Treaty settlements – reconciliation or fraud?

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This issue of *Public Access* focuses on the Treaty of Waitangi and the related issue of settlements between Maori claimants and the Crown. We feature four essays with viewpoints of leading writers and activists, in large part prompted by the recent Ngai Tahu settlement and Ministerial pronouncements on 'customary' fishing rights.

The Ngai Tahu 'settlement' has caused many people to question the propriety of Government's actions, and caused PANZ to question our previous qualified support for settlement of Maori claims.

We believe that only some aspects of the Ngai Tahu settlement package are justified. However the greater balance is not. The losers will be present and future generations of New Zealanders who will be denied a full democratic say on the use and management of public lands and other resources. Ngai Tahu's prevailing influence over these resources has the potential to undermine public rights of use, the protective status of these lands, and the lasting value of the settlement.

The question, "is this settlement reconciliation or fraud?", arises because –

- the Waitangi Tribunal found against Ngai Tahu claims for most of the South Island high country, including national parks etc.
- the settlement package makes extensive use of high country lands and resources, and some other places, that the Tribunal held were legimately owned by the Crown.
- the remedies sought by Ngai Tahu before the Tribunal were the return of land which *"should be representative of the lost land in both character and geographic distribution"*, not other lands that are totally dissimilar as has transpired.
- The Tribunal was asked by Ngai Tahu and the Crown not to make recommendations as to remedies. "The parties preferred that they should enter into direct negotiations with each other. *These negotiations would be on the basis of the tribunal's findings of fact"*.
- on receipt of the Tribunal's findings, the Crown and Ngai Tahu entered into a contractual 'Framework Agreement' for the purpose of resolving *proven* grievances. There was no provision for negotiating disproven claims.
- the government misled the public with its policy that the public conservation estate would "not be readily available" for settlement of Maori claims, and where used only "small discrete parcels" were available. For 'Topuni' alone, an area likely to be greatly in excess of 50,000 ha will be affected.
- there is minimal use of alternative state assets, such as Landcorp farms, despite the Minister of Justice describing these as "among the most suitable for use in settlement of the Ngai Tahu land claim". This has caused public lands to become the primary means of settlement.
- Government's frequent public statements of intent to properly consult the public were not fulfilled; their conduct has been secretive and contemptuous of public concerns.

> *Concise Oxford:* **fraud** *n. "...use of false representations to gain unjust advantage; dishonest artifice or trick...deceitfulness".*

PANZ believes that in several respects the actions of Government on the Ngai Tahu settlement are consistent with the above definition.

The secret sell-out

By Dave Witherow

Dave Witherow is an angler, tramper and conservationist.

Old injustices will not be remedied at the expense of new ones. "Such settlements could never last", according to the Minister, Doug Graham.

But the proposed Ngai Tahu settlement – should it be enacted in its present form – will make a mockery of these promises, and guarantee racial disharmony for generations.

The worst aspect of this "settlement" concerns the public estate – the interrelated network of conservation lands, recreational and wilderness areas, Crown Reserves and leaseholds which are the shared inheritance of all New Zealanders. Even the National Parks, which Mr Graham until recently had declared sacrosanct, will be compromised.

A swindle of these dimensions could not, of course, be conducted in the open. Direct freehold into private ownership would be much too controversial. So the deed, instead, is to be done by stealth – through a variety of smokescreen stratagems

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cooked up by the Minister's faceless staff, and designed to conceal from the public view the true extent of pillage.

Mr Graham, occasionally conscious that his furtive bartering is unacceptable, has from time to time pretended that a wider public input would be sought, and taken proper account of. But, beyond a few inconsequential meetings, none of this has happened. The only formal opportunity for public input will be on the still-secret enabling legislation, which will no doubt be referred to the Maori Affairs Select Committee latter this year. This will provide no check at all on what has already been determined–Government has made contactual obligations to Ngai Tahu.

The Crown – meaning Mr Graham – has usurped the public's right to defend its legitimate interests. Mr Graham and Ngai Tahu will decide together in secret. And if this defrauds the rightful owners of their inheritance, so be it.

Part of the Graham/Ngai Tahu agenda is described below. Other mechanisms exist but have not yet been leaked in any detail.

Nohoanga

Of the various indefensible aspects of the Graham plan none is more far-fetched than the "Nohoanga" or "campsite" entitlement. Areas of Crown land adjacent to rivers and lakes will be closed to traditional public use and allocated as private campsites, for the exclusive use of Ngai Tahu.

Each of these campsites will be relatively small, but there will be a great many of them spread the length and breadth of the South Island (and, as for 'Topuni', the concept is to be available for export further North).

The excuse for this race–specific alienation of public land is, according to Mr Graham, to provide access to waterways for Ngai Tahu to engage in "customary fishing". The fact that customary fishing no longer occurs apparently does not matter, any more than the fact that the present users of these rivers, lakes, and campsites, will lose what to them are long–established customary rights. Some customary rights, it seems, are more important than others.

People of Ngai Tahu descent no longer fish with flax nets or bone hooks. They use modern equipment and methods to catch native species as well as introduced gamefish, such as trout and salmon. They are entitled to camp on public land adjacent to these resources in exactly the same way as everyone else. But to Mr Graham and his Ngai Tahu counterparts this is not enough. They must be awarded extra rights and special access, and allowed to deny their fellow–citizens the enjoyment of camping places they may have been using for generations. They would terminate existing rights, all in the cause of Justice.

There are many things wrong with the Graham/Ngai Tahu proposal, some of them of far greater magnitude, but none of them epitomises its racist divisiveness as pointedly as the Nohoanga concept.

Deeds of recognition, statutory advisors, protocols, etc.

Under Mr Graham's proposals Ngai Tahu will be given a privileged role at every level of environmental administration and management, from national to local. Ngai Tahu "Statutory Advisors" will oversee areas as large as mountain ranges, and will promote their own interests directly to the Minister – bypassing the normal channels available to the unwashed public. And the Minister, in turn, will be obliged to have "particular regard" to the requirements of Ngai Tahu.

Through "Deeds of Recognition" this comprehensive meddling will be extended further, with Ngai Tahu involved, as of right, in the day-to-day management of undisclosed areas of the public domain. The Department of Conservation, already supine, will be kneecapped through the imposition of "Protocols" designed to ensure maximum Ngai Tahu interference at every level of its activities.

The obvious intent is to provide Ngai Tahu with a level of manipulation of public land far beyond its democratic entitlement. This will include the placement of Ngai Tahu on the governing bodies of the national Conservation Authority and its regional Boards, as well as the Guardians of lakes Wanaka and Manapouri, and the local Fish and Game Councils (to all of which they already have democratic access). These provisions require the abrogation of the basic principles of democratic representation, allocating a pervasive and non-accountable domain of self-interest to a small, racially-selected minority. It will be a covert deal which, far from righting old injustices, will launch a generation of new ones.

Caples and Greenstone Valleys

This deal has metamorphosed considerably since its first appearance. The original plot was a massive freehold, allowing Ngai Tahu to build a monorail the length of the Greenstone valley. The fact that this would have destroyed the area's remote appeal was of no account to Sir Tipene O'Regan and his associates. But there was too much public outcry, and subsequent drafts have seen the monorail's demise.

Ngai Tahu, nonetheless, remain adamant that commercial exploitation is their prerogative – especially in the lower Caples, which they may be given freehold. Such development – as Bryce Johnson of the NZ Fish & Game Council has pointed out – would ruin the wilderness character of the region, and could easily be prohibited.

