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Defenders of the Environment: Third-Party Interests and Crown-Ngāi Tahu Treaty Settlement Negotiations

The role of third party interests in Treaty settlement negotiations is often under emphasised. Their influence on the Ngāi Tahu negotiations (1991-1998), for example, was prominent. These pioneering negotiations presented a series of challenges to the development of the National Government's Treaty of Waitangi settlement policies, with some conservationist groups emerging as among the strongest opponents of aspects of the settlement proposals. The change generally from cooperation to confrontation between Māori protest movements and claimants under the Treaty, on the one hand, and environmentalists on the other, has been explored by a number of authors.[1] The interaction between third parties and the Waitangi Tribunal has also been investigated.[2] However, there has been little work on the role of third parties in the Treaty settlement negotiations processes, which follow (or bypass) Tribunal Reports, although ultimately they played a prominent role in determining the specific lands to be returned or co-managed and how this would be done.[3]

In Ngāi Tahu's negotiations, the potential return of sites of cultural significance, in particular, came under sustained scrutiny for the first time. The possibility of such transfers was informed by the Waitangi Tribunal's specific recommendations in its key report on the Ngāi Tahu claim.[4] The iwi sought the return, through fee simple title, to many areas which were of conservation value, including Whenua Hou (Codfish Island), Rarotoka Island, the Crown Titi Islands, the Arahura River, Aoraki (Mount Cook) and Lake Waihora. In areas where fee simple title could not be obtained, including especially in the Crown's 'conservation estate', Ngāi Tahu sought a co-management role. Many of the problems within parts of the conservation movement centred on the capacity for and propriety of indigenous people co-managing conservation lands appropriately, something which Ngāi Tahu perceived to be a challenge to their rangatiratanga – or their autonomy or self-determination. There was, in short, a fundamental disagreement on the idea of Treaty rights, and such views were shared within the Department of Conservation (DoC).

Such opposition from some officials and third-parties delayed agreement on the return of sites of cultural significance, and also had a bearing on issues relating to the fate of three high-country pastoral leases that were held in the 'land bank' which the Crown established for properties of potential return to Ngāi Tahu: Elfin Bay, Greenstone and Routeburn Stations. This article will focus on the negotiations regarding these stations, as well as those relating to the bed of the Arahura River, Whenua Hou/Codfish Island) and the Crown Titi Islands.

Consistently in conflict: Ngai Tahu and the 'Greenies'.

There were numerous Ngāi Tahu public relations efforts to convince the general public of the justice of their case, but perhaps the most heated public forum was that involving conservation. A number of interest groups, such as the farmers' lobby (Federated Farmers) and those representing 'recreational' values – such as the Federated Mountain Clubs (FMC), Public Access New Zealand (PANZ) and the New Zealand Fish and Game Council – were very vocal. In some ways it might be expected that conservation groups would be avid proponents of indigenous co-management, if not of fee simple transfer, but that was not always the case.[5]

This took many officials by surprise, although some DoC officials had foreseen the difficulties that might arise.[6] Some conservationists' reactions to Ngāi Tahu's aspirations went so far as to stoke racial fears amongst conservative pakeha. Those conservationists who publicly supported Ngāi Tahu, such as Otago University's Dr Henrik Moller, who had engaged with the iwi in studies of mutton birding in the Titi Islands, were targeted in the media by some conservationist groups' spokespeople.[7]

Recreational and conservation groups, such as the Royal Forest and Bird Protection Society (Forest and Bird), FMC, PANZ and (at first) the Fish and Game Council, were suspicious that conservation estate alone was going to be used to address settlements.[8] This was not the case, but (to the frustration of many officials) such groups' demands for consultation did not lead to any great willingness to engage in discussions with the government on such issues; there was, in particular, a lack of trust in both government and iwi during the negotiations, which were (as with all settlements) confidential – although without prejudice to any final outcome. The other predominant fear amongst third party groups was that any Ngāi Tahu participation in the management of conservation areas would mean curbing access to the general public. This was mixed up with a perception that tangata whenua participation in management of conservation areas was part of the Crown's ongoing privatisation process, with Ngāi Tahu being merely another private interest. Thus in early 1992 the FMC wrote to Minister in Charge of Treaty of Waitangi Negotiations, Douglas Graham, that '[n]o-one would suggest giving control of our public conservation parks to a private group, e.g. Helicopter Line, or Fiordland Travel.'[9]

Lack of understanding about Ngāi Tahu's aspirations extended to assumptions about the historical past, ignoring archaeological and other evidence. Later that year the FMC wrote again to Graham: 'Ngai Tahu have no strong visible relationship with conservation lands during European times. Their relationship to these lands before settlement is unprovable, and for much of the inland estate, appears minimal.'[10] There were elements inside the Crown who thought similarly. At this time, Treasury officials emphasised the subjective nature of historical claims, arguing that establishing connection with the land or costing the iwi's loss was not possible.[11] The FMC claimed that many non-Maori New Zealanders had 'fought and won the preservation of these lands. Their mana, including their desire to see these lands protected in perpetuity, deserves precedence.'[12] In late November 1993 the television news programme *Frontline* presented a show on Treaty settlement negotiations and the potential transfer of National Parks to iwi, sparking a flurry of letters to the papers. Every one of them opposed the use of any conservation land in a possible settlement, many of them referring to the need to maintain the principle that New Zealanders were 'one people'.[13]

Despite a constant stream of criticism by a number of groups of the negotiation processes, there were a few examples of support from within the conservationist movement. After the release of the first Waitangi Tribunal report on Ngāi Tahu's claims in 1991, for example, the North Canterbury Conservation Board had expressed support for the return of Lake Waihora (Ellesmere) to the iwi.[14] In 1992 three conservation and environmental organisations the Maruia Society, Friends of the Earth and Greenpeace New Zealand wrote a joint letter to Graham, which he passed on to chief Ngāi Tahu negotiator Tipene O' Regan. It included these sentiments:

> Genuine recognition of the Treaty of Waitangi and the claims which flow from it is a challenge that faces all New Zealand society, environmentalists or not. The principal challenge, of course, is to recognise the injustice of past action and the need to settle past grievances in a fair and just manner. The challenge specifically to conservationists

> and the environmental movement is to recognise that Maori are not merely another interest group to be consulted, but partners with the Crown through the Treaty. For example, it is for Maori, not the environmental movement, to decide what mechanism adequately recognises their mana under the Treaty. It means a recognition that where land has been unjustly confiscated or appropriated in the past, returning it to Maori is not a question of privatisation, but rather a question of returning it to its rightful owners.[15]

Such perspectives, however, were the exception for conservation groups in this early period of Treaty settlements. While in fact the negotiations with Ngāi Tahu did not progress significantly until 1996, to many conservationists and recreationists a settlement always seemed imminent and bringing with it unacceptable ramifications.

