Landcorp Farms & the SOE option

for Ngai Tahu claims settlement

Hands on SOEs

Hands off Greenstone Valley!

Public Access New Zealand

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November 1994

"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*)

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 August 1992, 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 Tribunal 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 as reserves 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.

This 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 the 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 the 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 Landcorp 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

The appendix 'Landcorp Properties' contains schedules of Landcorp properties within Canterbury, Otago, and Southland. The list is not exhaustive. Other properties, without registered certificates of title, may exist. Financial constraints determined that not all certificates of title were obtained and inspected, however all that exist should be listed. Reproduction costs have also constrained the publication of all information collected by PANZ. All relevant information on Landcorp and other SOE holdings *should* be readily obtainable by Government if it required the corporations to furnish it.

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.

Appendices

References

ODT, 24 March 1993
ODT, 2 November 1994
Ngai Tahu 'Amended Claim of 2 June 1987'
Framework Agreement
'Ngai Tahu Land Claim': Excerpt from *Public Access* No. 2 March 1993
Hands off Greenstone pamphlet, PANZ
(12 pages total)

Landcorp Properties

Schedules, photographs, certificates of title, plans (49 pages total)

Appendix

References

Otago Daily Times 24 March 1993

Minister looks to Landcorp farms for Ngai Tahu claims

By Pete Barnao

Landcorp farms would be among the most suitable lands for use in settlement of the Ngai Tahu land claim, the Minister of Justice, Mr Graham, said.

Speaking from Wellington yesterday, Mr Graham dismissed as "absolute nonsense, claims by a recreational group, Public Access New Zealand, that financial motives led the Government to favour the use of natural areas, including national parks and pastoral leases, over productive state-owned enterprise assets in reaching a settlement.

He said Landcorp farms available in the settlement area were "most suitable for settlement".

Any settlement would have no effect on public access to or conservation of protected areas. The Government was not considering conveying title or joint-title of conservation lands to Ngai Tahu. although a settlement might see Ngai Tahu involved in their management, Mr Graham said.

"The conservation estate is there for all New Zealanders and will stay there for all New Zealanders.

"They are keen to see (conservation areas) preserved and we are keen to see them preserved."

The Government had bought the Greenstone, Routeburn and Elfin Bay Stations at the head of Lake Wakatipu. These were in a land bank and were likely to be used in a settlement with Ngai Tahu.

Mr Graham said any Ngai Tahu proposals to develop these or other lands for tourism were subject to the same controls and regulations as any other proposal.

"There will be no concessions."

Public Access NZ had expressed concern that giving public ownership and control to Ngai Tahu might harm public access and preclude an improvement of existing access to natural areas. Proposed tourism developments could harm conservation values.

A spokesman, Mr Brian Turner, said public access to former forest park land near Mount Hikurangi, East Cape, had disappeared since the land became Maori freehold.

This was despite a "legally binding agreement" between the Crown and Ngati Porou that included a right of public access described by the Minister of Conservation, Mr Marshall, as "secure for all future generations of New Zealanders", Mr Turner said.

"Public access in many areas is inadequate and insecure anyway. Existing access is not good enough," he said.

Landcorp's rising profits prove farming businesses sustainable

Wellington (PA).— Landcorp Farming's progressively higher profits as a state-owned enterprise over the past seven years have proved agricultural businesses can be profitable and sustainable, general manager Bernard Card says.

The company s trail to profitability started in 1987 when 600.000ha of former Lands and Survey Department land was split up into the Department of Survey and Land Information, the Department of Conservation and Landcorp Farming Group.

For Landcorp Farming, the challenge was to take almost 250,000ha of both developed and partially-developed agricultural land spread across New Zealand and create a coherent and profitable business.

Now, Landcorp has one of the largest livestock genetic resources in the world under one management, improved returns and a growing profile on the international market.

Mr Card said the secret to success was a combination of physical factors, progressive management and business practices and a proactive rather than reactive attitude.

In the past financial year, Landcorp Farming recorded a gross revenue of $83.5 million, up from $74.5 million on the previous year. Net operating profit before tax rose from $9.8 million in 1992-93 to $20.4 million in 1993-94 — an increase of 109%.

Mr Card

Mr Burdon

This year's stock includes 637.000 breeding ewes, mostly Romneys; a cattle breeding herd of 52.000; goats, including the African Boer goat; 17.000 hinds; 1400 fallow hinds; and 1000 velveting stags.

Mr Card said livestock improvement policies, staff management and motivation, and looking outside agriculture for business models had helped Landcorp take the best possible advantage of its trading environment.

Landcorp also had a clear focus of what it wanted to achieve.

"We are quite clear about what we are doing – and that is making money for the shareholder in a sustainable way," Mr Card said.

In the future, farmers would have a closer link with consumers, giving them far more information about market demand.

With this in mind, Landcorp was actively pursuing its own domestic and international marketing opportunities through branded products and livestock.

Boer goats were a successful livestock investment. Marketed in North America through Landcorp's Canadian subsidiary, the bucks attracted an average price increase from $10,000 to $42,083.The highest price received was $158,000 and accounted for 51% of the increase in profit.

Mr Card said other than occasionally providing services to the agriculture community, Landcorp Farming was also showing an agricultural business could perform profitably and sustainably.

It was now poised to take full advantage of a freeing-up in world markets.

"The performance of the company is establishing the fact that an agricultural business can be successful and can stand up reasonably well when compared with a lot of other enterprises," Mr Card said. "I don't believe that aspect of it has always been fully appreciated."

On any decision to eventually sell the farms or use them for the settlement of Waitangi Tribunal claims, Mr Card said State-owned Enterprises Minister Philip Burdon had stated that the group would not be sold.

Memorials recording Waitangi Tribunal claims on almost all Landcorp's 213 farms were not an impediment to the company's business activities, he said.

In "the narrow sense" there was no reason why the Government needed a farming company, he said, but then it was also performing beyond some people's expectation and he believed it had not yet reached its full potential.

3.4. **Amended Claim of 2 June 1987**

WHEREAS the Claimants have already filed claims dated respectively the 24th November, 1986 and the 16th December, 1986

AND WHEREAS both those claims were accompanied by schedules

AND WHEREAS they are now requested to particularise those claims

THE CLAIMANTS SAY:

THE CLAIM

From 1840 to the present day the Crown has, in respect of the Maori people, their land, their culture and their well being, consistently acted in ways contrary to the Treaty of Waitangi, and therefore has been and remains in breach of the Treaty and its principles.

