

# Ngai Tahu Land Report

## 11 The North Canterbury Purchase

### 11.1 Introduction

Chapter 11

THE NORTH CANTERBURY PURCHASE

#### 11.1. Introduction

It will be recalled that one of the disputed questions in the Kemp purchase of 1848 was the location of the northern boundary. The claimants maintained that the boundary was at Kaiapoi pa. The Crown, that it was at or near the mouth of the Hurunui River. For reasons which we have discussed at length in chapter 8 the tribunal concluded that Ngai Tahu intended to sell the Kaiapoi district up to the Hurunui and that Kemp and Kettle also thought the boundary was at or near the Hurunui. That was where it was shown on the deed map. From there it ran in a north-westerly direction to Kawatiri on the west coast.

As we have also seen, Walter Mantell chose to disregard the deed map and fixed the north-eastern boundary some distance further south, at the site of the old Kaiapoi pa on the south side of the Rakahuri (Ashley) River. Ngai Tahu thereby forfeited any right to select reserves in the extensive area between the Rakahuri and Hurunui Rivers.

Despite immediate protests by Ngai Tahu, the Crown chose not to disturb Mantell's action in fixing the boundary at the Kaiapoi pa. As a result, Ngai Tahu title to portions of the Canterbury Association block (created in 1850, with its northern boundary at Motunau) was not extinguished before extensive areas had been sold by the association and the Crown to European settlers.

Ngai Tahu were incensed at the boundary being fixed by Mantell at Kaiapoi pa. They saw it as a totally unjustified recognition by the Crown of Ngati Toa mana over an area which they regarded as theirs. They vigorously disputed the validity of the Wairau purchase in so far as it purported to dispose of land which Ngai Tahu said belonged to them. Very soon after Mantell fixed the boundary a delegation of Ngai Tahu from Kaiapoi went to Wellington and made clear their protest to Lieutenant-Governor Eyre. As will be seen in our later discussion, in the ensuing years they continued to protest and assert their manawhenua over not only North Canterbury but the Kaikoura district also.

While Governor Grey made some tentative moves to settle the claim nothing positive was done. Lieutenant-Governor Eyre left New Zealand in April 1853 and Governor Grey departed for South Africa at the end of the year. Colonel Wynyard held office as administrator from January 1854 until Governor Browne's arrival in September 1855. In the interim the provincial councils had been established and in the absence of a strong central government became dominant. They had responsibility for land disposal on behalf of the Crown. Nothing further was done by government about Ngai

Tahu complaints until Governor Browne visited Lyttelton in 1856. Following representations from Ngai Tahu he instructed the chief land purchase commissioner, Donald McLean, to investigate their grievances.

In the meantime, there was steady and growing encroachment of settlers on the land from the old Kaiapoi pa site northwards to Kaikoura and beyond. Some held extensive areas under pasturage licences, others had acquired the freehold. By the time McLean's agent, J G Johnson, began an investigation early in 1856 following Browne's instructions, the provincial governments of Canterbury and Nelson had already leased or sold large areas between the Rakahuri and Wairau Rivers. In August 1856 W J W Hamilton assumed responsibility for settling the North Canterbury purchase. Because of difficulty in obtaining the services of an interpreter, negotiations were delayed until February 1857. On 4 February 1857 Hamilton and the interpreter, the Reverend J Aldred, met at Kaiapoi with Ngai Tahu from Port Levy, Rapaki and Kaiapoi. Principal rangatira from Kaikoura, Wainui and Wairewa were also there. The following day, 5 February 1857, a deed was signed. Ngai Tahu surrendered to the Queen the lands from Kaiapoi northwards to the Waiau-ua River, and on to the sources of the Waiau-ua, the Hurunui and the Rakahuri Rivers. Hamilton estimated the block at 1,140,000 acres. The purchase price was stated to be £200, but Hamilton undertook to request the governor to increase the price to £500. This was later agreed to. Although Ngai Tahu sought reserves at Hurunui and Motunau these were refused by Hamilton. His ostensible reason (given to Ngai Tahu) was that they had ample reserves elsewhere under Kemp's purchase. The real reason (given to McLean) was that the block was almost entirely occupied by European pastoralists and serious difficulties could arise if he set aside reserves for Ngai Tahu.

The Crown, during the course of our proceedings, conceded that it should have taken steps to clarify the situation arising out of the Kemp purchase and that it should have allocated reserves in North Canterbury before it was overrun by European settlers. The Crown also accepted that it acted in breach of the Treaty in failing to make provision for adequate reserves when Hamilton purchased the North Canterbury block in February 1857.

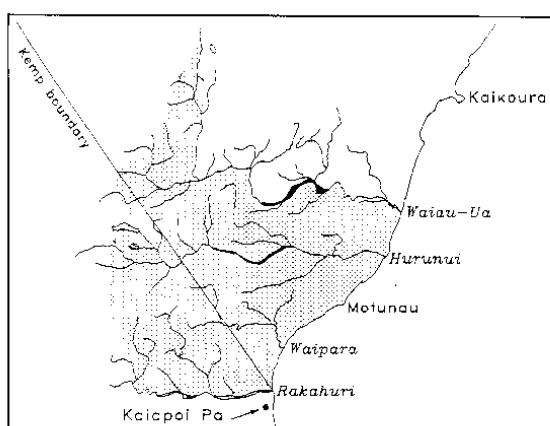


Figure 11.1: The North Canterbury purchase. Because there were no maps of the purchase the boundaries are an approximation. One interpretation of the deed could have allowed the northern tributaries of the Waiau-Ua to have been included but this would seem unlikely given the estimates of the area of the block given at the time.

# Ngai Tahu Land Report

## 11 The North Canterbury Purchase

### 11.2 Statement of Grievances

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The claimants provided a single summary of grievances relating to both the North Canterbury and Kaikoura blocks. We set out here those grievances which relate in whole or in part to North Canterbury. The remainder will appear in our next chapter on the Kaikoura purchase.

