Chapter 1

Kaikoura Ancillary Claims

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

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

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

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

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

- **the Crown acquired the reserves, in collusion with Pakeha squatters, for scenic purposes without the knowledge of the Maori owners;**

- **only Maori land, as little as the reserves were, was taken for this purpose; and**

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

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

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

The Waiharakeke and Omihi reserves

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

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

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

The request for an exchange

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

> bring all my acres of ground to the one block, to Haututu, the 12 acres at Waiharakeke, & 3

> acres from Omihi, & leave 3 acre for the (urupa) & landing place, all the others to Haututu. (M13:158)[7]

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

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

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

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

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

Whether Stephenson Smith put the interests of 'settlement' over and above those of Ngai Tahu can only be speculative. The Crown went to some lengths to satisfy itself that Stephenson Smith had

located the 15 acres where Tapiha desired (AB32:4–6).[14] There is no subsequent record of dissatisfaction about the situation of the Haututu allocation. From 1903 Tapiha's family leased the land for one pound per year. It is important, however, to keep the question in mind as Stephenson Smith played a major part in the subsequent exchange arrangements in his role as Commissioner of Crown Lands Blenheim.

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

The drive for scenery preservation

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

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

Figure 2: Omihi reserve

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

When Auchinleck's one-year lease ran out in October 1906, he again appealed to the Commissioner of Crown Lands Blenheim, the same Stephenson Smith, to have impending clearing operations stopped (M13:168).[19] The following February, stirred by the news that Taylor intended to resume cutting, Auchinleck called on the commissioner to take firm action. His attitude toward Maori speaks for itself:

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

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

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

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

Protests about the exchange

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

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

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

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

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

> although the Beatons appeared to be quite willing and anxious for the exchange proposed by Tapiha Te Whanikau they appear not so anxious to complete the exchange since they have got the use of 15 acres of the Crown land and still retain the Native Reserves. (M13:193)[30]

The Crown submitted that:

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

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

The acquisition

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

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

It is evident that the Crown preferred to get the owners' agreement to the taking. However, this agreement was not considered essential. In the event, the Scenery Preservation Board (which had replaced the Scenery Preservation Commission) recommended taking the land under the Public Works Act 1908 (M13:179).[32] The Minister of Lands was asked to approve this course of action but before he could respond there was a change of Minister. It was not until July 1912 that ministerial approval was

given. The submission for approval stated that the Native Land Act 1909 had proved to be a 'stumbling block' and had prevented the exchange from being completed. The submission also stated that compensation for the taking in the form of Haututu had been 'practically consented to' (AB32:11).[33] The intention to take 12 acres 16 perches of Waiharakeke J and 3 acres 35.75 perches of Omihi K2 was proclaimed on 20 September 1912. An objection with regard to the acquisition of Omihi K2 was lodged by the Beatons on 1 November. They claimed that improvements had been made to the land; that they stayed on the reserve while fishing; that it was ancestral land; and that there was no bush on the land worthy of preserving. Their parting plea was that 'us people of the Ngai Tahu have very very little land' (M13:194).[34]

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

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

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

The alienation of Omihi K2

1.2.6 Auchinleck was well rewarded for his tenacity in having Omihi K2 reserved for scenic purposes. Throughout the proceedings it was intimated that he would receive 'some title' for the portion of Omihi K2 he was occupying under lease from the Beatons. Once the compensation had been finalised, he was given a leasehold of the land under occupation at a nominal rent of one shilling per annum (AB20:58).[40] In 1918 Auchinleck applied to purchase his house site. He argued that his request was reasonable because, but for him, the scenic reserves would never have been acquired (AB32:21).[41] It was eventually agreed that the purchase could proceed only by revoking the scenic reserve status of the portion occupied by Auchinleck and thereafter selling the section to him (AB32:22–25).[42] The reservation was revoked in November 1918 and the sale given ministerial approval in April 1919 (AB32:29).[43] In 1921 the scenic reservation status of 3 roods 17 perches at the south-eastern corner of Omihi K2 was uplifted and the land sold to Auchinleck (AB20:92).[44]

