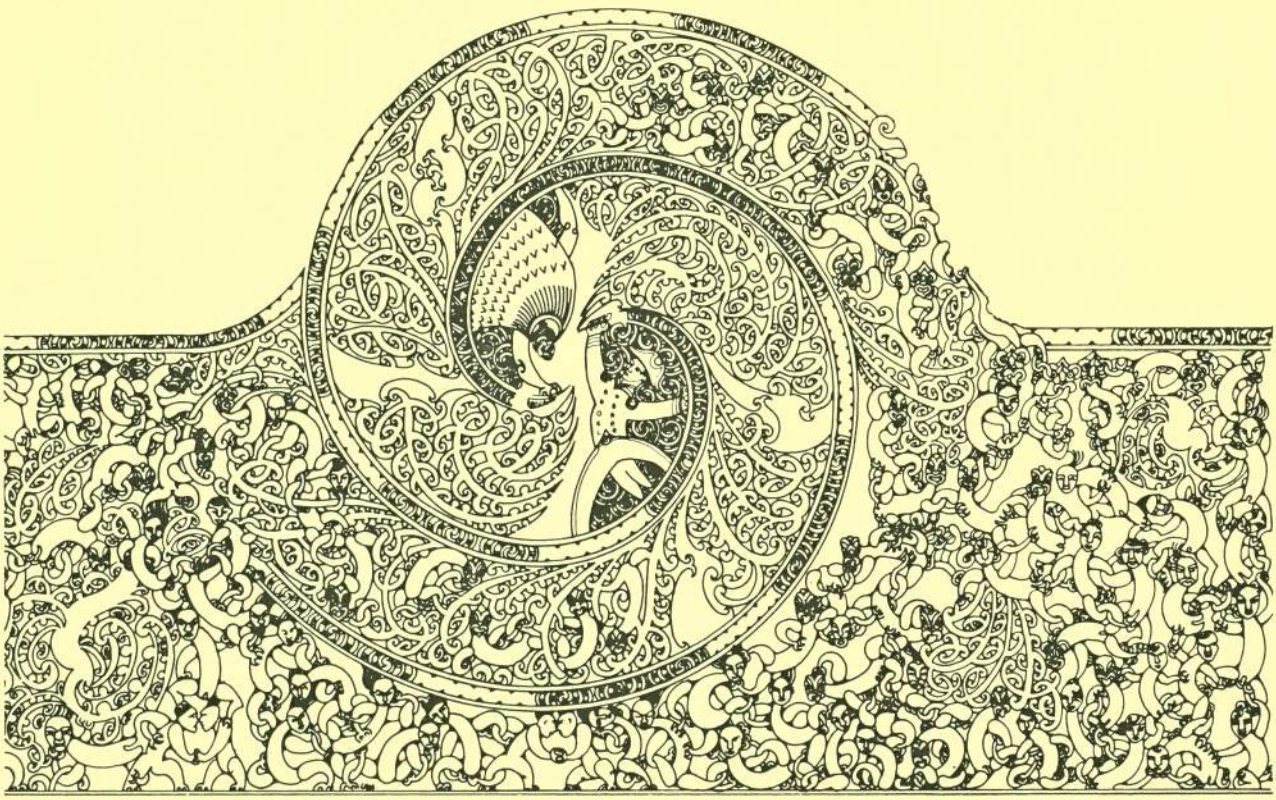
THE NGAI TAHU ANCILLARY CLAIMS REPORT 1995



WAITANGI TRIBUNAL REPORT 1995

THE NGAI TAHU ANCILLARY CLAIMS REPORT 1995

WAI 27

WAITANGI TRIBUNAL REPORT 1995

GP PUBLICATIONS

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

ISBN 0-86472-188-9

First published 1995
Reprinted 1997
Edited and produced by the Waitangi Tribunal
Published by GP Publications, Wellington, New Zealand
Printed by GP Print, Wellington, New Zealand
Set in Times New Roman

Waiata

Ka hoki tonu mai au
Ki a koe Ngai Tahu
Ki te whakarongorongo
Ki te wherawhera
I o Poutini Pounamu

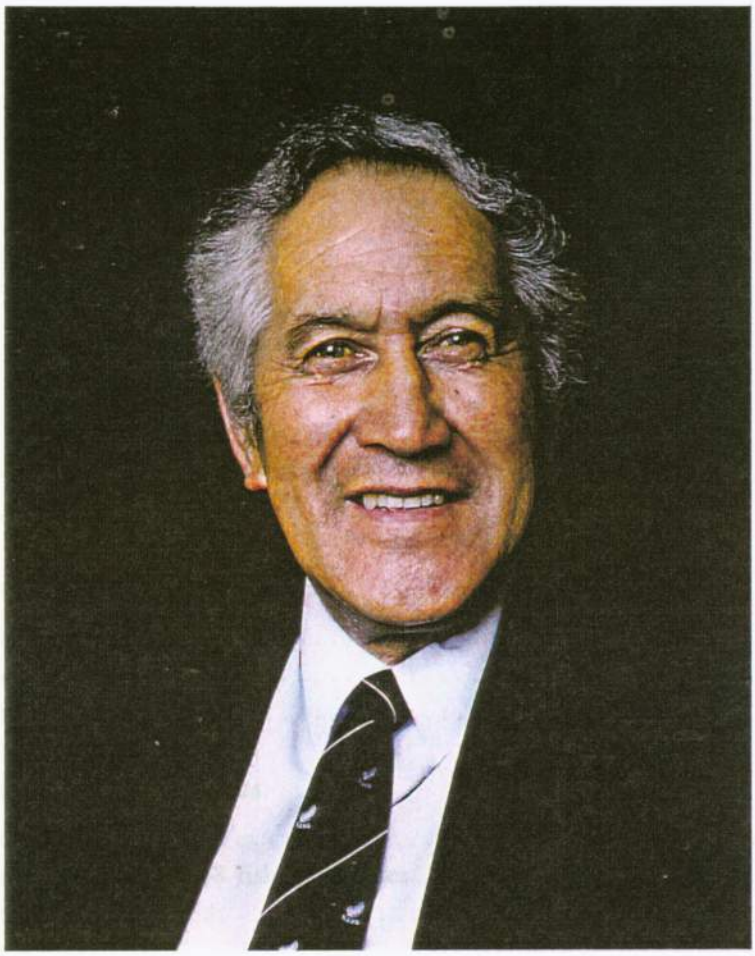
Kua hahaea te ata
I runga o Rekohu
Tirotiro noa ana
Poua ma
Ka ngaro koutou i runga
I o Otautahi

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 korerorero
Te kupu Tapu
Mo tenei ra



Sir Monita Delamere KBE
17 June 1921 - 28 April 1993

Tihei maui ora!

Te tangata i whanau i te wahine
he toru, toru nei ona ra,
a ki tonu i te rarurarU,
rere ana ia ano he atairangi kahore hoki te tumautanga,
i waenganui o te ora kei te mate matau,
me rapu ora matau i a wai ki te kahore i a koe, E Ihowa.
A ka rongo ahau i tetahi reo i te rangi e mea mai ana, Tuhituhia ka hari te hunga mate,
e mate ana i roto i te Ariki kia oki ratau i a ratau mahi.

No reira, Tumatauenga,
takoto mai, takoto mai me ratau katoa
i hinga atu i te pae o te riri,
haere, haere ki a ratua e takoto mai na i te whenua Iwi ke.

Kaore e mutu te tangi mo koutou.

No reira, kei to hoa,
kei te rangitira kei te pu o te hahi,
tenei matau o hoa o te Ropu Whakamana i te Tiriti o Waitangi te poroporoaki ano.
Tenei matau me te iwi whanau kei te tangi tonu.
Kapiti hono, tatai hono,
koutou te hunga mate ki a koutou - Kapiti hono tatai hono, tatau te hunga ora ki a tatau.

Moe mai e te Pononga a te Atua e mohio ana hoki tatau,
e hara i te mou mou o mauiuitanga i roto i te Ariki.

Contents

Chapter 3—*continued*

Chapter 4: Otakou Ancillary Claims

Chapter 5: Murihiku Ancillary Claims

Chapter 6: Rakiura Ancillary Claims

List of Maps and Diagrams

List of Abbreviations

AJHR	*Appendices to the Journals of the House of Representatives*
Compendium	A Mackay, *A Compendium of Official Documents Relating to Native Affairs in the South Island*, Nelson, 1872
DOC	Department of Conservation
HO	Head Office
DOSLI	Department of Survey and Land Information
L&S/LS	Lands and Survey
LRO	Land Registry Office
MB	Minute Book
MLC	Maori Land Court
NA	National Archives
NZPD	*New Zealand Parliamentary Debates*
SIMB	South Island Minute Book
SO	Survey Office

References in brackets refer to documents contained in the Wai 27 Record of Documents, for example, (AB24:12) refers to page 12 of document AB24.

The Honourable Minister of Maori Affairs
Parliament Buildings
WELLINGTON

Te Minita Maori

Tihei mauriora!
Karanga te pou whenua
Karanga te pou marae
Karanga te pou tangata
E nga mana, E nga reo,
Tena koutou, tena koutou, tena koutou

Tena koe te Minita mo nga take Maori

We present to you the Tribunal's report on Ngai Tahu ancillary claims. It is the third major report of this Tribunal on Ngai Tahu grievances and follows on the land and mahinga kai reports handed to your predecessor in office on 1 February 1991 and the second sea fisheries report presented on 6 August 1992. This report examines 100 ancillary claims brought to notice during the hearing of the earlier land and sea fisheries claims. The claims range over a wide range of subject-matters. For your convenience we have set out in the final chapter, and by way of an overview, certain general conclusions which can be drawn from the large number of separate claims. As a further aid we have grouped claims according to the region in which the grievance arose. The six regions are Kaikoura, Canterbury, Arahura, Otakou, Murihiku, and Rakiura. We have allotted separate chapters to each of these regions and in a seventh chapter have brought together grievances arising from various statutes and regulations.

We have also tabled in appendix 1, by way of a summary, details of each claim, the Tribunal's finding on each claim, and brief particulars or recommendations where these were considered appropriate.

This report concludes the investigation and determination process but still leaves at large the question of compensatory remedies. At the commencement of the land and mahinga kai claim we were asked by both the Crown and the claimants to make findings on the issues and determine whether there had been any breaches of Treaty principles. We were asked to defer the question of remedies so that the parties could negotiate a settlement. The Tribunal did, however, reserve the right to rehear this question if the parties could not agree. Regrettably, as this report goes to print, it would appear that there has been a breakdown in negotiations and a request that the Tribunal reconvene has been filed by the claimants.

It would have been satisfying to the parties and indeed to the Tribunal itself if all the hard work that has been put into the investigation and determination process could have resulted in a successful settlement between the claimants and the Crown. It is certainly not too late to achieve such a settlement, and the Tribunal, without shirking from its duty to complete its statutory task, would again earnestly request the parties to try again.

It has been a long haul for the Wai 27 Tribunal and those appearing before it and we would all be greatly pleased to reach the functus officio point.

Heoi ano

Acknowledgements

This report marks the end of the Tribunal's inquiry process, although it may not end the Tribunal's involvement in remedies. It is therefore appropriate for the presiding officer to record his gratitude to a number of people who have helped so much over the eight-year period that this large claim has been running. The Tribunal has acknowledged elsewhere its appreciation of the work of persons outside the Tribunal, so this thank you is directed to the large team of researchers, committee clerks, and production and administration staff within the Tribunal who have contributed to these comprehensive reports, which will live on as a taonga of Ngai Tahu and a valuable resource of the nation. There is a danger when naming persons of leaving somebody out but that risk is taken because, as years pass, those associated with this Tribunal inquiry, and their families also, may find some pride and interest in looking back at their work in this period and on the Ngai Tahu claim.

As a general acknowledgement I therefore thank the director, Buddy Mikaere, and all the staff of the Tribunal who have in any way participated in Wai 27. In a more particular way, my Wai 27 Tribunal thank the following persons for their expertise in their particular fields, which is reflected in the quality of the result. For example, Noel Harris, mapping officer, has enlivened and clarified the chapters with his maps and diagrams, Rose Daamen laid the foundation of the ancillary claims inquiry in her clear initiating document L32, and Jane Luiten and Paul Hamer showed exceptional research and analytical skills in their investigation of the ancillary claims. I could go on through all the names but I will summarise simply by thanking them all for their high standards and their support.

Researchers: Michael Belgrave, Alan Ward, George Habib, Peter Tremewan, Jane McRae, Rosemary Daamen, Deborah Montgomerie, Jenny Murray, Jane Luiten, Clare Taylor, Paul Husbands, Kate Riddell, Paul Hamer, Sian Daly, Suzanne Woodley, Neville Gilmore

Committee clerks: Steve Gracie, Lori Paul, Hine Henry, Tony Tumoana, Lynette Fussell, Jeanette Henry, Hemi Pou, Moana Murray

Interpreter: Lena Manuel

Typing/production: Jenny Cassie, the late Craig Southern, Janice Keepa, Mata Fuala'au, Noel Harris (mapping officer), Mark Larsen

Editing: Dominic Hurley

Preface

At the first hearing of the Ngai Tahu Wai 27 claim on 17 August 1987, counsel for the claimants explained that Henare Rakithia Tau and the Ngai Tahu Maori Trust Board would be principally concerned with the presentation of grievances under nine groupings. The 'Nine Tall Trees of Ngai Tahu' comprised grievances relating to the eight regional purchases of Ngai Tahu territory undertaken by the Crown from 1844 to 1864. The ninth tall tree was mahinga kai. These grievances were largely directed at the Crown's failure to keep its promises: its failure to exclude from the sale the lands and mahinga kai sought by the tribe and its failure to provide the health, educational, and land endowments needed to give the tribe a stake in the developing economy. In all, there were 73 wrongful Crown acts or omissions — the 'branches' of the nine tall trees — alleged by Ngai Tahu to be inconsistent with the principles of the Treaty of Waitangi. The *Ngai Tahu Report 1991*, the Tribunal's report on the nine tall trees, was banded to the Minister of Maori affairs on 1 February 1991. Since then the Tribunal bas also reported on Ngai Tahu sea fisheries.

In addition to the 73 grievances set out in the statement of claim, many matters of grievance to the tribe were raised verbally or in written form by members of Ngai Tahu as the Tribunal moved around Te Wai Pounamu between 1987 and 1989. These concerns of the tangata whenua, more than 100 in total, fall under the canopy of the main Ngai Tahu claim and have generally been referred to as 'undergrowth' or 'ancillary' claims. It is these claims which form the substance of this present report.

The ancillary claims cover a wide range of issues from the compulsory acquisition of Ngai Tahu land for public purposes to the lack of protection afforded to Maori land under Manri land legislation and other statutes. Many of the matters have already been dealt with by the Tribunal in its previous two reports on Ngai Tahu's claims, or in other Tribunal reports. Since the grievances were voiced, there bave been numerous changes whicb have a direct bearing on the claims. Legislative reforms pertaining to town planning, resource management, conservation, and Maori land administration would appear to have answered some of the concerns raised in these claims. There bas also been a marked change in the attitude of the Government and its agencies as a result of earlier reports of this Tribunal and the wider public acceptance of the validity of grievance claims.

The inquiry into Ngai Tahu's claim was an extensive one. Over a period of 3½ years, 23 bearings were conducted. The Tribunal received 900 submissions and beard from 262 witnesses and 25 corporate bodies. However, to a great extent the 'undergrowth' was overshadowed by the larger 'branches'. In order to deal with the substantive grievances of the principal claim, there was little or no detailed evidence presented by the Wai 27 claimants in respect of each ancillary grievance. Understandably, the people who brought the matters to notice invariably had little supporting documentation. Most of the claims were investigated to some extent by the Crown, and this research, together with supplementary work by Tribunal staff, forms the basis of the present report. As the investigation of the ancillary claims was restricted by the sheer size of Ngai Tahu's claim, so too was the discussion on the issues whicb the claims raised. Large and complex in themselves, these were also dwarfed by the size of the main claim. In view of this fact, the Tribunal has refrained from making any findings on issues on wbicb no argument by the parties has been beard.

The following report, then, is an account of events behind each grievance and the Tribunal's conclusions on those events. In many ways this report serves as a sequel to the 1991 main report. In 1991 the Tribunal concluded that many of the claimants' grievances arising from the eight Crown purchases, including those relating to mahinga kai, were established. Indeed, the Crown properly conceded that it had failed to ensure that Ngai Tahu were left with ample lands for their present and future needs. The Tribunal found that, in acquiring from the tribe 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 established that subsequent efforts by the Crown to make good Ngai Tahu's loss were few, extremely dilatory, and largely ineffectual.

Investigation into the ancillary grievances voiced by the people of Ngai Tahu reveals that the parlous condition in which the tribe was left as a result of the Crown purchases has only intensified. Falling well short of a definitive history of matters affecting the tribe since the purchase of their land, the summaries of each claim none the less provide a significant and telling insight into the subsequent circumstances befalling the tribe. The 'hopelessly inadequate' lands excluded from the Crown purchases as tribal endowments have been reduced even further through the processes of alienation, including the compulsory acquisition of these lands for public purposes. Substantial areas of land supposedly set aside for landless Ngai Tahu have never been granted. For a number of reasons which this ancillary report discloses, Ngai Tahu are considerably more landless today than the *Ngai Tahu Report 1991* detailed.

In view of the rather inconclusive manner in which the ancillary claims were presented to the Tribunal as it travelled around Te Wai Pounamu hearing the substantive land and fishing claims, it was decided to prepare a draft report and circulate it for discussion. This was done and the interim report was released on 8 July 1993. The Tribunal gave two reasons for the procedure. Firstly, it wanted to give the parties a more adequate opportunity to research and make submissions. Secondly, it wanted to provide Ngai Tahu and the Crown with some indication of the nature and extent of the ancillary claims so that these claims and the Tribunal's findings thereon could be taken into account during claims settlement negotiations. A closing date of 31 October 1993 was fixed for submissions to be filed but was then extended, first to 28 February 1994 and then to 30 June 1994. The draft report awakened not only the interest of the 117 ancillary claimants but also the concerns of other Maori individuals and Maori groups, as well as several territorial authorities. In order to ensure that an opportunity was given to all interested persons to present their views, the Tribunal directed service of the draft report on 27 runanga. Major submissions and responses were filed by Ngai Tahu and the Crown. The record of documents for Wai 27 claims is updated and appended hereto and lists the names of those persons and bodies that made submissions. The additional submissions received were directed to 58 of the 100 reported claims and required further research by the Tribunal. Further extensions of time were given virtually up to the completion of this report so that the Tribunal could consider whether its original findings were correct. The new material applied has certainly been most helpful in removing inaccuracies and in filling out in more detail the background to the claims. As will be noted in the final overview chapter, there have been several legislative changes which have impacted on the Tribunal's findings and have been taken into account, such as the Treaty of Waitangi Amendment Act 1993 and Te Ture Whenua Maori Act 1993. There have also been Government policy statements on public works, conservation, and perpetual leases which have a bearing on a number of these ancillary claims, requiring a reappraisal by the Tribunal.

This third report marks the completion of the Tribunal's inquiry into the Ngai Tahu claim. The following claims are dealt with on a regional basis, with a section also on legislative and other claims. We draw attention to the fact that the schedule of ancillary claims has been substantially amended from that published in appendix 5 of the *Ngai Tahu Report 1991*. This has been necessary on closer consideration of the claims. The number of reported ancillary claims therefore now stands at 100, with a further 17 matters on which, for the reasons given, the Tribunal has not commented. While it can be assumed that most matters of concern to the tribe will now have been dealt with, this is not to say that other claims may not subsequently be received. Indeed, one such claim already exists, registered as Wai 348, concerning the laying of railway through the Purakaunui reserve near Otakou, which will no doubt be considered by a future Tribunal.

We turn, then, to the consideration of the ancillary claims in the Kaikoura region.

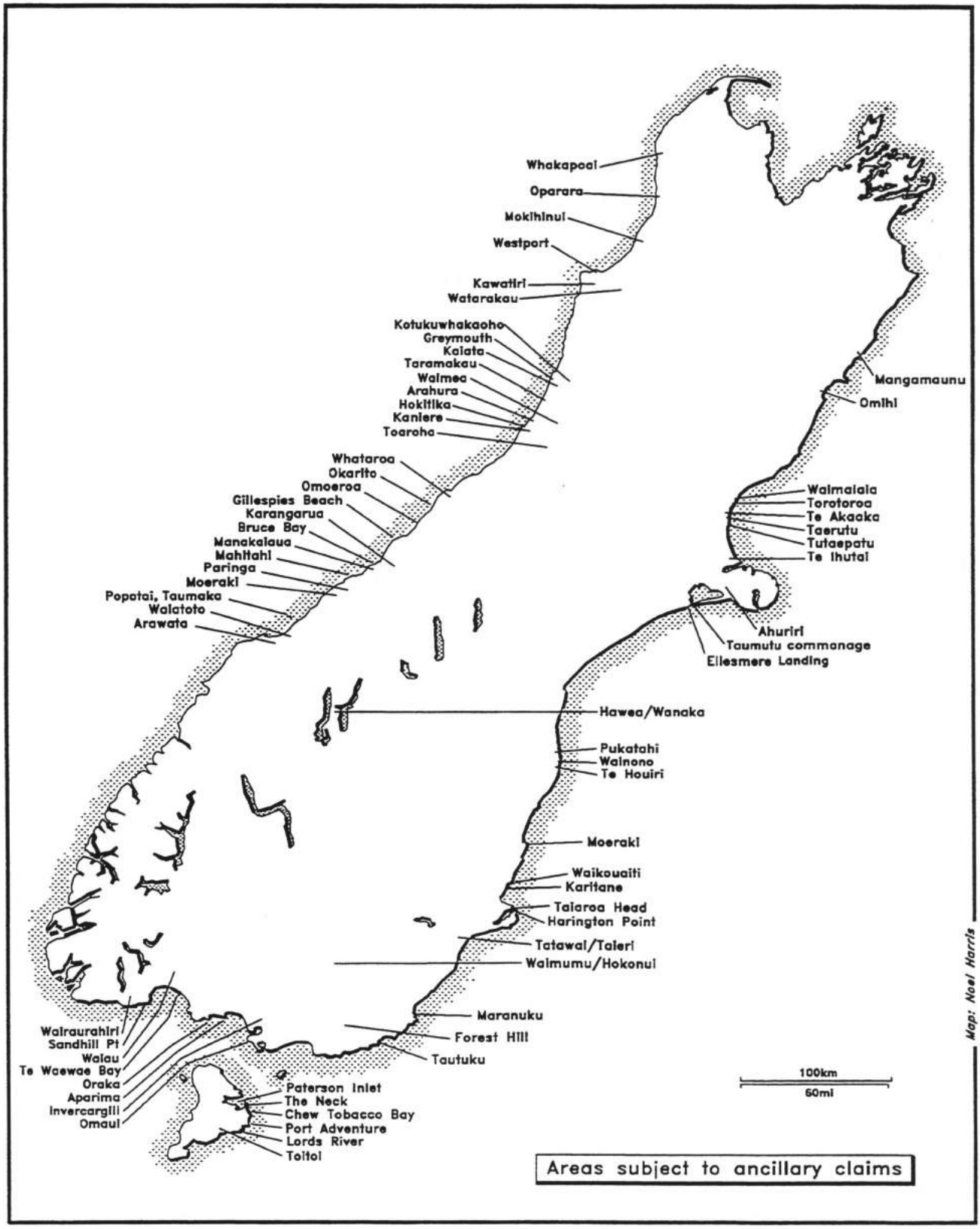


Figure 1: Areas subject to ancillary claims

Chapter 1

Kaikoura Ancillary Claims

1.1 Almost nowhere in the area under claim by Ngai Tahu in Te Wai Pounamu was the failure of the Crown to provide adequate reserves for the tribe as a consequence of land purchases so dramatic as in north Canterbury and Kaikoura. As explained in the *Ngai Tahu Report 1991*, James Mackay, who negotiated the purchase for the Crown, was instructed to provide a very limited acreage for the tribe. By 1859, when the purchase took place, the whole area was already covered with pastoral runs of considerable size, a fact which was acknowledged by Mackay and used by him as a reason for denying Ngai Tahu a large tract of land that they wished to retain.

Mackay created 14 separate reserves between February and May 1859 with an estimated area of 5566 acres 1 rood 28 perches. Although the reserves were not referred to in the deed of purchase, representatives of Ngai Tahu signed a memorandum on 29 March 1859 which listed the areas of land 'reserved permanently for us, and for our heirs and relatives', or, in the Maori version, 'e whenua pumau mo matou, mo o matou uri, mo o matou whanaunga'. This tribal endowment, then, represented less than 0.5 percent of the Crown purchase, despite Ngai Tahu requests that the reserves should cover a much larger area.

The following complaints were raised by Ngai Tahu before the Tribunal at Tuahiwi during the first week of hearings. The Tribunal visited the reserves in September 1987, accompanied by Ngati Kuri and counsel. The grievances principally concern the Crown's subsequent acquisitions of land for roading, railway, and scenery preservation purposes from the little that Ngai Tahu were awarded. Helpful research was undertaken, and submissions presented, by Crown witness David Alexander.

1.2 Claim no: **1**
Claim area: **Waiharakeke J and Omihi K**
Claimant: **Te Wharetutu Stirling (A18), Trevor Howse (A12)**

Mrs Te Wharetutu Stirling of Ngati Kuri referred to the reserves located between the Kahutara and Oaro Rivers. Mrs Stirling and Trevor Howse claimed that:

- **the Crown acquired the reserves, in collusion with Pakeha squatters, for scenic purposes without the knowledge of the Maori owners;**
- **only Maori land, as little as the reserves were, was taken for this purpose; and**

- **the reserves so taken are now used for holiday grounds, or have been sold into private ownership, despite Maori protests.**

In addition, Mr Howse claimed that Ngai Tahu never received the land at Haututu in exchange for the loss of the Waiharakeke and Omihi reserves.

1.2.1 Five reserves were made by James Mackay for Ngati Kuri between the Kahutara and Oaro Rivers. They are Kiekie H (one acre), Whakauae I (19 acres), Waiharakeke J (12 acres), Omihi K (six acres), and Haututu L (74 acres). It is not proposed to deal with all of these reserves in the following narrative, as the claimants' grievances pertain only to Waiharakeke J, section 2 of Omihi K, and Haututu L.

The Waiharakeke and Omihi reserves

Twelve acres were set aside by Mackay at Waiharakeke in 1859. This reserve came to be known as Waiharakeke J. It is said that Ngai Tahu collected flax from the swampy land here. Further south, at Omihi, six acres were marked off as Omihi K. This was the site of Omihi pa, a place of close Ngai Tahu settlement until Te Rauparaha's raid in the 1830s. In his history of the Kaikoura coast, W J Elvy records that at least 500 people lie buried here.[1] The six acres set aside by Mackay did not encompass the whole of the pa site, but rather the extent of occupation as at 1859 (M12:70). His plan of the reserve shows a house, a boathouse, a garden, and the site of graves.[2] On survey in 1899, the areas of Waiharakeke J and Omihi K were found to be 12 acres 16 perches and 7 acres 15 perches respectively (M13A:14–15).[3]

Ownership of the reserves was determined by the Native Land Court at Kaikoura in July 1890. Hoani Te Whanikau Tapiha, also known as Jack Tumaru, played a significant role in these proceedings, giving evidence as to entitlement to the different Kaikoura reserves. With regard to Waiharakeke J, he stated that 'Ropata and Tumaru' (who were both then deceased) were the original owners and that Tumaru had been the sole owner of Omihi K (M13:26–27).[4] Court orders were made to this effect, with a slight amendment in that a quarter-acre section was reserved from Omihi K as an urupa, for which four trustees were appointed (M13:30, 40).[5]

On 22 July 1890 Ropata's interest in Waiharakeke J was succeeded to by five of his grandchildren. Tumaru's interest in the same was succeeded to by Tapiha and his sister, Tini Korehe Reu Takarua, in equal shares (M13:192).[6] Tapiha and Korehe also succeeded Tumaru's interest in Omihi K.

The request for an exchange

1.2.2 On 4 June 1896 Tapiha wrote to the district surveyor, F Stephenson Smith, requesting a consolidation of his land at Haututu, a 74-acre reserve he shared with Korehe:

> bring all my acres of ground to the one block, to Haututu, the 12 acres at Waiharakeke, & 3 acres from Omihi, & leave 3 acre for the (urupa) & landing place, all the others to Haututu. (M13:158)[7]

This was not the first time that Tapiha had comported himself as though he were the sole proprietor of the reserves. In 1889 a lease arranged by Tapiha had been stopped by Judge Mackay because the judge was aware that others shared an interest in the reserves (AB20:67).[8] In legal terms, Tapiha had only a one-quarter interest in the 12 acres at Waiharakeke J and a one-half interest in Omihi K. The interests of the other owners were overlooked by the Crown throughout the subsequent exchange negotiations.

According to David Alexander, Tapiha's request for the exchange was timely. The late 1890s marked the start of agricultural development along the coast as the large Crown pastoral runs behind the reserves were cut up for closer settlement (M12:59). The coastal road from the Kahutara River to the Oaro River and then inland was constructed as a special Government scheme in the late 1890s. On forwarding Tapiha's request, Stephenson Smith commented that the exchange would be 'in the interest of settlement'. However, he cautioned that Ngai Tahu should not be allowed to monopolise the landing place at Omihi (M13:157).[9]

The exchange was subsequently arranged by the Surveyor-General, S Percy Smith (Stephenson Smith's brother), himself, while on a visit to Kaikoura. In 1898 a 15-acre section was surveyed behind the Haututu reserve by Stephenson Smith (AB20:75).[10] In November 1898 Tapiha again wrote to the Surveyor-General to inquire whether a piece of land contiguous to the Haututu reserve was available for their use (M13:159).[11] However, the legalities of the exchange could not be finalised because there was no legislative sanction to effect the exchange (AB32:2–3).[12]

Mr Alexander stated that at this early stage in the exchange dealings the Crown had merely acted to facilitate the consolidation wishes of a Maori owner (M12:58). However, it is arguable that Stephenson Smith, the district surveyor at the time, had a major impact on the direction in which the exchange evolved and that his principal concern was settlement and development. Stephenson Smith's admonition that Ngai Tahu should not be allowed to monopolise the landing place at Omihi is cited as evidence of this. Questions arose over the allocation of further land behind the Haututu reserve. The Surveyor-General had arranged the laying off of the 15 acres at Haututu 'directly to the north of the north bank of the Owaru [River]'. When this instruction was not followed by Stephenson Smith, he was asked (twice) to explain his actions. He defended himself thus:

> The 15 acres was put at the back of Reserve 'L' at the request of the Natives. Please accept my assurance that I did not either wish to put them back there or had I anything at all to do with the exchange. . . . I have no personal interest in the matter at all, and I most strongly deny the apparent implication in your memo that I am attempting to push the Natives back from the frontage or take any unfair advantage of them in any way. (AB20:20)[13]

Whether Stephenson Smith put the interests of 'settlement' over and above those of Ngai Tahu can only be speculative. The Crown went to some lengths to satisfy itself that Stephenson Smith had located the 15 acres where Tapiha desired (AB32:4–6).[14] There is no subsequent record of dissatisfaction about the situation of the Haututu allocation. From 1903 Tapiha's family leased the land for one pound per year. It is important, however, to keep the question in mind as Stephenson Smith played a major part in the subsequent exchange arrangements in his role as Commissioner of Crown Lands Blenheim.

In August 1904 Omihi K was partitioned by the Native Land Court. The southern portion, Omihi K2 (3 acres 2 roods 7.5 perches), was awarded to Tapiha, the northern equivalent to Korehe (M13:186a).[15] The provision for the cemetery was overlooked, but was subsequently laid out to comprise a slice of 2 roods 23.5 perches between the two partitions. On Tapiha's death, his interests in the reserves were succeeded to by Teone Tapiha Pitini (Beaton), at that time still a minor. His father, John Beaton Morera, was appointed trustee.

The drive for scenery preservation

1.2.3 Hand in hand with the increasing agricultural development on the Kaikoura coast came the devastation of the ecological environment. In 1903 the Scenery Preservation Act was passed, giving recognition to a growing awareness of the need to protect New Zealand's natural qualities. The Department of Lands and Survey and the Scenery Preservation Commission were responsible for the promotion of the legislation and land was taken in the Kaikoura district to provide a scenic backdrop to the coastal road.

The department's interest in Ngai Tahu's coastal reserves being taken for scenery purposes was fanned by Francis Auchinleck, a local Pakeha resident and a staunch champion of the preservation of native bush. He had an informal leasing arrangement with Tapiha for a portion of Omihi K for a number of years and had built a cottage on the reserve. In September 1905 he informed the Scenery Preservation Commission of the 'indiscriminate cutting of bush' occurring on Waiharakeke J (M13:164).[16] Auchinleck held a one-year lease of three acres of Waiharakeke J, the remainder being leased to George Beaton and Te Manu Pepene (Taylor), who had begun to fell the bush. Aware of the old exchange proposal, Auchinleck suggested that it be implemented in order to incorporate the Maori reserve into the existing scenic reserves along the Kaikoura to Cheviot road.

His suggestion was adopted by the commission, which recommended that Waiharakeke J be exchanged for the 15 acres behind Haututu (AB20:27).[17] Although the commission did not include Omihi in its recommendations, Percy Smith, now chairman of the commission, was aware that the exchange involved more than Waiharakeke (AB20:24–25). In November the lessees were told to suspend any felling on the reserve in view of the proposed exchange (M13:169).[18]

When Auchinleck's one-year lease ran out in October 1906, he again appealed to the Commissioner of Crown Lands Blenheim, the same Stephenson Smith, to have impending clearing operations stopped (M13:168).[19] The following February, stirred by the news that Taylor intended to resume

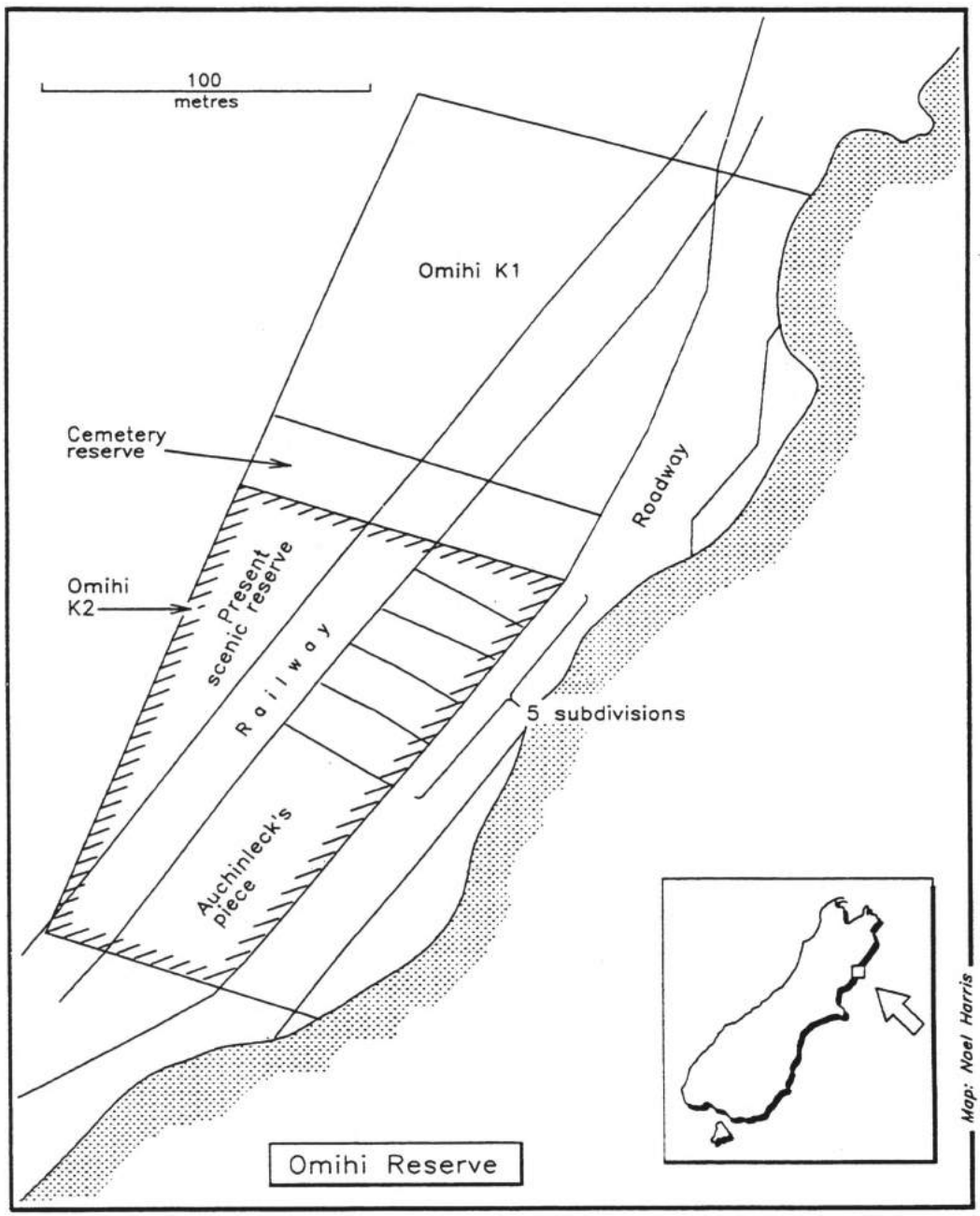


Figure 2: Omihi reserve

cutting, Auchinleck called on the commissioner to take firm action. His attitude toward Maori speaks for itself:

> Munu like all savages requires determined dealing with, leniency they misconstrue as impotency. A prompt decisive letter from the Department informing the man that any interference with the bush on the section will be followed by drastic measures will settle the thing for ever. (M13:171)[20]

Despite the fact that the exchange had not been effected and that Waiharakeke J was Maori land, Stephenson Smith took Auchinleck's advice. A letter was sent to Taylor giving notice that any person damaging the reserve or destroying the bush would be proceeded against at once (M13:172).[21] The basis of this decision was explained to Auchinleck in a letter of the same date:

> as the Natives are already in occupation of [the 15 acres at Haututu], I think I am justified in treating Native Reserve 'J' as Crown Land. (AB20:39)[22]

The commissioner's letter to Taylor confirms that the 2 acres 3 roods 24 perches of Tapiha's portion of Omihi was to be included in the deal. In his eagerness to complete the exchange, in July 1907 the commissioner sent the plans of the areas to be taken to the Under-Secretary for Lands for publication, even though the area of Omihi K2 to be taken had not yet been surveyed (M13:175).[23] At this stage the commissioner was still ignorant about the ownership of the reserves. Further delays lay in store, however; under the Scenery Preservation Amendment Act 1906, Maori land could not be taken for scenic reserves. Stephenson Smith was told by the under-secretary that it would now be necessary to wait until amending legislation was passed before the exchange could proceed (AB20:47).[24]

Protests about the exchange

1.2.4 In April 1907 Tini Korehe, the sole owner of Omihi K1 and the possessor of a quarter-share in Waiharakeke J, expressed her opposition to the Crown's acquisition of the reserves for scenic purposes (AB20:41).[25] Her objection was the loss of income that this would result in for her.

Early in 1908 John Beaton wrote to the Commissioner of Crown Lands, adamant that Omihi K should not be part of the exchange (M13:166).[26] He explained that the reserve was ancestral land, resided on by his people for many generations. Beaton was prepared to leave the native bush on the reserve untouched and to proceed with the exchange of Waiharakeke J. When his arguments left Stephenson Smith unmoved, he stated that before his death Tapiha had had a change of heart about exchanging his share of Omihi (M13:165).[27]

Stephenson Smith, however, had 'no intention of abandoning the Exchange'. He was both dismissive and paternalistic about the Beatons' objections:

> I cannot understand why the owners of Omihi should object to our doing all we can to preserve the graves of those old people buried there, especially as the owners profess that is their chief desire and reason why they object to our taking it. (M13:187)[28]

As a further enticement, he arranged to have the rent for the Haututu land set aside (M13:167).[29] This was later used by the commissioner against the Beatons:

> although the Beatons appeared to be quite willing and anxious for the exchange proposed by Tapiha Te Whanikau they appear not so anxious to complete the exchange since they

> have got the use of 15 acres of the Crown land and still retain the Native Reserves. (M13:193)[30]

The Crown submitted that:

> it is unreasonable to view the Crown's actions over the exchange as entirely negative, particularly as the exchange was originally proposed by Tapiha for his own benefit. (AB34:10)

However, in view of the total lack of consideration of the owners and the way the protests of the Beatons were ignored, it is reasonable that the exchange be seen as 'entirely negative'.

The acquisition

1.2.5 It appears that the delay in getting the exchange implemented was caused by the Crown's quandary about which legislation to use. By May 1910 it was thought that the exchange might be implemented under the newly passed Native Land Act 1909. However, it was pointed out that under the provisions of this Act the owners' agreement to the exchange would be necessary. By this stage the Department of Lands and Survey was aware of the ownership of the reserves. On 30 January 1912 the commissioner was instructed:

> If, therefore, you can obtain the signature of the native owners to the conveyance of their area, the matter can be completed. If, after investigation, you find that it is impossible to obtain the signatures, the land may have to be eventually taken under the Scenery Preservation Amendment Act 1910 and the Public Works Act, and the Crown Land awarded as compensation therefore. (M13:177)[31]

It is evident that the Crown preferred to get the owners' agreement to the taking. However, this agreement was not considered essential. In the event, the Scenery Preservation Board (which had replaced the Scenery Preservation Commission) recommended taking the land under the Public Works Act 1908 (M13:179).[32] The Minister of Lands was asked to approve this course of action but before he could respond there was a change of Minister. It was not until July 1912 that ministerial approval was given. The submission for approval stated that the Native Land Act 1909 had proved to be a 'stumbling block' and had prevented the exchange from being completed. The submission also stated that compensation for the taking in the form of Haututu had been 'practically consented to' (AB32:11).[33] The intention to take 12 acres 16 perches of Waiharakeke J and 3 acres 35.75 perches of Omihi K2 was proclaimed on 20 September 1912. An objection with regard to the acquisition of Omihi K2 was lodged by the Beatons on 1 November. They claimed that improvements had been made to the land; that they stayed on the reserve while fishing; that it was ancestral land; and that there was no bush on the land worthy of preserving. Their parting plea was that 'us people of the Ngai Tahu have very very little land' (M13:194).[34]

Their petition was rebutted by Stephenson Smith's successor as Commissioner of Crown Lands, W H Skinner. He accused the Beatons of greed, stating that their reason for wishing to retain the land was 'mainly, if not wholly for the purpose of securing the cottage built by the lessee' (M13:186).[35] On 21 November 1912, even before Skinner's rebuttal had been prepared, the reserves were proclaimed taken for scenic purposes under the Public Works Act 1908, the Scenery Preservation Act 1908, and the Scenery Preservation Amendment Act 1910. The lack of consideration given to the Beatons' objection may have been due to its being lodged just outside the 40-day limit required by the Public Works Act 1908. Mr Alexander, however, suggested that the lack of consideration arose because the objection letter was addressed to the Minister in Charge of Scenery Preservation, not to the Minister of Works, who was arranging the taking. He argued that the objection was never passed on to the Minister of Works, hence it was never considered in the context of the Public Works Act (AB35:4).

Compensation for the acquisition was considered by the Native Land Court on 9 October 1913 (M13:180–182).[36] The hearing was held in Picton and it is not evident that any of the owners were present. Both Skinner and Stephenson Smith gave evidence. Much was made of the historical value of Omihi K and how it was better vested in the Crown. As planned, compensation would be the grant of the land at Haututu. A further hearing was held at Kaiapoi on 12 November 1913. In the interim a letter had been received by the land purchase officer signalling John Beaton's agreement to the court's compensation award on the condition that he would buy out the Ropata family's interests in the Haututu land (AB20:83).[37] The Ropata family do not appear to have been consulted or even informed of this development. At Kaiapoi the court assessed the amount of compensation at £116, and ordered that the land at Haututu be conveyed free of cost to Hoani Tapiha Pitini (Beaton) in lieu of this amount (M13:183–184).[38] Beaton was required to pay £18, being three-quarters of the value of Waiharakeke J, for distribution amongst the other owners of this reserve. The 15 acres behind Haututu was granted to the Beatons as general land and has therefore never been under the jurisdiction of the Maori Land Court (M12:68).[39]

It is clear that Auchinleck was extremely influential in the exchange proceedings, his opinion being strongly heeded by the Department of Lands and Survey, particularly Commissioner Stephenson Smith. Auchinleck was later made an honorary ranger for the scenic reserve, and on his death in 1924 achieved the rare distinction of a personal obituary paragraph in the Department of Lands and Survey's annual report to Parliament.

The alienation of Omihi K2

1.2.6 Auchinleck was well rewarded for his tenacity in having Omihi K2 reserved for scenic purposes. Throughout the proceedings it was intimated that he would receive 'some title' for the portion of Omihi K2 he was occupying under lease from the Beatons. Once the compensation had been finalised, he was given a leasehold of the land under occupation at a nominal rent of one shilling per annum (AB20:58).[40] In 1918 Auchinleck applied to purchase his house site. He argued that his request was reasonable because, but for him, the scenic reserves would never have been acquired (AB32:21).[41] It was eventually agreed that the purchase could proceed only by revoking the scenic

reserve status of the portion occupied by Auchinleck and thereafter selling the section to him (AB32:22–25).[42] The reservation was revoked in November 1918 and the sale given ministerial approval in April 1919 (AB32:29).[43] In 1921 the scenic reservation status of 3 roods 17 perches at the south-eastern corner of Omihi K2 was uplifted and the land sold to Auchinleck (AB20:92).[44]

In 1951 the South Island Main Trunk Railway was built through the reserve. Just over three-quarters of an acre was taken from Omihi K2 for the railway, which divided the scenic reserve in two: a hilly portion above the track and a flat area on the seaward side, between the railway and the road. The scenic reserve status of this seaward area, which amounted to 3 roods 0.4 perches, was subsequently uplifted. The land was then divided into five seaside sections and, in 1958, offered for sale (AB20:142).[45] In the face of Ngai Tahu protest about this development, the Crown took the position that, as the 'exchange' of 1912 was approved by the Maori Land Court, there was 'no doubt that Omihi K2 is the property of the Crown and therefore no Maori claim to ownership can possibly be supported' (AB20:142).[46] In reaching the decision to revoke the reservation, the Minister of Lands was influenced by 'the fact' that the area had no 'scenic value' and no 'historical significance'; that a dwelling had already been built on the land; that there was 'an extreme shortage of building sites' along that part of the coast; and that a lease had already been granted to a commercial fisher (AB32:30–33).[47] The Crown failed to acknowledge that the 'exchange' had been an acquisition under the Public Works Act 1908 and had been consistently protested against by the Beatons.

The Tribunal's conclusion

1.2.7 Turning first to the degree of knowledge that the Maori owners possessed of the Crown's intention to take Waiharakeke J and Omihi K2, it is evident that the Crown waived the idea of acquiring the land with the agreement of all of the owners in favour of taking it under the Public Works Act 1908. Under this legislation there was no provision for consultation with owners of affected land. Moreover, the usual procedures requiring the Crown to notify the owners and occupiers of affected land did not apply to Maori freehold land, unless title had been registered under the Land Transfer Act 1908. The Crown was merely required to have a notice of intention to take gazetted and twice publicly notified. Any such owners or occupiers had a 40-day period in which to lodge any objections to the taking. In the case of Maori land where title was not derived from the Crown, even these summary provisions were not required. With regard to Waiharakeke J, although the Beatons were aware of the Crown's intentions there is no indication that members of the Ropata family, who possessed a one-half interest in the land, were notified of the taking. The Tribunal considers the lack of consultation and notification to be a breach of the principles of the Treaty requiring the Crown to protect Maori rangatiratanga over their lands and other valued possessions, and deal with its Treaty partner with the utmost good faith. Although compensation was awarded by the court for the acquisition, again neither the Ropata family nor Tini Korehe appear to have been consulted about the arrangement regarding the Crown grant of the land at Haututu.

The owners of Omihi K2 knew of the impending compulsory acquisition; indeed, they protested against it for many years. The cultural and historical importance of the Omihi reserve to the owners was repeatedly made known to the Crown officials arranging the 'exchange'. The scenic and

historical qualities of the reserve were referred to at the compensation hearing in the Native Land Court as justification for the Crown's acquisition of the area. However, the evidence would seem to suggest that the inclusion of the Omihi area in the exchange arrangement was due not to the reserve's scenic qualities, but rather to the perceived need to boost the area of Maori land to be exchanged to 15 acres. This, we feel, is strengthened by the subsequent revocation of the scenic reserve status from parts of the scenic reserve.

In our *Ngai Tahu Sea Fisheries Report 1992*, we found a leading Treaty principle to be that:

> The cession by Maori of sovereignty to the Crown was in exchange for the protection by the Crown of Maori rangatiratanga.[48]

We noted that this principle is fundamental to the compact or accord embodied in the Treaty and is of paramount importance. By way of amplification, we said that:

> Implicit in this principle is the notion of reciprocity — the exchange of the right to govern for the right of Maori to retain their full tribal authority and control over their lands, forests, fisheries and other valuable possessions for so long as they wished to retain them. It is clear that cession of sovereignty to the Crown was conditional. It was qualified by the retention of tino rangatiratanga. It should be noted that rangatiratanga embraced protection not only of Maori land but of much more, including fisheries.
>
> Rangatiratanga was confirmed and guaranteed by the Queen in article 2. This necessarily qualifies or limits the authority of the Crown to govern. In exercising sovereignty it must respect, indeed guarantee, Maori rangatiratanga — mana maori — in terms of article 2.
>
> The Crown in obtaining the cession of sovereignty under the treaty therefore obtained it subject to important limitations upon its exercise. In short, the right to govern which it acquired was a qualified right.[49]

It will be noted that there is no provision in the Treaty enabling the Crown to dispossess Maori of any of their lands or forests or other properties without their consent. These were guaranteed to them by article 2.

The question is whether the Crown's compulsory acquisition of the land over and above the objections of the Ngai Tahu owners is in breach of Treaty principles. On the face of it, such a taking would appear to be a blatant breach of article 2. This is a complex issue which has not been argued in any depth by the parties and we are therefore unable to come to any definitive conclusion on the point.

Given the clear and unequivocal terms of article 2, however, it would seem that:

- if the Crown wishes to acquire Maori land for a public work or purpose, it should first give the owners notice and seek to obtain their consent at an agreed price;

- if the Maori owners are unwilling to agree, the power of compulsory acquisition for a public work or purpose should be exercised only in exceptional circumstances and as a last resort in the national interest; and

- if the Crown does so seek to acquire the use of Maori land for a public work, it should do so by acquiring a lease, licence, or easement, as appropriate, on terms agreed upon with the Maori owners or, failing agreement, by appropriate arbitration. Should there be exceptional circumstances where the acquisition of the freehold by the Crown is considered to be essential, Maori should have the right to have that question determined by an appropriate person or body independent of the Crown.

The Tribunal examines in more detail the acquisition of Maori land for public works and the provisions of various Public Works Acts in a later section of this report (see para 9.4).

In the case of land owned by Maori which the Crown sought to set aside for scenic purposes, the appropriate course in the great majority of such cases (if not all of them) would have been to negotiate for a lease of the land from the Maori owners if the owners were unwilling to sell. Compulsory powers of acquisition should have been exercised in exceptional circumstances only and as a last resort. Of course, the difficulty facing the Tribunal is in determining, from this point in time, whether the Crown was justified in compulsorily taking Maori land for such purposes. In the case of Omihi K2, however, serious questions arise regarding the propriety of taking the land for scenic purposes given the subsequent revocations. We consider that the later Crown dealings with Omihi K2 place the Crown's insistence on including the reserve in the exchange in a very poor light, particularly in the face of such strong protest from the Ngai Tahu owners. We find that the taking of Omihi K2 reflects a lack of good faith on the part of Crown officials.

The subdivision and sale of Omihi K2 is assumed to be the basis of the last part of Mrs Stirling's grievance that the reserves taken for scenic purposes are now used for holiday grounds or have been sold into private ownership. There have been references in the evidence to camping grounds near the area, but it has not been shown that these are in fact situated on Omihi K2 or Waiharakeke J. Mr Alexander submitted that the land has scenic reserve status under the Reserves Act 1977 (AB35:1). We reiterate our finding above that the subsequent revocation of the scenic reserve status and sale of portions of Omihi K2 by the Crown is a breach of its duty to act with the utmost good faith. The failure to first offer this land back to the original owners or the descendants thereof we also find to be a breach of the Treaty principle requiring the Crown to protect Ngai Tahu's rangatiratanga over their land. This is commented on more fully in claims 51 and 52.

The argument that more Maori land than non-Maori land was taken for scenery preservation purposes in this district is not accurate. Omihi and Waiharakeke were but two of 10 areas taken for this purpose. The other eight areas were Crown land under small grazing run leases. Omihi and

Waiharakeke comprised some 15 acres out of 208 acres 2 roods 29.7 perches that were eventually gazetted as scenic reserve in the Hundalee survey district by 1922.

1.3 Claim no: **2**
Claim area: **Mangamaunu A**
Claimant: **Trevor Howse (A9, A12)**

A number of grievances were made by Mr Howse about the Mangamaunu reserve in Kaikoura:

- **the land was of the 'most useless and worthless kind';**
- **excessive land was taken for roading and railway purposes, for which no compensation was paid;**
- **some of the land no longer needed for this purpose has never been returned and now comprises camping grounds;**
- **land was taken for scenic purposes without the knowledge or consent of the owners; and**
- **only Ngai Tahu land was taken for scenic purposes; no European land was taken.**

1.3.1 Mangamaunu A of 4800 acres was by far the largest of the reserves in Kaikoura set aside by James Mackay in 1859. The reserve ran in a strip along the coast north of Kaikoura, from Porangarau Stream in the north to the Hapuku River in the south. It was set aside at the request of Ngai Tahu and acceded to by Mackay, presumably because he regarded the land as 'utterly worthless for European settlement or cultivation'.[50] For Ngai Tahu, however, the reserve encompassed two areas of settlement, one at Waipapa and one at Mangamaunu, and gave access to a bountiful supply of kai from both the land and the sea. Mackay referred to the abundance of karaka trees, which were of value to the locals. His cousin, Alexander Mackay, who was present throughout the negotiations, later stated that the locals had requested the area, 'in order to secure to them the right of fishing along the coast'.[51] An insight into the rich resources of the area is provided in an anecdote related by W J Elvy in his history of the Kaikoura coast:

> When I was surveying a particularly rough boundary line on the block in 1908 I railed at the Maori for being so foolish as to take his land in such a rough locality. 'Why didn't you take your land at Bendermere, that lovely strip of good land between Mill and Schoolhouse Roads?' I asked. 'That's all very well for you to talk' they said. 'When the pakeha came the Maori knew nothing of the cow and the sheep. He only knew the food of the forest and the sea. At Wai-o-patiki (Bendermere Stream) there were no fish and no foods of the land. But at Mangamaunu there were paua (mutton fish), the pipi and pupu (cockles and whelks), the kuku and the kopukopu (mussels) on the rocks. In the sea

> were the koura (crayfish), the kahawai, the marari (butterfish), the pakirikiri (rock-cod), the ngoira (conger-eel) and the hapuku. On the land was the karaka, the pigeon, kaka and other birds.' The Maori say 'that's the place for me — plenty of kai. Lay my land off there'. (M10:47–48)[52]

Elvy also referred to numerous burial caves on the coast as a further reason why Ngai Tahu wanted the area reserved.

1.3.2 In answer to Mr Howse's first allegation, then, the reserve may have been of the 'most useless and worthless kind' for pastoralism and cultivation, but it would seem that this was not what Ngai Tahu had in mind when asking for the reservation of the land. This is not to say that the Crown did not have a responsibility to provide the tribe with sufficient land for pastoral purposes. Indeed, the Tribunal has already found that the land reserved to Kaikoura Ngai Tahu was inadequate, and that this constitutes a breach of the Crown's Treaty obligations.[53]

Gibson's exchange

1.3.3 The first alienation of land in Mangamaunu A occurred in 1880 as a result of negotiations between the Ngai Tahu owners and a settler named Walter Gibson. In exchange for 247 acres at the northern end of the reserve, Ngai Tahu were to receive 15 sections, totalling 7.5 acres, in the Kaikoura township. The exchange appears to have been concluded to the satisfaction of all, the Crown acting as middleman in the transaction. On 26 July 1880 Gibson signed a transfer of his 15 town sections to the Crown, while on 8 September 1880 the Crown granted Gibson title to the 247 acres of Mangamaunu A (M13:18–21).[54] The deed of conveyance excluded to the owners of Mangamaunu A a two-acre cemetery with road access to the coast. Gibson was left with a balance of 245 acres. When the Native Land Court sat in 1890 to determine entitlement to Mangamaunu A it was unaware of the cemetery reserve within Gibson's land, and therefore no orders were made about it. It was not until 1900–01, with the survey of the main road south, that the cemetery was surveyed out with a road frontage.[55] The area was gazetted as a cemetery reservation in 1981.[56]

The Native Land Court 1890

In July 1890 the Native Land Court sat at Kaikoura to determine entitlement to the Kaikoura reserves. Mackay's plans were produced to the court. At Ngai Tahu's initiative, 20 persons were determined as owners to the Mangamaunu reserve and the area was partitioned between them. Mangamaunu 1, at the township of Mangamaunu, comprised 18 town sections at 4.5 acres each, a general 10-acre paddock, and 7.5 acres of roads. Mangamaunu 2 was divided into 20 rural sections, most of these comprising 300 or 275 acres. Four of these sections, however, were of 60 acres or less, and were for the persons said to have a lesser interest in the reserve (M13:70).[57] The court also reserved five areas as urupa, and trustees were appointed for them. A church and school reserve at Mangamaunu, and another church reserve at Haunui were also set aside. The land, together with the acreage for Gibson's exchange, amounted to 4800 acres.

The main road south

1.3.4 Concern was expressed by the chief surveyor in May 1891 to the registrar of the Native Land Court about the approximate nature of the Mangamaunu reserve (M13:74).[58] The back boundary had not been surveyed and the coastline traversed only roughly. How would any anomalies on survey of the area be apportioned? He also drew attention to the necessity of having roads through the area reserved. The bridle track around the coastline had been improved and widened into a main road in the late 1880s as a relief scheme for the unemployed. In addition to the coastal road, it was considered that roads giving access to the Crown runs behind the reserve would be required at intervals throughout the reserve. Section 93 of the Native Land Court Act 1886 was thought to be sufficient authority to have the necessary roads laid off.

In October 1893 the Surveyor-General sent further guidelines to the Commissioner of Crown Lands Blenheim regarding the road survey:

> The main road should of course be reserved through the block and an area up to 5 per cent should be taken (including main roads) for other roads to give access to the Crown Lands behind: and should it be necessary to take more, this could be effected by removing the boundary of the Reserves backwards a little, so that the reserve shall contain 4800 acres less not more than 5 per cent taken for roads. (M13:17)[59]

This instruction is annotated by the commissioner:

> Note! all roads likely to be required must be surveyed *before* the back line of the reserve is determined. [Emphasis in original.] (M13:17)[60]

As it transpired, the Surveyor-General's instruction never had to be acted upon, because the situation he envisaged, of more than 5 percent being taken for roading, did not arise. The first survey of the reserve, completed in 1903, revealed the total acreage to be 4831.25 acres, including 56.5 acres set aside as roads (M12:16).[61] The 1906 partition survey showed the total acreage of the reserve to be 4825 acres 2 roods 23 perches, which included 38 acres 2 roods 23 perches of roads (M12:19).[62] According to Crown witness David Alexander, the back boundary of the reserve would have been fixed so as to ensure that the size of the reserve remained substantially unaffected by the setting apart of land along the coast for roading. Thus it can be seen that the 'subject to roads' provision in the memorandum accompanying the Kaikoura deed reduced the size of the reserve by only 13 acres from the 4800 acres originally intended (AB35:11; AB63).

In 1895 a topographical survey of south Marlborough was undertaken, and the Surveyor-General suggested that this was an opportune time to carry out the intended survey of Mangamaunu A. He proposed an exchange of the reserve for other Crown lands, primarily to provide access to the Crown leasehold runs behind the reserve, but also for the preservation of coastal flora (M13:76).[63] No survey began. Ten months later the district surveyor at Blenheim, F Stephenson Smith, reporting no

progress with the survey, supported the exchange proposal, not least because of the reserve's scenic qualities:

> It appears to me to be *very* necessary to reserve a strip of at least 5 chains wide along the sea coast between the Hapuku River and the Clarence. Not only for the preservation of the road, but for its scenic value also. [Emphasis in original.] (M13:77)[64]

It seems that nothing came of the exchange proposal. Nevertheless, a quite substantial area of land was cut out of the intended location of the reserve when the road survey was completed in 1901. An examination of the field and traverse books, together with the drawn plans to 1906, indicates that the road survey cut out between 350 and 380 acres along the coastal strip to a mean depth of 3.6 chains (AB20:205–232).[65] Depths varied from as little as half a chain to as much as 13 chains. Mr Alexander speculated that the width cut out varied to this extent because the road already in place prior to the survey did not run along the mean high-water mark (where it was intended that the legal road should run), and thus the width occasionally had to be greater to accommodate the formed road while still pursuing the convention of the time of setting aside the coastline itself as a road (AB35:7–8). Where the formed road was sufficiently far inland, both it and the road along the mean high-water mark were defined separately, but where they were close together they were combined (AB20:206; M13:1–6). It is a matter for further speculation whether the width of road reserved at certain points reflected Stephenson Smith's desire to cut out a wide strip for scenic as well as for roading purposes. In any case, Mr Alexander admitted that the road reservation monopolised the limited area of flat land along the length of the area originally intended for the reserve. This is true except for the Mangamaunu end where more extensive flat land was available.

It is clear that, whereas Maori eventually received a reserve of 4800 acres, the reservation of a costal strip of 350 to 380 acres meant that a prime 8 percent of what was originally intended as the reserve was denied them. In effect, Maori received 350 to 380 acres of back-country instead of 350 to 380 acres of coastline. Mr Alexander noted that the coastal strip cut out of the reserve currently has scenic reserve status under the Reserves Act 1977 (AB35:7).

The claimant's grievances: road reservation

There are two aspects to Mr Howse's grievance about the Crown's acquisition for roading: the lack of compensation and the excessive amount of land taken.

Dealing first with the issue of compensation, Mr Alexander drew attention to the memorandum accompanying the Kaikoura deed of purchase of 1859, which stated that:

> Should the Government desire now or at some future time to make roads through these lands, they are to do so; we are to consent to give the portions of land required for roads; we are not to ask payment for the part taken in the survey.[66]

He argued that the surveyors relied on section 93 of the Native Land Court Act 1886 and its successor (section 72 of the Native Land Court Act 1894) to lay off the roading, and that these legislative provisions were similar to the intention of the memorandum agreed to at the time of purchase (M12:5). He claimed that the memorandum precludes any grievance about the lack of compensation for the area taken for roading. In addition, he pointed out that, after survey, the acreage of land reserved exclusive of roads was substantially the same as was granted in 1859 inclusive of roads.

Mr Alexander conceded that a grievance might be sustained in respect of the amount of land that was taken for the road reservation. He explained that most roads in New Zealand had been surveyed with a width of one chain, though there were some two-chain roads. He stated that a width greater than one chain would probably have been necessary along most of the Mangamaunu coastline but was non-committal on what would constitute a reasonable and necessary width.

The Tribunal's conclusion

1.3.5 In the Tribunal's view, the two aspects of this grievance need to be considered together. While we accept that the memorandum accompanying the purchase deed of Kaikoura lands did indeed give the Crown the right to place a road through Ngai Tahu reserves without compensation, it did not stipulate how much area could be taken for roading. Ngai Tahu certainly would not have envisaged that the road reservation would take up most of the available flat land in what was intended to be their reserve, and that instead they would receive an equivalent area of back country to make up for the setting aside of this area as road. If indeed land was taken for scenic purposes as well as road requirements, as Stephenson Smith argued was so vital, Ngai Tahu would have further reason to feel aggrieved. The 1859 memorandum contains no clause regarding a Crown right to take land for scenic purposes without compensation.

It has already been established that the land comprising Mangamaunu A was extremely poor: 'utterly worthless' for cultivation and hopelessly inadequate for the tribe's needs. We have also related that one of the reasons behind the requesting of the reserve was to secure to the tribe access to the coast. While the Tribunal is aware that the actual acreage of the reserve remained substantially unchanged after survey, we would point out that the road reservation used up most of the available flat land on the reserve. Ngai Tahu were pushed back onto a less practical and convenient area and, in addition, denied access to the sea and their kaimoana.

On these grounds the Tribunal upholds the claimant's grievance that the Crown's acquisition of land along the coast for roading was excessive. We find the removal from the reserve of most of the limited area of flat land along the coast, and the denial of the tribe's access to the sea, to be a breach of the Treaty principle requiring the Crown to ensure Maori were left with sufficient land for their needs. We consider that Ngai Tahu would have been adversely affected by this breach.

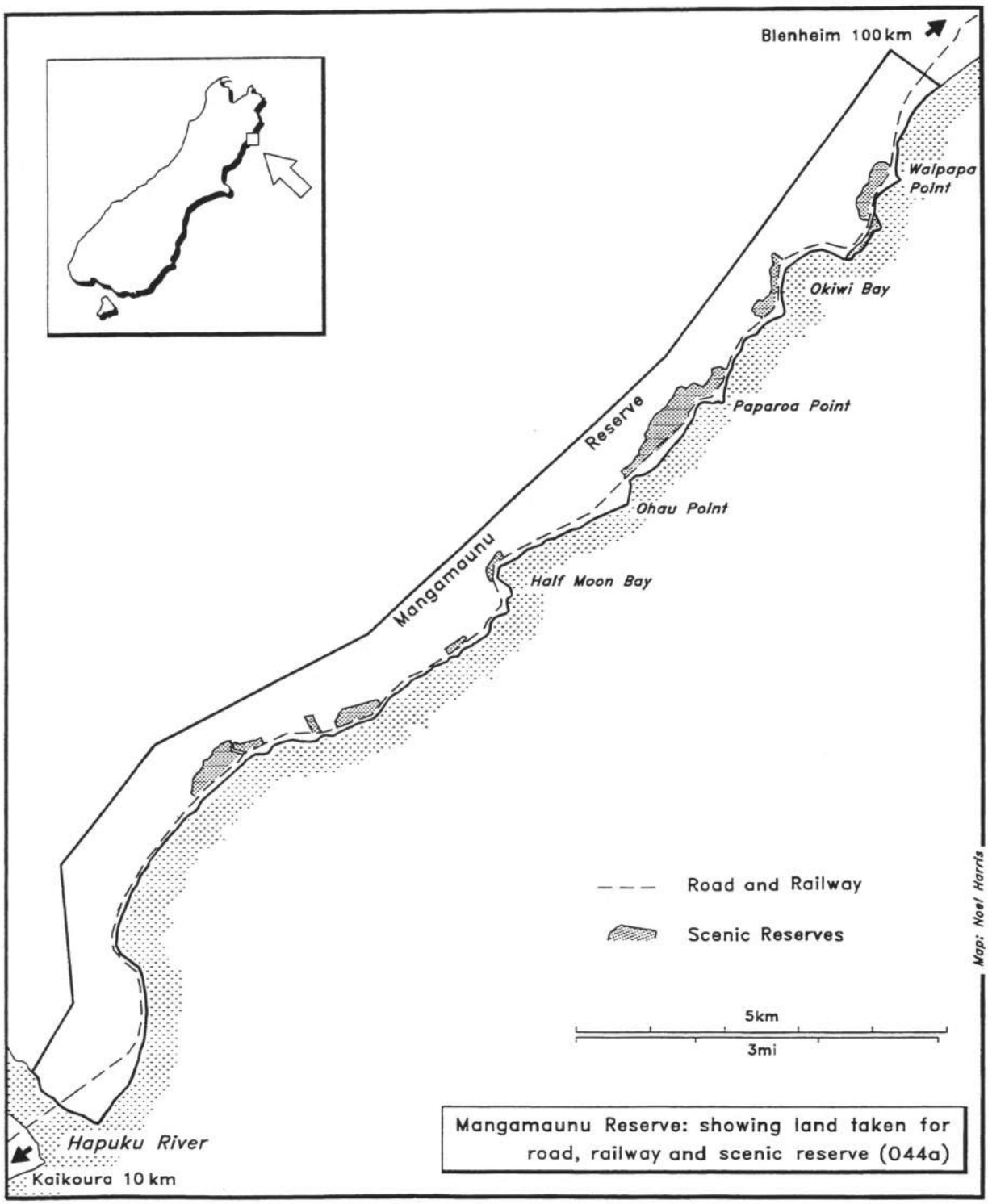


Figure 3: Mangamaunu reserve

Scenic reserves

1.3.6 As has already been mentioned, some Government officials in the 1890s were in favour of setting aside land in the Mangamaunu reserve for scenic purposes. With the passing of the Scenery Preservation Act 1903, interest in preserving elements of bush along the Kaikoura coast focused and intensified.

Around the turn of the century, Crown lands behind Mangamaunu A were surveyed and opened up for closer settlement. When the leases of the large Puhipuhi and Waipapa runs expired they were not renewed. Instead, these runs were divided up into what were known as small grazing runs, which were balloted to settlers in 1902. These settlers were keen to gain access to the coastal road over Mangamaunu A. In August 1904 the Native Land Court sat at Kaikoura to further partition the reserve based on the plans prepared by a Government surveyor, Mr T Hughes, and in accordance with the owners' wishes (AB20:190–203).[67] Even before the partitions had been surveyed in 1906, the first lease of Ngai Tahu's reserve had been signed. Many of the subsequent leases were made out to the settlers of the Crown lands behind the reserve.

With the issue of the first lease began the clearing of the bush on the sections. Similar bush clearance had been going on in the valleys behind the reserve. The result was a dramatic change in land use, which Mr Alexander described as an ecological disaster. The Scenery Preservation Commission first expressed interest in acquiring the greater portion of Mangamaunu A in 1904 (AB32:44).[68] It passed a resolution in May of that year recommending the acquisition of some 3286 acres of the reserve, to be accomplished by way of an exchange for land of a similar value closer to Kaikoura. In May the Department of Lands and Survey forwarded tracings and descriptions of the proposed scenic reserves at Mangamaunu to the commission for gazetting purposes. However, nothing came of this exchange proposal.[69] Mr Alexander noted that it was not deemed a suitable time to approach the owners, who had recently been in dispute with the Crown over the slow progress in completing the survey of the reserve, among other things,[70] and who had presented a petition to Parliament to hurry things up (AB32:45–47; AB35:8).[71] However, the proposal was strongly supported by the local Commissioner of Crown Lands, Henry Trent. In June 1905 he questioned whether, in light of the probability of acquiring 'nearly the *whole* of the Mangamaunu Native Reserve' for scenic purposes, it was worth proceeding with the costly survey of the court's partition of 1904 (A9:16:19).[72] The following month he reiterated his concerns to the chairman of the Scenery Preservation Commission, S Percy Smith:

> the land is of no value to the Natives, being . . . of a precipitous character, and further that, as it includes one of the finest stretches of Coast scenery imaginable, it seems desirable that every possible effort should be made to secure its preservation. (A9:16:20–21)[73]

Despite his ardour, it seems that nothing further was done. Mr Alexander observed that, when clauses in the Scenery Preservation Amendment Bill 1906 relating to the acquisition of Maori land were

struck out, it was suggested that the Public Works Act could be used, but Cabinet declined to approve this course of action (AB32:48; AB35:8).[74] The matter was revived by Trent's successor, F Stephenson Smith, who in November 1907 advised the Under-Secretary for Lands of the damage caused to the road by the destruction of bush along the coast:

> the Natives, having let Native Reserve A to Europeans, the latter are now felling all that most beautiful bush along the road between Aniseed Creek and the Clarence. The result will be that, not only shall we lose some of the most beautiful bush coast line in the country, but the hills being very steep and rocky the stones will slip down on the road to the great danger to travellers and ultimate destruction of the road, especially about the Ohau. (M13:83)[75]

Under the Scenery Preservation Amendment Act 1906 the Crown had no authority to deal with Maori land for scenic purposes. The reservation of Mangamaunu A, however, was seen to involve 'special circumstances' and Stephenson Smith was asked how he proposed to procure the area (A9:16:28).[76] In February 1908 a ranger was sent out to ascertain the lessees of the land and to extract from them a promise not to carry out any further felling or burning of bush (M13:80).[77] It was discovered that the destruction was not as widespread as the commissioner had been led to believe. He proposed that the bush visible from the road be set aside, requiring in some cases a width of 20 to 30 chains (M13:84).[78]

Approval was given by the Minister of Lands to a survey of the area proposed to be taken based on the commissioner's estimate. The surveyor was to evaluate the amount of compensation payable to the lessees (M13:85).[79] In March, Hemi Hui Te Miha and other Ngai Tahu owners of the different lots of Mangamaunu A were notified of the impending survey of the frontage of the reserve. No explicit reference was made to any acquisition as such, the owners being told that the survey was in order to:

> find whether the area already reserved is sufficient to preserve the bush for protection of the Main road; and, if not, to survey an additional area so as to secure this, and preserve the natural vegetation from destruction. (A9:16:30)[80]

The proposed acquisition was discussed with the locally based Ngai Tahu owners at Kaikoura. In Stephenson Smith's words, 'a great deal was said about our first giving them the land and then seeking to take it away from them again'. It was concluded that the commissioner would send to the various owners a tracing of the land proposed to be taken together with an offer of a 'fair value' for the same, 'leaving them to refuse or accept as they thought best' (M13:86).[81] It should be pointed out that at this stage the commissioner had in mind the taking of the proposed scenic reserves as a value-for-value compensation for the costs of surveying the Native Land Court's partition of the reserve, which were covered by charging orders on each section. However, on 1 December 1908 Cabinet resolved that the costs of survey should not be borne by the Ngai Tahu owners and the charging orders were withdrawn (M13:88).[82] On 8 December 1908 various owners were sent the commissioner's offer for the part of their section proposed to be taken (A9:16:32–36).[83]

The following February the tracings of the areas to be taken, a schedule of their value (estimated by Stephenson Smith), and the names of the owners and occupiers were forwarded to the under-secretary (M13:89, 91).[84] Some 264 acres along the coastal frontage were proposed to be taken. It was noted that in some instances the 'ample road reservation' had precluded the need to take scenic reserves.

However, the whole matter was put aside for three years after Cabinet again declined to approve the taking of the land under the Public Works Act 1908 (AB32:49).[85] According to Mr Alexander, this was probably because among the 1908 petitions were some that had been recommended to the Government for favourable consideration that asked that the land not be taken for scenic reserves.[86] The proposal was revived again in 1912 as a result of representations by the Kaikoura County Council (AB32:50–52; AB35:9).[87] Cabinet approved the acquisition of the 264.25 acres for £500, 'provided that the land can be purchased by agreement' (M13:92).[88] The Commissioner of Crown Lands Blenheim, W H Skinner, objected to such a condition. He argued that obtaining the agreement of the 38 owners would cause lengthy delays, which would be detrimental to the bush. He suggested instead that the land be taken by proclamation, after which application could be made to the Native Land Court under section 91 of the Public Works Act 1908 to assess the amount of compensation (A9:16:40).[89] His objections were overridden: the consent of the owners had to be obtained before the reserve could be taken (A9:16:42).[90] If this consent could not be procured, the matter would be resubmitted to the Government for further consideration.

Skinner was left to organise the assent of the Ngai Tahu owners. Where the owners lived outside the vicinity, other Commissioners of Crown Lands were called upon to approach these owners for their consent. Despite the under-secretary's express instructions to the contrary, the Commissioner of Crown Lands Wellington was told by Skinner that:

> If the owners will not agree to sign the agreement to sell, it is the intention of the Crown to take the portions required for scenery under the Public Works Act, and leave the assessment for values to the Native Land Court. (A9:16:39)[91]

By the end of October, Skinner had met with only partial success (M13:93).[92] With the exception of the Beaton family, all the owners residing locally had agreed to give up their lands. The owners living in the Wellington and Canterbury districts, however, had refused to sell. Collectively, the dissenters held interests over five of the parcels of land to be taken, amounting to some 119 acres — over half of the area to be taken 'by agreement'. One of the Canterbury owners was not prepared to sell for money but wanted an exchange of all of her land at Mangamaunu for land at Little River (M13:94).[93]

Mr Alexander explained that, when no agreement could be reached with some of the owners, the Minister in Charge of Scenery Preservation (and the Prime Minister) approved the taking of all of the lands under the Public Works Act 1908 (AB32:53).[94] The Public Works Department was instructed to proceed with the taking, using the fact that the European lessees had agreed to sell their interests in those sections which the owners had not agreed to sell (AB32:54–56).[95] When the

intention to take the land was advertised, one objection was received, from Tini Korehe (AB32:57),[96] but this was not sustained (AB35:9–10). On 3 December 1913 the lands were proclaimed taken. In all, 226 acres 3 roods 13 perches were taken in different pieces from nine different partitions of the reserve (M13:98).[97]

At Picton on 18 September 1914 the Native Land Court heard an application to assess the compensation payable for the land taken (M13:99–115).[98] The owners of the reserve argued that the eyes of the property had been picked out, and a valuer employed by them gave evidence as to the value of the areas taken. A much more modest valuation was submitted by the Crown's agents, and accepted by the court. A total of £460 8s 10d was ordered as compensation, the court listing the different amounts to be paid to the various owners (M13:113–115).[99]

The Tribunal's conclusion

1.3.7 The claimant's grievance is that land was taken from the Mangamaunu reserve for scenic purposes without the knowledge or consent of the owners. The evidence shows that a number of the owners were notified in March 1908 of the possible taking of further areas for the protection of the main road and scenery preservation purposes. A meeting at Kaikoura was held later that year between the Kaikoura-based owners and Stephenson Smith, where the proposed acquisition was discussed. Shortly afterwards, written offers were sent to various owners for their land. When the matter was revived in 1912, Skinner was expressly instructed by the Under-Secretary for Lands that the acquisition could proceed only if the land could be purchased by agreement. We note that there was no statutory obligation on the part of the Crown to procure the land in this manner. The Public Works Act 1908, under which the land was eventually taken, contains no requirement for the Crown to personally notify, let alone gain the consent of, owners of Maori freehold land. For the rest of 1912, and into 1913, attempts were made to gain the consent of the owners, both those locally-based and those outside the district. At the time of taking, however, over half of the owners of the affected land were opposed to the acquisition.

Whether the failure to obtain the consent of all of the owners constitutes a breach of the Treaty is a difficult question. As we commented in the previous claim, the only justification for taking land over the objections of the owners would be if the national interest were of such magnitude that the Crown would be justified in overriding its Treaty guarantees to Maori. In this particular case we are unable to come to any conclusion on this point. It is evident that the preservation of areas of scenic value is important and of benefit to the general public. Whether this was sufficient to outweigh Ngai Tahu's Treaty rights and their need for the land, however, must be very questionable. We would also point out that, if the public interest was seen to be of such importance, taking the land on lease or providing alternative lands for Ngai Tahu by way of compensation for the taking would have been more in line with the principles of the Treaty. We reserve our judgment on this matter.

Subsequent taking for scenic purposes

1.3.8 In 1930 the reservation over two areas of scenic reserve in section 3C of 2, amounting to 8 acres 1 rood 30.6 perches, was revoked (AB20:167).[100] In 1931 the intention to exchange this land with the owners of four different areas of Mangamaunu reserve was gazetted (AB20:168).[101] This exchange was raised with us as some doubt existed as to whether it in fact proceeded. Mr Alexander revealed that the exchange took place properly but that it did not involve Maori, since it was between a European landowner, Patrick Adair, and the Crown, the Maori owners having sold the lands in question to Adair in 1922 and 1923 (AB35:10–11). We therefore note that no grievance exists with respect to this exchange.

In 1977 the Crown acquired 26 hectares of land for scenic reserve purposes along the entire frontage of Mangamaunu 9B3 of 2. This was accomplished by agreement with the owners.[102]

The complaint expressed by Mr Howse was that only Ngai Tahu land was taken for scenic purposes and that no Europeans were required to make the same sacrifice. A total area of just under 300 acres was taken for scenic purposes from Mangamaunu A. It is true that in the years to 1914 an excess of Maori land in comparison to non-Maori land was taken for scenic purposes in this district. This may have been because the bush on land surrounding Ngai Tahu's reserve had already been burned and cleared for pastoral purposes. Since 1914, and up to the period 1980, however, some 5800 hectares of non-Maori land has been gazetted as scientific, nature, or scenic reserves.[103]

Although we do not support the above complaint, we feel that Mr Howse has strong justification for bringing to notice the area of Maori land taken for scenic purposes. The area taken for scenic preservation purposes represents a substantial reduction of Mangamaunu A. Little enough land was set aside for Ngai Tahu from the 1859 Kaikoura purchase and the Tribunal has already found on the inadequacy of these reserves. That further inroads were made into these small reserves is reason for concern.

Land for the railway

1.3.9 The South Island Main Trunk Railway was built along the Kaikoura coast from 1938 to 1944. In Elvy's history, there are numerous references to artifacts being discovered and burial caves disturbed, but there is little documentary evidence of this.[104]

The lands needed for the railway were taken under the Public Works Act 1928 in 1942, 1949, and 1951.[105] These lands fell into three categories:

- land needed for the railway itself: 70 acres 3 roods 3 perches of Maori owned land;
- land needed for road diversions due to railway construction: 5 acres 1 rood 28.5 perches; and

- land needed for river training and bank protection work associated with the Hapuku River railway bridge: 16 acres 25.4 perches.

Mr Alexander commented that only small areas of titled land were needed for railway purposes, most of the required land coming from the existing road reservation (M12:6). Compensation for the above acquisitions was set by the Maori Land Court in June 1951 at £296 (M13:128–130).[106]

The Tribunal has no information regarding Mr Howse's complaint that some of the land that was no longer required for the road and rail reservation was never returned and now comprises camping grounds.

The Tribunal's conclusion

1.3.10 The inadequacy of the reserves set aside for Ngai Tahu by the Kaikoura purchase has already been dealt with by the Tribunal. In the *Ngai Tahu Report 1991*, the Tribunal has stated that the land reserved to the tribe from the purchase was totally inadequate for Ngai Tahu's future prosperity. Of alarm to the Tribunal, then, is the fact that since the purchase even the little land left to the tribe has been further reduced by Crown acquisitions and alienation. Of the 4800-acre reserve set aside at Mangamaunu for Ngai Tahu, the following areas have been acquired by the Crown:

	acres	roods	perches
Road reserves to 1906	13	0	0
Scenic reserves to 1914	226	3	13
Road 1914	6	0	33
Railway 1942, 1949, 1951	92	1	16.9
Scenic reserve 1977	65	0	8.3
Total	403	1	31

Moreover, it should be reiterated that the Crown set apart for roading 350 to 380 acres of land along the coast out of lands that were originally intended to form part of the Mangamaunu A reserve. As outlined in the above summary, this area encompassed the flat land along the entire coastline of the reserve. Ngai Tahu were pushed back onto the steeper bushclad slopes (of no pastoral value) and denied their access to the sea. We have upheld Mr Howse's grievance with respect to the roading reservation. Although we have reserved our opinion on the Crown's acquisition of Ngai Tahu's land for scenic reserves, we are compelled to point out that the landless plight the tribe was left in after the Crown's purchase of their territory has only worsened up till the present time. We accordingly recommend that the inadequacy of the reserves set aside by the purchase of Kaikoura in 1859 and the continued inroads by the Crown into these pitiful reserves be a matter for consideration in the negotiations between the Crown and Ngai Tahu over settlement.

In this section on Kaikoura we have noted several breaches of Treaty principles arising out of the Crown's dealings with the small reserves left to Ngai Tahu. The Ngati Kuri people who have voiced

their concerns to the Tribunal were entirely justified in expressing their complaints as they saw their pitiful reserves eroded by Crown action to take land for the roading, railway, and scenic reserves. In addition to the grievances regarding Crown acquisitions, Mr Howse raised a more general complaint about the subsequent loss of the tribal reserves through the process of alienation. Indeed, of the 14 reserves granted to the tribe from the purchase, only three of these remain wholly in Maori ownership today. Put another way, less than half of the 5566 acres set aside from the purchase is retained by Ngai Tahu. The Crown submitted that it cannot place unreasonable restrictions on Ngai Tahu's voluntary alienation of its land, and that the Crown is therefore not responsible for the depletion of the tribal estate in this manner. We refer, however, to the gradual depletion of lands 'reserved permanently' for the tribe through actions and policies of the Crown in chapter 9. The Tribunal's conclusion is that the Crown is responsible for the extent of Ngai Tahu landlessness today through its failure to actively protect its Treaty partner by ensuring it maintained a sufficient endowment for its ongoing needs. Indeed, the Crown facilitated land alienation through the passage of legislation designed to break up tribal ownership. While the Tribunal has not delved deeply into the issue of Ngai Tahu land sales from within the Kaikoura reserves, we simply point at this time to our earlier findings regarding the inadequacy of Ngai Tahu reserves for the tribe's present and future needs at the time of purchase. The fact that the tribal endowment has been reduced to less than half of its original area should, we maintain, be a matter of consideration in the settlement of this claim.

1. W J Elvy, *Kaikoura Coast: The History, Traditions and Maori Placenames of Kaikoura*, Christchurch, Hundalee Scenic Board, 1949, pp 81–82

2. Plan M797, DOSLI Blenheim

3. SO plans 522, 523, DOSLI Blenheim

4. Nelson MB 2, pp 92–93, 17 July 1890

5. Ibid, p 96, 18 July 1890; p 106, 21 July 1890

6. Commissioner of Crown Lands Blenheim to Under Secretary for Lands, 6 May 1910, L&S 929, DOSLI Blenheim

7. Tapiha to district surveyor, 4 June 1896, L&S 201, DOSLI Blenheim

8. Note on memo, Judge Mackay, 24 August 1889, Omihi former papers, Marlborough 44, MLC Christchurch

9. District surveyor Kaikoura to chief surveyor Blenheim, 20 June 1896, L&S 201, DOSLI Blenheim

10. 'Plan of Haututu Native Reserve L', Omihi former papers, Marlborough 44, MLC Christchurch

11. Surveyor–General to chief surveyor Blenheim, 25 November 1898, L&S 201, DOSLI Blenheim

12. Surveyor–General to chief surveyor Blenheim, 17 February 1897, and chief surveyor Blenheim to district surveyor Kaikoura, undated, L&S 201, fols 31–32

13. District surveyor Kaikoura to chief surveyor Blenheim, 20 December 1898, Marlborough 44, MLC Christchurch

14. Chief surveyor Blenheim to district surveyor Kaikoura, 29 November 1898; district surveyor Kaikoura to chief surveyor Blenheim, 6 December 1898; and chief surveyor Blenheim to district surveyor Kaikoura, 17 December 1898, L&S 201, fols 34–36

15. Nelson MB 4, p 245

16. Auchinleck to chairman, Scenery Preservation Board, 24 September 1905, L&S 175, DOSLI Blenheim

17. Percy Smith to Commissioner of Crown Lands, 14 November 1905, Marlborough 44, MLC Christchurch

18. Commissioner of Crown Lands Blenheim to George Beaton, 21 November 1905, L&S 175, DOSLI Blenheim

19. Auchinleck to Commissioner of Crown Lands Blenheim, 13 October 1906, L&S 175, DOSLI Blenheim

20. Auchinleck to Commissioner of Crown Lands Blenheim, 16 February 1907, L&S 175, DOSLI Blenheim

21. Commissioner of Crown Lands Blenheim to Taylor, 20 February 1907, L&S 175, DOSLI Blenheim

22. Commissioner of Crown Lands Blenheim to Auchinleck, 20 February 1907, Marlborough 44, MLC Christchurch

23. Commissioner of Crown Lands Blenheim to Under–Secretary for Lands, 3 July 1907, L&S 175, DOSLI Blenheim

24. Under–Secretary for Lands to Commissioner of Crown Lands Blenheim, 31 July 1907, Marlborough 44, MLC Christchurch

25. Korehe to Commissioner of Crown Lands, 17 April 1907, Marlborough 44, MLC Christchurch

26. Beaton to Commissioner of Crown Lands, 4 January 1908, L&S 175, DOSLI Blenheim

27. Beaton to Commissioner of Crown Lands Blenheim, 20 January 1908, L&S 175, DOSLI Blenheim

28. Commissioner of Crown Lands Blenheim to Auchinleck, 11 November 1908, L&S 175, DOSLI Blenheim

29. Commissioner of Crown Lands Blenheim to Beaton, 11 January 1908, L&S 175, DOSLI Blenheim

30. Commissioner of Crown Lands Blenheim to Under–Secretary for Lands, 6 May 1910, L&S 175, DOSLI Blenheim

31. Under–Secretary for Lands to Commissioner of Crown Lands Blenheim, 30 January 1912, L&S 929, DOSLI Blenheim

32. Under–Secretary for Lands to Commissioner of Crown Lands Blenheim, 23 July 1912, L&S 929, DOSLI Blenheim

33. Under–Secretary to Minister in Charge of Scenery Preservation, 17 June 1912, L&S HO file 505, accession LS 1, NA Wellington

34. Morera and Morera to Minister in Charge of Scenery Preservation, 1 November 1912, L&S 929, DOSLI Blenheim

35. Commissioner of Crown Lands Blenheim to Under–Secretary for Lands, 29 November 1912, L&S 929, DOSLI Blenheim

36. Nelson MB 7, pp 230–232, 9 October 1913

37. Morera to land purchase officer, Wellington, 11 October 1913, Marlborough 44, MLC Christchurch

38. Court order, Picton, 9 October 1913

39. Certificate of title 21/144

40. Under–Secretary for Lands to Commissioner of Crown Lands Blenheim, 7 May 1914, Marlborough 44, MLC Christchurch

41. Francis Auchinleck to G W Forbes MP, 10 April 1918, L&S HO file 505, LS 1, NA Wellington

42. Commissioner of Crown Lands Blenheim to Under–Secretary for Lands, 12 June 1918; Under-Secretary for Lands to Commissioner of Crown Lands Blenheim, 4 July 1918; and Commissioner of Crown Lands Blenheim to Under–Secretary for Lands, 4 October 1918, L&S HO file 505, LS 1, NA Wellington

43. Commissioner of Crown Lands Blenheim to Under–Secretary for Lands, 21 March 1919, L&S HO file 505, LS 1, NA Wellington

44. Commissioner of Crown Lands Blenheim to Under–Secretary for Lands, 31 December 1934, Marlborough 44, MLC Christchurch

45. Commissioner of Crown Lands Blenheim to district officer, Christchurch Maori Affairs, 16 September 1958, Marlborough 44, MLC Christchurch

46. Ibid

47. R Solomon to Prime Minister and Minister of Maori Affairs, 11 September 1958; Minister of Lands to Minister of Maori Affairs, 6 October 1958; and Director General of Lands to Commissioner of Crown Lands Blenheim, 7 October 1958, L&S Blenheim file 3/577

48. *Ngai Tahu Sea Fisheries Report 1992*, p 269

49. Ibid

50. Plan M801, DOSLI Blenheim

51. A Mackay to Native Minister, 6 December 1865, *Compendium*, vol 2, p 210

52. W J Elvy, *Kaikoura Coast: The History, Traditions and Maori Placenames of Kaikoura*, Christchurch, Hundalee Scenic Board, 1949, pp 58–59

53. *Ngai Tahu Report 1991*, para 12.5.11

54. Blenheim deeds register IIIG/147, 150, and 183; Blenheim deeds index 4/487 and deeds register 50/407

55. SO plan 647, DOSLI Blenheim

56. *New Zealand Gazette*, 1981, p 2340

57. Nelson MB 2, p 135, 30 July 1890

58. Chief surveyor Blenheim to registrar, Native Land Court Wellington, 20 May 1891, L&S 201E, DOSLI Blenheim

59. Surveyor–General to chief surveyor Blenheim, 4 October 1893, L&S 201E, DOSLI Blenheim

60. Ibid

61. Blenheim SO plans 676, 677, 678 (M13:5–7)

62. Blenheim SO plans 774, 775, 776

63. Surveyor-General to chief surveyor Blenheim, 16 September 1895, L&S 201E fol 20, DOSLI Blenheim

64. District surveyor Kaikoura to chief surveyor Blenheim, 31 August 1896, L&S 201E, DOSLI Blenheim

65. Field books 139, p 44; 122, pp 1–10, 12–17; 161, pp 38–46; 164, p 15, DOSLI Blenheim

66. *Compendium*, vol 2, p 384

67. Nelson MB 4, pp 219–242

68. Minutes of Scenery Preservation Commission, 19 May 1904, NA Wellington, accession LS 70/1

69. Commissioner of Crown Lands Blenheim to chairman Scenery Preservation Commission, 13 July 1905, L&S 201, DOSLI Blenheim.

70. The 1902 survey plans (M13:5–7) were not approved by the chief surveyor because they were incomplete, and it was not until the 1906 plans (M13:1–3) were approved that a basis existed for title to issue.

71. Acting superintendent, Tourist Department, to native land purchase officer, 27 March 1905; file note, unsigned and undated; and Under-Secretary for Lands to Minister of Lands, 9 August 1906, L&S HO file 4/135, DOC HO; petition 844/04, AJHR, 1904, I-3, p 29

72. Commissioner of Crown Lands Blenheim to Surveyor-General, 5 June 1905, L&S 201, DOSLI Blenheim

73. Commissioner of Crown Lands Blenheim to chairman, Scenery Preservation Commission, 13 July 1905, L&S 201, DOSLI Blenheim

74. Under-Secretary for Lands to Minister of Lands, 14 December 1906, L&S HO file 4/135, DOC HO

75. Commissioner of Crown Lands Blenheim to Under-Secretary for Lands, 18 November 1907, L&S 201E, DOSLI Blenheim

76. Under-Secretary for Lands to Commissioner of Crown Lands Blenheim, 20 November 1907, L&S 201, DOSLI Blenheim

77. Assistant Crown lands ranger to Commissioner of Crown Lands Blenheim, 7 February 1908, L&S 201E, DOSLI Blenheim

78. Commissioner of Crown Lands Blenheim to Under-Secretary for Lands, 8 February 1908, L&S 201E, DOSLI Blenheim

79. Under-Secretary for Lands to Commissioner of Crown Lands Blenheim, 17 February 1908, L&S 201E, DOSLI Blenheim

80. Chief surveyor to Hemi Hui Te Miha (and others), 2 March 1908, L&S 201E, DOSLI Blenheim

81. Commissioner of Crown Lands Blenheim to Under-Secretary for Lands, 13 November 1908, L&S 201E, DOSLI Blenheim

82. Under-Secretary for Lands to Commissioner of Crown Lands Blenheim, 3 December 1908, L&S 201E, DOSLI Blenheim

83. Commissioner of Crown Lands Blenheim to Teoti Wira, Tanira Hohepa, Kaikara Hohepa, and Hariata Beaton, 8 December 1908, L&S 201E, DOSLI Blenheim

84. Commissioner of Crown Lands Blenheim to Under-Secretary for Lands, 20 February 1909; 'Schedule showing the Estimated Value of Portions of Mangamaunu Native Reserve Proposed to be Taken as Scenic Reserve', L&S 201E, DOSLI Blenheim

85. Under-Secretary for Lands to Minister of Lands, 8 March 1909, L&S HO file 4/135, DOC HO

86. Petitions 347/08, 372/08, AJHR, 1908, I-3, pp 10–11; petition 399/08, AJHR, 1908, I-3, p 15

87. County clerk Kaikoura to Minister of Lands, 8 June 1912; Under-Secretary for Lands to Minister of Lands, 13 June 1912 and 15 July 1912, L&S HO file 4/135, DOC HO

88. Under-Secretary to Commissioner of Crown Lands Blenheim, 23 July 1912, L&S 201E, DOSLI Blenheim

89. Commissioner of Crown Lands Blenheim to Under-Secretary for Lands, 29 July 1912, L&S 201E, DOSLI Blenheim

90. Under-Secretary for Lands to Commissioner of Crown Lands Blenheim, 31 July 1912, L&S 201E, DOSLI Blenheim

91. Commissioner of Crown Lands Blenheim to Commissioner of Crown Lands Wellington, 30 August 1912, L&S 201E, DOSLI Blenheim

92. Commissioner of Crown Lands Blenheim to Under-Secretary for Lands, 30 October 1912, L&S 201E, DOSLI Blenheim

93. Assistant Under-Secretary to Commissioner of Crown Lands Blenheim, 7 October 1912, L&S 201E, DOSLI Blenheim

94. Under-Secretary for Lands to Minister in Charge of Scenery Preservation, 5 August 1913, L&S HO file 4/135, DOC HO

95. Under-Secretary for Lands to Under-Secretary for Public Works, 2 September 1913 and 9 September 1913, L&S HO file 4/135, DOC Ho

96. Tamati Tahuaroa to T Parata MP, 1 November 1913, L&S HO file 4/135, DOC HO

97. *New Zealand Gazette*, 1913, p 3583

98. Nelson MB 7, pp 276–289, 18 September 1914

99. Court order, Picton, 18 September 1914

100. *New Zealand Gazette*, 1930, p 3854

101. Ibid, 1931, p 387; pt 3B of 2, 0.9358 ha; pt 3A of 2, 1.336 ha; pt 3C of 2, 0.0060 ha; closed road 0.9988 ha

102. Wellington MB 49, p 95

103. Kaitarau survey district: no 1 blk XI, no 1 blk XIV, no 1 blk XIII, no 1 blk XVI, no 6 blk XIV, nos 9, 10, and 11 of 6 blk XIV, no 15 blk XVI, no 16 blk XV; Mt Fyffe survey district: pt 59 blk V, sec 73 (pt 59 and 71) blk V, pt sec 70 blk V; secs 313–315 Kaikoura Sbn; Hundalee survey district: secs 17 and 18 blk XI, sec 10 blk X, sec 23 blk XV; see P30/3.4, P31/2.1, P31/2.2, P31/3.1, O31/8.3, O31/8.4, O31/8.2, O31/5.4, O31/4.4, O31/1.2, O31/6.4, O31/7.4, O32/5.1, metricated plans, record sheets, DOSLI Blenheim

104. W J Elvy, *Kaikoura Coast: The History, Traditions and Maori Placenames of Kaikoura*, Christchurch, Hundalee Scenic Board, 1949

105. *New Zealand Gazette*, 1942, p 2529; 1949, pp 1184–1185; 1951, p 845

106. SIMB 34, pp 126–128

Chapter 2

Canterbury Ancillary Claims

2.1 The majority of grievances arising in the Canterbury region relate to the loss of the tribe's mahinga kai. It is a loss which cannot be easily documented; the effects of drainage and pollution do not occur overnight. Yet in 1988, when these complaints were expressed to the Trihunal, the devastation of Ngai Tahu's highly prized taonga was readily apparent to all. The evidence lies in the dried-up lagoons, the poisoned lakes and rivers, the used-up fisheries. Members of Ngai Tahu can no longer practise a way of life that they used to practise even 20 years ago. Much of the damage, as the history behind the grievances will relate, occurred many years ago. In almost every instance the interests of settlement were placed firmly above those of Ngai Tahu. The following tale, however, is not solely to do with the past. As Rakiihia Tau pointed out:

> Rivers are now managed and their water is extracted for irrigation and used to carry effluent to the sea. . . . 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)

In order to hring a halt to the continuing destruction of their mahinga kai, Ngai Tahu demand a stake in the ownership and future management of the existing resources. It was repeatedly asserted that traditional methods of conservation are still relevant today, and that the tribe should be given a meaningful role as 'kaitiaki' over the resources.

The following summary of Canterbury grievances will again demonstrate the lack of sufficient reserves allocated to Ngai Tahu under the Kemp purchase deed, as already fully explained in the *Ngai Tahu Report 1991*. It also goes further to deal with the erosion into and loss of the small reserves granted, particularly the special 1868 fishery reserves.

2.2 Claim nos: **3–7**
Claim areas: **North Canterhury 1868 fishery reserves**
Claimant: **Rakiihia Tau (J10)**

The following grievances were hrought by Rakiihia Tau and concern fishing easements awarded to the people of Kaiapoi hy the Native Land Court in 1868. Of issue are the size, the location, and, in one case, the compulsory acquisition of the different reserves. At the heart of these grievances, however, lies the keenly felt loss of the tribe's 'mahinga kai'; the gradual disappearance of the resources themselves, which has rendered the easements useless. Mr Tau claimed that:

- **The Taerutu reserve was located on tapu ground, which meant that many members of the tribe could not use it as such, and land drainage and river control works have rendered the lagoon useless.**

- **The Waimaiaia reserve is so small that it has not been able to accommodate any change to the river mouth or land drainage. As a result the tribe has been left with a landlocked reserve with no access to the fishing resources.**

- **The fishery reserve 'near the Rotoroa lagoon' has been lost.**

- **The Te Aka Aka reserve has become landlocked as a result of land reclamation and river management, and tribal members are no longer allowed to camp and fish there (J10:17).**

- **The Te Ihutai reserve was compulsorily taken by the Crown in 1956, and compensation fixed at £85.**

The issues involved in these grievances are inseparable from those already discussed by the Tribunal in its main report: the extent of land reserved to Ngai Tahu, the provision of mahinga kai reserves, and the protection of these traditional food resources. It is necessary, therefore, to recapitulate briefly the history surrounding the Crown's purchase of the area, its provision for Ngai Tahu, and the Tribunal's findings to date.

Nga mahinga kai a Ngai Tahu

2.2.1 For hundreds of years Ngai Tahu pursued a seasonal round of hunting and food gathering over their huge territories. Survival largely depended on hunting and gathering kai. Various sections of the tribe would move to where resources were seasonally abundant, preserve the food, and take it back to their more permanent settlements. Even after the land purchases, many Ngai Tahu continued to rely on their 'mahinga kai', their traditional hunting grounds, for their existence.[1]

Today the food gathering from mahinga kai, although obviously not undertaken to the same extent, continues to be an important facet of life for many Ngai Tahu. This was evident in the submissions of the Ngai Tahu people to the Tribunal.

The Kemp purchase

2.2.2 When the deed of purchase for a huge tract of Ngai Tahu land was signed in 1848, the two parties had not decided on specific areas of land to be reserved for the tribe. Rather, Henry Tacy Kemp promised, and the deed provided for, different kinds of reserve, which were to be determined and marked off at a future date. This included provision for mahinga kai:

> Ko o matou kainga nohoanga ko o matou mahinga kai me waiho marie mo matou, mo a matou tamariki, mo muri iho i a matou . . .[2]

In the English translation this was interpreted as:

> 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 . . .[3]

From the evidence presented to it, the Tribunal determined that the Crown was obliged under Kemp's deed to reserve to Ngai Tahu their homes and their mahinga kai, and to provide additional ample reserves. However, as the *Ngai Tahu Report 1991* details, when the tribe's reserves were subsequently laid off by Walter Mantell in 1849, Ngai Tahu were left with a mere 6359 acres out of the 20 million acres involved in the purchase; in Mantell's own words, 'enough to furnish a bare subsistence by their own labour'. No provision was made for mahinga kai. With regard to fishing easements, Mantell later wrote:

> At almost every reserve the right to maintain the old and to make new eel-weirs was claimed, but I knew these weirs to be so great an impediment to the drainage of the country that in no case would I give way upon this point . . . (A8:I:242)[4]

In terms of the Crown's provision under the Kemp purchase, the Tribunal upheld the claimants' grievance 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 Kemp's 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.

The effect of the Crown's niggardly allocations, said the Tribunal, was to 'ghetto-ise' Ngai Tahu on small uneconomic units on which they could do little more than struggle to survive.[5]

The Native Land Court fishing awards

2.2.3 In 1868 the Native Land Court came to the south for the first time. Chief Judge Fenton presided. During the course of the Rapaki claim it became evident that the land reserved to Ngai Tahu from the sale was less than adequate. After Mantell's testimony, Crown counsel conceded that Ngai Tahu were entitled to more land than had been reserved to them (A8:II:201).[6] The court for its part judged that the provisions in the Kemp deed regarding the reservation of their 'pahs, residences, cultivations, and burial places' had not been effectually and finally carried out (A8:II:203).[7] That same day, Heremaia Mautai made a claim for Kaitorete Spit, on the basis that it had not been sold

to the Crown. Evidence was heard regarding the importance of both the lake and the spit to the tribe for fishing operations.

Fenton was given jurisdiction to determine what reserves should have been made under Kemp's deed. In the event he ordered a series of additions to the reserves, increasing the average acreage from 10 to 14 acres per head.

Fenton later stated that there had been 'a long argument', which 'lasted several days' over the issue of mahinga kai. The court minutes do not detail this debate. In the result, Fenton judged that it referred to 'local and fixed works and operations' and did not include 'Weka preserves or any hunting rights' (A8:II:217).[8] This effectively limited 'mahinga kai' to the practice of fishing.

Ngai Tahu had been told prior to this judgment to make a list of the areas they wanted reserved and a meeting had been held to this end out of court on 2 May 1868. Alexander Mackay took minutes of the meeting and it appears that Rolleston, Under-Secretary for the Native Department and acting for the Crown, was also present. Representatives were chosen to speak on behalf of Ngai Tahu from the various settlements. Horomona Pohio spoke for the people of Arowhenua, Waimatemate, and Waitaki, Wiremu Naihira for those of Kaiapoi. Representatives of the residents of Taumutu and Port Levy also stood. The minutes disclose the different requests for areas to be set aside for fisheries, urupa, weka runs, old cultivation sites, pa sites, and timber and occupation reserves. Mackay impressed upon those present that the granting of these acreages would be 'a final extinguishment of all their claims under the Kemp deed' (P11:309).[9]

The disparity between the requests aired at the meeting on Saturday and the acreages finally awarded by the court four days later, is considerable. With respect to the Kaiapoi requests, for instance, some of the acreages were reduced and some were wiped altogether (A8:II:217).[10] The reserve near Waipara (Waimaiaia) was reduced from 25 acres to 10 acres and Te Aka Aka was reduced from 20 acres to 10 acres. Otuapatu was instead reserved for a rifle range in March 1868 (AB35:12).[11] Taerutu, though, remained at 15 acres, as did Torotoroa. Te Ihutai, located at the mouth of the Avon River, also remained intact at 10 acres.

If Fenton is to be believed, he was unaware of these out of court reductions to Ngai Tahu's requests. 'I told the natives to make all their demands,' he later testified, '[and they] produced a list of the fisheries that they required and I made orders for the whole of them' (P11:338–339).[12] Mr Alexander argued that this may have been what Fenton would actually have liked to happen, 'but he was probably not sufficiently aware of the intricacies of fitting the new awards into the existing land tenure pattern'. Thus, according to Mr Alexander, his comments should be 'treated with some caution' (AB35:13). As a possible explanation why some reserves were not granted, Mr Walzl pointed to Rolleston's stipulation, aired in court on 5 May 1868, that 'eels weirs and fisheries to be granted should not interfere with the general settlement of the country' (P10:80). Mr Alexander, however, argued that Rolleston's comment was based on a fear that, by allowing fishing rights, Crown control over the raising or the maintenance at high-water levels of lagoons and estuaries, which might threaten water levels inland, would diminish. Thus, Mr Alexander stated, Rolleston's

comment was 'not a reason for not granting any particular easement . . . but rather was an upper constraining limit on what the Ngai Tahu grantees could do with their grants' (AB35:13–14). Both Crown counsel and Mr Alexander argued that it is hard to conceive that Rolleston's viewpoint was not discussed during the negotiations. Mr Alexander felt that the evidence pointed to the reductions being 'due solely to the land having already been granted or reserved for another purpose'. In evidence to a select committee 12 years later, the Reverend G P Mutu said that the reductions were because some of the areas had already been Crown granted (P11:361).[13] According to Rolleston, after the meeting of 2 May 1868, he and Ngai Tahu representatives visited the survey office to see whether the lands requested were available or whether they had already been Crown granted. Mr Alexander believed that Rolleston and the representatives would have seen a number of maps at the survey office showing sections purchased by settlers superimposed on a sketch of the district showing topographical features and roads already surveyed. Map data show, according to Mr Alexander, that those reserves granted in full (Taerutu, Torotoroa, and Te Ihutai) were 'very much hemmed in by sections granted earlier, and these other sections with boundaries to the water's edge, or into the water in some cases, would have enjoyed certain rights to the lagoon' (AB35:14). Waimaiaia and Te Aka Aka, on the other hand, although less hemmed in, were reduced in size. Mr Alexander suggested that the reason for these reductions is that, as cited above, Rolleston saw the reserves as being 'estuary situations where considerable catchment areas could be affected if too many rights were given to Ngai Tahu' (AB35:14). The court ruled that it was 'prepared to make the orders for the pieces of land and easements which have been agreed to by the Crown'. The court then made an order, which, Mr Alexander argued (based on what was included in the Arowhenua award order), included the following statement:

> And it is further ordered that the several Crown grants of the weirs and easements shall contain a provision saving the rights of the owners of land to the undisturbed flow of water in the several streams running through the said parcels of land. (AB35:15)[14]

Mr Alexander noted that the Crown's attitude that a settlement should not be interfered with was not incorporated in this order. He concluded that the nature and effect of granting the fishery easements (that is, whether or not they conferred special rights or rights of access 'to a common good') cannot be answered by the evidence available (AB35:15). In the result, five fishing easements in the vicinity of Kaiapoi, namely Taerutu (Ohuapounamu), Waimaiaia, Torotoroa, Te Aka Aka, and Te Ihutai, were duly awarded to the people there. The reserves granted in Arowhenua and Waitaki will be discussed later in this chapter.

The drainage of the Kaiapoi fisheries

2.2.4 The decreasing availability of Ngai Tahu's fishing resources is difficult to document. Nevertheless, in 1879, only 11 years after the court reservations, Te Oti Pita Mutu and 25 others petitioned Parliament on the loss of the fisheries of Ohuapounamu, Torotoroa, and Waimaiaia:

> na nga pakeha o reira [Ohuapounamu, Torotoroa, and Waimaiaia] i te tau 1876 i keri te wai a aua roto, mate ana nga ika o roto a nui ana te mate i pa ki nga tangata no ratou aua roto.[15]

In 1876, they claimed, the neighbouring Pakeha had drained the lake, which had killed all the fish, to the very great loss of the owners. They asked that the reclaimed areas be vested in them as compensation. The petitioners also demanded that an additional 10 acres be added to the Te Aka Aka reserve, at the mouth of the Rakahuri River as 'ko taua wahi e ngaro ngaro ana i te waipuke a he kino rawa te whenua kaore rawa e pai'.[16] The land was subject to floods and was of such poor quality as to be almost useless.

The Reverend G P Mutu told the Native Affairs Committee that at Lake Ohuapounamu near Kaiapohia pa drains which had been cut by Europeans in 1876 had been refilled by Maori, but the lake had remained at its low level (P11:362).[17] Eels were not as plentiful as they had been. At Torotoroa too, drains had been cut by Pakeha having land at the lower end of the lake. Mutu acknowledged that the Maori and Pakeha interests were directly opposed to each other. In the case of Torotoroa he proposed that the lake should be drained and that the land rendered dry by this measure should be awarded to the tribe by way of compensation (P11:363).[18] Ihaia Tainui stated that the road boards also had a hand in the draining.

Regarding the Te Aka Aka reserve at the mouth of the Rakahuri River, Mutu explained that land had been requested so that people could settle and graze horses while using the fisheries. However, when the area was surveyed, 10 acres of sandy soil had been selected for this. He asked that an adjoining piece of land be added to the reserve to make up for its poor quality (P11:365).[19]

Rolleston, now Minister of Lands, gave evidence to the committee. He reiterated his view that the fisheries came second to the settlement of the district. Of Torotoroa Lagoon he said:

> The reserve . . . was made at a spot where it commanded the deep water that could not be drained within this lagoon. The shallow part of the lagoon, which was not reserved for the natives, would naturally disappear in the interest of the drainage of a considerable piece of country. . . . I have no doubt that I told the Natives, what I am now telling the Committee, that there could be no claims admitted in respect of the drainage of the shallow part of the lagoon. (P11:330–331)[20]

Aside from the fact that Ngai Tahu speared eel in the shallow parts of the lagoon, his statement raises the issue of what exactly was reserved for Ngai Tahu in 1868. It is evident from the select committee notes that Ngai Tahu thought that they were getting the lakes, and the fish within, reserved to them. When Ihaia Tainui was asked if the award included the land as well as the water, he replied that 'The Maoris asked for those lakes to be reserved for their use, and the Court did so' (P11:320).[21] Likewise, Fenton stated, 'I meant the natives to have the enjoyment of those fisheries as they had before 1848' (P11:341).[22] Later, he said, 'My view is that no one has a right to interfere with the enjoyment of the easement which I gave them' (P11:344).[23]

The Tribunal concurs with Fenton's view. We consider that the 1868 court awards constituted a recognition of Ngai Tahu's rights to the continued and undisturbed use of those fisheries for which the awards were made. The grants were made to facilitate and enhance the tribe's fishing rights.

With regard to the lakes, the select committee recommended that the reclaimed area should be Crown granted to the reserve owners 'in compensation for the loss they have suffered by the drainage'.[24] A further 13 acres were reserved alongside Te Aka Aka reserve.

The destruction of the 1868 Kaiapoi fisheries was also alluded to in evidence to the Smith-Nairn commission of inquiry in 1880. The Reverend Mr Stack stated that:

> there was a large lagoon near old Kaiapoi pa, and another near Leithfield. The lagoon at Leithfield is perfectly dry. The natives were allowed fishing rights there by the Native Land Court in 1868, but owing to the drainage of the country by the settlers and Road Boards the lake has become perfectly dry. . . . At Taerutu, near old Kaiapoi pa, in addition to eels they used to catch a very large number of inangas. I know Solomon Tiwikai used to go there and dry from half a ton to a ton of inanga every year, but they have entirely disappeared owing to the drainage of the country. The Kaiapoi natives, and I may say most of the natives in Canterbury — I am speaking now from my own observation and knowledge of the people — had depended very largely upon eel fisheries, and that these fish made up a considerable portion of their daily food. And now, owing to the drying up of the lagoons, and the poisoning of many of the streams, it is very difficult to procure eels. (P11:263–65)[25]

It can be seen, then, that of the five easements awarded in north Canterbury, three had been detrimentally affected by drainage as early as 1876, and one, Te Aka Aka, was useless for the purposes for which it was set aside. The subsequent history of the Kaiapoi reserves under claim which follows reveals that the situation has only worsened.

2.3 Claim no: **3**
Claim area: **Taerutu**
Claim:

> **Mr Tau maintained that the Taerutu reserve was located on tapu ground, which meant that many members of the tribe could not use it, and that land drainage and river control works have rendered the lagoon useless.**

2.3.1 Mackay's minutes of the out of court meeting held on 2 May 1868 record that Ngai Tahu asked for two reserves in the vicinity of Taerutu:

(2) Tairutu; near Kaiapoi old Pah. There is about 15 acres which would make a good drying ground for eels.

. . . . .

