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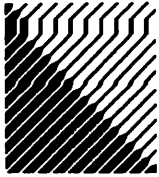
WAITANGI
CONSULTANCY
GROUP

P.O. BOX 11451
WELLINGTON.
TELEPHONE 829-142
FACSIMILE 829-142

DEPARTMENT OF CONSERVATION

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THE TREATY OF WAITANGI AND
THE NINE TALL TREES OF NGAI TAHU



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PROGRAMME

1. **Introductions:**
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what the Treaty actually says
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the establishment and work of the Waitangi
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TE TIRITI O WAITANGI

Ko Wikitoria, te Kuini o Ingarani, i tana mahara atawai ki nga Rangatira me nga Hapu o Nu Tirani i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga, me to ratou wenua, a kia mau tonu hoki te Rongo ki a ratou me te Atanoho hoki kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira hei kai wakarite ki nga Tangata maori o Nu Tirani kia wakaetia e nga Rangatira maori te Kawanatanga o te Kuini ki nga wahikatoa o te Wenua nei me nga Motu na te mea hoki he tokomaha ke nga tangata o tona Iwi Kua noho ki tenei wenua, a e haere mai nei.

Na ko te Kuini e hiahia ana kia wakaritea te Kawanatanga kia kua ai nga kino e puta mai ki te tangata Maori ki te Pakeha e noho ture kore ana.

Na, kua pai te Kuini kia tukua a hau a Wiremu Hopihona he Kapitana i te Roiara Nawi hei Kawana mo nga wahi katoa o Nu Tirani e tukua aiane, amua atu ki te Kuini e mea a tu ana ia ki nga Rangatira o te wakaminenga o nga hapu o Nu Tirani me era Rangatira atu enei ture ka korerotia nei.

Ko Te Tuatahi

Ko nga Rangatira o te Wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga, ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu te Kawanatanga katoa o o ratou wenua.

Ko Te Tuarua

Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira, ki nga hapu, ki nga tangata katoa o Nu Tirani, te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te Wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te Wenua ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

Ko Te Tuatoru

Hei wakaritenga mai hoki tenei mo te wakaetanga ki te Kawanatanga o te Kuini. Ka tiakina e te Kuini o Ingarani nga tangata maori katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.

(Signed) WILLIAM HOBSON.
Consul and Lieutenant Governor

Na ko matou ko nga Rangatira o te Wakaminenga o nga hapu o Nu Tirani ka huihui nei ki Waitangi ko matou hoki ko nga Rangatira o Nu Tirani ka kite nei i te ritenga o enei kupu, ka tangohia ka wakaetia katoatia e matou, koia ka tohungia ai o matou ingoa o matou tohu.

Ka meatia tenei ki Waitangi i te ono o nga ra o Pepueri i te tau kotahi mano, e waru rau e wa te kau o to tatou Ariki.

Ko nga Rangatira o te wakaminenga.

Treaty of Waitangi

A literal English
Translation of the Maori
Text. ?

Signed at Waitangi February 1840,
and afterwards by about 500 chiefs.

VICTORIA the Queen of England, in her gracious recollection of the chiefs and tribes of New Zealand and her desire that they and their chieftainship be secured to them, and a peaceful state also, has deemed it a just act to send here a chief to be the person to arrange for the native people of New Zealand to agree to the governorship by the Queen of all places of that land and of the islands. Already many of her people have settled in this land or are coming there. Now the Queen desires that the governorship may be settled to stem the evils that would come upon the native people and the British who dwell there in lawlessness. Now therefore it is good that the Queen has sent me, William Hobson, a captain in the Royal Navy as governor for all areas of New Zealand that are given over to the Queen now or later. She gives to the Chiefs of the Confederation of Tribes of New Zealand, and the other chiefs as well, these laws which will be spoken about now:

The first

The Chiefs of the Confederation and all the chiefs who have not joined that Confederation give absolutely to the Queen of England forever the complete government (KAWANATANGA) over their land.

Official English
Version.

Signed at Waikato May 1840.

HER MAJESTY VICTORIA Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorized to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those islands - Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the Native population and to Her subjects has been graciously pleased to empower and to authorise me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant-Governor of such parts of New Zealand as may be or hereafter shall be ceded to Her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

Article the First

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all rights and powers of .continued over page

Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.

The second

The Queen of England agrees to protect the Chiefs, the sub-tribes and all the people of New Zealand in the unqualified exercise of their chieftainship (RANGATIRATANGA) over their lands, villages and all their treasures. But on the other hand, the Chiefs of the Confederation and all the Chiefs will sell land to the Queen at a price agreed to by the person owning it and by the person buying it (the latter being appointed by the Queen as her purchase agent).

The third

For this agreed arrangement therefore, concerning the Government of the Queen, the Queen of England will protect all the ordinary people of New Zealand and will give them the same rights and duties of citizenship as the people of England.

WILLIAM HOBSON, Consul
and Lieutenant-Governor

We, the Chiefs of the Confederation of the Tribes of New Zealand who are gathered here at Waitangi, and we also the chiefs of New Zealand, understand the meaning of these words which we have accepted and totally agree. Thereby we have marked our names and our marks.

This has been done at Waitangi on the Sixth day of February in the year of Our Lord One thousand eight hundred and forty.

Article the Second

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of the Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

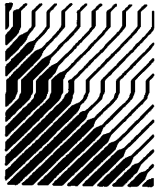
Article the Third

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her Royal Protection and imparts to them all the Rights and Privileges of British Subjects.

W. HOBSON
Lieutenant-Governor

Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof in witness of which we have attached our signatures or marks at the places and the dates respectively specified.

Done at Waitangi this Sixth day of February in the year of Our Lord One thousand eight hundred and forty.



THE TREATY OF WAITANGI AND THE NGAI TAHU REPORT

Treaty principles highlighted in this report (Ch 4)
included:

- * The cession by Maori of sovereignty to the Crown was in exchange for the protection by the Crown of Maori rangatiratanga
- * The Crown right of pre-emption imposed reciprocal duties
- * The Crown obligation actively to protect Maori Treaty rights
- * The principle of partnership
- * The right of redress for past breaches
- * The duty to consult

A SAMPLE OF THE TRIBUNAL FINDINGS

OTAKOU Crown failed to make adequate provision of reserves, either as tenths, or other reserves.

KEMP'S BLOCK Crown failed to appoint a protector to assist Ngai Tahu.

Crown failed to act with utmost good faith by not fulfilling its contractual obligations under Kemp's deed in respect of reserve and mahinga kai.

Crown failed to preserve and protect Ngai Tahu's rangatiratanga over their land and valued possessions.

Crown failed to ensure that Ngai Tahu were left with a sufficient endowment for the present and future needs.

Crown breached Article 2 by denying a larger reserve to Ngai Tahu

In denying the exclusion of Waihora and Kaitorete Spit from the sale, Mantell and the Crown breached the terms of the deed and denied access to mahinga kai - both Treaty breaches

BANKS PENINSULAR Lord Stanley's award of 30,000 acres was in effect confiscation - in breach of Article 2, both English and Maori versions.

Mantell's actions re Port Cooper and Port Levy breached Article 2 - disregarded Ngai Tahu rangatiratanga,

breached good faith, ignored need for Ngai Tahu consent, ignored withdrawal of a significant number of owners

Vesting of land in Canterbury Assoc breached Article 2 - lack of consent, breaching rangatiratanga.

Crown failed to ensure an adequate endowment of land for present and future needs. By taking Banks Peninsular, Crown ignored Ngai Tahu rangatiratanga.

"A clear duty now rests on the Crown to repair ... the grave harm done to Ngai Tahu by the serious and numerous breaches of the Treaty and its principles. Good faith and the spirit of partnership require no less." (9.9.6)

MURIHUKU Failure to appoint a protector was a breach of Article 1, requiring the Crown actively to protect Maori rights.

In refusing to reserve land Ngai Tahu wished to retain, Mantell breached Article 2 - English & Maori versions

Treaty requires the Crown to conduct its dealings on the basis of sincerity, justice and good faith. By denying promised schools and hospitals, Crown breached this.

Crown breached Article 2 by failing to reserve sufficient land for present and future needs, or access to mahinga kai. Ignoring of Ngai Tahu rangatiratanga was a serious blow to the social system, leading to disintegration of Murihiku Ngai Tahu's traditional life & society.

10 acres for male half-castes & 8 acres for female was insufficient for their needs, and in breach of Treaty.

The Crown refused to acquire quality, near-by land for Ngai Tahu, while purchasing over 450,000 acres for European settlement. The Tribunal was "unable to reconcile the Crown's action with its duty to act in the utmost good faith towards its Treaty partner. The [Land Settlement] Act and its implementation cannot be reconciled with the honour of the Crown. The tribunal finds the Crown's policy and the legislative implementation of the policy in relation to landless Ngai Tahu to be a serious breach of the Treaty principle requiring it to act in good faith." (20.7.4)

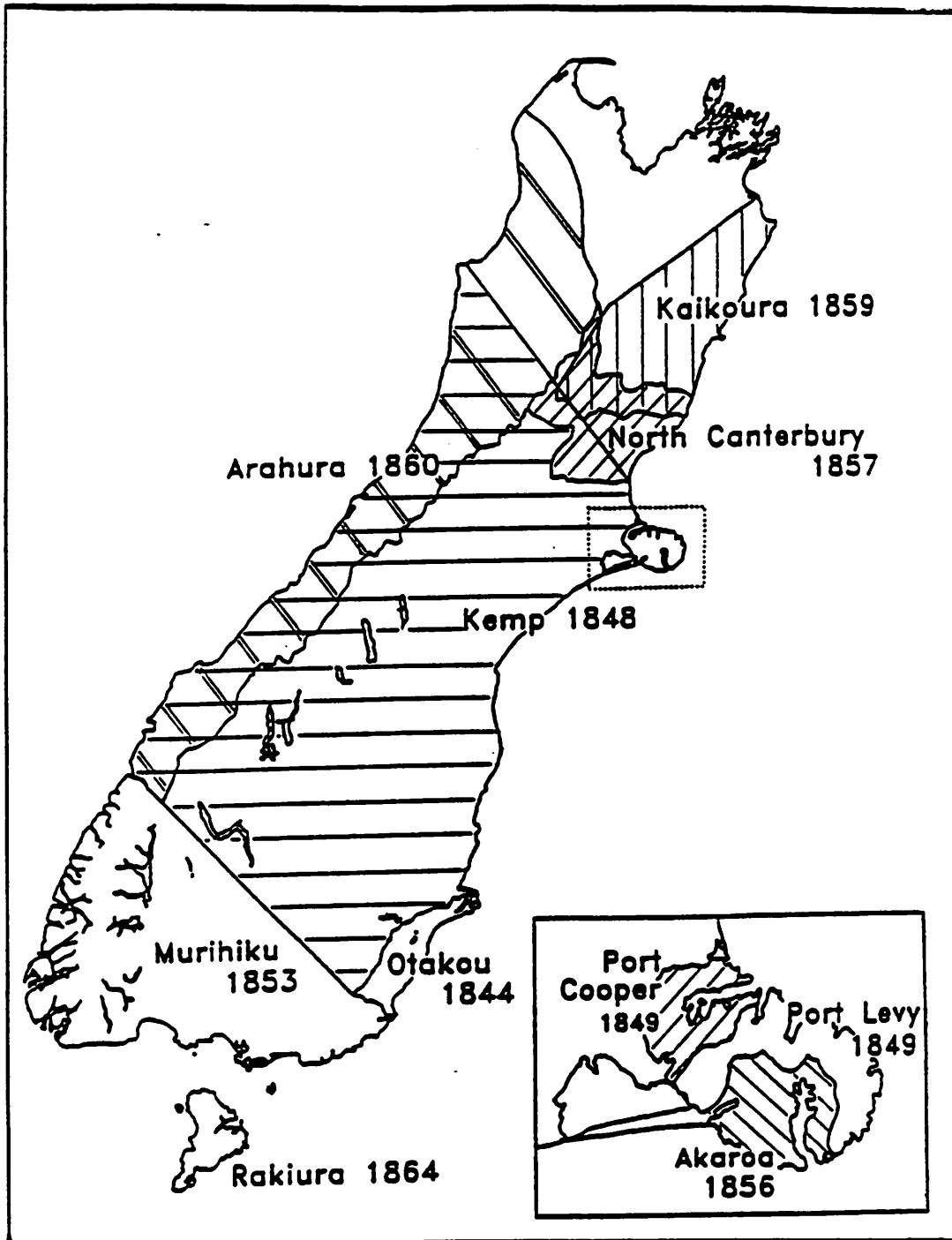


Figure 1.1: The Ngai Tahu purchases according to the deeds and deed maps. Many of these purchases overlapped each other. The Kemp purchase overlapped with the Kaikoura, North Canterbury and Arahura purchases, while the North Canterbury purchase also overlapped with Kaikoura.

