaty of Waitangi in unilaterally imposing the form of leasehold now known as Maori Reserved Land Leasehold on the lands reserved from the Arahura Purchase of 1860 against the clearly expressed wishes of the Poutini Ngai Tahu owners.

The applicant further contends that the above form of leasehold has severely disadvantaged the Poutini Ngai Tahu owners since that time and continues to do so in that they are deprived and have been deprived of the ordinary benefit of those lands, they are effectively prevented forever from enjoying the ordinary use and benefit of those lands and that they have not been able to enjoy the ordinary rights of ownership. (appendix 3.5)

Supplementary statement of grievances

- 14.3.3 The following specific allegations in relation to this matter appear in the claimants' summary of grievances filed on 17 August 1989, and are taken from the list of grievances arising out of the Arahura Crown purchase:

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(7) The Crown failed to protect Ngai Tahu by passing legislation imposing perpetual leases without the consent of Ngai Tahu, and without provision to protect them from economic loss.

(11) The Crown has failed to protect Ngai Tahu by not implementing the recommendations of the Commission of Inquiry into Maori Reserve Lands, 1973.[referred to in this report as the 1975 commission] (W6)

Summary of Ngai Tahu position

14.3.4 In essence Ngai Tahu were saying that the legislative action of the Crown in 1887 and 1955, in passing laws that imposed on them perpetual leases with 21-year reviews, and prescribed rentals of 5 per cent for rural land and 4 per cent for urban land, was done without Ngai Tahu consent. They further claimed that although some remedial action was recommended in the 1975 commission report, government has taken no action to change the law.

14.4. **Ngai Tahu Evidence**

Views of Kaumatua

14.4.1 Strong feelings were expressed to us by several of the claimant witnesses. Andrew Maika Mason, deputy chairperson of Mawhera Incorporation which now administers the leases, had this to say:

By the time the miners came, control of Mawhera had passed into the hands of the Crown which had it leased to the Pakeha settlers and miners, and our people were therefore driven off it

Wherever our people went they could not go farming, their land was in the hands of the Crown which had leased it out to the Pakeha. Put shortly, they could not live in their spiritual and cultural centre, Greymouth, because their land had been effectively removed from their control. As a consequence they could not grow with the town's economy and neither could they farm in order to supply the town. They were reduced to subsistence living.

The Maori Reserved Land Act is a very sore point with our people. When the Incorporation took over from the Maori Trustee, it was found that the original 500 acre Mawhera Reserve had been reduced to approximately 350 acres. The public trustee and the Maori Trustee had sold 150 acres. In theory we own 350 acres but in practice that ownership does not give us control because the land has all been leased in perpetuity. Further, we cannot even negotiate realistic rentals for the land because the rents are controlled by the Act. It is a sore point that in spite of the recommendation of the commission on Maori Reserved Land that something should be done about the leases and the rentals, nothing has been done in the 13 years since it reported its findings.

The result of all the things which I have described is that our people have not been able to develop any capital base. Economically they have fallen behind the Pakeha and are largely trapped in the labouring class. They have been effectively deprived of their own land and, because of the way that land has been leased, they have not been able to borrow against it and so could not raise the capital needed to develop an economic base.

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The effects of this lack of access to capital do not stop with the loss of opportunity to go into farming or other businesses. Possibly the worst effect is that because of the inability to go into business, our people have been denied the chance to acquire business acumen

Another result of what I have described is the loss of our language and culture. Deprived of their land base, our people were also deprived of the chance to develop as a strong cohesive group built around its ancestral land

. . . I blame the Crown which enacted those laws and, when it did so, took no account of the partnership created by the Treaty of Waitangi. That partnership created an obligation for each party to consult the other before taking any action that might affect the other. The Crown did not require the administrators of our land to consult us so they did not do so. Had they consulted us, they would have been told that we did not agree to our land being leased in perpetuity or to any of it being sold. (D4:7-13)

14.4.2 In a very well prepared submission James Mason Russell said:

Throughout the history of Maori Reserved Land legislators have put pen to paper and broken the sanctity of contract regarding Maori leases, for the benefit of the lessees.

The lessees were given the perpetual right of renewal because of the Kenrick commission as perpetual right of renewal was introduced two years later in the 1887 Act. Legislators listened to the voice of the lessee but did not listen to the voice of the Maori when the Maori was agreeable to a 126 year lease that would have been beneficial to the lessees. Legislators broke the existing contract when they gave the lessee the perpetual right of renewal in 1887. That was not observing the sanctity of contract. The perpetual right of renewal came about as a result of pressure from lessees. It was a stipulation which came into the contract that one side never asked for.

My tupuna that agreed to a 126 year lease should have been listened to, to a more degree than they were. A grave injustice was done to our tupuna. (D17:26)

Effect on Mawhera income

14.4.3 Mr S B Ashton, a chartered accountant of Christchurch and secretary of the Ngai Tahu Maori Trust Board, also gave evidence (D4:19-21). Mr Ashton was critical of the action of the Crown and confirmed that from the total rental income received in 1987 the gross return on the value of the land was 1.95 per cent and the net return was 0.58 per cent. Mr Ashton considered that a realistic gross return on an investment of 9 million dollars should not be less than 10 per cent, that is, nearly \$900,000.

Views of the chairperson of Mawhera Incorporation

14.4.4 Mr Tipene O'Regan, chairperson of the Ngai Tahu Maori Trust Board and chairperson of the Mawhera Incorporation, submitted that perpetually renewable leasehold was a form of freehold which in effect

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meant that the owners could never again enjoy the ordinary rights of ownership.

They cannot walk on the land, they are entirely separated from its control or management. (D18:3)

Mr O'Regan went on to say:

It is our view that the unilateral imposition of perpetual leasehold combined with Crown Trusteeship is in some respects worse than the direct confiscation of land suffered by some tribes. Confiscation would, perhaps, have been more honest. It would have offered a clear cut cause for compensation and a more obvious injustice to touch the conscience of the Pakeha power culture. Instead that culture, as represented by the Borough and citizens of Greymouth, has had the benefits of confiscation for over a century without any such compensation. It has been confiscation on the cheap and by stealth.

This form of dispossession of the Maori owners has conveyed wealth and power to the lessees and the culture they represent for more than a century whilst we have remained the nominal owners of the land—theoretically we have not been dispossessed, theoretically we are still the owners. However, the majority of Kati Waewae have been forced to leave the Poutini coast and find work and sustenance in Christchurch and elsewhere. We have not even been able to farm the fertile soils of our own Arahura valley or the other lands in the region of which we have remained the nominal owners. Even though the Trusteeship ended in 1976 the lands are still imprisoned in the perpetual leasehold and the Maori owners still forced to live at a distance from their heritage. (D18:5)

Describing the effect on the claimants, Mr O'Regan said:

We have, in the course of establishing a viable economic future for our mokopuna, purchased the freehold of certain of our lands, both urban and farmland in the Arahura. In order to stand again on the lands reserved from the Poutini Purchase we have had to pay the full freehold price of our own lands in order to recover them. This has involved heavy economic and mortgage burdens and our capacity to do this has reached the limits of financial prudence already. This is a continuing injustice and the recovery offers little joy tinged as it is with the sense of resentment that it is the only avenue open to us to regain our mana under the present law. (D18:8)

Mr O'Regan gave a number of examples of how the fixed percentage rentals denied either party the capacity to exercise flexibility in the application of the leasehold rent, and how this operated unfairly against the claimants. He said:

The fixed rental provision prevents us dealing in the ordinary way of business with our lessees. Rent is never able to be a negotiable factor in our business relationships. In the case of commercial leasehold this is clearly inequitable. There is no reason in equity and justice why Maori Land should not be able to be managed and negotiated on in the same way as is freely available to other business activity. It is clearly discriminatory. If other lessors in business in Aotearoa can freely negotiate rental and other provisions then Maori should also be able to. (D18:10)

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Mr O'Regan was severely critical of the actions of the Crown trustees, namely the commissioners, the Native Land Boards, the Public Trustee and most lately the Maori Trustee. He condemned the lack of action of the statutory trustees in consulting with the owners and in failing to invest in or develop the lands of the Mawhera owners:

As a result of this neglect on the part of the Crown's trustee agents the owners have suffered loss of value in their lands in real terms and they have been faced subsequently with heavy costs and real difficulty in bringing order and a measure of modest profitability to the administration of their lands.

Insofar as the trusteeship has been accountable only to the Crown, established by the Crown and paid by the Crown, the acts of the trustees must be considered as acts of the Crown. It is our contention therefore that the neglect or omissions referred to above . . . are acts of the Crown contrary to the spirit and intent of the Treaty. (D18:18)

We shall look a little later at the position of the Maori Trustee, in particular in relation to the administration of the perpetual leases and criticism of the trustee's administration.

Lease terms outdated and ineffective

- 14.4.5 Another criticism of the perpetual lease system was raised in the submission of the Wakatu Incorporation, which said in effect that, because the leases were subject to perpetual rights of renewal, the lease document itself provided that the lessee was entitled to a renewal on the same terms and conditions as the current lease. Wakatu said this resulted in the continual use of lease documents that were drawn up at the turn of the century, and because of this there were a number of significant omissions in the lease. For example, the lease documents fail to provide penalty for late payment of instalments and consequent delays in the recovery of rent. The leases do not provide for payment of any rental between the date of expiry of the lease and the determination of any arbitration on the rent. Owners were further affected by the continual use of the concept of unimproved value of the land as the basis for the determination of the rental (N11:6-7).

Reduced rental return

- 14.4.6 Obviously the most significant effect that the perpetual leases have had is in the reduced rental to the Maori owners. The claimants called Mr M R Hanna of Wellington, a registered valuer. The tribunal had placed before it, both in Mr Hanna's evidence and also in the evidence of another valuer, Mr T I Marks, called by the West Coast (South Island) Leaseholders Association, a series of tables showing the percentage interest rate return on 21-year perpetually renewable leases from various parts of the country. Mr Hanna indicated that:

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the Greymouth Harbour Board is reported recently to have adopted a policy whereby rentals for the lease of its industrial land on 21-year Glasgow leases with seven year reviews will be charged at the rate of 10% upon the land value. (Q14:5)

Mr Hanna went on to say that, were the incorporation's leasehold land in Greymouth freed of the controls imposed by the Maori Reserved Land Act:

one could expect that leasehold yields throughout the Borough would move to match those ruling for similar tenure through the rest of the country. (Q14:6)

We shall look at Mr Marks' evidence when we are addressing the response of the lessees to this claim, as at this point we are largely looking at the effects of the grievance as alleged by the claimants. Mr Hanna gave consideration to the broad question of what rentals the Mawhera Maori owners could expect to have received if their perpetual leases had been subject to rentals at current market rates from time to time, and reviewed on the basis of 7 rather than 21 years. Mr Hanna set out the methodology of his calculations, but we do not propose at this point to examine this evidence in detail.

Loss of rental measured by valuer

14.4.7 Mr Hanna calculated that the minimum loss to the Mawhera Incorporation may have been about \$750,000 for rent reviews calculated on 21-year renewals at market rate, and \$2,250,000 if the rental had been fixed at market rate at seven yearly reviews.

Mr Hanna agreed with Mr Marks, however, that a change from perpetual leasehold tenure to a lesser term, such as 42 years, would result in a redistribution of the interests in the land to the lessees' disadvantage. This disadvantage would be further compounded by shortening the period of review from 21 years to 7 years and by freeing the interest rate or yield up to market rates. Both valuers agreed that the lessees could expect to pay more rent, have their rent reviewed more regularly, have the length of their tenure severely limited, and suffer any penalty which would result from the new tenure, such as increased difficulty in negotiating mortgage finance on their interest or improvements. Mr Hanna believed that in calculating the monetary disadvantage to the Mawhera owners resulting from the imposition of 4 per cent and 5 per cent rental rates for a 21-year perpetually renewable lease, the year 1960 would be an appropriate date for commencement. Mr Hanna based this view on the grounds:

that prior to that time the general inflationary pressures in the economy at large were not sufficiently strong for the leasehold provisions of the Act to be a serious penalty to the owners. It appears that this view is shared by Mr Marks. (Q14:9)

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- 14.4.8 There can be no doubt that the combined result of the perpetual lease with its 21-year review and its fixed rental rates has, since the 1960s, imposed a monetary disadvantage on the claimants. We will return to this question later.

As will be seen from the above summary the claimants submitted that there has been serious economic loss to the Mawhera owners and indeed to all those owners who have been affected by the perpetual lease provision. The effect of the Crown's actions, in the view of the claimants, has been widespread and has resulted in not only the loss of control of their lands but in other consequential effects on Maori people. We propose now to look at the Crown's response to this claim and also to the evidence and submissions of the lessees.

14.5. **The Crown's Response**

Crown denies breach of Treaty

- 14.5.1 In his closing address Mr Blanchard, counsel for the Crown, strongly contended that it would be wrong for the tribunal to conclude on the evidence presented to it that there had been any breach of the principles of the Treaty in relation to the west coast leases. He stated the Crown recognised that, for the last 15 years approximately, legislation had worked unfairly against the Maori owners and the Crown was presently endeavouring to devise a plan to improve the situation. This plan would enable the leases to be put on a basis which was more commercially appropriate.

The Crown's case was that although Ngai Tahu were opposed to sale:

The Ngai Tahu beneficiaries plainly recognised that there had to be some degree of permanency of tenure for the lessees who were making their land at Mawhera so valuable and providing them with a substantial income . . . they wanted to have the entire benefit of the leasing situation. They could see the advantage of permanency in the leasing situation. (Y2:127)

The Crown argued that Ngai Tahu favoured permanency of terms for their lessees in 1887 and did not object to the 1887 legislation. Mr Blanchard submitted that the objection to the perpetual leases was a modern development because of the effects of modern inflation. Counsel also proposed that Ngai Tahu wanted to avoid the risk that the lessees would elect to leave Mawhera and resettle at Cobden, or that the Crown might force sale of the freehold.

Conclusions from Crown researchers

- 14.5.2 The Crown presented a joint research report by Messrs David Armstrong and Tony Walzl. This report is an excellent overview of the history of leasing on the west coast and has been most helpful to

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the tribunal. Indeed, the evidence produced by the Crown witnesses, together with the submission and evidence of the lessees as led by Dr Young, and further, the submissions and supporting material of the Maori Trustee, have all contributed to providing the tribunal with a comprehensive picture of events from 1856 down to the present time. The tribunal has also had the benefit of its own research in Professor Ward's overview report. We will analyse those submissions and evidence shortly but return now to the Crown case.

Messrs Armstrong and Walzl surveyed six areas of relevant matters and drew these conclusions:

- a) That with the consent of Ngai Tahu owners the Crown assumed responsibility for administering Greymouth reserves following the chaos which developed in the early 1860s after discovery of gold.
- b) Prior to Crown intervention Ngai Tahu had themselves leased portions of their reserve. There were no subsequent demands from the owners for their lands to be returned to them for occupation purposes.
- c) Alexander Mackay, as commissioner of native reserves, administered the reserves largely for the benefit of the owners while attempting to maintain impartiality. The commissioner interested himself in the general welfare of the owners and often with the consent of the owners strove to reconcile the requirements of the European land management with Ngai Tahu interest.
- d) The leaseholders' desire for security of tenure led to constant agitation for freeholding. As Ngai Tahu repeatedly rejected sale, perpetual leases could be seen as a compromise solution. If this solution had not been reached, leaseholding in Greymouth would have become less attractive.
- e) Ngai Tahu were cognisant of the need for a compromise solution. No evidence was found that showed Ngai Tahu opposition to perpetual leases while there was evidence available that indicated several owners favoured such a course.
- f) The public trustee administered the lands in much the same way as Mackay had done and at a time of violent leasehold agitation. (N6:79-81)

Summary of the Crown's view

- 14.5.3 The Crown urged the tribunal to look at the evidence in its proper historical context rather than in relation to current economic circumstances over the past 20 to 30 years. The Crown said that if the 1887 legislation had not been passed the reserves might well have been lost. The result of the legislation had been the retention of the Mawhera lands in Maori ownership and although there may be some need for legislative change now, by and large the leasing system had worked in a reasonably fair manner. There was, therefore, no breach of Treaty principles in the passing of the 1887 legislation.

*The Perpetual Leases Of Ngai Tahu Reserves*14.6. **The Lessees' Response*****General reaction of lessees***

- 14.6.1 Principal submission on behalf of lessees was made by the West Coast (South Island) Maori Leaseholders Association Incorporated represented by counsel, Dr Young. Other submissions were also received from individual lessees or groups of lessees who either sought the right to freehold their land or protection for the lessees if any changes in legislation were recommended.

Some lessees of residential land expressed concern about their inability to pay higher rents or to sell their leaseholds. One large New Zealand retail company agreed that the formula for fixing rent was not consistent with present day economic conditions and values, and that the terms of the leases were not consistent with current or common usage. That same firm suggested that the leases should be modified to include some of the provisions of the Public Bodies Leases Act 1969, particularly section 22, which provided for five yearly rental reviews. It was suggested to the tribunal by two other commercial firms that compensation or favourable government loans should be advanced to Maori owners to buy out lessees improvements, but that this tribunal should not recommend interference with lessees guaranteed title under the Land Transfer Act 1952.

In most of these submissions there was sympathy expressed for the Ngai Tahu position, but also concern at the effect on the leaseholder. We pass now to look at the views of the leaseholders association.

Legal submissions by leaseholders association on jurisdiction

- 14.6.2 In opening his submissions on behalf of the lessees Dr Young made two very interesting submissions to the tribunal. The first of these related to article 2 of the Treaty. Dr Young argued that once the Mawhera land came under the Native Reserves Act 1856 those lands could be disposed of with the assent of the governor. By assenting to place the lands under the Act Maori owners consented to a situation where their absolute rights of ownership were abandoned. For the purposes of article 2 of the Treaty therefore, it was no longer "their wish and desire to retain (the Reserves) in their possession" (N39:7). Thus having disposed of the land they were not entitled to the protection of article 2.

In a second legal argument Dr Young introduced article 3 of the Treaty. Dr Young submitted that a claim based on maladministration of the Arahura reserves was not a breach of the Treaty of Waitangi or its principles. Dr Young submitted that the real villain in this piece

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was inflation and Maori had suffered just as other New Zealanders had who might have held fixed interest securities. He said:

The claimants must establish that the Treaty of Waitangi protects not only their land but also statutory and equitable rights Maori tribes and groups did not enjoy in 1840 but obtained subsequently . . . If the commissioners of Native Reserves or the public trustee or the Maori Trustee or the Mawhera Incorporation have maladministered the Arahura reserves, and that is yet to be established, then it is regrettable. But it is not a breach of the Treaty of Waitangi or its principles . . . To accord Maori claimants a remedy based on maladministration would be to give them a remedy, or to use the language of the English text of the Treaty, a Right and Privilege not enjoyed by the British subjects. So article 3 of the Treaty has no application either. (N39:7)

Dr Young therefore submitted to the tribunal that the grievances of Ngai Tahu are not properly Treaty claims. In order to keep the continuity of this report relative to the Crown response, as earlier stated, we do not propose to deal with these two legal arguments at this point but will return to them later (14.8.14).

Lessees say Maori owners consented to leasing arrangement

14.6.3 Dr Young then moved to deal in some detail with the history of the Mawhera lands and in particular with the consent of Maori that the land be leased. He said it was evident from the pattern of leasing that the best interest of the Maori owners clearly depended upon the town continuing to thrive and flourish and that a commercial approach to the issue was called for. Dr Young referred to the statement by Alexander Mackay in his 1877 report who said of the lessors:

Neither have they any occasion to complain of not having had a fair share of the income devoted to their use, as they have received in cash and its equivalent, during the last eleven years, the sum of £21,515.4s9d: and the recipients only number about twenty. (N7:31)⁴³

Dr Young considered that, allowing for the changes in the value of money, those sums of money were considerable indeed.

Dr Young developed the point that the Maori owners were in full accord with a process of leasing. He said there had been no objection made by the Maori owners to the passing of the Native Reserves Act 1882, which provided for administration by the public trustee and which in fact extended the term of leases up to 63 years, provided the lease was for building purposes.

Dr Young then asserted that the South Island Native Reserves Act 1883 introduced compensation for lessees' improvements into the leases. He said that in his 1887 memorandum, Mackay assessed the value of the improvements at £400,000 (N7:3).⁴⁴ One would have expected that this valuable asset would have been sought by the Maori owners to be returned to them on expiry of the lease. On the

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contrary, Dr Young argued, the Maori owners wished the leases to continue and consented to the provision in the Bill. He referred to a statement by Mr Seddon MP during the passage of the Bill through the House, when Seddon observed:

that the Natives interested were quite as desirous as the tenants to have this Bill passed. The reason was this: that up to the present time there had been uneasiness amongst the tenants, and the property was depreciating in value. The Natives were as much alarmed and as desirous for this legislation as the tenants. (N40:33)⁴⁵

Counsel referred the tribunal to the comments of the Member of Parliament for Southern Maori, Mr Taiaroa, which were set out in his submission in which Mr Taiaroa said that the commissioner of Native Reserves and Maori who owned those reserves had consulted together and agreed that some means should be adopted by which a greater benefit should accrue to Pakeha as well as to Maori (N39:28)⁴⁶.

At page 29 of his submission Dr Young set out another extract from Mr Taiaroa's address to the House. It was reported Mr Taiaroa said:

[he] could not oppose the Bill altogether, because he had received a wire from Tainui and Mutu and all the other Natives interested in these reserves. He did not approve of what they put into the wire, but he would read it to the House, so that honourable members should see what it contained. It was this: H K Taiaroa, Wellington—We, who are the owners of these reserves are agreeable to the Bill, and we further agree that the leases shall be extended for a further term of sixty years.⁴⁷

Dr Young submitted to the tribunal, therefore, that the assent of the Maori owners to the 1883 Act showed a process of communication that existed between the Maori legislators and their constituents. He argued that there were a limited number of Maori owners who had a substantial interest in the reserve and as Ihaia Tainui had been a Member of Parliament and was familiar with the legislative process, the owners of the Greymouth reserve were in a position to make their views known to Parliament.

Dr Young's submission was that in 1883 the Maori owners of the reserves clearly wished the leasing arrangement to continue. Dr Young referred further to the Kenrick commission and the subsequent Bunny report in which a proposal was made by the owners for 63-year leases with a further right of renewal for 63 years. This offer was contained in the letter to the Native Minister Mr Ballance which was referred to earlier in this report (14.2.14).

Dr Young submitted that:

One hundred years later the difference between leases in perpetuity and leases in essence for 126 years may appear, at least to the owners, to be

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very significant. It certainly now is from the point of view of the lessees. But viewed, as it must be, from the perspective of the 1880s the difference is infinitesimal. (N39:34)

Lessees say Maori owners favoured commercial dealing

- 14.6.4 Dr Young argued that the only way the tenants' interest in improvements could be funded out was by the adoption of what can be loosely described as a perpetual leasing system. By the 1880s there was no suggestion that the Maori owners wanted to reoccupy the land and Dr Young said that the tribunal must not look at this situation wearing 1988 spectacles but rather how the position was viewed in the 1880s. From the point of view of the owners a system of perpetual leases was already in place in the early 1880s. In this submission therefore, counsel for the leaseholders was saying that the Maori owners had a commercial leasing system in place which they wanted to continue, even though they were resolutely opposed to the sale of the land.

Lessees say Maori owners were consulted and consented to 1887 Act

- 14.6.5 In his next submission Dr Young examined the background to the Westland and Nelson Native Reserves Act 1887 and referred to a number of passages from the debate in the House and later in the Legislative Council.

To the questions:

- Was there a fair process of consultation in relation to the 1887 legislation?
- Were the Maori owners generally in agreement with the course of action proposed?
- Did they have a fair opportunity to have their views heard?

Dr Young answered that:

- a) if there was insufficient evidence to enable any firm conclusions to be drawn to answer the questions, then the claimants had not proved their case and established that there was a breach of any Treaty principles.
- b) in determining what constituted a proper consultation and consent the issue had to be looked at in a realistic and practical way and the series of investigations and reports as to Maori attitude to sale and lease could not be ignored (N39:46).

Dr Young said that the statements made by Major Atkinson and Sir Frederick Whitaker could not be ignored and the Crown clearly believed that the Bill had the assent of the affected owners. He further submitted that Mr Parata's attitude to the legislation could not be

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ignored. It could not be assumed that the Maori members would not have performed their moral duties to the Maori owners and consulted them between June and December 1887 as to the legislation.

Dr Young continued that:

c) although Mr Taiaroa opposed the Bill it was on grounds that had nothing to do with its intrinsic merits and in circumstances which lent weight to Major Atkinson's assertion that the Bill had Mr Taiaroa's consent.

d) the Bill had the assent of the Maori legislators most directly concerned. They would not have given their consent unless they were satisfied that the owners were in agreement with what was proposed (N39:47).

By way of further substantiation of the owners' understanding of the perpetual leases counsel produced and commented on the 1909 action in which four signatories indicated their views on the leases. Dr Young urged that this evidence shows the Maori owners were properly organised, they instructed a solicitor, and were a reasonably cohesive group able to articulate their concerns effectively. He further noted that the 1909 proceedings were only 20 years after the legislation. If the perpetual leases were at issue then, why was this criticism not raised.

Lessees refer to Maori Reserved Land Act 1955

14.6.6 Dr Young also made the comment that no evidence was called by the claimants in relation to the 1955 legislation. Dr Young called a witness, Mr A M Jamieson, a retired solicitor, who was born in 1903 and had lived in Greymouth all his life. Mr Jamieson stated that the rate of rent prescribed under the 1955 Act at 4 per cent was in fact an advance on the rent that the Maori owners had been receiving of 3.75 per cent.

Dr Young summarised his submissions saying:

- a) The assertion there has been a breach of Treaty principles in relation to the legislation is unfounded.
- b) The Maori owners originally submitted voluntarily their land to a statutory regime which from the very outset contemplated the possibility of sale or lease in perpetuity.
- c) Although the issues as to rent were a running sore, it was an underlying community of purpose at all times between the Maori owners and the lessees which dictated largely the ultimate form of lease provided.
- d) There is no evidence at all from which it can be fairly concluded that any of the legislation was passed without adequate consultation. What evidence there is suggests that there indeed was consultation.

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e) On the whole the rent recovered by the Maori owners was in line with the rent recovered in relation to other Glasgow leases in New Zealand at all relevant times.

f) The 1955 legislation was, on the material which the lessees can produce, an advance and not a retrograde step as far as the Maori owners were then concerned.

g) To approach the issues of the legislation and the policies adopted from the point of view of current values of money, and current inflationary expectations was to adopt a blinkered and ultimately distorted view of the historical process. (N39:54)

- 14.6.7 Valuation evidence was called on behalf of the lessees to establish that from 1878 to 1984, a period of some 106 years, the average increase in land value for the Greymouth borough was a mere 4.8 per cent, the last 20 years having had a completely disproportionate effect on that figure. For the Grey county the figures had been calculated, from 1891 to 1986, a period of 95 years. The rate of increase during this time was 3.2 per cent, again with a disproportionate effect on the general rate of increase over the last years.

Dr Young submitted the evidence showed that up until 1955 the Maori owners, in relation to the Mawhera leases, did not appear to have been particularly disadvantaged. The rate of return that was referred to in 1909 and later established in the 1953 arbitration was 3.75 per cent.

Lessees' rights should not be disregarded

- 14.6.8 In conclusion, counsel stated that although it was undeniable that negotiated or arbitrated rents were producing rentals significantly in excess of the rents provided for under the 1955 Act, it was questionable if those rents would be as high as anticipated by the claimants. A strong statement was made by Dr Young in conclusion that it would be manifestly unjust and impolitic if the tenants of Mawhera incorporation should be selected to fund the compensation assessed to meet any loss suffered by the claimants. He urged upon the tribunal that it was a very serious thing indeed to interfere with settled titles to lands, titles which had been bought and sold and which had been offered as security for advances of money.

14.7. **The Maori Trustee's Response**

Allegations levelled at Maori Trustee

- 14.7.1 In this part we look at the response of the Maori Trustee to the allegations made by the claimants. The allegations were divided into two groups, the first of which covered:

- a) failure to allocate reserves set aside in the Arahura purchase deed;
- b) failure of Crown to protect Ngai Tahu by allowing reserves to be

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- reduced in area;
- c) inadequate provision under South Island Landless Natives Act 1906 to remedy landlessness caused by sale;
- d) marginal nature of reserves; and
- e) failure to provide for reforestation of the Mawheranui block.

The second group dealt more particularly with the failure of the Crown's appointed trustee to administer properly the reserved lands and included:

- a) failure to prevent taking of reserved land for public works;
- b) failure to consult owners as to use of land;
- c) adoption of an unfavourable attitude as Maori Trustee to the prospect of incorporation between 1967–1978;
- d) failure to act as a prudent trustee by acting in a passive role in respect of town planning matters;
- e) failure in duty as trustee to amalgamate land titles;
- f) failure to consult with owners over termination of Greymouth Post Office lease negotiations in 1974;
- g) failure in duty as trustee by attempting to recover for the Crown its expenditure in acquiring shares instead of the equity value fixed by the incorporation valuer; and
- h) failure as trustee to invest in or develop Mawhera lands.

14.7.2 The above allegations were contained in the submissions and evidence of claimant witnesses James McAloon (D3:14) and Tipene O'Regan (D18:16A-18). Elsewhere in this report we shall be dealing more specifically with those questions falling within the first group above. We shall in this section set out the responses of the Maori Trustee and later look at our findings on the alleged grievances in the second grouping above.

General denial of liability by Maori Trustee

14.7.3 In his opening submission on behalf of the Maori Trustee, counsel Mr Woods said the Maori owners were not alone in their concern that the Maori Trustee had:

expressed for some time that the current legislation is most iniquitous in respect of the interests of the beneficial owners and has openly advocated and given every practical support to numerous petitions for change in the legislation. (N32:1)

Mr Woods emphasised the Maori Trustee was a corporation sole constituted under the Maori Trustee Act 1953 and was not a department of government nor an agent of the Crown in the administration of reserved lands. Counsel said firstly, the Maori Trustee denied the allegations of breach of trusteeship and charges of mismanagement and secondly, the allegations fell outside the scope of the claimants'

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claim. Mr Wood then gave a summary of the Maori Trustee's role in reserved lands in the South Island and of recent developments in policy and administration since the 1975 report of the commission of inquiry. Counsel argued that the claimants were apparently confused as to the role of the Maori Trustee, and further, that the claimants did not appear to be directly challenging either the constitution of reserved lands or the necessity of maintaining a policy of reserved lands.

Counsel further argued that the claimants had failed to distinguish between acts of day-to-day administration and acts of omission resulting from the performance of a statutory requirement, or direction. Mr Woods submitted that only the latter were caught by section 6 of the Treaty of Waitangi Act 1975. He called two witnesses Ms Catherine J Nesus and Mr Richard T Wickens.

- 14.7.4 Ms Nesus, solicitor from the Department of Maori Affairs, presented a 115 page summary of the legislation dealing with reserved lands (N36), accompanied by a document bank of 540 pages (N37).

Ms Nesus described her submission as "navigating a bumpy course through the volume of law that exists". We agree with her view and as expressed previously, appreciate her useful contribution.

Submission of Deputy Maori Trustee

- 14.7.5 Mr Richard T Wickens, Deputy Maori Trustee and with more than 14 years duty in the Maori Trust Office, dealt more specifically with the alleged grievances. He said his submissions fell into two categories:

- a) to provide an administrator's perspective to the management of reserved lands; and
- b) to comment in rebuttal of the allegations made by Mr McAloon, concerning prejudiced administration of the reserved lands. (N34:1)

Mr Wickens offered the tribunal a quote from an observation made by a previous Maori Trustee, Mr Jock McEwen, to the 1975 commission.

The Maori Trustee is a man walking through a narrow defile on a course chosen by somebody else with stones raining down upon his head from the beneficial owners on the one bank and the lessees on the other. He is quite unable to placate either side. (N24:1)

Mr Wickens provided a carefully drawn analysis of the early history of the trusteeship including steps taken to appoint the Public Trustee in 1882 and subsequently the Maori Trustee in 1921. More importantly however, Mr Wickens drew from this historical analysis a number of salient points that had direct bearing on allegations levelled at the Maori Trustee which in his view should have been directed to government. In summary these points were as follows:

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(a) There are constraints placed on the trusteeship by the legislation. To describe the legislation as having evolved is perhaps inaccurate, *for the 1873 Native Reserves Act gave the trustee no more freedom to manage the reserves than did the Maori Reserved Land Act 1955.* (emphasis added)

(b) Although consultative mechanisms were put in place in several enactments, accountability continued throughout to be to the government and not to the owners. It would seem that the real power over the fate of the reserves has always been firmly concentrated in the hands of the government.

(c) Successive governments never contemplated large scale consultation but merely a kind of representative consultation. It is also relevant that consultation of a quality to satisfy trustee requirements may have been considered impractical in many instances as the beneficiaries of the individual blocks were not determined until the 1920s.

(d) The Crown's attitude up until the 1955 Act was one of special interest. The concentration of power in the hands of the Crown may have circumscribed the role of the trustees. The Crown saw itself as having a duty to the Maori people and introduced 'policies which it saw as necessary to fulfil that duty'.

(e) The shortage of funding has always been a characteristic of Maori land administration.

(f) Apart from early provisions in the 1856 and 1873 Acts, administration of the reserves was centralised in Wellington.

Mr Wickens then dealt in some detail with specific cases and allegations. He submitted that:

- the appropriate forum for dealing with breaches of trustee law was with the High Court and that avenue was and is available to the claimants (N34:11); and
- notwithstanding that remedial right and because the claimants had chosen to raise allegations in a public forum it was necessary to point out the generality of the claimants conclusions but in some cases the absence of recorded reasons and other factors such as local knowledge and experience which guided the decision making process of decisions made long ago (N34:8-10).

Mr Wickens in his concluding submission emphasised the costs involved in proper consultation due to multiple ownership, and said that achievement of the ideal would be prohibitive without regular subsidies from government (N34:19).

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In summarising of the Maori Trustee's position it is evident that the main thrust of the response to the claimants' allegations was that the claimants had remedies in the general courts for their complaints; that the grievances should be directed to the Crown rather than the Maori Trustee, and that in most specific instances there was an adequate answer to the claimants' criticism.

14.8. **The Tribunal's Examination of the Evidence and Findings**

Perpetual leasing is main complaint

- 14.8.1 The principal grievance of Ngai Tahu over their reserved lands was that the Crown failed to protect Ngai Tahu by passing legislation to impose perpetual leases without the consent of Ngai Tahu. Within the framework of that grievance come the associated grievances that the Crown fixed unrealistically low rentals and long review periods. The second grievance also relates to the perpetual leases, in the Crown's refusal to implement the recommendations of the 1975 commission of inquiry report which advocated change to the form of those leases. The third category of grievances voices the claimants' concern over the Crown's administration of the reserved lands, and in particular acts and omissions of the various statute-appointed trustees.

We propose to look in sequence at each of these matters and commence with the perpetual lease.

Grievance must be looked at in proper time perspectives

- 14.8.2 The first grievance requires consideration of the particular statutory provisions which created the perpetual leases. It also requires determination of whether or not Ngai Tahu consented to the leases. Both questions require a study of the historical background, so it will be necessary for us to retrace, in as brief a manner as we can, how the system of leasing started and progressed. We will have to look not only at the 1887 and 1955 Acts, which expressly covenanted the perpetual lease provisions, but a number of other earlier and later Acts which also relate to the reserved lands. The chronology and principal content of the statutes, reports and other relevant events have already been summarised (14.2). In this section we will draw on the main threads from that chronology. We were admonished by counsel on several occasions not to look back on past events with a current day outlook and knowledge. We have in fact been conscious of this requirement in our consideration not only of this part of the claim, but the many other grievances going back to even earlier periods in the Ngai Tahu claim.

*The Perpetual Leases Of Ngai Tabu Reserves***Classification of resources**

- 14.8.3 As we have earlier stated, there were two classes of land reserved from the Arahura 1860 sale to the Crown. The first area, totalling 6724 acres, was land set aside for individual allotments (herein referred to as schedule A lands) and the second area of 3500 acres was reserved for “Religious, Social and Moral Purposes” (herein referred to as schedule B lands). In his report to the chief land purchase commissioner on 21 September 1861 James Mackay said:

On the 21st May 1860, the Ngaitahu Title was completely extinguished over all the portion of the West Coast district lying between Kaurangi Point in the Province of Nelson, and Piopiotai, or Milford Haven, in the Province of Otago, and bounded inland by the watershed range of the East and West Coast of the Middle Island, the reserves mentioned in Schedules A and B being the only portions excepted from sale

As previously stated, reserves for individual allotment amounting in the whole to 6724 acres have been set aside.

Reserves amounting in the aggregate to 3500 acres have also been made for the benefit of the aboriginal inhabitants of the West Coast, and for the promotion of social, moral and religious objects among them.

The last mentioned reserves have been conveyed to Her Majesty, subject to the provisions of the New Zealand Native Reserves Act 1856; the Deed of Conveyance being enclosed herewith . . .

The Natives are not sufficiently enlightened for a sub-division of the reserves to be now effected, and it was also impossible for me in every case to ascertain the number of persons interested in each reserve (D5:13)⁴⁸

The schedule B lands, therefore, were placed under the 1856 Act immediately on transfer to the Crown.

Alexander Mackay’s view on sale and lease

- 14.8.4 We have earlier seen how well Alexander Mackay administered the leases during the 1860s and 1870s. By 1873 the leases were for terms of 14 or 21 years (N7:16).⁴⁹ It was in this year that Mackay reported to Parliament on the reserves (N7:13–17) and made the statement previously set out (14.2.7), that it was intended to let the land *in perpetuity* for the benefit of Maori.⁵⁰ In case this is taken to indicate that Mackay was in favour of leasing these reserve lands forever we need to look at a further statement he made a few months later in a letter to John Greenwood where he disagreed with the proposition of leasing land for building purposes for 60 or 99 years in a young country like New Zealand (N7:168).⁵¹

That Mackay continued to hold this view is evident from his memorandum on the status of Mawhera reserves in July 1877 (N7:30–31).⁵² In this report, referred to in detail in an earlier section (14.2.9) Mackay continued to oppose the sale of land and recommended

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leases for 60 years to persons wishing to erect permanent buildings of brick and stone. Alexander Mackay was, on the face of it, not only opposed to sale but also to leases beyond 60 years.

- 14.8.5 The tenants kept up pressure to sell through the 1870s. Under the 1873 Native Reserves Act, leases for building purposes were extended to a maximum term of 60 years. Mackay, as we have seen, was in favour of such a term but resolutely opposed to sale. However, Greymouth lessees still urged the Crown to buy the land and lease it to the tenants at lower rents and with rights of continual lease renewal (N7:28).⁵³

In 1881 Mackay was still promoting the 21-year farming lease and the total 60-year term building lease (N7:174).⁵⁴ The following year saw the passing of the 1882 Act which passed title and control of the reserves to the Public Trustee, who was empowered to lease for 30 years for farming, and 63 years in 21-year terms for building.

Did the Maori owners agree to perpetual leases in 1883?

- 14.8.6 The South Island Native Reserves Act 1883 was a most important statute in the chain of events affecting the Mawhera leases. In the first place, section 3 authorised the governor to grant the 500 acres of the Mawhera reserve to 26 Maori whose names and the acreage each took were set out in a schedule to the Act. At that date therefore, 8 September 1883, the relative interests and persons to whom title was to pass were clearly ascertained and named in the Act. In the second place the Maori owners agreed to a system of compensation for improvements being introduced into the leases provided they did not have to buy those improvements themselves if the lease terminated. The owners were consulted by their representative in Parliament, Mr Taiaroa, who said they were perfectly satisfied to grant leases for 21 years and 60 years. However the Act provided only for 21 years in respect of Mawhera leases. The reduced term and dissatisfaction of tenants over the form of the compensation for improvements led to the 1886 Royal commission and the subsequent Bunny report. Again there was great pressure put on the owners to sell. They steadfastly refused and expressed the view they were prepared to grant leases for 63 years with a right of renewal for another 63 years (N7:190).⁵⁵

We set out in 14.2.14 the text of the letter signed by seven Maori and translated by Mackay on 20 October 1885. We also set out the written depositions handed in to the commission by three of those seven, namely Inia Tuhuru, Teoti Tauwhare, and Henare Meihana. The evidence of these three persons contained references to leasing land in perpetuity and were tendered by the Crown and the Westland Lessees Association as evidence that the Maori owners consented to

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a perpetual leasing arrangement. Examination of the depositions does not in our view give any clear indication at all that those witnesses consented to the introduction of perpetual renewal clauses into the leases.

Inia Tuhuru qualifies his statement by the words “all land not required for our own use.” (N7:322)⁵⁶

Teoti Tauwhare uses the words “in fact we wish the leasing system perpetuated” (N7:323)⁵⁷ and Henare Meihana simply agreed with the others. It is further quite evident from Meihana’s evidence that his views were in accord “with the tenor of the letter we are forwarding to the Native Minister.” (N7:324)⁵⁸

Inia Tuhuru also referred to this same letter in his deposition when, after referring to leasing in perpetuity, he added “We send a copy of a letter to the Native Minister relative to the future dealings with our lands.” (N7:322)⁵⁹

As is clearly shown in that letter the signatories were agreeable to a 63-year term lease and a further renewal of 63 years, *not to leasing in perpetuity*.

The tribunal therefore does not see the evidence up to this point as indicating that the local Ngai Tahu people intended leasing their lands in perpetuity. We consider that Professor Ward correctly assessed the situation when he said:

Nothing in the evidence suggests that leases in perpetuity were being considered as an option at this stage. The Kenrick and Bunny Reports had not discussed them. The alternative which, rightly or wrongly, the owners of the reserve felt they were being presented with was sale. (T1:321)

This view is further supported by the following comment in the report of the 1975 commission:

(iv) It is pertinent to observe that the Wakefield concept of perpetually leasing the land is not the same as granting leases with perpetual right of renewal. In the former the rent and terms of all ensuing leases are negotiated while in the latter the rights of the parties are fixed by the original contract.

(v) The promise made by Alexander Mackay for perpetual leasing was spelled out in different form in the 1887 legislation in section 14 of that Act as a covenant for perpetual renewal with 21-year revisions of rent. (D1:59)⁶⁰

As we have seen, the Kenrick Royal commission recommended that leases be granted for 63 years.

*The Ngai Tahu Report 1991****Did the Bunny report recommend perpetual leases?***

14.8.7 Following on the recommendation of the Kenrick commission, Bunny, as special commissioner, again raised the question of sale. However, as we noted in 14.2.16 the owners were strongly averse to this notion, although they were willing to grant leases for 63 years with a right of renewal for a further 63 year term. There is therefore no indication whatsoever up to this point, that the Crown intended to introduce perpetual leases or that the Maori owners favoured perpetual rights of renewal.

Bunny, in his report, commented that the existing leases with their 21-year terms, made it impossible for the tenants to borrow money. He suggested as one of several desirable alternatives that the lessees be allowed to buy the freehold, and intimated that:

the government might itself be able to acquire the freehold from the Native owners, and, by placing the reserve under local control, give the persons interested some voice in deciding the future management of the estate. This seems upon the whole the best course, if feasible. (N7:192)⁶¹

So, at this point in 1886, there was a Royal commission recommendation for 63-year leases instead of 21 year terms and a special commissioner advocating Crown purchase of the freehold, but no perpetual leasing proposed. Nor was there discussion or consultation with Poutini Ngai Tahu about perpetual leasing.

The introduction of the perpetual lease clause

14.8.8 We looked earlier (14.2.17) at the Westland and Nelson Native Reserves Act 1887. This Act did not put into effect either the Kenrick commission recommendation of 63-year leases or the Bunny report alternative of the Crown purchasing the freehold. Instead, in section 14, five words were inserted which introduced the perpetual lease. The section read:

14. In all leases to be hereafter granted there shall be a condition for a new ascertainment of the rent at the expiry or surrender of every such lease, and that the then holder shall have the right of renewal for a like term upon the same conditions and covenants (*including the right of renewal*) subject only to the difference that the rent shall be the rent so ascertained as hereinbefore provided. (N7:06) (emphasis added)

Section 3 of the Act had repealed the provision of the 1882 Act allowing 30-year and 63-year terms and fixed a uniform term of 21 years. Whilst we have section 14 before us it is also appropriate to draw attention to the words included in it, “upon the same conditions and covenants”.

That is, not only did this 1887 Act create the perpetual lease, but it also created the provision which imposed the restrictive form of the

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lease. How then did this provision become part of the law? We look at some possible reasons.

Was the perpetual renewal clause inserted to appease the tenants?

- 14.8.9 The 1975 commission of inquiry report suggested that the perpetual right of renewal could indeed have been prompted by the Bunny report, where it said of Greymouth in 1886:

It is almost impossible to borrow money, for the purpose of making necessary improvements, upon the present title. (D1:432)⁶²

Professor Ward said of the clause:

it was clearly passed in response to these investigations (Kenrick commission and Bunny Report) both of which had argued that the tenants had genuine grievances which required redress. (T1:322).

Messrs Armstrong and Walzl said:

The leaseholders desire for security of tenure led to constant agitation for freeholding. As Ngai Tahu repeatedly rejected any suggestion that they sell the Reserve, *perpetual leases can be seen as a compromise solution*. (N6:81) (emphasis added)

Mr McAloon said:

The Act may, perhaps, be seen as a government attempt to compromise between the demands of Greymouth leaseholders to freehold, and the absolute refusal of the Maori owners to countenance this. (D3:22–23)

In his submission Dr Young said:

It being recognised as fair and appropriate and lawful that the tenants should be compensated for these improvements, the only practical way that compensation could be provided for was in the nature of what was in essence a perpetual leasing system. [There was not] the slightest suggestion the Maori owners wished to resume occupation of the land. (N39:34)

Objective of 1887 Act as seen by Parliament

- 14.8.10 Let us look now at the explanation given by Parliament for the introduction of the 1887 legislation as it pertained to the Greymouth reserve.

Sir Julius Vogel said:

The object of the Bill is not so much for the purpose of altering the position of the Natives as for making clear what are the relative positions of the lessees and sublessees. (D5:109)

Seddon said:

As regards the question raised by the honourable gentleman, that the titles have been individualized, I may say that I see nothing in this Bill which, as far as Greymouth is concerned, interferes with that. It merely says that these reserves, though the title vests in the Natives under the

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original Act, shall be placed in the hands of the public trustee – that is, that the Natives shall not take the land as a freehold and administer it themselves. It is quite possible that it would be against the interests of the Natives themselves if they had the land given to them in that way; for, very possibly, it would be sold to the present occupiers, or to speculators, and those who are now living on the rental from those lands would spend the money, and find themselves without anything to keep them. (D5:114)

Guinness said:

as the tenants are uncertain as to their rights of renewal and of payment for improvements, the consequence is that there is no inducement to them to improve their holdings . . . Another important point to consider is, that by giving fixity of tenure and right of renewal it will encourage the tenants to put up substantial buildings: it will have the effect of improving the buildings and increasing the value of the township generally. As the township improves, every twenty-one years the rent, under this Bill, as also under the Act of 1883 will be adjusted, and if the township improves and land increases in value, as we have reason to expect, the rent that the Natives will Draw will increase in proportion. Therefore, this Bill, instead of having a detrimental effect on the interests of the Natives, will have a contrary and very great beneficial effect in that direction. (D5:115)⁶³

There can be no doubt that the 1887 Act was introduced after the Kenrick commission and Bunny report as a means of remedying tenants' grievances, and to allow them a form of tenure which would permit them to carry out substantial improvements to the properties. Although the Bunny report advocated purchase of the freehold by the Crown, this alternative was not acceptable as the Maori owners strongly opposed it. In the view of this tribunal the principal purpose of the 1887 Act was to protect and improve the tenants' position.

In a later 1909 report of the public trustee J W Poynton, to Parliament's Native Affairs Committee to which we will later refer, Mr Poynton, in referring to the grant of perpetual leases, said:

By section 14 of The Westland and Nelson Native Reserves Act, 1887, the position of the tenants was further improved. This section is very innocent-looking . . . It, however, made a complete revolution in the leases. (N40:94)⁶⁴

As we have earlier stated, until the 1887 legislation, neither Mackay nor the Maori owners had been consulted or had consented to leases with perpetual renewal clauses. These virtually came out of the blue, as government sought to appease the tenants on the one hand, but not to upset the Maori owners by dealing with the freehold. What then was the attitude of Poutini Ngai Tahu to this legislation? Were they consulted? Did they consent?

The claimants alleged that the government acted unilaterally and without the consent of Poutini Ngai Tahu. The tribunal has therefore

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examined very carefully the evidence presented to it and in particular the events surrounding the 1887 legislation. As already explained, we do not consider that the pre-1887 evidence gives any indication of either consultation or consent, although that evidence was relied upon by the Crown and West Coast Leaseholders Association as indicative of consent. Poutini Ngai Tahu, or at least those of the tribe from whom statements were taken, opposed sale.

In Professor Ward's view:

Whether they would have opposed alienation by perpetual lease cannot be definitely established from the available evidence because this form of leasing was not being discussed. (T1:321)

We propose here to refer to a lengthy passage from Professor Ward's report on the passage of the 1887 Act:

Several issues have been raised before the tribunal with regard to the passage of this Act. It has been suggested that the Bill was rushed through and that the objections of the Maori Members of Parliament were not heeded. (D3:22–29) A close examination of the evidence suggests that some haste was involved in the final stages of the passage of the Act, but that one of the Maori members concerned came to support its measures and the other, although opposed, cannot be said to be specifically opposing the provisions relating to leases in perpetuity. The qualified support given to the Bill by these members cannot however be taken as an indication that the Bill was supported by the Maori whose land was affected by the Act. Several petitions presented around the time the Act was passed would appear to indicate otherwise.

When the Bill was first discussed in June, Tame Parata, the Member for Southern Maori opposed it and presented a petition from H K Taiaroa, a Legislative Councillor and an owner of the Greymouth Reserve (T2:97).⁶⁵ This petition was referred to the Native Affairs Committee but the report does not indicate what Taiaroa's objections to the Bill were. (T2:109)⁶⁶

Parata had a number of concerns. The Bill had not been available in translation until the morning of the 8th and he felt that he had not had sufficient opportunity to consider it. The owners of the reserve at Greymouth, were, he said, in ignorance of its provisions. He also had some substantive arguments. He had misgivings about a clause in the Bill allowing land to go out of Maori ownership for mining purposes or for public works. The clause allowing leases to be renewed in perpetuity did not meet his favour either because he felt it effectively took the land away from its owners.

Another objectionable power the Bill proposes to give the public trustee is that of extending the leases another twenty-one years if he sees fit; and so he will go on extending the leases time after time to the end of the world, and the Natives will never obtain possession of their ancestral land again. (D5:110)⁶⁷

He asked that consideration of the Bill be postponed until the next session. The House did not agree to this and put the Bill through its final reading on the 9th. The Bill was amended in the process and Parata

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supported it on the third reading despite the fact that it still contained the provisions concerning perpetual leasing, mining and public works. The amendment had provided that two Maori assessors be appointed to assist the other Assessors under the Act. Taiaroa and Parata were themselves suggested for these positions. (N7:237)⁶⁸

On the following day the Bill was opposed by Taiaroa in the Legislative Council. Taiaroa objected to being denied the opportunity to manage his own land and to the provision giving the lessees rights of perpetual renewal. He accused the five members from Greymouth and Hokitika of bringing the Bill forward to improve their chances of re-election. He too mentioned the prospect of the owners losing control of their land.

The Council must be perfectly aware that this land will never return. I understand from this Bill that the public trustee is to lease the land for a term of twenty-one years, and the land can be relet then for a second twenty-one years without the Natives having any voice in the matter whatever. These twenty-one year leases will be renewed and renewed until other generations spring up, and possibly until the day of judgment. (T2:112)⁶⁹

Parliament was prorogued later the same day.

When the issue came up for reconsideration in December, Parata again had problems getting a Maori translation. On 2 December he told the House that although the Bill had been on the order paper for a considerable time he had not been able to get a copy to circulate amongst his constituents. (N72:40)⁷⁰ He did not want the Bill rushed through. On the 21st of December he noted that many Maori interested in reserves had petitioned the House or written to him asking to take up their lands when the existing leases expired. One of these petitions was from Inia Tuhuru and seven other owners of the Greymouth reserve asking that the management of the reserve be left to them. (T2:98)⁷¹ A similar petition from Pamariki Paaka and eight owners of reserves in Motueka affected by the Bill was presented by Parata on 3 November. This asked for the repeal of the South Island Native Reserves Act and the grant of the power to deal with their land as they thought fit. (R6:3)⁷²

Parata did not go this far on the issue of owner control and management. He thought that the Bill could be amended to make it acceptable and suggested that any new leases should only be granted with the consent of the owners, and that renewals should not be granted without their knowledge and consent. He said he would carefully examine the Bill at its third reading, and if amendments were made there would be no reason for him to oppose it. The Bill was given its third reading straight after its second, Parata offering no further arguments against it despite the fact that it had not been amended to accommodate his suggestions. (N7:241-2)⁷³

The tribunal observes from an examination of Parata's Parliamentary address, that he was most insistent that before any fresh leases were granted the consent of the Maori owners should be obtained and that no renewals should be granted without their knowledge or consent.

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Having made that statement he proceeded then to talk about the reserves in Motueka and, almost at the end of his address, he made this statement:

I ask the Premier to strike out from the Bill the references to the Wakanui lands in the South Island, so that it may be quite clear that this measure will apply to reserves on the west coast of the South Island. That would distinguish the land to which it is to apply from the other part. While asking for this amendment, I support the second reading of this Bill. (D5:133)⁷⁴

In response, the Premier Major Atkinson said that he would be glad to consider the question raised by Mr Parata, and that he would introduce a clause giving the governor a general power to deal with the matter if he was satisfied that no injustice would be done. This obviously must have satisfied Parata because the record discloses that the Bill was then read immediately a second and a third time. It is also clear from an earlier statement made by Parata in the same final address he made to the House, that he was not going into the question of the reserves at Arowhenua, Mawhera, and Greymouth, because there was:

an honourable gentleman in Wellington who knows all about these reserves, and no doubt he will take advantage of the opportunity and, if necessary, he will improve the measure so far as it relates to these reserves, and, if any necessary amendments are needed, will see they are inserted. (D5:132)⁷⁵

The tribunal does not consider that Parata's consent to the passage of the Act represented support in any way for the content of the Bill including, in particular, the provision relating to perpetual renewal. Parata was speaking to the second reading of the Bill and obviously intended that there should be further amendments made to it. Another important fact is that just prior to the committal of the Bill, the member of Parliament for Dunedin, W D Stewart, pointed out that the time had arrived when South Island Maori should have an independent power over their reserves. He raised the question so that the Prime Minister might consider the matter before the Bill went into committee. The premier in reply, said that he hoped in the next session to bring down a Bill that would give Maori such a right as Stewart had raised wherever they were fit to exercise that power. Obviously the closure was taken very quickly and perhaps the premier's statements to both Parata and Stewart gave them some encouragement that there would be changes made to the legislation that would return some measure of control to the owners. We do not consider that, because Parata did not appear to have continued with his opposition, he necessarily agreed with the content of the Bill.

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We now return to continue the review of this matter by Professor Ward:

In the Legislative Council Tairaroa opposed the Bill to the end, though his opposition does not seem to have been primarily directed to the perpetual leases. He wished to amend the Bill to provide that the Native Lands Administration Act 1886 would not apply to land in the South Island or Stewart's Island because South Island Maori were unclear about how the 1886 Act affected their interests. Tairaroa was willing to vote for the Bill if his amendment was included. The amendment was not accepted. Following its rejection Tairaroa made an eloquent plea to the Council to delay the passage of the Bill for three weeks, complaining that he did not have an up-to-date copy of the Bill and its amendments in Maori. The Bill was passed over his objection. (N7:243-4)⁷⁶

In summary it would seem that on both occasions that Parliament considered the proposals which were eventually enacted in the Westland and Nelson Native Reserves Act it did so under pressure and at the tail end of a session. There was, however, a six month gap between the two debates. On both occasions Maori members complained that they did not have access to updated Maori versions of the Bills. It is not clear whether this materially affected their ability to represent the Maori affected by the Act. Parata, the MHR for Southern Maori spoke against provisions in the Bill including the clause giving lessees a perpetual right of renewal, but on both occasions he voted for the Bill. In December 1887 he helped make the Bill law despite the fact that he knew it to be contrary to the wishes of some of the owners of the affected land. Tairaroa maintained his opposition to the end, but as he expressed willingness to vote for an amended Bill containing the perpetual lease arrangements it does not seem that his opposition was directed at the perpetual leasing. (T1:325-326)

The tribunal does not accept that either of the Parliamentary representatives' actions amounted to a consent by Poutini Ngai Tahu to the perpetual leasing provisions of the 1887 Act. We think it necessary to observe that many measures are passed into law with no voice being raised on the final reading despite the fact that a member of the House does not agree with certain contents of the measure. The evidence in this particular case certainly does not amount to an estoppel that would operate against Poutini Ngai Tahu that their Parliamentary representatives had given their consent to the statutory provision.

Was consent of Ngai Tahu necessary to validate Crown action?

- 14.8.11 It might be asked whether Crown consultation with Maori owners, and the latter's consent to the legislation was necessary.

With a few strokes of a pen, by the insertion of the words "including the right of renewal" in section 14 of the 1887 Act, the legislation took away from the Maori owners a valuable property right and gave it to the tenants. It may have been done for any one or more of the

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reasons explained, including the purpose of encouraging development of the land and thereby enhancing the future rental return to Maori, but it was nevertheless an action that was to deprive the owners of use and occupation as well as a property right. The Mawhera lands were reserved for individual occupation. They were not to be set aside as lands for tribal endowments. The owners were known and had been determined in number and acreage only four years previously, in the 1883 Act. They were entitled to informed advice on the meaning and effect of such an important change to their title. They did not get it. In 1866 the Mawhera lands were placed under the 1856 Act so as to permit management and control. The Maori owners agreed to this course. They were not then able to cope with the European commercial processes of leasing. Alexander Mackay handled these proceedings to the satisfaction of the owners. Mackay and those owners were prepared to grant long term leases with compensation provisions. They were opposed to sale. By 1887 the Maori owners were becoming more conversant with commercial matters and indeed had petitioned Parliament for control of their lands to be returned. The Crown, in response to tenant pressure, gave into settler lobbying and answered its conscience to Maori interests by suggesting in its Parliamentary debate that the move was in the best interests of Maori as they would gain more rent and as they were incapable of managing their own affairs anyway.

Looking back with 1887 eyes, as we were urged to do, it is perhaps understandable that politicians acted as they did in the circumstances. Looking back however, with those same 1887 eyes, but with lens that require us to focus on the principles of the Treaty of Waitangi, this tribunal cannot accept that the actions of the Crown were in accordance with the Crown's duty to protect Ngai Tahu interests. It is ironic but pertinent that today, when Maori are seeking to reverse the position, this tribunal has been urged by tenants to respect their property rights and their guaranteed title under the Land Transfer Act. They do indeed have a valuable right. The Crown has also declared its intention to consult with the lessees before amending legislation is introduced. That is entirely proper too. It was not done in 1887. Unfortunately, that was not the only omission of the Crown. Legislation and Crown actions and omissions in 1955, 1967 and from 1975 to now, continued a breach of the duty to protect Maori owners of reserved lands, as we shall shortly see. At this point however we must look at the responses of the Crown and the lessees.

Did Ngai Tahu and the Crown agree to a compromise?

- 14.8.12 It was suggested by the Crown that perpetual leases could be seen as a compromise solution. This may well be the case, but it raises the

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question – who made the compromise? If the Crown are suggesting that the Maori owners saw this solution as the only way in which they could prevent their land from being sold, then of course it is not so much a compromise as a form of forced agreement to which the Maori owners had no alternative. If, on the other hand, it was a compromise of the Crown, then obviously it was intended to be a way of placating the tenants and yet upholding the owners' refusal to sell. The tribunal believes that it was indeed this latter form of compromise and certainly not an agreement that had the full -knowledge and consent of the Maori owners.

The introduction of the 1887 perpetual lease clause would likewise not seem to be consistent with the principle of good faith, seen by the Court of Appeal in its 1987 decision as being an important principle of the Treaty. The Crown had seen the need to provide a system of management and control of lands to protect Maori reserved land. In effect it created a statutory trust under which it retained ongoing fiduciary obligations. It was a trust in which the Crown retained its control. Its intervention in 1887 to transfer a valuable property right, giving perpetual rights of use and occupation to the lessees, can hardly be interpreted as an act of good faith. The Crown's simple duty to its Treaty partner was to protect the land until such time as effective management and control could be transferred back to Maori. It breached that duty by legislating to take from the owners the right to future use and occupation, and conferring that right on a third party. Furthermore, the land was not public land but privately owned land. It was not until 1976, following the 1975 commission's report, that Maori regained management from the Crown-appointed trustee. Even so, the title to the land was then, and is still, burdened with perpetual leases containing unsatisfactory covenants such as 21-year rent reviews and rents of 4 per cent (urban) and 5 per cent (rural).

Ngai Tabu were in favour of a commercial leasing regime

- 14.8.13 Dr Young, on behalf of the lessees, put forward the proposition that the Maori owners' best interests were served by the pattern of leasing that emerged and were clearly dependent upon the town continuing to thrive. Counsel considered that Maori adopted a commercial approach to the issue and were in full accord with the process of leasing. He argued that the difference between leases in perpetuity and leases offered by the Maori owners for 126 years, when viewed from an 1880 perspective, raised only an infinitesimal difference. There is no doubt that a relatively small number of owners were in fact receiving the benefit of rental from the Mawhera lands. There is also no doubt that the owners were anxious to cooperate with the

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tenants to allow the leases to continue for a long period. However, these actions cannot be taken as implicit consent to the 1887 provision.

Legal argument of the lessees

14.8.14 We proceed now to consider Dr Young's legal arguments set out above (14.6.2). Briefly stated, counsel argued:

- a) that when Ngai Tahu consented to their land going under the 1856 Native Reserves Act in 1866 it was no longer land they wished to retain in their possession and article 2 of the Treaty no longer applied; and
- b) that article 3 of the Treaty had no application to give claimants a remedy based on maladministration.

Dealing with the first question, we cannot accept that the Maori owners understood or agreed that by passing over control of their land to commissioner Mackay they no longer wished to retain the reserve in their possession. In our view, the act of consenting to the land passing to the Crown under the Act was not a disposition of the land in terms of the Treaty. Despite the vesting of the legal estate, Maori still retained a beneficial interest until the land was actually sold by the Crown. If land was subsequently sold by the commissioners, it would be no longer in the possession of the beneficial owners and Maori would have no further rights in respect of that land. We interpret the Treaty provision as intending to apply to land in respect of which Maori still retain a beneficial interest. Until Maori deliberately sell the land it remains protected under article 2 of the Treaty. The Mawhera owners resolutely opposed sale of their reserved lands, as is clearly shown and acknowledged in the evidence and in both Crown and lessees' submission to the tribunal.

We pass to consider the second contention, that the Treaty does not protect the statutory and equitable rights which Maori tribes and groups enjoy and that any claim for maladministration does not lie under the Treaty. In answer to this, we agree that the claimants enjoy the same common law and statutory rights as non-Maori. If a fiduciary duty is established, Maori would have rights to bring an action in the courts to remedy any breach of that duty.

However the claim is not based solely on maladministration, but rather challenges the action of the Crown in passing legislation which is alleged to be inconsistent with a principle of the Treaty. The tribunal is asked to determine whether there has been a breach of Treaty principle and if there has, to then recommend a remedy. In exercising its statutory jurisdiction the tribunal is charged to establish whether any act or omission of the Crown infringes a Treaty principle. To this extent the jurisdiction is particular to Maori by the

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express words of the statute. We do not therefore accept that the tribunal has no jurisdiction to proceed.

Is lack of objection sufficient to establish consent?

- 14.8.15 Both the Crown and lessees put forward the view that there was little or no objection from the Maori owners to the proposed perpetual leasing arrangement, and advanced in support of this contention the evidence given by the Maori owners at the 1885 Royal commission and in the Bunny report. We have already examined this evidence. Counsel also referred to the assent given by the Maori legislators most directly concerned with the Bill, and said that they would not have given consent unless they were satisfied that the owners were in agreement. We have also previously looked at what took place during the passage of the Bill.

A strong submission was made to the tribunal that the letter signed by four owners produced to the Parliamentary committee in 1909 examining further complaints of tenants, (14.2.18) was subsequent consent to the 1887 Act. Consideration of the evidence indicates that letter had been prepared by the Public Trustee himself, as the same language and terms are used, almost exactly, as in a letter later sent by Mr Poynton to the Honourable Mr A T Ngata. We do not consider that this letter is evidence that Maori owners, 22 years prior to that date, were satisfied with the perpetual lease provision or even aware of it. We also query whether any strong inference at all can be drawn from the letter. The circumstances in 1909 clearly showed that the tenants were again moving to purchase the freehold, and this was being resisted by the public trustee who sought the support of certain owners to prove to the parliamentary committee that the leases were favourable to the tenants. The Maori owners who were making the submission would certainly have wanted to endorse the action of the public trustee in preventing their lands from being sold.

Looking, therefore, at the circumstances attending the 1909 evidence, we do not consider that it does anything more than substantiate once again the owners' continued opposition to the sale of the freehold. Viewing the whole question of owners' objection however, the tribunal must agree that there is no evidence of strong opposition to the 1887 legislation. Lack of opposition, however, does not constitute consent although it might certainly give rise to the inference that there was lack of consultation. Lack of objection might also be due to lack of knowledge on the Maori owners' part of the full meaning and effect of the provision inserted into the 1887 Act. More importantly however, the lack of objection may have been due to the satisfactory way in which the land had been administered by Mackay, at least up until he left the scene in the 1880s. Maori owners

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had no need to register any objections, in that they were receiving rents from the land at a rate which was obviously based on the current market rate at that time. Indeed the evidence before the tribunal showed that there was little objection raised by the owners right through the period up to and including the 1955 legislation. Bearing in mind that the management and control of the reserves was out of Maori hands and being administered initially by the Public Trustee and then subsequently by the Maori Trustee, and that there was no structure representing the Maori owners interest as a whole until the 1960s, it is easier to understand the reason why there was not continual objection from those owners. We consider that the lack of objection by the owners may not be so much indicative of their attitude to the perpetual leasing of their land but more especially related to their lack of complaint about how the land was being administered and rentals received. We shall also come back to this question a little later.

Further reason for lack of objection by owners

- 14.8.16 We consider that the insertion of the perpetual leasing clause was a breach of the Crown's duty to protect under article 2. The Crown could well have persisted with a regime of 21-year leases or even moved to the longer term offered by the Maori owners. The Crown had no right to move to a system of perpetual leasing without proper informed negotiation and consultation, followed by consent of the Maori owners. It is true that there was little objection from the owners. Indeed in 1955, apart from some objection to the setting up of the conversion fund, it was presented in the House by the Minister of Maori Affairs that there was no criticism of the measure. This could well have arisen for the reason stated by the minister, Mr Corbett, and referred to in 8.2.20, that fragmentation of land and the spread of the Ngai Tahu and Taranaki tribes had removed them from their lands. The entrenchment of control under a perpetual leasing system which was centrally located in the Maori Trustee's office under the Reserves Act was, in our respectful view, the main contribution to loss of interest. Despite the lack of objection for whatever reason, the Crown continued with the perpetual lease regime but took a further step to intervene in the statutory contractual relationship between the Maori Trustee and the lessees by introducing in section 34 of the Maori Reserved Land Act 1955 a new prescribed rental. This rental was fixed at 4 per cent of unimproved value for urban land and 5 per cent for rural land. At the time this rental rate may not have been disadvantageous to Maori owners, but it nevertheless imposed a new contractual term in the reserved land leases. It is appropriate that we look at this statutory contract.

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What was the nature of the reserved land leases?

14.8.17 Throughout the hearing these reserved land leases have been referred to as Glasgow leases (ie, 21-year perpetually renewable leases). It was suggested to the tribunal that this form of lease was quite usual in New Zealand and certainly a well known type of lease in 1887. That is so, but there is an important difference between the position obtained with the Mawhera leases and most Glasgow-type leases in New Zealand which are made under some empowering Act, and are generally between a local body such as a harbour board, city council or a church body, and citizens.

In the leases made under an Act such as the Public Bodies Leases Act 1969, for example, the empowering Act confers wide powers as to nature and term. The parties to the lease then, within the overall statutory umbrella negotiate their terms. As the 1975 commission said of leases under the Maori Reserved Land Act 1955:

There are in fact four distinct parties concerned. These are the Legislature, the Maori Trustee, the lessee, and the beneficial owners who are represented by the Maori Trustee. (D1:60)⁷⁷

The 1975 commission went on to look at the role of these four parties and made some strongly critical statements about the position of the Maori owners:

The beneficial owners are not a contracting party and their role is a completely passive one. They are treated as children or persons under disability. They are not well informed upon the law or the facts concerning the lands in which they have an interest. They are not adequately consulted either . . . or indeed capable of being consulted, even when major changes in the law or the leases which affect their interests are contemplated. Even on occasions when they have expressed views in these matters their representations have not carried weight. (D1:62)⁷⁸

So in this reserved land leasing situation, although the Maori Trustee is the nominal representative of the beneficial owners, as the 1975 commission said:

in reality the parties who alone are free to determine the nature and terms of the leases are Parliament, ie, the Crown and the lessees. (D1:61).⁷⁹

and:

To call the Maori Trustee a free, responsible, and informed person entering freely into a contract on behalf of those whom he represents, is completely unreal and indeed to call it absurd would not be too harsh a term.⁸⁰

It has been the Crown therefore, who has set the contractual terms and changed them. The Crown in 1955 fixed the rental rates. At the time they were in line with market rental. There was no disadvantage to Maori owners. However, during the 1960s the fixed rates dropped

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below the market rate as inflation started to take effect. The Crown took no action to review the prescribed rates, and it was really from this point that the Maori owners began to suffer serious disadvantage. Another event occurred in 1967 which really showed the Crown had progressed the full way in yielding to the tenants – the passing of the Maori Affairs Amendment Act 1967.

The Crown allows the freehold to be sold to the tenants

- 14.8.18 Sections 155 and 156 of the Maori Affairs Amendment Act 1967, as we have seen (14.2.21), allowed lessees to purchase the freehold from the Maori Trustee. Again, this action of the Crown was strongly criticised by the 1975 commission. It said:

As far as the commission is aware no consideration of any kind accrued to the Maori Trustee or the beneficial owners in return for this provision. *Clearly this is a unilateral alteration by legislation of a long existing contract between the Maori Trustee and the lessees.* (D1:53)⁸¹ (emphasis added)

The commission reported that the Maori Trustee had not been invited to put forward any views on freeholding to government.

Thus the owners now stood to lose the freehold of their land. They had been separated from administration or control of it since 1866. They had had perpetual leases imposed on them without proper consultation or their consent in 1887. They had had prescribed rents of 4 and 5 per cent imposed in 1955 and finally, in 1967, the Crown allowed their land to be sold to the tenants. The tribunal has no doubt that the owners were so far removed from management of their lands and so lacking in co-ordinated grouping for resistance that there was little they could do.

However, as inflation continued into the 1970s, Maori were beginning to express concern about management of their estate. On 20 December 1973, as a result of New Zealand Maori Council representations supported by various Maori authorities, the commission of inquiry was constituted with seven terms of reference to inquire into Maori reserved lands and their administration.

Management and control of Mawhera is restored to Ngai Tabu

- 14.8.19 We saw in 14.2.23 the results of the commission's work, which recommended a number of remedial changes to the terms of the perpetual lease. These were directed to five-yearly reviews of rent, indexation of rental and rents being fixed at a basic rent of 1 per cent above government stock.

The commission felt that it could not recommend breaking the perpetual term because of the compensation payable but it noted:

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It is true that many years ago it [the right of perpetual renewal] was arbitrarily imposed by legislation without the consent of the beneficial owners. (D1:68)⁸²

The commission published its 500 page report in 1975, and although it was obviously hesitant to recommend the end of perpetual leasing in the existing leases, it saw the unfairness of the prescribed lease. Its recommendation that incorporation be legislated to allow Maori owners to take over management of their own lands was put into effect by government, and thus we saw the statutory birth of Mawhera incorporation, on 31 May 1976 and the end of Maori Trustee control. However, the commission's recommendations in respect of rent review and rent fixing have not been implemented in any form, despite assurances given to the Mawhera Incorporation and other Maori authorities that the position was to be reviewed. It is possible that if government had moved in respect of rent review and rental as quickly as it moved to transfer management these grievances would not have come before this tribunal. Despite its stated intention to intervene, the Crown has failed for 16 years to remedy the lease terms. We observe here that in 1975 it did repeal the tenants right to freehold.

Summary of tribunal findings as to breach

14.8.20 In our view the following acts and omissions of the Crown are inconsistent with the principles of the Treaty:

- 1 The insertion of the perpetual right of renewal in the leases of Maori Reserved Lands by section 14 of the Westland and Nelson Native Reserved Land Act 1887.
- 2 The insertion of sections 9A and 9B into the Maori Reserved Land Act 1955 by sections 155 and 156 of the Maori Affairs Amendment Act 1967.
- 3 The failure of the Crown to implement those recommendations of the Commission of Inquiry into Maori Reserved Land 1975 relating to renewal of terms and review of rent.

We set out earlier in this report (chapter 4), relevant Treaty principles governing the relationship of Maori and the Crown. The retention by Maori of tino rangatiratanga under article 2 requires the Crown not only to respect but further, to guarantee and protect mana Maori. It cannot be said that the Crown, in legislating to take away forever from Maori their future rights of use and enjoyment in respect of Mawhera lands, was discharging its guarantee to protect rangatiratanga under article 2. Nor can the Crown's unilateral action in respect of these perpetual leases, and their imposed unreasonable statutory terms, be

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seen to be dealing with Maori on the basis of sincerity, justice and the good faith of a Treaty partner.

The tribunal finds, therefore, that there has been a clear breach of article 2 of the Treaty. Furthermore, the tribunal is satisfied that, as a result of the Crown's actions and omission, the claimants have clearly been prejudicially affected thereby. Not only have the claimants lost a right of use and occupation but they also lost a valuable property right in their land when the Crown gave away that right to the tenants.

We therefore find that the claimants have established grounds 7 and 11 as set out in their summary of grievances.

Allegations against the Maori Trustee

- 14.8.21 In 14.7.1 we set out a number of allegations made by the claimants in respect of the Crown's failure to administer properly the reserved lands. We also examined the Maori Trustee's response. The whole question of Maori Trustee administration was investigated as part of its terms of reference by the 1975 commission. The commission considered there was a solid basis of fact underlying and supporting opinions put to the commission criticising lack of consultation, and the remote and impersonal administration. However the commission came to the view:

There is no doubt that a lot of the criticism levelled at the present administration of the Maori Trustee comes about by reason of the restrictive legislation within which he must operate. (D1:31)⁸³

The tribunal endorses this view and indeed, at various times in the submissions of claimant witnesses Messrs McAloon and O'Regan, the administration's deficiencies were directed back to the Crown and its legislative control. We also accept the six points made by the deputy Maori Trustee as a major contribution to the dissatisfaction of the Maori owners (14.7.5).

The tribunal has considerable sympathy for both the Maori owners and the Maori Trustee but very little for the Crown. From 1856 until 1975 the Crown persevered with a form of trust management in which, as we have seen, the Crown made the rules and supervised the process. The system adopted alienated Maori from any real consultation or knowledge about their interests in the reserved lands. The 1975 commission recommended alternative management systems for Maori incorporations and trusts that had been part of the Maori land utilisation system from 1909, (the year when the Native Land Act gave powers of management to Maori land incorporations). They were not new. They were there to be used many years earlier. There is no doubt that the fragmented title of Maori land, which was completely out of their control and use, led to alienation; a process

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certainly speeded up by the conversion procedures of the 1967 legislation. But the perpetual lease, the 21-year reviews and the 4 and 5 per cent rentals were the key elements of owner grievance. These elements, exacerbated by remote trustee control, estranged Maori from their land. Although management of the land has been returned, the major disadvantages remain and the Maori owners are bound by lease contracts containing terms imposed on them by enactments of Parliament. As each day continues without redress the financial loss of Maori owners accumulates.

- 14.8.22 It is the finding of the tribunal that primarily the actions or omissions of the Crown have been responsible for the general complaints laid at the door of the statutory managers. The tribunal accepts that some of the specific matters alleged against the Maori Trustee may be properly justiciable in the New Zealand courts of ordinary jurisdiction. The incorporations and trusts which have taken over management of the reserves are corporate bodies with powers to commence such proceedings. Generally, however, this tribunal considers that the number of specific complaints made to us during the hearing of the substantial grievances add weight to the claim, and support the findings made by us in 14.8.20 in respect of the principal grievance. By reason of the generality of the complaints listed in the second grouping in 14.8.20, and for the other reasons given above, we do not intend to make specific findings against the statutory trustees.

14.9. **The Tribunal's Views on Remedies**

What do the parties seek?

- 14.9.1 Having found that the Crown's legislative enactments in 1887 and 1967, and its omission since 1975 to implement remedial action, were respectively acts and an omission inconsistent with Treaty principles we must now consider the question of remedy.

What are the views of the parties and the other key figures in these grievances, namely the claimants, the Crown, the lessees and the Maori Trustee.

Remedy asked for by Ngai Tabu

- 14.9.2 The claimants seek as follows:
- (a) Monetary compensation from the Crown calculated on the basis of the difference between ordinary term leasehold rates pertaining to similar lands and the actual rates derived to the owners from the perpetually renewable leasehold imposed by the Maori Reserved Land Act 1955 and its preceding Acts. Calculated as a lump sum from 1872 to the present.
 - (b) Amendment to the Maori Reserved Land Act 1955 to the effect that the leases prescribed in that Act will:

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- (i) Over two 21-year lease periods convert to term leasehold those lands subject to the leases prescribed in the above Act.
- (ii) Immediately change from a fixed percentage rental basis to one of a freely negotiated rental subject to the Arbitration Act.
- (iii) Immediately change from the present rental review period of 21 years to a rental review period of 5 years in respect of commercial and rural land and 7 years in respect of private residential land.

The above statement of remedies was set out in a statement attached to a letter dated 5 September 1987 (appendix 5) addressed to the tribunal's registrar.

However in his address to the tribunal at Greymouth on Tuesday 1 December 1987, Mr Temm, for the claimants, said this:

We say that the owners are prepared to be reasonable, as the Maori have been down through the years. They don't ask for compensation for what they have lost. Lord knows if they were to work it out, it would be figures that would run into astronomical calculations if you took into account compound interest they would otherwise be entitled to for breach of trust. And as we all know when a breach of trust is committed by a big trustee compound interest is the ordinary role of damages. The cost would be absolutely astronomical but they don't ask for that. They are being very simple and practical. They are simply saying that they want their annual losses to be brought to an end. That's the first thing they ask for. And they seek a recommendation from the tribunal that the law be changed to put them on the same footing as Pakeha land owners. (W1)

The above statement would seem to indicate the claimants are not seeking the compensation referred to in the earlier claim dated 5 September 1987. There is no reference to compensation in either Mr Temm's closing address (W1:267-271) or in his final reply (Y1:122-124).

The Crown reserved its submissions on remedies

- 14.9.3 The Crown, whilst arguing that it had acted at all times in good faith and certainly not in breach of the Treaty, nevertheless recognised that for the last fifteen years approximately the legislation had worked unfairly. The Crown reserved submissions on the quantum of loss and also made no submissions on terms of remedial legislation as that matter was before a cabinet committee (X2:140).

The lessees oppose breaking perpetual leases

- 14.9.4 The West Coast (South Island) Leaseholders Association also said there had been no Treaty breach but, if so found by the tribunal, then the party in default was the Crown. Counsel Dr Young strongly opposed as unfair and unjust the claimants' proposal that the perpetual lease terms be broken. He claimed the lessees had settled land transfer titles which should not be expropriated and that if any monetary compensation was to be paid out then that was to be paid

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by the Crown. Counsel had called valuation evidence to establish that the lessees stood to lose \$4.5 million if the government met the claimants' proposal (N32:18).

The position of the Maori Trustee

- 14.9.5 The Maori Trustee supported the claimants' case for a review of leaseholds and provisions for rent fixing (N32:18). Deputy Maori Trustee Wickens commented:

The Maori Trustee is well aware of the defects in the Maori Reserved Land Act 1955, and has been conscious of the need for change to it. An attempt was made to change the leases in 1971 following the introduction of an amendment to the Local Bodies leases, allowing for rent reviews at five yearly intervals. The Maori Trustee had drafted an amendment along similar lines, but was instructed by government not to proceed with it. The amendment to the Local Bodies leases was a short-lived piece of legislation as it was repealed not long after it had been passed due to the public outcry against it. (N34:21)

The recommendation of the tribunal

- 14.9.6 The tribunal has no difficulty in coming to a view on remedy. We commented earlier that the sanctity of title now pleaded by the lessees is what the Maori owners lost by Crown action in 1887. If this was simply a matter between Crown and the lessee involving Crown land, then the lessees plea would have a strong base. But this case involves Maori land. It is not public or Crown land. It is private land. We see that an injustice occurred and still continues. It must be righted. The tribunal knows of no other privately owned land, management of which has been taken from the owners and the land placed under perpetual lease with 21-year rent reviews at fixed rentals of 4 per cent (urban) and 5 per cent (rural). Counsel for the Maori Trustee referred to a comment by the then Minister of Local Government in 1977:

The resolution of this issue will necessitate an arbitrary decision one way or the other and, clearly whichever of the alternatives is adopted there will be very considerable resentment from the proponents of the other. (N32:21)

As will be seen throughout this report, inadequate lands were reserved for Maori in almost every South Island Crown purchase. To have land which was set aside for individual allotment placed in perpetual lease was a further indignity. Kaupapa Maori and government's stated policy are directed to Maori self-determination and return of Maori land to Maori control.

The tribunal also accepts that the lessees are justly entitled to be compensated by the Crown for such loss they may suffer consequent upon implementation of this tribunal's recommended actions. That loss is an ascertainable figure. The tribunal considers that the

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statutory changes sought by the claimants should be implemented without further delay. The claimants do not appear to be seeking compensation for the loss suffered and the Crown have reserved submissions on this question. The tribunal is therefore not minded to make any present recommendations on compensation by way of solatium for loss. This question is reserved and may be raised and dealt with in the event that the tribunal is required, at some future time, to address remedies upon completion of negotiation between the parties.

If compensation is insisted upon by the claimants—and their valuer gave a minimum figure of \$750,000 on 21-yearly reviews and a maximum of \$2.25 million on 7-yearly reviews then it will be necessary for the question to be argued later. Crown counsel suggested that their values did not agree with the claimants' assessment of loss and suggested there might well be a need for the respective valuers to reappraise the situation in order to resolve the issue. The question of compensation is therefore presently deferred.

14.9.7 We proceed therefore to make the following recommendations in respect of the principal grievance:

1 That the Maori Reserved Land Act 1955 be amended (as sought by the claimants and set out in paragraph 6 page 2 of appendix 5) so that the leases prescribed in that Act will:

- (a) Over two 21-year lease periods convert to term leasehold those lands subject to the leases prescribed in the above Act;
- (b) Immediately change from a fixed percentage rental basis to one of a freely negotiated rental subject to the Arbitration Act; and
- (c) Immediately change the present rental review period of 21 years to a rental review period of 5 years in respect of commercial and rural land and 7 years in respect of private residential land.

2 That the lessees be reimbursed by the Crown for any provable loss suffered by them as a result of the legislative changes recommended above.

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Chapter 15

Rakiura

15.1. Introduction

Rakiura (Stewart Island) was the last major land mass to be purchased from Ngai Tahu by the Crown. Although Rakiura had been settled by Maori/European families for a number of years, the increasing unsupervised European encroachment on the island and the accompanying confusion over land titles, finally motivated the government into arranging the transaction. In 1854 a single land purchasing commissioner, Henry Tacy Clarke, was sent to negotiate the purchase. The deed of purchase, signed after a week's negotiation with 120 representatives having interests in the island, conveyed to the Crown all of Rakiura and the outlying islands where the titi seasonally burrow. Nine reserves were provided for Ngai Tahu and 21 islands were reserved for their exclusive use. The £6000 payment provided for immediate and long term benefit to the tribe.

Although Clarke carried out his duties diligently in comparison with his predecessors, the full implementation of the agreement was delayed for some years. The claimants have stated that the Crown failed to appoint a protector to advise Ngai Tahu of their Treaty and other rights. Under the Rakiura umbrella also were two grievances regarding the administration of the Titi Islands and the inclusion of Whenua Hou (Codfish Island) in the sale.

15.2. Background to the Purchase

15.2.1 Rakiura was the scene of a great deal of Maori-European contact. During the first decade of the nineteenth century vessels involved in the sealing industry operated in Foveaux Strait. Although there were occasional fracas between Ngai Tahu and these sealers, relations were generally good and many European men married Ngai Tahu women and began families. In the mid-1820s a semi-permanent settlement of these families was established with Ngai Tahu consent on Whenua Hou, the largest of Rakiura's off-shore islands.

Sealing was in decline in the 1820s but the rise of the shore-whaling industry meant that the Foveaux Strait area continued to see a significant amount of traffic during the 1830s. In addition to shore-

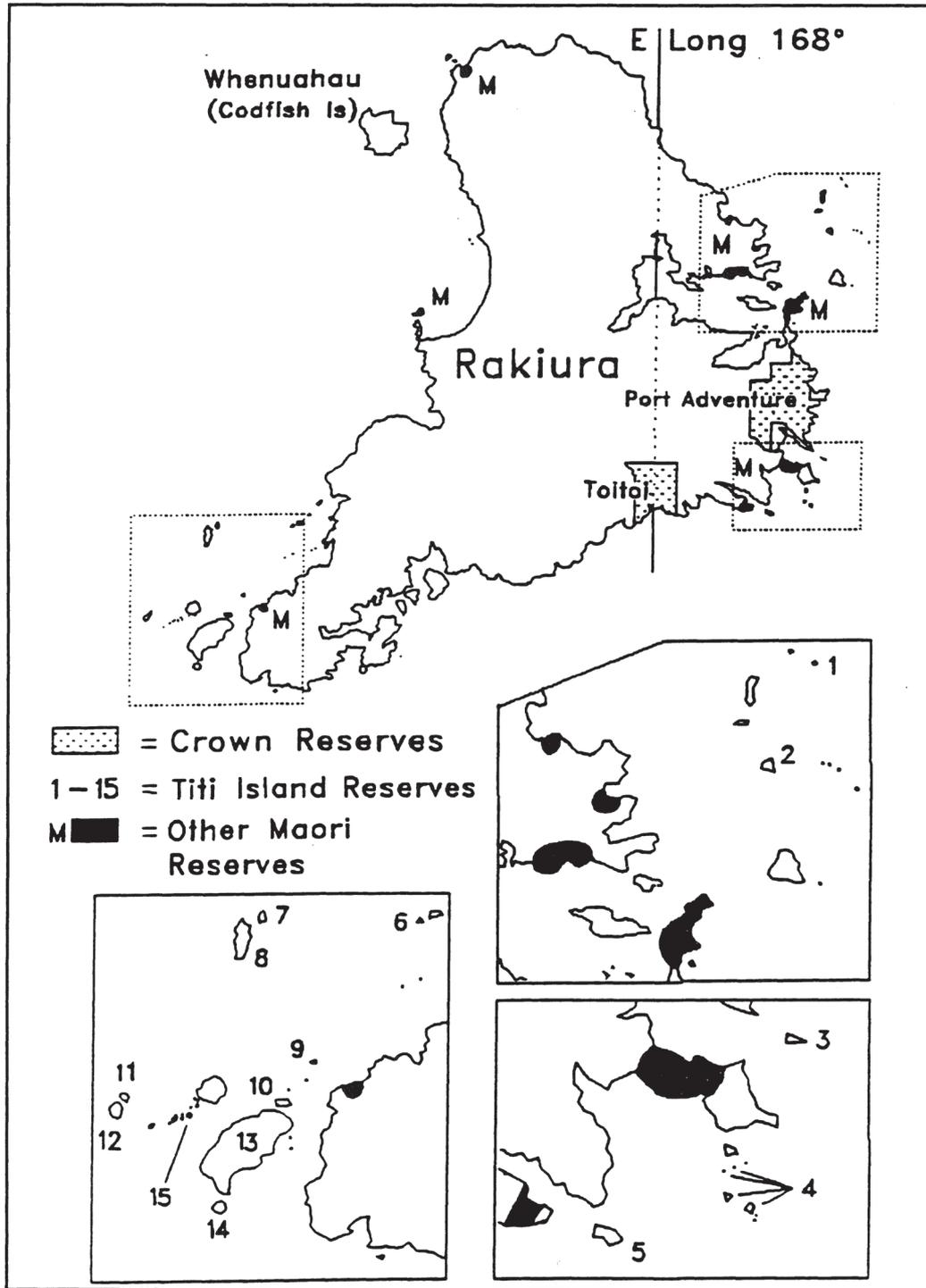


Figure 15.1: Rakiura and the Titi Islands, showing Maori reserves and Crown islands. The land west of the 168th parallel of longitude was offered in 1860 by Topi Patuki for sale to the Crown.

Rakiura

Titi Island Reserves		
Old name	No.	Modern equivalent
Pikomamaku Is	1	Womens Is
Herekopare Is	2	Herekopare Is
Tia Is	3	Tia Is
Potuatua Is	4	} Breaksea Islands
Pomatakiarehua Is		
Kaihika Is		
Wharepuaitaha Is		
Horomamae Is	5	Owen Is
Timore Is	6	Chimneys Is
Mokiiti Is	7	Little Moggy Is
Mokinui Is	8	Big Moggy Is
Kaimohu Is	9	Kaimohu Is
Rerewhakaupoko Is	10	Soloman Is
Tamaitemioka Is	11	Tamaitemioka Is
Pohowaitai Is	12	Pohowaitai Is
Takefu Is, Hereatua Is,	13	} Big South Cape Is
Taukiepu Is,		
Te Pukeotahoke Is		
Poutama Is	14	Poutama Is
Huirapa Is	15	Huirapa Is

whaling ventures, Rakiura became the summer home of many whalers and their families. By the mid 1830s a sizeable community had grown up around "The Neck" on the eastern peninsula of Paterson's Inlet.

On 5 June 1840, Major Bunbury landed at the uninhabited harbour at Point Pegasus (Zephyr Bay) and proclaimed British sovereignty. Four days later his ship left for the island of Ruapuke where several Ngai Tahu chiefs, including Tuhawaiki, signed the Treaty of Waitangi.

- 15.2.2 In a letter dated 21 December 1854 an offer was made by Topi Patuki, the principal representative of Rakiura Ngai Tahu, to gift the Titi Islands to the Queen (U3:20).¹ The offer had one important condition attached to it. Patuki wished retain exclusive rights to the titi. He expressed concern about the plundering of titi by strangers. The tone of the letter suggests that this desire to secure access to the titi and to stop European ravagement of the resource may have been the principal concern motivating the offer. In her report on Rakiura, Deborah Montgomerie stated that Patuki's letter is one of the clearest indications we have of a belief on the part of Ngai Tahu that the transfer of legal title to land to the Crown could be compatible with the retention of tribal rights to mahinga kai (U3:4). However, nothing appears to have come of the offer as Mantell, in his capacity as commissioner of Crown lands, seems to have made a decision not to relay the offer to the Queen.

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- 15.2.3 While the Titi Islands and the titi may have been Ngai Tahu's major concern in the area, the large land mass and its timber made the question of ownership of Rakiura more significant to European administrators. The first official approach from Ngai Tahu to the government over the possible sale of the island to the Crown was made by Patuki in 1860. He offered to sell the Crown a portion of Rakiura westward of the 168th degree of longitude (A8:II:53)². According to Basil Howard, Patuki thought to retain the eastern portion of the island, as it contained all the populated area, the frequented harbours and the profitable timber zone. Howard suggested that increased European interest in Rakiura was related to Patuki's desire to sell the island.³ There were already a number of established European settlers on the island and an increasing demand for secure land titles, particularly for sawmilling operations (A8:II:53)⁴. On 10 May 1861, Patuki wrote to the government stating that he did not wish Europeans to locate themselves on the island.⁵ Yet in another letter dated later that month he repeated his offer to sell the island to the Crown.⁶
- 15.2.4 The Crown faced a number of obstacles in expediting the Rakiura sale. Macandrew, the Otago superintendent who had been the prime mover behind the purchase within the Otago provincial government, had been removed from office. The cession of Southland from Otago complicated matters, as did the northern war and the instability of government ministries.

In this period, the problems with European encroachment on Rakiura seem to have continued to grow. In 1863 the native secretary, Francis Dillon Bell, urged the government to purchase Rakiura, as he considered the government might find itself in difficulty in consequence of unauthorised transactions from people "unlawfully occupying and dealing with portions of land in the island" (A8:II:53-54).⁷ At least one of these transactions was recognised by Patuki as binding. In November 1863 he informed the government that he had entered into an arrangement with certain Europeans for the sale of a portion of Stewart Island (U3:5-6).

By this time the government had already decided to purchase Rakiura and Bell proposed that somebody should be appointed immediately to do so. He informed his ministers that Rakiura was not formally annexed to any province, but that it naturally belonged to Southland. He proposed to introduce legislation to annex the island to Southland, arguing that it was quite immaterial whether the island was ceded or not at the time, as the Queen's sovereignty existed over it under the Treaty of Waitangi (A8:II:53-54).⁸ In December 1863 the Stewart Island's Annexation Act was passed. This move does not

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seem to have prejudiced the interests of the Maori owners of the island, being merely an expression of the Queen's sovereignty. Maori title to the area was not affected.

- 15.2.5 In September 1863, Theophilus Heale, the chief surveyor of Southland, was asked to negotiate the purchase as soon as possible. His instructions were detailed. He was to:

ascertain and make a list of all the natives, such as Topi [Patuki], and others who are immediately interested as owners of the land in Stewart's Island, determining and defining what right they have, either generally or individually, to any and to what portions of the island and from what date their claims originate respectively. (A8:II:54)⁹

It is not clear when the decision was made to attempt to purchase the entire island rather than the western portion offered by Patuki, or at what point it was decided to attempt to include the offshore islands. Heale's instructions show that the government had decided to attempt to purchase the whole of Rakiura. They do not explicitly mention the Titi Islands. The instructions also show there was a clear intention to provide an endowment for the vendors and not simply make a one-off payment. Regarding the payment, Heale was to:

offer as the purchase price of the land a certain sum to be paid at once, and a certain proportion – not exceeding one third – of the proceeds of future sales or leases of Crown lands in the island, on the understanding (to be explained to the sellers) that of the one-third so reserved, two-thirds will be spent for the benefit of the tribe by trustees to be appointed by the governor; and the remaining third to be distributed annually to Topi, Paitu, and the heirs of Tuhawaiki. (A8:II:54)¹⁰

With the change of government in October 1863, it would seem that Heale was replaced in his commission to purchase Rakiura. This was placed in the hands of Henry Tacy Clarke in February 1864. In accepting his commission Clarke was to follow the instructions issued to Heale. Further, he was to adjudicate those land claims between Europeans and Ngai Tahu that were still outstanding. No specific instructions were given to Clarke regarding the making of reserves, nor were the Titi islands mentioned (A8:II:54–55).¹¹

15.3. **The Purchase**

- 15.3.1 Clarke arrived in Invercargill in March 1864, but could not make much progress as this coincided with the mutton birding season. He noted in his report of 30 March 1864 that he had personally communicated with the local Maori residents (A8:II:55)¹². A letter had also been sent to Otago informing Ngai Tahu there that the government intended to proceed with the purchase and asking them to be ready to meet with the Southland claimants when called upon. Disputes about rights on the island had arisen, some Maori claiming rights through

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Ngati Mamoe. Patuki, as a principal claimant through Ngai Tahu, rejected the Ngati Mamoe claim. Clarke also recommended the prosecution of the proposed purchaser who had agreed to give £4000 for about two-thirds of the island. This was an agreement made directly with Patuki, who acknowledged that he had received £10 on account.

In May 1864 Clarke was able to begin negotiations in earnest. He considered his position inherently unsatisfactory, being charged with both protecting Maori interests, and buying the island as cheaply as possible. He wrote to the superintendent of Southland in April 1864:

The position in which I stand is, I conceive rather an anomalous one. On the one hand I shall be expected to purchase for the Provincial Government on the most favourable terms. On the other, I am instructed to have due regard to the interests of the Natives. (A8:II:58)¹³

- 15.3.2 Consequently, before entering into any purchase negotiations Clarke was careful to come to a clear understanding with the Southland Provincial Government over the purchase price. The payment schedule proposed by Clarke differed in several respects from that set out in the government's original instructions to Heale.

Clarke proposed a total price of £6000. Two thousand pounds of this was to be paid over at the time that the deed was signed, and £2000 was to be held by the government, with interest at 8 per cent per annum to be paid annually to certain named chiefs. The remaining £2000 was to be used to buy land in Southland as a reserve for Maori education and other purposes. Clarke considered that the instructions given to Heale about making payments out of the proceeds of land sales were inconvenient and unworkable. He wrote on 6 May 1864:

This would be especially the case with regard to Stewart's Island. The Provincial Government may find themselves trammelled in their mode of dealing with those lands, and it may become the source of frequent disputes and complications. On the other hand I know from my knowledge of the Natives, that eventually misunderstanding and dissatisfaction would inevitably arise. (A8:II:59)¹⁴

The general government and the provincial government both agreed to his proposal, although the provincial government did try to reduce the rate of interest that was to be paid on the £2000 invested with it to 6 per cent.

- 15.3.3 Clarke's letter to the superintendent of Southland on 26 April 1864 asking for approval of the revised payment schedule, contains the first official mention of an intention to make reserves on Rakiura for Ngai Tahu. Heale had previously noted that it would be necessary to make provision for the half-castes resident on the island. Clarke also

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recognised this, but suggested that other reserves would have to be made, including several reserves to provide Ngai Tahu with continuing access to titi. However the tenor of his comments on these reserves suggest that he did not see any conflict between making these provisions and the government's intentions.

In his letter he wrote:

The reserves necessary for the Natives will be two only;— one at Port Adventure, for William John Topi (Topi Patuki's half brother), and others residing in that locality; and one at Paterson's Inlet. It will also be necessary to reserve *three or four of the small* Islands adjacent where the Natives procure the "titi," or mutton bird. (A8:II:58)¹⁵ (emphasis added)

It would appear that Clarke had been given authority to make reserves before leaving for the south as he saw no need to discuss the arrangements regarding reserves in his letter to the superintendent. He updated his proposed course in a letter to the colonial secretary in May 1864 (A8:II:59)¹⁶. Clarke met with Mr Menzies, the Superintendent of Southland, in late June, and pressed upon him the necessity of settling the matter immediately. His view prevailed and Menzies arranged for the money to be made available.

- 15.3.4 On 24 October 1864 Clarke reported that the sale was complete (A8:II:60–61).¹⁷ His report mentions that there was a dispute between Ngai Tahu and Ngati Mamoe over ownership of the island but does not record any division over the question of whether or not to sell, or any uneasiness about the fact that the government wished to purchase the whole of Rakiura. He had met with 120 representatives of Ngai Tahu and Ngati Mamoe on 23 June, and found that the issue of ownership had been settled. To make sure that no undue pressure had been applied Clarke went through the dispute again. He did not record the discussion, but concluded that Ngai Tahu "indisputably" established their right over Ngati Mamoe and that Ngati Mamoe kaumatua were content "to hold a secondary position, and claim through their Ngai Tahu ancestry" (A8:II:60).¹⁸

A second meeting was held the next day to discuss the price. Clarke claimed to have told Ngai Tahu at the beginning of the negotiations that the government was willing to pay £6000. This was thought to be too low and Patuki asked for £50,000, then revised it to £22,000, and finally dropped his price to £12,000. Clarke refused to budge as he felt £6000 "was a liberal and just payment for an Island which was of little or no value to themselves" (A8:II:60).¹⁹

On 29 June Clarke held another meeting with the owners, this time at Bluff, and a deed was executed. Thirty-four chiefs signed the deed which conveyed to the Crown all of Rakiura and the adjacent islands.

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Nine reserves were made, amounting to about 935 acres, plus an unspecified amount of land on the Neck (out of which half-castes' grants, with ten acres for men and eight acres for women, were to be made). Clarke appended to his report on the purchase a list of 28 half-castes residing at the Neck, but acknowledged that this was probably incomplete. Twenty-one of the Titi Islands were reserved for Ngai Tahu-Ngati Mamoe but there is no indication how this list was compiled. Most significant, however, was the exclusion of Whenua Hou (Codfish Island) and some of the smaller Titi Islands from the list of those reserved for the vendors.

The £6000 was to be divided into three equal portions. The first was to be paid at the time of signing, the second invested with the government at 8 per cent and the income distributed annually, and the third used to buy land in Southland "for educational, and other Native purposes". This latter endowment, Clarke explicitly stipulated related "to Stewart's Island only" (A8:II:58).²⁰ In essence, he was conveying to the Southland provincial government that it should not use these funds and lands to set up schools in the Murihiku area for people other than Stewart Islanders.

Although Clarke's journal of proceedings, if it existed at all, has not been found, it is clear from the detailed list of islands in the deed that they were indeed negotiated for by the vendors. It is clear that some discussion on the Titi Islands must have taken place for them to be included in the list of reserves described in the deed. This is contrary to the witnesses' testimony, that specific islands were unintentionally included in the purchase.

15.4. **Developments After the Purchase**

The education endowment

- 15.4.1 In January 1868 Alexander Mackay visited southern Ngai Tahu settlements, including those on Stewart Island. In reporting on the education endowment he wrote:

. . . I would beg to point out the necessity that immediate action should be taken to make the third instalment of the Stewart's Island purchase money productive, either by way of investing it on mortgage, or by any other mode that would produce an immediate income. There appears to be very little doubt that if the terms of the Deed are strictly adhered to, and the amount invested in land, that there is every chance of its laying dormant for years, or at the best produce but a very limited amount.

The several Acts were explained for the benefit of the Natives, and they promised to hold meetings among themselves to concert measures to secure the return of a representative. A good deal of dissatisfaction was expressed by them, that the amount set apart out of the Stewart's Island purchase was lying idle, more especially as it had been withheld

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from them without their consent. They were given to understand that what was then done was for their ultimate benefit, but they failed to see any real advantage they had gained by the arrangement, whereas, if the money had been apportioned among them as they wished at the time, they would have the satisfaction to know, at any rate, what had become of it.

I explained to them that the Government were very anxious to find a safe investment for it, but many circumstances had occurred to prevent this intention being carried out. (A8:II:150)²¹

On 4 April 1870 G S Cooper, under-secretary of the Native Department, reported on the delay in implementing the deed:

There is another question to be settled in reference to the Stewart's Island purchase. By the terms of purchase £2,000 were to be invested in purchase of land in the Province of Southland, as an endowment for educational and other purposes for the benefit of the vendors. This land has recently been selected, and has to be granted to three trustees, who are to execute a Deed of Trust. These trustees (two of whom had better, if possible, be residents in Southland, and the third, Mr A. Mackay) have to be appointed.

The Provincial Government also wish to know by whom the expense of surveying this land is to be borne. There can be no doubt, in this case, at least, of the liability of the Province to execute the survey, as it is as much a purchase of their land as if it had been made with 2,000 sovereigns, instead of being, as it was, a remission of payment of £2,000 of the Stewart's Island purchase money, which the Province was under engagement to provide. But the question still remains unsettled. (A8:II:66)²²

In May 1870 Cooper reported that the provincial government was unable and unwilling to carry out the surveys (A8:II:67).²³ Cooper then obtained approval from the colonial government to pay for and engage Major Heaphy VC to arrange for the necessary surveys. At this time Heaphy had reported excellent land had been purchased as the education endowment, being Education Reserve Lot 225 Hokonui and Lot 13 Waimumu. This land was let for a period of 21 ½ years at a rental of £75 per annum for the first three years, and thereafter at £100 per annum for the remainder of the term. As no survey had been carried out, no Crown grant or lease had been issued and therefore no rent paid. Heaphy wrote that £75 would be due on 1 June 1870 and suggested a Crown grant be prepared. He also nominated two trustees to administer the trust: himself and I N Watts, the resident magistrate at Bluff (A8:II:72).²⁴

- 15.4.2 There was some confusion about how the endowment was to be administered and what conditions were on the trust. For two years following the purchase nothing was done. In 1866 the government made available £320, being two years' interest, to establish a school at Ruapuke.²⁵ The endowment was inadequate to provide for the education of all the children of the Southland kaika. Ngai Tahu were

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far from happy with the constant delays in providing for their educational needs.

The sum realised from the endowment was too small to pay all the running costs of the Ruapuke school and in 1868 the school committee decided that it would have to get contributions from the kaika so the teacher could be paid an adequate salary. The school had a difficult history and as the Maori population on Ruapuke declined it was only the dedication of Reverend Wohlers (who took over the teaching in 1869) that kept it operational.

In 1868 only one third of the children entitled to benefit from the fund lived on Ruapuke and no money was left over from the fund to set up other schools. The secretary of the Otago Education Board agreed to admit half-caste children to the school at Bluff and the central government agreed to pay the fees of those half-caste children whose parents could not afford to educate their children. A school had been built by the Riverton Maori five years earlier, but the community had not been able to find a teacher for their school. In 1868 I N Watt persuaded the teacher at the local provincial school to agree to teach Maori children before and after ordinary school hours. The parents of the Riverton children were obliged to pay five shillings per quarter per child.

It was not until 1875, eleven years after the purchase, that a school was finally established on Rakiura (M20:34). In 1877 the inspector reported:

I was disappointed to find the schoolhouse not yet built. This is very much to be regretted. I pointed out in my report last year that the small, smoky, overcrowded room now occupied as a schoolroom is unfit in every way for the purpose for which it is used. (M20:34-35)²⁶

Despite having specific provision made in the deed for educational needs, Rakiura Ngai Tahu were called on to provide a further £150 for the erection of the schoolhouse.

- 15.4.3 Today the endowment is still used for educational purposes. There is accumulated trust capital of \$3600 and income is derived from a lease over section 13 block I Waimumu and section 225 block LXIV Hokonui which is registered as Maori freehold land and vested in the Maori Trustee. The lease is a perpetually renewable 21 year lease which is subject to the provisions of the Maori Reserve Land Act 1955 and Maori Trustee Act 1953. The present term of the lease expires at the end of 1991.²⁷

The purpose of the trust is to provide financial assistance in the post-primary education of all descendants of the original owners of Rakiura. Although the Maori Trustee holds the endowment, seven

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advisory trustees from the region, appointed by the Maori Land Court, decide how the funds are allocated. Applications for assistance are sent to the Hokonui Endowment Trust Board every year. The application must be approved by three or more trustees before being sent on to the Maori Trustee who then pays out the grant to the applicant.

No representations were made to the tribunal concerning either the question of ownership or the terms of lease of the endowment lands. As yet the beneficial owners have not been identified by the Maori Land Court. Various procedures are available in the Maori Reserved Land Act 1955 for those with an interest in the land to make changes to the present administration of the endowment. The tribunal therefore sees no need to intervene by way of recommendation. We do however highlight the following:

- under section 11 of the Maori Reserved Land Act 1955 the court may determine the beneficial owners of any reserved land;
- under section 14 of the Act the court may vest the land in the beneficial owners determined by the court, or, in section 14(5) make an order in terms of section 438 of the Maori Affairs Act 1953 vesting the land in a trustee or trustees; and
- under section 15a the land may also be vested in and administered by a Maori incorporation.

Regarding the lease and its perpetual right of renewal, we note that it is subject to the same restrictions as those imposed on the Mawhera leases referred to in the preceding chapter. The advisory trustees may wish to join this issue to that of the Mawhera Incorporation and have the endowment lands freed from the perpetual lease and its restrictive terms. The tribunal would support such a move.

The £2000 investment

15.4.4 As related earlier, £2000 of the purchase payment was to be invested with the government and interest of 8 per cent per annum distributed to the people specified in the deed, namely Paitu, Teoni Topi Patuki, Tioni Kihau, Frederick Kihau and Ellen Kihau and their descendants. This was subsequently carried out although the rate of interest was reduced to 6.4 per cent by the National Expenditure Adjustment Act 1932.

In 1954 there were fifteen beneficiaries of the investment, six of whom were receiving a mere ten shillings and eight pence per quarter. It was decided that a lump sum of £3200 be distributed to the existing beneficiaries before any further fragmentation of interest occurred.²⁸ Section 7 of the Maori Purposes Act 1954 gave effect to this decision, and the money was distributed accordingly.

*The Ngai Tahu Report 1991***Reserves**

15.4.5 In his report on the purchase Clarke did not give any acreage for the reserve at the Neck. A list of 28 half-castes residing there was prepared, but Clarke acknowledged that there were more. In 1868 Mackay, in his report on southern settlements, wrote that no reserves had been surveyed, nor had the old land claims referred to by Clarke been settled. He reported that the land at the Neck was insufficient for the reserves promised under the deed and other land should be obtained (A8:II:64).²⁹

In 1869 Andrew Thompson presented a petition seeking redress for the lack of land allocated for half-castes. Mackay was appointed to examine the situation, arrange surveys of suitable land and report back to government. Mackay compiled a corrected list and this resulted in 94 claimants being recognised as landless half-castes.³⁰

In April 1870 G S Cooper reported on the southern Ngai Tahu reserves:

But in the Stewart's Island purchase a great and substantial injustice has been inflicted on the Natives and on a large number of half-castes for whom land was specially contracted to be reserved, by the delay in defining the reserves, a delay which had now reached the length of very nearly six years.

The claim of the half-castes was brought under the notice of the Legislature by a petition from Andrew Thompson to the Legislative Council last session, and the Council passed a resolution praying His Excellency to give immediate effect to the recommendation of their Public Petitions Committee, who urged that steps should be taken without delay to put the half-castes in possession of the land which had been promised them. The obstacle to marking off this land is not only the ordinary difficulty of obtaining a survey and the question of who is to pay for it (there are 94 sections to be laid out), but there is also the fact that the half-castes' land, and some other reserves as well, are to be laid off after certain "old land claims" are disposed of. Many of the claimants to these "old claims" cannot now be found, and there is reason to believe that most, if not all, of them are unable to defray the expense of surveying their claims. It would, I think, be advisable if the parties interested (the half-castes and the Provincial Government) could be got to agree to it, to exchange the claim on Stewart's Island for a block of land on the main, on which the half-caste families could be located. (A8:II:66)³¹

The Stewart's Island Grants Act 1873 made provision for the issuing of Crown grants to half-castes born on the island and resolved a number of claims. As there were others equally entitled to land Mackay temporarily reserved 1676 acres from sale in the area of Foveaux Strait.

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In 1874 the surveys were completed. The Stewart's Island Grants Amendment Act of 1876 vested two blocks at the Neck to Ihaia Whaitiri and Hoani Timarere, the persons named in the deed.

This completed the laying out of the reserves mentioned in the deed. However there remained the need for reserves for the "half-castes" who had not been provided for at the Neck. It was some years before provision was made for them and the subsequent legislative history is referred to in chapter 20. Save in the case of the "half-castes" the delay caused no great hardship, for the Maori continued to occupy the land in the vicinity of the proposed reserves.

15.5. **Ngai Tahu's Grievance**

15.5.1 The claimants stated:

The Crown failed to appoint a protector to ensure that Ngai Tahu were independently advised of their Treaty and other rights. (W6)

Mr McAloon in his evidence was critical of the unilateral determination of the Crown in fixing the purchase price below that sought by Ngai Tahu. He was also critical of Clarke's opposition to their request to administer the endowment fund. Mr Temm contended that Clarke failed to make the deed perfectly clear. He stated that Ngai Tahu wanted to preserve their birding rights on all of the islands and today they are not satisfied that these islands are Crown land.

Findings on grievance

- 15.5.2 There is no doubt that the Crown should have provided Ngai Tahu with a protector; an independant advisor to explain their Treaty and other rights to them. Clarke himself was aware of the ambiguity of his position: acting as a Crown agent on the one hand and keeping the interests of Ngai Tahu in mind on the other. The evidence however, suggests that Clarke did his utmost to ensure that there would be no subsequent complaints about the way the island was acquired. He met with a large contingent of Ngai Tahu with interests in the area and made sure internal disputes were resolved before any terms were negotiated. The deed with the annexed plan made it clear what was sold and what was reserved. Provision for ongoing benefit for Ngai Tahu from the purchase was made through the education endowment, and for a smaller group through the £2000 investment. Regarding the latter, he ensured that a full 8 per cent interest be paid. In comparison with his predecessors then, Land Commissioner Clarke executed his duties diligently. There is no evidence that Ngai Tahu were substantially prejudiced by the lack of a protector during the negotiations, or that the negotiations were carried out in a manner inconsistent with the principles of the Treaty of Waitangi.

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However, as we have detailed, the implementation of the deed was greatly delayed, to the detriment of Ngai Tahu. Had a protector been available to ensure that the terms of the deed were abided by, income from the education endowment may well have been made available promptly and to greater effect. In the same way, it was 10 years after the sale before the survey of the reserves was completed, and many more before those of mixed parentage were given land. Such delays are inconsistent with the Crown's duty actively to protect Maori interests. The tribunal was given no details as to any loss suffered by those living on the reserves and who eventually were given such land. For those half-castes who had to wait many years for an allocation of land there must have been loss, and this has been addressed in chapter 20.

The tribunal finds that the claimants' grievance is sustained to the extent that it applies to the implementation of the agreement.

15.6. **Titi Islands**

Introduction

- 15.6.1 The Titi Islands are those lying adjacent to Rakiura where the titi burrow on their annual migration from the northern hemisphere. On 29 June 1864 the islands were conveyed to the Crown as part of the Rakiura deed of purchase. Twenty-one of the islands, those closest to Rakiura were:

Returned to us [Ngai Tahu] as reserved for us and our descendants . . . under the Protection and management of the Government. (appendix 2.10)

These were purported to be the islands most frequented by the titi.

These islands at present have very great value, not only to Rakiura Maori as taonga and an important traditional mahinga kai, but also to New Zealand and indeed the world as a last refuge for many endangered species. Maintaining these sanctuaries requires very strict control of entry as risks arise not only from human activities but particularly from chance introduction of rodents. At present access and wildlife are managed by the Department of Conservation.

The claimants' grievance is that the tribe has been deprived of the full administration of the Titi Islands. The right to collect titi is known throughout Maori society to be the prerogative of Ngai Tahu. Any restrictions imposed on such rights creates an intensity of feeling illustrated to the tribunal by witnesses at this hearing.

The inclusion of the Titi Islands in the deed

- 15.6.2 The Rakiura deed of purchase refers explicitly to "all the large islands and all the small islands adjacent to Rakiura", and these islands are

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indicated on the plan annexed to the deed. However, there are no existing records of discussions regarding the inclusion of the Titi Islands. A number of submissions were put before the tribunal stating that Ngai Tahu had no wish to include the islands in the purchase.

Harold Ashwell of Ngai Tahu stated that the sale of Rakiura was not unanimously approved by all Ngai Tahu, and that the tangata whenua “unsuccessfully sought to exclude the Titi Islands from the sale”. According to Ashwell, Clarke, the purchasing officer, was resolute in his stipulation that the islands must be included in the purchase, but reached an agreement with Ngai Tahu that access by Rakiura Maori to the titi would be guaranteed (E3:1). Mr Ashwell made a particular claim to the island of Poho-o-Tairea. He stated that Poho-o-Tairea is the Maori name for Big Island, Stage Island or Women Island. The sealers’ Ngai Tahu wives and children stayed on this island while the men went on sealing expeditions. Mr Ashwell claimed rights of ownership through his ancestress who lived there 160 years ago with her children, and through the concept of ahi ka roa, long-term association with the island. He stated that the lists of the original owners were published in 1864 and any island not spoken for at that time was designated as Crown land. As his ancestor had died before the sale no person came forward to claim for his family succession.

In the Titi (Mutton Bird) Regulations 1978 there is no mention of Poho-o-Tairea, but Big Island is named as a Crown island and Pikomamaku, or Women Island, as a beneficial island. In the list of islands supplied by Mr Ashwell in his claim on behalf of Rakiura Maori entitled to titi rights through descent, Pikomamakuiti is given the European name “North” and is a Crown island (E3:4).

Mr Ashwell held that ownership of Poho-o-Tairea should be vested in himself and equivalent measures extended to those people who have maintained a similar presence of the islands of Pukeweka, Putahinu and Kani.

Syd Cormack stated that he had read that Clarke had selected 32 men as trustees for all owners, and as a result they became the owners of the reserved islands. The remaining islands became Crown land, thus dispossessing Ngai Tahu of their rights to claim title to these islands (E1:9).

Jane Davis claimed that several families were not included in the list of Maori owners of the occupied Titi Islands. She stated that as a result, these families have established greater ties with unoccupied islands, used less frequently by their tupuna, which are now Crown islands. She claimed that her family and others have rights to Putau

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Hunua or Putauhinu (a Crown island) through seasonal association since 1930.

Eva Wilson, of Ngati Mamoe descent, records the story of the Titi Islands as passed down by kaumatua in *Titi Heritage*. Her book attempts to prove by research the truth of their story. Wilson suggests that Ngai Tahu were adamant in wishing to exclude the islands from the Rakiura sale. Because Clarke's offer of purchase mentioned only "the island" and "an island", Ngai Tahu assumed that only Rakiura was being negotiated for and agreed to the sale on this understanding. Wilson claims that it was not until after the sale that Ngai Tahu realised that the Titi Islands were included. After some discussion amongst themselves, Ngai Tahu accepted this fact but asked that the resource be managed in the traditional manner and the islands protected from trespassers. Clarke then composed a list of reserved islands and their beneficial owners, and guaranteed government protection of the resource.³²

- 15.6.3 The purchase negotiations have been outlined earlier. We have clear evidence that in April 1864, before the negotiations had begun, Clarke intended to reserve three of four islands for Ngai Tahu "to procure the 'titi' or mutton bird" (A8:II:58).³³ The negotiations extended over several days and involve a substantial number of people. Clarke's report on the purchase included an enclosure which listed the islands reserved for Ngai Tahu and named in the deed, together with a list of chiefs for who such islands were reserved. It is this list which is cited by Wilson as being post-dated to the deed, made in response to Ngai Tahu's belated realisation that the islands were part of the sale of Rakiura. We find it hard to substantiate Wilson's claim that the sale of the Titi Islands was inadvertent. Clarke made such lists for all reserves; not only the Titi Islands. Birding rights on these islands must have been discussed prior to the signing of the deed. Not only are the number of islands increased from the original three or four to twenty-one, but all are specifically named in the deed. It could well be that the list of beneficiaries, as distinct from the designated islands, was prepared after the signing of the deed. Ashwell's evidence refers to the preparation of such a list but he did not state that the islands were inadvertently sold, rather that they were included over the objections of the owners. The manner in which the list of reserved islands was made confirms our view that the islands were not unwittingly sold: it appears that the islands specifically reserved were the most popular resting places of the birds.

Legislation since the deed of purchase

- 15.6.4 The first piece of legislation to affect the administration of the Titi Islands was the Special Powers and Contracts Act 1886. By clause 48

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of the first schedule the governor was authorised to make regulations for the protection and management of the Titi Islands and to protect the mutton birds in order to conserve them for the exclusive use of those Ngai Tahu who were beneficially entitled. These people were those listed in Clarke's appendage to the deed, and their descendants.