The three high-country pastoral leases: Elfin Bay, Greenstone and Routeburn Stations

In order to protect Crown lands from alienation for future transfer to Maori claimants, the Crown had developed a system under which lands sought by the claimants could be placed in a land bank. Once the negotiations were completed, some or all such lands would be transferred to the claimant group.[16] These were generally comprised of surplus Crown land, but in the negotiation process Ngāi Tahu had expressed an interest in the purchase of a private asset, the Elfin Bay Station. In May 1992 this high-country pastoral lease on the shores of Lake Wakatipu was advertised for sale.[17] The next month Ngāi Tahu requested its purchase and that of an adjoining high-country pastoral lease, Greenstone Station, properties seen as addressing some of their claims of a 'Hole in the Middle' – land said never to have been purchased from them by the Crown.[18] The Crown agreed to the purchases. Ngāi Tahu wanted the leases to be transferred at once to the Ngāi Tahu Māori Trust Board on the precedent of the Crown's agreement to transfer Hopuhopu camp to the Tainui Māori Trust Board. The Crown, however, maintained that the leases and the former military base were different kinds of assets, and that they would be placed in the land-bank for potential transfer upon settlement.[19]

Just as the Greenstone pastoral lease was being purchased by the Crown for land banking, however, the Minister of Conservation sought to retire 4,534 hectares of the station into the conservation estate, part of a broader process relating to the high country leases.[20] Although Ngāi Tahu was very hesitant, its negotiators agreed.[21] Despite the iwi's support for increasing the conservation and recreation values at Greenstone Station, a number of different conservation and recreation groups continued to fear Ngāi Tahu's motives. The Otago Fish and Game Council, a statutorily created sports recreation organisation, expressed its opposition to the transfer of the lease for landbanking because of potential negative implications for trout angling if Ngāi Tahu became the lessee. The Otago Conservation Board voiced similar opposition, on grounds of potential erosion of conservation values in the area.[22] The South Otago Branch of the New Zealand Deerstalkers Association lobbied the government to purchase the entire Greenstone station for recreational sporting interests.[23] The Southland Fish and Game Council was more moderate, asking to be kept informed of developments in relation to recreational fishing access in the Southland section of Elfin Bay Station.[24] Taken together, the various conservation and recreation third-party interests would play a significant role overall in delaying agreement on the return of the high-country leases, as well as the other conservation aspects of Ngāi Tahu's settlement negotiations.

In July 1992 following the inclusion of the Elfin Bay and Greenstone Station leases in the Ngāi Tahu land-bank, the Crown sought to have a $40 million cap placed on the total value

of Crown properties in the land-bank (originally there had been no limit).[25] Ngāi Tahu, seeking a much larger quantum for their overall settlement than the Crown envisioned, initially opposed this limit but eventually signed up for it.[26] Also in July 1992 Ngāi Tahu requested the purchase of Routeburn Station, a high-country pastoral lease adjacent to Elfin Bay and Greenstone Stations. [27] The Crown agreed to the purchase, contingent on both the reduction of the land-bank cap from $40 million to $35 million and an undertaking from Ngāi Tahu that no further private pastoral leases would be requested for inclusion in the land-bank. Although Ngāi Tahu considered that the Crown's lowered cap was arbitrary, it again agreed.[28] In August 1992, Routeburn Station was added to the land-bank and the cap was reduced to $35 million accordingly.[29]

The lead unit for Treaty settlement negotiations within government was the Treaty of Waitangi Policy Unit (ToWPU), which would be reorganised as the Office of Treaty Settlements (OTS) at the beginning of 1995. In October 1992 ToWPU officials met with representatives of two major sports and recreation organisations: Hugh Barr, the President of the Federated Mountain Clubs, and Bryce Johnson, the Chairman of the New Zealand Fish and Game Council. Barr stressed great concern with the use of Greenstone Valley, Elfin Bay and Routeburn Stations as Treaty settlement redress, and wanted the government to re-categorise the station lands into farming, conservation, and recreational areas. Both representatives sought an active role in consulting with the Department of Conservation on the proportion of any new land categories within the three high-country stations. The ToWPU officials noted that Ngāi Tahu had always stressed that they would not restrict public access to areas of conservation and recreation value, and that Ngāi Tahu was bound by the same public access provisions as previous lessees. The officials indicated that Ngāi Tahu had a strong commitment to conservation principles, and had indicated a desire to enter into joint management projects with the Crown to put these into effect. ToWPU staff reported to their superiors that Barr and Johnson 'maintained that they did not want to interfere with the resolution of Ngāi Tahu's grievances where this concerns commercial interests. They do, however, want to have a chance to represent their constituents' interests (and what they see as the wider public interest)'.[30]

The ToWPU officials suggested to Barr and Johnson that their organisations explain in writing to DoC and ToWPU that they had undertaken assessment work on the areas in question, and wished to be part of a consultation process to determine which parts of the high country leases the Crown would retain for conservation and recreation purposes and public access rights. The representatives, however, remained sceptical of Ngāi Tahu's motivations in the face of the officials' explanations of Ngāi Tahu's position.[31] Johnson wrote to Graham following the meeting, seeking an undertaking that conservation and sporting organisations would be consulted before any settlement offers were made to Ngāi Tahu.[32]

In July 1993, after political pressure from conservation and sports recreation advocates both within and outside government, DoC produced a report that recommended the retirement of a large proportion of the three high-country pastoral leases into the conservation estate. It stated that large areas of the leases were high-value conservation lands that were unsuitable for pastoral grazing. Ngāi Tahu was concerned that, after having already agreed to the retirement of 4,534 hectares into the conservation estate from Greenstone Station in July 1992, further sections of the Station would now be similarly affected. ToWPU officials conveyed the Ngāi Tahu concerns to Graham. A ToWPU official noted that 'discussion of certain options, namely conditional vesting of land title and unconditional vesting of land title, were removed by DoC staff from the draft before it was sent to TOWPU for despatch to the NGOs [non-government

organisations]. While this rewrite may suit the views of the NGOs, it may not suit those of iwi.'[33]

At the same time as ToWPU officials felt that DoC was having a negative effect on Ngāi Tahu's negotiations, Ngāi Tahu believed that DoC had undermined their aspirations for farming and tourism development in the Greenstone Valley. During formal negotiations with the Crown, Chief Negotiator Tipene O'Regan commented that 'Ngāi Tahu appreciate the conservation values but not the proposals contained in the report.' They are aware of the botanical values but are concerned that the protection of red tussock will damage the economic viability of the area; if so, they would require compensation.'[34] O'Regan told the Minister that Ngāi Tahu could not accept the three high-country pastoral leases in a settlement packet unless they formed a viable farming unit. Graham stated that while the Crown intended to transfer leasehold land to Ngāi Tahu, consultation with conservation groups had to take place.[35]

Despite DoC's report outlining how this might occur in a way that would suit the various parties, conservation and sports recreation interests continued to press the government over the use of the three high-country leases: even though the negotiations made very little progress, a number of conservation and sports recreation organisations believed a settlement to be imminent. Despite the Crown's widespread conferral with them, they continued to seek further consultation.[36] In addition to the Federated Mountain Clubs, the New Zealand Fish and Game Council and the Conservation Boards, other organisations that were vocal in their opposition to transferring some of the high-country pastoral leasehold lands were the conservationist Forest and Bird Society and the sports recreation group Public Access New Zealand. Graham spoke to members of PANZ and corresponded with its Director, Bruce Mason,[37] and Ngāi Tahu had concerns about the effect that the organsiation could have on the pastoral lease aspect of any final settlement.[38]

As the Ngāi Tahu negotiations slowed as result of the Crown's development of a 'fiscal envelope' policy in 1993 and 1994, the iwi argued that the public consultation process had been hijacked by PANZ and other special interest groups. At some of the public consultations Ngāi Tahu negotiators felt that a disproportionate amount of time was given to speakers who opposed the iwi's aspirations.[39] Ngāi Tahu negotiator Edward Ellison had asked Sid Ashton, the Ngāi Tahu Māori Trust Board (NTMTB) Secretary, to investigate the alleged racist tendencies of the Otago Fish and Game Council, given the nature of their opposition to the transfer of the three high-country pastoral leases.[40] At the June 1994 Crown-Ngāi Tahu meeting, the iwi negotiators expressed strong reservations about the manner in which the North Canterbury and Southland Conservation Boards ran their public consultation processes. Ngāi Tahu preferred a different body with 'less vested interest' to conduct the consultations.[41] Conversely, some conservation groups alleged to the Crown that Ngāi Tahu had been the party doing the hijacking at public consultation. Catherine Wallace of the Environment and Conservation Organisations, an umbrella group of conservation organisations in New Zealand, specifically asked Doug Graham that Ngāi Tahu not be present at future public consultations.[42]