OTAKOU

1. Protector failed to discharge his responsibilities, during and after the sale Not sustained
2. Crown failed to provide land for an economic base Sustained
3. Crown failed to set aside 1/10th Not sustained
4. Crown failed to establish an administrative policy to protect Ngai Tahu Not sustained
5. Gov Grey signed Grant without setting aside a tenth Not sustained
6. Crown failed to set aside promised Otepoti reserves Not sustained
7. Crown failed to create Princes St reserve Not sustained
8. Crown failed to provide a permanent hostel in Dunedin Not sustained

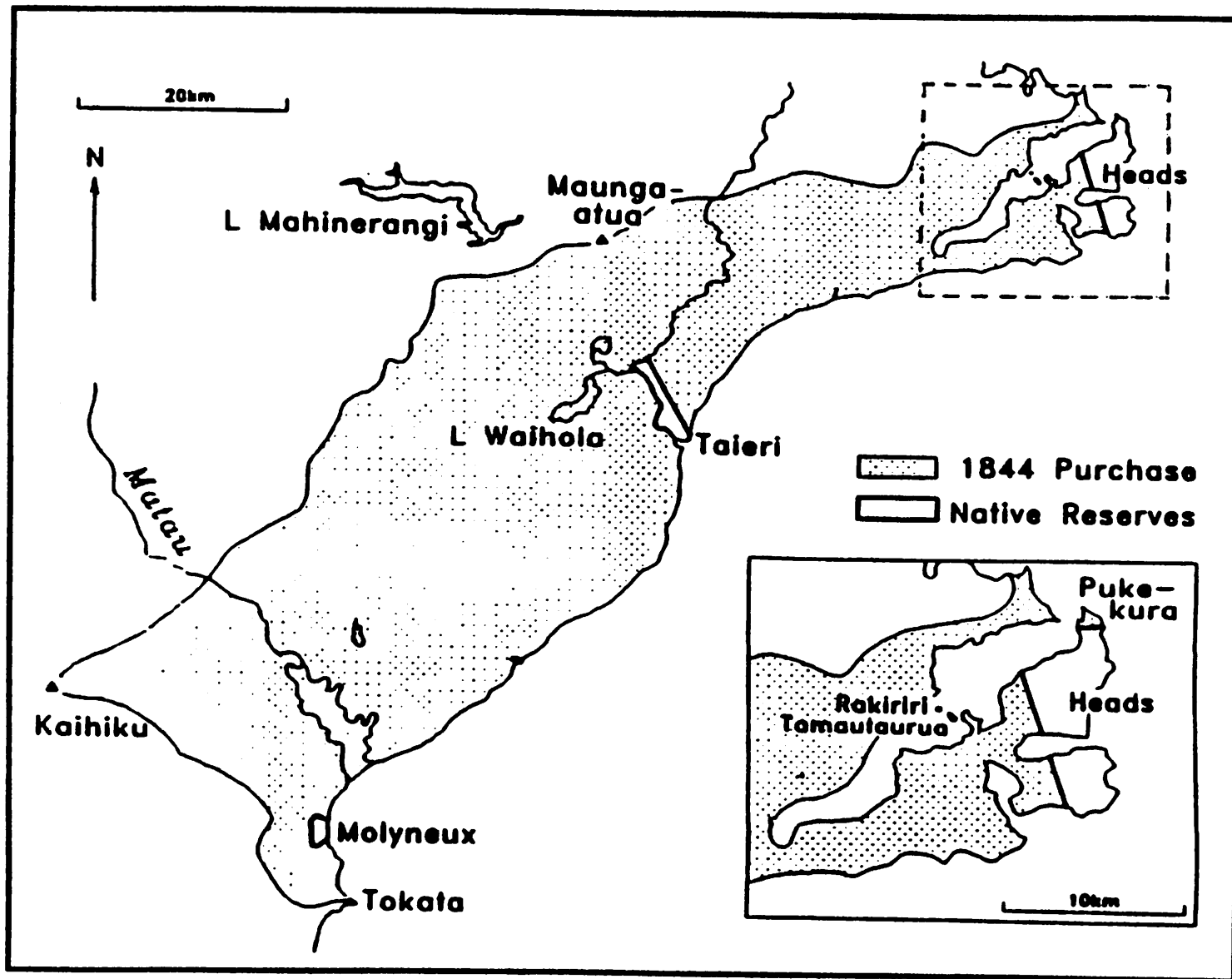
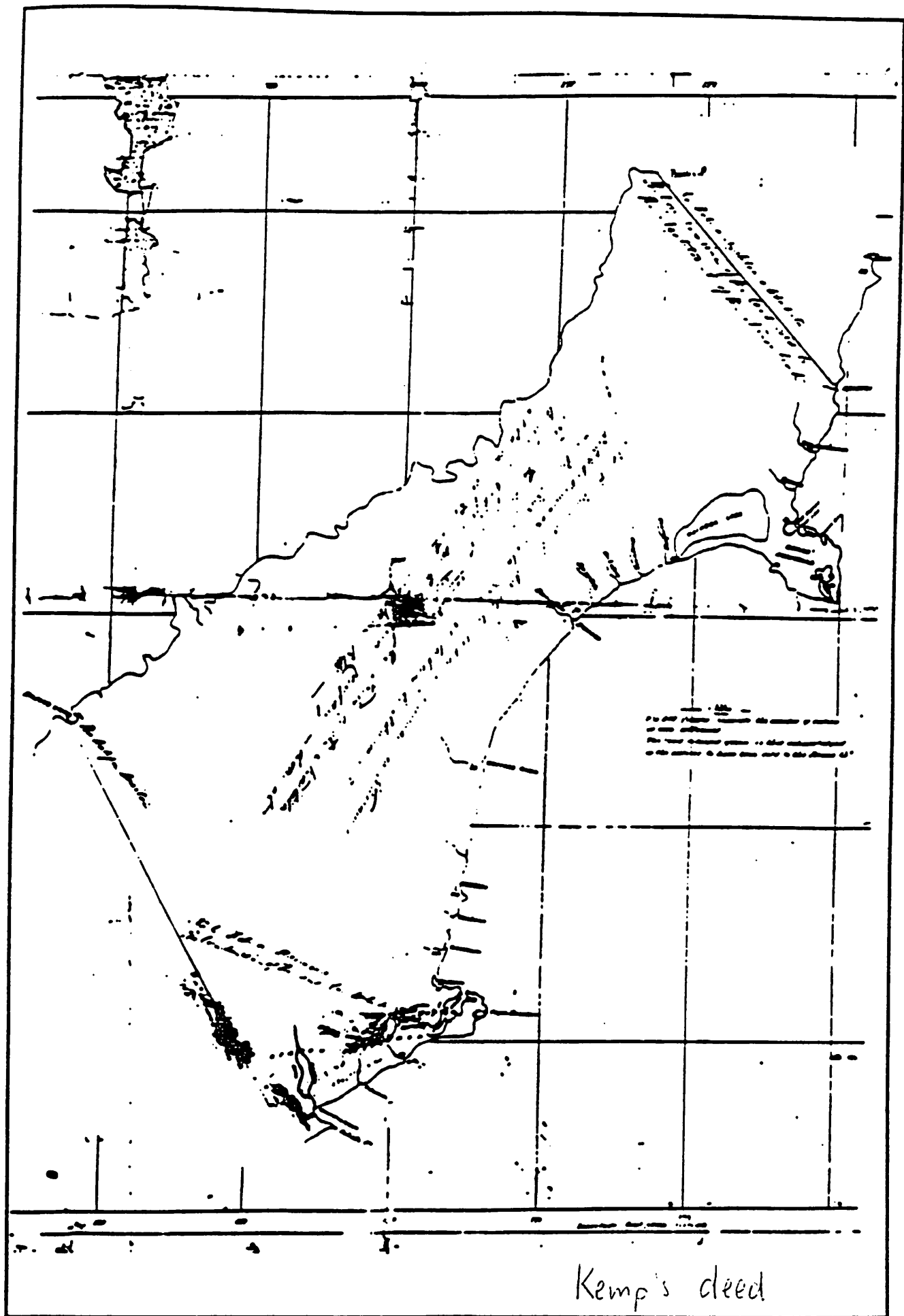


Figure 6.1: The Otakou purchase as defined by DOSLI and estimated at 533,700 acres, showing the reserves at the Otakou Heads, Taieri and Molyneux (O45)

KEMP'S BLOCK

- | | |
|--|----------------------------|
| 1. Crown included Kaiapoi in 1847 Ngati Toa purchase - unfair pressure on Ngai Tahu | Not sustained |
| 2. Crown failed to fulfil purchase terms: a. ample reserves for present & future benefit b. reserve mahinga kai | Sustained Sustained |
| 3. Crown refused to exempt land between Waimakariri & Kowhai rivers | Sustained |
| 4. Crown enforced its interpretation of: a. western boundary, following foothills b. eastern boundary, excluding Kaitorete & Waihora | Not sustained Sustained |
| 5. Crown failed to protect Ngai Tahu interests under NZ Co Land Claims Ordinance 1851 | Not sustained |
| 6. Crown passed Cant. Assoc. Amend. Act 1851 without protecting Ngai Tahu interests | Sustained |
| 7. Crown failed to protect Ngai Tahu interests in Native Land Court (Native Land Act 1865) | Not sustained |
| 8. Crown passed Ngai Tahu Reference Validation Act 1868 to detriment of Ngai Tahu | Not sustained |
| 9. Crown aborted Smith Nairn commission & suppressed its evidence | Sustained |
| 10. Crown failed to give equal treatment to Ngai Tahu under 1893-1909 Land for Settlement Act | Not sustained |
| 11. Crown assigned inferior land to Ngai Tahu under S.I. Landless Natives Act 1906 | Sustained |