In the early part of this century disputes arose about Ngai Tahu rights to take titi and Pakeha trespassing on the islands. It was generally acknowledged that Clarke's list of beneficial owners was incomplete. In 1909 an Order-in-Council conferred jurisdiction on the Native Land Court to determine birding rights (P8b:38).³⁴ In 1910, Chief Judge of the Native Land Court, Mr Jackson Palmer, after a detailed investigation and consideration of submissions, made an order which established the rights of various members to beneficial islands, that is, to those islands specifically reserved to Ngai Tahu in the deed of purchase (P8b:43). With the owners of the birding rights established, the Crown was able to discuss with them the regulations to be applied to the Titi Islands. After consultation with the main kaika at Bluff, Riverton and Colac Bay, the regulations were gazetted on 30 May 1912, under the authority of the Land Act 1908.³⁵

- 15.6.5 These regulations have been rewritten and amended slightly at different times since 1908.³⁶ They are enforced today as the Titi (Mutton Bird) Regulations 1978. The islands reserved to Ngai Tahu are defined as "beneficial islands". Although the beneficial ownership of these islands has always remained with Ngai Tahu, they are held in trust for such owners by the Crown. The other islands which were not specifically reserved in the deed of cession, but are named in the regulations, are defined as "Crown islands". Under the regulations a beneficiary is a Rakiura Maori who holds a succession order from the Maori Land Court entitling him or her to any beneficial interest in any beneficial island. Beneficiaries do not require a permit to enter such an island. However, no Rakiura Maori can enter any Crown island without first obtaining written permission.

The regulations make specific provision for the protection of the food source of the Rakiura Maori and their descendants and the protection of the islands from despoliation by people and animals.

In the administration of the regulations, Rakiura Maori and their spouses have supervisory powers and representation on a committee through which recommendations on matters concerning the islands can be made. The commissioner is statutorily bound to call an annual meeting of all interested Rakiura Maori.

*The Ngai Tahu Report 1991****Ngai Tahu's grievance***

- 15.6.6 Counsel for the claimants contended that the problem of the Titi Islands is primarily a matter of establishing how the islands on which the titi burrow should be protected. The importance of the Titi Islands as a past and present food resource was evident in the submissions of Ngai Tahu witnesses. "Te Heke Hau Kai Titi", mutton birding, is an ancient tradition which takes place every autumn and has survived through to the present day. The claimants' grievance was that:

The tribe has been deprived of the full administration of the Titi Islands.
(W6)

Robert Whaitiri submitted that the time had come for the Ngai Tahu Trust Board to administer the 1978 regulations. Paddy Gilroy, in his submission, urged that more stringent measures be put in place to protect the mahinga kai for future generations (H:13).

The Crown's response

- 15.6.7 The Crown contended that the regulations provide a mechanism for mutual benefit, balancing the free access of beneficial owners against the policy of protection of endangered species. In his evidence to the tribunal Ronald Tindal, then conservator for the Rakiura district, referred to the islands as the "last ark of many endangered species" (P8b:2). He said that the continued existence of these species depends on an unaltered habitat and protection against accidental or deliberate introduction of competitors such as predators or grazing animals. He submitted evidence to show that already in some islands rat infestation had occurred. In 1964 a rat invasion on Big South Cape, the largest of the beneficial islands, caused irreparable damage to bird life. Four Crown islands and three beneficial islands alone support the entire breeding stock of South Island's saddleback, banded rail, gecko, skinks, and other insects. In order to maintain these populations at risk, an understanding of the species, a knowledge of management, a policy of control of access and a monitoring of invasion are necessary (P8b:2-5). The Crown maintained that it alone has the highly skilled workforce required to protect these treasures. The Conservation Act 1987 which established the Department of Conservation, provides under section 4 that the Act is to be interpreted and administered so as to give effect to the principles of the Treaty of Waitangi. Ronald Tindal claimed that the history of Crown administration of the titi resource upheld at least three identified principles namely:

- the principle of protection of the tangata whenua food source;

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- the principle of mutual benefit for both Rakiura Maori and the Crown by the protection of the island from despoliation; and
- the principle of options whereby regulations were established by consultation and have protected the economic opportunity for food or barter to titi as a solely Rakiura Maori right. (P8b:9–10)

He stated that it is probably one of the best protected Maori food sources in New Zealand.

Crown counsel claimed that it is established by case law that the Crown has the power to regulate for conservation purposes providing it gives priority to the indigenous people where their rights to take game conflict with the rights of the other people (see *Kruger v Queen* 1978 (Canadian Case) 1 SCR 104) (P8a:15–17). No evidence was given that Rakiura Maori have been refused permits to hunt for titi. They may be restricted in some way by the regulations, but these regulations are administered in consultation with a representative committee for the mutual benefit of all parties to hunt for the titi and to protect these islands from despoliation. Claimant Rakiihia Tau himself said:

Our relationship, management and administration as Ngai Tahu whanui of the mutton bird or Titi Islands is perhaps the nearest living example we have to the meaning of Rangatiratanga to our natural resources or mahinga kai. (J10:25)

The same view was taken by another witness Robert Whitiri when he agreed:

the Titi Island Regulations . . . work and they were drawn up by Maori people. The fact that they were drawn up by Maori people makes them unique. (E1:7)

- 15.6.8 Rakiura Maori attach great importance to their exclusive right. It is essential that any legislative change which could impinge on such a right be discussed with the committee created under the regulations. In our view the regulations provide a good compromise of birding rights for Rakiura Maori and the conservation of endangered species. The Department of Conservation has the skilled workforce to implement policies arrived at by the representative committee. We are satisfied that under the present regime the islands on which titi are found are sufficiently protected.

The Crown islands

- 15.6.9 A further claim became apparent in submissions of claimants before the tribunal relating to the Crown islands. There was strong feeling among Ngai Tahu that the Crown islands should be returned to Ngai Tahu, that is, similarly vested for a beneficial interest in Ngai Tahu.

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Both the Crown islands and the beneficial islands are governed by the regulations and Rakiura Maori have exclusive birding rights over these islands. Retention of full ownership of the Crown islands at this time is related to conservation management. While no grievance has been established in respect of the Titi Islands, there would be meritorious reasons relating to mana and rangatiratanga in recognising a Ngai Tahu status over the Crown islands.

We consider that vesting the beneficial ownership of the Crown islands in designated Ngai Tahu, or such other body as may be nominated by Ngai Tahu, would be recognising to a large degree the actual situation which at present exists. This matter is discussed in greater detail in chapter 17.

If this course was followed it could satisfy the claim of Jane Davis, who claimed her family have rights to Putauhinu through long seasonal association since 1930. Mr Ashwell claimed ownership by long family association to Poho-o-Tairea. The tribunal cannot see how long association with an island can make it the subject of an ownership claim when such islands were included in the deed of sale. If Poho-o-Tairea is a Crown island then Mr Ashwell would be in the same position as Mrs Davis. The tribunal finds that there was no breach of Treaty principles in the action of the Crown in issuing regulations governing the administration of these islands.

15.7. **Whenua Hou (Codfish Island)**

15.7.1 Whenua Hou is the largest of the Crown islands, being approximately 1400 hectares, and lies three kilometres off the western coast of Rakiura. In the deed of cession it was not mentioned as one of the islands to be reserved for the Maori people. The claimants stated that: According to oral tradition the island Whenua Hou (Codfish Island) was included in the purchase against the wishes of the people. (W6)

They further alleged that Rakiura Maori originated from this island and that it is their ancestral ground. They said that at the time of the purchase in 1864 it was settled by retired sealers and their Maori wives and children, but this last assertion is doubtful. In retrospect it is surprising, as it was a home to the ancestral Maori population, that it was excluded from the list of islands reserved from the sale. While some discussion was held prior to the deed being completed regarding which Titi Islands were to be reserved, it was either an oversight or a conscious decision that Whenua Hou was excluded from the rest of the beneficial islands.

It is clear that Whenua Hou was traditionally a stopping off place of Aparima Maori on their way to the Titi Islands. However, three boat

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landing reserves were provided on the eastern side of Stewart Island, including Mitini Island on the south coast of Masons Bay for Aparima Maori whilst on bird catching expeditions. There would appear to be no reason why Whenua Hou should be included in the sale if a request for its exclusion had been made, and no reason for Clarke to refuse such a request.

- 15.7.2 Further claims surfaced during the hearing which related to the designation of the island as a nature reserve, thereby restricting access to those with traditional associations with the island.

Whenua Hou was made a scenic reserve in 1915.³⁷ From 1968 access restrictions were applied requiring any intending visitor to first obtain a permit from the commissioner of Crown lands. In 1983 it was intended to classify the island as a nature reserve. This was thought to be more appropriate than a scenic reserve because access to a nature reserve is by permit only and preservationist in intent. A scenic reserve by comparison carries a presumption of public access except in special circumstances.

Ronald Tindal, then conservator for the Rakiura district, impressed upon the tribunal the extreme value of Whenua Hou both nationally and internationally as a last refuge for many endangered species of plant, bird, animal and insect life. Because of its size and distance from the mainland, the island provides an ideal sanctuary for the introduction of species at risk (P8b:10–15).

- 15.7.3 On 29 September 1983 the Rakiura Maori Land Incorporation submitted an objection about the classification of the island as a nature reserve.

The Rakiura Maori Incorporation concluded:

There must be provision to recognise the traditional worth of Codfish Island. It is not satisfactory to have the very basic of traditional sites, as this one undoubtedly is, held within the confines of a nature reserve and known only to a privileged few who have no connection with the island beyond their position of employment or academic qualifications. (014B:160)

It was claimed by the incorporation's representatives that these restrictions, imposed for conservation, virtually preclude access to the island by the local people. They also wanted Ngai Tahu involvement in management decisions regarding the island.

A meeting was held on 30 May 1985 between the incorporation and the Assistant Commissioner of Crown Land, Invercargill. In reply to their objections the assistant commissioner claimed that he had not, as yet, ever seen an application from Ngai Tahu for a permit to visit the island, and that permits were given to anyone with a responsible

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and legitimate reason for entering the island. Restriction of access was necessary to preserve the island's special ecology. He stated that once the classification was in place, the descendants of the original residents may be accommodated in the island's management plan and he invited the Rakiura Maori Land Incorporation to submit suggestions on what this management plan should contain (O14B:161–163).³⁸

Further representations were made to the Minister of Lands on 7 September 1985, but he supported the change of classification and the island was subsequently gazetted as a nature reserve in 1986.

Finding on grievances

- 15.7.4 The tribunal finds that no grievance exists in respect of Whenua Hou, but recognises that it is of great importance to Ngai Tahu as their ancestral ground and can only surmise that its inclusion in the sale was an oversight. Had a protector been engaged to oversee the transaction it could be that the islands would have been reserved to Ngai Tahu. As that is only speculation however, the claim cannot be substantiated.

The tribunal is now aware that tours of Codfish Island are available. These are conducted by Ronald Tindal and operated as a commercial venture. The tribunal considers that subject to prior notification, free access should be given to Rakiura Maori, consistent with the security of the wildlife. The tribunal also supports the involvement of Ngai Tahu in the management of the island.

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Chapter 16

The Eight Crown Purchases—An Overview

16.1. Introduction

16.1.1 With the Rakiura purchase in 1864 the Crown completed its acquisition of Ngai Tahu land first begun 20 years earlier. For the sum of £14,750 the Crown had acquired 34.5 million acres from Ngai Tahu. This was most of the South Island and more than half the land mass of New Zealand, which is some 66,200,000 acres in extent. All but an insignificant fraction of Ngai Tahu's land was gone; only 37,492 acres remained. No doubt the Crown's representatives were well satisfied with their efforts.

By 1864 Ngai Tahu were in a parlous, some might say pitiable condition. They were now an impoverished people largely confined on uneconomic patches of land, almost entirely isolated from mainstream European development, neglected by government at both central and provincial level, marginalised and struggling to survive both individually and as a people. Their rangatiratanga greatly diminished, their communal way of life and the cultural and spiritual values associated with it seriously undermined. As settlement steadily encroached on them from all sides, as land was progressively fenced and drained, as their access to mahinga kai steadily decreased, Ngai Tahu eked out a bare subsistence on land incapable of sustaining them. No wonder their voices came to be heard more and more in protest.

Why did this happen? The short answer, as must by now be abundantly clear, is that the Crown failed, time and time again, to honour the principles of the Treaty of Waitangi. Why then did the Crown so consistently act in breach of its Treaty obligations? There were various reasons. Probably the most important was that in all the evidence relating to these purchases there is no indication that either the governors giving the instructions or the Crown purchasing agents responsible for carrying them out ever so much as adverted to the Treaty. Other reasons stem in large part from radically different assumptions on the part of Crown officials on the one hand and Ngai Tahu, the tangata whenua, on the other.

*The Ngai Tahu Report 1991****Contemporary assumptions***

- 16.1.2 Professor Ward noted several contemporary assumptions of Crown officials and settlers at the time of the purchases (T1:5–6). These we discussed at chapter 5.7. They included an assumption of cultural superiority often manifested in an attitude of arrogance, condescension and at times aggressiveness by officials towards Maori. In some officials however, it could on occasions lead to a sense of obligation and responsibility.

Europeans widely believed that the Maori were dying out. We agree that this almost certainly conditioned officials' assessments of Ngai Tahu's "present and future needs", particularly in relation to their land requirements.

To the extent that the Maori could be saved from extinction it was thought desirable to assimilate them speedily into western culture and values. This would include abandoning their communal way of living and the break up of their reserves.

The nineteenth century values of self-reliance and the ethic of competition would, it was said, need to be absorbed by Maori. And so continued reliance on their traditional communal social structures and lifestyle would need to be abandoned. The retention of such values would "sap" initiative and independence. It is apparent that Mantell, for instance, was strongly influenced by such convictions. Hence his extreme reluctance to agree to more than minimal reserves. He and other purchasing officers shared a desire to be seen by their superiors as hard bargainers. This strongly influenced the outcome, notably in the case of James Mackay Jr at Kaikoura.

Intermarriage between Maori women and Pakeha men had taken place and was likely to continue. The children of these mixed marriages would, it was thought, merge increasingly with the European community through further intermarriage, thereby enhancing assimilation. In this way the tribal social fabric would be weakened.

- 16.1.3 It is clear that Ngai Tahu wished to engage actively in the new economic order and profit from trade and the opportunity to acquire European goods. By the early 1840s Ngai Tahu had in fact absorbed many of the Europeans who had married Ngai Tahu women. This was assimilation in reverse. By 1840 the incursion into Ngai Tahu territory by northern tribes had been repelled and the tribe was at peace with its neighbours. But Ngai Tahu were not in a strong bargaining position. Unlike many North Island tribes they constituted no real threat to prospective settlers. They had been weakened by civil war, by battles with northern tribes and struck down by European diseases.

The Eight Crown Purchases—An Overview

Some had dispersed, temporarily at least, from their traditional kaika. Whaling and the prosperity it had brought was in decline. In various ways they were in a weakened condition.

There remained however a strong desire to enhance tribal mana. To this end Ngai Tahu were prepared to accommodate prospective settlers and to sell land to the Crown to facilitate settlement. It is, however, unlikely that they had a real appreciation of the likely speed of settlement or of the numbers of settlers soon to be spreading over the land. It is highly likely they expected many of their traditional usages to continue in the foreseeable future over much of their land, in particular their access to mahinga kai. Throughout the 1850s Ngai Tahu cultivated or grazed stock beyond the reserves and continued to hunt and forage much as previously.

Ngai Tahu, in agreeing to sell their lands to the Crown, contemplated an ongoing relationship with the Crown and with the new owners of the land. For, at the time of the early purchases, they would have had little real understanding of the finality and irrevocability of the sale of their land or of their consequential permanent alienation from it and its resources. Only over time, as settlement increasingly pressed upon them, did they come to realise the full significance of the land transactions. As settlement built up and properties were fenced in Ngai Tahu found their access was tolerated on less and less of the land other than the little reserved for them. The full significance of the deed of sale and later Crown grants to settlers gradually became impressed upon them. There seemed little scope for further discussion or negotiation. Increasingly the settlers claimed the right to exclusive possession of their land. Increasingly Ngai Tahu became confined to their minimal reserves and the prospect of poverty and isolation.

- 16.1.4 But they were parties to the Treaty of Waitangi. Ngai Tahu rangatira were prepared to treat with the governor and his representatives in good faith. They had expected that dealings over land would lead to ongoing relationships and be for the mutual benefit of the parties. The Treaty provided or should have provided an essential protection to Ngai Tahu in their dealings with the Crown over land. Yet only in the Otakou purchase negotiations was an independent protector made available. Following Grey's abolition of the Protectorate Department, Ngai Tahu had to rely entirely on their own resources, with such assistance and good will (if any) as might be offered by the Crown's agent whose principal role was to extinguish their title to the land. The primary loyalty of the various land purchase commissioners clearly lay with the Crown, not Ngai Tahu. It is instructive to

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assess their actions and those of their superiors, the governors, in the light of the relevant Treaty principles.

16.2 **Crown Protection of Maori Rangatiratanga**

16.2.1 In chapter 4 we have discussed the principles of the Treaty as they apply to this claim. We propose now to test the Crown actions over the various purchases against certain of these principles. First, the principle that:

cession by Maori of sovereignty to the Crown was in exchange for the protection by the Crown of Maori rangatiratanga.

As our earlier discussion of Treaty principles shows, rangatiratanga is both a complex and subtle concept. When in article 2 the Crown guaranteed to Maori tino rangatiratanga – full authority – over their lands and other property and valued possessions, it guaranteed more than ownership, so long as they wished to retain it. Rangatiratanga signifies the mana of Maori not only to possess what they own but to manage and control it in accordance with their preferences. That is, in accordance with Maori customs and cultural preferences. And so land retained by Maori and over which they exercised rangatiratanga would involve continuing to hold the land communally as a community resource with the subordination of individual rights necessary to maintain tribal unity and cohesion. But as we have seen, the Crown denied the right of Ngai Tahu to retain land they wished to keep and left them with the merest fraction of the vast lands they formally owned. Such deprivation meant not only a loss in material terms but also a loss of the exercise of their rangatiratanga upon which the viability of their social system itself depended. When, as later happened, much of what little tribal land they retained came to be individualised under the Native Lands Acts of the 1860s, this allowed the irreversible process of dismantling the tribal social structure to be accomplished.

16.2.2 For Ngai Tahu's social system to remain in place it was essential they kept ample lands and access to traditional food resources. When it is recalled that Ngai Tahu had customary title over more than half of Aotearoa it is idle to suggest they could not have been left with substantial areas in locations of their own choice. But instead we find Kemp purchasing some 20 million acres and promising, but not actually setting aside, any land for Ngai Tahu. Mantell, who followed, denied their requests when he felt so inclined and left them with a few thousand acres in places not always of Ngai Tahu's choosing. On Bank's Peninsula he acted with a high hand, inducing Ngai Tahu to accept totally inadequate reserves. In Murihiku he again acted as sole arbiter in deciding what land of their own they would be allowed to

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retain. Hamilton had no sooner settled the Akaroa purchase with a mere 1200 acres than he received a request from Ngai Tahu for a further 400 acres. This he felt compelled to deny, as did James Mackay Jr, who received a similar request at Kaikoura. Hamilton denied Ngai Tahu the right to retain any land at all in the North Canterbury purchase. James Mackay was again constrained by arbitrary limits imposed by his superiors on the amount he could leave with Poutini Ngai Tahu and denied their request to retain substantial lands on either side of the Arahura River. In none of these purchases was the land which remained in Ngai Tahu ownership and possession remotely adequate to enable them to maintain their traditional way of life and social structure, let alone engage in new activities such as pastoral farming.

- 16.2.3 Under article 1 the Crown secured sovereignty over New Zealand. This was conceded by the Maori people in exchange for the protection of their rangatiratanga by the Crown. The Crown however failed in its Treaty duty to protect Ngai Tahu's rangatiratanga over their lands and other valued possessions, including pounamu. This failure lies at the heart of their many grievances.

Mr Bill Dacker, in his evidence to us on the prejudicial effects Ngai Tahu suffered by the lack of land, emphasised that the loss of land and the consequential loss of traditional resources deprived the people of an economic base for their communities. This eventually forced more and more of them to migrate to where there was work. As Mr Dacker explained, once the strength of the communities was broken in this way, the people were exposed increasingly to the predominantly negative European attitudes towards Maori and their culture. And so the loss of economic strength flowed through into loss of culture. In short, Ngai Tahu's rangatiratanga had become seriously eroded. The magnitude of the Crown's failure of its Treaty obligation to protect Ngai Tahu's rangatiratanga will be considered further in the context of the next Treaty principle.

16.3. **The Crown Right of Pre-emption Imposed Reciprocal Duties**

- 16.3.1 While under article 2 of the Treaty the Crown guaranteed to Maori their tino rangatiratanga over their lands and other valued possessions, Maori in turn made a valuable concession to the Crown. Lord Normanby had instructed Hobson that he should, if at all possible, obtain from the Maori people their agreement to sell their land only to the Crown. Article 2 accordingly gave the Crown the extremely valuable monopoly right to purchase land from the Maori to the exclusion of all others. The tribunal has found that the granting of

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this right to the Crown by Maori imposed a reciprocal obligation on the Crown. This was to ensure, when exercising its right of pre-emption, that the Maori people in fact wished to sell; secondly that each tribe was left with a sufficient endowment for its own needs – both present and future.

16.3.2 This raises the question of what might constitute a sufficient endowment for the tribes' present and future needs. As we pointed out in our discussion of Treaty principles, there can be no single answer to this question. Much might depend upon a wide range of demographic and other factors such as

- the size of the tribal population;
- the land the tribe was occupying or over which various members enjoyed rights;
- the principal food resources and their location;
- the location of wahi tapu; and
- the likely impact of European farming practices.

It was well known by Crown officials, including Governor Grey, that the Ngai Tahu people would for many years remain dependent upon traditional sources of mahinga kai, including sea and inland fisheries. To secure these the Crown, in negotiating a purchase, was under a duty to ensure that extensive areas of land in suitable locations remained in the tribe's possession. In other words, that Ngai Tahu's rangatiratanga over the land was maintained.

It was known that Ngai Tahu, in welcoming Europeans amongst themselves, were anxious to engage in the new economy. It was apparent by the late-1840s that much of the land east of the Southern Alps was well suited to the development of pastoral farming. To engage in this activity alongside the new settlers, Ngai Tahu would need to be left with extensive portions of their land. The tribunal notes that pasturage licences issued to individual settlers ranged in area from 5000 to more than 30,000 acres. In time no doubt land which yielded traditional forms of mahinga kai might also be adapted, in part at least, to pastoral and other forms of farming, including agricultural cropping.

16.3.3 The claimants' grievances in relation to reserves fall under two main heads. First, that certain land which Ngai Tahu sought to have left in their ownership was included in the various purchases at the insistence of the Crown agents. Secondly, that in each purchase other than Rakiura, insufficient land was set aside for Ngai Tahu as an economic base to provide for their present and future needs. The tribunal has found in each of such purchases that both grievances

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have been made out by the claimants. The areas in the first category requested and refused by the Crown purchase officers varied in size from in excess of 200,000 acres, in the case of the Kemp purchase and some 100,000 acres in the Kaikoura purchase, down to relatively small areas in Murihiku and some other purchases. The tribunal stresses that it is dependent very largely on records, often sketchy, made at the time by the Crown purchasing agents of reserves expressly requested by Ngai Tahu which they refused to make. But the Crown has not suggested that such notes are complete or exhaustive. Nor, nearly 30 years later in evidence before the Smith–Nairn commission, could we expect Ngai Tahu rangatira who participated in the purchase negotiations to recall all the reserves requested and refused. The tribunal believes that other requests for reserves were made and declined of which we have no record. The likelihood is that these were quite numerous. An indication of values at the time of the Kemp purchase was given by the Crown valuer, Mr Armstrong. He valued an area of some 220,000 acres requested by Ngai Tahu at £205,000, as at 1848. The present day prairie value of this land was assessed by Mr Armstrong at 370 million dollars.

But it was in the second category that the most serious breaches occurred in seven out of the eight purchases, Rakiura being the sole exception. The following table shows the areas of the eight purchases and the reserves set aside.

Table of Purchase and Reserve Areas

Purchase	Area in acres¹	Reserves in acres
Otakou	533,700	9615
Kemp (net)	13,551,400 ²	6359
Banks Peninsula	251,500	3426
Murihiku	7,257,500	4875
North Canterbury	2,137,500	—
Kaikoura	2,817,000	5558
Arahura	6,946,000	6724 ³
Rakiura	420,000	935 ⁴
Total area	33,915,100	37,492

Notes

1 The various purchase areas have been calculated by the Department of Survey and Land Information from boundary information supplied by the tribunal. A simple calculation of all land in the South Island below the northern boundaries of the Arahura and Kaikoura purchases gives a gross area of 34,500,000 acres. The discrepancy

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between this figure and the aggregate figure of 33,915,100 is probably accounted for by ambiguities in certain purchase boundaries.

2 The gross area of land in the Kemp purchase is 20,497,400 acres, extending to the west coast. But the land in the Arahura purchase subsequently acquired separately has been deducted to give the net figure of 13,551,400 acres.

3 Plus endowment reserves of 3500 acres and 2000 acres to meet surveying costs.

4 Plus an unspecified area of land at the Neck some of which was set aside for half-castes and 21 Titi Islands (area unknown) and an education endowment reserve of 2000 acres.

Ngai Tahu population in the 1840s

- 16.3.4 In 3.2.2 the tribunal concluded from the evidence of Professor Anderson for the claimants and Professor Pool and Mr Walzl for the Crown that in 1840 the Ngai Tahu population was of the order of 2000 to 3000. Seasonal migration and other factors however may have resulted in an underestimate. No final conclusion can be reached at this stage. The tribunal thinks it reasonable to assume that in the 1840s the Ngai Tahu population would have numbered approximately 3000.

On an assumed population of 3000 Ngai Tahu the 37,492 acres set aside from the eight purchases gives an average of 12.5 acres for each individual. It is not surprising that counsel for the Crown conceded that the reserves set aside for Ngai Tahu were inadequate and that the Crown had failed to meet its Treaty obligations. The tribunal is satisfied that not only were the reserves insufficient, they were so grossly insufficient as to be no more than nominal in character. Most, if not all the Crown purchase agents, well knew that the reserves were insufficient for Ngai Tahu's needs. A moment's thought would have shown them that the lands left with the various Ngai Tahu hapu could not possibly sustain them as tribal communities. It must have been readily apparent that many would be forced to leave the land or, if they sought to remain, they would have a struggle to survive. It must have been equally obvious that Ngai Tahu would have no opportunity to do more than engage in very small scale agricultural production, assuming the land was suited to such activity.

- 16.3.5 In 1848 when the second and largest purchase took place this resulted in Mantell apportioning minimal reserves of 10 acres or less per person. By this time the Crown representatives well knew that European settlers were taking up extensive pastoral holdings ranging from tens to hundreds of thousands of acres. The tribunal can only

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assume that the Crown consciously decided that 10 to 12 acres was sufficient for individual Ngai Tahu but that individual Europeans required vastly more land. It is not surprising that Matiaha Tiramorehu in 1849 was vigorously complaining at the inadequacy of the Moeraki reserve which allowed no scope for running cattle and sheep in any numbers.

To make matters worse the Crown permitted licences for extensive holdings of pastoral runs to be issued to Europeans on Banks Peninsula, and especially in the Akaroa block, North Canterbury and Kaikoura well before the land was purchased from Ngai Tahu. As a consequence the Crown was to set aside no, or at the most, minimal reserves for Ngai Tahu. In doing so the Crown either totally overlooked its Treaty obligations or cynically disregarded them. Whatever the reason, the predictable outcome was that the new settlers prospered and Ngai Tahu were reduced to poverty and despair.

- 16.3.6 All this occurred as a result of the exercise by the Crown of its Treaty right of pre-emption without any recognition of its reciprocal Treaty obligation to ensure that Ngai Tahu were left with an ample endowment for their present and future needs. The tribunal recalls the New Zealand Company's pre-Treaty policy of vesting in the company one-tenth of the land purchased from Maori to be held by the company in trust for the future benefit of the tribe. Moreover, FitzRoy in 1844 in his waiver proclamation contemplated that tenths would be vested in Crown trustees for Maori and public purposes. New Zealand Company tenths were in Wellington later vested in the Maori beneficiaries. Had the Crown adopted this practice and in addition to land left in Ngai Tahu ownership vested a tenth of all land acquired in trust for Ngai Tahu this would have been greatly to their advantage. In time the land might well have been transferred into Ngai Tahu's legal ownership. This would have resulted in Ngai Tahu receiving some 3.4 million acres in addition to land expressly reserved to them. This would have been a vast improvement on the nominal 37,492 acres reserved to them. For 3000 Ngai Tahu this would, if vested directly in the tribe, have provided the equivalent of 1133 acres per person.

Given that Ngai Tahu undoubtedly owned the land, the vesting in them of an area which amounted to about 1133 acres per person, particularly when compared with the much more extensive runs thought appropriate to the needs of European settlers, could scarcely be regarded as generous. The tribunal cites this merely by way of example and not because we see it as the appropriate measure of the land which should have been left with Ngai Tahu. Ngai Tahu clearly had a need of land which would have been suitable for pastoral or

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other forms of farming. But Ngai Tahu also had a strong affinity, in some cases of a spiritual nature, to other notable features of the landscape. Prominent is Aoraki (Mount Cook). Their trails throughout their extensive domain, including those over the great mountain range, their lakes and rivers, were all taonga, all greatly prized.

Instead, these people, the tangata whenua, whose homeland it was, were against their will reduced to subsist on a mere 12 acres per person. Their rangatiratanga denied; their future both tribally and individually bleak; their Treaty rights ignored. All this with the knowledge or connivance of successive governors acting on behalf of the Crown.

- 16.3.7 In the course of our discussion of the Kemp purchase we noted that in 1868 Chief Judge Fenton in the Native Land Court increased Ngai Tahu's reserves from an average of 10 acres per person to 14 acres. This resulted in some 5000 acres of new reserves in Canterbury and Otago (8.10.8) This was done at a time when much of the land in Canterbury, North Canterbury and Kaikoura had been taken up either under pasturage licences or by the acquisition of the freehold of large runs of many thousands of acres for individual settlers. A single pasturage licence would equal or exceed the total area of 5000 acres granted by the court on the representation of Crown officials that an increase from 10 to 14 acres would meet the needs of individual Ngai Tahu. Such a flagrant double standard is explicable only on the basis that the Crown had no serious concern for the rights and well-being of its Treaty partner, in this case the Ngai Tahu people. The Crown simply ignored the Treaty.

We relate in chapters 18 to 22 of this report subsequent efforts of Ngai Tahu to obtain redress for the great wrong done them and the Crown's response. As we will show, it was extremely belated and did little to mitigate the landless or near landless state of so many Ngai Tahu.

16.4. **The Crown Obligation Actively to Protect Maori Treaty Rights**

- 16.4.1 We turn now to this, the third of the relevant Treaty principles which applies to the eight Crown purchases from Ngai Tahu. We recall the words of Sir Robin Cooke in the *New Zealand Maori Council* case that:

the duty of the Crown is not merely passive but extends to active protection of Maori people in the use of their lands and waters to the fullest extent practicable. There are passages in the Waitangi Tribunal's Te Atiawa, Manakau and Te Reo Maori reports which support that proposition and are undoubtedly well founded.

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As we have earlier held, the duty of protection imposed on the Crown extends not merely to the use of their lands and waters, as noted by Sir Robin Cooke, but to the exercise by the Crown of its Treaty right of pre-emption (4.7.11).

In his formal instructions to Hobson the colonial secretary, Lord Normanby, stressed the need for the Crown to protect Maori interests. Contracts with Maori were to be “fair and equal”. This was to be ensured through the appointment by the Crown of an officer who would act on behalf of the governor and who would be “expressly appointed to watch over the interests of the aborigines as their Protector”. Lord Normanby went on to suggest that a comparatively small sum would be paid to Maori for their land for reasons which we will return to later in this discussion. He then stressed:

- that all dealings with Maori for their lands should be conducted on principles of sincerity, justice and good faith;
- Maori must not be allowed to enter into any contracts which might, through ignorance or unintentionally, prove injurious to them;
- by way of example, land which would be essential or highly conducive to their own comfort, safety or subsistence should not be purchased from them; and
- Maori should alienate only such land as would not cause them distress or serious inconvenience.

Lord Normanby envisaged that the role of the protector would be to ensure compliance with these instructions. But as events proved there was considerable scope for a conflict in interest in the one person being charged with the duty of purchasing land for the Crown for on-sale to settlers and at the same time protecting Maori interests in the ways stipulated by Lord Normanby. Consequently George Clarke, who was appointed the first protector in April 1840 requested to be relieved of his land acquisition duties in 1842 and this was approved.

- 16.4.2 In only one of the eight purchases from Ngai Tahu was a protector appointed. As we have seen, George Clarke Jr assumed this role in the Otakou purchase, while JJ Symonds supervised the New Zealand Company purchase on behalf of the Crown. Governor Grey, for reasons of his own, abolished the Protectorate shortly after his arrival. And so in none of the remaining purchases was an official protector involved. Presumably the land purchase officers or commissioners to extinguish native title, as they were commonly called, were expected to fulfil this role also. If so, as our discussion of the various purchases has shown, they failed dismally to do so.

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As the tribunal has shown, the Crown, through successive governors and their various purchasing agents, failed to protect Ngai Tahu rangatiratanga over their land and other valued possessions, failed to ensure Ngai Tahu retained land they did not wish to sell, and failed to ensure Ngai Tahu retained ample land for their present and future needs.

- 16.4.3 The duty of protection also extended to other matters. The tribunal considers that the Crown, in buying land from Ngai Tahu, assumed the burden of ensuring that the implications were properly understood by the sellers, assuming the latter were entitled to sell in the first place. The obligation fell on the Crown to resolve the contradiction between the Crown's duty to protect Maori rangatiratanga over their land and the Crown's right to buy that land if the owners were willing to sell. The evidence shows that when the roles of protector and purchaser were combined in the one individual, as was the case in seven of the eight purchases, the resolution was unlikely to be in Ngai Tahu's favour. To satisfy themselves that Ngai Tahu understood the nature of the transactions they were being invited to enter into, the Crown purchase agents would need to explore several questions. For example, was finality really understood by the Maori? Did they understand that there was no necessary and contractual ongoing relationship entailed in the sale; that payment was not a koha; that the vendor might have no residual rights such as the right to protect (and have access to) wahi tapu; to protect the land from physical and spiritual pollution according to Maori values and the right to conserve the resources of the land for common benefit according to these same values; that the sale did not entail the right to share the land or its fruits with the buyer, or make any further claim on him, or that money was less durable an asset than land and that it should be valued as a means for saving and investment lest it ultimately prove to be of little value.
- 16.4.4 Before briefly examining the evidence in the light of these observations the tribunal further notes that, in a culture with an oral tradition, the spoken word and manner of its delivery continue to have salience long after the advent of literacy. And so with transactions involving the Maori under the Treaty, what was actually said – or thought to have been said – in negotiations, how and by whom it was said, have always taken precedence over the documentary record. Rangatira have not often read the “fine print”, carefully checked deeds against maps, become involved in technical details and so on. Moreover the physical act of signing a document had no cultural precedent and would, in the early days, have had no literal meaning whatever if done in private, away from the marae. By the same token a witness to a signature would have been thought equally strange and irrelevant.

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For centuries land had been used, conserved and handed over from one generation to the next. With each sale of land however, and notwithstanding prior discussion, a few individuals by placing their mark on a document broke that continuity for ever. Tribes had always lost land in battle, losing it by selling it was something new.

- 16.4.5 There remains the question of consent. Before 1865 and the beginning of the Native Land Court, investigations of title, ownership of land and its resources were always liable to be contentious. So if the Crown believed it had obtained the owners' consent to a sale and purchase agreement, that did not absolve it under article 2 of the Treaty from ensuring that the consent of those rangatira entitled to give it on behalf of their beneficiaries had been obtained, and it should have been aware that those silent at a meeting were not necessarily giving silent assent to the agreement.

We have earlier indicated the likelihood that in some respects at least the Crown purchase agent on the one hand and the Maori vendors on the other, came away from the signing of a deed of purchase with different impressions of what had been done and the implications for the future. This was likely to be the case especially with the earlier purchases. But each party was probably unaware that the other had a different impression of the arrangement entered into.

- 16.4.6 Each of the eight purchases was completed by the signing of a deed of purchase. The first such deed, which related to Otakou, said that the chiefs and men of Ngai Tahu consented "to give up, sell and abandon altogether . . ." all their claims and title to the land described in the deed. It went on to say they also gave up certain named islands but reserved other places as described in the deed for themselves and their children. Before this deed was signed representatives of Ngai Tahu, the Crown and the New Zealand Company physically traversed the region and identified the land which was to be excepted from the sale for Ngai Tahu. We have noted in our discussion of the Otakou purchase that Symonds, immediately after the purchase, advised Superintendent Richmond that he requested George Clarke, the protector, to explain to Ngai Tahu that in disposing of their land they for ever surrendered their interest and title to the land and that their consent was binding on their children as well as themselves. Symonds further reported that the boundaries were frequently explained to Ngai Tahu by George Clarke, who said Ngai Tahu fully understood the contents of the deed. William Wakefield later reported on 31 August 1844 that Clarke told Ngai Tahu that they were about to part with the land described in the deed which he was about to read to them, and that it would be gone from them and their children for ever, that they must respect the white man's land and that the white

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man would not touch the land reserved by Ngai Tahu. Wakefield went on to say that Karetai “spoke to the same effect, strongly insisting on each respecting the others rights in order to avoid disputes” (C2:11:57–58). After the deed was signed Tuhawaiki then removed a tapu from a burial site at Koputai and took away the remains for reburial. While no one can be sure at this distance in time what impression all this made on the minds of individual Ngai Tahu, the evidence suggests that in this instance the Crown made reasonable efforts to ensure that Ngai Tahu understood the full implications of the deed. Clarke in 1880 confirmed he went to considerable trouble to ensure this. And one of their leading rangatira appears to have reinforced this understanding when speaking to his people before the deed was signed. But, as we have earlier said, this was the only sale at which an independent protector was present. But having said that, the tribunal observes that even a conscientious protector failed to ensure that Ngai Tahu retained sufficient land for their future needs. They were able to keep all they sought to retain but this in the event proved inadequate.

In the Kemp purchase which followed four years later, the deed of purchase provided that the chiefs and people surrendered their lands entirely and for ever, on the condition that certain lands were to be reserved, and then stated, as translated by this tribunal, that the bulk of the land was to be set aside for the Pakeha for ever. Later deeds speak of the “entire surrender of the land” (North Canterbury); of agreeing “entirely to give up all those lands which have been negotiated for” to the Queen “as a lasting possession for her or for the Europeans to whom Her Majesty or rather His Excellency the Governor shall consent that it be given”, and later, that “all the lands and all other things above enumerated . . . have been entirely surrendered to Her Majesty the Queen for ever and ever”. After naming the reserves set aside for Ngai Tahu the deed further says, “The only portions for ourselves [Ngai Tahu] are those just named” (Murihiku); of parting with their lands “and for ever transferred unto Victoria Queen of England . . . for ever” and later for the Queen to hold “as a lasting possession absolutely for ever and ever” (Arahura). The remaining deeds all contain wording to the same or similar effect (see appendix 2).

- 16.4.7 The Kemp transaction differed from all the other purchases (except North Canterbury) in that no reserves were set aside prior to the signing of the deed of purchase. Rather, Ngai Tahu were promised that reserves would be set aside and their mahinga kai reserved to them. We have considered at some length in our discussion of this purchase the likely Ngai Tahu expectations of what these promises meant and the failure of the Crown to meet them. No reserves at all

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were provided in North Canterbury – a clear breach of the Treaty. In six of the eight purchases the reserves (albeit in all cases inadequate) were first discussed and set aside by the Crown purchase agents before the deed of purchase was signed. Unfortunately there is little contemporary evidence of the nature and content of the discussions which took place between the Crown purchase agents and Ngai Tahu rangatira as to the implications for Ngai Tahu of the respective sales. We know that Mantell went to considerable trouble in implementing the Kemp purchase and negotiating the Murihiku purchase to ascertain which chiefs had interests in the various localities. At the same time he was unwilling to meet all their requests to retain land they did not wish to sell. By 1853, the date of the Murihiku purchase, settlement of Europeans in the neighbouring Otakou purchase area was building up. From that point on, as settlers moved onto the Canterbury, Banks Peninsula, North Canterbury and Kaikoura blocks, the implications of the sale of their land to the Crown would have become increasingly obvious to Ngai Tahu. It is not possible in the absence of any detailed evidence to know with any certainty the extent to which Ngai Tahu expectations of the outcome of the various sales differed from those of the Crown agents. Only in the Otakou purchase do we have reasonably explicit contemporary evidence on the point, but this is all from Pakeha sources. The tribunal would be surprised however, if, particularly in the case of the early purchases and especially in relation to continued access to mahinga kai, there were not differing expectations on the part of the Ngai Tahu vendors and the Crown purchasing agents. It may be that with the best will in the world this could not have been avoided. But the Otakou experience would suggest that the presence of the protector George Clarke did go some way at least to ensure that Ngai Tahu appreciated the implications of the sale and the fact that the land sold would be owned and occupied by future European settlers and not them.

The primary obligation of Crown purchase agents was manifestly to the Crown, not to Ngai Tahu. This was evident from their conduct. The tribunal is satisfied that, had a protector been appointed to assist and advise Ngai Tahu on each of the purchases, they would have been more fully alerted to the consequences of the Crown's proposals. It is, for instance, inconceivable that on the major issue of reserves a protector would have acquiesced in the parsimonious attitude of the Crown agents over both the retention of land the vendors wished to keep and the provision of reserves for Ngai Tahu's present and future needs. As we have already indicated, a protector would have counselled them on the need to reserve all their pounamu. He would have warned them of a need to ensure adequate access to mahinga kai. He would have been in a position to check that those who sold were

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entitled to sell. His presence would have made less likely the making of threats or the exercise of unfair pressure, for example by playing on tribal rivalries. He would have discussed with them the vexed question of price. This last matter needs further consideration by us.

16.5. The Price Paid

16.5.1 To acquire over half the land mass of New Zealand, some 34.5 million acres, the Crown paid Ngai Tahu the sum of £14,750. The details are as follows:

16.5.2

Purchase	Price (£)	Area in acres
Otakou	2400	533,700
Kemp (net)	2000	13,551,400
Banks Peninsula	650	251,500
Murihiku	2600	7,257,500
North Canterbury	500	2,137,500
Kaikoura	300	2,817,000
Arahura	300	6,946,000
Rakiura	6000	420,000

If we ignore the last purchase of Rakiura (Stewart Island) for £6000, the remainder, that is all Ngai Tahu land in the South Island, amounting to some 34 million acres, was acquired for £8750.

16.5.3 While Lord Normanby, in his instructions to Hobson, required the governor to acquire land from the Maori “by fair and equal contracts” through the oversight of a protector, he envisaged that the price to be paid the Maori would “bear an exceedingly small proportion to the price for which the same lands will be resold by the Government to the settlers”. The colonial secretary saw no injustice in this. In his view much of the land was of no use to the Maori. In their hands, he said, it possessed scarcely any exchangeable value. He thought much of it might long remain useless even in the hands of the government. Its value in exchange would be first created and then progressively increased by the introduction of settlers and capital from Britain. “In the benefits of that increase the Natives themselves will gradually participate.”

Putting aside for the moment the soundness or otherwise of the views expressed by Lord Normanby, the tribunal would stress that such efficacy as they might have depended on the last proposition – that as the value of the land increased as a result of British settlement, the Maori would gradually participate in such increase in value. But this proposition is valid only if, as Lord Normanby insisted, the Crown

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ensured that the Maori vendors were left with ample land for their own requirements. This did not happen due in part at least to the absence of a protector in all but one of the purchases. And even in the case of Otakou, as we have seen, the reserves left with Ngai Tahu were inadequate for their future livelihood. And so the justification envisaged by Lord Normanby for paying Maori a small price for their land was wholly invalidated by the minimal area of land left in Ngai Tahu's possession.

- 16.5.4 Professor Ward in his report (T1:14–15) pointed out that British officials frequently argued in justification of the low prices paid to Maori vendors the unimproved land title had little or no value. Only registration of title and the creation of legally recognisable interests in land or improvements to or in the vicinity gave the land its value. However, as Professor Ward demonstrated, it is wrong to say that the land had no value. He instanced the resources used in the hunter-gatherer economy, rights of access, the water and soil as all having a value for those who use them. Nevertheless, as Professor Ward pointed out, it is true that the incidence of title created and supported by land registration do give further value. As does the subdivision of land, the building of roads and bridges, drainage and so on.

This could not happen if Maori were not prepared to sell some of their land:

A more important issue is whether the loss of use-value to the Maori – the ability to maintain a household in whatever degree of security and comfort obtained at the time—was compensated by access to exchange – values likely to achieve at least a comparable standard in a commercial economy relative to the rest of society, not just a continuation of the previous standard. (T1:15)

Professor Ward conceded that it may well not have been feasible for large cash prices to have been paid by the Crown –to have done so might well have proved too much for immigration societies and stopped the whole colonisation process. Given that Ngai Tahu wanted settlement to go ahead and had expectations of sharing the advantages, access to added value from their reserves was important. “But”, said Professor Ward, “if reserves were to provide revenue from added-value as well as continued subsistence, they would have to have been substantial and of good quality land”. Instead the Crown agents agreed to pay no more than nominal sums, in most cases well below Ngai Tahu expectations and well below the prices paid more northern tribes. If that were not enough, they then conceded minimal reserves of such small dimension that any subsequent added value would do little if anything to ameliorate their condition. It is difficult to believe, had a protector been appointed in each case, that this would have been the outcome.

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16.5.5 The tribunal has said enough to demonstrate that Ngai Tahu were very detrimentally affected by the Crown's breach of its Treaty obligation actively to protect Ngai Tahu's Treaty rights. In their single-minded commitment to the purchase of Ngai Tahu's vast estate, the respective Crown purchase agents, with the connivance or clear endorsement of the various governors of the day, very largely ignored Ngai Tahu's rights as a Treaty partner. It is abundantly clear the odds were weighed so heavily against Ngai Tahu that, in the absence of a competent and committed officer appointed to advise and assist them, they stood no real chance of avoiding tribal disintegration, serious impoverishment and virtual landlessness.

16.6. **The Principle of Partnership**

16.6.1 The New Zealand Court of Appeal has affirmed that the Treaty signifies a partnership and requires the Crown and Maori partners to act toward each other reasonably and with the utmost good faith. Underlying all the Crown's Treaty obligations is the concept of the "honour of the Crown".

16.6.2 The tribunal has not found it necessary to make many explicit findings of a lack of good faith on the part of the Crown. Examples will be found in Kemp's purchase (8.9.19), Arahura (13.5.7), Banks Peninsula (9.10.3) and North Canterbury (11.5.5, 11.5.8). But this was not because the instances were few and far between. Much of Mantell's conduct in laying down the reserves in Kemp's purchase; his high-handed and arbitrary approach to the Ports Cooper and Levy purchases on Banks Peninsula and to a lesser extent perhaps to reserves at Murihiku, is difficult if not impossible to reconcile with the duty of the Crown to act towards its Maori partner "reasonably and with the utmost good faith". Hamilton found it expedient to give a false reason for his unwillingness to grant reserves in North Canterbury; James Mackay Jr threatened reliance on the Ngati Toa purchase while he was at the same time denying its validity during the Kaikoura purchase; he resorted to a "false start" to induce agreement on the purchase price. The Crown's actions, in refusing to pay more than a nominal price for land largely settled at North Canterbury and Kaikoura, and in the case of Arahura for which a very substantial rise in value was imminent, reflect badly on the honour of the Crown.

16.6.3 Nor can Governor Grey in particular escape responsibility. He was aware of and endorsed the conduct of those he appointed to purchase or allocate reserves in the Kemp, Banks Peninsula and Murihiku purchases. Governor Browne was privy to the North Canterbury, Kaikoura and Arahura purchases. These two governors were necessarily implicated in the wholesale breaches of the Treaty which

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occurred during the purchases effected by their duly appointed agents. There is no evidence that either questioned any aspect of any of the transactions which took place on their instructions. On the contrary they expressed satisfaction with the outcome. Had not the Crown after all, for the paltry sum of less than £15,000 acquired over half of Aotearoa while leaving the tangata whenua with a mere 37,492 acres out of 34.5 million acres? We have seen no evidence that this near total denial of Ngai Tahu's rangatiratanga, their confinement to a handful of totally inadequate reserves and the inevitable tribal disintegration and impoverishment of a proud and loyal tribe caused Her Majesty's governors any concern at all.

16.7. **Other grievances**

This overview would not be complete without a brief reference to the tribunal's findings on three other major grievances. In two of these, namely the boundary disputes as to the extent of the land included in the Kemp and Murihiku purchases, the tribunal found in favour of the Crown. In the third the claimant's grievance was in effect substantiated but on grounds other than those relied on by the claimants. We will refer to each in turn.

The "hole in the middle"

- 16.7.1 The claimants' maintained that the western boundary of Kemp's purchase followed the "foothill" ranges from Maungatua to Maungatere and did not extend to the West Coast as claimed by the Crown. The tribunal has however found that Ngai Tahu agreed with Kemp to give up a substantial part of the land they owned or in which they had an interest from coast to coast. But this finding is tempered by the further finding that Ngai Tahu did not agree to part with their kainga, their mahinga kai, or the extensive areas required to enable them to adapt to and prosper in the new society which European settlement among them would facilitate. Ngai Tahu expected by this arrangement with Kemp to participate fully in the new economy which the sale to Kemp would make possible. But while settlers prospered the Crown's obligations to Ngai Tahu were not honoured and they were reduced to poverty, distress and landlessness.

The land west of the Waiau

- 16.7.2 The claimants have said that the land west of the Waiau was wrongfully included in the Murihiku sale. This comprises the extensive area of the southern Fiordlands. After a careful and detailed consideration of all available evidence the tribunal was unable to sustain the claimants' grievance. The weight of evidence supported the Crown's claim that Ngai Tahu agreed to sell from coast to coast. But the tribunal also found that in addition to the Crown failing to reserve to

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Ngai Tahu ownership of various areas of land, including Rarotoka Island, which they sought to retain, the Crown further failed to ensure that Murihiku Ngai Tahu were left with adequate land for their present and future needs. The tribunal further found that the Crown's agent Mantell, failed to take any steps to consult Ngai Tahu as to the nature, location and extent of hapu hunting and food gathering rights over the tribal territory as part of the essential provision for their present and future needs. As a consequence Ngai Tahu were deprived of reasonable access to their traditional food resources including those west of the Waiau.

The Otakou tenths

- 16.7.3 The tribunal has not sustained the claimants' contention that FitzRoy's waiver proclamation of 26 March 1844, which provided for tenths, applied to the Otakou purchase. Nor has it upheld the claim that at the time of the purchase either the Crown or the New Zealand Company undertook that tenths would be provided. But the tribunal has found that the failure of the Crown either to make provision for tenths in terms of its then policy or to make other adequate provision for Ngai Tahu was a breach of the Crown's duty under the Treaty to set aside ample land as an economic base for the future. On different grounds then the claimants' grievance is justified.

Chapter 17

Mahinga Kai

**Toi tu te marae a Tane
Toi tu te marae a Tangaroa
Toi tu te Iwi**

**If the world of Tane survives
If the marae of Tangaroa survives
The people live on (J10:10)**

17.1 Introduction

In this part of the report the tribunal looks at Ngai Tahu's traditional relationship with the natural resources of their tribal territory. In dealing with Kemp's purchase, the tribunal found that the expression "mahinga kai" meant to Ngai Tahu "those places where food was produced or procured" (8.9.12). As an extension of this definition we were told by the claimant Henare Rakiihia Tau that his pukorero explained mahinga kai to him as:

Nga hua o te whenua
Nga hua o Tane me nga uri
o Tangaroa

This interpreted means the resources of the land, the resources from the bush and forests which includes all birds and animals dependant upon these resources, and the uri o Tangaroa refer to all living things within the waterways which include all water be it lake, river, lagoon or sea water. (J10:5)

The tribunal, in examining the meaning of mahinga kai, also dealt with the lack of provision made under the Kemp purchase to reserve and protect Ngai Tahu rights over mahinga kai. The tribunal found three breaches of the Treaty had occurred (8.9.19–21). We shall later refer to these findings. In addition, the tribunal has looked at mahinga kai in the context of the tribe's relationship with its resources in early pre-contact times and as well the impact of events during the contact period with Europeans 1769–1840 (3.2). In this section of the report we move on in history to look at the post-1840 period and in so doing will relate the story as given in evidence and submission.

There are two observations we must make: the story is only partly told here and the story is sad. These statements need explanation.

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As to the first observation, the tribunal has decided to divide its inquiry and issue separate reports on the major land claims, the sea-fisheries claim and the ancillary claims respectively. The reasons for this decision have been given earlier (1.6.15). Needless to say kai ika and kai moana resources are inextricably linked with kai awa, kai manu, kai roto and kai rakau. The fabric of Ngai Tahu mahinga kai can only be fully produced by interweaving all sources of kai. Also, in reporting separately on the hundred or so ancillary claims of Ngai Tahu, which deal mainly with specific grievances over such matters as loss of reserves, legislative omissions and errors, there will be instances in which mahinga kai will be involved, for example the fishing reserves at Lakes Wanaka and Hawea, Lake Tatawai and Lake Wainono. This report may also be inadequate in that it is difficult to portray in written form the total picture as seen by tribunal members, not only from the comprehensive evidence presented, but also from the on-site inspections of the polluted and depleted mahinga kai areas and the visual impact from inspecting artifacts and other taonga in various museums. Despite these inadequacies, which regrettably are unavoidable and do not allow the tribunal to adopt a holistic approach to all land and sea resources, we shall try hard to keep the overall scene before us.

As to the second point, this narration is sad, not only because it depicts what has happened to Ngai Tahu food resources as a result of settlement but because it also paints a sorry picture for all New Zealanders. When Hana Morgan, at Te Rau Aroha Marae at Awarua, on 20 April 1988, spoke for her marae regarding the depletion of kai moana by pollution and over fishing, none of those present could have remained untouched by her moving and compelling plea. She clearly and frankly explained how Maori had been dispossessed of their mana and rangatiratanga over mahinga kai and predicted that:

Within twenty years, the sea garden will be bare, just as our land is bereft of the native forests and birds that once abounded. (H13:55)

Hana Morgan's full submission will be reported in the sea fisheries report. It contains a message for all New Zealand.

Ngai Tahu's deeply-felt grievances can be traced back to the failure of the Crown's representatives to provide the tribe with adequate reserves, including specific kai resources. This omission has already been discussed at some length and will be dealt with again later.

We shall also be looking at the impact of settlement on mahinga kai. There can be no doubt that settlement has added to the pain of Ngai Tahu in the deprivation of mahinga kai. But settlement has also brought environmental damage affecting the whole community. In the end, not only will there be a need to find a compromise between

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the Crown and Ngai Tahu so as to restore mana and rangatiratanga to the tribe and honour to the Crown, but there will also be a need to find a compromise between people and nature for the good of all New Zealand. We hope the observations and findings of this tribunal may guide the parties towards achieving both these goals.

The tribunal held a number of hearings at which the mahinga kai grievances were raised by the claimants and responded to by the Crown. At some of these hearings sea fishery evidence was also tendered by the parties and by the New Zealand Fishing Industry Board and the New Zealand Fishing Industry Association. Over an unbroken 10 day period, 11–20 April 1988, the tribunal dealt specifically with mahinga kai issues, including some sea fishery matters, and travelled extensively over the South Island inspecting mahinga kai areas. The tribunal also had a brief opportunity to make an aerial inspection of traditional trails across the Southern Alps. Evidence was given to the tribunal by kaumatua and by an impressive array of professionals in the fields of archaeology, history, zoology, geography, biology and languages. Visits were also made to the Canterbury Museum, Otago Settlers Museum and Otago Museum. Once again the tribunal must say that the Crown has responded most competently and helpfully in the introduction of historical and other research material which has enabled the tribunal to assess the issues. As the evidence will show, we must all accept some responsibility for the deterioration that has taken place in our environment since people first put their feet on the land. The tribunal sounds this cautionary note early in this chapter of the report and will deal more fully with it at the end. Notwithstanding this caveat, as the evidence unfolded before the tribunal, it became clear that Ngai Tahu have suffered greatly from the adverse effects flowing from land settlement. We shall shortly relate and examine some of the specific grievances.

In the final section of this part we will give our findings. First we will look at the post 1840 relationship between Ngai Tahu and their resources.

17.2 **Ngai Tahu and Their Mahinga Kai After 1840**

17.2.1 As we have seen in earlier evidence, Ngai Tahu led a highly mobile life. For hundreds of years they pursued a seasonal round of hunting and food gathering over their huge territories. Survival largely depended on hunting and gathering kai. Movement and an understanding of the resources available over a wide territory were crucial for life (J10:99). We have already seen the map locating 3919 archaeological sites (H3:1) and which in effect traced out the entire South Island (figure 3.1). Professor Anderson described the hunter-

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gatherer economy and how the population dispersed during late spring to autumn and then retreated to long term settlements in winter and early spring. Various sections of the tribe would move to where resources were seasonably abundant, preserve the food and take it back to their more permanent settlements (H1:76–77). We have seen evidence of Ngai Tahu moving from the east and south, utilising resources during inland trails and while journeying to collect pounamu. There was the great annual migration south to the Titi Islands in autumn to obtain mutton bird. We have also seen earlier numerous examples of the fresh-water fishing activities of the tribe. Of one thing there can be no doubt: mahinga kai in its various forms was an integral part of the Maori economy and culture before contact with Europeans. Even after the land purchases, Ngai Tahu continued to gather their traditional food not only from areas near their settlements but also in journeys to far places. Despite the development of pastoral farming by the new settlers many Ngai Tahu continued to rely on their traditional hunting grounds for their existence.

- 17.2.2 However, European settlement inevitably began to impinge on Ngai Tahu mahinga kai resources. In 1865, some Canterbury farmers moved to stop Ngai Tahu families from trespassing on their land to hunt weka (J48:24).¹ Evidence given to Commissioner Mackay in 1891 often stressed the loss of mahinga kai. By the late nineteenth century most sources of mahinga kai in the Otakou block had been destroyed or enclosed by settler occupation. Ngai Tahu fell back on eeling and whitebaiting but these sources of food soon became threatened (F11:51).²

The following extract from the evidence of claimant Rakihihia Tau is quoted in full because it is a graphic illustration of just one Ngai Tahu family in the post World War 2 period:

I was brought up at Tuahiwi and my father was a seasonal worker with shearing as his main occupation. Because his work was seasonal, there were often periods when he was unemployed. When he was shearing the job would take him away from home and into the foothills and the high country. In his absence or at times when he was unemployed we depended on what we could catch to feed our family.

Dad and other relatives taught us the ways of catching food at very early ages. The people of Tuahiwi would camp for extended periods on the banks of the Ashley, Waimakariri and the Cam rivers near the sea and spend the days fishing both for personal use, barter or for sale. We hunted for Whitebait, Eels, Salmon, freshwater Crayfish, Flounder, Mussels and Pipsis. These were some of the fish caught. If we were lucky we would also get duck and geese eggs. We would cook and eat a lot of this food on the spot and some would be taken back to Tuahiwi for those who remained there.

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We routinely fished all the creeks and drains around Tuahiwi for Eels and Flounders. It is important to understand that the Eels, Flounders and Crayfish which were such an important part of our diet flourished in the side streams, drains and lagoons, which were much more important to us than the main rivers. These smaller water bodies are the first to disappear when farmers or Catchment Boards start land drainage or river management works. This is well illustrated by my earlier evidence which shows that all the fishery easements awarded to us last Century now no longer provide access to water.

We would regularly go fishing off the North Canterbury coast line and Banks Peninsula seeking kaimoana (Shellfish) and Kai ika (fin fish). We would keep some of the fish for ourselves and give some to our relatives who would always give us something in return. When I was young we would dry some of the fish we caught so that we had food to eat. In particular, I remember catching and drying Shark and, also, being given dried Shark by relatives who lived on the Coast. As a schoolboy I would take a strip of dried Shark to school for my lunch.

By the time I was a teenager the birds which our people had relied on for food, had largely disappeared so there was not much birding. Map 7 indicates bush in 1860 on Banks Peninsula which in turn identifies forest bird habitat. Today almost all of this forest cover has disappeared. We would catch the odd Kereru (wood pigeon) which could be found in odd pockets of bush in the Waipara area or among the cherry trees at Lowburn. I was grown up before anybody told me that it was illegal to catch the Pigeons. Occasionally Dad would bring Kereru or other birds home for food. I did not know the names of some of the birds he brought, they were just food. An example, my parents, Taua and Poua, made use of various roots as medical remedies. In our wanderings as children to quench our thirst we would eat certain parts of certain flowers. These no longer can be found. I like many other Ngai Tahu have tasted some potent home brews made out of the resources from the bush. However, none of these ever tasted as bad as that Pakeha medicine called castor oil. Suffice to say, I can understand the preference that many of us have made when having to decide between the two.

It is important to stress that the Kai which we got in this way formed the basis of our diet. It was not a case of catching food to supplement what we could buy, rather it was the other way round; we bought food to supplement what we caught. This practice was unquestioned among my family, it was the way that my parents and their grandparents had always lived.

I was brought up to believe that the Mahinga Kai was all ours. This was such a fundamental belief that it did not have to be stated except to pass it on to our children, or to explain it to the rare politician who bothered to ask us about our attitudes or beliefs. This belief was and is the most important that I have. It was the reason for the way my family lived for several generations and it has played an important part in the way I have lived.

I am now 46 years old. I was brought up to believe that Kemp's Deed gave us ownership of all the Mahinga Kai resources. For that reason I have felt free to hunt and fish wherever I liked. I spent 1 year at Canterbury University studying for a B. Com Degree but gave that up to become a Freezing Worker. Partly that decision was based on the fact

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that in an Accountant's office I earned 3.7.6 per week whereas, in the Freezing Works I could earn 19.0.0 per week. There was more to it than that though. I realised that living as my father had, I would be able to take jobs that would enable me to be in the right places at the right times to enjoy the pursuit of and the eating of Mahinga Kai.

For the last 28 years I have been a seasonal worker. In the summer and early autumn I would work in the Freezing Works at Canterbury or Bluff. Some evenings and weekends I would go fishing for recreation and for food. From April to the first half of May. I would go mutton birding on the Titi Islands. I would always catch enough to feed my family for the year with enough left over to sell. In the winter I got jobs in forestry work, either bush work or planting trees. This took me out into the countryside where I could catch fish and sometimes birds, which I would eat on the spot and, when there was enough, take some home to my family. This also allowed me to spend a season with my family in South Westland fishing commercially for Whitebait and living off what nature provided.

Living the seasonal way I am repeating the pattern of my father's life, except that he went shearing in the summer whereas I went to the freezing works. In a modified way we have both followed a seasonal cycle around the countryside just as our ancestors did before the Pakeha arrived.

In recent years the Mahinga Kai has got scarce. Rivers are now managed and their water is extracted for irrigation and used to carry effluent to the sea. The creeks, drains and lagoons have largely dried up, and where they still have water, the fish and eels have largely gone. There is little point in launching a small boat to go fishing off the coast, those fish are gone too. When I go to the Titi Islands I can no longer rely on Paua for food, nearly all the beds have been fished out by large boats in the last ten years.

The Mahinga Kai which was our principal source of food is in the process of disappearing and there does not seem to be anything we can do about it. (J10:21-25)

We shall now look at other evidence and submissions from the people of Ngai Tahu.

Kaikoura

- 17.2.3 Trevor Hapi Howse told how in his early childhood he was influenced by his grandparents who taught him the traditional way of gathering, preparing, storing and conserving natural resources – skills he still practices today. This witness said his generation, with some possible exceptions, was probably among the last to have been taught the art of survival with the use of traditional methods of conservation.

Mr Howse believed Maori history and oral traditions proved conclusively that coastal waters, rivers, lakes and forest were as important spiritually as they were physically to their well-being as a people (H7:32). A list of mahinga kai resources which were in common use by his Tupuna was put in evidence. He said these food resources were relied on heavily in his early childhood but now, under government

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legislation, such rights have virtually vanished (H7:32). A second witness, Wiremu Solomon, gave extracts from legends to illustrate the location and abundance of food resources used by Ngati Kuri and their right through whakapapa to these resources. He claimed that most rivers within the Ngati Kuri rohe have been depleted of kai, that kanakana and mountain trout have not been seen in the rivers for years, and that weka and kereru are rare and kaka and kiwi are no longer sighted as a result of the loss of areas of native forest (H7:6). The following is a summary of details of the maps supplied by this witness.

- A map, which is marked confidential, lists key pa sites and also mahinga kai sites. There are approximately 200 place names indicated on this map throughout the Kaikoura district going up as far as Parinui o Whiti (White Bluffs) (H28).
- A further confidential map which lists all the kai manu that were taken in the same area, from Parinui o Whiti, down to the Waiau. It also lists some of the estuarine shellfish (H29).
- Another map which relates mainly to pa sites around the Kaikoura peninsula (H30).
- There is a comprehensive map of rivers and springs in the same area of the Waiau down to the Hurunui. It indicates kai awa for tuna, inanga, pakiki, kakapu and koura (H32).
- A further map lists kai roto throughout the Kaikoura area. It sites all of the particular kai roto by way of a key and the names that are listed are harakeke, raupo, taramea, kiekie, pingao, tikumu. Then it shows the gardens and trees. No date is shown on the map but it was presented as traditional evidence of Ngati Kuri on sources of mahinga kai available on the land (J11).

The tribunal was deeply impressed by the efforts made by Ngati Kuri in the production of this material on mahinga kai.

Canterbury

- 17.2.4 Rawiri Te Maire Tau of Ngai Tuahuriri claimed that Ngai Tahu of Canterbury sold their land because they believed, among other things, that their mahinga kai would be reserved for their use. However, he said the Crown failed to honour this promise. He identified traditional areas of mahinga kai including a reference to Banks Peninsula which has the Maori name of "Te Pataka a Rakaihautu" as evidence of its reputation as being abundant with resources. Mr Tau asserted that Ngai Tahu of Canterbury were not allocated adequate reserves to support their people by cultivation nor were adequate mahinga kai reserves created. He argued that as a result, Ngai Tahu could not live either within the economy of the

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Maori or the non-Maori. In addition to this, land was being modified by settlers, and the creation of farms on the plains and run-holdings in the high country led to both lack of access to traditional areas of mahinga kai and the depletion of kai manu and kai aruhe in those areas. He further suggested that areas which were set aside as fishing reserves were unfit for use by as early as 1891 (H6:33).

It is evident that Ngai Tuahuriri, even after the sale of Canterbury, continued to use the waterways. We were told that the Rakahauri (Ashley), Waimakariri and Rua Taniwha (Cam) were three prominent waterways which continued to sustain the tribe. They also relied heavily on the lagoon Tutae Patu from which large quantities of tuna were taken. We shall see later how settlement ended this lagoon as a resource. A number of witnesses also spoke of Waihou and its importance. Waihora (Lake Ellesmere) and Wairewa (Lake Forsyth) will be dealt with separately.

South Canterbury

17.2.5 We were told by the people of Arowhenua how all the lakes and rivers in the area were once a source of food.

Jack Reihana told of camping for a week or more with his grandmother to catch and preserve eels at Lake Wainono and remembers another old lady bringing home large quantities of dried eels from the Waitarokaoa (H10:2).

William Torepe reviewed past and present availability of mahinga kai from Waitaki to Rakaia (H10:4). He briefly commented on the presence or absence of such kai as tuna, fish, watercress, wild fowl and acclimatised species in the Opihi, Waihi and Temuka Rivers, Milford Lagoon, Hae Hae Te Moana, Kakahu, Lakes Tekapo, Alexandrina (McGregor), Wainono, Benmore and Aviemore, the beach in the vicinity of Pareora River and Waimate Creek. This witness sadly related the diminution of "Maori kai", which he listed at the beginning of his submission, and how this has affected traditional hospitality to guests on the marae (H10:8).

Kelvin Anglem, who has lived all his life at Arowhenua, spoke of the past abundance of eels in the Opihi and of his many trips made alone or with his grandparents to catch eels which were preserved or bartered. Like other witnesses he recorded the depletion of tuna, whitebait and kanakana (H10:19).

The tribunal was most interested in a thoughtful and sympathetic submission from Murray Bruce, a third generation New Zealander whose great grandfather emigrated from Scotland in 1860 and commenced farming in Cheviot in 1869. Mr Bruce spoke of his family's

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association with the Maori people of the area. He said that he had studied historical records which indicated the Waihou area once supported 8.3 per cent of the Maori population of the South Island and was a major natural food supply district. He said that the tangata whenua lived permanently at the pa on the terrace above the mouth of the Willowbridge Creek and were able to obtain from the Waihou the following resources: fernroot, cabbage tree, raupo, purau, patiki, hau eels, whitebait, silveries, kokopu, grayling, giant bully, kaka, pigeon, weka, tui, parakeets, pukeko, ducks and teal. He referred to a book by E C Studholme, *Te Waimate*, which said the area was:

a veritable paradise for natives, on account of the wonderful supply of food.³

Mr Bruce stated that use would have been made of the estuary at the mouth of the river and of the nearby 2500 acre Waimate bush which contained totara, matai, miro, broadleaf, kahikatea, rimu, flax, cabbage trees, fernroot and raupo. He was strongly in favour of granting local Maori reserves for access to mahinga kai so that the kaumatua were not strangers on their river (H10:25).

Another witness from Arowhenua, Kelvyn Davis Te Maire, noted that the areas of mahinga kai known to him from childhood. He stressed that the areas were not merely mahinga kai but areas of historical importance to himself and his people (H10:33–34). Of most concern to Mr Te Maire were the streams of Wainono and its tributaries, the Waituna Creek, Hook Stream, Makikihi River, Waihou, and its tributaries the Dead Arm, the Box, Maori Lake and Waimate.

The Waitaki River was also important. Mr Te Maire gave a very detailed account of the fish, fowl and vegetable foods of mahinga kai known to him. Water fowl of several different species were caught without the use of a firearm. The swans were cared for by the elders and by his father in a way that one would look after hens. He recalled an elderly cousin remarking to his father about being a nurseryman. He also remembered being sent down to the beachfront, the nesting area, and collecting driftwood and raupo to strengthen the nests, thus stopping eggs and young swans from falling into the water and destroying the young. Whilst this was being done eggs were taken for food, but the young people were told firmly that “when the first bird sat, were not to return”. He complained, “we had that role of Kaitiaki removed by way of regulation and new managers” (H10:33).

He blamed the acclimatisation society for mismanaging the wildlife because they did not care for it the way his people did. He spoke of his affinity with the rivers and lakes, similar to that of his father and

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of the importance of this area for mahinga kai to the runanga of Waihao (H10:32).

Two further witnesses, Rangimarie Te Maiharoa and Te Ao Hurae Waaka, related past history of the district and how the whole area from the eastern seashore to the main divide was the stamping ground of the people of Arowhenua (H10:47; H47.1). We were told by Rangimarie Te Maiharoa of the reliance of his people on the Waitaki river mouth and the resources such as whitebait, paraki, mullet, kahawai, the eggs of marten and terns, and kaio, which he gathered as a boy. He also spoke of the importance of Lake Wainono and of a visit with his father in 1936–37 when they speared many eels at Parihaka.

During the hearing the claimants produced in evidence a book written by Buddy Mikaere entitled *Te Maiharoa and the Promised Land*. In chapters 7 and 8 Mikaere describes the Maori prophet's heke to, and the settlement at, Omarama in 1877. He relates how the people fed themselves by growing potatoes and vegetables, grazing cattle, pigs and fowls, taming a flock of karoro, and catching weka, putakita, parera, tatoa and whio. Fish were a major item of diet. As the author says:

The Omarama district had long been known as an eeling centre; the northern end of nearby Lake Hawea was the site of an ancient pa built to protect the eel weir on the lake . . .

Other places in the area had even stronger associations with the past, especially for the descendants of Rakaihautu. Take Karaka, now Ram Island, in the middle of Takapo (Lake Tekapo), was the home of the ancestors of the Arowhenua people. In those days the haumata (snow grass) grew over one and a half metres high, and abounded with weka and succulent kiore (native rats). Such was the reputation of Takapo as a mahika kai that people came from as far away as Kaiapoi, several hundred kilometres to the north, to trade for food. (J48)⁴

This then was the evidence received by the tribunal from and about the people of Arowhenua.

Otakou

17.2.6 The tribunal received quite detailed traditional information on behalf of the tangata whenua of Otakou on the past available food resources.

Edward Ellison's carefully prepared and well-presented submission, (H12 and H53) not only annotated the various types of kai that were found in the area, but also carefully detailed the way they were procured and processed, where the mahinga kai sites were found and the routes that were traversed to reach them. For example:

A coastal track from the mouth of the Mataau passes up the coast north to the peninsula passing several villages on the way. On overland journeys

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sustenance could be got from several types of plants. When travelling through rich pliable soils the fernroot was dug. The best type being crisp enough to break easily when bent. The roots were roasted on a fire, then bruised by a flat stone, the long fibres being drawn out, the remaining substance being pounded to a tough dough then eaten. While travelling on dry open plains or away from the coast the old Maori would often during the season of the tutu fruit (summer) pick the ripe berry of the tutu plant, strain the fruit through a bag, this would produce a refreshing juice on a hot day.

It was interesting to note the diverse routes and in particular the special foods of some areas. He spoke of one such mahinga kai:

There were many Career nesting areas around the cliff faces facing the ocean. It was a favourite pastime to gather the eggs of the Karoro to supplement the diet. This was a dangerous task as it meant scaling the cliff faces in search of nests. In order to get fresh eggs a regular run of nests would be harvested every other day so that the eggs were no more than two days old. This activity took place from Pukekura at various points to Pikiwhara (Sandymount) up until recent times. (H12:50)

Edward Ellison's submission contained a wealth of information about the ways mahinga kai was processed and preserved. The following account describes the manufacture of poha for preserving titi:

Four or five poha can be got from a good length of bull kelp. The kelp is koko'd (opened) by pushing the hand through and care is taken not to push in the edges but a fair margin is left to avoid any tendency for edges to split when drying. The sun and wind also koko the bag. Pupuhi (blow it up) when green and hang it up in the wind and sun (not in the rain). It can be blown up with the mouth also or with a pupuhi pipe. A flax coop being round the poha mouth ready to tighten when blowing ceases. The tighter it is blown the better. It usually takes 2–3 days to dry. It is hung up inside for a day then deflated to whakahau (soften it).

Usually laid on the grass Taritari and covered with grass to take the hardness out of it. Water must not be let on it when hard and dry or it will be ruined. When the bag is pliable the edges are trimmed and the bag rolled up for future use. In earlier times the bags were buried in the earth (tapuke covered with earth) to soften them. The bag was then worked until like elastic. The mouths were stretched and the birds rammed in them. Small poha hold 18–20 birds but some large poha hold as many as 110 birds, 40 or 50 was the average . . . In the poha the hard "cord" of kelp where there is no fringe is called taha rakau (wooden edge). Young searchers were [encouraged] to look for this edge. These poha were often traded to the Rakiura Maori for Poha full of titi. (H12:4)

Edward Ellison claimed that very few traditional resources have been available since the turn of the century as most mahinga kai have disappeared. He instanced woodhen, ti root and fern root, and referred to kai moana as an over-exploited resource, affected also by pollution.

Matthew Ellison dealt more fully with the devastating depletion of mahinga kai in the Otakou region (H12). He expressed concern about

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the pollution of the waterways within the Puketeraki area, claiming that nutrient waste, fertiliser runoff and raw sewerage have rendered the kai moana within the Waikouaiti River and Blueskin Bay inedible. Local bush clearance has led to the disappearance of kai moana and root and berry food, and access by tangata whenua to the remaining bush is impossible. Matthew Ellison claimed that paua beds have been depleted from over-exploitation which the fishing regulations fail to control. He argued that the taking of water, land reclamation and bush clearance have caused the silting and destruction of pipi beds, and the remaining two mussel beds were over-exploited. He also referred to legislation which denied Maori rights to take woodpigeon, weka, and out of season game such as native duck, swan, pukeko and swan eggs. He asserted that as equal partners to the Treaty, the manawhenua of Ngai Tahu should be recognised and that specific areas should come under the control and management of the tangata whenua.

The last witness we refer to from this region was David Marama Miller, a kaumatua and a shareholder of the Purakanui Incorporation (H52). He recorded past hunting and gathering in the Purakanui area from his father's knowledge and from archaeological records. Mr Miller referred mainly to the over-fishing and pollution of mussel, paua and cockle beds, and asks that stringent protection measures be introduced.

Murihiku and Rakiura

- 17.2.7 At its sitting on Te Rau Aroha marae at Awarua (Bluff), the tribunal heard submission from people of Murihiku and Rakiura. Taare Bradshaw (H13:22) claimed that with the aid of old whakapapa he had identified areas of mahinga kai and in particular the seasonal round of titi, weka kanakana and eel catching. In his submission he referred in great detail to the food resources of Murihiku including the bird life obtained from the forests and the fruits from karaka, kowhai, totara, manuka, koromiko, tupare, teteaweka, ngaio, hinau and other trees. The leaves of the koromiko, manuka, and kokomuka were prescribed for medicinal purposes. He detailed the areas that were used for mahinga kai.

The tribunal was impressed by the knowledge of this witness who had, prior to making his submission and over a long period, spoken to numerous kaumatua and used the knowledge of some of the tupuna who had left behind their work. He detailed the yearly calendar of food gathering as explained to him by three of these people, essential to the well-being of the tribe as a whole.

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Kevin O'Connor gave evidence concerning the depletion of kai moana in and around Riverton (H13:37). This witness provided a list of commonly used plants for medicinal purposes (H55). He also referred to pollution and to the silting from bush clearance depleting kai awa in the Waiau. He went on to describe other obstacles impeding the flow of rivers and drains resulting in kai awa being prevented from reaching their breeding grounds.

Mr Harold Ashwell, in addition to documenting the traditional and present use of the Titi Islands, gave a very useful review of mahinga kai within and around Rakiura (H13). He spoke of the profusion of birds in the bush on Rakiura, including penguins, kiwi and kereru, and those nesting on the islands offshore, such as the Titi Islands. He referred to the depletion of this birdlife and to what he described as the "deplorable" destruction by the Department of Internal Affairs of the weka population on Whenua Hou. It was a most useful submission, which described his own experience of traditional activities including mahinga kai expeditions with his grandfather. These activities included the preparation and maintenance of poha, various methods of fishing, uses of plants and animals for medicinal purposes and the construction and use of the wharerau.

Mr Terence Gilroy, known as Paddy Gilroy, in speaking of titi-catching expeditions, again brought to the tribunal's notice the abundance of food resources which were present on the islands in the late 1800s and early 1900s (H13:16). He instanced weka, tui, kaka, kereru, rakuraku, korere, kina, paua, oysters, crayfish and other finned fish and lamented the present-day necessity to take food to the islands. We shall refer to this witness again when we deal with the Titi Islands.

George Newton Te Au gave evidence of his grandparents' access to abundant kai moana, kai ika, kai manu, kai awa and kai roto on Whenua Hou, Rakiura, Murihiku and Ruapuke. He recalled trips to the various islands to gather food and described various methods of catching weka and titi and preserving titi. He observed that these resources have diminished and blamed rats, pollution and over-fishing for the loss. He recommended an extension of the present rahui for at least two miles around the Titi Islands (H56:2).

Arabura

- 17.2.8 At the hearing in Hokitika on 15 April 1988 the tribunal heard the first evidence on west coast mahinga kai from an archaeologist Mr Ray Hooker (H57). Mr Hooker summarised the evidence of pre-European Maori settlement, occupation and subsistence in the area and augmented his submission with ethnographic material. He pointed out that changes in the coast line and river mouths had destroyed a large

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part of the Poutini archaeological record. He also said that dense coastal vegetation also hindered location and identification of archaeological sites. However within these limitations he was of the view that there was evidence of early settlement on the Poutini coast. In indicating there were six favourable economic zones which supported settlement, Mr Hooker confirmed that preferred settlement was coastal, especially near lagoons and swamps. He stated that a wide range of resources from coast to mountain were used but that onshore, inshore and offshore biota were of notable importance within the Maori diet.

- 17.2.9 The evidence which followed confirmed that Poutini Ngai Tahu still relate strongly to the forest, rivers and sea through their mahinga kai. Evidence was given concerning the past abundance of mahinga kai within the rohe of South Westland people. Gordon McLaren stated that the tupuna lived throughout the land; permanently where resources were especially abundant and replenishable, and nomadically where they were not. We were told:

The whole of the land from Waitaha to Piopiotahi was clothed in Tane's forest, and few spots would have gone untrudged by our early hunting parties. Unlike other areas of Aotearoa, birds and fish were prolific everywhere. From the forests came the manu – kiwi, kaka, tui, kereru, kakapo, makomako and a host of others; and the hua rakau from the karaka, kotukutuku, moro, matai, rimu, kahikatea, koromiko, hinau, totara, ti, pikopiko, katoke, kurau, mamaku and others.

Other products gathered were kareao for naki, toetoe for tukutuku, pingao, harakeke, kie kie, raupo, kuta for weaving. With manu there was little waste – the flesh was eaten, feathers were used for decoration and the bones were fashioned into fish hooks and spear heads.

Some had dual uses, such as harakeke which also had a medicinal value and an edible nectar, and others were universal in their use, such as the ti – the dried leaves were ideal for paraerae, the fruit was eaten and the roots, when cooked in umu, were a principal source of sugar.

Then there was the puha and watercress – both still taken frequently – the aruhe.

The swamps, lakes and rivers writhed with fish life, especially tuna – once a staple diet – and yielded other food sources such as weka, pukeko and whio . . . Tuna formed a big part of the diet in our tupuna, and hinaki were set all around the Makawhio-Maitahi area up until recent years. They are still taken, but no longer in great numbers. (H8:30–31)

The tribunal was told by Iris Climo, secretary of the Rata Branch of the Maori Women's Welfare League and involved in numerous Maori organisations, that her childhood was spent at Makawhio and that as a child her family virtually lived off the land as there were no roads. Supplies by sea came in every three months.

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She spoke of being given her “survival kit” (H8:39). Both men and women knew how to weave kono, kete, korowai, hinaki, snares, and fishing nets. She said:

We learned how to gather our materials, practising Conservation (although we did not call it that at the time) in taking only as much as we required and returning our scraps to the Source. The Moon was our calendar and we gathered food accordingly especially Kai Moana. We all knew how to kohikohi the birds and cook them in a variety of methods. We learnt how to cook in flax and hot ashes. Medicines using natural resources were also common. We lived as a Whanau looking after each other, taking only as much as we needed and bartering when necessary. Drying and smoking fish for out of season especially Inanga, gathering seagull eggs was also a Whanau event. Hand trawling involved the whole population. In fact fishing was a major occupation.

Living was almost communal, in that so much of what we did and learned were as a group rather than individual.

Everyone participated at Hui, held in the hall and I can remember being put on the mattresses to sleep.

My mother made flax cups to drink from, when we were near streams (H8:39).

Another witness, Kelly Russell Wilson was born at Hunts Beach in 1919 and he spoke of his mahinga kai expeditions in 31 different locations:

Martins Bay, Big Bay, Browns Refuge, Gorge River, Sand Rock Point, The Hope River, Barn Bay, Cascade, Red Hills, Cascade Plateau, Smoothwater, Jacksons Bay, Niels Beach, Waiatoto, Mussel Rock, Okuro, Waipa Maori Lake, Whakapoi, Abbey Rocks, Paringa, Ohunemaka, Heretaniwha, Makaawhio Bluff, Hunts Beach, Karangaroa, Gilespies, Lake Matheson, Oamaroa, Okarito, Whataroa and Saltwater (H8:21).

He identified the coast and coastal fishing grounds as providing the staple diet of kai moana and spoke of the importance of mana which resulted from the ability to provide sea food on a special occasion.

Traditional accounts of the use of lagoons and bush surrounding the Kowai River and the Arahura river mouth for gathering kai were given by James Mason Russell (H9:42). He said that depletion of inshore fisheries around the Arahura pa is noted to have occurred about 1960. Mr Russell blamed drainage or conversion of wetlands as the single biggest factor in depletion of whitebait because it altered their habitat.

Descriptions were given by this witness of fishing for tuna, mullet, flounder, trout, pateke, parera, putakiki and whitebait as well as watercress gathering and the catching of pukeko, weka, bush pigeons and wild ducks. This evidence was supported by Alan Lester Russell who gave statistics of fish caught some years ago but which now were

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depleted. He attributed this to the drainage of creeks, rockwalling of river, gold dredge tailings, sewage, and over-fishing.

Before looking at the impact of settlement, we shall deal with three traditional mahinga kai areas of great importance to Ngai Tahu: the Titi Islands, Waihora (Lake Ellesmere) and Wairewa (Lake Forsyth). We shall also deal briefly with two other aspects of importance: Ngai Tahu commercial activities and conservation.

Titi and the Titi Islands

E tangi te Hakuwai
I runga i o Moutere
Whakamataku taku
ana au
Te kai tiaki nga titi
Nga mahinga kai

- 17.2.10 Ngai Tahu's relationship with the Titi Islands is undoubtedly a most important cultural, social and political facet of Ngai Tahu tribal identity. The group of islands are made up of both Crown islands and beneficial islands. The latter are beneficially owned by Ngai Tahu and collectively administered by those who have whakapapa rights. The individual rights of succession cannot be alienated by will or by any gift or sale. Upon the death of the holder the rights pass down to the children. Although there are regulations in force, these are to protect the resource for the owners. The following assessment of the situation was provided by Rakihia Tau:

Our relationship management and administration as Ngai Tahu Whanui of the mutton bird or Titi Islands is perhaps the nearest living example we have to the meaning of Rangatiratanga to our natural resources or mahinga kai. For example:

1 The decisions are made to the allocation of catching areas or wakawaka, the siting of houses, the welfare of the mutton birders and the protection and rules governing the environment. These decisions are determined by those who possess whakapapa or genealogy rights to our Titi Islands. These decisions are collective decisions.

2 Our social order can be seen. We live in our houses as whanau groups. We work collectively, to ensure good town planning, allocation of wakawaka (birding areas) fairly and equitably, ensuring our provisions are transported and catch returned to our points of departure, as well our collective responsibility for the health of those of our people on the Island. More importantly, to discuss and determine policies for the protection of the environment, rules for catching Titi for the retention of our manu kai and their environment. These are unwritten laws, laws we live by, laws that are taught to learner birders, and for this reason we have maintained our environment and manu kai. From this point each individual is at liberty to exercise his skills

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in hunting the Titi. The working or dressing of these birds for future use, can be worked individually, by whanau, or a mingling of whanau groups.

All options are working on our Island of Pohowaitai. However, the catch is the property of that individual, or the whanau to do with as he or she determine. The importance of our social order is that all must contribute individually for the well-being of our collective responsibility, the retention of our resources for our future generations. If the individual does not desire to work this is also shown in the results when returning home. No work, no benefit. We were denied our mahinga kai. What could not be denied us was our Whakapapa kupenga o Ngai Tahu Whanui. *Property rights* to our mahinga kai, that is:

“Nga Hua o te Whenua
Nga hua o Tane
me nga uri o Tangaroa”

is a fact, it did exist, it still exists, and the property rights, customs and practices are to be found on our Titi Islands.

Travelling by sea to the Titi Islands, areas were set aside for general tribal use to gather mahinga kai and Titi as well to berth the canoes of old or the boats of today. Puai landing on the Island of Taukihepa (South Cape) is one such landing place. There are many others. This principle I have shown with Map 1. Those of our people with the correct whakapapa proceed to where they possess their property rights. On the Island that I take my Titi, Pohowaitai, we determine our wakawaka, that is areas to take. These are identified by cut tracks. Where cut tracks do not exist, string is laid on the ground to ensure no poaching by your relations take place. Our property rights are guarded jealously. The strings and tracks are there to remind us of our responsibility to respect property rights as well as to prevent conflict. These customs that we still maintain on our Titi Island were the same customs applied to all our mahinga kai which are tied together by Te Aka o Tuwhenua as mentioned in my son's evidence. This gives rise to our statements, “we have one foot on land and one foot in the water”.

3 The retention of this mahinga kai resource is the most important value we have. Our conservation measures can only be maintained by recognising these Islands under a collective title, customary Maori land, and not as individual property. (J10:25)

Catching Titi

- 17.2.11 The importance of the Titi Islands as a past and present mahinga kai for Ngai Tahu was spelt out by many witnesses. Mutton birding was and is an integral part of the life of the people of Te Wai Pounamu and one which has survived through the enterprising skills of the people. People travel from many parts of the South Island and indeed from the North Island to take up their birding rights inherited according to whakapapa.

Those coming from the north and other parts of Te Wai Pounamu would cross over to Ruapuke where they would meet up with the iwi from Bluff before moving on to the outlying islands. On the return

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journey to Ruapuke they would be met by their whanau from other hapu who had travelled down to hoko for titi. Some would bring pawhara eels, kanakana and other delicacies for this purpose (H13:16).

We were told of the various methods used to catch titi. The season opens on 1 April, known as nanao. The catching of titi is done during daylight hours and the method is to locate the bird in the rua with a stick and then to reach in and pull it out of the rua. In some cases it is necessary to dig because the titi are too far in. When this occurs the hole is repaired by means of a puru, thus ensuring that the rua will be serviceable for the following season, and that the parent bird will return to it. From about 20–28 April a different method of catching titi is used. This was called rama or as it is commonly called now, torching. In the past the old people used bark, shaped like a cone, with burning fat inside a torch. This method was used by some right up to the late 1940s:

When I was a child, going with my parents, the poha was still being used but not as much as in my Taua's time. As children we still had to help with the gathering of harakeke (flax) and rimu, but barrels were introduced and the poha slowly vanished. (H13:17)

We were also told of how mutton birding had gradually become a more costly exercise. There was no longer time to gather and prepare harakeke and rimu for poha so that the people had to buy barrels and tins. Stores and provisions were paid for in titi at the end of the season.

The excess of titi were sold so that our parents could provide us with what we needed eg, our educational needs, health, clothing and a roof over our heads. (H13:18)

Although some witnesses considered that titi numbers had declined and blamed rat infestation, air and sea pollution, we were assured by Mr Harold Ashwell that the annual take of 250,000 titi would be more than compensated for by the annual natural increase from some of the outer islands such as Snares Island which was not used by Maori for mutton birding and has an estimated titi population of 10 million (tape H12:2210).

Application of Treaty principles to the Titi Islands

- 17.2.12 We have examined the grievance of Rakiura Maori in respect of the Titi Islands and also considered the legislation and regulations governing the administration of the islands (15.6). We also looked at the response of the Crown to the complaint that the tribe had been deprived of the full administration of the islands. The tribunal has earlier found that there was no breach of Treaty principles in the action taken by the Crown to issue regulations governing the administration of this resource. Indeed the Crown argued, and its

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principal witness Ronald Tindal, then district conservator for the Rakiura district of the Department of Conservation, claimed that rather than breach the Treaty, the Crown had upheld and applied at least three established Treaty principles, namely:

- protection of the food resource;
- benefit to Rakiura Maori and the Crown in safeguarding taonga by mutual action; and
- full consultation with the beneficial owners in introducing regulations and ensuring ongoing protection of the resource.

Not only have the beneficial owners unrestricted right of entry to their islands but they have regulatory protection from trespass or interference with their rights. We agree that this is a perfect application of the view expressed by the President of the Court of Appeal, Sir Robin Cooke, in *New Zealand Maori Council v Attorney General* [1987] 1 NZLR 641, 664:

the duty of the Crown is not merely passive but extends to active protection of Maori people in the use of their lands and waters to the fullest extent practicable.

Counsel for the Crown, Mrs Kenderdine, argued that the regulations contained a number of conservation measures and further provided for annual election of a committee of management from the beneficial owners and their spouses. Counsel went on to argue, persuasively as we have earlier seen, that there was no breach of Treaty principle but rather an application of the principles of protection, partnership and consultation, and kawanatanga of the Crown as envisaged in the Treaty.

The tribunal accepts the view that the present arrangement reflects the principle of partnership. It also indicates the possibilities in an exercise of rangatiratanga guaranteed and protected by the Crown. The fact that regulations were drawn up by beneficiaries in the land is a point not to be overlooked in the application of the principles of partnership in resource management.

It is unfortunate other mahinga kai were not regarded or protected in the same way. We shall shortly be looking at two other prime mahinga kai resources in Waihora and Wairewa. The tribunal takes the view that if specific resources such as tuna and kai moana had been set aside by those original Crown negotiators, and protected by reservation and regulation in the same way as the titi, we would not be concerned today in considering this general grievance of Ngai Tahu.

*The Ngai Tahu Report 1991****Ownership of the Crown Titi Islands***

- 17.2.13 Before leaving the Titi Islands there was one question that arose from the evidence. There was obviously strong feeling among Ngai Tahu, and not necessarily just Rakiura Ngai Tahu, that the Crown Titi Islands be similarly vested for a beneficial interest in Ngai Tahu. We recall that in addition to the islands reserved for Raikura Maori there are additional islands scattered around Rakiura (Stewart Island). These Crown islands passed into Crown ownership under the Rakiura purchase deed of 29 June 1864. The islands are more widely distributed than the beneficial islands and are generally reported to be less popular nesting areas of the titi. Both the beneficial islands and the Crown islands are used for catching titi and both sets of islands are subject to the Titi (Mutton Bird) Regulations 1978. The regulations provide, inter alia, that no-one may enter to take titi or their eggs unless that person is a Rakiura Maori or the spouse or widow or widower of a Rakiura Maori. "Rakiura Maori" as defined in the regulations is a member of Ngai Tahu or Ngati Mamoe and a descendant of the original Maori owners of Stewart Island. Whilst Rakiura Maori have unrestricted right of access to the beneficial islands for bird-taking purposes, it is necessary for written consent to be obtained from the Minister of Conservation or the minister's delegate before any person may land upon any Crown island.

Jane Davis gave evidence that when the Native Land Court, in February 1910, determined the persons entitled to titi rights on the beneficial islands, several families were not included in the ownership lists and these families as a result established greater ties with the seemingly unoccupied, unclaimed islands used less frequently by their tupuna, and considered Crown land (E31). Jane Davis called for a return of the Crown islands to the families who have maintained long association with them and claim that her family have rights to Putauhinu through seasonal association since 1930.

Other witnesses, such as Paddy Gilroy (H13:16), Harold Ashwell (L32:63) and George Te Au (E6:5) claimed that the Crown islands were never sold to the Crown and were not the islands "adjacent to the shore" referred to in the purchase deed or alternatively, that these islands belong to Rakiura Maori through long association.

The tribunal has earlier found that there is no evidence the islands were inadvertently sold or that those who took part in the sale were unaware of the inclusion of these islands. Jane Davis has available to her family the provision of section 452 of the Maori Affairs Act 1953 to rectify any error or omission made by the Native Land Court in 1910. It is a fact however that Ngai Tahu have been using the Crown islands for many years – in the case of Jane Davis's family, for some-

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thing like 60 years. So there has been a continuous and long association between the people and at least some, if not all, of the Crown islands. We can only presume that permission has been applied for and granted to these families.

Conservation values

- 17.2.14 The tribunal received valuable and important evidence from Mr Ronald Tindal, already referred to earlier. Mr Tindal listed in respect of both the Crown and beneficial islands a number of endangered birds, plants, animals and insects which exist on these islands and described the islands as “the last arks of many endangered species”. Mr Tindal emphasised succinctly how these species are not only a taonga for Ngai Tahu but also a treasure of the people of New Zealand and of the earth, “as a large refuge for many species from whom we inherited this world”. Mr Tindal’s plea in respect of Whenua Hou (Codfish Island) was also raised in his submission dealing with the Titi Islands (P8B).

The tribunal is sympathetic to this entreaty from a person who, by his actions as district conservator, has demonstrated he has the interests of Maori at heart in relation to their traditional food source.

We also note from Mr Tindal’s evidence that some of the Crown islands, such as Big Island, have certain birds and insects not present on the beneficial islands although the latter islands do also appear to have a wide range of endangered and rare species. We make this observation because ownership and access by the beneficial owners do not appear to have prevented coordinated control and protection of the endangered species present on both the Crown and beneficial island groups. The tribunal certainly understands the danger involved and recognises the need for a continuing protection regime, but wonders whether ownership of the islands is crucial to this question in the light of existing conservation and management controls. We shall return to this point very shortly but must respond to another argument presented against change of ownership. This appeared not in Mr Tindal’s submission concerning the Titi Islands but in an appended background note whose author was not given. This note concludes by saying:

These islands other than the beneficial islands have been properly paid for and we would be opposed to their return to any other party. However management control of birding (as per Regulations 1978) could be given to the Rakiura Maori people provided that control of access for other values rest with the Department of Conservation for the Crown. These are Islands of international importance. (P8:1:2)

Two points arise from this statement, which appears to be postulating a government position on the Crown islands. First it argues that as

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the islands were paid for by the Crown they should not be returned. Second, provided control of access for other values remains with the Department of Conservation, birding rights could be given to the Rakiura Maori people.

We do not propose to deal with the first argument at this point. It is inconsequential to the issue and would bear inquiry from a number of points of view including whether sufficient reserves were awarded or whether the purchase price in the deed was an adequate consideration for the land sold. In this connection we point out earlier sales in which the purchase price was a gratuity rather than an ascertained value. The second point however seems to make it clear that there need be no bar to controlled access and issue of titi rights to Rakiura Maori.

The tribunal notes from an answer given by Mr Tindal, when being questioned on Whenua Hou, that he had strong misgivings that change of ownership of that island would threaten effective and permanent control – a matter which was of vital importance nationally and internationally. We have already suggested an alternative for Whenua Hou (15.7.4). It is certainly now a most vital island in conservation management of rare and almost extinct species such as the kakapo.

Future Ownership

- 17.2.15 Returning to the Crown islands, the tribunal sees no reason for retention of Crown ownership and can see strong grounds for recognition of Ngai Tahu mana by returning beneficial ownership to Rakiura Maori. The tribunal must of course make it clear that it has not found any breach of Treaty principle in the Crown's dealings with Ngai Tahu in 1864. The tribunal therefore has no jurisdiction to make any recommendation under section 6(3) of the Treaty of Waitangi Act 1975. However the tribunal feels that there is considerable merit in the request made by Rakiura Ngai Tahu for beneficial ownership of the Crown islands to be vested in the tribe. The involvement of the tribe in titi gathering expeditions to the islands over a long period with Crown consent, although bestowing no legal rights, recognises a Ngai Tahu need and a government desire to cooperate. We feel the Rakiura people, with limited provision made for them in granted reserves, would warmly respond to the Crown transferring back beneficial ownership in the Crown islands. There would be a continuing need for protection by regulation. We do not intrude further by suggesting the form and method of re-vesting, except to note that section 437 of the Maori Affairs Act 1953 may be an appropriate vehicle. That particular section may be useful in responding to the request made by Mr Ashwell (H32:63) that the islands be vested in

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the runanga rather than individuals, while yet allowing provision to be made for existing users.

The tribunal makes no recommendation regarding the transfer of full legal title of either the beneficial or the Crown Titi Islands. That is a matter for the beneficial owners to consider should they wish to. They may have reasons for leaving legal ownership of the islands in the name of the Crown, who is there really in a trustee position. On the other hand Rakiura Maori may consider that full title to all the islands, both beneficial and Crown islands, should be vested in the persons found to be entitled, leaving the Crown to safeguard the public interest in the protection of endangered species by regulation. The restoration of full ownership to Ngai Tahu would not, in the tribunal's view, be inconsistent with the continued protection of endangered species and if Ngai Tahu seek the legal title to all the Titi Islands the tribunal would support that goal. As a first step in the process the Crown Islands could be put on the same basis as the beneficial islands by vesting beneficial ownership in such persons or bodies as may be nominated by Ngai Tahu. We respectfully draw the minister's attention to our views on this matter.

Waihora (Lake Ellesmere)

- 17.2.16 In chapter 8 we said that although Waihora fell within the boundaries of the Kemp purchase of 1848, Ngai Tahu would have never contemplated disposing of this most vital mahinga kai (8.7.7). We examined the high-handed actions of Mantell in totally rejecting Ngai Tahu requests for eel reserves. We concluded that it was clear Ngai Tahu did not intend to part with this treasured fishery and recommended that the Crown remedy the situation by vesting ownership of Waihora in Ngai Tahu. We will now look more particularly at this lake and its importance to the tribe as a continuing food source.

Waihora was once known by its more ancient name of Te Kete Ika o Rakaihautu or, at the Wairewa end, as Te Kete Ika o Tutekawa. Now it is more commonly referred to as Lake Ellesmere (H9:39). The lake itself was one of Ngai Tahu's most precious taonga, renowned for the quantity and variety of its fish, bird and other resources. The rights to these resources were shared by many different hapu, with Ngai Tuahuriri having access to the norther reaches, Ngati Ruahikihiki to the southern waters, while the hapu of Banks Peninsula had access to the fishery where the lake reached the bottom of the peninsula's hills. Other Ngai Tahu from more distant regions could call on its resources through the complex network of tribal whakapapa. In the mid-nineteenth century the lake was much larger than it is today. Drainage, reclamation and the more frequent opening of the lake to the sea have lowered its level and reduced its expanse. The foreshores

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which were once swampy wetlands rich in indigenous fauna, have long since been turned into pasture. Fish once present in abundance, such as tuna and patiki are now scarce. Runoff and pollution are seriously damaging the quality of the water.

Waihora: past and present

- 17.2.17 The importance of Waihora as a source of food was emphasised by several witnesses. At the time of giving evidence, Morris Te Whiti Love was an investigating official in the surface hydrology section of the North Canterbury Catchment and Regional Water Board. This board was formerly charged to administer Waihora as part of its territory under the Water and Soil Conservation Act 1967. These responsibilities have now passed to the Canterbury Regional Council. Mr Love gave evidence in his personal capacity (H9:20). He explained that Maori spiritual values associated with the lake were not easy to define fully:

The lake is seen by the Maori as in the form of the Patiki – the flounder with its mouth where the eels are said to enter the lake (Selwyn River) in the early morning, with the outlet at the pito (navel) which is seen traditionally as being somewhere nearer the middle of Kai-Torete Spit, as opposed to the present outlet to the southwest of the lake near Taumutu. (H9:30)

Mr Love said that in the past lake levels were much higher and the spit development may have meant the lake could be opened at a different place than is presently the case.

Mr Love stated that the lake margins were closely settled from early times with the inhabitants of many small villages living on the food from the lake and the surrounding area. The principal food resources were tuna, patiki, piharau, aua and inanga. The lake was opened to the sea by a channel dug through the shingles of the spit in much the same way it is today (except the location of the cut was probably different, and now machines are used). The lake was left to fill to a higher level. One of the reasons for opening the lake was to effect drainage and prevent inundation of the area around Taumutu, although the lake was opened for fisheries purposes as well.

Waihora was also used by Maori for birding. Water birds were gathered in great drives when they were moulting and unable to fly. Many of the foods were dried and stored for winter, including inanga, aua, kanakana, and koura. As well as the food resource, raupo, wiwi and harakeke grew in abundance in the swamps on the lake margin and on the sandy spit where there are large areas of pingao, a native sedge used for traditional crafts. Today with the revival of traditional crafts the demand for these materials has increased but many of the

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areas where they grew have been changed by stock or other developments.

Mr Love went on to say that Waihora was of prime importance as an eel fishery. This has been recognised by the Pakeha in recent times with 847 tonnes of eels being taken in 1976: 56 per cent of the national total. Flounder were and are an off-season catch and fishermen switch to flounder fishing when the eel activity reduces in May. He asserted that its use today as a commercial fishery indicates its continuing importance as a food gathering area, although indications show that the lake is declining as a food resource.

Mr Love said that the water quality had traditionally been of serious concern to Maori because of the many Maori values which are sustained by the lake. From the mid-1970s considerable research had been carried out to identify the causes of this problem and the then North Canterbury Catchment Board started to prepare an investigative report on water quality.

Unfortunately the lake is now highly eutrophic: nutrients have run into the water and provide food for various kinds of water plants and algae which flourish and absorb oxygen, making the lake less able to support fish and the micro-organisms on which fish feed.

Further despoliation has occurred from the use of fertiliser on the catchment area feeding the lake. Mr Love considered it difficult to see the condition of the lake improving and stated that any wise management regime could only hold nutrient inputs at their current levels. Although it would incur great cost, Mr Love suggested that significant improvement of water quality would only occur with the removal of all phosphorus, nitrogen and other nutrients found in fertiliser from the entire catchment area of the lake.

Mr Love went on to deal with Wairewa to which we will refer later. He pointed out the similarities between these two lakes. Wairewa is now completely eutrophic with high phosphorous and nitrogen loadings and sometimes the water is lethal to stock and humans. The problem is caused by a blue green algae which appears to flourish in water that is slightly saline, as is the case with both these lakes. In addition to the poor quality of water in the lake, there is a further difficulty in that the weedbeds from the lake were badly damaged in the Wahine storm of 1968 and are not recovering.

Mr Love gave evidence on the effect of the Water and Soil Conservation Act 1967 and on hearings of applications for rights to take water, or to discharge effluent into the lake. He referred to the hearing of an application in 1983 by the Canterbury Frozen Meat Company Ltd to discharge affluent into the lower Waimakariri near Belfast. There was

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no Maori input into the hearing and it was suggested that the cost of legal representation has contributed to lack of any Maori involvement in such hearings which are proceeding all the time.

In the view of this witness, legislation governing water use rights should provide for the recognition of Maori values at all water right hearings and in all catchment plans and further, that when experts are preparing any reports for hearings, they should be required to consult with relevant Maori interests and supply their reports to the relevant tribal authorities well in advance of any hearing. This would at least give Maori a better knowledge of what is going on.

The tribunal felt that this was a most helpful statement from a well-informed witness. Mr Love concluded that management of the lake from a Maori viewpoint would involve:

opening the Lake to enhance the fishery; promotion of the regeneration of the weedbeds; any action that could improve the water quality of the Lake; including the control of bird numbers; control of the land use of the Lake margins and control of the use of the lake or inflow streams as a place to discharge sewage. (H9:31)

- 17.2.18 Rewi Brown of Waitaha, Ngati Mamoe and Ngai Tahu descent and a farmer at Lakeside, formerly fished the lake until he was prevented from doing so by the review of fishing licences which required him to prove that 80 per cent of his income was derived from fishing.

He gave a submission on behalf of the Taumutu Runanga, asking for the return of the lake. Mr Brown voiced his concern about how the lake had been allowed to deteriorate and the way it had been over-fished without any regard for the future.

Mr Brown claimed that drainage of the lake and over-fishing had led to the disappearance of shellfish beds and depletion of fish. Commercial fishing of eel and the consequent depletion of eel population was of concern. Mr Brown suggested that the lake was once about twice the size it is today and that both Mantell's and Captain Thomas' maps have it extending to the foot Gebbies Pass. He said the resources of the lake, its tributaries and the surrounding area included many varieties of tuna, patiki, herring, pipi, large cockle beds, kanakana, inaka, fresh and sometimes saltwater koura, whitebait and paradise ducks (H9:39). He gave in evidence extracts from a paper prepared by the late Riki Ellison detailing the various species of eels and patiki.

Mr Brown stated that as a result of commercial fishing the lake was almost fished out of eels. Waihora has a Total Allowable Catch (TAC) of 36.5 tonnes divided among 11 fishermen and this witness claimed that no local Maori were involved in the fishing industry in the lake. He said this was partially due to the fact that Maori traditionally fished

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seasonally and this did not fit in with the 80 per cent of income provision (H9:39).

Another ex-fisherman excluded from the 80 per cent of income requirement, Donald Brown of Ngai Tahu, said both his father and his grandfather before him had fished the lake. He spoke of his school holidays as a child with his grandparents, uncles and aunts at the lake and of the changes that had occurred since the lake was drained. He said his father had been forced to leave the area because of insufficient reserves and that this had hurt the old people (H9:47).

Mere Teihoka spent her childhood with her family at Taumutu and ate food that was gathered around the area: puha, watercress, eels, herring, flounders, inaka, smelts and whitebait. She recalled that there used to be a large pipi bed in the lake when she was young and that the lake itself was very different from what it is now; much higher, with clear water and a shingle bottom.

She referred in her evidence to taking eels from the Koru, the creek that feeds the lake. Because she has lived at Taumutu all her life Mrs Teihoka has witnessed the change in Waihora and her submission noted the lack of eels, the reduction in size of flounder, the occurrence of slimy water, even trespass notices, all of which mean less access to these once abundant traditional resources. She charged the Crown with being an inefficient caretaker and objected to the lack of attention given to conservation of the resources and ensuring their survival. She gave this precis of what the eel resource once meant to her family:

When we went eeling some of the pakeha families – The Gullivers, Jock Patterson and Ron Morton used to go with us. Three families, us, the Nutiras and the Martins used to go out together. Jack Te Koa . . . had so many whatas over there, dad here and old Peti over there. The three families used to work together to pawhara them. They were left to dry – covered at night – the moon mustn't get on them at all. Beautiful – they were beautiful (H9:11).

Despite the importance of Waihora as a food resource, no reserves of any kind were created over it to protect its use by Ngai Tahu.

- 17.2.19 We now look at Ngai Tahu reaction to the lack of reserves generally. Although eel weirs had been requested at the time of the purchase none were reserved. Kemp later acknowledged that there had been discussion of landing places and eel weirs, though he did not understand the reservation of eel weirs to be an exclusive one (T1:138). Mantell by his own account turned down Ngai Tahu's request for eel weirs. We have dealt fully with this in 8.9.13. Mantell was adamant that the rights of the Crown to control the level of the lake should not be interfered with. As we have earlier seen, not only did Mantell

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deny the tribe's request to have this right acknowledged, but he also placed the whole issue of European settlement above any reservation of Ngai Tahu's mahinga kai. All that was reserved to Ngai Tahu at the lake were two reserves at Taumutu, one around the kaika including its immediate cultivations – reserve no 43, and another close by enclosing existing cultivations – reserve no 44. Together the reserves totalled 80 acres.

- 17.2.20 We turn now to look at developments after the purchase. These were discussed in submissions made by a Crown historian Mr Tony Walzl. He referred to changes taking place in the 1860s:

The market in which Ngai Tahu had been involved began to fail. Pastoralism became the dominant form of farming in the Island. Ngai Tahu, with their inadequate reserves and lack of capital were not able to increase their land holdings. In addition to this, the population rose fairly steadily through this decade putting further strains on the economy. Subsistence food-gathering would have gained increased importance. However this occurred at a time when the European settlement of the countryside began to intensify resulting in decreased access to traditional sites, or the loss of these sites through European land improvement schemes such as drainage. Ngai Tahu began to react and bring claims before the Government.

It was not until the mid-1860s that Ngai Tahu began to complain in a public sense about the loss of certain resources. (P10:69)

Mr Walzl quoted Waruwarutu's letter to the superintendent of Canterbury of 9 September 1865:

and now the water is being let off by the Pakehas, that is to say by the Government, so as that land may be made a sheep station by the Europeans, and now there is very little (or no) water, it has to be left for two or three years before there is sufficient water to overflow so as to enable us to catch eels; but no, it is being drained off by the Government, so as to be a source of emolument for them. (P10:70)⁵

The government and Waruwarutu differed as to whether the lake had been drained. No future action then occurred as the Native Land Court had been directed to investigate the claim to Kaitorete Spit and during this hearing several land claims brought the eel fishing question to light. During the hearing, evidence was given on the importance of the lake and spit for Ngai Tahu fishing.

Mr Walzl, in referring to Chief Judge Fenton's judgment, quoted this passage:

The evidences of occupation by the claimant and his ancestors all indicate that the tribe have always regarded this place as a valuable fishery. And Mr White clearly proves that they have exercised their rights since the contract of sale. And it is quite consistent with that contract that they should have done so. And, no doubt, in acting under the order of reference, the Court will recognise the fisheries (included

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in the phrase mahinga kai) as the most highly prized and valuable of all their possessions. (P10:72)⁶

Fenton obviously recognised the significance of the Waihora fisheries to the Ngai Tahu economy; an understanding he brought to his Kauwaeranga judgment a few years later.

Fenton dismissed the claim against the validity of the Kemp deed but expressed the view that a fishery easement could be made over the whole of the spit without compromising the ownership of the Crown. Despite this assurance and although the court did create a number of fishing reserves, no easement was granted over the spit itself. Mr Walzl went on to examine the extent of the reserves actually awarded by the court and possible reasons for the number not granted or reduced in size. He made the point that the list and location of the easements asked for and given at Canterbury showed that 20 years after the sale of the land, Ngai Tahu were still involved in certain traditional activities such as weka hunting. Mr Walzl said of Ngai Tahu:

They still knew the places where food could be gathered and it seems that they were still using these places even though some appear to have gone over into European hands. This is an interesting point. An examination of the list also shows that the easements given, even those requested were located close to Ngai Tahu settlement area. This supports the contention noted earlier that had the reserves been of adequate size initially, important food-gathering sources would have been included. (P10:83)

- 17.2.21 What emerged from this study of Waihora was that there were two economic systems with different priorities over natural resources in conflict with each other. As Ngai Tahu saw the position they had been promised that their rights to their traditional economy, which relied so heavily on mahinga kai, would be reserved for them. On the other hand the Crown was clearly of the view that this economy must not obstruct the demands of land settlement. Even when clear rights to the fishery were recognized in 1868, these were seen to run counter to the requirements of settlement. The agricultural and pastoral economy won the conflict. Ngai Tahu would have well understood that the resources of Waihora should be shared with the settlers. But as far as this tribunal can ascertain from the evidence submitted to it, Ngai Tahu themselves never agreed or wished to be excluded from the resources of that lake. This happened as a result of Kemp's, Mantell's and other Crown agents' omission in failing to create the specific reserves sought by the tribe.

Indeed, as Crown witness Ronald Little pointed out, as recently as 1979 the Maori Womens Welfare League petitioned the Minister of Fisheries for an exclusive Maori eel reserve in the lake. The request

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was rejected because of the importance of the area to commercial fishery for eels and the possibility that a precedent would be created. Mr Little confirmed, as did other evidence from Dr Peter Todd, that Waihora is highly eutrophic and its poor water quality has been of concern for 30 years (P16b:8).

- 17.2.22 It is important at this point to consider the evidence of Professor Walter Clark, vice-president of the North Canterbury Acclimatisation Society (NCAS) and convener of that society's water resources committee (P16c). His submission was made on behalf of the society which has responsibility under the Wildlife Act 1953 and the Fisheries Act 1983 for the day to day management of the acclimatised fish and wildlife resources in the North Canterbury district. This includes Waihora and Wairewa.

Professor Clark's submission was divided into three main matters, the first of which dealt with "The Maori as a conservationist". The second matter was directed to the non-participation by Maori in conservation matters regarding fish and game. We shall look at these questions later. The third related to Waihora. Professor Clark listed activities undertaken by the society since 1960 concerning the lake. These included objections to the discharge of sewage effluent, appearances before the Planning Tribunal, discussion on walkways, management of lakeside reserves, lake shore erosion and ranger patrol of the lake. Research has also been carried out on weed re-establishment, monitoring trout population in the Selwyn and the recruitment of black swan.

Professor Clark said the society was ready to cooperate with others in promoting a better understanding of the lake and its reserves. In 1980 the society convened a public symposium on Waihora. He concluded by saying the society had championed the cause of Waihora as a biological asset of great worth which it has tried to protect from environmental degradation.

The tribunal acknowledges the effort the society has made in respect of environmental preservation in the lake and indeed in other waterways around Canterbury but notes Ngai Tahu and other evidence which highlighted the substantial deterioration and damage to the waterways. We shall be looking at the work of the acclimatisation societies generally in a later section when we consider their relationship with tangata whenua and the impact of European-introduced fisheries on Maori mahinga kai.

Tribunal's recommendations

- 17.2.23 Despite all their requests, petitions, commissions and court hearings, the story is that Ngai Tahu have been completely disregarded over

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150 years in respect of their mahinga kai rights to Waihora. A few small reserves were granted for other freshwater fisheries in 1868 but as Mr Walzl concluded:

Despite the intent, the Land Court easements were unsuccessful. They didn't return all that was asked for and over the next decade and a half were allowed to be destroyed. (P10:97)

For the reasons earlier set out in this report it is only fair that Waihora be handed back and that the tribe be significantly involved in future decision-making concerning the lake (8.7). It is necessary to define with some accuracy what area of the lake is included in this recommendation. The tribunal observes that the question of remedies generally is being held over for direct negotiation between the claimants and Crown consequent upon determination of the issues and findings by this tribunal. The tribunal however firmly considers

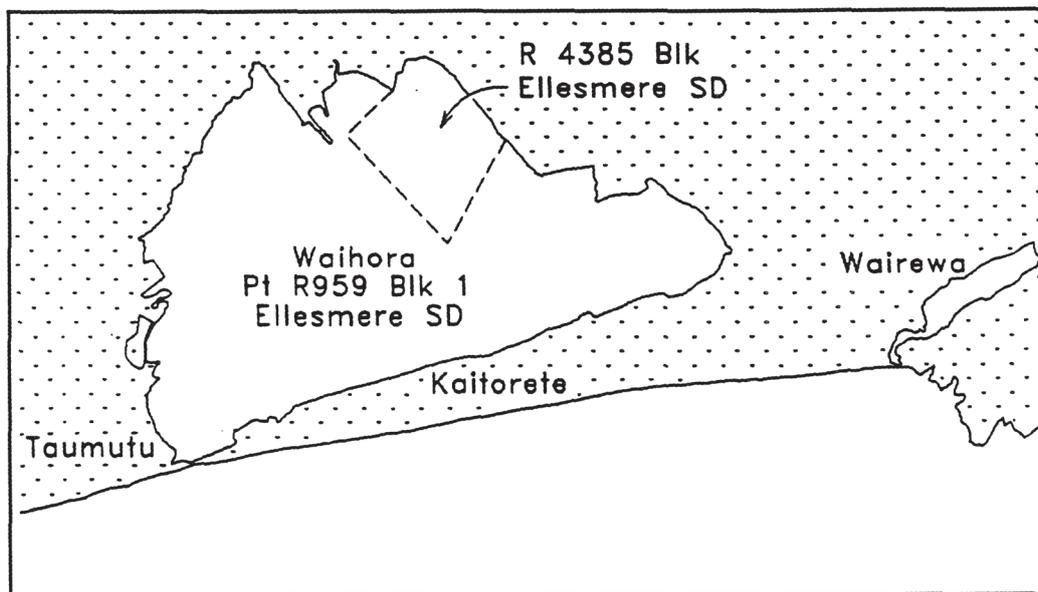


Figure 17.1: Waihora, as divided into parcels 19 and 22 on SO17138.

that Waihora should be returned to Ngai Tahu and wishes to make that view clear. We consider that the land identified as parcels 19 and 22 on map SO17138 and recorded on the accompanying schedule M36 as R4385 Blk 1 Ellsmere SD and pt R959 Blk Ellesmere SD should be returned to Ngai Tahu. An indication of the extent of this land is given in figure 17.1.

The tribunal leaves the question of the final area to be returned as a matter to be negotiated between the parties. There may need to be compromise reached on both sides because of matters not presently within the knowledge of this tribunal.