When the negotiations broke down in late 1994, the three high-country leases remained in the land-bank. In 1995 Graham and O'Regan exchanged a number of letters regarding the difficulty of dealing with conservation interests. While Graham stressed that conservation interests had to be dealt with, O'Regan countered that Ngāi Tahu's Treaty rights should not be trampled upon in the guise of 'public interest'. He pointed to Ngāi Tahu's concession on the retirement of land from the Greenstone Station lease in July 1992.[43] Graham's difficulties were increased by a continuing campaign against transfer of lands of conservation value by some

groups, despite the release of government policy which stated that only small and discrete sites of conservation lands were available for settlements.[44]

As the negotiations were in the early stages of recommencing at the beginning of 1996, the Commissioner for Crown Lands produced a report that was consonant with DoC's July 1993 report. It recommended that 90%, or approximately 30,350 hectares, of the three high-country pastoral leases be retired into the conservation estate. Te Puni Kokiri (TPK: Ministry of Māori Development) officials opposed these proposals, noting to ToWPU that 'such a recommendation appears not to take account of the Crown's objective to settle the Ngāi Tahu claim.' They argued that the Commissioner's report should have included the reasons 'why Ngāi Tahu regard the stations as important to their settlement, and any barriers to having them included'. They suggested that if the areas had 'high conservation values', this needed explanation. In a Cabinet paper, DoC did add some significant conservation information. Due to contradictory officials' advice, however, Cabinet postponed its decision on the high-country pastoral leases: this was 'a difficult issue which requires further consideration by the Crown and should be dealt with later in the negotiations in the context of other outcomes.'[45] The recommendations of the Commissioner of Crown Lands' report' however, would later become entrenched, and large areas of the pastoral leases were retired into the conservation estate.

In contrast to a number of conservation and public access groups, the South Island High Country Committee of Federated Farmers supported Ngāi Tahu as potential high country lessees. Ngāi Tahu had invested a lot of time and effort into building and maintaining a positive relationship with Federated Farmers, and the high country committee declared that PANZ had injected a regrettable racial element into the debate over high country land reform. The three pastoral leases had long been commercial properties, and such 'leases are being bought and sold all the time. Therefore, the hard question has to be asked, why is PANZ mounting a petition against these transactions and not others? The answer is that PANZ senses a political advantage in exploiting fears and prejudices in relation to Maori and proposed treaty settlements.'[46] The support of the high-country farmers' lobby group was perhaps prompted in part by their own connections with the high-country which, the Waitangi Tribunal had noted, was not so different from the connections to the land claimed by Ngāi Tahu.[47] Individual high-country farmers such as H.A.P. Barker of Queenstown also expressed his support for the iwi.[48]

Prime Minister Jim Bolger told Ngāi Tahu's negotiators in August 1996 that the Crown would never have purchased the leases if Ngāi Tahu had not requested their inclusion in their settlement: private interests would have purchased them, and they would not have been included in the conservation estate.[49] This no doubt helped further entrench Ngāi Tahu's negative opinion of those recreational and conservation interests which had opposed the tribe's planned use of the stations and which continued to oppose them. When the negotiations were approaching an Agreement in Principle, conservation and recreational organisations resumed their opposition to the use of most of the high-country pastoral leases in the Ngāi Tahu settlement.[50]

In the period leading up to the signing of the Agreement in Principle in early October 1996 Bryce Johnson, Chairman of the National Fish and Game Council, played a pivotal role in organising consultation with conservation groups, and such consultations continued throughout the negotiations until a final agreement was reached between Crown and Ngai Tahu. But both Forest and Bird and PANZ refused to attend most of the consultations, although the former had in August 1996 argued strongly for the government to engage in consultation with conservation groups.[51] Both organisations, however, released selective quotes about the

settlement and its provisions. Neither mentioned the some 30,350 hectares of land transferring to the conservation estate from the three high-country pastoral leases.[52]

Not only was public access guaranteed in the final settlement, moreover, but it was markedly improved, so much so that some commentators worried that the 'wander at will' provisions would create unfortunate precedents for future settlements; this was also a line of questioning at the Select Committee on Maori Affairs when it was deliberating on the proposed settlement legislation. In response, Ngāi Tahu negotiator Anake Goodall pointed out that Ngāi Tahu themselves were not satisfied with the high country part of the settlement, conservation and recreational politics having played a major part in Crown changes to the terms of the original plans regarding the pastoral leases. New Zealand First MP Tutekawa Wyllie stated that he understood the Ngāi Tahu position, but asked: 'where are we to go in terms of future settlements if the nature of the Ngai Tahu settlement may be detrimental to the ability of other iwi to settle?' Goodall replied that he was painfully aware of their responsibilities, and noted that they had tried to hold the land under the same terms as neighbouring private landowners: '[i]t is a dark irony that the access requirement was imposed as part of the settlement of a grievance over Maori being treated differently because of their race.'[53]

In the event, the great majority of the high-country stations' land was added to the conservation estate, and Ngāi Tahu farmed the remaining area. While most Treaty settlements represent situations in which land is transferred from the Crown to Māori claimants, the retirement of over 30,350 hectares of previously private high-country pastoral leases resulted in the Crown acquiring land from the circumstances of Ngāi Tahu's Treaty settlement. While this transfer was included in the calculation of the total quantum of Ngāi Tahu's settlement, it was an ironical situation one which reflected the government's sensitivity to third-party lobbying during the negotiations.

The return of sites of cultural significance

The lands that were contained in the Ngāi Tahu land-bank, including the remaining area of high-country pastoral leases, largely represented Ngāi Tahu's commercial aspirations. In addition to those lands Ngāi Tahu also sought the return of specific sites of cultural significance. The negotiations regarding the Arahura River, the Crown Titi Islands and Whenua Hou (Codfish Island) were indicative of the difficulties that Ngāi Tahu experienced in reaching an agreement with the Crown on their various sites of cultural significance, such as Rarotoka Island, Aoraki (Mount Cook), the bed of Lake Waihora, Tutaepatu Lagoon and Kaitorete Spit. Third-party interests played a prominent role in the negotiations over such sites, much like the use of high-country pastoral leases, and helped delay agreement.

