

RANGAHAUA WHANUI NATIONAL THEME L

THE TRUST ADMINISTRATION OF  
MAORI RESERVES, 1840-1913

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## INTRODUCTION

This is a national theme report for the Rangahaua Whanui programme.<sup>1</sup> It forms one part of two studies commissioned as National Theme L (trust administrations in the nineteenth century). The report attempts a historical overview of the legislation and general practice of the trust administration of native reserves from 1840 to 1913.<sup>2</sup> It was initially envisaged that the report would focus exclusively on the nineteenth century. However, this has been extended to 1913 in order to link up with Crown Forestry Rental Trust research into the Maori Trustee.<sup>3</sup>

### TRUST ADMINISTRATION OF MAORI RESERVES

We might begin with a brief acknowledgement that Maori reserves are themselves remarkably difficult to categorise or classify with any finality or assurance. This is largely because of the regionalised and particular patterns of land acquisition, as well as an absence of consistency among the colonial administration's approaches to the allocation and administration of reserves.<sup>4</sup> Certainly, there is no easily discernible template for trust reserves administration. Administration was meant to be guided by legislation, but, as will be shown, this was often not the case. Instead, the confusing and sometimes contradictory nature of administration owed a great deal to the initial inconsistencies surrounding the allocation and conception of 'reserves' in New Zealand.

Not all reserves were administered in trust. Trust administration extended only to reserves that were in Crown-granted title and that came to be vested in the Crown or controlled by it through various means. For example, while other reserves were automatically included under the aegis of trust administration, legislation from 1856 allowed Maori to place reserves still in customary title into the hands of administrators through whom they would receive Crown title.

A 'trust' has recently been defined as:

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1. For further information concerning the Rangahaua Whanui Series, refer to the appendix for the practice note; refer also to the research commission, 6 November 1995.
  2. Jenny Murray has been commissioned to complete the partner report examining Crown policies on Maori reserve lands from 1840 to 1907. The Murray report focuses on a conceptual study of reserves and also the removal of restrictions on alienation. The present report seeks to avoid duplication, and refers to Murray's partner study on these issues: J E Murray, *Crown Policy on Maori Reserved Lands, 1840 to 1865, and Land Restricted from Alienation, 1865 to 1900*, Waitangi Tribunal Rangahaua Whanui Series (first release), February 1997.
  3. Kieran Schmidt and Fiona Small, 'The Maori Trustee, 1913-53', report commissioned by the Crown Forestry Rental Trust, 1996
  4. For a detailed study of reserves 'policy', refer to Murray.

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an equitable obligation under which a person having control of property is bound to deal with that property either:

- (a) For the benefit of definite persons (of whom he himself may be one) and any one of whom may enforce the obligation; or
- (b) For some object or purpose permitted by the law.<sup>5</sup>

From the onset of colonial administration, it was envisaged that the formation of an independent trust represented the most beneficial form of official administration of reserves. Indeed, it was this object which, in part, led to the formation of the first Public Trust Office in 1873 (although the Public Trust Office did not formally adopt the administration of Maori reserves until 1882). Between 1840 and 1882, various methods were adopted purportedly for the trust administration of Maori reserves (outlined below) – some were trust administrations, for example, the 1856 Commissioners of Reserves, others, such as the boards of management from 1848 to 1856, were not.

Implicit in a trust relationship is a fiduciary duty, an obligation on the part of the trustees to assist the beneficiaries. Fiduciary duty is ‘founded on a trust relationship’.<sup>6</sup> This report explores whether the trust administration of reserves adhered to such a duty-bound relationship. Maori who chose to vest their lands in the trust administration did so in return for an assurance they would retain their lands and benefit from the administration. However, in many cases Maori were not in a position to choose. Reserves, such as tenths reserves, were often deemed to be under the trust administration, without Maori consent. Or, alternatively, Maori found themselves in a position where there were few other viable alternatives for retaining lands. The fiduciary duty was to realise the best possible return for the wards and beneficiaries, without endangering their land. In this context, we might consider the fiduciary duty in trust as commensurable with the sense of fiduciary duty expressed in the English text of the Treaty of Waitangi.

## STRUCTURE

The report follows a broadly chronological structure. There are five chapters, and each chapter attempts to draw out key themes and issues from the larger narrative. The origins of trust administration lie in the implementation of New Zealand Company theories of colonisation. Indeed, the only reserves to be administered in trust prior to 1856 were tenths reserves in the company settlements of Nelson and Port Nicholson. Chapter 1 discusses the origins of the trust administration of Maori

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5. Peter Spiller, *Butterworths New Zealand Law Dictionary*, 4th ed, Wellington, Butterworths, 1995, p 302
  6. ‘A fiduciary duty concerns disclosure of material facts in a situation where the fiduciary has either a personal interest in the matter to which the facts are material or acts for another party who has such an interest . . . The classic case where the duty arises is where a solicitor acts for a client in a matter in which he has a personal interest. In such a case there is an obligation on the solicitor to disclose his interest and, if he fails to do so, the transaction, however favourable it may be to the client be set aside at his instance’: Lord Jauncey, *Clark Boyce v Mouat* [1993] 3 NZLR 641, 648 (cited in Spiller, p 116).

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reserves, the company theories, and the Crown's adoption and implementation of administration up to 1856. Chapter 2 develops a close analysis of the first piece of reserves legislation to be implemented, the Native Reserves Act 1856, then traces its application in administrative practice through to 1870.

In 1869, Charles Heaphy and Alexander Mackay became dual commissioners responsible for the administration of reserves. Chapter 3 explores the administration of this 'dual commissionership' and their relationship to the Government between 1870 and 1882. Reserve Commissioners, though never formally abolished, were gradually replaced by the Public Trust Office after 1882. The Public Trustee's administration of reserves is the subject of chapter 4, the final and largest of the four periods examined. Indeed, the trustee's involvement was meant to represent a move towards more independent administration. We appraise whether the Public Trust Office, in actuality, provided the form of quintessentially impartial administration intended.

## METHOD

It is useful here to include a brief note on the research method used in this report. The nature and scope of this report have been based on the goals of the Rangahaua Whanui project; the aim has been to produce a broad historical survey, rather than detailed local analyses. Based on a national theme level, it should be considered as complementary to other more detailed Crown and claimant research reports prepared for specific claims.<sup>7</sup>

General reports often rely on case studies in order to span broad areas or periods. However, owing to the subject of the present report, an approach based on case studies has proved unsuitable. Administration between regions varied hugely. And case studies of localised areas tell us little about general trends. Instead, we have attempted a blanket coverage of all regions. This fulfils two purposes: first, it permits us to examine inconsistencies between administrations and, secondly, it highlights the extent to which local administrators influenced the particular direction of administration, sometimes in spite of the legislation.

Time constraints have severely restricted the scope of investigation. One of the weaknesses in a report of this nature lies in its inability to provide a detailed examination of primary source material. As a result, readers must remain cognisant of what has been omitted. The report endeavours, where possible, to highlight relevant sources of further research. Another weakness is the sole reliance on written source material produced in English. Maori written sources have not been consulted owing to the author's insufficient expertise in te reo Maori.

The majority of source material used in this report is from published primary or secondary sources. These source materials, while detailed in some periods, such as the 1870s, are relatively thin in others. This has led to a variation in the depth of

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7. These include the record of documents for Wai 145, the Wellington tenths claim. Other relevant records include those for Wai 143 (Taranaki) and Wai 27 (Ngai Tahu).

## INTRODUCTION

some chapters, compared to others. There is further scope for useful intertextual comparisons between published and unpublished forms of the same document. Such comparisons have not been attempted in the present study owing to time constraints.

## LIST OF ABBREVIATIONS

a, r, p	acres, roods, perches
AJHR	<i>Appendices to the Journals of the House of Representatives</i>
AJLC	<i>Appendices to the Journals of the Legislative Council</i>
app	appendix
GBPP	<i>Great Britian Parliamentary Papers</i>
CCJWP	Crown Congress Joint Working Party
ch	chapter
doc	document
ed	edition, editor
encl	enclosure
AJLC	<i>Appendices to the Journals of the Legislative Council</i>
MA	Maori Affairs series
MA MT	Maori Affairs Maori Trustee series
NA	National Archives
no	number
NZPD	<i>New Zealand Parliamentary Debates</i>
p, pp	page, pages
para	paragraph
pt	part
ROD	record of documents
ROP	record of proceedings
s, ss	section, sections (of an Act)
sec	section (of this report, or of an article, book, etc)
sess	session
vol	volume
Wai	Waitangi Tribunal claim

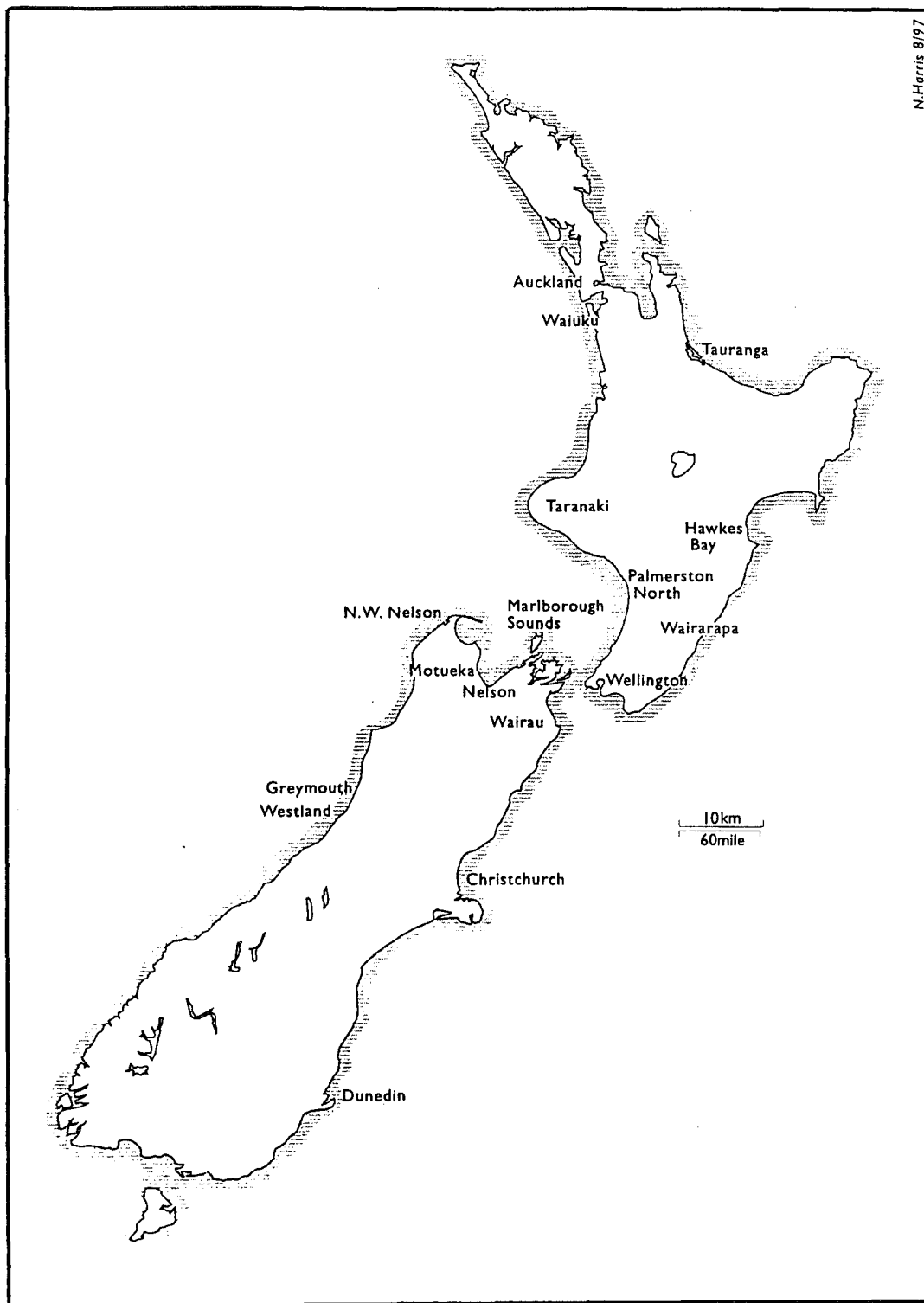


Figure 1: Locations of trust administration of reserves, 1840–1913



## CHAPTER 1

# ADMINISTRATION OF NEW ZEALAND COMPANY TENTHS RESERVES

### 1.1 INTRODUCTION

This chapter covers the origins of trust administration of Maori reserves in New Zealand. It focuses on the administration of New Zealand Company tenths reserves, which were first established in the colonies of Port Nicholson and Nelson as part of a scheme of systematic colonisation. In 1842, formal responsibility for the tenths reserves was transferred to the Crown and became the earliest example of Crown administration of reserves in trust. A great deal has been written on New Zealand Company tenths reserves in recent years. Reports produced for the Wellington tenths claim (Wai 145) and Te Tau Ihu o te Waka a Maui (Wai 102) provide a detailed investigation of matters relating to tenths reserves in Wellington and Nelson and have been used for the purposes of this report.<sup>1</sup>

This chapter restricts itself to an examination of the conception and early development of the administration of tenths reserves. We begin by briefly introducing the provision of tenths reserves inside the New Zealand Company's larger plan for settlement, then trace the transfer of company ideal into Government practice. In exploring the roots of trust administration, this chapter poses two underlying questions. First, we seek to determine whether the administration of reserves was undertaken with an explicit sense of trusteeship. The second question we should try to answer is, did the administration of reserves benefit Maori?

### 1.2 ORIGINS OF TENTHS RESERVES ADMINISTRATION

The origins of reserves administration lay in the background to the conception and allocation of reserves. In other parts of the world, where reserves had been created, not all were administered. The decision to administer reserves was taken by the New Zealand Company:

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1. These include: David Armstrong and Bruce Stirling, 'A Summary History of the Wellington Tenths: 1839-88, Crown Law Office, 1992 (Wai 145 ROD, doc C1), p 251; Duncan Moore, 'The Origins of the Crown's Demesne at Port Nicholson, 1839-1846' (Wai 145 ROD, docs E3-5), pts 1-3; Neville Gilmour (Wai 145 ROD doc A10); S P Quinn, 'Report on Wellington Tenths Reserve Lands'; M J Mitchell, 'Administration of Nelson Native Reserves' (Wai 102 ROD, doc A6B)

## 1.2 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

Reserves for Natives are very common things: they have been going on for three hundred years, and have never done any good yet. They were made by the old colonies in America. . . . the effect of that has been to isolate the Natives from the whites, and preserve them in a state of barbarism. The Company, having paid great attention to this subject, came to the conclusion that if the inferior race of New Zealand can be preserved at all in contact with civilised men it can only be by creating in civilised society a class of Natives who would retain the same relative superiority of position which they enjoyed in savage life. They determined, therefore, if possible, to make a native aristocracy, a Native gentry, and for that purpose to reserve lands as valuable property.<sup>2</sup>

New Zealand Company ideals for the systematic colonisation of New Zealand rested heavily upon distinctive views of the fabric of social organisation drawn from Victorian England, namely a vertical class society. In seeking to establish the essential foundations for a stable and prosperous new colony, the company planned to emulate the existence of a landed class of gentry, both for European immigrants and for Maori. In 1837, the New Zealand Association outlined the concept of ‘tenths’ reserves to be set aside for Maori as a basic component of a systematic European colonisation of New Zealand. In 1839, the arrangement was adopted by the association’s successor, the New Zealand Company, and conveyed in the company’s instructions to Colonel Wakefield: ‘[a] “portion of land equal to one-tenth of the whole” shall be reserved by the Company and held in trust by them for the future benefit of the chiefs, their families and heirs “forever”.’<sup>3</sup>

The allocation of company lands and tenths reserve entitlements was made by a lottery system. In this respect, Maori tenths were treated little differently from the selection of new colonists’ lands. This situation reflected the official thinking of the New Zealand Company and Government at the time that the decision over which pieces of land to be reserved for Maori would not be made by Maori, but determined according to other imperatives.

In all cases, the company expressed the view that the real payment and implicit benefit for Maori in terms of the land purchases would derive from the reservation of land for them in proximity to European settlement. The company initiated its activities with three land purchases from Maori on 27 September, 25 October, and 8 November 1839. The first deed followed the terms mentioned in Wakefield’s instructions above. However, the two subsequent deeds with Ngati Toa at Kapiti Island on 25 October, and with Ngatiawa at Queen Charlotte Sound on 8 November, neglected to specify the extent of reserve lands allocated. Barrett’s

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2. R Jellicoe, ‘Report on Native Reserves in Wellington and Nelson under the Control of the Native Trustee’, AJHR, 1929, G-1, p 5
  3. ‘New Zealand Company Instructions to Colonel Wakefield, Principal Agent of the Company’, May 1839, cited in Alan Ward, ‘A Report on the Historical Evidence: the Ngai Tahu Claim’, May 1989 (Wai 27 ROD, doc 11), p 75; see also the 1839 Wellington deed of sale in H H Turton, *Maori Deeds of Land Purchases in the North Island of New Zealand*, Wellington, vol II, 1887, p 95

translations to Maori increased the misunderstanding.<sup>4</sup> From the outset, there appeared a degree of confusion in the allocation of tenths reserves.

In late 1840, the Crown guaranteed a Crown grant to company lands. On the subject of reserve lands, the arrangement stated:

It being also understood that the Company have entered into engagements for the reservation of certain lands for the benefit of the natives, it is agreed that, in respect of all the lands so to be granted to the Company as aforesaid, reservations of such lands shall be made for the benefit of the Natives by her Majesty's government in fulfilment of, and according to the tenor of, such stipulations: the government reserving to themselves, in respect of all other lands, to make such arrangements as to them shall seem just and expedient for the benefit of the Natives.<sup>5</sup>

This agreement was formalised into the royal charter of incorporation granted to the company on 12 February 1841. Both the initial agreement and the eventual charter of incorporation established the role of the company as an agent of the Crown, in so far as it had been granted official responsibility for the administration of Maori reserves inside those lands comprising New Zealand Company settlements. In addition, the agreement expressed the Crown's intention to manage reserve lands on behalf of Maori and for Maori benefit.

### 1.3 NEW ZEALAND COMPANY ADMINISTRATION

Even before the company had received Crown ratification for its actions in New Zealand, it directed the appointment of an official, Edmund Halswell, to oversee the allocation and administration of tenths reserves. The New Zealand Company secretary, William Hutt, was questioned about Halswell's position and duties before the Select Committee on the Colonisation of New Zealand. Hutt explained:

The Directors have appointed a gentleman, Mr Halswell, a magistrate of Middlesex, as commissioner for the management of those portions of land which the company have reserved for the benefit of the aboriginal inhabitants in that part of New Zealand where they [the company] have formed their first colony . . . It is proposed to create a trust for the administration of the lands, which are now very valuable.<sup>6</sup>

Following the select committee's prompt, Hutt announced that it was the company's intention to create a trust for the administration of the lands. The committee asked whether Halswell would seek Maori consent for the inclusion of land under Halswell's 'superintendence'. Hutt replied that:

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4. Cited in Alexander Mackay, 'Memorandum by A Mackay on Origin of New Zealand Company's "Tenths" Native reserves', AJHR, 1873, G-2B; see also Ann Parsonson (Wai 27 ROD, doc P4), pp 29-31
  5. Vernon-Smith to Somes, 18 November 1840, Twelfth Report of the New Zealand Company, 26 April 1844, vol 1, (Wai 145 ROD, doc A28), pp 85-8
  6. W Hutt to select committee, 24 July 1840, s 1096, GBPP, 1837-40, p 128

### 1.3 TRUST ADMINISTRATION OF MAORI RESERVES, 1840-1913

the consent of the natives might possibly be asked; but there is no doubt that the natives would acquiesce without ceremony in a proposition which carried on the face of it an intention obviously beneficial to themselves.

It was further questioned whether the actual deed of trust would consist of an undertaking from all parties (settlers and Maori) to entrust the management to Halswell. Hutt's explanation stated simply that the trustees had yet to be appointed and that Halswell and eventually the trustees were all servants of the company. One member of the select committee raised the spectre that Halswell, as an agent of the company, could not represent a neutral trustee. Hutt dismissed the suggestion, however, by stating that:

in combining in his [Halswell's] person the duties of commissioner for the management of lands reserved for the natives, and of the servant of the company, they [the company] were taking a step which would carry their objects most beneficially into effect.<sup>7</sup>

Halswell was appointed as 'commissioner for the management of the native reserves'. Later in October, the company issued instructions to Halswell, which outlined its reserves policy in further detail:

From the very commencement of its proceedings the Company determined to reserve out of every purchase of land from the Natives a proportion of the territory ceded, equal to a tenth of the whole, and to hold the same in trust for the future benefit of the chief families of the ceding tribes. The company did not, indeed, propose to make the reserves for the native owners in large blocks, as it has been the practice to make for the Indians in North America, because that plan tends to impede settlement, and to encourage savages to continue barbarous, living apart from the civilised community . . .

Such being the objects of the Company, the directors do not find it in their power to do more than to preserve the property by appointing a special officer to overlook it, as if it were the private property of the Company, but who will, of course, have no power whatever to alienate the same or any part of it . . . In managing the reserves you are to take into consideration the existing wants of the Native race and to point out those objects to which in your judgement the revenues of the reserves may be most fitly appropriated to the end of promoting the moral and physical well-being of the Native chiefs, their families and followers, to the utmost extent that these means will admit of . . . As the appropriation of land to purchasers proceeds it will become your specific duty to select an eleventh, or a quantity equal to one-tenth of the land appropriated from time to time to purchasers, as Native reserves. The directors desire to impress on you the importance of taking care, on such occasions, that the lands you may choose for the natives are the most valuable then open to appropriation.<sup>8</sup>

These guidelines are significant as they reveal some distinctive features of the company's approach to reserves administration, in particular, features which were

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7. Ibid, s 1101, GBPP, 1837-40, p 128

8. New Zealand Company to Edmund Halswell, 10 October 1840, 'Appendix to Report from the Select Committee on New Zealand', GBPP, 1844, p 668

later inherited by successive administrations. At the time, the company defined its responsibility as no more than to preserve the property as though 'it were the private property of the Company'. This position established the idea that Maori reserves belonged to the company as its property, and not to Maori, as an ambiguous yet lasting precedent in the trust administration of reserves.

Halswell's instructions from the company re-emphasised the inalienability of reserved lands and stressed that reserves must be managed with the intention of benefiting Maori firmly in mind. An important part of this was the improvement of Maori 'moral and physical well-being'. The emphasis lay firmly on management, which included the payment of a financial annuity to Maori. European officials would manage revenue from reserves on behalf of Maori. Also, it was Halswell's responsibility to select lands from future land purchases to be allocated as Maori reserves.

On the strength of Hutt's testimony, it appears that the company was not concerned to consult with Maori over the formation of a trusteeship. Even so, before the company could institute a trust, administrative responsibility passed to the Crown.

#### 1.4 CROWN ADMINISTRATION, 1841

From the outset, the Crown looked to adopt the company approach to reserves. In August 1840 the Select Committee on the Colonisation of New Zealand made the following report:

That on all sales of land to be made by the Crown, and also in all cases of grants to be made under the special circumstances for which provision has been already suggested, reserves be made for the natives of a quantity equal to one tenth of the lands so sold or otherwise disposed of. Your committee are of the opinion that a plan of reserves, similar to that adopted by the New Zealand Company, would be attended with the most beneficial effects to the native race in New Zealand, and affords the best prospect of securing to them the benefits of civilisation. It appears highly desirable to create amidst the new colonial society, a class of natives who would possess the same relative superiority of position which they would have enjoyed in savage life, and who would not only be preserved from degradation themselves, but also be able to shield the inferior order of natives from wrong and oppression.<sup>9</sup>

Early the following year, the Crown made attempts to adopt the company approach as a model for the administration of reserves.<sup>10</sup> As Alan Ward in his report to the Ngai Tahu Tribunal has noted, the company concept of 'tenths' was quickly overlaid by governmental control.<sup>11</sup> In early 1841, Halswell was appointed a Government Commissioner for Native Reserves as well as a Company Protector of Aborigines. His Government position was gazetted in May 1841.

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9. 'Report of the Select Committee of the House of Commons regarding the Colonisation of New Zealand', 3 August 1840, GBPP, vol 1, 1837-40, pp ix-x

#### 1.4 TRUST ADMINISTRATION OF MAORI RESERVES, 1840-1913

In arranging for the reservation of lands, the Government did not interpret 'inalienability' to prohibit the lease of reserves. And with the appointment of Halswell, the decision was made to lease some reserves, for the stated purpose of generating revenue to pay for administration. Hobson included Halswell in a committee with other officials, designed to oversee the lease of some of the reserves for up to seven years. This was changed again in April 1842, and Halswell was instructed to refrain from leasing disputed lands in Wellington.

The Chief Protector of Aborigines, George Clarke, issued Halswell with further instructions entitled 'Respecting Management of Native Reserves' on 28 September 1841.<sup>12</sup> Clarke notified Halswell that a committee had been established in order to preside over the acceptance of tenders. The committee comprised the following people: the chief magistrate (Murphy), the company protector (Halswell) and the Crown prosecutor for the southern district (Hanson). Clarke's guidelines given to Halswell laid out the formal requirements for the lease of reserves:

The document alluded to has already instructed you that certain of the lands reserved by the New Zealand Company for the benefit of the aborigines at Wellington, shall be let on lease for periods not exceeding 7 years in the following manner:

You will forward an advertisement of all lands to be let, to this office, for insertion in the government gazette, at least one full month prior to the day fixed for leasing them, stating that tenders for renting the proportions of land therein described will be received by you on a certain day. This advertisement will also cause to be inserted in the local papers. Your advertisement will further state the terms on which the leases will be granted, namely, – quarterly payments of rent, and an advance on the first year's rent in the shape of a fine equal to ten percent thereon . . . you will cause a schedule of the whole to be made, and forward them with your reasons for accepting or declining them, to this office together with a notice for insertion in the *Gazette*. You will pay into the hands of the Colonial Treasurer, every quarter, without deduction or delay, all sums received by you on account of the reserves.<sup>13</sup>

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10. Some origins of the Crown's position on reserves can be found in a pamphlet prepared by Standish Motte, a prominent member of the Aboriginal Protection Society lobby in Britain. The pamphlet was entitled: 'Outline of the System of Legislation for securing Protection to the Aboriginal Inhabitants of all Countries Colonized by Great Britain.' Motte's proposals specified 'an adequate reserve of territory for the maintenance and occupation of the aborigines and their posterity' to be vested in an Aborigines Board of Protection and inalienable, even by lease. The document also highlighted Maori needs in terms of education, training, and medical care. It proposed the establishment of a fund to cater for these objectives, quite separate from reserved lands. Instead of deriving this land from the aborigines' occupation land, it was to come from an additional 'five percent of the sum derived from the sale of crown lands'. Furthermore, all penalties incurred or land forfeited because of breaches of the protection laws were also to go to the fund and 'in further aid, a certain amount of land in British colonies be at once set apart for the special purposes of the fund.': pamphlet, pp 15-16, CO 209/8, pp 426-441, NA, cited in Ward, 'Report on the Historical Evidence' (Wai 27 ROD, doc T1), p 77
  11. Ward, 'Report on the Historical Evidence', p 76
  12. George Clarke to E S Halswell, 28 September 1841, encl 3, Turton, (Wai 145 ROD, doc A26), p D-1
  13. Colonial Secretary to Halswell 24 December 1841, cited in Alexander Mackay, 'Report on Native Reserves', AJHR, 1873, G-2B, p 11

From these detailed instructions, it is apparent that a concerted effort was made to regulate leases. The revenue from leases was paid directly to the Colonial Treasurer, and credited as part of a 'native trust fund'. A researcher in the Wellington tenths claim (Wai 145), Duncan Moore, has argued that unless the company had intended to pay the reserve rents directly to the rangatira, then there was little difference between Hobson and Clarke's provisions and those maintained by the company: 'They merely removed ultimate authority for the scheme's management from the Company's agent and director and gave it to the Crown's Chief Protector and Governor.'<sup>14</sup> Still, the use of the term 'trust' in the title of the fund raises the obvious issue: to what extent had the actual nature of administration changed to reflect a trusteeship? After the select committee's inquisition, we might also question whether Maori were consulted about the formation of a trust, the appointment of particular trustees, the use of particular lands for lease, and the allocation of funds.

The Colonial Treasurer held the purse strings of the reserves' fund. Hobson made early use of the potential income by arranging advances for particular purposes. As Moore has noted: Hobson approved advances of £210 to cover the salary of a medical officer and assistant; £10 for medicines; £20 for a raupo dispensary (ironically this was just prior to the Raupo Houses Ordinance 1842 which prohibited the construction of raupo dwellings inside cities); £15 for interpreting for the police magistrate; and £90 to operate the protectorate office. These expenses were 'charged as a debt to the Colony from the Native Trust Fund, to be paid from its first receipts'.<sup>15</sup>

Confusion surrounded the apparent coexistence of two sets of administration. The overlap and contradiction were embodied in the position of Halswell, who, as protector for the company and the commissioner for the Crown, was required to submit dual reports in 1841 and 1842.

In Halswell's first report on 29 November 1841, he stated that the management committee was in a state of deciding the first leases after receiving several tenders.<sup>16</sup> The early discussion centred around Barrett's lease of a native reserve section at Pipitea (town acre 514). Barrett had obtained preferential use of the land through his marriage to Te Wharepouri's daughter Rawinia. He erected a hotel on the site, which quickly fell into debt, and by mid-1841, creditors sought the hotel and rights in the reserve land.<sup>17</sup> Barrett requested the reserves committee to secure his right to lease the land. However, the committee's position was immediately threatened, as one member of the committee, R D Hanson, was also one of the hotel's creditors. Hobson intervened and adjudged that:

The allotment on which Barrett stands is purely a Native reserve and was given to Barrett by Colonel Wakefield on the plea of his having married a native woman . . . My intention is not to expose to public competition the allotment on which Barrett's

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14. Wakefield to Directors, 11 February 1842, CO 208, pp 48-49 (Wai 145 ROD, doc E3), p 137

15. Shortland to Halswell, 24 December 1841, IA 4/271, pp 34-35 (Wai 145 ROD, doc E3), p 137

16. *Ibid*, p 138

17. Julie Bremner, 'Barrett's Hotel: The Victorian Rendezvous', *The Making of Wellington*, 1990, p 153

## 1.5 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

hotel is situated, but whoever holds the hotel may pay an equitable ground rent for the benefit of the Natives.<sup>18</sup>

Halswell's second report to the Government on 17 February 1842 confirmed that Barrett's lease was Maori reserve land. He also commented on the difficulty of obtaining investors interested in leasing Maori reserves for only short periods of seven years. Halswell was instructed in April 1842 to refrain from further leases, partly as a result of problems associated with Barrett's lease, but also as a result of a more general level of confusion surrounding the nature of administration.

A critic of this earliest Crown administration, Crown prosecutor R D Hanson, was quick to highlight what he saw as two essential injustices in the reserves scheme. First, Hanson held the nature of the original purchases as unjust. In addition, he felt the style of administration forced Maori into a position where they would have neither residences, nor cultivations 'without an abandonment, not merely of their present habitations, but of their present modes of life'.<sup>19</sup> He saw the only options of redress in legislation. Solutions would need to allow Maori the right to choose their own reserves as sites for occupation, something which would not 'harm' Pakeha settlement necessarily.

### 1.5 SHIFT OF ADMINISTRATION, 1842

On 27 July 1842, Lieutenant-Governor Willoughby Shortland replaced Halswell and the existing commission with a formal reserves trust.<sup>20</sup> He vested authority for the administration of Maori reserves in three individuals, the chief justice (Sir William Martin), the Protector of Aborigines (George Clarke), and Bishop Selwyn. Shortland explained the purpose to Clarke a day earlier:

With a view to the most efficient administration of this property for the benefit of the Native race, it appears desirable that all the reserves so made, or to be made, by the New Zealand Company, and any moneys which may prove from time to time to be disposable out of funds so to be set apart, after defraying the expenses of your establishment, should be vested in one set of trustees possessing the confidence of Government and the New Zealand Company.<sup>21</sup>

Shortland's actions signalled the beginning of a formal trust administration of Maori reserves. Again, however, Maori do not appear to have been consulted over the formation of a trust, and other problems were to emerge. Hobson died soon afterwards in September 1842, and Shortland (the Acting Governor) declined to

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18. Hobson Memorandum, nd, IA 1, p 329 (Wai 145 ROD, doc E3), p 140

19. Hanson/Society for the Protection of Aborigines, 24 May 1842, *Extracts from the New Zealand Gazette and Wellington Spectator*, p 27, (Wai 145 ROD, doc E3), pp 154–155

20. Duncan Moore provides a detailed narrative account of the changes in administration. Refer Duncan Moore (Wai 145 ROD, doc E3), pp 144–148

21. Colonial Secretary to Chief Protector, 26 July 1842, encl 9, Turton (Wai 145 ROD, doc A26), p D-3



formalise the new arrangement. Shortly after, the chief justice resigned from his position due to an apparent conflict of duty.

Administration continued, in spite of a lack of legislation. In each area the Crown appointed a local agent to assist the trustees. Henry St Hill was appointed to Wellington, while J T Wicksteed and Henry Thompson filled positions in Taranaki and Nelson, respectively. Thompson, in his other capacity as resident magistrate for Nelson, was a major protagonist and, ultimately, a casualty of an attempt to arrest Te Rauparaha at Wairau in 1843. Alexander MacDonald of the Union Bank of Australia assumed the Nelson position until January 1845. In each case, the nature of the administrative arrangements appears to have been haphazard, owing to a general level of confusion among the trust members, and, as Hanson had highlighted, the uncertain status of the reserve titles themselves. An example of the misunderstandings surrounding administration was mentioned by Wicksteed in a letter to William Wakefield in 1844: 'I believe nothing has been done to cure the defect in the Bishop's powers, which is of itself sufficient to stop advantageous leasing of the reserves.'<sup>22</sup>

Despite issuing general directions to Thompson in 1842, in the absence of a legislative sanction, the bishop himself appeared uncertain of his ongoing authority.<sup>23</sup> In 1843, he complained that he had:

received no other authority than the official letter of the late Governor, and that all agreements entered into by him, or agents under his authority, must be subject to the provisions of an Ordinance in Council hereafter to be enacted.<sup>24</sup>

From 1842 to 1848, only five official leases were entered into.<sup>25</sup> Claimant historian Neville Gilmore has concluded that the:

reserve scheme, pushed by the Company as an important element of its scheme of colonisation, was rendered ineffectual largely by ineffectual government administration. . . . The balance of the town lands was either alienated without official consent or lay fallow.<sup>26</sup>

Our concern here is not to expand at length on the intricacies of the administration of a few reserves, but to draw out the origins of administration.

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22. J T Wicksteed to Colonel William Wakefield, 22 January 1844, encl 11, Turton (Wai 145, ROD, doc A26, D-4)

23. Bishop of New Zealand to H A Thompson, 6 September 1842, encl 2, in Mackay, 'Papers Relative to Native Reserves in the Southern Island', *Compendium*, vol 2, pp 267-268

24. Selwyn Report, 28 February 1846, G-19/1, pp 38-46, cited in Wai 145 ROD, doc E4, p 309

25. These sections were: Barrett's lease (as already mentioned); Section 636 on Tinakori Rd; reserves 6 and 7 in the 'Town district' and section 26 Ohiro. These sections returned a total lease of £79 5s: Wai 145 ROD, doc A11, p 255

26. Neville Gilmore, 'Evidence' (Wai 145 ROD, doc A11), p 57

## 1.6 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

### 1.6 CONFUSION OVER THE STATUS OF TENTHS RESERVES

Much of the early administration was confounded by levels of confusion surrounding the status of reserves and the Government's policies of allocating reserves, something outside the scope of this report. The issues are raised in more detail within specific claim inquiries in Wellington and Nelson. Still, it is useful to touch upon the existence of confusion and explore the extent to which it influenced administration, and was, in turn, influenced by the absence of formal statutory directions from the Government.

Essentially, confusion arose out of the confluence of trust and Government approaches to the allocation of reserves. As mentioned earlier, the company envisaged tenths to be for the benefit of the leading families. The Crown, by contrast, sought revenue from reserve leases, providing that 'essential lands were to be exempted altogether' from the original sale or inclusion within an administrative scheme.<sup>27</sup> According to Ward, 'both purposes were miles apart from Maori concern to retain direct control of their most valued lands, either for traditional usages or for their own commercial arrangements'.<sup>28</sup>

In the transition from company to Government administration, confusion arose as to whether tenths reserves were intended as a site of occupation or as a form of endowment. This ambiguity weighed heavily upon potential administration. In allocating reserves, the company selected some reserves on sites already occupied by Maori. Such allocations contradicted the Crown's policy to exempt places of occupation (essential lands) from sale completely. Yet once the company had made early reserve allocations, the Crown was unable to remedy the situation easily.<sup>29</sup> And, as a result, administration became complicated by the existence of two sets of standards, one applied over the other.

In the example of the Nelson reserves, Grant Phillipson comments that confusion 'persisted well into the 1840s and prevented the establishment of the tenths on a sound basis for the performance of either of these functions [endowment or occupation]'.<sup>30</sup> The trustees themselves appeared more than aware of the deficiencies, as Bishop Selwyn noted in 1845:

The general decline of the settlements 'made it difficult to let lands upon lease' and there was an original ambiguity in the whole plan, by which it was left uncertain whether the reserves were for the actual occupation of the Natives, or intended to be let to English settlers, and the proceeds to be applied to the maintenance of Native institutions.<sup>31</sup>

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27. Moore, (Wai 145 ROD, doc E4), p 304

28. Alan Ward, 'Draft Report on the Legal and Administrative Regimes Affecting the Porirua and Petone Reserves', research report for the CCJWP (Wai 145 ROD, doc A44), pt B, p 3

29. Refer also to Nelson examples, Mitchell, 'Administration of the Nelson Native Reserves' (Wai 102 ROD, doc A6B), pp 14–15

30. Dr Grant Phillipson, *The Northern South Island*, 2 pts, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), June 1995, pt 1, p 112

31. Cited in Alan Ward, 'Draft Report on the Legal and Administrative Regimes Affecting the Porirua and Petone Reserves', research report for the CCJWP (Wai 145 ROD, doc A44), pt B, p 3

In the mid-1840s, two attempts were made to clarify the categorisation of reserves through the Spain commission and McCleverty awards. Neither achieved this object, and, in the continuing absence of definitive legislation, a certain degree of confusion remained.

### 1.7 SPAIN COMMISSION

Actions and events in Nelson demonstrated ongoing difficulties with the allocation and administration of reserves. Land Claims Commissioner William Spain's assessment of the company's claims in the Nelson region revealed that in common with the company's activities in Port Nicholson, the larger portion had not been alienated and that Maori did not consent to alienate pa, cultivations, and burial grounds.<sup>32</sup> Spain made the final award for Nelson:

saving and always excepting as follows: All the pas, burying places, and grounds actually in cultivation by the Natives, situate within any of the before-described lands hereby awarded to the Company as aforesaid, the limits of the pas to be the ground fenced in around their native houses including the ground in cultivation or occupation around the adjoining houses without the fence . . . and also excepting all the native reserves upon the plans hereunto annexed . . . the entire quantity of land so reserved for the Natives being one-tenth of the 151,000 acres hereby awarded to the said Company . . .<sup>33</sup>

Spain's decision reinforced the Crown's distinction between areas of Maori occupation (essential lands to remain in customary title) and the 15,100 acres of tenths (elevenths) reserves as endowments.

For all that, in many cases Spain's awards were paid only weak adherence. This was well demonstrated by the examples of reserve allocations in the Nelson and Golden Bay areas.<sup>34</sup> The Crown's failure to properly and consistently direct the establishment of reserve lands can be considered both a cause of and a product of an ineffective trust administration. In the example of the Nelson rural tenths, the Crown attempted to remedy what Spain found to be a shortfall in the number originally allocated. It duly proposed that reserves set aside in the Crown's 1847 Wairau Valley purchase would compensate for the original shortfall. Yet, despite the plan, without adequate administrative protection these reserves were subsequently purchased by the Crown in 1853 and 1854.

Alexander Mackay later appraised the damaging effects of losing land intended for tenths reserves upon the evolving trust administration. In an 1877 report on native reserves at Nelson and Greymouth, he argued:

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32. William Spain to Shortland, 12 September 1843, 'Report of Mr Commissioner Spain', encl 2, GBPP, 1844, vol 2, pp 291-307

33. William Spain, 'Report', encl in FitzRoy to Stanley, 8 April 1846, cited in Jellicoe, AJHR, p 29

34. Phillipson, pp 116-125

## 1.8 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

The Trust estate would have been in a much better position now to meet the numerous demands upon it had care been taken in the early days to secure for it the full complement of land contemplated by the scheme of the New Zealand Company . . . It will be seen by the foregoing particulars that a loss of fully £3000 per annum has occurred owing to the several circumstances that have interfered with the interests of the Trust estate since the commencement of the Nelson settlement.<sup>35</sup>

### 1.8 NATIVE TRUST ORDINANCE 1844

FitzRoy replaced Shortland as Governor in 1843. Once aware of the confused and informal nature of existing trust arrangements, FitzRoy sought to legislate. In 1844, he ceased to recognise the existing trustees and introduced a native trust Bill to the Legislative Council. The Bill was passed as the Native Trust Ordinance 1844, and it represented the first piece of official trust legislation. Its enactment signalled a desire on the part of the Government to tidy up the loose and inefficient state of reserve administration, highlighted in previous criticisms, for example those of Bishop Selwyn.

The preamble to the ordinance reveals the objectives as part of a broader aim of 'beneficial colonisation' through assimilation. Indeed, it was one of the earliest statements of Government policy towards Maori in terms of assimilation and amalgamation:

And whereas great disasters have fallen upon uncivilised nations on being brought into contact with colonists from the nations of Europe, and in undertaking the colonisation of New Zealand Her Majesty's Government have recognised the duty of endeavouring by all practical means to avert the like disasters from the Native people of these Islands, which object may best be attained by assimilating as speedily as possible the habits and usages of the Native to those of the European population. And whereas provision hath been made for the appropriation of certain lands and moneys for the purposes aforesaid, and it is expedient, for the better administration of the said lands and moneys, that Trustees should be appointed in whom the same shall be vested.<sup>36</sup>

Previous trustees were absorbed into a larger panel of trustees created under the Native Trust Ordinance. FitzRoy gave little recognition to the earlier existence of trustees. The new trustees were known as trustees 'for Native Education and Improvement in New Zealand'. Five were appointed, including: the Governor; the Attorney-General; the bishop of New Zealand; William Spain as Land Claims Commissioner; and the Chief Protector of Aborigines.

Lands to be administered under the terms of the ordinance were outlined in section 5:

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35. A Mackay, 'Report on Native Reserves in Nelson and Greymouth', 6 August 1877, AJHR, 1877, G-3A, p 1

36. Preamble, Native Trust Ordinance Act 1844

The property real or personal which shall from time to time be granted conveyed devised bequeathed or given to 'The Trustees for Native Education in New Zealand,' shall be holden by them upon the trusts hereinafter declared.

The ordinance further specified the uses of the reserves under trust administration (s 5):

Upon trust that the said Trustees shall apply the rents issues and proceeds thereof in the establishment and maintenance of schools for the instruction of the Native people in the English language, and for a systematic course of industrial and moral training in English usages and English arts, and in the providing for the relief of the sick, and generally in such a way as may be most conducive to the bodily and spiritual welfare of the Native race and to their advancement in the scale of social and political existence; such schools, provision for the relief of the sick, religious instruction, or other advantages, not being exclusively confined to persons of one particular religion.

While the ordinance borrowed on practices already used in the administration of lands, it established features which would be found in later legislation. All property was vested in the trustees. In turn, the trustees were granted authority to lease or exchange lands. Section 7 stated:

It shall be lawful for the Trustees for the time being to let the same or any part thereof upon lease of any nature and upon any such conditions as to the Trustees may seem fit, for any term not exceeding ninety-nine years, to take effect in possession, at the best yearly rent that can reasonably be gotten for the same, without taking any fine or premium for the making of such a lease.

At the same time, provisions were included to protect reserves from mortgage and eventual alienation (s 6):

And whereas it is desirable that all property real or personal which shall be at any time granted or conveyed devised bequeathed or given to the said Trustees upon the trusts hereinbefore declared, shall remain vested in the said Trustees for the time being free from any charge or encumbrance whatsoever, and be managed laid out and invested by them in such manner as that the best yearly income which can be reasonably be made to arise therefrom may be available for the purposes of this Ordinance.

The Native Trust Ordinance received royal confirmation. Governor Grey, however, after taking over from FitzRoy in November 1844, refused to gazette the Ordinance and thereby denied its implementation. The Native Trust Ordinance, in common with other early enactments, included a clause (s 28) stating its own terms of implementation:

This Ordinance shall not come into operation until it shall have received the Royal confirmation, and until such confirmation shall have been notified accordingly in the *New Zealand Government Gazette* by order of His Excellency the Governor of New Zealand for the time being.

## 1.9 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

While the first of the requirements was fulfilled, the second was not. And, therefore we might conclude that the ordinance did not become an active law of the land, where it otherwise might have.

Some early commentators explained the failure to implement the ordinance as due to sectarian differences over the planned form of the religious instruction.<sup>37</sup> The failure to implement the Native Trust Ordinance proved ultimately detrimental to reserves administration. Still, it is debateable whether the ‘lapse of effort meant that there was no agency to take responsibility for the management of the reserves’, as the Crown Congress Joint Working Party maintains.<sup>38</sup> Either way, no further legislation for the administration of Maori reserves was introduced until 1856.

### 1.9 MID-1840S ADMINISTRATION

After the failure to implement the 1844 ordinance, and the earlier dissolution of the trust, no further action was taken to substitute other formal arrangements for the administration of reserves:

The trustees who were nominated, however, gradually ceased to act at all, and in the meantime many partial arrangements had been entered into with settlers for the occupation of portions of reserves, but, as these arrangements were not legally binding, the agreements were either kept or not, as best suited the interests of the occupants, and very few rents were paid.<sup>39</sup>

We might characterise this period as a hiatus in administration.<sup>40</sup>

Later, Selwyn criticised the condition of reserve administration:

By this [Native Trust] Fund, we hoped that schools, hospitals, hostelries, would be built; that every useful art would be taught; every habit of civilisation introduced; and the whole social character of the people changed for the better. As one of the first trustees of Native reserves and Funds, I am sorry to be obliged to report that not one of these objects has been accomplished; or rather, that not one has ever been attempted.

When Governor Hobson appointed the Chief Justice and myself as joint Trustees of the Native Funds, he acknowledged to me that a balance of four thousand pounds (£4000) was due to the Natives, being the surplus of 15 percent upon the produce of the land sales, after payment of the Protector’s Establishment.

This sum, he said, had been swallowed up in the necessary expenses of the colony; though the instructions were imperative that the surplus ‘must’ be invested. It was

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37. Later in 1873, when similar problems affected reserves legislation, Walter Mantell explained that the 1844 Ordinance had lapsed due to sectarian differences: Mantell, 26 August 1873, NZPD, 1873, p 622; see also Jellicoe, AJHR, 1929, G-1, p 35.

38. Robyn Anderson, ‘Historical Overview of Wellington Region’, *Crown Congress Joint Working Party Report on Wellington Lands*, 1993, p 66

39. R Jellicoe, ‘Native Reserves in Wellington and Nelson under the control of the Native Trustee’, AJHR, 1929, G-1, p 35

40. Refer Phillipson, p 113

suggested: first, that Colonial Interest, and then that English Interest, might be allowed to the Credit of the Trust: this he said could not be guaranteed; but that a grant of £200 should be made to enable the trust to commence its operations.<sup>41</sup>

Selwyn's comments bear out the reality that trust administration was bound by the Government's heavy economic constraints in the 1840s.