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17.2.24 We now return to look at what the tribunal means by ownership of the lake which is presently Crown land. As has been shown earlier in this report, Waihora was an important source of mahinga kai to Ngai Tahu. Not only did it provide fish and shellfish, it was also used for birding. The swamps provided raupo and harakeke and the sandy spit produced pingao. The waters of the lake were once clear and the lake bed shingly. Today it is in a sorry plight and the tribunal has some reservations that the return of ownership will of itself restore what has been lost. As we have seen from the evidence of Morris Love as well as Crown witnesses Ronald Little and Dr Peter Todd, both Waihora and Wairewa are in a highly eutrophic state and their poor water quality gives grave concern. Mr Little, as we shall shortly see, indicated some of the steps that must be taken to restore Wairewa. Mr Love considered that further deterioration of Waihora might be arrested but any improvement could only be effected at substantial cost. There is no advantage in returning ownership if it is not accompanied by significant and committed Crown action to improve the water quality so as to restore the lake as a tribal food resource. The tribunal considers that the Crown has a distinct duty to take an active role in the provision of financial, technical, scientific and management resources to save Waihora. The tribunal offers these following alternatives for consideration by Ngai Tahu and for discussion between the parties in the negotiations to follow this report. There may be others. We recommend that the Crown vest Waihora as an estate in fee simple in Ngai Tahu and transfer ownership of Waihora to Ngai Tahu and contemporaneously enter into a joint management scheme with Ngai Tahu which would include such matters as:

- opening the lake to improve the fishery; and
- improving water quality by controlling bird population and use of land margins around the lake, control of lake usage and control of sewage disposal.

The joint management scheme should bind the Crown to provide the financial and other resources mentioned above.

Alternatively we recommend that the Crown, in manner similar to the Titi Islands, vest beneficial ownership of Waihora in Ngai Tahu but remain on the title as trustee holding the legal estate. Regulations for the future control and management of the lake in manner similar to the Titi Island regulations could then be invoked to protect the resource. In both the above alternatives there would be partnership between Ngai Tahu and the Crown.

As trustee the Crown, in consultation with the owners, would be required to manage and provide resources to control the use of the

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lake. Provision for certain public facilities would no doubt be made by Ngai Tahu.

There is ample provision for ownership determination and also owner representation to be ordered by the Maori Land Court under the Maori Affairs Act 1953. The tribunal leaves the alternative that Ngai Tahu prefer as a matter to be selected by Ngai Tahu and then settled with the Crown.

The claimants stated that a move was afoot to create a wildlife reserve and that the Taumutu people objected. It is time that this lake, which is taonga to Ngai Tahu was returned and attempts made to stem the over-exploitation. Unless drastic remedial action is taken very shortly, another resource will disappear. Ngai Tahu must be consulted and involved in that action. The tribunal was requested to recommend the cancellation of commercial eel licences for Waihora and indeed in other districts. This question will be addressed in the later report as certain further evidence concerning the lake fisheries has been notified but not yet heard. We shall also deal later with action that needs to be taken over future administration of this lake.

Kaitorete Spit

- 17.2.25 Kaitorete, or the Ellesmere Spit, is an isthmus consisting of approximately 4860 hectares stretching 24 kilometres at the northern end of Ninety Mile Beach between Banks Peninsula and Taumutu, separating Waihora from the sea.

The spit is important to Ngai Tahu for several reasons in addition to its value for eeling. It provides access to Waihora and is of significant historical and archaeological importance (H9:16). Most of all it has national importance because it contains the largest continuous pingao plantation in the country.

Catherine Brown, Chairperson of the Taumutu Runanga and the Mid-Canterbury Maori Committee, addressed the tribunal on the subject of pingao (H9:14). A member of Te Waipounamu District Maori Council, and the Aotearoa Te Moana Nui a Kiwa weavers, she was concerned that this resource be protected. She quoted Te Aue Davis' submission to the Planning Tribunal regarding pingao:

Pingao is used extensively all over the country for weaving. The demand for it is greater now than ever before. It is used for weaving kete, whariki, and tuku panels. The decorative tukutuku panels are woven with pingao and kiekie. When used in tukutuku panels it acquires a spiritual dimension, the patterns it fashions tell of the tribal history and legends of the area and its people . . .

Kaitorete has the largest continuous pingao plantation in the country. Apart from Kaitorete, Te Waipounamu has very little pingao. (H9:17)

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Catherine Brown also mentioned Riki Ellison's report on the Ellesmere coastal area prepared in response to a Department of Lands and Survey investigation of the area. The report pointed out the scarcity of pingao in the North Island, and the consequent importance of Kaitorete Spit as a national taonga.

- 17.2.26 A plea for the protection of such an important resource as this should not be disregarded. The tribunal asks that this matter be brought to the notice of the Minister of Conservation with a view to the setting aside of the area comprising the principal pingao plantation as a local purpose reserve under the Reserves Act 1977.

Although neither the claimants nor the Crown provided the tribunal with factual information on the exact location of the pingao it would appear from a map handed in by Crown counsel, which is colour coded to designate various ownership, that the sand dune area on which the pingao is located is either Crown land, DOC stewardship land, DOC scientific reserves or Landcorp land. It should therefore be possible within the framework of this ownership to find an effective way to protect and even develop the pingao for Ngai Tahu use.

Wairewa (Lake Forsyth)

- 17.2.27 The tribunal visited this lake on 16 April 1988 and inspected the eel drains at the most southern end. We journeyed around the lake inspecting it from various locations. Upon our arrival we were greeted by several kaumatua and told of the history and importance of the lake to Ngati Irakehu.

Monteiro James Daniel (H:45) said Wairewa was the sanctuary of the tuna and that for generations Ngati Irakehu had looked after and fished this lake. As is the case with Waihora, Wairewa is a coastal lake where access from the sea is blocked by a shingle bar and the lake is opened by digging a channel through to the sea. During the autumn migration, eels congregate in the outlet area. Eel fishing in the lake is restricted to Maori.

Very helpful scientific evidence about the eel fisheries on both Waihora and Wairewa, including details of the species and their habits, was given by a Crown witness Dr Peter Todd. Dr Todd has been employed as a fisheries scientist with MAF for 18 years and is an expert in eel biology. He has been particularly interested in Maori fisheries for eels and lampreys on which he has published papers. As an appendix to his submission, Dr Todd showed a photograph of a fisherman hanging a large number of eels to cure on a drying frame in the traditional method. The photograph was taken in 1948. The tribunal had explained and demonstrated to them, the 10–15 metre

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long and 1–2 metre wide trenches that were dug into the shingle from the lake and towards the sea. At night the eels move into the trenches and are caught there. Dr Todd's article further explained that certain traditions are still adhered to by the tangata whenua. Eels moving around the mouth of the trench are not caught unless they move into the trench and no-one steps or jumps across the trench during fishing operations. (P16b: appendix 1).

The reason for this action became apparent both from our inspection of the eel trenches at Wairewa, where we saw a number of them side by side, and from the evidence of Trevor Howse (J10:70). Mr Howse explained that a hapu system of ownership based on whakapapa set out the wakawaka or drains of each group and their rights to fish. Mr Howse gave his whakapapa which proved his rights to the use of these wakawaka and provided a map which illustrated where the family drains were located (J36). We were informed that these family wakawaka were "positioned by star-sightings between three tapu drains of Taua-nui, Taua-iti and Taua-toa" (J10:70). The mountain Te Ahu Patiki plays its part in the positioning of these three wakawaka.

There are three reserves around the lake and these will be looked at in our later report on ancillary claims. Suffice to say at this point that although there are these three small reserves around the lake at certain sites, the most important area containing the eel wakawaka is Crown land without any reserve status. Although the iwi has the right to take tuna from the lake, further measures may be needed to ensure consultation takes place over issues that affect eeling, such as water quality and access to the lake bed and the shingle bar which blocks the lake from the sea. It would seem to the tribunal that this is another area which should be investigated so that user rights can be secured to the iwi.

- 17.2.28 This is more important when we turn back to Dr Todd's evidence and recall that Wairewa is highly eutrophic and has periodic toxic algae blooms during the summer and autumn. The water can become so toxic that over the past 18 years farmers have been warned on three or four occasions to remove stock. Our visit to the lake in April gave proof of the deteriorated water quality. On this question Ronald Little had this to say:

Dr Todd in his evidence describes the environmental problems facing Lake Forsyth. I would like to add that in my estimation the problems facing this lake are as acute, or even more so, than the problems facing Ellesmere. The removal of forests, followed by years of intensive farming have led to Lake Forsyth being overly enriched. The lake warms up considerably in summer due to its relatively shallow nature, and a fair portion of the lower lake levels will be stripped of oxygen. Large scale fish deaths have been reported, and it was surmised (T Eldon, MAFFish,

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Christchurch), that deaths were caused by wind created tidal action stranding fish in oxygen depleted water. Most serious has been the presence of toxic blue-green algae that have resulted in the death of stock drinking the lake water. That occurrence resulted in many restrictions being imposed on water use. Toxic blue-green algae has caused serious problems in Europe, both to stock and humans, but is still a rare problem in New Zealand. Remedial measures are possible but require catchment wide measures. A similar situation arose several years ago in Lake Tutira which lies just north of Napier. The Ministry was involved in a study over several years involving everything from artificially mixing the entire lake to the introduction of algae eating fish from China.

At this time the degradation of Lake Tutira has been stopped based on a total management plan created by the Catchment Board aided by other agencies. The solution lay in the interception and diversion of the nutrient rich incoming water, isolation of most of the lake from stock animals, provision of vegetation buffer strips around the lake to soak up run-off and forest planting on all slopes leading directly to the lake. I fear the Lake Forsyth is in need of a similar approach and perhaps similar remedies. (P16a:3)

- 17.2.29 The existing Maori fishery in Wairewa is authorised by the Fisheries Act 1983 and more particularly by the Fisheries (South-East Area Commercial Fishing) Regulations 1986 – regulation 11(1) and the Fisheries (South-East Area Amateur Fishing) Regulations 1986 – regulation 7.

Mr Little advised us that the exclusive Maori eeling right over the lake resulted from submission made by the late Joe Karetai in 1961. It was very clear from the evidence of the local people and also Crown witnesses that continuing to allow commercial taking of eels from tributaries and creeks around the lake has had an effect. Mr Little explained that commercial fishing of the tributaries has now stopped because of a general decline in eels but nevertheless he recommended that the tributaries of the lake be included in the regulatory restriction. We consider that is a desirable extension and should be implemented forthwith. The tribunal also agrees with Mr Little that to have an effective input into management control Maori need to have representation on catchment boards, district and regional councils, harbour boards and other local bodies. Certainly there does exist a need for these territorial bodies and societies to consider a Maori perspective. In addition, however, Maori commitment to take an active role in water right applications, town planning hearings etc, is also necessary.

It is easy enough for this tribunal to express the need for Maori representation on all these bodies dealing with conservation and environmental matters. Indeed we were urged by Mr Temm to make a strong statement as to the right that Ngai Tahu have to be consulted

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on matters that affect them and that Ngai Tahu must also be accorded a decision-making place in the way resources are managed (W1:299).

Strong statements may well be needed but effective implementation is more important. We shall deal with the question of consultation and representation generally at the conclusion of this chapter.

Tribunal finding and recommendations

- 17.2.30 The tribunal is of the view that the failure of the Crown to set aside eeling reserves to protect this resource at the southern end of the lake is in breach of the Crown's duty to protect Ngai Tahu rangatiratanga under the Treaty. In 1961 as a result of Ngai Tahu representation, an exclusive right to take eels from Wairewa was given to Maori and the lake became the only Maori eeling reserve in the South Island. The Crown have therefore come some distance in recognising the importance of this mahinga kai but this action has not conferred on Ngai Tahu exclusive rights to that eeling resource as it should have. The tribunal finds this omission to provide fishing right for Ngai Tahu is also in breach of Ngai Tahu rangatiratanga under article 2. The tribunal accordingly recommends that the regulations be amended to substitute "Ngai Tahu" for the word "Maori".

The tribunal also recommends that the Crown reserve an area around the southern outlet which will secure the tribe's right to have access to the shingle beds and wakawaka. The present two reserves known as Te Pourua at the outlet end of the lake are not so handily located to the eel-trapping site as was a previous reserve MR1279. This latter reserve according to Crown researcher David Alexander was sold in error and later replaced by the Te Pourua reserves (Q10:12). There should be consultation between the Crown and tribe to ensure Ngai Tahu can continue with this fishery. In addition the tribunal recommends that all commercial eel fishing be prohibited in the waters leading into the lake and the regulations reserving Ngai Tahu rights be amended so as to include these streams.

The longer term problem of water quality also needs to be addressed. It is not an easy matter but measures suggested by Crown witness Ronald Little as undertaken at Lake Tutira (P16a:3) should be considered. If such action is not already underway it would seem that Ngai Tahu, the Department of Conservation, the Canterbury Regional Council and the Ministry of Agriculture and Fisheries should be jointly preparing a management plan. Ngai Tahu should be taking part in such investigations and should be involved in the decision making process. The tribunal considers that similar action is needed for Wairewa. The Crown through its agencies must provide the resources to do this work. These two lakes are treasured resources of Ngai

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Tahu but as evidence has shown, also have public interest. Therefore it is imperative that the process to save them begins immediately.

Commercial activity of Ngai Tahu since 1840

- 17.2.31 In other parts of this report dealing with the interaction of Maori and settler we have seen that considerable trading activities took place between Ngai Tahu and the settlers. This matter will also be discussed in chapter 18 when we look at the social and economic position of Ngai Tahu after the purchase. Our discussion here will therefore be brief. At the beginning of the hearing on mahinga kai the tribe spoke about the importance of trade and barter. The claimant Rakihia Tau said:

Trade was and still is the base of our culture and our social order, as it is to all cultures. Map 3 [J26] identifies our major trails throughout the South Island to our greenstone deposits. Our culture did not stand still, our ancestors and we the present accept and innovate for progress, the use of technology to provide for a quality of life. For those who believe that our culture remains in a grass skirt era, know not their history or the reasons for the Treaty of Waitangi. There is sufficient evidence recorded by the Europeans as to Trade between us and them. (J10:12)

As the tribunal moved around the South Island we were told by many witnesses of how hapu bartered food with other hapu or sold on the local market. Some examples of this appear in the evidence as follows.

Alan Russell told of catching in one day 500 kerosene tins of whitebait and of railing these and other fish to Christchurch for sale (H8:80). Paddy Gilroy spoke of bartering titi for smoked eel and Iris Climo of bartering various foods (H13:16,H8:39).

As will be seen from other sections of this report the opportunity for Ngai Tahu to continue to barter and sell the food resources available to them was reduced as the resources, and access to them, diminished.

Conservation

- 17.2.32 The oral traditions of Maori have played a most significant part in handing down from generation to generation an understanding of the need to conserve food resources. During this claim the tribunal heard repeatedly many of the rules that governed the gathering or taking of mahinga kai. Conservation measures included not only just taking sufficient to meet requirements but also procedures to help the creation of further supplies. In some cases procedures were followed to thin out an overpopulated resource. Peter Ruka Korako said:

It was my grandfather's understanding that all the whanau were training two or perhaps three children per fishing family to the lore of the Marae o Tangaroa. I was one such person along with my brother McNelly Teoti

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William Ruka. We were taught the ancient rites of seeding the lakes, rocks, river beds and banks and the sea beds, rocks and river mouths . . .

Just an example of some of the practices of our tupuna, if a pipi bed was becoming overpopulated and the kai was not getting “fat” they would bring in a particular whelk and it would soon thin down the beds, eating only the weakest. (J10:74)

This witness gave a detailed account of how the spat would be collected at the time the kai moana released their seeds. The ovid/gravid seeds would be placed in poha, punched with holes and buried in the third and fourth wave line at low tide or placed carefully on rocks or in crevices where the wave pressure would slowly disperse the eggs into the surrounding area (J10:78). These rituals of seeding were accompanied by karakia.

Kelly Wilson from South Westland stated:

Conservation was also part of Maori culture. Elaborate laws – at times very detailed – governed use of the sea as they did use of the land.

We were made very aware of the rule that was strictly enforced. That in gathering shellfish, a flax Kete would be used no larger than was necessary to provide two meals for the household and one more strictly enforced was the rule that such a Kete should always be carried – never dragged over the mud flats or shellfish beds. To do so would expose other shellfish to the sun or to the ravages of the sea birds that would deplete the resource.

Even when whitebaiting it was the custom in some areas for children to be given the task of separating and throwing back some of the females – easily distinguishable by the dark stripe that keen young eyes could quickly pick out.

It is not remarkable that conservation was so important to our way of life. Protection of the resource is not a new idea, it’s no more than common sense readily recognised by any intelligent people. (H8:23)

Rakihihia Tau told of how the seine and trawl nets of the commercial fishermen catch the titi or parent bird. He said:

This of course causes two sins, the parent bird is lost as well as their young. It is an offence to kill a parent bird on the Titi Island. Punishment is that you are required to eat it. This maintains our customs regarding conservation and retention of our resources. I kill mutton birds with my hands. In this way parent birds are easily identified from young birds. (J10:11–12)

Edward Ellison explained how strict tapu was placed on all kai at certain times of the year. He said atua or protective gods were incorporated in the maintenance of the tapu. This was done to avoid over-exploitation (H12:6).

We saw earlier in Trevor Howse’s evidence how conservation applied in the taking of eggs and how well the philosophy of conservation

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and preservation was ingrained in him from his parents and grandparents (H7:30).

James Russell said this:

In a historically hand to mouth society, it is difficult to consider anything other than a conservation ethic. Wilful pollution or destruction of a waterway or a food resource would probably have an immediate and significantly detrimental effect on the community as a whole. Consequently, an elaborate set of rules, restrictions and guidelines were enforced, often by means of quasi-religious concepts such as “tapu”, “rahui”, “utu”, and “muru” to ensure that such resources were indeed maintained as appropriate for community needs, resource management, or “rakatirataka” or “kaitiakitaka”. (H8:51)

Iris Climo said how she learned to practice conservation in taking only as much as was required “and returning our [scraps] to the Source” (H8:39).

- 17.2.33 There is no doubt that Ngai Tahu adhered to strict rules of conduct in which tapu and rahui played an important role. The need for a preservation and conservation ethic is of great importance to people directly dependent on the limited food resource for their subsistence. But as has already been observed in previous tribunal reports, in the Maori mind concerning the conservation of food resources there is very much a spiritual content. This is no less the case for Ngai Tahu.

We have previously said how the tribunal was impressed with the restraint shown by almost all the witnesses as they spoke of their ancestors, of the trust their ancestors reposed in them to cherish their taonga and hand them on to their children. Their kainga nohonga were situated near and depended upon their mahinga kai. Marae were sited in prime locations for water and food gathering. As person after person outlined the present depleted position and related it to the ill effects of land settlement it was apparent there was a deep feeling of dismay and concern that the trust placed in them as kaitiaki had been thwarted.

- 17.2.34 Mr Ronald Little, in addition to his evidence on Waihora and Wairewa, (P16a), also described the nature of the South Island during early habitation. He voiced concern at a statement made during the hearing that “Pakehas always exploit–The Maoris always conserve” He accepted that this was a generalised observation but responded that there were “a large body of Pakeha New Zealanders who have as deep and abiding love of the land as do the Maori”. He said:

The reason I raise this rather emotional issue is threefold:

- 1 Considerable detrimental environmental alteration has occurred in this country due to human activity and there is considerable potential for more damage to occur.

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2 Past change has been mainly due to the Pakeha settlers, but the Maori must share a major share of the responsibility as well.

3 Preservation and enhancement of the fishery habitat in the future, will require the combined energies and determination of all people. (P15a:2)

Mr Little proceeded to outline what had happened to New Zealand forests since 800AD and we shall look at that question shortly. This witness sought to make three points. First, that both Maori and Pakeha had contributed to environmental change by destroying the forests and by introducing noxious animals and plants. Secondly, that not all actions and introduced things have been bad and some are now vital to the economy base. He referred to sheep, cattle, pasture grasses, trees, grains and the like. Third, he saw the need for legislative reform and for Maori values to be adequately considered when processing water rights (P15a:12).

As part of the evidence presented by the fishing industry we heard from Mr R N Holdaway (S17). His submission has been already referred to (3.2.17). He is presently completing a doctorate in zoology and has undertaken research on extinct indigenous birds of New Zealand. His paper looked at the effects of Polynesian colonisation and resource management practices on the marine and terrestrial fauna and flora of New Zealand. The following is an extract:

The long and sad record of environmental damage which has accompanied the migrations of Europeans around the globe is well known. Unfortunately, the dramatic effects on island environments resulting from the progressive colonisation of the Pacific Islands, including New Zealand, by Polynesian peoples in the past 3000 to 4000 years are not yet generally appreciated.

The main theme of this submission is that the Polynesian peoples had, throughout the period of their occupation, no more or less claim to have lived in harmony with their environment, or to have a greater environmental or conservation awareness, than do the Europeans who followed them. It is based on published evidence of environmental alteration and deterioration, faunal extinction, and resource depletion in prehistoric and protohistoric New Zealand, especially the South Island . . .

It is not the object of this submission to try and apportion blame for past environmental damage, but to point out that the first priorities of all colonists are for food and shelter and that the need for these necessities overrides other considerations. Resources are exploited in descending order of return for effort; as one resource is depleted, the next is tapped. In island ecosystems, particularly where, as in New Zealand and other Pacific islands, the indigenous animals and plants are extremely sensitive and vulnerable to disturbance, the effects of human colonisation can be devastating. In New Zealand, the resource base was limited by the small range of food sources; plants and birds from the forests, fish, shellfish, and seals from the sea. The history of the Maori people in New Zealand is one of continuous adaptation; adaptation at first to an environment vastly different from the home islands of the tropical South Pacific,

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then adaptation to the changes in resources and environment through the centuries. The final phase of this adaptation had probably been reached some time before European contact, when the major protein sources were fish and shellfish, supplemented by small bird fowl, and the staple diet was fern root or ti root, varied at least north of Banks Peninsula, by horticultural crops such as kumara.

Many of the changes wrought in prehistory can now only be perceived in outline, from varied, often conflicting, evidence. It is, however, a painful truth that new colonists everywhere have abused their new environment, and only come to terms with the problems of resource management and conservation of resources when there were no alternatives. It is easy to see the mistakes of the past two centuries for they are all around us and many of the changes have been documented; the mistakes of earlier times are much less visible.

The idea of a Golden Age in human affairs, where people lived in harmony with their environment persists: it is a mistaken idea, based on a lack of knowledge of the real effects of human colonisation. The weight of evidence suggests that the earliest colonists exploited the stocks of indigenous vertebrates until most, if not all, were extinct or reduced to remnants of no economic value. Exploitation patterns of marine resources have been more difficult to quantify, but results presented in this submission suggest that the same patterns of overexploitation were present. The marine resource was simply more difficult to overexploit with the available technology.

Conservation practices which were introduced, such as rahui, were controls placed on resource exploitation after the main environmental damage had occurred and when the alternative to conserving the remaining resources was starvation for individual communities. These restrictions applied only to those essential resources which provided the staples of diet, or clothing, or other raw materials. Other resources such as forests, which were perceived as being inexhaustible and which held fewer resources, were destroyed when the necessity arose.

The burning of large tracts of forest in the early 19th Century for potato cultivation is evidence that the intrinsic value of forests did not transcend desire for a new source of food and exchange. The present attitudes to forest remnants such as the Waitutu block in western Southland or to the Cook's petrel on Codfish Island (Te Au 1988) seem to indicate that the idea of conservation or preservation of a rare resource for its own sake, is not of great importance.

New Zealand was the last major land mass settled by humans. It is now clear that the pattern of exploitation of resources and initiation of major environmental change which can be discerned here had a history stretching back through eastern Polynesia to the islands of Western Polynesia and Melanesia. As well as overexploiting the natural food sources, the colonists altered the environment of each new island by removing the natural vegetation cover to plant crops or for other cultural activities. They also introduced, deliberately or accidentally, animals such as the kiore, or Pacific rat, the dog, pigs, and various lizards (Crombie and Steadman 1986), snails, and plants (Kirch 1982a), all of which had actual or potentially deleterious effects on the environment. (S17:2-4)

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Professor Walter Clark, whose background and submission we referred to earlier (17.2.22) canvassed similar material to that given by Mr Holdaway. He said that since human settlement of New Zealand, more than 40 bird species had become extinct and about 20 of these since Europeans arrived. He gave instances of the species lost and attributed it to deforestation during the course of using fire in moa hunting. Professor Clark considered that conservation was in fact a rare notion until very recent times.

- 17.2.35 The evidence of Mr Holdaway and Professor Clark certainly places a share of the responsibility on Maori for the change in the environment. But those changes took place over a period of 1100 years. Looked at in isolation it is not easy to draw comparable conclusions between what has taken place between the two periods 800–1840 and 1840–1990. In one case we are dealing with a period of 1100 years and in the other a mere 150 years. It must also be remembered that the people who inhabited this country in the pre-contact period had to live off the land. It would have been helpful to have had before the tribunal a similar analysis of what has taken place over the past 150 years. There is no yardstick by which to measure the relative responsibilities of Maori and Pakeha. Nor does that matter. The cold hard situation is that there are ominous signs we have not yet learned from history. It is not the task of this tribunal however to measure blame for what has happened to our environment and what needs to be done. There are encouraging signs of awareness and desire to act by others. The tribunal's jurisdiction is to determine whether any act or omission of the Crown is inconsistent with the principles of the Treaty. The important line to draw is the one that divides any Crown breach of Treaty principles on the one side from grievances of dissatisfaction that arise out of the process of change in a developing society on the other side. These latter matters will not be matters strictly within the jurisdiction of the tribunal to recommend for remedy. The tribunal considers however that having had those issues placed before it, it may be helpful for the minister to receive a statement of our views. We shall therefore continue to comment on some of these matters and at the end of this chapter will look at the conclusions to be drawn.

We now move on to look more directly at the impact of settlement on Ngai Tahu.

17.3 **The Impact of Settlement**

Introduction

- 17.3.1 In chapter 18 we shall be looking at the social and economic condition of Ngai Tahu following the Crown purchases. To some extent therefore there is an overlap with this section which looks at the

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impact of settlement on mahinga kai. We shall endeavour to restrict the subject matter to mahinga kai and in so doing look at specific matters such as deforestation, clearing and drainage, water use and quality, acclimatisation, lack of access and pollution. As we have already reported, the tribunal has listened to many grievances of Ngai Tahu concerning the loss of their food resources. Most of these arise as a consequence of the development of New Zealand after the arrival of settlers. Some of them are of comparatively recent origin. Many of them will evoke a supporting sigh from other New Zealanders. In the end it will have to be the collective voice of the majority of New Zealanders that will direct change. Here is what one witness said:

I look at these areas which I have mentioned here in the lakes, the mountains, the rivers, wetland areas, the forests, the estuaries and the sea, with saddened heart and misty eyes, at the rape, pillage and destruction of the national assets of this beautiful land of ours.

Our rivers, lakes and wetlands or what is left of them, most of our wetlands have been drained, nearly all of our rivers have been interfered with, or would meddled with be a better phrase to use at this time. I see raw sewerage, dead livestock, and other obnoxious materials, pouring down our waterways out to the open sea, little wonder that these areas of mahi kai are no longer fit for human consumption.

Our forests, practically non-existent, and our native timbers, that is the chips, piled up in mountains along the quay sides of our ports awaiting export to foreign parts. I wonder at the mentality of all this carnage.

Is this the heritage that we of this generation are going to bequeath to our future descendants? Who is responsible?

I ask, where is the legislation that should be protecting these environments, and how good is it? (H13:29)

Several witnesses spoke of how the loss of traditional food resources and lack of land contributed to loss of culture. In a frank analysis of land loss and prejudicial effect on the people of Otakou, Bill Dacker cited this statement given by Hoani Tukao Wira to the 1891 Mackay inquiry:

The Natives have suffered since 1848 . . . in the loss of their *mahinga kai* and other privileges. Prior to that they were able to procure all their old descriptions of food. Now the rivers are stocked with trout, and the lagoons and lakes are dried up, their fish killed, and the wekas and other birds destroyed by the progress of civilisation . . . In former times their storehouses were full of food, but they had no use for whatas now. Have to obtain our supplies from the storekeepers now, which causes us to incur debts, as we are unable to maintain ourselves off the land. (F11:65)⁷

It is true that new foods were available to Ngai Tahu, but as Mr Dacker said, these became:

a matter of necessity rather than choice and a major measure of wealth in Maori terms was lost. From this loss the cultural bonds that were expressed through the exchange of foods, at hui, tangi and, formerly,

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kaihaokai, that bound the people to each other and to the land, began to suffer. (F11:66)

We were told by Rakihia Tau:

I have tried to keep this evidence objective and unemotional but I would not like to leave the tribunal with the impression that the Mahinga Kai issue is just that. I feel a deep sense of outrage that the promise to preserve our Mahinga Kai has been broken and that what Mahinga Kai is still left is fast disappearing. I am also conscious that those who make the decisions to clear the bush, control river flows, extract water for irrigation and discharge effluent into the rivers, do so with little or no consideration for our feelings or our traditions. To be fair, there are some signs that some of the decision makers, especially the North Canterbury Catchment Board are now prepared to listen to our views. Nevertheless, apart from the Town and Country Planning Act, there is almost no statutory requirement that they do so. (J10:25)

Crown historian Tony Walzl reported that in the years following the Native Land Court grants in 1868 the availability of resources to Ngai Tahu decreased, but there is little evidence available to document this process (P10:85). The Smith–Nairn commission in 1879 opened up the subject and many Ngai Tahu detailed the loss of their food gathering places. Mr Walzl conjectured that by this time Ngai Tahu were generally realising that many of their land-based resources could not be returned and began to concentrate on fishing matters. Mr Walzl referred to Mackay’s summary of the position in 1881:

The increase of civilisation around them, besides curtailing the liberties they formerly enjoyed for fishing and catching birds, has also compelled the adoption of a different and more expensive mode of life . . .

A matter that has inflicted a serious injury on the Natives of late years, and for the most part ruined the value of the fishery easements granted by the Native Land Court, is the action of the Acclimatisation societies in stocking many of the streams and lakes with imported fish. These fish are protected by special legislation, consequently the Natives are debarred from using nets for catching the whitebait in season, nor can they catch eels or other Native fish in these streams for fear of transgressing the law. They complain that, although they have a closed season for eels, the Europeans catch them all the year round. In olden times the Natives had control of these matters, but the advent of the Europeans and the settlement of the country changed this state of affairs and destroyed the protection that formerly existed, consequently their mahinga kai (food-producing places) are rendered more worthless every year, and, in addition to this, on going fishing or bird-catching, they are frequently ordered off by the settlers if they happen to have no reserve in the locality. This state of affairs, combined with the injury done to their fisheries by the drainage of the country, inflicts a heavy loss on them annually and plunges them further into debt, or keeps them in a state of privation. All this is very harassing to a people who not long since owned the whole of the territory now occupied by another race, and it is not surprising that discontent prevails, or that progress or prosperity is impossible. (P10:85)⁸

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We will now look more specifically at some of those developmental consequences.

Deforestation

And a like carpet at your feet, in endless gradation of light and shade, the New Zealand bush spreads out in green waves downwards to the edge of the sea.⁹

A forest land of dull shade and tangled growth . . . a land of silence and mystery save for the voice of many waters.¹⁰

17.3.2 With these two quotations Hemi Te Rakau opened his evidence to the tribunal at Hokitika. Mr Te Rakau is not Maori but has an adopted Maori child. He changed his name because of his child. In a thoughtful submission he stated:

The plain facts are that without this massive forest presence and protection man would not have survived on Te Tai o Poutini coast.

The sad facts are that in spite of this massive presence, few examples remain of continuous forest from the mountains to the sea.

One fine sample is south of Okarito Lagoon stretching from the sea beach to the hills and valleys of the hinterland.

Another is in the area of Karamea Whakapohi in the north of the district, a superb stretch of continuous growth cover from alpine to marine vegetation, encompassing all stages in between.

All the other thousands and thousands of acres have been destroyed or modified in some form or other by fire, axe, chainsaw or diggers and bulldozers.

The diet of old time Maori would indeed be different today if they sought subsistence living off these denuded and altered lands.

This is not the place, in my view, to record the detailed destruction piece by piece; there are too many. Too many causes; too many reasons; too many cases of individuals; too much greed; too much carelessness.

It is the place, I feel, to reflect calmly, slowly, and peacefully without malice or retribution upon the tremendous loss to Maori traditional ways of this removal of forest cover and all the ecosystems that it once supported – gone forever, how do you place a cost co-efficient formula on that!

The only really obvious and sure fact in this whole episode is the reality that so much is now reduced to so little and with it the traditional ways and rights of a whole people.

I feel that the forests must be viewed not as a piece of real estate for use regardless, but also as a living being itself, living out its lifetime too alongside us, the human content.

Although we know the physical value in cubic metre terms, production yields and recreational throughputs we should take great note and awareness of the spiritual concept of this great life form. Our only advantage is that we are cunning and mobile, but can end up in a desert of depression without spiritual values.

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The forests are not there for man's sole use, were not created solely for his benefit. Like the food in the vegetable garden they keep us alive; they produce the very air we breathe and if you destroy the planet's lungs then we are very, very dead.

The destruction of forests destroys the spiritual values of Maori people and those of other races and colours who recognise such things as Wairua. (H36:10)

17.3.3 During the course of evidence given by Mr Ronald Little (P15a:4) showing the adverse effect of deforestation on fisheries, a graph was tabled and is now reproduced in figure 17.2

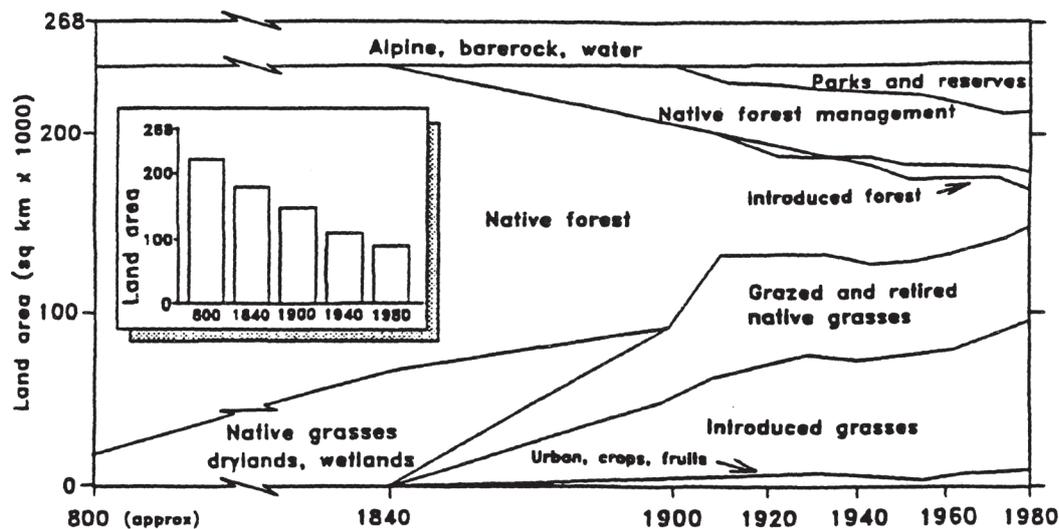


Figure 17.2: Changes in the vegetation cover of New Zealand over time, "The Use of Water Resources", R H S McColl; J C Ward, in *Inland Waters of New Zealand*, DSIR bulletin 241 (Wellington, 1987).

The line drawings illustrate the changing vegetative cover of New Zealand from the period 800 to 1840 and from 1840 to 1980. The original native forest was reduced by 20 per cent over the first 1000 years and by a further 40 per cent between 1840 and 1980. Mr Little went on to examine the damage caused by the consequential land erosion and he outlined the chain of events that follow the need to cope with resultant flooding. Mr Little referred to the straight line engineering concept of river control with the resultant loss by draining of wetlands, lagoons and waterways which were fishery habitats. In answer to the question he posed himself as to why the increased erosion, flood intensity, reduced food availability, reduced cover and an unduly variable habitat for fisheries were allowed to happen, Mr Little said:

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Perhaps the easy answer is that in any developing country with a struggling economy and a rapidly increasing population, an environmental conscience is a bit of a luxury. (P15a:4)

- 17.3.4 But as the forest disappeared so too did mahinga kai. One witness said this of North Canterbury:

Today almost all of the forest cover has disappeared. We would catch the odd Kereru (wood pigeon) which could be found in odd pockets of bush in the Waipara area or among the cherry trees at Lowburn. (J10:23)

The tribunal was given a map of Banks Peninsula showing the situation at about 1860 which is entitled "Rahua o te whenua manu kai" (J27). It shows outlined in green, the forest on Banks Peninsula which has been cleared off. The map shows a very large area of the central and north eastern parts of the peninsula which are covered in forest and bush. The map also shows 20 sites of sawmills, which is rather significant.

A consequence of this bush clearance was the loss to Canterbury Maori of the titi; farming destroyed the natural habitat, Ngai Tahu lost another mahinga kai.

Matthew Ellison spoke of the clearance of bush in the Puketeraki area and the loss of birds, berries and root food (H12).

Another witness, Kevin O'Connor, was concerned with the depletion of kai manu in and around Riverton. In general he attributed this to the loss of the areas of bush for timber and land clearance. He said that kaka had become very rare and the only place with weka within close proximity was at Pig Island. This witness also referred to the reckless killing of weka on Whenua Hou and submitted that tangata whenua should have been notified so that the meat, feathers and most importantly the oil which was highly prized for medicinal purposes would not have been wasted (H13:38).

Perhaps once again the needs of settlement prevailed but at a cost to both Maori values and future generations. We now look at the problem Maori faced in retaining access to their mahinga kai.

Loss of access

- 17.3.5 For some time after settlement began and before pastoral farming got underway, Ngai Tahu continued with their pattern of tribal foraging. Gradually however, land was cleared and livestock was introduced and Maori began to understand better the European concept of ownership as fences and gates were erected and trespass warnings appeared. Many of the new settlers denied access to Ngai Tahu. Rawiri Te Maire said this to the commission in 1891:

All former sources of food-supply were cut off. If they went fishing they were threatened to be put in jail, and if they went catching birds they

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were turned off. The winter was the most suitable time to catch the Weka, and the Maori in olden times used to catch the weka, and . . . set up a rahui to protect the birds. The Europeans will not allow the Natives to kill the woodhens now, as it is said they are useful to kill the young rabbits. The tuis and all other birds are gone, and the roots of the kauru and the fern have been destroyed by fire . . . Wekas and other birds were also preserved, to be used during the period while reserves were protected. The people did not kill the birds out of season in those days, but now the European destroy them at all times. (H6:32)¹¹

Rawiri Te Maire was supported by Tamati Toko who stated:

Some of us were nearly put in gaol for catching wekas on some of the runs. Donald McFarlane, of Hakataramea, and Mr Hoare, of Station Peak, turned us off while catching wekas. Put a notice in a newspaper that Natives would not be allowed to catch wekas on their runs; wanted to preserve wekas for game, and to kill the rabbits; but afterwards the wekas were killed on these runs by dogs and poison. Have seen the wekas lying dead on the runs in numbers, but the station-owners would not allow the Natives to kill or catch them; they threatened to shoot us if we went on their land. All our old mahinga kai are destroyed, and we are left without the means of obtaining the food we used formerly to depend on. (H6:32)¹²

Rawiri Te Maire Tau referred to this evidence in his submission on mahinga kai and emphasised that the situation Tamati Toko described was totally alien to Maori thought and philosophy (H6:32). As a result of this gradual process of being denied access, Ngai Tuahuriri by the turn of the century had given up attempting to catch weka and kai moana except during the shearing season. The high country no longer offered weka and pigeon because the forests had been replaced by farms. We were also told that today high country mahinga kai are virtually nonexistent and those that do exist are protected by legislation.

- 17.3.6 The issue of restrictive laws and regulations being imposed on Ngai Tahu was raised by several witnesses. Mr Tau claimed Ngai Tuahuriri understood “that much of our birdlife must be retained by using modern equivalents of rahui”. He emphasised that the shortage of bird life was caused “through European destruction”, implying the advent of settlement and its effects (H6:33).

There were the same touch of irony in this attitude as that in the Muriwhenua fishing claim when Northern Maori questioned the goodwill values being received by commercial fishermen for ITQs they owned under a quota management scheme set up to deal with a shortage created by the fishermen themselves.

Thus the claimants submitted that access was denied not only by the owners and occupiers of the land but also by legislation. We have already noted that the fishing easements granted in 1868 were inef-

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fective and had disappeared either by drainage, sea encroachment or diversion.

- 17.3.7 The following details of more recent happenings were contained in Rawiri Tau's submission (H6:33). Evidence was given by Rima Te Ao Tukia Bell, a leading kaumatua of Ngai Tuahuriri, who has since passed away.

Kua hahaea te ata
i runga o Rekohu
tirotiro noa ana
Poua ma
Ka ngaro koutou i runga i o Otautahi

She recalled that Ngai Tuahuriri continued to use the Waimakariri during her childhood. However Ngai Tuahuriri stopped using the river as they were being continually fined for catching salmon and a type of eel which was unique to the river. She also recalled using the lagoon Tutae Patu and the river Rua Taniwha (Cam). Tutae Patu and Rua Taniwha were two waterways once in continual use by Ngai Tuahuriri. Mrs Bell elaborated on how, during the summer time after school, all the families would journey to Rua Taniwha to catch eel, trout, wai kakahi and wai koura. The children would remain upon the river until evening and, having obtained their dinner, would return to their homes. The waterways sustained many Ngai Tuahuriri families during the depression. This continual use of the river slowly come to an end as the water quality declined and the once abundant food became virtually non-existent. Today eeling activities on the Rua Taniwha have all but ceased for lack of eels. Any that are caught are not held in high regard as the quality of the food has declined. Wai kakahi and wai koura no longer exist (H6:35).

Tutae Patu is no longer used: the lagoon and surrounding area having been drained. Furthermore the low water quality from farm runoff has meant that tuna is no longer available to Ngai Tuahuriri in sufficient quantities.

W A Taylor in *South Island Maori* recalls how annual competitions were held in Tutae Patu to see who caught the most eel. Large quantities were caught from the lagoon but the practice stopped in the mid-1970s as the quality of the tuna declined (H6:35).

During the hearing the tribunal was told of certain instances in which reserves created for mahinga kai purposes lacked access as they were surrounded by privately owned land. The tribunal has indicated to several witnesses that there is provision in sections 415 and 418 of the Maori Affairs Act 1953 to apply for access to such reserves. In any

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event in a later volume the tribunal will be examining all these specific complaints.

Acclimatisation

- 17.3.8 Under this heading we look at the relationship between Maori and settler as each sought to fish in the fresh waters of the South Island and to take wildlife. We should perhaps refer first to the submission of Mr W B Johnson, director of the national executive of the New Zealand Acclimatisation Societies since 1970 (P15b).

His submission stated that these societies, which were formally established throughout the country, were primarily concerned with the creation of self-sustaining populations of introduced fresh water fish and wildlife of interest and benefit to the public. He stated that the general rationale for their activities arose from the perceived unsuitability of the indigenous fauna, both aquatic and terrestrial, to provide food, sport and industry in a manner which settlers desired and were familiar with. He emphasised that whilst the societies were undeniably of European origin, the end result of their endeavours has been egalitarian, and remains so to this day.

We were told that New Zealand is presently divided into 24 districts of which 22 are run by locally elected councils. The societies derive their present statutory origin and role from the Wildlife Act 1953 and the Fisheries Act 1983. We were told that the societies are not user groups in the popular sense, but rather fish and game management agencies of the Crown which are run on a day to day basis by the users and more akin to local government.

In his outline of the societies' work, which includes the employment of rangers, Mr Johnson emphasised the development of their role from species introducers to habitat conservers, habitat protection now being the primary ethos (P15b). He referred to the societies' use of the Water and Soil Amendment Act 1981 (P15b). We have already referred to Professor Clark's submission (17.2.22) which criticised the "traditional non-participation by Maori in conservation matters" (P16c:1).

- 17.3.9 The emphasis of the societies has been historically on introduced species, based on European views of what was suitable for food and sport. Herein lies the reason for a divergent view between Maori, who saw the need to retain their own food resource, and the settlers and their descendants who had their own fishing customs to introduce into their new homeland. It is little wonder therefore, that there has been no cooperation between parties with such opposing views. The tribunal is sure that Professor Clark and the societies are motivated by the highest awareness of the need to preserve the quality of

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waterways. But we think that one of the reasons why there has been no cooperation, is that the activities of the society have been at the expense of the food resources of Ngai Tahu, a point clearly apparent from the evidence produced. This has probably precluded cooperation on matters of common interest because there is a fundamental disagreement between the parties on what constitutes that common interest, Professor Clark's denouncement regarding the lack of Maori conservation ethic and non-participation in conservation matters is capable of being turned just as nicely by Ngai Tahu against settlers and their descendants for lack of conservation ethic and non-participation in conservation of Maori resources. Dealing more specifically with Waihora there is evidence of Maori complaints and grievances. There is also evidence of disregard by the Crown and indeed opposition from the settlers.

17.3.10 Crown witness Ronald Little referred in some detail to the introduction of certain fish species well known to the settlers:

In the aquatic environment the same range of good and bad introduction exist. Most damaging have been certain aquatic plants such as one of the oxygen weeds that can clog lakes and waterways. A great many aquatic invertebrate animals have gained entry, spread widely and have replaced native species. It is probable that this latter category were all accidental introductions, and largely unknown to most people. Many fish have been introduced successfully, many have been tried and failed. Overall introductions have been successful and now tend to dominate the native species.

The reason for this success was probably that New Zealand was long isolated and as native fishes developed without severe competition or without the presence of major predators they presented little competition to exotica. Native fish fauna was fairly scarce and many ecological niches existed that new entrants could fill. This was especially so as the nature of the rivers, lakes and streams was rapidly altering due to river control and forest removal. Introductions of sporting fishes first occurred as follows:

Brown trout 1867/68 (very successful over both islands, especially in the South);

Tench 1867 (localised occurrence only);

Perch 1868 (widely dispersed in the North Island, a few in the South);

Brook trout 1877 (a few locations only);

Rainbow trout 1878/83 (widely spread, especially in the North Island);

Quinnat salmon 1901–1907 (South island success, but mainly on the southern east coast);

Red Salmon 1902 (land locked stocks in the Waitaki River only);

Atlantic Salmon 1908–1911 (originally successful but now almost gone).

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As well there have been various other introductions of varying success, from lake trout confined to Lake Pearson, to large goldfish populations in the Waikato basin. Unfortunately illegal introductions have occurred in recent years such as the rudd and koi carp, final effect of these species is still unknown. The effect these newcomers have had on native species, and especially those species of importance to the Maori, is of interest.

There is no doubt that salmonids and a few others, out-compete native species generally and can seriously affect native invertebrate populations. Eels on the other hand do well in the presence of trout and utilise them for good to some extent. The general consensus of scientific workers is that the decline in native species was due to changing land use rather than from competition from exotic fish.

The one doubtful case is that of the New Zealand grayling, now extinct yet present in large numbers at first European settlement. Allan (1949) did not consider the primary cause to be exotic fishes but rather altering land use. McDowall (1868) believed that the spread of trout and human exploitation also played a part.

The advantages of some introductions are also great. The biomass and availability of trout and salmon are very high today and present a valuable food source previously unavailable. It is true that licences are required to fish for trout or salmon yet they represent resources additional to those originally present and monies from licence purchase are used for fisheries management. (P15a:8-9)

Although Mr Little's views above would seem to indicate that eels and trout are compatible river residents, there was some evidence that the introduction of trout and salmon had some effect on eel populations, particularly at the elver stage of upstream spring migrations (T4a:47). The reverse may probably be said of the eels' propensity to take fingerling trout and thus again we see an area of possible conflict in the interests of Ngai Tahu and the acclimatisation societies. We have already seen the feeling generated by the prosecution of Ngai Tahu fishermen in the rivers and waterways. No doubt many of those prosecutions have been brought by rangers performing their inspection duties.

The Maori koaro or mountain trout was commonly found inland in mountain streams and the main upland alpine lakes. Koara populations have declined as a result of habitat loss, but in addition many lake populations have declined by the predation of the introduced trout (T4a:50). Maori smelt, known alternatively as parohe, paraki (parariki), pipiki, tiki-hemi and inangi or maneanea, are prized as a food, yet these too have suffered through the attentions of trout (T4a:53). There are also other freshwater species that were affected by the introduction of trout such as grayling and koura.

17.3.11 How did Ngai Tahu react? Here is one claimant's view:

When the European came he brought among other things sheep, gorse, stoats, wheat, fruit trees and trout. With the Pakeha Trout came his laws.

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They were placed in our waterways, our garden, Te Marae o Tangaroa. For me to catch a trout, I have to pay a licence for this privilege even though it is destroying my garden. It is an offence according to the laws of this land to take property that belongs to another. I believe this to be a just law, it is why our ancestors signed the Treaty. Now, if you are Maori, and you have property, should not the same law apply? Should not the person who put the Trout in our garden pay rental for this privilege. Should not those who take from our garden obtain permission also, and if required pay for this privilege. (J10:10)

The tribunal was told by Ngai Tuahuriri that they had always utilised their area in a conservative manner. They resented being fined for taking more than the limit of kai awa and kai moana when their food was intended for distribution over a wide family base. Many families survived the depression years by the distribution of kai awa and kai moana according to custom. An old saying of the tribe was “Silver and Gold have we none, but what we have we will share” (H6:23).

We referred earlier to the evidence of Kelvyn Te Maire who was critical of the management of water fowl by the acclimatisation society (H10:33).

Kelvin Anglem spoke of the shortage of eels in the Opihi River which once supplied in one night their whole winter’s supply. He told us of eel drives designed to protect young trout, when hundreds of eels were slashed with lengths of hoop iron and allowed to flood down the river or left to rot on the banks (H10:23).

The following was reported to the Mackay commission in 1891:

The Natives complain that they are now debarred from eeling in the Taieri River in consequence of its being stocked with imported fish and they are badly off for a fishing-place. They used to do eeling at a lagoon near the Waipouri Lake but were turned away from there, by surrounding European land owners and have nowhere to go now. They are very desirous that the lagoon should be secured as a fishing-place for them. (F11:52)¹³

Finally we refer once again to an extract from Mackay in 1881, incorporated in Crown historian Tony Walzl’s evidence:

A matter that has inflicted a serious injury on the Natives of late years, and for the most part ruined the value of the fishery easements granted by the Native Land Court, is the action of the Acclimatisation societies in stocking many of the streams and lakes with imported fish. These fish are protected by special legislation, consequently the Natives are debarred from using nets for catching the whitebait in season, [n]or can they catch eels or other native fish in these streams for fear of transgressing the law. (M14:85a)¹⁴

- 17.3.12 May we therefore refer back to Professor Clark’s criticism of lack of Maori involvement in fish and game management (P16c:1) and suggest that he has perhaps not understood how the activities of ac-

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climatisation societies may have been anathema to Maori. Not only were the introduced fish seen as decimating the indigenous species but the accompanying legislation, regulations and trespass notices greatly restricted the centuries old access to the waterways. That the Ngai Tahu Trust Board in 1986 invited the National Council of Acclimatisation Societies (NCAS) to meet with them to discuss Waihora was a clear indication that Ngai Tahu accepted a need to consult with others. Time did not permit NCAS to attend and the society was concerned at the suggestion raised as to “mismanagement in our recent past”. Perhaps the society may have taken an unduly defensive reference from the word “mismanagement”. No doubt discussion around a table would have helped everybody.

Our trout and salmon recreational fisheries are an important part of this country’s resources and they are well protected. The tribunal however, considers it important that consultation takes place with Ngai Tahu regarding decisions which affect their mahinga kai.

Although there may be marked differences of view, Ngai Tahu should be part of the policy-making process. They have strong grounds for their grievance that they have lost much of their mahinga kai and that what they do have left is certainly not well safe-guarded.

Water supply

- 17.3.13 The tribunal journeyed up through inland Canterbury from Timaru through Fairlie to Lake Tekapo and across to Lake Pukaki and Lake Ohau, thence to Twizel, Te Ao Marama (Omarama) – the place of Te Maiharoa’s settlement – down past Lakes Benmore, Aviemore and Waitaki and on to Oamaru. We were each presented with a brochure produced on behalf of Ministry of Works and Electricorp explaining how this network of lakes had become one of the country’s major sources of electricity. A system of man-made canals was constructed to ensure maximum utilisation of every drop of water.

Neither Maori nor settler could surely have contemplated in the last century what development would take place with these lakes.

Evidence from Mr J P Robinson, Hydro Group Manager of Electricorp was presented by Mr M France (Q16). A map of all power stations in the South Island was produced. The evidence explained how the corporation was committed to ensuring that the clean pure water used for power generation remained in that state after use. Emphasis was laid on the recreational uses created by artificial lakes and the need for strict observance of environmental principles. Mr Robinson stated that Electricorp welcomed full consultation with Ngai Tahu on the issue of water right renewals. A full explanation in very clear terms was given at the Waitaki generating system and its main features.

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Proposals for lake levels and recreational pursuits were also explained. Reference was made to the Opihi River and to a public statement that if the transfer of water to augment the Opihi River was genuinely and clearly in the overall public interest, it would not be opposed by the corporation. Further evidence was given of measures taken to avoid pollution at camping sites by the installation of removable tanks.

It was apparent the corporation was anxious to avoid any human pollution of water. We were particularly pleased that these firm assurances were given and that the corporation looked forward to a better process of consultation with Ngai Tahu.

- 17.3.14 The tribunal inspected the Opihi River having heard submissions from William Torepe about the lack of water in this important mahinga kai of the Arowhenua people (H10:2). It was very evident that there is a lack of water in this river. Mr Torepe attributed this to the issue of permits by the Regional Water Board to allow the Timaru City Council to draw off water for domestic supply. Permits have also been issued to farmers for irrigation of farmlands. Apparently this drains off the lower Opihi River which is dry for at least three months of the summer with the consequent effect on the food resources.

Mr P M Sagar, a fishery scientist with MAF, was charged with researching the effects of irrigation, hydro electric development and other water management practices on the freshwater environment (P16d).

The report's purpose was to provide us with information regarding the potential effects on fish of increasing the flows of the Opihi River. At the same time Mr Sagar explained to us the effects of the current low flows on the fish in the river. This river has been affected by interruption of its flow since about 1936, when the Levels Plain Irrigation Scheme began operation. These interruptions have created a number of problems for fish stocks which were explained in detail to us. This evidence confirmed what was evident to us from visual inspection.

Mr Sagar recommended there should be modest increases in the flow of the Opihi which would improve the fisheries values of the river, but he said some caution was necessary with respect to the input of glacial flour (silts) if the river was to be augmented by water from Lake Tekapo. He said that the Opihi River is clear and contains no silts and that moderate to low silt loads could have a significant and deleterious impact. For this reason the river flow should fluctuate.

Mr Sagar believed that changes in land use within the catchment of flood protection works had all contributed to modifying the character

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of the river by changing the flow pattern and substrates in the river. Obviously the solution is not an easy one.

There can be no doubt that the extraction of water from rivers for irrigation, power generation, domestic demand, factory use and stock watering have resulted in dramatic reduction to a great many waters.

Mr Little stated that not only does the water loss reduce fisheries habitat, migration routes and cover, but it results in changes in temperature, increased weed growth and even destruction of the river (P15a:10). Water intakes at the dams also affect fish and invertebrate fauna as well as creating barriers for fish movement.

Many early dams have inadequate protection for fish although this is being provided for in recent constructions (P15a:10). The evidence we heard from Electricorp about the creation of new opportunities is unfortunately offset by the loss of traditional fisheries in rivers and streams. The demands on the water supply for so many uses, coupled with river alignment and the drainage of creeks and swamps, have all adversely affected Ngai Tahu's access to mahinga kai. It has also contributed to a much more serious consequence – the problem of pollution.

Pollution

- 17.3.15 There should be little need for this tribunal to awaken any New Zealand conscience on this issue. Wherever we went around Te Wai Pounamu this subject came before us as witness after witness recounted the sad effect of pollution on mahinga kai. Nor is it just a problem for Ngai Tahu. We went to several sites to see evidence of what we were being told. As good a summary as any was provided by Kelvin Anglem of Arowhenua as he indicated the factors such as sewerage disposal, wool scour effluent, dairy factory discharge, aerial spraying and topdressing, farm waste and irrigation diversion which had all succeeded in reducing the once proud Opihi and its estuary from an important breeding and feeding ground for migratory birds and fish into something unfit for humans and animals to swim in. Mr Anglem was strongly moved as he concluded his evidence:

I am glad my Tupuna cannot stand on the banks of the Opihi and see what I have stood back and allowed to happen to their river. (H10:24)

We were given many instances covering the whole tribal area of Ngai Tahu and the whole range of human activity both past and current. The following table provides a few examples of these complaints from different parts of Ngai Tahu's territory.

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Reference	Nature of Activity	Effect
H8:114 H8:43	Gold mining on west coast.	Destruction of eel habitat.
H13:2	City sewerage and rubbish dump, wool scouring, paper mill, freezing works.	Destruction of kai moana
H11.2	Nutrients from hospital and sewerage.	Pollution of cockle bed
H13:39	Sewerage discharge. Discharge from freezing works, paper mills, hide tannery.	Destruction of kelp and kai moana
H6:22	Wastage from forest mill debarking plant, piggery effluent.	Pollution of water
C13	Discharge of industrial wastes, sewerage discharge, agricultural waste, textile mill.	Pollution of kai moana.

17.3.16 We referred earlier to evidence given by Mr W Torepe (17.2.5). This witness said that dirty and greasy effluent is also discharged into the Waihi River at Winchester (H10:2). He claimed that the majority of streams and creeks within Canterbury, notably those mentioned in his submission, are now just flood channels. The supply of fish in the Opihi River is now depleted as a result of water reduction.

Mr Torepe also referred to the effect of heavy land stocking around Lakes Tekapo, Alexandrina and McGregor, for which the Maori names are Takapo, Taka Moana and Whaka Ruku Moana respectively. He claimed also that wild fowl droppings at Lake Wainono had made the water quality suspect. The beach in the vicinity of the Pareora River may be polluted by freezing works discharge of untreated remains.

The witness tabled a report from the water resources manager of the South Canterbury Regional Water Board (H49). This report is dated 8 April 1988 and was supplied to Mr Torepe. It is a report on water quality concerning the Waihou River, Lake Wainono, Opihi River, Temuka River, Orari River, Rangitata River and the coastal zone. Of importance in this document is the problem of eutrophication within the Waihi-Temuka River system, notably in the lower Orari River. It is stated that eutrophication results mainly from the introduction of nitrogen and phosphorus. The application of fertiliser on farmland is considered the major source of nitrogen and is therefore regarded as difficult to regulate. Domestic sewerage is believed to be the major source of phosphorous. It is proposed that upgrading the oxidation ponds at the Geraldine and Temuka treatment plants will greatly

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reduce phosphorous levels. Any tertiary treatment, such as the discharge of effluent from oxidation ponds into the specially constructed wetland area would be of immense benefit. These areas, comprised of raupo or other species, would successfully retain the effluent for a period of up to 10 days and strip it of nutrients. It is felt that little would be gained in regulating the effluent at the two woolscouring plants within the Waihi/Temuka River system because although detergents used in woolscouring increase phosphorous levels, it is only the rinse water which is legally allowed to be discharged and this has low nutrient loadings. However, the heavy liquors produced, if illegally discharged, would greatly increase the phosphorous loading. The policing of woolscouring discharge is felt to be a possible problem.

- 17.3.17 It is clear from the Regional Water Board's report that there are certainly serious water quality problems that are likely to arise in the Temuka River and indeed in other rivers in the future. There is no doubt in the tribunal's mind after viewing the scene in the lower Opihi River, that diverse sources of nutrients from adjacent farmland and the shortage of water in the river generally have changed the structure of this river with a serious effect on the mahinga kai qualities.

There is no doubt that the South Canterbury Catchment and Regional Water Board is aware of the problem but it is also apparent that the sources of the problem are difficult to regulate against. The board reported that policing the activities of the two woolscourers that discharge into the river system will continue to be a problem since the board has neither the staff nor equipment to continuously monitor the quality of the effluent.

The tribunal considers that this is just one of the many areas of the South Island where pollution of various kinds have affected water quality and mahinga kai. The effect of it all is that the tuna have been reduced, the kanakana have become extinct and whitebait have been depleted by the destruction of breeding grounds due to river works.

- 17.3.18 Although British colonisation has taken its toll on land based resources it was not surprising that most of the current pollution complaints were directed at fisheries. For many years following European settlement Ngai Tahu had reasonable access to tuna and other kai moana, which were regarded by the newcomers and indeed down through two or three generations of their descendants, as unacceptable to their palate. Recently a change in the eating habits of New Zealanders has occurred. Smoked eel and other kai moana such as paua, mussels and pipi are now considered delicacies. The entrepreneurs who saw potential export markets in these foods have contributed to depleted

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resources of Maori traditional food. Faced with the effects of both pollution and exploitation, it is not surprising that Ngai Tahu grieve over their difficulty in offering their traditional kai at tribal hui.

We have not felt it necessary under this topic to refer to the spiritual significance that is attached to water. The tribunal, in earlier reports dealing with the Manukau Harbour, Kaituna River and the Mangonui Sewerage Report and Motunui Waitara, has dealt with the spiritual aspect as well as the biological base which is part of the strong cultural attitude towards water quality. We can report that several witnesses raised this matter with us and their submissions were well understood by the tribunal.

- 17.3.19 In conclusion on this particular question, counsel for the Crown suggested that present day pollution did not exist until comparatively recently and is not a problem endured peculiarly by Ngai Tahu. Counsel submitted there were limits to what any government could have done and can do about it. It was submitted that programmes for the eradication of pollution were being put in place and that more are needed but these are costly and could have economic side effects for Maori as for the public generally. The tribunal does not agree that pollution is of recent origin. Pollution of Maori food resources can be traced back to early settlements, as for example in the gold mining activities in the Westland rivers (H8:14). A Crown witness, Mr Rob Cooper, said the most notable early pollution was caused by the sawmilling industry (P12:9). He stated that sawdust in waterways was quite common last century.

We do agree that there has been a change in the extent of pollution as development has taken place. We acknowledge there is a much more active interest being taken in anti-pollution measures and the maintenance of water quality. In this section we are simply assessing that pollution along with other contributing factors affected Ngai Tahu mahinga kai.

In our view the evidence shows that pollution has certainly damaged the food resource.

17.4 **Ngai Tahu Grievances and the Crown's Response**

Statement of grievances

- 17.4.1 In the previous section we looked at the impact of settlement on Ngai Tahu and examined the various grievances expressed by a number of witnesses. We now record the general mahinga kai grievance as stated by the claimants:

According to the Treaty of Waitangi and later specifically confirmed by the Kemp Deed the Ngai Tahu people were guaranteed "the full, ex-

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clusive and undisturbed possession” of their *kainga* and their *mahinga kai*, but the acts and omissions of the Crown and agents of the Crown have in fact dispossessed Ngai Tahu of their *mahinga kai*. Ngai Tahu have thus been deprived of a major economic and sustaining resource in their *mahinga kai*. (W6)

As can be seen from this statement, the mahinga kai claim was based upon the duty owed by the Crown under article 2 of the Treaty and, in the case of the Kemp purchase, on the contractual terms of the deed.

From this very general statement of the claim the claimants developed five heads of grievance. They were as follows:

1. That the Crown has failed to ensure the adequate protection of the natural resources of Banks Peninsula; that it has allowed the wholesale destruction of the forests and other natural vegetation to the detriment of native fauna, water quality and soil conservation, and that the resulting siltation of stream beds and tidal waters has been to the detriment of fish and birdlife; that the Crown has allowed excessive pollution of Wairewa (Lake Forsyth) so that this great inland fishery and eel resource is now almost extinguished; and that it has allowed the depletion of kaimoana in the bays, harbours and coasts through pollution and excessive exploitation. (W3:3)
2. That the Crown to the detriment of Ngai Tahu failed to fulfil the terms of the agreement between Kemp and Ngai Tahu in respect of Kemps Purchase, in particular -
 - (a) Ample reserves for their present and future benefit were not provided; and
 - (b) Their numerous mahinga kai were not reserved and protected for their use. (W4:2)
3. The denial of access to certain mahinga kai accentuated the effects of landlessness. (W6: mahinga kai)
4. The drainage of swamps and lakes, the felling of bush, the conversion of land to agricultural use, and the introduction of acclimatised species destroyed or reduced the value of mahinga kai. (W6: mahinga kai)
5. The Tribe has been denied effective participation in resource management and conservation, such as administration of protected areas and of waterways. It also, on a smaller scale, has meant that such Tribal rights as those to the bones of stranded whales have been ignored. There has been no attention paid to the preservation of resources of special tribal significance, such as pikao. (W6: mahinga kai)

17.4.2 Counsel for the claimants made the following points in relation to mahinga kai, which we have summarised from his extensive closing address (W1):

- Ngai Tahu have always asserted that the term mahinga kai means “a place where food is gathered”;
- Governor Grey had full knowledge of the importance of a wide range of hunting and gathering areas to Maori and that a sudden

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- reduction to a cultivating economy would involve hardship and loss;
- Grey, Eyre and Mantell applied a policy to leave Ngai Tahu with as little land as possible so that they would be encouraged to take up work for the settlers;
 - mahinga kai was a necessity of life to Ngai Tahu. In 1880 there were or had been 2000–3000 places where good was gathered in seasonal activity and in some cases over long distances;
 - Waihora and Wairewa were important lakes and Kaitorete contained the largest pingao plantation in the country. These lakes were polluted and over exploited by commercial fishing;
 - there has been large scale pollution of food resources everywhere and settlement has destroyed, and affected access to, mahinga kai. Ngai Tahu has lost access to the food resources as well as protection of that resource;
 - there has been no consultation with Ngai Tahu over drainage, irrigation and reclamation, and decisions of central government and local authorities entirely lack a Maori dimension;
 - mahinga kai still has immense cultural significance to the iwi in the gathering and sharing of food. There is still a need not only for food resources, but for natural dyes and fibres and wood for carving; and
 - the fresh water and sea fisheries are of great importance.

The Crown's response

17.4.3 In her opening submission on mahinga kai (P9a) Crown counsel, Mrs Kenderdine, looked at the land purchase deeds in trying to ascertain the details of what Ngai Tahu sold. She noted that the only deed in which any reservation of mahinga kai was made was in Kemp's deed.

Mrs Kenderdine endorsed Tipene O'Regan's statement that:

The key point is, of course, that if there is a duty to protect then the person charged with that duty should be able to state the nature, shape and the extent of what he is charged with the care of. (H17:2.6)

Crown counsel went on to say that in a great many instances the Crown did not understand the nature, shape and extent of what it was charged to protect for the simple reason that the tribe itself had varying definitions of mahinga kai and was in the process of great change.

Crown counsel suggested that a valid approach was to look at reserves which were asked for and not given and assess the significance of those areas to the preservation of traditional resources where those requests were realistic and reasonable.

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The Crown agreed that Ngai Tahu were in competition with the settlers and were increasingly prejudiced by the settlers' activities, in particular by drainage and by denial of access to water ways. The Crown said that this produced complaints which led, in 1868, to the determination of the Native Land Court, presided over by Chief Judge Fenton, which made awards of so-called fishery easements to meet the need which had arisen, thereby attempting to fill a gap which had appeared in the Mantell reserves.

Mrs Kenderdine referred to the fishery easements made by the court. It was contended that the creation of the fishing easements, which in most cases were implemented by the grant of reserves adjacent to lakes and rivers, was in fulfilment of the Crown's duty under the Treaty of Waitangi to meet the need of Ngai Tahu arising as a consequence of European settlements following the sale of lands. The Crown therefore argued that through the Native Land Court in 1868, a remedy appropriate to the circumstance was granted.

Mrs Kenderdine stated that the passing of the Water and Soil Conservation Act 1967 was in response to the nationwide modern problem that there was not enough water available for all users and that the system of control or rationing had been necessary. She also submitted that as yet there had been no judicial consideration of the position of aboriginal titles rights or Treaty rights apart from *Huakina Trust v Waikato Valley Authority* [1987] 2 NZLR 188.

Omission of mahinga kai from deeds of purchase

17.4.4 Crown counsel went to considerable trouble to analyse all the purchase deeds. Kemp's deed is the only one that mentions mahinga kai. Mrs Kenderdine submitted that the Crown would expect to take the land unencumbered and without attached aboriginal rights.

The important question that then arises is whether in all the purchase deeds other than Kemp's, Ngai Tahu not only agreed to part with their lands but also with their mahinga kai.

Elsewhere in this report and in other reports of the tribunal there are references to Lord Normanby's clear injunction that Crown representatives were not to purchase any lands, "the retention of which by Maori would be essential, or highly conducive to their own comfort, safety or subsistence" (A8:I:15).¹⁵

In the light of knowledge by Crown officials that Ngai Tahu needed access to these resources there was an obligation on their shoulders to make adequate provision for these needs.

Only in the Rakiura purchase, relative to the taking of titi, and in the Kaikoura deed, where a reserve was set aside as suitable for traditional

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needs, were Ngai Tahu interests recognised. To the extent therefore that the deeds of purchase did not set aside specific mahinga kai reserves or provide adequate lands to ensure Ngai Tahu had access to their traditional resources the Crown negotiators were in breach of the Treaty. The tribunal does not accept that in entering into the various purchase deeds Ngai Tahu were doing so on the understanding they were thereby surrendering all future access to traditional food resources which they needed for subsistence and trade. The evidence which this tribunal has heard clearly shows that the tribe continued to exercise its mahinga kai rights after the respective sales and in most cases relied on those resources to live.

Crown's closing submission on mahinga kai

- 17.4.5 The Crown addressed two issues in closing submissions (X3:28–72). The first inquired into the meaning of the words “mahinga kai” as used in the Kemp deed.

It was important to the Crown's argument to limit the definition of the term “mahinga kai” to mean “cultivations” because if that meaning was fixed, the Crown was only thereafter required to reserve and protect cultivations. In chapter 8 the tribunal found against that limited use of the term and interpreted those words as meaning “those places where food was produced or procured by them” (8.9.12).

As an alternative the Crown argued that if the tribunal applied the wider definition, the evidence showed that post-1848 Ngai Tahu continued to have user access for some time and that as indicated by the claimants' witness, Professor Anderson, Ngai Tahu's traditional economy would have disappeared by the late nineteenth century (X3:41). Crown counsel was seeking to establish that Ngai Tahu had abandoned voluntarily their traditional mahinga kai.

We cannot accept this alternative argument, and we doubt that Professor Anderson would agree to that interpretation of his statement. We believe he was inferring that the consequences of settlement would be to effectively remove access by Ngai Tahu to their food resource. We have seen in the previous section how that in fact did occur. It was not a matter of choice.

- 17.4.6 In the second issue addressed in closing submissions, Crown counsel examined the Crown's general responsibility under the Treaty to ensure Ngai Tahu were left with an adequate resource base from which their society and economy could be sustained and developed.

Mrs Kenderdine made the following points:

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- the claimants had not given full weight to the words “so long as it is their wish and desire to retain the same in their possession” in article 2 of the Treaty;
- the term “resources” must be seen in relative terms. Ngai Tahu habits changed after settlement. They adopted some European foodstuffs and had abandoned or were in the course of abandoning mahinga kai;
- The Crown’s obligation to preserve and protect applied only to those resources which Ngai Tahu had used in the years immediately preceding the purchase and which they wished to continue using, ie, those which they did not wish to abandon;
- the claimants have wrongfully sought to protect resources once used but now discarded. This approach denies the dynamics of history and the subtleties of human interaction;
- the claimants’ food gathering activities over 1840–49, from evidence supplied by their witness Dr Anderson, were limited to gardening and eeling;
- Ngai Tahu had moved into the European resources and technologies and were using these in place of other traditional vegetables such as fern root. Alternations had taken place in Ngai Tahu lifestyle;
- there was little real knowledge or evidence of Ngai Tahu economy in the 1840s; and
- an analysis of each sale reveals Ngai Tahu awareness and involvement with the European economy and Ngai Tahu had abandoned all but the most important traditional resources.

The thrust of the Crown’s argument therefore was that Ngai Tahu had abandoned their traditional resources and had moved voluntarily into the changing society and economy with its new food resources. Presumably therefore there was no ongoing responsibility or need on the Crown’s part to protect old food resources and there could be no breach of Treaty principles.

This argument is founded on the notion that Ngai Tahu at the time of signing the agreement could foresee the future and were prepared to relinquish their mahinga kai – apart from the most important resources – in anticipation of other benefits to come from European settlement.

The evidence shows clearly that Ngai Tahu had no such perception or desire. It is of course correct that Ngai Tahu moved to adopt the introduced resources, but they continued their traditional food gathering and relied on it for sustenance. By 1868 however, pressure was coming on the food resources particularly those near to settle-

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ment (P10:96). Ngai Tahu did not abandon their own resources, rather they were shut out from those resources by the impact of settlement and were compelled to adopt a different, more expensive life style. We have also dealt with this Crown submission in chapter 3 (3.3.10–13).

By the end of the nineteenth century Ngai Tahu had lost most of their inland and forest resources and their fisheries were under threat. Their relinquishment of mahinga kai was not the result of any deliberate decision by the tribe but directly due to the inadequacy of reserves and exclusion by the needs of settlement. There is no evidence that they willingly parted with their rights and considerable evidence that they wished to retain them.

17.5 **The Tribunal's Conclusions**

Reasonable expectations of the parties at the time of sale

17.5.1 It may be useful at this point to assess what reasonable expectations and attitudes Ngai Tahu and the Crown respectively would have had when the purchase deeds were signed in Te Wai Pounamu. We draw these attitudes from the evidence and will then look at them in relation to the Treaty principles.

Looking first at Ngai Tahu we consider these factors would have been important to them:

- retention of rangatiratanga over the resource in the form of specific and adequate reserves;
- protection of the resource by the Crown and consultation with the Crown in matters concerning preservation of the resource;
- sharing of their food resources with the new settlers; and
- sharing the settlers' resources with Ngai Tahu.

We consider the Crown may have had in mind:

- that Ngai Tahu should have access to their mahinga kai as long as that access was not an interference with the occupational rights of the settlers; and
- that some reserves should be set aside for mahinga kai but that in time Ngai Tahu would take up pastoral farming and commercial activities which would with intermarriage lead to assimilation of Maori and (by) European.

Bearing these considerations in mind we must now look at what happened to these expectations and measure these consequences against the Treaty itself.

*Mahinga Kai****Grievance no 2: loss of rangatiratanga***

17.5.2 In earlier parts of this report we examined very fully the duty of the Crown under article 2 to ensure that Maori were left sufficient land for their present and future needs. The retention of sufficient land for mahinga kai purposes is therefore an important corollary of that principle. It was incumbent on the Crown to set aside specific reserves to protect those rights. As we see the position, it was not only necessary for the Crown to protect the principal food resource areas, it was also the duty of the Crown to provide the tribe with extensive land so that it could adapt itself to the new pastoral and agricultural economy. This new economy brought with it the new resources that were in time to replace some of the traditional mahinga kai. To take part in this process Ngai Tahu had to have reserved to them substantial areas of land which could be developed and farmed. We described this process and principle in detail in 10.7.12 when dealing with the Murihiku sale. It has been conceded by the Crown that inadequate reserves were granted by the Crown and Ngai Tahu were also gradually denied access to food resources (X3:72).

The Crown suggested that perhaps these inadequate reserves were explainable by the Crown's prediction that Ngai Tahu would disappear as a tribe through intermarriage and assimilation and that the tribe was also numerically small. The evidence presented to this tribunal certainly suggests these may have been pertinent matters in the mind of Governor Grey and his negotiators. But these persons also knew that Ngai Tahu travelled far and wide in their gathering of kai. Not only were they wrong in their prediction about the disappearance of the tribe, they were also wrong in applying that belief by reducing the size of reserves. They were acting quite contrary to the policy laid down so clearly by Lord Normandy and article 2 of the Treaty. As we stated when dealing with Waihora, the lack of an adequate land base to enable Ngai Tahu to develop as farmers and commercial people, left Ngai Tahu as a disintegrated tribe without any power to take a visible part in the political economy of the nation. This lack of reserves – the landlessness of Ngai Tahu – was also the reason they were not heard properly on further loss of their mahinga kai as settlement developed. In the end, Ngai Tahu finished up with major loss of their mahinga kai and virtually no land. The inadequacy of reserves left Ngai Tahu on a most unequal footing to compete in the growing economy. As Mr Walzl pointed out, Ngai Tahu by 1891 held their land in a confused jumble of 'legal' holdings, few of which were of use to the individual. The Crown suggested that the fishery reserves set aside by Chief Judge Fenton following the 1868 hearings were in fulfilment of the Crown's Treaty obligations. We have seen that despite Judge Fenton's emphasis on the importance of Waihora,

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not one fishery reserve was created over the lake. As to the other reserves, the Crown's own witness informed the tribunal that these had been destroyed over the next 15 years (P10:97). In 1879 the Smith–Nairn commission in respect of the Kemp purchase reported as follows:

The evidence before us shows that lands which, by the terms of the Ngaitahu deed should have been expected, have been Crown-granted to European settlers; that reserves that were promised which have never been made; and that eel preserves, kauru groves, and other sources of food supply, which, under the term "mahinga kai", were not to be interfered with, have been destroyed. In many ways the terms of contract have been violated. To restore is impossible. (M14:88)¹⁶

With the loss of their land and food resources, Ngai Tahu faced extinction as a tribal people. Individualisation of title after the Native Lands Act 1865 contributed greatly to the disintegration of their political system and brought extinction even closer. Ngai Tahu were victims of settlement because it appears it was not intended by the Crown's agents that they should have ever have a stake in it.

- 17.5.3 Put another way, the Crown has failed primarily in its duty to set aside a sufficient endowment for Ngai Tahu in the form of land so as to allow Ngai Tahu not only reasonable access to mahinga kai but also an economic base to meet the new and changing economy. We consider there has been a breach of article 2 accordingly. Ngai Tahu were detrimentally affected by this breach.

Grievances nos 1, 3, 4 and 5: protection of resources and resource management

- 17.5.4 These remaining four grievances mainly relate to the Crown's failure to protect mahinga kai resources during the continuing process of the developing economy of Te Wai Pounamu after settlement. There is an overlapping in some cases.

The tribunal believes that these grievances derive to a large extent from the Crown's failure to create adequate reserves for Ngai Tahu. Our finding that there has been a breach of Treaty principle on this latter question, therefore, is a partial answer to complaints that later actions or omissions of the Crown such as drainage of swamps, deforestation, water quality control may not have affected Ngai Tahu so badly if the tribe had been given sufficient reserves of its own. However there are issues such as pollution and the introduction of new species that need to be looked at in relation to the Treaty principle regarding the duty to consult referred to in chapter 4, The claimants urged on us the need for a strong statement by the tribunal as to the right that Ngai Tahu have to be consulted on decisions being made by central and local government on resource management and

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conservation. That request was made by Mr Temm, perhaps in philosophical acknowledgement that there was more to be gained in looking forward to better things than in looking back at past failures.

We have examined in some detail how Ngai Tahu have been affected by the impact of New Zealand's developing society and there is no doubt that the many things of which the tribe complain are completely accurate. As stated by one witness, it seems to be a universal evil of colonisation that the environment suffers as a result. And it seems axiomatic that remedies come too late and are only considered when the evil has taken place. Development is not always bad and many good things flow from it that are of great communal benefit, but they may have harmful effects to a minority.

It is an easy matter to lay blame generally but it is not always easy to apportion that blame with exactitude or to get agreement that the damage complained of is worse than the benefit obtained. Ngai Tahu have suffered the destruction of their traditional food resources from all that has flowed from New Zealand's developing economy. They have much to complain about. There is certainly a need for better consultative processes to be put in place as Mr Temm so strongly stressed.

We shall come back to that important question shortly. Our present difficulty relates to the rather general nature of the four remaining grievances. The extent of the damage caused to mahinga kai by settlement was made abundantly clear in submissions and evidence and by the inspections of the tribunal. We have no problem in reaching a conclusion on that issue. It is much more difficulty however, to reach a finding that the loss of mahinga kai can be attributed solely to the Crown as a breach of its duty to protect under the Treaty. In many cases the acts or omissions have occurred as the result of individual or group activities; be they farmers, foresters, fishers, miners, contractors and indeed the whole spectrum of society including citizens, local authorities, commercial and industrial firms. We are not dealing with a single cause and effect situation as might well be the case in other specific claims such as sewerage discharge into a particular river or inshore fishery. The tribunal is charged under the Act to determine whether any particular policy or practice, act or omission is that of the Crown.

- 17.5.5 Most of the evidence clearly showed the harmful effects of a developing society but in many cases there have been several contributory causes, some of which may have been within existing laws and some not. What the claimants have sought to express is that governments have exercised insufficient restraint in their policies over 150 years to prevent the total disaster which has occurred to Ngai Tahu tradi-

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tional food resources. That might appear to be a simple issue to respond to but it is a much more difficult matter to position that allegation within the jurisdiction given to this tribunal by section 6 of the Treaty of Waitangi Act 1975. This tribunal is required to identify with some precision the particular acts or omissions which have prejudiced Maori and which infringe the Treaty. We have no doubt that the claimants, if put to that exacting and detailed task, may well be able to perform it in relation to many of their claims. What they have chosen to do in this huge claim is to present a general picture of how Ngai Tahu have suffered serious harm as the combined result of many different causes over which they had no control. If the tribunal had been required to examine in detail each of the contributory causes outlined by many witnesses we would never have finished this inquiry. When we later report on ancillary grievances we will be dealing with a number of specific matters which allege violation of Treaty principles. These will be examined individually but there has been a wealth of general material given by witnesses concerning mahinga kai outside specific claims advanced by the claimants. We find it difficult therefore to determine that each of the general grievances nos 1 and 3–5 inclusive are sustainable as specific breaches of the Treaty. We do however agree that the matters set out in these four general statements, when taken together with the clear breach of article 2 as found by this tribunal, add more weight to our finding that Ngai Tahu mana and rangatiratanga in respect of their mahinga kai were improperly disregarded by the Crown.

- 17.5.6 What Ngai Tahu are further saying is that the tribe was not consulted and did not effectively participate in policy decisions. All this has contributed to the decline of their food resource. Furthermore, they wish to be consulted in the future.

This tribunal has no difficulty with these two questions. We believe that Ngai Tahu were not consulted and did not effectively bring a Maori perspective to many issues. We say that the reason for this is that they were effectively deprived of their mahinga kai and denied an economic land base by the Crown's failure to endow them with specific and adequate reserves. Their whole tribal base disintegrated because of the lack of land. This affected their opportunity to present a tribal view, a position not helped by the individualisation of title from 1865 on. That Ngai Tahu have spent more than 100 years fighting for the recovery of their rights has been due to their wairua and the tenacity of a relatively small number of people.

As we have earlier found, Ngai Tahu were wrongly deprived of their rangatiratanga and their mana. This was the breach of Treaty prin-

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ciples that denied them participation and consultation on policy decisions over those crucial years following the purchases.

17.6 Findings and Recommendations

17.6.1 The claimants alleged in their general claim that the Crown dispossessed Ngai Tahu of their mahinga kai and this was a breach of article 2 of the Treaty.

- We find that the grievance is made out to the extent that:

- (a) The Crown failed to make specific reserves to protect and preserve Ngai Tahu's mahinga kai; and

- (b) the Crown failed to provide sufficient reserves to allow Ngai Tahu to participate in the developing economy.

As a result Ngai Tahu were deprived of their rangatiratanga as guaranteed to them by article 2 of the Treaty.

- We confirm our findings in respect of grievance no 2, as given in relation to the Kemp purchase (8.9.18–21), and in particular:

- (a) We find that the Crown failed to preserve Ngai Tahu rights to the food resources of Waihora, as required by the terms of the Kemp purchase, and thereby acted in breach of article 2 of the Treaty principle of good faith.

- (b) We find that the Crown failed, as required under article 2 of the Treaty, to set aside specific reserves so as to protect Ngai Tahu's right of access to their eel resources at Wairewa.

- (c) We find that the Crown failed to protect Ngai Tahu rangatiratanga under article 2 in that it granted eeling rights at Wairewa to Maori instead of to Ngai Tahu.

- We find that the grievances numbered 1, 3, 4 and 5 as set out in 17.4.1 are not sustainable as breaches of the Treaty for the reasons set out in 17.5.5.

Tribunal recommendations

The tribunal makes the following recommendations pursuant to section 6(3) of the Act.

Waihora (Lake Ellesmere)

17.6.2 At the option of the claimants:

EITHER

That the Crown vest Waihora for an estate in fee simple in Ngai Tahu and contemporaneously enter into a joint management scheme with Ngai Tahu which would include such matters as:

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- (a) controlling the opening of the lake to improve the fishery
- (b) improving water quality by controlling bird population and use of land margins around the lake, control of lake usage and control of sewage disposal. The joint management scheme binding the Crown to provide financial, technical, scientific and management resources;

OR

That the Crown, in manner similar to the Titi Islands, vest beneficial ownership of Waihora in Ngai Tahu but remain on the title as trustee. The Crown then, in consultation with the beneficial owners, to make regulations for the future control and management of the lake in manner similar to the Titi Islands regulations and to provide the resources of the kind mentioned in the first alternative to improve the fishery and water quality.

Wairewa (Lake Forsyth)

- 17.6.3 (a) That the existing fisheries regulations giving Maori exclusive eel fishing rights over Wairewa be amended to substitute “Ngai Tahu” for “Maori” so as to return the rights to the tribe.
- (b) That the same regulations be amended to give Ngai Tahu exclusive rights to fish the waters leading into the lake and to cancel any other existing licences.
- (c) That an area of land be reserved around the eel trenches at the southern outlet which will secure Ngai Tahu rights of access.
- (d) That a management plan be prepared, involving Ngai Tahu as part of the decision-making process along with the Department of Conservation, Regional Authority, Ministry of Agriculture and Fisheries, for the improvement of the water quality with the Crown providing the same resources as recommended in respect of Lake Waihora.

Other recommendations

- 17.6.4 That beneficial ownership of the Crown Titi Islands be vested in such persons or bodies as may be nominated by Ngai Tahu and be subject to similar management regime as the beneficial Titi Islands.
- 17.6.5 That the question of reserving the pingao plantation of Ngai Tahu on Kaitorete Spit be brought to the notice of the Minister of Conservation for consideration and action.

Future consultation

- 17.6.6 During the hearing a number of proposals were made to improve Maori representation and to ensure better consultation with the iwi on resource management and control. In chapter 4 dealing with principles of the Treaty we referred to the views of the Court of

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Appeal in its 1987 decision concerning the New Zealand Maori Council on this question of consultation. In particular the observations of Sir Ivor Richardson suggest that in many cases where there seemed to be Treaty implications it may be necessary to have extensive consultation and cooperation in order to make informed decisions. This tribunal has suggested that planning and environmental matters may be notable examples. There are signs at last that central and local government have become aware of the need to involve Maori in these environmental matters and to have a Maori perspective.

The tribunal received a number of proposals from both Maori and Crown witnesses emphasising the need of improvement in the consultation process. We believe that need is now well documented and perhaps it is unnecessary for this tribunal to draw the matter to the minister's attention. We had a helpful submission from the former Director-General of Conservation, Mr Ken Piddington, assuring the tribunal that his department was very much aware of Treaty obligations and the need for Maori involvement. Mr Piddington gave details of procedures his department was putting in place and he emphasised the need to maintain regular working contact with the Ngai Tahu Trust Board.

As we see it, if the process of consultation is to be an effective one, it must be written into the various statutes and certain basic commitments made in those Acts on the status of such important matters as water and air purity. Many of the submissions made to us addressed kai moana and these will be covered in our later report.

We propose to include in this section some of the recommendations which have particular significance for mahinga kai and then finally to express some basic problems that need to be addressed.

Some other measures sought by claimants

- 17.6.7 (a) That areas of pingao, kuta, harakeke and totara should be set aside for the exclusive use of Ngai Tahu (H8:33).
- (b) That the present system of planting the wrong types of trees and plants in the rivers be changed to the planting of raupo and other species that would return the old ecosystem (H10:29).
- (c) That water boards strictly enforce the grant of any water rights (H6:36).

We make no recommendations concerning the above matters but simply wish to record them and bring them to notice.

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As stated we received a large number of proposals relating to representation on regional boards. We consider the following matters are material to effective representation.

A Maori perspective in environmental matters

- 17.6.8 Substantial changes to our law are required to ensure that Maori have an effective say in environmental matters.

The Resource Management Bill which has been introduced into Parliament provides an opportunity for change but other statutes, regulations and procedures must also be changed. We see a need for remedial action in these four fields and make the following recommendations:

- (a) amendment to statutes to ensure that Maori values are made part of the criteria of assessment before the tribunal or authority involved;
- (b) proper and effective consultation with Maori before action is taken by legislation or decision by any tribunal or authority;
- (c) representation of Maori on territorial authorities and national bodies; and
- (d) representation of Maori before tribunals and authorities making planning and environment changes.

- 17.6.9 Looking first at statutes where law is created the tribunal considers it necessary that those persons drafting new law should be required by statute to assess the impact of the proposed law on Maori and include within it criteria that will ensure a Maori perspective is sought and given. This mandatory requirement could be inserted into the Law Reform Act or the Constitution Act and would act as a safeguard in the introduction of all legislation.

There is no doubt that further amendments are needed to existing legislation to ensure that there is statutory recognition of Maori values. Such recognition should occur not only in environmental and public works matters but also in social legislation such as health and education. It extends across a broad range of statute law to include procedural legislation such as the Coroners Act 1988 and the Adoption Act 1955.

- 17.6.10 Perhaps the most significant area for change is in the consultative field. Consultation in Maori terms involves the well-being of the tribe. Local and central government need to recognise that Maori expect to discuss proposals that affect them in their traditional way on the marae. If our Pakeha leaders are diffident about going on to marae then meetings should at least be held in circumstances more akin to marae protocol. There must be recognition of the tribal framework

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and of the importance of issues being orally examined by Maori. Consultation in a Maori context is far, far more important to Maori than representation on Pakeha organisations. In some instances, Maori people serving on national and territorial bodies, even tribunals, may deliberately refrain from commenting on an important issue because that may be an intrusion on the mana of another hapu or iwi. On the other hand, explanation, examination and discussion on tribal marae will be much more likely to lead to an informed and acceptable decision. In the respectful view of this tribunal there must be a much greater effort to take proposals to the people on marae.

In addition to marae hui, tribal authorities must be given the opportunity to consider the various reports that are presented to territorial bodies well in advance of any hearing of the issues, and a right of hearing if requested. This question of consultation with iwi was examined in some detail by the Waitangi Tribunal in the *Mangonui Sewerage Report* (1988). The tribunal in that report (6.3) commented on the omission of the Crown to recognise the tribal position and to provide the legal foundation and resources for tribes to contribute more fully to local affairs and protect tribal interests.

In this claim Ngai Tahu have very substantial interests and the Treaty requires the recognition and protection of their rights. Consultation is not a one party process, and as the tribunal stated in the *Mangonui Sewerage Report* (1988), tribal institutions should provide a means whereby local and central government and private interests can confer with the tribe. It is the Crown's responsibility to remedy its past failures and ensure resources are provided to involve Ngai Tahu in future consultation processes. There has to be a positive and substantial Crown commitment of resources.

- 17.6.11 As earlier stated consultation is perhaps the most important way to ensure Maori have input into decision making processes. To a lesser extent, but important as part of the total framework, Maori must be represented on national and local bodies if the partnership principle is to be meaningful. There remains a lot to be done in this area. The formation of the national congress of iwi shows that Maori are conscious of the need for a united central body yet respecting the mana of each of its constituent tribes. Government has expressed a will to provide resources for iwi. It remains to be seen whether these procedural first steps will develop into a stronger stride forward. The tribunal has no magical answer to the problem of ensuring effective representation of Maori interests. There is certainly an awareness of the need. Possibly the answer to better Maori representation on various bodies may come from better consultation and statutory recognition of a Maori perspective.

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- 17.6.12 To conclude this examination of how Maori views can be brought to notice the tribunal emphasises the need for the Crown to provide adequate resources to ensure Maori are represented before planning and environmental authorities.

Hearings before tribunals and committees often involve complex matters of scientific and legal content. Maori should have access to legal aid in order to be represented by counsel and thus be effectively heard. We are aware that there is a Legal Services Bill currently before Parliament. We note that no provision has been made for legally aided representation of iwi, as iwi, before environmental and planning tribunals.

17.7 **Future Protection of Ngai Tahu's Mahinga Kai—the Doctrine of Aboriginal Title**

- 17.7.1 Apart from submissions directed by the claimants to the important question of consultation and representation, the tribunal has not received from Ngai Tahu any specific recommendations aimed towards future protection and preservation of mahinga kai. The claimants submitted that mahinga kai still has immense cultural significance to Ngai Tahu particularly in the gathering and sharing of it. Counsel told us there is still a need not only for food resources but for natural dyes and fibres and wood for carving. The question of remedies remains to be negotiated between Ngai Tahu and the Crown and opportunity will then no doubt be taken to look at some specifics. Obviously the fresh water and sea fisheries remain very much to the fore with Ngai Tahu. We have in this chapter looked at several important fresh water fisheries such as Waihora and Wairewa and rivers such as the Opihi.

We have seen it desirable to recommend certain action in respect of Waihora and Wairewa. We will look quite extensively at the important sea fisheries in a later report and will also consider in a further later report on ancillary claims, specific claims in respect of other mahinga kai grievances such as Lakes Hawea, Tatawai and Wainono. Before we leave this chapter however it would be helpful to the parties to have the tribunal's preliminary views on the availability of existing law which might provide a frame work for remedial changes.

- 17.7.2 Although settlement of Te Wai Pounamu effectively cut off Ngai Tahu's access to their mahinga kai, nevertheless, as Mr Temm and several witnesses put to the tribunal, the tribe still continues to forage for their flora and still collects herbs for medicinal purposes as well as pingao, kuta and harakeke for traditional weaving and decorative art. Trees of the forests such as totara are important for carving. There are other mahinga kai resources which Ngai Tahu continue to gather

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such as puha and watercress. During the course of the Waitangi Tribunal hearing of the Kaituna River grievance a comprehensive legal submission was made by Dr Paul McHugh, a Fellow of Sidney Sussex College, Cambridge. This submission was favourably received by the tribunal even though its chairperson, Chief Judge Durie, said the tribunal would not make any finding on it as the tribunal already had sufficiently wide powers under its existing jurisdiction to deal with the Kaituna issues. We agree with the view of the learned chief judge that the statutory authority of the Waitangi Tribunal is to determine whether any act or omission of the Crown is inconsistent with Treaty principles. That is our guiding jurisdiction. However, since the Kaituna decision, Dr McHugh has published a number of articles on aboriginal title and one published in the Victoria University Law Review (1986) 16, 313 entitled *Aboriginal Servitudes and the Land Transfer Act* raises a relevant and possible procedure for the registration of aboriginal servitudes ie, mahinga kai rights against the Land Transfer Title. Aboriginal title was defined in *Calder v Attorney-General of British Columbia* 1973 SCR 313 as:

a legal right derived from the Indians historic occupation and possession of their tribal lands.

In his article Dr McHugh says that the traditional rights of collecting certain herbs and selection of flax for traditional decorations honouring ancestors are governed by customary law. The rights stem from ancestral ownership and usage and where it can be shown that the aboriginal owners of a particular territory have not by sale, cession or abandonment, relinquished their non-territorial aboriginal title over that land, the aboriginal servitudes will be unaffected by transactions in relation to the Pakeha or Crown derived title. Dr McHugh looks at matters relating to the indefeasibility of the land transfer title and suggests that although certain aboriginal servitudes may be enforceable and registrable against the title of a registered proprietor as omitted easements under section 62(b) of the Land Transfer Act 1952 nevertheless, Parliament should consider amending the Act so as to make the title of the registered proprietor subject to those subsisting traditional incidents of Maori tenure. Dr McHugh suggests registrability could be granted by an order of the Maori Land Court following an investigation of a claim to an aboriginal servitude.

- 17.7.3 This tribunal does not make any recommendations for such a legislative change as proposed by Dr McHugh. It will be interesting to see if this question becomes subject to judicial scrutiny. There are several tests which obviously must be met to first establish the validity of the claimed customary servitude. It is difficult to perceive that our legislature would move to set up a procedure of registering mahinga kai customary rights against privately owned land. On the other hand

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Parliament may be prepared to come some way in protecting Maori customary rights by providing for the registration of certain defined mahinga kai rights against Crown or state-owned enterprise land. We make no recommendation but draw this to notice. The matter may yet come before our courts.

There are several statutory provisions available for the designation and reservation of Maori freehold land, general land and Crown land. These might well be used to protect specific mahinga kai. Sections 439 and 439A of the Maori Affairs Act 1953 cover a wide field of reservation. Fishery management areas can be created under the Fisheries Act 1983. The Maori Fisheries Act 1989 provides procedures for establishment of taiapure fishery reserves. The Reserves Act 1977 contains provisions for various types of reserves and uses thereof. Within the umbrella provided by these statutes there should be sufficient shelter to protect and develop mahinga kai. Manatu Maori should be used by iwi and hapu to determine specific resources that need development and protection.

The tribunal expresses the hope that Crown agencies will meet with Ngai Tahu and evolve procedures not only in joint management of mahinga kai resources but also in preserving and developing the precious little that remains.

References

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- 2 *Further Reports by Mr Commissioner Mackay Relating to Middle Island Native Claims* 16 July 1891, AJHR 1891, G-7A, p 6
- 3 E C Studholme, *Te Waimate: early station life in New Zealand* (2nd ed Reed, Wellington, 1954) p 39
- 4 Mikaere, p 75
- 5 Waruwarutu (and Kaiapoi Runanga) to FitzGerald, 9 September 1865, *Compendium*, vol 2, p 238
- 6 Native Land Court Proceedings, 5 May 1868, *Compendium*, vol 2, p 216
- 7 *Report on Middle Island Native Claims*, AJHR 1891, G-7, p 51
- 8 A Mackay to Under-Secretary, Native Department, 6 May 1881, AJHR 1887, G-8, p 16
- 9 A Reischeck *Caesar: the wonderful dog* (Star Office, Auckland, 1889)
- 10 M Moreland *Through South Westland: a journey to the Haast and Mount Aspiring, New Zealand* (Witherby & Co, London, 1911)
- 11 see n 7, pp 47–48
- 12 see n 7, p 48

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- 13 *Further Report on Middle Island Native Claims*, AJHR 1891, G-7A, p 6
- 14 see n 8
- 15 Normanby to Hobson, 14 August 1939, *Compendium*, vol 1, p 15
- 16 *Report of the Commission on Middle Island Native Land Purchases*, AJHR 1881, G-6, p 5

Chapter 18

Te Ao Hou: The New World

18.1. Introduction

Te Ao Hou was described to us as the new world, the world after the adoption of Christianity and following the Treaty, and after the loss of the tribe's lands. Ngai Tahu's place in this world was outlined to us, as it related to the people of Otakou, in the evidence of Mr Bill Dacker. We have already had some extensive glimpses of Te Ao Hou in our discussion of the evidence so far. In our examination of Ngai Tahu's Kemp purchase claims we have reviewed the tribe's struggle to have their claims acknowledged over many decades following the purchase itself. As part of this, we have looked at how Ngai Tahu appealed to the Crown to have their rights to North Canterbury accepted, and their various appeals for more land to be reserved, including those heard by the Native Land Court in 1868. Other inquiries, such as the Smith–Nairn inquiry in 1879–80, have also been examined. In the Otakou claim we have reviewed Grey's actions in setting aside the Princes Street reserve in 1853 and the various court cases and negotiations which followed this in the 1860s and 1870s. Some of the Crown's attempts to deal with the problems faced by the tribe have also been introduced. These include the provision of "half-caste" grants from the 1860s and land for "landless natives" at the turn of the century. On the West Coast, we have followed the history of the Maori reserves set aside as part of the Arahura purchase, and the process whereby many of these reserves became lost to the tribe through the provision of perpetual leases. In the mahinga kai section of the report, we have shown how settlement brought a halt to many of Ngai Tahu's food gathering practices, through over-exploitation, competing resource use, pollution and by restricted access. In assessing the Crown's failure to ensure that adequate reserves were made available for Ngai Tahu's present and future needs, it has also been necessary to explore the tribe's position in the years after the sales themselves.

There are still major concerns voiced by the claimants which need to be examined in this period, the times referred to by Professor Ward's report as the "aftermath of the purchases" (T1 chapter 11). The claim for "schools and hospitals" is one of these concerns. Ngai Tahu have

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complained on numerous occasions that their understanding of the terms of a number of the purchases, particularly the Kemp and Murihiku purchases, included the provision of educational and health services. We shall examine that claim in some detail, to determine what was promised by the Crown's agents at the time of the sales and what attempts the Crown may have made to provide such services for the tribe. Schools and hospitals became linked to a series of commissions of inquiry leading to the provision of "lands for landless natives" early this century. This occurred because, as we shall see, in the late nineteenth century Ngai Tahu's claims for such services became interwoven with their demands for a final settlement of their claims as a whole.

Before moving on to these aspects of the claim, we pause to take a consolidated view of Ngai Tahu's place in Te Ao Hou. We will examine Ngai Tahu's place in the new settler economy, their attempts to gain recognition of their claims and their relationship with the Crown following the purchases.

18.2. **Ngai Tahu and the Crown After the Purchases**

18.2.1 Mr Dacker's evidence concentrated on Otakou Ngai Tahu and on the failure of the Crown to provide sufficient reserves as part of the Otakou settlement. Much of this discussion is relevant to the condition of the tribe in other areas as well. Mr Dacker argued that a failure to adequately reserve sufficient lands for Maori made it impossible for Ngai Tahu to realise the promises they saw in the agriculture and commerce that Europeans had brought into their territory. Instead of thriving in Te Ao Hou, Mr Dacker found most Ngai Tahu left on the edges of the new society, often relegated to real poverty:

The loss of land and the loss of traditional resources deprived the people of an economic base for their communities which eventually forced more and more of them to migrate to where there was work. Once the strength of the communities was broken in this way, the people were exposed increasingly to the predominantly negative European attitudes to the Maori and Maori culture. Hence the loss of economic strength flowed through into loss of culture. (F11:4-5)

18.2.2 The Crown responded to Mr Dacker's paper with the evidence of Mr Tony Walzl (Q8). Mr Walzl examined the economic position of the tribe, not just in relation to the situation in the Otakou block, but throughout Otago, Canterbury and Southland. His evidence was detailed and comprehensive. He reviewed the condition of the reserves in the 1840s and 1850s, surveyed the quality of reserves in the various areas, and detailed Ngai Tahu attempts to increase the effectiveness of their reserves through appeals to have their areas increased and through individualised title. His conclusions differ little

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from those of Mr Dacker. Despite evidence that Ngai Tahu wished to “partake in the ‘new order’”, Mr Walzl concluded that Ngai Tahu found it impossible to compete because of “the lack of resources which resulted after the purchases” (Q8:64).

Both Mr Dacker and Mr Walzl were agreed that the failure to leave Ngai Tahu with anything like adequate land for their needs in Te Ao Hou was at the heart of their relegation to the margins of that new world. It is a conclusion we have reiterated many times in this report. In the years which followed the purchases, Ngai Tahu made numerous attempts to have their claims recognised, and in turn the Crown responded to these claims in one way or another. To understand why these grievances have not been resolved and are still before this tribunal we have to explore something of this troubled history of protest and response.

The tribe’s relationship with the Crown

- 18.2.3 Ngai Tahu and the Crown had differing views on their relationship with each other after the purchases. The tribe appears to have seen the purchase agreements as recognition of their rangatiratanga. As Mr Dacker’s evidence shows, despite the disregard shown them by the Crown, Ngai Tahu remained loyal to their Treaty partner. Time and time again Ngai Tahu declared their loyalty to Queen Victoria, their confidence in the law and their faith in Christianity. Throughout the 1850s and 1860s tribal leaders continued to place their faith in the fairness and justice of the governors and their representatives, and to persist in the hope that their requests to government would be met. Mr Dacker provides many instances of this loyalty.

In 1860, when all but Stewart Island and Ruapuke had passed to the Crown, Matenga Taiaroa attended the Kohimarama conference. This great council of chiefs was called by Governor Thomas Gore Browne to strengthen Maori adherence to the government, at a time when this was threatened by the events in Taranaki and by the formation of the King Movement. There can be little doubt of Taiaroa’s views. He told the governor that he had no opinion about Taranaki, but that his island belonged to the Queen (F11:6–7).¹ A few months later, with the prospect of further unrest in the north spreading uncertainty even as far south as Dunedin, Ngai Tahu chiefs again spelt out their commitment to the Queen and her laws. Matiaha Tiramorehu explained that:

It is some time since our union to the Queen has been made known to the most distinguished people of England, therefore I repeat God is our dwelling place, the Queen our parent, and the Governor the father of New Zealand. (F11:8)²

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His sentiments were repeated by Natanahira Waruwarutu, Merekihereka Hape and Rawiri Mamaru. Mr Dacker commented of Ngai Tahu that:

They saw themselves as a brother people to the European under the cloak of the Queen. They strove to make their mana strong within her Empire. They aspired to acquire the benefits of the new technology and the material culture that membership of that empire gave them access to. The adoption of Christianity and the signing of the Treaty sealed, with their spiritual and physical loyalty, a future within that empire. (F11:5)

This sense of brotherhood, of kinship, with the European under the Queen permeated the attitudes of Ngai Tahu in the period immediately after the purchases. In dealing with governors for the purchase of their lands, the chiefs appear to have expected that the relationship would continue, in a spirit of friendship and mutual concern.

- 18.2.4 For Ngai Tahu, active and vital participation in the affairs of the new world meant engaging in a personal relationship with the governor, as the Queen's representative, through ongoing personal contact. The mana of both parties to the deeds demanded no less. This is most clearly illustrated in the letters Ngai Tahu wrote to the governor. Ms Jenny Murray examined many records of Ngai Tahu's correspondence with various governors and Crown agents from the middle decades of the nineteenth century (T13). Her research shows that many Ngai Tahu were engaged in a continuing correspondence with the central and then the provincial governments. Dozens of letters were sent by Ngai Tahu. Unfortunately many have long since been lost in fires which have ravaged the files of the Native Affairs Department and its successors. However, we still have the departmental registers which show us something of the subject matter and authorship of this correspondence. Many letters were published by various parliamentary inquiries and many of these have already been discussed in the course of this report. A few, such as Tiramorehu's letters to the governor in 1849, were even published in newspapers at the time.

The letters display a wide range of concerns. Some writers complain, others make requests (often of a relatively trivial nature) while a few do little more than pass the time of day. Matiaha Tiramorehu was one of the most vociferous of letter writers and he corresponded with a number of governors over several decades. His protests over the Kaiapoi boundary are well known, but among his other letters are a request for a reserve at Wakatipu, a complaint about European use of poisons (T12:22)³, and concerns over the provision of lands for half-castes (T12:23)⁴.

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There were letters about mining, about reserves, about squatters or encroachments and roading, about stock, and about payments for a wide range of places. Books, schools and flags were all subjects of communications. In some cases copies were requested of *Te Karere Maori* (*The Maori Messenger*), or of *Ko Nga Ture o Ingarangi*, a digest of the laws of England, prepared by Sir William Martin.

Characteristic of the more political Ngai Tahu letters are those of Tikao, written in 1850 to press the claim to the area north of Kaiapoi. The first of these letters asserted Ngai Tahu rights to a list of places up to the Wairau, and explained who should be paid for those rights.⁵ Later letters discussed a site at Pigeon Bay, promised by the governor as a Maori reserve and complained of problems caused by Europeans in the bay. Tikao asked the governor to come in person to resolve these difficulties. If this was impossible, he was expected to write a reply and to have the offending Pakeha removed (T2:27–29).⁶

- 18.2.5 Vice-regal visits were attended by Maori and time was taken to address the governor in terms that stressed the tribe's loyalty while at the same time raising matters of concern. During a visit to Canterbury in 1852, Grey met with many Ngai Tahu concerned about their boundary with Ngati Toa, and some were entertained on board the government brig (T2: 68).⁷ In 1856, Ngai Tahu welcomed the new governor, Thomas Gore Browne, at Lyttelton, where Paora Tau again voiced their concerns about the recognition of Ngati Toa's rights north of Kaiapoi (T2:62).⁸ The laying of the foundation stone for St Stephen's Church at Tuahiwi, in 1867, was done by Grey himself. He attended a meeting of the runanga at Tuahiwi and received several petitions. Grey agreed there and then to some of the runanga's requests and promised to respond to others (T2:124–6).⁹

Professor Ward concluded that despite little familiarity with the ways of European government, rangatira showed a determination to participate in the new political order.

They were inexperienced too in the new categories of state power, but they showed a considerable determination to engage with these. In that context, meetings between the high ranking people of both cultures were valued. Agreements with the Governor were of special significance – but governors were not always men of honour. (T1:7)

As Professor Ward commented, Ngai Tahu attempts to gain a voice in the political world of the colony were very dependent on this personal relationship with the Crown's representatives. Unlike these representatives, however, tribal leaders placed less credence in this period on the written evidence of an agreement than on oral commitments made person to person, rangatira to rangatira.

*The Ngai Tahu Report 1991****The Crown's view of its obligations to Ngai Tahu***

- 18.2.6 Ngai Tahu may have seen the purchases as opening the way for a fraternal association between themselves and the Crown in the new Otago and Canterbury settlements, but the Crown's understanding of the sale agreements was much narrower. The Crown had been concerned to "extinguish native title". The result would leave Maori on fixed reserves, leaving to the settlers the business of developing the country, unhindered by Maori concerns.

Without an effective share in the new economy Ngai Tahu were unable to assert their concerns on government. The government relegated its relationship with the tribe to that of social welfare. This was at a time when the policies of *laissez-faire* ruled any debate over social economy, and the poor were expected to look after themselves by their own individual effort. Money for Maori purposes was spent grudgingly by the settler politicians, who in the 1850s conveniently forgot that Maori provided the majority of the country's customs revenue (T1:404). Assigning Maori concerns to those of social welfare was in the nineteenth century the very next thing to real neglect.

- 18.2.7 Letter writing and the occasional vice-regal visit show that Ngai Tahu had some access to government, but this should not be allowed to disguise the tribe's isolation from the every day administrative institutions of government. At a local level, Ngai Tahu had few Europeans they could turn to who had fluency in Maori and who were sympathetic to their interests. While Walter Mantell was commissioner of Crown lands at Dunedin in the early 1850s, there was at least one Crown official who could be approached. The resident magistrate, Chetham Strode, was also sympathetic to Maori interests (M14:28). In Canterbury, there was almost no one to mediate between them and the provincial government. W J W Hamilton, the customs officer at Lyttelton, was often called upon to deal with Maori issues. Although he completed the Banks Peninsula purchase and negotiated a settlement over North Canterbury, he was never confident of his fluency or appreciation of Maori concerns. There was only limited missionary assistance. The Reverend Johann Wohlers on Ruapuke appears to have taken little interest in Ngai Tahu's claims against the Crown. It was not until 1859 that Ngai Tuahuriri had a missionary presence in James Stack. In 1888, Alexander Mackay lamented the lack of a protector to look after the tribe's interests as settlement continued.

Owing to the non-appointment of an official protector for the Natives in the South, as was promised them at the cession of their land, these people have suffered a serious loss, for, had any person been clothed with the necessary authority to look after their welfare in the early days, a great deal of the irreparable neglect they have suffered from the

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non-fulfilment of the promises made them at the cession of their lands would probably not have occurred. (A9:9:65)¹⁰

Those measures that were taken, the construction of hostels in Lyttelton and Dunedin, the appointment of medical officers and the limited provision of school books, were isolated and not given continuing support.

The Crown's endowment policy

- 18.2.8 The Crown did, however, have a policy to use the funds provided from the sale of lands bought from Maori for Maori purposes. We have seen how this was spent in maintaining the office of the protectors. It may well be asked why profits from the sale of lands in Canterbury and Otago were not in some way returned to Ngai Tahu, providing an endowment to ensure their integration with the new economy. Walter Mantell asked the same question in 1854 when he complained that there should have been £5000 available for this purpose (M15:114).¹¹

The kinds of benefits which could have been provided to Maori other than the purchase price after they sold their lands could be listed as followed:

- added value to the lands remaining;
- provision in the deed for further payments or reservations once the land had been granted to settlers;
- the later provision of social services as part of the agreement; and
- the use of a proportion from the sale of Crown lands for Maori purposes.

As we have already seen, the belief that Maori would benefit from the added value that settlement would give their remaining lands was an essential part of the way the Crown justified its actions in paying only token amounts in its land purchases from Maori. In every purchase from Ngai Tahu this programme of endowment through reserved lands failed miserably to preserve anything like sufficient land so that the tribe could prosper in the new world.

In other sales in this period, such as some of those already discussed in the *Orakei Report* (1987), provision was made in the deeds for a proportion of the ongoing proceeds of sale to be used for the sellers' benefit. This too did not apply for Ngai Tahu. The Arahura deed allowed for land to be reserved to be later sold to pay for surveys, and the Rakiura deed allowed for land to be set aside as an education endowment (see appendix 2). The Kemp deed had the potential to allow further land to be set aside as the land was surveyed, until Mantell narrowly defined the terms of the deed when selecting the

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reserves. However, none of these deeds provided for the proceeds of sale to be used for Maori purposes. To some extent this omission flowed from the Crown's granting of the land to the New Zealand Company. We have seen how the provision for these grants was covered by the 1840 agreement between the New Zealand Company and the Crown (6.4.3). By this agreement the government determined what was a sufficient endowment to set aside for Maori in granting lands to the New Zealand Company. In the Otago purchase the Crown agents allowed for the possibility of further reserves being set aside, but this was not done by FitzRoy or by Grey when the land was surveyed and allocated to settlers.

The claim that Ngai Tahu were induced to part with their lands through promises made by Mantell, in particular, that the tribe would be provided with schools and hospitals, will be examined in more detail in a subsequent section.

- 18.2.9 After all this, there still remains Lord John Russell's 1841 instructions to Hobson to ensure that there was a fund for Maori purposes which consisted of not less than 15 per cent and not more than 20 per cent of the revenue from the sale of Crown lands. It was this fund which paid the costs of the protectors until they were abolished by Grey in 1846. With all other avenues for gaining a material advantage from the sale exhausted, there only remains the provision of the 15 to 20 per cent fund.

Professor Ward discussed these provisions in an appendix to his main report. He argued that difficulties in getting the Legislative Councils of New Ulster and New Munster to provide funds for Maori purposes convinced Grey that some provision should be made from the civil list (T1:401). Earl Grey hoped to provide the local government with wide authority over the raising of revenue in the 1846 constitution. But as Professor Ward pointed out, he also recognised that it would be an injustice for Maori not to be specifically provided for, since they would be for some time without a voice in the new legislatures, even though they were major contributors to the colony's revenue. In mid-1851, Governor Grey suggested that the new constitution should allow for a fixed sum of £7000 for Maori purposes, then 10 per cent of the colony's total revenue. One thousand pounds of this was to be destined for the South Island (T2:145–147).¹² The *Otago Witness* complained that the measure was an unwarranted extravagance in the Maori favour:

First, about 100 natives have to be paid for the land, then native reserves are made for them. This would have been very well, had the matter stopped here; but £7000 of the general revenue is to be set aside for native purposes. (T1:238)¹³

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Expenditure of this money was determined not by need, but by the political practicalities of the government of the day. More populous tribes, resisting the sale of their lands and opposing government policy, received more assistance than a loyal tribe whose lands had already passed from them.

- 18.2.10 The fund was to be used for hospitals and schools (for European use as well as Maori), for resident magistrates, Maori police and magistrates, for presents to chiefs and for other purposes “as may tend to promote the prosperity and happiness of the native race, and their advancement in Christianity and civilisation” (T2:146).¹⁴ However, the governor’s proposal did not necessarily envisage this measure as a replacement for a percentage of land sale revenue. He informed the colonial secretary that:

In naming the sum that will be required for native purposes, I have supposed that, as under Lord John Russell’s original instructions, the Governor-in-Chief would still, if a necessity for his doing so should arise, be authorised to apply 15 per cent. of the land fund to such purposes; and that the General Government alone would have the power of treating with the natives for the purchase of their lands. (T2:146–147)¹⁵

We note here that although the provision for using money from the land fund was still alive in 1852, Lord Russell’s insistence that this be done had been replaced with Grey’s understanding that drawing on this revenue would be at the governor’s discretion.

Earl Grey’s response was to accept the principle of a Maori revenue to be split between the provincial areas, but rather than setting the maximum amount he preferred a fixed proportion of the customs revenue to be set aside. Despite this, clause 78 of the constitution set aside a specific £7000 for Maori purposes (T2:149).¹⁶ The debts of the New Zealand Company had also been taken over by the colony, and these too were a 25 per cent charge against the land fund. Commissioners of Crown lands were informed about both funds in 1854. It was in reply to one of these circulars that Mantell raised the issue of the £5000 for South Island Maori purposes. However, Professor Ward found that these requests were met in general by “bewildered incomprehension” (T1:403–404). Governor Browne hoped that New Zealand representatives would not begrudge expenditure on Maori, particularly given their contribution to the colony’s revenue. He was wrong. As Professor Ward commented, the new legislatures of the 1850s ignored the justice of the situation and attempted to make all expenditure for Maori a charge on the civil list. Only the threat of war prompted the New Zealand Parliament to vote increased funds for Maori use. Although it would appear that the use of money from the sale of Crown lands was not directly done away

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with, following the adoption of the 1852 constitution, the practice clearly went into disuse.

- 18.2.11 Professor Ward's discussion of the topic prompted the Crown to prepare a late report on the whole issue. Mr David Armstrong provided an overview of the Crown's policy with regard to endowments in the period between 1840 and 1860 (X6). This was followed by a commentary by Mr Tony Walzl on how this policy related to the Ngai Tahu purchases. The papers were accompanied by a series of tables which provided considerable detail about the general finances of the colony during this period and the amount of money allocated and spent on specifically Maori purposes.

Mr Armstrong fleshed out many of the events described by Professor Ward, outlining how the protectors used up much of the funds available. He also explained how the policy became refined during the 1840s and how Grey decided to abolish the Protectorate Department, arguing that the salaries of the protectors had devoured all the funds available, and that there was nothing to show for the expenditure in the way of a single school or hospital (X6:37–38).¹⁷ Mr Armstrong then demonstrated that the Crown's arrangements with the New Zealand Company had removed the land fund for the company area from the Crown's control. In March 1849 Grey complained that the company was using the land revenue to purchase Maori lands (with the sanction of the colonial secretary) and as a result these funds were not accessible to the government.

Moreover the land fund of the Colony of New Ulster is in point of fact made liable for any engagements which the New Zealand Company may through their agents enter into, and the Secretary of State has recently sanctioned the expenditure of a portion of the land fund of this Province for the purpose of defraying the expenses of the purchase of a certain tract of land which the New Zealand Company are anxious to acquire in New Munster.

It thus appears that the whole of that source of Revenue from which payments on account of the natives are provided from which the expenses of roads and Public improvements should be defrayed, which should be charged with the cost of the Survey Department and with the sums which are expended in the purchase of lands from the natives are removed from the control of the Legislative and Executive Government of New Munster. . . (X6:54–55)¹⁸

Once the New Zealand Company's estates had been transferred to the Crown, following the company's inability to sell sufficient land, then the Crown was again in control of all the revenue from land sales.

Mr Armstrong also confirmed Professor Ward's argument that Grey did not see the statutory allocation of £7000 in the civil list as

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replacing, as least in principle, the responsibility to use 15 per cent of the land fund for Maori use (X6:24–25).¹⁹ In addition, Mr Armstrong demonstrated that this was the result of some confusion at the time, with the auditor general, Charles Knight, questioning the governor's authority to use the land revenue in this manner. Grey's reply, giving the reasons for the continuation of the policy, is instructive for the light it throws not only on the issue of endowment, but on Grey's negotiations with Maori for the purchase of their land.

