

IN THE WAITANGI TRIBUNAL
SOUTHERN NORTH ISLAND AND SOUTH ISLAND CLAIMS

Wai 2800
Wai 2324

IN THE MATTER OF the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF the inquiry into the Remaining Historical Claims:
Southern North Island and South Island Claims

AND

IN THE MATTER OF a claim by Neil Jury for and on behalf of the Geary
Whanau (Wai 2324)

SUBMISSIONS ON BEHALF OF WAI 2324

Dated this 18th day of October 2022

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Waitangi Tribunal

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1. These submissions are filed on behalf of Wai 2324, a claim made by Neil Jury on behalf of the Geary Whanau (“the Claimants”).
2. These submissions address the claim assessment completed by the Waitangi Tribunal.¹ The purpose of the claim assessment was to provide advice to the Waitangi Tribunal standing panel. It summarises allegations made by the statement of claim and assesses Waitangi Tribunal reports and other relevant existing secondary sources.²
3. The claim assessment concluded by summarising that the Geary Whānau claim issues appear to be sufficiently addressed by existing primary and secondary sources. Further, clarification was sought from the claimants in relation to a central claim issue.³
4. The Claimants were invited to submit their feedback on the claim assessment. They appreciate the opportunity to provide their feedback, and do so below.

Summary of claim assessment

5. The claim assessment correctly identifies that the Wai 2324 Statement of Claim alleges that the Crown did not provide the claimants’ tūpuna (John Geary, William Geary, and Thomas Geary) with the grants

¹ Waitangi Tribunal, *Claim assessment for the Standing Panel: The Geary Whānau Middle Island Half-castes Crown Grants Act 1877 Lands Claim (Wai 2324)*, July 2022 (Wai 2800, #6.2.2)

² Waitangi Tribunal, *Claim assessment for the Standing Panel: The Geary Whānau Middle Island Half-castes Crown Grants Act 1877 Lands Claim (Wai 2324)*, July 2022 (Wai 2800, #6.2.2), p 3

³ Waitangi Tribunal, *Claim assessment for the Standing Panel: The Geary Whānau Middle Island Half-castes Crown Grants Act 1877 Lands Claim (Wai 2324)*, July 2022 (Wai 2800, #6.2.2), p 3

(10 acres per man) prescribed by the Middle Island Half-castes Crown Grant Act 1877 (“the 1877 Act”).⁴

6. The 1877 Act provided half-caste families named in the schedules with land, as a final extinguishment of claims on the Crown following Crown purchasing. The Geary brothers’ were named in schedule B titled ‘Provincial District of Otago’. As ‘Geary, John’, ‘Geary, William’ and ‘Geary, Thomas’, each were identified as being entitled to 10 acres. The Geary brothers’ were not included in subsequent amendments to the 1877 Act. The subsequent amendments of 1883 and 1885 were made to remedy errors and omissions made.
7. The claim assessment also correctly identifies the following primary issue: was the Middle Island Half-Castes Crown Grant Act 1877 compliant with the Treaty of Waitangi and its principles?⁵
8. The claim assessment states that it is possible that the Geary whanau did not receive the grants prescribed by the 1877 Act because, as recorded, Crown officials believed the claimants’ tūpuna resided outside of the Murihiku Block at the time of purchase, and that they ‘Belong[ed] to North Island’.⁶
9. The claim assessment notes that the issue that appears to require closer consideration by the panel is where the claimants’ tūpuna resided at the time the grants were allocated. The assessment states that this might establish whether the claimants’ tūpuna were entitled

⁴ Waitangi Tribunal, *Claim assessment for the Standing Panel: The Geary Whānau Middle Island Half-castes Crown Grants Act 1877 Lands Claim (Wai 2324)*, July 2022 (Wai 2800, #6.2.2), p 5

⁵ Waitangi Tribunal, *Claim assessment for the Standing Panel: The Geary Whānau Middle Island Half-castes Crown Grants Act 1877 Lands Claim (Wai 2324)*, July 2022 (Wai 2800, #6.2.2), p 5

⁶ Waitangi Tribunal, *Claim assessment for the Standing Panel: The Geary Whānau Middle Island Half-castes Crown Grants Act 1877 Lands Claim (Wai 2324)*, July 2022 (Wai 2800, #6.2.2), p 19

to receive any grants, given evidence they may have resided outside of the Murihiku and Rakiura blocks at the time of purchase.⁷

10. Most significantly, the claim assessment notes the Ngāi Tahu report found the Middle Island Half-Caste Crown Grants Act 1877, the legislation most pertinent to this claim, breached the Treaty of Waitangi and its principles.