BANKS PENINSULAR

1. Lord Stanley awarded 30,000 acres to French without consulting Ngai Tahu Sustained
2. Ngai Tahu not compensated for Stanley's award Sustained
3. No reserves provided in Stanley's award Sustained
4. Crown failed to protect Ngai Tahu in handling French land dealings - esp. Belligny's deeds Not Sustained
5. Crown sent Mantell to "carry matters with a high hand" & did not rectify his actions Sustained
6. Mantell refused to negotiate payment or reserves at Port Cooper & Port Levy Sustained
7. Ngai Tahu had to abandon Port Cooper & Port Levy as reserves were inadequate Sustained
8. Ngai Tahu requests re reserves and boundaries at Port Levy were denied Sustained
9. Crown enforced Port Levy sale with minority of signatures & inadequate consultation Sustained
10. Crown assigned whole Banks Peninsular to Cant. Assoc. when it was not properly purchased Sustained
11. Ngai Tahu not compensated for European encroachment Sustained
12. Ngai Tahu denied their 1849 and 1856 requests inc. 30,000 acre Waiwera block Not sustained
13. Crown took whole Akaroa block against terms of 1856 deed Not sustained - but 27,300 acres not ever sold)
14. Hamilton's payment & reserves were manifestly inadequate Sustained
15. Crown unreasonably forced Akaroa Ngai Tahu to provide for returnees & themselves Sustained
16. Crown offered inferior land only to Ngai Tahu, outside purchase area (compared to treatment of landless Europeans) Equal rights existed Ngai Tahu land inferior
17. Banks Peninsular Ngai Tahu driven off, and lost their turangawaewae Sustained
18. Crown failed to protect natural resources of Banks Peninsular - result is pollution, massive depletion Sustained

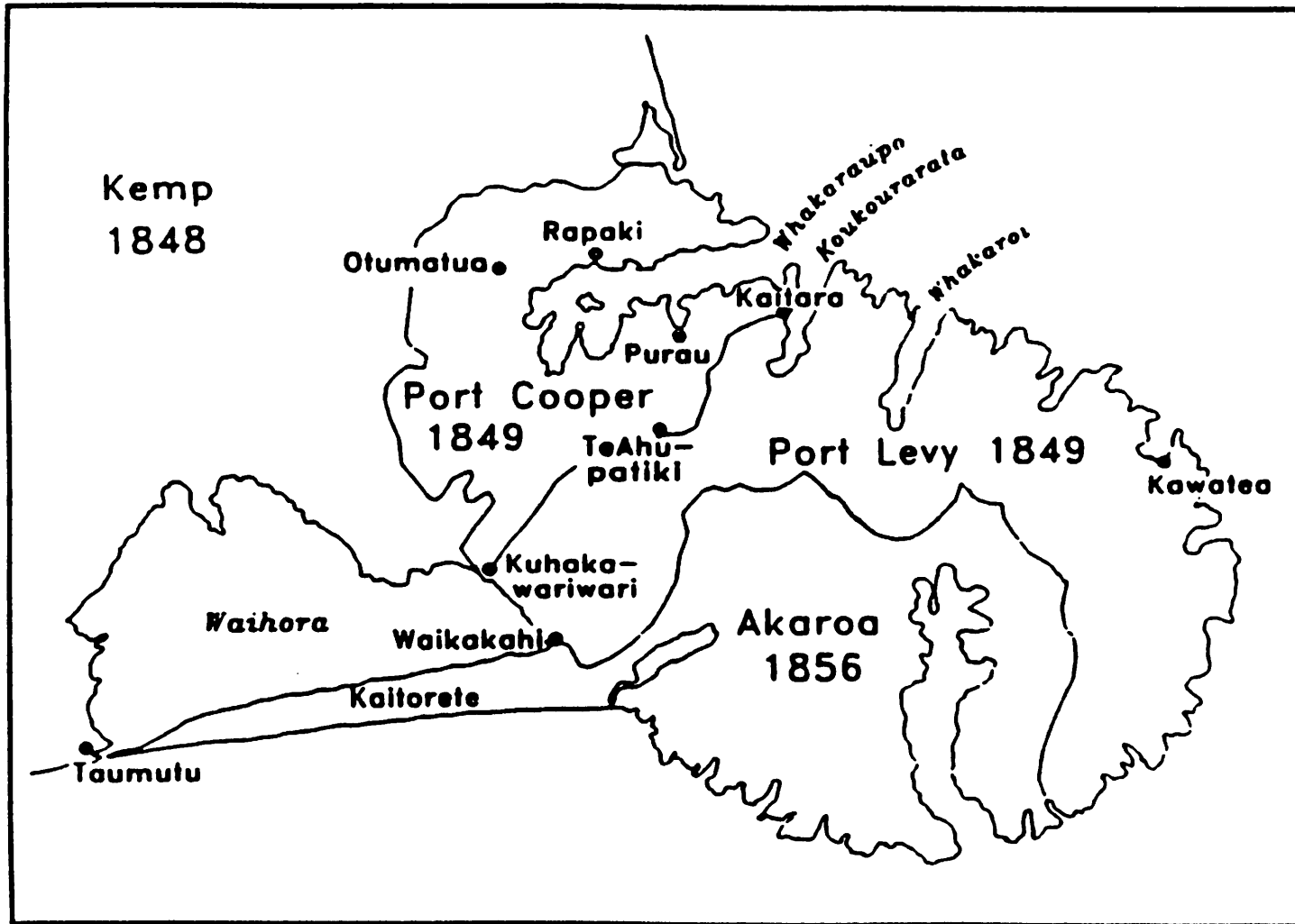


Figure 9.1 The Banks Peninsula purchases 1849-1856.

MURHIKU

- | | |
|--|----------------------------|
| 1. Crown failed to appoint a protector | Sustained |
| 2. Crown supported wrong reserve land limits set by Mantell | Sustained |
| 3. Crown wrongfully instructed/permitted Mantell to decide on reserve land | Sustained |
| 4. Crown failed to set aside additional land at various specified locations | Sustained |
| 5. Crown failed to provide promised schools & hospitals | Sustained |
| 6. Land west of the Waiau was wrongfully included | X Not sustained |
| 7. Crown failed to ensure all sale terms were known and accepted by Murihiku communities | Not sustained |
| 8. Crown failed to reserve land sufficient for an economic base | Sustained |
| 9. Legislation was inadequate to remedy landlessness | Sustained |
| 10. Crown breached good faith by not revealing sale price | Not sustained |

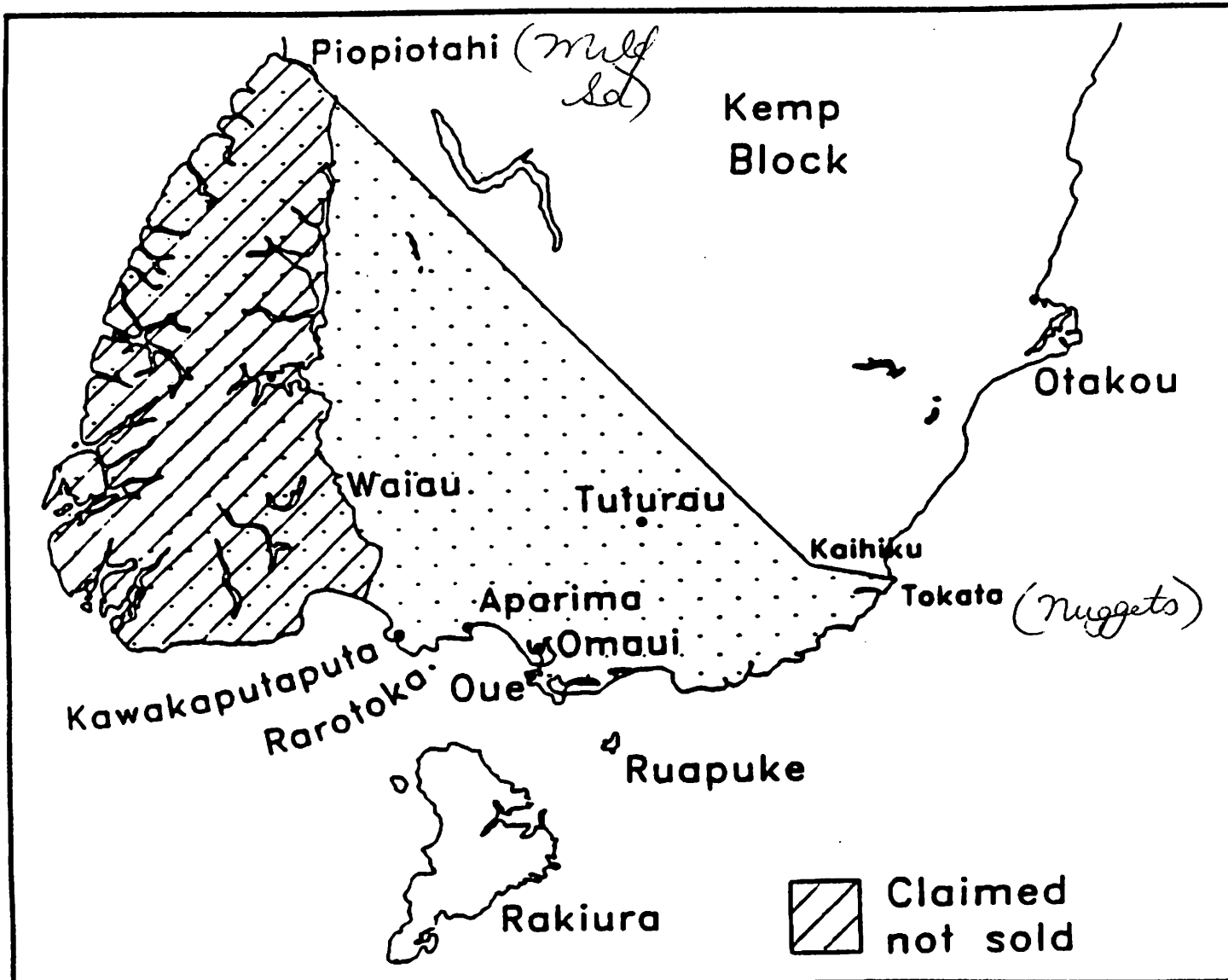


Figure 10.2: The Murihiku purchase, 1853, showing the land west of the Waiau River which the claimants alleged had not been included in the sale to Mantell

NORTH CANTERBURY AND KAIKOURA

1. Crown included Kaikoura & Kaiapoi in 1847 Ngati Toa purchase - unfair pressure on Ngai Tahu Sustained
2. Crown allowed European occupation before sale Sustained
3. Crown refused to allow requested reserves Sustained
4. Crown failed to provide any reserves in Nth Cant Sustained
5. Crown provided reserves in Kaikoura that were inadequate and unreasonably encumbered Sustained
6. Crown reserved land for landless Europeans, but not landless Ngai Tahu Not sustained
(but note gross inequalities of outcome)

