

Ngai Tahu Land Report

12 The Kaikoura Purchase

12.1 Introduction

Chapter 12

THE KAIKOURA PURCHASE

12.1. Introduction

This purchase shared many common features with the earlier North Canterbury transaction. In both cases the respective Ngai Tahu hapu strenuously objected to the Wairau purchase from Ngati Toa extending to land which they considered rightly belonged to them.

Thus we find not only the Kaiapoi Ngai Tahu protesting but also the Kaikoura hapu. From as early as the meeting with Governor Grey at Akaroa in February 1848 Ngai Tahu sought payment for both the Kaikoura and Kaiapoi districts. When in September 1848 Mantell, in the presence of Ngai Tahu, fixed the northern boundary of Kemp's purchase at the old Kaiapoi pa site, Paora Tau rose to say that it should be put right back to Te Parinuiowhiti. In 1850 both William Fox and W J W Hamilton reported on Ngai Tahu's claim to Kaikoura along with the claim for the Kaiapoi district.

In December 1850 the New Munster Executive Council went so far as to agree to pay £50 if Ngai Tahu would relinquish their claims to the country between Kaikoura and Kaiapoi. It does not seem that the money was ever paid over. Ngai Tahu continued to protest. For instance Paora Tau and Hone Wetere Tahea wrote demanding payment for Waipapa, Kaikoura, Waiau and other places to the south.

Meanwhile, the Crown proceeded to recognise the claims of various tribes to the north, including Ngati Toa. And at the same time European settlement was progressing steadily over both the Canterbury and Kaikoura blocks. While Donald McLean was very active in settling claims of the northern South Island tribes in the years 1853 to 1856, he showed no anxiety to investigate Ngai Tahu's repeated claims.

When W J W Hamilton returned to Lyttelton after settling the Akaroa purchase in December 1856 he found Kaikoura Whakatau, the paramount rangatira of Kaikoura, and 20 or more of his principal men awaiting him. They had heard that Hamilton proposed to negotiate with Kaiapoi Ngai Tahu over North Canterbury. Whakatau

expressed willingness to negotiate with the Crown over the Kaikoura district.

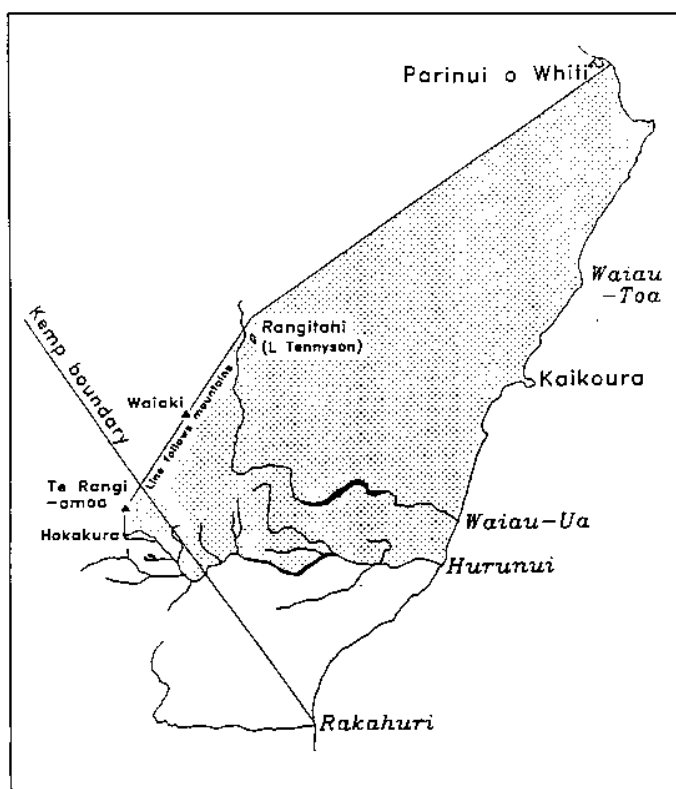


Figure 12.1: The Kaikoura purchase. The purchase overlapped with the North Canterbury purchase of 1857 which had its northern boundary at the Waiau-Ua.

He complained that Ngati Toa had no right to sell the country from Wairau to Kaiapoi. Hamilton reported his discussions with Whakatau to McLean early in 1857. McLean undertook to have the matter investigated but again showed no sense of urgency. Not until nearly two years later did McLean finally instruct James Mackay Jr to undertake the negotiations for the purchase of the Kaikoura district.

Mackay was unable to obtain the services of a surveyor from the Nelson provincial government. He complained bitterly that the provincial council was giving priority to surveying some 64,000 acres at Amuri - land which Mackay reminded McLean had never been properly acquired by the Crown and which the provincial government had no business to sell before the Crown had purchased the title to it.

Mackay's negotiations took place during February-March 1859 and a deed of purchase was signed on 29 March 1859. After weeks of protracted argument Mackay induced Ngai Tahu to accept $\text{c}300$ for 2.5 million acres. He refused to grant them a reserve of 100,000 acres which they requested and instead they were obliged to accept a mere 5558 acres in the remnant of land which had not yet been leased or sold to Europeans.

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12.2 Statement of Grievances

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We set out here from the combined summary of the claimants' grievances relating to both North Canterbury and Kaikoura, those grievances which relate to Kaikoura in whole or in part.