Claimant feedback

11. The Claimants wish to provide feedback on three issues raised in the claim assessment. We have rephrased these into questions, being:

- (a) Did the Geary whanau need to reside on the Murihiku block to be eligible for grants under the 1877 Act?
- (b) Did the Claimants have to whakapapa to Ngai Tahu to be eligible for grants under the 1877 Act?
- (c) Is further research required?

12. We will address each of these issues in turn.

Did the Geary whanau need to reside on the Murihiku block to be eligible?

13. The claim assessment states that it is possible that the Geary whanau did not receive the grants prescribed by the 1877 Act because, as

⁷ Waitangi Tribunal, *Claim assessment for the Standing Panel: The Geary Whānau Middle Island Half-castes Crown Grants Act 1877 Lands Claim (Wai 2324)*, July 2022 (Wai 2800, #6.2.2), p 20

recorded, Crown officials believed the claimants' tūpuna resided outside of the Murihiku Block at the time of purchase.⁸

14. The situation in Murihiku and Rakiura highlighted the circumstances experienced by half-castes throughout the whole of the South Island. Prior to 1840, there was considerable intermarriage between Māori women and European sealers and whalers. However, Māori of mixed ancestry were not provided for in the Native Reserves created upon Crown purchase. Additionally, Rakiura (Stewart Island) was acquired by the Crown in 1864. The deed of purchase provided that a portion of the land at 'the Neck' was to be reserved for the 'half-castes' residing there. However, this allocation of land quickly proved insufficient.
15. In 1869, Native Minister Alexander MacKay received the Public Petitions Committee's report concerning the state of landlessness experienced by 'half castes'.⁹ The report stated that the Crown has an obligation to honour Crown promises made at the purchase of lands.¹⁰ Angela Wanhalla stated that the select committee reporting on this issue found the Crown was obliged to set aside land within purchase blocks 'for half-caste families resident thereon at the time of cession'.¹¹
16. On 5 September 1871, Mackay contacted his under-secretary, observing that of the 187 'half-caste' Ngai Tahu, 91 had been born on Rakiura. A further 93 had been born at various places on the

⁸ Waitangi Tribunal, *Claim assessment for the Standing Panel: The Geary Whānau Middle Island Half-castes Crown Grants Act 1877 Lands Claim (Wai 2324)*, July 2022 (Wai 2800, #6.2.2), p 19

⁹ Waitangi Tribunal, *Claim assessment for the Standing Panel: The Geary Whānau Middle Island Half-castes Crown Grants Act 1877 Lands Claim (Wai 2324)*, July 2022 (Wai 2800, #6.2.2), p 9

¹⁰ Waitangi Tribunal, *The Ngai Tahu Report*, Volume II, pp 640- 641

¹¹ Wanhalla, *In/visible Sight*, p 101

mainland, again demonstrating that existing reserves for ‘half-castes’ were insufficient.¹²

17. Angela Wanhalla supports this assessment. She says, prior to 1864, land purchases in Canterbury, Otago, and Southland were made without consideration for mixed-descent children, of which there was a growing community.¹³
18. It is important to note here that the half-castes referred to were from various places in the mainland, not just Murihiku or Rakiura.
19. In 1872, the Hon Mr Mantell gave evidence of the unfulfilled promises to the Māori living on the Ngai Tahu block. He was “instructed by Lieutenant-Governor Eyre to inform the Natives that the money paid them was not the only or principal consideration for the cession of their land.”¹⁴
20. On 8 December 1877 the Middle Island Half-Caste Crown Grants Act was passed. It referred to certain promises having been made in favour of certain half-caste families then living in the South Island. Their names were listed in two schedules to the Act. The first schedule named 53 people living in Canterbury and 118 in Otago (which included Southland). The Act authorised a grant of ten acres to be made to each male and eight acres to each female. Such grants were to be deemed to be a final extinguishment of all claims of such people in respect of the promised provision of land. By later

¹² Waitangi Tribunal, *The Ngai Tahu Report*, Volume II, pp 640-641

¹³ Wanhalla, *In/visible Sight*, p 101

¹⁴ Waitangi Tribunal, *Claim assessment for the Standing Panel: The Geary Whānau Middle Island Half-castes Crown Grants Act 1877 Lands Claim (Wai 2324)*, July 2022, Supporting documents (Wai 2800, #6.2.2(a)), p 1060

amendments various errors and omissions were corrected, the last being in 1888.¹⁵

