

RANGAHUA WHANUI NATIONAL THEME A

OLD LAND CLAIMS

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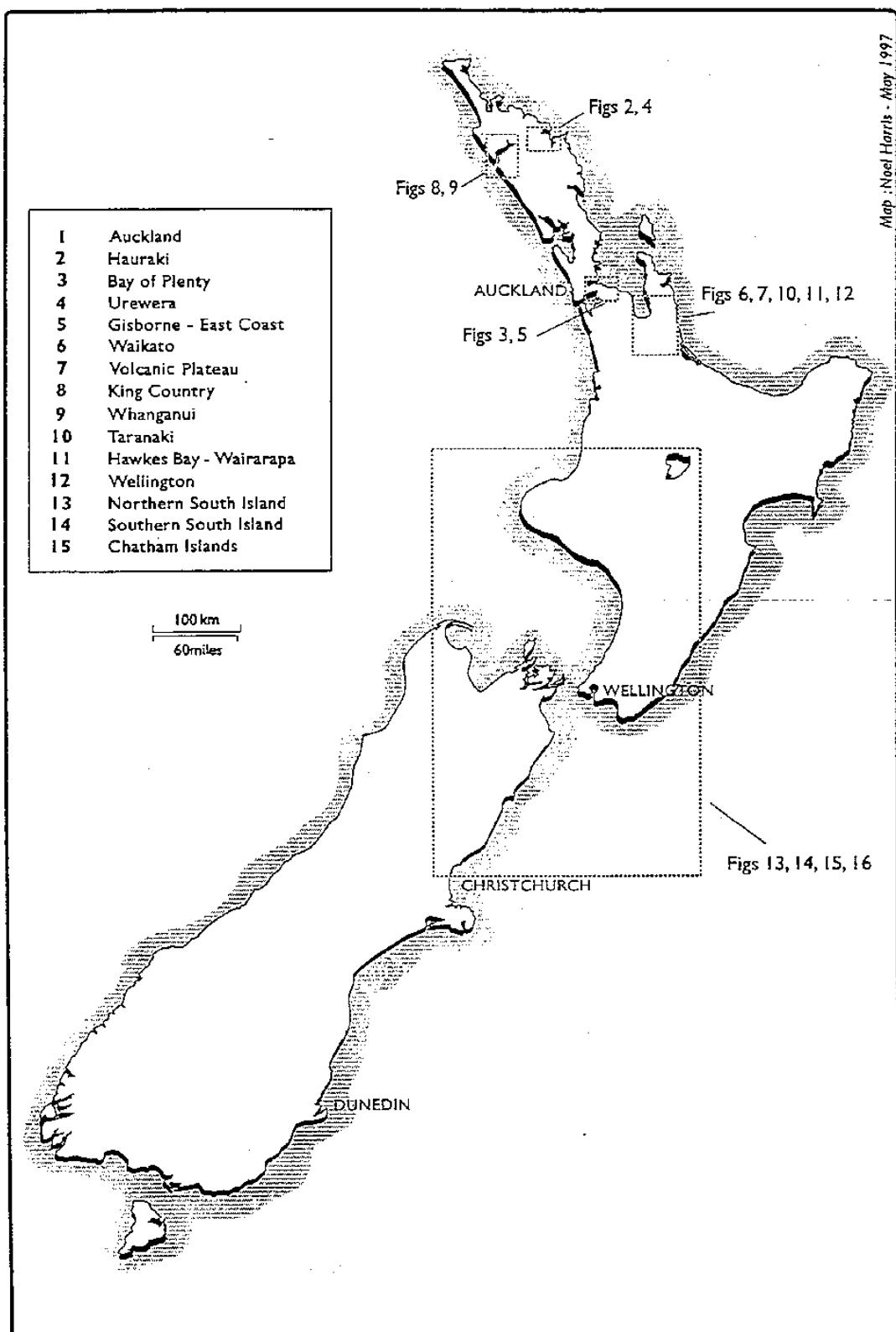


Figure 1: Location map – areas with old land claims

## LIST OF ABBREVIATIONS

AIM	Auckland Institute and Museum
AJHR	<i>Appendices to the Journals of the House of Representatives</i>
APL	Auckland Public Library, Auckland
app	appendix
ATL	Alexander Turnbull Library, Wellington
BPD	<i>British Parliamentary Debates</i>
BPP	<i>British Parliamentary Papers: Colonies New Zealand</i> (17 vols, Shannon, Irish University Press, 1968–1969)
corres	correspondence
CMS	Church Missionary Society
DNZB	<i>Dictionary of New Zealand Biography</i>
doc	document
encl	enclosed
G	Governor series, National Archives, Wellington
IA	Internal Affairs series, National Archives, Wellington
jnr	junior
LINZ	Land Information New Zealand
MA	Maori Affairs series, National Archives, Wellington
NA	National Archives
NLC	Native Land Court
NUG	<i>New Ulster Gazette</i>
NZC	New Zealand Company
OLC	Old Land Claims/old land claims series at National Archives, Wellington
p	page
pt	part
ROD	Record of Documents
snr	senior
s	section (of an Act)
sess	session

**PART I**

**THE LAND CLAIMS COMMISSION PROCESS**



# CHAPTER 1

## INTRODUCTION

This report contains four main sections. Barry Rigby wrote the introduction and the section on the Land Claims Commission process. Matthew Russell wrote the section devoted to four case studies, and the quantitative analysis of the detailed claims list in the appendix. Finally, Duncan Moore wrote the section entitled 'The Crown's Surplus in the New Zealand Company Purchases.' The remainder of this introduction will explain why we have written the report in this way. It will then discuss why old land claims, in our view, have never been satisfactorily investigated; why this report cannot claim to be the last word on the subject, and why old land claims assume their full significance only when they are related to subsequent Crown purchases.

### 1.1 REPORT ORGANISATION

The first main section of this report outlines the sequence of commission investigations, beginning with Godfrey/Richmond and Spain during the 1840s, continuing with Bell from 1856 until 1862, and concluding with the Myers Surplus Lands Commission of the 1940s. Included in the analysis of the work of these commissions is a certain amount of consideration of the statutory basis for each. Also covered in this section is the sequence of executive interventions beginning with Gipps and continuing with FitzRoy, Grey, and the various predecessors of the Lands and Survey Department which serviced the Myers Commission. In this way the commission process is portrayed as a nexus between judicial, legislative and executive functions.

Matthew Russell's four case studies provides the local claim detail which is largely absent from the more general consideration of the commission process. He chose four cases which appear to be exceptional in many ways. He chose them to form a corrective to the impression which may be gained from the aggregate data in his quantitative section that most claims produced little interesting human interaction of historical significance. His case studies suggest the contrary. Fairburn's Tamaki transaction looms large in the history of the southern approaches to the colonial capital during 1840–1865, and it raised major questions about both the Crown's claim to surplus lands and whether or not it would honour pre-Treaty promises to return land to Maori. Webster's claims became a proliferating saga of on-selling and litigation which eventually produced the first recognition of the

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Treaty of Waitangi in international law as late as 1925.<sup>1</sup> In the case of the Hokianga scrip claims, Commissioner Bell assigned his powers of investigation to John White (apparently without proper official appointment) who then proceeded to renegotiate pre-Treaty transactions with the assistance of a private surveyor, William Clarke. In doing this White essentially rearranged the legal landscape of the upper Hokianga and Waima areas without apparently having the statutory authority to do so. The most exceptional of all the case studies, however, is the saga of the McCaskill Hikutaia claims in southern Hauraki. There Crown actions ratifying the claims and perennial Maori protest against such actions provoked 'frontier' violence which has previously escaped the attention of professional historians.

Violence, too, erupted within the vast New Zealand Company 'purchase' area on both sides of Cook Strait, roughly from Taranaki to Kaiapoi. Duncan Moore, in the third section of this report, analyses Crown actions upon company claims in relation to a major category considered previously by both Rigby and Russell, that of surplus lands. As generally defined surplus land was the balance between the acreage claimed and surveyed, and what the Crown granted to a given claimant (minus anything reserved for Maori). Rigby traces the development of the Crown's general position on surplus lands, and Russell examines the question in relation to the Fairburn and Webster claims. Moore is the first historian to explore how this category, so prominent in the way Commissioner Bell considered claims from 1856 until 1862, may have entered into relations between the company and Crown in the crucial first decade of colonial history. Moore locates the category of surplus lands as a subset of Crown presumptive rights, rights which the Crown believed it acquired as a function of sovereignty, despite the fact that there was apparently no discussion of them during the 1840 Treaty deliberations.

Moore also highlights another theme which Rigby and Russell touch on, and which will be considered further in this introduction: the relationship between old land claims and subsequent Crown purchases. This problematic, but nonetheless crucial, relationship remains a key consideration which has yet to be fully investigated.

Finally, Russell provides a brief quantitative analysis of the appended lists of claims. His analysis includes an appropriate disclaimer regarding the accuracy of the data in the extensive 1375 claims listed in this report (organised by Rangahaua Whanui district). In this section Russell also defines some of the key terms used to describe aspects of old land claims. Since many of these terms are used throughout this report, a brief glossary follows:

- Crown grant: the legal instrument by which the Crown attempted to guarantee secure title to a defined area. Written boundary descriptions within the grant document defined 1840s grants. Only during the 1850s did the Crown require surveyed grant boundaries to be included in the document. The Crown grant is the precursor to the modern Torrens system introduced after 1870.

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1. Fred K Nielson, *American and British Claims Arbitration* Washington DC, US Government Printer, 1926, pp 540–546

- Native reserve: area commissioners or the Crown set aside for Maori within a larger area claimed to have been alienated prior to 30 January 1840. In some cases, for example, at Waitangi, the Crown failed to implement commissioners' reserve recommendations which accompanied their grant recommendations.
- Surplus land: the difference between the area commissioners determined to have been alienated prior to 30 January 1840, and that included in the Crown grant and/or reserved area. After 1856, Commissioner Bell required most claimants to survey both areas at the same time, thereby defining the extent of surplus. The Crown claimed title to surplus land where commissioners determined that Maori consented to the original transaction.
- Scrip land: claimed areas which Pakeha claimants vacated after accepting a Crown offer of equivalent value in the form of either a promissory note (scrip) or cash. Claimants normally exchanged their scrip for land in the vicinity of Auckland after it became the colonial seat of government in 1841. The Crown then claimed title to the supposedly vacant scrip land.

Although these terms are not employed in the same way in the New Zealand Company claims, they provide readers with a general guide to the way in which the Crown dealt with most old land claims.

## **1.2 WHY HAVE OLD LAND CLAIMS NEVER BEEN SATISFACTORILY INVESTIGATED?**

Another theme running through all four sections of this report is that none of the four major commissions of inquiry into this subject during the nineteenth and twentieth century (Godfrey/Richmond, Spain, Bell and Myers) satisfactorily investigated it. The 1840s Godfrey/Richmond commission did not attempt to investigate all Maori interests affected by each Pakeha claim, and neither did the Protectorate. Spain began an exhaustive investigation of such interests, in collaboration with Sub-protector Clarke, but then suspended it within four months during 1842 at Port Nicholson. Bell declined to investigate either Maori interests (which he believed had been properly determined during the inquiries of his predecessors), or New Zealand Company claims in any way, shape or form. The Myers Commission of the 1940s went further than Bell by assembling several hundred precis files on individual claims, and by compiling elaborate tables to illustrate the outcome of Crown actions on particular claims, using a Lands and Survey team for this purpose. This commission, however, had to confine itself mainly to those claims producing surplus, and it considered subsequent Crown purchases (for example, in the Fairburn/Tamaki and New Zealand Company areas) to have superseded the original claims, and to have put them outside its jurisdiction.

The main shortcoming of each of these investigations, however, was that they failed to examine old land claims in the light of what the Treaty of Waitangi may have required. Godfrey/Richmond, Spain, Bell and Myers all shared to a greater or

lesser degree the presumption that, by signing the Treaty, Maori conveyed to the Crown a sovereign right to apply the laws of England to New Zealand, and an exclusive right 'to extinguish Native title.' The authors of this report do not discuss the legal implications of this presumption (a task they gladly leave to the various counsel appearing before the Tribunal). All that can be said is that the validity of this presumption does not appear to be supported by the available historical evidence. If Maori willingly and knowingly conveyed such specific sovereign rights to the Crown in 1840, we have yet to discover the historical documentation supporting this view.

Commissioners assumed rather than demonstrated that the Treaty gave the Crown the exclusive right to determine the way in which 'Native title' had or had not been 'extinguished' prior to or after the Treaty, and to determine how it would give legal effect to pre-Treaty transactions. Although Maori discussed these transactions in very general terms at Waitangi, Mangungu and Kaitaia in 1840, all they agreed to was that there would be a proper investigation, and that lands 'unjustly held' would be returned to them. Crown representatives also agreed to protect customary ways, and they recorded nothing about telling Maori what would happen as a result of the subsequent commissions.

The available evidence suggests that the Crown failed to explain to Maori, or to obtain their consent to, the commission process. The Crown evidently failed to openly discuss with Maori representatives the grounds for its position on surplus lands or waste land (a category related to, but distinct from, surplus lands) as it evolved during the 1840s. When Bell explained the Crown's position on surplus lands to Maori at Mangonui, Whangaroa and Waimate in 1857, he evidently presented it as a *fait accompli*. Maori there were in no position to argue against the case Bell presented by evoking their Treaty rights. None the less, did not Maori have a right to see the Treaty as restraining the Crown's power to determine title to land which had been the subject of pre-Treaty transactions?

Furthermore, Tribunal commissioned historians have to ask basic questions about what the Treaty may have required. Did the Treaty require the Crown to undertake a thorough investigation of all Maori interests affected by Pakeha claims? Did the promise to return lands 'unjustly held' and the promise to respect Maori customary ways obligate the Crown to, before anything else, discover the nature of custom and the nature of Maori grievances relating to pre-Treaty transactions?

Jack Lee, in his recently published book entitled *The Old Land Claims in New Zealand*, argued that the Crown and its commissioners in effect returned most of New Zealand to Maori. He stated that:

by 1840 Maori vendors had eagerly disposed of most of New Zealand to speculators, developers and bona fide settlers. And it was only by relentless elimination of extravagant and dubious land claims that the Governors and their Commissioners had, by the end of the 1850s, reduced them [old land claims] to a little over 10,000,000 acres.<sup>2</sup>

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2. Jack Lee, *The Old Land Claims in New Zealand*, Kerikeri, Northland Historical Publications, 1993, p 20

Lee then argued that the Crown and commissioners reduced this figure even more to the acreage alienated either as granted, surplus or scrip land north of Taranaki (which he estimates at 600,000 acres), and to the 2.5 million acres he calculates the Crown alienated from Maori out of New Zealand Company and 'post-Bell [or post 1862] settlements.' This process of claim reduction, he maintained, saved Maori from certain 'calamity.'<sup>3</sup>

Was the process by which the Crown and commissioners reduced the extent of original claims carried out in fulfilment of the Waitangi promise to return 'lands unjustly held'? This question should be answered with proper consideration of the motives behind some of the largest claims. For example, Wentworth's claim to 20 million acres in the South Island (advanced after the date of the Land Claims Validity proclamation) was never intended to withstand serious judicial scrutiny. Lee himself admitted that its main purpose was to challenge the Crown's jurisdiction over pre-Treaty transactions.<sup>4</sup> In setting up a system which discouraged the pursuit of such 'monster' claims, the Crown may have ultimately protected Maori interests, but this definitely did not directly fulfil the promise to return land. Since Wentworth failed to substantiate his 'monster' claim, the South Island remained Maori land. What Maori retained, the Crown could not return.

### **1.3 THE LIMITATIONS OF THIS REPORT**

In this report we have not attempted to cover everything related to old land claims. We have omitted examination of the 200 or so pre-emption waiver claims filed as a result of FitzRoy's 1844 proclamations. We hope this will be the subject of a separate Rangahaua Whanui national theme report. Furthermore, although the authors touch on the relationship between old land claims and Crown purchases, a thorough treatment of this must await further investigation. Russell has prepared a brief analysis of pre-1865 Crown purchases similar to his quantitative section in this report. His Crown purchase analysis was used in the preparation of Professor Alan Ward's national overview report.

In other respects this report is still very much a preliminary examination of a multi-faceted subject. The extensive claim list appended to this report and the sometimes quite voluminous claim files held at the National Archives illustrate the difficulty of generalising in the face of local diversity. Russell's four case studies indicate that for every group of claims there may be a completely different history. This report is designed to encourage more studies of localised claims. In the case of the McCaskill Hikutaia claims we know that a claimant group is actively pursuing a more thorough investigation than that which Russell has completed. We hope that Tribunal commissioned historians are able to assist this kind of thorough investigation. Ultimately, we believe that the Tribunal should consider

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3. *Ibid*, pp 20–21

4. *Ibid*, pp 33–35

commissioning further localised investigations, using its own staff as well as claimant researchers.

If the Tribunal does decide to commission further research on old land claims, there are two areas which appear to require immediate attention:

- (a) The untold 'Maori side of the story'; and,
- (b) The relationship between old land claims and subsequent Crown purchases.

As alluded to in Rigby's process section, nineteenth and twentieth century commissioners invariably failed to allow Maori to speak with their own voice. As late as 1947 the Myers Commission appointed 'Counsel for Maori' told his clients that they could not possibly speak with any authority on matters which transpired during the first half of the nineteenth century. They were therefore denied a hearing at Kaikohe in October of that year.<sup>5</sup> Although the voluminous original claim files held in Wellington contain only a small proportion of evidence recorded by and for Maori, the Tribunal should consider commissioning a proper professional examination of this rare, but crucial, material. We believe that this is related to questions arising from the debate over deed language initiated in the Tribunal's investigation of the Muriwhenua claim.<sup>6</sup>

#### **1.4 THE RELATIONSHIP BETWEEN OLD LAND CLAIMS AND SUBSEQUENT CROWN PURCHASES**

As stated above, old land claims appear to assume their full significance only when related to subsequent Crown purchases. The total acreage of perhaps three million acres directly affected by old land claims (including New Zealand Company claims) looks insignificant when compared to the estimated 44.6 million acres purchased by the Crown as at 1865.<sup>7</sup> Duncan Moore, in his treatment of New Zealand Company claims and the Crown's actions upon them, suggests that the two subjects (old land claims and Crown purchases) cannot be viewed in isolation from each other. What the Crown eventually acquired in Taranaki, Wanganui, Manawatu, Porirua, Port Nicholson, and in the northern South Island was 'set up' by the original company claims.

The relationship between private claims and Crown purchases can also be illustrated by following the career of someone who moved back and forth between old land claims and Crown purchases throughout the crucial pre-1865 period. Francis Dillon Bell entered the service of the New Zealand Company at the behest of his father's cousin, Edward Gibbon Wakefield, in 1839. He followed the

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5. Myers Commission proceedings 25 February 1947, MA 91/2, pp A3-A4.

6. See particularly Margaret Mutu, 'Tuku Whenua or Land Sale?' Wai 45 ROD, doc F12; and Lyndsay Head, 'An analysis of linguistic issues raised in (F12) Margaret Mutu's, and (F13) Joan Metge's report.' Wai 45 ROD, doc G5.

7. This figure includes the 34.5 million acres Crown purchased in the southern South Island (or Ngai Tahu rohe), 3.2 million which Matthew Russell estimates as that purchased in the northern South Island, and 9.9 million purchased in the North Island by 1865. See Matthew Russell, 'Quantitative Analysis of pre-1865 Crown Purchases', report commissioned by the Waitangi Tribunal.

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company to New Zealand in 1843 and was involved in establishing its settlement at Nelson during the mid-1840s. In the period 1847–1850 he simultaneously served company and Crown in negotiating purchases at Taranaki and Waitohi (Queen Charlotte Sound) and attempting to negotiate a Crown purchase on behalf of the company at Wairarapa. Governor Grey appointed him Commissioner of Crown Lands in 1850, and his successor, Browne, appointed him the sole Land Claims Commissioner in 1856. In his commissioner's role, Bell pursued the standard company practice of ensuring that title to the soil was based on professional surveys, and on necessary Crown ratification.<sup>8</sup>

As commissioner he collaborated closely with local Resident Magistrates such as William Bertram White at Mangonui (himself a former New Zealand Company surveyor) and Native Land Purchase Commissioners such as Henry Tacy Kemp (who had previously purchased 20 million acres in the South Island for the Crown on behalf of the company). At the conclusion of his old land claims investigation he reported with considerable pride that he had produced a map which connected an unbroken chain of Old Land Claim and Crown purchase surveys all the way from North Cape to the Waikato River.<sup>9</sup> During 1861 and 1862, while completing his commission report, Bell became a champion of the Crown purchase policies which provoked the violence in Taranaki and Waikato. According to Dalziel, he ran the Native Office after McLean's departure from July 1861 until May 1862. A month after tabling his commission report, Bell became Native Minister and as such he was formally in charge of native policy during the invasion of the Waikato in mid-1863.<sup>10</sup>

Bell's career illustrates the merging of private and public interests in the name of colonisation, so typical of nineteenth century New Zealand. As the largest land claimant, the New Zealand Company and its servants collaborated closely with the Crown before 1850, and often moved into key Crown or judicial positions after 1850. Company supporters in Britain and New Zealand such as Earl Grey and Governor Grey saw people like Bell, White and Kemp as valuable agents of colonisation, and apparently paid little heed to the distinction between their private and public roles. In the hands of such people, old land claims became a Crown controlled form of colonisation; or private colonisation in the public interest. This public interest they assumed to be consistent with Maori interests and with the Crown's protective obligations. Thus Maori were not to be sent along a Cherokee 'trail of tears,' but neither were they to be allowed to impede the inexorable progress of colonisation. The Treaty had little weight in such thinking, but it must have more weight today as we review old land claims, and the Crown's actions upon them, since 1840.

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8. Raewyn Dalziel's entry on Francis Dillon Bell, DNZB, Wellington, Allen and Unwin, 1990, vol 1, pp 23–25

9. Bell report 8 July 1862, AJHR, 1862, D-10, p 5

10. Daiziel, DNZB, vol 1, pp 24–25



## CHAPTER 2

# THE LAND CLAIMS COMMISSION PROCESS

### 2.1 CROWN PRESUMPTIVE RIGHTS

To understand the process by which successive Land Claims Commissions investigated pre-Treaty transactions in New Zealand, it is necessary to understand both the legal framework for such investigations, and the legal assumptions embedded in that framework. The most fundamental legal assumption embedded in the commission process was that of the Crown's presumptive rights in New Zealand land. Broadly, the Crown presumed that, in 1840, it acquired title to all land in New Zealand as a function of sovereignty, subject to pre-existing Maori and settler claims.<sup>1</sup>

When Governor Hobson proclaimed British sovereignty in New Zealand in May 1840, he believed that he was instituting a new legal system, one based on English common law. The Crown acted on the assumption that sovereignty conveyed what is sometimes referred to as the radical title to all land, and upon this basis, the Crown alone could issue valid title. To extend this principle to pre-Treaty transactions, Hobson proclaimed in January 1840:

that Her Majesty . . . does not deem it expedient to recognise as valid any Titles to Land in New Zealand which are not derived from or confirmed by Her Majesty.<sup>2</sup>

The Crown's presumptive rights implicit in this Land Titles Validity Proclamation did not feature in the best documented Treaty discussions, those at Waitangi, Mangungu and Kaitaia between February and April 1840. Hobson's opening address at Waitangi on 5 February stressed the Crown's protective intent. He told Maori that the Crown would control the activities of lawless settlers, and it would encourage the emigration of responsible settlers.<sup>3</sup> Maori, however, did not accept such assurances without question. Te Kemara challenged Hobson and his two major assistants in the drafting of the Treaty texts with the words: 'return me my lands . . .

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1. Duncan Moore, a co-author of this report, has examined this concept in 'The Origins of the Crown's Demesne at Port Nicholson 1839–1846,' *Wai 145 ROD*, doc E3, pp 18–19, 23
  2. Land Titles Validity Proclamation 30 January 1840 (at Kororareka), Hobson papers, ATL. Hobson issued the same proclamation in Sydney on 14 January before setting sail to New Zealand. The wording of this proclamation follows that of Normanby's instructions. Normanby to Hobson, 14 August 1839, BPP, 1840 (238), pp 38–39
  3. Hobson's address, 5 February 1840, Colenso journal, vol 1, pp 31–32, ATL

the land on which we stand this day'. Hobson responded to Te Kemara's challenge (which Henry Williams translated to him) by stating 'that all lands unjustly held would be returned' to Maori.<sup>4</sup> Hobson's promise may have assumed the Crown's presumptive rights to determine title to disputed land, but most Maori probably understood it to be an affirmation of their rights. The context of the discussion was provided by Hobson's promise to protect their interests through lawful processes. Hobson said nothing that would have led Maori to understand that the Crown could convert its nominal or radical title (essentially its right to determine title) into a distinct proprietary interest (its subsequent claim to scrip and surplus land) as part of its presumptive rights.

The Crown's presumptive rights failed to feature in a transparent way in another promise at the Kaitaia Treaty discussion in April. On that occasion, Willoughby Shortland (acting for the incapacitated Hobson) promised Maori that 'the Queen would not interfere with their native laws nor customs'.<sup>5</sup> This promise was consistent with Normanby's instruction to Hobson that he protect Maori 'observance of their own customs'.<sup>6</sup> Again, this statement may have carried a subtle implication that the Crown's presumptive rights included the recognition of aboriginal title, but for Maori (and we do not know how the statement was expressed in their language) it probably carried with it the most obvious meanings. The Crown appeared to recognise that their ways would be respected and protected. Shortland's promise gave them no warning signals about the displacement of customary ways of dealing with land by ways controlled by English common law.<sup>7</sup>

## **2.2 TREATY REFERENCES TO PRE-TREATY TRANSACTIONS**

Discussions of the implications of the Treaty for consideration of pre-Treaty transactions occupy much of the written record, but there are no explicit references to these transactions in the Treaty texts. Hobson's land titles validity proclamation promised an inquiry into the validity of Pakeha claims. It stated 'that all Persons having any such Claims will be required to Prove' them to a commission appointed by the Governor of New South Wales.<sup>8</sup> The Treaty texts, however, made no direct reference to Pakeha claims or to this commission. The implication of article 2 protection of Maori property rights was that all such rights were included, and the only reference to the alienation of such rights was put in the future tense. Maori

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4. William Colenso, *The Authentic and Genuine History of the Signing of the Treaty of Waitangi* (Wellington 1890) pp 17–19. Te Kemara had been a principal in the pre-Treaty transactions at both Waitangi and Pakaraka where James Busby and Henry Williams, respectively, later claimed thousands of acres.
  5. Dr John Johnson, the Colonial Surgeon, recorded this statement. Johnson journal, 28 April 1840, APL.
  6. Normanby to Hobson, 14 August 1840, BPP, 1840 (238), pp 39–42
  7. This may explain the 'violent and seditious' reception Commissioner Godfrey and his translator H Tacy Kemp received at Kaitaia less than three years later. Kemp reported that Maori objected 'to the Government assuming any authority over their possessions,' and asserted that 'any surplus lands . . . will be resumed by the original proprietors.' Kemp to Clarke, 10 February 1843, G30/3, pp 743–747
  8. Land Claims Proclamation, 30 January 1840, Hobson papers, ATL

property rights, henceforth, were to include the right 'to alienate' such property to the Crown.<sup>9</sup>

Land claims, however, featured very prominently in the northern Treaty discussions. In addition to Te Kemara's dramatic challenge at Waitangi and Hobson's promise to return 'lands unjustly held', other Maori challenged Pakeha to respond. Manu Rewa and Moka Kaingamata named missionary claimants, George Clarke (later to become Protector of Aborigines) and Charles Baker, in challenging them to return land. Baker rose to the challenge, refusing to apologise for his claims and arguing that all his purchases included land reserved for Maori by 'an inalienable deed of gift'. Henry Williams then defended all missionary claims as being based on 'good and honest titles'.<sup>10</sup> Even Tarnati Waka Nene, in his eloquent defence of the Treaty, punctuated his remarks with expressions of concern about Pakeha land claims. He asked Maori: 'Is not the land gone? Is it not covered with strangers, over whom we have no power . . . [?]'. He then appealed to Hobson:

You must not allow us to become slaves. You must preserve our customs and never permit our lands to be wrested from us.<sup>11</sup>

Maori continued this kind of debate at Mangungu on 12 February. There Taonui declared: 'the land is our father . . . our chieftainship[,] we will not give it up,' to which Kaitoke added, 'we have been cheated. The Pakehas are thieves.' On the other hand, Rangatira Moetara contended that Maori had sold their land willingly, and had to live with the consequences of their foolhardiness.<sup>12</sup> Mohi Tawhai countered by proposing that Pakeha could keep land acquired 'by fair purchases,' but, he asked Hobson, what would happen to land 'stolen from us, will . . . [you] enquire about it . . . [?]'.<sup>13</sup> Wi Tana Papahia then asked Hobson 'whether it was right for two men to have all the land from the North Cape to Hokianga.' In reply to this accusation, Kaitaia missionary Gilbert Puckey rose to the defence of his CMS colleagues by stating that 'the land alluded to was held under a trust deed for the use of the natives'. The CMS, he said, was willing to entrust the administration of such trust responsibilities to the Government.<sup>14</sup> Land claims figured almost as prominently in the Kaitaia Treaty discussion (which Puckey interpreted). There, Reihana Teira Waero complained that he was unable to gather firewood because Pakeha claimed the land. Rawiri Tiro cautioned Shortland about the Governor taking 'our land,' but Paori Mahanga maintained it had 'been taken before' the

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9. In the Maori text alienation was expressed as 'te hokonga o era wahi wenua,' which Kawharu translated as 'will sell land . . .', I H Kawharu, *Waitangi: Maori and Pakeha Perspectives of the Treaty of Waitangi* (Auckland, 1989) pp 316–321.
  10. Colenso's contemporaneous account of this exchange differs slightly from the one which he published fifty years later: Colenso memo, 5 February 1840, Colenso papers, ATL; Colenso, *Authentic History*, pp 18–22.
  11. Colenso memo, 5 February 1840, Colenso papers, ATL; Colenso, *Authentic History*, pp 26–27; Hobson to Gipps 5, 6 February 1840, BPP, 1840 (560), pp 9–10
  12. Rev Richard Taylor's notes, 12 February 1840, encl in Taylor to CMS, 20 October 1840, Taylor papers, f10, ATL
  13. Hokianga speeches encl in Shortland to Stanley, 18 January 1845, BPP, 1845 (108), pp 10–11
  14. Taylor notes, 12 February 1840, Taylor papers, ATL

Treaty. Waratona Wero said that 'Pakeha Maori have got it all'.<sup>15</sup> Panakareao, of course, disagreed. In his memorable speech, he concluded:

the shadow of the land goes to the Queen, but the substance remains with us; the governor will not take our land; we will get payment [for it] as before . . .<sup>16</sup>

Maori, therefore, left officials in no doubt that they would jealously guard their land rights. Even if the Treaty texts were silent on land claims, Maori were not.

### **2.3 THE LAND CLAIMS COMMISSION'S LEGISLATIVE FRAMEWORK**

Normanby's August 1839 instructions limited Hobson's ability to act Maori concerns about retaining their land rights. Normanby charged Gipps, the Governor of New South Wales, not his representative in New Zealand, with responsibility for setting up the legal basis for the investigation of pre-Treaty transactions. He anticipated a flood of pre-annexation claims which only New South Wales possessed the administrative resources to deal with. He also believed that Gipps would be better equipped to resist Pakeha claimant pressure for making extensive grants. A New South Wales-appointed commission, he hoped, would avoid 'the dangers of the acquisition of large tracts of country by mere land-jobbers'.<sup>17</sup> None the less, Normanby also urged Hobson to pay careful attention to the vexed question of land claims. In keeping with this, Hobson met with Sydney-based claimants before departing for New Zealand. He told them that the Crown 'would not acknowledge excessive claims' or inequitable ones. He even declared that Maori:

never were in a condition to treat with Europeans for the sale of their lands, any more than a minor w[oul]d be who knows not the consequences of his own Acts . . .<sup>18</sup>

Gipps reiterated this view six months later in presenting his New Zealand Land Bill to the New South Wales Legislative Council. Two of the 'general principles' upon which he founded the legislative framework for investigating land claims were:

[1] that the uncivilized inhabitants of any country have but a qualified dominion over it, or a right of occupancy only; and that, until they establish among themselves a settled form of government, and subjugate the ground to their own uses, by the cultivation of it, they cannot grant to individuals, not of their own tribe, any portion of it, for the simple reason, that they have not themselves any property in it.

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15. Taylor Kaitaia notes, 28 May [sic] 1840, encl in Taylor to CMS, 20 October 1840, Taylor papers, ATL

16. This is as recorded in Shortland's Kaitaia speeches, BPP, 1845 (108), p 10

17. Normanby to Hobson, 14 August 1839, BPP, 1840 (238), p 39

18. Hobson to Gipps, 16 January 1840, G36/1

### *The Land Claims Commission Process*

[2] the right of pre-emption of the soil, or in other words, the right of extinguishing the native title, is [or rests] exclusively in the government . . . and cannot be enjoyed by individuals without the consent of their government.<sup>19</sup>

The New Zealand commission Gipps established in accordance with these principles was, in fact, modelled on the New South Wales Court of Claims established in 1833 and extended in 1835. Section 4 of the 1835 Act stipulated a mode of enquiry based on:

the real justice and good conscience of the case without regard to legal forms and solemnities . . .

The Crown in New South Wales sought to replace informal occupation licenses with indefeasible grants through this legislation. Such licenses (and subsequent grants), ignored the rights of the aboriginal peoples.<sup>20</sup> Despite this fundamental difference between the two colonies, the 1840 New Zealand Land Claims Act followed the 1835 New South Wales legislation almost word for word.

Although Gipps stipulated a less formal procedure than might be required by a court, section 2 of the 1840 Act required:

a strict inquiry . . . into the mode in which such [claimed] lands have been acquired . . . and also to ascertain all the circumstances upon which claims may be founded.

The Act required commissioners to take sworn evidence, unless it was obtained from Maori who they deemed incapable of understanding the oath. In such cases, commissioners were to give Maori evidence ‘such credit as it may be entitled to from corroborating or other circumstances.’<sup>21</sup> This 1840 New South Wales Act was, in a slightly modified form, to become the legislative framework for the first inquiries into New Zealand claims for almost a decade.

In addition to the requirements specified in the 1840 Act, Gipps responded to questions directed to him by Commissioners Edward Godfrey and Matthew Richmond about the application of the Act in New Zealand. In reply to their question about how they should deal with claims not supported by deeds, Gipps instructed them on 2 October 1840 that they were to accept ‘proof of conveyance according to the custom of the country . . . in the manner deemed valid by the inhabitants’. He instructed them that the Protector of Aborigines (or his deputy) should attend all their hearings ‘in order to protect the rights and interests of the natives.’ They were also supposed to have a Crown surveyor at their disposal to accurately describe the boundaries of both recommended grants, and lands ‘alienated . . . but not awarded,’ or what later became known as surplus land.<sup>22</sup>

19. Gipps speech, 9 July 1840, BPP, 1841 (311), pp 63–64. His third principle was the Crown’s exclusive right to establish a colony, a right not enjoyed by individuals.

20. Cited in Donald Loveridge, ‘The New Zealand Land Claims Act of 1840’ Wai 45 ROD, doc 12 pp 44–49

21. Quoted in David Armstrong, ‘The Land Claims Commission: Practice and Procedure 1840–1845’ Wai 45 ROD, doc 14, pp 7–10

22. Ibid, pp 13–17

### *Old Land Claims*

Gipps also instructed Hobson on his responsibilities when claims threatened to dispossess a tribe of its ‘whole patrimony.’ Gipps maintained that in such cases, if:

the chiefs admit the sale of land to individuals . . . the title of such chiefs to such lands are of course to be considered extinct whether or not the whole or any portion of the land be confirmed to the purchaser . . . Should it appear in any case that the lands have been obtained for an insufficient consideration, it will be proper and necessary for you, in concert with the official Protector of Aborigines to award them further compensation.<sup>23</sup>

Unfortunately, Gipps gave commissioners insufficient guidance on what should be considered ‘sufficient consideration.’ Consequently, few claims were subjected to the kind of scrutiny that he appeared to want regarding adequacy of consideration.

Although Armstrong, in his study of the Land Claims Commission, argues cogently that Gipps set up a framework that provided for a thorough inquiry, his statement that Gipps ‘strongly implied that the validity of pre-Treaty transactions was to be determined with reference to the vendors themselves’ is more questionable.<sup>24</sup> The legislative framework which Gipps gave the New Zealand inquiry emerged out of the legal assumption of *terra nullius* which prevailed in New South Wales. His ‘principle’ that the ‘uncivilized inhabitants of any country’ possessed neither transferrable sovereign nor transferrable property rights left Maori in the same category as the aboriginal inhabitants of New South Wales. The Treaty of Waitangi contradicted the first aspect of this principle, and his 30 November instruction to Hobson contradicted the second aspect. If Maori were not competent to transfer sovereign rights, why did Hobson proclaim that they had done so by Treaty? If they were not competent to transfer property rights to Europeans, why did he instruct Hobson that ‘the title’ of chiefs admitting sales was ‘to be considered extinct’? Furthermore, this form of private extinguishment contradicted Gipps’ second principle: that ‘the right of extinguishing native title . . . [rested] exclusively in the government’.

When New Zealand ceased to be a dependency of New South Wales in 1841, Hobson redrafted the Gipps Act into the New Zealand Land Claims Ordinance which came into effect in June of that year. The language of the New Zealand Ordinance differed in significant respects from Gipps’. Instead of the ‘strict inquiry’ called for by Gipps, Hobson called for (in his section 3) only ‘an inquiry.’ Furthermore, instead of requiring commissioners ‘to ascertain *all the circumstances* surrounding pre-Treaty transactions, the 1841 Ordinance required them to inquire just ‘the circumstances upon which such claims may be . . . founded.’ The key difference between the 1840 and 1841 legislation came in Hobson’s section 2 which stated in declaratory fashion:

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23. Gipps to Hobson, 30 November 1840, quoted in Armstrong, pp 20–21

24. Armstrong, p 22

That all unappropriated lands . . . subject however to the rightful and necessary occupation and use thereof, by the Aboriginal inhabitants . . . are and remain Crown or domain lands of Her Majesty . . .

Otherwise, section 9 on taking ‘the evidence of any aboriginal native . . . subject to such credit as it may be entitled to from corroborating and other circumstances’ came verbatim from Gipps’ Act.<sup>25</sup> Hobson’s 11 July 1841 instructions to commissioners differed in only minor respects to Gipps’ 2 October 1840 instructions. Clause 4 of the 1841 instructions required the protector to attend hearings, while clause 7 authorised commissioners to report claims prior to survey.<sup>26</sup>

## 2.4 NOTIFICATION PROCEDURES

Although Maori expressed concerns about the extent and implications of Pakeha claims at meetings convened for Treaty signing during the first half of 1840, the first official notice pursuant to the Land Titles Validity Proclamation in New Zealand did not occur until 30 December 1840. In the first issue of the *New Zealand Government Gazette*, Gipps announced the appointment of Commissioners Godfrey and Richmond and the scheduling of the first (mainly Bay of Islands) claims for hearing in the Russell (Okiato) courthouse on 25 January 1841. The notice of hearing stated that ‘all parties interested are desired to be in attendance with their Documents and Witnesses.’ It then summarised about half the claims scheduled for hearing. These ‘Particulars’ included the claimant, the location and approximate acreage of the area claimed, the ‘alleged’ vendors, the ‘consideration,’ and the date of the deed lodged with the commission. Finally, commissioners announced:

All Parties opposing the above Claims, are to give Notice thereof to the Commissioners at Russell, without delay.<sup>27</sup>

For Maori to have been properly notified of this proceeding, the same information should have been issued in the Maori language. During the Muriwhenua Tribunal investigation, historians produced no direct evidence on this point. Armstrong (who appeared as a Crown historian) indicated that the commissioners were unable to secure the attendance of the Protector of Aborigines (or his deputy) to represent Maori interests at either their first hearing, or the second in early March 1841.<sup>28</sup>

25. Moore regarded the ringing declaration regarding ‘unappropriated land’ in section 2 as revealing Hobson’s ‘acquisitive purpose,’ New Zealand Land Claims Ordinance 1841 (sess 1, no 2); Moore, *Crown Demesne*, p 83.

26. Hobson to Commissioners, 11 July 1841, OLC 5/4 b; cited in Armstrong, pp 85–86.

27. This first issue of what became the *New Zealand Government Gazette* was entitled *Gazette Extraordinary*, *New Zealand*, 30 December 1840, Hobson papers, ATL.

28. Armstrong, pp 44–45, 49.

This was despite the fact that Protector Clarke expressed concern during the previous month when he stated that:

many of the natives have been given to understand that the principal object of the Commission is to secure land for the Government at the expense of the Europeans, others again are hoping that through them [the commissioners] their lands (it matters not how fairly purchased) will revert again to them [ie Maori] . . .

Clarke concluded that Maori were understandably ‘complaining of the secrecy of the Government’ in this way of dealing with ‘both themselves and the country.’<sup>29</sup> He believed that as Protector he and his staff had an obligation to explain the purpose of the commission to Maori well in advance of hearings:

to make them intelligible to natives. The importance of proceeding as proposed will also appear, when it is considered that the greater part of these land transactions were conducted by parties *very partially understanding each other*; and I fear in many cases but little pains [were] taken to ascertain to whom the land they claimed belonged. [Emphasis added]<sup>30</sup>

Despite Clarke’s declared intentions, an English version of an 1841 notice to Maori was the only written notification evidence presented to the Muriwhenua Tribunal. This 1841 notice referred to a commission hearing to inquire into ‘the equity of the land sales by the Europeans to the New Zealanders.’ This would allow the Governor to ‘acknowledge or invalidate’ these transactions. The Governor wanted the Maori vendors to appear with the Pakeha claimants:

to give correct evidence concerning the validity or invalidity of the purchase of your lands. Harken! this is the only time you have for speaking; this, the entire acknowledgment of your land sale for ever and ever.<sup>31</sup>

The most that can be said about the Crown’s fulfilment of its notification obligations is that it remains to be verified. Armstrong argued that the Protectorate attempted to carry out Clarke’s intentions in the Kaipara area during March 1841. H Tacy Kemp (Clarke’s deputy) reported that he:

endeavoured to explain fully and explicitly the [Crown’s] gracious intentions [to Kaipara Maori] . . . I referred them more particularly to the Treaty of Waitangi. To this they readily agreed, and admitted their clear understanding of the same.<sup>32</sup>

Although Armstrong argued that Kemp’s Kaipara mission ‘suggests . . . the Maori were likely to soon become aware of the commission and its activities through their own developed networks of communication,’ Kemp’s report does not bear this out.

29. Clarke to Colonial Secretary, 9 February 1841, MA 4/58, p 19; quoted in Armstrong, pp 46–47

30. This was a remarkable admission coming from the protector. His role is discussed in greater detail below. Clarke to Colonial Secretary, 25 February 1841, IA 1/1841/250; quoted in Armstrong, pp 48–49

31. Governor’s approval, 9 July 1841, IA 4/271, pp 12, 20; quoted in Armstrong, p 41

32. Kemp to Clarke, 24 March 1841, in H H Turton, *Epitome of Official Documents relative to Native Affairs and Land Purchases . . .*, Wellington, Government Printer, 1883, B2–3; quoted in Armstrong, pp 50–51

His only indirect reference to the commission was to say that he had prepared a list of Kaipara claim 'particulars'. This was:

preparatory to investigation; but I think it improbable that the Natives will attend the claimants to the township of Auckland for further investigation [at a commission hearing].<sup>33</sup>

Evidently, Kemp failed to convince Maori of the importance of the hearing. Armstrong argued that prior to commission hearings, Protector Clarke 'would advise the Commissioners of appropriate locations to hold their courts,' and his subordinates (like Kemp) 'would also no doubt have discussed the nature and purpose of the Commission with local people.' Furthermore, he stated, that the Crown began a monthly publication in Maori in January 1842 which 'was likely to have' information on the commission.<sup>34</sup> Without direct evidence of such notification, however, the matter remains largely one of conjecture.

