

## CHAPTER 3

# CONCLUSION

### 3.1 THE NEW ZEALAND COMPANY AND THE SPAIN COMMISSION

The focus of this district report has been the alienation of land from Maori use and ownership, the consequences of that alienation, and the role of the New Zealand and British Governments in the process of alienation and reserve-making. The first major alienation took place in 1839 when the New Zealand Company purported to purchase the whole of the northern South Island from Te Rauparaha and a few Ngati Toa chiefs at Kapiti, and from a selection of Te Atiawa chiefs at Queen Charlotte Sound. The company's local agent, Captain Arthur Wakefield, tried to follow up this purchase by the selection of land in Tasman and Golden Bays from 1841 to 1842. His efforts to obtain land at the Wairau led to his death in 1843 and the de facto abandonment of the company's pretensions to have bought land further afield than the Nelson and Golden Bay districts.

The company purchases may be interpreted in the light of:

- (a) its instructions to its New Zealand agents;
- (b) its prospectuses, articles, charter, and other official statements of intent;
- (c) the evidence of company directors and other witnesses to British parliamentary committees; and
- (d) the statements of intention made by agents of the company to Maori, and reported by them to the company, to the Spain commission, and to the Government.

The liability of the Government may be measured by its role in superintending the company's actions, and its increasingly formal connection with the company in the 1840s. In February 1841, the Crown gave the company a charter, and made known its intention to use the company as one agency for the colonisation of New Zealand. From this point on, the Government monitored the company's actions and interfered in its concerns. The formal relationship between Crown and company really began in November 1840 when the Colonial Office agreed to provide the company with four acres of land for every pound spent on colonisation (the Pennington award). In 1841, the Crown assumed formal responsibility for the ownership and administration of the company's Maori reserves. Further interference in the company's land transactions with Maori was inevitable with the proclamation of Crown pre-emption in 1840, the passage of the Land Claims Ordinance, and the appointment of Commissioner Spain under the ordinance to investigate the validity of the company's purchases of land.

The company's purchases were intimately connected with the findings of the Spain commission, which formalised the parameters of the company's title and led to a Crown grant of land for the Nelson settlement. When measured against the express intentions of the company, the 1839 purchase from Ngati Toa and Te Atiawa had many flaws. Captain Wakefield found it necessary to repurchase land upon his arrival in Tasman Bay in 1841, because the local residents had neither consented to the sale nor received any of the purchase money. Further company purchases were illegal in 1841, however, so the captain claimed that he was merely making gifts upon actual occupation, rather than formally purchasing land. This meant that there were no deeds, no formal cession of rights, no recorded definitions of what was being given up and what was being retained in Maori ownership. These vague bargains were made with the iwi of Tasman Bay and some of the iwi of Golden Bay, although the Motupipi community may never have given its consent for settlement to take place in their area. It was clear that many Maori consented to settlers arriving and having land to live upon, and that they were to continue to sit (noho) with the Europeans, which was the closest the company interpreters could come to translating the concept of tenths. Evidence to the Spain commission, however, indicates that the details of the transactions were otherwise unclear.

Commissioner Spain was appointed in the wake of the London Agreement of Crown and company that there should be an award to the latter of four acres per pound spent upon colonisation. The Colonial Secretary instructed that the commissioner should 'execute the Law [the Land Claims Ordinance] with a view to prevent future injustice rather than with the expectation of being able to redress satisfactorily past wrongs'. Spain seems to have concurred with this view of his duties, and he reached an agreement with the New Zealand Government that he would do his best to arrange an accommodation between Maori and the company, rather than proceeding to invalidate the company's transactions, except in cases where this was completely unavoidable. His move towards arbitration and compensation, as opposed to finding whether or not purchases were valid, was very clear in the sittings of the commission at Nelson in 1844.