The multiplicity of the Acts complained of and the extent of the lands involved, together with the range of cultural and social grievances is such that, short of calling the evidence to be presented at the hearing of the claims, it is not possible for the complainants to succinctly state their grievances. For this reason, the complainants are concerned lest any omission from this document should be held to deny them the right to later seek redress of grievance in respect of the omitted material. They therefore give notice that in the event of matters not

covered by this document arising later, they will seek leave to further amend their claims.

PARTICULARS

LAND

In 1840 the Ngai Tahu people owned virtually all the land in the South Island south of a line drawn between Cape Foulwind in the West and White Bluff just north of Cape Campbell in the East. Today they own very little land. The acquisition of this land by the Crown and the subsequent sales to other owners, were contrary to Article 2 of the Treaty of Waitangi in that Ngai Tahu did not "wish or desire" to sell, nor were they "disposed to alienate" all of the land. Further, the prices paid for the various blocks were never "agreed upon" in the manner required by Article 2.

Land purchases apart, other Crown dealings with the land were contrary to Article 2 of the Treaty. In particular the Crown has:

(a) Failed to allocate reserves which were an integral part of the agreements for sale and purchase of Ngai Tahu land to the Crown.

(b) Failed to allocate all the reserves required by the South Island Landless Natives Act 1906.

(c) Confiscated without compensation various reserves in the South Island.

(d) Appropriated to itself Ngai Tahu land without consultation or agreement and, in at least one case, namely Greymouth, without the knowledge of its Ngai Tahu owners.

(e) Without the consent of its Ngai Tahu owners has converted freehold land into Leases in perpetuity.

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

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

(h) Has refused to permit registration of land in the names of the Maori tribes and/or in other ways which would reflect Maori customary land ownership.

All these actions are contrary to the preamble and Articles 2 and 3 of the Treaty of Waitangi in that the Crown:

(i) Has failed to "protect the just rights and property" of the claimants.

(ii) Has failed to "guarantee" to the claimants and their ancestors "the full, exclusive, and undisturbed possession of their lands and estates, forests and fisheries and other properties so long as they wished and desired to retain the same in their possession".

(iii) Has failed to "import" to their ancestors all "the rights and privileges of British subjects".

The land transactions giving rise to these breaches of the Treaty occurred at Horomaka (Banks Peninsula), Te Pakihi o Waitaha (North Canterbury), Kaikoura, Otakou (Otago), Murihiku (Southland) Rakiura (Stewart Island) and on Te Tai Poutini (West Coast of the South Island). The lands which the claimants seek to have allocated to them or which they seek to be compensated in respect of are largely described in a schedule lodged with the Claim dated the 16th December, 1986. It should be noted that that schedule is as complete as the data made available by the Crown thus far permits and the claimants give notice that the schedule will be extended as further necessary data becomes available.

MAHINGA KAI

According to the Treaty of Waitangi and later specifically confirmed by the Kemp Deed the Ngai Tahu people were guaranteed "the full, exclusive and undisturbed possession" of their ***kainga*** and ***mahinga kai***, but the acts and ommissions of the Crown and agents of the Crown have in fact dispossessed Ngai Tahu of their ***mahinga kai***. Ngai Tahu have thus been deprived of a major economic and sustaining resource in their ***mahinga kai*** including birding, cultivation, gathering and fishing resources. Since the issue of Treaty rights to ***mahinga kai***, especially in respect of fisheries, is subjudice in the Muriwhenua Claim now proceeding in the Waitangi Tribunal it would be inappropriate to detail it further at this stage, but notice is given now that claim will be pressed for a share in the fisheries, including the commerical fisheries, of Te Waipounamu and for the recovery of or compensation for birding and other traditional resources of which Ngai Tahu have been wrongfully deprived.

CULTURE

From shortly after 1840 down until the present time, all legislation affecting the Maori people, (and therefore the claimants) has reflected a policy of assimilation. As part of this process the Maori has been required to adapt to a Westminster system of Central and local government which gives little or no recognition to Maori ways of performing these functions. Wherever the Maori and Pakeha cultures have been in conflict it is the Maori who has had to bend. The result is that Maori cultural and social patterns and values have

broken down and the people have become confused and dispirited, with some now tending to seek radical remedies for Maori grievances.

The claimants seek a recommendation that the policy of assimilation be reversed. This would involve a substantial programme of legislative reform to all statutes which reflect that policy.

The claimants believe that the Treaty of Waitangi can be read for the principles which it spells out and for the spirit which underlies the whole document. The former are currently under consideration by the Court of Appeal so comment on them would be presently inappropriate. The spirit which underlies the Treaty, and the instructions given to those who wrote it, is a simple acceptance of the fact that we are two races. The Treaty is a partnership between those two races and that partnership requires consultation, the absence of which is the root cause of all the grievances now held by the Maori people. The claimants therefore seek a recommendation that the Crown should now unequivocally give a public assurance that hereafter the Maori people will be consulted and listened to in all matters affecting them.

REMEDIES

Changes to Crown policies and attitudes have already been mentioned. These will need to be extensive and the detailed implementation of them will be difficult and may take a long time. The claimants believe that these changes are fundamental to the future of our country, and the only reason that they do not develop this aspect of the claims further at this stage is their belief that the changes will be largely uncontroversial if carried out with sensitivity.

The resolution of land based claims is quite another matter and is likely to be extremely controversial. For that reason it is important to state that the claimants acknowledge the sanctity of contracts and the provisions of the Land Transfer Act. Although they seek land as a partial remedy for their claims, they acknowledge that people who have bought or leased land for value cannot be dispossessed of it. Contracts arising from the operation of the State Owned Enterprises Act may be another matter, but that Act is currently under consideration by the Court of Appeal, so the claimants reserve their position in respect of it.

For these reasons the claimants seek the allocation of Crown Land to them. The lands which are the subject of the claims have largely passed into private ownership and so other lands are sought in substitution. Any lands allocated to the claimants should be representative of the lost land in both character and geographic distribution. It may well be that any recommendation of the Tribunal should

be limited to the kind and quantity of the land to be allocated leaving the identification of particular parcels for determination elsewhere. Alternatively, if the Tribunal is minded to recommend allocation of land, it might give an interim decision to that effect. The claimants and the Crown could then consult with each other and, hopefully, reach an agreement which they could present to the Tribunal for its approval.

The claimants recognize that complete compensation in the form of land may prove impossible. In that event they would seek compensation in the form of a mix of land and money. They have also considered whether they should claim interest on the money value of all disputed land from the date of the dispute down to the present day. At this moment they have not decided whether to make such a claim but hereby give notice of the possibility, so that those potentially concerned may take such steps as they are advised in case such a claim is finally made.

DATED at Christchurch this 2nd day of June 1987.