## 2.5 THE ROLE OF THE PROTECTORATE

The extent to which the original Land Claims Commission protected Maori interests depended to a large extent upon the effectiveness of Protector Clarke. Clarke's major problem was that, as a major land claimant himself, he had a conflict of interest. Clarke claimed a total of 5500 acres near the Waimate Mission Station where he resided as a member of the Church Missionary Society prior to taking up his 1840 appointment as Protector. Armstrong believed that his experience as a claimant served him well in understanding the process by which Maori entered into pre-Treaty transactions. Certainly, his February 1841 statement (quoted above) that most of these 'transactions were conducted by parties very partially understanding each other' suggests that he was aware of potential injustice to Maori. None the less, Armstrong went too far when he argued that the lack of recorded Maori protest regarding Clarke's claims during the 1840s hearings rendered him beyond reproach.<sup>35</sup> In fact, few Maori recorded protests at any of the 1840s hearings.<sup>36</sup> This may have reflected their lack of understanding of what was at stake, because prior to systematic surveys and the Crown designating part of the surveyed area as surplus land, little appeared to have changed on the ground. When Maori became more aware of the area affected during the 1850s, Tamati Waka Nene objected to part of Clarke's Whakanekeneke claim, and others objected to his Waimate claim, only to be overruled by Commissioner Bell.<sup>37</sup> In addition to this Maori protest, during the late 1840s Governor Grey used Clarke's Whakanekeneke claim as a test

33. Ibid, pp 51–52; Kemp to Clarke, 24 March 1841, *Epitome*, 82–3

34. Armstrong, pp 55–58

35. Ibid, p 68

36. In only 21 out of 1049 claims did commissioners register any form of Maori protest. Return no 1, *New Ulster Gazette*, 1849. For more discussion of these figures, see the section on 'FitzRoy's intervention'.

37. Bell hearing, 23 March 1858, OLC 1/634; Bell, 'Notes of various Sittings of the Court', 13 October 1857, OLC 5/34

case. Although the New Zealand Supreme Court upheld the validity of the resultant 4000 acre grant, the Privy Council over-turned this judgement and voided Clarke's grant in 1851.<sup>38</sup>

More important than his personal interest was Clarke's membership of a group of missionary land claimants which had come under assault well before his appointment as Protector. Missionary land claims became a major political issue in both New Zealand and Britain when the CMS began to oppose the New Zealand Company's colonisation plans in 1838–1839. Gibbon Wakefield quickly retaliated with a 'physician heal thyself message,' forcing the CMS parent committee in London into a defensive posture.<sup>39</sup> Clarke, in particular, believed that the critics of the missionary land claims had waged a vindictive political campaign. He believed that he and his colleagues claimed land in an honourable attempt to both support their families and protect Maori against Pakeha land-sharks.<sup>40</sup> None the less, Dandeson Coates, the CMS Secretary, instructed Clarke and his colleagues to cease purchasing land before news of the Treaty reached London.<sup>41</sup> Despite the fact that Maori challenged missionary land claims at the Waitangi and Mangungu Treaty debates, Hobson described the Protector's role to Clarke as one which bore 'a close affinity to the labours you are engaged in on their [Maori] behalf under the Church Missionary Society'.<sup>42</sup> When William Broughton, the Anglican Bishop of Australia, investigated CMS claims, he demanded that individual missionaries claim no more than the 2560 acre grant limit established by the 1840 Act. 'So shall you vindicate yourselves,' he concluded, 'from the aspersions cast upon you'<sup>43</sup> Clarke and almost all his colleagues defied this instruction at the same time as they promoted themselves as mediators between the Crown and Maori.

All in all, Clarke's conflict of interest limited his ability to protect Maori interests in at least three different ways. It limited his willingness to support the enforcement of the statutory 2560 acre grant limit (which formed the basis of the Crown's 1849–1851 case against him), and it limited his effectiveness in criticising the monster New Zealand Company claims south of Taupo. Since he himself exceeded the grant limit, he could hardly sustain commission efforts to limit company grants in this way. Although Spain limited New Zealand Company grants to approximately 395,000 acres, this was well in excess of the 2560 acre statutory limit.<sup>44</sup> Finally, during 1840 and 1841, the first years of the Land Claims Commission, Clarke was required to act simultaneously as the Crown's Protector of Aborigines, and as its chief land purchase agent. The conflict between these roles was so pronounced that he was able to resign from his purchase responsibilities in 1842.<sup>45</sup> His dual roles

38. *Queen v Clarke* 1849, 1851, vir Moore 77, pp 77–84; Privy Council order, 25 June 1851, OLC 1/634. For further discussion of this decision, see below in the section in this chapter on 'Grey's Intervention'.

39. Coates testimony, BPP, 1837–1838 (680), pp 257–258; BPP, 1840 (582), pp 4, 79, 166–167, 177–178

40. Clarke to CMS, 20 January 1840, Clarke letters, ATL

41. Coates to Clarke, 18 February 1840, Williams CMS corres 1: 20–24, AIM

42. Hobson to Clarke, 4 April 1840, CMS/CN/M12, microfilm , ATL

43. Broughton to Williams, 28 September 1840, Williams CMS corres 1: 31–33

44. Armstrong, p 70; Moore, *Crown Demesne*, pp 76–82

45. Armstrong, p 67

also prevented him from attending many commission hearings during 1841–1842. This undoubtedly limited Clarke's effectiveness in protecting Maori interests during commission investigations.

## 2.6 COMMISSIONERS' QUALIFICATIONS AND ADMINISTRATIVE SUPPORT

Commissioners Godfrey and Richmond were almost totally reliant upon Clarke and his subordinates to deal with the Maori side of their investigations. Both were military officers serving in New South Wales at the time of their appointment. Neither had any New Zealand experience prior to their appointments, or much experience in colonial administration. Furthermore, neither had any legal training.<sup>46</sup> When they arrived in the new colony in early 1841 they were greeted with a very large number of claims, and by early 1842 the Governor had referred a total of 872 widely dispersed claims to them. Without adequate administrative support from a severely under-resourced colonial government, they were able to hear only 229 claims (about 26 percent of the total) in their first year of operation.<sup>47</sup>

Lack of revenue and the consistent refusal of imperial authorities to fund the administration of the infant colony virtually paralysed government in New Zealand throughout the entire period of the commission's inquiries.<sup>48</sup> Imperial authorities appear to have misunderstood that New Zealand land did not translate easily into colonial revenue. Colonial Secretary Lord Russell's instructions to Hobson in late 1840 and early 1841 called upon him to survey land granted to Pakeha and land occupied by Maori. He assumed that the unsurveyed remainder would become part of a vast disposable public domain.<sup>49</sup> Hobson, however, had only a small surveying staff at his disposal, and it was involved almost exclusively in the establishment of the colonial capital at Auckland during 1841–1842 rather than in assisting the Land Claims Commission.<sup>50</sup>

In a vain attempt to generate revenue out of land claims, Hobson attempted to speed up the commission's work. In late 1841 he announced that the 'successful settlement' of these claims (which covered, he said, 'every available tract' of New Zealand land) would either make or break the 'future prosperity of New Zealand.' He proposed to streamline the commission's process by introducing the simple New Zealand Company grant acreage formula in place of Gipps' complicated sliding scale. Following Wakefield's theory of colonisation, he also proposed the concentration of settlement in defensible areas such as the Bay of Islands,

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46. G H Scholefield, *Dictionary of New Zealand Biography*, Wellington, Government Printer, 1940, vol 1, p 302; vol 2, p 242
  47. Commissioners to Hobson, 12 March 1842, CO 209/14, pp 264–266, microfilm, NA Wellington; quoted in Armstrong, pp 114–115
  48. Statement of Receipts and Expenditure, 1840; Hobson to Stanley, 15 January 1842, BPP, 1843 (134), pp 1–2, 10–11
  49. Russell to Hobson, 9 December 1840, 28 January 1841, BPP, 1841 (311), pp 26–30, 51–52
  50. Godfrey to Colonial Secretary, 9 March, 26 November 1842, OLC 8/1; cited in Armstrong, p 61

Auckland and Wellington. Claimants in remote areas would receive scrip in exchange for land nearer the main colonial towns.<sup>51</sup> Hobson evidently believed that most of the outlying areas claimed by Pakeha would then become part of the public domain.

A storm of settler protest forced Hobson to remove the settlement concentration (via scrip exchange) provisions from his 1842 Land Claims Ordinance. Section 2 of this ordinance, like its predecessor, stated the Crown's presumptive rights:

All lands within the Colony which have been validly sold by the aboriginal natives thereof are vested in Her Majesty, her heirs and successors, as part of the demesne lands of the Crown.

Section 4 omitted the 2560 acre grant limit in the original Act and Ordinance (presumably for the benefit of the New Zealand Company).<sup>52</sup> Although commissioners operated in accordance with this Ordinance after it took effect on 25 February 1842, the imperial government disallowed it later that year. Colonial Secretary Lord Stanley believed that the company grant formula was not applicable to individual claims. He therefore instructed Hobson's successor, FitzRoy, to revive the original legislation.<sup>53</sup> Such legislative confusion can only have made the commissioners' already onerous duties even more difficult. They were somewhat relieved by the appointment of an additional commissioner to consider company claims after March 1842, but the task of examining the 1000 plus claims filed during the 1840s remained a monumental one.

## 2.7 DIFFICULTIES CONFRONTING COMMISSIONERS

The sheer number of claims requiring investigation in different parts of the country confronted commissioners with serious difficulties. As well as conducting hearings at Auckland and Kororareka, Godfrey and Richmond had to travel to places as remote as Coromandel Harbour (where they heard 87 claims), Kaipara, Waimate, Mangungu, Mangonui and Kaitaia. Furthermore, Godfrey had to travel to the South Island in 1843 where he heard 117 claims (mainly at Akaroa and Otakou). By mid-1843 Godfrey and Richmond had still heard only half the claims filed.<sup>54</sup> Godfrey delayed reporting on the numerous scrip claims at Hokianga and Mangonui until after the arrival of the new Governor. As a result, he had to issue 72 reports in the space of nine days with minimal clerical assistance.<sup>55</sup>

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51. Hobson's Address to the Legislative Council, 14 December 1841, BPP, 1841 (569), pp 198–199. This policy followed Russell's 17 April 1841 instructions to establish 'the general system of forming the settlers of each district into a regular community ... along Company lines'. Moore, *Crown Demesne*, p 168.
  52. Section 8 also permitted a single commissioner to report claims, whereas previously two were required. 1842 Amended Land Claims Ordinance (sess 2, no 14).
  53. Stanley to Hobson, 19 December 1842, co 209/14, p 370; cited in Armstrong, pp 103–106
  54. Godfrey and Richmond to Shortland, 30 May 1843, BPP, 1845 (246), p 12

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In addition to under-resourcing, commissioners faced a number of other difficulties. Hobson believed that their chief difficulty lay in overcoming 'the indolence and mutual hostility of the Natives'. In his words:

When it happens that the Claims occur on the land of friendly Natives, it is possible by bribing very highly to procure attendance [at hearings], but these instances are very rare.<sup>56</sup>

Godfrey and Richmond normally required the affirmation of at least two Maori during the examination of a claim. Walter Brodie, an aggrieved claimant, told the 1844 House of Commons New Zealand Committee that 'nearly all' claimants had to pay Maori to appear 'to make them actually tell the truth' and that this constituted 'a prejudice in favour of the natives'.<sup>57</sup> Rather than publicly notifying Maori of the purpose and procedure of the commission, the Crown apparently relied upon claimants to notify Maori privately. Since claimants had no interest in notifying Maori objectors, this probably meant that the only Maori likely to be informed were those whose support claimants could rely upon.

Godfrey and Richmond saw a different set of problems. They referred to how absentee speculators claimed:

enormous tracts of land for trifling sums . . . [Maori apparently] had no objection to cede a whole district to an individual presuming that he could not . . . dispossess or inconvenience their greater numbers [residing there] . . .

Subsequently, of course, the Maori residents would object to an unacknowledged Pakeha living on their land.<sup>58</sup>

Although commissioners' reports contained few references to this kind of situation, this omission could be explained by the fact that many of the monster claims were never brought to hearing. Clarke had made a similar observation when in August 1841 he deplored the fact that the company could claim the villages and cultivations of Maori.<sup>59</sup> The commissioners shared Clarke's desire to provide at least some protection for Maori interests. They wrote in May 1842 that Maori:

cultivation[s], and fishing and sacred grounds, ought . . . to be in every case reserved to them, unless they have, to a certainty, been voluntarily and totally abandoned. If some express condition of this nature be not inserted in the grants from the Crown, we fear the displacement . . . of the natives, who, certainly, never calculated the consequences of so entire an alienation of their territory.<sup>60</sup>

55. Godfrey to Colonial Secretary 3, 12 May 1844, OLC 8/1; J W Hamilton to Partridge, 14 May 1844, OLC 44/133, p 104

56. Hobson to Stanley, 26 March 1842, G25/1

57. Quoted in Armstrong, pp 125–126

58. Commissioners to Hobson, 12 March 1842, CO 209/14, pp 264–266; quoted in Armstrong, pp 114–116

59. Armstrong, p 70

60. Commissioners to Hobson, 2 May 1842, IA 1/1842/721; quoted in Armstrong, pp 117–119

The main difficulty commissioners encountered in reserving areas essential to Maori welfare was in defining such areas, and then ensuring that they were administered in the interests of Maori. Not only were Maori residents of such areas unlikely to attend hearings, but the commission was never assisted by the surveyor Gipps originally instructed it to employ.<sup>61</sup>

Nor did the 1840, 1841 or 1842 land claims legislation make any provision for Native Reserves. Only Russell's 1842 supplemental instructions to Hobson made provision for such reserves, but Hobson failed to embody this aspect of his instruction in statute.<sup>62</sup>

## 2.8 PROTECTORATE AND SURVEY REPORTS

Godfrey had long been aware of the tendency of claimants to inflate the acreage of their initial claim in an attempt to obtain a more significant grant. This, for him, highlighted the need for accurate surveys.<sup>63</sup> Russell's 1840 and 1841 instructions to Hobson required the Surveyor-General to identify all land subject to pre-existing Maori and settler claims, and to define the remainder as Crown demesne. Surveyors were also to cooperate with the Protectorate to ensure that all lands deemed 'essential' to Maori became inalienable reserves.<sup>64</sup> By the time of Hobson's premature death in September 1842, Crown surveyors had failed to define either the 42,000 acres for which commissioners by then had recommended grants, or the 150,000 acres of surplus land arising from them. Surveyor-General Ligar reported that it would take the Crown over seven years to do the job. He prevailed upon the Executive Council, and Shortland prevailed upon Lord Stanley in London, to authorise private surveyors both to 'create an immediately exchangeable property,' and to 'considerably augment' the public domain.<sup>65</sup> As a result, Shortland proclaimed that claimants could employ private surveyors, and:

Should the boundaries marked out . . . be found to contain a greater quantity of land than shall be contained in the Deed of Grant, the excess will be resumed.<sup>66</sup>

This was the first public notice of the Crown's intentions regarding surplus land. Significantly, it was apparently addressed to settler 'Land Claimants,' not to Maori.

Despite this injection of private surveyors into the process, commissioners continued to complain about the absence of reliable surveys to allow them to visualise the land under consideration. They needed to know whether claims

61. Gipps to Commissioners, 2 October 1840; cited in Armstrong, p 14.

62. Russell to Hobson, 28 January 1841, BPP, 1841 (311), pp 51–52. For further discussion on this, see the section on 'Reserves' below.

63. Godfrey to Colonial Secretary, 9 March, 26 November 1842, OLC 8/1; cited in Armstrong, p 61.

64. Russell to Hobson, 9 December 1840, 28 January 1841, BPP, 1841 (311), pp 30, 51–52; Moore, *Crown Demesne*, p 110.

65. Executive Council minutes, 19 September 1842, MA 91/8, exhibit B, pp 12–14; Shortland to Stanley, 24 September 1842, BPP, 1844 (566), pp 479–450; quoted in Armstrong, p 63.

66. 'Notice to Land Claimants', 27 September 1842, MA 91/8 B, pp 14A–14B.

overlapped with each other, with Maori land, and with the few Crown purchases (almost invariably unsurveyed) Clarke had negotiated in 1840 and 1841. In 1842, for example, Clarke failed to provide commissioners with more than a general boundary description of his 1840–1841 Mangonui purchases even though he admitted they overlapped ‘several purchases claimed by Europeans’.<sup>67</sup> When Godfrey was about to investigate Mangonui claims, he informed Clarke that it would undoubtedly prove ‘a rather troublesome business to discern what claims interfere with the land’ which the latter had purchased for the Crown.<sup>68</sup> Both Godfrey and Richmond, who began to hear claims separately after February 1842, assumed that while they could make general grant recommendations as a result of their hasty inquiries, the issuance of an indefeasible Crown grant would have to await an accurate survey of the precise boundaries of the land granted. They informed the local Colonial Secretary:

that, owing to the inaccuracies of the description of the boundaries in the deeds exhibited to us, we have very seldom been able to point out, exactly the actual situation and extent of the land claimed. The Native Sellers can alone shew the boundaries to the Surveyors.<sup>69</sup>

When private surveyors began to operate in 1843, they found some claimants less than cooperative when it came to boundary identification. Sampson Kempthorne discovered, when he began to survey CMS claims from Matamata northwards, that Maori disputed a number of the boundaries specified in the usually detailed deeds. He alleged that some of the missionaries deliberately obstructed his surveys, and that both Richmond and the newly-arrived Chief Justice William Martin privately criticised the extent of their claims.<sup>70</sup> Since commission hearings during 1843 numbered in the hundreds, Crown officials must have sensed the potential for wholesale confusion with the combination of lack of survey definition, and multiple overlapping and conflicting claims.

Apparently to provide a remedy to this situation, Shortland introduced verification of extinguishment procedures in the form of ‘special reports’ for both Protectorate officials and surveyors to complete in cases of overlapping or conflicting claims. The Colonial Secretary instructed Clarke that:

every precaution should be used to ensure a certain knowledge that the rights of the natives . . . have been completely extinguished . . .

Firstly, Crown surveyors were to define claim boundaries and report any Maori obstruction of their work. Then, a protectorate official was to complete a report which would:

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67. Clarke to Commissioners, 22 August 1842, MA 4/1, p 31

68. Godfrey to Clarke, 13 September 1842, OLC 8/1, p 50

69. Commissioners to Colonial Secretary, March 1843, OLC 8/1, pp 61–62

70. Kempthorne to CMS, 29 April, 3 November 1843, Kempthorne papers, ATL; Dieffenbach also criticised the extent of missionary claims. Ernst Dieffenbach, *Travels in New Zealand*, London, John Murray, 1843, vol 2, pp 166–168.

certify that after due inquiry he is fully satisfied of the alienation of their lands by the former aboriginal owners.<sup>71</sup>

Although Armstrong produced evidence that officials followed these procedures in the case of one Bay of Islands claim, the available evidence suggests that neither the Protectorate nor surveyors completed these ‘special reports’ with any consistency. John P Du Moulin and H Tacy Kemp filed some very brief reports in the Bay of Islands. For example, in the case of James Clendon’s Orongo claim, Du Moulin stated that no Maori obstructed his survey and: ‘No claims of ownership have been proffered on me by them, or on their behalf.’ Just as with Kemp’s report on the same claim, he recited the boundaries but named no Maori verifying the accuracy of them.<sup>72</sup> Without consistently completed ‘special reports’ on the boundaries and multiple interests associated with various claims elsewhere, northern commissioners must have been virtually ‘flying blind’ through the bulk of claims heard in 1842–1843.

## 2.9 HEARING PROCEDURES

Armstrong argued in his analysis of Godfrey and Richmond’s hearing procedures, that they gave special consideration to Maori evidence. At least two claimant witnesses before the 1844 House of Commons New Zealand Committee believed that the commission gave Maori evidence greater weight than that offered by Pakeha claimants. Brodie claimed that Karikari Maori forced him to reduce the extent of his original claim, and that Godfrey told him that unless he complied with Maori wishes ‘he would receive nothing.’ Similarly, Thomas McDonnell, the former British Resident at Hokianga, alleged that the way commissioners privileged Maori evidence encouraged the latter to extort further payments from claimants.<sup>73</sup> Although some Maori undoubtedly used the commission’s requirement to have at least two Maori support a claim in hearing to extract further concessions from claimants, this does not appear to offer sufficient grounds for arguing that the commission treated Maori evidence as more important than that produced by the claimants.<sup>74</sup>

Firstly, Pakeha normally produced the Maori witnesses with an undoubted expectation that they would support the claim (for which they were sometimes paid). Protectorate officials seldom recorded producing witnesses who objected to claims.<sup>75</sup> In most cases these officials were busy enough translating Maori evidence for the commission, though what they wrote down was normally a very brief

71. Colonial Secretary to Clarke, 21 April 1843, and enclosed ‘Protector of Aborigines Special Report . . .’ *Epitome* B8–9; cited in Armstrong, pp 174–175

72. Du Moulin and Kemp’s report [both undated], MA 91/18 (claim 121) pp 7–8. Armstrong cited the investigation of Gilbert Mair’s nearby Te Wahapu claim: Armstrong, pp 175–176.

73. Armstrong, pp 121–124, 133–135

74. Ibid, pp 143–146

75. In at least one case, Maori protested to Clarke prior to appearing before the commission: Wiremu Hau to Clarke, 19 February 1841, Hau sworn statement, 12 November 1841, MA 91/18 (59) pp 2, 4.

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affirmation in English. The typical Maori statement written into the record would read something like:

That is my signature to the Deed now before the Court, I with the rest of the Natives who signed sold the Land described therein to [the claimant] for the Goods stated in the Deed. The land belonged to us and we had a right to dispose of it. We understood that we parted with it for ever. The Boundaries are correctly described in the Deed . . . The Deed was read and explained to us before I signed. We have never sold this land to any other Person, nor has it been disputed by other Natives.<sup>76</sup>

While such a declaration may appear to be a straightforward expression of informed consent, the fact that it was recorded only in English and in a way that varied little from witness to witness raises several questions. The first is: why was no Maori language evidence recorded by Godfrey and Richmond in the way that Spain insisted it be recorded when he investigated claims further south? What guarantee did the testimony of only two Maori give that the interests of other groups were properly represented and would not be violated by the grant resulting from the commission's recommendation? Finally, in cases where Maori appear to have entered into arrangements with Pakeha claimants that resembled something less than absolute alienations of property in perpetuity, what did the commission do to recognise the Maori rights retained in such arrangements?<sup>77</sup>

The answer to the first question about why Godfrey and Richmond's assistants recorded virtually no Maori language evidence, to allow affirmers to speak for themselves, appears to be simple enough. The welter of northern claims, which by 1844 exceeded 800, appeared to prohibit the painstaking process undertaken by Spain's Commission in the south (a process which even Spain suspended after only six months or so). The question of the adequacy of two Maori affirmers (normally selected by the claimant) was probably considered in the same light. To recognise multiple Maori interests, and to have sought proper representation for each, would have undoubtedly prolonged the investigations of the commission beyond the means of the still financially strapped colonial administration.

The question regarding the commission's treatment of transactions which it should not have considered to be straightforward alienations or sales is much more difficult to answer. Protector Clarke, himself, admitted in 1841 that the majority of pre-Treaty 'transactions were conducted by parties very partially understanding each other'.<sup>78</sup> Section 2 of the 1841 Ordinance required commissioners to consider:

all titles to land . . . held or claimed by virtue of purchases or pretended purchases gifts conveyances or pretended conveyances leases or pretended leases agreements or other titles . . . from the chiefs or other individuals . . . of the aboriginal tribes . . .

By section 3 they were required to inquire:

76. Based on Te Kemara's unsworn statement recorded by Kemp, 2 January 1842, in the hearing of CMS Paihia claims, OLC 1/666

77. This matter is explored further in the discussion of trust deeds in the 'Reserves' section below.

78. Clarke to Colonial Secretary, 25 February 1841, IA 1/1841/250; quoted in Armstrong, pp 48–49

into the mode in which such claims to land have been acquired, the circumstances under which such claims may be and are founded, and also to ascertain the extent and situation of the same . . .

Thus, commissioners were required to consider the nature of pre-Treaty transactions. They were not to simply assume that they all amounted to simple alienations or sales. None the less, in reporting their recommendations on claims, the northern commissioners adopted printed forms which appeared to prejudge this issue. Instead of the variety of different kinds of transactions referred to in the Ordinance, the forms referred only to purchases, sales and alienations.<sup>79</sup> Such report forms failed to account for multiple Maori interests in land, and cases in which Maori clearly believed that they retained an interest in the land.

The situation where Maori continued to reside on land claimed by Pakeha is difficult to quantify, but was recorded by Ernst Dieffenbach as a widespread occurrence. He wrote that many Maori appeared to enter into pre-Treaty transactions:

with the implied understanding that they should continue to cultivate the ground which they or their forefathers had occupied from time immemorial. It never entered their heads that they should be compelled to leave it and retire to the mountains . . . In transferring land to the Europeans the natives [believed] . . . that they gave the purchaser permission to make use of a certain district. They wanted [above all else] Europeans amongst them . . .<sup>80</sup>

After quoting Dieffenbach in this way, Armstrong argued he was ill-informed. He dismissed Dieffenbach's view that commissioners 'cannot be aware of the hardship and injustice which in some cases they will entail upon native tribes.' Using the Port Nicholson situation as his example, Armstrong contended that, contrary to Dieffenbach's position that Maori believed they had entered into a limited exchange of specified rights with the company, they contested only the extent of the company's purchase, not the nature of the transaction.<sup>81</sup> The extent to which Commissioner Spain was able to investigate both the nature, and extent, of New Zealand Company transactions therefore requires close examination.

## **2.10 SPAIN'S HEARING PROCEDURES**

Duncan Moore, in his report to the Waitangi Tribunal for Wellington Tenthis claimants, provided the most detailed analysis of Commissioner Spain's procedures. Spain, unlike Godfrey and Richmond, owed his appointment to imperial instructions that the colonial government deal expeditiously with a

79. Commissioner's report form no 48 and no 49, OLC 1/634. These forms referred to land 'purchased,' an 'alleged purchase,' a 'bona fide purchase,' 'sellers,' a 'Deed of Sale,' and Chiefs having 'admitted the payment they received, and the alienation of the Land . . .'

80. Dieffenbach, vol 2, pp 143–144; quoted in Armstrong, pp 138–140

81. Dieffenbach, vol 2, p 144; quoted in Armstrong, pp 140–142

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particular set of claims, those of the New Zealand Company. Hobson's instructions to Spain under the provisions of the (later disallowed) 1842 Ordinance specified that he was to:

hold his court at such places as may afford claimants the greatest facility for producing native witnesses, and he will be guided [as in the 1841 Ordinance] . . . by the real justice and good conscience of the case without regard for legal solemnities

The Protector or his deputy had to be present in court:

to represent the rights of the natives and protect their interests . . . [with responsibility] to conduct the native cases, giving due and timely notice of opposition or caveat on the part of the natives to the Commission.<sup>82</sup>

In view of the well-known rivalry between the CMS and the company, Protector Clarke unwisely delegated to his sub-protector son, George Clarke jr, the duty of protecting Maori interests in the claims to be heard by Commissioner Spain. The father instructed his son that he was:

to superintend the hearing of these claims . . . notify . . . the Native population [of] the cause of his coming, and assure them that their complaints will be patiently heard, and that no lands will be taken from them except those which shall be proved to have been validly sold by them to the Europeans.<sup>83</sup>

Spain's hearings, begun at Port Nicholson in May 1842, proved to be (for the first three months, at least) an exhaustive investigation of voluminous Maori evidence. Although Spain had traveled to Auckland to receive his instructions, and while there he must have been fully briefed on Godfrey and Richmond's hearing procedures, he chose to depart from them. Instead of an examination of only two Maori witnesses per claim, recorded only in English in a very summary and repetitive fashion, in mid-1842 Clarke jnr recorded over 1000 pages of Maori testimony regarding company and related claims. He minuted evidence in both Maori and English and later translated these verbatim Maori minutes into English.<sup>84</sup> In addition to Clarke's painstaking attention to recording Maori evidence in both languages, Spain and Clarke interrogated both Maori and claimant witnesses. Moore criticised what he described as Spain's 'strict Interrogator-Witness style,' contrasting it with the post-1865 Native Land Court's 'rather open-ended (and Maori-led) Conductor-Challenger dialogue.' A more appropriate contrast is probably the extremely rushed and truncated hearings conducted by Godfrey and Richmond even as Spain began his much more painstaking hearings further south. Moore's observation that Spain's 'Court learned most about those Maori interests that appeared most useful to the interrogators' purposes – ie to the Court's and the

82. Hobson's instructions encl in Shortland to Spain, 30 March 1842, *ibid*, pp 11–12; quoted in Moore, pp 172–173

83. Shortland to G Clarke sr, 5 April 1842, IA 4/271, pp 46–47; quoted in Moore, *Crown Demesne*, p 173

84. Moore, *Crown Demesne*, p 180

colonists' purposes' should be considered in the context of the hearing process already operating in the north. Although Spain may have heard Maori mainly with a view to clearing the way for uncontested grants to the company and other claimants, at least he heard (and Clarke recorded) extensive Maori evidence, in contrast to their northern counterparts.<sup>85</sup>

The first days of Spain's Port Nicholson hearings set the tone for the remaining three months. Clarke's 19 May 1842 cross-examination of the New Zealand Company's agent, Colonel William Wakefield, included a question about 'whether any Chiefs were told the [1839 company] payment was for anchorage only, and that when their names went to the Queen she might send them presents.' Wakefield denied this, and began his own cross-examination of Maori witnesses on the same day.<sup>86</sup> Halswell, acting as the company-appointed 'Protector of Aborigines,' began questioning on 21 May, followed by Clarke, the official Sub-protector.<sup>87</sup> Spain allowed Clarke's searching cross-examination, which clearly troubled Wakefield. Wakefield then challenged Spain to explain:

how the searching investigation going on into the Company's titles was compatible with his declaration that he had come to carry out the agreement between the [British] Government and the Company ...<sup>88</sup>

Wakefield's challenge was, of course, consistent with the Colonial Office view of the essentially political purpose of Spain's commission to settle company claims as expeditiously as possible. On the other hand, Spain defended his judicial function, while Wakefield continued 'to urge upon Mr Spain the mischievous consequences of a protracted examination of the natives.'<sup>89</sup>

Not only did Spain persist with the cross-examination of Maori witnesses called by the company to support the 1839 transaction, he also called Maori witnesses who opposed it. During July and August he questioned these opponents about the customary ways of preventing one group from selling another's land. For example, he asked Mangatuku whether Te Puni or Te Wharekouri had any right to sell his land at the village of Pipitea. Mangatuku answered: no.<sup>90</sup> When Spain asked Te Puni on 7 July whether he and Te Wharepouri 'had a right to sell' the villages of Te Aro, Kumutoto, Pipitea, and Ngauranga 'without the consent of the people of those tribes,' Te Puni answered: yes.<sup>91</sup>

Unfortunately, after a rigorous examination of Maori evidence for three months in mid-1842, Spain transformed his activities into what Moore described as 'an Office-like purchase negotiation' for the following six months. He evidently completely misjudged the possible length and costs of such a thorough investigation. Consequently, he told Hobson that:

85. *Ibid.*, p 181

86. *Ibid.*, pp 186–187. Spain called and questioned Wi Tako on 20 May. *Ibid.*, pp 191–193.

87. *Ibid.*, pp 195–200

88. Wakefield journal (21 May 1842), Wai 145 ROD, doc A29, p 325; quoted in *ibid.*, p 202

89. Wakefield to NZC Directors, 30 May 1842, Wai 145 ROD, doc A29, p 645; quoted in *ibid.*, pp 237–238

90. *Ibid.*, pp 247–248

91. *Ibid.*, p 258 ✓

Unless powers are vested in me to act as an arbitrator, in awarding compensation where certain principal native chiefs have joined in sales, but other natives, who held lands for cultivation within the boundaries conveyed, have not done so, I see little prospect of settling the question.<sup>92</sup>

Spain therefore called upon Hobson to empower him to arbitrate in the interests of both Maori and Europeans.<sup>93</sup> The switch from investigation to arbitration, Moore contended, abbreviated the enquiry, restricted Maori participation in it, and obligated the sub-protector to ensure the alienation of their interests.<sup>94</sup> Moore concluded that Spain's investigation and switch to arbitration in late 1842 appeared to have been consistent with the Crown's long-term goal which he believed was the complete 'extinguishment of the Maori interests in the lands the company had sold to colonists'.<sup>95</sup> None the less, the significance of Spain's investigation for this study appears to be that it shows that the Land Claims Commissions elsewhere (and later) could have attempted a rigorous examination of Maori evidence had they been adequately resourced. Even though Spain suspended this kind of investigation after only three months in 1842, he showed what was possible if the commissioner chose to investigate both sides of the story with sufficient determination.

## **2.11 CLARKE'S CONCEPTION OF 'NATIVE TITLE'**

Despite the rigour of Spain's brief 1842 investigation of Maori witnesses on company transactions, neither he nor his sub-protector, George Clarke jr, appeared to have a clear conception of Maori interests in land and other resources. Clarke undoubtedly shared both his father's thinking and imperial conceptions of what constituted 'native title.' Although Clarke snr later took issue with the Crown's presumptive rights, while Protector of Aborigines he had to abide by imperial policy on this subject. In early 1841 when Russell instructed him (through Hobson) and the Surveyor General to identify the land 'that the natives should permanently retain', this implied that they should retain only those areas which they cultivated and resided upon, and that the remaining unoccupied areas should go to the Crown.<sup>96</sup> Clarke's attempts to carry out these instructions were notably unsuccessful during 1841 and 1842, when he also functioned as the Crown's chief land purchase agent. During these years he attempted Crown purchases in unsurveyed areas such as Mangonui, Mahurangi and Waitemata which were littered with old land claims and overlapping Maori interests. He later defined the largely abortive 1840–1841 Mangonui purchases as transferring to the Crown '(not the land, but) all the remaining interests of each chief in the disputed territory'.<sup>97</sup>

92. Spain to Hobson, 16 September 1842, Wai 145 ROD, doc A31, pp 178–179; quoted in ibid, p 280

93. Ibid, pp 279–280

94. Ibid, pp 284, 314

95. Ibid, p 338

96. Russell to Hobson, 28 January 1841, BPP, 1841 (311), pp 51–52

97. Clarke to Colonial Secretary, 1 September 1845, BPP, 1846 (337), p 123

Godfrey later complained to him that such an arrangement made his subsequent investigation of Pakeha claims difficult (to say the least), but Clarke was acknowledging the existence of multiple Maori interests in the same land. When the Mangonui and Wairau situations exploded into violence in 1843, Clarke became more aware of the need to articulate a clearer conception of 'native title.'

In the aftermath of these conflicts, Clarke proposed a New Zealand Domesday Book in which he would both list and map areas of Maori land outside Crown purchases and Pakeha claims in accordance with Russell's 1841 instructions. He declared that 'native title' was founded not upon conquest but 'upon occupancy and the subjugation of the Land'. He saw this complete catalogue as something 'from which all disputes might thenceforth be settled . . . [in] Native Courts'.<sup>98</sup> Later in 1843, Clarke reported that the complexities inherent in Maori multiple interests in land shackled all efforts to purchase large areas. He believed that Maori, even though they were able to sell small areas, encountered insurmountable obstacles. In his words:

in attempting to dispose of large tracts . . . [Maori] are certain either to injure themselves or come into collision with others . . . The natives are not only not willing, but cannot by any means be induced to part with their paternal possessions, which are generally the best lands . . .<sup>99</sup>

Although Clarke had come to an appreciation of the complexity of 'native title,' he did not appear to apply his understanding of the subject to Pakeha claims, including his own. In mid-1845 during the House of Commons debate upon the findings of its New Zealand committee investigation, the leading Colonial Reformer, Charles Buller, launched a withering personal attack on Clarke, and on his conception of 'native title.' He denounced Clarke as a land jobber masquerading as a protector of Maori interests. He ridiculed the idea that 'cannibal . . . savages' could transfer title to land in pre-Treaty transactions. These transactions, upon which Clarke based his private claims, lacked 'the first requisite of all contracts, that of being understood by both parties to it.'<sup>100</sup> Buller described Clarke's conception of 'native title' contained in his *Domesday Book* proposal as nothing but a set of:

monstrous fictions, which missionaries have invented for the sordid purpose of making out that the natives possessed and could convey to them a freehold tenure in their land. It can be of no advantage to the native race of New Zealand that we should compliment them by misunderstanding their social state.<sup>101</sup>

Buller's rejection of Clarke's approach, and the minimal resources available to colonial officials to either define Maori interests or assist commissioners,

98. Clarke to Colonial Secretary, 1 June 1843, encl in FitzRoy to Stanley, 20 August 1845, BPP, 1846 (337), pp 109–114

99. Clarke to Colonial Secretary, 17 October, 1 November 1843, CO 209/33, pp 356–360

100. BPD, 17 June 1845, vol 81, cols 674, 686, 688. Charles Buller, together with Gibbon Wakefield, helped Lord Durham produce his famous report on colonial self-government in 1839. W David McIntyre, *Colonies into Commonwealth* London, Blandford Press, 1966, pp 35–36, 46.

101. BPD, cols 673–675

compounded the problems FitzRoy faced when he arrived in New Zealand in late 1843. Just prior to his arrival, Acting-Governor Shortland informed London that Crown land policies:

have been drawn up on the assumption that the Natives have alienated vast tracts of land and that the Crown is consequently in possession, through the land claims and other sources, of considerable disposable Demesne.<sup>102</sup>

On the basis of commissioners' reports, Shortland rejected this assumption and he deplored how the lack of a disposable public domain crippled colonial administration.

## 2.12 FITZROY'S INTERVENTION

By the time FitzRoy arrived in the virtually bankrupt colony, Godfrey and Richmond had considered over 1000 claims. During 1843 and 1844, according to Armstrong, they recommended grants in 490 cases (about 46 percent of the total), they recommended 'no grant' in 165 cases (15 percent) and they did not investigate 241 (just under 23 percent) in which the claimants failed to appear. Of the 165 cases where commissioners recommended 'no grant', Armstrong estimated that 'Maori opposition' featured in 30 of these claims.<sup>103</sup>

Our scrutiny of the source of these statistics, the 1849 *New Ulster Gazette*, reveals a much less tidy picture than that which Armstrong reported. Fewer than 30 cases of 'Maori opposition' resulted in 'no grant' recommendations. Altogether 14 such cases appeared to cause such recommendations. On the other hand, FitzRoy intervened to ensure that a further seven claimants received either grants or scrip, in spite of recorded Maori opposition.<sup>104</sup> Several other land claim returns published in the 1849 *Gazette* reveal further anomalies. FitzRoy appointed another commissioner, R A Fitzgerald, to revise Godfrey and Richmond's recommendations. Fitzgerald altered 99 out of 655 original reports 'without having heard the case'. Partly on the basis of these revised recommendations, FitzRoy issued 12 grants in spite of original recommendations for 'no grant'.<sup>105</sup> Finally, only 42 out of the 230 grants issued by FitzRoy were either surveyed, or required no survey (as in the case of grants identical to islands). In 1849, as a result, the Crown described 81 percent of FitzRoy's grants as lacking sufficient 'description of the specific portions of the land conveyed'.<sup>106</sup>

FitzRoy intervened in this chaotic fashion in an attempt to speed up the process of allowing claimants to obtain Crown grants. He began by waiving survey

102. Shortland to Stanley, 30 October 1843, G25/1

103. Armstrong, pp 191–192. He added that commissioners failed to investigate 66 claims 'for unknown reason,' and a balance of 44 appear to be Hokianga and Mangonui 'scrip claims.'

104. 'Return [no 1] showing the whole of the Cases heard by the Original Commissioners . . .', NUG, 1849

105. Return nos 2 and 3, NUG 1849

106. Return no 8, NUG 1849. The Privy Council described unsurveyed grants as 'void for uncertainty' in *Queen v Clarke*, 1851

requirements. Ligar reported that claimants lacked sufficient incentive to employ surveyors. They believed 'that their titles to land, as derived from the natives, are equally as good as the title they would receive from the Crown.' FitzRoy, therefore, announced that written boundary descriptions in grants would suffice to bring to an end 'the long protracted subject of land claims'.<sup>107</sup>

Godfrey and Richmond had made all their recommendations in the expectation, required by section 9 of the 1841 Ordinance, that their written boundary descriptions (usually taken verbatim from deeds) would receive precise survey definition as a condition of the grant. In 1843 Godfrey and Richmond reported that:

owing to the inaccuracies of the description of the boundaries in the deeds exhibited to us, we have very seldom been able to point out, exactly, the actual situation and extent of the land claimed. The Native Sellers can alone shew the boundaries to the Surveyors.<sup>108</sup>

Godfrey alerted FitzRoy to the complications arising from unsurveyed grants in the Hauraki area where Maori disputes surfaced after his hearings. He admitted that during his hearings he was 'very seldom' able to get 'an accurate description of the boundaries' from Pakeha claimants. Should they receive grants:

with such boundaries as are simply defined in the Commissioner's report, without a survey of them pointed out by the Natives and justified by the Protector of Aborigines of the districts, I fear that much confusion and opposition will arise hereafter; for we must expect that grants will be subdivided or disposed of to fresh settlers, and, if there are any such flaws in the original purchase, arising from unfulfilled promises [to Maori] or otherwise, payment will be instantly demanded from the new-comers, and should they refuse it they will be turned off the disputed ground quite as unceremoniously in the North as they have unfortunately been in the South [at Wairau?]. The class I speak of, the new derivative purchasers, being perfectly innocent of any error in the contract, and likely to consider a title springing from a Crown grant as an ample ground of pertinacious holding, either mischief will ensue to the claimant if the Natives be strong, or if they are weak or isolated the Natives will suffer injustice.

Godfrey applied the same criticism to FitzRoy's 'extension' of his recommended grants for CMS and other favoured claimants (such as William Webster). He believed that these extended grants would almost invariably affect other Maori interests that he had tried to protect by limiting the area to be granted. He stated that he calculated recommended grant acreage not just on the basis of price paid, but also:

I have frequently deemed it necessary to regulate the amount of the grant recommended by the quantity of land which, making fair allowance for the claims of

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<sup>107</sup>. Executive Council minutes, 8 January, Legislative Council minutes, 9 January 1844, BPP, 1845 (247), pp 30, 96

<sup>108</sup>. Commissioners to Colonial Secretary, March 1843, OLC 8/1, pp 61–62

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opposing Native rights, it appeared probable to me that the sellers were clearly free to dispose of.<sup>109</sup>

After consulting Clarke, FitzRoy offered an astounding reply to Godfrey's concerns about the impact of unsurveyed boundaries and extended grants on the security of tenure. He maintained that unsurveyed grants did not necessarily undermine their validity, because the Crown was not required:

to maintain the correctness of the boundaries, or the extent of the lands granted – That for those who have made valid purchases, and have fairly satisfied all native claimants – such grants will be sufficient. For [those] who have *not* done so – it is neither *intended nor desired* that they should be sufficient . . . the Crown cannot grant that which it does not possess . . . if a valid and complete purchase has *not* been made – the Crown cannot give a title to the land. [Emphasis in original]<sup>110</sup>

In other words, FitzRoy offered to Pakeha claimants no legal safeguards from the very situation which Godfrey described as the most troublesome. In cases where Maori disputed boundaries after the commission hearings, FitzRoy was prepared to transfer responsibility for settling the dispute from the grantor (the Crown) to the grantee, despite the fact that the land may have been onsold to a settler who knew nothing of the original dispute. Further to this, Clarke made an even more astounding admission that despite the commission investigations:

all that has been ascertained is that various Europeans have made purchases from certain natives, but whether those natives had a right to sell or how that right was acquired, is still, *in the majority of cases*, quite a matter of doubt. [Emphasis added]<sup>111</sup>

The Protector of Aborigines appeared to be stating that 'in the majority of cases' the commissioners had failed to establish the Maori interests affected by Pakeha claims. Despite the 'special reports' on extinguishment his subordinates were supposed to have completed to assist commissioners in this matter, he concluded that Pakeha claims established no more than he had done with his 1840–1841 Mangonui purchases. His 1845 assessment of those two purchases was that they had purchased Maori claims, rather than land. In this, Clarke really admitted that neither commission investigations, nor his Crown purchases had succeeded in extinguishing all 'native title' within the purported purchase boundaries.<sup>112</sup> FitzRoy's chaotic legacy in the long, complicated story of Pakeha land claims was therefore bound to be a troublesome one.