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

The Tribunal's conclusion

1.2.7 Turning first to the degree of knowledge that the Maori owners possessed of the Crown's intention to take Waiharakeke J and Omihi K2, it is evident that the Crown waived the idea of acquiring the land with the agreement of all of the owners in favour of taking it under the Public Works Act 1908. Under this legislation there was no provision for consultation with owners of affected land. Moreover, the usual procedures requiring the Crown to notify the owners and occupiers of affected land did not apply to Maori freehold land, unless title had been registered under the Land Transfer Act 1908. The Crown was merely required to have a notice of intention to take gazetted and twice publicly notified. Any such owners or occupiers had a 40-day period in which to lodge any objections to the taking. In the case of Maori land where title was not derived from the Crown, even these summary provisions were not required. With regard to Waiharakeke J, although the Beatons were aware of the Crown's

intentions there is no indication that members of the Ropata family, who possessed a one-half interest in the land, were notified of the taking. The Tribunal considers the lack of consultation and notification to be a breach of the principles of the Treaty requiring the Crown to protect Maori rangatiratanga over their lands and other valued possessions, and deal with its Treaty partner with the utmost good faith. Although compensation was awarded by the court for the acquisition, again neither the Ropata family nor Tini Korehe appear to have been consulted about the arrangement regarding the Crown grant of the land at Haututu.

The owners of Omihi K2 knew of the impending compulsory acquisition; indeed, they protested against it for many years. The cultural and historical importance of the Omihi reserve to the owners was repeatedly made known to the Crown officials arranging the 'exchange'. The scenic and historical qualities of the reserve were referred to at the compensation hearing in the Native Land Court as justification for the Crown's acquisition of the area. However, the evidence would seem to suggest that the inclusion of the Omihi area in the exchange arrangement was due not to the reserve's scenic qualities, but rather to the perceived need to boost the area of Maori land to be exchanged to 15 acres. This, we feel, is strengthened by the subsequent revocation of the scenic reserve status from parts of the scenic reserve.

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

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

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

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

It will be noted that there is no provision in the Treaty enabling the Crown to dispossess Maori of any

of their lands or forests or other properties without their consent. These were guaranteed to them by article 2.

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

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

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

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

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

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

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

The subdivision and sale of Omihi K2 is assumed to be the basis of the last part of Mrs Stirling's grievance that the reserves taken for scenic purposes are now used for holiday grounds or have been sold into private ownership. There have been references in the evidence to camping grounds near the

area, but it has not been shown that these are in fact situated on Omihi K2 or Waiharakeke J. Mr Alexander submitted that the land has scenic reserve status under the Reserves Act 1977 (AB35:1). We reiterate our finding above that the subsequent revocation of the scenic reserve status and sale of portions of Omihi K2 by the Crown is a breach of its duty to act with the utmost good faith. The failure to first offer this land back to the original owners or the descendants thereof we also find to be a breach of the Treaty principle requiring the Crown to protect Ngai Tahu's rangatiratanga over their land. This is commented on more fully in claims 51 and 52.

The argument that more Maori land than non-Maori land was taken for scenery preservation purposes in this district is not accurate. Omihi and Waiharakeke were but two of 10 areas taken for this purpose. The other eight areas were Crown land under small grazing run leases. Omihi and Waiharakeke comprised some 15 acres out of 208 acres 2 roods 29.7 perches that were eventually gazetted as scenic reserve in the Hundalee survey district by 1922.

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

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

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

1.3.1 Mangamaunu A of 4800 acres was by far the largest of the reserves in Kaikoura set aside by James Mackay in 1859. The reserve ran in a strip along the coast north of Kaikoura, from Porangarau Stream in the north to the Hapuku River in the south. It was set aside at the request of Ngai Tahu and acceded to by Mackay, presumably because he regarded the land as 'utterly worthless for European settlement or cultivation'.[50] For Ngai Tahu, however, the reserve encompassed two areas of settlement, one at Waipapa and one at Mangamaunu, and gave access to a bountiful supply of kai from both the land and the sea. Mackay referred to the abundance of karaka trees, which were of value to the locals. His cousin, Alexander Mackay, who was present throughout the negotiations, later stated that the locals

had requested the area, 'in order to secure to them the right of fishing along the coast'.[51] An insight into the rich resources of the area is provided in an anecdote related by W J Elvy in his history of the Kaikoura coast:

> When I was surveying a particularly rough boundary line on the block in 1908 I railed at the Maori for being so foolish as to take his land in such a rough locality. 'Why didn't you take your land at Bendermere, that lovely strip of good land between Mill and Schoolhouse Roads?' I asked. 'That's all very well for you to talk' they said. 'When the pakeha came the Maori knew nothing of the cow and the sheep. He only knew the food of the forest and the sea. At Wai-o-patiki (Bendermere Stream) there were no fish and no foods of the land. But at Mangamaunu there were paua (mutton fish), the pipi and pupu (cockles and whelks), the kuku and the kopukopu (mussels) on the rocks. In the sea were the koura (crayfish), the kahawai, the marari (butterfish), the pakirikiri (rock-cod), the ngoira (conger-eel) and the hapuku. On the land was the karaka, the pigeon, kaka and other birds.' The Maori say 'that's the place for me — plenty of kai. Lay my land off there'. (M10:47–48)[52]