### **I.I0 ADMINISTRATION UNDER GREY, 1846-52**

The task of maintaining administration in the interim might have passed to George Clarke as Native Protector. Yet, Grey effectively abolished the protectorate as he jettisoned the approaches followed by FitzRoy in favour of his own more forcefully direct approaches. Grey's reserves policy leaned heavily towards incorporating Maori into the mechanics of the State. The earliest evidence of this approach was in his personal momentum for the establishment of schools and hospitals which would serve not only Maori but also Europeans, for example, the Education Ordinance 1847. Still, Grey's approach to Maori reserves was clouded by continued confusion over the status of tenths reserves. Crown researchers for the Wellington tenths claim, Bruce Stirling and David Armstrong, verify this point:

The confusion surrounding the ultimate disposal of the Company's reserves; ie whether they were there to serve as occupation or endowment land, also seems to have affected Grey's perception of the issue.<sup>42</sup>

### **I.II McCLEVERTY AWARDS, 1847**

The Colonial Office responded to Grey's concerns about the status and administration of Maori reserves by commanding Lieutenant McCleverty to conduct the adjustments and award Crown grants to reserves assigned to Maori. McCleverty's awards in 1847 again forged the distinction between lands for Maori occupation to remain in customary ownership and the tenths reserves vested in the Government.<sup>43</sup> The confusion between Crown and company views of reserves continued to some extent until the New Zealand Company went into receivership in 1851. An example of contrasting views of the status of reserves was the Attorney-General Daniel Wakefield's opinion in 1850 that native title remained unextinguished over an unassigned reserve since it had never been purchased, and

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41. Selwyn Report, 28 February 1846, Governor Series 19/1, pp 34-8 (Wai 145 ROD, doc E3), p 146

42. David Armstrong and Bruce Stirling, 'A Summary History of the Wellington Tenths: 1839-88', Crown Law Office, 1992 (Wai 145 ROD, doc C1), p 251. Grey expressed his views on the situation facing Maori reserves in Port Nicholson in a memorandum to the Colonial Office. He indicated that the first step towards clarifying any confusion should be the definition and surveying of reserve lands: Grey to Coates, 14 September 1846, GBPP, 1847, pp 610-612.

43. A claimant historian states that the McCleverty awards created two classes of native reserves: S P Quinn, (Wai 145 ROD, doc E13) p 8

## 1.12 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

therefore, the Crown's administrative control was constrained.<sup>44</sup> However, none of the McCleverty awards was brought under trust administration.

### 1.12 RESERVES MANAGEMENT

After 1845, the administration of Nelson tenths reserves stalled. Between January 1845 and 1848, the Government failed to administer reserves in any official sense. On 18 February 1848, the superintendent of Nelson, M Richmond, complained to the Colonial Secretary about the condition of the trust reserves in Nelson:

On looking into the affairs of the Native Reserve Trust of this settlement, I regret to say that I find them in an unsatisfactory state, nothing appears to have been done or anyone authorised to act since Mr McDonald gave up the charge in January 1845. The result is that there are rents and moneys due, sums to pay, the Native Hostelrys fast crumbling to ruins, and land both in the town and country, from which a revenue might be derived lying waste.<sup>45</sup>

We must not view Maori as simply passive victims of Government indecision over reserves. Newspaper reports in the *Nelson Examiner* demonstrated that Maori managed their own reserves:

so deranged was the trust which had been appointed to take charge of this property, that nothing was done with it, and the Natives at the Motueka undertook, in several instances, to lease and sell parcels of the reserves in that district on their own account . . .<sup>46</sup>

We should note that the Native Land Purchase Ordinance 1846 had already prohibited Maori from leasing tenths land to anyone, including other Maori, without a grant or permission from the Government.<sup>47</sup>

In 1848, amidst calls for the regulation of Port Nicholson and Nelson reserves, Lieutenant-Governor Eyre directed Alfred Domett to gazette the termination of the former trusts of native reserves in favour of newly constituted 'boards of management' in Nelson and Port Nicholson. Eyre explained the need for a new administration:

The Trustees who were nominated however having found many obstacles to the execution of their Trust gradually ceased to act at all and at last formally resigned: in the meanwhile many private arrangements were not legally binding, the agreements were either kept or not as best suited the interests of the occupants and very few rents

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44. Attorney-General Statement, 17 July 1850, OLC 1/1041, cited in Wai 145 ROD, doc A37, p 35

45. Superintendent of Nelson to Colonial Secretary, 18 February 1848, cited in Mackay, *A Compendium of Official Documents, Relative to Native Affairs in the South Island*, vol 2, 1873, p 273

46. *Nelson Examiner*, nd (Wai 102 ROD, doc A6B), p 28

47. 'An Ordinance for the prevention, by summary proceeding, of unauthorized purchases and leases of land': Native Land Purchase Ordinance, 16 November 1846.



were ever paid. This state of things being most unsatisfactory and having from various causes continued for a considerable length of time.<sup>48</sup>

Colonel McCleverty, Henry St Hill, and Justice Chapman were appointed to administer Port Nicholson reserves, while Poynter, Carkeek, and Tinline constituted the Nelson board of management.<sup>49</sup> Eyre issued instructions for the new boards of management on 15 June 1848. These guidelines corroborated Grey's views of the public ownership of reserves. The Government would retain control of the reserve lands in its own hands, acting on the advice of the boards of management, without Maori input.<sup>50</sup>

Eyre's 24 June memorandum outlined the proposed work of the boards of management. As noted elsewhere, Eyre argued against the formation of an inalienable trust. Instead, tenths reserves were placed under the direction of members of a board of management. Managers were not charged with the responsibility of protecting the lessors in the same way as trustees. Influential in Eyre's decision was the need to make provision for essential public acquisition of tenths reserve lands:

circumstances have made it desirable that in some instances total alienation of the land should be sanctioned, as for ordinance purposes, to provide sites for hospitals, for churches, for public offices, or for other indispensable objects of general and public utility: the government having no land left in the province of New Munster available for such important and available [sic] purposes . . . It may fairly be assumed, therefore, that it would only be reasonable and just that the Government, having done so much for the Natives, and being left without any lands whatever to appropriate to public objects, should reimburse themselves from the lands originally set apart as reserves to be formed for the benefit of the Natives.<sup>51</sup>

As a forerunner to public works acquisitions, a number of tenths reserve lands were taken for ostensibly 'public' purposes. The situation was pronounced in Wellington's case. Duncan Moore has noted, in reply to Crown assertions in the Wellington tenths claim:

With this [generosity] as its basis of claim, in the early 1850s, the Crown granted away many of the most valuable [in the present context] Native reserves to Wellington Hospital, Wellington College, and to Wellington Cathedral; it used rents on Native reserves at Wellington to compensate colonists for removing from disputed lands at Taranaki, and it sliced pieces off Native reserves at Wellington to round-off neighbouring colonists' grants.<sup>52</sup>

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48. Eyre to Colonial Secretary, 13 June 1848 (Wai 145 ROD, doc A40), pp 191-192

49. Wai 145 ROD, doc A40, pp 191-192

50. Eyre to Domett, 15 June 1848 (Wai 145 ROD, doc A40), p 317

51. Eyre to Domett, 23 June 1848, 'Memorandum Relative to the Native Reserves', encl 2, in no 13, Mackay, *Compendium*, vol 2, p 279

52. Duncan Moore (Wai 145 ROD, doc E3), pt 1, p 11

### 1.13 TRUST ADMINISTRATION OF MAORI RESERVES, 1840-1913

On 6 October 1848, Colonial Secretary Domett issued directions to the commissioners on the boards of management directing the lease and sale of any reserved lands. Domett remarked, however, that the initiative to sell and lease lay with the Maori owners. Government involvement began after Maori had made a decision to sell or lease the lands and had approached the Native Secretary for that purpose. Domett listed further concerns to be exercised in these cases:

The Government are willing to accede to their wishes and allow of their either letting or selling lands which are in their possession, subject to the following conditions: First, that the Government is satisfied that the land proposed to be parted with is not necessary for themselves; secondly, that the arrangements or terms to be made are such as meet the approval of government; thirdly that all money received for lands sold shall be paid to the Government and reinvested in such lands elsewhere as the Natives may desire to have, instead of those sold; fourthly, that leases be made for short periods only, and due security given for punctual payments of the rents, which may be received by the Natives themselves . . . His Excellency will feel obliged by your undertaking the general superintendence and direction of any such transactions upon the principles laid down in the foregoing conditions.<sup>53</sup>

Despite the absence of trusteeship, Domett's instructions convey a sense of fiduciary duty. This early recognition of Maori rights to decide the direction of administration for each reserve was significant, though this ought to be measured against practice in the cases of individual reserves in order to establish whether boards of management operated in this manner.

All reserve finances were delivered to the Colonial Treasurer. Once deposited, all costs of administration were defrayed from a native reserve fund held by the Colonial Treasurer.<sup>54</sup>

### 1.13 BOARDS OF MANAGEMENT, 1850-56

Detailed studies of individual administrations lie outside the scope of the present report. Bearing this in mind, the following section examines general administrative practice in order to question whether the above provisions for management boards were followed.

Studies of the board's management of the Wellington tenths have focused on the acquisition of urban tenths land for public purposes as proof of ongoing mismanagement. After Moore, researchers have closely examined Crown claims of previous generosity as a justification for acquisition.<sup>55</sup> Quinn, for example, argues the claimants' position in the Wellington tenths claim: 'this settlement was not

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53. Domett to Native Reserve Commissioners, 6 October 1848, encl 21, in H Turton, *An Epitome of Official Documents Relative to Native Affairs and Land Purchases in the North Island of New Zealand*, vol 2, Wellington, 1883, p D-14 (Wai 145 ROD, doc A26)

54. Alfred Domett to Native Reserve Board, 26 December 1850, encl 26, in H Turton, p D-16 (Wai 145 ROD, doc A26)

55. Moore, vol 1, pp 10-11

generous because the 1846–7 award of these items was not anything which Maori had not already been granted in the 1844–6 settlement.<sup>56</sup>

Given the apparent absence of Maori complaint against the board's administration in Wellington, Quinn further suggests that Maori only protested instances where the Crown interfered with the management of McCleverty reserves assigned to particular hapu – tenths reserves were expected to be administered on their behalf by the Crown in trust.<sup>57</sup> He indicates that reserves management proceeded on the assumption that the Crown was able to administer Maori lands better than Maori could, but still, he shows that no Maori complaints survived in the written record. Certainly, if Domett's instructions were followed and Maori were offered first decision over their reserves, it is arguable whether Maori would have protested at all. From this we might conclude two points. First, Maori had been informed that a trust would manage the tenths reserves on their behalf. Secondly, in order to ascertain whether Maori did contest Crown claims of management of the trust, a much more detailed search of surviving sources is required.

Other research in the Wellington tenths inquiry has demonstrated that boards of management leased some of the Wellington reserved lands at below market rents. Patricia Berwick cites examples of Pipitea and Mount Cook reserves leased during the early 1850s 'at a nominal or peppercorn rental'.<sup>58</sup> Berwick claims these examples represent leases tailored for European lessees at the expense of the Maori 'beneficial' owners. As a consequence, the rental incomes were unable to meet the accumulated costs and hence provided Maori lessors with no financial return to repay any debts. This is a significant charge against the original pledge of trust administration for the beneficial owners.

Similar tight pecuniary restrictions were imposed on the Nelson tenths reserves. In December 1849, Domett instructed Richmond:

With regard to any expenses connected with the administration of the Native Reserve Estate, His Excellency observes that it will be absolutely necessary that they be met in all cases by the receipts of the Trust, and not try the advances of the General Revenue . . . The one great point to bear in view being that until the debts and liabilities of the Trust are provided for no works of utility or improvement ought to be undertaken.<sup>59</sup>

In Nelson, there were fewer public acquisitions, and the nature of the administration appears more 'trust-worthy'.<sup>60</sup> For example, in one case, the Nelson

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56. Quinn, pp 4–5

57. Quinn, p 23. Here there is inconsistency in Quinn's arguments.

58. Patricia Berwick, 'The Trusteeship and Administration of the Tangata Whenua Reserve Lands of Whanganui-a-Tara' (Wai 145 ROD, doc E10), p 13

59. Colonial Secretary to Superintendent of Nelson, 12 December 1849, encl 22, Mackay, *Compendium*, pp 282–283

60. Indeed, Richmond the Resident Magistrate referred to the administration as a 'Board of Trust', although he was alone in this practice: for example, Richmond to Colonial Secretary, 23 April 1849, encl 18, Mackay, *Compendium*, p 281.

#### 1.14 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

board of management declined the request of the New Zealand Company agent for the exchange of a tenths reserve in Motueka.<sup>61</sup>

In 1853, management of Nelson tenths reserves was transferred from the board to a single individual, the Commissioner of Crown Lands, Major Richmond. During this changeover of administration, Governor Grey granted a large area of 918 acres 5 perches of tenths reserves at Motueka to the bishop of New Zealand for the purpose of a school. Thomas Brunner, chosen to select the Whakarewa lands in 1854 (and later a trustee under the Native Reserves Act 1856), denounced the action as a breach of the Treaty.<sup>62</sup> Yet the bishop's grant remained. After 1853, the provision of a single Commissioner of Crown Lands represented a loose attempt to provide for trust administration.

We might make some general observations on the nature of administration provided by the management boards from 1848 to 1856. From the evidence cited, in particular Eyre's instructions for the establishment of the boards, there were obvious weaknesses in the mode of administration proposed and practised. This failure to provide effective trust administration ran counter to earlier promises to Maori regarding the formation of a trust administration.<sup>63</sup> Domett's instructions provided for Maori consultation on administration, yet without a case-by-case study of individual reserves, it is difficult to conclude whether this eventuated.

#### 1.14 CONCLUSIONS

The early period from 1840 through until 1856 was notable for its failure to implement effective legislation which could guide the trust administration of Maori reserves. Having stated this, it should be questioned whether legislation was an essential prerequisite for trust administration. From the origins of the Crown's involvement in reserve lands, it expressed a conviction that a trusteeship was essential in order to administer Maori reserves effectively. Furthermore, under Shortland and FitzRoy, the Crown attempted to progress trust administration without legislation. Yet the efficacy of trust administration was compromised by the lack of administrative support, in particular, the unavailability of funds to pay for the administration. Grey rejected FitzRoy's Native Trust Ordinance and sought to pursue a more domineering approach, which culminated in the rejection of trust administration in favour of boards of management. Alan Ward has commented: 'During the 1840s and 1850s, the administration of the tenths was characterised by

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61. Mitchell (Wai 102 ROD, A6B), p 31; refer also Management of Native Reserves to Superintendent, 16 August 1849, Mackay, *Compendium*, vol 2, p 282

62. Mackay's *Compendium*, vol 2, p 304. Mackay himself hazarded the following incrimination: 'It would appear that the grant by His Excellency to the Bishop of New Zealand, of certain portions of the trust Estate at Motueka as an endowment for an industrial school, was made about the time that the Board of Management ceased to exist, and immediately before the writs for our constitutional Government were returned, and just on the expiration of the Governor's power to make them': Mitchell, p 32.

63. Refer to earlier select committee discussion. Also claimant researcher Moore mentions pledges made to Maori respecting reserves, pp 14, 163.

inaction, confusion and ad hoc arrangements as the Company concept was reworked and overlaid by government.<sup>64</sup>

We also need to assess if early reserves administration provided benefits to Maori. Trust administration appears to have occurred without consultation with Maori. In the confusion surrounding the allocation and recognition of the legal status of reserves, reserves were sometimes chosen for Maori in unfamiliar locations and leased out to Europeans without Maori involvement, while Maori themselves were forbidden under the Native Land Purchase Ordinance 1846 to lease their own lands, except with the endorsement of the Crown. Ironically maybe, the boards of management offered more administrative involvement to Maori, although it is difficult to discern whether this was realised in practice.

Administration fluctuated between trusteeship and management, and it was not until 1856 that the form of reserves administration was formalised in legislation and implemented.

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64. Alan Ward, *A Show of Justice: Racial 'Amalgamation' in 19th Century New Zealand*, revised edition, Auckland, Auckland University Press, 1995, p 88



## CHAPTER 2

# COMMISSIONERS OF NATIVE RESERVES, 1856–70

### 2.1 INTRODUCTION

This chapter studies the administrative period from the Native Reserves Act 1856 through to the appointment of Charles Heaphy and Alexander Mackay as dual Commissioners of Native Reserves in 1870. In contrast with the last chapter, it will focus on the enactment of legislation and its subsequent effect on administration. The Native Reserves Act 1856 marked an important stage in the development of reserves administration, and, as such, forms a backbone to the administration in the period. We might begin by questioning whether the implementation of reserves legislation signified actual or apparent changes to the mode of reserves administration.

Surviving source material on administration from this period is scattered. While some attempt has been made to address all areas, selected examples have been highlighted from each region to illustrate some general trends. It must be reiterated that such local reflections are not exhaustive. Again, for the present study to bear any relevance to Tribunal inquiries, further close studies of primary sources must be undertaken on a local level. For this purpose, some useful primary sources include the Maori Affairs Maori Trustee files I/IA, Maori Affairs series 2, and the Legislative Department series, which contains some select committee findings on Maori petitions.

### 2.2 ORIGINS OF THE NATIVE RESERVES ACT 1856

The background to the 1856 Act lay in the absence of statutory provisions dealt with in the previous chapter. The architect of the Act was a Canterbury politician, Henry Sewell, who arrived in New Zealand in 1853 as part of the Wakefieldian hybrid Canterbury Association. Sewell later rose to occupy influential positions in Government ministries, including (at different times) Premier and Colonial Treasurer from 1856 to 1857.<sup>1</sup> We get an insight into Sewell's views from his early response to complaints that Maori were denied franchise (under the Constitution

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1. W D McIntyre, 'Henry Sewell', *Dictionary of New Zealand Biography*, Wellington, Allen and Unwin NZ Ltd and the Department of Internal Affairs, 1990, vol 1, pp 391–393

## 2.2 TRUST ADMINISTRATION OF MAORI RESERVES, 1840-1913

Act 1852) because they did not meet certain criteria of land tenure. Sewell explained the position of Maori entitlement under the 1852 Act on the grounds that Maori could not qualify in respect of reserves, which:

in truth belonged to the Crown, and were vested in the Crown for the benefit of the Natives, just as if they were infants or lunatics, not having legal capacities. . . . They [Maori] have no equitable Estate, no interest in the land, at law or at equity, therefore no qualification.<sup>2</sup>

Sewell perceived the Government as guardians for Maori reserves. Yet, this view appeared anchored on the arrogant assumption that Maori were minors, or worse, incapable of managing their own reserves. Not for the first time the comparison was drawn between Maori, lunatics, and children.

In an attempt to strengthen his case for the implementation of the Native Reserves Bill in 1856, Sewell critically reviewed the tenths administration:

Those Native reserves, the first idea of which was originated by Wakefield and the New Zealand Company, have been left in a state of utter neglect, only now and then Governor grey [sic] jobbed away the land, as sops to the various Religious orders, bribing them into alliance with him but exasperating the Colonists. But for the Natives themselves scarcely anything has been done. Money out of the public chest has been expended (squandered I might say) in a thousand ways comparatively profitless; but except a few schools here and there established by the Religious bodies, and a few Hospitals, things too insignificant to be worth notice, as means of solid amelioration of the Native race, it has been almost a case of absolute *far niente* [idleness]. People in England will not believe it. The nonsense which I see written in Reviews on this subject is perfectly sickening.<sup>3</sup>

Sewell employed this 'concern' over previous failures to expound the essential 'benefit' of the proposed legislation. Foremost was Sewell's earnest pursuit to individualise land:

The Native Reserves act enables the government to place all reserved lands under the management of local commissioners, with whom native chiefs themselves may be associated. These commissioners to have full power of management (even of sale, with the Governor's written authority, for I will never consent to a law of Mortmain in the Colony). Out of Funds thus produced provision may be made for schools, Clergy &c in which the Natives themselves will have a voice through their Chiefs. But the most important of all is severalty; so taking the first step to lift them out of their present merely animal state of communism, into the position of civilised communities starting from the 'Family' as the social unit.<sup>4</sup>

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2. W D McIntyre (ed), *The Journal of Henry Sewell 1853-7*, vol 1, p 229

3. *Ibid*, vol 2, pp 251-252

4. *Ibid*, p 252. Graeme Butterworth has noted: 'Sewell was determined to avoid a repetition in New Zealand of the problem which had so bedevilled England during the 1830s, of ancient trusts no longer serving their original purposes that had been converted into other uses now seen as scandalous': Graeme and Susan Butterworth, *The Maori Trustee*, nd, p 11.



Severalty or the individualisation of title to land was a professed purpose of the 1856 Act. It remains for us to examine the legislation in more detail.

### 2.3 NATIVE RESERVES ACT 1856

The enactment of the Native Reserves Act 1856 signalled the beginning of a formal reserves administration. It also represented an official recognition of prevailing inconsistencies and a need to remedy administrative practices. In developing a close reading of the Act, it is useful to question whether the provisions of the Act constituted a nominal or effective improvement to reserves administration.

Section 14 defined reserves to be included under the operation of the Act:

Where any lands shall have been set apart or reserved for the special benefit of the said aboriginal inhabitants or any of them, or where upon any sale of lands by Natives a certain portion of the district sold shall have been or shall be specially excepted out of such sale, but over which lands so reserved set apart or excepted the Native title shall not have been extinguished, it shall be lawful for the Governor, with the assent of such aboriginal inhabitants, to be ascertained in manner provided by this Act, to declare such lands to be subject to the provisions of this Act, and to appoint Commissioners for the management thereof in like manner as if such Native title had been extinguished.

Administration then, extended only to reserved lands where Maori customary title was extinguished. Title to the reserves was vested in the Governor. Under this statutory definition, reserves were conceived as lands set apart within purchases. Maori retained management over all reserves in Maori customary title (such as McCleverty awards in Wellington).

Endowment reserves were clearly distinguished by their particular purpose from other administrable reserves. Section 8 made provision for the allocation of endowment reserves as:

set apart any such lands as sites for churches, chapels or burial-grounds, and also by way of special endowment for schools hospitals or other eleemosynary institutions for the benefit of the said aboriginal inhabitants.

In section 16, the Crown allowed itself the option of either managing the land themselves or placing the grant in the hands of:

any person or persons, whether of the Native or European race, or anybody corporate or bodies corporate nominated by or on behalf of such aboriginal inhabitants, and such lands held for the purpose of special endowments . . .

All Maori reserves were vested in the Governor. The Governor, in turn, was enacted to appoint Commissioners of Native Reserves. Section 6 outlined the duties and obligations of the commissioners:

### 2.3 TRUST ADMINISTRATION OF MAORI RESERVES, 1840-1913

When any lands within the jurisdiction of any Commissioners shall have been or shall be reserved or set apart for the benefit of the said aboriginal inhabitants over which lands the Native title shall have been extinguished, such Commissioners shall have and exercise over such lands full power of management and disposition, subject to the provisions of this Act; and subject to such provisions may exchange absolutely, sell lease or otherwise dispose of such lands in such manner as they in their discretion shall think fit, with a view to the benefit of the aboriginal inhabitants for whom the same may have been set apart. And no purchaser lessee or other person paying money to such Commissioners shall be afterwards answerable for such money or be bound to see such application thereof.

While the word 'trust' was not mentioned, it might be deduced that the adoption of full administration 'with a view to the benefit of the aboriginal inhabitants' denoted an implied trust relationship. Later sections intermingled the terms 'commissioners' and 'trustees'.<sup>5</sup>

Most significantly, the Act made allowance for the permanent alienation of Maori reserve lands with the Governor's assent. This represented a firm departure from tenths administration, where, although some tenths were allocated for public purposes, reserves were not disposed in private sales. It also contradicted Donald McLean's view that reserves, as an essential part of the Crown land purchase policy, must be inalienable.<sup>6</sup> The power to alienate Maori reserved land was partly a measure to remedy what Sewell viewed as the obstructive law of mortmain in England. Yet this rationale can only partly explain the implementation of powers of alienation. We ought to consider a wider context of increasing European pressure for Maori land, and the growth of Maori resistance to land alienation in the 1850s. Certainly, it is difficult to reconcile the realities of permanent alienation with the professed intentions of beneficial administration of Maori reserves and the Government's fiduciary duty. The power to alienate land violated the fundamental trust relationship.

Commissioners were appointed in panels consisting of no less than three members. Lease arrangements were restricted to a maximum term of 21 years (something which was to be complained of later by European settlers). Commissioners were granted full rights of management. All funds received from sales or rentals were administered by the commissioners (s 9):

for the benefit of the aboriginal inhabitants for whose benefit such lands may have been set apart in such manner as the Governor of the said Colony may from time to time direct.

In the allocation of funding, there was no allowance for Maori input. Europeans were assumed to know what best benefited Maori, which in turn had further consequences. One consequence meant that Maori were unable to direct funds to

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5. Refer for example to ss 8, 13

6. McLean to Colonial Secretary, 29 July 1854, in Turton, H H, *An Epitome of Official Documents relative to Native Affairs and Land Purchases in the North Island*, Wellington, 1883, D-21. My thanks to Barry Rigby for bringing this reference to my attention.

cover debts, and, as a result, became tied into tighter circles of dependence upon the Crown.

As a continuation of earlier methods, administration was intended to be self-supporting (s 13):

Such expenses of management shall be defrayed by each set of Commissioners or by any trustees respectively out of any money which shall come into their hands under the provisions of this Act.

Reserves themselves carried the weight of administration.

Opportunities were opened to enable Maori to include other lands in customary title under the Act. Section 14 permitted:

it shall be lawful for the Governor, with the assent of such aboriginal inhabitants, to be ascertained in manner provided by this Act, to declare such lands to be subject to the provisions of this Act, and to appoint Commissioners for the management thereof in like manner as if such Native title had been extinguished.

This 'opportunity' fitted with Sewell's professed aim to individualise Maori land title. Section 15 permitted grants of severalty to be made:

Any set of Commissioners appointed under this Act, with the assent of the Governor, may make a conveyance or lease in severalty of any lands within the limits of their jurisdiction to any of the aboriginal inhabitants for whose benefit the same may have been reserved or excepted, either for or without valuable consideration, and either absolutely or subject to such conditions as the said Commissioners may think fit.

In this form, the Act represented the first piece of legislation to individualise Maori land titles. Sewell's later attempts to introduce further provision for individualisation in the Native Territorial Rights Act 1858 and Native Councils Bill 1860 were both refused royal assent.<sup>7</sup>

A special process was outlined for 'obtaining' Maori assent and for authority to be placed in the hands of European commissioners. Section 17, the 'assent-clause', stated:

Provided always that whenever such assent shall have been ascertained as aforesaid, the land to which the same shall relate shall be conveyed to Her Majesty, her heirs and successors, and shall then become subject to the provisions of this Act.

Conversely, Maori owners of reserve lands in European title were not offered the chance to regain the administration of reserves from the Government trustees. Assent was a one-way street.

Any appraisal of the mode of management established by the Act ought to consider wider contexts of increasing settler pressure for Maori lands and Maori attempts to retain authority and restrict the alienation of lands.<sup>8</sup> The provisions of

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7. W D McIntyre, 'Henry Sewell', pp 391-392

## 2.4 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

the 1856 Act formalised many of the existing features of earlier tenths administration, yet there were significant innovations. Moreover, these innovations were directed towards balancing Maori beneficial interests with a need to individualise and (in some cases) alienate Maori land. The two pressures were rarely compatible, yet the Native Reserves Act 1856 attempted to legislate for both sets of concerns.

The parliamentary debates regarding the Bill show there to be a wide base of support for the implementation of the Act. It was argued, however, that section 18 deprived the Governor 'of the power given him by the Constitution Act, as the sole disposer of Native questions'.<sup>9</sup> On this matter, the House proved equally divided. The chair enthused that 'no Bill has previously engaged so much of the time of the Council'.<sup>10</sup> The degree of dissension was notable, in light of the subsequent 1862 amendment which changed the regulation to sole authority resting in the Governor.

## 2.4 LOCAL ADMINISTRATION, 1856–62

In examining administrative practice we are principally concerned to measure the extent to which practice adhered to statutory guidelines. Admittedly, this proves difficult to map from available source material.<sup>11</sup> Although required to submit annual reports to Parliament, Commissioners of Native Reserves contributed only sporadic reports to account for their activities. While provincial gazettes carried regular balance sheet information for each province, this form of evidence on its own is of limited use. As a result, we must rely on varying examples of administration.

One historian has argued that: 'Because the government did not have the resources to administer the reserves, their administration was placed under local commissioners without any attempt at detailed supervision.'<sup>12</sup> This tends to oversimplify matters. Certainly, Government resources were limited in the early periods. Yet it might be argued that local commissioners were, in fact, the closest form of administration possible. Broader supervision of the commissioners themselves remained inconsistent until the involvement of the Public Trust Office in 1882. Though again, we should question the extent to which the Public Trustee

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8. It is well beyond the scope of this report to attempt a discussion of broader contexts. Refer instead to general histories such as Binney (et al) *Te Tangata me te Whenua*, Auckland, 1990 and Rice (ed), *Oxford History of New Zealand*, Auckland, 1992.

9. Mr Seymour, 3 July 1856, 'Native Reserves Bill', NZPD, 1856, p 250

10. Chairman, *ibid*, p 251

11. Important sources of information include the tabled reports and returns of Maori reserves in the AJHR, AJLC, and provincial gazettes from 1856 1869. These carry reports submitted by commissioners, but, are by no means comprehensive records of the administration during the period, usually no more than a balance sheet of expenses. Some documentation relating to specific commissioners administration remains in MA MT series 1/1A. A wider search of surviving Maori Affairs files failed to locate a body of documentation which can be relied upon to base an investigation of the policies and administrative approach prior to 1870. In its absence, the task has been to assemble scattered correspondence where it exists, notably Maori Affairs series 4 (excluding the Maori letter books).

12. Butterworth, p 11

exercised detailed and localised administrative supervision (this will be dealt with in chapter 4).

It is important that we do not simply equate an absence of consistency in administrative approach to mean there was a general failure of supervision. Administration varied regionally, owing to great variations in the initial allocation of reserves between areas. In some areas, for example Taitokerau, no evidence could be found to indicate that commissioners were even appointed to administer the reserves in that area. During the period 1856 to 1869, the Government recognised the existence of certain deficiencies and experimented with alternatives. Under the terms of the 1856 Act, the experiment began with local commissioners who were appointed in teams of three, and delegated responsibility for all aspects of reserves management.

Each administration was different owing to regional factors and the personal discretion of individual commissioners. The absence of any centralised supervisory authority exacerbated matters. For that reason, therefore, we must rely on localised records in order to study administration on a regional level. The earliest surviving official information relating to administration in the period from 1856 to 1862 is found in an *Appendices to the Journals of the House of Representatives* report from 6 July 1858. It covers the administration of particular reserves in selected regions from 1856 to 1857. Coverage was far from comprehensive – from a total of eight provinces, only three returned reports of trust administration. These provinces were Nelson, New Plymouth, and Otago. No records exist for Wellington, Hawke's Bay, Auckland, Marlborough, or Canterbury.

On the basis of this information, we have compiled a brief comparison as far as is possible. Reserves in the areas of Canterbury and Southland, for example Kaiapoi, are not covered, as they have already been dealt with in part by the *Ngai Tahu Report 1991*. For a full list of all South Island reserves under the jurisdiction of the Native Reserves Act 1856, refer to Mackay's *Compendium*.<sup>13</sup>

#### 2.4.1 Nelson

Thomas Brunner, Alfred Domett, and John Poynter were appointed Commissioners of Native Reserves in the Nelson province to take over administration of former tenths reserves. The 1858 report listed the criteria for determining which reserves were administered. It is notable that the commissioners referred to themselves as constituting a trust:

The whole of the Reserves within the Province of Nelson are situated either in the town of Nelson, and the original suburban districts of Moutere and Motueka; or in

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13. Mackay, Alexander, *A Compendium of Official Documents Relative to Native Affairs in the South Island*, Wellington, 1873, vol 2, p 317. Commissioners were appointed for the provinces of Canterbury and Otago. On 12 October 1857, John Cargill, A R C Strode, and Robert Williams were designated commissioners for Otago. Canterbury received four commissioners: W J W Hamilton, C C Bowen, T Cass, and J Hall.

#### 2.4.1 TRUST ADMINISTRATION OF MAORI RESERVES, 1840-1913

Massacre [Golden] Bay, a block at Wakapuaka, and the new district of the Pelorus, which includes Queen Charlotte's Sound, and the Kaituna, with other valleys.

The first class of Reserves, in Nelson, Motueka and Moutere, are the only ones at present under the management of the trust; the remainder having apparently been excepted from the lands sold by the native owners to the Government; either at the period of the original negotiations, or on completion of the purchases of them; so that the native title to the reserved lands must, we presume, be considered as not yet extinguished.<sup>14</sup>

The practice of administration among tenths reserves allowed a further distinction. The difference in management was characterised by a split between urban and rural reserves. Yet, as discussed in the previous chapter, this is not strictly accurate. It is enough to recognise that administration remained strongly affected by the confusing nature of tenths allocations. Nelson urban tenths were leased to Europeans, with the exception of a section allocated for the erection of a hostelry. Some rural tenths, however, were left to Maori occupation, while others still were leased out. Examples of the effect on administration were the Motueka and Moutere reserves where the commissioners asserted Maori had been permanently resident:

The management of the suburban sections, at Motueka and Moutere involves a different principle from that of the Town sections. In these districts Natives have always been permanently resident; consequently it may be presumed that many of these sections must have been chosen with the idea of providing land for the future occupation and cultivation of the resident Natives.<sup>15</sup>

In these cases, administrative allowances were made to address the inconsistencies of tenths allocation over sites of occupation and cultivation. Where Maori:

desire permanently to retain the lands they are upon, it would perhaps be advisable to let them have Crown Grants of the Lands; including in the Grants the *whole of the names* comprising the families to whom the lands have been awarded; because the difficulties in the way of transfer, arising from the number of names in the Grant, would practically render such lands inalienable as at present. [Emphasis in original.]<sup>16</sup>

In their mode of administration, the commissioners worked to protect limited Maori interests in lands mistakenly allocated as reserves. At the same time, they sought to adhere to original directions under the 1856 Act. After surveying the full extent of the lands and the total Maori population in the area, the commissioners proposed to grant 'with the sanction of Government' long terms of leasehold.

Urban tenths administration benefited Maori through their pecuniary return. It was assumed that Maori had not resided permanently upon the lands which became Nelson town reserves and hence there was not the same requirement to protect Maori access to other more customary lands. In some (not all) cases the

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14. 'Report from Commissioners at Nelson', 2 June, 1858, AJHR, 1858, E-4, p 2

15. Ibid

16. Ibid, p 3

commissioners decided that financial return to Maori would be maximised through sale of land, rather than leases at 'peppercorn' rents:

Most of these [town] sections have been let for a term of 14 years; and a few for 21 years; and some for seven years. Several of them having been let some years back, when the settlement was in a comparatively depressed state, and rents of land accordingly very low, are still subject to leases which have some years to run, at rents almost nominal. As they have however risen greatly in value, we propose with the sanction of Government, to sell these as opportunity offers, because the sums they would realize, if put out at Interest on good security, would yield a considerable annual revenue to the trust, to which the present rates would bear no comparison.<sup>17</sup>

While the motive appears to benefit Maori in terms of capital gains, we must balance the effect of permanent land alienation in a climate of high inflation and rapidly increasing land values. The commissioners' explanation carried other undercurrents:

Where, by selling, they might be made more productive of Revenue, it might be as well to sell the —, as in our opinion, the Natives, with the lands we have already put them in possession of, are not likely to require any more than they will be well able to purchase in the manner above alluded to, or from other funds. And it is more desirable that after some years, when able to retain such position, they should be placed in all respects on the same footing with respect to Public Lands as Europeans, than that they should remain a distinct class, with distinct holdings.<sup>18</sup>

The decision to alienate Maori reserves proceeded on a belief that the commissioners were able to judge how much land Maori required and adjust it accordingly. Although motivated by a desire to benefit Maori on one hand, this approach strongly diverged from the original intention of the tenths which was to provide inalienable lands in towns and outside, in order that Maori might be brought 'within the pale'. Certainly, the aim was to amalgamate Maori, as hinted at in the final sentence, but the means to achieve this under the 1856 Act had changed. A good example is found in the commissioners' recommendations regarding the last Maori occupied tenth in the town of Nelson – the 'Native Hostelry':

It would be highly for the benefit of the Public, the Natives, and the Trust Fund, if the change that has been proposed could be effected with respect to those sections on New Haven Road on which the Native Hostelries stand. Many complaints are made of the nuisances caused by the Natives in these houses to residents in the neighbourhood. Their nasty mode of living, the various stench about their habitations; occasional though perhaps slight indecencies from exposure of their persons; their cooking fires close to adjoining fences, are the subject of these complaints . . . but of course it is obvious that a much greater rent could at present be obtained from the Haven sections than from those by the mill.<sup>19</sup>

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17. Ibid, p 2

18. Ibid, p 3

19. Ibid, p 2

#### 2.4.1 TRUST ADMINISTRATION OF MAORI RESERVES, 1840-1913

When physically located close beside European sensibilities, a perceived Maori presence upon the land was both threatened and threatening. Maori ahi kaa was being smothered downtown.

The 1858 report for Nelson also dealt with the expenditure of rents. Commissioners were granted sole authority to determine the expenditure of funds for 'Maori benefit'. As already stated under the Act, Maori were denied any consultation or involvement in the distribution of moneys generated from the lease of their lands. Commissioners proposed to allocate funds for a number of different purposes. For example: 'We think it quite desirable that a certain proportion of the Fund should be made applicable to the maintenance of peace and good order among the natives themselves'. The commissioners advocated a self-funded European-style legal system for Maori including magistrates and agents, separate from the system in place for British subjects and sponsored by the Crown:

After all, this is merely a matter of Police; and strictly the expense of preserving the peace among the Natives should be defrayed out of the Ordinary Revenue, as much as that incurred for the same object among the Europeans. But perhaps, as any such special arrangement is rendered necessary solely by the absence among the natives of the respect for the laws habitual to Europeans, it would be justifiable to allow a portion, at all events, of the expense of the arrangements to be laid upon funds specially devoted to the benefit of the Natives.<sup>20</sup>

Medical expenses were also paid from the Nelson fund. This included the cost of three medical officers and all other medical expenses incurred by Maori; 'such as one we are now incurring, for the safe custody of a dangerous female lunatic'. 'Mental and moral improvement' was based on the institutions of church and school, and both were deemed to be catered for in the 'transfer of so many of the best Reserves to the Bishop of New Zealand'.<sup>21</sup> Sectarian problems again surfaced as a consequence of the allocation of the entire proportion of educational reserves to the Church of England. This questionable practice was rationalised in terms of 'anglicising these semi-civilised beings'.<sup>22</sup> From passages such as these, we are left with a firm sense of a Eurocentric 'mission' guiding reserve administration on the ground level. Despite this, the commissioners noted pointedly, 'Many of these Rents are considerably in arrear; and will probably continue so, until the power of the commissioners to sue is more clearly laid out'.<sup>23</sup>

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20. Ibid

21. Ibid, p 4

22. Ibid, p 5

23. Ibid, p 7



From the figures provided it is possible to quantify the rental income and amount expended on Maori and administration costs for 1857:

Income and expenditure for Nelson Trust Reserves Administration, 1857.  
Source: 'Report from Commissioners at Nelson', 2 June 1858, AJHR, E-4,  
pp 8-11. Unfortunately, the Nelson report is the only one to include  
figures of administration.

Account balance from 1856	£164 16s 4d
Rental incomes 1857	£492 2s
Total income	£656 18s 4d
Expenditure on administration costs	£87 14s 9d
Expenditure on Maori benefits	£142 17s 14d
Total expenditure	£230 11s 1d
Balance	£426 7s 3d

#### 2.4.2 Taranaki

The original New Zealand Company plans to allocate tenths did not eventuate in Taranaki. In their place, other reserves were allocated from each Crown purchase, reserves which remained in Maori ownership. McLean noted in 1854:

At Taranaki the Native Reserves in the Company's plan were done away with, as the Natives almost entirely disputed the sale of that district, and in each purchase made from them since Captain FitzRoy's arrangements in 1844 ample reserves have been excepted by them for their own use, and those are generally occupied by them.<sup>24</sup>

The 1858 report in the *Appendices to the Journals of the House of Representatives* for the Taranaki reserves contrasted with reports for other regions. It carried significantly less information by comparison with the Nelson report. More important, the three New Plymouth commissioners, John Whitely, Robert Parris, and H Halse, were made virtually irrelevant in the face of Maori administration of their own reserves.

In 1860, when Taranaki Maori commenced armed opposition to alienation, the Crown had most of this reserved area still in Maori title and only 37 acres had been alienated to the Government by 1858. As a result, there were a limited number of four sections available for administration by the trustees. Of these, only one, Rawiri's reserve at Bell block, remained as an administrable reserve. Of the others, reserve number 10 was given over for military purposes, whilst reserves 21 and 25 had been sold to European landholders. The remainder of reserves included a

24. Donald McLean to Colonial Secretary, 29 July 1854 in Turton, *Epitome*, no 41, p D-22

### 2.4.3 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

number (205 acres) that Maori had leased to local Europeans, without the interference of European commissioners. On this matter, the commissioners claimed they had no wish to interfere, but rather, that they felt duty-bound to bring such lands under the operation of the 1856 Act, and 'place the occupants on a legal footing'.<sup>25</sup> It might be deduced from this statement that, although the area of 205 acres was not in Crown title, the commissioners had moved to incorporate the reserves within their jurisdiction on the basis that European tenants were involved.

The Taranaki commissioners were therefore restricted in the fulfilment of their duties. Given the lack of reserves to administer, Maori were administering their own reserves, and with little or no revenue generated there were no funds available for educational or medical relief. In contrast to the situation in Nelson, the realities of administration were heavily dictated by Taranaki Maori. This is demonstrated in the trustees' request for influential Maori to be appointed as joint commissioners, 'to secure the confidence of the Natives and facilitate the working of the commission'.<sup>26</sup> This was a positive recognition of the benefit of Maori involvement, yet the Governor ultimately ignored the request.

Prior to the 1860 Waitara conflict, Maori 'administration' prevailed in Taranaki. European reserves administration seemed irrelevant. Another 2080 acres of reserve lands existed in the Waiwakaiho block, but these were unable to be surveyed because Maori withheld from survey 1200 acres of the land. Maori had repurchased a further 1800 acres in the Hua block from the Government. None of these lands were put into the trusteeship of the reserves commissioners. After the Taranaki wars from 1861 to 1862, and 1864 to 1865, the situation was to be quite the reverse. Moreover, the case of pre-war Taranaki reserves demonstrated that, without an underlying assertion of authority and demographic superiority, European management of Maori reserves was untenable.

### 2.4.3 Otago

The position of the Otago commissioners, John Gillies and Robert Williams, shared a strong similarity with the Taranaki commissioners. In Otago (Otakou), all but an acre of land in the town of Port Chalmers remained in Maori customary title. Otago Maori had earlier visited Wellington to observe the establishment of tenths reserves, and decided to avoid the Government-based administration in favour of retaining authority over reserves themselves.<sup>27</sup> Consequently, the European commissioners were left destitute of land and finances to administer:

Seeing that we have no funds whatever in our hands, and can have none, at least for some considerable time, we do not consider it necessary to suggest any regulations for our future guidance . . . if we should attempt to lease, or otherwise use for the benefit of the Natives any of the other land at Port Chalmers, we would be at once stopped for want of funds; and further, we were and must be much crippled in our

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25. 'Report from Commissioners at New Plymouth', 26 June 1858, p 12

26. Ibid, p 12

27. See, for example, 'Select Committee Report on Otago Reserves', AJHR, 1865, F-2, p 1

attempts to communicate with the Natives for want of a paid interpreter, who would always be at our command.<sup>28</sup>

Another inconsistency in the Otago administration was the provision of only two commissioners. It is not known whether this affected management more than being a nominal breach of section 3 of the 1856 Act. In their report, Gillies and Williams articulated what appeared from their view to be a prudent approach to reserves administration. Furnished with legislation, but without land to administer, the commissioners were convinced of the need to extinguish Maori title to land:

[If] the general Native title was extinguished, and the whole reserves in the province were divided amongst the Natives, and a Crown grant given to each Native for the portion allotted to him, it would be one of the best things that could be done for them, and from enquiries we have been making we are impressed with the belief that this could be easily accomplished in this Province.<sup>29</sup>

Again, we have evidence of a strong conviction among those charged with the responsibility for administration of Maori reserves lands that the individualisation of land tenure would benefit Maori, and that it ought to be achieved through Government intervention.<sup>30</sup> Maori were enabled to transfer reserve lands from customary to Crown title under sections 14 and 17 of the Native Reserves Act 1856, mentioned earlier. It is not known why this did not occur in the case of the Princes Street reserve.

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28. In response to a question in the House of Representatives on 1 July 1857, requesting an account 'of all monies received and expended by them as such commissioners'. The reply was given that 'The Commissioners received no money, they had to bear their own expenses': 'Report by the Commissioners of Native Reserves for the Province of Otago', 21 June 1858, AJHR, 1858, E-4, pp 13, 16.

29. *Ibid*, p 13

30. The benefit of individualisation was couched in terms of 'civilising Maori', the commissioners further explaining:

We are of the opinion that the effect of such a measure would be the encouraging and stirring up the Natives to rival both one another and the Europeans in providing comfortable houses to dwell in, and in enclosing and properly cultivating their land. While their lands and pas are held in common they have no individual interest in improvements. It would tend to settle them more down on the soil, and by separating them from that common influence which they have over one another would greatly tend to make them emulate the European settlers; and moreover, as it would settle them in one locality something more substantial could be attempted for their moral and religious education than could be done under the present migratory mode of living; besides it seems to us to be a principle somewhat inherent in human nature that the possession of an exclusive Title to land has a tendency to increase the desire for improving the worldly circumstances and to encourage self-respect, and obedience and respect to the ordinances of Law and good Government; and as a means to these ends it has a tendency to increase the desire for mental improvement

...  
(AJHR, 1858, E-4, p 13.)

## 2.5 TRUST ADMINISTRATION OF MAORI RESERVES, 1840-1913

### 2.5 INDIVIDUALISATION AND OTHER PROVINCES

Initiatives to individualise land were part of a larger policy of the Native Department. The Secretary of the Native Affairs Department wrote to the Commissioners of Native Reserves on 23 April 1859:

as regards Reserves over which the Native title has not been extinguished. His Excellency is desirous of ascertaining whether in the judgement of your board any and what steps should be taken for obtaining the assent of the Natives, in order to bring the same under the operation of the Act.<sup>31</sup>

It continued:

His Excellency further suggests that your attention may be directed to the advantages which would result from a Subdivision of the Native Reserves or what would still be better if practicable the *individualisation* of certain portions of them. [Emphasis in original.]<sup>32</sup>

Here is evidence of the administrative authority in charge of Maori reserves instructing its agents to individualise Maori reserve lands where possible, an exigency quickly superseded by the Native Lands Act 1862.