A number of criticisms may be made of the way in which Spain investigated the company's northern South Island purchases:

- (a) his inquiry at Nelson was insufficient, having heard the evidence of several company witnesses but only one Maori chief, and then allowing Protector Clarke to examine other Maori witnesses informally, without transcribing their evidence or explaining whether it reconciled the contradictions between the evidence of Te Iti and the company witnesses, and between the evidence of the company witnesses themselves;
- (b) he held no formal inquiry at Golden Bay, simply accepting Clarke's assurances that the local Maori had sold their land;
- (c) his judgment recognised the partial validity of the Kapiti purchase of 1839, in contradiction to his findings in other cases, which allowed him to ignore the illegality of Captain Wakefield's 'gift-giving' purchases in 1841 and 1842, although in all other respects he treated them as formal purchases;

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- (d) he did not accept the refusal of the Golden Bay people to accept compensation, but ruled that the money should simply be banked on their behalf until they could be prevailed upon to accept it;
- (e) his award left the whole question of what had been ceded extremely confused, with undefined reservations and the inclusion of districts which Maori continued to insist had not been sold, which led to a contraction of reserves in the final Crown grant, and further Crown purchases of land in Golden Bay in which Maori were placed on an unfair and unequal footing; and
- (f) his findings awarded title of the Wairau district to a particular iwi (to the exclusion of two others) without an actual investigation of its customary ownership, and in contradiction of his stated principle that all residents had rights of ‘ownership’, and this judgment formed the basis for the later purchase of land by the Crown from only one of the three resident iwi.

### **3.2 CROWN PURCHASES, 1847–56**

In the aftermath of the company purchases and the Spain commission, the impetus for further land alienation moved to the Crown, which purchased land from Maori in order to tidy up the Spain award, to enable the company to meet its obligations to its Nelson settlers, and to fulfil the royal instructions of 1846 as far as possible by obtaining the ‘waste lands’ of Maori for the Crown. The New Zealand Government also wanted to prosecute settlement more actively after 1845, and it purchased land to carry out this objective. Governor Grey’s policy was to buy as much of the ‘waste lands’ as he could for the lowest possible price, for onsale or leasing to settlers, and to confine Maori to progressively smaller agricultural reserves. There were other reasons for the massive purchases of the late 1840s and early 1850s, however, including short-term political goals, such as the pacification of Ngati Toa, long-term political goals, such as the extension of substantive sovereignty and the reorganisation of Maori society, and of course the goal of creating revenue by the on-sale of Maori land for a much higher price than had been paid to the original owners. These reasons were interlinked, and often bore little relationship to the Government’s stated intentions with regard to Maori, both in Colonial Office pronouncements and those of the Governors of New Zealand.

The main body of this district report deals with the Crown purchases of 1847 to 1856, by which the vast bulk of land in the northern South Island was alienated from Maori ownership.

#### **3.2.1 Wairau purchase, 1847**

Governor Grey’s first initiative was to buy the Wairau and Kaiparategau districts in 1847, as well as 100 miles of the Kaikoura coast. The Wairau purchase took place in the context of the 1843 collision between the company and Maori, and the resultant ‘massacre’, FitzRoy’s adjudication that the company had been in the wrong, Spain’s award of the Wairau to Ngati Toa, and the more immediate 1846

crisis in the Hutt Valley. Grey's object was to provide land for the company for its rural sections, to bring Ngati Toa under the closer control of the Government, and to obtain the rich lands of the Wairau and Kaikoura regions for future settlement. He sent the Surveyor General, C W Ligar, to inquire into the nature and extent of the Wairau lands, and their current ownership, but ignored Ligar's report that the consent of 12 major chiefs and 'many' resident Maori would be necessary for alienation. Instead the Governor bought the land on the signatures of just three of the Ngati Toa chiefs, and disregarded the claims of other Ngati Toa chiefs and people, and of Ngati Rarua, Rangitane, and Ngai Tahu. The evidence suggests that the money paid to these chiefs was never distributed among the wider circle of right-holders, and that the Government countenanced this situation.

