

# Ngai Tahu Land Report

## 23 Evidence of Other Interested Bodies

### 23.1 Introduction

Chapter 23

#### EVIDENCE OF OTHER INTERESTED BODIES

##### 23.1. Introduction

At its first hearing the tribunal publicly announced that it would give all persons or organisations wishing to give evidence the opportunity to do so. At the time several government departments and state-owned corporations as well as other corporate bodies, farming interests and Maori organisations sought and were granted leave to appear and be heard. Subsequently, on 30 June 1988 the Treaty of Waitangi (State Enterprises) Act 1988 was passed and was deemed retrospectively to have come into force on 9 December 1987. Section 4 of this Act amended the Treaty of Waitangi Act 1975 by inserting a new provision, section 8C. This section restricts entitlement to appear and to be heard in relation to land transferred to or vested in a state enterprise to those persons named in the section. State-owned enterprises are excluded.

The tribunal on 11 November 1988 issued a direction (O54) that while the new section 8C(2) of the Treaty of Waitangi Act expressly excludes (inter alia) the application of section 4A of the Commissions of Inquiry Act 1908 which regulates those persons entitled to be heard, it does not exclude section 4B of that Act. Section 4B empowers the tribunal to receive as evidence any statement, document, information or matter that in its opinion might assist it to deal effectively with the subject of the inquiry. The tribunal directed that if a state-owned enterprise was able to help the tribunal in this way the tribunal might well authorise it under section 4B provided such evidence did not touch upon any question relating to the return of land to which section 8A applies.

Following this direction and in the absence of any objection from the claimants or the Crown the tribunal received evidence from certain state-owned enterprises. In addition the tribunal heard from other interested organisations. This evidence came from various disparate groups or organisations comprising high country pastoral lessees members of Federated Farmers, the Federated Mountain Clubs, NZ Deerstalkers Association, the North Canterbury Catchment and Regional Water Board and the Department of Conservation.

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*Waitangi Tribunal, Department of Justice, Wellington.*

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## 23 Evidence of Other Interested Bodies

### 23.2 High Country Pastoral Lessees

#### 23.2. High Country Pastoral Lessees

23.2.1 Mr E Chapman appeared as counsel for Federated Farmers in respect of Crown pastoral leases (P22(a)). His submissions concentrated on what he termed the "inappropriateness" of using the Crown's interest in pastoral leasehold land as a remedy. He said this was of very real concern to all pastoral lessees, given the "direct and onerous role" the Crown is said to play in managing high country lands.

Pastoral leases were created under the Land Act 1948. They succeeded pastoral licences, which had several disadvantages, including no security of tenure. As a result, Mr Chapman told us, some licensees tended to exploit the pasturage immediately before the termination of the licence to the detriment of erosion control. Without permanent tenure there was little incentive to improve land and buildings. The new pastoral leases removed these disadvantages. Leases are registered under the Land Transfer Act and are perpetually renewable at 33 year intervals, with rental reviews at 11 year intervals. The leases are freely transferable and may be used as mortgage security.

Mr Chapman advised that the obligations on the Crown as lessor are such that, while they produce revenue for the Crown, they cost the Crown far more to administer than the total received by way of rent. The Crown's interest is confined to the unimproved value of the land. All improvements, including buildings, fencing, improvements to pasture, drainage and water reticulation are the absolute property of the lessees. The lessees value their association with the Crown and its ability to participate in the management of the land. They wish to retain the Crown as lessor, in keeping with their present contractual arrangements. They submitted that the assignment of the Crown's interest in pastoral leases would not ensure a sound economic base for the future prosperity of Ngai Tahu.

23.2.2 The principal evidence in support of Mr Chapman's submissions came from Mr Hamish R Ensor in his capacity as chairperson of the High Country Committee of Federated Farmers (P22(b)). Mr Ensor, who along with other pastoral lessees attended various sittings of the tribunal while the claimants were presenting evidence, is a pastoral lessee in the Rakaia gorge in central Canterbury. He is the third generation to own and farm the Glenaan station and fourth generation in the country. As chairperson of the High Country Committee Mr Ensor represents approximately 360 pastoral lessees from Lumsden, in the south, to Blenheim, in the north. The great majority (324) are on the land comprised in Kemp's purchase.

