PANZ Monograph Series Number 8 ISBN 0-9583363-7-7

Landcorp Farms and the SOE option for Ngai Tahu claims settlement

"Landcorp farms would be among the most suitable for use in settlement of the Ngai Tahu land claim"
(Minister of Justice, 24 March 1993, *Otago Daily Times*)

Bruce Mason
Researcher, Public Access New Zealand
November 1994

Introduction

In 1991 the Waitangi Tribunal reported on Ngai Tahu land claims. Since then there have been a mix of responses to the very substantial redress found to be due to Ngai Tahu. There is also confusion and concern as to the form of redress proposed by the Crown.

Ngai Tahu made eight claims against the Crown. These were subdivided into 'Nine Tall Trees' consisting of 73 specific claims, plus 108 ancillary or 'undergrowth' claims.

The Tribunal found in favour of Ngai Tahu on approximately two-thirds of their claims, and disallowed the balance. A claim that, in relation to the western boundary of the huge Kemp purchase, the area sold to the Crown in 1848 did not extend westward of the foot-hill ranges, was dismissed by the Tribunal. So too was a claim that under the 1853 Murihiku purchase, the land west of the Waiau River was wrongfully included in the sale.

Ngai Tahu representatives have at times publicly acknowledged that they did not win all their arguments before the Tribunal:

> "...the Tribunal largely validated the Ngai Tahu claim although it did reject some aspects of it that we were prepared to accept at the time and that's how the negotiations started" (Tipene O'Regan, 3.8.92, to Canterbury Branch NZ Planning Institute).

A Minister of the Crown subsequently confirmed partial success by Ngai Tahu:

> "Whilst Ngai Tahu did not have a grievance which specifically related to the Routeburn, Elfin Bay, and Greenstone Stations, it did succeed in establishing a grievance relating to failure by the Crown to set aside adequate reserves for Ngai Tahu *in various parts* of the South Island" (Minister of Conservation, 19 July 1994, to Otago Fish and Game Council).

In 1992, at Ngai Tahu request, the Crown purchased the lessee interest in three high country pastoral leases at the head of Lake Wakatipu for "possible" future settlement with Ngai Tahu. These properties are of high public value for recreation and conservation and are within the high county proven to have been lawfully purchased by the Crown.

A key question arises from the Crown's decision to purchase the Greenstone, Elfin Bay, and Routeburn stations:

> *Is any resource over which there are no breaches of Treaty principles, available for settlement of legitimate claims, even when the Crown's actions over the intended 'remedy resource' have been found to be consistent with the Treaty?* PANZ thinks not, as to do so would undermine the only legitimate basis for Crown action on Treaty claims. 'Innocent' public and Crown-owned resources would become liable for alienation.

> The underlying philosophy which appears to be driving Government is that it considers it can use *all and any resources* within its control for settlement of 'claims', even when contrary to Tribunal findings. The fact that public lands are held in trust on behalf of present and future generations appears to have little bearing on Government's approach.

Ngai Tahu provide an answer to the question by stating in their amended claim of 2 June 1987:

> "any lands allocated to the claimants should be representative of the land lost in both character and geographic distribution" (Waitangi Trib. Report at p 1110).

The mountainous Greenstone-Routeburn area is greatly different, and hundreds of kilometres distant, from the highly productive farm and agricultural lands denied to Ngai Tahu elsewhere in the South Island.

PANZ believes that the Crown, in promoting remedies to proven Ngai Tahu claims by the use of high country Crown lands, is acting in breach of understanding with the Tribunal. The Tribunal recorded, at 24.1, that it:

"was advised by both the claimants and the Crown that they did not wish us to formulate a comprehensive set of recommendations as to the relief which should be provided by the Crown…the parties preferred to enter into direct negotiations with each other. *These negotiations would be* ***on the basis of the tribunal's findings of fact*** *and its consequential findings of a breach of Treaty principles.* For its part, the tribunal has been happy to accept this proposal."