Governor Grey paid £3000 in annual instalments of over six years, partly to ensure the continued loyalty of the Ngati Toa leaders. He admitted that the price was 'small' and less than the chiefs had asked for, but justified this by the largeness of the Wairau reserve, which amounted to 117,248 acres. Anything less, he reported to the Colonial Office, would have been unjust to Maori while they continued to practise their traditional economy. Unfortunately for Maori, the Crown purchased this large reserve six years later.

The Governor did not inform the British Government of the element of coercion which had underlain the Wairau purchase. According to Grey's later testimony, the Wairau 'massacre' was brought up by the chiefs themselves, and their agreement to sell so much land was a voluntary atonement for their 'crime'. He looked upon it 'more as a giving up of the land for the good of both races than as a purchasing of it'. Other evidence suggests that Ngati Toa regarded the purchase as a forced cession of land in which they paid unwilling *utu* for the Queen's dead at Wairau, and that the imprisonment of Te Rauparaha and other senior Toa chiefs was used to pressure Tamihana Te Rauparaha and the others to agree to the 'sale'.

### **3.2.2 Waitohi purchase, 1848–50**

In contrast to the Wairau purchase, the purchase of the much smaller Waitohi district was conducted in a more creditable manner. The Government used its influence to assist the company to acquire Waitohi as a port for the Nelson settlement. The local Te Atiawa were willing sellers and the negotiations were carried out over a number of years, which enabled a general understanding of (and consent to) the terms of the sale. There were problems, however, with the quality of land in the Waikawa reserve, which was supposed to replace the agricultural utility of Waitohi. This problem was not so important at the time because of the retention of the rest of Queen Charlotte Sound.

### **3.2.3 Pakawau purchase, 1851–52**

This purchase was conducted by the Nelson Commissioner of Crown Lands, Major Richmond, acting on the instructions of Governor Grey. Richmond's task was to buy the area north of Aorere in Golden Bay, which Grey wanted because of its rich mineral resources. The major avoided paying Maori for the full value of their

minerals and their land. He feared that they might be ‘advised that it would be more to their interest to retain the ownership, [and that] the present opportunity might be lost of acquiring it’. Under Lord Normanby’s instructions, of course, it was the Government’s duty to ensure that Maori did not enter into just such a bargain in which they were the ‘ignorant and unintentional authors of injuries to themselves’, but these instructions, had, perhaps been superseded by later instructions and policies. Richmond’s negotiations with the Te Atiawa inhabitants of the Pakawau block were delayed by the intervention of other chiefs in Golden Bay who claimed to have an interest, and by the Ngati Toa chiefs of Porirua. Rather than inquiring into the matter carefully to ascertain the basis of right-holding in the block, the Governor instructed Richmond to satisfy all claimants. As a result, the sale was widely canvassed in Nelson Province and its terms were settled at a general hui in May 1852. The area of land was unknown (estimated at 96,000 acres) but it included West Whanganui harbour and was sold for £550, which was paid among a wide circle of claimant chiefs. The local residents received only 230 acres of reserves. The same hui refused to sell the West Coast of the South Island at this point for the low price which Richmond was allowed to offer them.