D. M. Palmer

Solicitor for the Claimants

COPY

FRAMEWORK AGREEMENT

BETWEEN

CHAIRPERSON, CROWN NEGOTIATING TEAM

AND

CHAIRPERSON, NGAI TAHU NEGOTIATING TEAM

FOR

NGAI TAHU CLAIM

PURPOSE OF NEGOTIATIONS

1 On 1 February 1991, the Waitangi Tribunal made certain findings and recommendations in regard to the Ngai Tahu claim brought on behalf of Ngai Tahu iwi by Henare Rakiihia Tau and the Ngai Tahu Maori Trust Board.

2 The Waitangi Tribunal found many of the grievances in the Ngai Tahu claim to be proven and the Crown has accepted the general thrust of the Waitangi Tribunal report. For the purpose of these negotiations both the Crown and Ngai Tahu have agreed to set aside any differences they may have with the report.

3 The Crown and Ngai Tahu now seek to enter into negotiations for the purpose of resolving these grievances.

i.e. the proven ones !

NGAI TAHU NEGOTIATIONS COMMERCIAL : IN CONFIDENCE

OBJECTIVES OF THE NEGOTIATIONS

4 It is agreed by the Crown and Ngai Tahu that the objectives of the Ngai Tahu negotiations be as follows:

a to negotiate a just, equitable and durable resolution of grievances found by the Waitangi Tribunal to be justified and

Grievances were not proven

b to conduct the negotiations in such a way that the negotiations and the resolution of grievances are mana enhancing to Ngai Tahu and restore the honour of the Crown.

PROCEDURAL MATTERS

5 It is agreed that:

a Negotiation sessions be convened on the last Wednesday of each month at 3pm in the office of the Minister in Charge of Negotiations pending further discussion as to venue.

b Consultation sessions be convened, as required, by agreement between the Crown and the Ngai Tahu negotiating teams.

c All exchanges between the Crown and Ngai Tahu, for the purposes of settling the claim, are to be held in private and are to be "without prejudice".

d No resolution reached by the negotiating teams in respect of the whole or any part of Ngai Tahu's claims will be binding on the Crown or Ngai Tahu until embodied in a formal written agreement executed on behalf of the Crown and Ngai Tahu. The Crown and Ngai Tahu agree to conduct appropriate(internal consultation procedures before any such written agreement is presented for execution.

e The Crown and Ngai Tahu can at any stage of the negotiating process decide to withdraw the whole or part of the negotiating agenda from the negotiations process, although both agree that every endeavour should be made to resolve the grievances in the negotiations.

f No statements are to be made to the news media unless mutually agreed upon the Crown and Ngai Tahu. Such statements to be made only by the chairpersons of each negotiating team.

g The Crown and Ngai Tahu recognise that there are statutory obligations for the Crown to consult with interested parties on certain relevant matters. The Crown and Ngai Tahu agree to discuss these in advance, as well as to consult on public relations matters in general. The Crown will notify Ngai Tahu at the earliest possible date whenever it first appears that consultations with any third parties are required.

NGAI TAHU NEGOTIATIONS COMMERCIAL : IN CONFIDENCE

MATTERS TO BE DISCUSSED DURING THE NEGOTIATIONS.

6 It is agreed that discrete negotiations will be conducted between the Crown and Ngai Tahu which may culminate in separate Agreements-in-Principle and Final Detailed Agreements on the following matters and in accordance with the following target deadlines which both parties will use their best endeavours to achieve in so far as is feasible.

a **Legal personality.**

Timetable : *Departmental draft legislation by 8 November 1991; enactment by 1 April 1992.*

b **Crown Titi Islands, Whenua Hou.**

Timetable :

i *Small group meetings by 27 November 1991*

ii *Negotiators Agreement by 18 December 1991*

c **Rarotoka Island**

Timetable : *Negotiators Agreement by 18 December 1991.*

d **Pounamu.**

(i) Recommendation 1

Timetable : *Negotiators Agreement by 18 March 1992*

(ii) Other Matters

Timetable : *Negotiators Agreement by 19 May 1992*

e **Mawhera Perpetual Leases.**

Note : *Government to report to Waitangi Tribunal (following report by Maori Reserved Lands Ministerial Review Team) by 31 March 1992*

Timetable (i) *Negotiation to take place following receipt of Review Team Report*

(ii) *Ngai Tahu Negotiation Agreement by 14 April 1992*

f **Reserves Not Awarded / Health and Education Endowments / Commercial Aspects of Mahinga Kai.**

Timetable : (i) *Workplan by 27 November 1991*

(ii) *Negotiators Agreement by 31 May 1992*

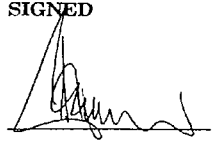
g **Cultural Aspects of Mahinga Kai/ Environmental Consultation/ Waihora/ Wairewa/ Pingao.**

Timetable : (i) *Workplan 27 November 1991.*

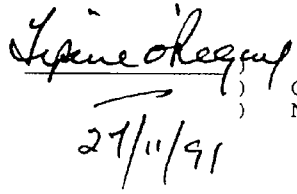
(ii) *Negotiators Agreement by 30 June 1992*

NGAI TAHU NEGOTIATIONS COMMERCIAL : IN CONFIDENCE

7 **SIGNED**



) Minister in Charge of Negotiations
) Chairperson, Crown Negotiating
) Team
)



) Chairperson
) Ngai Tahu Negotiating Team

Ngai Tahu Land Claim

In the last issue we addressed the Waitangi Tribunal's findings and recommendations on the Ngai Tahu land claim. We concluded that claims over South Island national parks and high country were being presented as having the force of a favourable ruling from the Tribunal behind them, when we contended that it did not.

In order to ascertain from Government what is the basis for them to be considering use of these lands as part of a settlement with Ngai Tahu, PANZ put to the Minister of Justice a series of questions in November last year. It took almost 3 months and 3 follow-up letters or faxes to obtain a substantive reply from Mr Graham.

Below is Mr Graham's reply, and our response to it —this is unavoidably long. Unlike Government we do not believe that unsubstantiated assertion is good enough. Our commentaries that follow provide the basis for our view that the Government is conducting a 'confidence trick.'

For a summary of our concerns see *'Maori land claims and 'partnership'* on pages 2 and 3.

Meanings & Names—

Kemp purchase	Canterbury and Otago
mahinga kai	places where food is procurred or produced
Murihiku	Southland
pingao	a native sand-binding sedge
pounamu	greenstone
Waihora	Lake Ellesmere
Wairewa	Lake Forsyth

Question One:

On 28 August 1992, and again on 22 October 1992, in reply to (correspondents) you stated "a number of options for settlement of the *proven* Ngai Tahu claims are currently being investigated by the Crown and Ngai Tahu negotiating teams" (our emphasis).