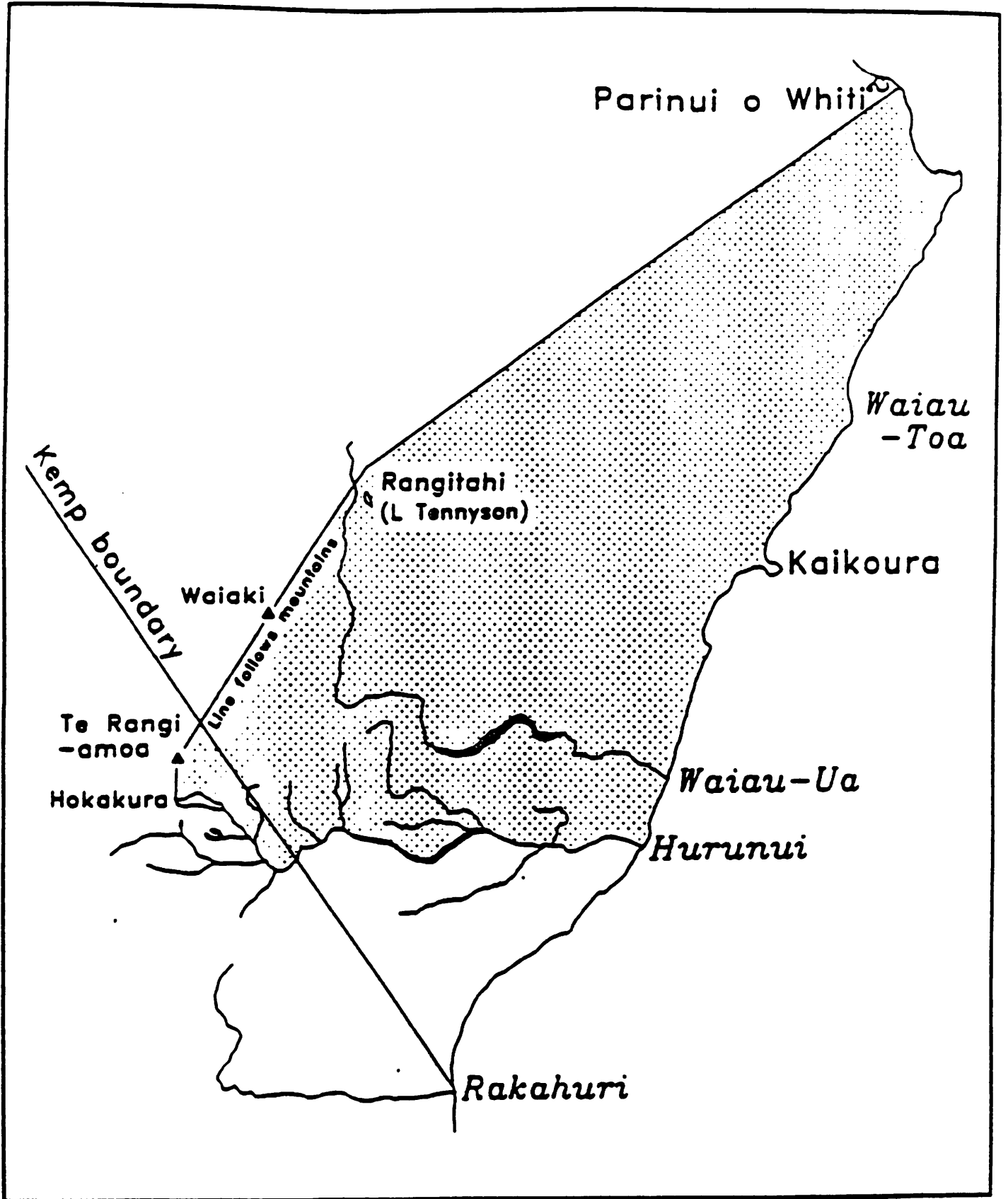


Figure 12.1: The Kaikoura purchase. The purchase overlapped with the North Canterbury purchase of 1857 which had its northern boundary at the Waiiau-Ua.

ARAHURA

- | | |
|---|--|
| 1. Crown failed to provide a protector | Sustained |
| 2. Crown used Ngati Toa & other purchases to pressure Ngai Tahu to sell | Not sustained |
| 3. Crown failed to permit Ngai Tahu to exclude the land they wished | a. 8,000 acre Arahura R - sustained b. 200,000 acres not sustained |
| 4. Crown wrongfully imposed a price on land Ngai Tahu wished to exclude from sale | Not sustained |
| 5. Crown failed to protect Ngai Tahu rights of possession & control of all pounamu | Sustained |
| 6. Crown failed to protect Ngai Tahu economic base | Sustained |
| 7. Crown imposed perpetual leases, harming Ngai Tahu | Sustained |
| 8. Crown failed to reveal value and importance of gold-bearing land, breaching good faith | Sustained |
| 9. Crown reduced size of excluded land | Later report |
| 10. Legislation inadequate to remedy landlessness | Sustained |
| 11. Crown failed to implement recommendation of 1973 Maori Reserved Lands Commission of Inquiry | Sustained |



Figure 13.1: The map of the Arahura purchase was on the deed itself. The detail of the boundaries of the purchase contrasts dramatically with that of the Kemp deed map. Courtesy of DOSLI, Wellington.

RAKIURA

- | | | |
|---|---|---------------------------------------|
| 1. Crown failed to appoint a protector | | Sustained re <u>implementation</u> |
| 2. Iwi deprived of full administration of Titi Islands | X | Not sustained |
| 3. Whenua Hou included in sale wrongly | X | Not sustained |

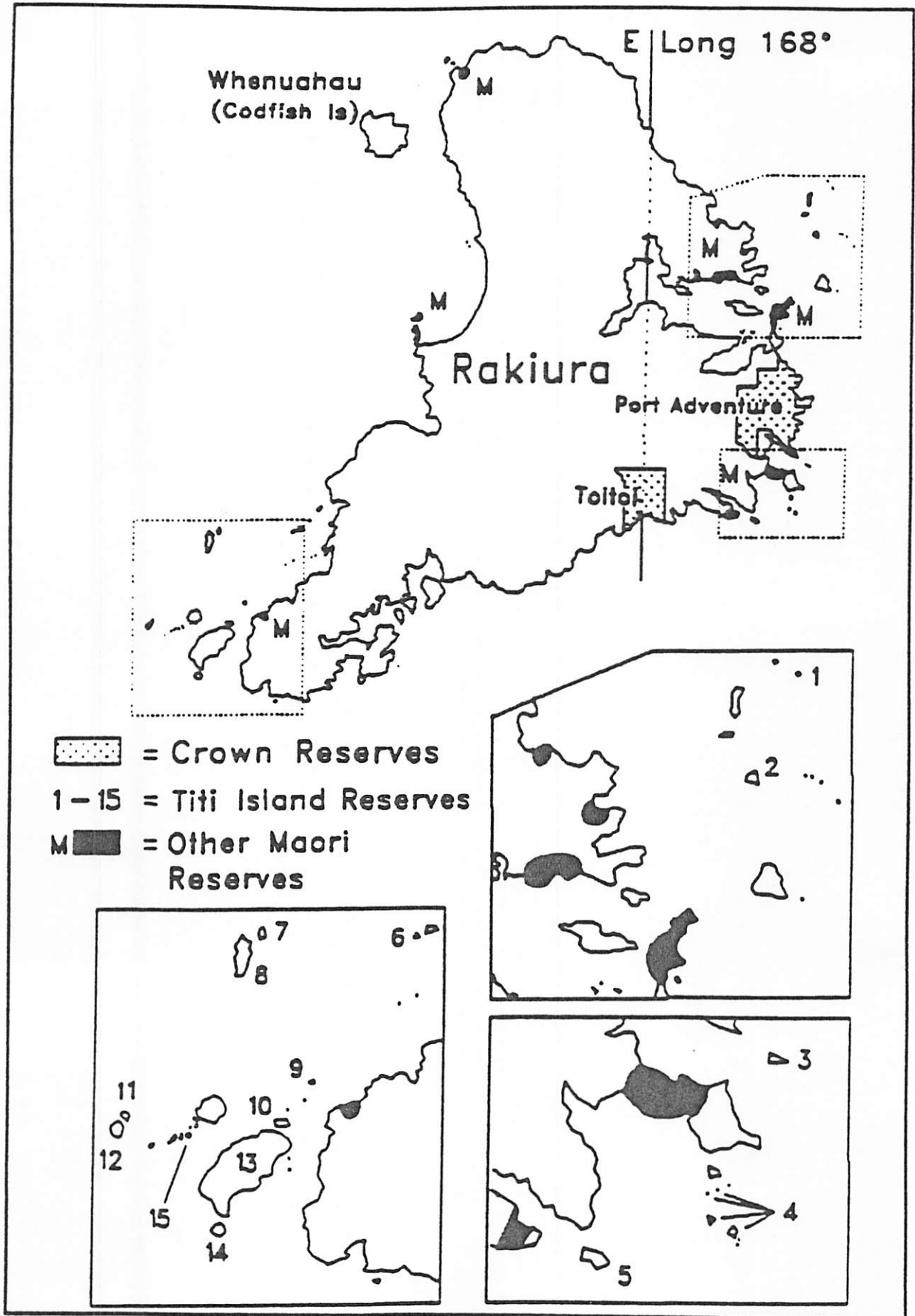


Figure 15.1: Rakiura and the Titi Islands, showing Maori reserves and Crown islands. The land west of the 168th parallel of longitude was offered in 1860 by Topi Patuki for sale to the Crown.

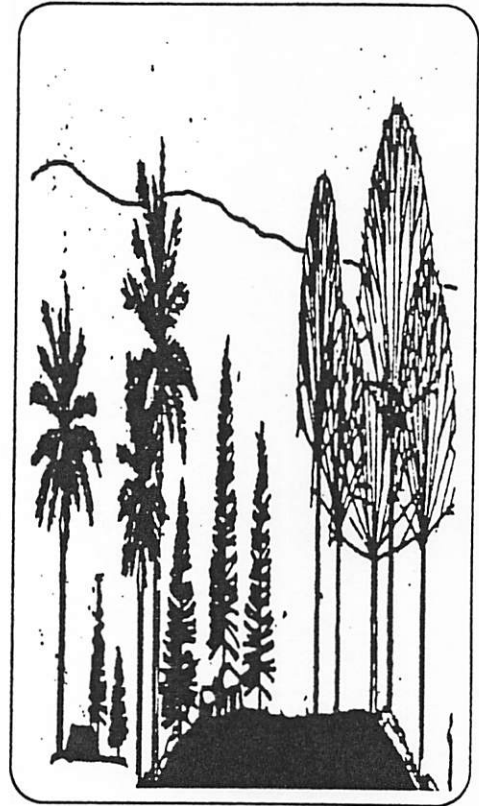
MAHINGA KAI

1. Crown failed to protect natural resources of Banks Peninsular; allowed destruction, to detriment of fauna, water, soil,; allowed excessive pollution of Wairewa
2. Crown failed to preserve Kemp's terms:
 - a. ample reserves for present & future use
 - b. mahinga kai not reserved & protected
3. Denial of access to quality & soil conservation and mahinga kai accentuated landlessness
4. Drainage of swamps & lakes, bush felling, conversion of land to agriculture, introduction of new species reduced value of mahinga kai
5. Iwi denied effective participation in resource management and conservation. Tribal rights & priorities ignored eg. whale bones, pikao

General Findings

- a. Crown failed to preserve mahinga kai
- b. Crown failed to provide reserves so Ngai Tahu could participate in economy
- a. Crown failed to preserve rights to Wahora, in breach of Treaty
- b. Crown failed to preserve access to Waihora eel resources
- c. Crown failed to protect rangatiratanga in granting eeling right to any Maori, not Ngai Tahu

from: Te Whakataurua Kaupapa/
Ngai Tahu Resource Management
Strategy for the Canterbury Region



Forests

Hundreds of years ago, most of Canterbury was covered by forest. Over the years, first Maori and then European cleared the forest to make way for agriculture and grazing operations. In recent years, and especially since the Water and Soil Conservation Act, 1967 became law, there has been a growing understanding that Canterbury water bodies are being seriously compromised.