The Tribunal expressed the view that there is need for a diversity of remedies for settlement of Ngai Tahu claims.

The State has massive commercial assets, wholly owned by itself, without the outstanding conservation and recreation values at issue as in the Greenstone valley area. State commercial assets have the potential to provide the most suitable basis for Ngai Tahu to re-establish an economic base. As the Tribunal recorded, at 24.5.4:

Several state-owned enterprises, including Landcorp, Forestcorp and Electricorp, now hold substantial interests in former Ngai Tahu territory. These have been transferred to them by the Crown. The shares in these SOEs are at present wholly owned by the Crown. It may be that as part of a negotiated settlement it would be reasonable for an appropriate interest in one or more SOE involved in the Ngai Tahu whenua to be assigned to Ngai Tahu by the Crown. The basis on which such an interest was assigned would be a matter for agreement between Ngai Tahu and the Crown.

PANZ believes that the outstanding public values of the three high country stations requires that other Crown resources be used in settlement with Ngai Tahu, consistent with the findings of the Tribunal. To proceed with a contentious and divisive decision to allocate the Greenstone valley area to a private developer, in the form of Ngai Tahu, would most likely result in on-going acrimony. That would defeat a principle purpose of Treaty claim settlement of obtaining durable resolution of grievances.

Purpose of this report

This report is primarily a compilation of (some) SOE assets within the Ngai Tahu rohe or tribal area which could be used for settlement of proven claims. It is a huge and immensely valuable economic resource. Both Ngai Tahu and government showed initial interest in using such assets in claims settlement. However since the Minister of Justice's March 1993 statement about Landcorp farms, "the SOE option" has dropped out of sight. The focus has shifted to using 'free' and relatively cheap public reserves and Crown lands which happen to have high levels of public interest. *The purpose of this report is to bring "the SOE option" back to government and public attention. We also ask that the use of such assets be put back on to the negotiating agenda.*

PANZ concludes that the SOE resource is so vast and well distributed throughout the South Island tribal rohe, *relative to proven claims*, that there is no necessity to use unrelated public and Crown lands such as the Greenstone valley and public reserves. *The underlying issue for Government is the importance it attaches to financial considerations ahead of public concerns for continuing public ownership, protection and public access to public and Crown land.*

It is also a test of Government's commitment to give proper effect to the principles of the Treaty of Waitangi. Reluctance to use SOE assets in claims settlement has to be contrasted with Government's ideological push towards privatising as many state assets as possible.

Our report conclusively documents that the government has plenty of alternatives at its disposal to avoid alienating the public in the claims settlement process.

What are the proven claims?

"The tribe is clearly entitled to very substantial redress from the Crown" (Waitangi Tribunal Report at 24.1)

In summary the Waitangi Tribunal found in favour of Ngai Tahu that—

Otakou Purchase

(Coastal Otago)

- The Crown did not set aside sufficient land to provide an economic base for present and future needs.

Kemp Purchase

(Canterbury, Inland Otago)

- The Crown failed to reserve a 220,000 acre 'Waimakariri Block' between the Waimakariri and Selwyn Rivers.
- The Crown failed to provide ample reserves for Ngai Tahu's current and future needs or for mahinga kai.
- The reserves did not allow them to develop an economic base in pastoral farming.

Banks Peninsula Purchases

- There were serious and numerous breaches of the Treaty of Waitangi.
- Insufficient lands were set aside.
- 30,000 acres were not paid for.

Murihiku Purchase

(Southland)

- Reserve areas which Ngai Tahu had requested, mainly on the coast, were not set aside.
- Promised schools and hospitals were not provided.
- The Crown failed to provide sufficient endowment for present and future needs.

North Canterbury and Kaikoura Purchases

- Ngai Tahu had never been adequately compensated.
- The Crown failed to reserve lands the tribe wished to retain: a request to set aside 100,000 acres around the Conway River as reserve was turned down.
- Inadequate reserves had been set aside, with none in North Canterbury.