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109. Godfrey to Colonial Secretary, 8 June 1844, *Epitome* B10–11; quoted in Armstrong, pp 187–188

110. FitzRoy to Colonial Secretary, 17 June 1844, IA 1/1844/1370; quoted in Armstrong, pp 189–190

111. Clarke report, 1 July 1845; quoted in Armstrong, pp 192–193

112. Clarke to Colonial Secretary, 1 September 1845, BPP, 1846 (337), p 123

## 2.13 GREY'S INTERVENTION

Upon replacing FitzRoy as Governor in late 1845, George Grey immediately launched an assault on both his native and land claims policies, and on his dependence upon a Protectorate department staffed largely with CMS affiliated people. In his famous 'blood and treasure' despatch of 25 June 1846, Grey argued that the missionary land claimants dominated Crown policy. He alleged that George Clarke snr and Henry Williams improperly influenced FitzRoy to extend their grants to 5500 and 11,000 acres respectively, and that Maori opposition to their extended grants led Heke, Kawiti and their followers to take up arms against the Crown. He concluded bitterly that the Crown had sacrificed blood and treasure to protect these self-interested Pakeha from the righteous wrath of Maori.<sup>113</sup>

FitzRoy defended his extended grants. He contended that Maori objected, not to his extension of missionary grants, but to their limitation to the statutory 2560 acres. FitzRoy believed that Maori sought to honour their original agreements with worthy claimants like Clarke and Williams. Above all, Maori resented the Crown's interference in their relationship with these claimants.<sup>114</sup> Grey countered with the argument, based on his reading of the pre-Treaty deeds, that:

It is by no means clear that they [Maori] understood that they gave an absolute title to the land such as the Crown title conveys . . .

Furthermore, Grey maintained that Maori continued to occupy areas within grant boundaries which, in any case, remained undefined in the absence of surveys.<sup>115</sup> To bolster his case against missionary claimants, Grey formed an alliance with George Augustus Selwyn, Bishop of New Zealand. Selwyn had his own political agenda. As early as 1843 he confidentially informed the CMS parent committee in London that extensive missionary land claims 'had a most injurious effect upon the minds of the Natives and the English Settlers'. He named 'Mr Fairburn's claim of 40,000 acres, Mr Taylor's of 50,000, Mr Clarke's, Mr Hamlin's, Mr H William's and others' as bringing the church into disrepute. He recognised that these missionary claimants were influential among Maori, but, he added, 'their own natives do not express their opinions to them as freely as they do to me.'<sup>116</sup> Selwyn protested FitzRoy's extension of the missionary grants in 1845, and in 1847 he won the parent committee's support for Grey's proposal to reduce them to the 2560 acre limit. With this support, Grey forced the claimants to either accept this reduction, or to face dismissal from the CMS. Grey told Selwyn that he would allow missionary claimants to save face with their Maori supporters by allowing them to 'voluntarily restore the surplus land [from the reduced grants] to the original native owners'.<sup>117</sup>

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113. Grey to Gladstone, 25 June 1846, BPP, 1848 (1002), p 106

114. FitzRoy to Earl Grey 20 March 1847, BPP, 1847 (837), pp 73–78

115. Grey to Earl Grey, 2 August 1847, BPP, 1848 (1002), p 110. Some missionaries such as Clarke (who had a son trained as a surveyor) conducted surveys as a precautionary measure. Clarke Crown grant, 16 May 1844, OLC 1/634.

116. Selwyn to CMS, 15 June 1843; quoted in Selwyn to Clarke, 1 September 1847, Selwyn papers, AIM. I am indebted to Richard Boast for this reference.

### *The Land Claims Commission Process*

When Selwyn put this same proposal to Clarke (Secretary for the CMS in New Zealand) two days later, he too emphasised that: 'The surplus land [is] to be restored to the original native owners.'<sup>118</sup>

At the very least, Grey insisted, the Crown should have reserved kaianga and wahi tapu within these grants. In the case of the Williams Pakaraka grant, which included a kainga at Pouerua, Grey declared:

the Crown clearly recognised the native rights of property in this land ... [The Crown] had no power without any regard to the claims of the natives to grant absolutely ... to Archdeacon Williams that which in no respect belonged to the Crown.<sup>119</sup>

While Grey waged this battle to disempower missionary claimants, the imperial government gave his opponents powerful ammunition in the form of the 'wasteland' doctrine. Colonial Secretary Earl Grey (formerly chairman of the 1844 Commons New Zealand committee) announced this doctrine in his late 1846 Royal Instructions to Governor Grey. Although inconsistent with the terms of the Treaty of Waitangi, this doctrine underlay imperial policy throughout the 1840s. Gipps gave it expression with his 1840 pronouncement that Maori exercised only 'qualified sovereignty' because they failed to govern themselves in the European fashion, and they possessed no recognisable property without having 'subdued the soil'.<sup>120</sup> Earl Grey cited an amateur ethnologist, Dr Arnold, as the source of these assumptions. He asserted that only by continuous cultivation and occupation could Maori exercise property rights. The areas which they failed to use in this way he defined as wasteland, which should become the Crown's disposable domain.<sup>121</sup>

The storm of protest this doctrine provoked from defenders of the Treaty, such as Chief Justice William Martin, Bishop Selwyn, Te Wherowhero and the London-based Aborigines Protection Society, forced Earl Grey to adjust his instructions to include the words that the Crown would 'scrupulously and religiously' honour the Treaty.<sup>122</sup> To contain the damage to the Crown's reputation among Maori, Governor Grey sent military and naval envoys all over the country in late 1847 to persuade them that the Crown had no intention of confiscating wasteland.<sup>123</sup> Grey's Private Secretary, Captain Nugent, assured Panakareao in Kaitaia that the Crown would not dispossess him, but:

with respect to the missionaries, that it was in contemplation to take away a portion of land from individuals who had procured ... larger quantities than they could use, to the exclusion of other Europeans, and reserve the portion taken away for the use of the natives.<sup>124</sup>

117. Grey to Selwyn, 30 August 1847, encl in Grey to Earl Grey, 1 September 1847, BPP, 1848 (1002), pp 118-119

118. Selwyn to Clarke, 1 September 1847, Selwyn papers, AIM

119. Grey to Earl Grey, 10 February 1849, BPP, 1849 (1120), pp 73-74

120. Gipps speech, 9 July, encl in Gipps to Russell, 16 August 1840, BPP, 1841 (311), pp 62-68, 76-78

121. Royal Instructions encl in Earl Grey to Grey, 23 December 1846, BPP, 1846 (763), pp 68-71

122. Earl Grey to Grey, 3 May 1848, BPP, 1848 (1002), p 144

123. Sotheby to Maxwell, 31 August 1847, BPP, 1848 (899), pp 21-22

When the Kaitaia missionaries reported this to Henry Williams he immediately informed Grey that Maori rejected his vile insinuations. According to Williams, Maori trusted missionaries to deal honestly with them, but they distrusted the Crown which attempted to dispossess them using an imperial doctrine which violated the Treaty of Waitangi.<sup>125</sup>

Indeed, Henry Williams successfully rallied Maori support to his cause. In 1848 he had leading Waitangi and Pakaraka chiefs Te Kemara and Te Tao sign what amounted to affidavits in which they swore to have willingly 'disposed of' (i tukua) land Williams claimed at Pakaraka. When Williams asked them whether they wished the land returned, as Grey alleged, they answered:

He teka rahoki na te Wiremu tana wahi matou na matou wahi.

No indeed, Williams' portion belongs to him and our portion belongs to us.<sup>126</sup>

Williams recorded the same sort of Maori declaration of support headed by Tamati Waka Nene in the case of Clarke's Whakanekeneke claim (634). In the margin of Nene's statement he wrote:

By the following statements recently made by Chiefs who sold land to the Mission families – Judgement may be formed as to the correctness of His Excellency's communication 'That the Missionaries have illegally and unjustly deprived the natives of land which they are entitled to . . . [are] opposed to the rights of the natives . . . [and have] wrested [land] from the natives.'<sup>127</sup>

In an unpublished manuscript now among the Williams family private papers, Henry Williams linked his extensive claims to the protective intent of a series of CMS trust deeds presented to George Clarke in his role as protector in 1840. Williams maintained that the CMS farm at Waimate, for example:

was formed for the sole benefit of the Natives to show them what could be accomplished by a steady and scientific mode of agriculture.

Maori were 'repeatedly invited' to live on CMS land at both Waimate and Paihia. None residing on CMS land had 'ever been disturbed'. He referred to the fact that:

Many Natives were residing upon such land near the Waitangi [Haruru] Falls at the time of the [1845–1846] disturbance.<sup>128</sup>

Williams stressed that during the Northern War, Maori did not retaliate against missionary property. Since the war, he wrote, Maori had continued to offer the Crown land for purchase without becoming landless. He believed that Maori trusted

124. Nugent to Colonial Secretary, 2 January 1848, BPP, 1848 (1002), pp 99–100

125. Williams to Colonial Secretary, 14 February 1848, BPP, 1849 (1120), pp 5–6, 9–11

126. Williams provided the English translation. 'Questions proposed to Two Chiefs of the Bay of Islands with the answers', 23 August 1848, Williams papers, 73, 83 AIM.

127. Williams marginal note on Tamati Waka Nene's statement, 10 Feb 1848, Williams papers 83, AIM

128. Land Purchases nd, Williams papers 95, AIM

missionaries who had their welfare at heart (especially in training them in scientific agriculture and animal husbandry). Finally, Williams referred to his Pakaraka claim. He stated that 'no disturbance' between Maori and missionary families had occurred over this land.<sup>129</sup>

The missionary defence of their land claims simply motivated Grey to convert his political attack on their extended and largely unsurveyed grants into a legal one. In 1847 he informed the CMS that his objection to the missionary grants stemmed from the fact that they included 'lands which the Natives may now justly claim, or which may be required for the use of the Natives'.<sup>130</sup> Grey's legal attack, however, focused not on outcomes unjust to Maori, but on the irregular procedures followed by FitzRoy. Attorney-General William Swainson brought a civil case against the legality of Clarke's Whakanekeneke grant on the basis of the contention that FitzRoy's decision to extend it from 2500 to 4000 acres was contrary to the terms of the operative 1841 Ordinance. The New Zealand Supreme Court, however, rejected the Crown's contention that this Ordinance required the Governor to abide by the recommendation of two commissioners who had heard the claim together. The court believed the Ordinance gave the Governor sufficient discretion to act as he did. Accordingly, in 1849 Chief Justice Martin upheld the legal validity of Clarke's grant.<sup>131</sup> The Judicial Committee of the Privy Council overturned this judgement two years later with respect to the question of whether FitzRoy possessed, 'under his general authority' not prescribed by statute, the prerogative power 'as relates to the making of grants of waste lands'. It found that FitzRoy could not claim authority from the 1842 Ordinance to grant more than 2560 acres since a disallowed colonial Ordinance 'never had the effect of law,' and the 1841 Ordinance required his grants to be based on the appropriate commission recommendations and Executive Council ratification.<sup>132</sup>

Although Grey successfully appealed the case to the Privy Council, his 1849 'Quieting Titles Ordinance' appeared to concede the point. His new Ordinance sought to remove the stigma of legal defects from all grants, provided they were retrospectively surveyed and certified as to the 'full' extinguishment of 'native title'.<sup>133</sup> In presenting the Crown's case for providing grantees with the necessary security, Swainson reminded the Legislative Council of the 'defects and irregularities' afflicting existing grants. He pointed out that the law was the source of some of these defects, because it 'did not require that the Commissioners should ascertain that the land had been purchased from the true native owners.' It required commissioners to report 'only that the claimants made a bona fide purchase from

<sup>129.</sup> Ibid. Philippa Wyatt, a Muriwhenua claimant researcher, produced evidence that Taiamai Maori indeed disputed part of the Williams Pakaraka claim. 'Issues arising from ... [Crown historical evidence] in reference to Pre-Treaty Land Transactions' Wai 45, ROD, doc L6, pp 31–32

<sup>130.</sup> Grey to CMS, 6 August 1847, Williams CMS corres, vol 2, pp 4–5, AIM

<sup>131.</sup> Grey to Earl Grey, 10 February 1849, BPP, 1849 (1120), pp 72–84; Supreme Court judgment, 16 July 1849, BPP, 1849 (1280), pp 138–139

<sup>132.</sup> *Queen v Clarke* 1849, 1851, vii, in Moore, *Crown Demesne*, pp 77–84; Privy Council order, 25 June 1851, OLC 1/634

<sup>133.</sup> New Ulster Quieting Titles Ordinance, 25 August 1849, BPP, 1849 (1280), pp 68–70

certain native chiefs'. Consequently, the Crown granted not 'an absolute title as against all the world, but only against the Crown itself'. He concluded that in cases where:

it should subsequently be found that the natives . . . had not the right to sell it, the true owner would be entitled to the aid of the Crown for the purpose of recovering the land which the Crown, having no title to it, had wrongfully disposed of.<sup>134</sup>

While the 1849 Ordinance appeared to provide a means with which the Crown could fulfil its Waitangi promise to return to Maori 'lands unjustly held,' to our knowledge, evidence of such restitution has yet to be presented to the Waitangi Tribunal. To begin with, the investigation process alluded to in the Ordinance, instead of requiring the Crown or grantees to prove they had satisfied all legitimate Maori interests in the land, required Maori to prove their 'title' before the Supreme Court within three years. On Maori access to this and other courts, Attorney-General Swainson commented a decade later:

Our Courts of Law, it is true, were open to all, without distinction of race; but what remedy was practically open to the New Zealander? He was unacquainted with our mode of procedure, living, it might be, at a distance of fifty miles from any of our settlements; unable to procure the attendance of witnesses, and without the means of paying the fees of Court.<sup>135</sup>

When the 1856 Parliamentary Select Committee on Old Land Claims came to sum up the effects of Grey's intervention, it concluded that less than 20 grantees had availed themselves of the provisions of the 1849 Ordinance. The committee consequently described it as 'inoperative,' partly because most claimants were ignorant 'of its provisions,' but mainly because they clung to a belief 'that their grants were good, and would ultimately be recognised'.<sup>136</sup> If settlers were ignorant of the provisions of the Ordinance, how could Maori be expected to avail themselves of its protective provisions?

## 2.14 THE LAND CLAIMS SETTLEMENT ACT 1856

The 1856 select committee reserved its most scathing observations for FitzRoy's intervention. It reported how his grants were 'full of defects'. The combined effect of FitzRoy and Grey's intervention was:

Some of the grantees are in possession of the lands granted; but a greater part of those claimed are unoccupied by anyone. Some portions have been resumed by the natives, and some where the native title has [previously] been extinguished . . . have been considered as Crown Lands . . . [usually after making] the natives some

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134. Crown Titles Bill, Second Reading nd, BPP, 1849 (1280), pp 70–73

135. William Swainson, *New Zealand and its Colonisation*, London, Smith, Elder and Co, 1859, pp 176–177

136. Select committee report, 16 July 1856, BPP, 1860 (2747), p 350

additional payment. Still, in a great number of cases no possession has been obtained by anyone; the natives disputing the ownership of the land in the absence of the claimants, or the insecurity of the titles . . . preventing the latter from attempting to enforce their supposed rights.<sup>137</sup>

The resultant Land Claims Settlement Act of the same year attempted to do what the 1849 Ordinance had failed to do: to give Crown grants full cartographic definition and legal validity. Significantly, the full title of the Act was to 'provide for the full settlement of Claims arising out of dealings with the Aborigines of New Zealand.' The preamble referred to the need for final settlement of 'disputed grants.' It gave 'Commissioners' full power to set their own procedures, and provided for appeal to the Supreme Court. By section 15(2), the Act severely limited the commissioners' scope for investigation into any claim previously heard. It forbade commissioners from investigating any claims which 'shall have been heard and allowed wholly or in part, and in respect of which that claimant shall have accepted . . . compensation . . . or a grant of land.' Section 19 required claimants 'to survey the whole of the area claimed in the original transaction' and authorised commissioners to issue new grants only if the transaction was found to be 'valid'. Only with 'new' claims (that is, those not heard during the 1840s) could commissioners enquire into original payment to Maori and equivalent acreage (under section 25). Sections 38 and 39 prohibited grants in areas 'over which it shall not be proved to the satisfaction of the commissioner that the Native title is extinguished,' (or which were required for public purposes) unless the Governor authorised the claimant to pay the estimated cost of such extinguishment.<sup>138</sup> Armstrong and Stirling, in their report to the Muriwhenua Tribunal, argued that the 1856 Act 'was not primarily concerned with establishing whether or not a sale had taken place, as this had, in most cases, been ascertained by the first Land Claims Commissions.'<sup>139</sup> This view probably reflects the way that Francis Dillon Bell, the only commissioner appointed under the Act, believed he should operate, and it is certainly supported by section 15(2). None the less, this limitation begs a number of questions. Had, in fact, the 1840s commissions established the nature of pre-Treaty transactions, and did the 1856 Act allow Bell to assume that they had? The foregoing analysis of the operations of the Godfrey-Richmond and Spain Commissions answers the first question negatively. Both commissions assumed too much and investigated too little about the nature of, and the circumstances surrounding, the original pre-Treaty transactions to be able to 'establish' that, without a shadow of a doubt, a fully understood 'sale had taken place.' Secondly, the 1856 Act did not excuse Bell from investigating all original transactions. Section 2 contradicted section 15(2) in that it empowered him 'to hear and determine all claims which might have been heard examined and reported on' by previous commissions 'and to examine and determine all questions relating to

137. Select committee report, 16 July 1856, BPP, 1860 (2747), pp 349–350. See David Armstrong and Bruce Stirling, 'Surplus Lands: Policy and Practice 1840–1950,' Wai 45 ROD, doc 12, p 53.

138. Land Claims Settlement Act 1856, 19 and 20 v, no 32

139. Armstrong and Stirling, p 65

grants' recommended by them. Unlike previous commissions which could only recommend grants, Bell could determine and issue them (except in cases of new claims in which he could grant no more than 2560 acres). Finally, section 50 gave Bell maximum discretion to proceed 'not according to strict law, but according to equity and good conscience'. In other words, he could be flexible in pursuing the most appropriate form of inquiry.<sup>140</sup>

## 2.15 SURVEY REQUIREMENTS

The fundamental difference between Bell's investigation and those which preceded it was the fact that he insisted upon the precise definition of both grants and (in most cases) claims by survey. The 1856 select committee proposed that:

Commissioners, attended by surveyors, should, under proper precautions, cause the boundaries of all lands claimed to be marked out in an unmistakable manner; because it is absolutely essential that in every case it is decisively ascertained whether any obstruction to the occupation of the land would be raised by native owners or claimants; and no mode can be devised of ascertaining this fact so effectual as the positive attempts to define, on the ground itself, the blocks of land claimed.<sup>141</sup>

Section 7 of the Act, which gave Bell maximum discretion in setting and changing his procedures, allowed him to be much more precise than previous commissioners. This was particularly with respect to the production of surveys required by sections 19, 22, 23, 40, and 44. Section 23(e) specified that claimants, not the Crown, would pay for surveyors certified by the commission to prepare the necessary plans in advance of hearings. While this was certainly an improvement over the 1840s experience, Bell chose to rely upon the services of numerous private surveyors, instead of employing Crown surveyors in accordance with select committee recommendations.<sup>142</sup> Bell finally laid down standard operating procedures for private surveyors on 8 September 1857. These procedures (or 'Rules') required surveyors to connect plans 'with some neighbouring survey' to allow for some form of cartographic consistency in the absence of scientifically established co-ordinates. Bell followed select committee recommendations by requiring surveyors to file 'a written description of the boundaries' with each plan, and also 'a certificate . . . that every boundary line . . . has been properly cut on the ground, and that the survey has been completed without disturbance from the Natives.'<sup>143</sup>

Despite Bell's attempt to ensure procedural consistency, most surveyors failed to follow all these detailed procedures. Only an estimated 10 percent of the 450 or so old land claim plans for Auckland and Hauraki still held by Land Information New

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140. Land Claims Settlement Act 1856, 19 and 20 v, no 32

141. Select committee report, 16 July 1856, BPP, 1860 (2747), p 353

142. The major exception to this rule was the Hokianga scrip surveys, examined below by Matthew Russell.

143. 'Rules Framed and established by the undersigned Land Claims Commissioner, Francis Dillon Bell, Esquire, in pursuance of the power vested in him in that behalf of the "Land Claims Settlement Act, 1856"', 8 September 1857, MA 91/9, exhibit B, pp 81–82

### *The Land Claims Commission Process*

Zealand (LINZ) contain a surveyor's certificate declaring the lines to be 'properly cut . . . [or] completed without disturbance by the Natives'.<sup>144</sup> Maori verification of boundaries largely depended upon whether or not they consented to the surveyor's work, but without consistent certification in this regard, available survey information says virtually nothing about Maori consent.

As Bell reported in 1862, his 'liberal survey allowances' encouraged claimants to survey 'the whole exterior boundaries' (or the whole claimed area), rather than just what claimants expected the Crown would grant them. Otherwise, he maintained:

The residue would practically have reverted to the natives and must at some time or other have been purchased again by the Government . . .<sup>145</sup>

In other words, Bell used his survey procedures to ensure that claimants' surveys defined surplus land for the Crown, despite the fact that neither the Act, nor his 'Rules' said anything about the Crown's claim to surplus. Again, the Crown's presumptive rights involved were implied rather than spelled out.

Bell justified private surveys as a cost saving device (using the Hokianga scrip surveys as the exception to prove this point), and summed up his accomplishment thus:

Land which had been abandoned by the original purchasers has been surveyed and secured to public use. A country which six years ago was almost unknown except to a few people residing there, has been mapped and made available to settlement.<sup>146</sup>

Bell privately revealed his full rationale for preferring private surveys when two Kaipara claimants in January 1857 proposed their willingness to allow Crown surveyors to 'chain off' a large part of their claim. In response to this request, Bell stated his:

supposition . . . that while the natives will give possession to a claimant and [allow private] surveys to be made of all land they originally sold [to] him, they were likely to object to the Crown taking possession of any surplus land afterwards, if only the part to be granted to the claimants is surveyed by him.<sup>147</sup>

Bell evidently wished to employ private (rather than Crown) surveyors in order to conceal the process by which the Crown acquired surplus. He believed that if Maori suspected that the Crown would get the land, they would oppose the survey. He warned that if 'the natives afterwards object to surrendering the surplus to the Crown,' a new Crown purchase would be costly. Bell proposed, therefore, that he work closely with the District Land Purchase Commissioner to establish 'that the

<sup>144</sup>. I have quantified certification by inspecting all Auckland and Hauraki original OLC plans on microfiche at LINZ's National Office in Wellington. Since approximately 75 percent of old land claims occurred in these districts, this certification percentage applies only to those districts.

<sup>145</sup>. Land Claims Commissioner's report, 8 July 1862, AJHR, 1862, D-10, p 5

<sup>146</sup>. Ibid, p 15

<sup>147</sup>. Bell memo, 10 January 1857, MA 91/18 (9), pp 7-8

natives admit the alienation of the whole claim'.<sup>148</sup> He informed John Rogan, the Kaipara District Land Purchase Commissioner, that Crown surveyors should only survey areas known to be within a defined Crown purchase area:

The principal thing to avoid in transactions of this kind with the natives, is the appearance of uncertainty on the part of Government, and after the land having twice been gone over by the surveyors, it does not seem desirable to delay the land purchasing operations for the chance of getting a little more as included in the original claim.<sup>149</sup>

In areas, such as Kaipara, where old land claim boundaries frequently overlapped Crown purchase boundaries, Bell wanted claimants to get as much as possible privately surveyed. This would essentially allow the Crown to get the land without having to pay for it, on the assumption that the claimant had already paid for it.<sup>150</sup>

## **2.16 BELL'S CREDENTIALS AND HEARINGS**

Unlike the 1840s commissions whose compliance with Treaty obligations depended in large part upon the performance of Clarke's protectorate department, Bell's Treaty obligations would be almost entirely his own personal responsibility. Only at Hokianga, where he employed John White to investigate scrip claims, would he be assisted by anyone with Clarke's credentials regarding Maori matters. Like Commissioners Godfrey and Richmond, Bell lacked legal training. According to William Oliver, his main training prior to 1856 had been as a New Zealand Company employee and as a Commissioner of Crown Lands during Grey's first administration.<sup>151</sup> Although Oliver noted that many of Bell's colleagues in Government appear to have found him less than trustworthy, he argued that his credentials were as an agent of colonisation, and that this, rather than any personal failings, marked his performance as a judicial officer.<sup>152</sup> Oliver assessed Bell's 'identification with the cause of colonisation' as the 'lens' through which he saw the evidence presented to him on Pakeha claims. In Oliver's judgement, Bell 'should not be relied upon as an interpreter' of Maori interests.<sup>153</sup> The way Bell dealt with Maori interests at his various hearings in the North can be gathered from a critical reading of his 'Notes of various Sittings of the Court' which he recorded between September and October 1857.<sup>154</sup>

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148. Ibid

149. Bell to Rogan, 17 December 1857, MA 91/18 (8), p 13

150. For more discussion of surveys and the overlapping Kaipara old land claims and Crown purchases, see chapter 4 in R Daamen, P Harmer and B Rigby, *Auckland, Waitangi Tribunal Rangahau Whanui Series* (working paper: first release), July 1996, pp 185–191

151. W H Oliver, 'The Crown and Muriwhenua Lands: An Overview,' Wai 45 ROD, doc L7, pp 16–17, 20–21

152. Ibid, pp 17, 21

153. Ibid, p 21

154. 'Notes of various Sittings of the Court', 21 September–14 October 1857, OLC 5/34

### *The Land Claims Commission Process*

Particularly instructive are Bell's notes of what transpired at his Waimate hearing on 13 October 1857. On that day George Clarke sr, the former protector and defendant in *Queen v Clarke*, presented his Whakanekeneke and Waimate claims for investigation. Clarke, whose Whakanekeneke grant had been rendered null and void by the 1851 Privy Council decision, protested the provision of the 1856 Act requiring him to surrender his grants. Bell assured him:

that his deposit of the Grants in obedience to the law in no way precluded him from bringing his case by petition before the Legislature hereafter for any further grant of land.<sup>155</sup>

When Bell later ordered new Whakanekeneke grants in this claim, he noted the 1851 Privy Council judgement voiding the original grant. He believed, however, that 'notwithstanding' the illegality of the original grant, it was 'sufficient that I should deal' with Clarke's claim only in terms of the 1856 Act. He therefore ordered a total of 6568 acres in grants to Clarke and two of his sons (in contrast to the 4000 originally granted).<sup>156</sup> Thus Bell was exceedingly generous towards Clarke.

He was less generous towards Maori. On the evening of the same day on which Bell heard Clarke's evidence regarding his claims, what appeared to be a large group of Maori arrived to state their case. According to Bell's notes (which are reproduced almost verbatim below) these Maori:

brought before the Commr. several disputes & claims – relative to Mr. Clarke's, Achd[eaco]n. Wm. Williams, and the Rev. Mr Davis' Lands. [space] At a little before midnight the Comr. gave his decision, overruling all their objections upon the proofs afforded by repeated references to the old papers in the several claims. [space] They were asked whether it had ever happened that Government had taken from them and given to a European, any land stated to be their property by the former Commissioners; and in what light they would regard the present Court, if at the request of a European made 13 years after the former adjudications any land reserved for them were taken away? Equally they could not expect that after such a lapse of time I should listen to the claims of Natives to get back portions of land awarded by [to?] Europeans by the former Commissioners; and that although I had in accordance with my invariable practise heard all they had to say, I should certainly not give back an area which had been validly sold by those who in those days were really empowered to sell, nor allow the claim of anyone who had failed to bring his objection forward at the original Inquiry. [space] ... We then went fully into the question of excess [surplus land] as at Mangonui and Whangaroa.

At the conclusion they expressed themselves perfectly satisfied, & went up to Mr. Williams & Mr Davis & apologised for having raised the objections they did.<sup>157</sup>

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155. Notes, 13 October 1857, OLC 5/34

156. Bell order, 15 April 1859, OLC 1/634. In addition, the Crown acquired 1914 acres of surplus land, and the 411 acre Native reserve surveyed in 1844 remained within Clarke's grant.

157. Notes, 13 October 1857, OLC 5/34

Although this meeting may not have been typical of Bell's encounters during his hearings, it is particularly revealing of his underlying assumptions. Firstly, his disposition towards Maori 'disputes & claims' stood in marked contrast to the highly sympathetic hearing he gave Clarke earlier that day. Secondly, he refrained from describing what their claims were. Apparently, he thought them unworthy of any detailed record. We do not know, for example, whether any affected the Clarke Whakanekeneke claim he had endorsed a few hours earlier, or whether Maori disputed only his smaller Waimate claim. When Bell 'overruled' all Maori objections on the basis of commission records from the 1840s, he revealed his assumption that his predecessors had satisfactorily investigated all Maori interests in claims. Bell based his refusal to even consider returning land 'which had been validly sold by those who . . . were really empowered to sell' on the belief that his predecessors investigated all Maori interests, and that they had invited Maori to appear to testify on all interests affected. Clarke, himself, in a July 1845 report, and Swainson in introducing the 1849 Ordinance, specifically rejected this notion. Previous commissioners investigated nothing more than 'various . . . purchases from certain natives'.<sup>158</sup> Commissioners failed to investigate all Maori interests affected by Pakeha claims, apparently because they were not required to by statute, and because they were inadequately resourced. Bell simply failed to properly assess the history of these claims simply because he, too, was not legally required to do so.

Bell's treatment of Maori at Waimate in October 1857 had its sequel with a Kororareka hearing six months later. On 23 March 1858 Tamati Waka Nene appeared before him to protest the boundaries of Clarke's Whakanekeneke claim which Bell had agreed to at Waimate. Apparently, Nene claimed that Clarke had improperly included a place called Potaetupuhi and another place near his eastern boundary in his claim. Nene, it seems, also protested the Crown's acquisition of almost 2000 acres of surplus land at Whakanekeneke. Bell's record of the hearing read:

After a full hearing & reading over the evidence & Deeds produced before the [1840s] investigating Commissioners, it appeared clear that there was no encroachment whatever on the original boundaries sold. Waka Nene's objection to Potaetupuhi and to the piece adjoining Mr Shepherd's claim at [no placename given] were overruled as well as all the other [unrecorded] objections. The Natives were then informed that under the law, as they had been repeatedly told, the Surplus Land reverted to the Crown: and that if they desired the Government to make any Reserve out of the same for their use, they must at once address the Governor, with whom the decision on such a request rested.<sup>159</sup>

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158. Clarke report, 1 July 1845; quoted in Armstrong, pp 192–193; Swainson on the 1849 Ordinance, BPP, 1849 (1280), pp 70–73

159. Nene attended the hearing with Pirika 'and a number of other Natives,' after having lodged a written protest with Bell. He apparently objected to aspects of Clarke's Waimate claim, as well as his Whakanekeneke boundaries. Nene to Bell, 1 October? 1857; Bell's notes, 12 October 1857, 19 March 1858; Bell's hearing record 23 March 1858, OLC 1/634.

Once again, Bell's response to the protest was one of peremptory dismissal. Presumably, he took such action after due consideration, especially because Nene was a powerful political figure. None the less, Nene fared no better than the larger Maori group at Waimate (of which he may have even been a member). Bell recited the commission records once more, and nothing Nene could say either about boundaries or surplus land shook his faith in the legal soundness of recorded realities. Maori, of course, did not have the advantage of access to the official written records. In such a situation, while Bell 'heard' Maori objections, a critical reading of the available evidence suggests that their objections 'fell on deaf ears.'

## 2.17 THE 'MAORI SIDE OF THE STORY'

The records of all the Land Claims Commissions prior to 1865 carry very little of the 'Maori side of the story.' Godfrey and Richmond recorded virtually nothing in the Maori language. Although Pakeha claimants presented a large number of Maori deeds in support of their claims, and normally produced two Maori witnesses to affirm their authenticity, most of the deeds appear to have been written by Pakeha, and almost all Maori affirmations were recorded in English. Even when, in the case of Spain's Commission, George Clarke jnr and his assistants recorded extensive Maori testimony, this became of almost academic interest when Spain switched from investigation to arbitration in September 1842.<sup>160</sup>

Even missionary land claimants presented Maori testimony in a way which raises questions about whether it was the 'Maori side of the story.' During Grey's attack on missionary claims, Clarke's son Henry questioned Nene about the 'validity' of the Whakanekeneke 'purchase.' Nene apparently sought Grey's assistance:

to allow natives to occupy certain lands in the Bay of Islands, which they claimed as their property, although it was asserted that this land was included within the boundaries of one of the Church Missionary land claimants . . .<sup>161</sup>

Henry Clarke's leading questions to Nene were clearly intended to refute Grey's allegations that the missionary claimants were responsible for dispossessing Maori. He recorded the following dialogue:

*I tika hokonga o Wakaneke. o te Puri. e taku matua e te Karaka?*

Was the purchase of Wakaneke, and te Puri, by my Father, by Te Karaka, correct?

*Ae. he pono. e tika ana*

Yes, truly, it was correct

*I whakaae koe. ki nga utu i hoatu mo taua whenua?*

Did you consent to the payment which was given for that piece of land?

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160. Moore, *Crown Demesne*, pp 284, 314

161. Grey to Earl Grey, 1 September 1847, BPP, 1848 (1002), p 117

## *Old Land Claims*

*I whakaae ano a hau*

I did consent

*I hokoa taua whenua ra ma wai?*

For whom was that piece of land purchased?

*Mau ano taua whenua . . .*

For you. is that piece of land . . .

*Kahore koe. i korero atu ki te tangata kia whakahokia atu taua whenua?*

Have you not spoken to any person /expressing a desire/ that piece of land should be returned?

*Mau te whakaaro ki tetahi wahi maku*

It is for you to say if I shall have a portion.<sup>162</sup>

Henry Williams added a marginal note to this, and several other similar recorded Maori statements in support of missionary claimants. Williams stated that with this evidence observers could judge 'the correctness' or otherwise of Grey's allegations that 'the Missionaries have illegally and unjustly deprived the natives of land which they are entitled to'.<sup>163</sup>

The meanings of the Maori answers to Clarke's leading questions were, however, much more ambiguous than the simple affirmation of absolute alienation sought. Williams sought the same simple answers to leading questions in his dialogue with Te Kemara (of Waitangi fame) and Te Tao. The main author of the Maori Treaty text recorded this dialogue as follows:

*Nawai Pakaraka me era atu wahi wenua i tukua ki a te Wiremu me ana tamariki i mua i te unga mai o te Kawana tuatahi [?]*

By whom was Pakaraka and other pieces of land. disposed of to Te Wiremu/Williams/ and his children. before the arrival of the First Governor [?]

*Na maua. na te Kamera raua ko te Tao. ne era atu hoki*

By us two. By Te Kamera and Te Tao. & by others

*He pono koia. i mea atu koutou ki a te Kawana nei ki ara atu tangata ranei. ko ta koutou hiahia. kia waka hokia atu. era wahi wenua ki a koutou [?]*

Is it true. that you told the Governor. or any other person that it was your desire that those pieces of land. should be returned to you – [?]

*He teka rahoki. na te Wiremu tana wahi. na matou na matou wahi*

No indeed – Williams[?] portion belongs to him and our portion belongs to us –<sup>164</sup>

The most that can be said about these statements is that they should not be classed as independently expressed views. While the Maori language component gives greater clarity to Maori views than that afforded by Commissioners Godfrey, Richmond and Bell, the simple meanings Clarke and Williams attributed to Maori

162. Tamati Waka Nene statement (recorded by H T Clarke), 10 February 1848, Williams papers 73, 83, AIM

163. Williams marginal note on Nene statement, 10 February 1848, Williams papers 83, AIM

164. Te Kemara and Te Tao statements, 23 August 1847, Williams papers 73, 83, AIM

### *The Land Claims Commission Process*

cannot be accepted as 'authentic' Maori expressions. Winifred Bauer, a specialist on the structure of the Maori language, has analysed the closing sentence. She considers its Maori meanings to be ambiguous.<sup>165</sup>

In the same vein, George Clarke snr attributed to Maori a critique of the entire old land claim process. Writing as Bay of Islands civil commissioner in 1862 to the then Premier, William Fox, Clarke expressed his view that widespread Maori disaffection arose:

out of what appeared to them the injustice done to the early Settlers. 'If' they say 'the Queen's own children are by enactments to be deprived of Lands fairly purchased from us[,] what must we aliens expect from the Government ... We thought NZd belonged to us, and we thought we had aright to sell what portion of our lands we pleased, and to whom we pleased; We did sell some to the Pakehas and we told the Commission we had received a fairer payment for it and were satisfied, and that the Pakeha had a valid claim when[,] Lo! and behold![,] their Government gives them only part of what we sold them; it cannot by any possibility belong to the Government for they were not the purchasers, if it does not belong to the Pakeha, it belongs to us[;] then with immeasured indignation they explain '*E tika ana tenei mahi a Kawanatanga?*' Is this the justice of the Government [?] What confidence can we have in it [?]<sup>166</sup>

Again, the indignation Clarke attributed to Maori would be more convincing if it came directly from them, in their own cause, rather than from him. Once more, a colonial official with his own agenda assumed that he could speak for Maori. Premier Fox apparently ignored Clarke's self-serving appeal on behalf of Maori.

Bell's way of recording Maori testimony in English at Waimate in October 1857 illustrates how one-sided the 'official' record could be. Not only was Bell unwilling (and perhaps unable) to record what Maori said in their own language, he also often recorded them as agreeing with him after he had convinced them of how wrong-headed their protests were. Since Maori had no opportunity to record 'their side of the story' before Bell, what reliance can be placed on the way he summed up these discussions? As Oliver put it with reference to Bell's frequently expressed view that he convinced Maori to accede to the Crown's right to acquire surplus land:

One would have more confidence in that conclusion, and in its acceptance by the Crown's historians, if there was any corroborative evidence from a source less implicated in the outcome than the Commissioner himself.<sup>167</sup>

The plain fact of the matter is that, throughout the voluminous old land claim files (over a thousand of them) held in the National Archives in Wellington, Maori voices are seldom heard speaking for themselves. Most of the Maori language evidence was recorded by colonial officials or by commissioners with an agenda of their own. When Maori spoke to commissioners, officials recorded what they

<sup>165</sup> Personal Communication, 30 July 1996

<sup>166</sup> Clarke to Fox, 29 May 1862 (Private), OLC 6/2

<sup>167</sup> Oliver, p 19

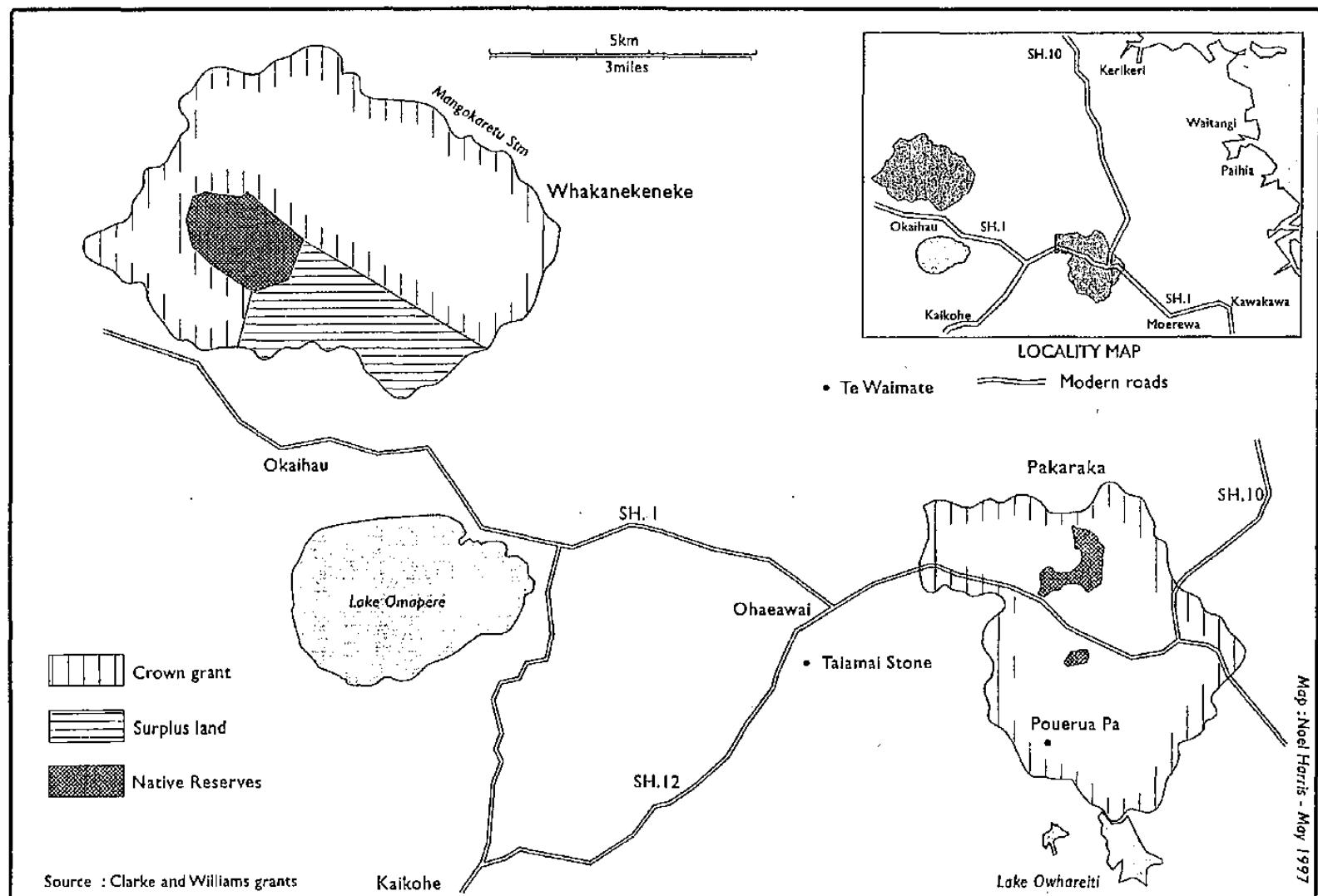


Figure 2: Whakanekeneke and Pakaraka

considered significant. When Maori wrote in their own language to officials or commissioners, this too was invariably refracted through an English language lens by the translation process. In other words, we simply do not know the Maori 'side of the story' well enough to say much about Maori views on the process of investigating old land claims.

## 2.18 THE CONSISTENCY TEST

Since the colonial government invariably favoured settler interests over those of Maori, the most Maori could have expected from the Crown was consistency and clarity. But were Crown actions consistent and clear? Were they consistent with Treaty obligations, statute, or stated policy? And were Crown policies stated openly and clearly for the benefit of all?

To be consistent with Treaty obligations, Crown land claim policy should have given specific effect to promises made to Maori during the 1840 Treaty discussions. Indeed, the Crown legislated and implemented an inquiry into Pakeha claims, but neither the operative Acts nor Ordinances gave legal effect to the two major promises Crown officials made to Maori at the Waitangi and Kaitaia Treaty discussions. At Waitangi Hobson had promised that once a commission had enquired into claims, 'lands unjustly held' would be returned to Maori. Then at Kaitaia Shortland promised (in accordance with the letter of Normanby's instructions) to respect Maori customary observances. The 1840 New South Wales Act, the 1841–1842 New Zealand Land Claims Ordinances, and the 1856 Land Claims Settlement Act all failed to give legal effect to these promises. The fact that investigation procedures established by statute eliminated a lot of so-called monster claims should not be seen as returning land to Maori. Such land (particularly in the South Island) remained Maori land; it had never been anything else.

Moore's investigation of the Spain Commission shows how far short of Treaty expectations it fell. When the Colonial Office instructed Spain in 1841 that 'the redress of past injustice to the natives is less the object of this commission than the prevention of future wrongs,' it was acting contrary to the Crown's obligations.<sup>168</sup> The implications of Russell's instructions to Spain was that he conduct a perfunctory inquiry with the main aim of giving effect to the Crown's 1840 agreement to settle New Zealand Company claims as expeditiously as possible. In keeping with Russell's essentially political purpose, he charged Spain with the duty to 'determine' claims. Since Hobson believed that this was at variance with the judicial functions required by both operative Ordinances, he insisted that while Spain might 'determine' (Russell's term), as well as investigate claims, the issuance of grants would remain the Governor's prerogative and would also depend upon proper surveys.<sup>169</sup> Thus there was a certain amount of inconsistency in the way

168. CO to Martin, 24 March 1841, IA 1/45/1247; in FitzRoy to Spain, 9 August 1845, IA 1/47/2117; quoted in Moore, *Crown Demesne*, p 167

169. Shortland to Spain, 16, 30 March, IA 4/253, pp 6, 9; quoted in ibid, p 171

Spain drew contrasting instructions from two different masters (neither of whom referred explicitly to Treaty expectations). Colonial Secretary Russell defined his role as that of a servant of the Crown to give effect to its 1840 agreement with the company. On the other hand, Hobson instructed Spain to act in an essentially judicial capacity with the power to recommend, but not to award grants.