(7) Otutapatu; near Tairutu; 25 acres there is land not bought. (P11:311)[26]

Before the Native Land Court on 6 May 1868, however, the areas had been reduced to 'five acres at Tairutu' and 'ten acres near Tairutu' respectively (A8:II:217).[27] Further, it seems that the two areas were combined into a single reserve of 15 acres 'Near Kaiapoi old pah' (A8:II:186).[28] On survey, this reserve, MR 898, block VIII, Rangiora survey district, was found to be 12 acres in area. In January 1887 the court determined that 117 persons were entitled to the reserve (AB21:6–9).[29]

MR 898 lay on the eastern side of Waikuku Lagoon, very near the old Kaiapohia pa site. This pa is also known as 'Te Pa o Turakautahi' or 'Te Kohaka a Kaikai a Waro' (AB21:20).[30] Mr Tau claimed that the area was tapu after the sacking of Ngai Tuahuriri's stronghold by Te Rauparaha. He stated that because many people would not use the lagoon for this reason, the court's award of land here was inappropriate.

There is no doubt that the area was of huge significance to Ngai Tahu. In 1848 Mantell had promised them that the site of Kaiapohia pa would be reserved 'so that neither Native nor European might dwell there' (A8:I:216).[31] On survey of the block, 11 acres were duly reserved for 'native purposes'. On the other hand, during the 1868 proceedings outlined above, Wiremu Naihira, as representative of Kaiapoi Ngai Tahu, expressly requested land near the old Kaiapohia pa for a fishing reserve.

The drainage of the fishery

2.3.2 Waikuku Lagoon was formerly a significant mahinga kai for the tribe. In evidence before the Native Affairs Committee in 1879, the fishery was referred to as Ohuapounamu. It has also been known as 'massacre lagoon', after Te Rauparaha's sacking of Kaiapohia pa.

In 1875 the lagoon, section 1873 of 31 acres, was reserved for public purposes. As related above, the following year the lake was partially drained by neighbouring Pakeha. Although Ngai Tahu had refilled the drains, the lagoon remained at the lower level. Over the years, requests by adjacent property owners to lease or buy the lagoon reserve were made to the Department of Lands and Survey. On each occasion the Commissioner of Crown Lands informed the applicants that there was no authority to alienate the reserve. In 1899 Crown Lands Ranger Ward was sent to investigate allegations of squatting and the destruction of game on the reserve. As a result of his report the reserve was declared a sanctuary for native waterfowl in December 1900 (AB21:60).[32]

In June of 1902 the Mandeville and Rangiora Road Board wrote to the Commissioner of Crown Lands Christchurch complaining that the choked creek on section 1873 was causing serious damage to the nearby road. They asked that control and use of the reserve be given to them in order to have the creek cleared (AB21:64).[33]

Ward was again asked to investigate. He considered that the cost of keeping the waterways in the reserve clear would be more than double the amount of any rent received for the land. He referred to the past drainage of the lagoon and its detrimental effect on Ngai Tahu's fishery. He also noted that three-quarters of the lagoon remained undrainable. Noting the tribe's continuing interest in the reserve, Ward recommended that:

> As it would seem though that the reserve was made into a Fauna reserve partly out of consideration to the Maories, they I think should be considered in the matter of control of the reserve. (AB21:67)[34]

The land board, however, determined to give control of the sanctuary to the Canterbury Acclimatization Society, on the undertaking that the society would also keep the drain clear at the north-eastern end of the reserve (AB21:70).[35] This was agreed to in February 1903 (AB21:72).[36]

The issue was revived in 1913 by the Rangiora County Council. The blocked creeks through the reserve were once again causing flooding and damage to the road (AB21:73).[37] It was estimated that the removal of willows choking the drains would cost £25. In light of the acclimatisation society's refusal to take responsibility for the clearing, the county council was approached about taking over control of the reserve (AB21:86).[38] This was declined. In response to a request for the necessary funds to have the drains cleared, the Under-Secretary for Lands also denied responsibility for the matter. He stated that the swamp should be offered for lease. In reporting on the reserve, the Crown lands ranger considered that the reserve should be offered to Ngai Tahu, who were already leasing out the fishing easement and the pa site. Failing this, the dry areas of the reserve could be sold to adjoining landowners, who would then become responsible for keeping the waterways clear (AB21:93).[39]

Meanwhile, the problem of flooding was becoming acute, affecting both neighbouring farmland and the road (AB21:95).[40] In July 1914 adjacent property owners were asked if they were interested in buying portions of the reserve fronting their properties. In order to sell the reserve, it was declared Crown land under section 68 of the Reserves Disposal Act 1914. A survey of the reserve was also undertaken.

The problem continued to drag on unresolved. In March 1917 Mr H Stokes, one of the adjoining landowners, indicated his interest in purchasing the northern part of the reserve (AB21:126).[41] He received a certificate of title for 7 acres 20 perches (part section 1873) in August 1924 (AB21:13).[42]

By this time moves to have the remaining portion of the reserve, some 24 acres, added to the adjoining Ngai Tahu reserves took shape. These moves were motivated principally by the Department of Lands and Survey's desire to avoid the 'heavy charges' involved in clearing the drains (AB21:133).[43] However, the extent to which Ngai Tahu still used the fishery was also inquired into; it was reported that the occasional eel was still caught (AB21:164).[44] Because of the very poor quality of the land, it was thought that the area would be added to MR 873A, the pa site reserve, free of charge (AB21:166).[45] Under section 21 of the Native Land Amendment and Native Land Claims

Adjustment Act 1924, part section 1873 was reserved for the benefit of Kaiapoi Ngai Tahu. The control and management of both reserves were vested in the Kaiapoi Reserve Board, which was to consist of the stipendiary magistrate of Kaiapoi, the Southern Maori and Kaiapoi members of Parliament, and three other members appointed by the Native Minister. In 1925 Wereta Tainui Pitama, Waata Momo Taituha, and Hamuera Rupene were gazetted as the unofficial members of the board.[46]

In October 1925 the Rangiora County Council again raised the issue of the blocked drains with the Commissioner of Crown Lands (AB21:176).[47] Predictably, the commissioner responded that the reserve was now administered by the Kaiapoi Reserve Board and that he no longer had jurisdiction over it (AB21:177).[48]

In November 1929 the Minister of Lands was approached by the chairman of the Rangiora County Council, Mr Stalker, about the drainage of Waikuku Lagoon. In December Mr Stalker proposed that a clear open channel about 20 feet wide should be made to carry away the flood waters (AB21:193).[49] The Native Minister suggested that Ngai Tahu should be consulted about the proposed drainage works. In March 1930 Wereta Pitama was visited by the Christchurch field inspector. According to the inspector, Pitama was favourable to the scheme:

> He informed me that personally he was in favour of the Lagoon being drained and was also of the opinion that members of the native race locally were favourably disposed towards the water way being opened up & the Lagoon drained. (AB21:201)[50]

No further or wider consultation with the tribe was considered necessary.

In February 1931 the county council notified the Commissioner of Crown Lands Christchurch of its intention to construct a drainage outlet on the property (AB21:203).[51] The commissioner had no objections to the scheme, merely pointing out once again that the department had no responsibility for the works.

Today the Kaiapohia pa site, MR 873A, and the old lagoon, section 1873, are a single Maori reservation, under the administration of Ngai Tahu trustees appointed by the Maori Land Court. The purpose of the reservation is for:

> A marae, meeting place, recreation ground, sports ground, Church site, burial ground, a place of emotional association, and a place of historical significance and scenic interest, for the common use and benefit of the Tuahuriri Hapu of the Ngai Tahu people.

MR 898 was not included in the administrative arrangement because of concerns about possible differences in its ownership.

We shall return to Taerutu reserve after considering the four other reserves involved in Mr Tau's claim.

2.4 Claim no: **4**
Claim area: **Waimaiaia**
Claim:

> **Mr Tau claimed that the Waimaiaia reserve is so small that it has not been able to accommodate any change to the river mouth or land drainage. As a result the tribe has been left with a landlocked reserve with no access to the fishing resources.**

2.4.1 Mackay's minutes of the meeting in the town hall held on 2 May 1868 record that Wiremu Naihira asked for 25 acres at Waimaiaia. Ten were awarded.

The Waimaiaia reserve lies on the coast about 1.5 kilometres south of the Waipara River. Mr Tau's grievance implies that the reserve might have been contiguous with the Kowai River mouth at the time of its reservation. However, Mr Alexander, for the Crown, contested this. He claimed that the reserve was intended, not for the Kowai fishery, but rather for a small lagoon situated immediately behind it (O5:12). He cited the first survey plan made of the region in 1861–62 as evidence. An 1890 survey plan also shows the reserve, NR 899, as being bounded inland by the 'Old Body of Lagoon', and comprising 10 acres 3 roods (O6A:1).[52]

The lagoon is Crown land and is officially known as rural section 38170. In a field officer's report made in November 1971 this section was described as:

> basically a fresh water lagoon. It has been gradually reduced in size by accretion and sedimentation. It is covered with raupo, flax, swamp grasses and sedges with hundreds of cabbage trees of various sizes. (AB21:261)[53]

At the instigation of the Runanga o Ngai Tuahuriri, Waimaiaia MR 899 has since been set apart as a Maori reservation for the purposes of a meeting place and recreation ground for the common use or benefit of those Ngai Tahu residing in the Kaiapoi and Tuahiwi districts (O6:3).[54]

2.5 Claim no: **5**
Claim area: **Torotoroa**
Claim:

> **Mr Tau questioned the loss of a 20-acre reserve made 'near the Rotoroa lagoon' (J10:16).**

He claims to have been unable to find any record of the fishing easement which is listed together with other reserves awarded to Ngai Tahu by the Native Land Court in 1868.

2.5.1 Mr Alexander, however, identified this reserve as the Torotoroa reserve, MR 895, located just south of Leithfield. He said that confusion has probably arisen because the Maori Land Court records treat the original fishery easement and a later extension to it (the old lagoon bed) as two separate reserves (O5:18). Mr Tau's complaint has, therefore, been answered.

As discussed above, the drainage of Torotoroa had been attempted by Pakeha before 1879. Mr Alexander noted that this was in part to keep the main north to south highway (now State Highway 1) clear of flood waters which backed up across it. In 1883, as a consequence of Te Oti Pita Mutu's petition in 1879, the 38-acre lagoon bed, section 2557, was reserved under the Land Act 1877 for the 'use of aboriginal natives'.[55] Although reserved for Ngai Tahu, the land was still technically Crown land. Before the title could be transferred to Maori ownership, the owners and their relative interests in the block first had to be determined by the Native Land Court.[56] This was attempted in 1913 but it was not until 1970 that the ownership of section 2557 was officially investigated by the court. The owners were made the same as the contiguous MR 895. Both areas have been leased over the years, the rents being applied to the maintenance of the Tuahiwi hall and cemetery.

2.6 Claim no: 6
Claim area: **Te Aka Aka**
Claim:

> **Mr Tau's claim regarding Te Aka Aka is two-edged. He claims firstly that as a result of land reclamation and river management this once useful reserve has become landlocked and no longer provides access to the fishing resource. He also maintains that due to various regulations and Acts of Parliament Ngai Tahu are no longer allowed to camp on the riverbank and adjoining land to pursue their customary fishing practices (J10:17).**

2.6.1 Te Aka Aka reserve, MR 896, was set aside on an island at the mouth of the Rakahuri (Ashley) River in order to give Ngai Tahu access to the rich fisheries there. Inanga (whitebait), tuna (eel), waikoura (freshwater crayfish), cockles, pipi, and flounder were all species which could be caught in the surrounds. Mr Tau maintained that the reserve also served as a launching place for deep-sea fishing.

As related above, a further 13 acres adjoining MR 896 were set aside for the 'Aboriginal natives of Kaiapoi' as a result of Te Oti Pita Mutu's petition in 1879. However, when this additional land, lot 2486, was surveyed three years later it was found that river erosion had diminished the area to a mere 3 acres 3 roods (O6A:3).[57] The river had also taken its toll on MR 896: in 1890 it was surveyed at 6 acres 1 rood, instead of its originally assessed 10 acres (O6A:5).[58] The ownership of MR 896 was determined by the Native Land Court in 1887. The status of MR 2486, however, shared a similar fate as the Torotoroa Lagoon bed in that technically the land was still Crown land. This

was rectified in 1970 when the reserve was awarded by the Maori Land Court to the owners of MR 896.

The landlocking of the reserve

2.6.2 Over the years Ngai Tahu continued to use the reserve as a base while enjoying the fisheries of the Rakahuri River and Saltwater Creek. Mr Tau can remember staying there as a boy. There were small fishing huts on the reserves which, as late as 1966, were still described as being on an island (AB21:292).[59] This supports the claimant's assertion that the change to the river course has been a relatively recent one. However, Mr Alexander argued that the change to the course of the Rakahuri River, which confined it behind a stopbank, took place in the 1930s. Mr Alexander submitted that the stopbanking of the river was a Public Works Department unemployment scheme on behalf of the Ashley River Trust. The reserve, be argued, 'may appear on cadastral maps to be on an island, but this had ceased to be the case on the ground long before 1966' (AB35:19).

Ngai Tahu's fishing reserve today is indeed landlocked. According to Mr Alexander, the landlocking of the reserve occurred in the 1930s, when the course of the river apparently changed to the south, enabling a stopbank to be built on the riverbed fronting the reserve. It is indeed evident that the stopbanks constructed along the river have played a large part in this development:

> an examination of the aerial pbotos show that there are very considerable changes in the bed of this river, particularly from the Main Road Bridge to the sea. Stopbanks appear to have been put in and quite considerable portions of wbat were river bed apparently now seem to be bigh & dry. (AB21:328)[60]

It can be seen from the North Canterbury Catchment Board's plan that MR 896 and MR 2486 have been directly affected by the construction of the stopbank (AB21:341).[61]

The river's change of course has meant that mucb of the old bed has been reclaimed. This area, reserve 3102, was reserved as a domain in 1897 and as a river conservation reserve since 1956, the control and management of whicb is vested in the Canterbury Regional Council (which assumed the functions of the North Canterbury Catchment Board) (AB21:353).[62] As Mr Alexander noted, the effect of the reservation on owners with potential accretion rights was recognised in 1896 and 1918, but this did not stop the reservation (AB32:88–92; AB35:19).[63]

In November 1978 the registrar of the Christcburcb Maori Land Court was made aware that the southern portion of MR 896 which had been washed away by the time of survey in 1890 now formed part of reserve 3102. On questioning the cbief surveyor about the propriety of this, the registrar admitted that the area should not bave been included in the original domain or the present river conservation reserve (O6:30).[64] A new survey sbowing MR 896 as 10 acres in area was completed in 1981 (O6A:6).[65] The same has not been done for MR 2486. Sbould the claimants wish to pursue this, the Tribunal feels that, given the registrar's previous involvement, the matter would be better taken up through the Maori Land Court.

The Crown submitted that an application for creation may be made pursuant to section 81 of the Land Transfer Act 1952 (presuming that the land is subject to that Act), and that evidence of survey and of the gradual and imperceptible accretion must accompany the application. The Crown added that:

> Any title or other instrument recording ownership of the accretion may require some acknowledgement of the existence of the stopbank and the Regional Council['s] maintenance responsibilities (AB34:12).

Camping along the river

2.6.3 The second part of Mr Tau's claim refers to the tribe's practice of camping along the banks of the river and on the adjoining land in order to practise commercial fishing during and after the whitebait season. This is elaborated on in *Te Whakatau Kaupapa*, Ngai Tahu's resource management strategy for the Canterbury region:

> The most important mahinga kai in a modern context on the Ashley River is the Taranaki, a tributary near the Taranaki floodgate. During the whitebait season, Kaiapoi Ngai Tahu have traditionally camped on the Taranaki to catch the fish. They used to set up make-shift huts on the banks of the Taranaki, but in 1987 the Rangiora County Council passed a by-law which stopped the erection of temporary buildings in the area. This in effect forced a number of Ngai Tahu to abandon their customary food gathering activities.[66]

It is the tribe's desire that local Ngai Tuahuriri Ngai Tahu be allowed to establish temporary camps for the purpose of gathering kai during the appropriate seasons.

Tribunal staff have since been informed by Bruce Thompson of the Waimakariri District Council (formerly the Rangiora County Council) that the council has not passed any specific bylaws on this issue. He maintained that the district plan, which has been in existence since the 1970s, does not permit the erection of temporary buildings without building permits, but that the council has a relaxed attitude to the many people who camp and caravan in the area.

2.7 Claim no: 7
Claim area: **Te Ihutai**
Claim:

> **Mr Tau claimed that the Te Ihutai reserve was compulsorily taken by the Crown in 1956 and compensation fixed at £85 (J10:17–18).**

2.7.1 This 10-acre reserve, MR 900, lay in the Christchurch district on the Sumner to New Brighton coastline. Mr Tau stated that the reserve was part of a much larger fishery and, at the time of

allocation, gave access to the estuary of the Heathcote and Avon Rivers. The certificate of title issued in December 1895 lists 116 owners of the reserve, determined by the Native Land Court in 1887 (AB21:357–358).[67] The land was 'inalienable by sale or mortgage or by lease for a longer period than 21 years'.

In 1956 the reserve was taken for sewage treatment works and vested in the Christcburcb Drainage Board. The intention to take was published in the *Gazette* on 15 March 1956, and the land was proclaimed taken on 30 August that same year.[68] Under section 22(e) of the Public Works Act 1928, the board was required to serve notice of the acquisition on the owners of the land 'so far as they can be ascertained'. In Marcb 1956 the solicitor for the board informed the Maori Trustee of the board's inability to ascertain the current owners of the land (AB21:361).[69] Indeed, neither the owners nor the local runanga were formally approacbed about the compulsory acquisition, although a Ministry of Works officer reported in July 1956 that Te Ari Pitama, the cbairman of the South Island Maori Council and an owner of the reserve, had stated that 'the Maoris are keen to get rid of the land [and] require compensation' (AB32:94).[70] At the compensation hearing two years later, counsel for the drainage board stated that notice of intention to take had been served on the Ngai Tahu Maori Trust Board and on Mr Corcoran, who was acting for the owners at the bearing. No objections had been received (O6:75).[71]

The reserve was brought up at the meeting of the Otautahi Tribal Committee in May 1957, but it is not known in wbat context (AB21:366).[72] It seems, bowever, that the committee was as yet unaware of the acquisition.

An application for compensation was lodged by the drainage board in February 1957. At this stage the board 'desired to offer in exchange for the area of land taken, an area of land owned by the Board in the same vicinity' (AB21:371).[73] A meeting had been beld to this end with the Honourable Eruera Tirikatene, member of Parliament for Southern Maori, and the secretary of the Ngai Tahu Maori Trust Board.

The compensation bearing was beld on 12 February 1958 (AB21:379–381).[74] Judge Jeune presided, Mr Somers acted for the Christcburcb Drainage Board, and Mr Corcoran acted for the owners of the land. At least one member of Ngai Tahu, Te Ari Pitama, was present. Mr Pitama was keen to take up the board's offer of an excbange of land in lieu of compensation. The board, bowever, had reconsidered its position. Mr Pitama was told that the only land the board bad was acquired under the Public Works Act, and that 'The 1928 Act prevents any value being placed on it for special use to Board' (AB21:380).[75]

Also of contention at the bearing was the amount of compensation to be paid. A valuer called by Mr Somers stated that the '£50 Government Valuation' was all that could be expected. This reference to the 'Government Valuation' is somewbat baffling given that a special valuation by the Valuation Department bad been undertaken at the request of the Maori Trustee in December 1957. This bad estimated the value of the land at £100, with the comment that it 'could be worth much more to the Christchurch Drainage Board' (AB21:374).[76]

Mr Corcoran considered that the so-called Government valuation of £50 was nominal and bore no relation to the future potential of the site. In the result, compensation was fixed at £80 with £5 interest accrued from the taking date. In his decision, the judge stated:

> Sec 29 of 1944 Finance Act says the value is to be that which the land if sold on the open market hy a willing seller on the specified date might be expected to realise. No increase can be made because of its incorporation in the Board's scheme nor can any account he taken of the fact that its value has been reduced hy such scheme. (O6:79)[77]

The money was to be paid to the Ngai Tahu Maori Trust Board to be applied to the benefit of Ngai Tuahuriri hapu. In *Te Whakatau Kaupapa*, it is stated that:

> This Reserve was considered so valuahle that the owners would not accept the money offered as compensation to them. The only acceptahle compensation would be a similar area of land having similar characteristics to that which was compulsorily taken.
>
> The taking of Ihutai has long been a sore point with the owners. The compensation offered was minimal and still lies unused with the Ngai Tahu Maori Trust Board.[78]

The Trihunal's conclusions on 1868 Canterbury fishery reserves

2.7.2 Many of Mr Tau's complaints regarding the fishing easements around Kaiapoi fall under the much more general statement of claim already dealt with by the Trihunal. With regard to his complaints about the size of the reserves, for instance, the Tribunal has found that the Crown:

> 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 hut also an economic hase 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 hreach.[79]

His complaints concerning the loss and degradation of the tribe's mahinga kai are also part of a much larger claim against the Crown, namely that:

> The drainage of swamps and lakes, the felling of hush, the conversion of land to agricultural use, and the introduction of acclimatised species destroyed or reduced the value of mahinga kai.

With regard to the loss of mahinga kai through the impact of settlement, the Trihunal felt unahle to uphold the grievance in light of its statutory obligation to identify with some precision the particular acts or omissions which have prejudiced Ngai Tahu and which infringe the Treaty. It stated that in many cases the acts or omissions have occurred as the result of activities carried out hy the whole spectrum of society and they cannot be attrihuted solely to the Crown as a breach of its duty to protect under the Treaty.[80]

However, there exists a distinction between the general drainage of the country for the purposes of settlement and the drainage affecting a limited number of fisheries specifically set aside in 1868 as mahinga kai for the use of Ngai Tahu. The tribe had waited 20 years to have their rights under the provisions of the Kemp deed to their traditional food gathering places recognised and acted on. That these mahinga kai were restricted to a handful of eel weirs and fisheries confirms the Tribunal's previous finding with respect to the Crown's failure to provide adequate reserves. To have even these few resources made useless within eight years of their reservation indicates a further failure on the part of the Crown to protect Ngai Tahu's mahinga kai. With respect to the specific 1868 fisheries, we consider that the Crown had a duty under the terms of both Kemp's deed and the Treaty of Waitangi to ensure that Ngai Tahu had, in Fenton's words, 'the enjoyment of those fisheries as they had before 1848'. The Crown failed to fulfil this obligation. It is evident to the Tribunal that Ngai Tahu have been detrimentally affected by the loss of these fisheries.

Directly as a result of the Crown's failure to set aside sufficient reserves under the Kemp deed in 1848 and, in particular, fishery reserves, the Native Land Court in 1868 was directed to determine what reserves should have been made. As we have seen, Chief Judge Fenton proceeded to make a number of orders, although the areas finally reserved were much less than those sought by Ngai Tahu. The Tribunal considers that the Crown had a special duty to protect these fishery reserves so that Ngai Tahu could continue to enjoy them. The evidence in respect of not only the Canterbury fishery reserves but also other Ngai Tahu fishery reserves shows that this duty was not performed. As a result Ngai Tahu has been left bereft of a major food resource. The 1868 fishery reserves created by the Native Land Court were of special importance to Ngai Tahu. As these resources disappeared there was and still is an obligation on the Crown to remedy this breach of the Treaty. It can be remedied by the development of regional inland and estuarine fishery reserves. As this report proceeds the Tribunal will refer to special areas that may be suitable for such development. In its 1991 land report the Tribunal recommended the development of Wairewa (Lake Forsyth) and Waihora (Lake Ellesmere) and in its later *Ngai Tahu Sea Fisheries Report 1992* recommended that 'all existing annual eel fishing licences on Waihora be not renewed on expiry so that the lake can be returned to Ngai Tahu as a Ngai Tahu eel fishery'.[81] It is disappointing to record here that the Honourable Minister has seen fit to disregard or, perhaps more kindly, to delay implementation of this recommendation, as eel fishing licences have been reissued since the Tribunal reported.

If remedial response to the Tribunal's findings on South Island mahinga kai in its two earlier reports is to be given by the Crown, there is a need not only to give effect to the recommendation as already made by this Tribunal but also to look seriously at the development of other inland fishery reserves to replace those given but soon thereafter lost to the tribe. Shortly, we shall indicate areas in which the Crown could consider the grant of fishery reserves.

2.8 Claim no: 8
Claim area: **Ahuriri**
Claimant: **Rakiihia Tau (J10)**
Claim:

Mr Tau referred to a 166-acre reserve granted for fishing purposes fronting Ahuriri Lagoon and the Halswell River. He claimed that the drainage of Waihora (Lake Ellesmere) has meant that the reserve no longer has access to these once important fisheries and can no longer be used for fishing (J10:19).

2.8.1 This land was traditionally known as Te Koroha. Although no reserves had been set aside here for their use, Ngai Tahu continued to camp near the lagoon to fish for eels (O6:86).[82] In 1878 the Crown land around Waihora (a large proportion of which was underwater) was made subject to the Railways Construction Act 1878, whereby the proceeds from its sale were used to pay for the construction of the Little River railway line (Q10:23). As a result of the Ellesmere Lake Lands Act 1888 (which authorised flood protection works for low-lying lands before their sale to pay for the railway), the lands were surveyed. Ngai Tahu from Kaiapoi, Little River, Rapaki, and Port Levy lobbied the Honourable E Mitchelson, then Native Minister, to have their fishing area reserved to them (O6:82–88).[83] According to Mr Alexander, Mitchelson promised that three sections would not be sold but would be set aside as fishery reserves, and these sections were chosen by the Reverend G P Mutu (AB32:97; AB35:21).[84] Mr Alexander noted that the sections were leased in 1890 but, in 1891, 10 acres of section 11 were retired from the lease to provide Ngai Tahu with land for camping and eel drying (AB32:98; AB35:21).[85] Under section 20 of the Reserves Disposal and Exchange Act 1895, sections 11, 12, and 13, block 10, Halswell survey district were set aside for Ngai Tahu for 'fishing and other purposes'. The sections lay on the south-west side of Ahuriri Lagoon and also fronted the Halswell River. Mr Alexander observed that the 1895 legislation was precipitated by advice in that year from George Robinson, a Ngai Tahu kaumatua, that the tribe needed all of the area set aside (AB32:100–101; AB35:21).[86]

The drainage of Waihora became an issue in the 1870s. Mr McAloon has detailed the early legislative history affecting the lake (H9:3–6). Regarding Ahuriri Lagoon, he brought attention to the Ellesmere Lands Drainage Amendment Act 1912, which vested the lagoon in the Ellesmere Lands Drainage Board and gave the board authority to drain the lagoon, lease the land gained by this method, and apply the revenue so gained for further draining Waihora. The legislation stated that nothing in the Act would prejudice or affect Ngai Tahu fishing rights 'which may exist . . . with respect to any part of the Ahuriri Lagoon which for the time being is not . . . drained and reclaimed'. Mr McAloon observed that 'the effect of the 1912 Act was to place Ngai Tahu fishing rights over the lagoon at the discretion of the Ellesmere Lands Drainage Board' (H9:6). However, Mr Alexander contended, with support from Crown counsel, that fishing opportunities may have been lost even before the passage of the legislation in 1912. In suggesting that 'the provisions of the 1912 legislation may have been of a very small residual nature by the time they were passed, rather than allowing a major loss of Ngai Tahu rights' (AB34:12; AB35:22), he cited Taituha Hape's evidence before the Native Land Court in 1913 that the eels were no longer 'obtainable' at the

Ellesmere reserve (O6:87).[87] It remains unclear what exactly remained of the fishery in 1913. The Honourable Tame Parata told the legislative council in 1912 that 'the lake was drying up, and very soon the eels in it would die, so that it would provide no further food for the Maoris'.[88]

Ngai Tahu's reserve was in fact affected long before the passage of the 1912 Act. Indeed, in 1901 all references to the reserve being set aside for fishing purposes had been dropped, because section 35 of the Native Land Claims Adjustment and Land Laws Amendment Act 1901 vested the reserve in the Public Trustee 'for the use and benefit of such Natives of the Ngai Tahu tribe as the [Native Land] Court shall . . . determine' (O5:50). The Public Trustee could lease the land and apply the rents for this purpose. It seems that before the Public Trustee took over the land in 1901 it was leased to one George Robinson of Little River, who had been part of the Ngai Tahu deputation which visited Mitchelson requesting the setting aside of the fishery reserve. Only one year's rent was obtained from Robinson by the Ngai Tahu trustees appointed to manage the reserve, and this situation may have precipitated the transferral of the responsibility for the land to the Public Trustee. However, it was not until 1913 that the Native Land Court heard an application by the Public Trustee for the determination of the owners and their relative interests (O6:82–99).[89] By this time the accumulated rent had reached £1360. The court minutes appear to indicate that the land had long since ceased to be of any use for fishing purposes.

Of issue at the court was whether the reserve was for the benefit of all Ngai Tahu or specific Canterbury communities. In the result, the court ruled that the accrued rents would be applied for the benefit of Ngai Tahu at Kaiapoi, Taumutu, Little River, Rapaki, and Port Levy. Percentages for each area were worked out on the basis of lists given to the court by Ngai Tahu. The Maori Trustee took over the management of the reserve in 1958. In 1978 the Maori Land Court ordered that the proceeds be distributed communally rather than to individuals.

The Tribunal's conclusion

2.8.2 The reservation of land at Ahuriri Lagoon for fishing purposes served the requirements of the people of five different Ngai Tahu settlements: Kaiapoi, Taumutu, Little River, Rapaki, and Port Levy. It will be remembered that by the time that this mahinga kai was set aside in 1895 most of the Kaiapoi fishing lagoons had been depleted through drainage. The passing of the Ellesmere Lands Drainage Amendment Act 1912, however, gave the drainage board the authority to drain Ahuriri Lagoon and lease the land recovered. Although this legislation contained a savings clause in that 'nothing in this Act shall be deemed to prejudice or affect any Native fishing rights . . .', it was in fact an empty provision as the drainage board was still entitled to carry on with the drainage and reclamation. Despite the strong protests of the Honourable Tame Parata that the drainage of the lagoon adversely affected Ngai Tahu's rights, the Government justified subordinating those rights to the public interest. The Minister of Internal Affairs, the Honourable F H D Bell, told the Legislative Council in the debate on the 1912 Bill that:

> the Maori, like the European, must submit, for the public good, to accept full monetary compensation for rights which barred a public work . . . It was impossible to permit a

> Maori to hold up the whole drainage of a plain, to prevent the straightening up of a river, to prevent the reclaiming of swamp land and turning it into productive land. . . . In regard to this lagoon, it might or might not, for all he knew, be a valuable fishing right to the Natives. . . . He assumed it was an ancient fishery, and he assumed the fish were there now, and he assumed that the drainage operations would interfere with the fish and the quantity of food which the Natives could obtain there. . . . The answer was that notwithstanding that the country should be drained.[90]

Ngai Tahu had a right to claim compensation under section 29 of the Land Drainage Act 1908.

The reserve remains in Ngai Tahu hands and is leased, yet this is another case in which Ngai Tahu have lost an important fishery which was set aside for them. The Tribunal has already found that the Crown failed to protect Ngai Tahu in respect of their 1868 fishery reserves. We feel that the Crown was similarly duty-bound to protect Ahuriri Lagoon for the continued use and enjoyment of the tribe. We find its failure to do so to be in breach of the Treaty principle requiring the Crown to ensure that sufficient endowments were made for the tribe's present and future needs. Mr Alexander and Crown counsel have pointed out that the ongoing reality of the drainage work meant that there could have been no guarantee that the fishery would last indefinitely. Mr Alexander noted that the drainage of the area had been contemplated for at least 12 years prior to 1890 and that land was being sold in that area on that very basis, something of which Ngai Tahu 'were clearly aware' (AB35:22). However, the Tribunal does not accept that the loss of the fishery was ever a fait accompli. As the Honourable Tame Parata suggested to the Legislative Council:

> the particular spot affected by this Bill had been a place where the Maoris had obtained their food ever since the Maoris first began to live in the South Island. . . . Seeing that the Drainage Board was doing all this damage to the lagoon, and was depriving the Maoris of their foodstuff there, it was only fair and just that the boundaries of the Maori land should be extended until it reached the channel this board had constructed.[91]

Submissions directed to this Tribunal by Crown counsel and Mr Alexander asked the Tribunal to measure kawanatanga against rangatiratanga and, in so doing, in respect of Ahuriri Lagoon, to give weight to the advantages that accrued to Maori from gaining more valuable land that was capable of producing increased rents. Indeed, the land was described in the Native Land Court minutes as 'good', 'worth at least £20 per acre', and 'admirable for dairying' (O6:82). While it cannot be denied that strong advantages flowed from the drainage and that Maori enjoyed those advantages to some extent, Maori fisheries were nevertheless needed for the sustenance that they provided. The Crown did not protect them by ensuring that alternative fishery resources were developed or endowed for the present and future needs of the tribe. We again urge the Crown to take this further example of the depletion of fishery reserves into account in negotiating with Ngai Tahu for the return of other fishery reserves such as Tutaepatu Lagoon, which we now consider.

2.9 Claim no: 9
Claim area: **Tutaepatu Lagoon**
Claimant: **Rakiihia Tau (J10), Te Maire Tau (H6)**
Claim:

Rakiihia Tau claimed that this area of great tribal significance should be vested in the tribe. Te Maire Tau complained about the drainage of the lagoon there.

2.9.1 Tutaepatu Lagoon, rural section 40464, block XII, Rangiora survey district, lies at Woodend Beach and is fed by the Rakahuri (Ashley) River and a number of small creeks. According to the claimants it was the site of an old pa and the urupa of Turakautahi, the founder of Kaiapohia pa. The lake was used by local Ngai Tahu for eel fishing and recreation right up until the 1970s. Rakiihia Tau claimed that the people of Kaiapoi have always believed that the land around the lagoon belonged to them, and for years they have received rents which they thought derived from this land. In 1973 the Department of Internal Affairs approved the setting aside of Tutaepatu Lagoon (49.2357 hectares) as a wildlife management reserve. Because of a need to first survey its boundaries, however, the lagoon was not gazetted as such until 1976.[92] Apparently the eels were seen as a threat to the birdlife and the Wildlife Service agreed to a commercial eeler's request for the right to cull them. However, the eeling licence was never used because a natural fluctuation in the level of the lagoon drastically reduced the amount of water. Te Maire Tau added that the drainage of the area, together with the damage from farm run-off, has led to the decline of the fishery (H6:35).

Rakiihia Tau claims that the land should belong to Ngai Tahu, as a kainga nohoanga, a mahinga kai, as well as an urupa of tribal importance. In *Te Whakatau Kaupapa*, policies are put forward for the management of this mahinga kai:

1. That the quality and quantity of water in all waterways be improved to the point where it supports those fish and plant populations that were sourced from them in the past. This mahinga kai must be fit for human consumption.

2. That wetland areas be created and expanded. All existing wetlands should be maintained at their present area at least in recognition of their value as 'buffers' in times of high rainfall and also their crucial importance to fish and plant communities.

3. That local Ngai Tahu be allowed to establish temporary camps for the purpose of collecting mahinga kai during the appropriate seasons.

4. That the local Runanga should be involved in the management of all mahinga kai resources, including fresh and salt-water fish.

5. That the Canterbury Regional Council actively encourage and support all initiatives to restock lagoons and other waterways with native fish species, and all initiatives to maintain those places as a suitable fishery habitat.

The Trihunal bas since been advised that, although the lagoon bas the status of a wildlife management reserve, no management as such of the area is carried out by the Department of Conservation. Mr Alexander explained that the responsibility for its management and control has remained with the Minister of Internal Affairs, as a result of the reservation and appointment to control and manage gazetted in 1976. There was no adjustment made to the Minister of Internal Affairs' responsihilities under the Reserves Act 1977 as a result of the Government's environmental restructuring in 1987 (AB35:24). The lagoon remains shallow and, in the course of dry summers, can dry up altogether.

The Tribunal's conclusion

2.9.2 In the *Ngai Tahu Report 1991*, the Trihunal found that the Crown in its purchase of Ngai Tahu lands failed to set aside specific mahinga kai reserves or to provide adequate lands to ensure that Ngai Tahu had access to their traditional food resources. The evidence produced to the Tribunal showed that Ngai Tahu had never relinquished their mahinga kai and relied on these resources for sustenance. Rather than abandon their resources, Ngai Tahu were shut out from them by the process of settlement and in the end finished up with a major loss of their mahinga kai and virtually no land. The Tribunal found that there had been a breach of article 2 of the Treaty in the Crown's failure to provide sufficient reserves to protect and preserve Ngai Tahu's mahinga kai. In particular, the inland fishing resources of Ngai Tahu were almost totally eliminated as land settlement and development took place. Although the Trihunal found it difficult to determine that certain grievances relating to loss of mahinga kai by forest clearing, straightening of water ways, land drainage, and pollution could be directly attributed to Crown policy, practice, or omission, and thereby constitute a breach of the Treaty, nevertheless the Tribunal found that overall Ngai Tahu mana and rangatiratanga in respect of their mahinga kai were improperly disregarded by the Crown. The Tribunal has also found that the Crown failed in its Treaty duty to protect the specific fishery resources created in 1868.

Tutaepatu Lagoon is Crown land reserved for wildlife but because of its shallow nature and periodic drying-up it bas no formal management scheme in place. While acknowledging that there is no breacb of the Treaty involved in respect of this claim, the Trihunal supports the plea for its return to Ngai Tahu as a compensatory measure for the loss which the tribe has sustained with respect to their traditional fishing resources.

Ngai Tahu are to be commended for the detailed study that they have conducted into resource management since the end of the Ngai Tahu land claim and the issue of the Trihunal's first report. *Te Whakatau Kaupapa: Ngai Tahu Resource Management Strategy for the Canterbury Region* was published in December 1990 and has been referred to earlier. In it, Ngai Tahu recommend policies aimed at creating and expanding wetlands as an important part of fisbing and plant resources as well as the involvement of the tribe in consultation and management. The Trihunal sees this policy statement not only as a corollary arising from the Tribunal's statement on Maori participation in environmental matters, but also as an invitation to the Crown and the Canterbury Regional Council to join Ngai Tahu in partnership to implement the strategy. The development and enhancement of Tutaepatu Lagoon in such a partnership, with active Crown participation in any project to restore

the area as a mahinga kai for the tribe, would provide some compensation for the loss of fishery reserves referred to earlier in this section on the Canterbury region. We therefore recommend that the Crown vest Tutaepatu Lagoon for an estate in fee simple in Ngai Tahu and contemporaneously enter into a joint management scheme with Ngai Tahu which would include such policies as expressed hy Ngai Tahu in *Te Whakatau Kaupapa*; the joint management scheme hinding the Crown to provide financial, technical, scientific, and management resources.

2.10 Claim no: **10**
Claim areas: **Pukatahi and Te Houriri**
Claimant: **Kelvyn Te Maire (H10)**
Claim:

> **Mr Te Maire claimed that two mahinga kai reserves, Pukatahi and Te Houriri, which were set aside for the local people, can no longer be used for this purpose; that sea encroachment has affected the land; and that there is no access to the reserves (H10:33).**

2.10.1 Pukatahi, or Puhakati, and Te Houriri were two fishing reserves situated near Wainono Lagoon that were set aside by the Native Land Court in 1868 at Ngai Tahu's request. We have already discussed the background to the court's awards with regard to the Kaiapoi fishery reserves. At the out of court meeting with Ngai Tahu on 2 May 1868, Horomona Pohio, on behalf of the people of Arowhenua, Waimatemate, and Waitaki, requested 14 further reserves for the people of these areas. Two such requests were:

> (6) 10 acres at mouth of River Hook on a lagoon, at Northern end.
>
> (7) Waimatemate. 2 Reserves at Waihau on sea Coast near burial ground say 20 acres altogether. (P11:309)

A number of Pohio's requests were turned down, and in most cases the acreages were diminished. Twenty acres, however, were set aside as a fishing reserve on the north-western side of Wainono Lagoon, adjoining the Hook River. It is referred to in the Maori Land Court today as Puhakati MR 907.[93] Ten acres were also awarded at an eel weir at what was then a small lagoon just south of Wainono Lagoon. This reserve is known as Te Houriri MR 906. An 1878 survey plan shows the area as 10 acres 3 roods 15 perches (O6A:50).[94] Mr Te Maire has referred to the adjoining lagoon as 'Maori Lake'.

Little has been revealed regarding Ngai Tahu's use of these fisheries or the introduction of drainage works which may have affected them. The Wainono Drainage Board was formed in 1896 and the following year, in order to drain the district, a three-mile drain was cut from the north end of Wainono Lagoon north to Makakihi (AB21:666).[95] In addition, two outlet boxes were huilt to open

the mouth of the Waihao River in flood time. The effect these works had on the Maori fisheries has not been assessed.

According to Mr Alexander, the swampy land on which Pukatahi was located has long since dried up to become indistinguishable from the surrounding farmland (O5:130). In 1982 the reserve was vested in the Maori Trustee to lease the land for 15 years with five yearly rent revisions (O6:306–308).[96] A 14-year lease to an adjoining farmer had expired in 1961 and, although the land had been occupied since, no rent had been paid. Eleven of the 20 shares in the block are owned by the Maori Trustee.

In his submission Mr Alexander stated that the lagoon adjoining Te Houriri is now a small patch of slightly damper land than the surrounding countryside. It is attractive for wading birds but is no longer a fishery (O5:131). Rents from MR 906 are devoted to the upkeep and improvement of the Morven Maori cemetery, the Morven Maori hall, and the Punamaru cemetery, or to any other purpose approved by the Morven Glenavy Maori Committee (O6:309–310).[97]

The Tribunal has since been advised by the Timaru office of the Department of Conservation that an area south of Wainono Lagoon was purchased by the Central South Island Fish and Game Council for development as a waterfowl habitat. The scheme involved flooding the area, affecting some 300 to 400 acres of land to the south of the lake, including Te Houriri MR 906 and Maori Lake. According to the department, Ngai Tahu were approached about the scheme and gave it their support.

The Tribunal's conclusion

2.10.2 These are two further cases in which areas set aside for fishing purposes have been rendered worthless for this as a result of land drainage. We reiterate our finding with regard to the 1868 Native Land Court fishing awards that the deterioration of the Pukatahi and Te Houriri fisheries constitutes a failure on the part of the Crown to protect Ngai Tahu's mahinga kai. Such failure we deem to be a breach of article 2 of the Treaty. In the following claim we discuss Ngai Tahu's claim for a stake in the management of Wainono Lagoon. We support the development of the lagoon as a Ngai Tahu fishery and recommend as much. Such development by the Crown, in partnership with the tribe, would provide real and meaningful reparation for the loss that Ngai Tahu of south Canterbury have suffered in the destruction of mahinga kai such as Te Houriri and Pukatahi.

The above lands are still in Maori ownership and are currently leased. There is provision under section 316 of Te Ture Whenua Maori Act 1993 for road access to be granted to Maori land that has no present effective access. This would provide an answer to the grievance in respect of access without intervention by the Tribunal. The question of sea encroachment is not one which we can determine as being the fault of the Crown.

2.11 Claim no: **11**
Claim area: **Wainono Lagoon**
Claimant: **Rangimarie Te Maiharoa (AB52), Jack Rethana, Kelvyn Te Maire (H10)**
Claim:

The claimants stated that Wainono Lagoon is a traditional and important mahinga kai for local Ngai Tahu. They seek a stake in the management of the lake and an end to commercial fishing there.

2.11.1 According to the claimants, Wainono Lagoon has traditionally been a significant mahinga kai for the people of Arowhenua, Waihao, and Glenavy, not only for eels and fish, but also for aquatic birds. Mr Te Maiharoa told of the ancient history of the area and the sustenance that it provided to early visitors to the area. All of the claimants used the fishery regularly in earlier times. Mr Te Maiharoa said that they had grown up as food gatherers and that eels, waterfowl, water cress, and swan and duck eggs had been taken from the lagoon. In particular, Mr Te Maiharoa and Mr Te Maire referred to an area called 'Te Kutuawa', or 'the box', where the lagoon waters merge with the Waihan River. This is in fact a flood control arrangement eight kilometres south of the lagoon, hy which the water flow and lagoon levels are regulated. An abundance of fish such as tuna, kanakana, mata, inaka, and patiki can still be caught there.

It is claimed that in the last decade the fishery has been devastated hy commercial fishing. According to Mr Te Maire, major commercial fishing occurs during the 'Hina pouri' season, when the eels migrate to the sea to spawn. Because of this, the fishery has no chance to regenerate. He maintained that the authorities have constantly been approached by Ngai Tahu about having commercial fishing permits withdrawn. All three claimants seek a stake in the management of the lagoon and an end to commercial fishing so that the fishery can be preserved for traditional use. Mr Te Maiharoa went further and requested that all tributaries of the lagoon be set aside as mahinga kai also. He explained that the lagoon had completely changed in appearance since his youth, with a much lower water level, more silt in the lagoon bed, and willows taking over from flax.

The present lagoon and margins are a remnant of an extensive wetland area modified hy agricultural, horticultural, and pastoral development. At its normal level of one metre above sea level, Wainono Lagoon has a water area of 335 hectares. During times of high water-levels, the lagoon extends its influence, forming an extensive shallow strip on its northern aspect. Wainono provides a habitat for a diverse range of wetland hirds and fish species. It is considered a wetland of national importance worthy of protection and preservation, and is recognised by wildlife officers as 'the only coastal lake and mudflat between Waihora (Lake Ellesmere) to the north and Karitane to the south' and 'a vital link in the diminished chain of lagoons on the East Coast of the South Island' (AB32:128).[98] From about 1972 the Wildlife Service has tried to have the lagoon gazetted as a Government Purpose Wildlife Management Reserve. It is also an important regional recreation resource: some 350 shooters hunt the lagoon during the waterfowl season (AB27:1–9).[99]

Since 1988 control and management of Wainono Lagoon bas been vested in the Department of Conservation. The drainage of the lagoon is controlled by the Wainono Drainage Committee, a rateable body, wbich is responsihle for repairing the Waihao box and clearing the outlet drains. Although a conservation area, Wainono is not currently reserved. The Trihunal bas been advised hy the Timaru field office that the department is moving towards having the lagoon made a wildlife management reserve. The lagoon is currently held as a stewardship area pursuant to section 62 of the Conservation Act 1987. The working party looking at setting up a management plan for the lagoon comprises one of the above Ngai Tahu claimants, along with representatives from two district councils, the Wainono Drainage Board, an irrigation company, the Central South Island Fish and Game Council, and the QEII Trust, as well as three farmers and a representative of recreation users. The working party has dealt with a number of issues involving the lagoon since 1993 and will resolve an appropriate controlled minimum water level for the lagoon upon the receipt of bydrological research. Crown counsel has advised that, while there is still commercial fishing in the lagoon, it is being actively discouraged by the department and the Sports Fish and Game Council (AB72:2).

The Trihnnal's conclnsion

2.11.2 In its resource management study, *Te Whakatau Kaupapa*, the authors refer to Wainono Lagoon as the south Canterbury equivalent of Waihora and Wairewa and state that it was an important mahinga kai of Wathan Ngai Tahu. The Trihunal's research would seem to indicate that in 1995 some progress has been made to remedy the complaints placed before the Tribunal in 1988, in that commercial eel fishing of the lagoon is being discouraged and local Ngai Tahu are involved in a working party setting up a management plan for the lagoon. In the Tribunal's view, this lagoon should be developed as a reserve for Ngai Tahu fishing with perhaps a wider management use including wildlife. It requires a positive involvement of Ngai Tahu in the consultation and management processes, and could well restore to the tribe its traditional food resources. The Tribunal refers to its previous recommendations in the 1991 land report on effective consultation and to its comments above oo the development of a partnership strategy with the Crown and local bodies for the future use and management of the lagoon. We accordingly recommend that Wainono Lagoon be developed in partnership with Ngai Tahu of south Canterbury as a traditional fisbery resource in compensation for the loss of other mahinga kai such as Te Houriri and Pukatahi. Mr Te Maiharoa sought a recommendation that the reserve be set aside for Waitaha Ngati Mamoe Ngai Tahu. We consider that the Maori Land Court should determine who amongst the tangata whenua are entitled to this mahinga kai after a hearing at which all persons claiming an interest have had the opportunity to present formal evidence.

2.12 Claim no: **12**
Claim area: **Taumutu commonage**
Claimant: **Catherine Brown (H9)**
Claim:

> **On behalf of the Taumutu runanga, Mrs Brown claimed that the present leases in perpetuity of the Taumutu commonage are unsatisfactory. The owners wish to administer the land themselves and regain the nse of the commonage (H9:14).**

Mrs Brown claimed that blocks 1 to 4 of MR 3667 are under lease in perpetuity and administered by the Maori Trustee. She asked that rents be set at a realistic level with the right of review every five years, to be administered by themselves by way of a trust or incorporation. The Ngai Tahu owners do not wish to have the leases renewed when they expire; Mrs Brown stated that there are many young people who would like to farm and settle there.

2.12.1 Under the Taumutu Native Commonage Act 1883, MR 3667 and MR 806, together containing 770 acres on the shores of Waihora, were:

> set apart as Crown lands for free occupation in commonage hy the Natives residing at Taumutu . . . in aid of their support and maintenance, and otherwise for their exclusive use and benefit.

Ngai Tahu at Taumutu were said to be 'worse off than any others' with regard to the amount of land they had to live off, and the commonage was set aside to provide them with a place to run their horses and cattle.[100] Mr Alexander pointed out that at this time the boundary of the commonage with Waihora was defined as the low-water line, with the expectation that the lake would be drained (AB35:26). Consequently, the lower parts of the commonage were submerged for nine months of the year.

In fact the locals had very little stock to graze. The commonage was unfenced, so problems with wandering stock arose. Nor could the Taumutu runanga afford to do anything about it. Towards the end of 1883 a meeting was held to discuss the problem. On 1 October 1883 Rewi Koruarua, Atarea Maopo, and Teone Paka Koruarua, the leading kaumatua of Taumutu, agreed to lease the land to Hone Kerei Taiaroa for a period of 21 years at a rent of £25 per year (AB21:447–454).[101] This was changed to a 99-year lease in 1898.

By 1902, however, considerable dissatisfaction was felt by many of the locals about the leasing arrangements. As the stipendiary magistrate reported:

> It is scarcely necessary to point out that this is practically the only land that about fifty people have to live on and it is little enough. The rental derived is of no assistance to them. (O6:129–130)[102]

By then, many families owned stock and wished to use the commonage for pasturage. The rent, when divided among so many, was of little gain to anyone (O6:119–121).[103] They were also angry that part of the reserve, set aside for their common benefit, was being sublet to Pakeba. The matter was investigated and Taiaroa's lease rescinded.

As a result of the complaints, the Taumutu Native Commonage Act 1905 repealed and substituted the 1883 Act and vested the commonage in the Public Trustee. Under section 3 of the Act, the Public Trustee was to set apart suitable portions of the commonage for the use and occupation of those beneficially entitled for grazing or other purposes. Only those areas not being used were to be leased for a period of no longer than 21 years. The leasing of part of the commonage was considered necessary in order to benefit families not using or occupying the land. In drafting the amending legislation, Alexander Mackay had cautioned:

> If . . . it is decided to vest the land in the Public Trustee to administer, precaution should be taken to prevent it being treated as an ordinary Native Reserve to be let with a view to produce a rental, irrespective of other considerations especially the purpose for which the land was first appropriated to. (AB21:496)[104]

There is little information on the subsequent leasing of the commonage. The beneficial owners of the block were determined by the Native Land Court in 1906 (O6:132–133).[105] The Public Trustee's role in the administration of the land was handed over to the Native Trustee in 1920. A letter from the Native Trustee to the chief surveyor Christchurch in 1921 tells of his intention to call for tenders for the lease of the commonage, excepting three areas amounting to 62 acres to be left for the use of the beneficial owners (AB21:580–581).[106] A further memorandum dated 13 September 1938 states that 'the greater portion' of the commonage was being leased to one Alfred Willey for a term of 21 years (AB21:606).[107] In 1948 MR 3667 and 45 acres of part MR 806 were subdivided by the Maori Trustee into four parcels (O6A:23).[108]

The commonage was made a Maori reservation in 1955 by virtue of section 3(1) of, and the First Schedule to, the Maori Reserved Land Act 1955. The Maori Trustee now holds the Taumutu Maori commonage lands on trust 'to lease the land in accordance with the provisions of Part III of the Act and to pay the rent and other proceeds to the persons beneficially entitled'. Thus the lands are no longer available for the use of the owners themselves. As at 31 March 1988 lots 1 to 4 and part MR 806 were all leased in perpetuity (P14C:11–12).

The Tribunal's conclusion

2.12.2 Study of the early legislation and in particular Alexander Mackay's caution about leasing out the commonage shows clearly the intention that this land should be reserved for free occupation by Ngai Tahu Maori residing at Taumutu. Despite this, apart from a small area, the land passed out of Ngai Tahu common possession and use, and was leased out. The whole of the commonage is now leased out in perpetuity to four lessees, who include among them a Ngai Tahu beneficiary. The Taumutu

runanga claim that the present leases in perpetuity are unsatisfactory because there are younger people wishing to return to the area and settle there.

The perpetual leasing of Ngai Tahu lands bas already been discussed in full in the *Ngai Tahu Report 1991*. The Tribunal has found the perpetual leasing of Maori reserved land to be a serious breach of the principles of the Treaty. In the 1991 report, the Tribunal recommended with respect to sucb leases that:

> 1. 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 leasebold 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 cbange 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.

We upbold Mrs Brown's grievance with respect to the perpetual lease of the Taumutu commonage. Because the land was originally intended as a commonage there would seem to be a stronger claim for its earlier return to Ngai Tahu use and occupation than perhaps some other areas of Maori reserved land. It may be possible for the Crown to negotiate with the present lessees for an earlier surrender of their leases, subject, of course, to those lessees being reimbursed by the Crown for any provable loss. The Tribunal reiterates and stresses the need for immediate Crown intervention to implement the Tribunal's 1991 recommendation, whicb still remains unsatisfied. This would at least yield to the Taumutu runanga knowledge that their lands were to be returned to them and in the interim a realistic market rent received.

We comment in detail on the Crown's position with respect to perpetual leases in claim 42 and in paragrapb 9.2 of cbapter 9.

2.13 Claim no: **13**
Claim area: **Ellesmere landing**
Claimant: **Catherine Brown (H9), Mere Teihoka (H9)**
Claim:

> **The claimants stated that Ellesmere landing is part of the Taumntu commonage and, as such, helongs to Ngai Tahu. They called for the return of the land to them.**

Catherine Brown claims on behalf of the Taumutu runanga their right to Ellesmere landing, a five-acre area at Fishermans Point. She stated that they have always considered that the land was part of the Taumutu commonage set aside for them in 1883, and that in 1972 the Maori Land Court determined that the land was Maori land (H9:15). She wants it returned to Ngai Tahu. Mrs Tethoka, who lives on the landing reserve, expressed her anger at being called a 'squatter' hy the council (H9:11).

2.13.1 The land at issue in this claim is MR 806, one of two areas set apart as a local Maori commonage in 1883. The 70 acres of MR 806, on the shores of Waihora, had originally been gazetted as a landing reserve in 1867 (AB21:525).[109] However, as set out in the previous claim, under the Taumutu Native Commonage Act 1883 both MR 3667 and MR 806, together containing 770 acres, were:

> set apart as Crown lands for free occupation in commonage by the Natives residing at Taumutu . . . in aid of their support and maintenance, and otherwise for their exclusive use and benefit.

MR 806 was described as:

> Seventy acres, more or less, being Section numbered 806 . . . *excepting thereout five acres for a landing-place*, and a road connecting the same with the Taumutu and Bridges Road. [Emphasis added.]

In fact the five-acre exception was made to accommodate a fishing settlement of sorts which had sprung up at the point a number of years ago. The men who fished Waihora lived there on sufferance, having no title to the land on which their makeshift homes were located.

In 1887 MR 806 was 'inadvettently' included in the Schedule to the Puhlic Reserves Sale Bill (AB21:528).[110] This led to rumours among the Taumutu residents that the 70-acre reserve was to he set aside for the fishers at the point (AB21:526).[111] Taiaroa's letter to the Minister of Lands conveying Rewi Koruarua's alarm at this news suggests that relations between Ngai Tahu and the Pakeha fishers were not good:

> [The fishermen] also break down the fences of the Natives and let loose their horses as they liked into the Natives' paddocks. They destroy the small fish, eel, and steal salmon. (AB21:527)[112]

In November 1888 a letter was written to the chief surveyor in Christchurch on behalf of the 'fishermen of Lake Ellesmere who occupy reserve 806', protesting against Ngai Tahu's interference with the landing reserve:

> For some time the maories have got the idea that they are the rightful and sole owners of this reserve, they have tried to drive the fishermen off and have also demanded rent for their cottages and now to finish off matters, have fenced off the only road the fishermen have of leaving and arriving at their settlement. (AB21:531–532)[113]

If Ngai Tahu were not aware of the exception of this five-acre area from their commonage they were soon made so. In July 1889 the chief surveyor was again informed that:

> the 'Maories' have been stopping the fishermen and are now fencing off what they think is the reserve of 5 acres, completely shutting off the fishermen from communication hy wheeled traffic to the main road. (AB21:537)[114]

This protest, together with a letter from Koruarua giving notice of his intention to close the access road, prompted an immediate survey of the five-acre landing reserve and the road leading to it (O6A:20).[115] The halance of MR 806 was calculated at 62 acres.

In 1905 the 1883 Act was repealed and suhstituted to make better provision for the management of the commonage. This has been outlined in the discussion of the previous claim. Under the 1905 Act, as with the 1883 Act, the five-acre landing reserve and the road leading to it were excepted from the commonage.

In 1920 control of the five acres at Fishermans Point was vested in the Ellesmere County Council.[116] The council had sought the right to control the reserve in order to regulate the occupation and sanitation of it (AB21:560).[117]

1972 Maori Land Coort decision

2.13.2 Questions about the status of the landing reserve were raised hy the registrar of the Maori Land Court at Christchurch in 1971. After inquiries to both the district land registrar and the chief surveyor, Riki Ellison, a local Ngai Tahu and lessee of part of the Taumutu commonage, was advised to make an application to the court under section 30(1)(a) of the Maori Affairs Act 1953 to determine the ownership and title of the land (AB21:491).[118]

An application was accordingly made by Mr Ellison on 8 January 1972 and heard in the Maori Land Court on 19 May. The application was made on the grounds that MR 806 was originally a landing

reserve for the original Ngai Tahu residents of Taumutu, that there was no certificate of title for the land, and that for the last 60 years numerous cribs had been erected on the property without the payment of rent (AB21:492).[119]

At the court bearing in May, Mr Ellison produced a five-page typewritten summary of information pertaining to the block (AB21:494–498).[120] Key documents, such as the 1883 and 1905 Acts, were not included. In order to suhstantiate the claim that the landing reserve was part of the Taumutu commonage, reference was made to a lease of seven acres of land at the southern end of the commonage: 'the residents of European [descent] known as the Fishermans' Reserve paid to Rewi Koruarua the sum of £30 from 1887 to 1893' (AB21:497).[121] No source is given but attention is called to 'Statement of accounts marked "P"'.

This needs closer attention. When Alexander Mackay met with Taumutu residents in July 1902 in order to resolve the issue of Taiaroa's lease, he made an inspection of the southern portion of the commonage. On this occasion be noted:

> A few acres of dry land near the Fisbermans settlement had been let as a separate paddock, by Rewi and others at a rental of £3 per annum for a few years, hut that arrangement was now terminated and the land referred to was back again in Taiaroas hands. (AB21:470)[122]

Taiaroa's statement of accounts marked 'P' does not make any reference to the 'Fishermans settlement' (AB21:474).[123] The sum of £30 is said to be for 'Tetahi Wahi ano e maharatia ano e whitu eka na Rewi Koruarua i Reti atu ki te tangata. no roto ano i te 250'. In bis letter enclosing the accounts, Taiaroa referred to the seven acres as 'te Kainga o nga Ptho' (AB21:471).[124] On the survey plan made in 1889 an area of seven acres, beyond the 'High Water Mark', is shown just north of the landing reserve (AB21:460).[125]

It would seem, therefore, that the seven-acre area leased by Koruarua was not the five-acre landing reserve on which there were 'Fishermen's Huts', but rather an area just north of the reserve, wbich is still part of the commonage today.

In light of the information available to it, the court determined that only the control of the landing reserve had been vested in the Ellesmere County Council in 1920, and that therefore 'The land remains Maori land' (AB21:500).[126] In the court's view, the area ought to have become Manri reserved land, by appropriate amendment to the Maori Reserved Land Act 1955. The matter was adjourned for this departmental action to be taken.

In December 1972 information about the case was forwarded to Department of Maori Affairs' head office in order to have the appropriate legislation enacted (AB21:508).[127] In the interim, the court was informed that the council bad no ohjection to granting title of the reserve to Taumutu Ngai Tahu (AB21:502).[128] From the Department of Maori Affairs, the matter was referred to the Department of Lands and Survey, which in turn referred it to the Commissioner of Crown Lands for comment.

In his reply of 25 May 1973 the Director-General of Lands argued that the five-acre landing reserve at Fishermans Point had never been a Maori reserve; that, in the absence of any information to the contrary, the original 70-acre landing reserve gazetted in 1867 was set aside not for the original Maori inhabitants of Taumutu, but for the public generally; and that the 1883 and 1905 legislation had excepted the five-acre landing reserve from the commonage (AB21:513).[129] He was not in favour of having the reserve alienated from Crown ownership. On receiving this letter, the district solicitor of the Maori Land Court at Christchurch was instructed to 'remove from the Maori Land Court records any doubt about the true character of this land' (AB21:512).[130] Mr Ellison was subsequently informed of the director-general's decision and his application was not proceeded with (AB21:505, 516).[131]

More recently, moves have been made to get the reserve status on the landing reserve revoked in order to secure a better tenure for the people living there (AB21:651).[132]

The Tribunal's conclusion

2.13.3 Although the claimants may well feel justified in bringing this claim, it is evident that the issue of the five-acre landing reserve has been canvassed on several earlier occasions. Indeed, as far back as 1899 the resident Maori were aware of the fishermen's occupational rights and took steps to fence off the five-acre area. In 1973 the Maori Land Court, after hearing a claim by Mr Ellison, dismissed the claim on the ground that the five-acre area had never been included as part of the commonage. The Tribunal finds that there has been no breach of any Treaty right. The Crown is currently in the process of tidying up the position so as to offer a more secure tenure to those who presently reside there. This will no doubt include the witness Mrs Tethoka, who voiced her objections at being labelled a 'bloody squatter' (H9:12).

2.14 Claim no: **14**
Claim area: **Hawea**
Claimants: **Matthew Ellison (H11), Ngai Tahu Maori Trust Board**
Claim:

> **Mr Ellison complained that the tribe no longer has access to the Hawea reserves and that the 100-acre fishing reserve was sold by the Maori Trustee without the consent of the tribe (H11:6). In an amended statement of claim of 2 June 1987, the claimants stated that the Crown's failure to allocate the 'landless natives' reserve was contrary to article 2 of the Treaty. They seek the return of these reserves and compensation for the loss of the use of the land.**

Manuhaea, or 'the Neck', is a narrow bridge of land separating Lakes Wanaka and Hawea. It is thought to have been the main settlement on the lakes and the home of Te Raki and his family until Te Puoho's raid in 1836. Manuhaea Lagoon, formed by a creek running between the two lakes, was an important eel fishery.

The claim concerns the fate of three parcels of land at, or near to, Manuhaea, said to have been reserved for Ngai Tahu. Two of the reserves were created to alleviate the tribe's landlessness, arising from the Crown's purchase of their territory. The first, a 100-acre block, was awarded in 1868 as a fisbing reserve by the Native Land Court. Then in 1903, 1658 acres were recommended to be reserved as a South Island 'landless natives' allocation. A third area, of 540 acres, was mapped as a 'Native Reserve' at Bushy Point in 1870.

None of these lands are now in Ngai Tahu ownership. Part of the 100-acre fishing easement was taken for a power development in 1962 and the balance of the land was alienated by the Maori Trustee in 1970. The 1658-acre block was never legally granted to the tribe and now forms part of a pastoral run. A 10-hectare recreation reserve exists at Bushy Point and is managed by the Department of Conservation.

The bistory behind the reserves has been researched by both the Crown and the claimants. Counsel for the Maori Trustee also made a submission regarding the alienation of the fishing reserve. Members of the Tribunal visited the area in February 1988 and met with the claimants and the local farmers.

The origins of the reserves: the 100-acre fishery easement

2.14.1 On 27 May 1868 Chief Judge Fenton awarded 100 acres of land at Manuhaea, 'at the Westem extremity of the middle arm of Lake Hawea, situated near a Lagoon at the foot of Isthmus Peak to include the site of an old pa' (O8:4).[133] The reasons behind the award have been discussed earlier in the claims concerning the Canterbury fishing reserves. Ten trustees were appointed for the Hawea award, which was to be beld in trust for those Ngai Tahu residing between Waitaki and Purakaunui (O8:4).[134] The land was to be inalienable, except to the Crown (O8:4b).[135]

The reserve appears on an 1870 map by Charles Heapby, then Commissioner of Native Reserves (O8:5). On this map it is located on the northern bank of the arm of Lake Hawea, at Pikirakitahi Bush, wbicb is somewhat different from the court's 1868 description. At a Native Land Court bearing at Waikouaiti on 26 March 1887 before Judge Alexander Mackay, Ngai Tahu expressed their desire to have the area changed to Pikirakitahi, it being more suitable than Manuhaea. Apparently a bouse had been buih by them at Pikirakitahi under the assumptioo that the 100 acres bad been allotted there (O8:8).[136] Seven representatives of the different settlements to benefit from the reserve were chosen as trustees.

It appears that Ngai Tahu's request to have the reserve moved was never acted on. A 1916 survey map of the Mount Burke run shows the reserve on the southem side of the lagoon at Manuhaea (O8:9b).[137] Ms Josephine Barnao, a Crown researcber, suggested that Heaphy's map with the reserve depicted on the northero bank of the arm of the lake, together with Ngai Tahu's desire to have the reserve moved to Pikirakitahi, may have given rise to the subsequent claim for 540 acres at Bushy Point (O7:6). This will be discussed in more detail later.

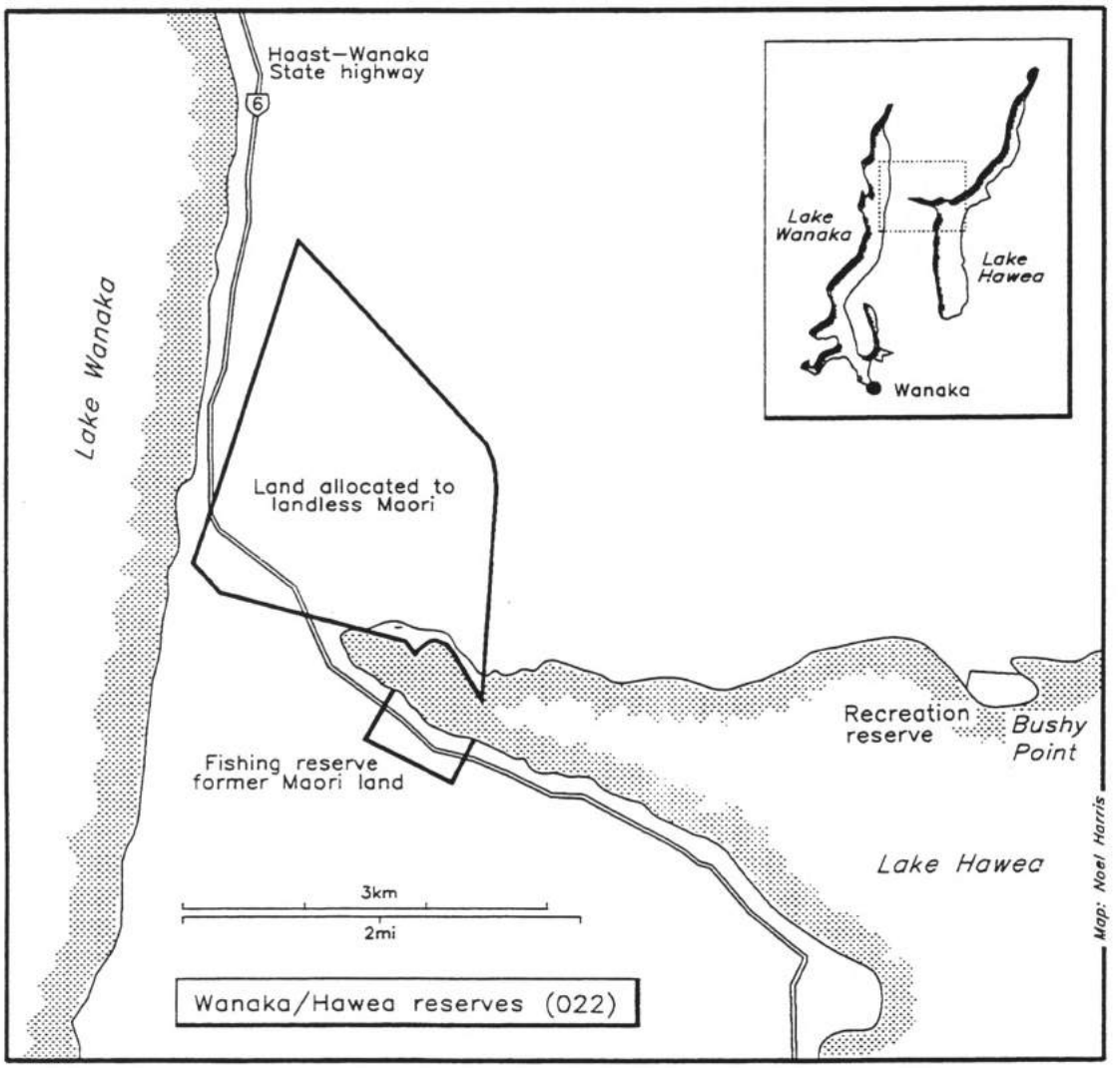


Figure 4: Hawea reserves

The 1658-acre landless natives reserve

2.14.2 In December 1893 Cabinet appointed Alexander Mackay and S Percy Smith to complete a list of landless Maori in the South Island and assign sections to them within the blocks nominated. The background to these 'Landless Natives Grants' has been dealt with in chapter 20 of the *Ngai Tahu Report 1991*.

In March 1903 Commissioners Mackay and Smith recommended the allocation of 1658 acres 1 rood 2 perches at Manuhaea for landless Ngai Tahu (O8:12).[138] It was suggested that this land should be let as a pastoral run, with Ngai Tahu receiving a proportionate part of the rent. Although the land was not to be subdivided immediately, the commissioners urged that the reserve be laid off. The names of and allocations for 57 people were recorded in the Native Lands Register (O8:13).[139] The

absurdities of the scheme are glaring: well over half of the people for whom the reserve was intended were from outside the area, many from as far away as Kaiapoi and Kaikoura in the north and Oraka in the south. How an annual rent of £3 9d could alleviate the effects of their landlessness is beyond imagination.

Before ministerial approval was given, the Surveyor-General requested a report on the general character and availability of the land (O8:14).[140] Crown Lands Ranger McDougall reported that the proposed area fell on run 338B, where there was no flat land. He suggested that the reserve allocation be taken from the neighbouring run 338A (O8:16).[141] After further consideration, the plans were reworked to implement his suggestions while at the same time leaving a flat area in run 338A for a homestead.

On 20 August 1903 ministerial approval was given to the taking of 1660 acres from run 338A for landless native purposes (O8:27).[142] An annotation to the letter seeking this approval dated 5 October 1903 records:

> All Landless Natives' Blocks are informally set aside pro tem: When the whole scheme has been completed, I understand that the whole matter will be formally completed by special legislation. (O8:27)[143]

In a letter of the same date the Surveyor-General informed the chief surveyor in Dunedin:

> As there is no immediate intention of subdividing this land at present, it will be sufficient if you mark off the area on the maps in your Office and forward description of the boundaries thereof for entry in the Registry kept by the Commissioners, Messrs Percy Smith and Judge Mackay MLC. (O8:29)[144]

In October 1906 the South Island Landless Natives Act was passed. In order to be reserved, under sections 3 and 4 of the Act the recommended areas for landless Maori had to be gazetted, firstly temporarily and then permanently not more than six months afterwards.

On 19 October 1906 the Under-Secretary for Lands, W C Kensington, forwarded schedules containing the names of persons for grants of land in the Wanaka block to the Commissioner of Crown Lands Dunedin for revision (O8:32).[145] The reserve still formed part of run 338A, whose licence did not expire until 1916. No survey or subdivision of the area had yet been made. Written on the commissioner's letter returning the schedules is the comment:

> The portion within a Run, lease of which is still current cannot be included in Gazetted list of awards. (O8:33)[146]

In view of the length of time that Ngai Tahu would have to wait for the land, the under-secretary inquired whether an alternative area could be found (O8:34).[147] The Commissioner of Crown Lands thought not. On his letter it was written:

> This portion of the award will have to stand over as unsatisfied there is no suitable land. (O8:35)[148]

The scbedule of names for the Wanaka block in the Native Lands Register bears the annotations 'Not to be gazetted' and 'Not to be included in gazetted list of awards' (O8:36–36a).[149]

The 1658 acres, never having been gazetted, was not legally reserved, and no titles were issued to the 57 persons allocated land in the block. It is apparent from the records that, had the land not been leased, it would have been gazetted. The South Island Landless Natives Act 1906 was repealed in 1909 hy the Native Land Act and no further allocation of land not actually taken up by the grantees was to be made. However, it was evidently realised that there should be some statutory provision to enable title to be issued for Crown land set aside or reserved for Maori, or proposed to be set aside or reserved, and section 11 of the Native Land Amendment Act 1912 was accordingly enacted. A similar provision was also contained in section 437 of the Maori Affairs Act 1953.

The 540-acre Bushy Point reserve

2.14.3 The claimants maintain that a third reserve of 540 acres existed at Bushy Point. This claim seems to bave its basis in Charles Heaphy's interaction with local Ngai Tahu in 1870. The Commissioner of Native Reserves located Ngai Tahu's reserve at Hawea on the northern bank of the arm of Lake Hawea, at Pikirakitahi. On the map he prepared, it was the only Ngai Tahu reserve in the vicinity. The scbedule on the map held in the chief surveyor's office in Dunedin stated that it was a 'Fishing Reserve, Lake Hawea' and was headed 'Additional Reserves made under award of Native Land Court' (O8:42).[150] It is clear, then, that the reserve on Heaphy's 1870 map was in fact the 100-acre fishing reserve granted hy the court in 1868, even though it is situated at an area which differs from the court's description. Whether Heaphy changed the location of the reserve at the behest of Ngai Tahu in 1870 is cause for speculation. It will be remembered that in March 1887 the Native Land Court was told that members of Ngai Tahu had built a bouse at Pikirakitahi (where Heaphy had located the reserve) on the assumption that the 100 acres had been allotted there. They told the court that Pikirakitahi was more suitahle than Manuhaea. There is no evidence of any court decision on Ngai Tahu's request to have the reserve moved to Pikirakitahi. It appears from later maps that their request was never acted on. When the Mount Burke run was surveyed in 1916, the fishing reserve was pegged on the southern side of the lagoon at Manuhaea (O8:9h).[151]

Ngai Tahu's conviction that land was reserved to them at Pikirakitahi was revived in June 1927, when an investigation of title of the Wanaka-Hawea reserves was beard. A lithographic plan was produced in court which showed three areas of reserve: the 100-acre fishing reserve at Manuhaea, the 1658 acres, now part of the Mount Burke run, and an area of 540 acres 'about 3 miles eastwards at Bushy Point as indicated on Heaphy's Map of 1870' (O8:40).[152] One Mr Parata wished to have the same trustees appointed for all three hlocks. An interlocutory order on investigation was made in favour of seven trustees, to be finalised the following summer, 'unless cause is shown to the contrary in the meantime' (O8:40).[153] The Department of Lands and Survey had no information

on the Bushy Point reserve and after the 1927 bearing the lithographic plan showing the three reserves was lost.

Maori Land Court action 1927–35

2.14.4 Having ascertained that the Department of Lands and Survey had no information on the Busby Point reserve, on 12 September 1927 the Moeraki runanga applied for the investigation of title for the landless natives block. This was dismissed on 13 December 1928 (O8:43h). An application to succeed dated October 1927 in respect of 'Wanaka Landless' was similarly dismissed (E26).

On 28 November 1927 the Native Land Court sat at Temuka. At the court bearing that day the chairman of the Moeraki runanga, Teone Paira Huriwai, expressed the runanga's dissatisfaction with the trustees nominated at the June bearing (O8:45).[154] An amended list of 11 trustees was subsequently agreed to by the Moeraki runanga, and finalised by the court at Puketeraki on 7 December 1927 (O8:47)[155] The original application for investigation of title of May 1927 was stamped 'ordered' and dated 7 December 1927.

However, doubt was expressed by the registrar about the nature of the order to be made (O8:48).[156] He was also unclear whether all three blocks were to be included in the names of the trustees, as had been suggested at the court hearing.

Judge Gilfedder responded:

> An order was made or was proposed to be made by Judge Mackay for the 100 acres piece but so far it is uncertain whether or not the Crown claims the two larger pieces. I understand that the Natives have appointed a deputation to interview the Native Minister and Minister of Lands and endeavour to get these areas thrown open for investigation. In the meantime they have selected Trustees to administer the 100 acre piece in furtherance of the intention of Judge Mackay. The land is practically valueless and it is scarcely worth while ascertaining the beneficial owners unless the two large areas are set apart also for Native use. (O8:48)[157]

It seems that because of the confusion over the 'two larger pieces' no order was ever made appointing the new trustees to the 100-acre block.

On 3 March 1928, John M Ellison, one of the newly appointed trustees of the 100-acre block, saw Prime Minister Coates with the view to getting title to the Hawea reserves (O8:51).[158] Upon inquiry to the Department of Lands and Survey, it was found that the 100-acre fishing reserve was situated in block VI, mid-Wanaka district, and that no section number had been allocated to it. There was no reference to the land in the Lands and Deeds Registry Office.

Mr Ellison followed up his March interview with the Prime Minister with a letter on 3 August 1928 (O8:54).[159] He advised Coates of the trustees' desire to lease the reserve which had been lying idle

'for a great number of years'. In order to do so they needed title to the reserves. Later that month Mr Ellison asked the Prime Minister to make an application to the Native Land Court under section 6 of the Native Land Amendment and Native Land Claims Adjustment Act 1922 to inquire into the entitlement to the reserves (O8:55).[160]

An order was subsequently made on 29 October 1928 referring to the court for inquiry and report the Ngai Tahu entitlement to the reserves at Hawea-Wanaka, the general position of the reserves, and the reason why the location of the fishing easement had changed (O8:56).[161]

The case was heard before Judge Acheson on 11 June 1930 at Puketeraki. Five years later a perfunctory report was submitted by Judge Harvey, and forwarded to the Under-Secretary of the Native Department the following month (O8:57).[162] The report merely reproduced the testimony of Hoani Matiu and John Ellison, who once again alluded to the lithographic plan showing the three areas of reserves. It was established that the fishing easement had been reserved, the landless natives block had not been gazetted, and there was no information regarding the 540 acres at Bushy Point.

In forwarding the report, Judge Jones stated that there was no such reserve as the supposed 1658 acres:

> It may be that the proposed beneficiaries would have some moral claim for a proportion of the rent unless they have been allotted land elsewhere. (O8:58)[163]

A further application in 1938 for investigation of title into the reserves by Matiu was dismissed (O8:59).

In reach of a settlement: the 1658-acre block

2.14.5 In 1956 a deputation of Ngai Tahu raised the issue of the landless natives block with the Secretary for Maori Affairs (O25).[164] The secretary felt that the claim had merit and forwarded suggestions to deal with the matter to the Director-General of Lands. The claim was endorsed by a head office committee of the Department of Lands and Survey, which recommended that the Minister be recommended to approve a grant of £1050 by the Crown to satisfy the claim (O8:66b).[165] This amount was based on the value of the land (£300) plus the rent for the land compounded at 5 percent for 50 years. The recommendation was subject to Treasury approval and a valuation of the land.

Treasury gave its tacit agreement to submitting the grant proposal for Cabinet approval on 18 February 1957 (O25).[166] The amount, however, was reduced to £725, Treasury arguing that 3 percent compound interest on the rent was more appropriate. The following month the proposal was submitted for the Minister of Maori Affairs' approval (O25).[167]

The Minister, however, had reservations. The grant was seen to be too generous and, more importantly, it would set a 'dangerous precedent'. Other lands of greater extent had also been informally set aside and never granted (O25).[168] In August 1957 the Director-General of Lands

informed the Secretary for Maori Affairs that ministerial approval had been given to having the whole matter referred to the Maori Land Court (O25).[169]

An application was accordingly made to the court to inquire into any entitlement that Ngai Tahu might have to the hlock, and to recommend the persons to whom compensation could be paid if entitlement were proven. However, the terms of the application were considered to be too vague and it was referred back to the department. An amended application was also considered to be ton vaguely worded. In addition, it was pointed out that:

> there should be defined claimants, wbose claim is properly formulated, and . . . a reasonable certainty that they are prepared to prosecute it before the Court in a businesslike manner. (O25)[170]

This information was forwarded to Robert Whaitiri and John Te Tau via Ms K Riwai, all of wbom had made previous inquiries about the hlock. The chairman of the Awarua Tribal Committee was advised of the court's requirements before accepting the application. In the Department of Maori Affairs' view, it was up to the Ngai Tahu claimants to take the matter further (O25).[171] No further action was taken.

The alienation of the fishing easement

2.14.6 On 29 November 1954 Robert Whaitiri, chairman of the Awarua Tribal Committee, wrote to the secretary of the Department of Maori Affairs, on behalf of the beneficiaries of the Hawea-Wanaka fishing reserve (O8:60–61).[172] He pointed out that the proposed Roxburgh hydro-electric power project would submerge a considerahle portion of the reserve and that compensation was expected. He advised that the trustees appointed in 1927, hut never finalised, were now deceased. Inquiries were subsequently made by the Maori Trustee to the State Hydro-electricity Department and the Ministry of Works about the impending works and its effect on the Maori reserve. On survey of the land it was thought that the proposed raising of the lake level would affect 27 acres of the fishing reserve. The resident engineer also pointed out that 60 acres of the 'landless natives' block would also be submerged. The lagonn at the Neck would be completely submerged (O25).[173]

On 14 November 1956 Richard Te Tau, chairman of the Huirapa Tribal Committee, wrote to the Commissioner of Crown Lands Dunedin, expressing the committee's interest in the department's intentions with regard to compensation for the area of reserve to be taken. He reminded the commissioner that any compensation should be applied for the benefit of those for whom the reserve was originally intended (O25).[174] In response Mr Te Tau was informed of the procedure for the acquisition of Maori land and told that the dishursement of compensation rested with the Maori Trustee. Notice of the compensation hearing would be puhlished in the *Panui* (O25).[175]

Twenty-five acres were eventually taken on 16 January 1962 for lake storage purposes under the Public Works Act 1928 (O8:61)[176] Two years later, on 21 February 1964, an application for the assessment of compensation for the 25 acres was hrought hy the Ministry of Works (O25).[177] Chief

Judge Jeune presided. The Maori interest was represented by Mr Griffin of Ross Dowling and Company Solicitors, who had been appointed by the ministry. Mr Griffin claimed that he had been unable to get any instructions from Ngai Tahu regarding the compensation to be sought. Apparently one individual had suggested £5000 per acre. There is no indication wbether Mr Griffin contacted either the Awarua or Huirapa Tribal Committees, wbo had both expressed an interest in the matter. He did suggest that, in addition to the value of the land taken, the loss of fishing rights should also be compensated for, but could not produce any evidence to establish this. The district valuer, who estimated the land taken was worth £25, claimed the reserve bad not been used for fishing. The court was adjourned in order that the Maori Trustee could investigate the issue of compensation for lost fishing rights.

A Government valuation of the 25 acres, dated 6 June 1962, described the land prior to the raising of the lake as 'an unattractive, rocky and mostly steep block of tussock and fern with no potential other than grazing', and of nominal value. The valuation given was £25 (O9:app8).

In a letter of 25 March 1964 to the Commissioner of Crown Lands Dunedin, the cbief judge indicated his intention, in view of the fact that all the trustees were now deceased, and in the absence of any instructions from the Ngai Tahu beneficiaries, to vest the balance of the land in the Maori Trustee (O8:62).[178] He claimed that the reserve had not been used for fishing for a great number of years, if ever, and inquired into the possihility of the Crown buying the land. In response, the commissioner suggested that the land be made available to the lessee of the Hunter Valley Station.

On 27 August 1964 the court made an order under section 438 of the Maori Affairs Act 1953 vesting the balance of the reserve in the Maori Trustee on trust to:

- instruct the solicitors on the compensation application;
- alienate the other 75 acres hy sale or lease at his discretion; and
- apply the proceeds for the benefit of those originally intended to benefit from the reserve. (O8:62a)

Negotiations between the Ministry of Works, the Maori Trustee, the Commissioner of Crown Lands Dunedin, and Mr Griffin continued over the next three years. A price of £40 was eventually agreed upon (O9:appl1).[179] The court made an award of that figure on 8 August 1967 hut solicitors' fees of $65 bad to be subtracted. In August 1967 a grazing tenancy of $6 per annum to a neighbouring pastoral lessee was arranged for the balance of the reserve. Three years later the land was sold to the tenant for $157.75, the purcbaser bearing all costs of obtaining title, including survey. After paying solicitors' fees and other legal fees, the proceeds from the tenancy and sale ($139.57) were paid to the Arai Te Uru Marae Council for the Manri community centre being planned for Dunedin (O25).[180]

As pointed out earlier, neither of the tribal committees which had expressed an interest in the reserve appear to have been informed by the Maori Trustee of any of the developments affecting the reserve. In Marcb 1968, before the sale of the balance of the reserve, Mr Whaitiri was informed that it was being leased on a year-to-year tenancy and that the question of sale was being considered by the Maori Trustee (O25).[181] It is evident from the minutes of a meeting of Te Waipounamu District Maori Council on 15 August 1970 that some Ngai Tahu were aware of the alienation (O25). At this meeting it was felt that the wbole issue needed 'close and careful investigation'.

Following the sale of the reserve, the Christcburcb district office of the Department of Maori Affairs was 'bomharded' with correspondence on the subject. In one such inquiry, Robert McLachlan, a grandson of one of the original trustees, wrote to the Maori Trustee, accusing bim of failing to consult with Ngai Tahu about the sale:

> From enquiries I have made in our area it would appear that no attempt was made to contact any of the beneficiaries, for although I agree it would be impossible to locate all of these, I see no reason wby the Huirapa and Moeraki district committees sbould not have been approached for their views, this being one of the reasons for their existence. (O25)[182]

He reiterated his criticisms to the Minister of Maori Affairs a month later, pointing out that the value of the reserve to Ngai Tahu lay in its strategic position, which gave access to Lakes Wanaka and Hawea (O25).[183] He urged that a similar reserve be made available at either of the lakes.

However, the Manri Trustee took the view, whicb was reflected in the Minister's reply, that Ngai Tahu had the opportunity to voice any objections at the compensation court bearing in 1964. He considered that the advertisement of the hearing in the *Kahiti* was sufficient notice to the interested parties, and that Ngai Tahu's interests had been looked after competently hy Mr Griffin (O25).[184]

The issue was again raised in front of the Commission of Inquiry into Maori Reserved Land by Ms M Wallscott on bebalf of the Otago Maori Executive and Mr R Whitau on behalf of the Moeraki Maori Committee (O8:73a).[185] The commission, however, felt unable to make a recommendation, merely drawing attention to the provision in the 1975 Bill for the declaration of any land, whether Maori- or Pakeba-owned, to be a Maori reservation.

Following the commission's report, the Minister of Maori Affairs was requested hy Mr Whitau to have the land set aside as a Maori reservation. In his reply of 4 September 1975 the Honourahle Matiu Rata again stressed that at the time of the court hearing there were no trustees for the land in existence, the ownership of the land had never been determined, and no individuals or Maori organisations had appeared at the hearing (O25).[186] Inquiries, however, were made into the possibility of repurchasing the area. In October 1975 Mr Whitau was informed that the property was on the market if the Otago Maori Executive Committee was interested in buying back the 75 acres (O25).[187] Nothing seems to have come of this.

Towards a settlement

2.14.7 In 1979 the Ngai Tahu Maori Trust Board presented a petition to Parliament which concerned, among other matters, the Hawea-Wanaka reserves (O8:72).[188] The petition listed the alienation of the reserves as 'long-standing and unsatisfied grievances of the Ngai Tahu'. Cabinet accepted the claim in respect of the 1658 acres reserved for landless Ngai Tahu. With regard to the fishery reserve, the Maori Trustee maintained that he had fulfilled the trust imposed on him by the Maori Land Court to the best of his ability on a severely restricted market. The Crown took the view that:

> the Maori Trustee did at the time all that was legally required of him and . . . it would be unreasonable to criticise him or the actions of the Maori Land Court. Nevertheless it is doubtful whether the same approach would have been adopted today in light of the changed attitude of Government in dealing with Maori land matters. (O8:83:9)

On this basis the Department of Lands and Survey was prepared to recommend a package settlement incorporating the fishery reserve in a settlement of the claim. The Ngai Tahu Maori Trust Board had indicated its preference to have compensation made in land, preferebly on the shores of either Lake Wanaka or Lake Hawea. They had in mind the establishment of recreation facilities for the use of the tribe. It was thought that compensation would be made in land of equal value, or of a lesser value with the difference payable in cash (O8:76b). To this end available Crown lands were listed for consideration and the two areas of claim valued. The unimproved value of the two blocks was estimated at $45,750. In April 1983 Ngai Tahu representatives inspected eight areas of Crown land available as compensation. Of particular interest was the recreation reserve at Bushy Point (O8:79).[189]

However, the matter appears to have lapsed. The evidence shows that, despite attempts by the Department of Lands and Survey to learn of Ngai Tahu's views as to settlement, by 2 April 1985 nothing had been heard from the trust board (O8:82a). This may have been because of the board's impending claim to the Waitangi Tribunal. In evidence before the Tribunal Paul Hellebrekers, Conservation Officer at Makaroa, was supportive of the 10-hectare recreation reserve at Bushy Point being vested in Ngai Tahu ownership as compensation (O7:34). However, he advised that any such vesting should be made conditional as the reserve incorporated one of the last remaining forested areas on the shores of Lake Hawea that was readily accessible to the public. He submitted that the land should be kept in its natural state in perpetuity and that the public right of access should remain. He further recommended that the Department of Conservation should assume the management responsibilities for the area, with the ownership placed in Maori hands.

The Tribunal's conclusion

2.14.8 Dealing first with the 540-acre reserve at Bushy Point, the Tribunal does not accept that a reserve was ever granted to Ngai Tahu at this location. While Heapby may have positioned the 1868 fishery reserve on his map on the northern bank of the arm of Lake Hawea, and later requests were made to have the reserve moved from Manuhaea to Pikirakitahi, in fact the requests were never actioned.

It must also be noted that, had the fishing reserve been moved, the area of reserve at Bushy Point would not amount to 540 acres, but the original court allocation of 100 acres. We do not uphold this grievance.

Turning next to the 100-acre fishery reserve, the Crown has already conceded that the same approach would not be adopted today with regard to the sale of the block hy the Maori Trustee. We agree with this statement. The Maori Trustee cannot be criticised for bis part in the alienation in merely carrying out the terms of the trust placed upon him hy the Maori Land Court. The sorry lack of notification and consultation with the interested tribal committees, however, is a different matter and cannot be reconciled with article 2 of the Treaty. The Crown has indicated its preparedness to make amends for the alienation and concrete moves have been undertaken to this end. The Tribunal supports compensation in land to Ngai Tahu for the loss of their fishery reserve.

We consider lastly the 1658-acre hlock allocated hut never granted to landless Ngai Tahu. The land allocated between Lakes Wanaka and Hawea to 57 individuals, most of whom lived hundreds of miles away, was steep and rocky and of no conceivable use to them. The Tribunal has already found that the South Island Landless Natives Grants Act 1906 and its inplementation were but a cruel hoax, and they cannot be reconciled with the honour of the Crown. This finding was made on the basis that all of the land set aside for these purposes was in fact granted. That substantial areas of land were allocated to Ngai Tahu individuals but never suhsequently granted we find further magnifies the breach of the Treaty principle requiring the Crown to act in good faith.

As a result of Ngai Tahu's petition in 1979, the Crown accepted that the tribe had a valid claim with respect to this land. Positive steps were taken by the Department of Lands and Survey to compensate Ngai Tahu with land for the loss of both the landless natives hlock and the fishing reserve. As stated above, we support these moves and recommend that negotiations be recommenced immediately on a value-for-value exchange in land. We point out that as the 1658-acre hlock was actually allocated to 57 named Ngai Tahu it is important that any compensatory land awarded in respect of this area, as distinct from the fishery reserve, be vested in the descendants of the original allocatees. This should be borne in mind hy both Crown officials and Ngai Tahu negotiating the reparation.

1. *Ngai Tahu Report 1991*, para 17.2.1

2. Canterbury 1, DOSLI Wellington

3. Included in Eyre to Governor Grey, 5 July 1848, G7/1, NA Wellington

4. Mantell to Rolleston, 12 April 1866, *Compendium*, vol 1, p 241

5. *Ngai Tahu Report 1991*, para 8.9.18

6. Minutes of Native Land Court hearing, 27 April 1868, *Compendium*, vol 2, p 201

7. Ibid, p 203

8. Ibid, 6 May 1868, p 217

9. 'Minutes of Meeting of Ngai Tahu Hapus in Christchurch Town Hall', 2 May 1868, MLC acc 2218, box 27, NA Christchurch

10. Minutes of Native Land Court hearing, 6 May 1868, *Compendium*, vol 2, p 217

11. *Canterbury Provincial Gazette* 1868, p 62

12. Native Affairs Committee on petition of Te Oti Pita Mutu and others, evidence of Chief Judge Fenton, 1880, Le1/1880/6, NA Wellington

13. Ibid, evidence of G P Mutu

14. Report on the Petition of Ngai Tahu by Chief Judge F D Fenton, AJHR 1876, G7, pp 5–6

15. AJHR 1879, sess II, I-2, p 22

16. Ibid

17. Native Affairs Committee on Petition of Te Oti Pita Mutu and others, evidence of G P Mutu, 1880, Le1/1880/6, NA Wellington

18. Ibid

19. Ibid

20. Ibid, evidence of W Rolleston

21. Ibid, evidence of I Tainui

22. Ibid, evidence of Chief Judge Fenton

23. Ibid

24. AJHR, 1880, I-2, p 28

25. Evidence of J W Stack, 10 February 1880, Smith-Nairn commission, MA 67, series 1879, NA Wellington

26. 'Minutes of Meeting of Ngai Tahu Hapus in Christchurch Town Hall, 2 May 1868', MLC acc 2218, box 27, NA Christchurch

27. Minutes of Native Land Court, 6 May 1868, *Compendium*, vol 2, p 217

28. Schedule of reserves, encl in no 13, *Compendium*, vol 2, p 186

29. Otder of entitlement, 10 January 1887, Canterbury 144A block file, MLC Christchurch

30. Submission to Honourable Duncan McIntyre, Minister of Maori Affairs on behalf of Ngai Tuahuriri runanga of the Ngai Tahu people, MLC Christchurch

31. W Mantell to Colonial Secretary, 30 January 1849, *Compendium*, vol 1, p 216

32. *New Zealand Gazette* notice in L&S 2480, DOSLI Christchurch

33. J Marshall to Commissioner of Crown Lands Christchurch, 27 June 1902, L&S 2480, DOSLI Christchurch

34. Crown lands ranger to Commissioner of Crown Lands Christchurch, 28 July 1902, L&S 2480, DOSLI Christchurch

35. Commissioner of Crown Lands to secretary, Canterbury Acclimatization Society, 5 September 1903, L&S 2480, DOSLI Christchurch

36. Secretary, Canterbury Acclimatization Society, to Commissioner of Crown Lands Christchurch, L&S 2480, DOSLI Christchurch

37. County clerk to Commissioner of Crown Lands, Christchurch, 17 April 1913, L&S 873A, DOSLI Christchurch

38. Commissioner of Crown Lands Christchurch to county clerk, 8 September 1913, L&S 873a, DOSLI Christchurch

39. Crown lands ranger to Commissioner of Crown Lands Christchurch, 8 November 1913, L&S 873a, DOSLI Christchurch

40. County clerk to Commissioner of Crown Lands Christchurch, 14 July 1914, L&S 873a, DOSLI Christchurch

41. M Stokes to Commissioner of Crown Lands Christchurch, 26 March 1917, L&S 873a, DOSLI Christchurch

42. Certificate of title 358/102

43. Note on file, W Stewart, 25 July 1923, L&S 8/45, DOSLI Christchurch

44. Crown lands ranger to Commissioner of Crown Lands Christchurch, 28 February 1924, L&S 8/45, DOSLI Christchurch

45. Under-Secretary for Lands to Commissioner of Crown Lands Christchurch, 30 May 1924, L&S 8/45, DOSLI Christchurch

46. *New Zealand Gazette*, 1925, p 2491

47. County clerk to Commissioner of Crown Lands Christchurch, 17 October 1925, L&S 8/45, DOSLI Christchurch

48. Commissioner of Crown Lands to county clerk, 21 October 1925, L&S 8/45, DOSLI Christchurch

49. Field inspector to Commissioner of Crown Lands, 14 December 1929, L&S 8/45, DOSLI Christchurch

50. Note on file to commissioner, 17 March 1930, L&S 8/45, DOSLI Christchurch

51. County clerk to Commissioner of Crown Lands Christchurch, 19 February 1931, L&S 8/45, DOSLI Christchurch

52. Canterbury SO plan 4620

53. Field officer to Commissioner of Crown Lands, 25 November 1971, L&S 8/3/12, DOSLI Christchurch

54. SIMB 48, p 238

55. *New Zealand Gazette*, 1883, p 22

56. Section 11 Native Land Amendment Act 1912

57. Canterbury SO plan 3033

58. Canterbury SO plan 4619

59. Director-General of Lands to Commissioner of Crown Lands Christchurch, 2 November 1966, Canterbury 152, MLC Christchurch

60. Enclosure of notes, dated 18 May 1981, in 20/896 fol 8, MLC Christchurch

61. North Canterbury Catchment Board plan SP51, Canterbury 136, MLC Christchurch

62. Schedule enclosed in acting chief surveyor Christchurch to registrar Maori Land Court Christchurch, 14 November 1978, L&S 20/1, DOSLI Christchurch

63. Commissioner of Crown Lands Christchurch to Surveyor-General, 20 July 1896; Crown Lands Ranger Buckland to Commissioner of Crown Lands Christchurch, 20 February 1918, L&S Christchurch file CH134, 8/3/54, NA Christchurch

64. Chief surveyor to registrar, Maori Land Court, 23 April 1979, L&S 20/1, DOSLI Christchurch

65. Canterbury SO plan 15654

66. Te Maire Tau, Anake Goodall, David Palmer, Rakiihia Tau, *Te Whakatau Kaupapa: Ngai Tahu Resource Management Strategy for the Canterbury Region*, Aoraki Press, 1990, pp 5.13–14

67. Certificate of title 140/143

68. *New Zealand Gazette*, 1956, pp 364, 1179

69. E Champion to Maori Trustee, 5 March 1956, Canterbury 153, MLC Christchurch

70. File note by engineer's assistant Henshall, 20 July 1956. Works and Development Christchurch file CH150, 38/33, NA Christchurch

71. SIMB 36, p 267

72. Maori welfare officer to district officer, 7 June 1957, Canterbury 153, MLC Christchurch

73. Registrar Wellington to district officer Christchurch, 10 July 1957, Canterbury 153, MLC Christchurch

74. SIMB 36, pp 267–272

75. Ibid

76. Branch manager, Valuation Department, to Maori Trustee, 3 December 1957, Canterbury 153, MLC Christchurch

77. SIMB 36, p 271

78. Te Maire Tau, Anake Goodall, David Palmer, Rakiihia Tau, *Te Whakatau Kaupapa: Ngai Tahu Resource Management Strategy for the Canterbury Region*, Aoraki Press, 1990, p 5.22

79. *Ngai Tahu Report 1991*, para 17.5.3

80. Ibid, paras 17.5.4–5

81. *Ngai Tahu Sea Fisheries Report 1992*, para 14.3.4

82. SIMB 18, p 89

83. Ibid, pp 86–88

84. Telegram Commissioner of Crown Lands Christchurch to Under-Secretary for Crown Lands, 12 March 1890, L&S Christchurch file 1292, NA Christchurch (accession CH98)

85. Commissioner of Crown Lands Christchurch to Thomas Macartney, Taitapu, 4 February 1891, L&S Christchurch file 1292, NA Christchurch (accession CH98)

86. Commissioner of Crown Lands Christchurch to Surveyor-General, 13 May 1895, Commissioner of Crown Lands Christchurch to George Robinson, Little River, 20 March 1896, L&S Christchurch file 1292, NA Christchurch (accession CH98)

87. SIMB 18, p 91

88. NZPD, vol 161, p 1114

89. SIMB 18, pp 86–112

90. NZPD, vol 161, pp 1117–1118

91. Ibid, p 1113

92. *New Zealand Gazette*, 1976 pp 423–424

93. For certificate of title, see P9C:25–26

94. Canterbury SO plan 3348

95. William Greenwood, *Te Waimatemate: History of Waimate County and Borough*

96. SIMB 61, pp 254–256

97. Ibid, 44, pp 210–211

98. 'Wainono Lagonn Conservation Area Principal Management Issues Paper Nine', 14 July 1993. Conservation Canterbury file RSG 014

99. Wainono Lagoon field meeting papers, DOC Timaru

100. NZPD, 1883, p 168

101. H K Taiaroa to Minister of Maori Affairs, 10 April 1902, Canterbury 146, MLC Christchurch

102. Stipendiary magistrate Kaiapoi to Under-Secretary for Justice, 9 April 1902, Canterbury 147, MLC Christchurch

103. Teone Paraone to Native Minister, 19 January 1902, Canterbury 147, MLC Christchurch

104. Extract of letter by A Mackay in typewritten material, Canterbury 147, MLC Christchurch

105. SIMB 15, p 15

106. Native Trustee to chief surveyor Christchurch, 26 October 1921, L&S 20/806, DOSL1 Christchurch

107. Deputy Native Trustee to Commissioner of Crown Lands Christchurch, 13 September 1938, L&S 8/151, DOSL1 Christchurch

108. Lots 1–4 on Canterbury DP 14196

109. *Canterbury Provincial Gazette*, 1867, p 201

110. Chief surveyor to Surveyor-General, 20 July 1898, L&S 20/806, DOSLI Christchurch

111. Rewi Koruarua to Taiaroa, 27 June 1888, L&S 20/806, DOSLI Christchurch

112. H K Taiaroa to Minister of Lands, 28 June 1888, L&S 20/806, DOSLI Christchurch

113. Durant to chief surveyor Christchurch, 6 November 1888, L&S 20/806, DOSLI Christchurch

114. Durant to chief surveyor, 24 July 1889, L&S 20/806, DOSLI Christchurch

115. Canterbury SO plan 4591

116. *New Zealand Gazette*, 1920, p 1441

117. County clerk to Minister of Marine, 2 July 1919, L&S 20/806, DOSLI Christchurch

118. Registrar to R Ellison, 20 October 1971, Canterbury 146, MLC Christchurch

119. Application to determine ownership and title, 8 January 1972, Canterbury 146, MLC Christchurch

120. Canterbury 146, MLC Christchurch

121. Ibid

122. Minutes of meeting at Taumutu on 30 July 1902, Canterbury 146, MLC Christchurch

123. Schedule enclosed in Taiaroa to A Mackay, 16 September 1902, Canterbury 146, MLC Christchurch

124. Ibid

125. Plan of reserve in Canterbury 146, MLC Christchurch

126. SIMB 49, pp 124–125

127. Registrar Christchurch to head office, 12 December 1972, Canterbury 146-7, MLC Christchurch

128. Drew to registrar, Christchurch Manri Land Court, 19 September 1972, Canterbury 146-7, MLC Christchurch

129. Director-General of Lands to Maori Trustee, 25 May 1973, Canterbury 146-7, MLC Christchurch

130. Note on secretary, head office, to district officer Christchurch, 1 June 1973, Canterbury 146-7, MLC Christchurch

131. Maori Trustee to R Ellison, 16 August 1973, Canterbury 146-7, MLC Christchurch

132. Member of Parliament, Selwyn, to district commissioner, Lands & Survey, 23 January 1987, L&S 20/806, DOSLI Christchurch

133. SIMB 1A, p 63

134. Ibid

135. Return of reserves in Otago province, *Compendium*, vol 2, p 245

136. SIMB 6, p 92

137. SO plan 12464

138. Percy Smith and A Mackay to Surveyor-General, 2 March 1903, L&S 50456, DOSLI Wellington

139. Native land register, Wanaka block, DOSLI Wellington

140. Surveyor-General to chief surveyor, 8 May 1903, L&S 50456, DOSLI Wellington

141. A McDougall to Commissioner of Crown Lands Dunedin, 27 May 1903, L&S 50456, DOSLI Wellington

142. Annotation dated 20 August 1903 to Surveyor-General to Minister of Lands, 19 August 1903, L&S 50456, DOSLI Wellington

143. Annotation dated 5 October 1903 to Surveyor-General to Minister of Lands, 19 August 1903, L&S 50456, DOSLI Wellington

144. Surveyor-General to chief surveyor Dunedin, 5 October 1903, L&S 50456, DOSLI Wellington

145. W C Kensington to Commissioner of Crown Lands Dunedin, 19 October 1906, L&S 50456, DOSLI Wellington

146. Commissioner of Crown Lands to Under-Secretary for Lands, 2 November 1906, L&S 50456, DOSLI Wellington

147. Kensington to Commissioner of Crown Lands Dunedin, 29 November 1906, L&S 50456, DOSLI Wellington

148. Commissioner of Crown Lands to Under-Secretary for Lands, 12 December 1906, L&S 50456, DOSLI Wellington

149. Native land register, pp 110–110a, DOSLI Wellington

150. Chief surveyor Dunedin to Paprill, Salter and Gresson, 9 September 1927

151. SO plan 12464

152. SIMB 24, pp 209–210

153. Ibid

154. SIMB 24, p 296

155. Ibid, p 315

156. Registrar to Judge Gilfedder, MA 7/6/246, vol 1

157. Ibid, note on letter

158. I Piper to Balneavis, 4 March 1928, MA 7/6/246, vol 1

159. Ellison to Coates, 3 August 1928, MA 7/6/246, vol 1

160. Ellison to Coates, 28 August 1928, MA 7/6/246, vol 1

161. Chief Judge Jones, 29 October 1928, MA 7/6/246, vol 1

162. Judge Harvey, 'Report on Court hearing of 11/6/30', 21 February 1935

163. Chief Judge Jones to under-secretary, Native Department, 12 July 1935, MA 7/6/246, vol 1

164. Secretary for Maori Affairs to Director-General of Lands, 13 August 1956, MA 7/6/246, vol 1 (note that document O25 is not paginated)

165. Head office committee on land for landless Maoris, MA 7/6/246, vol 1

166. Secretary of Treasury to Director-General of Lands, 18 February 1957, MA 7/6/246, vol 1

167. Secretary for Maori Affairs to Minister of Maori Affairs, 29 March 1957, MA 7/6/246, vol 1

168. Ibid, see note on letter

169. Director-General to Secretary for Maori Affairs, 9 August 1957, MA 7/6/246, vol 1

170. Memorandum, chief judge, 25 February 1958, MA 7/6/246, vol 1

171. District officer to Secretary for Maori Affairs, 14 May 1959; Secretary for Maori Affairs to Director-General of Lands, 10 June 1959, MA 7/6/246, vol 1

172. R Whaitiri to Secretary for Maori Affairs, 29 November 1954, MA 7/6/246, vol 1

173. Resident engineer to Commissioner of Works, 31 October 1956; survey plao TLH 629, MA 7/6/246, vol 1

174. R Te Tau to Commissioner of Crown Lands Dunedin, 14 November 1956

175. District land purchase officer to R Te Tau, 20 November 1956, MA 7/6/246, vol 1

176. *New Zealand Gazette*, 1962, p 31

177. SIMB 40, pp 32–34

178. Chief judge to Commissioner of Crown Lands Dunedin, 25 March 1964, MA 7/6/246, vol 1

179. SIMB 42, p 352

180. Secretary for Maori Affairs to Director-General of Lands, 10 December 1981, MA 7/6/246, vol 1

181. Secretary for Maori and Island Affairs to R Whitau, 13 March 1968, MA 7/6/246, vol 1

182. R McLachlan to Department of Maori Affairs, 27 August 1970, MA 7/6/246, vol 1

183. R McLachlan to Minister of Maori Affairs, 28 September 1970, MA 7/6/246, vol 1

184. Minister of Maori Affairs to R McLachlan, 23 October 1970, MA 7/6/246, vol 1

185. *Report of Commission of Inquiry into Maori Reserved Land 1975*, AJHR, 1975 H-3, p 130

186. Minister of Maori Affairs to R Whitau, 4 September 1975, MA 7/6/246, vol 1

187. Minister of Maori Affairs to R Whitau, 24 October 1975, MA 7/6/246, vol 1

188. G McMillan, 'Report on Ngaitahu Trust Board Petition', 29 April 1982

189. J Gleave, Assistant Commissioner of Crown Lands, April 1983, MA 7/6/246, vol 1

Chapter 3

Arahura Ancillary Claims

3.1 Under the Arahura deed of purchase of 1860, some 6724 acres were excluded from the sale for allotment to individual Ngai Tahu (described in the deed under schedule A) and an additional 3500 acres were set aside in trust for religious, social, and moral purposes (listed under schedule B). The land so reserved for Ngai Tahu was little more than nominal. Additional land was allocated to individuals under the South Island Landless Natives Act 1906. In Westland 6175 acres were set aside to provide for those Ngai Tahu left landless as a result of the Crown's scant provisions from the original purchases of Ngai Tahu land.

The tangata whenua of Te Tai Poutini are concerned about their landless plight. The quality, quantity, location, and gradual disappearance of the land reserved to them are all subjects of complaint. Few of these grievances were addressed by the Crown.

The majority of grievances, however, were submitted by the claimants' historian, James McAloon. In some cases these claims were a restatement of those brought by the claimants themselves. Mr McAloon's submission dealt with several issues: land reserved to Poutini Ngai Tahu but never allocated, the alienation of reserved land, and various shortcomings in the implementation of the landless natives grants legislation. These claims were responded to by Crown counsel Peter Blanchard. Criticisms were also directed by Mr McAloon at the custodianship of the Public and Maori Trustees, which in turn were countered by Mr Wickens, who appeared on behalf of the Maori Trustee. In all, Mr McAloon made allegations concerning more than 30 different parcels of land.

The Tribunal has already reported its finding on the Arahura reserves in the *Ngai Tahu Report 1991*. It was satisfied that, particularly having regard to the nature of the land and the climatic conditions, the reserves were quite inadequate to provide a sustainable economic base for the future. It also found that the Crown failed to ensure Poutini Ngai Tahu retained access to their mahinga kai. This failure was deemed a breach of article 2 of the Treaty and of detrimental effect to the tribe. We now look at the grievances expressed by Kelly Russell Wilson and James Mason Russell before proceeding to examine the various issues raised by Mr McAloon.

3.2 South Westland reserves

The late Mr Wilson and his family were from south Westland. His turangawaewae stretched from Okarito in the north to Milford Sound in the south. He gave evidence on behalf of his extended family and the Mahitahi Maori Committee, recounting details of the reserves lying between. Within this account the following claims were made:

no provision was made for Pontini tangata whenua in places where they nsed to reside, including a lack of provision for mahinga kai and areas of cultural significance;

the reserves were either too small or too nnsuitahle, or both, to be of any practical benefit; and

even these meagre reserves were reduced hy snbsequent Crown acquisitions.

Mr Wilson claimed that this comhination of factors has 'forced most of my family and all the other families to move away from our ancestral and tribal lands' (D10:2).

Some of the claimants' grievances were restated hy the claimants' historian, Mr McAloon, and as such, addressed by the Crown. Where this has occurred, the summary of events is discussed under the claimant's grievance. Many of Mr Wilson's claims, however, have not been investigated by either party.

The claimant, on behalf of the Mahitahi Maori Committee, made it clear that recompense for the reserves must be made in land. Specific examples of compensation in land were suggested, namely that Makawhio Bluff be vested in the tribe as reparation for the loss at Okarito, and Heretaniwha Point for the loss of land at Mahitahi. Mr Wilson urged that the administration of compensation be at the local community level.

Fleeting comments were made regarding the displacement of some Poutini Ngai Tahu from their land through 'misguided' succession orders (H8:25). This allegation is not adequately defined and no research has been undertaken to verify it.

3.3 Claim no: **15**
Claim area: **South Westland reserves**
Claimant: **Kelly Russell Wilson**
Claim:

Mr Wilson claimed that many areas where land shonld have been set aside are devoid of such reserves.

The claimant questioned the lack of reserves in areas 'where we know our Tupuna lived off the land and sea' (H8:24). He maintained that traditional accounts of past Ngai Tahu settlement and occupation have in the last few years been verified hy archaeological finds. His outline included areas of cultural significance and those of especial value as mabinga kai.

3.3.1 Moving north to south, he detailed areas known to have been occupied or used by his people. He pointed to the absence of any reserve at Karangarua beach, where a village used to exist at the mouth

of the river, and which he remembered as a child as an 'excellent mahinga kai'. Further south, Mr Wilson stated that two urupa are situated on either face of Makawhio Bluff, which was also the site of a past settlement. He compared the spiritual significance of the bluff to that of Te Reinga Wairua. But, he said, we have no land here.

The claimant stated that at Heretaniwha Point archaeological evidence records habitation for over 500 years. In addition to being a traditional area for kaimoana, the claimant maintained that:

> [This] was a very sensitive area to our ancestors as no party would visit this area unless all things were seen to and the tupuna were satisfied that they visited in peace . . . somewhere in that area the last act of eating the mana of the victim was performed. *No Reserves* there. [Emphasis in original] (D10:5)

Paringa too, was an area of habitation and of value for its kaimoana, warranting more than the few small reserves made at the mouth of the river. According to Mr Wilson, the tribe understood that an area was reserved at Mussel Point, an area well documented as an urupa where a number of chiefs are buried. No such reserve was made.

Of particular concern was the absence of reserves from Lake Moeraki to the Waiatoto River, and south of Jackson's Bay. Mr Wilson stated that both traditional and archaeological evidence support the fact that these areas were populated by Ngai Tahu in their hundreds. He submitted that people roamed through the region, from Bruce Bay to the Black River, and on to Paringa, Whakapoai, Haast, Mussel Point, Jackson's Bay, Milford Sound, and Martin's Bay, reaching all these places by canoe. Extensive villages were said to have been situated at Martin's and Barn Bays. And yet, Mr Wilson mourned, not one reserve was made.

Mr Wilson claimed that the lack of reserves set aside for the tribe in south Westland has robbed his people of their ancestral lands, their tribal heritage. The result, he explained, was that his people have had to move away from the area in order to survive. He asserted that land should be set aside in the region from Jackson's Bay to Milford Sound on a tribal basis.