These confluent, scenic valleys, already protected by national protection order, are very popular with trampers, fishermen, and hunters. They are logical extensions of the adjacent National Parks, and, being unencumbered Crown land, could be added to them immediately. Were Ngai Tahu concerned with anything other than commercial gain they would support this course of action.

Topuni

This loosely-defined concept, the most insidious and dangerous of all the Graham proposals, is to be imposed on National Park and other public lands of the South Island (with the threat of later extension further North).

In areas subject to Topuni – which may include whole National Parks – Ngai Tahu will be given authority to suppress any behaviour or activity they consider unacceptable. Since these behaviours and activities are undefined, and since the Topuni concept, like the Treaty itself, may be expected to "evolve", we can anticipate a permanent and escalating interference in people's rights to enjoy their National Parks. Enforcement of public 'behaviours' through bylaws and regulations is contemplated, all overseen by Ngai Tahu behavioural police.

This thoroughly offensive proposition, needless to say, has never been debated. It is profoundly undemocratic, in that one

Specific Sites to be allocated to Ngai Tahu

Source: Heads of Agreement, 5 October 1996, Schedule 1

Note: does not include the high country stations, lakebeds, Nohoanga, rivers or sites included in settlement of Ancillary Claims.
Order: No. / Site / Land Type / Area (approx) / Remedy

1 Aoraki, Canterbury (**Mt Cook**) / national park / boundaries to be set /
Deed of recognition or Statutory acknowledgment; and Ngai Tahu Topuni overlay reserve and Statutory adviser.

2 Te Mahaki o Tuterakiwhanoa, Otago (**Mt Aspiring**) / national park / boundaries to be set /
Deed of recognition or Statutory acknowledgment; and Ngai Tahu Topuni overlay reserve and Statutory adviser.

3 **Mt Tutoko**, Southland (Fiordland National Park) / national park / boundaries to be set /
Deed of recognition or Statutory acknowledgment; and Ngai Tahu Topuni overlay reserve and Statutory adviser.

4 Pikirakitahi, Otago (**Mt Earnslaw**, Mt Aspiring National Park) / national park / boundaries to be set /
Deed of recognition or Statutory acknowledgment; and Ngai Tahu Topuni overlay reserve and Statutory adviser.

5 **Takitimu Range**, Southland / conservation area / boundaries to be set - more than 45,000 ha /
Ngai Tahu Topuni overlay reserve and Statutory adviser.

6 Kopuwai, Otago (**the Obelisk**, Old Man Range, Central Otago) / pastoral lease / <1 ha /
Create reserve around obelisk and vest in Ngai Tahu or Title to obelisk with non-disturbance covenant.

7 Parinui-o-Whiti, Nelson (**White Cliffs**, north of Lake Grassmere) / conservation area / <1 ha /
Ngai Tahu able to erect pouwhenua; 20m radius reserve around pouwhenua.

8 Motupohue, Southland (**Bluff Hill**) / Scenic reserve / 150 ha /
Acknowledgment of standing; and Rename reserve and Ngai Tahu Topuni overlay reserve; and Statutory adviser.

9 Matakaea, Otago (**Shag Point**, Otago) / recreation reserve / 55 ha + islands /
Transfer title to islands with covenant for non-disturbance and Deed of recognition or Statutory acknowledgment with respect to the reserve; and Rename reserve on island; and Ngai Tahu Topuni overlay reserve; and Statutory adviser with respect to reserve.

10 Tokata, Otago (**The Nuggets** - Nugget Point, South Otago) / conservation area / 40ha + islands /
Deed of recognition or Statutory acknowledgment; and Statutory advisor.

11 **Kawarau Gorge**, Otago (natural bridge area, Central Otago) / marginal strip-pastoral lease / <40ha /
Create historic reserve on marginal strip and vest in Ngai Tahu.

12 Wanaka Peninsula, Otago (**Mt Burke Station**, Lake Wanaka) / pastoral lease / ? /
Awaiting information from LINZ on nature of tenure and possibly further information from Ngai Tahu on nature of interest.

13 Otukoro, Nelson (**Kahurangi** National Park, North Westland) / conservation area / 15ha /
Create historic or local purpose reserve and vest in Ngai Tahu; and Closure of unupa (If not within National Park, require legislation).

14 **Castle Hill**, Canterbury (rock art site, North Canterbury) / conservation area / 54 ha /
Deed of recognition or Statutory acknowledgment: and Change name of area; and Interpretation; and Statutory adviser and "Topuni" overlay reserve.

15 **Maerewhenua**, Otago (rock art site, North Otago) / historic reserve / <1 ha /
Transfer title with public access covenant; require management plan that condition and values at date of transfer are maintained: or Vest reserve; or Transfer title with condition that management remain with Crown.

16 **Takiroa**, Otago (rock art site, North Otago) / historic reserve / <1 ha /
Transfer title with public access covenant; require management plan that condition and values at date of transfer are maintained, or Vest reserve; or Transfer title with condition that management remain with Crown.

17 Pukekura Pa, Otago (**Taiaroa Head**, Otago Peninsula) / mixed holdings (albatross colony) / – /
Vesting of title in claimants with agreement for joint management by DOC, Dunedin City Council, Claimants and retention of existing interests.

18 **Motutapu Island**, West Coast (Grey River, Westland) / (see remarks) [none provided] / unsurveyed /
Transfer title with easement for water pipe.

19 **Lake Mahinapua**, West Coast (North Westland) / scenic reserve / unsurveyed /
Deed of recognition or Statutory acknowledgment; and statutory adviser; and Transfer title with covenants if necessary to protect existing public rights.

20 **Whakapoai Caves**, West Coast/Nelson (near Kahurangi the north-westem boundary of the Ngai Tahu takiwa) / conservation area? / boundaries to be set /
Close caves to public access (if cave entrances not within National Park, require legislation).

21 **Kahurangi**, West Coast/Nelson) (North Westland) / National Park / <40ha /
Ngai Tahu able to erect pouwhenua; and Ngai Tahu Topuni overlay reserve; and Statutory adviser.

22 Te Horo, Southland (**Anita Bay**, Milford Sound) / National park / Boundaries to be set /
Deed of recognition or Statutory acknowledgment; and Closure of area: and Statutory adviser.

23 Maukaatua, Otago (**Maungatua**) (west of Taieri Plains) / scenic reserve / >1240ha /
Rename reserve; and Ngai Tahu Topuni overlay reserve; and Statutory adviser.

24 Katiki, Otago, (**Moeraki** Peninsula) / historic reserve / 14 ha /
Survey out pa site and transfer title with public access covenant require management plan that condition and values at date of transfer are maintained; or Survey out pa site and Vest reserve; or Transfer title with condition that management remain with Crown.

25 Tamakura, Nelson (**Goose Bay**, Kaikoura) / – / ? /
Awaiting clarification from Ngai Tahu on nature and area of interest.

26 Onawe Pa, Canterbury (**Akaroa Harbour**, Banks Peninsula) / historic reserve / 28 ha /
Transfer title with public access and historic protection covenant; or Vest reserve; or Deed of recognition or statutory acknowledgment; or Transfer title with condition that management remain with Crown.

27 **Omihi**, Nelson (Kaikoura Coast) / – / ? /
Awaiting clarification from Ngai Tahu on nature and area of interest.

28 **Kahutara**, Nelson (Kaikoura Coast) / scenic reserve / ? /
4 sections to be vested freehold and 2 recreation reserves to be vested.

29 Ripapa, Canterbury (**Lyttelton Harbour**, Banks Peninsula) / historic reserve / 1.6ha /
Interpretation at site; and Ngai Tahu Topuni overlay reserve; and Statutory adviser.