1. That the Crown's inclusion of Kaikoura and Kaiapoi in the Wairau Purchase of 1847 from Ngatitōa exerted unfair pressure on Ngai Tahu to part with these blocks on unfavourable terms.
2. That the Crown allowed these blocks to be sold or leased to European settlers-[...] almost entirely in the case of the Kaikoura Block-before they had been purchased from Ngai Tahu, and that Ngai Tahu have never been adequately compensated for this.
3. That the Crown refused to allow lands requested by Ngai Tahu [...] between the Kahutara and Tutaeputaputa (Conway) Rivers in the Kaikoura Block to be excluded from the sale or reserved exclusively for their use, in breach of Article II of the Treaty.
4. [Relates solely to the North Canterbury block].
5. That the Crown in the Kaikoura Block provided reserves that were inadequate for agricultural purposes and inadequate as an economic basis for the prosperity of Ngai Tahu, and that were unreasonably encumbered with Crown roading and railway rights.
6. That the Crown [...] in the Kaikoura Block [under the Land for Settlements Acts for the benefit of landless Europeans] from November 1893 resumed the Cheviot, Blind River, Starborough, Puhipuhi, Richmond Brook, Waipapa, Lyndon No 1 & 2, Rainford, Annan, Flaxbourne No 1 & 2, and Culverden Estates, but failed to do likewise for Ngai Tahu, in breach of Article III of the Treaty. (W5)

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12.3 Background to the Purchase

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12.3.1 In our discussion of the North Canterbury purchase we outlined in some detail the way in which Ngai Tahu expressed their concern at the Crown's failure to recognise their mana over the land north of the Kaiapoi pa site. This concern extended, as we have seen, not just to the North Canterbury block, but to the land up to and beyond Kaikoura as far as Parinui o Whiti, or the White Bluffs, at the northern end of the Kaikoura district.

Without repeating the detailed evidence recorded in the previous chapter, the tribunal briefly notes the following incidents by way of example.

- In February 1848, as Matiaha Tiramorehu later reported, Ngai Tuahuriri sought payment for Kaikoura and Kaiapoi (L9:23 {FNREF|0-86472-060-2|12.3.1|1})
- As soon as Mantell, in September 1848, fixed the northern boundary of the Kemp purchase at the Kaiapoi pa Paora Tau said that it should "be put right back to Te Parinuiowhiti". Later that day Mantell was told a party of Ngai Tahu would go to Wellington to see the Governor "and try and shift the line back to Te Parinui o whiti" (G2:773-775). {FNREF|0-86472-060-2|12.3.1|2} A party duly went and saw Lieutenant-Governor Eyre at Wellington.
- On 11 January 1850 Hamilton reported to Fox that it was probable the Ngai Tahu of Kaiapoi, Amuri, Kaikoura and Port Levy would object to the occupancy of the country to the north of the Kowai River as far as Kaikoura (L9:31). {FNREF|0-86472-060-2|12.3.1|3}
- On 16 January 1850 John Tikao and 11 other Ngai Tahu chiefs wrote to the governor on behalf of the Tuahuriri people claiming the land between Kaiapoi and the Wairau. (A8:II:7) {FNREF|0-86472-060-2|12.3.1|4}
- In April 1850 Kelham, on behalf of William Fox, reported that Ngai Tahu assertions that some of the country between the Kaikoura mountains and the Port Cooper plains had not been purchased might have some foundation. Fox himself had heard this when at the Kaikoura peninsula (L9:30). {FNREF|0-86472-060-2|12.3.1|5}
- On 10 December 1850 the New Munster Executive Council, on Eyre's initiative, agreed to pay œ50 for the relinquishment by Ngai Tahu of their claims to the country between Kaikoura and Kaiapoi. Governor Grey approved the proposal in January 1851 (M11:7-12). {FNREF|0-86472-060-2|12.3.1|6} It seems the money was never paid over.

- In October 1852 Kemp, the native secretary of New Munster, paid the sum of œ60 to the chief Kaikoura Whakatau "by which he relinquishes all claims to the lands in the vicinity of Kaikoura" (T2:66). {FNREF|0-86472-060-2|12.3.1|7} Whether this was in fact the payment for Fyffe's whaling station at Waiopuka is not clear (T1:262).

- Governor Grey visited Canterbury in 1852 and was later reported by J G Johnson as having offered the Kaiapoi hapu œ100 for their rights north of the Ashley. How far this was to have extended is not clear (A8:II:11). {FNREF|0-86472-060-2|12.3.1|8}

- In September 1852 Paora Tau and Hone Wetere Tahea wrote demanding payment for Waipapa, Kaikoura, Waiau, Te Hurunui, Motunau, Rakahuri and Kaiapoi (T1:263). {FNREF|0-86472-060-2|12.3.1|9}

12.3.2 Meanwhile, as we have noted (11.3.8), the Crown proceeded to recognise the claims of various other tribes including Ngati Toa. At the same time, European settlement gathered momentum in both the Kaikoura and North Canterbury blocks (11.3.9-11). As Professor Ward noted:

In the 1850s, Maori wrote, and remonstrated, repeatedly. Grey was given ample opportunity to redress the grievance. It was not lack of information that caused the delay. (T1:277)

While Donald McLean, the land purchase commissioner, was very active during this period, he clearly regarded the claims of Ngai Tahu as having little if any need of prompt attention. And so by 1858 the whole of the Kaikoura block of some 2.5 million acres was occupied by European settlers except for three relatively small blocks, including one at the Kaikoura peninsula. By the following year, 1859, only the block at the peninsula had not been leased or sold to settlers (M6:24-25).