The three areas discussed above were those singled out by the 1858 report in the *Appendices to the Journal of the House of Representatives*. Others were omitted. The report had purported to include all areas administered by Commissioners of Native Reserves, indeed it was entitled 'Return of all Lands held by the Commissioners of Native Reserves under the New Zealand Native Reserves Act 1856'.<sup>33</sup> Yet it failed to mention any reserves in the remaining four provinces, without apparent explanation. Such an oversight might be construed as indicative of administrative weaknesses. Moreover, the absence of administration in certain areas with definable reserves such as Auckland and Taitokerau demonstrated that the Crown was negligent in its application of administration. There was no standard format for reports. Each published report varied from region to region in depth and scope. For example, the report on Otago reserves included categories on the state and quality of each individual reserve.<sup>34</sup> This type of information is significant to any analysis of the sufficiency of trust reserves allocation and administration, and yet is absent from all other reports at the time, and from those subsequent.

The provision of reports to provincial gazettes reinforces an image of weak administration. Under the provisions of section 11 of the 1856 Act, commissioners were required to contribute annual reports to be published in the respective provincial gazettes. Yet, in practice, the requirement was barely adhered to in the four provinces surveyed. Neither Taranaki, Wellington, Nelson, nor Hawke's Bay

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31. Thomas Smith to Commissioners of Native Reserves, 23 April 1859, MA 4/3, p 96

32. Ibid, p 97

33. 'Report of Commissioners of Native Reserves', 6 July 1858, AJHR, 1858, E-4, p 1

34. 'Report by the Commissioners of Native Reserves for the Province of Otago', 21 June 1858, AJHR, E-4, p 17

submitted a report to their provincial gazette until mid-1865, after the bulk of the New Zealand wars. Also, it might be noted that there existed no requirement to publish reports of the administration of reserves in te reo Maori, like other earlier proclamations and notices.

We must be aware of the broader pattern of events and the timing. In particular, administrative policy was heavily influenced by the origins and the impact of the New Zealand wars and the undermining of Maori authority in the establishment of European administration of Maori lands. While there is not space here to pursue this connection, it is important that we recognise the wider contexts of encroaching Government control. Until Maori authority had been circumvented, the pre-war Maori determination to negotiate their own arrangements for land agreements left little scope for European modes of administration to operate.

## **2.6 THE NATIVE RESERVES AMENDMENT ACT 1858**

The first amendment to legislation came as a response to the problem of large amounts of outstanding rental arrears. It made provision for commissioners to sue tenants for the recovery of back-rents. The legislation carried the reciprocal measure, that commissioners could themselves be sued. In parliamentary debates, Frederick Whitaker acknowledged that 'some difficulties had arisen with the tenants about the recovery of rents'.<sup>35</sup> Apart from the allowance to enable commissioners to sue and conversely be sued, the final amendment to the Act added no further alterations.

### **2.6.1 Misappropriation of the Otumaikuku reserve**

The first official evidence of mishandling of Maori reserves was brought to the attention of the Native Department in 1861, after the onset of the Taranaki wars in March 1860. It was little surprise, therefore, that the misappropriation should have occurred in Taranaki. The Otumaikuku reserve had originally been recommended for a 21-year lease. As it transpired, however, the commissioners approved the final sale of the block to another commissioner, Robert Parris, for the sum of £100. Sewell as Acting Minister of Native Affairs addressed the Taranaki commissioners in late 1861 regarding the lease and ultimate alienation of this reserve. Sewell announced that the transaction was void and requested copies of all transactions together with a complete report of all lands leased and alienated by the Taranaki trustees.<sup>36</sup>

Despite the existence of the Native Reserves Amendment Act 1858, there was minimal response from the Native Department. After the transaction was deemed unlawful in terms of the 1856 Act, the Crown subsequently acquired freehold title. Whereas Maori trustees of the land may have expected the return of the land at the

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35. 'Native Reserves Amendment Bill', 30 July 1858, NZPD, 1858, p 66

36. Sewell to Commissioners of Native Reserves, 5 November 1861, MA 4/4, p 416

## 2.6.1 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

termination of the trust, this example represents one of the earliest indications to Maori that reserves might not be returned into their hands.

The growing realisation that reserves might never be returned to Maori ownership after the termination of trusteeship must be considered. However, due to the variation in individual arrangements and understandings made at the time of the land purchase and reserve allocation, this is best pursued on an individual case-by-case basis.<sup>37</sup> The issue of the Otumaikuku reserve remains a grievance in the minds of Taranaki Maori, mentioned in the statement for the Taranaki generic claim currently before the Waitangi Tribunal (Wai 143). A much earlier example is found in a letter of complaint from Te Rira Porutu (and eight others) to St Hill, the Commissioner for Wellington Reserves. The complaint was made that:

Mr St Hill has already leased one of our sections there, and receives the rent. No portion of it (the rent) has ever been given to us. Governor Grey told us that after nine years we should resume possession of it. At the expiration of that period we went to Mr St Hill, and he refused to give it up to us. Hence we discover that your custom is to give and then afterwards to take away.<sup>38</sup>

In seeking to understand the Otumaikuku appropriation, we might also examine the discretion of the individual commissioner, Robert Parris. Prior to his appointment as a Commissioner of Native Reserves in 1859, Parris occupied a range of official positions in Taranaki, including Provincial Treasurer. Like many other commissioners (and indeed unpaid provincial politicians at this time) he maintained other paid occupations. We might consider the attendant difficulties of balancing numerous responsibilities. Parris himself was a key figure in the complex picture of Maori–Pakeha interaction in Taranaki. At the outbreak of tensions over the purchase of the Waitara block in 1859 and 1860, Parris operated as an Acting Native Secretary and attempted to secure the purchase. Once the dispute over Waitara escalated into conflict, Parris immediately joined the militia as an officer, attaining the rank of captain. Somewhat surprisingly, Parris retained the commissionership of Maori reserves during his service in the conflict and afterwards. Under the Native Reserves Amendment Act 1862, he was appointed as sole Reserves Commissioner. An understanding of the individual's involvement, such as Robert Parris in Taranaki, is crucial to attain a faithful sense of administration.<sup>39</sup>

The shock waves of the official uncovering of local mismanagement led to a further amendment of native reserves legislation in 1862.

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37. Letter included as Swainson, minute on letter Strang to Swainson, 23 June 1859, Turton, *Epitome*, encl 63, p D-33

38. Wai 143 ROP, second amended statement of claim, 21 December 1995

39. It is worthwhile exploring the involvement of each commissioner in turn, something which is regrettably not possible given the restrictions of the current project. It is also notable that the entry for Robert Parris in the *Dictionary of New Zealand Biography*, vol 1, omits to mention his involvement as a reserves commissioner.

## 2.7 THE NATIVE RESERVES AMENDMENT ACT 1862

In contrast to the 1858 amendment, the 1862 Act signalled major changes to the existing form of reserves administration. All existing commissions were cancelled and full authority was restored to Governor Grey (s 2):

All the powers and authorities which by the Native Reserves Act 1856 are given to or vested in or which may be exercised by Commissioners appointed or to be appointed under that Act shall vest in and may be exercised by the Governor.

Reserves estates were vested in the Governor and it was from him that all leases and alienations of land issued. More significantly, section 7 removed the need for Maori assent before including any customary lands under the provisions of the Act – provisions which further allowed for the permanent alienation:

Where under the provisions of the said Act the assent of the aboriginal inhabitants is required to bring land under the operation of the Act the Governor may by order in council declare such assent to have been ascertained and thereupon the title of the Aboriginal Inhabitants in the land to which the same shall relate shall be deemed to be extinguished and the land shall from the date of such Order in Council vest in Her Majesty . . .

In order to trace the political debate of the Act, we must rely on press accounts, in particular, those in the *Wellington Independent*. Even then, the debates appear short on detail. An exception was the response from Harrison, himself a former commissioner, to parliamentary attacks on the performance of fellow commissioners. Harrison shifted the blame squarely upon the terms of the 1856 Act. He criticised the legislation for constricting the courses open to the commissioners and Maori alike:

the inefficiency of the commission connected with Wanganui did not arise from any apathy or indiscretion on their part, but from the commission having been fettered – been hampered with a heavily gaited code of instructions, which neutralised their endeavours to carry out the object of their appointment – instructions which opposed a barrier to all progress by instilling at the very threshold of their labours, that the natives should – by deed – cede over their reserves to Her Majesty, to be held in trust . . . and with respect to rents, that the money so raised should be expended by the commissioners as they might think best for the interests of the natives concerned.

He then related a meeting with local Maori at Whanganui where one chief questioned:

When you white people wish to let your lands, do you give them over to the Governor, and then does he direct others to let them and spend the money for you. We are quite willing that you should take charge of these reserves, and let them for as much as you can, and give us periodically the money, and we can spend it very well for ourselves.<sup>40</sup>

## 2.8 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

Maori questioned the administrative relationship. In this quote, the speaker questions whether Maori are being treated in a similar way to British citizens. More emphatically, he asserts that Maori wish to control the revenue from the lease of the lands; he does not mind authorising his reserves to be let, and for Europeans to oversee this process, but he rejects European control of all aspects of administration, in particular the disbursement of the income from Maori reserves. Ironically, the terms of the 1862 Act did not improve matters.<sup>41</sup>

The 1862 amendments signalled a decisive shift in the direction of reserves administration – a shift precipitated by the context of continuing war in Taranaki. The reins of reserves administration were replaced firmly in the hands of the Governor, though he retained the ability to delegate authority under section 8:

The Governor may by order in Council from time to time delegate all or any of the powers competent to the Commissioners under the said Act unto any person or persons for any period . . .

## 2.8 CENTRALISED ADMINISTRATION, 1862–70

On the strength of the 1862 Act, it might be assumed that the Governor would actively direct administration. However, circumstances again varied from province to province. Studies of post-1862 reserves administration must examine carefully the relationship between the Governor and delegated officers, and test whether administrative practice followed legislative prescriptions.<sup>42</sup>

After delays by the Native Minister and attempts to iron out the legal implications of the Act for the existing commissioners, the new amendment finally came into operation on 1 September 1863. In Nelson, this heralded swift change, as the former commissioners were replaced, not by the Governor, but by Alexander Mackay to act on behalf of the Governor.<sup>43</sup> Mackay, former Assistant Native Secretary in Nelson, was crucial in convincing the Government that a system of administration of Maori reserves was workable, given the allocation of appropriate individuals to act as regional agents of administration.<sup>44</sup>

The administrative transition under the 1862 Act appears uneven. There was no uniform dismissal of existing commissioners and adoption of gubernatorial authority. Some, such as the Wellington commissioners, remained as administrators until ultimately replaced by George Swainson who acted as Commissioner of Reserves from 9 June 1865.<sup>45</sup> In the absence of formal appointments for Whanganui

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40. *Wellington Independent*, 22 August 1862, vol 17, p 3

41. This was perhaps the reason why Harrison chose to relate the quote to Parliament.

42. 'You will see by the act that the Governor may delegate his authority': Native Office to Commissioners of Native Reserves, 12 August 1863, MA 4/6, pp 97–98.

43. Edward Shortland to Commissioners of Native Reserves in Nelson, 17 November 1863, MA 4/6, p 191

44. A complete register of Nelson reserves survives in the Maori Affairs files at National Archives and provides illuminating details back to 1856. However, this is the sole document which has survived, and therefore provides no basis for comparison.

45. Frederick Weld to Commissioners of Native Reserves in Wellington, 9 June 1865, MA 4/7, p 115



and Hawke's Bay, resident magistrates John White and G S Cooper had their existing authority extended.<sup>46</sup> A Chetham Strode was appointed Commissioner of Native Reserves for Otago, and, as already mentioned, Robert Parris was retained after Taranaki had been stripped of other Commissioners of Reserves. Administration, though modified, continued to be strongly characterised by regional differences.

In Native Department correspondence, there were immediate indications that the pre-1862 administration had been deficient and that the changes were a genuine attempt to improve administration. Shortland's notice of dismissal to former commissioners intimated that the distribution of funds from reserves had not been carefully managed on either the regional or the central levels. He requested financial statements of revenue and expenditure from all outgoing commissioners: 'I believe this information was partly supplied about two years ago but no complete record exists of the various transactions in which the respective Commissioners have been engaged.'<sup>47</sup> Shortland carried the accusation of misconduct further:

I believe however the eleventh section of the act has been much, if not quite neglected by the Commissioners failing to obtain the Governor's direction in the disposal of monies.

The Governor was concerned about the commissioners' non-adherence to administrative prescriptions, rather than the failure of the Act itself.

## 2.9 LOCAL ADMINISTRATION, 1862-70

In order to appraise the adherence to, and efficacy of, the 1862 legislation, as well as the benefit to Maori, we must again look to local administrative practice.<sup>48</sup>

### 2.9.1 Wellington

In Wellington, George Swainson operated as a Commissioner of Reserves on behalf of the Governor from 1864 to 1867. Before and after those dates the administration of Wellington reserves remained informal. Official reports, required under the 1856 Act, were limited to balance sheet returns. From such limited source material, it is difficult to rebuild a detailed picture of local administration, and the nature of administration between 1862 and 1864 remains difficult to ascertain.

On 11 October 1862, Native Minister Domett issued Swainson with instructions for the management of reserves:

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46. Edward Shortland (Native Secretary) to Commissioner of Native Reserves (Whanganui), 17 November 1865, MA 4/6, p 191. No evidence could be found to substantiate this arrangement, refer G S Cooper, 'Report on Native Lands in the Province of Hawke's Bay', AJHR, 1867, A-15.
47. Some returns of reserves were received and can be located in the general letter books of Maori Affairs Department series 4, but these carry little information that can be used to analyse the efficacy of administration; Edward Shortland to Commissioners of Native Reserves, 12 August 1863, MA 4/6, p 97
48. We have limited ourselves to the published records from the commissioners themselves.

## 2.9.1 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

The duties required will be mainly these – the survey of native reserves, lands of half-castes and other lands, roads etc of which surveys may be required by government; the preparation of Crown Grants, Leases and other documents in connection with these lands which may require plans to be placed thereon, and to assist in the work of enquiring into and individualising native title.<sup>49</sup>

The importance of protecting Maori interests was emphasised:

You shall give your whole attention towards forwarding the views and interests respecting the lands of those natives who are the avowed friends of the Government and loyal subjects of the Queen. You will not, of course, manifest any inimical feeling towards disaffected natives; but you will simply decline to assist them in any way.<sup>50</sup>

War in Taranaki and Waikato was a subtext to administration in this period. Indeed, Fox's directions a week later were more explicit. He instructed Swainson that 'no Crown Grants are to be issued to avowed Kingites'.<sup>51</sup> Swainson's instructions included both unassigned tenths and McCleverty reserves.

It is useful to consider the changes of section 7 of the 1862 Act in conjunction with the administration of Wellington reserves. Confusion continued to surround attempts to distinguish between the administration of assigned and unassigned reserves. Commissioners Strang and Carkeek wrote to the Attorney-General in order to seek clarification:

Has the Board [of commissioners] full power of management and disposition over reserves of this class under the provisions of the 'Native Reserves Act, 1856', or does the law vest that power in the Natives, in whose names and whose benefit such reserves have been made?<sup>52</sup>

The 1862 Act, as already mentioned, allowed the Governor scope to include assigned reserves under administration. This point has been overlooked by a claimant researcher for the Wellington tenths claim. Quinn argues that administration in the 1860s was characterised by confusion. He substantiates this point with evidence that Swainson dealt with assigned (McCleverty) and unassigned tenths reserves in a similar way.<sup>53</sup> Yet, in pursuing this line of argument Quinn does not account for the provision under the 1862 Act which permitted the Governor to include any reserve lands under administration, without assent.<sup>54</sup> The practice of administration, then, appears to adhere to legislation, though in response

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49. Domett to Swainson, 11 October 1862, MA 4/5, p 213; Wai 145 ROD, doc E8, p 448

50. Ibid

51. Halse (Acting Native Secretary) to Swainson, 17 October 1864, MA 4/6, p 441 (cited in Wai 145 ROD, doc E8, p 449)

52. Commissioners of Native Reserves to Attorney-General, 23 June 1859, *Turton*, encl 63, p D33

53. Quinn, 'Report on Wellington Tenths Reserve Lands' (Wai 145 ROD, doc E3), p 16

54. Note, Swainson had earlier indicated an intention to expand the number of reserves under administration: 'Another class of reserves – those brought under the Act [1856] by the assent of Natives obtained under clause 14. I read the object of this clause is to enable them [Maori] to let in a legal way any such lands as described. Until I was appointed, no attempts had been made to act upon this clause.': Swainson to Walter Mantell, 11 July 1865, MA 1/1A, item 28

to Maori criticism we might again ask whether the terms of the Act suited Maori beneficially.

Reserve administration finances did not greatly benefit Maori in this period. Revenue generated by reserves was swallowed by the costs of administration. In each annual return, the revenue generated was always matched or surpassed by accrued expenditure. As the total amount of accrued revenue increased, so too did the disparity between income and expenditure. The first published return for Wellington was for the period of October 1863 to September 1864. The stated sources of revenue in this period included rent due on leased reserves (all European lessees), as well as Crown grant and purchase fees. The total figure stood at £988. Commissioners were paid £6 5s on four separate occasions from 1863 to 1864.<sup>55</sup> A comparison with the later 1864 to 1867 balance sheet reveals a steady increase in the number of reserves and total income. The total amount of funds generated was £3291.<sup>56</sup> Revenue was used to refund loans on equipment, pay labour and survey expenses, and maintain hostelries, as well as pay salaries. There are some unexplained items of expenditure though, such as amounts listed as expended to Maori owners of reserves. These particular figures commonly matched the amount received from Pakeha lessees. However, it is difficult to deduce from the balance sheets whether the amounts were paid to the Maori owners, or spent on behalf of the Maori owners. The accounts were finally audited by Edward Hill who acted as 'examiner' of the commissioners' accounts for Swainson, under the Native Reserves Act 1856.<sup>57</sup>

A schedule of all reserves administered by the Government, produced in 1865, included a comprehensive list of all Maori reserves in the Wellington city and country districts.<sup>58</sup> It is notable that, although the schedule ordered by the House of Representatives included reserves still in customary title, in the case of Wellington, there were no reserves remaining in Maori title by 1865. This shift indicated the impact of the 1862 legislation. From the total number of reserves, approximately half were leased by the Crown to European tenants. The remainder were unlet, with the exception of nine assigned reserves leased by Maori to European tenants without any involvement of the commissioner.<sup>59</sup>

In the early 1850s, two acres of reserve land, town sections 88 and 89, were leased to the military. There had been previous disagreement over whether the land could simply be granted to the military. The Attorney-General had opined that Maori reserved lands 'cannot be granted without the consent of the Natives beneficially interested in them'.<sup>60</sup> In an attempt to circumvent the issue, Grey

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55. 'Account of All Monies Received and Expended by the Commissioner of Native Reserves', *Wellington Provincial Gazette*, 1864, p 262

56. *Ibid*, 1867, pp 142-144

57. *Ibid*, p 144

58. 'Return of All Lands Vested in the Governor by Virtue of the Native Reserves Amendment Act 1862', 1 August 1862, AJHR, 1862, A-17, pp 3-6

59. It would be useful to compare the rentals charged by the Government as compared with Maori landlords. However, unfortunately the schedule in question does not include the figures for Maori, they are simply stated as unknown.

60. Attorney-General to Eyre, 6 July 1850 (Wai 145 ROD, doc A34), p 91

## 2.9.2 TRUST ADMINISTRATION OF MAORI RESERVES, 1840-1913

proposed a lease on a 'peppercorn' rent until the lands were no longer required and were returned to Maori owners. However, the lands were not returned, they were instead transferred for the purposes of a school and hospital. In his final report to the Governor in 1867, Swainson noted: 'No rent has ever been paid or equivalent given for these Sections'.<sup>61</sup> Until Swainson's complaint, the matter had not been broached by reserves administration. Throughout, Maori protested the appropriation of these 'endowment' reserves, but ultimately, they were not returned.

Swainson occupied the post of commissioner until 1867. After this time, the position was left vacant. On 12 August 1867, the Native Department notified that: 'the government do not think it necessary to fill up that office.'<sup>62</sup> The reasons for this decision are not clearly explicable. None the less, it is notable that the Government chose not to appoint a commissioner to administer Wellington reserves in any capacity between 1867 and 1870. No reports were submitted for this period. It is presumed that the Governor's office may have overseen this aspect, but in the absence of verification, we might conclude that, at best, Wellington administration remained inconsistent.

### 2.9.2 Taranaki

The administration of Taranaki reserves changed dramatically as a result of the Waitara conflict. It is impossible to examine the administration without reference to the ongoing wars in Taranaki. As earlier mentioned, Parris, who served as an officer in the first Taranaki war, was reappointed as Commissioner of Reserves under the 1862 Act.

Again, there was a delay in the publication of accounts in the provincial gazettes. The earliest report, for March 1858 to January 1864, did not appear until 1868.<sup>63</sup> Ten reserves were listed under formal administration, but, by the end of 1864, half of these reserves had been sold to Europeans. These reserves included: Whakawhitiwhiti, Manawai, Pipiko, Otumaikuku, and Waiwakaiho D. Another reserve, Waiwakaiho F, was sold in 1867 to John Whitely, himself a reserve commissioner like Parris.<sup>64</sup> The revenue generated from all but the last land sale passed through the hands of the commissioners. Commissioners skimmed off the purchase price, which, in the case of the sale of Manawai, amounted to the not inconsiderable sum of £11 14s. It is difficult to evaluate whether this represented a fair deduction. Deductions for administration may have been appropriate in the case of permanent alienations, but were they appropriate with alienations to fellow commissioners? Maori were able to sell their own land just as easily without paid assistance.

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61. 'Return of All Lands Vested in the Governor', AJHR, 1867, A-17, p 3

62. Secretary Native Affairs (W Rolleston) to Igglesden (?), 12 August 1867, MA 4/10, p 143

63. 'An Account of All Monies Received and Paid by the Commissioners for Native Reserves for the Province of Taranaki, from the Date of their Appointment, March 16 1858, to January 28 1864', *Taranaki Provincial Gazette*, 1868, pp 10-15

64. *Ibid* p 11

The remaining five reserves continued to accrue rentals varying between £6 and £44. In each case, the management fee paid to the commissioners was entered on the balance sheet at a fixed rate of 5 percent. Moneys received were used to pay certain Maori and the commissioners' expenses. It is not known in what form the recorded payment was received by Maori, or if the single individual listed in each case effectively represented the owners of the reserve. This information is only accessible from a close investigation of individual reserves. Edward Hill audited and approved these balance accounts in late 1866. It is still unexplained why the accounts should have been submitted all at the same time, and so late after the early period. Delays such as these may cast shadows of doubt over administrative efficiency.<sup>65</sup>

A decrease in the sale of reserves is revealed in the Taranaki reserves administration between 1864 and 1866. In wake of the discovery of the Otumaikuku deal, no reserves were alienated in the later period (with the exception of Waiwakaiho mentioned above). From 1864 until 1870, Parris acted as sole Commissioner for Reserves. In this case, and in others, the role of the individual commissioner ought to be examined in close detail.<sup>66</sup>

The 1867 report in the *Appendices to the Journals of the House of Representatives* illustrated the changes to the Taranaki reserves landscape between 1860 and 1865. By 1867, the number of reserves under the administration of the 1862 Act had increased to 27. Twenty-one of these were Crown-granted reserves. But a further six Maori customary reserves had been included. Where Maori title had been extinguished, nine out of 21 remained unoccupied by either Maori or European tenants, nine were leased to European, one had been sold to a European, and, significantly, the remainder were occupied by Maori.<sup>67</sup> According to this report, none of the six reserves remaining in Maori title was actually occupied by Maori.<sup>68</sup>

### 2.9.3 Hawke's Bay

An 1862 'Return of General Reserves' lists 27 reserves created in Hawke's Bay.<sup>69</sup> Any evidence of reserves administration in Hawke's Bay remains inconclusive. There were references to educational reserves in 1865 and 1867, administered under the Educational Reserves Act 1861, but no apparent connection to general

65. When examining the later balance sheet for evidence of divergent trends in administration we must be aware that both sets of accounts were produced on the same day, 22 May 1867, and therefore are subject to some doubt over authenticity.

66. For further information on Parris, refer to Ward, A, *A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand*, revised edition, Auckland, Auckland University Press, 1995, p 151

67. 'Return of All Lands Vested in the Governor by Virtue of the Native Reserves Act 1856 and the Native Reserves Amendment Act 1862', AJHR, 1867, A-17, p 12

68. *Ibid*, p 13

69. Andrew Sinclair, 'Return of General Reserves for Natives which have been Made in Cessions of Territory to the Crown - Province of Hawke's Bay', AJHR, 1862, E-10, p 9. For a general discussion of the allocation of reserves in Hawke's Bay, refer Dean Cowie, *Hawke's Bay*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), 1996, pp 51-60.

#### 2.9.4 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

Maori reserves. The extent of pre-1865 land alienations in Hawke's Bay heightened the need for an effective administration of reserves. Yet, there were no active attempts to distinguish Maori reserves and administer them pursuant to the native reserves legislation. There were references in the *Hawke's Bay Provincial Gazette* for 1867 and 1868 which indicated that specific blocks of Maori land were leased by Europeans and that rents were accrued and entered on the general revenue and expenditure balance sheets.<sup>70</sup> Still there was no administrative facility for Maori reserve lands in the Hawke's Bay province. While this evidence is not overwhelming, it points to some vagaries in administration.

In the absence of a commissioner for Maori reserves, the resident magistrate for Hawke's Bay, G S Cooper, compiled a report for Parliament on native lands in Hawke's Bay on 20 August 1867.<sup>71</sup> Cooper listed a series of reserves in the region and stated that: 'With regard to the reserves I have to report that they form but a small percentage of the area sold.'<sup>72</sup> The majority of the information relates to the allocation, rather than the administration, of reserves. A notable exception was the Te Aute estate, 7397 acres in extent. Though considered an educational endowment, two of the three grants comprising the property were ceded by Maori under the provisions of the Native Reserves Act 1856. Therefore, it can be argued that the early administration of Te Aute fell within the realm of governmental administration. Despite this, evidence indicates Te Aute estate lacked administration: 'No steps have been taken as yet to fulfil either of the trusts under which this valuable estate is held.'<sup>73</sup> Cooper added:

I would recommend that a commissioner should be appointed to examine and report upon the value of the property, the amount of incumbrances [sic] with which it is burdened, and the best means of relieving it.<sup>74</sup>

Te Aute was later singled out by the Commission of Inquiry into Religious, Charitable and Educational Trusts 1869 as a case worthy of special remark.<sup>75</sup>

#### 2.9.4 Nelson

On 9 November 1863, James Mackay junior was appointed under the Native Reserves Amendment Act 1862 as a new commissioner to replace former commissioners Poynter, Domett, and Brunner. Alexander Mackay subsequently assumed the role on 26 January 1866.

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70. See 'Revenues and Expenditure', *Hawke's Bay Provincial Gazette*, 1866, p 65; 'Revenues and Expenditure', *Hawke's Bay Provincial Gazette*, 1867, p 31; 'Revenues and Expenditure', *Hawke's Bay Provincial Gazette*, 1868, p 43

71. G S Cooper, 'Report on the subject of Reserves, Native Lands etc, in the Province of Hawke's Bay', AJHR, 1867, A-15, A-15A

72. Ibid, p 1

73. Ibid, p 4

74. Ibid

75. 'Third Report of the Religious, Charitable, and Educational Trusts Commission', AJHR, 1870, A-3, p iv

In a number of respects, the administration of Maori reserves at Nelson and Greymouth was more effective than other reserves administrations. Alexander Mackay's *A Compendium of Official Documents Relative to Native Affairs in the South Island* carried a section on Maori reserves in the South Island and demonstrated a degree of efficacy and accountability unmatched in other areas. Further evidence of Mackay's ability was seen in his initiatives to aggregate funds, something which was later adopted for broad improvements to administration.<sup>76</sup>

In 1863, James Mackay submitted a general overview of Maori reserves in the South Island. He classified three types of reserves there:

- 1st Lands reserved from sale by the Natives themselves
- 2nd Lands reserved by the government for Native occupation and cultivation
- 3rd Lands reserved by the New Zealand Company, and by the Government, for raising funds for various purposes.<sup>77</sup>

This was Mackay's attempt to dispel confusion over matters of administration. He entitled his report 'Native Reserves and the Individualisation of Native Title'. This title gave an indication of the intended direction of reserves administration. On the issue of individualising land titles to reserves in the first two categories he added:

it would have a beneficial effect, as it would break up for ever, the system of several families living together in confined and unhealthy Pas. A family living on its own allotment of land would be likely to make greater improvements and advancement than when massed with others as joint cultivators.<sup>78</sup>

Although a raft of published accounts survive for the Nelson reserves in the provincial gazettes, these are limited to financial statements, devoid of written reports of the progress and intentions of the commissioner. Still, the financial records are relatively comprehensive. Early accounts of reserves administration were not published until 1863, and all commissioners shared this practice of not publishing early records until after the 1862 amendment Act. Statements of receipt and expenditure of the Native Reserve Fund from 1857 to 1862 were prepared by commissioners Thomas Brunner, Alfred Domett, and John Poynter.

The early records reveal two features. Items of expenditure of the commissioners were recorded in assiduous detail. In addition, there was a gradual increase in income and a balance of the trust fund over the early period from 1858 to 1862.<sup>79</sup> Here was an effective balance of payments. The majority of expenditure appears to have been allocated to medical expenses for Maori as well as to the maintenance of the Maori hostel in Nelson. Yet, some questions remain. Nowhere on the early balance sheets were deductions for the costs of administration entered. Also, unlike

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76. Ibid

77. J Mackay to Native Secretary, 3 October 1863, Mackay, *Compendium*, vol 2, p 137

78. Ibid, p 139

79. 'Statement of Receipts and Expenditure of the Native Reserve Fund', 3 August 1863, *Nelson Provincial Gazette*, pp 93-95

#### 2.9.4 TRUST ADMINISTRATION OF MAORI RESERVES, 1840-1913

later accounts, none of the early statements was audited. A concerted effort was made to audit later accounts towards the end of the 1860s under the trusteeship of Alexander Mackay, sole commissioner from 1863. Also, between 1863 and 1869, Greymouth reserves were added to the commissionership of Mackay. Balance figures for both areas show continued increases, though in Nelson's case, not large increases.

The provision of Greymouth reserves flourished after the discovery of gold in 1865. Much of the history of the Greymouth reserves has been covered by the Waitangi Tribunal's *Ngai Tahu Report 1991*. For the purposes of studying the legislation and policy of reserves administration, it is worth recognising the actions of Alexander Mackay in establishing the Greymouth reserves on a beneficial foundation. In response to a rush for land in the area and pressure to strip Maori of reserve entitlements, Mackay used the Native Reserves Amendment Act 1862 to bring Maori reserves under legislative administration.

Mackay remained determined to retain Maori reserves, rather than alienate the lands to appease settler demands. As a result, West Coast Maori benefited from the trickle-down of large amounts paid for rents at the height of the gold rush. Where settler demand was high, this involved a delicate balance of competing interests. A claimant historian has shown that, in the case of Greymouth leases, the trade-off for land retention was often lower rents charged to Europeans:

There appears to be some rental adjustment upwards between periods for some leases in Nelson, Motueka and Moutere, but adjustments downwards between first and second periods in a number of the Greymouth leases.<sup>80</sup>

Still, the retention of reserves in Greymouth in particular meant benefits continued into the 1870s and demonstrated the potential for administration in an area of high settler demand for reserve lands, given the judicious involvement of individual commissioners.

Native Trust Fund balances for Nelson and Greymouth, 1866-69. Source: *Nelson Provincial Gazette* 'Statements of Receipts and Expenditure of the Native Reserves Fund', *Nelson Provincial Gazette*, 1863, vol 11, pp 93-97, 57-58; 1867, vol 15, pp 37, 40-41; 1868, vol 16, pp 156, 194; 1869, 17, p 57, 74; 1870, 18, pp 129-130.

Date	Nelson (£)	Date	Greymouth (£)
1866	£147 11s 9d	1866	£1574 2s 9d
1867	£402 6s 9d	January-May 1867	£2083 14s 8d
1868	£459 7d	June 1867-68	£3193 11d
1869	£602 1s 4d	January-December 1869	£3445 10s 2d

80. Mitchell, 'Administration of the Nelson Native Reserves' (Wai 102 ROD, A6B), p 39



Some historians have regarded Mackay's administration as far-sighted in his approach to administration for Maori benefit. It appears that Mackay was also concerned to continue to obtain Maori assent on a local level, in spite of the automatic assent provided under section 7 of the Native Reserves Amendment Act 1862. Mackay reported to the Native Minister in 1865 concerning the process for including Golden Bay reserves under Government administration:

It would be necessary to get the assent of the Natives to bring this reserve under the operation of the Native Reserves Act 1856, before the rents could be appropriated for Native purposes, even then, the Natives chiefly interested in the land would expect to receive the rent.<sup>81</sup>

The example demonstrates responsible administration from an individual commissioner, despite the provisions of the 1862 Act.

Mackay's expenditure on reserves also demonstrated his concern for long-term Maori benefits. As hinted at, his practice of combining funds from different reserves to achieve a higher return from investment signalled a commitment to the effective administration of reserves for the benefit of Maori. During 1866, Mackay invested £600 of native trust money at 10 percent interest.<sup>82</sup> Medical expenses always figured in trust expenditure, yet in 1868, Mackay contributed £317 to the costs of medical attendance to Maori.<sup>83</sup> These actions also help explain the relatively low balance figures. Finally, Mackay paid allowances directly to Maori from European rents. These rates varied yearly, but reached a figure as high as £1736, paid to Maori benefactors of Greymouth reserves for the 18 months between June 1867 and 31 December 1868.<sup>84</sup> Acting as South Island Commissioner of Reserves, Mackay used some of the revenue generated from the prosperous Greymouth reserves to loan money to the Otago Princes Street reserves in order to cover debts accrued.<sup>85</sup>

### 2.9.5 Otago

The administrations of South Island reserves within the Ngai Tahu rohe have been skimmed over in this report because aspects have already been explored and reported upon in the course of the Ngai Tahu hearings (Wai 27). An exception is made for Otago, in the case of Dunedin's Princes Street reserves dispute in 1865.

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81. Alexander Mackay to Native Minister, 6 December 1865, Mackay, *Compendium*, vol 2, no 36, p 310
82. 'Statement of the Receipts and Expenditure of the Native Reserve Fund', *Nelson Provincial Gazette*, 1867, vol 15, p 37
83. 'Receipts and Expenditure', *Nelson Provincial Gazette*, 1869, vol 17, p 57; Mackay noted earlier a request from Maori on reserves at Pelorus River between Nelson and Marlborough: 'the Natives resident there were petitioning the Government to appoint a medical man for their district ...', Mackay to Native Minister, 6 December 1865, Mackay, *Compendium*, vol 2, p 312.
84. 'Receipts and Expenditure', *Nelson Provincial Gazette*, 1869, vol 17, p 74
85. Four hundred pounds was loaned to Prince Street reserve, Otago: 'Tabular statement of Receipts and Expenditure of the Native Reserves Fund, Greymouth from July 17th 1865 to December 31st 1869', Mackay, *Compendium*, vol 2, no 41, p 321.

## 2.10 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

Though comparatively small, the administration and alienation of this reserve provoked a great deal of investigation and publicity.<sup>86</sup>

Princes Street coastal reserve lands were originally set aside by Walter Mantell for Maori use, but then later appropriated by the Otago Provincial Council in 1865. John Topi Patuki petitioned Parliament and threatened legal action in the Supreme Court unless the alienation of the reserve lands was overturned.<sup>87</sup> The resulting flurry of paper and investigation failed to halt the sale, which, as Alan Ward has indicated, proceeded from the point of political expedience.<sup>88</sup> Governor Grey acceded to the alienation of the reserves and gubernatorial management failed to protect them. It was left to Native Ministers Walter Mantell and J E Fitzgerald to protest the action. Notably, in his capacity as Auditor-General, Fitzgerald was able to obtain £6000 in way of back-rent for the former Maori owners. The existence of rent arrears and a failure to enforce rentals was a continuing theme of weak administrative practice. Fitzgerald also contemplated prosecuting Grey as Governor and trustee for flagrant misuse of trust reserve lands.<sup>89</sup>

The Waitangi Tribunal reported on the matter to determine if a breach of the principles of the Treaty of Waitangi had occurred.<sup>90</sup> It was noted that the Tribunal had difficulty in recommending that the Crown had an obligation to preserve in perpetuity a specific piece of land for Maori. However, the Tribunal made a more general finding:

The failure to meet the Crown's Treaty obligations was found to have rested more on the failure to ensure that Ngai Tahu retained sufficient land for their present and future needs and thereby denying Ngai Tahu the opportunity of participating in the commercial development of the town and the benefits that would have flowed from this.<sup>91</sup>

The example of the Princes Street reserves illustrates for us the continuing disputes over the protection of Maori reserve interests, including effective Government administration.

## 2.10 THE NATIVE LANDS AMENDMENT ACT 1866

The Native Lands Amendment Act 1866 applied some prescriptions to the administration of reserves. In particular, it sought to regulate the alienation of reserves, something, which had been part of the dispute over the Princes Street reserves.<sup>92</sup>

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86. See, for example, AJLC, 1867–68, pp 1–14, 15–36, 45–57

87. 'Petition of John Topi Patuki', AJLC, 1867, pp 17–18

88. Alan Ward, pp 183, 215, and 257

89. Fitzgerald to Mantell, 15 April 1866, Mantell ms 278, cited in Ward, p 215

90. Waitangi Tribunal, *Ngai Tahu Report 1991*, 3 vols, Wellington, Brooker and Friend Ltd, 1991, vol 1, pp 44–51

91. *Ibid*, p 51

Section 3 redefined 'native reserve' as it applied under the Act into the following categories:

(1) All lands vested in the Governor under and by virtue of the New Zealand Native Reserves Act 1856 and the Native Reserves Amendment Act 1862.

(2) All lands reserved by the Aboriginal Natives on the cession of lands to the Crown where such lands are specified in the deed of sale.

(3) All lands reserved for the benefit of Aboriginal Natives upon the sale by them of any lands.

(4) All lands comprised in blocks and set apart for the benefit of Aboriginal Natives according to the directions of any Commissioner appointed to investigate purchases of land made from the Aboriginal Natives by the New Zealand Company.

(5) All lands reserved for the benefit of Aboriginal Natives by the New Zealand Land Company or New Zealand Company.

In addition to a broad definition of 'Maori reserves', the Act proposed other amendments to the practice of reserves administration. These terms concerned the issue of alienation. Section 5 stated that:

every Crown Grant which shall hereafter be issued . . . in any Native reserve shall contain a provision that the land therein comprised shall be inalienable by sale or mortgage or by lease for a longer period than twenty-one years from the making of any such lease except with the assent of the Governor in Council . . .

As alluded to here, the restriction on alienation was not a blanket protection. Indeed, the Governor retained the authority to alienate reserve lands under section 6. Two other features were introduced which directly affected the administration of reserves. Section 7 prevented the implementation of rack rents, or the practice of hiking rents to premium levels. This measure was clearly designed to protect European lessees from free-market rents. From the provisions of the Act, it would appear that an attempt was made to balance Maori and settler interests. The Act also re-emphasised the Governor's authority to direct the application of rental funds (something earlier complained of in parliamentary debates before the Native Reserves Amendment Act 1862).

A return of all reserves administered under the 1856 and 1862 legislation was produced for Parliament in 1867. This document was subsequently printed in the *Appendices to the Journals of the House of Representatives*.<sup>93</sup> It represents the first and only attempt at a comprehensive list of all reserves which come under the scope of formal Government administration during this period. The secretary noted that reserves existed only in the provinces of 'Taranaki, Wellington, Nelson, Canterbury and Otago'.<sup>94</sup> Once more, the survey overlooked reserves in Hawke's Bay and Auckland (mentioned below). The absence of Auckland reserves from the list was

92. Note, sections 13 and 14 of the Native Land Amendment Act 1867 further amended regulations in an attempt to limit alienations.

93. 'Return of all Land Vested in the Governor by Virtue of the New Zealand Native Reserves Act 1856 and the Native Reserves Amendment Act 1862', AJHR, 1867, A-17 (attached as appendix)

94. *Ibid*, p 3

## 2.11 TRUST ADMINISTRATION OF MAORI RESERVES, 1840-1913

all the more remarkable because of the enactment of a separate piece of legislation concerning the management of a native reserve hostel – the Auckland and Onehunga Native Hostelries Act 1867.

### 2.11 THE DOMETT COMMISSION, 1869-70

One strong reaction to discoveries of reserves mismanagement was the appointment of a commission of inquiry to investigate ‘the condition and nature of trust estates for religious, charitable and educational purposes’. The commission comprised Alfred Domett, George Cooper, Robert Hart, and Theophilus Heale, all former Commissioners of Native Reserves. While the scope of the inquiry focused on endowment reserves for specific purposes, some of the evidence and findings touched on the broader nature of reserves administration.

#### 2.11.1 Auckland

The commission’s report included evidence of the absence of administration of Auckland. As Commissioner of Native Reserves in Auckland, James Mackay stated: ‘The first instructions I received respecting Native reserves was October, 1867, at which time I was instructed to take charge of the Auckland and Onehunga Hostelry Reserves’.<sup>95</sup>

Mackay’s testimony illustrated that the reserves had been left unattended and European squatters had moved in to occupy them. Maori were unaware and remained uninformed of which areas had been allocated as endowment reserves. As Mackay noted:

I found one man on Reserve No 4 [reserve 4, section 12, in the town of Auckland] who said he had been on it twenty-three years, and I only succeeded in getting rid of him by threatening legal proceedings.<sup>96</sup>

In all four cases, Auckland reserves were either unleased, or the rentals were simply not collected and distributed for Maori benefit. The administration was by no means certain:

I believe that the six acre section No 89, has been leased to Mr Blackett for twenty-one years, and has to run about three years more. I believe the rent has been paid to some agent in Auckland, but I have failed to discover the particular; no rent has been paid to my department for this allotment.<sup>97</sup>

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95. James Mackay, ‘Sworn statement’, encl 11, in Theophilus Heale to Robert Hart, 7 May 1869, ‘The First Report of the Commission of Inquiry into the Condition and Nature of Trust Estates for Religious, Charitable, and Educational Purposes’, AJHR, 1869, A-5, p 48

96. Ibid

97. Ibid

The status of endowment reserves at the portage of Onehunga also presented an intriguing picture. Mackay commented:

Before 1867, there was some difficulty about the title to these reserves; but by The Auckland and Onehunga Hostelrys Act 1867, this was set at rest as far as regards Nos 11, 19, and 4, which were placed under my control. No 89, containing 6 acres 1 rood, was not brought under the provisions of that Act and remains under the original Crown Grant to certain trustees, which appears to have been reconveyed by them to the Crown; consequently I have no power to deal with this reserve.<sup>98</sup>

Although the majority of the commission's report does not directly concern us here, such conclusions as mentioned help to fill some of the many gaps in the broader administrative record.

## 2.12 CONCLUSIONS

The introduction of native reserves legislation in 1856 was an attempt to institute a framework for administration. Despite a degree of continuing confusion, the enactment of legislation formalised a trust relationship. In this chapter, we have examined the effect, beneficial or other, of the 1856 and 1862 legislation on the trust administration of Maori reserve lands.

The 1856 Act directed the course of management under a formal relationship of equitable obligation. The Government administered Crown-granted reserves, and Maori continued to administer their own customary reserves. Among the provisions of the Act there was a strong impetus to assist Maori to individualise titles (severalty), and also to alienate lands. Without immediately casting such objectives as destructive, we still need to carefully question whether the motive was for Maori benefit.

Legislation struggled to balance the competing interests of Maori beneficial owners and European settlers (lessees). The Native Lands Amendment Acts 1866 and 1867 typify attempts at balance. On one hand, these laws attempted to restrict powers of alienation over reserves, but, in the next clause, rack-renting on the open market was prohibited. In 1862, the Native Reserves Amendment Act 1862 overbalanced. The 1856 and 1862 Acts appear to breach the nature of a 'trust agreement' by granting European commissioners full authority to determine Maori 'assent' to lands being administered or alienated, whether these lands were granted or customary.

However, against the legislative backbone it is also important to juxtapose the practice of local administration on a micro-level, in order to measure adherence to legislation and the relative discretion exercised by local commissioners. During the period of 1856 to 1870, one of the strong characteristics of reserves administration was the involvement of officials and commissioners on a regional basis. Indeed,

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98. Ibid, p 49

## 2.12 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

some individuals allowed for a slight deviation from the legislative guidelines in order to achieve a more beneficial return for Maori. Alexander Mackay, in particular, continued to seek Maori assent for the inclusion of lands under Government administration, in spite of legislative provisions. Other individuals exercised discretion in a less beneficial manner.

In other regions, most notably Auckland, there was a complete absence of reserves administration. The 1862 return listed the existence of 100 reserves in the Auckland province.<sup>99</sup> Despite this, there does not appear to have been any concerted form of reserves administration in operation for these reserves. We might regard the hiatus in the administration of reserves in the northern North Island as one consequence of the lack of a centralised framework of organisation.

While legislation guided trust administration from 1856 to 1870, the nature of localised practice without a centralised organisation allowed individual commissioners a degree of discretion in the exercise of administration. The local record of Alexander Mackay demonstrated some of the positive benefits which might accrue from informed and flexible management of individuals operating on localised levels. It was largely in response to the efficacy of this model that Donald McLean, without legislation, altered the system of administration, ultimately retaining Mackay as Commissioner for South Island Reserves and appointing Charles Heaphy as overall Commissioner of Native Reserves in 1869.

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99. Andrew Sinclair, 'Return of General Reserves for Natives which have been Made in Cessions of Territory to the Crown: the Province of Auckland', *AJHR*, 1862, E-10, pp 4–5

## CHAPTER 3

# DUAL COMMISSIONERSHIP, 1869–81

### 3.1 INTRODUCTION

In this chapter we trace the course of independent commissionership from Charles Heaphy's appointment as Commissioner of Native Reserves in 1869 to the shift of administration to the Public Trust Office in 1881 and 1882. The first thing to identify about this period of roughly a decade is that Heaphy did not operate as sole administrative commissioner, but shared the task with Alexander Mackay. Mackay continued to operate as South Island Commissioner of Trust Reserves in Nelson and Westland, the most successful of all trust estates. Moreover, it was Mackay's successful administration that was applied as a model for the North Island and Heaphy's appointment. During the period from 1869 to 1881, no further legislation guiding administration was implemented and therefore the statutory basis for reserves administration continued to rest on the Native Reserves Amendment Act 1862.

### 3.2 BACKGROUND

Native Minister Donald McLean appointed Heaphy as Commissioner of Native Reserves in 1869. In the same year, F D Fenton, the chief judge of the Native Land Court and a member of the Legislative Council, introduced a native reserves Bill. The timing was not coincidental. And, while it is difficult to reduce the interrelationship between the events to simple cause and effect, no doubt both decisions were greatly affected by the hearings and reports of the Domett commission from 1868 to 1870, discussed in the previous chapter.

### 3.3 FENTON'S NATIVE RESERVES BILL 1869

Fenton, called by Stafford into the Legislative Council, introduced a Bill which aimed to provide the Native Land Court with the ambit of authority over Maori reserves. Fenton sought the right to allocate reserves, administer them as trustee, and permit or restrict their subsequent alienation. He also sought trusteeship of all the interests of Maori minors. Fenton argued that the administration of Maori

### 3.3 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

reserves should not have been under the control of the Government of the day. He proposed, as far as:

the different character of these reserves will allow, to place them all on one basis and form of management; and I think the only way to do that is to give some person power, on behalf of the government and also on behalf of the Natives, to undertake the entire management, subject, in many cases to judicial interposition.<sup>1</sup>

Indeed, it was judicial interposition that was central to Fenton's approach to administration under the Act: 'these questions will be decided not by the Governor in Council or some Civil Commissioner or Resident Magistrate, but by the Court on sworn testimony.'<sup>2</sup> Fenton's aggrandisement of the Native Land Court bothered many, including McLean, and was the main reason for the Act being dropped. In the course of the parliamentary debates, reference was made to Hawke's Bay; in particular, the Te Aute educational reserve.