Arahura Purchase

(Westland)

- The price paid was too low.
- A larger reserve should have been set aside to protect greenstone in the Arahura Valley.
- Reserves were quite insufficient for the future economic or social needs of the tribe.

Two points stand out from the evidence and the Tribunal's rulings—

The first is that the tribe was not left with sufficient land for a current or future economic base, and that the Crown did not protect traditional food sources. The Crown's acquisition of 34.5 million acres for £14,750, while leaving Ngai Tahu 35,757 acres of largely unproductive land is demonstrably unjust. Subsequent efforts by the Crown to make good Ngai Tahu's loss were few, dilatory and largely ineffective. The Tribunal concluded that the tribe is clearly entitled to very substantial redress from the Crown. However it believed this redress must reflect present day realities.

The second is that the reserves the Ngai Tahu wanted set aside at the time of purchase were productive lands, such as the North Canterbury plains. They were not the low value wildlands and mountains now included in the public conservation estate. The only grievances sustained by the Tribunal that affect the public conservation estate concern Lake Ellesmere, parts of the Arahura Valley, and Ngai Tahu ownership of pounamu (greenstone).

Nature of reserves not awarded

The Tribunal's Report repeatedly recorded that the Crown failed to ensure that, in addition to their kaika and cultivations, Ngai Tahu were left with substantial areas of good quality land on which to develop side by side, and on at least an equal basis, with new settlers. This was for agricultural, pastoral or dairy farming. It was the wish of Ngai Tahu to engage in such activities. For this they needed good quality land, however the reserves set aside for them did not "prove to be adequate in area or quality" or in appropriate locations.

Framework Agreement

On 27 November 1991 The Crown and Ngai Tahu signed a 'Framework Agreement' to govern the conduct of settlement negotiations.

Both parties agreed to enter into negotiations towards a just, equitable and durable resolution of *proven* grievances, as found by the Waitangi Tribunal to be justified. Both parties acknowledged that the Tribunal found *many*, as distinct from *all*, of the grievances of Ngai Tahu to be proven.

PANZ believes that negotiation of *unproven and disallowed claims* is contemptuous of the jurisdiction of the Waitangi Tribunal and a breach of trust when public, as opposed to government, property is involved. Such a course also runs entirely counter to the Ngai Tahu statement of claim (quoted earlier) on which the Tribunal's findings, and supposedly the Crown's response, is based.

Government's position on SOEs Question:

Are SOE assets being held for possible settlement with Ngai Tahu, and if not why not?

Answer: "In negotiating settlement of Treaty of Waitangi claims the Crown may consider a variety of assets for redress. A Crown land bank has been established for the Ngai Tahu claim. It contains a number of surplus Crown properties from within Ngai Tahu's tribal area that Ngai Tahu have requested be held for possible use in settlement of their claim. In addition, the Crown purchased lessee interests in Elfin Bay, Greenstone and Routeburn stations in 1992 and placed these in the land bank. These purchases were made on the open market and were at Ngai Tahu's request.

"The Elfin Bay, Greenstone and Routeburn stations may well ultimately form part of a future settlement of the Ngai Tahu claim. However, prior to this, the Crown will complete its assessment of the conservation and recreation values of the properties to ensure that such values are sufficiently safeguarded in any settlement. Various conservation and recreation groups have been consulted about this assessment.

"SOE land is not being 'held' for possible settlement with Ngai Tahu because the interests of Treaty of Waitangi claimants in SOE lands are safeguarded by the 'claw-back' provisions of the Treaty of Waitangi (State Enterprises) Act 1986. These provisions provide for the compulsory resumption by the Crown of SOE land should the Waitangi Tribunal recommend it be returned to Maori. Accordingly, assets subject to the 'claw-back' provisions may form part of any final settlement. In addition, the Crown may consider some specific SOE assets for resolution of the Ngai Tahu claim" (Douglas Graham, Minister of Justice, 9 June 1994, *Otago Daily Times*).

'Claw-back' of SOE assets?