Hamilton reports Ngai Tahu's willingness to sell

12.3.3 When Hamilton returned to Lyttelton on 24 December 1856, after laying out reserves following the completion of the Akaroa block purchase earlier that month, he found Kaikoura Whakatau, the paramount Kaikoura chief, and 20 to 30 of his principal people waiting to see him. They had heard that Hamilton was about to commence negotiations with the Kaiapoi people for the purchase of the North Canterbury block.

As Hamilton reported to McLean on 8 January 1857:

Whakatau stated at the interview I had with him, in presence of the principal Maoris of Kaiapoi, Rapaki, Port Levy, &c. (who are all members in common with the Kaikoura people of the Ngaitahu tribe), that Ngaitahu are the lawful owners of the country southwards from Pari-nui-o-whiti (The White Bluffs) between the Wairau and the Awatere (Wakefield); of this tract the Kaikoura Maoris claim the special ownership as far as the Waiau-ua, which was fully admitted by the Kaiapoi and Rapaki Maoris who, on the other hand, claim no special ownership north of the Waiau-ua. (A8:II:16) {FNREF|0-86472-060-2|12.3.3|10}

Hamilton went on to report on the basis of his conversation:

- that Whakatau complained that the Ngati Toa had no right to sell the country from Wairau to Kaiapoi;
- that the whole of the country from Parinui o Whiti southwards had long been occupied by sheep owners but the Kaikoura people had never received one shilling for it except for œ50 in about October 1852 paid to Whakatau for the surrender of Waiopuka, Fyffe's whaling station on the Kaikoura peninsula;
- that by a census recently taken for the Nelson government he "understood them to say" Kaikoura Maori numbered 80. They lived or cultivated at Waipapa, Ohau, Te Hapuku, Maunga, Mahuita, Wainuairara, Kaikoura pa and Mikonui. They owned some cattle and horses; and
- that Whakatau and his people offered to sell all their land to the Crown except for two reserves-one of 400 acres at Waipapa old fishery, the other of 600 acres at the Kahutara River, or such other reserves as might later be agreed upon. Hamilton understood the price to be the same as for Akaroa and that to be offered for North Canterbury, that is, œ150. He strongly recommended:

that this opportunity be seized upon of satisfying, for the small sum of œ150, a claim over not less than 1,200,000 acres of country, and at the same time of dealing honourably and fairly by the ostensibly rightful owners whose property we have now so long been enjoying. (A8:II:17) {FNREF|0-86472-060-2|12.3.3|11}

It was noted in the Ward report that it is not clear from the context whether Hamilton's report of the money necessary to satisfy the claim was his own estimate or was reached in discussion with Ngai Tahu leaders (T1:279). Certainly Kaikoura Whakatau was later to deny making such an offer. Moreover, Hamilton admitted to possessing only "a slight knowledge of the Maori language" (A8:II:29). {FNREF|0-86472-060-2|12.3.3|12} The possibility of a misunderstanding cannot therefore be eliminated.

12.3.4 On 31 March 1857 McLean thanked Hamilton for his report on the unsettled claims of Whakatau and his people to lands between the White Bluffs and the Waiau-ua. He said the New Munster records were being searched. If the rights of the Kaikoura tribe were clearly established the government would pay œ150 and make such reserves as might be necessary. McLean suggested that the claim had been inadvertently overlooked because the central government did not have an officer stationed in the South Island to investigate such matters. The commissioner indicated that he hoped to have the matter rectified in the course of the next summer. Again it seems he saw no need for haste (A8:II:25). {FNREF|0-86472-060-2|12.3.4|13}

12.3.5 By August 1857 Hamilton had become further concerned at the Crown's delay in commencing negotiations with "the legitimate owners" at Kaikoura and Arahura. In a letter of 6 August he urged upon McLean:

the necessity for making early arrangements for sending a competent Maori scholar to Kaikoura and Arahura to obtain the surrender of the remaining Native lands in this Island. The recent gold discoveries at Nelson are so likely to raise the value of the land in the eyes of the Maoris to the most extravagant pitch, that I fear any delay in

accepting their proposals to treat may end in totally preventing the acquisition of the land sought for by us. (A8:II:27). {FNREF|0-86472-060-2|12.3.5|14}

Hamilton might have added had he known, that the Kaikoura block was by then almost wholly overrun with European settlers. McLean, on 5 October 1857, replied that the governor would be despatching an officer at an early date to settle the claims (A8:II:27-28). {FNREF|0-86472-060-2|12.3.5|15} But again, this was an idle assurance. The summer of 1857-58 came and went without any further action by the Crown. Indeed, nothing happened until November 1858.

Waitangi Tribunal, Department of Justice, Wellington.

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12.4 The Purchase

12.4. The Purchase

The Crown finally authorises the Kaikoura purchase

12.4.1 More than 10 years after Ngai Tahu had first raised with Governor Grey, in February 1848, the issue of their title to the land at Kaikoura, the Crown eventually recognised the claim and took action to settle it.

On 3 November 1858 McLean wrote to James Mackay Jr, recently appointed assistant native secretary at the Collingwood goldfields, instructing him to proceed to Kaikoura to settle the claim. Mackay was told:

- to fix reserves "necessary for the maintenance and wants" of Ngai Tahu, "the proportionate area of the reserve for each individual or head of a family to vary from 10 to 100 acres, according to the quality, capabilities, relative value of the land, and rank of the owner";
- to ensure that a village site required at Kaikoura by the Europeans was not reserved to Ngai Tahu;
- that the Crown would pay œ150 for the block;
- that having completed his duties at Kaikoura he was to proceed to Arahura for a similar task;
- that the total sum estimated for the two purchases was œ300, to be apportioned as he thought best; and
- that great reliance was placed on Mackay's judgment in carrying out his duties, including the extent of the necessary reserves (A8:II:33-34). {FNREF|0-86472-060-2|12.4.1|16}

12.4.2 James Mackay was a competent Maori linguist. His father James Mackay Sr, a personal friend of McLean, had successfully sought an official appointment for his son. Mackay Jr became something of a protegé, of McLean. He considered McLean to be one of his best friends. Not infrequently, when he wrote officially to McLean he also wrote him a separate personal letter. In this way he was better able to explain or justify his actions.