In the debate surrounding the Bill, Colonial Secretary Gisborne recognised the:

difficulty presented by the present position of the Native Reserves . . . The dealings with Native reserves and with the land of the Natives had been in many respects unsatisfactory. The Natives had ceded land for many important religious and educational objects, and they had seen those objects wholly neglected.<sup>3</sup>

Gisborne also questioned the roles ascribed to the Native Land Court under the bill; in particular, the authority to alienate reserves. He argued that there had been a tendency for the court:

to strip the Natives of their property to a great extent, and he feared that would continue unless they made some provision 'for making some definite reserves which should be inalienable for the support of those Natives and their children'.<sup>4</sup>

The Bill passed through the Legislative Council, but was dropped by the Lower House of Representatives. When Gisborne attempted to reintroduce the Bill later that same year, it was referred to a select committee. The select committee produced an interim report on the Bill in August 1870. It stated the purpose of the Bill was:

to vest in one officer, to be called the Native Trustee, the administration (subject to the control of the Native Land Court) of all estates throughout the colony held in trust for or for the benefit of Natives.<sup>5</sup>

The committee's report began by describing the existing system of administration as very defective, with the exceptions of Canterbury and Nelson. Overall, however, it opposed Fenton's proposals and the Bill in general:

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1. F D Fenton 30 July 1869, reading of the 'Native Reserves Bill', NZPD, 1869, p 166

2. Ibid

3. Gisborne, 30 July 1869, second reading 'Native Reserves Bill', NZPD, 1869, p 167

4. Ibid, p 168

5. 'Interim Report of the Select Committee into Native Reserves Bill', 15 August 1870, AJLC, 1870, p 8



to place the administration of the whole of these large and scattered trust estates throughout the Colony under the control of a single officer does not appear likely to effectuate the desired object. It appears to your committee to appoint officers for this purpose in different localities, who shall be directly responsible to the Government, and who will not be (as proposed by the present Bill) mere agents appointed by, and under the direction of, and responsible only to, the Chief Trustee.<sup>6</sup>

The need for the commissioners to be under a higher authority was made explicit, and, in this respect, the involvement and role of the Native Land Court was strongly questioned.

The report expressed a sense of concern for the beneficial administration of reserves. Connected to the matter of the Bill, the committee harked upon the urgent need for a 'practical check to prevent frauds and abuses, which are growing up in the land dealings between Europeans and Natives'. It was suggested that this was achievable by other measures, and, led in part to the formation of the Native Lands Frauds Prevention Bill (see below). Further evidence of the committee's protective concern was expressed in its desire to ensure that reserves remained inalienable and that the applications of trust funds were well directed. Such suggestions implied that both matters had not been attended to in the former administrations:

Alienation of land held by Native grantees upon trusts either express or implied, whether by way of lease or absolute sale, made in breach of such trusts, ought to be prevented and annulled . . . Provision should be made for insuring, as far as possible, the application of funds to their proper objects. The Bill now under consideration by your committee does not appear calculated to effectuate these objects.<sup>7</sup>

Native Minister Donald McLean appointed Charles Heaphy, former Chief Surveyor of Confiscated Lands as Commissioner of Native Reserves for all islands. The reasons for this shift have been dealt with in part in the previous chapter. However, it is likely that much of the motivation for the decision came from McLean, in an attempt to shore up his position in relation to the Native Land Court, especially Chief Judge F D Fenton. Other commentators have already highlighted the competitive relationship between these two key figures in the administration of Maori policy through this period: 'Land legislation in the 1870s was heavily influenced by the resurgence of the long-standing rivalry between Fenton and McLean.'<sup>8</sup> This report simply draws on established details in order to help explain the background to the shift in approach, and the appointment of Heaphy as Commissioner of Native Reserves. Following on, the first question might well be: To what extent did Heaphy's appointment in fact signal a shift in style of reserves administration?

McLean outlined Heaphy's appointment and duties in a letter on 13 October 1869. Heaphy was offered the appointment as Commissioner of Native Reserves

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6. Ibid

7. Ibid, p 9

8. Refer Alan Ward, *Show of Justice*, revised edition, Auckland, Auckland University Press, 1995, pp 251–263; Graeme Butterworth, *Maori Trustee*, nd, pp 12–16

### 3.3 TRUST ADMINISTRATION OF MAORI RESERVES, 1840-1913

responsible for 'various duties in connection with Native Reserves, and certain other Native lands that are specified in the margin'. These included:

The administration of native reserves held in trust by the Government, and other lands set apart for the benefit of the natives.

Supervision of native hostelrys.

The supervision of the payment to the natives of the proportionate amount due to them on sale of certain blocks at Remuera, and elsewhere.

The supervision of lands taken under 'The New Zealand Settlements Act, 1863' and 'The New Zealand Settlements Amendment Act'.

The recommendation to the government of lands proper to be rendered unalienable by the native owners, through the operation of the Native Lands Court, and generally the duties devolving on the 'trustee' contemplated in the provisions of the Native Reserves Act, which passed the Legislative Council last Session.

A general supervision over the laying off of the main lines of road through the North Island, and setting apart of districts of land suitable for immigration from Europe.<sup>9</sup>

McLean went on to urge:

It will be necessary to classify the various Native Reserves as soon as possible, bringing them all under one schedule that shall be descriptive of the objects and circumstances of the trusts, with a view to the most efficient management of the estates for the future. Such schedule should be prepared in time to be laid before the next session of Parliament. Also, to negotiate with the Natives for the acquisition of land for the site of the telegraph line, and for the supply of timber for maintenance of the constructions on the line.<sup>10</sup>

Colonial Secretary William Gisborne added further details to Heaphy's instructions:

The principal object of your duties is to enable you to collect and arrange such information respecting Native reserves and the present administration of them, as will, in the case of the proposed Native Reserves Bill being passed next session, enable effect to be given to that Bill at once. It will be necessary to that end that you should be appointed a Commissioner of Native Reserves.

It is also important that you should so far as the law will allow you, perform the duties which were also contemplated under the proposed Native Settlements Bill, with a view in all cases of alienation of Native Lands by means of the Native Lands Court to proper provision being made, if such does not exist already, for inalienable reserves, for the support of the Native owners of the land going through the Court and of their descendents . . . Mr Fenton, also, who introduced the Native Reserves Bill and takes a great interest in its object will no doubt be kind enough to aid you with his suggestions on the other matters contemplated by the Bill. You will however, in no way interfere with the duties of the Inspector of Surveys under the Native Lands Acts.<sup>11</sup>

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9. McLean to Heaphy, 13 October 1869, AJHR, 1869, D-16, encl 1, p 3

10. Ibid

What was missing from the instructions appears to have been guidelines for the direction of rental funds. Gisborne closed by expanding on McLean's directions and stating that Heaphy was to be appointed as Sub-Inspector of Telegraphs. Recently, Graeme Butterworth has described the range of duties conferred upon Heaphy as 'a remarkable mixture of the important and the trivial' and an indication of 'how ad hoc New Zealand Government still was'.<sup>12</sup> While there is some truth that most officials were required to carry out a swag of duties, it should be recognised that these were not assigned randomly. The growing sense of expansion in European population and the pressing need to connect settlements meant that duties of laying roads and telegraphs were just as important to the Colonial Government as the administration of reserves and, in many cases, not unconnected.

At first glance there appears a tenuous connection between the different duties of the commissioner, combining trust administration of Maori reserves with the supervision of raupatu lands, and the ultimate supervision of setting apart land suitable for roads and for immigrants from Europe. However, underlying these tasks was the uneasy combination of the management of the remaining Maori lands in reserve and the opening up of New Zealand for European immigration. Thus, we need to recognise the paradoxical nature of Heaphy's ascribed duties.

We might also consider Heaphy's own background for the position of commissioner. McLean offered the position to Heaphy on account of:

your [Heaphy's] knowledge of the circumstances under which most of the lands were set apart, your experience as a surveyor in the various Provinces, and on the confiscated lands, and your acquaintance with the tribes.<sup>13</sup>

Other aspects of his earlier occupation as Chief Surveyor of Confiscated Lands returned to haunt him. Allegations of bribery and corruption levelled at Heaphy during the late 1860s led to a formal commission of inquiry headed by Alfred Domett. Domett summarised the situation in 1870 (referring to his appointment as Commissioner of Native Reserves):

definite charges had been brought by Mr Heale which were in the possession of the Government, and that without investigation into these charges, Major Heaphy had been appointed to a position of trust and responsibility.<sup>14</sup>

Theophilus Heale, the Inspector of Surveys, testified that during the time Heaphy occupied the post of chief surveyor:

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11. W Gisborne to Heaphy, 6 November 1869, encl 2, AJHR, 1870, D-16, p 3

12. Butterworth, p 13

13. McLean to Heaphy, 13 October 1869, D-16, AJHR, 1870, p 3. Michael FitzGerald in the *Dictionary of New Zealand Biography* carries a good deal of other background. Although, it should be noted that the only mention of Heaphy's career as Commissioner of Native Reserves is poured into one solitary sentence in three pages of biography (vol 1, p 182): 'He was an efficient administrator of the paternalistic system of 'native reserves' and collector of income due to their beneficiaries.'

14. 'Commission of Inquiry into Charles Heaphy', MA 63, p 7, NA Wellington

### 3.4 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

an organised system prevailed under which any youth by paying to the said Charles Heaphy a sum of £100 could in a very few months obtain employment in the responsible position of a contract surveyor . . . 13 persons in the past 2 years done so.<sup>15</sup>

Domett eventually concluded:

With all this, I feel bound to say that I consider Major Heaphy to have been guilty of a lamentable error in judgement in continuing to take pupils with premiums while he had government contracts to give out.

Yet, Heaphy was ‘acquitted entirely of conscious or intentional corruption’.<sup>16</sup> In light of these proceedings, an element of doubt was raised as to Heaphy’s suitability as Commissioner of Native Reserves. In the meantime, McLean responded to the completed findings of Domett’s commission of inquiry into reserves, and, with the failure of the reserves bill put forward by Fenton, introduced his own legislation to protect Maori land from mismanagement and fraud.

### 3.4 NATIVE LANDS FRAUDS PREVENTION ACT 1870

The Native Lands Frauds Prevention Act 1870 was introduced by McLean as Native Minister, largely in response to the findings of the Domett commission. It purported to prevent abuses and frauds relating to the alienation of Maori lands (including reserves). Section 4 explicitly stated that no alienation was to be valid if:

contrary to equity and good conscience and in the case of land held under any trust . . . or in relation to the sale or supply of spirituous or fermented liquors or of arms or any war-like implements or stores.

Under section 5, part-time trust commissioners were appointed from the Native Department in order to investigate and ultimately approve or decline each alienation. Commissioners were also charged with the responsibility of ensuring that Maori were left with ‘sufficient land’ for their support. Overall, however, just as the commissioners themselves were only part time, the implementation of the measures was only partially effective, as Alan Ward has demonstrated.<sup>17</sup>

Once again, the success of Nelson administration was harked upon in the rhetoric of parliamentary debate as a positive model of beneficial reserves administration. Fenton held the Nelson example aloft:

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15. Ibid, p 10

16. ‘Commission of Inquiry into Charles Heaphy’, MA series 63, pp 76–77

17. Alan Ward, *Show of Justice*, p 252. ‘It [the act] was not retrospective and when H R Russell, leader of a rival faction to that of McLean in Hawke’s Bay politics, in order to strike at McLean’s own dubious dealings, secured an amendment in the Legislative Council to make it retrospective, McLean had it deleted in the House of Representatives.’

There is a class of reserves made by the New Zealand Company, and, as far as I can learn, they are the only reservations made by the government, in one form or another, on which the Legislature can look with perfect satisfaction. As far as I know they are the only reserves in New Zealand which are managed with success, but I am not able to say whether that is because the person in charge gives more time and attention to them, or whether their trusts are different in foundation.<sup>18</sup>

### 3.5 COMMISSIONER'S REPORTS, 1871

Heaphy's first task as Commissioner of Native Reserves was to prepare a comprehensive series of reports covering the current administration of all Maori reserves. Completed and published in 1871, Heaphy's reports can be found in unpublished form in the National Archives.<sup>19</sup> The published versions of the reports were submitted as document D-16 in the 1871 *Appendices to the Journals of the House of Representatives*. Some minor changes were noted between the versions.<sup>20</sup> However, owing to time restrictions a thorough textual comparison has not been undertaken. For the purposes of consistency (only) in this report I have relied upon the reports published in the *Appendices to the Journals of the House of Representatives*.

Heaphy began his presentation of reports with the following explanation:

It is not possible on so short an acquaintance with the condition of the Reserves in New Zealand as my official commission with the trust has enabled me to have I should be able immediately to point out an improved method of management, or any alteration that would have the effect of rendering the estates at once more productive. It has been my object rather, to compile a list of the reserves, descriptive of their condition and the nature of the varying responsibility that attaches to them, and to show their extent in relation to the native population.<sup>21</sup>

In the introduction, Heaphy took an opportunity to introduce two points. The first was that 'several of the reserves had been lost sight of and many remained unutilised'. The second point was that the best means available to use the reserves was consolidation:

It may not be premature here to draw attention to the advantage that would accrue from a consolidation of the more scattered reserves being effected . . . whether by simple consent of the Native owners, or, if necessary, by legislative enactment.<sup>22</sup>

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18. F D Fenton, 'Native Reserves Bill', 30 July 1869, NZPD, 1869, p 165

19. MA 17/1

20. For example, Hawke's Bay Interim Reports, MA 17/1. These documents include fuller details and lithographic plans which do not appear in the final published version, AJHR, 1871, D-16, pp 11-17. Also, the returns of Taranaki reserves created out of raupatu lands, published as 'Heaphy to McLean' (17 June 1870, encl 8, D-16, AJHR, p 6) do not exist in the original documents.

21. Charles Heaphy, 'General Observations', MA 17/1, np

22. Charles Heaphy, 4 July 1870, MA 17/1

### 3.6 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

#### 3.6 HEAPHY'S CATEGORISATION OF RESERVES

Heaphy, in his reports, constructed a series of categories in order to classify all types of reserves. This represented the first comprehensive attempt to structure and organise reserves. It demonstrated, in one sense, the value of Heaphy's new role as Commissioner of Native Reserves. Reserves were classified into three large categories, with sub-categories under each, as follows:

Class A: trust, under provisions of Crown grants or legislative enactments

1. For a specified object.
2. For benefit of natives generally.

Class B: reserved lands, not under enactment

1. For a specified person or purpose.
2. For the benefit of natives generally.

Class C: reserves of land under or to be brought under Native Lands Acts

1. Grants with limitations.
2. Lands that should be made inalienable.
3. Granted land, subsequently conveyed to trustees.<sup>23</sup>

The system categorised reserves according to the purposes and circumstances for which they were created. But the classes do not indicate which particular reserves were administered by the Crown and the details of administration. In light of the previous differences between McLean and Fenton over the administrative jurisdiction of reserves, it is notable that Mackay included the final category, class C, as lands under the terms of the Native Lands Act.

It is unfortunate that the 1871 reports, despite detailed listings of all reserves for each province, provided no information regarding the term of the lease or the amount of the rent. The sole exception to this was the Taranaki report, which was not prepared by Heaphy. Instead we are simply left with broad schedules, which organised reserves into Heaphy's categories, but do not provide sufficient information to permit an analysis of administration.

Below are listed short summaries of the administration of reserves in each province, derived from the 1870 reports.

##### 3.6.1 Taranaki Reserves

Taranaki Commissioner Parris did not submit a report to Heaphy. It is therefore somewhat difficult, as Heaphy says, to evaluate the state of administration, except to record the schedule of reserves and financial accounts.<sup>24</sup> Parris also submitted bare financial statements of all credit and debit figures for each reserve. In each case listed in the table on the following pages, the figures balanced on paper.

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23. 'Report on the Native Reserves in the Province of Hawke's Bay', encl 9, AJHR, 1870, D-16, p 14; see also MA 17/1

24. R Parris, 'Schedule of Native Reserves in the Province of Taranaki', AJHR, 1871, D-16, p 7

Income received was solely from rents and payments made either to Maori individuals, presumably trustees (although this was not verified), or to the individual commissioner for the cost of administration. There is in fact little that can be revealed from examining these facts in isolation, except the bare details of each lease.

### 3.6.2 Hawke's Bay

By contrast, Hawke's Bay reserves received a full written report in 1871 from Heaphy, in the absence of an existing reserves commissioner.

The report goes into great detail on the history of land alienation and individualisation in Hawke's Bay. Heaphy mentions a number of examples of individual blocks in Hawke's Bay to illustrate specific issues facing the administration of reserves. One or two examples will be repeated to give some sense of the approach to administration adopted by Heaphy himself in this district. Heaphy requested that a person be appointed to obtain the consent of the owners for including the following blocks under Government administration: Pohirau, Otukarara, Te Torohanga, Pukehou, Tatake Opake, and Te Koau. In seeking Maori assent, Heaphy chose to ignore the automatic assent granted under section 7 of the 1862 Act. He went on to claim that:

the Natives treated me with great confidence, and appeared to be well satisfied with the action taken by the Government in providing means for the conservation of their land.<sup>25</sup>

Given the extent of land alienation at Hawke's Bay it is perhaps not surprising that local Maori reacted to the alternative of trusteeship in that light.

Heaphy noted that the debts of many local Maori in Hawke's Bay were 'of very considerable amount'.<sup>26</sup> In one example, Karaitiana Takamoana (later the member of Parliament for Eastern Maori and the leader of the repudiation movement) complained that they had individualised title to reserves and drawn mortgages on the Crown grant on the security of the rental incomes, yet the payment of rents was not enforced. When:

the time of low prices for wool and stock came, and the white man did not pay the rents agreed upon – one owing three years rent – and while we could not get in the money owing, we were called in periodically for the interest on the mortgages; and so our debts increased, and we had to mortgage other lands, or to sell to keep off legal proceedings.<sup>27</sup>

Note, for Hawke's Bay, there was only one reserve that was listed as a trust estate (class A) in Heaphy's report. This was known as Toha's reserve at Wairoa and was

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25. Report on the Native Reserves in the Province of Hawke's Bay, encl 9, AJHR, 1870, D-16, p 13; see also MA 17/1

26. Ibid, p 12

27. Ibid

No	Area (acres)	District	Lease terms	Rent	Remarks
1	154a	Grey	49a, 10 years from 1 October 1865	£20	
2	201a 3r	Grey	Not let		
3	584a	Grey	140a, 10 years from 1 January 1867	£63 10s	Individualised, but no Crown grant
4	50a	Grey	140a, 10 years from 1 October 1867	£12 10s	
5	367a	Omata	110a, 10 years from 1 January 1867	£31	
6	10a	Omata	Not let		
7	76a	FitzRoy	10 years from 1 January 1867		Private arrangement before Act
12	1a 2r	New Plymouth	Not let		
14	18a 1r	New Plymouth	10 years from 1 June 1865	£15	
15	3a	New Plymouth	7 years from 1 June 1867	£5	
20	19a 1r 13p	FitzRoy	Not let		
24	2r	FitzRoy	Not let		



E	77a	Hua and Waiwakaiho	56a, 21 years from 1 January 1863	£25	
FI	50a	Hua and Waiwakaiho	21 years from 1 January 1862	£20	
G	75a	Hua and Waiwakaiho	21 years from 1 January 1862	£25	
H	53a 1r 34p	Hua and Waiwakaiho	21 years from 1 July 1865	£20	
I	54a	Hua and Waiwakaiho	21 years from 1 July 1865	as above	
K	50a	Hua and Waiwakaiho	Not let		
Upokotanaki	52a	Hua	Not let		
Hoehoe	53a	Hua	Not let		
Hawe Taone	20a	Bell	10 years from 1 July 1865	£15	

Schedule of Taranaki reserves, 1871. Source: AJHR, 1871

### 3.6.3 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

997 acres in area. It was deemed a trust with a special purpose (class A-1) and was not administered under the Native Reserves Act 1856.

#### 3.6.3 Canterbury

Heaphy began with a formal calculation to consider the sufficiency of reserves for the maintenance of a given number of persons.<sup>28</sup> The Maori population figure for Canterbury was listed at 406 (this was corrected in Maori Affairs series 17/1 to 607 persons).<sup>29</sup> The total area of Canterbury reserves was listed at 10,076 acres, then divided from the population figure which provided each Maori 16<sup>2</sup>/<sub>3</sub> acres according to Heaphy's calculations. It is not discussed whether this was considered 'sufficient' for Maori existence, although a qualification was added in the case of Canterbury, that in:

considering the sufficiency of the Reserves for the maintenance of a given number of persons, regard must be had to the circumstance that it is the custom of the Natives frequently to change the locality of their cultivations in order to obtain 'new ground'.<sup>30</sup>

Attempts to quantify Maori requirements form a common feature of reserves administration, and while there does not seem to have been any clear standard, we will examine the different figures reached and the justifications used in order to analyse this curious approach.

Heaphy's overview of reserves at Canterbury included the recommendation that, where Maori had ceased to cultivate 'or profitably occupy the land', it should be vested in European trustees for the benefit of the grantees. He added a brief mention of Kaiapoi reserve, unsurveyed reserves at Lake Ellesmere, and some reserves which he felt should be exchanged. In particular, Lake Forsyth reserve numbers B-1 to B-4 were said to contain Maori burial grounds. Heaphy commented:

There appears however, to be no ground for such belief, and as the Reserve – a long narrow strip – is useless for cultivation, and is required for a road, it is desirable that it should be conveyed to the Superintendent of Canterbury, and an equal area of cultivable land in the vicinity be substituted for it.<sup>31</sup>

Heaphy, in this example, operated in his dual public roles as Commissioner of Native Reserves and Surveyor of Roads. The combination of these duties raises questions about the possibility of a conflict in interests.

The largest category of Canterbury reserves, according to Heaphy's classification, was:

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28. This was not applied in the case of Taranaki or Hawke's Bay.

29. The figure was printed as 406 persons in AJHR, 1870, D-16, p 17. However, in the original MA 17/1 the figure 406 was crossed out and replaced with 607 persons, dated 20 August 1870.

30. AJHR, 1870, D-16, p 17

31. Ibid, p 18

CI Grants with Limitations, Return of Reserves made in pursuance of awards of the Native Lands Court in May 1868, in final extinguishment of all claims under the Ngai Tahu deed of 1848.

Furthermore, Heaphy praised in glowing terms the success, as he saw it, of the Canterbury reserves: 'The Reserves in the Province of Canterbury unquestionably form a magnificent estate for the existing remnant of the people that formerly owned the land.'<sup>32</sup> This view can be contrasted against Reverend Stack's warning made to William Rolleston, the Canterbury provincial secretary:

They [local Maori] now find themselves placed in a situation they never contemplated when disposing of their land for the purposes of colonisation and consider themselves the victims of deception and boldly charge the Government with having purposely misled them. They are bequeathing to their children a legacy of wrongs for which they charge them to seek redress – this will serve to perpetuate the spirit of discontent which has for some time prevailed.<sup>33</sup>

### 3.6.4 Otago

There was only a short report covering the lists of reserves at Otago. No calculation of the total amount of reserves available for Maori was made. None the less, Heaphy listed a series of reserves holdings and declared them to be, like Canterbury, a great benefit to Maori. He was more guarded though in terms of the surveys, which he felt left reserves too narrow to be an attractive proposition for tenancy. He concluded: 'In either case the advantage of individualising the title is annulled, and the evils of common holding must operate.'<sup>34</sup>

Heaphy added a brief history of Maori attempts to recover the reserve after a Crown grant was issued to the superintendant of Otago in 1865. He explained that all attempts to recover the land through the Native Land Court, the Supreme Court, and eventually the Court of Appeal had failed. Furthermore, set against the backdrop of continued failure to obtain the lands, Maori were still owed £6908 18s 9d in accumulated rents from reserves in the wider area, which would prove of considerable benefit if invested for Maori.

### 3.6.5 Southland

Southland reserves were classed in two categories. The first was lands set aside on the mainland and islands on the sale of the Murihiku block. The other class was restricted to 'the neck' on Stewart Island, set aside by H T Clarke as Land Purchase Commissioner for the benefit of half-castes (children of earlier liaisons between sealers and Maori).<sup>35</sup> In Heaphy's view, the mainland reserves appeared to have

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32. Ibid

33. J W Stack to W Rolleston, 29 August 1871, Inwards Correspondence Provincial Superintendent/ Secretary, Canterbury Museum, 1871/1549, cited in Ward (Wai 27 ROD, T1), p 357

34. 'Report on the Native Reserves in the Province of Otago', 31 May 1870, encl 11, AJHR, 1870, D-16, p 24

### 3.6.6 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

been selected from the sites of former cultivations, were well placed, and were likely to increase in value. Stewart Island reserves by contrast:

have been selected less with regard to their value for purposes of cultivation than on some local or peculiar object, such as titi mutton bird catching . . . and are much scattered.

Heaphy preferred the establishment of cultivations, and urged the consolidation of Stewart Island reserves:

It would be advantageous if those on the main Island could, with the consent of the Natives interested, be consolidated into a half or a third of their number of blocks, and taken in fertile situations.<sup>36</sup>

Heaphy assessed the sufficiency of Southland reserves. He calculated that a population of 342 Maori (he included 'half-castes') had 11,069 acres of reserves, from which he derived a figure of 32 $\frac{1}{3}$  acres per person.<sup>37</sup>

It should be noted that, among the South Island reserves, only Marlborough, Nelson, and Westland comprised reserves administered in Government trust. The Canterbury, Southland, and Otago reserves were under the direct control of their Maori owners.

### 3.6.6 Westland

In 1871, the reserves in Westland totalled 5930 acres in extent. Maori placed 3536 acres under the trust administration. The Westland reserves formed the most lucrative trust for Maori beneficiaries of any in the country. The onset of heavy demand for land during the 1860s West Coast gold rush persuaded many Maori to place their lands in trust to be declared inalienable.

The principal portion (500 acres) of the lands formed the town of Greymouth. By 1871, almost all sections were occupied and leased, yielding a gross rent of £3000 per year. Two European administrators, Alexander Mackay (the reserves commissioner) and John Greenwood (interpreter, agent for assent) jointly managed the Westland reserves. It was on the strength of their efficient management that Heaphy's report for the region contained a good deal more detail than many of his other reports.

It is useful at this point to summarise the income and expenditure of Westland trust reserves (in the period from 1 July 1865 to 31 December 1869). The total amount collected from the estate over this period was £14,361 19s 7d. Expenditure stood at £10,366 9s 5d, and the trust fund was left with a balance of £3995 10s 8d. This sum was then split: £550 was placed in the Bank of New Zealand at Nelson,

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35. Stewart Island was formally known as Stewart's Island and is referred to as such in the contemporary AJHR reports, including the report pertaining to the Southland reserves sourced for this chapter: AJHR, 1870, D-17, p 30.

36. Report on the Native Reserves in the Province of Southland', AJHR, 1870, D-16, p 30

37. Ibid, p 31

and the balance of £3445 10s 8d remained to the credit of the fund in the public account. Heaphy explained:

In the accounts kept here, the proceeds derivable from the Native Reserve Estate at Greymouth are kept separate, as this Fund is entirely distinct from the Native Reserve Fund at Nelson.<sup>38</sup>

The following amounts were paid from the trust fund on an annual basis: £1200 was paid to Maori beneficiaries of the estate; £100 was divided between Greenwood and Mackay as salaries; and additional moneys were paid for travelling expenses. On the subject of administration charges, it was noted:

It was originally arranged with the Native owners on the Reserves being brought under the Act, that a charge of ten per cent on the annual amount collected should be allowed to defray such expenses as the cost of collection, and the Commissioner's travelling expenses; but as both these expenses, including also salaries, do not anything like absorb an amount equivalent to what such an annual charge would be, it may be fairly considered that the whole cost of management is under ten per cent of the annual net income.<sup>39</sup>

Heaphy later provided a brief socio-economic overview of the condition of West Coast Maori, and the great improvement made by the trust management of lands and, indirectly, the arrival of Europeans in the region.<sup>40</sup> He emphasised the achievements of colonial administration in saving and 'improving' Maori in European terms.

In contrast, Heaphy criticised the decision of the provincial government to levy the trust fund to pay a tax of 20 percent of gross rents from the first year and a succeeding payment of 8 percent towards the upkeep of roads and public works. Heaphy, despite his role as Surveyor of Roads, questioned the move strongly:

It is difficult to understand on what principle that the Native Lands should thus be taxed twice for the construction of roads. That the leaseholders should be liable for assessment like any of the occupied ground is reasonable, and in certain other cases where, by the construction of adjacent public works, such land had derived an enhanced value, it might be reasonable to expect it to contribute for a time, even if occupied, but beyond this I am unable to recognise a liability. The claim is founded on the argument that inasmuch as that the Reserves never contributed anything towards the land fund, from which money for the construction of public works was obtained, therefore the land should bear an exceptional tax.<sup>41</sup>

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38. 'Report on the Native Reserves in the County of Westland', AJHR, 1871, D-16, p 34

39. Ibid, p 34

40. 'It may be without the limits of a Report on Reserves to touch upon circumstances of this nature, but when it has been so often written in England that the Maori suffers materially and socially by contact with the settler, it is but proper, I think, to show that even in the midst of a gold digging community - proverbially rough . . . the Maori has improved in social condition, and is well cared for.' : ibid, p 35

### 3.6.7 TRUST ADMINISTRATION OF MAORI RESERVES, 1840-1913

#### 3.6.7 Nelson

Heaphy and Mackay, Commissioner of Nelson Reserves, conjointly produced a detailed report on Nelson reserves. The total area of all reserves in the province was stated at 58,365 acres 2 roods 7 perches, spread among a population of 483 individuals (120<sup>5</sup>/<sub>6</sub> acres per person). Such arithmetic exercises, as earlier discussed, served only to obscure the existing circumstances and the requirements of Maori occupants, while issues of the quality of land and the proximity of reserve to administrative services, such as medical care, were left unmentioned.<sup>42</sup>

Mackay discussed the trust-administered reserves and provided schedules listing each reserve.<sup>43</sup> Below is a summary of the totals for those reserves administered in each of the three areas inside the Nelson province.

Nelson trust reserves, 1871

Location	No	Area (acres)	Rent	Remarks
Nelson township	55	55a 1r 30p	£600	Includes three unlet, three exchanged, and two sold
Motueka-Moutere	42	2134a	£370	Five unlet, two in Maori use and two Bishop's endowment
Nelson-West Coast	12	3650a	Nil	All under administration, but none leased
Totals	109	5839a 1r 30p	£970	

The rental figures listed represent annual returns. It is notable that none of the north-west Nelson trust reserves, the largest spatial area of reserves, was leased out. The paradox may have been due to the relative inaccessibility of the lands. The resulting total income was disbursed for a variety of purposes. Mackay explained that due to the large estate (300 acres) granted to the bishop of New Zealand at Motueka for the establishment of an industrial school in 1853, no further funds were allocated for educational purposes. Other uses for the fund were stated to

41. Heaphy continued:

The argument however, does not seem to be perfect. A land fund is really the profit accruing from selling at a high rate lands bought from the Natives at a low rate. It is a legitimate means for obtaining an end, but it does not follow that lands never purchased should be affected by the practice. A land fund is available for the introduction and settlement of immigrants, the purchase of their lands, and the opening up of the country. It can scarcely be expected that purely Native lands should be made to contribute to these purposes; and the reserves on the West Coast, although under the management of the Government, are as much the property of the Natives as the unpurchased country of Taupo or the Urewera.

(‘Report on the Native Reserves in the County of Westland’, AJHR, 1871, D-16, p 35)

42. Heaphy noted: ‘The true proportion is, however, less for the local Natives, as Maoris from both sides of the Straits hold interests in the large – 44,000 acre – reserve at West Whanganui’: ‘Report on the Native Reserves of the Province of Nelson’, AJHR, 1871, D-16, p 37.

43. Ibid, p 39

'improve the general condition of Maori by assisting them in their industrial pursuits'.<sup>44</sup> Some medical assistance was also provided, and small interest-free loans were lent to Maori in order 'to aid them in procuring anything useful to their welfare, on the understanding that the several amounts are to be repaid as speedily as circumstances will permit'.<sup>45</sup> By and large, it appears that the revenue was allocated in keeping with the purposes required under earlier legislative guidelines.

After reports on Westland and Nelson, areas administered by Alexander Mackay, Heaphy singled Mackay out for special mention:

I deem it proper to record my opinion of the very satisfactory manner in which the reserves of the middle island have been managed by Alexander Mackay. The difficulties and delays mentioned in respect to the Southland Reserves were beyond his control, while the prosperous condition of the West Coast and Nelson Estate is due to his careful administration.<sup>46</sup>

### 3.6.8 Marlborough

In Marlborough, Heaphy described a Maori population of 369 Te Ati Awa, Rangitane, Ngati Kuia, and Ngai Tahu, and a total area of reserves of 21,404 acres. His calculation, across tribal boundaries, determined that each individual retained an equivalent of 58 acres. Again, however, no consideration was made of the quality of the land, nor the proximity of access. From the schedule, only five of the 44 reserves listed were trust reserves actively administered by the Crown. These are listed on the following table.

Marlborough trust-administered reserves

Section	Name	Area (acres)	Remarks
26	Orakauhamu	50a	Under Native Reserve Act 1856*
19	Te Rakauhapara	46a	Under Native Reserve Act 1856
32	Te Hora	230a	Under Native Reserve Act 1856
1	Kaituna I	200a	Under Native Reserve Act 1856
30	Tuamarina	46a 28p	Purchased in lieu of Nelson town section 344

\* It is curious that Heaphy records the details of the Marlborough reserves as administered under the Native Reserves Act 1856. In the absence of further evidence, it is difficult to ascertain whether Heaphy administered reserves according to the particular legislation under which they were created, or simply according to the prevailing legislation at the time of administration. It may have been that, in this case, Heaphy referred to the 1856 Act as the underlying legislation, while the 1862 amendment simply affected changes to particular sections of the 1856 Act.

44. A MacKay, 'Report on the Native Reserves of the Province of Nelson', AJHR, 1871, D-16, encl 14, p 38

45. Ibid

46. Heaphy, 'Report on the Native Reserves of the Province of Nelson', AJHR, 1871, D-16, encl 14, p 37; see also, MA 17/1

### 3.7 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

According to Heaphy, none of the reserves was let, nor yielded an income. There were no town sections or educational or charitable endowments. Heaphy acknowledged a degree of limitation concerning Marlborough reserves:

Although well acquainted with the localities of the reserves, I do not feel competent at once to indicate a manner in which they could be more advantageously dealt with. A longer and more intimate knowledge of the condition and wants of the respective Natives interested in them is necessary before it can be determined how they can be made most productive.<sup>47</sup>

Heaphy, in preparing the 1871 reports, accepted his limitations in terms of how far he was able to analyse the workings of administration. The reports are themselves useful in the sense that they represent the first comprehensive attempt to categorise reserves, and to deal with each separately. Because not all provinces contributed full lists of reserves and, in particular, trust reserves with rental figures, the task of analysis is made difficult.<sup>48</sup> We need also to be aware of Heaphy's attempts to 'calculate' Maori requirements as far as reserves were concerned, without dealing to any extent with the 'messy business' of actual administration. Another useful comparison would be to examine individual reserves in each area and determine whether proceeds from rents were in fact spent in the manner described in Heaphy's reports – something unable to be attempted given the broad scope of this report.

### 3.7 DUAL COMMISSIONERSHIP, 1871–79

By 1873, further refinements had been made to the framework of administration. Charles Heaphy reported on reserves at Wellington, Auckland, and Hawke's Bay. Alexander Mackay retained the management of South Island trust reserves, in particular Westland and Nelson. Other trust reserves, such as Taranaki, were not reported on regularly. From an examination of some features of administration covered by commissioners' reports in the *Appendices to the Journals of the House of Representatives*, we are able to construct broad profiles of administrative practice. At the same time, we need to note any significant variations between the styles of administration pursued by Mackay in the South Island, and Heaphy in the North Island. This will allow us to appraise the degree of consistency in administration.

Heaphy's report on the administration of Wellington and Auckland for 1873 highlighted an earlier absence of active administration. In Wellington, Swainson's

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47. Heaphy, 'Report on Native Reserves in the Province of Marlborough', AJHR, 1870, D-16, encl 15, p 43

48. No report was received from the Auckland region. Heaphy mentioned difficulties in obtaining information from the acting Auckland commissioners, see MA 17/1. It is therefore presumed that the required information simply never arrived in time for Heaphy to include in his report, but there was no explanation of the absence of Auckland reserves in the published account. The other glaring omission from the report was Wellington. Although these reserves were picked up in the 1873 AJHR reports, again there was no explanation from Heaphy in 1871 as to why there had been no report for Wellington.



1867 departure had left the reserves without a commissioner, and a number of problems concerning lease arrangements had developed partly as a result. Makara reserves 21 and 22 suffered in the absence of Government administration, because European tenants and Maori landlords seemed unaware of the arrangements, and rents were not paid.<sup>49</sup> Heaphy appeared to resolve this dispute satisfactorily. He was also involved in the negotiation and purchase of sections of Maori trust McCleverty reserves at Petone for the construction of the Masterton railway line. Eleven acres from sections 1, 2, 3, 16, and 20 were purchased for the sum of £632 3s 2d, at £55 per acre. Facing increasing pressures of this kind, and with a sense of confidence in the renewed administration of reserves under Heaphy, Maori at Port Nicholson chose to place a number of reserves, formerly leased and administered by themselves, into the hands of Heaphy as trustee. Continued assurance was demonstrated by Wiremu Tamehana and Erenora Tungia. Later in 1874, Hoane Te Okoro also transferred to Crown trusteeship reserves at Takapuwahia in Porirua.<sup>50</sup>

Other Maori in the Hawke's Bay also took notice of Heaphy's active initiatives in trust administration by placing further reserves under the administration of the Native Reserves Acts during the 1870s. Karaitiana Takamoana (as mentioned earlier) vested the Pakowhai estate of 834 acres in the administration of Resident Magistrate S Locke and Commissioner Heaphy. This is a significant example of Maori placing faith in Heaphy's administration as an alternative means of protecting their lands against encroaching alienations. McLean wrote to Heaphy in early 1870, instructing him to proceed to Hawke's Bay in order to induce the named Maori owners of Pakowhai to convey their estates to two trustees and ensure inalienability. He explained that, to his mind, the Native Land Court activity in Hawke's Bay had promoted the partial individualisation of title, and allowed 'a few of the owners of an estate to sell their interests in it; the consequent introduction of strangers causes remaining owners to sell out or encumber their interests'.<sup>51</sup> McLean's correspondence was misleading. The original recommendation that Heaphy become involved came from Fenton, at the behest of another Maori owner in the block, Rihi.<sup>52</sup>

Maori like Karaitiana actively sought alternative ways to protect land. The voluntary investment of lands in the Government trustee appealed to Maori as protection against the galloping alienations suffered in the Hawke's Bay at the time. Te Arai reserve of 1000 acres was another Hawke's Bay reserve entrusted to Commissioner Heaphy. In 1872, the chief Ihaka Whaanga vested the Waikokopu block in the hands of the commissioner. Heaphy confirmed Maori trust in the commissioner by repurchasing two smaller sections which had early been alienated from inside the larger block. The Waikokopu block was returned to a beneficial whole, and was debt-free by 1876.<sup>53</sup>

49. Heaphy, 'Report of the Commissioner of Native Reserves', AJHR, 1873, G-2, p 1

50. Heaphy, 'Report of Commissioner of Native Reserves', AJHR, 1874, G-5, p 3

51. McLean to Heaphy, 19 February 1870, MA-MT 1/1A, file 109, NA Wellington

52. Fenton to McLean, 22 January 1870; see also Rihi to Fenton, 18 December 1969, MA-MT 1/1A, file 110

53. Heaphy, 'Report of the Commissioners of Native Reserves', AJHR, 1876, G-3, pp 1-2

### 3.8 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

It should be noted that it is difficult to ascertain how well Maori benefited from their decision to bring land into the trust owing to the absence of detailed records of Heaphy's income and expenditure figures.

#### 3.8 COMMISSIONER OF (MIDDLE) SOUTH ISLAND RESERVES

In 1873, Alexander Mackay completed a report on the trust reserves of the South Island, covering the provinces of Nelson–Marlborough and Westland. He operated in the capacity of Commissioner for Native Reserves in the South Island for the duration of the 1870s.

Marlborough reserves were included in the discussion of the Nelson reserves. Mackay added:

The reserves in the province of Marlborough contain an aggregate area of 21,414 acres, 522 of which are under the operation of the Native Reserves Act 1856, the remainder are in the occupation of the Natives and comprise a large proportion of hilly and worthless land.<sup>54</sup>

Mackay was not impressed by the allocation of reserves in Marlborough, and indicated that only a relatively small number fell within the scope of trust administration under the 1856 Act anyway. Henceforth, Marlborough trust reserves were incorporated into Nelson administrative reports.

Published financial tables indicated that Nelson reserve leases returned relatively high rents during the 1870s, partly the product of Mackay's effective management. Indeed, Nelson accounts continued to show a balance in credit as a result of Mackay's management and the accumulation of an ongoing fund. Yet, expenditure was also high. It seems Mackay's concern for Nelson was to benefit Maori with services, much more than money in the bank. Among other expenses paid from the fund, Mackay, like Heaphy, found himself involved in the construction of roadways, for example, to the Wakapuaka reserves at a cost of £307 9s 8d: 'This road when completed will prove a great boon to the Natives – a greater [sic] could not have been conferred.'<sup>55</sup>

Westland trust accounts began with a much larger balance (£4473 18s 5d), mostly owing to the continuing gold boom on the West Coast. Again, Mackay appeared to manage the finances effectively in order to offset items of expenditure, and invest the balance. Mackay's concern was to protect returns to the trust fund. He managed this assiduously. The rights of the existing tenants, and the terms of their leases, required protection as much as the reserves themselves, as, in Mackay's eyes, the two must have appeared inextricably linked.

By the mid-1870s, a number of the Westland reserves were approaching the first round of lease renewal. European tenants publicly voiced anxiety at potential

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54. A Mackay, 'Report on Native Reserves in the Middle Island', 30 July 1873, AJHR, 1873, G-2A, p 2

55. Ibid

dispossession of leases, as well as rent increases for those retaining leases. Mackay in reply explained that:

although a right of renewal cannot be inserted into the leases, that the intention is to let the lands in perpetuity for the benefit of the Natives, and that whoever is in possession at the expiration of any of the terms of lease, provided the occupant would agree to pay an equitable rent for the premises in proportion to the increased value of the property, that an extension of lease would be granted him.<sup>56</sup>

While Mackay's offer should not be misconstrued as a perpetual lease, still, he espoused the conviction that Maori would benefit from longer leases. The same underlying rationale was later used to justify and introduce perpetual leases in the South Island Reserves Act 1885. In Mackay's view, however, Maori benefit was dependent on regular adjustments of 'equitable rent'. McLean echoed these views in 1873: 'There was no doubt that the longer the lease, the greater were the improvements made, and the greater the benefit redounding to the owners of the soil.'<sup>57</sup> In both comments, it seems clear that European administrators did not envisage Maori returning to their reserve lands. But, in order to appraise the degree of pecuniary benefit offered to Maori by such long-term leases, we must examine the levels of the rents charged to European lessees (see the later tabulation of 1870s accounts).

Mackay went on to explain the background behind the policy of long-term leases:

The principle is based on an old established practice in England, where it is considered that those who are in possession of leases for lives or years, particularly from the Crown, have an interest beyond the subsisting term, which is usually denominated 'the tenant's right of renewal'. This interest, although it is not a certain or contingent estate, there being no means to compel a renewal, yet it influences the price in sales and conduces to the security of the tenure beyond the fixed term. One argument adduced in the favour of the views held by the residents of Greymouth, is, that there could be no right of property in land that remained unsubdued to the purposes of man. If this principle was maintained in regard to the right of property inland irrespective of to whom it might belong, it might possibly be admissible, but why it should be specially applied to the case of the Greymouth Reserve it is difficult to understand; and it may be argued, in opposition to this doctrine, that if the right of property go along with labour, how can their land of persons who have bestowed but little labour upon the soil, be usurped by civilised people from a distance, who have only laboured on it with the permission of the recognised owners.<sup>58</sup>

European lessees of the Greymouth reserves continually angled for rights to freehold and lower rents. Yet, it is a mistake to assume that Mackay simply wanted to alienate trust reserves through whatever means possible. Indeed, against the pressures to dissolve trust reserves, Mackay made the following defence:

56. Ibid, p 3

57. McLean, 18 August 1873, NZPD, vol 14, p 506

58. A Mackay, 'Report on Native Reserves in the Middle Island', 30 July 1873, AJHR, 1873, G-2A, p 3

### 3.9 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

Concerning the proposition mooted some time since to sell the estate, and capitalise the proceeds, no good reason has yet been adduced why such a course should be adopted, but the contrary, for besides committing a waste, very little benefit would have accrued to the majority of the occupants. It might under some circumstances be of public importance to remove the extensive barrier which reserves are to colonization, but there can be no sound objections to reserves of moderate size, much less to lands occupied under favourable terms.<sup>59</sup>

Overall, these comments signal an administrative attempt to provide longer-term leases. In the 1870s, the conviction was fixed to the maintenance of beneficial rents for Maori. Later in the 1880s, the decision was made to implement leases in perpetuity.

#### 3.9 *REGINA v FITZHERBERT* (1873)

The next historical development to directly impinge upon the state of trust administration was the Court of Appeal case *Regina v FitzHerbert* (1873). This case sought a *scire facias*, or a repeal of the record for the 1851 Crown grant for all New Zealand Company lands in Wellington, vested in the Crown. After considering the origin of the Crown's demesne lands in Wellington, and the allocation and management of reserves at Port Nicholson, the the Court of Appeal made the following decision:

It appears therefrom that the creation of Native Reserves was not one of the objects especially provided for in the statutes, charters, instructions, and ordinances by or under which the management or the disposal of the demense lands of the Crown was regulated.<sup>60</sup>

While the court appeared to acknowledge that trust reserves had been conceived and continued to be administered in other areas of New Zealand, reserves at Wellington and Nelson, formerly New Zealand Company lands, were deemed Crown demense lands 'unencumbered with any trust':

It is found in terms that the Queen never has expressly declared any trust in writing, constituting the disputed lands Native Reserves; and we think we are not at liberty to declare that the acts of the officers of the crown and Colonial Governments, so far as they are made to appear on these findings, bind the estate of the Crown in those lands, so as to compel the Crown to hold the lands impressed with a trust as Native Reserves.<sup>61</sup>

The consequences of the judgment were dramatic. Alarm bells sounded in the ears of the trust commissioners and the Native Department. Heaphy made it clear

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59. Ibid, p 4

60. 'Letter from Honourable W Mantell Forwarding Copy of Judgment of Court of Appeal in the case of *Regina v FitzHerbert*', AJHR, 1873, G-2C, p 3

61. Ibid

that there was at least a moral responsibility regarding the trust reserves at Wellington and Nelson. He highlighted that, while:

declaring the reserves to be the property of the Crown, the Court of Appeal indicated that there might exist a moral obligation towards the Natives in regard to an interest in the lands.<sup>62</sup>

Heaphy and McLean reacted in response to the findings of the judiciary, and both sought to retain the sense of 'trust' implicit in the estates:

There is no doubt that when the land was purchased of [sic] them, the Natives were solemnly promised that these reserves should be made for their future benefit, and it is essential that faith should not be broken. A Bill has therefore been prepared to give by enactment a legal status as Native Reserves to such of the lands as have not been granted.<sup>63</sup>

### 3.10 THE NATIVE RESERVES ACT 1873

Native Minister McLean explained the new reserves Bill of 1873 during parliamentary debates:

There had been a want of definition of title with respect to the tenths set apart by the New Zealand Land Company as reserves for the Natives. These lands had not been recognised by law . . . Some dissatisfaction arose among Natives at the lands being dedicated to purposes which did not immediately benefit them; and it was necessary that these reserves should be placed in some definite position as Native reserves, and be administered as such.<sup>64</sup>

McLean described the Bill as:

simply a consolidation and amendment of the law relating to all Native reserves, whether made under the New Zealand Company, under the awards of Colonel McCleverty, or in any other way.<sup>65</sup>

Quite explicit then was the intention to legislate in order to rectify the position adopted by the judiciary with regard to the Wellington and Nelson tenths. It is argued here that the 1873 Act represented more than a stated attempt to consolidate existing legislation. Underlying the timing and intention of the Act was the Native Department's attempts to tidy up the increasingly unwieldy field of reserves administration. Part of this was the issue of former New Zealand Company tenths reserves, but the other crucial aspect (and the subject of reserves petitions) was the singular absence of Maori involvement in administration. For these reasons, the

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62. 'Report of Commissioner of Native Reserves', AJHR, 1873, G-2, p 2

63. Ibid

64. McLean's explanation of the 1873 Bill, NZPD, 8 August 1873, vol 14, p 353

65. NZPD, 8 August 1873, vol 14, pp 327-328

### 3.10 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

1873 Act represented the most detailed piece of legislation affecting Maori reserves. Numerous refinements were made to existing regulations, and these are explained below.