### **3.2.4 Waipounamu purchase, 1853–56**

#### *(1) First Ngati Toa deed, August 1853*

In August 1853, a hui of Ngati Toa chiefs met with Grey and McLean to farewell the Governor, who took advantage of a situation involving a complex recognition of mana, to request the cession of all of Ngati Toa’s lands in the South Island. The Ngati Toa chiefs signed a deed on behalf of themselves and their South Island relatives and allies, which made a blanket cession to the Queen of ‘all our lands’ in Te Waipounamu. The Government paid £2000 up front, and promised a further £3000 over six years. The distribution of the later payment, and the allocation of reserves, were supposed to be decided at a general hui in Nelson in January 1854. The Government understood the deed as a sale of eight million acres for less than a farthing per acre, which would be followed by the payment of compensation to resident right-holders, and their restriction to small agricultural reserves on the model of Earl Grey’s 1846 instructions. Ngati Toa did not concur with the Government’s interpretation of the deed, and historians such as Ward and Ballara have argued that such ‘blanket’ cessions of rights were inherently faulty. Rawiri Puaha, for example, informed resident chiefs that he had not sold Kenepuru Sound and Mahakipawa Arm (in the Pelorus), Tory Channel, the large Wairau reserve of 1847, Port Underwood, and parts of Cloudy Bay. Specific districts had in fact been treated for and sold, such as the West Coast and Te Hoiere, and others had been left out, such as the islands at the mouth of Pelorus Sound, despite the blanket nature of the deed; the real details of what was agreed to were oral in form and were not recorded by officials.

The transaction was made almost entirely with North Island Ngati Toa chiefs, some of whom were offered additional inducements in the form of scrip to buy land, and individual 200-acre reserves. The value of these inducements was greater than that of the actual purchase money, which Government officials boasted was very

low in relation to the value of the land and its resources. As with the Pakawau purchase, there was a desire to buy the land before settlement revealed the prices that could be got for both the land and minerals. The Government held no hui or other inquiry into the right-holding of the area but accepted Ngati Toa's claim of pre-eminent rights at face value, and offered Toa chiefs further inducements to assist the compensation process on the ground in the northern South Island. One of Ngati Toa's lasting grievances, however, was that the promised individual reserves were never made for the 26 chiefs, and they were not happy with an eventual payoff in the 1880s, in the form of £5200 vested in the Public Trustee.

*(2) Deals with non-resident Te Atiawa, 1854*

McLean broke the August 1853 agreement by failing to hold a general hui in Nelson in January 1854, at which Ngati Toa was supposed to meet with the resident right-holders from across the top of the island and decide on how the remaining £3000 would be divided, and also decide on what land would be reserved from the sale. Instead, McLean went to Taranaki to arrange land purchases in that province. As part of his complicated strategy to breach Te Atiawa's anti-selling front, the commissioner offered money for land which they were no longer using (and which some had never used) in the northern South Island. In March 1854, he obtained many signatures, including that of Wi Kingi, to two deeds: the first sold Te Atiawa's interests in areas of previous purchase (Waitohi and Wairau, including the Waikawa reserve); the second sold the 'whole of the lands to which we lay claim in the Middle Island', and listed 18 places of settlement, two of which had already been sold (the Wairau again, and Pakawau), some of which Te Atiawa had never settled at, and others of which were later reserved by the resident right-holders. McLean paid £700 for these two agreements, and there were no reserves mentioned in the deeds for the use of these Taranaki Maori.

In November 1854, McLean visited Waikanae and negotiated a deed with five chiefs of that district, which sold Te Awaiti (Tory Channel) and 'all the lands which have been entirely given up by Rawiri Puaha and the chiefs of Ngatitoo'. He paid them £200, making a total of £900 paid to non-resident Te Atiawa over the 15 months since the signing of the original Ngati Toa deed. This was a well known practice of McLean's, in which he negotiated first with non-residents and obtained a foothold in the title, before presenting the purchase as a fait-accompli to those more nearly concerned in the fate of the land.

*(3) First South Island deed, November 1854*

During this war of nerves, while McLean bought up the rights of various non-residents, he did make one brief visit to Nelson in November 1854. He negotiated a preliminary settlement with two Ngati Hinetuhi chiefs from Port Gore, and paid them £100 as 'part payment' for their lands at Port Gore and Queen Charlotte Sound. The deed stipulated that there would be a further 'final settlement of all our claims' after the land had been surveyed and the reserves marked off. I have found no evidence of a further settlement with Ngati Hinetuhi, as provided for by the deed; the two signatories did not sign the later Te Atiawa deed in 1856, but one Hinetuhi

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person was listed among the 50 hapu heads who received money for distribution under that later deed.