30 Te Raka-hineatea, Otago (**Moeraki** Peninsula, Otago) / see 24 / see 24 /
see 24.

31 Huriawa, Otago (**Karitane**, mouth of Waikouaiti, Otago) / historic reserve / 13ha /
Transfer title with public access and non-disturbance covenants: or Vest reserve; or Transfer title with condition that management remain with Crown.

32 Mapoutahi, Otago (**Purakaunui**, north of Otago Harbour) / historic reserve / 1.6ha /
Transfer title with public access and non-disturbance covenants; or Vest reserve; or Transfer title with condition that management remain with Crown.

'Secret sell-out' continued...

small group should presume to dictate codes of behaviour on everyone else. And it is particularly obnoxious in the context of National Parks, which were specifically created for the free access and enjoyment, both physical and spiritual, of every citizen.

The Topuni malaise will also be extended over Scenic Reserves, Recreation Reserves, and the Conservation Estate in general.

The proposed Ngai Tahu deal, unlike previous Treaty settlements, involves the extensive use of conservation lands (this being in violation of Government's policy that the conservation estate will not be "readily available" for Treaty settlements). Were it not for this, despite the flimsiness of much of the accompanying argument, many of Mr Graham's extravagances would probably be tolerated.

This deal, however, will not be tolerated. It may be ratified, and signed with the usual ceremony, but its legacy will fester and ultimately erupt. No old injustice will ever be healed by a new injustice of this magnitude.

Mr Graham's judgment, often sound, has been strangely lacking in his negotiations with Ngai Tahu. His decision, contrary to all his assurances, to barter the public estate, is difficult to fathom.

Perhaps, as Brian Turner and Philip Temple have suggested, he fails to understand what their wild lands mean to New Zealanders. In an *Otago Daily Times* article, printed on the 19th June, Mr Graham said:

> "To most of us a river is something to use but we don't revere it as Maori do. To them it represents their ancestors and has its own wairua or spirit. They are naturally offended when it is polluted... the potential for disagreement is very great." "To Maori, landmarks such as mountains are important because they mark tribal boundaries. They are imbued with a spiritual element which is not easy for us to understand".

These are sincere, revealing lines. But the Minister speaks only for himself, and not, as he imagines, for all Pakeha, or all Maori.

To Mr Graham a river may be something to use and pollute, and the landscape devoid of spiritual content – but not to me, and thousands like me.

People respond to nature in different ways, and to different degrees – some hardly at all (like Mr Graham perhaps), and others very deeply. But they do so irrespective of race, as the world's religions and literatures have always reflected.

In New Zealand the regard for wilderness is part of the national psyche. It is enshrined in our National Parks, and expressed in the everyday pride we take in our green and unspoiled hinterland. It has grown stronger each generation, so that the destruction of a forest or pollution of a river can no longer lightly be attempted. It is an attribute of all the people, Maori and Pakeha.

The backcountry does not belong to the Crown. It belongs to us. It is not Doug Graham's to dispose of, and this fraudulent "settlement" will never be accepted.

What outdoor people want, Minister, is less exclusivity

By Brian Turner

Brian Turner is a writer, poet, and outdoorsman with a long involvement in conservation and recreational issues. He is a spokesman for Public Access New Zealand. Currently he is Writer in Residence at the University of Canterbury.

The Minister of Treaty Settlements, Doug Graham, has been working very hard to accommodate Ngai Tahu's wishes in respect to specific provisions relating to what he and they term "customary rights".

Reference has also been made to the Maori "communal values" involved, implying that there is a significant difference between what pakeha and Maori people mean and practise when it comes defining and acting on rights and values in this area.

I have had a lifelong active interest in sport, recreation and conservation. I don't envy Mr Graham his difficult job, but I know I am not alone in thinking that he doesn't seem to fully understand the views and depth of feeling of the pakeha people most actively concerned with outdoor recreation, and in hunting, fishing, and conservation generally.

Especially the hunting and fishing fraternity who, in the overwhelming number of instances, are deeply concerned with conservation. Many anglers and hunters and conservationists on the pakeha side have long felt that Mr Graham has been browbeaten by negotiating claimants (I accept that protagonists of both sides in a debate often claim that), that he has not properly consulted with them, and that he doesn't adequately understand their views and feelings on rights and values as they pertain to recreation and conservation.

In my opinion Mr Graham, and those who are prepared to accommodate his proposals, are, on the pakeha side, very often people who have little interest in conservation, hunting or fishing, and therefore aren't going to lose anything of real importance to them. Such people just want a settlement; the details are of no great significance.

But in my opinion there's not been sufficient contact, in the parlance of today, with the genuine "clients" in this area. Running through the whole issue is an implied assertion that Maoris are supreme and superior conservationists, have a deeper understanding of the natural world and values inherent in it, and that pakehas are crasser by comparison.

Only recently I heard a Maori spokeswoman on radio stating that conservationists with concerns for the Coromandel were busily trying to oppose Maori claims over the area while at the same time ignoring the effects of mining. She also said that Maoris were probably the greatest conservationists in the world.

Neither of her claims was true, but I mention them because similar claims are made throughout the country as a whole. There is an assumption in the whole debate concerning outdoor recreation and conservation that pakehas are generally awfully exploitative and Maoris far less so.

'Less exclusivity' continued...

It would be fairer to say that both races have a record of being seriously, even ruthlessly exploitative of natural resources at times, and that today a growing number of both Maoris and pakehas are coming round to acknowledging the error of some of their previous ways. I exclude from this observation those who still think it okay to kill kereru in the forests of the north and elsewhere, and those who overfish the sea. Let's look at "customary rights" as they pertain to fishing and hunting. For a start, species released here since 1840 weren't, obviously, part of what Maoris customarily fished for. And few, if any New Zealanders, have ever fished for trout and salmon, say, principally for food.

Eels and whitebait, yes. And ditto with fish and crustacea and molluscs found in the sea. But all fisheries are now subject to controls, most of which most people regard as necessary and are happy to comply with.

Sometimes, as is the case with sports fish, licences to fish are required, and the proceeds are used to manage and protect the fisheries. Most people agree with this, too. Both Maoris and pakehas have input into the formulation of regulations and controls, and have done for some time.

When it comes to sports fish and game, all licence holders are entitled to a vote for the election of regional councillors who are unpaid administrators charged with managing the fish and game resource (and guarding and lobbying to protect the natural environment crucial to the survival of both native and introduced species) on behalf of all licence holders. This is work that greatly benefits the wider community.

Access to public lands — and to the marginal strips often referred to as the Queen's Chain — is open to all. It is not exclusive to one group in society. It has long been considered a fair and desirable customary right.

It also contributes to the sense of communal values which anglers and hunters, regardless of race, colour or creed, share and deem an enlightened and laudable part of our society.

Reasonable people accept that Maoris have a part to play in the management of fisheries, for instance; accept that they have knowledge worth accessing and sharing. Maori representation on conservation boards, for example, in numbers greater than their proportion in the population is a case in point.

So joint management and control, open access to all, is what we have under the current system. There is no need to change it.

Much is made these days of preferred interpretations of Article 2 of the Treaty of Waitangi, and of what is meant — or was intended to be meant — by it. There is also much talk of what is meant by reference to the "principles of the treaty".

I have heard it said that the meaning of the "principles" is what Maori advocates say it means in any given circumstance and that's it. Certainly this is an area of profound disquiet.

There is also, in my view, a marked disinclination to refer to Articles 1 and 3 of the treaty, to consider them and their importance in determining the meaning and application of the treaty as a whole. It will be remembered that in Article 1 Maoris ceded sovereignty "absolutely and without reservation".

