Ngai Tahu Land Report

20 Landless Natives Grants

20.1 Introduction

Chapter 20

LANDLESS NATIVES GRANTS

20.1. Introduction

In the previous chapter we traversed the investigations of a series of parliamentary select committees, commissions of inquiry and Royal commissions during the years from 1872 through to 1891 in so far as they touched upon the Crown's promises as to schools and hospitals. A number of these investigations covered a much wider field of grievances, including the failure to provide adequate reserves, boundary disputes and related matters arising out of the various purchases. The Smith-Nairn commission of 1879-80 and the Royal commission presided over by Judge Alexander Mackay in 1886-87 are notable examples. We will return to these investigations in our succeeding chapter.

In the meantime the tribunal is concerned to consider the plight of those Ngai Tahu rendered landless or substantially landless due to the Crown's failure to prevent this occurring as a result of the various land purchases. We will focus on the nature, extent and adequacy of the Crown's response to this problem, the effects of which became increasingly apparent during the latter part of the nineteenth century. A convenient starting point is the report of Judge Mackay, who in May 1886 was appointed under Royal commission to enquire into the "Middle Island Native Land Question". We are particularly indebted to a full discussion of this topic by a Crown historian, Mr David Armstrong (M16), and also to the claimants' historian, Mr J M McAloon (E1).

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20.2 The Mackay Royal Commission 1886-87

20.2. The Mackay Royal Commission 1886-87

20.2.1 On 12 May 1886 the governor, Sir William Jervois, appointed Alexander Mackay, judge of the Native Land Court, to be a Royal commissioner. His warrant of appointment instructed the Royal commissioner:

- to inquire into all cases of Maori alleged to been unprovided with land;

- to inquire into cases where it was asserted that the lands previously set apart were inadequate for the maintenance and support of the Maori for whom they were provided;

- to inquire into the position of all half-castes in the South Island not included in any statutes who may have still been unprovided with land; and

- to ascertain and record the names of all such persons and recommend in what quantities and in what localities land should be set apart and awarded to each for cultivation and settlement purposes (M17:I:doc 1:16).{FNREF|0-86472-060-2|20.2.1|1}

A subsequent warrant dated 20 July 1886 instructed Mackay to report whether any Maori interested in the Smith-Nairn commission of 1879-1880 concerning the Otakou, Kemp, Murihiku and Akaroa purchases would accept a grant of land in final settlement of any claim regarding the non-fulfilment of any of the terms or conditions of those purchases, including any promises made in connection with them. If so, Mackay was to recommend in what quantities and localities land should be set apart for that purpose (M17:I:doc 1:16).{FNREF|0-86472-060-2|20.2.1|2}

In his report to the governor of 5 May 1887 Mackay traversed in considerable detail the background to Kemp's purchase and in less detail the Murihiku and Otakou purchases. We will refer to certain of this discussion in our next chapter. For the present we will focus on Mackay's findings and recommendations.

Kemp's purchase

20.2.2 After a detailed review of the background to this purchase Commissioner Mackay found that:

the fundamental principles laid down were not adhered to in acquiring the land in the Middle Island, neither in the reservation of sufficient land for Native purposes, nor in compensating the Native owners for the loss of a large share of their means of

subsistence through depriving them of their hunting and fishing rights. (M17:I:doc 1:6){FNREF|0-86472-060-2|20.2.2|3}

Mackay pointed out that the average acreage per individual set apart in Kemp's purchase in 1848 was under 10 acres. The Native Land Court hearing in 1868 resulted in an additional 2830 acres being set aside in Canterbury and 2100 acres in Otago. Subsequently a further acreage was allotted bringing the general average increase to under 20 acres per individual. But this additional land was not allotted equally. At places where the average was high per individual Mackay found there were many people without land. Moreover, as the commissioner pointed out, a very large proportion of the additional land awarded in 1868 and subsequently, was "very far below the original reserves in the quality of the soil" (M17:I:doc 1:9).{FNREF|0-86472-060-2|20.2.2|4}