The Tribunal's conclusion

3.3.2 Mr Wilson's grievance is in fact a much more detailed illustration of the wider complaint expressed in the general statement of claim for Arahura, namely 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 Tribunal has found that the land retained by Ngai Tahu from the purchase was little more than nominal. 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.[1]

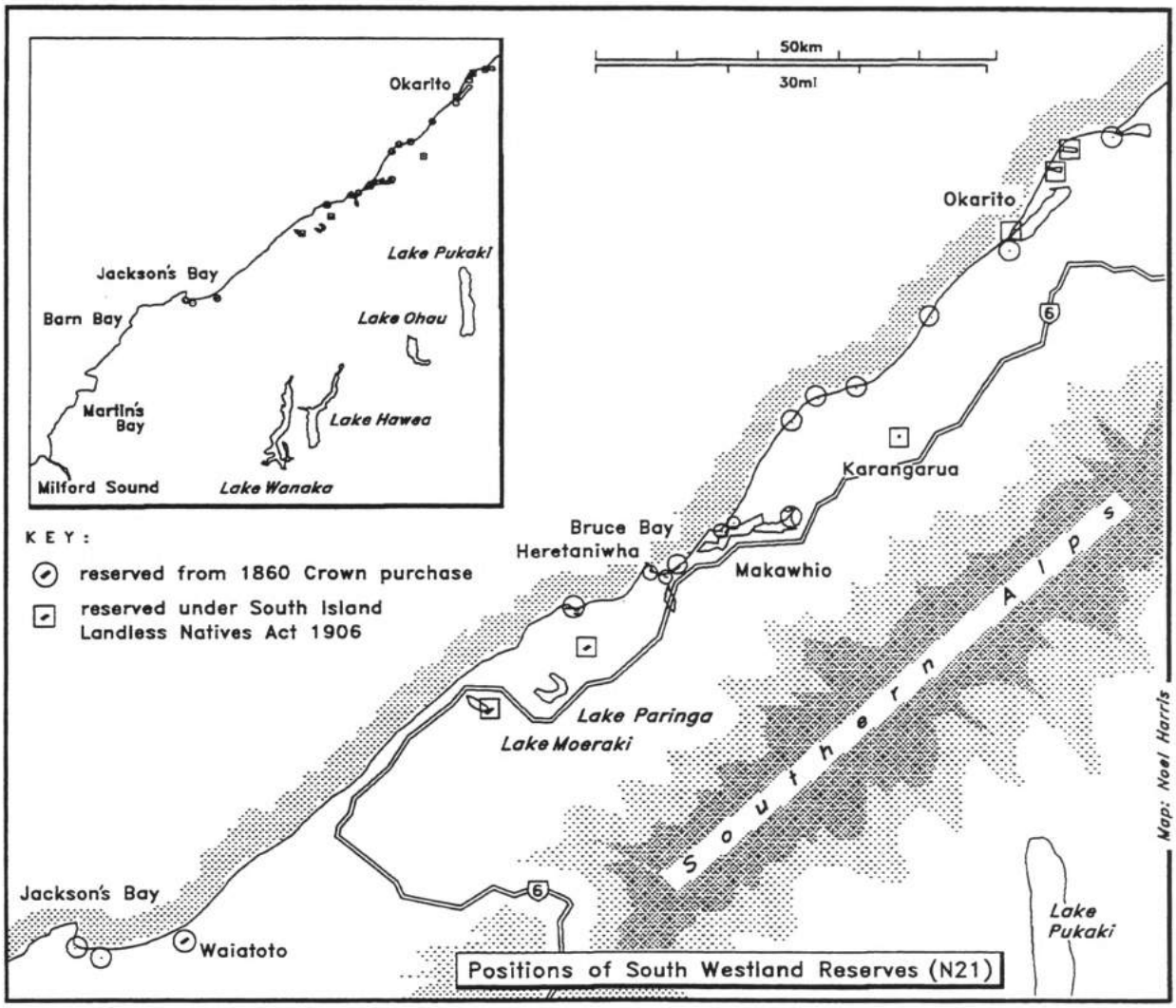


Figure 5: South Westland reserves

When purchasing the West Coast, James Mackay did not travel further south than Mahitahi. He was aware of:

> a few Natives at Jackson's Bay related to Taetae and to the natives of Mahitahi; but the Chiefs said it was not necessary that these should be present [at the negotiations] as the question had all been arranged among themselves in my absence. (D5:12)[2]

It appears that the people of south Westland were largely left out of the considerations for the purchase of Te Tai Poutini. The extent of population at the time has not been the subject of investigation by the Tribunal. We accept Mr Wilson's evidence that his tupuna used the land and resources from Jackson's Bay to Milford Sound. Although some aspects of his evidence may be challenged, nevertheless the principles that emerge from it confirm the Tribunal's earlier finding that Ngai Tahu were inadequately provided with reserves. We uphold this grievance with respect to the

paucity of reserves in the southern region of the West Coast. We recommend that the parties negotiating the settlement of the Ngai Tahu claim have regard to the provision of land in areas such as south Westland, which have been bereft of tribal reserves since the time of the original Crown purchase.

3.4 Claim no: **16**
Claim area: **South Westland reserves**
Claimant: **Kelly Russell Wilson (D10, H8)**
Claim:

> **Mr Wilson claimed that the reserves which were granted in south Westland were too inadequate — in both quantity and quality — to be economically viable.**

Mr Wilson alleged that census material and Ray Hooker's archaeological evidence (H8) lend weight to the fact that the acreage reserved to Arahura Ngai Tahu was inadequate. He maintained that many of the reserves granted were too small to farm even then, let alone now. He referred to the small reserves, of six to 10 acres, granted at Omoeroa and Gillespie's Beach, and those at Paringa. Although the land reserved at Makawhio was comparatively good, Mr Wilson maintained that it was barely enough to furnish an existence for one small family. In addition to the paucity of the reserves, Mr Wilson stated that in some cases the quality of the land was poor. Of note were those reserves inland from Karangarua, and those at Paringa, Lake Moeraki, and Waiatoto.

The size of the reserves

3.4.1 Two reserves were set aside for individual allotment by James Mackay at Gillespie's Beach. Reserve 14 comprised 10 acres on the north bank of the Wehenga (Cook) River. Reserve 16, of 20 acres, lay on the south bank of the Waikohai River, slightly further north. In 1879 reserve 14 was said to have been 'carried away by the river'.[3] Thirty acres were marked out on the south bank of the Omoeroha River, being reserve 15 (A8:II:387).[4] This reserve has been renamed section 790, block I, Waiho survey district. Further south, 200 acres were originally reserved at the mouth of the Paringa River. This reserve was later reduced to 50 acres because two of the owners elected to take their land at Buller instead.

The quality of the reserves

It was questionable, Mr Wilson said, why some of the reserves were ever allocated to the tribe. He was particularly disparaging of the reserves inland from Karangarua beach, in which, he jested, even a swamp hen would get bogged. Most of this land was granted to Ngai Tahu under the landless natives grants legislation, although six acres had been excluded from the purchase in 1860. It illustrates yet again the ludicrous nature of the landless natives grants scheme. Mr Wilson's criticism regarding this land was not a new one. When Ripeka Te Naihi testified in the Native Land Court

in May 1926 regarding other land given to Ngai Tahu in the area, she too said that the landless natives allocations were swampy and 'not of much value' (AB22:186).[5]

Mr Wilson alleged that the 50-acre block on the Paringa River was better suited to a billy-goat, and of no value to the tribe. This land, section 319, block III, Abbey Rocks survey district, was one of three areas surveyed for the tribe as a result of a request for food reserves during the Governor's visit to Makawhio in 1892. On behalf of his people, Te Koeti Turanga requested both of Lord Onslow and of the local member of Parliament, Mr Seddon, food reserves at Blue River, Paringa Lake, and Cook River (D5:315).[6] This was agreed to in principle, and in 1894 three reserves, of 50 acres each, were laid off.

However, the reserves were not located where Turanga had asked for them. Rather than lying at Paringa Lake, a good fishery for the tribe, section 319 was located on the Paringa River. Mr Wilson submitted that the land was useless for their needs. The second 'food reserve', section 318, block V, also in the Abbey Rocks survey district, was located at the inland end of Lake Moeraki (D5:313).[7] It was also the subject of complaint by Mr Wilson, who claimed that it was laid off at entirely the wrong end of the lake to be of any use as a mahinga kai; all the larger fish were (and still are) caught at the seaward end, where the water is deeper (D10:5). He also made the observation that half of this reserve is submerged beneath the lake. The third 50-acre reserve was placed in the vicinity of Lake Matheson (D5:312).[8] Section 865, block XVI, Gillespie's survey district lay on the main road south, and according to Mr Wilson had never been utilised by the tribe. He did not elaborate on why it had not been used.

3.4.2 Mr Alexander pointed out that we do not possess copies of Turanga's actual requests for reserves to be set aside at specific points, but rather a 1905 letter from the Commissioner of Crown Lands Hokitika which refers to Turanga's requests. Mr Alexander further speculated that the surveyor in 1894 would most probably have been instructed by his superiors to liaise with local Maori as to the reserves' location, and would not have had the latititude to choose the sites of his own volition (AB35:27). Mr McAloon countered that the surveyor, Browning, acted in a quite arbitrary manner in determining the boundary of Arawata reserve 1 (see para 3.6.1). The Tribunal, for its part, is satisfied that the 1905 letter and the apparent poor quality of the reserves laid off are sufficient indication that Turanga's original requests were not complied with.

The sections are also the subject of Mr McAloon's allegation that the Crown's failure to carry out its promise to allocate reserved land was an act of bad faith. The three areas, although arising from a specific request for food reserves, were brought under the South Island landless natives grants scheme. Although laid off in 1894, the sections were not permanently reserved until 1908, along with other landless natives allocations. And although permanently reserved, the food reserves were never allocated.[9] In 1964 section 865 near Lake Matheson was vested in the Maori Trustee (D5:321).[10] This seems to have been an incorrect action, caused, according to Mr Alexander, 'by [a] lack of clear knowledge about the history of the reserve' (AB32:139–140; AB35:27).[11] The Maori Trustee entered into a perpetually renewable lease of the section in 1965. Mr Alexander submitted that, 'Because under Section 110(9) of the Native Purposes Act 1931 (as added by Section 15 of the

Maori Purposes Act 1966) Section 865 was more correctly Crown land, it was agreed in 1969 that the proceeds of any sale would go to the Crown rather than be held for distribution by the Maori Trustee' (AB32:141–143; AB35:27–28).[12] The land was sold to the lessee in 1974. Mr Wilson did not appear to be aware of its alienation.

In fact the status of the Moeraki and Paringa reserves (sections 318 and 319 respectively) was a major reason for the passing of section 15 of the Maori Purposes Act 1966. As Mr Alexander noted:

> Because they were never allocated to individuals after their reservation as landless natives lands in 1908, it was assumed in 1965 that they were not required and could be treated as Crown Land.[13] Their original purpose, for food gathering, was lost sight of. At first it was thought that special legislation referring only to these two sections would be promoted, but then it was found that other land districts had land similarly unallocated, so the more general provision of an amendment to Section 110 of the Maori Purposes Act 1931 was passed by Section 15 of the Maori Purposes Act 1966. (AB32:136–138; AB35:28)[14]

By 1976 the sections were shown in the Crown Lands Register as Crown land. In response to an inquiry about this from the Department of Lands and Survey, in October 1979 Judge M C Smith confirmed that the sections were indeed Crown land by virtue of section 15 of the Maori Purposes Act 1966. In May 1981 the researcb officer for the Department of Lands and Survey reported that the sections had been reserved under the provisions of the South Island Landless Natives Grants Act 1906. As the land had never been allocated, it could be considered that 'all claims have [been] satisfied' and that the sections were now Crown land by virtue of section 110(9) of the Maori Purposes Act 1931 (D5:318).[15] Mr McAloon stressed the double injustice of the original non-allocation of the reserves and the Crown's resumption of the land 60 years later (AB57).

According to Crown counsel Mr Blanchard, sections 318 and 319 remain Crown land hy virtue of section 15 of the Maori Purposes Act 1966. While supporting the return of the land to Ngai Tahu ownership, he submitted that section 318 is Crown land under the Land Act 1948 and that section 319 is stewardship land under the provisions of the Conservation Act 1987. Maori Land Court minutes record, however, that on 2 May 1984 sections 318A and 319 were determined Maori freebold land (AB22:8).[16] Current files exist in the court for the two hlocks. The orders made by the Maori Land Court on 2 May 1984 were made pursuant to section 30(1)(i) of the Maori Affairs Act 1953 and simply declared the status of the land as Maori freehold land. Because they were not title orders, the Maori Land Court bas no record of ownership. It seems clear that the 1984 status declarations are erroneous and that sections 318 and 319 are still Crown land and need to be dealt with as set out in paragraph 3.4.4.

3.4.3 The last reserve, mentioned by Mr Wilson as being too steep to be of any use, even to adjoining farmers, was that at Waiatoto. Reserve 2, now section 755, was set aside on the south bank of the Waiatoto River by James Mackay in 1860 and comprised 100 acres. An inspection of the area was conducted in August 1983. In the lease inspector's view, 'Apart from a few millahle trees that may

be on the block, it has no immediate leasing value apart from perhaps some Sphagnum Moss royalty' (AB22:49).[17]

Given the nature of the reserves outlined above, Mr Wilson suggested that whoever allocated the land had no knowledge of the area. In addition he maintained that such allocations were made without any consultation with the tribe.

The Tribunal's conclusion

3.4.4 As outlined in the discussion of the preceding claim, the Tribunal has upheld the claimant's general grievance that inadequate land was set aside for the tribe. Mr Wilson's summary merely further illustrates the inadequacies of the Crown's reserve allocations, both in quantity and in quality. The claimant's grievance is upheld.

We turn now to Mr McAloon's evidence regarding the non-allocation of the three 50-acre food reserves requested by Ngai Tahu in 1892. Although Ngai Tahu's request was agreed to in principle and three areas were subsequently laid off, in fact the tribe never received title to the land. Moreover, as Mr Wilson related, sections 318, 319, and 865 were not situated where Ngai Tahu had asked for reserves. Although the sections were brought under the landless natives scheme, they were never subsequently allocated to individuals and thus title did not issue. Section 865 has been sold. Mr Blanchard stated, however, with respect to sections 318 and 319, that 'In light of evidence that the land was intended as food reserves we would support allocation of both sections to Maori ownership'. He submitted that the mechanism needed to revest the land would need to be considered in conjunction with the Department of Conservation in respect of section 319 (N4:40).

The Tribunal agrees with the principle so fairly expressed by Crown counsel. As the land was intended as food reserves it is fair that sections 318 and 319 should be returned to Maori ownership. There is a principle involved here. However, in light of the fact that the reserves were not laid out in areas requested by Ngai Tahu in 1892, and have been of limited or no use to the tribe, a return of sections 318 and 319 may not satisfy the needs of Makawhio Ngai Tahu. Additionally, section 865 has been sold. The Tribunal finds that the Crown's failure to carry out its promise of 1892 to Te Koeti Turanga to reserve to the tribe areas for mahinga kai to be in breach of the principle of good faith and the duty to ensure that the tribe was left with sufficient land for its present and future needs. Assistant Crown counsel Andra Mobberley more recently reiterated the Crown's support for the allocation of section 319A (of 20.2 hectares) to Maori ownership, but drew the Tribunal's attention to sections 16, 26, and 62(1)(d) of the Conservation Act 1987, which, in the absence of legislative change, must first be complied with (AB34:14). We support the plea of south Westland Ngai Tahu, put so strongly to this Tribunal by Mr Wilson, and we recommend that the negotiating parties have regard to the lack of reserves in this region in the settlement of the Ngai Tahu claim. If sections 318 and 319 are not acceptable to the tribe for the reasons set out above, consideration should be given by the Crown to the return of more suitable replacement land in the same region, if possible, and after consultation with Ngai Tahu.

3.5 **The acquisition of Ngai Tahu reserves**

Mr Wilson claimed that the inadequacy of the reserves bas been further compromised by the Crown's acquisition of some areas. While not questioning the need to take these areas for specific purposes, be stated that equivalent areas should have been granted to the tribe as compensation.

3.6 Claim no: 17
Claim area: **Arawata MR 1**
Claim:

> **Mr Wilson claimed that the reserve at Arawata has been reduced to a little over a third of its original acreage hy the Crown's acqnisition of land under the Pnhlic Works Act.**

He maintained that the land had been taken for an aerodrome (D10:5). The Arawata reserve is also the subject of Mr McAloon's submission relating to land reserved from the Arahura purcbase but not allocated to Ngai Tahu.

The Arahura purchase reserves

3.6.1 Three reserves at Jackson's Bay were excluded from the 1860 purchase for Poutini Ngai Tahu. The subject of this claim is reserve 1, a 100-acre reserve set aside by James Mackay on the south bank of the Arawata River (N5:2).[18] Another 100-acre block, reserve 2, was set aside a little further north, on the south bank of the Waiatoto River. Entitlement to these acreages was determined by Commissioner Young in 1879. A further 10-acre section was set apart on the south side of the bay as a scbedule B reserve, that is, for 'Religious, Social, and Moral purposes' (AB22:52).[19]

Today reserve 2 at Waiatoto is referred to as section 755, and remains at its original acreage of 100 acres. The 10-acre scbedule B reserve, section 752, is also Maori land. The fate of the 100-acre Arawata reserve, bowever, appears to be linked to the survey of the Jackson's Bay special settlement by Browning early in 1875. In May 1970 the Maori Land Court determined the ownership of two smaller reserves, one of 22 acres and the other of 33 acres 38 percbes, on the south bank of the Arawata River. These are referred to as Arawata 1 block and Arawata 2 block and would appear to be the remnants of reserve 1 (AB22:35).[20] The two areas were said to be:

> linked by a pencil vinculum to indicate that they are part of the same reserve or holding, but there is no appellation, the only notation being NR (Native Reserve). (AB22:36)[21]

Mr Wilson claimed that the reserve was diminisbed by the taking of land for an aerodrome in 1940. It is evident, bowever, that the acreage was reduced well before this. In December 1874 the Westland Provincial Survey Office bad the 100-acre reserve sketcbed but not surveyed (AB32:145).[22] The reserve was shown as a rectangle on the south bank of the Arawata River with

its long sides parallel to the coast. In December 1874 a party of surveyors led by Browning commenced the surveys required for the Jackson's Bay special settlement.[23] In October 1875 the reserve was shown in two parcels of 33 and 20 acres, with a settlement area between (AB32:146).[24] An 1876 survey map of the area also shows the two smaller Maori reserves marked off (AB27:29), as does a 1909 plan of 'Reserve from the Arahura purchase', which shows the two areas separated by a number of subdivisions (AB22:54).[25] The 1876 survey was made three years prior to Commissioner Young's report on the Arahura reserves. The land taken for the aerodrome in 1940 was taken from general land originally granted under the Jackson's Bay Settlement Act 1880.

It is likely, then, that the change to the reserve is, as Mr Alexander argued, 'a direct result of the special settlement surveys carried out by Browning', which show settlement sections within the rectangle of the reserve. Unlike the 1874 sketch, the settlement sections did not extend to the coast or to the mouth of the river (AB35:29).

An examination of Browning's field books by Mr Alexander revealed that Browning and his assistants found signs of European as well as Maori occupation in the unsurveyed Maori reserve during January and February 1875. Browning also personally laid off a six-chain goldmining reserve between the beach and the settlement sections.[26] It appears then, as Mr Alexander stated, that Browning, 'anxious to promote the gold mining opportunities for the budding special settlement, altered the Maori reserve boundaries to accommodate signs of Maori occupation while not interfering with European occupation or mining potential'. Furthermore:

> It is clear that Browning thought the 53 acres he surveyed as Maori Reserve to be sufficient for that purpose, as the rest of the land within the 1874 rectangle was laid off as settlement sections or identified by him as a gold mining reserve. (AB35:30)

As Mr McAloon noted:

> Browning appears to have behaved in a particularly high-handed manner in unilaterally adjusting the boundaries of the reserve and deciding that 53 acres was adequate for a reserve supposed to be 100 acres. (AB57)

The Jackson's Bay settlement

3.6.2 During the 1870s Jackson's Bay was the location of one of the Government's special settlement schemes to encourage immigration. Sixty thousand acres of Crown 'wasteland', extending from the Haast River in the north to the Smoothwater River in the south, were reserved for this purpose in February 1875.[27] Included in this area were all three Jackson's Bay Maori reserves, although this fact was not mentioned in the proclamation.

The community was not a success and most of the immigrants had moved within a few years of arriving there. In 1878 a commission of inquiry was directed to look into the reasons behind the failure, and to advise whether the special settlement should be abandoned.[28] Their findings led to

the Jackson's Bay Settlement Act 1880, which established a set of regulations and placed the settlement under the management and control of the local land board. Under these regulations settlers could apply for allotments of land, whicb were divided up into three classes. Town sections were to consist of not less than a quarter of an acre, suburban sections from one to 10 acres and rural lots from 50 to 150 acres. These allotments were held by half-yearly payments of rent for a period of at least two years, at a rate of two shillings per acre per annum. At the end of this term, provided occupation and cultivation could be proved, the settler was entitled to purchase the freebold of ber or his land for the balance of 20 shillings per acre. The maximum amount of land held by any one settler could not exceed 150 acres.

Land around the Arawata River was allotted in mostly 10-acre 'suburban' sections. In May 1889 title to section 522, block I, Arawata survey district, of 10 acres 2 roods, was granted to one William Burmeister, a German immigrant who had arrived with his family in 1875 (AB27:22).[29] In March 1895 title to sections 523 and 524, together comprising 21 acres, was granted to an Englishman, James Smith, who had arrived with his family at the same tune (AB27:23).[30] These three sections lay between the two areas of Maori reserve on the south side of the Arawata River. In April 1940 they were taken under the Puhlic Works Act 1928 for the purpose of an aerodrome (AB27:24).[31] The goldmining area along the beach remained in Crown hands, but, according to Mr Alexander, Browning's idea of a mining reserve was never followed up. The land was declared provisional State forest in 1919,[32] and in 1947 a large portion was also taken for the aerodrome.[33] Mr Alexander noted with irony that 'the taking was a tidying up action which was taken after the aerodrome had been closed for flying but before it had heen declared surplus' (AB35:31).[34] The aerodrome land was declared Crown land in 1965 and has subsequently been developed as the Neil's Beach bach settlement (AB35:31).[35]

Record of the 100-acre reserve 1 was kept in the Maori Land Court, although, unlike its Waiatoto counterpart, there was no certificate of title. Commissioner Young had determined the owners of the reserve in 1879 and successions to these owners continued right up to the 1950s, despite the fact that the reserve did not in fact exist. The situation was further obscured by the fact that from 1954 onwards succession orders for section 755 at Waiatoto were actioned on Arawata. The Arawata reserve file contains material relating to all three Jackson's Bay reserves.

In May 1970 the Maori Land Court ordered that 78 persons, the beneficial owners of section 752 in fact, be given relative shares in Arawata 1 and 2 hlocks.[36] The areas were treated in one title.

The disappearance of the 100-acre reserve at Arawata and the existence of the two smaller areas has not gone unremarked on by the court. The issue was raised in the mid-1970s, hut neither the court nor the Department of Lands and Survey could explain wbat had happened to the reserve. In May 1976 application was made for a consolidated order of section 755, in order to clarify the confusion in the Maori Land Court records concerning the Jackson's Bay reserves (AB22:27–28).[37]

The Tribunal's conclusion

3.6.3 It is apparent that the issue involved with this claim is not one regarding the Crown's acquisition of Ngai Tahu's reserved land under public works legislation as Mr Wilson stated. The aerodrome at Arawata was taken from general land. Rather, as Mr McAloon and Mr Alexander both submitted, it appears that the reserve was excluded from the Arahura purchase but not subsequently allocated in its entirety to Ngai Tahu. The evidence points to the present Arawata 1 and 2 blocks, together comprising 55 acres 38 perches, being all that remains of the original reserve. This appears to be owing to Browning laying off settlement sections and a goldmining reserve in the area reserved for Ngai Tahu. It seems that the Crown subsequently did little to rectify the situation.

Thus Ngai Tahu did not receive the land explicitly excluded for them under the terms of the Arahura purchase deed. This is in breach of the terms of the deed itself and also, we feel, in breach of the Treaty principle requiring the Crown to act towards its Treaty partner in good faith. The grievance is upheld in respect of the reduction in area of the reserve, but not in respect of land taken for public works.

3.7 Claim no: **18**
Claim area: **Bruce Bay MR 6**
Claim:

> **Mr Wilson claimed that one of Ngai Tahu's larger reserves, section 781 at Mabitahi, was bisected by the main road south and was further reduced by a five-chain scenic reserve on either side of the roadway and a buffer strip along the Makataka River. He claimed that no compensation was awarded for the area taken (D10:4).**

3.7.1 The reserve in question was originally known as reserve 6, and comprised 680 acres. Under the Natives Reserves Titles Grants Empowering Act 1886, 59 people were granted title as tenants in common to the section which was renamed section 781, block XIV, Bruce Bay survey district (N5:77–78).[38]

The claimant stated that three small farmlets operate on the land, and part-time jobs are worked to supplement the farming income. He was aggrieved that one of Ngai Tahu's larger reserves has been eaten into by public works, without any compensation. He stated that it was assumed that Heretaniwha Point would be granted in compensation for the loss.

Section 781 has been diminished by public works on three different occasions. The first of these occurred in 1938, when some 48 acres were taken for an aerodrome. When the main road south was laid through the reserve a further seven or so acres were taken for this purpose. As a consequence of this, a third area was taken in 1952 for scenic purposes.[39]

Land taken for an aerodrome

3.7.2 In the early 1930s, before south Westland was connected to the rest of New Zealand by the main road south, settler agitation stimulated the Government into committing funds for the development of landing grounds at different areas of settlement along the coast. To establish the grounds, settlers would provide the necessary land and assist in the preparation of the runways. Government funding would be restricted to such things as engineering supervision, survey plans, and tools. At Mahitahi, two sucb landing grounds were envisaged. The principal one would lie near the Mahitahi Post Office, on land owned by settler John Condon. A second, 'emergency' ground, for use in north-easterly and north-westerly winds, would be developed on an island near the Mahitahi River mouth, alongside section 781 wbere Messrs Stewart and Cbapman had established a timber company. The island was said to be unoccupied Crown land. Construction of this second landing ground would be undertaken by the company (AB27:57–59).[40]

However, wbile the development of Stewart and Cbapman's landing ground went ahead, that on Condon's property did not. Although Condon was willing to allow the aerodrome on his land, it was on condition that no buildings or structures would be erected and that be would 'only undertake to make the ground fit for a temporary airplane landing' (AB27:68–70).[41] It appears that these conditions were the major influence in the Crown's abandoning consideration of the site in November 1934. The acting district engineer commented that the matter had been dropped as 'Mr Condon will not move in the matter' (AB27:77).[42] Mr Alexander stressed as other reasons for the abandonment of the site the deadline of December 1934 (when the airmail service was scbeduled to commence), that work had already begun on the Stewart and Chapman site, and the Crown's understanding at the time that the Stewart and Chapman site was Crown land and therefore easier to deal with (AB27:67, 77;[43] AB32:158).[44] By October 1934 there was talk of moving the post office to the mouth of the river and Stewart and Chapman expressed their preparedness to enlarge the landing ground if necessary. Early in 1935 an inspection of the ground was made. In addition to enlarging the functioning north-south runway, an east-west strip was also required.

It was found that the proposed extension fell largely in section 781, as did part of the existing strip. One hundred and twenty-six Ngai Tahu individuals were said to have an interest in section 781. The area lying between section 781 and the Mahitahi River was considered to be Crown land (AB27:84).[45] Mr Alexander noted that Ngai Tahu's interest was not identified until after the decision was made to abandon the Mahitahi Post Office site proposal and that, as late as September 1935, the Puhlic Works Department was 'unahle to say whether the landing strips proposed and in use are on Native Reserve or on River land' (AB32:159).[46] On receiving news of the tenure of section 781, the land purchase officer of the Public Works Department considered it 'useless' to try and obtain the usual agreement for acquiring the land. The matter might possibly be dealt with by a meeting of assembled owners, but this too would 'mean delay and might even then prove unsuccessful' (AB27:87).[47] The quickest way, it was decided, was to take the land under the Public Works Act 1928, leaving the matter of compensation to the Native Land Court. The district engineer was accordingly directed to have the area surveyed so that the compulsory taking could proceed.

In fact, although the survey of the proposed aerodrome proceeded, most of the landings were done on the smooth beach fronting Mahitahi. None the less, an area was laid off by the river and in March 1937 the capital value of this was estimated at £308. The extended landing ground was said to comprise 38 acres 2 roods 10.8 perches of Crown land, 3 roods 26.2 perches of closed road, and 48 acres 1 rood 2 perches of section 781 (AB27:96).[48] The development of this area, however, could not take place until the tenure bad been secured.

In August 1937 both the chief surveyor at Hokitika and the registrar of the Ikaroa Native Land Court were asked to supply the Assistant Under-Secretary for Public Works with information as to the present title of the required land. Both were told that 'where Natives are concerned' individual names were not required (AB27:94–95).[49] In his reply, the registrar listed six of the 'principal owners', together with their addresses. In January 1938 a more complete list showing the names and addresses (wbere known) of 171 owners in the hlock was also forwarded to the department (AB27:99–103).[50]

In September 1937 the intention to take 48 acres 1 rood 2 perches for the purpose of an aerodrome under the Public Works Act 1928 was gazetted.[51] Notice of intention was advertised in the *Hokitika Guardian* on 12 and 13 October 1937, displayed at the Bruce Bay Post Office,[52] and served on the six principal owners mentioned above, as well as on Mr Corcoran, who often acted for Maori interests. On 19 October 1937, one of the owners, Tane Te Koeti of Whakapatu, relayed to the department his lack of objection to the taking (AB27:104).[53] Later that month, one William Koeti Bannister (one of the owners) also wrote to the Minister of Public Works. According to Mr Bannister, the owners had no objection to the aerodrome being placed on their land hut they did expect compensation for the 'use' of the land (AB27:108–109).[54]

In November 1937 the Surveyor-General raised the issue that part of the area considered to be Crown land by the Puhlic Works Department was in fact accretion to section 781. He pointed out that on the Crown grant the reserve was bounded by the Mahitahi River and any accretion along this boundary would be considered 'on survey and application by the registered proprietors' to be accretion to section 781 (AB27:110).[55] The district land registrar agreed with this view. The survey plans were accordingly amended to give the affected section 781 an increased area of 61 acres 1 rood 6.8 perches, and fresh schedules were drawn up. However, the engineer-in-chief, wbo was also the Under-Secretary for Puhlic Works, took exception to this view, arguing that the area referred to as accretion could not be considered as such until application had been made for the same by the registered proprietors of section 781 (AB27:113).[56] It is interesting to note another Public Works official's comments on the under-secretary's view:

> I cannot follow this argument. It seems to me that the area is accretion to Section 781 and that the ordinary rule of law applies and that it belongs to the adjoining owners. Application for a title is only a matter of procedure I think. (AB27:114)[57]

To this comment, Mr Read, the Public Works Department's land purchase officer, responded:

> that may be so but the point is that the adjoining owners bave apparently done nothing to get a title, and if land is taken by Proclamation the owners cannot claim from the Crown as they cannot produce a title.[58]

Mr Alexander argued that gaining title to the aceretion is not a formality but is the 'subject of inquiry by the District Land Registrar and requires statements hy surveyors . . . before a title will issue' (AB35:34).

The areas on the survey plan and scbedules to be gazetted were accordingly amended. The area of land at issue, 13 acres 4.8 percbes, was labelled 'river bed' (AB27:115).[59] This, Mr Alexander contended, was the land's correct definition, as this was its status at the time of taking. Such a status, Mr Alexander explained, 'is a neutral term which is not passing judgement about a matter which has not been considered' (AB35:34). In August 1938 the area of section 781 required for the aerodrome was proclaimed taken.[60] The area of Crown land set apart for the aerodrome was proclaimed taken in December 1938 and included the 13 acres of riverbed.[61] Mr Alexander rightly pointed out that the Crown should not have included the 13 acres in its declaration because 'it gives an incorrect impression of the status of the land' (AB35:35).

Under section 104 of the Public Works Act 1928, application was made by the Minister of Public Works to the Maori Land Court to assess the amount of compensation. The application first came before the court at Kaiapoi on 1 August 1939, but was adjourned to Hokitika to give the owners of the land the opportunity to engage counsel and have the land independently valued. At Hokitika on 15 February 1940 the owners of the hlock were still not represented hy counsel but 'a number [were] present in Court in person' (N5:313–318).[62] Nor had an independent valuation been carried out. William Bannister testified that the land taken was ancestral land, and aired a concern central to the claimant's grievance today:

> The owners are multiplying and each generation finds itself possessed of less land per bead. The taking of this land accentuates that position as it reduces the Natives' Estate. (N5:316–317)[63]

After hearing the Crown's evidence regarding the value of the land, the court offered the owners a further adjournment to have an independent valuation carried out. Those present, bowever, were prepared to 'accept the Court's judgement' in the matter. In the event, the court ordered compensation of £270 15s 9d to be paid for the area taken, an increase on the Government valuation, plus interest of £20 2s 5d (N5:319–320).[64] The money was to paid to the South Island District Maori Land Board, to be held and administered on behalf of the owners of the land.

By way of an epilogue, the aerodrome taken from Ngai Tahu's reserve was abandoned shortly afterwards. In July 1940 the acting district engineer reported that erosion was taking its toll on the land. He commented that, as the landing ground was used but rarely, any expenditure on river protection would hardly be warranted.[65] By February the following year the river was within feet of the runway, and options to moving the landing ground elsewhere or abandoning it altogether were

considered. Now that the main road was laid, there was no longer the necessity for the airstrip. A big flood in May of 1942 resulted in considerable damage to the runway and in June the northern end of the strip had been reduced by eight yards through river erosion. Once again it was recommended that the ground be abandoned. No further reports are available until November 1947, when it was reported that the landing ground had been 'abandoned for some time'. It was recommended that the area, 'of 40 to 50 acres', be disposed of. In July 1948 the aerodrome committee resolved that the landing ground had no future as an aerodrome. In November the acting resident engineer informed the district engineer of the intention to dispose of the area. If no compensation had been paid to the Ngai Tahu owners, the land was to be given back. If compensation had been paid, the land was to be proclaimed Crown land to be administered by the Department of Lands and Survey. A proclamation declaring the 42 acres 1 rood 2 perches taken from section 781 to be Crown land no longer needed for the purpose of an aerodrome was accordingly gazetted in March 1949.[66]

The main road south

3.7.3 At the same time that moves were afoot to take land from section 781 for the aerodrome, plans to lay the main road south through the reserve were also underway. This proposed roadway was a deviation of the existing road, considered necessary by the Public Works Department 'in order to get a better road and crossing of the Mahitahi River' (AB27:124).[67] In a letter to the Permanent Head of the Public Works Department, the district engineer stated that the 132 owners of the reserve objected to the deviation. He asked that the permanent head issue a centre line proclamation or 'take such other steps as may be required to allow the work of road construction to proceed' (AB27:124).[68]

A proclamation defining the middle line of the road was in fact gazetted in June 1937 (AB27:126).[69] This course of action was later attributed to the 'impracticality' of locating the numerous owners of the block. Under the proclamation, the works could be carried out on the land without the consent of the landowners. Once the construction work was complete, survey plans would be drawn up and the affected lands acquired by the Crown.

In October 1937 Mr Bannister wrote to the Minister of Public Works about the road:

> so far there has been no mention of compensation in fact I don't [remember] any permission being asked for a roadway through this property. Still we [the owners] recognise that the roadway is for the good of the district at the same time we are entitled to some compensation for the loss of our land. (AB27:108–109)[70]

He was told in reply that obtaining the consent of such numerous owners was impractical. He was also informed that compensation for the land taken for roading would probably be determined by the Native Land Court (AB27:128).[71]

Section 781 was not the only land to be affected by the deviation. Throughout 1938 the Crown entered into agreements with other affected landowners for the acquisition of the area required for the main road south. With regard to Maori-owned land, and in particular section 781, bowever, the department's approach was somewhat different:

> If you could locate the principal native owners and obtain their consent to entry and to the land being taken suhject to compensation being settled by the Native Land Court when the Proclamation has been issued, this would enable you to proceed with construction, hut the Department's experience has been that it is more expeditious to issue a Notice of Intention and take the land compulsorily wbere natives are conceroed. (AB80)[72]

Once a title search had been done, the notice of intention would be issued.

By August 1938 the survey of the road through section 781 was complete. Inquiries were made to both the district land registrar and the Maori Land Court regarding the ownersbip of the reserve. It will be remembered that as of January 1938 the department had a list of the 171 owners of section 781 together with their addresses (where they were known). Despite this it appears that no notification of the intention to take the land was served on any of these owners. The proclamation declaring 7 acres 1 rood 36.7 perches in two separate parcels from section 781 taken under the Puhlic Works Act 1928 was gazetted on 15 May 1941.[73] Compensation of £6 was awarded by the Native Land Court two months later (AB22:192).[74]

Plans for a scenic reserve

3.7.4 Laying the main road through the reserve resulted in a third area heing taken for scenic purposes. The area eventually taken for a scenic reserve was first earmarked early in 1938 wben Crown officials made an excursion down the West Coast expressly to look at suitable land for scenic purposes along, and in view of, the new road. Regarding section 781, the Commissioner of Crown Lands and the Conservator of Forests Hokitika were:

> greatly impressed hy the beauty of a magnificent stand of Kahikatea between the Makataka Stream and the Maitahi [sic] River, and also with the need for obtaining an area for river-bank protection upstream from the site of the new Maitahi [sic] Bridge. (N5:118)[75]

After investigating the matter, it was decided that:

> every effort sbould be made to acquire a strip approximately 5 chains in width on each side of the road just south of the Makataka Stream crossing and running south for a distance of approximately 28½ chs. (N5:118)[76]

It was also decided that a strip of about seven acres on the west side of the new road would have to be acquired, together with a belt of about 18 acres on the east side of the road, running upstream from the Mahitahi bridge. In total, 53 acres 2 roods 23 percbes was deemed 'the absolute minimum' necessary for their purposes (N5:111).[77]

There were 171 owners interested in the reserve, some of them living as far away as Invercargill and Te Kuiti. The geographical dispersal of the owners was seen as an impediment to holding a meeting of owners to discuss the acquisition. Instead, notification of the Government's intention was sent on 17 November 1939 to those owners wbose addresses were known (N5:120).[78] The letter called for objections, though it was thought that given the proposal's 'desirability' no objections would be made (AB32:162).[79]

Four months later, only 10 owners had replied. Of these, six were said to be 'of a more or less favourable nature', three were opposed to the alienation, and one was 'in indefinite terms' (N5:120).[80] Five circulars had been returned unclaimed (N5:109). Mr Alexander argued that, since the letter of 17 November 1939 did not ask owners in favour of the proposal to reply hut six still did, this 'points to a high degree of acceptance, or at least non-opposition' (AB35:35). It was decided that plans to take the land under the Public Works Act 1928 would proceed, leaving the amount of compensation for the land to be fixed by the Native Land Court later on. Notice of the impending acquisition was gazetted on 23 May 1940 (N5:109).[81] Copies of the proclamation were then sent to 'five of the principal owners' (N5:103).[82]

3.7.5 The owners of the reserve had sold the timber rights on the section in 1933 to David Stuart, managing director of Bruce Bay Timbers Ltd, for £2270 (N5:226).[83] Under the terms of the grant, the grantee (strictly speaking, Stuart) had the right to mill timber on the section for six years, beginning on 6 December 1933. The purcbase price was paid by half-yearly instalments.

The company had not yet begun milling in the areas required for the scenic reserve when, in April 1938, it was asked by the Commissioner of Crown Lands Hokitika to refrain from further cutting. To compensate for the loss of the timber, the company was to be given cutting rights to an equivalent amount of timber in State forest elsewbere in the vicinity (N5:118).[84] With regard to the Maori owners, the Crown considered that, as they had sold the timber rights, their sole interest was in the land. Appropriate compensation would be assessed by the Native Land Court at 'a time and place that will be as convenient as possible for those interested' (N5:114).[85]

By early 1941 the 'gentlemen's agreement' between the Crown and the timber company had not been finalised, nor had further steps been taken to acquire the land. And nothing further was done for the next five years — a situation later said to have been caused by war conditions (N5:227).[86]

In 1946 Bruce Bay Timbers lodged a claim for compensation for the loss of the timber on the areas proposed for the scenic reserve (N5:98).[87] As the company had ceased milling in the district, a cash payment was demanded instead (N5:100).[88] After many months of negotiation, £1729 8s 1d was finally agreed upon in full settlement of the company's claims (N5:90).[89] Ministerial approval was

given in February 1950 but payment of the settlement was delayed because of the company's internal problems (N5:247).[90]

Once the Government had settled with the company as to the price of the timber, action was taken to acquire the Maori land. Crown officials seemed quite unconcerned about this aspect of the purchase:

> The actual land acquisition side of it is OK, a notice of intention to take the areas having been issued with the approval of the Maori Dept. (N5:89)[91]

The compensation to he paid to the owners, too, was thought to be nominal:

> The land value is not available at the moment, hut will be very small. £2000 should easily cover timber value aod land value. (N5:89)[92]

Because the acquisition of the land had been delayed, in 1951 it was decided that a second notice of intention to acquire the land should be gazetted. On 22 May 1952, 53 acres 2 roods 23 percbes of section 781 were taken under the Public Works Act 1928 and the Scenery Preservation Act 1908 (N5:243).[93]

Compensation

3.7.6 The Maori Land Court was asked to assess the compensation payable to the Maori owners. The case was heard on 4 February 1953, and:

> questions were raised regarding the disposal of the timber and it was mentioned that at the time the Crown entered into the negotiations the rights with the Bruce Bay Timber Company had lapsed. (N5:253)[94]

The court was of the opinion that, 'as the timber cutting rights had expired prior to the Crown taking the land, any timber remaining on the areas taken reverted to the Maori owners' (N5:248).[95] It would, therefore, be the Ngai Tahu owners who were entitled to the compensation for the timber, not the company. The court required that the ownership of the timber be investigated and the matter was adjourned.

The Crown repudiated such a proposal. Under the terms of its agreement with Bruce Bay Timbers, the Crown was obliged to pay the company £1729 8s 1d for the timber. The Director-General of Lands, for one, considered the court's suggestion 'manifestly unfair as the Crown would, in effect, be paying twice for the same timber' (N5:248).[96] The Crown solicitor, too, observed that 'if the Maori owners bave already been paid once for the timber there is little merit in a claim to be paid again for the same thing' (N5:246).[97] However, be cautioned against paying the company:

> I do not see how you can very well pay out £1700 and get nothing in return, hut on the contrary be faced with the prospect of paying out more money for the same rights. (N5:246)[98]

The director-general concurred with this view and the Crown solicitor in Greymouth was instructed to attend the next court hearing, 'in an endeavour to persuade the Judge that the Maori owners are not entitled in equity to anything for the timber as they have been paid all that is due for it by the Company' (N5:245).[99]

The bearing took place on 11 November 1954 and Judge Jeune presided. In essence, the court found that the company's grant of 1933 was a licence or easement only, not a sale of goods. The owners remained the proprietors of the growing timber, the company possessing an interest in the timber only once it had been cut. The court awarded £55 compensation for the land and £1729 15s for the millable timber (N5:226–229).[100] The sum was payable to the Maori Trustee on bebalf of the owners, together with £21 costs and £3 hearing fee. The Crown was given two months to appeal the decision, but it was felt that such action would be futile (N5:210).[101] In the result it did pay for the timber twice. On 11 Novemher 1955, £1729 8s 1d was paid to Bruce Bay Timbers. Compensation to the owners was paid to the Maori Trustee on 19 July 1955. In addition, interest due on the compensation from the date of the award to the date it was paid was determined at £53 10s 10d and also paid to the Maori Trustee (N5:200).[102]

The Tribnnal's conclnsion

3.7.7 In other sections of this report the Tribunal has criticised past puhlic works legislation which did not then require consultation with, or even notification to, the Maori owners of the land to be taken. Considering first the acquisition of some 48 acres for the landing groind, although the Puhlic Works Department was in possession of the names and addresses of the 171 owners of the block, only six of these were informed of the intention to take the land. From the outset, it was not envisaged that the land would be acquired hy the Crown through agreement with the owners of section 781, as had been done with other landowners affected by the aerodromes in south Westland. We note that Condon's land, considered as first choice for the siting of a landing ground, was not compulsorily taken. Nor was the use of the Puhlic Works Act 1928 even considered wben Condon agreed to his land being used for the aerodrome only on certain conditions. Indeed, the Crown took into account the objections of Condon in abandoning that proposal whereas the Maori land was simply taken under the Public Works Act. Similarly, with the road deviation through section 781 involving some seven acres of their land, obtaining the consent of the Ngai Tahu owners to the taking was deemed to be 'impractical'. None of the 171 owners were served with notice of the taking. In the third instance, regarding land taken from section 781 for scenic purposes, it is clear that measures were taken hy the Crown to at least notify the owners of the impending acquisition.

The Tribunal cannot condone the actions of the Crown in failing to consult or notify Ngai Tahu about the compulsory acquisition of their land for public purposes. We find that failure to be in hreach of the principles of the Treaty requiring the Crown to protect Ngai Tabu's rangatiratanga over

their lands and to act towards its Treaty partner with the utmost good faith. It could be argued that the different procedures used by the Crown to acquire land from Maori and Pakeha landowners are in breach of Maori rights under article 3 of the Treaty. In his submission to the Tribunal, Mr Wilson stated that he did not disagree with the takings themselves, but rather with the fact that their reserve was reduced considerably and that no alternative lands were provided by the Crown by way of compensation. In our view, alternative lands should have been provided by the Crown. Mr Wilson suggested on behalf of the Mahitahi Maori Committee that Heretaniwha Point would be suitable compensation for the takings. We note that this claim is yet another example where the small area reserved to Ngai Tahu has been further diminished by the Crown's public works acquisitions. Although monetary compensation was awarded by the Maori Land Court in all three takings of section 781, the fact remains that Ngai Tahu's tribal estate, as pathetic as it was, has been substantially reduced by the actions of the Crown.

We further note that, although entitled in law, Ngai Tahu never gained title to the river accretion. The accretion of about 13 acres was deemed riverbed, and was not included in the compensation payable to the Maori owners. This bureaucratic action unfortunately accompanied many public works acquisitions of Maori land. This grievance also emphasises the difficulty that fragmented and absentee ownership poses in presenting proper objection to proposed public works. When it was proposed to take land from a non-Manri, that person was notified and heard, and her or his objection was sustained.

The Tribunal comments elsewhere in this report on the deficient procedures of public works legislation for the acquisition of Maori lands up until 1974 (see claim 51). This particular grievance is but one further example of the easy prey that Maori land presented for public works acquisitions, with the consequential diminution of Maori land.

3.8 Claim no: **19**
Claim area: **Whataroa MR 20, MR 21, and MR 22**
Claim:

> **Mr Wilson claimed that in 1952 Ngai Tahu were forced to sell 281 acres of reserved land at Okarito for a low price (D10:3). He later ventured the opinion that the 319 remaining acres were most likely taken for other uses under the Public Works Act (L32).**

Mr Wilsou referred to the 'Okarito Sections' and detailed three section numbers. Upon consideration, the Tribunal has identified the areas under claim as reserves 20 (281 acres) and 21 (13 acres), block IV, Okarito survey district, and reserve 22 (296 acres), block I, Whataroa survey district. These reserves lie just north of Okarito Lagoon, on the Waitangi Taona and Waitangi Roto Rivers, and on the south bank of the Whataroa River.

Mr Wilson claimed that the owners were forced to sell 281 acres for 10 sbillings per acre in 1952. The Mahitahi Maori Committee has suggested that Makawbio Bluff sbould be reasonable compensation for any loss at Okarito (D10:4). The reserves were also pointed to by Mr McAloon as areas that were reserved from the Arahura purchase but never allocated to Ngai Tahu.

3.8.1 When James Mackay laid off the reserves, the total acreage amounted to 619 acres (D5:18).[103] In 1879 the area of the three reserves was given by Commissioner Young as 689 acres. The three reserves have always been treated together, even though section 22 lies north of the other two sections. A survey of the lands bad not been done wben the lands came before the Native Land Court in November 1915 (N5:20).[104] On this occasion the court allotted 687.5 acres to 33 people, the certificate of title to be issued once a survey of the land had been completed. On survey, the acreage was found to be considerably less. Reserve 20 was now 281 acres, reserve 21 was 13 acres, and reserve 22 was 296 acres, making a total of 590 acres.

The alienation of reserve 20

3.8.2 On 2 November 1954 notice was sent out to the owners of reserve 20 to attend a meeting to consider the following resolution:

> THAT the said land be sold to the Crown for a consideration of One thousand seven bundred and seventy five pounds (£1,775). (AB22:70)[105]

The Crown wished to acquire the block in order to protect the nesting places of the white beron colony there. The proposed price was said to represent both the value of the land, assessed by the Department of Lands and Survey at £375, and the value of the timber, estimated by the Forest Service to be £1400 (AB22:76).

The meeting of owners took place in Hokitika on 24 November 1954. Thirteen owners were present and a further eight represented by proxy (AB22:71).[106] Collectively they represented some 201 acres of the 281-acre block. The minutes of the meeting do not indicate any coercion being placed on the Ngai Tahu owners by the Crown. One owner saw the offer as the only way to get revenue from the land:

> Mr Tuhuru Tainui said that it appeared to bim that if the Crown's offer were not accepted their chance of selling the timber at all might be remote. The land would not be of much use to the owners for farming or other purposes and the Crown's offer would enable them to realise on their asset. (AB22:73)[107]

The resolution was carried, but not unanimously. Two owners, namely Ihaia Weepu and Hori Tipene Tauwhare, voted against the resolution as they considered the price too low. A third owner also opposed the offer by proxy. The resolution was confirmed by the court on 26 January 1955 and the land was declared Crown land the following August (AB22:67–68).[108]

There has been a lasting feeling among Poutini Ngai Tahu that the £1775 was never paid to them. On 3 December 1986, one Paul Madgwick wrote to the registrar of the Maori Land Court:

> The Mahitahi Maori Committee of South Westland decided at a recent hui at Okarito to pursue the longstanding question of allegedly unpaid compensation for the loss of Maori Reserve 20 . . . to the Crown, for inclusion in the Waitangi-roto Nature Reserve. (AB22:101)[109]

In response, the registrar enclosed material relevant to the purchase, including a copy of the Maori Trustee's receipt for the sum of £1775, dated 23 March 1955 (AB22:99–100).[110] The question of whether the payments were then made to the owners was referred to the beneficiary section. The outcome of this inquiry is not on file. In the absence of any grievance on this point, we assume that the money was in fact paid out to the owners.

The Tribunal's conclusion

3.8.3 Mr Wilson has claimed that Ngai Tabu were forced to sell their 281-acre reserve to the Crown for a low price. The Tribunal notes that the price offered for the land was based on a recent Government valuation. No improvements had been made to the reserve. We note that some of the owners at the time felt that the price offered for the land was too low, and rejected the offer on this basis. It is difficult, however, to come to any conclusions on this point without a more thorough knowledge of the land and the values of surrounding lands at the time. Mr Wilson's allegation that the land was sold for 10 shillings per acre would seem to be incorrect.

In view of the claimant's comment that the remainder of the Okarito reserves was most likely taken for other uses under the Public Works Act 1928, we turn now to consider sections 21 and 22.

Plans to acquire reserve 21

3.8.4 Three months after reserve 20 was proclaimed Crown land, the Maori Affairs Department was informed of the Crown's wish to purchase reserve 21:

> This is considered a very desirable acquisition and its purchase would mean that the Crown would have control of the whole of the area from the mouth of the Whataroa River in the north to the Waitahi Bluff south of the Waitangi-Roto River. It would also mean that the Crown would be able to further ensure that the White Herons are adequately protected from disturbance. (AB22:80)[111]

The district valuer had assessed the 13 acres, described as 'mostly sand dunes covered with gorse and flax', at £25. Upon inquiry on how to go about acquiring the reserve, the Wellington district officer of the Maori Affairs Department advised that:

> as there are 105 owners of whom less than 12 bave any worthwbile interests, it is considered a resolution of assembled owners for a proposed purchase at £25 or at the most £50 would barely cover the expenses incurred in calling the meeting. (AB22:79)[112]

He suggested that consent be obtained from the majority of owners and the land be taken by proclamation under the Public Works Act 1928. This policy, bowever, was not supported by head office:

> Ministerial and departmental policy is against the use of the Public Works Act for acquiring areas such as this for the Crown. (AB22:82)[113]

A meeting of owners was subsequently beld on 19 July 1956. Fifteen owners were present to consider the resolution that the land be sold to the Crown at a price of not less than £25 (AB22:83).[114] The discussion at the meeting as recorded hy the minutes discloses evidence that pressure was brought to bear on the owners to part with their land. When asked if they had to sell to the Government, the deputy registrar replied:

> No, but the Government can place a proclamation over the land and take it hut it desires to round off a purchase already agreed to for the larger part of the block for whicb compensation has been paid. (AB22:84)[115]

Concern was expressed about the loss of fishing rights; the area being notable for its whitehait. Mr Morse, for the Department of Lands and Survey, admitted that the protectionary regime of the heron colony would prohibit access during the whitebait season. When it was suggested by one owner that the decision be left pending a guarantee of their fishing rights, Mr Morse responded:

> I would point out that we do not wish to take the land. (AB22:85)[116]

The Tribunal infers from these statements that the Crown wished to acquire the land by agreement, hut might otherwise proceed compulsorily. Despite what can be construed as pressure from both the Department of Lands and Survey and the deputy registrar, the resolution was dropped. As one owner suggested, at £40, the department's final offer, the land would be better gifted. The sale proceeded no further.

The alienation of reserve 22

3.8.5 In Octoher 1958 an application for a lease of reserve 22 was received by the registrar on hehalf of Arnold Nolan (AB22:87).[117] Mr Nolan farmed the surrounding land and, it seems, informally used section 22 (AB22:93).[118] Acting on instructions from Judge Jeune, the registrar responded to the application:

> It is very unlikely that the Perpetual Renewal would be confirmed by the Court and you may therefore wish an initial proposal for sale with the alternative to lease as already applied for and owners could consider such alternatives. (AB22:89)[119]

A meeting of owners was called for 30 July 1959 to consider the following resolutions:

> (a) That section 22 Whataroa MR be sold to Arnold Martin Nolan at sucb a price as the owners shall determine at the meeting.
>
> (b) If the owners do not resolve to sell, that the land be leased to Arnold Martin Nolan for a term of 21 years at a rental of £12 0s 0d per annum with such a renewal as shall be determined without compensation for improvements. (AB22:91)[120]

The five owners present at the meeting were somewhat divided. One wanted to sell both the land and the timber on the block to a timber company. Others were in favour of a sbort-term lease. Everyone, bowever, was against the sale of the land to Mr Nolan. Eventually it was agreed that the land sbould be leased for a term of five years at a rental of £12 per annum. There were two dissentients (AB22:93).[121] The resolution was confirmed by the court on 16 February 1960 and modified to protect the timber and flax on the reserve.

The lease expired in February 1965. Although it is recorded that Mr Nolan wished to renew the lease, there is no further information regarding this matter. On 16 September 1983 sections 21 and 22 were vested in the Maori Trustee, who was ordered to lease the sections to Mr Nolan for a 15-year term at a rental of $100 per annum. Rent reviews were to take place every five years (AB22:102–103).[122] Rather than being taken by the Crown for public works, sections 21 and 22, amounting to 125.0478 hectares, are still Maori freebold land.

The Trihnnal's conclusion

3.8.6 Mr Wilson was erroneous in his statement of claim that sections 21 and 22, the remaining areas of reserve after the acquisition of section 20, have been taken for public works. It is clear that this land is still Maori freehold land. With regard to section 20, the Tribunal considers there have been no breaches of the Treaty for the reasons set out earlier. However, we note that this is yet another instance in which Ngai Tahu's meagre reserves have been further eroded by the Crown's acquisition of areas for puhlic purposes. We refer later in this report to the real need for further land for tribal use in areas such as south Westland. We urge that in the negotiations between the Crown and the claimants there be consideration given to restoring areas of land in the more remote regions of the tribe's domain as a result of the inadequate reserves set aside for Ngai Tahu at the time of purchase.

3.9 Claim no: **20**
Claim area: **Bruce Bay**
Claimants: **Kelly Russell Wilson (tape D1A:0363), James Mason Russell (D17)**

Mr Wilson and Mr Russell were concerned with two different issues regarding goldmining on 'Maori Beach', section 782 at Bruce Bay.

> **Mr Russell maintained that the gold-bearing reserve is under threat from Pakeha goldminers. He claimed that the situation has occurred because the Mining Act 1971 contravenes the Treaty of Waitangi (D17).**

The concern about Pakeha usurpers is not a new one, having been aired to the Maori Trustee on several occasions in the past. Mr Russell, however, did not define which aspects of the Mining Act 1971 are believed to breach the Treaty of Waitangi.

> **Mr Wilson claimed that the goldmining activities of the Maori owners of section 782 have been brought to a sudden halt by legislation which provides that the reserve is Crown land (tape D1A:0363).**

He claimed that the last time the Maori owners went goldmining they were told that the land, having been eroded, had reverted to Crown land. They were forced to leave. This is a new complaint, and it would appear that legislation other than the Mining Act 1971 is at issue. At the heart of both claims is the Ngai Tahu conviction that they possess the sole right to the gold-bearing sands of what once comprised section 782, and which is now, through the process of sea encroachment, foreshore. It is a belief based on the fact that they have never extinguished their rights to section 782, and also on their customary use of these sands for gold extraction over the past 100 or so years.

Ngai Tahu rights to Maori Beach

3.9.1 Section 782, block X, Bruce Bay survey district was set aside by James Mackay in 1860 under the terms of the Arahura purchase. Until 1891, when a certificate of title was granted to the owners, the 58-acre reserve was known as reserve 7 (N5:77–78).[123] The reserve runs along the coast at Bruce Bay and today is commonly referred to by the locals as 'Maori Beach'. It appears that serious sea erosion has affected the section over a long period of time. In 1976 it was described as being 'almost completely eroded by the sea' (AB22:114).[124] Mr Russell claimed that the reserve is used only by Ngai Tahu and is regarded by all as Maori ancestral land.

Ngai Tahu rangatiratanga over the land and, in particular, the goldmining rights to the area have been at issue since at least the 1970s. In 1976 one Eva Wilson conveyed the owners' alarm at news that mining rights to the beach had been sold to an individual by an exploration company (AB22:114, 116–117).[125] Upon inquiry to the Mines Department, it was found that an application had been lodged by a Mr B Wyber for an area of beach some 800 metres north of section 782's northern boundary (AB22:120).[126]

In August 1979 a Mr J Bannister, said to be representing the local descendants of the original owners, requested the Maori Trustee's intervention to have trespassing on the beach area stopped:

> There is now gold on the beach again and the Europeans are busy (despite protests) carrying it away in large quantities. (AB22:122)[127]

According to Mr Bannister, the reserve owners had mined the area on a small scale for decades:

> This block is mostly eroded by sea this has been happening for over 100 years. [E]ach time the sea has encroached there has been Gold on the beach, which has been worked by the local Maori people, all [descendants] of the original owners, and this has been a valuable stand by for them, making it possible to obtain many comforts which would be otherwise unobtainable for them. (AB22:121)[128]

His conviction that the Ngai Tahu owners had the right to mine the beach was based on well over 100 years of experience:

> Various Europeans in the early days 1857–1920 also had worked it (My Grandfather among them) but in order to do so they had to lease from the Maori Owners. However since then the only Europeans to work it was Husbands or wives of Maori Owners, if their spouses were there with them. There have been many attempts by Europeans to have sea beach claims granted over this area, but until the Wardens [office] was moved from Hokitika, the Warden has always upheld the Maori objections and no claims were granted. (AB22:122)[129]

In response to his appeal, the registrar of the Maori Land Court advised the owners to take action through the police. Section 459 of the Maori Affairs Act 1953, which provided for the conviction of anyone who, without lawful authority, cut or removed metal or minerals (among other things) from Maori freehold land, was drawn to Mr Bannister's attention (AB22:126).[130] Soon after, the Maori Trustee was again urged to 'table immediate objection' to an application for mining rights on the beach extending from section 872. The applicant was one of those complained about earlier by the reserve owners (AB22:128–129).[131] Once more the Maori Trustee explained his inability to take any action, advising the complainants to take the matter up with the police and obtain legal advice (AB22:130).[132]

3.9.2 Mr Russell claimed that in 1983 an application was made for goldmining rights over part of the beach. He claimed that members of the reserve trust objected to the Planning Tribunal but their objection was turned down. They also informed the Minister of Energy that the reserve 'was and is Maori "ancestral land"'. In concluding, Mr Russell stated that the Mining Act 1971 contravenes the Treaty of Waitangi as it dispossesses Maori people of their ancestral land.

The only application of which the Tribunal has record over section 782 is an exploration licence application made by Venture Minerals Ltd on 14 June 1988 (AB22:104).[133] The company intended

to undertake exploration on a number of sections in Bruce Bay, including section 782. James Russell was appointed agent for the owners. On 28 June 1988 he made an objection to the application to the Planning Tribunal, on the ground that:

> the consent of Trust has not been obtained by the application as to Section 30 of the Mining Act 1971. (AB22:108)[134]

It is not evident from the record whether this objection was upheld by the tribunal. The company's application was withdrawn in December 1988 (AB22:111).[135] In the course of the exchange, however, it was pointed out by the company's agents that under section 59 of the Mining Act 1971 exploration licences may be granted whether the land in question is open for mining or not, although:

> A granting of an exploration licence does not of course, negate the necessity to gain a consent from the owners of Maori Land in order to declare the land open should entry be required onto this land for exploration. (AB22:109)[136]

The Tribunal's conclusion

3.9.3 The issues involved in this claim are both complex and major. In the Tribunal's view, they need to be inquired into and argued fully by both parties before any finding can be reached on them. This has not been done in the hearing of the Ngai Tahu claim and the Tribunal does not propose to deal with them in this ancillary report.

With the passing of the Crown Minerals Act 1991, considerable changes have taken place in the legislation governing the issuing of mining rights since this claim was brought to the Tribunal's notice at Arahura marae in November 1987. At this point it may be useful to set out briefly some of the provisions of the Crown Minerals Act.

Like the Resource Management Act 1991 and the Conservation Act 1987, the Crown Minerals Act 1991 contains a provision relating to the principles of the Treaty. Section 4 requires 'All persons exercising functions and powers under this Act [to] have regard to the principles of the Treaty of Waitangi'. There is, therefore, a requirement on the Crown, as well as on local government, the Planning Tribunal, members of any board of inquiry, and any other persons exercising a function under the Act, to take into account the principles of the Treaty. While the principles have not been defined in any legislation to date, information about them can be garnered from court decisions, Waitangi Tribunal reports, and Government statements on the same.

At common law the 'royal metals' gold and silver have always been vested in the Crown by virtue of the royal prerogative. This is further provided for in section 10 of the Crown Minerals Act. However, the Crown loses its proprietary rights when they have been lawfully obtained by the holder of a permit (s 31). The Minister of Energy is responsible for the granting of minerals permits.

Dealing first with any mining the claimants may wish to carry out on their own land, it should be noted that section 8 provides that no person may prospect or explore for, or mine, Crown-owned minerals in land unless the person is a holder of a permit granted under the Act. However, section 8(2)(a) does not require a permit to be taken out by any person in respect of any Crown-owned mineral that exists in a natural state in land that the person owns or occupies and that is in land that is not the subject of a permit in respect of such mineral. Section 8(3) also permits prospecting or exploring for, or mining, gold in a gold fossicking area by means of hand-held, non-motorised machinery.

The grant of a permit does not confer a right of access to land, except in the case of a Crown employee or other person authorised by the Minister in writing to carry out a minimum impact activity. It is important to note that in sections 51 and 80 procedures are outlined to be followed with respect to access to Maori land.

We pass now to look at the position that applies in respect of the foreshore. Under the Foreshore and Seabed Endowment Revesting Act 1991, all foreshore, that is to say, 'any land covered and uncovered by the flow and ebb of the tide at mean spring tides', belongs to the Crown. It may be possible that under section 61 of the Crown Minerals Act 1991, which provides that the appropriate Minister may enter into any access arrangement in respect of Crown land, and in view of the provision relating to the principles of the Treaty of Waitangi noted above, the claimants may be able to apply for a permit to mine the foreshore fronting section 782.

In view of the substantial changes in legislation since this claim was brought, the Tribunal considers that the claimants should exercise the rights and procedures available to them under the new legislation. If what they consider to be breaches of the Treaty continue, either in the legislation or in the exercise of functions under the legislation, a claim detailing the position should be filed with the Tribunal. The Tribunal refrains from making any finding regarding this claim until there has been a re-examination of the matter by the claimants.

3.10 Claim no: **21**
Claim area: **Poerua**
Claimant: **Kelly Russell Wilson**
Claim:

> **Mr Wilson listed the 'disappearance of reserves at Porirua' as an issue of concern to the tribe (H8:24).**

3.10.1 The Tribunal is not sure of the reserves under claim. In Alexander Mackay's *Compendium*, it is recorded that a 15-acre reserve was made at 'Poberua, at pah and burial ground'. This was listed as reserve 23. It is possible that this is the subject of Mr Wilson's complaint. Title to the land was granted to Miria Papako on 25 February 1879.[137]

Today reserve 23 is known as section 791, block XIV, Oneone survey district, and referred to in Maori Land Court records as Oneone 23. Although moves were afoot to incorporate the reserve into the Saltwater Lagoon Scenic Reserve in 1977, and again in 1984, it appears that nothing came of this (AB22:131–135).[138] The land is still listed as Maori freehold land and the acreage has not diminished.[139]

The Tribunal's conclusion

3.10.2 This general allegation by Mr Wilson cannot be properly researched or answered because of the lack of information.

3.11 Claim no: **22**
Claim area: **Kaniere**
Claimant: **James Mason Russell (D17)**
Claim:

> **Mr Russell claimed that he and others have been dispossessed of rural section 1737, block IX, Kaniere survey district by the Land Transfer Act 1952.**

3.11.1 The land in question, comprising 21 acres, was originally granted to one Hakiaha Tahuna of Hokitika on 6 October 1874 under the Westland Waste Lands Act 1870 (D17).[140] In December 1965 rural section 1737 was part of a parcel of land, the certificate of title to which was issued to William Noah Harris.[141]

Mr Russell is interested in the land as the descendant of Henare Meihana, the whangai of Ripeka and Hakiaha Te Horo, who Mr Russell claimed is the same Hakiaha Tahuna named on the original certificate of title. He submitted Maori Land Court minutes which establish Henare Meihana's rights as whangai to the Te Horos' land on their deaths.

In May 1965 notice of Mr Harris's application for the issue of a certificate of title under the Land Transfer Act 1952 was placed in the *Gazette* and the *Hokitika Guardian*, and also displayed at the Christchurch district office of the Maori Affairs Department and the Maori Land Court at Christchurch. On 16 December 1965 the land was vested in Mr Harris under section 3 of the Land Transfer Amendment Act 1963.[142] That section provides that any person in possession of any land for a continuous period of not less than 20 years, and who continues in possession of the land, can make an application to the registrar to get a certificate of title for an estate in fee simple in the land. The Act requires close examination of the application by the registrar and examiner of title.

It is to be noted that section 21 of the 1963 amendment exempts certain lands from being acquired by this right of adverse possession. Maori land within the meaning of Te Ture Whenua Maori Act 1993 is protected from such application. There is no record of rural section 1737 in the Maori Land Court. This suggests that the section has never been Maori land in terms of the 1953 Act. The

registered proprietors of the section now bold a permanent title protected against impeachment and indefeasible on any ground save fraud.

The certificate of title issued to Hakiaha Tahuna states on its face that the grant followed purchase under the Westland Waste Lands Act 1870. On 8 Marcb 1920 a caveat was registered against the title by a Noah Harris of Kowbitirangi, farmer, wbo claimed estate or interest 'as purchaser under Memorandum of Transfer dated 1 March 1920' (AB27:132–133).[143] As we have related, in 1965 Noah Harris's son William applied under section 21 of the Land Transfer Amendment Act 1963 to have a certificate of title issued under the Land Transfer Act 1952. A search of papers filed in the Hokitika Land Registry Office supporting this application includes an affidavit by one Albert Richard Elcock of Hokitika, solicitor, wbo deposed that in 1950 Noah Harris consulted him about obtaining title to section 1737. According to Mr Elcock:

> there came into my hands various papers which showed that purchase moneys bad been paid to Messrs Lewis and Wells by the said Noah Harris, and that Hakiaha Tahuna had died in 1886 and successors to him had to be appointed to enable, it appears, registration of a transfer. (AB27:141)[144]

Mr Elcock, who acted for Noah Harris (and whose daughter married William Harris), instructed a searcb for the memorandum of transfer upon wbicb the caveat was based but was unable to locate it.

The Tribnnal's conclnsion

3.11.2 The claimant James Russell asserts that he and others have been dispossessed of their rights to their land through the Land Transfer Act 1952. No argument was presented to the Tribunal by either the claimant or the Crown as to wbether or not there had been a breach of the Treaty principles relative to the processes of the acquisition of this land by William Harris under the 1963 amendment Act.

Presumably, however, the claimant considers that the right to acquire title by adverse possession of 20 years contravenes the principle of rangatiratanga. The Act is limited in its scope to general land. It does not apply to Maori freehold or customary land or to Crown land. Section 1737 was Crown land granted to Hakiaha Tahuna. It was not Maori land as defined under the Maori Affairs Act 1953 (whicb included customary land). It ceased to be Crown land wben the grant issued to Tahuna. In our respectful view this is not on the face of the material presented to this Tribunal an instance whicb would amount to a breacb of rangatiratanga or the right to protection.

Although the claim of proof of purchase of section 1737 by Noah Harris as set out above is not absolutely conclusive, there is nevertheless some strong suggestion that this land was so purchased. No claim appears to have ever been made by descendants of Hakiaha Tahuna from its grant in 1874 until this grievance application. The land is general land. It is now privately owned. There is no breacb of Treaty principles involved here.

3.12 Claim no: **23**
Claim areas: **Popotai and Taumaka Islands**
Claimant: **James Mason Russell**
Claim:

Mr Russell claimed that in 1981 the Maori Land Court vested the tribal offshore islands of Popotai and Taumaka in individual ownership, thereby depriving future generations of Kati Waewae (H8:77).

The claimant maintained that offshore islands like Popotai and Taumaka were great food gathering resources for the people of Te Tai Poutini. Such islands were never sold to the Crown and should have remained in tribal ownership. He was concerned that the Maori Land Court did not have enough information when making the decision to vest the islands in individual ownership, and that this decision has deprived future tribal generations of the enjoyment of these islands.

Investigation of title

3.12.1 Popotai and Taumaka Islands, often called the Open Bay Islands, are situated off Jackson's Bay, and their total area comprises some 39 acres. In 1933 the islands were declared a native bird sanctuary and have been home to penguins, weka, shags, and fern birds, as well as a breeding ground for the fur seal (AB22:136).[145]

Like many islands around New Zealand, Popotai and Taumaka were still Maori customary land. Title had never been issued for the islands, nor had they ever been alienated to the Crown. In order to correct this irregularity, in 1981 the Commissioner of Crown Lands made an application under section 161 of the Maori Affairs Act 1953 to investigate title to the islands.

The application was heard by the Maori Land Court on 10 December 1981. Judge M C Smith presided. Kelly Wilson relayed his limited knowledge of Ngai Tahu's past use of the islands to the court. He told of Ruera Te Naihi and his wife, Ripeka Te Naihi, the last persons to live on the islands. While concurring that the descendants or successors of this couple should be entitled to the ownership of Popotai and Taumaka, he was careful to point out that this was not exclusive: 'there are a tremendous number of other people also entitled' (AB22:138).[146] He went on to say that the Te Naihi family was an extensive one, all with rights to the islands. Terry Ryan, speaking on behalf of the Ngai Tahu Maori Trust Board, stated that many of the people granted title to the nearest block of Maori reserve on the mainland, section 755 at Waiatoto, came from outside Westland.

The judge gave his decision on 14 December 1981. There seems to have been no consideration given to vesting the islands on a tribal basis. This may have been because, in the course of the hearing, counsel for the Crown had indicated the Crown's intention to approach the owners for the future management control of the islands as a wildlife sanctuary, and required named individuals with whom to negotiate. In any event, the judge referred to the presumption which exists when determining title to offshore islands which are still customary land; that is to say, the islands would

have been occupied or regularly visited and used for the collection of food by the hapu who occupied nearby land on the mainland. He therefore looked to the ownership of the mainland reserves closest to the islands. The nearest reserve at Waiatoto was rejected on the basis that seven of the 11 grantees nominated as owners to the reserve by Commissioner Young in 1879 were not resident in Westland at the time. He looked instead at the commissioner's recommendations for reserve 3 at Paringa, some 32 kilometres north of the islands. Commissioner Young's list comprised 22 people, including members of the Te Naihi and Kinihe families mentioned by Mr Wilson. All but one of these persons were resident at Mahitahi at the time. The judge therefore concluded:

> In the absence of any evidence to the contrary, the Court concludes that most, if not all, of the above persons were the members of the Kinihe and Te Naihi families referred to by Mr Wilson in his evidence, and were the persons who, by virtue of use and occupation, were entitled to the fee simple of Open Bay Islands. (AB22:144)[147]

An order was made to this effect, the registrar to prosecute succession applications in order to establish present-day ownership.

The Tribunal's conclusion

3.12.2 In essence this is a claim that the Maori Land Court, in making its order on 14 December 1981, acted erroneously or relied on a mistake or omission in the presentation of the facts of the case to the court. There is provision under section 45 of Te Ture Whenua Maori Act 1993 for an application to be made to the chief judge of the Maori Land Court to remedy any mistake or omission made by the court in the presentation of the evidence to the court. The applicant, therefore, has a remedy available under the existing law which should be exercised. The Tribunal also comments that section 338 of the 1993 Act permits land to be set aside for communal purposes, and sectioo 339 permits the Minister of Maori Affairs to bring an application to have any land set aside as a Maori reservation by reason of its historical significance or its spiritual or emotional associations. There is therefore ample scope within the existing law for Mr Russell's concerns to be investigated. Helen Rasmussen, of Haast, an owner of the islands, submitted that the principle of ahi kaa had been correctly applied in the court's decision, and that any challenge to the ownership should be made through the court itself (AB62). Iri Barber-Sinclair, a claimant in the Maori incorporation regulations claim (claim 98), also expressed her support for the court's decision (AB61).

Section 7(c) of the Treaty of Waitangi Act 1975 provides that the Tribunal may in its discretion decide not to inquire into any claim for which there is an adequate remedy or right of appeal which would be reasonable for the person alleged to be aggrieved to exercise. This section also permits the Tribunal to defer inquiry into any claim on sufficient reason. The Tribunal is not presently satisfied that there has been a breach of the principles of the Treaty and defers any further inquiry into this matter until the claimant has proceeded to exercise his rights under Te Ture Whenua Maori Act 1993.

3.13 **Lands reserved in 1860 hut not allocated**

At the fourth hearing, from 30 November to 3 December 1987 at Greymouth, James McAloon, historian for the claimants, made a submission regarding the Arahura purchase and reserves. With regard to the reserves, his submission was broken up into six different types of grievance. Although not listed in the ancillary schedule, the Tribunal has treated Mr McAloon's allegations as ancillary grievances.

We now turn to consider the reserves which fall under Mr McAloon's first area of claim, which is that:

> **areas were reserved from the Arahura purchase of 1860 but were never allocated to Ngai Tahu, in breach of article 2 of the Treaty of Waitangi (D3:62).**

His submissions concerning the reserves at Arawata and Whataroa have already been discussed in regard to Mr Wilson's grievances concerning the Crown's acquisition of Ngai Tahu land (see claims 17 and 19).

3.14 Claim no: **24**
Claim area: **Paringa MR 3**

The history of this grievance has already been investigated by the Department of Lands and Survey in 1981. This investigation forms the basis of the following summary.

3.14.1 Reserve 3, an area of 200 acres, was set aside by James Mackay on the south bank of the Paringa River in 1860 (D5:18).[148] Subsequent references to the reserve, however, record a reduced acreage. Five years later Alexander Mackay annotated a copy of schedule A reserves (see para 3.1) held at the Hokitika office with the following (as transcribed by the Department of Lands and Survey):

> 150 acres to be laid off at Paringa instead of 200 acres as formerly proposed owing to the natives having received an equivalent [illegible allocation] in another locality. (D5:49)[149]

In his *Compendium*, however, the reserve was scheduled as a 50-acre area on the north bank of the river. A footnote explained:

> The quantity originally reserved at Paringa was 200 acres but was subsequently reduced to 50 in consequence of 150 acres having been selected in another locality in lieu of a proportionate acreage at Paringa. (D5:20)[150]

When Thomas Young was commissioned in 1878 to determine those with rights to the schedule A reserves, he reported in respect of reserve 3:

> This reserve was originally intended to be 200 acres, but, as two Natives named Parata and Kuini took their share (150 acres) at Buller instead (see Nos 37 and 39), the area is now 50 acres.[151]

The reduction of the Paringa acreage was objected to by one of the owners when the grantees of the reserves at Kawatiri (Buller) were discussed:

> This land was taken from Paringa, thereby reducing the Paringa Reserve to 50 acres. I consider that we have been deprived of our land. Parata never told us. I object to his having this until we get the full 200 acres at Paringa.[152]

Mr McAloon's argument was that the allocation of 150 acres at Kawatiri should not have affected the status of the original Paringa reserve, especially as it appears that only some of those who had rights at Paringa were granted rights to the land substituted at Kawatiri (D3:16).

The 150 acres of reserve 3 which were not recommended for a grant were subsequently surveyed and subdivided into two sections, namely rural section 727A (MR 1101) on the south bank of the river and rural section 729A (MR 1102) on the north bank. The 50-acre area recommended for a grant was also surveyed, and is known today as Paringa 3 (MR 1100), lying on the south bank of the river (D5:52).[153]

In 1981 the research officer for the Department of Lands and Survey considered that, although other land had been provided elsewhere, under the terms of the Arahura deed Maori title to the 150-acre area had still not been extinguished. The land, therefore, was still subject to the Maori Reserved Land Act 1955 irrespective of other land being provided in MR 37 and MR 39 (D5:52).[154] In a letter of 16 June 1981 to the registrar of the Maori Land Court, the Director-General of Lands stated that he had no objection to the Maori Trustee dealing with rural sections 727A and 729A, and that Paringa 3, which until then had been administered by the Maori Trustee, could be vested in the beneficial owners (D5:47).[155] On 2 May 1981 all three sections were determined Maori freehold land (AB22:8).[156]

The Tribunal's conclusion

3.14.2 It would appear that all of the 200 acres of land originally allocated at Paringa for Ngai Tahu at the time of purchase is now Maori freehold land. Although the Tribunal acknowledges that the owners have not always enjoyed the use of 150 acres of the 200-acre reserve set aside for them, we feel that this has now in fact been remedied. The Tribunal sees no reason to intervene further.

3.15 Claim no: **25**
Claim area: **Okarito MR 19**

3.15.1 Fifty acres were originally set aside for Ngai Tahu at Okarito on the spit between the lagoon and the sea. There is a suggestion in Maori Land Court records that the area was an urupa (AB22:152).[157] However, by as early as 1870 the reserve had been reduced to 13 acres (N5:25).[158] This was confirmed by Thomas Young in 1879 when he was commissioned to determine entitlement to the Poutini reserves. Commissioner Young recorded that the 50-acre reserve was now 13 acres but no explanation was given for the reduction.[159]

The reserve was renamed section 793, block XI, Okarito survey district, and on 24 September 1891 a certificate of title for the land was issued to Miria Papake. The most up-to-date Maori Land Court records give the area as 24 acres 1 rood (AB22:153).[160] It was reported in 1977 that the other 26 acres were believed to have been eroded by the sea (D5:56).[161] Mr Blanchard also speculated that the movement of the sea might account for the shrinkage and expansion of the area (N4:14). Mr McAloon concluded that if this were so it would reinforce the fact that the land set aside as reserves for Poutini Ngai Tahu was of inferior quality (D3:17).

The Trihnnal's conclusion

3.15.2 The Tribunal does not agree with Mr McAloon's conclusion regarding the allocation of this reserve. Its position on the spit between the lagoon and the sea may bave been at the bebest of Ngai Tahu. The fact that the movement of the sea has probably resulted in the reduction in the size of the reserve cannot be attributed to the fault of the Crown. While we do not find any breacb of Treaty principles, we note that this is yet another example of the diminution of the tribal estate retained by Ngai Tahu.

3.16 Claim no: **26**
Claim area: **Waimea MR 28**

3.16.1 James Mackay set aside 50 acres at Waimea, 'on the south bank of Upper Taremakau'. It was scheduled as reserve 28 (N5:2).[162] However, wben Commissioner Young travelled to the coast in 1879, he noted that the 50-acre reserve was 'now 12 acres'. Ihaia Tainui explained that the 'rest of it has been washed away'.[163] At the bearing on 28 January 1879 Tainui drew the commissioner's attention to a 300-acre area of land at the eastern end of the Arahura native reserve. The land was vacant and the surveyor at Hokitika had told Tainui that the Government might add it to the Arahura reserve. Tainui wished to have the land reserved for members of Ngai Tahu as compensation for the areas of reserve wbich had been washed away. He submitted a list of 10 people in wbom the land should be vested. It was explained to Ngai Tahu that the request did not fall within the jurisdiction of the commission, but at the request of Ngai Tahu a note was made of the matter.

Alexander Mackay, then Commissioner of Native Reserves, had heen present during the proceedings of the Young commission. An 1883 schedule of reserves prepared hy him recorded that the Waimea reserve had been 'Destroyed hy river encroachment. Lands given in lieu thereof at Arahura, and also in exchange for the reserve at Pakihi' (D5:66).[164]

In response to Mr McAloon's allegation that the land was not allocated, Mr Blanchard submitted that land was given at Arahura in suhstitution for reserves 28 (Waimea) and 29 (Pakihi).

Land in exchange

3.16.2 Section 26 of the Native Land Laws Amendment Act 1896 gave the Native Land Court jurisdiction to determine the ownership of the land described in the Schedule to the Act, and the owners' relative shares and interests in the land. The Schedule described:

> All that parcel of land, containing hy admeasurement 300 acres, more or less, situated at the eastern end of the Arahura Native reserve, being a portion of that reserve undealt-with in 1879 under the Royal Commission issued to Mr Thomas Young.

The Native Land Court commenced its hearing relating to this land on 14 January 1897 and the following minutes were recorded:

> The Court explained that the intention with regard to this 300 acres was that it should be allotted to the persons for whom the Reserve at Pakihi and Taramakau had been made as compensation for the loss of these lands as well as compensation for other lands which may have been damaged by the River.
>
> The Reserve at Taramakau and Pakihi would ahsorb 200 acres of the quantity leaving 100 acres to be apportioned for other purposes.
>
> Teoti Pita Mutu pointed out that about 50 acres of the Reserve on the North Bank of the Taramakau River had heen swept away and he asked that compensation should be given for that.
>
> It was finally agreed that 50 acres out of the 100 acres should be allotted to Rahera Muriwai Uru to the extent of 30 acres and to Hira Makarini and Riaki Tauwhare to the extent of 20 acres equally. (N4:19)[165]

Mr Blanchard submitted that all hut three of the persons whom Commissioner Young recommended should he included in the Crown grants for reserves 28 and 29 were included in the court order of 20 January 1897 for the vesting of the 300 acres.

Upon inquiry from the Puhlic Trustee regarding the Waimea and Pakihi reserves in April 1899, Alexander Mackay again explained that 'these reserves were surrendered with the concurrence of the

Natives for whom they were set apart and land was given in lieu thereof at the upper end of the Arahura Reserve' (AB27:175). The two reserves, he later added, no longer existed.

In 1981 research was conducted hy the Department of Lands and Survey into the exchange. The research officer commented:

> I have been unahle to locate any specific information to land being granted at Arahura in lieu of the 12 acres (50 acres) for MR 28, Waimea on South Bank Upper Taramakau, although this could have been the case because the total area of the Arahura Reserve No 30 is still 2179:2:17.3 p notwithstanding the possihle addition of MR 29, reductions for roads, erosion plus 80 acres 3 roods 3.3 perches known as 'Taiaroa Special'. The original area of MR 30 was shown as 2000 acres. (AB22:178)[166]

It was considered that the exchange was 'likely' to have occurred.

The fate of MR 28

3.16.3 Although land had supposedly been given elsewhere in exchange for the 12 acres at Waimea, administration of the reserve continued. In 1973 one J Bennett wrote to the Christchurch Maori Land Court asking for permission to camp on the reserve while whitebaiting in the area (AB22:158–159).[167] The registrar's only caution was that the writer of the request would not become an owner imtil his mother's estate had been settled (AB22:160).[168] Details of the Te Pakeke family's interest in the hlock were contained within the registrar's response. The schedule of ownership orders listed 22 owners of the 12-acre reserve (AB22:162).[169]

In September 1977 the Maori Affairs Department in Christchurch was notified hy the Westland Catchment Board and Regional Water Board of its river control scheme over part of the Taramakau River. Waimea 28 would be affected by the proposed scheme:

> At present this section is riverbed and the main channel flows through the section. It would not be economical to protect this section.
>
> As shown on the plan the meander (main) channel has been designed to utilise the existing channel which flows through Waimea 28 Block. (AB22:163)[170]

The catchment board was told by the Christchurch district officer that if it wanted to negotiate with the beneficial owners for the purchase of the block it would he necessary to apply to the court for a meeting of assemhled owners to consider a suitahle resolution for sale (AB22:164).[171]

The reserve became a focus of inquiry in 1979, when it was discovered that there was no certificate of title for the section. In response to a query from the District Maori Land Survey Committee regarding the status of the land, the chief surveyor at Hokitika replied:

> I have been unahle to locate a title for this Maori Block which now appears to form part of the bed of the Taramakau River. However I have heen ahle to locate some relevant information on one of our closed office files and this implies that no warrant or title was ever issued for this land on account of serious flooding and erosion problems. (AB22:165)[172]

Enclosed in his reply was correspondence from 1922. One letter from the chief surveyor to the Native Trustee stated that the 12-acre reserve had 'completely disappeared and is now part of the bed of the Taramakau River' (AB22:167). In a letter to the Native Trustee in May 1922, the Commissioner of Crown Lands wrote:

> I may state that during his recent visit to the West Coast Judge Rawson mentioned that he thought the Natives were given land in another locality in lieu of this Reserve on account of the erosion by the river and that it might now consequently be considered Crown Land. (AB22:169)[173]

Research into the history of Waimea 28 was eventually undertaken by the Department of Lands and Survey in 1981. This has already been mentioned above with regard to the provision of land at Arahura. The research officer was of the opinion that title should not be granted to the Waimea land (AB22:178).[174] The basis of this opinion appears to have been because the land was now riverbed, and because land was likely to have been given in lieu of this reserve at Arahura. This conclusion was supported by Maori Land Court staff:

> If you peruse the research paper . . . you will see that the Commissioner of Crown lands seems almost certain that land in lieu of this reserve was granted elsewhere due to the flooding prohlem. Therefore and as the block is now river bed it would seem that it should be deleted from MLC records. Would you please discuss with Judge Smith when he is next in the office to see if he agrees we should now simply remove the record from the hinders. (AB22:172)[175]

Another note on this memorandum reads:

> The appropriate action to have Sec 28 deleted from Ct records would be for the Registrar to apply to the Ct under s 30(1)(i) for a determination as to status. On the evidence hereunder I would find that it is not Maori freehold land. (AB22:172)[176]

This in fact was done at a court sitting at Hokitika on 10 December 1981. Judge M C Smith determined that MR 28 was neither Maori land nor general land. The court found that it was in fact Crown land (AB22:156).[177] Mr McAloon seemed unaware of this fact before the Tribunal.

The Tribunal's conclusion

3.16.4 It would appear from the facts available to the Tribunal that this reserve, which was originally 50 acres in extent, has now been taken up completely by the Taramakau River. No title for the land has ever issued and, indeed, as recently as 1981 the Maori Land Court determined that the reserve was in fact Crown land. There is evidence that the reserve was used by the owners as a camping site during whitebaiting. It is another instance of Ngai Tahu losing a reserve by natural flooding and erosion, although in this case it seems that an additional area was granted in the Arahura reserve to compensate for this loss, thus meaning no overall loss of land occurred. However, if any lingering doubt exists as to whether the exchange actually occurred, recourse could be had to section 44 of Te Ture Whenua Maori Act 1993, under which a challenge to the 1981 Manri Land Court decision could be mounted.

3.17 Claim no: **27**
Claim area: **Watarakan MR 45**

3.17.1 The Watarakau reserve consisted of 50 acres on the south bank of the Kawatiri (Buller) River. Commissioner Young recommended that the reserve be vested in Ihaia Tainui and Wikitoria Te Piki. Title to the reserve was never issued but successions did take place. An order appointing Pepene Poharama as successor to the interest of Tainui was made by the Native Land Court on 8 January 1887. An order was made in respect of the interest of Te Piki on 11 May 1921, appointing 13 people as her successors (N5:186).[178]

In August 1917 the Department of Lands and Survey was instructed to issue title to certain Maori reserves on the West Coast, including the Watarakau reserve (N5:184).[179] However, the area had never been surveyed and, although moves were taken to rectify this, the matter lapsed. MR 45 was known officially as section 45, block IV, Ohika survey district.

Acquisition for a scenic reserve

3.17.2 In October 1936 the Commissioner of Crown Lands approached the Under-Secretary for Lands about the possibility of acquiring the reserve for scenic purposes:

> It is steep, hush covered ground and is of no use for settlement purposes. It is right on the main highway in the Buller Gorge, and its sharp tree covered ridges and bush edged streams present a very attractive aspect to the passing traveller. The land on both sides for a considerable distance is Scenic Reserve, and Section 45 is the only area in the locality not under control. (N5:189)[180]

The commissioner referred to a public works camp having been recently established in the vicinity. The possibility that employees might cut firewood from the reserve was seen as a further reason for making the land a scenic reserve.

The Native Department was asked for its opinion about bringing the reserve under the control of the Scenery Preservation Act 1908 (N5:187).[181] Without consulting the owners of the block, the successors of Tainui and Te Piki, the Under-Secretary of the Native Department gave his approval of the proposal:

> As I see it, the land in question is Crown land subject to an obligation on the part of the Crown to grant it to certain natives . . . (N5:180)[182]

He went on to point out that because of this neither the Public Works Act 1928 nor section 11 of the Scenery Preservation Amendment Act 1910 could be used to acquire the land. He suggested that:

> if you are of opinion that monetary compensation should be paid, and can see no other way out of the difficulty, you might perhaps consider the advisability of meeting the position by legislation. (N5:180)[183]

Accordingly, the Under-Secretary for Lands made the annotation:

> Please prepare recommendation to Minister that matter be referred to Scenery Preservation Board and if that body considers land should be reserved for scenic purposes special legislation be included in Washing up Bill declaring the land to be a scenic reserve and empowering the Native Land Court to fix compensation and names of persons entitled. (N5:180)[184]

The board did recommend that the Watarakau reserve become a scenic reserve and an appropriate clause was prepared (N5:174–177). This became section 20 of the Reserves and Other Lands Disposal Act 1937. Under this section, the Native Land Court was empowered and directed to determine the identity and relative shares of the beneficial owners of the land and the amount of compensation payable to them.

Compensation

3.17.3 The first hearing to consider compensation was held in chambers at Kaiapoi on 9 August 1938. None of the owners were present (N5:169).[185] The judge considered that they should be represented and that the Department of Lands and Survey's offer of 5 shillings per acre was 'insufficient'. The case was adjourned. On 31 January 1939 the Native Land Court again considered compensation for section 45 (N5:26).[186] The Crown's offer bad doubled to 10 shillings per acre, the busb on the land 'having no commercial value'. The court, bowever, required evidence of the land's value and the case was adjourned sine die (N5:165).[187] At the next bearing, the owners were represented by Mr Corcoran. A Government valuation of the land, dated 22 April 1939, was submitted by counsel for the Department of Lands and Survey. The owners objected to the Government valuation, but were unable to afford an independent assessment. Again the case was adjourned.

The matter was finally settled at Kaiapoi on 24 July 1941 (N5:29–34).[188] During this hearing a witness whose children had interests in the land expressed the owners' reluctance to part with the reserve when so little land remained to Ngai Tahu on the West Coast. He maintained that the department's valuation was ridiculous; in his opinion the reserve was worth £3 per acre (N5:155–156).[189] In the result, the court awarded compensation of £50 for the reserve, plus £2 2s for the cost of counsel, to the successors to Tainui and Te Piki, to be paid to the South Island District Maori Land Board (N5:152–153).[190]

The Tribunal's conclusion

3.17.4 This 50-acre reserve was part of the land left out of the Arahura deed of purchase and reserved for Ngai Tahu. Although grantees were recommended by Commissioner Young, title to the reserve was never subsequently issued. The fact that Ngai Tahu maintained an interest in the land is evidenced by the fact that successions occurred to those for whom the reserve was intended. We consider that under the Arahura deed of purchase the Crown was obliged to complete the grant of title to Ngai Tahu of lands excluded from the purchase. Its failure to do so in this case meant that the beneficial owners of Watarakau MR 45 were neither consulted about nor notified of the Crown's acquisition of their land for public purposes. They had no opportunity to voice any objections to the taking and were left with only the right to compensation. We consider this to be a breach of the Crown's duties under article 2 of the Treaty to protect the interests of the Maori owners and to act towards its Treaty partner with the utmost good faith. The Tribunal considers this another example in which the scant area reserved for Ngai Tahu on the West Coast has been further eroded by unilateral Crown action.

3.18 The alienation of Ngai Tahu reserves

Mr McAloon alleged that the alienation of the following reserves, which were not under the jurisdiction of the Maori Trustee, is a breach of article 2 of the Treaty of Waitangi.

He stated that the Crown's acquisition of Maori reserves, or parts of Maori reserves, for various purposes is a breach of article 2 of the Treaty, regardless of whether or not compensation was paid (D3:62). His concern regarding section 781 at Bruce Bay has already been discussed under Mr Wilson's grievance about the Crown's acquisition of this land (see claim 18).

Mr McAloon also made a claim in respect of Ngai Tahu's pre-emptive right to purchase land from the eastern boundary of Arahura MR 30 to the source of the Arahura River at Mount Tubua. Mr McAloon said that the endowment of the land to the Hokitika Harbour Board contravened the promises made to Ngai Tahu by the Crown's agent at the time of purchase.

The Tribunal has found (*Ngai Tahu Report 1991*, paras 13.5.10–11) that, by imposing on Mackay a limit on the quantity of land to be reserved to Ngai Tahu, Governor Browne was acting in clear

breacb of article 2 of the Treaty. The Tribunal recommended that the Crown, after consultation with Ngai Tahu, sbould negotiate for the purchase of a reasonable amount of land on either side of the Arahura River and its tributaries to their respective sources. The Tribunal considers that this finding and recommendation would already seem to have resolved the tribe's concerns and does not wish to comment further on this matter.

3.19 Claim no: **28**
Claim areas: **Kawatiri MR 39, MR 40, MR 41**

These reserves were originally set aside by James Mackay under the terms of the Arahura purchase. Reserve 39 bas been discussed in part in relation to reserve 3 at Paringa. Parata wished to have his allocation set aside at the Kawatiri (Buller) River, and so 100 acres were laid out bere as reserve 39. Reserves 40 and 41, of 50 acres each, were also set aside by the Kawatiri River and in 1879 Commissioner Young recommended that title be granted to Hone Kaiaia and his grandchild, and Henare Mahuika respectively.[191]

The Crown's acquisition of the sections

3.19.1 The reserves were renamed sections 52, 53, and 54, square 141, block I, Ohika survey district. In 1881, some 300 acres were taken from the Kawatiri reserves and the neighbouring section 55 for the construction of a relief channel for the Kawatiri River under the Public Works Act 1876 (D5:70).[192] Approximately 91 acres were all that remained of Ngai Tahu's original 200 acres after the acquisition: section 52 was now 53 acres 3 roods 32 percbes, section 53 was 20 acres 3 roods 37 perches, and section 54 was a mere 14 acres 2 roods 28 percbes (N5:39).[193]

Mr Blancbard submitted that £516 16s was paid by way of compensation for the land but did not submit any evidence to support this.

The alienation of the land

3.19.2 On 28 July 1965 the Maori Trustee received a query about the sections from a Mr J O'Connor, wbo farmed the adjoining land. Mr O'Connor wisbed to lease or buy the unoccupied land (AB22:180).[194] He was advised of the usual procedure for the alienation of Maori land. As there were several owners of sections 52 and 54, it would be necessary to call a meeting of them (AB22:181).[195]

Rather than proceeding in this manner, an application was made to have the land vested in the Maori Trustee under section 438 of the Maori Affairs Act 1953 for the purpose of sale. The application was beard on 5 October 1967 (N5:38).[196] The officer appearing for the Maori Trustee pointed out the poor quality of the land, and the fact that none of the owners bad responded to a circular which had been sent out asking for objections to the proposal of vesting the land in the trustee for the purpose of sale. The sole owner of section 53 was the original grantee of the land. It was submitted that

'fairly exhaustive enquiries' had been made as to bis identity, without success. Nineteen of the 32 owners of section 52 and 10 of the 15 owners of section 54 had been sent the circular. Only one reply was received asking for further information. An order was accordingly made vesting the land in the Maori Trustee for the purpose of sale. Shortly afterwards, the land, 91 acres 2 roods 7 percbes, was sold to Mr O'Connor for $226.67 (N5:37).[197]

The Tribunal's conclusion

3.19.3 The above land was taken under the Public Works Act 1876. Under this Act, notice of the intention to take land was required to be gazetted and twice publicly notified, as well as served upon the owners of the land affected 'so far as they can be ascertained'. There was no special provision in the Act regarding the procedures for taking Maori land. The record shows that the intention to take the land was gazetted. Unfortunately there is no information as to whether the owners of sections 52, 53, and 54 were notified of the acquisition. The question also arises whether the persons recommended by Commissioner Young to receive title to the blocks in 1879 had in fact done so by 1881.

The Tribunal is not prepared to make any finding upon this particular acquisition of land by the Crown in view of the paucity of evidence available. Mr McAloon's submission that the act of taking land specifically excluded from the 1860 deed of purchase in itself constitutes a breacb of article 2 of the Treaty raises a substantial issue that would need to be argued. The Tribunal again, bowever, refers to its earlier statements in this report on the inadequacy of notice and, more importantly, the reduction of the small areas of land left to Ngai Tahu by the subsequent taking of substantial portions of this land for public purposes. In the *Ngai Tahu Report 1991*, the Tribunal found that the lands that Ngai Tahu were left with from the Crown's purchase of their territory were insufficient for their present and future needs. The present example demonstrates that Ngai Tahu have been rendered considerably more landless since, owing in part to the Crown's compulsory acquisition of their lands. In our concluding cbapter we shall comment on this question of the erosion of lands excluded from the Crown purchase or granted to individuals under later legislation.

3.20 Claim no: **29**
Claim area: **Pakihi MR 29**

Reserve 29, referred to as the Pakihi reserve, comprised 150 acres on the north bank of the upper Taramakau River. The reserve has been discussed briefly in relation to Waimea MR 28 (see claim 26).

3.20.1 In 1879 Commissioner Young recommended that title to the reserve be granted to 13 named individuals.[198] No mention is made in the commissioner's report of the Pakihi reserve being affected in any way by river erosion. The reserve was never surveyed, nor was title ever issued (N5:44).[199] Alexander Mackay's 1883 scbedule of reserves records that four years after Young's

recommendation land had been given at Arahura 'in exchange' for the Pakihi reserve (D5:66).[200] The reasons behind this action, or indeed any details at all about the 'exchange', have not surfaced.

However, as earlier detailed in the discussion of Waimea MR 28, under section 26 of the Native Land Laws Amendment Act 1896 the Native Land Court determined title to:

> 300 acres, more or less, situated at the eastern end of the Arahura Native reserve, being a portion of that reserve undealt-with in 1879 under the Royal Commission issued to Mr Thomas Young.

The court's record of this determination stated that the 300-acre area should be granted to those for whom the reserves at Pakihi and Taramakau had been allocated, as compensation for the 'loss of these lands'. In the case of Waimea MR 28, as we have explained, the loss was caused by river erosion. With regard to Pakihi MR 29, however, there is no such explanation.

The original location of Pakihi MR 29 was eventually included in a grant to the Midland Railway and has since been subdivided (N5:45).[201] Mr Blanchard submitted that both the Pakihi and the Waimea reserves were exchanged for other land included within the main Arahura reserve, which compensated for the loss of the reserve at Pakihi (N4:24).

The Tribunal's conclusion

3.20.2 Although the reason for the exchange of the Pakihi reserve for land at Arahura has not been revealed, the Tribunal is satisfied that alternative land was allocated at the eastern end of the Arahura reserve in lieu of the Pakihi reserve. The Tribunal does not uphold the grievance in respect of this particular parcel of land.

3.21 Claim no: **30**
Claim area: **Greymouth MR 51**

3.22 Claim no: **31**
Claim area: **Greymouth MR 86**

Mr McAloon originally submitted that the above lands were Maori reserves (D3:19). However, they were, as Mr Blanchard pointed out, never Maori reserves but municipal reserves (N4:25). A subsequent submission from Mr McAloon now accepts Mr Blanchard's contention (AB41). Accordingly, there being no grievance now alleged in respect of these two blocks, the claims are not upheld.

3.23 **South Island landless natives reserves**

McAloon submitted grievances relating to the following reserves set aside in Arahura under the South Island Landless Natives Act 1906. He claimed that:

- **the Government failed to allocate all the lands set aside for the purpose;**
- **the reserves were inadeqnate both in qnality and in quantity; and**
- **the Act was repealed in 1909, before it conld be fully given effect to.**

The backgroimd to grants of land made to Ngai Tahu under the South Island Landless Natives Act 1906 has already been discussed at length in chapter 20 of the *Ngai Tahu Report 1991*. In Westland 6175 acres were set aside to provide for landless Maori in the South Island. The main reserves were set aside at Manakaiaua (3759 acres) and Whakapoai (1600 acres). Smaller reserves were set aside at Blue River, Lake Paringa, Colac River, and Toaroha.

Ngai Tahu complaints about reserves granted to them under this Act are not confined to the Arahura region. Major grievances regarding the legislation were included in the Kemp, Murihiku, and Arahura 'tall trees'. The Trihunal has already found that much of the land allocated was completely unsuitable for farming, especially in sections of 50 acres or less, and that the legislation was but a 'cruel hoax'. It concluded that the Crown's policy and legislative implementation of the policy in relation to landless Ngai Tahu was a serious breach of the Treaty principle requiring it to act in good faith.

The following allegations relate to specific reserves at Manakaiaua, Whakapoai, and Toaroha. The history of each exemplifies the shortcomings of the provisions made for landless Ngai Tahu under the 1906 legislation. Mr McAloon's allegations regarding Ahbey Rocks sections 318 and 319, and Gillespie's section 865, the 50-acre mahinga kai reserves, have already been discussed under Mr Wilson's grievance (see claim 16).

3.24 Claim no: **32**
Claim area: **Manakaiaua (Bruce Bay)**

Sections 853, 854, and 855

3.24.1 Land had been leased at Manakaiaua by Ngai Tahu since 1878. Under increasing difficulty to finance the lease, the locals took the opportunity to ask the Governor, Lord Onslow, directly for land when he visited the area in 1892 (D5:315).[202] Te Koeti Turanga stated that his children were virtually landless. He asked, firstly, that food reserves be set apart at Blue River, Paringa Lake, and Cook River (see claim 16) and, secondly, that land in the run they could no longer afford to lease be reserved. This was agreed to at the time and subsequently supported by the Under-Secretary for

Lands. Some 555 acres were laid off and marked sections 853, 854, and 855 in blocks X and XI, Bruce Bay survey district. A list of those entitled to the land was also compiled, and the sections were then withheld from sale. In 1895, however, it was decided that dealings with the sections be 'held over', the land being 'retained for the Maoris till Judge Mackay and he [Surveyor-General S Percy Smith] had finished their work' (D5:316).[203] This of course, alluded to the commissioner's quest to find land for the landless Maori of the South Island.

Landless natives allocations

3.24.2 In 1896 Commissioners Mackay and Percy Smith decided that a further 3659 acres would be set aside at Manakaiaua for landless Ngai Tahu, and surveys of the area were completed (D5:316).[204] This land fell in the Bruce Bay and Karangarua survey districts, north of the land initially requested by Ngai Tahu. By 1905 sections 853, 854, and 855 were still earmarked as reserves for the local residents, but little else was done and no surveys were undertaken.

The South Island Landless Natives Act became law in 1906 and in May 1908 the land set aside for landless Ngai Tahu in the Manakaiaua block was permanently reserved.[205] This comprised the 3659 acres determined by the commissioners in 1896, plus the 555 acres of sections 853, 854, and 855.

The commissioners determined allotment on the basis of 50 acres per adult and 20 acres per child under the age of 14. Not all of the land reserved for the purpose was necessarily allocated. In the case of the Manakaiaua block, sections 853, 854, and 855 were not allocated.[206] At the bottom of the schedule it was declared that:

> further lists of persons deemed to be entitled to land under the provisions of 'The South Island Landless Natives Act, 1906,' will be published as soon as the surveys are completed.[207]

This may be the reason why sections 853, 854, and 855 were not allocated. It could also be that the original reason for granting these particular sections got lost in the mire of determining who was allotted what and where under the landless natives scheme. The people entitled to get the sections were granted their allotments on reserved land further north.

Unallocated reserves and unprovided-for Ngai Tahu

3.24.3 The South Island Landless Natives Act 1906 was repealed in 1909 by the Native Lands Act. The Under-Secretary for Lands brought this fact to the attention of the Commissioner of Crown Lands Hokitika at the end of January 1910 with the admonition:

> it is therefore very essential that all allocations of land under the Act should be made and duly gazetted before the end of March. (D5:279)[208]

Shortly after this, the commissioner met with tangata whenua from the Manakaiaua area at Makawhio. At this meeting Ngai Tahu aired their concern that land had not been provided for their children under the landless natives allocations. A list of 56 individuals (who ranged in age from six months to 17 years), who had not received land was compiled. The commissioner determined that the amount of land needed would be 1420 acres and recommended to the Under-Secretary for Lands that this be taken from sections 853 and 855, and in addition from section 2981, which had been resumed from a pastoral run (D5:283–293).[209] Nine days later he appended a further six people to the list, five of whom were minors, and recommended that the land for these six people be taken from section 2982, block VIII, Bruce Bay survey district (D5:280–282).[210]

The commissioner raised another concern. He informed the under-secretary that, although section 855 had not been allocated, it had in fact been occupied for some time. After gaining general acquiescence to their right of entitlement in 1892, certain Ngai Tahu had built their homes on the land and had carried out improvements on the section. Although land had been allocated in other sections around Manakaiaua to those who had initially asked for land in 1892, not surprisingly these people had not moved to these allocated areas, but had continued to live in their homes on section 855 (D5:285–286).[211] The commissioner's solution was to recommend that land in section 855 be granted to these people's children, who had not been allocated any land.

This was not what the under-secretary had envisaged, and his response was emphatic:

> there is no use in forwarding the names of any persons who have not already received an award. The Commissioners . . . in beginning their investigation into this matter in 1896, laid it down that no children born after the 31st August 1896 were to be considered; as nearly all the names in the list in your memo of the 10th March are children born subsequently to the date mentioned they received no award. Whether the few other names given were brought before the Commissioners is now immaterial, as the fact that no awards have been made is sufficient for the Department, which can only recognise what has been done. I may mention that the granting of land in this manner was an act of grace on the part of the Crown, and there was no obligation to make any awards whatever . . .
>
> A full list (*Kahiti* No 31) of all those who were awarded land in your district was forwarded to you on the 17th August 1903, and no additions can be made to this list without fresh legislation. (D5:294)[212]

A standard letter was accordingly sent to 20 Ngai Tahu claimants. They were told that:

> the whole of the land set apart for granting to natives under that Act has already been allocated and as the Act has been repealed no further grants can now be made. (D5:295)[213]

They were also informed that any Maori who did not make their claims in 1896 and all children born after that date had no right to grants of land. Commissioners Mackay and Percy Smith were blamed for this policy; wrongly, as Mr McAloon pointed out. Claims were heard and accepted throughout the 12 years the commissioners spent determining the reserves and it was Government policy to exclude any Ngai Tahu born after 1896. Mr McAloon also asserted that the view that grants made under the landless natives legislation were 'an act of grace on the part of the Crown' and that there was 'no obligation to make any awards whatever' is a violation of articles 2 and 3 of the Treaty. He did not specify wby.

Entitlement to the reserve

3.24.4 In 1926 an application was made to the Native Land Court by Makareta Hynes to investigate title to sections 853, 854, and 855. Ripeka Te Nathi, one of the principal witnesses at the court hearing, stated:

> I remember wben the Premier R J Seddon and Govr Onslow came there through the Haast Pass. The Premier promised to give the land there to the people who lived there. . . . This land was not for landless Natives. (AB22:185)[214]

By order of the court on 19 November 1926, 11 people became entitled to the sections (AB22:187–188).[215]

In 1941 some seven acres were taken under the Public Works Act 1928 for a road. Compensation of £7 was awarded hy the court on 29 July 1941 (AB22:192).[216] One acre was also taken in 1960 for a hurial ground (AB22:197).[217] Today the sections are still Maori freehold land and comprise 537 acres 16 percbes (AB22:194).[218]

The Tribnnal's conclusion

3.24.5 The Trihunal does not upbold Mr McAloon's allegations regarding sections 853, 854, and 855. While we acknowledge that Ngai Tahu waited 34 years to get title to the sections promised to them in 1892, it appears from the evidence that, throughout this time, they had the use of these lands. The persons entitled to these lands do not seem to have been prejudiced hy the delay in receiving title to the same. Regarding his concem about the 1909 repeal of the 1906 Act, we note that there was further provision under the Native Land Amendment Act 1914 to grant title to land which had been permanently reserved. In view of the Tribunal's earlier finding on the South Island Landless Natives Act 1906, reported in the *Ngai Tahu Report 1991*, we feel it unnecessary to comment on Mr McAloon's assertions regarding the under-secretary's opinion that the landless natives grants were an 'act of grace on the part of the Crown'.

3.25 Claim no: 33
Claim area: **Whakapoai (Heaphy) River**

3.25.1 In 1905 Mackay and Percy Smith reported that 1600 acres had been allocated in the Heaphy valley for 38 'landless natives' (D5:257).[219] The land had been surveyed and was comprised of 38 sections in blocks I and V, Whakapoai survey district (AB22:198).[220] The sections ranged in sized from 20 to 50 acres.

The land was allocated but it appears it was never reserved, either temporarily or permanently (D5:325).[221] Certainly, titles were never issued to the allocatees. In 1916 control of the reserve was vested in the Nelson Land Board under section 12(b) of the Native Land Amendment Act 1914.[222]

It appears that some administration, however little, was done by Native Land Court staff. In March 1920 the Wellington registrar was instructed by Judge Rawson to make inquiries to the Lands Department in order to sort out a succession matter regarding section 5, block I (AB22:204).[223] Succession orders were made for at least one section in the reserve. In October 1922 five such orders were made for section 12, block I (AB22:199–203).[224]

In 1932 it was recorded that:

> The whole of the Heaphy Valley, with the exception of the reserve for landless natives, is now Provisional State Forest, and it does not appear to be worth resuming for settlement purposes on account of the isolation and poor quality of the land. (D5:324)[225]

The only access to the reserve was via the Heaphy track from either Collingwood or the coast north of Karamea.

In February 1972 the Manri Trustee was approached by the Conservator of Forests about alienating the land. The New Zealand Forest Service wished to incorporate the reserve into the North West Nelson State Forest Park (D5:328).[226] The Christchurch district officer of the Office of the Maori Trustee was asked to look into the matter. He responded:

> We have no record of the land concerned and it would appear that this area was not required for allocation to South Island landless Maoris. (D5:329)[227]

He concluded that by virtue of section 15 of the Maori Purposes Act 1966, being an amendment to section 110 of the Maori Purposes Act 1931, the land was Crown land subject to the Land Act 1948. In April 1994, after the Department of Conservation had completed an investigation under section 8 of the National Parks Act 1980 to determine whether 34 of the Whakapoai sections could be included in a national park, the Minister of Conservation announced his intention to create the Kahurangi National Park. The Whakapoai land was not included in the proposed park boundaries. According to the Department of Conservation, however, no decision regarding the Whakapoai land's inclusion will be made by the Minister until after the Tribunal has reported on this claim.[228] The

land is now managed by the department as a conservation park in terms of section 61 of the Conservation Act 1987 (D4:41).

The Tribunal's conclusion

3.25.2 A similar situation as exists in respect of this block exists in respect of the Wanaka-Hawea landless natives block reported on at claim 14. As at Hawea, the land at Whakapoai was laid off and allocated to named individuals but never proclaimed reserved, either temporarily or permanently. As at Hawea too, the land at Whakapoai was hopelessly unsuitable for settlement purposes. Precipitous and isolated, the setting aside of this land to alleviate the tribe's landlessness confirms the Tribunal's earlier finding that the 1906 Act and its implementation were in breach of the Treaty principle requiring the Crown to act in good faith.

Additionally, as with the land at Hawea, the Tribunal finds that the Crown's failure to permanently reserve and grant title to the land allocated to specific 'landless' Maori is in further breach of the Crown's duty to act in good faith towards its Treaty partner. It is noteworthy that in respect of the landless natives block at Hawea the Crown has accepted that the tribe has a valid claim to this land and has taken steps to compensate the tribe for its loss. Since the land at Whakapoai is Crown land, the Tribunal recommends that title to the block be vested in the descendants of the original allocatees. However, the Tribunal recognises that, in view of the land's poor quality, the return of Whakapoai may not satisfy the needs of Ngai Tahu.

3.26 Claim no: **34**
Claim area: **Toaroba**

Mr McAloon referred to two sections in the Toaroha survey district which were set aside for landless Ngai Tahu but never granted for the purpose. The first of these was reserved for a particular person, although, strictly speaking, it was not because he was landless. It appears that the second section was set apart on some maps as potential land for landless Ngai Tahu claims, but was never actually recommended for reservation.