Hobson was also inconsistent in the degree of administrative support he was willing to offer Spain, which he was apparently unable to offer Godfrey and Richmond in the North. For example, he sent a survey party to accompany Spain to Wellington:

in order that you may be able to carry out that part of your instruction which regards public reserves as well as the measurement and description of the Lands awarded.<sup>170</sup>

Hobson instructed Spain to give preferential treatment to the company in recommending grants because, he stated, the company held 'blocks of Land under their Charter from the Crown'.<sup>171</sup>

Hobson's instructions also referred to how the Crown had 'guaranteed' both the 'Town of Wellington and the shores of Port Nicholson' to the company, 'with the exception of native pahs cultivations and burying grounds.' This, as Moore pointed out, implied that the company, not Maori, either already owned the area 'or (more probably) must be enabled to own [it]'.<sup>172</sup>

Despite Spain's vigorous attempts to give effect to the 1840 agreement between the Crown and the company, in September 1843 he reported:

I am of the op[inion] that the greater portion of the land claimed by the Company in the Port Nicholson district, and also in the district between Port Nicholson and Wanganui, including the latter place, has not been alienated by the natives to the New Zealand Company; and that other portions of the same districts have been only partially alienated . . .<sup>173</sup>

Despite Spain's strongly expressed reservations about the validity of the company's claims, Lord Stanley authorised a settlement in mid-1843 'under the condition that the validity of their purchases shall not be successfully impugned by other parties'.<sup>174</sup>

Although Spain, to his credit, objected to the flaws in the original Port Nicholson transaction, he required Maori to ratify his subsequent settlement without sufficient consent. As Moore indicated, only 12 percent of Wellington's adult male Maori population registered the formal consent to Spain's 1844 settlement with the company.<sup>175</sup> In sum, Spain's proceedings lacked the consistency and even-handedness so essential to ensuring a just outcome.

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170. Shortland to Spain, 26 March 1842, *ibid* p 10; quoted in *ibid*, p 172

171. Instructions encl in Shortland to Spain, 30 March 1842, IA 4/253, pp 11–12; quoted in *ibid*, pp 172–173

172. Instructions encl in Shortland to Spain, 30 March 1842, IA 4/253, pp 11–12; quoted in *ibid*, pp 177–178

173. Spain to Shortland, 12 September 1843, Wai 145 ROD, doc A31, p 350; quoted in *ibid*, pp 419–420

174. Stanley to FitzRoy, 26 June 1843, BPP, 1844 app 1, p 7; quoted in *ibid*, pp 431–432

175. *Ibid*, pp 482–484, 532

FitzRoy's intervention in 1844–1845 made inconsistency something that almost came to be expected of the Crown. His waiver of survey requirements made undefined grant, scrip and surplus land the norm for almost a decade. The 188 unsurveyed or 'floating' FitzRoy grants were not only, in Grey's words 'void on the ground of uncertainty,' but also virtually incomprehensible to settler and Maori alike.<sup>176</sup> Neither FitzRoy, nor his successors, gave either statutory authority or proper transparency to scrip and surplus land policies. FitzRoy announced publicly that surplus land would be held in trust for Maori in 1844, and Grey tried to force missionary claimants to return it to Maori in 1847. Both FitzRoy and Grey failed to act upon these stated intentions, and Bell's investigation after 1856 proved to be a determined effort to recover surplus for the Crown.<sup>177</sup>

Even George Clarke snr found the Crown's performance on old land claims to be fundamentally inconsistent with his view of justice. In his private 1862 letter to Premier Fox, the former Protector of Aborigines rejected not only land claims legislation, but also the unstated presumptive rights underlying all Crown actions. He believed that they had:

all been based on a rotten foundation and have proved a serious injury to the Colony as well as to the Settlers . . . [He firmly believed] that most of the Native jealousies and want of confidence in the Government have grown out of what appeared to them the injustice done to the early Settlers . . . A more fatal error was never committed by the Government than that of declaring and proclaiming all unoccupied lands in New Zealand and all lands purchased from the Natives before the Treaty of Waitangi, to be the Demesne lands of the Crown.<sup>178</sup>

Since Clarke here was pursuing his own self-interest, his words cannot be taken at face value. At the same time, he probably gave the Crown more credit than it deserved. While the Crown briefly asserted claims to 'wasteland' (unoccupied lands) and scrip/surplus, or 'Demesne lands,' it did not do so with the clarity or consistency necessary to allow Maori to know where they stood.

Oliver summed up the situation in presenting claimant evidence to the Muriwhenua Tribunal. In his professional opinion:

the Crown's policy was implemented in a contradictory, vacillating, dilatory and unintelligible manner. No effort was made to clarify it until the end of the 1850s, and only then in the course of Bell's hearings as he was putting it into effect. It was a lamentably deficient exercise in public relations which at least indicates a failure on the part of government to communicate their intentions to those who had some right to know what they were.<sup>179</sup>

The fact that the Crown failed to settle most claims prior to Bell's 1856–1862 commission was almost inevitably productive of confusion and inconsistency.

<sup>176</sup> Return no 8, NUG 1849; Grey to Earl Grey, 1 September 1847, BPP, 1848 (1002), pp 117–118

<sup>177</sup> The subject of scrip and surplus land will be discussed in greater detail in the following two sections.

<sup>178</sup> Clarke to Fox, 29 May 1862 (Private), OLC 6/2

<sup>179</sup> Although he referred more specifically to surplus land policy in this section of his report, his criticism applies also to general land claims policies. Oliver, p 6

### *Old Land Claims*

Although Bell proclaimed that he had settled the vast majority of claims in 1862, he did so mainly by assuming that he need not reinvestigate the circumstances of the original transactions.

Bell was normally quick to dismiss Maori protests, but he spent a great deal of time calculating increases in grant acreage. Section 23(d) of the 1856 Act allowed him to increase the acreage of cancelled 1840s grants by no more than one-sixth. Section 44 prescribed an additional survey allowance equivalent to one acre for every 10 shillings paid to surveyors, and section 45 prescribed another allowance to defray commission fees. These additional allowances, however, should not have exceeded the one-sixth maximum increase set in section 23(d), since the 1856 select committee made the purpose of this section perfectly clear. That committee reported that:

new grants should not convey in any case more than one sixth more land than the amount the old grant declares the grantee to be entitled to. This sixth is given in order to enable natural boundaries, where practicable, to be taken instead of survey lines.<sup>180</sup>

This language was repeated in the crucial section 23(d) of the Act:

In no case shall any person be entitled to a new grant of more than the quantity expressed in the cancelled grant, except that the grant may be extended to one-sixth more than such expressed quantity.<sup>181</sup>

Instead of limiting grant acreage to this absolute maximum of one-sixth, Bell frequently added all the other allowances into his new grants. As a result, in Muriwhenua, for example, Bell increased the total grant acreage Godfrey recommended of 10,046 acres to 22,703 acres. Muriwhenua claimant researcher, Maurice Alemann, termed this Bell's 'magic arithmetic.'<sup>182</sup> This arithmetical increase in grant acreage was apparently in contravention of the Act.

Despite Bell's contention that he had closed the book on the subject, disputes concerning Pakeha claims continued to arise after 1862, particularly over surplus land. The 1873 Native Land Act contained a provision to enable the Native Land Court to settle Pakeha claims, and a series of twentieth-century commissions (including the Sim and Myers Commissions) attempted to deal with unresolved aspects of these claims. The very fact that the Waitangi Tribunal has heard voluminous evidence on this subject, particularly in the Muriwhenua and Wellington Tents claims, suggests that the Crown failed to treat the nineteenth century roots of the problem with sufficient consistency and even-handedness.

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180. Select committee report, 16 July 1856, BPP, 1860 (2747), p 353

181. Land Claims Settlement Act 1856, 19 and 20 v, no 32

182. Maurice Alemann, 'Muriwhenua Land Claim: Pre-Treaty Transactions' Wai 45 ROD, doc F11, pp 27–28, 32–33

## 2.19 SCRIP LAND

Scrip and surplus land were two by-products of the inconsistent way in which the Crown treated Pakeha claims. Both originated as policies without statutory authority, arising apparently as a sub-set of the Crown's presumptive rights, and were therefore never explicitly, or consistently, defined.

Scrip entered the glossary of claims terminology in late 1841 when Hobson announced that the urgent necessity to settle Pakeha claims required a radical streamlining of the commission's process. He proposed the concentration of settlement in defensible areas such as the Bay of Islands, Auckland and Wellington where claimants from remote areas would move in return for scrip equivalent to the value of grants recommended for their original claims.<sup>183</sup> Evidently, Hobson assumed that most of the outlying areas claimed by Pakeha would then become part of the public domain which could be disposed of to settlers later, when his government had expanded its authority to such areas. A storm of settler protest forced Hobson to remove the settlement concentration (and scrip exchange) provisions from his 1842 Land Claims Ordinance. None the less, Hobson's scrip exchange policy went into effect without statutory authority after his death.

The implementation of this policy has received virtually no attention from historians, and remains mysterious in many ways. Acting-Governor Shortland pursued a course of encouraging claimants to employ private surveyors, and to accept scrip offers, as a cost-cutting exercise. He believed that by concentrating settlement:

Land claimants . . . would be afforded an opportunity of obtaining property of immediately exchangeable value, and . . . the demesne lands of the Crown would be considerably augmented . . .

The Colonial Secretary's subsequent 'Notice to Land Claimants' offered scrip to those 'who may prefer land in the immediate vicinity of the settled districts'.<sup>184</sup>

The Colonial Secretary authorised further scrip exchanges in a proclamation of 6 September 1843. It stated simply that claimants for whom commissioners had recommended grants could accept scrip in exchange for these grants. They could then purchase land 'in the unoccupied portions of the district in which the Town of Auckland is situated' with this scrip.<sup>185</sup> Following yet another FitzRoy proclamation in March 1844, the Colonial Secretary laid down specific 'Terms and Conditions relative to the Exchange of Land' in September that year. This stated that scrip claimants should select land surveyed for them either 'on the River Tamaki' for those granted less than 50 acres, or 'in the District of Papakura and on

<sup>183</sup> Hobson's Address to the Legislative Council, 14 December 1841, BPP, 1841 (569), pp 198–199. This policy followed Russell's 17 April 1841 instructions to establish 'the general system of forming the settlers of each district into a regular community . . . along Company lines': Moore, *Crown Demesne*, p 168.

<sup>184</sup> Executive Council minutes, 19 September 1842; Notice to land claimants, 27 September 1842, MA 91/9, Exhibit B, pp 12–14, 14A–14B

<sup>185</sup> 'Government Notice – Exchange of Land', 6 September 1843, *Epitome* B9

the Wairoa' for those entitled to more than 320 acres. These 'country lands' were to be offered at public auction in December 1844.<sup>186</sup>

A policy as poorly defined as scrip was almost bound to cause confusion in its application. As initially conceived, only claimants with properly investigated, valid claims were eligible for scrip offers. In the case of approximately 40 claims in the vicinity of Mangonui, however, claimants received such offers in the absence of an investigation. When Godfrey arrived at Mangonui in 1843, Panakareao disputed claims east of the township, and Pororua disputed those west of it. Fearing tribal war, Godfrey withdrew without conducting an investigation. A year later he attempted to remove all Pakelia from the disputed area by offering them scrip, though none of the claimants should have been eligible for grants. In making these irregular offers, Godfrey apparently sought to teach Maori a lesson. The removal of settlers from Mangonui, he wrote, was necessary:

to prevent discord between the Tribes . . . to induce them to settle similar disputes [in future] more amicably and with less annoyance to the Settlers.

Godfrey believed that the absence of Pakeha from their area for a number of years would make Mangonui Maori appreciate the value of their services. Only then could Pakeha 'take quiet possession . . . of the lands *alleged* to have been purchased [emphasis added].'<sup>187</sup> Godfrey, then, based his offers on alleged rather than properly investigated claims. His departure from standard operating procedure, however, went undetected by FitzRoy and his successors, by Bell, and even by the Myers Commission of the 1940s. They simply assumed that Godfrey investigated the Mangonui claims, and that he had verified the 'extinguishment of native title.' It was partly upon this false assumption that the Crown claimed title to approximately 20,000 acres of 'scrip land' at Mangonui during the nineteenth and twentieth centuries.<sup>188</sup>

A more fundamental problem than the miscarriage of the policy in areas such as Mangonui was the category itself, loaded as it was with unexamined assumptions. The term 'scrip land' is essentially problematic. By what right could the Crown make arrangements with one party to pre-Treaty transactions, without consulting Maori, and then claim title to the land vacated as a result? Mangonui Maori had some say in the process by simply refusing to allow some of 'their' Pakeha to accept scrip. None the less, the Crown failed to consult them, or to even inform them of how scrip exchanges affected their interests. At Hokianga (examined below by Matthew Russell) and in the Bay of Islands, Godfrey and Richmond based their scrip recommendations on investigated claims in which they made the usual grant recommendation. But even there, Maori were left in the dark. The Crown failed to survey 'scrip land' in the Hokianga area until the late 1850s, and some Bay of

<sup>186</sup> 'Terms and Conditions relative to Exchange of Land', 26 September 1844; Governor's Proclamation, 26 March 1844, *Epitome* 89–10

<sup>187</sup> Godfrey to Colonial Secretary, 3 February, 12 May 1844, OLC 8/1, pp 80–81, 86–87

<sup>188</sup> Rigby, 'A Question of Extinguishment', Wai 45 ROD, doc F9, pp 56–59, 69–70

### *The Land Claims Commission Process*

Islands scrip areas such as Kapowai were not properly defined by survey until the 1890s.

At Kapowai, a peninsula on the southern side of the Waikare inlet, the Crown surveyed a 2170 acre 'Small Grazing Run' for Henry Lane out of scrip land. Lane reported to the Commissioner of Crown Lands in 1893 that he could assist the Crown in establishing its title because he was confident that he could identify 'the old Natives who sold Whitlaws [Whytlaw's] OLC now leased to me'.<sup>189</sup> The Maori people living at Waikare rejected the Crown's claim. In a petition to Parliament they stated 'we are quite sure that this land Kapo[w]ai throughout all its extent was never sold to the Europeans'.<sup>190</sup> Gerhard Mueller, the chief surveyor in Auckland, dismissed the Maori claim, because he was equally convinced that Kapowai:

was originally purchased by the Crown from Matthew Whytlaw for the sum of £2560.  
paid in scrip . . . I cannnot see how any [Maori] claim can now be set up to this land  
as it has been Crown land since 1844 . . .<sup>191</sup>

Parliament saw fit to recognise the depth of Maori grievances at Kapowai and elsewhere by appointing its own commissioner in 1907. He heard local Maori make impassioned statements, such as 'Ever since I had breath this land has been known to be ours'. Consequently, he recommended the return of Kapowai. The Crown, however, ignored his recommendation. Only when a further commission heard the grievances once more in 1920 was the Crown willing to return the land. However, even in taking remedial action the Crown failed to acknowledge the source of the problem, that is, the opaque and inadequately documented scrip policies.<sup>192</sup>

Remarkably, during a succession of twentieth century commissions of inquiry into Maori grievances arising from scrip exchanges with settlers, the Crown's officers still failed either to adequately explain the legal basis of the Crown's scrip policy, or to distinguish it from the more familiar Crown policy regarding surplus land. Thus, in regard to Mangonui 'scrip land', the Myers Commission concluded:

The whole question could only be one of surplus lands, and, even if there was any surplus in this case, any rights of whatever kind the Maoris might have had therein were extinguished by the [1840, 1841 and 1863] Crown purchases from the Maoris.<sup>193</sup>

In repeatedly failing to distinguish scrip from surplus land (and in suggesting that subsequent Crown purchases 'wiped the slate'), the Crown only compounded the confusion over the legal basis of its claims.

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189. Lane to CCL, 25 July 1893, BAAZ 1108 (Lands and Survey records), box 88, file 2173, NA, Auckland

190. Wiremu Te Teete petition nd, Lands and Survey records, file 2173, NA Auckland

191. Mueller to Surveyor-General, 28 July 1904, Lands and Survey records, file 2173, NA, Auckland. In another letter to the same person on the same day, Mueller rejected Maori claims to Opua surplus land nearby in the same categorical way.

192. Daamen, Hamer and Rigby, pp 111–113

193. Surplus Lands [Myers] Commission report, 18 October 1848, AJHR, 1848, 6-8, p 15. On the 1840–1841 Mangonui purchases, see 'Clarke's conception of Native Title' above; and on the 1863 Mangonui purchase, see Rigby, 'A Question of Extinguishment?', pp 56–70.

## 2.20 SURPLUS LAND

Armstrong, Stirling and Oliver adequately summarised the origins of the Crown surplus land policy in their reports presented to the Muriwhenua Tribunal. Although the Crown had attempted to claim surplus land (the balance between a claimed and a granted area) out of William Fairburn's Tamaki claim in 1842, the policy lacked any sort of definition until Governor-designate FitzRoy demanded a suitable definition from Lord Stanley in mid-1843. Stanley saw surplus land as based on Crown presumptive rights. His position was that, in Oliver's words:

all land equitably purchased from Maori before 1840 lapsed to the Crown and so became its property. As a result of subsequent [commission] investigations, and in recognition of their interest in these lands, some of it was to be granted to the original [Pakeha] purchasers. Part was to be reserved to Maori, as required by the terms of the original transactions and in response to Maori requests. The balance [surplus] would become the property of the Crown and eventually available for sale and settlement. Thus apart from small reserves the land considered to have been equitably obtained would be assigned by the Crown either to the claimants or to itself.<sup>194</sup>

Significantly, Stanley described the Crown's legal position in hypothetical language, and gave FitzRoy the discretion to adapt it to local circumstances. FitzRoy confused the situation by his pronouncements upon his arrival in New Zealand. On several occasions, in late 1843 and early to mid-1844, he announced that the Crown would hold surplus land in trust for Maori rather than treating it as part of its disposable domain.<sup>195</sup>

Prior to FitzRoy's arrival, Shortland had questioned Surveyor-General Ligar on unsurveyed claims. Ligar calculated that since commissioners by then had recommended grants totalling 42,000 acres, and the unsurveyed area of 'the[se] original claims amounted to 192,000 acres; *150,000 acres will consequently remain demesne lands of the Crown*' (emphasis added).<sup>196</sup> The *Gazette* notice appearing eight days later stated:

... Crown Grants will convey the number of acres, to which the Claimant shall be found entitled. Should the boundaries be found to contain a greater quantity of land than shall be contained in the Deed of Grant, *the excess will be resumed*. [Emphasis added]<sup>197</sup>

Although the Crown directed this notice of its intention to acquire surplus land to claimants rather than Maori, Muriwhenua Maori explicitly denied that the Crown had any rightful claim to the surplus in early 1843. As Commissioner Godfrey recorded it, they declared:

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194. Oliver, p 5

195. See, for example, FitzRoy's statement that surplus land should be held in trust 'for the benefit of the aborigines generally.' *Southern Cross*, 6 July 1844; quoted in Armstrong and Stirling, p 15

196. Executive Council minutes, 19 September 1842, MA 91/8 B, p 12

197. Notice to Land Claimants, 27 Sept 1842, MA 91/8 B, p 14A

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1. That the sales of land around Kaitaia already made by Nopera [Panakareao] and his party to individuals should be acknowledged; *but that any surplus lands (ie., those the Government does not grant to the claimants) will be resumed by the chiefs who sold them . . .* [Emphasis added]<sup>198</sup>

This forthright declaration may have influenced FitzRoy to apparently reverse the Crown's position upon his arrival. Yet his pronouncements did not become policy. He merely delayed the implementation of the policy. Armstrong and Stirling pointed out that while the policy remained latent, even Pakeha claimants 'found it almost impossible to comprehend'.<sup>199</sup> By October 1844, FitzRoy decided not to assert the Crown's surplus land claim within the boundaries of the Fairburn Tamaki claim in the face of concerted Maori opposition. He reported to Stanley that such an assertion 'would have injured the character of the queen's government very seriously, if not irretrievably.' On surplus land, he regretted that it was 'quite impossible to make them [Maori] comprehend our strictly legal view'.<sup>200</sup>

In his last days as Protector of Aborigines, George Clarke reported Maori disenchantment with Crown actions regarding old land claims. He reported to Governor Grey that Maori had become convinced that the Crown set up commissions as a quasi-judicial disguise to allow it to dispossess Maori. He wrote:

This opinion was still further strengthened when it became known that the surplus land confiscated under the sanction of the Land Claims Ordinance were to be appropriated and resold for the benefit of the government and not restored to the natives, as the original proprietors, as in the case of Mr Fairburn.<sup>201</sup>

Grey, of course, hit back at Clarke by launching his attack on missionary land claimants with his 'blood and treasure' despatch three months later. Grey also won Selwyn's support in his campaign to reduce missionary grants to the statutory maximum, a campaign which further highlighted the surplus land issue. If the Crown reduced all grants to 2560 acres, what then would happen to the increased area of surplus land? Grey and Selwyn had the same answer: missionaries would 'voluntarily restore the surplus land to the original native owners'.<sup>202</sup> When the missionaries refused to comply with this request, Grey took Clarke to court and prevailed upon the CMS to dismiss Henry Williams. But he failed to return surplus land to Maori.

According to Armstrong and Stirling, the Crown failed to implement its surplus land policy during the decade after FitzRoy and Grey's intervention, 'either because

198. Godfrey to Colonial Secretary, 10 February 1843, *Epitome*, 87

199. Armstrong and Stirling, p. 19. They also pointed to how, in May 1843 (even before Stanley formulated the Crown's position), the editor of the *Southern Cross* lampooned the justification of its claim to surplus land: pp. 27–29.

200. FitzRoy to Stanley, 15 October 1844, BPP, 1845 (369), pp. 28–30; quoted in Armstrong and Stirling, pp. 26–27. Brodie testified to the House of Commons New Zealand Committee on this Maori opposition to Crown acquisition of surplus land at Tamaki: BPP, 1844 (556), p. 53.

201. Clarke to Grey, 30 March 1846, co 209/44, pp. 89ff. I am indebted to Duncan Moore for this reference.

202. Grey to Selwyn, 30 August 1847, BPP, 1848 (1002), pp. 118–119; Selwyn to Clarke, 1 September 1847, Selwyn papers, AIM

### *Old Land Claims*

it lacked the resources to define its interests; or because the land was remote and was of little commercial importance.<sup>203</sup> It was not until Bell introduced his September 1857 instructions for private surveyors that the Crown defined surplus on the ground. But even though Bell was to urge surveyors to define surplus land, his rule number 17 did not do so explicitly, and it did not require them to do so in all cases. It stated:

As a general rule claimants will be required to survey the whole exterior boundary of their claim as the same was originally acquired from the Natives; but this will not be demanded in cases where the extent of the claim greatly exceeds the maximum quantity to be granted.<sup>204</sup>

Sections 44 and 46 of the Act which provided generous survey allowances gave claimants ample incentive to 'survey the whole exterior boundary of their claim' (including the surplus).<sup>205</sup> This gave claimants a tangible incentive to ensure that surplus land would not 'revert' to Maori. In his words:

The result has been not only to produce a large surplus of land which, under the operation of the existing Acts, goes to the Crown; but to connect the claims together, and lay them down on a map. Under the arrangements which I directed to be adopted by the surveyors . . ., I was enabled, as the original boundaries of a great number of the Claims were coterminous, to compile a map of the whole country about the Bay of Islands and Mangonui, showing the Government purchases there as well as the Land Claims; and a connected map now exists of all that part of the Province of Auckland which lies between the Waikato River and the North Cape.<sup>206</sup>

A remarkable feature of Bell's 1862 report was how little attention he devoted to the almost 300,000 acres granted to claimants, and how much was devoted to surplus land and unsettled claims. Only two short paragraphs are devoted to grants, while almost a page of explanation and a two-page return refer to surplus land claimed by the Crown.<sup>207</sup> He explained that he had not pressed the Crown's rights to surplus land in all cases. He regretted that his report took:

no account of any claims which lapsed or were not referred to any Commissioner, with the exception of those cases where the land was given up to myself by the natives. There are many cases where (so far as I can form a judgement) bona fide purchases were made . . . and if the state of the country had permitted I should have taken measures to recover as much as the natives would agree to give up of this land for the Crown. [Emphasis added]<sup>208</sup>

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203. Armstrong and Stirling, p 39

204. Bell's 'Rules . . . in pursuance of . . . the "Land Claims Settlement Act 1856"', 8 September 1857, MA 91/9, Exhibit B, pp 81–82

205. Land Claims Settlement Act 1856, 19 and 20 v, no 32

206. Bell report, 8 July 1862, AJHR, 1862, D-10, p 5. This map appears to be that held today at LINZ, Auckland, titled 'Auckland Roll plan 16'. See Daamen, Hamer and Rigby, pp 125–126.

207. Ibid, pp 6–7, 8–9, 21–22

208. Ibid, p 8

Evidently, Bell was deterred from 'recovering' all such surplus land, not because Maori needed it, but because such actions (during the New Zealand Wars) may have encouraged Maori to repudiate previous sales in other areas. He believed that his 'recovered' 200,000 acres of surplus land, plus neighbouring Crown purchased areas, were virtually 'open for settlement'.<sup>209</sup>

In spite of Bell's determination to recover surplus and scrip land for the Crown, Maori claimed many such areas in the Native Land Court after 1865. Judge Maning in 1870 awarded Maori almost 5000 acres at Taemaro and Whakaangi which the Crown claimed as either scrip, surplus or as part of the disputed 1863 Mangonui Crown purchase.<sup>210</sup> After Maori lodged several more similar Native Land Court claims, the Lands Department sent John Curnin, its legal draftsman, north to combat them. He reported that all scrip and surplus land should be 'at once gazetted as Crown lands and marked on the survey maps as such . . . One such map . . . would save a ream of correspondence.'<sup>211</sup> On the same day he reported to the Native Minister:

that the Chief Judge of the Native Land Court gave Judgement this morning [apparently in Rawene] in relation to the surplus lands of the Crown . . . that the lands having been alienated by the Natives before the Treaty of Waitangi, and such alienations having been confirmed by the Queen after proper examination during the lifetime of the alienors, the said lands were demesne of the Crown and not Native lands within the Treaty, nor therefore within the jurisdiction of the Court.

Curnin added that, once gazetted and mapped, surplus areas should promptly be 'sold to the public, so as to get them for ever out of the reach of the Natives'.<sup>212</sup>

Less than a month later, Curnin articulated what became the Crown's standard legal position on surplus land for almost half a century:

By International Law all the territory in a country which becomes conquered by, or ceded to a nation, belongs to the nation and not to its individual members, or as it is generally said, vests in the sovereign of the nation as part of the estate of the Crown. This was the case in New Zealand saving as modified by the Treaty of Waitangi, which conserved to the Natives their lands, that is to say the lands in their possession at the time of making the Treaty.

If at the time of that treaty, it would be proved that they had parted with any of their lands, those lands at once belonged to the Crown.

The question of surplus lands must not be debated in relation to the Natives, but really in relation to the Crown. For, it is indisputable that all lands bought by individuals from Natives in New Zealand, became absolutely the property of the Crown on the treaty of Waitangi, or even before that; and that it was out of the pure bounty and equity of the Crown that the old land claimants were granted some land, which no doubt they had originally bought, but which equally without doubt belonged to the Crown by International Law.<sup>213</sup>

209. *Ibid.*, pp 8-9

210. B Rigby, 'The Mangonui area and the Taemaro claim' Wai 45 ROD, doc A21, pp 26-27

211. Curnin to Smith, 16 March 1885, MA 91/5, p 45

212. Curnin to Native Minister, 16 March 1885, MA 91/5, pp 42-43

The Surveyor-General approved Curnin's proposal to gazette and map all surplus land, but his assistant, S Percy Smith, foresaw problems when many such areas still had not been surveyed.<sup>214</sup> To overcome these problems, Curnin compiled detailed lists of scrip and surplus areas. He sent them to Smith with instructions to locate a number of unsurveyed claims on the map.<sup>215</sup> Curnin in Wellington, and Smith in Auckland, teamed up as the Crown's scrip and surplus land experts after 1885. The Native Department referred the complicated Mangonui/Taemaro dispute to them. In this case, Curnin accused Maori petitioners of deliberately trying to throw him 'off the scent' by renaming the disputed area Te Kapara.<sup>216</sup> Smith argued that 'Taemaro was included in one of the old Land Claims but was not allowed by the Commissioner, it therefore became Surplus Land of the Crown as usual under those circumstances'. He clearly did not know what he was talking about, as he virtually admitted when he added that although he was convinced that Taemaro was surplus land:

by what process of law or equity these extensive areas became the property of the Crown I have never been able to learn . . .<sup>217</sup>

Smith followed this admission a year later with further speculation regarding the same Taemaro land:

As far as I can make out the whole of the unsurveyed lands in this neighbourhood are absorbed in . . . old Land Claims . . . It can be proved I expect that the surplus out of these claims became Crown land and consequently no Maori land is left.<sup>218</sup>

Smith and Curnin just kept revealing their confusion. Taemaro was, in fact, not surplus but scrip land. Furthermore, the Crown never 'proved' satisfactorily that Maori there either knew about or consented to the original pre-Treaty transactions which both Godfrey and Bell failed to investigate.<sup>219</sup>

Even though the Crown stuck to Curnin's 1885 definition of its legal rights, and to Smith's guesswork as to where they applied, successive twentieth century investigations of Maori grievances arising from surplus and scrip land began to question the Crown's legal and ethical position. In 1926 Native Land Court Chief Judge R N Jones referred eight Maori petitions to Judge F O V Acheson under the terms of the Native Land Claims Adjustment Act of the previous year. In referring these petitions further on to the 1927 Sim Commission to investigate both confiscation and 'other grievances', Acheson stated that he was:

213. Curnin to Smith, 15 April 1885, BAAZ 1108 (Lands and Survey records), box 88, file 2173, NA, Auckland. An imperfect copy of this document was reproduced in MA 91/5, p 41.

214. McKerrow to Smith, 19 October 1885; Smith to McKerrow, 18 December 1885, MA 91/5, pp 39–40

215. 'List of original Land Claims Records left at Auckland for Mr Smith's reference to be returned to Mr Curnin at Wellington by registered parcel', 6 March 1886; Curnin memos 6, 8 March 1886, Lands and Survey records, file 2173, NA Auckland

216. Curnin to T W Lewis, 23 August 1886, MA 91/9, exhibit G, p 47A

217. Smith to Under-Secretary Lands, 22 March 1887, MA 91/9, exhibit G, p 48

218. Smith to Lewis, 10 February 1888, Wai 45 ROD, doc H1A

219. Rigby, 'A Question of Extinguishment?', pp 56–70

### *The Land Claims Commission Process*

compelled to say that the retention of 'Surplus Lands' by the Crown was an act which would hardly meet with the approval of anyone at the present day.<sup>220</sup>

When the Sim Commission refrained from making recommendations on these petitions, Acheson sought to reopen the matter in the Native Land Court. For almost 20 years the Crown forestalled this investigation by repeatedly promising a full inquiry by a Royal Commission.<sup>221</sup> During this time, Chief Judge Jones expressed a legal position which flew in the face of that which Curnin had expressed on behalf of the Crown. Jones maintained that the Crown could not legitimately claim an interest in pre-Treaty transactions which it deemed 'null and void' in the 1841 Ordinance (and earlier in the 1840 Land Titles Validity Proclamation). He stated:

The surplus land therefore never passed from the Natives and no declaration by the Land Claims Commissioners could alter the Native title.<sup>222</sup>

On the other hand, when the Myers Commission came to review the surplus land question during the 1940s, it agreed with Bell and Curnin's fundamental assumption that surplus land 'must be considered as the Demesne of the Crown.'<sup>223</sup> The Myers Commission's very general terms of reference made it reluctant to investigate particular transactions, even though Lands and Survey department staff prepared literally hundreds of typed summaries of old land claim files for its use. Although it was required to report on scheduled petitions, it made no attempt to grapple with the historical issues raised, for example, by those in the Mangonui area. In fact, the commission complained that no petition raised:

the question of surplus lands as such, nor do the petitioners base their claims on considerations of equity and good conscience . . . What they do is claim on other and altogether different grounds.<sup>224</sup>

Most Maori petitions raised historical issues, such as missionary promises to return surplus land.<sup>225</sup> True, they failed to document most of them, but that was almost invariably due to their lack of access to the essential public records. The commission's chair, former Chief Justice Sir Michael Myers, evidently wanted Maori petitions to deal with the legal issues raised by surplus land, which he was most competent to adjudicate. Of course, Maori could not be expected to raise such issues because they almost always lacked proper legal assistance when they prepared their petitions.

In the end Maori had to be satisfied with the commission's extremely opaque final recommendation:

220. Acheson to Under-Secretary Native Department, 7 March 1927, MA 38/18/6; quoted in Michael Nepia, 'Muriwhenua Surplus Lands' Wai 45 ROD, doc G1, pp 24

221. Nepia, pp 24–27

222. Jones to Ngata, 30 March 1933; quoted in Nepia, pp 25–26

223. Bell report, 8 July 1862, AJHR, 1862, D-10, p 18

224. Myers Commission report, 18 October 1848, AJHR, 1948, G-8, p 13

225. For example, Joseph Matthews tried to return surplus land to Maori at Aurere and Tangonge (near Kaitaia). MA 91/9 D, p 15; E, pp 27–28.

We are agreed that in the case of many [unidentified] transactions there was an area of surplus land to which the Maori vendors would have had no right in equity and good conscience but that in a number of other [also unidentified] transactions where there was an area of surplus land they would have had a claim in equity and good conscience to the whole or part of such area. We are agreed, too, that some compensation should be paid.<sup>226</sup>

## 2.21 RESERVES

One of the Treaty expectations of Maori discussed in 1840, and also previously required in Normanby's instructions to Hobson, was that Maori would be left with sufficient resources to sustain their communities. The way Normanby expressed this requirement was that Maori:

must not be permitted to enter into any [land purchase] contracts in which they might be the ignorant and unintentional authors of injuries to themselves. You will not, for example, purchase from them any territory, the retention of which by them would be essential, or highly conducive, to their own comfort, safety or subsistence. The acquisition of land by the Crown for the future settlement of British subjects must be confined to such districts as the natives can alienate, without distress or serious inconvenience to themselves. To secure the observance of this – will be one of the first duties of their official [Crown] protector.<sup>227</sup>

Hobson and Shortland's promises to return lands 'unjustly held' and to respect Maori custom were consistent with the protective obligations spelled out in Normanby's instructions. Maori, of course, seized the opportunity afforded by the Treaty hui to dramatise their case regarding pre-Treaty transactions, and their fears of dispossession arising from the welter of such transactions (particularly in the north).

Church Missionary Society missionaries and Busby responded to dramatic Maori accusations by referring to trust deeds designed to allow Maori to continue living within claimed areas. In early 1839 CMS missionaries in the Bay of Islands announced that their trust deeds ensured that 'immense tracts of good land ... remain in [the] possession of the natives' who otherwise were 'continually parting with their land'. These trust deeds differed from regular purchases or alienations which were:

made with the full understanding that they do not revert again to the New Zealanders. They are secured to the purchasers and his heirs forever with a right to everything pertaining thereto.<sup>228</sup>

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226. Myers report, p 18. The Crown paid various Maori Trust Boards (particularly the Tai Tokerau Board) a total of £61,307; Nepia, p 116.

227. Normanby to Hobson, 14 August 1839, BPP, 1840 (238), p 39

228. 'Remarks of the Northern [cms/nz] Subcommittee on Parent Committee' letter of 9 August 1838, CMS/CN/MTI

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The CMS subcommittee apparently deposited seventeen trust deeds with George Clarke when he left the CMS to become Protector of the Aborigines in 1840. The trust deeds designed by the CMS apparently protected Maori land particularly in areas of the Bay of Islands, Tamaki, Port Nicholson and Whanganui.<sup>229</sup> The standard English wording in such a deed, from the 1835 Kawakawa example, devised for and signed by Maori, read:

No part of our Land at Kawakawa or any of the places around shall be sold to Europeans; but let it continue for us and for our Children for ever. The Missionaries at Paihia shall fix marks, and make sacred the Boundaries, and hold in Trust that no one may sell any Part without the Consent of the Missionaries.<sup>230</sup>

Upon receipt of these trust deeds, Governor Gipps instructed Land Claim Commissioners to:

not recommend the alienation to other Individuals (ordinary claimants) of any portion of the lands vested by those deeds of Trust in the missionaries for the benefit of the Aborigines or at least . . . not . . . without fully considering these [Trust Deed] Claims, and being perfectly satisfied that a Counter Claimant may have a better Title.<sup>231</sup>

In at least one case, Clarke intervened as Protector of Aborigines to ensure the enforcement of a trust deed. At Whananaki Clarke maintained that an 1835 trust deed meant that the land could not be granted to John Salmon, a later claimant.<sup>232</sup> In a further twist to the story, Salmon attempted to exchange his Whananaki claim for Crown land, apparently derived from the Fairburn Tamaki claim. There he encountered once more the obstacle of a CMS trust deed. Governor FitzRoy instructed the Colonial Secretary to inform him:

that the land formerly purchased by Mr Fairburn cannot be touched, except under the authority of the Trustees of Native Reserves, who we are not yet embodied.<sup>233</sup>

According to Clarke, the area Fairburn claimed was also protected by a CMS trust deed as 'A Tract of Country situated on the River Thames on a river called "Wairoa" containing at least 30,000 acres'.<sup>234</sup>

Lord Russell in January 1841 set the Crown's own standard for the creation of Native reserves. He stated very clearly that Hobson was to instruct his Surveyor-General to define lands 'essential' to Maori, and that his Protector of Aborigines was to ensure that these reserves were held inalienable for the foreseen needs of

229. Each deed is described briefly in Clarke to Colonial Secretary, 16 November 1840, IA 1/1841/135

230. D Coates testimony (before House of Lords New Zealand Committee), 11 May 1838, BPP, 1837-1838 (680), p 261. See also transcription of deed no 1, Wai 45 ROD, doc 13(a), app 6.

231. E Deas Thompson (on behalf of Gipps) to commissioners, 2 January 1841, ibid. Commissioners requested copies of these deeds and Hobson directed that they be supplied with them. Hobson memo, 5 February 1841, ibid.

232. Summary, MA 91/19 (408), p 1

233. FitzRoy to Sinclair, 18 February 1845, MA 91/19 (408), p 5

234. Deed no 17, Wai 45 ROD, doc 13(a), app 6; Paul Husbands and Kate Riddell, *The Alienation of South Auckland Lands*, Waitangi Tribunal Research Series, 1993, pp 9-14

Maori.<sup>235</sup> Unfortunately, Hobson and his successors failed to follow these instructions.

The New Zealand Company's tenths system provided an inauspicious beginning to Crown reserves practice. The company reserves were well described by its official naturalist during 1839–1841, Ernst Dieffenbach. As a highly educated and humane scientist, his views on this subject were widely read in official circles after he published them in London in 1843.<sup>236</sup> While praising the company tenths as a 'judicious and expedient' attempt to finance the Crown's 'protecting and civilizing' agencies, he expressed grave reservations about their administration. He believed that the company would attempt forcible removals of whole Maori communities, and that it would not provide sufficient land for their long-term welfare.<sup>237</sup> His three key recommendations to the Crown were that it should guarantee:

[1] Security in their titles to the land which they [Maori] occupy, provided such land is a sufficiency . . .

[2] The internal arrangement of all the reserved landed property to be left to the natives themselves . . .

[3] Procuring by treaty or purchase a sufficiency of land for conquered tribes, who are henceforth to be under the protection of government . . .<sup>238</sup>

George Clarke jr, the man charged with upholding the Crown's responsibilities in this, by 1844 condemned the company tenths system of reserves as 'pregnant with evil,' and the Port Nicholson purchase Spain authorised as alienating 'the whole land of several tribes.' He went on:

the reserves – with the cultivations[,] are barely adequate to support the natives – or will be insufficient for the purpose in a few years.

He opposed leasing reserves to raise funds for Native purposes, but thought that the Crown could: 'take such surplus lands as from Mr Fairburn's purchase and let them for the benefit of the natives'. This area he distinguished from 'a large portion of land within the [Port Nicholson] district unsurveyed – and which therefore belongs to the natives'.<sup>239</sup> FitzRoy planned to grant 'the outlying lands that the Crown acquired in [scrip] exchanges (with colonists)' to Native Reserve Trustees.<sup>240</sup> He also proposed vesting surplus land in the same trustees later in 1844.<sup>241</sup> Nothing like this was ever done, however, and Moore concluded that the Wellington Tents, far from providing for Maori needs, simply justified the alienation of most of their land at Port Nicholson.<sup>242</sup>

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235. Russell to Hobson, 28 January 1841, BPP, 1841 (311), pp 51–52

236. On Dieffenbach's personal history, see Denis McLean's entry on him in the *New Zealand Dictionary of Biography*, Wellington, Port Nicholson Press, 1990, vol 1, pp 107–108

237. Dieffenbach, pp 145–149

238. *Ibid*, p 171

239. Clarke jnr to Clarke sr, 1 April 1844, Clarke letters, pp 66–68; quoted in Moore, *Crown Demesne*, pp 558–560

240. FitzRoy to Stanley, 15 April 1844, Wai 145 ROD, doc A32, p 11; quoted in *ibid*, p 562

241. *Southern Cross*, 6 July 1844; quoted in Armstrong, p 15

### *The Land Claims Commission Process*

The situation at Tamaki and Waitangi appeared to follow the Port Nicholson precedent, even though the Crown did not have to deal with parallel company control there. William Fairburn, another CMS missionary, had transacted an area estimated to contain at least 75,000 acres in 1837. The deed documenting that transaction promised to return one-third of the entire area to Maori, something which the 1840s commissioners included as a condition of the 5500 acre grant they recommended.<sup>243</sup> When the Crown tried to lease a section of the area outside Fairburn's grant to Charles Terry in 1842, Maori challenged him on the basis of the fact that the Crown, not being a party to the original transaction, had no rights within the area. This, of course, was an area that the Crown would later describe elsewhere as 'surplus land.'<sup>244</sup> In late 1842, Protector Clarke informed the Surveyor-General that:

the land claimed by the Natives, said to be included in Mr Fairburn's claim, never belonged to that gentleman, a reserve of one-third to themselves apparently formed a part of the original agreement between the parties, and upon that ground they have taken possession of certain portions of the land. Some of the Natives have never even removed from it, but are now, and have heretofore been, cultivating on localities included within Mr. Fairburn's boundary.