20.2.3 Commissioner Mackay conveniently summarised his recommendations in respect of the Kemp and Murihiku purchases in his covering letter of 5 May 1887. First, he proposed that blocks of land should be set apart as an endowment to provide an independent fund for the promotion of the objects which were held out to Ngai Tahu as an inducement to part with their land. As Mackay saw it:

A fund of this kind would possess manifold advantages, one of the chief being that the moneys accruing for the purpose would be derived from a permanent and independent source, removed from the ever-varying influence of Parliament, or other causes which have hitherto interfered with an equitable fulfilment of the claims of the southern Natives. (M17:I:doc 1:1){FNREF|0-86472-060-2|20.2.3|5}

He envisaged that some of the purposes for which the moneys could be expended were:

- the erection and maintenance of schools and other buildings for general purposes;

- the fencing, improving and drainage of land;

- the purchase of farm implements;

- medical aid and medicines;

- teachers' salaries;

- the purchase of books and other school requisites;

- contribution to local rates;

- the purchase of food and clothing for destitute and elderly Maori; and

- for any other purpose which would promote the social and moral welfare of Ngai Tahu.

Secondly, Mackay recommended that blocks of land be set apart for the use and occupation of Ngai Tahu, to an extent that would augment the quantity owned by each man, woman and child to 50 acres per head.

He accordingly recommended that additional land be set aside as follows:

Kemp purchase:

(a) endowment purposes, 100,000 acres; and

(b) individual use and occupation in addition to the quantity already reserved, 30,700 acres.

Total: 130,700 acres

Murihiku purchase:

(a) Endowment purposes, 40,000 acres; and

(b) additional for individual use, 15,412 acres.

Total: 55,412 acres

Thus Mackay recommended a total of 186,112 acres for all purposes in both blocks. The Banks Peninsula purchases were included in the consideration for Kemp's purchase.

20.2.4 As to Otakou, Mackay took the view that the New Zealand Company had fully admitted the right of Ngai Tahu to have a tenth of the land set apart for them in the Otakou block in the same manner as was carried out in their other settlements. The tribunal, for reasons given in our discussion of the Otakou purchase, believes Mackay to be mistaken on this point (6.6.17). Mackay went on to express the opinion that it was highly inequitable that the Otakou Ngai Tahu should be compelled to suffer for an omission of the colonial government to set apart tenths. As he put it, "the desirability will no doubt be now seen that immediate action should be taken to remedy, as far as possible, the loss they have sustained in consequence" (M17:I: doc 1:15).{FNREF|0-86472-060-2|20.2.4|6} He thought that if the obligation respecting the tenths was admitted, the least Ngai Tahu were entitled to was the minimum quantity of 14,460 acres (one-tenth of the 144,600 acres contemplated for the Otakou settlement) together with additional land as compensation for the years they had been deprived of the benefit of the tenths.

Due to lack of time, Mackay was unable to make a selection of land or ascertain the names of those Ngai Tahu for whom extra land should be provided.

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20.3 Joint Committees

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The 1888 Joint Middle Island Native Claims Committee

20.3.1 Commissioner Mackay's comprehensive, thoughtful and constructive report was coolly received by the legislature. In June 1888 the House of Representatives and the Legislative Council decided to appoint nine members each to a joint committee:

to consider and report on the claims of the Middle Island Natives on account of unfulfilled promises, and the recommendations made by Mr. Commissioner Mackay thereon on the 5th May 1887.(M17:I:doc 2:1){FNREF|0-86472-060-2|20.3.1|7}

On 22 August 1888 the joint committee reported that it had in the time available not completed its investigation of Kemp's purchase and had not started its investigation of the Otakou, Murihiku and Akaroa purchases. It had, however, amassed a considerable dossier of documentary evidence to which it briefly referred in an "epitome of the Ngaitahu [Kemp] case". Notwithstanding that its investigation was unfinished the joint committee concluded that:

The foregoing review of the question seems to establish that no promises of reserves of land have been made which have not been fulfilled, and that at the negotiations no promises of tenths were made or held out. (M17:I:doc 2:7){FNREF|0-86472-060-2|20.3.1|8}

It recommended that a similar committee be appointed for 1890 to complete the Kemp purchase inquiry and that of the Otakou, Murihiku and Banks Peninsula purchases.