Mackay arrives at Kaikoura

12.4.3 James Mackay Jr set off for Kaikoura on horseback on 15 February 1859. With him was his cousin Alexander Mackay, later to become prominent in Maori affairs and a Native Land Court judge. They reached Kaikoura nine days later on 24 February. With them came all the Ngai Tahu living between the Waiautoa River and the peninsula. Whakatau, the principal chief of the region, was still to arrive.

While awaiting the arrival of Whakatau, Mackay had some general discussion with those Ngai Tahu present. The following day he wrote two letters to McLean, one official, the other private. In his official letter he advised that:

- Ngai Tahu were very exorbitant in their demands and were seeking œ5000;
- he had "hinted" to them that the land had been once purchased already and if necessary "the Ngaitoa and Ngatiawa tribes would give possession of it to the Government";
- the district covered the whole of the Awatere, Tarndale, Clarence (Waiautoa), Amuri and Wai-ua country, which he estimated to contain about 2.5 million acres;
- the greater part of these districts was now occupied by sheep-farmers, who in many cases had purchased considerable quantities of land from the government; and
- he would "use every means" in his power "to induce the Natives to accede to the terms offered" by him. If unsuccessful he would proceed to Arahura and then await further instructions (A8:II:34-35). {FNREF|0-86472-060-2|12.4.3|17}

12.4.4 In his private letter he was more forthcoming and was particularly critical of the Nelson provincial government.

- He expressed exasperation at being unable to persuade the Nelson provincial officials to make available a surveyor to mark out the reserves they "being all engaged in laying out runs at the Wairau and Amuri".
- He protested that a surveyor, Clarke, who had been assigned to survey 64,000 acres at Amuri by May should have been placed at his disposal to lay out reserves for Ngai Tahu:

previous to surveying land which had never been properly acquired from them, and which in fact has no business to be sold until the Native title has been extinguished over it. (M11:18) {FNREF|0-86472-060-2|12.4.4|18}

- He later emphasised that:

if the Nelson Provincial Govt. had before selling an acre of land or letting a single sheep run, laid the case of the Kaikoura Natives before the General Government, and requested its immediate adjustment, the present difficulty would not have arisen. (M11:22) {FNREF|0-86472-060-2|12.4.4|19}

We note that Mackay was evidently unaware that Ngai Tahu had been protesting to the governor and Crown officials since February 1848.

- He explained that the Ngai Tahu present seemed to know the exact sums paid for land at Amuri and Waiiau-ua:

when they mention such sums as seven thousand eight hundred pounds being given by one man for land it is rather difficult to persuade them that the whole block is not worth five thousand pounds. (M11:20){FNREF|0-86472-060-2|12.4.4|20}

The Kaikoura Ngai Tahu were more numerous than he expected "there being altogether about seventy I hear":

...I am terribly afraid that these fellows are too wideawake for me, as to the value of the land-a good many of them are employed on the sheep stations and they know the country well both coast and inland, and seem to know every run and in some instances even the acreage of them. I told them today that they would have plenty of land reserved for their use. (M11:21){FNREF|0-86472-060-2|12.4.4|21}

It is apparent from this correspondence that Mackay was somewhat pessimistic about the prospects of a successful outcome to his negotiations. His threat, or "hint", as he preferred to disguise it, that the Crown might if necessary invoke the Wairau purchase cannot be condoned. It was made before the arrival of Whakatau and so before the negotiations proper began. It does not come well from a government official who was at the same time scathing in his criticism of the provincial government for facilitating the settlement of Ngai Tahu land before title had been obtained.

The deed is signed

12.4.5 Although Mackay commenced his discussions with Kaikoura Ngai Tahu on 24 February, a deed of purchase was not signed until 29 March 1859. It is apparent that protracted negotiations took place over the price and that discussions were broken off more than once. During the month all the reserves were identified and a list was signed on 15 March 1859. Mackay followed the practice adopted by Hamilton in keeping minutes of the proceedings. Unfortunately these are no longer available. The only contemporary record is Mackay's official report to McLean of 19 April 1859 (A8:II:35-36){FNREF|0-86472-060-2|12.4.5|22} and his personal letter to McLean of 22 April 1859 (M11:23-26).{FNREF|0-86472-060-2|12.4.5|23} The Smith-Nairn commission did not hear evidence on the Kaikoura purchase.

The boundaries

12.4.6 According to Mackay in his 19 April report the block contained about 2.5 million acres. As described in the deed:

the boundaries of the Land commencing at Karaka (Cape Campbell) and proceeding by the Sea Coast in a Westerly direction to Parinui-o-whiti (Wairau Bluffs) from thence turning inland it runs in a direct line to Rangitahi (Tardale) at the source of the River Waiautoa (Clarence) whence turning in a South Westerly direction it continues by the mountains to Hikatura (Lake Summer) turning thence in an Easterly direction the boundary is the Hurunui to its confluence with the Sea-Thence turning at the mouth of the Hurunui in a North Easterly direction it goes along the sea beach to Karaka (Cape Campbell). Where the boundaries join. (see appendix 2.8)

Mackay explained that he was aware that the country between the Hurunui and Waiau-ua Rivers had been bought by Hamilton as part of the North Canterbury purchase. But he found that some of the Kaikoura Ngai Tahu denied having received any payment from Hamilton and they disputed the right of the Kaiapoi Ngai Tahu to sole ownership of the district. He thought it prudent therefore to include the whole of the land northward of the Hurunui in the deed. In the result the land between the Hurunui and Waiau-ua Rivers was included in both purchases.