The run-off of agricultural chemicals, and the entry of nitrates and phosphates into water bodies through accelerated soil erosion, is seriously affecting water quality in all waterways. Lake Wairewa (Lake Forsyth) is a good example of this problem, and there are signs that Te Waihora (Lake Ellesmere) is also becoming eutrophic. Eutrophication

MAHINGA KAI

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is a natural process but in the cases of Wairewa and Waihora that process has been vastly accelerated by human intervention. Matters have reached the stage where water scientists believe that the only way to slow down this process is to re-forest the catchments of the two lakes. Those catchments comprise approximately 285,000 hectares, practically all of it in private hands and used for extensive or intensive agricultural purposes and most unlikely to ever be re-afforested.

Within the Canterbury region there are only small isolated stands of indigenous forests left. These are valuable as examples of what was once a climax vegetation cover and are worth preserving for that reason alone. They serve another purpose in providing the habitat for fast disappearing native bird species. Most of the native birds have now left the Canterbury region following the destruction of their habitat; all of them are under threat and most are classified as endangered species.

Ngai Tahu believe that these forests and their inhabitants are now so scarce that there is justification for stopping the felling of all indigenous trees, even if they are on privately owned land. Plainly in the latter case compensation would have to be paid to the owners, but Ngai Tahu believe that the cost of compensation is outweighed by the need to preserve a heritage that is nearly gone.

There are large exotic forests in the Canterbury region most of which were owned by the Crown but are now in the process of being

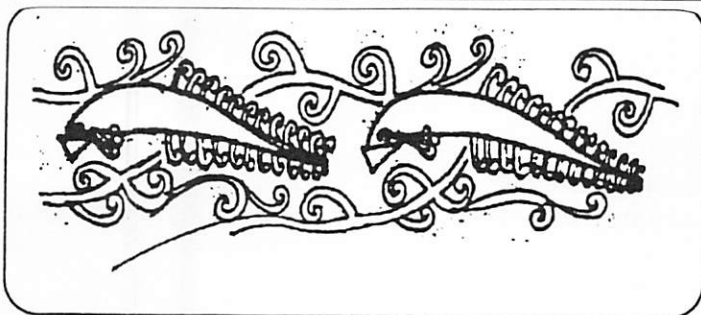
sold to private enterprise. There have been suggestions that what will be sold is the cutting rights, not the land. If that is to be the case then there is a strong possibility that after one or two cycles of cutting the Crown may be left owning the bare land where once the forests stood. Who would then pay to replant the forests? For the reasons already given Ngai Tahu believe that large parts of Canterbury should be forested and, for that reason, stipulate that owners of forests should not be allowed to cut the timber and leave the land bare. Forest should be replaced by forest.

Policy

1. That logging of indigenous forests should stop forthwith.
2. That owners of indigenous forests be compensated for any loss of income caused by such a ban.
3. That where possible the owners of such forests should be encouraged to enter into heritage covenants and suitable incentives should be made available.
4. That when exotic forests are felled, the owners should be encouraged to replant them.

"Within the Canterbury region there are only small isolated stands of indigenous forests left."

"... the need to preserve a heritage that is nearly gone."



5. That the detrimental effects of erosion and noxious weed invasion resulting from the clearance of exotic forests should be considered, and suitable conditions applied to avoid these outcomes.

6. Wherever possible, but especially at the margins of lakes and rivers, vegetation should be established to assist in stemming the flow of nutrients into these water bodies.

7. A concerted effort should be made to conserve, protect and enhance existing indigenous vegetation, for their own sake, as a habitat for native bird-life and as a mechanism in assisting in erosion control and the absorption of fertiliser run-off.

8. That a concerted effort to control noxious plants which are threatening indigenous vegetation should be maintained at all times. This effort should treat river-beds as a priority.

9. That the formation and management of any reserves be done with the full involvement and with the assent of the appropriate Runanga.

10. That Ngai Tahu access to, and rights to use resources from public forests, parks and reserves be guaranteed. This includes the use of traditional materials such as pingao and harakeke.

11. That representative native flora be used in revegetation projects, and where possible this should be of local genetic origin.

Ngai Tahu Fishing Easements

Introduction

The following section is a review of the fishing easements set aside for Ngai Tahu in 1868 by the Native Land Court, presided over by Judge Fenton.

The easements or reserves were part of the promises made in Kemp's Deed which promised Ngai Tahu that their mahinga kai would be set aside for them and their descendants.

The Crown took a limited approach when interpreting mahinga kai and took the to phrase to mean "cultivations". On the other hand, Ngai Tahu understand mahinga kai

to mean all food and other resource producing places. This phrase means exactly what it states, that is, Ngai Tahu have a right to take food and other resources from all places, including the ocean, coastline, rivers, inland waterways, swamps, plains, high country, mountains and forests.

Mantell did not reserve any mahinga kai for Ngai Tahu in 1848 when he was instructed to set aside Reserves for the Tribe by Lieutenant-Governor Eyre. This failure of Mantell to set aside adequate reserves of mahinga kai was one of the reasons, among others, why Ngai Tahu sought to have their case heard in the Native Land Court in 1868.

Ngai Tahu faced a new problem in the Court, as Judge Fenton ruled that the Court was bound to take the Crown's interpretation of mahinga kai as the Reserves were to be Crown grants. Fenton then produced an Order of Reference which required the Court to allocate reserves within the area of the Canterbury purchase. Ngai Tahu counsel withdrew in protest on the basis that the Postmaster General of the area, John Hall, did not have

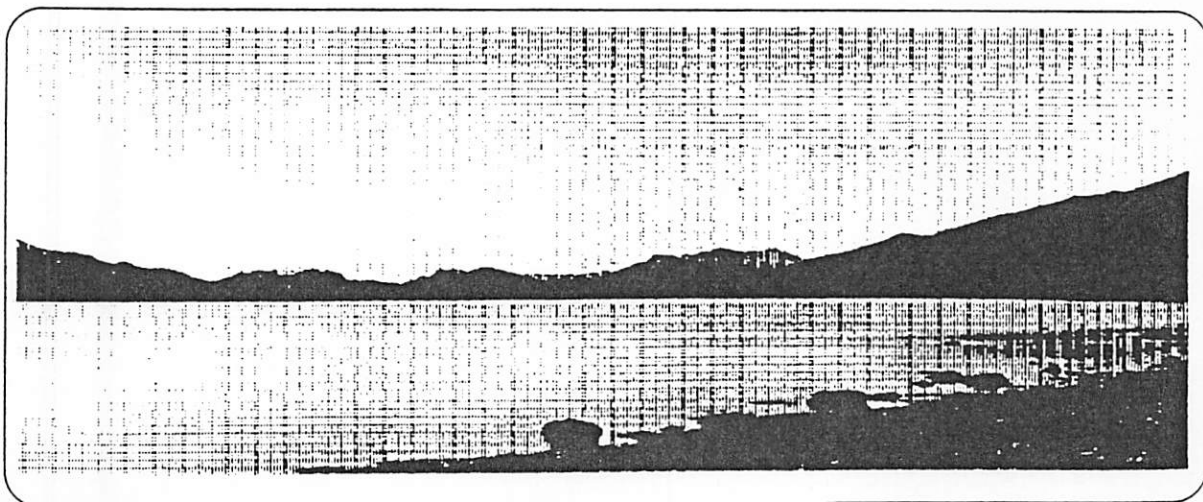
the authority to sign the Order of Reference, and that that privilege belonged to the Governor alone. The outcome was that Ngai Tahu were left without counsel.



Fishing easements were sections of land sited near rivers, lagoons and estuaries that allowed Ngai Tahu to use them as a camping site from where they could take fish, eel or shellfish. The easements did not give any property rights to the water or the beds of the lakes or rivers.

However, from the mid to late 1870s Ngai Tahu began to complain that the water levels of the lagoons, lakes and rivers were falling due to nearby drainage operations by local farmers. The drainage of the waters brought about a decline in the quantity of fish because of the destruction of their habitat.

A common feature of these easements is that they are often subject to erosion which periodically changes their topography as in the case of Waitarakao in the Arowhenua District



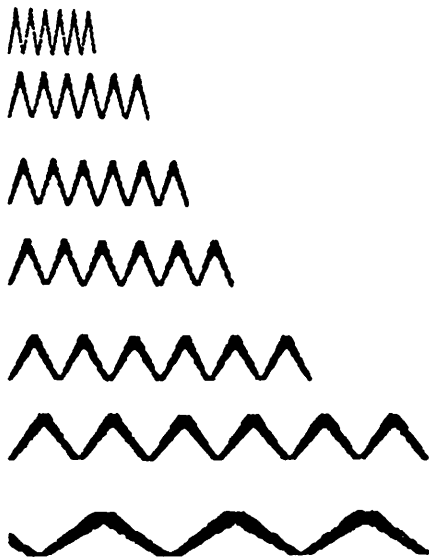
which now lies out to sea.

Policy

1. That Ngai Tahu should be permitted to develop projects on these easements which reflect the original intention of providing an economic base for Tribal communities.

2. That the gazetting of Wairewa as a Maori Fishing Reserve be altered to a Ngai Tahu Fishing Reserve for Ngai Tahu who descend from kaumatua listed under the land grants of the Maori Reserves from Wairewa, Rapaki, Kaiapoi, Port Levy and Te Taumutu.

3. See also policies on Maori Reserved land, especially in Section 5, and the Index (Section 9).



Water Values

Introduction

This text aims to show the pivotal importance of water to Ngai Tahu. Water, and the resources it supports, determines the siting of their kainga (villages), their identity, and the rhythm of their lives.

The traditional values and controls regarding water are included in the Tribe's spiritual beliefs and practices. This recognises and reinforces the absolute importance of water quality in relation to both mahinga kai and hygiene.

Water is held in the highest esteem because the welfare of the life that it contains determines the welfare of the people reliant on those resources.

Traditionally, water was the centre of all activity within Maori society. It provided the preferred transport medium; supported fish and shellfish populations; was used in religious ceremony; and was also used for recreation. For these reasons, and like most other cultures, settlements were centred beside, or in close proximity to major waterways.

As mentioned earlier in the text, water-sourced foods were particularly important in Te Waipounamu because of the harsh climate which precluded the easy or extensive growing of horticultural crops.

This dependence on kai-moana (sea-food), kai-awa (river-sourced food) and kai-roto (lake-sourced food) is a theme which has remained through to present times. After the Land Sales of the mid-1800s, many Ngai Tahu families were forced to rely on that food which could be sourced from the waterways as their land reserves were of inadequate area and/or quality.

These resources were equally essential during times of great hardship, such as the depressions. For these reasons, and also because this source of mahinga kai is one of the very few opportunities for modern-day Ngai Tahu to participate in the food and practices of their tupuna (ancestors), water and the food that it supports are at the forefront of Ngai Tahu concerns today.

Over a long period of time, Ngai Tahu accumulated an extensive amount of knowledge about the resources within their rohe, particularly water-sourced foods.

Harvesting methods reflect a sophisticated understanding of the breeding cycles, migration times and feeding habits of all the important fresh and salt-water species, with different names being used for the same fish at different parts of its life-cycle. Many species can be harvested at different times of the year by understanding their habits at those times and adjusting the catching method to suit. To ensure the continuation of the resource, strictly observed restrictions are enforced to protect breeding stock.