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-entirely in the case of the North Canterbury 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 at Hurunui and Motunau in the North Canterbury Block [...] to be excluded from the sale or reserved exclusively for their use, in breach of Article II of the Treaty.
4. That the Crown failed to provide any reserves for Ngai Tahu in the North Canterbury Block.
5. [Relates solely to the Kaikoura block].
6. That the Crown in the North Canterbury Block under the Land for Settlements Acts for the benefit of landless Europeans, from November 1895 to May 1897 resumed the Patoa, Ashley Gorge, and Horsley Downs Estates [...] but failed to do likewise for Ngai Tahu, in breach of Article III of the Treaty. (W5)

# Ngai Tahu Land Report

## 11 The North Canterbury Purchase

### 11.3 Background to the Purchase

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11.3.1 As we have seen in our consideration of the Kemp purchase, the true location of the northern boundary gave rise to much controversy. The claimants strongly urged that the north-eastern point was at the old Kaiapoi pa site; the Crown disputed this and contended for the Hurunui river mouth near the 43rd parallel of latitude, as shown on the Kemp deed map. We do not propose to go over this well-trodden ground again. The tribunal concluded that, given their over-riding concern to assert their manawhenua over the Kaiapoi district and further north, Ngai Tahu would not have agreed in their negotiations with Kemp that the Ngati Toa purchase line under the Wairau purchase came to Kaiapoi pa. We believe that Ngai Tahu intended to sell the Kaiapoi district up to the Hurunui (8.5.11). The tribunal considers that it was Mantell's subsequent action, later in 1848, in asserting arbitrarily and categorically that the north-eastern boundary line was at Kaiapoi pa, which immediately triggered Ngai Tahu's strong and concerted objection. They were not prepared to concede that Ngati Toa had manawhenua over the Kaiapoi district. Just as they were not prepared to concede this in their negotiations with Kemp, nor were they prepared to accept Mantell's subsequent unilateral action. That Kemp and Kettle believed that the north-eastern boundary was near the 43rd parallel of latitude and probably at the Hurunui river mouth is demonstrated by the deed map.

Ngai Tahu protests against the Ngati Toa sale of the Wairau

11.3.2 Both shortly before and for some years after the Kemp purchase, Ngai Tahu protested to the governor and his officials that Ngati Toa had no right to sell land south of the Wairau valley. We do not propose to record every known instance of their protests but will outline some examples.

The first recorded protest occurred during Grey's visit to Akaroa in February 1848, some three months before the Kemp purchase. As we have earlier noted, Matiaha Tiramorehu recorded in his letter of 22 October 1849 to Eyre that in the course of his February meeting with Ngai Tahu, Governor Grey gave assurances that "(the payment for) Kaiapoi should not be given to the Ngatitoas, but that for Kaikoura was already gone to them" (L9:23). {FNREF|0-86472-060-2|11.3.2|1}

Soon after Mantell fixed the north-eastern boundary of Kemp's purchase at Kaiapoi pa, a Ngai Tahu delegation went to Wellington in September 1848 to protest to Eyre. Mantell also promised he would advise Eyre of their grievance. He told Eyre that Ngai Tahu asserted the land north of Kaiapoi pa was never occupied by Ngati Toa. Secondly, that Ngai Tahu had never ceased to live at or near the disputed land and, thirdly, that subsequent to the last inroad of Ngati Toa, Ngai Tahu had successfully

conducted an expedition against them which had not been avenged (M3:24-25). {FNREF|0-86472-060-2|11.3.2|2} There appears to be no record of what transpired between Eyre and the Ngai Tahu representatives at the September meeting.

11.3.3 In December 1849 Matiaha Tiramorehu again wrote to Governor Grey requesting part of the payment for the land north of Kaiapoi claimed by Ngati Toa (M11:1-2). {FNREF|0-86472-060-2|11.3.3|3} A month later Tikao and others wrote to the governor claiming payment for the land between Kaiapoi and Wairau (A8:II:7). {FNREF|0-86472-060-2|11.3.3|4} Tiramorehu's letter was referred to Mantell, who on 12 March 1850 reported to the colonial secretary that he understood from Eyre that Grey had decided in January 1850 not to compensate Ngai Tahu because the land had already been purchased from Ngati Toa. For his own part Mantell expressed the opinion that Ngai Tahu's claim was valid against Ngati Toa, who he thought to have no right to the disputed district (M11:3-4). {FNREF|0-86472-060-2|11.3.3|5}

Eyre did not report to Governor Grey until 4 July 1850, who on receiving it in August instructed the papers to be shown to Lieutenant Servantes. Servantes, who had acted as interpreter at the Wairau purchase, was to explain why the nominal boundary of Ngati Toa had been extended to Kaiapoi (M11:5-6). {FNREF|0-86472-060-2|11.3.3|6} As we have seen in our discussion of the Kemp purchase (8.3.6), Servantes noted that doubts were entertained at the time of Ngati Toa having an undisputed title to the land further south than Kaikoura, but it was thought advisable to include the land as far as Kaiapoi in order to extinguish whatever claim Ngati Toa had to it. On 17 October 1850 Grey sent Eyre a copy of Servantes' memorandum. He concluded that, should Eyre think that Tiramorehu and his people were entitled to some payment for the land to the south of the Kaikoura range, he should arrange, with the advice of his Executive Council, for this to be done (L9:550-551). {FNREF|0-86472-060-2|11.3.3|7} Eyre, after consulting Mantell, obtained the concurrence of the Executive Council to £50 being paid to Ngai Tahu "for the relinquishment of their alleged claims to the country between Kaikoura and Kaiapoi" (M11:7-11). {FNREF|0-86472-060-2|11.3.3|8} No record has been found to show this payment was in fact made, although Grey approved the proposal in January 1851 (M11:12). {FNREF|0-86472-060-2|11.3.3|9}

11.3.4 Meanwhile, in January 1850, W J W Hamilton wrote to William Fox, the New Zealand Company principal agent, warning him that Ngai Tahu of Kaiapoi, Amuri, Kaikoura and Port Levy would object to the country north of the Kowai River as far as Kaikoura being occupied by settlers. They claimed the land had not been purchased from them (L9:I:31). {FNREF|0-86472-060-2|11.3.4|10} James Kelham, the New Zealand Company accountant in Wellington, in April 1850, writing on behalf of Fox to his London superiors reported that:

The assertions of the Natives that some of the country between the Kaikoura Mountains and Port Cooper Plains has not been purchased, may have some foundation. I heard the same story when I was at Kaikoura Peninsula in the "Acheron"; but the district is included in the Nelson grant, which was issued under the purchase made by Sir George Grey, in person, from Rauperaha and Ngatitoas. The few Natives resident in it assert that Rauperaha had no right to sell, having never fully conquered the inhabitants. Into the merits of such an assertion I am not prepared to

enter; but the question is of no immediate importance, and may, I have no doubt, be settled at any time for a very small sum of money, if not without. (L9:30) {FNREF|0-86472-060-2|11.3.4|11}

He enclosed a copy of Hamilton's letter to Fox. The London office in turn expressed its concern to Earl Grey, the British colonial secretary, who on 7 October 1850 instructed Governor Grey to take all necessary steps to ensure the Canterbury Association obtained a clear title to the land which had been reserved for their colonising operations (L9:29). {FNREF|0-86472-060-2|11.3.4|12} We are unaware of any positive action taken by Grey as a consequence of these instructions.

11.3.5 In March 1852 Governor Grey visited Canterbury. At Lyttelton he met with a considerable number of Ngai Tahu who claimed compensation from the government for land purchased to the north of the Kemp block. According to the newspaper report, Ngai Tahu were satisfied with Grey's response (T2:68). {FNREF|0-86472-060-2|11.3.5|13} Some years later J G Johnson was to say that Grey had offered Ngai Tahu œ100 for their land north of the Ashley on that occasion (A8:II:11). {FNREF|0-86472-060-2|11.3.5|14} If so, nothing came of it, for on 27 August 1852 Poihipi Te Arorahui, a leading spokesperson for Ngai Tahu at Kaiapoi, wrote to Grey demanding œ400 for the land north of Kaiapoi. Failing satisfaction, he threatened that European settlers would be removed from land they were occupying at Kaiapoi, Motunau, Hurunui and elsewhere (T2:76-77). {FNREF|0-86472-060-2|11.3.5|15} Professor Ward noted that 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|11.3.5|16}

11.3.6 The mounting discontent of Ngai Tahu at the failure of the Crown to recognise their claim was revealed by the school teacher at Kaiapoi, Henry Fletcher. He advised that, if they did not receive a satisfactory answer from the governor, Kaiapoi Ngai Tahu intended to take matters into their own hands. They would compel payment by force as they had the necessary ammunition and promises of help from Ngai Tahu on Banks Peninsula and the Ninety Mile Beach. FitzGerald, the provincial superintendent, advised the resident magistrate, Charles Simeon, that additional police might be required. Simeon passed on the reports to George Grey, who gave instructions that any acts of violence should be reported immediately so that "effectual means may be taken for at once crushing such acts of insubordination" (T2:85-86). {FNREF|0-86472-060-2|11.3.6|17} We have no evidence that Ngai Tahu carried out their threats. They later claimed however that at Grey's request they had refrained from evicting the Europeans who settled north of Kaiapoi (A8:II:21). {FNREF|0-86472-060-2|11.3.6|18} A year later Simeon again reported that Ngai Tahu were continuing to agitate their claim and he recommended that something should be done to settle the matter. He added that he had never been able to understand the nature and extent of their grievance (T2:87-88). {FNREF|0-86472-060-2|11.3.6|19} Henry Tacy Kemp, in his role of native secretary of New Munster, noted that there had been several such applications from members of the Ngai Tahu tribe. In his view, Ngai Tahu could not be recognised as claimants as they had been driven off by Ngati Toa, who had long since sold the land in question to the government (T2:88). {FNREF|0-86472-060-2|11.3.6|20} No further action was taken by the Crown.

11.3.7 The Ward report conveniently summarised the outcome of Ngai Tahu's repeated protests as follows:

Although the evidence is fragmented and somewhat confused, it does seem that during 1850-2 Ngai Tahu achieved limited government recognition of the fact that they had rights north of Kemp's purchase but this recognition did not improve their position with regard to the land. Apart from the inquiries made as a result of Tiramorehu and Tikao's letters the government does not seem to have perceived a need for an inquiry into the extent of these rights. Nor was the validity of the Nelson Crown grant and the later transfer of land claimed by the tribe to the Canterbury Association questioned. That is, this limited official recognition of Ngai Tahu interests does not seem to have translated into any thorough-going investigation of their rights, or halted the process by which they were being dispossessed of their land. No further investigation was undertaken until 1856 when the claim was brought to the attention of John Grant Johnson who was negotiating with the Kaiapoi and Akaroa hapu over their outstanding claims on Banks Peninsula. (T1:265)

The Crown historian Graham Sanders suggested that during the years 1850-1856 there was a "hiatus" in land purchases. He attributed this to what he described as the whole structure of administration and government being in seeming disarray until the mid-1850s (M7:15-16). Not surprisingly, this contention was vigorously opposed by the claimants. They correctly pointed out that Grey had three years in which to act on Ngai Tahu protests until his departure at the end of 1853 (O47:5). Instead, European settlement steadily increased. Counsel for the Crown conceded in his final address that the Crown should have taken steps to clarify the Kemp purchase and should have allocated reserves in North Canterbury before it was overrun with European settlers. Instead, as the Crown admitted, the matter was not attended to until the new governor, Browne, visited Lyttelton in January 1856 (X2:75-76).

The Crown's recognition of other claims

11.3.8 That Mr Sanders' contention of a hiatus in land purchases was misconceived is made only too clear by the Crown's very considerable activity in relation to claims to the north of Ngai Tahu territory. In our later chapter on the Arahura purchase we recount in some detail the succession of Crown purchases commencing with the purchase of the remaining Ngati Toa rights in Te Wai Pounamu for œ5000. This was followed in successive years through to 1856 with other purchases instigated by Donald McLean, purporting to extinguish the interests of Te Atiawa, Ngati Tama, Ngati Rarua and Rangitane in Te Wai Pounamu (13.3.3). The sum of œ6200 was paid out. As Professor Ward noted, these purchases show that where the Crown had the commitment to investigate and extinguish particular claims it could find the resources to do so (T1:266). But this commitment fell short of investigating and settling Ngai Tahu's outstanding claims.