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

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

Gibson's exchange

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

The Native Land Court 1890

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

The main road south

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

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

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

This instruction is annotated by the commissioner:

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

As it transpired, the Surveyor-General's instruction never had to be acted upon, because the situation he envisaged, of more than 5 percent being taken for roading, did not arise. The first survey of the reserve, completed in 1903, revealed the total acreage to be 4831.25 acres, including 56.5 acres set aside as roads (M12:16).[61] The 1906 partition survey showed the total acreage of the reserve to be

4825 acres 2 roods 23 perches, which included 38 acres 2 roods 23 perches of roads (M12:19).[62] According to Crown witness David Alexander, the back boundary of the reserve would have been fixed so as to ensure that the size of the reserve remained substantially unaffected by the setting apart of land along the coast for roading. Thus it can be seen that the 'subject to roads' provision in the memorandum accompanying the Kaikoura deed reduced the size of the reserve by only 13 acres from the 4800 acres originally intended (AB35:11; AB63).

In 1895 a topographical survey of south Marlborough was undertaken, and the Surveyor-General suggested that this was an opportune time to carry out the intended survey of Mangamaunu A. He proposed an exchange of the reserve for other Crown lands, primarily to provide access to the Crown leasehold runs behind the reserve, but also for the preservation of coastal flora (M13:76).[63] No survey began. Ten months later the district surveyor at Blenheim, F Stephenson Smith, reporting no progress with the survey, supported the exchange proposal, not least because of the reserve's scenic qualities:

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

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

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

<u>The claimant's grievances: road reservation</u>

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

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

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

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

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

Figure 3: Mangamaunu reserve

The Tribunal's conclusion

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

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

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

Scenic reserves

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

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

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

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

Despite his ardour, it seems that nothing further was done. Mr Alexander observed that, when clauses in the Scenery Preservation Amendment Bill 1906 relating to the acquisition of Maori land were struck out, it was suggested that the Public Works Act could be used, but Cabinet declined to approve this

course of action (AB32:48; AB35:8).[74] The matter was revived by Trent's successor, F Stephenson Smith, who in November 1907 advised the Under-Secretary for Lands of the damage caused to the road by the destruction of bush along the coast:

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

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

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

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

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

The following February the tracings of the areas to be taken, a schedule of their value (estimated by

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

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

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

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

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

Mr Alexander explained that, when no agreement could be reached with some of the owners, the Minister in Charge of Scenery Preservation (and the Prime Minister) approved the taking of all of the lands under the Public Works Act 1908 (AB32:53).[94] The Public Works Department was instructed to proceed with the taking, using the fact that the European lessees had agreed to sell their interests in those sections which the owners had not agreed to sell (AB32:54–56).[95] When the intention to take the land was advertised, one objection was received, from Tini Korehe (AB32:57),[96] but this was not sustained (AB35:9–10). On 3 December 1913 the lands were proclaimed taken. In all, 226 acres 3

roods 13 perches were taken in different pieces from nine different partitions of the reserve (M13:98).[97]

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

The Tribunal's conclusion

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

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

Subsequent taking for scenic purposes

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

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

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

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

Land for the railway

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

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

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

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

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

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

The Tribunal's conclusion

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

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

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

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

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

2. Plan M797, DOSLI Blenheim

3. SO plans 522, 523, DOSLI Blenheim

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

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

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

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

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

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

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

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

12. Surveyor–General to chief surveyor Blenheim, 17 February 1897, and chief surveyor Blenheim to district surveyor

Kaikoura, undated, L&S 201, fols 31–32

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

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

15. Nelson MB 4, p 245

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

Figure **Error! Main Document Only.**: Omihi reserve

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38. Court order, Picton, 9 October 1913

39. Certificate of title 21/144

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

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

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

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

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

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

46. Ibid

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

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

49. Ibid

50. Plan M801, DOSLI Blenheim

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

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

53. *Ngai Tahu Report 1991*, para 12.5.11

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

55. SO plan 647, DOSLI Blenheim

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

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

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

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

60. Ibid

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

62. Blenheim SO plans 774, 775, 776

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

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

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

66. *Compendium*, vol 2, p 384

67. Nelson MB 4, pp 219–242

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

99. Court order, Picton, 18 September 1914

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

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

102. Wellington MB 49, p 95

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

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

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

106. SIMB 34, pp 126–128