McLean explained the purpose of the Bill during the second reading in the House of Representatives:

The Bill would enable the Commissioners to take control of certain lands over which the Native title has not been extinguished; and it also enabled the Commissioner to sue for rents on Native lands, and to hand the proceeds over to the Native owners. The lands which it was intended to bring under the operation of the Bill were generally such lands as had been set apart as reserves, and over which the Natives had great difficulty in coming to an understanding amongst themselves . . . There had also been reserves in portions of the confiscated land in the Waikato, which for administration had been placed by the Natives in the charge of the Commissioner, in order to avoid disputes among themselves; and in all similar cases in the future, such lands would be placed under the control of the Commissioners. Lands set apart for Native purposes, and lands held in trust for those purposes, would come within the operation of the Act. There had been a want of definition of title with respect to the tenths set apart by the New Zealand Land Company as reserves for the Natives. These lands had not been recognised by law. By a judgement of the Appeal Court . . . these reserves were held to be demesne lands of the Crown. Some dissatisfaction arose among Natives at the lands being dedicated to purposes which did not immediately benefit them; and it was necessary that these reserves should be placed in some definite position as Native reserves, and be administered as such.<sup>66</sup>

The title of the Act was ‘an Act to make provision for the better administration of Native Reserves’. The preamble explained that:

difficulties have arisen in respect of the management and administration of these reserves, owing to the fact that in some cases the trusts intended to be created under these reserves have not been sufficiently defined, and in other cases the heirs of the original beneficiaries cannot be readily ascertained.

These served as sharp acknowledgements of continuing problems in administration.

The 1873 Act repealed all former pieces of reserves legislation, including the Native Reserves Amendment Act 1858, the Native Reserves Act 1862, the Auckland and Onehunga Native Hostelrys Act 1867, and sections 13 to 15 of the Native Lands Act 1867. However, existing contracts formed under the repealed legislation were maintained as legitimate. Native reserves were defined to include under the provisions of any Act or contract either current or prospective:

all lands and all moneys issuing out of land which may have been or which may hereafter be reserved set apart or appropriated upon trust for the benefit of the Aboriginal Natives . . .

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66. Donald McLean, 8 August 1873, NZPD, vol 14, p 353

The Act applied to all native reserves in an attempt to provide a standardised base of administration.

In part a product of the earlier 1856 and 1862 legislation, the 1873 Act staked out formal districts for reserves administration. The Governor, in turn, appointed a single reserves commissioner to each of the formalised districts.

The key innovation of the 1873 Act was the inclusion of permanent administrative roles for Maori. In each district, a panel of three local Maori 'assistant commissioners' constituted a 'board of direction', with the Pakeha commissioner as chairman. These boards presided over all decisions affecting the management of native reserves. The question remained as to which Maori were to be selected for the administrative roles, and while Maori would appoint their own representatives, the manner of appointment was decided by the Government.

Maori involvement was outlined in section 7 of the Act:

In every district created under this Act there shall be elected by the Natives resident in the district from amongst themselves, in manner to be regulated by the Governor in Council, three persons as Assistant Commissioners, who, together with the Native Reserves Commissioner appointed as hereinbefore mentioned, shall form a Board of Direction for the administration of the Native reserves in such district. Of every such Board the Native Reserves Commissioner appointed as aforesaid shall be the chairman.

The Native Reserves Commissioner shall from time to time, as he may deem desirable, call a meeting of the Board, who shall by a majority of its members decide on all matters connected with Native reserves in the district for which they are constituted; and no sale lease or exchange of any Native reserve shall be effected without such decision being first obtained and recorded upon the minutes of the meetings of the Board.

Yet, this provision drew the chagrin of Pakeha politicians. Their opposition echoed during the parliamentary debates of the Bill (see below).

Once commissioners had been appointed, the legal estate of reserves was removed from the Governor and vested in the commissioner (s 11). This provision did not include those reserves already vested in a particular person or person as trustee, nor:

any lands which have been excepted or reserved by Aboriginal Natives, on the cession or surrender of lands to the Crown, and specified . . . in the deed of cession or surrender.

Further refinements in section 12 spelt out measures of accountability for assistant or delegated commissioners. All acting or newly appointed 'assistant' commissioners were required to present within three months of the operation of the Act:

a full statement and account, duly and properly vouched, of all moneys received and expended . . . [together with] a full and detailed report and statement of the nature and extent and the position and condition of every such Native reserve.

### 3.10 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

Sections 13 to 16 laid down terms for assistant commissioners' conduct and responsibility making them ultimately accountable to the European reserves commissioner. However, the commissioner himself was not bound by any such measures of control from above. In other respects, the vesting of authority back in commissioners represented a return to the administration in line with the 1856 Act, before gubernatorial interposition, although there were more formal structures of supervision in the 1873 Act.

District commissioners were formally granted the authority conveyed by the Commissioner Powers Acts of 1867 and 1872. In line with Mackay's promises, existing trusts were protected, with alterations possible only by way of legislation. Commissioners retained the authority to exchange, lease, or sell reserve lands with the consent of the board and the Governor. Time periods for lease were retained at 21 years for lands, though 60-year periods were offered for building leases. These terms of lease were in line with McLean's and the commissioners' views (already mentioned) that longer leases were most beneficial – although there was still no hint in the legislation of leases in perpetuity. Revenue from the sale or exchange of lands was specified to be used for the purchase of other lands (for further reserves) or Government securities. The division of revenue for particular purposes marked another development, no doubt influenced by approaches taken by Mackay with Nelson and Greymouth reserves.

General regulations for the management of the reserves (sections 24 to 31 of the 1873 Act) included the following requirements (they, in turn, provided a degree of protection for the 'interests of the beneficial owners'):

- (a) all rent from leases to the Commissioner of Native Reserves shall be adequate rent;
- (b) no fine, premium, or foregift (a fine or a premium for a lease) can go into a lease unless sanctioned by the Governor;
- (c) no lease shall allow tenants not to be punished for wilful damage to land;
- (d) the commissioner cannot be personally interested in any lease; and
- (e) no lease will contain covenants for the commissioner's advantage.

These regulations demonstrated a concern to protect the status of Maori as owners of land. Here, the emphasis was placed on ownership, rather than simply the terms of the lease.

Notification requirements were tightened. Following appointment, each commissioner was required to provide the Governor with a complete return of all reserves in the district within six months. By comparison with earlier reporting requirements, terms under the 1873 Act spelt out in detail the obligations of each commissioner to report back to the Governor. Further, commissioners were also required to produce annually:

- a full and accurate report of the then state and condition of each Native Reserve and an account, duly and properly vouched, of all moneys received and expended by him.

These reports were then to be delivered to the next sitting of the General Assembly, to be printed in English and Maori.



No change was proposed to the funding of the costs of administration – all expenses continued to be met from the proceeds of native reserves leases. Section 34 gave the Governor further authority to institute a fund for the payment of all costs associated with administration. Aside from covering those costs, funds were targeted to the following purposes:

1. The payment of the cost incident to the survey of such reserve, and the charges (if any) incurred in the Native Land Court in respect thereof.
2. The erection and maintenance of any schoolhouse or other building for general use.
3. The purchase and repair of implements of husbandry.
4. The fencing improvement and drainage of the land.
5. The erection maintenance and repair of houses and property.
6. The supply of food and medical assistance.
7. Salaries of schoolmasters.
8. The purchase of books and writing materials.
9. Other educational purposes.
10. Contribution to local rates.

Provisions were made for the inclusion of Maori reserves in customary title under the Act. Under sections 35 to 40, Maori assent was required before any 'customary' reserves could be administered by the Government. This requirement marked a return to the terms of the 1856 Act. The automatic assent granted to the Governor in the 1862 Act was removed. Instead, as before in 1856, the Governor appointed a representative to ascertain assent 'according to such rules as prescribed in that behalf by the said Governor'(s 36). The addition of reporting procedures served to finalise such amendments to policy. For example, assent had to be verified by a report submitted to the Governor and then subsequently published in the *Gazette*. Once conveyed to the commissioner, the reserve was then taken to the Native Land Court in order to remove customary title (s 46).

In addition to the stages of administration defined above, a series of miscellaneous provisions were included at the end of the Act. These regulations aimed to tidy up certain aspects of administration. Section 48 extended the basis for inclusion under trust administration. The section addressed Maori lands intended to be in trust but where no trust had been declared in the grant.<sup>67</sup> These lands were entrusted to the Crown for the benefit of Maori. This concept of 'intended trusts' appears open to a degree of interpretation. It was also applied in the case of any Crown grant, where the grantees were willing to surrender the grant in favour of having the land vested in the Commissioner of Native Reserves, 'or to any other person or persons of the European race'. By implication, Maori were not deemed suitable trustees.

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67. More specifically, section 48 of the Native Reserves Act 1873 refers to Crown-granted Maori land 'intended to be in trust for the benefit of large sections of Natives, but no such trust has been declared in the grant, and it is fitting that such intended trusts should be particularly defined'.

### 3.10 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

Owing to ongoing disputes concerning the legality of New Zealand Company and McCleverty reserves, sections 53 to 55 validated these reserves and placed them firmly under the retrospective administration of native reserves legislation. The McCleverty awards in particular had received neither Crown grants nor any document of title. It was admitted that ‘through lapse of time it is difficult in certain circumstances to ascertain the persons who are now entitled to the benefit of such lands’ (s 55). Yet, all commissioners were required to make immediate application to the Native Land Court in order to ascertain the owners in each case. The final part of the 1873 legislation contains schedules listing the types of reserve under the administration of the Act, including Schedule D, a listing of all New Zealand Company reserves in Nelson and Wellington, for the purposes of clarifying the status and position of the reserves under the trusteeship of the Government.

Parliamentary debates highlighted a host of issues relating to the 1873 Act, yet debate centred upon the role and participation of Maori within the trust’s administrative structures as envisaged under the Act.

For newly elected Maori member Wi Parata, the important issue was the appointment of three Maori assistant commissioners to join the existing European commissioners, an initiative he supported.<sup>68</sup> Although Takamoana did not think it would be a good Bill for Maori, he was concerned about the loose identification of reserves in the terms of the Bill and more generally. He asked: ‘Were they [reserves to be administered under trust] within the blocks which the Government had purchased or outside of them?’<sup>69</sup>

The House of Representatives continued to debate the Native Reserves Bill on 18 August. Newly elected member, and later Native Minister, John Sheehan felt that the three pieces of legislation proposed at the time for dealing with the ‘native question’ – the Native Councils Bill, the Native Lands Bill, and the Native Reserves Bill contradicted each other. On the issue of Maori participation as proposed by the Reserves Bill, Sheehan cited the proviso that European commissioners were not bound to consider Maori viewpoints:

Provided that the concurrence of any such aboriginal Native chief shall not be necessary to the validity of any Act of the Commissioner. Was not that a transparent sham? They were to have Native Commissioners – salaried officers; they were to have natives assisting them, with salaries; but notwithstanding the objections taken by the Natives to the management of the reserves in their own districts, the Commissioners could Act as they pleased.<sup>70</sup>

Sheehan expressed further concern about the extent of the authority granted to individual reserves commissioners, powers which he argued were not given to some judges. As an alternative, Sheehan strongly advocated the Native Land Court as the sole organisation for dealing with Maori land matters. He also preferred the court over the commissioner system because it allowed Maori owners some voice in the

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68. NZPD, 1873, vol 14, p 353

69. Ibid, p 494

70. NZPD, 1873, vol 14, p 495

process: 'There was no attempt made throughout the Bill to ascertain the opinions of the actual owners of the particular property to be made a reserve.'<sup>71</sup> Maori 'character', he felt, was judged to be untrustworthy under the terms of the Act:

in every clause it perpetuates the very worst features of the old Native protectorate. Instead of . . . inducing him [Maori] to take an active part in the management of his own property, this Bill told him that he was a child, not fit to be intrusted with the management of his own affairs.<sup>72</sup>

Sheehan characterised the Government as creating a 'complication of systems' which, he felt, did not cater for Maori interests and would prove unmanageable.

Sheehan's preference for the Native Land Court may have been a conscious attempt to reintroduce Fenton's involvement after he was shut out in 1869. Certainly, it illustrates a continuing division between schools of thought as to how Maori lands, in particular reserves, might be best administered. Another Minister, T B Gillies, drew a comparison with the administration of European public reserves in the North Island. European reserves, he maintained, were in a terrible state, but unlike Maori reserves were not inflicted with trustees to manage the lands. Gillies argued for Maori self-management of reserves:

We had frequently heard the recommendations made, during discussions in former sessions, that the Natives should be permitted to manage their own reserves. He quite concurred with that opinion, because he believed they could manage them more efficiently and more economically than they could be managed by government officers.<sup>73</sup>

Curiously, T L Shepherd, in defence of the Act, disputed Gillies' argument by returning to racist notions that Maori were incapable of managing their own lands. For our purposes, Shepherd's comment demonstrates that Eurocentric assumptions of Maori capabilities were intimately connected to discussions of administration of Maori reserves and the implementation of 'trusteeship'.

Despite extensive changes and discussion, the 1873 Bill was passed but never implemented. In addition to references in the *Appendices to the Journals of the House of Representatives*, Butterworth has conducted a search of *Gazettes* from the period.<sup>74</sup> Alexander Mackay noted that the Act had never been brought into effective operation as a result of a host of deficiencies in the Act. These he attempted to highlight in a document tabled before the House of Representatives in August 1876, and an amendment Bill was subsequently introduced. On the strength of major objections voiced during the debates, it would appear that a major reason for non-implementation was that too much authority for administration had been shifted away from the Governor's direct control in particular, the existence of Maori administrators.

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71. Ibid, p 496

72. Ibid, p 497

73. Ibid, p 500

74. Butterworth, *Maori Trustee*, p 16

### 3.II TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

The refusal to implement the Act shares similarities with the non-implementation of the Native Trust Ordinance 1844. However, unlike the ordinance, there was no detail in the text stating what was required for it to be brought into operation. Therefore, it might be argued that once the 1873 Act had received royal assent there was a constitutional obligation on the part of the Government to implement the legislation – legislation which might have allowed Maori a firmer involvement in the trust administration.

In the wake of the failure to ratify the Act, a period of stasis in administration began and lasted for almost a decade. A series of proposed Bills all failed to pass through Parliament, and as a result of their collective failure, the administration of reserves continued to rely on the 1862 Act in its basic form.

#### 3.II THE NATIVE RESERVES AMENDMENT BILL 1876

‘Kahore te Ture o te tau 1873 i whakaatu i te rerenga ketanga o nga tikanga Whenua Rahui Maori’.<sup>75</sup>

On 16 August 1876, Alexander Mackay responded to a request from the Secretary of the Native Department to indicate inadequacies in, and improvements to, the Native Reserves Act 1873, in order to draft a new Native Reserves Bill. Mackay commented:

It is generally admitted that by those who have made themselves acquainted with the provisions of the ‘Native Reserves Act 1873’ that it is altogether too cumbersome in its operation for the practical and satisfactory administration of the Native Reserves property throughout the Colony.<sup>76</sup>

Mackay then proceeded to outline what he saw as a host of deficiencies with the Act.

Strong criticism was focused on the implementation of the boards of management. Mackay attacked the boards on one level as unnecessarily impeding the flow of customary lands into reserves administration, and, on the other, as failing to provide effective representation for Maori in matters concerned with the administration of native reserves. However, the alternative proposed must be examined carefully, in order to evaluate the intention:

The Assembly in passing the Act of 1873, having declared its belief that it was advisable that the Natives should have a voice in the management of their lands, this

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75. ‘He Pukapuka Na Mr Alexander Mackay, Tuku mai i tetahi Pire Hou mo Nga Whenua Rahui Maori’: AJHR, 1876, G-3A, p 1. It is notable that Mackay’s amendments were translated and published in Maori. In this context, the translation chosen for native reserves, Nga Whenua Rahui Maori, is particularly significant, as it implies lands were protected by rahui (made untouchable). It is worth questioning whether Maori, in choosing to ‘vest’ reserves in the commissioner, understood it to mean a ‘Government rahui’, or customary rahui, allowed for by nga ture Pakeha.

76. ‘Letter from Mr Alexander Mackay, Forwarding Draft of a New Native Reserves Bill’, 16 August 1876, AJHR, 1876, G-3A, p 1

right has been extended to them in the case of Reserves of the fourth and fifth class; but, in place of effecting this by a Board of Management composed of three Natives and a European Commissioner, it is proposed to abolish the Board and give the Commissioner to be appointed power to issue leases for any term not exceeding twenty-one years for agricultural purposes, with the assent of the persons beneficially interested, and, with the same assent, to execute leases for building purposes for sixty years, subject to regulations to be made by the Governor.

This will give the Natives concerned a direct voice in the management of their lands, without the intervention of a Board composed of persons holding views probably inimical to the interests of the owners of the land.

It may not be considered out of place to point out that the principle involved in regard to the intervention of the Native owners may probably be found to operate prejudicially to their interests by interfering with the bona fide occupation and improvement of the property, besides placing the Natives concerned at the mercy of designing persons, having in view their own aggrandizement in the rest. The mode proposed also embodies an opposite principle to the law in operation in England in regard to the administration of landed property belonging to persons under a disability.<sup>77</sup>

Maori were deemed subjects incapable of self-management:

It had been contended of late that it is not expedient, in regard to the Native Reserves, to keep the Natives in a state of pupillage, but that the management should be placed in their own hands. The proposition is no doubt a desirable one, provided it could be carried out satisfactorily; but it will probably be conceded, on the matter being viewed dispassionately, that the Natives of the present day, although very much advanced in knowledge, can scarcely be considered competent to deal satisfactorily with large and valuable estates in which the interest of a large class of European tenants are involved.<sup>78</sup>

Here was an assumption underlying Mackay's approach to reserves administration. Mackay's primary concern in the matter was to maximise the return of rents to beneficiaries; it was not to alter the relationship of trust and beneficiary. Amendments to the 1873 Act focused on improving the efficiency of administrative processes in order to maximise monetary returns. Mackay wrote:

It will probably be found, by experience, that the most satisfactory and beneficial mode of dealing with the class of Native Reserves that will be affected by the Act is to place them under the absolute management of individual trustees, who, without the power of alienation, might make such arrangements for letting them – subject to regulations to be made by the Governor in Council – as would secure the largest pecuniary benefit for the beneficiaries, to whom they should be required to account, as well as to the General Assembly.<sup>79</sup>

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77. Ibid, p 2

78. Ibid

79. Ibid

### 3.11 TRUST ADMINISTRATION OF MAORI RESERVES, 1840-1913

One of Mackay's amendments proposed that the Governor have the power to convert, in the case of long leases, renewable leasehold tenure into a tenure in fee, subject to an annual rent charge in perpetuity. Curiously, this proposition ran counter to a line of amendment altering 60-year building leases to three 20-year leases, in order to adjust ever-fluctuating rental rates over time. In the same breath, it seemed that Mackay was concerned to establish perpetual lease arrangements on permanently fixed rates.

The danger with such an approach was that the connection between the owners of the reserve and the whenua became distanced and, in some cases, virtually extinguished. Mackay's proposal of a change in title, for all its good intentions, proposed the virtual extinguishment of Maori ownership of reserves, with payment drawn out over a long period of time instead of one lump sum, in order that it could be best 'drip-fed' to Maori. Effectively then, Maori were restrained at every turn – they were alienated from the land, were unable to manage the leases, were delivered small amounts of money over a long period of time, but, once again, were denied the right or mana to manage their own finances.

Mackay's Native Reserves Amendment Bill was introduced to both Houses in October 1876. During the debates in the House of Representatives, it became apparent that, behind the momentum to amend the Act lay the imperative of renewing European leases, particularly in the township of Greymouth.<sup>80</sup> The member of Parliament for Southern Maori, Hori Kerei Taiaroa, severely criticised the amended Bill. He cited petitions sent from Maori at Greymouth complaining against 'such a Bill', and great complaints had been made as to the way in which the reserves were managed by the commissioner.<sup>81</sup>

Taiaroa levelled two particular complaints which are mentioned here because they directly relate to the larger picture of trust reserves administration. First, he objected to the repeal of the section in the 1873 Act which provided for the appointment of Maori assistant commissioners to manage native reserves. He thought that, as the native reserves belonged to Maori, it was only right that there should be Maori whose special duty it would be to watch the proceedings of the Europeans in respect of such lands. He also voiced disapprobation at the length of lease terms:

Provision was made in this Bill for the granting of leases for sixty years, but he thought it was very wrong that those Native Reserves should be granted for such a long period as sixty years. That period might never be arrived at, and it really meant that the land would go altogether.<sup>82</sup>

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80. See F Whitaker's introduction to the second reading of 'Native Reserves Bill', 28 October 1876, NZPD, 1876, p 709

81. Three petitions were reported as received during 1876 concerning reserves legislation. These petitions were not published, but listed in the AJLC 'Schedules of Petitions'. Refer, for example, Petition of Ihaia Tainui and Inia Tuhuru, 11 August 1876, AJLC, 1876, sess 1876, p v; Taiaroa, 'Native Reserves Bill', 28 October 1876, NZPD, 1876, p 710

82. Ibid

In hindsight, it appears that the calls and concerns of residents of Greymouth weighed heavily upon the minds of the legislators, both Maori and Pakeha. The question remained, which party was to benefit most? And, although the 1876 amendment Bill was eventually discharged because a new Bill was required, rather than an amendment to a piece of lifeless legislation, the concern to European lessees appeared the stronger on paper:

It will be easily understood, therefore, that the Act of 1873 caused considerable uneasiness to the tenants at Greymouth as to how the Board of Management would deal with the question of extended leases, as it was well known that the Natives to be elected for the position must be chosen from the persons who had openly stated their intention to take possession of the property at the termination of the existing leases . . .

With regard to the Act of 1873, which had not been called into operation, he might say that the principal reason why it was not brought into operation was that the Native proprietors in Greymouth saw that if it was brought into operation their interests would be materially prejudiced, and they petitioned that the Act should be allowed to remain in abeyance. The principal reason for that was that, if the tenants had to rely upon a Native Board for the renewal of their leases, their position would be materially altered.<sup>83</sup>

### 3.12 THE NATIVE RESERVES AMENDMENT BILL 1877

The Native Reserves Amendment Bill 1876 was reintroduced without changes in 1877. Similar arguments to those made in 1876 raised the spectre of Maori administration as the principal need for an amendment to the Native Reserves Act 1873. Debate was prompted by further Maori petitions against the current form of management on the West Coast as well as against the proposed amendment to the native reserves legislation.<sup>84</sup> Eventually the matter was duly referred to a select committee.

Later parliamentary debates on the 1877 Bill also brought new criticisms of the high cost of European administration of reserves in Greymouth and Nelson. Buckley quoted Nelson figures: 'there was a charge of £393 against the natives for administering an estate which bought in £1706.'<sup>85</sup> In another session focused on the administrative accounts of the Westland reserves for 1876 and 1877, Whitmore concluded:

there could be no doubt that these charges were excessive and that some person had been making a good thing out of it. He would take good care that this matter was looked into, and the honourable gentleman might rest assured that the government

83. Kennedy, 'Native Reserves Bill', 28 October 1876, NZPD, 1876, pp 711-712

84. 'Schedule of Petitions Presented to the Legislative Council, Session 1877', AJLC, 1877, pp x-xiv; in particular, petitions 36 and 39, presented by Te Hapuku and Ihaia Tainui.

85. Buckley, 'Native Reserves Amendment Bill', 6 September 1877, NZPD, 1877, p 289

### 3.13 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

might make every possible inquiry, and take such steps as were necessary to insure a fairer proportion between the revenue and the charges.<sup>86</sup>

After the select committee findings, the amendment Bill was once more withdrawn from the House.<sup>87</sup>

### 3.13 NATIVE RESERVES TRUST ACCOUNTS, 1870–71

It is useful at this point to attempt an analysis of the native reserves accounts for the period of the 1870s. We first need to recognise the inherent difficulties of obtaining reliable figures. For the most part we are able to access a series of figures published in the *Appendices to the Journals of the House of Representatives* for each district during the 1870s, up until the enactment of the Public Trust Amendment Act 1877.

Reporting practices by the early 1870s had achieved a standardised format. Heaphy prepared both a brief overview report and a financial statement for all administered reserves in the North Island on an annual basis. Mackay completed the same for the South Island reserves of Marlborough, Nelson, and Greymouth, generally in more detail. There was still a degree of fluctuation over reports received from Taranaki, and the inclusion of Hawke's Bay reserves, which did not always appear in the reports.<sup>88</sup>

We can deduce from the figures that trust funds in almost all districts peaked in the mid-1870s. This demonstrated a close connection to the wax and wane of the economy, marked in the case of the 'gold-boom' Nelson and Westland reserves. In reference to criticism in debates, the relatively small balance figure derived from the Nelson administration was noticeable in the graphs.<sup>89</sup>

There are few hard and fast generalisations we can adduce across all regions, owing to the degree of fluctuation. Certainly, there was no steady growth in the balance figures over time – something we might have expected as an administration became more effective. We ought also to consider levels of Maori population. Through the 1870s, as the European population in New Zealand skyrocketed, Maori population levels continued to decline. In 1879, Mackay estimated the Westland population of Maori stood at 35.<sup>90</sup> These smaller populations meant that relative returns appeared higher. Even so, there were other factors to consider. For example, Westland reserves surprisingly yielded a diminishing balance of payments owing in part to large amounts of money sunk into public works required to stabilise the Grey River.

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86. Colonel Whitmore, 'Native Reserves Amendment Bill', 22 November 1877, AJHR, 1877, p 323

87. After the allegations of unduly high salaries, it was an interesting coincidence of timing that Heaphy recommended the dramatic reduction of his own salary from £500 to £100: 'Report of the Commissioner of Native Reserves', AJHR, 1877, G-3, p 2.

88. Robert Parris was replaced by Charles Brown as Acting Commissioner of Native Reserves in 1876.

89. It is important to regard the different monetary scales applied to the y-axis of the graph.

90. Alexander Mackay, 'Native Reserves Amendment Bill', 28 October 1876, NZPD, 1876, p 712



### 3.14 ADMINISTRATION, 1876–80

During the period of shifting approaches and legislative proposals in the mid-1870s, a strong paradox remained concerning the status and future of the former New Zealand Company reserves at Nelson and Wellington. One of the principal reasons underlying the creation of the Native Reserves Act 1873 was the status of native reserves at Wellington and Nelson in the wake of the 1872 *Regina v FitzHerbert* finding. Nevertheless, this was left hanging in the balance after the ambiguity of the 1873 Act, and the failure to substitute any provisions in its place. The administration of Nelson and Wellington reserves continued under a vague status quo, without any formal recognition that circumstances should be altered until 1878. Finally, a royal commission was proclaimed for Wellington, directing Heaphy as commissioner to investigate:

the claims of certain Natives who profess to own, or be beneficially interested in the reserves called the New Zealand Company's 'tenths', and into the proper application of their rents and profits.<sup>91</sup>

At the time, Heaphy mentioned there was an expectation that special legislation would be required in order to resolve the situation effectively.

#### 3.14.1 The West Coast commission, 1878–79

Maori claims to reserves and the involvement of the Native Minister led to the appointment of a separate royal commission for the allocation of Crown grants for the Westland reserves. This was an alternative procedure to hearing the applications through the Native Land Court. The inquiry sought to investigate Maori claims over all the reserves within the Arahura Crown purchase, and to issue Crown grants to individuals if deemed appropriate. Foremost in the Government's mind for ordering a commission were the interests of the existing tenants – the financial basis of the trust. It should be noted here that the subject of the West Coast commissions and the West Coast settlement reserves are covered in the next chapter.

#### 3.14.2 General administration

In the late 1870s, trust reserves continued to be administered by Heaphy and Mackay, the only change (as already noted) being the substitution of Charles Brown for Robert Parris in Taranaki. The commissioners maintained a concern for the welfare of Maori beneficiaries, and saw the need to maximise returns for the trust funds in order to fulfill the objectives. In the absence of Government assistance, the paradox of self-funding administration is apparent. In 1877, Mackay complained that Parliament should contribute towards the costs of medical officers' expenses (£230 per annum), on the ground that elsewhere in the colony the expenses were defrayed out of general revenue.<sup>92</sup> The point was pursued the following year when

91. 'Report of the Commissioner of Native Reserves North Island', AJHR, 1878, G-6A, p 1

### 3.14.2 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

Alexander Mackay referred to his cousin James's earlier report of 11 July 1864 which had recommended the parliamentary subsidy of medical expenses, and which had been approved by the Native Minister of the time, William Fox. Mackay was critical:

but no subsidy has been paid to the fund in fulfilment of the aforesaid understanding, fourteen years having elapsed since the [medical] appointments were made. The fund is now entitled, at the lowest computation to a sum of £1400.<sup>93</sup>

Heaphy, moreover, recommended the reduction of his own salary as Commissioner of Native Reserves from £500 to £100.<sup>94</sup>

Despite the obvious caution and concern exhibited by the commissioners, incongruities in administration continued into the late 1870s. For example, Omaroro reserve (number 16 of the Wellington town belt) was sold in 1875, by dint of a 'purchasing clause' contained in the lease agreement. The land had been a McCleverty reserve, and, in that respect, it was intended that Maori retain 'uncontrolled power'.<sup>95</sup> We might question, in these circumstances, how an option to purchase the freehold of the reserve crept into the leasing agreement. Unfortunately, no further information on the issue could be found.

Competing tensions and visions within reserves management were highlighted in the sale of three subdivided reserve sections at Pipitea Pa in Wellington in 1875. These sections were alienated because they were said to be unhealthy: 'For sanitary and other reasons, it was desirable that these Pa lands in the town should cease to be Native property.'<sup>96</sup> This decision forces us to reflect on the original ambition to embrace Maori within the pale of 'civilisation'. In this example, 'amalgamation' sought the extinguishment of Maori rights to land, not spatial accommodation.

In August 1876, the Colonial Treasurer ordered an investigation of the native reserve accounts, 'with a view to open a separate account of each fund, the practice previously having been to treat the revenue accruing from several estates as one common fund'.<sup>97</sup> The former approach had allowed Mackay to finance and re-finance loans and mortgages between the Nelson and Greymouth reserves. Ultimately, the findings of the investigation led to the enactment of an 1877 amendment to the Public Revenues Act. Instead of paying the moneys into a public account, the amendment Act directed that all revenue from the administration of reserves had to be paid into the Public Trust Office. Section 6 of the Act stated:

All moneys payable to the Government in trust for private persons, and which are not liable to be appropriated for the public service of the colony, shall, except as herein otherwise specially provided by this Act, be paid into the Public Trust Office,

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92. 'Native Reserves, Nelson and Greymouth', 6 August 1877, AJHR, 1877, G-3A, p 2

93. 'Native Reserves, Nelson and Greymouth', AJHR, 1878, G-6, p 1

94. 'Report of the Commissioner of Native Reserves', AJHR, 1879, G-3, p 2

95. 'Report of the Commissioner of Native Reserves', AJHR, 1875, G-5, p 2

96. 'Report of the Commissioner of Native Reserves', AJHR, 1876, G-3, p 3. Note, it was not stated what 'other reasons' might have implied.

97. 'Native Reserves, Nelson and Greymouth', AJHR, 1877, G-3A, p.1.

and shall be dealt with and accounted for as provided by the Acts for the time being in force relating to such office.

This can be understood as the first stage of a shift of administrative responsibility from an independent commissionership to the Public Trustee. Movements towards this transition can be seen earlier in Mackay's and other proposed amendments to the Native Reserves Bill. The transition to the Public Trustee is detailed in the next chapter.

In his 1878 and final report on North Island reserves, Heaphy outlined the rearranged format for the reserves accounts:

In the North Island, all monies derived from reserves in which any particular native is interested, are payable into the 'Wellington,' 'Taranaki, or 'Auckland' account, respectively, and the account can be operated on for the payment to the Natives interested.

All monies derived from reserves of a more general character, such as Hostelry maintenance Reserves and Reserves not appropriated to any particular person or Hapu, are paid over the whole Island into a 'General purposes Account', which can be operated on for expenses of Hostelries, surveys of reserves, commissioner's salary and other similar expenses.<sup>98</sup>

From 1877, published reports ceased to be collated regionally, instead being listed under the above categories in the accounts of the Public Trust Office. The involvement of the Public Trust Office forms the focus for the following chapter. Despite the involvement of the office in matters of financial management, the independent commissioners continued to administer trust reserves until Heaphy's death in 1881.

In 1879, Grey as Premier attempted to introduce a Maori Reserves Vesting Bill. In his background to the Bill, Grey indicated that the objective of his Government had been to 'assimilate the business of the Native Department, and by degrees to abolish it altogether'.<sup>99</sup> The Maori Reserves Vesting Bill was designed to achieve these ends as he saw it:

Secondly a Bill similar to the present was prepared, and leave obtained to introduce it last session, placing all Native reserves in the hand of the Public Trustee, and thus taking that duty also from the Native Department. Another result of that measure would be of very great importance . . . namely, that individuals anxious to obtain possession of Native Reserves would not have to apply to the Government.<sup>100</sup>

The significance of these views should not be overlooked. For, although Grey's Bill was withdrawn, like the earlier 1877 and 1878 amendment Bills, these Bills formed the backbone of the Native Reserves Act 1882. Grey proposed: 'The Native Reserves would be dealt with exactly as the reserves for orphans and other persons whose property was in the hands of the Public Trustee.'<sup>101</sup>

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98. 'Report of the Commissioner of Native Reserves North Island', AJHR, 1878, G-6A, p 1

99. Grey, 'Maori Reserves Vesting Bill', 24 October 1879, NZPD, 1879, p 514

100. Ibid, p 515

### 3.15 CONCLUSIONS

Two features strongly influenced the form of reserves administration during the 1870s. The first of these was the failure to implement new legislation outlining the terms of management. In the vacuum created after the non-implementation of the Native Reserves Act 1873, it is difficult to deduce a single clear direction behind the course of administration. We might criticise the absence of clear, structured policy and direction as detrimental to Maori interests. Yet, the relationships between the Government, Maori beneficial owners, and incoming settlers were more complicated than this allows. While continued attempts were made through the late 1870s to introduce legislative amendments, consensus proved unobtainable.

The reasons behind the non-implementation of the 1873 Act are themselves revealing. Significantly, European Ministers appeared almost unanimously opposed to the formal introduction of Maori administrators, as proposed under the Act. This rejection of Maori participation in administration appears to be the crucial point which stalled the passage of the Act. In the absence of new statutory guidelines through the 1870s, administration reverted to the 1862 amendment Act, and full gubernatorial intervention.

The second major characteristic appeared largely as a consequence of the first. After the appointment of dual Commissioners Heaphy and Mackay, administration deviated from strict adherence to the 1862 Act. It is argued that Mackay and Heaphy, through their instructions and practice, administered reserves as an independent commissionership. Their approach enabled a degree of administrative flexibility, shown by their attempts to obtain Maori assent, rather than relying on automatic assent. In particular, Mackay demonstrated a concern for effective management and benefit to Maori by quietly employing Maori assistant commissioners for Nelson, in spite of the parliamentary reaction to the 1873 Act.<sup>102</sup>

In the strictest sense, the dual commissionership was not 'independent', and reserves continued to be vested in commissioners on behalf of the Governor. Furthermore, Maori were denied participation as assistant commissioners in the trust administration.

The alienation of reserve lands continued. Mackay justified certain alienations on account of the higher capital gains for Maori, and disallowed others. There is little evidence to indicate whether Maori were consulted about the prospects of alienation. What is more intriguing, perhaps, was the increasing willingness among certain Maori, in the early 1870s, to vest reserves in the commissioners as a form of protection. A notable example includes a leader of the repudiation movement in Hawke's Bay. Maori sought new means for securing their lands in a post-war context of confiscation. There are a host of reasons which help to explain local motivations, but these must be examined in closer detail than is possible for the purposes of this report.<sup>103</sup> On a more general level, Maori 'willingness' to vest

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101. Ibid

102. Hemi Matenga and T P Mutumutu were listed as Assistant Commissioners in a schedule of staff prepared by Mackay in 1882: Alexander Mackay to Public Trustee, 15 September 1882, MA-MT 1/1B (see the next chapter for further details)

reserves may have been influenced by differences in conceptual meanings of 'reserve', such as rahui and lands which were ultimately to be returned to Maori owners for the use of future generations.

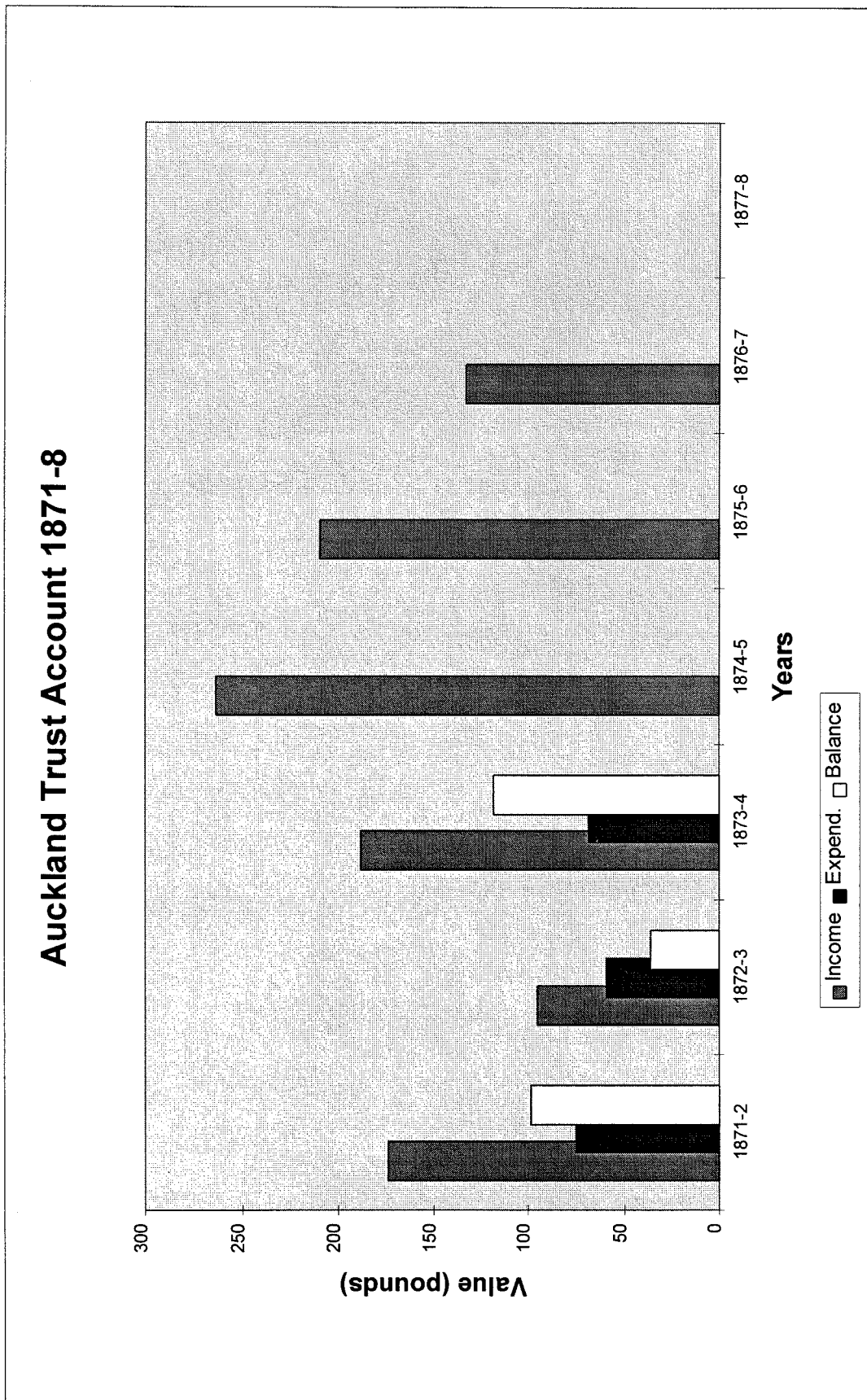
Both Mackay and Heaphy sought to provide longer terms of lease. They perceived this to benefit both Maori and settler alike. Although discussed, the commissionership stopped short of advocating leases in perpetuity. Mackay displayed an awareness of the need to keep rent increases regular. However, despite this, some rents were lowered in favour of settlers, though not on a level comparable with the 1880s. And, in other cases, rents were left in arrears.

Again, it is difficult to assess the relative benefit bestowed upon Maori in the manner of trust administration. No doubt Mackay and Heaphy undertook to promote benefits to Maori as they saw them. In the context of low Maori population and rapidly expanding settler numbers, the commissioners acted to preserve certain benefits for Maori. Yet, these benefits did not include the occupation, use, or even lease of their own reserve lands. It became more evident during the 1870s that reserve lands administered by the Government were not to be returned to Maori owners. They were, it might be observed, already 'leased' in perpetuity to the Government.

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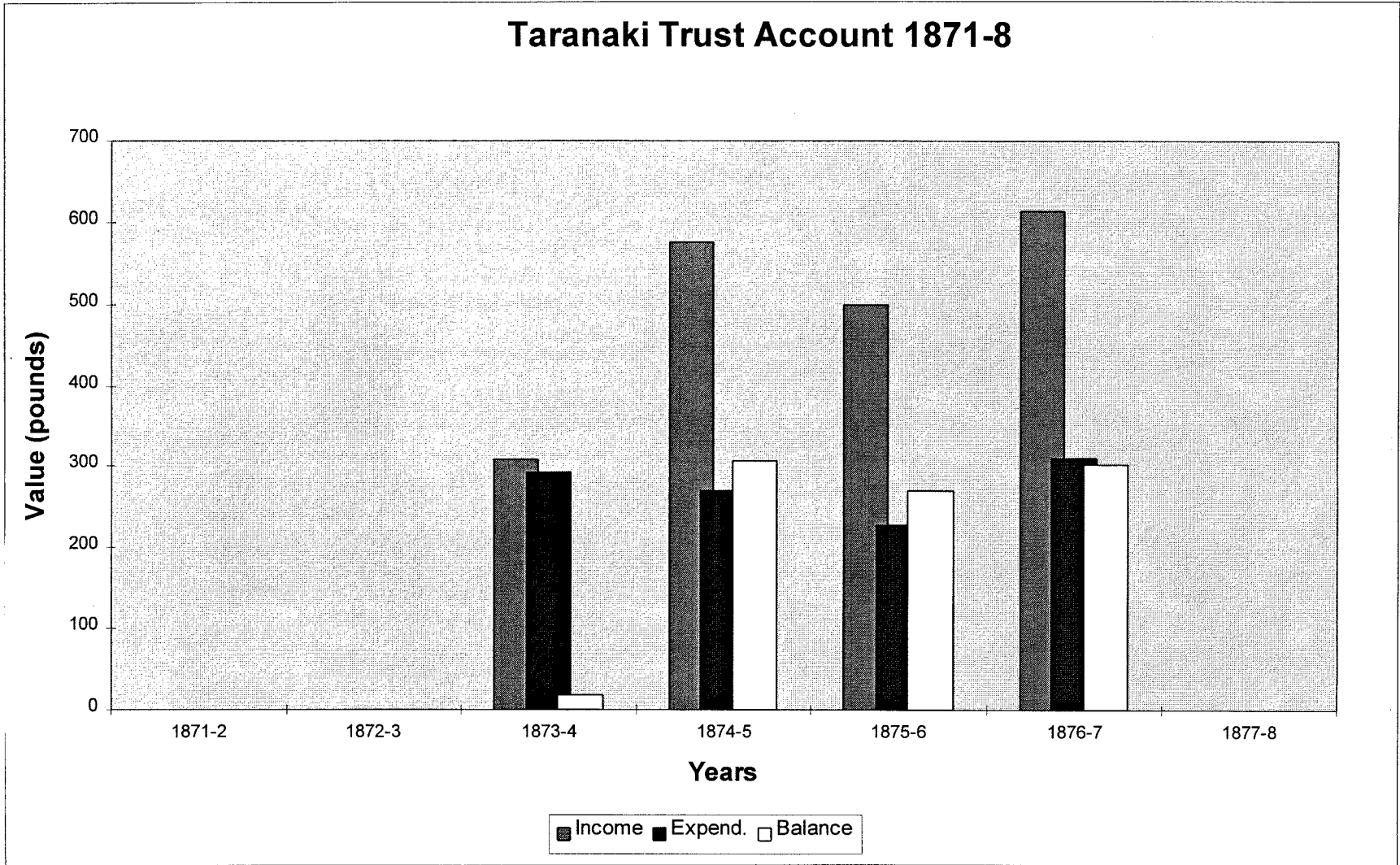
103. See Wellington for another example, although it is significant that the number administered and leased by Maori themselves far outstripped those administered by the Commissioner of Native Reserves. See 'Report of the Commissioner of Native Reserves', AJHR, 1877, G-3, p 2.