As human beings we are often reminded that we ought to revise our thinking in accordance with what, given the lessons to be drawn from history, seems sensible and desirable. Attempts to graft or enforce the thinking of earlier times on to subsequent, increasingly distant generations grate and often fail, for good reason.

In New Zealand it's my opinion that when it comes to recreational hunting and fishing, and to conservation generally, most knowledgeable people today don't want a system that entrenches exclusivity; don't want a system that gives priority to the views of one group ahead of another.

They want a system that draws on the breadth of knowledge available within their society, that is democratic and is seen to be fair and just and equitable, and is an advance on what has gone before. Decisions on allocation of and access to natural resources that are based on a sense of guilt, are driven by aggrievement or moral outrage, will never be readily accepted.

In my experience most people accept that it is right to place limits on the number of fish they are allowed to take, but they are not prepared to accept that because others, somewhere in their past, can cite they are descendant from Maoris, they have "rights" specific to them.

I know that we are supposed to be bound by what the courts decide, but, in the end, if people think the law as interpreted by the courts is an ass, they will flout it.

That's when Parliament must step in. When it comes to access to rivers, streams, lakes and the sea coast I am convinced that very few people who actively use these areas want any more exclusivity than that which exists already.

What they would prefer is less. Settlement proposals as negotiated by Mr Graham may result in the opposite.

Natural values – a personal view

By Philip Temple

Philip Temple is a Dunedin-based writer and photographer.

In a press article recently (*Otago Daily Times* 19 June 1997), the Minister in Charge of Treaty Negotiations stated that it was difficult 'to give recognition to values and traditions which are unique to Maori in today's world. Let me give you an example. To most of us a river is something to use. We fish in it, swim in it, launch our boats into it and may enjoy just looking at it flow by. But we don't revere it as Maori do'.

This demonstrated to me not only that Doug Graham is out of touch personally with the values that inhere in the natural world but also that, on the basis of this, he holds an uncritical and misty-eyed view that most Maori are in touch and most pakeha are not. It is nothing less than appalling that a senior minister of the Crown, responsible in the Treaty area to represent all of us, should hold such flawed and partial views. At the very least, Mr Graham is being given bad advice; at worst, he is being manipulated into a position where he now overlooks the fact that he is negotiating for the Crown – that is, all New Zealanders – and has become chief apologist for the plaintiffs under the Treaty.

Mr Graham's press statement was a personal affront to me and to the tens of thousands of other non-Maori citizens of this country for whom their identity as New Zealanders is rooted in a reverence and love for nature and landscape which, while different, is just as valid and as powerful as the Maori's. I could quote endlessly from literature to illustrate and prove my point but will speak here only with my own voice and from my own experience ...

Nearly thirty years ago, I wrote, 'My own first encounter with mountains was a vision of spring snow sparkling on a clear night on that river's peaks, a sight still vivid in memory, like any scene or event that moulds one's life. Bewitched and humbled at the same time, I became a child of the mountains and nothing seemed more virtuous or valuable than to explore and understand the face of a high landscape ... the peaks brought the crystallisation of growing strength and confidence, the slow welding of a bond between myself and the mountains, and an understanding of both'. Judging by the reactions I had to that piece of writing, I spoke for many, many other people who lived in, visited, tramped or climbed our mountain country.

The greater part of my life's work as a writer and photographer has been inspired by the Southern Alps mountain world in all its multifarious facets, from lowly lichen to icy peak... 'Even when they were smothered in storm he always saw them in his mind's eye, obdurate within the cloud, unchanged by thunder or rain or even snow, for the mountains made all these and could not be changed by them; they made the rain and the snow, the water for the rivers, the cold and the heat and the wind, and the land was composed of their dust. They were like gods, grizzled and tawny, ancient and violent, disposing and creating, everlasting. And like gods, they appeared in different guises, inscrutable, always perfect'. I have willed that, when I die, my ashes should be scattered in the place that is my spiritual home.

My feelings for, understanding and spiritual identification with the world of the Southern Alps led me to create an entire kea mythology for a place that had scant existing mythology. And while I always gave regard to Maori place, myth and experience in the mountain world in my writings - whether in novels, children's books, guide books or other non-fiction books - I rarely encountered Maori during my travels in the mountains, noticed no significant involvement by Maori in mountain conservation issues and certainly never received any Maori comment or response to any of my writings.

And here lies the rub. Just like Doug Graham, it seems no Maori is willing to acknowledge any pakeha spiritual or emotional connection with the land or, if there is any form of acknowledgement, it is always qualified as being less or inferior. It is different, certainly. It is backed by untold centuries of involvement with nature, with gods, with myths of forest and sea, with traditions of a natural and symbiotic relationship with the land that draw on cultural experiences and references, exemplified in art and literature, which are much more widely based than the purely Polynesian. The pakeha are the inheritors in New Zealand of a vast weight of myth and tradition.

Recognising the validity of pakeha experience of nature in New Zealand is, of course, politically dangerous. All Maori claims of moral and spiritual precedence and authority are based on the premise that Maori have been here longer, it is their only home and, therefore, it must be more important to them and they must have a better understanding of the natural environment. This premise ignores the fact that New Zealand is the pakeha's only home, too, and that they have been here long enough now to have their own powerful and valid relationship with the land.

Just as it is imperative and just that pakeha properly recognise Maori spirituality, place and customary behaviour in the New Zealand landscape, so must Maori recognise the pakeha's. Exclusivity is no basis on which to bring about settlements which are lasting, not just from the Maori point of view but also from the pakeha's. Recognition of each other's place in this land is the only way that a full reconciliation and understanding can be reached. Mutual respect and acceptance are something that Mr Graham as negotiator should have the wit to recognise are essential to the conclusion of any settlement process.

Being fair-minded while avoiding the global guilt trap

By Bruce Mason

Bruce Mason is researcher and a spokesman for Public Access New Zealand. In 1993 he published a paper on the Treaty of Waitangi and the principle of 'partnership'.

A comic-strip view of history can lead to generalisations and prejudices as damaging as those which may be better put behind us. Over the last decade there has been a one-sided, simplified view of the Treaty of Waitangi, and of the history of Maori - Pakeha interaction.

I now know that the vague view of New Zealand's history that I obtained during my formative years in the education system of the 1950s and 60s was seriously deficient and strongly biased towards the European perspective. I, and most New Zealanders, have been poorly served in this regard. However, in our eagerness to make amends, many are now over-compensating to the extent of adopting replacement comic-strip views of history...this requires the wearing of blinkers that shut out fact and circumstance that do not fit with the new vision. It also allows the redefinition of the meaning of words. Everything, in the words of Maori legal adviser Moana Jackson, should be "contextualised". Any consequent action, lawful or unlawful, can then be justified.

Sovereignty

Most dictionaries say that sovereignty entails the exercise of supreme, unmitigated power by nation states. Like many New Zealanders I have been bewildered by claims by Moana Jackson, Ken Mair and others demanding recognition of Maori 'sovereignty' within New Zealand. As an absolute, unqualified power residing in Parliament it appears that what they demand is a contradiction in terms. How can sovereignty reside, in a shared or any other form, anywhere else but in Parliament?

The Government has been slow and equivocal in responding to Maori sovereignty demands, greatly worsening public unease. Justice Minister Doug Graham dismissed claims of Maori sovereignty as "unlikely to succeed", but without dismissing the possibility. He further confused the issue by saying that "self-determination for Maori could only be beneficial". Minister Jenny Shipley has rejected Maori sovereignty as "having no basis in law", but then advised New Zealanders "to urgently form a view on the issue". If her first statement is correct, what need for the second?