Henare Meihana's 10 acres

3.26.1 In August 1901 the Native Minister received a request from Henare Methana to exchange his land at Little River for land between the Hokitika and Kokatahi Rivers, because this was closer to his residence (D5:336).[229] The matter was referred to Commissioners Mackay and Percy Smith for advice and after considerable delay it was found that Methana was referring to land at Little River that he had been entitled to receive as a half-caste, but never had. Percy Smith decreed that Methana was 'not entitled to land as a landless Native having already 147 acres: but he is entitled to ten acres as a half-caste' (D5:334).[230]

Almost four years after the request had been made, the Commissioner of Crown Lands was told:

> [Commissioners] for landless Natives state that there is no objection to applicant obtaining ten acres between Hokitika & Kokatahi Rivers if you can allot it. (D5:334)[231]

In November 1907 the tracing and description of the reserve was forwarded to the Under-Secretary for Lands for gazetting (D5:337).[232] Section 2479, block III, Toaroha survey district, of 10 acres, was situated along the Toaroha River. A sketch of the section bears the inscription 'Taken by Henara [sic] Meihana as a Landless Native (6 September 1905)' (D5:330).[233] The land was temporarily reserved on 18 February 1908 and permanently reserved three months later.[234]

Although the reserve was set aside expressly for Meihana, and permanently reserved in accordance with the South Island Landless Natives Act 1906, Meihana never received a certificate of title for the section. When a list of persons entitled to land in the Manakaiaua blocks was published in 1908, it was stated that further lists of those Ngai Tahu entitled to other land would be published once the land had been surveyed. Section 2479 had still not been surveyed by 1914 (D5:276).[235] In December 1919 the Commissioner of Crown Lands detailed a scbedule of 715 acres of land in Westland that had been set aside for landless natives but that bad not been allocated (D5:344).[236] Meihana's section was one of these.

The land subsequently became part of the Department of Lands and Survey's Lake Arthur Farm Settlement (AB22:217).[237] In 1981 an application was made by the Minister of Lands under section 437 of the Maori Affairs Act 1953 to:

> determine the persons now beneficially entitled to this land so that the 1905 contract with Mr Meihana can be completed. (AB22:211)[238]

At the bearing the court was asked to make an additional order under section 438 of the Maori Affairs Act 1953 vesting the land in the Maori Trustee for the purpose of sale:

> Location and accessibility renders this land as being of limited use to anyone but the adjoining farm unit. It is considered therefore that it would be best utilised as part of that unit. (AB22:212)[239]

Those descendants of Meihana present at the court were against the sale of the land. In the result, the court vested the land in 34 people, deemed at an earlier date to be the successors to Meihana (AB22:206–208).[240] The application regarding the section 438 trust was dismissed.

Section 2386

3.26.2 Mr McAloon referred to a second area, section 2386, wbicb bounded Meihana's section on two sides. A sketch plan shows that a surveyed area of 133 acres was 'Proposed for further Claims of Landless Natives (if required)' (D5:331).[241] On a map attacbed to the Commissioner of Crown Lands' list of landless native blocks it was noted that the section had been temporarily withheld from the

market, 'as it may partly be selected by Landless Natives' (D5:340).[242] This was followed by 'This note is cancelled by N Land Act 1909' and 'now held under renewable lease'.

Mr Blanchard submitted that this was because of the age restriction set in 1896 and in order that no further claims would be considered without further legislation. There is no record of this land in the Maori Land Court records in Christcburcb.

The Tribunal's conclusion

3.26.3 Dealing first with Henare Meihana's allocation of land, it would seem to the Tribunal that, although there has been considerable delay by the Crown in fulfilling its obligations to Meihana in granting title to section 2479, this has since been rectified at the Crown's initiative. It is of note that the Crown felt obliged to complete 'the 1905 contract with Mr Meihana'. In light of the vesting of the land in the descendants of the original allocatee, the Tribunal does not upbold this grievance.

Nor do we upbold the grievance relating to section 2386. In our view, the fact that land was earmarked on a map for possible allocation under the landless natives grants scheme does not, in itself, obligate the Crown to reserve all such land for landless Maori. We have already found that the landless natives scbeme was a serious breacb of the Crown's duty to act in good faith. There was, undoubtedly, a great deal of better, less remote land whicb could have been used to alleviate the tribe's landlessness. The shortcomings of the legislation and its unplementation are not, in our minds, in dispute. However, the fact that section 2386 was tagged for possible allocation under the scbeme but was never, by the terms set by the Crown, required for that purpose does not in our view constitute a breach of Treaty principles.

3.27 **The custodianship of the Maori Trustee**

In addition to the 6724 acres that were excluded from the Arahura purchase for individual allotment to Poutini Ngai Tahu, 3500 acres were also reserved, 'for the promotion of social, moral, and religious objects among them'. These are often referred to as the schedule B reserves. All seven of these scbedule B reserves were transferred to the Crown at the time of purcbase under the Native Reserves Act 1856. Many scbedule A reserves were also transferred under this Act. The legislation affecting these reserves has been discussed in chapter 14 of the *Ngai Tahu Report 1991*. Although initially administered by the Commissioner of Native Reserves, by provision in the Native Reserves Act 1882 both management and title of the reserves subject to the 1856 Act were vested in the Public Trustee. In 1920 the Office of the Native Trustee was established. All Maori reserves that bad been vested in the Public Trustee were vested in the Native Trustee, wbo also inherited the former's powers, duties, and functions.

Mr McAloon's allegations relate to those reserves wbicb were under the custodianship of the Public, Native, and then Maori Trustees. The following criticisms were made:

- **the Crown failed to consult the beneficial owners regarding the nses to which the reserves were put;**

- **the Crown acquired reserve land for Crown pnrposes, including for scenic reserves, roading, or railways, for local body purposes, and for defence pnrposes; and**

- **much of the reserve lands were marginal.**

Because Mr McAloon directed more than one of these criticisms to eacb reserve at issue, the following analysis is divided by reserve.

The respouse of the Maori Trustee

3.27.1 Deputy Maori Trustee Richard Wickens responded to Mr McAloon's criticisms as they related to actions of the Maori Trustee (N34). This response has already been summarised in the *Ngai Tahu Report 1991*.[243] Mr Wickens made a number of salient points in defence of the Maori Trustee:

- There are constraints placed on the trusteeship by legislation. According to Mr Wickens, the Maori Reserved Land Act 1955 gave the trustee no more freedom to manage the reserves than the Native Reserves Act 1873 had.

- Although consultative mechanisms were put in place in several enactments, accountability continued throughout to be to the Government, 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.

- 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 because the beneficiaries of the individual blocks were not determined until the 1920s.

- 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 aod introduced policies 'which it saw as necessary to fulfil that duty'.

- The sbortage of funding bas always been a characteristic of Maori land administration.

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

The main thrust of Mr Wickens's rebuttal was that the claimants had remedies in the general courts for their complaints, that the grievances should be directed at the Crown rather than at the Maori Trustee, and that in most specific instances there was an adequate answer to the claimants' criticism.

3.27.2 The Commission of Inquiry into Maori Reserved Lands 1974 found that much of the criticism directed at the Maori Trustee had its basis in the restrictive legislation within which the trustee had to work. The Tribunal endorsed this view and found that primarily the actions or omissions of the Crown have been responsible for the general complaints laid at the door of the statutory managers.[244] The Tribunal concluded:

> 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 interest in the reserved lands.

The Tribunal stated that the perpetual lease system, exacerbated by remote trustee control, resulted in the alienation of Maori from their lands. Although implicit in the above finding, we did not make any specific determination in the main report that the lack of consultation with the owners was in breach of Treaty principles. We turn now to consider this issue as the lack of consultation is a major aspect of the following concerns brought by Mr McAloon.

3.28 Claim no: **35**
Claim area: **Mokihinui reserve**

3.28.1 This reserve of 160 acres was set aside in the Mokihinui valley and was listed as reserve 5 in Mackay's schedule B. Like other scbedule B reserves, title had been vested in the Crown at the time of purchase and the administration undertaken by various local and then central government bodies. However, this 'administration' seems to have been nominal. By 1887 no leases had been issued and the reserve was described as being covered in bush and thick undergrowth, with portions of it 'beavily timbered' (D5:362).[245]

Land taken for a company railway

3.28.2 In 1887 the agent for the Public Trust Office in Westport reported that, while the reserve had little value as agricultural or pastoral land, it contained an 'inexhaustible' supply of coal. The Mokihinui Coal Mining Company Ltd was mining adjacent sections in the valley. The agent pointed out that 2 roods 10 perches of the reserve would be needed for the company's railway extension and recommended that the reserve be leased for mining purposes (D5:364).[246]

The following year 2 roods 36 perches were taken from the reserve, section 5, block XV, Mokihinui survey district, and allocated to the Mokihinui Coal Mining Company for the construction of a mining railway (D5:365).[247] The only reference to compensation is a note in the trustee files

requesting the agent of the Public Trustee in Westport to see about obtaining payment for the land taken (D5:366).[248] Mr McAloon submitted that the owners of the land would not have benefited from the railway, as could be claimed in the case of a public road; rather, the Government took the land to provide a benefit to a private company.

Mining lease

3.28.3 The reserve was of interest to different mining groups. However, before reserve lands were leased, the arrangements had to be sanctioned by the Native Reserves Board. The board's resolution note states:

> Applications have been made at different times for leases of this Reserve, hut the Board has always declined such applications, and the Mokihinui Coal Company have now applied to the Public Trustee to have the land leased under a mining lease. (D5:367)[249]

The board resolved that the reserve could be leased for a period of 30 years, at an annual rental of sixpence per acre, plus a royalty on the coal mined. Tenders were called for in 1896, and the Mokihinui Coal Mining Company secured the lease.

In 1898 the company went into voluntary liquidation without having mined the reserve (D5:370).[250] According to Mr McAloon, the board revoked the decision to offer the land for lease for mining and offered it on a yearly tenancy for grazing. In 1899 it was reported that the best timber on the reserve had been taken, but it was not stated when it was taken or by whom (D5:371).[251] Mr McAloon submitted that from 1901 the reserve was leased for grazing. In 1976 it was transferred to the Mawhera Incorporation.

The Trihunal's conclusioa

3.28.4 On the evidence presented to it the Trihunal is not prepared to make any finding herein.

3.29 Claim no: **36**
Claim area: **Ahaura**
Claim:

> **Mr McAloon claimed that measures to prevent further erosion damage to the Ahaura reserve were not implemented, to the detriment of the reserve.**

Seven hundred acres were set aside by James Mackay in the Mawhera valley 'on the South Bank of River Ahaura or Arnot' (D5:18).[252] The land was flat and low-lying. Three rivers, the Grey, the Ahaura, and the Little Grey, converged just above the reserve, and during floods much of the area was submerged (D5:377).[253]

The need for protection works

3.29.1 The reserve had been leased to the Craig brothers, who had farmed the land since before 1872. In January 1889 it was reported that 62 acres of the reserve had been washed away (D5:372).[254] Thomas Craig was asking for assistance to undertake works to prevent further erosion. Failing this, he demanded a reduction of rent for the area which had been lost. In the opinion of a licensed surveyor:

> these works would not cost much to complete & if left undone most of the Native Reserve which composes very Rich Soil eventually will be washed away. (D5:372)[255]

An application to the Native Reserves Board for a reduction in rent and assistance to construct erosion prevention measures was made in April 1889. The board resolved that it 'could not afford above lessee any assistance in the construction of River protection works' (D5:373–374).[256] It did agree, however, to reduce the rent in proportion to the amount of land washed away.

The issue was raised again on 16 March 1897, when Thomas Craig's brother William wrote a letter of complaint to the Public Trust Office:

> The River at several places has encroached on the land and swept large slices of it away . . . Needless to say covered as they are with slime the pastures have been almost ruined for this season. (D5:375)[257]

Mr Craig pointed out that although protective works may at first thought appear impracticable:

> we are certain much good can be done at comparatively little cost by the raising of Earth Embankments to prevent overflow. At intervals along the whole frontage of the reserve and at two places immediately above it there are hollows or depressions through which flood waters rush with great force carrying gravel and sediment. If these were stopped . . . the mischief caused would be greatly reduced. (D5:376)[258]

He estimated that such a scheme would cost little more than £100 and asked the Public Trustee for assistance in constructing the works.

The proposal was considered by the Native Reserves Board on 24 November 1897 (D5:377).[259] Once again it was resolved that no assistance could be given for the construction of protection works. There is no explanation for the board's decision, although on the application form it was stated:

> From reports received it would appear that the expense of building substantial protective works would be more than the value of the land they would save. (D5:377)[260]

Mr McAloon also alleged that H K Taiaroa's letter complaining that no direct payments of revenue had been made to the beneficial owners was not resolved, or even replied to (D5:378–379).[261] The

letter cited by Mr McAloon, however, makes no such complaint directly. It would need to be read in context to establish whether the claimant's allegation has any bearing at all.

The Tribunal's conclusion

3.29.2 It is apparent that measures to protect this reserve from further river damage were considered too costly by the Native Reserves Board. On the evidence before it, the Tribunal has difficulty reaching a conclusion on the reasonableness of this decision. We make no finding in respect of this grievance.

3.30 Claim no: 37
Claim area: **Taramakau MR 27**
Claim:

> **Again, it was alleged that the absence of any measures to prevent river erosion has resulted in serious impairment to this reserve (D3:47).**

3.30.1 A reserve of 85 acres was set apart for individual allotment by James Mackay in 1860 on the north bank of the Taramakau River. In 1879 Commissioner Young recommended that title to 50 acres be issued to Mata Kara and Hira Mutu as joint tenants, and the remaining 35 acres be granted to Whakatau Moroaiti Pakapaka and Timi Kaiwai.[262]

Mr McAlonn's allegation concerns part Maori reserve 27, block III, Waimea survey district, comprising 33 acres 1 rood 8 perches. It is assumed that this was the area intended for Pakapaka and Kaiwai.[263] By 1954 it was reported that 10 acres of the original area had been washed away by the river and a further 16 acres were subject to severe flooding. The amount of 'reasonably safe land' was confined to approximately 7 acres (D5:383).[264]

The Tribunal's conclusion

3.30.2 The Tribunal does not consider that there was an obligation on the Crown to protect this land against such natural events as flooding. We do not uphold the grievance but once again we point out the further diminution of the reserves left to Ngai Tahu and their consequent further landlessness.

3.31 Claim no: **38**
Claim area: **Oparara**
Claim:

> **This, too, is an allegation concerning the decline in quality of the Oparara reserve owing to the failnre of the Native Trustee to take action to protect the land from erosion.**

Five hundred acres were set aside by James Mackay near Karamea, on the north bank of the Karamea River. It was a schedule B reserve, of good pastoral value, and was leased in perpetuity for farming.

The need for protection works

3.31.1 The issue of river erosion on the reserve was first raised in 1916 hy several farmers in Buller coimty who wanted assistance in protecting their land (D5:388).[265] It seems that, in times of flood, water from the river found its way into an old channel which ran through the reserve before rejoining the main river three miles further down. The Buller County Council was informed by its engineer that protection works were 'of vital importance to a large area of most valuahle river flat' (D5:385).[266] He estimated that the necessary measures would cost around £2000.

When referred to the Government, the Minister of Lands disclaimed all responsihility for the matter. The River Boards Act 1908 had been passed for these express cases, he replied, and 'the Government cannot be expected to assist in the protection of the land' (D5:386–387).[267] The Minister of Puhlic Works decreed that 'those interested should take steps to have a River Board established' (D5:390).[268] The Puhlic Works Department's chief engineer felt that such expenditure was not justified; in his opinion the prohlem was not acute (D5:390).[269]

Nothing was done despite continued complaints from the lessees. The Native Trustee considered that any protective works would cost hundreds of pounds to implement and, as the rent received was insignificant in comparison, 'it is clear we cannot do anything' (D5:392).[270] He, too, considered that it was up to the lessees to do something about the prohlem.

In 1929 the damage was exacerbated by an earthquake, causing the river to overflow more readily into the channel on the reserve. As one lessee wrote, the consequent impact on the reserve was extensive:

> At Easter 1931 the river again overflowed on to the leasehold and *completely devastated the grazing land* — so much so that all the cows had to be dried off and turned loose to thrive as best they could. [Emphasis in original.] (D5:394)[271]

This particular lessee requested that either protective works be undertaken by the Native Trustee or ber rent be reduced. The trustee responded:

> My powers as trustee for the beneficial owners, whose interest is the unimproved value of the land, are limited and I have no authority to reduce the rent without the consent of all the beneficiaries.... I do not think I would be justified in allowing any rents received to be expended in repairing or protecting the improvements. (D5:396)[272]

In November 1937 the Public Works Department informed the above lessee of its intention to stop the continual flooding by the construction of a stopbank (N35:app7).[273]

Mr McAloon's criticism of the Native Trustee is veiled. He stated first of all that the Maori owners were removed from any management of their reserve. He then alleged that, as a result of the failure of any other party to take more than minimal responsibility for the protection of the land, the Maori owners' property declined in quality. He seemed to be implying that if Ngai Tahu had had the power to manage their lands they would have acted otherwise.

Deputy Maori Trustee Richard Wickens responded to Mr McAloon's criticism by pointing out that there were sound economic reasons wby the Buller County Council, the Government, the trustee, and the leasebolders decided against funding protective works. The cost of the necessary measures far exceeded the value of the land. He also stated that the beneficial owners of the land were not determined until the 1920s (N34:8).

The Tribunal's cnnclusinn

3.31.2 The evidence in this claim supports the statement of Mr Wickens that there were sound economic reasons wby the different parties decided against funding protective works. With regard to the Native Trustee in particular, we consider his decision in this matter to be a sound one, based on the fact that the cost of carrying out such protective works far outweighed the rent received by the beneficial owners. In the result it appears that protective works were eventually undertaken by the Public Works Department. We do not upbold this grievance. Later in this report we refer in more detail to the actions of the Public Trustee and the Maori Trustee as statutory trustees and to our finding in the 1991 main report of the Crown's failure to protect Ngai Tahu rangatiratanga by setting up a system whicb precluded Maori from any consultation or knowledge about their lands.

3.32 Claim no: **39**
Claim area: **Orowaiti reserve**

3.32.1 This grievance concerns a 50-acre reserve set aside in 1860 for individual allotment at Orowaiti, near Westport. Reserve 43 lay 'South of Mud Flat and near the Beach'. In 1879 Commissioner Young recommended that title to the reserve be granted to Ihaia Tainui and Wikitoria Te Piki as joint

tenants.[274] This reserve was subsequently brought under the Native Reserves Act 1856. The record shows it was being leased by 1900.

When a leasehold title in the reserve was subdivided in 1975, it was discovered that there were serious anomalies between title and occupational boundaries in the land. So much so that the lessee of one lot was said to have substantial buildings and a dwelling in a neighbouring lot (D5:398).[275] Many of the other properties were affected to a lesser degree. The problem appears to have been a long-standing one; a 1900 deposited plan showed the discrepancies in the occupational and title boundaries existing at that date. In the words of the Buller County Council engineer:

> It would seem therefore that for 76 years the Maori Trustee . . . has been granting transfer of guaranteed title to land to persons who inadvertently partly occupied other land to varying degrees. (D5:398)[276]

A meeting of the lessees was called in order to resolve the situation. It was decided that the area should be resurveyed and new titles issued on the basis of the current occupational boundaries. Both the lessees and the Buller County Council considered that the survey and administrative costs of such action should be borne by the lessor. The Maori Trustee, however, had already expressed his view:

> The problem as a whole is not of the Maori Trustee's creation; nor does he see that he has any duty or responsibility to take the initiative in its solution . . . the initiative would have to be taken, and all costs borne, by the lessees affected. (D5:400)[277]

The Orowaiti reserve was vested in the Mawhera Incorporation in May 1976. The Maori Trustee informed the council in June 1976 that further negotiations concerning the realignment of the boundaries of the land and the issue of cost and survey should be raised with the management committee of the incorporation (D5:401).[278]

The Tribunal's conclusion

3.32.2 It is not entirely clear what Mr McAloon's concern is. It would seem that the Maori Trustee stood firmly in the interests of the beneficial owners by refusing to bear the costs of the survey. If it is alleged that an error has been made in the issue of the land transfer title there may be alternative remedies available to the owners of the land under the Property Law Act 1952 and the Land Transfer Act 1952. It is not apparent to the Tribunal from the submissions made to it what the outcome of the situation was in respect of negotiations between the incorporation as the new owner and the local council. The claim would need further investigation before the Tribunal could consider whether there has been a breach of Treaty principles. On the information before it, the Tribunal is not prepared to uphold the grievance.

3.33 Claim no: 40
Claim areas: **Westport town sections**
Claim:

> **Mr McAloon alleged that the Maori Trustee's amalgamation of 11 Westport town sections into one title has left the Mawhera Incorporation with the possibility of incurring considerable expense (D3:48).**

3.33.1 This allegation concerns the Maori Trustee's amalgamation of 11 Westport town sections into a single certificate of title, 3D/1220, in 1973 (D5:404–405).[279] Although Mr McAloon's point was directed at one example only, the incorporation has six such multiple titles, which involve in total 26 individual lessees (D5:416).[280]

In 1977 the Westport town sections were vested in the Mawhera Incorporation. Difficulties arose when the incorporation proceeded to sell the freehold of certain sections. A sale of one of the sections included in a multiple title was considered a subdivision under section 271 of the Local Government Act 1974, and an approved plan of survey of the particular section was required. The district lands registrar in Nelson refused to issue new certificates of title unless the sections involved were resurveyed. The question of who is to bear these costs, which may prove to be extensive, has been the subject of debate for the past decade and is at the heart of this grievance. Mr McAloon alleged that an administrative act of the trustee has created the possibility of the incorporation incurring considerable expense.

Mr Wickens revealed that the amalgamation did not in fact occur in 1973. He submitted an earlier certificate of title dated 26 November 1936 which showed that at that time the sections of Mr McAloon's complaint were already included on a single title (N35:app31–33).[281] He stated that there is every likelihood that the situation existed even prior to 1936.

The predicament is of concern not only to the incorporation. John Duncan, a former lessee who bought the freehold to his section in 1980, has been campaigning to obtain the certificate of title for years. He, too, has asked the Tribunal to intervene. Mr Duncan's section 250 is one of those on certificate of title 3D/1220, the subject of Mr McAloon's allegation. It is therefore convenient to use this section as a pilot study.

John Duncan's section

3.33.2 Certificate of title 3D/1220, dated 30 March 1973, shows a number of Westport town sections administered by the Maori Trustee (D5:404).[282] As mentioned above, a prior certificate of title discovered by Mr Wickens shows that the sections, 12 in number, had already been amalgamated by 1936. In 1972 one of the sections was taken for a teacher's residence. The 1973 title therefore shows 11 sections, although only eight are given in the actual title description. As Mr McAloon pointed out, these sections are not contiguous.

In January 1977 title to the properties was transferred to the Mawhera Incorporation. Under the trustee's administration, all 11 properties were leased for a 21-year term, and all hut three of these lease agreements contained a right of renewal. As the *Ngai Tahu Report 1991* has outlined, the benefits for the lessors of sucb leases were nominal.[283]

The incorporation began selling the freehold of certain sections to some of the leaseholders. Mr Duncan bought the freebold to section 250 on 21 November 1980 for $6800 (D5:431, 435).[284] Difficulties arose when the certificate of title for section 250 was sought from the district land registrar in Nelson. These problems arose from the fact that the section was included in a multiple title:

> issue of separate Certificates of Title for the Sections and parts of Sections of the Town of Westport . . . come within the definition of sub-division set out in Section 271 of the Local Government Act 1974. Accordingly it will be necessary for the sub-divisional requirements of the said Act to be complied with including the lodgement of plans of survey for deposit, to enable the issue of separate Certificates of Title for the Sections to which you refer. (D5:413)[285]

There was no plan of survey or approval in respect of the section. The title plan was based on the Town of Westport plan, which, as the district land registrar explained, was only a record map that had never been approved hy the Westport Borough Council. Although road lines and intersections were fixed, the sections were not pegged. In short, the existing plan was an inadequate survey and unacceptahle for deposit with the Land Transfer Office. A resurvey of the section would be required (D5:407–408).[286]

The implications for the incorporation and Mr Duncan were alarming. The cost of survey and approval to subdivide the land had not been taken into account when the purchase price had been agreed upon. Both parties were dismayed at the possihility of considerable further expense. At their solicitors' prompting, the incorporation attempted to secure financial assistanee from the borough council, suggesting that, as it was the Town of Westport plan that was preventing the incorporation from getting the certificate of title issued, the council should pay for the resurveying of the whole of Westport (D5:416–417).[287] Not surprisingly, the council rebutted such an argument:

> The prohlem in this instance arises not from any deficiencies in the deposited plans hut the fact that the Incorporation in contracting to transfer separate freehold titles to pieces of land contained within an existing single title is creating a subdivision within the definition of Section 275 Local Government Act 1974. Consequently the provisions of Part XX of that Act relating to the preparation and approval of survey plans apply and the District Land Registrar will not, of course, issue separate titles until a plan, approved hy the Council under Section 305, has been deposited. (D5:418)[288]

Various ideas to resolve the problem without incurring considerahle expense have been put forward by the incorporation's solicitors. The bottom line, however, is that each section on a multiple title

which is to be freeholded will require a survey plan acceptahle to the council and the district land registrar (D5:422–423).[289]

Mr Duncan's property is one of seven former leaseholds which were subsequently freeholded before 1984. In total, the incorporation envisages selling the freehold of 28 properties on multiple titles (D5:426).[290] It can be appreciated that the expense of this will be staggering and that the incorporation is loath to bear the cost. Mr Duncan also feels that be has 'paid in full' for his section (D5:431).[291]

Mr Duncan's efforts to ohtain title to his section have continued unabated throughout the 1980s. Members of Parliament and Cabinet Ministers have been approacbed hy both Mr Duncan and the incorporation with a view to obtaining legislative intervention, but to no avail. In response to Mr Duncan's latest entreaty of 1986, the Minister of Internal Affairs, the Minister of Maori Affairs, and the Minister of Justice all considered that the prohlem was one between Mr Duncan and the Mawhera Incorporation. They did not wish to interfere (D5:437–439).[292]

The Tribnnal's conclnsion

3.33.3 The allegation that the Maori Trustee is responsible for the amalgamation of Ngai Tahu's Westport town sections is not supported by the evidence.

The Tribunal considers that, if a survey title is necessary to enable the sale of certain sections to lessees, the cost of providing a guaranteed title under the Land Transfer Act 1952, whicb may require a survey, is a matter of contract between the vendor and the purchaser. There have been recent amendments to the law relating to subdivision under the Resource Management Act 1991 and it may well be that there has been a change in the position which is capable of resolution by further negotiation between the incorporation and the district land registrar. The Trihunal does not accept that there has been a breach of any principle of the Treaty on the evidence presented to it.

3.34 Claim no: **41**
Claim area: **Mawheranui reserve**

Mr McAloon had a number of allegations with respect to the Mawheranui reserve:

- **the Puhlic Trustee had a cavalier attitude towards the application of revenne from the reserve to Maori pnrposes;**
- **there was a lack of consnltation about placing the reservennder the Mining Act 1911 and the Forest Act 1921;**
- **the Maori Trustee was careless in granting timber cutting rights to an incompetent firm; and**

- **the owners were not consulted before the land was logged.**

Section 1, square 118, block VI, Mawberanui survey district was originally set aside by James Mackay in 1860. The 1000-acre reserve was one of the seven schedule B reserves and, as such, became subject to the Native Reserves Act 1856 at the time of purchase. Most of the land was heavily forested and, owing to its 'rough broken & billy' nature, was not considered suitable for farming (D5:440).[293] It is now vested in the Mawbera Incorporation.

Mr McAloon's criticisms were responded to by Deputy Maori Trustee Richard Wickens.

The Public Trustee's administration

3.34.1 Up until the turn of the century the Mawheranui reserve was left largely untouched, although mining was taking place in the area. Having been informed that there were probably gold deposits within the reserve, the Public Trustee did not wish to grant a lease for a 21-year term. An annual revenue of £5 10s from the reserve resulted from a single tenancy and this was credited to the Westport and Ahaura account. It was recorded that:

> This a/c is seldom drawn upon and now has an accumulated fund of £460. (D5:440)[294]

Mr McAloon stated that this indicates a somewhat cavalier attitude on the part of the trustee to actually applying revenue for Maori purposes or, indeed, to actively promoting Maori interests as opposed to sitting back and collecting the rent (D3:48). In rebuttal, Mr Wickens stated that the Public Trustee would have had some kind of policy for the disbursement of revenue (N34:12). In support he submitted a 1922 memorandum to Judge Gilfedder stating that rent from Oparara lands had been used to subsidise doctors at Greymouth and Hokitika for the benefit of Ngai Tahu living near those places (N35:app8).[295]

The Mining Act 1898 and the Forests Act 1921

3.34.2 In 1903 by Order in Council the Mawberanui reserve was placed under the Mining Act 1898 for the purpose of leasing, and in 1922 the reserve became a Maori forest under the Forests Act 1921. Mr McAloon was critical of the fact that both these moves were done without consulting the Maori owners. In May 1911 the Public Trustee requested the Westland Land Board to lease the reserve under the provisions of the Mining Act 1898 (D5:441).[296] The consequences of placing the land under the Act were not discussed.

In 1922 the Native Trust Office Board resolved to transfer control of the reserve to the Commissioner of State Forests under the Forests Act 1921 (D5:442).[297] In effect, the New Zealand Forest Service, as administrator and supervisor of milling operations, became an agent of the Native Trustee. Under this arrangement the Conservator of Forests arranged the disposal of the timber on the reserve and paid the royalties to the Native Trustee (D5:454).[298] Maori reserves were treated in the same way as State forests (D5:445).[299]

The cutting of silver pine

3.34.3 The reserve's timber was considered to be its only valuable aspect, the land itself being unsuitable for farming. Interest in cutting the timber was initially directed at extracting the silver pine on the reserve for fencing posts. In 1951 approval was given to AG Howe & Company, a timber company that specialised in splitting posts, to extract the silver pine for supply to the Maori Land Board. However, the company was inadequately staffed for the job and it was not until March 1953 that they declared themselves ready to proceed (D5:446).[300] Upon inquiry from the company, the district officer of the Maori Affairs Department signalled the Maori Trustee's consent to 'the grant of cutting rights over the . . . area' to the company, on the understanding that the New Zealand Forest Service would act on the Maori Trustee's behalf as to the cutting terms (D5:448).[301]

On 2 November 1954, the district officer again wrote to AG Howe & Company:

> The Maori Trustee is agreeable to *any worthwhile timber* being taken from the bush on terms which are agreed to by the New Zealand Forest Service. [Emphasis added.] (D5:449)[302]

The ambiguity of this correspondence later became the cause of a great deal of trouble. On the face of it, the trustee was consenting to the company taking all of the millable timber from all of the block. The company's initial application, however, had been in respect of the silver pine only, as they specialised in fencing (D5:446).[303] The company's subsequent application to cut the rimu on the reserve was declined on the recommendation of the Conservator of Forests:

> The Companys original application was to cut Beech fencing material and mining timber, and cutting should be restricted to this type of produce and species.
>
> Messrs AG Howe & Co have no experience in logging and are obviously only interested in any Rimu trees handy to the main road.
>
> You are no doubt aware that this is the only Maori owned timber in the locality and in view of the necessity to conserve the existing timber resources it is recommended Messrs AG Howe & Company's application to cut Rimu be declined. (D5:450)[304]

AG Howe & Company proceeded to cut silver pine for fencing posts, mining props, and railway sleepers. Rimu and hirch were also removed where access was needed to tap pockets of silver pine (D5:464).[305]

Logging the reserve

3.34.4 The Maori Trustee began considering the wholesale disposal of the millable timber on the reserve in 1956. It was suggested by the Wellington district officer of the Maori Affairs Department that a

meeting of owners be called with a view to revesting the reserve (D5:454).[306] It was decided, however, that this would be held over until the timber had been logged (D5:460).[307]

In August 1956 the Maori Trustee proposed to the conservator that AG Howe & Company (now AG Howe Ltd) be allowed to split posts from both the yellow pine on the reserve (which was also good fencing material) and the remaining silver pine, on condition that the cutting was completed within two years (D5:460).[308] At the end of this period, the cutting rights to the extensive millable timber on the reserve would be advertised for sale by tender.

AG Howe, however, had its sights fixed on the rimu and birch in the block. It claimed that the removal of millable timber had been its original intention and that considerable capital outlay had been made with this in mind (D5:461–463).[309] The company brandished the 2 November 1954 letter from the district officer as proof that it had rights over all millable timber on the whole reserve. While admitting that the letter could be interpreted in this manner, the Maori Trustee explained that this had not been the intention (D5:466).[310] He remained adamant that rights to log the reserve had not been granted. The Forest Service, for its part, repeated its view that the company was 'not an established saw-miller, being conceroed chiefly with dealing in fencing material' (D5:464).[311]

The dispute dragged on until 1960. In an attempt to resolve the issue, in November 1959 the Maori Trustee offered the company rights to mill a 140-acre portion of the reserve (D5:491).[312] After further wrangling, the company accepted the offer (D5:499).[313]

Logging rights over the rest of the reserve were put up for tender in sections throughout the 1960s. All of the sections were successfully tendered for by AG Howe (N35:app12).[314] By 1971 the whole reserve had been logged and the Maori Trustee began considering alternative uses for the land. In July 1972 the beneficial owners were informed that the land was no longer producing revenue but that afforestation leases were seriously being considered (D5:507).[315]

In October 1972 the district officer suggested that the land be revested in the owners and then made a section 438 trust, with the Maori Trustee as trustee. It was thought that this would provide a 'less complicated trust and a Court order on which to operate' (D5:508–509).[316] The Maori Trustee thought this action unnecessary, but noted:

> If possible, however, the owners of the land should be put in the picture before any long term arrangement is finally entered into. (D5:510)[317]

Mr McAloon stated that this one sentence encapsulates the administration of the trustee. In essence, his point is that the reserve was logged throughout the 1960s without consultation with the owners and by a company of questionable competence (D3:51).

The Maori Trustee's view

3.34.5 Mr Wickens responded to the claimant historian's statements about the competence of AG Howe. He submitted evidence wbich showed that, in spite of earlier views expressed by the forest service about the company's ability to log timber, a letter of 1966 conveys an entirely different opinion:

> AG Howe Limited is the established operator in this area . . . The logs produced by Howe Limited are sawn by Ogilvie and Company at Gladstone whicb acbieves a most satisfactory and desirable distribution of the sawn product to the Westland district. (N35:app12)[318]

Of the two tenderers on this occasion, AG Howe was the lower, and the Forest Service recommended that, in the event of the Maori Trustee requiring acceptance of the bigher tender, AG Howe should be given the opportunity of meeting the sum offered by its rival. Mr Wickens had a further point:

> given that AG Howe and Co [sic] had only one competitor in 1966 . . . in fact there was not a lot of interest in the timber on the land and the Maori Trustee, concerned to produce a return, had few choices open to him. (N34:15)

Concerning the trustee's lack of consultation with the owners on the different decisions that were made over the years regarding the administration of the reserve, the deputy trustee's general thrust was that this reflects the legislative and other constraints on the trustee, and that the criticism should be directed at the Government.

The Tribunal's conclusion

3.34.6 The four allegations made by Mr McAloon are directed at the Public Trustee and the Maori Trustee. The position of the Maori Trustee in relation to ber or his obligations to the beneficial owners was discussed in full in the *Ngai Tahu Report 1991*. As we set out in the main report, the question of the Maori Trustee's administration was investigated as part of the Commission of Inquiry into Maori Reserved Land 1974. The commission considered that there was a solid basis of fact underlying and supporting criticisms regarding the lack of consultation with the beneficial owners and the remote and impersonal administration. However, the commission came to the view, which the Tribunal endorses, that mucb of the criticism could be attributed to the restrictive legislation within whicb the Maori Trustee had to operate. We reiterate our finding in the main report that the actions and omissions of the Crown bave been primarily responsible for the allegations such as lack of consultation, rather than any failing of the statutory trustees (*Ngai Tahu Report 1991*, para 14.8.2). With regard to the Mawheranui reserve, there is no evidence to suggest that the Maori Trustee acted either negligently or in breacb of the trustee's statutory duty.

The fact remains, however, that under the system set up by the Crown, whereby Ngai Tahu's reserves were leased in perpetuity and the control of sucb reserves was vested in statutory trustees,

Ngai Tahu were unable to exercise rangatiratanga over their lands. This, we feel, is in direct contravention of the guarantees of article 2 of the Treaty. While we do not find against the Maori Trustee, we uphold Mr McAloon's concern relating to the lack of statutory provision for consultation with the Maori owners of the reserved lands.

3.35 Claim no: **42**
Claim area: **Whakapoai reserve**
Claim:

According to Mr McAloon, the following events illustrate the possible injury brought upon the tribe through a lack of consultation.

3.35.1 The Whakapoai reserve was a 100-acre schedule B reserve, set aside by James Mackay in 1860. The land lies on the coast at the mouth of the Heaphy River, and parts are covered with rata, kamahi, and other native trees, none of which are millable. This reserve, section 6, block V, Whakapoai survey district, is not to be confused with the 1600-acre landless natives allocation which was also in the Heaphy valley.

The reserve had been leased from time to time on renewable 21-year terms. The revenue from leasing was minimal, especially when divided among the numerous owners. In 1956 a 'large number' of owners were said to have received less than £2 from the first distribution in 25 years (D5:511).[319] When the last lessee died in 1953, the Maori Trustee had difficulty finding a new lessee. Grazing on the reserve was restricted to about 30 acres, and access to the area was difficult.

In 1956 it was reported that the Department of Lands and Survey was interested in preserving the bush on the reserve and it was recommended that the reserve be acquired for scenic purposes by the Crown for the 1949 Government valuation of £175 (D5:511).[320]

The Maori Trustee concurred, but felt it advisable to first obtain the views of the owners about such a proposal (D5:513).[321] Although not a meeting of assembled owners as such under Part XXIII of the Maori Affairs Act 1953, a meeting was none the less held at Kaiapoi on 5 August 1956 in order to receive the owners' views on the proposal. Fourteen owners attended the meeting and others, both for and against the proposal, responded by letter. Those at the meeting were unanimously opposed to the sale (D5:520).[322] In light of this, they were informed by the Maori Trustee's agent at the meeting that the land would be revested with them, and that any future alienation would be dealt with by the Maori Land Court. It was recorded that 'They seemed satisfied that this was the proper course'.

Mr McAloon pointed to the lack of statutory provision for consultation. He alleged that this incident illustrates the great gap that could exist between the perceptions of the trustee and those of the people on whose behalf the trustee was acting. 'We can only wonder', he said 'how many decisions of the Trustee would have been opposed had consultation taken place' (D3:52). Mr Wickens, on the

other hand, said that this was unfair speculation. He stated that the Maori Trustee, in carrying out her or his duties, may often be faced with more than one choice of action and, although the merits of other choices could no doubt be argued strongly, this does not necessarily mean that the trustee has behaved improperly (N34:15).

It appears from the documents submitted by the Deputy Maori Trustee that the land was not subsequently revested with the owners. In 1958 the reserve was made subject to a perpetual lease for 21 years and in 1971 the lessee offered to purchase the land for the unimproved value of $180. The Christchurch district officer approved of such a sale, and urged that, for economic reasons, it should proceed without consulting the owners:

> We have not written to the owners concerning the lessee's offer to buy. The cost of this including printing and stationery would be greater than the commission we would receive on the sale and we recommend that all interests being uneconomic be acquired by means of Section 41D/53 and disposed of to enable the freeholding to proceed. (N35:app16)[323]

Because no owner of the section received more than 50 cents from the annual rental of $9, all would have come under the category of having 'uneconomic shares'. It appears, however, that this course of action was not followed. The reserve at Heaphy was one of those transferred to the Mawhera Incorporation on 31 May 1976.[324]

The Tribunal's conclusion

3.35.2 The statements made by the Tribunal in the previous claim with respect to the lack of consultation and the deficiencies in the legislation to enable closer Ngai Tahu involvement with lands administered by the Maori Trustee apply in this instance. The land is now vested in the Mawhera Incorporation and, we assume, still subject to perpetual lease. No doubt the incorporation will be looking at management and development options once the Government has taken action to rescind such leases.

As stated in its 1991 report, the Tribunal found the scheme of perpetual leases under the Maori Reserved Lands Act 1955 to be in breach of the principles of the Treaty. This issue has again surfaced in several of the ancillary claims here reported. In a general submission made by Crown counsel (AB34:7), the Crown refers to proposals for settling the perpetual lease issue that were announced in 1993 by the then Minister of Maori Affairs, the Honourable Doug Kidd, in a paper entitled *Framework for Negotiations: Toitu Te Whenua*. A special panel headed by retired Chief District Court Judge Peter Trapski was appointed to undertake public consultation on these settlement proposals. That panel has now completed its work and reported back to the Minister.

Following the report of this special panel and a consideration of its recommendations, the Government issued yet another policy document, *Toitu Te Mana, Toitu Te Whenua: Maori Reserve Lands Government Policy Decisions 1994*.

The difference between this policy document and earlier ones seems to lie in the assertion that this document now sets out the Government's final decisions. In a foreword signed by the Minister of Maori Affairs and the Minister of Lands, it is stated that these final decisions 'provide a fair and just legislative framework for individual negotiation'. The booklet announces that the Government aims to pass legislation in 1995 amending the Maori Reserved Land Act 1955. Interested parties will be given one final opportunity to make submissions to the select committee.

It is gratifying to note that the Government is now finally moving to terminate all perpetually-renewable Maori reserved land leases and to phase in market rents. However, the detailed terms of the policy still fall short of this Trihunal's 1991 recommendation to constitute a just and proper settlement. The date on wbich a perpetual lease terminates could be from 42 to 63 years bence. Market rents will not be introduced immediately but will, after a three-year hold at present levels, be pbased in over the next four years. Rent reviews will take place every seven years, which is completely out of line with current rent reviews for commercial properties. Lessees are to be paid a very small compensation of between 1.85 percent and 2.9 percent of the uninproved value. Maori owners, on the other hand, have to use the Treaty of Waitangi claims process to have compensation claims considered. In its main 1991 report, the Tribunal noted that Ngai Tahu were prepared to forgo compensation for what they had lost. That report was issued in early 1991 and no douht Ngai Tahu's views were hased on the belief that the Government intended to place rents immediately on a freely negotiated market basis. Whether the claimants and other Maori bodies representing the Maori beneficial owners of vested lands will in 1995 adopt a similar compromising stance cannot be predicted. Evidence presented to this Tribunal six years ago suggested a substantial loss suffered hy Maori owners from the low rents fixed hy legislation and reviewed at 21-year intervals.

It remains to be seen whether the Government will change any of the detailed terms as the legislation progresses through the select committee stages.

This Trihunal reiterates the findings made in the 1991 report that perpetual leases and lack of consultation with Maori were in breacb of the Treaty. It appears to this Tribunal that the 1994 policy decision, while commendahle in the stated ohjective of terminating the perpetual provisions and moving to market rents, may yet need further change to the details to remedy the severe injustice suffered by Maori and to provide a fair and just solution. The Tribunal bere comments that its 1991 recommendation on rent reviews sought review periods of five years in respect of commercial and rural land and seven years in respect of private residential land. This was the amendment sought by Ngai Tahu and incorporated into the Tribunal's recommendations. While the Tribunal maintains its position as stated in paragrapb 14.9.7 of the 1991 report, we acknowledge that there may well be a case for having commercial property rents reviewed every three years rather than every five years. No doubt this may well be a matter of detail to be resolved before the select committee.

Until legislation is passed to break the perpetual lease and ameliorate the terms on which Ngai Tabu can negotiate with its lessees, the Crown will continue to be in serious breach of its Treaty obligation, as set out in the 1991 report.

3.36 Claim no: **43**
Claim areas: **Westport sections 721 and 732**
Claim:

> **Mr McAloon alleged that these two Westport sections were sold by the Maori Trustee without coosultation with tbe owners.**

3.36.1 Westport town sections 721 and 732, both comprising one rood, were situated in Peel Street, on the eastern outskirts of Westport. By 1967 both sections had long since been left lying idle; section 732 was said to have been an old creek bed whicb was now covered in dense hlackberry, and section 721 was reported as 'low lying, very wet and with poor drainage' (N35:app29).[325] Intermittent attempts had been made to arrange leases for the sections, but to no avail. The Government valuations of the sections, assessed in 1965, were low. The capital values were given as £20 for section 732 and £15 for section 721 (N35:app24).[326] On the other hand, reference was made in 1967 to a Department of Lands and Survey field report of the same year whicb gave section 732 a capital value of £150 (N35:app29).[327]

In 1967 the Westport Borough Council was contemplating filling and subdividing land adjoining section 732 and offered to purcbase the section for the Government valuation. The town clerk suggested that section 9(2) of the Maori Reserved Land Act 1955 might apply:

> Where any reserved land which, by reason of its size, configuration, nature, or quality, cannot, in the opinion of the Maori Trustee, profitably be used in the interests of the beneficiaries on wbose behalf the land is administered, the Maori Trustee may, with the consent of the Minister, sell the land upon sucb terms and conditions as the Maori Trustee thinks fit. (N35:app26)[328]

Consultation with, or the consent of, the owners was not required.

In the result, the council bought section 732 for $50 in December 1967 (D5:520c).[329] None of the owners were consulted. Section 721 met a similar fate the following year, except that the council paid only $20, the amount, it was said, of a 'Special Government Valuation' (D5:520f).[330]

The Tribnnal's conclnsion

3.36.2 Yet again we see another instance in whicb two sections left out of the 1860 Crown purchase have been lost to their owners as a result of sale without consultation with their owners. Although the Maori Trustee was acting within the jurisdiction conferred under the Maori Reserved Land Act 1955, there appears to have been no attempt to ascertain the owners' views. The fact that the trustee was not required by law to do so we consider to be a breacb of article 2 of the Treaty, which guaranteed to Ngai Tahu rangatiratanga over their lands. The grievance is upbeld.

3.37 Claim no: **44**
Claim area: **Kotukuwhakaoho MR 34**
Claim:

Mr McAloon gave evidence that this reserve has been reduced by excessive Crown acquisitions for roading and railways (D3:52).

3.37.1 James Mackay reserved 250 acres for individual allotment 'On South Bank at junction of the Kotukuwhakaoho and Grey' (D5:18).[331] This was one of the schedule A reserves which became subject to the Native Reserves Act 1856.

Different parts of the reserve have been taken by the Crown for roading and railway reserves. The first survey of the reserve recorded the area as 239 acres 2 roods 32 perches.[332] Mr Alexander noted that this survey shows the frontage of the reserve on the Grey and Arnold Rivers as legal road, despite this boundary being described in the 1886 *Gazette* (which brought the reserve under the provisions of the Native Reserves Act 1856) as river bank.[333] Mr Alexander suggested that the reason for the survey being over 10 acres less than that reserved by James Mackay 'may well have something to do with the laying off of the riverbank roads'. He noted that a later plan of June 1884 'scaled the riverbank road off at 11140 links, which at 100 links (one chain) width represents 11 acres 0 roods 22 perches' (AB35:37).

The reserve was next surveyed in June 1884 and its area given on the survey plan as 242 acres 36 perches (D5:521).[334] This plan shows that 9 acres 2 roods 35 perches had been marked off for a railway reserve, and 3 acres 3 roods 27 perches had been laid off for Arnold Road (D5:521).[335] It also shows a Manri Gully Road. The area of railway was updated by the same surveyor later that year to 10 acres 19 perches.[336] In 1888 a further survey showed that the railway developments were greater than were envisaged in 1884: it showed a total of 38 acres 1 rood 3 perches was taken for railway purposes.[337] As well, Reefton and Maori Gully Roads were shown as public roads without any area given. Mr Alexander estimated that 'these scale out at just over 5 acres' (AB35:38).

The railway land was laid off for the Midland Railway Company Ltd, a 'private company which had certain rights under the Railway Construction and Land Act 1881 by virtue of an agreement made with the Crown' (AB35:38).[338] No information has been located concerning the company's dealings with the Public Trustee in regard to compensation. Mr Alexander explained that no title to the reserve had been issued at the time, so there is no easy method of determining what agreement was reached. In 1900 the Midland Railway Company's lands were taken over by the Crown 'in lieu of debts owed'.[339]

A subdivision survey of the reserve was commissioned by the Public Trustee in 1902, which Mr Alexander stated was 'presumably for leasing purposes' (AB35:38).[340] The plan showed the area of land taken for roads and railways as 40 acres 5 perches, which Mr Alexander rightly pointed out is incorrect; the actual area is more than 42 acres. This 1902 survey, therefore, gives a total of 201 acres 3 roods 31 perches remaining in Maori hands.[341]

In 1919 a further 5 acres 2 roods 39.72 perches were taken for the Greymouth to Otira railway line, 'in addition to land previously acquired for the purposes of the said railway'.[342] This was taken in two lots, one of 2 acres 2 roods 31.13 perches and the other of 3 acres 8.59 perches. A further 1 acre 1 rood 23.8 perches were taken in October 1922 for the same purpose.[343] This left a total of 194 acres 3 roods 7.48 perches, which was also the area for which title was issued in December 1922 (AB22:220). The Native Land Court was requested to determine compensation for these three areas in May 1923 (D5:531).[344] In the meantime, however, agreement on the amount of compensation to be paid was reached between the Railways Department, the Native Trustee, and the lessee of the lots of 3 acres 8.59 perches and 1 acre 1 rood 23.8 perches (D5:530).[345] On 20 November 1923 compensation was determined at £207 6s and awarded to the parties involved (D5:526).[346] The Native Trustee received £57 6s for the freehold of the areas.

In 1972, 29.7 perches were taken from the reserve for a road and, in 1981 and 1984, 1.406 hectares and 1.430 hectares respectively were taken for the same purpose. Thus, 193 acres 3 roods 25.65 perches (78.4727 hectares) of the Kotukuwhakaoho reserve remain Maori-owned. The reserve is currently administered hy the Mawhera Incorporation (AB35:39).

Since 1884 the area of the reserve, then, has consistently been treated as 242 acres. Mr Alexander calculated that the reserve 'may more properly be considered to have had an area closer to 255 acres if the 11 acre riverbank road and underestimation in the 1902 survey is allowed for' (AB35:39).

The Tribnnal's conclusion

3.37.2 Nothing is known of the measures taken to notify or consult with the beneficial owners of this land about the various compulsory acquisitions. As it was under the jurisdiction of the Native Trustee, however, it can be assumed that the owners were not notified at all. Mr Alexander pointed out how strategically valuahle, in terms of transport links, the reserve has turned out to be. This explains, in part, why so much of the reserve was taken for this purpose. However, this does not detract from our findings concerning the lack of consultation with and notification given to Maori owners about the taking of their land for puhlic works (see claims 1, 18, and 51, and para 9.4). We also refer to our findings in the last four claims that the Crown's policy of issuing perpetually renewable leases of Maori land, with the control of such reserves vested in statutory trustees with no provision for effective consultation with the beneficial owners, was in clear breach of article 2 of the Treaty.

3.38 Claim no: **45**
Claim area: **Kaiata MR 33**
Claim:

Mr McAloon objected to a 10-acre strip being taken from the Kaiata reserve for the Greymouth to Hokitika railway (D3:52).

3.38.1 Two hundred and fifty acres were set aside in 1860 on the 'South Bank of River Mawhera, at Kaiata' for individual allotment.[347] Section 33, hlock IX. Arnold survey district was subsequently bisected by a railway reserve for the Greymouth to Hokitika railway line (D5:525).[348] According to Mr McAloon, this happened in 1886. He also claimed that the area taken for the railway comprised a 'ten-acre strip'.

The tracing cited by Mr McAloon does not give the acreage taken for the railway but it is apparent that it was much less than a 10-acre strip. In addition the tracing shows that after the railway area was deducted the acreage of the reserve was 250 acres 3 roods 22 perches, just over the original allocation. This is boroe out hy information pertaining to the hlock at the Maori Land Court in Christchurch. The land was transferred to the Mawhera Incorporation in 1976.

The Tribunal's conclusion

3.38.2 The Trihunal does not accept that there has been any breach of Treaty principles in this particular case.

3.39 Claim no: **46**
Claim area: **Arahnra MR 30**

A number of criticisms were directed at the administration of the Arahura reserve, namely that:

- **excessive roads were made in the reserve;**
- **the Maori Trustee failed to provide flood protection;**
- **the beneficial owners were not consnlted over deeisions affecting the reserve; and**
- **the Maori Trustee failed to apply revenue to purposes agreed on by the beneficial owners.**

3.39.1 The history behind the creation of this reserve has been discussed in the *Ngai Tahu Report 1991*. The Arahura reserve comprised 2000 acres running from the coast along the banks of the iwi's prized river. The area had been expressly set aside to protect Ngai Tahu's rights to pounamu.

The reserve was set aside for individual allotment and in 1879 Commissioner Young recommended that title to different areas of the reserve be granted to the people set out in his schedule. He also recommended that Ihaia Tainui, Ripini Waipapa, and Henare Meihana be appointed as trustees with the power to lease the land for a period not exceeding 21 years.[349] Less than four years later, however, the reserve was listed in Alexander Mackay's report on Maori reserves that were subject to the Native Reserves Act 1882.[350] Title to all such reserves was vested in the Crown.

Roading in the reserve

3.39.2 In February 1868 John Hall, Secretary for Public Works in Canterbury, reported on the roading in the Westland province and, in particular, the problems of access which had arisen in the Arahura reserve:

> I am informed that a considerable portion of the Arahura reserve has now been leased without any reservation having been made in favour even of such lines of road as are absolutely necessary to keep open communication between the Northern and Southern parts of the West Coast, so that, for instance, one of the blocks so leased contains the only practicable crossing for the main road from Christchurch to Hokitika, and another block, if fenced, would bar all access to the bridge erected across the Arahura River, over which the whole of the traffic along this part of the coast is now carried. I need hardly state that it would be found practically impossible to close such lines of communication, even if a legal right to do so could reasonably be asserted, which does not appear to be the case, and that any attempt to effect such stoppage might lead to very embarrassing results. I have therefore felt bound to exercise without delay the right reserved as above mentioned, to take such further roads as are indispensable for the general traffic of the district, and have instructed Mr Fraser, the County Surveyor, to lay out in the first instance the necessary line to provide free access to the Arahura bridge, and to a safe ford at the lower part of the River. (D5:573)[351]

Alexander Mackay, then Native Commissioner, was furnished with plans of the reserve 12 months after the surveys had been completed. On 6 March 1869, he relayed to the Under-Secretary of the Native Department his concern that the extent of roading laid out would render the reserve worthless:

> I have the honour to enclose herewith a tracing of the Native reserve at Arahura, showing the lines of road laid through it by the County Government, who have seen fit, owing to an imaginary right on their part to intersect the property with a perfect net work of roads and other thoroughfares, thereby rendering the land, if some of these lines are carried out, comparatively useless for occupation.
>
> The Government appear to imagine that, because an excess of 560 acres was made for road purposes when the reserve was laid off, in excess of the area of 2000 acres the Natives are legally entitled to, it has a right to step in and lay off lines of road any where through the property, whether the land is occupied or not. (D5:572)[352]

The railway line, continued Mackay, occupied 100 acres of the best land in the reserve, and areas to the extent of 170 acres were laid off for other roads. Mackay had sent a written protest to the chief surveyor about the road lines laid out over the reserve, especially those of the railway. He suggested that instead of carving up the reserve, 'without considering the interests of the property', the Government should take back the 560 acres from the upper end of the reserve, 'in order that the Natives may enjoy the full benefit of the block to which they are entitled without fear of encroachment for the future' (D5:572).[353]

The 560-acre surplus area for road purposes alluded to by Mackay had not been the subject of any formal arrangement between the Government and the Ngai Tahu owners of the reserve. In Mackay's view:

> no special arrangement was made in the matter of roads through the reserve, further than it was generally understood by the persons beneficially interested in the land, that one line of road should be allowed over all the reserve. The idea of setting apart 560 acres for road purposes, in excess of the original area, must have originated with the Surveyor, Mr Mueller, who laid off this reserve among others, or else with the Provincial Government of Canterbury, in whose employ he then was.
>
> There can be no serious objection to some of the lines of road laid through the reserve, the Christchurch road especially, as that has enhanced to a great extent the value of the land for occupation, or against some of the branch lines, as they do not detract from the value of the property; but it is the right asserted by the Government to take roads where they please, whether over land in occupation or otherwise, because an excess of 560 acres was added for road purposes when the reserve was surveyed, that special objection ought to be taken to. (D5:572)[354]

An affected tenant later made a claim to the provincial government for compensation of £100. The government felt that compensation should come from the Native Trust, on the ground that the government had a right to take roads through the reserve wherever it was found necessary because of the 560-acre road allowance which had been added to the reserve. Again, Mackay strongly objected to such a proposal:

> the Government have no right to take roads through the reserve without agreement and compensation, . . . in the case of the road required to the Bridge at Arahura, the land could only be obtained by taking it under 'The Public Works Act, 1864,' and compensating the occupant in the manner prescribed by that Act. (D5:577)[355]

In 1870 the Westland County Council sought to replace a washed-out road on the reserve. It requested that half the cost be met by the Native Trust. Mackay agreed on condition that:

- the local government pay the lessee's £100 compensation claim for the road that was put through his leasehold;

- if the Government in the future saw fit to construct another road on the reserve, the Native Trust would not be called on to meet any of the costs, either for constructing the road or for paying compensation to any occupants; and

- the Government would take back the 560 acres included in the reserve for roading purposes, less 170 acres already absorbed by roads from the upper end of the reserve, so that the reserve was not encroached upon in the future. (D5:577)[356]

In order to maintain the size of the reserve, it was envisaged that Ngai Tahu would exercise their pre-emptive right and purchase the 390 acres taken by the Government in accordance with the third condition. The conditions were agreed to by the county chairman and authorised by the Native Department.

Declaration of a public road

3.39.3 Mr McAloon alluded to further roading problems in the Arahura reserve which occurred in the 1940s. He claimed that some roads through the reserve were made by the council without the authorisation to do so (D3:59). In 1944 the county council applied to the Native Land Court to have these roads, comprising 37 acres, declared public roads without compensation being paid. This was agreed to by the court and confirmed by proclamation in 1945 (D5:581).[357] Mr Wickens stated that there does not appear to be a case for the Maori Trustee to answer.

The Maori Trustee's failure to provide flood protection works

3.39.4 The reserve was subject to extensive flooding and damage from erosion over the years. As Mr McAloon pointed out, this affected the value of the land and was reflected in the low rentals paid by the lessees. To illustrate this grievance, the claimant historian pointed to an appeal to the Maori Trustee in 1957 by one of the lessees affected by the flooding.

In June 1957 a Mr J Bradley, the lessee of sections 52, 53, and 54, approached the Maori Trustee for financial assistance to construct permanent protection works on his land (D5:540).[358] The Westland Catchment Board had agreed to provide permanent protection measures on a three to one subsidy, leaving Mr Bradley to find £500. The lessee claimed that he had contributed to previous protection works and had carried out repair measures ever since at his own cost. He asked the trustee for £150.

His request was refused, although a remission of two years' rent was offered. The Maori Trustee received £300 a year from the whole of the Arahura reserve. Mr Bradley was asking for half of this amount for his affected sections. Most of the sections comprising the reserve were leased for 21-year terms with a perpetual right of renewal, the lessees owning all improvements. In response to representations made by Mr Bradley, the Minister of Maori Affairs explained:

> There is clear evidence that, in the assessment of the rents, the danger from flooding and erosion has always been taken into account. This is the reason for the very low rents — so low, in fact, as to give support to the proposition that the leaseholds are, in the hand of the lessees, little short of freeholds. The interest which the lessees have is so great as almost to blot out the interest of the beneficial owners, and it follows that it would be unfair to ask the owners to bear any but the smallest part of the burden of protection. (D5:541)[359]

Mr McAloon stated that the problem with this reasoning is that no other party — not the leaseholders, the local bodies, or the Crown through the Ministry of Works — regarded itself as liable for the costs of protection.

This statement is not altogether valid. While the documents submitted to the Tribunal are sketchy and do not give a complete picture, it is evident that substantial protection measures were carried out on the reserve. In 1950 protective works to the value of £522 were needed to shield the Arahura pa from serious flooding. Two-thirds of this cost was met by the Soil Conservation and River Control Council, and approval was given to take the remaining £174 from the civil list (Maori purposes) (D5:539).[360] In a later account there is a reference to $1396 [sic] being provided from the civil list in the years 1950 to 1955 to protect the Arahura pa from erosion which threatened several homes (D5:543).[361] There is also a reference to a 1956 contribution by the trustee of £100 for protection works affecting two other leasehold sections (D5:541).[362] In the very example that Mr McAloon used to prove his point, it is clear that two-thirds of the cost of protecting Mr Bradley's property was to be met by the Westland Catchment Board, and that the lessee was doing his utmost, as he had in the past, to finance the remaining third.

This is not to say that in every case protection was provided, or that the value of the land did not decline. However, as outlined by the Minister of Maori Affairs in 1958, the Maori Trustee was faced with a dilemma:

> It is one of difficulty for him in that, while knowing that the protection work is necessary to save the land, he must see that the owners are not made liable for payments out of all proportion to their interest in the land. (D5:541)[363]

It would be difficult to justify spending half the annual revenue of the reserve on protection works which would benefit a single leasehold.

In December 1974 James Russell, on behalf of the Arahura Tribal Committee, wrote to the trustee, informing him that the existing protective works were in need of urgent reinforcement and repair (D5:542).[364] He asked if the fund which had financed the earlier works could be made available for further preventative measures. The trustee replied that the question of deciding whether protection work was required was the responsibility of the Westland Catchment Board (D5:543).[365]

Lack of consultation with the beneficial owners

3.39.5 Mr McAloon instanced a number of decisions made about the utilisation of the reserve under the administration of, firstly, the Public Trustee and, later, the Maori Trustee, without consultation with the beneficial owners. These are discussed in chronological order below.

The use of the Arahura River

3.39.6 In April 1888 the Arahura River was declared a watercourse for goldmining tailings under the Mining Act 1886 (D5:534–535).[366] In 1890, £1850 compensation and £75 costs were said to have been paid to the Public Trustee for distribution to the Ngai Tahu owners for actual and prospective damage to the reserve as a result of this (D5:536).[367] Mr McAloon claimed that the Crown never consulted the Ngai Tahu owners over the use of this most important river.

The bulk of the compensation was distributed. By March 1908, £161 10s 2d was being held for 16 named owners and, one year later, all but £43 19s 9d had been disbursed. This remained with the Maori Trustee until January 1958, when it was decided to give the money to the Arahura Tribal Committee for its community centre project (D5:536).[368]

The subdivision of the reserve

3.39.7 Mr McAloon alleged that, in the early 1900s, private arrangements between the Ngai Tahu reserve owners and the leaseholders were made for parts of the Arahura reserve (D3:55). Although it was pointed out by the trustee that this was illegal, the arrangements were ratified. According to Mr McAloon, the owners entered the arrangements to forestall the risk that they perceived of the trustee making subdivisions in the reserve that would conflict with their own purposes. He cited a letter from Hoani Tainui to the Public Trustee on 8 January 1909 to support this (D5:569).[369] It is questionable, however, that this is what the correspondence is about, and there is no indication that the subdivision was arranged by the trustee. Mr McAloon's allegations are unsubstantiated by his evidence.

Gold and oil prospecting

3.39.8 Mr McAloon also alluded to the use of the reserve for gold prospecting in 1918 and oil prospecting in 1943. In neither case, he argued, did the law require the approval of the Maori owners. In documents submitted by the claimants' historian, it is evident that section 42 of the Arahura reserve, comprising 47 acres, was leased to the Westland Gold Prospecting Syndicate Ltd in 1912 for a period of 21 years (D5:549).[370] Regarding his evidence on oil prospecting, it seems that in 1943 the New Zealand Oil Exploration Ltd was contemplating sinking a bore on the reserve (D5:550).[371] It is evident from the single letter adduced by Mr McAloon that the registrar of the Ikaroa District Maori Land Board had ascertained that the reserve would not be adversely affected by the drilling.

The removal of gravel

3.39.9 In 1957 an arrangement was made between the Westland Catchment Board and the Maori Trustee about the removal of gravel from the bed of the Arahura River to within the boundaries of MR 30 (D5:555).[372] Private contractors had first to obtain a permit from the board to remove the gravel, and the board passed on the royalties to the Maori Trustee. This revenue was then distributed to the beneficial owners. Under the agreement, the board and any other local authority had the right to take gravel without paying royalties. In 1974 the district officer claimed that the agreement was made 'with the knowledge of the Arahura Maori Committee' (N35:app20).[373]

The issue was raised at a meeting of the Arahura Tribal Committee held in March 1958. The owners felt that the charge of sixpence per yard was too low: '1 [shilling] a yard would have been reasonable' (D5:551).[374] The committee also wanted the trustee to apply the proceeds from the gravel removal to the construction of a Maori community hall or meeting-house.

The trustee replied that, although one shilling per yard had initially been suggested, the Westland Catchment Board had considered this too much, and had reduced the charge accordingly. On the second point it was noted that:

> The Maori Trustee has no authority to apply rents or other income from the reserve for the purpose suggested. If the owners wish this money to be contributed to the community hall, it will be necessary for them to do this voluntarily on receipt of any distribution of the royalty. (D5:552)[375]

Mr McAloon criticised the law which allowed the trustee to enter into contracts for the use of the reserve without consulting the owners, but did not require the trustee to use the rent in ways directed by the owners (D3:54). In rebuttal, Mr Wickens stated that, although the trustee was bound to observe the relevant law, he was not deliberately obstructive. He referred to another fund-raising proposition, the milling of timber on the reserve, to illustrate his point.

In 1958 a meeting of owners was called to discuss whether timber on the reserve should be milled to raise money for the community hall project. The owners were equally divided on the proposal. Mr Wickens noted that, even if there had been authority to make money available, this fact in itself would have presented the trustee with a difficulty. The Maori Trustee, however, was prepared to:

> make available the proceeds from the sale of the timber on the reserve in so far as it affects the shares of those owners who voted in favour of the proposal. (N35:app21)[376]

Mr Wickens concluded that this arrangement was reasonable. It may also be remembered that the residue of compensation from the declaration of the river as a watercourse in 1888 was also applied by the trustee to the construction fund.

The quantity of gravel removed over the years from the riverbed within the reserve did not amount to much. In 1975 even this was brought to an end hy the trustee, as a result of a request by the Arahura Maori Committee (D5:558).[377]

The removal of topsoil

3.39.10 Lastly, Mr McAloon alleged that in 1975 the Maori Trustee allowed topsoil to be taken from the reserve for a school playground. In March 1975 James Russell laid a complaint about the fact that topsoil was being taken from sections 70 and 71 of the reserve (D5:563).[378] The soil was taken hy the lessee of the sections and used for the Hokitika Primary School playground. Mr Russell was told hy the Hokitika office:

> the legal owner of the land is the Maori Trustee who . . . has a contract with the lessee and no third party intervention would do any good. I found it necessary to remind him that the recommendations of Commission are merely recommendations and the Govt may never act on them. I then said that removing topsoil was most likely not in itself a breach of covenant, but if [it] had the effect of impoverishing the land then this most likely would be, hut it was more a question of effect or result of an action rather than the action itself. (D5:563)[379]

Mr McAloon cited this as evidence that sections of the Maori Affairs Department did not regard themselves as accountahle to the Maori people. The advocate of this view, however, was rehuked by the district officer in Christchurch, who then investigated and upheld the owners' complaint (D5:564–568).

Mr McAloon claimed that this was yet another example of the trustee entering into arrangements for the reserve without consulting the owners. The evidence, however, suggests that the Maori Trustee was not aware of the removal of soil until Mr Russell's complaint (D5:568).[380]

The Tribnnal's conclusion

3.39.11 Dealing firstly with the question relating to excessive roading, the Tribunal considers that, on the evidence availahle to it, it is unable to make a finding either way. Mackay was certainly concerned about the extent of roading laid through the reserve in 1869 and he proposed measures to prevent further encroachment into the reserve through roading. However, the exact extent of land ultimately taken for this purpose was not submitted hy the claimants, nor was it the suhject of inquiry by the Crown.

On the question of flood protection, it is apparent that some measures were taken by the Maori Trustee (as well as other bodies) when the trustee considered that flood protection works were warranted. We agree with the Minister of Maori Affairs' statement in 1958 that the trustee was forced to weigh up the need for the works against the limited interest that Ngai Tahu had in the land as the beneficial owners. We consider that the Maori Trustee acted to protect the owners' rights

against those of the lessees. The Tribunal is not prepared to find that the Maori Trustee failed in the exercise of his statutory duty in respect of flood protection work on the Arahura reserve.

The claimant also raised once again the lack of consultation over decisions affecting the reserve. The Tribunal has already dealt with this question and set out its views in claims 41 to 44. The Crown's policy of leasing Manri reserves in perpetuity with statutory managers in control had the result of alienating Maori from their land. The failure to ensure that effective consultation was undertaken with the beneficial owners we find to be a clear breach of article 2 of the Treaty.

It might be said at this point that it appears that Mr McAloon has carefully gone through the administration of all of the reserves left for Ngai Tahu which have subsequently been vested in the Mawhera Incorporatioo. The Tribunal considers that it is not difficult to present a critical analysis of the past administration of the land by selecting from the records those matters which appear to justify criticism. In some cases, however, research by the Maori Trustee refutes the claims voiced by Mr McAloon in his submission and the rather general allegations that he raises. On the other hand, there is no doubt that his submission further emphasises the deficiencies in the consultation and decision-making process under the trustee's administration which would probably not occur in present times. The Tribunal has already commented on this matter and held it to be a clear breach of article 2 of the Treaty.

3.40 Claim no: **47**
Claim area: **Freeholding and incorporation**
Claim:

> **Mr McAloon alleged that the attitude of the Maori Trustee towards both freeholding land and the formation of the Mawhera Incorporation left a lot to be desired (D3:59).**

The Maori Affairs Amendment Act 1967 provided for two important developments for Maori reserved lands: it allowed leaseholders to freehold with the consent of the beneficial owners and it raised the possibility of Maori owners forming an incorporation to manage their own reserves.

The Mawhera Incorporation was formed in 1976 and subsequently took over the management of all of the reserves in the Westland region which had previously been administered by the Maori Trustee.

Freeholding

3.40.1 Mr McAloon conceded that all of the records point to the trustee having been scrupulous in observing the letter of the law. However, he cited the following excerpt from a 1971 minute sheet, which, he maintained, revealed something of the trustee office's attitude towards freeholding:

> When some owners are paid it may influence other owners to offer their shares. (D5:583)[381]

This observation, Mr McAloon submitted, 'indicates a strong preference for freeholding, and an attendant lack of sympathy for or understanding of alternatives' (D3:60).

Mr Wickens, on the other hand, pointed out that it was in fact a minute by a man on the bottom clerical public service grade seeking direction from his controlling officer. The response to such an observation, he contended, would be more indicative of official attitude. Moreover, Mr Wickens stated that the observation, together with others quoted by Mr McAloon, must be seen in the context of the administrator's role in implementing section 155 of the Maori Affairs Amendment Act 1967. Such observations could, therefore, be 'interpreted as merely offering some strategy for trying to give effect to that section, and as such devoid of sentiment' (N34:18).

Incorporation

3.40.2 Mr McAloon went on to cite correspondence which he believed displayed a similar negative attitude towards the prospect of incorporation. In 1968 Dr Douglas Sinclair requested particulars from the trustee with the view to forming an incorporation to manage the Greymouth reserve. The inter-departmental correspondence relating to this request does not reflect well on the Maori Trustee (D5:584).[382] Dr Sinclair was given the relevant information, hut was told:

> There is no right of resumption in the leases and, so long as the lessees wish to renew, then renewals must be granted. In these circumstances, there does not seem to be much point in the suggestion that the owners should incorporate and take over the administration of the Reserve. (D5:590)[383]

A similar request was made to the district officer in Christchurch by Whetu Tirikatene-Sullivan (D5:586).[384] The member of Parliament wanted the trustee to consult the beneficial owners of the Greymouth reserve on incorporation as a possible alternative to selling the land to lessees. The district officer saw her proposal as an attempt to undermine section 155 of the 1967 Act:

> I think if these people are successful in getting, say, Greymouth Reserve incorporated, it will completely defeat the legislation because it will transfer to the Incorporation the absolute discretion the Maori Trustee now has whether to sell or not and for their own purposes they could well deny the owners any choice on the question of sale. (D5:587)[385]

Mr McAloon claimed that these two excerpts reveal an attitude that Maori people are not able to administer their own affairs. This was countered by the Deputy Maori Trustee. He cited the Christchurch district officer's handing-over statement that was prepared for the incorporation as proof that the Maori Trustee was, on the contrary, most helpful to the owners (N35:app37–46).

The Tribunal's conclusion

3.40.3 The Tribunal is not prepared to make a finding on a general allegation such as that made in this matter. There can be no doubt that over a long period of time there have been Crown officers who have expressed views which are completely unacceptable. On the other hand, there have been actions of the Government in finally handing over the administration of these reserves to the owners themselves which are to be commended. Whatever the attitude may have been of persons involved in the administration of these lands, the fact of the matter is that they have now been handed over to tribal representatives to administer.

1. *Ngai Tahu Report 1991*, para 13.5.17

2. J Mackay to chief land purchase commissioner, 21 September 1861, *Compendium*, vol 2, p 40

3. 'Report of Mr Commissioner Young on Native Reserves on the West Coast, Middle Island', 25 February 1879, AJHR, 1879, sess II G-3B, p 5

4. *Compendium*, vol 2, p 387

5. SIMB 23, pp 372–373

6. 'Precis of Correspondence re Lands for Natives at Bruce Bay' in Commissioner of Crown Lands Hokitika to Under-Secretary for Lands, 19 August 1905, L&S 2220, NA Christchurch

7. Ibid, sketch of reserves in Abbey Rocks survey district

8. Sketch of reserves in Native Reserve 865, L&S 2220, NA Christchurch

9. *New Zealand Gazette*, 1908, pp 1514–1515

10. Certificate of title 2B/118

11. District officer Manri and Island Affairs Christchurch to Director-General of Lands, 30 October 1968. L&S Hokitika file 20/1, held by DOSLI Hokitika

12. Maori Trustee to Director-General of Lands, 14 April 1969, and Director-General of Lands to Maori Trustee, 6 May 1969. L&S Hokitika file 20/1, held by DOSLI Hokitika

13. Commissioner of Crown Lands Hokitika to Director-General of Lands, 26 July 1965, and Director-General of Lands to Secretary for Maori Affairs, 23 August 1965, L&S Hokitika file 20/1, held by DOSLI Hokitika

14. Director-General of Lands to Commissioner of Crown Lands Hokitika, 8 July 1966. L&S Hokitika file 20/1, held by DOSLI Hokitika

15. Director-General of Lands to registrar Maori Land Court, 16 June 1981, L&S correspondence 1981

16. SIMB 65, p 252

17. Report from lease inspector, 3 August 1983, correspondence file Westland 1, MLC Christchurch

18. 'Report of Mr Commissioner Young on Native Reserves on the West Coast, Middle Island', 25 February 1879, AJHR, 1879, sess II, G3-b, p 2

19. For the location of these reserves, see the map contained in correspondence file Westland 1, MLC Christchurch

20. 'Plan showing Maori Land situated in Blocks I and II Arawata Survey District', correspondence file Westland 1, MLC Christchurch

21. Chief surveyor Hokitika to registrar Christchurch, 7 July 1975, correspondence file Westland 1, MLC Christchurch

22. Sketch of Jackson's Bay special settlement, signed by Gerhard Mueler, chief surveyor, 13 December 1874. This sketch also shows the Waiatoto reserve in a different location from that in which it was subsequently surveyed. 'Immigration Correspondence within the Colony', AJHR, 1875, D5, after p 20.

23. Gerhard Muller (chief surveyor) to superintendent province of Westland, 11 December 1874, AJHR, 1875, D5 p 13

24. Published map of Jackson's Bay district, October 1875, L&S Hokitika file 168, National Archives Christchurch

25. 'Reserve from the Arahura Purchase', 11 February 1909, correspondence file Westland 1, MLC Christchurch

26. DOSLI Hokitika field book 184, pp 15–16 and 48–65, 8–11 January 1875; and DOSLI Hokitika field book 185, pp 13–14, 13 February 1875

27. *New Zealand Gazette*, 1875, p 121

28. 'Report of the Jackson's Bay Special Settlement Commission 1879', AJHR, 1879, H-9

29. Certificate of title 10/226

30. Certificate of title 20/149

31. *New Zealand Gazette*, 1940, p 627

32. Ibid, 1919, p 1284

33. Ibid, 1947, p 904

34. Resident engineer Greymouth to Commissioner of Crown Lands Hokitika, 13 June 1946; and chief surveyor Hokitika to Under-Secretary for Public Works, 29 July 1946. L&S Hokitika file 3/114, Department of Conservation West Coast Conservancy

35. *New Zealand Gazette*, 1965, p 163

36. SIMB 46, pp 222–223

37. Application under section 445 for a consolidated order, 5 May 1976, block file Westland 1, MLC Christchurch

38. Certificate of title 9/236

39. Bruce Bay has the status of a scenic reserve under the Reserves Act 1977.

40. Assistant engineer to engineer-in-chief, 21 June 1934, W1 23/381/27, NA Wellington

41. Memorandum of agreement between John Codon and His Majesty the King, 14 September 1934

42. Acting district engineer to the Permanent Head of the Public Works Department, 30 November 1934, W1, 23/381/27, part 1, NA Wellington

43. Acting district engineer to Permanent Head of the Public Works Department, 7 September 1934 and 30 November 1934, W1, 23/381/27, part 1, NA Wellington

44. County clerk Westland County Council to district engineer Greymouth, 24 Deeember 1934. Works and Development Greymouth file 21/4, accession CH130, NA Christchurch

45. District engineer to permanent head, 25 November 1935, W1 23/381/99, NA Wellington

46. Chief surveyor Hokitika to district engineer Greymouth, 22 November 1934. L&S file 3/114, Department of Conservation West Coast

47. Engineer-in-chief to district engineer, 20 January 1936, W1 23/381/99, NA Wellington

48. 'Schedule of Land Required for Aerodrome Purposes', 9 July 1937, W1 23/381/99, NA Wellington

49. Assistant under-secretary to chief surveyor; to registrar Ikaroa Native Land Court, 27 August 1937, W1 23/381/99 NA Wellington

50. 'Owners of Bruce Bay See 781', W1 23/381/99, NA Wellington

51. *New Zealand Gazette*, 1937, p 2243

52. Ibid

53. Statement of Tane Te Koeti, 19 October 1937, W1 23/381/99, NA Wellington

54. W K Bannister to Minister of Public Works, 25 October 1937, W1 23/381/99, NA Wellington

55. Surveyor-General to assistant under-secretary, 11 November 1937, W1 23/381/99, NA Wellington

56. Engineer-in-chief to chief surveyor, 21 April 1938, W1 23/381/99, NA Wellington

57. Note of chief surveyor to engineer-in-chief, 28 April 1938, W1 23/381/99, NA Wellington

58. Ibid, note on back

59. 'Schedule of land required for aerodrome purposes', 28 April 1938, W1 23/381/99, NA Wellington

60. *New Zealand Gazette*, 1938, p 1858

61. Ibid, p 2809

62. SIMB 30, pp 7–12

63. Ibid, pp 10–11

64. Court order, 15 February 1940

65. Acting district engineer to permanent head, 8 July 1940, W1 23/381/99, part 1, NA Wellington

66. *New Zealand Gazette*, 1949, p 872

67. District engineer to permanent head, 4 March 1937, W1 44/2/2, NA Wellington

68. Ibid

69. Copy of proclamation on file, W1 44/2/2, NA Wellington

70. W K Bannister to Minister of Public Works, 25 October 1937, W1 23/381/99, NA Wellington

71. Engineer-in-chief to W K Bannister, 8 April 1938, W1 44/2/2, NA Wellington

72. Engineer-in-chief and under-secretary to district engineer Greymouth, 14 July 1938, W1 44/2/2, NA Wellington

73. *New Zealand Gazette*, 1941, p 1328

74. Court order, 29 July 1941, Westland 54/14, MLC Christchurch

75. Under-secretary of the Department of Lands and Survey to Permanent Head of the Public Works Department, 11 March 1940, L&S 4/63

76. Ibid

77. Under-Secretary, Department of Lands and Survey, to R Ormsby, 16 April 1940, L&S 4/63

78. Under-Secretary, Department of Lands and Survey, to Under-Secretary, Native Department, 11 March 1940, L&S 4/63

79. Under-Secretary of Lands to owners of section 781, 17 November 1939, L&S 4/63, NA Wellington

80. Under-Secretary for Lands to Under-Secretary, Native Department, 11 March 1940, L&S 4/63

81. *New Zealand Gazette*, 1940, p 1134

82. Under-secretary, Native Department, to Under-Secretary for Lands, 16 October 1940, L&S 4/63

83. Assessment of compensation for parts taken by proclamation for scenic purposes, 16 June 1954, L&S 24/Res 10/3

84. Under-secretary, Department of Lands and Survey, to permanent head, Public Works Department, 11 March 1940, L&S 4/63

85. Minister in Charge of Scenery Preservation to J O'Brien, 14 March 1940, L&S 4/63

86. Assessment of compensation for parts taken by proclamation for scenic purposes, 16 June 1954, L&S 24/Res 10/3

87. Commissioner of Crown Lands to Under-Secretary for Lands, 19 June 1947, L&S 4/63

88. Director of Forestry to Under-Secretary for Lands, 6 June 1947, L&S 4/63

89. Commissioner of Crown Lands to Director-General of Lands, 1 August 1949, L&S 4/63

90. Director-General of Lands to Crown solicitor, 23 November 1953, L&S 24/Res 10/3

91. Note dated 17 November 1949, L&S 4/63

92. Ibid

93. *New Zealand Gazette*, 1952, p 890

94. Director-General of Lands to Commissioner of Crown Lands, 18 August 1953, L&S 24/Res 10/3

95. Director-General of Lands to Crown solicitor, 24 November 1953, L&S 24/Res 10/3

96. Director-General of Lands to Crown solicitor, 23 November 1953, L&S 24/Res 10/3

97. Crown solicitor to Director-General of Lands, 26 November 1953, L&S 24/Res 10/3

98. Ibid

99. Director-General of Lands to Commissioner of Works, Ministry of Works, 7 December 1953, L&S 24/Res 10/3

100. Assessment of compensation for parts taken by proclamation for scenic purposes, 16 June 1954, L&S 24/Res 10/3

101. Director-General of Lands to Commissioner of Crown Lands, 24 February 1955, L&S 24/Res 10/3

102. Commissioner of Works to Director-General of Lands, 10 August 1955, L&S 24/Res 10/3

103. 'Lands Reserved from Sale for the Arahura Natives, West Coast', *Compendium*, vol 2, p 387

104. SIMB 19, p 144

105. Notice of meeting of owners, 2 November 1954, alienation file 15/2/163, NA Christchurch

106. Minutes of meeting, 24 November 1954, alienation file 15/2/163, NA Wellington

107. Ibid

108. Confirmation of resolution, 26 January 1955; extract from *New Zealand Gazette*, 1955, p 1325, Westland 18, MLC Christchurch

109. P Madgwick to registrar, Maori Land Court Christchurch, 3 December 1986, correspondence file Westland 5/6, MLC Christchurch

110. Registrar, Maori Land Court, to P Madgwick, 12 December 1986, correspondence file Westland 5/6, MLC Christchurch

111. Director-General of Lands to Secretary for Maori Affairs, 14 November 1955, alienation file 15/2/163, NA Christchurch

112. District officer Wellington to Secretary for Maori Affairs, 26 January 1955, alienation file 15/2/163, NA Christchurch

113. Memo, head office to district officer Wellington, 13 February 1956, alienation file 15/2/163, NA Christchurch

114. Application to summon a meeting of owners, alienation file 15/2/163, NA Christchurch

115. Minutes of meeting of owners, 19 July 1956, alienation file 15/2/163, NA Christchurch

116. Ibid

117. Murdoch, James and Roper to district officer, Maori Affairs Christchurch, received 28 October 1958, alienation file 15/2/163, NA Christchurch

118. Minutes of meeting of owners, 30 July 1959, alienation file 15/2/163, NA Christchurch

119. Registrar, Maori Land Court Christchurch, to Murdoch, James and Roper, 9 April 1959, alienation file 15/2/163, NA Christchurch

120. Notice of meeting of assembled owners, 17 July 1959, alienation file 15/2/163, NA Christchurch

121. Minutes of meeting of owners, 30 July 1959, alienation file 15/2/163, NA Christchurch

122. Trust order, 16 September 1983, correspondence file Westland 18, MLC Christchurch

123. Certificate of title 4/63

124. E Wilson to Maori and Island Affairs, 6 July 1976, correspondence file Westland 54, MLC Christchurch

125. E Wilson to Maori Trustee, received 4 August 1976, correspondence file Westland 54, MLC Christchurch

126. Inspector of Mines and Quarries to Maori Trustee, 11 August 1976, correspondence file Westland 54, MLC Christchurch

127. J Bannister to Maori Trustee Christchurch, 13 August 1979, correspondence file Westland 54, MLC Christchurch

128. Ibid

129. Ibid

130. Registrar to J Bannister, 29 August 1979, correspondence file Westland 54, MLC Christchurch

131. E Wilson to Maori Trustee, 31 August 1979, correspondence file Westland 54, MLC Christchurch

132. Registrar to E Wilson, 11 September 1979, correspondence file Westland 54, MLC Christchurch

133. Hancock Consultants Ltd to registrar Christchurch, 17 June 1988, file 60/80, MLC Christchurch

134. Notice of objection to an application, 29 June 1988, file 60/80, MLC Christchurch

135. Hancock Consultants Ltd to registrar Christchurch, 12 December 1988, file 60/80, MLC Christchurch

136. Hancock Consultants Ltd to registrar, 12 July 1988, file 60/80, MLC Christchurch

137. Certificate of title 9/251 (Westland), in Westland 19, MLC Christchurch

138. Material from correspondence file Westland 19, MLC Christchurch

139. Title binder 28a, MLC Christchurch

140. Certificate of title 5/1204 (note that D17 is not paginated)

141. Certificate of title 2B/364

142. Certificate of title 5/1204

143. Caveat 165, 8 March 1920, LRO Hokitika

144. Affidavit of Albert Elcock, 19 August 1964, in application 704, LRO Hokitika

145. SIMB 61, pp 58–76

146. Ibid, p 62

147. Ibid, p 74

148. 'Lands Reserved from Sale for the Arahura Natives, West Coast', *Compendium*, vol 2, p 387

149. Director-General of Lands to registrar, Maori Land Court, 16 June 1981, L&S 22/5441

150. 'Schedule of Native reserves, County of Westland, made in the Cession of Territory to the Crown, in fulfilment of promises or engagements made to the Natives', *Compendium*, vol 2, p 339

151. 'Report of Mr Commissioner Young on Native Reserves on the West Coast, Middle Island', 25 February 1879, AJHR, 1879, G-3B, p 18

152. Ibid, p 11

153. Report by K Cayless, 28 May 1981, enclosure in Director-General of Lands to registrar, Maori Land Court, 16 June 1981, L&S 22/5441

154. Director-General of Lands to registrar, Maori Land Court, 16 June 1981, L&S 22/5441

155. Ibid

156. SIMB 65, p 252

157. Material from Westland 17, MLC Christchurch

158. 'Schedule of Native Reserves County of Westland', AJHR, 1870, D16, p 36

159. 'Report of Mr Commissioner Young on Native Reserves on the West Coast, Middle Island', 25 February 1879, AJHR, 1879, G-3B, pp 6, 19

160. Schedule of ownership orders, Westland 17, MLC Christchurch

161. 'Report from T Ryan on West Coast Reserves Not Included in the Incorporation', 28 February 1977

162. 'Report of Mr Commissioner Young on Native Reserves on the West Coast, Middle Island', 25 February 1879, AJHR, 1879, G-3B, p 2

163. Ibid, p 9

164. 'Return of Native Reserves', AJHR, 1883, G-7, p 8

165. SIMB 9, pp 267–269

166. K Cayless, *Report on Maori Reserves 13 (Ohinetamatea) and 28 (Waimea) — West Coast*, 1 May 1981, correspondence file Westland 22/23, MLC Christchurch

167. J Bennett to Maori Land Court Christchurch, 19 August 1973, correspondence file Westland 22/23, MLC Christchurch

168. Registrar to J Bennett, 4 September 1973, correspondence file 22/23, MLC Christchurch

169. Schedule of ownership orders, correspondence file Westland 22/23, MLC Christchurch

170. Chief engineer, Westland Catchment Board, to Maori Trustee, 28 September 1977, correspondence file Westland 22/23, MLC Christchurch

171. District officer Christchurch to chief engineer, 3 October 1977, correspondence file Westland 22/23, MLC Christchurch

172. District officer Christchurch to head office, 30 August 1979, correspondence file Westland 22/23, MLC Christchurch

173. Commissioner of Crown Lands to Native Trustee, 9 May 1922, correspondence file Westland 22/23, MLC Christchurch

174. K Cayless, *Report on Maori Reserves 13 (Ohinetamatea) and 28 (Waimea) — West Coast*, 1 May 1981, correspondence file Westland 22/23, MLC Christchurch

175. Instruction on memorandum from head office to district office, Christchurch, 8 June 1981, correspondence file Westland 22/23, MLC Christchurch

176. Ibid

177. SIMB 61, p 55

178. Under-Secretary, Native Department, to Under-Secretary for Lands, 29 January 1937, L&S 4/761

179. Commissioner of Crown Lands to Under-Secretary for Lands, 17 February 1937, L&S 4/761

180. Commissioner of Crown Lands to Under-Secretary for Lands, 7 October 1936, L&S 4/761

181. Under-Secretary for Lands to Under-Secretary, Native Department, 26 November 1936, L&S 4/761

182. Under-Secretary, Native Department, to Under-Secretary for Lands, 17 March 1937, L&S 4/761

183. Ibid

184. Ibid, note written on 19 March 1937

185. Commissioner of Crown Lands to Under-Secretary for Lands, 9 August 1938, L&S 4/761

186. SIMB 29, p 94

187. Commissioner of Crown Lands to Under-Secretary for Lands, 31 January 1939, L&S 4/761

188. SIMB 30, pp 320, 321–324

189. Report of departmental officer attending court hearing, 25 July 1941, L&S 4/761

190. Decision of Native Land Court, 24 July 1941, L&S 4/761

191. 'Report of Mr Commissioner Young on Native Reserves on the West Coast, Middle Island', 25 February 1879, AJHR, 1879, G-3B, pp 11–12

192. *New Zealand Gazette*, 1881, pp 1282, 1627

193. 'Plan of Native Reserves, Secs: 52, 53, 54 and 55, Sq:141, Blk 1 Ohika SD', February 1910

194. J O'Connor to Maori Trustee, 28 July 1965, correspondence file Westland 50, MLC Christchurch

195. Registrar to J O'Connor, 5 August 1965, correspondence file Westland 50, MLC Christchurch

196. SIMB 43, p 46

197. Position sheet, details of alienation, L&S 35/267

198. 'Report of Mr Commissioner Young on Native Reserves on the West Coast, Middle Island', 25 February 1879, AJHR, 1879, G-3B, p 20

199. Material from L&S 20/1, DOSLI Hokitika

200. 'Return of Native Reserves', AJHR, 1883, G-7, p 8

201. Chief surveyor to registrar, Maori Land Court Christchurch, 13 March 1973, L&S 20/1, DOSLI Hokitika

202. 'Precis of correspondence re lands for Natives at Bruce Bay', incld in Commissioner of Crown Lands to Under-Secretary for Lands, 19 August 1905, L&S 2220, NA Wellington

203. Ibid, p 2

204. Ibid

205. *New Zealand Gazette*, 1908, pp 1514–1515

206. Ibid, pp 1852–1853

207. Ibid, p 1853

208. Under-Secretary for Lands to Commissioner of Crown Lands Hokitika, 29 January 1910, L&S 2220, NA Christchurch

209. Commissioner of Crown Lands Hokitika to Under-Secretary for Lands, 10 March 1910, L&S 2220, NA Christchurch

210. Commissioner of Crown Lands Hokitika to Under-Secretary for Lands, 19 March 1910, L&S 2220, NA Christchurch

211. Commissioner of Crown Lands Hokitika to Under-Secretary for Lands, 10 March 1910, L&S 2220, NA Christchurch

212. Under-Secretary for Lands to Commissioner of Crown Lands Hokitika, 13 April 1910, L&S 2220, NA Christchurch

213. Letter sent to 20 claimants from Commissioner of Crown Lands Hokitika, 30 May 1910, L&S 2220, NA Christchurch

214. SIMB 23, p 372

215. Material in Westland 54/14, MLC Christchurch

216. Court order, 29 July 1941, Westland 54/14, MLC Christchurch

217. Memorial schedule, Westland 54/14, MLC Christchurch

218. Schedule of ownership orders, Westland 54/14, MLC Christchurch

219. 'Report Relative to Setting Apart Land for Landless Natives in Middle Island', 28 September 1905, AJHR, 1905, G-2, p 2

220. Westland 63, MLC Christchurch

221. 'List of Sections in Heaphy Valley for Landless Natives', Commissioner of Crown Lands to registrar, Native Land Court, 13 July 1932, file 464, MLC Christchurch

222. *New Zealand Gazette*, 1916, p 3819

223. Judge Rawson to registrar Wellington, 10 March 1920, Westland 63, MLC Christchurch

224. Succession orders in Westland 63, MLC Christchurch

225. Commissioner of Crown Lands to registrar, Native Land Court, 13 July 1932, file 464, MLC Christchurch

226. Conservator of Forests to Maori Trustee, 16 February 1972, L&S memoranda 1971–72

227. District officer to head office, 22 February 1972, L&S memoranda 1971–72

228. As per telephone conversation between Tribunal staff and Wayne Devine, principal conservation officer, estate administration, Department of Conservation, Wellington, 20 July 1994

229. H Meihana to Native Minister, 1 August 1901, L&S 2220, NA Christchurch

230. Note on memorandum by S Percy Smith, 2 November 1904, L&S 2220, NA Christchurch

231. Ibid

232. Unsigned letter, Under-Secretary for Lands, 19 November 1907, L&S 2220, NA Christchurch

233. 'Block III Toaroha SD', L&S 2220, NA Christchurch

234. *New Zealand Gazette*, 1908, pp 611, 1514

235. Under-Secretary for Lands, 'List of Blocks — Landless Natives Commission', 13 July 1914, L&S 2220, NA Christchurch

236. Commissioner of Crown Lands to Under-Secretary for Lands, 11 December 1919, L&S 2220, NA Christchurch

237. Commissioner of Crown Lands to registrar Christchurch, correspondence file Westland 20, MLC Christchurch

238. SIMB 61, p 80

239. Ibid, p 82

240. Order vesting land in persons beneficially entitled, 10 December 1981, Westland 69, MLC Christchurch

241. 'Block III Toaroha SD', L&S 2220, NA Christchurch

242. Commissioner of Crown Lands to Under-Secretary for Lands, 13 July 1914, L&S 2220, NA Christchurch

243. *Ngai Tahu Report 1991*, para 14.7.5

244. Ibid, para 14.8.22

245. W Lloyd to Public Trustee, 2 September 1887, Maori Trustee file 31/177

246. Ibid

247. *New Zealand Gazette*, 1888, p 390

248. Public Trustee to W Lloyd, 24 April 1888, Maori Trustee file 31/177

249. Resolution of Native Reserves Board, Maori Trustee file 31/177

250. Secretary of Liquidations to Deputy Public Trustee, 26 May 1898, Maori Trustee file 31/177

251. Agent at Westport to Public Trustee, 23 June 1899, Maori Trustee file 31/177

252. 'Lands Reserved from Sale for the Arahura Natives, Schedule B', *Compendium*, vol 2, p 387

253. Application to Native Reserves Board, Maori Trustee file 6/98/1/3

254. W Houston, licensed surveyor to agent for Public Trustee, 2 January 1889, Maori Trustee file 6/98/1/3

255. Ibid

256. Application to Native Reserves Board, 18 April 1889, Maori Trustee file 6/98/1/3

257. W Craig to Public Trustee Office, 16 March 1887, Maori Trustee file 6/98/1/3

258. Ibid

259. Application to Native Reserves Board, 24 November 1897, Maori Trustee file 6/98/1/3

260. Ibid

261. H K Taiaroa to Hamatini, 8 October 1889, Maori Trustee file 6/98/1/3

262. 'Report of Mr Commissioner Young on Native Reserves on the West Coast, Middle Island', 25 February 1879, AJHR, 1879, G-3B, p 9

263. It is not known how the reserve came under the trustee's jurisdiction.

264. District valuer to Maori Trustee, 30 August 1954, Maori Trustee file 31/2077

265. County clerk to Public Trustee, 22 September 1916, Maori Trustee file 31/1291

266. County engineer to Buller County Council, Maori Trustee file 31/1291

267. Minister of Lands to J Colvin MP, 19 July 1916, Maori Trustee file 31/1291

268. Engineer-in-chief to Under-Secretary, Public Works Department, 9 May 1918, Maori Trustee file 31/1291

269. Ibid

270. Native Trustee to R Hudson MP, 20 November 1923, Maori Trustee file 31/1291

271. P Issell to secretary, Central Earthquake Committee, 6 July 1931, Maori Trustee file 31/1291

272. Native Trustee to P Issell, 13 July 1931, Maori Trustee file 31/1291

273. Assistant engineer, Public Works Department, to P Issell, 4 November 1937, Maori Trustee file 31/1291

274. 'Report of Mr Commissioner Young on Native Reserves on the West Coast, Middle Island', 25 February 1879, AJHR, 1879, G-3B, p 12

275. Engineer, Buller County Council, to Minister of Maori Affairs, 1 April 1976, Maori Trustee file 6/52/1

276. Ibid

277. District officer, Office of the Maori Trustee to county engineer, Buller County Council, 22 December 1975, Maori Trustee file 6/52/1

278. Assistant Maori Trustee to county clerk, Buller County Council, 4 June 1976, Maori Trustee file 6/52/1

279. Certificate of title 3D/1220 (note that, although the title lists eight section numbers, the plan and memorial show that there are 11 sections on the one title)

280. Secretary of Mawhera Incorporation to town clerk, Westport Borough Council, 10 July 1981, Mawhera Incorporation files

281. Certificate of title 43/192 and 194

282. Certificate of title 3D/1220

283. *Ngai Tahu Report 1991*, para 14.8.20

284. J Duncan to chairman, Mawhera Incorporation, 10 October 1983; 'Mawhera Incorporation Schedule of Sections Freeholded in Westport, 15 June 1984', Mawhera Incorporation files

285. District land registrar to secretary, Mawhera Incorporation, 22 July 1981, Mawhera Incorporation files

286. District land registrar to Registrar-General of Land, 29 April 1981, Mawhera Incorporation files

287. Secretary, Mawhera Incorporation to town clerk, Westport Borough Council, 10 July 1981, Mawhera Incorporation files

288. Cottrell, Lovell and Maitland to town clerk, Westport Borough Council, 21 August 1981, Mawhera Incorporation files

289. Saunders and Co to secretary, Mawhera Incorporation, 5 November 1981, Mawhera Incorporation files

290. Schedule of sections requiring survey, enclosure in secretary, Mawhera Incorporation, to S O'Regan, 17 May 1984, Mawhera Incorporation files

291. J Duncan to chairman, Mawhera Incorporation, 10 October 1983, Mawhera Incorporation files

292. Minister of Internal Affairs to J Duncan, 11 February 1986; Minister of Maori Affairs to J Duncan, 27 February 1986; Minister of Justice to J Duncan, 11 April 1986, Mawhera Incorporation files

293. Note dated 13 August 1900, Maori Trustee file 6/179

294. Ibid

295. Registrar, Native Land Court, to Judge Gilfedder, 14 March 1922, not sourced

296. Public Trustee to chairman, Westland Land Board, 30 May 1911, Maori Trustee file 6/179

297. Resolution of Native Trust Office Board, 28 October 1922, Maori Trustee file 6/179

298. District officer to Maori Trustee, 15 May 1956, Maori Trustee file 6/179

299. See Part VI of the Forests Act, also Conservator of Forests to registrar, Ikaroa District Maori Land Board, 6 April 1949, Maori Trustee file 6/179

300. A Howe to Assistant Under-Secretary of Maori Affairs, 5 March 1953, Maori Trustee file 6/179

301. Under-Secretary of Maori Affairs to manager, A G Howe and Co, 16 April 1953, Maori Trustee file 6/179

302. District officer to A G Howe and Co, 2 November 1954, Maori Trustee file 6/179

303. A Howe to Assistant Under-Secretary of Maori Affairs, 5 March 1953, Maori Trustee file 6/179

304. Conservator of Forests to district officer, Maori Affairs Department, 16 November 1954, Maori Trustee file 6/179

305. Conservator of Forests to district officer, Maori Affairs Department, 18 January 1957, Maori Trustee file 6/179

306. District officer to Maori Trustee, 15 May 1956, Maori Trustee file 6/179

307. Maori Trustee to Conservator of Forests, 30 August 1956, Maori Trustee file 6/179

308. Ibid

309. Manager, A G Howe Ltd, to Secretary for Maori Affairs, 24 December 1956, Maori Trustee file 6/179

310. Head office to district officer, 1 February 1957, Maori Trustee file 6/179

311. Conservator of Forests to district officer, Maori Affairs Department, 18 January 1957, Maori Trustee file 6/179

312. District officer to A G Howe Ltd, 18 February 1960, Maori Trustee file 6/179

313. District officer Christchurch to head office, 27 April 1960, Maori Trustee file 6/179

314. New Zealand Forest Service to district officer, Maori Affairs Department, 2 May 1966, not sourced

315. District officer Christchurch to owners, July 1972, Maori Trustee file 6/179

316. District officer Christchurch to head office, 6 October 1972, Maori Trustee file 6/179

317. Memo, Maori Trustee to district officer Christchurch, 12 October 1972, Maori Trustee file 6/179

318. New Zealand Forest Service to district officer, Maori Affairs Department, 2 May 1966, not sourced

319. Memorandum on the Heaphy reserve, 6 July 1956, Maori Trustee file 31/2079

320. Ibid

321. Maori Trustee to district officer Wellington, 10 July 1956, Maori Trustee file 31/2079

322. Note on meeting of owners, held 5 August 1956, Maori Trustee file 31/2079

323. District officer to head office, 7 July 1971, Maori Trustee file 31/0/21

324. *New Zealand Gazette*, 1976, p 127

325. District officer Christchurch to head office, 3 July 1967, Maori Trustee file 31/45

326. Commissioner of Crown Lands to Maori Trustee Christchurch, 23 March 1967, Maori Trustee file 31/45

327. District officer to head office, 3 July 1967, Maori Trustee file 31/45

328. Town clerk, Westport Borough Council, to Maori Trustee Christchurch, 9 June 1967, Maori Trustee file 31/45

329. Notice of sale, valuation 1890/89, Maori Trustee files 31/44, 31/45

330. Memo, head office to district office Christchurch, 28 November 1968, Maori Trustee file 31/45

331. 'Lands Reserved from Sale for the Arahura Natives, West Coast', *Compendium*, vol 2, p 387

332. DOSLI Hokitika survey office plan 8669

333. *New Zealand Gazette*, 1866, pp 83–84, 87

334. DOSLI Hokitika survey office plan 8671

335. Survey plan of section NR 34, block XI, Arnold survey district, 29 October 1884, files 457, 458, 459, MLC Christchurch

336. DOSLI Hokitika survey office plans 4904 and 4905, dated by the surveyor 27 August and 12 November 1884

337. DOSLI Hokitika survey office plan 4929

338. This refers to the Midland Railway Contract Act 1887 and an agreement dated 3 August 1888 recorded in AJHR, 1889, D2.

339. *New Zealand Gazette*, 1900, p 1413

340. DOSLI Hokitika deposited plan 104

341. However, to make this total the survey should have given the land for roading and railways as 40 acres 1 rood 5 perches. Mr Alexander inferred from this that 'the road and railway area was not calculated from survey data, but was merely treated, incorrectly, as the balance to bring it up to the June 1884 area' (AB35:38).

342. *New Zealand Gazette*, 1919, p 2567 (note that the block name is incorrect)

343. *New Zealand Gazette*, 1922, p 2849

344. Chief engineer to registrar, South Island District Native Land Court, 5 May 1923, files 457, 458, 459, MLC Christchurch

345. Chief engineer to registrar, South Island District Native Land Court, 15 November 1923, files 457, 458, 459, MLC Christchurch

346. Compensation order, 20 November 1923, files 457, 458, 459, MLC Christchurch

347. 'Lands Reserved from Sale for the Arahura Natives, West Coast', *Compendium*, vol 2, p 387

348. Plan of Kaiata reserve, not sourced

349. 'Report of Mr Commissioner Young on Native Reserves on the West Coast, Middle Island', AJHR, 1879, G-3B, pp 16, 20

350. 'Report on State and Condition of Native Reserves in the Colony', AJHR, 1883, G-7, pp 7–8

351. Commissioner of Crown Lands to Secretary, Crown Lands, 16 August 1869, *Compendium*, vol 2, p 45

352. A Mackay to Under-Secretary, Native Department, 6 March 1869, *Compendium*, vol 2, p 43

353. Ibid

354. A Mackay to Under-Secretary, Native Department, 5 June 1869, *Compendium*, vol 2, p 44

355. A Mackay to chairman, Westland County Council, 10 June 1870, *Compendium*, vol 2, p 49

356. A Mackay to Native Minister, 25 August 1870, *Compendium*, vol 2, p 49

357. *New Zealand Gazette*, 1945, p 866

358. J Bradley to Maori Trustee, 26 June 1957, Maori Trustee file 6/1/3

359. W Nash to Kent, 26 May 1958, Maori Trustee file 6/1/3

360. Under-Secretary to Minister of Maori Affairs, 20 November 1950, Maori Trustee file 6/1/3

361. District officer Christchurch to J Russell, 13 January 1975, Maori Trustee file 6/1/3

362. W Nash to Kent, 26 May 1958, Maori Trustee file 6/1/3

363. Ibid

364. J Russell to Maori Trustee, 19 December 1974, Maori Trustee file 31/0/1

365. District officer Christchurch to J Russell, 13 January 1975, Maori Trustee file 6/1/3

366. *New Zealand Gazette*, 1883, pp 433–434

367. Maori Trustee to Judge Jeune, 23 Jaouary 1958, Maori Trustee file 6/2

368. Ibid

369. H Tainui to Public Trustee, 8 Jaouary 1909, not sourced

370. Acting controller, Native division, Public Trust Office, to Valuer-General Wellington, 8 July 1918, Maori Trustee file 31/1593

371. Registrar, Ikaroa District Maori Land Board, to Native Trustee, 22 December 1943, Maori Trustee file 6/1/1

372. Secretary, Westlaod Catchment Board, to Maori Trustee Christchurch, 29 May 1974, Maori Trustee file 6/1/3

373. Maori Trustee Christchurch to W Tirikatene-Sullivan, 27 February 1974, Maori Trustee file 6/1/3

374. Maori welfare officer to Maori Trustee Christchurch, 17 March 1958, Maori Trustee file 6/1/1

375. Maori Trustee, head office, to district officer, Wellington, 3 April 1958, Maori Trustee file 6/1

376. Secretary, Arahura Tribal Committee, to W Nash, Minister of Maori Affairs, 30 October 1958, not sourced

377. Secretary, Arahura Maori Committee, to Maori Trustee Christchurch, 23 August 1975, Maori Trustee file 6/1/3A

378. Minute sheet, 3 June 1976, Maori Trustee file 6/1/1

379. Ibid

380. District officer Christchurch to secretary, Arahura Maori Committee, 22 July 1975, not sourced

381. Minute sheet, 13 July 1971, Maori Trustee file 31/970

382. Maori Trustee to district officer Christchurch, 29 February 1968, Maori Trustee file 6/10/1

383. Maori Trustee to D Sinclair, 24 April 1968, Maori Trustee file 6/10/1

384. W Tirikatene-Sullivan to district officer Christchurch, not dated, Maori Trustee file 6/10/1

385. Memo, district officer Christchurch, 14 March 1968, Maori Trustee file 6/10/1

Chapter 4

Otakou Ancillary Claims

4.1 The ancillary grievances from the Otago region concern a medley of issues, including the powerlessness of Maori landowners against squatters, the Crown's failure to return land taken for public works, and the loss of mahinga kai. As well, there is a claim regarding the loss of control of the Karitane foreshore reserve to the local county council.

4.2 Claim no: **48**
Claim area: **Moeraki**
Claimant: **Sydney Cormack**

There are two aspects to Mr Cormack's grievance regarding the Donaldson family land at Moeraki:

- **Crown grants to Maori-owned sections at Moeraki are not recognised as being valid titles; and**

- **Maori landowners lack the power to evict sqnatters (E16:12).**

Mr Cormack's claim concerns sections 23 and 62, block I, Moeraki survey district, Crown granted to the Donaldson family. Mr Cormack claimed that since 1907 the land has been occupied by a Pakeha farmer without any rent being paid to the owners. Mr Cormack claimed that existing legislation did not give the owners the power to evict the squatter unless he was doing damage to the land or removing something of value, and that the Maori Land Court had no jurisdiction because the ex-lessee was Pakeha. Moreover, wben the owners attempted to register the title of the land, they were informed by the Maori Land Court that, unless the Maori owners could show good title to the land, all would go to the occupier. It was submitted that in order to retain the land the owners were obliged to sell to one of their own (L32:14). Mr Cormack subsequently submitted that, contrary to the decision of a meeting of owners to sell the land to John Douglas Kemp, the Dunedin Land Registry awarded title to the oecupier (AB47).

Ngai Tahu's reserve at Moeraki was set aside in 1848 and comprised 500 acres. Mantell also granted a 75-acre reserve at Kakaunui, some 25 kilometres further north. In 1853 this acreage was transferred to Moeraki at the request of the owners, where it was added to the southern boundary. Ownership of the reserve was determined by the Native Land Court in 1868.

Title to section 62

4.2.1 In 1848 Moeraki was the focus for a dozen or so Pakeha whalers. A number of these were married to Ngai Tahu women and had families, 'supporting themselves by the produce of Gardens cultivated hy their wives the sale of Pigs, and the capture of an occasional Whale' (O6:374).[1] According to Walter Mantell, then Commissioner of Crown Lands, 'the tone of the little Community was far from good', owing to the high consumption of alcohol among the whalers (O6:374).[2]

When Mantell returned to the area in 1852, the situation, he noted, had degenerated still further. The effect of the Europeans' 'hahitual drunkenness' and 'the constant supply of spirits' had spilled over to the neighbouring Ngai Tahu kaika, 'dirt and squalor having succeeded to the neatness and cleanliness which I had remarked in 1848' (O6:374).[3]

Those whalers who had huilt their homes on Crown land were told to move. However, provision was made for the families of mixed marriages. As Mantell saw it:

> For the half castes living in such a community as that which I have broken up at Moeraki I see no future hut vice and misery for the half caste when scattered among the general population with means of education and in a better state of Society, a less bad example from their Parents with provision too against want from lands properly administered for their benefit I anticipated that good standing among us which their general natural intelligence entitles them to occupy. (O6:375)[4]

Mantell recommended that six families be granted land at Moeraki. According to Mr Alexander, the grants were 'issued to the European father, with the Maori mother to bold the land for her lifetime after the death of the father, and with the children then succeeding on the mother's death' (AB46:1). Twenty-five acres were set aside for William Haberfield, whom Mantell described as 'the most respectahle of the Squatters' (O6:375)[5], his wife Mary Ann (Tete), and their four children (O6:376).[6] Their land was known as section 61, hlock I, Moeraki survey district. Joseph Donaldson and Susan 'Pokiri', who was recorded as a half-caste herself and the daughter of Tete (and who presumably, therefore, shared in the aforementioned 25 acres), received 10 acres for their then two children (O6:376).[7] Both sections lay adjacent to the Manri reserve allocated by Mantell in 1848. Donaldson received title to his allocation, subsequently known as section 62, block I, Moeraki survey district, in Fehruary 1853. On survey in 1908, section 62 was calculated at 10 acres 1 rood 13 perches (O6A:79).[8]

The grant to Donaldson duly recorded that the land would pass to Pokiri upon his death or:

> after the decease of the survivor of them the said Joseph Donaldson and Pokiri to such of the children of the said Pokiri hy the said Joseph Donaldson whether born before or suhsequently to her Marriage with him or hy any future Husband as shall then be surviving. (O6:377–378)[9]

Donaldson and Pokiri had nine children in total. Donaldson died in November 1871 and Pokiri in December 1907, at about the age of 79, leaving six surviving children (AB23:9–10).[10]

While it is not the subject of this claim, it is perhaps worth recording the fate of section 61, which belonged to William Haberfield. According to section 49 of the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1907, section 61 had been granted to Haberfield in 1853 'for his life, with remainder to such of his children by a certain Maori woman named in the grant as should be living at his death'. However, Haberfield had died leaving no surviving children, 'by reason whereof', according to the Act, 'the said land has now reverted to the Crown'. Trustees were appointed under section 49 to sell the land and divide the proceeds equally among Haberfield's 15 surviving grandchildren. We note, however, that at the time of the enactment of this piece of legislation it would appear that at least Haberfield's daughter Pokiri survived him. The 1907 Act makes no mention of when Haberfield died or whether he had been survived by his wife Tete.

Title to section 23

4.2.2 In 1877 the Middle Island Half-caste Crown Grants Act was passed. The issue of providing further lands for Ngai Tahu of mixed parentage had arisen initially from a petition in 1869. The 1877 Act referred to certain promises having been made in favour of some half-caste families then living in the South Island (who were listed in the Schedules to the Act) and authorised a grant of 10 acres per male and eight acres per 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 amendments, various errors and omissions were corrected, the last in 1888.

At Moeraki, 17 such grants were surveyed near the original Maori reserve in 1881 and subsequently granted (O6A:80).[11] According to Mr Cormack, these sections were of poor quality (AB37). Section 23, block I, Moeraki survey district, the subject of this claim, was an eight-acre section adjoining the Donaldsons' section 62. Under Schedule A to the Middle Island Half-caste Crown Grants Act 1883, one 'Susan Russell' was granted eight acres of land. We assume this is Pokiri. In November 1916 a certificate of title for section 23 was issued to a 'Susan Russell, of Moeraki, a half caste', to antevest from September 1883 (AB64).[12] However, Maori Land Court file records give the name for this certificate of title as 'Sarah Russell, of Moeraki, a halfcaste' (AB23:1).[13] Again, we assume the certificate held by the Land Registry Office Dunedin is correct, but some confusion remains since one of Donaldson and Pokiri's nine children was named Sarah.

Squatters on the land

4.2.3 As mentioned, Donaldson died in 1871. Until her death in 1907, Pokiri was said to have leased the family's two Moeraki sections to a farmer. According to Mr Cormack, no payment has been made for the lease of the land since her death (AB23:15, 31).[14]

Matters came to a head in 1973. Sections 23 and 62, 18 acres 1 rood 13 perches in all, were unfenced and surrounded by farmland owned by one Mr K Aitchison, who was using the land for

grazing without paying rent. The only access to the Donaldsons' sections was through the adjoining property. The family, it was said, were 'disgusted at not being able to extract use and occupation monies from the Squatter' (AB23:17).[15] It was also stated that 'most members of the family have agreed to sell as there is no way to obtain a legal lease or to collect unpaid rents' (AB23:16).[16]

A Government valuation prepared in May 1973 valued section 23 at $743.16 and section 63 at $956.83, and concluded that:

> Because of its distance from Moeraki, its isolation and lack of formed access, it would not be readily saleable other than to adjoining neighbours. As Mr Aitchison occupies virtually all the surrounding land it would be difficult to envisage many other potential purchasers. (AB23:14)[17]

Mr Cormack has argued that the valuation was affected by the lack of access. He bas stated that there was a paper roadline surveyed up a swampy gully (AB37). The Tribunal has no further information on these matters.