20.3.2 In addition to thedocumentary evidence, including Mackay's 1887 report, the joint committee heard evidence from Walter Mantell, William Rolleston and H K Taiaroa, all of whom were Members of Parliament at the time. It appears Rolleston's evidence was particularly influential. A senior minister of the Crown who had a lengthy involvement in both provincial and central government, Rolleston appeared to reflect the popular view of the issue. He commenced by criticising Mackay's report as exceeding its terms of reference and proposing a totally new adjustment of the original Kemp's purchase agreement on what appeared to Rolleston an entirely untenable basis. Rolleston referred to his membership on a House of Representatives committee which in 1882 inquired into a petition from H K Taiaroa. On the claim that ample reserves had not been provided, the committee had evidence that the reserves made by the Native Land Court in 1868 were given in final settlement of all claims over land.

According to Rolleston, "The allocation by Mr. Mantell was most judiciously made in the interests of the Natives." And later Rolleston observed that Mantell had stated he considered 10 acres for every man, woman and child "a fair apportionment". Rolleston commented that he had "no doubt it was at the time" (M17:I:doc 2:78).{FNREF|0-86472-060-2|20.3.2|9}

When asked whether he thought substantial justice had been done by the Native Land Court concerning the awards made to Ngai Tahu and the supplementary reserves, Rolleston agreed that he did.

Rolleston then went on to deprecate the making of large Maori reserves which he said "would work out extremely mischievously". He asserted that various portions of the reserves were being let. He argued that the enlargement of those reserves:

would tend, not to civilisation, but to the creation of an idle and degraded race; and it is extremely desirable that no step should be taken to prevent a labouring-class from arising among the Natives. In the formation of that class among the Natives lies, to my mind, the future salvation of the race. (M17:I:doc 2:80){FNREF|0-86472-060-2|20.3.2|10}

Rolleston was then asked for his opinion as to what he considered to be an appropriate "endowment". He replied that it varied very much:

I may say I am of the opinion that the landed endowments are more than ample now, but the question is whether we can deal with individual cases of hardship or want. I think no Native should be without reasonable means of settlement upon land to keep him from absolute want, and I think ten acres of good land to a Native, a head of a family, a very fair amount. Of course, if the land is poor, and in a situation where they could not get a living through fishing, a larger quantity would be necessary. It varies according to the situation of the land. (M17:I:doc 2:80){FNREF|0-86472-060-2|20.3.2|11}

Rolleston was later asked for his opinion on ways in which any moral claims Ngai Tahu might have against the government could be satisfied. He reiterated his view that it would be extremely injudicious to provide further reserves by way of endowments:

If necessary, residence reserves might be made where it was shown there was absolute pauperism. My own view would be very strongly to deal no more with land except where pauperism by want of any land was established. Let the Government issue terminable annuities. This dealing with land is, to my mind, from experience which I do not wish to recur to, accompanied with very great evils. I feel, with regard to all land-purchase, it would be far better to pay annuities, which would not allow of the squandering of money, and would maintain the Natives above want. The only hope is that of the Natives becoming an industrious people. (M17:I:doc 2:84){FNREF|0-86472-060-2|20.3.2|12}

20.3.3 In brief Rolleston proposed:

- no land should be set aside as endowments for Ngai Tahu as recommended by Mackay;

- it was dangerous to grant any Ngai Tahu more than the minimum of land and then only where it was shown "there was absolute pauperism";

- rather than grant any more land the government should issue terminable annuities; and

- the only hope for Ngai Tahu was to become an industrious people presumably all as members of the "labouring-class".

And so Ngai Tahu, from whom the Crown had acquired virtually all 34 million acres for a trifling sum, were to be denied a just share in their land. Instead they should settle for becoming industrious labourers. Any further Crown intervention was to be confined to cases of "absolute pauperism". Given this evidence it is not surprising that the joint committee should conclude that no promises of reserves of land had been made which had not been fulfilled.