Prime Minister Jim Bolger, has latterly dismissed any possibility of Government ceding sovereignty to anyone else (except perhaps to overseas investors), but has left open the prospect of some Government activities being delegated to Maori groups.

Some, like Moana Jackson, claim that Maori never ceded sovereignty to the Crown on the signing of the Treaty of Waitangi. This is on the basis that "no matter how powerful or respected a Maori leader, he or she could not give away the sovereign authority of their people". Such a view defies centu-

"Guilt trap' continued...

ries of international history. There are no shortages of treaties between nations where leaders have done just that. True, in most cases the vanquished have signed away their sovereignty under duress from victors. Maori history is full of lost tribal sovereignty as a result of conquest by invading tribes. Is Mr Jackson saying that it is acceptable to lose sovereignty as the result of armed conquest, rather than by voluntary agreement as occurred under the Treaty of Waitangi?

Other 'Maori sovereignty' advocates have claimed that the word 'kawanatanga' (meaning "complete government"—equivalent of 'sovereignty', in Article 1 of the Treaty) was a neologism and could not have been understood by the chiefs. However the chiefs understood the power of life and death they held over their subjects and it was this, and other rights, that they were ceding to the Crown. Many chiefs also had extensive overseas experience to assess the British as the least bad empire, and the British legal system as their best hope for preserving their remaining chiefly rights ('rangatiratanga' of Article 2).

Others state that the 1835 Declaration of Independence by some northern North Island chiefs established New Zealand, or at least part of it, as a sovereign nation. This sovereignty is implied to have survived intact despite being superseded by the 1840 Treaty of Waitangi.

Tino rangatiratanga

Alternatively there may be a valid basis for Maori sovereignty under the Treaty of Waitangi. Perhaps there are express provisions that do allow a sharing of power, self-determination, or separatism? Does Ken Mair's interpretation of 'tino rangatiratanga' as synonymous with 'sovereignty' provide an answer?

If new constitutional arrangements are being advocated, surely as a precursor it is necessary for the wider community to understand better the deal struck between Maori Chiefs and the Crown in 1840. Why rely solely on assertions, from those with political axes to grind or public lands to occupy, as to the content and meaning of the Treaty?

The central assumption on which the claim is made that the Treaty promised Maori sovereignty is the Article 2 provision guaranteeing to Chiefs the unqualified 'tino rangatiratanga' over (all) their lands, forests and fisheries. There are also notions of 'equal governance', 'bi-culturalism', and 'equal partnership' which are claimed to flow from the Treaty. Such views are gravely flawed. They arise from very selective reading of the Treaty and redefinition of the meaning of the term 'tino rangatiratanga'.

Most definitions I have seen have 'rangatira' meaning chief; 'rangatiratanga' as chieftainship; 'tino rangatiratanga' being a superlative form of chieftainship or evidence of greatness. It is nevertheless a different and lower order of authority from the supreme sovereignty ceded to the Crown under Article 1 and enacted by proclamation. The Crown has the power to make and enforce law—to keep the peace, by force if necessary. The Crown's title to its territory is indivisible—it shares its sovereignty with no-one.

The Waitangi Tribunal is of the view that tino rangatiratanga does not refer to a separate sovereignty but to tribal self management on lines similar to what we understand by local government. "Contemporary statements show well enough that Maori accepted the Crown's higher authority and saw themselves as subjects, be it with substantial rights reserved to them under the Treaty".

The matters and resources that should be subject to tino rangatiratanga are those reserved to hapu under the Treaty, not all lands, forests and fisheries as is almost always implied. The latter view ignores the land sales provisions of Article 2. If land and associated resources have been lawfully sold to the Crown then tino rangatiratanga is extinguished over these. I have examined the sales deeds for most of the South Island and have found that "rivers, lakes, the woods, and the bush, and all things whatsoever within those places, and all things lying thereupon" were either explicitly or implicitly sold by chiefs to the Crown.

The meaning of Article 2 has been woefully distorted by Maori separatists and by many of their liberal allies. To claim now that no valid land sales occurred is mere raving. The main point of Article 2 was to prevent (at Maori initiative) racketeering 'land sales' between a variety of dubious foreigners and 'chiefs' who were not duly authorised to sell. The pre-emptive right of the Crown to purchase any lands which the proprietors "...may be disposed to alienate..." is the main effect of Article 2. It certainly does not hint at any possible separate legal system or jurisdiction for Maori any more than for other landowners.

Aside from the content of the Treaty, the concept of bi-culturalism ignores the reality that the traditional concept of 'Pakeha' no longer fits the very diverse character of non-Maori society. New Zealand is now a multi-cultural society. It is not confined to two cultures. Recognition of multi-culturalism does not deny the right of different ethnic groups, including Maori, to retain their cultural identities. A bi-cultural model denies that diversity. Multi-culturalism, based on mutual respect, allows the celebration and enjoyment of ethnic diversity, while retaining the entitlements and powers of equal status and protection of individuals before the law, and the law makers. That is consistent with Article 3 of the Treaty. A Crown-Maori shared-power or sovereignty model is not.

Complete reading of Treaty essential

A complete reading of the Treaty is essential for a grasp of its meaning and to understand the weighting that should be given to its various (superficially conflicting) provisions.

The Treaty, in Maori and English versions, consists of a preamble, three articles, and an epilogue. To obtain full understanding of the relationship struck between Maori and the Crown, each Article must be read in its entirety, related to other articles, then to the purposes of the Treaty as set out in the preamble.

On the ceding to the Crown the right of complete sovereignty *or* government (Article 1) and the granting of exclusive pre-emptive (purchase) rights of land to the Crown (Article 2), Maori would retain *either* exclusive and undisturbed possession of their lands and estates forests fisheries and other properties so long as it is their wish to retain the same in their possession *or* the unqualified exercise of chieftainship over all their lands, villages and all other treasures (Article 2). In consideration of the foregoing Maori were granted the same rights, privileges, and duties of citizenship as the people of England (Article 3). The 'either' 'ors' arise from the different versions of the Treaty. In my view the versions don't materially differ if all their content is taken into account.

The proposition of 'Maori sovereignty/rangatiratanga' hinges on selective quotation from Article 2 by cutting out reference to the inseparable provision for land sales, and by ignoring the overarching right of governance/sovereignty granted to the Crown under Article 1.

"Guilt trap' continued...

The English preamble states that the Treaty was to ensure the recognition of Her Majesty's Sovereign authority over the whole of New Zealand. This is confirmed by the translated Maori version whereby the Chiefs agreed to a (single) Queen's Government being established, not dual governments. There is ample evidence that Maoris had urged this, and that the British government was very reluctant to take on any more far-flung territories.

There is an urgent need for greater public awareness of the full content of the Treaty to avoid continuation of the blinkered view that has had currency in recent times. Even the balanced and well promoted view of the Treaty presented by the New Zealand 1990 Commission has been swept aside in a wave of political correctness and radicalism.

Tolerance and equality

At the heart of the issue is the need for tolerance if we are to live together in peace and harmony. But we also need to achieve much more than this if New Zealand is to remain a comfortable place that all New Zealanders can call "home". We must be able to understand and enjoy our differences without feeling threatened.