Mr Ensor explained that the High Country Committee deals directly with the minister of the Crown responsible for the administration of pastoral leases. Despite the reorganisation of the Crown's landholding agencies into state-owned enterprises,

pastoral leases remain under the jurisdiction of the Crown. Mr Ensor told us that this was because pastoral lease lands have particularly high multiple use values for production and scenic/conservation purposes. For these reasons it was thought the residual interest in the land should remain with the Crown rather than individuals, groups or companies. Mr Ensor commented on the concern expressed at the first hearing of this tribunal by various Ngai Tahu kaumatua at the depletion of their resources through the introduction of European species and exploitation of waterways and other traditional food collecting grounds. He emphasised that pastoral lessees shared a common desire to preserve the very delicate balance between production and conservation on high country land. Mr Ensor referred to evidence from a number of Ngai Tahu concerning the difficulty of access to certain food collecting grounds or places of spiritual significance. He said pastoral lessees acknowledged that concern. In so far as their farm management practices allow, the policy of the High Country Committee is to encourage lessees to facilitate public access. He cited a recent study to demonstrate that this occurs. He thought runholders would not be insensitive to any special Maori needs.

Mr Ensor related to us the views of lessees on the proposal that the Crown's interest in pastoral leases might be transferred to Ngai Tahu as one remedy for the past wrongs of the Crown. It was suggested that Ngai Tahu's cultural and spiritual links with the high country pastoral lease land were no greater than that on freehold land. Indeed it was thought that "apart from the transitory greenstone passages and certain lakes and peaks of special spiritual significance", the South Island high country was considered a rather harsh environment compared with the coastal and river margins on which Ngai Tahu permanent settlements were located. Mr Ensor suggested that if any group of New Zealanders could claim to be the indigenous people of the pastoral lease land perhaps it is the lessees themselves, as they are the only people in the history of New Zealand to have actually settled on and worked the land in question. In many cases, it was claimed, occupation by these lessees extends back over four or five generations. The tribunal notes that these contentions overlook the fact that when the Kemp and other purchases were effected by the Crown, requests of Ngai Tahu to retain extensive areas of land which would have included some high country, were wrongly denied by the Crown. Ngai Tahu were left with no high country land and virtually no other land. They were in no position to engage in pastoral farming whether in the high country or elsewhere. But European settlers, by contrast, were enabled to take up extensive runs of many thousands of acres.

In support of the contention that the Crown should not vest its interests in any pastoral leasehold land in Ngai Tahu, Mr Ensor argued that this should not occur simply because the title derives from the Crown. He argued that the pastoral lessees entered into an agreement with the Crown in perpetuity when they signed their lease documents, and in exchange for their rights to pasturage accepted certain restrictions and undertook a caretaker role. They strongly believe in the sanctity of lease documents and believe them to be just as binding as any Treaty or Crown purchase. They see the transfer by the Crown to Ngai Tahu as in "abdication" of its side of the deal.

Mr Ensor also told us that pastoral lessees on occasion have sought to increase their share of ownership from the Crown, presumably by being permitted to purchase the freehold. He suggested that it has been unsuitable for lessees to acquire a greater

interest in their pastoral land, it seems inappropriate for the Crown to change the title in favour of Ngai Tahu, in the absence of substantial grievances relating specifically to the pastoral lands by way of justification. Finally, Mr Ensor made the point that the pastoral leasehold lands are held by the Crown to protect the wider national interest and not to generate income from rentals. It was strongly argued that these lands cannot be an economic base for two different groups at the same time, without involving conflict and depletion of an existing improving resource.

23.2.3 Mrs Iris Scott, a pastoral lessee of Rees Valley station, Glenorchy, gave evidence in support (P22(b)). Two thirds of her property is covered by snow in a normal winter, which seriously limits the carrying capacity. Traditional high country farming is said to rely on nature to a greater extent than most types of farming, the secret of sustainability being to keep stocking-rates low enough to allow the natural vegetation to replenish itself. At present the Crown has an involvement in setting and ensuring compliance with stocking-rates. This, Mrs Scott said, emphasises the Crown's important non-commercial function in lease management. Maintaining a viable farming operation in a harsh environment must be balanced against the Crown's intention to preserve the land for the benefit of all New Zealanders. Mrs Scott described their stocking practices. Most of the land is grazed for less than two months of the year. In these ways the Crown's conservation objectives are said to be a major part of pastoral lease management. Improvements to pasture and buildings, while the sole property of the lessees, are only done with Crown consent, thus ensuring that any developments are compatible with sound environmental practice and the productive capacity of the land. In Mrs Scott's case the development area is less than 2 per cent of the run, the remainder being in its natural undisturbed state. Department of Conservation records indicate that some 1200 trampers passed through Mrs Scott's valley in 1988 and she thought that two or three times that number make day trips to the valley, most of whom act responsibly and cause no problems to farm management or the environment.