Would you please cite the relevant Tribunal findings and recommendations for areas subject to the Kemp and Murihiku purchases, that sanction changes to ownership, partial loss of Crown control, or co-management over areas now administered by the Department of Conservation, and pastoral leases? We find basis in the Tribunal's report for pounamu, Waihora, Wairewa, and pingao being used in settlement but none for public, and pastoral leasehold, lands in the South Island high country.

Answer:

"The Tribunal findings on the Kemp and Murihiku purchases are found mainly in chapters 8 and 10 respectively. These findings relate, *inter alia*, to inadequate reserves, failure of the Crown to exclude particular lands from sale and failure of the Crown to protect mahinga kai. As to recommendations, at chapter 24.1 the Tribunal states 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. While it is recognised that the Tribunal would wish to make recommendations on some specific matters (as we have done in respect of pounamu for example), the parties preferred that they should enter into direct negotiations with each other."

In other words, the Tribunal made specific recommendations on discrete areas of the claim, but in respect of the general claim agreed to allow the two parties to negotiate remedies."

Commentary:

This is what immediately follows the passage quoted above, but is not stated by Mr. Graham [24.1 at p 1051]—

> "These negotiations would be on the basis of the Tribunal's findings of fact and its consequential findings of breach of Treaty principles."

Two key elements of the grievances heard by the Tribunal related to the western boundaries of the Kemp and Murihiku purchases by the Crown. Ngai Tahu claimed that the western boundaries were the foothills above the Canterbury Plains, and the Wairau River in Fiordland. In other words they claimed that all the Canterbury and Otago high country now occupied by pastoral leases, Arthurs Pass, Mount Cook, Mount Aspiring and Fiordland national parks, etc., had never been sold to the Crown.

During the hearing of the claim the Crown's counsel dismissed these claims as "myths" and "without any factual foundation" (*The Press* 1/7/88).

The Tribunal's findings on these matters are recorded in its report—

> **Murihiku western boundary** [2.6 at p 104]
> "After weighing all the evidence the Tribunal found that the land west of the Wairau was not wrongfully included in the sale. Accordingly the claimants' grievance no 6 was not sustained."
> **Kemp western boundary** [8.11.5 at P 516-517]
> "The claim of Ngai Tahu regarding the western boundary was not dismissed lightly. However after a full, frank and lengthy discussion, the Tribunal finds that it does not uphold the claimants grievance no 4(a), that on the matter of boundaries the Crown enforced an interpretation which had not been agreed to by Ngai Tahu in respect of the western boundary."

There was consideration of the matter in chapter 2.4 at pp 53, 62, 63, 65, chapter 2.6 at p 102, and chapter 10.6.18 at pp 632-633. The latter reference repeated the Tribunal's finding in regard to the land west of the Wairau River.

PANZ can find no basis in the Tribunal's findings to support the use of the above lands for settlement of 'grievances' that have been disallowed. Where other grievances, as listed in Mr. Graham's reply, were upheld these were for distinctly different areas or resources.

It is critical to be aware of the function of the Tribunal. Both Ngai Tahu and the Crown submitted to its jurisdiction and did not first settle on an alternative of direct negotiation. This alternative was open to both parties. Instead they chose to submit their cases for determination by the Tribunal. Negotiations *then* followed.

Tribunal member the Right Reverend Manuhuia Bennett has stated: "Ngai Tahu claims before the Waitangi Tribunal were concerned *with finding out whether land had been bought legally or not*" (*The Dominion* 30/5/89). His comment is reinforced by the Tribunal's comments on its jurisdiction—

> [1.7 at p 27]
> "The role of the Tribunal is to determine whether, and to what extent, the Crown has acted in breach of Treaty

principles and the extent to which the claimants have been detrimentally affected by any such breaches. It is then left to the parties to negotiate a settlement of any *proven* grievance" (our emphasis).

[4.4.2 at p 222]
"For the purposes of the Act [Treaty of Waitangi Act 1975], the Tribunal has exclusive authority both to determine the meaning and effect of the Treaty as embodied in the two texts, and to decide issues raised by the differences between them."

[17.7.2 at p 917]
"We agree with the view of the learned chief judge [Durie] that the statutory authority of the Waitangi Tribunal is to determine whether any act or omission of the Crown is inconsistent with Treaty principles. That is our guiding jurisdiction."

Additionally the Tribunal "shall cause a sealed copy of its findings and recommendation (if any) with regard to any claim to be served" on the claimant and relevant Ministers of the Crown (s 6(5) Treaty of Waitangi Act 1975). The Tribunal has a duty to reach findings, and a discretion to make recommendations.

The Tribunal accepted both parties' requests not to come down with recommendations, except in some specific areas where grievances were upheld.

Further, under the Tribunal's recommendations, it went on to record [25.1.at pp 1061-1065]—

"As stated earlier in this report *the Tribunal at the commencement of the claim was urged by both the claimants and the Crown to make findings on the issues and to determine whether there had been breaches of any Treaty principles.* We were asked to defer the question of remedies. We agreed to that course for two reasons. First, it obviated possible waste of time in both parties addressing remedies prior to the Tribunal establishing whether breaches had occurred. Secondly, and more importantly, it gave the parties an opportunity *after having received the Tribunal's findings*, to negotiate a settlement" (our emphasis).

A memorandum to the Cabinet Committee on Treaty of Waitangi Issues, at 1.4.2, more succinctly records the Tribunal's powers: "the power to make *findings of fact* and interpretation and related recommendations" (our emphasis).

In respect of Mr. Graham's assertion in his reply that the Tribunal allowed the two parties to negotiate remedies in respect of a 'general' claim, this is incorrect. While Ngai Tahu lodged a 'general' claim on 26 August 1986, the Tribunal required Ngai Tahu on 24 April 1987 "to file a more particular statement of grievances, with specific details of the acts and omissions of the Crown of which the claimants complained." An amended claim of 2 June 1987 set out these particulars [1.3.2 at p 4]. "As the hearing progressed the tribunal requested Ngai Tahu to file a list of grievances grouped under Ngai Tahu's 'Nine Tall Trees.' In all a total of 73 alleged wrongful acts or omissions of the Crown were claimed to be inconsistent with the principles of the Treaty of Waitangi" [1.3.4 at p 8].

Ngai Tahu themselves limited possible remedies by stating in their amended claim of 2 June 1987— "any lands allocated to the claimants should be representative of the lost land in both character and geographic distribution" (Appendix 3.4 at p 1110).