Elevating the rights of one race (which happens to be a minority) to that of an 'equal' with the majority of society under a dual sovereignty or similar model, will create inequality between New Zealanders as individual citizens. A Maori individual would end up with greater civil and political influence, and worth, than individuals of non-Maori descent. Institutionalising differences of personal entitlement and power on the basis of ethnicity is, by its very nature, racism. How can this possibly honour Article 3 of the Treaty which grants all New Zealanders the same rights and duties of citizenship, or our strong, if somewhat bruised, self-image of egalitarianism? There will be disproportionately greater representation and power for Maori individuals within the institutions of government. This will hinge on ethnicity not on equal citizen representation. Proposals for shared power on an ethnic basis do not sit well with attaining equality for citizens or with the recent electoral changes to proportional representation.

'Claims' and 'grievances'

There have been numerous breaches of the Treaty by the Crown, especially by settler governments, but the current simplified view of our history does not acknowledge that there were major differences in treatment meted out to Maori from one tribe to the next. The assumption is that seizure and confiscation of land by the Crown occurred everywhere. Whereas on occasions governments have honoured the terms of the Treaty.

Waitangi Tribunal reports reveal Maori 'grievances' can be either real or imagined. Many commentators, and advocates for Maori, have fallen into a 'global guilt trap' whereby they assume or portray all 'claims' and 'grievances' concerning Maori as valid. A corollary is that to be Maori is, by definition, to be aggrieved. This is not a very rewarding position for anyone to be in.

It is a matter of historical fact that the Treaty is the founding document of New Zealand. Honouring and implementing its provisions requires a scrupulous regard for its content. Flights of fancy into all manner of disreputable claims of Maori sovereignty, self-determination, separatism and suchlike not only dishonour the Treaty but remove the possibility of it serving as a workable foundation for New Zealand society.

PANZ, truth, and the news media

By Brian Turner

All lobby groups face difficulties in getting their point of view across in the mainstream media. Supporters won't be surprised to hear that PANZ has had some problems in this regard, so for that reason I was interested, when speaking recently with a prominent journalist, to be told that bodies lobbying on behalf of 'private interests' had managed to persuade a substantial number of media staff that PANZ was too radical. He said that although it was clear that we had been speaking the truth for the last three years or more, our timing had been wrong. What we've been saying, he said, is okay now that others have at last cottoned on. In other words the truth is of lesser or little importance; it's who says what, when, and how you say it that counts most.

As with many words, radical has shades of meaning. One is to do with thoroughness – we try to be thorough, fair and accurate. But radical is also used pejoratively, especially by our opposition, to mean extreme. In other words, they are saying that they are reasonable – pure as the driven snow – and we are unreasonable. Oh yeah? All that we do is lobby and work hard to try to ensure that the public estate is retained for the use and benefit of all the citizens of New Zealand. As a general rule we oppose those who seek to privatise public lands with recreational and conservation value. Occasionally we work, too, to see if we can persuade authorities to add bits of such value to the estate.

But generally, contrary to what our opponents say, we do not set out to 'grab' land, we try to stop them from grabbing it principally for private gain.

What our opponents don't like about us is that we are committed to resist private predation of the public estate. We don't mealy-mouth; we ask for public consultation and open debate. Our opponents are loath to come out into the open, to come clean.

Recently I was reading a book by an American journalist called Howell Raines. In it he wrote of a friend who, while out fishing one day, said that, "The problem with Republicans is that they would run roughshod over human values in order to protect property values. The good thing about Democrats is they would run roughshod over property values in order to protect human values." Those remarks got me thinking about the situation ideologically in New Zealand, how confused it has become, and how the drive to privatise so much threatens to ride roughshod over the traditional values and expectations of people with a deep interest in recreation and conservation.

Media people throughout New Zealand are only just beginning to wake up to the attachment very large numbers of New Zealanders have to public lands, and to the depth of their desire to retain them.

So much of the negotiation relating to matters crucial to the future of the public estate takes place in Wellington and is conducted, in secret, by people who have no public profile at all, and who will avoid – or are instructed to avoid – telling the public what is proposed until it is a fait accompli. Conspiracies do occur. One of the dangers faced by Wellington-domiciled lobbyists on behalf of recreational and conservation interests is that they can become too chummy with Ministers and MPs. When this occurs – and the slippage is infectious as all who

'Truth & the news media' continued...

havelived in Wellington will attest – they begin to feel that they know best and that people who live in the regions should leave them alone and accept what emerges from the back-room politicking.

Well, no. PANZ doesn't think it's supporters want us to mealy-mouth, kowtow, cower. Every year we make dozens of detailed, well researched and reasonable proposals. We examine legislation; we try to uncover the truth. We try to make MPs and bureaucrats release information and consult with the public who treasure access to the glorious outdoors.

We're sorry about the smear campaign by some of our opponents. It does them no credit. As for members of the mainstream media: it's good that more of them are waking up and have begun a more rigorous examination of recreation and conservation issues in an effort to get at the truth. It's good, in other words, that they are at last beginning to act like a fourth estate: Well, some are.

Public roads

Privatisation in the wind

The Minister of Transport Jenny Shipley has released a 'Land Transport Pricing Study' discussion document. Shipley, although reputed to have said that a public road network will be retained has also stated that the status quo is unacceptable, meaning that commercialisation/privatisation, in various shades is preferred. Remember that the Business Round Table came out with road privatisation plans last year. Co-incidence? Public roads have been estimated as the most valuable asset in New Zealand–at around $23 billion, so they are a natural target for those with private, commercial agendas.

The document's narrow focus on costs and transport totally discounts the wider legal and civic value of 'roads'. The authors present a view that roads only mean cars/transport. There is nothing about the legal status of roads, that these are publicly-owned strips of land; that there are centuries-old common law rights of passage attached; that our land-owning/occupying civilisation depends on every allotment having legal access onto a road; that our society depends on its citizens having freedom of movement for it to be able to function; that half our roads are currently unused by motor vehicles but nevertheless have essential value for legal and non-motorised access to both private and public lands and waters; that half the Queen's Chain consists of 'roads'.

However despite these major omissions there are small hints that these matters are not oversights. The authors have embarked on a privatisation/user pays course – the technology for monitoring vehicle movements is already available. The focus is on user-pays for vehicles but they do not dismiss extension of the concept to pedestrians and cyclists! It is only the absence, for the present, of suitable monitoring technology that is seen as a barrier. Even the right of legal frontage onto a road is interpreted as a 'privilege' that landowners should pay for. Like everything else in the myopic world of the New Right, it is only individuals with money that have rights and liberties! It has enormous potential for a Big Brother/Corporate State with every move by every citizen monitored and recorded.

A more commercial direct user-pays approach to managing public roads, even under continued Crown and local authority ownership, is likely to result in management for profit rather than people. A likely consequence will be the 'stopping' and disposal of lightly used back-country roads which are generating insufficient returns to pay for upkeep or provide a profit on the investment. Unformed legal roads will become financial liabilities if the road authority is required to produce a return on land value, as distinct from the investment in road building and maintenance. Approximately half the public road 'network' is unformed, but of crucial importance for providing legal rights of access to public lands, water margins, and private land generally.

There are huge civil liberties issues at stake. Like, what becomes of the freedom of movement guaranteed to everyone under the New Zealand Bill of Rights if there are no means left to freely exercise it? Freedom, that most precious of commodities, is apparently only to be available to those who can afford it.

The proposals, either through oversight or stealth, have the potential to be a monumental attack on personal freedoms and public rights of access, unparalled in New Zealand's history.

What you can do

Contact your MP; and
Write a submission by 15 August 1997, to:
Land Transport Pricing Study
Ministry of Transport, P O Box 5248, Wellesley Street, Auckland. Fax: (09) 379 0073

Ask–
• that the public road network in its entirety be retained in Crown and local authority ownership and control.
• for removal from legislation of any ability by roading authorities to seek a monetary return on land value.
• that transport pricing arrangements be confined to maintained vehicle roads; unformed roads be removed from the scope and influence of the Study.
• that common law rights of public passage and access to private and public property remain unaffected.