. . . I have to acquaint you that as the natives have been given to understand, on many occasions, on disposing of their land, that the proportion of the land fund above alluded to would if necessary be expended in promoting their welfare, and as it has also been frequently explained to them that such expenditure of part of the land fund, rather forms the real payments for their lands, than the sums in the first instance given to them by the Government . . . (X6:26)²⁰

To summarise Grey's position, it was intended that:

- £7000 would be provided through the civil list for Maori purposes;
- 15 per cent of the revenue from land sales would also be available for such purposes;
- payments from the land fund had been promised Maori at the time of land purchases;
- these payments were to be regarded by Maori as part of the price of the land; and
- the discretion on whether 15 per cent of the land revenue could be spent on Maori purposes rested with the governor.

18.2.12 Whatever Grey's intent, it would appear that the policy went into abeyance after his departure at the end of 1853. While Robert Henry Wynyard was acting governor until September 1855, some confusion over the issue was apparent. But after Governor Browne's arrival the policy appears to have been completely suspended. The new governor saw the civil list as being supplemented by the ordinary revenue of government, not by any particular provision from the land revenue. Only where there were provisions in actual deeds was money provided from this source for Maori needs. In 1859, when the Crown's land purchase policy was blocked by widespread Maori determination not to sell land, Browne did suggest that up to three tenths of the blocks purchased be provided for reserves for Maori use and for future endowments (X6:31).²¹

The Crown historians then went on to suggest that for a number of reasons it was unlikely that the Crown agents would have made promises over such issues as schools and hospitals: at the time, land revenue was under the control of the New Zealand Company, the tribe was very small and their domain large, and Grey was engaging

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in a “personalised” Maori policy (X6:36–37). For reasons which will become apparent in our later discussion of the schools and hospitals claim we find this argument unconvincing (19.3.2).

- 18.2.13 The financial difficulties which beset government in the 1840s meant that even if 15 to 20 per cent of the land fund had been allocated for Maori purposes there would still not have been a large amount of money available. Only in 1840 and 1841 was a substantial quantity of money available, and this was due to high profits achieved from the sale of lands in Auckland. Between 1844 and 1847 inclusive the total land revenue was little more than £1000 per annum. This began to rise in the late 1840s, but was still only £13,477 in 1852 (X6:appendix 2:table 1). When the actual costs of land acquisition are taken into account the fund was in deficit in all years between 1840 and 1850, with the exception of 1841 (X6:appendix 2:table 2).

An additional table shows just how limited the central government’s commitment to expenditure on Ngai Tahu was during this period. Although figures are far from complete, they suggest expenditure directly on Ngai Tahu of £4 in 1850, £10 in 1851 and £17 in 1852. Only in the year 1859–60 was a significant sum spent on the tribe, with £1058 being of direct benefit to Ngai Tahu (X6:appendix 2:table 5). Ngai Tahu could be said to have benefited from other areas of expenditure, such as money spent on medical services and on resident magistrates. However all of this could in many ways be offset by the government’s direct encouragement of settlement, from which, as we have seen, Ngai Tahu received little benefit after the first few years.

- 18.2.14 Grey argued that he could provide “substantial and lasting benefits” (X6:17)²², by using the fund directly. We have seen how as a consequence, the absence of an officer to advise Ngai Tahu on their rights under the Treaty clearly prejudiced the tribe in their dealings with the Crown over land. It would also appear that in the uncertainty over constitutional issues between the late 1840s and the mid-1850s the issue of the use of revenue from Crown land sales was allowed to fade from the Crown’s consciousness. We wonder whether this would have been the case if the Protectorate Department had still existed. Given that Ngai Tahu were left with so little land following the purchases, the commitment of a percentage of revenue from the sale of lands from within their takiwa would have allowed for some amelioration of their condition. It does have to be recognised that the policy of the time was not specifically directed to the actual tribes which had sold their lands, but to all Maori and even to the European poor as well. However had such a policy continued in the 1850s it could have been expected that a larger proportion of the revenue

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could have provided some assistance in the new economy. This option must be seen as a second choice. Without land, and land in substantial quantities, it was impossible for Ngai Tahu to continue to exercise their rangatiratanga. Nor would revenue from land sales alone have been enough to reinstate Ngai Tahu's rangatiratanga. However, yet another opportunity to ensure that the tribe had some of the resources necessary to participate in the new world was let slip.

We shall examine the Crown's policy towards the tribe in more detail as it develops towards the end of the century in our discussion of the claim for schools and hospitals.

18.3. **The Displacement of Ngai Tahu Following Settlement**

18.3.1 The arrival of the Otago and Canterbury settlers marked a watershed between the period when Ngai Tahu had largely assimilated those visitors to their territory, and the time when the tribe was displaced by the sheer scale of immigration. There was a period of adjustment when the new Pakeha communities were not self-sufficient in foods and other necessities, when the newly arrived settlers welcomed fresh vegetables, fish, firewood, pigs and other commodities. Ngai Tahu responded to this market by planting their reserves in crops and acquiring livestock. Some built European styled dwellings. Maori labour, too, provided a cash income. In the early days, Maori vessels carried cargo and Maori ferrymen took passengers across the island's rivers.

However, settlements soon developed their own agricultural self-sufficiency and Maori were pushed to the edges of the European society. This happened quite quickly. By the mid 1850s, Ngai Tahu of Tuahiwi were but occasional visitors to Christchurch. Nonetheless they appeared to be holding their own economically, aided by the sale of timber from the Tuahiwi reserve. They were seen by the settlers as keeping to themselves and their affairs were of little interest to the vast majority of Europeans. In 1856 Commissioner Hamilton, while discussing the Akaroa purchase with Ngai Tahu, applauded Ngai Tahu's prosperity:

the 600 or 700 Maories residing in this Province are possessed of considerable property in cultivated land and stock. That they are industrious, and no doubt contribute a very fair share towards the general prosperity and towards the public revenues. I might instance their energy towards the production of a valuable but long neglected article of export, whale-bone and oil, of which they have this year sold £2,000 worth. Their fishing station at Ikuraki they have fitted out on their own responsibility with the assistance of the late owner. It is confidently stated, that next season this station will produce 100 tons of oil, worth (at £40,) £4,000. (M15:42)²³

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For the moment, the deficiencies in the amount of land left Maori were disguised by the small number of settlers and by the immigrants' need to acquire Maori produce until they were themselves established.

- 18.3.2 At Otago, Ngai Tahu continued to trade with the Dunedin settlers through the 1850s, but there is strong evidence that their presence in the town was far from welcomed. In 1850, Grey promised to establish a hospital for them, and Chetham Strode, the resident magistrate, organised the building of the hospital and the appointment of a surgeon (O20:49–50). Both these measures were bitterly opposed by the Otago settlers when they were required to fund them, following the creation of the Otago province. Ngai Tahu soon felt they were not welcome in the town. Matiaha Tiramorehu complained that the settlers' leaders remained ignorant of Maori and their concerns:

We have not been pleased with Captain Cargill, with McAndrew's set, with all the men of Scotland. Though seven years have passed they do not know anything of us, nothing at all of the Maori from Murihiku to Waitaki. There is but one white man whose house we enter, the Magistrate Chetham (Strode) is the only one, he speaks to us and we speak to him. (M14:28)²⁴

A lack of confidence in the hospital led to a petition that Dr Robert Williams be appointed as a special medical officer for Ngai Tahu and another hospital be built specially for Maori use (T1:239).²⁵ The Princes Street hostelry, so eagerly sought by Ngai Tahu in the early 1850s was little used in the 1860s.

- 18.3.3 The west coast remained all but unvisited by Europeans until the 1860s, when the gold rushes brought diggers swarming over the whole area, creating new towns almost overnight up and down the coast. Ngai Tahu were quickly overwhelmed numerically, there being no more than about a hundred of the tribe to begin with. However, continued Maori ownership of the valuable Mawhera reserve gave Poutini Ngai Tahu a substantial stake in the new town of Greymouth. Despite this, most of the tribe withdrew from Greymouth to Arahura in 1869 (T1:307). Although mining affected all of the coast, its disruption was short lived, and for Ngai Tahu in South Westland, the old lifestyle was maintained until well into the twentieth century.
- 18.3.4 Kaikoura and Murihiku were also less disrupted by settlement than the communities of Canterbury and Otago. Natural resources could still be obtained from the sea, although much of the land was allocated as runs. The influx of Europeans occurred more gradually and there was less drainage of swamps and industrial pollution of mahinga kai.

*Te Ao Hou: The New World****The reserves in the 1850s***

- 18.3.5 Surveys of the reserves in Canterbury, Otago and Southland, discussed by Mr Walzl, show that in many cases the reserves were of good quality. These surveys were taken at different times between the 1850s and the 1890s. In Otago the Otakou Heads reserve was described as “fine agricultural land”, while the Taieri and Molyneux reserves were respectively described as “second class” and “suitable only for pasture” (Q8:12).²⁶ The Tuahiwi reserve was depicted as having “rich arable soil” by Stack as late as 1880 (M15:23).²⁷ Initially it also had good timber, one of the few areas on the plains well endowed with bush. In 1861 the reserve was valued by Walter Buller at £45,400 (M15:19).²⁸ The reserves Mantell made at Moeraki, Waikouaiti, Kaiapoi and Arowhenua were also described as good quality agricultural land. Those on Banks Peninsula were of poorer quality. Less information was provided on the Murihiku reserves but these appear not to have been as valuable as those in Canterbury.

In the early 1840s there had been considerable agricultural activity at Otakou and large cultivations of potatoes were recorded by Dubouzet in 1840 and Shortland in 1844 (H1:21).²⁹ By the early 1850s Mantell recorded that there were no stock or cultivations on the peninsula (O16:28).³⁰ Otakou Maori were still trading with the Otago settlers, but their produce appears to have come more from the sea than from the land (Q8:19–20).

Matiaha Tiramorehu complained of the limited size of the Moeraki reserve in 1849, only a year after the reserve had been marked out. He cited the need for land for potatoes, wheat and pigs. Perhaps more importantly, given the changes that were occurring in the economy of the time, he asked for more land so that cattle and sheep could be run (M15: 26–27).³¹

- 18.3.6 The rapid development of a new pastoral economy was the most dramatic feature of New Zealand’s economic growth in the 1850s. The Wakefield scheme had aimed at achieving a high population density by selling land at £2 per acre and limiting allotments to 100 rural acres. But this proved completely inadequate for farming sheep. During the mid-1840s as sheep farming became profitable, European run holders gained access to very large areas of land, extending from tens to hundreds of thousands of acres. Frederick Weld and Charles Clifford, for example, leased the Flaxbourne run from Ngai Toa in 1847, and later received a depasturage license from the government (T1:268).³² By the middle of the 1850s, very substantial areas of the Kemp block were being occupied by pastoralists, most on very large runs (M5). This development only accentuated the gap between Ngai

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Tahu's small subsistence holdings and the massive estates of individual Europeans.

- 18.3.7 Not only did sheep farming require large amounts of land, it also required capital. The purchase of stock was expensive and put investment in pastoralism beyond the ordinary immigrant. For Ngai Tahu, without capital and without sufficient land, pastoralism was an impossibility. Mr Walzl commented that by 1854 even Mantell had to "admit the difficulties inherent in gaining entrance" into the European economy (Q8:29). Mantell described the state of the reserves and the difficulties Ngai Tahu were having in acquiring stock.

Their gardens are generally well kept – the usual crops being potatoes and wheat & to these they have lately added oats for their numerous horses, and tobacco: the latter thriving well even in Ruapuke . . . They have for some time owned a few head of horned cattle, these have now increased to a considerable number, and since the extravagant rise in the price of horses they prefer purchasing the cheaper and more useful Stock. A few of the more civilized have resolved to invest in sheep but the price of that description of stock is now too high for their means. (M15:74–75)³³

Mantell went on to note that one family had saved £200 to invest in sheep and he suggested that individual Ngai Tahu be allowed to purchase smaller sections than those usually laid off, as they were unlikely to be able to individually purchase the standard 80 acre sections. Professor Ward's report suggested that Mantell hoped that in restricting the size of Ngai Tahu's reserves, those Maori with the most individual initiative, as he saw them, would be able to acquire land on European terms. It is clear that without capital or land, this was impossible, even if Maori were prepared to abandoned their tribal ownership of lands, and this appears doubtful.

The accounts of the use of the reserves by Mr Dacker and Mr Walzl also confirmed that the period immediately after the sales was a time of comparative prosperity. East coast Ngai Tahu were able to take advantage of the needs of the new immigrant communities in Canterbury and Otago. However, Ngai Tahu's trade was not just based on agriculture on the reserves. In Otago, agricultural use of the reserve at the heads appears to have declined, compared with the 1830s, but in Canterbury there was a thriving Maori agriculture in the early 1850s (Q8:24–39). This suggests that Ngai Tahu were also relying on their mahinga kai, and in particular their fisheries, to provide them with commodities for trade with the settlers.

18.4. **The Economic Decline of Ngai Tahu**

- 18.4.1 Approving descriptions of Ngai Tahu's social and economic condition in the 1850s gave way to pessimistic and negative accounts in

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the mid-1860s. A report by H T Clarke from Murihiku set the tone for much of what was to follow:

I much regret that it is not in my power to give any very flattering account of the Kaitahu tribes. I have visited some of their Kaikas, and conversed with some of their principal men, and I can only say, that as a rule, they are in a most unsatisfactory condition. Taking them as a people, they are the most inert and listless I ever met. Whether this arises from the frequent use of ardent spirits, to which the Natives are much addicted. . . , or to the almost total neglect of their welfare by the Government I am not prepared to say; perhaps to both. (M15:57)³⁴

Two years later, Alexander Mackay also toured the southern reserves. Apart from Waikouaiti, where there was evidence of good cultivations, some sheep, cattle and horses, and a stable community, his general prognosis for the tribe was bleak. He estimated little more than a dozen acres under cultivation in any of the settlements, and saw their “gradual extinction as a people” as only a matter of time (A8:II:152).³⁵ Similar reports continued on to the end of the century.

Demographically overwhelmed

- 18.4.2 Demographic displacement was also at the core of Ngai Tahu’s cultural marginalisation. In 1851 there were 2832 Europeans in Canterbury. By 1856 this had risen to 6160 and by 1861 this figure had more than doubled to 16,048.³⁶ With the gold rushes, the population had risen dramatically and by the time of the Smith–Nairn commission in 1879–80, Stephen Eldred-Grigg commented that something like 77,000 immigrants had entered the province.³⁷ While Ngai Tahu were no longer declining in numbers, they were in no position to maintain their own against such an influx. Mr Walzl and Professor Pool have examined late nineteenth century censuses. They have demonstrated that the Ngai Tahu population (roughly identified as the Maori population of Canterbury, Otago, Westland and Southland) was growing throughout the 1860s and 1870s. Although there may have been a slight decline in the 1880s, the upward movement continued in the 1890s (O15:31). But total numbers of Maori in the four most southern provinces totalled only 1716 in 1874, 1947 in 1881 and 2109 in 1896 (O43). At a time when the European population was increasing by the thousands every year, Ngai Tahu’s demographic turn around went unnoticed. The common European view was still that the Maori were dying out. However an increasing Ngai Tahu population put real pressure on reserves, that were less than sufficient for the smaller communities that existed at the time they were made, let alone for Ngai Tahu’s expanding numbers.

Restrictions to mahinga kai

- 18.4.3 We have seen in the mahinga kai section of this report just how dramatically settlement reduced Ngai Tahu’s access to their mahinga

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kai and other natural resources. While settlement was small scale and the European population limited, the impact of the purchases on the tribe's food gathering enterprises was limited. Ngai Tahu were still able to hunt pigs and birds and take fish across much of their previous domain. However some food gathering activities were curtailed quite soon after European occupancy. It was noted by James Stack that the processing of ti had ceased by the time he arrived in 1859, a consequence of the burning off of runs for pasture (P11:272).³⁸ Edible fern root met the same fate.

Confinement on the reserves completely changed Maori ability to participate in the rearing of stock. Prior to the purchases Maori animals, particularly pigs, had been allowed to run freely at some distance from cultivations (F11:20).³⁹ Once Ngai Tahu were restricted to the reserves, there was no space to run animals, and crops needed fences to keep out both their own animals and those of their Pakeha neighbours. Disputes over damage caused by straying stock were commonplace (A8:II:138).⁴⁰ Mr Dacker suggested that the cost of fencing led to land being leased (F11:22). Maori agriculture was also land intensive, breaking in each area, planting it for a few seasons, and then when the land was exhausted, shifting to a new location. On the reserves, this was impossible.

Pastoralism, rapid population growth and the carving up of the country into farms increased competition over land use in which Ngai Tahu were inevitably the losers. Swamps were drained, streams polluted by timber milling and bush felled. As early as the mid-1860s Ngai Tahu were beginning to claim that their traditional food gathering places in Canterbury and Banks Peninsula had been badly affected by settlement.

Individualisation of title

- 18.4.4 As problems with the size of the reserves became exacerbated, new solutions were sought. Although individualisation was the major policy goal of successive governments in their dealings with Maori, there were pressures within Ngai Tahu which suggested that some form of individual title within the reserves may be a solution to some of their problems. Mr Dacker argued that confinement on the reserves had undermined the traditional tribal political structures which had in the past resolved disputes between different sections of the tribe. With competition for land confined to the meagre reserves, Mr Dacker argued that traditional means of allocating land for the use of individuals and whanau broke down. Mr Dacker suggested that:

The subdivision of their land into individual holdings was seen by many as a way to free their lands from the problems of communal ownership

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when participating in an economy that was structured around private ownership and the payment of wages to individuals. (F11:26)

However, Ngai Tahu did not necessarily see subdivision in completely European terms. Otago Maori sought to divide the land among whanau and hapu, in a manner consistent with the customary allocation of land use (F11:29–32).

- 18.4.5 The subdivision of the Kaiapoi reserve in 1860 was discussed by Mr Walzl (M14:33–57). Although the task of partitioning the reserve was given to Walter Buller, the allocation of land was done by the Kaiapoi runanga. Buller had been sent down to Canterbury in November 1859 to examine the situation of the Maori reserves, in anticipation of a visit by Governor Browne early the following year. He found the situation at Kaiapoi highly receptive to individualisation and discussed the matter at some length with the runanga. Browne detected real enthusiasm for the proposal when he arrived, and he reported to the colonial secretary that:

At every Maori settlement which I visited the same request was preferred, viz. ; that I would make their lands individualised and reconveyed to them under crown grants. (M15:86)⁴¹

Included in his report was the translation of an address by Ngai Tahu chiefs at Port Cooper, made to the governor on 6 January 1860.

Here is another subject for us to speak of, O Governor. The voice of all the people is that our Land Reserves in various places be subdivided, so that each may have his own portion. We ask you to give to each man a title in writing to his own allotment; but we leave the matter in your hands O Governor. Our reason for urging the subdivision of our lands is, that our difficulties and quarrels may cease, that we may live peaceably, and that Christianity and good works may thrive amongst us. (M15:87)⁴²

Allocation of the reserve lands took until May 1860, with land being divided into family lots of 14 acres, and the bush separately divided. Buller insisted on land being made available for Ngai Tuahuriri then living at Moeraki, because Mantell had promised as much in 1848. Although land was allocated for individuals this was still done along whanau and hapu lines. Requests for the individualisation of a number of other Ngai Tahu reserves followed.

Maori enthusiasm for the measure did not last, as major difficulties were encountered. The whole process was very slow. It took six years for the titles to be awarded for Tuahiwi, by which time Maori had become frustrated with the delays and unsure of the benefits. By 1866, Ngai Tuahuriri were complaining that their old customary title may have served them better than new titles undelivered (M15:145g–145k).⁴³ Mr Walzl also pointed out that individualisation actually made less land available to each family. The cost of survey had also been borne by the owners themselves.

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- 18.4.6 More seriously perhaps, Mr Walzl considered the implications of the ongoing partition of Ngai Tahu reserves on the overall economic and social condition of the tribe. Once reserves were partitioned among a number of owners and these interests further divided by succession, ownership became highly fragmented. Mr Walzl cited the condition of the Onuku reserve as typical of those discussed by Alexander Mackay in his 1891 report. This showed the reserve to be divided into 42 different interests ranging from just over an acre up to 26 acres, with more than half of these interests less than 10 acres (Q8:61). In many cases individual Maori were left with several interests in a number of different reserves, none of which was sufficient on its own to support them or their families.

Individualisation of reserves was not imposed on the tribe, and, when implemented, was done with general consent and with the active involvement of the runanga concerned. However, the whole exercise proved far from beneficial to the tribe because of the paucity of land available. What immediate benefits there may have been were dissipated by Crown delay. At the same time that Buller was attempting to place Ngai Tahu families into 14 acre allotments, the blocks thought sufficient for European use were being extended from between 50 to 200 acres per family (O15:11–12). Individual ownership had been advanced as a panacea for Maori development by official after official. With so little land to begin with, the merits and demerits of the policy are largely irrelevant to this central problem of landlessness. Buller divided Ngai Tuahuriri's few "loaves and fishes" amongst them, and afterwards there were even some lands left over. But there had been no miracle, and Mantell's measly 10 acres per head had in effect been reduced to 14 acres per family.

The climate changes: the 1860s and 1870s

- 18.4.7 The late 1860s marked a turning point, and Mr Walzl identified the 1870s as a period of dramatic change in the tribe's position:

Having relied on European advice, and having tried experiments such as individualisation and leasing, Ngai Tahu, found themselves no better off. By the 1870's they were beginning to organise themselves in order to arrest this development. (M14:76–77)

Up until the mid-1860s Ngai Tahu's claims had been very specific. The claim to the lands north of Kaiapoi pa had been the largest and most persistently argued claim. Beneath these were a series of smaller requests of government, particularly as they applied to land. Matiaha Tiramorehu's request for an extension of the Moeraki reserve and the increase made to the Waikouaiti reserve are illustrative of these claims. Despite the tribe's lack of experience in the ways of the European government, these claims met with some success. Addi-

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tional land was granted at Waikouaiti, despite Mantell's protests (M14:10).⁴⁴ The North Canterbury and Kaiapoi purchases and the payment of £200 to Tiramorehu for lands north of Kaiapoi were a recognition of Ngai Tahu's long fought campaign to have the rights recognised to the northern part of their takiwa (A8:II:75–79).⁴⁵ These rights had been partially recognised by Grey and Kemp and then denied by Mantell. Mantell and Grey provided the reserves at Princes St and Port Chalmers, although imperfectly, and a hostelry was also established in Lyttelton (A8:II:121–122).⁴⁶ Requests for other reserves were also met positively (A8:II:117–120).⁴⁷

- 18.4.8 By the late 1860s there was some recognition that Ngai Tahu had been short changed by the purchase process. William Gisborne, the colonial secretary, commented, in response to a request for a specific reserve at Taumutu, that the Ngai Tahu deed had promised the tribe adequate reserves, and that if that was not now the case then further reserves should be made:

At the time of the original purchase the Natives were promised that ample reserves would be made for them, and the Government is anxious that in any case where the reserves may have subsequently proved inadequate or unfit for occupation, the promise should be carried out, as is proposed in this instance by granting an additional piece of land. (A8:II:120)⁴⁸

Grey, too, in 1867 was met with a series of petitions, to which he responded positively. It was as a result of this realisation that the Native Land Court was given the powers to examine the Kemp deed under an order of reference in 1868. We have already encountered the actions of this court in our discussion of one of the Kemp grievances (8.10.9). The court rejected the claim of Mr Cowlshaw, Ngai Tahu's counsel, that the deed was in fact invalid. Chief Judge Fenton determined that the terms of the deed had not been fulfilled. He ruled that by increasing the amount of land reserved to the tribe to 14 acres per head, the tribe could be seen to have been provided with sufficient land for their present and future needs.

- 18.4.9 At the same time Ngai Tahu were awarded a number of additional fisheries reserves and easements. This was a consequence of the court's finding on the reservation of "mahinga kai" in the Kemp deed. In defining the reserves due Ngai Tahu under this provision Chief Judge Fenton concluded:

The Court gives its opinion that Mahinga kai does not include Weka preserves, or any hunting rights, but local and fixed works and operations. Under the reservation clause of the contract, we are prepared to make order for the pieces of land and easements which have been agreed to by the Crown. (P11:402)⁴⁹

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The reserves made in 1868 demonstrate the narrowness of this definition of “mahinga kai”. Fenton considered including an easement over Kaitorete to allow Ngai Tahu to build eel drains, but this does not appear to have been implemented in any way. Additional reserves were, however, awarded in Canterbury, many with fisheries potential (P10:82). Ngai Tahu also requested more reserves which were not granted, including five on Banks Peninsula (P10:80–83). Most of these were fishing reserves, but a 50 acre block on the Opihi River was for weka. In May 1868 at Dunedin, the court made similar easements and awards. Awards were made for Waikouaiti, Purakaunui and Papakaiao. A hundred acre block was also set aside at Lake Hawea.

- 18.4.10 The court decisions of 1868, and the apparent finality of the terms of the Ngaitahu Validation Act 1868 as it applied to the granting of reserves, left Ngai Tahu even more frustrated by the failure of the Crown to recognise their grievances. Professor Ward’s report commented on Ngai Tahu reaction to the court’s rulings:

The finality of the 1868 allocations was pressed home to the tribe. To share in the new reserves Maori were required to sign a document releasing the Crown from the relevant clauses of Kemp’s deed. Where up to 1868 Ngai Tahu had been able to look forward to and make application for further reserves under the terms of the deed, after 1868 the Crown considered that its obligations had been effectively discharged and the tribe was forced to face the reality of survival on the reserves. (T1:357)

The report went on to quote Stack’s 1871 warning to the government about the consequences should the Crown continue to ignore the tribe’s grievances.

They now find themselves placed in a situation they never contemplated when disposing of their land for the purposes of colonisation and consider themselves the victims of deception and boldly charge the government with having purposely misled them. They are bequeathing to their children a legacy of wrongs for which they charge them to seek redress—this will serve to perpetuate the spirit of discontent which has for some time prevailed. (T1:357)⁵⁰

Sympathetic reports of Ngai Tahu’s declining situation, and Grey’s apparent willingness to deal with their grievances may have heightened Ngai Tahu expectations that their tribal mana would be restored to them. The result was worse than discouraging. Awarding additional land, increasing the tribal allocation within the Kemp block to 14 acres per head, did little to arrest the tribe’s landlessness at a time of population growth and rapid increase in settlement. The Native Land Court’s definition of the terms of the deed were still at enormous variance with the promises of extensive quantities of land which Kemp had made them.

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18.4.11 The claim, Te Kerema, became an increasing focus for the political and economic direction of the tribe. Advancing the Princes Street claim taught the tribe's leaders new skills in the promotion of their grievances. New strategies were required for new political circumstances. H K Taiaroa was elected to the House of Representatives in 1871, and began a persistent campaign to bring Ngai Tahu's plight before Parliament. For over 30 years he pushed Ngai Tahu's interests in both the House of Representatives and the Legislative Council.

While Taiaroa pursued a new course in the committee rooms of Parliament, other leaders took more traditional paths in asserting the tribe's claims. Te Maiharoa led a heke to Omarama in the winter of 1877. He and his community were claiming the land they believed should have been reserved to them from the Kemp purchase. The community lived off the land and faced the harsh privations of winter and the hostility of the neighbouring land owners. In his book on Te Maiharoa, Buddy Mikaere shows how the land owners of the district successfully combined to have Te Maiharoa and his community removed from Aomarama in 1879 (J48).⁵¹ At the time of this eviction, the Smith–Nairn commission was beginning to examine the tribe's various claims against the Crown. The failure of Te Maiharoa's attempts to assert ownership through traditional means gave more strength to Taiaroa's campaign to have the tribe's rights recognised through the parliamentary process.

18.4.12 Meanwhile the condition of the tribe continued to deteriorate through the hard times of the 1880s. Any benefit from these additional reserves was soon eroded away. The process of settlement and development continued after the 1860s, as did the increase in the tribe's numbers. The limited value of these additional reserves was particularly well illustrated by the later history of the fisheries easements allocated by Chief Judge Fenton in 1868. Through further drainage and competition with European agricultural activities these had become largely useless for their original purpose by 1881 (M15:152).⁵² At that time the extent to which settlement was interfering with the Ngai Tahu economy was clear, as was the inability of the tribe to make any economic gain out of the reserves granted to them in 1868 (M15:16). As Ngai Tahu's economic life became more and more restricted to the reserves by settlement, their condition worsened. Economic depression in the 1880s further accentuated their disadvantage, making it even more difficult for Maori to gain employment.

18.4.13 In the 1870s and 1880s government inaction, exacerbated by the continuing displacement of Maori from their mahinga kai, fuelled bitterness and hostility among many of the new generation of tribal

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leaders. The demands for redress became increasingly more urgent. To Europeans it may have seemed that the requests for compensation and restoration of the tribal estate became less compromising and more extensive. However all of this did not shake the ultimate loyalty of the tribe to the Crown. H K Taiaroa articulated the various claims of the tribe to government, but remained steadfastly loyal to the Queen. His tombstone bears the following inscription:

Ka Nui Te Pai Ana Mo Nga Tangata Maori Me Tona Atawhai Ki Te Rangatira O Te Kuini

Great is the good of his work for the Maori people with his fostering of the authority of the Queen (F11:6)

In 1885, at the opening of a hall at Wairewa, he had offered Ngai Tahu's assistance to Great Britain should war break out with Russia (F11:11).⁵³ The offer was typical of Ngai Tahu commitment to the Crown and to the European world. With other Ngai Tahu parliamentarians, Taiaroa used the law and the representative system to press the tribe's grievances. Despite the increasing sense of loss felt by Ngai Tahu, Parliament and the courts were seen as the only way of achieving a just settlement. The tribe pursued its goals in a spirit of protest and cooperation.

18.5. **Conclusion**

We have outlined something of the tribe's position in the nineteenth century. In this period, Ngai Tahu were forced to respond to the changes brought about by contact with western technological society and by the development of a modern agrarian economy in their midst. Ngai Tahu's ability to cope with this change was severely checked by the Crown's failure to ensure that the tribe had a sizable stake in Te Ao Hou, the new world. Without that stake, Ngai Tahu were forced to deal with an alien culture stripped of the resources to ensure their survival.

The Reverend Stack summed up the dispirited state Ngai Tahu had reached by the end of the 1880s:

Most of the old chiefs are now dead, their last years so many of them having been embittered by the want of the common necessities of life, such as food, clothing, and firing, of which they were deprived by those who took away their native sources of wealth, and failed to supply them with the European equivalent which they had agreed to give in exchange. (M14:95)⁵⁴

We have looked at the way Ngai Tahu responded to their predicament, through direct approaches to the governor, through petitions and in the Native Land Court. We now turn to examine some specific elements of the Ngai Tahu claim, as it emerged in the latter decades of the nineteenth century, namely the claim to "schools and hospi-

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tals” and the various committees of inquiry which examined Ngai Tahu’s claims in the late nineteenth century leading to the provision of “lands for landless natives” and to twentieth century attempts to find a settlement to some of these grievances.

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Chapter 19

Schools and Hospitals

19.1 Introduction

The claimants' grievances in respect of the Murihiku purchase include a complaint that:

The Crown failed to provide schools and hospitals at each Ngai Tahu village which provision was part of the price agreed upon by the Crown. (W6)

Claimants' counsel confined his submission on the question of schools and hospitals to the Murihiku purchase. There is, however, clear evidence that when Walter Mantell was setting aside reserves following the Kemp purchase, he made promises to Ngai Tahu that the government would provide schools, hospitals and other assistance. We will discuss these promises as well as those made by Mantell during his negotiations for the purchase of the Murihiku land.

Probably the clearest description of the promises are to be found in the evidence of Mantell and various Ngai Tahu chiefs before the Smith–Nairn commission. At this point we will quote from the evidence of one chief only, Natanahira Waruwarutu, who in discussing the negotiations with Mantell following the Kemp purchase, said:

After a considerable argument Mr Mantell spoke about schools and hospitals, and the large amount of money, as a final payment, and the looking after the Maoris by the Govt. (R7:app 3:48)¹

Other Ngai Tahu witnesses gave similar evidence.

At the same hearings Mantell testified as to the promises he made while setting aside reserves following the Kemp purchase. He explained that following receipt of his instructions of 2 August 1848, he thought it necessary to obtain further instructions from Lieutenant-Governor Eyre. This was because of misgivings he had about his ability to persuade Ngai Tahu to sign a fresh deed, given that they had sold 20 million acres for only £2000 and Mantell was left with only £1500 to distribute. He thought it desirable that he should be authorised to offer a further inducement as he feared that otherwise he would find it extremely difficult to complete the negotiations. And so he saw Eyre who told him:

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that I must distinctly point out to the natives that the main consideration which they would receive for their lands was, after all, not the small amount of money which was then to be given to them by the Govt, but would consist in the enhanced value of the reserves which should be made for them; in the schools which the Govt would have instituted for the instruction of themselves and their children, in the hospitals which would be instituted for the care of their sick and in the appointment of officers to look after their interests. (R7:appendix 3:37)²

Having received this assurance Mantell proceeded on his mission:

and whenever difficulties arose on the part of the natives, and objections were raised, I made and constantly repeated to them this assurance of the Lieut-Governor. It was my belief at the time that had I not had it in my power to give them this assurance, I could not have got their assent to the Cession of the land. (R7:appendix 3:38)³

Mantell, when asked whether there was to be a school at every kainga, replied that nothing definite was ever said. When pressed on the point he agreed that the Ngai Tahu would have been left with the hope of a school in “every kainga of reasonable size” (R7:appendix 3:45).⁴ As to hospitals Mantell said:

My own idea of the matter was, that some 3 or 4 hospitals might be established in the whole length of the country, but that medical attendants would be appointed who would visit the districts lying between the hospitals. (R7:appendix 3:45–46)⁵

As will be seen, Murihiku chiefs gave similar evidence of promises by Mantell during the 1852 Murihiku purchase.

19.2 **The History of the Promises**

19.2.1 Mr Tony Walzl, an historian called by the Crown, gave detailed evidence covering all aspects of the promises. He drew our attention to the apparent absence of any record of Mantell’s interview with Eyre, or of any written instructions in respect of his negotiations in either the Kemp or Murihiku transactions. However, Mr Walzl reminded us that Mantell’s instructions gave him a discretionary authority which may well have been wide enough to encompass the promises which he made. Mantell was instructed that:

Should any unforeseen difficulties arise not anticipated or provided for the Lt Governor feels assured he may with confidence commit to you a discretionary power to act as upon a mature consideration of all the circumstances you may deem best, requesting only that in such occasions you will keep in view the objects & intentions of your Mission. (M3:100–101)⁶

Nor was Mr Walzl able to discover any contemporary note or record by Mantell in correspondence or his personal papers touching on the promises he was later to testify he had made. Mr Walzl also remarked on the absence of any reference to the Crown’s failure to implement

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the promises in a wide-ranging report which Mantell, then commissioner of Crown lands, Otago, made to the colonial secretary on 18 March 1856, on the condition of Ngai Tahu in Otago and Murihiku (M15:66–81).⁷

The tribunal has no reason to doubt that Mantell did receive the instructions referred to from Eyre. His apprehension as to the difficulties he might meet seem to us entirely reasonable. Moreover, as will be seen, Eyre's instructions were in accord with current policy. Nor, as we will later indicate, are we in any doubt that Mantell did make the promises to which he later referred.

The first written reference to any such promises is a personal letter from Mantell to J J Symonds of 21 August 1855. In this letter Mantell commented that:

Now in making purchases from the natives I ever represented to them that though the money payment might be small, their chief recompense would lie in the kindness of the Govt towards them, the erection & maintenance of schools & hospitals for their benefit & so on-you know it all. (G2:409)⁸

Mantell's correspondence with the British colonial secretary

- 19.2.2 In 1855 Mantell obtained leave from his position of commissioner of Crown lands, Otago, and by February 1856 was residing in London. On 5 July of that year he placed on record his concern that his promises as to the provision of schools and hospitals and other assistance for Ngai Tahu had not been fulfilled. He took the bold, and possibly unprecedented step for an official employed by a colonial government, of writing direct to the secretary of state for the colonies in the British government. Several letters ensued between the Colonial Office and Mantell before the colonial secretary, W Labouchere, in September 1856, dispatched a copy of all the correspondence to Governor Browne for a report from New Zealand on the issues raised by Mantell (A8:II:81–88).⁹ In his letter of 5 July 1856 Mantell claimed that by promising more valuable recompense in schools and hospitals and in “constant solicitude” for Ngai Tahu's welfare and general protection on the part of the Imperial government, he procured the cession of some 30 million acres of land for small cash payments. He accused the colonial government in New Zealand of neglecting to fulfill these promises and referred to the small sums expended on schools and hospitals. He documented the refusal of the colonial government to replace worn out books used by the Reverend Wohler's mission station on Ruapuke Island (A8:II:82).¹⁰ He claimed to be writing to the colonial secretary:

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at the request of the Chief and sub-ordinate Chiefs of the united tribes . . . for in the Local Government they have long ceased to repose confidence. (A8:II:83)¹¹

The colonial secretary wished to know Mantell's authority for making the promises and whether he had officially raised the matter with the New Zealand government.

In response to the first question Mantell advised:

That, in my written instructions, no specific authority is given, and that it was not only unnecessary, but even inexpedient, that such specific authority should have been inserted, is, I conceive, sufficiently clear. (A8:II:84)¹²

However, he amplified this statement by saying that he had no reason to believe that his immediate superiors differed from him on this point and that a written record of them:

might tend to perpetuate a distinction between the races, which, at the time that these purchases of land were made, by me it seemed to be the desire of the Imperial Government to abrogate. (A8:II:84)¹³

Mantell gave a further reason for the absence of a written record of the promises:

Had I myself been justified in entertaining any fear that the Government would fail in fulfilling promises (verbally given on authority, only verbal for reasons which I considered valid), I should not have hesitated to insert them in the text of those Deeds of Cession which I drew. But Sir George Grey, during whose Government all of my purchases were made, seldom, to the best of my recollection, refused any reasonable request on behalf of these Natives, nor had I ground for believing that his successor would be less just.

I have received three sets of instructions to purchase lands, of which the last two refer for details to the first which contains nothing more definite on the point now under comment than directions to induce the Natives to accede to my views, or to get, or win their consent. (A8:II:84)¹⁴

Mantell then enlarged on his instructions from Eyre:

Lieutenant-Governor Eyre, who directed those (the first) instructions to be written, impressed upon me the propriety of placing before the Natives the prospect of the great future advantages which the cession of their lands would bring them in schools, hospitals, and the paternal care of Her Majesty's Government, and, as I have before said, I found these promises of great use in my endeavours to break down their strong and most justifiable opposition to my first commission, and in facilitating the acquisition of my later purchases, adding to the Crown lands an area nearly as large as England. (A8:II:84)¹⁵

In response to the colonial secretary's second question as to whether he had officially raised the matters with the New Zealand government Mantell said:

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... I have the honour to state that I brought the subject under the notice of Colonel Wynyard, at Auckland, on the 19th May, 1855, at an interview which His Excellency accorded to enable me to avoid a correspondence, and at which, by his direction, the Native Secretary was present.

On this occasion I brought under Colonel Wynyard's notice many facts with which I have not troubled you. His Excellency gave to my remarks the most polite attention, but none but the most unsatisfactory replies. I, therefore, in the belief that I should there find both inclination and power to aid my Maori friends, resolved to bring the main question before the Secretary of State for the Colonies. (A8:II:84)¹⁶

19.2.3 On receiving the colonial secretary's despatch Governor Browne obtained a report from Native Secretary McLean. On 26 January 1857 McLean advised the governor:

I can find no trace or record of any other promise made to these Natives; nor have they, to my knowledge, alluded to any direct promise made by the Government, that has not been fulfilled.

If any distinct promise has been made to the Ngaitahu tribe of prospective advantages to be obtained by them, consequent on the cession of their land; I submit that Mr Mantell should have distinctly stated, for the information of the Government, what the real extent and nature of these promises actually were, by whom made, and by what authority. In the absence of such information, which Mr Mantell has failed to produce in any definite shape, I conceive that the Government is not chargeable with the blame imputed to it by Mr Mantell, inasmuch as the terms of the original treaties or agreements for the cession of their lands have been strictly observed and fulfilled by the Government. (A8:II:88)¹⁷

McLean concluded his report by saying:

With the exception of education for the young, for which purpose there are no funds at your Excellency's disposal, I do not perceive that any neglect has been evinced towards the Natives referred to by Mr Mantell. (A8:II:88)¹⁸

On 9 February 1857 Governor Browne reported to the colonial secretary, Labouchere. He advised that he agreed with Mantell in thinking the colonial government was bound to care for the interests of the Maori population. He reported that government agents had long made promises that schools and hospitals would be provided when negotiating a purchase of land from Maori:

I am satisfied that from the date of the Treaty of Waitangi, promises of schools, hospitals, roads, constant solicitude for their welfare and general protection on the part of the Imperial government have been held out to the Natives to induce them to part with their land. Nor does it appear to me that the obligation could be less imperative if no promise had ever been made. The difficulty is how to fulfill either the promise or the obligation. (O21:58)¹⁹

It seems to us impossible to construe these comments in any way other than as a categorical endorsement of the promises made by

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Mantell in the course of his negotiations in both the Kemp and Murihiku purchases. Indeed, the governor appears to be saying that in making such promises Mantell was doing no more than following a long established policy. It is noteworthy too that the governor saw such promises being made as an inducement to Maori to part with their land. It is apparent that this is one of the reasons why the promises were to be made.

- 19.2.4 Near the end of his correspondence with the secretary for the colonies, Mantell wrote to Tiramorehu:

I am urgently pressing upon the Principal Secretary to the Queen to fulfill my words to you expressed of old when you gave your lands to me. This was the word (but you will probably bear it in mind) that you were not to consider so much the small amount of money given by me for your lands, rather the schools for you and your children and the Hospitals and the constant care for you on the part of the Government. These are the things which constitute the great payment for your lands. (B2:4/2:265–266)²⁰

Mantell's action in making representations in England direct to one of the Queen's principal secretaries of state clearly made a considerable impression on Tiramorehu and Ngai Tahu generally. The letter was produced on more than one occasion before select committees and commissions of inquiry. It served to cement and crystallise the promises in the minds of Ngai Tahu. As the Crown historian Mr Walzl said, from this point on the promises were firmly fixed in the minds of European and Maori, and over the following years there was no serious attempt to challenge their existence (O20:19–20).

- 19.2.5 When, in July 1861, William Fox formed a new ministry, Mantell agreed to join it as native minister if Fox and his colleagues would support certain measures for the benefit of Ngai Tahu. These included the provision of schools and hospitals and the appointment of a suitable government officer to look after the welfare of Ngai Tahu "as promised by [Mantell] on the sale of their lands to the Queen" (O21:22).²¹ But the necessary funds did not eventuate and Mantell resigned after five months in office.

In the following year, Matenga Taiaroa addressed a letter dated 13 February 1862 to "all my Tribe, to my Hapu, and to my Son [H K Taiaroa]" in which he referred to the Treaty, the sale of Otakou and Kemp's purchase. He commented that Kemp referred to "schools, hospitals and other words on account of which the land was given". "After that," he said, "came Mr Mantell, whose words were to the same effect" (M15:170–171).²²

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This appears to be the first recorded statement that Kemp, in addition to Mantell, promised Ngai Tahu schools and hospitals at the time of the purchase.

Ngai Tahu continue to seek action

19.2.6 During the 1860s Ngai Tahu maintained pressure on the government for action on the promises. Until November 1863 the Imperial government had responsibility for “native affairs” in New Zealand. But this now devolved to the General Assembly (O21:51). When yet another new government, the Whitaker-Fox Ministry, was formed in October 1863, Fox became colonial secretary and as such, assumed responsibility for native affairs. He appointed H T Clarke to settle the purchase of Rakiura (Stewart Island) and at the same time to investigate and report on the condition of Ngai Tahu in Otago and Southland. Clarke in fact sent two reports to the colonial secretary. One concerned his findings on the general condition of Ngai Tahu in the southern provinces. The second related specifically to the promises of schools and hospitals. The general report, 29 September 1864, gives a depressing account of a “squalid, miserable and ignorant” people. The chiefs, challenged by Clarke as to why they had not exerted themselves to “raise their people from their present condition” answered:

that they have placed full reliance upon the government giving full effect to its engagements – that the Government promised to undertake the task of ameliorating their condition as part of the consideration for their lands; that after waiting in vain for these benefits they concluded in their own minds that the Government had forgotten them. (M15:57–58)²³

Clarke, among other recommendations, proposed that:

- a government officer be appointed immediately, whose sole duty would be to look after the interests of Maori in Otago and Southland. He should also act as commissioner for Maori reserves;
- two interpreters, one for Otago and one for Southland, be permanently attached to the resident magistrates’ courts as officers of those courts;
- three medical men be appointed to attend the Ngai Tahu sick.
- schools be established at Moeraki, Waikouaiti, Otago Heads, Ruapuke and Aparima.

In his second report, 30 September 1864, concerned with the non-fulfillment of Mantell’s promises, Clarke wrote:

At every meeting held with the Natives during my late visit to the southern Provinces, great prominence was given to this subject. Natives from Waimatamate, Waitaki, Moeraki, Waikowaiti [sic], Otakou, Ruapuke, and Aparima, were unanimous in alleging that they have been deceived. They state that besides the monied consideration given by Mr

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Mantell, they were also promised that out of the revenue accruing from the lands then ceded, the Government would support schools, hospitals, &c., and would promote and encourage undertakings having for their object the amelioration of the condition of the Natives. These promises, they say, have never been fulfilled. (A8:II:91)²⁴

On 15 November 1864, Fox, in a memorandum on Clarke's two reports, noted that:

Considering the great length of time during which faith has failed to be kept with the Natives they are entitled to a very large amount of arrears, and the Government should propose to the Assembly no niggard vote for the purpose. Since the pledges were given a whole generation has run to seed without receiving the benefit of that culture which was promised. No reparation can be made now for this neglect, but it should be remembered when action is taken, and it should prevent any murmur at the appropriation of what might under other circumstances appear too large an appropriation of the public money, to a small remnant of a tribe which once owned three-fourths of the Middle Island. (O21:56)²⁵

19.2.7 Happily, it appeared for Ngai Tahu, when on 24 November 1864 the Weld Ministry took office, Mantell was again made native minister. Mantell appointed C Hunter Brown to investigate the promises and offer solutions. But some months before Hunter Brown reported on the promises Mantell had yet again resigned as native minister. Hunter Brown advised that he had spoken to Ngai Tahu:

of the intention of the government now to establish schools and hospitals and hostelries if they were found useful and told them in each place what I should recommend, while explaining that the decision would still rest with the Government and I made use of this to urge them strongly to cooperate towards the maintenance of schools but with little success. (O20:27)²⁶

Mantell's successor, FitzGerald, was not sympathetic to Ngai Tahu. On 9 October 1865 he wrote to the Reverend J W Stack at Kaiapoi in reply to news that, although a new school had been opened there, the local Ngai Tahu would not pay school fees to support it:

tell them that when I was Superintendent I went to them with the Bishop of New Zealand, and we told them that to put a clergyman, a School, a Hospital, in each small village of 10 or 12 inhabitants was utterly impossible, but that if they would all come together and live together in one place, all these things should be provided, but they would not. It is entirely their own fault that we have not been able to do more for them. (O21:44)²⁷

And so Ngai Tahu were expected to believe that it was all their fault that successive governments had not honoured the promises or indeed adhered to the general policy adverted to by Governor Browne in his 1857 despatch to the colonial secretary, Labouchere. Moreover, FitzGerald's comments seem entirely to disregard the fact that the government agent Mantell had apportioned such minuscule

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reserves in various areas to Ngai Tahu that it would have been economic suicide for them to attempt to relocate onto one totally inadequate reserve. FitzGerald's comments also reveal his insensitivity to the Ngai Tahu wish and indeed legitimate desire to live in their traditional way in their own hapu groups.

In December 1865 Rolleston, under-secretary for native affairs, wrote to yet another native minister, A H Russell, in terms which supported the earlier views of Clarke and Hunter Brown (O21:48–49).²⁸ But Russell, like his predecessor FitzGerald, had begun the dismantling of the Native Department and showed little interest in the plight of Ngai Tahu. Instead the matter lay dormant until 1868 when the Native Land Court conducted its first hearings. Mantell gave evidence at these hearings about his promises. The court held that it had no jurisdiction to make a ruling on the promises.

The Ngaitahu Validation Act 1868 was passed later in the year to legitimate the Kemp purchase deed and to validate its subsequent reference to the court. This Act expressly left open for further consideration Mantell's promises as to schools, hospitals and other advantages in relation to the Kemp purchase.

The first inquiries

- 19.2.8 In 1871 H K Taiaroa was elected to the Southern Maori seat. He persistently sought to secure investigation of Ngai Tahu grievances regarding the unfulfilled promises and other matters by parliamentary select committees. The select committee which sat in 1872 was the first of many set up to investigate the Ngai Tahu case. It was unable to come to any firm conclusion but noted:

that these claims have not hitherto had that consideration which they deserve. (M15:165)²⁹

It recommended a further inquiry.

Accordingly another select committee was appointed to sit during the following session. But Sheehan, a member of this committee, advised the House of Representatives in 1874 that considerable difficulty was experienced in getting members of the 1873 select committee to attend and it was almost impossible to obtain a quorum (O21:62).³⁰ Eventually it seems the committee fell into a state of disarray and ended up recommending that two arbitrators be appointed to inquire into the matter. The government however, assured Taiaroa the matter would be settled before the 1874 session of Parliament (O21:60).³¹ This did not happen. Taiaroa, in 1874, proposed that yet another committee investigate the unfulfilled claims. Sheehan, who supported this suggestion, told the House:

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it was absolutely proved by official documents that claims did exist. It was undoubtedly certain that the Natives had been promised schools and hospitals. (M15:159)³²

Other members however were opposed to the appointment of yet another committee. In the event, Tairaroa had the questions redirected to the Native Affairs Committee, a fate which Alexander Mackay in a letter to the Reverend Stack prophetically characterised as “consigning it to its grave” (O21:67–68).³³

- 19.2.9 The Native Affairs Committee duly sat in 1875. It recommended the appointment of a full commission of inquiry, thereby stalling consideration yet again. By the following year nothing further had been done. The native minister, McLean, explained that the government had been unable to find commissioners willing to act. But McLean observed that Judge Fenton, although unable to undertake a full commission due to his “not being a good sailor” would be willing to review the matter and submit a very exhaustive report “embracing his extensive knowledge of the question” (O21:66).³⁴ In his report of 10 July 1876 Fenton, in discussing the promises, said:

Hospitals, I think, they have had, access to the Government institutions having been open to them as well as to Europeans. Schools they have partially had. But even failure in this respect cannot be the subject of pecuniary compensation . . . If the Government have been remiss in this matter, all they can do is to hasten to repair their remissness, and provide schools for the future. (M15:179)³⁵

Not surprisingly, Tairaroa was critical of Fenton’s report and in a detailed statement of 26 October 1876 denied that Mantell’s promises had been adequately met:

Mr Fenton says that these promises cannot be the subject of a money compensation. That is correct; these promises cannot be paid for with money, but they can be paid for if it be shown what lands went in consideration of those unfulfilled words; the payment would be the restoration of those lands. That is the only way in which compensation could be made. (M15:191)³⁶

The Smith–Nairn Royal commission

- 19.2.10 Tairaroa called again for a commission of inquiry into Ngai Tahu grievances. Eventually, in 1879, a Royal Commission on Middle Island Native Land Purchases (the Smith–Nairn commission) was appointed. The Royal commission was authorised to investigate whether there remained any unfulfilled promises arising from various purchases from Ngai Tahu. In addition it was to ascertain whether all reserves provided for in the various sale agreements had in fact been made. The commission sat over a two year period, 1879–1880, and reported early in 1881. It travelled extensively and heard voluminous evidence from many of those, both Maori and European, who were parties to

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the agreements and present at the discussions which led up to them. Much of the commission's record of evidence was submitted as evidence to the tribunal. Mr Walzl, for the Crown, produced and analysed all the evidence from those actually present at the making of the promises, that is, Mantell and various Ngai Tahu chiefs. Mr Walzl produced two tables summarising the evidence relating to promises of schools and hospitals made during the Kemp and Murihiku negotiations. Rather than reproduce extensive passages from the witnesses' evidence, we propose to state the main points which emerge from Mr Walzl's analysis, which we believe adequately reflects the import of the evidence.

Ngai Tahu evidence

- 19.2.11 In addition to Mantell, five leading Ngai Tahu chiefs gave evidence in respect of his promises during the Kemp purchase negotiations (R7:64A). They were Waruwarutu, Tiramorehu, Te Uki, Patuki and Naihira. Whereas Mantell testified that he made the promises at various times in many places throughout the negotiations and one of the Ngai Tahu rangatira agreed with him, the other four chiefs indicated that the promises were made once only, at Akaroa, after Mantell returned from a visit to Wellington. Mantell said that he used the promises to overcome opposition to the purchase while three of the chiefs said they were given after Ngai Tahu complained about the inadequacy of the purchase price. In addition, Tiramorehu claimed that the promises followed argument over the boundaries and the size of the reserves. All five men agreed that the promises were explained by Mantell who, in evidence, said schools were to be provided in every major kaika, and that three or four hospitals would also be provided. One of the Ngai Tahu chiefs said schools and hospitals would be established in all places within the boundaries of the land sold; another, that schools were to be provided throughout all the districts, and two were silent on this question. Only Tiramorehu said that Kemp had also promised schools and hospitals. As to the importance of the promises made, Waruwarutu, Tiramorehu and Patuki all alleged, in effect, that but for these promises (including a final payment also said to have been promised), the negotiations would not have succeeded.

In the case of Mantell's promises of schools and hospitals during the negotiations for the Murihiku block, the commission only heard evidence from Ngai Tahu. No doubt Mantell would have given evidence had the commission's warrant not expired. Mr Walzl again very usefully summarised the evidence of 13 chiefs who testified on this topic (R7:87A). He pointed out that the evidence of these witnesses was not always clear, with many lapses in their recollection

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of events. He was also critical of other aspects. Nevertheless he conceded that there was an overall consistency in the Murihiku Ngai Tahu evidence concerning the promises. Almost all 13 witnesses testified that the promises were made after dissatisfaction had been expressed by Ngai Tahu at the small sum being offered for the land. Several witnesses went on to say, in effect, that the promises had played a significant role in their agreeing to the purchase.

The Smith–Nairn commission reports

- 19.2.12 The Smith–Nairn commission reported to the governor on 31 January 1881. In doing so it adverted to the fact that in July 1880 further proceedings of the Royal commission were suspended by Native Minister Bryce, who refused to make further funds available. Accordingly, the commissioners were unable to present a detailed report. Instead, they outlined the opinions they had formed during the inquiry so far as it had proceeded (M15:194).³⁷ As to Mantell's promises during the 1848 Kemp purchase negotiations, the commission said:

It cannot be supposed that, with respect to the promises to establish schools and hospitals, and to promote their welfare generally, it was understood that these promises were to be completely and finally fulfilled immediately on the cession of their land; that hospitals and schools would be built and established forthwith; and that other provision for their needs would be then made as promised. It must have been meant and understood that these promises were only to be completely fulfilled in the future; that is, as the settlement of the land by the pakeha advanced, and funds accrued from its sale to European settlers. . .

We think it must be admitted that those promises remain unfulfilled. (M15:195)³⁸

In respect to the Murihiku purchase, the commission noted that its inquiry was not complete. But it felt able to say:

It would . . . appear that similar promises [to those made by Mantell in the Kemp purchase] with respect to schools, hospitals and other advantages were made to the sellers for the purpose of inducing them to part with their land. (M15:197)³⁹

The commission proposed that a fund be established, the income from which could be used in supplying medical aid, establishing and supporting schools and other forms of assistance to Ngai Tahu (M15:196).⁴⁰

- 19.2.13 The long and arduous inquiries of the Smith–Nairn commission, which traversed the lengthy evidence that we, more than 100 years later, have again had to go over, were to no avail. Their recommendations languished and during the 1880s we find the same melancholy outcome as in the preceding decade: endless debates and procrastination by the appointment of further parliamentary select

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committees and Royal commissions, none of which resulted in any remedial action or compensation in respect of the unfulfilled promises. We can refer only briefly to the sorry history of the failure of successive governments to face up to their obligations and to act in accordance with the principles of the Treaty of Waitangi and the partnership it represented. Thus, on 25 August 1882, the Native Affairs Committee reported on a petition of H K Tairaroa and I Tainui, holding that schools and medical attention had been supplied since 1868 fully and, since 1865, partially. But, it said, there were two places, Arowhenua and Moeraki, where Ngai Tahu refused schools in case their acceptance would interfere with their claims. The committee admitted that prior to 1868 there was insufficient attention to the matter and there ought to be some recompense for that.

The first Mackay Royal commission

- 19.2.14 Four years later, on 12 May 1886, the government appointed Alexander Mackay, by now a judge of the Native Land Court, to be a Royal commissioner to inquire into all cases of “landless natives” and the adequacy of reserves set aside for Maori in the South Island. In addition, Mackay was to ascertain whether any Ngai Tahu interested in the Smith–Nairn commission were willing to accept a grant of land in final settlement of all claims for the non-fulfilment of any terms and conditions of the purchases in question, and of any promises made in connection with such purchases. Mackay’s report of 5 May 1887 is both comprehensive and informative (B3:7/1).⁴¹ It discusses many of the central issues and refers to much material which we, over 100 years later, have yet again traversed. We refer more fully to this valuable report in the following chapter (20.2). For the present we note Mackay’s findings in respect of the unfulfilled promises as to schools and hospitals.

Mackay found that:

It was meant and understood at the time that the promises were made to the Natives *re* the establishment of schools and hospitals that special provisions would be made with all reasonable diligence for the establishment of these institutions, and not that they would have to wait until the requirements of the European community rendered them necessary. (B3:7/1:7)⁴²

He concluded that:

seventeen years had elapsed before medical aid was provided or an officer specially appointed to administer Native affairs in the South, and that nineteen years after the date of the purchase the first systematic attempt was made to establish schools. (B3:7/1:8)⁴³

Later he spoke of a misconception on the part of the Native Affairs Committee of 1882:

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with regard to schools and medical attendance having been supplied in the past, but especially as regards education, as the schools now in operation in the South Island were conducted (before the Education Act of 1877) under the general scheme of education that obtained in the colony under "The Native Schools Act, 1867," and cannot be considered as special institutions in fulfilment of the original promise, as the Natives would have gained the advantage derivable therefrom even if they had received a more advanced price for their land. The amount spent for medical aid in the southern provinces up to the 31st March 1882, a period of nearly thirty-four years since the date of the first purchase, and twenty-nine years since the date of the second, only amounted to £2,559 18s. 8d. (B3:7/1:10)⁴⁴

Among other recommendations Mackay proposed that 100,000 acres be set apart as an endowment to promote the welfare of Ngai Tahu.

Further parliamentary inquiries

- 19.2.15 Next followed the inevitable parliamentary consideration of the Royal commissioner's 1887 report. This time it was to be by a joint committee of both chambers. The committee began by investigating Kemp's purchase. On 22 August 1888 it reported:

in consequence of the extensive range of inquiry necessitated by the nature of the case, the voluminous documentary evidence affecting it, and the fact that the labours of the Committee did not begin until the 23rd June, it has been found impossible to enter upon the investigation of the Otakou, Murihiku and Akaroa purchases. . .

As it is impossible to do justice to the importance of the inquiry during the remaining part of the present session, with which the functions of the Committee end, the Committee recommend that at the beginning of the next session of Parliament a similar Committee should be appointed, so that the inquiry into the Ngaitahu case may be completed, and the other cases also undertaken. (A9:9:1)⁴⁵

In an "epitome" to the Ngai Tahu (Kemp's purchase) case it detailed the numerous earlier hearings and inquiries concluding with Mackay's 1887 comprehensive report. Despite its admitted inability to complete its inquiry into the Kemp purchase it concluded its epitome by saying that:

The foregoing review of the question seems to establish that no reserves of land have been made which have not been fulfilled, and that at the negotiations no promises of tenths were made or held out. (A9:9:5)⁴⁶

In coming to this conclusion the committee virtually dismissed Mackay's report. The joint committee recited the history of promises regarding schools and hospitals but reached no conclusion on the question of their non-fulfillment. Mackay, by contrast, had come to a very clear view on this matter and had made appropriate recommendations. These appear not to have been considered by the joint committee.

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19.2.16 In June 1889 a further joint committee of both legislative chambers was appointed to report on claims as to unfulfilled promises in respect of reserves actually made, and further reserves promised; schools, hospitals and constant solicitude for Ngai Tahu welfare. In its report of 10 September 1889 it concluded that more land should be provided where the present holdings were insufficient to provide Maori a livelihood (M17:I:2:1-10).⁴⁷ It continued:

The Committee are satisfied that the educational provision is now, and has been for a number of years, sufficient for the children of Ngaitahu, and that, however much it may be regretted that the provision for the education of the tribe was not begun earlier, it is impossible to assess pecuniary loss arising from failure to fulfil assurances under this head.

As regards hospitals, the Committee find that separate hospitals have never been provided for Ngaitahu, but that the public hospitals are open to Natives equally with Europeans. Medical attendance for Ngaitahu appears to have begun prior to 1864, and has continued to a greater or less extent to the present time.

For a number of years Ngaitahu was looked after on behalf of the Government by specially-qualified persons. The condition of the Natives during that period was at any time easy of ascertainment.

This arrangement was practically ended in 1880 as regards resident officers, and entirely so in 1884; and, although it appears that cases of distress would be more or less relieved if brought under the notice of the Native Office, there cannot be said to be any inspection or any regular means of knowing whether distress exists or not. As a matter of fact, the Native Department is ignorant of the condition of the Ngaitahu, and under existing circumstances can only know of it in the most accidental manner. (M17:I:2:2)⁴⁸

The committee then put forward suggestions for a “final settlement” of the case. It concluded that the only practical and effective solution would be for a careful inquiry to be made into:

the condition of the Ngaitahu Natives; and, if it be found that any have not sufficient land to enable them to support themselves by labour on it . . . to make further provision by way of inalienable reserve to meet such cases. (M17:I:2:2)⁴⁹

The committee also called for the appointment of suitable officers to report to government from time to time on the condition of Maori, and submit appropriate recommendations. Such reports to be laid before Parliament.

As to Murihiku, the committee found it to be clear that assurances of schools, hospitals and other advantages had been given. They therefore considered their recommendation regarding Ngai Tahu in the Kemp block should also be applied to Murihiku Ngai Tahu.

So yet another investigation was called for. The committee appeared to ignore evidence from the under-secretary of the Native Depart-

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ment that special medical arrangements were by 1889 confined to three part-time medical officers who were inaccessible to many Ngai Tahu. The new inquiry proposed side-stepped the issue of unfulfilled promises as to schools and hospitals.

The second Mackay Royal commission

- 19.2.17 Following the various joint committee reports, none of which in themselves gave any relief to Ngai Tahu, Judge Alexander Mackay was asked yet again to make an investigation and report. However his warrant as Royal commissioner expressly limited his inquiry to the claims of those who were unprovided with land. In his report of July 1891 (A9:II:7)⁵⁰ Mackay pointed out that because of his very narrow terms of reference it would be necessary for him to furnish a supplementary report dealing (yet again) with long-standing and unmet Ngai Tahu grievances including those relating to unfulfilled promises of schools and hospitals. The commissioner's supplementary report was made on 16 July 1891 (C2:17:3).⁵¹ In this report Mackay referred to Ngai Tahu's complaint that the recommendations of neither the 1879 Smith–Nairn Royal commission nor the 1887 Mackay Royal commission had yet been fully considered. He further pointed out that the making of provision for landless members of the Maori community did not comprise all they were entitled to expect in fulfillment of past promises. Later in his report Mackay discussed the reasons for Ngai Tahu's poverty:

The settlement of the country by the Europeans in the early days was looked on with considerable satisfaction by the Natives in the South Island, as it relieved them from the constant dread of hostile attack from the northern Natives; but long experience has proved to them that the colonization of the country is not an unmixed blessing, as it has deprived them of all their privileges and forced them to adopt a mode of life unsuited to their former habits, and under circumstances that keep them in a chronic state of poverty. Formerly they could obtain readily all the food and clothing they required; now they are obliged on scanty means to eke out a precarious livelihood; while the Europeans, who have possessed themselves of the territory that was once theirs, are living in affluent circumstances as compared with themselves. It is no wonder, therefore, that they feel disappointed and dissatisfied with their lot. (C2:17:5)⁵²

The commissioner also found that “The medical aid afforded the Natives has also been of a partial character, many of the settlements not participating in the advantage” (C2:17:5).⁵³ Examples were given of heavy expenses incurred by Ngai Tahu in obtaining medical aid away from the principal towns. Problems of schooling were also noted. Not surprisingly, given the parlous condition of the people which his report discloses, Mackay again recommended, as he had done in his major 1887 report, that adequate land be set aside as an

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endowment for Ngai Tahu, to relieve their condition and assist in meeting unfulfilled promises. His recommendation has never been implemented.

Ngai Tahu fail to secure redress

- 19.2.18 We recall that the first (inconclusive) inquiry into Ngai Tahu grievances about unfulfilled promises was made by a parliamentary select committee in 1872. We have chronicled the long series of subsequent inquiries, over 20 years, none of which resulted in any relief to Ngai Tahu. Is it any wonder that 100 years later Ngai Tahu should again seek from the Crown some recompense for the deprivation and sustained marginalisation which has resulted from the failure of the Crown to honour promises made 150 years ago? Promises of course, which relate not merely to the provision of schools, hospitals and other assistance, but to the totally inadequate reserves left Ngai Tahu as a result of the Crown's failure to honour the terms of various deeds of purchase, or to ensure the provision of adequate land for the present and future needs of the Ngai Tahu people.

19.3 **The Nature and Extent of the Promises**

- 19.3.1 There can be no real doubt that promises that the Crown would provide schools, hospitals and general assistance to Ngai Tahu were made by at least Mantell in respect of both the Kemp and Murihiku purchases. The tribunal's lengthy recital of the numerous investigations of parliamentary select committees, Royal commissions and commissions of inquiry put this beyond dispute. But the question was raised by Mr Walzl in the course of well-researched and exhaustive evidence, as to just what was promised by Mantell in 1848 and 1852. Mr Walzl suggested that, over the years, the nature of the promises and their significance had undergone a change in the minds of both Mantell and Ngai Tahu. To substantiate this the evidence of both Mantell and the Ngai Tahu chiefs was closely analysed by Mr Walzl.

As earlier indicated, the claimants have made only one specific claim as to schools and hospitals, and that within the context of the Murihiku claim. But the Smith–Nairn commission evidence of both Mantell and Ngai Tahu, as Mr Walzl himself demonstrated, clearly extended to the making of such promises in respect of the Kemp purchase.

Counsel for the claimants submitted that the promises were made as part of the transaction: being collateral warranties or collateral agreements (W1:207). But counsel for the Crown argued that it had not been proved that definite contractual promises were made and were deliberately broken. We could spend much time traversing the detailed analysis of the evidence given over the span of some 40 years

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on the nature and extent of the promises, but we doubt if it would prove profitable.

Instead we will start by citing certain conclusions reached by Mr Walzl:

The answer to the problem of where the promises featured in the Ngai Tahu land purchases probably lies somewhere between Mantell's later descriptions and informal Government welfare policies. The promises may not have been part of the contractual negotiations as such, merely general inducements for land-selling which became promises at a later period when the lack of Government action in the South Island became apparent. Or they may have been general comments on the benefits that the European settlement would bring subsequent to the sale, benefits which, for Ngai Tahu, did not arrive. (O20:46)

- 19.3.2 Before commenting on these observations we should recall the manner in which, as we have demonstrated elsewhere in this report, Mantell conducted his negotiations with Ngai Tahu. He conceded by way of reserves not an acre more than he felt compelled to do. He denied many of the legitimate requests of Ngai Tahu. In the case of Kemp, he met constant complaint as to the nominal purchase price of £2000 for 20,000,000 or so acres; in the case of Murihiku he settled on a price of £2600 for some 7,500,000 acres, again against the legitimate hopes and aspirations of Ngai Tahu for a more realistic price. It is difficult to believe that Mantell was not genuine when he told the Smith–Nairn commission that, “whenever difficulties arose on the part of the natives”, he constantly repeated to them the assurance he had received from Lieutenant-Governor Eyre, that the “main consideration” that they would receive for their lands was not the small amount of money given them by the government, but would consist in the enhanced value of their reserves, and the schools and hospitals which the government would establish for them (R7:37–38).⁵⁴ In the light of this evidence the tribunal is unable to accept Mr Walzl's last-mentioned suggestion that Mantell's promises may have been simply “general comments on the benefits that the European settlement would bring subsequent to the sale”.

Having said that, the tribunal does not find it necessary to decide whether, as the claimants argued, the promises were part of the contractual arrangements as such, or alternatively, in Mr Walzl's terms, “merely general inducements for land-selling which became promises at a later date when the lack of government action in the South Island became apparent”. In our view it is sufficient if the promises were in the nature of inducements to Ngai Tahu to consummate the respective purchases. There is a very real danger of cloaking this discussion with legal concepts and fine semantic distinctions which, at the time the promises were made, would not have

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been in the minds of either Mantell or the Ngai Tahu participants. We remind ourselves of Lord Normanby's instructions of 14 August 1839 to Captain Hobson that:

All dealings with the aborigines for their lands must be conducted on the same principles of sincerity, justice, and good faith, as must govern [his] transactions with them for the recognition of Her Majesty's sovereignty in the Islands. (A8:I:15)⁵⁵

The tribunal cannot accept that Ngai Tahu, to whom these promises were made by an accredited Crown commissioner acting on behalf of the Queen's representative, would have had in mind fine distinctions between collateral warranties or conditions on the one hand, and inducements on the other. The very concepts would be foreign to them. We cannot believe that Mantell's promises, given the minimal price and minuscule reserves which he insisted on, were not influential in the minds of Ngai Tahu. Indeed the tribunal is satisfied that they were intended to be influential. So much was recognised at an early stage by Governor Browne in his statement to Labouchere, colonial secretary, of 9 February 1857:

I am satisfied that from the date of the Treaty of Waitangi, promises of schools, hospitals, roads, constant solicitude for their welfare and general protection on the part of the Imperial government have been held out to the Natives *to induce them to part with their land*. (O21:57–58)⁵⁶ (emphasis added)

Clearly Browne accepted that Mantell's promises were made as inducements to Ngai Tahu to persuade them to part with their land. He was close in time to these events. The tribunal is unable to dissent from his informed view; indeed it would be wrong and capricious for us to do so.

- 19.3.3 Ngai Tahu were anxious to become involved in the new economy which would result from settlement; the provision of schools and hospitals would clearly assist them. We find that the honour of the Crown and the requirement of good faith required it to honour the unfulfilled promises. Successive parliamentary committees and commissions of inquiry recognised an obligation on the Crown to do so. Judge Alexander Mackay was surely right when he proposed in 1887, and reiterated in 1891, that the Crown should make a substantial and permanent endowment of land, the income from which would be used to ameliorate the distressing condition of Ngai Tahu, a condition which was the result, in part at least, of the failure on the part of the Crown over several decades to honour the promises made to Ngai Tahu in 1848 and 1852.

*The Ngai Tahu Report 1991*19.4 **The Extent to Which the Promises were Met**

19.4.1 It is apparent from our earlier discussion that Mackay was satisfied as late as 1891 that the Crown had failed to compensate Ngai Tahu for its unfulfilled promises. But it is desirable that we should now refer briefly to the detailed evidence which we received, from Crown witnesses in particular, as to the extent to which schools, hospitals and medical aid were in fact provided for Ngai Tahu in the first 40 or so years after the Kemp and Murihiku purchases.

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19.4.2 In 1847 an Education Ordinance was passed by the New Zealand Legislative Council on Grey's initiative. It was applicable to both races although Grey proposed initially to apply it chiefly to the education of Maori and half-caste children (M20:6).⁵⁷ Funds were made available to the Anglican, Roman Catholic and Wesleyan churches. Dr Barrington, a Reader in Education called by the Crown, told us that all the activity under the 1847 Ordinance took place in the North Island except for some assistance to a school at Motueka in 1852. Ngai Tahu received no benefit at all from the Ordinance.

From the coming into force of the Constitution Act 1852 early in 1853, the six provincial councils assumed responsibility for education. But Dr Barrington testified that there was little evidence that the Canterbury or Otago provincial governments took specific steps to provide for the education of Maori children in those provinces (M20:14). He cited the following passage from a memorandum of 9 March 1868 by the superintendent of the Otago Province to the colonial secretary:

The question of providing schools for the Maori population having been repeatedly brought under the notice of the General Education Board of this Province, and understanding there is a rate for the General Assembly at the disposal of the colonial government available for this purpose—I have the honour to submit on behalf of the Education Board its willingness to undertake the administration of this fund for the establishment of schools at the Native villages of Taieri, Otago Heads and Moeraki. I may state that the Education Board has the control of upward of sixty schools throughout the province and that it should be entrusted with the establishment and management of schools for the Maori population. Such schools will participate in the same successful administration which has hitherto characterized the education system of the Province. (M20:15)⁵⁸ (emphasis added)

As Dr Barrington noted this still represented, as late as 1868, only an intention to provide schools for Maori pupils on the part of the provincial council (M20:15). Settler prejudice denied access to some Maori children living close to provincial schools and in some cases this was aggravated by Maori indifference to education (M20:16). In

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May 1868 the secretary to the Otago Education Board told the provincial secretary that:

nearly all the Native settlements are beyond the reach of our ordinary district schools and I am hopeful that bye and bye the Native Department will establish schools at Otago Heads, Taieri and Waikouaiti. (M20:16)⁵⁹

19.4.3 Dr Barrington's investigations did not reveal any involvement by the New Zealand government in assisting Maori education between 1848 and 1858. In 1858 the Native Schools Act was passed. This Act granted an annual sum of £7000 for a term of seven years for Maori education. Assistance was, however, limited to schools run by religious bodies. The effective operation of the Act was between 1858–65, after which the New Zealand wars closed the schools. But all of the schools which received assistance under this Act were situated in the North Island. The sum of £200 was, however, granted by Governor Browne towards a school for Maori purposes at Kaiapoi. This was later supplemented by a further grant of £200 from central government, £250 from the provincial government and £50 from Ngai Tahu's Kaiapoi road compensation money. In addition, materials and labour equivalent to £50 were given. Dr Barrington recorded that this government assistance to the Kaiapoi school is the only real example of central government assistance to Maori education in the South Island prior to 1868 (M20:18–19). Sporadic efforts were made by missionaries or other well-disposed private citizens to operate schools for Ngai Tahu children, but by 1868 Mackay was still reporting extensive failure to provide for the education of Ngai Tahu children (M20:20–21). In 1874 Mackay confirmed that in the South Island "no schools were established until 1868, excepting one at Kaiapoi" (M20:22).⁶⁰

19.4.4 The Native Schools Act 1867 provided for the development of a national system of Maori state primary schools under the control of the Native Department. Under this Act, Maori were to provide the school site, of not less than one acre, and in addition to meet:

- half the total expenditure on buildings and repair;
- a quarter of the teacher's salary; and
- a quarter of the cost of school books.

Dr Barrington pointed out that in many parts of New Zealand the Maori desire for schools was not being met. He cited an inquiry made by Alexander Mackay to the under-secretary, Native Department, on 22 January 1868:

May I beg to inquire what action the Government contemplates taking with regard to the payment of fees in these schools (Arowhenua, Waimatimati, Waikowaiti), whether it is proposed to be guided entirely by the 1867 Act or whether, in consideration of the promise held out to

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the Natives of the Southern Provinces, in the cession of their lands to the Crown, the Government will be required to pay the entire cost of the education of their children. I would beg to point out, while on the subject that the Natives themselves, as a rule, are too poor to contribute for the education of their children with any degree of certainty, and if the payment of the Government subsidy is to be based on their complying with the conditions of the Act, it will be tantamount to a breakdown of the whole scheme. (M20:26)⁶¹

The inability of many Maori to make the substantial contribution to the establishment and running of their schools resulted in an amendment in 1871 to the 1867 Act. This gave the governor-in-council authority to vary the financial contribution of Maori depending on local circumstances.

It is clear from the foregoing discussion that for 20 years at least, following the Kemp purchase in 1848, apart from the single instance of Kaiapoi, central government failed completely to honour the promises of schooling for Ngai Tahu. Moreover, settler hostility continued after 1867 to the admission of Maori children into public schools (M20:28–30). This prejudice was increasing in 1915 (M20:47).

19.4.5 We turn now to the development of Maori schools after 1867. School sites for South Island Maori were obtained in various ways. Dr Barrington found that some sites were declared Crown land. Others were part of Maori reserve land. Others were gifted by Maori to the Crown. Others again were purchased from Maori ownership (M20:31–32).

By 1878 eleven state Maori schools had been established in the South Island under the 1867 Act, at Rakiura (Stewart Island), Molyneux, Riverton, Otago Heads, Waikouaiti, Kaiapoi, Wakapuake, Wairau, Waikawa, Arahura and Wairewa. But local Ngai Tahu in many cases made a substantial contribution. We cite a few examples:

- At Otago Heads Ngai Tahu built both the school and the school house on a church reserve. Later the sum of £286 was granted towards the house and additions and improvements to the school (M20:32–33).
- At Riverton the school, opened in 1868, was originally a church built at the joint expense of government and Ngai Tahu, the former paying £120 and the latter the cost of the materials. A later addition was provided by government (M20:36).
- At Port Molyneux Ngai Tahu provided land for a school and erected the school house, described in 1879 as a “mud-walled building, thatched with rushes, about 15 ft x 10 ft. . .”.⁶² On 19 March 1880 government offered to pay three quarters of the cost up to £100 for a new building. The teacher reported that the Maori considered

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the government “under a promise to provide the whole amount for school buildings”. On 6 April 1880 the secretary to the Otago Board of Education described the school as a “most wretched clay hovel utterly unfit for a school or for the shelter of any living animal”. A new school was erected in 1880 (M20:37–38).

- At Arahura the school was opened in October 1874. The whole of the cost was borne not by government, but by the Greymouth native reserve fund. The government contributed only half the teacher’s salary leaving the balance to be paid out of the Native Reserve Fund.

While in some cases, such as the Little River school, the government appears to have borne the whole cost of erecting the school, it is apparent that in others Ngai Tahu, despite promises made up to 30 years earlier, had been obliged to make a substantial contribution towards the capital cost of the buildings, and in some cases towards the teacher’s salary. Dr Barrington advised us that:

Even after the passing of the 1871 Amendment to the 1867 Act, right up to and even beyond the passing of the 1877 Education Act which established free, compulsory (except for Maori) and secular state [primary] education, Maori parents were frequently required to make a variety of financial contributions to the development of schools. The amount often seemed to depend on the discretion of the Inspector; he attempted to estimate the capacity of the people to pay and then set fees or contributions to the building of schools accordingly.

What I do find extraordinary is that even after 1877, Maori parents were still sometimes asked to make financial contributions to the cost of new school buildings (See Port Molyneux 1880). Indeed the requirement that Maoris wishing to have a school in their community should ‘make such contribution in money or in kind towards the cost of school buildings as the Minister may require’, was preserved in the Native School Code, 1880.

There [were] also occasions, (such as at Rapaki in 1877) where the Government remained reluctant to provide the expenditure required for school construction. I doubt very much if a similar reluctance would have been tolerated or accepted in relation to the educational needs of a similar number of Pakeha children (‘30–40’ according to the Maoris; ‘upwards of 20’ according to Stack). (M20:55)

It is not possible to find the Crown’s record in the provision of schools for Ngai Tahu in the three decades following the Kemp and Murihiku purchases as being consistent with good faith and honourable dealing with its Treaty partner.

Hospitals and medical aid

- 19.4.6 Mr Walzl, for the Crown, gave carefully researched evidence of government health measures for Ngai Tahu. He dealt first with the Dunedin hospital and then with other health provisions (O20:49–76).

*The Ngai Tahu Report 1991****Dunedin hospital***

- 19.4.7 During his visit to the new settlement of Dunedin in November 1850, Governor Grey pledged central government support for a hospital in Dunedin. The promise, according to Resident Magistrate A Chetham-Strode, was made to Ngai Tahu in response to an urgent request from them. Whether this request, and Grey's response, were a result of Mantell's 1848 promises is not known. As Grey also provided funds for hospitals in Auckland, New Plymouth and Wellington in the North Island, this may have been part of his then policy. Early in 1853, a Dr Williams, the district coroner, was appointed provincial surgeon, to the annoyance of the Otago Settlers' Association. The association complained that if a hospital was to be for Ngai Tahu it ought to be on one of their own reserves and not in Dunedin (O20:52).

In 1856, in response to demands by the Otago Provincial Council, the hospital was formally taken over by the province, the central government to pay for the cost of any Ngai Tahu patients. Over the next three years such payment amounted to all of £5 (O20:54).⁶³ In January 1856 Tiramorehu wrote to Governor Browne asking that Dr Williams be appointed doctor for all Maori from Murihiku to Waitaki. In July and September 1857, in letters to Mantell, Ngai Tahu urged the building of a hospital. Mr Walzl observed that they obviously did not feel part of the system and the fragmentary evidence shows only a low level of usage by Ngai Tahu of the Dunedin hospital. Two patients were admitted in 1860 (O20:54–55). Later, general hospitals were built at Invercargill and Riverton which were also used by Ngai Tahu, but to what extent is not known.

Other Ngai Tahu health measures 1860–1890

- 19.4.8 Before 1860 medical assistance for Ngai Tahu was limited. At the mission stations at Ruapuke and Kaiapoi it is likely that the clergy administered some medical assistance, but Mr Walzl stated that no formal or regular government measures were made for Ngai Tahu before 1860. When Mantell became native minister in July 1861, however, he requested a report from Walter Buller on what medical arrangements could be made for Ngai Tahu in Canterbury (O20:57). In 1862 two part-time medical officers were appointed to visit Kaiapoi and Banks Peninsula respectively. But no medical officers were appointed for Otago or Southland Ngai Tahu during this period (O20:58–59). Mr Walzl pointed out that Mantell's request in 1861 was for proposals for medical aid, not the provision of hospitals. Whereas in FitzRoy and Grey's time hospitals had been seen as the chief means of meeting Maori health needs, the remoteness of many Maori kainga from European settlements led to an emphasis on a medical officer system.

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From 1860 through to 1890 the provision of medical assistance to Ngai Tahu by central government varied considerably from time to time depending on the political whim or concern of the government of the day. And governments changed frequently. Thus, when Mantell again became native minister in 1864, he stimulated further action. During his ministry, part-time medical officers were appointed at Timaru and Riverton. The Timaru doctor was to visit Arowhenua weekly and Waimatamate on urgent cases. In 1865 Hunter Brown recommended a hospital at Waikouaiti and a single sick room at Otago Heads. But with Mantell's departure from office a new period of Maori policy would seek the dismantling of the Native Department and the limited services it provided. This trend was to continue for the next three and a half years (O20:63). The three ministers who succeeded Mantell; FitzGerald, Russell and Richmond, all participated in allowing the department to run down. Mr Walzl reported that they were notably successful in reducing medical officers available to Ngai Tahu. Dismissals and salary reductions were put in place. During the period of three and a half years no more doctors were appointed to assist Ngai Tahu in Canterbury, Otago or Southland (O20:64). An exception occurred at Invercargill. In 1868 the government agreed to a request from the provincial hospital at Invercargill for a subsidy for Maori patients treated there. It seems some Ngai Tahu were using the hospital (O20:65).

- 19.4.9 In June 1869 Donald McLean became native minister. Unlike his three immediate predecessors he was an activist. He reversed the policy of curtailing the provision of medical aid to Maori, including Ngai Tahu. This brought some improvement to Ngai Tahu's situation. The services of a doctor at Riverton continued and in addition central government made a regular contribution of £50 to Invercargill hospital (plus a payment of £100 arrears) to meet Ngai Tahu needs for hospital treatment. Even the Reverend Wohlers at Ruapuke was given a £15 allowance for drugs.

In 1870 subsidies were paid to doctors to attend Ngai Tahu at Timaru, Arowhenua and Waimatamate, replacing the single doctor at Timaru who had resigned. However the rest of Canterbury did not fare so well. It seems that through much of the 1870s no subsidised medical assistance was available on Banks Peninsula (O20:66). Likewise, in Kaiapoi, the Reverend Stack was paid £50 to meet half the cost of Ngai Tahu medical bills, unless they were in real need. During the McLean period, which came to an end late in 1876, no Maori hospitals were erected.

- 19.4.10 In October 1877 John Sheehan, who replaced Daniel Pollen as native minister, reversed Pollen's retrenchment of the department. He

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reinstated some medical officers. Under Bryce, who became native minister in 1879, Ngai Tahu health measures did not suffer. Mr Walzl suggested this may have been, in part at least, because the Smith–Nairn Royal commission commenced hearings in 1879, and unfulfilled promises were within their terms of reference. But by 1883 it appears there was only one government subsidised doctor in Canterbury, and no hospital contributions were now being made (O20:69–70). In Otago, an area which had been neglected by government for some time, the subsidy of £50 was paid to a doctor, and this arrangement continued until 1885. In Southland, where Mr Walzl considered there had been, since the mid-1860s, “rather good coverage in terms of medical attendance”, the position changed. Although the Riverton appointment was maintained, the Reverend Wohler on Ruapuke lost his drug subsidy, and subsidies to Riverton and Invercargill hospitals ceased. Under Ballance, from 1884–1887, subsidised health schemes for Ngai Tahu were further reduced or refused (O20:71). Mr Walzl noted that the 1891 Middle Island Land Commission (the second Mackay commission) revealed that other areas of Ngai Tahu were similarly deprived which resulted in great hardship (O20:72).

- 19.4.11 It is clear from the foregoing that Ngai Tahu received no government assisted medical aid until 1861, and then only in varying degrees until the turn of the century. Apart from the relatively benign situation at Riverton, which occurred at a comparatively late period, it is apparent that Mantell’s promises were not adequately honoured by the Crown. In response to a claim made on behalf of the claimants, that the government’s record on the provision of medical services to Ngai Tahu was “half-hearted at least”, Mr Walzl commented:

despite the short-term benefits which Ngai Tahu gained, the Crown efforts in both education and health were woefully inadequate. (R7:122)

The tribunal entirely agrees with this assessment of successive governments’ performance over the three to four decades following Mantell’s promises in 1848 and 1852. They were indeed woefully inadequate.

19.5 **Conclusions**

- 19.5.1 It remains for us to state our conclusions on Ngai Tahu’s grievance, that the Crown failed adequately to fulfill Mantell’s promises as to schools and hospitals. We have found that these promises were made by Mantell to induce Ngai Tahu to part with their land in the Kemp and Murihiku purchases. We have further found that, given the grave dissatisfaction of Ngai Tahu chiefs both with the price and the totally inadequate extent of the reserves proposed or insisted on by Mantell, that the prospect of the provision of schools, hospitals and other

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government assistance constituted material inducements to Ngai Tahu to sell their lands, many millions of acres in extent.

In our earlier discussion of relevant Treaty principles we emphasised that when exercising its pre-emptive right to purchase Maori land, all such dealings were to be conducted on the basis of sincerity, justice and good faith (4.7.8).

Ngai Tahu willingly acceded to the Treaty of Waitangi. The Treaty signifies a partnership and requires the Crown and Maori partners to act towards each other reasonably and with the utmost good faith. The honour of the Crown lies at the heart of the Crown's Treaty relationship with its Maori partner. Mr Justice Richardson has pointed out that:

Where the focus is on the role of the Crown and the conduct of the Government that emphasis on the honour of the Crown is important.⁶⁴

Findings as to grievance no 5 (Muribiku)

- 19.5.2 We find that the Crown, in acquiring land from Ngai Tahu was obliged by the Treaty of Waitangi to conduct its dealings on the basis of sincerity, justice and good faith. Promises made by the Crown's representative to Ngai Tahu to induce them to sell their lands should have been fulfilled by the Crown, and fulfilled promptly. Good faith, fair dealing and the honour of the Crown required no less. But, as we believe the evidence overwhelmingly shows, the Crown failed to meet these tests. Intermittent and long-delayed efforts were made partially to meet the Crown's obligations. To this day Ngai Tahu have not been compensated for the failure of the Crown adequately to meet its Treaty obligations in respect to the promises of schools and hospitals. In those early years, when the provision of these amenities would have made a significant contribution to the advancement of Ngai Tahu, they were left, over a considerable period, largely neglected and forgotten, or ignored. It is not too late for this omission to be repaired. We believe that the remedy proposed as long ago as 1887, by Royal Commissioner Judge Mackay, that a substantial endowment of land be secured to Ngai Tahu, would go far to right so many years of neglect.

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Chapter 20

Landless Natives Grants

20.1. **Introduction**

In the previous chapter we traversed the investigations of a series of parliamentary select committees, commissions of inquiry and Royal commissions during the years from 1872 through to 1891 in so far as they touched upon the Crown's promises as to schools and hospitals. A number of these investigations covered a much wider field of grievances, including the failure to provide adequate reserves, boundary disputes and related matters arising out of the various purchases. The Smith–Nairn commission of 1879–80 and the Royal commission presided over by Judge Alexander Mackay in 1886–87 are notable examples. We will return to these investigations in our succeeding chapter.

In the meantime the tribunal is concerned to consider the plight of those Ngai Tahu rendered landless or substantially landless due to the Crown's failure to prevent this occurring as a result of the various land purchases. We will focus on the nature, extent and adequacy of the Crown's response to this problem, the effects of which became increasingly apparent during the latter part of the nineteenth century. A convenient starting point is the report of Judge Mackay, who in May 1886 was appointed under Royal commission to enquire into the "Middle Island Native Land Question". We are particularly indebted to a full discussion of this topic by a Crown historian, Mr David Armstrong (M16), and also to the claimants' historian, Mr J M McAloon (E1).

20.2. **The Mackay Royal Commission 1886–87**

20.2.1 On 12 May 1886 the governor, Sir William Jervois, appointed Alexander Mackay, judge of the Native Land Court, to be a Royal commissioner. His warrant of appointment instructed the Royal commissioner:

- to inquire into all cases of Maori alleged to been unprovided with land;

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- to inquire into cases where it was asserted that the lands previously set apart were inadequate for the maintenance and support of the Maori for whom they were provided;
- to inquire into the position of all half-castes in the South Island not included in any statutes who may have still been unprovided with land; and
- to ascertain and record the names of all such persons and recommend in what quantities and in what localities land should be set apart and awarded to each for cultivation and settlement purposes (M17:I:doc 1:16).¹

A subsequent warrant dated 20 July 1886 instructed Mackay to report whether any Maori interested in the Smith–Nairn commission of 1879–1880 concerning the Otakou, Kemp, Murihiku and Akaroa purchases would accept a grant of land in final settlement of any claim regarding the non-fulfilment of any of the terms or conditions of those purchases, including any promises made in connection with them. If so, Mackay was to recommend in what quantities and localities land should be set apart for that purpose (M17:I:doc 1:16).²

In his report to the governor of 5 May 1887 Mackay traversed in considerable detail the background to Kemp’s purchase and in less detail the Murihiku and Otakou purchases. We will refer to certain of this discussion in our next chapter. For the present we will focus on Mackay’s findings and recommendations.

Kemp’s purchase

20.2.2 After a detailed review of the background to this purchase Commissioner Mackay found that:

the fundamental principles laid down were not adhered to in acquiring the land in the Middle Island, neither in the reservation of sufficient land for Native purposes, nor in compensating the Native owners for the loss of a large share of their means of subsistence through depriving them of their hunting and fishing rights. (M17:I:doc 1:6)³

Mackay pointed out that the average acreage per individual set apart in Kemp’s purchase in 1848 was under 10 acres. The Native Land Court hearing in 1868 resulted in an additional 2830 acres being set aside in Canterbury and 2100 acres in Otago. Subsequently a further acreage was allotted bringing the general average increase to under 20 acres per individual. But this additional land was not allotted equally. At places where the average was high per individual Mackay found there were many people without land. Moreover, as the commissioner pointed out, a very large proportion of the additional land awarded in 1868 and subsequently, was “very far below the original reserves in the quality of the soil” (M17:I:doc 1:9).⁴

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20.2.3 Commissioner Mackay conveniently summarised his recommendations in respect of the Kemp and Murihiku purchases in his covering letter of 5 May 1887. First, he proposed that blocks of land should be set apart as an endowment to provide an independent fund for the promotion of the objects which were held out to Ngai Tahu as an inducement to part with their land. As Mackay saw it:

A fund of this kind would possess manifold advantages, one of the chief being that the moneys accruing for the purpose would be derived from a permanent and independent source, removed from the ever-varying influence of Parliament, or other causes which have hitherto interfered with an equitable fulfilment of the claims of the southern Natives. (M17:I:doc 1:1)⁵

He envisaged that some of the purposes for which the moneys could be expended were:

- the erection and maintenance of schools and other buildings for general purposes;
- the fencing, improving and drainage of land;
- the purchase of farm implements;
- medical aid and medicines;
- teachers' salaries;
- the purchase of books and other school requisites;
- contribution to local rates;
- the purchase of food and clothing for destitute and elderly Maori; and
- for any other purpose which would promote the social and moral welfare of Ngai Tahu.

Secondly, Mackay recommended that blocks of land be set apart for the use and occupation of Ngai Tahu, to an extent that would augment the quantity owned by each man, woman and child to 50 acres per head.

He accordingly recommended that additional land be set aside as follows:

Kemp purchase:

- (a) endowment purposes, 100,000 acres; and
- (b) individual use and occupation in addition to the quantity already reserved, 30,700 acres.

Total: 130,700 acres

Muribiku purchase:

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- (a) Endowment purposes, 40,000 acres; and
- (b) additional for individual use, 15,412 acres.

Total: 55,412 acres

Thus Mackay recommended a total of 186,112 acres for all purposes in both blocks. The Banks Peninsula purchases were included in the consideration for Kemp's purchase.

- 20.2.4 As to Otakou, Mackay took the view that the New Zealand Company had fully admitted the right of Ngai Tahu to have a tenth of the land set apart for them in the Otakou block in the same manner as was carried out in their other settlements. The tribunal, for reasons given in our discussion of the Otakou purchase, believes Mackay to be mistaken on this point (6.6.17). Mackay went on to express the opinion that it was highly inequitable that the Otakou Ngai Tahu should be compelled to suffer for an omission of the colonial government to set apart tenths. As he put it, "the desirability will no doubt be now seen that immediate action should be taken to remedy, as far as possible, the loss they have sustained in consequence" (M17:I: doc 1:15).⁶ He thought that if the obligation respecting the tenths was admitted, the least Ngai Tahu were entitled to was the minimum quantity of 14,460 acres (one-tenth of the 144,600 acres contemplated for the Otakou settlement) together with additional land as compensation for the years they had been deprived of the benefit of the tenths.

Due to lack of time, Mackay was unable to make a selection of land or ascertain the names of those Ngai Tahu for whom extra land should be provided.

20.3. **Joint Committees**

The 1888 Joint Middle Island Native Claims Committee

- 20.3.1 Commissioner Mackay's comprehensive, thoughtful and constructive report was coolly received by the legislature. In June 1888 the House of Representatives and the Legislative Council decided to appoint nine members each to a joint committee:

to consider and report on the claims of the Middle Island Natives on account of unfulfilled promises, and the recommendations made by Mr Commissioner Mackay thereon on the 5th May 1887.(M17:I:doc 2:1)⁷

On 22 August 1888 the joint committee reported that it had in the time available not completed its investigation of Kemp's purchase and had not started its investigation of the Otakou, Murihiku and Akaroa purchases. It had, however, amassed a considerable dossier of documentary evidence to which it briefly referred in an "epitome

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of the Ngaitahu [Kemp] case". Notwithstanding that its investigation was unfinished the joint committee concluded that:

The foregoing review of the question seems to establish that no promises of reserves of land have been made which have not been fulfilled, and that at the negotiations no promises of tenths were made or held out. (M17:I:doc 2:7)⁸

It recommended that a similar committee be appointed for 1890 to complete the Kemp purchase inquiry and that of the Otakou, Murihiku and Banks Peninsula purchases.

- 20.3.2 In addition to the documentary evidence, including Mackay's 1887 report, the joint committee heard evidence from Walter Mantell, William Rolleston and H K Taiaroa, all of whom were Members of Parliament at the time. It appears Rolleston's evidence was particularly influential. A senior minister of the Crown who had a lengthy involvement in both provincial and central government, Rolleston appeared to reflect the popular view of the issue. He commenced by criticising Mackay's report as exceeding its terms of reference and proposing a totally new adjustment of the original Kemp's purchase agreement on what appeared to Rolleston an entirely untenable basis. Rolleston referred to his membership on a House of Representatives committee which in 1882 inquired into a petition from H K Taiaroa. On the claim that ample reserves had not been provided, the committee had evidence that the reserves made by the Native Land Court in 1868 were given in final settlement of all claims over land.

According to Rolleston, "The allocation by Mr Mantell was most judiciously made in the interests of the Natives." And later Rolleston observed that Mantell had stated he considered 10 acres for every man, woman and child "a fair apportionment". Rolleston commented that he had "no doubt it was at the time" (M17:I:doc 2:78).⁹

When asked whether he thought substantial justice had been done by the Native Land Court concerning the awards made to Ngai Tahu and the supplementary reserves, Rolleston agreed that he did.

Rolleston then went on to deprecate the making of large Maori reserves which he said "would work out extremely mischievously". He asserted that various portions of the reserves were being let. He argued that the enlargement of those reserves:

would tend, not to civilisation, but to the creation of an idle and degraded race; and it is extremely desirable that no step should be taken to prevent a labouring-class from arising among the Natives. In the formation of that class among the Natives lies, to my mind, the future salvation of the race. (M17:I:doc 2:80)¹⁰

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Rolleston was then asked for his opinion as to what he considered to be an appropriate “endowment”. He replied that it varied very much:

I may say I am of the opinion that the landed endowments are more than ample now, but the question is whether we can deal with individual cases of hardship or want. I think no Native should be without reasonable means of settlement upon land to keep him from absolute want, and I think ten acres of good land to a Native, a head of a family, a very fair amount. Of course, if the land is poor, and in a situation where they could not get a living through fishing, a larger quantity would be necessary. It varies according to the situation of the land. (M17:I:doc 2:80)¹¹

Rolleston was later asked for his opinion on ways in which any moral claims Ngai Tahu might have against the government could be satisfied. He reiterated his view that it would be extremely injudicious to provide further reserves by way of endowments:

If necessary, residence reserves might be made where it was shown there was absolute pauperism. My own view would be very strongly to deal no more with land except where pauperism by want of any land was established. Let the Government issue terminable annuities. This dealing with land is, to my mind, from experience which I do not wish to recur to, accompanied with very great evils. I feel, with regard to all land-purchase, it would be far better to pay annuities, which would not allow of the squandering of money, and would maintain the Natives above want. The only hope is that of the Natives becoming an industrious people. (M17:I:doc 2:84)¹²

20.3.3 In brief Rolleston proposed:

- no land should be set aside as endowments for Ngai Tahu as recommended by Mackay;
- it was dangerous to grant any Ngai Tahu more than the minimum of land and then only where it was shown “there was absolute pauperism”;
- rather than grant any more land the government should issue terminable annuities; and
- the only hope for Ngai Tahu was to become an industrious people presumably all as members of the “labouring-class”.

And so Ngai Tahu, from whom the Crown had acquired virtually all 34 million acres for a trifling sum, were to be denied a just share in their land. Instead they should settle for becoming industrious labourers. Any further Crown intervention was to be confined to cases of “absolute pauperism”. Given this evidence it is not surprising that the joint committee should conclude that no promises of reserves of land had been made which had not been fulfilled.

The 1889 Joint Committee on Middle Island Native Claims

20.3.4 A further joint committee was appointed to complete the work of its 1888 predecessor. The questions investigated by the committee

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related to reservations of Maori reserves and cultivations, further land reserves, and schools, hospitals and solicitude for Ngai Tahu welfare.

The joint committee reported on 10 September 1889 (M17:I:doc 2).¹³ It found that the evidence established the promises made in regard to residences and cultivations were fulfilled. No reasons were given for this finding. The committee also found that the further land reserves made, “although not undertaken in so liberal a spirit as might have been suitable to the case”, might be considered as having substantially discharged the public obligations under this head. They saw the Native Land Court 1868 decisions as supporting this view. But having said this, the committee conceded that it might “yet be found highly expedient that more land should be provided where the provision proves to be insufficient to afford Natives a livelihood” (M17:I:doc 2:2).¹⁴ This would seem to be inconsistent with its earlier finding.

The committee then proposed that the only practical and effective way to reach a satisfactory settlement would be to make a careful inquiry into the condition of the Ngai Tahu people. If it was found that any of them had insufficient land to support themselves by labour on it, further provision by way of inalienable reserves should be made for them. So yet another investigation was called for.

1890 Joint Committee on Middle Island Native Claims

- 20.3.5 This committee, which reported on 9 September 1890, was concerned solely with the Otakou purchase and in particular the question of tenths. It was unable to satisfy itself that the principle of tenths applied to this purchase. But the committee went on to find that the evidence before it showed the existing provision of land to be “by no means sufficient” (M17:I:doc 2).¹⁵ It recommended an appropriate inquiry in association with that to be undertaken in respect to the Kemp, Banks Peninsula and Murihiku purchases.

20.4. **The Mackay Royal Commission 1891 and Subsequent Reports**

- 20.4.1 Notwithstanding the fact that his 1887 Royal commission report had been largely ignored, Judge Alexander Mackay was again appointed a Royal commissioner on 10 December 1890, on the recommendation of the joint committee. He was to inquire further into the condition of the Ngai Tahu people and to ascertain if any of them had insufficient land for their support by working it. His investigation covered the Otakou, Kemp, Banks Peninsula and Murihiku blocks. Throughout his extensive inquiry Mackay continually received complaints from Ngai Tahu that his terms of reference were too restricted. Ngai Tahu wished to raise yet again their wider grievances about the

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inadequacy of the reserves granted and about those refused. As a consequence Mackay made a supplementary report of 9 July 1891 (M17:I:doc 3).¹⁶ Both reports are somewhat discursive and each contains lengthy schedules of population and land holdings (or lack of them) in various areas. Mackay's two reports were conveniently summarised for us by Crown historian David Armstrong (M16:10–15). We are indebted to him for much of the following account of Mackay's findings in the two reports.

- 20.4.2 The commissioner provided schedules for all the areas in the Otakou, Kemp and Murihiku blocks and for Rakiura. He listed those having no land, those having insufficient land and those with over 50 acres. We note that even in 1890, 50 acres was apparently considered sufficient land to provide a living. We assume this would be on the basis that it was good quality land.

Mr Armstrong calculated that of Ngai Tahu as a whole, Mackay found that 44 per cent had no land, 46 per cent had insufficient, and only 10 per cent had sufficient land, that is, 50 acres or more. The commissioner also recorded that of the half-caste population of Southland the ten acres each for men and eight each for women was "altogether inadequate".

In general Mackay, who visited and took evidence at all the principal settlements, gave a depressing account of the poverty, listlessness and despair amongst Ngai Tahu. Among the reasons for Ngai Tahu's poverty, as noted by Armstrong, were:

- 90 per cent possessed either no land (44 per cent) or insufficient land (46 per cent);
- of the 10 per cent who owned more than 50 acres, few could make a living due to the inferior quality of the soil or the scattered manner in which the lands were situated;
- unskilled seasonal work on which Ngai Tahu relied to supplement their incomes was becoming harder to find because of competition from Europeans. For many their remoteness from European settlements meant work of this kind was unavailable;
- many Ngai Tahu had made contributions of money to aid H K Taiaroa "in seeking redress for the non-fulfilment of the promises made them on the cession of their land to the Crown" (M17:I: 3); and
- the destruction of many Maori fisheries by the drainage of the country and the introduction of European fish species.

On a more positive note Mackay found that:

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There are no cases of entire destitution; but that is attributable in a great measure to the compassionate disposition of the Natives towards each other . . . and many persons who ought to be relieved by the Government, in conformity with the understanding to that effect when their land was ceded, are maintained by their relatives, which has the effect of keeping them all in poor circumstances. (M17:I:doc 3:4-5)¹⁷

In concluding his supplementary report Mackay stated that, notwithstanding anything that might have been urged to the contrary, he saw no justification for changing the views he had expressed and the recommendations he had made in his May 1887 Royal commission report.

The Crown's reaction to the Royal commission reports

- 20.4.3 Although pressed by Tame Parata in Parliament to act on the reports' recommendations, the native minister, A J Cadman did nothing until December 1892 when he went to Dunedin and met with Ngai Tahu at Otago Heads. At this meeting Cadman indicated that the government would be prepared to make certain Crown lands available to those who had no or insufficient land (M17:I: 8).¹⁸ Later in December the minister wrote to Parata advising him of the lands the government now had in mind, amounting to some 90,466 acres, mainly at Te Wae Wae Bay (60,110 acres) and at Tautuku (9320 acres), Lake Wanaka (11,852 acres) and Stewart Island (9184 acres). It appears that Ngai Tahu were not consulted about the location of the land the government was offering.

Mackay and Smith appointed to assign the land

- 20.4.4 In December 1893 Cabinet appointed Alexander Mackay and Percy Smith, the surveyor-general, to complete a list of landless Maori and assign sections to them within the blocks nominated. In 1894, with the concurrence of government, Parata joined the commissioners to assist in grouping families. The commissioners' jurisdiction extended to all landless Maori in the South Island. The task was an onerous one.

The commissioners issued a series of interim reports. The first of them in 1896 referred to the fact that they had been sitting at different times for about three months during the evening (M17:I:23).¹⁹ Their second interim report was dated 14 June 1897 (M17:II:24).²⁰ It was necessary to compile a complete alphabetical list of all South Island Maori and their respective holdings. This was a monumental task. The commission then met and completed the grouping of the families who were to receive land at Stewart Island, Waiau in Southland, Tautuku in Otago/Southland and Wanaka. This was accomplished by 1895. The commissioners drily noted that with the exception of about four days "the whole of it has been done outside official hours, and in our own time". (M17:II:4:2)²¹

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20.4.5 In their third interim report of 30 June 1898 the commissioners advised that during the year, surveys had been in progress in the district west of the Waiau River (Fiordland) (M17:II:25:2).²² The surveyor reported that of the large block of 60,110 acres, the western part of it, amounting to some 30,000 acres, was quite unsuitable for settlement purposes, being “both mountainous and barren”.²³ This being so, the eastern part of the block only could be used, and here 1264 individuals had had farms allocated to them, in sizes varying from 80 to 460 acres—altogether 141 farms, covering an area of 29,908 acres. Although the report does not say so, this land was extremely isolated. A further report, their fourth, was dated 16 June 1899 (M17:II:27).²⁴ It noted that two additional blocks were recommended to government to be set aside for landless Maori: a further 7600 acres on Stewart Island, described as fair and about equal in quality to the adjacent block at Lords River already allocated; and a second block of 50,000 acres at Wairaurahiri, some 15 miles to the west of the Waiau block. The latter fronted on to Foveaux Strait. The land was said to be only “of fair quality”, but the commissioners expected some to be too broken for settlement, in which case it would be cut out on survey. Even more remote than the Waiau block, the land was covered with forest. Rainfall was very heavy. Some 1828 Ngai Tahu were said to require this land at Stewart Island and Wairaurahiri.

On 20 June 1901, in their fifth report, the commissioners advised that no progress was made during the period 1899–1900 in allocating lands as the Wairaurahiri block survey was not sufficiently advanced (M17:II:28).²⁵ However some progress had been made in 1901. There still remained some 700 people to be provided for, including those at Kaikoura and Marlborough.

The quality of the land allocated

20.4.6 On 18 August 1904, in response to a request by T Parata, the House of Representatives ordered that the reports of the Survey Department relating to the lands set apart for landless Ngai Tahu at Waiau, Lords River (Stewart Island), Tautuku and Wairaurahiri be tabled. They made depressing reading. The Crown historian, David Armstrong, conveniently summarised the main features (M16:38–41). The tribunal reproduces here some of his comments and citations from the various reports.

Alton district

20.4.7 John Robertson, who surveyed the Alton district, reported on 10 September 1899. The roads were laid off (but not formed) over fairly level country which was wet and boggy in places. The soil on the beach front sections was good but the land deteriorated inland.

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Timber was relatively plentiful but the ground was generally of a broken nature.

J H Treseder, the district road engineer, advised that the lack of access and market for produce made the sections of “very little value”:

There are one or two sections more that could be settled upon, but taken as a whole the country is not at all suitable for farming purposes, as the ground is pretty broken up . . . a great portion of the land is covered with moss of a depth of from 6 in. to 18 in., and the soil is mostly clay. . . . the climate is very wet . . . I consider the land unsuitable for the purpose for which it was set aside, being far too rough and broken and soil of a poor nature. (M17:II:29:2)²⁶

The county engineer, A McGavock, reported that with the exception of some sections, portions of which were first class, the bulk of the land was not fit for settlement, being clay subsoil covered with moss. The country was very broken and the cost of roading would be considerable. He added:

For settlement purposes I consider they are almost useless, and I am of opinion that were the Government to offer them for nothing, and undertake to give tenants access to the different sections, it would be impossible for settlers to make a living. (M17:II:29:2)²⁷

The chief surveyor for Southland reported for the year ending 31 March 1903. He referred to an inspection of the survey operations beyond the Waiau River (in Fiordland) known as the “Landless Natives” block:

I am sorry to say that a large proportion of this land is of little value, being mostly carpeted with a covering of moss varying from 12 in. to 24 in. deep, then densely over-grown with valueless birch timber with occasional patches of fair red and white pine, and a little sprinkling of totara; but owing to the inaccessible nature of the country the last-mentioned timbers are of no commercial value. Taking the inaccessible nature of the country into consideration, its excessively wet climate, and the poor quality of the land, I fear that the selection has not been all that could be desired for settlement purposes or for landless Natives. (M17:II:29:3)²⁸

Lords River, Stewart Island

- 20.4.8 On 2 September 1904 John Hay, commissioner of Crown lands, Invercargill, reported that the land set apart at Lords River was densely covered with bush, some of which was suitable for sawmilling. The soil he classed as generally from fair to good. He considered the land suitable for the purpose for which it had been surveyed. One great advantage from the Maori point of view was the good fishing-ground in the immediate vicinity and the excellent harbour.

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Tautuku

- 20.4.9 E O'Neill, a Crown lands ranger, on 17 November 1903 reported that the sections on the south-east coast had a proportion of milling-timber. They were rough, broken, bush sections with a fair aspect, generally about 23 miles from a proposed new railway terminus at Ratanui and within one mile of a school and post office.

Wairaurahiri

- 20.4.10 This block was extremely remote, being well to the west of the Waiau River in Fiordland. Commissioner Hay reported on 13 July 1903:

In January, 1902, I walked through this block from the coast along centre road-line to Lake Hauroko, . . . In this distance there are no doubt small patches of fair land, but undoubtedly the area of such is so infinitesimal that they are not worth consideration. There is also some fair timber in places, but it is of no commercial value owing to the inaccessible nature of the country. . .

It will now be seen from what I have said . . . that apparently an error of judgment has been committed in having the land set aside and surveyed for settlement purposes. (M17:II:29:4)²⁹

Separate reports were made on the land east and west of the Wairaurahiri River.

The eastern side

C Otway, surveyor, commented generally on this land which had been surveyed by T G Lilliecrona:

The block as a whole is exceedingly difficult of access, the distance from its centre to the formed road at Waiau Mouth being thirty-five miles. The timber in places is fairly suitable for milling purposes, but milling operations could not be successfully carried on for want of proper access by road, while access from the sea is out of the question, except on very rare occasions. The land, if cleared, would grow grass fairly well, but clearing would be a difficult undertaking owing to the peaty and mossy nature of the surface, which, being always wet and damp, would make it impossible to secure a good burn.

After three years experience of this locality, I am of opinion that the rainfall is as great as, if not greater, than that of any other part of New Zealand. It is also doubtful whether grass would last very well in such a country.

The conditions under which settlement would have to progress make this locality quite unsuitable for Native occupation, while the very inferior quality of the soil generally makes it unfit for settlement of any kind. (M17:II:29:5)³⁰

The western side

Otway's general comments were:

As a whole, this block is exceedingly difficult of access, the distance from Papatotara Post-office varying from thirty-three to fifty-five miles, twelve

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miles of which is along the beach, and the remainder over a rough and broken track.

The timbers in places along the coast and other parts of the block are fairly suitable for milling proposes, but milling operations could not be successfully carried on for want of proper access by road, while approach by sea, owing to danger in effecting a landing, could not be taken into account. The country, if cleared, would carry grass very well, but clearing would be a difficult and anxious undertaking, owing to the exceptionally wet climate, and the peaty and mossy nature of the surface, which, being always wet and damp, would make it next to impossible to secure a good burn. It is also doubtful whether grass, when grown, would last very well in such country.

As regards the climate, I may say that, after over three years' experience, I have found the rainfall excessive, and consider it as great as, if not greater than, that obtaining in any other part of the colony.

With reference to prices, I have taken 5s. per acre as a basis of valuation, but consider that this basis is much too high, my personal estimate of the value of the land being an average of about 1s. per acre.

My remarks given in the report on the [east] block surveyed by Mr T. G. Lilliecrona with reference to its suitability for Native occupation or settlement apply equally to this block. (M17:II:29:6)³¹

- 20.4.11 It is apparent from these various reports that apart from the land on Stewart Island and to a lesser extent at Tautuku, the bulk of the land so laboriously surveyed was extremely remote and largely worthless for the settlement of landless Ngai Tahu. While the land no doubt had some limited value for timber-milling, its remoteness and the absence of roads meant that even this activity would be severely restricted. Although Stewart Island was accessible by sea it entailed a journey across dangerous waters to one of the most isolated places in New Zealand.

Mackay and Smith's final report

- 20.4.12 Meanwhile, and despite the apparent futility of their enormous labours, very largely in their own time, the commissioners completed their work. They furnished their final report on 28 September 1905 (M17:II:31).³² Among the reasons they gave for their unavoidable delay in completing their work the most important was the absence of suitable blocks of land in which to allocate the claims:

In the end, lands have actually been found to meet all requirements as to area, but much of the land is of such a nature that it is doubtful if the people can profitably occupy it as homes. (M17:II:31:1)³³

The tribunal can only wonder why so much labour was expended, and in their own time, by the two commissioners, when it was apparent to them that it was a largely fruitless exercise. The various surveyors and Crown land commissioners' reports had been tabled in the House of Representatives. No doubt their contents were known to Members of Parliament, the government and the commis-

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sioners. The tribunal can only conclude that Mackay and Smith had been directed by the Crown to complete the exercise despite its futility. Or did the Crown seriously believe that by making this gesture it could wash its hands of any future obligation to Ngai Tahu?

20.4.13 The commissioners made a number of other points in their report:

- They considered it necessary that legislation be passed so that titles allocated to the land could be issued.
- They had included half and quarter caste Maori in their allocations.
- Their brief covered the whole of the South and Stewart Islands.
- On instructions from the Crown children born since 31 August 1896 were not included in the considerations.
- Not all those provided for were entirely landless, but all who were landless or who had less than 50 acres if adult, or 20 acres if minors were allocated land to bring their holdings up to these amounts. This was done on the authority of government as this acreage was considered to be a more appropriate area and more in conformity with the original intention:

that land of a sufficient area for their future wants should be set apart for their maintenance. (M17:II:31:1)³⁴

- The commissioners allocated land to Ngai Tahu south of the northern boundary of Canterbury on the basis of the 50 and 20 acre formula. But for those Ngai Tahu north of Canterbury the maximum allocation for adults was 40, not 50 acres. Each eligible child received 20 acres. The commissioners justified this differential treatment because the Ngai Tahu people in Canterbury and south were said to have had a:

special claim to consideration in fulfilment of promises made at the cession of their territory, whereas those to the north had no such rights, and are indebted solely to the generosity of the Crown for the increased area. (M17:II:31:2)³⁵

20.4.14 Mr Armstrong commented on the commissioners' references to "future wants" and "special claims" in the last two quotations as indicating that they, with the concurrence of the government, had begun to see the provision of land for landless Ngai Tahu as a settlement of Ngai Tahu claims. "At no stage", said Mr Armstrong, "was this the reality of the situation" (M16:46). The tribunal would agree with this latter observation. Given the commissioners' conclusion that much of the land allocated was unsuitable for the purposes of settlement we also question whether Mackay and Smith seriously contemplated that it could constitute a settlement of Ngai Tahu's wider claims. Moreover, as Mr Armstrong pointed out, a significant part of Mackay's "final claim" recommendations in terms of "future wants" in his 1887

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Royal commission report had been the provision of substantial reserves for endowment purposes. This had never been carried into effect. Indeed it had been ignored, if not rejected, by the Crown. The tribunal agrees with Mr Armstrong that neither Ngai Tahu nor initially the government saw the allocation as anything other than a “compassionate” gesture made to alleviate poverty.

The 1905 land allocations

20.4.15 The commissioners gave the following figures for the area of 142,118 acres allocated to 4064 people, not all of whom were Ngai Tahu:

Block	Persons	a	r	p	
Waiau	1278	44,455	2	1	surveyed
Wairaurahiri	280	10,866	2	33	”
Tautuku	366	11,615	2	30	”
Raymond’s Gap	8	350	3	15	partly surveyed
Manakaiaua	135	3759	3	20	surveyed
Lords River	241	8724	3	24	”
Whakapoai (Heaphy River)	38	1600	0	0	”
Whangarae (Croixelles)	23	934	2	19	”
Queen Charlotte Sound	166	5701	2	1	”
Hokonui	772	27,809	0	39	not surveyed
Glenomaru	7	350	0	0	”
Wanaka	57	1553	2	26	”
Miritu	9	360	0	0	”
Tennyson’s Inlet	175	6462	3	17	”
Forest Hill	20	850	0	0	”
Toitoi River	181	7392	0	4	”
Port Adventure	308	9340	3	26	”
Totals	4064	142,118	1	5	

(M17:II:31:2)³⁶

In conclusion the commissioners reminded the government, as they had on an earlier occasion, that their work had been done in their own time quite outside official duties.

20.5. **The South Island Landless Natives Act 1906**

20.5.1 This Act made provision for land to be allocated to landless South Island Maori generally in accordance with the Mackay–Smith recommendations. It contained restrictions on the alienation of such land.

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The Bill was introduced by the native minister, Sir James Carroll, on 4 September 1906. Carroll incorrectly suggested that Mackay and Smith were appointed to deal with claims in a comprehensive manner “both in its relationship to present and future requirements” (M17:II:33:316).³⁷ Later he suggested:

that we are coming now to a point when we will have to settle – when we will have to wipe off the slate, as proposed in this Bill – claims which, I regret to say, have been in existence too long. Generations have passed away with promises unfulfilled; but we have reached that stage now when, I think, these matters should be settled, so as to clear our consciences and rid the records of any stigma attachable to the reputation of the colony and the Government. (M17:II:33:318)³⁸

Carroll concluded his opening remarks, however, by leaving the question open:

Whether this settlement is equal really to the magnitude of the claims, or whether it gives all to which the Natives in the South Island are entitled to claim, is a question upon which I will not venture an opinion at present; but I do say this, in view of the absolute necessity of bringing these matters to a conclusion, in view also of the fact that it has been a blot on our colonial reputation to have allowed these claims to remain unsettled and undetermined for so many years, the best solution we can obtain at the present day, no matter whether or not we reach the utmost bounds of what is just, so long as it is considered fair and reasonable, should be hailed with satisfaction. (M17:II:33:318)³⁹

The member for Southern Maori, Tame Parata, strongly contested the notion that the lands being set aside under the proposed Act had anything to do with the wider claims of Ngai Tahu, which were an “entirely distinct matter” (M17:II:33:323)⁴⁰

The Bill was duly enacted but was repealed by the Native Land Act 1909 before it was fully implemented.