The price paid

12.4.7 Mackay was obliged, if he wished to secure a purchase, to increase his earlier offer of œ200 to œ300. He did so most reluctantly and only after protracted stonewalling:

I set the fellows down so that none of them had anything to say, except that it was no use for them to talk to me as I was as hard as a stone and was Satan and Haukiora-and after all could not get them to take the money. (M11:26){FNREF|0-86472-060-2|12.4.7|24}

Mackay detailed his reasons for being obliged to increase his offer to œ300 as follows:

1. That the Natives refused to take the sum of œ150 (the sum I was instructed to pay them); and on my offering them œ200 (which sum I considered I was justified in tendering, as œ400 had been placed at my disposal for completing the Arahura and Kaikoura questions, to be apportioned by me in such a manner as I might deem most desirable for carrying out the duties assigned to me), they would not surrender the whole of their lands, wishing to retain the portion intervening the Rivers Kahutara and Tutai-putu-putu, containing some 100,000 acres, and which is rented from the Government by Messrs. Fyffe, Keene, and Tinline, for sheep runs, and part of which has also been purchased by them from the Crown.
2. That on my refusal to pay œ200, unless the whole of the land was surrendered to the Crown, the Natives threatened to eject the settlers from the above-mentioned block.
3. That I considered if the question was much longer delayed it would probably cost a larger amount to arrange it satisfactorily.
4. That the European settlers did not feel themselves secure unless the purchase was completed, the Natives having, in various ways, annoyed them by driving the sheep off the runs, preventing the settlers cutting timber, and from erecting buildings on their runs, and on several occasions, threatening that if they were not paid for the land, they would turn them off.
5. That although I did not think much of the threats of the Natives about ejecting the European residents, still they might be very troublesome, and should they turn any of them off land which had been purchased from the Crown, the person ejected would have strong claims to compensation, from the Government for selling him land, over which the Native title had not been properly extinguished; and the sum of œ100

would be but a small item in comparison with the loss, which would be sustained by the Government in such a case, not to speak of the probable expense of making a future arrangement with the Natives, as in the case of Pirika and Caldwell at Tukurua, Massacre Bay.

6. That the Natives were not willing to defer the payment until I could write to Auckland for instructions, assigning as a reason that they had already been deceived by the Government, and ought to have been paid long before.

7. That on my taxing the Chief Kaikoura (Whakatau) with breach of faith, in now asking £10,000 for land which he had formerly agreed to sell for £150, he repudiated having done so, merely stating that he had expressed his willingness to dispose of it, but had not mentioned the price. That although I produced a copy of Mr. Hamilton's report, the whole of them steadfastly denied having ever offered the whole of the land for £150.

8. That the Natives were thoroughly acquainted with the value of the land they were selling, instancing the payment of £7800 to Government by Mr. Robinson for a small piece of the block now offered for sale by them, and several others of the same nature.

9. That I felt assured it would be impossible to get them to surrender their claims for less than £300, as I could not advance any more arguments against them than I had done, and although they admitted that I had controverted every argument made by them, they obstinately persisted in refusing to take £200.

10. That it was not without considerable difficulty that I managed to get them to consent to receive even £300, and I had to make a false start to Port Lyttelton before they could be brought to assent to it. (A8:II:35-36){FNREF|0-86472-060-2|12.4.7|25}

12.4.8 While there is no record here of any repetition of the threat made by Mackay during his discussions prior to the arrival of the paramount chief Whakatau, it is apparent that he resorted to the subterfuge of appearing to be willing to depart as a means of inducing Ngai Tahu assent to the sale for £300.

There is a distinct possibility that Hamilton, because of his slight knowledge of Maori, misunderstood Whakatau as having earlier agreed to sell for £150. In any event, the question of reserves had been left open and Mackay refused Ngai Tahu's request for a 100,000 acre reserve.

Ngai Tahu were extremely reluctant to accept £300. They well knew how very inadequate such a price was, given the then well-established value of land in the district. The price, although more than contemplated by Mackay, can only be regarded as nominal. It was grossly inadequate.

The reserves

12.4.9 Mackay was unable to obtain the services of a surveyor. He laid off and marked the various reserves himself. The deed of purchase which, like the deed later made at Arahura, purported to be made under the "shining sun", made no reference to reserves. These were, however, provided for in an earlier memorandum of 15 March

signed by Kaikoura Whakatau, 20 other Ngai Tahu, James and Alexander Mackay and George Fyffe, described as a sheep farmer of Kaikoura. The memorandum reserved for Ngai Tahu the following lands:

Reserve Acres

Mikonui 450

Te Kiekie 20

Omihi 100

Te Hiku o te Waero (Kaikoura, 3

South Bay)

Kaikoura at the Pa 22«

Opokiki 12«

Pukaka 100

Maungamaunu and
Waipapa 4800

Kahutara 50

(A8:II:384){FNREF|0-86472-060-2|12.4.9|26}

The memorandum provided that, should the government wish to make roads through these lands, Ngai Tahu agreed to give the portions required without payment.