23.2.4 Mr Jim Morris, formerly a high country farmer from the headwaters of the Rakaia River in Canterbury, recently purchased a pastoral lease at Ben Avon, in the Ahuriri valley near Omarama. He spoke movingly of the high country people's affinity for the mountain lands and the strong bonds formed with the land by successive generations of the high country farming community:

If you have ever walked a ridge line as the sun rises on a clear day, whether searching for sheep, botanical species, game or just for the love of it, whether Maori, Chinese or European, your thoughts on nature, your god and the fellowship of man will be the same. (P22(b):4)

Mr E D Lyttle spoke on behalf of the Otago Federated Farmers (P29). He is a farmer on the Otago peninsula. Like Mr Morris he spoke of the strong feeling which he and his fellow farmers have for the land.

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## 23 Evidence of Other Interested Bodies

### 23.3 Federated Mountain Clubs of New Zealand (Inc)

#### 23.3. Federated Mountain Clubs of New Zealand (Inc)

Mr David Henson, vice-president of the Federation of Mountain Clubs gave evidence on its behalf (S18). The federation has over 100 clubs affiliated to it, comprising some 16,000 individual members. The member clubs are those concerned with mountain recreation, including tramping, climbing, skiing and deerstalking. The federation is represented on the National Parks and Reserves Authority, the Walkway Commission and walkway committees. Federation members are frequently included on national parks and conservation parks boards and committees.

The general thrust of the federation's submissions was to express its concern for the sound management of New Zealand's public natural lands. It strongly believes these should be retained in Crown ownership and managed for the public good. The only exception it recognised is the pastoral lease system, which it considered should remain in Crown ownership, while recognising that the lessees have occupancy and trespass rights. At the same time the federation expressed considerable sympathy for the Maori sense of grievance over land rights issues.

The federation referred to suggestions that one or more national parks might be passed into Ngai Tahu ownership and leased back to the Crown for ongoing use as a national park. The federation speculated that if this occurred rental costs to the Crown could amount to millions of dollars. This in turn, it was said, would have a significant impact on federation members and other users of national parks. The federation strongly believes in freedom of entry, without charge, to national parks, while having no quarrel with charges for facilities such as huts. It predicted large rentals were bound to "raise the spectre of substantial entry fees".

The federation advised that currently "highly concessional rentals apply to pastoral leases". It supported continuance of this rental system, which it saw as a recognition of the sensitive nature of the land and the need for careful grazing. It argued that if rentals were set at normal commercial levels there would be pressure on runholders to over graze, with consequent damage to water and soil and natural values.

It was submitted by the federation that the transfer of title of Crown land to Maori ownership would amount to privatisation of such land. The new owners would, it was suggested, acquire the right to grant or deny access to such land, the right to charge for public access, the right to "economic exploitation", with far fewer environmental constraints than exist at present, and the right to sell the land to other private interests.

A large proportion of the land originally acquired by the Crown, the federation said, has been retained in public ownership for good reasons. This land, the federation considered, should be held in trust for all New Zealanders and managed for the

common good. It argued that it would be a "dereliction of duty" by government if national parks were used in settlement of claims. In the federation's opinion, if Maori land claims are proven, government should buy land of higher economic value on the open market for settlement of such claims.

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*Waitangi Tribunal, Department of Justice, Wellington.*

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### 23.4 New Zealand Deerstalkers' Association (Inc)

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This association, which represents New Zealand's recreational hunters, made a late written submission signed by its president, Mr David Hodder. The association said that since its formation in 1937 it had fought to protect the public's right of access to, and hunting on, the open high country of the South Island. Mr Hodder referred to a paper presented by Mr Maika Mason on behalf of the Ngai Tahu Trust Board to a Wild Animal Management Seminar in 1988, in which the Ngai Tahu tribal position on rehabilitation of traditional mahinga kai was explained. Mr Hodder stated there appeared to be no conflict between the goals of the association and those of Ngai Tahu. He urged the tribunal to include a finding in its report that the hunting of deer, thar and chamois be retained as a public use.