Clarke, therefore, instructed the Surveyor-General to prepare 'a map of the district of land claimed by Mr. Fairburn' at his 'earliest convenience'. This map was to show:

the Native villages as reserves, and . . . a fair proportion of the Tamaki land should also be reserved for their benefit. The Ngatipaoa Tribe, being the principal claimants of the Tamaki, will expect their portion of land there.<sup>245</sup>

Despite Clarke's willingness to point out the location of the necessary reserves to surveyors, they were apparently never properly established. Nine years later Ngati Tamatera, a Hauraki group led by Katikati, opposed the sawyer William McGee's occupation of Maraetai land they claimed as their own. Katikati also testified before Commissioner William Gisborne that he had never been informed of the earlier Godfrey/Richmond Commission's inquiry.<sup>246</sup> According to Husbands and Riddell, Surveyor-General Ligar recommended the return of 15,000 acres to Maori in 1851. Instead of creating the promised reserves, however, the Crown began paying off different tribal groups that year. Husbands and Riddell concluded:

It was a very dubious proceeding on the part of the Crown not to grant the one-third back to Maori, as contracted in the 1837 deed and recommended by the LCC, and, having allowed the land to be occupied by settlers, to buy off various entitled Maori

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242. Moore, *Crown Demesne*, pp 568–569

243. Husbands and Riddell, pp 9–11

244. *Ibid*, p 13

245. Clarke to Ligar, 19 December 1842, *Epitome*, B6

246. McGee to Commissioner of Crown Lands, 24 March 1851; 'Statement of the Native Chief Kati Kati or Moananui', 9 June 1851, OLC 1/ 590; cited in Husbands and Riddell, pp 11–12

## *Old Land Claims*

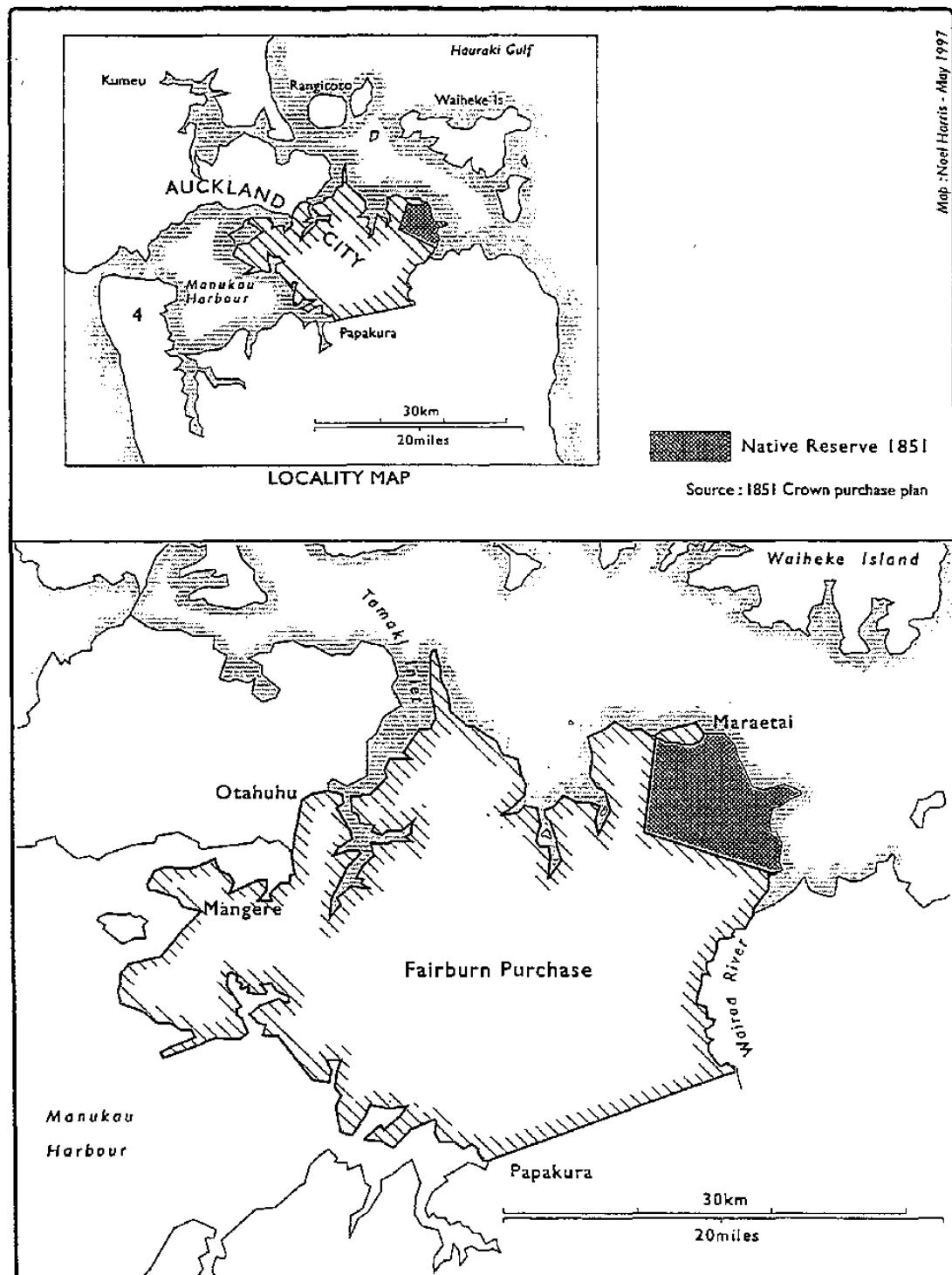


Figure 3: Fairburn's Tamaki claim

groups for small payments . . . In this the Crown would appear to be in breach of its own clear undertakings.<sup>247</sup>

The situation at Waitangi appears to have followed the pattern established at Tamaki. There James Busby claimed a total of 10,000 acres. Commissioners Godfrey and Richmond recommended that he receive no more than 3264 acres in grants.<sup>248</sup> Three commission recommendations for Busby's nine Waitangi claims specified Native Reserves. One reserve clause for example referred to the Ratoa Valley as 'reserved to the Natives'.<sup>249</sup> Another referred to:

One hundred and fifty (150) Acres that were returned or granted to the Natives by Mr Busby . . . [on] 19 Feb 1839 to be reserved for them . . .<sup>250</sup>

A third report referred to the fact that Busby had deposited a kind of trust deed with the Protector of Aborigines 'returning and guaranteeing to the Natives a portion of the above [claimed] land' along the Waitangi River.<sup>251</sup>

The question of what happened to these three reserve recommendations remains a puzzle. William Clarke apparently surveyed Busby's Waitangi claims during the 1850s. In January 1858 he sent Bell a 'Sketch of the Claims at Waitangi & c' which clearly shows the '10,400' acreage figure for Busby.<sup>252</sup> Neither this sketch, nor the eventual survey plan (so 930A), show the location of any of the reserves Godfrey and Richmond recommended in 1842.<sup>253</sup> Two of the three reserves are shown, however, on new grant plans, apparently prepared during the 1850s, but dated 1844. These grant plans, however, were not incorporated in the survey plan.<sup>254</sup>

When Busby appeared before Bell on 23 September 1857 at Russell, he refused to recognise the validity of the 1856 Act under which Bell operated. Bell threatened him with the cancellation of his original grants, but also sought to persuade Busby:

that the Act was an advantage and not an injury to him as well as others, [and] that there was a further step to be taken after the repeal of the Grants – namely the making out of a new Grant to any person who showed good title to the land. If therefore he would give me the plan of the survey he had made of the 10,000 acres claimed by him, I should probably prepare a new Grant for the amount to which the Act entitled him  
...<sup>255</sup>

Busby enquired whether filing his survey plan would prejudice his legal position. Bell answered him it would not, but again warned him:

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247. Husbands and Riddell, p 14. For further investigation of the Fairburn Tamaki claim, see Matthew Russell's case study below.

248. Commissioners reports, 2 May, 14 June 1842, OLC 1/14-24

249. Ibid (claim 18)

250. Ibid (claim 20)

251. The reserve boundary description suggests that it straddled both sides of the river: ibid (claim 21).

252. See Clarke's Waitangi sketch map dated 14 January 1858 filed with Clarke's survey letters in OLC 4/32

253. For the eventual 1872 survey, see Busby's Waitangi grant, plan so 930A (original held at LINZ, Auckland).

254. Busby Crown Grants R10E fol 8; R16E fol 14; R17E fol 15, LINZ, National Office, Wellington

255. Bell, 'Notes of various sittings', 23 Sept 1857, OLC 5/34, pp 4-5

### *Old Land Claims*

that it was probable if I did not get *his* survey I would make an order for a[nother] survey . . . charging him for the same pursuant to the Act. [Emphasis in original]<sup>256</sup>

Although Bell did not record having received Busby's Waitangi survey, the fact that it received an OLC plan number (281) indicates that he filed it. Busby continued to insist upon the validity of his 1844 grants, but, after the Supreme Court dismissed his case, he agreed in 1867 to submit the dispute to binding arbitration. Two of the three arbitrators reported in Busby's favour in 1868, assuring him of clear title to all except 1000 acres of surplus within the originally claimed area.<sup>257</sup>

Although nothing in the award statement referred to reserves for Maori, in a subsequent letter to Busby seeking to clarify the terms of the award, the two arbitrators wrote:

we award you the Bay of Islands [Waitangi] land only, *from which we withheld small portions you reconveyed to the Natives.* [Emphasis added]<sup>258</sup>

What the arbitrators thought they had 'withheld' (or reserved) for Maori we do not know. According to the available survey information, they 'withheld' nothing.<sup>259</sup> The only possible explanation of this apparent anomaly may lie within the terms of the original Waitangi grants. Although they restated the commissioners' 1842 recommendations regarding Maori reserves, later surveys ignored them. The arbitrators, Jackson and Mackelvie, may well have thought that all the reserved areas were outside the surveyed and granted area.<sup>260</sup>

A letter from James Busby to Land Claims Commissioner Alfred Dommet in 1870 may shed some light on the Waitangi reserves mystery. He indicated that he wished to have his grant issued in one block:

I would also beg your attention to the reservations made for the natives in two of the former grants and to the terms in which the plots of land in these grants were leased to the natives. These will appear from the enclosure No 1 which is the original draft prepared by Mr Colenso from which the several leases were prepared, so far as regards the conditions upon which those leases were to be held.

In every case the land purchased by me from the natives was purchased absolutely and without any reservation whatever. This will appear from the certified copies of the original deeds which, as well as copies of the original leases granted by me at Wangarei and the Bay of Islands were delivered to [Land Claim] Commissioners . . .

I have always therefore considered that I was entitled to grants without any reservation whatever on the Government being satisfied that the natives entitled to the leases were in possession of them, and enjoyed the right of occupation which continued only so long as they continued to occupy.

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256. Ibid, p 5

257. 'Arbitrator's Award in the Case of James Busby Esq' 6 April 1868, AJHR, 1869, D-11, pp 3-4

258. Jackson and Mackelvie to Busby, 15 October 1868, AJHR, 1869, D-11, p 4

259. See Busby's Waitangi plan, so 930A.

260. Plan so 930A surveyed by William Busby (probably during the 1860s) does identify a 'Waitangi Reserve' on the south side of the river upstream from Haruru. This, however, was outside the Busby claim area. It may also have been a public reserve, rather than a native reserve.

### *The Land Claims Commission Process*

With regard to the reservation at a place called Otuwhere or Wharengarara in the grant of 5,000 acres, this right ceased within two years of the date of the purchase, having been abandoned by the natives and never afterwards occupied. But their only representation lately preferred a claim for it before the Native Land Court which was dismissed by the Court, and afterwards relinquished by the claimant as will appear by the original documents enclosed Nos. 2 & 3.

The other reservation in the grant called Te Puke has been occupied by the descendant of the parties to whom it was leased, and their right of occupation therefore still exists: but it is a right of occupation only, held from me, and ought not to interfere with the integrity of the grant.

Busby's surveyor son William submitted a very hastily prepared plan. He asked Commissioner Dommet to return it later for him to 'fill in all the details which were left out.'<sup>261</sup>

The 'enclosure No 1' Busby referred to consisted of Hare Wirikake's signed statement dated 1 December 1868. It read:

E hoa e Te Pukipi [sic]

Kia rongo mai koe kua mutu taku totohe ki a koe mo Otuwhere – ara mo Wharengarara – Hera matu, kua rite a mana korero, ko mita Wiremu Puhipi – ko te mutunga tenei ake ake<sup>262</sup>

This Busby understood as Wirikake's absolute relinquishment of his claim to the Otuwhere reserve at Waitangi. In addition, Judge Maning verified Busby's assertion regarding the location of the land. He stated:

The land named in this document (Otuwhere) is identical with the [Native Land Court] claim No. 93 – 1866 ...<sup>263</sup>

Busby's 'enclosure No 2' was a lengthy undated Maori document purporting to be a 'copy of a deed reconveying a piece of land at the Puke to Tona [or 'Toua'] & party.' Finally, his 'enclosure No 3' was the Hokianga Native Land Court register entry on Wirikake's 1866 Otuwhere claim:

which Maning dismissed on 4 May 1867 after two successive non-appearances by the claimant.<sup>264</sup>

Finally, William Busby wrote to Dommet on 28 November 1870 stating:

261. Otuwhere is located at the western extremity of Busby's Waitangi grant: see figure 3; Busby to Dommet 6 May 1870, IA 15/5.

262. Wirikake statement, 1 December 1868; encl in Busby to Dommet, 6 May 1870, IA 15/5. Witnessed by F E Maning, H Williams and Hopkins Clarke. Niwa Short believes that this statement 'sounds like someone is fed up with all the debate . . . concerning Otuwhere, and that this will be the end to it all for Ever' Personal communication, 10 March 1997.

263. Maning signed statement, 12 February 1869; encl in Busby to Dommet, 6 May 1870, IA 15/5. Maori apparently surveyed land at Waitangi as ML 2488, but the plan is missing from LINZ Auckland. See Auckland roll plan no 33.

264. Wirikake Otuwhere claim no 93–1866, Hokianga Native Land Court register; encl in Busby to Dommet, 6 May 1870, IA 15/5

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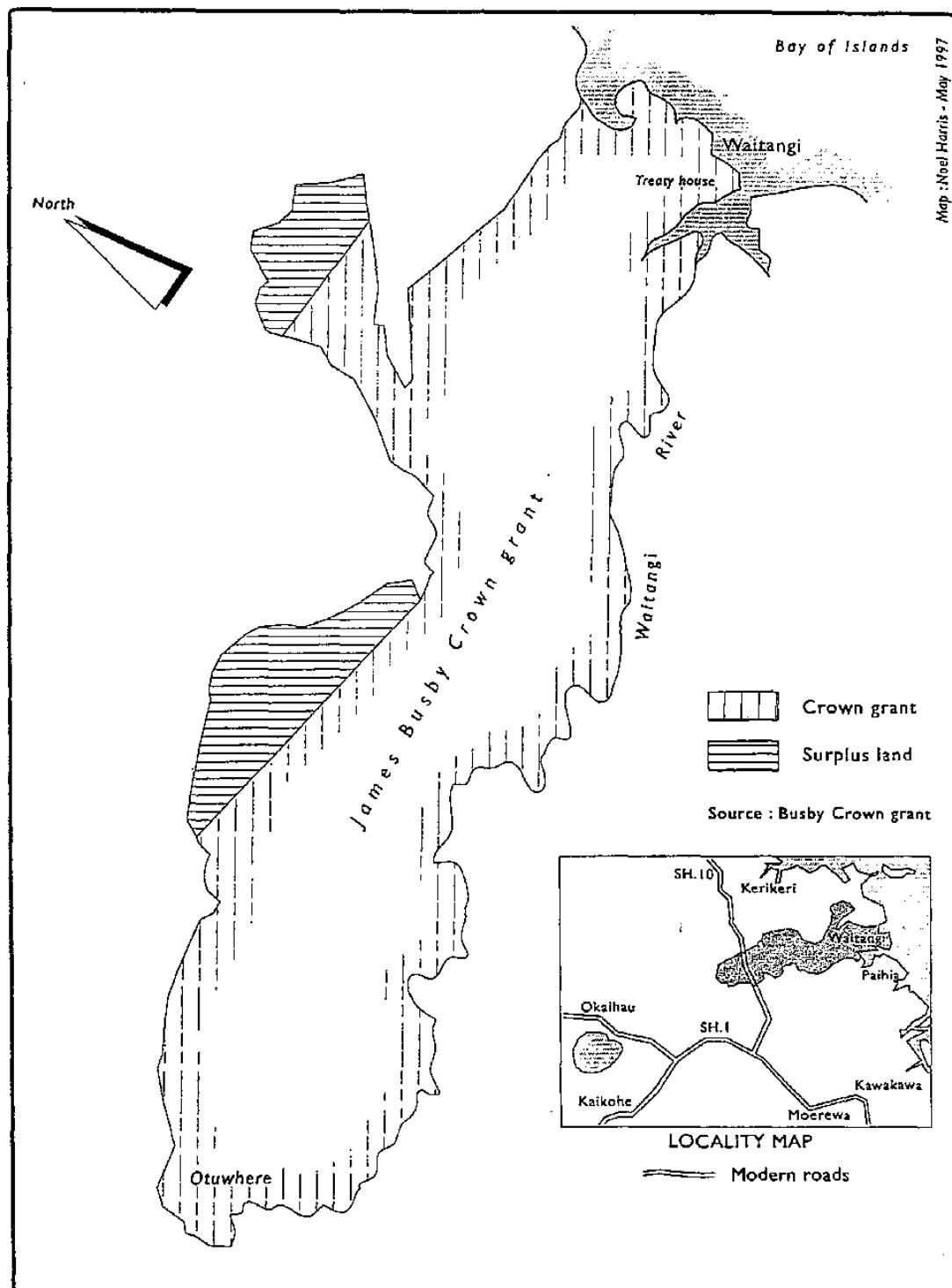


Figure 4: Busby's Waitangi grant

I have the honour to forward herewith, the 'Amended' plan of Mr James Busby's land at Waitangi.

The plan shows the boundaries of the original purchase from the Natives. The blocks marked No 1 & 2 containing respectively 460 and 586 acres both of which adjoin Government land have been cut out, in order to reduce the quantity . . . to that allowed by the Arbitrators.<sup>265</sup>

This appears to have been Busby's Waitangi grant plan, later designated so 930A. The two blocks William Busby 'cut out' totalling over 1000 acres were the blocks designated as Crown surplus land. At Waitangi Busby got 9374 acres, the Crown got 1010 acres, and Maori got nothing.

## 2.22 WHAT WERE MAORI LEFT WITH?

Maori reserves out of areas claimed by Pakeha claimants amounted to very little anywhere in the country, as indicated in our quantitative introduction to this national theme report. The Crown appears to have assumed that Maori had always plenty of land outside the areas claimed by Pakeha, and those later purchased by the Crown. Yet the Crown was forewarned about the need to plan in advance by ensuring that adequate reserves were set aside for Maori. In 1843 Ernst Dieffenbach estimated the Maori population of the North Island (divided into 12 tribal groupings) to be 114,890. He estimated that the Crown should reserve at least ten acres of arable land for each man, woman and child. This estimate was perhaps based on the false assumption that Maori needed only small plots of arable land, when they practised a form of shifting cultivation, and hunting and gathering, which required a much larger area than sedentary horticulture. None the less, on his very conservative reasoning, Dieffenbach reckoned the Crown need to reserve 1,148,900 acres for North Island Maori in 1843.<sup>266</sup>

Part of the problem was the absence of a single Crown agency devoted to implementing the Crown's often-stated policy of defining and administering inalienable Maori reserves. Although Russell instructed Hobson to create such reserves in 1841, the only land claims statute which even mentioned such reserves, did so to provide for their alienation.<sup>267</sup> The appointment of Charles Heaphy as a national Commissioner of Native Reserves in 1870 should have allowed the Crown to remedy this situation.

In his first major report to Parliament, Heaphy identified part of the problem. He identified that although reserves created out of pre-1865 Crown purchases in Auckland province appeared to be 'a tolerably sufficient provision for the future wants' of Maori, he believed that some tribes had 'sold recklessly, and are in danger

<sup>265</sup> William Busby to Dommet, 28 November, 1870, IA 15/5

<sup>266</sup> Dieffenbach, vol 2, pp 149-150

<sup>267</sup> This was section 8 of the 1858 Act which appeared to contradict section 7 of the Native Reserves Act 1856 requiring reserves to be inalienable for 21 years. Land Claims Extension Act 1858, 21 and 22 v, no 76; Native Reserves Act 1856, 19 and 20 v, no 10.

of becoming paupers.' He identified the endangered tribes as Te Rarawa, Ngati Whatua, and Patukirikiri of Hauraki.<sup>268</sup> These people came from areas which had experienced some of the most intensive old land claim and Crown purchase activity. Heaphy calculated that Te Rarawa reserves in the Muriwhenua area amounted to only about 19 acres per person. He therefore recommended that the Crown should allow 'none of the cultivations of the Rarawa and Ngatiwhatua . . . to be sold'.

Heaphy further recommended that the Crown should create endowments for Maori purposes out of the Hokianga/Bay of Islands surplus land. This was the area which contained the greatest concentration of old land claims. The Commissioner of Native Reserves stated that the Crown would find it difficult to settle Pakeha on this land (without explaining why). He went on to state:

These difficulties would not exist, however, in many cases if the lands were appropriated as endowments towards the support of Natives in local hospitals . . .<sup>269</sup>

Although Heaphy listed 715,009 acres of Native Reserves in the North Island, he included in this list both restricted Native Land Court titles, and several reserves already alienated.<sup>270</sup> Even then, the Crown apparently failed to act upon Heaphy's modest recommendations, both with respect to calling a moratorium on Crown purchases from Te Rarawa and Ngati Whatua, and with respect to creating endowments out of Hokianga/Bay of Islands surplus land.

In addition to harbouring a general sense of grievance, Maori in many old land claim areas were left without any clear information on what had happened to their land. In spite of Bell's insistence that he explained surplus land to Maori, they apparently never accepted his explanations. Furthermore, did the Crown ever attempt to fully explain to Maori the full implications of its presumptive rights? It certainly did not do so at the three main Treaty gatherings in the north in 1840. Since the Crown frequently failed to operate in a consistent and transparent fashion regarding old land claims, Maori often suspected it of downright duplicity. Successive nineteenth and twentieth century investigations of several aspects of the subject fell far short of restoring Maori confidence that their interests were considered in a full and fair way.

Almost 150 years after the signing of the Treaty, Muriwhenua claimants called for 'an enquiry as to the extent to which and the circumstances in which the[ir] original land . . . and their Taonga passed into other and particularly into Crown hands'.<sup>271</sup> In this statement they expressed a dual loss. They believed that they had

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268. Report of Commissioner of Native Reserves, 19 July 1871, AJHR, 1871, F-4, p 5

269. Ibid. This hearked back to FitzRoy's 1844 promise to hold surplus land in trust for Maori and his 1845 statement that the reserve arising from Fairburn's Tamaki claim would be administered by 'Trustees.' FitzRoy to Sinclair, 18 February 1845, MA 91/19 (408), p 5

270. List E, encl in native reserves report 19 July 1871, AJHR, 1871 F-4, pp 7-44, 47-59, 62-63. The NLC could issue titles restricting land from alienation for 21 years, but it could also lift such restrictions during that period. None the less, this 'restricted' category accounted for almost 70 percent of Heaphy's 'reserved' area.

271. 'Statement of Claims', Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*, Wellington, Department of Justice: Waitangi Tribunal, 1988, p 249

not only lost their land, but also that they had lost almost all knowledge of how they had lost it. In other words, they were left with very little of either their land, or the history of their land.

## 2.23 CONCLUSION

As highlighted in the general introduction to this report, old land claims appear to assume their full significance only when considered together with subsequent Crown purchases. All the issues arising from old land claims invariably apply with greater significance to pre-1865 Crown purchases:

- (a) Crown purchases, too, were characterised by the lack of an adequate 'Maori side of the story.' This is especially important when historians attempt to establish whether or not Maori knowingly and willingly consented to 'extinguishment.'
- (b) The Ngai Tahu Tribunal, for instance, found that in pre-1865 purchases south of Wairau, the Crown's actions were frequently inconsistent with its Treaty obligations.<sup>272</sup>
- (c) Scrip and surplus land issues arose during many Crown purchase negotiations. In 1857, for example, Kemp reported how scrip 'claims frequently come to notice during negotiations with the natives . . . they form a very large part of the Public Domain'.<sup>273</sup>
- (d) Crown purchases, even more than old land claims, threw up issues regarding the adequacy of native reserves.

The issues arising from Crown purchases inevitably assumed greater significance than those arising from old land claims simply because pre-1865 Crown purchases were so much more extensive. The estimated three million acres directly affected by old land claims pale to relative insignificance when compared with the 44.6 million acres purchased by the Crown by the end of 1865. As a proportion of the total land area of New Zealand, Crown purchases accounted for approximately 67.5 per cent, and old land claims only 4.5 percent. None the less, old land claims were, in a sense, the forerunner of Crown purchases. They set the pattern of extinguishment that the Crown repeated with its subsequent purchases.

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<sup>272</sup>. Waitangi Tribunal, *The Ngai Tahu Report 1991*, 3 vols, Wellington, Brooker and Friend Ltd, 1991, vol 2, pp 274-277, 454-458

<sup>273</sup>. Kemp listed over 100,000 acres of scrip land north of Whangarei: Kemp to McLean, 11 February 1857, AJHR 1861, c-1, pp 16-18.



**PART II**

**CASE STUDIES**



## CHAPTER 3

### CASE STUDY: THE FAIRBURN PURCHASE

There are three main reasons why William Fairburn's 1836 purchase at Tamaki has been selected as the first case study for this report.<sup>1</sup> In the first instance, it is undoubtedly a significant old land claim. This significance derives from its size, more than 75,000 acres, and its location. As shown in figure 5, in modern day terms the Fairburn purchase covers most of South Auckland, from Otahuhu in the north to Papakura in the south. The second reason for beginning with the Fairburn purchase is closely related to the first. Because of its size and proximity to Auckland, with its burgeoning population and newly acquired status as the colony's capital, the Fairburn purchase provides a good opportunity to explore the Crown's approach to the question of 'surplus land'. As will be shown, this 'surplus', which was composed of the balance between the area concluded by the Land Claims Commissioners to have been the subject of a bona fide purchase, and the area eventually granted to the claimant, was an important component of Colonial Office policy. Thirdly, the Fairburn purchase, or specifically, the failure of successive Colonial administrations to honour the terms of the original purchase as recognised by the Land Claims Commissioners, stands out as a striking example of how the old land claims process sometimes failed to safeguard the interests of the Maori vendors.

Fairburn, in his notification of claim, originally estimated his purchase to encompass 40,000 acres. He subsequently modified this before the Land Claims Commissioners, Godfrey and Richmond, stating: 'The number of Acres contained in this Claim is I am sure more than 40,000. I have heard from other persons competent to judge that there are considerably more'.<sup>2</sup> A more accurate estimate of the supposed contents of Fairburn's purchase was provided by the Surveyor General, Charles Ligar, in 1851. He estimated that the purchase contained closer to 75,000 acres.<sup>3</sup> The estimated size of the purchase increased a third time when, in 1948, the Myers Commission on surplus lands used planimeter readings to arrive at a figure of 82,947 acres.<sup>4</sup>

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1. All claim numbers used in the following case studies, unless specifically stated otherwise, are those assigned by Commissioner Bell. The equivalent Godfrey and Richmond number, from the original hearings, can be most conveniently found in Bell's 1863 app to his 1862 report: Land Claims Commission, 'Appendix to the Report of the Land Claims Commissioner', 8 July 1862, AJHR, 1863, D-14.
  2. Testimony of William Fairburn, 23 May 1842, recorded in Godfrey and Richmond, 14 July 1842, OLC 1/590, NA Wellington
  3. Ligar minute, 17 October 1851, on Ligar and Gisborne to Colonial Secretary, 9 October 1851, OLC 1/590, NA Wellington

The uncertainty surrounding the precise size of Fairburn's purchase derives from two inter-related causes. Firstly, the exact boundaries of the Fairburn purchase have never been satisfactorily defined. The description contained in the purchase deeds was typically imprecise:

the whole of the dragging place at Otahuhu, go on from thence to the Ararata, from thence to the Awatiotio, from thence to Papakura; go on from thence to Rangiuru; from thence to the Wairoa; from thence to Wakakaiwera; from thence to Umupuia; from thence to the Poho; from thence to Maraitai; from thence to Motukaraka; from thence to Awakarihi; from thence to Mangimangiroa; from thence to Tawakaman; from thence to Waipapa; from thence to Okokino; from thence to the Panahoroiwi; from thence to the River Wangamatau: continue on from thence to Otahuhu where it ends. That portion of the land to the Eastward is bordered by the sea called Mimirua, flowing towards Hauraki: that to the Westward is bounded by Manukau: that to the Southward by the river Wairoa.<sup>5</sup>

Because of the sheer size of the block, and the unusual circumstances preceding the purchase itself, these boundaries were never traversed or even pointed out from an elevated position. Ideally, such an exercise would have occurred at the time of the original purchase, and involved both vendors and purchasers, in order to expose any misunderstandings between the two parties with regard to exactly what was being transacted. Certainly, a traversing of the boundaries should have been a pre-requisite to any determination by the commissioners as to the area which they considered to have been the subject of the bona fide purchase. Indeed, as has been argued in the main text of this report, the early commissioners made their recommendations under the assumption that a proper survey identifying the precise boundaries would be required before an indefeasible Crown grant was issued. As the imprecise estimates narrated above indicate, however, no such survey has ever been undertaken of the entire Fairburn purchase. Surveys of land conveyed in individual grants within the block did occur, but these smaller surveys were not conducted in a comprehensive manner which would have allowed an overview of the entire purchase. As will be shown later, the lack of such an overview had an extremely detrimental impact upon the Maori vendors, principally because it contributed to the fact that the third of the purchase reserved to them was never marked out.

The circumstances of Fairburn's Tamaki purchase in 1838 were, as he himself admitted, of a 'peculiar nature'.<sup>6</sup> This peculiarity had its origins in the Nga Puhi raids of the 1820s. These raids resulted in the virtual desertion of South Auckland as the resident iwi fled into the Waikato, some directly, some via the Hauraki Plains.

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4. Alan Ward in Paul Husbands and Kate Riddell, *The Alienation of South Auckland Lands*, Waitangi Tribunal Research Series, 1993, p 14. It is interesting to note that this 'expansion' in the Fairburn purchase was in contrast to the 'shrinkage' evident in most old land claims. An excellent example of this is William Webster's Piako claim, the focus of a later case study, which was originally estimated at 80,000 acres but eventually surveyed at 51,000 acres.
  5. Turton's deed 347, reproduced in Husbands and Riddell, pp 74-75
  6. Fairburn to New South Wales Colonial Secretary, 2 January 1841, OLC 1/590, NA Wellington

*Case Study: The Fairburn Purchase*

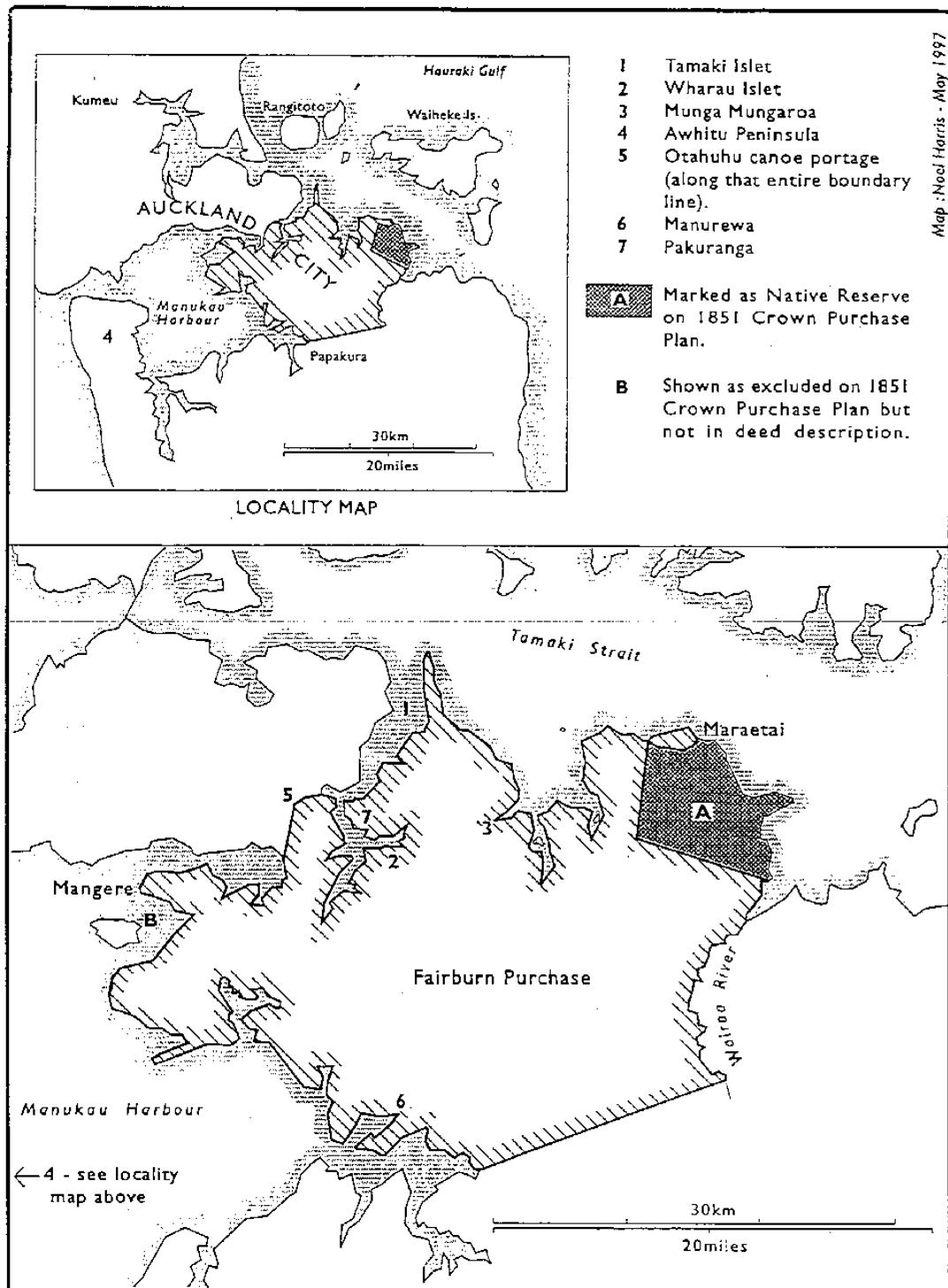


Figure 5: Boundaries of Fairburn purchase

Despite the fact that the Nga Puhi raiders declined to assert ahi kaa over the vacated lands, it was several years before South Auckland iwi deemed it safe to return. This occurred in 1835, under the protection of Te Wherowhero, a relationship symbolised by Te Wherowhero's taking up residence upon the Awhitu Peninsula.<sup>7</sup> The re-occupation of the area was not, however, a completely smooth process. Considerable friction arose amongst the returning iwi over who could claim an interest in the various portions of what would soon become the Fairburn purchase. This is evident in the following 1851 statement of Ngati Paoa chief, Hauaura:

The whole purchase was very irregular – we were in great confusion at the time – Otara at the time was disputed by the Ngati Paua [Ngati Paoa] the Ngatimatira [Ngati Tamatera?] and the Akitai tribes . . . Munga Mungaroa and the back of it back to Papakura were disputed by the Akitai Tribe and 'Kati Kati' [whom he later identifies as 'Nga te tai'].<sup>8</sup>

On a more general level, Fairburn identified the various conflicts as occurring between the 'exterior districts' of 'Waikato and Thames . . . which parties had long been in a state of hostility to each other. The land at Tamaki appeared to be a bone of contention'.<sup>9</sup>

It was as a means of ending these on-going hostilities, by removing the 'bone of contention', that Henry Williams suggested to Te Wherowhero that the entire area should be sold to the Church Missionary Society. The result was a meeting, in January 1836, at which most of what today constitutes South Auckland was sold to William Fairburn. The meeting was attended by the CMS missionaries Fairburn, Hamlin, Maunsell, Williams, and a 'large party' of Maori.<sup>10</sup> There seem to have been two major Maori figures behind the sale: Te Wherowhero, under whose protection the contending iwi had returned to the area, and who was wishful of peace; and Turia, leader of Ngati Terau, who according to Fairburn 'was the principal Chief. He virtually sold it – the land. – The rest acquiesced'.<sup>11</sup> Specifically mentioned in the 1836 deed of sale were 'Hauauru and people, Tuiri [Turia] and people, and Herua and people'. The deed also specified that they had 'received as return for that land Tamaki, ninety blankets, twenty-four axes, twenty-four adzes, twenty-six hoes, fourteen spades, eighty dollars, nine hundred pounds tobacco, twenty four combs, [and] twelve plane irons'.<sup>12</sup> Fairburn would subsequently testify before Godfrey and Richmond that four further 'installments', with a total value of £902, were required to fully extinguish the title of all those who subsequently asserted an interest in the area of land originally purchased in 1836.<sup>13</sup> The most

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7. Alan Ward, *Historical Report on South Auckland Lands*, Preliminary Discussion Draft prepared for the Crown Congress Joint Working Party, 1992, p 3
  8. Testimony of Hauauru, 14 June 1851, translated and recorded by John Grant Johnson, enclosed in Gisborne to Colonial Secretary, 1 July 1851, OLC 1/590, NA Wellington
  9. Fairburn to New South Wales Colonial Secretary, 2 January 1841, OLC 1/590, NA Wellington
  10. *ibid*
  11. Fairburn, 19 June 1851, enclosed in Gisborne to Colonial Secretary, 1 July 1851, OLC 1/590, NA Wellington
  12. H Turton, *Maori Deeds of Old Private Land Purchases in New Zealand*, Wellington, 1882, p 307. Also reproduced in Husbands and Riddell, pp 74–75.

### *Case Study: The Fairburn Purchase*

significant of these subsequent deeds was that of 12 July 1837, by which Fairburn promised to return:

One third of the whole purchase the boundaries to be determined as soon as the country shall be surveyed. – That is to say that each of the Tribes known by the names Ngati Paoa, Ngati Tamatera, Ngati Terau, Te Akitai, and Ngati Whanaunga, shall have secured to them for their personal use for ever, in proportion to the number of persons of whom their tribes may consist residing in any part of the Thames and Manukau[.]<sup>14</sup>

As well as indicating which groups Fairburn considered to have possessed the most significant interests in the area purchased, the 1837 deed also raises the issue of exactly what was transacted in the Fairburn purchase. To be more specific, were those Maori who signed the deeds consenting to a total and complete alienation, or did they have in mind something less than that, for example, the sharing of rights to cultivate or reside within the boundaries defined? The issue of Maori perceptions of early ‘sales’ has been the subject of considerable submissions before the Muriwhenua Tribunal, the members of which are currently engaged in the writing of an interim report which is likely to deal with this issue.

Bearing this in mind, there are certain features specific to the Fairburn purchase which are certainly worthy of mention. Given the sheer size and location of the Fairburn purchase, it is not unreasonable to question whether Maori would have been willing in 1836 to sign away completely and forever all rights to such a significant area of land. While these rights were undeniably the subject of considerable dispute at the time of the sale, the fact that they were contested only serves to highlight the value that was placed upon the land itself. Significantly, even after the 1836 ‘sale’, Maori continued to reside on the land covered by the purchase. Indeed, Fairburn subsequently testified that it was understood during the negotiations that the purchase would in no way disturb any existing cultivations.<sup>15</sup> These were principally located around, and to the east of, Maraetai. More importantly, Fairburn wrote to the New South Wales Colonial Secretary that he had invited Maori to return to Tamaki and settle upon the land. Of those who did, he wrote: ‘Many are now Christians and schools are carried on amongst them and they are cultivating the land without molestation’. It is not clear from this statement what the exact distribution of this settlement was, that is, whether it referred solely to the residents of Maraetai, or whether there were other settlements beyond this.<sup>16</sup>

In the same letter, Fairburn makes a positive linkage between his invitation to the Maori vendors for them to settle upon Tamaki, and the return of a third of the land

13. Evidence of William Fairburn, 1 September 1841, recorded by the commissioners in OLC 1/590, NA Wellington. The figure of £902 was a composite of £16 cash and £302 goods, the latter figure typically being multiplied by three to indicate the increased value of goods once they had been transported from Sydney to New Zealand.

14. Deed of Conveyance, 12 July 1837, minuted on back of Deed of Purchase, 22 January 1836, OLC 1/590, NA Wellington

15. Fairburn, 19 June 1851, enclosed in Gisborne to Colonial Secretary, 1 July 1851, OLC 1/590, NA Wellington

16. Fairburn to New South Wales Colonial Secretary, 2 January 1841, OLC 1/590, NA Wellington

by the 1837 deed. The lack of subsequent Maori habitation outside of the settlements around Maraetai strongly suggests, however, that, in the absence of a comprehensive survey to alert them otherwise, not all of the Maori vendors were aware of the existence of the third returned. How was this possible? The third was returned in 1837, by a deed written on the reverse side of the first, and main Fairburn purchase deed of 1836. The deed itself was signed by Fairburn alone, with no indication of how many other witnesses were present. Nor is Fairburn's testimony as recorded by the commissioners in 1841 any more illuminating in this regard. The commissioners also examined 11 Maori witnesses. While such a number of witnesses was not unusual for a missionary-related old land claim, it was considerably more than the minimum of two generally required by, and produced before, the commissioners. Significantly, nowhere in this unusually high level of Maori testimony is any reference made to the return of a third of the purchase by the 1837 deed. It was probably this glaring omission which saw Fairburn recalled by the commissioners for cross-examination: 'Have you given to the Natives a Deed transacting the third of this land to them?' To which Fairburn replied, 'No. But they understand the promise'.<sup>17</sup> The commissioners obviously accepted this, subsequently reporting that: 'The Claimant has stated in evidence that he has reconveyed One third of this Purchase to the Natives, which the Commissioners recommend they may be left in undisturbed possession of'.<sup>18</sup>

Testimony gathered a decade later by Commissioner for Crown Lands Gisborne, however, raises serious doubts about exactly how applicable was Fairburn's assurance that 'they understand the promise'. Kati Kati of Ngati Tamatera, for example, testified before Gisborne that 'I never heard of a third of the whole block being returned by Mr Fairburn to the Natives'.<sup>19</sup> Kati Kati, a youth at the time of the original purchase, never signed the 1836 Deed but was 'among the party when the first payment was made'.<sup>20</sup> His lack of knowledge about the third returned is perhaps most easily explained by the fact that he never attended the Commissioners' investigations into the Fairburn purchase. As he stated to Gisborne: '[I] never heard till after it had ended, of the Commission that sat into this claim'.<sup>21</sup> As the 1851 testimony of Hauauru of Ngati Paoa clearly demonstrates, however, non-attendance at the 1841 hearing of Godfrey and Richmond does not explain all instances of ignorance of the reversion of the third. Hauauru, who signed the 1836 deed and testified as much before the commissioners in 1841, subsequently told Commissioner Gisborne that:

[While he had] heard that Mr Fairburn gave back Mungaroa, Maraetai, the Pouru and Onepuia to the Natives [ . . . ] he had] not heard of a large undefined piece of Mr

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17. Cross examination of William Fairburn, 1 September 1841, OLC 1/590, NA Wellington

18. Godfrey and Richmond, 14 July 1842, OLC 1/590, NA Wellington

19. Testimony of Kati Kati, 1 July 1851, translated and recorded by John Grant Johnson, enclosed with Gisborne to Colonial Secretary, 1 July 1851, OLC 1/590, NA Wellington

20. Testimony of William Fairburn, 19 June 1851, enclosed with Gisborne to Colonial Secretary, 1 July 1851, OLC 1/590, NA Wellington

21. Testimony of Kati Kati, 1 July 1851, translated and recorded by John Grant Johnson, enclosed with Gisborne to Colonial Secretary, 1 July 1851, OLC 1/590, NA Wellington

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Fairburn's purchase having been returned by him to the Native Sellers to be afterwards divided amongst them according to their population.<sup>22</sup>

It is clear then, that in spite of the high level of Maori testimony presented before the original Godfrey and Richmond hearing, knowledge of the third of the purchase returned by the 1837 deed was not as widespread as was implied in Fairburn's assurance to the commissioners in 1841 that the vendors 'understand the promise'.

Those Maori who did testify before Commissioner Gisborne that they were aware of the reversion of the third, did so in support of their right to ownership over various pieces of land within the purchase boundaries. Mohi of Akitai, who contested the occupation by a Major Gray of an area of land adjoining the Wharau inlet, testified that:

Mr Fairburn when we sold him the land, said we should not be disturbed in our cultivations. – We also heard that part of the land sold to Mr Fairburn was to be returned to the Natives and that the Government approved. – Wharau is part of the land that was returned as described by me – it was returned by Governor FitzRoy – we have no written document – we have only his word[.]<sup>23</sup>

Similarly, We Tuke's statement in 1851 that: 'The lands mentioned in the deed were originally sold to Mr Fairburn . . . Governor Shortland gave us back Onepuia, under the arrangement of a third being returned by Mr Fairburn'.<sup>24</sup>

Another aspect of the Maori testimony gathered by Commissioner Gisborne in 1851 which casts an interesting light upon the proceedings of the earliest commissioners is the statement of Mohi that:

The evidence just read to me is what I gave before the Commissioners, – except as regards the sale of all the land. – I told the Commissioners that I did not sell the Wharau (now occupied by Major Gray) but I excepted no other piece – I stated this through Mr Forsaith, – My evidence was not read to me. – Wakahara, when he was alive owned the same land as we did. – His evidence as read to me, is not correctly given[.]<sup>25</sup>

Thomas Forsaith was the sub-protector of Aborigines who was assigned to the investigation of Fairburn's Tamaki purchase. In addition to translating the Maori testimony so that it could be recorded by the commissioners, it was also his job to ensure that the 'interests' of the Maori vendors were not ignored in the process of the investigation. This presumably would have included, amongst the many responsibilities that attended such a role, his ensuring that those giving testimony

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- 22. Testimony of Hauauru, 14 June 1851, translated and recorded by John Grant Johnson, enclosed with Gisborne to Colonial Secretary, 1 July 1851, OLC 1/590, NA Wellington
  - 23. Testimony of Mohi, 23 June 1851, translated and recorded by John Grant Johnson, enclosed with Gisborne to Colonial Secretary, 1 July 1851, OLC 1/590, NA Wellington
  - 24. Testimony of We Tuke, 14 June 1851, translated and recorded by John Grant Johnson, enclosed in Gisborne to Colonial Secretary, 1 July 1851, OLC 1/590, NA Wellington
  - 25. Testimony of Mohi, 23 June 1851, translated and recorded by John Grant Johnson, enclosed with Gisborne to Colonial Secretary, 1 July 1851, OLC 1/590, NA Wellington

were aware of what was being recorded. Like his immediate superior, Protector George Clarke, Forsaith was also an old land claimant himself claiming 3078 acres in the Kaipara region.