Mr Aitchison was prepared to buy the land, and Mr Cormack was initially intent on seeing him do so (AB23:27).[18] In late 1973 they met in Invercargill to discuss the sale. However, further negotiations broke down when Mr Cormack became aware that Mr Aitcbison had been present at the valuation of the land. Mr Cormack also alleged that the latter had dissuaded other prospective buyers from purchasing the land (AB23:15–17).[19]

The alienation of the land

4.2.4 On Mr Cormack's initiative, an application was lodged by John Douglas Kemp, a relation of the Donaldson family, to purchase the land. Separate meetings were beld for the owners of the two sections. The first, on 9 May 1974, was attended by six owners to consider the sale of section 23 for $880. A further five owners were represented by proxy. At the meeting it was agreed:

> that the land was of little use to anyone but an adjoining owner and as the applicant was sucb an owner as well as a relation of the owners present, the price offered was a reasonable one. (AB23:19)[20]

The resolution was passed unanimously.

The meeting of assembled owners to consider the sale of section 63 for $1100 took place on 11 July 1974. The three owners present passed the resolution unanimously. At this bearing Mr Cormack was recorded as saying:

> When it was established wbo owned the section I tried to get the rent from the squatters but this was not possible and due to the present legislation it is not possible to prosecute squatters without the full representation of all the owners.

> The present Government has been told of this loophole in the law but I cannot see them doing anything about it. I prosecuted as many successions to deceased owners as was possible. . . .
>
> Therefore, the idea of this sale is to have one member of the family own it so that squatting can be stopped. (AB23:27–28)[21]

The alienation of both sections was confirmed by the Maori Land Court on 5 August 1974 and entered as such on the respective certificates of title (AB23:33–34).[22]

The Tribunal's conclusion

4.2.5 No information has come to light regarding Mr Cormack's claim that Crown grants to Maori land at Moeraki are not recognised as being valid titles. Mr Cormack's claim that the Dunedin Land Registry Office awarded title to the occupier (Mr Aitchison) because the Maori owners could not provide 'good title' to the land (AB47) is not supported by the certificates of title for these blocks or by any other evidence submitted. The certificates to sections 23 and 62 were registered in Kemp's name in 1975. Further details will need to be supplied before this grievance can be considered.

Turning to his second allegation, Mr Cormack raises three reasons why the owners of multiply held Maori freehold land were unable to prosecute trespassers or squatters. Firstly, because the Maori Land Court had no jurisdiction to deal with claims against Pakeha; secondly, because it was not possible to prosecute without a full representation of all of the owners; and, lastly, because it had to be shown that damage was being done to the land, or that something of value was being removed.

At this point we make the comment that when dealing with unlawful occupation of Maori land there are many considerations that need to be examined. In some cases, even though rent has not been paid to the owners, substantial improvements to the land have been carried out by the occupiers. Often the rates for the land are paid by the squatter. In some cases adjoining farmers have occupied land for the purpose of removing noxious weeds that were spreading to their own properties. On the other hand, there are instances, as we shall see later in this report, when trespassers go onto the land to remove valuable timber, or in the case of Murihiku, sphagnum moss. Circumstances will differ in each case and it is very difficult for a general view to be stated.

Mr Cormack is experienced in Maori Land Court matters and in representing the interests of Maori people. The Tribunal recognises the concerns he raises in relation to the difficulties of managing fragmented lands. He is quite correct in asserting that the Maori Land Court's jurisdiction in this matter was inadequate. At the time that the owners of the Donaldson land were attempting to find redress from the squatter for the past use of their land, the court's jurisdiction was governed by section 30 of the Maori Affairs Act 1953. This section limited the court's jurisdiction to determine trespass or other injury to Maori freehold land as between Maori, and not against a Pakeha occupier. This was not amended until 1982, by section 6 of the Maori Purposes Act, which permitted the court to determine trespass of any person, although the right to recover damages was limited to $1200.

However, although the Maori Land Court's jurisdiction was limited in this manner, the Trihunal would point out that there was at least one other procedure availahle to the owners. The appointment of a trustee under section 438 of the Maori Affairs Act 1953 would have enahled this trustee to negotiate terms of rent and also take steps to evict any trespasser in the general courts. With the passing of the Manri Affairs Amendment Act 1974, further provision was made in Part IX thereof for agents to be appointed by the Maori Land Court to protect the rights of owners. Such agents could commence proceedings in the general courts for recovery of money for any matter in relation to the land. We acknowledge that before this more recent legislation owners of multiply held Maori freehold land were faced with serious impediments in trying to obtain a legal lease or collect unpaid rent for their land. However, in the above claim we do not accept that the owners of the Donaldson land were forced into the course which they eventually chose to pursue; that is, the sale of that land. We do not uphold the grievance.

Even with the recent changes in legislation, statutory law still has some distance to travel in order to deal with prohlems arising from multiply held land. The Trihunal does not intend to deal with these inadequacies in the forum of this ancillary report. We shall come hack to this question of trespass and illegal occupation in dealing with the Murihiku claims (see claims 76 and 84). At this point we merely state in answer to Mr Cormack's grievance that there is now adequate provision in Maori land law to evict squatters.

It should be noted that, pursuant to the Treaty of Waitangi Amendment Act 1993, the Tribunal has no power in any event to recommend the return of privately owned land.

4.3 Claim no: 49
Claim area: **Moeraki**
Claimant: **Sydney Cormack**
Claim:

> **Mr Cnrmack claimed that recipients of half-caste grants were exclnded from entitlement to the main reserve at Moeraki by the Native Land Court (E16:3).**

He referred in particular to five Ngai Tahu women who were excluded from the reserve on account of the provision of land for their 'half-caste' families.[23] Mr Cormack argued that the five women who lived at Moeraki were from 'prominent' families and therefore had a right to share in the reserve (AB37).

4.3.1 The Native Land Court did indeed determine that those already provided for with other Crown grants outside the reserve should be excluded from entitlement to the main reserve:

> The undermentioned persons having been provided with land outside the Reserve in consideration of their having half-caste families it was decided that they were not entitled

> also to participate in the Reserve being in a different position to those who were overlooked in 1868 and had consequently been hitherto excluded.[24]

The names of five women were listed, namely Titi (Mrs Rutherford), Mereana Tete (Mrs Haberfield), Kaunana (Mrs Hughes), Pokiri (Mrs Donaldson), and Katarina Marere (Mrs Thomson). The minutes do not disclose on what grounds such a decision was reached.

The Tribunal's conclusion

4.3.2 As related in the previous claim, 500 acres were reserved for the Ngai Tahu residents of Moeraki by Mantell in 1849. According to his calculations at the time, the Maori community there comprised 87 persons, 19 of whom were children under the age of 14 (M3:68–69).[25] As Dr Donald Loveridge set out in his submission, this amounted to just 5.75 acres per head. The reserve at Moeraki was totally inadequate for the community's needs. The paucity of the tribal reserve may well have accounted for the court's decision to exclude the above women from the reserve, as their families had been provided with other land.

In any event there was provision in the Maori Affairs Act 1953 (and this is further provided for in section 44 of Te Ture Whenua Maori Act 1993), for any aggrieved owner or descendant of an owner to apply to the Chief Judge of the Maori Land Court for amendment of any order that was made erroneously or as a result of mistake or omission on the part of the court or in the presentation of the facts of the case to the court. If the descendants of the five women listed above wish to pursue this matter, there is provision for them to do so. It must, however, be proved that an error was made either by the court or in the presentation of the facts of the case to the court. The Tribunal does not find that there has been any breach of Treaty principles in respect of this matter but we once again comment on the inadequacy of the original grants.

4.4 Claim no: **50**
Claim area: **Karitane**
Claimant: **Taini Morere Koroheke Wright**
Claim:

> **Mrs Wright's concern was the maintenance and ownership of the section of the Karitane foreshore containing the Karitane urupa (L32:33).**

Mrs Wright claimed that it was her grandmother who, from 1935–37, went to court to have the foreshore 'given back' to local Maori as the soil was falling away and exposing bones from the urupa. The case was successful and family trustees for the land were appointed. Mrs Wright now suspects that the local council has retaken the land.

The Waikouaiti reserve

4.4.1 Walter Mantell set aside 1800 acres at Waikouaiti in 1848. In 1850 the reserve was extended by Charles Kettle to include a further 569 acres 2 roods 6 perches. When entitlement to the reserve was determined by the Native Land Court in 1868, the area was given as 2323 acres (O6:384).[26] In 1885 the first full survey of the reserve boundaries took place. Mr Alexander pointed to a pencilled notation on this plan which gives the area as 3049 acres 1 rood 24 perches (O6A:85).[27]

In 1887 the reserve was partitioned by order of the Native Land Court (O6A:91–94).[28] A 20-acre block fronting the Waikouaiti River at Karitane was marked off for a town subdivision. The court order was validated by the Waikouaiti Reserves Act 1892.

The Maori town site was surveyed in 1888 into 54 sections, mostly of one rood each, and the Hau Te Kapakapa cemetery (section 30, of about two roods) (O6A:95).[29] In 1898 an Order in Council authorised the Native Land Court to determine Maori ownership and make orders for titles.[30] In 1899, 65 people were deemed to be entitled to the sections in the township reserve (O6:408).[31]

Entitlement to the Waikouaiti foreshore reserve

4.4.2 When the town settlement was subdivided in 1888, a strip of land along the Karitane foreshore remained unallocated. This formed part blocks 25 and 26 and comprised 1 acre 2 roods 10 perches (O6:415).[32] The question of entitlement to this land first became an issue in 1924. On 3 December 1924 Ngati Huirapa asked the Native Land Court to declare the land a native reserve 'for the public use of the Puketeraki Natives'. The names of eight people, already trustees of the church and hall, were put forward as trustees for the foreshore reserve (O6:401–402).[33]

Later that month the court made an order on investigation of title in favour of the eight nominees:

> to hold as trustees and to devote any income arising from this strip of land for general public purposes for the benefit of the Natives of Puketeraki and adjacent districts. (O6:403, 412)[34]

This decision was met with strong opposition by various sectors of the community. The Waikouaiti County Council, the Karitane Amenities Society, and others claimed that the strip of land was a public access, set apart as a road to the cemetery and some of the subdivisional sections. In June 1928 they were given the opportunity to argue their case in the Native Land Court (O6:405–411).[35]

The Waikouaiti County Council's argument was based on the 1888 plan of subdivision which had been issued by the Surveyor-General. The plan showed a road marked in red on the land in question (O6:406).[36] Under section 96 of the Public Works Acts Compilation Act 1905, counsel argued, such a plan rendered the road Crown land over which the Native Land Court had no jurisdiction. He also cited a Court of Appeal decision concerning land in Kaikoura which supported his contention. The hearing was adjourned until the following July.

Several local Ngai Tahu testified at the 1929 hearing. They related that part of the land in dispute was in fact an ancient hurial ground. Hoani Matiu said:

> It is an old burial ground at bottom of the cliff between the present cemetery fence and the beacb. There are more than 50 graves there . . . My father and others told me that wben the measles decimated the Maoris between 1825 and 1830 the bodies were buried at the font of the cliff. Five to ten died each day. (O6:409)[37]

Mr J Ellison stated that, as boys, be and bis friends had been warned:

> not to trespass on the part of the foreshore wbere the bodies were huried. The land was tapu. (O6:410)[38]

Counsel for Ngai Tahu pointed to the statutory prohihition against the laying off of a road through a Maori burial site. It was alleged that the Public Works Acts of 1882 and 1884 and Part VIII of the Native Land Court Act 1886 precluded the laying off of a public road through a Maori cemetery (O6:413).[39] In a judgment delivered on 20 July 1929 the court found that:

> the strip of land lying between the Waikouaiti Township sections and the highwater mark is still Native land and is not a road; that part at least of it consists of a Native burial ground and that the Native Land Court may, under Part V of the Native Land Act 1909, determine who are the beneficial owners entitled to it. (O6:414)[40]

A newspaper clipping suhmitted by Mr Alexander indicates that some Karitane residents disagreed with the outcome, urging the county council to appeal against the decision of the court (O6:414).[41] The report states that the council did decide to appeal the decision, but there is no subsequent record of proceedings.

The reservatinn nf the fnreshnre

4.4.3 In 1937 the tangata whenua again applied to the court to have the land reserved 'as a burial ground, landing place, meeting place and recreation ground for the common use of the owners thereof' (O6:416).[42] Six trustees were proposed hy one person, and one Mr Matiu asked that his two sons and a nephew also be appointed trustees. The minute book recorded that 'Hawana Matiu says be will not act as a trustee unless Richard te Tau also acts' (O6:416).[43] The court in its wisdom determined:

> so long as local trustees act there will he continuous strife. While the local people spend their time in petty squabbles Europeans are using the land and may be acquiring title to it. (O6:416)[44]

The land was reserved for the purposes proposed by Ngai Tahu, hut the Native Trustee was appointed trustee.

Moves to acquire the reserve

4.4.4 The reserve was a popular area for the general public and had been used as a picnic area for years. It was leased by the Maori Trustee to the Karitane and Puketeraki Welfare and Improvement Society in 1950 for a period of seven years. On the whole though, the Maori Trustee's administration of the land appears to have been lax; in 1960 it was reported that:

> all sorts of people appear to be taking unlicensed liberties with the Reserve, such as taking sewerage pipe lines across it, unauthorised camping etc, and apparently the erection of boat sheds. (AB23:44)[45]

In April 1960 the Waikouaiti County Council advised the Maori Trustee of its concern about the 'serious nuisance' occasioned by the use of the reserve for camping without suitable facilities (AB23:40).[46] Several complaints were made by the owners of the reserve about trespassers.

In February 1960 the Department of Lands and Survey expressed its wish to purchase some Maori-owned sections in the town block in order to expand the Karitane domain (O6:418–419).[47] The foreshore reserve was one of them. Given the terms of the trust, it was thought that the reserve could be leased to the Crown in perpetuity. Control of the reserve would be vested in the Karitane Domain Board, which intended to develop a children's playing area and camping park on the land. The domain board had stipulated that the rent be a 'peppercorn' one because:

> the residents of Karetane [sic] have paid £520 towards the cost of a concrete retaining wall and filling in behind same on the foreshore area which is vested in the Board's control. This wall was necessary to protect the foreshore and the Maori Reserve from the inroads of the sea, and is apparently the only reason there is any land left at the moment. (O6:419)[48]

Approval to begin negotiations for the lease of the reserve was granted by the Board of Maori Affairs in August 1960. The board, however, reduced the length of the lease to seven years and decreed that the issue of rent was up to the owners.

The proposal was discussed and unanimously opposed by a well-attended meeting of owners on 24 September 1961 (AB23:77).[49] Also in attendance were representatives of the Karitane Beach Improvement Society, the Karitane Domain Board, and the Department of Lands and Survey. Of concern to many owners was the speculation that future generations would be denied access to the land if control of the reserve passed to the domain board. As well, Richard Te Tau expressed his anxiety that promises made by kaumatua in 1940 to build a memorial cairn to commemorate the landing site of the first Methodist missionary in the area, the Reverend Mr Watkin, would not be honoured if the domain board gained control of the area (AB23:77).[50] The assembly of owners also called for an end to the Maori Trustee's administration of the reserve and urged that control should instead be given to the local tribal committee. The general feeling among the Ngati Huirapa present was that it was more than time that they were allowed to manage their own affairs.

The question of reclamation

4.4.5 Ngai Tahu's request for rangatiratanga over their reserve was acted on. In 1962 the Manri Trustee agreed to relinquisb ownership and control over the reserve, which was then vested in six trustees appointed by the tribal committee (AB23:102).[51] They became the Waikouaiti Maori Foreshore Trust Board.

On gaining management of the reserve, the trust board was quick to carry out improvements. In September 1962 the secretary advised the district officer of Maori Affairs that 'Work on the reserve has already been quite successful, the site having been bulldozed of lupins and a road and parking site formed' (AB23:107).[52]

The formation of this parking area had involved the consolidation and levelling of an accretion to the reserve, or the reclamation of the foreshore, depending on which account one believes. The control and ownership of the trust board's improvements were to become points of issue over the ensuing years between the trust board — wbo considered the works to have taken place on Manri land, the mean high-water mark having receded over the years — and local and central government, wbo believed the improvements to have taken place on foreshore belonging to the Marine Department.

The original grant of the reserve shows that the reserve boundary extended to the high-water mark (AB23:119).[53] This was confirmed hy the Native Land Court in 1929 (AB23:130).[54] A plan of the reserve attached to the court order gives the reserve's riverward boundary as the 'Old High Water Mark' (AB23:35).[55] According to the trust board, considerable natural accretion had taken place over the years as the high-water mark receded, leaving a strip of beach between the old boimdary of the foreshore reserve and the existing high-water mark (O6:430–431).[56] The owners of the foreshore reserve considered the accretion an extension of their land.

As mentioned above, the trustees, on gaining control of their land:

> consolidated the area with approximately 8,000 yards of spoil and huilt up a picnic area and motor parking area. . . . Previously the area could hardly park 40 cars now we have an area to park 300 cars with room for picnics as well. (O6:425)[57]

The area, of 1 rood 10 perches, had been raised 2.5 feet and levelled at a cost of £240 to the board (AB23:124).[58] The works were financed primarily from annual Christmas carnivals held on the reserve, wbicb were organised by the Karitane Carnival Committee.

If the trustees' account was correct, in that the works were carried out on an area gradually huilt up by river movement, their consolidation of sucb land would be within the law. Under the doctrine of accretion, as described by G W Hinde in *Introduction to Land Law*, any accretion resulting from the gradual and imperceptible recession of tidal or running waters becomes the property of the owners of the parcel of land to which it is added.[59] According to Hinde, the doctrine is limited to land

abutting on tidal or running water and applies whether the change is wrought by natural or artificial means, 'provided that the change is not the direct result of deliberate reclamation'.[60] Moreover, the doctrine applies notwithstanding that the former boundaries of the land were defined and ascertainable.

However, major questions remain. Firstly, the toe of the filling was reported to be below the mean high-water mark, 'as normal tides almost cover the drums placed on the river face of the reclamation' (O6:426).[61] At least a portion of the works was on foreshore. The trustees referred time and time again to a strip of beach above the high-water mark. They maintained that this accretion was where their works were situated. The local authorities and Government departments, on the other hand, were adamant that the works had taken place on the foreshore fronting the reserve. This land, it was claimed, was Marine Department land, the control of which had been vested in the Karitane Domain Board in 1953.[62] We return now to the narrative.

Control of the reclamation

4.4.6 Problems began in September 1962 when the chairman of the trust board, Mr J Heath, received an inquiry about the 'reclamation work along the frontage of the Maori Reserve at Karitane affecting the foreshore' from the Commissioner of Crown Lands Dunedin. The commissioner demanded to know under whose authority permission had been granted to undertake the reclamation (O6:423).[63]

The Waikouaiti Maori Foresbore Trust Board was nonplussed by the accusation:

> With regard to the reclamation work, he [the secretary of the trust board] has no knowledge of any of this work being done other than on the Maori land. If any of the earth is spilled on to the foreshore it can be only to a very slight degree. (O6:424)[64]

The secretary of the trust board suggested that an inspection of the area take place to ascertain the correct boundary of the property. Having been informed of the domain board's control of the area, the trustees also made representations to the Minister of Marine in February 1963 to have control of the area vested in the trust board (O6:425).[65] It appears that at this stage the trust board accepted the fact that the local domain board had control over the area between the Maori reserve and the Waikouaiti River.

Neither the Marine Department nor the domain board had any real objection to the work being carried out, but vesting control of the 'reclamation' in the trust board was another matter. The Karitane Domain Board wanted to 'retain' control over the foreshore, that is to say, the reclaimed area (O6:428).[66] This was supported by the board's parent body, the Department of Lands and Survey (O6:426–427).[67] The Marine Department, too, saw a 'unified' control of the whole area, including Ngai Tahu's reserve, under the domain board as the best solution. The department was concerned that the reclamatioo had been carried out illegally, and that passing control of the reclamation to the trust board would be putting an area of public interest into private hands

(O6:428–429).[68] In all of the above correspondence the works were considered to have taken place on foreshore.

The Waikouaiti Maori Foresbore Trust Board was understandably opposed to any suggestion of giving up control of the levelled area, let alone its reserve. On 4 November 1963 the trust board again wrote to the Minister of Marine, arguing that its improvements to the area outside the reserve bad been a consolidation of natural accretion:

> the Karitane Domain Board . . . can not lay claim to the narrow strip that has gradually built up between the old high tide mark and the original boundary of the Maori Trust's property. (AB23:121)[69]

The trust board also alleged that a denial of access to Ngai Tahu's fishing grounds and cockle beds adjoining the reserve, as a result of domain board control of the area, would be contrary to article 2 of the Treaty of Waitangi. It sbould be noted that the hoard was still referring to land above the high-water mark:

> I am confident that the above explanation will convince you that my Trust has acted in good faith . . . and that it is logical organisation to have jurisdiction out as far as the high tide mark. (AB23:122)[70]

The Minister's reply was uncompromising. He pointed to the trust board's dumping of 8000 yards of spoil in the area, an inspection of the area in 1962 whicb confirmed encroachment on the foresbore had occurred, and the fact that the facing wall of the levelled area was almost covered at high tide. He concluded:

> It is, therefore, clear that unauthorised reclamation has been carried out which encroaches on foreshore controlled by the Karitane Domain Board. (AB23:123)[71]

He was not prepared to transfer control of the reclamation to the trustees.

In an attempt to resolve the issue, representatives of all interested bodies (the Marine Department, the Department of Lands and Survey, the trust board, the domain board, and the Waikouaiti County Council) met in May 1964 for an on-site discussion of the prohlem (O6:433).[72] Nothing seems to have come of this, because 'lack of information failed to produce any decision' (AB23:126–127).[73] Suhsequent discussions were equally as fruitless. The situation stagnated for a further two years.

On 16 August 1966 the Secretary of Marine advised the Waikouaiti county clerk that the 'illegal reclamation' would now be handled under section 175 of the Harbours Act 1950. Once the county council had validated the reclamation by Order in Council, the land would be vested in the council (O6:434).[74] The secretary pointed out the possibility that the trust board could be forced to bave all the material removed. The following day the trust board received a stiffly worded letter from the Marine Department threatening that if the material recently dumped on the foreshore and the illegal

reclamation were not removed within 21 days the department would consider litigation (O6:435–436).[75]

At a meeting held on 5 September 1966 the trustees finally succumbed to official pressure (O6:437–438).[76] It was agreed, among other things, that:

- the reserve would be leased to the county council for 10 years, with the right of renewal to a further decade;
- the county council would arrange to have the reclamation validated and vested in its control; and
- the domain board would transfer its control of the foreshore and two adjoining sections to the council.

It was reported that these moves had been taken 'in order to obtain a unified control of the various areas which are used by the public'. In 1983 the reserve was still being leased to the Silverpeaks County Council (formerly the Waikouaiti County Council).

The reclamation is validated

4.4.7 Although the above agreement had been reached, the Marine Department found further complications with the Harbours Act 1950. Section 265 provided for omissions or irregularities to be corrected by Order in Council only for harbour boards or other local authorities. As the reclamation had been undertaken hy the trust board, this section could not apply. Nor could the reclamation be validated under the same section in the name of the Waikouaiti County Council as it had not undertaken the work. In March 1968 the Secretary for Marine wrote:

> Because the Harbours Act does not take into account illegal reclamations undertaken by anyone other than Harbour Boards or local authorities it is reasonable to assume that it is the intention of the Act that all such illegal works should be removed pursuant to sections 176 and 177 of the Act.
>
> In this particular case, however, the illegal reclamation is regarded as a useful piece of work and Waikouaiti County Council is prepared to accept title to it.
>
> It is the feeling of this Department that the reclamation should be regarded as having been undertaken by the Crown in which case the registration of title in Waikouaiti County Council to the area can be effected by the District Land Registrar without any further action needed by this Department. (O6:443)[77]

The Department of Lands and Survey agreed to this course of action, and arranged for the reclamation to be declared a recreation reserve and vested in the council in trust for that purpose

(O6:443–444).[78] The area, of 3 roods 17 perches, was gazetted in 1968 (O5:188).[79] No title has subsequently been issued (AB35:40).[80]

The Trihnnal's conclusion

4.4.8 This grievance raises questions concerning the maintenance and ownership of a section of the Karitane foreshore which adjoins the Ngai Tahu-owned Waikouaiti Foreshore Reserve, being part hlocks 25 and 26. As related above, the reserve was vested in six representative trustees in 1962, who proceeded to make unprovements to the reserve, in particular the consolidation of an area of land between the reserve boundary and the high-water mark. On first being questioned about the consolidation by the Commissioner of Crown Lands, we have seen that the Waikouaiti Maori Foreshore Trust Board considered that the works had taken place on Maori land. The trust board suggested that an inspection of the area take place. In a letter dated 22 Fehruary 1963 the trust board informed the Minister of Marine that they 'apparently have encroached on the strip of beach which is controlled hy the Domain Board'. Control of this strip of beach was sought. In his report of the matter to the Director-General of Lands in April 1963, the Commissioner of Crown Lands stated that the area 'recently reclaimed' covered approximately 1 rood 30 perches. According to the commissioner, 'The toe of the filling is below mean high water mark as normal tides almost cover the drums placed on the river face of the reclamation'.

By November 1963 the trust board had reversed their earlier acknowledgement of encroachment and argued that no reclamation had occurred; they had merely consolidated the natural accretion that had taken place over the years. As we have seen, the Crown agents have maintained their stance that the works were undertaken on foreshore owned by the Crown. What concerns this Trihunal is:

(a) that there does not appear to have been any attempt to establish conclusively whether the strip was accretion or foreshore, and the evidence points to the strong possihility that there may have been elements of both;

(b) the insistence hy Marine officials that the strip was Crown land and the subsequent pressure hrought to bear on the trustees to accept that position, particularly in threatening possihle offence and requiring removal of the works under sections 176 and 177 of the Harbours Act 1950; and

(c) the fiction adopted hy the Crown to overcome the lack of jurisdiction under the Harbours Act 1950.

The Trihunal is concerned that the compromised agreement reached hetween the county council and the trust board on 5 September 1966 may well have been forced hy the threat of action over the alleged 'unauthorised reclamation'. In the end result the trust board consented not only to having the strip validated but also to leasing its foreshore reserve land.

It is ironic that, in bis memorandum to the Minister of Lands on 24 October 1968, the Director-General of Lands referred to the work as an 'offence' under the Harbours Act 1950 but went on to state that, 'In this particular case, bowever, the illegal reclamation is regarded as *a useful piece of work*' (empbasis added), and that:

> *It was therefore agreed that the reclamation should be treated as Crown land* and that this Department arrange the reservation of the land for recreation purposes and vest it in the County Council free of charge. [Emphasis added.] (O6:443)[81]

The Tribunal can understand the concern expressed by the claimant Mrs Wright. Although the foreshore reserve itself remains vested in trustees, the additional areas claimed as accretion and developed at some cost hy the trust board are still Crown land. The reserve was leased to the Silverpeaks County Council until 31 July 1983. The memorial schedule in the Maori Land Court records does not disclose any further alienation, thus presumably the trustees can and have exercised their rights in respect of the reserve.

4.4.9 The Tribunal finds that the Crown representatives' dealings with the trust board fall short of the duty of the Crown to act in good faith and protect Ngai Tahu rangatiratanga as guaranteed by the Treaty. The Crown has acted quite peremptorily in claiming the accretion as foreshore land. Thirty years on it may be more difficult to ascertain what portion of the original foreshore has accreted and should be vested in the adjoining Maori owners. The matter should be re-examined. The Tribunal recommends that the Crown agree to the question being referred by the Minister of Maori Affairs to the Maori Land Court for inquiry and report under section 29 of Te Ture Whenua Maori Act 1993. Crown counsel submitted that, if the area is subject to the Land Transfer Act 1952, a correction to the boundary may be required by the district land registrar under section 18 of that Act (AB34:15). In seeking the Maori Land Court inquiry, the terms of reference should include the award of compensation, if found justified. As has been stated elsewbere in this report, ownership and control of land are reconcilable and the views of the Dunedin City Council (having succeeded the now defunct Silverpeaks County Council) should also be available to the court.

Crown counsel sought clarification as to whether it is the Tribunal's intention that, if reclamation has occurred, the reclamation should be removed so that the mean high-water mark coincides with the edge of accretion and the Maori land reverts to being on the water's edge, or wbether the Tribunal proposes some other course of action (AB34:15). The Trihunal does not wish to pre-empt an inquiry into the matter by the Maori Land Court and thus has no comment on the above.

4.5 The Otago Peninsula reserve

The Otago Peninsula has traditionally been an area of Ngai Tahu settlement and use. When the Otakou purchase was being negotiated, Ngai Tahu chiefs wished to retain the wbole of the peninsula on the eastern side of the harbour. In the event, a four-mile reserve was made there, containing some 6665 acres.

The following grievances concern areas at Taiaroa Head and Harington Point which formed part of the Maori reserved land and which were taken for defence purposes last century.

4.6 Claim no: **51**
Claim area: **Taiaroa Head**
Claimant: **Magdeline Wallscott, Kuku Karaitiana, and others**
Claim:

> **Mrs Wallscott claimed that traditional land at Pukeknra, on Taiaroa Head, was taken fnr defence pnrposes but was not returned when it was no longer needed for those pnrposes (L32:28).**

The Tribunal has since received a claim dated 8 December 1992 from Otene Kuku George Karaitiana, Anna Goreham, and David Karetai, all descendants of Korako Karetai. This has been registered as Wai 324 (AB27:190–196). It affects the same land as under Mrs Wallscott's claim, that is, lot 33, block A3, and part lot 27, block A1, Otakou Native Reserve. For the purposes of this report only, we shall refer to these two sections as the 'Karetai land'. The Wai 324 claimants object to the fact that their tipuna's land has not been offered back to them now that it is no longer needed for the purpose for which it was taken. They claim that the land is of tremendous cultural and spiritual significance to the family and are concerned that current negotiations regarding the future ownership and management of this land are proceeding without consultation with them. The Tribunal does not propose to have a formal hearing of Wai 324. By direction of the chairperson dated 2 February 1993, the following summary constitutes the Tribunal's report on the claim.

4.6.1 Taiaroa Head, the outermost extremity of Otago Peninsula, is also known as 'Pukekura', after the pa of that name where Karetai resided. Professor Atholl Anderson submitted that this settlement was located at Pilots Beach. Mr Karaitiana, in his submission to the Dunedin City Council on the draft management plan of the Taiaroa Head reserves, stated that, in addition to Pukekura, at least one other pa site exists on the headland, that of Rangipipikao. He claimed that there are also numerous waahi tapu there.

Under the terms of the Otakou deed of purchase, Ngai Tahu's reserve on the peninsula did not include the headland, apparently because it was earmarked for a lighthouse reserve. The boundary of the Ngai Tahu reserve was described in the deed as:

> thence along the coast [from Poatiri] 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 . . . (A8:I:104)[82]

The Native Land Court sat in Dunedin in May 1868. It heard applications for the partition of and entitlement to the peninsula reserve. Of issue at Taiaroa Head was the extent of Government land

marked off for the lighthouse reserve. The court determined the boundary as being an existing fence line built by one of the pilots, comprising an area of 18 acres. The landing place at Pilots Beach was also a matter of contention. The provincial government of Otago had been paying an annual rent to local Ngai Tahu for the use of the landing. The court decreed that the beach did in fact fall into the native reserve. The one-acre reserve at Pukekura became lot 33, the landing reserve lot 28. Both areas, and the neighbouring lot 27, were vested in Korako Karetai. The following year the lighthouse reserve at Taiaroa Head was gazetted (O3:doc2).[83]

On 29 November 1878 Karetai conveyed lot 28, the pilot station beach frontage, to the Crown for £100 (O3:doc3).[84] This was then conveyed by the Crown to the Otago Harbour Board in 1881 (O3:doc4).[85] A small portion of the lighthouse reserve occupied by the pilot houses and signal station was also vested in the board under the Otago Harbour Board Indemnity and Lands Vesting Act 1888.

Land taken for defence purposes

4.6.2 On 29 May 1888 lot 33 and part of lot 27 were taken by the Crown under the Public Works Act 1882 Amendment Act 1885 for defence purposes (O3:doc5).[86] Compensation of £65 was paid for the 6 acres 2 roods 27 perches so taken (O3:doc6).[87] In April 1890 a further portion of 4 acres 1 rood 4 perches was taken from lot 27 for a road to the lighthouse.[88] There is no evidence of payment of compensation for the acquisition of this land. A little over five acres was also taken from the surrounding lots 32, 47, 48, and 49 for the same purpose. In October 1891 further land was taken from lot 27 for defence purposes (O3:doc6–7).[89] Compensation of £45 was paid for the 3 acres 1 rood 7.2 perches so taken. In 1894 the road to the lighthouse reserve was realigned and further small areas were taken from lots 27, 32, 48, and 49 to accommodate these changes (L10:C2).[90] As a result of the realignments, part lot 27 lost a further five perches.[91] As with the earlier road acquisition, there has been no evidence provided that compensation was paid.

In summary, then, 9 acres 3 roods 34.2 perches were taken from lots 33 and 27 for defence purposes in the years 1888 and 1891. Land to the extent of 4 acres 1 rood 9 perches was taken for roading. All of the above land was taken under the Public Works Act 1882 and its 1885 amendment, the Public Works Act 1882 Amendment Act 1885. Section 24 of the 1882 Act reads:

> Whenever it may be necessary to take any land for any Government work which may be held or occupied by Native owners, under any tenure or for any estate or interest whatsoever, the Governor in Council may order that such work shall be constructed on or through any such land, to be defined in general terms in such Order in Council, *without complying with any of the provisions hereinbefore contained.* [Emphasis added.]

The provisions referred to above relate, among other things, to the Crown's requirement to give public notice of the impending works or taking, serve notice on the owners of the land, and receive and hear any objections to the intended works. Under section 24, these provisions did not apply to Maori land. On the contrary, under section 25 upon the gazetting of the Order in Council for two

months, the Governor could take and hold the Maori lands and enter upon them, without any notice or application to the owners or occupiers of the land. Once compensation was determined by the Native Land Court, the land vested in the Crown.

4.6.3 There has been no grievance regarding the Crown's taking of lots 33 and 27 for defence purposes, nor has this been the subject of investigation. At this point, however, we must state that the provisions of the Public Works Act 1882, and its amendment under which the land was taken, in no way reflect the partnership or recognition and protection of Ngai Tahu rangatiratanga implicit in the Treaty. Under the law the Crown was not required to consult with, or even notify, the Maori owners of the land. The Tribunal does not dispute the importance of constructing defence works, indeed we regard such works as essential. Nor do we question the suitability of the acquisition at Taiaroa Head. However, we are left unaware of whether it was necessary for the Crown to acquire the freehold of this land for defence purposes. It may well be that the land could have been leased for such time as it was required for those purposes. In this way Maori would have retained the ownership of their land, the use of which would have been returned to them when the land was no longer required. In our view, serious doubts must arise regarding the arbitrary procedures that were embodied in the legislation of the time for taking Maori land for public purposes. Such procedures fly in the face of the principle of partnership, which requires the Crown and Maori Treaty partners to act toward each other reasonably and with the utmost good faith. The fact that different rules applied for the acquisition of non-Maori land could also be seen as a breach of article 3 of the Treaty.

We note that it was not until the passing of the Maori Purposes Act 1974 that there was any serious requirement on the Crown to notify the owners of multiply held Maori land of any proposal to take that land for public works. Part IX of the 1974 Act established a code for the representation of owners of Maori land that is in multiple ownership, requiring certain procedures to be followed to give notice to such owners. Until then the only requirement on the Crown, provided for in section 22(4) of the Public Works Act 1928, was to issue a *Gazette* notice of the impending works or taking. This was repealed by section 12(7) of the Maori Purposes Act 1974.

Taiaroa Head reserves

4.6.4 The Department of Internal Affairs became interested in Taiaroa Head when albatross began visiting the area. In 1938 the first young bird survived to the point where it was able to fly and that same year the department fenced off the main nesting area from the rest of the lighthouse reserve and defence area (P6:7–8).[92] The lighthouse reserve, Otago Harbour Board land, and lot 33, together comprising 20 acres, were declared a sanctuary under the Animals Protection and Game Act 1921–22 (L10:E).[93] After the passing of the Wildlife Act in 1953, the sanctuary automatically became a wildlife refuge.

In 1958 the Department of Lands and Survey was advised that the army no longer required the defence reserve at Taiaroa Head (P6:1).[94] This area comprised 7 acres 3 roods 37.8 perches of part lot 27 (P6:2).[95] The difference between the amount of land taken for defence purposes last century and that left by 1958 can be accounted for by the road which was laid through part lot 27 after it

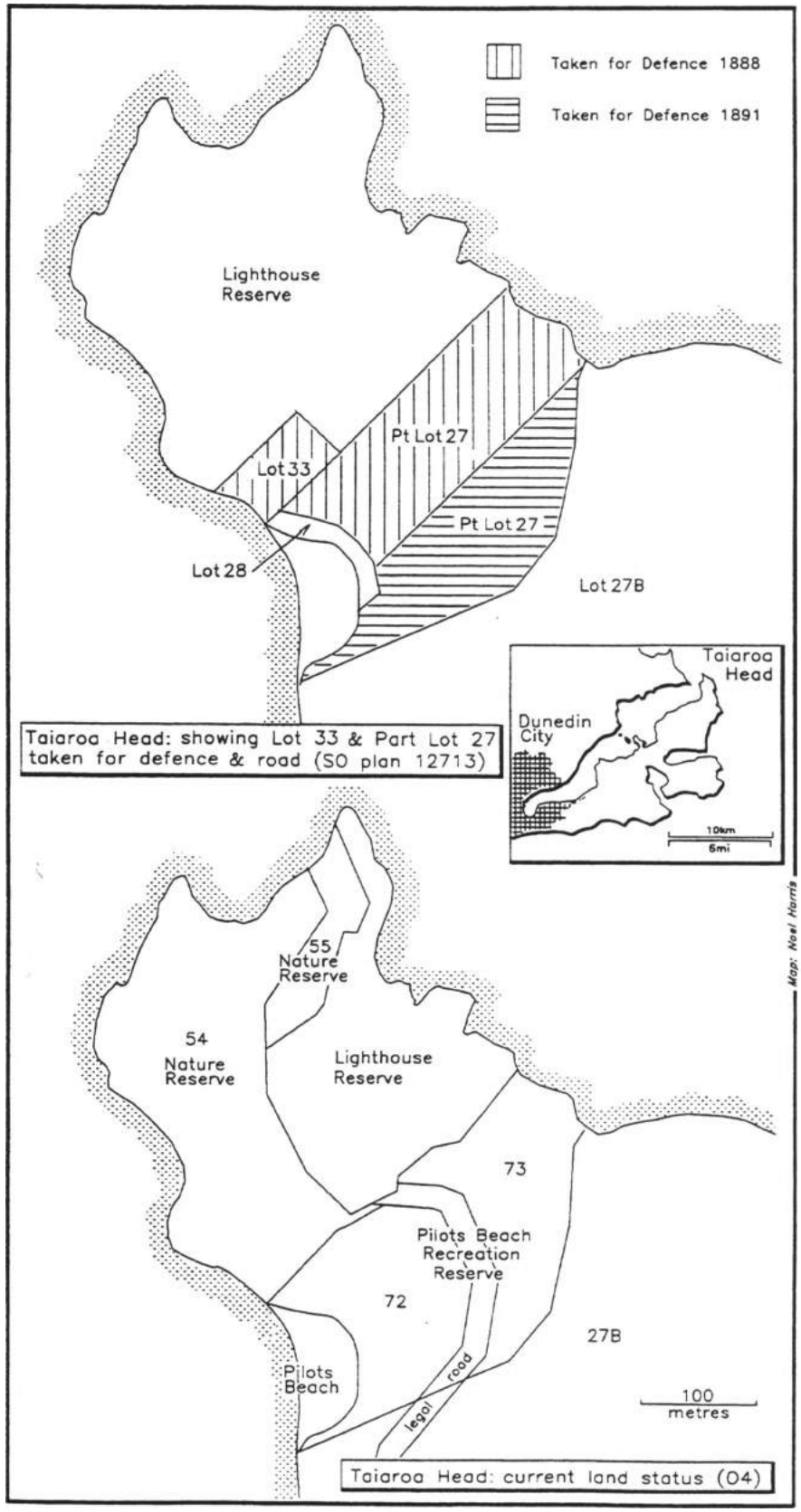


Figure 6: Taiaroa Head

was taken in 1888. In bis submission to the Tribunal, Mr Alexander stated that the policy of the Government at the time was to circulate details of surplus land to potentially interested Government departments in order to see if they were interested in it for an alternative public purpose (P7:4). Only after this was done, and no alternative public purpose was found, was the land sold on the open market. At that time there was no statutory requirement to first offer the land to be sold to the original owners or their descendants. Lot 33 was declared Crown land in April 1959 (L10:G).[96]

In June 1962 a proposal was submitted to the Minister of Lands to bave the albatross colony made a reserve under the control and management of the Minister of Internal Affairs for the preservation of flora and fauna (P6:7–9).[97] It was also proposed to reserve adjoining areas for recreation purposes. The plan required, among other things, the reservation of lot 33 and a portion of part lot 27 (which was in the process of being declared Crown land) for a flora and fauna reserve. It was envisaged that the balance of part lot 27 would be reserved for recreation purposes as it was a popular picnic spot for the general public (P6:8). Ministerial apprnval was given to the proposal and the following action was taken to bave the plan unplemented.

The 7 acres 3 roods 37.8 perches of part lot 27 no longer required for defence purposes were gazetted as Crown land in 1962.[98] In 1963 the reservation over almost 10 acres of the lighthouse reserve was revoked and the vesting in the Otago Harbour Board cancelled (L10:I).[99] Later that year the flora and fauna reserve was gazetted and the Minister of Internal Affairs appointed to control and manage it (L10:J–K).[100] The lighthouse reserve, of 6 acres 1 rood 37 perches, was vested in the harbour board (L10:K). In 1970 the originally surveyed road through the old defence reserve was closed. Some two acres of part lot 27 became section 69, and 2 roods 12.7 percbes became section 70. A further 3 roods 26.9 perches were taken for the resurveyed road (L10:M).[101]

Contrary to the 1962 proposal, only a very slight area (0.0152 bectares) of part lot 27 was included in the flora and fauna reserve. Another small portion (0.2430 hectares) was incorporated into the lighthouse reserve. By far the largest parcel of part lot 27, together with the closed road areas (sections 69 and 70), was reserved for recreation purposes in 1982 and vested in the Dunedin City Council. The recreation reserve comprised 3.9153 hectares and was given the new appellations section 72 and section 73 (L10:P).[102] Lot 33 is now part of section 54, the nature reserve of 4.5729 hectares.

The draft management plan on Taiaroa Head reserves

4.6.5 Today the wbole of Taiaroa Head is reserved under the Reserves Act 1977. The beadland has the overlying status of wildlife refuge, and part of the surrounding foreshore is a wildlife sanctuary. The area is divided into three sectors: the lighthouse and recreation reserves, administered by the Dunedin City Council, and the nature reserve (and wildlife sanctuary), administered by the Department of Conservation. The lighthouse reserve is leased to the Otago Peninsula Trust by the Dunedin City Council, and the trust operates services for visitors to the beadland (see para 4.6.7).

The breeding population of royal albatross has now reached 60 or 70 birds. Stewart Island shags, southern blue penguins, sooty shearwaters, southern black-backed gulls, and red-billed gulls also inhabit the headland. Fur seals breed around the shoreline, and Hooker's sea lions, southern elephant seals, and leopard seals occasionally haul out on Pilots Beach. In addition to its importance as a wildlife habitat, the headland has historical significance for both Maori and Pakeha. It is also the site of a lighthouse and coastal shipping control station. Pilots Beach is a popular beach area.

In 1992 the Department of Conservation and the Dunedin City Council jointly prepared a draft management plan to ensure an integrated approach to the future management of the reserves (AB27:237–277).[103] Both bodies were principally concerned with protecting and enhancing the native wildlife and its habitat. To this end, they proposed a number of changes to the land status which would see the reclassification of the lighthouse and recreation reserves as a local purpose reserve for wildlife protection.

The department and the council were aware of the strong attachments that Otakou Ngai Tahu have for the headland and stated that such attachments 'justify a formal place and role for the iwi in the oversight of the reserves'. Three options were expressed which set up alternative actions to be considered in respect of the administration of the reserves. The proposals would have seen the establishment of a management agency (trustees, a board, or a 'Heritage Protection Authority') in which the management and control of the reserves would have been vested. This agency was to have been representative of the Ngai Tahu iwi or Te Runanga Otakou, the Dunedin City Council, and the Department of Conservation. Under these options the new agency would have been obliged to follow the objectives of the management plan (AB27:251–252).[104]

Submissions on the draft plan were called for by 28 August 1992. The Otakou runanga was notified about the proposed management options in the plan before its public release but, as Mr Alexander conceded, 'could not be said to have been consulted about them' (AB35:41). In all, 25 submissions were received, including four petitions containing a total of 190 signatures (AB32:178).[105]

However, the head office of the Department of Conservation subsequently identified some procedural irregularities with the draft plan's release and notification, including the fact that the reserves had not been classified and the plan had not been approved by the Director-General of Conservation before being made available to the public (AB32:174–176).[106] Those who had originally made submissions were informed that the recreation and lighthouse reserves would be reclassified (a process which provided for public input) and that thereafter the management plan would be reissued for public comment (AB32:178).[107]

Kuku Karaitiana, for the Wai 324 claimants, expressed some concern at the delays and what he saw as the Department of Conservation's non-cooperative approach. He stressed, however, that the wildlife on the peninsula was not under any threat at all from the involvement of the descendants of Korako Karetai in the management of the reserves (AB32:181–191).[108] Eventually, in response to a request from the Otago Regional Council, the Department of Conservation agreed that the

Trihunal's decision in this report would he awaited hefore further consideration of the classification of the reserves takes place (AB32:194).[109]

The claimants' grievance

4.6.6 In their statement of claim, Mr Karaitiana and others state that the land which was taken from them is of tremendous cultural and spiritual importance to the family. It is claimed that although they have never surrendered their rights to the land, the Crown, the Department of Conservation, the Dunedin City Council, and others have been dealing with lot 33 and part lot 27 down to the present time to the exclusion of the claimants. It is alleged that the claimants have been adversely affected hy the fact that the land has not been returned to them even though it has long ceased to be used for the purpose for which it was taken, and that this constitutes a breach of the Treaty. In paragraph 10 the claimants state that, under New Zealand's public laws, land compulsorily acquired by the Crown which is no longer needed for the purposes for which it was taken must be offered hack to the original owners, whom the claimants represent. They also maintain that the Crown and others are presently negotiating to make deals with the land to the exclusion of the claimants. Mr Karaitiana has urged the Trihunal to recommend that the Crown, the Department of Conservation, and the Dunedin City Council deal only with the deseendants of Korako Karetai, the original owner of the land.

The Wai 324 claimants rely on the provisions of section 40 of the Puhlic Works Act 1981, which sets out a procedure for the disposal of land which is no longer required for a puhlic work. We do not propose to set out the full text of the section here, hut it generally provides that, where any land is held under the Puhlic Works Act or any other Act and is (a) no longer required for that puhlic work; (b) not required for any other puhlic work; and (c) not required for any exchange under section 105 of the Puhlic Works Act, the chief executive shall endeavour to sell the land in accordance with the provisions of section 40. The purpose of the section is to require the land to be offered back for purchase hy private contract to the person from whom it was acquired or to the successor of that person. In addition to section 40 of the Puhlic Works Act 1981, there is further provision in section 134 of Te Ture Whenua Maori Act 1993 for the revesting in Maori of any land acquired hy the Crown or by any local authority or puhlic body for the purposes of a puhlic work or other puhlic purpose but no longer required for the public work or other puhlic purpose for which it was acquired or is held. As the Trihunal interprets the law, there is no statutory compulsion on the Crown to return land which was acquired for a puhlic purpose and is still required for the puhlic purpose for which it is held, notwithstanding that that purpose may be different from that for which it was initially taken.

No grievance is expressed hy the claimants under Wai 324 that the compensation moneys that were paid were inadequate nor are there any allegations about the lack of compensation paid in respect of the land taken for roading. The principal concern of the claimants, and indeed that of Wai 27 claimant Magdeline Wallscott, was that land taken for a puhlic purpose hut no longer used for that purpose has never been returned.

The Tribunal's conclusion

4.6.7 The Tribunal in its two earlier Ngai Tahu reports has stated the Crown's duty to protect Ngai Tahu's rangatiratanga over their land and all other valued possessions. In our discussion of claim 1 we have discussed the qualified right to govern accorded to the Crown under the Treaty and the limitations upon its exercise, namely the retention by Maori of tino rangatiratanga over their lands and other properties. As set out earlier, the Tribunal also considers that the Treaty signifies a partnership and requires both Treaty partners to act towards each other reasonably and with the utmost good faith. We find that these principles are sadly lacking in the above history of the defence land at Taiaroa Head. The Tribunal is well aware of the necessity for the Crown to take land for public purposes. Preparations for the defence of our nation are essential, and there is no doubt that the current use of lot 33 and part lot 27 is of national as well as international importance. We find, however, that the Crown's action in changing the use of the old defence land without consulting the descendants of the original owners is a breach of Treaty principles. The arbitrary way in which the Crown has dealt with this land, from the earliest taking date in 1888 up until the present, indicates a disregard for these principles.

Pukekura was an area of Ngai Tahu settlement. The area comprising the old lot 33 was of such importance to the tribe that, at the time of the Crown's purchase of Otakou, they insisted it be reserved from the sale. In light of the breaches of Treaty principles outlined above and the significance of the land to the Karetai family, the Tribunal considers that ownership of what comprised lot 33 should be restored to the descendants of Korako Karetai. However, the council has stated that it envisages returning the reserve to the Otakou runanga. The Tribunal merely observes at this point that the land was originally taken from Korako Karetai and any return should be made to his descendants.

While part lot 27 was also taken from Korako Karetai, we cannot make the same recommendation for the reasons that now follow. The Tribunal notes that the fee simple title to the recreation reserve, the former part lot 27, is now vested in the Dunedin City Council under section 26 of the Reserves Act 1977. Counsel for the city council, Warren Alcock, submitted that the Tribunal does not have the jurisdiction to recommend the return of this land to Ngai Tahu because the 1993 amendment to the Treaty of Waitangi Act 1975 expressly prohibits the Tribunal from recommending the redress of Maori grievances through the 'return to Maori ownership of any private land' or the 'acquisition by the Crown of any private land' (AB50:2). The 1993 amendment inserted into the principal Act the following definition of private land:

> 'Private land' means any land, or interest in land, held by a person other than—
>
> (a) The Crown; or
>
> (b) A Crown entity within the meaning of the Public Finance Act 1989.

Mr Alcock submitted that the Dunedin City Council is not the Crown and therefore the Tribunal cannot make a recommendation for the return of land the council bolds in fee simple.

The Tribunal concurs with Mr Alcock's view that it docs not have jurisdiction to make such a recommendation. However, the Tribunal is pleased to note that Mr Alcock bas communicated to the Tribunal the council's intention, in any case, to return the ownership of the recreational reserve to Maori 'as a gesture of goodwill', on condition that the council continue to share in its management. The Tribunal commends the council for its generous approach to this matter.

Mr Alcock's submission raised some important considerations for the Tribunal in terms of the parameters of its jurisdiction. We were also required to consider the implications of the private land amendment for the scope of our recommendations in the context of claim 75, which involves land controlled and managed by the Southland District Council. We have observed that the Treaty of Waitangi Act now disallows the Tribunal from recommending the return to Maori of any privately owned land or interest in land, such as a lease, and therein concur with Mr Alcock's submission. We have accordingly abided by these new provisions. However, we would note that the Act allows any Maori to bring a claim against the Crown before the Tribunal (which the Tribunal may then proceed to consider) wbere be or she feels prejudicially affected by any policy or practice, act or omission (whether past, present, or impending) committed or made 'by or on behalf of the Crown'. The extent of jurisdiction given to the Tribunal hy the words 'by or on behalf of the Crown' has not been argued before this Wai 27 Tribunal, and we are not required to make a finding on the meaning and effect thereof. It is useful, however, to refer briefly to two issues wbicb arise. The first question is wbether the Tribunal has jurisdiction to accept and inquire into a claim, and make recommendations therein, in cases where control or management of the property is vested in or held hy a local authority or other body or the property itself is vested in or beld by a local authority. Put simply, the argument might be advanced that the policy or practice, or the act or omission, is not the Crown's and therefore no claim lies under the Act.

This jurisdiction question should not be confused with the second legal issue as to what constitutes 'private land' as those words are used in the Treaty of Waitangi Amendment Act 1993. The situation may well arise in wbich the Tribunal may determine that it has jurisdiction to hear and inquire into a claim by virtue of the 'by or on behalf of the Crown' provision in section 6, hut may further determine that it has no power to make a recommendation because the land is 'private land' within the definition of the 1993 amendment.

Again it is important to note that the definition of 'private land' in section 2 of the Act (as inserted by the 1993 amendment) clearly refers to any land or interest in land beld hy a person other than the Crown or a Crown entity. In the case of the recreation reserve, being the former part lot 27 referred to in this particular ancillary claim, that land is vested in the Dunedin City Coimcil and beld hy that body. It therefore is protected by section 6(4A) from any recommendation of the Tribunal. We shall see in a later ancillary claim (claim 75 relating to Howell's Point) that the land is a former public domain which remains Crown land because, although it is controlled and managed by the

Southland District Council under the Reserves Act 1977, it is not beld by that body, thus enabling the Tribunal to make a recommendation in respect of it.

The Tribunal is fully cognisant of the inportance of the native wildlife and its habitats at Taiaroa Head. There can be no doubt that this inportant national asset must be protected. Any return to the Karetai descendants must be conditional on the obligation to adhere to the management objectives. The Tribunal does not accept, bowever, that it is crucial to the future management and protection of the albatross colony that ownership of the Karetai land remain with the Crown. At Tuahiwi marae in February 1988 Ken Piddington made a submission to the Tribunal in his capacity as Director-General of Conservation. One of the issues discussed by Mr Piddington was wbether title is relevant to the department's role of managing conservation areas. He suggested that there is no incompatibility between the department's responsibility to manage land and waters for conservation purposes and the revesting of title of any such land in the iwi. Mr Piddington cited the 1978 return of Mount Taranaki to the Taranaki Maori Trust Board (and the simultaneous gifting back of the mountain by the board for a national park) as an example of this. Sucb revesting, Mr Piddington stated, would be an appropriate way in whicb to recognise Ngai Tahu as tangata wbenua. The only foreseeable problem would be if pressure were subsequently brought to bear by the tribe to introduce uses to protected areas which were in conflict with the Conservation Act 1987 or other legislation (G8:12). The Tribunal notes that the example of the revesting of Mount Taranaki may not be the example that is the most relevant to our recommendations with respect to the land at Taiaroa Head. However, we note also that in recent years Mount Taupiri has been returned to Tainui, the bed of Lake Taupo bas been vested in Ngati Tuwharetoa, and negotiations are continuing between the Department of Conservation and Ngati Porou for the return to the tribe of its sacred mountain Hikùrangi.

In December 1994 the Crown released the booklet *Crown Proposals for the Settlement of Treaty of Waitangi Claims: Detailed Proposals*. This booklet is part of the Crown's consultative process on its claims settlement policy proposals. With respect to the conservation estate, the booklet states that the conservation estate is 'beld on behalf of all New Zealanders' and 'not readily available for the settlement of Treaty claims'. However, 'discrete sites' can be returned to Maori if their special significance has been demonstrated. The existing nature and degree of legal protection and public access, and the right of existing concessionaires, will all be safeguarded under the proposed policy. As for the return of land itself, it may (a) be vested in Maori claimants (with legal encumbrances, wbere appropriate, to ensure continued public access and conservation objectives); (b) be vested either under the Reserves Act 1977 or through special legislation, with varying degrees of Crown control and with title to revert to the Crown if the conditions of vesting are not met; or (c) be retained by the Crown, with iwi to play a significant management role.[110] Crown counsel noted that a period has been provided for to allow interested parties to formulate submissions on the proposed policy approach (AB72:1). This period expires on 31 August 1995.

The Tribunal makes no comment upon this generic policy proposal affecting conservation lands, as it is not a matter before us. However, we observe that the land recommended for return to Ngai Tahu at Taiaroa Head seems to comply with the criteria, as we understand them, for sucb a return under

the Crown's proposed policy. The significance of the area applies equally to the land sold to the Crown as part of the Otakou purchase as to that reserved for Korako Karetai. Later in this section, we suggest the statutory mechanisms already in place for the return of land.

The Trihunal is satisfied that adequate machinery and safeguards in the present law exist to protect the native wildlife. The Wai 324 claimants have also indicated that they fully support the albatross colony and do not wish to see it at all jeopardised. Neither sections 40 and 41 of the Puhlic Works Act 1981 nor section 134 of Te Ture Whenua Maori Act 1993 would seem to be available for the purposes of revesting as the lands are still held for puhlic purposes. Special legislation may be needed to provide a vehicle for the return of the Karetai land to Korako Karetai's descendants.

Mr Alcock further submitted that the Dunedin City Council holds title to the rest of the headland reserves, that is, the area comprising the old lighthouse reserve, as successor to the Otago Harbour Board. As with the recreation reserve, however, the council is willing to return the lighthouse reserve to the wider Ngai Tahu iwi as a gesture of goodwill. The Trihunal once again commends unreservedly the council's generosity in this matter. The lighthouse reserve has not been suhject to the claim and involves land included in the Crown's original Otakou purchase, yet we emphasise once more the historical and cultural significance of the peninsula to the tribe.

4.6.8 A submission was also received from Neville Marquet, counsel for the Otago Peninsula Trust. The trust is a voluntary organisation which was set up some 25 years ago to encourage the preservation and enhancement of the natural and historical features of the Otago Peninsula. The trust's main asset on the Taiaroa Head is the albatross colony visitor centre. Mr Marquet estimates that the trust has an investment of approximately $5 million in this centre and the albatross viewing areas. The trust has a 33-year lease for the lighthouse reserve from the Dunedin City Council, with two 33-year rights of renewal (AB49:2).

Mr Marquet stated that 'no decision of the Waitangi Tribunal should in any way affect [the trust's] short or long term interests' at Taiaroa Head. He asked that 'wherever the final ownership is directed the use of this area [should] continue to be fully available to the general puhlic' (AB49:2). The Trihunal in no way wishes to make any recommendations which would adversely affect any of the trust's interests or activities at Taiaroa Head, which are surely an asset to the Otakou Peninsula.[111] Furthermore, as we have discussed, any return of land to Ngai Tahu should be conditional upon adherence to management ohjectives, amongst which puhlic access to the albatross colony must be paramount. However, we note with satisfaction Mr Marquet's other comment that 'It is the Trust's wish that it live in harmony with all persons who have a valid interest in the headland and sees no reason why this should not continue. . . . If [the trust's] interests can be maintained the ownership of the land is not of direct concern' (AB49:2).

Again, such return should be made conditional on an ohligation hy the Ngai Tahu owners to adhere to the management plan in order to ensure the continued protection of the nature reserve. The inroads that have been made into the reserves of Ngai Tahu referred to in various parts of this report would

seem to the Trihunal to justify a generous approach to a solution based on the partnership principle of the whole of the beadland area.

4.6.9 No less important is the question of Ngai Tahu's participation in the management of the reserves. The Department of Conservation and the Dunedin City Council have indicated their willingness to include Ngai Tahu in the future management and control of the Taiaroa Head reserves. We strongly commend this move. The Wai 324 claimants have stated that, with respect to their tipuna's land, the Crown should deal only with them. Given the department and city council's objective to ensure an integrated approacb to future management of the Taiaroa Head reserves, we feel this may be impractical. The significance of the beadland to Ngai Tahu ki Otakou necessitates the involvement of the Otakou runanga in the management of the reserves. However, the Tribunal would call attention to the fact that the descendants of Korako Karetai, represented by the Wai 324 claimants, have an exclusive interest in the old lot 33 and part lot 27, which comprise over a third of the Taiaroa Head reserves. Their interest in this land is not disputed by the Wai 27 claimants. It is clear that the Wai 324 claimants would also share a general interest in the rest of the beadland reserves. Any involvement of the iwi in the management of the Taiaroa Head reserves must include representation from this claimant group. We recommend accordingly.

As we have seen, a portion of the headland is vested in the Dunedin City Council and a portion is Crown land, the latter being the nature reserve and wildlife sanctuary administered hy the Department of Conservation. The Tribunal has acknowledged the importance of the area as a wildlife refuge. The need to protect the area is also accepted by the Wai 324 claimants. The whole headland is of great cultural and bistorical significance to Ngai Tahu ki Otakou. Earlier in this claim we mentioned that special legislation may be needed to provide the machinery for the return of the land. That statutory method would provide a clear-cut approach. However, even as the law presently stands, it appears to the Tribunal that there is a way in which the land could be restored to Maori ownership with the public interest and conservation concerns fully safeguarded.

Both the Dunedin City Council and the Otago Peninsula Trust bave no objection to the return of the land conditional upon continued adherence to a management plan. We have already suggested management under a tripartite arrangement.

To facilitate the return of that area of land vested in the Dunedin City Council, a portion of whicb is leased to the Otago Peninsula Trust, we suggest as a first step that the land be revested in the Crown pursuant to the provisions of section 27 of the Reserves Act 1977. Section 27(1) expressly provides that the revesting is 'subject to the trusts affecting the land and to any valid leases, rights, or easements subsisting thereover at the date of revesting'. This would protect both the present use trust and the lease to the Otago Peninsula Trust.

The second step in the process would be an application to the Maori Land Court hrought under section 134(1)(e) of Te Ture Whenua Maori Act 1993 hy the Minister of the Crown having responsibility. This provision is a new provision in Maori land law and gives wider jurisdiction than the procedures previously provided under sections 267 and 436 of the former Maori Affairs Act

1953. It enables any Crown land, howsoever acquired or held, to be vested in Maori. In the application to the court, the Minister, pursuant to powers given by section 134(7)(c), may specify the conditions upon which the land is to be returned. The Minister, therefore, bas effective power to stipulate the conditions such as conservation and access that must be attached to the court order.

Section 77A of the Reserves Act 1977 (as inserted by another new provision in 1993), entitled 'Nga Whenua Rahui Kawenata', provides a new regime wbicb allows Maori landowners to join with the Crown in a management scbeme to preserve and protect:

(i) The natural environment, landscape amenity, wildlife or freshwater life or marine life babitat, or historical value of the land; or

(ii) The spiritual and cultural values which Maori associate with the land.

It seems to the Tribunal that this new provision provides adequate protection for both Maori and the public interest.

As a second condition (and it is not for this Tribunal to suggest in detail bow all objectives can be achieved, because this would need consultation) the Minister may stipulate that the vesting order be followed hy a further Maori Land Court order under sections 338 and 340 of Te Ture Whenua Maori Act 1993 creating a Maori reservation over the lands returned and determining that the reservation be beld for the common use and benefit of the people of New Zealand. Section 340 provides opportunity for the appointment of not only Maori trustees representing the ownership, hut also trustees representing the local authority involved.

With some respect, the Tribunal feels that there is a lack of knowledge and understanding hy Maori and Pakeha alike of the existing law, admittedly somewhat new in some cases, whicb enables suitable partnership management to be concluded with conservation in mind. In some cases local authorities and even Government departments are ignorant of the remedies provided under the present law.

There are already in place, therefore, statutory powers enahling a return of Crown land to Maori yet allowing for completely adequate safeguards to meet not only conservation demands but also the wider puhlic concerns sucb as access and enjoyment. The law also lays the basis for the Maori owners to be involved in these management and conservation issues. It remains for the Crown to iinplement the statutory process.

In the case of the Otakou beadland area, therefore, the Trihunal urges the Crown to complete a programme which both satisfies the Maori grievance and is in accord with the positive and constructive approacb of the Dunedin City Council and the Otago Peninsula Trust.

4.6.10 In summary, therefore, the Trihunal recommends that the ownership of the Crown land taken from Korako Karetai be returned to his descendants, and the Crown land at Taiaroa Head which formed

The following is a tabular summary of the lands discussed.

Former land status/ appellation	How/ when acquired	Current status	Currently owned/ administered by	Relevant claimant group for return of title
Lighthouse reserve	1844 Otakou purchase	Nature reserve: section 55 and part section 54	Crown owned: administered by DOC	Otakou runanga
Lot 33 Maori reserve	Taken for defence 1888	Nature reserve: part section 54	Crown owned: administered by DOC	Descendants of Korako Karetai
Part lot 27 Maori reserve	Taken for defence 1888	Nature reserve: part section 54	Crown owned: administered by DOC	Descendants of Korako Karetai
Part lot 27 Maori reserve	Taken for defence 1888	Recreation reserve: part sections 72 and 73	Vested in and administered by Dunedin City Council	Descendants of Korako Karetai
Part lot 27 Maori reserve	Taken for defence 1891	Recreation reserve: part sections 72 and 73	Vested in and administered by Dunedin City Council	Descendants of Korako Karetai
Lighthouse reserve	1844 Otakou purchase	Lighthouse reserve	Vested in and administered by Dunedin City Council: leased to Otago Peninsula Trust	Otakou runanga
Lot 28 Maori reserve	Crown purchase from Korako Karetai 1878	Recreation reserve: part section 72	Vested in and administered by Dunedin City Council	Descendants of Korako Karetai

part of the Otakou purchase be returned to the Ngai Tahu ki Otakou. The Tribunal supports the return by the Dunedin City Council of land originally taken from Korako Karetai to his descendants, as well as the return of other land at Taiaroa Head (the lighthouse reserve) to Ngai Tahu ki Otakou. The Tribunal feels the management of the Taiaroa Head reserves should be shared evenly in a tripartite arrangement between Ngai Tahu, the Department of Conservation, and the Dunedin City Council. Furthermore, the Tribunal believes there should be specific representation of the descendants of Korako Karetai in any management structure. Finally, the interests and activities of the Otago Peninsula Trust at the headland must remain unaffected.

4.7 Claim no: **52**
Claim area: **Harington Point**
Claimant: **Emma Potiki Grooby-Phillips**
Claim:

> **Mrs Grooby-Phillips claimed that land taken at Harington Point for defence pnrposes in 1890 has not been returned even though it is no longer used for this pnrpose. She claimed that no compensation was paid for the Crown's acquisition (L32:31).**

4.7.1 When the Otago Peninsula reserve was subdivided in 1868, the court allotted lot 49 to Wiremu Potiki, Mrs Grooby-Pbillips' great-grandfather.[112] In 1890 five acres were taken from lots 48 and 49 under the Public Works Act 1882 Amendment Act 1885 for the construction of defence works (O3:doc8).[113] Mrs Grooby-Phillips' allegation that no compensation was paid for the acquisition is negated by evidence wbicb reveals that £75 was awarded for the land by the Native Land Court in 1892 (O3:doc6).[114]

Land no longer needed for defence purposes

4.7.2 As mentioned in the discussion of the previous claim, in 1958 the Department of Lands and Survey was advised by the Defence Department that the defence reserves at Otago Heads were no longer required (P6:1).[115] This included the defence land at Harington Point, being 4 acres 3 roods 36.4 percbes of part lot 49. Unlike the defence reserve at Taiaroa Head, none of the various Government departments informed of the Harington Point reserve were interested.

In the absence of any Government interest, the land was proclaimed Crown land in October 1961 (P6:4).[116] Mr Alexander stated that the lack of consideration given to offering the land back to the original owners reflected Government policy and legislation of the day.

In 1962 the Department of Lands and Survey proposed that the land be reserved for recreation purposes:

> It is occasionally used by trampers and picnic parties and, although exposed and unattractive should be reserved for recreation purposes as there is no other use for it. (P6:8)[117]

Although this proposal was approved by the Minister of Lands, action with respect to part lot 49 was never taken. It seems that the matter was overlooked until 1982, when the Commissioner of Crown Lands endeavoured to rectify the matter. Both the Dunedin City Council, in 1982, and the Otago Peninsula Trust, in 1984, were approached about accepting the control and management of the land (P6:10–11).[118] Both, however, declined.

In 1986 it was discovered that when the defence reserve had been declared Crown land in 1961, a survey error had resulted in three small areas totalling 630 square metres not being included in the transfer to the Department of Lands and Survey (P6:12).[119] As Mr Alexander pointed out, the Public Works Act 1981 required that any surplus land be offered back to the original owners. The Ministry of Works, however, wished to see the land incorporated into the proposed recreation reserve. In February 1987 approval was sought and given to exempt the land from being offered back to the original owner under section 40(2)(a) of the Public Works Act 1981. It was thought that 'due to the size, shape and location of the subject areas . . . an offer back to the original owners is inappropriate in this case' (P6:13).[120] These areas were declared Crown land in April 1987 (P6:14).[121] Lot 49 is now section 75 on survey office plan 21449, and comprises 2.063 hectares. The land is subject to the Land Act 1948 and is the administrative responsibility of the Commissioner of Crown Lands Dunedin.

The Tribunal's conclusion

4.7.3 The land at Harington Point, like that at Taiaroa Head, was taken for defence under the Public Works Act 1882 and its 1885 amendment. As discussed in the previous claim, under this legislation no notification of, let alone consultation with, the Maori owners of the land was necessary before taking the land. As with the Taiaroa Head claim, no grievance has been submitted with respect to the actual taking of the land for defence purposes, nor has this been the subject of investigation. The Tribunal, however, would like to reiterate that the arbitrary procedure for taking Maori land for public purposes, as provided for in the legislation of the time, indicates little regard for the principles of the Treaty.

The Tribunal has stated that the exercise of the Crown's sovereignty is limited by its promise to guarantee Maori rangatiratanga over their land and other valued possessions. Implicit in this is the duty to consult. The fact that since 1958 the land has not been required for defence, and the descendants of the original owners have not been approached about this development, constitutes in our view a breach of the Treaty.

As an epilogue, the Tribunal is pleased to report that the Crown is now to take steps to vest this land in the descendants of Wiremu Potiki. We strongly commend this action, which we feel is entirely appropriate in the circumstances.

4.8 Claim no: **53**
Claim area: **Lake Tatawai**
Claimants: **Magdeline Wallscott (L32:28), Craig Ellison (C13a), Edward Ellison (H12:3)**
Claim:

> **The claimants referred to the deprivation of traditional mahinga kai resulting from the drainage of Lake Tatawai.**

Edward Ellison, chairperson of the Otakou Maori Committee, submitted that Lake Tatawai was once an important mahinga kai. He described the lakes of Taieri as:

> a food basket for the Taieri people as well as the Peninsula, yielding large quantities of large tasty eels, several types of ducks — Parera (Grey duck) Kukupako (Black teal) Pateke (Shoveller Duck) Tete (Shoveller duck). (H12:3)

Lake Tatawai was particularly renowned for its tuna (eels) and kanakana (lamprey). As recompense for the loss of the lake, Mr Ellison sought a similar fishing right for the descendants of the original beneficiaries, or other 'suitable compensation' (H53:1).

The reservation of the lake

4.8.1 In 1885 Jack Connor (Tieke Koona) and others petitioned Parliament regarding a landing reserve at Lake Tatawai:

> Petitioners pray that a reserve called Tatawai or Waihoropunga containing four acres and which is a landing place for their boats and an eel fishery be returned to them.

Although it was referred to the Government for inquiry, there is no subsequent record of the petition. Again, in August 1891, Connor wrote to Parata, the member for Southern Maori, asking that a reserve be set aside on the shores of the lake. In his letter forwarding Connor's request to the Native Minister, Parata explained:

> He is applying for a piece of land on the shore of a lake so that they may be ahle to reside there as the lake has always been used hy their fathers and forefathers and also themselves as [an] eel catching place. (S7:119)

Four acres were set aside for Ngai Tahu. In 1897 a complaint was made by Connor that this reserve was being encroached upon hy Pakeha. Inquiries by the chief surveyor in Dunedin found that this

was not the case (Sg:332).[122] Two years later Connor again alleged that local Pakeha now had possession of the reserve. He feared that when Ngai Tahu next went to fish there they would be turned off as trespassers. He also added:

> and when you are seeing about [it] I want you to get the lake as well as the reserve for fishing as the other lakes are all taken up for dredging, and if this is not seen into and dredging starts it will kill all the fish there as well. So try your best and get it granted solely for the Natives of Henley, as that will be the only fall back they will have soon for fishing. It will be of about 60 acres more or less. (Sg:333)[123]

Connor's allegation regarding the possession of the reserve was found to be incorrect. Regarding the reservation of the lake, the Commissioner of Crown Lands reported:

> the natives wish the small lake, Tatawai, reserved for them for fishing purposes as is usual with such lakes in other Native settlements. He mentions that there are some nine Native families comprising about 50 souls interested in this Reserve, and he recommends that, under the circumstances, the proposed reservation be made. I cannot see that there is likely to be any objection to this course, although I do not think there is ever likely to be any dredging operations to prevent the Natives pursuing their avocation of fishing for eels in Lakes Waihola and Waipori. (P6:20)[124]

The lake was reserved in 1902 under the Public Reserves Act 1881 for fishing purposes for Ngai Tahu residing in the Taieri Maori Village (P6:22–23).[125] Often referred to then as Maori Lake, Lake Tatawai comprised 121 acres. The 4-acre 2-perch landing reserve comprised section 84, block VI, Maungatua survey district.

In 1908 the lake was declared a sanctuary for imported and native game, and under the proclamation 'no imported game or native game shall be taken or killed within the said area' (P6:27).[126] Mr Alexander did not know why this came about, or the consequences of the action. He suspected that it related to shooting rather than fishing (P7:12). An earlier letter suggests that Ngai Tahu were shooting game on the lake, which they understood to be their right (P6:25).[127] This contention is supported by Mr Ellison's submission (H12:3). In 1909 Connor and 29 others from Henley petitioned Parliament to have the lake's sanctuary status rescinded (P6:28).[128]

Connor also alleged in 1908 that settlers were cutting drains to run the water out of the lake (P6:29).[129] This was denied by the acting engineer of the Taieri Drainage Board:

> no such works have been carried out, either by the settlers or by the Drainage Board, since the Taieri Drainage Board was formed. (P6:30)[130]

In Parliament on 8 December the following year Parata asked the Minister of Lands whether he would instruct his department to issue a Crown grant to Ngai Tahu for the lake. He added that the lake had been used by the ancestors of the Taieri people from 'time immemorial'. In reply Sir

Joseph Ward stated that there was no power to issue such a grant, nor would such action confer 'any greater privileges than they now have over the land or lake'.[131]

The loss of a fishery

4.8.2 Attempts to have Lake Tatawai drained resumed in 1910 as a result of a report made hy one Michael Elliot. His recommendations were:

> apparently partly carried out and then abandoned, owing, it is stated, to opposition hy the Maoris to the drying of the lake over which they have, or are alleged to have, fishing-rights. (P6:42)[132]

Ngai Tahu fishing rights in the lake were again threatened in 1912 with the consideration of the Taieri Land Drainage Bill. The Bill provided the necessary authority for a drainage board to drain certain areas, which would then be vested in the board. On 24 October 1912 clause 8, which guaranteed the protection of Ngai Tahu fishing rights in the lake, was deleted from the Bill hy the Legislative Council. Sir George McLean had moved that the clause be struck out as it enabled 'Maoris to hold up the whole work of the Drainage Board and he did not think the Natives themselves wished to do this'. He proposed that the clause be replaced by one providing for payment of some compensation to Ngai Tahu. This was agreed to despite strong opposition from Parata.

Parata subsequently told the House that he had been instructed hy Ngai Tahu to oppose the clause of the Bill that allowed for the drainage of the lake. He was supported hy the member for Northern Maori, Dr Rangihiroa. Owing to the opposition from the Maori member and some Pakeha members, the Bill was passed without the amendment sought hy McLean. Section 9 of the Act stated:

> Nothing in this Act shall be deemed or allowed to prejudicially affect any Native Fishing rights over Lake Tatawai which may exist at the time of the passing of this Act.

Extensive flooding in the area, peaking in 1908, 1917, and 1919, led to the appointment of a commission of inquiry in 1919 to look into the need for, and methods of providing, river control and drainage works on a number of South Island rivers. The Taieri River was one of these. The commission's report regarding the Taieri was presented in 1920.

Tatawai was reported to be 'practically tideless' and 'almost dry' (P6:35).[133] Lake Waipori itself had 'shoaled up' so much that portions which 40 years ago had been deep were now above water and growing grass. This accretion was attributed principally to 'detritus from the mining carried on in the higher reaches of the river'. It was said to aggravate flooding and to have a disastrous effect upon the lower water drainage.

Owing to the siltation of the lake beds caused hy mining debris, it was reported that Lakes Waihola and Waipori could no longer act as storage areas for floodwaters as they had in the past. Higher floodwater peaks therefore travelled down the lower Taieri River. The rivers commission proposed

to reinstate the traditional system by cutting floodwater channels from the rivers into the lake basins, and by undertaking works to keep the level of the lakes artificially low during normal flows so as to maximise the floodwater storage volume. This would involve cutting channels from Lee Creek and other drains into Lake Tatawai, and cutting a deep channel from Lake Tatawai to Lake Waipori:

> When the Maori Lake has been dredged as outlined, and its waters are kept permanently at the lowest level practicable — probably 1 ft or more below low-water mark — there will be an appreciable reservoir into which the drains can discharge while pumping is not in progress. (P6:42)[134]

Regarding Ngai Tahu's rights to fish the lake, the commissioners commented:

> Your Commissioners cannot conceive that such a consideration as fishing-rights in a lake which is almost dry, and which could therefore have no commercial value to any one, should be allowed to weigh against the enormous benefits, financial and otherwise, which would accrue to the settlers and the State if the Maori Lake were utilized for the purposes herein indicated, and in which capacity it would be doing a service infinitely greater than ever it will do as a fishing-ground for Natives. Your Commissioners are of opinion that the lake is of no financial value to the Natives; but, even so, it would be better to waive this point and, even in opposition to strict justice, to take the lake and pay the Maoris some compensation in order to wipe out their opposition for ever. If their demands are extortionate, then by the provisions of a special Act their rights should be extinguished and Parliament should fix a sum, which should be a purely nominal one, to be paid to any Natives who could establish the fact that at present they are making any substantial use of the lake. (P6:42)[135]

The commissioners' recommendations were implemented under provisions in the Taieri River Improvement Act 1920. This legislation superseded the 1902 reservation of Tatawai and vested the bed of the lake in the Taieri River Trust as an endowment.

Under section 20 of the Act, Ngai Tahu could claim compensation from the river trust for lost fishing rights, providing they could prove such rights had been exercised. Any disputes about the amount of compensation to be paid would be settled through arbitration. Section 20(3) provided that:

> All claims against the Trust under subsection one of this section shall be made within six months of the date of the coming into operation of this Act, and thereafter, and upon payment of any claim agreed upon or determined as aforesaid, the rights of all Natives shall cease for ever.

In fact no such claims for compensation were lodged. Mr Alexander could not find any evidence of any consultation when the lake was taken from Maori use and vested in the Taieri River Trust (AB35:45). Minutes of a meeting of the trust on 3 October 1921 record that:

> The Act came into operation on 1st March last and as no claims have been lodged all Native rights have, in accordance with the provisions of the Act, now ceased forever. (P6:51)[136]

However, it appears that Ngai Tahu of Henley were not aware of the 1920 legislation. On 26 June 1924 they appealed to the Native Land Court regarding the loss of their lake:

> The Natives allege that they did not bear or know of the passing of the Act till after the expiry of the six months and were consequently too late to lodge claims. (P6:52)[137]

According to the court minutes, Ngai Tahu intended to petition Parliament for remedial legislation to enable them to lodge claims. Mr Alexander was unable to say whether a petition was so presented.

Professor Atholl Anderson submitted that Lake Tatawai was completely drained some time after 1931 (C8:7). On an aerial photo submitted by Mr Alexander, Lake Tatawai is indistinguishable from the surrounding farmland (P7:10).

In 1979 Ngai Tahu petitioned Parliament on a number of issues. One of these concerned the 'loss of fishing rights consequent upon the draining of Lake Tatawai' (O8:72). This was stated to be a long-standing and unsatisfied grievance of Otakou Ngai Tahu. The petition was referred for favourable consideration after a hearing by the Maori Affairs Committee but a commission of inquiry was not appointed. Research into the claims was undertaken by the Department of Lands and Survey (O8:83).[138]

With regard to the Lake Tatawai claim, the research that was undertaken took a very narrow view. It focused first of all on the degree of public notification of the 1920 Act. The standing orders of the House at the time were referred to, which provided that:

> no local bill shall be read a second time unless notice has been given of the Bill in the locality to which it refers, such notice shall state explicitly the object which the bill is intended to effect and shall have been published once at least in each of three successive weeks on the same day in each week before the second reading in a newspaper circulating in such locality . . . (O8:83/5)[139]

It was concluded from this that, in terms of the standing orders, adequate public notice was given, and the petitioners' submission that affected Maori were not notified of the Act was difficult to accept (O8:83/5).[140]

Secondly, it was pointed out that, under the Act, compensation would have been paid only to Manri residing in the Taieri Maori village, as the reservation of Lake Tatawai for fishing purposes specifically limited this right to Maori residents of the village. According to the research, no names were recorded for any Maori living in the Taieri Maori village on the 1919 Southern Maori electoral roll. The roll showed one Maori whose address was Taieri and 10 others living at Henley. It was

therefore concluded that compensation would have been payahle only to the one person shown at Taieri.

The petition was not accepted hy the Crown. The Ngai Tahu Maori Trust Board was told that further evidence would be required if they wanted the matter reopened for inquiry (O8:81).[141]

The Crnwn's cnmment

4.8.3 Mr Alexander submitted that the local Maori population around Lake Tatawai had decreased by the 1920s, and that the lake was of less value as a fishery by then. Both factors, he surmised, would account for Ngai Tahu's declined vigilance in protecting their rights to the lake. However, the Crown witness stated that this did not excuse the cavalier manner in which the fishing rights were cancelled:

> All of the onus was on the local Maori community to justify its claims, and there was no acknowledgement (and indeed there was some questioning) of the rights which had been granted hy the 1902 reservation. (P7:17)

Mr Alexander submitted that compensation was an entitlement and should have been provided. As far as he is aware, no compensation has since been granted.

The Tribuual's conclnsion

4.8.4 As the above summary of facts clearly shows, Lake Tatawai was traditionally an important mahinga kai for Ngai Tahu from Taieri and the Otakou Peninsula. It was a rich source of tuna and hirds. From 1885 local people petitioned Parliament for a reservation over the lake as well as a landing reserve. They received a four-acre landing reserve and, unlike the Canterbury fishery reserves, in 1902 the lake was also reserved for fishing. From 1910 onwards the fishery reserve gradually became threatened as drainage, silting, floodwater control, and, ultimately, legislation in the Taieri River Improvement Act 1920 eclipsed Maori fishing requirements.

The lake finally disappeared as a fishery resource of Ngai Tahu in March 1921 and since that time Ngai Tahu have constantly expressed their grievance. There was no consultation with the tribe. Nor was any compensation made for the loss. The report of the 1920 Taieri River Commission showed scant regard for Maori fishing rights. We also view the Government's conclusions on Ngai Tahu's 1979 petition regarding the loss of the fishery with concern. We do not coosider that the publication of the 1920 Act in the local newspaper comes anywhere close to the fulfilment of the Crown's Treaty obligations to Ngai Tahu. With regard to the Government's conclusion on compensation, we draw attention to the claimants' submission that the lake was an important mahinga kai for people of the whole Taieri district and the Otakou Peninsula.

As this Trihunal has so sadly noted in its main report and elsewhere in this report, the needs of land settlement gradually dissipated, and then destroyed, the food resources of Ngai Tahu. In our view

there was a duty on the Crown to protect those reserves that were specially set aside for Maori fishing purposes. If the demands of greater public need in the form of river control, drainage, and land settlement could be more justified than the food resource requirements of Maori, then there should have been consultation and discussion with local Ngai Tahu and the development of alternative resources. The Tribunal has already found that the Crown has breached its duty of care and protection of these special fishery reserves. It needs no more repetition. What is needed is for the Government and its agencies to acknowledge and regret the omissions of the past and get on with the provision of alternative resourcing. We shall return to this point in our concluding chapter. There are some encouraging signs of recognition of Ngai Tahu needs. There are also some positive signs of Ngai Tahu planning and participation in resource management. This should be fostered.

4.9 Claim no: **54**
Claim area: **Taieri**
Claimant: **Sydney Cormack (E16:1, 10)**
Claim:

> **Mr Cormack claimed that several half-caste sections in Taieri block 22 were not allocated. He claimed that the land was probably taken by the Bruce County Council.**

The claimant stated that an application for investigation of title to the land was held up by the Department of Lands and Survey for several years. Eventually the local names from a list of those not granted lands were submitted to the court, which made an order in favour of those persons. This land, be said, is no longer listed in the Department of Maori Affairs records and was probably taken by Bruce County Council in favour of a farmer who was paying the rates on the land.

The Taieri half-caste reserves

4.9.1 Mr Alexander believed the area referred to hy Mr Cormack comprised sections 26 to 37, block XI, Clarendon survey district (P7:18). The sections, nine of 8 acres and two of 10 acres, were reserved under the Middle Island Half-caste Crown Grants Act 1888. As with much of the land so reserved, these sections consisted of steep hill faces, and were useless for grazing (AB23:139).[142]

In the course of moves to have the land reserved for scenic purposes in the early 1950s, it was revealed that, although 11 sections had been reserved, only five were subsequently granted to half-caste persons. Separate grants for the remaining six (sections 26, 27, 31, 32, 34, and 35) had never been issued (AB23:140).[143]

Questions regarding the status of the land were raised in the early 1970s. The chief surveyor in Dunedin considered the land was Crown land reserved for Maori hut never granted (P6:56).[144] Both the department and the court were agreed that the best way to resolve the matter would be to have the Minister of Lands make an application under section 437 of the Maori Affairs Act 1953

to determine those beneficially entitled to the sections. However, as some sections had been modified by road works in 1939, a new plan of the altered sections would be necessary (P6:56).[145] This would be compiled at the department's expense.

The appropriate application was drawn up in October 1972. However, it was not until January 1974 that the application was sent hy the court to the Commissioner of Crown Lands for the Minister's signature. The hold-up was caused by the Department of Land and Survey's 'excessively long delay in preparing the plan of the balance of section 34 and 35' (AB23:145).[146] It was a further 14 months before the Commissioner of Crown Lands forwarded the application to the Minister (AB23:148).[147] The reasons behind this delay were not evident. The application was signed hy the Minister of Lands in September 1975.

It was not until 12 August 1976 that the matter came before the Maori Land Court (P6:59).[148] The Department of Lands and Survey had declined to prosecute the application, stating that it was up to anyone wishing to establish rights to the sections, in particular Mr Cormack, to make their case to the court (AB23:150).[149] The case was adjourned to enahle Mr Cormack to research which half-caste persons had been living in the Taieri area last century. At the second sitting in Fehruary 1977, Mr Cormack submitted a list puhlished in 1891 of those half-castes who had not yet received any grants of land, and identified those on the list who had lived in the Taieri area. As a result the court ordered the sections to be vested in seven persons from the 1891 list, all of whom were deceased (P6:60).[150]

The current status of the land

4.9.2 According to Mr Alexander all of the sections in the Clarendon half-caste reserve, except for one, are listed in the Maori Land Court records as still being Maori land and subject to the court's jurisdiction. An application has been made for the one section which is general land, seeking a court order that it be declared Maori land and brought back under the court's jurisdiction (P7:20). The Crown witness also suhmitted rates records of the reserve which show that none of the sections are in the hands of the council, while only two of the sections are shown as having an occupier (P6:61).[151] He concluded that, while Mr Cormack is correct in identifying a number of sections which were not allocated, there is no suggestion in Maori Land Court or Bruce County Council records that any of the sections have been taken hy the council, apart from the land needed for the road realignment in 1939.

The Tribnnal's conclusion

4.9.3 The evidence presented to the Trihunal as set out above would indicate that, although there was considerable delay in the completion of this matter, the sections have now been declared Maori land aod are vested in those entitled to them. We do not consider that this constitutes a hreach of Treaty principles.

4.10 Claim no: 55
Claim area: **Waikouaiti Lagoon**
Claimant: **Matapura Ellison (H11)**
Claim:

> **Mr Ellison stated that, although a fishery reserve was made at Waikouaiti Lagoon, the lagoon has since been designated a wildlife reserve, and Maori no longer have the right to fish or hunt waterfowl there (H11:6).**

4.10.1 When the Native Land Court had finished its business in Christchurch (see claims 3 to 11), Fenton proceeded to Dunedin to hear fisheries claims there. During these proceedings two fishery easements were awarded in the Waikouaiti district at the sites of existing eel weirs and were vested in four trustees. Of relevance to this claim is the award of 2 acres 3 roods 20 perches on the eastern side of what Mr Ellison has referred to as Waikouaiti Lagoon. This is also known as Hawkeshury or Matainoka Lagoon. Ngai Tahu's reserve there is Matainoka 1N, Hawkesbury township. This reserve was granted in 1868 in relation to other lands around the lagoon already granted. The easement itself was granted from land on the eastern side set aside for the township of Waikouaiti (AB35:25; AB32 map f). Mr Alexander again noted that it is unclear to what extent the grant of the easement conferred on Ngai Tahu special rights to the lagoon over and above the rights of other landowners, or whether the granting of the easement put Ngai Tahu beyond the reach of changes in the management of the waterway (such as wildlife protection) which might occur in the future (AB35:15, 25). In 1978 new trustees were appointed for the reserve, with power to lease the land and apply the proceeds to the upkeep and improvement of three cemeteries, the Hui Te Rangiora church, and the Huirapa hall at Puketeraki (O6:383).[152]

Hawkeshury Lagoon, section 32, hlock VI, Hawkeshury survey district, comprises approximately 61.4 hectares. Its value as a wildlife and recreational area has been recognised from early times. Originally designated as a recreation reserve, in 1888 it came under the control of the newly formed Hawkesbury Domain Board. In 1900 the reserve was gazetted a reserve for native and imported game and in 1912 incorporated into the Waikouaiti Domain. The lagoon was proclaimed a sanctuary for native and imported game in 1929. With the passing of the Wildlife Act 1953 the lagoon was declared a wildlife refuge. This status protected wildlife hy making it unlawful for any person, except with the prior written approval of the Minister of Internal Affairs, to:

> hunt or kill for any purpose, or molest, capture, disturb, harry, or worry any wildlife in the wildlife refuge, or to take, destroy, or disturb the nests, eggs, or spawn of any such wildlife . . .

The lagoon is today a reserve for Government purposes (wildlife refuge) under the Reserves Act 1977, and is managed and controlled hy the Department of Conservation (AB27:10–17).[153] The same protectionary regime is in place, preventing any fishing or hunting on the lagoon without the written authority of the Minister of Conservation. According to Department of Conservation staff in Dunedin, there have been discussions with the local runanga on the management of the lagoon

to allow them to fish for eel and inanga for cultural purposes, and on the development of their fishing reserve for the purposes of eeling. This consultation has been undertaken in conjunction with the Hawkesbury Lagoon Advisory Committee.

The Tribunal's conclusion

4.10.2 The Tribunal again refers to the 1868 specific fishery reserves created by Judge Fenton. In the case of this lake, easements were granted to access and use the sites of existing eel weirs. Although Waikouaiti Lagoon differs from the other fisheries in that it does not seem to have been adversely affected by drainage, the result for Ngai Tahu bas none the less been the same: they no longer enjoy the rights of use over the lagoon that the 1868 fishery awards were intended to convey. In this case Ngai Tahu have been denied the resource through restrictive regulations owing to the lagoon's status as a wildlife refuge. We consider this denial to be in breacb of both Kemp's deed and the principles of the Treaty.

It is encouraging to note the present attitude of the Crown to the recognition of Ngai Tahu's rights to this resource. Unlike the other fisheries whicb bave been destroyed, in the case of Waikouaiti the opportunity stills exists for Ngai Tahu to regain the use of their traditional fishery. Within the framework of the regulatory regime needed to conserve wildlife it should be possible for a management plan to be evolved so as to recognise the traditional rights of local Ngai Tahu to their mahinga kai, whicb was specifically granted as a fishery reserve. We commend the action of the Crown in entering into a programme of consultation with Ngai Tahu on the management of the lagoon so as to appropriately recognise their traditional rights to this mahinga kai. We recommend further negotiations by the tribe on a traditional basis and the amendment of legislation to that end, should it prove necessary.

1. Mantell to Colonial Secretary, 17 May 1852, in Walter Mantell letterbook, November 1851 to January 1855, not sourced

2. Ibid

3. Ibid

4. Ibid

5. Ibid

6. 'Schedule shewing the Names etc of the Trespassers on Crown Lands in the District of Moeraki and the Provision Recommended for the Half Caste Children', compiled by Walter Mantell and attached to Mantell to Colonial Secretary, 17 May 1852, in Walter Mantell letterbook, November 1851 to January 1855, not sourced

7. Ibid

8. Otago Maori land plan 41

9. New Munster miscellanous grants, vol 1, fol 53

10. Affidavit of John Wilkinson, dated 15 May 1930, block file Otago 13/70 (general land), MLC Christchurch

11. Otago Maori land plan 40, sections 23, 69–84, block I, Mocraki survey district. The total area was 153 acres 2 roods 27 perches.

12. Certificate of title for section 23, block I, Mocraki survey district, vol 180, fol 136, Land Registry Office Dunedin

13. Certificate of title 180/136, in block file Otago 13/1 (general land), MLC Christchurch

14. Cormack to registrar, 20 November 1973, alienation files 15/2/2200, 15/2/2201, NA Christchurch

15. Cormack to registrar, 17 December 1973, alienation file 15/2/2200, NA Christchurch

16. Cormack to registrar, 20 November 1973, alienation file 15/2/2200, NA Christchurch

17. Rural valuation and short report, alienation file 15/2/2200, NA Christchurch

18. Minutes of meeting of owners of section 63, 11 July 1974, alienation file 15/2/2201, NA Christchurch

19. Cormack to registrar, 20 November 1973 and 17 December 1973, alienation file 15/2/2200, NA Christchurch

20. Minutes of meeting of owners of section 23, 9 May 1974, alienation file 15/2/2200, NA Christchurch

21. Minutes of meeting of owners of section 62, 11 July 1974, alienation file 15/2/2201, NA Christchurch

22. SIMB 50, pp 327–328

23. We comment that the category of 'half-castes' was from a purely Pakeha administrative point of view, and that no such distinction was made in Maori minds.

24. SIMB 6, p 133

25. 'Table of Population, Reserves, Payments, etc, Ngai Tahu Block, August 1848, to January 1849', appended to Mantell to Colonial Secretary for Eyre, 30 January 1849, G7/4, NA Wellington

26. SIMB 1A, pp 47–49

27. Otago Maori land plan 265

28. Otago Maori land plans 267, 268, 269, 270. These survey plans are enlarged plots of the original Otago Maori land plan 266.

29. Otago Maori laod plan 249

30. *New Zealand Gazette*, 1898, p 1323

31. SIMB 25, p 226

32. SIMB 28, p 252

33. SIMB 23, pp 184–185

34. Ibid, p 211; SIMB 25, p 244

35. SIMB 25, pp 86–88, 226–229

36. Ibid, p 87

37. Ibid, p 227

38. Ibid, p 228

39. Ibid, p 245

40. Ibid, p 246

41. *Evening Star*, Dunedin, 23 July 1929

42. SIMB 28, pp 252–254

43. Ibid

44. Ibid

45. District officer to head office, Maori Affairs, 22 April 1960, correspondence file Otago 38, MLC Christchurch

46. County clerk Waikouaiti to Maori Trustee, 8 April 1960, correspondence file Otago 38, MLC Christchurch

47. Director-General of Lands to Secretary for Maori Affairs, 26 February 1960, L&S 8/3/6, DOSLI Dunedin

48. Ibid, quotation from Karitane Domain Board

49. Minutes of meeting of owners of Waikouaiti foreshore reserve, 24 September 1961, correspondence file Otago file 38, MLC Christchurch

50. Ibid

51. Variation of an order appointing trustees, 22 February 1962, correspondence file Otago 38, MLC Christchurch

52. J Parata to district officer Christchurch, 26 September 1962, correspondence file Otago 38, MLC Christchurch

53. District officer Christchurch to L Evans, 18 July 1963, correspondence file Otago 38, MLC Christchurch

54. District officer Christchurch to county clerk Waikouaiti, 14 July 1964, correspondence file Otago 38, MLC Christchurch

55. Plan in correspondence file Otago 38, MLC Christchurch

56. J Kent, secretary, Waikouaiti Maori Foreshore Trust Board, to Minister of Marine, 4 November 1963, L&S 8/3/6, DOSLI Dunedin

57. Lovell Evans, chairman, Waikouaiti Maori Foreshore Trust Board to Minister of Marine, 22 February 1963, L&S 8/3/6, DOSLI Dunedin

58. J Kent to registrar, Christchurch Maori Land Court, 1 May 1964, correspondence file Otago 38, MLC Christchurch

59. G Hinde, D McMorland, P Sim, *Introduction to Land Law*, Wellington, Butterworths, 1979, p 170

60. Ibid

61. Commissioner of Crown Lands Dunedin to Director-General of Lands, 22 April 1963, L&S 8/3/6, DOSLI Dunedin

62. *New Zealand Gazette*, 1953, p 1137

63. Commissioner of Crown Lands Dunedin to J Heath, 6 September 1962, L&S 8/3/6, DOSLI Dunedin

64. Downie, Stewart, Payne, Forrester, and Armitage to Commissioner of Crown Lands Dunedin, 17 September 1962, L&S 8/3/6, DOSLI Dunedin

65. Lovell Evans, chairman, Waikouaiti Maori Foreshore Trust Board to Minister of Marine, 22 February 1963, L&S 8/3/6, DOSLI Dunedin

66. Minister of Marine to chairman, Waikouaiti Maori Foreshore Trust Board, 10 June 1963, L&S 8/3/6, DOSLI Dunedin

67. Commissioner of Crown Lands Dunedin to Director-General of Lands, 22 April 1963, L&S 8/3/6, DOSLI Dunedin

68. Minister of Marine to chairman, Waikouaiti Maori Foreshore Trust Board, 10 June 1963, L&S 8/3/6, DOSLI Dunedin

69. J Kent to Minister of Marine, 4 November 1963, correspondence file Otago 38, MLC Christchurch

70. Ibid

71. Minister of Marine to J Kent, 3 December 1963, correspondence file Otago 38, MLC Christchurch

72. File note, 2 June 1964, L&S 8/30/8, DOSLI Dunedin

73. J Kent to registrar, Christchurch Maori Land Court, 14 May 1964, correspondence file Otago 38, MLC Christchurch

74. Secretary for Marine to county clerk Waikouaiti, 16 August 1966, L&S 8/30/8, DOSLI Dunedin

75. Secretary for Marine to honourary secretary, Waikouaiti Maori Foreshore Trust, 17 August 1966, L&S 8/30/8, DOSLI Dunedin

76. County clerk Waikouaiti to Commissioner of Crown Lands, 16 December 1966, L&S 8/30/8, DOSLI Dunedin

77. Secretary for Marine to Director-General of Lands, 12 March 1968, L&S 8/30/8, DOSLI Dunedin

78. Submission by Director-General of Lands to Minister of Lands, 24 October 1968, L&S 8/30/8, DOSLI Dunedin

79. *New Zealand Gazette*, 1968, p 2038

80. Chief surveyor Dunedin to David Alexander, 13 October 1993

81. Submission by Director-General of Lands to Minister of Lands, 24 October 1868, L&S 8/30/8, DOSLI Dunedin

82. *Compendium*, vol 1, p 104

83. *New Zealand Gazette*, 1869, p 588

84. Deed 46498, not sourced

85. Deed 51834, not sourced

86. *New Zealand Gazette*, 1888, p 633; shown on PWD 14545

87. Under-Secretary for Public Works to Under-Secretary for Defence, July 1892, not sourced

88. *New Zealand Gazette*, 1890, p 517

89. Ibid, 1891, p 1208

90. Ibid, 1894, p 1502

91. PWD plan 17133, NA Wellington

92. Submission approved by Minister of Lands, 26 June 1962, L&S 8/16/74/11, DOSLI Dunedin

93. *New Zealand Gazette*, 1938, p 2084

94. Director-General of Lands to Commissioner of Crown Lands Dunedin, 14 October 1958, L&S 8/30/1/1, DOSLI Dunedin

95. Circular letter of District Commissioner of Works Dunedin, 24 September 1959, MWD 8/9/3, Dunedin (the areas can be seen on SO plan 12713)

96. *New Zealand Gazette*, 1959, p 567

97. Submission approved by Minister of Lands, 26 June 1962, L&S 8/16/74/11, DOSLI Dunedin

98. *New Zealand Gazette*, 1962, p 1156

99. Ibid, 1963, p 1430

100. Ibid, pp 1868, 1877

101. Ibid, 1970, p 145 (shown on MOW 16870)

102. Ibid, 1982, p 1948

103. *Draft Management Plan for Taiaroa Head Reserves*, DOC Dunedin, 1992

104. Ibid, pp 12–13

105. Analysis of submissions, undated, Conservation Otago Conservancy file NAT 3/2, DOC Dunedin

106. Deputy director-general (advocacy) to regional conservator Otago, 15 September 1992, Conservation Otago Conservancy file NAT 3/2, DOC Dunedin

107. Circular letter to 21 submitters from regional conservator Otago , 17 December 1992, Conservation Otago Conservancy file NAT 3/2, DOC Dunedin

108. Kuku Karaitiana to regional conservator Otago, 6 April 1993 and 11 May 1993, Conservation Otago file NAT 3, DOC Dunedin

109. Minutes of Otago Conservation Board, 16 July 1993

110. *Crown Proposals for the Settlement of Treaty of Waitangi Claims: Detailed Proposals*, Office of Treaty Settlements, 1994, pp 15–17

111. Indeed, the 1993 amendment to the Treaty of Waitangi Act 1975 would appear to preclude the Tribunal from making recommendations affecting the trust's interests.

112. 'List of Grantees for Otago Heads', *Compendium*, vol 2, p 246

113. *New Zealand Gazette*, 1890, p 809

114. Under-Secretary for Public Works to Under-Secretary for Defence, July 1892, not sourced

115. Director-General of Lands to Commissioner of Crown Lands Dunedin, 14 October 1958, L&S 8/30/1/1, DOSLI Dunedin

116. *New Zealand Gazette*, 1961, p 1700

117. Submission approved by Minister of Lands, 26 June 1962, L&S 8/16/74/11, DOSLI Dunedin

118. Commissioner of Crown Lands Dunedin to town clerk, Dunedin City Council, 8 April 1982; Commissioner of Crown Lands to secretary, Otago Peninsula Trust, 11 March 1984, L&S 8/16/74/11, DOSLI Dunedin

119. Submission approved by District Commissioner of Works Dunedin, 16 February 1987, L&S 8/16/74/11, DOSLI Dunedin

120. Ibid

121. *New Zealand Gazette*, 1987, p 1695

122. Chief surveyor Dunedin to Surveyor-General, 16 December 1897, Justice file 1899/1210

123. Connor to Parata, 4 September 1899, Justice file 1899/1210

124. Commissioner of Crown Lands Dunedin to Surveyor-General, 11 December 1899, Lands and Survey Dunedin file 8/46

125. *New Zealand Gazette*, 1901, p 779; 1902, p 12

126. Ibid, 1908, p 1594

127. Connor to Parata, 6 July 1903, L&S 8/46, DOSLI Dunedin

128. Petition 398 of Tieke Koona and 28 others of Henley, AJHR, 1909, I-3, p 11

129. Parata to Minister of Lands, 25 September 1908, L&S 8/46, DOSLI Dunedin

130. Acting engineer, Taieri Drainage Board, to Commissioner of Crown Lands Dunedin, 24 October 1908, L&S 8/46, DOSLI Dunedin

131. NZPD, vol 148, p 747, 8 December 1909

132. 'Report of the Rivers Commission on Taieri River', AJHR, 1920, D-6D, p 12

133. Ibid, p 5

134. Ibid, p 12

135. Ibid

136. Taieri River Trust minute book 1, Otago Catchment Board, Dunedin, p 28

137. SIMB 23, p 109

138. 'Result of Research by the Department of Lands and Survey and its Position on the Ngaitahu Maori Trust Board Petition', not sourced

139. Ibid, p 5

140. Ibid

141. Director-General of Lands to Minister of Lands, 9 August 1984, not sourced

142. Commissioner of Crown Lands to registrar, 11 February 1951, correspondence file Otago 2, MLC Christchurch

143. Registrar to Secretary for Maori Affairs, 2 May 1952, correspondence file Otago 2, MLC Christchurch

144. Chief surveyor Dunedin to registrar, Maori Land Court, 11 January 1973, block file Otago 2, MLC Christchurch

145. Ibid

146. Chief surveyor Dunedin to registrar, 14 December 1973, correspondence file Otago 2, MLC Christchurch

147. Commissioner of Crown Lands to deputy registrar, 10 March 1975, correspondence file Otago 2, MLC Christchurch

148. SIMB 52, p 82

149. Commissioner of Crown Lands to registrar, 31 March 1976, correspondence file Otago 2, MLC Christchurch

150. SIMB 52, p 355

151. District manager, Bruce District Council, to D Alexander, 29 November 1988

152. SIMB 55, p 190

153. *Hawkesbury Lagoon Reserve for Government Purpose, Wildlife Refuge: Draft Management Plan*, DOC Dunedin

Chapter 5

Mnribiku Ancillary Claims

5.1 The Tribunal has found that the reserves set aside by Walter Mantell in Murihiku as part of the purchase of the block were inadequate for the tribe's present and foreseeable needs, that the Crown failed to bonour its obligations to many Ngai Tabu 'half-caste' people, and that the landless natives legislation was but a cruel hoax, enacted to appease its conscience.

The history behind Ngai Tahu's ancillary claims reveals that even the paltry and unproductive land reserved for the tribe has been eaten into by public works, the individualisation of title, and the impact of developing towns. Ngai Tahu of Murihiku have considerably less land today than the Tribunal's 1991 report detailed.

Researcb on the Murihiku ancillary claims was undertaken by Crown witness David Alexander and presented to the Tribunal in November 1988. Supplementary researcb on many of the claims was presented the following month. Mr Alexander stated that be was assisted by Trevor Howse, Sydney Cormack, and the deputy registrar of the Christcburcb Maori Land Court, Simon Hadfield. Some of the claims, bowever, were not addressed by the Crown witness or acknowledged in the ancillary claim scbedule prepared by the Tribunal in 1991. Maori Land Court records have provided an insight into many of these grievances, but gaps in the history of some claims remain.

5.2 Claim no: **56**
Claim area: **Maranuku**
Claimant: **Sydney Cormack (E16)**
Claim:

> **Mr Cormack claimed that in 1909 the Crown took 122 acres 1 rood for a scenic reserve under the Public Works Act 1908 without consulting the owners (E16:3).**

5.2.1 The Maranuku or Te Karoro reserve at Willsher Bay lies just south of the Kaka Point township in south Otago. The reserve was originally set aside by Mantell under the terms of the Kemp deed. Entitlement to the area was determined by the Native Land Court in 1868, although title to the sections was not granted until 1893 (AB24:1, 7).[1] Karoro A, section 48, block IV, Glenomaru survey district (406 acres 2 roods 36 percbes), was vested in Alfred and Ellen Kihau, Haimona Papaoke, Eruiti Kinihi, Henrietta Whaitiri, and Mary Hood. It is the subject of this particular claim. Karoro B, section 47 (402 acres 30 percbes), was similarly granted to Haimona Rangireke, Roto Pikaroro, Rawiri Takata Huruhuru, Rawiri Koroko, Teone Te Ururaki, and Ihaia Potiki. Contained

within Karoro B is section 49, a one-acre area used by Ngai Tahu as a burial ground. It was specifically provided on both Crown grants that the land was to be absolutely inalienable for ever, and that the Governor-in-Council 'shall have no power to consent to an alienation by lease or otherwise' (AB24:1, 7).[2]

Background to the alienatiou

5.2.2 In 1905 scenery preservation commissioners recommended the acquisition of 100 acres of section 48 for scenic purposes (P6:62).[3] It was envisaged that the forest-clad slopes of the reserve on the north side of Karoro Stream and abutting the sea would be exchanged for two Crown land sections, amounting to some 133 acres. The Commissioner of Crown Lands Dunedin was instructed to implement the exchange.

The Crown lands ranger, however, considered that the proposed exchange would not be equitable. He argued that the Crown lands were of bigher value and that:

> the more advantageous way would be to take the 100 acres from section 48, either by arrangement with the Natives or under the Public Works Act. (P6:63)[4]

According to the ranger, none of the original grantees lived in the district. The commissioner agreed with the ranger's proposal but nothing further was done about the matter (P6:64).[5]

In March 1908 'an attempt . . . to get the milling rights to the timber from some of the Maoris' again spurred the Crown into action (P6:65).[6] The Commissioner of Crown Lands Dunedin was advised of the Government's decision to take the land under the Public Works Act 1905:

> Will you please have the land surveyed as soon as practicable, and . . . see that the best boundaries and most picturesque portion of the bush are included in the reserve. . . .
>
> If you are aware of the names of the principal owners of the Native Reserve, it would be as well to notify them of the intention of the Government, and arrange that they may go over the land with the surveyor in order that, if possible, mutually satisfactory boundaries may be agreed upon. It is always desirable to avoid any likelihood of friction in sucb cases. (P6:65)[7]

When the survey was carried out the following Marcb, it was reported that:

> With regard to the principal owners of this Native Reserve, there is some doubt as to who these are, but the surveyor was accompanied on the groimd by some of the resident Natives who professed to bave some authority in the matter and were favourable to the idea of the area being made a scenic reserve. (P6:66)[8]

In October 1909, 122 acres 1 rood 20 perches of section 48 were proclaimed taken under the Public Works Act 1908 for scenery preservation purposes (P6:67–68).[9]

Compensation

5.2.3 On 25 February 1910 a solicitor acting for one Miss Kihau, the daughter of Alfred Kihau, inquired about payment for the land taken. A figure of £4 10s per acre was mentioned as having been fixed (P6:70).[10] The Under-Secretary for Lands replied that the question of compensation would be decided by the Native Land Court (P6:71).[11]

In October 1910 a Maori resident of Kaka Point, Kini Ruru, objected to the erection of a fence at the seaward end of the scenic reserve:

> As the Government have not paid for the land, nor take the trouble to see me, I am not going to allow any one to go on my land and put fences up. My price is (£4) an acre. (P6:72)[12]

The Native Land Court beard the application for compensation in November and December 1910 (P6:73–79).[13] The owners of the land were represented by a Mr Moffett. The first bearing was adjourned at bis request so that a valuation on bebalf of the owners could be prepared. The Government valuation was assessed at £122. It is interesting to note that the 'forest-clad slopes' were now referred to by counsel for the Public Works Department as 'a face of cliff covered with scrub and light timber of no marketable value'.

At the December sitting the court beard further valuation evidence from Public Works Department witnesses, most of wbom were local farmers. Their opinions were largely based on the agricultural value of the land. None of the owners were called upon for evidence. Mr Moffett commented that the land was taken without the owners' consent and that taking the frontage had depreciated the section as a wbole. The owners, be said 'are quite prepared to give the wbole block to the Crown at the rate of £1 per acre'. In the result, compensation was fixed at £150, on the understanding that a road would be made on the northern boundary of the land taken to give the owners access to the beacb from the remaining part of section 48. The money was paid to the Public Trustee, to be distributed to the individuals specified by the court.

Mr Alexander submitted that it does not appear that any formal consultation with the owners took place or that any attempt to consult them was made. He stated that some of the owners were notified of the impending alienation, but it is possible that this was advanced as a foregone conclusion and not as a matter for negotiation. Mr Alexander seemed to imply that this may account for the lack of protest about the taking of the land.

Mr Alexander noted that the land currently bas the status of a scenic reserve under the Reserves Act 1977 (AB35:46).

The Tribunal's conclusion

5.2.4 The Tribunal refers to its earlier comments on the manner in which Maori-owned lands were taken for public works (see claims 1, 18, and 51). Again we find the lack of notification given to the owners of section 48 to be in breach of the principle of partnership and the protection of Ngai Tahu rangatiratanga over their lands as guaranteed in article 2 of the Treaty. The Tribunal also voices its concern that there are so many instances in which Ngai Tahu's small reserves have been reduced hy the Crown's compulsory puhlic works acquisitions without notice, consultation, or consent. We shall deal collectively with this process in the concluding chapter of this report.

5.3 Claim no: **57**
Claim area: **Maranukn**
Claimant: **Sydney Cormack (E16)**
Claim:

> **Mr Cormack claimed that in 1940 another part of section 48, the open sandhill country between the scenic reserve and the sea, was taken hy the connty for a recreation gronnd. Agaln, he maintained, there was no negotiation with the owners about the alienation of the land (E16:3).**

5.3.1 The first suggestion that the sandhills should become public land arose from the Willsher Domain Board's 1936 proposal to gain control of the Maranuku scenic reserve. The domain board controlled a recreation reserve on the south side of Karoro Creek, and wished to develop the waterway as a boating and swimming amenity (P6:80).[14] In order to have the necessary jurisdiction to do this, it needed control over the land on the north side of the creek; that is to say, the scenic reserve proclaimed in 1909. The proposition to vest control of the land in the board was viewed favourably, both by the Under-Secretary for Lands and by the Marine Department, with the latter also being prepared to vest control of the foreshore of the creek bounding the domain in the board. Furthermore, the under-secretary wrote to the Commissioner of Crown Lands Dunedin:

> I should be glad to be advised whether you consider it would not be also advisable to add to the Domain the land lying to the north of the Domain and between the scenic reserve and the sea, as shown as sandhills on the tracing. (P6:83)[15]

It was assumed that this area was Crown land, and the field inspector, for one, was very enthusiastic:

> The sand hills as shown on attached tracing are of no scenic value, and further the acquisition of them would not be of any benefit to the Reserve.
>
> These sand hills lie between the formed road and the sea and would undoubtedly be of value to the Domain Board as a parking area, and general play ground for children, during the holiday season.

> Should the Domain Board accept the offer I have no fear hut that in a few years the area will he a much unproved and useful asset to the Domain. (P6:84)[16]

The domain board was equally keen to get control of this area. It resolved in July 1936 that:

> My hoard would especially like control of that area of Crown land lying immediately to the North and consisting mainly of Sand hills and would respectfully urge the Dept to incorporate this in the Domain. (P6:86)[17]

However, the following month the Under-Secretary for Lands was informed by the chief surveyor that the northern area was in fact part of the Maranuku Maori reserve (P6:87).[18] It had been separated from the rest of section 48 by the seenic reserve. Thereafter, interest in adding the land to the domain appears to have waned, although the control of the foreshore in front of the land, along with other foreshore areas, was vested in the Willsher Domain Board on 29 September 1937 (P6:89).[19]

Land for a camping ground

5.3.2 In 1938 the Clutha County Council was anxious to establish a camping ground in the district. The area of sandhills north of Karoro Creek was proposed (P6:90).[20] On this occasion it was thought that the land was part of the scenic reserve. In May 1939 the Commissioner of Crown Lands informed the Willsher Bay Scenic Board that the proposed camping site was part of the Maranuku Maori reserve and be declined to take further action (P6:91).[21]

The council remained undeterred and suggested that the area required, of about five acres, also be taken for recreation purposes and later classified as a domain (P6:94–95).[22] The council was willing to pay any compensation awarded to the owners by the Native Land Court, 'provided the amount was reasonahle'.