Settlers progressively occupy North Canterbury and Kaikoura

11.3.9 Valuable evidence commissioned and called by the Crown was given on European settlement north of Kaiapoi by David J Alexander. Mr Alexander described European settlement in the area from the Ashley River northward to Parinui o Whiti (White Bluffs) prior to the North Canterbury purchase in 1857 and the Kaikoura

purchase in 1859. We here record, from a wealth of detail, the principal points made by Mr Alexander.

## Whalers

11.3.10 The first record of shore-based whaling stations on the North Canterbury-Kaikoura coast is in 1842. Between 1842 and 1846 whaling stations were active at Motunau, Amuri Bluff, Rangi-inu-wai (Riley's Rock), South Bay, Waiopuka and Waipapa. Thereafter only the Riley brothers at Riley's Rock, and Fyffe at Waiopuka continued. Mr Alexander thought it likely that all the European whalers would have made a payment to the local Maori people for the use of their station sites (M5:4-7).

## Settlers

11.3.11 The Nelson settlement was founded by the New Zealand Company in 1842. The company found it had sold more land in advance than was available so it looked beyond the hills into Marlborough. A company surveyor, Cotterell, sent to report, found south of the Awatere River (in an area later to become part of the Flaxbourne run):

a beautiful grassy plain, richly covered with grass, clear of all bushes and fern, running as far as the eye could reach... with low undulating hills to the south-east all grass. (M5:8) {FNREF|0-86472-060-2|11.3.11|21}

Cotterell's enthusiastic report on this country persuaded the New Zealand Company to satisfy its need for more land in the Wairau and Awatere valleys. The attempted survey in this district resulted in the Wairau conflict in which Cotterell and twenty-one Europeans and four Maori died. As a consequence of this tragedy European settlement was suspended in the area for three years. Mr Alexander noted that only after Commissioner Spain's report and the Wairau purchase of March 1847, did the settlement regain its impetus (M5:7-8).

Professor Ward noted that the 1850s and 1860s were to be the years of the pastoralist, not the whaler. But in Kaikoura these two activities were at first combined by Robert Fyffe's operations at Waiopuka (T1:267). Fyffe was engaged in sheep-farming by 1844-45. In March 1851 however, he applied for a pasturage licence to protect his rights in the land he was grazing. When Fyffe was drowned in April 1854 he left assets which included four whaleboats, a dozen wharves and sheds at Waiopuka and 2000 head of stock, including a milking herd of 192 goats (M5:13). {FNREF|0-86472-060-2|11.3.11|22}

In 1847 Charles Clifford and Frederick Weld (later to be premier) negotiated a lease direct with Te Puaha of Ngati Toa and a signatory to the Wairau deed, giving grazing rights to an extensive area at the north end of the subsequent Kaikoura purchase from White Bluffs to Kekerengu. The first 3000 stock arrived at Flaxbourne in 1848. By 1850 there were 11,000 sheep on the property. Clifford and Weld applied for a pasturage licence and received one of the first issued by the New Zealand Company, on 1 January 1849 (M5:14). {FNREF|0-86472-060-2|11.3.11|23}

A third early run was established by three Greenwood brothers at Motunau. They had previously been occupying Purau Bay in Port Cooper. It is thought they built a homestead at Motunau in 1845 and cattle were driven there from Banks Peninsula in September 1847. By January 1850 the property was carrying some 1450 sheep, 140 head of cattle and 40 pigs (M5:14-16).

These three sheep runs were the only ones in operation before 1848. Following the Wairau purchase and the issue of the Nelson Crown grant, Nelson settlers seeking land found it in the Awatere valley. Some obtained leases, others the freehold. With the founding of the Canterbury settlement in 1850, run-holdings moved into the North Canterbury and Kaikoura blocks (M5:16). By the time of the purchases from Ngai Tahu most of the land, including the valuable coastal areas, had been occupied by European settlers for at least five years in the case of the North Canterbury purchase, and at least three years in the case of the Kaikoura purchase (M5:39-40). A substantial quantity had been freeholded by the time of the respective purchases especially in the North Canterbury block and in the Amuri and Awatere/Flaxbourne districts of the Kaikoura block. Mr Alexander referred to the requests made by Ngai Tahu to Hamilton for reserves at Motunau and Hurunui, presumably at the mouth of each of these rivers. Both areas were within the first runs to be taken up, Motunau mouth being on Greenwood's Motunau run and Hurunui mouth being the site of a proposed township (M5:29-30). A series of maps of the North Canterbury and Kaikoura blocks shows the steady increase in land taken up by European settlers from 1846 to 1859. In 1846 only the Motunau run appears; by 1859 the whole of the North Canterbury block is taken up by settlers and only an area in and adjacent to the Kaikoura peninsula is excepted in the Kaikoura block (M6:14-25). See figure 11.2.

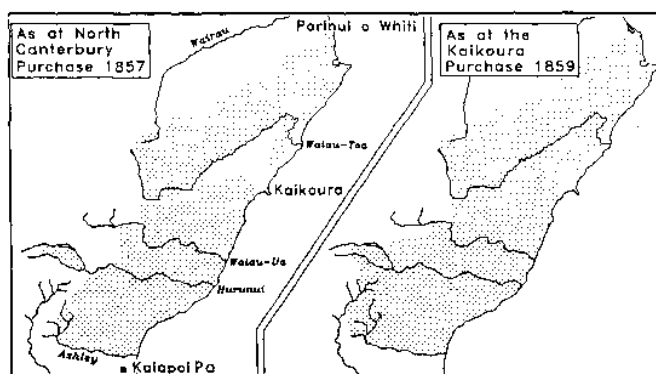


Figure 11.2: Both the North Canterbury and the Kaikoura purchases were almost completely occupied by pastoralists at the time when the Crown negotiated the sales with Ngai Tahu. By 1859 only the area around the Kaikoura peninsula was not under pastoral license or had not been freeholded.