The 1889 Joint Committee on Middle Island Native Claims

20.3.4 A further joint committee was appointed to complete the work of its 1888 predecessor. The questions investigated by the committee related to reservations of Maori reserves and cultivations, further land reserves, and schools, hospitals and solicitude for Ngai Tahu welfare.

The joint committee reported on 10 September 1889 (M17:I:doc 2).{FNREF|0-86472-060-2|20.3.4|13} It found that the evidence established the promises made in regard to residences and cultivations were fulfilled. No reasons were given for this finding. The committee also found that the further land reserves made, "although not undertaken in so liberal a spirit as might have been suitable to the case", might be considered as having substantially discharged the public obligations under this head. They saw the Native Land Court 1868 decisions as supporting this view. But having said this, the committee conceded that it might "yet be found highly expedient that more land should be provided where the provision proves to be insufficient to afford Natives a livelihood" (M17:I:doc 2:2).{FNREF|0-86472-060-2|20.3.4|14} This would seem to be inconsistent with its earlier finding.

The committee then proposed that the only practical and effective way to reach a satisfactory settlement would be to make a careful inquiry into the condition of the Ngai Tahu people. If it was found that any of them had insufficient land to support themselves by labour on it, further provision by way of inalienable reserves should be made for them. So yet another investigation was called for.

1890 Joint Committee on Middle Island Native Claims

20.3.5 This committee, which reported on 9 September 1890, was concerned solely with the Otakou purchase and in particular the question of tenths. It was unable to satisfy itself that the principle of tenths applied to this purchase. But the committee went on to find that the evidence before it showed the existing provision of land to be

"by no means sufficient" (M17:I:doc 2).{FNREF|0-86472-060-2|20.3.5|15} It recommended an appropriate inquiry in association with that to be undertaken in respect to the Kemp, Banks Peninsula and Murihiku purchases.

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20.4 The Mackay Royal Commission 1891 and Subsequent Reports

20.4. The Mackay Royal Commission 1891 and Subsequent Reports

20.4.1 Notwithstanding the fact that his 1887 Royal commission report had been largely ignored, Judge Alexander Mackay was again appointed a Royal commissioner on 10 December 1890, on the recommendation of the joint committee. He was to inquire further into the condition of the Ngai Tahu people and to ascertain if any of them had insufficient land for their support by working it. His investigation covered the Otakou, Kemp, Banks Peninsula and Murihiku blocks. Throughout his extensive inquiry Mackay continually received complaints from Ngai Tahu that his terms of reference were too restricted. Ngai Tahu wished to raise yet again their wider grievances about the inadequacy of the reserves granted and about those refused. As a consequence Mackay made a supplementary report of 9 July 1891 (M17:I:doc 3).{FNREF|0-86472-060-2|20.4.1|16} Both reports are somewhat discursive and each contains lengthy schedules of population and land holdings (or lack of them) in various areas. Mackay's two reports were conveniently summarised for us by Crown historian David Armstrong (M16:10-15). We are indebted to him for much of the following account of Mackay's findings in the two reports.

20.4.2 The commissioner provided schedules for all the areas in the Otakou, Kemp and Murihiku blocks and for Rakiura. He listed those having no land, those having insufficient land and those with over 50 acres. We note that even in 1890, 50 acres was apparently considered sufficient land to provide a living. We assume this would be on the basis that it was good quality land.

Mr Armstrong calculated that of Ngai Tahu as a whole, Mackay found that 44 per cent had no land, 46 per cent had insufficient, and only 10 per cent had sufficient land, that is, 50 acres or more. The commissioner also recorded that of the half-caste population of Southland the ten acres each for men and eight each for women was "altogether inadequate".

In general Mackay, who visited and took evidence at all the principal settlements, gave a depressing account of the poverty, listlessness and despair amongst Ngai Tahu. Among the reasons for Ngai Tahu's poverty, as noted by Armstrong, were:

- 90 per cent possessed either no land (44 per cent) or insufficient land (46 per cent);

- of the 10 per cent who owned more than 50 acres, few could make a living due to the inferior quality of the soil or the scattered manner in which the lands were situated;

- unskilled seasonal work on which Ngai Tahu relied to supplement their incomes was becoming harder to find because of competition from Europeans. For many their remoteness from European settlements meant work of this kind was unavailable;

- many Ngai Tahu had made contributions of money to aid H K Taiaroa "in seeking redress for the non-fulfilment of the promises made them on the cession of their land to the Crown" (M17:I: 3); and

- the destruction of many Maori fisheries by the drainage of the country and the introduction of European fish species.