The Native Department was asked for its opinion. The Under-Secretary for Lands supported the alienation hut was concerned about the lack of access to the sea from the remainder of the Maori-owned section (P6:98).[23] Although the access road to the coast across the scenic reserve at its north-eastern corner (as promised hy the Puhlic Works Department at the 1910 compensation hearing) had been marked on a lithograph of the area, this roadway did not in fact exist.[24]

In November 1939 the Department of Lands and Survey received a list of the landowners from the Native Land Court. However, the court's registrar could provide only eight addresses for the 26 owners and advised that 'most of the owners are probahly dead and no successors have yet been appointed' (AB32:203–204).[25] The Under-Secretary for Lands referred the matter to his colleague in the Native Department, remarking that it seemed 'that a circular letter to the owners would not be of any great use in ascertaining whether there is any real ohjection to the taking of the land' (AB32:205).[26] The Under-Secretary of the Native Department replied in December 1939 that the taking should proceed, 'subject to the provision for access to the beach being made for the Natives

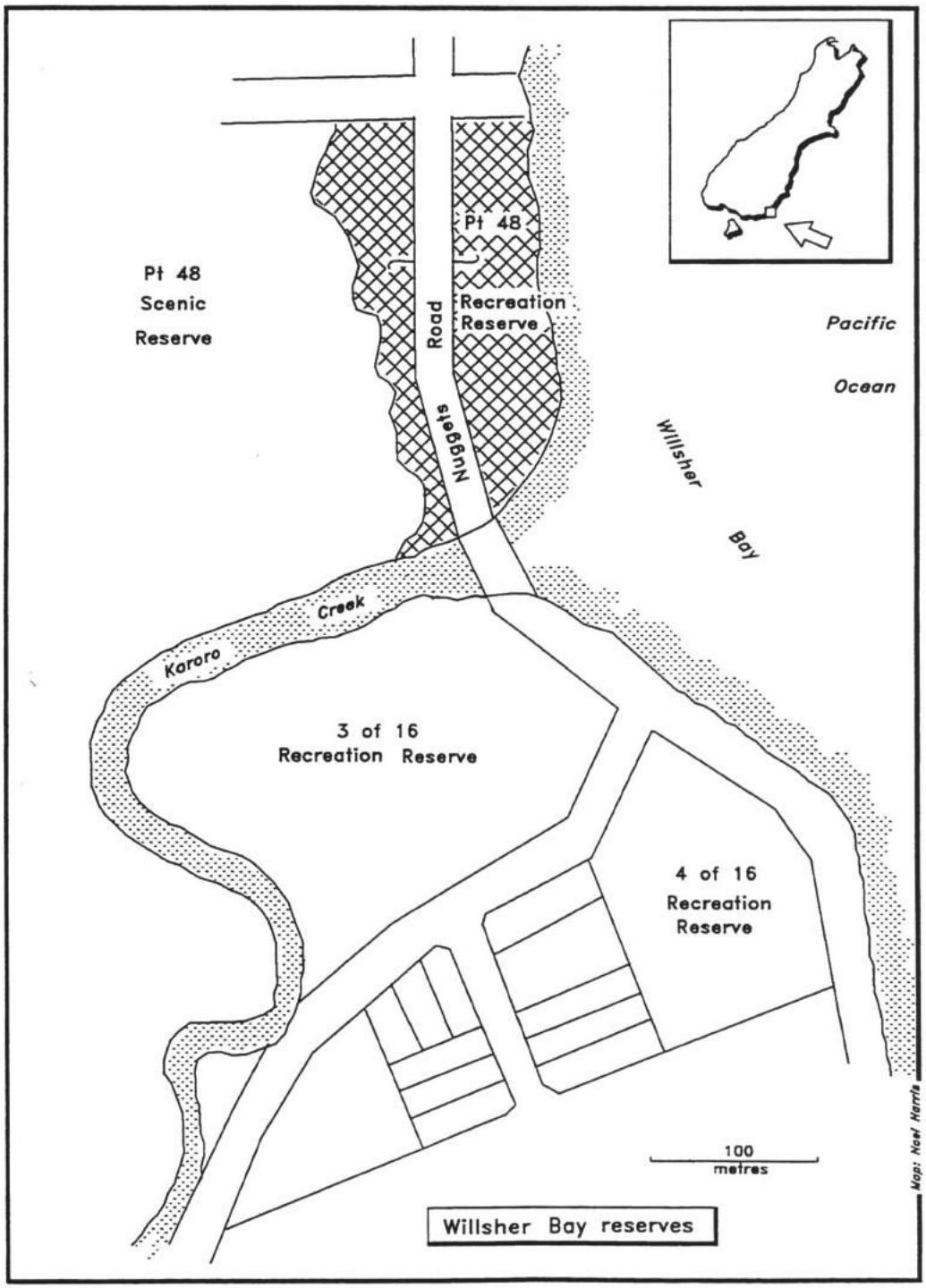


Figure 7: Willsher Bay reserves

along the Northern boundary of section 48, if that is practicable' (AB32:206).[27] The Native Minister consented to this course in January 1940 (AB32:207).[28] At the beginning of February 1940 the Under-Secretary for Lands communicated to the Commissioner of Crown Lands Dunedin the Minister's agreement and the requirement that direct access to the beach be created for the remainder of the Maori land (P6:99).[29] A total of 5 acres 2 roods 11 perches was proclaimed taken for a recreation ground under the Public Works Act 1928 in June 1940 (P6:100),[30] and added to the Willsher Domain one month later (P6:101).[31] The road was proclaimed taken the following year (P6:102).[32]

Compensation

5.3.3 The Native Land Court heard the application for compensation for the land taken in Dunedin in January and in Picton (where it gave its decision) in February 1941. At neither sitting were the owners present or even represented. The first hearing was adjourned because no valuation certificate was available. At Picton on 19 February only the Government valuation certificate was presented and, in the absence of any owners, the court ordered that compensation of £18, plus 5 percent interest per annum from the date of taking, be paid to the South Island District Maori Land Board on behalf of the owners (P6:103–106).[33] As had been agreed in advance, the Clutha County Council paid the compensation due.

Section 4 of 16

5.3.4 In August 1987 the Maori Land Court at Christchurch received an inquiry about the recreation reserve from one Mr K M A Cain, who had seen the area advertised for sale in 1983 (AB24:31–32).[34] Of concern to the correspondent was why the original owners of the area had not been given the first option to buy back the reserve when it was no longer needed for the purpose for which it was taken. He claimed that the advertisement had been withdrawn when the then Commissioner of Crown Lands Dunedin had been questioned about the issue. He also claimed that none of the owners had received the compensation for the 1940 acquisition.

However, what Mr Cain had in fact seen was an advertisement placed by the Commissioner of Crown Lands Dunedin advertising for public comment his intention to dispose of a part only of Willsher Bay recreation reserve, section 4 of 16, block VII, South Molyneux survey district (AB32:208).[35] This section is separated from part section 48 by Nuggets Road, section 3 of 16 (also reserved for recreation purposes), and Karoro Creek. Mr Alexander explained that section 4 of 16 had been purchased by the Crown from a European in 1902 (AB32:209; AB35:48).[36] Despite this, Mr Cain's inquiry was followed up on the basis that the land in question was part section 48. The registrar of the Maori Land Court in Christchurch referred the matter to the Ministry of Works, which could offer no assistance (AB24:35).[37] The court informed Mr Cain that compensation had indeed been paid for the land after its taking in 1940 (AB24:34).[38]

Nevertheless, the revocation of the reservation and sale of section 4 of 16 did not proceed. In April 1984 the Maranuku Maori Advisory Committee informed the Department of Lands and Survey that

there were Maori graves on the section (AB32:212).[39] Mr Alexander explained that the graves are marked on Otago Survey Office plan 7072, dated 1901, hut noted that the department's inquiries resulting from the committee's advice found that the evidence for Maori graves was equivocal (AB35:48). Long-standing residents felt there may well have been Maori graves in the area, hut only the graves of two German sailors could be confirmed (AB32:211).[40] In light of the uncertainty about hurials on the land, the Commissioner of Crown Lands eventually decided that the land should be retained in public ownership (AB35:214).[41]

The matter of section 4 of 16 arose again in 1993. By this time the Department of Conservation proposed to vest both this land and the adjoining section 3 of 16 in the Clutha District Council. The regional conservator approved a recreation classification, 'suhject to consultation with iwi, ie I want to know if they have any objection before I sign the *Gazette* notice' (AB32:215–216).[42] To this end, the regional conservator wrote to the Maranuku Lands Trust in August 1993 seeking any comments (AB32:217).[43] Mr Alexander's advice was that no reply had been received to this inquiry by 1 October 1993 (AB35:49).

Recent developments

5.3.5 Mr Alexander noted that, at about the same time as the disposal of section 4 of 16 was being considered (with the resultant confusion with part section 48), there was some activity with respect to part section 48 itself. As required by the Reserves Act 1977, the land had to be classified. The Department of Lands and Survey felt that the area of recreation reserve west of Nuggets Road should be incorporated into the adjacent Willsher Bay scenic reserve and classified for scenic purposes. Because of this proposed change in status, a puhlic notice was placed in the *Otago Daily Times* in August 1982 (AB32:220).[44]

In response to the notice, Naina Kihau Russell of Invercargill requested the return of the land to its former owners through her member of Parliament, Whetu Tirikatene-Sullivan, who in turn approached the Minister of Lands on her behalf (AB32:221).[45] The Minister replied that he did not consider that 'there is a case to revoke the reservation in order to return the land to the Maranuku owners', but he noted that Mrs Russell had been in touch with his department in Dunedin and that 'it appears likely that a compromise can be reached if it is left to be resolved locally' (AB32:222).[46] The Commissioner of Crown Lands Dunedin met Mrs Russell in Invercargill on 11 November 1982, and reported that:

> [my] feeling from the discussion with Mrs Russell is that she would like to see the 2 hectares revested hut I think that she would be happy if in our management we did something to recognise the early Maori occupation. (AB32:223–224)[47]

The research officer at the department's head office concluded that:

> It seems to me that it can be argued that as the land was taken for a particular purpose and is no longer required for that purpose, then in accordance with Government policy we should renegotiate with the former owners for the use of part for scenic purposes.

In view of this report, the Director-General of Lands informed the Commissioner of Crown Lands Dunedin that 'classification of this reserve should not proceed until Mrs Russell's concern has been satisfactorily resolved' (AB32:225–226).[48]

In June 1983 the department approached Mrs Russell once more to ascertain whether she still wished to object to the reclassification of the area west of the road. The Commissioner of Crown Lands mentioned the possible erection of 'a suitable interpretive plaque . . . featuring the Maori history' (AB32:227–228).[49] Mrs Russell replied that the matter concerned other people and that it should be held over until a meeting of the owners had taken place (AB32:229–231).[50]

However, it seems that nothing more came of the matter until 1989, when the Department of Conservation's senior conservation officer in Owaka observed that the matter required further consideration. He noted the long-standing grievance of local Maori with respect to the land and recommended that consideration be given to revoking the reservation and returning it to its former owners, adding that its 'removal from crown protection is warranted given the low conservation value in scenic, ascetic [sic], botanical or recreation terms' (AB32:232–233).[51] The regional conservator sought and received the head office's views (AB32:234–237),[52] but after that the matter seems to have lapsed. The question of the reserve was revived again in 1992 when a request was received from a member of the public for the lease of the land to establish a camping site there (AB32:240).[53] The opinion of the senior conservation officer (statutory management) was that the department could not justify retaining the land for conservation purposes and that it should be declared surplus and offered back to former owners under the Public Works Act. This official noted that the 'present lease proposal, desirable as it may be, would in my view create a local political scrap' (AB32:238–239).[54] Subsequently, the department's Kaupapa Atawhai manager became involved. He consulted with the iwi and identified an undiminished desire for the land to be returned to the descendants of the former owners (AB32:242).[55]

Mr Alexander's last understanding of the situation (as at 1 October 1993) is that the Department of Conservation was waiting for a response from the descendants of the original owners of Te Karoro A, which would allow negotiations to commence (AB35:51). Crown counsel confirmed in October 1994 that this situation remained unchanged. The land continues to have the status of a recreation reserve under the Reserves Act 1977. The Clutha District Council has also noted that Nuggets Road, which bisects the reserve, is currently free from erosion but may in future require some form of sea protection work outside the immediate area of the road reserve (AB60).

The Tribunal's conclusion

5.3.6 Mr Alexander admitted that until relatively recently there had been no indication of any attempt by the Crown to identify, let alone consult or negotiate with, the Ngai Tahu owners of the block. The Tribunal concurs with this view. Once again we find that the lack of notification or consultation constitutes a breach of the principles of the Treaty (see claims 1, 18, and 51). The grievance is upheld. We note the Department of Conservation's recent efforts to negotiate with the descendants of the former owners for the return of the land. We commend this course of action and recommend that the land be returned to the Ngai Tahu owners entitled by using the provisions of section 134 of Te Ture Whenua Maori Act 1993.

5.4 Claim no: **58**
Claim area: **Maranuku**
Claimant: **Emma Potiki Grooby-Phillips (C5)**
Claim:

> **Mrs Grooby-Phillips claimed that the best of the timber has been taken from the reserve in the last 30 years. She maintained that the owners were unaware of both the milling and who received the payment for it.**

5.4.1 Interest in the Maranuku reserve forest, comprised of mixed rimu, matai, kahikatea, and miro, was first expressed by the Lanshaw Sawmilling Company Ltd in June 1962 (AB24:22).[56] Although primarily concerned with the millable timber on part sections 47 and 48, the company was prepared to obtain the freebold of both blocks if necessary. An application was subsequently lodged by the company to call a meeting of owners to consider selling both the land (some 675 acres) and the timber in part sections 47 and 48, block IV, Glenomaru survey district (P6:116).[57] The price was to be set at the Government valuation for the land and the Forest Service appraisal for the timber.

A small hiccup in the proceedings occurred when it was revealed that Maranuku A (Karoro A or section 48) had been partitioned in 1887, although the boundaries of A1 and A2 had never been defined (AB24:4).[58] The problem posed by the partition was that, while all of the addresses of the owners of Maranuku A1 were known to the court, the same could not be said of Maranuku A2. Thus a meeting of owners to consider the proposed alienation of the block could not proceed. In order to overcome this obstacle an application was lodged to have the partition order cancelled. This was ordered by the court on 22 May 1964 (AB24:5).[59]

The Crown, too, had been interested in purchasing the land, exclusive of the timber, 'for some years'. In June 1964 the Forest Service indicated its desire to acquire the land in order to establisb a pulp mill. It was envisaged that the land would be cleared and replanted (P6:118).[60] The Board of Maori Affairs approved the Crown's application for the land, for the sum of £5500 or the amount of a special Government valuation, whichever was the greater (P6:116).[61]

The sale of timber on section 48

5.4.2 In August 1965 a meeting of the owners of part section 48 was called by the Maori Land Court. Three propositions regarding this section were to be discussed:

- that the land be sold to the Lanshaw Sawmilling Company at a Government valuation price plus the Forest Service valuation of the millable timber on the land;
- that the timber be sold on a royalty basis to the company; or
- that the land be sold to the Crown, exclusive of the timber, for £740 or a special Government valuation, whichever was the greater (P6:114).[62]

The meeting was held in Invercargill on 1 September 1965. Five owners were present, and another five were represented by proxy (P6:120–122).[63] The owners' lawyer was also in attendance. The Lanshaw Sawmilling Company, the Department of Lands and Survey, and the Forest Service were also represented. The owners had already decided that they had no wish to sell the land and were concerned only with the sale of the timber and the method of payment. Mr Latham for the Department of Lands and Survey emphasised that the Crown's interest was in the land only, and then only on condition that the adjoining part section 47 could be purchased as well. On learning of the owners' intention not to sell, he did not pursue the matter further. Another sawmilling company had also expressed interest in buying the timber rights, although the application had not yet been received by the court. The owners, of course, were interested in hearing the new applicant's offer and asked that the meeting be adjourned for two months to make this possible.

The matter was concluded at a meeting of owners held at Invercargill on 26 January 1967 (P6:123).[64] Five of the owners were present, namely Iwi Paewhenua, James Russell, Mere Cain, Naina Russell, and Rena Fowler, and another six were represented by proxy. The two timber companies competing for the timber rights, the Lanshaw Sawmilling Company Ltd and the Clutha Timber Company Ltd, still wished to acquire the land as well. The owners, however, were resolved that the land was not for sale. In the result, the owners accepted the Clutha Timber Company's offer of 30 shillings per hundred feet board measure for the timber. The decision was later confirmed by the Maori Land Court, subject to two conditions designed to safeguard the interests of the owners (P6:126).[65]

Logging proceeded on part section 48 for the next two years. The Clutha Timber Company paid a total of $18,390 in royalties and this was distributed by the Maori Trustee to the owners (P7:38). Evidence of this includes Naina Kihau Russell's ledger card, which shows that royalty payments for Maranuku A were paid on 22 November 1968 and 5 January 1969. Her card also reveals that royalty payments for Maranuku A2 were paid out on 5 July 1969 and 1 February 1971 (P6:129).

In 1976 it was reported that the timber left on part section 48 was 'not of merchantable value' (P6:130).[66] It is not known whether section 47 was ever milled. Although the initial expression of

interest in 1964 concerned both sections, the subsequent meeting of owners was concerned only with part section 48. In 1976 the Conservator of Forests reported that:

> Of the 162 hectares in Section 47 only some 32 bectares carries bigh forest containing some merchantable trees. A walkover estimate of this area indicates that there may he some 900 cubic metres of millable podocarp logs. This is not a very attractive milling proposition and the value of the sawn logs may be less than $2,000. (P6:130)[67]

Mr Alexander concluded that, while the Maori Land Court and the owners were fully involved with the logging of part section 48 and the payment of royalties, there was little or no involvement with any logging that may have occurred on section 47. The paucity of official records on section 47 means that it is not clear wbether or not logging has occurred on this section over the last 30 years. Mr Alexander stated that:

> If logging did occur and if timber royalties were paid, then this was an arrangement made without the safeguards wbicb Maori Land Court endorsement can provide. (P7:38)

The Tribnnal's conclusion

5.4.3 It is clear that a meeting of owners of part section 48 did take place to consider the sale of timber on the section. Payment for the timber was dispersed to the owners. Regarding section 47, the Tribunal has been unable to discover whether milling did in fact occur and what happened to any proceeds thereof. In any event, the Tribunal does not consider that this would constitute a claim against the Crown, but rather may result in an action being bronght to recover compensation from those persons wbo may have milled the timber. On the evidence presented and available to this Tribunal, there does not appear to be any breach of Treaty principles by the Crown in this claim.

5.5 Claim no: **59**
Claim area: **Maranuku**
Claimant: **Emma Potiki Grooby-Phillips (C5)**
Claim:

> **Mrs Groohy-Phillips hlamed a road cnnstructinn over part of the Maranuku urupa fnr the recent exposure nf bones there. She claimed that land was taken for the road nnder the Public Wnrks Act 1928 aud that no cnmpensatinn was awarded.**

5.5.1 The urupa is situated on the edge of a cliff, just south of the Reomoana scbool on the Maranuku reserve. It was formally known as section 49, block IV, Glenomaru survey district. Known Ngai Tahu and Ngati Mamoe burials took place in this cemetery between 1871 and 1951 (AB24:14).[68] On 24 August 1981 the Maori Land Court heard an application to bave the urupa made a Maori reservation. The applicant confirmed that the cemetery bad been used for many years and that the

bodies were interred close to the sea (P6:110).[69] In 1982 it was set aside as a Maori reservation under section 439 of the Maori Affairs Act 1953 (P6:111).[70]

In 1928 a roadline was surveyed south from the Kaka Point township along the coastal frontage of the Maori reserve. In 1929 some five acres (including 17.8 perches of the coastal side of the urupa site) were taken from sections 47 and 48 for the roadworks under the Public Works Act 1928 (P6:112–113).[71]

Mrs Grooby-Phillips attributed the relatively recent exposure of bones to this early road formation. Moreover, she alleged that no compensation was awarded for the land taken for the road. Mr Alexander was unable to find any evidence that compensation was awarded to the owners.

The Tribunal's conclusion

5.5.2 This would seem to be another instance of land taken under the Public Works Act 1928 without provision for proper notification and objection from owners. In this case, there would have been added impetus for consultation with the owners in order to safeguard the urupa. It is noted, however, that it was not until 1981 that an application was made to the court to have the section set aside as a Maori reservation and gazetted as sucb. Unfortunately, the information available to the Tribunal is not sufficient to establish whether the owners were in fact notified and whether any compensation was awarded. The Tribunal makes the general observation that it has made in previous matters concerning the inadequacy of the public works legislation but can make no specific finding on the factual situation of this case because of the paucity of evidence. There is provision under section 319 of Te Ture Whenua Maori Act 1993 for compensation still to be sought, but obviously a good deal of further detailed researcb would need to be made for the purposes of that application.

5.6 Claim no: **60**
Claim area: **Tantuku**
Claimant: **Taare Hikurangi Bradshaw (E8A)**
Claim:

> **Mr Bradshaw claimed that the construction of a carpark and lands and snrvey picnic area on top of an urupa at Tantuku is hut one example of the unjnstifiahle acqnisition of Maori land under the Public Works Act 1928.**

This matter was also alluded to very briefly in Mr Cormack's submission. He also claimed that the area was a Maori urupa.

5.6.1 The Crown witness, David Alexander, was aware of only one cemetery in the vicinity of Tautuku, this being on the north side of the Tautuku River mouth and, therefore, outside the Tautuku reserve, wbicb is located on the south side (O14A:38). Mr Alexander claimed that the cemetery was Crown land, known as section 27, block VIII, Tautuku survey district, and comprised 0.4603 bectares. In

1977 an investigation of the area was made with a view to including the cemetery and the adjoining estuary area in the Tautuku Bay scenic reserve. The Department of Lands and Survey reserves ranger reported:

> There bas been a large amount of sand movement at the southern end of Tautuku Beacb especially in the vicinity of the Cemetery Reserve and there appeared to be no trace of graves that are in the cemetery. Various posts and large pieces of timber protrude out of the sand in places but these could be the remains of anything and do not really appear to be marking any graves.
>
> Jim Peterson, an old time resident of the district informed me that he believed trace of the graves disappeared long ago and that sand movement actually uncovered buman remains at some time . . .
>
> A little bit on the history of this cemetery taken from a book is:—
>
> > 'In the 1880's Sir Thomas MacKenzie while exploring the Catlins bush found several early graves on the sand hills of Tautuku. On one of them a totara slab bore the carved inscription:
> >
> > Sacred to the memory of Tamuk
> > wbo departed this life
> > September 25th 1846.'
>
> The grave, be wrote, is nearly bidden with wild flowers sucb as veronica and convolvulus. The weather has worn away the wood leaving the lettering standing out in relief. It was the grave of Jimmy Wybrows wife, Jimmy Wybmw being one of the whalers at Tautuku. (O14B:89)[72]

The ranger recommended that both the cemetery reserve and the estuary be added to the scenic reserve. In 1978 the cemetery section was indeed incorporated into the Tautuku Bay scenic reserve under the Reserves Act 1977 (O14B:91–92).[73] Mr Alexander claimed that this decision was also based on the absence of any record of burials since European settlement and the fact that the land was Crown-owned.

The Tribunal's conclusion

5.6.2 If the urupa referred to above is in fact the subject of Mr Bradshaw's claim, then the claimant is incorrect in his statement that this is an example of an unjustifiable acquisition of Maori land imder public works legislation. The cemetery referred to by Mr Alexander lay on Crown land outside the perimeter of the Tautuku reserve. Having said that, it is regrettable that matters relating to places of importance to Manri are not the subject of consultation with the tangata wbenua as a matter of course. On the information presented to the Tribunal, we do not find any breacb of Treaty principles.

On the other hand, should the claimant wish to have the urupa reserved, an approach should be made to bave the area excluded from the scenic reserve and set aside as wahi tapu.

If the above cemetery is not that referred to hy Mr Bradshaw, further clarificatton and research is required from the claimant.

5.7 Claim no: **61**
Claim area: **Waimumu**
Claimants: **Sydney Cormack (E16), Taare Hikurangi Bradshaw (E8a), Robert Agrippa Whaitiri (tape A1:4482)**
Claim:

> **This claim concerns the compnlsory acquisition of Ngai Tahu land at Mount Hedgehope in 1964 for a television transmitter site.**

The Hedgehope/Hokonui transmitter is situated on land set aside under the South Island landless natives legislation of 1906. Blocks I, IV, V, and Vl in Waimumu Hundred were reserved temporarily for landless Ngai Tahu in Southland on 9 March 1908 and proclaimed permanent reserves two months later (O14B:96).[74]

Mr Bradshaw claimed that the acquisition is but one example of how the 'national interest' does not consider Maori people's interests (E8A:2). Mr Cormack and Mr Whaitiri also objected to the compulsory acquisitton, the latter claiming that, while the land was taken overnight, it took over three years to return the land that was not needed for the purpose.

The alienation

5.7.1 In June 1964 a letter was prepared hy the district officer of the Maori Affairs Department in Christchurch for circulation to all of the Maori committees in the South Island, informing them of the Government's intention to take section 65, block VI for a television transmitting site (AB24:38).[75] This letter was an appeal by the district officer for information about those who might have had interests in the section, as only two of the original owners had heen succeeded. Court records showed that 26 people bad interests in the hlock. The officer advised:

> There will of course be the question of compensation for the taking of the land to be settled and this will he a matter for the Maori Trustee to negotiate, but in doing so he is anxious to consult the owners or those who would be entitled to be owners if they ohtained succession . . .
>
> If any of these people ohject to the taking of the land they should let me know as soon as possihle. (AB24:38)[76]

In July 1964 section 65, of 592 acres 1 rood, was taken for a television transmitter site under the Public Works Act 1928 and the Broadcasting Corporation Act 1961 (O14B:98).[77] The land was vested in the New Zealand Broadcasting Corporation.

Less than one-sixteenth of this was required for the transmitter. Section 65 was subsequently subdivided into four lots and only some 13 hectares, lot 2, were needed for television transmitting purposes. Lots 1, 3, and 4, of some 227 hectares, were leased out for grazing in 1969 for a period of 20 years. In April 1975 lots 1, 3, and 4 were transferred to the Crown (O14B:99)[78] and set apart as State forest the following year (O14B:100).[79]

It appears that the compulsory acquisition was undertaken without consultation with the owners, although there is the suggestion that the Maori Trustee was involved. It was commonly perceived that the taking had occurred 'without local knowledge' (O14B:101).[80] In 1984 the Ministry of Works and Development advised the Director-General of Lands that the land was compulsorily acquired because of the urgency of the matter and the fact that the multiple ownership of the land would have made consultation with the owners time-consuming (O14B:105).[81] In 1964 it was thought that many of the original owners were deceased and, as the Christchurch district officer pointed out, only two of the owners had been succeeded.

Whether or not compensation was paid is also questionable. As detailed above, compensation for the acquisition was to be 'a matter for the Maori Trustee to negotiate'. The Government valuation for the section in 1961 was £295, or 10 shillings per acre (AB24:38).[82] The relevant trustee file, 30/0/2, is missing from the Maori Trustee's records in Christchurch. Mr Alexander was unaware of any compensation arrangements.

Towards reparation

5.7.2 In April 1982, acting on 'a rumour that the original owners had been hard done by', the Assistant Conservator of Forests met with Robert Whaitiri, member of the Ngai Tahu Maori Trust Board, to discuss the suggestion that lots 1, 3, and 4 revert to Ngai Tahu ownership (O14B:101–102).[83] Preliminary discussions were then held between the board and the Forest Service and it was agreed in principle that the return of this land to the Ngai Tahu owners should proceed (O14B:107).[84] On 15 November 1982 the trust board wrote to the Maori Land Court in Christchurch requesting the registrar to take the initiative to have the land vested in representative trustees for the original owners.

The Minister of Forests approved the release of the land from State forest to the Department of Lands and Survey on 27 July 1983, by way of a clause in the Reserves and Other Lands Disposal Bill 1983 (O14B:104).[85] It was envisaged that the land would then be granted back to the descendants of the original Maori owners.

The clause was not added to the Bill as further investigation by the Department of Lands and Survey uncovered the grazing lease which had been drawn up in 1969. The lease was due to expire in 1989,

with a right of renewal for a further five years. The department was reluctant to assume responsibility for the land under such circumstances. It asked that the lease issue be resolved before the land was released from State forest control (O14B:105–106).[86]

The Conservator of Forests accordingly advised the trust board that the disposal of the land released through the Reserves and Other Lands Disposal Bill was no longer a simple transfer issue (O14B:107).[87] At a meeting on 6 June 1985 to discuss the options available to the owners, the Forest Service and the Ngai Tahu Maori Trust Board agreed that the land should be transferred with the lease continuing (O14B:109).[88] The following month the Forest Service indicated that the transfer would be part of the Maori Purposes Bill 1985. This did not eventuate. In February 1986 the trust board wrote to the Conservator of Forests, expressing its concern at the continued delay (O14B:112).[89]

Mr Alexander stated that no further action bas been taken and that the transaction appears to have become a casualty of the restructuring of the Crown's environmental agencies. Crown counsel informed the Tribunal that the transmitter site itself is now held by the successor to the New Zealand Broadcasting Corporation, Broadcast Communications Ltd. The former State forest land is now held by the Crown under the Public Works Act 1981.

The Tribunal's conclusion

5.7.3 It is evident that an attempt was made by Maori Affairs Department officials to notify the owners of the block of the impending taking through various Maori committees. However, any such owners were left with little time to respond to the proposal. It has been claimed that the compulsory acquisition went ahead 'without local knowledge'. The Tribunal refers to its earlier comments in claims 1, 18, and 51 regarding the lack of statutory provision for the notification of owners of Maori freehold land. Again we find the Crown's failure to consult the owners of section 65 about the taking, particularly in light of the size of the affected area, to be in breach of the principles of the Treaty.

There can be no doubt of the validity of this grievance. We feel the claimants are justified in claiming that the 'national interest' has simply trampled over the rights of the Maori owners. We are critical of the Crown's action in taking an area of 592 acres for the television transmitter site when only about 30 acres were required for this purpose. Furthermore, having established the need for only a small area, the Crown then proceeded to lease the remaining 560 acres or so for 20 years and to set the land apart as State forest.

The Tribunal finds that there bas been a breach of article 2 of the Treaty in the Crown's failure to protect the rangatiratanga of Ngai Tahu and to act in good faith. That breach will continue until action is taken to return lots 1, 3, and 4 and determine compensation for the compulsory acquisition. Despite representations from the Ngai Tahu Maori Trust Board, the land is still in Crown ownership. It should be returned forthwith.

5.8 Claim no: **62**
Claim area: **Waimumu**
Claimant: **Sydney Cormack (E16)**
Claim:

> **Mr Cormack claimed that as 2500 acres (part block I, Waimumu survey district) were set aside as a landless natives reserve, they should have been allocated and not resumed by the Crown.**

5.8.1 As outlined in the preceding summary on claim 61, land in Waimumu Hundred was set aside for certain Ngai Tahu under the landless natives legislation of 1906. Land was chosen here because other land set aside in the Wairaurahiri (Waitutu) block in western Southland was later considered to be unsuitable for settlement purposes (see claim 88). Although 10,456 acres of land in the Wairaurahiri block were apportioned out to landless Ngai Tahu, much of the interior was not allocated (P6:146).[90] State forest land in the Hokonui hills was chosen to make up the shortfall, which was calculated at 27,839 acres (P6:146).[91] In 1906 four blocks of State forest land in the hills reverted to Crown land status (P6:145).[92] Two years later this land, plus a number of adjoining Crown land areas (together totalling 31,520 acres), was reserved for the purpose of providing land for landless Maori in the South Island (O14B:94–95).[93]

Mr Alexander maintained that, because the acreage set aside in the Hokonui hills exceeded the actual shortfall from the Wairaurahiri reservation, from the beginning it was not expected that the full area of the blocks would be allocated to landless Ngai Tahu (P7:42). He stated that, after the areas to be allotted had been surveyed and granted, a balance area remained. In Waimumu Hundred this amounted to some 2500 acres (P6:131).[94]

On 20 February 1969 the Maori Land Court heard an application under section 161 of the Maori Affairs Act 1953 by Mr Cormack to establish whether the 2500-acre block was Maori land. The Department of Lands and Survey referred the court to section 15(9) of the Maori Purposes Act 1966, which amended section 110 of the Maori Purposes Act 1931. Section 15(9) provides that:

> Where any land permanently reserved pursuant to the enactments referred to in the recital to this section has not been allocated, that land may be dealt with as if it were ordinary Crown land subject to the Land Act 1948.

The court was advised that part block I was part of a larger block for which ministerial approval had been given to change the status to permanent State forest. The application was dismissed (P6:150–151).[95]

Mr Alexander submitted that the 2500-acre 'leftover' did become part of a larger 11,700-acre block which was declared State forest in 1982 (P7:43).[96] In 1984 the high conservation value of the area was recognised when this block was set apart as the Dunsdale Ecological Area (P6:149).[97]

The Tribunal's conclusion

5.8.2 The Tribunal bas already found on the inadequacies of the Crown's provision for landless Maori. It bas upbeld the claimants' principal grievance that the Crown's allocation of land on the basis of 50 acres per person was completely inadequate to remedy the landlessness caused by the sale of their lands to the Crown. The deficiencies of this 50-acre allotment were invariably compounded by the wretched quality and remote situation of the land cbosen for the scbeme.

Given the severe flaws in the landless natives scbeme, it is understandable that Ngai Tahu today are indignant that not all of the land set aside for allocation was used for this purpose. While we can sympathise with the claimants on this, the Crown did fulfil the terms of the legislation in allocating the land. That these terms were miserly, especially in view of the fact that there was plenty of good quality Crown land available, has already been established. However, the fact remains that landless Ngai Tahu individuals, as determined by Mackay and Percy Smith, received their entitlement under the 1906 Act. We do not accept that the Crown's failure to vest land over and above these allocations can be held against it, save only for the Tribunal's finding that the whole scbeme was inadequate and in breacb of Treaty principles.

5.9 Claim no: **63**
Claim area: **Forest Hill block**
Claimant: **Sydney Cormack (E16)**
Claim:

> **Mr Cormack claimed that wben two sections containing millable timber were sold in the Forest Hill block the timber was valned not hy the New Zealand Forest Service bnt hy the Valuation Department. The claimant maintained that, as a result, the owners were denied the right to a fair price.**

Mr Cormack's grievance concerns sections 917 and 918, block LXII, Hokonui survey district, situated in the Lora Gorge. Section 917 comprised almost 353 acres and the adjoining section 918 some 336 acres. Both sections were granted to individuals under the South Island Landless Natives Act 1906 (AB24:43–47).[98] The sections were sold to Ian Wilson in 1970 for $20 per acre. Mr Cormack maintained that be was later informed by the miller who milled the sections that three-quarters of the sections' purchase price bad been paid in timber royalties, and at the time there was still some months' logging left on the second section.

Only the alienation file conceroing section 918 was available. However, as the two sections were dealt with together and shared a similar fate it is reasonable to assume that what happened with section 918 also occurred with the adjoining section 917.

Tbe alienation of tbe land

5.9.1 An application for a meeting of assemhled owners to consider the sale of section 918 was lodged by Mr Wilson on 9 April 1970 (AB24:52).[99] The proposed resolution was the 'sale of land at $20.00 per acre'. The Valuation Department had valued the section at $2300. In spite of Mr Cormack's allegations, no value was placed on the timber by the Valuation Department, the district valuer merely commenting that:

> The natural cover on this hlock was medium to light hlack and red pine, Totara and broadleaf forest which has been milled over. (AB24:54)[100]

In fact it was not known immediately by the court if there was any timber on the land and the meeting was delayed until the Conservator of Forests had been consulted (AB24:52).[101] The section had been logged before. In 1915 the timber on part of section 418 had been sold to James Lindsay and George Dixon, and in 1948 the Lora Gorge Sawmilling Company Ltd had been granted permission to mill the timber on the section by the Southland Land Board, in whicb control of the section was then vested (AB24:50–51).[102] The following description was forwarded to the court by the Conservator of Forests in June 1970:

> The trees are of poor quality and comprise 38 per cent of matai, 45 per cent of kahikatea, 14 per cent of rimu and 3 per cent of miro. Although timber was found in the upper reacbes of the area it is deemed unmillable through topographical difficulties. (AB24:56)[103]

The conservator put the value of the timber at approximately $3900.

The owners of the section were sent notice of a meeting to be held on 25 June 1970 to discuss the resolution that section 918 be sold to Mr Wilson for $20 per acre, payable in cash in one sum two months after the date of confirmation of the resolution by the Maori Land Court. The Maori Trustee's commission was to be paid by Mr Wilson. It was also proposed that before any moneys were distributed to the owners $100 should be paid to Eva Wilson, because it was through ber efforts, spread over nine or 10 years, that the title was in sufficient order to be alienated. Both the real estate agent's and solicitors' fees were to be borne by the owners. The timber appraisal of $3900 and the Government valuation of $2300 were detailed on the notice (AB24:57–58).[104]

Seven of the 17 owners were present at the meeting, and a further seven represented hy proxy (AB24:61–64).[105] It does not appear that the sale of the land was at issue at all. The owners' concerns, as recorded in the minutes, centred on the Maori Trustee's commission, the solicitors' costs, and the amount to be paid to Mrs Wilson, whicb after some discussion was increased to $150. The resolution was carried unanimously.

When Mr Wilson applied to the Maori Land Court for confirmation of the resolution, it was explicitly stated that section 918 had timber to the value of $3900 growing on it, and that there were

no provisions in the sale relating to the cutting of timber (AB24:68).[106] In the court on 5 August 1970 it was maintained that the purchase price included consideration of the timber value (AB24:69).[107] It would seem from cursory calculations that this is correct:

> 335 acres x $20 = $6700
> $2300 (GV) + $3900 (timber appraisal) = $6200

Although it is apparent that the Valuation Department did not, as Mr Cormack asserted, make an appraisal of the timber on the sections, the root of his grievance is that, soon after the land was purchased by Mr Wilson, the purchase price of the sections was all but recovered from the timber royalties accruing from the land. In October 1980 Mr Cormack related the incident, which he classed as yet another 'rip-off', to the registrar of the Maori Land Court at Christchurch:

> The Wilson Sawmiller Marshall & son told me he purchased the timber on both these sections, one for 3/4 of the purchase price and the other for about the purchase price.[108]

The complaint was never followed up.

The Tribunal's conclusion

5.9.2 The question of the adequacy of the purchase price was a material matter in the confirmation of the resolution of owners before the Maori Land Court. The court is required to look carefully into the question of adequacy and it is apparent that the price offered for sections 917 and 918 fell within the usual formula applied by the court under section 227A of the Maori Affairs Amendment Act 1967, namely, the amount of the special Government valuation plus 15 percent plus the value of any timber on the land. Contrary to Mr Cormack's statement, the value of the timber was calculated by the Conservator of Forests, as required by the court. Although the purchaser may have subsequently made good on the sale of the timber, the fact of the matter is that at the point of confirmation in the court there had been compliance with the statutory requirements. The Tribunal finds that there is no breach of any Treaty principle in this complaint.

5.10 Claim no: **64**
Claim area: **Omaui**
Claimants: **Taare Hikurangi Bradshaw (L32)**
Claim:

> **This claimant maintained that 369 acres of land in the Omaui reserve, of great traditional significance, were taken for scenic reserve purposes, which reduced the size of the reserve by half. In his view, such an acquisition illustrates how the 'national interest' does not consider Maori people's interests (E8:2).**

Mr Bradshaw maintained that the area was a former papakainga and of traditional significance as the site of a battle between Ngai Tahu and Ngati Mamoe. His grievance concerned the taking of 369 acres of land for scenic reserve purposes, which, be stated, reduced the size of the reserve by half (L32:67).

5.10.1 The Omaui reserve was one of seven reserves marked off by Walter Mantell on his tour of Murihiku prior to the Crown purchase of the block in 1853. This has been detailed in the *Ngai Tahu Report 1991*. The reserve was situated on the eastern headland of the entrance to the New River estuary and comprised 1686 acres. In 1868 the Native Land Court determined that 28 people were entitled to the block, but only Topi Patuki, Alfred Kihau, Horomona Patu, and Peneamine Kahupatiti were to he named in the Crown grant (A8:II:250).[109]

Today little more than half of the reserve remains in Ngai Tahu hands. The native reserves schedule shows that in 1899 the reserve, section 1, block VII, Campbelltown Hundred, had been partitioned into seven sections and a two-acre cemetery reserve (O14B:40, 54).[110] These portions were sold off over the years, beginning with lot 1 in 1916, until, in February 1960, only lots 5, 6, and 7, totalling 856 acres, were still in Maori ownership (O14A:18).[111]

The Omaui scenic reserve was created in 1963 (O14B:74).[112] The Crown witness presented evidence which showed that the 338 acres which were purchased hy the Crown for the scenic reserve were comprised of land from the former Omaui reserve which had already been alienated, namely, lots 2A, part lot 3, and part lot 4. Land still in Ngai Tahu ownership was not affected.

The alienation of the reserve

5.10.2 In order to clarify the position for the claimant, the following sets out the circumstances behind each of the alienations from Ngai Tahu ownership. Only the areas later acquired by the Crown for scenic purposes have been dealt with.

Lot 2A

5.10.3 By 1912 lot 2, of 103 acres 1 rood 7 perches, was vested in six owners. By far the largest interest in the section, of 68 acres 3 roods 18 perches, was held hy Teone Wiremu Tohi (AB24:97).[113] The remainder was divided equally between five others. In December 1912 the Native Land Court heard Tobi's application to have his acreage partitioned off in the northern part of the section. The other owners were agreeable to the proposition and an interlocutory order was made, to be finalised when the application was gazetted. Tohi was then made the sole owner of lot 2A, section 1, block VII, Campbelltown Hundred (AB24:98).[114]

Tobi was succeeded by Henry Williams aod Vernon Ohaia Mason Thomas in equal shares in March 1942 (AB24:99).[115] On Mr Williams's death in 1950, Mr Thomas became the sole owner.

In November 1951 lot 2A was purchased from Mr Thomas by one Logan Udy for £172, or £2 10s per acre.[116] This was confirmed by the Maori Land Court on 3 December. As Mr Alexander pointed out, the memorandum of transfer, dated 23 November 1951, was signed by Mr Thomas. Approximately half of lot 2A was purchased from Mr Udy by the Crown on 9 August 1962 for the scenic reserve (O14A:18).

Lot 3

5.10.4 Lot 3, of 447 acres 2 roods 30 perches, was alienated by the South Island District Maori Land Board, acting as agent for the owners under Part XVIII of the Native Land Act 1909 and the amendments thereof, to one William John Boyd on 13 October 1925. The land was sold for £1343 1s 3d. At the time of sale there were 34 listed owners of the block (AB24:104).[117] The memorandum of transfer relates that the alienation was made:

> in terms of a resolution passed by the said proprietors at a meeting of assembled owners held at Invercargill on the 2nd day of July 1925. (AB24:107)[118]

Recent inquiry by Ruth West into the 1925 alienation of lot 3 has thrown some doubt on the propriety of the transaction. A record of the meeting of assembled owners supposedly held on 2 July 1925 cannot be found (AB24:112).[119] At that time such meetings were dealt with by the district Maori land boards. The South Island District Maori Land Board sat in Invercargill on the same day. According to the registrar, who responded to Mrs West's inquiry, the board's minutes reveal that:

> on 2 July 1925 the aforementioned meeting was called under Pt XVIII of the Native Land Act 1909 to consider a leasing proposition to Teone Matapura Erihana, however, this proposition lapsed and the abovenamed section was resolved to be sold to Mr W J Boyd under the same part of the said Act. . . .
>
> Confirmation of the sale to Mr W J Boyd is evidenced by Judge Gilfedders signature signed on behalf of the Maori Land Court on the Memorandum of Transfer which I feel was signed in Chambers as other written evidence within either the Board's Minute Book or the Maori Land Court Minute Books on 13 October 1925 being the date of confirmation is non existent. (AB24:108)[120]

Mrs West claimed that a number of the owners were deceased at the time of the meeting, and of those still alive more than half were living outside Southland (AB24:110).[121] She also claimed that succession applications for the land are still being accepted and processed by the court (AB24:111, 114).[122]

Lot 4

5.10.5 The events behind the alienation of this section are detailed in the following summary of Mr Cormack's grievance (claim 65). In short, lot 4, containing 171 acres 27 perches, was sold to William John Boyd, the owner of lot 3. On 17 February 1959 the assembled owners of lot 4, having considered an earlier offer from the Crown for the section, resolved to sell the land to Mr Boyd for £6 per acre. The resolution was carried by 25.82031 shares to 18.36000. Two memorials of dissent were lodged with the recording officer (AB24:86–91).[123]

In January 1962, 102 acres 2 roods 10 perches of lot 4 were purchased from Mr Boyd by the Crown for the creation of the Omaui scenic reserve (O14B:72–73).[124]

In addition to the above lots 2A, 3, and 4 of section 1, 1 rood 29.4 perches were taken from lot 1 of section 1 for the scenic reserve. This was sold by Maurice Topi Patuki to a Pakeha in November 1914. While the Tribunal has no details of the transaction, the memorandum of transfer was signed by Patuki and confirmed by the South Island District Maori Land Board a year later. The land was general land when acquired by the Crown for the purposes of the scenic reserve.

The Tribunal's conclusion

5.10.6 The allegation that land was taken for the scenic reserve from Maori-owned land has been found to be erroneous. The evidence clearly shows that the scenic reserve was taken from land already alienated from Ngai Tahu ownership. The Tribunal finds that there has been no breach of any Treaty principle in this matter.

5.11 Claim no: **65**
Claim area: **Omaui**
Claimant: **Sydney Cormack (E16)**
Claim:

> **Mr Cormack claimed that at Omaui the Crown offered to buy land at half the price that adjacent farmers paid for their land. 'This is the usual procedure by the Crown, there are 3 ways in use — cajolery, coercion and confiscation' (E16:9).**

The claimant, however, did not specify when this occurred, or what part of the reserve he was referring to. Mr Alexander was unable to investigate the grievance. The Tribunal has been able to find information which may be the grounds of Mr Cormack's complaint. It pertains to lot 4 of section 1, block 7, Campbelltown Hundred, comprising 171 acres 27 perches.

Proposal for a scenic reserve

5.11.1 The Crown's initiative in purchasing this section was sparked by the Southern Progress League's approach to the Native Minister in 1941 (AB24:76).[125] The league sought to have the section, on wbicb the main native bush on the Omaui Maori reserve was located, set apart as a scenic reserve. However, the proposal was shelved during the war years and further action deferred until an access road to the area had been completed.

With the opening of the new road Omaui became a popular holiday place and in 1955 the establishment of a scenic reserve at Omaui was referred to the Minister of Lands (AB24:77–78).[126] On 1 July 1955 approval was given for the opening of negotiations for the purchase of freehold and Maori land, including lot 4 of section 1.

The owners of lot 4 bad agreed to a private sale of their land some years before. In February 1936 a meeting of assembled owners had resolved to sell the block to a William Todd for £516 which, at the time, was more than 10 times the amount of the Government valuation of the section (AB24:71–72).[127] However, the matter lapsed as Mr Todd's proposed schedule of payment had not been part of the resolution and was not therefore acceptable to the court (AB24:75).[128]

By March 1957 the Crown had focused on lot 4 of section 1 and an adjoining bushclad area of some 200 acres which was vested in the Corporation of the City of Invercargill in trust as an endowment for municipal purposes (AB24:77–78).[129] Ministerial approval was given in March 1957 for the purchase of lot 4 for the Government valuation of £255 plus the Forest Service appraisal of the timber at £335. The Board of Maori Affairs, too, approved the negotiations.

A meeting of assembled owners of lot 4 was summoned for 9 December 1959 to consider the following proposal:

> That the above land be sold to the Crown at a price not less than £590. (AB24:83)[130]

At the meeting the owners were informed of another offer for the land. William John Boyd was prepared to pay £6 per acre for the land (some £1030 in all); almost double the offer of the Crown. The owners present were less than impressed with the Crown's application:

> The Crown's offer is too low. The western end of Omaui is in good demand for beach baches. Invercargill City Council has been leasing some of the land for baches. I oppose the resolutioo and suggest the meeting be adjourned. I know of another person in Bluff who would be interested in buying and prepared to pay more. (AB24:84)[131]

The meeting was adjourned to consider any other offers for the land.

The land is sold

5.11.2 A second meeting of owners was held on 17 February 1960 to consider both the Crown's and Mr Boyd's offers. Of the 172.15625 shares in the block, only 44.18031 were represented: eight owners were present and 10 were represented by proxy. The Crown by this stage had rethought its offer:

> The first speaker to address the meeting was Mr Costello of the Lands & Survey Dept who was representing the Crown. He informed the meeting that his Department had valued the land, independent of the Valuation Dept and their value was £985. He was authorised to buy at this figure but his department would be prepared to raise this figure to £1000 subject to the consent of their Minister. (AB24:88)[132]

There does not appear to have been much discussion about the alienation of the land at the meeting. The recording officer noted that:

> The other owners present had nothing to say at all and even after an aerial map had been passed there were no comments. (AB24:88)[133]

It seems, however, that considerable antipathy was felt towards the Crown:

> I then asked them if anyone would move that the block be sold to the Crown. There were immediate cries of 'We won't sell to the Crown'. (AB24:88)[134]

In the result, the resolution to sell the land to William Boyd was carried by 25.82031 shares to 18.36000. Two memorials of dissent were lodged with the recording officer. Just over 100 acres of lot 4, section 1 were bought from Mr Boyd three years later for the creation of the Omaui Scenic Reserve (O14B:72–73).

The Tribunal's conclusion

5.11.3 The Maori Land Court, under the legislation relating to alienation of land, is required to have a special Government valuation at the time the alienation comes before the court. As stated in the summary of claim 63, the special Government valuation plus 15 percent is deemed to be adequate under the Act and equivalent in most cases to a proper market value. In some cases the court may also require the evidence of a registered valuer. In this particular case the Crown was relying on the Government valuation of the land plus the value of the timber. The meeting was held two years after ministerial approval of the purchase had been given and there may well have been a change in the Government valuation at that time. In any event the owners, as they did in this instance, had the right to reject any offer made for the land if they so desired. Mr Cormack is correct in his statement that the Crown offered to purchase this piece of land for half the price offered by a private individual. However, the Tribunal does not consider this to be a breach of any Treaty principle.

5.12 Claim no: **66**
Claim area: **Invercargill**
Claimant: **Rena Naina Peti Fowler (E15)**
Claim:

> **Mrs Fowler claimed that section 73, block II, Invercargill Hnndred was sold by the Maori Trustee in 1964 withont notification being given to the owners or knowledge of payment ever being made.**

5.12.1 On application to the Native Land Court in June 1926, section 73, block II, Invercargill Hundred (comprising 6 acres 2 roods 26 percbes) was partitioned into eight parts, a ninth part being designated as a road to provide the other owners access to the main road (E15:A).[135]

The sections were bisected by the Invercargill city boundary; some lay within, some without. In March 1963 in Hastings an application was beard by the court to have the land vested in the Maori Trustee under section 387 of the Maori Affairs Act 1953. This section, which provided for the utilisation of 'unproductive' Maori land through the appointment of the Maori Trustee to act as agent for the owners, is detailed in the Tribunal's conclusion below. The Invercargill City Council and the Southland County Council had brought the application in order to deal with the growth of noxious weeds on the property. The 'ten-foot gorse' was said to stand out 'like a plantation of trees' (E15:B).[136]

The court considered that, if the titles to seven of the sections were amalgamated and replaced by a title in one for the whole of the block, the area 'could be more conveniently dealt with'. Sections 73D and 73E were thought to be suitable for bouse sites and were to be excluded from the amalgamation. It is recorded that the court was adjourned so that 'those present could discuss amalgamation and vesting in the Maori Trustee' but that 'no agreement was forthcoming':

> The sole owner of 73F wanted bers vested in the intended sole-owner of 73D but this would form an irregular shaped section part in the City and twice as mucb in the County. (E15:B)[137]

The court, bowever, ordered that several titles of sections 73A, 73B, 73C, 73F, 73G, 73H, and 73J be cancelled under section 435 of the Maori Affairs Act 1953 and replaced by one title to the wbole of the land.

According to the minutes taken that day, 'There was no proposition for the clearing of any part of the land'. In view of this the court decreed that the land be vested in the Maori Trustee under section 438 of the Maori Affairs Act 1953 in trust to negotiate or conperate with the noxious weeds inspector to prevent further infestation. In addition, the court gave the Maori Trustee the power to alienate the land by lease or, ultimately, by sale:

> if the Maori Trustee is of opinion that a sale of the land either without leasing or after having leased is of more benefit to the owners to sell the whole or parts thereof by such means, for such price and on such terms as the Maori Trustee thinks fit. (E15:4)[138]

In 1964 the amalgamated section was indeed sold by the Maori Trustee to one Mr Larsen for £1075 (E15:C).[139] This was £25 less than the Government valuation of the land, but it was considered by the Maori Trustee to be the best option available. The owners of the land were not consulted at all about the sale of the property.[140] Mr Alexander was able to produce a ledger card for Abner Russell Jr, who had an interest in the block, which showed credit accruing from section 73 on 21 December 1965. The Crown witness submitted this as proof that the purchase moneys were credited to the owners (P7:46).

The Tribunal's conclusion

5.12.2 Of issue in this claim is the introduction into Maori land law of provisions relating to the utilisation of unproductive Maori land. Part III of the Maori Purposes Act 1950 set up a code to deal with unproductive Maori land. Section 34 of the Act provided:

> (1) Where, with respect to any land to which this Part of this Act applies, the Court is satisfied—
>
> (a) That the land is unoccupied; or
>
> (b) That the land is not kept properly cleared of weeds which are noxious weeds within the meaning of the Noxious Weeds Act 1950; or
>
> (c) That any rates payable in respect of the land, or any moneys recoverable in the same manner as rates are recoverable, have not been paid, and that the amount of the said rates or moneys has been charged upon the land; or
>
> (d) That the owners of the land have neglected to farm or manage the land diligently and that the land is not being used to its best advantage in the interests of the owners and in the public interest; or
>
> (e) That any beneficial owner cannot be found—
>
> the Court may make an order appointing the Maori Trustee to execute in his own name, as agent for or on behalf of any owner or owners of the land, an instrument of alienation in respect of the land, or any part thereof, or any interest therein, in accordance with the provisions of this Part of this Act.

Subsequent sections of the Act provided that no order should have any force or effect until approved by the Minister of Maori Affairs (s 36) and that no land was to be sold if it was capable of being

leased for farming purposes. Procedures were put in place for the land to be properly valued before sale or lease, and power was given to the Maori Trustee to invite owners to apply for leases. Ultimately, however, the Maori Trustee had power to alienate by way of sale.

When the Maori Purposes Bill 1950 came hack to the House from the select committee, it was committed, had its second and third reading, and was passed in a very short time. The then Minister of Maori Affairs, Mr Corhett, commented on Part III:

> Part III is designed to hring into profitahle utilization idle Maori lands which have been subject to much criticism over a large period of time — these lands have been said to constitute a burden on the local bodies so far as rates are concerned. They are weed-infested in many instanees and are of no benefit to the Maori people at all. The Government has been trying to find a solution to this problem so that the land can be more profitably used. It is a prohlem for wbicb the Maoris cannot be blamed because of the very difficult position of a multiplicity of owners, creating almost communal lands. (AB27:284)[141]

The Honourable Minister went further to say that:

> One important point in the legislation is that there is an adequate safeguard for the fee-simple of Maori land. . . . The preservation of the fee-simple is something very dear to the bearts of the Maori people, and our purpose in bringing this down is to provide that with the full and efficient use of the land a greater measure of assurance is given to the Maori people in the preservation of the fee-simple. (AB27:284–285)[142]

During the examination of the Bill on a clause-hy-clause basis, the Honourable Minister again commented that:

> There will be no right bere for the Maori Trustee to sell land that be has taken control over under this clause. There is a further provision giving beneficial owners of any property that is being offered for lease priority in obtaining that lease. It will he first offered to any beneficial owner of the property. That may not be clear to some members. (AB27:288)[143]

Again, later in the dehate, be stated that:

> the Court may make an order appointing the Maori Trustee as agent to execute an instrument of alienation in respect of the land in accordance with the provisions of Part III of the measure. I want to make it clear to those wbo perhaps misinterpreted the word 'alienation', who took it to mean the loss of the fee-simple was involved, that is not correct. All that is involved is that the Maori Trustee will have the right to lease the land, but he has no right of sale at all, and the fee-simple is preserved to the beneficial owners. (AB27:288)[144]

There was little debate on the measure and certainly no opposition from the three Maori members who spoke on it.

The Trihunal here comments that the explanation that there could be no sale of the land hy the then Honourable Minister does not seem to be expressed in the Act itself. Alienation as defined under the Maori Purposes Act 1931 (which was amended by the Maori Purposes Act 1950) includes the sale of land. Indeed Part III of the 1950 Act, although it required the consent of the Minister to an order of the court appointing the Maori Trustee as agent, and although it provided for land to be leased if it was suitahle as farmland for that purpose, still conferred a right of sale on the Maori Trustee.

The 1950 Act was brought down into the Manri Affairs Act 1953 as Part XXV of that Act. The Maori Trustee was still authorised to act as agent for the purposes of sale or lease hut was required to offer the right of purchase or lease to a Maori or a descendant of a Maori before proceeding on the open market (s 387(5)). Ministerial conseot was still required for the appointment of the Maori Trustee (s 389) and the power to sell was not to be exercised if the land could be leased (s 392).

Part XXV of the Maori Affairs Act 1953 was repealedhy section 6 of the Maori Purposes Act 1970. It is interesting to note the comments made by the Honourable Minister of Maori Affairs Duncan McIntyre when the 1970 Bill was before the House for committal:

> Clause 6 repeals Part XXV of the principal Act, which contained compulsory provisions for dealing with idle or unproductive Maori lands. The Maori people have always objected to this part of the Act on the grounds that the total area of idle Maori land is no greater than that of idle European land or of Crown land; yet there is no provision for the compulsory utilisation of European land. Part XXV is in fact very little used, as the court prefers to use the provisions of section 438 of the principal Act, which enahles idle land, weed-infested land, or land where no rates are being paid, to be vested in trustees for the purpose of hringing the land into production. As Part XXV is practically a dead letter, it is better to remove it from the statute book. (AB27:294)[145]

There was a further statement made during the debate by Mr Wilkinson, member for Rodney, who said this concerning section 6:

> These provisions have been used very little of recent years. The interesting thing to note about them is that they are compulsory, and many people, not only in the Maori world hut outside, have pointed out that unproductive European lands are not suhject to similar compulsory provisions regarding utilisation. As this provision is almost totally in abeyance now, it has been considered reasonahle to remove Part XXV from the statute book altogether. (AB27:296)[146]

5.12.3 Returning now to the fate of section 73, in March 1963 the Maori Land Court exercised powers under section 438 of the Maori Affairs Act 1953, although the application before the court had been hrought under section 387 of that Act. It is apparent from the record of the hearing that those owners

who might have been present had not come hack to the court with any proposal for the clearing of any part of the land after an adjournment gave them an opportunity to look at the options availahle. In any event, the Maori Land Court went ahead and made an order vesting the land in the Manri Trustee, with power to negotiate or cooperate with the noxious weed inspector to prevent further infestation, but also with power to alienate the land by lease or, ultimately, hy sale.

It should also be noted here that section 438 of the Maori Affairs Act 1953 gave the Maori Land Court a very wide discretion in vesting land in trust for the purpose of facilitating the use, management, or alienation of that land. It is evident that, in this particular case, the court bad in mind the ultimate sale of the land if it could not be satisfactorily cleared of noxious weeds or alternatively leased to some person with adequate provision for the removal of the gorse. The land was sold and has gone into private ownership.

The court in 1963 clearly contemplated the sale of the land as a last resort but nevertheless vested that power in the Maori Trustee. It is interesting to note that section 438 of the Maori Affairs Act 1953 bas been amended by the new Te Ture Whenua Maori Act 1993, and no trustee of an ahu whenua trust appointed pursuant to section 215 of that Act can be given or can hold any power of sale of the land. Section 228 of the 1993 Act provides that trustees shall have no power to sell any land vested in them unless the proposal to sell has the consent of at least 75 percent of the owners and such sale requires confirmation by the Maori Land Court. Although the court in respect of section 73 made its order under section 438, it was dealing with an application under section 387. Section 438 gave the court wider jurisdiction to make orders relating to use or management than existed under section 387 and the court obviously intended that the Maori Trustee should try to negotiate or cooperate with the noxious weeds inspector. However, because of the apparent lack of cooperation from the owners on clearing the land, the court must have been very much aware of the power of sale given by section 387, whicb power was also contained in section 438. The court intended that the land be sold only as a last resort. The circumstances attending this whole matter indicate that the court had section 387 before it as the basis of jurisdiction to hear and deal with the noxious weeds prohlem.

The question at issue here is simply whether the provision legislated in 1950 and brought down into the Maori Affairs Act 1953 as Part XXV was in breacb of the principles of the Treaty of Waitangi. As was pointed out hy the Honourable Minister of Maori Affairs in 1970 when the law relating to the sale of unproductive land was repealed, there was no comparable law in existence at that time that provided for agents to be appointed to sell general land in breach of the provisions of the Noxious Weeds Act 1950. Despite the limited safeguards inserted into the 1953 Act, this present claim illustrates clearly enough that a block of Maori land was sold over the heads of the Maori owners without their consent.

The Trihunal considers that this constitutes a breach of article 3 of the Treaty of Waitangi in that Maori land has been suhject to a discriminatory and confiscatory provision that did not apply to general land. The parliamentary debate that took place in 1950 may well have left upon the minds of the Maori members an impression that no land could be sold as a result of any application made

pursuant to the new law. There was certainly no debate or comparison of that provision with the general law applying to European land. As the land is now private land, this Tribunal has no jurisdiction to make any recommendation in respect of it.

Mrs Fowler's allegation that the owners of the land were not notified or consulted about its alienation would appear to be correct. The proceeds of the alienation, however, appear to have been distributed to the Maori owners by the trustee. As we have set out on numerous occasions, the failure to notify and consult the owners is in clear breach of the Treaty principle requiring the Crown to protect Ngai Tahu rangatiratanga over their lands.

Although the above finding of the Tribunal goes beyond the grievance of Mrs Fowler, her claim has nevertheless resulted in the disclosure of legislation that existed for 20 years, was discriminatory, and led to the loss of section 73.

5.13 Aparima reserve

Ngai Tahu from Murihiku were set aside a reserve at Aparima (now known as Riverton) by Walter Mantell on his tour of Southland before the Murihiku purchase took place. The reserve was situated on the eastern side of the Aparima River mouth and consisted of 527 acres. The Tribunal has found in its 1991 report that the claimants' grievance that Mantell refused to reserve additional land at Aparima is made out, although it was unable to quantify the deficiency.[147]

The policy of individualisation of Ngai Tahu title in an attempt to alleviate the paucity of the land they were reserved has also been discussed in the *Ngai Tahu Report 1991*.[148] In the early 1860s Ngai Tahu at Aparima were reported to have agreed to cede the reserve to the Government on condition that they received Crown grants for the portions allotted to individuals or families (O14B:81).[149] In 1865 the reserve was surveyed but for some reason little else was done. In 1874, after discussion with the owners, the reserve was divided into 81 sections by Alexander Mackay (O14B:25).[150] Only 360 acres were suitable for partition between 48 claimants. This meant an allocation of 7.5 acres each. An acre reserve was set apart on the beach frontage as a landing place, another acre for a church and school reserve, and 3.5 acres were marked off as a cemetery. These allotments are listed in the 1899 native reserves schedule. By this stage some 16 acres in the south of the reserve had been alienated by proclamation or lease. The schedules recorded only 20 Ngai Tahu living on the reserve.

The Tribunal now looks at the various claims lodged in respect of the Aparima reserve.

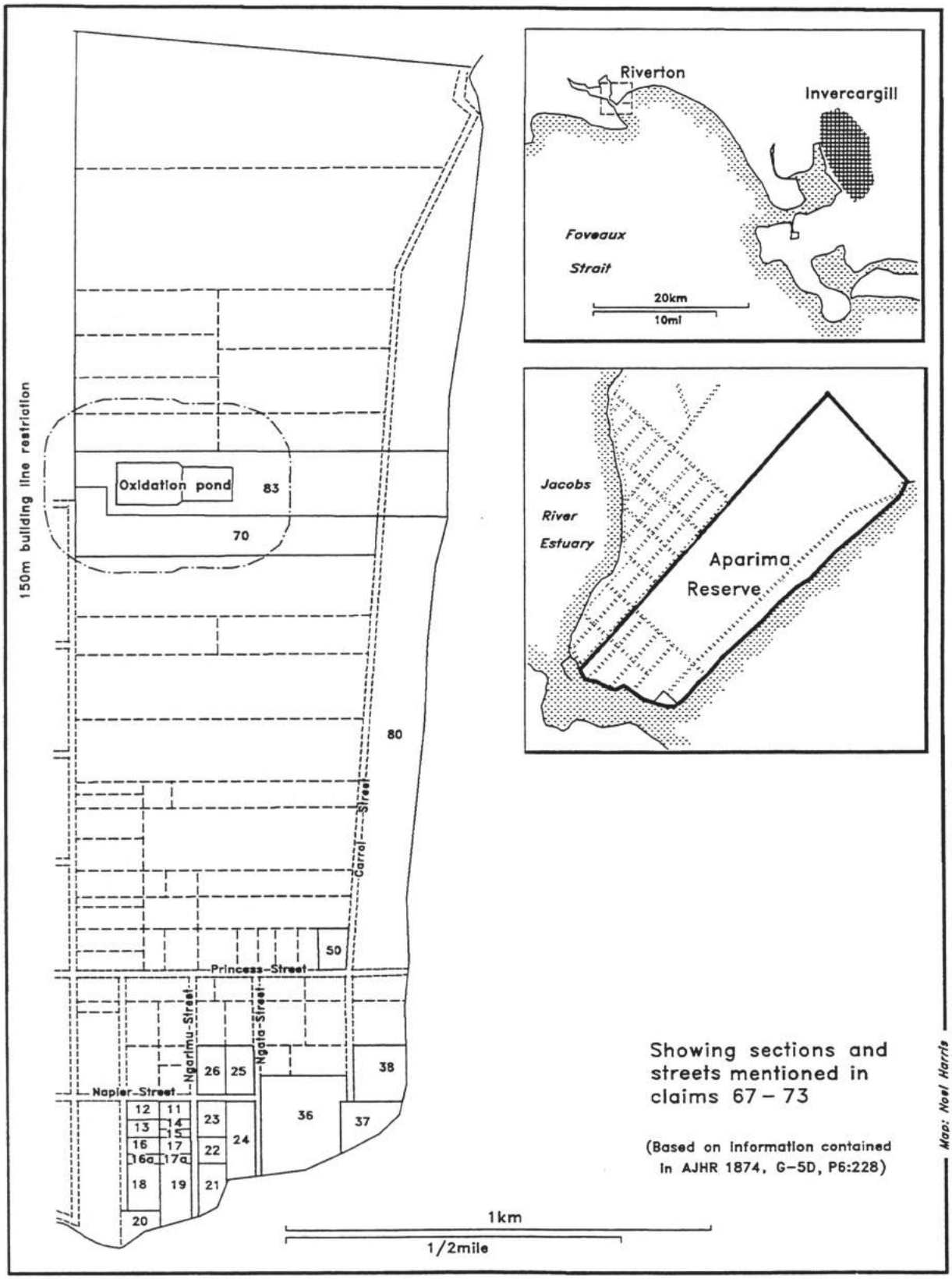


Figure 8: Aparima reserve

5.14 Claim: **67**
Claim area: **Aparima**
Claimant: **Sydney Cormack (E16)**

There are three components to Mr Cormack's claim:

> **That section 71, part of section 80, and a portion of Carrol Street (depriving Maori access to a number of sections) were taken to create a rifle range. This was later named section 83.**
>
> **That when the land was no longer needed for this purpose it should have been returned to its owners. Instead, it was granted to the Wallace Connty Conncil and further to the Riverton Borough Council for a night soil reserve and ruhhish tip.**
>
> **That the conncil made a road in section 80 adjacent to the old Carrol Street to service the rubbish tip. One hnndred metres of Carrol Street were then widened from 10 to 20 metres, tarsealed, and declared a pnhlic road for access to the golf course.**

Land for a rifle range

5.14.1 In October 1913 some 27 acres were taken from the Aparima reserve under the Public Works Act 1908 for a rifle range. This comprised 24 acres 34 perches of section 71, 4 acres 24 perches of section 80, and 2 roods 32 perches of a private road, Carrol Street, in hlock XXV, Jacobs River Hundred (O14B:82).[151] Title to section 71 had been issued to Tiki Karaweko and Karipa and Mere Haimona as tenants in common as recommended by Alexander Mackay in 1874. Title to section 80 had not been registered at the time of taking. This section fronted the sea and had heen regarded as being too poor for allotment. In 1874 Mackay had recommended that the land be granted to five residents of Aparima in trust for all of the local Ngai Tahu for grazing purposes. There is some doubt about the status of Carrol Street. In the *Gazette* notice proclaiming the taking, the street was referred to as 'private road'. In his 1874 report, however, Mackay stated that this road had been set apart for public purposes under the terms of the deed of purchase (O14B:25).[152] In accordance with the legislation of the time, none of the owners of the affected land were served with notice of the taking. Notice was confined to the *Gazette* declaration and an advertisement in the local newspaper on 24 October 1913.[153]

It appears that there was considerable resistance to the utilisation of this land for the rifle range. When, in December 1913, the Native Land Court sat in Invercargill to hear the department's application for compensation, 'strenuous opposition' was voiced by a number of the adjoining Ngai Tahu landowners about the taking of the portion of Carrol Street. It was claimed that closing off this portion had deprived them of direct access to Riverton (AB27:296).[154] There were also concerns about the general safety of the range. Mr Moffett, who appeared for the successors of one Agnes Bates and her husband, John Bates, also gave evidence (P6:166).[155] Patn of section 71, occupied

by John Bates's brother-in-law Morgan Hayes, bad not been taken. In light of the objections, the court reserved its decision on the award of compensation. Agreement was subsequently reacbed with the Public Works Department and the Defence Department giving the landowners affected by the closing of Carrol Street a right of way over the range.

Resistance to the location of the range continued. In response to a petition with 91 signatures against the range, local residents were asked to suggest an alternative. However, their proposal of section 81, a swampy commonage at the top of the Aparima reserve, was considered too unsuitable for the purpose.

In December 1915 compensation was finally determined by the court at £164, to be paid to the Public Trustee for distribution to the owners (P6:163–172).[156] It was explained by Mr Kimbell for the Public Works Department that the objections to the road being taken bad been overcome by the Defence Department's consenting to the continued use of the road except during target practice. The minutes suggest that the area of road taken was not compensated for, although this is not beyond question.

In the years directly following the compulsory acquisition of section 71 and part section 80, it appears that the range was used only marginally for rifle practice. This was said to be due to the intervention of the war and the curtailment of local territorial training. By 1918 the range was being leased out for grazing.

From rifle range to night soil tip

5.14.2 By 1949 the range was deemed to be no longer suitable for rifle practice. In February of that year the land was offered to one Micbael Hayes, the son of Morgan Hayes, wbo bad occupied part section 71. Michael Hayes's mother was Elizabeth Bates, a Ngai Tahu woman wbo had beld an interest in section 71. Micbael Hayes bad been leasing the range and he and his family were said to 'own the land, or most of it, surrounding the old Range'. The Under-Secretary for Maori Affairs was approacbed by the Commissioner of Works for his views on the proposal to revest the land in the original owners, in accordance with section 7 of the Maori Purposes Act 1943.[157] This section provided for the return to the original Maori owners or their descendants of lands taken for a public work and no longer required for that public work, or any other public purpose.

The Under-Secretary for Maori Affairs did not respond until a full year later and his answer was brief:

> it is unlikely that the former owners would be prepared to find the amount concerned, or indeed any amount, in payment of the revesting of these sections.
>
> The Maoris concerned are scattered all over the country and the prospect of their utilising the land is very remote. (AB27:307)[158]

He pointed out that, as section 80 had been set aside as commonage, there would be numerous people involved.

In light of this answer, it appears that the Commissioner of Works discarded any idea of proceeding under the 1943 Act. In 1951 the land was declared surplus to requirements and became Crown land (O14B:83).[159] In May 1951 Mr Hayes was approached about the department's desire to sell the land for around £100 (P6:175).[160] He was informed that Crown lands could be disposed of privately only to an ex-serviceman or an adjoining landowner and was asked for any particulars which would indicate that either of these conditions applied. In reply, Mr Hayes informed the commissioner that the land he occupied was Maori land which was not registered in his name. It is clear that he was interested in purchasing the old range as he told the commissioner that he intended to 'apply to the Maori Land Court for a title' to the land he lived on (P6:176).[161] In the meantime he was given a five-year lease of the range for a nominal rent.

On Mr Hayes's death, the lease was transferred to a Mary Donovan, who, it appears, had no interest in the surrounding Maori land. The lease was renewed for a further five years in 1956 as the issue of ownership had still not been resolved (P6:177).[162] When the lease came up for renewal in 1961, the department considered selling the land hut, because there was no legal access, Carrol Street being regarded as a private road, it was recommended that the land be re-let for a further five years (P6:178).[163]

In October of that year the facilities and administration of the Riverton Domain were reviewed. The Riverton Borough Council was told to remove from the domain the dog dosing strip and the shed where night soil tins were stored (P6:179).[164] The old rifle range, part sections 71 and 80, was suggested as an alternative location. Accordingly, on 13 November 1961, the council resolved to take over the area for a depot and disposal area for night soil and to apply to the Minister of Lands to have the land reserved as such (P6:181).[165] After some negotiation the council agreed to purchase the land from the Crown for £300 (P6:182).[166] The sections comprising the old rifle range were renamed section 83. Title to the land, of 26 acres 1 rood 17 perches, was issued to the council on 10 July 1963 (O14B:84).[167]

The Crown witness concluded that the Department of Lands and Survey would have been willing to offer the land to the owners of the surrounding Maori land if they could have demonstrated registered title to that surrounding land. However, the department made no attempt to ascertain who the owners of the block were and Mr Alexander stated that it had no legal obligation to do so (P7:54).

Section 83 is now the site of Riverton's sewage treatment work (see claim 68). Until 1985 the Riverton rubbish tip was located on the seaward end of section 83. A formed and metalled roadway through the middle of section 80, running parallel with Carrol Street, provided access to the tip until the lessee of section 80 closed it off (AB24:120).[168] In April 1985 the Wallace County Council advertised its recommendations for a change in its district scheme (AB24:123).[169] One of these

changes was the closing down of the rubbish tip on section 83, whicb was effected on 6 May 1985 (AB24:125).[170]

Carrol Street

5.14.3 In essence, Mr Cormack alleged that a 100-metre length of Carrol Street, a private Maori road, was widened, tarsealed, and declared a public road when access was needed to the Riverton golf course.

The question of status of the roads in the Aparima reserve is far from clear. Under the Murihiku deed of purcbase, Ngai Tahu agreed that:

> ki te mea ka wakaaro . . . the Governor ki te whaihanga amua ake nei etahi buarahi 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 buarahi e wakaaro ai ia kia bangaia.[171]

This was translated into Englisb as:

> 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 portions thereof without any payment being made, that the roads whicb be thinks necessary may be properly laid off.

When Mackay visited the area in 1874 to sort out the partition of the reserve, he reported with respect to roads that:

> The only roads set apart for public purposes in the reserve is Paddock Street [now Princess Street] to the beach, and the longitudinal road running parallel with the beacb in the direction of Invercargill [Carrol Street]. These lines exhaust the quantity of land that can fairly be claimed for the purpose, as the deed of cession only empowers the Government to take one line of road through the property. (O14B:25)[172]

His plan of the subdivision sbows the above streets as being one chain wide.

Despite Mackay's view on the status of Carrol Street, it is evident that, at the time of the taking of part of the roadway for the purposes of a rifle range, it was generally considered to be a private Manri roadway. In Marcb 1949 the Maori Land Court beard an application under section 484 of the Native Land Act 1931 to declare the southern end of Carrol Street a public road (P6:248–249).[173] Mr Alexander stated that the application was made because section 50, to the northwest of the length of road to be proclaimed public, had been subdivided into three lots and public access was needed to the lots (P7:71–72). At the hearing counsel for the cbief surveyor submitted that the present position was holding up the development of the area. An affidavit was also produced from the county clerk to the effect that the road had been used by the public and that public money had been expended on the maintenance of the road. The court declared some 91 metres of the southern end of Carrol Street to be a public road. This 20-metre wide length of road was proclaimed public road

the following September. A report on the road compiled by the Maori Trustee in 1985 described the western end of Carrol Street as 'a public road for 91 metres or so giving access to the Riverton Golf Club' (AB24:118).[174]

Regarding the alleged widening of the road, Mr Alexander maintained that, because Carrol Street was originally laid out as a 20-metre (one-chain) wide roadway, there has been no encroachment into Maori land (P6:173).[175]

The Tribunal's conclusion

5.14.4 It is evident that those Ngai Tahu with interests in sections 71 and 80 were not consulted or even notified about the compulsory acquisition of their land for the purpose of the rifle range. The Crown made no inquiries to the Native Land Court as to who had an interest in the sections, merely relying on the district land registrar for title information. In accordance with the legislation of the day, notice was confined to a gazetted declaration and one advertisement of the fait accompli in the local newspaper. In light of the opposition to the range after it was taken, it seems likely that, had the affected owners been served with notice of the Crown's intention, their objections may have been more carefully considered. Regarding the first aspect of Mr Cormack's grievance, then, the Tribunal finds the Crown's failure to consult the owners about the taking for the rifle range to be in breach of the Treaty principles requiring the Crown to protect Ngai Tahu rangatiratanga over their lands and to act towards its Treaty partner with the utmost good faith.

We find a similar lack of notification and consultation occurring when the land taken for the rifle range was no longer required for this purpose. With the exception of Mr Hayes, who had rights to section 71 through his mother, no effort was made to contact the persons or successors to those persons from whom the land was originally acquired. We note that the Commissioner of Works' suggestion that the land be returned under the provisions of the Maori Purposes Act 1943 was dismissed by the Under-Secretary for Maori Affairs. As a result the land was handed over to the Lands Department for disposal and as we have seen, Mr Hayes's attempt to purchase the land was rejected on other grounds. Mr Cormack is correct in his assertion. The land could have and should have been restored to Ngai Tahu ownership instead of being sold to the Riverton Borough Council. The Crown's failure to do so we consider to be a further breach of article 2 of the Treaty. We would add that the freehold of the land should not have been taken in the first place. A lease would have sufficed. When the Crown no longer required the rifle range, possession of the land would have automatically reverted to the owners. In the following claims it is apparent that Ngai Tahu of Aparima are in dire need of a tribal land base. The little land that was reserved for them from the original purchase has been further reduced through the processes of alienation and, as we have seen above, through public works acquisitions. In our conclusion at claim 73 we have urged the negotiating parties to have regard to the provision of land for Ngai Tahu of Aparima in negotiating the settlement of the tribe's claim. We consider that the breach of Treaty principles in this present claim should also be taken into account in such a provision of land.

As Carrol Street was originally laid out as a one-chain roadway, the Tribunal does not uphold the claimant's grievance on this point. Regarding the designation of part of this road as a public road, the Tribunal considers that the court's decision of 1949 has not prejudicially affected the claimants. This aspect of the grievance is not upheld.

5.15 Claim no: **68**
Claim area: **Aparima**
Claimant: **Naomi Alvina Bryan (E11)**
Claim:

> **Mrs Bryan was concerned with the 150-metre building line restriction around the Riverton oxidation ponds which affects her property. She also referred to the council's right to pump raw and treated sewage onto the land in an emergency and the lack of notification of such decisions to the owners of the affected land.**

The Riverton oxidation ponds are located on section 83 (the former rifle range, which then became a night soil reserve: see claim 67). Mrs Bryan is an owner of the neighbouring section 70, which is leased out to graze racehorses.

The Riverton sewage scheme

5.15.1 The oxidation ponds on section 83 are part of the former Riverton Borough Council's (now the Southland District Council's) sewage reticulation and treatment scheme which was proposed in 1980. Prior to the scheme the community's human waste had been disposed of through septic tanks and night soil collection. When the Wallace County Council considered the Riverton Borough Council's requirement to include in its district planning scheme a designation for a sewage treatment plant on section 83, an objection was raised by the Minister of Works and Development. The requirement did not include a 150-metre building line restriction around the proposed treatment plant, as outlined in the ministry's guidelines on establishing oxidation ponds. The council, however, was more concerned with the immediate implementation of the sewage scheme and recommended that the plant requirement be confirmed without any conditions attached (P6:230).[176]

The building line restriction was imposed when the district scheme was reviewed in 1986 (P6:228).[177] Mrs Bryan maintained that the restriction forbids the erection of any building in any form, even walls, in case of inundation. Mr Alexander argued that, as the restriction falls on land designated rural A, it has a limited impact anyway. That is, it restricts only those occupied buildings erected for farming purposes in accordance with the rural A zoning of section 70. He also pointed out that no one objected to the building line restriction when the opportunity to do so was provided. The claimant's daughter, Muriel Te Huikau Johnstone, submitted on behalf of the claimant that her mother heard about the building restrictions only during discussions over the proposed renewal of water rights in 1988 and was previously unaware that these restrictions had been imposed (AB56).

In January 1988 the Wallace County Council's application to the Southland Catchment Board and Regional Water Board was advertised (P6:231).[178] The council had applied for water rights allowing the discharge of treated oxidation pond effluent onto land, and the discharge of raw sewage from various pumping stations around Riverton in an emergency. This right had initially been granted in June 1980 and renewed in 1983. The council's 1988 application was merely to renew an existing right. Mrs Johnstone claimed that her mother had not heen aware of applications for water rights made prior to 1988 because no attempt had been made to contact her personally, despite her heing a landowner known to the local body (AB56). However, on this occasion the application attracted two ohjections. K W Roderique, L Hart, and T Nilsen did not detail their ohjection (P6:232, 234).[179] Mrs Bryan, the other ohjector, expressed her concerns about possihle pollution of the area. She pointed out that her land had already been devalued by the oxidation ponds and building line restriction and, as a result, future use of the section would be confined to agricultural or pastoral use. Pollution of the section through the disposal of effluent would make the land worthless (P6:233).[180] Of immediate concern was whether the ditches from which the racehorses drank would be contaminated.

A meeting was held between the parties on 25 February 1988. In response to the ohjections an engineering report on the sewage scheme was prepared by the county engineer and sent to the ohjectors with a letter from the board. Both the report and the letter explained the way in which the effluent was discharged and sought to reassure the ohjectors that with such a scheme 'it was unlikely that any surface water will be affected'. With regard to the drains on section 70, the board explained:

> The engineers have given assurances that the land drains are not at risk from contamination. Based on our testing of land drains and oxidation pond effluent I doubt that bacterial levels in the drain would be increased hy a seepage from the infiltration ponds.
>
> No overflow of effluent to adjacent land is intended hy the applicant nor is this to be permitied hy the right. (P6:241)[181]

On receipt of this information, Mrs Bryan informed the board that she had no further ohjection to the Wallace County Council's water rights application (P6:242).[182] However, Mrs Johnstone submitted that her mother's concerns regarding the building restrictions on her property and its devaluation due to the proximity of the sewage plant continued despite the information supplied. She explained that her mother did not so much withdraw her objection to the application as simply give up, because 'Her objection citing her concerns over risks of contamination to the water was her *last hope* of saving her precious land, her & our turangawaewae' (emphasis in original) (AB56).

The Tribunal's conclusion

5.15.2 We consider that a primary concern in this claim relates to the lack of notification that Maori owners of land, particularly absentee owners, receive of schemes affecting their land. Instead of puhlic notices which are 'not difficult to miss', Mrs Bryan stated that advice notices should be sent to

owners of adjacent properties likely to be affected by, in this instance, their proximity to oxidation ponds, inundation, sewage spills, and so on, in time for them to make representations and objections to the necessary bodies. Further, she stressed the need for Maori representation on these local bodies.

The Trihunal has already expressed its views on the issue of consultation and Maori representation in the *Ngai Tahu Report 1991*.[183] We stressed the need for a marked improvement in the processes of consultation by the Crown and local authorities with Maori, including Ngai Tahu. Recommendations were made regarding action in four areas that could be taken by the Government to remedy the situation. The question of changes in the Resource Management Act 1991 has also been toucbed on in the following claim.

5.16 Claim no: **69**
Claim area: **Aparima**
Claimant: **Jane Karina Davis (E31)**
Claim:

> **Jane Davis complained that section 20, a landing place reserved for all Southland Maori, has been rezoned as industrial.**

5.16.1 When Mackay went south in 1874 to individualise title in the Aparima reserve, of major issue with the Maori community there was the question of ownership of the foresbore. Ngai Tahu remained unmoved by Mackay's argument that the foreshore belonged to the Crown, insisting that it was their right under article 2 of the Treaty and, further, that Mantell had distinctly promised them the foreshore as a landing place for their boats when he set apart the reserve. Mackay could not convince Ngai Tahu hut he did set aside section 20, of 1 acre 15 perches, on the Aparima River mouth as:

> a landing place for the use of the whole of the Native community in the Southland District. (O14B:24–27)[184]

Five trustees were appointed.

In 1971 Sydney Cormack applied to the Maori Land Court for the appointment of trustees for the hlock as the original trustees had never been replaced. He contended that the Riverton Borough Council was using the landing reserve as a dump for stumps and derelict trees. Mr Cormack, with the support of the tangata whenua, asked that a new trust be made in order to lease the land and apply the rents to further local Ngai Tahu education. This was ordered hy the court (P6:222–223).[185]

In the first review of the Wallace County Concil's district planning scheme, notified in 1986, section 20 is zoned industrial fishing. This zone bas been established to 'enable the fishing fleet in Riverton to gain close and ready access to the essential facilities it requires for servicing, such as wharves, jetties and processing plants' (P6:224).[186] Setting aside suitahle areas is seen as vital for the

industry's continued development. According to the Crown witness, the zoning of section 20 for industrial fishing was not objected to when the opportunity to do so was provided in 1986.

There are certain restrictions on land use within an industrial fishing zone. Mr Alexander argued that this will be to the claimant's benefit, because zoning section 20 industrial fishing gives it a value which it might not otherwise have if zoned for an alternative use (P7:63). Mr Alexander maintained that the section at present appears under-used, but the potential is there for uses of it which will provide an income for the educational purposes covered by the trust over the land. In 1988 Mr Cormack stated that the land was leased at $120 per annum (AB24:128).[187]

The Tribunal's conclusion

5.16.2 The Tribunal has not been made aware of the nature of the claimant's objection to the rezoning of section 20. The question of town planning is now provided for in the Resource Management Act 1991. Under that Act, the Planning Tribunal is required to recognise the relationship of Maori and their culture and traditions to, among other things, their ancestral sites (s 6(e)). Under section 8, all persons exercising functions and powers under the Act shall take into account the principles of the Treaty of Waitangi. The Tribunal does not presently see that this dispute with the local body is an act or omission or a breach of responsibility of the Crown under the Treaty and sees no present reason for intervention or finding in this matter.

5.17 Claim no: **70**
Claim area: **Aparima**
Claimant: **Naomi Alvina Bryan (E12)**
Claim:

> **Mrs Bryan claimed that her family has been disadvantageously affected by the council's designation of their property as a recreational zone, and the development of the area as recreational grounds.**

5.17.1 Mrs Bryan's land (section 25, block XXV) was granted to her tupuna, Elizabeth Stirling, under the Murihiku Native Reserves Grants Act 1883 and has been occupied by the family ever since (E12:3). In 1977 the section was zoned recreational in the Riverton Borough Council's district planning scheme. Under such a designation certain restrictions applied. The family could maintain but not improve their home, and could sell only to a sporting or recreational body. Mrs Bryan maintained that her objection to the designation was dismissed.

Other grounds for complaint have arisen with the development of the area for recreation. Mrs Bryan claimed that the family's boundary fences were bulldozed without consent and never replaced or compensated for; that Ngata Street was closed, denying them access to Princess Street; that the part of Napier Street which bounds section 25 was narrowed to half its width; and that for five years

access to the family's garage and coal shed was chained off. The situation has been exacerbated by inconsiderate parking on sports days, which converges around Napier Street and the Bryan property.

The district scheme was superseded by the first review of the Wallace County Council's district scheme in 1986. This showed section 25 as residential 1 (P6:228).[188] Mr Alexander concluded that the section would have been devalued by the recreation zoning over it because of the limited range of potential buyers under such a zoning. However, its current zoning imposes no such restrictions or disadvantages.

Napier and Ngata Streets

5.17.2 When the Aparima reserve was individualised by Mackay in 1874, streets were also laid out and, being part of the reserve, were considered Maori roadways. In February 1948 the Maori Land Court ordered that certain roads should become public. The justification for this was that 'the roads have been used by the public for a period of 30 years and maintained out of public funds' (P6:243).[189] Both Napier Street, of 20 metres' width, and Ngata Street, of 10 metres' width, were among those proclaimed public roads the following month (P6:245).[190] They remain public roads to this day.

Section 25 lies on its own on the corner of Napier and Ngata Streets. Napier Street has been narrowed to 10 metres where it adjoins Mrs Bryan's section. In the Crown witness's opinion it is more than wide enough to meet the needs of a single house site. Mr Alexander also stated that parking for the sportsfield is provided off the 20-metre wide road before it reaches the point where it narrows to 10 metres. The claimant maintained that Ngata Street was closed off, making access to the property both difficult and dangerous. Mr Alexander stated that, while this street is unformed, the line of road where it fronts on to section 25 can be identified by a double fence line. The Southland District Council also indicated that Ngata Street was unformed rather than closed and access to the Bryan property had always been from Napier Street. Mr Alexander concluded that the existing formed road access is adequate for the requirements of the section.

The Tribunal's conclusion

5.17.3 It would seem that this claim has now largely been remedied by changes to the zoning which have restored a 'residential' use to Mrs Bryan's land. It would also seem that the access disadvantage has not been as serious as that claimed in that both Ngata and Napier Streets are still public roads. Although Napier Street has been narrowed to 10 metres, it is sufficiently wide to give the required access. In addition, the Tribunal notes (from information supplied by the Southland District Council) that Ngata Street may soon be constructed in order to provide access and services to proposed building lots (AB71). We hope that this will further improve the claimant's access situation. However, we see no breach of Treaty principles in the grievance as presented to us.

5.18 Claim no: **71**
Claim area: **Aparima**
Claimant: **Sydney Cormack (A22)**
Claim:

Mr Cormack claimed that the cemetery on the reserve has been disrupted.

5.18.1 When Mackay subdivided the reserve in 1874, be laid off a cemetery of 3 acres 2 roods 4 percbes at the river mouth in the south-west corner of the reserve (O14B:26).[191] This became section 37. Mr Cormack believed that burials occurred right along the Aparima River bank, from the river mouth to the old landing reserve (section 20). The river bank bas since been developed as the Riverton Recreation Reserve and the Aparima College sportsfield.

Mr Cormack's statement was corroborated by another witness, Jane Davis (E31). Mrs Davis submitted that when section 38 was being prepared as a sportsfield buman bones were unearthed by a bulldozer, and re-covered again unceremoniously. According to this witness, the principal of the scbool bas since asked local Ngai Tahu kaumatua to remove the tapu over the playing field as children kept having accidents (E31:2). However, the Southland District Council submitted that the bones were uncovered on section 36, the property of Aparima College, rather than section 38, a rough piece of ground used by the local pony club for grazing. According to the council's reserves officer, the bones uncovered on section 36 were never positively identified as buman. The background to the alienation of this section has not been the subject of investigation. In addition to sections 36 and 38, the area affected by Mr Cormack's allegation includes sections 19, 21, and 24, wbicb lie between the cemetery and the landing reserve. These sections have not been in Maori ownership since 1890, when they were sold by Horomona Pukuheti (see claim 73).

The cemetery reserve itself has not been disrupted. Upon application by Mr Cormack, in May 1972 the Manri Land Court recommended that the section be reserved under section 439 of the Maori Affairs Act 1953 for the purpose of a burial ground for the common use or benefit of members of the Ngati Mamoe and Ngai Tahu tribes (AB24:130–134).[192]

Tbe Tribunal's conclusion

5.18.2 It is not clear wbat the claimants are seeking. As presently stated, the claim is not formulated or directed against the Crown or any omission or act of the Crown under the Treaty. We note that the claimant bas the right to raise matters concerning any Treaty obligation in negotiations with the local body and should bave recourse through the processes provided by the Resource Management Act 1991. It is of concern that human remains were uncovered by a bulldozer, but this apparently occurred not on the cemetery reserve but on land whicb was sold by the Ngai Tahu owners and is therefore general land. The Tribunal understands the people's feelings over the incident but cannot on present submissions hold this to be a Treaty breach.

5.19 Claim no: 72
Claim area: Aparima
Claimant: **Eva Wilson (E9)**
Claim:

> **Mrs Wilson claimed that in 1841 Maori land at Riverton included land on either side of the Aparima River, the fish factory site, the domain, the Pilot reserve, and the harbour board land. She claimed that these areas should be reserved for tourism and their historical value.**

5.19.1 Mr Alexander pointed out that all land around Aparima was Ngai Tahu land in 1841. It remained so until the Murihiku purchase of 1853. He admitted to having little knowledge of the tourism or historical values of the other sites mentioned by Mrs Wilson.

The Tribunal's conclusion

5.19.2 In the *Ngai Tahu Report 1991*, the Tribunal sustained the claimants' grievance that the Crown failed to set aside additional land at Aparima to that which Mantell allowed.[193] It will be remembered that Mantell failed to get agreement to 'reducing the demands of the Natives for a reserve of extravagant dimensions sufficiently to justify me in assenting to them'. On his return to Aparima three weeks later, he reported on the 'arrangement' of the reserve along the lines of his earlier proposal, 'after great annoyance from those stupid dolts Paroro and Solomon'.

Had Ngai Tahu been allowed the area they wished to retain, it is possible that the reserve would have included the areas listed by Mrs Wilson. There exists amongst the Ngai Tahu people of Aparima a general feeling that there is a need to establish some sort of tribal land base in the area. In light of the Crown's failure to set aside adequate land for the tribe from the Murihiku purchase, and the continued encroachment into the original Aparima reserve, the Tribunal supports this sentiment. We comment further on this matter in the following claim.

5.20 Claim no: 73
Claim area: Aparima
Claimant: **Jane Karina Davis (E31)**
Claim:

> **Mrs Davis asked that all land taken for recreation reserves in Aparima be returned to the Maori people to be administered by the local runanga under the umbrella of the Ngai Tahu Maori Trust Board.**

The areas affected by this claim are sections 11, 12, 13, 14, 15, 16, 16A, 17, 17A, 18, 19, 21, 22, 23, 24, 36, and 38, plus a portion of Ngarimu Street. The Crown witness concentrated his research

on whether the relevant sections were sold willingly by the Maori owners or wbether they were compulsorily acquired.

Horomona Pukuheti's sections

5.20.1 As a result of Alexander Mackay's recommendations of 1874, Horomona Pukuheti (also known as Horomona Paatu, or Patu) was granted title to a number of sections in the Aparima reserve, together totalling some 29 acres. In early 1890 he approached the Crown about selling sections 11, 12, 14, 15, 18, 19, 21, 22, 23, 24, and 26. He was offered £250 for this land, which amounted to 15 acres 2 roods 17 percbes (P6:198–199).[194] These terms were agreed to hy Pukuheti on 21 March 1890. The memorandum of transfer for all of these sections except section 22 was registered on 9 December 1890 (P6:202–203).[195] It was recorded that Pukuheti signed after the contents had heen explained to bim by a licensed interpreter, and a statement was attached to the memorandum describing the transaction in Maori. Restrictions wbich made the sections 'inalienahle hy sale or hy lease for a longer period than 21 years or by mortgage' were removed hy Order in Council in November 1890 (P6:204–205).

Section 22 was dealt with separately because it was in a different title. It had originally been set aside for school purposes and held in trust jointly by Pukuheti and George Howell.[196] The one-acre section was sold by Pukuheti on 22 November 1890 for £15 (P6:211–212).[197] Again, a Maori statement of the transaction was prepared and the details explained to Pukuheti by an interpreter. The restrictions on alienation of the land were removed hy Order in Council on 12 January 1891.

In 1894 sections 18, 19, 21, 22, and 24 were permanently reserved for public recreation purposes (P6:210).[198] Sections 11, 12, 14, and 15 were permanently reserved as recreation grounds for a public scbool. Section 23 was also proclaimod a public recreation reserve in 1894, baving first been set aside for police purposes (P6:216).[199]

Section 16A

5.20.2 The details bebind the alienation of section 16A are not known. In February 1922 section 16A, of 1 rood 20 percbes, was purchased hy the Riverton Domain Board. While the signatures of all nine owners are listed on the certificate of transfer, it must be noted that not all of these were made on the official date of transfer, which was 23 February 1922. Some of the signatures are dated up to a month later, wbicb raises doubts as to an agreement by consensus of the owners to sell the land.

The transaction was confirmed by the South Island Maori Land Board in July of the same year and the transfer was registered against the title on 7 August 1922 (P6:187).[200] However, the domain board did not have the statutory authority to hold title to land. This situation was rectified in 1950 when the land was vested in the Crown under section 13 of the Reserves and Other Lands Disposal Act 1950.

Section 17A

5.20.3 Section 17A, of 1 rood 20 percbes, was detailed in 1899 as being on lease to the Riverton Borough Council for 21 years as a recreation reserve. In 1951 the Board of Maori Affairs approved of negotiations being entered into with the owners for the purcbase of this section to enlarge the Riverton Domain. Meetings of assembled owners of sections 16, 17, and 17A were called for 5 and 11 December 1950. The Crown sought the other two sections in order to extend the Riverton District High School site. However, a quorum was not reacbed at these meetings. In the opinion of the Under-Secretary for Lands, this was because:

> It appears unlikely that sufficient owners could be persuaded to attend a meeting in view of the small amount of purchase money involved. (P6:190)[201]

The Crown's offer for section 17A was based on a 1939 Government valuation of the section. The under-secretary suggested that all three sections, amounting to about 1.5 acres, be taken under the Public Works Act 1928. This proposal was approved and gazetted in April 1953 (P6:191).[202] Compensation for section 17A was considered by the Maori Land Court on 8 July 1953. None of the owners were present and Mr Binnie, of Stout, Hewat, and Moller was appointed by the court to act in their interests. Compensation was based on the special Government valuation as at 27 April 1953 of £30 and the court ordered that this amount be paid to the Maori Trustee (P6:195–197).[203] Compensation for sections 16 and 17 was considered on the same day.

Section 38

5.20.4 Section 38 was originally vested in Teone Topi Patuki. In 1938 the four-acre section was sold together with section 30 to a Pakeba for £165. The transfer was confirmed by the Native Land Court (P6:217–218).[204] There is some indication that the owners were present wben the application for the confirmation of transfer was beard. Maurice Topi Patuki wanted to give his share to his mother and Mrs Whaitiri wanted ber share to renovate ber bouse at Bluff. However, at a subsequent sitting in Wellington the court determined that the money was to be paid to the Maori Land Board (P6:218).[205]

In 1975 the Crown acquired the land as an addition to the Riverton Domain, to be administered by the domain board (P6:219). Mr Cormack alleged that bones were dug up and re-covered unceremoniously on section 38 during the preparation of the area for playing fields (see claim 71). The Southland District Council later submitted that this complaint in fact referred to section 36, the Aparima College sportsfield. Information supplied by the council's reserves officer identified section 38 as an area of uncultivated ground now used by the local pony club.

Ngarimu Street

5.20.5 Section 82 was formerly part of Ngarimu Street located between sections 19 and 21 and regarded as Maori customary land. It was taken in 1953 under the Public Works Act 1928 for a recreation ground (P6:220).[206] Compensation was considered for the roadline, together with section 17A, by the Maori Land Court in July 1953. Although the area taken, of 1 rood 7.4 perches, was valued at £15, no compensation was awarded because it was thought that determining the owners would be too costly (P6:195–196).[207]

Mr Alexander concluded that most of the sections which make up the Riverton recreation reserve appear to have been willingly sold by their Maori owners, and therefore do not fall into the category of being 'taken' for the recreation reserve (P7:62). He maintained that, of the two areas taken under the Public Works Act, one was formerly part of a Maori roadway, while in the case of the other area the Act was used because it was not possible to get a quorum at a meeting of owners. He did not canvass sections 13 and 36, which were also originally taken for recreation purposes.

The Tribunal's conclusion

5.20.6 The Aparima reserve, like the other reserves made from the extensive Crown purchases of Ngai Tahu land, was made as a trihal endowment for the subsistence and support of the tribe. As the Trihunal has related, the Crown, in purchasing Ngai Tahu lands, was under a duty to ensure that the tribe was left with sufficient land for their needs, hoth present and future.[208] It has already been made painfully obvious that, without exception in the purchase of Ngai Tahu lands, the Crown failed miserably in this respect. Ngai Tahu are still living with the effects of this failure today.

In our view, the Crown's duty to ensure that Ngai Tahu retained sufficient land for their needs did not cease at the time of purchase. Rather, the duty extended to ensure that the trihal endowment was maintained. The Crown submitted that it could not unreasonably restrict Ngai Tahu from voluntarily alienating their land and, wbere sucb voluntary alienation occurred, the Crown could not be considered in breacb of Treaty principles if it then purchased the land. In response, the Trihunal refers again to its finding, as stated in the concluding chapter, that the Crown has failed in its duty to actively protect its Treaty partner in maintaining a sufficient endowment for its ongoing needs. The prejudicial effect of Maori land legislation on tribal and Maori ownersbip of land has been dealt with in the *Orakei Report* (1987). The subsequent grant of individual titles for the sections at Aparima was no doubt responsihle for the later alienation of the sections by some of the owners. Although many of the sections which are now recreation reserve in Riverton were sold by consent, there is certainly a strong feeling amongst resident Ngai Tahu that the endowment should bave been protected for their common use. It is the alienation of their already meagre reserve which, we feel, underpins the claims for the return of areas of importance around the district. The objection of the Crown, that their duty to Ngai Tahu conflicted with a responsibility to ensure that the educational and reereational needs of Riverton were met, we find unconvincing (AB34:17). The Crown fulfilled its responsibility to the community of Riverton at the expense of the tribal estate and, in so doing, showed scant regard for its prior obligation to Ngai Tahu of Aparima.

The Tribunal is unable to uphold Mrs Davis's claim that the areas whicb now comprise Riverton's domain and school should be returned to the tribe. Sunilar claims for the return of other areas around Aparima have been voiced hy other claimants. In the following claim Jane and Wiremu Davis and Eva Wilson call for the return of the Pilot reserve, and in claim 75 Howells Point and Mores reserve are also the suhject of a claim for return to Ngai Tahu ownership. As with the present claim, no specific grievances are directed at the Crown; the Ngai Tahu community at Aparima simply requires redress for its landless plight.

The Trihunal has already held the Crown's failure to set aside an adequate endowment for the tribe and to ensure that the endowment remained intact to be a serious hreach of Treaty principles. At Aparima the area of original reserve was greatly reduced hy Mantell over the objections of the tribe and further incursions have been made through the processes of alienation and, as we saw in claim 67, through the taking of land for puhlic works. In our view it is now incumbent on the Crown to restore to the tribe an endowment which will be sufficient for their needs. While the matter of settlement of remedies has been left to the claimants and the Crown to negotiate, the claims from the community of Aparima clearly show the need for tribal land in this area.

5.21 Claim no: **74**
Claim area: **Aparima**
Claimants: **Jane Karina Davis (E31), Wiremu Davis (E7), Eva Wilson (L32)**
Claim:

> **The claimants were dissatisfied with the Wallace County Council's refusal to permit a Maori village reconstruction to remain on the Pilot reserve. They asked that the reserve be returned to local Ngai Tahu, to be administered hy the local runanga under the umbrella of the Ngai Tahu Maori Trust Board.**

5.21.1 The Pilot reserve, or part section 30, hlock II, Jacobs River Hundred, lies on the south side of the Aparima River mouth. It was formerly vested in the Riverton Harbour Board in trust, without power of sale, as a harbour endowment, and is currently held by the Southland District Council under certificate of title.

As part of Riverton's 1986 sesquicentennial celebrations, local Ngai Tahu were asked to construct a replica Maori village on the Pilot reserve. According to Jane Davis, this was done with volunteer labour and material supplied by the Ngai Tahu people in the area (E31:2). The enterprise seems to have been a resounding success, attracting school parties and tourists alike. More unportantly, the reconstructed village seems to have become a focus of cultural pride and identity for the tangata whenua.

Although the village was intended as a temporary construction only, at the end of the year the Aparima Maori Village Committee sought to retain and upgrade it as a permanent fixture. An application was made to the Wallace County Council for planning consent to develop the venture.

The village was to be rebuilt from scratch with donated timber, and financial support was offered by the Tourist and Publicity Department. The Riverton Area Promotion Society, too, applauded the project and, according to the claimants, the community at large supported the scheme. Toilet facilities in the neighbouring playground would be used and periodic detention labour would maintain the village once it had been completed as a community project. It was not envisaged that the village would be used for cultural activities, although Ngai Tahu did wish to hold parts of funeral services there.

The council refused the application. In their view the proposal did not meet certain criteria:

- the site had to have good access to capitalise on the tourist facilities of the development;
- the site had to be able to be linked into a convenient council-operated sewage scheme;
- the site had to have some historical significance for the Maori community;
- the project had to be designed and constructed on a permanent basis; and
- an organising body had to be established for ongoing administration and maintenance.

When measured against these criteria, the council considered that the site lacked suitable sanitation facilities and had been constructed as a temporary structure which did not necessarily conform to building bylaws:

> Having considered all of these issues the Committee [of the council] is of the view that the community at large and in this case, particularly the adjoining landowners, rely on the District Scheme to provide them with some certainty as to the types of activities which are likely to be their adjoining neighbours. The Committee considers it is inappropriate and unjust to establish a land use in the first instance on a temporary basis for a specific purpose and then formalise that land use at a later stage by way of planning procedures.
>
> The Committee therefore comes to the conclusion that if a Maori Village is to be established in Riverton and it wholeheartedly supports the principle, then it should be properly conceived and promoted and the appropriate planning procedures followed. (P6:157–160)[209]

In his capacity as a qualified town and country planner, the Crown witness concluded that the council's decision was a fair and, moreover, a 'reasonable' conclusion to reach in terms of planning case law. The claimants on the other hand saw the refusal as just one more way in which Ngai Tahu from Aparima are still being unjustly treated.

The Aparima Maori Village Committee did have the opportunity to lodge an appeal with the Planning Trihunal within one month of receiving the decision of the council, but they did not do so. Jane Davis maintained that a petition against the decision was signed hy several hundred people. In their submissions to the Tribunal the claimants asked that the Pilot reserve be returned to the local runanga to administer.

The Waihopai Maori Committee advanced the option of moving the village to Howells Point, another area of land the claimants wished to have returned to them (E23). Jane Davis also supported the vesting of Howells Point in Ngai Tahu (see claim 75).

The Trihunal's conclusion

5.21.2 The issue at stake here is the refusal of the local body (and we note that the Wallace County Council has now been superseded by the Southland District Council) to allow the local people to permit a Maori village reconstruction to remain on a piece of land, vested in trust as a harbour endowment, which has been zoned recreational. As presently stated, the Tribunal has difficulty in accepting that it has jurisdiction to intervene as, under the Treaty of Waitangi Act 1975, we may deal only with any acts, omissions, policies, and practices of the Crown. We do, however, reiterate the Ngai Tahu community of Aparima's need for a tribal land hase, as set out fully in the previous claim.

5.22 Claim no: **75**
Claim area: **Aparima**
Claimant: **Wiremu Davis (E7)**
Claim:

> **Mr Davis claimed that Ngai Tahu of Aparima have no land and that, as a result, Howells Point, the Pilot reserve, and Mores reserve should be returned to Ngai Tahu ownership.**

None of these areas have been in Maori ownership since the Crown's purchase of Murihiku in 1853. The Crown witness queried whether the claim is a grievance or a specific remedy for the tribe's general land claim (O14A:45).

Howells Point

5.22.1 Mr Davis claimed that Howells Point was a focus for the community at Aparima in the early 1800s. The headland was within easy access of both the hush and the sea and provided a great vantage point for espying approaching visitors.

The Southland District Council informed the Trihunal that the present Howells Point reserve comprises section 75, block I, and sections 10A (part), 20, 31, 32, and 33, block II, Jacohs River Hundred (AB54). Sections 31 and 32, block II were originally set aside as a lighthouse reserve in

the 1870s and 1880s but, soon after, part of this land was made Riverton borough endowment land, which to this day has been used for grazing. According to the claimant, apart from an automatic light beacon which has been in existence for only 15 years, the site has never been used as the location for a lighthouse.

The council's reserves officer submitted that in 1879 section 75, block I and section 33, block II were gazetted for recreation purposes, and that sections 10A (part) and 20, block II were gazetted in 1907. She noted that all of this land was united in the 1950s to form the Riverton Domain (AB54).

In 1966 the Riverton Domain and section 32, comprising in total 135 acres 1 rood 24.7 perches, were gazetted as the Howells Point Domain, with the Wallace County Council being appointed as the Howells Point Domain Board under the Reserves and Domains Act 1953 (O14B:113).[210] Two years later section 31, comprising 7 acres 2 roods 2 perches, was added to the domain (O14B:114).[211] With the advent of the Reserves Act 1977, the Wallace County Council's function as the domain board was carried over by virtue of section 16(3). Today, the Howells Point Reserve remains a Crown-owned recreation reserve of approximately 142 acres. The Southland District Council is appointed to manage and control the land under section 28(1) of the Reserves Act 1977.

Mr Davis's claim for the return of this area to Maori hands was supported by the Waihopai Maori Committee Incorporated. The chairman of the committee, Mr Te Au, advised the Tribunal of the iwi's wish to transfer to Howells Point the Maori village built for the sesquicentennial celebrations of the town (E23) (see claim 74). More importantly, perhaps, the tangata whenua desire the reserve as a location for a future marae.

The Southland District Council responded that the control and management of the land had been with the local authority since 1908, and that major public funds had been expended over this time in developing and maintaining the reserve, including the provision of pienic facilities, shelter, roading, and toilet facilities. The reserves officer informed the Tribunal that the reserve is both a local asset and extensively used hy visitors from other parts of the country and overseas. She concluded with respect not only to Howells Point hut also to the other two reserves subject to this claim that:

> the reserve lands should be maintained under current control because of the significance to the district and Southland area and that enjoyment by the public should not be impeded. These reserves should be retained by Council as steward for the land to be available for the enjoyment of the public at large. (AB54)

In a further submission, the reserves officer submitted that, while the control and management of the land is granted from the Crown, the council's interest in the land is similar to that of any private person, thus disallowing the Trihunal from making recommendations with respect to the land's return in terms of section 6(4A) (inserted into the Treaty of Waitangi Act 1975 in 1993) (AB69). We discuss this in our conclusion below.

The Pilot reserve

5.22.2 This reserve, part section 30, block II, lies on the south side of the Aparima River mouth. It was formally vested in the Riverton Harbour Board in trust, without power of sale, as a harbour endowment, and is currently held by the Southland District Council under certificate of title 115/228. As outlined in the previous claim, in 1986 it became the site of the Maori village reconstruction. The council's reserves officer submitted that, although designated as harbour endowment land, the reserve has been extensively used and thought of as recreation ground by residents and visitors to the area alike (AB54). She added that the 1993 private land amendment to the Treaty of Waitangi Act would apply in this case (AB69).

Mores scenic reserve

5.22.3 Mr Davis described this as being the only bush within close proximity to Howells Point — before it was milled out. The land today is a Crown-owned scenic reserve of some 159 hectares but, as the council's reserves officer pointed out, this is a comparatively recent development. The original Crown-owned scenic reserve site was section 39, block I, hut the remainder and majority of the reserve was in fact freehold land gifted to the Crown in 1969 under the Reserves and Domains Act 1953 to ensure that it was properly protected from any future sale, with the Crown subsequently returning control and management to the Wallace County Council. The reserve was enlarged by the addition of some council endowment land in 1985. The reserves officer explained that the land was only gifted to the Crown after an assurance had been received that it would not be sold and that the management would he granted to the council in perpetuity.

The reserves officer submitted that the reserve should be retained by the council because of its ecological and recreational significance. She noted that the council had expended considerable public funds to protect and provide for the public enjoyment of and benefit from the reserve (AB54). She added that the land was substantially private land before being gifted to the council and that the intent of the gifting would be lost if it were removed from public ownership and council control (AB69).

Other grievances

5.22.4 A number of other areas were alluded to which Mr Davis would like to see back in Ngai Tahu ownership because of their traditional significance for the tribe. Pig Island, for instance, is a small island which lies offshore from Aparima. Mr Davis claimed that the island was frequented hy local Maori who gathered kelp in preparation for their annual journey to the Titi Islands.

Mr Davis also made claims for Rarotoka (Centre) Island and Whenua Hou (Codfish) Island. In the *Ngai Tahu Report 1991*, the Trihunal found that, although Rarotoka — of considerable strategic importance to Ngai Tahu and once a populous refuge — was included in the Murihiku deed of cession, it should have been reserved to the tribe. Regarding Whenua Hou, it concluded that Ngai

Tahu's claim that the island was included in the purchase against the wishes of the people could not be sustained.[212]

The Tribunal's conclusion

5.22.5 We sympathise with Mr Davis's concerns over the landlessness of his people at Aparima. We reiterate our finding that the Crown bas failed to maintain the tribal estate, and that sucb failure constitutes a breach of the Treaty. However, we agree with the submission of the Southland District Council that the private land amendment to the Treaty of Waitangi Act 1975 disallows us from recommending the return of the Pilot reserve, and we respect the council's stance that the control and ownersbip of Mores reserve sbould remain unaltered given the circumstance that the majority of the land was gifted by a private landowner. With respect to Howells Point reserve, however, we disagree with the council that its control and management of the reserve constitutes a privately beld interest in the land in terms of the new subsection (4A) of section 6 of the Treaty of Waitangi Act. As we discuss at claim 51, that provision bars the Tribunal from recommending the return to Maori of any private land, defined under the Act as 'any land, or interest in land, held by a person other than the Crown or a Crown entity within the meaning of the Public Finance Act 1989'. The council does not 'hold' the land under the Reserves Act 1977 but is simply appointed to 'control and manage'. Nevertheless, we respect the council's development of this area over many years and refrain from recommending the return of title to this land to Aparima Maori without, at least, the full involvement of the council in any negotiations concerning the land's future management and use. We think a more pertinent recommendation to the Crown in this instance is that the landless plight of Ngai Tahu from Aparima should receive the utmost consideration in settlement negotiations between the Crown and claimants.