Of the 11 Maori witnesses who appeared before the commissioners, two, Tihi and Takanini, are recorded as having disputed that their portion of the land had ever been sold. This resulted in it being explicitly excepted by the commissioners in their subsequent recommendation. Like the third of the purchase returned by the 1837 deed, however, the exact location of this exception remained undefined. At the end of their investigation the commissioners reported that the considerable Maori testimony left no doubt that, with the two qualifications noted above, an equitable and total alienation had been conducted by Fairburn. Their report also noted that, under the terms of the 1841 Ordinance, they were restricted to recommending a maximum grant of 2560 acres. A third qualification upon Fairburn's grant was that it could not include any land which formed part of the Otahuhu canoe portage, linking Manukau Harbour to the River Tamaki and thence Waitemata Harbour. This, the commissioners recommended, should be reserved for the Government.<sup>26</sup>

There was, of course, a considerable difference between the area concluded by Godfrey and Richmond to have been the subject of a bona fide purchase, and the area they subsequently recommended should be granted to Fairburn. Before examining how the government dealt with this 'surplus' area of land, it would be useful to trace the subsequent history of Fairburn's Tamaki grants. On reading the commissioners' report, Governor FitzRoy referred the claims back to another commissioner, Robert Fitzgerald, to see if there were grounds for extending the grants beyond the maximum prescribed in the 1841 Ordinance. Such a referral occurred for many of the missionary-related old land claims and was consistent with the fact that throughout his administration, 'FitzRoy was always concerned with serving the interests of Maori and long term settlers'.<sup>27</sup> Few old land claimants had been in the colony as long as the missionaries, and their work in promoting Christianity was an important ingredient in FitzRoy's personal philosophy about how best to 'civilise' Maori.<sup>28</sup> Commissioner Fitzgerald subsequently recommended in April 1844 that Fairburn's granted acreage should be extended to 'not more than 5,500 acres'. Justifying this extension, Fitzgerald highlighted Fairburn's 26 years of residence in the colony, the 'good feeling and friendship between him and the aborigines', the considerable Maori testimony before Godfrey and Richmond, the presence of Fairburn's family, and the considerable payment made by Fairburn to the various Maori vendors.<sup>29</sup> Fitzgerald's recommendation was

26. Godfrey and Richmond, 14 July 1842, OLC 1/590, NA Wellington. In addition to the third returned to the Maori vendors by the 1837 deed, Fairburn conveyed, on 1 April 1840, another third of the entire purchase to the Church Missionary Society. This conveyance was disallowed by the commissioners who stated that any such conveyance must come out of the 2560 acres they recommended Fairburn should receive. While giving no reason for this disallowance in their report, the fact that it had occurred after the assumption of British sovereignty would not have helped the CMS case.

27. Dean Cowie, "To Do All the Good I Can": Robert FitzRoy – Governor of New Zealand, 1843–1845', MA thesis, University of Auckland, 1994, p 66

28. Ibid, pp 45–46

29. Fitzgerald to FitzRoy, 22 April 1844, OLC 1/590, NA Wellington

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subsequently approved with FitzRoy minuting that 'I approve fully of the reasons for extending Mr Fairburn's claim'.<sup>30</sup>

Because of the absence of an overarching survey it is difficult to be precise about the exact location of the 5494 acres subsequently selected by Fairburn. Further complicating the matter is the fact that Fairburn did not include all his land in a single grant, but instead spread it over nine different grants.<sup>31</sup> The single largest of these, accounting for almost half of Fairburn's total acreage, was located in the proximity of Manurewa, that is, in the southern portion of his purchase. It seems likely that this large area, some 2507 acres, surrounded the Fairburn family dwelling.<sup>32</sup> Further '*houses* and several acres of cultivated ground' were included within a much smaller grant, just under 400 acres, situated at Maraetai (emphasis in original).<sup>33</sup> The remainder of the grants, accounting for 2148 acres of the total 5493, are recorded as being located in Pakuranga, although subsequent events would reveal that several of these can more accurately be located near Otahu, specifically, what would soon become the site of the Otahu pensioners' village. These Otahu allotments were selected by Fairburn in the presence of Governor FitzRoy.<sup>34</sup>

As mentioned in the main text of this report, the close relationship between Governor FitzRoy and the missionaries would provide FitzRoy's successor, George Grey, with an angle from which he could attack FitzRoy's native and land policies. By way of illustration, Grey accused Protector of Aborigines and missionary land claimant, George Clarke, of failing to properly protect Maori interests when he recommended approval of Fitzgerald's extensions. Clarke's motive, according to Grey, was to get more land for himself than he would have done under the 1841 Ordinance.<sup>35</sup> As has already been stated, this politically-motivated attack was subsequently turned into a legal one when Attorney-General Swainson brought a civil case against the legality of FitzRoy's extension of Clarke's grant at Whakanekeneke.

George Clark, however, was not alone in being threatened with legal action against his FitzRoy-approved extension. In October 1847, Fairburn received a letter from the Attorney-General informing him that the government sought the surrender of all his grants to lands within the Fairburn purchase on the grounds that they were illegal. The letter further stated that under clause six of the 1841 Ordinance the Governor was under no obligation to issue a new grant in replacement of those surrendered. In this case, however, the Governor had indicated to the Attorney-General that upon the grants being surrendered he 'will cause to be issued to you a new Grant for 2560 acres of land (the maximum prescribed under the 1841

30. FitzRoy minute, 25 April 1844, on Fitzgerald to FitzRoy, 22 April 1844, OLC 1/590, NA Wellington

31. The size and approximate location of these grants is taken from a list compiled by the Surveyor General's Office, 16 November 1847, OLC 1/590, NA Wellington

32. Ligar to Colonial Secretary, 26 June 1844, OLC 1/590, NA Wellington. There was also a second, much smaller, Manurewa grant of 470 acres.

33. FitzRoy to Sinclair, 10 March 1845, OLC 1/590, NA Wellington.

34. Ligar to Colonial Secretary, 26 June 1844, OLC 1/590, NA Wellington

35. Cowie, p 94

Ordinance).<sup>36</sup> On asking for clarification of the grounds upon which the grants were considered illegal, Fairburn was given a lengthy and somewhat convoluted explanation, his own summary of which is quoted below.<sup>37</sup> As he understood it, the Governor's objections were:

founded on the fact that the two Commissioners (Messrs Richmond and Godfrey) appointed under the first Land Claims Ordinance having recommended that a Grant should be issued to me for 2560 . . . acres and their report to that effect having being confirmed by the Governor that therefore the case was disposed of and could not be legally gone into again under the [1842] land claims amendment Ordinance[.]<sup>38</sup>

On receipt of the Attorney-General's explanation, Fairburn was still reluctant to surrender his grants. While he did not dispute that the extended grants might in fact be illegal, he was not willing to concede that this necessarily required their invalidation:

I trust the Governor is too honourable to take advantage of a technical legal objection to invalidate its own Crown Grants founded upon an equitable and just claim . . .

Had I taken ground not my own – had I received property from the Crown for which I never paid – even under such adverse circumstances as these the honour of the Crown being pledged for the transaction it ought to be faithfully maintained, but in the present case when no one has been wronged . . . I cannot conceive it possible that the Crown would thus take advantage of its own neglect and shake public confidence in its Acts by such an invasion of private property and desecration of national faith as would appear to be contemplated from the remarks in your letter[.]<sup>39</sup>

Grey, however, was unswayed by Fairburn's argument and continued with his plans for the commencement of litigation. In the face of this pressure Fairburn ended his opposition to the surrendering of his grants and accepted Grey's proposal for the issue of new grants in accordance with the maximum prescribed by the 1841 Ordinance.<sup>40</sup>

Having achieved the capitulation of Fairburn, Grey, for reasons which may need to be uncovered by further research, subsequently relented from his proposed arbitrary reduction of Fairburn's granted acreage. Instead, he instructed the Surveyor General to purchase from Fairburn any lands at Otahuhu that the government might require for the site of the pensioners' village. The agreed purchase price was £2 per acre, for which consideration Fairburn sold 400 acres in 1850.<sup>41</sup> Thus, in one sale, Fairburn recovered almost the entire consideration he had

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36. Attorney-General to Fairburn, 15 October 1847, OLC 1/590, NA Wellington

37. Fairburn to Colonial Secretary, 2 November 1847, OLC 1/590, NA Wellington. A draft of the Attorney-General's response is attached to Attorney-General to Fairburn, 15 October 1847, OLC 1/590, NA Wellington.

38. Fairburn to Colonial Secretary, 12 November 1847, OLC 1/590, NA Wellington

39. *Ibid*

40. Fairburn to Colonial Secretary, 6 December 1847, OLC 1/590, NA Wellington

41. Surveyor General to Colonial Secretary, 30 July 1850, OLC 1/590, NA Wellington

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paid between January 1836 and December 1839 for the nearly 83,000 acres contained within the original purchase boundaries. In addition to this, Fairburn voluntarily reduced the rest of his FitzRoy-granted holdings within the purchase boundaries by selling upon the open market allotments of land adjoining the pensioner village for prices of up to £30 an acre.<sup>42</sup>

But Fairburn was not the only party who stood to reap considerable financial benefits from the increasing market value of the land encompassed within the Fairburn purchase. The Crown also stood to benefit from its ownership of the considerable 'surplus' deriving from the purchase. This surplus was composed of the difference between the area concluded by Godfrey and Richmond to have been the subject of a bona fide purchase, and the area eventually granted to the claimant. The assumption of Crown ownership over, and subsequent sale of, 'surplus' lands was an important part of Colonial Office policy. Working from the assumption that Maori had alienated vast tracts of land to speculators and Land Company agents, the so-called 'monster claims', the Colonial Office anticipated that limiting the amount that could be granted to a single individual would result in the creation of a considerable Crown demesne. It further anticipated that this demesne would not only assure the Crown's control over the colonisation of New Zealand, but also that its subsequent sale would ensure that the colony was self-funding in its administration. Of course, this assumption of 'monster' alienations by Maori was not correct, with the result that 'there was barely enough surplus land accruing to the Crown to fund colonial administration, and due to a chronic shortage of funds, the Crown could not purchase lands itself and on sell them to settlers, despite the fact that Maori were clamouring to sell'.<sup>43</sup>

The rationale by which the Colonial Office believed the Crown was entitled to assume ownership of the surplus lands arising from old land claims can be seen in the following letter from the Secretary of State for the Colonies, Lord Stanley. Responding to a query from Robert FitzRoy, about to depart to take up the governorship of the Colony, Stanley wrote:

1st. Your first enquiry is in the following terms – 'To whom should land now belong which has been validly purchased from New Zealand Aboriginals: but which exceeding a certain specified quantity cannot be held under existing Laws by the original Purchaser or his Representative[.]

The case thus supposed is (if I rightly understand it) a case in which the Contract with the Native shall be found by the Land Claim Commissioners to have been untainted by any such fraud or injustice as would render it invalid. It is assumed that neither on the grounds of inadequacy of price, nor on any other grounds could the former proprietor of the Land require that the sale of it should be set aside. But it is, at the same time supposed that the lands thus acquired exceeded the limitation which defines the extent of land to be holden by any European under a title originally

42. Surveyor General minute, undated, on Surveyor-General to Colonial Secretary, 30 July 1850, OLC 1/590, NA Wellington

43. 'Surplus Lands: Policy and Practice, 1840–1950', submission of David Armstrong and Bruce Stirling (Wai 45 ROD, doc 12), p 16

derived from the aborigines. The question then is – who is the proprietor of the excess? To that question it must be answered that by the terms of the supposition the Purchaser is not the Proprietor; – and that the hypothesis being that the claims of the Aboriginal Sellers have been justly extinguished, they are no longer the Proprietors – hence the consequence seems immediately to follow, that the property in the excess is in the sovereign as representing and protecting the interests of Society at large. In other words such Lands could become available for the purposes of Sale and Settlement.<sup>44</sup>

While the rationale behind the Crown's assumption of surplus lands may have been clear to Lord Stanley, the submission of Armstrong and Stirling to the Muriwhenua Tribunal has shown that in the Colony itself the policy was neither accepted, or understood, by the majority of Europeans or Maori. In large part this can be attributed to a failure by the Crown to adequately explain its policy beyond the realms of dispatches between the Colonial and Imperial Governments.<sup>45</sup> Further contributing to this lack of understanding and acceptance was the behaviour of Governor FitzRoy himself. Within a month of his arrival in the Colony, FitzRoy was reported twice in the *Southern Cross* as having publicly stated that the Crown had no intention of retaining the surplus lands but that they would, instead, be restored to Maori.<sup>46</sup> FitzRoy was aware of course, that such pronouncements contradicted the principles underlying the Colonial Office policy as outlined in Lord Stanley's letter of 26 June 1843. It is clear, however, that FitzRoy strongly believed:

the only way that the government could maintain a position of integrity was if the surplus was returned to the original Maori owners. He knew he could not give land to settlers which Maori did not want them to have, and that the Crown could lay no justifiable claim to the land.<sup>47</sup>

In contending that attempts on the behalf of the Crown to assume possession of surplus lands would result in Maori becoming 'exceedingly irritated', FitzRoy used the specific example of the Fairburn purchase.<sup>48</sup> Prior to FitzRoy's arrival, Acting-Governor Shortland had issued a significant portion of the Fairburn surplus to a European settler by the name of Terry. Terry was not an old land claimant, but rather a significant creditor of the cash-strapped administration. As Walter Brodie testified in 1844 before a British Parliamentary Select Committee on New Zealand, Terry was prevented from taking possession of the surplus lands assigned to him by the Crown:

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44. Stanley to FitzRoy, 26 June 1843, G 1/9, NA Wellington

45. Armstrong and Stirling, p 19

46. This was in the editions of December 30, 1843, and January 20, 1844. Extracts from both reports are quoted in Armstrong and Stirling, pp 13–14. Armstrong and Stirling also provide references for one other instance where FitzRoy's feelings on the return of surplus lands to Maori became known in the public arena.

47. Cowie, pp 69–70, in which Cowie summarises Stanley to FitzRoy, 26 June 1843

48. FitzRoy to Stanley, 15 October 1844, cited in Armstrong and Stirling, p 26

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There is the case of Mr Fairburn, a missionary, a case well known; he had 40,000 acres of land that he had purchased . . . This piece of land was investigated by the Commissioners, and they awarded Mr Fairburn about 3,000 acres of land, and the rest the Government was to take themselves. When Mr Terry went out with his flax machinery, in May 1842, he had a sort of certificate from the government, to chose 20,000 acres of land; the only 20,000 acres the government had in one piece was a part of those 37,000 acres that they had taken from Mr Fairburn; consequently the Government gave Mr Terry 20,000 acres which really belonged to the missionary. Mr Terry was not aware what land it was. He went down, with all his machinery, and the natives went down too. They allowed him to land everything; and as soon as everything was landed, the natives asked him who he was. He told them, and they asked him who sent him there. He told them that the Government had given him the land. The natives said the Government had no authority to give it to him; that if it did not belong to Mr Fairburn, it did not belong to Government, but to the natives themselves; and that those parties should not erect any thing on the ground, unless with the consent of Mr Fairburn.<sup>49</sup>

It cannot be denied that Walter Brodie, as a frustrated land claimant, certainly had 'an axe to grind' in respect of the Colonial government's handling of old land claims.<sup>50</sup> Nonetheless, his testimony is valuable for providing evidence of very early opposition by Maori to the Crown's assumption of surplus lands. It should also be noted that Lord Stanley was certainly not unaware of the likelihood of Maori resisting the Crown's assumption of any surplus for the reason that, as FitzRoy himself protested, it was 'quite impossible to make them comprehend our strictly legal view of such cases'.<sup>51</sup> This is evident in Stanley's writing to FitzRoy that:

not only the difficulties you yourself suggest but others not now distinctly perceptible will probably arise. Especially it may happen that the Natives may be found in possession of some such [surplus] lands; or may be prompted by feelings entitled to respect, earnestly to solicit the resumption of them. In any such contingency it would be your duty (I am well aware how much it would be your inclination) to deal with the original Proprietors with the utmost possible tenderness; and humour their wishes so far as it can be done, compatibly with the other and higher interests over which your Office will require you to watch.<sup>52</sup>

While Stanley was by no means questioning the soundness of the original policy, the sale of surplus lands by the Crown being central to the Colonial Office blueprint for the colonisation of New Zealand, he was none the less allowing FitzRoy, the

49. Walter Brodie, 4 June 1844, BPP, 1844, vol 2, p 42

50. Brodie was found by the commissioners to have completed a bona fide purchase. Frustrated at the delay in having a Crown grant issued on the basis of that recommendation, Brodie took the highly unusual step of having his claim surveyed, at his own expense, having gained an assurance from Acting-Governor Shortland that this would be sufficient to ensure the issuance of his grant. On production of the completed surveys, however, Governor Shortland refused to issue any grant before FitzRoy arrived and Brodie was forced to leave the Colony before his grant could issue: *ibid*, p 31.

51. FitzRoy to Stanley, 15 October 1844, cited in Armstrong and Stirling, p 26

52. Stanley to FitzRoy, 26 June 1843, G 1/9, NA Wellington

Queen's representative at the scene, maximum discretion in how the policy should be implemented.

When this discretion allowed to FitzRoy is combined with the 1842 recommendation of Godfrey and Richmond that Maori were entitled to be left in 'undisturbed possession' of one-third of the Fairburn purchase, it is manifest that Maori too stood to benefit from the rising price of South Auckland land. That this should be the case was in fact consistent with Colonial Office policy, as embodied in Lord Normanby's 1839 instructions to Hobson. In those instructions, Lord Normanby assumed that the primary benefit that would derive to Maori from land sales would not be the initial consideration paid for the land, but the subsequent increase in the value of remaining Maori land as a result of the introduction of European settlement and capital.<sup>53</sup> As Alan Ward has argued, however, this hypothesis only held true as long as Maori remained in possession of a 'pool of land' which was not only of a reasonable quality, but also in reasonable proximity to areas of European settlement.<sup>54</sup> The reservation of a third as recommended by Godfrey and Richmond in 1842 would certainly have met this criteria, particularly if the title was made inalienable. Such a reservation would also have satisfied another element of Normanby's 1839 instructions, that Maori 'must not be permitted to enter into any contracts in which they might be the ignorant and unintentional authors of injury to themselves. You will not, for example, purchase from them any territory, the retention of which would be essential, or highly conducive, to their own comfort, safety or subsistence'.<sup>55</sup>

It would seem that Colonial officials were initially sincere in their intention to give effect to the commissioners' recommendation with regard to the return of a third of the Fairburn purchase. According to an 1851 memorandum by Charles Ligar, Surveyor General, the commissioners' recommendation was subsequently 'approved by the Government', most probably a reference to Governor FitzRoy.<sup>56</sup> Such an assumption is supported by the example given in the main text of this report, whereby John Salmon, a land claimant, was prevented by FitzRoy from exchanging his Whananaki claim for land in South Auckland on the grounds that 'that the land formerly purchased by Mr Fairburn cannot be touched, except under the authority of the Trustees of Native Reserves, who are not yet embodied'.<sup>57</sup> Even had such a

53. Normanby to Hobson, 14 August 1839, BPP, 1840, vol 3, pp 85–90. It was the 'tenths' proposal of the New Zealand Company, however, which gave the greatest exposure to the idea that Maori would reap substantial benefits from the sale of land for European settlement. Under the tenths: 'The New Zealand Company . . . proposed to reserve, and hold in trust for the benefit of Maori, one in ten of each of the sections in its [Wellington] subdivisions . . . [it thus] involved a recognition that if the Wellington Maori were to generally share in the growth of the town to be built on the land they had sold to the Company a generous proportion of land would need to be reserved, the added value of that land providing the revenue for the benefit of the former customary owners of the land': Ward, *Historical Report on South Auckland*, pp 13–14.

54. Alan Ward, *Supplementary Historical Report on Central Auckland Lands*, Preliminary Discussion Draft prepared for Crown Congress Joint Working Party, p 58

55. Normanby to Hobson, 14 August 1839, BPP, 1840, vol 3, p 87

56. Ligar to Gisborne, 17 May 1851, enclosed in Gisborne to Colonial Secretary, 1 July 1857, OLC 1/590, NA Wellington

57. FitzRoy to Sinclair, 18 February 1845, MA 91/19 (408), NA Wellington, p 5

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body been in existence, FitzRoy's publicly aired opposition to the Crown's assumption of the surplus makes it seem unlikely that he would have been inclined to allow the issuance of a Crown grant to Salmon until the location of the third recommended by the commissioners had been defined by survey. But for all his good intentions, FitzRoy's term in office was marked by its shortness and multitude of more pressing problems. FitzRoy was recalled before he was able to oversee the implementation of Fairburn's 1837 deed.

FitzRoy's successor, George Grey, did not share his predecessors misgivings as to the equity of the Crown's assumption of surplus lands. Quite to the contrary, it is clear that for Grey the sale of surplus lands offered at least a partial solution to the colony's serious financial problems. It should come as no surprise then, that no initiative was made under his administration to effect the survey and return of the third as recommended by Godfrey and Richmond in 1842.

The matter remained unresolved for several years until the actions of a Ngati Tamatera Chief, Kati Kati, prompted the Colonial administration to re-investigate the matter. In March 1851, Kati Kati halted the timber-cutting activities of William McGee, the holder of a Crown timber license on part of the Fairburn surplus land. As McGee informed the Colonial Secretary:

I have been hindered and prevented from executing the [timber licence . . . ] by the Chief named Kuttikut, and his tribe who have recently made a settlement and reside on the Creek within about two or three hundred yards of my location . . . [Kati Kati has demanded £26] in default of which they ordered me forthwith to leave the yard, or they would burn everything belonging to me, and do me other serious injury[.]<sup>58</sup>

The £26 was to be in compensation for the timber taken under the license; Kati Kati asserting that the timber being logged by McGee was owned by him.<sup>59</sup> The subsequent correspondence provoked by McGee's letter shows that the Colonial administration had forgotten about the 1842 recommendation of Godfrey and Richmond that a third of the Fairburn purchase should be returned to the Maori vendors. Upon receiving McGee's letter, the Colonial Secretary forwarded it to the Surveyor General with the request that he 'state whether the Natives have any claim to the lands for which the Timber Licence alluded to have been granted'.<sup>60</sup> This request solicited the following reply from the Surveyor General's department: 'The Land is the property of the Crown, the Natives have no proper claim on the West of a cut line which bounds Handy's land [one of McGee's workers], on the East of it, they have been permitted to occupy'.<sup>61</sup> Not only did the Surveyor General's response contain no reference to the third to be restored to Maori, but it also implied that those Maori residing east of Handy's line did so at the Crown's sufferance. As was mentioned earlier, these settlements seem to have located around, and to the east of, Maraetai; specifically, Ngati Terau residing at Onepuia, and, at least

58. McGee to Sinclair, 23 April 1851, OLC 1/590, NA Wellington

59. Gisborne to Sinclair, 18 June 1851, OLC 1/590, NA Wellington

60. Sinclair minute, undated, on Gisborne to Colonial Secretary, 26 March 1851, OLC 1/590, NA Wellington

61. James Baker minute on Gisborne to Colonial Secretary, 26 March 1851, OLC 1/590, NA Wellington

according to the 1851 testimony of We Tuke, by their sufferance, Ngati Paoa at Owhe.<sup>62</sup> Nevertheless, Fairburn himself testified that it was explicitly understood during the purchase negotiations that those who resided in the vicinity of Maraetai would not be disturbed in their cultivations.<sup>63</sup> Furthermore, as has already been shown, those in residence at Maraetai believed their right to reside there to be firmly derived from the 1837 deed.

By the time of Kati Kati's protest, however, the Colonial administration had clearly forgotten about the recommendations and intentions of earlier officials. Comprehending no possible reason for Kati Kati's actions, the government dispatched Commissioner for Crown Lands, William Gisborne, to investigate. Gisborne subsequently conducted a series of interviews with various Rangatira at the mouth of the Thames River, and later, at Maraetai. The interviews, recorded and translated by his companion, Native Department interpreter John Grant Johnson, are in many places difficult to reconcile with each other, particularly in regard to establishing the exact relationship between the various hapu or iwi mentioned.<sup>64</sup> As has already been highlighted, it was during one of those interviews that Kati Kati stated that he had 'never heard of a third of the whole block being returned by Mr Fairburn to the Natives'. Instead, Kati Kati based his claim of ownership over the land being logged by McGee on the fact that it had never been sold. He maintained that Fairburn had specifically excepted from the original sale all the land between the Munga Munga Roa Stream and Te Pouru, Maraetai.<sup>65</sup> This might be contrasted with the evidence of We Tuke, of Ngati Terau, who testified to Gisborne that: 'When Governor Shortland gave us back Onepuia, under the arrangements of a third being returned by Mr Fairburn. – Kati Kati saw that none had been returned to him and claimed between Munga Munga Roa and Maraetai as his share'.<sup>66</sup>

Gisborne's subsequent report makes it clear that he preferred We Tuke's interpretation of events over that of Kati Kati. 'After a careful consideration of the various conflicting statements, I am of [the] opinion that all the land in dispute was originally sold to Mr Fairburn, and that the only just claim which Kati Kati can prefer arises out of the reversion of the third'.<sup>67</sup> While this may have disappointed Kati Kati, he might have drawn some satisfaction from Gisborne's admission that Kati Kati's protests had 'forced upon my attention' the issue of the third of the Fairburn purchase which the 1837 deed had promised would be restored to the original Maori vendors. As Gisborne subsequently reported to the Colonial Secretary:

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62. Testimony of We Tuke, 14 June 1851, translated and recorded by John Grant Johnson, enclosed in Gisborne to Colonial Secretary, 1 July 1851, OLC 1/590, NA Wellington
63. Testimony of William Fairburn, 19 June 1851, enclosed in Gisborne to Colonial Secretary, 1 July 1851, OLC 1/590, NA Wellington
64. See Ward, *Historical Report on South Auckland Lands*, pp 24–25
65. Testimony of Kati Kati, 9 June 1851, translated and recorded by John Grant Johnson, enclosed in Gisborne to Colonial Secretary, 1 July 1851, OLC 1/590, NA Wellington
66. Testimony of We Tuke, 14 June 1851, translated and recorded by John Grant Johnson, enclosed in Gisborne to Colonial Secretary, 1 July 1851, OLC 1/590, NA Wellington
67. Gisborne to Sinclair, 1 July 1851, OLC 1/590, NA Wellington

### *Case Study: The Fairburn Purchase*

This claim of reversion had never been properly defined and given to the different Native Sellers of the original block, – some verbal promises, it seems, have been made them by different Governors, – and now, owing to the immensely enhanced value of their claims, – to their great desire of location in the vicinity of Auckland, and to their regret at having received so little for the original sale (about £300 for 75,000 acres) they have commenced seizing, in spite of the Government, upon some of the most valuable spots they can find.<sup>68</sup>

After acknowledging the equity of Kati Kati's claim to a share in the third, Gisborne outlined potential remedies to resolve the situation. 'Two courses remain open, in my opinion, to the Government, either to mark off what may appear a reasonable quantity of land, for the Thames Tribes, at Maraetai, or altogether to buy [out] their claims, – either with land [from] elsewhere [within the purchase], or with land and money, combined'. It was the last option, buying out their claims with a combination of money and land, that Gisborne considered to be the best one. This was because he believed that those iwi currently residing in the vicinity of Maraetai, that is, Ngati Terau and Ngati Paoa, would not react favourably to the Crown offering other iwi the right to settle upon the land around Maraetai; land which they had always considered to constitute their share of the third. At the same time, Gisborne did not consider it practical or desirable to concede in its entirety the 'extravagant' area claimed by Kati Kati. As was briefly alluded to much earlier, Gisborne further recommended that, once the balance of land and cash to be paid to Kati Kati had been determined by the government, 'a Surveyor should mark out, with definite boundaries, all lands so set apart for the Natives, – that a certificate should be given to each tribe to that effect, and a written relinquishment on their part of all other claims, within the original deed of sale, be also obtained'.<sup>69</sup> In making this recommendation, Gisborne was referring not only to those lands which might subsequently accrue to Kati Kati, but to all the lands returned as a result of the 1837 deed. For as was highlighted earlier, despite the fact that Ngati Terau had been resident at Maraetai since before the purchase, the fact that the Crown had clearly forgotten about the reversion of the third meant that the exact status of their holdings was not at all clear. While approximately 5000 acres at Maraetai was marked off on various plans as Native Reserve, the initial appraisal of the Surveyor General's department that resident Maori 'had been permitted to occupy' the land at Maraetai would suggest that the settlement had not received any formal recognition of its reserve status.<sup>70</sup>

Disregarding the advice of Gisborne, the Government eventually resolved to settle the dispute with Kati Kati through a purely cash payment of £200. This was to be delivered in two installments, an initial payment of £100 in October 1851, with the remainder to be paid once Kati Kati and his fellow protestors had removed their settlement from within the purchase. A further condition of the cash payment was that its acceptance was to be seen as a relinquishment of any further claims by

68. Ibid

69. Ibid

70. James Baker minute on Gisborne to Colonial Secretary, 26 March 1851, oLC 1/590, NA Wellington

Ngati Tamatera to any land within the boundaries of the Fairburn purchase.<sup>71</sup> A similar extinguishment of any future claims was the intention of an earlier payment of £100, this time to Mohi and Epiha, on behalf of Te Akitai. A third and final payment, this time of £500, was made in February 1854. The beneficiaries of this largest cash payment were Ngatitai.<sup>72</sup>

By these payments, the Crown considered itself to have fully extinguished all claims by Maori to land within the Fairburn purchase. Two points might be made about this assumption. Firstly, none of the payments included either Ngati Whanaunga or Ngati Paoa, both of which were amongst the five iwi explicitly mentioned by Fairburn's 1837 Deed.<sup>73</sup> Secondly, the total payment made, £800, seems a highly inadequate consideration for the relinquishment of ownership of at least 25,000 acres of South Auckland land, especially when the formalisation of this ownership had been recommended by Godfrey and Richmond in 1842, and subsequently 'approved by government'.<sup>74</sup> The 1850s payments appear even more inadequate in light of the decision of the 1948 Myers Commission on Surplus Lands to exclude the Fairburn purchase from its calculations. This was on the basis that the 'Crown Purchases' of the 1850s had covered the entire Fairburn purchase, not just the third restored by the 1837 deed. In this way, the 1850s payments also served to deny the descendants of the original Maori vendors an investigation into whether their forebears 'had a right in equity and good conscience to have the surplus lands returned to them'.<sup>75</sup>

The decision of the Myers Commission to exclude the Fairburn purchase from its considerations was merely the latest in a series of missed opportunities by the Crown to give effect to the promises and intentions conveyed in Lord Normanby's 1839 instructions. The potential benefit which would have derived from a third of the Fairburn purchase being restored to Maori was 'kept alive', as it were, by the commissioners in 1842 and FitzRoy during his short term as the Queen's representative. With the arrival of Grey, however, another potential benefit of the considerable surplus deriving from Fairburn's purchase was given precedence. Grey perceived the surplus in terms of its potential for easing the colony's financial problems. Ironically, this was also consistent with the Colonial Office policy conveyed in Normanby's instructions, which assumed that Crown ownership of the considerable demesne accruing from surplus lands would not only assure Colonial Office control over the colonisation of New Zealand, but also that its subsequent sale would ensure that the colony was self-funding in its administration. In the instance of the Fairburn purchase, these contradictions within Lord Normanby's

71. Ligar and Gisborne to Sinclair, 9 October 1851, OLC 1/590; H Turton, *Maori Deeds of Land Purchases in the North Island*, deed no 221, pp 279–280

72. H Turton, *Maori Deeds*, deed no 219, p 278; deed no 233, p 290

73. This is assuming that 'Ngati Terau' of the 1837 deed and 'Ngatitai' of the 1851 deed are one and the same, as asserted by Ngati Tai today.

74. Ligar to Gisborne, 17 May 1851, enclosed in Gisborne to Colonial Secretary, 1 July 1857, OLC 1/590, NA Wellington

75. 'Report of the Royal Commission to Inquire into and Report on Claims Preferred by Members of the Maori Race Touching Certain Lands Known as Surplus Lands of the Crown', AJHR, 1948, g-8, p 18

*Case Study: The Fairburn Purchase*

1839 instructions were resolved, at least as far the Crown was concerned, by the cash payments of the early 1850s which removed the obstacle to government revenue presented by the promises of the 1837 deed.



## CHAPTER 4

### CASE STUDY:

### THE WILLIAM WEBSTER CLAIMS

William Webster arrived in New Zealand, via Sydney, in March 1835. The Sydney connection is important because it was to be Sydney merchants who would, in the near future, extend to Webster the considerable line of credit which would fund his short-lived but expansive business and property empire. On his arrival in New Zealand, Webster found work on the Coromandel Peninsula at a spar station owned by one of these Sydney merchants, Robert Dacre. But working for someone else was obviously not to Webster's liking, and before he had been in the country two years he had established his own timber and trading post on Whanganui Island at the mouth of the Coromandel Harbour.<sup>1</sup>

Webster's purchase of Whanganui Island from the Maori owners in December 1836 was the first of several alleged property acquisitions by Webster. He would later claim that by the beginning of 1840 he had completed purchase agreements for 14 separate locations.<sup>2</sup> As shown in table 1, while concentrated around Coromandel Harbour and the Thames region, these purchases also extended to the Waikato, Mahurangi, and various islands of the Hauraki Gulf. In total, Webster claimed to have paid the Maori owners £7163 to extinguish title to an area exceeding 131,000 acres.

With the signing of the Treaty of Waitangi on 6 February 1840, the possibilities of further property acquisitions from Maori by private individuals such as Webster was brought to an abrupt halt by the commencement of a Crown pre-emptive right. Of even greater concern to Webster, however, was the issuance three weeks earlier by the Governor of New South Wales, George Gipps, of the Land Titles Validity Proclamation which declared that the Crown would not recognise any title to land which did not derive from a Crown grant. The proclamation was subsequently read out by Hobson upon his arrival in the Bay of Islands and received the formal

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1. P Adams, 'Webster, William, 1815-97', in DNZB, vol 1, W H Oliver (ed), Wellington, Allen and Unwin, 1990, pp 578-579

2. The 14 separate locations is based on the number of distinct claims Webster eventually filed with the Land Claims Commission in 1841. It is interesting to note that in the same letter to Willoughby Shortland, Colonial Secretary, in which he put forward these 14 claims, Webster alluded to his having purchased a further 13 parcels of land in New Zealand. He promised to forward details of these purchases once he had found the relevant documentation, which he claimed was currently missing. The documentation was never forwarded and was not referred to again: Webster to Willoughby Shortland, 3 October 1841, reproduced in John Salmond, *The Webster Claims: General*, Wellington, 1912, OLC 4/24, p 23, NA Wellington.

*Old Land Claims*

Claim numbers	Location	Claimed area (acres)	Claimed payment (£)
714	Makariri (CH)	250	343
715	Whanganui Island (CH)	250	284
716	Waihou River	1500	215
717	Taupiri (CH)	800	268
718	Coromandel Harbour	1000	450
719	Great Barrier Island	20,000	1200
720	Motutaupere Island (CH)	?	80
721	Waihou River	3000	90
722	Point Rodney	10,000	421
723	Tairua	2000	450
724	Waiheke Island	3000	608
725	Big Mercury Island	6000	948
726	Piako	80,000	1726
727	Waiheke Island	3500	80
		$\Sigma$ 131,300	$\Sigma$ 7163

Key: CH = Coromandel Harbour

Table 1: William Webster's old land claims

approval of the New South Wales Legislative Council with the passage of the curiously-titled, New South Wales Act.<sup>3</sup> This Act formed the basis of the 1841 Land Claims Ordinance, the issuance of which by Governor Hobson was necessitated by New Zealand's ceasing to be a dependency of New South Wales. Following the model established by the 1840 Act, the 1841 ordinance provided for the establishment of a Land Claims Commission which would be charged with investigating purchases completed before the assumption of British sovereignty over New Zealand. Crown titles for these earlier purchases would only be issued if the Land Claims Commissioners were satisfied that the purchase had taken place on 'equitable terms'. The 1841 ordinance also established a maximum permissible grant of 2560 acres per individual, regardless of how many distinct purchases any

3. New South Wales Act 1840

individual claimed to have completed. This limit could be extended in special circumstances, but such a recommendation from the commissioners required the approval of the Governor.<sup>4</sup>

Given the extent of his alleged purchases, William Webster was perhaps understandably reluctant to submit those claims to examination by the Land Claims Commission, lest they be significantly reduced. He believed he would be able to avoid such scrutiny by drawing on his being born in Portland, Maine. Basing his argument on his being a citizen of the United States, Webster maintained that Britain:

was bound to recognise interests acquired by nationals of other civilised nations from chiefs whose sovereignty had been explicitly acknowledged by the British Crown before the Treaty of Waitangi, and in that document itself. In short, that [his . . .] titles derived from the same authority and capacity as those of the British Crown and, being created at an earlier date, were an existing charge on whatever Britain acquired at Waitangi.<sup>5</sup>

This was not an argument that Governor Hobson felt inclined to entertain. This can be seen in his response to a letter in which Webster declared it was his intention to place his land claims before the United States government in order that they might directly negotiate with their counterparts in Britain.<sup>6</sup> Hobson responded to this by minuting that if Webster persisted in his 'seeking assistance from a foreign government, [he] must relinquish all the rights of a British subject – such as the ownership of a British vessel, which I understand he now possesses'.<sup>7</sup> While it would be denied by future Solicitor Generals, this amounted to the placing of considerable pressure upon Webster. It was certainly effective; Webster subsequently wrote, 'I wish my claims to be laid before the Commissioners, and am willing to take my chance with all the others'.<sup>8</sup>

Webster's claims were individually heard by one or both of the Land Claims Commissioners, Edward Godfrey and Matthew Richmond. In March 1844 they filed a final report with Governor FitzRoy, covering most of Webster's claims. Before examining their recommendations, there are two developments that should be mentioned.

Firstly, in February 1842, the Land Claims Amendment Ordinance was passed. The most significant feature of this ordinance was that it removed the maximum prescribed acreage, establishing in its place the formula which had been developed for the land claims of the New Zealand Company, that is, one acre for every five shillings expended in purchase money. This 1842 Ordinance was declined the royal assent so that it never had statutory authority. Due to the slow communication between Britain and the colony, however, notice of this refusal did not reach New

4. New Zealand Land Claims Ordinance 1841

5. Webster himself never articulated his position as clearly as this summarising quote which is taken from A Frame, *Salmond: Southern Jurist*, Wellington, Victoria University Press, 1995, pp 136–137

6. Webster to Shortland, 20 July 1841, reproduced in Salmond, *The Webster Claims: General*, p 23

7. Ibid, p 23

8. Webster to Shortland, 3 October 1841, reproduced in Salmond, *The Webster Claims: General*, p 24

*Old Land Claims*

Zealand until September 1843, 18 months after its initial proclamation. As most of Webster's claims were heard by the commissioners in the period that the 1842 Ordinance was presumed to be effective, they initially recommended grants in seven of Webster's purchases. These recommendations, summarised in table 2, had a total combined area of 7541 acres.<sup>9</sup>

Claim number	Location	Recommendation (acres)	Maori witnesses
714	Makariri	250	1
715	Whanganui Island	250	1
716	Waihou River	550	2
717	Taupiri	800	2
722	Point Rodney	1944	2
724	Waiheke	1187	2
726	Piako	2560	2
		$\Sigma$ 7541	

Table 2: Grants recommended by Godfrey and Richmond in Webster's claims

As is also shown in the above table, in order to conclude that a bona fide purchase had in fact taken place, the commissioners did not consider it necessary to hear the supporting testimony of a large number of Maori witnesses. As a general rule, Godfrey and Richmond required that a minimum of two supporting Maori witnesses be produced before the commission if they were to subsequently recommend a grant to be issued. Sometimes, however, as illustrated by the first two Webster claims summarised in the above table, the commissioners were willing to conclude that a transaction had resulted in a bona fide purchase with only a single Maori witness providing supporting testimony.

Of the seven Webster claims in which the commissioners did not recommend any grant be issued, four were withdrawn by Webster before hearings began (718, 719, 720, 721). A fifth, Webster's claim to Waiheke (727), was disallowed on the grounds that the payment was not completed before the assumption of British sovereignty.<sup>10</sup> Also disallowed was Webster's claim to Tairua (723), this time

9. Robert Stout, 'Webster's Land Claims', 15 August 1887, AJHR, 1887, A-4, p 15. The recommendations of this report are summarised in a manuscript table produced by the Land Office, dated 22 April 1844, which can be found in OLC 4/25, NA Wellington.

10. Salmond, 305M: Waiheke Island, Wellington, 1912, OLC 4/24, NA Wellington

### *Case Study: The William Webster Claims*

because the purchase money had not been received by the rightful owners of the land.<sup>11</sup> This same defect afflicted Webster's claim to Big Mercury Island (725) when, after hearing the testimony of thirteen Maori witnesses, three supporting and ten opposing the sale, Commissioner Godfrey concluded that the Maori vendors who signed the deed could claim ownership over only two small portions of the island.<sup>12</sup> Godfrey did not, however, recommend any grant for these two areas. This was because news of the disallowance of the 1842 ordinance had finally reached the Colony. As a result of that news, Godfrey and Richmond filed an amended final report in which they disregarded all of their earlier recommendations contained in table 2, and recommended instead, that the combined acreage of any grants to Webster should not exceed 2560 acres, the maximum prescribed by the 1841 Ordinance.<sup>13</sup>

This dramatic about-face by Godfrey and Richmond might not have been significant but for a second development which accompanied their hearings of Webster's claims. This was the fact that Webster, on the strength of the initial recommendations made by the two commissioners, had promptly sold a significant part of his interest in his claims to third parties, the so-called derivative claimants. With the news of the disallowance of the 1842 Ordinance, and the commissioners' subsequent amendment of their earlier recommendations, the derivative claimants suddenly found themselves in the rather unenviable position of being 'left without anything for their money, and without redress'.<sup>14</sup>

By mid-1844, therefore, the combination of the two developments outlined above had produced the following results. Despite having found Webster to have completed bona fide purchases to some or all of the area of eight of his fourteen claims, the commissioners felt restrained under the terms of the 1841 Ordinance to limit themselves to recommending a maximum grant of 2560 acres. The apparent injustice of this was further compounded by the June 1844 report of Commissioner Godfrey on claim 36. This was a joint claim by Webster, William Abercrombie, and Jeremiah Nagle to the whole of Great Barrier Island. Having found the claimants to have completed a bona fide purchase of the northern half of the island, Godfrey none the less felt compelled to report that: 'The claimant already having received a maximum grant of 2560 acres, no grant is recommended'.<sup>15</sup> As if this was not enough, there was also the financial hardship of the derivative claimants to be considered. These claimants had bought part of Webster's interest in good faith that the 1842 Ordinance provided him with a valid title that he could transfer to them. The subsequent disallowance of that Ordinance had left them significantly out-of-pocket with nothing to show for their investment.