The Arahura River

The Waitangi Tribunal found that the Crown had 'acted in breach of its Treaty obligations in failing to meet the wishes of Ngāi Tahu to retain ownership of the pounamu in and adjacent to the Arahura and its tributaries.'[54] It recommended that the Arahura River and all its tributaries be vested in the Mawhera Incorporation or another body nominated by Ngāi Tahu.[55] The Arahura Valley has traditionally been one of the principal sources of pounamu (greenstone), which both represented power and survival for Ngāi Tahu and was recognised as a sacred object and a valuable commodity.[56] Despite the specific recommendation of the Waitangi Tribunal regarding the Arahura, the process of vesting the river was complicated by conservation interests both within and outside government. The Crown and Ngāi Tahu had

largely agreed that it would be cost-efficient to identify the catchment area of the Arahura and its tributaries to their respective sources, and transfer that catchment to Ngāi Tahu, while ensuring the maintenance of conservation values and public access. When DoC consulted with conservation and recreational NGOs regarding the catchment transfer proposal there was opposition from those concerned about preserving conservation values and public access to the Arahura Valley.[57]

As a result of public consultation, DoC sought to change the parameters of previous broad agreements, recommending in October 1992 the establishment of a reserve governed by the Reserves Act 1977 for the valley. Ngāi Tahu opposed this, with O'Regan describing it as incorporating 'effective powers of confiscation.' He believed that:

> a formula governed by the Reserves Act which would make us tenants, subject to ejection under the current or future legislation, would be demeaning in the extreme and is quite inappropriate. It is our belief that the Tribunal recommendation to return the title, which is itself a reflection of the importance placed by the Tribunal on this taoka[58], can be achieved at the same time as providing for the Crown's objectives of maintenance of conservation values and public rights of access. This issue lies at the heart of the restoration of the Crown's mana.[59]

By linking the Crown's mana to Ngāi Tahu's rangatiratanga, O'Regan was expressing the intimate connection that existed between the two partners to the Treaty of Waitangi and stating that by the vesting of the Arahura catchment in Ngāi Tahu, 'there could be few more tangible ways to confirm Ngāi Tahu's Tino Rangatiratanga.'[60] However, the DoC position to establish an official reserve became entrenched within the Crown. When in March 1993 Ngāi Tahu re-affirmed its desire for the vesting of the river and its tributaries into the Mawhera Incorporation, the Crown continued to argue that the reserve status was the only option available.[61]

In addition to its recommendation regarding the vesting of the Arahura River, the Tribunal also proposed a survey of the entire river and its tributaries. Although Ngāi Tahu and the Crown reached an impasse on the issue of vesting, the iwi still pressed for the survey. When the Crown countered that the cost of a survey was prohibitive, Ngāi Tahu noted that a survey would be unnecessary if the entire catchment were transferred to the Mawhera Incorporation as the Tribunal had recommended.[62] For the rest of 1993 and throughout 1994, until the breakdown of the negotiations that November, both Crown and Ngāi Tahu remained firm on their positions on the Arahura River.

When negotiations slowly began to recommence in the first half of 1996, both the Crown and Ngāi Tahu recognised that they would have to shift in some way its position on the Arahura River to reach an overall agreement.[63] For its part, Ngāi Tahu understood that since the Crown refused to vest the catchment, it would have to maximise its opportunities within reserve status. While conservation groups were pressing for the classification of the Arahura River area as a scenic reserve, however, Ngāi Tahu countered that if the area was going to be classified as a reserve against its wishes then it should be classified as a historic reserve. While both types of reserves had the same public access provisions in the Reserves Act 1977, scenic reserves were specifically designed for the use of the public, while historic reserves were not. Late in the negotiations, in September 1996, conservation interests altered their stance, seeking to have the scenic value of the area recognised in addition to the historic reserve sought by Ngāi Tahu.[64] Ultimately, while Ngāi Tahu was unable to have the entire catchment vested in the Mawhera Incorporation, an historic reserve was so vested.[65] There were limits, of course, to Ngāi Tahu's ability to control the settlement process, but concessions were gained along the

way that were important to the integrity of the settlement from the Ngāi Tahu perspective. This was one of them.

The Crown Titi Islands and Whenua Hou

The Titi Islands have been an important part of the Ngāi Tahu economy for centuries, with the titi (mutton-birds) harvested there not only a traditional food source but also a tradable commodity.[66] When Rakiura (Stewart Island) was sold to the Crown in 1864, twenty-one of the closest neighbouring islands were reserved for Ngāi Tahu from the purchase, becoming known as the Beneficial Titi Islands. The Crown took ownership of the remaining islands, which became known as the Crown Titi Islands. The Waitangi Tribunal found that the Crown should have reserved all of the islands neighbouring Rakiura, and recommended that 'beneficial ownership of the Crown Titi Islands be vested in such persons or bodies as may be nominated by Ngāi Tahu and be subject to a similar management as the beneficial Titi Islands.'[67]

Whenua Hou (Codfish Island), also near Rakiura, is known as the ancestral home of Rakiura Ngāi Tahu, and one of the original stopping off places for the iwi on their way to the Titi Islands. During the Tribunal hearings Rakiura Ngāi Tahu did not deny that Whenua Hou was included in the purchase of Stewart Island, but they complained about being denied access to it thereafter. The Waitangi Tribunal recommended that 'subject to prior notification and to arrangements with conservation authorities, free access be available to Rakiura Māori to visit the island but consistent at all times with the security of wild-life on the island.'[68]

The two different sets of recommendations of the Tribunal for Whenua Hou and the Crown Titi Islands reflected the different forms of land-based redress that Ngāi Tahu and the Crown would develop together. The return of the Crown Titi Islands was one of the most integral aspects of the Ngāi Tahu claim, especially for the Rakiura people.[69] Although the Waitangi Tribunal had not recommended the return of Whenua Hou, O'Regan argued that its return would re-affirm the Crown's commitment to recognising Ngāi Tahu's rangatiratanga. Specifically, he sought to establish what he termed a 'joint title' approach in which both the Crown and Ngāi Tahu would share title to important sites such as Whenua Hou.[70]

Early in one of the first formal meetings between the Crown and Ngāi Tahu in late 1991, there was initially some limited support from DoC for the 'joint title' approach, but only if Ngāi Tahu also agreed to co-management rather than ownership of the Crown Titi Islands and in both cases this was really to be Ngai Tahu's participation, in an advisory capacity, to what was in essence primary control by DoC.[71] When the Crown consulted with conservation organisations, indeed, there was positive support for a Ngāi Tahu advisory role, as opposed to Ngāi Tahu's 'joint title approach.'[72] In June 1992 DoC formally proposed the establishment of an advisory Reserves Board for Whenua Hou, its majority reserved for Rakiura Ngāi Tahu, while Ngāi Tahu continued to pushed for a 'joint title' solution.[73] In O'Regan's words, the 'joint title approach is relevant in the context of Whenua Hou and may well be relevant across a much wider spectrum of settlement within Ngāi Tahu's rohe. We believe the Australian and Canadian models in this area are instructive and find it difficult to understand why NZ should find it so difficult.'[74]

Reference to developments in Canada and Australia was used by Ngāi Tahu throughout the negotiations to stress precedents existed for recognising the rangatiratanga of indigenous groups in other former British colonies. During the March 1993 negotiations, for example,

O'Regan noted that Ngāi Tahu continued 'to be interested in the concept of shared title, for example, as for Ayers Rock [Uluru] in Australia.'[75] But the 'joint title' idea did not gain much traction within the Crown, most elements within which sought to provide Ngāi Tahu with an advisory role in conservation or reserves boards. This was despite O'Regan's attempts to stress that Ngāi Tahu did not seek to challenge DoC's role in 'the wider conservation estate'. The proposed solution for Whenua Hou and the Crown Titi Islands, would not have broader ramifications, and 'would not mean operational control or co-management as management is the business of the DoC. Ngāi Tahu would, however, seek control of the Ngāi Tahu cultural context, ie, names etc.' The Crown responded that its co-management proposal for Whenua Hou was fully consistent with the Tribunal's recommendations, and that the concept of 'joint title' remained unacceptable to the Crown.[76] While Whenua Hou was not available for either straight transfer or as a 'joint title' proposition, however, the Crown Titi Islands remained available - although it was unclear how transfer would be achieved. At first DoC proposed that the islands be co-managed by Crown and iwi together, but Ngāi Tahu continued to seek sole fee-simple ownership.[77] The Crown's compromise was to envision vesting in the same manner as the Beneficial Titi Islands.[78] Ngāi Tahu was in broad agreement, but requested that the vesting of the Islands occurred without the Crown's retention of its customary coastal 'marginal strip'. From Ngāi Tahu's perspective, marginal strips were created when the Crown disposed of land: the return of land in a Treaty settlement was a different proposition, and did not carry the same encumbering obligations. More specifically, many of the Titi Islands to be returned had steep seashore cliffs which contained important titi nesting sites that would be included in any marginal strip. The Crown tentatively agreed to Ngāi Tahu's proposal, but declared that the matter would have to be determined by public consultation, like other conservation matters covered above.[79]