## Commissioner Johnson's investigations

11.3.12 In January 1856 Governor Thomas Gore Browne visited Lyttelton. On 12 January the governor met the Ngai Tahu people belonging to the district. He was addressed by Paora Tau, who complained that Sir George Grey had recognised the claim of Ngati Toa to land in the Kaiapoi district which belonged to Ngai Tahu. The governor promised that he would arrange for Donald McLean, the chief land purchase commissioner, to investigate the matter and pay them a visit (T2:62). {FNREF|0-86472-060-2|11.3.12|24}

In April 1856 McLean sent John Grant Johnson as a special commissioner to Canterbury. But his instructions were to complete Mantell's unfinished purchase of the Akaroa block and nothing was said about the land north of Kaiapoi which Paora Tau had complained about to Governor Browne in January. Whether this was because the governor had failed to carry out his promise or McLean had misunderstood him we do not know (L3:III:56). {FNREF|0-86472-060-2|11.3.12|25} However, Johnson reported to McLean on 11 May 1856 that Ngai Tahu made it clear to him that if the Crown was not prepared to recognise their grievance over North Canterbury they would use their influence to prevent a settlement of the Akaroa question. Johnson advised McLean that as far as he could learn Ngai Tahu's claim to be compensated for the land north of Kaiapoi was a just one. He recommended their claim be met by a payment of  $\text{œ}150$ . When, as he put it, justice had been done to the Kaiapoi Ngai Tahu, he could then use their influence in settling the Akaroa block purchase (L3:III:56-57). {FNREF|0-86472-060-2|11.3.12|26}

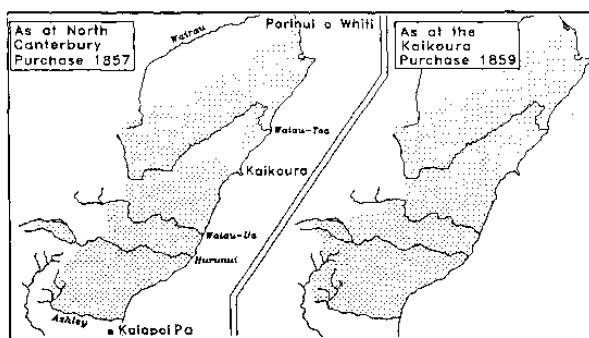


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McLean accepted Johnson's advice and obtained the governor's agreement to  $\text{œ}150$  being paid in settlement of the Ngai Tahu claim for the land north of Kaiapoi. He acknowledged "the merit and nature of the Kaiapoi claim" which he said had "always been a source of discontent" with Ngai Tahu (L3:III:57). {FNREF|0-86472-060-2|11.3.12|27} And so Johnson was authorised to settle with Kaiapoi Ngai Tahu (L3:III:57). {FNREF|0-86472-060-2|11.3.12|28} The Ward report noted in relation to this action by the Crown that:

It cannot be said any new or compelling evidence had been presented for a change of policy by the Crown, yet McLean's decision to act was a turning point. It implicitly called into question the Crown record of inaction on Ngai Tahu representations of the past seven or eight years. (T1:272)

11.3.13 As it happened, Johnson returned to Auckland without entering into negotiations over either the North Canterbury or Akaroa blocks. It was left to Hamilton to settle both these purchases. As a result of Johnson's investigations and report, McLean accepted, as we have seen in our discussion of the Akaroa block purchase, that Ngai Tahu were entitled to be paid for the Akaroa block. In a memorandum of 13 August 1856 he also noted:

with reference to the unextinguished claims at Kaiapoi, a sum of  $\text{œ}150$  should be paid to the Natives, conditionally, that they first settle the Akaroa claims. (A8:II:12){FNREF|0-86472-060-2|11.3.13|29}

Hamilton was instructed by McLean on 16 August 1856 to act for the Crown in respect of both the Akaroa and North Canterbury block purchases (A8:II:13). {FNREF|0-86472-060-2|11.3.13|30} As we have seen, he completed the Akaroa block purchase on 11 December 1856.

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*Waitangi Tribunal, Department of Justice, Wellington.*

# Ngai Tahu Land Report

## 11 The North Canterbury Purchase

### 11.4 The Purchase

#### 11.4. The Purchase

The negotiations

11.4.1 Although Hamilton had clear instructions to allow 800 acres by way of reserves in the Akaroa block purchase, no mention was made of reserves for Ngai Tahu in the North Canterbury block. He was simply instructed to pay the Ngai Tahu claimants £150. Professor Ward commented that:

In this important respect the terms of the transaction appear to have been arrived at by the Crown without reference to the wishes or interests of Ngai Tahu. (T1:272)

When reporting to McLean on 11 December 1856 the successful completion of the Akaroa purchase, Hamilton referred to the forbearance of Ngai Tahu towards the Crown which permitted trespassing by settlers on the Akaroa block. He went on to say:

And it is a fact worthy of notice that so early as the year 1850, when the Canterbury Association's Surveyors first crossed the Ashley (Rakahauri), the Kaiapoi Natives complained to me that the land north of it had never been sold by them. The Kaikoura Maoris had previously asserted the same thing to me. I represented the matter officially to the New Zealand Company's Chief Agent. But until Mr. Johnson's arrival here no official enquiry into the case seems ever to have been made. (A8:II:15){FNREF|0-86472-060-2|11.4.1|31}

11.4.2 Because of difficulties in arranging for the interpreter, the Reverend J Aldred, to be available to go to Kaiapoi, Hamilton was not able to arrange a meeting with Ngai Tahu until 4 February 1857. When reporting to McLean the outcome of his discussions, on the following day, Hamilton enclosed a copy of his "minutes of proceedings". These succinctly record the progress of his negotiations with Ngai Tahu and his misgivings about the deed of purchase which was signed that day.