On a more positive note Mackay found that:

There are no cases of entire destitution; but that is attributable in a great measure to the compassionate disposition of the Natives towards each other ... and many persons who ought to be relieved by the Government, in conformity with the understanding to that effect when their land was ceded, are maintained by their relatives, which has the effect of keeping them all in poor circumstances. (M17:I:doc 3:4-5){FNREF|0-86472-060-2|20.4.2|17}

In concluding his supplementary report Mackay stated that, notwithstanding anything that might have been urged to the contrary, he saw no justification for changing the views he had expressed and the recommendations he had made in his May 1887 Royal commission report.

The Crown's reaction to the Royal commission reports

20.4.3 Although pressed by Tame Parata in Parliament to act on the reports' recommendations, the native minister, A J Cadman did nothing until December 1892 when he went to Dunedin and met with Ngai Tahu at Otago Heads. At this meeting Cadman indicated that the government would be prepared to make certain Crown lands available to those who had no or insufficient land (M17:I: 8).{FNREF|0-86472-060-2|20.4.3|18} Later in December the minister wrote to Parata advising him of the lands the government now had in mind, amounting to some 90,466 acres, mainly at Te Wae Wae Bay (60,110 acres) and at Tautuku (9320 acres), Lake Wanaka (11,852 acres) and Stewart Island (9184 acres). It appears that Ngai Tahu were not consulted about the location of the land the government was offering.

Mackay and Smith appointed to assign the land

20.4.4 In December 1893 Cabinet appointed Alexander Mackay and Percy Smith, the surveyor-general, to complete a list of landless Maori and assign sections to them within the blocks nominated. In 1894, with the concurrence of government, Parata joined the commissioners to assist in grouping families. The commissioners' jurisdiction extended to all landless Maori in the South Island. The task was an onerous one.

The commissioners issued a series of interim reports. The first of them in 1896 referred to the fact that they had been sitting at different times for about three months during the evening (M17:I:23).{FNREF|0-86472-060-2|20.4.4|19} Their second

interim report was dated 14 June 1897 (M17:II:24).{FNREF|0-86472-060-2|20.4.4|20} It was necessary to compile a complete alphabetical list of all South Island Maori and their respective holdings. This was a monumental task. The commission then met and completed the grouping of the families who were to receive land at Stewart Island, Waiau in Southland, Tautuku in Otago/Southland and Wanaka. This was accomplished by 1895. The commissioners drily noted that with the exception of about four days "the whole of it has been done outside official hours, and in our own time". (M17:II:4:2){FNREF|0-86472-060-2|20.4.4|21}

20.4.5 In their third interim report of 30 June 1898 the commissioners advised that during the year, surveys had been in progress in the district west of the Waiau River (Fiordland) (M17:II:25:2).{FNREF|0-86472-060-2|20.4.5|22} The surveyor reported that of the large block of 60,110 acres, the western part of it, amounting to some 30,000 acres, was quite unsuitable for settlement purposes, being "both mountainous and barren".{FNREF|0-86472-060-2|20.4.5|23} This being so, the eastern part of the block only could be used, and here 1264 individuals had had farms allocated to them, in sizes varying from 80 to 460 acres-altogether 141 farms, covering an area of 29,908 acres. Although the report does not say so, this land was extremely isolated. A further report, their fourth, was dated 16 June 1899 (M17:II:27).{FNREF|0-86472-060-2|20.4.5|24} It noted that two additional blocks were recommended to government to be set aside for landless Maori: a further 7600 acres on Stewart Island, described as fair and about equal in quality to the adjacent block at Lords River already allocated; and a second block of 50,000 acres at Wairaurahiri, some 15 miles to the west of the Waiau block. The latter fronted on to Foveaux Strait. The land was said to be only "of fair quality", but the commissioners expected some to be too broken for settlement, in which case it would be cut out on survey. Even more remote than the Waiau block, the land was covered with forest. Rainfall was very heavy. Some 1828 Ngai Tahu were said to require this land at Stewart Island and Wairaurahiri.