5.23 Claim no: **76**
Claim area: **Aparima**
Claimant: **Sydney Cormack (E16)**
Claim:

Mr Cormack claimed that at block I, Jacobs River Hundred, eigbt of 10 Maori-owned sections are being used by an adjacent farmer without rent being received.

5.23.1 The issue is a long-standing one with Mr Cormack, wbo has attempted over the years to bring a balt to sucb practices. He likened the above situation to that occurring at Te Waewae Bay on Longwood block II, wbere family balf-caste grants were located within Pakeha farmland (see claim 84).

Unfortunately, the Tribunal bas little information on the present claim. Two sections in block I, Jacobs River Hundred are vested in Mr Cormack as trustee under section 438 of the Maori Affairs Act 1953. As trustee, Mr Cormack pays the rates on the land and arranges the leasing of the area. The land is said to be very poor, being mostly rocky hilltop (AB24:128–129).[213] Maori Land Court minutes regarding the renewal of the section 438 trust in 1988 for these two sections throw some

light on Mr Cormack's allegation to the Trihunal. At the hearing two issues were raised in the evidence adduced by Mr Cormack. One concerned the reason why he had become trustee of the land:

> That land was one of many sections advertised for sale by the Wallace CC. As there were no owners addresses. I paid the rates. Saved the land from disappearing. A lot of other land did. (AB24:129)[214]

The other is the basis of this claim:

> There are about 9 or 10 sections in that [block] that are used unofficially who pay rates but do not pay rent. I would seek help from Maori Affairs Dept to investigate the present position with these lands. There would be 140 acres inclusive of the sections we are dealing with.

At this point the Tribunal has no other information on this claim. Mr Alexander was duhious whether the grievance was a deficiency of the Crown's making.

The Tribnnal's conclusion

5.23.2 The Trihunal refers to its earlier finding on claim 48 and comments that there are now avenues of law available to persons under Te Ture Whenua Maori Act 1993 to remedy the situation set out in this claim. Since this grievance was heard there have been concerted efforts hy the Maori Land Court and the Maori Trustee to ensure that trustees or agents can be appointed to deal with land on which there is not enough information concerning ownership. Again, the question of the allocation of these small sections to diverse owners resident in other places and lacking knowledge about the land has in many cases led to the loss of that land. This is really the suhstance of Mr Cormack's complaint which expresses exactly what has happened in respect of these various pieces of land. The Tribunal is aware that the Maori Land Court is prepared to intervene to investigate the use and occupation of Maori land and, indeed, under the provisions of the new legislation is required to take an active interest in this work. The claimant should seek the help of the court to remedy the injustice he sees.

5.24 Claim no: 77
Claim area: **Riverton/Oraka**
Claimant: **Wiremu Davis (E7)**
Claim:

> **Tbe claimant maintained that 17 blocks of steep, rocky, and bnsh-covered hills between Colac Bay and Riverton were allocated for balf-castes. Access to these blocks will have to be built and maintained by tbe owners.**

Mr Davis claimed that only a goat could live on the wretched sections which were allocated in eight- and 10-acre lots. He claimed the land has never been used because of this, although some of the

blocks have since been purchased by an adjacent farmer. The council has apparently determined that any access to the blocks will have to be built and maintained by the owners.

Mr Davis did not specify which block the sections were in. They may be situated in block I, Jacobs River Hundred, the same land which is the subject of claim 76 (AB24:140).[215]

The Tribunal's conclusion

5.24.1 The Tribunal has already found that the Crown was in breach of the Treaty principle requiring the Crown to ensure that adequate provision was made for Ngai Tahu 'half-castes'.[216] It is doubtful whether the blocks referred to by Mr Davis will ever provide a useful return to the owners. The evidence of Wiremu Davis, Sydney Cormack, Jane Davis, and others provided important background to the Tribunal on the inadequacy of the grants when it reached its finding in the main report.

As earlier reported, the resources of the Maori Land Court and the provisions of the new legislation require the court to be involved not only with the retention of land but also with its use and development. Obviously there is a need for proper representation of the existing ownership to be established and authority given to persons representing each of those blocks to join in a concerted action to find a proper remedy. The fragmentation of title that has occurred makes the position no easier. No doubt in some of these sections there have been no successions to the original grantees completed. It would seem to the Tribunal that there is a task ahead for this land to be exchanged for more suitable land with the Crown. It may well be necessary for the duly appointed trustees of the beneficial owners to be involved in negotiations with the Crown to find a solution to the future use and management of these remote and, in most cases, valueless blocks of land with no legal or practical access.

5.25 Claim no: **78**
Claim area: **Merivale**
Claimant: **Sydney Cormack (E16)**
Claim:

> **Mr Cormack claimed that section 56, block IV, Aparima Hundred, a half-caste grant made to the Williams family, has become general land without any sale being recorded in the Maori Land Court minute books (E16:9).**

5.25.1 Section 56 was granted under the Middle Island Half-caste Crown Grants Act 1877 to John, Mary, and Ann Williams. The section was surveyed in 1895 and comprised 26 acres: 10 acres per male and eight acres per female (P6:284–285).[217]

Ann Williams died in 1899. One of her sons, Frederick Bates, lived on the land and, according to the claimant, was given his siblings' shares in the land. At any rate, the Native Land Court approved of Frederick as his mother's sole successor in the section (P6:286).[218]

Title was eventually issued in 1960 and the owners of the section are listed as John and Mary Williams and Frederick Bates, as tenants in common in equal shares (P6:287).[219] The certificate of title records that it is issued in terms of the Middle Island Half-caste Crown Grants Act 1877, which, as the Crown witness pointed out, suggests that it is Maori land subject to the jurisdiction of the Maori Land Court. However, the court considers that the land is no longer Maori land (AB24:136).[220] The certificate of title bears the pencilled annotations:

> See 1/51/1 and 1/9/1 of 17.9.67
> not Maori Land. See 1/9/1 of 20.11.1968
> see however 1/15/2 of 13.7.73 (P6:287)[221]

Upon inquiry, land registry staff have verbally advised Mr Alexander that the relevant files have been destroyed and that it is not possible to find out what these notes refer to (P7:83). In his view, section 56 has to be regarded as still being Maori land because the reference to the half-caste grants legislation has not been superseded by any other memorial on the title.

The Tribunal's conclusion

5.25.2 There is provision under section 131 of Te Ture Whenua Maori Act 1993 for the status of this land to be determined upon application being made to the Maori Land Court. This is not a matter in which the jurisdiction of the Tribunal is involved. The Tribunal comments, however, that the successors to the persons shown on the title are the persons who should make an application for any status change. Currently, registrars of the Maori Land Court are reconciling records of the court with certificates of title in the Lands Registry Offices. Perhaps the claimant could refer this matter to the registrar of the Maori Land Court at Christchurch, who may consider that action under section 131 should be taken to clarify the situation.

5.26 Claim no: **79**
Claim area: **Oraka**
Claimant: **Sydney Cormack (E16)**
Claim:

> **Mr Cormack alleged that no compensation was paid to Mr Poko by the Wallace County Council for the construction of a road over his land, for shingle taken from his property, and for the large trench left behind as a result (E16:6).**

The claimant maintained that when the coastal road was eroded the Wallace County Council sought permission to realign the road either through the urupa or over the adjacent Maori land. Mr Poko gave his permission to allow the road to be built over his land as his ancestors rested in the cemetery. The road was then constructed over his land but no compensation was paid for the land taken or for the shingle also taken, which left a large trench in Mr Poko's land.

The following history of the Oraka (Colac Bay) road is rather convoluted. Authority to change the roadway was never implemented and the existing road had, as at 1988, still not been legalised. Of issue, too, is the ownership of section 13, and the complete absence of any record of an arrangement to use part of the section as a gravel supply.

The initial realignment proposal

5.26.1 As at 1960 the road through Oraka followed the coast until it reached section 14, the Maori urupa, where it diverted inland around the cemetery before once again emerging hy the seafront. While this road had been used for a good many years, it was in fact a de facto road, the legal road hugging the coast in front of the cemetery. In the late 1950s the Wallace County Council was said to have received numerous complaints about four hazardous right-angle bends in the cemetery diversion, which were worsened hy the 'unchecked growth of noxious weeds' on the section (P6:260).[222]

Following discussions with the Colac Bay Progress League and the Papatotara Trihal Committee about the problem, the council made an offer to the trihal committee. It was proposed that the existing de facto road be closed and a new road constructed on a straight line through the cemetery, part of wbich would be on the legal road. Because of erosion from the sea, this would entail taking balf a chain of land from the cemetery itself as well as land from five adjoining sections. The legal road had been used as a burial ground and it was proposed that the bodies huried in this section, and in the area needed for the road, would be exhumed and re-interred in the area of closed de facto road, after which the council would hulldoze all weed growth, remove the trees, and enclose the area with a post and rail fence. Local Ngai Tahu would then be responsihle for the replacement of tombstones and the future upkeep of the cemetery.

Both the progress league and the trihal committee agreed to the proposal, the latter on condition that representatives could supervise the re-interment of the remains in order to ensure that it was properly done. A puhlic meeting was held on 13 August 1959, when the proposal was discussed at length and the following resolution carried by 24 votes to four:

> That the proposals arranged with the Wallace County Council be accepted, subject to any remains that can be identified or any that are disturbed in carrying out these proposals being removed and re-interred in the new area. (P6:261)[223]

It was further resolved that the district officer of the Maori Affairs Department be authorised to make an application to the Maori Land Court to effect the above resolution.

The application was heard on 4 Octoher 1960, when the above information was outlined. Mr Binnie appeared for Edward Poko Cameron, said to be the owner of section 13, who objected to the proposed cbanges. The case was adjourned to give Mr Binnie time to make a legal submission on the objection.

It is not apparent from the available documents just wbat Mr Cameron's objections were. When the case was resumed, reference was made to a gravel pit, that is:

> The matter of the gravel pit has nothing to do with the present application as the Court sees it. (P6:271)[224]

Generally, bowever, the court determined on 2 November 1960 that his concerns bad been dealt with in the evidence beard by the court in September, and that:

> The Court is satisfied the orders sought should be made in the interests of all the owners of the adjoining blocks and residents.

The court ordered that the straight-through road along the coastline in front of section 14 be allowed and that parts of section 14 and the five adjoining residential sections be used for the new road alignment, without compensation being paid to any of the owners. The record shows that the court had:

> satisfied itself that the larger piece was part of 8 [sections] with many owners — that any small compensation could not be satisfactorily distributed. (P6:259)[225]

As the order related to the laying out of Maori freehold land as a roadway, the court followed up this order with a recommendation to the Minister of Works to have the new roadway declared a public road. This was gazetted in 1961 (P6:275).[226]

The reservation of the cemetery

5.26.2 Despite the court approval and the gazetting of the roadway through the cemetery, there were no further moves to complete the agreement. The de facto road behind the cemetery continued to be used instead of the road along the seafront. It appears, too, that the cemetery remained in its unkempt state. In February 1969, through the initiative of the Colac Bay Progress League, the Maori Land Court recommended that the cemetery (of one acre) be reserved under section 439 of the Maori Affairs Act 1953 as a burial ground for the people of Oraka. The league bad in mind the cleaning up of the area:

> to cut the growth off and plant grass and put in a road through cemetery as road along Coast had been washed away by the sea. The Maori people bowever did not want the cemetery disturbed according to the Welfare Office though Mrs Portnick said yesterday the people agreed with the cleaning up. (AB24:163)[227]

Three people, including the secretary of the league, were made trustees. Section 14 was proclaimed a Maori reservation in May 1969 (AB24:146).[228] However, it was subsequently discovered that the area comprised only 2 roods 33.2 perches, land for the road realignment baving been taken in 1961

(AB24:147).[229] Despite the fact that the land so taken had never been used for roading, the notice of reservation was cancelled in November 1969 (AB24:158).[230]

The realignment of the road

5.26.3 In August 1969 the Colac Bay Progress League sought permission from the Maori Land Court to straighten the road by taking land from sections 1 to 4 adjoining the cemetery (AB24:150).[231] In reply, the court listed the owners of the affected sections and pointed out that, unless the realignment was undertaken by the Crown under the Public Works Act, the league would bave to obtain the consent of the owners. Attention was drawn to the court's roadway order of October 1960.

The Wallace County Council was also interested in carrying out improvements to the section of road adjacent to the cemetery (AB24:154).[232] In November 1969 a copy of the 1960 order authorising works on the area was requested from the court.

The realignment of the road bebind section 14 was carried out some time prior to 1975. A survey of the realignment shows that, in addition to sections 13 and 14, 10 adjoining residential sections have been affected by the straightening of the road (P6:276–277).[233] Mr Alexander submitted that little progress has been made on the subsequent legal procedures necessary to legalise the road on its alignment behind the cemetery. At the time of his submission, the land had not yet been taken under the Public Works Act and no compensation bad been determined. In August 1988 the survey plan was forwarded to the court by the council's solicitors. The council sought the court's advice as to the owners of sections 13 and 14, in order to 'enter into agreement' with them over the issue (P6:278).[234]

As of November 1988 the trustees of the cemetery were all deceased. The court advised the council that an application by those with interests in the reservation would be necessary to appoint further trustees for section 14. The ownership of section 13, labelled as the 'Oraka Maori Reserve' on the 1975 survey plan, was in dispute and under investigation by the Maori Land Court (AB24:175).[235]

The Crown witness stated that the fact that the alignment behind the cemetery bas not yet been taken under the Public Works Act for roading, and compensation for the land taken has yet to be determined, represents unfinished business on the part of the council, wbich it is now attempting to resolve (P7:79). The Crown witness also discussed the council's proposal to exchange the portion of stopped legal road for the area of section 14 that the used road now occupies. He pointed out that this plan may be thwarted by section 345(3) of the Local Government Act 1974, wbicb requires that any portion of road within 20 metres of the mean bigh-water mark wbich ceases to be a road shall automatically become a local purpose (esplanade) reserve under the Reserves Act 1977.

The ownership of section 13

5.26.4 In his submission to the Tribunal, Mr Cormack maintained that section 13 was owned by John Poko. In a letter to the Maori Land Court in November 1988, Mr Cormack provided some insight into the confusion which exists about the ownership of the section:

> There is no European title or even a title Registered to Section 13 Block Eleven Oraka Township Sections and it is only the fact that there has been dealings in the Maori Land Court by the Wallace County Council in regard to the Roadway Order that has prevented the changing of the title to Crown Land.
>
> Spent five hours in Lands & Deeds before applying to the MLC, searched all maps & records held there in an unavailing search for information.
>
> There is no S/O to anyone on Section 13 the only name associated is John Poko and his successor Erueti Poko Cameron alias Ted Cameron [who] was recognised as such during the Roadway case brought hy the Wallace County Council before Judge Jeune. (AB24:139)[236]

In this letter, Mr Cormack alleged that hundreds of acres have been lost to the Maori owners through the change of status from Maori land to general land, owing to the absence of any title:

> All maori lands except Landless lands and Half caste lands were devoid of any titles, they were granted as a unit, . . . were surveyed once the owners were established by the courts, wben the subdivisions were listed on the hlock hut no titles were issued until an alienation was granted by the Maori Land Court, then the lands Dept manufactured a title and recorded it on the Title sheet for the whole block in the Registry Book . . .
>
> It is this method that allowed the removal of many bundreds of acres from Maori Land to European land needing only a letter stating there was no Maori title to the land, such a letter prevented the court from bearing the Maori application due to the land having a European title. (AB24:138–139)[237]

As mentioned above, in November 1988 the Maori Land Court informed the Wallace County Council that the ownership of section 13 was under investigation by the court:

> There is a dispute as to who is the actual owner with one of the possibilities being that this is residual land from the original section which would place the ownership in the hands of all the descendants of the original grantees. (AB24:175)[238]

The issue of gravel

5.26.5 Mr Cormack maintained that gravel was taken from section 13 without compensation. He claimed that a trench was left in the section as a result.

The only reference to this that the Tribunal bas been able to discover in Maori Land Court records is a letter from the Wallace County Council to the Commissioner of Crown Lands, dated 13 August 1957, whicb reveals that part section 13 was once used as a gravel supply (AB24:181).[239] The council was experiencing difficulty in finding new reserves of gravel for roadworks in its district. Existing supplies were said to be very nearly exhausted. The letter to the commissioner was a request to extend the pit on section 13 to include the whole of the section, together with adjoining sections 1 to 6 and 15 to 20.

In November 1957 the council was informed hy the Maori Land Court that the land required was suhject to Part XXIV of the Maori Affairs Act 1953 and therefore no alienation could take place unless it was first approved by the Board of Maori Affairs and the restrictions were removed from the titles (AB24:183).[240] It would seem that the council did not take the matter any further.

Mr Alexander submitted that the shallow depression he has observed in the inland side of the road does not show any loss in productive capacity today (P7:80).

The Tribunal's conclusion

5.26.6 This is not a matter within the jurisdiction of the Tribunal. It is a question between the claimant, as the representative of an owner of sectton 13, and the Southland District Council (which has succeeded the Wallace County Council through local government reforms). It is a matter which is capable of resolution in the Maori Land Court, whicb also has jurisdiction in the question of the award of any compensation. There are obviously difficulties yet to be overcome relative to succession to this land and this too must be resolved in the court. The Tribunal bas set out a detailed summary of the facts surrounding this matter as it may be a convenient place to have it for all the parties involved. The registrar of the Maori Land Court has power to bring an application to the court to determine who the owners are so that succession applicattons can then be pursued to determine the persons presently entttled. No douht this matter has been brought to the attention of the Trihunal in order to air the concern over the delays and the issue of grants. However, the matter is capable of resolution under existing law and this Tribunal has no jurisdiction to intervene.

5.27 Claim no: **80**
Claim area: **Oraka**
Claimant: **Sydney Cormack (E16)**
Claim:

> **Mr Cormack claimed that the site of the Colac Bay school was gifted by Mrs Cameron and should be returned to her descendants when it is no longer needed for this purpose (E16:2).**

5.27.1 Sarah Ann Cameron was granted section 1A, Longwood district, of eight acres, in 1876 under the Stewart Island Grants Act 1873 (P6:279).[241] In 1882 special legislation was passed to exchange her section for other land, namely section 69, block II, of just over 11 acres. The exchange was brought about because the original site chosen for the local school had been found unsuitable. Mrs Cameron agreed to accept another parcel of land so that her eight-acre Crown grant could be used for the school. In accordance with the Special Powers and Contracts Act 1882, section 1A automatically vested as a site for a school (P6:280–281).[242] The actual conveyance of the property from Mrs Cameron to the Crown took place on 5 December 1884 (P6:282–283).[243]

The Crown witness submitted that it is his understanding that school sites which were gifted and are no longer needed are handed back to their original owners or their descendants. Mr Alexander maintained that the Colac Bay school site fits into neither of these categories, because section 1A was exchanged, not gifted, and the school is still in operation (P7:81).

The Tribunal's conclusion

5.27.2 For the reasons set out by Mr Alexander above, the Tribunal does not uphold this grievance.

5.28 Claim no: **81**
Claim area: **Oraka**
Claimant: **Lovell Hart (E35)**
Claim:

> **Mr Hart claimed that in 1958 the Maori Affairs Department promised him leasehold title to Oraka B, extending to the high-water mark, and that this promise has not been honoured.**

5.28.1 In May 1957 a meeting of assembled owners of Oraka B resolved to sell the 382-acre block to the Crown in order to establish an individual Maori farming venture on the land (P6:251).[244] Oraka B was one of a number of blocks in Oraka and Kawakaputaputa purchased by the Crown for this purpose.

Lovell Hart obtained the lease for Oraka B and began his tenure on 1 June 1957. Before the lease document was issued, however, a survey of legal road access had to be completed. In May 1958, one year after his lease had commenced, Mr Hart received word from the district officer of the Maori Affairs Department, informing him that:

> it should not now be long before documents can issue to *confirm the promises already made by the Department in its letter to you dated 30 May 1957*. A lease will issue to you of the land in your unit as at present defined. Because of the involved nature of providing a chain reserve right around the Colac Bay foreshore, it has now been decided that the Crown leases will issue under the Maori Affairs Act and *that you get a lease of existing land down to high water mark* exclusive of the legal road which will stop at Mrs Belcham's boundary and also exclusive of the present Maori road line which runs through your property right round the coast. This native road line which will not be included in your lease, will still be available to members of the public but the local body will not accept responsibility for maintenance. It is a native road line laid off for the purpose of giving access to the Maori Land Court subdivisions which were originally located in the Oraka block. As these subdivisions have now been amalgamated under Oraka A and been made Crown lease, the need for the Native road line no longer exists. Should you at any future date decide to freehold your Crown leasehold, you would be perfectly entitled to apply to the Maori Land Court to have this Maori road line closed and added to your holding on the grounds that it no longer serves the purpose for which it was laid off. I stress, once again, that this is in respect of the Native road line that will be left after the legal road is extended to Mrs Belcham's boundary. [Emphasis added.] (P6:254–255)[245]

It was not until 1964 that the lease document was issued to Mr Hart, for a term of 33 years with rights of renewal and purchase (O14B:85).[246] In 1983 Mr Hart acquired the freehold to Oraka B.

<u>The high-water mark</u>

5.28.2 Mr Hart expressed his interest in buying the freehold of Oraka B in 1970. The issue of whether his property extended to the high-water mark, and whether or not the freehold included the minerals on or under the surface of the land, was raised with the Maori Trustee (P6:267).[247]

The office solicitor considered the property boundary to be the high-water line, but he also thought it:

> unwise for us to give any firm assurances to Mr Binnie [Mr Hart's solicitor] on this point. We should let the maxim caveat emptor apply. When replying to Mr Binnie we could say that from a perusal of the title it would appear that part of the boundary borders the sea and that the boundary would be on the high water mark but we should emphasise that this is merely the inference which we draw from the title and we do not intend to make any representations [to the Board of Maori Affairs]. (P6:268)[248]

The district officer's response to Mr Hart's solicitor was suitably guarded (P6:269).[249]

Mr Hart's supporting documents chronicle his attempts, such as the one described above, to get the high-water mark boundary of his property registered against the title, a promise he is adamant was made to him unequivocally by the Maori Affairs Department in 1958. His grievance before the Trihunal is one he has aired on numerous occasions to agents of the Crown, without satisfactory response.

Mr Alexander was of the opinion that Mr Hart's leasehold, and now freehold, of Oraka B does extend to the high-water mark. He maintained, however, that the legal road which stops at Mrs Belcham's property and the Maori roadway are excluded from the property. He argued that the Maori roadway was not included in the Crown's purchase of Oraka B and was therefore not land wbich the Crown could lease or allow to be freeholded. The title to Oraka B shows the Maori roadway around the majority of the coastal boundary of the hlock, and at these points the title to the block does not extend to the high-water mark. The Crown witness pointed to a legal road along the coast in the north-eastern part of the block, presumahly the legal road referred to in the 1958 letter as providing access to Mrs Belcham's property. He submitted that along the remainder of the coastline, that is, one area just north of Oraka Point and a second strip in the south-western corner of the block, Mr Hart's title extends to the high-water mark. He added that the high-water mark being referred to is that defined at the date of survey, which may be different from the present-day location (P7:75–76).

The Tribunal's conclusion

5.28.3 The Tribunal considers that the submission on behalf of the Crown correctly sets out the position. There is provision within existing Maori land law for Mr Hart to apply to the Maori Land Court to close any roadway that is not presently required and also to resolve any claim to ownership or possession and status of land. The Trihunal does not propose to intervene in this matter as being an act or omission of the Crown or a breach of the principles of the Treaty.

5.29 Claim no: **82**
Claim area: **Ouetota**
Claimant: **Sydney Cormack (E16)**
Claim:

> **Mr Cormack claimed that the Pabi pa site should have beeu included in tbe Ouetota reserve set aside by Mantell in 1853 (E16:5).**

5.29.1 The Ouetota reserve, of 90 acres, lies a few kilometres north-west of Kawakaputaputa. The Pahi pa was situated on Matariki Island, offshore from the reserve. The claimant also maintained that a kainga was situated opposite the island in a bay now known as Cosy Nook (P7:84). Mr Alexander referred to Barry Brailsford's book *The Tattooed Land*, in which the island pa was recorded as Te

Kiri o Tunu and the kainga as Pahia (P6:288–289).[250] Neither the kainga nor the island fall within the boundaries of the Ouetota reserve set apart under the Murihiku purchase. Mr Cormack alleged that this was 'the practice of the day to break up the association with the land' (E16:5). He maintained that it would have been proper to have allocated land in and around the old pa site.

The Tribunal's conclusion

5.29.2 There is little information on how the Ouetota reserve came to be set aside.[251] Mantell simply recorded that on 14 January 1852 he 'Set out reserve no 7' (E2:27).[252] There have been a number of instances in which offshore islands, although vested in the Crown, have come to be dealt with as Maori customary land and applications have been lodged with the Maori Land Court for the issue of freehold orders for investigation of title and the issue of freehold title. The Murihiku purchase deed provided that all the islands lying adjacent to the shores, excepting Ruapuke, passed to the Crown under the deed. The Tribunal does not consider that there is a breach of any Treaty principle arising from this claim but that, if the pa site on Matariki Island is an important and historical place for Ngai Tahu, attention should be drawn to this matter during the negotiations for settlement of the claim.

5.30 Claim no: **83**
Claim area: **Te Waewae Bay**
Claimant: **Sydney Cormack (E16)**
Claim:

> **Mr Cormack claimed that a block of half-caste land was situated near Monkey Island in Te Waewae Bay. He claimed that a grant of eight acres, section 1, block 1 of Longwood reserve, made to Sarah Roderique (née Williams or Pauley), has never been recorded in Lands and Survey record files (E16:2).**

5.30.1 Mr Alexander responded that none of the sections in this block, referred to as the Longwood reserve, were issued either in the name of Sarah Roderique or to anyone of that surname (P7:86). He did not provide the information to back up this statement.

The Tribunal's conclusion

5.30.2 Further research by Tribunal staff in Maori Land Court records has not disclosed any information on this matter. In the absence of sufficient information, the Tribunal makes no finding on this matter.

5.31 Claim no: **84**
Claim area: **Te Waewae Bay**
Claimant: **Sydney Cormack (E16)**
Claim:

> **Mr Cormack referred to the Dallas family's half-caste grants in Longwood block II to exemplify the difficulty that owners of Maori land faced in obtaining rents from Pakeha squatters. 'There was no operable law to stop trespass or occupation of Maori land unless some article of value was removed or the land damaged in some way . . .'(E16:10–11).**

A number of sections in the south-eastern part of Te Waewae Bay opposite Monkey Island were granted under the Middle Island Half-caste Crown Grants Act 1877. Of relevance to this claim are sections 76, 77, 78, and 79, block II, Longwood survey district, which were granted to Margaret, John, Jane, and Martha Dallas. These sections comprised 34 acres, on the basis of 10 acres per male and eight acres per female.

Mr Cormack claimed that, like many other half-caste sections incorporated into Pakeha farms, the above land was part of a farm belonging to one Mr Watson. He claimed that an attempt to get the Maori Land Court to fix the rent and back rent for the land failed because the court has no jurisdiction over a Pakeha squatter. The magistrate ruled that he could not hear the case until every listed owner was present in court — a near impossibility.

In evidence to the Maori Land Court regarding other land in the Rowallan and Alton districts, Mr Cormack is recorded as saying:

> There are no laws at present to stop squatting on Maori land, although trespass by shooters can now be controlled under the Noxious Animals Act. We have recently successfully prosecuted three parties for trespass on the Rowallan/Alton Incorporation [land]. The Forest Service is the body that is supposed to operate the Noxious Animals Act but we find that it takes up to two years to bring a prosecution through them, but the police will do the job. (AB24:234)[253]

At this hearing Mr Cormack outlined other ways in which the land is being illegally used, including for deer capture, timber felling, and, more recently, the collection of sphagnum moss (AB24:232).[254] In an attempt to bring an end to the unauthorised exploitation of their land, trustees were being appointed under section 438 of the Maori Affairs Act 1953 (AB24:229–231).[255]

Background to the alienation

5.31.1 In 1946 Robert Watson, a neighbouring farmer, applied to the court to summon a meeting of owners to approve of his proposed purchase of the four sections (P6:290).[256] Years later some of the owners alleged that the sale had been agreed to but had not been confirmed by the Maori Land

Court. At a meeting of owners of the land held in 1972, Sydney Cormack stated that the court had no jurisdiction to confirm the sale because the succession on the four titles was not up to date and therefore a representative meeting could not he held. The file note on the application form simply records 'Dismissed for non prosecution'.

In 1967 the owners of the sections sought to:

> bring the respective titles to the stage where there will be sufficient representation of owners to warrant application to the Court to summon a Meeting of Owners; and also to conduct, on behalf of the owners, negotiations for sale of the above sections. (P6:291)[257]

The owners also wished to know why the court had refused to confirm the sale of the properties in 1940.

Meetings of owners were held for each of the four sections on 7 and 8 September 1972 to consider the sale of the sections to Bernard Watson, Robert Watson's successor. According to Mr Watson's counsel, the initiative had come from the owners, not from Mr Watson. Counsel also stated that Mr Watson had been 'using the property for a very long time' and 'had fenced the land and kept it in good order'.

It is intimated in the minutes of the first owners' meeting regarding section 77 that Mr Watson had not been paying rent for the use of the land:

> [Mr Cormack] said that he has an application for appointment of trustees which is at present on the panui for the next Invercargill Court sitting. He said that the trustees would then sue Mr Watson for past use and occupation . . .
>
> Mr Cormack informed the meeting that there were ahout 5,000 acres in Southland and Otago being 'squatted on' hy Europeans . . .
>
> Mr Cormack suggested that the owners lodge an injunction preventing Mr Watson from using the land. (P6:293)[258]

Perhaps even stronger evidence of this is the resolution itself:

> That the land be sold for $1,625, out of which the Maori Trustee do pay $265 to Messrs Stout, Hewitt, Binnie and Howarth, Solicitors, for costs and dishursements, *and that any claim for past use be dismissed.* [Emphasis added.] (P6:294)[259]

It was claimed at the time that Mr Watson's offer was generous and well above the Government valuation of the land. And despite Mr Cormack's attempts to forestall the alienation, the owners all appeared willing to sell, the only matter of contention being the price.

The first meeting seems to have set the scene for the other three. Later that evening the owners of section 78 assembled to discuss the proposed sale. One of these, Stanley Lee, was recorded as saying that 'there was not much which the owners could do since the owners at the meeting in the afternoon had decided to sell their section' (P6:295).[260] The owners were unanimous in their agreement to sell and a similar resolution to that regarding section 77 was passed. At the meeting of the owners of section 76 the next morning the same pattern was followed, with Mr Watson's solicitor reiterating the generosity of his client's offer, and the owners unanimously approving of the sale. The meeting of assembled owners of section 79 was over in five minutes (P6:296–298).[261] The resolutions passed by all four meetings were confirmed by the Maori Land Court in February 1973 (P6:300–301).[262]

Mr Alexander conceded that it appears that the Watson family had been occupying the Longwood half-caste sections without paying rent, although he was not prepared to state how long this had gone on for (P7:89). He suggested that some of the owners had been willing to sell since the mid-1940s and that this may have affected the Watson family's attitude towards 'using' the land. However, the Crown witness maintained that there was no evidence to suggest that the Crown knew of the situation prior to the meetings of owners in 1972, by which time it would have been too late for the Crown to act.

The Trihnnal's conclusion

5.31.2 Mr Cormack is claiming that owners of Maori land faced great difficulty in obtaining rents from persons squatting on the land and that there was no operable law to stop trespass on or occupation of Maori land unless some article of value was removed or the land damaged in some way. A similar claim has been discussed in relation to half-caste land at Moeraki (see claim 48).

Mr Cormack was present at the meeting of assembled owners to consider the sale of sections 76 to 79 and suggested that the owners lodge an injunction to prevent the then purchaser, Mr Watson, from using the land. The owners of the four blocks rejected Mr Cormack's advice and went ahead with the sale. There were no objections from any of the owners and the resolution was subsequently confirmed in the Maori Land Court. It would seem from the record that the owners were aware of the previous occupation by Mr Watson but were prepared to release him from any payment for it. This may have been owing to a lack of ahility to force payment for past occupation. The record also discloses that Mr Watson had been using the property for a long time and had kept it in good order. There was also a suggestion that the owners had agreed to sell it to Mr Watson at an earlier time. It is difficult to ascertain the precise reasons in the minds of the owners but the fact of the matter is that they agreed to the sale and passed a resolution relieving the applicant Mr Watson from any claim for past use.

However, Mr Cormack is correct in his statement that the law has not always permitted Maori to obtain recovery of rent for past occupation or trespass on their land. Until 1982 the Maori Land Court had a very limited jurisdiction in the area of trespass and could determine only claims as between Maori to recover damages for trespass. At various times the quantum of damages has been

increased from £200 to $3000 and later to $12,000. Under existing law there is no limit to the amount that can he recovered hy way of damages for trespass or other injury to Maori freehold land. Furthermore, in 1982 the court's powers to determine acts in relation to trespass or other injury and to grant an injunction in respect of any actual or threatened trespass or injury to Maori freehold land were extended hy amendments to section 30(1)(c) and (d) Maori Affairs Act 1953 to delete the words 'as between Maori'. An action can now be taken against any trespasser whether Maori or non-Maori. There has therefore been a substantial change in the law since the early period to which Mr Cormack refers.

One remedy that has heen available to Maori owners since the passing of the Maori Affairs Act 1953 is the power to appoint trustees under section 438 and to vest in those trustees the power to act on behalf of the owners, including the right to take proceedings in other courts for recovery of any damages from trespass.

Mr Cormack's concerns reflect his experience in Maori land matters. As he has pointed out, the Maori Land Court has had the power for some considerahle time to issue injunctions in matters concerning the removal of any timber, trees, flax, and minerals from Maori freehold land. Since the Native Land Amendment and Native Land Claims Adjustment Act 1929 the court has had the power to act in relation to the trespass hy any person on Maori land and the removal therefrom of any timber, flax, kauri gum, or minerals. The court is currently empowered under section 19 of Te Ture Whenua Manri Act 1993 to issue injunctions and prohihit distrihution of any proceeds. There is also power under section 18(1)(c) to recover damages for trespass or other injury to the land. Any person who without lawful authority attempts to remove timber, flax, ferns, sand, topsoil, metals, minerals, or other substances commits an offence and is liable on summary conviction to a fine of up to $5000 (s 346).

The Tribunal agrees with Mr Cormack that multiple ownership of Manri land and, in particular, the absentee ownership of these more remote Southland lands has caused severe difficulty in the due administration of such land. It is for this very reason that the Maori Trustee and the Maori Land Court have been moving in more recent times to ensure that there is adequate representation for each hlock of Maori land so that concerted action can be taken to protect and develop it. The Trihunal in this particular claim does not propose to review the law, relating the inadequacy of past land laws, to provide an effective remedy for Maori owners. This is a substantial question which needs to be looked at in depth and properly argued with reference to the circumstances existing at the time that the legislation was introduced and passed. Although the Maori Land Court had no jurisdiction under section 30 of the Maori Affairs Act 1953 to recover damages for trespass from a non-Maori squatter, it was still possihle for a trustee to be appointed hy the court under section 438. This trustee could then take steps to evict any squatter by action in the general courts. Any Maori owner could also take trespass proceedings in the general courts. The jurisdiction of the Maori Land Court is an additional or alternative procedure which, since 1982, permits the court to award damages against any trespasser. Mr Cormack admits that the Rowallan/Alton Incorporation in 1981 succeeded in prosecuting three trespassers on Maori land; thus there was a remedy availahle prior to the 1982

amendment of the Maori Affairs Act. The Tribunal sees no breach of any Treaty principle in this claim.

5.32 Claim no: **85**
Claim area: **Te Waewae Bay**
Claimant: **Sydney Cormack (E16)**
Claim:

Mr Cormack claimed that Sandhill Point, originally a cemetery and pa site, was proclaimed an historical reserve in 1967 and is now Crown land (E16:3).

5.32.1 Sandhill Point is an old Ngai Tahu burial ground. Although it was not reserved for the tribe from the Murihiku purchase of 1853, it is marked as a 'Native Cemetery Res' on a 1901 survey plan (O14B:123).[263] Mr Cormack stated that the land, section 14, block XIII, Rowallan survey district, was taken as a lighthouse reserve but never used for the purpose. No information was available to the Tribunal in support of his statement. Further to this, Mr Cormack stated that the same piece of land was set aside as a pa site and cemetery reserve with the three trustees (AB37). In two separate submissions he explained how, in 1971, be raised the matter with the Maori Land Court and applied to bave the land (21 acres 3 roods) reserved under section 439 of the Maori Affairs Act 1953 (AB24:195)[264] and to have new trustees elected (AB65). On inquiry to the district land registrar, however, it was discovered that sections 14 and 16 had been proclaimed a historical reserve in 1969. Access to the area was prohibited unless a permit was first obtained (AB24:197).[265] Mr Alexander submittted that this restriction came about in an attempt to protect the site's historical and arcbaeological value and that the Murihiku Tribal Committee, whicb was consulted at the time, was happy for the proposal to proceed (AB32:251–254).[266] In addition, Mr Alexander stated that the probibition was later removed owing to the difficulty in policing sucb a remote area (AB32:255–256).[267] There is no indication that Maori were consulted on this matter. Mr Alexander noted that the area is currently a bistoric reserve under the Reserves Act 1977 (AB35:55).

The reserve retains its significance for Ngai Tahu as a burial ground.[268] Mr Cormack submitted that bones were often uncovered by winds and that the artefacts to be found in the area were of considerable cultural and historical significance. He claimed that many Maori were unable to walk near the old site and that even Pakeha sometimes mentioned feeling uneasy in its vicinity (AB65). The reserve's importance is also enhanced by the growth of pingao there. Mr Cormack has suggested that the reserve should be enlarged to encompass coastal rocks and stacks of importance; 14 middens are said to be located on the reserve itself (E16:4).

With reference to Mr Cormack's claim that three trustees were appointed in respect of the pa site and cemetery reserve, counsel for the Crown informed the Tribunal that the Department of Conservation (Southland conservancy) has, to date, been unable to find any record of trustees baving been appointed in respect of the reserve (AB72:4).

The Trihnnal's conclusion

5.32.2 Ngai Tahu obviously have a long-standing relationship with Sandhill Point as an old urupa of significance to the tribe. It is evident that the land has been in Crown ownership since the Murihiku purchase of 1853 although its significance as a Ngai Tahu burial ground has been acknowledged on old survey maps and, more recently, by the reservation of sections 14 and 16 as a historic reserve. Mantell's 'bigh-handed' approacb to awarding areas of reserve to Ngai Tahu from the Crown's purchase may explain, but not excuse, the fact that this urupa was not reserved. Given that its significance as a bistoric reserve lies in its association with Ngai Tahu, the Tribunal sees considerable merit in the claimant's attempt to bave section 14 set aside as a Maori reservation. When Mr Cormack applied to the Maori Land Court in 1971 to have this area made a section 439 Maori reservation, there was no jurisdiction in the court to create a reserve over Crown land. That position has cbanged in the recently enacted Te Ture Whenua Maori Act 1993. Section 339 of that Act now permits the Minister of Maori Affairs to apply to the court for a reserve recommendation to issue in respect of any Crown land or State-owned enterprise land if it has any historical significance or spiritual or emotional association for the Maori people. The Tribunal recommends that the Minister should exercise this new power and at the same time consider the revesting of this land in the bapu or iwi or persons that the Maori Land Court may determine so entitled after an appropriate bearing.

5.33 Claim no: **86**
Claim area: **Rowallan district**
Claimant: **Sydney Cormack**
Claim:

> **Mr Cormack claimed that section 6, hlock VIII, Rowallan survey district, although reserved for landless natives, was not nsed for this pnrpose and so reverted to Crown land (E16:2).**

5.33.1 Mr Cormack was aware that the allocatees of section 6 were granted land elsewbere because of the poor quality of the land (E16:4–5). The Crown witness confirmed that the allottees of section 6, block VIII, of 267 acres, took section 1, hlock XIV of 334 acres instead. Mr Alexander commented that, provided that the named individuals got the areas specified for them, any halance could remain Crown land.

The Trihunal's conclusiou

5.33.2 The Trihunal considers that there is no breach of Treaty principles in this matter.

5.34 Claim no: **87**
Claim area: **Waiau**
Claimant: **Sydney Cormack (E16)**
Claim:

> **Mr Cormack alleged that some 1700 acres between the Waian River and the Clifton to Papatotara road were resnmed by the Crown in 1914 on the grouud that the Tautuku A and B blocks had been granted instead.**

He claimed that the area included the site of Te Waewae pa on the west side of the river mouth. The grievance is a long-held one; two petitions presented to Parliament early this century resulted in the establishment of a commission of inquiry to look into the matter in 1915. The report and minutes of this inquiry form the basis of the information availahle today (P6:302–341).[269]

In essence, the then claimants maintained that at the Native Land Court sitting in 1868 before Chief Judge Fenton 1000 acres of land were awarded at the Waiau River in final satisfaction of promises made imder the Kemp purchase. They claimed that this reserve was in addition to a 1000-acre block reserved at Tautuku for the same purpose (see claim 112). The Crown, on the other hand, argued that the initial location chosen for the reserve was at Waiau, hut that this was changed before the Dunedin sitting ended and the 1000 acres at Tautuku was substituted for the 1000 acres at Waiau.

Wai 189

5.34.1 Additional material supporting this grievance was received from Mr Cormack and his daughter Mrs N A Sinclair in May 1991. Of immediate concern to them is the impending sale of the remaining five acres of Crown land in the Waiau hlock, the site of the former New Zealand Forest Service headquarters at Tuatapere. The old forestry complex is imder the management of the Department of Conservation and consists of a few houses, an office complex, and a number of single men's quarters. The claim, asking the Tribunal to act to stop the sale, has been filed as Wat 189.

In July 1991 the Tribunal was informed hy the Commissioner of Crown Lands, who is selling the property on hehalf of the Department of Conservation, that the property will not be suhject to the 'clawback' provision as it is not to be transferred under the State-Owned Enterprises Act. The Ngai Tahu Maori Trust Board has been consulted about the sale and its sanction given. It has been pointed out that the Government has no mandate to withhold land from sale except imder the Ngai Tahu consultative procedure, or in light of a proven claim before the Waitangi Tribunal.

The Waiau reserve commission 1916

5.34.2 The commission of inquiry appointed in October 1915 comprised two judges of the Native Land Court, Judges MacCormick and Rawson. Hearings were held in Invercargill over two days and adjourned to Wellington for a further day's sitting one week later (P6:303).[270] The commission was charged with the following terms of reference:

- to ascertain whether the Native Land Court's award of 1868 had been satisfied;
- if it had been, which land it was satisfied with;
- under what authority the reserve at Tautuku was made; and
- why land on the west hank of the Waiau River was withheld from sale.

Evidence behind the claim: the 1000-acre award

5.34.3 In April and May of 1868 the Native Land Court sat for the first time in the South Island to investigate Ngai Tahu claims to different reserves and to issue Crown titles to the owners. Chief Judge Fenton presided. The proceedings have been outlined in the *Ngai Tahu Report 1991*.[271] In Christchurch the court ordered the setting aside of a further 2695 acres in final extinguishment of all claims under the Kemp deed. In Dunedin almost a month later it was ordered that land to the extent of 2094 acres be reserved for the same purpose in Otago. Thus, areas were set aside at Papakaiao, North Harbour, and Purakaunui, to name a few.[272] On 28 May 1868 it was ordered that 1000 acres be reserved at Tautuku in fulfilment of:

> all demands under Kemp's Deed, and is set apart for those Natives and their descendants who signed the Deed, but who never received any share of the land reserved for Native purposes within the houndaries of that purchase.

Judge Fenton's minutes for 23 May 1868, however, contain the remark '1000 acres at Waiau [River]' and the list of the owners' names. Counsel for the Department of Lands and Survey submitted that the Native Land Court's decision in 1868 was to award 1000 acres, not 2000, for those Ngai Tahu who had signed Kemp's deed hut had not been included in the reserves.

The list of owners made for Waiau varied slightly from that later puhlished in Mackay's *Compendium* for Tautuku, in that two of the trustees named in the Tautuku grant were not listed in the Waiau schedule, and one owner listed for Waiau was not included as a trustee for the Tautuku land. In 1915 the claimants' counsel argued that this meant that the Tautuku reserve could not have been a substitution. The Crown, on the other hand, used the similarity between the listed trustees, even down to the division of the trustees into 'A' and 'B' columns, to argue that the Tautuku reserve was in fact a substitution for the award at Waiau. Mr Cormack has contended that the similarity in the lists can he otherwise interpreted:

> the lists for each piece of land contain the principal representatives of the respective areas of Otago and Southland, [and] would be the same for any similar area south of Otakou.[273]

Oral evidence

5.34.4 Three men who had been present on the day that the Waiau reserve was allegedly awarded appeared before the 1915 commission. According to these witnesses, Commissioner Alexander Mackay had circulated amongst those Ngai Tahu outside the courtroom, urging them to claim lands under the Kemp deed as the Kaiapoi people had done. The land at Waiau was chosen at the request of Horomona Pukuheti, one of the prominent rangatira of south-west Murihiku, and agreed to by the other kaumatua present. Taituka Hape recounted how the owners and 10 trustees were also agreed upon by the elders outside, a list of whom was then given to Mackay and read aloud in court:

> List was produced to Court. I was present when it was produced to Judge and assessor and read out in the Court. Decided they were to be the owners of Waiau Objectors were challenged but none — natives present agreed. I don't know anything about grant of Tautuku — it did not take place that day. (P6:320)[274]

Raniera Erihana, also present on this occasion, submitted that Tautuku was discussed after the Waiau reserve was settled:

> It was discussed at Prince of Wales hotel and after lunch mentioned in Court I was staying at the hotel and so were many others. It was discussed in the hack room of the hotel with Mr Mackay — some of the natives applied to Mr Mackay for the Tautuku block as it was a suitable landing place and old Native settlement & whaling station. Mr Mackay agreed and then matter was mentioned to Court hut the Court dealt with it some days afterwards not then. (P6:323)[275]

John Connor, too, said that discussions about land at Tautuku took place in the back room of the Prince of Wales hotel, after the land at Waiau had been completed at the court. His version varies slightly from Erihana's because he maintained that this meeting took place in the evening, not at lunchtime (P6:326).[276]

Other oral evidence was given to establish Ngai Tahu occupation and use of the reserve since 1868. Although no long-term settlement had ever been established on the reserve, temporary houses had been erected for different people who had come and gone on the reserve. One Richard John Ryan testified that he had resided on the reserve for more than six years before being evicted by order of the Magistrates Court. The principal use, however, was as a mahinga kai; the Waiau River was considered a good eel fishery. Totara bark was also collected from the area.

Lack of official documentation

5.34.5 In the claimants' favour was the complete absence of any record to say that the land awarded at Tautuku was in exchange for that noted in the judge's minute book as set aside at Waiau. On the other hand, hy far the strongest point in the Crown's case was the ahsence of any mention of an award at Waiau in all subsequent official documents. For instance, three days after the Waiau award

was supposedly made, Mackay reported to the under-secretary to the Native Commissioner. No reference was made to an award at Waiau. His letters to the superintendent of the province of Otago and the Commissioner of Crown Lands Dunedin on the same day alluded to the 1000 acres at Tautuku, but not to any award at Waiau. In bis *Compendium*, too, only the reserve at Tautuku was recorded. When Major Heaphy reported on Ngai Tahu's reserves in Otago and Murihiku in 1870, no mention was made of a reserve at Waiau. Mr Cormack submitted in later correspondence to the Tribunal that this was possibly because the Waiau reserve had not been surveyed at that time.

The above letters are but a few examples presented to the commission of the absence of any subsequent mention of the reserve at Waiau.

Maps

5.34.6 Several Southland survey office maps show some 1712 acres marked on the west hank of the Waiau River as native reserve. The claimants maintained that Pakeha applying for land in the area were refused because it had been granted to Ngai Tahu. However, witnesses from the Department of Lands and Survey testified that these areas had been so marked as a result of instructions from Mr Barron, the Assistant Surveyor-General, in June 1892 to set the land aside for landless natives and half-castes claims (P6:316–318).[277] Judge Gilfedder testified that the Waiau River was regarded by locals as a Maori reserve and referred to as 'the Maori block' from 1896 onwards (P6:333–334).[278] Counsel for the Department of Lands and Survey submitted that the claim for the land was a recent one, arising from the setting aside of the land on maps for landless natives claims.

The commission's findings

5.34.7 The commission reported its findings in November 1916. Sucb findings, it said, were 'not beyond question'. In effect the commission dismissed the claimants' case, concluding that:

> the most probable explanation is that, with the consent of the Natives and the Court, the original award of 1,000 acres at Waiau was, on the 28th May, 1868, cancelled in favour of an award for a similar area at Tautuku, and that the list of owners was amended at the same time as regards some of the names. (P6:307)[279]

Little weight was attacbed to the testimony of those Ngai Tahu present at the court in 1868:

> All the three witnesses named above would be young men in 1868, and naturally would not take an active part either in the proceedings in Court or in discussions which are said to have taken place with Mr Mackay outside as to the lands to be set apart for Natives. As they themselves admit, the elders would attend to those matters. After the lapse of so long a period as nearly fifty years their recollection of wbat happened in 1868 cannot be very clear, and, bowever bonest the intentions of the witnesses may he, it is more than probable that the conversations and discussions of later years have become interwoven with the memories of the earlier occurrences. Being Natives, they have naturally been in

> contact with those who are interested in the success of this claim, and moreover, are either claimants themselves or their wives or relatives are. (P6:304)[280]

The commission felt that, in the absence of any subsequent references to an award at Waiau, either by Mackay or by H K Taiaroa, in his capacity as a member of the House of Representatives, such an award was never made. The commission also found that land on the west bank of the Waiau River was withheld from sale to settlers because of the Assistant Surveyor-General's instruction to mark it off as land to settle landless natives claims. This point had been conceded by the claimants' counsel by the end of the hearings.

The Tribunal's conclusion

5.34.8 This claim is obviously the revival of a long-held grievance which has been the subject of inquiry by a special commission. However, the matter was not argued before the Tribunal, nor was it subject to any specific inquiry during the hearing of the Wai 27 claim. No new evidence has been presented which would show that the finding and decision of the 1916 commission of inquiry was wrong. In view of these facts, the Tribunal considers that it would be improper to comment on the validity of the 1916 commission's decision. The Tribunal makes no finding on this claim.

5.35 Claim no: **88**
Claim area: **Wairaurahiri**
Claimant: **Teriana Nilsen (E30)**
Claim:

> **Mrs Nilsen questioned the disappearance of Maori-owned land between Lakes Hanroko and Poteriteri since 1966.**

The claimant maintained that the Waitutu Incorporation was led to believe that the blocks had been sold willingly, although there were no records of any meetings of owners. As a result of inquiries to the Director-General of Lands in May 1986, the claimant was informed that the Waitutu Maori land had been exchanged for land in Hokonui and Rakiura (E30:1).

Mr Alexander considered Mrs Nilsen's grievance to be misconceived in that land set apart for the purpose of providing land for landless natives was not by virtue of that reservation automatically Maori land (O14A:49).

Landless natives allocations

5.35.1 Mackay and Percy Smith set aside a block of 50,000 acres in the Wairaurahiri region for allocation to landless Maori in the South Island. In their interim report of 1899 they stated that this block was:

> situated some twelve or fifteen miles to the west of the Waiau block, already allocated, and fronts on to the Foveaux Strait. So far as the information to hand shows, it is of fair quality, covered with forest. It will probably turn out that part of the area is too broken for settlement, but this will be cut out on survey. (O14B:118)[281]

In 1901 it was further reported that 38,321 acres of land in the Wairaurahiri block had been allocated to 1102 persons, and that approximately 7000 acres were still available for those not yet provided for (O14B:119).[282] This included people from Kaikoura and Marlborough.

Mackay and Percy Smith had not traversed the land in question themselves; their selection of the Wairaurahiri block had been based on 'Mr Hay's report made at the time he did the Triangulation of the country' (P6:133).[283] The chief surveyor's annual report on the land allocated there was 'indifferent' and, after further survey, Percy Smith and Mackay were informed in 1903 that:

> a large proportion of this land is of little value, being mostly carpeted with a covering of moss . . . then densely overgrown with valueless birch timber . . . but owing to the inaccessible nature of the country, the excessive wet climate and poor quality of the land, [I] fear that the selection has not been all that could be desired. (P6:132)[284]

In the result, 10,456 acres of land in the Wairaurahiri block was granted to 280 persons, but much of the interior was not allocated (P6:146).[285] State forest land in the Hokonui hills was chosen to make up the shortfall, which was calculated at 27,839 acres (P6:146; see also claim 9).[286] Mr Alexander submitted details of the individual allotments which were transferred (O14B:120–122).[287]

The area of the Wairaurahiri block which was not allocated has become Crown land. A letter from the chief surveyor at Invercargill to the registrar of the Maori Land Court in May 1971 reads:

> I have investigated the status of these sections listed and find that none of them have registered owners and therefore by virtue of section 15 Maori Purposes Act 1966, being an amendment to Sec 110 Maori Purposes Act 1931 this land became Crown land subject to the Land Act 1948. (AB24:217)[288]

It appears that most of the land was gazetted as provisional State forest in 1919 and that part of it is now in the Fiordland National Park.[289]

Mr Alexander concluded that the area of the Wairaurahiri block which was not allocated because of this transfer eventually became part of the Waitutu State Forest. The part of the block which was granted is today represented in the holdings of the Waitutu Incorporation.

The Tribunal's conclusion

5.35.2 The Tribunal has dealt with the question of land set aside for landless Maori but not allocated in claims 34 and 62. This claim falls into the same set of circumstances and the Tribunal's findings therein apply bere also. There is no breach of Treaty principles.

5.36 Claim no: **89**
Claim area: **Wairaurahiri**
Claimant: **Teriana Nilsen**

Mrs Nilsen, speaking on behalf of the Waitutu Incorporation, was concerned about their coastal block of land which extends from the Wairaurahiri River to the Waitutu River. She alleged that:

- **Ngai Tahu ownership of the land is under threat from those who would like the land included in the Fiordland National Park; and**
- **access to their land has been denied.**

Mrs Nilsen urged upon the Tribunal that the Maori owners of the land should be allowed the ownership and control of the block and coastal waters and that the Maori Affairs Act be amended in order to afford the Waitutu Incorporation the same protection as the Companies Act.

The Waitutu Incorporation

5.36.1 The lands that comprise the Waitutu Incorporation's boldings were originally granted to individuals under the South Island Landless Natives Act 1906. As with most of the lands granted under this scbeme, the land in the Wairaurahiri block was isolated, inaccessible, and totally unsuitable for the settlement of the grantees. As a consequence, the lands have remained largely untoucbed for most of this century. In 1971, however, 23 of the 25 landless blocks were amalgamated into one title by the Maori Land Court under section 435 of the Maori Affairs Act 1953. This statutory provision was used in cases where the court was satisfied that amalgamation of the ownership into one title would allow the whole area to be more conveniently worked. Two years later, following a meeting of owners, the Waitutu Incorporation was formed to administer and develop the 5365-acre block, stretching from the Wairaurahiri River to the Waitutu River. It was proposed to investigate forestry development, including the milling of timber. The forest on the incorporation's land is indigenous, largely lowland with pure stands of beecb and podocarps, rimu and totara. The objects of the incorporation provide for:

> using the land, or any part thereof for the growing of timber for engaging in the felling and marketing of timber for establishing and carrying on timber mills for granting licences to cut and remove timber or for engaging in any other operations for the

> production or utilisation or sale of timber and for carrying on any agricultural or pastoral or afforestation business therein. (AB24:222)[290]

No sooner had proposals begun wben conservationists moved to prevent any logging. The incorporation's objectives conflict with Government policy and conservationist philosopby. Both of these interests would like to see the land incorporated into the Fiordland National Park. It is argued that the area is the only one in Southland where the sea-to-mountain vegetation sequence is undisturbed. It also contains pure stands of untouched rimu. Because of its isolation, its coastal resources of paua and fisb are said to be some of the richest in New Zealand. Of more concern to conservationists is the likelihood that once this area is opened up for milling there would be increasing pressure to mill the State forest.

Mrs Nilsen suhmitted that the pressure on the Maori owners to part with their land, or to leave it untouched, has continued unabated. She claimed that pressure was originally hrought to bear hy the Wallace County Council, wbich threatened the owners that the land wonld be taken if the rates were not paid. Accusations were later made by the Pest Destruction Board that the land was a breeding groimd for noxious animals, particularly deer and possums, and for pigs with bigh levels of mercury. The most recent pressure was from the catchment board, wbicb added a further 10 percent to the rates. The incorporation is also fed up with maps that do not distinguisb their land from the national park.

Access to the hlock

5.36.2 Access to the block, apart from the sea, can be gained only by going through the Waitutu State Forest. The pressure to keep the land in its original state has meant that the owners have been unahle to get access to their land. Mrs Nilsen claimed that a contract with Feltex to mill the land selectively failed because of extensive lobbying and negative publicity. The company had agreed to provide access to the Maori-owned blocks. According to the claimant the owners were finally given permission for a roadway on 31 March 1986 but were told by Peter Tapsell, then Minister of Lands, that they would never fell a log.

In addition to the intimidation, degradation, and embarrassment that the owners have been made to feel in their attempts to get access to the land, Mrs Nilsen claimed that 'personally and corporately government and environmentalists have cost us most of our liquid assets'. The claimant stated that the incorporation has had to face many district scheme hearings and planning tribunals 'at a cost of thousands of dollars'. She maintained that a failed contract, caused by delays prolonged by environmental objections and involvement, and the lack of progress in gaining access to their property require compensation.

Recent developments

5.36.3 The Tribunal has since been advised that the incorporation has ohtained permission to log under the Resource Management Act 1991 but has been prohibited from exporting logs under the Customs Act

1966. The sale of timber on the domestic market is permissible because the forest is exempt from the Forests Amendment Act 1993 (see below), but according to the incorporation this is not profitable. Effectively, therefore, the incorporation is presently hamstrung. It bas incurred beavy expenses and can make no progress. In December 1993 the incorporation sold the cutting rights to the Waitutu Forest to Paynter Timber Group Ltd (AB73).

The concern of other Maori landowners in the Rowallan and Alton blocks regarding present Government policy has been drawn to the Tribunal's notice in a claim registered as Wai 158. The claim lay adjourned for some time wbile the owners of the various blocks appointed trustee representatives. At the time of writing (January 1995), bowever, the negotiations were beld in abeyance wbile the Government considered a proposal for the settlement of the claim made by a special negotiator appointed by the Minister of Conservation. The negotiator's brief was to reacb a settlement with the incorporation that would address both the conservation values of Waitutu and the ability of the incorporation to use their land to develop an economic base (AB73).

On 24 Marcb 1993 the Forests Amendment Act 1993 was passed with effect from 1 July 1993. This Act introduced a new Part IIIA into the Forests Act 1949, which was designed to promote the sustainable forest management of indigenous forest land. The scbeme spelled out restrictions on the export and milling of interim indigenous forest produce and introduced procedures for sustainable forest management plans. Section 67A(1)(a) and (b) excluded West Coast indigenous production forest and any indigenous timber from land that is permanently reserved under the South Island Landless Natives Act 1906 and that has the status of Maori land or general land owned by Maori under Te Ture Whenua Maori Act 1993.

The Tribunal's conclusion

5.36.4 This shortly but strongly expressed grievance of Teriana Nilsen belies the bopelessness and irony of the situation now facing the Maori owners of the Waitutu lands and uther lands awarded imder the South Island Landless Natives Act 1906. It needs no long review. The unjust and intolerable position of Waitutu owners is there for all New Zealand to see in plain and simple measure. Twenty-five Waitutu blocks, each approximately 200 to 300 acres in extent, were awarded to landless Maori. Not only was the land of poor quality, but it was allocated on a most inadequate basis and divided into individual sections that were imeconomic and virtually useless. The Tribunal has already found that the Crown's policy and legislative implementation of it in relation to landless Ngai Tahu was a serious breacb of the Treaty principle requiring the Crown to act in good faith.[291]

As this Tribunal stated in its first report, if laodless Ngai Tahu bad in the first instance been given viable farmland in their former domain similar to that awarded to settle landless Europeans, the present unjust situation would not have arisen. If the public interest is now considered to be of more importance to the nation than that of the Waitutu owners and other owners of Maori land in Murihiku, then there is an obligation on the Crown to compensate sucb owners for lost milling opportunities. The Crown must surely act to restore bonour and justice. The Crown should either allow the owners of the Waitutu Incorporation to market their forest to best advantage or compensate

them adequately. There may be remedies acceptable to the incorporation such as exchange for other millable forest or for viable farm land.

5.36.5 The Tribunal also considers that the incorporation should be compensated for the monetary loss it has suffered through the many district scbeme bearings and planning tribunals it has bad to face, through the delays caused by environmental objections, and through generally having to seek consent to deal with its land. These expenses and monetary losses are presumably a matter of record and shown in the incorporation's financial records. The Tribunal recommends, therefore, that, in addition to the satisfactory settlement of issues relative to the future use of the land and its timber resources, the Crown should reimburse the Waitutu Incorporation for all provable, actual, and reasonable costs incurred in negotiations and planning applications up to the date on wbicb the incorporation receives consent to market its timber resources or alternative remedies are agreed upon between the incorporation and the Crown.

We note that with the passing of the Forests Amendment Act 1993 there has been some slow progress towards allowing the Maori owners the freedom to deal with their lands. However, other restrictions continue. Although excluded from the export prohibition under the forestry legislation, the export probibition under section 70 of the Customs Act 1966 still remains and, until the Government lifts that control, the Maori owners will have a limited market for their forest. Crown counsel explained that the Government had intended to develop policy on wbether this export ban should be lifted for the incorporation's land, but that it was now bolding this policy in abeyance by reason of the Crown's negotiations over the Waitutu land (AB34:18).

It is apparent that, as the law stands at the time of this report, the claim by Teriana Nilsen is well founded. Because of the involvement of lands other than the Waitutu lands and also because the Crown bas opened negotiations on settlement it is evident that this report sbould go no further than confirm its previous finding on the breacb of the Treaty principle requiring the Crown to act towards its Treaty partner with the utmost good faith. We also find that as long as the Crown allows the present restrictions without adequate redress there is a continuing breach of the Crown's obligations to act in good faith and to protect its Treaty partner. If a satisfactory resolution does not soon emerge from the continuing negotiations, the Waitutu Incorporation should seek leave to join the other claimants in Wai 158 and request that a Tribunal be appointed to hear the parties.

1. Registered title 89/157 block file Otago 7; registered title 89/158 block file Otago 7/2, MLC Christchurch

2. Ibid

3. Kensington to Commissioner of Crown Lands Dunedin, 12 June 1905, L&S ML 192, DOSLI Dunedin

4. E Heill, Crown lands ranger, to Commissioner of Crown Lands Dunedin, 10 August 1905, L&S ML 192, DOSLI Dunedin

5. Commissioner of Crown Lands Dunedin to Under-Secretary for Lands, 21 August 1905, L&S ML 192, DOSLI Dunedin

6. F O'Neill for Under-Secretary for Lands to Commissioner of Crown Lands Dunedin, 14 March 1908, L&S ML 192, DOSLI Dunedin

7. Ibid

8. Commissioner of Crown Lands Dunedin to Under-Secretary for Lands, 28 April 1909, L&S ML 192, DOSLI Dunedin

9. *New Zealand Gazette*, 1909, pp 2531–2532. The land is shown on Otago SO plan 4429.

10. J Harvey to Commissioner of Crown Lands Dunedin, 25 February 1910, L&S ML 192, DOSLI Dunedin

11. Under-Secretary for Lands to J Harvey, 23 March 1910, L&S ML 192, DOSLI Dunedin

12. K Ruru to Land Board Dunedin, 3 October 1910, L&S ML 192, DOSLI Dunedin

13. SIMB 16, pp 202, 287–292

14. Commissioner of Crown Lands Dunedin, to Under-Secretary for Lands, 26 March 1936, L&S 8/3/54, DOSLI Dunedin

15. Under-Secretary for Lands to Commissioner of Crown Lands Dunedin, 1 June 1936, L&S 8/3/54, DOSLI Dunedin

16. Field inspector to Commissioner of Crown Lands Dunedin, 22 June 1936, L&S 8/3/54, DOSLI Dunedin

17. Secretary, Willsher Domain Board, to Commissioner of Crown Lands Dunedin, 11 July 1936, L&S 8/3/54, DOSLI Dunedin

18. Chief surveyor Dunedin to Under-Secretary for Lands, 10 August 1936, L&S 8/3/54, DOSLI Dunedin

19. *New Zealand Gazette*, 1937, p 2270

20. County clerk Clutha to Commissioner of Crown Lands Dunedin, 7 December 1938, L&S 8/3/54, DOSLI Dunedin

21. Commissioner of Crown Lands to secretary, Willsher Bay Scenic Board, 4 May 1939, L&S 8/3/54, DOSLI Dunedin

22. Commissioner of Crown Lands to Under-Secretary for Lands, 4 August 1939, L&S 8/3/54, DOSLI Dunedin

23. Under-Secretary, Native Department, to Under-Secretary for Lands, 10 October 1939, L&S 8/3/54, DOSLI Dunedin

24. Under-Secretary for Lands to Commissioner of Crown Lands Dunedin, 19 October 1939, L&S 8/3/54, DOSLI Dunedin

25. Registrar, Native Land Court, to Under-Secretary for Lands, 22 November 1939, L&S HO file 1/722, Conservation head office

26. Under-Secretary for Lands to Under-Secretary, Native Department, 29 November 1939, L&S HO file 1/722, Conservation head office

27. Under-Secretary, Native Department, to Under-Secretary for Lands, 6 December 1939, L&S HO file 1/722, Conservation head office

28. Under-Secretary, Native Department, to Under-Secretary for Lands, 8 January 1940, L&S HO file 1/722, Conservation head office

29. Under-Secretary for Lands to Commissioner of Crown Lands Dunedin, 1 February 1940, L&S 8/3/54, DOSLI Dunedin

30. *New Zealand Gazette*, 1940, p 1571

31. Ibid, p 2597

32. Ibid, 1941, p 1360

33. SIMB 30, pp 150–151, 237–238

34. K Cain to Maori Trustee, 3 August 1987, correspondence file Otago 7, MLC Christchurch

35. *Clutha Leader*, 29 July 1983, (copy on L&S Dunedin file 8/3/54, Conservation Otago)

36. File note dated 24 August 1983, L&S Dunedin file 8/3/54, Conservation Otago

37. District Commissioner of Works to registrar, Christchurch Maori Land Court, 25 August 1987, correspondence file Otago 7,MLC Christchurch

38. W G Apuwai, for registrar, to K M A Cain, 18 August 1987, correspondence file Otago 7, MLC Christchurch

39. File note by Assistant Commissioner of Crown Lands, 5 April 1984, L&S Dunedin file 8/3/54, held by Conservation Otago

40. Senior ranger Owaka to Commissioner of Crown Lands Dunedin, 21 May 1984, L&S file 8/3/54, held by Conservation Otago

41. Commissioner of Crown Lands Dunedin to Mr and Mrs Blair (adjoining owners), 14 October 1985, L&S Dunedin file 8/3/54, held by Conservation Otago

42. Case 93/75 for classification and vesting of reserve, approved 23 June 1993, Conservation Otago file 8/3/54, Conservation Otago

43. Regional conservator Otago to secretary, Maranuku Lands Trust, 30 August 1993, Conservation Otago file REC 39

44. Public notice in *Otago Daily Times*, 25 August 1982. Copy of notice on L&S Dunedin file 8/3/54, Conservation Otago.

45. Member of Parliament for Southern Maori to Minister of Lands, 13 September 1982, L&S Dunedin file 8/3/54, Conservation Otago

46. Minister of Lands to Member of Parliament for Southern Maori, undated but circa October 1982, L&S Dunedin file 8/3/54

47. Note for file on meeting between Commissioner of Crown Lands and Mrs Naina Russell, 15 November 1982, L&S Dunedin file 8/3/54, Conservation Otago

48. Director-General of Lands to Commissioner of Crown Lands Dunedin, 7 December 1982 (with the report of K Cayless, research officer, attached), L&S Dunedin file 8/3/54, Conservation Otago

49. Commissioner of Crown Lands Dunedin to Mrs N K Russell, 16 June 1983, L&S Dunedin file 8/3/54, Conservation Otago

50. N Kihau Russell to Commissioner of Crown Lands Dunedin, 26 July 1983 and 22 May 1984, L&S Dunedin file 8/3/54, Conservation Otago

51. Senior conservation officer Owaka to regional conservator Dunedin, 16 October 1989, Conservation Otago file REC 39

52. Regional conservator Otago to Director-General of Conservation, 10 November 1989, and Director-General of Conservation to regional conservator Otago, 28 November 1989, Conservation Otago file REC 39

53. Mr and Mrs D F Johnston to Department of Conservation, undated but circa August 1992, Conservation Otago file REC 39

54. Handwritten note on memorandum field centre manager Owaka to regional conservator Otago, 28 August 1992, Conservation Otago file REC 39

55. Kaupapa Atawhai manager to regional conservator Otago, 8 December 1992, Conservation Otago file REC 39

56. Stewart, Mackenzie, and Sinclair to Maori Affairs Department Christchurch, 7 June 1962, correspondence file Otago 7, MLC Christchurch

57. Paper approved by Board of Maori Affairs, 1–2 June 1965, L&S 20/14, DOSLI Dunedin

58. Partition order, 4 March 1887, block file Otago 7, MLC Christchurch

59. Order cancelling partition orders, 22 May 1964, block file Otago 7, MLC Christchurch

60. C Eville to Commissioner of Crown Lands Invercargill, 26 August 1965, L&S 20/14, DOSLI Dunedin

61. Paper approved by Board of Maori Affairs, 1–2 June 1965, L&S 20/14, DOSLI Dunedin

62. Notice of meeting of assembled owners, 16 August 1965, alienation file 15/2/1936, MLC Christchurch

63. Minutes of meeting of owners, 1 September 1965, alienation file 15/2/1936, MLC Christchurch

64. Minutes of meeting of owners, 26 January 1967, alienation file 15/2/1936, MLC Christchurch

65. SIMB 42, pp 276–277

66. L King to Commissioner of Crown Lands, 27 August 1976, L&S 13/17/1, DOSLI Dunedin

67. Ibid

68. Information by Mrs M R Wylie, block file 7/2, MLC Christchurch

69. SIMB 59, p 25

70. *New Zealand Gazette*, 1982, p 1759

71. Otago SO plan 2621; *New Zealand Gazette*, 1929, p 518

72. Reserves ranger to Commissioner of Crown Lands Dunedin, 19 July 1977, L&S 13/48/11, DOSLI Dunedin

73. *New Zealand Gazette*, 1978, p 2847, area given in notice corrected by *New Zealand Gazette*, 1979, pp 990–991

74. *New Zealand Gazette*, 1908, pp 891–892, p 1514

75. District officer to all Maori committees South Island, 11 June 1964, correspondence file Southland 70A, MLC Christchurch

76. Ibid

77. *New Zealand Gazette*, 1964, p 1108

78. Southland land registry certificate of title B1/1188

79. *New Zealand Gazette*, 1976, p 166

80. File note of interview between assistant conservator (planning) and R Whaitiri, 6 April 1982, file 9/94/4, NZFS Invercargill

81. Director-General of Lands to Director-General of Forests, 13 November 1984, L&S 10/101, DOSLI Wellington

82. District officer to all Maori Committees South Island, 11 June 1964, correspondence file Southland 70A, MLC Christchurch

83. File note of interview between assistant conservator (planning) and R Whaitiri, 6 April 1982, file 9/94/4, NZFS Invercargill

84. Conservator of Forests Invercargill to Ngai Tahu Maori Trust Board, 2 May 1985, file 9/94/4, NZFS Invercargill

85. Director-General of Forests to Conservator of Forests Invercargill, 27 July 1983, file 9/94/4, NZFS Invercargill

86. Director-General of Lands to Director-General of Forests, 13 November 1984, L&S 10/101, DOSLI Wellington

87. Conservator of Forests Invercargill to Ngai Tahu Maori Trust Board, 2 May 1985, file 9/94/4, NZFS Invercargill

88. Conservator of Forests Invercargill to Director-General of Forests, 18 June 1985, file 9/94/4, NZFS Invercargill

89. S Ashton to Conservator of Forests, 19 February 1986, file 9/94/4, NZFS Invercargill

90. Statement attached to plan showing Forest Hill and Hokonui blocks, L&S old file 1848, DOSLI Invercargill

91. Ibid

92. *New Zealand Gazette*, 1906, p 274

93. Ibid, 1908, pp 891–892, 1514

94. Part block I, Waimumu Hundred, NZMS 13 series cadastral map Southland 55, 3rd ed, 1 January 1953

95. SIMB 44, pp 311–312

96. *New Zealand Gazette*, 1982, p 3013

97. Ibid, 1984, p 14

98. Compiled lists in block files Southland 66A/8A and Southland 66A/9 (general land), MLC Christchurch

99. Action sheet, application for meeting of owners, alienation file 15/2/2075, NA Christchurch

100. Rural valuation and shore report, alienation file 15/2/2075, NA Christchurch

101. Action sheet, application for meeting of owners, alienation file 15/2/2075, NA Christchurch

102. Material in block file Southland 66A/9 (general land), MLC Christchurch

103. Appraisal from Conservator of Forests, alienation file 15/2/2075, NA Christchurch

104. Notice of meeting of owners, 11 June 1970, alienation file 15/2/2075, NA Christchurch

105. Minutes of meeting of owners, 25 June 1970, alienation file 15/2/2075, NA Christchurch

106. Affidavit of Mr Ian Sydney Wilson, 24 July 1970, alienation file 15/2/2075, NA Christchurch

107. SIMB 47, p 55

108. Cormack to registrar, 11 October 1980, alienation file 15/2/2307, MLC Christchurch

109. *Compendium*, vol 2, p 250

110. 'Schedule of Native Reserves in the Colony', 1899, MA Acc 2685 LC 20, NA Wellington

111. For supporting evidence, see O14B:55–73. These include the memoranda of transfer and certificates of confirmation for the sections referred to. Southland Land Registry transfer documents 39746, 99761, 55426, 170252, 185693, 182143.

112. *New Zealand Gazette*, 1963, p 1140

113. Extract from SIMB 17, pp 360–361

114. Partition order, 10 February 1887, correspondence file Southland 28, MLC Christchurch

115. Particulars of title, in correspondence file Southland 28, MLC Christchurch

116. Alienation file 15/2/1595, NA Christchurch

117. Certificate of title 128/176, correspondence file Southland 28, MLC Christchurch

118. Memorandum of transfer dated 13 October 1925, correspondence file Southland 28, MLC Christchurch

119. Registrar to R West, 19 October 1989, correspondence file Southland 28, MLC Christchurch

120. Registrar to R West, 5 September 1989, correspondence file Southland 28, MLC Christchurch

121. R West to registrar, 17 September 1989, correspondence file Southland 28, MLC Christchurch

122. Ibid; R West to Maori Trustee, 25 October 1989, correspondence file Southland 28, MLC Christchurch

123. Minutes of meeting of owners, 17 February 1960, alienation file 15/2/1058, NA Christchurch

124. Memorandum of transfer dated 19 January 1962

125. Under-Secretary, Native Department, to registrar Wellington, 20 February 1941, alienation file 15/2/1058, NA Christchurch

126. Director-General of Lands to Secretary for Maori Affairs, 27 March 1957, alienation file 15/2/1058, NA Christchurch

127. Minutes of meeting of owners; registrar to Under-Secretary, Native Department, alienation file 15/2/1058, NA Christchurch

128. Registrar to Under-Secretary, Native Department, 25 January 1941, alienation file 15/2/1058, NA Christchurch

129. Director-General of Lands to Secretary for Maori Affairs, 27 March 1957, alienation file 15/2/1058 NA Christchurch

130. Notice of meeting of owners, 20 November 1959, alienation file 15/2/1058, NA Christchurch

131. Minutes of meeting of owners, 9 December 1959, alienation file 15/2/1058, NA Christchurch

132. Ibid, 17 February 1960, alienation file 15/2/1058, NA Christchurch

133. Ibid

134. Ibid

135. SIMB 24, pp 60–61

136. SIMB 39, pp 246–247

137. Ibid

138. Order vesting Maori freehold land in trustees, Southland 50/24, MLC Christchurch

139. Alienation notice, South Island District Maori Land Court file 35/157

140. MA 54/18/34, NA Wellington

141. NZPD 1950, p 4722

142. Ibid, pp 4722–4723

143. Ibid, p 4726

144. Ibid

145. Ibid, 1970, p 4915

146. Ibid, p 4917

147. *Ngai Tahu Report 1991*, para 10.4.8

148. Ibid, para 18.4.4-6

149. A Chetham Strode to Native Secretary, 20 November 1860, AJHR, 1861, E-3H, p 6

150. 'Report by Mr A Mackay respecting the Aparima, Kawakaputaputa and Oraka Reserves', 25 March 1874, AJHR, 1874, G-5C, pp 1–4

151. *New Zealand Gazette*, 1913, p 2961

152. 'Report by Mr A Mackay respecting the Aparima, Kawakaputaputa and Oraka Reserves', AJHR, 1874, G-5C

153. Assistant under-secretary, Public Works, to clerk in charge, 16 October 1913, WI 23/41 pt 1, NA Wellington

154. Note dated 29 December 1913, WI 23/41 pt 1, NA Wellington

155. SIMB 18, p 240

156. Ibid, pp 237–240, 292; 19 pp 26, 127–128, 210–211

157. Commissioner of Works to Under-Secretary for Maori Affairs, 10 June 1949, WI 23/41 pt 1, NA Wellington

158. Under-Secretary for Maori Affairs to permanent head, Ministry of Works, 27 July 1950, W1 23/41 pt 1, NA Wellington

159. *New Zealand Gazette*, 1951, p 294

160. Commissioner of Crown Lands Invercargill to M Hayes, 8 May 1851, L&S 8/5/68, DOSLI Invercargill

161. Commissioner of Crown Lands Invercargill to W Hunter, 30 May 1951, L&S 8/5/68, DOSLI Invercargill

162. Commissioner of Crown Lands Invercargill to district field officer, 5 March 1956, L&S 8/5/68, DOSLI Invercargill

163. Submission approved by Commissioner of Crown Lands Invercargill, 1 September 1961, L&S 8/5/68, DOSLI Invercargill

164. Commissioner of Crown Lands Invercargill to town clerk, Riverton Borough Council, 2 October 1961, L&S 8/5/68, DOSLI Invercargill

165. Resolution of Riverton Borough Council, 13 November 1961, L&S 8/5/68, DOSLI Invercargill

166. Town clerk, Riverton Borough Council, to Commissioner of Crown Lands Invercargill, 13 February 1963, L&S 8/5/68, DOSLI Invercargill

167. Certificate of title 191282

168. Assistant director for Maori Trustee to Commissioner of Crown Lands, 18 November 1985, correspondence file Southland 1, MLC Christchurch

169. Extract from *Southland Times*, 20 April 1985, correspondence file Southland 1, MLC Christchurch

170. Ibid, 4 May 1985, correspondence file Southland 1, MLC Christchurch

171. Murihiku deed of purchase, Otago 1, DOSLI Wellington

172. 'Report by Mr A Mackay respecting the Aparima, Kawakaputaputa and Oraka Reserves', AJHR, 1874, G-5C

173. SIMB 33, pp 270–271

174. Maori Trustee to Commissioner of Crown Lands Invercargill, 18 November 1985, correspondence file Southland 1, MLC Christchurch

175. Southland SO plan 1048

176. County clerk Wallace to clerk, Riverton borough, 17 December 1980, not sourced

177. Wallace County Council district planning scheme, first review, planning map sheet 27

178. Public notice, *Southland Times*, 15 January 1988

179. Notice of objection dated 18 January 1988, water rights file A352, Southland Catchment Board; report on meeting to Southland Catchment Board Water Resources Committee, 4 March 1988, item 1.04

180. Notice of objection dated 9 February 1988, water rights file A352, Southland Catchment Board

181. Water resources manager, Southland Catchment Board, to T Nilsen and others; N Bryan, 11 April 1988, water rights file A352, Southland Catchment Board

182. N Bryan to water resources manager Southland Catchment Board, 14 May 1988, water rights file A352, Southland Catchment Board

183. *Ngai Tahu Report 1991*, paras 17.6.10, 24.2

184. 'Report by Mr A Mackay respecting the Aparima, Kawakaputaputa and Oraka Reserves', AJHR, 1874, G-5C

185. SIMB 48, pp 164–165

186. Wallace County Council district planning scheme, first review, ordinances for industrial fishing zone, pp 291–294 and planning map sheet 27

187. SIMB 70, p 106

188. Wallace County Council district planning scheme, first review, 1986, planning map sheet 27

189. SIMB 33, p 14

190. *New Zealand Gazette*, 1948, p 346

191. 'Report by Mr A Mackay respecting the Aparima, Kawakaputaputa and Oraka Reserves', 25 March 1874, AJHR, 1874, G-5C, p 3

192. SIMB 49, pp 83–84, 138; correspondence file Southland 1, MLC Christchurch

193. *Ngai Tahu Report 1991*, para 10.4.8

194. Under-Secretary, Native Department, to S Paatu, 18 February 1890, L&S old file 2482, DOSLI Invercargill

195. Memorandum of transfer, Southland land registry document 9595

196. 'Report by Mr A Mackay respecting Aparima, Kawakaputaputa, and Oraka Reserves', AJHR, 1874, G-5C, enclosure 3, p 9

197. Memorandum of transfer, Southland land registry document 9683

198. *New Zealand Gazette*, 1894, p 376

199. Ibid, p 1623

200. Memorandum of transfer, Southland land registry document 50302

201. Under-Secretary for Maori Affairs to Director-General of Lands, 2 February 1951, L&S 8/3/38, DOSLI Invercargill

202. *New Zealand Gazette*, 1953, p 637

203. District land purchase officer to District Commissioner of Works Invercargill, 14 July 1953, L&S 8/3/38, DOSLI Invercargill; SIMB 34, p 401

204. SIMB 28, pp 319, 367

205. Ibid

206. *New Zealand Gazette*, 1953, p 16

207. District land purchase officer to District Commissioner of Works Invercargill, 14 July 1953, L&S 8/3/38, DOSLI Invercargill; SIMB 34, p 401

208. *Ngai Tahu Report 1991*, para 4.7.8

209. Decision of Wallace County Council on application by Aparima Maori Village Committee for planning consent to retain and upgrade the Maori Village, located on Pilot reserve Riverton, for tourist and recreation purposes, 17 July 1987, not sourced

210. *New Zealand Gazette*, 1966, p 1468

211. Ibid, 1968, p 1835

212. *Ngai Tahu Report 1991*, paras 10.4.15, 15.7.4

213. SIMB 70, pp 106–107

214. Ibid, p 107

215. Cadastral map of Colac Bay, correspondence file Southland 27, MLC Christchurch

216. *Ngai Tahu Report 1991*, para 10.8.6

217. District surveyor Merivale to chief surveyor Invercargill, 21 October 1895, L&S old file 999, DOSLI Invercargill

218. SIMB 16, p 252

219. Southland land registry certificate of title 223/37

220. Deputy registrar to acting district ranger, NZFS, 17 May 1982, correspondence file Southland 1, MLC Christchurch

221. Southland land registry certificate of title 223/37

222. SIMB 38, p 43

223. Ibid, p 44

224. Ibid, p 101

225. Ibid, p 42

226. *New Zealand Gazette*, 1961, p 1733

227. SIMB 44, p 325

228. *New Zealand Gazette*, 1969, p 964

229. Secretary, head office, to Maori Land Court Christchurch, 10 June 1969, correspondence file Southland 27, MLC Christchurch

230. *New Zealand Gazette*, 1969, p 2342

231. Secretary, Colac Bay Progress League, to Maori Land Court Christchurch, 26 August 1969, correspondence file Southland 27, MLC Christchurch

232. Chief surveyor Invercargill to registrar, 3 November 1969, correspondence file Southland 27, MLC Christchurch

233. Invercargill SO plan 8990

234. D G Hatfield and Associates to Secretary of Maori Affairs Christchurch, 18 August 1988, block file Southland 27, MLC Christchurch

235. Registrar to executive officer, Wallace County Council, 25 November 1988, correspondence file Southland 27, MLC Christchurch

236. Cormack to registrar, 2 November 1988, correspondence file 27/4/15, MLC Christchurch

237. Ibid

238. Registrar to executive officer, Wallace County Council, 25 November 1988, correspondence file Southland 27, MLC Christchurch

239. County clerk Wallace to Commissioner of Crown Lands Invercargill, 13 August 1957, correspondence file Southland 27, MLC Christchurch

240. Registrar to county clerk Wallace, 18 November 1957, correspondence file Southland 27, MLC Christchurch

241. Southland land registry deeds register 30/426

242. Item 41 to the Schedule to the Special Powers and Contracts Act 1882

243. Southland land registry deeds register 36/592–593

244. Resolution of assembled owners, 23 May 1957, not sourced

245. District officer of Maori Affairs to L Hart, 30 May 1958, not sourced

246. Southland land registry certificate of title B1/1062

247. Stout, Hewat, Binnie and Howorth to Maori Trustee, 21 January 1970, Maori Trustee file 4/9/56, Christchurch

248. Internal memorandum Munro to Roberts, 30 January 1970, Maori Trustee file 4/9/56, Christchurch

249. District officer to Stout, Hewat, Binnie and Howorth, 6 February 1970, Maori Trustee file 4/9/56, Christchurch

250. B Brailsford, *The Tattooed Land*, Wellington, AH & AW Reed, 1981, pp 229–230

251. *Ngai Tahu Report 1991*, para 10.4.11

252. Mantell MS diary, 1851–52, in J H Beattie, *The Pioneers Explore Otago*, Dunedin, 1947, appendix B, p 122

253. SIMB 60, p 155

254. Note dated 21 February 1990, correspondence file Southland 59A/1, MLC Christchurch

255. SIMB 65, pp 131–133

256. File note in alienation file 15/2/1372, MLC Christchurch

257. Stout, Hewat, Binnie and Howorth to registrar, Maori Land Court, 4 August 1967, alienation file 15/2/1372, MLC Christchurch

258. Minutes of meeting of owners of section 77, 7 September 1972, alienation file 15/2/2124, MLC Christchurch

259. Ibid

260. Minutes of meeting of owners of section 78, 7 September 1972, alienation file 15/2/2122, MLC Christchurch

261. Minutes of meetings of owners of sections 76 and 79, 8 September 1972, alienation files 15/2/2123, 15/2/2125, MLC Christchurch

262. SIMB 49, pp 341–342

263. Invercargill SO plan 3472

264. Registrar, Maori Land Court, to S Cormack, 25 August 1971, correspondence file Southland 60, MLC Christchurch

265. *New Zealand Gazette*, 1969, p 574

266. Case 69/284 to Minister of Lands, approved 19 March 1969, Conservation HO file REH 0237; Commissioner of Crown Lands Invercargill to R A Whaitiri, Murihiku Tribal Committee, 7 June 1968, L&S Invercargill file 8/4/1, Conservation Southland; file note by district administration officer Invercargill, 12 September 1968, L&S Invercargill file 8/4/1, Conservation Southland

267. Case R77/134 to Minister of Lands, approved 5 April 1977, Conservation HO file REH 0237; *New Zealand Gazette*, 1977 p 1105

268. Teriana Nilsen's submission, E30

269. 'Report of Commission of Inquiry into a Claim made by Certain Natives to an Area of Land at Waiau, Southland', 18 November 1915, AJHR, 1916, G-2, pp 1–7; SIMB 19A, pp 1–33

270. 'Report of Commission of Inquiry into a Claim made by Certain Natives to an Area of Land at Waiau, Southland 1916', 18 November 1915, AJHR, 1916, G-2, p 2

271. *Ngai Tahu Report 1991*, para 8.10.8

272. 'Return of Reserves in the Province of Otago made in pursuance of Awards of the Native Land Court, in May, 1868, in final extinguishment of all Claims under the Ngaitahu Deed of 1848', *Compendium*, vol 2, p 244

273. Correspondence in Wai 189 file, Waitangi Tribunal

274. SIMB 19A, p 12

275. Ibid, p 15

276. Ibid, p 18

277. Ibid, pp 8–10

278. Ibid, pp 25–26

279. 'Report of Commission of Inquiry into a Claim made by Certain Natives to an Area of Land at Waiau, Southland', 18 November 1915, AJHR, 1916, G-2, p 6

280. Ibid, p 3

281. 'Report Relative to Setting Apart Land for Landless Natives in South Island', 16 June 1899, AJHR, 1899, G-1, p 1

282. 'Report Relative to Setting Apart Land for Landless Natives in Middle Island', 20 June 1901, AJHR 1901, G-1, p 1

283. Percy Smith, Mackay to Surveyor-General, 2 March 1903, L&S old file 1449, DOSLI Invercargill

284. Surveyor-General to chief surveyor Invercargill, 8 May 1903, L&S old file 1449, DOSLI Invercargill

285. Statement attached to plan showing Forest Hill and Hokonui blocks, L&S old file 1848, DOSLI Invercargill

286. Ibid

287. Schedule of allocations transferred from Wairaurahiri block to Hokonui block (extracted from register kept by DOSLI

288. Chief surveyor to registrar, 6 May 1971, correspondence file Southland 60, MLC Christchurch

289. *New Zealand Gazette*, 1919, p 1292

290. Registrar to J Hoare, 10 January 1975, correspondence file Southland 60, MLC Christchurch

291. *Ngai Tahu Report 1991*, para 20.7.4

Chapter 6

Rakiura Ancillary Claims

There are but a few grievances concerning land in Stewart Island. The most consequential of these contrary to the principles of the Treaty of Waitangi — regarding the Titi Islands and Rarotoka Island — have already been dealt with in the *Ngai Tahu Report 1991*. The claims were responded to by the Crown witness, David Alexander.

6.1 Claim no: **90**
Claim area: **Paterson Inlet**
Claimants: **Rena Naina Peti Fowler (E14)**
Claim:

> **Mrs Fowler claimed that land originally granted to five of her tupuna under the Stewart Island Grants Act 1873 has been 'lost to us by way of methods and means that we are unable to prevent' (E14:1).**

6.1.1 This claim concerns the confusion about two section 14s, in different blocks, on either side of Paterson Inlet. In 1878 William, Robert, George, and James Coupar, and Phyllis Wesley were granted title to section 14 in Paterson survey district under the Stewart Island Grants Act 1873 (E14:3). Although the grant did not say so explicitly, it is evident from the sketch on the grant that the section lay in block XVI on 'the Neck', on the southern side of the harbour. In conformity with the legislation, the section comprised 48 acres: 10 acres per male and eight per female.

In addition to title to section 14, block XVI, the Maori Land Court also has record of title to section 14 in block I, Paterson survey district. This section lies across the water on the northern side of the harbour, on an isthmus between Halfmoon Bay and Paterson Inlet, and originally comprised 30 acres. According to court records, section 14, block I, like its counterpart in block XVI, was granted to William, Robert, and George Coupar under the Stewart Island Grants Act (AB25:2).[1] The claimant Mrs Fowler is listed as the 10th owner in the schedule of ownership orders for the section (E14:10). However, information from the Land Registry Office shows that section 14, block I was in fact granted to a James Thomson on 24 January 1882 (E14:16).[2] The grant was made with 'the written authority' of the Governor and it is considered from this that at the time of its issue the Crown considered that the land was Crown land available for disposal (AB25:11).[3] The section has since passed hands a number of times and is now referred to as part section 14, block I, of 22 acres 3 roods.

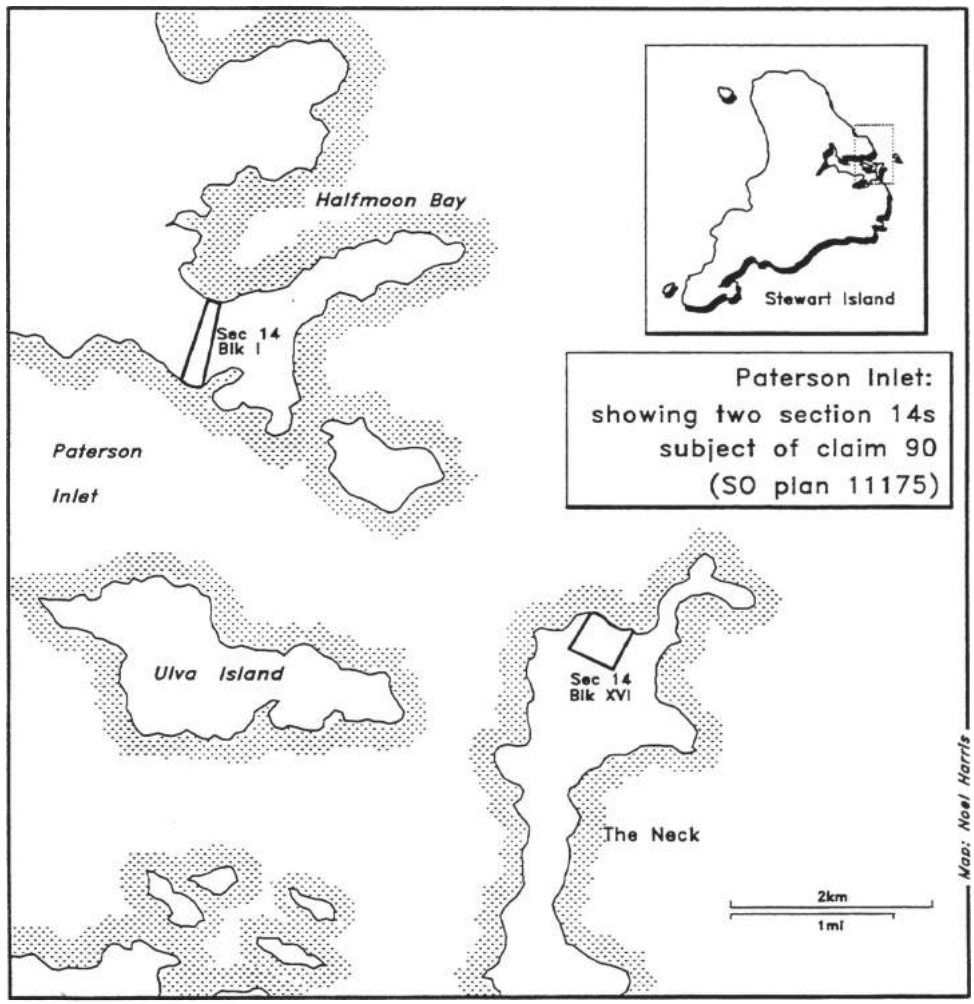


Figure 9: Paterson Inlet

The confusion over the two sections may have arisen from an 1891 schedule of land granted to half-castes under the 1873 Act. Of the five people interested in section 14, the schedule listed only William, Robert, and George Coupar, and did not specify which block the section lay in. This would perhaps lead one to conclude that section 14 comprised only 30 acres: the acreage of the section in block I. A further basis for confusion may have been that in the 'Block' column of the schedule two periods are shown for the Coupars' allocations. At a quick glance, they could be mistaken for inverted commas, which would then denote that the section fell within block I (E14:9).[4]

Maori Land Court staff became aware of the discrepancy in 1983 after inquiries were made about the matter by Mrs Fowler. She was informed that section 14, block I was not Maori land and that the court had 'done all that it can' (AB25:12).[5] In March 1984 part section 14, block I was determined to be Maori freehold land but an application was subsequently made by the registrar of the court to have this order amended. The deletion of part section 14, block I from the schedule of Maori land was ordered on 12 February 1985 (AB25:15).[6]

In her submission to the Tribunal, Mrs Fowler wrote:

> I ask this learned Tribunal to please help us resolve this rather long standing problem which I feel is not of our making . . . I feel that it is not only crown leases that are suspect hut that it is even in the everyday execution of sunple pen mistakes and we are stuck with the hurden of subsequent reactions. (E14:2)

The Trihunal's conclusion

6.1.2 It is apparent that William, Robert, George, and James Coupar and Phyllis Wesley did receive the land they were entitled to under the Stewart Island Grants Act 1873. Moreover, it is clear from the grant that this entitlement was satisfied with section 14, block XVI. It is apparent that the Maori Land Court's error in recording section 14, block I as Manri freebold land bas resulted in the confusion surrounding the sections today. This error, bowever, has been brought to notice and correctly amended hy the court. The Trihunal is satisfied that section 14, block I, granted to James Thomson in 1882, has never been Maori freehold land. The grievance is not sustained.

6.2 Claim no: **91**
Claim area: **Paterson Inlet**
Claimant: **Sydney Cormack (E16)**
Claim:

> **Mr Cormack alleged that the Crown's application to the Maori Land Conrt to purchase Maori reservesnn 'the Neck' of Paterson Inlet was inconsiderate of Maori either living or owning land there. He also ohjected to the legislation of the time with respect to 'uneconomic interests', which made it difficult for the Maori owners to oppose the application.**

6.2.1 In April 1971 the registrar of the Manri Land Court in Christchurch was informed of the Department of Lands and Survey's 'general consideration' to purchase Ngai Tahu reserves around Paterson Inlet in order to provide puhlic reserves in the area (P6:345).[7] The Commissioner of Crown Lands 'had in mind' in particular sections 15A (a 10-acre scbool reserve) and 22 (an old landing reserve) in block XVI and sections 192 and 193 in block I.

Mr Cormack was informed of the Crown's interest in purchasing the sections on 3 May 1971 (P6:346).[8] An application to have trustees appointed for the landing reserve was heard by the Maori Land Court on 5 August 1971 (P6:347–348).[9] Mr Cormack was present. Four trustees were appointed under section 438 of the Maori Affairs Act 1953 to bold and administer the land for the benefit of all owners of Paterson Inlet block XVI, with no power to alienate.

6.2.2 Mr Cormack bad also been advised of the Maori Trustee's intention to purchase the uneconomic interests of section 1 on the Neck, comprising 86 acres. In his submission to the Tribunal, Mr Cormack alluded to at least two Maori Land Court sittings where section 1 on the Neck was at issue (E16:6). He maintained that a valuation of £700 was obtained for the section and that the sale was

objected to by three economic owners. It was said that at the next sitting a revised valuation of £300 was given and consequently there were now no economic owners. Mr Cormack maintained that it was only the owners' openly expressed resistance to the sale which stopped the alienation of the land to the Crown. The Crown's application was dismissed and the court recommended that no further sale of Maori land be made on Stewart Island.

The above allegation has not been researched by Mr Alexander. Regarding the claim about the Crown's intention to purchase other Ngai Tahu reserves on the Neck, Mr Alexander submitted that, as at 1971, the Crown was only contemplating acquiring the sections, and did not appear to have committed itself to the concept.

The Tribunal's conclusion

6.2.3 Regarding the Crown's intention to purchase Ngai Tahu's land on the Neck, the Tribunal is of the view that as none of the land was taken the claimants have not heen prejudicially affected. We do not upbold this grievance.

In the ahsence of any evidence on the other aspect of Mr Cormack's claim, we are unable to reacb any finding. However, as Mr Cormack points out, the old 'uneconomic interests' rule which allowed small interests in Maori land to be acquired by the Maori Trustee on succession had the effect of disenfranchising many Maori landowners. It may well bave lessened the number of owners in eacb hlock, therehy possihly reducing the volume of opposition to alienation of the land. The uneconomic rule was strongly objected to by Maori and was repealed in 1974.

6.3 Claim no: **92**
Claim area: **Port Adventure and Toitoi**
Claimant: **Harold Ashwell (E3)**
Claim:

> **Mr Ashwell claimed that land set aside at Port Adventure and Toitoi nnder the South Island Landless Natives Act 1906 hut never granted shonld be returned to Ngai Tahu without the conditions stipnlated hy the Governmeut.**

6.3.1 Under the landless natives grants scheme, three hlocks of land were set aside on Stewart Island to provide for those deemed to be landless. The first of these, at Lords River, was surveyed and the list of allocatees and their respective sections was gazetted in compliance with the South Island Landless Natives Act 1906 (O14A:67).[10] Under pressure to meet the requirements of the scheme, in 1904 two further blocks on Rakiura were considered for allotment. The Port Adventure hlock, of 10,000 acres, was accordingly declared permanently reserved for allotment to named individuals from Marlborough. Land at Toitoi, 7400 acres in extent, was also permanently reserved for Ngai Tahu of Kaikoura (O14A:67).[11] The names of the allocatees, together with their respective shares in the two blocks, were entered into the Native Land Register (AB27:313–345).[12] Not all of the land in the

blocks was allocated: only 9445 acres of the 10,000-acre Port Adventure block and 7035 acres of the 7400-acre Toitoi block. As with much of the land granted under the scheme, the two blocks were of 'indifferent' quality. In 1929 the field inspector commented:

> Owing to the very poor nature of the land when considered for settlement purposes, and the great expense and risk of failure in bringing it in, I cannot see any possibility of making a successful settlement on either of the blocks even after the milling timber is taken off. There are a few isolated spots along the coast that might be considered possible but for the fact that access has to be by boat and no natural harbours are provided. (AB27:390)[13]

Although permanently reserved, the Port Adventure and Toitoi blocks were never surveyed, and as a result title was never granted to those listed as entitled to the land. Under section 8 of the 1906 Act the gazetting of the names of those entitled, their respective shares, the name of the locality, and the section numbers was required as a basis of title. As a subdivisional survey was not completed, such a notice could not be published.

In 1924 the matter of the Port Adventure block was brought to the attention of the Minister of Lands by a number of the Marlborough allocatees (AB27:376).[14] The possibility of issuing title to each block in the names of the beneficiaries as a whole, rather than undertaking a subdivisional survey, was investigated but never followed up. This could be attributed to a number of factors: the expense of surveying the block boundaries, the fact that Maori had not settled on the land, and the suggestion that the Crown might resume the land and pay the beneficial owners compensation (AB27:387–388).[15] In any case, the matter lapsed. Further thought was given in 1964 to the Government resuming the land under section 110(6) of the Maori Purposes Act 1931 and compensating the intended owners. Again, nothing came of the suggestion.

Attempts to gain title

6.3.2 In the early 1980s an application was lodged by Rewi Fife, president of Rakiura Maori Land Incorporated, for Crown grants to issue to the Port Adventure and Toitoi blocks. Mr Fife made the application as an individual rather than on behalf of the incorporated society. Although having no beneficial interest in the blocks himself, he was motivated by his interest in protecting Maori land on Stewart Island.

His application was considered by the Department of Lands and Survey and it was established that the amount of land which had been allocated to individuals by Mackay and Percy Smith (7035 acres 3 roods 3 perches in the case of Toitoi and 9445 acres 1 rood 30 perches in the case of Port Adventure) was Maori land pursuant to section 110(4) of the Maori Purposes Act 1931. The residual land in the blocks, which had not been required for allocation, was considered to be Crown land in terms of section 110(9) (AB27:399).[16] It may be helpful at this point to set out these subsections because the status of the land became a material issue in the negotiations for the return of the land

and is indeed the key issue of this claim. Section 110(4) of the Maori Purposes Act 1931 provided that:

> All land permanently reserved and *allocated* in favour of landless Natives under the enactments in this section first recited (wbether titles are issued under this section or otherwise) shall be deemed to be Native land within the meaning of the principal Act . . . [Emphasis added.]

Under section 15 of the Maori Purposes Act 1966 a new subsection (subs (9)) was added to section 110 of the 1931 Act. This subsection provided that:

> Where any land permanently reserved pursuant to the enactments referred to in the recital to this section *has not been allocated*, that land may be dealt with as if it were ordinary Crown land subject to the Land Act 1948. [Emphasis added.]

As set out above, throughout the initial phase of negotiations to have the Crown grant of the hlocks completed, the Crown accepted that the land allocated to various individuals was Maori land in terms of section 110(4). Meetings between the Department of Lands and Survey on the one hand and Mr Fife and other members of Rakiura Maori Land Incorporated on the other took place throughout 1982. Questions regarding the society's authority to negotiate on behalf of the beneficial owners were dispelled by Judge M C Smith of the Maori Land Court, who informed the department that the society already had the power under its rules to negotiate with the Crown for the completion of the grants (AB27:405).[17] The department's position on completing the grants included the retention of a 20-metre wide strip of coastline along the full length of both blocks and up the Toitoi River. It also sought the society's agreement that the Crown would not be required to partition the hlock according to the original allocations. Of less importance was a walkway easement over an existing track from Little Glory Bay to Port Adventure. Although the above were put to the society as conditions, in fact the department's bargaining position was not strong. As the allocated land was considered to be Maori land, the only negotiating strengths were the unallocated areas of Crown land within each hlock and the possihility that the Local Government Act 1974 would apply to the blocks, a partition of which would require the setting aside of a 20-metre wide esplanade reserve (AB27:411–412).[18] This possibility was later dismissed.

The society's response to the department's position was sent to the head office at the close of 1982. In effect it was a complete rejection of the Crown's terms. The society proposed that the allocated area, including a one-chain strip *below* the high-water mark, be vested in the society immediately in trust for the owners. Anything less, it was argued, would not reflect the true intent of the reservation: 'The coast and foresbore contain the various elements traditionally essential for the survival of the Southern Maori people and culture . . .' (AB27:416).[19] Of concero was the lack of control they would be able to exert over resources such as paua if they did not own the coastal strip (AB27:427).[20] It was also contended that, as an expression of goodwill and in recognition of the many years of delay in issuing title, the residual areas of Crown land should be included in the title of the hlocks. The society also stated that the question of survey should be adjourned and left open

for a future decision when the position of the descendants could be better assessed. It was particularly opposed to the walkway easement, desiring control over access to the blocks because of the revenue received from recreational shooting. Not surprisingly, therefore, this first phase of negotiations resulted in a stalemate.

A further meeting was held between the parties in September 1983, with consideration given to the reservation of the Toitoi swamp as a wetland area as well as other alternatives to ease the deadlock (AB27:424–429).[21] In November 1983, however, the office solicitor for the department produced an alternative legal opinion on the interpretation of section 110 of the Maori Purposes Act 1931 (O14B:141–142).[22] Sections 7 and 8 of the South Island Landless Natives Act 1906 were referred to, which provided:

> 7. For the purpose of carrying out the intention of this Act, or in fulfilment of any contract, promise, agreement, or understanding in connection with the setting-apart of lands for landless Natives in the South Island, the Governor may from time to time execute warrants for the issue of Land Transfer certificates to all or any parts of the land heretofore selected and allocated in favour of any such purpose, to any person or persons whose names have been ascertained either in severalty or as tenants in common, and may fix the terms and conditions and the dates on which the legal estate therein shall respectively vest.
>
> 8. The names of the persons deemed to be entitled to such instruments of title, together with the respective areas allotted them, shall be published in the *Kahiti*, together with the name of the locality and the sectional number; and such publication shall form the basis of title, and shall operate provisionally as such for the purpose of exchange, subdivision, or the reduction of areas as hereinafter provided.

The assistant solicitor argued that 'allocated' was used in a general sense in section 7 and was particularised in section 8. For 'allotment' to have taken place in terms of the South Island Landless Natives Act 1906, the names of the persons deemed entitled, their respective areas, the name of the locality, and the section number would all have had to have been determined. As the land had not been surveyed, the last of these four factors, the section numbers, had not been set down. Neither were the details of the allocations published in the *Kahiti*. Therefore, it was asserted, there was no allocation in terms of the 1906 Act and section 110(4) did not apply. Rather, it was thought that the land fell within the provisions of section 110(9) and, therefore, the land was Crown land subject to the Land Act 1948. Mr Fife was subsequently told by the Minister of Maori Affairs that the Maori Land Court 'agreed' with the department's finding (O14B:146).[23] This endorsement, however, was given by the district solicitor for the Maori Affairs Department in Christchurch. It was not a considered opinion, but simply a letter concurring with the Department of Lands and Survey's view (AB27:461).[24]

Although the change in status did not affect the Crown's intention to complete the title grant, in the words of the director-general, 'it gives the Department a much stronger hand and removes the

bargaining power of the Maoris' (AB27:430).[25] The department was now in a position to 'insist' on its conditions.

The society contested such a conclusion, arguing that section 7 recognises allocations as made, while section 8 clearly states that the details to be published in the *Kahiti* are for the purpose of effecting title, not allocation. They pointed out that there is nothing in the Act to say that the non-publication of title details in the *Kahiti* (due to the Crown's failure to survey the blocks) voids any allocations made in favour of landless natives (AB27:443).[26]

It was suggested by the department that the Maori Land Court was the most appropriate authority to resolve the issue of the blocks' status. The society, however, was distrustful, viewing the court's earlier endorsement of the Crown's position as collusion, even though the court had not made any determination on the issue. Negotiations between the department and the society once again broke down. Subsequent appeals were made by the society to the Minister of Maori Affairs, the latter again recommending that the issue of status be referred to the court for determination. In his view, however, the status of the land was 'of little long term importance' (AB27:446).[27] In November 1986 the society wrote to the Waitangi Tribunal seeking the Tribunal's 'intervention and assistance' in having the blocks legally declared Maori land, and thereby returned to the rightful owners (AB27:452–453).[28]

6.3.3 The following June a meeting was arranged between Mr Ashwell and Mr Te Au, on behalf of the society, and the Minister of Maori Affairs, Koro Wetere. As a result of this meeting the following agreement was reached:

- the incorporation accepted, under protest, that the blocks were Crown land;
- the Crown would apply to the Maori Land Court to vest the full area of the blocks, including the residual Crown areas, in the society as trustees for the allocatees under section 437 of the Maori Affairs Act 1953;
- a 20-metre wide strip along the coastline and the banks of the Toitoi River would become a Maori reservation under section 439 of the Maori Affairs Act 1953 for the common use and benefit of the public;
- the incorporation would consider the reservation of the Toitoi swamp for public use and benefit; and
- the Crown would arrange survey of the blocks and reservations (O14B:147).[29]

In his submission to the Tribunal at Te Rau Aroha Marae at Bluff in February 1988, Mr Ashwell expressed his resentment that lands set aside by an Act of Parliament for a specific purpose have been made the subject of a new deal (E3:5). If a new agreement had to be negotiated, he maintained that this should be done on the basis that the number of descendants had trebled and therefore the

area of land required to settle them should also be trebled. With regard to the Maori reservations to be created for public purposes under section 439 of the Maori Affairs Act 1953, be stated that they should not bave to concede anything to get what is rightfully a Maori resource.

6.3.4 In researching the claim, Mr Alexander submitted that the Crown bas agreed to more than its strict obligations require of it:

- it has agreed to all of the land in both blocks becoming Maori land, not just the 9445 acres of the Port Adventure block and the 7035 acres of the Toitoi block whicb it was originally planning to grant; and

- it could have insisted that the coastal and riverbank strips remain in Crown ownership (O14A:70–71).

Although Mr Alexander conceded that the additional grants could easily be justified given the nearly 90 years of Crown neglect in arranging the grants, and the saving that the Crown makes by not having to survey all of the individual allocations, be considered that the agreement leaves the Crown open to risk. At no time during the negotiations with Rakiura Maori Land Incorporated has the Crown consulted the allocatees or their successors, or atiempted to do so. He maintained that this leaves the Crown open to a charge that it bas gone behind the backs of those wbo have a greater stake than the society in the land concerned. This, be said, may be dealt with by the Maori Land Court at a later date. He did not address the key issue regarding the status of the land.

The survey has not yet begun. Attempts to alter the boundaries to reduce the costs of surveying the blocks and to regularise the land-bolding pattero were not supported by the Department of Conservation. On 5 January 1988 the chief surveyor wrote to the Acting Director-General of Lands, asking for urgent confirmation that the survey was to proceed (E29).[30] It was estimated that the survey would cost $200,000, although this was not definite. The Department of Survey and Land Information is also aware of this claim to the Tribunal and has suggested that any survey should wait, pending the Tribunal's views on the matter (E28).[31] In July 1989 discussions were beld between the department and the Maori Land Court as to the form the section 437 application should take (AB27:455–459).[32] It appears that recent delays bave been due to the problems and expense of carrying out the block surveys. The department wisbes to explore further the possibilities of boimdary rationalisation with the Department of Conservation and the society (AB27:460).[33] Despite the lack of progress there is no suggestion that the Crown has withdrawn its commitment to seeing the agreement implemented.

The Trihunal's conclnsion

6.3.5 **On the issue of status**

The Tribunal has been asked by the claimant to find on a legal question — the status of the Port Adventure and Toitoi blocks — wbicb bas not been argued by either of the parties. Indeed, the legal

arguments of each party have been discovered only as a result of research into the matter. It is questionable whether the Tribunal is the correct body to conduct such a judicial review. Our brief is to inquire into and find on matters in terms of the principles of the Treaty of Waitangi, not general law. Having said that, we do make the following comments.

In our opinion, the Crown's argument that the land is Crown land by virtue of section 110(9) falls down in interpreting section 8 of the South Island Landless Natives Act 1906 to say that the blocks were not allocated as provided in section 110(4) of the Maori Purposes Act 1931 because certain elements were missing in the allocation process, namely the section numbers. We find considerable merit in the society's contentions that section 8 sets out the procedure to establish title, not allocation, and that allocation as intended by section 7 of the Act referred to Mackay and Percy Smith's exercise in matching landless Maori to available Crown lands. It was not dependent on the procedures outlined in section 8. Section 110(9) has application only to such lands as were permanently reserved and not required for the satisfaction of claims under the scheme; for instance, the residual areas which were not allocated from the two blocks. In our view, the Crown's original view as expressed in 1981 was the correct one; the allocated areas of some 7035 and 9445 acres are Maori land pursuant to section 110(4) and the residual areas, now calculated at 541 hectares, are Crown land in terms of section 110(9) because they have never been allocated.

It is easy to understand why Rakiura Maori Land Incorporated feels as angry as it does about the situation. The Crown has been able to obtain the society's agreement to a number of conditions on the questionable premise that the land is Crown land. Although the Minister may have thought this question to be of 'little long term importance', it is evident that the status of the land has been crucial to the negotiations, and the strength of each negotiating party's hand. The 1987 agreement was, in effect, one forced upon the society by the Crown's opinion on the legal status of the land. We feel that this question should have been resolved before any agreement was attempted, although we can appreciate the concerns of both parties to have the matter completed. The Crown's persistence in pushing its interpretation of the legislation, without taking measures to have the issue resolved, does not indicate a consideration for the principles of partnership or good faith inherent in the Treaty.

We would point out that the question of status has a bearing on other claims and other landless natives lands which were permanently reserved for specific individuals but never subsequently granted (see claim 34). It is an issue which needs to be determined by an independent authority. It is to the Crown's credit that it recommended recourse to the Maori Land Court for the resolution of the status issue. The society's misgivings about the court's impartiality on this issue, believing the court had sanctioned the Crown's interpretation, can also be understood. However, as we have discussed above, the court's endorsement was not a considered judicial opinion and the Tribunal considers that this course of action still warrants consideration.