In any event the Tribunal directed under 24.1 that the negotiations would be on the basis of the Tribunal's *findings of fact.* This precludes negotiating 'remedies' involving lands or resources where claims were not sustained. The 'discrete' areas that recommendations were made on had no bearing on high country pastoral leases or national parks.

In its report the Tribunal touched on other matters not directly related to Treaty breaches and its jurisdiction, for instance [25.1]—

"The Tribunal also makes a number of other recommendations which although not directly arising from or remedying breaches of the Treaty nevertheless flow from the Tribunal's inquiry and need to be addressed by the Crown."

Under its 'Remedies' chapter the Tribunal commented on the place of **pastoral leases** in any settlement [24.5.1 at p 1054]—

"In seeking to re-establish their rangatiratanga Ngai Tahu expect to have land returned to them. The Tribunal agrees with this view. There is adequate land held by the Crown and state-owned enterprises to enable land settlement to feature in any remedy. Ngai Tahu made clear, for instance, their interest in land held under pastoral leases from the Crown."

Further on under 24.5.2 reference is made to **national parks**—

"A number of the South Island national parks include mountains, lakes and landscape of particular spiritual value to Ngai Tahu. They are the repository of much Ngai Tahu mythology and tradition. Restoration of their rangatiratanga would seem unfulfilled were *the return of some at least of these treasured natural features denied to Ngai Tahu*" (our emphasis).

Pastoral lease and national park lands are clearly on the Ngai Tahu wish-list. However it is now an established fact that the Tribunal disallowed their claims over them. Ngai Tahu may *wish* to have such lands returned to them but they cannot *expect this as of right* on the basis of the Tribunal's findings.

National parks, etc., are lands of the Crown *held under trust by the Crown in public ownership for public benefit.* The flow-on consequence of the Tribunal's determinations is that they must continue to be so held. As Mr. Graham has stated:

"Treaty claims are against the Crown so that it is for the Crown itself to negotiate settlements of them. However, the Crown would want to ensure that any transfer to Maori of any Crown-owned asset would not directly prejudice any third party, including the New Zealand public, since such further injustice would also be in breach of the Treaty" (Minister of Justice to NZ Fish & Game Council 17/8/92).

The Treaty is about a relationship between two parties. An unjustified granting of rights to one is at the expense of the other. To maintain a just balance of rights and obligations between the parties, the Tribunal's findings must be upheld.

In regard to re-establishing Ngai Tahu rangatiratanga the Tribunal appears to have gone beyond its own findings and jurisdiction in viewing pastoral leases and national parks as part of a settlement [24.5.1 & 24.5.2 above]. The Tribunal found that loss of rangatiratanga was confined to lack of reserves, mahinga kai, and eeling rights at Wairewa [2.12 at p 163-165]—

"In respect of mahinga kai the Tribunal found as follows:

(a) (i) that the Crown failed to make specific reserves to preserve and protect Ngai Tahu's mahinga kai; and (ii) that the Crown failed to provide sufficient reserves to allow Ngai Tahu to participate in the developing economy.
As a result Ngai Tahu were deprived of their rangatiratanga guaranteed to them by article 2 of the Treaty.

(e) that the Crown failed to protect Ngai Tahu rangatiratanga under article 2 in that it granted eeling rights at Wairewa to Maori instead of to Ngai Tahu."

The reserves (for agricultural, pastoral or dairy farming), and mahinga kai sought by Ngai Tahu were well outside the high country in question. Therefore the Tribunal's comments under 24.5 are not, and cannot be, directionary on the Crown. In respect of the Tribunal's observation that restoration of rangatiratanga would seem unfulfilled were the return of some at least of these treasured natural features in national parks *denied* to Ngai Tahu, this contradicts their own findings that such lands were legally purchased by the Crown.

It is only findings of fact, and recommendations based on such findings, that the Crown is obliged to consider.

"Honesty of purpose calls for an honest effort to ascertain the facts and reach an honest conclusion." Richardson J in *New Zealand Maori Council v Attorney-General.* [1987] 1 NZLR at p 682

Question Two:

We note that the Treaty of Waitangi Act 1975 gives the Tribunal exclusive authority to determine the meaning and effect of the Treaty and to determine if the Crown has acted in breach of Treaty principles. **If Government believes it has authority to independently determine the scope of Treaty breaches by the Crown would you please cite that authority.**

Answer:
"In the case of the Ngai Tahu claim, the Crown has no need to independently determine the scope of Treaty breaches as the Tribunal has already detailed this in the Ngai Tahu report."

Commentary:
The Minister has side-stepped the question but confirms that *the Crown's position relies on the detailed determinations of the Tribunal.*

Question Three:

The Tribunal consistently concluded that the purpose of reservations were so that Ngai Tahu could develop side by side, and on at least an equal basis with new settlers, in agricultural, pastoral or dairy farming. The Tribunal also found that the Crown had a duty to protect *principal* food resource areas (our emphasis), as opposed to all possible areas. National parks, pastoral leases, and high country conservation lands were not principal mahinga kai and do not coincide with these considerations or with what Ngai Tahu asked to have reserved to them at the time of the land transactions. **Please advise if Government differs from our reading of the Tribunal's report in this regard.**

Answer:
"The Crown accepts in principle that insufficient reserves were set aside, that it failed to exclude certain lands from sale and that it thereby failed to protect mahinga kai. The Tribunal states at chapter 17.5.2 that:

> "it was not only necessary for the Crown to protect the principal food resources areas, it was also the duty of the Crown to provide the tribe with extensive land so that it could adapt itself to the new pastoral and agricultural economy."

If the Crown were to limit itself to assisting the tribe to adapt to pastoralism and agriculture, upon which the entire economy of this country is no longer based, it could be in danger of breaching the Treaty. The tribe would once again be left without a realistic economic base. The Crown must come up with creative remedies that will not compound past Treaty breaches, nor create others. In an effort to do this, the Crown is attempting to put the tribe in a position where it can take care of its own people. However, as well as an economic base, the tribe has lost much of its mana because of the Crown's past actions. It is now up to the Crown to assist the tribe to regain its mana by restoring some form of rangatiratanga over the land. It is this desire which is behind the consideration of sharing title to conservation lands."

Commentary:
The Minister's reply does not contest the PANZ interpretation of the report in regard to principal food areas and desired reserves being outside present-day national parks, pastoral leases, and high country conservation lands.

The entire economy of New Zealand in 1848-53, when the Kemp and Murihiku purchases were negotiated, was not confined to pastoralism and agriculture. However it was reserves for these purposes that Ngai Tahu wanted set aside for them. Inclusion of public conservation lands in a settlement to provide the tribe with a "realistic economic base" is a base concern of many in the conservation and recreation movements. This is causing widespread scepticism at assurances that there is nothing to fear.