Claimants’ grievances as to the Act

20.5.2 The South Island Landless Natives Act 1906 was the subject of grievances in three of the Crown purchases. These were:

- That the Crown by the South Island Landless Natives Act of 1906 assigned to Ngai Tahu lands, none of which were in Kemps Block, and which were much inferior to those provided contemporaneously for landless Europeans under the Land for Settlement Acts—a breach of Article III (Kemp’s purchase, grievance no 11)
- the Landless Natives Act and other legislation were inadequate to remedy the landlessness caused by the sale to the Crown. (Murihiku purchase, grievance no 9)
- the South Island Landless Natives Act 1906 and other legislation was inadequate to remedy the landlessness caused by the sale to the Crown. (Arahura purchase, grievance no 10)

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20.5.3 In 1909 Tiemi Hipi and 916 other Ngai Tahu petitioned the House of Representatives for an investigation to enable a final settlement of the claims of Ngai Tahu with reference to Kemp's purchase in 1848. The petition was heard by the Native Affairs Committee in 1910. Mr Hosking K C appeared for the petitioners. He clearly distinguished between Ngai Tahu's claim for further provision in terms of Kemp's deed on the one hand and the provision under the Landless Natives Act 1906. This latter provision, he emphasised, was simply made for Maori on the footing that they were landless, not because they were entitled to a certain quantity of land.

Land allocated under Landless Natives Act criticised

20.5.4 Hosking pointed out the grave deficiencies in the land allocated to Ngai Tahu:

The reserves which have been made under the Act lie in remote parts of the country. They are all covered with bush, and are a long distance from a railway, and are mostly not roaded. In some cases the area which each man has in this reserve is, say, 5 acres, because he happens to hold 45 acres in other places. How, may I ask, can it be conceived that the Landless Natives Act has by such reserves made provision in the sense in which reserves made in 1848 would have made provision for the Native, had they been made of a sufficient character to provide for his wants? I might – if I may be pardoned – for a moment refer to these reserves. There is a reserve at Waiau – a block of 43,000 acres. It is six miles, I understand, from any access. There is the reserve at Hokonui. There are roads through it, but with the exception of a small part it is covered with bush. There is the land at Waiau-Rahiri, 10,000 acres, thirty miles from any railway, and no road. There is a reserve at Waikawa, 5,000-odd acres, twenty-five miles from a railway. There is a main road through it, but no branch road. (M17:II:35:19)⁴¹

The Native Affairs Committee referred the petition to the government for favourable consideration.

20.6. **The Gilfedder and Haszard Commission of Inquiry 1914**

20.6.1 In response to further complaints from Ngai Tahu as to the unsuitable condition of much of the land allocated under the 1906 Act, the government on 23 June 1914 appointed Michael Gilfedder and Henry Douglas Morpeth Haszard as commissioners to inquire into the issue of reserves for landless Maori.

The commissioners reported on 31 August 1914 (M17:II:40).⁴² In addition to investigating the situation in the South Island they were required to investigate the position of those Maori without any land in the Waikato-Maniapoto Native Land Court district. The following summary is confined to the South Island situation.

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The first question related to what provision had already been made for landless Ngai Tahu. The commissioners found that 142,463 acres had been set apart for 4064 people prior to the South Island Landless Natives Act 1906. This was as a result of the Mackay-Smith 1905 report. Of that area, 5642 acres in six blocks was proclaimed under sections 235 and 236 of the Land Act 1892. The commission found that under the South Island Landless Natives Act 1906, 12 blocks, consisting of 126,324 acres were permanently reserved, though in the case of four of those blocks the list of names and shares had not yet been published. It further found that since the repeal of the above two Acts, two blocks containing 934 acres had been reserved under the provisions of sections 321 and 322 of the Land Act 1908. It further found that in the case of three blocks containing 9561 acres no proclamation had yet been issued, although they were included in the area shown in the commissioners' report.

The commissioners took the view that the Mackay-Smith return of 4864 landless Maori might have included some double counting. But they did not say what, in their opinion, might have been the correct number.

The second question was whether the lands so set apart or permanently reserved had been duly applied for the purposes for which they were so set apart or reserved. The commission found that in regard to the reserves in Otago, Southland and Stewart Island, practically none of them had been occupied by the persons for whom they were set apart.

The third question asked was whether by any process of consolidation or by exchange for more suitable or conveniently situated lands, the purposes for which the lands were set apart or reserved could be better provided. The commission stated that the ideal situation would be for individual grantees to personally occupy their own holding, but they found that in actual practice there were insuperable difficulties in achieving this. In most cases the reservations were too remote from the present homes of the beneficiaries. In some cases the people to whom the land had been awarded to were too old or too young to start a new home in a strange locality. Lastly, the land set aside in some instances was not suitable for subdivision into small areas.

The fourth question was whether the purposes could be better provided by appropriating reserves for hapu or families, rather than for individuals. The commissioners agreed that the system of allotting the land in family groups would be the most practicable way of dealing with the reserves in those cases where Ngai Tahu wished to personally occupy them. However, as the report later indicated, the probability was that very few would do so.

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The fifth question was whether the purposes could be best provided by leasing the lands. The commission answered that an overwhelming majority of the Maori who appeared and gave evidence had said they did not intend to personally occupy the land allotted to them, and 90 per cent favoured their land being administered by the commissioner of Crown lands.

The last question was a general one as to the best methods of dealing with the lands so that the lands or the rents and profits might be applied to the best advantage. The commissioners noted that they had had insufficient time to visit many of the reserves. Instead they relied on the evidence of Crown land rangers and government valuers where possible. The commissioners advised that:

The lands vary in quality and degrees of inaccessibility, and range in value from £2 10s. an acre to 5s. There are a few fertile patches, and these are occupied, but the blocks on the whole are unsuitable for closer settlement or Native cultivation . . . Southland blocks contain good milling-timber, and would be taken up by sawmillers if thrown open in areas large enough to warrant the erection of mills and construction of light lines or tramways. (M17:II:40:6)⁴³

The tribunal notes this would not have been possible under the system of 50-acre or less individual Maori holdings.

20.6.2 The commission then briefly commented on the productive capacity of the various reserves. We note the main ones.

- *Wanaka block* of 1554 acres allotted to 57 Ngai Tahu. The commissioners noted that “It seems to be useless to survey the block into either family or individual sections, as it is not adapted for close settlement” (M17:II:40:7).⁴⁴
- *Tautuku block* of 6821 acres, mostly timbered but of poor quality. “The soil is poor and the climate wet.” While there were no shipping facilities nor a railway within measurable distance, “yet the fact that a sawmill and a dairy factory are in operation in the district would go to indicate that dairying areas of 200 acres each would be taken up” (M17:II:40:7).⁴⁵

The tribunal infers from this that 200 acres would be an economic unit for one farmer. Clearly there would be problems for Ngai Tahu with varying interests of up to 50 acres each.

- *Waikawa block* of 5238 acres adjoining Tautuku on the south. Its characteristics were much the same as Tautuku. The land was said to be of average quality and suitable for dairying (presumably in 200-acre holdings).

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- *Hokonui block* of 27,809 acres and *Forest Hill block* of 850 acres contained some good dairying and pastoral land if offered for lease in areas of 200 to 300 acres.
- *Stewart Island blocks: Lords River* (8725 acres); *Port Adventure* (9340 acres) and *Toitoi River* (7392 acres) were not occupied. The land was said to be broken and poorly timbered. If cleared the land would be suitable for cattle or sheep. It was probable the land could be taken up for pastoral purposes if available in areas of 500 acres or more.
- *Alton block* four to nine miles west of the Waiau River. The soil was fairly good, the land undulating, with some good milling-timber. When cleared there could be good dairying country.
- *Rowallan block* was further west and more remote than the Alton. Although it carried better timber its soil was inferior to the Alton block. The combined area of the Alton and Rowallan blocks was 44,455 acres.
- *Wairaurahiri block* (101,866 acres) about 35 miles from the Waiau. It had some timber but no means of transporting it. The soil was poor, growing mostly moss and manuka.

The commissioners' recommendations

- 20.6.3 The commissioners pointed out the difficulty of arranging for the land to be leased because of confusion over ownership. They saw the renting of large areas as beneficial to the Ngai Tahu owners:

We would therefore recommend that legislation be enacted vesting all landless Native reserves for which the titles have not yet been uplifted in the Commissioner of Crown Lands for the district in which such reserves are situated, in trust for the Native owners; that the said Commissioner should have the reserves opened for settlement in suitable-sized sections, and submitted to ballot in the same manner as Crown lands are dealt with, but with the proviso that Native owners who wish to settle on their lands should have absolute preference before the general public are admitted to the ballot. (M17:II:40:9)⁴⁶

In addition, the commissioners recommended that the Native Land Act 1909 be extended so that Maori occupying their own sections might be able to borrow money for the purpose of improving their land. Provision would also need to be made for roading.

20.7. **Conclusions**

South Island Landless Natives Act 1906

- 20.7.1 It is apparent from the Gilfedder-Haszard 1914 report that little of the land allocated under the 1906 Act was capable of being farmed in sections of less than 50 acres. In those areas where farming was thought to be feasible, holdings of not less than 200 acres were

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recommended and 500 or more in the case of Stewart Island. Much of the land west of the Waiau River was inhospitable, lacking roading and extremely wet. Extensive areas were thought totally unsuitable for settlement because of the poor quality of the soil, the broken nature of the land, the rainfall and the remoteness. Moreover it was situated far from traditional Ngai Tahu kainga. Capital would clearly be required and this almost all Ngai Tahu lacked. As David Armstrong put it, most of those who might decide to take up their land would find the task of producing a living from it well nigh impossible.

Findings

- 20.7.2 The tribunal adopts the following statements of David Armstrong, the Crown's own witness, in the course of his concluding observations on the provisions for those Maori without land:

In effect the Crown had taken 18 years to arrive at an almost totally unsatisfactory resolution to the problem of landless Ngai Tahu. In fact, the lack of resources placed at the disposal of Smith and Mackay, in terms of clerical assistance and the provision of surveyors, indicates the Crown's attitude towards the problem, which borders almost on indifference.

Despite oft repeated claims that no other land was available, there seems little doubt that good quality Crown land was procurable during this period. Evison points out that under the Settlement Acts of 1892 and 1894 the Crown purchased nearly 100 estates of viable farmland in former Ngai Tahu territory for the settlement of landless Europeans. Between 1893 and 1909, 66 such estates were resumed by the Crown in Kemp's Block, totalling well over 150,000 ha, at a cost of around £2 million. (M16:55)

- 20.7.3 The tribunal sustains the claimants' grievances referred to in 20.5.2.

Breach of Treaty principles

- 20.7.4 While the Crown chose to ignore Commissioner Mackay's principal recommendations in his 1887 report, it did, after reports from protracted parliamentary joint committees, decide to commission Mackay and Smith to make recommendations as to the allocation of land to landless Ngai Tahu. But much of the land chosen by the Crown for allocation, as we have seen, was completely unsuitable for the purpose. As Mr Armstrong noted, the Crown's attitude towards the problem "borders almost on indifference".

The contrast in Crown concern for Europeans with no or insufficient land is startling. Whereas it was apparently thought impossible for the Crown to re-acquire substantial areas of good quality land adjacent to the places where Ngai Tahu lived on their meagre reserves, it was perfectly feasible for the Crown to purchase over 450,000 acres to facilitate European settlement.

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The Crown was well aware by 1904, if not much earlier, that substantial parts of the land to be allocated in Otago and Southland were quite unsuitable for settlement by Ngai Tahu. The tribunal is unable to escape the conclusion that, to appease its conscience, the Crown wished to appear to be doing something when in fact it was perpetrating a cruel hoax. In the tribunal's view the facts speak for themselves. The tribunal is unable to reconcile the Crown's action with its duty to act in the utmost good faith towards its Treaty partner. The Act and its implementation cannot be reconciled with the honour of the Crown. The tribunal finds the Crown's policy and the legislative implementation of the policy in relation to landless Ngai Tahu to be a serious breach of the Treaty principle requiring it to act in good faith. This breach is yet to be remedied.

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Chapter 21

Parliamentary Select Committees, Royal Commissions and Commissions of Inquiry

21.1. Introduction

In the preceding two chapters we have related how the Crown failed in its Treaty obligations both in respect of the provision made for schools and hospitals and in the allocation of land for landless Ngai Tahu. In the course of our discussion we have referred to many, indeed most, of the parliamentary select committees, Royal commissions and commissions of inquiry appointed to consider Ngai Tahu grievances arising out of the acquisition of their land by the Crown. In this chapter we will be considering only some of these inquiries in relation to the wider grievances of Ngai Tahu for which they sought, largely in vain, remedial action by the Crown. These grievances related to the failure of the Crown to ensure Ngai Tahu were left with ample reserves for their present and future needs, to the claim for “tenths”, to mahinga kai and to boundary disputes and associated matters. We will be focusing chiefly on the 1879–1880 Smith–Nairn Royal commission report; the Mackay Royal commission reports of 1887 and 1891, the intervening joint parliamentary select committee reports of 1888–1890 and the 1920 Jones commission of inquiry. We will refer only briefly to some of the background of the principal investigations. A number have already been noted in one or both of the preceding two chapters.

21.2. The History of Inquiries

Middle Island Native Affairs Committee 1872

- 21.2.1 The first inquiry to be noted is that of the Middle Island Native Affairs Committee of the House of Representatives constituted on 19 September 1872. It reported a month later on 21 October 1872. Its brief was to inquire into unfulfilled promises made to Ngai Tahu. Mr H K Taiaroa, member for Southern Maori, referred to the failure of the Crown to provide the reserves promised by Kemp and to Mantell’s exclusion of cultivations and associated matters. The committee, which heard evidence from a few witnesses only, reported

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that the evidence heard, though far from complete, led them to the conclusion that the claims had not previously had the consideration they deserved. They thought the Princes Street reserve had been dealt with on a legal and technical basis rather than broader considerations of equity and good faith. The committee recommended a further inquiry by an impartial commission (C2:doc 21).¹

Chief Judge Fenton's 1876 report

21.2.2 Following the Native Affairs Committee report of 1872 another select committee was appointed to sit during the following session. For reasons we explained in our discussion of schools and hospitals (19.2.8) no hearing took place until 1875 when the committee again recommended the appointment of a full commission of inquiry, thereby stalling consideration once more. The government, which had difficulty in finding suitable commissioners, prevailed on Chief Judge Fenton who, while unable to undertake a full commission, was willing to review the matter.

Fenton heard little evidence but it was apparently sufficient for him to hold:

- that Ngai Tahu were not promised tenths in 1844;
- that Kemp did not intimidate Ngai Tahu;
- that the boundaries (which were disputed) were part of the deeds and could not be questioned;
- that Mantell did not use threats against Ngai Tahu; and
- that the Native Land Court in 1868 (over which Fenton presided) had given “mahinga kai” a most extensive interpretation and made appropriate orders for reserves; that the court increased the reserves to 14 acres per head and, had the government suggested a much larger quantity he, Fenton, would gladly have sanctioned it (M15:178–180).²

The Smith–Nairn Royal commission 1879–81

21.2.3 Not surprisingly, H K Taiaroa was not happy with Fenton's 1876 report. He kept up pressure for a full inquiry. This finally resulted in the appointment on 15 February 1879 of T H Smith and F E Nairn to be a Royal commission known at the time as the Middle Island Native Land Purchases Commission, and more shortly, the Smith–Nairn commission.

The commission was required to inquire into:

- whether there were any unfulfilled promises and/or conditions relating to the Kemp purchase, including Mantell's subsequent actions;

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- whether the reserves agreed to be granted in Kemp's deed had all been made; and
- the same kind of questions in respect of the purchase of the Otago block by Symonds in 1844, the Murihiku block by Mantell in 1853 and the Akaroa block by Hamilton in 1856.

21.2.4 As will have been apparent from the tribunal's discussion of these various purchases, the Smith–Nairn commission, which travelled widely throughout the South Island, received voluminous evidence from various Ngai Tahu signatories to the deeds of purchase. The commission also heard evidence from Kemp, Mantell, Hamilton, Fenton, Grey, Alexander Mackay, Reverend J W Stack and Symonds. We have already discussed the deliberations of the commission in relation to unfulfilled promises concerning schools and hospitals (19.2.12).

21.2.5 The Smith–Nairn commission held sittings, some lengthy, at Auckland, Wellington, Otaki, Christchurch, Kaiapoi, Dunedin, Port Chalmers, Waikouaiti, Akaroa and Riverton. These sittings took place over the period from March 1879 to April 1880. By January 1880 however, the government, or at least Bryce, the native minister, was becoming either impatient or anxious to find a reason for terminating the commission's proceedings. The Native Office under-secretary on 19 January 1880 wrote to the commission at Bryce's direction stating that if:

satisfactory progress has not been made as will indicate an early conclusion of the inquiry, the Government will seriously consider whether the Commission should not at once terminate. (A9:9:46)³

The commission responded with persuasive reasons why their inquiries would need to continue.

On 12 April 1880 Bryce advised the commission that the sum voted for the commission was approaching exhaustion. He felt Parliament would not support him if he allowed the vote to be exceeded (A9:9:46).⁴ The commission responded on 14 April 1880 by saying that it considered it proper to acquiesce in the minister's suggestion that it should stop the inquiry at its present stage pending the matter being referred to Parliament. To which Bryce replied that he would review the position when all outstanding accounts came in, but:

he will not pass any vouchers in excess of the sum voted, either for the services of a secretary or for any other purpose; nor is he even prepared to say that Parliament will be asked to vote any additional sum in connection with the Commission. (A9:9:47)⁵

The financial harassment of the commission continued. During May and June they worked on collating the evidence and drafting a report.

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On 28 June they were told that the government would not authorise any further advances and the refund of expenses was refused.

- 21.2.6 Labouring under the handicap of no further funding and virtual ostracism by Bryce, the commission presented a greatly abbreviated report on 31 January 1881, shortly before the expiry of their two year warrant. They explained that because their work had been suspended by Bryce they were unable to present a detailed report on their uncompleted inquiry (A9:9:52).⁶

As to the Otakou and Kemp purchases, the commission found that Symonds, Kemp and Mantell must be regarded as pledging the Crown (in the case of the Otakou block by explicit stipulation, and in the case of Kemp's block by implication) to a reservation of a large proportion of the land for the exclusive benefit of the Maori owners. On the basis of their inquiry, "so far as completed", they considered:

a reservation for the benefit of the Native sellers of a large and permanent interest in the land ceded, which would be fairly and properly represented by one acre reserved for every ten acres sold to European settlers. (A9:9:53)⁷

In coming to this conclusion they were influenced by certain pre-1840 arrangements made by the New Zealand Company and by certain hearsay statements by Mantell to the Native Affairs Select Committee that, in making the Otakou and Kemp purchases, "it was clearly intended that nominally one-tenth, but virtually one-eleventh was to be reserved for the Natives" (A9:9:52).⁸ The commission appears also to have relied on a posthumous letter of Matenga Taiaroa and various Ngai Tahu petitions. The commission considered that the reserves set aside by Mantell were only intended as a present provision and that once settlement had taken place and funds were available additional reserves would be made.

As to the Akaroa block they thought it would properly come under the arrangement proposed with reference to the Otakou and Kemp blocks (A9:9:54).⁹ Regarding the Murihiku block they considered the wording of the deed excluded the possibility of there being any arrangement for tenths. They indicated their inquiries had not been concluded. They noted that in at least two places, Waimatuku and Piopiotahi, "reserves were promised which were not made" (A9:9:54).¹⁰

As will be apparent from the tribunal's findings in relation to the purchases considered by the Smith-Nairn commission, we have come to quite different conclusions on most of the issues discussed. But this tribunal, unlike the Smith-Nairn commission has had the advantage of much more detailed evidence, not only from the Ngai Tahu

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claimants, but also the Crown. The Crown neither called evidence nor was represented by counsel before the Smith–Nairn commission. In the result we are satisfied that this tribunal is in a very much better position to come to an informed and balanced conclusion on the matters in issue.

21.2.7 The claimants in their grievance no 9 in Kemp’s purchase claimed:

That the Crown aborted the Royal Commission of Smith and Nairn and suppressed its evidence to the detriment of Ngai Tahu. (W4)

There is little doubt that the then native minister, Bryce, was not well disposed towards the Smith–Nairn commission. In 1882 H K Taiaroa requested that the evidence given by Mantell to the commission be placed before the Native Affairs Committee including a petition from Ngai Tahu. It appears this was done, the evidence being read to the committee and translated to the Maori members. In addition, H K Taiaroa “asked for a very large amount of evidence of natives which had been taken before the commission”.¹¹ This evidence was placed before the committee but it was said that Taiaroa neither looked at it nor asked that it be read to a committee.

Finding on Kemp grievance no 9

21.2.8 The tribunal is unable to find on the very limited information placed before it that the evidence was suppressed by the Crown and is not able therefore to sustain this grievance. Given the hostility or indifference of the government of the day, and in particular its native minister Bryce, to the Smith–Nairn Royal commission, its report virtually sank without trace. Not until substantial portions of the evidence received by the commission were produced to this tribunal by both the claimants and the Crown did it again publicly see the light of day. In the intervening 110 years it had been largely forgotten or ignored.

Native Affairs Committee report 188221.2.9 In 1882, the year following the Smith–Nairn report, H K Taiaroa and Ihaia Tainui petitioned the House of Representatives (A9:9:59).¹² The petition referred to the work of the Smith–Nairn commission which it said was dissolved before its work was completed. The petitioners complained that they had spent thousands of pounds and much time in seeking redress, and sought relief from Parliament for their grievances. The report of the Native Affairs Committee made on 25 August 1882 summarised the complaints of the petitioners under three heads.

- First, that when the South Island purchases were made there was an agreement that, in addition to cash payments for the land, ample reserves would be made for Ngai Tahu to live on. The committee’s

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short response was that the reserves made at a Native Land Court sitting on 7 May 1868 were given in final settlement of all claims under this head. The Ngaitahu Reference Validation Act 1868 was invoked as confirmation of this.

- Secondly, it was said by the petitioners that in regard to the Otago and Kemp purchases it was arranged that tenths would be set aside for the benefit of Ngai Tahu. To this the committee replied that there was no evidence to show that the claim for tenths was thought of until within the last few years.
- The third complaint related to schools and medical attention. The tribunal has referred to this in its earlier chapter on this subject.

The brevity and tone of this report confirmed the negative response which a year earlier had befallen the Smith–Nairn report.

Select committee report 1884

- 21.2.10 This was a report, dated 16 September 1884, on the petitions of Te Maiharoa and others. One group of petitioners led by Te Wetere laid claim on behalf of South Island Ngai Tahu to all the land in Canterbury and Otago inland of certain points, “at no great distance from the Eastern Coast of the island”. The select committee reported this claim as being conclusively shown to be totally unfounded. They relied on the Kemp deed which they showed to Wetere who positively denied the identity of the deed and which he said had been fabricated for the occasion. But his own signature as one of the sellers appeared both on the deed of sale and on a receipt for the purchase money and Wetere ultimately acknowledged that this was so.

The committee also referred to a complaint by Te Maiharoa and others that reserves promised them at the time of the sale to the New Zealand Company had not been made and they asked the government to give them land to live upon. The committee’s response was to say that the question of reserves was finally decided by the Native Land Court in 1868 when the Ngai Tahu claims were considered. The court had awarded such reserves as appeared to be sufficient in final satisfaction of all claims. The committee said the present petitioners were fully represented at the sitting of the court and the award was made with their knowledge (B3: 6/8).¹³

Once again the committee relied, as its 1882 predecessor had done, on the alleged final and binding effect of the 1868 Native Land Court award. It had no regard to the merits of Ngai Tahu’s claims.

The Mackay Royal commission report 1887

- 21.2.11 In the preceding chapter on the South Island Landless Natives Act the tribunal has set out the terms of reference of Royal Commissioner

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Alexander Mackay, who received his warrant of appointment on 12 May 1886. We largely confined our discussion of the Mackay report of 5 May 1887 to his recommendations. We now refer more fully to his discussion of the background to the Kemp, Murihiku and Otakou purchases.

As previously indicated, Mackay's terms of reference required him to investigate all cases of landless Ngai Tahu and those cases where it was said the lands previously set apart were insufficient for their needs. For the first time in over 20 years, during which courts, select committees and a Royal commission were charged with inquiring into Ngai Tahu's principal grievances, a commissioner went to considerable trouble to record the background to the purchases, especially that of Kemp. While the report is thorough, it is somewhat discursive. The tribunal has necessarily been selective in choosing certain parts for reference. The report deserves to be read in full as the considered judgment of a man, by then a Native Land Court judge, with a wealth of experience in South Island Maori affairs over a considerable period.

Mackay's discussion of the Kemp purchase

- 21.2.12 In his report (M17:I:doc 1)¹⁴ Mackay first discussed Kemp's purchase in considerable detail, including events subsequent to the purchase in 1848.

Mackay considered that in the light of a despatch dated 25 March 1848 from Governor Grey to Earl Grey, referring to a visit by the governor to the South Island and also to the tenor of the directions given to Lieutenant-Governor Eyre concerning the purchase of the territory within the Ngai Tahu block, that the settlement with the Ngai Tahu was intended to be made on the following terms:

That ample reserves for the present and reasonable future wants should be set apart for the claimants and their descendants, and registered as reserves for that purpose; and, after the boundaries of the reserves had been marked out, then the right of the Natives to the whole of the remainder of the block should be purchased. (M17:I:doc 1:3)¹⁵

He then referred to the similar instructions that were given to Kemp. These, he said, were not followed. Instead of the reserves for Ngai Tahu being marked off as was contemplated, and then the remainder of the district purchased, the money was paid in the first place, and the reserves left to be determined at a future time. Mackay noted the result was that Ngai Tahu were placed:

entirely in the hands of the Government as to the quantity of land to be set apart; – a position that was taken advantage of to circumscribe the area of land allotted to them to the narrowest limits, as will be seen from extracts taken from the evidence given by the Hon. Mr Mantell before

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the Native Land Court in April and May, 1868, at the investigation of the ownership of the Native reserves set apart in Kemp's Purchase. (M17:I:doc 1:3)¹⁶

Mackay then recorded an extensive quotation from Mantell's evidence and at its conclusion observed:

Sufficient evidence has been adduced in the foregoing extract to show that the Natives, instead of being consulted in respect of the land they desired to retain, were coerced into accepting as little as they could be induced to receive. (M17:I:doc 1:3)¹⁷

Mackay then concluded:

The extent of the land ultimately reserved for the Natives in 1848 was 6,359 acres, a quantity that can hardly be considered to come within the meaning of ample reserves for the present and future wants of a population of 637 individuals, the number of Natives then to be provided for within the block. The Governor was empowered under the terms of the deed of purchase to set apart additional lands for the Natives when the country was surveyed; but even that condition was only partially fulfilled in 1868, a period of twenty years after the date of the engagement. (M17:I:doc 1:4)¹⁸

The commissioner then proceeded to discuss the question of mahinga kai:

The Natives were under the impression that under the terms of the deed they were entitled to the use of all their "mahinga kai" (food-producing places); but they found, as the country got occupied by the Europeans, they became gradually restricted to narrower limits, until they no longer possessed the freedom adapted to their mode of life. Every year as the settlement of the country progressed the privilege of roaming in any direction they pleased in search of food-supplies became more limited. Their means of obtaining subsistence in this way was also lessened through the settlers destroying, for pastime or other purposes, the birds which constituted their food, or, for purposes of improvement, draining the swamps, lagoons, and watercourses from which they obtained their supplies of fish. Their ordinary subsistence failing them through these causes, and lacking the energy or ability of supplementing their means of livelihood by labour, they led a life of misery and semi-starvation on the few acres set apart for them. (M17:I:doc 1:4)¹⁹

Mackay next referred to a despatch dated 7 April 1847 from Governor Grey to Earl Grey, in which the governor spoke of the need for Ngai Tahu to continue to have access to their wild lands and not be limited to lands for the purposes of cultivation as they had yet to develop sufficient agricultural skills. He pointed out that the same question was dealt with in a letter from Earl Grey to the Wesleyan Missionary Committee dated 13 April 1848.

Mackay expressed the view that it would not be possible to hold large tracts of land simply to enable the Maori to roam over them as previously, but, he said:

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on the other hand the settlement of such lands would not have been allowed to deprive the Natives even of these resources without providing for them in some other way, advantages fully equal to those they might lose. (M17:I:doc 1:4)²⁰

Later in his report Mackay noted that the Native Land Court in 1868 had provided for certain fishery easements to be set apart for Ngai Tahu. These were 212 acres for fishery easements in Canterbury and 112 acres in Otago.

The fishery easements have for the most part been rendered comparatively worthless through the acclimatisation societies' stocking many of the streams and lakes with imported fish. These fish are protected by special legislation, consequently the Natives are debarred from using nets for catching the whitebait in season, nor can they catch eels or other native fish in these streams for fear of transgressing the law.

Another source of injury done to their fisheries is the drainage of the country. In olden times, before the advent of the Europeans and the settlement of the country, they were at liberty to go at will in search of food, but now, should they chance to go fishing or bird-catching in any locality where they have no reserve, they are frequently ordered off by the settlers. All this is very harassing to a people who not long since owned the whole of the territory now occupied by another race, and it is not surprising that discontent prevails at the altered condition of affairs and the want of precaution observed at the outset by their civilised guardians, who could alone foresee the consequent result of colonisation on their former customs and habits of life, to have either secured them these privileges, or else provided them with additional lands as compensation for depriving them of some of the most important means of subsistence. (M17:I:doc 1:8)²¹

- 21.2.13 The commissioner referred to certain of Lord Normanby's instructions of 14 August 1839 to Governor Hobson. These required the Crown to conduct their dealings with the Maori people on principles of sincerity, justice and good faith. Nor must they be permitted to enter into injurious contracts. Nor must any land be bought which they required for their own livelihood. To secure compliance would be one of the first duties of their official protector. These instructions, Mackay noted, appeared to have been "entirely disregarded".

Mackay then observed:

The most important consideration that arises in the colonisation of a country inhabited by an aboriginal race like the Maoris is how to give them an equivalent for the lands they surrender, as a payment in perishable articles cannot be considered a fair equivalent for a possession so valuable as the soil. The most equitable mode of payment, and one that could have been easily effected at the time when the purchases were made from the Natives in the southern provinces of the Middle Island, would have been to have appropriated a certain proportion of the land ceded by them as a provision for their advancement in the scale of social and political existence. This system would have been the means of securing to them a property continually increasing in value, as well as

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practically conferring on them the advantages it was anticipated they would receive through the occupation of their former territory by the European community. (M17:I:doc 1:5)²²

Next followed a quite lengthy discussion by Mackay of the New Zealand Company policy of providing for Maori reserves in the form of tenths.

After further discussion of the Imperial government's views on land purchase policy and in particular the need to ensure that Maori were left with sufficient land to enjoy the enhancement in value arising from settlement around them, a view which was shared by the New Zealand Company as evidenced by its tenths policy, Mackay continued:

A perusal of the facts already narrated will furnish ample evidence that the fundamental principles laid down were not adhered to in acquiring land in the Middle Island, neither in the reservation of sufficient land for Native purposes, nor in compensating the Native owners for the loss of a large share of their means of subsistence through depriving them of their hunting and fishing rights.

It surely could not be considered that the enhancement in value of a few thousand acres reserved for the vendors of Kemp's Block by the introduction of capital and labour into the colony, or the small payment of £2,000 for the cession of over twenty million acres, was a sufficient recompense for so valuable a territory, even if measured by the amount of benefit the original owners had derived from it. (M17:I: doc 1:6)²³

What should have been done at the time, Mackay said, for the protection of the welfare of Ngai Tahu, was to have set apart not only sufficient land for their use and occupation, but also for the purpose of raising an independent fund to be devoted to objects connected with their general welfare, advancement, and improvement. He then referred to the lack of a protector:

Owing to the non-appointment of an official protector for the Natives in the south, as was promised them at the cession of their land, these people have suffered a serious loss, for, had any person been clothed with the necessary authority to look after their welfare in the early days, a great deal of the irreparable neglect they have suffered from the non-fulfilment of the promises made them at the cession of their lands would probably not have occurred. (M17:I: doc 1:7)²⁴

Having reached the prior conclusion that the Crown had failed to provide ample reserves for the present and future needs of Ngai Tahu, Mackay recommended that 100,000 acres be set aside for endowment purposes for Ngai Tahu in the Kemp block, together with a further 30,700 acres for their individual use and occupation in addition to that already reserved.

The Murihiku, Banks Peninsula and Otakou blocks

- 21.2.14 Mackay next discussed the Murihiku block. He applied the principles he had developed in his discussion of Kemp's purchase and recommended the provision of 40,000 acres for endowment purposes and an additional 15,412 acres for individual use and occupation.

As to Banks Peninsula, which he referred to as the Akaroa block, he said this had been treated as a portion of Kemp's purchase and he therefore found it unnecessary to make any additional recommendation.

Finally he discussed the Otakou block, and while he did not make any express recommendation, he made it clear that the New Zealand Company intended, and as he said, "fully admitted", that Ngai Tahu should have a tenth of the land set apart for them in the Otakou block in the same manner as was carried out in other New Zealand Company settlements.

The foregoing account does not do full justice to Commissioner Mackay's painstaking and comprehensive report. But it is sufficient to demonstrate that in the view of perhaps the best informed European of the time, grave injustices had been done to Ngai Tahu which required to be remedied.

Reports of Joint Committees on the Middle Island Native Claims 1888, 1889 and 1890

- 21.2.15 As we have indicated in our previous chapter (20.3.1), Commissioner Mackay's report was coolly received by the legislature. In June 1888 the House of Representatives and the Legislative Council each appointed members to a joint committee to report on the claims of Ngai Tahu on account of unfulfilled promises and on the recommendations made by Commissioner Mackay in his 1887 report. The joint committee reported on 22 August 1888. The tribunal has discussed their report in the preceding chapter and need not refer to it here except to note (a) that the committee had insufficient time to complete its inquiries and (b) notwithstanding this, it concluded that no promises of reserves of land had been made which had not been fulfilled. The tribunal notes that the joint committee paid little regard to Commissioner Mackay's well-documented and convincingly reasoned report.

The 1889 joint committee was appointed to complete the work of its 1888 predecessor. Its conclusions are referred to in the previous chapter at 20.3.4. We simply note here that the committee concluded that promises as to residences and cultivations were fulfilled and the obligation to provide further land reserves had been substantially discharged. Notwithstanding this, it recommended a further inquiry

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to ascertain whether any individual Ngai Tahu had insufficient land on which to support themselves.

The 1890 joint committee, as we have earlier indicated in 20.3.5, discussed the question of tenths and again recommended further inquiry, as the evidence before it showed the existing holding of land by Ngai Tahu to be by no means sufficient.

Mackay's second Royal commission 1890–91

21.2.16 Somewhat surprisingly perhaps, in view of the Crown's cavalier attitude to Mackay's 1887 report, he was appointed a Royal commissioner for a second time on 10 December 1890. He was to carry out the inquiry recommended by the 1890 joint committee, as indicated in the preceding paragraph. In 20.4.2 of our chapter on "landless natives" we have summarised Mackay's findings. Here we note some further observations made by Mackay in his two reports. His reason for making two reports we earlier noted in 20.4.1.

21.2.17 In his first report (M17:I: doc 3)²⁵ Mackay was critical of the observations in the joint committee's report of 10 September 1889 in which the committee suggested that the award of the Native Land Court might have reasonably met the demands arising out of the promises made in respect of the Kemp purchase. He expressed the view that "the trifling additions" made by the court "do not adequately carry out the original intention that the owners of Kemp's Block should be provided with ample reserves". He continued:

The quantity set apart in 1868 was merely a theoretical quantity, and was based on the subdivision of the Kaiapoi Reserve in 1862 into farms of 14 acres, much in the same manner that the average quantity of 10 acres per individual was adopted by Mr Commissioner Mantell in 1848 from an estimate furnished him by Colonel McCleverty, whom he had consulted on the matter, but this quantity was only intended for their present wants.

This was the cause that led to 14 acres being fixed in 1868, and that quantity was simply adopted for the purpose of putting all the Natives on the same footing, but the Court accepted it as a full extinguishment of the conditions of Kemp's purchase.

This view of the case, however, was not accepted by the Natives who petitioned Parliament in 1872. This petition was referred to a Select Committee, who reported as follows:- "That the evidence taken by the Committee in reference to the claim of the Natives of the Middle Island, though far from complete, leads them to the conclusion that these claims *have not hitherto had that consideration which they deserve.*"

Parliament was again petitioned by the Natives in 1874, 1875, 1876, and 1878; and in 1879 a Commission was appointed by the Governor. The Commissioners reported on the question, but no action was taken to give effect to the report. (M17:I: doc 3:3–4)²⁶ (emphasis in original)

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Mackay again referred to Lord Normanby's instructions to Hobson as to the principles to be observed to ensure Maori interests were fully protected when the Crown sought to purchase land from them. And again Mackay commented that:

a perusal of the circumstances connected with the acquisition of territory from the Natives in the South Island will indisputably prove that none of these principles were observed. (M17:I: doc 3:4)²⁷

The quality of the land

21.2.18 As to this Mackay reported:

The same statement was made everywhere that the land is insufficient to maintain the owners on it. Even those who owned comparatively large areas made the same complaint.

As regards the larger areas, the cause of this is attributable to several circumstances – namely, the inferior character of the soil, and the scattered manner in which the lands are situated. Only a few of the original reserves contain first-class land; nearly all the land comprised in the awards of the Court in 1868, including also the land given as compensation to the Kaiapoi Reserves for the acreage allotted out of their reserve to non-residents, is very inferior; consequently, although the acreage held by some of the Natives may appear to be large, the inferior character of the land more than counterbalances any seeming advantage they apparently possess. (M17:I: doc 3:4)²⁸

21.2.19 In his supplementary report of 16 July 1891 (M17:I: doc 3/2)²⁹ Mackay expressed the mounting frustration of Ngai Tahu at the continued failure of successive governments to address their grievances:

The Natives urge that the principal part of their claim has not received the attention it deserves; and they point to the fact that the report of the Commission of 1879 established the most important points of their case, also that the report of the Commission of 1887 further supported their claims, and made certain specific recommendations for the settlement of the matter, which have not as yet been fully considered. They also pointed out that making provision for the landless portion of the community does not comprise all they are entitled to expect in fulfilment of the promises made to them in the past, nor can it be deemed to be a satisfactory compliance with the condition contained in the Ngaitahu deed—that the Governor would set apart additional land on the country being surveyed, which, according to Mr Kemp, *was to be done in a liberal manner, and in such proportions as to meet the wants and provide for the general welfare of the Natives.*

They further urge that the expenditure they have been put to, amounting to several thousand pounds, in seeking redress for the non-fulfilment of the promises made to them, should be refunded by the Government, as it ought not in common justice to have been left to them to take action for the purpose of establishing their rights, as this duty devolved solely on the Government to perform. They state generally that this expenditure was one of the chief means of plunging them in debt, as all who had not money at command to contribute in aid of their cause sacrificed their cattle and crops for the purpose of acquiring funds.

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They have never recovered from the sacrifice made on that occasion, and owing to this and other causes, is the reason why poverty is now lurking in their midst. (M17:I: doc 3/2:3)³⁰ (emphasis in original)

Later Mackay commented further on the quality of a significant proportion of their reserves. He referred to general testimony obtained at all the settlements as to the inability of the people to maintain themselves on the land. One problem was that the land was not of a uniform quality. He annexed a return (schedule E) of the character of the soil in the reserves in Canterbury and Otago: 13,138 acres being good; 11,785 acres medium, and 8110 acres inferior. A large proportion of the lands awarded by the court in 1868 were either medium or inferior.

The Natives at Waitaki complained of the poor land reserved for them. Three sections were set apart there in 1868, comprising an area of 489 acres 2 roods 10 perches; more than two-thirds of this area is stony and unfit for cultivation. The only piece of good land has been destroyed by the encroachment of the river, and but a few acres now remain that can be utilised. The people are very badly off for food-supplies in consequence, and, to make matters more trying for them, they cannot fish in the Waitaki for eels or whitebait, owing to that river being stocked with imported fish; and the runholders will not allow them to go over their country to catch woodhens or other birds in season. Owing to this and other circumstances they are compelled to lead a life of semi-starvation. The young people find employment during the busy season, but cannot obtain work all the year round, consequently the small amount they can earn is soon exhausted in paying their debts, and nothing is left to maintain their families with while they are out of work.

The Natives of Taumutu are very badly off, owing to the poor character of the land reserved for them. A large proportion of the original reserve made in 1848 is very poor, and all the land that has been added since is decidedly inferior.

The 700 acres allotted to the residents under "The Taumutu Commonage Act, 1883, 'is only fit for pasturage purposes, and a very small proportion is useful even for that. (M17:I: doc 3/2:6)³¹

Mackay concluded this report by saying he saw no reason to change the opinions expressed in his 1887 report, nor to change the recommendations for the settlement of the problems which he made in that report. Again, regrettably, Mackay's report of Ngai Tahu's major grievances fell on deaf ears. Instead the government, as we have seen in the previous chapter, in 1893 appointed Mackay and Smith to compile a list of landless Maori in the South Island and assign sections to them within nominated blocks. This protracted exercise, as the tribunal has shown, proved largely ineffective.

Native Land Claims commission 1920

- 21.2.20 On 8 June 1920 the government appointed another commission of inquiry to investigate 11 petitions and claims by Maori in different

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parts of New Zealand. Most were relatively recent, originating within the previous two or three years. Quite the oldest was the petition by Tiemi Hipi and 916 other Ngai Tahu to the House of Representatives with respect to the purchase of the Kemp block in 1848. It will be recalled from our previous chapter (20.5.3) that this petition was heard by the Native Affairs Committee in 1910. That committee referred the petition to the government for favourable consideration. Now, a decade later, some of Ngai Tahu's long-standing and frequently aired grievances were to be heard yet again. Seventy-two years had by now elapsed since the purchase in 1848.

21.2.21 The commissioners appointed were the then chief judge of the Native Land Court, R N Jones, and J Strauchon and J Ormsby. They reported on Tiemi Hipi's 1909 petition on 30 November 1920 (M17:II: doc 42).³² It appears from the report that it was entirely based on the commission's reading of certain documents, principally the report and enclosures of the 1888 Joint Committee on Middle Island Native Affairs and the Mackay compendium of official documents and correspondence. There is no indication that any Maori, or indeed Pakeha, witnesses were heard or that counsel were present to assist. The commission's report therefore is not so much the result of an inquiry as a review of certain material which they chose to read. It does not appear that the commissioners read either of Judge Alexander Mackay's 1887 or 1891 reports which constituted the most comprehensive and authoritative accounts of the Ngai Tahu grievances over Kemp's purchase. We propose therefore to refer only briefly to certain aspects of the report.

21.2.22 The commission referred to the Ngai Tahu contention that they sold only the eastern seaboard. It concluded that whatever may have been intended, the deed covered all the land from the east to the west coast.

The decision of the Native Land Court in 1868 that the matter of granting reserves was purely within the discretion of the governor or the Crown, whatever the demands of Ngai Tahu, and that the court was bound by the evidence of the Crown witnesses, was strongly criticised by the commission. "This was scarcely", they thought, "the kind of investigation contemplated by the Act of 1865." (M17:II: doc 42:36)³³

The commission held that the request of Ngai Tahu for further reserves should have been met "in a more liberal spirit". The question then, said the commission, was what would have been a liberal spirit? "Certainly not 14 acres per head." The commission went on to find:

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The requisite reserves for the present and reasonable future wants of the sellers and their descendants, as arranged by Sir George Grey with the principal chiefs of the South Island; or Lieutenant-Governor Eyre's instructions to Mr Kemp, to reserve ample portions for their present and prospective wants; or those to Mr Mantell, that liberal provision be made both for their present and future wants, and due regard be shown to secure the interests of the Natives and meet their wishes, have never been carried out. (M17:II: doc 42:37)³⁴

The tribunal observes that this finding is in marked contrast to the findings of the Native Affairs Committee of 1882 (21.2.9), the select committee of 1884 (21.2.10) and the joint parliamentary committees of 1888 (21.2.15).

- 21.2.23 Having decided that Ngai Tahu were entitled to be compensated for this failure the commission then wrestled with the problem of the appropriate remedy. It saw the only fair way would be to put "the aggrieved party in the same position as if the contract had been fulfilled, by allotting proper reserves, ascertain what the present value of them would be, and measure loss accordingly" (M17:II: 42:37).³⁵ But the commission found this not to be possible:

At this date there is, however, no land which can be set apart, or, if there were, the setting of such apart would not be conducive to effective settlement of the Dominion. (M17:II: doc 42:36)³⁶

After deducting the Arahura block, the Banks Peninsula block, the reserves actually provided, and "absolutely valueless land", such as snowy mountain tops, waste beds of rivers, and precipitous cliffs from the 20 million acres arguably bought under Kemp's deed, the commission arrived at a figure of 12.5 million acres. They assessed this to be worth £78,125. They then deducted the purchase price paid of £2000 to give £76,125; to this was added 72 years interest at 5 per cent-£274,050-to give a sum of £350,175. Finally, a sum was added in recognition of the heavy expenses incurred by Ngai Tahu bringing the total sum to £354,000. This sum the commission recommended should be paid as full compensation. The tribunal notes that whereas the commission placed an 1848 value of £78,125 on 12.5 million acres of Ngai Tahu land, Mr D J Armstrong, a valuer called by the Crown in this inquiry, placed an 1848 value of £205,000 on only 220,000 acres of such land. There is an extraordinarily wide disparity between the two valuations.

Implementation of the 1920 commission recommendation

- 21.2.24 The appointment of the 1920 commission to inquire into Kemp's purchase was in response to the petition of Tiemi Hipi and 916 other Ngai Tahu in 1909. That petition was referred by the Native Affairs Committee in 1910 to the government for favourable consideration.

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A decade was to elapse before the Crown took any action. This, typically, was to instigate yet another inquiry.

Once again the government received a positive recommendation. On this occasion that a lump sum of £354,000 be paid Ngai Tahu as compensation for the Crown's failure to honour its obligation to provide "ample", or "liberal", reserves in respect of Kemp's purchase.

The tribunal notes that the 1920 commission took no account of the serious failure of the Crown to protect Ngai Tahu's mahinga kai; it ignored the failure to set aside land which Ngai Tahu wished to keep. Nor is there any indication in the report that the commissioners were aware of the impoverished condition to which generations of Ngai Tahu had been subjected by the Crown's failure to honour its Treaty obligations. The report is completely silent on the devastating effect of the Crown's failure to respect and protect Ngai Tahu's rangatiratanga over their lands and other taonga and the consequential break down in their social and economic structures, the dispersal of the tribe and their near disintegration as a people. The report makes no mention of the Treaty or the Crown's obligations under it.

21.2.25 It remained to be seen what action if any the Crown would take on this occasion to implement the commission's recommendation. Would it suffer the fate of earlier recommendations? In fact, 24 years was to pass before anything was done. In 1944 the Crown agreed to pay £10,000 a year to Ngai Tahu for 30 years in settlement of its obligations under Kemp's purchase. In 1973 statutory provision was made for the payment of \$20,000 per annum in perpetuity to Ngai Tahu as further recognition of the Crown's obligation. In the concluding part of this chapter the tribunal considers in some detail the Crown's submission to us that as a result of the Ngaitahu Claim Settlement Act 1944 and the subsequent 1973 legislation the claimants are barred or estopped from seeking any further relief in respect of Kemp's purchase. For reasons which we there give the tribunal is unable to accept the Crown's submission.

21.3. **The Tribunal's Findings**

21.3.1 In this chapter the tribunal has been concerned to relate the long history of efforts made by Ngai Tahu to persuade the Crown to meet its obligations under the various deeds of purchase. As noted, Ngai Tahu's grievances related principally to the failure of the Crown to:

- ensure ample reserves were left with Ngai Tahu for their present and future needs, including the claim for tenths;
- set aside land which Ngai Tahu made it clear they did not wish to sell;

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- protect their right to mahinga kai; and
- investigate boundary and associated disputes.

The first formal inquiry was made in 1872 by a parliamentary select committee at the instigation of the newly elected member for southern Maori, H K Taiaroa, in 1871. This committee recognised that Ngai Tahu's claims had not previously had the consideration they deserved. It recommended a further inquiry. As we have seen, this was to be the dreary and unrewarding pattern for the next 50 or so years. Inquiry followed inquiry. Parliamentary inquiries were generally negative. The Crown ignored the well-documented recommendations made in 1887 and confirmed in 1891 by royal commissioner Judge Mackay. It took 10 years to follow up the favourable recommendation of the 1910 parliamentary committee. It took a further 24 years to, in part, implement the recommendation of the 1920 commission.

- 21.3.2 The tribunal cannot reconcile the Crown's failure for more than 140 years to meet its obligations to Ngai Tahu with its duty to act towards its Treaty partner reasonably and with the utmost good faith. Its record of prevarication, neglect and indifference over so long a period, in facing up to its obligations, cannot be reconciled with the honour of the Crown. Nor can the decision in 1944 to pay £10,000 for 30 years and the later decision to continue a payment of \$20,000 be regarded as more than a small contribution to its obligations to Ngai Tahu. The Crown's failure to meet its Treaty obligations to provide ample reserves, to protect Ngai Tahu's right to mahinga kai, to return or make compensation for its failure to leave with Ngai Tahu land they did not wish to sell, to reinstate Ngai Tahu's rangatiratanga in appropriate ways, has continued down to the present day, greatly to the detriment of the Ngai Tahu people.

21.4. **The Ngaitahu Claim Settlement Act 1944**

- 21.4.1 In her closing address for the Crown, Mrs Kenderdine submitted that the 1944 settlement with Ngai Tahu and the subsequent 1973 adjustment to that settlement, constitute a full and final settlement to claims arising from the Kemp purchase. Crown counsel relied on the submissions made earlier in our hearings by the then senior counsel for the Crown, Mr A Hearn, QC (M22).

We now consider Mr Hearn's lengthy submissions, on the Ngaitahu Claim Settlement Act 1944 (the 1944 Act). Although nowhere stated explicitly, the burden of Mr Hearn's submissions was that the claimants are in some way estopped or barred from seeking any further relief in respect of Kemp's purchase by the provision of the 1944 Act (M23).

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21.4.2 In his submissions Mr Hearn briefly outlined the background circumstances or “factual matrix” in which the 1944 Act is said to have been enacted. His starting point was that part of the *Report of the Native Land Claims Commission 1920* which, as we have seen concerned Kemp’s purchase, and which resulted in a recommendation that Ngai Tahu be paid £354,000 as full compensation.

The 1920 commission report did not attempt to chronicle the outcome of the many hearings by the various parliamentary select committees, Royal commissions and commissions of inquiry which we discuss elsewhere, (of which the 1920 commission was simply the last in a long series). Nor did the report so much as mention the Treaty of Waitangi.

While purporting to outline the “factual matrix” to the 1944 Act counsel ignored virtually all the relevant facts which date in a continuum from the time of the Kemp purchase, (some only of which are described in the 1920 commission report and which we have earlier related in considerable detail). Instead he took as his starting point the recommendation of the 1920 commission. He did not discuss the contents of the 1920 commission report. Thus, while quoting from an English case, *Reardon Smith v Hansen* [1976] 1 WLR 989, involving a contract for a charter party and sub-charter party to the effect that what the court must do is to place itself in thought in the same factual matrix in which the parties were, counsel has not himself attempted to do this.

Rather, he emphasised events subsequent to that report, and commented that the 1920 commission report recommendation “was not *immediately* given effect to. . .” (M22:2 emphasis added). This comment perhaps unconsciously reflects the sense of time in Crown dealings with Ngai Tahu. The 1920 commission recommendation was not given effect to for 24 years, and then only in part.

21.4.3 Lengthy delays occurred while the Native Land Court determined the Ngai Tahu beneficiaries. Section 21 of the Native Land Amendment and Native Land Claim Adjustment Act 1928 stated that a decision had not yet been made as to whether the recommendations of the 1920 commission would be given effect to, but nevertheless constituted the Ngaitahu Trust Board “for the purpose of discussing and arranging the terms of any settlement of the claims for relief that may be come to”.

In March 1930 Treasury advised the Prime Minister of the day that liability should not be admitted by the government but that, given the “false hopes” raised by the 1920 commission report, an ex-gratia payment of one lump sum of £15,000 might be paid. In October 1935

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discussions were held between representatives of Ngai Tahu, G W Forbes (Prime Minister and Minister of Native Affairs), H G Coates (Minister of Finance) and Sir Apirana Ngata, following which the coalition government made an offer of £100,000 in full settlement. This was rejected by Ngai Tahu (M17:II: doc 43:9).³⁷

In March 1938 F Langstone (acting Minister of Native Affairs) met a further Ngai Tahu delegation led by Mr E T Tirikatene, Member of Parliament. In his opening remarks the minister pointed out that:

we [the government], are not responsible for what has taken place in the past and my effort has been . . . to try and get the people to stop looking backwards and forget the past and get their faces towards the future. . . (M17:II: doc 43:1)³⁸

At this meeting there was some discussion as to how the government might meet its obligation. Mr Langstone concluded by saying that:

when the Government has made up its mind it will take some legal form. You (Tirikatene), as the member will be informed and you will be able to inform your Maori people.(M17:II: 43:27)³⁹

This suggests that the government would unilaterally decide the amount and form of relief (if any) and then simply advise the Southern Maori member.

21.4.4 In fact, nothing further was done until 1944 when, on 4 December H G R Mason, Minister of Native Affairs, gave instructions for a Bill to be prepared providing for 30 successive annual grants of £10,000 each. In introducing the Bill in the House of Representatives, Mr Mason said any approach to a settlement must involve fairly arbitrary estimates:

Therefore, a compromise of some sort is all that is open to us; and this compromise embodied in the Bill is satisfactory to the Maoris and to the Government. (M17:II, doc 49:755)⁴⁰

The Ngaitahu Claim Settlement Act 1944 was passed on 15 December 1944. Its long title was “An Act to effect a Final Settlement of the Ngaitahu Claim”. Its preamble recited that:

WHEREAS the members of the Ngaitahu Tribe and their descendants have from time to time made certain claims in respect of the purchase of the Ngaitahu Block by Mr Kemp on behalf of the Crown in the year eighteen hundred and forty-eight; And whereas the persons now interested in the claims have agreed to accept the payment of the sum of three hundred thousand pounds in the manner hereinafter appearing in settlement of the aforesaid claims:

Section 2 of the Act provided:

In settlement of all claims and demands which have heretofore been made on His Majesty's Government in New Zealand and for the purpose of releasing and discharging His Majesty's said Government from any

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claims or demands which might hereafter be made on it in respect of, or arising out of, the purchase of certain lands in the South Island belonging to the Ngaitahu Tribe (the purchase aforesaid being that referred to under the heading of "South Island Claims – Kemp's Purchase" in the report of a Native Land Claims Commission contained in paper G.-5 of the Appendices to the Journals of the House of Representatives for Session I of the year nineteen hundred and twenty-one), there shall be paid to the Ngaitahu Trust Board, being the Board referred to in section sixty-five of the Native Purposes Act, 1931, without further appropriation than this Act, in each year for a period of thirty years and no longer, the annual sum of ten thousand pounds, payable on the first day of April in each year, commencing with the first payment on the passing of this Act as for the first day of April in the year nineteen hundred and forty-four.

21.4.5 There is very real doubt as to how much, if any, consultation with Ngai Tahu preceded the enactment of this legislation in 1944. Mr Tirikatene, during a later debate in 1946, is reported as saying:

The fund . . . was agreed upon during the dying hours of the 1944 session of Parliament. An amount of £300,000 was offered, and I gave a promise to my people that whatever I was able to achieve in the way of a settlement offer would be submitted to them for THEIR acceptance. I have done that. Two proposals were put before the beneficiaries. I was not in the position of my predecessors of going out with a promise only. An amount of £300,000, to be paid over a period of thirty years, had actually been provided for by statute, and the money was transferred to the Native Trustee to be held in trust until a second examination had been made by my people and an answer given. . . ; I said that if they thought the amount was insufficient they could pass a motion accordingly, and we would return the money, but if they considered that they should accept the money and set up some form of administration to disperse it, they should move accordingly. I said that I wanted a majority opinion from my people. (M17:II: doc 51:49)⁴¹

It is apparent from this statement by the minister that his consultation with the Ngai Tahu people took place *after* the passage of the Act. This is confirmed by the affidavit dated 13 October 1971 sworn by Mr R J Taylor, who was private secretary to the minister from 1943 to mid 1946. He recounted in detail the discussion between the Prime Minister (Mr Fraser) and Sir Eruera Tirikatene which took place in his presence in the later stages of the 1944 parliamentary session, and states that, when consulted by the Prime Minister, he indicated that he (Taylor) considered the minister's proposal of 30 annual payments of £10,000 would be unacceptable to the Ngai Tahu people (M23:49).⁴² Mr Taylor went on to testify that he was unaware of any meetings held subsequent to such meeting with the Prime Minister and prior to the passing of the 1944 Act. In his capacity as private secretary to the minister, Mr Tirikatene, he did not attend any meetings called in connection with the claim. He expressed his certain opinion that at the time of enactment of the 1944 settlement

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Act there had not been acceptance of the settlement by the Ngai Tahu people (M23:49–50).⁴³

It does appear, however, that during the period 1944–46 Tirikatene did consult with Ngai Tahu in their various localities, and that a majority gave retrospective approval to the 1944 settlement which by then of course was a fait accompli. The comments of Mr Matiu Rata, Minister of Maori Affairs, in 1973 during the debate on clause 3 of the Maori Purposes Bill, which provided for a payment to the Ngai Tahu Maori Trust Board of \$20,000 per annum in perpetuity, are of interest. This Bill was the government's response to a petition by Mr Frank Winter, on behalf of the Ngai Tahu Maori Trust Board, and representations by the Ngai Tahu people.

Arising from a petition heard last year it became obvious to members of the present Government that the *so-called settlement of 1944 was by no means to be regarded as a fair and final settlement*. Members of the then Maori Affairs Committee heard leaders from the Ngaitahu people explain how, when the settlement was proposed, they had accepted it on the basis that in years to come a more enlightened determination would prevail. The committee heard valuation and statistical evidence in relation to the claim. Taking into account the fluctuation in purchasing power, and more particularly the view expressed in 1921 by a Royal Commission headed by Chief Judge Jones of the Maori Land Court, the Government considers that the matter ought to be settled in a more reasonable way. (M23:54)⁴⁴ (emphasis added)

Later, during the debate on the second reading of the same Bill Mr Rata said this:

The other matter concerns the continuation of payments to the Ngaitahu Trust Board. By agreement in 1944, the payment ceased as from 1 April this year. After considerable thought it was felt that there was a case, and, while the board members, and in particular the beneficiaries, may feel that this of itself can never be considered final and absolute payment, it is nevertheless a realistic attempt to meet what has been a long outstanding problem and one that needs to be resolved in the interests of people concerned and of the country generally. (M23:59)⁴⁵

Several points emerge from the minister's statements:

- the government accepted that the "so-called settlement of 1944" was by no means to be regarded as a fair and final settlement;
- Ngai Tahu accepted it on the basis that in the years to come a more enlightened determination would prevail. As indeed proved to be the case;
- such acceptance was given after the passage of the Bill and at a time when Ngai Tahu's only option was to reject it and have the Act repealed, thereby subjecting Ngai Tahu to very considerable pressure to agree and making it difficult, if not impossible, to exercise a free choice in the matter;

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- taking into account fluctuation in purchasing power and the views expressed in the 1920 commission report the government considered the matter ought to be settled in a more reasonable way; and
- the minister recognised that neither the board nor the beneficiaries might feel that the new proposal would be considered a final and absolute payment. Nevertheless he saw it as a realistic attempt to meet a long outstanding problem.

21.4.6 It was against this limited “factual matrix” that Mr Hearn submitted that in some way Ngai Tahu should be irrevocably bound by the provisions in the 1944 Act and the Maori Purposes Amendment Act of 1973 (the latter providing the payment of \$20,000 per annum in perpetuity), and that Ngai Tahu are estopped or barred from making any claim for further or other relief under the Treaty of Waitangi Act 1975. Thus, he submitted, there can be no escape from a finding that it was the intention of the parties that such provision (the payment of \$20,000 in perpetuity) should be in full and final settlement (M22:18).

At least two observations should be made on this submission. First, it is clear that the minister in charge of the legislation in fact recognised that the board, and in particular the beneficiaries, might not consider the new proposal to be “a final and absolute payment”. While doubtless the government of the day hoped it had found a final solution to a long-standing grievance, it did not enact a new provision making the 1973 payment a full and final settlement. Second, and more importantly, there was no suggestion that the provision was intended to be a settlement of the Crown’s obligations under the Treaty of Waitangi. The Treaty was not in issue. It was not even mentioned. It is not referred to either in the 1920 commission report, or by any of the ministers. The Treaty of Waitangi Act 1975 which confers the jurisdiction for the present claims before the tribunal, was to be two years in the future.

What in fact happened was that a unilateral settlement was reached in 1944 which was later retrospectively accepted as a *fait accompli*. Subsequent events, and submissions of the Ngai Tahu people, showed that settlement to be inadequate. The government changed its terms. The responsible minister, far from characterising it as final and irrevocable, recognised that the Ngai Tahu board or the beneficiaries might not consider it to be a “final and absolute payment”, although no doubt the government hoped they had heard the last of it.

21.4.7 Mr Hearn, in dealing with the 1944 Act, did so on the footing (without necessarily accepting) that there was a breach of Treaty principles

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arising out of the Kemp purchase, in that the Crown did not ensure that the people were left with sufficient land for their maintenance, support and livelihood. He thought it fair to accept this as having been recognised by subsequent events. The question he proceeded to address was whether the principles of the Treaty have any relevance to, or can be said to be breached, by the 1944 Act and subsequent events.

However, he then proposed that an appropriate way might be first to consider all the transactions without bringing the Treaty principles into account. Counsel suggested the broad issue to be whether it could be said there was equitable fraud or whether there was an unconscionable bargain between the parties. We would say at the outset that this question, assuming it is useful and relevant, could only be decided after a comprehensive review of all the events, from and including the Kemp purchase in 1848, and not from the arbitrary point of a commission report in 1920, and even less so from the passage of an Act in 1944.

The tribunal was referred to certain dicta from two commercial cases. One, *Blomley v Ryan* (1956) 99 CLR 362, involved the court in setting aside a contract for the sale and purchase of a grazing property on the grounds that it was an unconscionable bargain and such that a court of equity would not enforce. In the other, *Commercial Bank of Australia v Amadio* (1983) 57 ALJR 358, an order was made setting aside a mortgage and a guarantee. The factual situations in each of these cases, involving as they do commercial contracts, are far removed from the present, which is not concerned with a contract but with legislative enactments.

Mr Hearn contended, from what he described as the vantage point of the Crown, that the parties reached an agreement in 1944 and a statute was drawn up and passed reflecting that agreement “as the Crown saw it” at the time. As indicated earlier, the weight of evidence strongly suggests that there was not, in fact, an agreement with Ngai Tahu at the time the 1944 Act was passed. While the Crown may have thought that to be the position, we believe that view was mistaken. Be that as it may, Mr Hearn further pointed to the subsequent petition by Mr Winter on behalf of the Ngai Tahu Maori Trust Board, and the consideration by parliamentary committees, and contended that, “what was asked was given and that arrangement was reflected in a statutory amendment passed by members of the House of Representatives” (M22:26). He submitted that “in ordinary circumstances” there could be no grounds whatsoever for setting aside such a transaction and a party could be estopped from further claims. Mr Hearn cited from two further commercial cases in which parties to

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contracts were held to be estopped from attempting to escape from certain contractual provisions (*Charles Rickards Limited v Oppenheim* [1950] 1 KB 616 and *Coupe v J M Coupe Publishing Limited* [1981] 1 NZLR 275). We do not find these contract cases helpful in considering Mr Hearn's submission that Ngai Tahu are in some way estopped by the 1944 Act or the 1973 amendment from pursuing a claim under the Treaty of Waitangi Act 1975 and in particular its 1985 amendment.

- 21.4.8 While the 1944 Act purported to release and discharge the Crown from any further claims and demands, it was clearly not regarded as binding on the Ngai Tahu people. On the contrary, the Crown subsequently conceded, and it was explicitly stated by the responsible minister, M Rata, "that the so-called settlement of 1944 was by no means to be regarded as a fair and final settlement." The same minister when speaking to the 1973 amendment explicitly recognised that the board members, and in particular the beneficiaries, might feel that this of itself could never be considered a final and absolute payment. We are not dealing here with a contract but with an attempt by government to right past wrongs for which there was, at the time, no legal remedy. As events showed, equity and justice required the Crown in good conscience to review the 1944 Act. Who can say (the Treaty apart, for purposes of this discussion), that the Crown might not be persuaded to do so again. Consider for instance, the quite unforeseen high rates of inflation since 1973 which must have seriously devalued the real worth of the provision made in that year and in perpetuity. We see no possible basis on which Ngai Tahu may be held to be estopped by either the 1944 Act or the 1973 amendment.

We have dealt with the foregoing argument from Mr Hearn, which ignored Treaty principles, because he raised them. The tribunal considers they are lacking in substance and of no real assistance to us. Our duty is to apply Treaty principles.

- 21.4.9 Counsel chose to address a very brief argument only on the Treaty principles as such. In this context the only Treaty principle to which he appeared to advert is the duty of Treaty partners to act reasonably and in the utmost good faith towards each other. Directing attention to the 1944 settlement and subsequent events, including the granting of relief on the 1973 petition, he asked where in the evidence before the tribunal is there material to suggest any lack of good faith on the part of the Crown?

There is a basic fallacy in this approach to which we have already adverted. Mr Hearn has sought to isolate his whole discussion of the 1944 Act and subsequent legislative acts from all that happened

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before 1920. In short, he has excluded more than 70 years of relevant historical events. These we have dealt with at length in an earlier chapter.

But if we confine our consideration to the limited “factual matrix” proposed by counsel the following facts are pertinent:

The 1920 commission report found there to be a clear case for a substantial award to the Ngai Tahu people. It took the Crown almost 25 years to decide to take some action on it. It is legitimate to ask whether this was consistent with a Treaty partner’s obligation to act reasonably and in good faith towards the other. Was it reasonable to procrastinate for a quarter of a century (a depression and war intervening notwithstanding) before providing some relief? Is that consistent with good faith? But the inordinate delay was compounded by a refusal to implement the commission’s recommendations. Ngai Tahu had been deprived of the sum of £354,000 (\$708,000) for some 24 years. No interest was paid. Instead the government decided to pay 30 annual instalments of £10,000 (\$20,000). The 1944 value of such an arrangement being substantially less than the nominal amount of £300,000 (\$600,000), which in turn was substantially less than the £354,000 (\$708,000) awarded by the 1920 commission, and even less had interest been paid on that sum over the 24 year period. Since 1973 inflation has severely eroded the value of the annual payments of \$20,000.

Mr Hearn overlooked – as did the 1920 commission – that an important part of the Ngai Tahu complaint about the Kemp purchase related to mahinga kai. Is the so-called settlement of 1944 and its modification in 1973 to be conclusive of that claim also when it was never considered? Is it to be conclusive of the claim for reserves and the return of Crown land? Is the Crown acting reasonably and in good faith in seeking to bar the Claimants from any relief under the Treaty of Waitangi Act 1975, an Act which was not even in existence when the events of 1944 and 1973 occurred? Can Ngai Tahu be estopped from making a claim under an Act of Parliament which, for the first time in 1985 conferred on them a right to make claims based on breaches of the Treaty going back to 1840, by events to which they were a party before those statutory rights were conferred? In our view such a proposition, which seems to be implicit in Mr Hearn’s lengthy submissions, is not only untenable but difficult to reconcile with good faith on the part of the Crown. We confirm what we said in the *Orakei Report* (1987) 184:

it would be contrary to equity and good conscience for the Crown to rely on undertakings given at the time on behalf of the elders as foreclosing the possibility of claims being made for the remedy of grievances for

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which no legal provision existed in 1978 but for which provision was later made in 1985.

Counsel submitted that, whatever happened before, “what happened in 1944 and subsequently, was not or is not, inconsistent with the principles of the Treaty” (M22:29). He argued that the claim then made (in 1944 and presumably later) was not treated as if no legal right existed to make such claim. Accordingly, he submitted the circumstance that such a claim can legally be made now does not alter the position. In our view these submissions are also untenable.

- They suggest that it is appropriate to deal with the 1944 Act and later events in total isolation from events originating in 1848 and continuing since then.
- We do not accept that the Ngai Tahu claim for action by the Crown on the 1920 commission was made in pursuance of a legal right to make such a claim. This assumes that in some way their claim was enforceable at law which clearly it was not. Nor indeed was it enforceable in a court of equity. The Crown, after a quarter of a century, finally granted some relief because it found the will to do so, having long recognised that in equity and good faith it should so do.

21.4.10 We should perhaps consider one final point made by Mr Hearn in this context. He asked if it is not possible for a claim to be settled as purported to be done in 1944 and subsequently, how is it within the power of this tribunal to make a recommendation, which if accepted by the Crown, could be a settlement of this claim? (M22:30)

Let us accept for the purposes of the argument that there was a settlement in 1944 and subsequently which was intended to be binding and irrevocable. Our first observation is that if it is later shown to have been inequitable then the Crown, in good conscience, may well decide to re-open it. In the same way, if Crown implementation of a tribunal recommendation is later shown to be inequitable, the Crown might subsequently be persuaded to grant further relief. We suggest there is a clear distinction between a “settlement” made before the enactment of the Treaty of Waitangi Act 1975, and without reference to or in pursuance of the principles of the Treaty on the one hand, and actions of the Crown which fully implement recommendations of the tribunal following findings and a report by the tribunal under the 1975 Act. Assuming the tribunal bases its findings on thoroughly researched evidence and the correct application of Treaty principles, and the Crown implements those findings, they are likely to be invoked by the Crown as a complete answer to a subsequent claim on the same set of facts. There may be an exceptional case when new and highly relevant facts are discovered or new

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or extended Treaty principles are developed which might justify a review. In that event, the Crown might refer the matter back to the tribunal. We would expect such cases to be rare. Given the virtual impossibility of ensuring that all material facts have been discovered in all cases at a particular point of time the need for a review cannot be altogether excluded, unless, of course, the Crown chose to legislate to this end. But we would expect the need for a review in such circumstances to arise only infrequently. In those cases where a settlement based on tribunal findings is freely negotiated between claimants and the Crown we would anticipate such settlements, except in rare instances, to be binding on both parties.

- 21.4.11 We have found that Ngai Tahu is not barred by the Ngaitahu Claim Settlement Act 1944 or the Maori Purposes Amendment Act 1973 from pursuing its claim in respect of Kemp's purchase. But, when seeking compensation from the Crown for the loss arising from breaches of Treaty principles which this tribunal has found, clearly full regard must be had to the payments made by the Crown since 1944 to the present time. It will be a matter for negotiation between Ngai Tahu and the Crown as to how far such payments have gone to compensate the iwi for the Crown's failure to meet its obligations in respect of this purchase and the consequential ongoing and cumulative loss suffered by Ngai Tahu since 1848.

References

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- 4 *ibid*, further letter of 12 April 1880, p 48
- 5 *ibid*, further letter of 16 April 1880, p 49
- 6 *ibid*, Smith and Nairn to native minister, 31 January 1881, p 54
- 7 *ibid*, p 55
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- 11 NZPD 562)
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- 13 AJHR 1884, I-2, p 3
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- 18 ibid, p 4
- 19 ibid
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- 22 ibid, p 5
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- 34 ibid, p 37
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- 38 ibid, p 1
- 39 ibid, p 27
- 40 H Mason, 13 December 1944, (267 NZPD 755)
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- 45 M Rata, 8 June 1977 (383 NZPD 1197)

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Chapter 22

Ngai Tahu's Search for Redress and the Crown's Response—An Overview

22.1. Introduction

In chapters 5 to 16 the tribunal reviewed the eight Crown purchases from Ngai Tahu. We concluded that these resulted in the near total denial of Ngai Tahu's rangatiratanga, their confinement to a handful of totally inadequate reserves, and the inevitable tribal disintegration and impoverishment of a proud and loyal tribe. In chapter 17 the tribunal has found that the Crown failed to take appropriate measures to preserve and protect Ngai Tahu's mahinga kai and to provide sufficient reserves to allow Ngai Tahu to participate in the developing economy.

In chapters 18 to 21 we have investigated the consequences of the purchases for Ngai Tahu, their unremitting search for redress and the Crown's response to Ngai Tahu's pleas for justice – for the Crown to honour its obligations under the various purchases.

22.2. The Crown's Response

- 22.2.1 How did the Crown respond? In 1872 the first parliamentary select committee met, came to no final conclusion and called for further inquiry. From then on through to 1920 at least 17 inquiries were held into Ngai Tahu grievances as to unfulfilled promises or their landless state. Most of these inquiries were carried out by parliamentary select committees, in some instances joint committees of both Houses. In only one case, in 1910, did a parliamentary select committee make a recommendation that government accord a Ngai Tahu petition favourable consideration. No action was taken by the Crown on that recommendation for 10 years, and then only to constitute another inquiry. In all other cases the select committees either rejected Ngai Tahu's grievances or proposed that a commission of inquiry investigate them further. It is a story of seemingly endless delay and procrastination.
- 22.2.2 The Smith–Nairn Royal commission was appointed in 1879. In 1880, after carrying out an extensive investigation, its funds were cut off. Its attenuated report recommending substantial relief to Ngai Tahu

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was completely ignored by the Crown. Its evidence was left to gather dust in Parliament's vaults.

In 1886 the first Mackay Royal commission was appointed. Judge Mackay made a thorough investigation and wrote a comprehensive and persuasive report. He found grave injustice had been done to Ngai Tahu. He recommended substantial relief. His report was ignored; none of its recommendations were implemented. Notwithstanding this, in 1891 Judge Mackay was again appointed a Royal commissioner to inquire further into the condition of the Ngai Tahu people and to ascertain if any of them had insufficient land. This he had already done in 1886–87.

Mackay reported that 44 per cent of Ngai Tahu had no land, 46 per cent had insufficient, and only 10 per cent had sufficient land, that is, 50 acres or more. Mackay confirmed the views and recommendations he had made in his 1887 Royal commission report for a substantial endowment and significant grants of additional land for the Canterbury and Murihiku people.

The Crown's response to this was to appoint yet another commission, comprising Judge Mackay and Surveyor-General Smith, to compile a list of landless Maori and assign sections of up to 50 acres to them within government allocated blocks. This took nearly 12 years, partly because of the size and complexity of the task, but more importantly because the commissioners were obliged to do virtually all the work in their own time, outside official hours. Such was the low priority assigned by the Crown to this work. The result was the South Island Landless Natives Act 1906.

Unfulfilled promises as to schools, hospitals and general welfare

- 22.2.3 The tribunal proposes briefly to consider the outcome of each of the three broad heads of Ngai Tahu grievances. We look first at the promises made on behalf of the Crown as to schools, hospitals and general welfare. The evidence shows that such promises were made to Ngai Tahu by at least Mantell, in respect of both the Kemp and Murihiku purchases.

Schools

- 22.2.4 Detailed evidence from Crown witness Dr Barrington, a university reader in education, catalogued the history of neglect and occasional partial compliance with its obligations in the provision of schools for Ngai Tahu. The tribunal has concluded that it is not possible to find the Crown's record in this respect, in the three decades following the Kemp and Murihiku purchases, as being consistent with good faith and honourable dealing with its Treaty partner.

*Ngai Tahu's Search for Redress and the Crown's Response—An Overview***Health**

- 22.2.5 Another Crown witness, historian Tony Walzl, provided a detailed account of government health measures for Ngai Tahu over the period 1850 to 1890. In response to a claim on behalf of the claimants that the Crown's record was "half-hearted" at best, Mr Walzl commented that despite the short-term benefit which Ngai Tahu gained, "the Crown efforts in both education and health were woefully inadequate" (R7:122). The tribunal subscribes to this view.

General welfare

- 22.2.6 In an appendix to his main report, Professor Ward discussed Lord John Russell's 1841 instructions to Hobson to ensure there was a fund for Maori purposes of not less than 15 per cent, or more than 20 per cent, of the revenue from the sale of Crown lands. It was this fund which paid the costs of the protectorate until its abolition by Grey in 1846. The Crown historian Mr David Armstrong later provided details of the Crown's policy with regard to endowments in the period 1840 to 1860. This was followed by a commentary by Mr Tony Walzl on how this policy related to Ngai Tahu purchases. This and related topics have been discussed by the tribunal in chapter 5. As we have indicated, the figures provided to us, although far from complete, suggest an expenditure directly on Ngai Tahu of £4 in 1850, £10 in 1851 and £17 in 1852. Only in the year 1859–60 was a significant sum spent on the tribe, with 1058 being of direct benefit to Ngai Tahu (X6:appendix 2:table 5). These expenditures were for welfare matters other than schools and hospitals. It is a sorry record. And yet, as we showed in our discussion of schools and hospitals, Governor Browne in 1857 informed the British colonial secretary Labouchere, that from the date of the Treaty of Waitangi:

promises of schools, hospitals, roads, constant solicitude for their welfare and general protection on the part of the Imperial government have been held out to the Natives to induce them to part with their land. (O21:58)¹

- 22.2.7 Just as the Crown failed to meet its obligations in respect of schools, hospitals and other medical services, so it largely failed to honour its promises to care for the general welfare of Ngai Tahu and offer them its protection. The tribunal reiterates its finding (19.5) that the Crown in acquiring land from Ngai Tahu was obliged by the Treaty to honour promises made by the Crown's representatives to induce them to sell their lands. Such promises should have been fulfilled by the Crown and fulfilled promptly. Good faith, fair dealing and the honour of the Crown required no less. Infrequent and long-delayed efforts were made partially to meet the Crown's obligations. But to this day Ngai Tahu have not been compensated for the failure of the Crown to meet its Treaty obligations in respect of these various promises.

*The Ngai Tahu Report 1991****Landless Ngai Tahu***

22.2.8 The tribunal has chronicled the long, frustrating, and in the end largely unrewarding record of the Crown to make some amelioration of the distressing situation of so many Ngai Tahu rendered landless by the Crown. When, finally, the South Island Landless Natives Act was passed in 1906, it was found that the landless and near landless Ngai Tahu had been allocated land in some of the remotest areas of the South Island; land substantial parts of which was unsuitable for settlement. Little if any of such land was viable in lots as small as 50 acres. The climate was excessively wet and access in some areas virtually impossible. No wonder so few Ngai Tahu took up the land. Yet the Crown, while well aware of all this, persisted with what had every appearance of a hollow gesture. Nor, when the Gilfedder and Haszard commission of inquiry in 1914 demonstrated the unsuitability of much of the land, did the Crown take remedial action. In the tribunal's view the facts speak for themselves. The tribunal is unable to reconcile the Crown's action (or inaction) with its duty to act in the utmost good faith towards its Treaty partner. The South Island Landless Natives Act 1906 and its implementation cannot be reconciled with the honour of the Crown. The Crown's Treaty breach has yet to be remedied.

Wider grievances of Ngai Tahu

22.2.9 In our preceding chapter on parliamentary select committees, Royal commissions and commissions of inquiry we considered how the Crown had addressed Ngai Tahu's wider grievances. In particular the tribunal was concerned with the failure of the Crown to ensure Ngai Tahu were left with ample reserves for their present and future needs; their claim for tenths; their grievance that lands they sought to retain were acquired by the Crown; their claim to mahinga kai; and their dispute over certain boundaries and related matters.

As with schools and hospitals and provision for landless Ngai Tahu, so with these grievances the Crown's response was characterised by a series of inconclusive hearings, often by parliamentary select committees. These led in turn to first the Smith–Nairn Royal commission in 1879–81, and then the two Mackay Royal commissions in 1887 and 1891 respectively, whose recommendations for substantial relief were totally ignored by the Crown.

The Crown similarly ignored the favourable recommendation of the Native Land Committee in 1910. It did nothing for 10 years when it referred the 1909 petition of Tiemi Hipi and 916 other Ngai Tahu to yet another body, this time the 1920 commission of inquiry, chaired by the chief judge of the Native Land Court, R N Jones. The commission's favourable recommendation, which related solely to

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Kemp's purchase, was not acted upon for a further 24 years and then only in part. In all, 35 years had elapsed since Tiemi Hipi petitioned the House of Representatives and the Crown sponsored legislation in 1944. The tribunal has carefully considered but not been persuaded by a submission from the Crown that the claimants are in some way estopped from further relief by the Ngaitahu Claim Settlement Act 1944.

22.2.10 As we have said (21.3.2) the tribunal cannot reconcile the Crown's failure for more than 140 years to meet its obligations to Ngai Tahu with its duty to act towards its Treaty partner reasonably and with the utmost good faith. We reiterate that its record of prevarication, neglect and indifference over so long a period cannot be reconciled with the honour of the Crown. While the payments under the 1944 Act and its subsequent amendment constitute in small measure a recognition of the Crown's obligation to Ngai Tahu, it is no more than that. And in respect of one purchase, albeit the largest, only.

22.2.11 Crown counsel and the several historians and other witnesses called by the Crown made a major contribution through extensive and rigorous research to uncover the facts. Crown counsel and various witnesses freely conceded that the Crown was in default both in its Treaty obligations in respect of the various purchases, especially on the question of inadequate reserves, and in its failure adequately to respond to legitimate post-purchase grievances by Ngai Tahu. The record shows that Ngai Tahu time and time again sought relief for the grave injustices it had incurred at the hands of the Crown, the last occasion being a petition in 1979 on behalf of the Otakou people. Time and time again, Ngai Tahu were rebuffed by the Crown. Yet another unproductive inquiry would be called for. Decade after decade have passed. Generation after generation of Ngai Tahu, largely landless, impoverished, their rangatiratanga unprotected, have sought relief with little success.

22.3. **Conclusion**

This tribunal, with the help of counsel and a great many witnesses, an extensive historical record, and lengthy submissions, has attempted to conduct a comprehensive, fair and objective inquiry into Ngai Tahu's grievances. They are not new grievances. They have their origin in the failure of the Crown to treat fairly and honourably with Ngai Tahu both at the time of the purchases and subsequently over almost a century and a half. With the exception of the disputed boundaries Ngai Tahu have established their major land and associated grievances. They are entitled to speedy and generous redress if the honour of the Crown is to be restored. The tribunal would urge,

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in the interest of all New Zealanders, that the Crown at long last repays its debts to Ngai Tahu. Surely Ngai Tahu have waited long enough.

References

- 1 T Browne to Labouchere, 9 February 1857, G1/43, NA, Wellington

Chapter 23

Evidence of Other Interested Bodies

23.1. Introduction

At its first hearing the tribunal publicly announced that it would give all persons or organisations wishing to give evidence the opportunity to do so. At the time several government departments and state-owned corporations as well as other corporate bodies, farming interests and Maori organisations sought and were granted leave to appear and be heard. Subsequently, on 30 June 1988 the Treaty of Waitangi (State Enterprises) Act 1988 was passed and was deemed retrospectively to have come into force on 9 December 1987. Section 4 of this Act amended the Treaty of Waitangi Act 1975 by inserting a new provision, section 8C. This section restricts entitlement to appear and to be heard in relation to land transferred to or vested in a state enterprise to those persons named in the section. State-owned enterprises are excluded.

The tribunal on 11 November 1988 issued a direction (O54) that while the new section 8C(2) of the Treaty of Waitangi Act expressly excludes (inter alia) the application of section 4A of the Commissions of Inquiry Act 1908 which regulates those persons entitled to be heard, it does not exclude section 4B of that Act. Section 4B empowers the tribunal to receive as evidence any statement, document, information or matter that in its opinion might assist it to deal effectively with the subject of the inquiry. The tribunal directed that if a state-owned enterprise was able to help the tribunal in this way the tribunal might well authorise it under section 4B provided such evidence did not touch upon any question relating to the return of land to which section 8A applies.

Following this direction and in the absence of any objection from the claimants or the Crown the tribunal received evidence from certain state-owned enterprises. In addition the tribunal heard from other interested organisations. This evidence came from various disparate groups or organisations comprising high country pastoral lessees members of Federated Farmers, the Federated Mountain Clubs, NZ Deerstalkers Association, the North Canterbury Catchment and Regional Water Board and the Department of Conservation.

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23.2. High Country Pastoral Lessees

- 23.2.1 Mr E Chapman appeared as counsel for Federated Farmers in respect of Crown pastoral leases (P22(a)). His submissions concentrated on what he termed the “inappropriateness” of using the Crown’s interest in pastoral leasehold land as a remedy. He said this was of very real concern to all pastoral lessees, given the “direct and onerous role” the Crown is said to play in managing high country lands.

Pastoral leases were created under the Land Act 1948. They succeeded pastoral licences, which had several disadvantages, including no security of tenure. As a result, Mr Chapman told us, some licensees tended to exploit the pasturage immediately before the termination of the licence to the detriment of erosion control. Without permanent tenure there was little incentive to improve land and buildings. The new pastoral leases removed these disadvantages. Leases are registered under the Land Transfer Act and are perpetually renewable at 33 year intervals, with rental reviews at 11 year intervals. The leases are freely transferable and may be used as mortgage security.

Mr Chapman advised that the obligations on the Crown as lessor are such that, while they produce revenue for the Crown, they cost the Crown far more to administer than the total received by way of rent. The Crown’s interest is confined to the unimproved value of the land. All improvements, including buildings, fencing, improvements to pasture, drainage and water reticulation are the absolute property of the lessees. The lessees value their association with the Crown and its ability to participate in the management of the land. They wish to retain the Crown as lessor, in keeping with their present contractual arrangements. They submitted that the assignment of the Crown’s interest in pastoral leases would not ensure a sound economic base for the future prosperity of Ngai Tahu.

- 23.2.2 The principal evidence in support of Mr Chapman’s submissions came from Mr Hamish R Ensor in his capacity as chairperson of the High Country Committee of Federated Farmers (P22(b)). Mr Ensor, who along with other pastoral lessees attended various sittings of the tribunal while the claimants were presenting evidence, is a pastoral lessee in the Rakaia gorge in central Canterbury. He is the third generation to own and farm the Glenaan station and fourth generation in the country. As chairperson of the High Country Committee Mr Ensor represents approximately 360 pastoral lessees from Lumsden, in the south, to Blenheim, in the north. The great majority (324) are on the land comprised in Kemp’s purchase.

Mr Ensor explained that the High Country Committee deals directly with the minister of the Crown responsible for the administration of

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pastoral leases. Despite the reorganisation of the Crown's landholding agencies into state-owned enterprises, pastoral leases remain under the jurisdiction of the Crown. Mr Ensor told us that this was because pastoral lease lands have particularly high multiple use values for production and scenic/conservation purposes. For these reasons it was thought the residual interest in the land should remain with the Crown rather than individuals, groups or companies. Mr Ensor commented on the concern expressed at the first hearing of this tribunal by various Ngai Tahu kaumatua at the depletion of their resources through the introduction of European species and exploitation of waterways and other traditional food collecting grounds. He emphasised that pastoral lessees shared a common desire to preserve the very delicate balance between production and conservation on high country land. Mr Ensor referred to evidence from a number of Ngai Tahu concerning the difficulty of access to certain food collecting grounds or places of spiritual significance. He said pastoral lessees acknowledged that concern. In so far as their farm management practices allow, the policy of the High Country Committee is to encourage lessees to facilitate public access. He cited a recent study to demonstrate that this occurs. He thought runholders would not be insensitive to any special Maori needs.

Mr Ensor related to us the views of lessees on the proposal that the Crown's interest in pastoral leases might be transferred to Ngai Tahu as one remedy for the past wrongs of the Crown. It was suggested that Ngai Tahu's cultural and spiritual links with the high country pastoral lease land were no greater than that on freehold land. Indeed it was thought that "apart from the transitory greenstone passages and certain lakes and peaks of special spiritual significance", the South Island high country was considered a rather harsh environment compared with the coastal and river margins on which Ngai Tahu permanent settlements were located. Mr Ensor suggested that if any group of New Zealanders could claim to be the indigenous people of the pastoral lease land perhaps it is the lessees themselves, as they are the only people in the history of New Zealand to have actually settled on and worked the land in question. In many cases, it was claimed, occupation by these lessees extends back over four or five generations. The tribunal notes that these contentions overlook the fact that when the Kemp and other purchases were effected by the Crown, requests of Ngai Tahu to retain extensive areas of land which would have included some high country, were wrongly denied by the Crown. Ngai Tahu were left with no high country land and virtually no other land. They were in no position to engage in pastoral farming whether in the high country or elsewhere. But European

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settlers, by contrast, were enabled to take up extensive runs of many thousands of acres.

In support of the contention that the Crown should not vest its interests in any pastoral leasehold land in Ngai Tahu, Mr Ensor argued that this should not occur simply because the title derives from the Crown. He argued that the pastoral lessees entered into an agreement with the Crown in perpetuity when they signed their lease documents, and in exchange for their rights to pasturage accepted certain restrictions and undertook a caretaker role. They strongly believe in the sanctity of lease documents and believe them to be just as binding as any Treaty or Crown purchase. They see the transfer by the Crown to Ngai Tahu as in “abdication” of its side of the deal.

Mr Ensor also told us that pastoral lessees on occasion have sought to increase their share of ownership from the Crown, presumably by being permitted to purchase the freehold. He suggested that if it has been unsuitable for lessees to acquire a greater interest in their pastoral land, it seems inappropriate for the Crown to change the title in favour of Ngai Tahu, in the absence of substantial grievances relating specifically to the pastoral lands by way of justification. Finally, Mr Ensor made the point that the pastoral leasehold lands are held by the Crown to protect the wider national interest and not to generate income from rentals. It was strongly argued that these lands cannot be an economic base for two different groups at the same time, without involving conflict and depletion of an existing improving resource.

- 23.2.3 Mrs Iris Scott, a pastoral lessee of Rees Valley station, Glenorchy, gave evidence in support (P22(b)). Two thirds of her property is covered by snow in a normal winter, which seriously limits the carrying capacity. Traditional high country farming is said to rely on nature to a greater extent than most types of farming, the secret of sustainability being to keep stocking-rates low enough to allow the natural vegetation to replenish itself. At present the Crown has an involvement in setting and ensuring compliance with stocking-rates. This, Mrs Scott said, emphasises the Crown’s important non-commercial function in lease management. Maintaining a viable farming operation in a harsh environment must be balanced against the Crown’s intention to preserve the land for the benefit of all New Zealanders. Mrs Scott described their stocking practices. Most of the land is grazed for less than two months of the year. In these ways the Crown’s conservation objectives are said to be a major part of pastoral lease management. Improvements to pasture and buildings, while the sole property of the lessees, are only done with Crown consent, thus ensuring that any developments are compatible with sound environmental practice

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and the productive capacity of the land. In Mrs Scott's case the development area is less than 2 per cent of the run, the remainder being in its natural undisturbed state. Department of Conservation records indicate that some 1200 trampers passed through Mrs Scott's valley in 1988 and she thought that two or three times that number make day trips to the valley, most of whom act responsibly and cause no problems to farm management or the environment.

- 23.2.4 Mr Jim Morris, formerly a high country farmer from the headwaters of the Rakaia River in Canterbury, recently purchased a pastoral lease at Ben Avon, in the Ahuriri valley near Omarama. He spoke movingly of the high country people's affinity for the mountain lands and the strong bonds formed with the land by successive generations of the high country farming community:

If you have ever walked a ridge line as the sun rises on a clear day, whether searching for sheep, botanical species, game or just for the love of it, whether Maori, Chinese or European, your thoughts on nature, your god and the fellowship of man will be the same. (P22(b):4)

Mr E D Lyttle spoke on behalf of the Otago Federated Farmers (P29). He is a farmer on the Otago peninsula. Like Mr Morris he spoke of the strong feeling which he and his fellow farmers have for the land.

23.3. **Federated Mountain Clubs of New Zealand (Inc)**

Mr David Henson, vice-president of the Federation of Mountain Clubs gave evidence on its behalf (S18). The federation has over 100 clubs affiliated to it, comprising some 16,000 individual members. The member clubs are those concerned with mountain recreation, including tramping, climbing, skiing and deerstalking. The federation is represented on the National Parks and Reserves Authority, the Walkway Commission and walkway committees. Federation members are frequently included on national parks and conservation parks boards and committees.

The general thrust of the federation's submissions was to express its concern for the sound management of New Zealand's public natural lands. It strongly believes these should be retained in Crown ownership and managed for the public good. The only exception it recognised is the pastoral lease system, which it considered should remain in Crown ownership, while recognising that the lessees have occupancy and trespass rights. At the same time the federation expressed considerable sympathy for the Maori sense of grievance over land rights issues.

The federation referred to suggestions that one or more national parks might be passed into Ngai Tahu ownership and leased back to the Crown for ongoing use as a national park. The federation speculated

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that if this occurred rental costs to the Crown could amount to millions of dollars. This in turn, it was said, would have a significant impact on federation members and other users of national parks. The federation strongly believes in freedom of entry, without charge, to national parks, while having no quarrel with charges for facilities such as huts. It predicted large rentals were bound to “raise the spectre of substantial entry fees”.

The federation advised that currently “highly concessional rentals apply to pastoral leases”. It supported continuance of this rental system, which it saw as a recognition of the sensitive nature of the land and the need for careful grazing. It argued that if rentals were set at normal commercial levels there would be pressure on run-holders to over graze, with consequent damage to water and soil and natural values.

It was submitted by the federation that the transfer of title of Crown land to Maori ownership would amount to privatisation of such land. The new owners would, it was suggested, acquire the right to grant or deny access to such land, the right to charge for public access, the right to “economic exploitation”, with far fewer environmental constraints than exist at present, and the right to sell the land to other private interests.

A large proportion of the land originally acquired by the Crown, the federation said, has been retained in public ownership for good reasons. This land, the federation considered, should be held in trust for all New Zealanders and managed for the common good. It argued that it would be a “dereliction of duty” by government if national parks were used in settlement of claims. In the federation’s opinion, if Maori land claims are proven, government should buy land of higher economic value on the open market for settlement of such claims.

23.4. **New Zealand Deerstalkers’ Association (Inc)**

This association, which represents New Zealand’s recreational hunters, made a late written submission signed by its president, Mr David Hodder. The association said that since its formation in 1937 it had fought to protect the public’s right of access to, and hunting on, the open high country of the South Island. Mr Hodder referred to a paper presented by Mr Maika Mason on behalf of the Ngai Tahu Trust Board to a Wild Animal Management Seminar in 1988, in which the Ngai Tahu tribal position on rehabilitation of traditional mahinga kai was explained. Mr Hodder stated there appeared to be no conflict between the goals of the association and those of Ngai Tahu. He urged the tribunal to include a finding in its report that the hunting of deer, thar and chamois be retained as a public use.

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This issue is relevant to the tribunal only in so far as it relates to restoration of mahinga kai rights to Ngai Tahu. The broader question of continued access and public use raises conservation and other issues outside the parameters of this inquiry. It would seem evident however, from Mr Mason's statement, that there is indeed a conflict between Ngai Tahu and the association over wild animal management, in that the impact of the introduction of the exotic species referred to has been destructive of such mahinga kai as weka, kaka and kereru. It is possible that there may be room for compromise, although Ngai Tahu see the continued presence of wild animals as subordinate to the redevelopment of Maori mahinga kai rights. Obviously there will be need for further consideration of hunting rights and management systems when Ngai Tahu are negotiating remedies with the Crown. Ngai Tahu have declared their aim of working in partnership with the Crown in achieving policy goals.

23.5. **North Canterbury Catchment and Regional Water Board**

Two submissions were made on behalf of this board (A14, P23). The second was presented by Mr J M Glennie, the group leader, planning. We were told that the board's interests in and concerns for land and water management were largely independent of tenure arrangements. But the board intimated that its ability to influence land management did vary with tenure and government policy, among other matters. In practice the board had been able to more directly control certain land management practices on Crown pastoral land than on freehold land. The board expressed its concern that its land and water interests should continue to be adequately provided for should Ngai Tahu be successful with its claim.

The board expressed particular concern for certain class VIII and seriously eroding class VII land. It submitted that, should the interest of the Crown in pastoral leases be transferred to Ngai Tahu, it should be on the condition that significant areas of class VIII and seriously eroding class VII land would not be used for pastoral farming or any other use detrimental to soil and water conservation. The board also urged that ownership of water should remain with the Crown.

23.6. **Telecom Corporation of New Zealand Ltd**

Evidence was given by Mr John Crook, assistant to the chief executive of Telecom (P24(a) & (b)). Mr Crook provided detailed information relating to land assets held by Telecom, many of which were shown to have special features which might bear on any relief which might ultimately be granted either by the tribunal, in terms of the Treaty of Waitangi (State Enterprises) Act 1988, or in negotiations between the

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claimants and the Crown. The information supplied recorded four separate classifications of properties held by Telecom and their location. It will prove very helpful should any Telecom properties become the subject of possible remedies.

23.7. **Land Corporation of New Zealand Ltd**

Submissions were made on behalf of Landcorp by their counsel, Mr C Mouat (P25). The tribunal was informed of the various categories of land held by Landcorp, including some 54 farms vested in Landcorp in the South Island, plus a further six Crown owned farms managed by Landcorp on an agency basis. Mr Mouat advised that the properties taken over by Landcorp from the Crown (and subject to resumption under the State Owned Enterprises Act) were underdeveloped farms not suitable for individual ownership. Additional land required for finishing purposes has since been acquired by Landcorp to enhance the economic viability of some farms.

Counsel for Landcorp told the tribunal:

Ngai Tahu people have an affinity with the land. Ngai Tahu also require a strong economic base to look to the future with confidence. Some of the remnant lands left to Landcorp are really in the same category as the “worthless” lands left to the tribe in 1840 and subsequent years. The Crown must compensate Landcorp for lands resumed. Landcorp would very likely replace its lands with better country to continue its breeding of superior quality animals. Landcorp does not want to look over the fence at Ngai Tahu struggling on difficult country. (P25:5)

Accordingly, Mr Mouat advised that Landcorp would support the idea that Ngai Tahu should receive the compensation, not Landcorp, “so that they may find land that suits their needs”. Just because land is “available”, Mr Mouat said, it should not be forced upon the claimants. As to the presence of wahi tapu on Landcorp properties, counsel advised that Landcorp would respect the position. Finally, Mr Mouat expressed Landcorp’s willingness to assist in a positive manner in any discussions with the claimants in respect to possible remedies.

23.8. **Electricity Corporation of New Zealand Ltd**

Submissions were made on behalf of Dr R S Deane, the chief executive of Electricorp, by Mrs Geraldine Baumann, the corporation secretary (Q15), and on behalf of Mr J P F Robinson, hydro group manager for the South Island, by Mr M J France the group environmental manager, South Island, for the corporation (Q16).

On the question of water rights, Dr Deane advised that in line with an agreement with the Crown, the corporation, which at present has perpetual water rights, intends to apply for standard water rights to replace its existing use water rights.

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As to land, Dr Deane undertook that the corporation would seek to hold only those lands which are reasonably required for its commercial operations. These would include land upon which there are structures, or where the effect of the corporation's control of water is extremely pronounced, as with former river beds now used as spillways. The corporation will not own the beds of artificial or of natural lakes subject to hydro electric control, except where structures are erected on them. Dr Deane said he knew Ngai Tahu were particularly concerned in this regard in respect to Lakes Pukaki, Ohau and Tekapo. He assured Ngai Tahu that the corporation did not aspire to hold the beds of these lakes, which the corporation knew were of particular significance to the Maori people of the area.

Dr Deane conceded the need to develop further good working relationships with the local tangata whenua. This would include production areas and matters such as fish and water rights. The corporation recognised that further investigation was required into indigenous fish and wildlife to ensure appropriate recognition is given to their requirements, including such facilities as elver passes, where these are appropriate. It would ensure that local Maori are consulted and their views incorporated.

Mr Robinson made available a topographical map (Q16A) showing the situation of the corporation's power stations in the South Island and their associated control structures. There are currently 14 such stations, having been commissioned during the period 1915–1984. Mr Robinson described the upper Waitaki system, which includes the Tekapo A and B and Ohau A, B and C stations together with the Twizel control system. The tribunal inspected this complex. The tribunal was advised of measures taken by the corporation to reduce pollution from human waste.

Mr Robinson saw the need for consultation and co-operation between the corporation and Ngai Tahu on matters of mutual interest and undertook to foster this.

23.9. Department of Conservation

The tribunal received a substantial and constructive submission from Mr Ken Piddington, the director-general of conservation, who was shortly after to relinquish his position to become the first director of environment with the World Bank (G8). Mr Piddington outlined to us the various functions of the new Department of Conservation, which was formally inaugurated in the previous April of 1987. In addition to its management and promotional functions in respect of the conservation of natural and historic resources generally, the department has taken responsibility for the proper conservation of

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the coastal areas and for the care of marine mammals and indigenous freshwater fish. Mr Piddington stressed that conservation is about the actions of a community in respect of what it has inherited and what it would like to see passed on intact to future generations. He argued that this involved some modification of the concept of private ownership by the incorporation of such concepts as guardianship, trusteeship, stewardship, or, in the Maori concept, rangatiratanga. By way of illustration he cited two examples where New Zealand has opted against the notion of exclusive ownership. These were pastoral leasehold lands and the coastal estate.

Mr Piddington said that, should the claimants be successful in respect of national parks, and he mentioned Fiordland National Park, Mount Aspiring National Park and Aoraki National Park specifically, he saw no consequential change for the purposes of day to day management. He understood that the Ngai Tahu Trust Board saw the possibility of unaltered status for national parks and other conservation areas, citing their recent support for the establishment of the Paparoa National Park.

Mr Piddington indicated that, in thinking about the way in which the principles of the Treaty of Waitangi affect the department in its operational work and how it might best achieve the form of partnership articulated by the Court of Appeal in the *New Zealand Maori Council* case, he proposed to develop a set of guidelines. Later he said:

In considering our responsibilities for the public estate the central issue comes back to whether or not the question of title is actually relevant to our management role. Since the claimants have raised several issues in respect of title I believe the conclusion we have reached is highly significant. As already indicated the stewardship of a public resource does not require the steward to obtain evidence of ownership. It is, however, necessary for that agent to receive unequivocal instructions from a source of higher authority. This authority in my submission equates precisely with the concept of "Rangatiratanga" in Article the Second. It follows that by seeking appropriate guidance from a tribal Trust or other authority the Department can align its protective role with the wording of the Maori version of the Treaty. (G8:17)

In short Mr Piddington envisaged the development of a partnership between the department and the tangata whenua, working for the common good.

The tribunal notes in concluding its record of the evidence of the high country farmers, the Federated Mountain Clubs, the state owned enterprises and the Department of Conservation, that all gave their evidence in a spirit of good will, indeed sympathy, toward Ngai Tahu,

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even though in some cases not supporting certain remedies which Ngai Tahu might seek for their grievances.

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Chapter 24

The Crown and Ngai Tahu Today

24.1 Introduction

The tribunal has found on the evidence before it that many of the claimants' grievances arising out of the eight Crown purchases, including those relating to mahinga kai, have been established. Indeed the Crown has properly conceded that it failed to ensure Ngai Tahu were left with ample lands for their present and future needs. The tribunal cannot avoid the conclusion that in acquiring from Ngai Tahu 34.5 million acres, more than half the land mass of New Zealand, for £14,750, and leaving them with only 35,757 acres, the Crown acted unconscionably and in repeated breach of the Treaty of Waitangi. The evidence further establishes that subsequent efforts by the Crown to make good Ngai Tahu's loss were few, extremely dilatory, and largely ineffectual. As a consequence Ngai Tahu has suffered grave injustices over more than 140 years. The tribe is clearly entitled to very substantial redress from the Crown. The Crown has publicly acknowledged that where breaches of the Treaty by the Crown have occurred resulting in loss to Maori it is, in the words of Sir Ivor Richardson in the *New Zealand Maori Council* case, "required to take positive steps in reparation". The Crown's obligation to effect redress in this case is indeed a heavy one.

The tribunal was advised by both the claimants and the Crown that they did not wish us to formulate a comprehensive set of recommendations as to the relief which should be provided by the Crown. While it was recognised that the tribunal would wish to make recommendations on some specific matters (as we have done in respect of pounamu for example), the parties preferred that they should enter into direct negotiations with each other. These negotiations would be on the basis of the tribunal's findings of fact and its consequential findings of breach of Treaty principles. For its part, the tribunal has been happy to accept this proposal. Indeed it believes it to be the preferable course to be followed. But, as will be later indicated, the tribunal will wish to be informed of the progress of such negotiations and will be prepared to give further consideration to the question of remedies should one or both parties so request. However, having said this, the tribunal proposes at this stage to indicate in a very general

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way the various forms of redress which it believes the parties will wish to consider.

24.2 **Restoration of Ngai Tahu's Tribal Mana**

It is clear that if the Crown is to meet its Treaty obligation to redress its numerous and longstanding breaches of the Treaty it must restore to Ngai Tahu their rangatiratanga and hence their mana within the Ngai Tahu whenua. This extends over the greater part of Te Wai Pounamu, of which Ngai Tahu were and remain the tangata whenua.

It is equally clear that the restoration of Ngai Tahu rangatiratanga will, in today's circumstances, need to take various forms. Given the expressed wish of the parties to negotiate directly on the specific forms of redress, the tribunal proposes to comment in a general way only. It has earlier made a limited number of formal recommendations for redress on discrete matters, where this seemed appropriate or was sought by the parties.

Perhaps we should observe at the outset of this discussion that, given the nature and magnitude of the losses sustained by Ngai Tahu, no redress made almost a century and a half later will fully compensate the claimants. Generations of Ngai Tahu have suffered as a consequence of Crown Treaty breaches. Virtually all the valuable land has long since passed into private hands. Irreparable damage has been done to Ngai Tahu mahinga kai resources. And so a fair, just and practical settlement is likely to be based on a mixed set of remedies which reflect not only the nature and extent of the grievances but present day realities.

24.3 **Need for Appropriate Tribal Structures**

Because reparation is likely to be to the tribe, it is clear that there must be appropriate tribal structures to control and administer tribal assets, whether money, lands or other property. The tribunal understands that in June 1990 in anticipation of the passage of the Runanga Iwi Act 1990 the tribe constituted the Runanganui o Tahu. We assume the new runanganui will be incorporated under the recently enacted Runanga Iwi Act 1990. If so, it will have the necessary legal status to act on behalf of the Ngai Tahu people. The runanganui's charter will no doubt provide for its accountability to the various Ngai Tahu hapu.

The chairperson of the claimant trust board, Mr O'Regan, has stated publicly that the Ngai Tahu Maori Trust Board in its present form is not an appropriate vehicle to deliver what is going to be required next century (see *Waitangi: Maori and Pakeha Perspectives of the Treaty of Waitangi*, edited by I H Kawharu, p 255). He currently envisages a central tribal governing structure which will service the

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regional tribal communities through a network of regional offices. Mr O'Regan says that the proposal is for a runanganui elected by the tribal runanga which will hold the tribal assets as trustee and will decide matters of tribal policy. Mr O'Regan sees the trust board as being the executive arm of the tribe and accountable to the runanganui. He emphasises however that other tribal administrative structures, involving possible division into autonomous regions, are also being considered.

No doubt there will be further tribal debate on this question which is not a matter for either this tribunal or the Crown to determine. It is however important that if negotiations for remedies are to be satisfactorily conducted, there should first be resolution by Ngai Tahu of their internal structures. The tribunal was informed by the claimants that that process is under way.

24.4 **Need for Consultation**

The tribunal, in its discussion of mahinga kai in chapter 17, stressed the need for a marked improvement in the processes of consultation by the Crown and local authorities with Maori, including Ngai Tahu. The tribunal particularly emphasised the need for discussion on proposed policy changes between central and local government officials and Maori on marae. This discussion should take place on matters affecting Maori while policy is still in the formative stage, to ensure adequate Maori input. We do not propose to repeat our detailed discussion in (17.6.10).

While the tribunal was there chiefly concerned with consultation on environmental matters, we emphasise that the need for adequate consultation extends to a wider range of social, economic and cultural matters of particular significance to Maori. We were pleased to note in the submissions of the SOEs who gave evidence, willingness to enhance their level of consultation with Ngai Tahu. The director-general of the Department of Conservation gave a similar assurance.

The tribunal is concerned that whilst affirmative statements of intention to consult may be expressly made and intended by representatives of government departments, it does not always follow that these proposals are implemented.

The claimants' counsel, at a recent hearing in Wellington called to discuss future timetabling for the sea fisheries claim, informed the tribunal that the Department of Conservation, in moving to establish a draft coastal planning scheme have not involved the iwi. Ngai Tahu's standing has not been recognised by the department and the trust board is not being heard on this important measure.

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If consultation offers are to be effective and meaningful there should be a clear effort made to involve Ngai Tahu in every aspect of environmental planning. It is apparent to the tribunal that statutory intervention, as proposed earlier by the tribunal in this report, is needed to ensure Maori participation in local regional council planning as well as national environmental policies.

24.5 **A Diversity of Remedies**

24.5.1 As we have indicated, the remedies sought by Ngai Tahu are likely to take several forms. While we have not received detailed submissions from the claimants on the total range of remedies they might seek from the Crown, we are aware of their interest in various forms.

In seeking to re-establish their rangatiratanga Ngai Tahu expect to have land returned to them. The tribunal agrees with this view. There is adequate land held by the Crown and state-owned enterprises to enable land settlement to feature in any remedy. Ngai Tahu made clear, for instance, their interest in land held under pastoral leases from the Crown. Perhaps understandably the pastoral lessees opposed the suggestion that the Crown should transfer its interest in some or all of this land to Ngai Tahu. They stressed their view that the returns by way of rent to the Crown do not fully compensate the Crown for its expenses in administering the leases. This includes regular scrutiny of the land-use by lessees and a responsibility to ensure that conservation and environmental values are maintained or enhanced. Ngai Tahu might well respond that the Crown could continue to assist in these matters notwithstanding the transfer of the ownership of the land to Ngai Tahu. We heard from the Ngai Tahu people of past degradation of the environment following European settlement. The tribunal has no reason to believe that, were the Crown title to pastoral leasehold land to be vested in Ngai Tahu, they would be other than sensitive and caring for the proper conservation of this high risk land. With goodwill on all sides a workable solution should be possible.

24.5.2 Several witnesses, notably the Federated Mountain Clubs, discussed the possibility that some national parks in the South Island might be vested in Ngai Tahu. Dr Deane, for the Electricity Corporation, referred to the particular interest of Ngai Tahu in Lakes Pukaki, Ohau and Tekapo. Dr Deane made it clear that the Electricity Corporation had no wish to own the beds of these lakes. A number of the South Island national parks include mountains, lakes and landscape of particular spiritual value to Ngai Tahu. They are the repository of much Ngai Tahu mythology and tradition. Restoration of their ran-

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gatiratanga would seem unfulfilled were the return of some at least of these treasured natural features denied to Ngai Tahu.

However, Ngai Tahu have made it clear that they have no wish to change the essential character of national parks. The opposition of the Federated Mountain Clubs to any such public lands being vested in Ngai Tahu appears to be based on an apprehension that the public's access to such lands might be restricted and that fees might be charged for entry were Ngai Tahu to become the owners. These and any other concerns would be matters for negotiation between Ngai Tahu and the Crown. It seems unlikely that a reasonable solution could not be found which suitably recognised the public interest in these lands, should some be restored to Ngai Tahu ownership.

There is provision in section 439 of the Maori Affairs Act 1953 for the setting apart of any Maori freehold land or general land for the purposes of a reserve or place of historical or scenic interest or for any other specified purpose.

Section 439(12) permits constitution of a Maori reservation to be held for the common use and benefit of the people of New Zealand.

Trustees representing the public user can be appointed as trustees along with Maori Trustees to administer the reserves. There are a number of these reserves already in existence. Transfer of ownership, or should it perhaps be stated more aptly, return of ownership to Maori, need not affect public use. Section 439 could also be further extended to provide procedures for partnership management.

- 24.5.3 As we have seen, counsel for Landcorp contemplated that some lands presently owned by the corporation might be transferred into Ngai Tahu ownership. He pointed out, however, that most, if not all, of the South Island lands vested in Landcorp are marginal economic units unsuitable for individual ownership. But, should they be resumed by the Crown for transfer to Ngai Tahu, Landcorp would be entitled to compensation under the provisions of the Treaty of Waitangi (State Enterprises) Act 1988. Rather than see Ngai Tahu struggling with such properties, the corporation supported the suggestion that Ngai Tahu, not Landcorp, should receive the compensation so that Ngai Tahu could find land better suited to their own needs.

Again, these are matters for negotiation between the parties should Ngai Tahu wish to pursue this particular remedy.

- 24.5.4 Several state-owned enterprises, including Landcorp, Forestcorp and Electricorp, now hold substantial interests in former Ngai Tahu territory. These have been transferred to them by the Crown. The

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shares in these SOEs are at present wholly owned by the Crown. It may be that as part of a negotiated settlement it would be reasonable for an appropriate interest in one or more SOE involved in the Ngai Tahu whenua to be assigned to Ngai Tahu by the Crown. The basis on which such an interest was assigned would be a matter for agreement between Ngai Tahu and the Crown.

24.5.5 In chapter 14 the tribunal has discussed the claimants' grievances in respect of the West Coast leases in perpetuity. We have found that these leases were imposed on Ngai Tahu in breach of the Treaty and that Ngai Tahu are entitled to redress. The government has had these and similar leases under consideration for some time, with a view to finding an appropriate form of remedy for the greatly disadvantaged Maori owners. The tribunal considers that a satisfactory solution must be found to this serious grievance as part of a comprehensive settlement.

24.5.6 Ngai Tahu have a natural and understandable desire to have returned to them a substantial interest in the land they once owned. The restoration of their rangatiratanga depends upon this happening. But it is clear that the land which remains in the possession of the Crown, whether high country pastoral leasehold land, national parks, or other land still vested in the Crown or Landcorp, would not provide Ngai Tahu with an economic base. Such land as is being farmed is either marginal or, in the case of the high country pastoral lease land, has a high conservation component. The value of the remainder lies in its scenic, recreational, environmental and wilderness qualities. In addition it has special and unique value to Ngai Tahu as tangata whenua. While, therefore, the return of part of this land is of importance to Ngai Tahu, its importance is as much intangible as tangible.

Yet it cannot be disputed that, as a result of the Crown's numerous Treaty breaches, Ngai Tahu has suffered grievous economic loss. Moreover much of this loss has persisted for a century or more. Ngai Tahu is plainly entitled to very substantial compensation over and above any or all of the foregoing forms of redress. Such compensation would necessarily have to be financial. It would need to be sufficiently substantial to enable Ngai Tahu, now a numerous tribe, to be able significantly to enhance the social, educational and economic well-being of its people. Whether the tribe opts for the purchase on the open market of viable farm properties in suitable locations, or for the establishment or purchase of commercial ventures offering employment opportunities for its people, or for other forms of investment or economic activity, or for a combination of some or all of these, is of course for Ngai Tahu to decide. The tribunal is conscious of the fact that Ngai Tahu, up to 1844, owned more than half the land mass

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of Aotearoa, yet only 20 years later it had been reduced to less than 38,000 acres. The serious and repeated breaches of the Treaty of Waitangi which so reduced Ngai Tahu to near landlessness have yet to be redressed. Ngai Tahu's loss has been great and continuing. The honour of the Crown can only be restored by a settlement which recognises the magnitude of Ngai Tahu's great deprivation, sustained over more than a century. Only a large and generous response by the Crown will suffice to redress the wrongs done to Ngai Tahu and lay their numerous grievances to rest. No less will serve to restore the honour of the Crown.

24.6 Financial Assistance to Ngai Tahu in Their Negotiations with the Crown

24.6.1 Although significant financial assistance has been made available by government towards legal and research expenses incurred by Ngai Tahu in the prosecution of its claims, the tribe has been obliged to expend substantial additional sums. In the result, the Ngai Tahu Trust Board, which has borne the brunt of the financial burden, is sorely pressed financially.

Tribunal's recommendations

24.6.2 The tribunal is conscious that the negotiations with the Crown which will follow the release of this report on the land claims will be lengthy and intricate. Ngai Tahu will require the services (among others) of experts in accounting, taxation, valuation and law. Such professional services, given the likely magnitude and complexity of the matters in issue, will be very costly. It is not easy to estimate the likely sum involved. The tribunal is satisfied that necessary professional services will cost at least \$1 million. This may well be an underestimate. The tribunal recommends that a sum of not less than \$1 million be made available to Ngai Tahu to enable it to engage the necessary professional and related administrative services to prosecute its negotiations with the Crown.

24.6.3 The tribunal is hopeful that in a spirit of goodwill and with a commitment on the part of the Crown to act justly and generously towards Ngai Tahu, a settlement satisfactory to both parties will be reached without undue delay. At the end of twelve months following the release of this report the tribunal would expect to receive a report from the parties as to the progress made towards achieving a settlement. If at any time the parties are unable to reach agreement on the whole or any part of matters in issue, the tribunal would be amenable to setting a date for hearing the parties on the question of remedies and to make appropriate recommendations. The tribunal expresses the hope that this contingency will not arise and that the parties in

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the spirit of partnership are able to arrive at a mutually acceptable settlement.

24.7 **Reimbursement of Costs**

24.7.1 At the conclusion of its final hearing on 10 October 1889, the tribunal received from the claimant Henare Rakihiia Tau a statement of costs claimed by him in prosecuting his claim. The claim detailed time involved of 5561 hours costed out at \$31 per hour and totalling \$172,391, together with travelling costs of \$14,525 also detailed, making a total amount of \$186,916. From this sum Mr Tau had deducted \$13,040 paid to him by the trust board, making a net sum claimed of \$173,876. The period covered by the statement was from July 1986 to August 1988 inclusive.

Mr Tau stated that during this period his employment with the meat industry was interrupted and his claim was based on the then ordinary employment rate of \$31 per hour.

24.7.2 The tribunal also received from the Ngai Tahu Maori Trust Board through its secretary, Mr S N Ashton, a chartered accountant in public practice in Christchurch, a detailed schedule of costs directly incurred by the board in respect of its involvement in the claim up to 6 October 1989. The total sum claimed was \$399,168.

24.7.3 The tribunal has no statutory power to award costs. The tribunal however has considered both the above claims with a view to making recommendations to government.

Dealing first with claimant Mr Tau's application, although the tribunal accepts that Mr Tau has incurred expenses and may also have suffered loss of employment, the tribunal is reluctant to recommend reimbursement of an individual claimant's costs. Although Mr Tau has brought the claim and has taken a significant part in its preparation and presentation the grievance itself is substantially on behalf of the tribe. Ngai Tahu as a tribal group in these proceedings has been represented by the trust board.

The legal costs of Mr Tau as well as the research and administrative costs in presentation have been met by the trust board and substantially refunded to the board by grants made pursuant to appointments and commissions authorised by sections 7A and clause 5A (second schedule) of the Act. To this extent Mr Tau has not been called upon to meet any legal or research costs other than his own time. The tribunal notes that a number of tribal members have been involved in the presentation of this claim and considers it would be inappropriate to reimburse an individual claimant even though that person may have made a major contribution and even though the claim

The Crown and Ngai Tahu Today

is brought in his name under the statutory prescription. The tribunal considers that reimbursement of an individual's expenses must be looked at in the circumstances of each case before it. If the grievance is personal to an applicant and well-founded there may be justification for the tribunal to consider reimbursement. On the other hand if a grievance is really brought on behalf of iwi or hapu the tribunal should regard the claim as such and consider the position of the tribal group rather than the individual.