On 20 June 1901, in their fifth report, the commissioners advised that no progress was made during the period 1899-1900 in allocating lands as the Wairaurahiri block survey was not sufficiently advanced (M17:II:28).{FNREF|0-86472-060-2|20.4.5|25} However some progress had been made in 1901. There still remained some 700 people to be provided for, including those at Kaikoura and Marlborough.

The quality of the land allocated

20.4.6 On 18 August 1904, in response to a request by T Parata, the House of Representatives ordered that the reports of the Survey Department relating to the lands set apart for landless Ngai Tahu at Waiau, Lords River (Stewart Island), Tautuku and Wairaurahiri be tabled. They made depressing reading. The Crown historian, David Armstrong, conveniently summarised the main features (M16:38-41). The tribunal reproduces here some of his comments and citations from the various reports.

Alton district

20.4.7 John Robertson, who surveyed the Alton district, reported on 10 September 1899. The roads were laid off (but not formed) over fairly level country which was wet and boggy in places. The soil on the beach front sections was good but the land

deteriorated inland. Timber was relatively plentiful but the ground was generally of a broken nature.

J H Treseder, the district road engineer, advised that the lack of access and market for produce made the sections of "very little value":

There are one or two sections more that could be settled upon, but taken as a whole the country is not at all suitable for farming purposes, as the ground is pretty broken up ... a great portion of the land is covered with moss of a depth of from 6 in. to 18 in., and the soil is mostly clay. ... the climate is very wet ... I consider the land unsuitable for the purpose for which it was set aside, being far too rough and broken and soil of a poor nature. (M17:II:29:2){FNREF|0-86472-060-2|20.4.7|26}

The county engineer, A McGavock, reported that with the exception of some sections, portions of which were first class, the bulk of the land was not fit for settlement, being clay subsoil covered with moss. The country was very broken and the cost of roading would be considerable. He added:

For settlement purposes I consider they are almost useless, and I am of opinion that were the Government to offer them for nothing, and undertake to give tenants access to the different sections, it would be impossible for settlers to make a living. (M17:II:29:2){FNREF|0-86472-060-2|20.4.7|27}

The chief surveyor for Southland reported for the year ending 31 March 1903. He referred to an inspection of the survey operations beyond the Waiau River (in Fiordland) known as the "Landless Natives" block:

I am sorry to say that a large proportion of this land is of little value, being mostly carpeted with a covering of moss varying from 12 in. to 24 in. deep, then densely over-grown with valueless birch timber with occasional patches of fair red and white pine, and a little sprinkling of totara; but owing to the inaccessible nature of the country the last-mentioned timbers are of no commercial value. Taking the inaccessible nature of the country into consideration, its excessively wet climate, and the poor quality of the land, I fear that the selection has not been all that could be desired for settlement purposes or for landless Natives. (M17:II:29:3){FNREF|0-86472-060-2|20.4.7|28}

Lords River, Stewart Island

20.4.8 On 2 September 1904 John Hay, commissioner of Crown lands, Invercargill, reported that the land set apart at Lords River was densely covered with bush, some of which was suitable for sawmilling. The soil he classed as generally from fair to good. He considered the land suitable for the purpose for which it had been surveyed. One great advantage from the Maori point of view was the good fishing-ground in the immediate vicinity and the excellent harbour.

Tautuku

20.4.9 E O'Neill, a Crown lands ranger, on 17 November 1903 reported that the sections on the south-east coast had a proportion of milling-timber. They were rough,

broken, bush sections with a fair aspect, generally about 23 miles from a proposed new railway terminus at Ratanui and within one mile of a school and post office.