SOE 'Claw-back' provisions arose out of the New Zealand Maori Council successfully taking the Crown to Court in the 1987 'SOE lands case'. As a consequence, the Government was required to make statutory provision for resumption of SOE assets for return to Maori claimants *if such return is recommended by the Waitangi Tribunal*. Provisions are now incorporated into the Treaty of Waitangi (State Enterprises) Act 1988 and under section 27B of the State-owned Enterprises Act 1986. Memorials under this section are registered against the titles of almost all Landcorp freehold properties.

However, *at the request of the Crown and Ngai Tahu,* the Waitangi Tribunal did not make recommendations on most aspects of the claims. Therefore there are no recommendations and *no statutory requirements* to trigger the 'claw-back' provisions over SOE lands. This *does not preclude* Government decisions to use such assets in claims settlement; use of such assets remains at the discretion of Government. After all, the *absence* of recommendations on the Greenstone valley did not preclude government from purchasing the lessees' interest and considering transferring that, and the Crown's interest in the lands, to Ngai Tahu. *It would be an exceedingly fallacious argument for Government to now claim that SOE lands are unavailable for claims settlement as the 'claw-back' provisions don't apply. The Crown made them non-operative by requesting that the Tribunal make no recommendations!*

Landcorp farms 'uneconomic'?

In December 1988 counsel for Landcorp told the Waitangi Tribunal that:

> "the properties taken over by andcorp from the Crown...were underdeveloped farms not suitable for individual ownership... Landcorp does not want to look over the fence at Ngai Tahu struggling on difficult country", and, "just because land is 'available'...it should not be forced upon the claimants" (Waitangi Tribunal Report at 23.7).

The counsel for Landcorp continued to point out to the Tribunal:

> *"that most, if not all, of the South Island lands vested in Landcorp are marginal economic units unsuitable for individual ownership*...rather than see Ngai Tahu struggling with such properties, the corporation supported the suggestion that Ngai Tahu, not Landcorp, should receive the compensation so that Ngai Tahu could find land better suited to their own needs" (Waitangi Tribunal Report at 24.5.3).

The Tribunal accepted the 'uneconomic farm' line at face value by recording its view:

> *"...it is clear that the land which remains in the possession of the Crown*, whether high country pastoral leasehold land, national parks, or other land still vested in the Crown *or Landcorp, would not provide Ngai Tahu with an economic base.* Such land as is being farmed is either marginal or, in the case of the high country pastoral lease land, has a high conservation component. The value of the remainder lies in its scenic, recreational, environmental and wilderness qualities" (24.5.6).

Contrast the reported Landcorp 1988 submission with that of Landcorp Farming's general manager's reported statement (appended) that "the company's trail to profitability *started in 1987* and that it has had progressively higher profits as a state-owned enterprise *over the last seven years"* (*ODT,* 2 November 1994).

It appears that Landcorp did not tell the Tribunal that its farms, inherited from Lands and Survey's farm settlement programme, were *designed for closer settlement by individual private farmers.* They were intensively developed for settlement by landless farmers as stand-alone units. Most farms are already developed into several farming units. Even if individual units were 'uneconomic' and "unsuitable for individual ownership" as claimed, because they adjoin it would be easy to amalgamate them into 'economic' units. Landcorp has common title over several units. Existing titles could be easily subdivided into smaller titles for private ownership of individual units.

The appended press cutting of 2 November 1994, the size of the properties, and photographs and plans, provide insight into how "uneconomic" the Landcorp farms really are.

PANZ believes the Minister of Justice's statement on 24 March 1993, that "Landcorp farms would be among the most suitable for use in settlement of the Ngai Tahu land claim", to be correct.

The SOE Option

Landcorp Farming Limited

This is New Zealand's largest agricultural enterprise, running 1.6 million livestock units—sheep, beef and dairy cattle, deer and goats—on 156 properties totalling 421,000 hectares (Landcorp 1994 Annual Report). It is a subsidiary of Landcorp, a State-owned Enterprise wholly owned by the government.