21. Grants were awarded to ‘half-castes’ only, with restrictions preventing alienation without approval from the Native Land Court, which had to be persuaded the ‘natives possessed other lands’ conducive to their maintenance. These restrictions sought to ensure ‘half-caste’ sellers would not become dependent on the state.¹⁶
22. Angela Wanhalla notes that numerous petitions and pressure from Ngāi Tahu leaders resulted in the Middle Island Half-Caste Crown Grants Act 1877, to provide South Island ‘half-castes’ with an economic base, while also adhering to promises made under the Rakiura Purchase.¹⁷
23. Mackay also commented that the Middle Island Half-Caste Crown Grants Act 1877 was to provide for ‘half-castes’ who were not born on Stewart Island, but were equally entitled to land because of their mixed descent heritage.¹⁸ MacKay further reported to the Under Secretary of the Native Department that he was “in the South to collate a return of the half-caste families to be provided with land in fulfilment of promises made on the cession of native territory to the Crown within the boundaries of the Ngaitahu, Motutuku and Stewart’s Island purchases”.¹⁹ He specifically refers to blocks outside of Murihiku.
24. The colonial government was also concerned by the uncertainty of ‘half-castes’ loyalty and cultural values. In 1856, a board of inquiry

¹⁵ Waitangi Tribunal, *The Ngai Tahu Report*, Volume II, p 641

¹⁶ Wanhalla, *In/visible Sight*, pp 103-104

¹⁷ Wanhalla, *In/visible Sight*, p 103

¹⁸ Wanhalla, *In/visible Sight*, pp 103-104

¹⁹ Waitangi Tribunal, *Claim assessment for the Standing Panel: The Geary Whānau Middle Island Half-castes Crown Grants Act 1877 Lands Claim (Wai 2324)*, July 2022, Supporting documents (Wai 2800, #6.2.2(a)), p 1058

was appointed to investigate the state of native affairs and recommended that land rights, often in the form of trusteeship arrangements, should be prioritised to secure the loyalty of mixed-descent children to the Crown.²⁰

25. The Claimants do not believe that because their tūpuna resided outside of the Murihiku Block at the time of purchase that they should not have received their grant of land, as the claim assessment indicates.
26. The Claimants submit that all half-castes, whether they had resided in Murihiku, Canterbury, Otago or anywhere throughout the South Island were included in the Middle Island Half-Caste Crown Grants Act 1877. The Crown wanted to ensure half-caste loyalty, that they would not be dependant on the state, to fulfil promises made during purchase of multiple blocks – not just Murihiku, and to cease the petitions from Māori on this issue.
27. John Geary, William Geary, and Thomas Geary were accurately listed in Appendix B of the 1877 Act as they lived in the provincial district of Otago and should have received Crown grants in Otago.
28. Professor James McAloon was correct when he made reference to the Geary Whānau tūpuna being born in Otago.²¹ However, they did not reside at Taieri in 1853 as stated. John, William and Thomas Geary resided at Otago Heads in 1874.²² It is essential to note that Prof McAloon was discussing Murihiku block and those that were eligible to receive a grant under the 1877 Act based on the purchase of Murihiku. However, the 1877 Act applied to land purchased by the

²⁰ Wanhalla, *In/visible Sight*, pp 90-92

²¹ McAloon, *Murihiku Block* (Wai 27, #E1), p 445.

²² Waitangi Tribunal, *Claim assessment for the Standing Panel: The Geary Whānau Middle Island Half-castes Crown Grants Act 1877 Lands Claim* (Wai 2324), July 2022 – Supporting documents (Wai 2800, #6.2.2(a)), p 1044

Crown throughout the South Island, not just Murihiku. The Otakou land block purchased by the Crown resulted in the Geary Whanau eligibility under the 1877 Act.