This issue is relevant to the tribunal only in so far as it relates to restoration of mahinga kai rights to Ngai Tahu. The broader question of continued access and public use raises conservation and other issues outside the parameters of this inquiry. It would seem evident however, from Mr Mason's statement, that there is indeed a conflict between Ngai Tahu and the association over wild animal management, in that the impact of the introduction of the exotic species referred to has been destructive of such mahinga kai as weka, kaka and kereru. It is possible that there may be room for compromise, although Ngai Tahu see the continued presence of wild animals as subordinate to the redevelopment of Maori mahinga kai rights. Obviously there will be need for further consideration of hunting rights and management systems when Ngai Tahu are negotiating remedies with the Crown. Ngai Tahu have declared their aim of working in partnership with the Crown in achieving policy goals.

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*Waitangi Tribunal, Department of Justice, Wellington.*

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### 23.5 North Canterbury Catchment and Regional Water Board

#### 23.5. North Canterbury Catchment and Regional Water Board

Two submissions were made on behalf of this board (A14, P23). The second was presented by Mr J M Glennie, the group leader, planning. We were told that the board's interests in and concerns for land and water management were largely independent of tenure arrangements. But the board intimated that its ability to influence land management did vary with tenure and government policy, among other matters. In practice the board had been able to more directly control certain land management practices on Crown pastoral land than on freehold land. The board expressed its concern that its land and water interests should continue to be adequately provided for should Ngai Tahu be successful with its claim.

The board expressed particular concern for certain class VIII and seriously eroding class VII land. It submitted that, should the interest of the Crown in pastoral leases be transferred to Ngai Tahu, it should be on the condition that significant areas of class VIII and seriously eroding class VII land would not be used for pastoral farming or any other use detrimental to soil and water conservation. The board also urged that ownership of water should remain with the Crown.

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*Waitangi Tribunal, Department of Justice, Wellington.*

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### 23.6 Telecom Corporation of New Zealand Ltd

#### 23.6. Telecom Corporation of New Zealand Ltd

Evidence was given by Mr John Crook, assistant to the chief executive of Telecom (P24(a) & (b)). Mr Crook provided detailed information relating to land assets held by Telecom, many of which were shown to have special features which might bear on any relief which might ultimately be granted either by the tribunal, in terms of the Treaty of Waitangi (State Enterprises) Act 1988, or in negotiations between the claimants and the Crown. The information supplied recorded four separate classifications of properties held by Telecom and their location. It will prove very helpful should any Telecom properties become the subject of possible remedies.

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*Waitangi Tribunal, Department of Justice, Wellington.*

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## 23 Evidence of Other Interested Bodies

### 23.7 Land Corporation of New Zealand Ltd

#### 23.7. Land Corporation of New Zealand Ltd

Submissions were made on behalf of Landcorp by their counsel, Mr C Mouat (P25). The tribunal was informed of the various categories of land held by Landcorp, including some 54 farms vested in Landcorp in the South Island, plus a further six Crown owned farms managed by Landcorp on an agency basis. Mr Mouat advised that the properties taken over by Landcorp from the Crown (and subject to resumption under the State Owned Enterprises Act) were underdeveloped farms not suitable for individual ownership. Additional land required for finishing purposes has since been acquired by Landcorp to enhance the economic viability of some farms.

Counsel for Landcorp told the tribunal:

Ngai Tahu people have an affinity with the land. Ngai Tahu also require a strong economic base to look to the future with confidence. Some of the remnant lands left to Landcorp are really in the same category as the "worthless" lands left to the tribe in 1840 and subsequent years. The Crown must compensate Landcorp for lands resumed. Landcorp would very likely replace its lands with better country to continue its breeding of superior quality animals. Landcorp does not want to look over the fence at Ngai Tahu struggling on difficult country. (P25:5)

Accordingly, Mr Mouat advised that Landcorp would support the idea that Ngai Tahu should receive the compensation, not Landcorp, "so that they may find land that suits their needs". Just because land is "available", Mr Mouat said, it should not be forced upon the claimants. As to the presence of wahi tapu on Landcorp properties, counsel advised that Landcorp would respect the position. Finally, Mr Mouat expressed Landcorp's willingness to assist in a positive manner in any discussions with the claimants in respect to possible remedies.

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*Waitangi Tribunal, Department of Justice, Wellington.*

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## 23 Evidence of Other Interested Bodies

### 23.8 Electricity Corporation of New Zealand Ltd

#### 23.8. Electricity Corporation of New Zealand Ltd

Submissions were made on behalf of Dr R S Deane, the chief executive of Electricorp, by Mrs Geraldine Baumann, the corporation secretary (Q15), and on behalf of Mr J P F Robinson, hydro group manager for the South Island, by Mr M J France the group environmental manager, South Island, for the corporation (Q16).