Of course, as was alluded to in the previous case study and in the main text of this report, William Webster was not the only old land claimant perceived to have been

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11. Salmond, 305H: *Tairua*, Wellington, 1912, OLC 4/24, NA Wellington

12. Salmond, 305J: *Big Mercury Island*, Wellington, 1912, OLC 4/24, NA Wellington

13. Stout, p 15

14. Ibid, p 15

15. Edward Godfrey, 10 June 1844, reproduced in Stout, p 14

'hard done by' as a result of the 2560 acre maximum imposed by the 1841 Ordinance. There were also a considerable number of missionary land claimants whose contribution to colonisation, and in particular, the 'civilisation' of Maori, was perceived by Hobson's successor, Robert FitzRoy, to merit an exception to the upper limit set by the 1841 Ordinance. It was with the intention of giving recognition to these exceptions that FitzRoy appointed a brand new Land Claims Commissioner, Robert A Fitzgerald.<sup>16</sup> Unfortunately, very little biographical information exists about Fitzgerald prior to his appointment as a Land Claims Commissioner. Most of what we do know is provided by G H Scholefield: '[Fitzgerald was] a planter in the West Indies . . . [before he] came to New Zealand in 1840 and was appointed registrar of the Supreme Court and manager of intestate estates'.<sup>17</sup> Further insight into Fitzgerald's character is provided by the fact that he was eventually dismissed from his position as commissioner after giving expression, from February 1845, to doubts he harboured concerning FitzRoy's land policy, and in particular, his own role in it. The essence of these doubts was that 'Fitzgerald was concerned at the legality of FitzRoy's extensions to awards, and at having to revise the recommended awards already made by Commissioners Richmond and Godfrey'.<sup>18</sup>

It is clear, however, that Fitzgerald's reservations about his role in the old land claims process took a while to develop. This can be seen in the case of William Webster's claims which were referred to Fitzgerald by the Executive Council, in April 1844, with the instruction that 'the Commissioner . . . should be authorised to recommend an extension of the grant'.<sup>19</sup> Commissioner Fitzgerald did not hesitate to act upon his recently conferred authority. A mere twelve days after the Governor had proposed to the Executive Council a reconsideration of the Webster claims, Fitzgerald responded with a memorandum which recommended grants to Webster and his derivatives totalling 17,655 acres. This was more than double the area recommended by Godfrey and Richmond when they believed themselves to be operating under the authority of the 1842 Ordinance. And this figure is not including the further 8080 acres which Fitzgerald also recommended should be granted to Webster on Great Barrier Island when claim 36 was referred to him in June 1844. What was the reason for this increase? While Fitzgerald recognised the interests of derivative claimants in his recommendations, he also maintained the total acreage recommended in each claim by the earlier commissioners in all cases except one; for example, where in the case of Makariri Godfrey and Richmond had recommended a grant of 250 acres, Fitzgerald recommended two grants of 125 acres, one to Webster and the other to Henry Downing who had purchased a half-share from Webster.<sup>20</sup> The single instance where Fitzgerald deviated from the total

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16. Fitzgerald was appointed under the authority of an 1844 amendment to the original 1841 Ordinance, the Land Claims Ordinance 1844.
  17. G H Scholefield, *A Dictionary of New Zealand Biography*, vol 1, Wellington, Department of Internal Affairs, 1940, p 259
  18. Dean Cowie, "To Do All the Good I Can": Robert FitzRoy – Governor of New Zealand, 1843–1845', MA thesis, University of Auckland, 1994, p 90
  19. Extract from the minutes of the Executive Council, 10 April 1844, reproduced in Stout, p 16

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acreage recommended by the earlier commissioners was in regard to Piako, claim 726.<sup>21</sup> The deviation, however, as summarised in table 3 below, was a highly significant one. Whereas the earlier commissioners had initially recommended a single grant of 2560 acres to Webster, Fitzgerald recommended a reduction in Webster's grant to 1219 acres on the one hand, while on the other he argued for the issuing of grants for a further 11455 acres to the derivative claimants who had bought an interest in Webster's Piako claim.

Name of derivative	Recommendation (acres)
Abercrombie, P	5000
Johnson	1280
Mathew	2560
Downing	320
Wanostracht	250
Nagle and Wren	150
Russell	640
Devlin	1255
	Sub-total 11,455
Webster	1219
	Total 12,674

Table 3: Commissioner Fitzgerald's recommendations for claim 726, Piako. Source: Fitzgerald to FitzRoy, 22 April 1844, reproduced in Stout, p 16.

Given that all of the grants recommended by Fitzgerald in relation to Webster's claims were subsequently issued by Governor FitzRoy, it becomes particularly important to examine the three main reasons put forward by Fitzgerald to justify his recommending such a considerable enlargement of the recommendations of the earlier commissioners.<sup>22</sup>

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- 20. The extant evidence gives no indication in most cases of what consideration was paid by the derivatives nor, in the early transactions, of when they occurred.
  - 21. This is excluding claim 36, Great Barrier, which was only heard by Commissioner Godfrey in June 1844. This was after Fitzgerald had made his first series of recommendations and, more importantly, after Godfrey had become aware of the disallowance of the 1842 Ordinance.
  - 22. These reasons are contained in Fitzgerald to FitzRoy, 22 April 1844, reproduced in Stout, p 16

Fitzgerald argued that Webster had expended £7787 on his land claims which, under the terms of the valuation-schedule of the 1841 Ordinance, meant he could be considered to have paid for 50,904 acres.<sup>23</sup> This was considerably higher than the 31,148 acres Webster might have expected to have been awarded under the 5s per acre formula contained in the disallowed 1842 Ordinance. Whichever figure is preferred, there are a number of problems with this argument.

Firstly, Fitzgerald's figure of £7787 is actually a composite of two amounts – the amount of £3257 which Webster paid directly to Maori vendors in those transactions he eventually received grants for, and the extra £4530 which Webster subsequently expended on 'improving' those properties.<sup>24</sup> Manifestly, any expenditure by Webster upon a property subsequent to its purchase should not have been allowed to enter into any judgement upon the 'equity' of the original transaction. After all, such expenditure in no way benefited the original Maori vendors while Webster himself would have been compensated for such expenditure in the purchase money paid by his derivative claimants. FitzRoy would certainly have been aware of this argument. He would have read the December 1842 despatch from the Colonial Office informing the New Zealand authorities of the disallowance of the 1842 Land Claims Ordinance. In explaining the disallowance, Lord Stanley, Secretary of State for the Colonies, had stated that the total expenditure calculation used for the New Zealand Company was not applicable to individual claimants. The New Zealand Company was a special case where the party involved had:

invested large sums of money in the colonization of New Zealand, and principally in sending emigrants thither from this kingdom. But there is no ground for inferring that it was ever proposed to apply the same rule to the settlers and occupiers of the land in the colony, whose circumstances and the mode in which they acquired land, Her Majesty's Government had every reason to suppose were not the same as in the case of the New Zealand Company.<sup>25</sup>

This prohibition against any consideration of payments which were not part of a direct transaction between purchaser and vendor was stated even more strongly six months later when Lord Stanley explicitly instructed FitzRoy that: 'For the purpose of determining the extent of a settlers claims no estimate is to be made of the

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23. This valuation scale was a device which was meant to ensure equity between old land claimants. It worked on a graduated basis where the earlier a purchase, the more acres would be considered to have been paid for, if the same amount was tendered in any two purchases. It was not intended to be a measure of whether the transaction between claimant and Maori vendor was an 'equitable one', but rather, it was a means of rewarding those 'true settlers' who had settled earlier in relation to those pure 'land speculators' who purchased closer to the assumption of British sovereignty. For more detail see 'The Land Claims Commission: Practice and Procedure, 1840–1845', submission of David Armstrong (Wai 45 ROD, doc 14), pp 24–25.

24. Fitzgerald bases his calculations of Webster's expenditure on purchasing and improvements on the manuscript synopsis of Webster grants prepared by the Land office on 22 April 1844. Because of the illegibility of some of the writing, it is difficult to be sure of how he came to the exact figure of £7787: OLC 4/25, NA Wellington.

25. Stanley to Hobson, 19 December 1842, CO 209/14, NA Wellington

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Capital laid out by him in Building, or of the time employed by him in improving his land'.<sup>26</sup>

A second major problem with this first reason put forward by Fitzgerald to justify his enlarged recommendations is that he made no attempt to verify these figures in any way. Take, for example, the figure of £3257 which Webster claimed to have paid directly to Maori vendors in those transactions he eventually received grants for. The cash component of this figure was very small. It was predominantly made up of goods whose original value had, in accordance with the standard practice of Godfrey and Richmond, been multiplied by three to reflect the increased value of the goods as a result of their having being transported from Sydney to New Zealand. The original value of the goods was typically provided by Webster himself, either on the purchase deed itself, or on a separate receipt signed by the vendors in acknowledgement of their having received payment.<sup>27</sup> There is nothing on the extant record to indicate that the commissioners ever attempted to independently verify the accuracy of the values assigned, by Webster, to the payment goods. Even more serious than this, however, is the fact that Fitzgerald, to quote a later Land Claims Commissioner, Robert Stout, 'takes for granted the gross amount stated by Mr Webster as having been paid by him to the Natives . . . without enquiry whether or not they had been really spent';<sup>28</sup> that is, Fitzgerald failed to investigate whether Webster actually completed the payment of all the goods identified in his various purchase deeds and receipts. Such an inquiry would certainly not have been misplaced. Several of the investigations conducted by Godfrey and Richmond had revealed a tendency, on the part of Webster, to exaggerate or manipulate the evidence supporting his purchases.

In his claim to Great Barrier Island, for example, Webster testified before Commissioner Godfrey that he had:

paid them [the Maori owners] £20 sterling in cash, and goods to the value of nearly £1000. For some of the articles specified in the deed of sale as payment, but not yet delivered, the Natives hold my promissory notes . . . I deliver a correct list of the articles given to the Natives and admitted to have been received by them, as there are errors in that written on the back of the deed.<sup>29</sup>

After hearing extensive Maori testimony, Godfrey concluded that the vendors had received only £580 from Webster, well short of the £1000 Webster claimed. But this was not the only exaggeration contained in the purchase deed. The deed laid claim to the whole of Great Barrier Island, though Webster was forced to admit in the face of considerable Maori testimony that 'some other Natives have laid claim

26. Stanley to FitzRoy, 26 June 1843, G 1/9, NA Wellington

27. Of the seven Webster claims which resulted in grants, two did not have the value of the goods assigned by Webster in the purchase deed or associated receipts. These were his Waikou River (716) and Piako (726) claims.

28. Stout, p 16

29. All the quotes and information in this paragraph are taken from Robert Stout's reproduction of extracts taken from the original Commissioner Godfrey file: Stout, p 14.

to the south-eastern part'. Godfrey concluded that this 'part' in fact amounted to the southern half of the island.

This exaggeration on the part of Webster was by no means an isolated example. The pattern was repeated in his claims to Big Mercury Island and Tairua.<sup>30</sup> While all three of these examples were revealed in the testimony before the early commissioners, it does not seem unreasonable to question whether it might not have been even more widespread than they were able to discover. Such questioning certainly does not seem out of place when the case of one of Webster's Waiheke claims, 724, is considered. Having heard the testimony of two Maori witnesses to the signing of the deed, Ruinga and Ngakete, Godfrey and Richmond were satisfied that a bona fide purchase had been completed and recommended a grant of 1187 acres. An 1854 memorandum from Land Commissioner Donald McLean allows a new perspective on the events recorded in the Godfrey-Richmond report. It is worth quoting this memorandum at length:

I have the honour to report to you [the Colonial Secretary . . .] that I find there are certain lands for which Crown grants have been issued and to which the Native title has not as yet been extinguished.

For instance, there is a block of land . . . at the north of the Waiheke Island, for which a certain amount of goods and money were paid by Mr William Webster, of Coromandel, and for which the Commissioners for investigating and reporting on claims to lands purchased from the Natives have recommended a Crown grant. It appears from the statements of the Natives that a vessel had been promised them by Mr Webster conditionally that they would admit the justice of his claims before the Commissioner's Court; this vessel they nominally had possession of, but it was taken by Mr Webster to Coromandel to undergo, as he alleged, some repairs, and was never afterwards returned to them; the Natives, in consequence, will not give up the land.<sup>31</sup>

The issue of the quality of the investigations by the early commissioners is one which will be discussed in more detail further on in this case study. For now, it is enough to state that manifestly Commissioner Fitzgerald should have treated the figures provided by Webster with a healthy dose of caution, and not just accepted them at face value.

The second reason put forward by Fitzgerald to justify his considerably enlarged recommendations was the relationship between Webster and his derivatives:

Considerable sales of land having been made by him on the faith of all his valid purchases being recognised by the Crown . . . Should he not be enabled, by great liberality on the part of his Excellency, to meet his engagements, even partially, he is likely to be overwhelmed with lawsuits, and subjected to great losses.<sup>32</sup>

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30. In his Big Mercury Island claim, 725, Webster claimed to have purchased the whole island for a consideration of £948. Commissioner Godfrey concluded from Maori testimony that he had in fact purchased only two very small sections, for the much smaller sum of £278. In the case of Tairua, claim 723, the commissioners settled on a payment figure of £169, well short of the £450 claimed by Webster: extracts reproduced in Stout, pp 10–12.
31. Donald McLean to Colonial Secretary, 10 July 1854, reproduced in John Salmond, 3051: *Waiheke A*, Wellington, 1912, OLC 4/24, NA Wellington

Certainly, the extent of Webster's 'on-selling' of his claims was 'considerable'. By the time his claims came before the commissioners, Webster had already sold 67,610 acres of the total 107,300 acres claimed.<sup>33</sup> Manifestly, the derivative claimants were engaged in speculation, purchasing an interest in anticipation of the original transaction by Webster being validated by the commissioners. This should have eliminated them as a factor for consideration by Fitzgerald. What seems to have made Fitzgerald believe that the derivative claimants should be considered, was the fact that they had engaged in this speculation believing the 1842 Ordinance to be in effect.<sup>34</sup> When that Ordinance was subsequently disallowed, the resumption of the 1841 Ordinance's 2560 acre maximum effectively left them with nothing to show for their expenditure. But even if we accept that the Colonial Government's failure to secure royal assent for the 1842 Ordinance created an injustice that needed to be corrected, it is not at all clear how Fitzgerald could justify the sheer extent of his grants to the derivative claimants in Webster's Piako claim. For even under the terms of the subsequently disallowed 1842 Ordinance, Webster, having expended £1726 to purchase an area he claimed to be 80,000 acres, was only entitled to a grant of 6904 acres.<sup>35</sup> Commissioner Fitzgerald, however, recommended Piako grants to Webster and his derivatives totalling 12,674 acres, just under double what they could have reasonably expected to have been granted under the 1842 Ordinance.<sup>36</sup> This was in direct contravention of the guidelines regarding the treatment of derivative claimants which had been sent to Godfrey and Richmond by George Gipps, Governor of New South Wales. Gipps wrote that in their investigations, the commissioners should give consideration:

only to the circumstances under which the original purchase was made from the natives or the valuable consideration given to the natives without reference to what may have been paid to the original purchaser by any subsequent one[. Furthermore . . .] no individual . . . shall in the whole obtain more than which under the Act the

32. Fitzgerald to FitzRoy, 22 April 1844, reproduced in Stout, p 16

33. This total of 107,300 acres does not include the claimed acreage of Webster's claims 718, 719, 720, and 721, which were withdrawn by Webster before the commissioners could hear them.

34. As noted earlier, the extant information gives no indication in most cases of what consideration was paid by the derivatives, nor of when the actual transactions occurred. Thus we are forced to assume that the subsequent on-selling occurred after the passage of the 1842 Ordinance. This seems a reasonable assumption given that the maximum set by the 1841 Ordinance would have actively discouraged speculation. It is worth noting, however, that Salmond states Webster conveyed his entire 1500 acre Waihou River claim, 716, to Monro in 1840. Unfortunately, Salmond does not provide a reference for this particular piece of information, although presumably he obtained it from the original Godfrey and Richmond file. Salmond, 305B: *Waihou River*, Wellington, 1912, OLC 4/24, p 1, NA Wellington.

35. Calculation based on the 1842 Ordinance formula of one acre for every five shillings expended. According to the schedule of the 1841 Ordinance, and forgetting for the moment the maximum limit of 2560 acres, he would have been entitled to a total grant of 4315 acres. John Salmond, *Claim 305K: Piako*, OLC 4/24, p 1, NA Wellington

36. This lack of concern to be restrained by even the more liberal 1842 formula is also evident in Fitzgerald's recommendations for the joint Webster, Nagel, and Abercrombie claim to Great Barrier Island, claim 36. Whereas under the 1842 ordinance the three claimants might reasonably have expected to be granted 2323 acres in total, Fitzgerald recommended individual grants to the respective claimants of 8080, 8070, and 8119 acres. Totalling 24,769 acres, this was ten times more than they would have been entitled to under the formula established in the 1842 Ordinance.

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Commissioners are authorised to award . . . The derivative claimant . . . can never receive more than the original purchaser would have been entitled to receive[.]<sup>37</sup>

Thus, while Fitzgerald may have believed a case existed for the correction of the hardship imposed upon the derivative claimants by the disallowance of the 1842 Ordinance, he was guilty of considerable overcorrection in the case of Webster's Piako claim.

The third and final reason put forward by Commissioner Fitzgerald to justify his enlarged recommendations was that 'Mr Webster is one of the most enterprising settlers in this colony, having established a ship-building yard, several whaling stations, water-mills, and other improvements'.<sup>38</sup> In arguing thus, Fitzgerald was applying to an individual old land claimant the rationale underpinning the settlement of the extensive land claims of the New Zealand Company. As was shown earlier in this case study, in disallowing the 1842 Ordinance, the Colonial Office had strongly rejected such an approach, arguing that the expenditure of individual claimants could not be seen to have advanced the process of colonisation in the same manner as that of the New Zealand Company. But even had such an approach been acceptable to the Colonial Office, Fitzgerald's assessment of William Webster was a rather uncritical one. While it must be admitted that in his 'early years Webster proved himself a businessman of ability', this was a short-lived phenomenon. In late 1840 Webster was arrested in Sydney and was imprisoned for seven weeks for debts of £12,000.<sup>39</sup> Clearly, while Webster may have initiated several business ventures they were not paying their way. A much more accurate character reference was that recorded by Land Commissioner Stout during his 1887 review of Fitzgerald's recommendations.

Webster received his grants for 5000 acres, and within less than four months had transferred the whole of these lands to his creditors, besides the 12,655 acres granted directly to them [as derivatives], leaving himself without an acre of all his purchases, and still a debtor to the Sydney merchants:

There is not anything surprising in this, for it must be sufficiently apparent . . . that Mr Webster had no means of his own; that he speculated for land in New Zealand with goods obtained on credit, and, in the absence of goods, that he gave natives promissory notes for cash or goods which at times he was unable to redeem.<sup>40</sup>

Thus, none of the three reasons set out by Commissioner Fitzgerald as justifying a significant extension of the original Godfrey and Richmond recommendations stand up to close scrutiny. But in conducting this examination, doubts have also surfaced in regard to those original recommendations, specifically, the manner in which the early commissioners came to conclude that a purchase was bona fide.

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37. New South Colonial Secretary to Land Claims Commissioners, 13 March 1841, cited in Armstrong, pp 21-22

38. Fitzgerald to FitzRoy, 22 April 1844, reproduced in Stout, p 16

39. Adams, p 578

40. Stout, p 17

These doubts are supported by examination of the subsequent history of the largest of Webster's claims, that to Piako. The location of the claim is shown in figure 6. Webster claimed to have purchased 80,000 acres on the western side of the Piako River as a result of his having paid £1726 to Maori vendors on 31 December 1839. Godfrey and Richmond examined two Maori witnesses, Koanaki and Ware Ponga, and concluded that a bona fide purchase had taken place 'excepting the land belonging to the chief Takapu'.<sup>41</sup> Even before they reached this conclusion, however, Webster had already on-sold four-fifths of his interest in the claim. As has already been shown, in combination with the disallowance of the 1842 Ordinance, this created a situation in which Commissioner Fitzgerald would feel compelled to recommend a considerable enlargement of the initial Godfrey-Richmond recommendations. As was the case with virtually all the Old Land Claims heard before the early commissioners, no survey was carried out in conjunction with any of these recommendations. Had there been such a survey, or even just a walking of the boundaries, it would have become immediately clear that there were serious problems with the extent and nature of the transaction conducted by Webster at Piako.

These problems remained hidden below the surface as long as those who held Crown grants derived from Webster's Piako claim considered them merely as investments, a piece of paper to be on-sold for a profit, and did not attempt to take actual possession of the land that the grants purported to give title to. While this would seem to have been true for most of Webster's Piako derivatives, it was not true of all of them.<sup>42</sup> John Johnson, an original beneficiary of Fitzgerald's enlarged recommendations, was of a mind to take actual possession of the land contained in his Crown grant. When Johnson attempted to survey the land, however, he encountered considerable resistance from local Maori. Unfortunately, the extant record does not shed much light on the nature of this resistance, beyond noting that Johnson's efforts to give effect to his Crown grant 'encountered serious difficulties and obstruction'.<sup>43</sup>

Knowledge that local Maori were refusing to recognise the validity of the Crown grants derived from Webster's Piako claim did not prevent Frederick Whitaker and Theophilus Heale from purchasing Peter Abercrombie's 5000 acre Webster-derived grant in November 1854. Whitaker was a man of considerable political experience and influence in the colony. By the time he and Heale acquired Abercrombie's Piako interest, he had already spent several years as a member of the Legislative Council and would, in the next couple of years, periodically hold the office of

41. Godfrey and Richmond Report, 18 December 1843, extracts reproduced in Stout, p 13.

42. For an indication of the numerous hands which many of Webster's Piako grants passed through, see the summary in Stout, pp 26-28.

43. Land Claims Commissioner Bell to Superintendent of Auckland, 26 September 1861, reproduced in John Salmond, 305K: *Piako*, Wellington, 1912, p 24. Bell made these comments after examining Johnson's file. Because this file can no longer be located it is difficult to know exactly when the events referred to occurred or even, whether the John Johnson referred to by Bell was the original derivative claimant, or his son, John Grant Johnson, who inherited the Crown grant in 1848.

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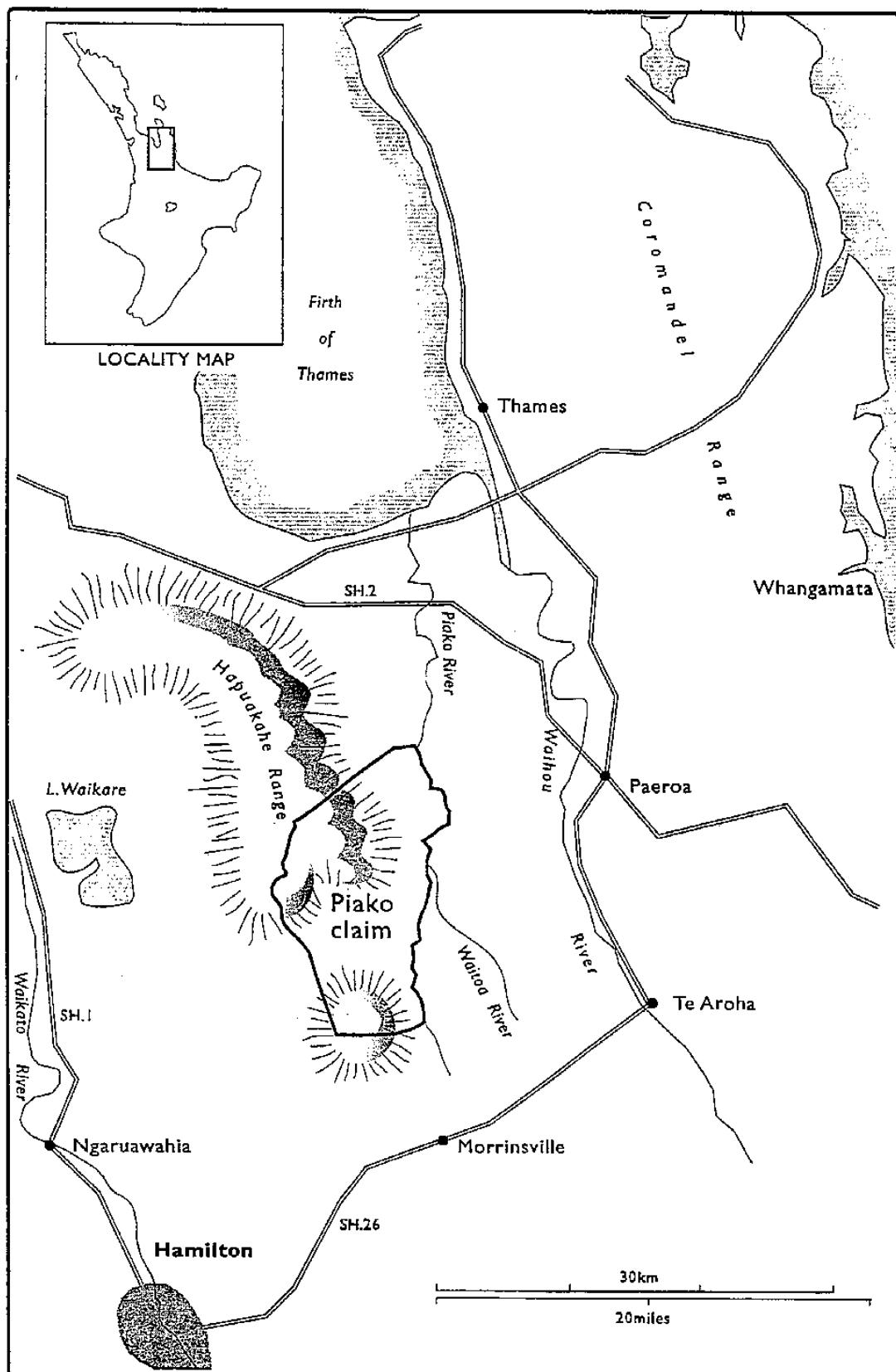


Figure 6: Webster's Piako claims

Attorney-General. Significantly, Whitaker used his access to the centres of political decision-making to:

represent . . . the viewpoint of the 'war party' in Auckland: that in the name of civilisation and progress, settlers must have easier access to Maori lands; that war against Maori 'rebels' must be ruthlessly prosecuted; and that, after unconditional surrender, there must be large confiscations of land, and military settlements to enforce the peace of the Pakeha.<sup>44</sup>

The 'land hunger' which underpinned this viewpoint is also evident in Whitaker's subsequent involvement, from the mid-1870s, as a partner in a syndicate headed by Thomas Russell which purchased from the Government the 80,000 acre Piako swamp. Situated between Hamilton and the head waters of the Piako River, the favourable terms of the purchase created such a public outrage that the matter was investigated by a parliamentary committee.<sup>45</sup> While the purchase survived the investigation, the heavy costs associated with the drainage and development of the swamp forced the syndicate to float a public company, the Waikato Land Association, to re-finance the venture. The reprieve this offered was short-lived, however, and the uneconomical basis of the venture was publicly exposed when the Company crashed spectacularly in the depression of the mid-1880s. Manifestly, Whitaker, to quote Russell Stone, 'was an unabashed speculator'.<sup>46</sup> As such, his joint-purchase of Abercrombie's Piako grant in 1854 should be seen as the beginning of three decades of speculation in Piako lands. At the same time, Whitaker's purchase of the grant, while knowing of the difficulties already encountered by Johnson, indicates that, unlike the later case of the Piako swamp, he may not have intended to take actual possession of the land the Crown grant purported to convey. Instead, he was more likely to have considered it merely as an investment, a piece of paper to be on-sold for a profit.

Such a perspective, however, would have become untenable as a result of the passage of the 1856 Land Claims Settlement Act. The 1856 Act sought to settle any disputes remaining in connection with old land claims by withdrawing all Crown grants which had been issued on the recommendation of the early commissioners. New grants would only be issued if the former holders of the invalidated grants conducted a survey of the area those grants had purported to convey. An indirect consequence of this requirement was that it forced speculators to confront the physical manifestation of their investments if they wished to retain them. But as has been shown in the main text of this report, the principal rationale underpinning the requirement of the 1856 Act that grant holders employ surveyors themselves, was that it was believed that this would be much less likely to cause opposition from local Maori. Presumably, it was on the basis that this rationale was not applicable to Webster's Piako claim, local Maori having already indicated that they objected to the Crown grants, that the Colonial Government despatched Drummond Hay,

44. R C J Stone, 'Whitaker, Frederick, 1812-1891', in DNZB, vol 1, p 586

45. 'Report, Minutes of Proceedings, and Evidence of Piako Swamp Sale Committee', AJHR, 1875, 1-6

46. Stone, p 587

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District Land Purchase Commissioner, to survey the claim. While such a task would have been very familiar to Hay, who, in common with many of those holding a similar position within the Colonial Government, had originally started his career as a surveyor, it was a highly unusual course of action for the government.<sup>47</sup> Only two other regions, the Hokianga and parts of Kaipara, had their old land claims surveyed by Government-funded surveyors working to fulfill the requirements of the 1856 Act.

In conducting his survey of the area which Godfrey and Richmond had concluded, fourteen years earlier, to have been the subject of a bona fide purchase by Webster, District Commissioner Hay also encountered resistance. His reports, moreover, cast considerable doubt on whether such a finding was ever justified. William Webster had estimated the total area of his Piako purchase to be 80,000 acres. In fact, the actual area of the land he claimed to have purchased was later found to contain 51,000 acres.<sup>48</sup> This 'shrinkage' was a product of the 'frontage to the river having been supposed to be twice its actual length'.<sup>49</sup> This in itself was not unusual, a clear majority of old land claimants over-estimated the actual size of their purchases by ratios greater than this. What was particularly damaging to the legitimacy of the original Godfrey and Richmond finding was the fact that, of the 22,150 acres Hay was eventually permitted to survey within the boundaries outlined by Webster, the Maori vendors maintained they had sold barely a third of that area to Webster in December 1839, that is, a total of 7500 acres.<sup>50</sup> As the district commissioner himself noted, the cause of this huge discrepancy was that while:

in almost all the receipts for installments on land on the Piako the River Piako is named as the eastern boundary, . . . they [the Maori vendors] one and all denied and ridiculed the idea of their ever having sold the land right down to the river[.]<sup>51</sup>

How are we to interpret this significant divergence of opinion between what Webster maintained he had purchased and what the Maori vendors were willing to admit in 1857, twenty years after the event, that they had sold? There are two clear possibilities. Firstly, it is possible that the Maori vendors did knowingly and willingly sell to Webster the area outlined in his Piako deed. But that since then, they had witnessed a substantial increase in the economic value of the land, as measured by the price paid in surrounding Crown purchases and subsequent private sales, and saw District Commissioner Hay's survey as an opportunity to renegotiate the original purchase price by means of extracting further payment or decreasing the total area of the purchase to increase the relative price per acre.<sup>52</sup> It would

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47. Two examples of this particular career path are John Rogan and William Searanke.

48. Salmond, 305K: *Piako*, p 1

49. District Commissioner Hay to Chief Commissioner, 21 October 1857, extracts reproduced in Salmond, 305K: *Piako*, p 17

50. District Commissioner Hay estimated the area that the Maori admitted to have sold to Webster at 6000 acres. In a report dated 26 September 1861, Land Claims Commissioner Bell informs us that the area was actually closer to 7500 acres in size. Reproduced in Stout, p 28.

51. District Commissioner Hay to Chief Commissioner, 21 October 1857, extracts reproduced in Salmond, 305K: *Piako*, p 17

certainly be understandable if this was the case. Given that Webster claimed to have paid £1726, if the Maori vendors had indeed alienated the entire 51,000 acres contained within the boundaries claimed by Webster, and if they had received the full £1726, this amounted to an average price of less than one shilling per acre. This figure improves slightly if the area alienated is restricted to the 12,674 acres recommended by Commissioner Fitzgerald (which it would not have been because the government would have claimed the difference between the alienated and granted areas as surplus). Even under this unrealistic scenario, however, the price per acre is still less than three shillings per acre. This compares rather poorly with the price subsequently obtained by Webster himself, without any improvements or even occupation, of 'an average sum of twenty shillings per acre'.<sup>53</sup>

Alternatively, it is possible that the Maori vendors never knowingly alienated the whole of the area claimed by William Webster. The area of river frontage which was disputed by the Maori vendors in 1857 had always been an important mahinga kai, the swamps adjoining that portion of the river being rich in eels.<sup>54</sup> Given the previously mentioned examples of the grossly inaccurate descriptions in Webster's deeds for Tairua and the islands Big Mercury and Great Barrier, and the rather dubious payment practices of Webster, it is not difficult to see how such a discrepancy may have come about. Also of interest is the fact that an 1860 survey plan of the area shows considerable Maori cultivations approximately mid-way along the eastern, or river-bound, boundary of Webster's claim.<sup>55</sup> Unfortunately, there is nothing on the 1860 plan to indicate how long the settlements might have been there. Thus, at this stage it is not possible to determine whether the settlements were primarily a response to Drummond Hay's attempted survey of the entire purchase in 1857, or whether they had existed prior to that survey and thus might be taken to indicate the vendors' original understanding of the purchase boundaries. Whichever might be the case, the settlements were subsequently incorporated within the Maukioro Native Reserve, the location of which is shown on figure 7.<sup>56</sup> The 1857 Piako block Crown purchase deed explicitly provided for a reserve to be

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52. David Armstrong has advanced such an argument before the Muriwhenua Tribunal in attempting to explain Maori opposition which was recorded in many of the Godfrey and Richmond hearings. Armstrong, pp 143–144
  53. Stout, p 15. This figure is based on the re-sale value of all Webster's claims, thus the true average resale price for Piako may be slightly lower. Nonetheless, it gives an indication of the huge discrepancy between the price paid to Maori vendors and the price obtainable on the open market.
  54. Land Claims Commissioner Bell to Superintendent of Auckland, 26 September 1861, reproduced in Salmond, 305K: *Piako*, p 29
  55. OLC plan 162, located in the South Auckland plan series, held by Land Information New Zealand (LINZ), Heaphy House, Wellington.
  56. The 1860 plan is marked with the words 'Native Reserve' just north of the Maori settlements. In the absence of any boundaries marking out the extent of the reserve, it is not immediately clear from the plan that the reserve does in fact encompass the settlements. But by comparing the location of the settlements as marked on the OLC plan, with the location of the reserve as marked on Salmond's sketch of the various Crown purchases, it seems reasonably certain the two overlap. Salmond, *Piako*: 305K, p ii. It is important to note that the copy of this document stored at National Archives does not contain this sketch map. This is also true of several other of the sketch maps which accompanied Salmond's summaries. The sketch maps are, however, recorded on the Microfiche copy (Micro-499) of Salmond's summaries held at the ATL, Wellington.

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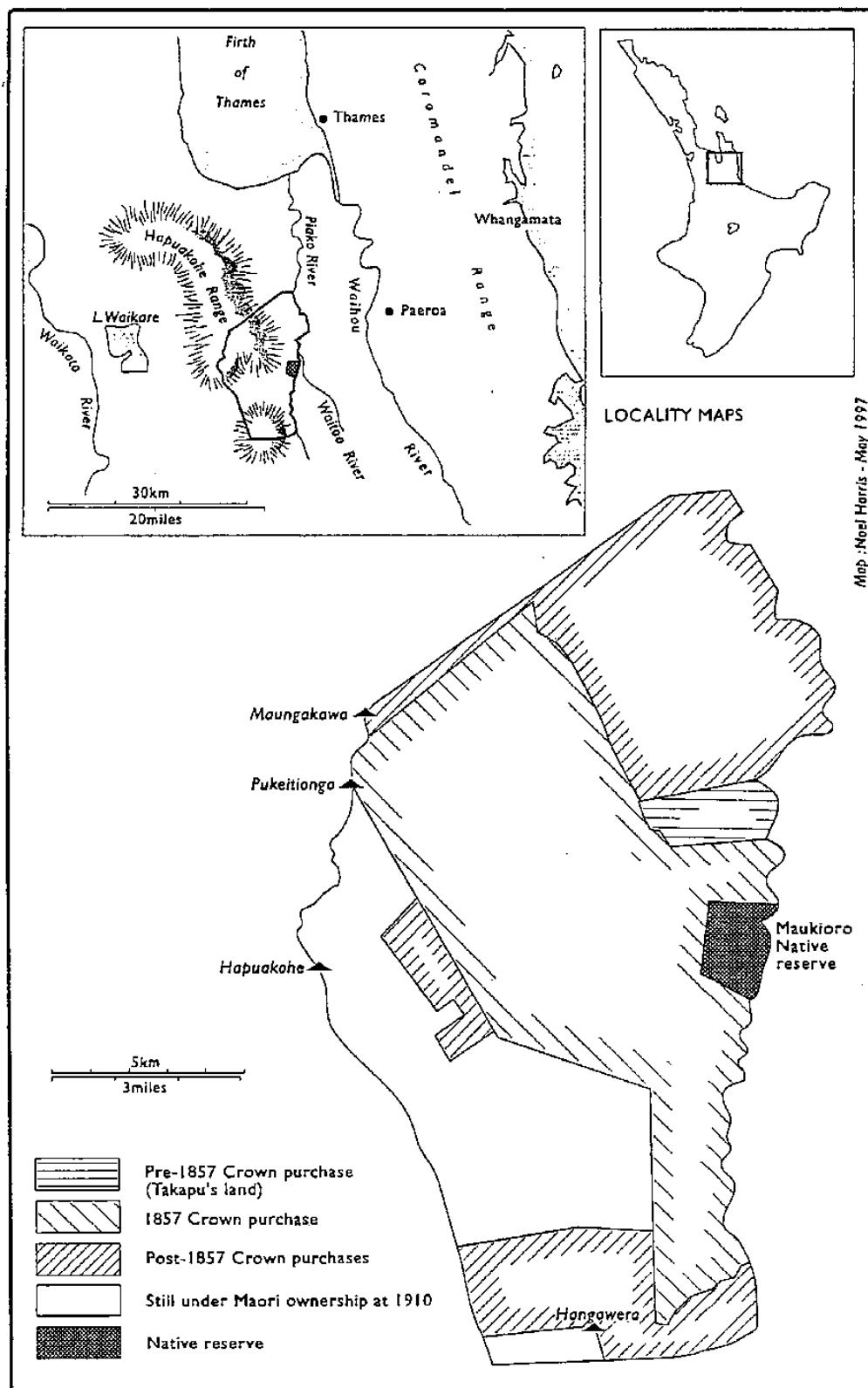


Figure 7: Boundaries of Webster's Piako claim and subsequent Crown purchases until 1910

established: 'with the exception of the burial place at Paeroa and Waiparera where the line crosses the Waikaka Creek, these two last named places are reserved for the Maoris, this is the only exception'.<sup>57</sup> The absence of any of the above-mentioned place names from the 1860 plan means, however, that it is difficult to be sure whether the reserve subsequently established was in fulfilment of the provisions of the 1857 deed, or a response to the existing Maori settlements. Possibly, it satisfied both these functions.

Of the two interpretations outlined earlier of the likely cause of the divergence of opinion between what Webster maintained he had purchased and what the Maori vendors were willing to admit they had sold, it is clear that it was the latter interpretation which was believed to be the more accurate one by District Commissioner Hay. On 11 November 1857 he reported:

With regard to this purchase, they [the Maori vendors] have been consistent in asserting that, though their names were signed together in token of assent, and their evidence before the Commissioner's Court went to prove that the purchase was a bona fide one, still they were induced to act thus from the promises and representations of Webster, and that at the time they hardly knew the importance of the steps they were taking. I may observe that the [purchase] sum promised by Webster was five times the amount paid by him. It is needless to state that the promise was not kept.<sup>58</sup>

Five weeks later he had this to add:

I had one continued discussion with the Natives with regard to Webster's claims, but they were always most consistent in ignoring entirely the boundaries as laid down in any documents to which I had access. From all that I have seen, I am inclined to think that the Natives are in the right – at any rate, far more so than the European – in this instance.<sup>59</sup>

District Commissioner Hay was by no means alone in his questioning of Godfrey and Richmond's finding that Webster had completed a bona fide purchase of the entire area, with the single exception of Takapu's land, which he claimed at Piako.

In 1856, Francis Dillon Bell was appointed a Land Claims Commissioner under the Land Claims Settlement Act passed that same year. It has already been stated that the Act sought to settle any disputes remaining in connection with old land claims by withdrawing all Crown grants which had been issued on the recommendation of the early commissioners. New grants would only be issued if the holders of the withdrawn grants conducted a survey of the area conveyed in the old grant. A second major feature of the 1856 Act was that it contained an incentive which it was hoped would encourage claimants to survey the entire area of the old land claim, not just the acreage which they had been granted within that claim.<sup>60</sup>

57. Deed 399, H H Turton, *Maori deeds of land purchases in the North Island of New Zealand ... 1871*, vol 1, Wellington, 1882, p 556

58. District Commissioner Hay to Chief Commissioner, 21 October 1857, extracts reproduced in Salmond, 305K: *Piako*, p 17

59. *Ibid*

This incentive was contained in section 44 of the Act, which allowed for claimants to be awarded 'an additional quantity of land' in 'compensation' for the costs associated with having the claim surveyed. This compensation was calculated at a fixed rate, so the more land surveyed, the greater the amount of compensatory land which could be awarded. Significantly, under section 23 of the Act, the compensatory land was not to be taken into consideration by the commissioner when awarding the maximum granted acreage of 2560 acres prescribed elsewhere in the Act. This effectively allowed the prescribed maximum to be exceeded, the only limitation being that the amount of compensatory land awarded was not permitted to exceed one-sixth of the total area surveyed.<sup>61</sup> Bell, the sole commissioner appointed under the 1856 Act, subsequently reported to Parliament that this incentive-based scheme had enabled the Crown to 'recover' a significant amount of 'surplus' land. This surplus was composed of the balance between the area Godfrey and Richmond concluded to have been fairly alienated from the Maori vendors, and the typically smaller area eventually granted to the claimants:

There is no doubt that the grant of liberal survey allowance had a very beneficial effect. If the Government had attempted to survey the claims themselves, the claimants would have had no interest in the whole exterior boundaries being got, and would only have felt called upon to point out as much as was actually to be granted to them. The residue would, practically, have reverted to the natives, and must at some time or other have been purchased again by the Government: and a large extent of territory must have remained, as it was before the passing of the Land Claims Acts, a *terra incognita*. But when the claimants were told they would receive an allowance in acreage to the extent of 15 per cent. on the area surveyed, it became their interest to exert all their influence with the native sellers to give up the whole boundaries originally sold. The result has been . . . to produce a large surplus of land which, under the operation of the existing Acts, goes to the Crown[.]<sup>62</sup>

The importance attached by Bell, in his 1862 report, to the recovery of surplus lands resulting from his promotion of the 'liberal survey allowance' of the 1856 Act, make his following comments all the more significant. Made after he had thoroughly reviewed the Webster claims, from which, in the case of Piako, the government stood to gain a considerable surplus, he wrote the following to the Superintendent of Auckland:

It is not within my province to express any opinion as to the original issue by Governor Fitzroy of grants to the extent of 12,674 acres in this [Piako] claim . . . But

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60. This incentive was first contained in the 1849 Quieting Titles Ordinance, the passage of which was designed to pre-empt the questions *Queen v Clark* would raise about the validity of old land claim-derived grants. Unlike the 1856 Land Claims Settlement Act, the 1849 Ordinance lacked an element of compulsion, without which, the incentive was not sufficient enough to encourage claimants to survey their own claims. See 'Surplus Lands; Policy and Practice: 1840–1950', submission of David Armstrong and Bruce Stirling (Wai 45 ROD, doc J2), p 44
  61. Land Claims Settlement Act 1856
  62. Land Claims Commission, 'Report of the Land Claims Commissioner', 8 July 1862, AJHR, 1862, D-10, p 5

### *Case Study: The William Webster Claims*

it is certain that, as regards the Piako claim, notwithstanding the evidence taken before Commissioner Godfrey in 1842, the Natives would never have agreed to give up possession to the extent which Webster claimed to have purchased.<sup>63</sup>

And yet, despite this serious questioning of Godfrey and Richmond's conclusions in respect to Webster's Piako claim, the fact remained that on the strength of those conclusions Commissioner Fitzgerald had successfully recommended the issuing of Piako grants totalling 12,674 acres. Given that the Maori vendors in 1857 were only willing to admit the alienation of 7500 acres, the Crown found itself in an awkward position. It was unable to enforce Maori acceptance of Godfrey and Richmond's findings. This effectively left it with two options. It could offer Piako grantees an equivalent amount of Crown land elsewhere, or it could negotiate a purchase of further Piako lands from the Maori residents. This second option was the one pursued by District Commissioner Hay in 1857. He eventually managed to negotiate the alienation of 22,150 acres in four separate Crown purchases, the total area of which is shown in figure 7. These four purchases were the first in a series of eighteen separate Crown purchases. Even then, however, as illustrated in figure 7, the 18 purchases did not extinguish the Native title over the entire area that Godfrey and Richmond had concluded in 1843 to have been the subject of a bona fide purchase by Webster.<sup>64</sup> It is worthwhile repeating the comments of John Salmond, who, as Solicitor General in 1910, would have cause to once again re-examine the Crown purchases covering the Webster claim to Piako:

Owing to the defective nature of Webster's title as against the Natives, the Crown has found it necessary, in order to make good the Crown grants issued to Webster and his assigns, and in order to acquire the surplus not included in those grants, to purchase from time to time large areas within the boundaries of Webster's claims . . . Webster, or his assignees, obtained Crown grants of 12,674 acres at the price of 2s. 8d. per acre . . . His purchase was not only at a gross undervalue, but was invalid against the Native owners of large portions of the area. Even as to the 12,764 acres, it was subsequently validated only by the expenditure of large sums of money by the Crown in purchases from the Natives.<sup>65</sup>

It is highly unfortunate that the extant record gives very little indication of the nature of the negotiations which preceded the Crown purchases at Piako in 1857. The papers of District Commissioner Hay contain only the slightest reference to the negotiations when, at a very early point, he notes that the Maori vendors had refused an offered price of £50 'because they maintain that some payment ought to be made by the Government on account of Webster's purchase'.<sup>66</sup> Despite its

63. Bell to Superintendent of Auckland, 26 September 1861, reproduced in Salmond, 305K: *Piako*, p 29

64. Salmond, 305K: *Piako*, p 3. Salmond states the number of Crown purchases within the Webster claim boundaries to have been nineteen. The very first of these was in 1854 and covered Chief Takapu's lands, explicitly identified by Godfrey and Richmond as having being excluded from the original purchase, and thus not included in my figure.