When consultation with the Southland Conservation Board was envisaged, Ngāi Tahu was concerned about the effect that third-party interests might have on the negotiations for the return of the Crown Titi Islands.[80] The Ngāi Tahu negotiators had developed a draft deed for the management structure that it proposed would govern the Titi Islands,[81] and the Crown wanted to release this not only to the Conservation Board but also to Forest and Bird which . Ngāi Tahu felt would oppose the waiving of the marginal strip and thereby derail the agreement that had been reached in principle. The Crown negotiators responded that there were advantages to releasing the deed, as it would allow the Crown to allay any concerns Forest and Bird may have had with the proposal.[82]

The Crown's consultation with the Southland Conservation Board regarding the transfer of freehold title to the Crown Titi Islands was combined with that on the proposal for a Reserves Board at Whenua Hou. When the Board narrowly provided its support for the proposals, Ngāi Tahu sought to expedite the transfer of the Crown Titi Islands and the establishment of the board for Whenua Hou, but in June 1994 Graham sought the Minister of Conservation's support before taking this further.[83] At this time the two parties were beginning to explore a possible interim settlement, as a major settlement seemed to be receding. Ngāi Tahu wanted to include Whenua Hou and the Crown Titi Islands in any such interim settlement, but the Minister of Conservation opposed this, citing both the narrow margin of support within the Southland Conservation Board for the proposals and the waiving of the marginal strip at the Crown Titi Islands. When an interim settlement was porposed in November 1994, since Ngāi Tahu's proposals for redress relating to the Crown Titi Islands and Whenua Hou were still under consideration by the Crown, they were not included. This contributed to the rejection of the interim settlement by Ngāi Tahu in November 1994, and the subsequent breakdown of the negotiations.[84]

When negotiations were recommencing in early 1996, the Crown explored some variations in the settlement offer regarding Whenua Hou and the Crown Titi Islands, and substantial internal Crown debates developed during the recommencement process. Te Puni Kōkiri and DoC officials, in particular, debated conservation issues and their potential to foster or endanger the development of goodwill between Crown and Ngāi Tahu negotiators. Comments by DoC officials on a Cabinet paper being developed in March 1996 reflected some of the reasons the first interim settlement was rejected by Ngāi Tahu in 1994; they wanted the paper to highlight the significant public opposition that was raised against the Whenua Hou and Crown Titi proposals, and their only narrow support within the Southland Conservation Board.[85] A TPK official commented:

> We consider TPK should be involved in any inter-departmental discussions on these matters as our participation will assist in achieving a better outcome. For example, in the past we have contested several elements of the Crown's present negotiating position (ownership of pounamu, Whenua, Crown Titi Islands, Rarotoka including [the] foreshore and seabed) which are only now being contemplated as part of the compromises necessary to reach a settlement.[86]

OTS officials advocated for revised positions that reflected both TPK and Ngāi Tahu concerns. In the event, while DoC's reservations about the Southland Conservation Board consultation process were included in the final draft sent to Cabinet, this also set out the limitations of the previous interim settlement offer of November 1994.[87]

On Whenua Hou, Ngāi Tahu had sought equal representation on the Reserves Board, as well as the negotiation with DoC of transparent and explicit protocols over visiting rights to the island. The proposal developed in the first half of 1996, in preparation for the formal recommencement of negotiations, largely met Ngāi Tahu's approval. In addition to equal representation on the Reserves Board, a consultative group comprised of Rakiura Ngāi Tahu would be formed to provide advice to the DoC Regional Conservator on the issue of entry permits. With regard to the Crown Titi Islands, Ngāi Tahu insisted on the waiving of marginal strips if negotiations were to advance, and the Crown agreed to the demand. Thus fee simple title of all land within the islands could be transferred, so long as they were managed as a nature reserve. Here, Ngāi Tahu sought sole management, while the Crown argued for co-management.[88]

As the negotiations neared a Heads of Agreement in late September 1996, Ngāi Tahu proposed that the fee simple title of Whenua Hou should be transferred to Ngāi Tahu, but with immediate gift-back to the Crown. When this was rejected, Ngāi Tahu instead sought an undertaking that if the island were no longer required for conservation purposes it would pass to Ngāi Tahu, but this too was rejected. The Crown's final offer was that, instead of a Reserves Board, a sub-committee of the Southland Conservation Board would be established with equal representation of Rakiura Ngāi Tahu and board appointees. This sub-committee would, among other things, prepare a policy setting out the conditions under which the Minister of Conservation would grant permits for access to Whenua Hou. This was accompanied by agreement that Ngāi Tahu would both receive the fee simple title to the Crown Titi Islands and acquire sole responsibility for the management of the islands.[89]

When an agreement was finally reached on Whenua Hou and the Crown Titi Islands just before the 1996 election, a number of conservation and sports recreation groups, such as the FMC, continued to oppose any settlement involving conservation areas. The President of

Forest and Bird, Kevin Smith, for example, spoke out against the transfer of the Crown Titi Islands to the iwi.[90] The society's Southland branch expressed concern about the allegedly 'speedy' negotiations underway between the Crown and Ngāi Tahu. As well as opposing the proposed handover of the Crown Titi Islands, Forest and Bird opposed the creation of a conservation board sub-committee for Whenua Hou. Barbara Marshall of the Federated Mountain Clubs asked that neither the Crown Titi Islands nor Whenua Hou be used as redress, despite the recommendations of the Waitangi Tribunal.[91]

The negotiations and settlement provisions regarding the Arahura River, Whenua Hou and the Crown Titi Islands reflected the Waitangi Tribunal's specific findings and recommendations. Substantive negotiations took place over a number of years, and were subject to numerous consultation processes with third-party conservation organisations. The Tribunal's recommendation that the Crown transfer the fee-simple title of a specific conservation area, the Crown Titi Islands, was finally effected. While the Tribunal did not recommend the transfer of Whenua Hou, Ngāi Tahu first sought a 'joint title' approach like the Australian arrangements at Uluru/Ayers Rock and then, late in the negotiations, the transfer of full title with immediate gift-back to the Crown. While neither proposition was accepted, Ngāi Tahu was able to obtain a significant management role in the Whenua Hou Nature Reserve. The return of the Crown Titi Islands, without the marginal strip traditionally required when the Crown disposed of land, together with sole Ngāi Tahu control of the islands, reflected the measure of rangatiratanga that the iwi had re-established around these important sites of cultural significance.