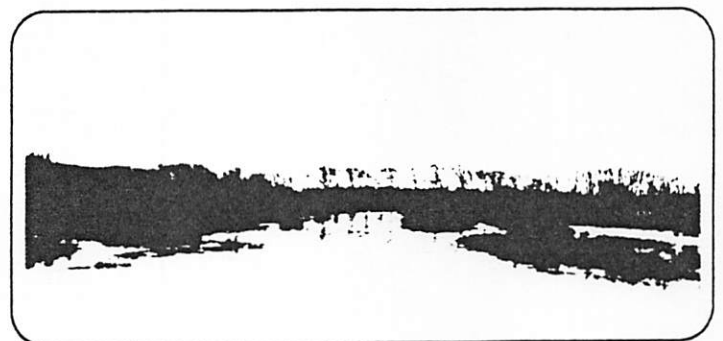
Evidence given to the Waitangi Tribunal in particular, hints at a vast and sophisticated traditional knowledge of resource management and enhancement techniques. These include the technologies to both increase and decrease populations of shellfish to provide an optimal product. Genetically superior strains were recognised and transplanted to other areas, often near kainga.



(2)

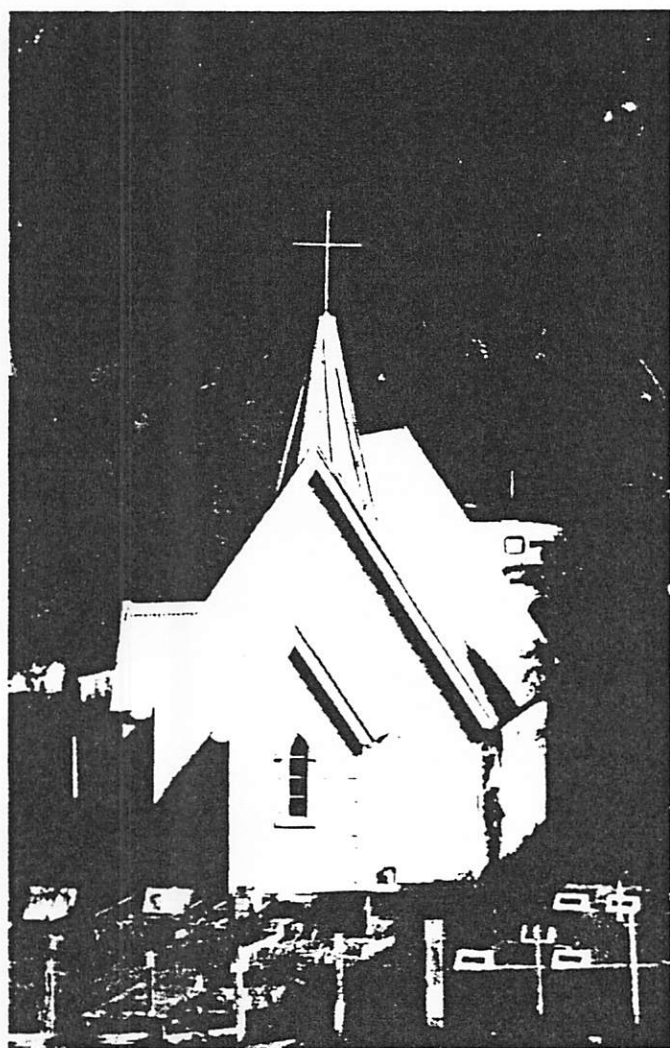
Extensive knowledge also exists of the various sea currents, winds, stars and tides, and which combinations of these indicate which fish can be caught and where. Specific catching methods were developed for each species, whether fresh or salt-water, and appointed specialists controlled the management of each resource.

As mentioned in an earlier section, food and the presentation and gifting of it is central to the Maori culture. Not only is it very important to show 'aroha ki te iwi' (regard to people), but also to be able to support the kaumatua (elders) of the community and to help cater at functions such as takiaue (funeral ceremony).



Spiritual Values

As already mentioned, all life came into being when Maku mated with Mahoroanuiatea, another form of water, and begat Raki. Water, therefore, is the promoter of all life and represents the life-blood of the environment. Its condition is a reflection on the health of Papatuanuku (the Earth Mother).



Water was used by tohunga in various religious ceremonies, including the lifting of tapu from warriors returned from battle; baptisms; initiation ceremonies; and funerary rites. Each ceremony was performed only with water suitable for that function and certain areas were set aside for these purposes. These various water classifications are: waitapu, waitohi and waiora; each having their own characteristics and spiritual function.

Because of the sacred nature and pragmatic importance of water, specific practices and restrictions are enforced. For example, it is unacceptable to discharge sewerage into waterways where food is collected.

One of the most prominent spiritual notions that Ngai Tahu has in relation to waterways is that the sea, rivers, lakes and streams were all guarded by taniwha or kaitiaki (guardians). In some cases they acted as guardians of a particular area, or of particular people. In other cases they acted as messengers, signalling the end to a fishing season, or worse, impending misfortune.

The Canterbury region has a number of examples. Tikao recalled two taniwha who live in a rua (cave) each, near Opukutahi. These taniwha were left there by Te Ake, a Ngai Tahu rangatira, to safeguard friendly people on the sea.

The waterways of Kaiapoi are also guarded by two taniwha, the tuere and the koiro. The tuere is a

lamprey that is spotted and creamy in colour. The koiro is a large black eel that inhabits the waters in the Kaiapoi Pa. The Ngai Tuahuriri and Ngai Te Ruahikihiki hapu believe that these eels, when very young, travel from Kaiapoi through the underground waterways as far as Te Waihora (Lake Ellesmere).

Connected to the concept of water guardianship is the matter of tapu. Water was declared tapu for several reasons. The best example of waitapu (sacred waters) are those waterways that act as burial places. Because of their primary use, food is not taken from these places.

There is another rahui in the Kaiapoi region, on a site known as O Tu Kai Kino in the Puharakeke (Styx River), this water being used by tohunga for embalming.

At Ihutai, near Sumner, Ngai Tahu fishermen avoid an area known as Tuawera because of an incident where a hapu, Ngati Pohoareare, were killed by makutu (witchcraft).

All of the above are examples of areas of water which have, or have had, a rahui laid over them.

In conclusion, there are waters within the Ngai Tahu rohe (traditional boundaries) which are categorized as entities with their own distinct characteristics. The classification of these waters determines how they may, and may not, be used. Where water types are incompatible, the mixing of those waters

is unacceptable to Ngai Tahu.

According to Ngai Tahu tradition, it was the Rapuwai people who classified the waters of Te Waipounamu. Water is classified according to its uses, and that classification then determines the future uses of that waterway. For example, it would be inappropriate to drink water used for embalming the dead, or to bury a tupapaku (corpse) in a tauraka (fishing ground). Areas of water were set aside for various types of use by tohunga, either because of their location or because the waters were considered to have special qualities.

Wai whakaheke tupapaku

Waiwhakaheketupapaku translates as water burial sites. Within this report we refer to some of these water-burials in the Canterbury region. Tupapaku (human corpses) were weighted down in lagoons, rivers, springs and in the ocean in secret places.

To identify the location of these waters identifies the funerary places which Ngai Tahu are less than anxious to do. For this reason Ngai Tahu require some restriction on the information about these sites, and they are therefore identified in the silent file.

These waters themselves have no special qualities, although

they are regarded as culturally sensitive. However, Ngai Tahu would strongly object if a sewerage outlet was sited over a water burial or if some form of industrial waste was discharged there.

Waitohi

These waters were used by tohunga during initiation and baptismal ceremonies. The function was to remove the tapu from people (whakanoa). For this reason restrictions were imposed on these waters in order to ensure their continued purity.

Waimataitai

This refers to the coastal sea and waters in the estuaries where salt and fresh water mix.

All estuaries were, and are, important mahinga kai for Ngai Tahu. However, waimataitai should not be taken in the limited context of waters only but also in the wider meaning of the word "estuary". Waimataitai also includes areas of

coastal swamp near the estuary. The water quality of these places was formerly good enough to sustain food.

Waiora

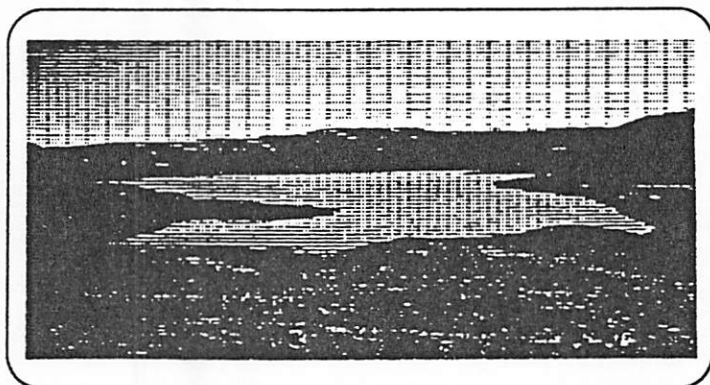
These waters were used for healing by tohunga. Like waitohi, these waters were pure.

Today it is difficult to identify all such waters in the Canterbury district because that knowledge is now incomplete and most places have been interfered with by modern developments. However, there are some still significant to Ngai Tahu today.

Waterways: Rivers, Tributaries, Lagoons and Lakes

Planners need to be able to identify traditional Maori fisheries in order to protect them and maintain appropriate standards of water quality. The purpose of this part of the paper is to give effect to the "Draft Regional Planning Scheme Report", which stated as one of its policies:

"That traditional Maori fishing grounds in Canterbury be identified and practical measures be taken to protect these and maintain appropriate standards of water quality."



There is a problem here already. There is a mistaken belief that Maori fishing grounds are 'site-specific', whereas in reality all waterways are a source of mahinga kai for Ngai Tahu and are therefore important. The concept of 'site-specific' fishing grounds completely ignores the mobility and migratory habits of fish species.

Take for example the problem of Te Akaaka, a fishing reserve set aside in 1868 by the Native Land Court, for the use by the Kaiapoi Ngai Tahu, near the mouth of the Ashley River. The main foods taken here are the cockle and pipi, but these shellfish move with the mouth of the river. According to one report, the Ashley River has been slowly moving northwards since 1979. The kai moana and kai awa have followed the movement of the river mouth - away from the Te Akaaka reserve.

Similar cases can be made for virtually all Ngai Tahu fishing reserves in the North Canterbury area, as all of the lagoons sited next to the reserves have been drained. The Reserves therefore no longer provide access to resources as originally intended.

The idea of 'site-specific' fishing grounds within the inland waterways and estuarine systems should be resisted. The concept is more applicable to coastal and deep-sea areas where fishing grounds are frequently located over reefs or trenches.

However, there are traditional fishing grounds and fishing easements which need to be discussed further. The following section will deal with some of the principal water bodies in the Canterbury region which are still used as mahinga kai.

Inland Waters

According to Te Waipounamu traditions, the inland lakes were dug by Te Rakaihautu and his ko (digging stick) which was named Tuhiraki - present day Mount Bossu.

Ngai Tahu interests in the waterways extend beyond coastal shellfish beds and off-shore fishing grounds. In the Canterbury region Ngai Tahu have interests in all of the lakes that are fed from the mountains because they support fish populations.

Lakes specifically used up till the middle part of this century by the Ngai Tuahuriri were: Whakamatau (Lake Coleridge), Oporea (Lake Pearson), Oporea iti (Lake Grassmere) and Kai Moana (Lake Howden). The lakes fed the Waimakariri, and Rakahuri.