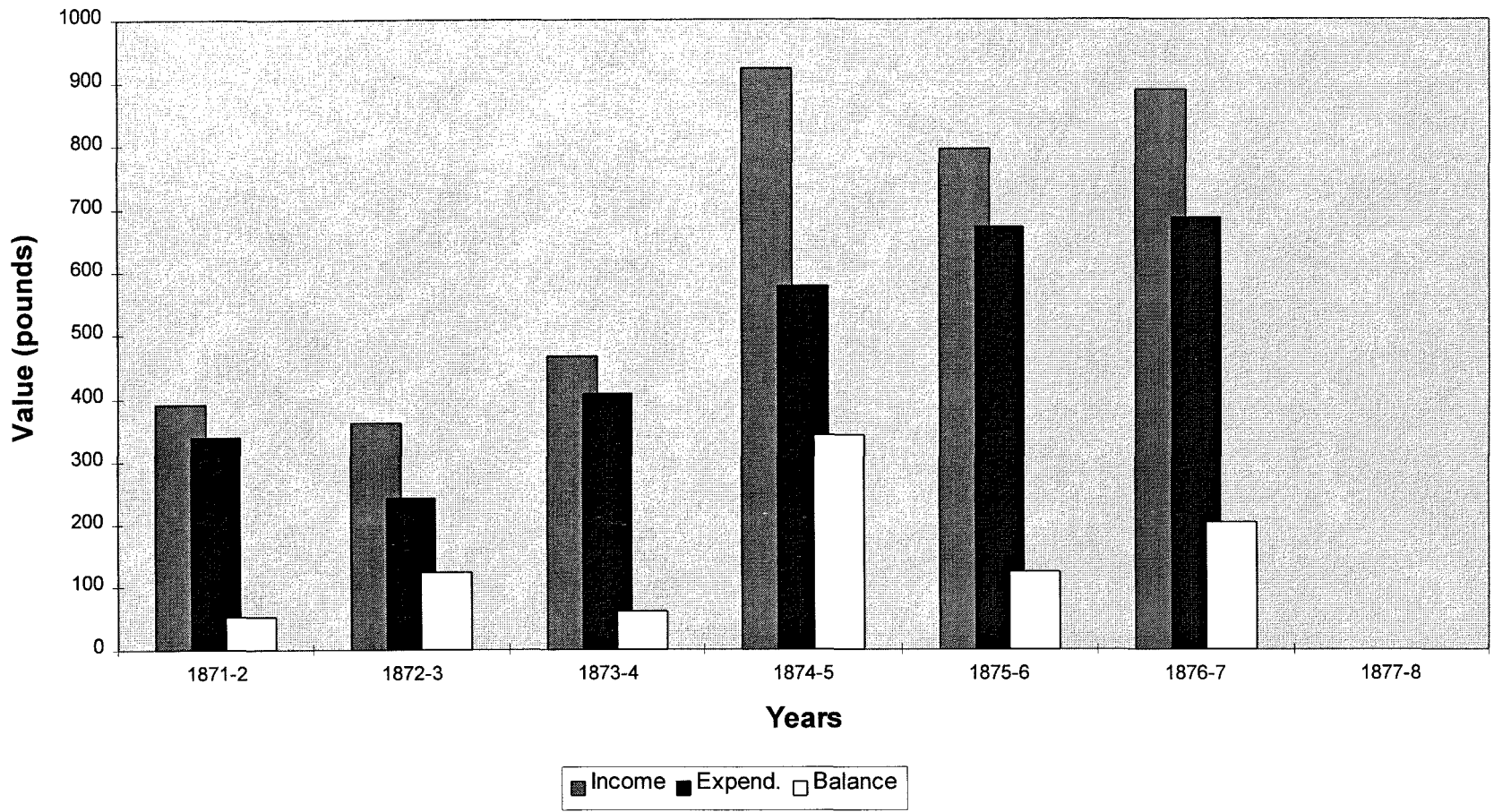






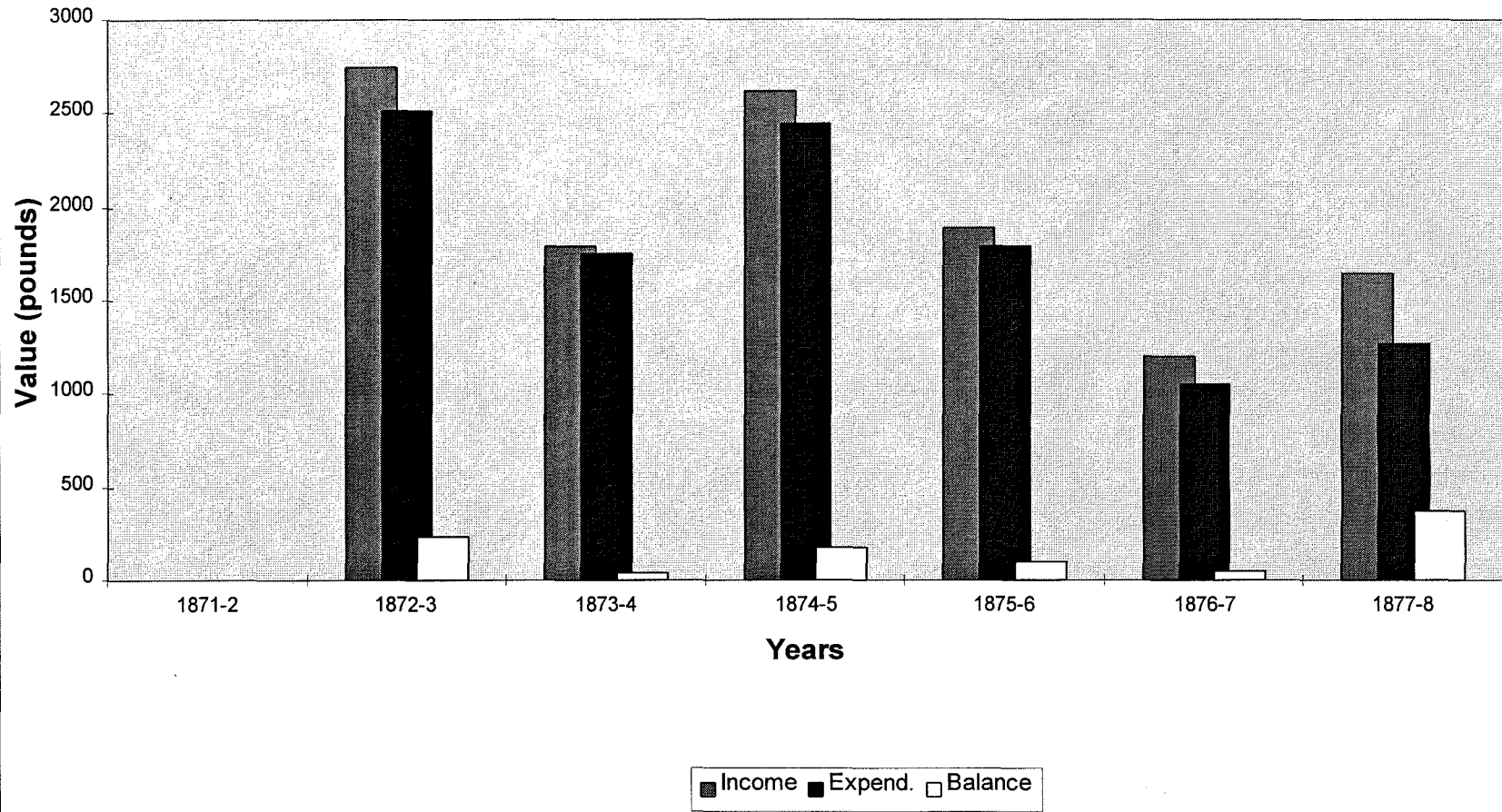


### Wellington Trust Account 1871-8

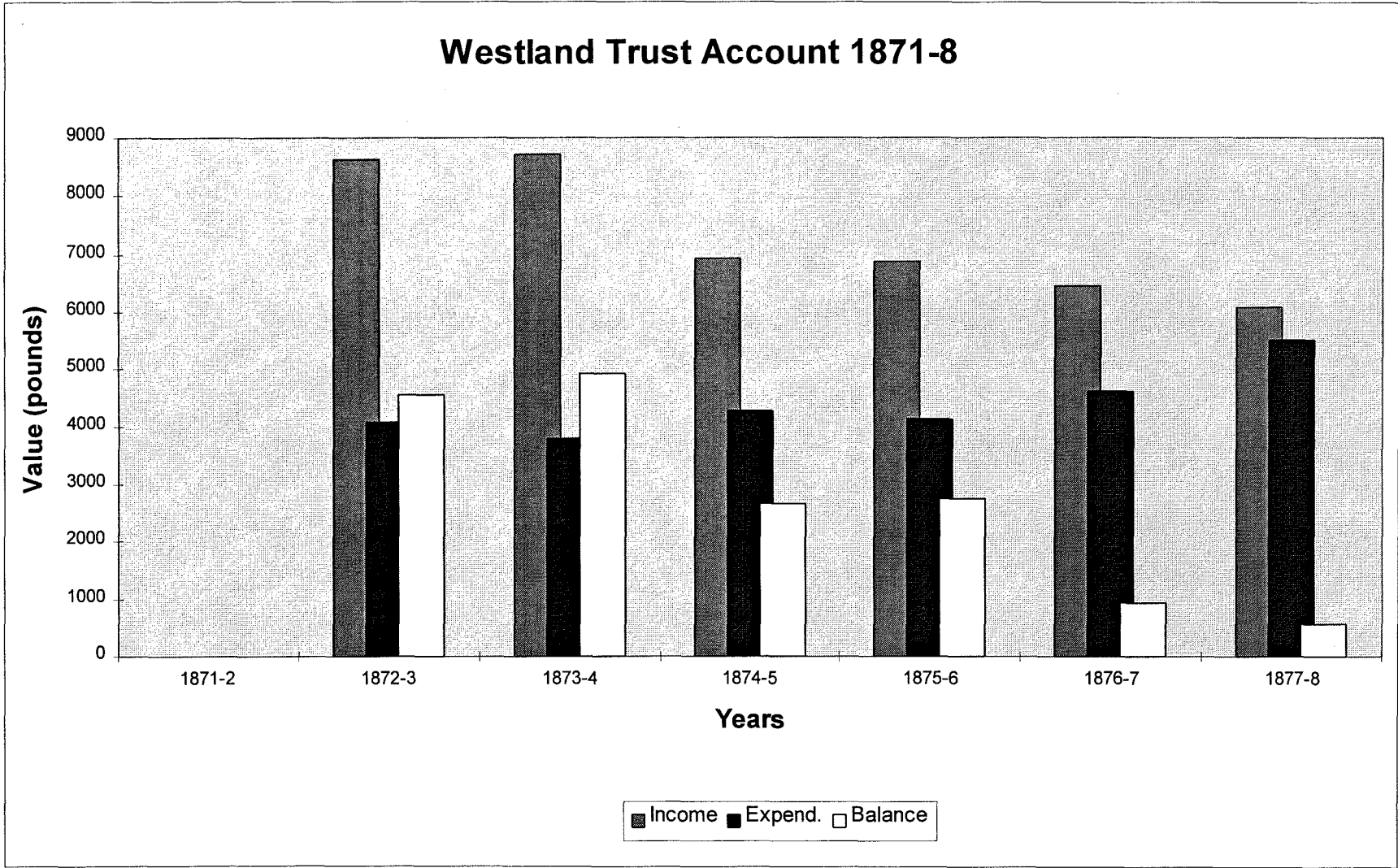




### Nelson/ Marlborough Trust Account 1871-8











## CHAPTER 4

# PUBLIC TRUSTEE ADMINISTRATION, 1882–1913

### 4.1 INTRODUCTION

This final chapter addresses the Public Trustee's administration of Maori trust reserves from 1882 to 1913. It follows chronologically from the previous chapter through to 1913, where it joins with a corresponding study of the Maori Trustee produced by the Crown Forestry Rental Trust.<sup>1</sup> The Native Reserves Act 1882 lay at the heart of administration between 1882 and 1913. It marked a decisive shift in the administration of trust reserves from the Native Department commissionership to the newly formed Public Trust Office. This chapter continues with a legislative and policy overview of trustee administration.

The chapter relies largely upon secondary sources. Published accounts in the *Appendices to the Journals of the House of Representatives* have proved less useful than expected on account of the Public Trustee's method of reporting only balance sheet details, without any explanation of approach to administration. The early Public Trustee files between 1869 and 1883, left by Alexander Mackay as Commissioner of Native Reserves, were examined to provide some underlying view of the effect of the 1882 Act on administration.<sup>2</sup> However, it has proved an impossible task to plumb the depths of primary source material on Public Trustee administration given the broad nature of the project, and time restrictions. For the purposes of a general overview report, I have been forced to focus on legislative history and policy developments, rather than close regional inspection.<sup>3</sup> This must be recognised as a weakness of this report, but at the same time, relevant source materials have been identified where it is appropriate.

This chapter is structured into three sections. The first explores the nature of the transition of administration from the Commissioners of Native Reserves, and the origins of the Public Trust's involvement with reserves administration. The second part traces the style and effect of the administration established under the 1882 Act through the following decade, and the introduction of leases in perpetuity. Parallels are drawn between the situation of the West Coast settlement reserves in Taranaki,

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1. Kieran Schmidt and Fiona Small, 'The Maori Trustee 1913–1953', report commissioned by Crown Forestry Rental Trust, May 1996
  2. Refer to 'Commissioner of Native Reserves', MA MT 1/1B, NA, Wellington
  3. In reality, the material contained in MA MT 2-45 necessitates an entire report devoted to the practical workings of Public Trustee administration on a local level.

#### 4.2 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

and more general trust administration of native reserves. Finally, later Liberal initiatives in Maori land administration are analysed with reference to their connection and impact on the fate of reserves administration up to 1913.

There are a number of larger questions or themes which run through this analysis. First, we must question whether the introduction of the Native Reserves Act effected a change in administrative form, or merely reflected a continuation of a gradual shift in Government policy concerning Maori. Another theme examines the relationship between the Public Trustee's administration of the West Coast settlement reserves and other reserves administration. This study draws on material from the Waitangi Tribunal's recent *Taranaki Report* concerning the administration of the West Coast settlement reserves.<sup>4</sup> A recent argument postulated by Crown counsel in the Wellington tenth hearing (Wai 145) has led to an examination for the purpose of this report of the relationship between the Government and the Public Trust Office, and the requirements of an independent trustee.<sup>5</sup> Aware that the Waitangi Tribunal has already reported at length on the West Coast settlement reserves, there is not the time nor the scope to revisit a close investigation of their administration, except to draw comparisons in administration. For that reason, this report will not provide a detailed discussion of these reserves. However, we will refer to the findings of the Waitangi Tribunal in order to consider the origins and nature of Public Trustee administration under legislation. Phrased as a question, we might ask: Were the West Coast settlement reserves typical or atypical of reserves administration under the Public Trustee during this period?

#### 4.2 ORIGINS OF PUBLIC TRUST ADMINISTRATION

In the previous chapter, we discussed the 'dual commissionership' administration of native reserves in the 1870s. We must, however, begin this chapter with a degree of overlap. The conception and involvement of the Public Trust Office in the business of trust administration did not begin abruptly in 1882, but had its origins in 1872, if not earlier. Formed in 1872, the Public Trust Office was first introduced to reserves administration in a limited capacity in 1877, well before the Native Reserves Act 1882 was enacted.

Through the 1870s and early 1880s, there were continued attempts to replace the Native Reserves Act 1873.<sup>6</sup> In mid-1880, Captain Thomas Fraser, the member of the Legislative Council for Otago, moved that there be a complete return of reserves currently administered under native reserves legislation, in order to best inform the ongoing attempts to relegislate.<sup>7</sup> This represented a positive step towards the

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4. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi*, Wellington, GP Publications, 1996, ch 9, pp 245–276

5. Crown counsel has submitted that the Maori Trustee (post-1920) was not an agent of the Crown. It contends therefore that the Tribunal does not possess the jurisdiction to investigate the actions of the Native (later Maori) Trustee: Crown submission, Wellington tenth hearing, (Wai 145 ROP DOC 2.101), 16 August 1996.

6. Refer, for example, 'Native Reserves Vesting Bill', 24 October 1879, NZPD, 1879, p 514

accurate location of the position of trust reserves under the Native Reserves Act 1856, amidst continuing attempts to implement legislation for the administration of Maori reserves. The 1880 Native Reserves Bill was an attempt to recommit the 1879 amendment Act (mentioned in the last chapter). It was hinted in debates that the Public Trustee might logically adopt the administration of Maori reserves:

If these reserves were placed under the Public Trustee, seeing that he was a government officer paid by the colony to attend to the Natives as well as to the Europeans, he (Mr Reynolds) would not object so much to the Bill.<sup>8</sup>

Here the Public Trustee was clearly identified as suitable for the task on account of his role as Government officer in charge of European trust estates. Further suggestions that the Public Trustee should adopt reserves administration appeared in the actions and debates of Parliament the following year.<sup>9</sup>

### 4.3 PUBLIC TRUST LEGISLATION

In order to understand the involvement of the Public Trust Office in reserves administration, it is useful to connect the formation of the office in 1872 to the broader imprint of Vogelite policies of expansion and centralisation in the 1870s. Indeed, it was Vogel himself who pushed the public trust legislation through the parliamentary process.<sup>10</sup> Vogel urged the expansion of European settlement and the centralisation of Government administration with equal verve.<sup>11</sup> J Woodward, as the first Public Trustee, stated the purpose of the Public Trust Office as follows:

The appointment of a Public Trustee is an attempt to insure the faithful discharge of trusts, and at the same time to relieve persons from being obliged to burden their friends with the responsibilities of Trustees . . . Farther, the Public Trust Office Act proposes to substitute a permanent officer for guardians who, with the best possible intentions, are liable to be incapacitated for the duties they have undertaken, by removal, change of circumstances, or death. A guardianship is thus established which will continue long after the individual who first exercised it will have ceased to act.

The act also provided for the absolute safety of trust property, and for its application to the purposes directed in the deed or will by which the trust has been created.<sup>12</sup>

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7. Fraser stood as a notable figure in the 1880s debates over reserves administration. For background, refer to G H Scholefield (ed), *A Dictionary of New Zealand Biography*, Wellington, Department of Internal Affairs, 1940, vol 1, p 282; Captain Fraser, 'Native Reserves', 30 June 1880, NZPD, 1880, p 604.
  8. Reynolds, 'Native Reserves Bill', 5 August 1880, NZPD, 1880, p 123
  9. F Whitaker, 'Native Reserves Bill', 24 August 1881, NZPD, 1881, p 102; see also the implementation and debates surrounding the West Coast Settlement Reserves Act 1881.
  10. It was claimed that the formation of the Public Trust Office in New Zealand represented the first in the world: C J Vennell, *A Century of Trust 1873-1973: A Centennial History*, 1973, p 30.
  11. For a wider context of Vogelite developments refer to Sinclair (ed), *Oxford Illustrated History of New Zealand*, 1990, chs 5, 6; also, Rice (ed), *Oxford History of New Zealand*, 1992, chs 5-7.
  12. Circular, J Woodward to E Pearce, 30 December 1872, cited in Vennell, p 33

#### 4.3 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

We might measure these statements of guardianship against later developments in reserves administration under the authority of the office.

The office was first introduced to limited administration of Maori reserves under the terms of the Public Revenues Amendment Act 1877 (discussed in chapter 3). Yet the office had existed prior to this, having been formed in 1872 under the Public Trust Office Act 1872 (which was subsequently amended in 1873 and 1876). Moreover, under the terms of the public trust legislation, it was conceivable that full management of trust reserves may have been passed to the Public Trustee from 1872. Section 15 of the 1872 Act enabled the Governor to vest any trust property in the Public Trustee.<sup>13</sup> These terms were amended by sections 3 to 10 of the Public Trust Office Amendment Act 1876. Amendments in 1876 also extended to the Public Trustee the authority to lease lands.<sup>14</sup> This was a strong signal that the Trustee was being equipped to adopt the formal administration of Maori reserves, among other rental properties. In light of these legislative provisions, we are led to question why the transfer of full powers of administration, not simply financial arrangements, was delayed until the Native Reserves Act 1882, after the implementation of the West Coast Settlement Reserves Act 1881?

The management of finances, derived from Maori reserves, formed a smaller part of the ongoing question of how to administer Maori reserves. The issue of responsibility for reserves finances had been uncertain from as early as the Native Reserves Amendment Act 1862. On 7 July 1865, the Colonial Treasurer, William FitzHerbert, wrote to the Attorney-General seeking clarification as to whether the Treasury should manage funds from the commissionership.<sup>15</sup> In reply to a memo from George Swainson, Native Secretary Rolleston attempted to clarify the situation regarding financial management:

By the 4th section of the Amendment Act [1862] the property rests in the Governor he is to receive rents and the power to hold this property cannot be delegated. The proceeds should go first to the Treasury.<sup>16</sup>

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13. 'When any such property is placed in the Public Trust Office, all the duties powers and responsibilities of the officers trustees or other person theretofore holding or administering the same shall cease, and such officers trustees or other persons shall forthwith hand over to the Public Trustee all deeds papers and moneys belonging to or relating to such property.'

14. Section 9 of the Public Trust Office Amendment Act 1876

15. 'The Colonial Treasurer wishes to be informed whether it is his duty to require any monies that may be in the hands of the Commissioner [of Native Reserves] or may from time to time be received by them, to be paid over to the Treasury': Colonial Treasurer to Attorney General, 7 July 1865, MA-MT 1/1A, item 27.

16. Rolleston comments on 'Memo', Swainson to Mantell, 11 July 1865, MA-MT 1/1A, item 28: Rolleston continued in the margin: 'I think the Commissioner should be the person to hold the special fund after it has passed through the Treasury. There are other Trusts of a like kind established by the Treasury eg Intestate estates . . . Expenditure should be authorised through the Executive Government but I imagine there would be a power in the Commissioner to resist a payment which seemed to him alien to the intention of the Act – a power which could never be effectively used in the case of disagreement between the Commissioner and the Executive who could cancel his delegated powers. The case is peculiar and there is a little confusion in the position of the parties but if Mr Swainson on considering that primarily the Governor, that is, the Government are Trustees he will see that it is reasonable that his accounts should all pass through the Treasury.'

Swainson retorted that such a requirement to pass all accounts through a centralised agency before distributing to Maori 'is just impossible'.<sup>17</sup> Heaphy, on the same document, echoed Swainson's opinion:

This is perfectly true. The Natives are always in communication with the tenants and come for the rent the same day (or at most the day after) it is paid to the Commissioner. They cannot understand the system of placing the money at Public Account and getting authorization to clear it out again.<sup>18</sup>

Heaphy's comments help demonstrate continuing concern against the centralisation of reserves administration, which persisted after the implementation of the Public Trust Acts. Heaphy highlighted the degree of Maori presence in the administrative process, and something of Maori requirements as counterpoised to the centralised administration of finances.

All financial arrangements connected with the Public Trust Office were arranged by statute. Section 37 of the Public Trust Office Act 1872 named all moneys paid into the Public Trustee's account the property of the Government. Furthermore, all management expenses, salaries, and costs associated with the office were paid from a separate pool of trust revenue known as the 'Public Trustee's account' (s 38):

The Public Trust Office shall keep a separate account, called the 'Public Trust Office Expenses Account' which he shall charge with all salaries and other expenses incurred in the general management of the Public Trust Office, and shall credit with the sums payable out of the several properties in the Public Trust Office for the cost of managing the same, and with all fees and other moneys paid into the Public Trustee's Account but not belonging to or forming part of any such property. And he shall keep a separate and detailed account of the receipts and payments made on account of each separate property in the Public Trust Office, and of all moneys invested on account of each such property.

Perhaps surprisingly, the Executive assumed direct responsibility over the fund, despite making no direct financial contribution. Section 39 detailed explicitly how salaries of officials were to be paid:

The Public Trustee shall pay out of the Public Trustee's Account all such salaries and other expenses in the general service of the Public Trust Office as he shall be authorized to pay by the Colonial Treasurer, as shall be by law payable, but not otherwise; and he shall pay out of the same Account all current expenses and charges incident to the management of the properties in the Public Trust Office, and all the net profits and income accruing therefrom to the several persons entitled to receive the same, subject to the provisions of this Act and of the regulations issued under the authority thereof:

Provided that he shall not pay or agree to pay on account of any property in the Public Trust Office any sum in excess of the amount which is standing in the Public Trustee's Account to the credit of such property.

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17. Memo, Swainson to Mantell, 11 July 1865, MA MT 1/1A, item 28

18. Ibid. Heaphy appended his comments to the original document on 11 September 1873.

#### 4.3.1 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

These early arrangements continued to form the basis of financial arrangements and administrative charges made on Maori reserves once the Public Trustee adopted full management in 1882.

As already hinted at, the Public Trust Office fashioned from 1870s legislation was inextricably attached to the Government. As well as financial support, the constitution and authority of the Public Trustee involved direct Government influence. Whilst the position of the trustee was intended as a non-political appointment, his decisions were subject to the board of management, closely aligned to the executive. Automatic membership of the board included the Colonial Treasurer, the Government Annuities Commissioner, the Attorney-General, the Commissioners of Audit, and the Public Trustee. Moreover, board membership and responsibility remained largely the same under the Native Reserves Act 1882, until further amended in 1894.

Under the 1870s Public Trust Office legislation, ‘guardianship’ was applied to the management of estates of minors, the deceased, and lunatics. For this purpose, all lands were vested in the Public Trustee. Section 10 of the 1876 amendment Act added provision for the trustee to assume possession of and administer the land of an ‘absentee proprietor’. The majority of the provisions related to the administration of lands where the recipients either were incapable of legally administering their own affairs or were intestate. Before legislation placed Maori reserves under the administration of the Public Trustee, Maori perceived a connection between the assumption behind such public trusts and their own reserves’ administration. In a petition against the Native Reserves Act 1873, Renata Kawepo complained: ‘This law resembles the law for Pakeha children, drunkards and lunatics. And we are compared by this law to infants inebriates and idiots.’<sup>19</sup>

In retrospect, Kawepo’s astute criticism also highlights continuity in administrative approach before and after the involvement of the Public Trustee. Like Kawepo, we must question the assumption underlying the decision to place Maori reserve administration in the Public Trust Office. European estates were vested in the Public Trustee when beneficial owners were unable to manage lands themselves. The same assumption was applied to Maori. By including Maori reserves under the same form of administration, the Government expressed the assumption that Maori were incapable of managing their own lands. Such views are glimpsed in speeches from parliamentary debates in 1880, mentioned later in the chapter.

#### 4.3.1 Raupatu reserves

While public trust legislation gradually angled towards the inclusion of Maori reserves administration, a sharp distinction was made in the case of raupatu reserves. The Government and Compensation Court awarded Maori reserves on Raupatu lands in South Auckland, Waikato, and Taranaki. These reserves were

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19. Renata Kawepo, petition, AJLC, 1873, no 7 (cited in Ward, p 253)

separated from the sweep of the public trust legislation and were guided instead by local legislation:

If the operation of this [Native Reserves] Bill extended to that part of the colony on the West Coast where the disturbances were taking place, a difficulty might arise in reference to legislation with regard to that part of the country. Legislation of a special nature must take place in reference to that portion of the country, and that legislation would detail what has to be done.<sup>20</sup>

Although South Auckland reserves were never administered by the Government, Taranaki West Coast settlement reserves were placed under the administration of the Public Trustee from the outset.<sup>21</sup> Moreover, a consideration of the administration of the West Coast settlement reserves is essential for understanding broader trust administration of Maori reserves from 1882.

#### 4.4 WEST COAST SETTLEMENT RESERVES

West Coast settlement reserves were formed in Taranaki through the operations of West Coast commissions of inquiry in 1880 and 1881 (see sec 4.2.4), then formalised in legislation in 1881. Their significance in a broader overview of trust reserves administration is twofold. Created in 1881, West Coast settlement reserves were the first Maori reserves to be placed under the direct administration of the Public Trustee. On another level, it might be seen that innovations in the administration of these settlement reserves guided the genesis of wider trust administration of reserves in the 1880s and 1890s. Still, we must be cautious to keep both categories of administered reserves distinct. Confusion was evident even among administrators themselves. In one instance, Rennell, the local Public Trust Office agent, became uncertain over whether a particular Taranaki reserve was administered under West Coast settlement reserves legislation or the general trust administration. Eventually, Mackay as commissioner clarified the distinction.<sup>22</sup>

In the recent *Taranaki Report*, the Waitangi Tribunal has examined the West Coast settlement reserves in some depth.<sup>23</sup> We refer here to the Tribunal findings. These will be briefly summarised to give an understanding of the genesis of public trust administration in the period.<sup>24</sup> The central issue, as earlier introduced, is the

20. F Whitaker, 'Native Reserves Bill', 5 August 1880, NZPD, 1880, p 123

21. The Crown was involved in the Waiuku reserves, although it never formally 'administered' them: refer Waitangi Tribunal, *Auckland*, Rangahaua Whanui Series, July 1996, pt 1, pp 228-229.

22. MA-MT 1/1B

23. See Waitangi Tribunal, *Taranaki Report*, pp 246-273

24. Also refer to reports prepared for the investigation of the Taranaki claims (Wai 143 ROD): Janine Ford, 'The Administration of the West Coast Settlement Reserves in Taranaki by the Public/Native/Maori Trustee 1881-1976' (Wai 143 ROD, doc M18), 1994; Donald Loveridge, 'The Adoption of Perpetually Renewable Leases for Maori Reserved Lands, 1887-1896' (Wai 143 ROD, doc C2), 1994; Hazel Riseborough, 'Background Papers for the Taranaki Raupatu Claim' (Wai 143 ROD, doc A2), 1989; Ben White, 'Supplementary Report on the West Coast Settlement Reserves' (Wai 243 ROD, doc M20), 1996

#### 4.4.1 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

extent to which the construction of the West Coast settlement reserves administration functioned as a model for all reserves administration.

##### 4.4.1 West Coast Commission, 1880

The 1880 West Coast commission of inquiry was established under the Confiscated Lands Act and Maori Prisoners' Trials Act 1879, in response to Maori complaints that Europeans had failed to return Maori lands in Taranaki. Three members of Parliament, Sir William Fox, Sir Francis Bell, and Hone Tawhai, constituted the first commission which sat in 1880. The commission sought to investigate the Government's failure to allocate reserves in Taranaki.<sup>25</sup> However, Tawhai immediately resigned on account of the biased views of the other commissioners. Fox and Bell (both supporters of the Government) remained and produced three reports.<sup>26</sup> They described the reserves they thought were needed and some reserves to be set aside. They then formed a second commission in order to bring the reserves to fruition, under the West Coast Settlement (North Island) Act 1880.

However, as the Tribunal has found, the second commission acted unlawfully in its failure to adhere to the West Coast Settlement (North Island) Act and allocate adequate reserves.<sup>27</sup> In addition, some of the Tribunal's criticisms of the West Coast commission's work for example, might well be remembered in order to understand the subsequent administration.

The Tribunal included a discussion of the role of the West Coast Commission in the subsequent administration entitled 'Perpetual leases begin with the West Coast Commission'. The following is an excerpt from the discussion:

Throughout its inquiries and its several reports, the commission saw no conflict between protecting Maori interests and promoting European settlement, for any tension was simply resolved by putting European interests first. That conflict was transferred without thought to the statute that was to govern the administration of the Maori reserves. The West Coast Settlement Reserves Act 1881 was drafted by the West Coast Commission. It vested the management of the reserves in the Public Trustee, empowered the trustee to lease the reserves, and yet required, in section 8, that the trustee act for the benefit of 'the natives to whom such reserves belong' on the one hand and for the 'promotion of settlement' on the other. From that day forward, the Public Trustee was required to promote two goals inherently in conflict. Like the West Coast Commission, the Trustee was to favour European settlement . . . In any event, by drafting this special legislation, the West Coast Commission arranged for the management and the administration of all reserves it created to be vested in the Public Trustee, who would allocate to Maori such land as was thought necessary for their own occupation and lease the balance to Europeans generally on perpetual terms. The Trustee was now the rangatira. Traditionally, it had been the function of the hapu, through the kahui rangatira, to arrange all land allocations themselves.<sup>28</sup>

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25. Waitangi Tribunal, *Taranaki Report*, p 246

26. For further details on Tawhai's position as the member of the House of Representatives for Northern Maori, see Ranginui Walker, 'Hone Mohi Tawhai', in *The Turbulent Years, 1870–1900*, 1994, pp 142–145

27. *Ibid*, p 254



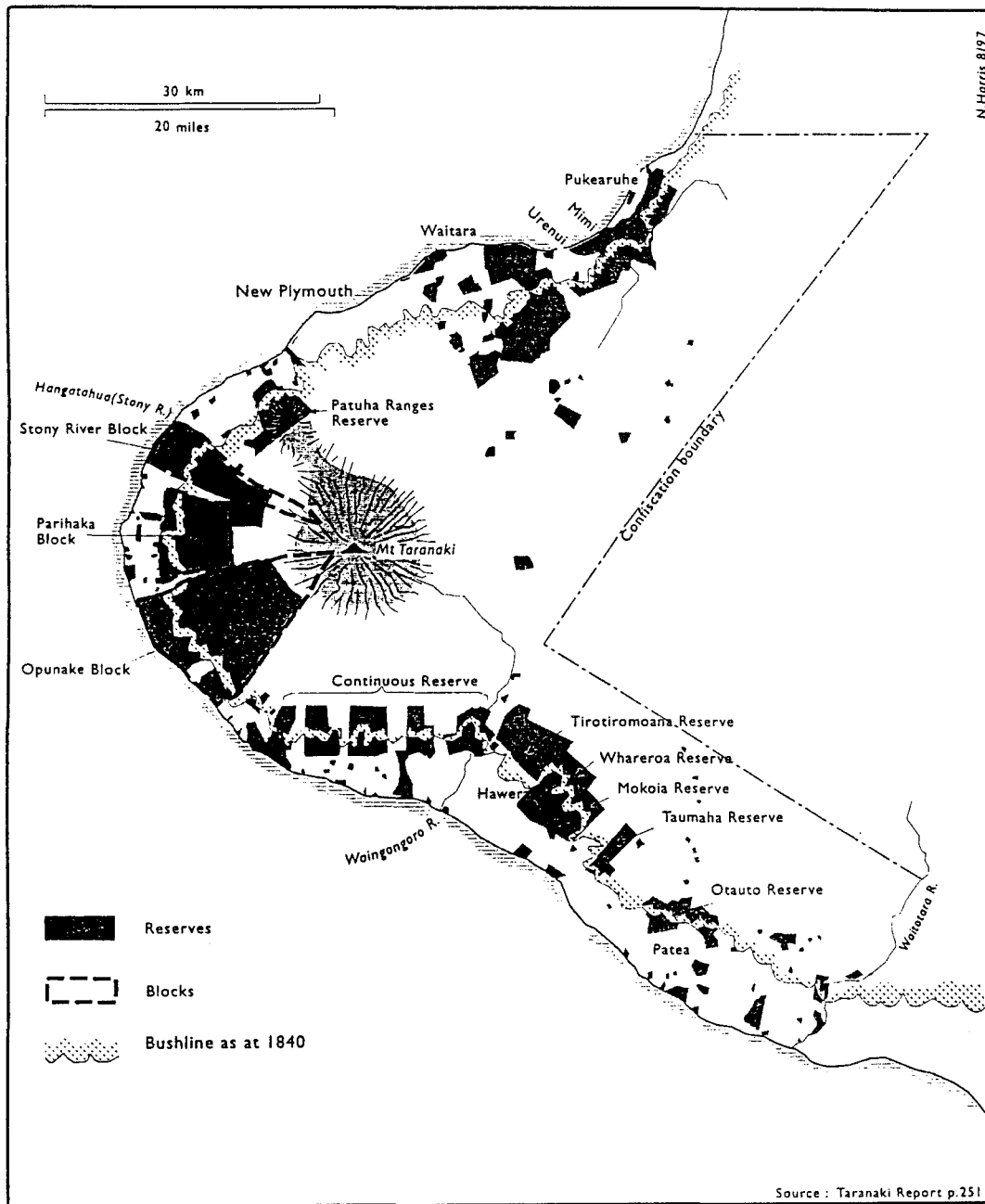


Figure 2: West Coast Commission reserves

#### 4.4.2 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

This quotation is intended not to pre-empt more detailed analysis of the Public Trustee which will occur later in the chapter, but to recognise the initial involvement and effect of Public Trustee administration on the West Coast settlement reserves. Further, the Tribunal in its findings emphasised the dual purposes explicit to the approach under the West Coast Settlement Reserves Act 1881. Attempts in legislation to equitably measure the interests of Maori and Europeans were problematic, as the interests of one party usually affected the other detrimentally. And, as the Tribunal has noted, the interests of European settlement (as mentioned in the name of the Act) gained primacy over the interests of Maori beneficiaries.

#### 4.4.2 West Coast Settlement Reserves Act 1881

The West Coast Settlement Reserves Act 1881 traced its descent from the New Zealand Settlements Act 1863, as it purported to deal with those reserves within the confiscated territory of Taranaki. It defined all reserves subject to the Act as those created by the West Coast Commission and the West Coast Settlement Act 1880. Excluded from the 1881 Act were all pre-existing reserves which were ‘actually administered’ under the terms of any reserves legislation. Under the Public Trust Office Act 1872, the Public Trustee became sole trustee for the West Coast settlement reserves, and so signalled the beginning of its responsibility for the administration of Maori trust reserves.

The Public Trustee was authorised to manage all settlement reserves, and could exchange, lease, or sell them. Sole authority to alienate reserves was granted to the trustee.<sup>29</sup> Rental revenues were paid directly to Maori beneficiaries, rather than ‘administered’ for Maori benefit. This was an administrative improvement for Maori from the 1870s commissionership or the succeeding Native Reserves Act 1882. However, as the Tribunal has noted, after full costs of administration had been deducted from rental incomes, little or nothing was left for the ‘owners’ of the West Coast settlement reserves.<sup>30</sup>

Maori involvement in the administration of West Coast settlement reserves was left stated in vague terms:

And it shall be the duty of such Trustee, so far as conveniently may be, in the exercise of the powers given him under this Act, to consult and obtain the assistance of some Native or Natives who shall be best acquainted with the circumstances of any reserve which is being dealt with, and to act as far as possible in accordance with the wishes of the Natives interested in the reserve.<sup>31</sup>

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28. Waitangi Tribunal, *Taranaki Report*, p 258

29. Indeed the wording of this provision (s 7) was couched in the negative in order to lend an impression of security, in the absence of any former restrictions on alienation:

No reserve which has been made alienable in any way, whether or not the same has been granted to the Natives, or to any person in trust for the Natives, shall be so alienated except with the concurrence of the Trustee, who before giving his consent shall satisfy himself that the terms of any such alienation are fair and proper, and, in respect of the leases, that the proposed lease is in all respects in conformity with the provisions of this Act.

30. Waitangi Tribunal, *Taranaki Report*, p 261

On the application of the 1881 Act in general, the Tribunal has commented:

Although the 1881 Act directed the Public Trustee to consult with those Maori whom the Trustee thought might be necessary and to act in accordance with Maori wishes, too much was left to the Trustee's discretion. He was also required to promote European settlement, and Maori, having lost their rights of control, were merely respondents to Government initiatives.<sup>32</sup>

This relationship was more or less repeated in the terms of the Native Reserves Act 1882, and under a less than formal role in a board of management. European 'settlement' of Taranaki, then, was the express purpose of the West Coast Settlement Reserves Act 1881. We can observe similar pressures and intentions behind general reserves administration, although less explicit. Maori representative Tomoana had already signalled his fear that, although the West Coast settlement (North Island) Bill 1880 related to Taranaki, 'it will extend over all other portions of the country'.<sup>33</sup> We need to exercise caution before generalising about all areas of reserves administration, but by drawing comparisons between the provisions of the West Coast Settlements Act 1881 and the Native Reserves Act 1882, we are better able to appraise the relationships between these different trust administrations.

#### 4.5 ORIGINS OF THE NATIVE RESERVES ACT 1882

After the implementation of the West Coast Settlement Reserves Act 1881, attention returned to the situation of the reserves administration effectively left hanging after the Native Reserves Act 1873. In July 1881, concern was raised for an urgent amendment to native reserves legislation. At the heart of this inquiry was concern over the European tenancy of the Greymouth reserves.<sup>34</sup> From there, the member attempted to cover all options: 'Failing the individualising of the Native title to the land referred to, long leases should be granted, in the interests of the trust and the tenants alike.'<sup>35</sup> This was not the first time the provision of leases had been mentioned. Maori interests were assumed implicit in the word 'trust', but not once were they mentioned directly. Instead, we can glimpse a strong concern for the future of European lessees, particularly in Greymouth. It was commonly assumed that, owing to the relatively 'large' amount of revenue (£4000) derived from Greymouth leases, Maori trust reserves were well catered for by the Government. Evidence emerged during the 1881 parliamentary debates which strongly countered this view. It was pointed out, in one example, that a European leaseholder at Greymouth was in fact sub-letting the property and earning himself £1000 per

31. Section 8 of the West Coast Settlement Reserves Act 1881

32. Waitangi Tribunal, *Taranaki Report*, p 260

33. Mr Tomoana, 'West Coast Settlement (North Island) Bill 1880', 20 August 1880, NZPD, 1880, p 519

34. 'His [Weston's member of the House of Representatives] object in asking this question was to ascertain whether or not steps were likely to be taken to improve the tenure of the lessees of the town of Greymouth': Weston, 5 July 1881, NZPD, 1881, p 298.

35. Weston, 5 July 1881, NZPD, 1881, p 298

#### 4.5 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

annum, a quarter of the trust's total revenue.<sup>36</sup> Walter Mantell maintained that £4000 was:

not a large amount for a very large portion of the most important part of Greymouth, and if it belonged to the Hon Mr Lahmann [member of the House of Representatives], £12,000 a year would probably be the lowest rental that honourable gentleman would accept for it.<sup>37</sup>

In short, the imbalance of Pakeha and Maori interests in the case of Westland reserves administration is comparable in some respects to the Tribunal's criticisms of the West Coast settlement reserves.

When the Bill was explained before the House of Representatives a month later, there was a redolent concern for the European leaseholders at Greymouth.<sup>38</sup> As Frederick Whitaker explained:

It was suggested then, on more than one occasion, that it would be very desirable that the whole of the Native Reserves should be placed under the administration of the Public Trustee, and the Board who acted with him in the management of matters under his charge. On careful consideration of the matter, and more particularly now, as the Native Reserves Commissioner was dead, it had been decided that the Native Reserves might properly be put under the management of the Public Trustee and the Board acting with him, who should have control in dealing with them.<sup>39</sup>

We might now shift to question the underlying reasons for transferring reserves administration from trust commissioners to the Public Trust Office. Charles Heaphy's death should be seen as part of events, but, as Butterworth has suggested, we should not see it as overly significant in this process, because it simply began the review 'that Bryce's policy [as Native Minister] would have made inevitable'.<sup>40</sup>

Any attempt to explain adequately the shift in administration and assess its impact must contextualise the issue of reserves administration inside broader developments to centralise Government administration and, in particular, the Native Department. Alan Ward has noted that John Bryce, as the new Native Minister in 1879, 'proposed to end "the system of personal government which obtains in the Native Department"'.<sup>41</sup> The decisive trend to centralise Government authority affected both Maori and European. Provincial government had been abolished in 1876. Bryce was intent on pushing the amalgamation of Maori administration much further in relation to the Native Department than his predecessors, Pollen and Sheehan. Therefore, we must understand the shift of trust reserves administration, from commissionership to the Public Trustee, as part of the

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36. Thomas Fraser, 'Native Reserves Bill', 24 August 1881, NZPD, 1881, p 102

37. Walter Mantell, 'Native Reserves Bill, 24 August 1881, NZPD, 1881, p 102

38. 'Lahmann pointed out that the town of Greymouth would be seriously affected by the passing of the Bill': Henry Lahmann, 'Native Reserves Bill', 24 August 1881, NZPD, 1881, p 102.

39. F Whitaker, 'Native Reserves Bill', 24 August 1881, NZPD, 1881, p 102

40. Butterworth, p 18

41. Refer NZPD, 1879, pp 350–360 (cited in Alan Ward, *A Show of Justice*, 1995, p 281)

larger impetus, spearheaded by Bryce as Native Minister, to centralise Maori within a single governmental structure without 'exceptional laws'.

After Heaphy's departure, Alexander Mackay was left to administer all trust reserves in the interim before a new reserves Bill was introduced. In addition to maintaining the administration in a rudimentary form, Mackay submitted administrative accounts for both the North and the South Island trust reserves for the year 1881, itself a formidable task.<sup>42</sup> Mackay's views were sought right up to the implementation of the 1882 Act. It was unlikely that he had any hand in drafting the legislation himself, though, because the 1882 version contained little in the way of departure from any of the previous proposed amendment Acts from the late 1870s. In September 1882, Mackay was appointed sole commissioner to aid the Public Trustee under the 1882 Act. Shortly afterwards, on 20 May 1884, Bryce effectively removed the position of commissioner from reserves administration, and appointed Mackay a judge of the Native Land Court.

#### 4.6 THE NATIVE RESERVES ACT 1882 – 'A FISH FULL OF BONES'

Bryce reintroduced a Native Reserves Bill in 1882. It was debated between July and August 1882, amended, and then finally passed into law. This was the first piece of legislation relating to the general administration of native reserves to have survived passage through the House in the previous 20 years. However, the provisions of the 1882 Act were not innovative. The majority of features derived from either former trust reserves or public trust legislation. Even the notion of Public Trustee administration of Maori reserves had been around for more than a decade.<sup>43</sup>

The 1882 Act transferred full responsibility for the trust administration of native reserves from the commissioners attached to the Department of Native Affairs to the Public Trust Office. Management and title to reserves was vested in the Public Trustee. Section 8 stated:

All lands and personal estate now vested in the Governor or any Commissioner or Public Officer (as such) under any Act theretofore in force relating to Native reserves shall, from the commencement of this Act, be deemed to be placed in the Public Trust Office, and shall vest in the Public Trustee, subject to the trusts attached thereto respectively.

The aim behind the creation of the Public Trust Office, according to the official historian of the Public Trust Office, C W Vennell, was to provide an independent body. Yet we must question whether contemporary assertions of independence are sustainable in retrospect. For, while the Public Trustee and not the Governor now

42. 'North Island Native Reserves Account', 1 April 1880-31 March 1882', AJHR, 1882, G-6; 'Native Reserves, Nelson and Greymouth', AJHR, 1882, G-7

43. Native Minister John Bryce acknowledged that it was not the first time that the issue of Public Trust administration had been raised: 'Native Reserves Bill 1882', 28 July 1882, NZPD, 1882, p 651.

#### 4.6 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

assumed title and administrative responsibility, Government connections, as we have already seen, were not far removed.