It is important to note that the Maori Land Court has jurisdiction under section 131 of Te Ture Whenua Maori Act 1993 to determine and declare by order the particular status of any parcel of land whether or not that matter may involve a question of law. The status of these two important blocks

of land appears to rest so far on opinion only and has not been canvassed in a judicial bearing. In addition to the above jurisdiction (which is a new jurisdiction in that the Maori Land Court from 1 July 1993 can determine the status of land that is claimed to be Crown land), the Maori Land Court bas available to it a further jurisdiction under section 18(1)(i) of the 1993 Act. This new section permits the court:

> to determine for the purposes of any proceedings *or for any other purpose* wbether any specified land is or is not beld by any person in a fiduciary capacity, and, where it is, to make any appropriate vesting order. [Emphasis added.]

The Maori Land Court can now have regard to all the circumstances surrounding claimed rights to any piece of land and, having declared such land is held in trust, may then proceed to dispose of it by vesting order. This new law is now available to those claiming interest in Toitoi and Port Adventure and whilst the decision of the Maori Land Court is a matter for that court, it would seem to this Waitangi Tribunal that an application could well be argued with some force that the Crown holds these two blocks in trust for the persons to wbom they were originally allocated. Independently, therefore, of any finding of this Tribunal, there would appear to be a possible remedy available to the claimants to seek an order as to status from the Maori Land Court and possibly also use the new jurisdiction of that court to seek a declaration of trust and/or a vesting order in the names of the persons entitled, being those descendants of the original allocatees.

6.3.6 On the issue of Treaty principles

Having voiced our opinion on the status of the Port Adventure and Toitoi hlocks, we turn now to consider the Crown's actions in the light of Treaty principles. The fact of the matter is that the two hlocks were permanently reserved and allocated to named Manri in order to relieve, in however pitiful a way, the effects of their landlessness. Title was never granted because the hlocks were never surveyed. The blocks were never surveyed because of the cost involved and in light of the fact that the land would probably never be occupied hy the allocatees, given its remoteness and lack of access. And so the position remained. In 1924 the Crown considered issuing title in one to eacb of the blocks. It also considered a compensatory monetary settlement. Nothing happened. In 1964 the Crown looked at resuming ownership and paying compensation. Nothing happened. In the 1980s Rakiura Maori Land Incorporated sought title. When negotiations for the completion of title to the land reacbed an impasse, the Crown departed from the view held for 70 years that the land was Manri land, and decreed that the land was Crown land. Despite the agreement reacbed in 1987, the land remains in Crown hands after 90 years of procrastination. The Trihunal is of the view that, while the Crown has recognised Maori entitlement to the land, it has failed to exercise its Treaty ohligation to act in good faith by completing the survey and granting title. We consider that the Crown has an obligation in terms of the Treaty to complete this vesting of Port Adventure and Toitoi hy surveying the two blocks and returning the land to those entitled.

Despite the fact that the 1987 agreement was dictated hy the strong hargaining position of the Crown, the compromise was not without merit. The Crown has endeavoured to protect the public

interest by insisting on the reservation of areas for puhlic use and enjoyment. In return for the reservation of the coastal strip and the Toitoi River, the Maori allocatees would receive title to the residual areas of Crown land. Under the section 439 reservation provisions, they would retain ownership of and control over the reservations. Given that this 'agreement' was made under duress, however, and given the suhsequent dissatisfaction expressed hy the claimant, we feel that it would be unsuitahle to consider a settlement along the lines of the 1987 agreement.

The claimant Mr Asbwell is not the only party with concerns about the 1987 agreement. The Crown, too, has raised the issue of representation, questioning wbether Rakiura Maori Land Incorporated has authority to speak for the original allocatees, and wbether the Crown should be a party to an agreement with persons other than those entitled. However, the Trihunal considers that this problem could easily be overcome by following Judge Smith's 1982 suggestion that the title issue in the names of those originally gazetted in their respective shares, and that the land be declared Maori freehold land and then vested in a trustee under section 215 of Te Ture Whenua Maori Act 1993 (formerly s 438 Maori Affairs Act 1953). In this process the Maori Land Court, following the usual procedure, would probably give directions as to private and public notice of its proposal to revest and create a trust. This would generally result in a meeting beld prior to the court fixture at wbich the owners could discuss the issues and nominate trustees to represent them so that the vesting could proceed. The court would probably constitute an investigatory or bolding trust to allow the succession to deceased beneficial owners to be completed. Rakiura Maori Land Incorporated may offer itself as trustee for this initial investigatory period. That society is to be commended for the interest taken and effort expended in negotiations so far. Although the claimant has suhmitted that in the view of the society the land should be vested in it and beneficial title remain with those succeeding the original allocatees, the Trihunal feels that title will most appropriately be vested in those persons found eligihle by the Maori Land Court.

The necessary survey of the hlock for the completion of grants has still not been undertaken. This is no doubt as a result of the overall Ngai Tahu claims bearings. The Tribunal has not been privy to all of the reasons why the claimants are opposed to the Crown's seeking of these public use reservations. In addition to the issue of rangatiratanga over their lands, and the reasons earlier referred to, such as control over kaimoana and access, there may be other valid grounds of objection. We feel that, in light of the manner in whicb the 1987 agreement was reached and the continuing delay in completing the title grant, the Crown is ohliged to seek new approval from the persons beneficially entitled or their appointed trustee representatives. If the Crown seeks to retain the 20-metre coastal strip and the Toitoi River strip and reserve the Toitoi wetlands for public purposes, that proposition should be put to the meeting of owners called to discuss the appointment of trustees.

In conclusion then, the Tribimal finds that there has been a breach of article 2 of the Treaty in the failure of the Crown for 90 years to vest legal and beneficial title in the persons entitled. The Crown in more recent times since 1980 has wrongly imposed undue pressure on those claiming the land. It must now restore good faith by taking immediate steps to complete the survey and vest the land. Counsel for the Crown has suggested that a meeting of owners prior to the survey of the land would

be advantageous in determining the nature of the work to be done. The Tribunal agrees that there would be merit in such a meeting. Although only 9445 acres of the Port Adventure block and 7035 acres of the Toitoi block were allocated, the Tribunal considers that the failure to vest this land in the persons entitled for some 90 years justifies some compensatory award from the Crown. The award of the residual areas of Crown land, calculated at 541 hectares, to the entitled persons would be modest compensation for the delay, and we note that, in view of the land's poor quality, the return of it may not satisfy the needs of Ngai Tahu. The Tribunal considers that the Crown should be financially responsible for calling a meeting of the descendants of the original allocatees at a time, date, and place to be fixed by the Maori Land Court, and upon directions as to notice of such meeting fixed by a judge of the Maori Land Court.

This process is capable of completion within six months of the presentation of this report to the Minister of Maori Affairs.

The Tribunal accordingly recommends, pursuant to section 6 of the Treaty of Waitangi Act 1975, that all of the area permanently reserved in the Port Adventure and Toitoi blocks be completed as to survey and revested in the persons found to be entitled by order of the Maori Land Court within 12 months from the presentation of this report to the Minister free from any restriction, covenant, easement, or condition, unless agreed to by the owners or their trustees.

6.4 Claim no: 93
Claim areas: **Port Adventure, Chew Tobacco Bay, Little Glory Harbour**
Claimant: **Harold Ashwell (E3)**
Claim:

Mr Ashwell claimed that scenic reserves in Port Adventure and Chew Tobacco Bay and at Little Glory Harbour should be vested in Rakinra Maori Land Incorporated to facilitate access to and administration of the Port Adventure and Toitoi blocks.

The claimant maintained that these areas were former Maori landing grounds and that a landlocked resource is of no use without access. Mr Alexander pointed out that the areas in question, acquired as part of the Rakiura purchase of 1864, are now scenic reserves held under the Reserves Act 1977. He further submitted that the landless natives blocks themselves have a considerable sea frontage and that the old landing sites may not prove to be the most suitable now or in the future. As the scenic reserves include islands and encompass more than landing sites, in Mr Alexander's view it should not be necessary to completely revoke the reservation status of these areas in order to provide access to the Port Adventure and Toitoi blocks (AB35:19).

The Tribunal's conclusion

6.4.1 The Tribunal concurs with Mr Alexander's view that the assignment of the entire area of scenic reserve would not be necessary to provide access to the Port Adventure and Toitoi blocks. Moreover,

section 129B of the Property Law Act 1952 (and its amendment) allows for 'reasonable access' to be granted to landlocked land. Under this section of the Act the High Court may vest parcels of appurtenant land in the owner of the landlocked land or grant easements over that land. Should the Port Adventure and Toitoi blocks qualify as 'landlocked' land (ie, there is a lack of reasonable access to the land, which impedes the occupier's use and enjoyment of her or his land), the claimants may have recourse to the legal option supplied by that Act. Sections 315 and 316 of Te Ture Whenua Maori Act 1993 also give jurisdiction to the Maori Land Court to create easements and lay out roadways for the purpose of providing access, or additional or improved access, to any Maori freehold land. The Trihunal accordingly makes no finding on this matter. The claimant's concerns are capable of resolution under existing law.

1. Correspondence file Southland 38, MLC Christchurch

2. Certificate of title 24/63

3. Assistant land registrar to registrar, Maori Land Court, 14 June 1983, correspondence file Southland 38, MLC Christchurch

4. 'Land Granted to Half-Castes under "The Stewart Island Grants Act, 1873"', AJHR, 1891, sess II, G-8, p 3

5. Registrar to R Fowler, 24 June 1983, correspondence file Southland 38, MLC Christchurch

6. Extract from SIMB 67, p 16, correspondence file Southland 38, MLC Christchurch

7. J Harty to registrar, Maori Land Court Christchurch, 26 April 1971, block file Southland 38, MLC Christchurch

8. T Ryan to S Cormack, 3 May 1971, block file Southland 38, MLC Christchurch

9. SIMB 48, pp 144–145

10. *New Zealand Gazette*, 1908, pp 1845–1848

11. Ibid, pp 891–892

12. Native land register of South Island landless natives, pp 197–214, DOSLI Wellington

13. Field inspector to Commissioner of Crown Lands Invercargill, 5 April 1929, L&S 39880, DOSLI Wellington

14. T Ruka and 16 others to H Uru, 24 September 1924, L&S 39880, DOSLI Wellington

15. Commissioner of Crown Lands Invercargill to Under-Secretary for Lands, 28 May 1925, L&S 39880, DOSLI Wellington

16. Director-General of Lands to R Fife, 20 August 1981, L&S 39880, DOSLI Wellington

17. Registrar, Maori Land Court Christchurch, to R Fife, 21 May 1982, L&S 39880, DOSLI Wellington

18. Commissioner of Crown Lands Invercargill to director-general, 25 November 1982, L&S 39880, DOSLI Wellington

19. 'Draft Proposals for the Acceptance of Control of the Port Adventure and Toitoi Landless Maori Reserves by Rakiura Maori Land Incorporated', R Fife, L&S 39880, DOSLI Wellington

20. Note for file, 3 October 1987, L&S 39880, DOSLI Wellington

21. Ibid

22. 'Status of Land in Toitoi and Port Adventure Blocks, Stewart Island', 4 November 1983, L&S 39880, DOSLI Wellington

23. Minister of Maori Affairs to R Fife, 13 March 1985, L&S 39880, DOSLI Wellington

24. District solicitor to Commissioner of Crown Lands Invercargill, 29 November 1983, Southland 51, MLC Christchurch

25. Director-General of Lands to Commissioner of Crown Lands Invercargill, 14 November 1983, L&S 39880, DOSLI Wellington

26. 'Status of Land in Toitoi and Port Adventure Blocks, Stewart Island', L&S 39880, DOSLI Wellington

27. Minister of Maori Affairs to R Fife, 5 August 1985, L&S 39880, DOSLI Wellington

28. H Ashwell to secretary, Waitangi Tribunal, 3 November 1986, L&S 39880, DOSLI Wellington

29. Minister of Maori Affairs to H Ashwell, 24 June 1987, L&S 39880, DOSLI Wellington

30. H Roderique to K Cayless, 5 January 1988, L&S 39880, DOSLI Wellington

31. K Cayless to district manager, Department of Survey and Land Information, undated and unsourced

32. Draft application; Director-General of Lands to T Gilroy, 24 July 1989, L&S 39880, DOSLI Wellington

33. Chief surveyor Invercargill to Commissioner of Crown Lands, head office, 23 February 1990, L&S 39880, DOSLI Wellington

Chapter 7

Legislative and Other Ancillary Claims

7.1 Claim no: 94
Claimant: **Robert Agrippa Whaitiri**
Claim:

> **Mr Whaitiri was angry that the transfer of administration of the Titi Islands from the Department of Lands and Survey to the Department of Conservation occurred without any thought given to consulting the beneficial owners of the islands (tape A1:4482).**

7.1.1 The regulations were traditionally administered by the Commissioner of Crown Lands who resided in Invercargill. When the Department of Lands and Survey was disbanded in 1987, the administration of the islands was transferred to the Department of Conservation. This transfer of administration was not at issue. The fact that the people of the islands were not consulted about it is. 'Once again', Mr Whaitiri claimed, 'our people have been ignored'.

The Tribunal's conclusion

7.1.2 The Tribunal has already stated its views on the issue of consultation in the *Ngai Tahu Report 1991*. It 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 was 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 Tribunal concluded:

> 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 . . . is needed to ensure Maori participation in local regional council planning as well as national environmental policies.[1]

The Tribunal recommended that remedial action should be taken by the Government in the areas of:

(a) [the] amendment [of] 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) [the] representation of Maori on territorial authorities and national hodies; and

(d) [the] representation of Maori before tribunals and authorities making planning and environmental changes.[2]

The Tribunal can understand Mr Whaitiri's concern, which echoes the views of a number of witnesses appearing before this Trihunal. It is evident that Ngai Tahu are gearing themselves to take a more active role in the consultative process. As reported elsewhere in this report, there are some encouraging signs that Crown agencies are beginning to consult with the tribe.

7.2 Claim no: **95**
Claimant: **Aroha Hohipera Reriti-Crofts**
Claim:

Mrs Reriti-Crofts claimed that the Maori Affairs Amendment Act 1967 detrimeotally affects Maori land ownership, particularly as it provides for land in multiple ownership to be willed to individuals and so pass from Maori family control (A20).

The claimant stated that Ngai Tahu are a people who believe that whanau, hapu, and iwi needs and communal interests are paramount. She claimed that the introduction of laws which force Maori people to think and behave on an individual hasis is a direct attack on a philosophy that is intrinsic to the preservation of their culture, and is racism in its truest sense:

> This Act, has done exactly what it was intended to do. It has continued to render us landless. 67 members of my family have already been affected hy individual title holding. How many families have to be landless before justice is seen to be done? (A20:2)

In concluding, Mrs Reriti-Crofts urged that the Maori Affairs Amendment Act 1967 be repealed.

The Tribunal's conclusion

7.2.1 The Tribunal does not propose in this report to look at the operation of the 1967 amendment Act in any depth. That law has been substantially amended to provide that land can now only pass hy will to persons of the same kinsgroup. Considerable new measures were also introduced to create whanau trusts so that families could have better control over their fragmented interests, and the alienation provisions were tightened up to give more effect to the principle of retaining land in Maori ownership. We consider that these measures will allay this claimant's concerns.

7.3 Claim no: 96
Claimant: **Rangimarie Te Matharoa**
Claim:

> **Mr Te Maibaroa was concerned with the destruction of historical sites of importance to Ngai Tahu. He attributed this abuse to the authorities responsible for the areas (A19:12).**

The claimant maintained that, while most historical sites would not now be in Maori ownership, Ngai Tahu still relate deeply to such places. He instanced a recent excavation of swampland, which had destroyed some 800 moa skeletons uncovered there. He asked that the Tribunal recommend to the Government that such historical sites be protected, and that the tangata whenua be represented in local government in order to ensure that their perspective is taken into account. Mr Te Maiharoa later submitted that it was not his intention to speak for Ngai Tahu when referring to the historical sites and their protection, because these predate the arrival of Ngai Tahu in the South Island and are of importance specifically to Waitaha. He also expressed dissatisfaction with the amalgamation of Waitaha and Ngai Tahu in settlements relating to the South Island (AB39).

The Tribunal's conclusion

7.3.1 The Tribunal has stated that consultation between Government bodies and Maori is the most important way to ensure Maori input into decision-making processes. As outlined above in claim 94, such consultation should take place in a Maori context, with proposals explained, examined, and discussed on tribal marae. Regarding representation, the Tribunal concluded that 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. Its recommendations to that effect have been given above. Since this grievance was presented, Te Ture Whenua Maori Act 1993 has been enacted, with new powers given to the Minister of Maori Affairs under section 339 to apply to the Maori Land Court to reserve Crown land or State-owned enterprise land when, by reason of the historical significance or spiritual or emotional association of such land to Maori, such action should be taken. Section 339 is an additional power to that given under the Reserves Act 1977 for the designation of historic and other reserves and will provide Maori people with an effective control mechanism through the appointment of trustees. It will of course be necessary for iwi to take the initiative by bringing waahi tapu to notice, if so desired, and by requesting the Minister to act.

7.4 Claim no: 97
Claimant: **Taini Morere Korobeke Wrigbt**
Claim:

> **Mrs Wright claimed that tbe Town and Country Planning Act 1977 restricts building on inberited Maori land, and that this affects traditional Maori life, in particular the ability to live with one's hapu (L32:12).**

The Tribunal's conclusion

7.4.1 Since this claim was presented to the Tribunal, there have been cbanges introduced by the passing of the Resource Management Act 1991 and Te Ture Whenua Maori Act 1993. The latter Act now provides for the issue of occupation orders which will allow Maori to build on their ancestral land. Most district councils in more recent years bave taken a greater interest in the bousing of Maori, particularly on their own land. Several councils have provided for Maori residential sites on papakainga as a predominant use under the planning system. We note, too, that the Resource Management Act provides for the principles of the Treaty of Waitangi to be taken into account hy all persons exercising functions and powers under that Act. This would include local government, the Planning Tribunal, and members of any boards of inquiry. The Trihunal in its *Ngawha Geothermal Resource Report* (Wai 304) has recently expressed strong reservations about the effect of the words 'take into account' in section 8 of the Resource Management Act:

> It is difficult to escape the conclusion that the Crown in promoting this legislation has been at pains to ensure that decision-makers are not required to act in conformity with, and apply, relevant Treaty principles. They may do so, hut they are not obliged to do so.[3]

As a result of its inquiry into the Ngawha geothermal claim, the Trihunal bas recommended that an appropriate amendment be made to the Resource Management Act 1991 to require that all persons exercising functions under the Act *shall act in a manner consistent* with the principles of the Treaty of Waitangi. We must now await and see how the Government responds to the Trihunal's recommendation. There bave certainly been substantial changes in attitudes and policies over the past six years. The Tribunal is of the view that Mrs Wright's claim bas largely heen caught up hy progressive and helpful legislative changes.

7.5 Claim no: **98**

Claimants: **Sandra Rose Te Hakamatua Lee (D11), Iri Barber-Sinclair (D12), Aroha Hohipera Reriti-Crofts (D13)**

Claim:

> **Ms Lee called for a review of the Maori Incorporation Regulations 1969 and the repeal of section 48(1) of the Maori Affairs Amendment Act 1967.**

7.5.1 One of the recommendations of the Commission of Inquiry into Maori Reserved Land 1975 to be put into effect was that legislation should be introduced to allow Maori landowners to take over the management of their lands. The Mawhera Incorporation was established by statute on 31 May 1976. Many of the Arahura reserves formerly under the Maori Trustee's administration have since been vested in the incorporation.

Of concern to Ms Lee is that the imposition of yet another Pakeha system on the administration of Maori land continues to undermine the traditional system of land tenure based on common ownership and Maori cultural values:

> Incorporation under the Maori Incorporation Regulations 1969 does not offer [an] adequate alternative either. The provisions for share purchase and share voting have the effect of removing (if abused), the tribal voice, and the voice of Kaumatua not skilled at Corporate meeting technique or structures in favour of the more entrepreneurial type Maori. The way the regulations are laid down gives impetus to corporate wheeling and dealing too often at the expense of our cultural values. (D11:23)

Her concern was shared by others of Kati Waewae, namely Mrs Barber-Sinclair and Ms Reriti-Crofts:

> Today our original shareholders (our Kaumatua) are now not the major shareholders hut very much the lesser sharebolders, wbicb I believe should never have happened. (D13:2)

Mrs Barber-Sinclair has little faith in a corporate body which is governed hy regulations prescribed by the Crown, and deemed it unsatisfactory that 'final decisions . . . should be determined by the share votes of a minority who have managed to acquire by purchase (in pakeha corporate style) a majority of shares' (D12:5). One bone of contention concerns the power of alienation given to the management committees of Maori incorporations by section 48(1) of the Maori Affairs Amendment Act 1967. Under this section the management committee has the power to alienate, mortgage, charge, or otherwise dispose of the incorporation's assets, the only proviso being that wben the sale of land is at issue, a resolution of a general meeting of sharebolders must first be made. When the majority of shares are in the hands of a few 'wheelers and dealers', sucb a proviso becomes meaningless. Mrs Barber-Sinclair made additional submissions to the Tribunal on 7 July 1994 referring to certain proceedings taken by her people in the Maori Land Court to restrain dealings with land vested in the Mawhera Incorporation.

Ms Lee called for a repeal of the section in order to ensure that no further alienation of Kati Waewae land occurs. She accepted the difficulties inherent in applying a form of administration that would adequately ensure that the tribal voice and ancestral taonga are protected under the Pakeha legal system. However, she claimed that as the problem is of Pakeha making, as a direct result of colonisation, the problem is for Pakeha to solve (D11:23).

The Tribunal's conclusion

7.5.2 There have been substantial changes made to the law relating to Maori incorporations by Te Ture Whenua Maori Act 1993. The kaupapa behind this legislation in respect of Maori incorporations was largely prepared and presented to the Government by the Federation of Maori Authorities. Under section 17 the Maori Land Court is required to 'protect minority interests in any land against an oppressive majority and to protect majority interests in the land against an unreasonable minority'.

Since Mrs Barber-Sinclair made her submissions, the High Court of New Zealand has given its decision on the powers of an incorporation to sell land. It has ruled that the 1953 Act, as amended in 1967, empowered an incorporation to sell land but granted it only limited power to buy land. The decision, although important in reference to powers under the 1953 Act, is now academic as Te Ture Whenua Maori Act 1993 has widened the powers of an incorporation, which can now buy and sell land.

The Tribunal is not prepared in this report to conduct a review of the incorporation provisions of the Act or the regulations. All sections of the community have been given every opportunity to express their concerns to the Government over the long period that the select committee has been considering the legislation for. It remains to be seen whether the amended legislation will meet the aspirations of the people.

7.6 Claim no: 99
Claimant: **Taare Hikurangi Bradshaw (E8)**
Claim:

> **Mr Bradshaw called for a complete review and restructuring of the Town and Country Planning Act 1977, with particular reference to the clear understanding of terms such as 'ancestral land', 'Maori environments', and 'significant Maori land holdings' (E8:2–3).**

7.6.1 The claimant supplied his own interpretations of the above terms.

'Ancestral land': land and waters which exist as part of the physical, cultural, and spiritual environment, and significant elements of Maori environments contained within or associated with them.

'Maori environments': embody all physical and human-related (cultural and social) systems. Some of the elements within these systems are more important than others, but all contribute in one way or another and therefore must be considered as relevant aspects to be conserved, protected, and enhanced for the future.

Mr Bradsbaw called for iwi representation on planning councils in order to protect and promote Ngai Tahu cultural concerns in any future development of the environment.

He also stressed that the term 'significant Maori land boldings' must also be given a broad interpretation; the term 'significant' sbould refer not only to the monetary value of Maori land, but also to the cultural value associated with this land:

> For instance urupa, papakainga, and other ancestral lands contain a greater value than mere economic value and their protection from detrimental forces may require greater attention than that wbicb is normally given to land of future economic value. (E8:3)

The Tribunal's conclusion

7.6.2 The Tribunal bas dealt with matters relating to town planning in other sections of this report. Again we comment that since this claim was presented there bave been substantial changes made to the legislation pertaining to town and coumtry planning. The provisions of the Resource Management Act 1991 may address some of Mr Bradshaw's concerns. Section 8 of that Act provides that all people exercising functions and powers under the Act shall take into accoumt the principles of the Treaty of Waitangi. One of the matters of national importance, as defined in section 6(e), is:

> The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.

Since the *Habgood* decision of 1987, ancestral land is not confined to land still in Maori ownership.[4]

In claim 97 we referred to the Wai 304 Tribunal's recommendation regarding the amendment of section 8 of the Resource Management Act 1991. We have also dealt extensively in the *Ngai Tahu Report 1991* with the need for consultation with, and representation of, Maori on local bodies and other planning authorities. Our recommendations to this end are set out at claim 94. Section 249 of the Resource Management Act 1991 provides for the appointment of a Maori Land Court judge to act as an alternate planning judge, and section 253 of the same Act requires the Minister, when appointing persons as planning commissioners, to ensure that the Planning Tribunal has a mix of knowledge and experience in various fields, including 'matters related to the Treaty of Waitangi and kaupapa Maori'. It can be fairly said that there bas been a shift in public and Government attitudes since Mr Bradshaw brought his request. It yet remains to be seen how the Government responds to the Tribunal's recommendations.

7.7 Claim no: **100**

Claimants: **Emma Potiki Groohy-Phillips, Dorothy Hitchcox, Dorothy Te Mahana Walsh, Taini Morere Koroheke Wright**

Claim:

A recurring and deeply-felt grievance for Ngai Tahu throughout Te Wai Pounamu is the loss of their language.

7.7.1 When the Trihunal sat at Otakou marae in November 1987 a number of women recounted aspects of their lives as children growing up in the Otakou region. These women are but a few of those Ngai Tahu who impressed upon the Tribunal how deeply they feel for the loss of their language. Their sad stories are lamentably familiar: grandparents who were not allowed to speak Maori at school; parents who thought only to encourage their children to succeed in the Pakeha world and so ceased speaking Maori in the home. The result was evident in the halting mihi of the Otakou kuia.

Mrs Te Mahana Walsh attributed this phenomenon to the lack of value that the community at large placed on things Maori and pointed out that the language has not been the only cultural taonga to have been lost. She referred to her aunt's skill at weaving, which was never passed on. Mrs Wright, another kuia from the Otakou region, mourned the loss of traditional Ngai Tahu place names.

'Te Ao Hou' for Ngai Tahu has already been outlined in chapter 18 of the *Ngai Tahu Report 1991*. Instead of thriving in the new settler economy, both claimant and Crown historians agreed that Ngai Tahu were 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 hase 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 hroken 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.[5]

Numerically overwhelmed very early on and marginalised on pitiful reserves, Ngai Tahu have perhaps felt the impact of assimilation the worst.

Mrs Te Mahana Walsh was 55 when she finally had the opportunity to learn her language; not from her people, but at the Wellington Polytechnic. In a moving submission, she spoke of the 'cultural battering' that her people receive from both Maori and Pakeha alike:

> because we have been deprived of these basic things we are called plastic Maoris. We are called not-Maoris.

She stated that the situation is far from being mended.

The Tribunal's conclusion

7.7.2 Similar laments can be heard the length and breadth of Aotearoa. The Tribunal has already considered a claim concerning the loss of the Maori language. In 1986 Huirangi Waikerepuru and Nga Kaiwhakapumau i te Reo Inc alleged that the Crown had failed to protect the Maori language, a breach of article 2 of the Treaty, which guarantees to Maori 'o ratou taonga katoa'. They cited certain legislation, as well as broadcasting and educational policies, as being inconsistent with the principles of the Treaty. Their claim was strongly supported from Manri quarters on every side.

The Tribunal upheld their claim, and found that Maori have been prejudicially affected by the Crown's failure to protect their language, as required by article 2 of the Treaty. It accepted that the guarantee in the Treaty requires affirmative action to protect and sustain the language, not a passive obligation to tolerate its existence, and certainly not a right to deny its use in any place. These findings were reiterated in the *Allocation of Radio Frequencies Report 1991*. A number of the Tribunal's recommendations have since been implemented by the Government.

1. *Ngai Tahu Report 1991*, para 24.4

2. Ibid, para 17.6.8

3. *Ngawha Geothermal Resource Report*, Wellington, Brooker and Friend Ltd, 1993, para 7.7.9

4. *RFBPS v W A Habgood Ltd* (1987) 12 NZTPA 76 (HC Admin)

5. *Ngai Tahu Report 1991*, para 18.2.1

Chapter 8

Claims Not Reported On

The following matters are listed in the scbedule of ancillary grievances puhlisbed in the *Ngai Tahu Report 1991* as grievances made by members of Ngai Tahu. On further consideration, bowever, the Tribunal has decided not to report on these matters. The reasons for this are given in each of the claims detailed below.

8.1 Kaikoura

The following three grievances are said to bave been made by Trevor Howse. However, no record exists of these complaints having been made in either the written or the oral submissions of this claimant. It is possible that the matters may have been brought up verbally during the Tribunal's site visit of the Kaikoura reserves. There is also a possihility that certain issues were hrought to the attention of the Crown but escaped the formal notice of the Trihunal. In light of the ahsence of any record of these complaints, the Trihimal has decided not to report on them.

Claim no: **101**
Claim area: **Kaikoura E (Takahauga Pa)**

This is listed as a claim concerning the loss of area in exchange pre-1890.

Claim no: **102**
Claim area: **Kie Kie H**

This is said to be a claim that excessive roads were put through the reserve.

Claim no: **103**
Claim area: **South Bay F**

This is listed as a grievance concerning the loss of a landing reserve at South Bay on the Kaikoura Peninsula. The history of this reserve has been researched by the Crown.

Claim no: **104**
Claim area: **Hantutu L**

It is said that Mr Howse claimed that the land behind Haututu was never received in an exchange. This is assumed to be the subject of claim 1, the exchange of Waiharakeke J and part of Omthi K for land behind Haututu. It has therefore heen dealt with in that context.

8.2 Canterhury

Claim no: **105**
Claim area: **Houhoupounamu Lagoon**
Claimant: **Te Maire Tau (H6:34)**

In his suhmission, Mr Tau outlined the prejudicial effects of drainage on mahinga kai such as Houhoupounamu Lagoon, referred to by the Reverend G P Mutu in 1891 in front of Commissioner Mackay. Mutu explained that most of the fishery easements awarded hy the court in 1868 were now destroyed:

> The one at Rotorua has heen drained. Waimaiaia has been rendered useless by sea encroachment and Houhoupoimamu has been drained.

These same fisheries were the suhject of Te Oti Pita Mutu's petition in 1879, although Houhoupounamu Lagoon in that petition was referred to as Ohuapounamu Lagoon. The Tribunal considers that this matter has already been dealt with in its discussion of the Canterbury fishing reserves of 1868.

Claim no: **106**
Claim area: **Taumutn**
Claimant: **Rewi Brown (tape A1:6418)**

This is listed as a claim to the village of Taumutu. Mr Brown, however, was simply drawing the Tribunal's attention at the first hearing of Ngai Tahu's claim to the tribe's land and fishing rights at Taumutu and Waihora (Lake Ellesmere). He added that these would be looked at more closely in the course of the hearings. The Trihunal considers that the trihe's rights regarding Waihora have already heen reported on. Recommendations regarding ihe lake were made in the *Ngai Tahu Report 1991*. It is assumed that the reference to Ngai Tahu's land rights at Taumutu relates to the commonage and the landing reserve there, hoth of which have been reported on at claims 12 and 13. The Trihunal therefore considers that no further action is necessary.

Claim no: **107**
Claim area: **Koru Creek**
Claimant: **Rewi Brown (H9)**

It is stated that Mr Brown claimed the right to Koru Creek. On reviewing his evidence, however, it is clear that Mr Brown's reference to the Koru Creek is a geographical one; he is merely pointing out that a deep channel extended parallel to the landing reserve at Taumutu and right of the creek. As there is no grievance expressed by Mr Brown, the Tribunal expresses no view thereon.

Claim no: **108**
Claim area: **Waihao 903**
Claimant: **Kelvyn Te Maire (H10:33)**

In his submission, Mr Te Maire stated that bis people's marae is located on Waihao 903, a 500-acre 'occupation' reserve granted by the Native Land Court in 1868. He added that the area is of poor agricultural value. The Tribunal considers that this was not intended as a specific grievance as such, the claimant merely lending support to the general theme that the land whicb Ngai Tahu received from the court in 1868 was of poor quality. For this reason, the Tribunal has not taken the matter further.

Claim no: **109**
Claim area: **Te Anan**
Claimant: **Robert Agrippa Whaitiri (L32:4)**

Mr Whaitiri claimed that a quarter-acre section originally intended for a nurses' bome at Te Anau has been offered back to Ngai Tahu at an inflated price. The Tribunal is not aware of the exact location of this property, but it is believed that Mr Whaitiri was referring to land included in the Crown purchase of Murihiku. According to Mr Whaitiri, the Crown offered the land to the Ngai Tahu Maori Trust Board because it was no longer needed. His point is that in terms of the Murihiku purchase the quarter-acre section would have been worth two shillings, or 20 cents. This, he says, is incongruous with the Crown's recent offer of the land to the trust board for $40,000. He agreed that the land should be sold to Ngai Tahu, but at a price which covered legal fees, and little more.

The Tribunal does not see that there is any obligation on the part of the Crown to offer the land back to the trust board, as the land in question was part of that purchased by the Crown in 1853.

8.3 Otakou

Claim no: **110**
Claim area: **Waitaha**
Claimant: **Mori Pickering (L32)**

Mrs Pickering claimed that land was taken from members of her family (the Ellisons) at Waitaha without notice. She believes that this land is now reserve. The grievance has not been investigated because the Tribunal does not have sufficient information regarding the location of the land and the nature of the grievance to do so.

Claim no: **111**
Claim area: **Otakou Peninsula**
Claimant: **Riwai Karetai**

Mr Karetai claimed the right to live on his family land at the kaik on the Otakou Peninsula (L32:41). His grievance is said to stem from the use of the land by non-Maori crib owners. At the time of Mr Karetai's submission it was not known whether the land had been sold, or whether the cribs were leased. Again the lack of information regarding the location of the kaik has meant that inquiry into this claim has not proceeded.

8.4 Murihiku

Claim no: **112**
Claim area: **Tantuku**
Claimant: **Sydney Cormack (E16)**

Mr Cormack referred to a 1000-acre block set aside at Tautuku for those who signed Kemp's deed but did not receive a grant within the area designated in the deed (E16:1).

One thousand acres of land at Tautuku were granted by Judge Fenton at the Native Land Court sitting at Dunedin in 1868 in fulfilment of:

> all demands under Kemp's Deed, and [the land] is set apart for those Natives and their descendants who signed the Deed, but who never received any share of the land reserved for Native purposes within the boundaries of that purchase. (O14B:88)[1]

The block was to be divided into two equal parts of 500 acres each. Hori Kerei Taiaroa and nine others, and Teone Topi Patuki and nine others were made trustees of the land, which was to be 'absolutely inalienable'. Mr Alexander submitted that the full 1000 acres of the reserve has been allocated, as promised by the court. Today, he maintained, 93 percent of the Tautuku block is still

Maori freehold land (O14A:38). About 52 acres have become legal roading upon survey of the block and 19 acres bave been taken for a scenic reserve.

In light of Mr Alexander's evidence that the 1000-acre grant has been allocated to Ngai Tahu, it is not clear to the Tribunal just wbat Mr Cormack's grievance is.

Claim no: **113**
Claim area: **Waimumu**
Claimant: **Sydney Cormack (E16)**

Mr Cormack claimed that he attended a meeting of owners of a block in Waiunumu wbere the owners' proposition of joint management in forestry with the Crown was refused; the Crown was interested only in a purchase of the land.

The Tribunal bas been not been presented with any information regarding this grievance, and researcb in the Maori Land Court and National Arcbives in Christcburcb has not uncovered any material.

In addition to the above claim, on whicb the Tribunal has no information, three other non-specific claims were made by Mr Cormack.

Claim no: **114**
Claim area: **East Rowallan and Alton blocks (E16)**
Claimant: **Sydney Cormack**

Mr Cormack objected to the existence of small pockets of Crown land scattered throughout east Rowallan, and the two-chain width of the roads passing through this land (E16:2).

The land that Mr Cormack is referring to is land granted to landless Ngai Tahu in 1908. In the Rowallan and Alton survey districts, over 43,000 acres were permanently reserved for this purpose but, according to the Crown witness, some of this land was not granted and therefore remained Crown land (O14B:96).[2] Mr Alexander thought Mr Cormack to be under a misconception that, because the block was reserved, all of it was therefore to become Maori land (O14A:47). He submitted that, while it was possible for all the land in a larger block to be so allocated, it was not inevitable that this would happen. Provided that the named individuals received the areas specified for them, any balance could remain Crown land.

Mr Alexander did not address the issue of the excessive width of the roads through the block. The Tribunal has no information on this aspect of Mr Cormack's grievance.

Claim no: **115**
Claim issue: **Mnrihiku cemeteries**
Claimant: **Sydney Cormack**

Mr Cormack claimed that a number of old Ngai Tahu/Ngati Mamoe cemeteries in Murihiku should be reserved. His application to get them reserved 20 years ago lapsed because survey maps were not provided by the Department of Lands and Survey. He stated that old cemeteries exist at Colac Bay, Kawhakaputaputa, and Tautuku.

Maori Land Court records reveal that in 1971 Mr Cormack applied to the court for a recommendation to have the following areas reserved for Ngai Tahu and Ngati Mamoe under section 439 of the Maori Affairs Act 1953:

- Kawhakaputaputa section 6;
- Kawbakaputaputa section 7;
- Oraka Maori reserve 184, section 1;
- Jacobs River section 37, block XXV; and
- Oraka section 2A, block XI, Longwood (AB24:131).[3]

It was said that all of these areas had been reserved as cemeteries at various times. The condition of the different urupa varied. Section 6 at Kawbakaputaputa was fenced off and the gravestones were visible, if overgrown. Section 7 on the other hand was not fenced off, stock were grazing there, and there was no sign of burials. At the court bearing on 25 February 1972, the applicant submitted that further consultation with the tangata wbenua would be necessary before trustees were appointed (AB24:131).[4]

On 22 May 1972 the court recommended that the sections listed above:

> be set apart for the purposes of burial grounds for the common use or benefit of members of Ngati Mamoe and Ngaitahu tribes. (AB24:132)[5]

It was not until February 1973 that copies of the orders were sent to head office for an Order in Council to have the land gazetted as Maori reservations. The delay in forwarding the orders was said to be:

> due to difficulty in acquiring sketch plans for the Kawhakaputaputa sections 6 & 7. These sections were only recently found to be Maori lands and the Cbief Surveyor was kind enough to compile a sketch plan for our purposes. (AB24:133)[6]

Apart from section 37 in Jacobs River Hundred, the Tribunal has no information wbether the sections were subsequently gazetted as Maori reservations. The Tribunal is of the opinion that the claim is capable of resolution in the Maori Land Court.

Claim no: **116**
Claim issue: **Maori titles**
Claimant: **Sydney Cormack**

Mr Cormack stated that titles for half-caste lands and lands on Stewart Island and at Whakapatu, Ouetoto, Colac Bay, and Jacobs River need a thorough search because a great deal of land became general land under the 1967 Act. It is assumed that Mr Cormack is referring to Part I of the Maori Affairs Amendment Act 1967, which provided that Maori freebold land would cease to have that status if the land were owned by four or less owners. While not expressly stated in the Act, sucb land would bave become general land.

There is provision for this land to again bave the status of Maori land. Without more specific details the Tribunal is not prepared to take the matter further. In any event, the matter is capable of resolution in the Maori Land Court.

Claim no: **117**
Claim issue: **Timber fiftbs**
Claimant: **Sydney Cormack**

Mr Cormack claimed that revenue paid to the county from Maori-owned timber for the maintenance of roads was never spent on the upkeep of Maori roads. He submitted that, under the provisions of the Counties Act, a levy of one penny per 100 super feet of sawn timber from logs conveyed to a sawmill was paid to the local authority. As be understood it, the levy to the local authority was payable in lieu of rates until all of the timber bad been milled from the land.

This was a very general claim made by Mr Cormack without any particulars that would enable the Tribunal to investigate it. For this reason the Tribunal has not dealt with the matter.

1. 'Schedule of Reserves attached to Report by Major C Heaphy on Native Reserves in Otago', AJHR, 1870, D-16, p 29
2. *New Zealand Gazette*, 1908, p 1514
3. SIMB 49, pp 82–84
4. Ibid, p 84
5. Ibid, p 138
6. Registrar to secretary, head office, 12 February 1973, correspondence file Southland 1, MLC Christchurch

Chapter 9

Ngai Tahu Ancillary Claims: An Overview

This report has gone a long way to describe how those Ngai Tahu lands excluded from the Crown purchases made between 1844 and 1864 have been affected hy various intervening events down to the present time. It is a telling insight into the current state of landlessness that the tribe faces in 1995. And this, we feel, is the fundamental issue behind almost every one of Ngai Tahu's ancillary claims. It is this which fuels the complaints ahout the acquisition of Ngai Tahu lands for public purposes. It is the lack of a land base which has prompted Ngai Tahu from Aparima to call for the return of land there, although no specific Crown action is questioned. It is the fact that only three of the original 14 reserves set apart for the tribe in Kaikoura remain wholly in Ngai Tahu ownership which has drawn Trevor Howse to speak out. In 1868 the Native Land Court was directed to determine what reserves for mahinga kai should have been made under Kemp's deed. Despite requests from Ngai Tahu for areas to be set aside for fisheries, weka runs, hunting reserves, cultivation sites, timber reserves, and occupation reserves, as well as pa sites, the Native Land Court restricted the reserves to fishery reserves and awarded only a small number of these, much diminished in area from the reserves sought. As has been clearly detailed in this report, and hrought to notice by the claimant Rakiihia Tau and others, even these limited hut special reserves virtually disappeared as a result of land drainage, river straightening, loss of physical access, legislation and regulation processes, and Crown acquisitions.

As we set out in the preface, the manner in which the claims were presented and the suhsequent lack of attention they have received in terms of research and argument have resulted in a rather inconclusive report on a number of issues. In many cases the individual complaints have not been held by the Tribunal to be breaches of the principles of the Treaty of Waitangi. Nevertheless, the report is valuable in that it reflects the concerns, the frustrations, the sense of hopelessness, and, in many cases, the anger of a people who are now bereft of their land, their traditional food resources, and their language. Viewed as a whole, together with the 1991 main report, it is a damning indictment of the Crown's failure to honour the Treaty of Waitangi.

As the Tribunal has worked its way through these claims, it has stated its conclusions on each at the end of each claim summary. In some cases we have made findings that the Treaty has been breached and have made recommendations. For the purposes of clarity and reference we have prepared a summary of the claims, findings, and recommendations, which is set out in appendix 1.

What follows are the general conclusions we have reached on the myriad matters raised in these numerous claims. In order to present an overview assessment of all of these ancillary claims, we refer, firstly, to the paucity of the land left to Ngai Tahu from the Crown purchases. Secondly, we look at the inroads which have been made into these reserves and how these have come about.

Thirdly, we look at the loss of the tribe's food resources. We next review the issues surrounding the compulsory acquisition of Ngai Tahu land for puhlic purposes. Fifthly, we turn to Crown attempts over the years to provide some relief to the trihe, before reviewing recent changes in legislation which go some way towards answering Ngai Tahu's complaints. Lastly, we turn to consider the crux of the claims: the restoration of an estate and resource hase to the tribe.

9.1 Provision of a trihal estate

A principal cause of the trihe's present landlessness lies of course in the niggardly amount of land reserved to Ngai Tabu from the original Crown purchase of their domain. In accordance with the principles of the Treaty of Waitangi, and the Crown's right of pre-emption which that treaty bestowed, in purchasing land from Maori the Crown was to ensure that the tribe was left with sufficient land for their present and foreseeable needs. Such a principle, as we have seen, was sorely neglected in the purchase of Ngai Tahu lands. In the Kemp purchase, the trihe was appeased with promises of further reserves and provision for mahinga kai which never subsequently materialised. As Kelly Wilson sadly related, scant provision was made for the people of south Westland, and no reserves at all were made in some areas where Ngai Tabu were known to reside. In the case of north Canterbury, no provision whatsoever was made for the tribe, as much of the land had already been on-sold hy the Crown to settlers. Rather than the 'tenths' rule, which was applied in the Crown's purchase of other areas of New Zealand at the time and which would have seen at least one-tenth of all land acquired hy Crown purchase remaining in Maori ownership, Ngai Tahu were left with one-thousandth of their previous domain, some 35,757 acres from a tract of 34.5 million. Such provision, as we have found in the *Ngai Tahu Report 1991*, was woefully insufficient for the support of the tribe, even in the short term. Moreover, the paucity of the tribal endowment was damaging to Ngai Tahu's traditional way of life and social structure, and impeded any attempts to participate in new activities such as pastoral farming.

The state that Ngai Tahu communities were reduced to as a result of the Crown purchase of their domain has heen recounted hy the Trihunal in 1991:

> 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 hy 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 suhsistence on land incapable of sustaining them.[1]

In the *Ngai Tahu Report 1991*, the Trihunal found the Crown's failure to set aside an ample land endowment from the purchases for the trihe's present and future needs to be in serious hreach of

both the Crown's duty to protect Ngai Tahu rangatiratanga and its obligations in the exercise of its pre-emptive right. We need say no more on this.

9.2 Inroads into the tribal estate

Having set aside what was, in Mantell's words, 'enough to furnish a bare subsistence by their own labour', it is to be expected that these reserves, mere pinpoints on a map, would be retained by the tribe. Moreover, in view of the circumstances surrounding the Treaty which we have discussed in detail in earlier reports, one could expect that the Crown would take active measures to ensure that this was so. Indeed, how could 'future needs' be provided for if the land were not retained? This intention is reflected in the terms of the 10 purchase deeds themselves. Signed by 'nga rangatira me nga tangata o Ngaitahu', on behalf of 'ourselves, our relatives and descendants', the deeds invariably referred to the lands excluded from the purchase as 'bei wenua tumau iho mo matou, mo o matou uri i muri iho i a matou, ake tonu atu'. As pitifully small as the reserves were for Ngai Tahu, it is evident that, at the time of purchase, both the Crown and the tribe were of one mind; such land was to be kept permanently as a tribal estate for the sustenance of the communities where the reserves had been set apart. This is reflected in the restrictions on alienation placed on the title of many of the reserves.

The broad principle that tribes or tribal individuals should retain sufficient lands for their needs found expression in many policies and statutes of New Zealand's own Government. As the Orakei Tribunal reported in 1987, Maori reserves were recognised and provided for in the Native Reserves Act 1856, and section 22 of the Native Reserves Act 1882 added the important criterion that reserves could not be alienated unless:

> a final reservation has been made, or is about to be made, amply sufficient for the future wants and the maintenance of the tribe, hapu or persons to whom the reserve wholly or in part belongs.

The preamble to the Native Land Act 1873 reiterated the objective of reserving areas for the purpose:

> of assuring to the natives without any doubt whatever a sufficiency of their land for their support and maintenance, as also for the purpose of establishing endowments for their permanent general benefit from out of such land.

Rather than actively protecting the tribal estate, however, investigation into Ngai Tahu's ancillary claims has revealed that the Crown has been largely responsible for its subsequent decline. It is because of Crown policy and Crown action that Ngai Tahu no longer possess even the meagre reserves left to them as a result of the purchases. Many of the grievances have focused on the reduction of the reserves as a result of public works acquisitions. We will return shortly to this issue when we discuss the manner in which the lands were taken. For now we make the point that the degree to which Ngai Tahu land has been affected by public works is material. Often the best of a

reserve has been taken, or too much, and, with few exceptions, no alternative land has been provided by way of compensation.

Ngai Tahu bave also lost their reserves through discriminatory and arbitrary provisions in legislation. Of particular note is section 438 of the Manri Affairs Act 1953, which gave the Maori Land Court a very wide discretion in vesting land in trust for the purpose of facilitating the use, management, or alienation of that land. This section enabled the alienation by the Maori Trustee of both section 73 at Invercargill, on the pretext of its noxious weeds problem, and the fishing reserve at Hawea, without any consultation with the owners of the lands. Other provisions in Maori land legislation, sucb as that pertaining to 'uneconomic shares', wbile not the subject of specific complaint in these claims, have resulted in the alienation of Maori land.

Numerous allegations were made by Mr McAloon that many of the Arahura reserves have been literally washed down the river. While the Tribunal rejects this as being any fault of the Crown, we do acknowledge that larger reserves may bave accommodated sucb natural pbenomena. In addition, much of the reserved lands was lost or diminished by flooding or erosion because of its location alongside rivers or by the sea. In some cases the reserved lands, because of their location, were also needed for settlement, sucb as happened in Greymouth, wbere the town was located at the river mouth. Pressure from settlers seeking long-term commercial and residential sites resulted in the granting of perpetual leases.

One of the principal factors behind the reduction of Ngai Tahu's tribal endowments was not argued in any depth by the claimants. This of course was the Native Land Court's granting to individuals of titles to wbat were intended to be tribal reserves. The rationale behind early Maori land legislation has been explained by the Orakei Tribunal.[2] The Native Lands Act 1865 and subsequent amendments effected the individualisation of Maori landholdings with two objectives in mind: to better facilitate the alienation of sucb land and to destroy the communal nature of Maori society. The Orakei Tribunal found that the provisions of the 1865 Act wbich enabled tribal ownersbip of Maori land to be extinguished on the application of any one member of the tribe without the consent of the remainder of the tribe were inconsistent with the principles of the Treaty. In recognising te tino rangatiratanga of tribes over their lands, the Crown acknowledged the authority or mana of Maori for so long as they wisbed to bold their land in accordance with long-standing custom on a tribal and communal basis. It found that, by enabling the vesting of both the legal and the beneficial ownership in only a few members of the tribe to the exclusion of the great majority, the Native Lands Act 1865 breacbed the Treaty guarantee to Maori of the full, exclusive, and undisturbed possession of their lands.[3] The grant of title to Ngai Tahu's tribal estates to individuals is accountable for mucb of the subsequent alienation of their lands.

In some cases, while Ngai Tahu retain ownersbip of their reserves, they are unable to exercise control over the land. In 1991 we reported on the system of perpetual leasing, wbicb in effect forever took away Ngai Tahu's future rights to the use and enjoyment of their reserves for very little return. We found such a system to be in breacb of article 2 of the Treaty and recommended action to remedy the situation. Grievances concerning perpetual leases have surfaced again in these ancillary

claims and are dealt with in the Tribunal's findings on claim 42 (concerning the Whakapoai reserve). The Tribunal is gratified that the Government proposes in 1995 to legislate to remove the perpetual term provisions and restore a market rent but it still considers that further changes in other details of the proposals are needed if a fair and just solution is to be found. The final opportunity to remedy a long-standing and continuing grievance will rest in the select committee of Parliament and in the subsequent legislative action. As the position already stands, despite the Government's declared intention to break the perpetual leases, the Maori owners and, to a lesser degree, the lessees, are being required to carry the loss. It is inequitable that the Crown, having introduced in 1887 and still retaining today legislation which effectively forever took away the right of the Maori beneficial owners to manage their own lands and which created a regime of rent reviews quite unfair and damaging to those beneficial owners, should escape its responsibility to make a substantial compensatory contribution.

Other factors which have hindered Ngai Tahu's ability to manage and exert control over their lands have their foundation in prohibitive Maori land legislation and also in other general enactments. These restrictions have come to light during the hearing of the substantive claim and are referred to in the 1991 report. Investigation into these 100 ancillary claims confirms and extends the range of that legislation. We have referred earlier in this report to the injustices relating to perpetual leases. These injustices were created in respect of Ngai Tahu reserved lands by the Westland and Nelson Reserves Act 1887 and carried through into present day application under the Maori Reserved Lands Act 1955. We shall shortly consider the impact of public works legislation operating unfairly against Maori landowners. In claim 8 we examined the impact of the Ellesmere Lands Drainage Amendment Act 1927, which empowered a drainage board to drain Ahuriri Lagoon and thereby jeopardise Ngai Tahu fishing rights. In claim 66 we dealt with section 34 of the Maori Purposes Act 1950, later brought down as section 387 of the Maori Affairs Act 1953. This legislation set up a code which allowed for unproductive Maori land to be sold by the Maori trustee upon order from the Maori Land Court. There were no similar provisions in the law for idle European land or even Crown land to be sold. Section 387 was repealed in 1970 but not before this discriminatory and confiscatory provision resulted in the loss of Invercargill section 73 and possibly other lands during its 20-year existence.

Maori land legislation has contained many provisions which have affected the rights of Maori to own and control their land interests. This report is not the place to detail and discuss these matters, which have been looked at in earlier decisions and which will no doubt be further investigated by the Tribunal in other specific claims, where an opportunity will be provided for the claimant and the Crown to examine and argue the position. Suffice it to say in this report that legislative provisions have undoubtedly resulted in the diminution of Ngai Tahu's pitifully small estate and their control and management of it. Later in this chapter we shall look at some beneficial recent changes introduced into both Maori land law and general legislation which go some way towards remedying the position. We shall also comment on some positive attitudes developing in Government departments and local authorities.

9.3 The loss of food resources

The investigation into Ngai Tahu's ancillary grievances concerning mahinga kai has only added to the sorry picture painted in the *Ngai Tahu Report 1991*. In 1868, 20 years after signing a deed which guaranteed to them the retention of their mahinga kai, Ngai Tahu from the Canterbury region finally received the court's sanction to a handful of inland fisheries. In every single instance these specific fisheries have since been made redundant. In the case of Taerutu and Torotoroa, within a decade the fisheries were destroyed through drainage. Subsequent attempts by Ngai Tahu to secure areas of mahinga kai, such as the reservation of Taieri, did not result in any lasting success. In every case, the interests of 'settlement' have been placed above Ngai Tahu's rights, as guaranteed to them by the Treaty and by the terms of the Kemp deed. In 1991 the Tribunal felt unable to uphold the general grievance relating to the loss of the tribe's mahinga kai through the impact of settlement. We stated that the loss was the result of activities from the whole spectrum of society and could not be attributed solely to the Crown as a breach of its duty to protect under the Treaty. In the consideration of the ancillary claims, however, we feel that a distinction exists between the general impact of settlement on the countryside as a whole and that affecting a limited number of fisheries specifically set aside as mahinga kai for the use of Ngai Tahu. For this reason we have upheld the claimants' grievances.

The loss that Ngai Tahu have suffered through the destruction of their traditional mahinga kai has been a recurring theme in the Ngai Tahu claim. As was so eloquently put by Huhana Morgan during the hearing, the last straw has been the inability of the tribe in recent times to place kaimoana on the table of their wharekai for their guests. This is not solely as a result of the loss of the fisheries, but also, as in the case of Waikouaiti Lagoon, as a consequence of conservation restrictions which prevent Ngai Tahu from exercising their traditional rights. Over the years the tribe has largely been left out of the management of such resources, and has often been detrimentally affected by restrictive regulations which have no regard for their traditional rights. As the Crown has failed to protect Ngai Tahu's tribal estate, it has similarly neglected to ensure the tribe's continued use and enjoyment of a handful of valued fisheries. Such failure we have found to be a breach of article 2 of the Treaty.

9.4 Public works acquisitions

We turn now to discuss the manner in which the tribe's reserves have been taken for public works purposes such as defence, roading, railways, scenery preservation, and recreation, as this has been a dominant issue in the ancillary claims. Of recurring concern is the way in which the owners of affected land have been kept in the dark about such takings. Numerous complaints have been directed at the Crown's failure to notify owners of impending works and to consult with them about the issue. Criticisms have also been directed at the excessive nature of some takings, the fact that land has been taken over the objections of the owners, and that compensation for some takings has never been paid. Allegations have been made that in some areas only Maori land has been taken for public purposes.

9.4.1 Few of the Ngai Tahu claimants have questioned the Crown's right to take their land for puhlic purposes. Kelly Wilson of south Westland, while bemoaning the fact that the one and only reserve capable of being farmed at Mahitahi bas been eaten into on three different occasions hy public works, was not critical of the Government's use of the land. Rather, he simply made the point that alternative lands should bave been provided by way of compensation. Such a tolerant view, which was reflected in many of the claimants' submissions, is remarkable in the face of the great loss which the tribe has sustained throughout the years.

The conflict between the Crown's guarantee in article 2 of the Treaty of 'te tino rangatiratanga' or 'the full exclusive and undisturbed possession' to Ngai Tahu over their lands, on the one hand, and the right of 'kawanatanga' or 'sovereignty' conveyed to the Crown in article 1, on the other, has not gone unnoted. Mr McAloon, researcber for the claimants, raised this issue with respect to the reserves in Arahura, alleging that the Crown's general act of compulsory acquisition of these lands for public purposes was in breacb of article 2 of the Treaty, whether or not compensation was paid. However, the question has not been argued by either of the parties. In light of the many other large issues involved in the Ngai Tahu claim, this is not surprising. In the absence of any argument on this crucial issue, bowever, the Trihunal has refrained from making any definitive finding on the point. We feel that the circumstances of eacb case need to be considered in order to come to any conclusions with regard to a breach of Treaty principles. This task of weighing up the puhlic interest against the guarantees stipulated in the Treaty becomes inordinately difficult with the passage of time since the taking in question and the limited extent of the information available to us. In considering the acquisition of parts of the Mangamaunu reserve for scenic purposes, for instance, we have been unable to form any conclusion on this issue. On the other hand, in claim 1 we have found that the Crown's compulsory acquisition of this land above the owners' objections to be in breach of article 2 of the Treaty, given the subsequent revocation of the scenic reserve status and sale of much of the area. In our discussion of that claim we also suggested the nature of the limitations which would seem to be imposed by article 2 of the Treaty on the right of the Crown compulsorily to take Maori land for public works. We now turn to review the manner in wbicb Ngai Tahu lands have been taken, and to the recurring grievance regarding the failure of the Crown to return lands once they are no longer needed for the purpose for wbich they were taken.

9.4.2 Ngai Tahu criticisms regarding the lack of knowledge that owners had of the various takings are generally well founded. In some cases the Trihunal has been unahle to ascertain whether or not the owners were notified, but the pattern has generally emerged that only in extremely rare cases were all of the owners of multiply beld land notified of the impending takings. In many cases none of the owners were so notified. This can be attrihuted to provisions in public works legislation of the time for the procedure for taking Maori land, whicb differ considerahly from those for taking general land. Whereas general land was often taken by agreement with the owners, the same was not true for Maori freehold land. Under section 24 of the Puhlic Works Act 1882 no notice at all of the taking was required to be served on the owners of Maori freehold land, the publication of the relevant Order in Council being sufficient to take and hold the lands for the said purpose. By 1908 notice of the taking was required to be served on owners and occupiers of Maori freehold land only if the title to such land bad been registered under the Land Transfer Act 1908. As very little Maori

freehold land was so registered, in practice 'notification' was restricted to the publication of the *Gazette* notice in the *Kahiti*. Nor was this substantially changed under the 1928 revision. It was not until 1974, with the passing of the Maori Affairs Amendment Act, that there was any serious requirement on the Crown to notify the owners of Maori freehold land of any proposal to take their land.

It is evident that the different procedures for the taking of Maori freehold land arose in order to overcome the difficulties and delays in locating the numerous owners of such land. The nature of a fragmented title, the number of owners involved, and the geographical dispersal of the owners have often been cited as justification for the lack of notice served on such owners. As one Public Works Department official said in relation to the taking of land from Ngai Tahu's reserve at Mahitahi for roading:

> If you could locate the principal native owners and obtain their consent to entry and to the land being taken . . . this would enable you to proceed with construction, but the Department's experience has been that it is more expeditious to issue a Notice of Intention and take the land compulsorily where natives are concerned. (AB:80)[4]

While this method may have been more expedient from the Crown's point of view, it is apparent that Maori landowners lost out. The lack of sufficient notice removed the possibility of lodging any protest about the taking. By excluding Maori landowners from the option of taking land by agreement, it denied them the opportunity to say no to any proposed works. We draw attention to the case at Mahitahi where John Condon, a Pakeha whose land was required for an aerodrome, refused to sign the Crown's agreement for the use of his land. As a result his land was not subsequently taken. Part of section 781, Ngai Tahu's reserve, was acquired instead, with notice being served on only six of the 171 owners. The problems arising from the fragmentation of Maori land interests are not new to the Tribunal. We point out, though, that such problems are of the Crown's making. The fact that Maori have been prejudicially affected as a result is unjust. Moreover, the establishment in 1974 of a code for the representation of owners of Maori freehold land to be notified of impending works is evidence that a way around the problem, which would not cut Maori landowners out of the objection process, existed, and could have been introduced well before 1974. The Tribunal considers that the statutory shortcomings in the notification given to Maori landowners of the taking of their land for public purposes in no way recognise or protect Ngai Tahu's rangatiratanga over their lands. Such provisions also fly in the face of the Treaty principle of partnership, which requires the Crown to act towards its Treaty partner with the utmost good faith. The fact that Maori landowners were not afforded the same rights as non-Maori landowners can also be viewed as a breach of article 3.

In submissions made in the ancillary claims, the Crown has commented generally on compulsory takings under the various Public Works Acts and made this statement:

> The Crown notes that the Government is still to consider policy on the settlement of Treaty claims raising this issue. However, pending the development of that policy, in the

> context of other claims raising the same questions, the Crown bas taken a similar position to that adopted by the Tribunal in the Draft Report — that a case by case assessment is required.
>
> In general, the Crown has not accepted that Article I of the Treaty is necessarily subservient to Article II. It has taken the position that both articles must be read in relation to the principles of the Treaty as a whole. They must also be read alongside Article III whicb imparts to Maori the rights and privileges of British subjects. (AB34:2–3)

We would observe that the Crown does not appear to have had regard to the views of the Tribunal expressed in chapter 11 of the *Ngai Tahu Sea Fisheries Report 1992* and, in particular, our discussion of the Treaty principle that the cession by Maori of sovereignty to the Crown was in exchange for the protection by the Crown of Maori rangatiratanga.

9.4.3 As important as the issue of notification is the Crown's failure to return lands which are no longer required for the purpose for whicb they were originally acquired. A striking example of this was the acquisition of some 592 acres in 1964 for the television transmitter site at Hedgehope. Less than one-sixteenth of the land so taken was required for the purpose. Rather than returning the surplus area, it was leased out for grazing and then set apart as State forest. The compulsory acquisition of Omihi K2 for scenery preservation purposes over the objections of the owners, and the subsequent revocation of the scenic reserve status over half of this area, is another case in point. Such actions, we feel, display an arrogance on the part of Crown agents and can hardly be reconciled with the Crown's duty to both act in good faith and protect Ngai Tahu's rangatiratanga over their lands. While in the case of the Hedgehope transmitter some moves bave been taken to have the surplus land returned, as at April 1995 this has still not been done.

Ngai Tahu bave not objected to giving up their lands wben they were satisfied that this was for the public good. They are, however, well justified in objecting to the Crown's failure to return sucb land once that public interest has been served. The Tribunal agrees with the sentiment that Ngai Tahu's interest in the land does not stop at the point of taking, or wben compensation is paid. Although the return of land taken for public purposes to the original owners or their descendants is provided for in legislation, we feel that this bas some way to go. The claims presented to this Tribunal show a tardiness on the part of the Crown in returning such land. To be consistent with the obligation to protect Ngai Tahu's rangatiratanga over their lands, we feel that the tribe's continuing interest in lands devoted to the public good should be recognised by the Crown.

9.4.4 Researcb into the claims reveals that in most cases monetary compensation was paid to the owners of affected lands. Such compensation was generally low, based on the Government's valuation of the lands because invariably the owners could not afford an independent valuation. The benefit of monetary compensation to owners of Maori freebold land is questionable, given that such owners were often numerous, and the amount, when divided up between them all, was nominal. We agree with Mr Wilson's view that a 'land for land' basis of compensation would bave been more

acceptable than the payment of money. The provision of alternative lands by way of compensation may have gone some way towards maintaining the tribal estate.

9.4.5 It was interesting to hear the opinion of Ken Piddington in his capacity as Director-General of Conservation. He spoke with regard to the department's management role of conservation areas, submitting that there is no incompatibility between the department's responsibility to manage land and waters for conservation purposes and the vesting of such areas in Maori ownership. In other words, the management of the land is not dependent on ownership. This is a substantial move forward from the traditional viewpoint, whereby Crown ownership of resources is considered to be essential. The Tribunal welcomes such an enlightened approach and comments that the same concept could be applied to the Crown's use of land for any public purpose.

The provision of joint-venture alternatives, as opposed to the continuing loss of the freehold, also warrants serious consideration. Joint control of land to be used for public purposes is consistent with the principle of partnership inherent in the Treaty. It would also ameliorate continuing encroachment into Maori reserves, such as we have seen in this ancillary claims report. The Tribunal is aware that in the United States joint-venture uses of Native American lands occur which have benefits for the state and the indigenous people involved. We are also aware that when Native American land is required for roads in the State of New Mexico an easement over such land is acquired, not the freehold. The option of a lease, a licence, an easement, or a joint-venture arrangement should, we believe, in the great majority of cases, be the appropriate way of protecting property rights guaranteed to Maori under article 2 of the Treaty. There would be no difficulty in reconciling either acquisitions of leasehold interests or a joint-venture approach with section 2 of Te Ture Whenua Maori Act 1993, which sets out the Act's primary objectives as the retention, use, and development of Maori land. No doubt the policy ministry, Te Puni Kokiri, could provide research on such proposals.

9.4.6 The Tribunal considers that a further review of the Crown's power to acquire Maori land under Part II of the Public Works Act 1981 is required. We recommend firstly that:

- the Public Works Act be amended to provide that it should be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi.

Secondly, we recommend as a consequence of the first recommendation that:

- the Crown and local authorities be expressly authorised to acquire a lease, licence, or easement over, or enter into a joint-venture arrangement in respect of, Maori land required for public purposes, instead of acquiring the freehold title of such land.

These recommendations should be brought to the notice of the Minister of Lands, the Minister of Justice, and the Minister of Maori Affairs.

9.4.7 In most cases the Trihunal has not made any recommendations with regard to the specific ancillary grievances relating to puhlic works which have been upheld. We have, however, referred to the resultant reduction of Ngai Tahu's already meagre reserves, and we will return to this point shortly. Below are the specific recommendations that we have made regarding lands acquired for puhlic purposes:

- The 'Karetai lands' at Taiaroa Head, lot 33 and part lot 27, should be returned to the descendants of Korako Karetai (claim 51). We have also supported the vesting of the rest of the headland in the Otakou runanga.
- Section 75 at Harington Point should be returned to the descendants of Wi Potiki (claim 52).
- Part section 48, hlock IV, Glenomaru survey district should be returned to the Ngai Tahu owners entitled (claim 56).
- Lots 1, 3, and 4 of section 65, hlock VI, Waimumu Hundred should be returned to the original owners, and compensation should be determined for the acquisition (claim 61).

9.5 Crown attempts to alleviate landlessness

Various attempts have been made hy the Crown over the years to alleviate the sorry plight in which Ngai Tahu have been left. These have been outlined in the *Ngai Tahu Report 1991*. Such attempts suggest that the Crown has at different times acknowledged that it is incumbent on itself to ensure that the tribe has not been left altogether landless. Having said that, the Trihunal cannot view such Crown initiatives as serious undertakings to remedy the situation. The Crown's response to requests for specific food reserves at Makawhio in 1892, for example, was to set aside lands in areas other than those requested by the tribe and of no use to them. Furthermore, the tribe has never received title to these areas.

9.5.1 Of particular note in the ancillary claims is the provision of further lands for Ngai Tahu under the South Island Landless Natives Act 1906. The allocation of land under this Act was in response to years of Ngai Tahu protest about the inadequacy of their lands. As we set out in 1991, the scheme attempted to remedy 'landlessness' hy bringing individual Maori landholdings in the South Island up to 50 acres per head, an amount commonly perceived by Pakeha politicians to be sufficient for their needs. The whole basis of the scheme, as we have seen, was seriously flawed and the ancillary claims have only highlighted these shortcomings. Maori from Marlborough were allocated land on the slopes of Rakiura, and Ngai Tahu from Kaikoura in the north and Oraka in the south were allocated land on the rocky, remote hills above Wanaka. In 1991 the Trihunal reported that the 1906 Act and its implementation were hut a cruel hoax which did little to relieve the grim reality of Ngai Tahu's landlessness. It is ironic to say the least that today, when Ngai Tahu are finally in a position to benefit financially from the landless natives lands through the milling of indigenous timber thereon, they have been prevented from doing so hy the Government.

Moreover, a closer look at the implementation of the landless natives scheme as a result of the ancillary claims has revealed that title to some 19,734 acres of allocated land has never suhsequently been granted. In the Trihunal's mind, this further exacerbates our 1991 finding of a lack of good faith on the part of the Crown. We have made the following recommendations with respect to the landless natives lands:

- Negotiations should be recommenced immediately in respect of the Wanaka-Haweahlocks on a value-for-value exchange in land (claim 14).

- Title to the Whakapoai landless natives block should be vested in the descendants of those Maori originally found entitled (claim 33).

- The Crown sbould permit the Waitutu Incorporation to market the timber on their lands or provide adequate compensation for the loss of milling opportunities. The Crown should also reimburse the incorporation for all provahle, actual, and reasonable costs incurred in negotiations and planning applications up to the date on which the incorporation receives consent to market its timber resource or alternative remedies are agreed on between the incorporation and the Crown (claim 89).

- The wbole of the Port Adventure and Toitoi landless natives hlocks should be completed as to survey and vested in the persons found to be entitled hy order of the Maori Land Court within 12 months from the presentation of this report to the Minister, free from any restriction, covenant, easement, or condition, unless agreed to by the owners or their trustees (claim 92).

The Tribunal has not upheld claims that Ngai Tahu are entitled to unallocated areas of land wbicb were set aside for the purpose of being assigned to landless natives.

The Crown submitted that there does not appear to be an ohvious distinction justifying the Tribunal's approach to claims 14, 77, and 89, on the one hand, and claims 33 and 92 on the other. Crown counsel stated:

> Claims [14, 33], 77, 89 and 92 concern land allocated under the South Island Landless Natives Act 1906. In respect of claims [14], 77 and 89 the Tribunal finds that the land allocated or granted by the Crown under this Act was of poor quality, that sucb Crown action breached the principles of the Treaty, and that remedial action is required accordingly. However, at claims [33] and 92 the tribunal recommends that land wbicb was allocated in the 1906 Act, but not granted, sbould now be granted to the descendants of the original allocatees, despite its poor quality. (AB34:8)

The Crown has not recognised that there are two separate issues at stake bere. Claims 14, 77, and 89 concern land granted because of Ngai Tahu's landlessness. The land granted was of poor quality and did little to alleviate that landlessness. Thus remedial action is recommended by the Tribunal.

In claims 33 and 92 (and claim 16[5]) the main issue is that, despite the promise of land to alleviate Ngai Tahu's landlessness, the land was never granted. That the land was and is of poor quality should not obscure the fact that the Crown promised land and did not grant it. Thus the Tribunal has recommended that the land should be granted to the descendants of the original allocatees. There is no inconsistency.

The Crown also suggested that it may be appropriate to deal with the claims which relate to the South Island Landless Natives Act 1906 after the Tribunal has investigated the claim to the Southland indigenous forests (Wai 158), as that claim also involves land allocated under the 1906 Act (AB34:9). The Tribunal maintains, however, that it has sufficient information concerning these ancillary claims on which to base its findings and recommendations.

9.6 Recent changes

Many of the ancillary grievances have been directed at legislation which affects Maori land, in particular the Maori Affairs Amendment Act 1967, the Town and Country Planning Act 1977, and the Mining Act 1971. As these concerns were not argued in any depth by the parties, the Tribunal has avoided making any findings on such legislation. We have also commented that a number of the claimants' grievances would seem to have been caught up by recent legislative changes affecting resource management, namely the Resource Management Act 1991, the Conservation Act 1987, and the Crown Minerals Act 1991. These recent Acts require that all persons exercising functions and powers under those Acts shall take into account (or words to that effect) the principles of the Treaty of Waitangi. Under the Resource Management Act 1991, the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga is listed as a matter of national importance.

Of course these legislative provisions are subject to interpretation. The Waitangi Tribunal established to hear the Ngawha geothermal claim (Wai 304) has recently expressed strong reservations about the Resource Management Act 1991, in that it does not go far enough to ensure that Treaty principles are applied. The Wai 304 Tribunal concluded that, under the Act, decision-makers are not required to act in conformity with, and apply, relevant Treaty principles and it recommended that the legislation should be amended to ensure that Maori Treaty rights are accorded their appropriate standing. It may still be some time before Maori are accorded the recognition they seek in matters affecting their resources. None the less, the groundwork is in place for proper recognition and protection to occur, and there has been a perceptible change in public attitudes in some areas. The Department of Conservation, for instance, has displayed a positive recognition of Treaty principles in having Ngai Tahu representation in the management of Wainono Lagoon and in seeking to bring commercial eeling of that lagoon to an end. The Tribunal welcomes such moves. We caution, however, that in devolving power to local authorities the Crown's responsibility to uphold the principles of the Treaty is in no way lessened.

9.6.1 There are several claims which we have indicated are resolvable in the Maori Land Court. The recently enacted Te Ture Whenua Maori Act 1993 has at its heart the retention of Maori land and

contains provisions which answer some of the complaints expressed hy Ngai Tahu. The Act has also increased the Manri Land Court's jurisdiction on a number of issues. We have made two recommendations on matters to be determined hy the court. The second of these is now possihle through new provisions in the 1993 Act. We recommend that:

- the question of accretion at Karitane be referred to the Maori Land Court for inquiry under section 29 of Te Ture Whenua Maori Act 1993 (claim 50); and

- the Minister of Manri Affairs apply to the Maori Land Court to have section 14 at Sandhill Point reserved imder section 339 of Te Ture Whenua Maori Act 1993 and vested in Ngai Tahu (claim 85).

It remains to be seen whether this Act will fulfil the aspirations of the people in the management of their land.

9.7 The restoration of the tribal estate

In some respects the current landless, or nearly landless, plight of Ngai Tahu today makes the investigation into how this came about irrelevant. Whether the reserves were subsequently sold 'willingly' hy Ngai Tahu vendors, or taken hy the Crown for puhlic works, or swallowed up hy the river, the fact remains that Ngai Tahu are today all hut landless. And this fact in itself stands in hreach of the principles of the Treaty of Waitangi. Chief Judge Durie concluded as much in the *Waiheke Island Report*:

> I come to that conclusion having regard to a policy, fundamental to the execution of the Treaty in my view, that in the colonisation process the tribes would not be left landless, and hy extrapolating from that, a continuing duty to consider redress where a current state of landlessness is in itself evidence that the Crown has not maintained that intent.[6]

Because of the Trihunal's limited jurisdiction in that claim, it was unahle to examine the detail of how Ngati Paoa lost its land. The Chief Judge's conclusion was hased solely on Ngati Paoa's virtual landlessness as at 1987. As parties to both the Treaty of Waitangi, on the one hand, and the various deeds of purchase of their land on the other, Ngai Tahu could never have conceived that their lands would eventually be dissipated to the extent that they are today. Such a result is in hreach of both compacts.

The Trihunal has fomd the failure to set aside sufficient land for Ngai Tahu's present and future needs, including ample provision for mahinga kai, to be a grave hreach of article 2 of the Treaty. We consider that it was therefore imperative that the Crown ensure that the paltry lands and fisheries that were reserved from the purchase were kept intact for the suppott and enjoyment of the tribe. In failing to protect even the miserable resources which were reserved to the tribe from the purchase of their land, the Crown has acted in serious breach of the Treaty.

The onus is now on the Crown to restore a tribal endowment. The Chief Judge's conclusion with regard to Ngati Paoa has equal relevance to the plight of Ngai Tahu:

> It seems then a reasonable expectation today, and in keeping with the spirit of the Treaty, that the Crown should not resile from any opportunity it may have to provide at least a part of those endowments that it ought to have guaranteed, and to ensure, that proper policies to that end are maintained.[7]

9.7.1 In paragraph 9.4.5 the views of a former Director-General of Conservation, Mr Piddington, were referred to in relation to Crown ownership of land. This Tribunal agrees with Mr Piddington's views that the Crown does not need to have ownership in order to ensure that land is managed so as to safeguard and conserve its valuable resources in the public interest. The Tribunal has also adopted this view during its consideration of claim 51 concerning Taiaroa Head. The Tribunal has gone further to demonstrate that, within the existing statutory framework, there is adequate provision to enable the return of Crown land to Maori ownership while also providing complete protection of the national interest. The Tribunal has set out the relevant sections of the Reserves Act 1977 and Te Ture Whenua Maori Act 1993 which would permit such a course. The Tribunal has also reflected that there is a lack of knowledge of these procedures by Maori and Pakeha alike and that this innocent ignorance extends even to local authorities and Government departments. Perhaps by drawing attention to the existing law the Tribunal may succeed in persuading the Government to have a second look at its proposed overarching policy which was announced in June 1994 and referred to in the booklet entitled *Crown Proposals for the Settlement of Treaty of Waitangi Claims*. The Tribunal respectfully draws to the Minister of Conservation's notice its statement of the procedural regime, as recorded at paragraph 4.6.7 of this report, which is presently available to the Minister. There seems to be a lobby of persons and organisations which is opposed to any Crown land administered by the Department of Conservation being returned to Maori solely or to Maori and the Crown jointly. These persons may be uninformed on the protection mechanisms which are available to the Government.

9.7.2 The question of settlement for Ngai Tahu has been left to the two parties to negotiate. This report has established the need for the restoration of a tribal land base on a regional basis. To this end, we have recommended that, in negotiating the settlement of the wider Ngai Tahu claim, both parties have regard to the appeals of the tangata whenua in regions such as Kaikoura, south Westland, and Aparima (claims 2, 15, 16, 73, and 75). We acknowledge that there will also be other Ngai Tahu communities in similar circumstances whose landless plight was not brought to the attention of the Tribunal. We strongly urge that both parties have regard to the local concerns.

In the same way, the Tribunal finds that the Crown is similarly duty-bound to restore fishery resources to the tribe. We have recommended in several instances that alternative regional inland and estuarine fisheries be developed for the use of the tribe (claims 3 to 8, 10, and 53). In particular, in response to the claimants' requests, we have recommended that:

- The Crown should vest Tutaepatu Lagoon in Ngai Tahu ownership and contemporaneously enter into a joint management scheme with Ngai Tahu for the development of the fishery for their use. The joint management scheme should bind the Crown to provide financial, technical, scientific, and management resources (claim 9).

- Wainono Lagoon should be developed in partnership with Ngai Tahu of south Canterbury as a traditional fishery resource for them (claim 11).

- The Crown should commence a programme of effective consultation with Ngai Tahu as to the management of Waikouaiti (Hawkeshury) Lagoon and should ensure the resumption of fisbing by the tribe on a traditional basis (claim 55).

Direction has come from the claimants with respect to the Canterbury region in the recent publication of a resource management strategy for the development of inland and estuarine fishery reserves. The Tribunal commends them for this positive start. We recommend the development of resources to fulfil the requirements of Ngai Tahu in each region. On a final note, and echoing the sentiments expressed in 1991, the Tribunal points out that the participation of Ngai Tahu in the management of resources is essential to ensure that such resources are developed in a way which reflects their needs.

9.8 Conclusion

This third major report concludes the Wai 27 Tribunal's inquiry into all Ngai Tahu grievances to the point of determining wbether the tribe's claims are well founded or not. It does not, bowever, entirely complete the statutory duties reposed in the Tribunal hy section 6 of the Treaty of Waitangi Act 1975. Subsection (3) of that section gives the Tribunal discretionary power to recommend the action to be taken by the Crown to compensate claimants for any act, omission, policy, or practice of the Crown found to bave prejudicially affected them. In chapter 24 of its 1991 report the Tribunal set out its general views and indicated that it would he prepared to bear the parties and make appropriate recommendations if settlement negotiations between the claimants and the Crown should fall down.

As this report on the ancillary claims reaches finality and is about to be presented, there is a request from the claimants for the Tribunal to reconvene on the question of remedies. That request is presently being considered by the Trihunal. This makes it all the more important, therefore, that this report on ancillary claims can be completed so that the claimants and the Crown can have before them the Wai 27 Trihunal's final assessment of all Ngai Tahu grievances, as well as the recommendations made in respect of certain claims.

1. *Ngai Tahu Report 1991*, para 16.1.1

2. *Orakei Report*, 1987, p 41

3. Ibid, p 154

4. Engineer-in-chief and under-secretary to district engineer Greymouth, 14 July 1938, W1 44/2/2, NA Wellington

5. Despite its relevance, the Crown omitted this claim from its submission concerning the South Island Landless Natives Act 1906 (AB34:8).

6. *Waiheke Island Report*, 1987, pp 36–37

7. Ibid, p 40

Makahuri: He Kinaki Whakamutunga

Makahuri me to ropu, Tena Koutou

Since our generation of Ngai Tahu set out on the long road of due process before the Trihunal and the Courts, Aotearoa has had four Prime Ministers and much has changed. Sir Monita has passed on and many of our own who appeared before you on the marae throughout Te Wai Pounamu have gone too. Many more, though, still live and a new generation is inheriting the Ngai Tahu dream of justice. As we in our time shall not rest, unless in justice, neither shall they rest. Only in justice can there be peace between Ngai Tahu and the Crown.

We must find that peace though — lest the grievance consume the future as it has so much of our past.

'He mahi kai takata, he mahi kai hoaka'

'It is a work that devours people as sandstone devours pounamu'

Makahuri mai, ka tika hoki o koutou mahi nunui. Ka mihi o Kai Tahu ki a koutou mo tena. Kua mutu. Ma te wa te mahi rokopai o Kai Tahu me te Karauna.

Ngai Tahu greet you and we thank you for this huge task which has now finished. The future task is for Ngai Tahu and the Crown to make peace.

Sir Tipene O'Regan
Chairman
Ngai Tahu Maori Trust Board

Epilogue

And so in this month of April 1995, after an inquiry wbicb has been proceeding for over seven years, the Waitangi Tribunal constituted for that purpose and known as the Wai 27 or Ngai Tahu Tribunal now presents its third major report. In 1991 the Tribunal reported on the major land claim involving 73 grievances. That report was followed in 1992 by another major report on sea fisheries and now the Tribunal reacbes the end of its inquisitorial function by reporting on 100 ancillary and specific matters raised by individual members of the iwi during the progression of the main land and sea fisberies claims. It is not quite the end of the Tribunal's function as remedies may yet call for Tribunal intervention, as discussed in the chapter 9. But it is the end of the detailed examination and determination of Ngai Tahu grievances.

At the conclusion of its 1991 report, the Tribunal looked back and recounted the unforgettable moments of its journey through Ngai Tahu's land and of the various encounters it bad with Ngai Tahu people, some poignant, some beartwarming, some disputatious, but all rewarding.

The Tribunal members will never forget the courtesy, grace, and bospitality of all of the bapu of Ngai Tahu. Nor will the Tribunal forget the dignity, patience, and innate sense of bumour of Ngai Tahu people despite their long-standing frustration and anger at being ignored for well over a century. As the Tribunal sat for the last time at Tuahiwi and listened to the general discussions of the tangata whenua on all that had taken place over the lengthy bearing process, one important theme emerged. The people were satisfied and relieved that they had discharged the trust reposed in them by tupuna to bave Ngai tahu grievances beard. It speaks much for the tenacity of the tribe that despite every set-back over sucb a long period a small number of kaumatua bad marshalled resources to have their claun put to the Tribunal and in sucb capable manner.

In its 1991 report the Tribunal also thanked counsel for the claimants and counsel for the Crown for the constructive, fair, and able way in wbicb evidence bad been presented. Four years further on the Tribunal reiterates its appreciation of the contribution of so many people to this lengthy inquiry.

Neither the claimants nor the Crown will be satisfied with all of the findings of the Tribunal. There is one enduring satisfaction, bowever, in the vast written record that now exists in respect of Ngai Tahu history and grievances. There is an even greater satisfaction for Ngai Tahu in baving persevered in their searcb for justice through legal process and in discharging the beavy burden that they have carried for so long. It now remains for the Crown to try to regain the bonour and the trust it lost last century by offering fair and just terms of settlement.

Final Message and Prayer

At the end of each hearing day, as the Wai 27 Tribunal journeyed through Te Wai Pounamu, Bishop Bennett closed proceedings with a thought for the day and a karakia.

Following that fine tradition, he now gives us this final message and prayer:

> Throughout the long deliberations on Ngai Tahu's claims, from the 'tall trees' to the 'undergrowth', something quite unrelated to the proceedings themselves was developing.
>
> The human factor in all of this became more and more evident as time passed. The Ngai Tahu claim was one of the earliest and certainly one of the largest, bringing together a large number and a wide variety of people, many being involved for the first time in the social and cultural intricacies of Maori history, Maori values, Maori attitudes, Maori pain, and Maori expectations. The relationship between the major participants — the claimants, the Crown, and the Tribunal — reached new levels of understanding as the parties strove in their common task to set the record of history straight and plot a future which could bring benefit to all of the people.
>
> A new appreciation and respect for the people of Ngai Tahu grew as their story of dispossession and tribal poverty unfolded. In the early days following settlement only the tenacity with which they held to the memories of their waahi tapu, their mighty rivers, bountiful lakes, sacred mountains, and mahinga kai, together with their sense of iwi, kept their own homeland from becoming a foreign country to them.
>
> Added to all of this was their deep sense of spirituality. Their regard for their majestic Aoraki was not dissimilar to that of the early Israelites during their own time of oppression, when, needing help, the psalmist cried, 'Ka anga oku kanohi ki nga maunga kei reira he awhina moku' ('I will lift up mine eyes unto the hills from whence cometh my help. My help cometh ever from the Lord who hath made heaven and earth').
>
> We wish to end this report on a note of appreciation to all of those involved in these claims, and we express our hope that our children may go forward together in strength with trust and confidence in themselves as a just and honourable people.
>
> Ma te Atua tatau katoa e manaaki.

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; and

(b) The Minister of Maori Affairs;
The Minister of Justice;
The Minister in Charge of Treaty Negotiations;
The Minister of Conservation;
The Minister of Lands;
The Minister of Fisheries;
The Minister for State-owned Enterprises;
The Minister for the Environment; and
The Solicitor General.

Dated at Wellington this 27th day of April 1995

A G McHugh, presiding officer

M T A Bennett, member

G M Te Heuheu, member

I H Kawharu, member

G S Orr, member

D J Sullivan, member

Appendix 1

Summary of Ngai Tahu Ancillary Claims, Findings, and Recommendations

The following pages contain a tabular summary of the Ngai Tahu ancillary claims.

KAIKOURA

No	Claim area	Claim	Finding	Recommendation
1	Waiharakeke J Omihi K	Taken for scenic purposes without knowledge of owners; only Maori land taken; not returned to tribe when no longer required	Treaty breach re lack of consultation and notification in taking Waiharakeke; in taking Omihi K2 for scenic purposes; and in failing to first offer Omihi K2 back to descendants; Crown should, in general, gain Maori consent before acquiring land for public works by lease, licence, or easement, the freehold being necessary only in exceptional circumstances	
2	Mangamaunu A	Worthless land; excessive land taken for road with no compensation; taken for scenic purposes without knowledge or consent of owners; only Maori land taken; not returned when no longer required	Treaty breach re roads, both excessiveness and lack of compensation; provision of alternative lands in compensation may have been appropriate; Crown failure to protect the tribal estate	Landless plight of Ngai Tahu in Kaikoura should be regarded in settlement negotiations

CANTERBURY

3	Taerutu	Inappropriate allocation of fishery; destroyed through drainage and river control	Treaty breach re destruction of fishery	Alternative regional inland and estuarine fisheries should be developed for use of tribe
4	Waimaiaia	Fishery easement too small; destroyed through drainage; landlocked reserve	Treaty breach re destruction of fishery	As above
5	Torotoroa	Fishery and reserve lost to tribe	Treaty breach re destruction of fishery but land reserve still held	As above
6	Te Aka Aka	Fishery destroyed through river management; prevented from camping there	Treaty breach re destruction of fishery; accretion and claim for land should be pursued in Maori Land Court	As above
7	Te Ihutai	Fishery compulsorily acquired for sewage works	Treaty breach re loss of fishery	As above
8	Ahuriri Lagoon	Fishery destroyed through drainage	Treaty breach re loss of fishery	As above

9	Tutaepatu Lagoon	Fishery should be vested in tribe	Supported finding in main report that Crown failed in Treaty duty to protect fishery	Tutaepatu Lagoon should be vested in Ngai Tahu and developed as a fishery resource for tribal use in joint management scheme with Crown; Crown to provide financial, technical, scientific and management resources
10	Pukatahi, Te Houriri	Fisheries destroyed; lack of access; sea encroachment	Treaty breach re loss of fisheries; access can be sought in Maori Land Court; no breach in respect of sea erosion	Alternative regional inland and estuarine fisheries should be developed for use of tribe
11	Wainono Lagoon	Fishery should be managed by tribe; end to commercial eel fishing	Supported by Tribunal	Wainono Lagoon should be developed in partnership with Ngai Tahu as a fishery resource for the use of the tangata whenua found entitled to mahinga kai by Maori Land Court
12	Taumutu commonage	Perpetual lease of commonage land denies Maori owners' use	Treaty breach	As set out in *Ngai Tahu Report 1991*, p 1063
13	Ellesmere landing	Land should be returned to Ngai Tahu	Not upheld	
14	Hawea-Wanaka	Fishing reserve sold by Maori Trustee; landless natives land not allocated; reserve at Bushy Point not granted	Treaty breach re fishing reserve and landless natives land	Negotiations should immediately be recommenced on a value-for-value exchange in land to the satisfaction of Ngai Tahu; land to be vested in descendants of original allocatees

ARAHURA

15	South Westland reserves	Areas should have been reserved to tribe	Treaty breach as found in 1991 report	Landless plight of Ngai Tahu in south Westland should be regarded in settlement negotiations
16	South Westland reserves	Reserves inadequate in quantity and quality; 1892 food reserves not granted	Treaty breach upheld as found in 1991 report	Sections 318 and 319 or other land in same region should be returned
17	Arawhata MR 1	Reduced by public works acquisition	Treaty breach re failure to set aside reserve	
18	Bruce Bay MR 6	Reduced by public works acquisitions; no compensation	Treaty breach re failure to notify owners of takings; Crown should have provided alternative lands in compensation; Crown failure to protect tribal estate	

19	Whataroa MR 20, MR 21, MR 22	Forced to sell MR 20 for low price; MR 21 and MR 22 taken for public works	Not upheld on either counts, but notes further reduction of tribal estate	
20	Bruce Bay	Gold-bearing reserve under threat from outside interests; Maori no longer have right to mine foreshore	Deferred, pending further argument and consideration from claimants	
21	Poerua	Disappearance of reserve	No finding, lack of information	
22	Kaniere	Dispossessed of land through Land Transfer Act 1952	Not upheld	
23	Taumaka and Popotai Islands	Islands should have been vested tribally, not in individuals	Deferred until further recourse by claimant to Maori Land Court	
24	Paringa MR 3	Reserved from purchase but not allocated	Not upheld	
25	Okarito MR 19	Reserved from purchase, now reduced in size	Not upheld	
26	Waimea MR 28	Reserved from purchase but not allocated	Not upheld, but notes further reduction of tribal estate	
27	Watarakau MR 45	Reserved from purchase but not granted, taken for public works	Treaty breach in failure to grant title to land and notify owners of taking	
28	Kawatiri MR 39, MR 40, MR 41	Taken for public works	No finding, but notes further reduction of tribal estate	
29	Pakihi MR 29	Reserved from purchase but not allocated	Not upheld	
30	Greymouth MR 51	No longer Maori land	Not upheld	
31	Greymouth MR 86	No longer Maori land	Not upheld	
32	Manakalaua 853, 854, 855	Reserved for landless Ngai Tahu but not allocated	Not upheld	
33	Whakapoai	Allocated to landless Ngai Tahu but not granted	Treaty breach	Title to the block should be vested in descendants of those orlginally entitled or alternative land granted
34	Toaroha	Section 2479 allocated to Henare Melhana but not granted, section 2386 set aside for landless natives but not allocated or reserved	Not upheld on either count	
35	Mokihinui	Native Trustee failure to administer land properly	No finding	

36	Ahaura	Measures not taken to prevent river erosion	No finding	
37	Taramakau MR 27	Measures not taken to prevent river erosion	Not upheld, but notes further reduction of tribal estate	
38	Oparara	Measures not taken to prevent river erosion	Not upheld	
39	Orowaiti	Relates to non-alignment of sections	Not upheld	
40	Westport town sections	Maori Trustee's amalgamation of town sections on one title	Not upheld	
41	Mawheranui	Maori Trustee's poor administration of the reserve without consultation with owners	Treaty breach re lack of consultation	
42	Whakapoai	Lack of consultation with reserve owners	Treaty breach re lack of consultation and granting of perpetual lease	
43	Westport sections 721, 732	Sold without consultation with owners	Treaty breach re lack of consultation	
44	Kotukuwhakaoho MR 34	Reserves reduced through excessive roading and railways	Treaty breach re lack of notification and consultation in taking land although roads and railway links beneficial	
45	Kalata MR 33	10-acre strip taken for railway	Not upheld	
46	Arahura MR 30	Excessive roading; Maori Trustee's poor administration of the reserve without consultation with owners; wrongful application of revenue	No finding on excessive roading; no breach in respect of flood damage; Tribunal again finds breach in lack of consultation	
47	Freeholding and Incorporation	Maori Trustee's attitude not good	No finding	

OTAKOU

48	Moeraki	Crown grants not recognised as valid titles; Maori landowners have no power to evict squatters	Not upheld	
49	Moeraki	Ngai Tahu women not included in entitlement to main reserve	Not upheld, but notes inadequacy of original reserves	

50	Karitane	Ownership and maintenance of foreshore reserve	Treaty breach	Question of accretion should be referred to the Maori Land Court for inquiry under s 29 Te Ture Whenua Maori Act 1993
51	Taiaroa Head	Land taken for defence and not returned when no longer required	Treaty breach re lack of notification in taking land; may not have been necessary to take freehold, leasehold should have sufficed; lack of consultation with owners about change in use	Ownership of lot 33 and part lot 27 should be returned to Karetai descendants; headland reserves should be vested in Otakou runanga; Ngai Tahu should be involved in the management of the reserves in tripartite arrangement between Ngai Tahu, DOC, and Dunedin City Council; descendants of Korako Karetai should also be involved in the management: the interests and activities of the Otago Peninsula Trust must remain unaffected
52	Harington Point	Land taken for defence, no compensation and not returned when no longer required	Treaty breach re failure to return land to descendants of original owner	Section 75 should be returned to descendants of Wi Potiki as planned
53	Tatawai	Fishery destroyed through drainage, silting, floodwater control, legislation	Treaty breach	Alternative regional inland and estuarine fisheries should be developed for the use of the tribe
54	Taieri	Half-caste sections reserved but not allocated	Not upheld	
55	Waikouaiti	Restrictive regulations prevent use of fishery	Treaty breach	Crown should undertake effective consultation with Ngai Tahu in the management of the lagoon and ensure the resumption of fishing by the tribe on a traditional basis

MURIHIKU

56	Maranuku	Land taken for public works without consultation with owners	Treaty breach	
57	Maranuku	Land taken for public works without consultation with owners	Treaty breach	This area should be returned to Ngai Tahu owners entitled
58	Maranuku	Timber on reserves taken without knowledge or payment to owners	Not upheld	

59	Maranuku	Urupa disturbed by road construction. no compensation paid	No finding, but notes earlier comments on lack of consultation in taking land	
60	Tautuku	Urupa disturbed by construction of car park	Not upheld	
61	Waimumu	Land taken for public works and not returned when not needed	Treaty breach re lack of notification in taking land, failure to return surplus area, failure to compensate owners	Lots 1, 3, and 4 should be returned to original owners; compensation for section 65 should be determined
62	Waimumu	Land set aside for landless natives not allocated. since resumed by the Crown	Not upheld, but notes inadequacy of land granted under the scheme	
63	Forest Hill	Owners denied a fair price for timber on sections	Not upheld	
64	Omaui	Reserve taken for scenic purposes	Not upheld	
65	Omaui	Crown offered to pay half price for land	Not upheld	
66	Invercargill	Land sold by Maori Trustee without any consultation with owners	Treaty breach	
67	Aparima	Land taken for public works and not returned when no longer required; area of Maori road widened and made public	Treaty breach re lack of consultation in taking land and failure to return land to original owners; freehold need not have been taken, lease would have sufficed	Landless plight of Aparima Maori should be taken into account in remedies
68	Aparima	150-metre building restriction and water rights application without consultation with affected Maori owners	No finding, lack of jurisdiction. but refers to earlier findings on lack of consultation	
69	Aparima	Landing reserve has been rezoned industrial	No finding, lack of jurisdiction	
70	Aparima	Owners affected by designation of property as recreational	No finding, lack of jurisdiction	
71	Aparima	Cemetery on reserve has been disrupted	No finding, lack of jurisdiction	
72	Aparima	Areas of importance should be reserved	Supported, referred to claim 73	
73	Aparima	Land taken for recreation reserve should be returned	Treaty breach re Crown failure to protect tribal estate	Landless plight of Ngai Tahu from Aparima region should be regarded in settlement negotiations
74	Aparima	Council's refusal to grant permanent permit for Maori village reconstruction	No finding, lack of jurisdiction	

75	Aparima	Areas of importance should be returned to the tribe	Supported, referred to claim 73	Landless plight of Ngai Tahu from Aparima region should be regarded in settlement negotiations
76	Aparima	Maori sections being used by farmer without rent being paid	Not upheld	
77	Riverton/Oraka	17 half-caste sections of poor quality; access must be built by owners	Treaty breach re poor quality of land granted	
78	Merivale	Maori land became general land without any sale	No finding, lack of jurisdiction, referred to Maori Land Court	
79	Oraka	No compensation for land used for road and for shingle taken	No finding, lack of jurisdiction, referred to Maori Land Court	
80	Oraka	Land gifted for school should be returned when no longer required for the purpose	Not upheld	
81	Oraka	Crown's promise to grant title to high-water mark not kept	Not upheld, lack of jurisdiction, referred to Maori Land Court	
82	Ouetota	Pahi pa site should have been included in original reserve	Not upheld	
83	Te Waewae Bay	Section of half-caste land has never been recorded in lands and survey record files	No finding	
84	Te Waewae Bay	Difficulty in extracting rents from Pakeha squatters	Not upheld	
85	Te Waewae Bay	Sandhill Point is a Ngai Tahu urupa	Supported	Minister of Maori Affairs should apply to Maori Land Court to have land reserved under s 339 Te Ture Whenua Maori Act 1993 and vested in those Maori entitled
86	Rowallan	Land reserved for landless natives not used and now Crown land	Not upheld	
87	Waiau	1700 acres resumed by Crown on grounds other land had been awarded instead	No finding	
88	Wairaurahiri	Disappearance of Maori land between Lakes Hauroko and Poteriteri	Not upheld	

89	Wairaurahiri	Ngai Tahu ownership of land under threat; denied access to the land	Treaty breach	Crown should either allow incorporation to market forest or compensate for lost milling opportunities; Crown should also reimburse incorporation for costs incurred in seeking to market its timber

RAKIURA

90	Paterson Inlet	Tupuna's land has been lost	Not upheld	
91	Paterson Inlet	Crown's attempt to purchase Maori land inconsiderate; objects to 'uneconomic interests' legislation	Not upheld	
92	Port Adventure; Toitoi	Landless natives land allocated to individuals, should be returned to Ngai Tahu unconditionally	Treaty breach	Port Adventure and Toitoi blocks should be *completed* as to survey and revested in the persons found to entitled by order of the Maori Land Court within 12 months of presentation of this report
93	Port Adventure, Chew Tobacco Bay, Little Glory Harbour	Scenic reserves should be vested in incorporated society to facilitate access and administration of landless natives blocks	Supports need for access to main reserves	Application should be made to Maori Land Court and/or High Court for granting of access

LEGISLATION ETC

94	Titi Islands	Lack of consultation	Referred to past findings on consultation	
95	Maori Affairs Amendment Act 1967	Power to will land to individuals outside family, wants Act repealed	Referred to provisions in Te Ture Whenua Maori Act 1993 which remedy matter	
96	Historical sites	Should be protected; tangata whenua representation on local bodies	Referred to past findings on consultation, representation, provisions in Te Ture Whenua Maori Act 1993	
97	Town and Country Planning Act 1977	Restricts building on Maori land	Referred to Resource Management Act 1991 and earlier finding	
98	Maori Incorporation rules	Do not reflect Maori system, power to alienate lands should be repealed	Referred to Te Ture Whenua Maori Act 1993 and changed law	
99	Town and Country Planning Act 1977	Should be reviewed to give clearer meaning to Maori-related terms	Referred to Resource Management Act 1991, past findings on consultation and representation	
100	Maori language	Loss of the language and culture	Referred to past findings in *Te Reo Maori Report 1986*	

CLAIMS NOT REPORTED ON

101	Kaikoura E	Loss of area in exchange	No record of grievance
102	Kie Kie H	Excessive roads through reserve	No record of grievance
103	South Bay F	Loss of landing reserve	No record of grievance
104	Haututu L	Land never received in exchange	Dealt with in claim 1
105	Houhoupounamu Lagoon	Degradation to fishery	Dealt with in claim 3
106	Taumutu	'Claim to village of Taumutu'	Dealt with in claims 13 and 14
107	Koru Creek	'Claim for right to Koru'	Geographical reference, not a claim
108	Waihao 903	Of poor agricultural value	Not a specific grievance
109	Te Anau	Section offered back to tribe at price incongruous with original purchase price	Not considered to be a grievance
110	Waitaha	Family land taken without notice	No information
111	Otakou Peninsula	Claim right to live at kaik	No information
112	Tautuku	Refers to 1000-acre award	Not clear as to issue of grievance
113	Waimumu	Proposal of joint management refused by Crown	No information
114	Rowallan and Alton	Objection to small pockets of Crown land; two-chain widths of the road	No information
115	Murihiku cemeteries	Should be reserved	Capable of resolution in Maori Land Court
116	Maori titles	Titles need search as much of it became general land under 1967 amendment	No specific information
117	Timber fifths	Revenue not spent on Maori roads	No information

Appendix 2

Record of Ancillary Claims Documents

A **First hearing at Tuahiwi Marae, 17 August 1987, and Rangiora High School, 17–20 August 1987**

Document:

A8 A Mackay (ed), *A Compendium of Official Documents Relative to Native Affairs in the South Island* 2 vols, Nelson, Government Printer, 1872 (later referred to as *Compendium*)
(registrar)

A9 Supporting papers to A12, A13, A31
(counsel for claimants)

A12 Evidence of Trevor H Howse on Banks Peninsula, North Canterbury, and Kaikoura
(counsel for claimants)

A18 Submission of Te Wharetutu Te A Stirling

A19 Submission of Rangimarie Te Maiharoa

A20 Submission of Aroha H Reriti-Crofts

A22 Map of block 25, Jacobs River Hundred, March 1874
(counsel for claimants)

C **Third hearing at Otakou Marae, 2 November 1987, and reconvening at Tuahiwi Marae, 5 November 1987**

Document:

C5 Submission of Emma P Grooby-Phillips

C8 (a) Evidence of Dr Atholl Anderson on Maori settlement at Otakou
(b) References to C8(a)
(counsel for claimants)

C13 (a) Submission of Craig Ellison on pollution of lands and waters in Otago
(b) Documents presented with C13(a)

D **Fonrth hearing at Arahura Marae and the Conference Room, Ashley Motor Inn, Greymouth, 30 November–3 December 1987**

Document:

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)

D5 Supportings papers to D4
(counsel for claimants)

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) Supportings papers to D11(a)

D12 Submission of Iri Barber

D13 Submission of Aroha H Reriti-Crofts

D17 Submission of James M Russell on Arahura

E **Fifth hearing at Te Ran Aroha Marae, Bluff, 1–3 Fehruary 1988, with site visit to Lakes Wanaka and Hawea**

Document:

E2 Supporting papers to the evidence of Robert A Whaitiri, Sydney Cormack and James P McAloon on Murihiku (E1) (evidence of Sydney Cormack replaced with E16)
(counsel for claimants)

E3 Submission of Harold F Ashwell on Bluff-Motupohue
(counsel for claimants)

E7 Submission of Wiremu Davis

E8 (a) Submission of Taare Bradshaw
(b) Portion cadastral map, Bluff Harbour

E9 Eva Wilson, *Hakoro Ki Te Iwi, The Story of Captain Howell and His Family*, Invercargill, Times Printing Service, 1976
(Eva Wilson)

E11 Submission of Naomi A Bryan on section 70, block 25, Jacobs River Hundred

E12 Submission of Naomi A Bryan on section 25, block 25, Jacobs River Hundred

E14 Submission of Rena Fowler on Stewart Island Grants Act 1873

E15 Correspondence from Maori Land Court to Rena Fowler on section 73, block 2, Invercargill Hundred, dated 25 January 1988
(R Fowler)

E16 Evidence of Sydney Cormack on Murihiku reserves
(counsel for claimants)

E23 Submission of George N Te Au on behalf of the Waihopai Maori Committee Incorporation, dated 1 January 1988

E26 Further papers relating to Maori reserves at Lakes Hawea and Wanaka
(counsel for claimants)

E28 Correspondence from K Cayless, Acting Director-General, Department of Survey and Land Information, to district manager Invercargill, dated 13 January 1988, response to E29
(registrar)

E29 Correspondence from district officer Invercargill to Director-General, Department of Survey and Land Information, on Port Adventure and Toitoi landless natives blocks, 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

E35 Papers submitted by Lovell Hart on Colac Bay, Southland
(registrar)

H Seventh hearing at Tuahiwi Marae and Te Rau Aroha Marae, Bluff, 11–20 April 1988

Document:

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)
(counsel for claimants)

H8 Evidence of Ray Hooker, Hemi Te Rakau, Kelly R Wilson, Gordon McLaren, Albert K Te Naihi-McLaren, Iris Climo, James M Russell and Allan L Russell on mahinga kai, Arahura area
(counsel for claimants)

H9 Evidence of James P McAloon, Mere K E Teihoka (Hamilton), Catherine E Brown, Morris T Love, Rewi Brown, and 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, Arowbenua 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)

H53 Submission of Edward Ellison on mahinga kai
(counsel for claimants)

J Ninth hearing at Tuahiwi Marae, 27–30 June 1988

Document:

J10 Evidence of Henare R Tau, David Higgins, Tevor H Howse, Peter Ruka, and Barry Brailsford on mahinga kai
(counsel for claimants)

L Tenth hearing at the Southern Cross Hotel, Dunedin, 25–28 July 1988

Document:

L10 Evidence and supporting papers of Jesse H Beard on Taiaroa Head
(counsel for Crown)

L32 Summary from the submissions of ancillary and other issues raised in the Ngai Tahu claim
(registrar)

M Eleventh hearing at College House, Ilam, Christchurch, 29 August–1 September 1988

Document:

M3 Supporting papers to the evidence of Dr Donald M Loveridge on Kemp's purchase, part II, Walter Mantell's involvement in the Kemp purchase (M2)
(counsel for Crown)

M10 Evidence of Dr Donald M Loveridge on the Kaikoura purchase 1859
(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)

N Twelfth hearing at the Ashley Motor Inn, Greymouth, 19–22 September 1988

Document:

N4 Evidence of Crown Counsel on Poutini Ngai Tahu reserves

N5 Supporting papers to N5

N21 Map of South Island showing land reserved from the Arahura purchase
(counsel for Crown)

N34 Evidence of Richard T Wickens, Deputy Maori Trustee
(counsel for Maori Trustee)

N35 Supporting papers to N34
(counsel for Maori Trustee)

O Thirteenth hearing at the Student Union Building, Otago University, Dunedin, 7–10 November 1988

Document:

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

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)

O22 Map of Lakes Hawea and Wanaka, G298
(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)

O44 Evidence of Ronald Keating
(a) Map of Kaikoura reserve and the study block
(counsel for Crown)

P Fourteenth hearing at College House, Ilam, Christchurch, 5–9 December 1988

Document:

P6 Supporting papers to P7
(counsel for Crown)

P7 Evidence of David J Alexander on Otakou, Murihiku, and Rakiura reserves
(counsel for Crown)

P10 Evidence of Anthony Walzl on mahinga kai
(counsel for claimants)

P11 Supporting papers to P10
(counsel for claimants)

P14 (c) Submissions of Crown counsel on Taumutu commonage reserves
(counsel for Crown)

Q Fifteenth hearing at Mancan House, Christchurch, 7–9 February 1989

Document:

Q10 Evidence and supporting papers of David J Alexander on Lake Forsyth and Lake Ellesmere reserves
(counsel for Crown)

S Seventeenth hearing at the Chateau Regency, Christchurch, 29 May–2 June 1989

Document:

S7 Evidence of Anthony Walzl on Ngai Tahu fishing 1840–1908
(counsel for Crown)

S8 Supporting documents to S7
(counsel for Crown)

W Twenty-first hearing at Tuahiwi Marae, 14–17 August 1989

Document:

W6 Claimants' summary of grievances on Otakou, Murihiku, Rakiura, Arahura, and mahinga kai

AB Post-hearing documents filed with respect to the ancillary claims

Document:

AB20 Research undertaken by Tribunal staff on the Kaikoura ancillary claims

AB21 Research undertaken by Tribunal staff on the Canterbury ancillary claims
(a) Volume One
(b) Volume Two

AB22 Research undertaken by Tribunal staff on the Arahura Ancillary claims, 14 September 1991

AB23 Research undertaken by Tribunal staff on the Otakou Ancillary claims, 19 November 1991

AB24 Research undertaken by Tribunal staff on the Murihiku Ancillary claims, 1 November 1991

AB25 Research undertaken by Tribunal staff on the Rakiura Ancillary claims

AB26 Direction of Presiding Officer relating to ancillary claims, 23 March 1993

AB27 Additional supporting documents to Tribunal research, vols 1,2

AB28 Memorandum and directions of Chairperson to Director, Waitangi Tribunal, 8 July 1993

AB29 Draft Ngai Tahu Ancillary Claims Report, July 1993
(confidential document)

AB30 Joint memorandum of counsel to the Waitangi Tribunal seeking extension of time to file submissions, 28 October 1993

AB31 Letter from Ngai Tahu Maori Trust Board regarding areas not commented on in the ancillary report, 2 November 1993

AB32 Ngai Tahu Ancillary Claims additional documentation filed by the Crown Law Office, December 1993

(a) Map of claim 3 Taerutu
(b) Map of claim 4 Waimaiaia
(c) Map of claim 5 Torotoroa
(d) Map of claim 6 Te Aka Aka
(e) Map of claim 7 Te Ihutai
(f) Map of claim 12 Waikouaiti
(g) Maps of claim 45 Kotukuwbakaobo

AB33 Tribunal directions to commission Tarah Nikora, 24 March 1994

AB34 Crown submissions to the Waitangi Tribunal concerning the Draft Ngai Tahu Ancillary Claims Report, 23 March 1994

AB35 Crown response to factual aspects of the Ngai Tahu Ancillary Claims Report, by David Alexander, March 1994

AB36 Tribunal letter to ancillary claimants inviting comments on the draft report, 17 December 1993

AB37 Submission of Sydney Cormack, 10 January 1994

AB38 Submission of Taini Wright, 14 January 1994

AB39 Submission of Rangimarie Te Maiharoa, 4 February 1994

AB40 Submission of Dorothy Te Mahana Walsh, February 1994

AB41 Submission of Jim McAloon, 25 February 1994

AB42 Submission of Matapura Ellison, 15 Marcb 1994

AB43 Submission of Harold Ashwell, 17 Marcb 1993

AB44 Submission of Jane Davis, 18 March 1994

AB45 Ngai Tahu Response to Draft Ancillary claims Report of the Waitangi Tribunal, Wai 27, 1994

AB45 (a) Accompanying letter of transmission from Tipene O'Regan

AB46 Crown response to factual aspects of claimants submissions on the Waitangi Tribunal's draft report. Material prepared by David Alexander, June 1994

AB47 Further submission of Sydney Cormack, 6 June 1994 (forwarded by Treaty Of Waitangi Policy Unit)

AB48 Submission of John Douglas Kemp, 10 June 1994

AB49 Submission of the Otago Peninsula Trust, 13 June 1994

AB50 Submission of the Dunedin City Council, 13 June 1994

AB51 Submission of Mary Ellison, 13 June 1994
(forwarded by the Minister of Justice)

AB52 Further submission of Rangimarie Te Maiharoa, 21 June 1994

AB53 Press release by Ministers of Conservation and Treaty Negoitiations regarding claims to Conservation Estate, 24 June 1994

AB54 Submission of the Southland District Council, 27 June 1994

AB55 Submission of S R Bull, 28 June 1994

AB56 Submission of Muriel Te Huikau Johnstone, 28 June 1994

AB57 Further submission of Jim McAloon, 29 June 1994

AB58 Submission of Hirini Matunga, 30 June 1994

AB59 Crown response to claimant submissions, 1 July 1994

AB60 Submission of the Clutha District Council, 5 July 1994

AB61 Submission of Iri Barber-Sinclair, 11 July 1994

AB62 Submission of Helen Rasmussen, 11 July 1994

AB63 Further submissions for the Crown by David Alexander, 18 July 1994

AB64 Moeraki certificates of title supplied by the Land Registry Office (Dunedin), 12 August 1994

AB65 Further submission of Sydney Cormack, September 1994

AB66 Further submissions from the Crown re Harrington Point, 5 October 1994

AB67 Further submissions for the Crown by David Alexander, 22 October 1994

AB68 Further submissions from the Southland District Council, 2 November 1994

AB69 Further submissions from the Southland District Council, 8 November 1994

AB71 Further submissions from the Southland District Council regarding Aparima Reserve, 21 November 1994

AB72 Memorandum from Crown Counsel concerning various claims contained in the Waitangi Tribunal's Draft Report on Ngati Tahu ancillary claims, 9 January 1995

AB73 Correspondence from the Office of Treaty Settlements regarding Ngai Tahu ancillary claim 89 (Wairaurahiri) 13 January 1995

AB80 Letter from Works File W1 44/2/2 held at National Archives, Wellington (erroneously omitted from AB27): Engineer-in-Chief and Under-Secretary to District Engineer Greymouth, 14 July 1938 (re ancillary claim 18: Bruce Bay)

Appendix 3

Explanatory Note Regarding Appendices

The Trihunal's two previous reports on Ngai Tahu grievances, the *Ngai Tahu Report 1991* and the *Ngai Tahu Sea Fisheries Report 1992*, included a number of appendices that are not contained in this report.

The Trihunal has not felt it necessary, for example, to set out in full once more the Ngai Tahu statements of claim lodged as Wai 27. This reflects in part the fact that this report deals with over 100 individual grievances, none of which (apart from the Taiaroa Head claim filed with the Trihunal as Wai 324) have their own formal statements of claim. Similarly, the record of inquiry, including information concerning the notice of claim, the appointment of members, the venues and dates of hearings, and the appearances of counsel, has not been reproduced in this report. This too reflects the fact that the ancillary claims were not the suhject of the hearings themselves per se, and also that much of the research into the claims was conducted after the formal hearing of the Wai 27 claim had ceased.

For a full reproduction of the Crown's major purchases deeds that involve Ngai Tahu land, as well as hiographical information on the members of the Ngai Tahu Trihunal, we refer readers to the *Ngai Tahu Report 1991*.

GP PUBLICATIONS

ISBN 0-86472-188-9