Further south, across the Waimakariri to the Rakaia River, Ngai Tuahuriri used the lakes that led into the Rakaia,

Waikirikiri (Selwyn River), Waiwhio (Irwell River) and Hakatere River. Evidence of Ngai Tuahuriri presence in this region was at Whakaepa which sits at Coalgate. This was an outpost Pa of the Kaiapoi Ngai Tahu which was used by foraging parties.

The principal foods taken from these lakes were eels, putangitangi (paradise duck), parera (grey duck), pateke (brown duck), whio (blue duck) and pukeko (swamp hen).

The inland lakes further south down to the Waitaki were used mainly by whanau subdivisions of the Ngati Huirapa as mahinga kai and the foods of those are described above.

Shellfish Seeding

Seeding was a traditional form of aquaculture practiced by Ngai Tahu. It took two forms: the first was that people skilled in the management of specific mahinga kai were given the task of planting (seeding) different types of shellfish in new areas; the second is when shellfish were taken out of their natural habitat and stored in artificial environments - usually in rua (storage pits).

Knowledgeable people would choose their kai moana mataitai (seafood) at a time when they were ready to seed and place

them in poha rimurapa (a container made from seaweed). The poha would be placed along the shoreline near the kainga where the pressure of the waves over the buried poha would trigger the release of the seeds from the kai moana mataitai. Alternatively, the poha would be gently kneaded by the cultivator so that the seeds were pressured out.

This is an oversimplification of a complex process, but it gives a general description. Water quality must be suitable to allow regeneration of the shellfish. This means that the mauri of the river that enters the estuary or coastline where the kai mataitai is to be planted should be compatible with the mauri of the waters from where the shellfish was originally taken. Besides the biological factors involved, social controls were also practised.

The practise of seeding was seldom done in the last few decades, so that many whanau lost part of their tradition. However, to some whanau the art is still known and because of recent commercial stress upon traditional fisheries the family traditions are being shared amongst Ngai Tahu, and most of the coastal kainga are once again reviving this important conservation and resource enhancement practice. Many different areas were seeded by Ngai Tahu in the Canterbury Region, including coastal waters, rivers and estuaries. Ngai Tahu commercial fishermen in their spare time have frequently assisted in transplanting wai mataitai species all around the extensive coastline of Te Waipounamu, trying out prospective breeding sites.

The second form of aquaculture practised was the storage of kaimoana in rua or coastal storage pits. All Ngai Tahu kainga sited near the coastline have whanau-owned rua. The location of these places are known only to the families and are owned exclusively by them.

These pits are usually hollows in the rocks which the tide covers at high water. In these pits are stored shellfish, usually mussels and paua. Foods are taken from the coastline and stored in the pits which are then used as a cupboard, avoiding unnecessary trips to the ocean. For these pits to work, the sea must be constantly moving in and out of the rocks. Also, only the best shellfish can be stored in the rua as diseased shellfish placed in a small rua will infect the rest.

A smaller scale version of this was that some kainga, such as Koukourarata, would communally go to a neighbouring bay and make up small beds of shellfish and store them under piles of rocks for the winter. This was done in the autumn.

Policy

1. That the Canterbury Regional Council should promote the protection of traditional seeding rights in consultation with Ngai Tahu.
2. That in determining applications by Ngai Tahu individuals or Runanga to

initiate aquaculture ventures, whether water or land-based, the responsible authority should have a duty to consider the Treaty of Waitangi.

General Water Policy Statement

The maintenance of water quality and quantity are perhaps the paramount resource management issues to Ngai Tahu.

The important challenge in the modern context is the wise use of our natural resources in a way which is consistent with those values passed onto us by our tupuna. This challenge includes the wise use of natural resources, knowledge and technology passed on to Ngai Tahu by their tupuna, while not forgetting or belittling the sound accumulated wisdom of the past. A combination of balance, realism and an acceptance of Ngai Tahu values is needed.

As mentioned above, Ngai Tahu resource management is primarily focused on the ethic of sustainability and the long-term welfare of the environment, and therefore the long-term welfare of the people within that environment.

It is recognised that the welfare of people and the success of their activities within the environment depended on water being maintained in the best

possible condition.

To this end, the utmost effort must be made to maintain and increase both the quality and quantity of water in *all* waterways. Further deterioration, of either water quality or quantity is unacceptable to Ngai Tahu.

"Further deterioration, of either water quality or quantity is unacceptable ..."

Policy

1. That no discharge into any water body should be permitted if it will result in contamination of the receiving water.

2. That no lowering of water levels in identified waiwhakaheketupaku (water burial sites) should be allowed.

3. That the quality and quantity of water in all waterways be improved to the point where it supports those fish and plant populations that were sourced from them in the past and that these mahinga kai are fit for human consumption.

4. That the Canterbury Regional Council should actively encourage the disposal of effluent onto land rather than into water, provided that the groundwater is not polluted in the process.

5. Management

Plans should be prepared for each river, their tributaries and catchments, and a coherent list of all water rights made, whether to abstract water or to discharge effluent. These management plans should be developed in consultation with the appropriate Runanga, and only adopted with their consent.

6. That when water rights to discharge effluent come up for renewal, investigations should be undertaken to determine if more modern technology would permit an improvement in the quality of any discharge.

7. That in the case of abstraction, more efficient use of water be encouraged. Any water "saved" in this manner should be returned to the waterways to enhance river flows, and not reallocated to other users.

8. That water right charges should reflect the extent to which the Canterbury Regional Council needs to monitor and supervise rights and ensure compliance.

9. That methods of storing excess water, for example wetlands and dams, should be actively encouraged.

10. That wetland areas be created and expanded. All existing wetlands

should be maintained at their present area at least, in recognition of their value as "buffers" in times of high rainfall and also their crucial importance to fish and plant communities.

11. That no further reclamation of wetlands be allowed.

12. That those Runanga which possess beneficial rights to a particular water body should be consulted on all management practices which will impact on that waterway or its resources.

13. That Maori Advisory Committees at both Regional and District levels should be consulted before any Catchment Management Plan is adopted, and the Committee advise the Council of any issues of concern to the tangata whenua and any requirements to be met in the preparation of the plan.

14. That agricultural and chemical spraying be prohibited in any case where the effects of such spraying will be to degrade the quality of any water body or affect the flora and fauna in the immediate vicinity of such water bodies.

15. That the Canterbury Regional Council should encourage land owners or occupiers to plant vegetation on ripar-

ian strips to prevent contaminated run-off into any wetland, waterway or lake.

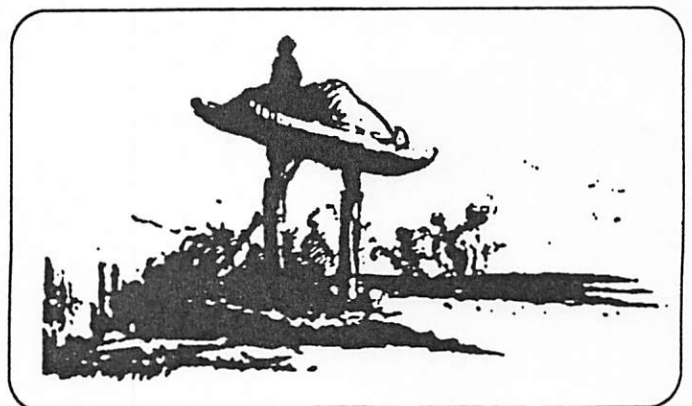
16. That efforts to improve the quality of eutrophic water bodies such as Wairewa (Lake Forsyth) and Te Waihora (Lake Ellesmere) should be initiated.

17. That the Canterbury Regional Council, in consultation with the Ngai Tahu Maori Trust Board, appoint an Iwi Liaison Officer and provide appropriate administrative support for that Officer.

Mahinga kai

Introduction

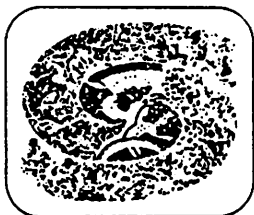
Mahinga kai was one of the taonga (treasured possessions) reserved from sale in the terms used in the Maori version of Kemp's Deed in 1848.



"To Ngai Tahu, mahinga kai means, and has always meant, the whole resource chain from mountain top to the ocean floor."

Kemp's Deed was a deed of sale drafted by the Crown, and negotiated on the Crown's behalf by Henry Tacy Kemp. The intention of the Deed was to purchase 20,000,000 acres in the South Island from the Ngai Tahu for the sum of 2,000 pounds. The coastal boundary of Kemp's Block ran from Kaiapoi down to Otakou (Otago). The Crown and Ngai Tahu have never agreed as to where the inland boundary of the purchase is located and this matter is part of the Ngai Tahu claim presently before the Waitangi Tribunal.

The Deed also promised that Ngai Tahu would retain all their "mahinga kai" for their own use and for the use of their descendants. The Crown originally interpreted mahinga kai as being 'cultivations' and 'fixed eel weirs'. To Ngai Tahu, mahinga kai means, and has always meant, the whole resource chain from mountain top to the ocean floor.



The Canterbury plains were originally worked as one large mahinga kai. It would take too long to list all of those foods taken from this region and so, for the purpose of this paper, it is simply noted that the majority of the foods available and taken then are not now available. Ngai Tahu have consistently argued that this is a serious breach of the Crown obligation under both Kemp's Deed and the Treaty of Waitangi.

This problem has not simply crept up on Ngai Tahu this century. Ngai Tahu kaumatua in the 1870s recalled the scarcity of bird-life in their time. Rawiri Te Maire, a Ngai Tahu kaumatua, recalled in 1876:

"The tuis and all other birds are gone, and the roots of the kauru and the fern have been destroyed by fire." (7)

One Tuahiwi kaumatua, the late Rima Bell, recalled her childhood in the 1930s:

"The old people would travel up there [North Canterbury] for weka and pigeons, which are no longer there because the forests have been cut away."

Other kaumatua of Ngai Tahu have similar recollections, Wiremu Te Uki explained mahinga kai thus before the Smith-Nairn Commission in 1879:

"We used to get food from all over our island; it was all mahinga kai. And we considered our island in a far superior position to any other, because it is called Waipounamu, the greenstone island, the fame thereof reaches all."

Highly organised seasonal timetables were followed to best utilise the resources available, and were unique to each hapu depending on the resources coming under their manawhenua. A large number of trails were used to gain access to

these areas, including those that traversed Te Tiritiri o te Moana (the Southern Alps) and lead to the treasured pounamu. The defence of these trails was delegated to specific hapu and whanau.

Besides the kakapo, a whole host of other kai (foods) were taken as well including: kaka, kea, tui and flora such as tikumu (*Celmisia* sp.), taramea (Wild Spaniard, highly valued for the perfume produced from it) and aruhe (fernroot). The Torlesse Range was a huge mahinga kai used by families from Kaiapoi Pa and the surrounding area.

Resource usage was determined by whakapapa and occupation, and traditional boundaries were jealously guarded by the individual hapu. The actual usage itself reinforced the user's manawhenua rights. These rights also carried with them the responsibility to manage the resource so that it would be available for future generations.

The high country was all part of the Ngai Tahu mahinga kai. The Ngai Tahu food gathering boundaries covered the whole inland range.