Hamilton recounts meeting with Ngai Tahu from Port Levy, Rapaki and Kaiapoi. Also present as having some claim to share in the payment, but not as enjoying any positive rights of ownership, were Whakatau, chief of Kaikoura, and some Akaroa chiefs. They took no part in the proceedings. Hamilton commenced by offering "from the Governor £150 for the land north of Kaiapoi" (A8:II:20){FNREF|0-86472-060-2|11.4.2|32} Ngai Tahu responded by requiring reserves at Hurunui and Motunau, to which Hamilton replied:

I had no instructions to entertain any question of reserves in this case. Maoris urged want of room for their increasing stock, insisting on a new reserve, also on the fact of my agreeing to one at Wairewa, without having instructions. Replied: Wairewa was agreed to, because Mautai and his people were in occupation, and would have no other place to reside on and cultivate; but besides their separate reserves at Rapaki, Purau, and Port Levy, all very ample, they had at Kaiapoi about 2640 acres, twice the quantity of all the Akaroa reserves for a population not much larger. After many long speeches, my offer positively and absolutely rejected by acclamation and counter-offer made to settle the matter then and there, first for œ500 cash; or second for the œ150 named, and an ample reserve. (A8:II:20).{FNREF|0-86472-060-2|11.4.2|33}

Ngai Tahu urged on Hamilton the value and extent of their land. They drew his attention to the price the Crown had been selling it for, which proved the reasonableness of their offer. The land, they said, had been stolen from them. They challenged Hamilton to point out any houses, burying places, pa or any signs of Ngati Toa's ownership. "South of Kaiapoi", they said, "all had been fairly bought". The Crown's "ownership was unquestioned" (A8:II:20).{FNREF|0-86472-060-2|11.4.2|34}

Ngai Tahu then offered to accept œ150 as a part payment of the œ500, leaving it to the good faith of the governor to pay the remaining œ350. Hamilton declined "such a loose transaction, as well on their account as on that of the Government". But on his own responsibility he added œ50 to the œ150 previously offered and said he would pay the œ200 at once. After some three hours Ngai Tahu rejected this offer. Hamilton suggested they meet the next day when they should let him have their proposal which he would convey to the governor (A8:II:20).{FNREF|0-86472-060-2|11.4.2|35}

The next morning, 5 February 1857, Ngai Tahu renewed their offers of the previous day "dwelling strongly on the necessity for their having a large reserve". Hamilton again declined them. Ngai Tahu then expressed their willingness to accept œ200 and no reserves, provided Hamilton would give a written guarantee that he would represent their case strongly to the governor and use his influence to obtain the full sum of œ500. Hamilton was at first unwilling to agree to this as he had no assurance that their request would be met. Finally, "Being much pressed", he gave a guarantee that he would "recommend the distribution of œ200 among them all, so soon as the Kaikoura purchase should be completed" (A8:II:21).{FNREF|0-86472-060-2|11.4.2|36} The written guarantee which he gave, dated 5 February 1857, envisaged the œ200 being distributed among all Banks Peninsula, Kaiapoi and Kaikoura Ngai Tahu (A8:II:22).{FNREF|0-86472-060-2|11.4.2|37}

The deed is signed

11.4.3 Twenty Ngai Tahu rangatira signed the deed of purchase on 5 February 1857. They gave up their claim "to all the land at Kaiapoi and on to Waiau-ua and on to the sources of the Waiau-ua, Hurunui and Rakahauri [Ashley]" for the sum of œ200 (see appendix 2.7). The old pa of Kaiapoi at Te Moture was expressly reserved, (this was to implement Mantell's promise made at the time of the Kemp purchase). The area of the land sold to the Crown was estimated by T Cass, chief surveyor, at 1,140,000 acres.

After recording the signatories to the deed and the payment of œ10 to each of the 20 signatories Hamilton went on to report, in reference to his minutes, that:

I should remark that the country ceded has been for several years past almost entirely occupied by ourselves as freehold or sheepwalk. By reserving any new tract for the Maoris, serious complications might be created, and the necessity for reference to the Land Office would delay the purchase greatly. This was my chief reason (not made known to them) for declining their proposal to accept œ150 and a reserve, which otherwise I should have at once agreed to. But, under existing circumstances, it seemed absolutely indispensable to pay a large purchase money and make no reserve. (A8:II:21){FNREF|0-86472-060-2|11.4.3|38}

Hamilton referred to the copy of the guarantee, which he enclosed, saying he should have nominated œ300 instead of œ200. He urged the governor to agree to pay the additional œ300 requested by Ngai Tahu. He attributed the delay of six years or more in obtaining a hearing of their case as the reason why they had been prepared to accept so small a sum as œ200, preferring to grasp what was within their reach rather than risk further delay. Hamilton reminded the governor that about two years previously "one block of this land between Waipaoa and the Hurunui, containing 30,000 acres, was sold by the government for œ15,000 [10 shillings an acre]" (A8:II:21). {FNREF|0-86472-060-2|11.4.3|39}

It will be noted that the ostensible reason given by Hamilton to Ngai Tahu for not granting any reserves was that they had sufficient elsewhere in the Kemp block, especially at Taumutu and on Banks Peninsula. But, as he admitted to McLean, the chief reason (which he did not make known to them) was that the country was almost entirely occupied by European pastoralists either "as freehold or sheepwalk".

11.4.4 When McLean received Hamilton's report on the purchase he noted that no reserves had been made by Hamilton "inasmuch as the land demanded by the Natives was of great value" (A8:II:25). {FNREF|0-86472-060-2|11.4.4|40} But he supported the payment of the additional œ300 to Ngai Tahu:

to whom it must be conceded that great injustice has been done from the fact that their claims were not earlier enquired into and recognised. (A8:II:25){FNREF|0-86472-060-2|11.4.4|41}

In the event, the additional sum of œ200 was paid to Banks Peninsula and Kaiapoi Ngai Tahu on 12 November 1857 and the remaining œ100, to make up the total purchase price of œ500, on 6 January 1860 (A8:II:381-382). {FNREF|0-86472-060-2|11.4.4|42}

# Ngai Tahu Land Report

## 11 The North Canterbury Purchase

### 11.5 Ngai Tahu's Grievances

#### 11.5. Ngai Tahu's Grievances

Grievance no 1: Crown pressure on Ngai Tahu to sell

11.5.1 The claimants' first grievance insofar as it relates to the North Canterbury purchase is:

That the Crown's inclusion of [...] Kaiapoi in the Wairau Purchase of 1847 from Ngatitooa exerted unfair pressure on Ngai Tahu to part with these blocks on unfavourable terms. (W5)

This grievance is identical with the claimants' first grievance in respect of the Kemp purchase.