On the question of water rights, Dr Deane advised that in line with an agreement with the Crown, the corporation, which at present has perpetual water rights, intends to apply for standard water rights to replace its existing use water rights.

As to land, Dr Deane undertook that the corporation would seek to hold only those lands which are reasonably required for its commercial operations. These would include land upon which there are structures, or where the effect of the corporation's control of water is extremely pronounced, as with former river beds now used as spillways. The corporation will not own the beds of artificial or of natural lakes subject to hydro electric control, except where structures are erected on them. Dr Deane said he knew Ngai Tahu were particularly concerned in this regard in respect to Lakes Pukaki, Ohau and Tekapo. He assured Ngai Tahu that the corporation did not aspire to hold the beds of these lakes, which the corporation knew were of particular significance to the Maori people of the area.

Dr Deane conceded the need to develop further good working relationships with the local tangata whenua. This would include production areas and matters such as fish and water rights. The corporation recognised that further investigation was required into indigenous fish and wildlife to ensure appropriate recognition is given to their requirements, including such facilities as elver passes, where these are appropriate. It would ensure that local Maori are consulted and their views incorporated.

Mr Robinson made available a topographical map (Q16A) showing the situation of the corporation's power stations in the South Island and their associated control structures. There are currently 14 such stations, having been commissioned during the period 1915-1984. Mr Robinson described the upper Waitaki system, which includes the Tekapo A and B and Ohau A, B and C stations together with the Twizel control system. The tribunal inspected this complex. The tribunal was advised of measures taken by the corporation to reduce pollution from human waste.

Mr Robinson saw the need for consultation and co-operation between the corporation and Ngai Tahu on matters of mutual interest and undertook to foster this.

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## 23 Evidence of Other Interested Bodies

### 23.9 Department of Conservation

#### 23.9. Department of Conservation

The tribunal received a substantial and constructive submission from Mr Ken Piddington, the director-general of conservation, who was shortly after to relinquish his position to become the first director of environment with the World Bank (G8). Mr Piddington outlined to us the various functions of the new Department of Conservation, which was formally inaugurated in the previous April of 1987. In addition to its management and promotional functions in respect of the conservation of natural and historic resources generally, the department has taken responsibility for the proper conservation of the coastal areas and for the care of marine mammals and indigenous freshwater fish. Mr Piddington stressed that conservation is about the actions of a community in respect of what it has inherited and what it would like to see passed on intact to future generations. He argued that this involved some modification of the concept of private ownership by the incorporation of such concepts as guardianship, trusteeship, stewardship, or, in the Maori concept, rangatiratanga. By way of illustration he cited two examples where New Zealand has opted against the notion of exclusive ownership. These were pastoral leasehold lands and the coastal estate.

Mr Piddington said that, should the claimants be successful in respect of national parks, and he mentioned Fiordland National Park, Mount Aspiring National Park and Aoraki National Park specifically, he saw no consequential change for the purposes of day to day management. He understood that the Ngai Tahu Trust Board saw the possibility of unaltered status for national parks and other conservation areas, citing their recent support for the establishment of the Paparoa National Park.

Mr Piddington indicated that, in thinking about the way in which the principles of the Treaty of Waitangi affect the department in its operational work and how it might best achieve the form of partnership articulated by the Court of Appeal in the New Zealand Maori Council case, he proposed to develop a set of guidelines. Later he said:

In considering our responsibilities for the public estate the central issue comes back to whether or not the question of title is actually relevant to our management role. Since the claimants have raised several issues in respect of title I believe the conclusion we have reached is highly significant. As already indicated the stewardship of a public resource does not require the steward to obtain evidence of ownership. It is, however, necessary for that agent to receive unequivocal instructions from a source of higher authority. This authority in my submission equates precisely with the concept of "Rangatiratanga" in Article the Second. It follows that by seeking appropriate guidance from a tribal Trust or other authority the Department can align its protective role with the wording of the Maori version of the Treaty. (G8:17)

In short Mr Piddington envisaged the development of a partnership between the department and the tangata whenua, working for the common good.

The tribunal notes in concluding its record of the evidence of the high country farmers, the Federated Mountain Clubs, the state owned enterprises and the Department of Conservation, that all gave their evidence in a spirit of good will, indeed sympathy, toward Ngai Tahu, even though in some cases not supporting certain remedies which Ngai Tahu might seek for their grievances.

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*Waitangi Tribunal, Department of Justice, Wellington.*