Conclusion

Third-party interests have played a key role in the Treaty settlement process in New Zealand. The difficulties experienced by Ngāi Tahu in having certain Crown lands returned, especially conservation lands, partly reflected the interests of third-parties as well as opposition within the Crown. The return of the Crown Titi Islands, and other sites of significance to Ngāi Tahu, was delayed as a result. These third-party interests were diverse: business interests, conservation and recreational advocates and farmers had all served to extend the Ngai Tahu negotiations. Some conservation groups, for example, opposed any precedence for Maori decision, operating from a particular cultural construction.[92]

Te Maire Tau pinpointed the diverging views at issue: 'Pakeha perceive Maori as claiming a spiritual relationship with the land, yet also managing to kill off the moa. Maori perceive Pakeha as both pillagers of the environment and yet claiming the role as guardians of the 'nation's treasures'.'[93] This is not an absolute dichotomy. Individuals within the diverse group of third-party interests, for example, had been very supportive of and instrumental in negotiating final agreements that were acceptable to the iwi. While ongoing opposition to aspects of land transfer continues to this day, this has diminished as the Treaty settlement process has become accepted by nearly all political parties and a large proportion of Pakeha.[94]

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October 2015

[1] David Young, *Our Islands, Our Selves: A History of Conservation in New Zealand* (Dunedin: Otago University Press, 2004); Keri Mills, "The Changing Relationship between Māori and Environmentalists in 1970s and 1980s New Zealand," *History Compass* 7/3 (2009): 678-700.
[2] Janine Hayward, "Three's a Crowd?: The Treaty of Waitangi, the Waitangi Tribunal, and Third Parties" *New Zealand Universities Law Review*, 20(2): 239–251 (2002).
[3] One exception is Ben White's 1994 Master of Resource Management thesis, "Sites of Contestation: Perceptions of Wilderness in the Context of Treaty Claim Settlements," Lincoln University.
[4] Waitangi Tribunal, *The Ngai Tahu Report*, 1991, 1061-1066.
[5] *Forest & Bird*, "The Treaty and the Estate," February 1994 for articles by Tipene O' Regan and both conservationist supporters and opponents of the Ngai Tahu proposals.
[6] DoC official 1 to Cath Nesus, 21 November 1991, C-27-7-04 Vol. 1, Office of Treaty Settlements (OTS) archive.
[7] March-April 1994, "Dr Henrik Moller and the kereru files," NT140 Q22, Macmillan Brown Archive, Canterbury University.
[8] "Ngai Tahu: External Communications, Liaison NGOs," C-27-7-04 Vol. 1, OTS archive.
[9] Barbara Marshall, Federated Mountain Clubs (FMC) to Douglas Graham, 16 March 1992, C-27-7-04 Vol. 1, OTS archive.
[10] Hugh Barr (FMC) to Graham, 21 May 1992, C-27-7-04 Vol. 1, OTS archive.
[11] Atholl Anderson, *The Ethno-history of Southern Maori, 1650-1850* (Dunedin: Otago University Press, 1998).
[12] Hugh Barr (FMC) to Graham, 21 May 1992, C-27-7-04 Vol. 1, OTS archive.
[13] Various letters to Graham, November 1993, AAKW W5105 7812 5, Archives New Zealand.
[14] Tom Metcalfe, "Board backs return of lake to Maoris," *The Press*, 23 April 1991.
[15] Cindy Kiro (Greenpeace NZ), Guy Salmon (Maruia Society), Clive Monds and Susi Newborn (Friends of the Earth) and Robbie Morrison (Wellington Rainforest Action Group) to Graham, 8 October 1992, C-27-7-04 Vol. 1, OTS archive.
[16] Damian Stone, "Financial and Commercial Dimensions of Settlement," in Nicola Wheen and Janine Hayward (eds.) *Treaty of Waitangi Settlements* (Wellington: Bridget Williams Books, 2012), 138-150.
[17] Graham to Chairman Cabinet Committee on Treaty of Waitangi Issues, "Settlement of the Ngai Tahu Maori Trust Board Claim to the Waitangi Tribunal," 20 May 1992, C-27-4-07 Vol. 1, OTS archive.
[18] From as early as the 1860s Ngai Tahu claimed that the 1848 'Kemp Purchase' had not extended to the West Coast but only to the foothills of the Main Divide, and thus that the mountainous middle of the central South Island, the 'hole in the middle', had never been sold. While the 1879-1880 Smith-Nairn Commission upheld the validity of that claim, it was largely rejected by the Waitangi Tribunal in its 1991 report: *Appendices to the Journals of the House of Representatives*, G-06, 1881; Waitangi Tribunal, *The Ngai Tahu Report*, 1991, pp. 51-82, 387-524.
[19] Manager Crown Forest Lands to David Oughton, Secretary for Justice, 19 June 1992; Treaty of Waitangi Policy Unit (ToWPU) official 4 [officials have not been identified in this paper; they are numbered as per the research notes of the author] to Graham, 19 June 1992, both in: C-27-4-07 Vol. 1, OTS archive; Ngāi Tahu-Crown meeting minutes, June 1992, C-27-4-02, Vol. 4, OTS archive.
[20] Minister of Conservation to Chairman Cabinet Committee on Treaty of Waitangi Issues, "Greenstone Pastoral Lease: Exclusion from area to go in the Crown Land Bank," 19 June 1992, C-27-4-07, Vol. 1, OTS archive.
[21] Tipene O'Regan to Graham, 6 August 1992, C-27-4-07 Vol. 1, OTS archive.
[22] Les Cleveland to Graham, 30 July 1992, C-27-4-07, Vol. 1, OTS archive.
[23] Kerry O'Donohue to Graham, 29 July 1992: C-27-4-07, Vol. 1, OTS archive.
[24] Niall Watson to Graham, 9 July 1992; M.A. Rodway to Graham, 28 July 1992, both in: C-27-4-07, Vol. 1, OTS archive.
[25] In addition Ngāi Tahu, unlike any other claimant group, were able to on-sell properties at a profit and then place further Crown lands in the land-bank. This was only possible in a rohe as large as Ngāi Tahu's.
[26] Graham to O'Regan, undated but most likely July 1992; Ngāi Tahu-Crown meeting minutes, 24 July 1992, both in: C-27-4-02, Vol. 4, OTS archive; see too CSC (92) 387, C-27-4-07 Vol. 1, OTS archive.
[27] CAB (92) 643; ToWPU official 4 to Graham, "Ngai Tahu Negotiations: Advance on Settlement,"31 July 1992, both in: C-27-4-07 Vol. 1, OTS archive.
[28] O'Regan to Manager Crown Forest Lands), 13 August 1992, C-27-4-07, Vol. 1, OTS archive.