29. The Claimants do not accept that John, William and Thomas Geary were left off subsequent amendments to the 1877 Act because they were incorrectly added in the first place. They lived on the Otakou block and were not provided for in the created Native reserves. The Crown, after purchasing the land they lived on, was required to provide them with sufficient land for their present and future needs.
30. The Claimants submit that eligibility was not the reason why their tupuna did not receive their Crown grant under the 1877 Act. The Claimants suspect many issues led to their tupuna not receiving their grants.
31. In 1878, for example, the Otago Land Board refused Mackay's application to have certain waste land set aside for mixed-descent families, despite the application already having the support of the Commissioner of Crown Lands.²³ The local authorities were unwilling and uncooperative when MacKay sought to establish the reserves. A clear show of discrimination by the Land Boards.
32. The Claimants tupuna were not the only grantees that did not receive their grants. In 1891, over 100 grantees had been granted 522 acres under the Half caste Grants Acts, but did not receive any land.²⁴ David Alexander's report on the History of Kemp Block Reserves

²³ Wanhalla, *In/visible Sight*, p 104

²⁴ McAloon, *Murihiku Block* (Wai 27, #E1), pp 60-62

demonstrates that land withdrawn from sale to satisfy half-caste claims was not actually allocated for this purpose.²⁵

33. The Claimants submit that the claim assessment highlights the need for further gap-filling research on this issue.

Did the Claimants have to whakapapa to Ngai Tahu?

34. The claim assessment states that it is possible that the Geary whanau did not receive the grants prescribed by the 1877 Act because, as recorded, Crown officials believed the claimants' tūpuna 'Belong[ed] to North Island'.²⁶

35. The Claimants acknowledge that the Geary brothers' did not whakapapa to Ngai Tahu and they did not have seller rights, they were not a party to the Otakou land block sale. They were of Ngā Mahanga descent of Taranaki. However, the Geary Whānau tūpuna were born in Otago and resided at Otago Heads.²⁷ Claimant evidence will provide further detail on how the three brothers' are buried at the Portobello Cemetery having all passed away between 1923 and 1930.

36. The Claimants submit that the Geary brothers' were correctly included and should have been provided for under the 1877 Act.

37. Under the Middle Island Half-caste Crown Grants Act 1877, the grants were for "half-caste families".²⁸ It is the Claimants submission that all half-castes living in the South Island, whether they were Ngai

²⁵ Alexander, *History of Kemp Block Reserves* (Wai 27, #05) p 147

²⁶ Waitangi Tribunal, *Claim assessment for the Standing Panel: The Geary Whānau Middle Island Half-castes Crown Grants Act 1877 Lands Claim* (Wai 2324), July 2022 (Wai 2800, #6.2.2), p 19

²⁷ Waitangi Tribunal, *Claim assessment for the Standing Panel: The Geary Whānau Middle Island Half-castes Crown Grants Act 1877 Lands Claim* (Wai 2324), July 2022 – Supporting documents (Wai 2800, #6.2.2(a)), p 1044

²⁸ Middle Island Half-caste Crown Grants Act 1877, s2

Tahu or not were included in the Middle Island Half-Caste Crown Grants Act 1877.

38. The Crown wanted to ensure half-caste loyalty, that they would not be dependant on the state, to fulfil promises made at the time of purchase to provide for Māori living on the block and to cease the petitions from Māori on this issue. The Crown did not require the grantees to be of Ngai Tahu descent.
39. Mr Kemp, the Crown Purchase Officer stated, “in reference to that part of the deed which refers to the setting apart of further reserves by the Government, I think that the impression on my mind, and on the mind of the Natives made at the time, was that the provision hereafter to be made was one which was to be carried out in a liberal spirit, and in such proportions as to met the wants and provide for the general welfare of the Natives resident at the different settlements at the time the purchase was made.”²⁹
40. Kemp makes it clear that the reserves were to provide for those resident on the block at the time of sale. As the Geary brothers’ were resident in the Otakou block at the time of sale they would be eligible for the grants under the 1877 Act.
41. The political and cultural conditions at the time resulted in mixed descent children living in a middle ground between the Māori and Pakeha world. Some were shunned from the Māori world for being Pakeha while simultaneously being shunned by the Pakeha world for being Māori.³⁰ The Crown Officials identified that a separate provision

²⁹ Waitangi Tribunal, *Claim assessment for the Standing Panel: The Geary Whānau Middle Island Half-castes Crown Grants Act 1877 Lands Claim (Wai 2324)*, July 2022 – Supporting documents (Wai 2800, #6.2.2(a)), p 1070

³⁰ Waitangi Tribunal, *Claim assessment for the Standing Panel: The Geary Whānau Middle Island Half-castes Crown Grants Act 1877 Lands Claim (Wai 2324)*, July 2022 – Supporting documents (Wai 2800, #6.2.2(a)), p 1278

for half-castes was required. Those considered Māori sellers were provided with reserves set aside after the purchase of the block. However, nothing was provided for half-castes living in the area. After many petitions by Ngai Tahu leaders for half-castes living within their rohe and Pakeha fathers for their half-caste children, the 1877 Act was drafted in answer to their concerns.³¹ This group of half-castes were united in one group together, whether they were half-caste Ngai Tahu or other iwi.