### *(4) Second Ngati Toa deed, December 1854*

Taking advantage of the presence of large numbers of Ngati Toa from both islands at Wellington for a tangi, McLean held a second hui at Porirua and obtained the signatures of leading chiefs to a second deed. This hui was more representative of the South Island Toa than the 1853 one had been, and the leading Ngati Rarua chief from the Wairau, Te Tana Pukekohatu, was also present. McLean's suggestion that there were also leaders from other iwi present was misleading, and rested mainly on the presence of the Ngai Tahu chief Taiaroa, and a few minor Te Atiawa chiefs from Queen Charlotte Sound. In return for signing a deed that was slightly more specific about what was being sold, and for promising to go with McLean to the South Island to compel their relatives and allied to accept the purchase, the Ngati Toa leaders and Pukekohatu received the outstanding £2000 of the original purchase money. The whole of the £5000 had been spent by the end of 1854, therefore, and almost all of it had been paid to non-resident right-holders.

### *(5) The Golden Bay and Tasman Bay transactions, November 1855 to March 1856*

In November 1854, McLean sent a surveyor and interpreter into the French Pass, Sounds, and Wairau districts to lay off reserves as they saw fit. This was a clear signal to resident Maori that the purchase was a fait accompli and their separate consent not strictly necessary, and that reserves would be dictated by the Government. In December, he negotiated a second deed with Ngati Toa and paid them the remaining purchase money. It was now 17 months since the signing of the original deed, and local Maori across the island were frantic in their appeals to Major Richmond that both their consent and payment were necessary for the alienation of the land. They accused the Government of a serious breach of faith. They also refused to accept the reserves as laid off by Brunner and Jenkins, pointing out extensive districts which they wished to keep. Nevertheless, the stringent decisions of these two officials as to the real 'needs' of Maori seem to have formed the basis of the later reserves in the areas which they visited.

McLean kept the resident Maori waiting a further 10 months before coming to Nelson to settle matters – this waiting game, during which McLean dealt with crises elsewhere, was ended by the direct orders of the new Governor. The commissioner met with the Golden Bay and Tasman Bay chiefs at Nelson in November 1855. Ngati Rarua and Ngati Tama (and some Te Atiawa, although perhaps not the Pariwakaoho people) were present. Ngati Apa were not present, and were neither consulted nor paid for their interests in the land. McLean drew up a deed for the chiefs to sign, ceding 'all our lands in this Island' not already sold, with Arahura, Wairau, and the Ngai Tahu purchases as the boundaries, for the sum of £600. McLean took the view that the land had already been sold and he was merely extinguishing outstanding claims and making reserves. The effect of this constraint is reflected in the price, which was much lower than Ngati Rarua and Ngati Tama had held out for in abortive negotiations to sell the West Coast in 1852. McLean

argued that the bargain secured ‘a large extent of land to the Government for a very small amount of purchase money’.

After strong argument from Riwai Turangapeke and Wi Katene Te Puoho, McLean agreed to withdraw the Government’s ‘claim’ to Taitapu and Wakapuaka respectively. Taitapu became a reserve under the deed, but Wakapuaka was not mentioned as excepted from sale, although both places were marked (incorrectly) on the map. McLean and the Maori signatories agreed that the question of unsold land within the area of the Nelson Crown grant should be dealt with separately. The commissioner also made a separate deal with Turangapeke for land between Taitapu, Pakawau, and the Nelson Crown grant, although this oral agreement was forgotten about until the chief’s later complaints led to its settlement in the 1860s. The ‘blanket’ cession was nonsense, therefore, as neither side regarded the transaction as a cession of all unsold rights everywhere, and it may in fact have been considered by Rarua and Tama mainly as a sale of the West Coast. These iwi argued later that they had not sold the interior, and there remained an unpurchased ‘hole in the middle’ of the Waipounamu block. There is evidence both for and against this contention, but the matter is very complex and requires further research. The point that every unsold coastal place north of Te Tai Poutini was made the subject of specific deals, including Taitapu, the Turangapeke block, Golden Bay, and Wakapuaka, of which only Taitapu is reflected in the official deed, is surely significant. There may also have been other oral agreements of the type entered into with Turangapeke, and which failed to make their way into the written record.