[29] CAB (92) M23/10a, C-27-4-02 Vol. 4, OTS archive. In July 1993 Ngāi Tahu sought another high-country pastoral lease, at Glenmore Station, but the Crown was very hesitant. In the event, the station was taken off the market before it was sold. Graham, "Purchase of Glenmore Station for Part Settlement of the Ngāi Tahu Claim," 8 July 1993; ToWPU official 10 to Treasury official 8, "Re Glenmore Station," 12 July 1993, both in: C-27-8-01 Vol. 6, OTS archive.
[30] ToWPU official 4, "Meeting with Fish and Game Council and Federated Mountain Clubs," 20 October 1992: C-27-7-04 Vol. 1, OTS archive
[31] ToWPU official 4, "Meeting with Fish and Game Council and Federated Mountain Clubs," 20 October 1992; B. Marshall (FMC) to Graham, 21 October 1992; Bryce Johnson to Graham, 21 October 1992, all in: C-27-7-04 Vol. 1, OTS archive.
[32] Johnson to Graham, 28 October 1992, C-27-7-04 Vol. 1, OTS archive.
[33] ToWPU official 11 to Graham, 15 June 1993, AAKW W5105 7812 5, Archives New Zealand.
[34] "Meeting between Crown and Ngai Tahu Negotiators," 1 July 1993, C-27-2-02 Vol. 2, OTS archive.
[35] Graham to O'Regan, 21 September 1993, NT140, F(i)1 Box 129, Macmillan Brown archive.
[36] Graham to Royal Forest and Bird Society, Environmental and Conservation Groups, New Zealand Fish and Game Council, Maruia Society, FMC, New Zealand Deerstalkers Association and the New Zealand Conservation Authority, 16 December 1991; Catherine Wallace to Graham, 4 April 1992; ToWPU official 4, "Meeting with Fish and Game Council and FMC," 20 October 1992; Denis Marshall to Graham, 7 December 1992, all in: C-27-7-04 Vol.1; Denis Marshall, "Speech to the Federated Mountain Clubs," 12 June 1993, NT140 G20b, Macmillan Brown archive; B. F. Webb to Sid Ashton, 21 March 1994, NT140 M4 (g), Macmillan Brown archive; DoC official 1, "Consultations for Ngai Tahu ," 11 May 1994, C-27-7-04 Vol. 1; Graham, "Speech to Public Access NZ," June 1994, C-27-7-04 Vol. 1; Graham, "Ngai Tahu Negotiations: Preliminary Crown Position on Sites of Recreational and Conservation Interest, 17-18 September 1996 in Christchurch and Dunedin", Vhi 52c (r), Te Runanga o Ngai Tahu (TRONT) archive, Christchurch.
[37] Bruce Mason to Graham, 12 November 1991; Graham to Mason, 3 December 1991; Mason to Graham, 24 November 1992; Graham to Mason, 19 February 1993, all in: C-27-7-04 Vol. 1, OTS archive; Mason to Graham, 2 May 1994; Graham to Mason, 25 May 1994, both in: C-27-7-03 Vol. 1, OTS archive.
[38] "Meeting between Crown and Ngai Tahu Negotiators," 18 July 1994, C-27-2-02 Vol. 3, OTS archive.
[39] O'Regan to Graham, 8 March 1994 and 3 June 1994; "Minutes of a Meeting between Crown and Ngai Tahu Negotiators," 16 March 1994, both in: C-27-2-03 Vol. 3; "Minutes of Public Consultation Process Hui by the Ngai Tahu Maori Trust Board," 22 April 1994; C-27-7-04 Vol. 1.
[40] Edward Ellison to Ashton, 2 June 1994, Vhi 16 (t), TRONT archive.
[41] DoC official 2 to ToWPU official 11, 18 January 1994, AAKW W5105 7812 5, Archives New Zealand; "Minutes of a meeting between Crown and Ngai Tahu Negotiators", 8 June 1994, C-27-2-02 Vol. 3, OTS archive. Adversarial consultation processes regarding Treaty settlements and indigenous rights has also been explored by Canadian authors: by anthropologist Elisabeth Furniss in the British Columbian context during the same time period in the Cariboo-Chicotlin area, and by journalist Alex Rose in his history of the Nisga'a claim. See Furniss, *Burden of History: Colonialism and the Frontier Myth in a Rural Community* (Vancouver: UBC Press, 1999) and Rose, *Spirit Dance at Meziadin: Chief Joseph Gosnell and the Nisga'a Treaty*.
[42] Catherine Wallace to Graham, 4 April 1992, C-27-7-04 Vol.1.
[43] O'Regan to Graham, 20 February 1995; Graham to O'Regan, 17 March 1995; O'Regan to Graham, 20 March 1995, both in NE-18-027-00-01, OTS archive.
[44] Office of Treaty Settlements, *Crown Proposals for the Settlement of Treaty of Waitangi Claims* (Wellington: Department of Justice, 1994).
[45] TPK official 3 to OTS official 3, 20 March 1996; Minister of Treaty Negotiations to Cabinet Strategy Committee, "Ngai Tahu: specific assets with conservation implications," 31 March 1996, both in: NE-12-027-00-02 Vol. 3, OTS archive; CSC (96) M 10/3a, b, c, NE-12-027-00-02 Vol. 4, OTS archive.
[46] South Island High Country Committee of Federated Farmers of New Zealand, "Farmers Stand by Defence of Ngai Tahu," 23 March 1995, Macmillan Brown archive.
[47] Waitangi Tribunal, *The Ngai Tahu Report*, 1040-1042; Michele D. Dominy, "White Settler Assertions of Native Status," *American Ethnologist*, Vol. 22, No. 2 (May, 1995), 358-374.
[48] R. Haworth to O'Regan, 4 October 1997, VB 256 (l), TRONT archive; H.A.P Barker to Graham, 23 September 1996, Vhi 54j, TRONT archive.
[49] Ashton, "Wakatipu Titles," 19 August 1996, Vhi 52 (g), TRONT archive.

[50] B. Marshall to Prime Minister, 12 September 1996, NE-18-027-00-01, OTS archive; "Fears land deal could exclude public access", *Otago Daily Times*, 3 October 1996.
[51] Valerie Campbell to Graham, 4 August 1996, NE-18-027-00-01, OTS archive.
[52] OTS official 2 to Bolger, 5 August 1996, NE-10-027-00-02 Pt.1, OTS archive; Anake Goodall, "File Note of meeting with Prime Minister," 6 August 1996, TRONT archive; Ashton, handwritten notes, 13, 15, 19, 20 August 1996, Vhi 52 (g), TRONT archive.
[53] Tina Nixon, "Fear precedent set with Ngai Tahu deal," 19 June 1998, *The Southland Times*; Interview with Anake Goodall, 7 May 2011.
[54] Waitangi Tribunal, *The Ngai Tahu Report*, 725.
[55] Waitangi Tribunal, *The Ngai Tahu Report*, 1061.
[56] Russell Beck and Maika Mason, *Pounamu Treasures: Nga Taonga Pounamu* (Auckland: Penguin, 2012). The Crown had continued to provide consent to private companies to mine pounamu in the Arahura Valley: O'Regan to Graham, 24 January 1992, Vhi 9a(c), TRONT archive.
[57] "Meeting of Crown and Ngai Tahu Negotiators," 4 February 1992, C-27-8-01 Vol. 1, OTS archive.
[58] In the Ngai Tahu dialect of the Māori language, the "ng" is often replaced with a "k". Hence "taonga", or treasured possession, is "taoka".
[59] The meaning of mana is many and varied, but in this case signifies the honour of the Crown.
[60] "Minutes of a meeting between Crown and Ngai Tahu Negotiators," 30 September 1992, C-27-2-02 Vol. 2, OTS archive.
[61] O'Regan to Graham, 25 March 1993, C-27-2-02 Vol. 2; "Minutes of a meeting between Crown and Ngai Tahu Negotiators," 31 March 1993; O'Regan to ToWPU official 11, 6 April 1993; ToWPU official 11 to O'Regan, 8 April 1993; ToWPU official 10 to Graham, 29 June 1993; Graham to O'Regan, 18 October 1993, all in: C-27-2-02 Vol. 2, OTS archive; "Minutes of a meeting between Crown and Ngai Tahu negotiators," 4 May 1994, C-27-2-02 Vol. 3, OTS archive.
[62] "Minutes of a meeting between Crown and Ngai Tahu Negotiators," 26 January 1994, C-27-2-02 Vol. 3, OTS archive.
[63] Department of Prime Minister and Cabinet official 3 to Bolger, 28 February 1996, NE-12-027-00-02 Vol. 2.
[64] Goodall, "File note of telephone conservation with [OTS official 2]," 27 September 1996, Vhi 52b (d), TRONT archive; *Reserves Act 1977*, Sections 18 and 19.
[65] *Ngai Tahu Deed of Settlement*, 21 November 1997, Section 13.3.2.
[66] Michael Stevens, "Settlements and 'Taonga': A Ngāi Tahu Commentary," in Nicola Wheen and Janine Hayward (eds.) *Treaty of Waitangi Settlements* (Bridget Williams Books: Wellington, 2012), 135; Michael Stevens, "Muttonbirds and modernity in Murihiku: continuity and change in Kai Tahu knowledge," Ph.D Thesis, University of Otago, 2009.
[67] The Waitangi Tribunal, *The Ngai Tahu Report*, 1064
[68] Ibid.
[69] Harold Ashwell to Waitangi Tribunal, 17 August 1991, Vhi 9b(f), TRONT archive; "Meeting between Ngai Tahu, Department of Conservation and Treaty of Waitangi Policy Unit officials," 1 October 1991, C-27-2-03 Vol. 1, OTS archive.
[70] "Minutes of Meeting between Ngai Tahu and Crown Negotiators," 30 October 1991, C-27-2-03 Vol. 1, OTS archive.
[71] "Minutes of Meeting between Ngai Tahu and Crown Negotiators," 30 October 1991, C-27-2-03 Vol. 1, OTS archive.
[72] Minutes of Meeting between Ngai Tahu and Crown Negotiators," 4 February 1992, C-27-8-01 Vol. 1, OTS archive; "Minutes of Meeting between Ngai Tahu and Crown Negotiators," 6 October 1993, C-27-2-02 Vol. 2, OTS archive
[73] DOC official 2 to O'Regan, 23 June 1992, Vhi 13 (k) Box 150, TRONT archive.
[74] O'Regan to Graham, 25 March 1993, C-27-2-02 Vol. 2, OTS archive.
[75] In 1985 Ayers Rock/Uluru was returned as freehold title to the local Aboriginal community and leased back to the Australian government. It is co-managed by a Park Board with an Aboriginal majority: David Lawrence, "Managing Parks/Managing 'Country': Joint Management of Aboriginal Owned Protected Areas in Australia," Research Paper 2 1996-97, Parliament of Australia.
[76] "Minutes of Meeting between Ngai Tahu and Crown Negotiators," 31 March 1993; ToWPU official 11 to Graham, 27 April 1993; "Minutes of Meeting between Ngai Tahu and Crown Negotiators," 28 April 1993; ToWPU official 10 to Graham, 29 June 1993, all in:C-27-2-02 Vol. 2, OTS archive.