PANZ on the Internet

We now have a comprehensive web site up and running, with over a hundred pages and masses of information about the outdoors.

Visit our site for updates on topical issues such as Treaty settlements, and progress on tenure reviews. The full official proposals for the latter, with maps, are posted as soon as they are released to assist your submission-making.

As well as information on PANZ, there is resource information on the Queen's Chain, high country, public roads etc. This has proved particularly useful for researchers, news media and students–we have received very complimentary comments.

We are indebted to Fish & Game Otago for providing us with a location on their web site. This should not be taken as endorsement of our pages. You will locate us at–

www.fish-game.org.nz/panz

Access News

Please send clippings (with date and source) to PANZ

England's 'Hero of the Hedgerow' battling for the countryside

Otago Daily Times, March 21, 1997

England (AP): Colin Seymour may seem the classic English eccentric, a self-taught lawyer going to court to invoke a long-forgotten law to defend a hedge.

But he won, and may have set an important precedent that will help save the rolling patchwork of the ancient English countryside from the bulldozers of development

The 63-year-old former teacher has prevailed in a string of court cases against farmers, government bodies and others who want to close paths, tear up trees or gouge out mines.

"Petitions and reasoned letters are a waste of time," he said. "If you write a half page letter threatening the law, it sharpens their minds. You do not have to be a solicitor or a barrister in order to be able to read and reason and put together a legal argument."

Mr Seymour recently won a victory hailed by people worried about the loss of hedgerows. It was a judgement saving a 51m strip of ragged hedge in Flamborough, his Yorkshire village.

His case was as based on a 1765 law, called an Inclosure Act, which said the hedge must be maintained "forever". There were some 4000 similar local acts around the country. Mr Seymour said, and all used the same words: "to make and forever maintain."

"A properly maintained hedge might last for 1000 years," he added...

...Flamborough was seen as the test ease for these old laws and environmentalists were delighted.

"There have been a lot of letters from people who have taken encouragement," Mr Seymour said.

He lives on a government pension for the disabled. He is nearly deaf — with partial hearing in only one ear – and has lost his peripheral vision through glaucoma.

Though he dropped out of school at 15, Mr Seymour later earned bachelor's degree's in education and social sciences and a master's degree in management studies.

In his first case, 20 years ago, he halted the National Coal Board's plans for open-pit mining around his former house.

His edge is sheer determination. He spends hours wading through old documents until he finds what he needs to win.

Several of his cases have involved encroachments on historic paths and other public rights of way. In 1987 he helped two men who had been trying since 1949 to get a public pathway reopened.

"To win this ease for them and watch them walk the 3km along this woodland path gave me more pleasure than any other case before or since," Mr Seymour said.

French glacier for sale

Otago Daily Times, February 26, 1997

Paris (Reuter): For sale, France's only privately-owned glacier. Pristine alpine views, eagles and deer, no noisy human neighbours. Price: 5 million francs ($NZ1,277,000).

After a 30-year tussle with the State, owners of the Gebroulaz glacier in the Alps are renewing their bid to sell their icy valley near the Meribel and Val Thorens ski resorts.

But the State estimates the glacier, an alpine pasture with hunting, three chalets and a small lake is worth just half the asking price.

[If the Government's Crown Pastoral Land Bill is passed in its orginal form, we may end up with private glaciers in the Southern Alps! – Ed].

Right of way right through

Otago Daily Times, April 29, 1997

London: A young couple's dream home has turned into a nightmare because a right of way runs through the property — meaning anyone can arrive on their doorstep and demand to walk through their home.

Stephanie and Philip Stunell (both 20) knew their two-bedroomed semi at Westbury, Wiltshire, had a history concerning an ancient footpath.

But they believed it had been resolved by a legal diversion when they paid £49,500 ($NZ 117,326) in September last year and moved in.

They maintained that builders Persimmon Homes assured them the diversion order had been granted, moving the footpath route a little to bypass their home.

But now they have learnt a High Court judge confirmed a diversion order could not be granted leaving the route and its ancient right of way in operation.

It means anyone can come to their door and demand to walk through their home.

The Stunells had a Ramblers Rest name plague made as they thought the house's unusual history gave it "character" but now plan to remove the house sign.

Mr Stunell, an electrician said "We have still not heard anything official from the builders yet. But I understand they have applied for a new diversion order...

...He said they completed the house purchase in September last year and had now learnt the High Court challenge was initiated the previous month. They believed the route question had been resolved before they bought.

His wife Stephanie, an American, said "No-one has yet asked to walk through the house. I just hope that they just don't in the future. If they do ask and I am on my own I am going to demand a police escort."

Two years ago Wiltshire County Council revealed the builders had disregarded the ancient right of way. The council ordered the removal of the front and back doors to allow access. But the doors were later returned following vandalism in the empty building.

A temporary diversion order was challenged by ramblers and led to a public inquiry.

After the inquiry, an inspector, appointed by Environment Secretary John Gummer, agreed the footpath could be moved to bypass the house.

But rights of way campaigner Francis Morland (52) of Chapmanslade, Wiltshire— who does not intend to exercise the right of way—challenged that decision in the High Court earlier this year.

Uncontested by the builders or West Wiltshire district council, the High Court judge awarded Mr Morland his costs.

Now it is understood that Persimmon is seeking a further diversion order.

Mr Stunell maintained: "Meanwhile, I have been advised to sit tight for the time being."

Jack Hartley, secretary of the North Wiltshire branch of the

120,000-strong Ramblers Association, said he sympathised with the young couple, but added "We have to be quite adamant about this.

"Like any footpath, this could have been in existence for several hundred years. If any ramblers turn up, they have to give them access." — BPA

Access war continues

Wairoa Star, April 3, 1997

The Papuni Station access war continues to rage, even after a Maori Land Court decision.

The battle is years old but has taken a new turn following the approval of a injunction to prevent any further road formation over the station.

Problems arose some years ago when an easement across Papuni and allowing access into the Te Urewera National Park expired and the station owners declined to renew it.

User groups began to use the legal road which they pegged.

The Papuni owners then made application to the Maori Land Court to prevent the formation of a track on the legal road for fear it may damage the land.

The presiding judge adjourned the application, suggesting the parties – the owners, users and council – try to negotiate a remedy.

However, after a year of trying to reach an arrangement no conclusion was reached so the application went back to court.

Judge Savage visited the site and held two or three hearings regarding the access and granted the injunction.

The injunction prevents the further formation of any type of track on the legal road.

He went on to rule that the paper road is held by council in trust for the owners and as it will be eventually returned to the owners he made an order vesting the return.

He added that the question of whether the land should become Maori freehold land, and what should happen to its status as a roadway, was not before him.

Wairoa District Council manager Peter Freeman said he had spoken with Papuni owners to clarify the judgement.

The owners will meet next Friday to discuss it (the ruling).

Mr Freeman said the situation will be reviewed following that meeting and an appeal may be lodged.

Council's future involvement will be dependent on its balancing landowners rights and those of the public.

[The Crown Law Office is appealing the decision on the basis that the Maori Land Court exceeded its jurisdiction – Ed].

Road likely to be kept open

Otago Daily Times, September 7, 1996

A road at the top end of Lake Ohau used as access to Monument Hut [and Hopkins Valley] is likely to be kept open by the Waitaki District Council.

Earlier this year, the council considered stopping basic maintenance on the road because of the cost and the expectation by a small number of users that it would be restored after floods.