42. Under tikanga John, William, and Thomas Geary were living within the rohe of Ngai Tahu, under the manawhenua of Ngai Tahu, exercising their customary interests. These customary interests were lesser than seller rights, but provided for the continuation of activities and practices the Geary brothers' exercised.
43. We submit that the Ngai Tahu sellers received Native Reserves to provide for their present and future needs, in accordance with their rights as sellers. The half-caste members of the population were not included in the Native Reserves and had to be provided for in some other way. The 1877 Act addressed this issue. Consequently, the Geary brothers', as half-caste residents were granted 10 acres each per man in recognition of the interests they lost when the Otakou block was purchased and to provide for their present and future needs, along with the other half-castes resident on the block, under the 1877 Act.
44. MacKay reported to the Secretary for the Crown in June 1875 that the Geary brothers' were half-castes residing outside the Ngaitahu and Murihiku blocks at the date of those purchase and subsequently,

³¹ Waitangi Tribunal, *Claim assessment for the Standing Panel: The Geary Whānau Middle Island Half-castes Crown Grants Act 1877 Lands Claim (Wai 2324)*, July 2022 – Supporting documents (Wai 2800, #6.2.2(a)), p 1277

for whom provision should be made.³² Enclosure 2 in No. 15 identifies John, William and Thomas Geary as being born in Otago and resident in Otago Heads at 1874.³³ To be absolutely clear, after visiting settlements throughout the South Island and speaking with Māori, Native Reserves Commissioner/Native Minister Alexander MacKay recommended that John Geary, William Geary, and Thomas Geary should be provided for.

45. The Claimants do not accept that John, William and Thomas Geary were left off subsequent amendments to the 1877 Act because they were incorrectly added in the first place. They were half-caste and were not provided for in the created Native reserves. The Crown, after purchasing the land they lived on, was required to provide them with sufficient land for their present and future needs.
46. John Geary, William Geary, and Thomas Geary were correctly listed in Appendix B of the 1877 Act as they were half-caste living in the provincial district of Otago and should have received Crown grants in Otago.

Is further research required?

47. The claim assessment concluded by summarising that the Geary Whānau claim issues appear to be sufficiently addressed by existing primary and secondary sources.
48. No primary research was conducted specifically on the Wai 2324 claim. The Claimants seek targeted gap-filling research to be

³² Waitangi Tribunal, *Claim assessment for the Standing Panel: The Geary Whānau Middle Island Half-castes Crown Grants Act 1877 Lands Claim (Wai 2324)*, July 2022 – Supporting documents (Wai 2800, #6.2.2(a)), p 1045

³³ Waitangi Tribunal, *Claim assessment for the Standing Panel: The Geary Whānau Middle Island Half-castes Crown Grants Act 1877 Lands Claim (Wai 2324)*, July 2022 – Supporting documents (Wai 2800, #6.2.2(a)), p 1044

commissioned, particularly on the issues raised in the claim assessment.

49. The Claimants note that there is already a large amount of evidence provided.³⁴ However, there is nothing that specifically covers why the Geary brothers' were not included in subsequent amendments to the 1877 Act, whether being a descendant of a seller is a pre-requisite for being eligible for grants as a half-caste under the 1877 Act and as a result of this whether, under tikanga, customary interests besides those of owner were provided for by the Crown under the 1877 Act.

Conclusion

50. The Claimants submit that further research is required on the Wai 2324 claim.
51. They further submit that the 1877 Act is not limited to half-castes resident on the Murihiku block nor Ngai Tahu descendants.
52. Additionally, the Claimants concur with the Ngāi Tahu report that found the Middle Island Half-Caste Crown Grants Act 1877 breached Te Tiriti o Waitangi and its principles.

DATED this 18th day of October 2022



Eve Rongo

Claimant Counsel

³⁴ See Waitangi Tribunal, *Claim assessment for the Standing Panel: The Geary Whānau Middle Island Half-castes Crown Grants Act 1877 Lands Claim (Wai 2324)*, July 2022, Supporting documents (Wai 2800, #6.2.2(a))