The Golden Bay grievances arising from the Spain award were ‘settled’ in March 1856, by the signing of three further deeds in which Ngati Rarua and Ngati Tama were paid £150 for the Separation Point–Wainui district, and groups of Ngati Tama were paid a total of £170 because they had missed out on a share in the Spain compensation award. These new payments were kept to the low levels of the original Spain award, and the Government maintained that these deeds extinguished all outstanding Maori claims in Golden Bay.

*(6) Marlborough transactions, 1856*

McLean toured the Marlborough districts from January to March 1856, negotiating with the local inhabitants to sign deeds of cession, and allocating reserves. Many of these reserves were not surveyed at the time, and nor did they include the most basic prerequisites of the 1840s, such as all pa and cultivations. As a result, some reserves became fruitful sources of later disputes and misunderstandings. The Ngati Toa and Ngati Rarua of the Wairau district, and the Ngati Toa of Pelorus Sound, accepted that their land had been sold in the August 1853 and December 1854 deeds. McLean was supported by leading Porirua chiefs in these negotiations, and he also gave individual reserves as ‘inducements’ to key local chiefs. He also treated with the surviving ‘conquered’ communities of Rangitane in the Wairau, and Ngati Kuia in the Kaituna Valley–Pelorus Sound region. Rangitane asked for £2000 but received a token £100. Their real recognition was supposed to lie with the ownership of reserves, but Rangitane were shortchanged. Their reserves were never granted to the extent agreed upon in terms of acres, nor in accordance with a promise (they

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argued) of exclusive ownership. Ngati Kuia also received £100 and a handful of tiny reserves, in return for the blanket cession of all their rights everywhere. These deeds were widely negotiated and signed, and were witnessed by leading Ngati Toa chiefs; the element of disadvantage and compulsion arising from earlier transactions was a clear factor in the acceptance of very low prices and inadequate, ill-defined reserves.

Te Atiawa of Queen Charlotte Sound asked for £10,400 for their land but over a series of negotiations they agreed to accept £500, which was only £100 more than they had received just for Waitohi six years earlier, and was a full £400 less than had been paid to their non-resident Taranaki and Waikanae relations. McLean negotiated on the basis that the land was already sold, and that if they did not accept the £500 he would pay them nothing for it. Hapu heads feared that the low price meant that the people would receive less than sixpence each for the alienation of their land. Surveyors had already laid off reserves at the command of the commissioner, and Te Atiawa were confined to a handful of tiny reserves on the shores of Queen Charlotte Sound. Waikawa reserve, which had been found unsuitable for Maori agriculture, was pronounced by Alexander Mackay to have been the best of them.

Ngati Koata were more successful to the extent that they secured renewed Government agreement to the exclusion of Rangitoto (D'Urville Island) from the Waipounamu purchase. They received £100 in satisfaction of their rights on the mainland, and two or three small reserves in the French Pass district. As with other reserves in these transactions, the failure to carry out proper surveys led to boundary disputes in later years, and the contraction of the reserves.

These Marlborough transactions tied up the loose ends of the Waipounamu purchase. As far as the Government was concerned, its officials had paid a total of £6787 to extinguish Maori title over 8 million acres of land and natural resources, and had restricted the former Maori owners to small occupation reserves and a subsistence economy. Officials had neither surveyed the reserves, marked proper boundaries, recorded all the oral promises and agreements, fulfilled all the terms and conditions, nor investigated customary title to ascertain full and proper consent to the agreements and a correct apportionment of purchase money between varying types of right-holders. Nevertheless, McLean pronounced the transaction complete, with the sole exception of a need to extinguish the title of Ngai Tahu on the West Coast.