For reasons which we gave in 8.5.12 the tribunal was not able to find that the Crown's nominal inclusion of Kaiapoi pa in the Wairau purchase of 1847 exerted unfair pressure on Ngai Tahu to part with Kemp's block on unfavourable terms. While in relation to the Wairau purchase we accepted that the inclusion of Kaiapoi pa would have been a source of anxiety to Ngai Tahu, the tribunal believes it was substantially mitigated by Governor Grey's 1848 assurances and the arrangement reached by Kemp and Ngai Tahu at the time of the Kemp purchase.

As we earlier recalled, Matiaha Tiramorehu recorded in his letter of October 1849 to Eyre, that the previous year when Grey had discussions with Ngai Tuahuriri at Akaroa, the governor told them that the payment for Kaiapoi should not be given to the Ngati Toa but that the payment for Kaikoura had already gone to them. Tiramorehu complained in his letter that when Kemp came he placed the boundary of Ngati Toa land at Kaiapoi. The tribunal believes this error should be attributed to Mantell, not to Kemp, who believed he was purchasing up to the Hurunui on the 43rd parallel.

When Ngai Tahu in September 1848 vigorously protested at Mantell's action in fixing the Kemp purchase boundary at the Kaiapoi pa site and journeyed to Wellington to protest to Eyre, the matter should have been put right and Grey's assurance given in February of that year honoured. But as we have said (8.5.11), once Mantell had located the pa and fixed it as the boundary, he was forced to doggedly maintain his position. When Ngai Tahu raised the matter in Wellington with Mantell's superiors, in Kemp's presence, they too saw it as expedient to stand behind Mantell's decision.

As we have seen, Ngai Tahu persisted in their protests but no effective action was taken to correct the situation until the North Canterbury deed of purchase was signed some eight and a half years later. By maintaining that the north-eastern boundary of

Kemp's purchase was at Kaiapoi pa after Mantell had erroneously fixed it there, the Crown in effect recognised the mana of Ngati Toa as extending to that point. This caused enormous distress to Kaiapoi Ngai Tahu who did not rest until their mana was restored in February 1857. But they paid a heavy price. Such was their anxiety, due to the pressure of European settlement, that their just rights would never be recognised, they parted with their lands initially for œ200, ultimately for œ500, but with no reserves whatsoever.

#### Finding on grievance no 1

11.5.2 The tribunal has no doubt, given all the circumstances leading up to the 1857 purchase which we have related, that the Crown's nominal inclusion of Kaiapoi pa in the Wairau purchase and the Crown's acquiescence in recognising the boundary of Kemp's purchase at that point did exert unfair pressure on Ngai Tahu to part with the North Canterbury block on unfavourable terms. The first grievance is accordingly sustained.

#### Grievance no 2: The sale of North Canterbury land to Europeans

##### 11.5.3 In their second grievance the claimants stated:

That the Crown allowed these blocks to be sold or leased to European settlers-entirely in the case of the North Canterbury Block [...] before they had been purchased from Ngai Tahu and that Ngai Tahu have never been adequately compensated for this.  
(W5)

It is clear from the evidence before the tribunal that the Crown did allow the whole of the North Canterbury block to be occupied by European settlers before purchasing it from Ngai Tahu. Substantial areas were in fact sold and the freehold granted. The remainder of the block was occupied under pasturage or other licences. The evidence is equally clear that by the time the Crown came, very belatedly, to recognise the legitimacy of Ngai Tahu's claim, the land had increased very considerably in value. We have cited an instance of 30,000 acres being sold for œ15,000, or 10 shillings an acre. Mr Alexander explained to us that due to difference in policy between Governor Grey and the Canterbury Association, all land north of the Waipara River which fell outside the Canterbury Association block, could be purchased for ten shillings an acre, or five shillings if it was of poorer quality, while œ3 an acre was charged by the Canterbury Association for land south of the Waipara. Not surprisingly more sold at the cheaper price. Between 1 July 1853 and 31 December 1854, 61,120 acres of rural land were sold at 10 shillings an acre, while 1178 acres sold at œ3 an acre (M5:23-24). {FNREF|0-86472-060-2|11.5.4|43} The stark difference in the price paid by the Crown, of œ500 for 1,140,000 acres, is only too apparent.

The Crown's attitude to meeting claims by Ngai Tahu is illustrated by Professor Ward, who in comparing this purchase with the Crown's practice in the North Island said:

The price which Ngai Tahu received was a small fraction of the sums handed over by McLean himself for blocks of pastoral land in the Wairarapa in 1853-54-a total of

roughly 1,500,000 acres for c14,000-with large reserves granted, and much of the best land withheld from sale. (T1:276)

That Ngai Tahu were interested as early as 1848 in engaging in pastoral activities is apparent from requests made to Mantell. For instance we have earlier noted that in September 1848 they told Mantell they wanted "a run of some thousand acres" for grazing sheep (8.8.20).

#### Finding on grievance no 2

11.5.4 The delay of over eight years in recognising and settling Ngai Tahu's claim to the North Canterbury block saw their land completely occupied by European settlers. The Crown must accept responsibility for this. A consequence of the unjustified delay by the Crown meant that not only had the land, as a result of settlement, considerably increased in value, but also that Ngai Tahu were placed in a greatly weakened bargaining position. For all they knew the Crown would continue to rely on the Wairau purchase as giving it title to the land.

The tribunal has no hesitation in finding that Ngai Tahu have never been adequately compensated for the sale of the North Canterbury block. Grievance no 2 is accordingly sustained.

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

11.5.5 The tribunal was unable to reconcile the Crown's action regarding the inclusion of Ngai Tahu land in the Wairau purchase from Ngati Toa with Ngai Tahu's rangatiratanga over such land. No investigations appear to have been made by the Crown as to Ngai Tahu rights in the North Canterbury block. While Grey in February 1848 recognised Ngai Tahu's rights at least up to the Hurunui River, this was revised by the Crown's subsequent acquiescence in Mantell fixing the boundary of Kemp's purchase at the Kaiapoi pa site. Despite persistent protests by Ngai Tahu from 1848 on, the Crown permitted all the land in the North Canterbury block to be occupied by European settlers and alienated substantial areas of the freehold to them. This was in blatant disregard of, or unconcern for, Ngai Tahu's rangatiratanga over this land. Far from consenting to this occupation of their land, Ngai Tahu vigorously objected. When very belatedly the Crown finally consented to recognise the rights of Ngai Tahu in this land, they did so by agreeing to pay no more than a nominal price, far below the then value of the land. This was inconsistent with good faith and the obligation of the Crown to deal fairly and honourably with its Treaty partner. In so doing it clearly acted in breach of article 2 of the Treaty, as equally clearly it did in denying for so long and with such serious consequences the rangatiratanga of Ngai Tahu in the North Canterbury block. Ngai Tahu have not been compensated to this day for the very substantial loss which flowed from the Crown's breach of Treaty principles.