The contradictions of both government and Tribunal, while determining that Ngai Tahu had suffered "grievous economic loss," and advocating the return of non-economic conservation lands [24.5.5] to remedy that loss, raises the spectre of new forms of economic activity. These may be inimical to the preservation and public use purposes of these areas. The prospect is of entry charges, tourism developments (e.g. Ngai Tahu already signed into joint venture for a Greenstone Valley monorail), and other developments that may directly conflict with continued free public entry and enjoyment. Mixed messages about purposes and intent from both Ngai Tahu representatives and the Government, as well illustrated by the Minister's reply, are fuelling this concern. Is economic development *as well as* restoration of 'mana' and 'rangatiratanga' intended? The latter considerations are invariably tied by Ngai Tahu and the Government to the return of public lands rather than state-owned enterprise lands. A sceptic could easily believe that *mana* and *rangatiratanga* cannot be restored by transferring title to highly productive farms and forests!

And there is the question of what is meant by ***mana*** and ***rangatiratanga***? Some definitions:

Mana— authority, control, influence, prestige, power, psychic force.

Rangatiratanga (also *te tino rangatiratanga*)—

> chieftainship: tribal control of tribal resources. Includes the holding of resources on a communal rather than individual basis.

(Source: *Environmental Management and the Principles of the Treaty of Waitangi*, Parliamentary Commissioner for the Environment, 1988):

The Second Article of the Treaty guarantees Maori unqualified exercise of their **rangatiratanga** over their lands, villages and all other treasures (translation of Maori version).

The *Principles for Crown Action on the Treaty of Waitangi*, Department of Justice 1989, sets out the Crown's interpretation of 'The Rangatiratanga Principle/The Principle of Self Management' as —

> "The Second Article of the Treaty guarantees to iwi Maori the control and enjoyment of those resources and taonga *which it is their wish to retain*. The preservation of a resource base, restoration of iwi self management, and the active protection of taonga, both material and cultural, are necessary elements of the Crown's policy of recognising rangatiratanga" (our emphasis).

The Tribunal in its Ngai Tahu report observes [4.6.6 at p 231]

> "In the Te Atiawa Report (1983) the Tribunal stressed that rangatiratanga and mana are inextricably related, and that rangatiratanga denotes the mana not only to possess what one owns but, and we emphasise this, to manage and control it in accordance with the preferences of the owner. The Tribunal thought the Maori text would have conveyed to Maori people that, amongst other things, they were to be protected not only in the possession of their fishing grounds (the subject matter of the Te Atiawa claim), but in the mana to control them in accordance with their own customs and having regard to their own cultural preferences. Clearly the same understanding would have been held in relation to land. We continue to believe that this is the proper interpretation to be given to the Treaty, because the Maori text is clearly persuasive in advancing this view, and because the English text, referring to "full exclusive and undisturbed possession" also permits it."

Implications arising from application of the rangatiratanga principle become apparent from *Taking Into Account the Principles of the Treaty of Waitangi*, Ministry for the Environment, 1993—

> "The use of the term "rangatiratanga" in the context of the Treaty denotes an institutional authority to control the exercise of a range of user rights in resources, including conditions of access, use and conservation management. Rangatiratanga incorporates the right to make, alter and enforce decisions pertaining to how a resource is to be used and managed, and by whom."
>
> "In speaking with consent authorities Maori speak of their interest in natural resources as a right of ownership of the resources. Although generally understood to mean legal title, the English concept of "ownership" encompasses rights of possession, use, and management of natural resources and the right to derive benefits of capital and income from those resources. This range of user rights is also characteristic of rangatiratanga."

Translated into application over public lands, *'rangatiratanga'* means replacement by one-sector ownership, control, use and benefit according to their own preferences. By definition, other philosophies of management and users are liable to be excluded.

This is completely at odds with the founding principles of national parks and other protected areas.

PANZ believes that in cases where the Tribunal may find that parts of the public conservation estate were unlawfully taken from Maori, there should be consideration of the use of other assets, as well as return of the land in question, to arrive at equitable settlements. In the case of the Ngai Tahu land claim however this question does not arise—the Tribunal's findings of lawful purchase by the Crown means that Ngai Tahu did not wish to retain these particular lands. Therefore there is no grievance under Article Two of the Treaty for the Crown to answer.

PANZ is aware of the view of the Tribunal, at 4.6.6 at p 231

> "Generations of Ngai Tahu have suffered as a consequence of Crown Treaty breaches. Virtually all the valuable land has long since passed into private hands. Irreparable damage has been done to Ngai Tahu mahinga kai resources. And so a fair, just and practical settlement is likely to be based on a mixed set of remedies which reflect not only the nature and extent of the grievances but present day realities."

The question of *which* Crown resources can and should be used must be the central issue. The Tribunal's findings, and considerations of the Crown's legal responsibilities to the whole community ("not to create other Treaty breaches"), should narrow down the choice of assets to those of the state-owned enterprises, cash, or both.

Question Four:

Please advise on what basis national parks, etc., and pastoral leases appear to be subject to preferential consideration for settlement of Ngai Tahu grievances ahead of use of SOE holdings (e.g., Landcorp, Forestcorp) for such purposes.

Answer:

"National parks and pastoral leases are not subject to preferential consideration for settlement of Ngai Tahu's claim. They are merely two of the options that have been discussed by the parties. Other options, including SOEs, are also being considered."

Commentary:

Mr. Graham replied to us on 19 February 1993. On 23 February Government introduced the **Treaty of Waitangi Amendment Bill**. This provides that the Waitangi Tribunal shall not recommend to the Crown that it "acquire ownership of any land or interest in land held by any person."

'Person' is defined by the Acts Interpretation Act 1924 (s 4)—"includes a corporation sole, and also a body of persons, whether corporate or unincorporate."

It appears that SOEs, being corporations, are within the meaning of 'person.' In that case the Tribunal will only be able to recommend the return of public lands, the conservation estate, for settlement of claims. **The Bill may signal Government's intentions for settlement with Ngai Tahu.**

Question Five:

We believe that, unlike SOE assets, national parks, etc., are not government properties able to be divested by government decision alone. The conservation estate *is held in trust* by the government of the day for the benefit of present and future generations (C.f. s 4 National Parks Act 1980). The whole scheme of that Act is designed to maintain such areas as public property as well as retain full Crown jurisdiction and political accountability for management. **On what basis of statutory or other authority have you and other Ministers of the Crown publicly stated that 'title' or 'joint-title' are being considered for conveyance to Ngai Tahu?**

Answer:

"Section 4 of the Conservation Act 1987 states that that Act shall be so interpreted and administered as to give effect to the principles of the Treaty. As you are aware neither joint title nor co-management will affect existing public access to, or conservation values over, the conservation estate. However, the Government recognises the legitimate right of all New Zealanders to participate in conservation decisions, and so has undertaken that if any alterations in the management of our conservation estate were envisaged to discuss this with conservation organisations."