### **3.2.5 Ngai Tahu purchases, 1857–60**

Without an investigation into customary right-holding, but acting on the principle of 'blanket' purchases of all rights everywhere, the agents of the Crown entered into three further transactions involving northern South Island land, in which they purchased the rights of Ngai Tahu on the east and west coasts. The North Canterbury purchase of 1857 and the Kaikoura purchase of 1859 acquired the rights of Maori based at Kaiapoi and Kaikoura respectively. The Arahura purchase of 1860 was held to have extinguished the rights of people living south of the Taitapu reserve. The Tribunal has already reported on Treaty breaches with regard to these

purchases, but its reports were restricted to the effects of the transactions on Ngai Tahu. Rangitane may have had unextinguished interests south of Parinui o Whiti which ought to have been considered. Ngati Apa certainly had interests in the Kawatiri district and elsewhere on the West Coast. They signed the Arahura deed, received an unknown amount of the small purchase price, and 424 acres of reserves. Their interests were neither recognised nor extinguished north of the Arahura purchase, and the Native Land Court compounded this situation by refusing to recognise Ngati Apa in the late nineteenth century. The plight of Ngati Apa deserves serious consideration. Furthermore, the Wai 102 claimants have argued that the Young commission unfairly excluded Ngati Rarua and others from the West Coast reserves at Greymouth and elsewhere. Further research is necessary on these issues.

In conclusion, I would like to pose a series of fundamental questions for the consideration of the Tribunal in respect of Crown purchases in the northern South Island:

- (a) What were the Crown's stated undertakings to (and about) Maori regarding the manner in which land would be purchased, and the amount and types of land which Maori needed to retain in their possession?
- (b) Were there alternatives to alienation by sale – in particular, the questions of how much land was really necessary for settlement at the time and for the foreseeable future, and whether Maori should have had the option of leasing their land to European pastoralists and miners?

With regard to the actual negotiations and process of purchase, there are a number of important questions:

- (a) *Who did the Crown negotiate with, and did it treat with all (or any) of the correct right-holders? Did the Crown treat with the whole community? with a large group of chiefs? with a small group of chiefs? with residents? with absentees? with people who had never lived on the land or visited it for resource-use? with non-resident chiefs claiming paramountcy over their neighbours? with conquerors? with conquered? with both?*
- (b) *And in respect to all of these potential vendors, with whom did the Crown negotiate first? That is to say, did the Crown get the consent of non-residents first, and present the purchase as a fait accompli to residents, who were told that they were merely entitled to compensation)? to whom did it give the majority of the payment? how were the payments divided between vendors and did the Crown supervise or control such arrangements? on top of the formal price and reserves, were separate arrangements made with key chiefs as 'inducements'?*
- (c) *What was contained in the formal agreement (the deed)? Were there other, informal or verbal agreements? Were the written deeds translated accurately? Were their contents explained adequately to Maori? Was there a clearly defined sale of a clearly defined district? Was there a map? Was the map accurate and did Maori demonstrate an understanding of it? Did the parties walk the boundaries of the sale or of the reserves or of both?*
- (d) *Did the Crown extinguish all customary interests, and were the phrases about the 'surrender of all rights everywhere' a genuine reflection of the transaction as understood by Maori? And in particular, did the Crown*

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actually bargain for specific and discrete districts, in contravention of the wording of the deeds? Did it fail to extinguish the rights of Ngati Apa? And was there a 'hole in the middle' of the blanket purchases?