The loss of mahinga kai is due to four main factors:

1. Much of the mahinga kai is now depleted due to the destruction of the habitat.

2. Denial of access to mahinga kai by local by-laws and Government legislation.

3. The fencing of land for subdivision and occupation by pastoral farmers.

4. The introduction of predators such as rabbits, cats, dogs, ferrets and stoats which have severely reduced the traditional foods of Ngai Tahu.

Re-forestation of the Canterbury plains is not a realistic goal, when much of it is in livestock and agricultural production. For these reasons, there seems little point in citing places as mahinga kai which are no longer available. Nevertheless, there are places in the Canterbury region to which Ngai Tahu still go to obtain foods.

It is important that all areas of remaining native bush be protected. These places must be retained as a mahinga kai, and they must be managed by Ngai Tahu. The Tribe have always argued that Kemp's Deed and the Treaty of Waitangi ensured full access and rights to all food producing places.

Ngai Tahu have been aware since last century that the native wildlife was being destroyed by introduced predators. For example, titi (muttonbirds) were formerly taken in many places on Banks Peninsula. Today there are not enough muttonbirds to take. The main reason is that each titi lays one egg in a burrow, triennially. On the



"The other big pests are Government officials who in ignorance destroy the burrows ..."

"Mahinga kai was, and is, central to the Ngai Tahu way of life."

mainland the eggs are prone to attacks from ferrets, stoats and rats. The adult birds are game for cats and dogs. The other big pests are Government officials who in ignorance destroy the burrows thinking that they are rabbit burrows.

Mahinga kai was, and is, central to the Ngai Tahu way of life. As mentioned in an earlier section, the collection and processing of mahinga kai is an important social and economic activity. Ngai Tahu are concerned that the collection of mahinga kai, in its numerous forms, should continue to remain an integral part of their culture.

Policy

1. That the quality and quantity of water in all waterways be improved to the point where it supports those fish and plant populations that were sourced from them in the past, and that these mahinga kai are fit for human consumption.

2. That wetland areas be created and expanded. All existing wetlands should be maintained at their present area at least, in recognition of their value as "buffers" in times of high rainfall and also their crucial importance to fish and plant communities.

3. Ngai Tahu maintain that future planning procedures should consider the fact that areas such as wetlands are important mahinga kai to Ngai Tahu.

4. Where productive mahinga kai areas still remain, strong policies should be adopted to maintain and enhance them. The Canterbury Regional Council should support the attainment of access provisions where necessary.

5. That local Ngai Tahu be allowed to establish temporary camps for the purpose of collecting mahinga kai during the appropriate seasons.

6. That the local Runanga should be involved in the management of all mahinga kai resources, including fresh and salt-water fish.

7. That the Canterbury Regional Council actively encourage and support all initiatives to restock lagoons and other waterways with native fish species, and all initiatives to maintain those places as a suitable fishery habitat.

8. See also the Tribal policies on water, especially as stated in Section 4, at 4-20 and 4-21.

Wahi Tapu

Introduction

In modern terms - in the Ngai Tahu rohe - the term wahi tapu refers to places held in reverence according to tribal custom and history. Some wahi tapu are important to the Iwi, while others are important to individual hapu or whanau. For example, Kaiapoi Pa is a wahi tapu of Tribal importance.

Wahi tapu in the Waitaha (Canterbury) region are places such as section 88 on the Kaiapoi Maori Reserve. Another category which comes under this term are those areas traditionally used by tohunga, for example, streams used during waitohi ceremonies.

Urupa

Of all wahi tapu the urupa is the most significant. They are important to Ngai Tahu as in these areas lay the bones of celebrated ancestors who are gone but never forgotten.

"Our dead are very close to us. They do not lie alone in that short space between death and burial. We stay with them every minute and talk and sing to them. When we have returned them to the earth we remember them in speech and song. Each time we meet one another after being apart, we pause and weep again, no matter how happy the occasion for our meeting".

The dead are a link to the past and to the land. By protecting the urupa, the mana of the ancestors and their descendants is also remembered.

Knowledge of urupa is often only retained by certain individuals within an Iwi. These individuals are not always willing to divulge the locations of urupa for fear of them being disturbed. The protection of urupa is discussed because of their deep significance and importance in Ngai Tahu culture.

Urupa can have statutory protection under the following Acts:

1. *The Historic Places Act, 1980;*
2. *The Maori Affairs Act, 1953;*
3. *The Town and Country Planning Act, 1977.*

However, the above Acts may be over-ridden in the Courts by other legislation, for example, the Petroleum Act 1981. Because of this, urupa do not have the absolute protection that Ngai Tahu require.

Urupa should have the same statutory protection afforded

cemeteries, at least, in both the rural and urban situation. We say 'at least', because we are aware that Pakeha seem to be able to forget about their dead and when convenient just go ahead and bulldoze a cemetery to make way for some modern project; for example the Bowen Street Cemetery for the Wellington motorway, or in Dunedin the Arthur Street playing field.

We want the Canterbury Regional Council to be quite clear that such behaviour in relation to any of our Maori cemeteries, officially recognised or not, would be entirely unacceptable. We believe that we currently have the sympathy and agreement of the Council in this respect, but the matter must be mentioned as it may indicate a need for future clarification of the law.

It is wrong that there should be any rule of precedence of statutes in the courts which would legally permit any of our urupa to be desecrated. In that respect, Ngai Tahu say that such statutory or Court rules of precedence, and so the statutes themselves, are contrary to the Treaty and should not be applied in the courts.

The Canterbury Regional Council should maintain a register of all wahi tapu and include them in District Planning Schemes.

Besides actually identifying an urupa in its scheme, the local authority should acknowledge the importance of existing urupa whether known or not. Further,

planners should allow for the establishment of new urupa in the future.

Generally, urupa are unmarked burial sites and can be found throughout the Canterbury Regional Council area. The term is also used to describe present-day cemeteries.

Urupa were usually first set aside on a family basis, that is people were placed in areas where they had a right to go. That right was based on whakapapa and turangawaewae. If such sites are accidentally uncovered it is important that the local Ngai Tahu Runanga be contacted and that the connected families be identified and notified before those sites are altered or affected in any way. This needs to be the shared duty of the local Runanga and the Ngai Tahu Maori Trust Board. Maps relevant to these Silent Files are to be found at 5-78 Appendix A.

Ngai Tahu are concerned that their urupa are not disturbed and for this reason have used silent files which cite the urupa in a general location. The "silent file" gives a *general identification* of a place where an urupa or any other important place is sited. Silent files are to be used only by kaitiaki approved by the Ngai Tahu Maori Trust Board and the families concerned.

Urupa were often marked by ti-kouka (*Cordyline australis*, Cabbage Tree). In general, any which is likely to disturb the ground near a visible ti-kouka should be unundertaken with care in case an old grave

is accidentally opened. On the other hand and affecting our listings here, because these marker ti-kouka have frequently died or have been removed over time, an exact location is often now unclear. Therefore, if an urupa is sited in a paddock then that paddock will be identified but a site-specific location within the paddock cannot be given.

It will be for the Regional Council to approach the Ngai Tahu Maori Trust Board if the prescribed area is to be affected in any way. The Tribal Trust Board will be able to ensure the appropriate Runanga is involved (sometimes this will require two or more Runanga to confer), and they can also decide whether any non-Maori authorities such as the Police or the Historic Places Trust should also be informed. The Regional Council should never try to 'go it alone' and should always seek the assistance of the Ngai Tahu authorities at the earliest possible time, whenever bones, or taonga Maori such as cloaks or other artefacts are uncovered.

The purpose of contact with the Ngai Tahu Maori Trust Board is to allow the descendants the opportunity to recover, in a culturally appropriate manner, bones that may be under threat.

Throughout the whole Ngai Tahu rohe there are many urupa and it is impossible to identify all of them in the short time-frame available for this study. However, there are a number of burial sites which are important Tribally and which need to be protected and left as they

are.

Urupa are a sensitive issue. Ngai Tahu believe that in most cases they should be strictly left alone.

In some instances it may be desirable to re-inter the skeletal remains, for example perhaps if the site was known to contain only one ancestor and it is deemed by the Runanga and connected interests to be necessary to give way to development. In other cases, however, this would be inappropriate.

The uri (descendants) of the tupapaku are the only people who can make this decision, with assistance from Ngai Tahu kaumatua. The methods used to define the uri of the koiwi (human bones; also wheua) and which uri have the right to decide what happens is a complicated Tribal process. Therefore, our policy statements are:

Policy

1. That urupa must be given full statutory protection and access to those sites must be guaranteed.
2. That the Canterbury Regional Council should support moves to gain such protection, and should encourage others to acknowledge and respect Ngai Tahu's position.
3. That district

schemes should provide for urupa to be subdivided from larger lots. This is important as many Ngai Tahu sites have urupa on them.

4. That urupa should be recognised as a predominant use on Maori-owned ancestral land.

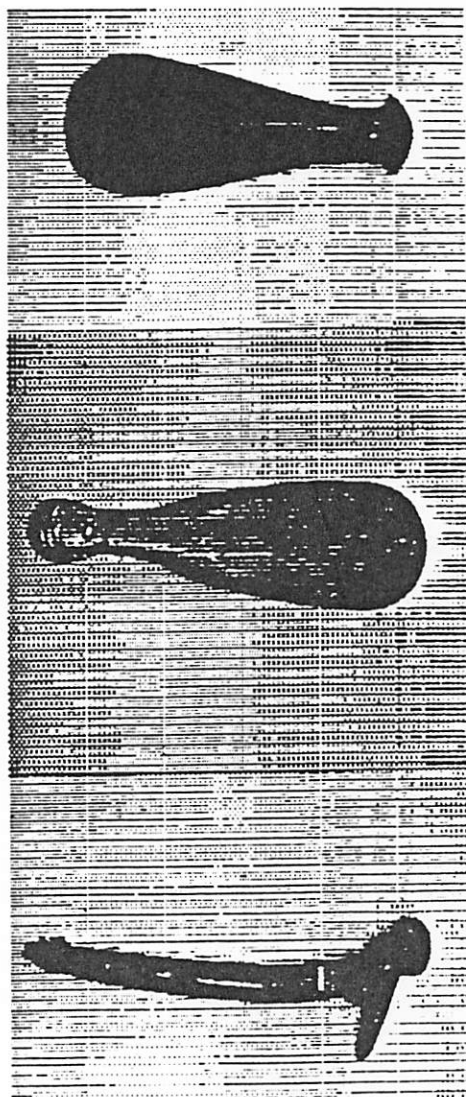
5. That urupa should be recognised as a predominant use in any rural zone.

6. That if wheua are uncovered on privately owned land then immediate contact must be made with the Ngai Tahu Maori Trust Board, and the local Papatipu Marae and Runanga (local representative groups) for the internment in an appropriate Ngai Tahu urupa or cemetery, if that is the desire of the descendants.

7. That for wheua uncovered on Crown-owned property, these remains be reinterred on site and fenced off, after consultation with the Ngai Tahu Maori Trust Board. Free access to these sites must be guaranteed.

8. A silent file will be kept on known burial sites by the Ngai Tahu Maori Trust Board. Where these sites are located out-

side Maori Reserved land they have been given a number and the general area has been marked on the relevant map in Appendix A to Chapter 5. Anyone proposing any change on or near one of these sites should consult the Ngai Tahu Maori Trust Board through the Regional Council's Iwi Liaison Officer. The Ngai Tahu Maori Trust Board in turn can initiate contact with those people who have a direct interest in that particular site. All decisions will be made on a site by site basis.



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.