Commentary:

There are no provisions for 'joint title' under the Conservation Act. There are provisions under s 60F for certificates of title in the name of the Queen. There are no equivalent provisions for national parks and reserves. It appears that 'joint title' could only be created by legislative amendment.

It may be possible to transfer title in total from the Queen to Ngai Tahu once a title is created in her name. **In the view of PANZ it is both unneccessary and highly dangerous to have certificates of title issued over public lands.** Such lands do not require titles. Only alienated or private lands need titles to establish who the true owner is. In the absence of such proof the Crown enjoys 'eminent domain' over all lands.

Disposal of public lands requires more than discusion with *selected* 'conservation groups.' The Minister's statement is hardly recognition of "the legitimate right of all New Zealanders to participate in (so called) conservation decisions."

ACTION BOX

Write to the Prime Minister/see your MP. Ask them to stop transfers of these and other public lands which are unsupported by Waitangi Tribunal *findings of fact*.

Hands off Greenstone Valley!

Government is on the brink of giving a nationally important recreation area to a private developer. The Greenstone, Caples and upper Mararoa valleys, and surrounding mountain lands near Queenstown, are close to being given to the Ngai Tahu Maori Trust Board. Ironically the injustice this would create for most New Zealanders would be in breach of the Treaty of Waitangi. Private ownership or control has the potential to restrict access to only those willing and able to pay entry or user charges. It would also give impetus to the privatisation of South Island's high country pastoral leasehold lands for tourism purposes. This simply cannot be allowed to happen.

The valleys are nationally and internationally acclaimed tramping, fishing and hunting areas.

Public Access New Zealand believes that the only way to secure public use of these outstanding places is to add them to adjoining national park and conservation areas. PANZ also believes that Government should be using state-owned enterprise lands for settlement of *proven* aspects of Ngai Tahu's land claims rather than *unrelated areas of high public interest* such as the Greenstone Valley.

"Hands off the Greenstone Valley" is a message directed at Government.

Whose injustice?

Tipene O'Regan on Ngai Tahu land claims

"The Ngai Tahu claim was not based on the Treaty, but on the Pakeha law of contract...in the South Island there was a breach of contract" (Tipene O'Regan, Chairman Ngai Tahu Maori Trust Board, *The Press* 11/6/93).

"[The Otago Fish and Game Council] is also quite correct in stating...that the Greenstone etc. pastoral leases are not the subject of a proven (specific) grievance, and are thus not lands wrongfully taken which should be returned. Unfortunately for Fish and Game, that does not snuff out Ngai Tahu's legal interest. This area was subject to land sales contracts where the Crown was obliged to set aside one tenth of the land sold, and failed to ("reserves not awarded"). There is therefore justice in the Crown buying the land as it became available, with the cost for deduction from any settlement with Ngai Tahu" (*Mountain Scene* 4/11/93). **NOTE**: The Ngai Tahu Trust Board only claimed before the Waitangi Tribunal that it was entitled to 'Tenths' under the Otakou (greater Dunedin) purchase. The Tribunal found that there was no such legal obligation on the Crown. All the lands supposed to be reserved to Ngai Tahu were in lowland and coastal locations between Kaikoura and Southland. The Tribunal confirmed that all the South Island high country was legally purchased by the Crown.

The Contracts

The area was purchased by the Crown under the 'Kemp' and 'Murihiku' agreements (extracts below)—

Kemp Deed (Canterbury, inland Otago) 12 June 1848

Know all men. We the Chiefs and people of the tribe called the "Ngaitahu" who have signed our names & made our marks to this Deed on this 12th day of June 1848, do consent to surrender entirely & for ever to William Wakefield the Agent of the New Zealand Company...the whole of the lands...(the condition of, or understanding of this sale is this) that our places of residence & plantations are to [be] left for our own use, for the use of our Children, & to those who may follow after us, & when the lands shall be properly surveyed hereafter, we leave to the Government the power & discretion of making us additional Reserves of land, it is understood however that the land itself with these small exceptions becomes the entire property of the white people for ever.

We receive as payment Two Thousand Pounds...

Murihiku Deed (Southland) 7 August 1853

Let all the Nations know. We the chiefs and all the people of all the lands lying within the boundaries hereunder written, derived through our ancestors from whom it descended to us...have written our names and marks as the act of consent of us, for ourselves, for our relations, for our families, for our heirs now living, and our descendants who shall be born after us, entirely to give up all those our lands which have been negotiated for, the boundaries of which have been described...to Her Majesty the Queen of Great Britain, her heirs and successors for ever, as a lasting possession for her or for the Europeans...

And whereas we have agreed entirely to give up our land within the boundaries hereunder...the Commissioner for extinguishing Native Claims...agrees that he will pay us the sum of two thousand pounds sterling...

Now these are the boundaries of the land which have been alienated; ...[and] all the lands within those boundaries, with the anchorages and landing places, with the rivers, the lakes, the woods, and the bush, with all things whatsoever within those places, and in all things lying thereupon.

All the lands, and all other things above enumerated, and which lie within the boundaries above recited, have been entirely surrendered to Her Majesty the Queen for ever and ever.

The Minister of Justice on the Treaty of Waitangi

"As subjects of the Crown...all New Zealanders have rights under the Treaty" Hon. Doug Graham, *Otago Daily Times* 31 March 1993.

"...the Crown would want to ensure that any transfer to Maori of any Crown-owned asset would not directly prejudice any third party, including the New Zealand public, since any further injustice would also be in breach of the Treaty" Hon. Doug Graham 17 August 1992.

$6.85 million buy-out

In 1992, at the request of Ngai Tahu, the government purchased the lessees' interests in three pastoral leases covering the Greenstone, Elfin Bay and Routeburn Stations. A highly inflated price of $6.85 million was paid for the three grazing leases. The underlying land, including conservation values and its potential for recreation and tourism, was already owned by the Crown. Approximately 27,000 hectares were placed in a 'Land Bank' for *possible* (Government's term) future settlement of Ngai Tahu land claims. All the land is now unoccupied Crown Land (but farmed for the Government) pending decisions on its future.

The former pastoral leases cover valley floors and mountain tops and are intermingled with forested public conservation areas and mountain lands in the Mount Aspiring and Fiordland national parks. Substantial public facilities (huts and tracks) are established on the former leasehold without any formal protection or rights of public usage. Secure public access is almost non-existent; public access has been completely at the discretion of the landholders.