Practical administration was directed through the actions of the Public Trustee in concert with a 'board'. This administrative board, as envisaged under the Public Trust Office Act 1872, was intended to focus upon financial management; this was reflected in the selected appointments (s 18). Significantly, the status of the Public Trust Office board was broadened slightly against the restricted focus of the original 1872 Act. Still, this were not enough to stay sharp criticisms made of the board:

it will consist of five members – the Public Trustee, the Colonial Treasurer, the Commissioner of Annuities, the Attorney-General, and the Commissioner of Audit; three to form a quorum. Now that is as complete a Government affair as it could possibly be, and I ask honourable members to consider the power that would be placed in the hands of any Government, through the Trustees holding such an immense amount of land . . . We should have an independent Board of some kind.<sup>44</sup>

Despite this criticism, the Public Trust Office board of management under the 1872 Act was now called upon to administer Maori reserves. The trend of feeling might also be measured by another proposal, suggesting that reserves might be better managed by the Minister of Lands and the Waste Lands Board 'in the same way as the Crown lands are dealt with at present'.<sup>45</sup>

The sole departure from the pre-existing administrative structure was the inclusion of a Maori voice. We must be careful not to confuse the provision of a board to administer the Public Trust Office with the initiative to install Maori into decisive roles of administration within a 'board of management' under the earlier imperative of the Native Reserves Act 1873. It is important to clarify the distinction, for, in response to objections raised in the House, Bryce admitted two Maori to roles within the Public Trust Office board. Although, as will be seen, the roles were more perfunctory than proactive. In response to parliamentary debate on the subject, Bryce postulated:

I think it would be a suitable thing to place a Maori on this Board, so far as its duties relate to the management of these reserves. I am prepared to accept an amendment of that kind, or even to introduce such an amendment myself. That, I think, would meet the objection raised, for I don't think the member, after he had considered the matter, would recommend that a Maori be given actual official work upon a salary, because, while a Native might be very well qualified to express his opinion on matters coming before the Board, it is obvious that he could not very well do official work.<sup>46</sup>

The position of commissioner was retained to assist the Public Trustee in a secondary capacity. This position appears to have been tailor-made for Alexander

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44. Montgomery, 'Native Reserves Bill', 28 July 1882, NZPD, 1882, p 656

45. J W Thomson, 'Native Reserves Bill', 28 July 1882, NZPD, 1882, p 659

46. Bryce, 'Native Reserves Bill', 28 July 1882, NZPD, 1882, p 651

Mackay. After Mackay's promotion to the Bench of the Native Land Court in 1884, the position was never again occupied.<sup>47</sup> Bryce outlined the situation: 'The Public Trustee will have a general supervision over the management of these reserves, but he will be assisted by a commissioner to be appointed for the purpose.'<sup>48</sup> In addition, agents of the Public Trust Office were expected to assume roles within the administration of Maori reserves. The involvement of 'agents' was not specifically mentioned in either the Native Reserves Act 1882 or the Public Trust Act 1872, although section 10 of the latter Act allowed the Governor to appoint other 'officers'. The direction to appoint local 'agents' to carry out the administration of the Public Trust Office came instead from the *Gazette* notice:

Local agents will be appointed to manage the legal and other business connected with estates, the preference being given to estates (subject to the approval of the Public Trustee) to Solicitors or Agents who have previously had the management of the property, or who are nominated by the person placing the property in the office, or the parties principally interested therein.<sup>49</sup>

The matter became confused over the issue of who should pay for the deployment of Public Trust Office 'agents'. Vennell described agents as usually:

commercial or professional men, most of whose time was devoted to other interests. In remote districts, policemen were sometimes employed . . . their powers were strictly limited. They had no authority to liquidate claims, to spend money, or to commit the Office in any way. Everything had to be referred through Wellington for decision. They were simply receivers of claim and collectors of rent and interest.<sup>50</sup>

The systematisation of administrative procedures under a central authority was a strong characteristic feature of the 1882 Act. A concerted attempt was made to systematise financial income and expenditure. The Act made provision for the centralisation of the payment of costs relating to the administration of reserves. Previously, payments to officials had been deducted in a less balanced, though immediate, fashion, depending on the relative wealth of each account. In contrast, the terms of the Public Trust Office Act 1872 established that all management costs were to be met from the Public Trust Office account. The salaries of the Public Trustee, clerk, and commissioner appear to have been paid in this manner. However, the 1882 Act carried a further provision which allowed the Governor authority 'for fixing the charges to be paid as cost for managing the same.' It continued (s 9):

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47. The absence of a commissioner to assist the Public Trustee during the interceding decade and a half was noted by a commission of inquiry into the Public Trustee in 1913: 'Under the Native Reserves Act there has always been power to appoint a Reserves Commissioner who should, subject to the Public Trustee, conduct routine business connected with such reserves. No such Commissioner exists.' 'Commission of Inquiry in the Public Trust Office', 15 January 1913, AJHR, 1913, B-9A, p 17.

48. Bryce, 'Native Reserves Bill', 28 July 1882, NZPD, 1882, p 651

49. 'Public Trust Office Act 1872', 30 December 1872, *Gazette*, 1872

50. Vennell, *A Century of Trust*, p 42

#### 4.6 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

The salaries of all Officers appointed for the administration of this Act, or the carrying out any of the purposes thereof, shall be defrayed out of such moneys as shall from time to time be appropriated by the General Assembly in that behalf.

Outside of the centralised management, practical administration continued to be conducted by agents. Agents were instructed to deduct a fixed percentage commission from the rents they collected prior to delivery of the funds to the Public Trust Office.<sup>51</sup> The initial percentage figure of 10 percent was halved after Mackay's response. Another agent noted attendant difficulties and indicated it preferable if the Public Trustee could manage all such deduction and payments centrally.<sup>52</sup> However, for unknown reasons, Public Trustee Hamerton chose to adhere to separate schemes for payment. The existence of two echelons of administration meant that the legacy of self-funding administration continued unabated under the terms of the Native Reserves Act 1882.

In addition, there was some ratification of reserve fund expenditure (s 13):

Every Native reserve shall be used, and the rents and proceeds there of be applied, for and towards the purposes or objects to which the same are applicable respectively, and none other.

Section 14 defined terms of 'benefit' for Maori 'beneficiaries' as follows:

Where any Native reserve has been or shall be made for the benefit, or in trust for the benefit, of any Natives, whether individually or collectively, the said word 'benefit' in any instrument constituting the trust shall be construed to mean the physical social moral or pecuniary benefit of any such Natives, and shall extend to include the providing of medical assistance and medicines; and the proceeds of any such reserve may be applied accordingly.

Section 3 redefined all types of reserves for the purposes of the Act:

All lands coming within any of the definitions following shall be deemed to be Native reserves, that is to say—

1. Lands which have been or shall hereafter be excepted or reserved by Natives on the cession or surrender of lands to the Crown, and specified as so excepted or reserved in the deed of conveyance, cession, or surrender.
2. Lands which have been or shall hereafter be reserved or excepted for the benefit of Natives upon the sale by them to the Crown of any lands.
3. Lands which, by virtue of the provisions of the fourteenth section of 'The New Zealand Native Reserves Act, 1856', or the seventh section of 'The Native Reserves Amendment Act, 1862', may have been subject to the provisions of 'The New Zealand Native Reserves Act, 1856'.

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51. Hamerton requested Mackay 'to prepare an order in Council fixing the charge to be paid for management under section 9 of the Native Reserves Act 1882 – such charges to be made 1 April next. I suggest 10% on all sums collected, £1 1s from Lessee for lease and any other small fee you have been in the habit of charging': Hamerton to Mackay, 26 February 1883, PT 83/59, MA MT 1/1B.

52. Perkins (Agent for Greymouth) to Hamerton, 28 February 1883, PT 83/60, MA MT 1/1B



4. Lands comprised in blocks guaranteed to or set apart for the benefit of Natives by Colonel McCleverty, or according to the directions of any Commissioner appointed to investigate purchases of land made from Natives by the New Zealand Land Company.
5. Lands reserved for the benefit of Natives by the New Zealand Land Company or the New Zealand Company.
6. Lands vested in the Public Trustee under this Act.

Only particular reserves, those 'subject to the provisions of any Act repealed by this Act', would come under the jurisdiction of the 1882 Act (s 4). Unlike the previous Native Reserves Act 1873, reserves within confiscated areas were extricated from the 1882 Act under section 5.

In keeping with earlier trust reserves legislation, the Act continued to restrict trust administration to reserves in Crown title: 'no Native reserves shall be subject to the administration of the Public Trustee under this Act until the Native title over such land shall have been extinguished' (s 19). Such statements must be read in conjunction with the expansion of the role of the Native Land Court to make assessments on reserves for the purpose of administration as well as individualisation (see ss 16, 19, 20-26). For example, it was mentioned in the context of discussion of the 1882 Act that:

it is highly desirable there should be a subdivision of Native Lands to a very considerable extent, and I believe that is the end and object which we should keep very much in view.<sup>53</sup>

The central force of the Act was contained in sections 8 to 16. All reserve lands and personal estate were vested in the Public Trustee. The authority to lease reserves was granted to the trustee on the sanction of the board. At the same time, the degree of limitation placed on the trustee by the board should be questioned. We might assess the degree of protection offered to Maori reserves under the terms of the Act.

Two terms of lease were offered. Thirty-year leases were tendered for the purposes of mining or agriculture, on land that was not to be built upon. Tenants planning to build were offered 63-year leases in three terms of 21 years, with an automatic right of renewal at the end of each term. Both figures exceeded previous terms of leasehold. Both categories benefited further from a lower frequency of rental assessments than previous terms. The regulations therefore appear tilted to favour construction on the land and the longer-term retention of leases. Security for pre-existing leases was guaranteed under section 10. This ensured that previous contracts were honoured and eased the anxious minds of Greymouth lessees.<sup>54</sup>

The terms of the lease contracts were also better defined and structured under the 1882 Act:

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53. Bryce, 'Native Reserves Bill 1882', 28 July 1882, NZPD, p 651

54. 'The reason it commended itself to that Committee was that pressure in respect to the leasing of these reserves was unduly brought to bear upon the Minister in whose charge the lands were, and it was felt that if there was any possibility of removing that pressure means ought to be taken . . .': John Bryce, 'Native Reserves Bill', 28 July 1882, NZPD, p 651.

#### 4.7 TRUST ADMINISTRATION OF MAORI RESERVES, 1840-1913

- (a) Every lease shall be disposed of by public auction or public tender, after due notification thereof has been given by advertisement in a newspaper having general circulation in the district wherein the land to be leased is situate, as the Board shall think the most fitting in each case.
- (b) The rent to be reserved shall be the best improved rent obtainable at the time.
- (c) No fine, premium, or foregift shall, in any case, be taken upon any lease.
- (d) No person in any way concerned with the Administration of this Act shall in any case be personally interested, directly or indirectly, in any lease, nor shall there be imported therein any provision or covenant for the private advantage of such a person.

These provisions sought to derive the maximum rental return on leased reserves. In such a way, it was envisaged Maori beneficiaries would derive the greatest benefit from administration based on rental market forces. We might consider these measures as an attempt to improve the administration of Maori reserves.

The Public Trustee received the authority to grant leases with a strong protection over existing trusts and lease arrangements (refer ss 10, 15). Still, such protections did not appease other leaseholders who were more concerned about the Act's provisions which imposed regulations for all future lease contracts. Indeed, the provision that all leases would be disposed by public auction to the highest bidder riled the existing Pakeha leaseholders. They feared the loss not only of their lease but of any improvements made to the property and exerted considerable pressure on politicians. From the lessees' riposte came another piece of legislation: the South Island Native Reserves Act 1883, which provided for compensation to be paid for improvements.<sup>55</sup> In many ways then, the application of the Public Trustee's administration resulted in a tightening of measures and practices in a formal sense. These changes reflect a shift to centralise administrative authority.

#### 4.7 THE NATIVE LAND COURT AND THE REMOVAL OF RESTRICTIONS ON ALIENATION

Part of the centralised shift involved the resurrection of an active role for the Native Land Court. Administration envisaged under the Native Reserves Act 1882 applied only to reserves in Crown title. Reserves in customary title had to be taken to the Maori Land Court before they could be 'protected' under formal administration. The Native Land Court occupied a significant role, although it was not involved with the action of direct administration such as had been proposed in 1869 and during the amendment debates of the mid-1870s. Under section 16, beneficial

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55. 'The effect of the 1883 legislation was to ensure that the value of the improvements would be paid to tenants on the expiry of their then leases': Waitangi Tribunal, *Ngai Tahu Report 1991*, 3 vols, Wellington, Brooker and Friend Ltd, 1991, vol 3, p 743. Leases in Greymouth were also reduced to a term of 21 years, where other reserves remained either 30 or 63 years. Resentment continued and in 1884 there was an attempt to introduce further legislation to provide existing lessees with an automatic right of renewal, before a royal commission was appointed in 1885 (discussed below).

interests in reserves were to be determined by the court, at the request of the Public Trustee.

It might be argued that the involvement of the Native Land Court in the administration under the Act allowed increased settler access to Maori reserve lands. Section 19 set out the contingent terms for reserves to be included under the Act. New provisions in sections 20 to 22 can be interpreted as allowing more options to Maori, but in the same breath opening ('unlocking') reserves to Government administration, where they had previously been held as exempt. Section 20 stated:

In any case where it would be advantageous for the owners of any Native reserves over which the Native title has not been extinguished as aforesaid, to bring the same under the operation of this Act for the purpose of management, the Public Trustee, with the consent of the Natives beneficially interested therein, may make application to the Court for that purpose . . .

Both reasons were expressed in the legislation. However, we must be cautious to consider the effect of provisions working together, rather than in isolation.

Court procedure for determining 'assent' was then outlined:

The Court shall hear and determine any such application as if the same had been made by the owners of land, and shall ascertain in the manner it shall think fit the names of all the owners of the land comprised in the application, the proportionate undivided share of each owner therein, and the assent or dissent of the said owners to such land being dealt with in the manner provided.

Thus, in practice there was little scope for Maori input.

Under section 21, Maori were also free to transfer all such reserve lands to the Public Trustee via the Native Land Court. It was perhaps section 22 that may have been viewed as most objectionable to Maori interests:

Where any Native reserve vested in the Public Trustee, or under his control, or held by any Natives under Crown grant, memorial of ownership, or certificate of title, is subject to any restrictions, limitations, or conditions, such Trustee or Natives respectively may apply to the Court to have the same or any of them annulled and removed.

One argument is that such a provision simply allowed Maori more freedom with their reserve lands, and yet, when considered against the purposes of establishing and maintaining secure trust estates, such views appear contradictory to the notion of inalienability. Certainly, there is an element of progression through these provisions, whereby reserves were first brought under the sweep of the legislation and could then be stripped of any protective mechanisms at the request of either the owners or the trustee.

Restrictions on alienations had been applied to Maori reserved lands since the Native Lands Act 1862 (s 10). Moreover, the provisions of section 22 of the Native Reserves Act 1882 represented the first stage towards the removal of restrictions

#### 4.8 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

governing the alienability of land.<sup>56</sup> At the same time, the removal of restrictions under section 22 was made contingent upon the retention of ‘sufficient land’ for Maori:

Before altering or removing any restrictions, limitations, or conditions attached to any Native reserve, the Court shall be satisfied that a final reservation has been made, or is about to be made, amply sufficient for the future wants and maintenance of the tribe, hapu, or persons to whom the reserve wholly or in part belongs.

Restrictions over reserves were gradually eased through the 1880s and 1890s. The ‘guard’ was gradually lowered as successive legislation required proportionally smaller numbers of owners in assent of any removal of restrictions. The nadir was reached in 1894 and 1895, with the enactment of the Native Land Court Act 1894 and the Native Land Laws Amendment Act 1895. The new Maori lands administration scheme established in 1900 returned restrictions (see sec 4.3.12). The subject of the removal of restrictions on alienation is dealt with in greater detail in the parallel Rangahaua Whanui national theme report by Jenny Murray, *Crown Policy on Maori Reserved Lands 1840 to 1865, and Lands Restricted from Alienation, 1865 to 1900*.

#### 4.8 PARLIAMENTARY DEBATES ON THE 1882 ACT

Parliamentary debates in the House of Representatives reveal readings of the purposes guiding administration.<sup>57</sup> Bryce and certain other European Ministers expressed a desire to further open (Maori) lands for settlement. All four Maori members of Parliament were unified in debate against the Bill. Some other European members of Parliament also chose to oppose the Bill.

Hone Tawhai described the 1882 amendment of the Native Reserves Act as a ‘fish full of bones’.<sup>58</sup> He explained that the meaning of the Bill was ‘to place all the Native reserves under the authority of the Public Trustee, who is a European’. His major criticism was based on the fact that with a single Public Trustee there would be little or no access to him. Tawhai suggested that a better alternative model of administration for Maori reserves was the Orakei Native Reserve Act 1882. As a private Act, it enabled the trustee, Paora Tuhaere, to lease but not sell land sections at Orakei without the consent of all the beneficial owners.<sup>59</sup> Tawhai explained:

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56. Refer Jenny Murray, *Crown Policy on Maori Reserved Lands, 1840 to 1865, and Lands Restricted from Alienation, 1865 to 1900*, Waitangi Tribunal Rangahaua Whanui Series, February 1997

57. Copies of debates in the Legislative Council could not be located.

58. ‘I had hoped that this measure would appear to me in the shape of a fish, or a kind of a eel, called the piharau, which has no bones, so that I could have eaten of it without being annoyed by the bones. But according to the conclusion we have arrived at, and according to what we have seen of this Bill, it is more like a shark that lives on human prey’: Hone Tawhai, ‘Native Reserves Bill’, 28 July 1882, NZPD, 1882, p 650. Ironically, Bryce, as Native Minister, did not disagree. In a burst of literal rhetoric he crowed, ‘This is a fish, and therefore it has bones, and ought to have bones’: Bryce, 28 July 1882, Native Reserves Bill’, NZPD, 1882, p 651.

The system of reservation that I am in favour of is this: that each Maori should be given his own property – his land – and he should hold it under his own authority; that Natives should be allowed to deal with their own lands in the same way that I proposed that those who are interested in the Orakei lands should deal with theirs.

He added:

If lands were dealt with in the manner I have proposed, and the Maoris allowed the power of leasing it themselves, none of the proceeds of the land would then go to pay officers who manage the leases and other gentlemen connected with the administration of these lands.<sup>60</sup>

All four Maori members, Tawhai, Tomoana, Te Wheoro, and Taiaroa condemned the Bill.<sup>61</sup> Access to centralised administration was a major concern for Maori. Local access to the administrator and the funds derived from rents was imperative to Maori, and was denied to them under the terms of the Act. Time and access to administration cost money. Maori members voiced this concern.<sup>62</sup>

Tomoana commented: 'I think this is a most iniquitous Act. It takes away from the Maori everything he possesses, and gives it to another person to control.'<sup>63</sup> Shades of contrast were drawn with the laws applied to Pakeha lands:

Supposing this Bill dealt with European lands in the same way that it proposes to do with Maori lands, what would be the consequence? Great noise and many objections to it – far more objections than are now made. This Bill, to my idea, is like a nail hammered into a hard piece of wood, and so tightly that to extract it would be impossible.<sup>64</sup>

Underlying the relationship was the racist assumption that Maori were inferior to Europeans. Thus they were placed in a subordinate relationship of dependence, as 'beneficiaries'. John Ballance, the Minister of Lands from 1884 and later the Premier, commented in 1882:

It would not only be sound policy therefore to bring all leased (reserve) land under general regulations and the control of a department, but it would be a necessary measure of protection against unfair dealing. Whatever may be said to the contrary, it is beyond doubt that the Native is in many respects an infant needing a guardian.<sup>65</sup>

Taiaroa looked to attack such underlying assumptions:

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59. Refer Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim*, Wellington, Department of Justice: Waitangi Tribunal, 1987, p 41

60. Tawhai, 'Native Reserves Bill', 28 July 1882, NZPD, 1882, p 650

61. See Taiaroa, 22 August 1882, NZPD, 1882, p 504; also, Tawhai, 28 July, NZPD, 1882, p 650

62. Tawhai, 'Native Reserves Bill', 28 July 1882, NZPD, 1882, p 650

63. Tomoana, 'Native Reserves Bill', 22 August 1882, NZPD, 1882, p 510

64. Ibid

65. John Ballance, *A National Land Policy Based on the Principle of State Ownership: with the Regulations of the Village Homestead System*, Wellington, 1887, cited in Don Loveridge, 'The Adoption of Perpetually Renewable Leases for Maori Reserved Lands, 1887-96' (Wai 145 ROD, doc c2), p 9

#### 4.8 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

The Maori people are not children, and in saying so I wish also to say that they should not be treated as children, that they have sufficient intelligence to manage their own affairs, and that their lands should not be given to others.<sup>66</sup>

Seddon supported these views:

I say, considering the position of the Maoris, considering that they are intelligent, well-educated and well able to manage their own affairs, I think Parliament would be doing a wrong thing to take from them the right to manage their own affairs. Why, if any of us purchased land on the West Coast from the Government, if Parliament proposed to interfere with us in the management of our estate, we would not stand it . . .<sup>67</sup>

Another European Minister, Daniels, concurred:

give them [Maori] their land, and let them manage it for themselves. If they wish to have the advice of any person in the management of it, let them have it; but do not make this compulsory trust.<sup>68</sup>

Maori opposition to the Bill also arrived in the form of petitions. References to petitions were made by Tairaroa and Tomoana during speeches before the House.<sup>69</sup> Tairaroa in particular explained that he was prompted to speak 'by the fact that so many petitions have come from the Native tribes of this Island objecting to this measure'.<sup>70</sup> Both Tairaroa and Tomoana accused the Government of not providing adequate coverage to the petitions:

They [the Government] know very well that a petition has been sent here from the Natives about the Omaranui Block, and the [Select] Committee has recommended that it should be referred to the Government for them to take action upon. And what have they done? They have done nothing in the matter.<sup>71</sup>

Maori petitions provided further evidence of widespread complaint against the Native Reserves Bill, and it reminds us of the weak position of Maori members inside a European Parliament.

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66. Tairaroa, 'Native Reserves Bill 1882', 22 August 1882, NZPD, 1882, p 504

67. Seddon, 'Native Reserves Bill 1882', 28 July 1882, NZPD, 1882, p 657

68. Daniels, 'Native Reserves Bill 1882', 28 July 1882, NZPD, 1882, p 654

69. Reference to petitions were made in Tairaroa, p 504

70. Tairaroa, 22 August 1882, NZPD, 1882, p 504

71. Tomoana, 22 August 1882, NZPD, 1882, p 510. Tairaroa earlier stated:

Since I have been in the House this session I have not heard any honourable gentleman express a desire to hear any member of the Native race at the bar in connection with these Native reserves. I attach a great deal of importance to the fact that the owners of these reserves, who are the persons specially interested, have sent a petition to the House praying that they might be heard at the bar, in order to state their objections to the Bill. The Maoris are the owners of the reserves proposed to be dealt with, and the Bill proposes to take away their right of dealing with them and place it in the hands of others.

(22 August 1882, NZPD, p 504.)

Other theories were postulated as to the purposes behind the Government's policies towards Maori land, and, in particular, the Native Reserves Act 1882. Major Te Wheoro stated:

I verily believe these lands will be a security for the money which will be borrowed from England. When these lands come under the operation of this Act, the Government will say to the lenders, 'Well, we have all this property in land; therefore lend us so much money.'<sup>72</sup>

While the charge was not disputed, there is not space here to pursue the connection.

The overarching imperative to open lands for settlement and economic development was alluded to in the debates. Colonisation was deemed beneficial to all parties. Furthermore, anything which compromised the impetus was criticised in Parliament. Some Government Ministers saw the Native Reserves Act 1882 as locking up Maori land 'to the injury of the productive power of the colony'.<sup>73</sup> John Bryce commented in debate:

It has been further objected to the Bill from another direction that it would, in effect, lock up under its management a large quantity of land in a way that would be hurtful to the public interest. No doubt large provision is made for a large quantity of land coming under this Bill, and nothing would give me greater pleasure than to see a large quantity of land coming under it. But I would point out that, if the quantity of land coming under the Bill is too large, provision is made in the Bill for unlocking, if I may say so, land unduly locked up.<sup>74</sup>

In a 1991 article, Tom Brooking highlighted the Liberal approach to breaking open Maori lands and the attempt to further develop the countryside for European settlement and small farming.<sup>75</sup> Comments, coupled with subsequent initiatives to bring larger numbers of reserves under the Government's direct administration in the 1880s, can be seen as a backdrop to the later Liberal policies. Numerous allusions were made to the dangers of shutting up the lands in reserves and the corresponding need to 'unlock the land'. This rhetoric demonstrates the omnipresent tension between settler and Maori interests over Maori reserves. Bryce continued:

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72. Major Te Wheoro, 'Native Reserves Bill', 22 August 1882, NZPD, 1882, p 507. Tomoana later asked the House, 'Why should not the object of this Bill be publicly announced? If it is for the purpose of securing these moneys that are to be borrowed, why should it not be so stated? I do not see anything in this Bill whatever that will benefit the Maori people.': Tomoana, 22 August, 'Native Reserves Bill 1882', NZPD, 1882, p 510.

73. Bryce, 'Native Reserves Bill', 28 July 1882, NZPD, 1882, p 651

74. *Ibid*, pp 651-652

75. Tom Brooking, "'Busting up" the Greatest Estate of All', NZJH, vol 26, no 1, 1992, p 95:

Politicians of every colouration then shared a consensus on three key issues: that all landlordism was bad but Maori landlordism was the most malevolent of that oppressive institution, since Maori landowners constituted a block or bar to settlement and progress locking up the land in the same way as the great estate owners; and that Maori must not be made completely landless so as to become a 'burden on the state'. This phrase was used many times by every kind of politician . . . Furthermore, if Maori could be held somewhere between a proletariat and a peasantry they would stay in remote country areas and away from the towns, supporting themselves and maintaining order and stability.

#### 4.9 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

the land of the Maoris, in common with the land of the White people, must be, in the interests of the colony, made productive . . . there is ample provision for unlocking lands when it is desired so to do. Honourable members will see that is the case if they look at clause 21.<sup>76</sup>

Another member mentioned concern over access to reserve lands in relation to the construction of the main trunk line.<sup>77</sup> We might also remember that Charles Heaphy's former roles combined Commissioner of Native Reserves with ongoing responsibility for the survey of roads and telegraph lines. That such public works schemes were intimately connected to the fate of reserves administration is itself revealing of the expectations placed on reserves.

Some observers were bothered by the seemingly large area of reserves land which came under the terms of the Act. A direct comparison was drawn with the Thermal Springs Districts Act 1881. It was commented:

The only case that I know of which is like it is the Thermal Springs Bill of last session. That Bill many of us innocently thought was only to prevent the alienation of springs of hot water. And other things with Maori names mentioned in the Bill which are of exceedingly great value for curative and medicinal purposes . . . We were really passing a Bill under which the Government have set aside 680,000 – nearer 700,000 acres in fact – to be administered in any way in which the Government, without reference to this House, may see fit.<sup>78</sup>

#### 4.9 ADMINISTRATION, 1882–84

The years between the introduction of the Native Reserves Act 1882 and Mackay's dismissal provide a useful focus for examining the nature of change in trust administration. During this short period, Mackay remained Commissioner of Native Reserves, acting as a bridge between the two periods of administration. The institution of a centralised office of administration meant immediate changes to the regional variations and to the flexibility that existed under the commissionership of the 1870s. For example, previously Maori beneficiaries of Collingwood and Marlborough reserves received rental payments directly. After 1882, it was recommended that the practice cease and consistency be adopted.

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76. Bryce, 'Native Reserves Bill 1882', 28 July 1882, NZPD, 1882, pp 651–652

77. 'We in the North Island are very anxious to see the country opened by a railway running from Auckland to Wellington': F Whitaker, 'Native Reserves Bill 1882', 28 July 1882, NZPD, 1882, p 655.

78. There were other attendant problems. Facing high rental payments in the midst of the 1880s depression, lessees defaulted payment and sought to purchase freehold. Furthermore the Supreme Court decided that Ngati Whakaue was an iwi, not a 'body corporate', and therefore not entitled to sue for arrears: F J Moss, 'Native Reserves Bill 1882', 28 July 1882, NZPD, 1882, p 661; also see Ward, pp 288–289.



Staffing was re-evaluated. As a result of a request by Hamerton, Mackay submitted the following list of employees salaried to the native reserves account.

Name	Rank and station	Rate (£ per annum)
Alexander Mackay	Commissioner, Wellington	100
	Nelson	225
	Greymouth	225
Catley	Clerk, Nelson	50
Hough	Interpreter, Nelson	40
Hemi Matenga	Assistant commissioner	100*
T P Mutumutu	Assistant commissioner	
E Johansen	Medical officer, Motueka	50
E Collins	See Nelson <sup>†</sup>	50
Lewis Horne	See Wairau <sup>†</sup>	50
Charles Scott	See Picton <sup>†</sup>	50
John Hosking	Schoolmaster, Wairau	55
E Hosking	Sewing mistress, Wairau	10
Vacant	Schoolmaster, Arahura	150
Vacant	Medical, Westland	75

\* These three positions were recently vacated at the time the list was compiled.

<sup>†</sup> A single figure was listed. It is presumed to apply to both assistant commissioners. Note the Wellington clerk, Mr Rattray, had been suspended 'having been committed for trial'.

Return showing the names and salaries of the officers employed in the Native Reserves Department. Source: Alexander Mackay to Public Trustee, 15 September 1882, Public Trustee file 82/3156, Maori Affairs Maori Trustee series I/1B.

Mackay's employment of two Maori assistant commissioners is of particular significance. Given the non-implementation of the Native Reserves Act 1873 largely on account of proposed Maori involvement in management, the (almost secret) existence of two Maori commissioners represented a revelation. Nowhere else in documentary sources cited was the participation of the two Maori officers mentioned. Their presence was immediately targeted by the Public Trustee:

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The salaries of the two assistant Commissioners and the interpreter must be discontinued unless very good reason be adduced to the contrary. They appear to me to be absolutely thrown away and to inflict a gross injustice upon the beneficiaries of the particular reserves.<sup>79</sup>

It was declared that neither position was further required, and an onus fell upon Mackay to disclaim any need for the Maori commissioners. Mackay responded that the commissioners should be dismissed, 'their services never having been needed'.<sup>80</sup> This was an unusual statement given their continued employment on a significant salary. On the dismissal of the interpreter, however, Mackay could not agree. From a comparative view, the employment of Maori officers inside an ostensibly European administration appears surprising and almost contradictory, showing a degree of inconsistency between theory and practice of administration.

There were other inconsistencies in administration. Despite outstanding rental debts owing to Maori, leaseholders continued to capitalise on popular resentment in order to retain new terms of lease. Without exception, significant rent arrears were owed to Maori beneficiaries across all areas. Some notable examples included £525 1s 10d rental arrears from Nelson town reserves, while Motueka-Moutere and Motueka 2 fared little better, with debts accrued of £441 3s 3d and £327 16s respectively. Less surprisingly, perhaps, the worst scenario hailed from the Westland reserves in the South Island, where £740 18s 10d was still owed. Mackay was sufficiently concerned to note:

in some instances where the arrears are large there will be little alternative but to forfeit the lease, as matters will only drift into a worse position, if further latitude is granted.<sup>81</sup>

Strong words, although no recorded occurrences could be found to have taken place.

The administrative changeover in 1882 also produced a number of official requests for general statistics on all reserves.<sup>82</sup> We can usefully juxtapose these against the trust reserves figures from 1882 and 1883. The general statistics of trust reserves under the terms of the Native Reserves Act 1882 were listed by Mackay. He recorded that the total aggregate area of reserves under the Act consisted of 53,762 acres 2 roods 15 perches. Of this, 39,435 acres 2 roods 7 perches lay in South Island trust reserves, while 14,327 acres 18 perches remained in the North Island.<sup>83</sup> The aggregate lands were divided among 657 tenancies; 88 in the North

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79. Hamerton to Mackay, 15 March 1883, PT 83/82, MA MT 1/1B

80. Mackay explained that 'their appointment was the result of the popular opinion then prevailing that the Natives should have a voice in the management of their own affairs, but the practical value of the office has been nil': Mackay to Hamerton, 20 March 1883, PT 83/82, MA MT 1/1B.

81. Mackay to Public Trustee, 5 February 1883, PT 83/ 27, MA MT 1/1B

82. Refer AJHR, 1883, docs G-7B, 7-C, 7-D

83. Alexander Mackay, 'Report on the State and Condition of Native Reserves in the Colony', 18 May 1883, AJHR, 1883, G-7, p 1

Island and 569 in the South Island, demonstrating the relative disproportion of trust reserves allocation.

Mackay's report provides a useful overview of all trust properties administered under the terms of the Native Reserves Act 1882. The report is treated in detail below. In the case of Auckland reserves, of five parcels believed to come under the administration of the 1882 Act, only three (a total of 4 acres 2 roods 29 perches) in fact proved to remain in Maori beneficial ownership.<sup>84</sup> The two remaining reserves (one of six acres and the other of unspecified proportions) were both previously vested in the Crown, but, for unknown reasons, they were not recognised as transferred to the Public Trustee. Mackay's overview itself uncovered a number of apparent administrative inconsistencies, perhaps formerly submerged under the sprawling undergrowth of administration. Yet, what is remarkable is the complete exclusion from trust administration of all reserves north of Auckland (something which Mackay does not mention).

Within his list of trust reserves, Mackay included reserves defined for specific purposes. While under the auspices of Public Trust Office administration, these particular reserves could not be leased by the Public Trustee. Mackay mentioned the example of separate Auckland reserves:

There are other parcels of land in the Auckland Land District formerly brought under the operation of the Native Reserves Act, but these lands were brought under for a specified purpose, and are not otherwise available for occupation.<sup>85</sup>

Tauranga raupatu reserves were another example of reserves defined for specific purposes. Established under the Confiscated Lands Act 1867, these reserves were proclaimed endowment reserves for the specific purpose of education. The administration of the Tauranga reserves contrasted further with the fate of the other raupatu reserves already mentioned. Hawke's Bay reserves were also reserves 'having been brought under for a specified purpose [and] not available to be otherwise dealt with'.<sup>86</sup> It is not known whether it was this 'endowment' relationship, or other points of confusion, which led Captain Fraser to declare earlier during the parliamentary debates surrounding the 1882 Act: 'Four Native Reserves were totally lost in Hawkes Bay; nobody knew what had become of them.'<sup>87</sup> Certainly the state of awareness concerning the administration of Hawke's Bay reserves, after Heaphy's own determined efforts in the 1870s, should not have inspired much confidence. Despite such pronouncements, Mackay proved able to

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84. Two of the reserves were found in central Auckland, one the site of the Mechanics Bay Hostel, the third remaining parcel was the former site of the Onehunga portage hostel (the building burnt down in the late 1870s, and was not rebuilt). The rents accrued from the administered reserves were paid into the costs of administering the Mechanics Bay Hostel: Alexander Mackay, 'Report on the State and Condition of Native Reserves in the Colony', 18 May 1883, AJHR, 1883, G-7, pp 1-2.

85. *Ibid*, p 2

86. *Ibid*

87. '[A] and it would be the duty of the Commissioner to find out where they were. Major Heaphy, when he had been examined on the point, either would not or could not say where they were': Captain Fraser, 'Native Reserves Act 1882', 29 August 1882, NZPD, p 637.

#### 4.9 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

identify three further reserves (Te Arai Matawai, Waikokopu, and Poukawa), none of which was leased – possibly a more plausible reason as to why little was known of the reserves administration. We might hypothesise, in the absence of firmer evidence, that these three reserves demonstrated Maori use of the system of reserves administration, almost in spite of itself, to avoid the clutches of alienation. Later, on 10 April 1883, Mackay notified Hammerton that the Hawke's Bay reserves had been 'removed' from administration under the terms of the Native Reserves Act 1882.<sup>88</sup>

Mackay's count of Taranaki reserves administered by the Public Trustee included 3552 acres 1 rood 4 perches. This number was entirely separate from the West Coast settlement reserves. The rents from these particular reserves were paid to Maori beneficial owners, in contrast to the rents of the West Coast settlement reserves, which were paid into the Public Trustee's accounts. Similarly, the Palmerston reserves, an example of land acquired from the proceeds of the sale of other Wellington reserves at Wainuiomata, derived revenue which was paid directly to the Waiwhetu Maori as beneficial owners.

Mackay's list of Marlborough reserves is perhaps the most surprising. As the most complete published record, it shows the total area of Marlborough reserves under the 1882 Act as 21,004 acres. This amounted to the largest individual region of reserves in the country, and half of the South Island aggregate. More revealing perhaps, was the statistic that only five reserves, totalling 3376 acres, were let to Europeans through the terms of the 1882 Act.<sup>89</sup> Almost all the remainder, much of it in the area now known as the Marlborough Sounds, was either occupied or let by Maori. Mackay explained the situation with the following words:

The reserves in the Marlborough District contain an aggregate area of 21,004 acres 2 roods 8 perches. A few blocks have been let; some are in the occupation of the Natives for cultivation and pastoral purposes, and for fishing-places, but a large proportion consists of hilly and worthless land, not likely to be utilized.<sup>90</sup>

The implication was clear enough. If the land was not suitably valuable in European eyes then Maori retained effective interest and control over their lands, inside the wider span of reserves legislation.

The situation of the two New Zealand Company settlements of Nelson and Wellington were contrasted in Mackay's account. The Nelson reserves were styled a success story:

The Natives in the original Nelson settlement, in consequence of the foresight of the New Zealand Company in setting apart these lands for their benefit, have reaped a considerable advantage through being placed in a position of independence in the way of monetary aid for purposes that the Natives in the other parts of the colony have had to depend on the assistance received from the government.

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88. Although what this meant in practice is not known: Mackay to Hammerton, 10 April 1883, PT 83/46, MA MT 1/1B.

89. Mackay, 10 April 1883, PT 83/46, MA MT 1/1B, p 7

90. *Ibid*, p 3

There was a marked contrast with the fate of Wellington reserves:

A large number of the New Zealand Company's sections appear to have been appropriated to other uses, as well as included in Colonel McCleverty's awards, leaving a very small proportion of the original estate available for the purposes to which these lands were to be devoted under the company's scheme of settlement.<sup>91</sup>

Another contrast was found in the case of Westland reserves in 1882. The total area of reserves on the West Coast was listed as 5936 acres 1 rood 16 perches, a majority of which (4226 acres) were included under the 1882 Act.<sup>92</sup> Mackay also noted the dramatic decrease in demand for reserve leases in the wake of the collapse of goldmining activity. In Westport, for example, the bulk of the town sections lay unoccupied, either by European tenants or by Maori. What concerned Mackay most about the Westland reserves were the entitlements of the leaseholders to an automatic right of renewal, which was threatened by the proposal to auction leases under the 1882 Act.

Further to the subject of tenants' concerns, Mackay made the following points:

The general principle upon which the Native Reserves estate has hitherto been administered was to encourage the occupation of the land, as well as the creation of a permanent and respectable state. Every facility was therefore granted to the tenant to improve and cultivate his leasehold, as if it were his own freehold, by promoting the system of tenant rights. In renewing a lease the tenant's improvements were always considered his own, and an increase of rent was only charged on the land in respect of its inherent properties of fertility, advantages of situation, and other causes that had tended to raise the value during the interim. No difficulty either was ever raised with regard to assignments; the only matter insisted on was that the person to whom it was proposed to assign the lease should be capable of paying the rent. The leases also were free from all restrictive covenants in regard to stopping or the sale of produce. All that was expected was that the tenant would conform with the implied covenant to cultivate the land in a good and husbandlike manner; and it was to his interest to do so, because he felt secure in the renewal of his lease at the end of the subsisting term, or, if he desired to leave the district, he could sell his leasehold to the best advantage in consequence.

All these advantages have disappeared under the new Act, consequently, the tenants are anxious as to their future, and have decided to evoke the aid of parliament to afford them security for payment of unexhausted improvements should their efforts prove unsuccessful in securing a fresh lease in the manner prescribed under the present Act. This is only just and reasonable, considering that the estate is indebted for its improvement entirely to the labour and capital of the present lessees or their predecessors in title. It would be inequitable, therefore, at the expiration of the present leases, a number of which terminate in about three years, to offer these lands for public competition without consideration for those who have enhanced the value.<sup>93</sup>

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91. Ibid, p 2

92. Ibid, p 3

93. Mackay, 'Native Reserves in the Colony', 18 May 1993, AJHR, 1883, G-7, p 8

#### 4.10 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

In some respects, Mackay's discourse worked to reassure a number of European leaseholders whose concerns in some quarters had been partly responsible for the initial momentum to amend native reserves administration. What is remarkable, though, was the complete omission of Maori interests in, or long-term ownership of, the reserves. Responsibility in this sense was pledged between Crown and colonist, and Maori appear almost marginalised from the trust relationship. From such perspectives we derive a darker sense of the administrative relationship between the Crown, glimpsed through the actions of the Government, and Maori. On one level, Maori were invited to participate in a centralised system as individuals who would benefit. Yet, on another level, Maori interests were not necessarily considered as important as those of Europeans. This was not simply a primacy placed on European interests, but a form of institutional racism. Put simply, Maori rights to long-term ownership of their lands were prejudicially affected in favour of offering leaseholders many of the benefits of effective freehold. On the facing page is listed a statistical summary of Mackay's 1882 return.

#### 4.10 THE SOUTH ISLAND NATIVE RESERVES ACT 1883

The South Island Native Reserves Act 1883 followed in the wake of considerable political pressure from European lessees concerned over the issue of lessee improvements and high rents. As a result of the Act, provision was made for the incumbent lessee to reimburse the previous tenant for the value of any improvements made upon a reserve at the termination of a lease term (ss 5, 6, 10). Terms of lease were also adjusted. In the case of Greymouth reserves, all leases were confined to a term of 21 years, instead of 30 or 63 years. This shortening of the terms of lease generated significant consternation, and was partly the cause of the Commission of Inquiry into South Island West Coast Reserves 1885 (the Kenrick commission).

The commission was formed to inquire into the condition of European lessees on Maori reserves on the West Coast of the South Island. We might interpret such provision, and the seeming ignorance paid to Maori complaints (mentioned in parliamentary debates), as a preoccupation with the interests of European settlers to the detriment of the Maori 'beneficiaries'. Alan Ward has reported on the history of the commission in a historical overview for the Ngai Tahu claim (Wai 27). Ward comments that the commission reported in October 1885 and 'found broadly in favour of the tenants though it stopped short of recommending freeholding'.<sup>94</sup> The Kenrick commission concluded that both the 1882 and 1883 statutes detrimentally affected European settlers holding reserve leases on the West Coast.

Attempts to redress a perceived imbalance followed. The Westland and Nelson Native Reserves Act 1887 repealed the South Island Native Reserves Act 1883 (see

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94. Alan Ward, 'A Report on the Historical Evidence' (Wai 27 ROD, doc T1), p 317

Category	North Island	South Island	Total
Reserves let	51	20	71
Part let	11	6	17
Unlet	10	No number specified	10*
Maori occupation	5	24	29
Part occupied	7	2	9
Unusable	2	6	8
Sold	4	0	4
Part sold	1	1	2
Let by Maori	4	17	21
Granted to Maori	2	23	25
Part granted	6	0	6
Hostelries	3	0	3
Public works	0	3	3
Other <sup>†</sup>	24	3	27
	North Island	South Island	Total
Total number of individual reserves	143	148	291
Total area of reserve land	14,327a	39,435a	53,762a

\* There were no South Island reserves which were recorded as 'unlet'. Instead, a number were simply left blank.

<sup>†</sup> This heading includes the 24 Tauranga raupatu reserves created for educational endowment purposes in the North Island, as well as reserves allocated for fishing, timber, and a burial ground in the South Island.

Summary of Mackay's 1882 return. Source: 'Return of Native Reserves Subject to the Operation of "The Native Reserves Act, 1882"', AJHR, 1884, G-7, pp 5-8, refer appendix.

#### 4.10 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

s 26). The terms of lease were amended to a uniform 21 years. Above all, European lessees were granted the perpetual right of renewal of leases. Section 14 stated:

In all leases to be hereafter granted there shall be a condition for a new ascertainment of the rent at the expiry or surrender of every such lease, and that the then holder shall have the right of renewal for a like term upon the same conditions and covenants (including the right of renewal), subject only to the difference that the rent shall be the rent so ascertained as hereinbefore provided.

There were other pitfalls for Maori owners of reserves in the terms of the Westland and Nelson Native Reserves Act 1887. These included changes made to the valuation of improvements and the fixing of rents. All leases were to be set by competition at the auction. By auctioning leases, it was hoped that rental values might reflect current market values. At the same time, existing leaseholders were offered a perpetual right of renewal, on the basis that the rents remained in touch with current market valuations. However, when Poynton, the Public Trustee during a commission of inquiry in 1909, described the provision, he commented that:

the farce of submitting the lease to public competition was gone through. Just as there was a tacit agreement not to give a true value to the improvements, so it was an unexpressed resolve in the community not to bid at auction to give a fair rent.<sup>95</sup>

Further quoting Ward, the Tribunal concluded:

In practice this arrangement does not seem to have resulted in fair rents being set. Because such a high proportion of the Greymouth community were leaseholders and it was difficult to get real competition for the leases. Lessees were effectively enabled to set their own rent.<sup>96</sup>

And as result, Maori were disadvantaged in the process. Ward stated:

this Act brought about what has been described as a 'revolution' in the leasing arrangements on the West Coast. Although the Act did not adopt any of the specific alternatives put forward by either the Kenrick Commission or the Bunny Report, it was clearly passed in response to these investigations, both of which argued that the tenants had genuine grievances which required redress.<sup>97</sup>

The Tribunal described the effect of the perpetual right of renewal under the Act in the following terms: 'Effectively the land was removed from the control, use or occupancy of the Maori owners.'<sup>98</sup>

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95. J W Poynton to Native Minister, 3 November 1909, doc N-7, p 349, cited in Ward, 'Report', p 327

96. Waitangi Tribunal, *Ngai Tahu Report 1991*, vol 3, p 747, cited in Ward, 'Report', pp 326–327

97. Ward, 'Report', p 322

98. *Ngai Tahu Report 1991*, vol 3, p 746



#### 4.11 PERPETUAL LEASES AND 'LEASES IN PERPETUITY'

The decision to grant reserve leases in perpetuity should not be read as a sudden shift in administrative policy. As the Tribunal has recently identified, statutory provision for perpetual leases predates 1892 (in the case of the West Coast settlement reserves) and also the Nelson and Westland Reserves Act 1887:

[From the outset] the leases were capable of being made perpetual. Some research advice has assumed that the perpetually renewable leases dated from the 1892 Act. While the Act of 1881 [the West Coast Settlement Reserves Act] did not spell out the perpetual nature of the leases, the form of the leases was given in the fourth schedule of the 1883 regulations, and a basis for perpetuity was introduced in clause 5. We consider those leases were *ultra vires* the Act, but the leases were given out none the less and were capable of permanently denying possession to Maori owners.<sup>99</sup>

Perpetual leases were imagined as the best means available to appease the concerns of specifically European leaseholders over security of tenure. At the same time, leases with perpetual tenure established a regular basis of rent renewal. From one respect, the provision of perpetual leases overrode any potential benefit that may have been derived from more regular rent increases:

As one counsel explained the Act: 'There is a provision put in to tickle the natives – they may sit and amuse themselves fixing the rent – but the real power is in the hands of the Public Trustee.'<sup>100</sup>

The objectives of European administration were firmly directed at securing financial return as the benefit bestowed, not the continued occupation of land.

Maori response to the implementation of leases in perpetuity under the 1887 Act was mixed and, in some ways, ambivalent. During the early stages, ambivalence may have been the result of inadequate exposure to the implications of the legislation. Certainly, both Maori members Taiaroa and Parata protested that the Bill was foisted on Parliament late at night, without Maori translation. This may in part explain the absence of direct criticism of the perpetual leases.<sup>101</sup> Maori had petitioned against the earlier South Island Reserves Act 1885.<sup>102</sup> Yet, no petitions can be located in published sources relating to the 1887 Act and, in particular, perpetual leases. Despite some evidence from the Ngai Tahu hearing investigation

99. Waitangi Tribunal, *Taranaki Report*, p 262

100. McLean, NZLR, 1890, p 7, cited in Patricia Berwick, 'Trusteeship and Administration', 1996 (Wai 145 ROD, doc E10), p 33

101. For further explanation of the procedure of the Bill through the House refer to Ward, 'Report', pp 322-325.

102. References to the petitions can be found in the *Journals of the House of Representatives* such as the petition presented by H K Taiaroa against South Island Native Reserves Bill, 8 June 1887, JHR, sess 1, no 173, p xviii. Another example was the petition of Pamariki Paaka complaining of the provision of the South Island Native Reserves Bill, 3 November 1887, JHR, sess 2, no 142, p xxii. Inia Tuhuru petitioned 'that the management of their property should be left to themselves': 29 November, 1887, JHR, sess 2, no 411, p xxxi. Note, none of these reserves were reprinted in the AJHR.

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into the Westland reserves, it is difficult to draw conclusions of Maori perspectives towards perpetual leases, based on written sources.<sup>103</sup>

One possible explanation for this absence of expected criticism may be the relatively small numbers of Maori alive in those particular regions of the South Island, and their limited material requirements. For a relatively small Maori population, endowed with a relatively large area of reserves, the concern to retain land for occupation may have been less than the desire for financial security in the short-term. Perpetual leases were a much more complex issue under Maori customary law.