12.4.10 In his letter of 19 April 1859 Mackay commented that the quantity of land provided for reserves might "appear large". But he went on to explain that:

it is of the most useless and worthless description, (especially the block of 4,800 acres), and the total value of it cannot be estimated at more than œ450 or œ500, in fact it is questionable from the nature of the reserves whether they will be found more than barely sufficient for the wants of the Native population, and for the increase of their horses and cattle, of which they now possess considerable numbers, one of the best proofs of which is that they have applied to me to be allowed to purchase land from the Government, to the extent of about 400 acres within the block just ceded by them to the Crown. (A8:II:36){FNREF|0-86472-060-2|12.4.10|27}

This is a disturbing statement. Mackay characterises the larger part of the reserves as of the "most useless and worthless description". On the plan of the large 4800 acre block officially known as M801, Mackay endorsed the following note:

Plan of the block of land reserved by the Natives of Kaipapa and Maunga Maunu for themselves, at the time of disposal of their claims to land on the East Coast, Province of Nelson.

Estimated contents 4800 acres; nearly the whole of it is utterly worthless for European settlement or cultivation, and is valued by the Natives for the Karaka, which grows on the face of the hills and cliffs. The North and south boundaries have been laid out to the full distance of fifty chains, and it is improbable that the inland boundary will ever require surveying. (M28(f)){FNREF|0-86472-060-2|12.4.10|28}

This map is dated 28 March 1859-the day before the deed was signed. Mackay oversimplified in suggesting that the 4800 acres was attractive to Ngai Tahu principally because of the karaka berries present in considerable quantities. His cousin Alexander Mackay who was present throughout the negotiations some years later noted:

Although the Kaikoura reserve is large, it is very worthless, consisting chiefly of steep hillsides clothed with a small growth of timber. It was given to the Natives at their own request when surrendering their claims to land in that locality, in order to secure to them the right of fishing along the coast. (A8:II:312){FNREF|0-86472-060-2|12.4.10|29}

12.4.11 W J Elvy in his history of the Kaikoura coast published in 1949 was cited by Dr Donald Loveridge (M10:47-48). Elvy, in noting that Mackay had made excuses in his report for granting the large reserve at Maungamaunu, said Mackay "would probably be surprised if he could visit it nowadays to find that it carries about 5000 sheep and 500 cattle". Elvy also commented that when he was surveying on the block in 1908 he:

railed at the Maori for being so foolish as to take his [sic] land in such a rough locality. "Why didn't you take your land at Bendemere, 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 foods of the forest and the sea. At Wai-o-patiki (Bendemere stream) there were no fish and no foods of the land. But at Maungamaunu there were the paua (mutton fish), the pipi and pupu (cockles and whelks), the kuku and kopukopu (mussels) on the rocks. In the sea there were the koura (crayfish), the kahawai, the marari (butterfish), the pakirikiri (rock-cod), the ngaira (conger eel) and the hapuku. On the land were the karaka, the pigeon, kaka, and other birds. The Maori says: "that's the place for me-plenty of kai. Lay my land off there." (M10:47-48){FNREF|0-86472-060-2|12.4.11|30}

12.4.12 While the tribunal has no doubt that the mahinga kai available was a major reason why Ngai Tahu requested this reserve it does not accept that in 1859 Kaikoura Ngai Tahu were not anxious to retain land for pastoral purposes. In the passage already quoted from his report Mackay, after referring to the horses and cattle owned by Ngai Tahu, told McLean that they had asked him to be allowed to purchase 400 acres from the government within the block they had just ceded to the Crown. This is the Akaroa purchase situation repeating itself. In the tribunal's view it reveals an appalling attitude on the part of the Crown's agent, who to prove how hard a bargain he has driven, virtually gloats over the fact that to obtain land they want and need

Ngai Tahu are driven to seeking permission to buy back 400 acres of their own land. We cannot condemn too strongly such a cynical disregard by the Crown's agent of the rights of its Treaty partner. We turn now to consider the claimants' various grievances.

Waitangi Tribunal, Department of Justice, Wellington.

Ngai Tahu Land Report

12 The Kaikoura Purchase

12.5 Ngai Tahu's Grievances

12.5. Ngai Tahu's Grievances

Grievance no 1: Crown pressure on Ngai Tahu to sell

12.5.1 In their first grievance the claimants stated:

That the Crown's inclusion of Kaikoura and Kaiapoi in the Wairau purchase of 1847 from Ngatittoa exerted unfair pressure on Ngai Tahu to part with these blocks on unfavourable terms. (W5)

We have considered this grievance in relation to the North Canterbury purchase and upheld it. The only material difference between the circumstances of the Wairau purchase, insofar as it impinged on the North Canterbury and Kaikoura purchases, relates to the discussions between Ngai Tahu and Governor Grey at Akaroa in February 1848. As Matiaha Tiramorehu noted in his October 1849 letter to Eyre, Governor Grey told them at Akaroa that the payment for Kaiapoi should not be given to the Ngati Toa "but that the payment for Kaikoura was already gone to them [the Ngati Toa]." Just as Kaiapoi Ngai Tahu continued to protest the recognition of Ngati Toa's right to be paid for the North Canterbury block, so did Kaikoura Ngai Tahu similarly protest the recognition by the Crown of Ngati Toa's right to be paid for the Kaikoura block. Despite these protests the Crown refused or neglected seriously to investigate Ngai Tahu's title to the land until 1856, and further delayed its recognition of their right by not effecting a purchase until March 1859, by which time virtually all the land was held under pasturage licence or had actually been sold to European settlers.