[77] "Minutes of a meeting between Ngai Tahu and Crown Negotiators," 1 March 1992, C-27-8-01 Vol. 1, OTS archive.
[78] CSC (92) 89, C-27-2-02 Vol. 2, OTS archive.
[79] O'Regan to Graham, 25 March 1992, C-27-2-02 Vol. 2, OTS archive "Minutes of Meeting between Ngai Tahu and Crown Negotiators," 31 March 1993, C-27-2-02 Vol. 2, OTS archive.
[80] "Minutes of Meeting between Ngai Tahu and Crown Negotiators," 28 April 1993, C-27-2-02 Vol. 2, OTS archive.
[81] Rakiura Ngāi Tahu were also intimately involved in the negotiations regarding Whenua Hou and the Crown Titi Islands. They were disappointed with the proposal for Whenua Hou, believing that the proposals should have allowed for greater Rakiura Ngāi Tahu control of the island. The Rakiura Titi Committee was the coordinating committee regarding the Titi Islands, and O'Regan and the Ngāi Tahu Māori Trust Board consulted with the Committee during the negotiation process. It gave interim approval for the draft management structure deed for the Crown Titi Islands in mid-1993. But the Committee was split over the issue of the vesting of the Titi Islands, with some members believing the Islands should be vested locally rather than into Te Runanga o Ngāi Tahu. Eventually agreement was reached that the Islands would be vested in Te Runanga o Ngāi Tahu, but with local direct management: "Minutes of Meeting between Ngai Tahu and Crown Negotiators," 1 July 1993, and "Minutes of Meeting between Ngai Tahu and Crown Negotiators," 28 July 1993, both in: C-27-2-02 Vol. 2, OTS archive; see too O'Regan to Graham, 18 January 1994 and "Minutes of Meeting between Ngai Tahu and Crown Negotiators," 26 January 1994, both in: C-27-2-02 Vol. 3, OTS archive.
[82] "Minutes of Meeting between Ngai Tahu and Crown Negotiators," 1 July 1993; "Minutes of Meeting between Ngai Tahu and Crown Negotiators," 28 July 1993; "Minutes of Meeting between Ngai Tahu and Crown Negotiators," 6 October 1993, all in: C-27-2-02 Vol. 2, OTS archive. It is unclear what Forest and Bird's immediate response was to the draft deed, but given their opposition to other aspects of the Ngāi Tahu settlement it was most likely negative.
[83] "Minutes of Meeting between Ngai Tahu and Crown Negotiators," 8 June 1994, C-27-2-02 Vol. 3, OTS archive.
[84] O'Regan to ToWPU official 8, 8 August 1994; Graham to Cabinet Strategy Committee, "Ngai Tahu on-account settlement," 24 August 1994; CAB (94) M 40/10, all C-27-2-02 Vol. 3, OTS archive.
[85] DoC official 2 to OTS official 3, 20 March 1996, NE-12-027-00-02 Vol. 3.
[86] TPK official 3 to OTS official 3, 20 March 1996 and Graham to Cabinet Strategy Committee, "Ngai Tahu: specific assets with conservation implications," 31 March 1996, both in: NE-12-027-00-02 Vol. 3.
[87] CSC (96) M 10/3a, b, c, NE-12-027-00-02 Vol. 4, OTS archive.
[88] OTS official 3 to Department of Prime Minister and Cabinet, Crown Law Office, Treasury and DoC officials, 18 March 1996; Graham to Cabinet Strategy Committee Chair, "Ngai Tahu: Specific assets with conservation implications," 31 March 1996, all in: NE-12-027-00-02 Vol. 3, OTS archive; Bolger to O'Regan, 22 April 1996, NE-12-027-00-02 Vol. 5, OTS archive.
[89] Goodall to Ngāi Tahu Negotiating Team, 19 September 1996, Vhi 52c (u), TRONT archive.
[90] Kevin Smith to Doug Kidd, 3 October 1996, Vhi 54 (f), TRONT archive.
[91] Owen Cox to Graham, 27 August 1996, NE-18-027-00-01, OTS archive; CE Henderson to Graham, 4 September 1996, NE-18-027-00-01, OTS archive; Forest and Bird, "Postpone Ngai Tahu Settlement, Forest & Bird Plea," 1 October 1996, Vhi 53b (l), TRONT archive; Kevin Smith to Doug Kidd, 3 October 1996, Vhi 54 (f), TRONT archive. In a similar vein, Public Access New Zealand claimed that access to climbing Aoraki would be completely banned under Ngāi Tahu control, while Forest and Bird argued that the government would be giving away the entire conservation estate in the South Island: Public Access New Zealand, "Climbing MT Cook could be banned under secret deals with Ngai Tahu," 1 October 1996, Vhi 53b (l), TRONT archive.
[92] William Cronon (ed.), *Uncommon Ground: Rethinking the Human Place in Nature* (New York: Norton & Company, 1995).
[93] Te Maire Tau, "Ngai Tahu and the Canterbury Landscape" in John Cookson & Graeme Dunstall (eds.) *Southern Capital Christchurch, Towards a City Biography: 1850-2000* (Christchurch: Canterbury University Press, 2000), 41-59, 57.
[94] Sir Tipene O'Regan, "Impact on Ngai Tahu – A Maori Perspective," in Jacinta Ruru (ed.) *In Good Faith* (Wellington: NZ Law Foundation, 2008).