Without encroaching into the area of iwi or hapu discretion it may well be that the iwi or hapu itself might take some steps to reimburse costs and expenses incurred by any of its members. The tribe generally is in the best position to know the respective contributions of its members. This decision may well be looked at with disappointment by Mr Tau but the tribunal considers there is a need for the tribunal to assess its position having regard to all claims that might be brought before it. There is no doubt that Mr Tau has taken a major role in this case. He has served Ngai Tahu well.

- 24.7.4 The tribunal has examined the schedule of costs prepared by the trust board's accountants and is satisfied these reflect the direct costs incurred by the board over the period of the claim.

As earlier noted, the board's financial position has been placed in a precarious position as a direct result of the extraordinary expenses incurred. The board has made several requests during the claim for financial assistance but the tribunal deferred making any recommendation to government until the report on the major claims was completed. The trust board has consequently been obliged to tread most cautiously in managing its affairs. The reimbursement which the board now seeks are the actual costs of the claim. The total sum involved up to 6 October 1989 is \$399,168.

The tribunal, as the report confirms, considers that the Ngai Tahu claim is well-founded and that justice requires the tribunal to recognise the tribe's request for refund of its actual expenses.

- 24.7.5 Accordingly there is a recommendation that the Crown reimburse to the Ngai Tahu Maori Trust Board the sum of \$399,168 in repayment of costs incurred by the board as set out in its statement presented to the tribunal on 13 November 1989.

Chapter 25

Tribunal Recommendations

25.1 Introduction

In this chapter the tribunal sets out its recommendations made pursuant to section 6(3) of the Treaty of Waitangi Act 1975 on five matters only.

The tribunal also makes a number of other recommendations which although not directly arising from or remedying breaches of the Treaty nevertheless flow from the tribunal's inquiry and need to be addressed by the Crown.

As stated earlier in this report the tribunal at the commencement of the claim was urged by both the claimants and the Crown to make findings on the issues and to determine whether there had been breaches of any Treaty principles. We were asked to defer the question of remedies. We agreed to that course for two reasons. First, it obviated possible waste of time in both parties addressing remedies prior to the tribunal establishing whether breaches had occurred. Secondly, and more importantly, it gave the parties an opportunity, after having received the tribunal's findings, to negotiate a settlement.

The tribunal did however reserve the right to make recommendations on matters of urgency or in those cases it deemed appropriate. To that extent therefore the following recommendations are preliminary and limited. It may be necessary for the tribunal to come back to this question later should the parties fail to reach a settlement. The question of remedies is therefore reserved.

The recommendations are listed in the same chronological order as the grievances to which they relate. The reference given at the end of each recommendation is to the relevant section of the report.

25.2 Recommendations Pursuant to Section 6(3)

Pounamu:

1 That to remove doubts as to the ownership of the pounamu in or on the land described in section 27(6) of the Maori Purposes Act 1976 the Crown take appropriate legislative action to vest all such

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pounamu in the Mawhera Incorporation or such other body as may be nominated by Ngai Tahu.

2 That section 27 of the Maori Purposes Act 1976 be amended so as to vest the beds of all tributaries of the Arahura River in the Mawhera Incorporation or such other body as may be nominated by Ngai Tahu.

3 (a) That the Crown, after consultation with Ngai Tahu, negotiate for the purchase of a reasonable amount of land on either side of the Arahura River and its tributaries to their respective sources. Such land to include the banks of the rivers and to be sufficient in area to include any changes in course of such rivers and to provide access to reasonable quantities of pounamu where such may exist in or on such adjacent land.

(b) That the Crown transfer ownership of all such land so acquired and any such land already owned by the Crown to the Mawhera Incorporation or such other body as may be nominated by Ngai Tahu.

4 That the Crown transfer ownership and control to Ngai Tahu or such other body as may be nominated by Ngai Tahu (including the right to mine) of:

(a) all pounamu owned by it in land within the boundaries described in the Arahura deed of purchase dated 26 May 1860, other than any pounamu already vested in Ngai Tahu or which is vested in Ngai Tahu pursuant to our recommendations numbered 1 to 3; and

(b) all other pounamu owned by it in the Murihiku and all other blocks purchased from Ngai Tahu by the Crown.

Such transfers to be subject to the condition that all existing mining or other licences should run their normal course, to ensure that the holders of such licences are not adversely affected.

5 (a) That the Crown pursuant to section 7 of the Mining Act 1971 by order in council declare in respect of all pounamu which is the property of proprietors of privately owned land on or under the land in the districts described in the preceding paragraphs 4(a) and (b), that pounamu on or under such land shall be prospected for or mined only pursuant to the said section 7.

(b) An appropriate amendment should be made to the Mining Act that no prospecting, exploration, mining or other licence relating to pounamu shall be granted under that or any other Act to any person or body other than Ngai Tahu or such other body or person as may be nominated by Ngai Tahu (13.5.31).

Tribunal Recommendations

Mawhera perpetual leases

6 That the Maori Reserved Land Act 1955 be amended so that the leases prescribed in that Act will:

- (a) Over two 21-year lease periods convert to term leasehold those lands subject to the leases prescribed in the above Act;
- (b) Immediately change from a fixed percentage rental basis to one of a freely negotiated rental subject to the Arbitration Act; and
- (c) Immediately change the present rental review period of 21 years to a rental review period of 5 years in respect of commercial and rural land and 7 years in respect of private residential land (14:9:7).

7 That the lessees be reimbursed by the Crown for any provable loss suffered by them as a result of the legislative changes recommended above (14:9:7).

Waihora (Lake Ellesmere)

At the option of the claimants either:

8 (a) That the Crown vest Waihora for an estate in fee simple in Ngai Tahu and contemporaneously enter into a joint management scheme with Ngai Tahu which would include such matters as:

- (i) controlling the opening of the lake to improve the fishery; and
- (ii) improving water quality by controlling bird population and use of land margins around the lake, control of lake usage and control of sewage disposal. The joint management scheme binding the Crown to provide financial, technical, scientific and management resources;

or

8 (b) That the Crown, in manner similar to the Titi Islands, vest beneficial ownership of Waihora in Ngai Tahu but remain on the title as trustee. The Crown then, in consultation with the beneficial owners, to make regulations for the future control and management of the lake in manner similar to the Titi Islands regulations and to provide the resources of the kind mentioned in the first alternative to improve the fishery and water quality (17.5.2).

Wairewa (Lake Forsyth)

9 That the existing fisheries regulations giving Maori exclusive eel fishing rights over Wairewa be amended to substitute “Ngai Tahu” for “Maori” so as to return the rights to the tribe.

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10 That the same regulations be amended to give Ngai Tahu exclusive rights to fish the waters leading into the lake and to cancel any other existing licences.

11 That an area of land be reserved around the eel trenches at the southern outlet which will secure Ngai Tahu rights of access.

12 That a management plan be prepared, involving Ngai Tahu as part of the decision making process along with the Department of Conservation, Regional Authority, Ministry of Agriculture and Fisheries, for the improvement of the water quality with the Crown providing the same resources as recommended in respect of Lake Waihora (17.5.3).

Financial Assistance to Ngai Tahu

13 That a sum of not less than one million dollars be made available to Ngai Tahu Trust Board to enable it to engage the necessary professional and related administrative services to prosecute its negotiations with the Crown on the question of remedies (24.6.2).

14 That the sum of \$399,168 being the costs incurred by Ngai Tahu Maori Trust Board up to 6 October 1989 in the preparation and presentation of its claim to the tribunal and as set out in a statement filed on 13 November 1989 be reimbursed by the Crown to the Trust Board. (24.7.4)

25.3 **Other recommendations**

1 *Whenua Hou (Codfish Island)*

That subject to prior notification and to arrangements with conservation authorities, free access be available to Rakiura Maori to visit the island but consistent at all times with the security of the wild-life on the island (15.7.4).

2 *Crown Titi Islands*

That beneficial ownership of the Crown Titi Islands be vested in such persons or bodies as may be nominated by Ngai Tahu and be subject to similar management regime as the beneficial Titi Islands (17.5.4).

3 *Pingao*

That the question of reserving the pingao plantation for Ngai Tahu on Kaitorete Spit be brought to the notice of the Minister of Conservation for consideration and action. (17.5.5)

4 *Consultation in environmental matters*

That remedial action be taken by government in these four fields:

Tribunal Recommendations

- (a) amendment to statutes to ensure that Maori values are made part of the criteria of assessment before the tribunal or authority involved;
- (b) proper and effective consultation with Maori before action is taken by legislation or decision by any tribunal or authority;
- (c) representation of Maori on territorial authorities and national bodies; and
- (d) representation of Maori before tribunals and authorities making planning and environment changes (17.5.8).

Epilogue

And so a little over four years after the presentation of this claim to the tribunal we have completed our examination of the major land grievances of Ngai Tahu and their loss of mahinga kai.

It has been quite an experience and for all those who took part there will be unforgettable moments; some awesome, such as the sudden rush of wind at the church service at Kaiapoi pa; some poignant, such as the lament of Hana Morgan at Te Aroha marae; some heart-warming, such as the planting of three trees by the Crown, the claimants and the tribunal at Tuahiwi and the subsequent presentation and hoisting of the Red Ensign with Tuahiwi emblazoned across it. Perhaps most memorable of all, the poroporoaki and the satisfaction and relief of Ngai Tahu at the knowledge they had completed the trust reposed in them.

We have already paid tribute to the people of Ngai Tahu for their graciousness and hospitality. We have also commended counsel and the researchers for their diligence and fairness. This tribunal must place on record however its recognition of the outstanding research, administrative and organisational support given to this tribunal by Dr Michael Belgrave, research manager, and his small team of tribunal staff. Dr Belgrave's contribution and the assistance he has so willingly given to the claimants, the Crown and all those people who have wished to place their views before this tribunal are well known to those persons and deeply appreciated by them.

In accordance with section 6(5) of the Treaty of Waitangi Act 1975, the registrar is directed to serve a sealed copy of this report on:

- (a) The claimants, Henare Rakiihia Tau and the Ngai Tahu Maori Trust Board
- (b) Minister of Maori Affairs
 - Minister of Justice
 - Minister of Conservation
 - Minister of Mining
 - Minister for the Environment
 - Minister of Fisheries
 - Minister of Lands
 - Minister of State-Owned Enterprises
 - Solicitor General

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- (c) J L Marshall for New Zealand Fishing Industry Board
T J Castle for New Zealand Industry Association
- (d) Federated Farmers of New Zealand

DATED at Wellington this 1st day of February 1991.



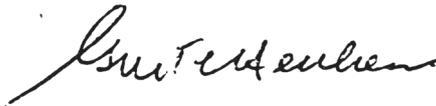
A G McHugh, presiding officer



M T A Bennett, member



M E Delamere, member



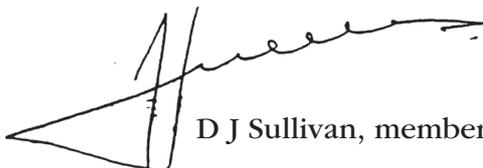
G M Te Heuheu



I H Kawharu, member



G S Orr, member



D J Sullivan, member



Waita

Waita

Ka hoki tonu mai au
Ki a koe Ngai Tahu
Ki te whakarongorongo
Ki te wherawhera
I o Poutini Pounamu

Kua hahaea te ata
I runga o Rekohu
Tirotiro noa ana
Poua ma
Ka ngaro koutou i runga
I o Otautahi

E tangi te Hakuwai
I runga i o Moutere
Whakamatakutaku ana au
Te Kaitiaki nga titi
Nga Mahinga Kai

E tama ma
I mua o te Honore
Whakaitiiti iho ra
Pupuritia ko Te Tokotoru

E Hine, e Shonagh
Ko koe te ngakau nui
Tangi whakaroto ake nei
Te arohanui hei hoa
Haere rerenga

Makahuri e tu
Kua mutu te nohotanga
Te Matua Whakarite mai tatau
Homai nga kororero
Te kupu Tapu
Mo tenei ra

Appendix 1

The Treaty of Waitangi

The Text in Maori

KO Wikitoria, te Kuini o Ingarani, i tana mahara atawai ki nga Rangatira me nga Hapu o No Tirani [sic] i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga, me to ratou wenua, a kia mau tonu hoki te Rongo ki a ratou me te Atanoho hoki kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira hei kai wakarite ki nga Tangata maori o Nu Tirani-kia wakaetia engā Rangatira maori te Kawangatanga o te Kuini ki nga wahikatoa o te Wenua nei me nga Motu-na te mea hoki he tokomaha ke nga tangata o tona Iwi Kua noho ki tenei wenua, a e haere mai nei.

Na ko te Kuini e hiahia ana kia wakaritea te Kawangatanga kia kaua ai nga kino e puta mai ki te tangata Maori ki te Pakeha e noho ture kore ana.

Na, kua pai te Kuini kia tukua a hau a Wiremu Hopihona he Kapitana i te Roiara Nawi hei Kawana mo nga wahi katoa o Nu Tirani e tukua aianeī, amua ki te Kuini e mea atu ana ia ki nga Rangatira to te wakaminenga o nga hapu o Nu Tirani me era Rangatira atu enei ture ka korerotia nei.

Ko te Tuatahi

Ko nga Rangatira o te Wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu – te Kawangatanga katoa o o ratou wenua.

Ko te Tuarua

Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira ki nga hapu – ki [nga] tangata katoa o Nu Tirani te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te Wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te Wenua – ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

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Ko te Tuatoru

Hei wakariteta [sic] mai hoki tenei mo te wakaaetanga ki te Kawanatanga o te Kuini-Ka tiakina e te Kuini o Ingarani nga tangata maori katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.

(Signed) WILLIAM HOBSON,

Consul and Lieutenant-Governor

Na ko matou ko nga Rangatira o te Wakaminenga o nga hapu o Nu Tirani ka huihui nei ki Waitangi ko matou hoki ko nga Rangatira o Nu Tirani ka kite nei i te ritenga o enei kupu, ka tangohia ka wakaaetia katoatia e matou, koia ka tohungia ai o matou ingoa o matou tohu.

Ka meatia tenei ki Waitangi i te ono o nga ra o Pepueri i te tau kotahi mano, e waru rau e wa te kau o to tatou Ariki.

Ko nga Rangatira o te wakaminenga.

Treaty of Waitangi 1975, First Schedule, as amended by Treaty of Waitangi Amendment Act 1985

The Text in English

HER MAJESTY VICTORIA Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorised to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those islands – Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorise me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

The Treaty of Waitangi

Article the First

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.

Article the Second

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess as long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

Article the Third

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

W HOBSON Lieutenant Governor

Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof: in witness of which we have attached our signatures or marks at the places and the dates respectively specified.

Done at Waitangi this Sixth day of February in the year of Our Lord One thousand eight hundred and forty.

[Here follow signatures, dates, etc.]

Treaty of Waitangi Act 1975, First Schedule

Appendix 2

Deeds of Purchase

- 2.1 OTAKOU 1844 – Maori/English
- 2.2 KEMP 1848 – Maori/English
- 2.3 PORT COOPER 1849 – Maori/English
- 2.4 PORT LEVY 1849 – Maori/English
- 2.5 MURIHIKU 1853 – Maori/English
- 2.6 HAMILTON'S AKAROA DEED 1856 – Maori/English
- 2.7 NORTH CANTERBURY 1857 – Maori/English
- 2.8 KAIKOURA 1859 – Maori/English
- 2.9 ARAHURA 1860 – Maori/English
- 2.10 RAKIURA 1864 – Maori/English

2.1. **Otakou, 31 July 1844**

1A 1 1885/2457 (Colonial Secretary, NZ, Inwards Letters), National Archives, Wellington. Otago 3, DOSLI, Heaphy House, Wellington

Kia Mohio, nga Tangata katoa ki Tenei Pukapuka, ko matou ko nga Rangatira me nga tangata o Ngaitahu i Nui Tireni kua tuhia nei o matou ingoa ki raro, ka wakaae i tenei rangi i te toru tekau ma tahi o nga rangi o Hurai i te tau o to tatou Ariki kotahi mano e waru rau e wa te kau ma wa; kia tukua, kia hoko; kia whakamahuetia rawatia mo Wiremu Wekepiri (William Wakefield) te tino kai mahi o te wakaminenga o Nui Tireni i Ranana mo nga kai wakarite o taua wakaminenga o matou wahi katoa to matou papa katoa i roto i nga wenua i roto i nga rohe kua tuhia nei ki raro, ko nga ingoa o aua wenua ko Otakou, ko Kaikarae, ko Taieri, ko Mataau, ko te Karoro, ko nga rohe enei, ka timata te rohe wakararo i Purehurehu haere tonu i tatahi wakawiti atu ki tawahi o te ngutu awa o Otakou ki Otupa, haere tonu i tatahi a Poatiri, ko te taha ki te haurawaho ko te moana nui haere tonu i Poatiri-a-Tokata, ko te taha ki toka ka haere tonu i reira a runga i te hiwi i Taukohu-a-Pohueroa haere tonu i runga i te hiwi i kaihiku wakawiti ki tawahi o Mataau, haere tonu i runga i te hiwi o Maunga-tua-a-i-runga i Wakaari-a-runga i Mihiwaka i te hiwi-a-Otuwarerau

Deeds of Purchase

-a-heke noa ki tatahi ki Purehurehu, me nga moutere katoa hoki, ka tukua e matou a Kamautaurua a Rakiriri a Okaihe, a Moturata, a Paparoa, a Matoketoke, a Hakinikini a Aonui. Tenei hoki nga wahi wenua kua kotia e matou mo matou mo a matou Tamariki ko tetahi wahi wenua i te taha wakawaho o Otakou ko Omate te ingoa, ka timata te rohe i moepuku wakawiti atu ki Poatiri haere tonu i tatahi-a-te Waiwakaheke ka wakawiti i reira ki Pukekura haere i tatahi a moepuku ko tetahi wahi wenua hoki kei Pukekura kotahi pea te ekara o roto kua poua ki te pou, ko tetahi wahi wenua hoki kei Taieri ka timata te rohe i onumia tika tonu te rohe a Maitapapa ko te awa o Taieri hoki te rohe o tetahi taha. Ko tetahi wahi hoki kei te Karoro ko te Karoro te rohe ki runga ko te moana nui te rohe wakawaho ko te rohe wakararo kei te kainga a kia kotahi te maera o te rohe wakauta. Ko enei wahi kua kotia e matou e kore e hokoa e retia ki tetahi tangata atu kia wakaae ra ano te Kawana o Niu Tirenī – Ko nga utu enei mo aua wenua kua wakahuatia ki runga, e ruai [sic] mano e waraua [sic] Pauna moni kua tangohia e matou i tenei rangi i te aroaro o enei kaititiro.

Hoani Tuhawaiki tana X tohu	Pokene tana X tohu
Hoani Tuhawaiki, X mo Topi	Te Kai Koarere tana X tohu
Pohau	Kihau tana X tohu
Kahuti tana X tohu	Kuru Kuru tana X tohu
Papakawa tana X tohu	Moko Moko tana X tohu
Tutewaiao	Korako Karetai tana X tohu
Raki Wakana tana X tohu	Te Haki tana X tohu
Taiaroa tana X tohu	Karetai tana X tohu
Korako tana X tohu	Taka Maitu tana X tohu
Te Raki tana X tohu	Horomona Pohio
Te Ao tana X tohu	Te Raki
Potiki tana X tohu	Tairoa, mo Pokihi X
Pohata tana X tohu	

Witnesses:

John Jermyn Symonds, P.M.
 Frederick Tuckett
 George Clarke, junior, Protr, Aborigines
 David Scott

Know all men by this document We the chiefs and men of the Ngaitahu Tribe in New Zealand whose names are undersigned consent on this thirty first day of July in the year of our Lord one thousand eight hundred and forty four to give up, sell, and abandon altogether,

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to William Wakefield the Principal Agent of the New Zealand Company of London on behalf of the Directors of the said Company all our claims and title to the Lands comprised within the under mentioned boundaries, the names of the said Lands are Otakou, Kaikarae, Taieri, Mataau, and Te Karoro. These are the boundaries – The northern boundary line commences at Purehurehu runs along the sea shore crossing the entrance of Otakou (Harbour) to Otupa, thence along the coast to Poatiri – the Eastern boundary is the ocean from Poatiri to Tokata, thence the southern boundary runs along the summit of Taukohu to Pohueroa – it then runs along the summit of Kauhiku range and crosses the Mataau river, thence along the summit of the Maungaatua range to Wakaari along the summit of Wakaari to Mihiwaka and Otuwareroa, thence it descends to Purehurehu on the sea coast – We also give up all the Island Kamautaurua, Rakiriri, Okaihe, Moturata, Paparua, Matoketoke, Hakinikini and Aonui – Excepting the following places which we have reserved for ourselves and our children that is to say a certain portion of Land on the eastern side of Otakou called Omate – the boundary line commences at Moepuku crosses over to Poatiri thence along the coast to Waiwakaheke then crosses to Pukekura and runs along the side of the harbour to Moepuku – also – a certain portion of Land at Pukekura the boundaries of which are marked by posts containing one acre more or less – also – a portion of Land at Taieri, the boundary line of which commences at Onumia and runs across in a straight line to Maitapapa, the Taieri river forms the other boundary, also a portion of Land at Te Karoro bounded on the south by the Karoro river, on the east by the ocean the northern boundary includes the village of that place and extends inland about one mile which said reserved places we agree neither to sell nor let to any party whatever without the sanction of His Excellency the Governor of New Zealand. – We have received as payment for the above first mentioned Lands the sum of one thousand [sic] and four hundred Pounds in money, on this day, in the presence of these witnesses.

A true translation – George Clarke Junior, Protector of Aborigines.

2.2. **Kemp, 12 June 1848**

Canterbury 1, DOSLI, Heaphy House, Wellington

English translation included in G Eyre to His Excellency the Governor in Chief, 5 July 1848, G7/1, National Archives, Wellington.

Wakarongo mai e nga iwi katoa. Ko matou ko nga Rangatira, ko nga tangata o Ngaitahu kua tuhi nei i o matou ingoa i o matou tohu ki tenei pukapuka i tenei ra i te 12 o Hune, i te tau tahi mano waru rau wha tekau ma waru ka whakaae kia tukua rawatia atu kia Wairaweke (William Wakefield) te Atarangi o te Whakaminenga o Niu Tireni e

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noho ana ki Ranana, ara ki o ratou Kaiwhakarite, o matou Whenua, o matou oneone katoa e takoto haere ana i te taha tika o tenei moana timata mai i Kaiapoi i te tukunga a Ngatitooa i te rohe hoki o Whakatu, haere tonu, tae tonu ki Otakou, hono tonu atu ki te rohe o te tukunga a Haimona, haere atu i tenei tai a te mouna [sic] o Kaihiku, a puta atu ki tera tai ki Wakatipu Waitai (Milford Haven) otira kei te pukapuka Ruri te tino tohu, te tino ahua o te whenua. Ko o matou kainga nohoanga ko a matou mahinga kai, me waiho marie mo matou, mo a matou tamariki, mo muri iho i a matou; a ma te Kawana e whakarite mai hoki tetahi wahi mo matou a mua ake nei a te wahi e ata ruritia ai te whenua e nga Kai Ruri – ko te nui ia o te whenua, ka tukua whakareretia mo nga Pakeha oti tonu atu.

Ko te Utu kua tukua mai mo matou e Rua mano pauna moni (2,000) e tuawhatia mai te utunga mai o enei moni ki a matou, utua mai kia matou inaianei, e Rima rau pauna (500), kei tera utunga e 500, kei tera atu 500, kei tera rawa atu e 500, huihuia katoatia, e 2,000.

Koia tenei tuhituhinga i o matou ingoa i o matou tohu, he whakaaetanga nuitanga no matou, i tuhia ki konei ki Akaroa i te 12 o Hune 1848.

Ko te tohu tenei o Taiaroa X	John Tikao
Maopo X	John Pere
Paora Tau X	Tiaki x
Tainui X	Ko Te hau
Koti X	Matiaha
Karetai	Ihaia
Pohau	Waruwarutu
Wiremu Te Raki	Taki
Solomon Pohio	Ko Rirawa
Te Whaikai Pokeno	Korehe
Rangi Whakana	Ko Te Poriohua
Potiki	Wiremu
Tiare Wetere	Ko Hape
Ko Tare Te haruru	Pukenui
Haereroa	Tuauwau
Tiraki	Tuahuru
Te Matahara	Te Hau
Manahe	
Ko te Uki	
Pukari	
By proxy Taiaroa &	
Solomon for Topi	
Kihau, son of Tuhawaiki	
& Te Korako.	

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Nga ingoa o te kai titiro –

Witnesses –

R.A. Olliver, Commander H.M.S. “Fly”

T. Bull, Lieutenant

John Watson, Resident Magistrate

Charles H. Kettle, J.P., Principal Surveyor, New Zealand
Company

H. Tacy Kemp, J.P., Commissioner

James Bruce, Settler

Know all men. We the Chiefs and people of the tribe called the “Ngaitahu” who have signed our names & made our marks to this Deed on this 12th day of June 1848, do consent to surrender entirely & for ever to William Wakefield the Agent of the New Zealand Company in London, that is to say to the Directors of the same, the whole of lands situate on the line of Coast commencing at “Kaiapoi” recently sold by the “Ngatitoo” & the boundary of the Nelson Block continuing from thence until it reaches Otakou, joining & following up the boundary line of the land sold to Mr Symonds; striking inland from this (The East Coast) until it reaches the range of mountains called “Kaihiku” & from thence in a straight line until it terminates in a point in the West Coast called “Wakatipu-Waitai” or Milford Haven: the boundaries & size of the land sold are more particularly described in the Map which has been made of the same (the condition of, or understanding of this sale is this) that our places of residence & plantations are to [be] left for our own use, for the use of our Children, & to those who may follow after us, & when the lands shall be properly surveyed hereafter, we leave to the Government the power & discretion of making us additional Reserves of land, it is understood however that the land itself with these small exceptions becomes the entire property of the white people for ever.

We receive as payment Two Thousand Pounds (2000) to be paid to us in four Instalments, that is to say, we have this day received 500, & we are to receive three other Instalments of 500 each making a total of 2000. In token whereof we have signed our names & made our marks at Akaroa on the 12th day of June 1848.

Signed

Here follow Forty Signatures

Witnesses signed

True translation H. Tacy Kemp

*Deeds of Purchase*2.3. **Port Cooper, 10 August 1849**

Canterbury 5, DOSLI, Heaphy House, Wellington

Whakarongo mai ra e nga tangata katoa; ko matou ko nga rangatira ko nga tangata o te Wakaraupo, (Port Cooper) ara, o nga wenua katoa e takoto ana i ia taha i ia taha o te Wakaraupo e mau nei te ahua, kua tuhi i a matou ingoa, i a matou tohu, he wakaaetanga mo matou mo a matou wanaunga, mo o matou tamariki, mo o matou uri katoa e whanau i muri iho ia matou kia tino tukua rawatia atu nga wenua katoa o matou e tuhia nei nga rohe, e mau nei te ahua ki tenei pukapuka tuku whenua kia Her Majesty the Queen of Great Britain, her heirs and successors, hei wenua tumau tonu iho mona, mo nga pakeha ranei e wakaaetia e ia, ara e His Excellency the Governor, kia tukua mo ratou aua wenua.

Ano te mea kua wakaae matou kia tukua rawatia atu o matou wenua e takoto nei i roto i nga rohe oneake nei tuhia, e wakaae ana Mr Mantell Commissioner for the Extinguishment of Native Claims, i runga i te mana kua tukua mai kia ia e His Excellency the Lieutenant Governor of the Province, kia utua matou ki nga pauna moni rua nei rau takitahi – kua riro mai nei kia matou i nga ringaringa o Mr Mantell, hei utunga wakamutunga rawatitanga mo aua wenua.

Na, ko nga rohe enei o nga wenua ka tukua tonutia e matou: ka timata te rohe wakauta i te ngutuawa o Opawa, ka haere atu ma te rohe i tuhi ai ki te kautu o te pukapuka tuku wenua a Mr Commissioner Kemp i te 12 o Hune 1848, a – haere tonu ma taua rohe puta tonu ki Waihora: ko te rohe wakawaho ka timata ki Kaitara, a haere tonu ma te Pohue, a, ma te hiwi a te Ahupatiki a, puta tonu ki Waihora ki te wakamarotanga, taua maunga ki Kuhakawariwari; otira ki te pukapuka ruri te tino tohu te tini ahua o te wenua. A, ko te wenua katoa one nga aha noa iho o aua wenua e takoto ana i roto i enei rohe, haunga ano nga wahi i wakatapua mo matou e Mr Mantell, Commissioner, kua oti nei te tuku tonu atu.

Ko te wahi tuatahi e wakatapua nei mo matou ko te wahi wenua ki Purau, e iwa pea eka o roto i ruritia ai i a W. Octavius Carrington, Surveyor i wakaturia ai nga rohe kia Tiemi Nohomutu, kia Kautuanui kia Tami Tukutuku kia Tiemi Kokorau i te aroaro o Joseph Thomas Esq^{re} i te 25 o nga ra o Hurae 1849.

Ko te tuarua; ko nga rakau o te motu ngaherehere e huaina nei ko Motuhikarehu, kiuta atu o Purau, hei mahinga wahie mo matou, ko te wenua e hara ia hei a matou, hei te pakeha ano ia. I wakaturia ano taua wahi kia Tiemi Nohomutu ma e Mr Mantell Commissioner raua ko W. Carrington i te 26 o nga ra o Hurae 1849.

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Ko te tuatoru, ko te wahi wenua e huaina ana ko Rapaki, ko Taukahara; ko nga rohe enei i wakaturia ai ki nga tangata maori e Mr Carrington i te aroaro o Joseph Thomas Esq^{re} raua ko Mr Mantell, Commissioner: E timata ana kei te pou e tu ana ki te rae ki Otuherekio, ka haere ka piki mai te Hiwi ara, ma nga tohu i wakaturia ai e Mr Carrington a tae tonu ki runga ki te Upokookuri, a, haere tonu ana aua tohu, a, heke iho ma te hiwi ki te taha wakauta o Taukahara ma te pari e huaina ana ko Nohomutu, a, hono ki te awa iti ko Okaraki te ingoa, a tika tonu ma taua awa, a hono tonu ki te wai tai.

Otira ki nga kautu o Mr Carrington, te tino tikanga o aua rohe katoa.

Heioi, ko te wakamutunga rawatanga tenei o nga wahi e wakatapua mo matou i roto i te rohe mo Her Majesty the Queen of Great Britain a ko aua wahi e wakaae ana hoki a Mr Mantell, Commissioner, kia waiho hei wenua tumau iho mo matou, mo o matou uri i muri iho i a matou, ake tonu atu.

E wakaae ana hoki matou kia kua e hokona ki te pakeha aua wahi kua oti nei te wakatumau kia matou kia wakaae mai ra ano His Excellency the Governor.

Ano, e wakaae aha hoki matou kia kua e tukua he pakeha ki aua wahi noho ai kia wakaae mai ra ano His Excellency the Governor.

Ano, e wakaae ana hoki matou kia waiho tonu mo His Excellency the Governor te wakaaro mo nga ara ruri nui e wakaaetia a mua e His Excellency the Governor kia hanga, kia takoto marire ki roto i nga rohe kua oti nei te wakatapu tonu mo matou.

A, mo to matou wakaaetanga pono rawa ki nga tikanga katoa i roto i tenei pukapuka tuku wenua kua panuitia mai nei kia matou ka tuhia o matou ingoa me o matou tohu:- a, mo te wakaaetanga hoki a Her Majesty the Queen of Great Britain ki nga tikanga katoa i roto i tenei pukapuka ka tuhia hoki te ingoa o Mr Mantell, Commissioner for the Extinguishment of Native Claims.

I Oketeupoko, i te Wakaraupo (Port Cooper) no te ngahuru o nga ra o Akuhata, i te tau kotahi mano, ewaru rau, e wa tekau ma iwa i tuhia tenei pukapuka. 10 August 1849

ko nga ingoa o nga kai titiro

Charles. O. Torlesse
Octa Carrington
John Gebbie
John Bannister
Ngarongomate

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Kerere
L Fitch

Walter Baldock Durrant Mantell, Commissioner

Ko te tohu tenei X a Nohomutu
Tami Tukutuku
Ko te tohu tenei X a Tiemi Kokorau
Ko ra na wete
Ko Te tohu tenei X a Matiu Kurihia
Ko te tohu tenei X a Hape
Ko te tohu tenei X a te Rua
Ko te tohu tenei X a Poharama Ru
Ko te tohu tenei X a Maru
Ko te one Teuki
Ko te Pukenui
Ko Topi
Ko Kairakau
Ko te tohu tenei X a Tukaha
Ko Porokori
Ko te tohu tenei X o Apetara Kautuanui
Ko Tiakikai
Ko Tahea

Hearken all people; we the Chiefs and people of Te Wakaraupo (Port Cooper) that is to say of all the lands lying on either side of Te Wakaraupo, a plan of which is attached, have signed our names and made our marks in token of our consent, for ourselves, our relatives, our children and our descendants after us to cede finally all the lands, of which the boundaries are described in this deed of sale, to Her Majesty the Queen of Great Britain her heirs and successors as a lasting possession for her or for the Europeans who may be allowed by her, that is to say by His Excellency the Governor to become possessed of these lands.

And whereas we have agreed to cede finally our lands which are within the boundaries hereafter to be described, Mr Mantell, Commissioner for the Extinguishment of Native Claims by virtue of the powers vested in him by His Excellency the Lieutenant Governor of the Province agrees to pay of two hundred pounds, which we have received by the hands of Mr Mantell in final payment of the said lands.

Now these are the boundaries of the lands which we have finally ceded: the inland boundary commences at the mouth of Opawa thence along the boundary described in the plan attached to Mr Kemp's deed dated the 12th June 1848 to Waihora; the outer boundary commences at Kaitara, thence by Te Pohue, thence by the

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Ahupatiki ridge to Waihora following the line of the said mountain to Kuhakawariwari, but the survey plan will accurately shew the description of the land, and we hereby cede for ever all the land, with all belonging thereto, which lies within these boundaries excepting the portions reserved for Mr Mantell, Commissioner.

The first portion reserved for us is the land at Purau estimated to contain nine acres as surveyed by Mr Octavius Carrington Surveyor and as pointed out to Tiemi Nohomutu, to Kautuanui, to Tami Tukutuku and to Tiemi Kokorau in the presence of Joseph Thomas Esqre on the 25 July 1849.

The second: we are to have the use of the trees in the bush called Motuhikarehu for firewood, but the land is not for us but for the Europeans. That piece also was pointed out to Tiemi Nohomutu and others by Mr Mantell Commissioner and Mr Carrington on the 26 July 1849.

The third: the piece of land called Rapaki and Taukahara of which these are boundaries as pointed out to the Maoris by Mr Carrington in the presence of Joseph Thomas Esq^{re} and Mr Mantell Commissioner: Commencing at the post standing on the point at Otuherekio thence it runs up and along the ridge following the marks shewn by Mr Carrington and on to Te Upokookuri thence following these marks down by the ridge to the inland side of Taukahara thence along the cliff called Nohomutu to the small stream called Okaraki thence following the course of that stream to the sea.

All these boundaries are correctly shewn in the plan made by Mr Carrington.

These are the whole of the places reserved for us within the boundary for Her Majesty the Queen of Great Britain, and Mr Mantell Commissioner agrees that these places shall be permanent possessions for us and for our descendants after us for ever and ever.

We also agree not to sell to the Europeans those places which have been reserved for us without the consent of His Excellency the Governor; and we further agree not to allow Europeans to occupy these places without the consent of His Excellency the Governor and we further consent to leave to His Excellency the Governor the decision as to the main lines of road which His Excellency the Governor may hereafter agree to have made within the boundaries which are herein reserved for us.

And in token of our true consent to all the provisions contained in this deed of cession which has now been read over to us we sign our names and make our marks, and in token of the assent of Her Majesty

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the Queen of Great Britain to all the provisions contained in this Deed, the name of Mr Mantell Commissioner for the Extinguishment of Native Claims is hereunto affixed.

This deed was made at Oketeupoko, Te Wakaraupo (Port Cooper) on the tenth day of August one thousand eight hundred and forty nine.

[Here follow the signatures]

T G Young translator, Native Dept, 9 June 1871

2.4. **Port Levy, 25 September 1849**

Canterbury 2, DOSLI, Heaphy House, Wellington

Wakarongo mai ra e nga Iwi katoa ko matou ko nga Rangatira ko nga tangata katoa o nga wenua katoa e takoto haere ana i roto i nga rohe meake nei tuhia e mau nei te ahua, kua tuhi i a matou ingoa i a matou tohu hei wakaetanga mo matou mo o matou wanaunga mo o matou uri katoa e wanau i muri iho ia matou, kia tino tukua rawatia atu nga wenua katoa o matou e tuhia nei nga rohe, e mau nei te ahua ki tenei pukapuka tuku wenua kia Her Majesty the Queen of Great Britain her heirs and successors hei wenua tumau tonu iho mona mo nga Pakeha ranei e wakaetia e ia, ara, e His Excellency the Governor kia tukua mo ratou aua wenua. A no te mea kua wakaae matou kia tukua rawatia atu o matou wenua e takoto nei i roto i nga rohe meake nei tuhia e wakaae ana Mr. Mantell Commissioner i runga i te mana kua tukua mai ki a ia e His Excellency the Lieutenant Governor of the Province kia utua matou ki nga pauna moni e toru nei rau takitahi (300) kua riro mai nei kia matou i nga ringaringa o Mr. Mantell hei utunga wakamutunga rawatanga mo aua wenua. Na ko nga rohe enei o nga wenua ka tukua tonutia e matou; ka timata te rohe wakautu ki Kaitara – a haere tonu ma te Pohue a ma te hiwi a te Ahupatiki, a puta tonu ki Waihora ki te wakamarotanga o taua maunga ki Kuhakawariwari, ara ma te rohe wakawaho a Nohomutu ma; ko te rohe wakawaho ka timata kei Waihora kei Waikakhi ka haere a ma te tohu e tuhia i roto i te kautu ahua wenua e mau nei a hono tonu ki te waitai ki Pohatupa (Fly or Flea Bay).

Otira, kei te pukapuka ahua wenua e mau nei te tino tohu me te tino ahua o te wenua o nga rohe ano hoki. A ko te wenua katoa me nga aha noa iho o aua wenua e takoto ana i roto i enei rohe haunga ano te wahi i wakatapua mo matou e Mr. Mantell kua oti nei te tuku tonu atu. Ko te wahi tenei e wakatapua nei mo matou ko te wahi wenua kei Koukourarata; ko nga rohe enei o taua wahi i wakaaturia ana e Mr. Octavius Carrington, Surveyor raua ko Mr Mantell ki a Apera Pukenui, kia Himeona kia etahi atu o nga tangata o matou, a kua waitohungai ki nga pou kua pania hoki nga pohatu i te kokowai: – E timata ana taua

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rohe ki te pou kei te rae ko Pariahineteata te ingoa, ka piki i konei ka haere ma nga pou i poua ai e Mr Carrington a tae ki te pou e tu ana kei te Watamaraki, witi tika atu i reira ki te Upokoohinetewai, a, haere tonu ma te hiwi o te maunga, ara, ma nga tohu ki Kakanui a heke iho i reira ma te hiwi ara ma nga tohu ki te wai tai ki Puketi: Otira kei te pukapuka ahua wenua o Mr O. Carrington Surveyor te tino tikanga o taua rohe. Heoi, ko te whakamutunga rawatanga tenei o nga wahi e wakatapua mo matou i roto i te rohe mo Her Majesty the Queen of Great Britain a ko taua wahi e wakaae ana hoki a Mr Mantell Commissioner kia waiho hei wenua tumau iho mo matou mo a matou uri i muri iho ia matou, ake tonu atu. E wakaae ana hoki matou ki a kua e hokona ki te Pakeha taua wahi kua oti nei te wakatapu mo matou kia kua hoki e tukua ki Pakeha ki taua wahi noho ai kia wakaae mai ra ano a His Excellency the Governor. Ano e wakaae ana hoki matou kia waiho tonu mo His Excellency the Governor te wakaaro mo nga ara ruri nui e wakaetia a mua e His Excellency the Governor, kia hanga, kia takoto marire ki roto i nga rohe kua oti nei te wakatapu tonu mo matou. A ko nga mara katoa me nga kainga katoa e takoto ana i waho o te rohe mo matou hei tenei tau (1849) ano era katoa te wakarerea e nga tangata Maori kia watea ai te wenua; haunga ano nga ware me nga mara kei te Wakaroi (Pigeon Bay): a koia tenei te tikanga tenei mo aua wahi kei te Wakaroi (Pigeon Bay) ko nga mara e ngakia ana i naianei e tupu ana te kai i naianei me ngaki marie i tenei tau, i tera tau ano hoki a, hei te tau kotahi mano, e waru rau, e rima tekau ma tahi (1851) me wakarere katoa aua mara me aua kaika e nga tangata Maori kia watea ai te wenua mo te Pakeha kauraka hoki he mara hou e topea ki taua wahi kei te Wakaroi (Pigeon Bay). A mo to matou wakaetanga pono rawa ki nga tikanga katoa i roto i tenei pukapuka tuku wenua kua panuitia mai nei kia matou, ka tuhia i matou ingoa me o matou tohu; a mo te wakaetanga hoki a Her Majesty the Queen of Great Britain ki nga tikanga katoa i roto i tenei pukapuka ka tuhia hoki te ingoa o Mr Mantell Commissioner of the Extinguishment of Native Claims.

I Koukourarata i Port Levy no te rua tekau ma rima o nga ra o Hepitema i tuhia tenei pukapuka 1849.

Ko nga ingoa o nga kaititiro.

Octa Carrington

James Egan

Ngarongomate

Henere Kowa

Walter Mantell, Commissioner

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Apera Pukenui
Kairakau
Himiona
Na Puehu tenei X tohu
Na Kauoma tenei X tohu
Na Haimona Kaiparuparu tenei X tohu
Na Te Warerakau tenei X tohu
Tamati Pukurau
Na Ipika tenei X tohu
Na Wiremu Parata Te Atawiri tenei X tohu
Na Poharama Ruru tenei X tohu
Na Taoraki tenei X tohu
Peneahi te Pai
Na Timaru Tiakikai tenei X tohu
Na Waipuhuru tenei X tohu
Na Hokokai by Poharama tenei X tohu
Na Te Ao tenei X tohu
Ko Te Waipapa
Ko Hapaikete
Pohata by proxy by Apera
Rangiaupere
Na Tupeha tenei X tohu
Tamaakeke by proxy by Apera
Te Kapiti by proxy by Apera
Wi Karaweko by proxy by Apera
Na Pirimona

Hearken all the tribes. We the chiefs and people of all the land within the boundaries hereunder described and of which the plan is attached have signed our names and made our marks in token of the consent of us on behalf of our relatives and all our descendants to the final cession of all those of our lands whereof the boundaries are herein described and the plan attached unto this deed to Her Majesty the Queen of Great Britain her heirs and successors as a lasting possession for her or for Europeans who she, that is to say His Excellency the Governor, may allow to become possessed of these lands.

And whereas we have consented to give up entirely our land within the boundaries hereunder described Mr Mantell, by virtue of the power granted to him by His Excellency the Lieutenant Governor of the Province agrees to pay us the sum of three hundred Pounds (300) which we have received from the hands of Mr Mantell as a final payment for those lands.

These are the boundaries of the lands which we absolutely give up: The inland boundary commences at Kaitara, thence to Te Pohue and

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along the ridge to Te Ahupatiki, it comes out at Waihora following the ridge of that mountain to Kuhakawariwari, that is to say by the outer boundary of Nohomutu and his people; the outer boundary commences at Waihora at Waikakahi thence it goes as is shewn on the plan hereunto attached till it reaches the sea at Pohatupa (Fly or Flea Bay).

But an accurate description of the land and its boundaries is contained in the plan hereunto attached. And all the land together with the things belonging thereto within the boundaries (except the piece reserved for us by Mr Mantell) is hereby absolutely given up.

This is the portion reserved for us – the land at Koukourarata; these are the boundaries of that piece pointed out by Mr Octavius Carrington, Surveyor and Mr Mantell to Aperu Pukenui to Himiona and to others of our people, pegs have been put in to mark them and the stones have been marked with red ochre. That boundary commences at the pole on the bluff called Paniahinetatea, it strikes up from here and follows the poles put in by Mr Carrington till it reaches the pole at Te Watamaraki, thence straight across to Te Upokoohinetewai, thence along the Manukuia ridge thence as marked to Kakanui, it comes down there by the ridge thence as marked to the sea at Puketi. The boundary is, however, more fully described in the plan of the land made by Mr. Carrington. Well, this is the only reserve made for us within the boundary of Her Majesty the Queen of Great Britain, and Mr Mantell Commissioner consents to leave that as a lasting possession for us and our descendants after us for ever. We also agree not to sell to Europeans that piece which is reserved for us and not to allow any Europeans to live on that place without the consent of His Excellency the Governor. Also we consent to leave it to His Excellency the Governor to decide about the main lines of road which His Excellency the Governor may agree to make and lay off within the boundaries which have been reserved for us. And all the cultivations and all the places situate outside of the boundary for us are to be abandoned by the Maori in this year (1849) that the land may be clear, excepting the houses and cultivations at Te Wakaroi (Pigeon Bay). This is the arrangement in respect of these places at Te Wakaroi (Pigeon Bay) the cultivations now being worked upon and upon which crops are growing may be cultivated during this year and next year and in the year one thousand eight hundred and fifty one (1851) all those cultivations and all those kainga must be abandoned by the Maori in order that the land may be clear for the Europeans: no new cultivation is to be made in that place at Te Wakaroi (Pigeon Bay).

And in token of our true consent to all the covenants contained in this deed of conveyance which has now been read over to us we affix

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our names and marks; and in token of the consent of Her Majesty the Queen of Great Britain to all the covenants contained this deed the name of Mr Mantell Commissioner for the Extinguishment of Native Claims is hereunto affixed.

This document was written at Koukourarata, Port Levy on the twenty fifth day of September 1849.

2.5. **Murihiku, 17 August 1853**

Otago 1, DOSLI, Heaphy House, Wellington

Kia mohio mai nga Tauwi katoa; ko matou ko nga Rangatira me nga tangata katoa o nga whenua katoa e takoto haere ana ki roto ki nga Rohe kua tuhia kiraro, a, i riro mai kia matou no o matou Tupuna tuku iho kia matou, e mau nei hoki te Ahua, kua tuhi i o matou Ingoa i a matou tohu, hei Wakaaetanga mo matou ano, mo o matou Whanaunga, mo o matou Hapu me o matou Uri katoa e ora nei a ka whanau i muri iho i a matou, kia tukua rawatia atu o matou nei Whenua katoa kua whakaritea, kua tuhia nga Rohe a e mau nei hoki te Ahua ki tenei pukapuka tuku whenua kia Her Majesty the Queen of Great Britain Her heirs & Successors for ever hei Whenua tumau tonu iho mona mo nga Pakeha ranei e whakaaetia e ia ara e His Excellency the Governor kia tukua mo ratou. A no te mea kua wakaae matou kia tukua rawatia atu o matou nei whenua e takoto nei ki roto ki nga rohe kua tuhia nei kiraro, e wakaae ana Walter Mantell, Commissioner for Extinguishing Native Claims ta te mea kua tukua mai kia ia e His Excellency the Governor-in-Chief, te wakaaro ki te wakarite i te utu mo enei whenua, kia utua mai matou e ia ki nga pauna moni kia rua mano taki tahi (2000) Ko te tikanga o te utunga tenei, kia wehea nga moni nei kia rua nga tukunga; na ki te tukunga tuatahi kia kotahi mano pauna (1000) a, kia riro mai aua moni ki a matou ki Otakou kia rupeke mai ra ano ka takata; ko te tukuka tuarua kia kotahi mano pauna (1000) hei awarua tuku ai ki te marama e tae mai ai te moni. Na, ka huihuia katoatia nga moni e nga tukunga nei ka rite ki nga 2000 kua whakaritea ki waenga.

Na, ko nga Rohe enei o nga Whenua kua oti nei te tuku. Ka timata te rohe i Milford Haven (ko te ingoa o taua wahi ki to te Kepa pukapuka tuku whenua ko Wakatipu Waitai otira ki to te Maori ingoa ko Piopiotai,) haere atu i reira ki Kaihiku a, i reira haere atu ki Tokata, ina kia piri rawa ki nga rohe tawhito o te Kepa raua ko Haimona, ma te moana no Milford Haven haere atu ki Tokata, ara ko Tauraka, Rarotoka, me Motupiu me nga motu katoa e takoto tata ana ki takutai (kauaka Ruapuke ma) me nga Whenua katoa ki roto ki aua rohe, me nga Turanga me nga Tauranga, me nga awa, me nga roto, me nga ngahere, me nga Pakihi, me nga aha noa katoa ki roto ki aua wahi me

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aua mea katoa e takoto ana; Otira kei te pukapuka ruri kua oti te whakapiri ki tenei pukapuka te tino tikanga me te tino ahua. Ko nga whenua katoa me nga aha noa katoa, kua oti nei te tuhituhi kirunga a e takoto ana ki roto ki nga rohe kua wakaritea kirunga kua tukua rawatia atu kia Her Majesty the Queen ake ake ake. Otira ko nga wahi whenua i wakaritea e Mr Mantell i ruritia hoki e C. Kettle Esq. J.P. Government Surveyor ki Tuturau, Omaui, Oue, Aparima, Oraka, Kawakaputaputa, me Ouetota, e mau nei hoki nga tohu whika, 1, 2, 3, 4, 5, 6, 7, i pania hoki ki te ta ahua kohai, mo matou hei wenua tumau rawa mo matou, me o matou tamariki, ake, ake, ake: ka mutu o matou wahi ko enei kua wakahuatia nei hoki nga ingoa, E whakaae ana hoki matou kia kaua e hokona aua wahi kua oti nei te wakatumau kia matou, kia wakaae mai ano His Excellency the Governor. E wakaae ana hoki matou kia kaua e tukua he pakeha ki aua wahi noho ai kia wakaae mai ano His Excellency the Governor. A, ki te mea ka wakaaro His Excellency the Governor ki te whaihanga amua ake nei etahi huarahi ki roto ki enei nga wahi i wakatumauria mo matou e wakaae ana matou kia tukua utu koretia atu etahi wahi kia takoto pai ai nga huarahi e wakaaro ai ia kia hangaia. A, mo to matou wakaaetanga, ponotanga rawatanga ki nga tikanga katoa ki roto ki tenei pukapuka kua panuitia mai nei kia matou kua tuhia e matou i o matou ingoa me o matou tohu; a mo te wakaaetanga a Her Majesty the Queen of Great Britain, ki nga tikanga katoa ki roto ki tenei pukapuka, kua tuhia hoki e Walter Mantell, Commissioner for the Extinguishment of Native Claims, i tona ingoa.

I tuhia o matou ingoa me o matou tohu ki tenei pukapuka ki te 17 o ka ra o Akuhata, kotahimano waru rau rima te kau ma toru ki Tanitini.

Dated at Dunedin, Province of Otago, this seventeenth day of August, one thousand eight hundred and fifty-three.

Walter Mantell, Commissioner	Teoti Rauparaha
Taiaroa	Tipene Pepe
Koau	John Wesley Korako
Taheke	Kereopa Totoi
Karetai	Tiare Hape
Potiki	
Tare Wetere Te Kaahu	Moihi Hamero
Reihana	James Rikiriki
Huriwai	Te Marama
Tiare Ru	Maraitaia
Wi Rehu	Ihaia Whaitiri
Paitu	Kahu Patiti
Akaripa Pohau	Horomona Mauhe
Matewai Hoani	Hoani Korako

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Riwai Piharo	John Topi Patuki
Paororo	Manihera Tutaki
Ko Matewai	Matene Manaia
Tare Te Au	Te Pae
Makaia	Pokene
Whaiti Pirihira	Timoti White
Inia te Meihana	Horomona Pohio
Hohaia Poheahea	Paororo
Irai Tihau	Matiaha Kukeke
Pukuhau	Takurua
Korako Turinaka	Huruhuru
Tare Te Ao	Haimona Pakipaki
Wiremu Te Raki	Rawiri Teawha
Ko Te Tohu, tenei x a Kaikai – Witness Hugh Robinson	
Ratimira Tihau Te Au	
Tiare Te Au	
Pitoko	Wiremu Rehua
Rota Pikaroro	

Witnesses to the signatures and marks–
Edmund Hooke Wilson Bellairs, Esq., Dunedin, Otago
James Fulton, J.P., West Taieri
Robert Williams, J.P., Dunedin, Otago
A. Chetham-Strode, R.M., Dunedin, Otago
Charles H. Kettle, J.P., Dunedin, Otago
William G. Filleul, Dunedin
Richard Anthony Filleul, Dunedin
Robert Chapman, of Dunedin, Clerk to the Bench

Sealed by me, this 17th day of August, 1863.

(L.S.)A. CHETHAM-STRODE

Let all the Nations know. We the chiefs and all the people of all the lands lying within the boundaries hereunder written, derived through our ancestors from whom it descended to us, the plan whereof is hereunto annexed, have written our names and marks as the act of consent of us, for ourselves, for our relations, for our families, for our heirs now living, and our descendants who shall be born after us, – entirely to give up all those our lands which have been negotiated for, the boundaries of which have been described, and the plan whereof is annexed to this deed of conveyance, to Her Majesty the Queen of Great Britain, her heirs and successors for ever, as a lasting possession for her or for the Europeans to whom Her Majesty, or

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rather His Excellency the Governor, shall consent that it shall be given.

And whereas we have agreed entirely to give up our land within the boundaries hereunder written: Walter Mantell, the Commissioner for extinguishing Native Claims (by virtue of the authority given to him by His Excellency the Governor-in-Chief to arrange and determine the price to be paid for these lands), agrees that he will pay us the sum of two thousand pounds sterling, the manner of payment to be as follows:— The money shall be divided into two portions: In the first instalment there shall be one thousand pounds, which shall have been paid to us at Otakou when all the people shall have assembled. The second instalment of one thousand pounds shall be paid at Awaroa in the month in which the money arrives. The whole of the moneys of these payments being added together, they shall amount to the sum of two thousand pounds, as agreed upon above.

Now these are the boundaries of the land which have been alienated: The boundary commences at Milford Haven (the name given to that place in Mr. Kemp's deed is Wakatipu, but by the Maoris it is called Piopiotahi), thence to Kaihiku; thence to Tokata, strictly following the old boundary line of Messrs. Kemp and Symonds, and by the coast from Milford Haven round to Tokata, with Tauraka Rarotoka, Motupiu, and all the islands lying adjacent to the shore (excepting the Ruapuke group), and all the lands within those boundaries, with the anchorages and landing-places, with the rivers, the lakes, the woods, and the bush, with all things whatsoever within those places, and in all things lying thereupon. A more accurate description and representation of the land is given in the plan hereunto annexed.

All the lands, and all other things above enumerated, and which lie within the boundaries above recited, have been entirely surrendered to Her Majesty the Queen for ever and ever.

But those portions of land which have been set apart by Mr. Mantell, and surveyed by C. Kettle Esq., J.P., Government Surveyor, at Tuturaui, Omaui, Oue, Aparima, Oraka, Kawakaputuputa [sic], and, Ouetoto, marked with the figures 1, 2, 3, 4, 5, 6 and 7, and coloured yellow, are for ourselves as lasting possessions for us and for our children for ever. The only portions for ourselves are those just named. We also agree that the portions which have been reserved for us shall not be sold without the consent of His Excellency the Governor.

And if His Excellency wishes at any future time to cause a road to be made through the land reserved for us, we agree to give up some

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portions thereof without any payment being made, that the roads which he thinks necessary may be properly laid off.

And in testimony of our true and unreserved assent to all the conditions of this deed, which has been read aloud to us, we have signed our names and marks; and in testimony of the consent of Her Majesty the Queen of Great Britain, Walter Mantell, Commissioner for the extinguishment of Native Claims, hereunto signed his name.

Our names and marks were signed to this deed on the seventeenth of the days of August, one thousand eight hundred and fifty-three, at Dunedin.

[Here follow the signatures.]

2.6. **Akaroa 10 December 1856**

Canterbury 3, DOSLI, Heaphy House, Wellington

He pukapuka tuku whenua tenei, i tuhituhia ki Hakaroa i tenei ra i te tekau o nga ra o te Marama o Tihema i te tau o to tatou Ariki 1856. Ko te whakaaetanga tenei onga [sic] tangata Maori o Hakaroa, o Pigeon Bay, o Port Levi, o Port Cooper o Kaiapoi, o Hairewa o te motu puta noa ki runga, puta noa ki raro, kia tukua katoatia nga wahi, e tohea nei ki Akaroa, ki a Te Kuini Wiki toria [sic] ki ona uri, ake ake-hei utu mo nga pauna moni. Ko tahi rau ma rima tekau kua riro mai i tenei rangi.

Heoi ano nga kainga, e tohutohungia mo matou, mo nga tangata Maori ko nga eka e wha rau (400 acres) ki Onuku. Ko nga eka e wha rau ki te tumu ki tenei taha mai o Wainui—Ko nga eka e wha rau/400 acres/ki Wairewa.

Ma matou te whakaaro ki te tangata e puta mai ki te tohe i te whenua – ki te tonono moni ranei, no te mea kua riro rawa mai ki a matou nga moni mo te whakaotinga katoatanga o nga whenua ki Hakaroa. Koia matou ka whakaae nei i tenei ra, ka tuhituhi i o matou nei ingoa ki tenei pukapuka.

I te aroaro o

J W Hamilton

William Aglmer – offg Minster, Akaroa

John Aldred – Wes Minister, Lyttelton

Robert Frenvel – sub. coll. customs, Akaroa

William George Poole

O Davie

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Na tenei X tohu Wiremu Karaweko
Hone Taupoki
Na tenei X tohu Matini Pawiti
Na tenei X tohu Tuauau
Na tenei X tohu Tamati Tikao
Na tenei X tohu Rangimakere
Na Te Teira
Na tenei X tohu Ropoama
Na tenei X tohu Enoka
Na tenei X tohu te Wakapiri
Na tenei X tohu Tamati Tipene
Hoani Pita Akaroa
Eli Tihau
Paurini
Na tenei X tohu Hoani Wetere
Na tenei X tohu Hakiaha
John Patterson
Solomon Pohio
Na tenei X tohu Raihania
Na tenei X tohu Hona
Na tenei X tohu Hori Waitutu
Na tenei X tohu Heneri Watene
Marutai
Henere te Paro
Na tenei X tohu Raniera
Na tenei X tohu Ekaia
Na tenei X tohu Hamuera
Na tenei X tohu Hoani Timaru
Na tenei X tohu Enoka
Na tenei X tohu Hoani
Na tenei X tohu Paora Tangi
Na tenei X tohu Horo Papera
Na tenei X tohu Paora Tau
Hoani Akaroa
Teoti William

Ko nga rohe o te wahi mo nga Maori o Wairewa.

Me timata ki te uri ko te Waipawa – a haere ki Owika – a haere ki te puke ko Karawera – a kei muri – ko Hukahuka te roa.

He kupu tikanga mo nga Huanui mo nga ara i tahi. Ko matou ko Wiremu Koraweko o Onuku, ko Hoani Papeti o Wainui ko Mautai o Wairewa e wakaae ana ki nga Huanui ka karangatia e te Kuini kia keria i runga i o matou whenua e wakaae ano hoki matou ki a tuwera tonu nga ara i tatahi o te moana.

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Witness of signatures Dec 10 1856 at Akaroa

J W Hamilton	Hoani Akaroa
Robert Grenvel	Na tenei X tohu Mautai
John Aldred Na tenei X tohu	Wiremu Korawheko
C. Davie	

This is a Deed conveying land, written at Hakaroa on this day, on the tenth of the days of the month of December in the year of our LORD 1856. This is the consent of the aboriginal inhabitants of Hakaroa, of Pigeon Bay, of Port Levi, of Port Cooper, of Kaiapoi, of Wairewa of the island extending to the South, extending to the North, entirely to surrender the pieces [of land] now disputed at Akaroa, to the Queen Victoria to Her Heirs for ever and ever in consideration of the sum of One hundred and fifty pounds in money received on this day.

These only are the places reserved for us, for the Native people the four hundred acres (400 acres) at Onuku; four hundred acres (400 acres) at Wairewa.

With us will be the consideration for any person coming to claim the land or to demand money because we have entirely received the monies for the full and final surrender of the lands at Hakaroa. Wherefore we consent on this day and sign our names to this document.

[here follow the signatures]

The boundaries of the piece for the Natives of Wairewa, – to commence at the ridge called Waipaua, thence to Oweka thence to the hill Karawera, and afterwards to Hukahuka te roa.

An agreement relative to the roads and the seaside paths. We Wiremu Koraweko of Onuku Hoani Papeti of Wainui and Mautai of Wairewa agree that the Queens roads should be dug (formed) upon our lands and we also agree that the roads by the sea side should always remain open.

[Here follow the signatures]

A true translation H Smith for the Chief Commissioner.

2.7. **North Canterbury, 5 February 1857:**

Canterbury 4, DOSLI, Heaphy House, Wellington

He pukapuka tuku whenua i tuhituhia ki Kaiapoi i tenei ra i te rima o nga ra o te marama o Pepuere i te tau o to tatou Ariki 1857. Ko te whakaaetanga tenei o nga tangata Maori o Kaiapoi, o te Whakaraupo (Port Cooper) o Kokorarata (Port Levy) o Whakaroi (Pigeon Bay) o

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Hakaroa, o Wairewa, o te tuauru o te motu katoa, kia tukua to matou tohe mo te whenua katoa i Kaiapoi puta noa ki Waiau-ua, puta noa ki nga awapuna o Waiau-ua o Hurunui o Raka Hauri kia tukua rawatia taua whenua katoa ki a te Kuini Wikitoria ki ona uri, ake, ake, he utu mo nga pauna moni e rua nga rau kua riro mai ki a matou i tenei rangi.

Ma matou te whakaaro mo te tangata e putamai ki te tohe i te whenua, ki te tohe moni ranei mo te whenua, no te mea kua riro rawa mai ki a matou nga moni mo te whakaotinga katoatanga o te whenua ki a te Kuini, i Kaiapoi putanoa ki Waiau-ua, putanoa ki nga awapuna o Waiau-ua o Hurunui o Raka hauri.

Hoia ka whakaae matou ka tuhituhi hoki i o matou nei ingoa i tenei ra.

Ko te Pa o Kaiapoi o mua kei te moture, kua whakatapua me tona hua nui.

Na Paora Tau tenei X tohu	
Na Paora Take tenei X tohu	Henere Pereita Tawiri
Na Horomona Haukeke tenei X tohu	Wiremu Te Uki
Hakopa	Solomon Pohio
John Patterson	Ihaia Tainui
Na Matiu Hutoi tenei X tohu	Pita te Hori
Na Hoani Timaru tenei X tohu	John Pere
Na Hopa Kaukau tenei X tohu	Kaikoura Whakatau
Na Arapata Koti tenei X tohu	Na Te Aika tenei X tohu
Ihaia Taihoa	Na Tukaha tenei X tohu
T Tikao	

i te aroaro o

William Congreve of Christchurch
John Aldred (Wesleyan Minister, Christchurch)
William H Revell, Sub-Inspector of Police at Kaiapoi,
G F Day of Kaiapoi, Publican,
J W Hamilton of Lyttleton, Collector of Customs, Agent for purchase of Kaiapoi and Akaroa lands

A deed conveying land written at Kaiapoi on this day on the fifth of the days of the month of February in the year of Our Lord 1857. This is the consent of the Natives of Kaiapoi, of Te Whakaraupo (Port Cooper) of Kokorarata (Port Levi) of Whakaroi (Pigeon Bay) of Akaroa, of Wairewa of the West-side of all the Island to give up our claim to all the land at Kaiapoi and on to Waiau-ua and on to the sources of the Waiau-ua. Hurunui and Rakahauri, entirely to give up all that land to the Queen Victoria and her descendants forever in

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consideration of the sum of Two hundred pounds paid into our hands on this day.

With us will be the consideration for any person coming forward to claim the land or demanding money for the land because we have finally received the monies for the entire surrender of the land to the Queen at Kaiapoi and on to Waiau-ua and on to the sources of Waiau-ua of Hurunui of Rakahauri. Wherefore we consent and sign our names on this day.

The old Pa of Kaiapoi at Te Moture has been reserved – made sacred with its road also.

2.8. **Kaikoura, 29 March 1859**

Marlborough 9, DOSLI, Heaphy House, Wellington

TENEI PUKAPUKA i tuhituhia i tenei i te rua tekau maiwa o nga ra o Maehe i te tau o tatou Ariki 1859 he Pukapuka tino hoko tino hoatu tino tuku whakaoti atu na matou na nga Rangatira me nga Tangata o (Ngahitau) Ngaitahu no ratou nga ingoa e mau i raro nei a hei whakaatu tenei Pukapuka mo matou mo a matou whanaunga me o matou uri mo te tuhituhinga o o matou ingoa ki tenei pukapuka i raro i te ra e whiti nei kua whakarerea rawatia kua tino tukuna rawatia atu kia Wikitoria Kuini o Ingarangi ki ona uri ki nga Kingi ki nga Kuini o muri iho i a ia me ana me a ratou e whakarite ai hei whakaritenga mo nga Pauna moni etoru rau (300-0-0) kua utua mai ki a matou e (James Mackay Jr) Tiemi Make mo te Kuini (a e whakaaetia nei e matou te rironga mai o aua moni) ko taua wahi whenua katoa kei te Parawini o Whakatu ko Kaikoura te ingoa o taua wahi whenua ko nga rohe kei raro i te Pukapuka nei e mau ana te korero whakahaere ko te mapi hoki o taua whenua kua apititia ki tenei. Me ona rakau me ona kowhatu me ona wai me ona awa nui me ona roto me ona awa ririki me nga mea katoa o taua whenua o runga ranei o raro ranei i te mata o taua whenua me o matou tikanga me o matou take me o matou paanga katoatanga ki taua wahi; Kia mau tonu kia Kuini Wikitoria ki ona uri ki ana ranei e whakarite ai hei tino mau tonu ake tonu atu. A hei tohu mo to matou whakaaetanga ki nga tikanga katoa o tenei Pukapuka kua tuhituhia nei o matou ingoa me o matou tohu. A hei tohu hoki mo te whakaaetanga o te Kuini o Ingarangi mo tana wahi ki nga tikanga katoa o tenei Pukapuka kua tuhia nei te ingoa o (James Mackay Jr) Tiemi Make Kaiwhakarite Whenua. Ko nga rohe enei o taua whenua ka timata i te taha ki terawhiti i te kurae o te karaka ka haere tonu i tatahi i te taha o te moana ki Parinui o whiti, ka whati i konei a ka haere whakauta tika tonu ki Rangitahi i nga matapuna o te awa o Waiautoa (Clarence). Ka whati i konei a ka haere tonu i te taha o nga maunga, i Maunga Tawhai i Waiaki (i te matapuna o

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Waiauuwha) i Te Rangiamoa, ki Hokakura (te roto i nga matapuna o te Hurunui) ka whati i konei a ka haere tonu te rohe i te awa o te Hurunui tuhono noa ki te moana. Ka whati i te Kongutu awa o Hurunui a ahu whaka te marangai. Ka haere tonu i tatahi ki te Karaka (Cape Campbell) ka tutuhi nga rohe o reira.

Eruiti his X mark	Ko Kaikoura Whakatau
Raiania his X mark	Raihania his X mark
Hakaira his X mark	Ihaia Poieke his X mark
Tioti Wira his X mark	Tumaruru his X mark
Aperahama his X mark	Hohepa his X mark
	Arama Karaka his X mark
	Ihaia Taiawa his X mark
	Hakopa his X mark
	Hoani Timaru his X mark
	Mu Korapa his X mark
	Renata te Whiringa his X mark
	Paratani Whiti his X mark
	Wiremu Kepa his X mark
	Haora his X mark
	Karehoma his X mark
	Parata his X mark
	Rawiri te Kauhariki his X mark
	Ihau his X mark
	Hakaraia te Utu his X mark
	Ohaia his X mark
	Whera his X mark

Ko nga tangata i kite i te hoatutanga o nga moni me te tuhinga o nga ingoa -

James Mackay Jr (Tiemi Make) – Assistant Native Secretary
Kai Whakarite Whenua – Acting Native Land Purchase
Commissioner

George Fyff – Sheep Farmer, Kaikoura
Alexander Mackay – Settler, Nelson

THIS DEED written on this twentyninth day of March in the Year of our Lord 1859 is a full and final sale conveyance and surrender by us the Chiefs and People of the Tribe (Ngahitau) Ngaitahu whose names are hereunto subscribed And Witnesseth that on behalf of ourselves our relatives and descendants we have by signing this Deed under the shining sun of this day parted with and for ever transferred unto Victoria Queen of England Her Heirs the Kings and Queens who may succeed Her, and Her and Their Assigns for ever in consideration of the Sum of three hundred Pounds (300-0-0) to us paid by James Mackay Jr on behalf of the Queen Victoria (and we hereby acknow-

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ledge the receipt of the said monies) all that piece of our Land situated in the Province of Nelson and named the Kaikoura or East Coast District the boundaries whereof are set forth at the foot of this Deed and a plan of which Land is annexed thereto with its trees minerals waters rivers lakes streams and all appertaining to the said Land or beneath the surface of the said Land and all our right title claim and interest whatsoever thereon To Hold to Queen Victoria Her Heirs and Assigns as a lasting possession absolutely for ever and ever. And in testimony of our consent to all the conditions of this Deed we have hereunto subscribed our names and marks. And in testimony of the consent of the Queen of England on her part to all the conditions of this Deed the name of James Mackay junr, Acting Native Land Purchase Commissioner is hereunto subscribed. These are the boundaries of the Land commencing at Karaka (Cape Campbell) and proceeding by the Sea Coast in a Westerly direction to Parinui-o-whiti (Wairau Bluffs) from thence turning inland it runs in a direct line to Rangitahi (Tarndale) at the source of the River Waiautoa (Clarence) whence turning in a South Westerly direction it continues by the mountains to Hikatura (Lake Sumner) turning thence in an Easterly direction the boundary is the Hurunui to its confluence with the Sea – Thence turning at the mouth of the Hurunui in a North Easterly direction it goes along the sea beach to Karaka (Cape Campbell). Where the boundaries join.

2.9. **Arahura, 21 May 1860:**

Westland 1, DOSLI, Heaphy House, Wellington

TENEI PUKAPUKA i tuhituhia tenei i te rua te kau matahi o nga ra o Mai (21 Mai) i te tau o to tatou Ariki 1860 he Pukapuka tino hoko tino hoatu tino tuku whakaoti atu na matou na nga Rangatira me nga Tangata o Ngaitahu no ratou nga ingoa e mau i raro nei a hei whakaatu tenei Pukapuka mo matou mo o matou whanaunga me o matou uri mo te tuhituhinga o o matou ingoa ki tenei pukapuka i raro i te ra e whiti nei kua whakarerea rawatia kua tino tukuna rawatia atu kia Wikitoria Kuini o Ingarangi ki ona uri ki nga Kingi ki nga Kuini o muri iho i a ia me ana me a ratou e whakarite ai hei whakaritenga mo nga Pauna moni etoru rau (300) kua utua mai ki a matou e Tiemi Make mo te Kuini (a e whakaaetia nei e matou te rironga mai o aua moni) ko taua wahi whenua katoa¹ kei nga Porowhini o Whakaatu, Kutaperi, me Otakou ko Poutini ko Arahura nga ingoa o taua wahi whenua ko nga rohe kei raro i te Pukapuka nei e mau ana te korero whakahaere ko te mapi hoki o taua whenua kua apititia ki tenei. Me ona rakau me

¹ [footnote included on deed] "Otira tenei tenei ano etahi wahi whenua ano matou i roto ki aua whenua ano ki nga pukapuka A me B o aua whenua ki tenei pukapuka e mau ana – kihai i utu aua whenua. Na Tieme Make."

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ona kowhatu me ona wai me ona awa nui me ona roto me ona awa ririki me nga mea katoa o taua whenua o runga ranei o raro ranei i te mata o taua whenua me o matou tikanga me o matou take me o matou paanga katoatanga ki taua wahi; kia mau tonu kia Kuini Wikitoria ki ona uri ki ana ranei e whakarite ai hei tino mau tonu ake tonu atu. A hei tohu mo to matou whakaaetanga ki nga tikanga katoa o tenei Pukapuka kua tuhituhia nei o matou ingoa me o matou tohu. A hei tohu hoki mo te whakaaetanga o te Kuini o Ingarangi mo taua wahi ki nga tikanga katoa o tenei Pukapuka kua tuhia nei te ingoa o Tiemi Make Kaiwhakarite Whenua. Ko nga rohe enei o taua ka timata i te taha o te moana i Piopiotai a ka haere ki utu ki nga maunga huka ki Taumaro – haere tonu ki nga maunga Tiore Patea – Haorangi, me Te Rae o Tama ka haere i kona ki runga ki te tarahanga o Taramakau haere tonu ki te maunga o Wakarewa a haere tonu i reira ki runga ki nga maunga tae noa ki te hapua o te Rotoroa a ka haere i kona ki nga tauru o nga awa o Karamea me Wakapou i a ka haere maro tonu ki te Kurae o Kaurangi i te taha o te moana. Ka whati i kona a ka haere tonu whaka te haurunga i te taha o te moana ki Piopiotai, ka tutuki nga rohe i reira.

Kinihi his X mark	Tarapuhi te Kaukihi his X mark
Kerei his X mark	Mere te Aowangai his X mark
Rawiri Mokohuruhuru his X mark	Werita Tainui his X mark
Pako his X mark	Hakiaha Taona his X mark
Wiremu Parata his X mark	Purua his X mark
Puaha te Rangī his X mark	Makarini Tohi his X mark
Arapata Horau his X mark	Riwai Kaihi his X mark

Ko nga tangata i kite i te hoatutanga o nga moni me te tuhinga o nga ingoa–

James Mackay Jnr – Assistant Native Secretary and Acting Land Purchase Comm
 Samuel M Mackley – settler, Nelson
 James Burnett – surveyor, Nelson
 Tamati Pirimona his X mark Collingwood
 Hori e Koramo his X mark Collingwood

THIS DEED written on this twenty first (21st) day of May in the Year of our Lord 1860 is a full and final sale conveyance and surrender by us the Chiefs and People of the Tribe Ngaitahu whose names are hereunto subscribed And Witnesseth that on behalf of ourselves our relatives and descendants we have by signing this Deed under the shining sun of this day parted with and for ever transferred unto Victoria Queen of England Her Heirs the Kings and Queens who may succeed Her and Her [sic] and Their Assigns for ever in consideration of the Sum of three hundred Pounds (300) to us paid by James Mackay

Deeds of Purchase

Jr on behalf of the Queen Victoria (and we hereby acknowledge the receipt of the said monies) all that piece of our Land² situated in the Province of Nelson, Canterbury and Otago and named Poutini or Arahura the boundaries whereof are set forth at the foot of this Deed and a plan of which Land is annexed thereto with its trees minerals waters rivers lakes streams and all appertaining to the said Land or beneath the surface of the said Land and all our right title claim and interest whatsoever thereon To Hold to Queen Victoria Her Heirs and Assigns as a lasting possession absolutely for ever and ever. And in testimony of our consent to all the conditions of this Deed we have hereunto subscribed our names and marks. And in testimony of the consent of the Queen of England on her part to all the conditions of this Deed the name of James Mackay Junior, Commissioner is hereunto subscribed. These are the boundaries of the Land commencing at the Sea-side of Piopiotai (Milford Haven), thence proceeding inland to the Snowy Mountains of Taumaro; thence to the Mountains, Tiori Patea, Haorangi (Mount Cook), Te Rae o Tama thence to the saddle at the source of the River Taramakau, thence to Mt Wakarewa, thence following the range of Mountains to the Lake Rotoroa, thence to the sources of the River Karamea and Wakapoui, thence by a straight line drawn to Kaurangi Point at the Sea side. Thence turning in a Southerly direction the Sea Coast is the boundary to Piopiotai (Milford Haven) where the boundaries meet.

[signatures follow]

2.10. **Rakiura, 29 June 1864:**

Otago 5, DOSLI, Heaphy House, Wellington

Tenei Pukapuka i tuhituhia i tenei rua tekau ma iwa o nga ra o Hune i te tau o to tatou Ariki 1864 he pukapuka tino hoko tino hoatu tino tuku whakaoti atu na matou na nga Rangatira me nga Tangata o Ngaitahu o Ngatimamoe no ratou nga ingoa e mau i raro nei a hei whakaatu tenei pukapuka mo matou mo o matou whanaunga me o matou uri me te tuhituhinga o matou ingoa ki tenei pukapuka i raro i te ra e whiti nei kua whakarerea rawatia atu ki a Wikitoria Kuini o Ingarangi ki ona uri, ki nga Kingi ki nga Kuini o muri iho i aia me ana me a ratou e whakarite ai hei whakaritenga mo nga 'pauna moni e ono MANO 6000 kua utua mai ki a matou e (Henry Tacy Clarke) mo te Kuini a e whakaaetia nei e matou te rironga mai o aua moni ko taua wahi whenua katoa ko RAKIURA he moutere ko te mapi hoki o taua whenua kua apititia ki tenei. Ko te tikanga o nga utu mo tenei whenua

² [footnote included on deed] "There are certain Lands within this block reserved from sale, these are described in Schedules A and B attached to this deed, James Mackay."

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koia tenei E rna mana kua utua mai ki a matou i tenei ra E rua mano pauna kua waiho ki a te Kawana pupuri ai a mana e apiti mai i rota i te tau nga pauna moni e waru mo te rau kotahi huihui katoa nga moni apiti i rota i te tau kotahi kotahi rau e ono tekau pauna ko enei moni me whakaputa i nga tau katoa me wehewehe ki a Paitu ki a Tioni Topi Patuki ki a Tioni Kihau ki a Frederick Kihau ki a Ellen Kiliau ki o ratou uri i muri i a ratou a ki te he katoa enei ma te Kawana e whakarite he tukunga iho mo enei moni. E rua mano Pauna kua waiho ki a te Kawana mana e whakarite aua moni hei hoko i etahi whenua ki te takiwa o Murihiku hei whenua mau tonu mo nga kura me era atu mea e whiwhi ai enei iwi i te pai. Ko te whenua kua tukua nei Ko Rakiura katoa me ona rakau me ona kowhatu me ona wai me ona awa nui me ona rota me ona awa ririki me nga mea katoa o taua whenua me nga motu nunui me nga motu ririki e tutata ana ki taua whenua me [o] matou tikanga me o matou take me o matou paanga katoatanga ki taua wahi kia mau tonu ki a Kuini Wikitoria ki ana uri ki ana ranei e whakarite ai hei tino mau tonu ake tonu atu. Ko nga whenua ka whakahokia mai hei whenua mau tonu mo matou me o matou uri koia enei (1) ko te tuatahi kei Potapa (Lords Harbor) e toro tekau eka. Ko te tua rua (2) kei Potiweta (port Adventure) e toru rau e toru tekau eka. (3) Ko te tua toru ko nga whenua katoa i te Neke (Neck). Kahore i riro tika i te pakeha i mua ka waiho enei mo nga hawhekaihe e noho ana i te Neke (Neck) ki te tu katoa nga hawhe kaihe i taua whenua ma Ihaia Whaitiri raua ko Hoani Timarere te toenga. Ko te tua wha (4) Ko te whenua ki te nota o Ohekia (Patersons Inlet) kia wha rau eka me tango mai i roto i te takiwa o te mira kani rakau tawhito i te mira kani rakau hou o Puroku (Bulloch) (5) Ko te tua rima ko te Kurae ki te taha ki te nota o Horse Shoe Bay kia whatekau eka. (6) Ko te tua ono kei Cultivation Point Port William kia warutekau eka. (7) Ko te tua whitu kei Rakete awa (Raggedy River) kia rima tekau eka. (8) Ko te tua waru kei Mitini motu (9) Kei Toparetutai kia rima eka. Me nga motu titi Ko Horomamae. Ko te Wharepuaitaha, Ko Kaihuka Ko Potuatua, Ko te Pomatakiarehua. Ko Tia. Ko Taukiepa. Ko Rerewhakaupoko. Ko Moki iti. Ko Moki nui Ko Timore Ko Kaimohu Ko Huirapa Ko Taketu Ko Hereatua Ko te Pukeotakohe Ko Tamaitemioka Ko Pohowaitai Ko Poutama a. Herekopare & Pikomamaku. Ko enei whenua mo matou otira ma te Kawana e tiaki e whakahaere nga tikanga (kua oti hoki te pani ki te ahua pua kowhai i roto i te mapi apiti ki tenei pukapuka) a hei tohu. mo to matou whakaaetanga ki nga tikaka katoa o tenei pukapuka kua tuhituhia nei o matou ingoa me o matou tohu. A hei tohu hoki mo te whakaaetanga o te Kuini o Ingarangi mo tana wahi ki nga tikanga katoa o tenei pukapuka kua tuhia nei te ingoa o Henry Tacy Clarke Kai whakarite whenua.

Deeds of Purchase

John Topi	Hoani Timarere tona X tohu
Hone Weterere Korako	Ihaia Waitiri
Tare Weteri Te Kahu	Te Koau tona X tohu
Potiki Solomon Pohio	
Korako Karetai	Kerei Kahuti tona X tohu
Timoti Karetai tona X tohu	Rawiri Mamaru
Edward King	Rawiri Temaie
Teoti Kerei Taiaroa	Haereroa tona X tohu
Horomona Mawhe tona X tohu	Matiu Khipane tona X tohu
Wiremu Te Rehu tona X tohu	Teoti Tekorihi tona X tohu
Hoani Korako	Kahupatiti
Tioni Wiremu Tohi tona X tohu	
Maika Nera	
Matiu Te Rupairera tona X tohu	
Huruhuru tona X tohu	
Paitu	
Horomona Patu	
Paororo tona X tohu	
Rawiri Teawha tona X tohu	
Tauira tona X tohu	
Henere Paremata tona X tohu	
Hoani Poko tona X tohu	

Teoti Mawhe [appears on English version not the Maori deed]

Ko nga tangata i kite i te hoatutanga o nga moni me te tuhituhinga o ngaingoa.

J Newton Watt – Resident Magistrate Campbelltown
H Simmonds – Clerk to Resident Magistrates Court, Campbelltown
M OKeiffe – Sergeant of Police Campbelltown
M O P Taylor – J P Waldeck Riverton
Wm J Pardy – Sergeant of Police Riverton

THIS DEED written on this twenty ninth day of June in the year of our Lord 1864 is a full and final sale conveyance and surrender by us the chiefs and. people of the Tribes Ngaitahu and Ngatimamoe whose names are hereunto subscribed And Witnesseth that on behalf of ourselves our relatives and descendants we have by signing this Deed under the shining sun of this day parted with and forever transferred unto Victoria Queen of England her heirs the Kings and Queens who may succeed her and her and their assigns forever in consideration of the sum of SIX THOUSAND POUNDS/6000/ to us paid by Henry Tacy Clarke on behalf of the Queen Victoria/ and we hereby acknowledge the receipt of the said monies/ All that piece of our land the island Rakiura a plan of which land is annexed thereto. The manner of the payment of this land is as follows: Two thousand Pounds/2000/ has been to us paid – Two thousand pounds is to be held by the

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Governor to bear interest at the rate of eight per cent – that is One hundred and sixty pounds per annum in all – the interest to be divided annually between Paitu, Teoni Topi Patuki Tioni Kihau Frederick Kihau and Ellen Kihau and their heirs failing all these the Governor shall direct how the money is to be applied Two Thousand Pounds/2000/ to be expended under the direction of the Governor in the purchase of lands in the Southland Province for Educational and other purposes for the benefit of these tribes. The land we now sell and convey is the whole of the Island Rakiura with its trees minerals waters rivers lakes streams and all appertaining to the said land or beneath the surface of the said land and all the large Islands and all the small Islands adjacent and all our right title claim and interest whatsoever thereon TO HOLD to Queen Victoria her heirs and Assigns as a lasting possession forever and ever. The lands that are returned to us as Reserves for us and our descendants are the following (1) The first is situated at Lords Harbor containing thirty acres (2) The second is situated at Port Adventure containing three hundred and thirty acres (3) The third is all that portion of land situated at the Neck/ which has not [been] previously sold to Europeans/ to be reserved for the half castes residing at the Neck should there be any remaining after the half castes have been provided for it shall be for Ihaia Whaitiri and Hoani Timarere (4) The fourth is situated on the North side of Ohekia (patersons Inlet) between the new and old saw mills of Bulloch containing four hundred acres (5) The fifth is situated on North Point of Horse Shoe Bay containing forty acres (6) The sixth is situated at Cultivation point Port William containing eighty acres (7) The seventh is situated at Raggedy River containing fifty acres (8th) The eighth is an island/Mitini/ near the south head of Masons Bay (9th) The ninth is situated at Toparetutai/ Port Easy/ containing five acres and the Titi Islands following Horomamae Wharetepuaitaha Kaihuka Potuatua Pomatakiarehua Tia Taukiepa Rerewhakaupoko Mokinui Mokiiti Timore Kaimohu Huirapa Taketu Hereatua Te Pukeotakohe Tamaitemioka Pohowaitai and Poutama Herekopare and Pikomamaku. These lands are reserved for us under the Protection and management of the Governor (they are colour yellow on the plan annexed hereto) And in testimony of our consent to all the conditions of this Deed we have subscribed our names and marks and in testimony of the consent of the Queen of England on her part to all the conditions of this Deed the name of Henry Tacy Clarke Commissioner is hereunto subscribed.

[signatures follow]

Appendix 3

The Claims

3.1. **General claim of 26 August 1986**

THE WAITANGI TRIBUNAL

ENGAMANĀ, ENGARĒO, ENGAKARANGARANGA O NGA HERENGA WAKA KĀTOA. ENA KOUTOU I RARO I TE MARU O TE MATUA TAMA WAIRUA TĀPU ME NGA ANAHERA PONO. TENA HOKI KOUTOU NGA KANOHI ORA O RATOU KUA WEHE ATU KI TE PO HAERE ENGA MĀTE, HAERE, HAERE, HAERE. HAERE KI TO TĀTOU MATUA I TE RANGI TE HUNGA ORA, TENA KOUTOU TENA KOUTOU, TENA TĀTOU KĀTOA.

HENARE RAKIHIA TAU and the *NGAITAHU MAORI TRUST BOARD* (a Maori Trust Board constituted by the Maori Trust Boards Act 1955) claim:

THAT:

1. The provisions of the Land Act 1948 and amendments affect the legitimate claims and rights of the Ngaitahu people to Crown Pastoral Lease Lands and Crown Lands generally lying within boundaries of land acquired from Ngaitahu by the Crown under Kemp's Deed and subsequent purchases and awards.
2. Proposed grants, transfers or sales of freehold title by the Crown to various parties affect the legitimate claims and rights of the Ngaitahu people to the lands referred to in (1) above.

THAT these things are contrary to the Treaty of Waitangi;

THAT the claimants are prejudiced as a result; and

THAT the claimants seek reform of these acts and policies

TO: The Registrar of the Waitangi Tribunal and to the following who should receive notice of this claim:

1. The Minister of Lands
2. Director-General of Lands
3. Department of Lands and Survey
4. Department of Maori Affairs

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5. Ministry of Agriculture and Fisheries
6. Ministry of Environment
7. Ministry of Conservation
8. Royal Forest and Bird Protection Society
9. President, Federated Farmers
10. Federated Mountain Clubs
11. Deerstalkers Association

(Signed) *H.R. TAU*

*SEAL OF THE
NGAITAHU MAORI
TRUST BOARD*

Dated this 26th day of August 1986

3.2. **Amended Claim of 24 November 1986**

THE WAITANGI TRIBUNAL

E NGA MANA, E NGA REO, E NGA KARANGARANGA O NGA HERENGA WAKA KATOA. TENA KOUTOU I RARO I TE MARU O TE MATUA TAMA WAIRUA TAPU ME NGA ANAHERA PONO. TENA HOKI KOUTOU NGA KANOHI ORA O RATOU KUA WEHE ATU KI TE PO HAERE E NGA MATE, HAERE, HAERE, HAERE. HAERE KI TO TATOU MATUA I TE RANGI TE HUNGA ORA, TENA KOUTOU TENA KOUTOU, TENA TATOU KATOA.

HENARE RAKIHIA TAU and the *NGAITAHU MAORI TRUST BOARD* (a Maori Trust Board constituted by the Maori Trust Boards Act 1955) claim by way of amendment to the claim WAI-27

THAT:

1. The acts and omissions of Henry Tacy Kemp and other officials and agents of the Government of New Zealand in and after acquiring the lands of the Ngaitahu people have prejudicially affected the legitimate claims and rights of the Ngaitahu people.
2. The provisions of the Land Act 1948 and amendments affect the legitimate claims and rights of the Ngaitahu people to Crown Pastoral Lease lands lying within boundaries of land acquired from Ngaitahu by the Crown under Kemp's Deed and subsequent purchases and awards.
3. Proposed grants, transfers or sales of freehold title by the Crown to various parties affect the legitimate claims and rights of the Ngaitahu people to the lands referred to in (1) above.

The Claims

4. That the particular claims specified in the schedule attached hereto are contrary to the Treaty of Waitangi and should be remedied.

THAT these things are contrary to the Treaty of Waitangi

THAT the claimants are prejudiced as a result; and

THAT the claimants seek reform of these acts and policies

TO: The Registrar of the Waitangi Tribunal and to the following who should receive notice of this amended claim:

1. The Minister of Lands
2. Director-General of Lands
3. Department of Lands and Survey
4. Department of Maori Affairs
5. Ministry of Agriculture and Fisheries
6. Ministry of Environment
7. Ministry of Conservation
8. Royal Forest and Bird Protection Society
9. President, Federated Farmers
10. Federated Mountain Clubs
11. Deerstalkers Association

DATED this 24th day of November 1986.

SEAL OF THE NGAITAHU

MAORI TRUST BOARD

SCHEDULE

A. We claim that the refusal of the Crown to honour the allocation of "Tenths" in respect of the Otago Purchase renders that purchase invalid and contrary to the principles of the Treaty of Waitangi and merits remedy by

(i) the return to the descendants of the Maori owners of the land within the boundaries of the Otago Purchase of 1844 OR alternatively

(ii) the allocation of Crown land within the boundaries of the Otago Purchase equivalent to the "Tenths" and FURTHER that

(iii) that suitable compensation be provided for the loss of use of those lands since the date of purchase

B. That the lands specified in the Petition to Parliament of the Ngai Tahu Maori Trust Board dated 7 December 1979 be returned to the Maori owners and compensation provided for loss of use of those lands.

C. That the native lands reserved from the Kaikoura Purchase and later vested in the Hundalee Scenic Reserves Board and now ad-

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ministered under the Reserves Act and other Acts were improperly alienated and should be returned to tribal ownership.

D. That the lands reserved from the exchange about 1900 of Maori land at Kaikoura for Crown land at Mangamaunu were improperly vested in the Crown and Public Bodies and should be returned to tribal ownership or appropriate compensation paid.

E. That the lands described in Kemps Deed, otherwise known as the Ngai Tahu Purchase of 1848, and subsequent purchases and awards which should have been allocated as reserves under that agreement should be now allocated from Crown lands within the boundaries of that deed.

3.3. **Amended Claim of 16 December 1986**

Mr S. M. Gracie,
Administration Officer,
Waitangi Tribunal,
Department of Justice,
Databank House,
175 The Terrace,
WELLINGTON.

Dear Sir,

Re: Ngaitahu Claim-Your Ref: WAI-27

Henare Rakihia Tau and the Ngaitahu Trust Board lay claim to either the freehold and/or the lessor rights in the lands as set out below and in the attached schedules, on the grounds that their allocation by Crown grant was made contrary in whole or part to agreements reached between the Crown and Ngaitahu representatives after 1840.

In view of our claim, disposal of all or part of any Crown Lands to State owned enterprises affect the legitimate claims of the applicants.

1. *Land Act 1948 and Amendments*. Enclosed are current, identifiable lands within the category of Section 66, 67 and 68 which would affect the Ngaitahu claim.

2. *Identifiable Pastoral Leasehold Land* also enclosed that would affect the Ngaitahu claim.

3. *Other areas of land* relevant to above sections of the Land Act and amendments not definable at this time as well as those lands within the category of section 63 referring to renewable leases of Crown Lands affecting the Ngaitahu claim.

The Claims

4. Crown Lands currently administered by the Department of Lands and Survey such as:

Section 53 Blk VI Kawarau Survey District

Section 11 Blk V Arrowtown

Section VI Hokonui 100

and others that affect the legitimate claims and rights of the Ngaitahu people.

5. *Section 15, Maori Purposes Act 1962* removed all unallocated South Island landless native blocks into Crown ownership. These lands were all defined but ownership not determined. Land affected were within the Heaphy Survey District, Waimumu, Tautuku, Toi Toi (Stewart Island), Wairaurahiri and other areas within the Ngaitahu regions which affect the Ngaitahu claim.

Yours faithfully,

NGAITAHU MAORI TRUST BOARD

H.R. TAU

DEPUTY CHAIRMAN

Schedule Included.

3.4. **Amended Claim of 2 June 1987**

WHEREAS the Claimants have already filed claims dated respectively the 24th November, 1986 and the 16th December, 1986

AND WHEREAS both those claims were accompanied by schedules

AND WHEREAS they are now requested to particularise those claims

THE CLAIMANTS SAY:

THE CLAIM

From 1840 to the present day the Crown has, in respect of the Maori people, their land, their culture and their well being, consistently acted in ways contrary to the Treaty of Waitangi, and therefore has been and remains in breach of the Treaty and its principles.

The multiplicity of the Acts complained of and the extent of the lands involved, together with the range of cultural and social grievances is such that, short of calling the evidence to be presented at the hearing of the claims, it is not possible for the complainants to succinctly state their grievances. For this reason, the complainants are concerned lest any omission from this document should be held to deny them the right to later seek redress of grievance in respect of the omitted material. They therefore give notice that in the event of matters not

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covered by this document arising later, they will seek leave to further amend their claims.

PARTICULARS

LAND

In 1840 the Ngai Tahu people owned virtually all the land in the South Island south of a line drawn between Cape Foulwind in the West and White Bluff just north of Cape Campbell in the East. Today they own very little land. The acquisition of this land by the Crown and the subsequent sales to other owners, were contrary to Article 2 of the Treaty of Waitangi in that Ngai Tahu did not “wish or desire” to sell, nor were they “disposed to alienate” all of the land. Further, the prices paid for the various blocks were never “agreed upon” in the manner required by Article 2.

Land purchases apart, other Crown dealings with the land were contrary to Article 2 of the Treaty. In particular the Crown has:

- (a) Failed to allocate reserves which were an integral part of the agreements for sale and purchase of Ngai Tahu land to the Crown.
- (b) Failed to allocate all the reserves required by the South Island Landless Natives Act 1906.
- (c) Confiscated without compensation various reserves in the South Island.
- (d) Appropriated to itself Ngai Tahu land without consultation or agreement and, in at least one case, namely Greymouth, without the knowledge of its Ngai Tahu owners.
- (e) Without the consent of its Ngai Tahu owners has converted freehold land into Leases in perpetuity.
- (f) Without the consent of its Ngai Tahu owners has fixed unrealistically low rentals for their leased lands.
- (g) Without the consent of its Ngai Tahu owners has fixed unrealistically long rests between rent reviews in respect of their leased lands.
- (h) Has refused to permit registration of land in the names of the Maori tribes and/or in other ways which would reflect Maori customary land ownership.

All these actions are contrary to the preamble and Articles 2 and 3 of the Treaty of Waitangi in that the Crown:

- (i) Has failed to “protect the just rights and property” of the claimants.

The Claims

(ii) Has failed to “guarantee” to the claimants and their ancestors “the full, exclusive, and undisturbed possession of their lands and estates, forests and fisheries and other properties so long as they wished and desired to retain the same in their possession”.

(iii) Has failed to “import” to their ancestors all “the rights and privileges of British subjects”.

The land transactions giving rise to these breaches of the Treaty occurred at Horomaka (Banks Peninsula), Te Pakihi o Waitaha (North Canterbury), Kaikoura, Otakou (Otago), Murihiku (Southland) Rakiura (Stewart Island) and on Te Tai Poutini (West Coast of the South Island). The lands which the claimants seek to have allocated to them or which they seek to be compensated in respect of are largely described in a schedule lodged with the Claim dated the 16th December, 1986. It should be noted that that schedule is as complete as the data made available by the Crown thus far permits and the claimants give notice that the schedule will be extended as further necessary data becomes available.

MAHINGA KAI

According to the Treaty of Waitangi and later specifically confirmed by the Kemp Deed the Ngai Tahu people were guaranteed “the full, exclusive and undisturbed possession” of their *kainga* and *mabinga kai*, but the acts and omissions of the Crown and agents of the Crown have in fact dispossessed Ngai Tahu of their *mabinga kai*. Ngai Tahu have thus been deprived of a major economic and sustaining resource in their *mabinga kai* including birding, cultivation, gathering and fishing resources. Since the issue of Treaty rights to *mabinga kai*, especially in respect of fisheries, is subjudice in the Muriwhenua Claim now proceeding in the Waitangi Tribunal it would be inappropriate to detail it further at this stage, but notice is given now that claim will be pressed for a share in the fisheries, including the commercial fisheries, of Te Waipounamu and for the recovery of or compensation for birding and other traditional resources of which Ngai Tahu have been wrongfully deprived.

CULTURE

From shortly after 1840 down until the present time, all legislation affecting the Maori people, (and therefore the claimants) has reflected a policy of assimilation. As part of this process the Maori has been required to adapt to a Westminster system of Central and local government which gives little or no recognition to Maori ways of performing these functions. Wherever the Maori and Pakeha cultures have been in conflict it is the Maori who has had to bend. The result is that Maori cultural and social patterns and values have

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broken down and the people have become confused and dispirited, with some now tending to seek radical remedies for Maori grievances.

The claimants seek a recommendation that the policy of assimilation be reversed. This would involve a substantial programme of legislative reform to all statutes which reflect that policy.

The claimants believe that the Treaty of Waitangi can be read for the principles which it spells out and for the spirit which underlies the whole document. The former are currently under consideration by the Court of Appeal so comment on them would be presently inappropriate. The spirit which underlies the Treaty, and the instructions given to those who wrote it, is a simple acceptance of the fact that we are two races. The Treaty is a partnership between those two races and that partnership requires consultation, the absence of which is the root cause of all the grievances now held by the Maori people. The claimants therefore seek a recommendation that the Crown should now unequivocally give a public assurance that hereafter the Maori people will be consulted and listened to in all matters affecting them.

REMEDIES

Changes to Crown policies and attitudes have already been mentioned. These will need to be extensive and the detailed implementation of them will be difficult and may take a long time. The claimants believe that these changes are fundamental to the future of our country, and the only reason that they do not develop this aspect of the claims further at this stage is their belief that the changes will be largely uncontroversial if carried out with sensitivity.

The resolution of land based claims is quite another matter and is likely to be extremely controversial. For that reason it is important to state that the claimants acknowledge the sanctity of contracts and the provisions of the Land Transfer Act. Although they seek land as a partial remedy for their claims, they acknowledge that people who have bought or leased land for value cannot be dispossessed of it. Contracts arising from the operation of the State Owned Enterprises Act may be another matter, but that Act is currently under consideration by the Court of Appeal, so the claimants reserve their position in respect of it.

For these reasons the claimants seek the allocation of Crown Land to them. The lands which are the subject of the claims have largely passed into private ownership and so other lands are sought in substitution. Any lands allocated to the claimants should be representative of the lost land in both character and geographic distribution. It may well be that any recommendation of the Tribunal should

The Claims

be limited to the kind and quantity of the land to be allocated leaving the identification of particular parcels for determination elsewhere. Alternatively, if the Tribunal is minded to recommend allocation of land, it might give an interim decision to that effect. The claimants and the Crown could then consult with each other and, hopefully, reach an agreement which they could present to the Tribunal for its approval.

The claimants recognize that complete compensation in the form of land may prove impossible. In that event they would seek compensation in the form of a mix of land and money. They have also considered whether they should claim interest on the money value of all disputed land from the date of the dispute down to the present day. At this moment they have not decided whether to make such a claim but hereby give notice of the possibility, so that those potentially concerned may take such steps as they are advised in case such a claim is finally made.

DATED at Christchurch this 2nd day of June 1987.

D. M. Palmer

Solicitor for the Claimants

3.5. **Amended Claim of 5 September 1987**

ARAHURA CASE: MAORI RESERVED LAND LEASEHOLD

The applicant has been asked by the Tribunal to detail its proposed remedies in respect of the above leases.

It is the applicant's position that the Crown acted in a manner contrary to the spirit and intent of the Treaty of Waitangi in unilaterally imposing the form of leasehold now known as Maori Reserved Land Leasehold on the lands reserved from the Arahura Purchase of 1860 against the clearly expressed wishes of the Poutini Ngai Tahu owners.

The applicant further contends that the above form of leasehold has severely disadvantaged the Poutini Ngai Tahu owners since that time and continues to do so in that they are deprived and have been deprived of the ordinary benefit of those lands, they are effectively prevented forever from enjoying the ordinary use and benefit of those lands and that they have not been able to enjoy the ordinary rights of ownership.

The applicant therefore proposes two remedies on behalf of its Poutini Ngai Tahu beneficiaries who are shareholders in the Mawhera Incorporation which presently holds the title to such leasehold lands:

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They are:

(a) Monetary compensation from the Crown calculated on the basis of the difference between ordinary term leasehold rates pertaining to similar lands and the actual rates derived to the owners from the perpetually renewable leasehold imposed by the Maori Reserved Land Act 1955 and its preceding acts. Calculated as a lump sum from 1872 to the present.

(b) Amendment to the Maori Reserved Land Act 1955 to the effect that the leases prescribed in that Act will:

(i) Over two 21 year lease periods convert to term leasehold those lands subject to the leases prescribed in the above Act.

(ii) Immediately change from a fixed percentage rental basis to one of a freely negotiated rental subject to the Arbitration Act.

(iii) Immediately change from the present rental review period of 21 years to a rental review period of 5 years in respect of commercial and rural land and 7 years in respect of private residential land.

The applicant believes it appropriate to inform the Tribunal that the above leasehold amendment has been publicly advocated over the past decade by the Mawhera Incorporation and by other major Maori Incorporations administering Maori Reserved Land leases. Apart from the division of the rental review provisions into two groups it is similar to the proposals of the New Zealand Maori Council's Legislative Review Committee which formed the basis of the present Maori Affairs Bill currently before Parliament. The Maori Reserved Land Act is however not dealt with in the current Bill.

3.6. **Amended Claim of 25 September 1987**

NGAI TAHU MAORI TRUST BOARD

The Registrar,
Waitangi Tribunal,
Tribunals Division,
Justice Department,
WELLINGTON

ATTENTION: DR. MAARIRE GOODALL.

I write to notify you of the basis of the Ngai Tahu fisheries Claim in respect of WAI 27 currently proceeding before the Waitangi Tribunal.

The content of this claim was communicated to the Minister of Fisheries by the Secretary of this Board by FAX on September 24.1987.

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You should note that the fisheries component of Wai 27 is contained within the “Mahinga Kai” section of the case. It is anticipated that this component will be dealt with separately pending the outcome of the Muriwhenua Claim currently being considered by the Tribunal.

The Ngai Tahu Fisheries Claim is as follows:

1. Ngai Tahu claim sole ownership of the fishery off their tribal coasts out to the twelve mile limit under the Treaty of Waitangi.
2. In the light of the partnership principle implicit in the Treaty and developed in some detail in the recent Court of Appeal decision, Ngai Tahu are prepared to grant to their Treaty Partner, the Crown, a full half share in that fishery.
3. Without prejudice to its position on the question that the Crown may have been in breach of the Treaty in imposing both general legislation in fisheries and the recently imposed ITQ system in particular, Ngai Tahu accept that the ITQ system is now a commercial and practical reality.
4. Ngai Tahu therefore retains for itself 50% of all ITQ for all species out to the twelve mile limit and grants to its Treaty partner, the Crown, the right to 50% of all ITQ within the twelve mile limit. This retention and grant apply only to those waters offshore from the tribe’s traditional boundaries. Those boundaries are currently being considered by the Tribunal.
5. On account of its Treaty partner’s action in unilaterally imposing its own stewardship on the fishery described in past years with the effect that the fishery has become seriously depleted, Ngai Tahu claims compensation for its losses so sustained.
6. The tribe is prepared to accept such compensation from its Treaty partner in the form of an allocation of ITQ in the fishery beyond the twelve mile limit. The quantum of such allocation is regarded as being negotiable.
7. Should the negotiation on the quantum of ITQ beyond the twelve mile limit be acceptable to Ngai Tahu then the tribe is prepared to abandon its prosecution of the question that the Crown has acted in breach of the Treaty and the principles of the Treaty in respect of Ngai Tahu fisheries.

The above Claim is filed with you without prejudice to its substance being filed in a more formal way at a later date.

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It is further filed without prejudice to Ngai Tahu consideration of a proposed MAORIFISHERY PROGRAMME currently being considered by Government but on which the tribe has not as yet been consulted.

Tipene O'Regan
Chairman

3.7. **Amended Claim of 13 April 1988**

ADDITIONAL ITEM / INLAND WATERS

Document H20

WAI 27 Mahinga Kai

It is the Ngai Tahu position that the waters comprising our mahinga kai are properly the property of the tribe. We assert further that the inland waters comprising both lakes and rivers and streams which occur in the area of the Kemp purchase which we have claimed not to have sold to the Crown (the areas beyond the foothills described in Mr. Evison's evidence) are in fact the real property of Ngai Tahu.

It is our contention that the action of the Crown in declaring all natural waters to be the property of the Crown was contrary to the Crown's obligations under the Treaty. Insofar as the inland waters referred to above were the property of Ngai Tahu and insofar as they were not sold in 1848 in the Kemp Purchase then the Crown failed in its duty to protect the tino rangatiratanga of Ngai Tahu in these lands and waters. This was over and above the Crown's contractual misconduct in misusing its powers to assert ownership over lands and waters which it had not in fact purchased.

The Ngai Tahu position in respect of the future of the lands and waters referred to is similar to that referred to above earlier in respect of other resources. The principle of partnership remains at the forefront of our thinking.

3.8. **Amended Claim in Respect of Fisheries (j7)
25 June 1988**

Tena koutou nga Kaiwhakawaa o te Taraipiunara nei, tena koutou nga Rangatira o te Roopu Whakamana i te Tiriti. Tena koutou.

Anei matou e tu ake nei ko Ngai Tahu Whanui.

Kia whakarongohia a matou tangi mo nga uri a Takaroa i ngaro ai.

In accord with our earlier reservations and notice given that we would in due time bring our fishing claim up to date with events to the time of hearing we now seek leave to amend our claim as follows.

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We previously stated to the Tribunal in written and also verbal submissions the kind of negotiated agreement with the Crown we then contemplated as possible as to sharing of the resource in various zones, but that we recognise no seaward limit to our fishery nor do we concede any derogation from our tribal *tinu rangatiratanga* in the seas off our coasts. Because of the many significant changes in the New Zealand fisheries and in their management since our claim was first filed, and particularly due to recent developments in the work of the Courts, Government and the Waitangi Tribunal itself, it is necessary now to reformulate the detailed principles of the Ngai Tahu fishing claim.

We have already given evidence on our inland fishing claims, and further detail relating that information to our whakapapa and land usage rights will be given at this hui. Although it will be convenient to the Tribunal to deal with our sea fishing claim as a separate and major issue in itself, we would emphasise to you that Ngai Tahu consider their lands and seas to be a physical and spiritual unity, a seamless whole which cannot properly be divided into parts. Within that unity is our *mabika kai*, which cannot be separated from our mana as a Tribe.

We therefore now assert our marine fishing claim:

Ngai Tahu Whanui encompasses all the hapu of Kaitahu, Kati Mamoe, Waitaha, and all of the earlier tangata whenua tribes or hapu of Te Waipounamu. For brevity in our claim we just say Ngai Tahu, which includes us all.

1. Ngai Tahu own the marine fishery adjacent to their Tribal territory. That fishery is our property and has been since time immemorial.
2. The geographic extent of our fishery is bounded laterally by perpendicular projection into the sea of our tribal land boundaries with other tribes at the coast at Pari-nui-o-whiti on the east, and at Kahuraki on the west, and sweeping southwards around the coast of Te Waipounamu and offshore islands including those to the south of Rakiura.
3. No seaward boundary offshore is recognised. Our traditional and customary tribal fishery is not limited by any past or present law or custom of Britain or of the Crown in New Zealand as regarding 3, 12, 200 or any other number of miles offshore, nor the alleged projectile strength of their cannon. We have the right to go to sea as far as we must, or are able, in order to obtain the fish that we require.

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4. Our fishery includes inshore waters, beaches, inlets, fjords and tidal rivers and estuaries, as well as littoral swamps, and it includes submarine fishing grounds without any limitation as to their depth.

5. Ngai Tahu do not claim mana whenua on Rekohu-Chathams Island or the smaller offshore islands of that group, and therefore we do not claim that mana moana nor the Chathams fishery. Ngai Tahu do claim and acknowledge their blood and historical relationship with many Chathams people of mixed Moriori, Maori or Pakeha descent. Accordingly we do not ourselves claim in the Chathams fishery, instead we recognise the duty of *whanaungatanga* requiring us to support the Chathams people in making their own claim. Ngai Tahu do not wish to intrude on the mana of the Chathams and only offer their support on such terms and at such times as those people might request from the Chathams Islands community itself, so long as we are satisfied their runanga genuinely represents the Chathams community itself rather than [sic] any external mainland group. Ngai Tahu expects in due time to negotiate directly with the Chathams people agreements for the boundaries and regulation of their respective fisheries where they abut. Equally we expect to negotiate suitable agreements with the tribal authorities to the north of us on west and east coasts of Te Waipounamu.

6. The Ngai Tahu fishery includes all property and user rights inherent in the business and activity of fishing within their tribal waters defined above.

7. The Ngai Tahu fishery includes commercial sustenance and cultural aspects and is not subdivided into compartments by such categories as listed in the Fisheries Acts or Regulations made by the Crown purportedly for the general NZ fishery; instead our fishery is one whole entity or *taonga* controlled by our tribal authorities for the benefit of all and for those who come after us according to our traditional values.

8. The Ngai Tahu fishery includes the right to fish without any interference or restriction whatever by the Crown or by other British subjects or New Zealand residents or by foreign persons.

9. Ngai Tahu fully recognise the conservation and management duties inherent in their rights of ownership usage and control of their fishery, for the continuing benefit of themselves and all other citizens of New Zealand. In that respect the expensive but disastrously ineffective management methods of the Crown intruded on our fisheries during the past half century or more must be modified to include the more sophisticated approach of Southern Maori tradition.

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10. Ngai Tahu are entitled to the protection of the Crown against any interference in their fishery by other citizens including Maori of other tribes, or by other residents or foreigners.

11. The Ngai Tahu fishery comprises fish of all species finfish shellfish crustacea seals whales and sea plants existing from time to time in southern waters or on our coasts including migratory species passing through those seas, and including also anadromous and catadromous species migrating between fresh and salt waters. Certain particular species such as squid, barracouta, hoki, hapuku seals whales or shellfish had especial traditional economic importance for Ngai Tahu but all species without exception are part of our fishery.

12. The fish in our fishery include all those species now found there whether or not they were all used at any particular date in the past, and also included are any other species of fish or plant life which might be newly discovered there at any time in the future. We are conscious that various species have been newly commercially exploited after findings by independent fishermen, including foreigners in the famous case of orange roughy which we understand was first found by Japanese invited by the Crown for a substantial fee payable to themselves, into our fishery. Ownership of those fish resources has nevertheless been arrogated to itself by the Crown, in breach of the Treaty of Waitangi and our ownership and control rights guaranteed to us in the Treaty.

13. The Ngai Tahu fishery includes all those places within our tribal seas where fish can from time to time be caught whether or not they were all used at 1840 or at any other date. Our property belongs to us no matter what particular use we might choose to make of it at any time.

14. Ngai Tahu fisheries include all the gear that is apparatus nets lures pa weirs hinaki lines hooks navigational aids and the like used in fishing, and it includes all the methods of fishing which were at any time used or which may in future be used for the species and places accessible to our fishermen at any time past in the future. Our fishing property is in no way limited by past technology and we have every right to utilise modern knowledge in its development.

15. The Ngai Tahu fishery includes all the cultural and spiritual values held to be important by Ngai Tahu and its various hapu whether or not those values are recognised or considered important by the Crown in its legislation, or by other Maoris or other citizens residents or foreigners, or by corporations. Ngai Tahu are entitled under the Treaty to have those spiritual or non-material values identified by them protected by the Crown.

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16. The management and control of their fishery is guaranteed exclusively to Ngai Tahu by the Treaty of Waitangi, and further by s.88(2) of the Fishing Act in our view of the law. Ngai Tahu were also entitled to the income and other benefits that may from time to time accrue from the activity and business of fishing in our tribal seas. Furthermore the entire property in the fishery was guaranteed to Ngai Tahu however that property title might be expressed in modern legal terms following legislation by the Crown whether it is now in real or such abstract forms as “quota” “licences” or any other form of title or right to fish. In our view the Crown has never had any right to interfere in the management or control of the fishery, nor to divert away from the rightful owners the income and benefits of fishing, nor to issue “quota” “licences” or other forms of purported title in property or user rights in the fisheries that in right belong to Ngai Tahu. The fishery property still belongs to Ngai Tahu.

17. Ngai Tahu have long recognised the need to develop a conjoint Maori-Pakeha society based upon mutual respect and reasonableness as between partners in accordance with the Treaty of Waitangi. The file of submissions by the Deputy Chairman and the Chairman of our tribal Trust Board to the Minister of Fisheries clearly shows a responsible attitude, acknowledged by the Minister himself, in regard to management and sharing in the fishery resource. Such submissions have been made by our Tribe over a long period of time, but so far with no satisfactory result, requiring us now to prosecute our claim to the fullest.

18. Ngai Tahu historically as shown in evidence to this honourable Tribunal have always been generous in their view of the needs and reasonable wishes of *manuhiri* peoples coming within our tribal boundaries in peace and friendship or for trade or mutual benefit. Long before the Treaty of Waitangi our tribal leaders recognised and encouraged trading educational and religious interrelationships both with other Maori and with Pakeha. The reasonable needs of those *manuhiri* for sustenance fishing were always allowed and protected under our tribal mana, continuing right through to the landmark 1986 case acquitted from the District Court by Williamson J in which the learned Judge saw clearly that the accused person belonging to a northern tribe was in fact exercising a Ngai Tahu fishing right under our approval and control through our hapu leaders of Ngai Tuahuriri. Thus the law acknowledged that our fishing rights had not been extinguished, even though only a small part of those rights were in issue in that case. In fact that case turned on the aboriginal rights under British and New Zealand common law, and not at all upon our much greater rights reserved to us under the Treaty of Waitangi.

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19. Ngai Tahu alone has the authority to give, and to revoke, fishing rights to manuhiri peoples coming into our rohe. We have in fact granted such rights since ancient times, which we call *tuku whenua* or *tuku moana* and which my colleagues will have referred to in other evidence. Any such grants are exercised under the mana of Ngai Tahu and have always been protected by us from intrusion by others, Pakeha or Maori, and equally may be revoked by us for good cause.

20. The policy of Ngai Tahu is no different today and we intend as a people to negotiate fair and reasonable arrangements with all those persons, Crown officers or foreign interests who will properly recognise our prior rights to do so, and our right to determine the best use of our inherent property in fishing. Therefore the single most essential requirement for those wishing to negotiate settlements within the Ngai Tahu fisheries as our Treaty partners will be that they need to acknowledge the fundamental fact that Ngai Tahu continue to hold the full and exclusive property and user rights in their tribal fishery as defined earlier and in their tribal activity and business of fishing. The Treaty of Waitangi guarantees nothing less.

21. Those who do acknowledge the proper basis to begin negotiations with Ngai Tahu as equals and as responsible Treaty partners, but only then, can expect honest negotiations for some share in the southern fishery to reach meaningful and practical results. In earlier pro forma and draft versions of this fishing claim we indicated the type of arrangement that Ngai Tahu might be willing to contemplate as a basis for negotiation.

Due to the significant developments in this field nationally following High Court orders, the issue of the Muriwhenua Fishing Report by the Waitangi Tribunal, and the executive negotiations between Crown and Maori representatives, we have reserved the right to modify our earlier offers (filed 25 September 1987) to negotiate, in light of the latest information. Hence our definition now of our full marine claim for your consideration.

However the principle earlier indicated, remains unchanged, that Ngai Tahu has always sought and still seeks proper recognition of our tribal property in the fishery, a fair and equitable negotiation with our Treaty partners in the Government representing the Crown today, and an equitable and practical arrangement in our fisheries. In seeking such a fair resolution Ngai Tahu cannot agree to abandon any of our fundamental rights, especially the clear property right in fishing guaranteed to us by the Treaty.

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22. With acknowledgement of Ngai Tahu rights to at the least an equal share in the management and control of the southern fishery, an equal or at least very substantial share in the income and benefits of fishing and similarly in the equity or property involved, we foresee a constructive and peaceful relationship developing for the benefit of Maori and all others in this country. We say at least an equal share in the management and control Mr Chairman, and that is a very considerable concession by my tribe, bearing in mind that the Treaty of Waitangi guaranteed to us the total and exclusive rights to control, indeed to own, the fishery, and bearing in mind that both the English and the Maori versions of the Treaty were written by Crown agents. If there were any doubt in this matter, and it is hard for reasonable people to see how there can be, it must be construed in favour of the Maori ownership and control of the property so clearly reserved to us in Article Two of our Treaty.

If such fundamental values are to be further denied despite the Treaty of Waitangi signed in all good faith by Ngai Tahu, despite specific reservations of our *mabika kai* in our land sale Deeds in Te Waipounamu, despite findings of the Waitangi Tribunal, despite orders and determinations of the High Court and Court of Appeal, then New Zealand will be condemned to unending conflict.

Ka whawhai tonu matou, ake ake ake!

The best time for peaceable settlement, is now.

23. Ngai Tahu continue to reserve their right to claim compensation at law in the Courts, and under the Treaty in this Tribunal, for damages to their fishery and for the exclusion of our tribesmen from fishing and the tribal benefits of our traditional activity and business of fishing caused by the wrongful actions of the Crown during past years. While our Tribal leaders hope that successful negotiations with our Treaty partners might make it unnecessary to pursue that course we give notice that such claims will be prosecuted if no fair agreement is reached.

24. Because of its importance to all New Zealand we emphasise again the importance of conservation as raised in paragraph Nine above. Ngai Tahu acknowledge the responsibility to so manage their fisheries on soundly based conservation principles that there is assurance the fishery will provide a sustainable resource for future generations. Ngai Tahu consider they have a valid position in conservation based on traditional Maori values, and supplemented by modern scientific knowledge and expertise. We do not deprive ourselves of any technical progress or discoveries in the modern scientific world, and we are not afraid to employ the best brains of

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other Maori, of Pakeha, or of foreign experts when we think they will be able to assist us in the management of this most valuable resource.

You will recall the official motto in the seal of our Ngai Tahu Maori Tribal Trust Board:

Mo tatou, a, mo ka uri a muri ake nei.