Ngai Tahu have expressed an interest (possibly for development, or licences for use) in the adjoining public areas as well.

Outstanding recreation and conservation values

For several hundred years visitors have walked the Greenstone Valley crossing of the southern alps. Firstly there were Maori en-route to the pounamu (greenstone) resources of the west coast. For the last 100 years there have been trampers, hunters and anglers. This is an unroaded, readily accessible, low altitude walk within the capability of most people. The Greenstone and Caples valleys now attract at least 2000 trampers per year. There is also a walkway to the Mavora Lakes via the Mararoa Valley.

Public use is not confined to following a few popular tracks. There is a lengthy history of informal 'wander-at-will' over much of the properties. Technically this has been trespassing.

Recently a draft National Water Conservation Order was notified which recommends that the Greenstone and Caples rivers be "preserved in their natural state"—the highest level of protection available—because of their outstanding trout fisheries, ecosystem and natural qualities.

In a report on 'conservation values' the Department of Conservation identified the following recreational features—

- An internationally important wilderness trout fishery
- An internationally important tramping track network
- A nationally important recreational hunting area

Secret deals —no public consultation

Government is involved in secret negotiations with Ngai Tahu and has rejected requests for public consultation on the future of the stations. Government has only given selected interest groups, including PANZ, opportunity to comment on a DOC assessment of conservation values. No call has been made for public comment on the appropriateness of a 'settlement' involving these lands, or the form of such a settlement. Ngai Tahu has announced their intention to operate various new tourism ventures that centre on acquiring the stations. Despite such assumptions of ownership, Government denies that any decisions have been made about the properties.

The Government has decided only to consult with those groups which it considers to have "a clear and appropriate interest" (Doug Graham 2 February 1994). According to Government the wider public's views aren't worth hearing!

Hollow assurances from Government

The Government has frequently said it will not contemplate the erosion of *existing* public access to these lands, nor harm to their conservation and recreational values, and that the rights and obligations of Ngai Tahu will be no different from that of the previous lessees. However the previous lessees held trespass rights over all the leasehold. There were no *legal* rights of access over the former leasehold and still none as Crown land.

There are unformed roads bisecting the former leases but these do not coincide with the walking tracks. There are marginal strips only along the banks of the Caples and part of the Mararoa rivers, but no practical means of access *to* them. There is a history of access problems for hunters wishing to reach the Recreational Hunting Area on adjoining public land.

What is needed is greatly *improved* rights of public access over and through the former leaseholds. Government has not indicated how recreational and conservation values would be protected if the land were passed to Ngai Tahu. PANZ believes that public ownership and control is the only way to properly safeguard the outstanding public values of the area.

Ngai Tahu intentions

A multimillion dollar monorail up the Greenstone Valley to Milford Sound was the first indication of Ngai Tahu's plans for the area. This proposal has been in the headlines for months although, for the time being, this is "on hold". A 'transportation link' of some kind through the valley is a long-term ambition. However this would greatly reduce the attractiveness of the valley as a popular tramping route. "Eco-tourism" in general has been advanced as an intention, associated with major developments in Queenstown and developments on-site.

Ngai Tahu also want to farm the area and has talked of increasing stock numbers in the sensitive Mararoa headwaters. But the Crown Research Institute have noted serious stock damage to bush edges from existing stocking. Wetlands are also being adversely affected. Ngai Tahu's wish for freehold over the whole area is strongly supported by Federated Farmers who see a 'precedent value' for all the other pastoral high country of the South Island. Under freehold ownership, or exclusive occupation under a leasehold, the door would be open for exclusive fishing and hunting and tolls over walking tracks. This would not only 'lock-up' the natural resources of this area but could prevent or greatly inhibit public use and enjoyment of the adjoining national parks and conservation areas.

The Ngai Tahu Trust Board's hostile or dismissive reactions to public interest in the area, and to the existence of recreation and conservation values that might inhibit their ambitions, are fair warning of the likely consequences of their gaining control. "Ngai Tahu was comfortable with the current level of *legal* access but would not commit itself to improving legal public access. Ngai Tahu was hostile to the marginal strip theory", and, "the Department of Conservation had exaggerated the conservation values...many of the department's ambitions to protect the values...were unreasonable...the DOC report included some "balmy conservation values" and "went overboard with phobias..." (Tipene O'Regan, *Otago Daily Times* 15/11/93). Mr. O'Regan's line is 'give us the ownership of the area first, *then* we will discuss protection'. PANZ believes that it would be totally irresponsible and unjust of Government to adopt such a course.

Strong public reactions so far

The issue has been running hot in Otago and Southland newspapers for months and was aired on *Frontline* (TVNZ) before Christmas. At a recent DOC 'invitee-only' meeting in Queenstown there was endorsement of DOC's identification of very high conservation and recreational values in the area, but condemnation of the lack of a proper public consultation process. The meeting asked Government not to make decisions on the future of the area prior to such a process being implemented.

Approximately 7000 people, many from Queenstown, have signed a petition opposing any development of a monorail or road in the Greenstone Valley.

Government's secrecy over the matter, its lack of public consultation, its continuing efforts to blur issues of public access and public ownership, and the unjust proposed allocation to one interest at the expense of all others, are some of the reasons why the public should reject the proposal.

What we want

- full public consultation
- retention of all areas of value for recreation and nature conservation in full public ownership and control
- an equitable settlement of *proven* Ngai Tahu land claims in accordance with the Waitangi Tribunal findings and the Treaty of Waitangi. There are 135,000 ha of Landcorp farms in the Ngai Tahu rohe (tribal area) better suited to claim settlement than high public interest Crown lands, and national parks etc.

What you can do

- write a letter to your MP
- visit your MP
- write a letter to your local newspaper
- get your club or friends and family to do the same
- copy and circulate this pamphlet
- become a subscribing supporter of PANZ. We need your financial support to enable continuation of a full-time effort to protect public rights to the outdoors. Write to us and we will send details.
- put a 'Hands Off Greenstone Valley' bumper sticker in a prominent place on your car, boat etc.

Stickers (kindly supplied by Otago Fish & Game Council) are available free from—
Public Access New Zealand
P O Box 5805, Moray Place, Dunedin

Enclose a self-addressed and stamped medium size envelope
(NZ Post Standard Letter Size)

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Public Access New Zealand is a charitable trust formed in 1992. PANZ's objects are the preservation and improvement of public access to public lands, waters, and the countryside through the retention in public ownership and control of resources of value for recreation. PANZ draws support from a diverse range of land, freshwater, marine, and conservation interests representing approximately 250,000 people from throughout New Zealand

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