In 1892, John McKenzie, the Minister of Lands, introduced a land Bill which brought a change to the notion of perpetual leases of Crown lands. 'Perpetual lease' tenure before 1892 became 'lease in perpetuity'. There were significant changes for reserves administration. Former 'perpetual leases' granted lessees a perpetual right of renewal, but included market-based rent increases. Replacement leases in perpetuity were available for a term of 999 years and the annual rental rate was fixed at 4 percent of the capital value of the land.<sup>104</sup> One historian has described the shift:

This tenure was a compromise arrived at between the advocates of the freehold and those of a state leasehold; for, although in many respects the new tenure was almost equivalent to freehold, the Crown's right was preserved to annual collection of rent . . .<sup>105</sup>

The shift had significant repercussions for Maori owners. Maori were removed from the virtual ownership of reserve lands for a fixed period of 999 years. The rental market was monopolised and rents set at a fixed rate of 4 percent of the current land valuation. By removing rent allocations from the free market, rental returns to Maori became directly affected by inflation. It might be seen that the changed administration under the Land Act 1892 ceased to distinguish between ordinary categories of leased Crown land and trust reserves. And, in the process, the status of Maori as owners was further undermined.

In 1892, leases in perpetuity were extended to West Coast settlement reserves. Section 6 of the West Coast Settlement Reserves Act 1892 explained:

Reserves may be leased by the Public Trustee, at his discretion, with the right of perpetual renewal, in the manner and under and subject to the Provisions of this Act.

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103. 'Parata, the MHR for Southern Maori, spoke against provisions in the Bill including the clause giving lessees a perpetual right of renewal, but on both occasions he voted for the Bill. In December 1887 he helped make the Bill law despite the fact that he knew it to be contrary to the wishes of some of the owners of the affected land. Taiaroa maintained his opposition to the end, but as he expressed willingness to vote for an amended Bill containing the perpetual lease arrangements it does not seem that his opposition was directed at the perpetual leasing.': refer to Ward, 'Report', p 325.

104. Native Land Act 1892

105. W R Jourdain, *Land Legislation and Settlement in New Zealand*, Wellington, 1925, p 32

While Maori owners had sought the termination of leases, Pakeha settlers declared the need to 'secure' terms of lease. Ballance saw a compromise in the granting of perpetual leases. He later stated:

The want of authority to grant a tenancy longer than twenty-one years, and to allow compensation for improvements, rendered impracticable the leasing, with any immediate pecuniary benefit to the Native owners, [of] the lands which they themselves could neither use nor occupy, and from which they derived no profit.<sup>106</sup>

For Maori, this 'compromise' represented a mere with a double edge.

Closest to Ballance's heart was the 'cause of European settlement':

Nothing is more at the heart of the Government, than to see this question settled once and for all, as we think it is injurious to the cause of settlement, injurious to the settlers, and injurious to the natives that it should remain unsettled.<sup>107</sup>

It is possible to compare Maori responses to the 1887 and 1892 Acts in order to ascertain whether Maori perceived problems with the introduction of perpetual leases and leases in perpetuity. There are two reports which examine the issue of perpetually renewable leases.<sup>108</sup> Both comment that the 1892 Act was unopposed over the issue of leases in perpetuity.

As was the case with the 1887 Act, there appear to have been no written objections from Maori members of Parliament to the implementation of perpetual leases. We need to question this absence on the ground that it might be expected that Maori would not support such a measure. Further, while we are left to ask why Maori did not appear to object specifically to perpetual leases, we must be careful not to assume that an absence of written criticism implied assent. Commentators have taken different views of the issue. Don Loveridge, in a report for the Crown Law Office, accentuated the difference of opinion among Maori:

Generally speaking, the Bill met with a mixed, but not entirely hostile reception. Three Maori members spoke at this time. Although all thought the Bill had its shortcomings, none opposed it in total. The first to speak, appropriately enough, was Hoani Taipua, the Member for Western Maori. He decried the role of the Public Trustee in the whole affair, and called for an end 'to the experiment of placing these lands' in his hands. He then stated that 'the present position is this: Some Natives approve of the Government's proposal . . . [but] I hold in my hand petitions signed by about a hundred Natives. I have just received these petitions, and they state that they are not satisfied with the present Bill. These petitions are evidence that there is considerable difference of opinion among the Natives.'<sup>109</sup>

106. John Ballance, AJHR, 1896, H-11, p 15, cited in D Loveridge, 'The Adoption of Perpetually-Renewable Leases for Maori Reserved Lands, 1887-1896' (Wai 145 ROD, doc C2) p 45

107. John Ballance, AJHR, 1892, G-2, p 5, cited in Loveridge, p 46

108. Refer Loveridge; Ben White, 'Supplementary Report on the West Coast Settlement Reserves', (Wai 145 ROD, doc M20.

109. Hoani Taipua, 'West Coast Settlement Reserves Bill', NZPD, 1892, vol 75, p3 69, passage in quotations cited in Loveridge, pp 51-52

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Although there was a degree of difference among Maori members of Parliament, Loveridge makes the important point that all Maori thought there were problems with the Act. Indeed, the central concern was the participation of the Public Trustee. Taipua, for example, complained of the dubious nature of previous Public Trustee administration:

It is true that the late Public Trustee has been removed, but the regulations framed by his office are still in force. But I think that the experiment of placing these lands in the hands of the Public Trustee has been tried long enough, and that we should devise some other method of administering them. I think we should make a new departure altogether.<sup>110</sup>

The member for Southern Maori, Tame Parata, took another tack. Instead of simply attacking the imposition of perpetual leases, he sought to highlight Maori industry and ability in agriculture. At the same time as Pakeha politicians preached 'progress' and the opening of large estates to smaller farmers, Parata skilfully appealed that Maori should regain access to their own lands in order to commence farming:

The Maori Trustee ought to intervene at the termination of leases, to offer lands to owners for cultivation. I think this is only right and just, and no exception can be taken to it: that wherever a lease falls in, and a certain block reverts to the control of the Public Trustee, before reletting this land he should satisfy himself whether or not the Natives are capable of cultivating it for their own benefit; and, if he ascertains that they are capable of doing that, and will do so, then he should hand over the whole, or a portion, to the Natives for that purpose – either to a few or a large number.<sup>111</sup>

Parata's stance was set firmly against perpetual leases. In Maori eyes, the implementation of perpetual leases was intimately connected with the larger intervention of the Public Trustee in the management of reserves. The issue was about who had authority to make decisions for reserves. Regardless of whether reserves were under perpetual lease or not, the Public Trustee retained sole authority over them. This formed the major concern for Maori in Parliament protesting against the implementation of reserves legislation in the 1880s and 1890s. Leases in perpetuity must be considered as one part of the larger concerns expressed at the time.

The 1892 Bill drew further petitions. Eparaima Te Mutu Kapa, the member for Northern Maori, referred to a number of petitions against the Bill which had been received.<sup>112</sup> More specifically, the member for New Plymouth mentioned a petition from Ngati Rahiri in Taranaki, that sought to withdraw their lands from the administration of the Public Trustee.<sup>113</sup> For Maori owners, the measure came out of

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110. Ibid, p 368

111. Parata, 'West Coast Settlement Reserves Bill', 1892, NZPD, vol 57, p 373

112. Eparaima Te Mutu Kapa, NZPD, 1892, vol 57, p 371

113. E M Smith, NZPD, 1892, vol 77, pp 194-196, cited in Loveridge, p 55

the blue in 1887 and 1892. Finally in 1899, Taiaroa spoke out against the provisions of the 1887 Act and its destructive effect on reserves:

At the time that the Westland and Nelson Native Reserves Act was being passed in this council . . . I pointed out that the Natives would suffer under the provisions of that Act, and we have found since that they have suffered, and I personally have suffered great loss by the unjust provisions enacted by that law.<sup>114</sup>

Neither the petitions nor Taiaroa's speech made direct mention of the provision of leases in perpetuity as divorced from the overall statute.

Loveridge's larger argument gauged Maori objection as lacking specific concerns. In light of this, he concluded that West Coast settlement reserves might be considered a suitable compromise. It seems difficult to sustain this line of argument in retrospect. The lease in perpetuity of theoretically 'inalienable reserves' did not represent a balanced compromise.

Conclusions reached in the *Taranaki Report* also contrast with Loveridge's findings. The Tribunal noted the number of petitions received from Maori protesting against the terms of the West Coast Settlements Act 1892.<sup>115</sup> Quoting from the royal commission into West Coast settlement reserves in 1912, the Tribunal emphasised the position of a union formed to safeguard those reserves in Taranaki not yet under perpetual lease.<sup>116</sup> This 'union', led by Dr Maui Pomare, visited Parliament in 1909 to protest against the continuing effect of perpetual leases:

Further, that iniquitous and cruel Act [the West Coast Settlement Act 1892] vested our lands in the Public Trustee for ever as if he were the absolute owner thereof in spite of the Crown grants solemnly given to us by Her late Majesty. It empowered the Public Trustee to arbitrarily lease our lands for all time, regardless of whether we have sufficient for our maintenance or not . . .<sup>117</sup>

When examined by the commission, Dr Pomare provided further evidence of Maori resistance to perpetual leases:

Now suppose the Maoris had been told in 1881 that, except for the lands which were reserved and made absolutely inalienable, all lands which were to be leased were to be leased for all time, do you think there would have been peace? – If that had been told to our people they would have been fighting still.<sup>118</sup>

114. Taiaroa, 'Native Reserves Amendment Act', 13 October 1899, NZPD, 1899, p 581

115. *Taranaki Report*, pp 262-265

116. Among the terms of investigation, the commission sought to investigate Maori claims against perpetual leases: 'And whereas the Native owners of the lands included in the said leases allege that such lands will be required for their own use and occupation on the expiration of the said leases, and have requested that the desire of the present lessees to obtain permission to surrender their leases and obtain fresh leases under the West Coast Settlement Reserves Act, 1892, shall not be granted': 'Report on West Coast Settlement Reserves (North Island) Commission', 6 April 1912, AJHR, 1912, G-2, p 1.

117. *Ibid*, p 108

118. *Ibid*, p 105, also cited in *Taranaki Report*, p 264

#### 4.12 TRUST ADMINISTRATION OF MAORI RESERVES, 1840-1913

These examples demonstrate resolute opposition to the continued imposition of perpetual leases in the case of the West Coast settlement reserves.

#### 4.12 ASSESSMENTS

In 1890, a royal commission of inquiry investigated the overall administration of the Public Trust Office. While few of the recommendations related specifically to the trust's management of Maori reserve lands, the general findings were significant and bear repeating:

Your Commissioners have gone most carefully into this portion of their duties, and it is with extreme regret they feel compelled to state that, so far as the Head Office is concerned, there has been an absolute want of any proper or regular system up to the present time in the conduct of its business.<sup>119</sup>

Particular complaints were levelled at bookkeeping, overcharges, and the absorption of any unclaimed funds:

In dealing with the charges made in reference to business done by the Public Trust Office, your Commissioners have to point out that these have been excessive. Up to the end of the year 1889, ten percent seems to have been the charge made for the collection of rents, and where an agent was employed, he was allowed one half, or equal to five percent . . . Your Commissioners believe that, in the interests of the public, the charges can be very much modified and lessened in such a manner as to increase the business of the Public Trust Officer.<sup>120</sup>

These strong criticisms rocked the boat and Hammerton was duly replaced as Public Trustee. The system of appointment was also changed, the Public Trustee no longer being appointed by the Governor, instead being made a public servant.

Another commission in 1890 on West Coast settlement reserves, the Stevens committee, concluded:

In short, the interest of the Natives in these estates has been reduced to an annuity computed at intervals of thirty years on the unimproved value of the lands.<sup>121</sup>

A further West Coast settlement reserves commission followed in 1891. The Rees commission added further recommendations, including terminating leases. But as the Tribunal has identified, instead of 'terminating leases', the resulting West Coast Settlement Reserves Act 1892 provided for perpetually renewable leases.<sup>122</sup>

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119. 'Report of the Commissioners on the Condition and Working of the Public Trust Office of New Zealand', AJHR, 1891, H-3, vol 3, p v

120. *Ibid*, p vii

121. 'Report and Evidence of the Joint Committee upon the West Coast Settlement Reserves', AJHR, 1890, I-12, p iii

122. *Taranaki Report*, p 262

**4.13 LIBERAL ADMINISTRATION OF NATIVE RESERVES**

'Leases in perpetuity' were extended to all trust reserves in 1895. Loveridge has characterised post-1892 developments in reserves administration as driven by the imagined 'success' of the West Coast Settlement Reserves Act 1892. He quoted Colonial Treasurer Joseph Ward as trumpeting:

In the 'West Coast Settlement Reserves Act 1892', we have a measure which has tended to solve one of the greatest of our Native difficulties, a problem of which hardly two years ago the solution seemed impossible.<sup>123</sup>

Flushed with 'success', John Ballance immediately introduced a Native Reserves Administration Bill in 1893, designed to extend the provision of leases in perpetuity to all administered reserves. After Ballance's death in 1893, the Bill stalled.<sup>124</sup>

In 1895, Richard Seddon, an earlier critic of the terms of the Native Reserves Act 1882, introduced an amendment Bill. Seddon's Bill ushered in two major changes to the form of administration of outstanding trust reserves. Leases in perpetuity were extended to tenants of all trust reserves upon application.<sup>125</sup> Significantly, the involvement of the Native Land Court, earlier extended under the 1882 Act, was severely restrained.

Under section 7(5) of the Native Reserves Amendment Act 1895, all remaining Maori reserves administered by the Public Trustee were able to be transferred to leases in perpetuity:

The new lease shall be for twenty-one years, and shall be renewable in same manner, and subject as far as practicable to the same conditions, as provided by 'The West Coast Settlement Reserves Act 1892' . . .

There was a pronounced connection to the 'successful model' of the West Coast settlement reserves legislation. It was perhaps partly for this reason that little debate surrounded the extension of lease in perpetuity under the 1895 amendment Act, and no Maori members spoke on the Bill.<sup>126</sup>

In analysing the changes made to the prescribed role of the Native Land Court under the 1895 Act, we might look to view the amendments in a long-term context. The involvement of the Native Land Court in reserves administration fluctuated greatly. This was most discernible in the prescribed shift from the Native Reserves Act 1882 to the Native Reserves Amendment Act 1895. Section 3(1) restricted the Native Land Court's involvement in reserves administration. Previously, the court was involved in the determination of special conditions affecting reserves, including the application and removal of restrictions on the alienation of reserves. In contrast with earlier roles, the court was permitted only to determine beneficial

123. Joseph Ward, 'Native Reserves Administration Bill', 4 July 1893, NZPD, 1893, vol 79, p 204

124. For further information on the passage and terms of the 1893 Bill refer to Loveridge, pp 61-69.

125. Section 7(2) of the Native Reserves Amendment Act 1895

126. More attention was paid to the timetabling of parliamentary sessions. Members commented that it was impossible to read and consider bills with due attention: for example, Captain Russell, 22 October 1895, NZPD, 1895, p 543.

#### 4.13.1 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

owners of the reserves. Section 3(2) states: 'Before the Native Land Court makes any order under this section it shall obtain the consent of the Public Trustee thereto.'

There was some debate over an amendment to section 6: 'Public Trustee may grant new leases of certain lands now leased.' Robert Stout sought to add 'with the consent of the Native owners'. However, the proposed amendment was thrown out by a majority of one.<sup>127</sup> This debate demonstrates that the issue of direct Maori involvement in the management of their own lands was still hotly contested.

Seddon had been cautious in describing the connection between the Public Trustee and the Government. In 1894, when issue was raised over the status of insurance arrangements under the West Coast Settlement Reserves Act 1892, Seddon outlined a 'liberal' view of reserves administration:

The principle of the 'West Coast Settlements Act, 1892', by which these reserves were vested in the Public Trustee, was an administration in which he must exercise his discretion in the interest of beneficiaries; and the Governor would not have power to make any regulation prescribing what were to be the obligations of the Public Trustee in the performance of the duties of his administration under that Act. The Governor might make a regulation for the internal conduct of the Public Trust Office, but he could not consistently with the principle of the Act be recommended to make . . . a regulation to which the Public Trustee in the exercise of his discretion should object, or which he should regard as not justifiable by the interests of the trust. Such a regulation would probably be *ultra vires*.<sup>128</sup>

#### 4.13.1 The Public Trust Office Consolidation Act 1894

In 1894, an attempt was made through legislation to tailor administrative processes to the multifarious tasks facing the Public Trust Office. Significant changes were wrought on the 1882 legislation. Gone from the composition of the Public Trust Office board was any Maori input. Bryce's token efforts had disappeared. Section 9 of the Public Trust Office Consolidation Act 1894 detailed the composition of the board as the Colonial Treasurer, the Native Minister, the Solicitor General, the Government Insurance Commissioner, the Commissioner of Taxes, the Surveyor-General, and the Public Trustee. The role of the board remained largely unchanged. Administrative arrangements were tightened. A series of regulations were produced in the *Appendices to the Journals of the House of Representatives*. Administrative charges were standardised. At 7½ percent, Maori trust reserves attracted the highest cost of all estates administered by the Public Trustee in 1905. However, the provisions did not affect the administration of Maori reserves directly.

#### 4.13.2 The Native Reserves Amendment Act 1896

Lingering uncertainty surrounding the position of certain reserves in relation to the Native Reserves Act 1882, including the tenths, led to the implementation of further

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127. 'Native Reserves Bill', 24 October 1895, NZPD, 1895, vol 91, p 608

128. Richard Seddon, 'West Coast Settlement Reserves', 5 July 1895, NZPD, 1895, p 388



legislation.<sup>129</sup> An 1896 amendment Bill sought to clarify the administrative relationship of the former New Zealand Company tenths reserves under the 1882 Act and the administration of the Public Trustee. The Act was passed and included schedules of all tenths reserves in Wellington and Nelson.

Tenths reserves were formally vested in the Public Trustee. Specific provisions for the application of the rents were also outlined. From 31 March 1896, three-quarters of all accumulated rents and proceeds from reserved lands were distributed to Maori beneficiaries, according to relative shares, as determined by the Native Land Court. After that date:

A part not exceeding one-half thereof shall be annually or from time to time distributed by the Public Trustee amongst the same beneficiaries, and in the same relative shares . . .

The application of the remaining half was left to the discretion of the Public Trustee.<sup>130</sup>

In the case of a particular Ngati Toa burial reserve, the terms proved far more intrusive. Part 2 of the Act removed the burial reserve known as Taupo 2 from the Maori 'owner' Wi Parata Kakakura, and compulsorily vested the entire area in the Public Trustee. This 'burial reserve' was mentioned by Mackay in his 1882 schedule and is also described in Schedule 2 of the 1896 Act. The reserve comprised 10 acres 2 roods 24 perches. The Public Trustee was empowered by the terms of the Act to retain one acre as the designated burial area and to lease out the remainder. In order to achieve this arrangement, section 7 granted the trustee power to authorise the disinterment of all bodies buried across the 10 acres and the reburial inside the one-acre patch. Maori were shunted into progressively smaller reservations in life and even in death. More galling still was the direction pursuant to section 8 that proceeds from the lease would fund the removal of Maori tupapaku, followed by the 'beautification' of the one acre in the 'European style', complete with monument.

Although there was no recorded dissent in parliamentary debate, we ought to consider the implications of the forcible imposition represented by the terms of the Act. In many ways, this extreme example signals the extent of control exercised by the Public Trustee and the blithe ignorance of Maori cultural values.

### 4.13.3 Impositions

During the Liberal period, Maori beneficial owners continued to be paid a regular annuity. Other administrative influences intervened to lower the amount received by Maori. Attempts in the 1880s and 1890s to lower and fix rental levels charged to European lessees had an increasingly sharp impact on the amount of annuity received by Maori. By denying the influence of free-market forces, Maori annuities

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129. Preamble to the Native Reserves Amendment Act 1896

130. Section 4 of the Native Reserves Amendment Act 1896

#### 4.14 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

were hit hard by inflation, and decreased over time. Valuations were another administrative influence in the determination of rental levels and demonstrated the potential for manipulation in isolated situations. In the same way land valuations are used to determine rates, valuations were relied upon, under the 1896 Act, as a base for setting rental levels. An example of manipulation of valuations has been highlighted in Nelson in 1900. Convinced the reserves were significantly undervalued, the district agent for Nelson made a number of attempts to increase the valuations and therefore the rents. To complete his assessment, he employed an independent valuer. His actions were immediately halted by the intervention of the Public Trustee. The trustee's response read:

All that is required under the provisions of the Act is for you, as my agent, to agree with the lessee to the upset rental for a new lease and the valuation improvements.<sup>131</sup>

Given the extent of advantages directed toward European lessees of Maori reserve lands, we should question whether Maori were able to lease their own lands. In this way, it might have been possible for Maori to pay rent to themselves through the Public Trustee and recoup some of the cost at least. However, Maori continued to be denied the right to lease their own trust reserve lands. As the Tribunal uncovered in the case of the West Coast settlement leases, Maori were blocked from leasing their own lands. The 1912 commission into the Public Trustee's administration of the West Coast settlement reserves made the following observation: 'In the Trustee's view, a Maori was not as a rule . . . qualified to be a successful occupant of a highly improved farm.'<sup>132</sup> Maori possessed only short-term licences to occupy, with no security against which to borrow. In a continuation of earlier administrative policy, Maori were denied the access and terms of leasehold over trust reserve lands that were enjoyed by Pakeha settlers.

#### 4.14 PETITIONS

Petitions continued to be received from Maori protesting against the general administration of the Public Trustee. From 1900 to 1912, Maori owners petitioned Parliament every year against the actions of the Public Trustee. Apparently, the only surviving record of these petitions remains in the schedule of petitions in the *Journals of the House of Representatives*. Many of these were not reported on by the Native Affairs Committee.<sup>133</sup> Complaints varied. Some Maori wanted their lands removed from the administration of the Public Trustee. On 8 November 1907, Epanaia Whaanga and 22 others petitioned that 'the Waikokopu No 3 and

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131. Public Trustee to District Agent, Nelson, 10 July 1900, MA MT 1, 27/2, cited in Kieran Schmidt, 'Maori Trustee 1913-56', 1996, p 14. This example demonstrates the value in pursuing close primary analysis in individual cases. Note there is a chronological error in Schmidt's text.

132. 'Report of the West Coast Settlement Reserves (North Island) Commission', 24 June 1912, AJHR, 1912, G-2, pp 6-9, cited in *Taranaki Report*, p 265

133. Refer to 'Schedules of Petitions', JHR, 1900-12

Opoutama blocks be taken out of the control of the Public Trustee'.<sup>134</sup> Other petitions requested that a royal commission be instituted to inquire into the administration of particular reserves.<sup>135</sup> It is impossible to accurately estimate the number of petitions Maori submitted, owing to the survival of so few. Petitions received listed in the *Appendices to the Journals of the House of Representatives* amounted to no more than two or three in any one year, but these lists are imperfect and cannot be relied upon.<sup>136</sup> The number of petitions against the wider trust administration of reserves was comparatively less than the number of complaints against the West Coast settlement reserves Acts.

#### 4.15 PUBLIC TRUSTEE ADMINISTRATION, 1900-13

Despite the implementation of the Liberals' new land administration scheme in 1900, the trust administration of Maori reserves continued effectively unaltered through to 1912. Variations resulted largely from the practical involvement of individual Public Trustees, rather than the Government. Three succeeding trustees were appointed from 1890 through to 1910. In the wake of the 1890 royal commission, J K Warburton assumed leadership. After an appointment as Auditor-General in 1896, he was succeeded by J C Martin from 1896 to 1900. Finally, Joseph William Poynton administered trust reserves for the first decade of the twentieth century.

##### 4.15.1 Royal commission into Public Trust Office, 1913

In 1912, a public service commission investigated the workings of the Public Trust Office. The subsequent report criticised the office's administration in general terms. In response, the Public Trustee wrote to the Minister in charge of the Public Trust Office, Mr Herdman, claiming that the findings were unsubstantiated by evidence.<sup>137</sup> The trustee's concerns over the first commission were echoed in Parliament and a second commission of inquiry was proposed.<sup>138</sup>

Robert Stout appointed a second commission of inquiry under the Commissions of Inquiry Act 1908.<sup>139</sup> The commission consisted of two businessmen, Alexander

134. Petition of Epanaia Whaanga, no 853, 8 November 1907, 'Schedule of Petitions', JHR, 1907, p xv

135. Petition of Hene Maatene (and 42 others), no 791, 14 September 1904, 'Schedule of Petitions', JHR, 1907, p xxxiv

136. It must also be born in mind that there is a high likelihood of missing certain petitions owing to the terse descriptions reproduced in the 'Schedule of Petitions'. If the first sentence of the petition does not mention the specific complaint against the Public Trustee, it is impossible to check whether the rest of the petition may have applied to Public Trustee administration. Hence, the number referred to above must be considered a bare minimum.

137. Fred Fitchett (Public Trustee) to Mr Herdman, 13 September 1912, NZPD, vol 160, 1912, p 257

138. Mr Forbes, 19 September 1912, NZPD, vol 160, 1912, p 258; parliamentary debate on the issue included pp 257-263

139. Public Trust Office Commission, 16 December 1912, 7 February 1913, and 28 March 1913, AJHR, 1913, B-9A, pp 1-2

#### 4.15.1 TRUST ADMINISTRATION OF MAORI RESERVES, 1840-1913

Macintosh of Wellington and John Hosking of Dunedin, and sat during January and February 1913. Among its terms of investigation, the commission was to ascertain:

whether the affairs of members of the Native race intrusted to the Public Trustee are carefully and satisfactorily managed, to report whether Native business managed by the Public Trustee should be separated from the Public Trust Office and managed by a Board or a Trustee specially appointed for the purpose.<sup>140</sup>

We are left with the impression that the commissioners were concerned to remove administrative tasks from a centralised and over-burdened Public Trust Office. Herdman commented:

An enormous burden at the present time rests on the shoulders of that officer [Public Trustee]. A tremendous responsibility has to be undertaken by him, and I am of the opinion that some alteration in the Public Trust Office Act will have to be made so as to provide the Public Trustee with the assistance of some business men.<sup>141</sup>

Furthermore, he said: 'It is obvious that with the increase of business the Public Trustee could not be expected to bring his own mind to bear upon every question that arose.'<sup>142</sup> The commission's report contrasted the ever-increasing workload against the limited numbers of head office staff and resources available.

Evidence of Public Trust Office overcommitment was seen in the absence of officers to act at a district level. Attempts were made to rectify the imbalance through legislation in 1912, with the appointment of four deputy trustees to different areas.<sup>143</sup> But the Public Trust Office Amendment Bill 1912 affected little else as far as native reserves administration was concerned. The commission's inquiry also highlighted the absence of a Commissioner of Native Reserves since the departure of Mackay in 1884.

Overall, the 1913 commission's investigation of the accounts and practicalities of administration found no evidence of mismanagement, nor perceived problems. It contrasted significantly with those of the earlier commissions, such as that of 1890:

As regards these [Maori] reserves the functions of the Public Trustee substantially consist in collecting and distributing the rents of the lands leased, in keeping a record of the changes of ownership, and in consenting to dealings by the tenants. For this work a commission of 7½ per cent is deducted from the Native. There has been no suggestion that this work is not well and carefully done, and we found no evidence to the contrary.<sup>144</sup>

In the commission's report, one possible source of difficulty for the continuing administration of native reserves by the Public Trustee was the varied nature of

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140. 'Public Trust Office Commission', AJHR, 1913, B-9A, p 4

141. Herdman, 19 September 1912, NZPD, vol 160, 1912, p 263

142. 'Public Trust Office Commission', AJHR, 1913, B-9A, p 6

143. Public Trust Office Amendment Bill 1912

144. 'Public Trust Office Commission', AJHR, 1913, B-9A, p 16

trusts and reserves. The commission highlighted the administration of the New Zealand Company tenths:

a part not exceeding one half of the rents and proceeds is paid to the beneficiaries. The balance is retained to form benefit funds, one for the North Island and one for the South. These funds and their accumulations are to be applied as the Public Trustee in his discretion thinks fit 'towards the physical, social, moral and pecuniary benefit of natives individually, and the relief of such of them as are poor or distressed.'

Despite an apparently positive record of administration, the commission described the New Zealand Company tenths reserves as an example of 'one of those indefinite trusts that serve to create irritation'.<sup>145</sup>

Similarly, the commission seemed bothered by the localised application of reserve funds. The functions of the Public Trustee in the distribution of revenues from the reserves (where they would then be applied at his discretion) were discharged through local agents, who reported or made recommendations upon applications received. Through inquiries, the trustee endeavoured to assure himself of the propriety of any suggested expenditure, and how far it would benefit the Maori. The commission found that: 'No general or settled scheme or plan has been devised with regard to the application of these [rental] funds.' On the whole, we are left with the impression that the commission's criticisms reflected less on the performance of the trustee, and more on the preoccupations of the commission with what it perceived as an efficient means of operation.

For a model of administration, the commission turned to the West Coast settlement reserves:

In like manner, as the proper disposal of the unleased areas of the West Coast Settlement Reserves involves the policy of how best to deal with the future of the Native, so does the application of these funds; and for similar reasons to those given in the case of the West Coast Reserves, we think these reserves and funds should be brought more into touch with the Native Department.<sup>146</sup>

One key to the commission's perception of public trust administration of native reserves was a financial analysis. A cost analysis demonstrated that Public Trust administration operated at a loss: 'It is also urged that the Native business has not paid.'<sup>147</sup> Based on the commission's accounting, remuneration from the administration of native reserves amounted to £3370, but this figure was outstripped by annual costs estimated at £3480.<sup>148</sup> Ironically, the commission acknowledged that the situation would be improved once the West Coast settlement reserves rents had been reassessed:

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145. *Ibid*, p 17

146. *Ibid*

147. *Ibid*, p 18

148. *Ibid*

#### 4.15.1 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

On this estimate the business is done at a loss, but with revaluation of the rents on the West Coast the commission to be derived therefrom in the near future will, it is estimated, on the reduced basis of 5 per cent per annum, which the Trustee now proposes, reach £4000 per annum, instead of something over £2000 per annum as at present. This should afford a handsome profit to the Trust Office, which should compensate it to some extent, at all events, for unremunerative work done in the past.<sup>149</sup>

The commission concluded: 'Nevertheless the Public Trustee and those members of the office staff who have given evidence to us hold the view that the office should be relieved of Native work.' Their reasons included both financial considerations and the interests of Maori:

The total removal of the administration from the Public Trust Office would help to relieve the over-taxed resources of the office, and it would certainly be impolitic at present to increase the personal duties of the Public Trustee by involving him in schemes for the betterment of the Natives if such are to be initiated . . .<sup>150</sup>

Significantly, the commission recommended that Maori input into administration be increased:

We are of opinion that in the administration of these reserves the Native point of view should be adequately represented, and that it should be in the interests of the Natives if by means of the revenues from these reserves – their own property – they could be assisted to better themselves as agriculturalists and otherwise.

Although Maori interests were emphasised, the proposed alternative was far from what many Maori may have hoped:

To this end, we are of the opinion that the whole of the Native reserves and their administration should be vested in an independent body. We therefore suggest that a Native Reserves Trustee should be created, with a Board consisting of himself, the Under-secretary of Native Affairs (or some other expert in Native affairs), the Under secretary of Lands, and two other members appointed by the Governor, of whom one should be a Native and the other a European who has had experience in agricultural matters.<sup>151</sup>

In its final recommendation, the commission sought the involvement of an 'independent body'. More than anything else, this comment made an implied assessment of the Public Trust Office as a body inextricably linked to the Government and incapable of neutrality.

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149. Ibid

150. Ibid

151. Ibid, p 18

#### 4.16 CONCLUSIONS

Under the Native Reserves Act 1882, the original intention of the transferral of administration from Native Department commissioners to the Public Trustee was to vest native reserves administration in an 'independent body'. Yet the recommendation of the 1913 commission that the Public Trustee did not represent an effective independent body forces us to revisit the original 1882 decision, and to question the extent to which the Public Trust Office operated independently from political influence. We must extend the analysis further to examine how this relationship impacted upon the administration of native reserves. The degree of political influence in the administration of the Public Trustee is debatable. Governed by statute, the Public Trust Office was forged too close to governmental influences. However, further unrelenting political pressure from European lessees to amend reserves legislation, and the string of subsequent amendments, only exacerbated the confusion.

As with earlier chapters in this report, an evaluation of Public Trust administration, in particular the implementation of perpetual leases, requires a balanced view of dual considerations. Under Public Trust administration, Maori continued to be perceived as nominal 'owners' of reserve lands; it was believed that they benefited the greatest from the provision of an annuity. Indeed, perpetual leases guaranteed Maori an annuity. The principal rationale for perpetual leases, in Loveridge's view:

seems to have been that, unless ironclad security of tenure was offered to lessees, the income received on behalf of the owners would be much lower than the value of the property would otherwise generate.<sup>152</sup>

Annuities secured to Maori were further affected. We must, however, set this view against a backdrop of the cessation of market rents and the effective lowering of rents against inflation which occurred. In theory, an open market might have worked to benefit Maori returns; however, the relationship was further compromised by legislative interference. A security of tenure and rental levels was offered to Europeans in perpetuity, which compromised the pecuniary benefit which may originally have been designed. The adoption of perpetually renewable reserves demonstrated that the Public Trustee could not provide independent management free from political winds.<sup>153</sup>

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152. Loveridge, p 76

153. A strong illustration of this is seen in the case of the Nelson tenths reserves brought under the administration of the Public Trustee under the Native Reserves Amendment Act 1896. In 1900, the district agent for Nelson, convinced the reserves were significantly undervalued, made a number of attempts to increase the valuations and therefore the rentals. To complete his assessment, he employed an independent valuer. His energies were immediately halted by the intervention of the Public Trustee. The Trustee's response read 'All that is required under the provisions of the Act is for you, as my agent, to agree with the lessee to the upset rental for a new lease and the valuation improvements': Public Trustee to District Agent Nelson, 10 July 1900, MA MT 1, 27/2, cited in Kieran Schmidt, 'Maori Trustee 1913–1953', 1996, p 14. Note there is a minor chronological error in Schmidt's text.

#### 4.16 TRUST ADMINISTRATION OF MAORI RESERVES, 1840–1913

There were a number of similarities between Public Trustee administration of the West Coast settlement reserves and the administration of other trust reserves. Loveridge also remarked on the connection:

the solution adopted for the West Coast Settlement Reserves soon came to be seen as an appropriate model for all Maori reserved lands. One might go so far as to suggest that the 1892 Act was seen as a 'trial run' for a mode of Maori Reserved Lands administration which was already being considered [see earlier in 1887].<sup>154</sup>

In light of these connections, we might share some of the general conclusions of the Taranaki Tribunal on the effect of Public Trustee administration of West Coast settlement reserves.<sup>155</sup>

This leads us to question the involvement of Maori in the management of their reserve lands, and their status in light of the legislation. Although limited provision was made for a single Maori to be appointed to the Public Trustee board of management under the Native Reserves Act 1882, no evidence was found to indicate anyone had ever been granted the limited opportunity.<sup>156</sup> Maori remained marginalised from all involvement in the administration of their reserve lands. Legislation continued to perceive Maori solely as beneficiaries. This position was based on firmly ingrained assumptions which further directed the course of administration. European administration of reserves, and the provision of an annuity, affirmed Maori status as beneficiary, not landholder. Placed in a supplicant position, Maori members protested rigorously. Some, such as Hone Heke Rankin, introduced new Bills aimed at returning the administration of Maori lands to Maori.<sup>157</sup> Others continued to petition Parliament.

Overall, the 1882 Act does not represent a major shift in administration. Public Trust Office legislation and administration bore strong continuities with the preceding course of trust reserves administration. Moreover, the step taken by the Liberal Government to implement perpetual leases might be viewed as a culmination of longer-term direction in trust reserves administration.

In short, we must be flexible enough to measure the beneficial intention of the legislators and the raw consequence of effective alienation by lease on Maori 'owners'.

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154. Don Loveridge, p 77

155. *Taranaki Report*, pp 274–276

156. 'Commission of Inquiry', AJHR, 1913, B-9A, p 17. Indeed, as the 1913 commission of inquiry criticised, the board itself met infrequently, and could hardly be deemed to have exercised a positive voice over the direction of administration.

157. Heke's defeated Native Rights Bill 1894, refer Spiller (ed), *A New Zealand Legal History*, 1995, p 155



## CHAPTER 5

# CONCLUSIONS

The present report attempts a balanced appraisal of the nature and intent of the trust administration of Maori reserves between 1840 and 1913. A trust relationship assumes a fiduciary duty between the trustee and its wards; in this case, the Maori owners of reserve lands. It also implies a relationship of dependence; that is, the implementation of trust administration was based firmly on the assumption that Maori were incapable of managing their own future reserves in the face of the pressures of colonisation. Moreover, fiduciary duty as implicit in trust administration acted as a doubled-edge sword. It served to deny Maori rights under article 2 of the Treaty of Waitangi, and in the absence of authority over their own reserve lands, Maori reserve owners came to rely upon European administration. At the same time, trust administration embodied a solemn duty to protect Maori reserves where Maori could not.<sup>1</sup>

The concept of trust administration of Maori reserves originated from New Zealand Company plans. As the New Zealand Company administration was gradually overlaid by Colonial Government intervention, the Government adopted the company's model of administration. The company's plan of allocating leasable reserves to provide a revenue for Maori beneficiaries formed the basis for all subsequent trust administration of reserves.

During the earliest period of administration between 1840 and 1856, only New Zealand Company tenths reserves were administered. Tenths reserves were applied in company settlement areas at New Plymouth, Wellington, and Nelson. Yet, from the outset, local factors intervened and New Plymouth tenths reserves were omitted from administration. This was one of the earliest examples of inconsistencies in administration.

Throughout the nineteenth century, there was a degree of inconsistency in the application of trust administration across different areas.<sup>2</sup> Variations are in part explainable by the particular nature of land acquisition and the creation of 'reserves' in each area. As noted elsewhere, it is somewhat difficult to accurately define what constitutes a reserve.<sup>3</sup> In the absence of stable categories of reserve, any

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1. Perhaps it might be commented that administrators were (paradoxically) provided with the authority to alienated trust reserves in particular situations. However, a study of the removal of restrictions on alienation is part of the Murray report, and therefore, readers are referred to that report for a fuller account.
  2. See, for example, the apparent absence of trust administration of Auckland reserves prior to 1865.
  3. Refer, Jenny Murray, *Crown Policy on Maori Reserved Lands, 1840 to 1865, and Lands Restricted from Alienation, 1865 to 1900*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), February 1996

study of reserves administration must logically proceed on an individual reserve-by-reserve basis.

Confusion surrounded early attempts to distinguish between reserves for administrative purposes. The company's plans were ambiguous about which reserves they thought might remain with Maori as sites of occupation and which might be leased. The Government's plans, in theory, forged a clearer distinction between reserved lands for Maori occupation, reserved outside land sales, and lands for lease reserved within the sales (the company tenths). The latter category of leasable reserves were also known as endowment reserves because revenue derived from leases was intended for the establishment of institutions such as schools. However, the overlay of two systems of allocation and administration generated difficulties and confusion in practice.

Maori (or native) reserves were always administered separately from ostensibly 'public reserves.' In 1847, as a forerunner to later public works legislation, the Government made allowance for the compulsory acquisition of Maori tenths reserves for public purposes. Once transferred, the reserves ceased to be administered as Maori reserves.

Overall, the earliest period of administration suffered for want of legislation. Despite a number of attempts at improvement, trust reserves administration in Wellington and Nelson can be characterised as loose and haphazard. In 1844, Governor Grey's refusal to implement the Native Trust Ordinance 1844 signalled a predisposition on the Government's part to intervene, rather than allow independent trust administration. Again, in 1873, when legislation purported to allow Maori limited involvement in administration, the Governor refused to implement the Act, despite the conferral of royal assent in both cases.

The Native Reserves Act 1856 was the first piece of legislation affecting the administration of reserves. It was intended to bring all Maori reserve lands under administration. While administration could extend only to reserves where Maori customary title was extinguished, the Act permitted Maori themselves to include any and all reserve lands under Government administration. All trust reserves were vested in the Governor.

In many respects, the passing of the 1856 Act formalised trust administration. Lands were theoretically protected from alienation although provision was made for the alienation of reserve lands with the assent of Maori owners. Panels of reserves commissioners were appointed in each province to administer reserves. In some areas, Maori continued to lease their own reserve lands to European settlers. Examples of Maori self-administration were seen in Wellington, Nelson, and Taranaki up until the wars of the 1860s.

The 1862 amendment Act tightened administrative provisions. Enacted in the midst of the wars, Governor Grey assumed sole authority for all aspects of the administration of reserves. This extended to martial administration – the right to administer and alienate any Maori reserve without Maori assent. This legislation remained in force, administered by local commissioners, until replaced in 1882.

## CONCLUSIONS

Administration under the commissioners provided Maori with financial returns for the lease of their lands. The practice of localised administration, without a centralised body, exposed itself to cases of misadministration. At the same time, it proves difficult to account for the consistency of administration across all areas based on the relatively small amount of surviving source material. There are numerous gaps in the administrative record.

The absence of a centralised authority was rectified in 1869, with McLean's appointment of Charles Heaphy as Commissioner of Native Reserves. Together with Alexander Mackay, Heaphy directed administration of Maori reserves across all areas until 1882. During this period, the process of administration was markedly improved. The existence of regular and detailed reports makes it possible to measure some aspects of administration, such as the provision of annuities to Maori beneficiaries. There is evidence that Maori directly benefited from the receipt of rental payments. Partly as a result, Maori in some areas chose to vest their reserves under the Government administration.

Six years after Maori were granted representation in the European Parliament, a conscientious attempt was made to introduce Maori participation to the Government administration of reserves. Significantly, it was on this point of Maori involvement as deputy commissioners that the Native Reserves Act 1873 was never implemented. The 1873 Act remains a striking indication of Government influence in the administration of Maori reserves in the 1870s. Numerous attempts were made to relegislate in the late 1870s, yet none succeeded in balancing both Maori and growing settler interests.

A strong push to amalgamate Maori administration inside existing Pakeha structures led to the decision to place trust administration in the Public Trust Office. The Native Reserves Act 1882 grew from the model of the West Coast settlement reserves, but also from the imperative to manage significant European, as well as Maori lessee interests. It marked the first effective piece of legislation governing administration for 20 years. By contrast, the following three decades witnessed a raft of new and amended legislation.

The 1882 legislation and the practice of Public Trust Office administration sought to maximise rental returns to Maori. During the 1880s and 1890s, increasing pressures on Parliament led to the enactment of legislation which increased the terms of lease available to European tenants and, at the same time, lowered the rents to less-than-market rates.

The implementation of leases in perpetuity was argued to benefit Maori by securing payment of an annuity. After 1862, trust administration concentrated on providing Maori beneficial owners with a financial return from reserve leases. It appears that, despite isolated occurrences of misadministration, Maori benefited from the payment of an annuity. Trustees were often required to balance the interests of what was, until the 1890s, a declining Maori population against a swelling majority of European settlers. Nowhere is the attempt to reconcile European interests more apparent than in the guarantee of 999-year leases in

perpetuity. Clearly then, an understanding of trust administration of reserves, particularly post-war, draws from two sources.

Other factors lowered the financial returns paid to Maori. In certain situations, rents charged to Europeans were kept below market rates through the intervention of Government legislation. Where rents were restrained, Maori were detrimentally affected by inflation. There is other evidence of rents being manipulated through deliberately low land valuations in order to provide cheap rents to European tenants. While there is evidence of this occurring, it is notoriously difficult to trace on a general level, and requires further substantive investigation on a local level. Without exception, each period of administration accrued large amounts of rent in arrears owing to Maori. Reserves commissioners, armed with the authority to sue, appeared to falter in their duty to reprimand European debtors.

Maori were divorced from direct involvement in reserves administration. Through the colonial imposition of a 'trust relationship', Maori were relegated to the position of beneficiaries and pushed into cycles of Government dependence. From the outset, Maori themselves were prohibited from leasing other Maori reserve lands in the same manner as Pakeha, despite guarantees under article 3 of both texts of the Treaty of Waitangi. While at times there was an element of choice offered to Maori to include their reserve lands under Government administration, the advent of war in the 1860s and the 1862 amendment Act transformed the relationship. Maori consistently protested their absence from involvement in the formal administration of reserves through petitions and parliamentary representation.

There remain unanswered questions, including How do we evaluate the benefit to Maori from administration? and How much land did Maori require for occupation, and how much could be leased in order to benefit Maori? Answers to these questions require further investigation on a local level not possible under the scope of this report. This report has attempted a broad historical survey of issues relating to the trust administration of native reserves. The preliminary conclusions presented here are intended as background to further discussion and research.

APPENDIX

**PRACTICE NOTE**

WAITANGI TRIBUNAL

CONCERNING the Treaty of Waitangi Act 1975

AND Rangahaua Whanui and the claims as a whole

**PRACTICE NOTE**

This practice note follows extensive Tribunal inquiries into a number of claims in addition to those formally reported on.

It is now clear that the complaints concerning specified lands in many small claims, relate to Crown policy that affected numerous other lands as well, and that the Crown actions complained of in certain tribal claims, likewise affected all or several tribes, (although not necessarily to the same degree).

It further appears the claims as a whole require an historical review of relevant Crown policy and action in which both single issue and major claims can be properly contextualised.

The several, successive and seriatim hearing of claims has not facilitated the efficient despatch of long outstanding grievances and is duplicating the research of common issues. Findings in one case may also affect others still to be heard who may hold competing views and for that and other reasons, the current process may unfairly advantage those cases first dealt with in the long claimant queue.

To alleviate these problems and to further assist the prioritising, grouping, marshalling and hearing of claims, a national review of claims is now proposed.

Pursuant to Second Schedule clause 5A of the Treaty of Waitangi Act 1975 therefore, the Tribunal is commissioning research to advance the inquiry into the claims as a whole, and to provide a national overview of the claims grouped by districts within a broad historical context. For convenience, research commissions in this area are grouped under the name of Rangahaua Whanui.

In the interim, claims in hearing, claims ready to proceed, or urgent claims, will continue to be heard as before.

Rangahaua Whanui research commissions will issue in standard form to provide an even methodology and approach. A Tribunal mentor unit will review the comprehensiveness of the commission terms, the design of the overall programme, monitor progress and prioritise additional tasks. It will comprise Tribunal members with historical, Maori cultural and

## THE CROWN'S ENGAGEMENT WITH CUSTOMARY TENURE

legal skills. To avoid research duplication, to maintain liaison with interested groups and to ensure open process:

- (a) claimants and Crown will be advised of the research work proposed;
- (b) commissioned researchers will liaise with claimant groups, Crown agencies and others involved in treaty research; and
- (c) Crown Law Office, Treaty of Waitangi Policy Unit, Crown Forestry Rental Trust and a representative of a national Maori body with iwi and hapu affiliations will be invited to join the mentor unit meetings.

It is hoped that claimants and other agencies will be able to undertake a part of the proposed work.

Basic data will be sought on comparative iwi resource losses, the impact of loss and alleged causes within an historical context and to identify in advance where possible, the wide ranging additional issues and further interest groups that invariably emerge at particular claim hearings.

As required by the Act, the resultant reports, which will represent no more than the opinions of its authors, will be accessible to parties; and the authors will be available for cross-examination if required. The reports are expected to be broad surveys however. More in-depth claimant studies will be needed before specific cases can proceed to hearing; but it is expected the reports will isolate issues and enable claimant, Crown and other parties to advise on the areas they seek to oppose, support or augment.

Claimants are requested to inform the Director of work proposed or in progress in their districts.

The Director is to append a copy hereof to the appropriate research commissions and to give such further notice of it as he considers necessary.

Dated at Wellington this 23rd day of September 1993

Chairperson  
WAITANGI TRIBUNAL

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