Therein lies a difference from the hasty short term profits approach so prevalent today in the way fisheries are being mis-managed. You must have found amongst all the other Maori tribes which your Tribunal has heard throughout the land, the same thing that I say to you now on behalf of Ngai Tahu

Maori take a very long view.

We are grown from the seeds of Ra'iatea planted here, ours is a very great canoe, and we shall not disappear.

25. We thus look far to the future, as we do to the past when the taniwha Poutini brought to our tribal lands Waitaiki, the mother of the taonga pounamu by which we are known throughout the Maori world.

*Kia whakarere ibo au ko toku mokai Tapu,
Ko Poutini tena kei te tabu o te uru
Here ai toku kupenga ki te Taramakau
Ara ki te Ara hura hei awahi e
ei ano toku whakaaro ki nga roto
tapu ..
e aue Taiki e*

The Ngai Tahu Report 1991

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Appendix 4

Maori Appellate Court Decision

4 South Island Appellate Court Minute Book 672

CASE STATED NO 1/89
IN THE MAORI APPELLATE COURT
OF NEW ZEALAND

IN THE MATTER of the Treaty of Waitangi Act 1975
AND

IN THE MATTER of a claim to the Waitangi Tribunal by
HENARE RAKIIHIA TAU and the NGAI
TAHU TRUST BOARD as Claimants and
HER MAJESTY THE QUEEN as
Respondent.

TO: The Waitangi Tribunal

FROM: The Maori Appellate Court

On the 17th day of March 1989 the Waitangi Tribunal did state a question to this Court requesting determination in respect of two areas of land purchased by the Crown and contained in the Arahura Deed of Purchase dated 21 May 1860 and the Kaikoura Deed of Purchase dated 29 March 1859:

(1) Which Maori tribe or tribes according to customary law principles of “take” and occupation or use, had rights of ownership in respect of all or any portion of the land contained in those respective Deeds at the dates of those Deeds.

(2) If more than one tribe held ownership rights, what area of land was subject to those rights and what were the tribal boundaries.

The decision of this Court is:

The Ngai Tahu tribe according to customary law principles of “take” and occupation or use had the sole rights of ownership in respect of the lands comprised in both the Arahura and Kaikoura Deeds of Purchase at the respective dates of those Deeds.

Having decided that Ngai Tahu only is entitled question two above does not require an answer.

Maori Appellate Court Decision

We annex hereto the reasons for our decision as recorded in 4 South Island Appellate Court Minute Book commencing at folio 673.

DATED at Rotorua this 12 day of November 1990

H K Hingston – President
H B Marumaru – Judge
Andrew Spencer – Judge

Coram

H K Hingston (Presiding Judge)
H B Marumaru (Judge)
A D Spencer (Judge)

DECISION

There were four claimants:

- (i) Rangitane Ki Wairau (Mr M N Sadd)
- (ii) Te Runanganui O Te Ihu o te Waka a Maui Incorporated.
(Mr J Stevens, Counsel) representing the tribes of Nelson and Marlborough:

- Ngati Apa Ki Te Ra To
- Ngati Kuia
- Ngai Koata
- Ngati Rarua
- Ngati Tama
- Ngati Tearangatira Ki Waipounamu
- Ngati Waikauri
- Rangitane Ki Wairau
- Te Atiawa

These tribes were formerly represented by Kurahaupo Waka Society in the proceedings, before the Waitangi Tribunal.

- (iii) Ngati Toa (Mr Williams, Counsel – Mr M Rei)
- (iv) Ngai Tahu Maori Trust Board (Mr P Temm Q.C. & Mr Knowles) representing Ngai Tahu.

The Waitangi Tribunal has referred this matter to the Maori Appellate Court pursuant to Section 6A of the Treaty of Waitangi Act 1975 as amended by Section 4 of the Treaty of Waitangi Act 1988 (“The Act”).

The question in terms of the Act referred to this Court concerns tribal boundaries in the northern part of the South Island of New Zealand and is set out hereunder:

The Ngai Tahu Report 1991

By agreement the parties namely the claimants and the respondents, have formulated the following question for determination by this Honourable Court having regard to the two areas of land purchased by the Crown and contained in the Arahura Deed of Purchase dated 21 May 1860 and the Kaikoura Deed of Purchase dated 29 March 1859.

- 1 Which Maori tribe or tribes according to customary law principles of “take” and occupation or use, had right of ownership in respect of all or any portion of the land contained in those Deeds;
- 2 If more than one tribe held ownership rights, what area of land was subject to those rights and what were the tribal boundaries?

From the wording on the question referred to us, a decision finding one iwi had right of ownership at the relevant date, in respect of all the land in one or both of the Deeds would mean no answer to the second question would be needed in respect of that Deed.

Throughout this decision, because the case stated requests a determination as at the dates of the Deeds, we have ignored any European occupation of any of the lands up to those dates.

We are of the view that before embarking on an evaluation of the evidence presented to the Court it would be proper to record our understanding of the relevant law.

We begin initially with the relevant portion of Section 6A Treaty of Waitangi Act 1975 which provides:

3 Power of Tribunal to state case for Maori Appellate Court or Maori Land Court – The principal Act is hereby amended by inserting, after section 6, the following section:

6A(1) Where a question of fact–

- (a) Concerning Maori custom or usage; and
- (b) Relating to the rights of ownership of Maori of any particular land or fisheries according to customary law principles of “take” and occupation or use; and
- (c) Calling for the determination, to the extent practicable, of Maori tribal boundaries, whether of land or fisheries, – arises in proceedings before the Tribunal, the Tribunal may refer that question to the Maori Appellate Court for decision.

This provision directs the Court to make its decision on the question referred, taking into account Maori custom and usage relating to Maori rights of ownership in lands and fisheries according to customary law principles of “take” and occupation or use. To do this we must first decide what these principles are.

The pre-European inhabitants of New Zealand had, over many centuries, developed certain customary *take* or rights concerning land the principal being as follows:

- 1 Discovery such as when the first canoes arrived

Maori Appellate Court Decision

- 2 Ancestry (*take tupuna*)
- 3 Conquest (*take raupatu*)
- 4 Gift (*take tuku*)

These *take* when supported by actual occupation of the land, generally signified rights (mostly in common) somewhat allied to ownership; these ownership rights could be lost in various ways; if a people left the area and none of their issue returned within three generations; if an iwi or hapu were defeated in battle and the victors remained and occupied the land to the exclusion of the losers; if iwi gifted the land to others, are examples.

Norman Smith in his book *Maori Land Law* (at pp 88, 91 & 92) described the general principles to be considered when weighing up occupation rights as follows:

- (a) Those who show complete and continuous occupation ie occupation commenced before 1840, and extending up to the time of investigation of title. Where the occupation is by virtue of ancestry it is usual to require that constructive possession was held for at least three generations. Where the occupation arises out of conquest it must be shown that the conquerors seized the land and reduced it into possession and retained it following, and by reason of, such conquest. Where the occupation is claimed to be under a gift, unbroken occupation by the various generations from the time of the gift should be shown.
- (b) Those who have never personally occupied but whose near antecedents had undisputed occupation or whose rights have been kept in existence by relatives.
- (c) Those who have occupied at some former period but are not in present occupation.
- (d) Those who are in occupation by right of ancestry but whose permanent occupation is recent in its origin.

It must not be necessarily assumed, however, that the application of one rule will exclude persons to whom the others might apply. On the contrary all four rules should, where applicable, be utilised.

Throughout the evidence of the various claimants there has been reference to the holding of mana-whenua in various lands comprised in the Deeds as additional right to the land; “mana-whenua” became the vogue in Maoridom circa the Kingitanga Movement in the 1860s. We believe the more appropriate word in relation to land is rangatiratanga, particularly as the Treaty of Waitangi uses that word.

The Court recognizes that the matters to be decided in its case are of great moment to each iwi making a claim and to Maoridom as a whole, this being the first case to be dealt with by this Court pursuant to this legislation.

The Ngai Tahu Report 1991

We have throughout been conscious that the Court is sitting as a Court of first instance, that an appeal from our decision would necessitate the expense of a Privy Council appearance and that our decision is binding on the Waitangi Tribunal, and, because of these factors, have allowed more leeway to the claimants in the presentation of their respective cases as well the testing of the other claimants' evidence than would normally be in the Maori Appellate Court. We believe that section 54(1) of the Maori Affairs Act 1953 should be liberally interpreted by the Court when dealing with cases stated of this nature.

We note that the case stated requires determination as at 1859 and 1860 and refer to our finding at - S.I. APP CT MB - where we said:

We understand the rule to be that put to us by the claimants, simply, land could not be acquired post treaty by conquest or take raupatu but the other incidences of customary title change remained intact.

Having found accordingly we are mindful that where an iwi have proven one of the customary take supported by occupation but were absent in 1840 they could revive their ahi kaa as long as the re-occupation was peaceful and within three generations of their leaving the area.

One factor that influenced the title situation in respect of those deeds was the invasion of Te Waipounamu by Te Rauparaha and his allies.

In 1828 the Ngati Toa, led by their Chief Te Rauparaha, invaded the South Island. They were joined in alliance by Ngati Koata, Ngati Tama, Te Atiawa and Ngati Rarua. The invasion took the Ngati Toa and their allies to Akaroa on Banks Peninsula in the east and to Arahura on the west coast of the South Island. Patricia Burns, in *Te Rauparaha: a new Perspective* says at the beginning of a chapter headed "Power and the Final Peace" that Te Rauparaha "commanded Cook Strait, the north of Te Waipounamu in the thinly populated coasts east to Kaiapohia and west to the river Hokitika". The Ngati Toa had not had any presence in the South Island prior to their invasion in 1828. Acts of warfare had effectively ended by 1836.

It is therefore necessary for us to clarify the title situation as it was prior to the invasion then consider the effect of the invasion, the title situation going into the 1840s and any legitimate revival of iwi occupational rights post 1840 and before the time of execution of the Deeds evidencing the Kaikoura purchase of 29 March 1859 and the Arahura purchase of 21 May 1860.

THE KAIKOURA DEED "Exhibit A" annexed to the case stated shows the land in question is the north eastern block on that map. The parties to the Deed were the Crown and Ngai Tahu.

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In respect of much of the land comprising the Kaikoura purchase, Deeds of Sale were entered into by the Crown with other iwi which specifically included areas sold by Ngai Tahu in the in the 1859 deed.

1 1847 Wairau Deed (Ngati Toa).

2 1853 General Deed covering the Northern Te Waipounamu. In this Deed Ngati Toa, claiming to be acting “co-jointly” with Ngatiawa Ngati Koata, Ngatirarua, Rangitane and Ngai Tahu ceded all their rights to the “Northern part of the South Island”.

3 Rangitane in a receipt dated 1 February 1865 acknowledged payment by the Crown of one hundred pounds in consideration “for all their claims to land in the North and South Islands” as recorded in the note describing this transaction recorded in Mackay’s compendium however the body of the document (receipt) referred to lands “from Wairau to Arahura ...”.

4 1856 Deed whereby Ngatiawa is described as ceding all claims to land in the middle Islands to the Crown – again the translation of the body of the document refers to specific areas.

Insofar as the various deeds are concerned we adopt Dr Mitchell’s (a witness for the Rangitane claimants) observation when he said viz a viz the various deeds–

There are other indications too of the Government’s desire to extinguish all native claim regardless of their validity.

At 3.S.I. Appellate CT MB 240 this Court had this to say:

All Counsel ... are reminded that s6A of the Treaty of Waitangi Act is a comprehensive code and the Court’s investigation will be conducted with the matters therein raised to the forefront – the fact that the Crown paid certain tribes for areas of New Zealand means nothing in terms of that section of the Act, however any properly recorded and documented evidence leading to the translation would on the other hand be extremely helpful.

During the course of the hearings, there was a substantial amount of evidence led concerning these deeds. In our view, however, the deeds themselves do little to assist us in determining the respective tribal rohe. The very fact that within the space of 13 years the Crown entered into a number of agreements which overlapped, thereby purchasing in some cases the same lands from different tribes, is evidence that the status of the respective deeds in determining “ownership” was questionable. Clearly, Ngati Toa received favoured treatment at the hands of the Crown, but we do not consider that this was necessarily an acknowledgement of their holding the “rangatiranga” over the territories concerned. That situation probably came about through a policy actively adopted by Te Rauparaha of

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establishing a close working relationship with the settlers. Hence he established a strong trading relationship in flax and food etc., provided protection for whaling settlements and encouraged Pakeha settlement in areas under his control, such as Cloudy Bay. From the settlers' perspective one could imagine their ready acceptance of his having the authority to enter into the Deeds of Sale without making close enquiry, being happy to conduct their negotiations in Wellington and leave the tribal relationships among the Maori people for them to sort out amongst themselves.

Having stated what we believe to be the law that is to be followed in cases of this nature we now turn to the respective Deeds.

KAIKOURA DEED 1859

The Deed describes the boundaries of the land as follows:

These are the boundaries of the land commencing at the Karaka (Cape Campbell), and proceeding by the sea coast in a Westerly direction to Pari nui o whiti (Wairau Bluffs); from thence turning inland, it runs in a direct line to Rangitahi (Tarndale), at the sources of the River Waiautoa (Clarence); whence, turning in a South-westerly direction, it continues by the mountains to Hokakura (Lake Summer); turning thence in an Easterly direction, the boundary is the River Hurunui to its confluence with the sea; thence turning at the mouth of the Hurunui, in a North-easterly direction, it goes along the sea beach to Karaka (Cape Campbell), where the boundaries join.

Rangitane conceded that Ngai Tahu occupied the East Coast as far north as Kaikoura during the period prior to the northern invasions in the 1820s led by Te Rauparaha. To that extent, and during that period Ngai Tahu's title was not disputed.

Rangitane claimed it had clear customary title to the Wairau and as far south as the Waiiau-toa in pre-Te Rauparaha times. It based its title on take tupuna (ancestral rights).

In support of its claim, Rangitane contended that the Waiiau-toa has long been recognised as the tribal boundary between Rangitane to the north and Ngai Tahu to the south; that Tapuae-o-Uenuku, is the sacred mountain of the Rangitane; and that Rangitane's claim is recognised by the fact that the Blenheim Maori Committee administers Kaimoana as far as the Waiiau-toa. It was further asserted that the Ngai Tahu currently residing in Kaikoura do not believe they have a claim to land north of the Waiiau-toa as evidenced by the acceptance of the Waiiau-toa – as their northern boundary when the Kaikoura Tribal Committee lodged objection with the Minister of Lands to possible sales of Crown pastoral leases in 1983.

Maori Appellate Court Decision

Extensive evidence was given by Rangitane and by Ngai Tahu as to their occupation of various parts of the disputed lands and surrounding territory, and to the battles fought between them prior to the advent of Te Rauparaha. As can be expected there were conflicting accounts of many of the historical events that occurred over 200 to 300 years ago.

According to Mr Frank Dodson Wairau MacDonald, a kaumatua who gave evidence for Rangitane, the first migration of Ngai Tahu from the North Island arrived at Moioio Island in the Tory Channel in the late 1600s. Over a period of a generation thereafter, Ngai Tahu were harried from place to place by the iwi of Rangitane, Ngati Mamoe and Ngai Tara until Ngai Tahu eventually migrated from Karaka (Mussel Point) to Kaikoura.

Mr MacDonald described a series of battles or incidents in which Ngai Tahu were forced to move firstly from Moioio Island where their Chief Puraho was killed; then from Pukatea Pa; from Patiaawa; from Ruatekanikani; from Hikurangi Pa; from Otekainga at the mouth of the Awatere River; from Otuwheru; and finally from Karaka (Mussel Point) when Ngai Tahu departed south to Kaikoura.

Mr MacDonald and other witnesses, spoke of the Waiau-toa as the sacred boundary of Rangitane. He said the boundary was established in the time of Te Hau (grandfather of Kupe) around 750 to the year 800. The sacred boundary was established in mythical times long before Rangitane was known as a tribe. It was firmly established when Ngai Tahu came to the South Island and Rangitane never trespassed south of the boundary. Ngai Tahu trespassed at Miromiro (northwest of Hamner Springs) and there were several battles to keep them back on the southern side of the boundary.

In the late 1700s a battle was fought at Matariki, on the north bank of the Waiau-toa, and Ngai Tahu were defeated by the combined forces of Rangitane and Ngati Mamoe. Tapuae-o-Uenuku, the sacred mountain of Rangitane, is on the northern side of the Waiau-toa.

Rangitane claimed that before the advent of Te Rauparaha, Ngai Tahu had been expelled from the northern parts of the South Island after suffering a series of defeats, and that the land north of the Waiau-toa was the domain of Rangitane.

Mr Tipene O'Regan, chairman of the Ngai Tahu Maori Trust Board, gave a different account. He described how Kai Kuri, a hapu of Ngai Tahu, migrated to the South Island under the leadership of Puraho and his son Muru Kaitatea. They settled in Tory Channel and established a great Pa Kaihinu (Mr MacDonald claimed this was a Ngai

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Tara/Mamoe Pa). Mr O'Regan related subsequent events that occurred and we set out an extract from his evidence:

Ngai Tara were living on Totaranui and Arapaoa Island on the other side of the water and before long they were in conflict with Puraho and his people in the wars over the bone fish hooks made from graves which had been interfered with. The conflict escalated and ended in the death of Puraho. With their ariki's death Kati Kuri set out to destroy Ngai Tara and this was accomplished and that tribe has never been known as a people of mana in this island since.

The Rangitane living at Wairau had assisted Ngai Tara in the fighting with Kati Kuri and it was necessary to seek utu from them. It was also convenient because Kati Kuri could not continue living at Kaihinu after the death there of Purahonui. War was made against Rangitane at Wairau and they were defeated. In the course of that fighting one of Maru's warriors, Tuteurutira, captured a wahine rakatira thinking she was Rangitane. He later found she was a recently captured prisoner of Rangitane. Her name was Hinerongo and she was ariki of the Kati Mamoe people of Waipapa (or Waiau-toa) Clarence River. It was her tangi for her tupuna places, Te Rae o Te Kohaka, Te Rae o Te Karaka and the hill of tikumu named Kairuru, that made him realise she was not Rangitane. Tuteurutira returned her to her Mamoe people and married her and lived amongst Mamoe at Waipapa. Meantime, Maru and the rest of Kati Kuri lived at Wairau and Rangitane stayed there as a subject people.

After a time Rangitane became restless and it became necessary to subdue them. The take was to avenge their attacks on Kati Mamoe and the capture of Hinerongo (who was partly related to Rangitane herself as well as being ariki to Kati Mamoe). Kati Kuri combined in alliance with Kati Mamoe and the battle was fought on the beach beneath the Pa, Pukatea (Whites Bay). This time Rangitane were completely conquered and ever since have been confined to Wairau where they were later to be overrun again by Ngati Toa in the 19th century.

Mr O'Regan stated that historically the real issue to them has always been the Awatere Valley and the control of the route right into the heartland of the Ngai Tahu. He said Ngai Tahu have never argued the Rangitane right to look upon Tapuae-o-Uenuku. He thought two peoples can look at different sides of the same mountain. What they differed with is where it stands. He referred to Aoraki which still remains the mauka atua of Ngai Tahu although it sits in a National Park.

Ngai Tahu, in their evidence, disputed the Waiau-toa as their northern boundary. Official documents produced to us indicated that in 1848, Ngai Tahu were claiming Parinui-O-Whiti to be their true boundary. We accept the assertion by Rangitane of the special significance of the Waiau-toa in their traditional history but we find insufficient evidence to establish that at the time of Te Rauparaha's incursions, the Waiau-toa was the tribal boundary between Rangitane and Ngai Tahu.

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In 1828, Ngati Toa and their allies crossed to Te Waipounamu and at Pelorus Sound, Ngati Kuia were attached and defeated. Rangitane who occupied the Wairau, were then overwhelmed and the invaders turned their attention to Ngai Tahu at Kaikoura and southwards.

Rangitane were not further involved in major warfare with the northern allies or any other iwi. Their defeat appears to have been comprehensive. J W Hamilton, Native land purchase agent, writing to Donald McLean, Commissioner of Native Land Purchase Department on 8 January 1857 says:

The Rangitane, now almost extinct appears to have been the original occupants of the northern portion of the middle island and might possibly maintain some kind of claim as far south as Waipapa or Waiau-toa (Clarence River). They seem, however to have been hemmed in on both sides by Ngai Toa and Ngai Tahu, and I am not able in this part of the Country to learn much about them. South of Waipapa however, I am of opinion, as I have stated before that the Ngai Tahu title is incontrovertible.

Ngai Tahu's defeats, and their resurgence against Ngati Toa in the 1830s onwards are discussed later and it is contended by the Ngai Tahu claimants that Ngai Tahu had never lost title to the lands up to Parinui-O-Whiti by 1840. We agree that that contention holds good as against the adverse claim by Rangitane who were in no position to assert customary title to the disputed land following their decisive defeat by the northern allies. There can be no doubt that Ngati Toa as at 1840 were in occupation of the area known as Cloudy Bay, North of Parinui-O-Whiti (White Bluff). They are claiming however, that their "sphere of influence" extended south of Kaikoura.

We must say at the outset that we found very little evidence of this. It is certainly true that the exploits of Te Rauparaha and his allies were well remembered. But we are unable to find evidence that Ngati Toa exercised ahi kaa south of "the Wairau". The only evidence which could seriously challenge that finding may be the observation by W.J.W Hamilton in 1849 that there were a number of Maori in the area of the Waiau-toa river who, it has been suggested, were descended from Tuhere Nikau. These people would apparently have been of Ngati Toa descent and were tupuna of Makari Miller ("Granny Mag") who died in about 1942.

Apart from this isolated reference to people of Ngati Toa descent living south of Parinui-O-Whiti, there is no evidence to support the claim that Ngati Toa people exercised ahi kaa in that area. It is noteworthy that Hamilton did not himself identify the tribal affiliation of the people he described and nor was any evidence led which could recall the names of places in that area which were specifically of significance to Ngati Toa. For example, the mountain known as

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Tapuae-O-Uenuku was the subject of special reference by both Ngai Tahu and Rangitane. In the case of Ngati Toa, however, no traditions by which the people identified themselves with the area were referred to. In our view, the existence of an isolated handful of people of its own is insufficient to establish ahi kaa – there is nothing to suggest in the evidence that these people kept in touch with their tribe and were in turn held out as being their representatives.

We are satisfied, however, that Ngati Toa had established their ahi kaa in the 12 years following their invasion in the area of the “the Wairau” and as far south as Parinui-O-Whiti. In 1845, Commissioner Spain reported that the Ngati Toa were settled in that area and had parts of the land under cultivation. In 1847 the Surveyor General, C W Ligar, reported that members of the Rangitane tribe who wished to cultivate land for growing potatoes in the Wairau first sought the permission of Te Rauparaha before doing so.

During the hearings the expression, “the Wairau”, was the subject of extensive argument. For the purposes of the claim by Ngati Toa, especially having regard to a the short period of time in which they had to establish themselves in the South Island prior to 1840, we find that “the Wairau” is the area they had settled in the vicinity of the Wairau Valley extending as far south as Parinui-O-Whiti only.

Accordingly, although it is clear that the Ngati Toa and their allies had effectively conquered the East Coast as far as Kaiapoi, (or possibly to Akaroa) they nevertheless did not follow up their military success by exercising ahi kaa over the territory south of Parinui-O-Whiti to such an extent as to establish a cultural tradition in the area. North of Parinui-O-Whiti, however, it is clear they established themselves in cultivating land there and established a mixed settlement with the European settlers. Kaumatua Pateriki Rei described Te Rauparaha as a cultivator who encouraged his people to sell produce to the Pakeha. This is consistent with Te Rauparaha’s policy of trading with the new-comers rather than maintaining the more nomadic lifestyle of other tribes whose territory may better be described as takiwa rather than rohe. Accordingly, apart from possibly Granny Mag’s forebears, there was very little evidence of the Ngati Toa exercising any presence south of Parinui-O-Whiti on either a seasonal or permanent basis. The incidence at Kaparatehau (Lake Grassmere) in 1836 when it is alleged Te Rauparaha had to make an undignified withdrawal from a duck shooting expedition, can only be assumed to have been an isolated expedition as no evidence was led which would suggest that a tradition of seasonal hunting in that area had been established by Ngati Toa after that event.

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In his opening submissions, Counsel for Ngati Toa, Mr J V Williams, first amended the synopsis of submissions, he had filed, dated 21 June 1990, by the addition at paragraph 1.3 to extend the area claimed on the east coast of the South Island to a “sphere of influence” south of Kaikoura.

Counsel subsequently went on to discuss the “1840 Rule” and the concept of ahi kaa. He said:

It may be that a tribe which has maintained the traditions of the exploits of its tupuna that recalls the battles that were fought, the defeats, the victories, that recites the whakapapa, that recalls the names of the places, the burials of the dead and wahi tapu which relate to its history, have maintained an ahi kaa, have not lost their connection with the land in respect of which they claim an interest ... My submission if the Court is to take a view of whether an iwi has maintained its ahi kaa up to the present day, then this court is invited to take a view that the maintenance of traditional stories, the maintenance of whakapapa, that the remembrance of wahi tapu, battles won and lost, is evidence of the maintenance of that ahi kaa.

We accept the thrust of those submissions but we have been unable to find evidence for Ngati Toa which satisfies the criteria described by their Counsel for finding that they had established ahi kaa south of Parinui-O-Whiti.

The historical evidence presented to the Court covering the settlement of Te Waipounamu by the Maori insofar as the lands, the subject of our enquiry clearly demonstrates the coming into being of the iwi now known as Ngai Tahu. This iwi evolved, we are told, over many generations by a process (in modern terminology) combining assimilation, amalgamation, conquest and intermarriage. The manuscript of Hariata Whakatau Pitini-Morera (Aaro Book ‘B’ as well as the evidence of Tipene O’Regan adequately demonstrates this evolution). This evidence of evolution was uncontradicted and we accept it.

The evidence regarding the customary title to the disputed lands prior to the invasion by Ngati Toa and other northern iwi produced by Ngai Tahu demonstrated that they had occupation and one or more of the various take; because of the evolutionary process adverted to above, discovery followed by intermarriage with conquerors and actual occupation for many generations made it difficult to clearly show a single take; this of course was not uncommon in Maori tradition and we accept it as it has been accepted by the Maori Land Court from the beginning.

There is adequate evidence that Ngati Tahu had the Rangatiratanga over the lands comprising both the Kaikoura and Arahura Deeds circa

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1820; examples from the Ngai Tahu presentation were for the most part uncontradicted.

In his account of his *Adventures in New Zealand* published in 1845 Edward Jeringham Wakefield had this to say:

The Ngati Apa, Rangitane and Maupoko occupied the succeeding coast as far as Kapiti, and “also shared the southern shores of Cook Strait *with the Ngai Tahu who inhabited Cloudy Bay and Queen Charlotte Sound.*

Another commentator was Ernst Dieffenbach, naturalist to the New Zealand Company, who had this to say in his pamphlet *New Zealand and its Native Population* when describing Te Rauparaha’s campaigns against the Te Waipounamu iwi:

He brought the war over to the Southern Island, to Queen Charlotte Sound, D’Urville’s Island, to Cloudy Bay, Tory Channel and further along the eastern coast. These places were inhabited by a numerous tribe, the Naheitou[sic] – I often found the deserted dwelling places of the Naheitou.

The Ngai Tahu claim to the lands comprising the Kaikoura Deed was put simply as follows:

- (i) They had customary Title before the Northern Tribes invaded.
- (ii) Te Rauparaha and his allies defeated them at Kaikoura, Omihi and in the second campaign at Kaiapo then retired from the Ngai Tahu domain.
- (iii) That within two years of these defeats Ngai Tahu were seeking battle with Ngati Toa north of Parinui-O-Whiti and Te Rauparaha did not respond in kind to these excursions.
- (iv) Ngai Tahu continued to fish and hunt over the northern portion of their claimed lands as well living in the areas around Kaikoura and south, all this to the exclusion of other iwi.

Much has been written about Te Rauparaha and his invasion of Te Waipounamu – the reason why he invaded (if he needed a reason) the campaigns and what happened after the campaigns. The evidence presented by the claimants setting out the course of the campaign beginning in the Southern Cook Strait area against Ngati Kuia and Rangitane and then moving south is consistent with the evidence of other claimants.

On the east coast it is clear that Te Rauparaha devastated Takahanga Pa (Kaikoura) and Omihi Pa (both Ngai Tahu strongholds) in his first campaign, but was rebuffed at Kaiapo and further in the following campaign he captured and sacked Kaiapo. We also believe that on the east coast the invaders did not proceed further south than Akaroa.

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It is also clear that Ngai Tahu were decisively defeated and the northern invaders if they had remained in occupation of the lands from the Wairau Valley to Kaiapoi would have, by reason of *take raupatu*, the “ownership” of the lands.

In our perusal of the material placed before us by all the parties there is a dearth of clear evidence of physical occupation either by the Northern Iwi, Rangitane or Ngai Tahu of the lands between Kaikoura and Parinui-O-Whiti post the northern invasion. There is uncontradicted evidence from the claimants that Tuhawaiki, a Ngai Tahu chief from Otago, led an expedition against Te Rauparaha and almost captured him at Lake Grassmere – there is independent evidence that the Europeans in the Cloudy Bay area were in the 1830s apprehensive fearing a Ngai Tahu invasion because they (the settlers) were there by licence of Ngati Toa. It is also not disputed that Tuhawaiki did in the 1830s mount an expedition in the Cloudy Bay area, and occupy the land for a short period before retiring southward.

Walter Mantell a Crown Official with a real knowledge of the Maori of the Southern Cook Strait suggested that land immediately south of the Wairau Valley was possibly wasteland because it was not occupied by Maori and was probably forfeited to the Crown because of this. We are of the view that he may have been correct in his opinion that the land was in a technical sense uninhabited ie, there was no Pa or permanent evidence of iwi residing there but categorically disagree with his assumption that this circumstance meant no Maori had title; we much prefer the view expressed by Sir William Martin, the first Chief Justice of New Zealand, as he put it, before the Treaty of Waitangi the whole of New Zealand “or as much of it as is of value to man” was divided amongst the Maori tribes and sub-tribes.

We are aware that Ngati Toa claimed certain rights south of the Wairau Valley to Kaiapoi basing this on evidence that some of their principal chiefs had been murdered there and also their having almost exterminated the Ngai Tahu resident in these lands, the survivors of that iwi having fled southwards. This account does not demonstrate actual occupation by Ngati Toa after the wars, ignores the excursions of Tuhawaiki in retaliation mentioned earlier and more importantly attempts to import a take not recognised by this Court – that the murder (killing) of invading chiefs creates title rights to the land where they were killed.

Ngai Tahu are adamant that the expedition by Tuhawaiki clearly demonstrate that they held the Rangatiratanga over the lands north of Kaiapoi to at least Parinui-o-Whiti, they argue that no competent Maori general would have left his flank so exposed, there was no

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threat therefore there would not have been occupation by Ngati Toa south of Wairau.

This Court though sympathetic to this view accepts that Te Rauparaha must have considered he could safely hunt at Lake Grassmere until rudely interrupted by Ngai Tahu; significantly we believe is the absence of evidence of use of this lake by Ngati Toa post Te Rauparaha's well documented escape.

We are not satisfied that there was occupation to the exclusion of all other iwis by any of the claimants of the lands south of the Wairau Valley to Kaikoura circa 1840 and therefore accepting that there could not be waste lands considered whether this land could be classed as kainga taotohe, that is land over which rights were enjoyed by more than one iwi. The evidence does not substantiate this because as mentioned above Ngati Toa had retired north and any "shared" use would then have to have been agreed between Ngai Tahu and other iwi. There is no evidence before us from which we can conclude there was agreed use of these land by Ngai Tahu and other iwi.

To satisfy the question of re-occupation by Ngai Tahu however we are not tied to occupation as at 1840; having found that Ngai Tahu held customary title before the north invasion they could, as long as it was not forcibly, occupy post 1840 and within three generations thus reviving their ahi kaa.

It is clear from what is before us that due to missionary influence Ngai Tahu slaves that had been taken by Ngati Toa were released in the late 1830s and early 1840s – many of these Ngai Tahu returned to their previous homes. These people were able to rekindle the fires as their release was within one generation of their capture as well they could not be classified as still subject to their former masters because of the Christian ethos as well the assumption of British sovereignty over New Zealand and the fact that all Maori post treaty held British Citizenship.

We have mentioned the Deeds entered into by the Crown with various iwi concerning the lands included in the Kaikoura Deed. Ngai Tahu suggest in their claim that the Crown's actions were based on a philosophy of divide and rule. We neither disagree or agree with this proposition but let the evidence speak for itself. We as a Court, though making clear our views as to the evidentiary value of the actual deeds, because all claimants appear to place great value on them, feel constrained to comment on both the Deed whereby Ngati Toa purported to dispose of the Wairau Valley and lands south to Kaiapoi was well the Kaikoura deed.

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Though much has been made of the Wairau deed we believe the whole transaction was used by Governor Grey more as a device to appease the clamouring of the New Zealand Company's lobbyists than a genuine bargain with the iwi entitled to sell the land. We note that the Wairau incident whereat company officials had been killed had been the subject of a recent official enquiry which exonerated the Maori participants and blamed the company. When giving evidence in 1879 to the Smith-Nairn Commission which body was investigating the Crown Purchase of and in the South Island, Governor Grey said regarding the Wairau purchase, that the sellers (who were christians) wished to make atonement for the Wairau killings.

It is our view significant that before the Deed was entered into there was no enquiry of any persons living on any of the lands north of Kaiapoi, an enquiry would have produced competing claimants particularly Ngai Tahu. Also of some import is the dealings with three younger chiefs of Ngati Toa, an unusual circumstance; the negotiations proceeded initially to encompass the Wairau Valley, the lands of the Wairau incident, then it expanded to include the lands south to Kaiapoi.

We believe the Wairau deed effectively reduced the pressure being exerted by the New Zealand Company on the Governor and had the added benefit to the Crown of eventually forcing Ngai Tahu to deal with the Crown later very much on the Crown's terms.

Governor Grey in his 1879 evidence had this to say about the transaction:

I regarded it more as a giving up of the land for the good of both races than as a purchasing of it.

Lieutenant W F G Servantes, the negotiator interpreter and a witness to the Wairau Deed, said in 1850 when explaining the reasons why Ngati Toa were able to sell land as far south as Kaiapoi:

Although the right of the – above named tribe "(Ngati Toa)" was considered doubtful, I beg to add that I believe it questionable whether according to Native customs Ngai Tahu had a better title.

We observe that Servantes had access to Ngati Toa representatives but he had not dealt with Ngai Tahu on this question. Ngai Tahu have placed evidence before us detailing their objection to the Wairau Deed from the outset culminating in the negotiations that resulted in the Kaikoura purchase. During this period there were various Crown Officials involved in one capacity or another. Messrs Mantell, Hamilton, James Mackay (Jun), McLean and the Governor of the time. Throughout Ngai Tahu petitioned the Governors and attempted to impress other officials with the validity of their claim. The documen-

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tation presented to us shows that they convinced many of the officials that the Crown had erred when dealing with Ngati Toa for land south of the Wairau Valley.

We have found it useful to refer to the evidence of Wiremu Te Uki a Ngai Tahu chief given to the Smith-Nairn Commission on 3rd April 1880 when referring to discussions Ngai Tahu had with Governor Grey at Akaroa in March of 1848 when he said:

At the request of Governor Grey, I and about 20 others went to Wellington with reference to a word Governor Grey had spoken to me at Akaroa. When at Akaroa Governor Grey had spoken to me about Kaiapoi being sold. I said, 'That land does not belong to Ngati Toa' Sir George Grey said 'Oh, yes; according to the Ngati Toa, it belongs to them; it belonged to their ancestors.' There was another word of the governor's. He invited us to go and stand on one side and meet the Ngati Toa, who would stand on the other side, and he would be the judge between us; and if we were able to show that the land belonged to us, he would recognise it as so; and if the other party showed that the land belonged to them, he would recognise them. When we arrived in Wellington we saw the Governor. We met him, and he immediately sent a message to Ngati Toa. They did not come upon the first message, and a second was sent. The Ngati Toa were afraid of the whakawaa, which they heard it was to be. Then a third messenger was sent, and then they made an excuse and went over to Queen Charlotte's Sound, professedly to a tangi. When the Governor saw that they would not come – (Governor Grey, Governor Eyre and Mr Kemp were there, the latter as interpreter), I proposed that for the money which had been received by Ngati Toa land should be given at Kawhia, where their original possessions were. Taiaroa spoke to the same effect. All the other chiefs spoke to the Governor about putting back the boundary of Kemp's Purchase further north to Parinuiowhiti, near Wairau. On our return from Wellington Mantell was at Murihiku. Taiaroa followed him up, and overtook him at Arowhenua.

Though Ngai Tahu were there complaining about "Kemps" purchase Deed which had put the Ngati Toa boundary as far south as Kaiapoi, the southern boundary complaint is relevant in our enquiry into the Wairau Deed.

In a letter reporting to D McLean the then Chief Commissioner of the Native Land Purchase Department dated 8th January 1857, J W Hamilton a Crown Official relates how he had received Whakataua, a Ngai Tahu Chief, from Kaikoura, and heard him assert that Ngai Tahu owned the country southwards from Parinui-O-Whiti. Hamilton had this to say with reference to the general question of Ngaitahu title:

The Rangitane, now almost extinct, appear to have been the original occupants of the North portion of the Middle Island, and might possibly maintain some kind of claim as far south as Waipapa or Waiu Toa (Clarence River). They seem however, to have been hemmed in on both sides by Ngati Toa and Ngai Tahu and I am not able in this part of the country to learn much about them south of Waipapa, however *I am of*

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the opinion, as I have before stated, that the Ngai Tahu title is incontrovertible.

Hamilton went on to quote from and referred to Commissioner Mantell's report of 5th September 1848 wherein the submissions in favour of Ngai Tahu's ownership were recorded concluding:

This evidence seems to me to be conclusive in favour of Ngai Tahu for Mr Mantell's knowledge of the Cook Strait Maoris was so complete, that he could hardly be misled on noted facts in their history or drawn to express an opinion where he had not sifted the evidence.

The Kaikoura purchase from Ngai Tahu was negotiated by James Mackay, then Assistant Native Secretary for the Government and in a letter he wrote on 25th February 1859 to the Chief Land Purchase Commissioner he spells out clearly the claim of the Ngai Tahu of Kaikoura viz:

The district claimed by them commences at the Hurunui and is bounded on the south by that river to its source; on the east by the sea from the Hurunui to Cape Campbell (Te Karaka) on the north by the sea from the last named place to the Wairau Bluffs (dividing the Wairau Plan from Kaparatehou); on the west by a line drawn from the Bluffs (Pari-nui-o-Whiti) to the Wairau Gorge from there to Rangitahi (Lake Tennyson, Tarnedale) from there it is bounded by the range of mountains lying to the eastward of the Buller and Grey Districts, West Coast to the Pass of the Hurunui and Taramakou.

We believe it is significant that Messrs Mantell, Hamilton and Mackay were all aware of the Ngati Toa claim as well the Wairau Deed of Cessation of 18th March 1847, they all at various times were offered evidence by Ngai Tahu and all three concluded that Ngai Tahu's claim were valid. We believe also that these persons were all experienced in Maori land dealings and yet, being Crown Officials knowing of prior purchases by the Crown of the lands, they all accepted the validity of the Ngai Tahu claim. We believe they were in a better position to reach a fair result than we are today; we are heavily influenced by their conclusions.

As we stated earlier the weight of evidence presented to us was in favour of Ngai Tahu holding rangatiratanga over the east coast of Te Waipounamu from Parinui-O-Whiti south to Hurunui including all the land comprised in the Kaikoura Deed immediately prior to the northern invasion.

We conclude our investigation in respect of the lands comprised in the Kaikoura Deed of Purchase by a finding that notwithstanding the conquest of Ngai Tahu by Ngati Toa and their allies, the failure of the northern tribes to remain in occupation post the conquest and the return of Ngai Tahu thus reviving their ahi kaa meant that at the time of the signing of the Deed (1859) the right of ownership of the lands

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comprised in that Deed was according to customary law principles of take and occupation or use vested in Ngai Tahu.

THE ARAHURA DEED 1859

Turning now to the Tai Poutini (West Coast).

The Arahura Deed describes the boundaries of the land as follows:

Commencing at the seaside, at Piopiotai (Milford Haven); thence proceeding inland to the Snowy Mountains of Taumaro; thence to the mountains,, Tiori Patea, Aorangi (Mount Cook) Te Rae, o Tama; thence to the saddle at the source of the River Taramakau; then to Mount Wakarewa; thence following the range of mountains to the Lake Rotoroa; thence to sources of the rivers Karamea and Wakapoai; thence by a straight line drawn to Kahurangi Point at the seaside; thence turning in a southerly direction, the sea coast is the boundary to Piopiotai (Milford Haven), where the boundaries meet.

The claimants are Ngai Tahu, Ngati Toa, Ngati Rarua, Ngati Tama, Te Atiawa and to a certain extent Ngati Apa. Once again, the historical accounts given by the respective claimants and their interpretation of certain events, differ markedly in several material respects.

A principal argument for Ngati Apa was that their ownership rights to lands, particularly in the Buller area, were recognised by the inclusion of members of their iwi (and also other non-Ngai Tahu) as owners in several of the West Cast Reserves. They pointed also to Puaha Te Rangi, of Ngati Apa, who asserted rights to land and compensation, during the negotiations leading to the signing of the Deed of the Arahura Purchase, and Mackay reports (Vol II, p.4.1):

... it was deemed expedient to permit Puaha Te Rangi on behalf of himself and a few other Ngati Apa Natives to participate in the payment, and it was arranged that some reserves should be allotted to them in the neighbourhood of the Buller River ...

Puaha Te Rangi was a signatory to the Deed of Purchase.

For Ngai Tahu, it was argued that Ngati Apa occupied the northern area of Te Waipounamu after their conquest of the early occupiers, Ngati Tumatakokiri. Ngati Apa were then replaced by Ngati Toa and Ngati Rarua and remnants of the Ngati Apa sought refuge from Ngati Rarua by moving to the lands of the Tai Poutini around Westport where Tuhuru allowed them to occupy land. Ngai Tahu contended that the Ngati Apa who settled there were a few individuals rather than a tribal entity.

In respect of the case presented by Ngati Toa in the area of the Arahura Deed, we find that they did not establish their claim. There was no evidence led which showed a cultural tradition with the area beyond leading at the early stages the invasion with their allies. There

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is nothing which suggests settlement or the exercise of any authority. They appear to have left any interest they would have established to their allies whom we have already considered, and limited their interests to the Cloudy Bay area. The sale in 1854 of the land which included pounamu is indicative of a lack of tradition in that resource. We were impressed by the significance attached to that tradition by Ngai Tahu, in particular Mr Maika Mason, and indeed it was Tuhuru, a Ngai Tahu Chief, who was allowed by the newcomers to continue that tradition. We accordingly cannot identify any interest sufficient to satisfy the criteria to establish ahi kaa – or to satisfy the criteria described by their Counsel to which we referred earlier.

Ngai Tahu offered evidence showing how they were the iwi that had title to the lands comprised in the Arahura Deed prior to the arrival of Ngati Tama and Ngati Rarua and of their Chiefs Niho and Takerei at the Tai Poutini (West Coast). Their evidence is that the Ngai Tahu had long envied the Tai Poutini Iwi their pounamu (greenstone) and when a captured women was prevailed upon to show them the pass whereby Ngai Tahu could travel from the Canterbury plains over the Alps to Tai Poutini it was inevitable that Ngai Tahu would invade. Ngai Tahu consolidated their position on that coast and traded the pounamu through Kaiapoi and not northward through Taitapu as had been the norm up to their invasion. In the years preceding the arrival of the North Island iwi (1800–1827) Tuhuru was the chief and he enjoyed great mana; he had conquered the Ngati Wairangi of Tai Poutini and remained in occupation. Tuhuru's people developed the working of pounamu to the highest standard known to Maori. Ngai Tahu also maintain that Tuhuru as well as occupying the Tai Poutini fought against a large Ngati Toa taua (war party) circa 1820 the battle being at Otakoro-iti a place below Kahurangi Point; Ngati Toa after the battle withdrew to the sea. We were also told of other battles where Tuhuru defeated Tumatakokiri.

Ngai Tahu acknowledge that after the Ngati Rarua invasion of Taitapu about 1828–1829 a few Ngati Apa fled southward into Te Tai Poutini and Tuhuru allowed them to settle around Kawatiri (Westport).

Andrew Maika Mason of the Kati Waewae hapu of Ngai Tahu described their tribal boundary as follows:

Ko nga rohe enei o taua whenua ki tamata i te taha o te moana i Piopiotahi a ka haere ki uta ki nga maunga huka ki Taumaro – haere tonu ki nga maunga Tioripatea, Aoraki me te Ra o tama, ka haere i kona ki te tarahaka o Taramakau – haere tonu ki te maunga o Wakarewa haere tonu i reira ki runga ki nga maunga tae ki te hapua o te Rotoroa, a ka haere i kona ki nga tauru o nga awa Karamea me Whakapoai a ka haere maro tonu ki te kurae o Kahuraki i te taha o te moana.

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Mr Mason stated that this boundary remained unchallenged for some 190 years until this present dispute.

We are of the opinion that Ngai Tahu held the “customary” title to Tai Poutini and had held it for a considerable time before 1827 the year Niho, Takerei and their Taua moved into the area.

There are conflicting stories regarding Niho’s advent into the Tai Poutini; Ngai Tahu argue that Tuhuru and Niho made peace forthwith and Niho, Takerei and their people settled without there being battles; on the other hand we have before us evidence that Tuhuru was beaten in battle captured and ransomed by his people and the Northern iwi occupied Arahura and the surrounding lands.

Ngai Tahu presented evidence that Te Puoho a Ngati Tama chief, decided to move down the West Coast and attack the Southern Ngai Tahu: Niho did not become involved; Ngai Tahu suggest this was because he was aware of the strength of the Ngai Tahu of Murihiku – be that as it may all the commentators agree that Te Puoho was killed and those few of his taua who were not also killed were enslaved by the Southern Ngai Tahu. This battle on the Molyneux Plains is remembered by Ngai Tahu and Ngati Toa as the battle of Tutura.

There is an interesting side issue to this defeat of Te Puoho; in 1850 his nephew/stepson Paremata wrote to Governor Grey claiming the lands where Te Puoho had been killed for Ngati Tama, basing his claim on the fact that his uncle had been killed there. This was another attempt to invoke this new “take”. We repeat that this Court does not acknowledge such a customary incidence of title.

Ngai Tahu’s evidence is that upon Te Puoho’s defeat, Niho, Takerei and their supporters withdrew from Tai Poutini northward to Taitapu. This withdrawal is not contradicted by other claimants and later European travellers in the 1840s (Heaphy & Brunner) confirm that Niho was not living on the Tai Poutini.

Ngai Tahu argue that with Niho’s going north, any rights he might have had went with him.

For the purpose of this Court, once Niho and his people left it becomes irrelevant whether he was a conqueror in occupation or a friendly iwi living with Ngai Tahu with their consent; we agree with Ngai Tahu that any rights he or his supporters may have had were extinguished according to Maori custom. We say this because there is no evidence before us that he left any of his iwi behind to maintain the ahi kaa; as well Ngai Tahu’s evidence that Niho never returned south of Kahurangi Point is uncontradicted.

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We believe that consistent with this view if Ngati Toa, Rangitane and Te Ati Awa rely upon conquest and occupation by Niho or Takerei to substantiate their claims to Tau Poutini any such right would necessarily have been lost with those chiefs' withdrawals.

There has been, as mentioned earlier, much reference to the various Deeds of purchase and receipts signed by representatives of various iwi. We note that the Crown in its purchases of land on the West Coast of Te Waipounamu adopted a similar method to its approach on the east coast. It appears to have been willing to deal with any Maori other than those living in the area and finally after repeated approaches dismissing those on the lands with paltry sums.

The 1853 Deed with Ngati Toa and others purported to deal with all rights of various iwi, including Ngai Tahu, to the land in the Northern part of Te Waipounamu. There is no evidence that Ngai Tahu were:

- (a) Parties to the Deed
- (b) Received any payments thereunder.

The Ngati Toa receipt dated 13 December 1854 refers to the 1853 Deed and includes Arahura as part of the lands being paid for.

On 2 March 1854 the Te Ati Awa Deed was signed, this included lands down to Arahura.

The Ngati Tama Deed of 10 November 1855 again includes lands down to Arahura.

This Deed was followed by the Rangitane Deed of 1 February 1856 and again includes lands down to Arahura.

As this Court has stated earlier in this judgement the various Deeds indicate:

- (a) The Crown was attempting to extinguish all Maori claims regardless of their validity.
- (b) The fact of payment of lands by the Crown is only evidence of such payment and without the evidence leading up to the payment is unhelpful in deciding these boundary issues.

The evidence before us in respect of the Arahura Deed of Purchase signed by Ngai Tahu is that James Mackay visited Arahura and the surrounding areas, held long meetings with the persons then occupying the lands and convinced them that it was in their interest to contract with the Crown.

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We believe it significant that Mackay was convinced that it was proper for the Crown to deal with Ngai Tahu in respect of lands as far north as Kahurangi Point because:

- (a) He was the first Crown official to deal directly with the persons occupying the land.
- (b) He would have been well aware of all the prior dealings wherein the Arahura and surrounding lands were included in previous sales to the Crown.
- (c) He was known as a knowledgeable but 'hard' man who boasted that no Maori had ever got the better of him.

We believe that any doubt Mackay may have entertained would have been resolved in favour of his employers and not the Maori. In a letter to the Native Land Court dated 27 September 1859 Mackay stated inter-alia:

I find the Ngai Tahu title to be good.

We believe it significant that when he made this statement Mackay was well aware that the claims of Takerei and Ngati Ratua were extinguished by McLean (Land Purchase Office for the Crown) in 1854, (he mentions it in the same letter); it is also extremely valuable that notwithstanding this knowledge he having investigated the Ngai Tahu claim was prepared to categorically confirm the title. McLean had not investigated the Ngai Tahu claim to these lands.

In the evidence presented by or on behalf of Rangitane much has been made of the fact that Puaha Te Rangi is included in the West Coast Reserves, this was met by Ngai Tahu claiming Puaha as being also of Ngai Tahu. Mr Sadd in his evidence acknowledged that Matanihoniho a (sister/cousin) of Puaha is also of Ngai Tahu as well she is entered in Ngai Tahu records as theirs. Mr Tipene O'Regan of Ngai Tahu had no problem in accepting Puaha as Ngai Tahu.

Ngai Tahu also explained why persons of Ngati Apa descent were living in Tai Poutini post 1840 – they put it simply, these people were allowed to settle by Ngai Tahu.

Having decided earlier that Ngati Toa had no rights of ownership in the Arahura Deed land we also confirm our understanding that any rights of Ngati Tama and Ngati Rarua were extinguished with the defeat of Te Puoho at Tuturau and the retirement of Niho and Takerei north of Kahurangi Point.

We accept that Ngati Apa and possibly other northern tribe remnants were in occupation of land along the Kawatiri and such occupation must have, as Mason suggests, been allowed by Tuhuru. However in

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the evidence before us nowhere have we found a customary take to support something more than a mere right of residence.

In our discussion earlier in this decision on the relevant law applicable in cases of this nature we accepted that to attain ownership there must have been one of the original take supported by actual occupation. We refer to our finding that Ngati Toa on the East Coast had conquered Ngai Tahu at least as far South as Kaiapoi yet because they did not remain in occupation, though they had Take Raupatu they did not attain ownership; In this West Coast question we have the opposite situation ie, occupation or residency but not supported by a customary take therefore we find that the rights of ownership of those people in terms of s6A(b) of the Treaty of Waitangi Act 1975 have not been established.

Having determined earlier that Ngati Tahu held the rangatiratanga over the lands comprised in the Arahura Deed before the invasion by Niho and Takerei in the late 1820's we now make a finding that for the reasons given above, in particular the defeat of Te Puoho of Ngati Tama and the consequential retirement of Niho and Takerei north of Kahurangi, the right of ownership accordingly to customary law principles of take and occupation or use was in 1860 vested in Ngai Tahu.

H K Hingston (Presiding Judge)

H B Marumaru (Judge)

Andrew Spencer (Judge)

This decision was formally promulgated in the Maori Appellate Court Te Waipounamu, Christchurch by Judge Heta Kenneth Hingston on the 15th day of November 1990.

Appendix 5

Schedule of Ancillary Claims

	WITNESS	REFERENCE	NATURE OF GREIVANCE
KAIKOURA			
1	Te Wharetutu Stirling	Haretu Haututu (A18) Whakauae	1 Reserves too small 2 Portion of reserves taken by Crown for scenic purposes without knowledge of owners and now used for holiday camps or in private ownership. No compensation
2	Trevor Howse	Mangamaunu reserve A (A12) (Aa(r))	1 More land than necessary taken for roadway and railway 2 No compensation for roadway or railway
3	Trevor Howse	Kaikoura E (Takahanga Pa)	Loss of area in exchange pre-1890
4	Trevor Howse	Kie Kie H	Excessive roads through reserves
5	Trevor Howse	Haututu L	Reserve too small. Land behind L never received in exchange
6	Trevor Howse	South Bay F Te Hikuawaho	Loss of landing reserve
CANTERBURY			
7	Riki Tau	Taerutu (J10)	1 Inappropriate allocation as a fishery 2 Reduction of lagoon
8	Riki Tau	Waimaiaia (J10)	1 No longer access to river 2 Too small 3 Should be re-gazetted
9	Riki Tau (see also Te Maire Tau .. H6)	Torotoroa (J10)	1 Fishery reserve – drained and useless
10	Riki Tau see also Te Maire Tau (H6)	Teakaka (J10)	1 Does not give access to reserves as first dedicated 2 Erosion of beds affected use of reserve 3 Ban against camping prevents use
11	Riki Tau Te Maire Tau (H6)	Ihutai (J10)	1 Taken under PW Act in 1956 for sewage treatment see also
12	Riki Tau see also Te Maire Tau (H6)	CT 199/076 (Ellesmere Reserve)	Left dry by land drainage

Schedule of Ancillary Claims

	WITNESS	REFERENCE	NATURE OF GREIVANCE
13	Riki Tau see also Te Maire Tau (H6)	Tutae Patu Lagoon (J10)	Local Maori believe land theirs, but have no title – an old pa site and burial place of Turakautahi – founder of Kaipohia
14	Te Maire Tau	Houhoupounamu (H6)	Fishery easement, but drained by 1891
15	Rewi Brown	Taumutu (Hearing 18.8.87)	Claims right to village of Taumutu
16	Catherine Brown	Ellesmere Landing	This reserve of 5 acres should belong Reserve (H10) to the tangata whenua
17	Mere Teihoka	Ellesmere Landing	Objects to being called “a squatter” Reserve (H10) Claims Ellesmere Landing Reserve is Maori land
18	Rewi Brown also Mere Teihoka	Koru (H10)	Right to this eel catching creek claimed
19	Kelvyn Te Maire	Pukatahi & Te Houriri Reserve Tauhinu (H10)	Reserves lack access
20	Rangimarie Te Maihora	Waihao 903 Reserve	Poor agricultural value
21	Kelvyn Te Maire	“The Box” (H10)	A reserve which is not gazetted and of significance to traditional history of the Waiha
22	Matthew Ellison	Waikouaiti Lagoon (H11)	Although given as a fishing reserve, has been designated a wildlife area and Maori cannot fish nor hunt there
23	Matthew Ellison	Wanaka–Hawea	1 Access denied 2 100 acres reserve sold by M/T without consent
ARAHURA			
24	Kelly Wilson	Reserve (D10) and 48 Omoeroa Gillespies Beach, Paringa, Arawata, Jacksons Bay	1 Reserves for South Westland were inadequate 2 Areas of inadequate reserves acquired by Crown 3 Succession orders missed out tangata whenua
25	Kelly Wilson	Waiatoto Paringa Karangarua and Kawhea	Land non-farmable. Land too steep Land waterlogged
26	Kelly Wilson	Karangarua Karangarua and others	An area of mahinga kai. Reserves should have been granted
27	Kelly Wilson	Arawata	Land taken under Public Works Act for aerodrome
28	Kelly Wilson	Bruce Bay (D10)	No compensation for Reserve 781 at Mahitahi in 1938 for construction of a roadway. Five (5) chain scenic reserve either side and strip reserve either side of river
29	Kelly Wilson	Bruce Bay (D10)	Reserve Section 782 – Needs protection from goldmining
30	Kelly Wilson	Okarito Bay (D10)	1 Maori were forced to sell 281 acres of 500 acre block in 1952 for a low price 2 Balance “most likely” taken for other purposes under Public Works Act

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	WITNESS	REFERENCE	NATURE OF GREIVANCE
31	James Russell	Kaniere S.D. Rural Section 1737, Block 9 (D17)	Claims that he and others have been dispossessed of Rural Section 1737 by the 1952 Land Transfer Act
32	Kelly Wilson	Poerua	Reserve at Poerua seems to have disappeared
33	James Russell	Offshore Island	"Dispossession" of some Katiwaewae as Taumaka Popotai islands off Te Tai Poutini coast
34	John Duncan (non-Maori)	Mawhera Incorp.	Unable to obtain title to a section
OTAKOU			
35	Sydney Cormack	Moeraki (E16, E20) Block 1, Section 62,&23	Crown grant not seen as a valid title
36	Sydney Cormack	Donaldson Land at Moeraki (E16, E20)	Maori Land Court would not recognise title
37	Sydney Cormack	Moeraki (E16, E20)	Maori women whose European husband received land as half-caste grants not entitled to share
38	Mrs Wright (nee Parata)	Karitane (L22, p33)	Foreshore containing bones in urupa. Land taken back by Silverpeaks County Council
39	Magdeline Wallscott	Pukekura L32 p28 Harington Point	Land taken for defence and no longer required and should be handed back
40	Mrs Grooby-Phillips	Otakou Peninsula (C5, C6)	Five (5) acres taken under Proc 976 for defence purposes, no compensation and No longer required for defence
41	Riwai Karetai 3.11.87	The Kaik, Otakou Peninsula (L32, p41)	Claims right to live in Kaik See Jesse Beard (L10)
42	Magdeline Wallscott see also: Craig Ellison and Edward Ellison	Lake Tatawai (L32 p28) (C13a, C13b, E53, H12 and H53)	Lake filled and fishing resource lost
43	Sydney Cormack	Taieri Block 22 (E16, E20)	Several half-caste sections should have been allocated
44	Robert Agrippa Whaitiri Te Anau	Te Anau	Section purchased for a meagre sum for (L32 p25) nurses home being offered back to Maori at inflated price
45	Robert Agrippa Whaitiri Te Kau	Te Kau (L32 p25)	Excessive land taken for a television transmitter and long delay in returning
46	Mori Pickering	Waitaha (L32, p 10)	Land taken from family at Waitaha without notice
MURHIKU			
47	Sydney Cormack	Marunuku (E16, E20) aka Te Karoro Reserve	Acquired by Crown through Section 15 MPA.
48	Sydney Cormack	Marunuku Recreation Ground	Land taken in 1940 by Courts for a proposed recreation ground which never eventuated and land went back to Crown
49	Emma Grooby-Phillips	Marunuku	"Best" timber taken over 30 years without Maori knowledge or payment
50	Emma Grooby-Phillips	Marunuku	Land taken for road upsets urupa and no compensation

Schedule of Ancillary Claims

	WITNESS	REFERENCE	NATURE OF GREIVANCE
51	Sydney Cormack	Tautuku (E16, E2, L32 p73)	1000 acres set aside for those who signed Kemps Deed but did not receive land. Not honoured
52	Sydney Cormack	Tautuku Landless Maori grants	There are a number of small sections of Crown land scattered through Maori landless grants
53	Taare Bradshaw	Tautuku Urupa (E8A, E8b)	Urupa at Tautuku disrupted by construction of a carpark and picnic area
54	Sydney Cormack	Forest Hill Block (E16, E20)	Two (2) Sections sold to Europeans containing valuable timber were valued unfairly
55	Sydney Cormack also Taare Bradshaw	Waimumu (E16, E20, E8a, and E8b)	Objection to taking of land at Hedgehope by Crown for a repeater station
56	Sydney Cormack	Waimumu Part 1,m Block 1	2500 acres should have been allocated as landless native land – not allocated and resumed by Crown under Maori Affairs Amendment Act 1967
57	Sydney Cormack	Omaui	Crown offered only one half of true value
58	Taare Bradshaw	Omaui (E8s, E8b)	Reduced by 369 acres to create a scenic reserve
59	Rena Naina Peti Fowler	Invercargill Hundred, Block II Section 73	Loss of seven house sites without notice and payment
60	Syd Cormack	Aparima (E16, E20)	1 Crown took part section 71 and part of section 80 for a rifle range – never returned 2 Crown passed on land to Wallace County Council and then Riverton Borough Council for Night Soil Reserve and Rubbish tip
61	Sydney Cormack	Aparima Section 37, Block XXV Jacobs River Hundred (E16, E20)	Urupa at Aparima College disrupted
62	Sydney Cormack	Jacobs River Block 1	Eight of ten sections used by adjacent farmer without compensation
63	Jane Davis	Aparima Recreational Reserve	All lands taken for Domain or Recreational Reserve ie, Jacobs River Hundreds Block 25 Sections 16A, 17A, 18, 22-24, 37 (urupa), 38 (urupa), 82 and Ngarimu Street – Should be returned
64	Jane Davis	Aparima Jacobs River Hundred Block 25 Section 20 (E31)	Land should not have been rezoned as “industrial” as it was recognised landing place of all Southland Maori
65	Jane Davis	Jacobs River Hundred Howell Point	These blocks should be returned to Pilot Reserve Maori
66	Naomi Bryan	Jacobs River Hundred Section 25, Block 25	Land zoned recreation and she was unable to deal with it. Fences bulldozed

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	WITNESS	REFERENCE	NATURE OF GREIVANCE
67	Naomi Bryan	Jacobs River Hundred	Oxidation pond placed next to ten Block 25, Section 70 sections and building restriction imposed
68	Eva Wilson	Jacobs River Hundred Howells Point Pilot Reserve	Lands should be reserved for tourism and historic value
69	Wiremu Bill Davis	Jacobs River Hundred Howells Point Pilot Reserve More's Reserve (L32 p66, E7)	Should be returned to Maori ownership places of importance to Maori
70	Sydney Cormack	Merivale Aparima Hundred Block 4, Section 56 (E16, E20)	Land passed out of Maori ownership and should be investigated
71	Sydney Cormack	Colac Bay (E16, E20)	No compensation given to John Poko by Wallace County Council for construction of road over land
72	Sydney Cormack	Colac Bay (E16, E20)	Land donated by Mrs Cameron for school and no longer required for that purpose and should be returned to Maori owners
73	Lovell Hart	Rangi Marama Colac Bay (C/T B1/1062 (E35))	Boundaries of land not defined
74	Wiremu Bill Davis	Colac Bay Riverton	That land set aside in 1870s as half-caste grants between Colac Bay v Riverton are uncultivable and lack access
75	Sydney Cormack	Ouetota Block 5 Section 182 (E16)	Reserve did not and should have included site of Pahi pa
76	Sydney Cormack	Te Waewae Bay (E16)	The section is not recognised by Lands and Survey as Maori Land
77	Sydney Cormack	East Rowallan & Alton Blocks (E16)	Objection to retention of small blocks of Crown land and to width of roads allowed in reserve
78	Sydney Cormack	Te Waewae Block 8 Section 6 (E16)	Should be Maori land because it has Maori title in Land Court
79	Sydney Cormack	Waiau (E16)	1700 acres improperly resumed by Crown
80	Teriana Nilsen	Wairaurahiri (E30, RD70)	Roadway access cannot be obtained and Maori owners denied right to control their own land
81	Teriana Nilsen	Land between Hauroko and Poteriteri	Other blocks of reserved land disappeared
82	Syd Cormack	Te Waewae Bay Block Block 13, Section 14 Sandhill Point	Title taken from Maori and vested in Crown
RAKIURA			
83	Rena Fowler	Paterson Inlet Block 16 (E13, 14, 15) Section 1 The Neck Section 14 Block 1	General discontent Loss of Section 1 which was granted to five of her tupuna

Schedule of Ancillary Claims

WITNESS	REFERENCE	NATURE OF GREIVANCE
84 Syd Cormack	Titi Islands (E16, E20)	Successors of 32 trustees became owners of some islands thus dispossessing persons other than descendants of the trustees
85 Harold Francis Ashwell	Titi Islands (E3, E28, E29, RD63)	The Titi Islands were unfairly included in the Rakiura sale
86 Sydney Cormack	Centre Island (Rauatoka) (E16, E20)	That Rauatoka was a Kati Mamoe retreat acquired by Crown by force

LEGISLATION OR PROCEDURES WHICH REQUIRE AMENDMENT

87 Robert Whaitiri	Titi Islands	That tangata whenua should have been informed of change in administration of their islands from CCL to Director/DOC
88 Aroha Reriti Crofts	Maori Affairs	That this amendment allowed land in Amendment Act 1967 multiple ownership to be willed to individuals and individualisation is detrimental to preservation of Maori culture
89 Te Maiharoa	Maori prehistoric and historic sites	That Maori Environmental Officer should be appointed in Government Departments to ensure protection of these sites from human interference
90 Tiny Wright	Town and Country Planning Act	That restriction placed on Maori by this Act prevents people building on inherited Maori land and ability of people to live with hapu
91 Sandra Lee	(a) S.I Native (b) Westland & Nelson N.R Act 1887 (c) Maori Reserved Land Act 1955 (d) Maori Affairs Amendment Act 1967 (S.48(1)). (e) Maori Incorporation Regulations 1969	That these five areas of legislation Reserve Act 1883 need review
92 Syd Ashton Boyd	Maori Reserved Lands Act 1955	That leasing provisions of this Act are objectionable
93 Taare Bradshaw	Town and Country Public Works Act	That these Acts are confiscatory and Planning Act 1977 should be reviewed
94 Teriana Nilsen	Maori Affairs Act & Companies Act	That Waitutu Incorporation should have right to control and own its own LAND and coastal waters
95 Sydney Cormack	Counties Act M.4. Amendment Act 1967	That levy taken on sawn timber has not been used for maintenance of Maori Road and That 1967 Act changed status of land from Maori to European
96 Tiny Wright	Traditional Maori Names (oral evidence 18.8.87 at Rangiora) (L32, p32)	That traditional Maori names have been lost

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	WITNESS	REFERENCE	NATURE OF GREIVANCE
97	Dorothy Hitchcox	Maori Language (L32 p35)	That Maori language lost as it was not permissible to speak Maori at school
98	Dorothy Walsh	Maori Language (L32 p35)	Loss of cultural value through loss of language
99	Sydney Cormack	Small Reserves and unduly wide roads (A22, A23)	That allocations of reserves up to 30 acres under Landless Natives Act 1906 were too small. That roadways of 2 chains were too wide
100	Sandra Lee	Road taken from Maori reserves (L32 p50)	That Maori owners had to pay for roading from Maori reserves
101	Taare Bradshaw	Loss of mana, language, tribal structure (L32 p67) (E8a, E8b)	General grievance covering various issues
102	Sydney Cormack	Crown grants and other issues. (L32 p75) (A22)	General complaint covering several issues
103	Kelly Wilson	South Westland Omoeroa, Gillespies Beach paringa etc (L32 p46) (D10)	That reserves created were uneconomic and too small to farm
104	Wiremu Davis	Land set aside as half-caste grants	That land allocated was unable to be cultivated and led to loss

SUMMARY OF MAHINGA KAI ISSUES OTHER THAN SEA FISHERIES

105	Alan Russell	Arahura River (D19) (see L39 p49)	That legislative assistance/protection be given to prevent pounamu fossickers in river bed
106	Mr Daniels	Lake Wairewa (Forsyth) (oral 18.8.87)	That eels depleted by Council openingoutlet to sea and nets being set at inlets
107	Emma Grooby-Philips	Kororo Creek Marunuku (C5, C6)	That eels have been depleted from creek and shellfish from Marunuku
108	Ihaia Hutana	Arahura River	That water level depleted by power station and affecting fishing at Arahura Pa

Appendix 6

Record of Documents

NOTE: Documents marked with an * are ruled confidential and are available only to counsel. Copies cannot be made.

The reference in brackets after each document refers to the person or party producing the document in evidence

A First hearing at Tuahiwi Marae, 17 August 1987 and Rangiora High School, 17–20 August 1987

Document:

- A1 Statement of claim Wai-27: Ngai Tahu claims (filed 24 February 1986; registered as Wai-27, 28 August 1986; revised claim 24 November 1986; amended 16 December 1986; further amended 2 June 1987). Full copies of these claims and later amendments are included in Appendix 3
(registrar)
- A2 The Treaty of Waitangi as signed by principal chiefs of Ngai Tahu (extract from A3)
(registrar)
- A3 *Facsimiles of the Declaration of Independence and the Treaty of Waitangi* (Government Printer, Wellington 1976)
(registrar)
- A4 Plan of land purchases in South and Stewart Islands, AJHR 1875 G-3
(registrar)
- A5 H C Evison *Ngai Tahu Land Rights* (3rd ed, Ka Roimate Whenua Series No 1, Ngai Tahu Maori Trust Board, Christchurch 1987)
(registrar)
- A6 G W Rusden (ed) *Aureretanga: Groans of the Maoris* (William Ridgeway, London 1888)
(registrar)
- A7 D F McKenzie *Oral Culture, Literacy & Print in early New Zealand: The Treaty of Waitangi* (Victoria University Press & Alexander Turnbull Library Endowment Trust, Wellington 1985)
(registrar)
- A8 A Mackay (ed) *A Compendium of Official Documents Relative to Native Affairs in the South Island* 2 vols (Government Printer, Nelson 1872) (later referred to as Compendium)
(registrar)
- A9 Supporting papers to A12, A13, A31
(counsel for claimants)

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- A10 Sample copies of Crown leases and licences (with Acts issued under):
- (a) Special lease (Land Act 1948 s 67(2))
 - (b) Lease (Land Act 1948 s 67(2))
 - (c) Licence to occupy, (Reserves Act 1977 s 74(2)(a))
 - (d) Grazing licences, New Zealand Forest Service, (Forests Act 1949)
 - (e) Licence to occupy a reserve (grazing license), (Reserves Act 1977 s 74)
 - (f) Deed of lease (television translator site), (Reserves and Domains Act 1953 s 27(10)(a))
 - (g) Permit to erect maintain and use buildings and towers and to maintain and use tracks (Reserves Act 1977 s 48A)
 - (h) Deed of lease of part Lake Mahinapua recreation reserve (Reserves Act 1977 s 54(1)(b))
 - (i) Deed of lease of part Lake Kaniere scenic reserve (Reserves and Domains Act 1953 s 27(10)(a))
 - (j) Industrial site licence, New Zealand Forest Service, for the purpose of allowing the site to be employed as a seasonal base for commercial eeling and whitebaiting (Forests Act 1949)
 - (k) Licence to occupy a reserve solely for the purpose of a boatshed site (Reserves Act 1977 s 74)
(registrar)
- A11 Sample copies of leases for Maori land
- (a) Memorandum of lease of rural land issued by the Mawhera Incorporation
 - (b) Memorandum of lease of urban land issued by the Mawhera Incorporation
(registrar)
- A12 Evidence of Trevor H Howse on Banks Peninsula, North Canterbury and Kaikoura
(counsel for claimants)
- A13 Evidence of Harry C Evison on Banks Peninsula, North Canterbury and Kaikoura
(counsel for claimants)
- A14 Submission of the North Canterbury Catchment Board and Regional Water Board, dated 11 August 1987
- A15 Submission of Henare R Tau and Ngai Tahu Maori Trust Board on lands of Crown subject to claim, and schedules as available at 16 December 1986
- A16 *New Zealand Maori Council and G S Latimer v Attorney-General and Others* [1987] 1 NZLR 651
(registrar)
- A17 Submission of Henare R Tau with attachment of Te Ngai Tuahuriri Runanga Incorporated rules
- A18 Submission of Te Wharetutu Te A Stirling
- A19 Submission of Rangimarie Te Maiharoa
- A20 Submission of Aroha H Rereti-Crofts
- A21 Dr P G McHugh "The Aboriginal Rights of the New Zealand Maori at Common Law" (PhD thesis, University of Cambridge, 1987)
(registrar)
- A22 Map of blk 25, Jacob's River Hundred, March 1874
(counsel for claimants)
- A23 Map of blk 25, Jacob's River Hundred, showing survey section plans
(counsel for claimants)

Record of Documents

- A24 Notice of interest by Kuku Karatiana, dated 12 August 1987
(registrar)
- A25 Submission of Eruera Te M I Te Aika
- A26 Opening submissions of claimants' counsel
- A27 Evidence of Tipene O'Regan
(counsel for claimants)
- A28 Map of Crown lands acquired from Ngai Tahu
(counsel for claimants)
- A29 Plan of Wairau plain and valleys attached to Wairau purchase deed (see A30)
(counsel for claimants)
- A30 Copy of deed of cession of the Wairau district
(counsel for claimants)
- A31 Addenda to evidence of Harry C Evison (see A13)
(counsel for claimants)
- A32 Additional copy of A31
(counsel for claimants)
- A33 Copy of Kemp's deed with translation and map
(counsel for claimants)
- A34 Map of South Island
(counsel for claimants)
- A35 Map of South Island showing boundaries lower half Kemp's purchase, Arahura,
Otakou, and Murihiku blocks, AJHR 1909 C-1
(counsel for claimants)
- A36 Map of South Island showing boundaries upper part Kemp's purchase, Arahura,
North Canterbury, Kaikoura and three Banks Peninsula blocks of Ngai Tahu
land, AJHR 1909 C-1
(counsel for claimants)
- A37 The Ngaitahu Claim Settlement Bill, first and second readings, 267 NZPD 615
(registrar)
- A38 The Ngaitahu Claim Settlement Bill, committal and third reading, 267 NZPD
754-761
(registrar)
- A39 Ngaitahu Claim Settlement Bill, legislative council, 267 NZPD 761
(registrar)
- A40 Ngaitahu Claim Settlement Act 1944 (No 33, 9 Geo VI)
(registrar)
- A41 Ngaitahu Trust Board Act 1946 (No 33, 10 Geo VI)
(registrar)
- A42 Maori Trust Boards Act 1955 (RS vol 8 p 683)
(registrar)
- A43 Statutory provisions related to:
 - (a) Pastoral leases (Land Amendment Act 1979 s 66)
 - (b) Pastoral occupation licences (Land Act 1948 s 66AA)
 - (c) Recreation permits (Land Act 1948 s 66A)

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- (d) Disposal of land in special cases (Land Act 1948 s 67)
- (e) Short tenancies for grazing purposes (Land Act 1948 s 68)
- (f) Licences for timber, flax, minerals etc (Land Act 1948 s 165)
(registrar)
- A44 Claim (affecting the Kaikoura block) of Joe Tukupua and the Interim Committee of Kurahaupo Waka Trust, dated 6 August 1987
(registrar)
- A45 Claim (affecting the Arahura block) of Joe Tukupua and the Interim Committee of Kurahaupo Waka Trust, dated 10 August 1987
(registrar)
- A46 Memorandum of deputy-chairperson on claim of Joe Tukupua and the Kurahaupo Waka Trust on the Kaikoura purchase, dated 11 August 1987
(registrar)
- A47 Memorandum of deputy-chairperson on claim of Joe Tukupua and the Kurahaupo Waka Trust on the Arahura blocks, dated 11 August 1987
(registrar)
- A48 Deed of sale of Banks Peninsula to Captain J Langlois, 2 August 1838, BPP/CNZ (IUP) vol 2 pp 438-439
 - (a) English translation supplied by Waitangi Tribunal staff
(registrar)
- A49 The Nanto-Bordelaise Company's agreement with the French government, 9 December 1839, Serie Marine, BB⁴ 1012, Nouvelle Zélande, Particuliers, 1838 à 1842, no 16, Archives Nationales, Paris. Micro Z 2806, National Archives, Wellington
 - (a) English translation supplied by Waitangi Tribunal staff
(registrar)
- A50 Agreement between Captain Langlois, the Nanto-Bordelaise Company and the French immigrants, NM 8/31 1852 239, National Archives, Wellington
 - (a) English translation supplied by Waitangi Tribunal staff
(registrar)
- A51 Deed of confirmation of the 1838 sale of Banks Peninsula to Captain Langlois, 11 August 1840, Serie Marine, BB⁴ 1011, Lettres récues de M Lavaud, 1842, no 2, Archives Nationales, Paris. Micro MS 330, Alexander Turnbull Library, Wellington
 - (a) English translation supplied by Waitangi Tribunal staff
(registrar)
- A52 Conditions of sale of Canterbury and West Coast to the French company – including receipt of an instalment of the price dated 24 August 1840, Serie Marine, BB⁴ 1011, Lettres récues de M Lavaud, 1842, no 3, Archives Nationales, Paris. Micro MS 330, Alexander Turnbull Library, Wellington
 - (a) English translation supplied by Waitangi Tribunal staff
(registrar)
- A53 Map of Banks Peninsula showing purchase boundaries and estates resumed by the Crown under Land for Settlements Acts, based on NZMS 281 (see A31)
(counsel for claimants)
- A54 Directions of deputy-chairperson to Joe Tukupua and Kurahaupo Waka Trust, dated 25 August 1987
(registrar)

Record of Documents

B Second hearing at Tuahiwi Marae, 21–23 September 1987

Document:

- B1 (a) Directions of deputy-chairperson to claimants directing filing of further particulars in respect of the Mawhera leaseholds and also all other Crown licences and leaseholds, dated 3 September 1987
(registrar)
(b) Statement on proposed remedies in respect of leases under the Maori Reserved Land Act 1955 (ie Mawhera leases), dated 5 September 1987
(registrar)
- B2 Evidence of Harry C Evison on Kemp's block
(counsel for claimants)
- B3 Supporting papers to B2
(counsel for claimants)
- B4 Evidence of Professor John T Ward on the Kemp's purchase case study
(counsel for claimants)
- B5 Unsworn affidavit of Manahi Paewai for Kurahaupo Waka claimants (see C20)
(counsel for Kurahaupo Waka)
- B6 (a) Submission of Mervyn N Sadd, dated 17 August 1987
(b) Further submission of Mervyn N Sadd with supporting maps, received 18 September 1987
(registrar)
- B7 Submissions of counsel for Kurahaupo Waka
- B8 Submission of counsel for claimants on the history of legislation affecting the Ngai Tahu land claim (Kemp's purchase)
- B9 Memorandum of counsel for claimants on intentions concerning existing leases and licences over Crown land, dated 23 September 1987
- B10 Submission of Jean Jackson
- B11 Maps supplied by Trevor H Howse for Kaikoura site visit, 25 September 1987
(registrar)
- B12 Map of South Island land tenure as at 1978, NZMS 187
(counsel for Crown)
- B13 Ngai Tahu fishery claim, received 28 September 1987
(registrar)
- B14 Correspondence from secretaries of the Treasury and of Maori Affairs to Ministers of Finance and of Maori Affairs, dated 17 July 1987
(registrar)
- B15 Submission of Robin Mitchell, received 9 October 1987
(registrar)
- B16 Submission of P N Gould, dated 11 September 1987
(registrar)
- B17 Evidence before the Native Land Court, Tuahiwi, 30 January–3 February 1925. 20A South Island Minute Book, folios 51–56, 57–69, and 76–83
(registrar)

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C Third hearing at Otakou Marae, 2 November 1987 and re-convening at Tuahiwi marae, 5 November 1987

Document:

- C1 Evidence of Dr Ann R Parsonson on the Otakou tenths
(counsel for claimants)
- C2 Supporting papers to C1
(counsel for claimants)
- C3 (a) Directions of the deputy-chairperson on application by the Maori Trustee that the claimants give further particulars of claims, dated 20 October 1987
(registrar)
(b) Application by the Maori Trustee for order that claimants give further particulars of claims, received 20 October 1987
(counsel for Maori Trustee)
- C4 Whakapapa of Mori C M Ellison
(M C M Ellison)
- C5 Submission of Emma P Grooby-Phillips
- C6 Correspondence from Wilkinson Mirkin & Kendall to the Department of Conservation, Dunedin, on land taken for defence purposes on Otago peninsula, dated 29 October 1987
(E P Grooby-Phillips)
- C7 Maps and documents on Te Karoro and Maranuku
(B Ellison)
- C8 (a) Evidence of Dr Atholl Anderson on Maori settlement at Otakou
(b) References to C8(a)
(counsel for claimants)
- C9 Submission of Kuaō Langsbury on the Treaty of Waitangi
- C10 M van Ballekom and R Harlow (eds) *Te Waiatatanga mai o te Atua, South Island Traditions recorded by Matiaha Tiramorehu* (Canterbury Maori Studies, No 4, Christchurch 1987)
(counsel for claimants)
- C11 Opening address of counsel for the claimants on the Otakou purchase
- C12 Submission of Edward Ellison on the history of the Otakou claim
- C13 (a) Submission of Craig Ellison on pollution of lands and waters in Otago
(b) Documents presented with C13(a)
- C14 Part of Kettle's map of the Otakou block, 1846-7, LS D-5, National Archives, Wellington
(counsel for claimants)
- C15 Additional evidence of Dr Ann R Parsonson on the Otakou "tenths" in relation to the 1844 proclamation
(counsel for claimants)
- C16 Correspondence between secretary of state for colonies & the New Zealand Company on the establishment of a proprietary government in New Zealand, BPP/CNZ (IUP) vol 4 pp 493-500
(counsel for claimants)

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- C17 Minutes of a special meeting of the committee of the New Zealand Company, August 1845, CO 208/188, pp 327–332, National Archives, Wellington
(counsel for claimants)
- C18 (a) “He Ture kua whakaaetia e nga rangatira Maori o te Wahipounamu”, Te Ware Runanga e kiia ana ko Te Mahi Tamariki, Otakou, 10 Hune 1875 (with translation)
(b) “Notice of the Business of a Hui in January 1874, to open the New Hall, Te Mahi Tamariki & to discuss Te Kerema” *Otago Witness* 31 January 1874 p 2
(with translation)
(counsel for claimants)
- C19 (a) Evidence of Wiremu Potiki to the Smith-Nairn Commission, 20 February 1880, MA 67/5 No 41, National Archives, Wellington
(b) Evidence of Hape Merekiherike to the Smith-Nairn Commission, 20 February 1880, MA 67/5 No 42, National Archives, Wellington
(c) Evidence of Hone Kahu to the Smith-Nairn Commission, 20 February 1880, MA 67/5 No 43, National Archives, Wellington
(counsel for claimants)
- C20 Affidavit of Manahi Paewai for Kurahaupo Waka claimants, dated 3 November 1987 (see B5)
(counsel for Kurahaupo Waka)
- C21 Submission of Andrew M Mason on boundaries of Arahura block
- C22 Evidence of Harry C Evison on the northern and inland boundaries of the Kaikoura and Arahura purchases of James Mackay, 1859 and 1860
(counsel for claimants)
- C23 Correspondence of Tipene O’Regan on claim of Kurahaupo Waka and aquacultural developments, Kaparatehau (Lake Grassmere), received 10 November 1987
(registrar)
- C24 (a) Correspondence of Tipene O’Regan on Kurahaupo Waka claim
(b) *Ngai Tahu Kaumatua alive in 1848 as established by the Maori Land Court in 1925 and the Ngai Tahu census committee in 1929*, issued by the Ngai Tahu Trust Board as at 1 January 1967
(counsel for claimants)

D Fourth hearing at Arahura Marae and the conference room, Ashley Motor Inn, Greymouth, 30 November–3 December 1987

Document:

- D1 *Report of Commission of Inquiry into Maori Reserved Land* (Government Printer, Wellington 1975)
(registrar)
- D2 *Report of the Committee of Inquiry: Crown Pastoral Leases and Leases in Perpetuity* (Government Printer, Wellington 1982)
(registrar)
- D3 Evidence of James P McAloon on Arahura
(counsel for claimants)
- D4 Evidence of Andrew M Mason, Sidney B Ashton, Malcolm R Hanna and Tipene O’Regan on Arahura
(counsel for claimants)

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- D5 Supporting papers to D4 (see D3, D18)
(counsel for claimants)
- D6 Submission of W E and A M Blythe on Mawhera Incorporation leases, received 2 November 1987 (registrar)
- D7 Submission of I S Marshall on Mawhera Incorporation leases, received 2 November 1987
(registrar)
- D8 Submission of B N Davidson on behalf of FTC Properties Ltd, received 27 October 1987
(registrar)
- D9 Preliminary decision of tribunal on Kurahaupo Waka claim, 26 November 1987
(registrar)
- D10 Submission of Kelly R Wilson on behalf of the Maitahi Maori Committee
- D11 (a) Submission and evidence of Sandra Te H Lee on behalf of the families and descendants of Iri Te A P Lousich-Feary, Nikau Te K Pihawai-Tainui, Roka Te H Pihawai-Johnson, Wiremu Welch and Metapere N Barrett
(b) Supporting papers to D11(a)
- D12 Submission of Iri Barber
- D13 Submission of Aroha H Reriti-Crofts
- D14 Submission of Dorothy M Fraser on behalf of the Maitahi Maori Committee
- D15 Correspondence of James Mackay to the chief land purchase commissioner, Auckland, 21 September 1861, *Compendium* vol II p 40
(Dorothy M Fraser)
- D16 Particulars of claim concerning Mawhera supplied by claimants to the Maori Trustee (see C3(a)-(b))
(counsel for Maori Trustee)
- D17 Submission of James M Russell on Arahura
- D18 Submission of Tipene O'Regan on Arahura
- D19 Submission of Alan L Russell on pounamu
- D20 "Greymouth Native Reserves", AJHR 1879 G-3A, G-3B
(registrar)
- D21 Map of Maori reserved land from the Grey to the Hokitika rivers, MA 15/1,2, National Archives, Wellington
(registrar)
- D22 Portion of cadastral map showing the Arahura river bed
(registrar)
- D23 Portion of physical map showing Arahura river bed
(registrar)
- D24 Submission of Barry M Dallas on Greymouth, Mawhera leases
- D25 Proposed town plan of Greymouth, 1865
(Barry M Dallas)
- D26 Map of township of Greymouth, 1865
(Barry M Dallas)

Record of Documents

- D27 Computer printout of Mawhera lessees, dated 14 October 1987 (registrar)
- D28 Minutes of the eleventh annual general meeting of shareholders of the proprietors of Mawhera Incorporation, held 3 October 1987 (counsel for claimants)
- D29 Submission of W F Morgan on behalf of Dingwall and Paulger Ltd and Ballie Neville & Co Ltd on Mawhera leases
- D30 (a) Documents relating to land ownership and milling and mining rights on the Arahura river above the Arahura Maori reserve
(b) Portion of map, NZMS 261 sheet J33 Kaniere, showing mining rights and land tenure for blocks above the Arahura reserve (counsel for claimants)

E Fifth hearing at Te Rau Aroha Marae, Awarua, Bluff, 1–3 February 1988, with site visit to Lakes Wanaka and Hawea

Document:

- E1 Evidence of Robert A Whaitiri, Sydney Cormack and James P McAloon on Murihiku, (Note: the evidence of Sydney Cormack was replaced with E16)
(a) Addenda to E1 (counsel for claimants)
- E2 Supporting papers to E1 (counsel for claimants)
- E3 Submission of Harold F Ashwell on Bluff – Motupohue (counsel for claimants)
- E4 Supporting papers to E3 (counsel for claimants)
- E5 Material supplied for the tour of Southland by Maori Land Board and Chairmen of Maori Land Advisory Committees, 30 and 31 October and 1 November 1979 (counsel for claimants)
- E6 Submission of George N Te Au
- E7 Submission of Wiremu Davis
- E8 (a) Submission of Taare H Bradshaw
(b) Portion cadastral map, Bluff Harbour
- E9 Eva Wilson *Hakoro Ki Te Iwi, The Story of Captain Howell and His Family* (Times Printing Service, Invercargill 1976) (E Wilson)
- E10 Submission of Alexander P Laing on behalf of the estate of R G Selbie
- E11 Submission of Naomi A Bryan on section 70, blk 25, Jacob's River Hundred
- E12 Submission of Naomi A Bryan on section 25, blk 25, Jacob's River Hundred
- E13 Map of Toitoto and Port Adventure blocks, Rakiura (H Ashwell)
- E14 Submission of Rena Fowler on Stewart Island Grants Act 1873

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- E15 Correspondence from Maori Land Court to Rena Fowler on section 73, blk 2, Invercargill Hundred, dated 25 January 1988 (R Fowler)
- E16 Evidence of Sydney Cormack on Murihiku reserves (replaces that included in E1) (counsel for claimants)
- E17 Copy of the deed of sale of Rakiura, 29 June 1864 and related papers from *Compendium* vol II pp 390–393 & pp 60–61 (counsel for claimants)
- E18 Schedules of native reserves in Otago, Southland and Stewart Island, from *Compendium* vol II pp 341 (counsel for claimants)
- E19 Copy of the plan of the Murihiku purchase, dated 17 August 1853 (counsel for claimants)
- E20 Maps referred to in E16 (counsel for claimants)
- E21 J H Beattie *Our Southernmost Maoris: their habitat* (Otago Daily Times, Dunedin 1954) pp 28–31 (counsel for claimants)
- E22 Insert to evidence of James P McAloon (see E1 p 54) (counsel for claimants)
- E23 Submission of George N Te Au on behalf of the Waihopai Maori Committee Incorporation, dated 1 January 1988 (registrar)
- E24 Preliminary evidence of James P McAloon on Maori Land at Wanaka/Hawea (counsel for claimants)
- E25 Papers relating to Maori reserves at Lakes Hawea and Wanaka (counsel for claimants)
- E26 Further papers relating to Maori reserves at Lakes Hawea and Wanaka (counsel for claimants)
- E27 Three maps of Lakes Wanaka and Hawea showing Maori reserves and proposed Maori reserve at the Neck, and showing impact of the raising of Lake Hawea on 1868 fishing reserve (counsel for claimants)
- E28 Correspondence from K Cayless, acting director-general, Department of Lands, to Invercargill district manager, dated 13 January 1988, response to E29 (registrar)
- E29 Correspondence from Invercargill district office to Director-General, Department of Lands on Port Adventure and Toi Toi blocks for landless Maoris – Stewart Island, dated 5 January 1988 (registrar)
- E30 Notes of Teriana Nilsen, secretary-treasurer, Waitutu Inc, dated 3 February 1988 (registrar)
- E31 Submission of Jane K Davis on Rakiura and Murihiku
- E32 Further submission and documents presented by Jean Jackson

Record of Documents

- E33 Further submission of Mervyn N Sadd, dated 20 November 1987 (registrar)
- E34 Application of Mervyn N Sadd, received 28 January 1988 (registrar)
- E35 Papers submitted by Lovell Hart on Colac Bay, Southland (registrar)

F Sixth hearing at Otakou Marae, 22–23 February 1988

Document:

- F1 Evidence of Dr Ann R Parsonson on Princes Street reserve, Dunedin (counsel for claimants)
- F2 Supporting papers to F1 (counsel for claimants)
- F3 Map of site of 1853 native reserve showing high water mark in relation to later reclamation, 1871, SO 14420, DOSLI, Dunedin (counsel for claimants)
- F4 Kettle's 1846 plan of Dunedin South laid out in town sections, showing site of 1853 native reserve, DOSLI, Dunedin (counsel for claimants)
- F5 Plan of site of proposed Dunedin post office, dated 17 November 1870, SO 14527, DOSLI, Dunedin (counsel for claimants)
- F6 The New Zealand Native Reserves Act 1856 (counsel for claimants)
- F7 The Native Reserves Amendment Act 1862 (counsel for claimants)
- F8 Dunedin Reserves Management Ordinance 1873, Ordinances of the Province of Otago, session XXXII no 417 (counsel for claimants)
- F9 Correspondence from J C Richmond to W Mantell, 19 August 1867, MS papers 83/173, Alexander Turnbull Library, Wellington (counsel for claimants)
- F10 Auckland and Onehunga Native Hostelries Act 1867 (counsel for claimants)
- F11 Evidence of Bill Dacker on "The Prejudicial Effects of the Lack of Land with Particular Reference to the Otakou Block" (counsel for claimants)
- F12 Submission of George Ellison on Princes Street
- F13 Correspondence from Earl Grey to Governor Grey, dated 23 December 1846, BPP/CNZ (IUP) vol 5 pp 520–543 (counsel for claimants)

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G Sixth hearing reconvened at Tuahiwi Marae, 24–25 February 1988

Document:

- G1 Further evidence of Harry C Evison on Banks Peninsula and Kemp's deed (counsel for claimants)
- G2 Supporting papers to G1 (counsel for claimants)
- G3 Transcript of C B Robinson's letters in Mantell's private memorandum book (see G2 pp 294–307) (counsel for claimants)
- G4 Transcript from N Z Gazette (New Munster) 6 September 1851 p 141 (counsel for claimants)
- G5 Copy of portion of Port Levy deed (counsel for claimants)
- G6 Map of Port Levy block, signed Walter Mantell, 25 September 1849 (counsel for claimants)
- G7 Copy of Hamilton's Akaroa deed 1856 (counsel for claimants)
- G8 Submission of Ken Piddington, director-general, Department of Conservation (counsel for Crown)
- G9 Memorandum of Kurahaupo Waka claimants, dated 18 March 1988 (counsel for Kurahaupo Waka)

H Seventh hearing at Tuahiwi Marae and Te Rau Aroha Marae, Bluff, 11–20 April 1988

Document:

- H1 Evidence of Dr Atholl Anderson on mahinga kai (counsel for claimants)
- H2 Supporting papers to H1 (see H3) (counsel for claimants)
- H3 Figures and tables supplementary to H1 and H2 (counsel for claimants)
- H4 Evidence of Barry Brailsford on mahinga kai, "Maori trails of Canterbury" (withdrawn and replaced by J10) (counsel for claimants)
- H5 Evidence of David T Higgins and William A G Goomes on sea fishery (counsel for claimants)
- H6 Evidence of Rawiri Te M Tau and Henare R Tau on mahinga kai, Tuahuriri area (submission of Henare R Tau withdrawn and replaced by J10; see also H57) (counsel for claimants)
- H7 Evidence of Wiremu T Solomon and Trevor H Howse on mahinga kai, Kaikoura area (counsel for claimants)

Record of Documents

- H8 Evidence of Ray Hooker, Hemi Te Rakau, Kelly R Wilson, Gordon McLaren, Albert K Te Naihi-McLaren, Iris Climo, James M Russell, Allan L Russell on mahinga kai, Arahura area (submission of Hemi Te Rakau replaced by H36) (counsel for claimants)
- H9 Evidence of James P McAloon, Mere K E Teihoka (Hamilton), Catherine E Brown, Morris T Love, Rewi Brown, Donald R Brown on mahinga kai, Waihora area (counsel for claimants)
- H10 Evidence of Jack T Reihana, Wiremu Torepe, Kelvin Anglem, Murray E Bruce, Kelvyn T A D Te Maire and Rangimarie Te Maiharoa on mahinga kai, Arowhenua area (counsel for claimants)
- H11 Evidence of Matt Ellison on mahinga kai, Puketeraki area (counsel for claimants)
- H12 Evidence of Edward Ellison on mahinga kai, Otakou area (counsel for claimants)
- H13 Evidence of Robert A Whitiri, Harold F Ashwell, Paddy Gilroy, Taare H Bradshaw, Huhana P B Morgan, and Kevin O'Connor on mahinga kai, Murihiku area (counsel for claimants)
- H14 Memorandum of counsel for Kurahaupo Waka, dated 30 March 1988
- H15 Memorandum of counsel for the New Zealand Fishing Industry Board and New Zealand Fishing Industry Association, dated 8 April 1988
- H16 Curriculum vitae of Dr Atholl Anderson (counsel for claimants)
- H17 Submission of Tipene O'Regan on behalf of the Ngai Tahu Trust Board on mahinga kai (fisheries), (see addenda, H20)
- H18 Correspondence from Hamish Ensor, chairperson of the High Country Committee, Federated Farmers, to Tipene O'Regan on South Island pastoral leases, dated 23 February 1988 (see H19) (counsel for claimants)
- H19 Correspondence from Tipene O'Regan to Hamish Ensor, dated 12 April 1988 (see H18) (counsel for claimants)
- H20 Addenda to H17, on inland waters (counsel for claimants)
- H21* Hoani Te Kaahu "He korero mo Kati Tuhaitara", Beattie Papers 582/F/17, Hocken Library (counsel for claimants)
- H22* (a) "He korero mo Tuteurutira raua ko Hinerongo"
(b)* "He korero mo Kati Kuri" (counsel for claimants)
- H23* Map of Fiordland fishing marks (also J32) (counsel for claimants)
- H24* Map of Kaikoura fishing marks (also J33) (counsel for claimants)

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- H25* Map of Banks Peninsula fishing marks (also J34)
(counsel for claimants)
- H26* Map of Foveaux Strait fishing marks (also J35)
(counsel for claimants)
- H27* Whakapapa of Wiremu Solomon
(counsel for claimants)
- H28* Map of Kaikoura, place names
(counsel for claimants)
- H29* Map of Kaikoura, kai manu and kai moana
(counsel for claimants)
- H30* Map of Kaikoura, tohu raumati
(counsel for claimants)
- H31 Map of Kaikoura from Barry Brailsford *The Tattooed Land* (Reed, Wellington 1981)
(counsel for claimants)
- H32* Map of Kaikoura, kai awa
(counsel for claimants)
- H33* Map of Ngati Kuri kai ika
(counsel for claimants)
- H34* Key to maps H27 to H33
(counsel for claimants)
- H35 Marcus Solomon "Boatman"
(counsel for claimants)
- H36 Evidence of Hemi Te Rakau on mahinga kai, Arahura area (replacing that in H8)
(counsel for claimants)
- H37* Archaeological evidence of Te Tai Poutini Maori settlement
(counsel for claimants)
- H38* Map of Te Tai Poutini archaeological sites
(counsel for claimants)
- H39 Photos of Chinese miners' flumes, road to Goldborough and sluicing at Manzonis, Callaghew
(H Te Rakau)
- H40 Photos (see H39)
(H Te Rakau)
- H41* Map of south Westland mahinga kai areas
(counsel for claimants)
- H42* Map of features of south Westland
(counsel for claimants)
- H43 Record of James M Russell's community involvement
(J M Russell)
- H44 Material supplied on areas crossed by the tribunal on flight Hokitika to Christchurch, 15 April 1988
(counsel for claimants)

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- H45 Evidence of Montero J Daniel on Taumutu site visit, 16 April 1988
- H46 Material supplied for Wairewa and Waihora site visit, 16 April 1988 (counsel for claimants)
- H47 Submission of Te Ao Hurae Waaka on Arowhenua
- H48 Submission of Kelvin Anglem on Timaru and Waitarakao
- H49 Memorandum of Frank Scarf on south Canterbury water quality (counsel for claimants)
- H50 Booklet of photographs and documents on Opihi River pollution (counsel for claimants)
- H51 Judge Frederick Chapman, "Field notes and others relating to greenstone", Cat No MI 414, source-Tame Parata (counsel for claimants)
- H52 Submission of David M Miller on mahinga kai, Purakanui area (counsel for claimants)
- H53 Submission of Edward Ellison on mahinga kai (counsel for claimants)
- H54* Map of mahinga kai, Murihiku area (counsel for claimants)
- H55* List of commonly used plants (K O'Connor)
- H56 Submission of George Te Au on mahinga kai, Murihiku area (counsel for claimants)
- H57 Supporting papers to H6 (registrar)
- H58 Further submission of Mervyn N Sadd, dated 26 April 1988

I Eighth hearing at Tribunals Division Boardroom, Databank House, Wellington, 19 May 1988

Document:

- I1 Draft issues raised by the evidence of the claimants (counsel for claimants)
- I2 Amendments to draft issues suggested by the tribunal (see I1) (registrar)
- I3 Memorandum of Kurahaupo Waka on draft issues, dated 19 May 1988 (see I1) (counsel for Kurahaupo Waka)
- I4 Memorandum of counsel for the Crown on draft issues, dated 20 May 1988 (see I1)
- I5 Notice of Tipene O'Regan on proposed amendment of mahinga kai claim (sea fishing), received 27 May 1988 (registrar)
- I6 Issues raised by the evidence of the claimants as determined by the tribunal (see I1-4) (registrar)

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- 17 Deputy-chairperson's memorandum of directions on Kurahaupo Waka claim, dated 23 June 1988 (registrar)

J Ninth hearing, held at the Tuahiwi Marae, 27–30 June 1988*Document:*

- J1 Further evidence of Harry C Evison on Banks Peninsula (see A9, A13, A31, G1, G2, J3, J4) (counsel for claimants)
- J2 Further evidence of James P McAloon on the Murihiku block (see E1, E2, E3) (counsel for claimants)
- J3 Additional archive material on Banks Peninsula supplied by Harry C Evison (counsel for claimants)
- J4 Supporting papers to J2 (see E1, E2, E3) (counsel for claimants)
- J5 Submissions of the Waitaha Management Group in association with the South Westland Runanga, Tutura Runanga, West Coast Fishermens' Association and Maruia Society
- J6 Revised analysis of Maori names appearing on French and official British deeds for sale of Banks Peninsula, 1838–1856 (an enlarged copy of J1 p 38) (counsel for claimants)
- J7 Amended claim in respect of fisheries, dated 25 June 1988 (registrar)
- J8 Map of Fiordland taken from an 1838 admiralty chart in Edward Shortland *The Southern Districts of New Zealand* (1851). Copied from A Charles Begg & Neil Begg *The World of John Boulton, including an account of sealing in Australia and New Zealand* (Whitcoulls, Christchurch 1979) fig 15
- J9 Copies of statutes and regulations relating to Lake Waihora (counsel for claimants)
- J10 Evidence of Henare R Tau, David Higgins, Trevor H Howse, Peter Ruka and Barry Brailsford on mahinga kai (Note: D Higgins' evidence replaces H5, B Brailsford's evidence replaces H4 and H R Tau's evidence replaces that included in H6) (counsel for claimants)
- J11* Map of kai roto, Kaikoura (counsel for claimants)
- J12* Map of groper grounds, Kaikoura area (1) (counsel for claimants)
- J13* Map of groper grounds, Kaikoura area (2) (counsel for claimants)
- J14* Map of groper grounds, Kaikoura area (3) (counsel for claimants)
- J15* Map of major trails of 1840 (counsel for claimants)

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- J16* Map of pounamu sources
(counsel for claimants)
- J17* Map of Canterbury trails before 1840
(counsel for claimants)
- J18 Barry Brailsford *The Greenstone Trails: The Maori Search for Pounamu* (Reed, Wellington 1984)
(counsel for claimants)
- J19 Barry Brailsford *The Tattooed Land* (Reed, Wellington 1981)
(counsel for claimants)
- J20* Map of mahinga kai, Christchurch area
(counsel for claimants)
- J21* Overlay to J20, wakawaka boundaries, Christchurch mahinga kai
(counsel for claimants)
- J22* Map of mahinga kai districts according to Matiaha Tiramorehu
(counsel for claimants)
- J23 Map of archaeological sites (see H3 Fig 1)
(counsel for claimants)
- J24 Map of rahua o te whenua, vegetation, 1840, *New Zealand Atlas* (Government Printer, Wellington)
(counsel for claimants)
- J25 Overlay to J24, “Kahore i Hokona”, from previous annual reports of the Ngai Tahu Trust Board
(counsel for claimants)
- J26 Overlay to J24, South Island trails
(counsel for claimants)
- J27 Map of rahua o te whenua, forest and saw mills, Banks Peninsula 1860
(counsel for claimants)
- J28 Map of te aka o tuwhenua, wakawaka ika (fishing wakawaka North Canterbury)
(counsel for claimants)
- J29* Map of Waitaki wakawaka, collected 1897 and presented to the Native Land Court 1925
(counsel for claimants)
- J30* Map of Canterbury wakawaka, collected 1897 and presented to the Native Land Court 1925
(counsel for claimants)
- J31* Map of currents, Punakaiki to Kahurangi Point
(counsel for claimants)
- J32* Map of Fiordland fishing marks and grounds (also H23)
(counsel for claimants)
- J33* Map of Kaikoura fishing grounds (also H24)
(counsel for claimants)
- J34* Map of Banks Peninsula to Otago fishing grounds and marks (also H25)
(counsel for claimants)

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- J35* Map of Foveaux Strait fishing grounds and marks (also H26)
(counsel for claimants)
- J36* Map of tuku moana, tuna heke, wakawaka for Lake Forsyth (Wairewa)
(counsel for claimants)
- J37 Additional note to the evidence of Trevor H Howse on Wairewa (see J10)
(counsel for claimants)
- J38 Map of Birdlings Flat, Lake Ellesmere, showing reserves, M37/8.1
(counsel for claimants)
- J39 Evidence of James P McAloon on mahinga kai, Ngai Tahu-Ngati Mamoe marine
property rights
(counsel for claimants)
- J40* Overlay to J28, kohanga o kaikai oara (North Canterbury fisheries)
(counsel for claimants)
- J41* Overlay to J28, maunga karanga
(counsel for claimants)
- J42* Map of South Island ocean currents
(counsel for claimants)
- J43 Final statement of David Higgins on Ngai Tahu fisheries (see J10)
(counsel for claimants)
- J44 Additional evidence of Peter Ruka on Ngai Tahu fisheries
(counsel for claimants)
- J45 Additional evidence of Henare R Tau on Ngai Tahu fisheries (see J10)
- J46 Diagram of River Dismal or Waitaki by Te Warekorari, 9 November 1848, MS 90,
Hocken Library
(counsel for claimants)
- J47 Evidence of Dr Peter J Tremewan on French land purchases from Ngai Tahu
(registrar)
- J48 Buddy Mikaere *Te Maibaroa and the Promised Land* (Heinemann, Auckland
1988)
(counsel for claimants)
- J49 Information paper for tribunal on southern Maori dialect
(counsel for claimants)
- J50 Map of French land purchases in Banks Peninsula
(counsel for claimants)
- J51* Map of Kaikoura to Banks Peninsula fishing marks and fishing grounds
(counsel for claimants)
- J52* Map of Taiaroa Head to Nugget Point fisheries and fishing marks
(counsel for claimants)

K On 30 June 1988 the Crown opened its response to the claim

Document:

- K1 Opening submission of Crown counsel
- K2 Supporting papers to K1

Record of Documents

L Tenth hearing at the Southern Cross Hotel, Dunedin, 25–28 July 1988

Document:

- L1 Opening submissions of Crown counsel on Banks Peninsula
- L2 Evidence of Graham J Sanders on Banks Peninsula (2 vols) (see M26, Q17)
(withdrawn)
(counsel for Crown)
- L3 Supporting papers to L2 (see M26, Q17)
(counsel for Crown)
- L4 Opening submissions of Crown counsel on Princes Street reserve
- L5 Evidence of Professor Gordon S Parsonson on Princes Street reserve (see L7)
(counsel for Crown)
(a) Arthur L Salmond *First Church of Otago; and how it got there* (Otago Heritage Books, Dunedin 1983)
(counsel for Crown)
- L6 Supporting papers to L5
(counsel for Crown)
- L7 Opening submission of Crown counsel on Kemp's purchase, part I (see M1)
- L8 Evidence of Dr Donald M Loveridge on Kemp's purchase (see M2, M3, O46)
(counsel for Crown)
- L9 Supporting papers to L8 (2 vols) (see Q18)
(counsel for Crown)
(a) Pages missing from L9 vols I and II
(counsel for Crown)
- L10 Evidence and supporting papers of Jesse H Beard on Taiaroa Head
(counsel for Crown)
- L11 Evidence of Ian R H Whitwell on Taiaroa Head
(counsel for Crown)
- L12 Map of Maori land holdings, Otago Heads, produced in the Native Land Court, Port Chalmers, 28 November 1913
(counsel for Crown)
- L13 Map of native reserve at Otago Heads 1897, ML135
(counsel for Crown)
- L14 Aerial photograph, Taiaroa Head reserves n d
(counsel for Crown)
- L15 Plan of Taiaroa Head light and pilot reserve, Pukekura, dated 2 July 1867
(counsel for Crown)
- L16 B Carter "The Incorporation of the Treaty of Waitangi into Municipal Law" (1980)
4 NZULR
(counsel for Crown)
- L17 Modern map of Banks Peninsula used as the base for overlays
(a) Overlay to L17, pre 1840 sales of Banks Peninsula
(counsel for Crown)
- L18 A Ballara "A Re-evaluation of the Process of Land Alienation by the Maoris, 1840-1890" (1982) JPS 91(counsel for Crown)

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- L19 Map of the Nelson Crown grant, 1848
(counsel for Crown)
- L20 Admiralty chart 1212 of 1848, including 1846 revision
(counsel for Crown)
- L21 Map of part of Middle Island by Charles Kettle, 1848
- L22 Photocopy of Kemp's deed
(counsel for Crown)
- L23 Photocopy of map of Kemp's deed
(counsel for Crown)
- L24 Map of South Island, NZMS 242, used as base for overlays for Kemp, North Canterbury and Kaikoura purchases
(a) Overlay to L24 on boundaries referred to in evidence (see L8)
(counsel for Crown)
- L25 Report of the Royal commission to inquire into and report on claims preferred by members of the Maori race touching certain lands known as surplus lands of the Crown, AJHR 1948 G-8
(counsel for Crown)
- L26 Maori owned ships, "Watts Index", National Archives, Wellington
(counsel for claimants)
- L27 Overlay to L17, Banks Peninsula, additional reserves requested by Ngai Tahu 1849
- L28 Overlay to L17, Port Cooper, Port Levy, Akaroa and French blocks
(counsel for Crown)
- L29 Overlay to L17, Kinloch and Morice estates
(counsel for Crown)
- L30 Further submissions of Crown counsel on Banks Peninsula (see L1)
- L31 Directions of deputy-chairperson on application of counsel for the West Coast (South Island) Maori Leaseholders' Association Incorporation and other lessees of Mawhera Incorporation for a summons to require the production of certain documents
(registrar)
- L32 Summary from the submissions of ancillary and other issues raised in the Ngai Tahu claim
(registrar)
- L33 Memorandum of Tipene O'Regan on the meaning of the name Otepoti, dated 3 September 1988
(registrar)
- L34 Reply of claimants to deputy-chairperson's directions on Kurahaupo Waka claim (see I7), dated 21 July 1988
(counsel for claimants)
- L35 Memorandum of Crown counsel on Kurahaupo Waka claim and deputy-chairperson's directions (see I7), dated 11 August 1988
(counsel for Crown)
- L36 Directions and interlocutory determination of deputy-chairperson on Joe Tukupua and Kurahaupo Waka claim, dated 16 September 1988
(registrar)

Record of Documents

M Eleventh hearing at College House, Christchurch, 29 August–1 September 1988

Document:

- M1 Opening submission of Crown counsel on Kemp's purchase, part II (see L7)
- M2 Evidence of Dr Donald M Loveridge on Kemp's purchase, part II, Walter Mantell's involvement in the Kemp purchase (see Q18)
(counsel for Crown)
- M3 Supporting papers to M2 (see Q18)
(counsel for Crown)
- M4 Submission of Crown counsel on the North Canterbury and Kaikoura purchases
- M5 Evidence of David J Alexander on background to the North Canterbury and Kaikoura purchases
(counsel for Crown)
- M6 Supporting papers to M5
(counsel for Crown)
- M7 Evidence of Graham J Sanders on North Canterbury
(counsel for Crown)
- M8 Supporting papers to M7
(counsel for Crown)
- M9 (a) Submission of Crown counsel on the Kaikoura reserves
(b) Submission of Crown counsel on Ngai Tahu and Crown policy 1850
(c) Submission of Crown counsel on land for landless natives
- M10 Evidence of Dr Donald M Loveridge on the Kaikoura purchase 1859 (see Q19, O48)
(counsel for Crown)
- M11 Supporting papers to M10
(counsel for Crown)
- M12 Evidence of David J Alexander on the history of the Kaikoura reserves
(counsel for Crown)
- M13 Supporting papers to M12
(a) A3 versions of plans contained within M13
(counsel for Crown)
- M14 Evidence of Tony Walzl on Ngai Tahu reserves 1848–1890
(counsel for Crown)
- M15 Supporting papers to M14
(counsel for Crown)
- M16 Evidence of David A Armstrong on the Crown's reserve policy concerning Ngai Tahu 1890–1944
(counsel for Crown)
- M17 Supporting papers to M16 (2 vols)
(counsel for Crown)
- M18 Further papers relating to the Kaikoura reserves, DOSLI, Wellington
(counsel for Crown)

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- M19 Memorandum of Crown counsel on whakapapa and hapu issues
- M20 Evidence of John M Barrington on schools
(counsel for Crown)
- M21 Supporting papers to M20
(counsel for Crown)
- M22 Submissions of Crown counsel on the Ngai Tahu Settlement Act 1944
- M23 Supporting papers to M22
- M24 Memorandum of counsel for Kurahaupo Waka claimants, dated 23 August 1988
- M25 "Two Letters from Ngaati-Toa to Sir George Grey", translated by Bruce Biggs,
(1959) JPS 68
(counsel for Crown)
- M26 Observations by the claimants on the evidence of Graham J Sanders on Banks
Peninsula (see L2, L3)
(counsel for claimants)
- M27 (a) Colour photocopy of Kaikoura purchase deed map 1859, DOSLI, Wellington
(b) Copy of Kaikoura purchase deed 1859, DOSLI, Wellington
(counsel for Crown)
- M28 Copies of plans of the Kaikoura reserves originally made by James Mackay, 1859
 - (a) M796
 - (b) M797
 - (c) M798
 - (d) M799
 - (e) M800
 - (f) M801
 - (g) M802
 - (h) M803
 - (i) M809
 - (j) M816(counsel for Crown)
- M29 Overlays to L24 of pasturage licenses relevant to Kaikoura and North Canterbury
purchases, 1846-1859 (see M6)
 - (a) 1859
 - (b) 1858
 - (c) 1857
 - (d) 1846(counsel for Crown)
- M30 Overlay to L24 of Nelson, Canterbury and Marlborough provincial boundaries
(counsel for Crown)
- M31 Overlay to L24 of land and fishing reserves, Kaikoura
(counsel for Crown)
- M32 Overlay to L24 of boundaries of the Cheviot estate
(counsel for Crown)
- M33 Department of Maori Affairs files associated with the Ngai Tahu Trust Board (see
M22, M23)
 - (a) MA 26/2 (3 vols)
 - (b) MA 26/2/7 (2 vols)

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- (c) MA 26/2, part I
(counsel for Crown)
- M34 Photocopies of various Canterbury deeds
- (a) Port Levy deed, 1849
 - (b) Port Levy deed, 1849
 - (c) Colour photocopy of map attached to Port Levy deed, dated 25 September 1849
 - (d) Translation of Port Levy deed, dated 25 March 1871
 - (e) Port Cooper deed, 10 August 1849
 - (f) Colour photocopy of plan attached to Port Cooper deed, dated 10 August 1849
 - (g) Translation of Port Cooper deed, dated 9 June 1871, with table by Walter Mantell showing the way the Port Cooper purchase money was allocated
 - (h) "Plan to illustrate the report on Native claims, Banks Peninsula", by John Grant Johnston, dated 7 June 1856
 - (i) English version of North Canterbury deed, dated 5 February 1857 (includes sketch plan)
 - (j) Maori version of North Canterbury deed
 - (k) Akaroa deed 1856
 - (l) English version of Akaroa deed, dated 10 December 1849
 - (m) Receipt for £100, final payment Kaiapoi lands, dated 6 January 1860
(counsel for Crown)

N Twelfth hearing at Ashley Motor Inn, Greymouth, 19–22 September 1988

Document:

- N1 Opening submission of Crown counsel on Arahura
- N2 Evidence of Dr Donald M Loveridge on the Arahura purchase, 1860 (see O49, R4, R6)
(counsel for Crown)
- N3 Supporting papers to N2
(counsel for Crown)
- N4 Evidence of Crown counsel on Poutini Ngai Tahu reserves
- N5 Supporting papers to N4
- N6 Evidence of David A Armstrong and Tony Walzl on the origin of leasing on the West Coast
 - (a) Submission of Crown counsel on the West Coast leases
- N7 Supporting papers to N6
(counsel for Crown)
- N8 Submission of Crown counsel on Ngai Tahu rights to pounamu and gold and silver
- N9 Supporting papers to N8
- N10 Submissions of Edward Tamati on behalf of the Parininihi-Ki-Waitotara Incorporation
- N11 Submissions of Hohepa Solomon on behalf of Wakatu Incorporation on reserved land leases
(counsel for claimants)

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- N12 Submission of Sir Ralph Love on behalf of the Wellington Tenth's Trust and Palmerston North Maori Reserves Trust on reserved land (counsel for claimants)
- N13 Directions and interlocutory determination of deputy-chairperson, dated 16 September 1988 (registrar)
- N14 Correspondence from Ian J Burgess, Valuation Department, to the secretary, Parininihi-Ki-Waitotara Incorporation on value of property vested in them, dated 15 September 1988 (counsel for Parininihi-Ki-Waitotara)
- N15 Correspondence from A G Johnson, Valuation Department, to the secretary, Parininihi-Ki-Waitotara Incorporation on values of properties vested in them, dated 23 November 1984 (counsel for Parininihi-Ki-Waitotara)
- N16 Twelfth annual report and accounts for the Parininihi-Ki-Waitotara Incorporation (counsel for Parininihi-Ki-Waitotara)
- N17 Photocopy Port Nicholson deed, dated 27 September 1839 (Sir Ralph Love)
- N18 Photocopy of the survey map for Port Nicholson (Sir Ralph Love)
- N19 Copies of sketch maps of the Arahura reserves by James Mackay
 - (a) Copy A
 - (b) Copy B(counsel for Crown)
- N20 (a) Photocopy of Arahura deed 1860
(b) Colour photocopy of sketch plan attached to Arahura deed (counsel for Crown)
- N21 Map of South Island showing land reserved from the Arahura purchase (counsel for Crown)
- N22 Map of Arahura River and reserve (counsel for Crown)
- N23 Maps of the Arahura riverbed, S09742, dated November 1976 (counsel for Crown)
- N24 Certificates of title for the Arahura River, dated 3 February 1928 (counsel for Crown)
- N25 Calculations of area in Maori reserve 30 (counsel for Crown)
- N26 Certificates of title
 - (a) CT 3D 1382
 - (b) CT 3D 1383
 - (c) CT 3D 1384(counsel for Crown)
- N27 Overlays to the Arahura purchase, MR 13 (counsel for Crown)
- N28 unallocated

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- N29 List of mining privileges
(counsel for Crown)
- N30 Correspondence from G C Morrison, Office of the Maori Trustee to Shonagh E Kenderdine, Crown counsel, on the Greymouth reserves, dated 7 August 1987
(counsel for Crown)
- N31 Evidence of Margaret Moir on behalf of the West Coast United Council
- N32 Opening submission of counsel for the Maori Trustee
- N33 Synopsis of N32
(counsel for Maori Trustee)
- N34 Evidence of Richard T Wickens, Deputy Maori Trustee
(counsel for Maori Trustee)
- N35 Supporting papers to N34
(counsel for Maori Trustee)
- N36 Submission of counsel for the Maori Trustee
- N37 Supporting papers to N36 (see N33)
(counsel for Maori Trustee)
- N38 Papers on Maori reserve 31 (Greymouth), DOSLI, Hokitika
- N39 Submission of counsel for West Coast (South Island) Maori Leaseholders' Association Incorporated and certain lessees of Mawhera Incorporation
- N40 Supporting documents to N39
- N41 Evidence of Thomas I Marks on valuations of land and leases on the west coast
(counsel for Crown)
- N42 Evidence of Alfred M Jamieson on Mawhera leases
(counsel for West Coast (South Island) Maori Leaseholders Association)
- N43 Submission of Eli T Weepu, Upoko Runanga O Tuhuru, on Maori reserved leasehold land
- N44 Evidence of Garlyn I Dixon on Arahura reserve land
- N45 Topographical map of Arahura River and environs
(counsel for Crown)
- N46 List of those holding mining licences and applicants for licences, DOSLI, Wellington
(counsel for Crown)
- N47 Correspondence from Crown counsel to the registrar on schedule of mining, prospecting and exploration licences, dated 15 September 1988
(counsel for Crown)
- N48 Preliminary observations by the claimants on the evidence given by Dr Donald Loveridge on Kemp's purchase (see L8)
(counsel for claimants)
- N49 Correspondence from the Maori Trustee to Crown counsel on area of Mawhera reserve freeholded and not vested in Mawhera Incorporation, dated 13 October 1987
(counsel for Crown)