Wairaurahiri

20.4.10 This block was extremely remote, being well to the west of the Waiau River in Fiordland. Commissioner Hay reported on 13 July 1903:

In January, 1902, I walked through this block from the coast along centre road-line to Lake Hauroko,... In this distance there are no doubt small patches of fair land, but undoubtedly the area of such is so infinitesimal that they are not worth consideration. There is also some fair timber in places, but it is of no commercial value owing to the inaccessible nature of the country....

It will now be seen from what I have said... that apparently an error of judgment has been committed in having the land set aside and surveyed for settlement purposes. (M17:II:29:4){FNREF|0-86472-060-2|20.4.10|29}

Separate reports were made on the land east and west of the Wairaurahiri River.

The eastern side

C Otway, surveyor, commented generally on this land which had been surveyed by T G Lilliecrona:

The block as a whole is exceedingly difficult of access, the distance from its centre to the formed road at Waiau Mouth being thirty-five miles. The timber in places is fairly suitable for milling purposes, but milling operations could not be successfully carried on for want of proper access by road, while access from the sea is out of the question, except on very rare occasions. The land, if cleared, would grow grass fairly well, but clearing would be a difficult undertaking owing to the peaty and mossy nature of the surface, which, being always wet and damp, would make it impossible to secure a good burn.

After three years experience of this locality, I am of opinion that the rainfall is as great as, if not greater, than that of any other part of New Zealand. It is also doubtful whether grass would last very well in such a country.

The conditions under which settlement would have to progress make this locality quite unsuitable for Native occupation, while the very inferior quality of the soil generally makes it unfit for settlement of any kind. (M17:II:29:5){FNREF|0-86472-060-2|20.4.10|30}

The western side

Otway's general comments were:

As a whole, this block is exceedingly difficult of access, the distance from Papatotara Post-office varying from thirty-three to fifty-five miles, twelve miles of which is along the beach, and the remainder over a rough and broken track.

The timbers in places along the coast and other parts of the block are fairly suitable for milling proposes, but milling operations could not be successfully carried on for want of proper access by road, while approach by sea, owing to danger in effecting a landing, could not be taken into account. The country, if cleared, would carry grass very well, but clearing would be a difficult and anxious undertaking, owing to the exceptionally wet climate, and the peaty and mossy nature of the surface, which, being always wet and damp, would make it next to impossible to secure a good burn. It is also doubtful whether grass, when grown, would last very well in such country.

As regards the climate, I may say that, after over three years' experience, I have found the rainfall excessive, and consider it as great as, if not greater than, that obtaining in any other part of the colony.

With reference to prices, I have taken 5s. per acre as a basis of valuation, but consider that this basis is much too high, my personal estimate of the value of the land being an average of about 1s. per acre.

My remarks given in the report on the [east] block surveyed by Mr. T. G. Lilliecrona with reference to its suitability for Native occupation or settlement apply equally to this block. (M17:II:29:6){FNREF|0-86472-060-2|20.4.10|31}

20.4.11 It is apparent from these various reports that apart from the land on Stewart Island and to a lesser extent at Tautuku, the bulk of the land so laboriously surveyed was extremely remote and largely worthless for the settlement of landless Ngai Tahu. While the land no doubt had some limited value for timber-milling, its remoteness and the absence of roads meant that even this activity would be severely restricted. Although Stewart Island was accessible by sea it entailed a journey across dangerous waters to one of the most isolated places in New Zealand.

Mackay and Smith's final report

20.4.12 Meanwhile, and despite the apparent futility of their enormous labours, very largely in their own time, the commissioners completed their work. They furnished their final report on 28 September 1905 (M17:II:31).{FNREF|0-86472-060-2|20.4.12|32} Among the reasons they gave for their unavoidable delay in completing their work the most important was the absence of suitable blocks of land in which to allocate the claims:

In the end, lands have actually been found to meet all requirements as to area, but much of the land is of such a nature that it is doubtful if the people can profitably occupy it as homes. (M17:II:31:1){FNREF|0-86472-060-2|20.4.12|33}

The tribunal can only wonder why so much labour was expended, and in their own time, by the two commissioners, when it was apparent to them that it was a largely fruitless exercise. The various surveyors and Crown land commissioners' reports had been tabled in the House of Representatives. No doubt their contents were known to Members of Parliament, the government and the commissioners. The tribunal can only conclude that Mackay and Smith had been directed by the Crown to complete the exercise despite its futility. Or did the Crown seriously believe that by making this gesture it could wash its hands of any future obligation to Ngai Tahu?