However, the suggestion brought protests from trampers, the Aoraki Conservation Board, Mountain Safety Council, Conservation Department, fish and game councils and automobile associations.

The proposal was to move the car park near Monument Hut back 7km and to put up signs notifying the end of the formed road.

Council infrastructural assets manager Peter Thomson said some people wrongly believed the council was going to close or stop the legal road.

This was not the intention, but rather finding an appropriate level for maintenance.

A recent meeting on the site focused on the need to maintain reasonable public access, while at the same time not encouraging two-wheel drive vehicles when conditions were likely to be unsuitable or changeable.

Mr Thomson is proposing to Monday's meeting of the works committee moves which could see the road retained, but only for four-wheel-drive vehicles.

This includes putting up signs at the gate adjacent to the Outdoor Activity Centre advising the road was only suitable for four-wheel-drive vehicles, maintaining the road periodically, making permanent a detour around a large washout and retained the intentions book at the end of Lake Ohau road.

If the committee and council accepted the proposal work could be earned out on the road before the summer recreation season, Mr Thomson said.

[The council has re-opened the road access to this important recreational area – Ed]

Agreement on conservation areas

Otago Daily Times, May 2, 1997

Pastoral lease tenure reviews mean 805ha of Mount Rosa Station and 680ha of Mount Dewar Station, both near Queenstown, are to become part of the conservation estate.

About 1400ha of pastoral lease on [Mt Rosa] Station will become freehold farming land...

...International property consultant Knight Frank carried out the tenure reviews which were recently approved by Crown representatives and landholders.

As part of the property rights exchange, the lessees had agreed to include an easement which would allow unrestricted public foot and mountain bike access over four-wheel drive tracks and routes from Coal Pit Saddle to State Highway 6, via Mount Rosa-Mount Mason, Knight Frank Alexandra [consultant] Phil Murray said.

An easement was also provided to allow vehicle access in the area between Coalpit Saddle and Mount Rosa for Department of Conservation management purposes.

In response to public submissions, the proposed conservation area of 540ha was extended to the agreed area of 805ha which was made up of 800ha in the Doolans top block and 5ha at Nevis Bluff.

The submissions also raised the issue of access for horseback riding and vehicle access for hang-gliding. The lessees were willing to allow those uses if asked, but did not want to agree to them being allowed as of right, Mr Murray said.

At Mount Dewar Station, about 1779ha of pastoral lease has been made freehold land for Mount Field Ltd for farming purposes. Within the freehold area a conservation covenant has been placed over the Skippers Road corridor and the upper Coronet Peak Road margin.

The property lies about l0km east of Queenstown bounded by the Shotover River to the west and Skippers Road to the east.

An easement would be included to allow unrestricted public foot and mountain bike access, and DOC vehicle access through the freehold area.

The area retained for conservation included 530ha in the Devils Creek-Mount Dewar area, 149ha of Shotover River margin and 1ha for the proposed Atleys Terrace historic reserve.

[These are just two of approximately 25 tenure reviews that have greatly improved public recreational opportunities in the South Island high country – Ed].

Club seeks better back country horse access

The Mirror, February 26, 1997

The Cromwell Riding Club is asking for the Department of Conservation's final Draft Conservation Management Strategy (CMS) to be reworded to better provide for horse access in the back country.

Cromwell Riding Club president Roger Gibson told the Otago Conservation Board on Friday he was "shocked and disappointed" that DOC's final draft failed to grasp the need to provide for back country horse trekking on the vast areas of public land administered by the department.

He warned that horse riders could soon find back country areas closed to them unless DOC started planning future access to new areas it was rapidly acquiring through the land tenure exchange process, as well as areas it already administered...

...the final draft of the strategy, which was presented to the Conservation Board on Friday, stated "there is little demand for them (horse trekking) on land administered by the Department."

"This is an incredible statement to make when the annual cavalcade alone draws more than 600 riders a year to travel back country routes," Mr Gibson said..

...In the Alexandra area the strategy mentioned only three sections of the Otago Central Rail Trail as being suitable for horses. It did not mention the many thousands of hectares of other public land also administered by the department or which had come into its estate since then, Mr Gibson said.

Examples were the Fraser Basin, Bains Block, Hawkdun Conservation Area, Old Woman Conservation Area, Lauder Basin, Upper Manorburn Conservation Area, and Old Man Scenic Reserve.

The strategy stated horses wore allowed where it was considered "suitable and appropriate," and where conservation and other values were unlikely to be adversely affected.

The department would have regard to such factors as the risk of introduction of weeds and potential of droppings to adversely affect other people's enjoyment in allowing horse riding opportunities.

"The reality is that horses have been travelling over these areas for the last 130 years without causing any impact on the natural values," Mr Gibson said.

The Conservation Board had discussed the issue in a public-excluded meeting on Friday and acknowledged its support for horse access to be provided for.

Acting Department of Conservation Otago regional conservator Ian Whitwell said yesterday that while the draft Conservation Management Strategy (CMS) was not "enthusiastic" about horse riding, it clearly envisaged the provisions might be changed.

"The CMS makes specific provision for review of areas available for horse riding and lists criteria against which new opportunities will be judged. The inclusion of this provision shows that there was an expectation that the list of suitable areas could be expanded," he said.

"In addition, there are opportunities through the tenure review process to provide horse-riding opportunities and the department welcomes submissions and information which will help it to negotiate agreements," Mr Whitwell said.

[PANZ shares the concerns of the riding club. In view of the long pastoral history of these lands, we believe that DOC should be more accommodating of horse riding –Ed].

Nevis Rd to remain open for ski access

Otago Daily Times, April 23, 1997

Cross-country skiers wanting to enjoy the wide-open spaces of the Hector and Garvie Mountains this winter will be able to drive to the area via the Nevis Road from Garston, as the "road closed" signs will not be put up this winter.

The Southland District Council has closed the road for the past two winters after it was damaged in 1994 when someone using a bulldozer cleared snow blocking the road, scraping off a considerable amount of gravel in the process.

The closures brought howls of protest from skiers wanting access to the [former] Southland Ski Club hut, which is reached from the Garston end, and the district council subsequently announced it would entertain requests for access on an individual basis.

Council works and services director David Adamson said yesterday it had been decided not to close the road this winter as mining activity had ceased at the Garston end of the Nevis Valley and heavy-vehicle traffic on Nevis Road had petered out.

Once again the Central Otago District Council has no plans to close its end of the road, which winds up between the Carrick and Old Woman Ranges from Bannockburn and then down to Garston through the Nevis Valley.

However, the road is usually closed to all but snowmobiles when the winter snow settles on Duffers Saddle.

While Nevis Road will officially remain open this winter, the Southland District Council will continue its usual practice of closing the Old Snow Pole track on top of the Old Man Range, in what Mr Adamson said was a bid to avoid damage to sensitive areas near the road.

The portion to be off limits between May 10 and October 18 comprises part of what is know on the Clutha River side of the range as Waikaia Bush Road and connects Shingle Creek and Waikaia Bush, passing near the historic Potters mining reserve.

However the Central Otago District Council has no plans to close the road on its side, after the council was challenged by the Federated Mountain Clubs and several individuals over the 1990 closing of the route.

[The Council is to be congratulated for changing its position on road closure. However the grounds for discontinuing the closure, that heavy vehicles including bulldozers are no longer using the road, confirms PANZ's original grounds for objection – that the council unlawfully discriminated against the public by closing the road to all vehicle users, rather than barring classes of vehicle that were causing damage. This case is indicative of widespread abuse of roading law by local authorities – Ed].

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