97 Landcorp farming properties, totalling 78,300 hectares, are in Canterbury, Otago, and Southland and within the Ngai Tahu rohe or

tribal area. These are freehold titles.

Most properties are ideally suited for settlement of proven Ngai Tahu claims, both in character and geographic distribution. Some are within the areas of 'reserves not awarded' to the tribe. These include the **Mt Parnassus** and **Tiromoana Stations** in North Canterbury. According to Evison (*Te Wai Pounamu*, 1993) these properties are either in or close to the pastoral lands refused to Ngai Tuahuriri, centred on Motunau and Hurunui. In addition, Landcorp's **Eyrewell Station** and **Langstone Farm** *are within the Waimakariri Block not awarded to Ngai Tahu.* Many other farms are in the general coastal/lowland localities where insufficient lands were awarded to Ngai Tahu (e.g., **Ealing Pastures**, **Seacliff**, **Orokonui**, **Akatore Creek**, **Waitapeka**, **Dawson Downs**). Other lands are highly productive and of similar character to those not awarded.

There is a vast array of highly productive farms in the Te Anau-Manapouri basin. These are in a highly scenic area bordering the World Heritage Fiordland National Park. In addition to farming, proximity to two tourist towns at the entrance to the park creates major potential for tourism development. The potential for rural-based economic activity is limited only by imagination.

Landcorp Investments Limited

1345 properties are held by this Landcorp subsidiary, including several large rural properties potentially suitable for claims settlement.

Landcorp Property Ltd, Landcorp Property Holdings Ltd

These and their substantial property portfolios were recently sold to Kupe Group Limited and are no longer available for settlement with Ngai Tahu.

Crown Forests

Approximately 19,000 hectares of **Crown exotic forests** are *administered* by the New Zealand Forestry Corporation, on behalf of the government (Treasury), through a contractor, Resource Management New Zealand Limited. Unlike other former State Forests, these forests have not been sold or had Crown Forestry Licences issued. PANZ has been advised they have been held for possible settlement with Ngai Tahu. The forests are the **Naseby**, **Herbert**, **Silverpeaks**, **Raincliff** (Timaru), and **Geraldine forests**. With the exception of Naseby, these forests are in the general localities of 'reserves not awarded' to Ngai Tahu.

In 1992, 100,000 hectares of South Island Crown forests were agreed for sale to ITT Rayonier NZ Limited including the above forests. However these forests were finally excluded from the sale, but with a 5 year right of purchase for Rayonier if not required for settlement with Ngai Tahu. The company has a year from when the forests are not required to exercise this option. The five forests have complementary cutting cycles so that collectively they are commercially sustainable.

There are no public access easements or conservation covenants in place, but the forests are currently managed as if they were. If on-sold, or given to Ngai Tahu, such encumbrances would need to be formalised.

Unlike other SOE assets, and leaseholds, there are no private property interests established on the above lands. Farm and forestry workers are either employees of, or contractors to, the corporations. Use of such lands in claim settlement will not necessarily mean lost employment opportunities as experienced managers and workers will still be required by a new owner.

'Paddock Values'

PANZ has taken informal valuation advice. This, and extrapolation of figures to comparable lands in the same locality, provides the basis for the **'Paddock Values'** contained in the following schedules. These are estimates of value on a broad-brush approach based on information supplied by PANZ. 'Paddock Value' is exclusive of all structural improvements, stock and trees. For Landcorp farms alone there is a 'paddock value' greater than $107 million. No estimate has been made of the land assets of Landcorp Investments Ltd or of the unallocated Crown forests.

Author's Note: all *italicised* text is our emphasis.

The above report is from the introduction to a 65 page publication containing references, schedules of Landcorp farms, certificates of title, plans, colour photographs and cover.

'Landcorp farms and the SOE Option' was available from—

Public Access New Zealand
R D 1
Omakau 9182
Central Otago

—for $75 inclusive – [out of print]