20.4.13 The commissioners made a number of other points in their report:

- They considered it necessary that legislation be passed so that titles allocated to the land could be issued.

- They had included half and quarter caste Maori in their allocations.

- Their brief covered the whole of the South and Stewart Islands.

- On instructions from the Crown children born since 31 August 1896 were not included in the considerations.

- Not all those provided for were entirely landless, but all who were landless or who had less than 50 acres if adult, or 20 acres if minors were allocated land to bring their holdings up to these amounts. This was done on the authority of government as this acreage was considered to be a more appropriate area and more in conformity with the original intention:

that land of a sufficient area for their future wants should be set apart for their maintenance. (M17:II:31:1){FNREF|0-86472-060-2|20.4.13|34}

- The commissioners allocated land to Ngai Tahu south of the northern boundary of Canterbury on the basis of the 50 and 20 acre formula. But for those Ngai Tahu north of Canterbury the maximum allocation for adults was 40, not 50 acres. Each eligible child received 20 acres. The commissioners justified this differential treatment because the Ngai Tahu people in Canterbury and south were said to have had a:

special claim to consideration in fulfilment of promises made at the cession of their territory, whereas those to the north had no such rights, and are indebted solely to the generosity of the Crown for the increased area. (M17:II:31:2){FNREF|0-86472-060-2|20.4.13|35}

20.4.14 Mr Armstrong commented on the commissioners' references to "future wants" and "special claims" in the last two quotations as indicating that they, with the concurrence of the government, had begun to see the provision of land for landless Ngai Tahu as a settlement of Ngai Tahu claims. "At no stage", said Mr Armstrong, "was this the reality of the situation" (M16:46). The tribunal would agree with this latter observation. Given the commissioners' conclusion that much of the land allocated was unsuitable for the purposes of settlement we also question whether Mackay and Smith seriously contemplated that it could constitute a settlement of Ngai Tahu's wider claims. Moreover, as Mr Armstrong pointed out, a significant part of Mackay's "final claim" recommendations in terms of "future wants" in his 1887 Royal commission report had been the provision of substantial reserves for endowment purposes. This had never been carried into effect. Indeed it had been ignored, if not rejected, by the Crown. The tribunal agrees with Mr Armstrong that neither Ngai Tahu nor initially the government saw the allocation as anything other than a "compassionate" gesture made to alleviate poverty.

The 1905 land allocations

20.4.15 The commissioners gave the following figures for the area of 142,118 acres allocated to 4064 people, not all of whom were Ngai Tahu:

Block	Persons	a	r	p	
Waiau	1278	44,455	2	1	surveyed
Wairaurahiri	280	10,866	2	33	,,
Tautuku	366	11,615	2	30	,,
Raymond's Gap	8	350	3	15	partly surveyed
Manakaiaua	135	3759	3	20	surveyed
Lords River	241	8724	3	24	,,
Whakapoai (Heaphy River)	38	1600	0	0	,,
Whangarae (Croixelles)	23	934	2	19	,,
Queen Charlotte Sound	166	5701	2	1	,,
Hokonui	772	27,809	0	39	not surveyed
Glenomaru	7	350	0	0	,,
Wanaka	57	1553	2	26	,,
Miritu	9	360	0	0	,,
Tennyson's Inlet	175	6462	3	17	,,
Forest Hill	20	850	0	0	,,
Toitoi River	181	7392	0	4	,,
Port Adventure	308	9340	3	26	,,
Totals	4064	142,118	1	5	

(M17:II:31:2){FNREF|0-86472-060-2|20.4.14|36}

In conclusion the commissioners reminded the government, as they had on an earlier occasion, that their work had been done in their own time quite outside official duties.

Waitangi Tribunal, Department of Justice, Wellington.