- (e) *Reserve issues.* In terms of the sale negotiations, were reserves adequately described in the deed? accurately placed on the map? were the boundaries specified, and if so, were they marked off correctly? were reserves surveyed at the time or marked off much later, and were the original vendors and Crown agents present to ensure that the arrangements were properly carried out?
- (f) *Issues of consent.* Were the parties willing? were they constrained, and if so, by what? were the consequences of the permanent alienation clear, and did the Crown deal fairly in terms of ensuring that Maori were fully aware of the economic value of land and minerals? Were the vendors allowed to keep as much land as they wanted to, whether as reserves or unsold land? did the Crown agree to make reserves where the vendors wanted them?
- (g) *Price in terms of money.* Did the Crown pay a fair price? (This is a vexed issue, but some reliance may be placed on the comments of Crown agents at the time and later that the prices were frequently nominal in terms of the real value of the land and its resources.)
- (h) *Price in terms of 'secure titles'.* The Crown maintained that part of the benefit of land sales was that Maori would get secure Crown grants for their reserves. Did this happen, and was the allocation of grants carried out fairly?
- (i) *Undertakings.* Did the Crown fulfil all the undertakings made to Maori during purchase negotiations?

Based on the evidence contained in this report, and with the proviso that further evidence may emerge from the primary record which may alter the findings of this report, it seems clear that the Crown's performance was flawed with regard to many of these questions, and that the alienation of Maori land in the northern South Island did not take place in a manner consonant with the good faith and fiduciary duties of the Crown. As a result, Maori in this district lost almost all of their land in a very short period, without adequate recompense, without their willing or deliberate consent to many of the most basic details of the transactions, and without adequate provision for their either maintaining their traditional economy or engaging in a meaningful sense with the emerging settler economy.

### 3.2.6 Reserves

After the alienation of almost all of their land by 1856, the future of northern South Island Maori rested on their reserves. On the basis of evidence contained in Mackay's *Compendium*, Maori Affairs files at National Archives, and official Government reports from 1860 to 1900, it is possible to draw the following conclusions:

- (a) the Crown did not ensure that the New Zealand Company's scheme for making reserves was properly carried out;

- (b) Maori never received their full tenths awards, and in fact the Government permitted a drastic shortfall in the tenths (partly by direct action, partly by inaction);
- (c) the question of who was entitled to the benefit of the tenths may never have been satisfactorily settled;
- (d) the Crown did not make all the reserves that it promised to do during the Crown purchases, and nor did it ensure that those reserves which were made were consistent with verbal and/or incompletely recorded agreements with Maori;
- (e) the Crown did not ensure that enough (and appropriate) land was reserved for Maori to continue their traditional economic practices if they chose to do so;
- (f) the Crown did not ensure that enough (and appropriate) land was reserved for Maori to participate in the settler economy if they wanted to do so, particularly in terms of pastoral farming and the timber industry, especially as one of the Crown's cardinal arguments was that Maori would benefit more from selling land and having settlers than from keeping undeveloped land;
- (g) from the impressionistic evidence of Alexander Mackay and others, and the plight of 'landless natives' by the 1880s, it would appear that the Crown did not ensure that enough (and appropriate) land was reserved to meet the 'present and future needs' of Maori; and
- (h) only two really large reserves were ever made, the Wairau reserve of 1847 and the Taitapu reserve of 1856, and the Crown did not ensure that Maori were able to exploit these reserves to their fullest extent or to retain them permanently in their possession.

In addition to these issues, there are a number of important questions about reserves which this report was not able to answer. Further research is necessary on:

- (a) the administration of the tenths and other reserves which came under the Native Reserves Acts;
- (b) the full details of how reserves were finalised after a complicated process of adjustment and swaps, especially in Golden Bay;
- (c) the process by which Maori obtained legal title to their reserves, especially James Mackay's allocation of Crown grants in the 1860s, and the landmark decisions of the Native Land Court in the 1880s and 1890s;
- (d) the extent to which Maori retained the smaller reserves in their possession;
- (e) the allocation and suitability of the landless natives reserves, and the degree to which they actually alleviated landlessness; and
- (f) the use and retention of land on D'Urville Island by Ngati Koata and Ngati Kuia.

The research of these and other issues, as identified in the main body of this report, would be necessary before the Tribunal could obtain a full history of land and resource loss in the northern South Island, and the role of Crown and Maori in the process.