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N50 Submission of Elcock & Johnston on behalf of Alexander J Wallace of Hokitika, on pounamu mining rights

O Thirteenth hearing at the Student Union Building, Otago University, Dunedin, 7–10 November 1988

Document:

- O1 Opening submission of Crown counsel on Otakou
 - (a) Valuation report and sales list on Princes Street reserve (no 11) (counsel for Crown)
- O2 Evidence of Dr Donald M Loveridge on the Otakou purchase (counsel for Crown)
- O3 Evidence and supporting papers of Josephine A Barnao on Taiaroa Head and Harington Point (counsel for Crown)
- O4 Map of Taiaroa Head (counsel for Crown)
- O5 Evidence of David J Alexander on history of the Kemp block reserves (counsel for Crown)
- O6 Supporting papers to O5
 - (a) Supporting plans to O5 (counsel for Crown)
- O7 Submission of Crown counsel on Wanaka-Hawea reserve
- O8 Supporting papers to O7 (counsel for Crown)
- O9 Submission of counsel for the Maori Trustee on Lake Hawea fishing reserve
- O10 Map of Taiaroa Head, J44/1.2 (counsel for Crown)
- O11 Opening submission of Crown counsel on the Murihiku purchase
- O12 Evidence of Graham J Sanders on the Murihiku and Rakiura purchases (counsel for Crown)
- O13 Supporting papers to O12 (counsel for Crown)
- O14 (a) Evidence of David J Alexander on the Murihiku and Stewart Island reserves
 - (b) Supporting papers to O14(a)
 - (c) Addendum to O14(a) (counsel for Crown)
- O15 Evidence of Professor David I Pool on the adequacy of Ngai Tahu reserves, a demographic analysis (counsel for Crown)
- O16 Supporting papers to O15 (counsel for Crown)
- O17 Evidence and supporting papers of Ronald D Keating on the Kaikoura, Kaiapoi (Tuahiwi) and Arahura purchases (counsel for Crown)

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- O18 Evidence and supporting papers of Donn Armstrong on valuations of Kaikoura and Canterbury, the land market historically to the present day
(counsel for Crown)
- O19 Evidence of Thomas I Marks on quantifying the benefits that would have accrued to Poutini Ngai Tahu had their request for a large reserve been granted
(counsel for Crown)
- O20 Evidence of Tony Walzl on Mantell's promises and the provision for Ngai Tahu health
(counsel for Crown)
- O21 Supporting papers to O20
(counsel for Crown)
- O22 Map of Lakes Wanaka and Hawea, Maori land and Crown land at Lake Hawea
(counsel for Crown)
- O23 Map of Lakes Hawea and Wanaka, G298
(counsel for Crown)
- O24 Map of native reserves in the provinces of Otago and Southland
(counsel for Crown)
- O25 Department of Maori Affairs file 7/6/246 (vol 1), land claims and alienations, Lakes Hawea and Wanaka
(counsel for Crown)
- O26 Department of Lands and Survey file 50456, land for landless Maoris mid-Wanaka SD
(counsel for Crown)
- O27 Map of South Island used as base for overlays for Kemp's purchase
 - (a) Overlay to O27, Maori reserves (general use and fishing)
 - (b) Overlay to O27, boundaries, purchase documents (lands of Crown) distinguishing general and SOE lands
 - (c) Overlay to O27, boundaries of various purchases
(counsel for Crown)
- O28 Sketch plan of reserve no 1, Tukurau
(counsel for Crown)
- O29 Sketch plan of reserve no 2, Omaui (see O13 p 27)
(counsel for Crown)
- O30 Sketch plan of reserve no 3, Oue
(counsel for Crown)
- O31 Sketch plan of reserve no 4, Aparima
(counsel for Crown)
- O32 Sketch plan of reserve no 5, Oraka (see O13 p 28)
(counsel for Crown)
- O33 Sketch plan of reserve no 6, Wakaputaputa (see O13 p 29)
(counsel for Crown)
- O34 Sketch plan of reserve no 7, Ouetota (see O13 p 30a)
(counsel for Crown)

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- O35 (a) Murihiku deed
(b) Map of Murihiku purchase
(counsel for Crown)
- O36 Map of Stewart Island showing 168°E longitude
(counsel for Crown)
- O37 Stewart Island deed
(counsel for Crown)
- O38 Titi Island reserves
(counsel for Crown)
- O39 Stewart Island reserves
(counsel for Crown)
- O40 Map of South Island used as a base map for overlays for Murihiku purchase
(counsel for Crown)
- O41 Overlay to O40, boundary of Murihiku purchase
(counsel for Crown)
- O42 Overlay to O40, Maori reserves
(counsel for Crown)
- O43 Evidence of Professor David I Pool
 - (a) Audit Table Locality Totals Ratio 1844–1896 Canterbury
 - (b) Audit Table Sex Totals Ratio 1844–1896 Canterbury
 - (c) Audit Table Age Totals Ratio 1844–1896 Canterbury
 - (d) Audit Table Sex-Age Totals Ratio 1844–1896 Canterbury
 - (e) Provincial Totals 1844–1896 Table 1
 - (f) County Totals 1844–1896 Table 2
 - (g) Provincial Sex Ratio 1844–1896 Table 3
 - (h) County Sex Ratio 1844–1896 Table 4
 - (counsel for Crown)
- O44 Evidence of Ronald Keating
 - (a) Map of Kaikoura reserve and the study block
 - (b) Map of Canterbury study area
 - (c) Map of Arahura study area
 - (d) Map of Tuahiwi reserve
 - (e) Map of Kaikoura study block sales and overlay
(counsel for Crown)
- O45 Base map of Otago Peninsula and overlays (a)–(h) of Otakou Maori reserve
(counsel for Crown)
- O46 Observations by the claimants on Crown evidence of Dr Donald M Loveridge on Kemp's purchase (L8 and L9) (see M2, M3, Q18, R1, R2)
(counsel for claimants)
- O47 Observations by the claimants on Crown evidence of Graham J Sanders on the North Canterbury purchase (M7 and M8) (see R5)
(counsel for claimants)
- O48 Observations by the claimants on Crown evidence of Dr Donald M Loveridge on the Kaikoura purchase (M10 and M11) (see Q19, R3)
(counsel for claimants)

Record of Documents

- O49 Preliminary memorandum of the claimants on Crown evidence of Dr Donald M Loveridge on the Arahura block (N2 and N3) (see R4)
(counsel for claimants)
- O50 Preliminary memorandum of the claimants on Crown evidence of David A Armstrong and Tony Walzl on the Arahura block
(counsel for claimants)
- O51 Curriculum vitae of Professor David I Pool (see O15 and O16)
(counsel for claimants)
- O52 Memorandum of deputy-chairperson on mahinga kai - sea fisheries claims, dated 10 November 1988 (see O53)
(registrar)
- O53 Memorandum of deputy-chairperson amending memorandum dated 10 November 1988, dated 14 November 1988 (see O52)
(registrar)
- O54 Memorandum of deputy-chairperson concerning state owned enterprises, dated 11 November 1988
(registrar)

P Fourteenth hearing at College House, Ilam, Christchurch, 5–9 December 1988

Document:

- P1 Opening submission of Crown counsel on the Otakou “tenths”
- P2 Evidence of Dr Donald M Loveridge on the Otakou purchase of 1844
(counsel for Crown)
- P3 Supporting papers to P2
(counsel for Crown)
- P4 Evidence of Professor Gordon Parsonson on the Otakou tenths, overview
(counsel for Crown)
- P5 Supporting papers to P4
(counsel for Crown)
- P6 Supporting papers to P7
(counsel for Crown)
- P7 Evidence of David J Alexander on Otakou, Murihiku and Rakiura reserves
(counsel for Crown)
- P8 Opening submission of Crown counsel on Titi Islands
 - (a) Evidence of Ronald Tindal
 - (b) Evidence and supporting papers of Ronald Tindal
(counsel for Crown)
- P9
 - (a) Submissions of Crown counsel on mahinga kai
 - (b) Supporting documents to P9(a)
 - (c) Documents relating to fishery easements
 - (d) Key to maps of Banks Peninsula, the Kaikoura coast and Kemp’s purchase
(counsel for Crown)
- P10 Evidence of Anthony Walzl on mahinga kai (see O48, Q19, Q21)
(counsel for claimants)

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- P11 Supporting papers to P10
(counsel for claimants)
- P12 Evidence of Robert D Cooper, MAFFish, on records of Maori fisheries in government archives since 1840
- P13 Supporting paper to P12
- P14 (a) Evidence of Josephine A Barnao on Kaitorete Spit
(b) Supporting papers of Josephine A Barnao on Waihora (Lake Ellesmere) (see P14(a), Q20, Q22)
(c) Submissions of Crown counsel on Taumutu commonage reserves (counsel for Crown)
- P15 (a) Evidence of Ronald W Little, MAFFish, on the nature of the land during the period of early habitation and what has happened to the South Island and its fishery habitat since then
(b) Evidence of B Johnson, national executive of the New Zealand Acclimatisation Societies, on the acclimatisation societies and their relationship with freshwater fisheries and wildlife (counsel for Crown)
- P16 (a) Evidence of Ronald W Little, MAFFish, on the physical nature of Lakes Ellesmere and Forsyth
(b) Evidence of Dr Peter Todd, MAFFish, on eel and lamprey biology and the eel fisheries in Lakes Ellesmere and Forsyth
(c) Evidence of Professor Walter C Clark on Maori involvement in management of freshwater fisheries and game resources in the North Canterbury acclimatisation district, with specific reference to Lake Ellesmere
(d) Evidence of Paul Sager, MAFFish, on the Opihi River – potential effects on fish of flow augmentation (counsel for Crown)
- P17 Map of Otakou purchase
(a) Overlay of Maori reserves
(b) Overlay of Crown and SOE land (counsel for Crown)
- P18 Further evidence of David A Armstrong on the Murihiku purchase (counsel for Crown)
- P19 Supporting maps to P2
(a) Sketch of the lands to be annexed to the settlement of New Edinburgh, 15 June 1844
(b) Survey of part of the harbour of Otago, 1844
(c) Sketch showing New Edinburgh purchase and reserve of “natives”
(d) A survey of part of the harbour of Otago (New Edinburgh settlement)
(e) Deed of purchase after the Native Land Court at Dunedin 17 May 1868 (counsel for Crown)
- P20 unallocated
- P21 Map of South Island land tenure (counsel for Crown)
- P22 (a) Submissions of counsel for Federated Farmers on behalf of Crown pastoral lessees
(b) Evidence of Hamish R Ensor on behalf of Crown pastoral lessees
(c) Evidence of Donald McKenzie on tenure of land subject to specific claims

Record of Documents

- (d) Evidence of Jim Morris on relationship to the land
- (e) Supplement to the evidence of Hamish R Ensor (see P22(b))
- P23 Submission of J A Glennie on behalf of the North Canterbury Catchment Board and Regional Water Board
- P24 (a) Submissions of counsel for Telecom Corporation of New Zealand Ltd
- (b) Supporting documents to P24(a)
- P25 Submissions of counsel for Land Corporation Ltd
- P26 Schedules of unallocated former state forest lands and Crown lands, Westland land district
(counsel for claimants)
- P27 Map of the South Island, sections highlighted in green
(counsel for Crown)
- P28 Map of South Island showing pastoral, freehold, army, forest park, special lease, university lease, and land once grazed
(counsel for Crown)
- P29 Evidence of Edwin D Lyttle on behalf of Otago Federated Farmers
- P30 Evidence of Ronald W Little, MAFFish, line graph of vegetation cover of New Zealand
- P31 Evidence of Ronald W Little, MAFFish, bar graph of native forest land area
- P32 (a) Map of Christchurch land drainage, present day
- (b) Map of Christchurch land drainage, c 1855
- (c) Long term planning for the Avon-Heathcote estuary, Christchurch City Council, 1980
(counsel for Crown)
- P33 Map of South Island used to point out Otumatua
(counsel for Crown)
- P34* Map of Maori place names of Lake Ellesmere presented by Ricki Ellison to Duncan McIntyre
(counsel for Crown)
- P35 Correspondence from Reverend J F H Wohlers to Frederick Tuckett, 1849–1856, MS 41, Hocken Library
(registrar)

Q Fifteenth hearing at Manca House, Christchurch, 7–9 February 1989

Document:

- Q1 Submission of counsel for the claimants on deputy-chairperson's memorandum of 10 November 1988 on sea fisheries claims (see O52)
- Q2 Submission of Mervyn N Sadd on deputy-chairperson's memorandum of 10 November 1988 on sea fisheries claims (see O52)
- Q3 Further evidence of James P McAloon on Murihiku and Rakiura
(counsel for claimants)
- Q4 Observations of claimants on the evidence of David A Armstrong on Murihiku (P18)
(counsel for claimants)

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- Q5 Observations of claimants on the evidence of Graham J Sanders on Murihiku and Rakiura (O12 and O13)
(counsel for claimants)
- Q6 Preliminary observations of the claimants on the evidence of Anthony Walzl on Mantell's promises and the provision for Ngai Tahu health (O20)
(counsel for claimants)
- Q7 Submission of Crown counsel on Ngai Tahu sea fisheries
- Q8 Evidence of Anthony Walzl on economy of Ngai Tahu
(counsel for Crown)
- Q9 Supporting papers to Q8
(counsel for Crown)
- Q10 Evidence and supporting papers of David J Alexander on Lake Forsyth and Lake Ellesmere reserves
(counsel for Crown)
- Q11 Evidence of Anthony Walzl on Native Land Court minute book
(counsel for Crown)
- Q12 Submissions of counsel for the New Zealand Fishing Industry Association
- Q13 Submissions of counsel for the New Zealand Fishing Industry Board
- Q14 Evidence of Malcolm R Hanna on valuation and the evidence of Thomas I Marks (see O19)
(counsel for claimants)
- Q15 Submission of Dr R S Deane, Electricity Corporation of New Zealand Ltd, on the role of the Electricity Corporation in relation to Maori claims
- Q16 Submission of J P F Robinson, Electricity Corporation of New Zealand Ltd, on South Island hydro power stations
(a) Topographical map showing Electricity Corporation of New Zealand Ltd's power stations in the South Island
(counsel for Electrocorp)
- Q17 Salient points in the claimants' observations (M26) on the evidence of Graham J Sanders on Banks Peninsula (see L2, L3)
(counsel for claimants)
- Q18 Salient points in the claimants' observations (O46) on the evidence of Dr Donald M Loveridge on Kemp's purchase (see L8, L9, M2, M3)
(counsel for claimants)
- Q19 Salient points in the claimants' observations (O48) on the evidence of Dr Donald M Loveridge on Kaikoura (see M10, M11)
(counsel for claimants)
- Q20 Observations of the claimants on the evidence of Josephine Barnao on the alleged French "purchase" of Banks Peninsula (see P14(a))
(counsel for claimants)
- Q21 Observations of the claimants on the evidence of Anthony Walzl on mahinga kai (see P10, P11)
(counsel for claimants)

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- Q22 Observations of the claimants on the evidence of Josephine Barnao on Kaitorete (see P14(a) and (b))
(counsel for claimants)
- Q23 Memorandum on the Treaty of Waitangi in the South Island
(a) Map A, nineteenth century Banks Peninsula
(b) Map B, eastern Canterbury and Banks Peninsula Ngai Tahu land sales 1840–1856
(counsel for claimants)
- Q24 Interlocutory determination of deputy-chairperson on procedure relating to hearing of sea-fisheries claim, dated 10 February 1989
(registrar)
- Q25 Submissions of Crown counsel in reply to memorandum of deputy-chairperson concerning an interim recommendation to the Crown sought by Ngai Tahu Trust Board for reimbursement of expenses
(counsel for Crown)
- Q26 Submission of claimants in support of application for interim order for reimbursement of claimants' expenses
(counsel for claimants)
- Q27 Submissions of the Wellington District Law Society to the chairperson of the Maori Fisheries Committee, House of Representatives, Wellington on the Maori Fisheries Bill 1988
- Q28 Memorandum of David J Alexander on ancillary claims, received 13 March 1989
(counsel for Crown)
- Q29 Memorandum of Thomas I Marks on the evidence of Malcolm R Hanna on the valuation of rentals for Mawhera leasehold land (see Q14)
(counsel for Crown)
- Q30 Memorandum of deputy-chairperson on procedure and case to be stated to the Maori Appellate Court, dated 27 February 1989
(registrar)
- Q31 Memorandum of Crown counsel on Ngai Tahu sea fisheries, dated 13 March 1989
(registrar)
- Q32 Memorandum of deputy-chairperson giving directions on timetabling and hearing dates for sea-fisheries portion of the claim, dated 16 March 1989
(registrar)
- Q33 Case stated to the Maori Appellate Court on a question to determine Maori land and fisheries tribal boundaries
(registrar)

R Sixteenth hearing at the Chateau Regency, Christchurch, 10–13 April 1989

Document:

- R1 Crown responses to preliminary observations by the claimants on the evidence of Dr D M Loveridge on Kemp's purchase (L8 and L9) (see O46)
(counsel for Crown)

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- R2 Crown responses to preliminary observations on the evidence of Dr D M Loveridge on Kemp's purchase (M2 and M3) (see O46) (counsel for Crown)
- R3 Crown responses to observations by the claimants on the evidence of Dr D M Loveridge on the Kaikoura purchase (M10 and M11) with additional documents (see O48) (counsel for Crown)
- R4 Crown responses to preliminary memorandum by the claimants on the evidence of Dr D M Loveridge on the Arahura block (N2 and N3) (see O49) (counsel for Crown)
- R5 Crown responses to observations by the claimants on the evidence of G J Sanders on the North Canterbury purchase (M7 and M8) (see O47) (counsel for Crown)
- R6 Crown responses to preliminary memorandum by the claimants on evidence of D A Armstrong and A Walzl on the Arahura block (N6 and N7) (see O50) (counsel for Crown)
- R7 Crown responses to preliminary observations by the claimants on evidence of A Walzl on Mantell's promises and the provision for Ngai Tahu health (O20 and O21) (counsel for Crown)
- R8 Evidence of David A Armstrong on Banks Peninsula (counsel for Crown)
- R9 Opening submission of Crown counsel on Ngai Tahu sea fisheries
- R10 Submission of Crown counsel on legislation concerning fisheries
- R11 Evidence of John A Colman, MAFFish, on marine fish and the environment (counsel for Crown)
- R12 Evidence of John D Booth, MAFFish, on rock lobster fishery (counsel for Crown)
- R13 Evidence of Talbot Murray, MAFFish, on South Island paua fishery (counsel for Crown)
- R14 (a) Evidence of Jacqui Irwin, MAFFish, on shallow water fin fisheries of the South Island
(b) Evidence of Tony Avery, MAFFish, on shoreline and shallow-water shellfisheries of the South Island
(c) Evidence of Graeme McGregor, MAFFish, on South Island blue cod fishery
(d) Evidence of Lawrence J Paul, MAFFish, on South Island shark fisheries (counsel for Crown)
- R15 (a) Evidence of Rosemary J Hurst, MAFFish, on South Island barracouta fishery
(b) Evidence of John B Jones, MAFFish, on South Island blue warehou fishery
(c) Evidence of Alistair B MacDiarmid, MAFFish, on South Island red cod fishery (counsel for Crown)
- R16 Evidence of Lawrence J Paul, MAFFish, on South Island groper, tarakihi and bluenose fisheries
(a) Evidence of Robert H Mattlin, MAFFish, on South Island squid fishery (counsel for Crown)
- R17 Evidence of Mary E Livingston, MAFFish, on South Island silver warehou fishery

Record of Documents

- (a) Evidence of John A Colman, MAFFish, on South Island hake fishery
- (b) Evidence of John A Colman, MAFFish, on South Island ling fishery
(counsel for Crown)
- R18 Evidence of Kevin J Sullivan, MAFFish, on hoki fishery
(counsel for Crown)
- R19 Evidence of Donald A Robertson, MAFFish, on orange roughy fishery
 - (a) Evidence of Peter McMillan, MAFFish, on South Island oreo fishery
(counsel for Crown)
- R20 Evidence of Robin Allen, MAFFish, on the role of fisheries research
(counsel for Crown)
- R21 Evidence of Ian N Clark, MAFFish, on development of the quota management system
 - (a) *Economic Review of the New Zealand Fishing Industry 1987–88* (NZFIB, February 1989)
(counsel for Crown)
- R22 Evidence of Bruce Shallard, MAFFish, on the quota management system
(counsel for Crown)
- R23 Evidence of Robert D Cooper, MAFFish, on the effect of fishery management policies on Maori involvement in fishing
(counsel for Crown)
- R24 Evidence of Grant Thomas Crowthers, MAFFish, on fisheries compliance
(counsel for Crown)
- R25 Evidence of Ian N Clark, MAFFish, on the economics of the South Island fishery
(counsel for Crown)
- R26 Evidence of Robert D Cooper, MAFFish, on local control and management of coastal fisheries by Maori
(counsel for Crown)
- R27 Audiovisual aids to MAFFish evidence, book of slide copies
(counsel for Crown)
- R28 Audiovisual aids to MAFFish evidence, box of slides used in presentation
(counsel for Crown)
- R29 Memorandum of Crown counsel on Banks Peninsula asking for the withdrawal from the record of their submissions and evidence L1, L2 and L30
- R30* “Mahinga Kai List 1880” presented to Tipene O’Regan by MAFFish
- R31 Question from the tribunal to MAFFish on the nature and extent of Ngai Tahu fishing in traditional times in relation to specific fish and shellfish
(registrar)
- R32 Further evidence in support of R23 on exclusion of part-time fishers
(counsel for Crown)
- R33 Statement of George Clarke Jr to the Smith-Nairn commission on the Otakou purchase, MA 67, National Archives, Wellington
(counsel for Crown)
- R34 Correspondence from H T Kemp referring to the termination of his services with the New Zealand government, GNZ MSS 201, Auckland Public Library
(counsel for Crown)

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- R35 Further evidence of Dr Ann R Parsonson on the Otakou tenths
(counsel for claimants)
- R36 (a) Supporting papers to R35, vol 1
(b) Supporting papers to R35, vol 2
(counsel for claimants)
- R37 Memorandum of counsel for NZFIB and NZFIA on timetabling and hearing dates for sea-fisheries portion of claim
- R38 (a) Evidence of John A Colman, MAFFish, on marine fish and the environment, supplement to R11
(b) Curriculum vitae of Alan Coakley, supplement to R14(a)–(d)
(c) Evidence of Kevin J Sullivan, MAFFish, on hoki fishery, supplement to R18
(d) Evidence of Rosemary J Hurst, MAFFish, on barracouta, blue warehou and red cod, supplement to R15(a)–(c)
(e) Evidence of Mary E Livingston, MAFFish, on silver warehou and red cod, supplement to R17, 17(a)–(b)
(f) Evidence of Neil Martin, MAFFish, on effect of fisheries management policies on Maori involvement in fishing, supplement to R23
(g) Evidence of Robert D Cooper, MAFFish, on local control and management of coastal fisheries by Maori, supplement to R26
(h) Evidence of Ian N Clark, MAFFish, additional data on TAC's catch values and valuation definitions, supplement to R25
(i) Evidence of Henry J Cranfield, MAFFish, on dredge oysters
(j) Evidence of Ron Blackwell, MAFFish, on gurnard
(k) Evidence of Graeme McGregor, MAFFish, on stargazer
(l) Evidence of Rosemary J Hurst, MAFFish, on gemfish
(m) Evidence of John A Colman, MAFFish, on southern blue whiting
(n) Evidence of Talbot Murray, MAFFish, on tuna
(o) Evidence of Lawrence J Paul, MAFFish, on species composition of the modern commercial fishery for marine finfish in the Ngai Tahu region of the South Island
(p) Evidence of Lawrence J Paul, MAFFish, on South Island marine fisheries bibliography
(counsel for Crown)
- R39 Evidence of James P McAloon on new translations of the Murihiku and Arahura deeds
(counsel for claimants)
- R40 Letter from J Thomas, agent and chief surveyor, Canterbury Association, dated 28 February 1849, 1/49A, 3/1 letterbook 1848–1851, Canterbury Association Records, Lands and Survey Collection, Canterbury Museum Archives
- S The seventeenth hearing at the Chateau Regency, Christchurch, 29 May–2 June 1989**

Document:

- S1 Evidence of Robert D Cooper, MAFFish, on history of the New Zealand paua fishery 1860–1973
(counsel for Crown)
- S2 (a) Evidence of Dr Murray A Bathgate on the archaeological and early documentary record concerning Maori fishing in the South Island including reference to two reports by Dr Foss Leach (S4 and S5)
(counsel for Crown)

Record of Documents

- (b) Curriculum vitae of Dr Murray A Bathgate
- (c) Curriculum vitae of Dr Foss Leach
- S3 Supporting papers to S2 (2 vols)
(counsel for Crown)
- S4 Report of Dr Foss Leach on the archaeology of Maori marine food harvesting
(see S2)
- S5 Report of Dr Foss Leach on archaeological time trends in South Island Maori
fishing (see S2)
- S6 (a) Evidence of David J Alexander on history of sealing and whaling in
southern New Zealand
(b) Supporting papers to S6(a)
- S7 Evidence of Anthony Walzl on Ngai Tahu fishing 1840–1908
(counsel for Crown)
- S8 Supporting documents to S7
(counsel for Crown)
- S9 Evidence of David A Armstrong on Ngai Tahu fishing in the twentieth century,
overview
(counsel for Crown)
- S10 Supporting papers to S9 (2 vols)
- S11 (a) Evidence of counsel for Tane Moana Runanga Trust Incorporated on Ngai
Tahu fishing
(b) Evidence of John Solomon on Ngai Tahu fishing (including evidence of
William Pacey)
(c) Evidence of Morris Jacobs on Ngai Tahu fishing (including the evidence
of Charles B Harvey, Raymond F Harvey, Stewart C Harvey, Graham D Harvey)
(d) Evidence of James N Pohio on Ngai Tahu fishing (including the evidence
of T M Taiaroa and Beresford Davis)
(counsel for Tane Moana Runanga Trust)
- S12 Maori language documents selected from the Taiaroa papers, Canterbury
Museum Library, and their translations by Sarah M Williams
(counsel for Crown)
- S13 Evidence of Lawrence J Paul, MAFFish, on the use of “marks” to locate fishing
grounds
(counsel for Crown)
- S14 Evidence of Lawrence J Paul, MAFFish, on the likely capture and use of fish
species by Ngai Tahu fishing people in traditional times (see R31)
(counsel for Crown)
- S15 J R Goodwin “Some Examples of Self-Regulatory Mechanisms in Unmanaged
Fisheries” FAO Fisheries Report (289) Suppl 2
(counsel for Crown)
- S16 Evidence of Professor Ian A Gordon on the meaning of “fisheries” particularly
in the Treaty of Waitangi
(counsel for NZFIB and NZFIA)
- S17 Evidence of Richard N Holdaway on Maori conservation of natural resources
in the pre-European and proto-historic periods of New Zealand history
(counsel for NZFIB and NZFIA)

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- S18 Submission on behalf of the Federated Mountain Clubs of New Zealand Incorporated
- S19 Evidence of Alison F Mannell, partner in crayfishing venture (counsel for NZFIB and NZFIA)
- S20 Evidence of Ralph E Brown, crayfisherman and marine farmer (counsel for NZFIB and NZFIA)
- S21 Evidence of Steven J Anderson, crayfisherman (counsel for NZFIB and NZFIA)
- S22 Evidence of Patrick King on the meaning of mahinga kai (counsel for Crown)
- S23 Opening submission of counsel for the NZFIA and NZFIB
- S24 Memorandum of claimants on Kemp's purchase and on the Treaty of Waitangi

T The eighteenth hearing at the Chateau Regency, Christchurch, 12–16 June 1989

Document:

- T1 Professor Alan D Ward "A Report on the Historical Evidence: The Ngai Tahu Claim Wai 27", May 1989, commissioned by the Waitangi Tribunal (see U10 and U11)
(a)–(f) Amendments and additions to T1
(registrar)
- T2 Supporting papers to T1
(registrar)
- T3 Dr Peter J Tremewan "Kai Tahu Land Sales to Captain Langlois and the Nanto-Bordelaise Company on Banks Peninsula", May 1989, commissioned by the Waitangi Tribunal
(registrar)
- T4 Dr George Habib "Ngaitahu Claim to Mahinga Kai", June 1989, commissioned by the Waitangi Tribunal
 - (a) Report on Ngai Tahu fisheries evidence
 - (b) Report on the mahinga kai lists 1880 (see R30)
 - (c) Assessment of Crown evidence on the mahinga kai fisheries aspects of the Ngai Tahu claim
 - (d) Report on evidence on sealing and whaling by the Crown and fishing industry
 - (e) Curriculum vitae of Richard O Boyd, Ika Venture Corp Ltd
(registrar)
- T5
 - (a) Nelson Crown grant to the New Zealand Company, August 1848
 - (b) Plan 1 of Nelson grant from the Crown to the New Zealand Company, Heaphy, 1848, SO 1053, DOSLI, Nelson
 - (c) Schedule to plan 1 showing the Nelson Crown Grant to the New Zealand Company, 1848, SO 1054, DOSLI, Nelson
(registrar)
- T6 Evidence of Kemp to the Smith-Nairn Commission, 1879, MA 67/8, National Archives, Wellington
(registrar)

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- T7 Correspondence from Mantell to Topi, 16 February 1858, MS paper 83, folder 166, Alexander Turnbull Library, Wellington
(registrar)
- T8 T W Downes *Old Whanganui* (W A Parkinson & Son, Hawera 1915) pp 320–326
(registrar)
- T9 Coloured copy of the Murihiku deed map, 17 August 1853
(counsel for Crown)
- T10 (a) Replacement of T1 p 399
(b) Replacement of T2 p 398
(registrar)
- T11 Map of the Wairau purchase, 1847, *Compendium*, vol 1 p 206
(registrar)
- T12 Archival material in the registers of Native Affairs Department and the Canterbury Provincial Council, prepared by Jenny Murray
(registrar)
- T13 A G Bagnall *Wairarapa, An Historical Excursion* (The Masterton Trust Lands Trust, Masterton 1976) pp 86–87
(registrar)
- T14 Correspondence from George Clarke Sr, chief protector of aborigines, to the colonial secretary, dated 17 October & 1 November 1843, BPP/CNZ (IUP) vol 2 appendix pp 356–360
(registrar)

U The nineteenth hearing at the Chateau Regency, Christchurch, 3–6 July 1989

Document:

- U1 Evidence of Dr Harry Morton on sealing and whaling
(counsel for NZFIA and NZFIB)
- U2 Evidence of Kevin P Molloy on sealing and whaling
(a) “The Range and Magnitude of the European Sealing Effort in New Zealand Waters, 1790–1830”
(b) “Whaling and Land Based Resources – A Study of Impact and Interaction within the Boundaries of South Island Ngai Tahu Occupation”
(counsel for NZFIA and NZFIB)
- U3 Evidence of Deborah Montgomerie on the Rakiura purchase
(registrar)
- U4 Submission of counsel for Tane Moana Runanga Trust
- U5 Evidence of Morris Jacob
(counsel for Tane Moana Runanga Trust)
- U6 Submission of John Solomon
(counsel for Tane Moana Runanga Trust)
- U7 (a) Submission of James N Pohio
(b)* Whakapapa tipuna of James N Pohio
(counsel for Tane Moana Runanga Trust)

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- U8 Evidence of William Pacey
(counsel for Tane Moana Runanga Trust)
- U9 Submission of Robert Pacey
(counsel for Tane Moana Runanga Trust)
- U10 (a) Observations of the claimants on the report of Professor Alan Ward (T1)
on the Murihiku and Arahura claims
(b) Observations of the claimants on the reports by Professor Alan Ward and
Dr Peter Tremewan with respect to Kemp's purchase, Banks Peninsula, North
Canterbury and Kaikoura (T1, T2, T3)
(c) Observations of the claimants on the report of Professor Alan Ward (T1)
on the Otago purchase
(d) Further observations by the claimants on the reports by Professor Alan
Ward and Dr Peter Tremewan (T1, T3)
(counsel for claimants)
- U11 (a) Submission of Anthony Walzl on the Ward report (T1), Mantell's promises,
especially those relating to health (summary of O20)
(b) Submission of Anthony Walzl on the Ward report (T1), mahinga kai
(c) Some observations of Anthony Walzl and David A Armstrong on the evi-
dence of Deborah Montgomerie on the Greymouth leases (T1)
(d) Some comments of David A Armstrong on the evidence of Jenny Murray,
Dr Peter Tremewan and Professor Alan Ward on Banks Peninsula (T1)
(counsel for Crown)

**V The twentieth hearing at Tribunals Division Boardroom, Databank House,
Wellington, 1–2 April 1989**

Document:

- V1 Submissions of counsel for NZFIB and NZFIA
- V2 Evidence of Dr Michael Belgrave on Waihora (Lake Ellesmere) and Kaitorete
(registrar)
- V3 Additional evidence of James P McAloon on the Arahura river reserves
(counsel for claimants)
- V4 Transcript of Tipene O'Regan's oral submission to the Waitangi Tribunal, 1
June 1989
(registrar)
- V5 Comments of Dr Murray A Bathgate on the evidence of Dr Harry Morton and
Kevin P Molloy relating to sealing and whaling (see U1, U2)
(counsel for Crown)
- V6 Comments of Dr Murray A Bathgate on the reports of Dr George Habib
(a) Report on Ngai Tahu fisheries evidence, June 1989 (see T4(a))
(b) Assessment of Crown evidence on the mahinga kai fisheries aspects of the
Ngai Tahu claim (see T4(c))
(counsel for Crown)
- V7 "Mythical topographic features in the early mapping of Otago and Southland
1823–51" *New Zealand Geographer* 2432 (October 1968) pp 206–213
(counsel for Crown)
- V8 Further submissions of counsel for NZFIB and NZFIA on the question of the
meaning and effect of "exclusive...possession of their...fisheries"

Record of Documents

- V9 Comments of Professor Alan Ward in response to observations by the claimants on his report on the Otago purchase (U10(c)) (registrar)
- V10 Correspondence from Brian L McIntosh on behalf of the Taumutu Residents Association, Leeston, Canterbury received 17 July 1989

W The twenty first hearing at Tuahiwi Marae, 14–17 August 1989

Document:

- W1 (a) Closing address of counsel for the claimants
(b) Supplement to W1(a)
(counsel for claimants)
- W2 Observations of the claimants on the report by Professor Alan Ward (T1) on the Princes Street reserve (appendix D) with additional documents
(counsel for claimants)
- W3 Claimants' summary of grievances on Banks Peninsula
- W4 Claimants' summary of grievances on Kemp's block
- W5 Claimants' summary of grievances on North Canterbury and Kaikoura blocks
- W6 Claimants summary of grievances on Otakou, Murihiku, Rakiura, Arahura, mahinga kai
- W7 Memorandum on statement by Henry Sewell (premier of New Zealand) quoted by P Temm in his closing address
(counsel for claimants)
- W8 Comments of MAFFish on report on Crown fisheries evidence by Dr George Habib (see T4(c))
(counsel for Crown)
- W9 Correspondence from Ellesmere County Council to counsel for the claimants on Fisherman Point reserve
(registrar)
- W10 Correspondence from the District Land Registrar's Office, Nelson to the Office of the Public Trustee, Wellington, on Westport leases
(counsel for Maori Trustee)
- W11 Submission of Trevor H Howse on signatories of certain deeds of sale to the Crown
(counsel for claimants)
- W12 Transcript of examination of Professor Alan Ward, 12–16 June 1989
(registrar)

X The twenty second hearing at Tuahiwi Marae, 11–15 September 1989

Document:

- X1 Closing address of Crown counsel, vol 1
- X2 Closing address of Crown counsel, vol 2
- X3 Closing address of Crown counsel, vol 3
- X4 Closing address of Crown counsel, vol 4

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- X5 (a) Map of Te Wai Pounamu giving Maori locations (see X2)
(b) Map of Te Wai Pounamu giving Maori locations
(counsel for Crown)
- X6 Evidence of David A Armstrong and Tony Walzl on endowments
(counsel for Crown)
- X7 Correspondence from Eyre to Grey, 1 May 1848, NM4/1, pp 169–171, National Archives, Wellington
(counsel for Crown)
- X8 (a) Questions from the tribunal to the Crown on Kemp’s purchase (see X1)
(b) Memorandum from the Crown in response to X8(a)
(counsel for Crown)
- X9 Correspondence from New Zealand Deerstalkers Association, to the registrar, received 11 September 1989
- X10 unallocated
- X11 Memorandum of Crown counsel providing answers to “issues” (see I6)
- X12 (a) Extracts from Mantell’s Sketchbook No 3, MS Mantell 1848–1849, Alexander Turnbull Library, Wellington
(b) Transcript of X12(a)
(registrar)
- X13 (a) Map of South Island by Mantell, C103, photographs and prints, Alexander Turnbull Library, Wellington
(b) Map of Middle Island by Mantell, C103, photographs and prints, Alexander Turnbull Library, Wellington
(registrar)

Y The twenty third hearing at Tuahiwi Marae, 9–10 October 1989

Document:

- Y1 Reply of claimants’ counsel to the Crown’s closing address
- Y2 Deputy-chairperson’s concluding statement
(registrar)
- Y3 Correspondence from the Minister of Energy to the deputy-chairperson on the tribunal’s recent submission on the question of restricting mining licences for pounamu, received 16 October 1989
(registrar)

Z Twenty fourth hearing at Tribunals Division, Databank House, Wellington, 28 June 1990

Document:

- Z1 Application by NZFIB and NZFIA for leave to adduce further evidence, received 22 May 1990
(registrar)
- Z2 Memorandum of counsel for NZFIB and NZFIA in support of Z1, received 22 May 1990

Record of Documents

- Z3 Directions of deputy-chairperson as to hearing of application by NZFIB and NZFIA for leave to adduce further evidence, dated 29 May 1990 (registrar)
- Z4 Memorandum of Crown counsel in response to deputy-chairperson's directions dated 29 May 1990, received 15 June 1990 (see Z3)
- Z5 Memorandum of counsel for NZFIB and NZFIA, received 28 June 1990
- Z6 Submissions of Crown counsel in respect of questions raised in the deputy-chairperson's directions dated 29 May 1990, received 28 June 1990 (see Z3)
- Z7 List of affidavits of first and second defendants filed in High Court proceedings (CP 559/87) requested by the deputy-chairperson's directions dated 29 May 1990 (counsel for Crown)
- Z8 Maps of Murihiku, 1851, 834–836 qbhd, 1851, Acc 3261, cartographic collection, Alexander Turnbull Library, Wellington
 (a) Maps
 (b) Direction of presiding officer, dated 29 June 1990
- Z9 Interlocutory determination by Tribunal on an application for leave to adduce further evidence, dated 2 July 1990 (registrar)
- Z10 Translation and synopsis of Ngai Tahu letters from the Grey collection, Auckland Public Library and Mantell collection, Alexander Turnbull Library, Wellington, by Lindsay Head, dated 14 July 1990 (registrar)
- Z11 Memorandum of Crown counsel, received 27 July 1990
 (a) Comments on the Murihiku maps, received 27 July 1990 (counsel for Crown)
- Z12 Memorandum of Crown counsel on translation of Ngai Tahu letters, received 14 August 1990
- Z13 (a) Memorandum of counsel for the claimants on Z10, received 16 August 1990
 (b) Comments on Otakou letters, received 16 August 1990 (see Z10)
 (c) Comments by the claimants on maps of the Murihiku block by Walter Mantell, 1851, dated 29 June 1990 (counsel for claimants)
- Z14 (a) Memorandum of counsel for the claimants on Kemp, received 16 August 1990
 (b) Correspondence attributed to Teoti Wiremu Metehau about Kemp's deed, received 16 August 1990
- Z15 Evidence of Professor Peter Munz on the interpretation of historical documents, with reference to Magna Carta (counsel for NZFIB and NZFIA)
- Z16 Evidence of Graham V Butterworth summarising conclusions reached on the impact of the speeches of the Maori members of parliament on the 1907 Fisheries Amendment Bill in the House of Representatives
 (a) Evidence of Graham V Butterworth on the Maori political system of the 1890s and 1900s
 (b) Supporting papers to Z16(a) (counsel for NZFIB and NZFIA)

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- Z17 Evidence of Susan M Butterworth on the history of the New Zealand fishing industry 1840–1923
 - (a) Supporting papers to Z17(counsel for NZFIB and NZFIA)
- Z18 Evidence of Gregory C Billington, NZFIB, on the history of the New Zealand fishing industry 1963–1989
 - (a) Reports of the Fishing Industry Board 1965–1975 (see Z18)
 - (b) Reports of the Fishing Industry Board 1976–1989 (see Z18)(counsel for NZFIB and NZFIA)
- Z19 Evidence of Gary Bevin, NZFIB, on the quota management system and the economic implications of the Maori Fisheries Act 1988 (counsel for NZFIB and NZFIA)
- Z20 Evidence of David G Anderson, NZFIA, with attachment of Paul Titchener *The Story of Sanford Ltd: The first one hundred years* (1980?) and lists of shareholders and directors of Otakou Fisheries Ltd (counsel for NZFIB and NZFIA)
- Z21 Evidence of Peter J Stevens, New Zealand Federation of Commercial Fishermen, with attachment of rules of the federation as at 1 August 1986 (counsel for NZFIB and NZFIA)
- Z22 Evidence of Neville L Climo on the quota management system and Lake Ellesmere (counsel for NZFIB and NZFIA)
- Z23 Evidence of Kenneth J Nordstrom, fisherman, on the individual transferable quota system and Lake Ellesmere (counsel for NZFIB and NZFIA)
- Z24 Evidence of Trevor J Gould, fish processor, on the Lake Ellesmere fishery (counsel for NZFIB and NZFIA)
- Z25 Evidence of Clem G Smith, fisherman, on the history of the Lake Ellesmere fishery and in the individual transferable quota system (counsel for NZFIB and NZFIA)
- Z26 Evidence of William D Wards on Lake Ellesmere (counsel for NZFIB and NZFIA)
- Z27 Evidence of Clifford Broad on the quota management system in relation to Stewart Island (counsel for NZFIB and NZFIA)
- Z28 Evidence of Ian J Munro, fisherman, on the individual transferable quota system in relation to Stewart Island (counsel for NZFIB and NZFIA)
- Z29 Evidence and supporting papers of Peter I Talley, Talleys Fisheries Limited (counsel for NZFIB and NZFIA)
- Z30 Evidence of David C Sharp, Wilson Neil Limited (counsel for NZFIB and NZFIA)
- Z31 Evidence of Antony D Threadwell, Pegasus Bay Fishing Company on the quota management system (counsel for NZFIB and NZFIA)
- Z32 Evidence of Ronald T Mackay, Big Glory Seafoods Limited (counsel for NZFIB and NZFIA)

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- Z33 Evidence of Lewis L Miller, Bapods Limited
(counsel for NZFIB and NZFIA)
- Z34 Evidence of Ronald E Caughey, Mossburn Enterprises Limited
(counsel for NZFIB and NZFIA)
- Z35 Evidence of Bruce W Urwin, Urwin and Co Limited
(counsel for NZFIB and NZFIA)
- Z36 Evidence of Ben L Calder, Johnsons Oysters Limited on the quota management system
(counsel for NZFIB and NZFIA)
- Z37 Evidence of Kypros Kotzikas, United Fisheries Limited, on the quota management system
(counsel for NZFIB and NZFIA)
- Z38 Evidence of Cameron A McCulloch, Johnson & de Rijk Packing Company Limited
 - (a) Evidence of Cameron A McCulloch, Riverton Fishermens Co-operative
 - (b) Evidence of Cameron A McCulloch, Southfish Co-operative Limited(counsel for NZFIB and NZFIA)
- Z39 Evidence of Eric F Barratt, Sanford (South Island) Limited, on the history of the New Zealand fishing industry and the individual transferable quota system
(counsel for NZFIB and NZFIA)
- Z40 Memorandum of deputy-chairperson giving directions as to filing of evidence, responses thereto and timetabling of further hearings, dated 3 September 1990 (registrar)
- Z41 Further memorandum of the claimants on Z10, dated 12 September 1990
(counsel for claimants)
- Z42 unallocated
- Z43 Evidence of Donald M Loveridge, commentary on evidence of Professor Ian Gordon (see S16)
(counsel for Crown)
- Z44 Evidence of Donald M Loveridge on the deeds of sale
(counsel for Crown)
- Z45 Evidence of Robert D Cooper on the development of consultation channels and the development by MAFFish
(counsel for Crown)
- Z46 Evidence of Robin L Allen on the MAF involvement in the latest developments in Maori fisheries
(counsel for Crown)
- Z47 Evidence of John L McKoy on the definition of inshore, offshore and deepwater fisheries
(counsel for Crown)
- Z48 Evidence of Ian N Clark on the history of New Zealand's deepwater fishery: discovery and development
(counsel for Crown)
- Z49 Evidence of Tony Walzl on the Crown/Maori relationship over fisheries 1840–1900, and the Crown management of the fisheries
 - (a) Supporting papers to Z49

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(b) Supporting papers to Z49
(counsel for Crown)

Z50 Maori Appellate Court decision on case stated re cross claim
(registrar)

AA The twenty fifth hearing at Databank House, Wellington, 20 December 1990

AA1 Evidence of Paul R Roberts on the Ngai Tahu Trust Board claim to the deep water fisheries resource
(counsel for NZFIB and NZFIA)

AA2 Evidence of Lee G Anderson on the Quota Management System.
(counsel for NZFIB and NZFIA)

AA3 Evidence of Peter I Talley on the Quota Management System by which the fisheries resources of New Zealand are managed
(counsel for NZFIB and NZFIA)

AA4 Submissions of counsel for Te Runanganui

AA5 Notice of application for order of stay from Mr Corkill representing Te Runanganui O Te Tau Ihu O Te Waka A Maui

AA6 Notice of application for order of stay from Mr M N Sadd representing Rangitane-ki-Wairau

AA7 Affidavit of Michael John Switzer

NOTE: Documents Z15–Z39, Z43–49 and AA1–7 were not considered for this report and will be dealt with in a subsequent hearing and report on the sea fisheries claim. Other documents in this list relating to sea fisheries and ancilliary claims, although already in evidence, have also not been considered.

Appendix 7

Record of Inquiry

7.1. **Notice of Claim**

Notice of the claim and first hearing at Tuahiwi Marae Rangiora was sent to the following:

- 1 Minister of Lands
- 2 Minister of Forests
- 3 Minister of Fisheries and Agriculture
- 4 Minister of Conservation
- 5 Minister of the Environment
- 6 Minister of Maori Affairs
- 7 Minister of Agriculture
- 8 Director General, Land Corporation, Wellington
- 9 District Solicitor, Land Corporation, Christchurch
- 10 Counsel for claimants, Mr Weston Ward and Mr Lacelles, Christchurch
- 11 Crown Solicitor, Crown Law Office, Wellington
- 12 Mr A Hearn QC, Christchurch
- 13 Ngai Tahu Maori Trust Board, Christchurch
- 14 Federated Farmers of New Zealand, Mr E Chapman, Wellington
- 15 Mr P Temm QC, Auckland
- 16 Mr M Knowles, Christchurch
- 17 Office Solicitor, Royal Forest and Bird Protection Society
- 18 Office Solicitor, Minister of the Environment
- 19 Office Solicitor, Residual Department of Lands
- 20 Office Solicitor, Minister of Agriculture and Fisheries
- 21 Office Solicitor, Federated Mountain Clubs of New Zealand
- 22 Office Solicitor, Minister of Conservation
- 23 Maori Trustee, Maori Affairs Department
- 24 Such other parties as have notified representation
- 25 All members of the tribunal

Copies of the claim were also sent to those on the schedules below who either notified the tribunal of their interest, or who the tribunal considered might be affected by the claim.

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Schedule A

- 1 New Zealand Maori Council
- 2 Department of Survey and Land Information
- 3 New Zealand Deerstalkers Association
- 4 National Water and Soil Conservation Authority, MOWD
- 5 Electricity Corporation of New Zealand
- 6 University of Canterbury
- 7 North Canterbury Hospital Board
- 8 Municipal Association (for distribution to members in the South Island)
- 9 Counties Association (for distribution to members in the South Island)
- 10 New Zealand Historic Places Trust
- 11 Te Maukanui o Te Maru, Kokiri Trust Managing Agency
- 12 Te Runaka o Katiwaewae
- 13 West Coast United Council
- 14 City of Dunedin
- 15 Kurahaupo Waka Society
- 16 Marlborough Catchment and Regional Water Board
- 17 Akaroa Fisherman's Association
- 18 North Canterbury Catchment Board and Regional Water Board
- 19 Crown Pastoral Lessees and Licensees
- 20 All mining license, right or leaseholders concerned in South Island mines or prospects
- 21 All leaseholders concerned in Mawhera Incorporation
- 22 Coal Corporation (for distribution to South Island licensees
- 23 Department of Justice, Christchurch: Commercial Affairs Division, High Court, District Court, Probation Service, Addington Prison, Christchurch Women's Prison, Paparua Prison, Tribunals Division
- 24 Housing Corporation of New Zealand, Nelson
- 25 Aparima Maori Committee (Inc), Riverton
- 26 Otago Acclimatisation Society
- 27 Southland Acclimatisation Society

Schedule B

Private individuals expressing interest in the claim.

- 1 Rangimarie Te Maiharoa
- 2 Otene Kuku George Karatiana
- 3 Jean Jackson
- 4 Anne Waipapa
- 5 Rewa Dick
- 6 J M Russell
- 7 Alison Whiting

- 8 Marg Hewlett
- 9 Fred Overmars
- 10 Lynne Smith
- 11 Mary King
- 12 James Tehau Donaldson
- 13 Mervyn Sadd
- 14 Irene F Edwards
- 15 E J Mould
- 16 I J Rogers
- 17 John Arther Nutira II
- 18 M Stonely
- 19 H A Radford
- 20 P L and L F Coughlan
- 21 G M Chapman
- 22 Te Whe Ariki Hutana
- 23 S R Gilmore
- 24 A C Brownie
- 25 Allen L Gillespie
- 26 P N Gould
- 27 Ernst & Whinney, Chartered Accountants
- 28 Tamati Paku Teweehi

Public notice was given in *The Dominion* on 8 June and 13 June 1987, and, it appears, in the *Press*, the *Marlborough Express*, the *Otago Daily Times*, the *Timaru Herald* on the 8 June 1987, and in the *Hokitika Guardian* on 13 June 1987.

On 7 August 1987 a further press release was distributed to the NZPA, the *Evening Post*, the *Dominion*, TVNZ–Christchurch, Radio Avon, Radio Ashburton, Radio 3ZB, the *Ashburton Guardian*, *Christchurch Star*, and the *Press*.

7.2. **Appointments**

The tribunal was constituted to comprise:

Judge Ashley G McHugh (presiding officer)
Bishop Manuhaia A Bennett
Sir Monita E Delamere
Sir Hugh Kawharu
Professor Gordon Orr
Sir Desmond Sullivan
Georgina Te Heuheu

- Paul Temm QC, David Palmer and Michael Knowles were appointed as counsel to assist the claimants.

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- Professor Alan Ward of the University of Newcastle, New South Wales was appointed to prepare a report on historical aspects of the claim.
- Doctor George Habib, fisheries consultant of Auckland, was commissioned to investigate and report on fisheries aspects of the claim.
- Doctor Peter Tremewan of the University of Canterbury was commissioned to prepare a report on aspects of the claim relating to Banks Peninsula.
- Doctor Jane McRae of the University of Auckland was commissioned to prepare a report on archival Maori sources relating to the claim.
- Lena Manuel assisted the tribunal as interpreter.

7.3. **Hearings and Appearances**

1 Tuahiwi Marae and Rangiora High School, 17–20 August 1897

For the claimants:

Paul B Temm QC
David M Palmer
Michael J Knowles

For the Crown:

Anthony Hearn QC
Shonagh Kenderdine
Peter Blanchard

Also Appearing:

Evan T Alty – Department of Conservation
Ray M Budhia – Department of Maori Affairs
Ewan J Chapman – Federated Farmers of New Zealand, South Island
High Country Committee Crown Renewable Lessees Association
L G Fergusson – Ministry of Agriculture & Fisheries
Ronald W Little – Ministry of Agriculture & Fisheries
M Maniapoto – Department of Maori Affairs
Christopher D Mouat – Land Corporation Ltd
J Paki – Department of Maori Affairs
J M Russell – Te Runanga o Katiwaewae
John G Stevens – Interim Committee of the Kurahaupo Waka Trust
Hilary L Talbot – Electricity Corporation of New Zealand Ltd
Richard T Wickens – Office of the Maori Trustee

Submissions and evidence were received from:

Tipene O'Regan (A27), Otene Kuku G Karatiana, Henare R Tau (A17), Te Wharetutu Te A Stirling (A18) Wiremu Torepe, Joe Tukupua, MacCully Matiu, Hon Matiu Rata, Robert A Whitiri, Magdaline Walscott, George N Te Au, Harold Ashwell, Aroha H Reriti-Crofts (A20), Rewi Brown, Rangimarie Te Maiharoa (A19), Mori Pickering, Montero J Daniels, Tiny M K Wright, Sydney Cormack (A22–A23), Runa Pihama-Bell, Freda D Brown, Eruera Te MI Te Aika (A25), Trevor H Howse (A12), Harry C Evison (A9, A13, A28–A35), Patrick McGloin

Documents A1 to A54 were admitted to the record

2 Tuahiwi Marae, 21–23 September 1987

For the claimants:

Paul B Temm QC
David M Palmer
Michael J Knowles

For the Crown:

Anthony Hearn QC
Shonagh Kenderdine
Peter Blanchard

Also appearing:

Evan T Alty – Department of Conservation
Ray M Budhia – Department of Maori Affairs
Ewan J Chapman – Federated Farmers of New Zealand, South Island
High Country Committee Crown Renewable Lessees Association
Fay Collins – Department of Conservation
Ronald W Little – Ministry of Agriculture & Fisheries
Christopher D Mouat – Land Corporation Ltd
John G Stevens – Interim Committee of the Kurahaupo Waka Trust
Hilary L Talbot – Electricity Corporation of New Zealand Ltd
Richard T Wickens – Office of the Maori Trustee

Submissions and evidence were received from:

Mervyn N Sadd (B6), Harry C Evison (B2–B3), Professor J T Ward (B4), Jean Jackson (B10), Henare R Tau.

Documents B1 to B17 were admitted to the record.

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3 Otakou Marae, 2–4 November 1987 and Tuahiwi Marae, 5 November 1987

For the claimants:

Paul B Temm QC
David M Palmer

For the Crown:

Shonagh Kenderdine
Peter Blanchard

Also appearing:

Ray M Budhia – Department of Maori Affairs
Ewan J Chapman – Federated Farmers of New Zealand, South Island
High Country Committee Crown Renewable Lessees Association
Fay Collins – Department of Conservation
Phillip Green – Office of the Maori Trustee
Edward Moses – Department of Maori Affairs
Christopher D Mouat – Land Corporation Ltd
John G Stevens – Interim Committee of the Kurahaupo Waka Trust
Richard T Wickens – Office of the Maori Trustee

Submissions and evidence were received from:

George Ellison, Magdaline Walscott, Mori M C M Ellison (C4), Wharerua K Ellison, Emma P Grooby-Philips (C5–C6), Tiny Wright, Moira M Reiri, Dorothy Walsh, Vivian B Russell, Martin Taiaroa, Kua Langsbury (C9), Tatani Wesley, Tipene O'Regan (C10), Edward Ellison (C12), Riwai Karetai, Craig Ellison (C13), Dr Atholl Anderson (C8), Dr Ann R Parsonson (C14–C19), Andrew M Mason (C21), Harry C Evison (C22)

Documents C1 to C24 were admitted to the record.

4 Arahura Marae and Ashley Motor Inn, Greymouth, 30 November–3 December 1987

For the claimants:

Paul B Temm QC
David M Palmer

For the Crown:

Shonagh Kenderdine
Peter Blanchard

Also appearing:

Evan T Alty – Department of Conservation
Ray M Budhia – Department of Maori Affairs
Phillip Green – Office of the Maori Trustee
Ronald W Little – Ministry of Agriculture and Fisheries
W F Morgan – Dingwall & Paulger Ltd and Ballie Neville & Co Ltd
Christopher D Mouat – Land Corporation Ltd
Sandra Te Hakamatua Lee – For the families and descendants of Iri Te Amokura Pihawai Lousich-Feary, Nikau Te Kiwha Pihawai-Tainui, Roka Te Hakamatua Pihawai-Johnson, Wiremu Welch, Metapere Ngawini Barrett
Richard T Wickens – Office of the Maori Trustee
Dr Willie Young – West Coast South Island Leaseholders Association, Greymouth Borough Council, Dominion Breweries Ltd, Campbell Renton Hardware Ltd and J E Thorn and Sons.

Submissions and evidence were received from:

Kelly R Wilson (D10), Ihaia B Hutana, Alan L Russell, Aroha H Reriti-Crofts (D13), Iri Barber, (D12), Dorothy M Fraser (D14, D15), James M Russell (D17), Tipene O'Regan (D18), Barry M Dallas (D24–D26), Andrew M Mason (D4, D20), James P McAloon (D3, D22–D23), Mayor Barry Dallas (D24–D26), John Duncan, Sydney B Ashton (D4)

Documents D1 to D30 were admitted to the record.

5 Te Rau Aroha Marae, Awarua, Bluff, 1–3 February 1988

The tribunal and parties made a site visit to Lakes Hawea and Wanaka on 3 February 1988.

For the claimants:

Paul B Temm QC
David M Palmer

For the Crown:

Shonagh Kenderdine
Peter Blanchard

Also appearing:

Tony Avery – Ministry of Agriculture and Fisheries
Jesse H Beard – Department of Conservation
Ray M Budhia – Department of Maori Affairs
Fay Collins – Department of Conservation
Robert D Cooper – Ministry of Agriculture and Fisheries
Alexander P Laing – Estate of R G Selbie
Ronald W Little – Ministry of Agriculture and Fisheries

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Edward Moses – Department of Maori Affairs and the Office of the Maori Trustee

Christopher D Mouat – Land Corporation Ltd

Hilary L Talbot – Electricity Corporation of New Zealand Ltd

Submissions and evidence were received from:

Robert A Whaitiri (E1), Trevor H Howse (E5), George N Te Au (E6), Wiremu B Davis (E7), Taare H Bradshaw (E8), Eva Wilson (E9), Sydney Cormack (E1, E16), Teriana Nilsen, Naomi A Bryan (E11–E12), Rena N P Fowler (E13–E15), James P McAloon (E1, E17–E19), Tipene O'Regan, Harold Ashwell (E3), Jane K Davis (E31)

Documents E1 to E35 were admitted to the record.

6 Otakou Marae, 22–23 February 1988

For the claimants:

Paul B Temm QC

David M Palmer

For the Crown:

Shonagh Kenderdine

Peter Blanchard

Also appearing:

Evan T Alty – Department of Conservation

Ray M Budhia – Department of Maori Affairs and the Office of the Maori Trustee

Jesse H Beard – Department of Conservation

Edward Moses – Department of Maori Affairs and the Maori Trustee

Christopher D Mouat – Land Corporation Ltd

Submissions and evidence were received from:

Dr Ann R Parsonson (F1–F10), George Ellison (F12), Bill Dacker (F11)

Documents F1–F13 were admitted to the record.

Tuahiwi Marae, 24–25 February 1988

For the claimants:

Paul B Temm QC

David M Palmer

For the Crown:

Shonagh Kenderdine

Peter Blanchard

Also appearing:

Ray M Budhia – Department of Maori Affairs and the Office of the Maori Trustee

Fay Collins – Department of Conservation

Edward Moses – Department of Maori Affairs and the Office of the Maori Trustee

Christopher D Mouat – Land Corporation Ltd

Hilary L Talbot – Electricity Corporation of New Zealand Ltd

Submissions and evidence were received from:

Harry C Evison (G1, G3–G7), Ken Piddington (G8)

Documents G1 to G9 were admitted to the record.

7 Tuahiwi Marae; Kiwi Rugby Football Club rooms, Hokitika; Taumutu Marae; Arowhenua Marae; and Te Rau Aroha Marae, Awarua, 11–20 April 1988

The tribunal and parties also made visits to the Canterbury Museum, Wairewa, Waihora, the Arowhenua area, inland lakes, Aomarama, and the Wainono area.

For the claimants:

Paul B Temm QC

David M Palmer

For the Crown:

Shonagh Kenderdine

Peter Blanchard

Also appearing:

Evan T Alty – Department of Conservation

Ray M Budhia – Department of Maori Affairs and the Office of the Maori Trustee

Tim Castle – NZFIA

L G Fergusson – Ministry of Agriculture and Fisheries

John L Marshall – NZFIB

Edward Moses – Department of Maori Affairs and the Office of the Maori Trustee

Christopher D Mouat – Land Corporation Ltd

J Paki – Department of Maori Affairs and the Office of the Maori Trustee

Bruce Scott – NZFIA

John G Stevens – Interim Committee of the Kurahaupo Waka Trust

Hilary L Talbot – Electricity Corporation of New Zealand Ltd

Carrie Wainwright – NZFIB

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Submissions and evidence were received from:

Dr Atholl Anderson (H1–H3), Rawiri Te M Tau (H6), Tipene O'Regan (H17–H19), David T Higgins (H5), William A G Goomes (H5), Wiremu T Solomon (H7), Ray Hooker (H8, H37–H38), Hemi Te Rakau (H36, H39–H40), Iris Climo (H8), Albert K Te Naihi-McLaren (H8), Gordon McLaren (H8, H41–H42), Kelly R Wilson (H8), James M Russell (H8, H43), Alan L Russell (H8), Rewi Brown (H9), Donald R Brown (H9), Catherine E Brown (H9), Mere K E Teihoka (H9), Morris T Love (H9), Jack T Reihana (H10), Wiremu Torepe (H10, H49–H50), Kelvin Anglem (H10, H48), Murray E Bruce (H10), Kelvin T A D Te Maire (H10), Rangimarie Te Maiharoa (H10), Te Ao H Waaka (H10), Allan S Evans, Edward Ellison (H12), Matt Ellison (H11), Robert A Whaitiri (H13), Harold F Ashwell (H13), Taare H Bradshaw (H13, H54), Terence P Gilroy (H13), Kevin O'Connor (H13, H55), Huhana P Bradshaw (H13)

Documents H1 to H58 were admitted to the record.

8 Tribunals Division Boardroom, Databank House, Wellington, 19 May 1988

For the claimants:

Tipene O'Regan

For the Crown:

Shonagh Kenderdine

Documents I1 to I7 were admitted to the record.

9 Tuahiwi Marae, 27–30 June 1988

On 29 June 1988 members of the tribunal visited Kaiapoi pa site. On 30 June 1988 the Crown opened its response to the claim.

For the claimants:

David M Palmer

For the Crown:

Shonagh Kenderdine

Peter Blanchard

Anthony Hearn QC

Also appearing:

Ray M Budhia – Department of Maori Affairs and the Office of the Maori Trustee

Ewan J Chapman – Federated Farmers of New Zealand, South Island High Country Committee Crown Renewable Lessees Association

Fay Collins – Department of Conservation
Robert D Cooper – Ministry of Agriculture and Fisheries
Hamish R Ensor – Federated Farmers
Ronald W Little – Ministry of Agriculture and Fisheries
John L Marshall – New Zealand Fishing Industry Board
Bruce Scott – New Zealand Fishing Industry Association
John G Stevens – Interim Committee of the Kurahaupo Waka Trust
Carrie Wainwright – New Zealand Fishing Industry Board.

Submissions and evidence were received from:

R R Karaitiana (J5), William W Tipa (J5), Brian J Piner (J5), M Jones (J5), Harry C Evison (J1, J6), Tipene O'Regan (J7), James P McAloon (H9, J2, J8, J39), Wiremu Solomon (H7, J12–J14), Barry Brailsford (J10, J15–19, J46), Henare R Tau (J10, J20–J30, J45), David Higgins (J10, J31–J35), Trevor H Howse (J10, J36–J38), Peter R Korako (J10, J40–42, J44), Montero J Daniels, Dr Peter J Tremewan (J47)

Documents J1 to J52 and K1 to K2 were admitted to the record.

10 Southern Cross Hotel, Dunedin, 25–28 July 1988

For the claimants:

Paul B Temm QC
David M Palmer

For the Crown:

Shonagh Kenderdine
Peter Blanchard

Also appearing:

Ray M Budhia – Department of Maori Affairs and the Office of the Maori Trustee
Jesse H Beard – Department of Conservation
J Burdon – Federated Farmers of New Zealand, South Island High Country Committee
P Garden – Federated Farmers of New Zealand, South Island High Country Committee
L Iosefa – Department of Maori Affairs and the Office of the Maori Trustee
Edwin D Lyttle – Federated Farmers, Otago
J Paki – Department of Maori Affairs and the Office of the Maori Trustee
I E Vercoe – Federated Farmers, Otago

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Submissions and evidence were received from:

Professor Gordon S Parsonson (L5), Ian R H Whitwell (L11), Graham J Sanders (L2–L3, L17–L18, L26–L29), Dr Donald M Loveridge (L8–L9, L19–L24)

Documents L1 to L36 were admitted to the record.

11 College House, Christchurch, 29 August–1 September 1988

For the claimants:

Paul B Temm QC

For the Crown:

Anthony Hearn QC
Shonagh Kenderdine
Peter Blanchard

Also appearing:

Christopher D Mouat-Land Corporation Ltd

Submissions and evidence were received from:

David J Alexander (M5, M6), Graham J Sanders (M7, M8, M10, M27), Dr Donald M Loveridge (M2, M10, M11), Trevor H Howse, Dr John M Barrington (M20, M21), Anthony Walzl (M14, M15), David A Armstrong (M16, M17)

Documents M1 to M34 were admitted to the record.

12 Ashley Motor Inn, Greymouth, 19–22 September 1988

For the claimants:

David M Palmer

For the Crown:

Shonagh Kenderdine
Peter Blanchard

Also appearing:

Graham Allan – Wakatu Incorporation
Ray M Budhia – Department of Maori Affairs
Preston E Bulfin – Parininihi-ki-Waitotara Incorporation
L Iosefa – Department of Maori Affairs
Steve Marshall – Wakatu & Combined Authorities
Tom Woods – Office of the Maori Trustee
J M Russell – Arahura Maori Komiti
Richard T Wickens – Office of the Maori Trustee
Dr Willie Young – West Coast Leaseholders

Submissions and evidence were received from:

Edward Tamati (N10), Peter Charleton, Sir Ralph Love (D1, N12, N17–N18), Hohepa Soloman (N11), Tipene O'Regan, Dr Donald M Loveridge (N2, N19–N21), Barry W Bone (N24, N27–N29), David Armstrong (N6), Anthony Walzl, Margaret Moir (N31), Catherine J Nesus (N33), Thomas I Marks (N41), Alfred M Jamieson (N42), Garlyn I Dixon (N44), E T Weepu, Ian S Marshall (D7)

Documents N1 to N50 were admitted to the record.

13 Student Union Building, Otago University, Dunedin, 7–10 November 1988

The tribunal and parties visited the Otago Museum where they were shown the Maori collection and the plans for the new Maori display area. There was also a visit to the Otago Settlers Museum which was followed by a site visit to Waikouaiti and the Puketeraki marae at Waikouaiti.

For the claimants:

Paul B Temm QC
David M Palmer

For the Crown:

Shonagh Kenderdine
Peter Blanchard

Also appearing:

Ray M Budhia – Department of Maori Affairs
John Crook – Telecom Corporation of New Zealand Ltd
R Young – Telecom Corporation of New Zealand Ltd

Submissions and evidence were received from:

Dr Donald M Loveridge (O2), Paul Hellebrekers, Josephine Barnao (O3, O22, O24–O26, O32, O45), David J Alexander (O5, O14, O27, O44), Graham J Sanders (O13, O28, O32–O34, O36–O37), Anthony Walzl (O16, O20–O21, O43), Professor David I Poole (O15–O16), Ronald D Keating (O17, O44), Donn Armstrong (O18, O44), Thomas I Marks (O19, O44), Mora Pickering, Ian R H Whitwell (O14)

Documents O1 to O54 were admitted to the record.

14 College House, Ilam, Christchurch, 5–9 December 1988

For the claimants:

Paul B Temm QC
David M Palmer

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For the Crown:

Shonagh Kenderdine
Annsley Kerr

Also appearing:

Ewan J Chapman – Federated Farmers of New Zealand, High Country Association
John Crook – Telecom Corporation of New Zealand Ltd
Edwin D Lyttle – Federated Farmers, Otago
Christopher D Mouat – Land Corporation
R Young – Telecom Corporation of New Zealand Ltd

Submissions and evidence were received from:

Dr Donald M Loveridge (P2, P3, P19), Professor Gordon S Parsonson (P4, P5), David A Alexander (P7), Ronald Tindal (P8), Anthony Walzl (P10–P11, P21), Trevor H Howse, John A Glennie (P23), B Johnson (P15), Robert D Cooper (P12, P13), Hamish R Ensor (P22, P28), Iris Scott (P21), Donald M Cochrane (P22), Jim Morris (P22), Ronald W Little (P15–P16), Dr Peter Todd (P16), Paul Sagar (P16), Professor W Clark (P16), Josephine Barnao (P14, P33), David A Armstrong (P18)

Documents P1 to P34 were admitted to the record.

15 Mancan House, Christchurch, 7–9 February 1989

For the claimants:

Paul B Temm
David M Palmer

For the Crown:

Shonagh Kenderdine

Also appearing:

Tim Castle – NZFIA
John L Marshall – NZFIB
Hilary L Talbot – Electricity Corporation of New Zealand Ltd

Submissions and evidence were received from:

Malcolm R Hannah (Q14), James P McAloon (Q3, L8), David J Alexander (Q10, O17), Anthony Walzl (Q8–Q9, Q11), Harry C Evison (Q22–Q23), Mrs Baumann (Q15), Mark France (Q16)

Documents Q1 to Q33 were admitted to the record.

16 Chateau Regency, Christchurch, 10-13 April 1989

For the claimants:

Paul B Temm QC
David M Palmer

For the Crown:

Shonagh Kenderdine
Peter Blanchard

Also appearing:

Carrie Wainwright – NZFIB

Submissions and evidence were received from:

David A Armstrong (R8), Dr R Allen (R20), Ian N Clark (R21, R24–R25), Robert D Cooper (R23, R26), John A Colman (R11), John D Booth (R12), Dr Talbot Murray (R13), Jacqui Irwin (R14), A Coakley (R14), Tony Avery (R14), Lawrence J Paul (R14, R16), Donald A Robertson (R16, R19), Graeme McGregor (R14), Dr Rosemary J Hurst (R15), John B Jones (R15), Alistair B MacDiarmid (R15), Robert H Mattlin (R16), Peter McMillan (R19), Dr Mary E Livingston (R17), Dr Kevin J Sullivan (R18), Bruce Shallard (R22), Neil Martin (R23, R32), Dr Donald M Loveridge (R33–R34), Dr Ann R Parsonson (R35)

Documents R1 to R40 were admitted to the record.

17 Chateau Regency, Christchurch, 29 May–2 June 1989

For the claimants:

David M Palmer

For the Crown:

Shonagh Kenderdine
Peter Blanchard
Annsley Kerr

Also appearing:

John L Marshall – NZFIA
Bruce Scott – NZFIA
Carrie Wainwright – NZFIB.

Submissions and evidence were received from:

David Henson (S18), Grant T Crothers (R24), Robert D Cooper (S1), Dr Murray A Bathgate (S2), Anthony Walzl (S7–S8), David J Alexander (S6), David A Armstrong (S9–S10), Anthony T R Corcoran (S11), Patrick King (S22), James P McAloon (R39), Professor Ian A Gordon

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(S16), Richard N Holdaway (S17), Alison F Mannell (S19–S21), Ralph E Brown (S20), Steven J Anderson (S21)

Documents S1 to S24 were admitted to the record.

18 Chateau Regency, Christchurch, 12–16 June 1989

For the claimants:

Paul B Temm QC

For the Crown:

Shonagh Kenderdine

Peter Blanchard

Submissions and evidence were received from:

Professor Alan Ward (T1–T2, T5–T8, T13), Dr Peter J Tremewan (T1, T3), Jenny Murray (T1, T10, T12)

Documents T1 to T14 were admitted to the record.

19 Chateau Regency, Christchurch, 3–6 July 1989

For the claimants:

Paul B Temm QC

For the Crown:

Shonagh Kenderdine

Also appearing:

Tim Castle – NZFIA

John L Marshall – NZFIA

Bruce Scott – NZFIB

Submissions and evidence were received from:

Dr Harry Morton (U1), Kevin P Molloy (U2), Deborah Montgomerie (U3), Dr George Habib (T4), Rick Boyd (T4)

Documents U1 to U11 were admitted to the record.

20 Tribunals Division Boardroom, Databank House, Wellington

For the claimants:

Paul B Temm QC

David M Palmer

For the Crown:

Shonagh Kenderdine
Annsley Kerr

Also appearing:

Tim Castle – NZFIA
John L Marshall – NZFIA
Bruce Scott – NZFIB
Carrie Wainwright – NZFIB

Submissions and evidence were received from:

Dr George Habib (T4)

Documents V1 to V10 were admitted to the record

21 Tuahiwi Marae, 14–17 August 1989

For the claimants:

Paul B Temm QC
David M Palmer

For the Crown:

Shonagh Kenderdine
Peter Blanchard

Also appearing:

Christopher D Mouat – Land Corporation Ltd

Documents W1 to W12 were admitted to the record.

22 Tuahiwi Marae, 11–15 September 1989

For the claimants:

Paul B Temm QC
David M Palmer

For the Crown:

Shonagh Kenderdine
Peter Blanchard

Also appearing:

Fay Collins – Department of Conservation
John L Marshall – NZFIB and NZFIA

Documents X1 to X13 were admitted to the record.

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23 Tuahiwi Marae, 9–10 October 1989

For the claimants:

Paul B Temm QC
David M Palmer

For the Crown:

Shonagh Kenderdine
Peter Blanchard

Also appearing:

Ewan J Chapman – Federated Farmers of New Zealand, South Island
High Country Committee Crown Renewable Lessees Association
Christopher D Mouat – Land Corporation Ltd

Documents Y1 to Y3 were admitted to the record.

24 Tribunals Division Boardroom, Databank House, Wellington, 28 June 1990

For the claimants:

Paul B Temm QC

For the Crown:

Annsley Kerr
Harriet Kennedy

Also appearing:

Tim Castle – NZFIA and NZFIB

Documents Z1 to Z9 were admitted to the record.

25 Tribunals Division Boardroom, Databank House, Wellington, 20 December 1990

For the claimants:

Paul B Temm

For the Crown:

Jennifer Lake
Annsley Kerr

Also appearing:

John Stevens and Bruce A Corkill – Te Runanganui O Te Tau Ihu O
Te Waka A Maui

Deborah A Edmonds – Ngati Toa Rangatira

Robert J Harte – Rangitane-ki-Wairau

John Marshall – NZFIA and NZFIB

Documents AA1 to AA7 were admitted to the record.

Appendix 8

Presiding Officer's Closing Address

After a hearing that commenced here on this marae at Tuahiwi on 17 August 1987 and continued in various places at almost regular monthly intervals over the next two years we have now come to the end.

It has been a marathon in every sense of the word. As participants in that marathon we are all exhausted by the effort. By "we" I mean the claimants, the Crown, and this tribunal. But behind these three principal participants there also lies a host of supporting people who have taken part. If I could magically switch on a movie screen and display the record of this inquiry it would take an hour to acknowledge the credits.

It was decided at the outset of this claim that the tribunal would endeavour to receive as much evidence as possible in written form. That procedure was followed and apart from some oral testimony of kaumatua and other witnesses which, with all other evidence was recorded on tape for later transcription, the bulk of the evidence was presented in writing. The result is that the tribunal has before it a huge written record 8.5 metres high which documents the Ngai Tahu case and the Crown response. It also includes numerous other submissions made to the tribunal by persons and bodies interested in or affected by the claim.

The tribunal notified and timetabled its hearings in such a way as to allow the claimants and the Crown and other bodies to use the three weeks between each week of hearing to prepare for the fourth week of hearing. This procedure thrust a great burden on counsel as they co-ordinated and supervised the preparation of material by the researchers and experts involved. It was continually, over 25 weeks of hearings, a battle against time, but almost without exception the tribunal as a result was able methodically to work through that evidence. In the course of this inquiry the tribunal travelled all over the South island in order to hear and see the facts and issues arising from the claim.

The record shows a total of over 900 submissions and exhibits were presented to the tribunal, some containing as many as 700 pages each. The document evidence tendered to the tribunal comprised

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thousands of different items. The presentation of written evidence and submission gave rise to another helpful procedure adopted by the tribunal. In many cases the evidence given was detailed historical or other expert fact. After presentation at the hearing opportunity was given to the parties and tribunal to question the witness to clarify the evidence, but in addition each party was permitted to file a written memorandum commenting on the evidence and expressing any contrary view. By this method the tribunal not only avoided unnecessary and often time wasting oral examination, but allowed both the Crown and the claimants the necessary time to give considered and researched response.

During the course of hearing, 20 memoranda of directions and interlocutory matters were issued by the tribunal and responded to by counsel. The record of documents in this claim is a large report in itself although it only lists the subject headings and author of each piece of evidence presented. Throughout this extensive inquiry of fact the tribunal has been helped considerably by the cooperative, constructive attitude of counsel appearing for the claimants and for the Crown. I will refer later to their participation in this inquiry.

When Mr Temm opened his case for the claimants he explained that although it was a single claim it nevertheless covered nine separate grievances which he referred to as "The Nine Tall Trees of Ngai Tahu". We have heard this expression many times over the past two years. We have also found as the hearing progressed that on each of the nine tall trees there were a varying number of branches each of which represented a claim within the claim. So that we are not facing nine separate claims, but in fact a total of 73 grievances arising out of the eight Ngai Tahu Crown purchase deeds, and mahinga kai. Each of these grievances requires comprehensive research and inquiry. But that is not all. Underneath the nine tall trees lie considerable undergrowth – representing over one hundred smaller grievances mainly raised by the people as the tribunal moved through the different districts to hear the main claims.

This will give some indication of the huge task that now confronts this tribunal as it commences to assess the merits of each of the claims and to determine the issues.

The tribunal proposes to report in two parts on this claim and the completion of counsel's submissions today ends the first phase. The tribunal in its first report will generally and comprehensively review the claim, examining and determining the facts and issues and reaching findings of fact. The tribunal will also define the principles of the Treaty of Waitangi which governed the relationship between Ngai Tahu and the Crown. Necessarily the report will contain the findings

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of this tribunal on the question of whether the Crown has acted in breach of those principles as that is the primary and statutory requirement of this tribunal. This first report will not contain specific recommendations as to the quantum of compensation payable or parcels of land that should be returned to Maori ownership. The tribunal proposes, and counsel for both the claimants and Crown respectively agree, that the question of remedies should be held over and dealt with at a later stage and, if necessary, by a further tribunal report. This is not a new approach by the tribunal. It was followed in the Muriwhenua Report (1988). It will no doubt be followed by other tribunals and is a sensible move which will save considerable time and expense. It will allow the claimants and the Crown to negotiate and even hopefully mediate settlement of remedies after both parties have had an opportunity to consider the tribunal's findings. The tribunal is, of course, mindful that its report should be sufficiently declaratory of the extent of its findings of grievance so that the Maori claimants, the Crown and indeed the public at large may have some perception of the quantum of any settlement that may be needed.

Having explained that the tribunal proposes to defer recommendations on remedies it should also be mentioned that if the parties cannot reach a settlement on remedies further formal hearings may be required to hear submissions from counsel on the nature and extent of remedies sought.

Although the question of general remedies will be deferred it is quite possible the tribunal may include specific recommendations in its first report where it is seen by the tribunal that urgent action is required to deal with a matter or that it may be desirable and convenient in the report to advise a certain course of action. This may arise in the case of some of the undergrowth claims.

The tribunal is anxious to avoid fragmentation of its reports but it is also very conscious of the fact that this claim has been proceeding over a period of two years and has been a considerable drain on the resources of the claimants. It is possible that the tribunal may have to consider this question as a matter of immediate concern and act accordingly. I now come back to the tasks in hand – the compilation of the report on this immense and complex claim.

May I say that the tribunal has drawn together the draft plan and profiles of the report. It is daunting to contemplate the work that is now required to fill in the framework and build the report. It will take some time and will require patience and tolerance on all sides. But that is what this tribunal has been commissioned to do and will do it. Each grievance will require separate analysis of the arguments for and against. Behind the arguments for and against each grievance lie

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masses of historical, legal, archaeological, biological, geographical and other scientific, social, economic facts and submissions. This tribunal has undoubtedly had placed before it every discoverable piece of information relevant to the wide range of facts surrounding the many and varied topics covered in this claim. Only those who have been present throughout can fully understand the mammoth mountain of evidence and submission that has accumulated and now has to be broken down and sifted and sorted and pigeonholed into each of the respective claims before each issue can be decided.

But it can also be said that those who have been present throughout have shared a learning process. And out of this learning process, and as a result of concessions that the Crown have made during the course of this hearing, it is clear indeed that underlying the whole of the Crown dealings with Ngai Tahu in the South Island there was a failure of the Crown to provide adequate reserves for the present and future needs of the Ngai Tahu people when the various purchases took place.

This failure of the Crown to ensure Ngai Tahu were left with a sufficient endowment for their own present and future needs has impacted detrimentally on the economic circumstances of Ngai Tahu. It also has resulted in the denial of access to traditional food resources.

The tribunal will deal fully with this breach of Treaty principles in its report, but the evidence presented to this tribunal throughout this inquiry and acknowledged by the Crown is so cogent and clear that the tribunal would be remiss in its duty if it failed to comment on it at this point. There are a number of issues that require considerable study by the tribunal before it makes a finding – some of these issues are substantive matters. These include:

- i) whether or not Ngai Tahu should have been awarded tenths in the Otakou purchase;
- ii) whether Ngai Tahu sold ‘the hole in the middle’ in the Kemp purchase; and
- iii) whether the land west of the Waiiau river (the Fiordland area) was sold under the Murihiku deed.

There are others. Persuasive argument and considerable evidence on these disputed questions has been put to the tribunal by both the claimants and the Crown. They require careful investigation. But not so the inadequacy of reserves and the lack of land resource for Ngai Tahu. The Crown’s failure to apply its stated policy that the agents of the Crown “were not to purchase from the Maori any land the retention of which would be essential or highly conducive to their

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own comfort, safety or subsistence” is plainly and abundantly clear to this tribunal and to all who heard and took part in these proceedings.

It is important that the tribunal notify this finding; albeit expressed today in a preliminary way and to be enlarged upon and perhaps quantified in the full report; for this reason.

The claimants have indicated that as part of any remedy they seek return of land. There can be no doubt whatsoever that Ngai Tahu, in any subsequent negotiations with the Crown to settle remedies, will be asking the Crown to return to them Crown land or land vested in state owned enterprises. Ngai Tahu have stated their desire for land as compensation to this tribunal and publicly on several occasions. Until this tribunal has completed its investigations and reached its findings on each grievance it cannot with any certainty indicate the extent of grievances and thereby allow the parties to treat with each other on the question of recompense. That the tribunal is able to say today however that Ngai Tahu were inadequately endowed with land at the time of the Crown purchases must surely indicate that Crown land or state owned enterprise land may be resorted to as compensation.

Unfortunately the proceedings before this tribunal have not always been as fully reported as one might have wished in order to apprise the nation of the extent of the grievances in the Ngai Tahu claim. Indeed this situation has also occurred in the North Island in respect of other claims.

The president of the Court of Appeal, Sir Robin Cooke, in the decision given on 3 October 1989 in the Tainui coal case said this:

it is obvious that, from the point of view of the future of our country, non-Maori have to adjust to an understanding that does not come easily to all: reparation has to be made to the Maori people for past and continuing breaches of the Treaty by which they agreed to yield government. Lip-service disclaimers of racial prejudice and token acknowledgements that the Treaty has not been honoured cannot be enough. An obligation has to be seen to be honoured. On the Maori side it has to be understood that the Treaty gave the Queen government, Kawanatanga, and foresaw continuing immigration. The development of New Zealand as a nation has been largely due to that immigration. Maori must recognise that it flowed from the Treaty and that both the history and the economy of the nation rule out extravagant claims in the democracy now shared. Both partners should know that a narrow focus on the past is useless. The principles of the Treaty have to be applied to give fair results in today's world.

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The learned judge in making that statement was referring to the possible award of Crown surplus lands in settlement of confiscation claims.

The Court of Appeal declared in the Tainui case that the Crown should take no action either directly or by its agents to dispose of Crown lands until such time as a protective scheme had been worked out for the Tainui claimants.

As land will be an essential ingredient of remedial settlement in the Ngai Tahu claim the tribunal urges government to follow the clear principle stated in the Tainui case and take no action to dispose of surplus South Island Crown land pending the completion of the Ngai Tahu report and the tribunal recommendations. Following the unequivocal view of the Court of Appeal, that any attempt to shut out in advance any claim to surplus land is not consistent with the Treaty this tribunal would expect government and its agents to abide by this declaration and hold back from land disposal.

I now wish to make some acknowledgements.

The tribunal wishes to thank the claimants, Mr Tau and the Ngai Tahu Trust Board for the dignity, patience and courtesy which in every way have been so much a part of the way in which these proceedings have been initiated and conducted. At all the hearings the quiet restraint and politeness of the kaumatua and people have impressed this tribunal. There have been many occasions when the witnesses including professional and expert persons have been just unable to control strong emotional stress as they have recounted history and its effect on Ngai Tahu people. However strong, feelings of frustration and anger have been carefully restrained. This has not been an easy process as there has been much to be angry about. Lurking constantly and there to step in and moderate strong language has been the great ally of Maori people – their constant companion – their sense of humour.

There has not been much to laugh about in the evidence apart from the irony of some of it and the many misjudgments of Maori and their future in much of it. This nation is fortunate that its tangata whenua can still laugh.

What Ngai Tahu can well be proud of is that they as a people have found themselves as a people and a tribe. As importantly, they have more than adequately honoured their promise to their tipuna in the presentation of this claim, this 'take' to the Waitangi Tribunal. Ngai Tahu have followed the processes laid down by law. They have always done that but without much success. There is no doubt that with the passing of years it is not always possible to retain the

Presiding Officer's Closing Address

accuracy of record, particularly of the spoken and handed down word. It cannot be said of Ngai Tahu that they have not persevered in their search for justice. I hope their wairua can now rest.

The claimants, Mr Tau, the trust board and all Ngai Tahu who have supported this claim have upheld the mana of Ngai Tahu. They have discharged the heavy responsibility which has burdened Ngai Tahu shoulders and hearts and minds for so long.

Heading the presentation of the Ngai Tahu claim has been their counsel, Mr Paul Temm QC. The tribunal thanks Mr Temm for the courteous, constructive and very able way in which he has presented this very wide ranging claim. The tribunal has appreciated very much indeed counsel's helpful procedural suggestions which have certainly allowed the proceedings to flow smoothly yet enabled the tribunal to allow adequate response on all evidential matters. The tribunal extends also to Mr David Palmer its gratitude for the assistance he has given during this claim. The tribunal has asked me also to thank Crown counsel Mrs Kenderdine and Mr Blanchard. I believe it is important to record at the end of this arduous inquiry, not only the most competent way in which the Crown has responded to the claim, but more particularly the way in which it has been done. Crown Counsel saw the Crown's role in this matter as presenting to the tribunal every relevant fact uncovered by the team of researchers and professionals engaged in this massive task. And they did so.

In my respectful view, Crown counsel have acted in every way to protect the Crown's position, yet more importantly to uphold the honour of the Crown. The Crown did not see itself in an adversarial role, though it did not hesitate to challenge disputed grounds; it rather saw itself almost in an amicus curiae role which required it to bring to the tribunal's notice all discovered material and opinion whether against or for the claim. The background researching by Crown officers and professional consultants has covered every facet, every nook and cranny of not only the nine tall trees and the related claims but also the large number of small claims. The result is that the record before this tribunal contains a most comprehensive and valuable taonga that will provide future generations with a priceless data base. This has resulted from the combined efforts of the claimants, the Crown and the tribunal's research teams. They are all to be thanked and congratulated for their diligence and scholarship. Before passing from the subject of the Crown's participation in this inquiry may I venture to suggest that if those Crown officials attending the South Island land sales 140 years ago had regarded the Crown's honour in the way these proceedings have been conducted by Crown officers this tribunal would not have been here today.

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In conclusion, but not least of all, the tribunal expresses its thanks to the band of loyal and dedicated staff of the Ngai Tahu Trust Board and tribunal, and as well the trustees and marae committees of marae we visited, and the people, for all the arrangements made to ensure our hearings ran smoothly and that we were comfortable.

It now only remains to be said that the tribunal reserves its findings which will be reported to the minister in due course.

The tribunal now stands adjourned.

Appendix 9

Members of the Ngai Tahu Tribunal

9.1. **Ashley George McHugh, Presiding Officer**

Ashley McHugh is acting chief judge of the Maori Land Court and has served as deputy chairperson of the Waitangi Tribunal. Born in Wellington in 1927 and educated at St Patricks College, Wellington, he later served in the RNZAF towards the end of World War II and then completed his law studies at Victoria University. For the next 25 years he practised law in Gisborne, specialising in tribunal work, and during that time he developed a knowledge of Maori issues and law.

In 1980 Judge McHugh was appointed to the bench of the Maori Land Court at Whangarei. He later sat at Wanganui and in 1987 was appointed deputy chief judge of the Maori Land Court.

For many years Judge McHugh has been involved in a number of charitable, sporting and commercial organisations. In particular he played a major role in trustee banking administration.

He was awarded MBE in 1980 for community services and for his contribution to the banking industry.

9.2. **Bishop Manuhuia Tutewehiwehi Augustus Bennett**

Bishop Bennett of Te Arawa was born in 1916 at Ohinemutu, Rotorua. He attended theological college at Te Aute and was ordained into the Anglican ministry in 1940. From 1944–45 he served in the RNZ Chaplains' Department of the 2nd New Zealand Expeditionary Force in the Middle East and Italy, attached to 28th NZ (Maori) Battalion. On his return to New Zealand he served in a number of parishes before being consecrated as Bishop of Aotearoa in 1986. During his parish ministry he completed a BSc from the University of Hawaii and also holds a Doctorate of Divinity.

Bishop Bennett retired as Bishop of Aotearoa in 1981 and was appointed to the Waitangi Tribunal in 1986. Throughout his life he has been involved in a wide range of community and church affairs, and particularly with Maori and bicultural projects.

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He continues to be actively involved in community organisations and was awarded the Order of Companion of St Michael and St George (C.M.G) in 1981 and the Special Order of New Zealand (O.N.Z) in 1989.

9.3. **Monita Eru Delamere**

Sir Monita was born at Omaio, Te Kaha in 1921 and is a member of Te Whanau a Apanui, Whakatohea, Ngai Tahu and Ngati Mamoe. He served in the Maori Battalion during World War II, was a Maori All Black 1946–49, and farmed for a number of years at Opotiki. In 1954 Sir Monita established a small dry cleaning business at Kawerau which he ran for the next 25 years. He has been involved in community activities for many years, becoming a rotarian, a justice of the peace and councillor on the Kawerau Borough Council. He established the first of the Kawerau region's three credit unions and continues to play an active role in organising or advising other North Island credit unions. The creation of credit unions has been an important aspect of Sir Monita's work, as he regards them a practical application of Maori concepts of community co-operation, support and self sufficiency.

In 1979 Sir Monita retired from business and returned to Opotiki where he was secretary of the Whakatohea Trust Board. He was appointed to the Waitangi Tribunal in 1986 and has served on the hearings of the Orakei, Taipa and Muriwhenua claims. He has been a member of the New Zealand Maori Council since 1962. A Ringatu spiritual leader and minister since the early 1950s, Sir Monita is a recognised authority in Maori law, custom, history and religion.

9.4. **Georgina Manunui Te Heuheu**

Georgina Te Heuheu is Ngati Tuwharetoa with kinship links to Te Arawa and Tuhoe. Born and raised at Taurewa, beneath Mount Tongariro, she is married and has two sons. She attended Turakina Maori Girls College and Auckland Girls Grammar School and after completing her BA and LLB degrees at Victoria University practised law in Wellington and Rotorua.

In 1974 Mrs Te Heuheu served on the Commission of Inquiry into Maori Reserved Land.

Currently involved in iwi development with the Tuwharetoa Maori Trust Board, Mrs Te Heuheu is also a director of the Maori Development Corporation and serves on the board of the Poutama Trust.

Members of the Ngai Tahu Tribunal

She is also involved in the area of legal services and law reform as a member of the Courts Consultation Committee and an advisor to the Evidence Reference Committee of the Law Commission.

9.5. **Ian Hugh Kawharu**

Professor Sir Hugh Kawharu belongs to Ngati Whatua and is head of the anthropology department at Auckland University. He holds a BSc (New Zealand) MA (Cambridge) and D.Phil (Oxford) as well as being an authority on traditional and contemporary Maori land law. From 1953 to 1965 he worked for Maori Affairs in housing, welfare and trust administration. He held a personal chair in social anthropology and Maori studies at Massey University from 1970 before taking up his Auckland appointment. He has been a member of the Royal Commission on the Courts, the Council of the Auckland Institute and Museum, and chairperson of the Ngati Whatua of Orakei Maori Trust Board. Recently he has set up Te Runanga o Ngati Whatua, a unifying body for all his tribe.

He has acted as a consultant for UNESCO, FAO, the NZMC and NZCER and has written or edited a number of books on Maori issues and race relations; most recently he has edited *Waitangi: Maori and Pakeha Perspectives on the Treaty of Waitangi* (Oxford University Press, 1989)

Sir Hugh received his knighthood in 1989.

9.6. **Gordon Stewart Orr**

Gordon Orr has had a three-cornered career in the practice, administration and teaching of law. Born in 1926, Professor Orr grew up in Masterton and completed BA and LLM degrees at Victoria University. Later he gave up a successful law partnership in Wellington and moved to the Crown Law Office where for several years he was senior Crown counsel. He then became deputy chairperson of the State Services Commission and later Secretary for Justice. In 1978 he was appointed professor of constitutional law at Victoria University teaching principally New Zealand constitutional law and legal history, including 19th century Maori land issues.

His publications include a book on administrative justice in New Zealand, written while he was a Harkness Fellow at the Harvard University Law School.

He was appointed emeritus professor in 1987 on retiring from Victoria University. Since joining the tribunal he has been one of its two full-time members, principally engaged in the Orakei and Ngai Tahu claims.

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9.7. **Desmond John Sullivan**

Sir Desmond was appointed to the Waitangi Tribunal in 1987, following a distinguished career as a lawyer and judge. He was born in 1920 at Waimate and was educated at Timaru Boys High School. After service in the New Zealand Army and Navy for the duration of World War II he graduated LLB from Canterbury University. He practised law in Westport for some years and later in Palmerston North. In 1966 he was appointed a stipendiary magistrate in Wellington and in 1979 was made chief judge of the District Court. In this capacity he implemented the wide ranging reforms recommended by the Royal Commission on the Courts.

Sir Desmond has been chairperson of the New Zealand Council for Recreation and Sport and Film Industry Board, and was executive director of the World Rugby Cup in 1987. He is active in the Catholic Church. Since retirement he has conducted several inquiries, including those on lotto, casinos, gambling and excise revenue.

Sir Desmond was knighted in 1984. He resigned from the Waitangi Tribunal on 1 July 1989 but remains a member for this Ngai Tahu claim.

Glossary

ahi ka roa	long burning fires ie occupation justifying title to land
akeake	species of tree
anihe	fernroot
arore	fungus
aruhe	fernroot
atua	god, supernatural being
aua	yellow-eyed mullet or herring
hapu	sub-tribe
hapuku	groper
harakeke	flax
hau	wind
haumata	snow grass
heke	migration, journey
hinaki	wicker eel-pot
hinau	species of tree
hoko	barter, buy, sell
hua rakau	produce of trees, fruit
hua whenua	produce of the land, vegetables
hue	gourds
hui	gathering, meeting
ika	fish
inanga, inaka	whitebait
inangi	smelt
iwi	tribe, people
kahawai	species of fish
kahikatea	white pine tree
kai	food
kaihaokai	a feast to reciprocate past hospitality
kai awa	food from rivers
kai ika	food from fish
kai manu	food from birds
kai moana	seafood
kai rakau	food from trees
kai raro	food from the ground
kai roto	food from the interior
kainga nohoanga	place of residence

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kainga, kaika	village, settlement, home
kaio	species of shellfish
kaitiaki	guardian, trustee, protector
kaka	bittern; native parrot
kakapo	ground parrot
kakapo	species of fish
kanakana	lamprey
karaka	species of tree
karakia	prayer, spiritual incantation
katoke	species of tree
katote	a tree fern
kaumatua	elder
kauri	species of tree
kauru	stem of cordyline
kawa	protocol, custom
kawanatanga	governance, government
kawau	cormorant, shag
kerema	claim
kereru	wood pigeon
kete	basket
kiekie	a climbing plant
kina	sea egg
kiore	native rat
kiwi	flightless bird
koaro	mountain trout
koha	present, gift
kohikohi	to gather, to collect
koko	parson bird
kokomuka	species of plant
kokopu	native trout
konini	type of fruit
kono	small basket
korau	wild turnip
korero	discussion, speech, to speak
korimako	bellbird
korokoro	lamprey
koromiko	a shrub
korowai	cloak ornamented with black twisted thrums
kotukutuku	a female totara
koukoupapa	native trout
koura	crayfish
kowhai	species of tree
kuku	pigeon

Glossary

kuta	species of rush
mahinga kai, mahika kai	places where food is procured or produced
mahoe	species of tree
maka	barracouta
makomako	species of tree; bellbird
mamaku	fernroot
mana	authority, control, influence, prestige, power
manawhenua	customary rights and authority over land
maneanea	smelt
manuka	tea-tree
marae	community meeting-place or surrounds
mata	species of herring
matai	species of tree
mataitai	seafood
miro	species of tree
moki	species of fish; raft
motu	island
moutere	island
murū	to plunder
nanao	beginning of the titi catching season
ngaio	species of tree
ngakinga	cultivation
nui	big, great, many
pa	fortified village, or more recently any village
pakiki	freshwater fish
panako	a fern
paraerae	a sandle made of leaves of flax or ti twisted into a pad
paraki	smelt; fresh-water fish
parariki	smelt
parera	grey duck
parohe	smelt
pataka	food storehouse raised on posts
pateke	species of duck, shoveller
patete	a small fresh-water fish
patiki	flounder
paua	abalone
pawhara	fish opened and dried
piharau	lamprey
pikopiko	a fern
pingao, pikao	native sedge
pipi	cockle
pipiki	smelt
pito	navel

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poha	food storage container
pounamu	greenstone
puha	species of plant
pukeko	swamp hen
pukorero	oratory
puna	spring of water
purau	sea urchin; shrub
puru	plug
putakita	paradise duck
putakitaki	paradise duck
raepo	species of duck
rahui	a restriction on access, prohibition
rakiraki	ducks
rama	to torch
rangatira	chief
rangatiratanga	authority, chieftainship
raupo	bullrush
raureka	species of tree
rimu	species of tree; seaweed, kelp
rohe	boundary, tribal region
rua	hole
runanga	assembly, council
taiapure	local fishing patches
takapu	gannet
take	issue, grievance; cause, reason
takiwa	district, region
tangata whenua	people of a given place
tangi	to cry; sound; funeral
taonga	prized possession, property
tapu	under religious, spiritual restriction; sacred
tapuke	bury, cover with earth
taramea	spear-grass
tarapunga	red-billed gull
tata	flock, used of certain birds
tatau	species of plant
tatoa	brown ducks
taua	war party
tawai	general name for beech-tree species
te ao hou	the new world
teteaweka	species of shrub
ti	cabbage tree
tikanga	custom
tikihemi	smelt
tikumu	species of plant
tino rangatiratanga	full authority

Glossary

titi	mutton bird
toetoe	grass, sedge
tohunga	specialist
torea	oyster catcher; pied stilt
toroa	albatross
totara	a forest tree
tui	parson bird
tukutuku	panel work
tuna	eel
tupare	species of shrub
tupuna	grandparents, ancestors
tutu hoki	flax stem juice
umu	oven
urupa	cemetery, burial ground
utu	recompense, revenge, response, price,
waharoa	horse mussel
wahi tapu	sacred place
wai kakahi	shellfish, a freshwater bivalve mollusc
wai	water
waiata	song
wairua	spirit
waka	canoe, tribal confederation (based on common canoe traditions)
wakawaka	share, marked out division based on rights through genealogy
weka	wood hen
whakapapa	genealogy
whanau	family
whanui	wide, extended
whare	house, building
wharerau	house, building unique to Rakiura Maori
whariki	anything spread on the ground ie floormat etc
whenua, wenua	land
whio	blue ducks
wiwi	tussock grass; rushes

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Index of Grievances, Findings and Recommendations

<i>Grievance</i>	<i>Finding</i>	<i>Treaty Finding</i>	<i>Recommendation</i>
1 OTAKOU			
1 The protector, Symonds, failed to discharge his responsibilities at the time of the negotiations, and afterwards.	6.7.3		
2 The Crown failed to ensure that sufficient land was set aside to provide an economic base for Ngai Tahu after they had sold their land, and so to protect their tribal estate.	6.9.13	6.9.14	
3 The Crown failed to set aside one-tenth of the 400,000 acre block as provided by the waiver proclamation.	6.4.19		
4 The Crown failed to establish an administrative policy under the waiver proclamation by which Ngai Tahu would have been protected.	6.4.19		
5 Governor Grey signed the Crown grant without setting aside the tenth required by the waiver proclamation.	6.4.19		
6 The Crown failed to set aside the Otepoti reserves which had been promised to Ngai Tahu as part of the sale.	7.5.6		
7 The Crown failed to create the Princes Street reserve in 1853 which prejudiced the position of Ngai Tahu in later litigation and negotiations.	7.5.11		
8 The Crown failed to protect Ngai Tahu by not providing a permanent hostelry in Dunedin for their personal use and occupation and as a base for their commercial activity.	7.5.13		

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<i>Grievance</i>	<i>Finding</i>	<i>Treaty Finding</i>	<i>Recommendation</i>
2 KEMP'S BLOCK			
1 That the Crown's inclusion of Kaiapoi in the Wairau purchase of 1847 from Ngati Toa exerted unfair pressure on Ngai Tahu to part with the Kemp block on unfavourable terms.	8.6.4	8.6.4	
2 That the Crown, to the detriment of Ngai Tahu, failed to fulfil the terms of the agreement between Kemp and Ngai Tahu in respect of the Kemp purchase, in particular: (a) ample reserves for their present and future benefit were not provided; and (b) their numerous mahinga kai were not reserved and protected for their use.	8.9.18	8.9.19–21	
3 That the Crown declined the Ngai Tahu request to exempt from the sale the area between the Waimakariri and Kowhai rivers, or to reserve it for their future exclusive use, to which they were entitled under article 2 of the treaty.	8.8.17	8.8.18	
4 That on the matter of boundaries the Crown enforced an interpretation which had not been agreed to by Ngai Tahu, in particular with regard to: (a) the western boundary, which Ngai Tahu wanted to follow the foot-hill ranges from Maungatere to Mangaatua as had been previously agreed with Governor Grey; and (b) the eastern boundary, which Ngai Tahu wanted to follow the line of sight from Otumatua to Taumutu and thus to exclude from the sale Kaitorete, most of Waihora (Lake Ellesmere), and its north-eastern shoreline with the adjoining wetlands.	8.11.5 8.7.7	 8.7.7	

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<i>Grievance</i>	<i>Finding</i>	<i>Treaty Finding</i>	<i>Recommendation</i>
5 That the Crown failed to ensure that a claim was lodged on behalf of Ngai Tahu to protect their interests under the New Zealand Company Land Claimants Ordinance of 2 August 1851.	8.10.3		
6 That the Crown on 7 August 1851 passed the Canterbury Association Amendment Act without providing for the protection of Ngai Tahu interests derived from the unfulfilled promises of the Crown under the Kemp purchase.	8.10.5		
7 That the Crown under the Native Land Act of 1865 failed to provide for adequate protection for Ngai Tahu in the conduct of the Native Land Court.	8.10.10		
8 That the Crown passed the Ngai Tahu Reference Validation Act of 1868 to the detriment of Ngai Tahu.	8.10.12		
9 That the Crown aborted the royal commission of Smith and Nairn and suppressed its evidence to the detriment of Ngai Tahu.	22.2.8		
10 That the Crown in the years 1893–1909 under the Land for Settlements Acts resumed some sixty valuable estates in the Kemp block at a cost of some £2,000,000 for the benefit of landless Europeans but failed to do likewise for landless Ngai Tahu, in breach of article 3 of the treaty.	8.11.6		
11 That the Crown by the South Island Landless Natives Act of 1906 assigned to Ngai Tahu lands, none of which were in the Kemp block, and which were much inferior to those provided contemporaneously for landless Europeans under the Land for Settlements Acts – a breach of article 3.	20.7.2		

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<i>Grievance</i>	<i>Finding</i>	<i>Treaty Finding</i>	<i>Recom- mendation</i>
3 BANKS PENINSULA			
1 That Lord Stanley awarded 30,000 acres to the French without consulting Ngai Tahu.	9.3.18	9.9.2	
2 That Ngai Tahu were not compensated for Lord Stanley's award.	9.3.18	9.9.2	
3 That no reserves were provided for Ngai Tahu out of Lord Stanley's award.	9.3.18	9.9.2	
4 That the Crown failed to protect Ngai Tahu against the land-purchasing pretensions of the French: that although Belligny's 1845 deeds were illegal and were not proved to be supported by the customary owners of the land, the Crown allowed these transactions to be used against Ngai Tahu by Commissioner Mantell in 1849 and subsequently by the Canterbury Association in denying Ngai Tahu their continued rights of occupation on Banks Peninsula.	9.5.1		
5 That the Crown sent Commissioner Mantell in 1849 to falsely assert that Banks Peninsula was already the property of the Crown, and to "carry matters with a high hand", or alternatively that Mantell having done these things the Crown did nothing to rectify them.	9.5.3	9.9.3	
6 That at Port Cooper and Port Levy in 1849 Commissioner Mantell conducted his proceedings as an award under which the matters of payment and Maori reserves were not negotiable; and that consequently Ngai Tahu were denied a fair price and an adequate provision of land and other economic resources (including kai moana and fisheries) for their continued sustenance and prosperity.	9.5.8	9.9.3	

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<i>Grievance</i>	<i>Finding</i>	<i>Treaty Finding</i>	<i>Recommendation</i>
7 That consequently Ngai Tahu had to abandon the Port Levy and Port Cooper blocks with the exception of the Port levy, Purau and Rapaki reserves which were quite inadequate for their needs.	9.5.8	9.9.3	
8 That at the Port Levy proceedings with Mantell Ngai Tahu expressed their unwillingness to sell Okains Bay, Kaituna Valley, and part of Pigeon Bay, and expressed a wish for a larger reserve at Port Levy; but these were denied to them.	9.5.8	9.9.3	
9 That although Mantell's Port Levy deed was signed by only a minority of the chiefs present at the proceedings, and Mantell did not visit all the settlements in the block to ascertain the resident's wishes, the Crown enforced the deed as a legal conveyance of the whole block.	9.5.9	9.9.3	
10 That the Crown under the Canterbury Association Lands Settlement Act of 14 August 1850 assigned the whole peninsula to the Canterbury Association, although it had been clearly excluded from the Kemp purchase and had not been otherwise properly purchased from Ngai Tahu.	9.6.4	9.9.4	
11 That consequently Ngai Tahu had to suffer European settlers moving on to their lands, for which they have never received adequate compensation.	9.6.4	9.9.4	
12 That at Mantell's 1849 Akaroa block proceedings Ngai Tahu asked to retain for their own use a substantial part of the block comprising some 30,000 acres or more, including the southern part of the peninsula and the whole Wairewa (Little River) basin, and in 1856 made a similar request to Hamilton, to which under article 3 of the treaty they were entitled;	9.7.2		

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<i>Grievance</i>	<i>Finding</i>	<i>Treaty Finding</i>	<i>Recom- mendation</i>
but this was wrongfully denied to them.			
13 That under the terms of Hamilton's 1856 deed only the "places (or areas) in dispute at Akaroa" were sold; but the Crown nevertheless with the exception of 1200 acres reserves enforced the forfeiture of the whole block.	9.7.3	9.9.5	
14 That Hamilton's 1200 acres reserves and 150 payment were manifestly inadequate as an endowment for the future prosperity of the Ngai Tahu residents of the Akaroa block together with the absentees, and that Ngai Tahu suffered as a result.	9.7.4	9.9.5	
15 That the Crown under the terms of Hamilton's Akaroa deed unreasonably required the Ngai Tahu residents of the block to provide for returning absentees as well as themselves from the 150 and 1200 acres Hamilton had provided, and that both residents and returning absentees suffered privation as a result.	9.7.4	9.9.5	
16 That under the Land for Settlements Acts the Crown at Wairewa (Little River) resumed the Morice Estate of 912 hectares on 16 December 1905 at a cost of £40,633 for the settlement of 29 landless Europeans, and on Banks Peninsula resumed the Kinloch Estate of 5275 hectares on 19 February 1906 at a cost of £116,382 for the settlement of 30 landless Europeans, which land could instead have been provided for the relief of landless Ngai Tahu; instead of which the Crown offered landless Ngai Tahu only the very inferior and remote land provided under the South Island Landless Natives Act of 1906, none of which was on Banks Peninsula.	9.7.6		

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<i>Grievance</i>	<i>Finding</i>	<i>Treaty Finding</i>	<i>Recommendation</i>
17 That as the result of these acts of the Crown most Ngai Tahu of Banks Peninsula were driven off the land and lost their turangawaewae.	9.7.6	9.9.5	
18 That the Crown has failed to ensure the adequate protection of the natural resources of Banks Peninsula; that it has allowed the wholesale destruction of forests and other natural vegetation, to the detriment of native fauna, water quality and soil conservation, and that the resulting siltation of stream beds and tidal waters has been to the detriment of fish and birdlife; that the Crown has allowed excessive pollution of Wairewa (Lake Forsyth) so that this great inland fishery and eel resource is now almost extinguished; and that it has allowed the depletion of kaimoana in the bays, harbours and coasts through pollution and excessive exploitation.	17.6.1	17.6.1	
4 MURIHIKU			
1 The Crown failed to appoint a protector to ensure that Ngai Tahu were independently advised of their treaty and other rights.	10.7.4	10.7.4	
2 The Crown wrongfully instructed or permitted Mantell to limit the land set aside for the use of Ngai Tahu after the sale.	10.7.5	10.7.6	
3 The Crown wrongfully instructed or permitted Mantell to decide what land should be set aside for Ngai Tahu use after the sale.	10.7.5	10.7.6	
4 The Crown failed to set aside the following lands for the use of Ngai Tahu after the sale: -additional land at Aparima to that which Mantell allowed; -additional land at Kawhakuputaputa to that which Mantell allowed;	10.4.19	10.7.6	

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<i>Grievance</i>	<i>Finding</i>	<i>Treaty Finding</i>	<i>Recommendation</i>
<ul style="list-style-type: none"> –additional land at Omaui to that which Mantell allowed; –a block at Oue; –a block of 200 acres at Waimatuku; –Rarotoka Island; –300 acres on the Waiau River, which may be at Oetoto as a reserve there; –a block at Opuaki; –the waterfall at Te Aunui on the Maitara River. 			
5 The Crown failed to provide schools and hospitals at each Ngai Tahu village which provision was part of the price agreed upon by the Crown.	19.5.2	19.5.2	
6 The land west of the Waiau was wrongfully included in the sale.	10.6.18		
7 The Crown failed to conduct the negotiations so that all the terms and conditions were known and accepted by each of the communities in Murihiku.	10.5.14		
8 The Crown failed to ensure that sufficient land was excluded from the sale to provide Ngai Tahu with an economic base and so to protect the tribal estate.	10.7.12	10.7.13	
9 The Half-Caste Grants Acts, the Landless Natives Act and other legislation were inadequate to remedy the landlessness caused by the sale to the Crown.	10.8.6 20.7.2	10.8.6 20.7.3	
10 The Crown acted in breach of its duty of good faith by not disclosing to Ngai Tahu at Awarua and elsewhere what the price would be until after the deed had been signed at Port Chalmers.	10.5.14		

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<i>Grievance</i>	<i>Finding</i>	<i>Treaty Finding</i>	<i>Recommendation</i>
5 NORTH CANTERBURY AND KAIKOURA			
1 That the Crown's inclusion of Kaikoura and Kaiapoi in the Wairau purchase of 1847 from Ngati Toa exerted unfair pressure on Ngai Tahu to part with these blocks on unfavourable terms.	11.5.2	11.5.5	
	12.5.2	12.5.5	
2 That the Crown allowed these blocks to be sold or leased to European settlers – entirely in the case of the North Canterbury block and almost entirely in the case of the Kaikoura block – before they had been purchased from Ngai Tahu, and that Ngai Tahu have never been adequately compensated for this.	11.5.4	11.5.5	
	12.5.4	12.5.5	
3 That the Crown refused to allow lands requested by Ngai Tahu at Hurunui and Motunau in the North Canterbury block and between the Kahutara and Tutaepu rivers in the Kaikoura block to be excluded from the sale or reserved exclusively for their use, in breach of article 2 of the treaty.	11.5.7	11.5.8	
	12.5.8	12.5.8	
4 That the Crown failed to provide any reserves for Ngai Tahu in the North Canterbury block.	11.5.7	11.5.8	
5 That the Crown in the Kaikoura block provided reserves that were inadequate for agricultural purposes and inadequate as an economic basis for the prosperity of Ngai Tahu and that were unreasonably encumbered with Crown roading and railway rights.	12.5.12	12.5.12	
6 That the Crown in the North Canterbury block under the Land for Settlements Acts for the benefit of landless Europeans, from November 1895 to May 1897 resumed the Patoa, Ashley Gorge, and Horsely Downs Estates, and in the Kaikoura block from November 1893 resumed the Cheviot, Blind River, Starborough, Puhipuhi, Richmond Brook, Waipapa, Lyndon No 1 and 2, Rainford, Annan, Flaxbourne No 1 and 2, and	11.5.10		

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<i>Grievance</i>	<i>Finding</i>	<i>Treaty Finding</i>	<i>Recom- mendation</i>
Culverden Estates, but failed to do likewise for Ngai Tahu, in breach of article 3 of the treaty.	12.5.14		
6 ARAHURA			
1 The Crown failed to appoint a protector to ensure that Ngai Tahu were independently advised of their treaty and other rights.	13.5.33	13.5.33	
2 The Crown wrongfully used the Ngati Toa and other purchases to put pressure on Ngai Tahu to consent to the sale.	13.5.3		
3 The Crown failed to permit Ngai Tahu to exclude from the sale such lands as they wished to exclude.	13.5.11 13.5.14	13.5.11	
4 The Crown wrongfully imposed a price on land that Ngai Tahu had wanted to exclude from the sale.	13.5.14		
5 The Crown failed to protect the right of Ngai Tahu to retain possession and control of all pounamu.	13.5.29	13.5.30	13.5.31
6 The Crown failed to protect Ngai Tahu by ensuring that they had kept enough land to provide an economic base and so preserve their tribal estate.	13.5.17	13.5.17	
7 The Crown failed to protect Ngai Tahu by passing legislation imposing perpetual leases without the consent of Ngai Tahu, and without provision to protect them from economic loss.	14.8.20	14.8.20	14.9.7
8 The Crown failed to protect Ngai Tahu by not revealing the value and importance of gold bearing land which was a breach of the duty of good faith.	13.5.7	13.5.7	
9 The Crown failed to protect Ngai Tahu by later causing or permitting lands that had been excluded from the sale to be reduced in area (for example, within the town of Greymouth).	later report		

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<i>Grievance</i>	<i>Finding</i>	<i>Treaty Finding</i>	<i>Recommendation</i>
10 The South Island Landless Natives Act 1906 and other legislation was inadequate to remedy the landlessness caused by the sale to the Crown.	20.7.2		
11 The Crown has failed to protect Ngai Tahu by not implementing the recommendations of the Commission of Inquiry into Maori Reserved Lands, 1973.	14.8.20	14.8.20	
7 RAKIURA			
1 The Crown failed to appoint a protector to ensure that Ngai Tahu were independently advised of their treaty and other rights.	15.5.2		
2 The tribe has been deprived of the full administration of the Titi Islands.	15.6.8		
3 According to oral tradition the island of Whenua Hou (Codfish Island) was included in the purchase against the wishes of the people.	15.7.4		
8 MAHINGA KAI			
1 That the Crown has failed to ensure the adequate protection of the natural resources of Banks Peninsula; that it has allowed the wholesale destruction of the forests and other natural vegetation to the detriment of native fauna, water quality and soil conservation, and that the resulting siltation of stream beds and tidal waters has been to the detriment of fish and birdlife; that the Crown has allowed excessive pollution of Wairewa (Lake Forsyth) so that this great inland fishery and eel resource is now almost extinguished and that it has allowed the depletion of kaimoana in the bays, harbours and coasts through pollution excessive exploitation.	17.6.1	17.6.1	15.5.3

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<i>Grievance</i>	<i>Finding</i>	<i>Treaty Finding</i>	<i>Recommendation</i>
<p>2 That the Crown to the detriment of Ngai Tahu failed to fulfil the terms of the agreement between Kemp and Ngai Tahu in respect of Kemps Purchase, in particular—</p> <p>(a) Ample reserves for their present and future use were not provided; and</p> <p>(b) Their numerous mahinga kai were not reserved and protected for their use.</p>	17.6.1	17.6.1	
<p>3 The denial of access to quality and soil conservation, and certain mahinga kai accentuated the effects of landlessness.</p>	17.6.1	17.6.1	
<p>4 The drainage of swamps and lakes, the felling of bush, the conversion of land to agricultural use, and the introduction of acclimatised species destroyed or reduced the value of mahinga kai.</p>	17.6.1	17.6.1	
<p>5 The tribe has been denied effective participation in resource management and conservation, such as administration of protected areas and of waterways. It also, on a smaller scale, has meant that such tribal rights as those to the bones of stranded whales have been ignored. There has been no attention paid to the preservation of resources of special tribal significance, such as pikao.</p>	17.6.1	17.6.1	

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Reference to the evidence of Professor Alan Ward, Mr Harry Evison, Dr George Habib, Mr James McAloon, Dr Donald Loveridge, Mr Tony Walzl and Mr David Armstrong will be found throughout the report.

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- Acclimatisation societies 17.2.22, 17.3.8-10, 17.3.12
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