Finding on grievance no 1

12.5.2 The tribunal is satisfied, given all the circumstances leading up to the 1859 purchase which we have related, that the Crown's inclusion of the Kaikoura block in the Wairau purchase did exert unfair pressure on Ngai Tahu to part with the block on unfavourable terms both as to price and reserves. The first grievance is accordingly sustained.

Grievance no 2: The sale of Kaikoura land to Europeans

12.5.3 The claimants' second grievance was:

That the Crown allowed these blocks to be sold or leased to European settlers-[...] almost entirely in the case of the Kaikoura Block-before they had been purchased

from Ngai Tahu, and that Ngai Tahu have never been adequately compensated for this. (W5)

Mr D J Alexander's evidence showed that by the time of the North Canterbury purchase in February 1857 the whole of the block had been either leased or sold to European settlers. Mr Alexander's evidence also showed that by 1859-the year of the Kaikoura block purchase-all but a relatively small area comprising the Kaikoura peninsula and the hinterland to the north back to the seaward Kaikoura range, had likewise been leased or sold to European settlers (M6:24-25). Just as with the North Canterbury block so in the Kaikoura block the price of land to the settlers was in 1859 at least ten shillings an acre, in the case of good land, or five shillings if of poorer quality. But Ngai Tahu received a mere œ300 for 2.5 million acres. At five shillings an acre the price would have been œ625,000; at just one shilling an acre œ125,000. We cite these figures to indicate the vast disparity between the price at which, after one month's hard bargaining, Ngai Tahu were induced to part with their land, and its established market value in the hands of the Crown. Our comments on the North Canterbury block in respect of this grievance are equally applicable to the Kaikoura block.

Finding on grievance no 2

12.5.4 For substantially the same reasons as we gave for upholding this grievance in respect of the North Canterbury block (11.5.3) we likewise conclude that Ngai Tahu have never been adequately compensated for the Kaikoura block purchase. Grievance no 2 in respect of this purchase is accordingly sustained.

Finding on breach of Treaty principles in respect of grievances nos 1 and 2

12.5.5 In the discussion of grievance no 1 the tribunal pointed out the one material difference between the circumstances of the Wairau purchase insofar as it impinged on the North Canterbury and Kaikoura purchases (12.5.1). That distinction is not, however, material for the purposes of any finding as to breach of Treaty principles. Accordingly, rather than repeat the reasons given in 11.5.5 we simply record that for the same reasons we find the Crown acted in breach of article 2 of the Treaty in respect of the Kaikoura purchase. We also find that to this day Kaikoura Ngai Tahu have not been compensated for the very substantial loss which flowed from the Crown's breach of Treaty principles.

Grievance no 3: The Crown's refusal to allow requested reserves

12.5.6 In their third grievance the claimants alleged:

That the Crown refused to allow lands requested by Ngai Tahu [...] between the Kahutara and Tutaepuaputa (Conway) Rivers in the Kaikoura Block to be excluded from the sale or reserved exclusively for their use, in breach of Article II of the Treaty. (W5)

As we have seen, Mackay in his report to McLean of 19 April 1859 noted that Ngai Tahu refused to accept œ150, and on his offering œ200:

they would not surrender the whole of their lands, wishing to retain the portion intervening the Rivers Kahutara and Tutai-putu-putu [Conway], containing some 100,000 acres, and which is rented from the Government by Messrs Fyffe, Keene, and Tinline, for sheep runs, and part of which has been purchased by them from the Crown. (A8:II:35){FNREF|0-86472-060-2|12.5.6|31}

Later in the same report Mackay advised that it would have been impossible to obtain Ngai Tahu's surrender of their claim for less than œ300. Even then he had to resort to making a "false start" to Port Lyttelton before they could be brought to assent.

The area which Ngai Tahu wished to retain was a little south of the Kaikoura peninsula and lay between the Kahutara and Conway Rivers. Ngai Tahu no doubt sought to keep it for pastoral farming. Mackay must have been inhibited from agreeing to the reservation of this land, or any lesser area, because it was entirely occupied by European settlers and part had actually been sold to them. We note that Fyffe, one of the three Europeans concerned, was a witness to the deed of purchase.

12.5.7 The Crown did not seek, in evidence or submissions to us, to justify the refusal by the Crown agent to reserve the 100,000 acres requested by Kaikoura Ngai Tahu on any ground other than that it had been leased or sold to settlers. It was, of course, an area far in excess of the quantity of reserves which McLean had suggested to Mackay might be made. His formula was for reserves for each individual or head of family to vary from 10 to 100 acres according to the quality and relative value of the land and rank of the owner. In laying down such a formula McLean completely overlooked that article 2 of the Maori version of the Treaty guaranteed to Ngai Tahu their rangatiratanga over their land. The English version of the same article confirmed and guaranteed to them the full exclusive and undisturbed possession of their land so long as they wished to retain it. It is apparent that Ngai Tahu wished to retain a substantial area of land for pastoral purposes and no doubt for greater access to a variety of mahinga kai resources. Instead their wishes were ignored and they were induced to settle for a mere 5558 acres.

Finding on grievance no 3

12.5.8 By imposing on its agent Mackay a limit on the quantity of land he might agree to being reserved to Ngai Tahu the Crown acted in clear breach of article 2 of the Treaty. This breach was exacerbated by the action of the Crown in facilitating the leasing and, in part, the sale of land to which Ngai Tahu's title had not been extinguished. The Crown's agent Mackay, as his correspondence to his superior McLean only too clearly revealed, was fully aware of this. Mackay was obliged by the Crown to deny Ngai Tahu's rangatiratanga over their land and to refuse to reserve to them land they wished and were entitled to retain. It was the Crown's responsibility to respect Ngai Tahu's title to their land and to restore it to them if, as was the case, they wished to retain it.