#### Grievances nos 3 and 4: Crown failure to provide reserves

11.5.6 These grievances may conveniently be considered together:

3. That the Crown refused to allow lands requested by Ngai Tahu at Hurunui and Motunau in the North Canterbury Block [...] to be excluded from the sale or reserved exclusively for their use, in breach of Article II of the Treaty.

4. That the Crown failed to provide any reserves for Ngai Tahu in the North Canterbury Block.(W5)

Finding on grievances nos 3 and 4

11.5.7 It should be said at once that the Crown does not dispute the validity of these grievances. Hamilton noted that Ngai Tahu sought reserves at both Hurunui and Motunau. His ostensible reason for refusing them was that Ngai Tahu had been provided with adequate reserves by the Kemp and various Banks Peninsula purchases. We have already found this to have been far from the case. The real explanation, as we have earlier noted, was that the country was occupied by European pastoralists, or as McLean inferred, the land demanded by Ngai Tahu was of great value. Consequently Hamilton resolutely refused to grant a single acre by way of reserves. The tribunal upholds both grievances nos 3 and 4.

Findings on breach of Treaty principles in respect of grievances nos 3 and 4

11.5.8 In no other purchase of Ngai Tahu land did the Crown fail completely to make any reserves for the tribe or wholly fail to meet their requests for reserves. Much of the North Canterbury block was very well suited to pastoral sheep-farming. Ngai Tahu were anxious to participate in this activity alongside the new settlers. Instead they received a mere c500, and then only after years of protest. The Crown's breach of article 2 of the Treaty is self-evident. It is conceded by the Crown. In failing to meet the request for reserves at Hurunui and Motunau the Crown flew in the face of Ngai Tahu's rangatiratanga over the land preserved to them by article 2. There could be no conceivable justification for such arbitrary action so at variance with the Crown's Treaty obligation.

In failing to set aside any reserves anywhere in the block the Crown ignored its clear obligation under article 2 to ensure that Ngai Tahu was left with ample reserves for their present and future needs. The tribunal finds it impossible to reconcile the Crown's conduct in this purchase with its Treaty obligation of good faith.

In short, the tribunal finds that the Crown acted in breach of article 2 of the Treaty in failing to respect the rangatiratanga of Ngai Tahu by reserving lands the tribe wished to retain, by failing to make any provision by way of reserves for the present and future needs of Ngai Tahu, and by failing to act in good faith and honestly towards its Treaty partner.

Grievance no 6: Land for Settlements Acts

11.5.9 In their sixth grievance that claimants alleged:

That the Crown in the North Canterbury Block under the Land for Settlements Acts for the benefit of landless Europeans, from November 1895 to May 1897 resumed the

Patoa, Ashley Gorge, and Horsley Downs Estates [...] but failed to do likewise for Ngai Tahu, in breach of Article III of the Treaty.(W5)

At the time the three estates referred to in this grievance were resumed, the Land for Settlements Act 1894 was in force. This Act enabled the Crown to acquire either by purchase or compulsorily, land in private ownership, if the landholding exceeded specified acreages. The principal purpose of Crown acquisition was to provide land for settlement under the Land Act 1892. Section 32 of the 1894 Act provided that any land so acquired was to be disposed of under the lease-in-perpetuity system, or, if pastoral, under the small grazing-run system of part V of the Land Act 1892. Section 157 of the Land Act provided for leases-in-perpetuity to have a term of 999 years and a rental equal to 4 per cent of the cash price of the land. Small grazing-runs were regulated by part V of the Land Act. Section 172 provided that a first class small grazing-run should not exceed 5000 acres and a second class grazing-run should not exceed 20,000 acres. The term of the lease was for 21 years with a right of renewal at a rental of 2.5 per cent of a price fixed by the land board.

There was no requirement in either Act that the applicant for land must be either European or landless. Under section 92 of the Land Act any person of the age of 17 years or upwards might be selected to take up land under the Act, but section 93 limited the rights of married women. Section 95 of the Land Act limited the right of any person owning 2000 acres or more of freehold land from acquiring land under the Act other than under part V (small grazing-run leases) and part VI (land held for pastoral purposes). No submissions were made by counsel on this grievance. So far as the tribunal is aware there was at the time no legal impediment to any qualified Maori applying for land under the Land for Settlements Acts. We have no information whether any did so, or, if so, with what results.

#### Finding on grievance no 6

11.5.10 On the assumption that Maori enjoyed the same rights under the Land for Settlements Acts as Europeans, the tribunal is unable to sustain the claimants' grievance no 6.

But, having made this finding on the limited information made available to us, we make the following observations. The Crown was prepared to outlay substantial sums of money to enable predominantly, if not only, European settlers, to take up extensive areas of land on favourable terms. Land, moreover, which was fertile and relatively accessible. We note that "small grazing-runs" under part V of the Land Act 1892 could be up to 5000 acres in extent for first class runs and up to 20,000 acres for second class runs.

As we will later see in chapter 20, land assigned to landless Maori under the South Island Landless Natives Act 1906 was often in remote and sometimes inaccessible areas, often of poor or indifferent quality, and always restricted to a maximum of 50 acres per adult and 20 acres for those under 14 years of age. The two Acts stand in stark contrast to each other. While unable to uphold the claimants' grievance, it is not difficult to understand why it was put to us. It takes little imagination to appreciate the sense of deprivation of the North Canterbury Ngai Tahu for whom the Crown refused to set aside a single acre. And yet, the Crown was later prepared, at considerable cost,

to resume, either by repurchase or compulsorily, land bought from Ngai Tahu for a pittance, to facilitate closer settlement predominantly by European settlers.

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