It follows that Ngai Tahu's grievance no 3 is sustained

Grievance no 5: The adequacy of reserves

12.5.9 In grievance no 5 the claimants stated:

That the Crown in the Kaikoura Block provided reserves that were inadequate for agricultural purposes and inadequate as an economic basis for the prosperity of Ngai Tahu, and that were unreasonably encumbered with Crown roading and railway rights. (W5)

Following protracted negotiations and refusing to set aside the 100,000 acres sought by Ngai Tahu, the Crown agent reserved some 5558 acres, including the 4800 acres at Maungamaunu. To European eyes at the time this land was of little value. This was no doubt why it had not been taken up by them. Mackay knew at the time he was making inadequate reserves. He was asked if the Crown would sell back some 400 acres. At what price he did not say.

In his closing address, Crown counsel conceded both that the Crown had paid insufficient for the land and that it should have reserved more land for Ngai Tahu (X2:88).

12.5.10 Counsel for the claimants, in his reply to the Crown's closing address, challenged an estimated Ngai Tahu population of Kaikoura as being approximately 80 persons. This figure comes from a comment by Hamilton, in his letter of 8 January 1857 to McLean, in which he referred to a census taken recently for the Nelson government as numbering the Kaikoura Maori at 78, since increased by two births. From the context it appears Hamilton obtained this information from the chief Kaikoura Whakatau.

Mr Temm drew the tribunal's attention to what he called the great danger of making any conclusion on Ngai Tahu population figures, whether in Kaikoura as a result of "Hamilton's estimate" or anywhere else. He criticised some of Mantell's calculations made during the titi season when Ngai Tahu were absent from their kaika.

The tribunal readily accepts that estimates of population must be viewed with caution. It is likely that in many cases they will have been understated. But if the tribunal is to make a finding in any given case, whether reserves set aside for Ngai Tahu were ample for their present and future needs, it is desirable that it should have evidence not of the exact population but of the likely order of the population of the group. Without that information it may be very difficult for the tribunal to make a finding.

In the present case counsel for the claimants submitted that the Crown's observation that there were only 80 people at Kaikoura in January 1857 was "completely wrong". Unfortunately he did not inform the tribunal of the basis for that categorical statement, nor did he refer to any evidence which substantiated it. The claimants called no evidence on the question.

The tribunal accepts that there were at least 80 Kaikoura Ngai Tahu and possibly more at the time of the March 1859 purchase. The question before us is whether the Crown failed to ensure, as it was obliged by Treaty principles to do, that Kaikoura Ngai Tahu retained sufficient land for their present and future needs, or, as the claimants put it, sufficient land for an economic base.

12.5.11 The Crown purchased some 2.5 million acres of land for which Ngai Tahu received œ300. The 5558 acres by way of reserves were clearly insufficient for their

present needs, as Mackay himself conceded in his report to McLean. Had the Crown agent agreed, as he should have, to Ngai Tahu's request to retain 100,000 acres, it is unlikely there would have been any later complaint. While the reserve of 4800 acres did ensure access to valuable marine and other food resources, it was of very small dimension. In subsequent years even this area was seriously eroded by Crown action in taking substantial and valuable areas of land adjacent to the coast for road and railway purposes. This aspect of the claimants' grievance will be further considered by the tribunal in the later report dealing with ancillary claims. It was totally inadequate as a long term base for ensuring that Ngai Tahu in the Kaikoura block could prosper alongside the European settlers who had overrun their land. The Crown, as the tribunal has said on numerous earlier occasions, was under an obligation to ensure that Ngai Tahu retained generous areas of land, amply sufficient to secure reasonable access to mahinga kai and to engage in agricultural and pastoral pursuits. Once again the Crown failed to meet its Treaty obligation. In the result, Ngai Tahu suffered and have continued to suffer substantial loss.

Finding on grievance no 5

12.5.12 The tribunal finds that grievance no 5 is sustained for the reasons given above (12.5.11).

The tribunal further finds that the Crown's failure to ensure that Kaikoura Ngai Tahu were left with sufficient land for an economic base and to provide reasonable access to their mahinga kai was in breach of article 2 of the Treaty, which required the Crown to ensure that each tribe was left with a sufficient endowment for its present and future needs. Ngai Tahu were detrimentally affected by such failure.

Grievance no 6: Land for Settlements Acts

12.5.13 In their final grievance the claimants alleged:

That the Crown [...] in the Kaikoura Block [under the Land for Settlements Acts for the benefit of landless Europeans], from November 1893 resumed the Cheviot, Blind River, Starborough, Puhipuhi, Richmond Brook, Waipapa, Lyndon No 1 & 2, Rainford, Annan, Flaxbourne No 1 & 2, and Culverden Estates, but failed to do likewise for Ngai Tahu, in breach of Article III of the Treaty. (W5)

The tribunal has considered an identical grievance in relation to the North Canterbury block. For reasons already given (11.5.9-10) the tribunal was unable to sustain that grievance. The legislation in force during the period when the various estates referred to in this grievance were resumed was not materially different from that applying to the North Canterbury block resumptions.

Finding on grievance no 6

12.5.14 As the situation is not materially different to that considered in the North Canterbury purchase, the tribunal is unable to sustain the present grievance no 6.

But the tribunal makes the same observations by way of criticism of the Crown's actions in relation to this grievance as it made in 11.5.10 of the North Canterbury purchase.

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