65. Salmond, 305K: *Piako*, pp 3-4

brevity, this reference does cut straight to the heart of the issue surrounding the subsequent Crown purchases, that is, exactly what leverage did the Crown seek to obtain from the increasingly dubious conclusion of its earlier agents that the Webster purchase had been a bona fide one? This is of critical importance because it relates to whether or not the Maori vendors were provided with the opportunity to say ‘no’ to the various purchases proposed by District Commissioner Hay in 1857. If, for example, Hay’s stance was one in which the enforcement of the issued Webster grants was portrayed as inevitable, despite his own personal doubts about the finding on which those grants were based, then the Maori vendors may have felt compelled to gain some financial benefit from the ‘inevitable’ alienation of land *which they had never intended to sell*. On the other hand, the fact that Piako Maori were able to force the Crown into making several more purchases might be taken as evidence of their successfully resisting any pressure which the Crown may have been attempting to assert. Such an argument is strengthened by Piako’s proximity to the Waikato, heartland of the emerging Kingitanga. As Bell acknowledged in his 1862 report, there were certain areas where ‘if the state of the country had permitted I should have taken measures to recover as much as the natives would agree to give up of this land for the Crown. After the Taranaki war [broke out in 1860], however, this became impossible in certain districts’.<sup>67</sup> It does not seem unreasonable to assume that even before the period being referred to by Bell, the Colonial Government would have been anxious to avoid any incident which may have contributed to a wider allegiance to the emerging movement.

Details of the eighteen purchases conducted by the Crown to extinguish title to the area Godfrey and Richmond concluded to have been the subject of a bona fide purchase are contained in table 4 below. This excludes the very first Crown purchase conducted within the boundaries of Webster’s Piako claim. The 1854 purchase covered Chief Takapu’s lands, explicitly excepted by Godfrey and Richmond when concluding a bona fide purchase had been concluded. The purchase price for the 1000 acre block was £50 and ten percent of any proceeds of sale. I have not been able to check whether this last condition was ever followed through.<sup>68</sup>

To make a definitive statement about how fair a return the consideration conveyed in these purchases was, would require a level of comparative research into similar Crown purchases which has not been possible within the confines of this case study.<sup>69</sup> If such research did, in the future, reveal the average price per acre to be comparatively low, then this might be taken to provide evidence that the Crown attempted to use the previous payments made by Webster as leverage to lower the price it would have to pay itself. Given that its own agents harboured

66. District Commissioner Hay to Chief Commissioner, 21 October 1857, extracts reproduced in Salmond, *305K: Piako*, p 17

67. Land Claims Commission, p 8

68. Salmond, *305K:Piako*, p 3

69. This shortcoming in current research will be partially met by the Crown purchase database, listing a similar range of details as contained in table 4, but on a national scale. It is anticipated that the database will be attached as an appendix to an upcoming report on Crown purchases by Helen Walter.

*Case Study: The William Webster Claims*

Date	Name of Block	Area (Acres)	Price (£)	Price Per Acre (Shillings)
November 1857	Otamatoi	950	?	?
16 November 1857	Piako	19,500	1590	1.6
23 November 1857	Te Nge	1200	110	1.8
14 December 1857	Te Hina	500	?	?
23 April 1860	Mohonui	2580	?	?
29 November 1872	Piako (residuary claims)	?	235	?
6 May 1889	Patatai	2500	?	?
8 July 1896	Hoeotainui South 2	1390	347	5
13 March 1897	Hoeotainui South 3a	183	55	5
23 April 1897	Hoeotainui South 3b	1420	426	6
4 November 1897	Hoeotainui South 3c	1500	450	6.3
31 March 1898	Waikaka a	698	209	6
31 March 1898	Waikaka b	1546	463	6
31 March 1898	Opokeka	1016	296	5.8
9 February 1899	Mangawhero 1, 3	3990	1197	6
23 February 1899	Mangawhero 2, 4, 5, 6	2789	841	6
28 August 1902	Hoeotainui North 3a	1250	241	3.9
30 July 1907	Hoeotainui South 4b2	1575	453	5.8

Table 4: Crown purchases within Webster's Piako claim, 1857–1907

serious doubts about the original finding of Godfrey and Richmond that a bona fide purchase had been completed, the equity of any such action by the Crown would be highly questionable.

While such a conclusion awaits the results of further research, there can be no doubt that the Crown was very keen to 'open up' the lands at Piako. This can be

seen in the following extract from a Commissioner Bell memorandum on the opportunity presented by the 'settlement' of Webster's Piako claim:

The impression which had always been on my mind that it would be extremely desirable for the interests of the Province [of Auckland] that this land should be retained in the hands of Government was very much strengthened . . . Now, the land in question is just in the position which it seemed to me to be most desirable to reserve for the site of a settlement . . . Besides its important relation to the Matamata and Upper Thames District, it is the commanding-point of the east-west water-communication between Waikato and Auckland, and presents advantages . . . [which] should, if possible be secured for the province, especially when it might be expected that the establishment of settlers there would be the first step towards opening a country which has hitherto been shut up against colonisation, and the foundation of more extended purchases from the natives.<sup>70</sup>

While this memorandum was not written in direct response to the Crown purchases of 1857, but rather, to encourage the holders of Piako grants to exchange them for land elsewhere, it is nonetheless revealing as to the way in which many Crown agents must have perceived the relationship between the 'settlement' of Webster's claims and the subsequent colonisation of the Piako area.<sup>71</sup>

That Webster's claim at Piako was perceived by Bell to be amenable to settlement was a product of the fact that by January 1860, Frederick Whitaker and Theophilus Heale had come into ownership of grants covering 11,019 acres of the 12,764 acres recommended by Fitzgerald at Piako.<sup>72</sup> This meant that there was an opportunity for the Auckland Province to acquire, in a single transaction, most of the land granted in Webster's Piako claim. The opportunity lapsed, however, when the parties failed to come to a common agreement with regard to the value of the grants. Whitaker and Heale eventually received a single Crown grant which absorbed in their entirety the Te Hina, Te Nge, and Takapu Crown purchases, as well as more than half the area of the Piako Crown purchase.<sup>73</sup> Of the remaining 1655 acres recommended by Fitzgerald but not acquired by Whitaker and Heale, 1255 acres was exchanged for £549 scrip in 1860, while the want of a claimant before Commissioner Bell in 1860 meant the remaining 400 acres 'lapsed', that is, were not re-issued.<sup>74</sup> While the Crown would normally have maintained, on the basis of the bona fide purchase finding of the early commissioners, that these 'lapsed' acres reverted to its ownership, as has already been shown, in the case of

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70. Bell to Superintendent of Auckland, 5 March 1861, reproduced in Salmond, 305K: *Piako*, pp 21–22
71. The exchange of land in this manner was known as a scrip exchange, a category covered in detail in the case study on Hokianga old land claims. By January 1860, Frederick Whitaker and Theophilus Heale had come into ownership of grants covering 11,019 acres of the original 12,764 acres recommended by Fitzgerald at Piako, thereby presenting the opportunity for the Auckland Province to acquire in a single transaction most of the land granted in Webster's Piako claim.
72. Salmond, 305K: *Piako*, pp 2–4
73. See sketch of Piako Crown purchases, *ibid*, p ii. The acreage of this single grant was actually 12,855 acres. This was composed of 11,019 acres for the various derivative grants Whitaker and Heale had accumulated, and 1836 acres awarded as survey allowance under the 1857 Land Claims Settlement Act. *Ibid*, p 2.
74. *Ibid*, pp 2–4

### *Case Study: The William Webster Claims*

Piako, the doubts surrounding the commissioners' finding had necessitated several Crown purchases in order to give true effect to the 1843 ruling of Godfrey and Richmond with regards to the extinguishment of Native title at Piako.

The supreme irony is, that even after completing eighteen distinct Crown purchases the Crown was to find itself once again being challenged about the Godfrey and Richmond ruling. This time, the challenge came not from the Maori vendors, but from William Webster himself. Webster had left New Zealand in 1847. In 1858 he presented a petition to the United States Congress alleging that he had not received just treatment from the British Colonial authorities in New Zealand. This, despite grants eventually being issued to himself, or his creditors, for a total of 25,735 acres.<sup>75</sup> His petition, and two other similar attempts, met no favourable response. Finally, in 1880, the Senate Committee on Foreign Affairs managed to persuade the President to submit Webster's case for international arbitration. The case was initially scheduled to appear before an international tribunal composed of one representative each from Britain, the United States, and France, in 1914. World War One intervened, however, and the case was not eventually heard until 1924. Counsel for the British government based their defence on the questionable nature of many of the transactions by which Webster claimed to have purchased more than 130,000 acres. In deciding to reject Webster's case, the tribunal took a different approach. They ruled that as a result of his original transactions, 'Webster [had] acquired no more than a native customary title, the content and scope of which was very uncertain and can not said to have extended to a full property [right] or *dominium*'.<sup>76</sup> It was their belief that before the assumption of British sovereignty:

The native law was customary and in a low stage of development. The land was possessed and occupied by the tribe, and separate cultivation seems to have given no more than what might be called a usufructuary interest. Alienation, in the sense in which it was understood by the white purchasers, was something quite new to the natives.<sup>77</sup>

As such, the tribunal concluded, Webster could have no perceivable complaint against the subsequent conversion of his customary title into the more certain and defined, and therefore marketable, property right that a Crown grant represented. While those Crown grants conveyed a smaller area than he claimed to have purchased before the Land Claims Commissioners, the tribunal did not consider this to be unjust because he 'had exchanged his customary title to the surplus for a better title to what was granted him'. Nor, in an argument which must have been influenced by the evidence provided by the British counsel and reproduced in this case study, did they consider that it would have been 'equitable to award him full title by British law to the fullest possible extent of the indefinite boundaries which his conveyances from the native chiefs called for. He could not have been in

75. Being made up of 4981 acres (715 to 727 excepting Piako, 726), 12,674 acres (Piako, 726), and 8080 acres (his third of claim 36: Great Barrier).

76. Fred K Nielson, *American and British Claims Arbitration*, Washington DC, 1926, p 543

77. *Ibid*, p 542

possession of all these tracts, nor were the limits of such possession as he had by any means clear'.<sup>78</sup>

Indefinite or exaggerated boundaries are but one of several grounds upon which the pre-Treaty transactions of William Webster might be challenged. Other significant faults include incomplete or exaggerated payments and failure to pay the rightful owners. While many of these defects were uncovered during the hearings of Godfrey and Richmond, the case of Piako illustrates that this was not always the case. It is worth pointing out that Piako was not the only Webster claim which, after being validated by one or both of the earliest commissioners, subsequently provoked significant resistance from local Maori necessitating several Crown purchases to eventually give effect to the Crown grants already issued. Webster's claim 722, encompassing 10,000 acres at Point Rodney, north of Auckland, is another case in point.

The example of Piako raises two important questions. Firstly, how many other Godfrey and Richmond findings were similarly flawed? This question can be only be answered by in-depth research into each individual old land claim, something which in all probability will only occur as each region approaches the stage of having its claims heard by the Waitangi Tribunal. Even then, as will be suggested in the case study of the McCaskill old land claims at Hikutaia, some defective judgements may not be immediately noticeable because resistance by Maori was not always recorded by agents of the Crown. Thus, in some ways, the nature of the extant historical record prevents a full reckoning of this important question. A second question raised by the example of Piako is: to what the extent can the subsequent Crown purchases be seen to have compensated local Maori for the original flawed decision of Godfrey and Richmond? Two aspects must be addressed when attempting to answer this question. Firstly, did the several purchase prices represent a fair return upon the value of the land? A definitive answer to this question will require more in-depth research into surrounding Crown purchases and the price at which the land was subsequently resold by the Crown. The presence of any compulsion on the part of the Crown would also effect any consideration of this question. A fair consideration for the land would be a great deal less equitable if local Maori were not given the option of refusing the sale in the first place. Once again, however, the historical record, in this instance, the brevity of notes surrounding the Crown purchase negotiations, makes any definitive answer difficult. A much wider search of existing records will be necessary here too.

In short, this case study, in solving one set of questions, has raised another set, equally important and arguably more elusive. While there can no doubt that the original Godfrey and Richmond findings were sometimes seriously flawed, the frequency and resultant injustice of this has yet to be fully determined.

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78. *Ibid.*, p 545

## CHAPTER 5

### CASE STUDY: HOKIANGA SCRIP CLAIMS

The origin and nature of scrip lands has been covered in the main text of this report. This case study shall attempt to highlight some of the problems and contradictions of the scrip policy through an examination of its operation within a specific region, the Hokianga.

Before that, however, it would be beneficial to briefly reiterate some of the points outlined in the main text. Firstly, the practice of issuing scrip had no specific statutory authority. Rather, it was a policy established by Governor Hobson in 1841 when he wished to concentrate European settlement in a few main centres in order to be able to provide better protection for settlers and to vacate potential trouble spots. Scrip was normally offered to old land claimants who had had their claims validated by a Lands Claim Commissioner. They were able to use this scrip to purchase land nearer centres of Pakeha settlement. If claimants elected to take scrip, the Crown assumed that the title to the land which the commissioners had previously judged to have been equitably purchased from the Maori vendors passed to the Crown. Importantly, because surveys were very rarely carried out prior to the recommendations of the early commissioners, there was no way for the Crown to immediately determine the exact location or size of the land it had acquired through the exchange of scrip.

By the mid-1850s the situation created by this absence of surveys was becoming increasingly intolerable. As has been argued elsewhere, Francis Dillon Bell, the sole commissioner appointed under the 1856 Land Claims Settlement Act, was very keen to utilise the liberal survey allowance contained in that Act to facilitate the recovery of surplus lands, that is, the difference between the area granted to claimants, and the area judged by the commissioners to have been the subject of a valid purchase. This motivation would have been even stronger in regard to scrip lands, where the entire area validated by the commissioners had subsequently passed to Crown ownership. Besides increasing the Crown domain, the removal of uncertainty surrounding the exact extent and location of the Crown's scrip land holdings would have the further benefit of ending the situation where 'the existence of a claim to an undefined area is a bar to the settlement or survey of the surrounding land'. Once again then, the settlement of the outstanding consequences of old land claims was perceived in terms of furthering the process of colonisation through facilitating large-scale European settlement.

There are two main reasons why the Hokianga seems particularly appropriate as a case study. Firstly, Francis Dillon Bell, the sole Land Claims Commissioner appointed under the 1856 Act, used the Hokianga as an example when commenting upon the shortcomings of the scrip policy in his 1862 report to Parliament.<sup>2</sup> Secondly, arguably no other region was as heavily transacted in terms of scrip exchange as the Hokianga.

Exactly why the Hokianga experienced such a high-rate of scrip exchange can be attributed to two factors. The first of these is the fact that it was the extensive stands of Kauri upon the land, rather than the land itself, which had been the primary motivation for the pre-Treaty purchases in the Hokianga region. Somewhat ironically, having purchased this land for the trees that stood upon it, the fact that Kauri ‘could only be extracted slowly, and with much labour’, meant that when presented with the opportunity of ‘getting [scrip] land at Auckland, the new capital, where more attractive business and employment opportunities were believed to be offering’, many Hokianga claimants were not hesitant in their acceptance of such an exchange.<sup>3</sup> As Commissioner Bell mentioned in his 1862 report, the attractiveness of scrip exchange was heightened further by what he describes as ‘the great misconception that often existed as to the area of the claims’.<sup>4</sup> Put most simply, because few surveys preceded the original investigations by Commissioners Godfrey and Richmond, when they found a purchase to be valid they were left with little choice but to recommend a Crown grant for the estimated area originally claimed.<sup>5</sup> As the surveys conducted under the auspices of the 1856 Act would show, these claimant estimations were in most instances highly inflated. In those instances where the claimants had subsequently exchanged their granted acreage, as recommended by Godfrey or Richmond, for scrip, the Crown had no way of recovering this discrepancy between the estimated and actual acreage.<sup>6</sup> This ‘lost acreage’ was all the more galling when it was considered that:

a large portion of the scrip was expended in the purchase of allotments within the City of Auckland, which allotments must now be worth at least ten times what they cost at [scrip] auction in 1844.<sup>7</sup>

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1. Fannin to Land Claims Commissioner, 21 March 1873, OLC 4/10, NA Wellington. While written in reference to old land claims left outstanding even after the investigations carried out under the authority of the 1856 Act, the sentiments expressed by Fannin were expressed by Bell on numerous earlier occasions.
  2. Land Claims Commission, ‘Report of the Land Claims Commissioner’, 8 July 1862, AJHR, 1862, D-10, p 7
  3. Jack Lee, *Hokianga*, Auckland, Hodder and Stoughton, 1987, p 281
  4. Land Claims Commission, p 7
  5. Sometimes the commissioners would not specify an exact amount but recommend a grant be issued ‘for the land described’ or the ‘land claimed’. Invariably, however, if a claimant had the opportunity to effect a scrip exchange then the amount of scrip issued was based on the acreage claimed by the claimant before the original commissioners.
  6. This contrasts with those old land claims which did not involve scrip. In these the Crown, by rights conferred in s 23 of the 1856 Act, was able to recall and invalidate the initial grant, even where it was no longer in the possession of the original claimant, and subsequently re-issue it when the actual area had been determined by a survey. There were a number of instances where the claimant did not make use of the scrip he or she gained in exchange, in which instance the Crown was able to recall the scrip and re-issue it for a value which was in accordance with the actual surveyed area of the claim.

### *Case Study: Hokianga Scrip Claims*

Thus, the scrip policy had enabled many old land claimants to effectively 'swindle' the Government out of a large number of acres. Moreover, in all likelihood they would have been able to use the exaggerated scrip granted to them to turn a very tidy little profit. An insight into the significance of this short-coming in the scrip policy can be gained from Commissioner Bell's noting in his 1862 report that:

In Hokianga claims alone the scrip issued was upwards of £32,000, while all the lands which I could recover there for the Crown fifteen years afterwards, including not merely the lands exchanged by the claimants but a considerable extent which had never been before a Commissioner at all, was 15,466 acres.<sup>7</sup>

Interestingly, it would seem that unlike the Government, at least some Maori vendors were aware of the above weakness in the operation of the scrip policy. John White, an interpreter from the Native Department, noted the following in relation to the survey of some of the claims of D B Cochrane:

These claims were not disputed when I was in Hokianga, but on a former occasion Mr Clarke was not allowed to survey these claims by the Natives, as they had heard that part of them had been exchanged for Scrip, hence they would not allow the whole to be surveyed lest the Government should require them to make up the deficiency in case the land did not contain the number of acres equal to the amount of scrip given in exchange.<sup>8</sup>

Such fears were not unfounded. There was certainly potential for Maori vendors to suffer as a result of the exaggerated acreage estimates of old land claimants who, without ever having had their claims surveyed, were able to exchange their Crown grants for scrip. In such situations, the Crown, when it eventually attempted to assert its title to the land gained from this exchange, understandably sought to survey an area roughly equivalent to the amount of scrip issued. If the boundaries as described in the commissioners' reports were still discernable after the considerable period of time that typically separated the original hearing from the eventual Government survey, then the Crown would have to accept that it would suffer a 'short-fall' in that claim. This seems to have been the case with the Hokianga surveys, as is evidenced by Bell's highlighting of the Hokianga in his 1862 report. If, however, the boundary descriptions were not precise, there was potential for the Government to survey more than was actually transacted in the original purchase, thereby recovering some of the 'short-fall' resulting from its having issued scrip on the basis of the exaggerated acreage estimate of the original claimant.

An example of this, discussed in considerable detail in the Rangahaua Whanui report for the Auckland District, is provided by the old land claims covering the Kapowai Peninsula.<sup>10</sup> When, in the 1890s, the Government finally decided to assert

7. Land Claims Commission, p 7

8. Ibid, p 7

9. Unfortunately, White does not provide a date for these earlier surveys. White, *Report of Proceedings at Hokianga*, 8 August 1859, OLC 4/4, pp 9–10, NA Wellington

its title to the land it had gained from the two Kapowai claimants who had opted for scrip, its survey of the Peninsula was actively resisted by local Maori who maintained that the claimants had never purchased as much land as they had estimated before the Land Claims Commission of the early 1840s. The Government, however, ignored these protests, taking advantage of the imprecise boundary descriptions reported by the commissioners to recover a great deal more than it had issued in scrip, although still less than the area as estimated by the claimants themselves. The injustice of this Crown action continued to be the subject of protest by local Maori with the result that the matter was eventually subjected to the scrutiny of the 1920 Native Lands Commission. As a result of the commission's recommendations, most of the Kapowai land taken by the Crown in satisfaction of its earlier scrip issue was returned to local Maori.

While the 1920 Native Lands Commission failed to identify the difficulties associated with scrip exchange when reporting on the Kapowai dispute, it is possible nonetheless to draw some tentative conclusions. Manifestly, the Government often ended up being 'short-changed' in regard to those claims in which scrip was issued. Equally clear, however, is the fact that the two parties responsible for this were the claimants, who typically exaggerated the size of their claims, and the Crown itself, for failing to require a survey of each claim prior to a grant being issued.<sup>11</sup> As was unwittingly demonstrated by the 1920 Native Lands Commission, any attempt by the Government to require the Maori vendors to 'make up' the short-fall resulting from scrip exchanges would have constituted a clear injustice. In fact, the Government realised this most of the time, as evidenced by the fact that it never attempted to enforce such a course of action when it eventually began a comprehensive survey of the Hokianga scrip claims in late 1858.

To carry out these surveys, the Government employed a private surveyor, William Clarke. William was a son of George Clarke, former Protector of Aborigines, missionary, and successful old land claimant to 4000 acres at Waimate; that is, until the validity of that grant was challenged by Governor Grey in 1849, and eventually overturned by the Privy Council in 1851.<sup>12</sup> As a private surveyor contracted by the Government, Clarke's work was to be overseen by Native Department interpreter, John White. White was familiar with the Hokianga area, having grown up there after his father, Francis, chose to establish 'a farm and

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10. Barry Rigby, 'Old Land Claims', in Rose Daamen, Paul Harmer, and Barry Rigby, *Auckland, Wellington, Waitangi Tribunal Rangahaua Whanui Series* (working paper, first release), July 1996, pp 103–113
  11. Section 6 of the Land Claims Ordinance 1841 stated that if the commissioners felt satisfied that a claimant was entitled to the lands they had claimed, then they were to make a recommendation which, among other things, 'shall set forth the situation measurement and boundaries by which the said lands shall and may be described in every grant or lease so far as it shall be possible to and they can conveniently ascertain the same'. While the phrase, 'situation measurement and boundaries', implies the necessity of a survey, it is not explicitly required. Indeed, the subsequent use of the phrase 'as far as it shall be possible and they conveniently can ascertain the same', should perhaps be seen as a recognition by the drafters that conditions in reality were far from ideal.
  12. *Queen v Clark* 1849, 1851, vii, Moore, *Crown Demesne*, pp 77–84; Privy Council order 25 June 1851, OLC 1/634, NA Wellington. For more detail on the events surrounding this case, see Rigby's chapter 2 of this report, *The Land Claims Commission Process*, pp 19–21.

### *Case Study: Hokianga Scrip Claims*

timber trading enterprise' there upon the family's arrival in New Zealand in 1835.<sup>13</sup> Like the man whose work he was supervising, John White was also related to a missionary land claimant, his uncle, William White. William, a Wesleyan missionary, was periodically based at Mangungu, Hokianga, from 1830 to 1836. During that time, White was 'a figure of considerable consequence to . . . Maori at Hokianga'.<sup>14</sup> This significance was a product of the fact that during the time of his residence at Mangungu:

Hokianga had become the main centre for the exploitation of kauri timber. The Europeans involved, considered unworthy individuals by the missionaries, competed strenuously for land and timber. White involved himself in this competition by yielding to the pleas for help from young Maori tribal leaders fearful of losing all their land. He forestalled Europeans by purchasing land, which he then returned to the Maori by an arrangement that allowed them to saw the timber on the mission land and sell it through his agency; the money thus raised was used to refund White's purchase price.<sup>15</sup>

White also purchased land for the 'settle[ment of] well-disposed Europeans who would provide a buffer between the [Mangungu mission] station and less well-disposed Europeans'. John White's father, Francis, was a beneficiary of one such purchase.<sup>16</sup> William White's extensive involvement in land dealings at Hokianga was a major factor in both his recall to England in 1836, and in the decision of the 'Wesleyan authorities . . . in March 1838 to dismiss White from both the ministry and the mission, on the grounds of excessive commercial activity and misapplication of mission property'. After his dismissal, William returned to Hokianga, taking up residence next to the Wesleyan mission at Mangungu, and continuing to preach.<sup>17</sup> His dismissal had important consequences for his involvement in land transactions. As M Gittos has noted:

[White's] purchases prior to his dismissal were almost certainly made to provide others with land or as trustees for Native chiefs. It was his severance from the mission, or his anticipation of it, that caused him to alter his attitude and assert that some of the purchases had been for himself.<sup>18</sup>

William White subsequently lodged seven claims involving Hokianga land for consideration by the Land Claims Commission.<sup>19</sup> Three of these were joint-claims

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13. M P Reilly, 'White, John 1826–1891', DNZB, W H Oliver (ed) Wellington, Allen and Unwin, 1990, vol 1, p 587
  14. M Gittos, 'White, William, 1794–1875', DNZB, vol 1, p 589
  15. *Ibid.*, p 589
  16. M Gittos, *Mana at Mangungu: A Biography of William White, 1794–1875, Wesleyan Missionary at Whangaroa and Hokianga*, Auckland, 1982, p 78
  17. Gittos, 'White, William', p 589
  18. Gittos, *Mana at Mangungu*, p 102
  19. The Land Claims Commission considered eight White claims in all. The eighth claim covered 15 acres at Whangaroa. Gittos points out that White originally drew up a schedule of 14 pre-Treaty purchases he wished to have considered by the commissioners but that he subsequently chose not to pursue six of these. *Ibid.*, pp 128–130.

*Old Land Claims*

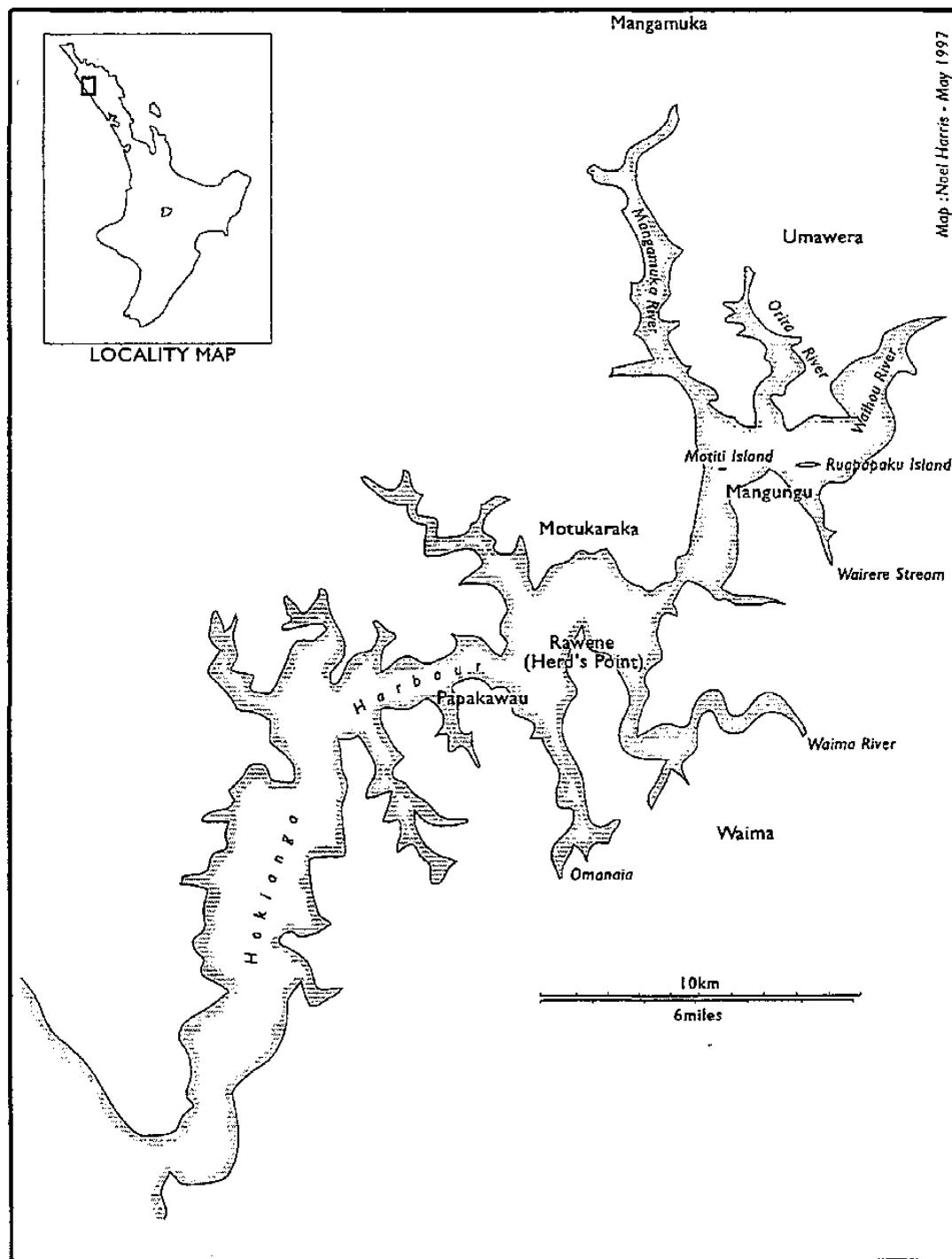


Figure 8: Hokianga Harbour and its main tributaries

*Case Study: Hokianga Scrip Claims*

with George F Russell, a man who was heavily involved with the timber trade and whose residence at Hokianga pre-dated that of White.<sup>20</sup> Details of all seven claims, the commissioners' findings, and the resultant Government action, are contained in table 1 below.

Claim Number	Claimant	Year	Acreage (Claimed)	Result
512	White	1835	1	Bona fide. No action.*
513	White	1833	150	Bona fide. No action.
514	White	1833	2	Disallowed
515	White	1835	1000	Scrip £1000
517	White and Russell	1832	250	Scrip (Russell) £250
518	White and Russell	1839	470	Bona fide. No action.
519	White and Russell	1839	10,000	Scrip (W White) £6099

\* In the context of this table, the term 'No Action' means that, having concluded that the purchase was a bona fide one, the commissioners recommended a grant be issued, but this never occurred. This can be explained by the fact that, overall, White received scrip significantly in excess of the maximum grantable acreage prescribed by the 1841 Ordinance.

Table 1: Status of William White's Hokianga old land claims prior to John White's arrival at Hokianga

As the table shows, William White was a significant old land claimant, personally accounting for at least one-fifth of the £32,000 of scrip that the Colonial Government had issued in relation to Hokianga old land claims.<sup>21</sup> Manifestly, this represented a clear conflict of interest for John White, William's nephew, which should have prevented him from being charged with the responsibility of overseeing the surveying of the Hokianga claims. This conflict of interest becomes even clearer when it is considered that William White's claim to Motiti Island, claim 512, was subsequently succeeded to by Francis White, William's brother and John's father.<sup>22</sup> As will soon be shown, however, this conflict of interest was but one of several major issues arising from John White's oversight of the surveying of the Hokianga scrip claims.

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20. G H Scholefield, *A Dictionary of New Zealand Biography*, vol 2, Wellington, Department of Internal Affairs, 1940, p 263
21. Land Claims Commission, p 7
22. 'Appendix to the Report of the Land Claims Commissioner', 8 July 1862, AJHR, 1863, D-14. Francis also seems to have succeeded to a partial interest in William White's claim 519, although it is not clear how this came about.

White was working under instructions provided to him by Commissioner Bell. Unfortunately, I have not been able to locate a copy of the original instructions but a memorandum which seems to have been written prior to White's employment by Bell gives some indication of what they were to contain. After setting out the survey rates to be paid to the surveyor involved, William Clarke, the memorandum noted that Bell would be responsible for setting the 'mode of proceedings'. The role of John White in these proceedings was alluded to in Bell's comment that 'Mr Clarke [is] to be accompanied by an officer of the Col. Government, to ensure that no disputes occur or disturbance of Boundaries already agreed upon'.<sup>23</sup> The tone and date of the memorandum would indicate that it was written for the approval or information of a higher authority, most probably the Governor, so that if Bell had intended White to exercise a greater role than that outlined above, this memorandum would have been the likely place for it to have been mentioned. There was certainly provision for White to be invested with greater authority under the 1856 Act. Upon the recommendation of Commissioner Bell, the Governor could have made White a judicial officer by appointing him an assistant commissioner. The Act then provided that:

The Commissioners may direct any Assistant Commissioner to examine into and report as to the circumstances relating to any claim to be investigated under this Act, or as to the practicability of giving possession of any land to be given in right of any grant, and as to any other matter or thing to be inquired of under this Act, and every such Assistant Commissioner may examine and report accordingly . . .

Furthermore:

All reports by Assistant Commissioners shall be returned to the Commissioners, and in finally hearing and deciding upon claims the Commissioners may proceed upon such reports in like manner as if such examination had taken place before the Commissioners themselves.<sup>24</sup>

Finally, Bell's rules of procedure, which he was required to publish under section 7 of the 1856 Act, stated that: 'Sittings of Assistant Commissioners will be held at such times and places as may be appointed by notice as aforesaid [that is, in the General or Provincial Government Gazettes]'.<sup>25</sup> A thorough search of the 'aforesaid' has failed to uncover any notice of either White's appointment as an assistant commissioner, or of his going to Hokianga in that capacity. Given the explicit nature of the above provisions it seems clear that Bell intended White to have a very limited authority, specifically, 'to ensure that no disputes occur or disturbance of Boundaries already agreed upon'.<sup>26</sup>

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23. Bell, 'Memorandum relating[g] to the Survey of Scrip Lands at Hokianga', 4 July 1858, OLC 4/7, NA Wellington
24. Land Claims Settlement Act 1856, ss 10 and 11
25. 'Rules Framed and established by the undersigned Land Claims Commissioner, Francis Dillon Bell, Esquire, in pursuance of the powers vested in him in that behalf of the "Lands Claims Settlement Act, 1856"', 8 September 1857, *New Zealand Government Gazette*, 23, 19 August 1857, p 144
26. Bell, 'Memorandum relating'

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White arrived in Hokianga on 30 October 1858. His first action upon his arrival was to call a meeting of all the local chiefs who had an interest in old land claims within that region.<sup>27</sup> The meeting took place on 9 November at Mangungu, the site at which Hokianga Rangatira signed the Treaty of Waitangi on 12 February 1840, and White's base of operations for his seven month stay. At the meeting, White read out to the assembled chiefs the boundaries of all the Hokianga old land claims as recorded in the Reports of the first Land Claims Commissioners, Godfrey and Richmond, having earlier translated them into Maori. His purpose in doing so was certainly not to revisit the original findings in any way, but rather, to get those chiefs involved with each transaction 'to nominate from amongst themselves [sic] those chiefs who would accompany me round each claim.'<sup>28</sup> This was in accordance with his instructions from Bell which stated that 'in order to remunerate the Natives appointed to direct the survey you are authorised to pay, to not more than two in each claim, the sum of five shillings per chief'.<sup>29</sup> But the meeting did not go entirely as White had planned. In eight of the claims, out of a total of 47 Hokianga scrip claims, the boundaries as translated and read out by White were disputed by some of the chiefs present.<sup>30</sup> White's response to this dissent was to categorically state to the entire meeting that he 'had no alternative but must insist on the boundaries as given by the Commissioners'.<sup>31</sup> He then justified his refusal to allow for any such deviation on the following grounds. Firstly, that the original hearings of Commissioners Godfrey and Richmond had provided ample opportunity for any objections to be heard. If these objections were substantiated, White argued to the Mangungu meeting, then the commissioners had had no qualms about adjusting the boundaries accordingly. Secondly, White stated that he did not have any authority to hear objections to the boundaries as recorded in the Godfrey and Richmond reports. This repudiation by White of his possessing any authority beyond that prescribed by Bell, that is, the prevention of 'disputes ... or disturbance of Boundaries already agreed upon', was to become a stock response for White whenever he encountered resistance to Clarke's surveying of boundaries.

An excellent example of this is White's treatment of OLC 390, just one of the three disputed claims of T Poynton to lands allegedly purchased at Papakawau. White reported that he met with the disputing chiefs, Mohi Tawhai, Were, and Honao, and their people on the disputed land. He first listened to all they had to say before reading to them Godfrey and Richmond's report. White then stated to those

27. In a letter to Commissioner Bell relating the details of the Mangungu meeting, White asserts that the meeting was attended by 'all the chiefs of Waihou, Orira, Mangamuka, Waima, Omaina and Whirinaki Rivers ... with the chiefs of the Heads of Hokianga'. White to Bell, 1 December 1858, letter no 3, OLC 4/3, NA Wellington
28. John White, *Report of Proceedings*, p 2
29. Extract from Bell's instructions to White quoted in White to Colonial Secretary, 8 October 1858, OLC 4/11, NA Wellington
30. Using the Bell numbering system, these were the claims 1015 (Wing), 540 (William Young), 388–390 (Poynton), 242 (Hunt), 12 (Oakes), and 971 (Mariner). White, *Report of Proceedings*, p 2. White noted this resistance in pencil on his translated boundary descriptions, some of which are located in OLC 4/11, NA Wellington
31. White to Bell, 1 December 1858, no 3, OLC 4/3. Rest of this paragraph derived from the same.

assembled that it was his intention to survey the boundaries as contained in the report on the grounds that there had been no objections during the original commissioners' hearing, and all of those now objecting were in some way related to the original vendors. He concluded his report of the day's events with the comments: 'I could not listen to this dispute. About three weeks after this meeting took place this dispute was given up'.<sup>32</sup>

There was, however, a single occasion where John White was willing to deviate from his stance of rigid adherence to the commissioners' reports in order to benefit the Maori vendors. This was in relation to the claim of Kelly, Nicholson, and others, to have purchased a parcel of land called Pakahikatoa on the Waima River. Two chiefs, Arama Karaka and Mohi Tawhai, disputed the Waima Creek as a boundary as contained in the commissioners' report. In instructing William Clarke to allow for this dispute when conducting his survey, White reported to Bell that to have taken the Creek as a boundary:

would have caused much ill feeling amongst the Natives of Waima, as from my own knowledge of the land in this River I am certain that those chiefs who sold the claim . . . could not have sold up to the Waima Creek . . . without selling that over which they had no right.<sup>33</sup>

In addition to forcing acceptance of disputed boundaries, White's use of his 'limited' authority is also significant for the fact that it was not a position he maintained consistently. While White demanded strict adherence to the findings of Godfrey and Richmond when boundaries were disputed during their survey, he was willing to assume a much less rigid stance if it would substantially benefit the Crown. This occurred in two ways. Most importantly, White sometimes chose to completely disregard the findings of the original commissioners. This occurred in relation to the survey of claim 275, S M and S B La Court, to land up the Waihou River Valley. The claimants failed to appear before Godfrey and Richmond. After hearing Maori testimony, the commissioners had concluded that only an earnest had been received in payment and therefore declined to recommend that a grant be issued. John White, however, did not feel bound to abide by the commissioners' report in this instance. His report to Bell reads:

It would appear from the statement made to me by the Chief Te Tai, Wi Tana and Kahika, that they did not dispute the sale to La Court Brothers . . . hence this claim was surveyed. Survey contents 37 acres.<sup>34</sup>

The collection of evidence and subsequent determination that a valid purchase had been completed is in marked contrast to White's protestation elsewhere that he was without authority to do anything but adhere firmly to the commissioners' findings. Nor was this an isolated incident. In April 1843, John's uncle, William White, had appeared before Commissioner Richmond claiming to have completed a purchase

32. White, *Report of Proceedings*, pp 43–44

33. *Ibid.*, pp 21–22

34. *Ibid.*, p 50

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five years earlier of Ruapapaku Island. The claimant, however, 'declined to bring forward [any Maori testimony or] evidence to substantiate the claim' and Richmond was accordingly obliged, as shown in table 1, to decline any recommendation of a grant.<sup>35</sup> This makes the subsequent actions of John White in instructing Clarke to conduct a survey of his uncle's claim all the more astonishing:

No evidence brought forward no Grant recommended Survey contents 87 acres. This survey was disputed by Rapana Wi Tarau and Te Ruanui [?], to whom I read the evidence of W. White before the Commissioners[;] when the [current] dispute was withdrawn.<sup>36</sup>

It is difficult to comprehend the above actions. Even if White *had been* empowered to re-investigate the original findings of the commissioners, it would surely have required more than the sole testimony of the Pakeha claimant in order to judge the purchase transaction to have been an equitable one.

The second way in which John White was inconsistent in his contention that he had no authority to deviate in any way from the findings of the early commissioners, was in regard to his 'discovering' of claims which had previously been unknown and which, as such, had never come before a commissioner. There were six of these in all.<sup>37</sup> One was a claim by William White to a parcel of land at Wairna. After noting in his report to Commissioner Bell that this claim had never been notified to the Government, White none the less goes on to state that:

As the chiefs Te Otene [?] and Mohi Whitingama state they sold it to White and that with the exception of two double barrel guns and two great Coats they have no further claim on it[,] I included it in the Herd's Point Survey [Herd's Point is today known as Rawene].<sup>38</sup>

White enclosed with this report a signed statement from Mohi, duly translated and witnessed by himself, in support of his surveying of the land. There are two important issues here. Firstly, as he himself frequently maintained, John White was empowered only to ensure adherence to the boundaries as established by Commissioners Godfrey and Richmond. This certainly did not include the taking of evidence to establish that a valid purchase had in fact taken place. Secondly, even if White had been given the authority to make such a determination, that is, had he been appointed an assistant commissioner under the 1856 Act, that very same Act forbade the investigation of any claims which were not lodged with the Government before the Act came into effect.<sup>39</sup>

Manifestly then, there are major difficulties inherent in John White's inconsistent application of his authority. When he encountered Maori disputes to his surveys,

35. Commissioner Richmond, 17 April 1843, OLC 1/514, NA Wellington

36. White, *Report of Proceedings*, p 18. Other examples include claims 464, Thurlow and McDonnell, and 177, Eggart.

37. White, *Schedule Report of all the Hokianga Claims, Scrip or Otherwise: Showing what state private Claims are in as well as the Governments*, 21 May 1859, OLC 4/2, NA Wellington

38. White, *Report of Proceedings*, p 34

39. Section 15 of the Land Claims Settlement Act 1856

White rigidly adhered to his position that 'I did not come to Hokianga to act in any way, but according to the Reports of the Commissioners'.<sup>40</sup> On numerous other occasions, however, White can be seen to have wrongfully assumed the powers of an assistant commissioner, collecting evidence and surveying on the basis of his determination that the original transaction had been an equitable one. Furthermore, his actions in regard to the alleged purchase by William White at Waima saw him acting outside even the terms of the 1856 Act. The fact that the claimant in this previously unregistered 'purchase' was his uncle, is symptomatic of a conflict of interest which was clearly evident before John White's arrival at Hokianga and which should have eliminated him from being charged with the oversight of the Hokianga surveys.

Despite the above problems, it is worthwhile examining what John White believed to be the causes of the Maori disputes over the boundaries as established by Commissioners Godfrey and Richmond. White's letters, reports, and daily journal indicate three main causes of disputes.

The most important of these, at least as far as John White was concerned, was that some Maori vendors saw the considerable time gap between the original hearing and the current survey as presenting an opportunity in which they might gain some financial advantage. Perhaps the best example of this is provided by the survey of William White's claim at Papakawau, claim 515, which led John White to record:

This claim was disputed by Tamati Waka Nene who insisted that he had not been paid in full by White for this claim, having read to him his own evidence before the Commissioners after some time he recollects that he had been paid in full for the Land and allowed the claim to be surveyed.<sup>41</sup>

That Waka Nene was unable to immediately recall testimony given more than a decade earlier is perhaps understandable, especially since there had been no occupation of the concerned land, by either claimant or Government, in the interim period. Nonetheless, it was incidents such as the one above which primarily account for the low esteem in which John White came to hold most Hokianga Maori who he encountered in the survey process. This can be seen very clearly in his reply to Bell upon his being informed that the Land Office was unable to locate the Godfrey and Richmond reports for the three claims of John Baker:

I do not know how I shall be able to find the proper boundaries, in fact I would not take upon myself to survey the boundaries as pointed out by the Natives in the absence of the papers unless instructed to do so as I have lost all confidence in most of the Hokianga chiefs.<sup>42</sup>

But even when he was in possession of the necessary papers, and had obtained the vendors' re-affirmation of the boundaries reported therein, John White was to

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40. White, *Report of Proceedings*, p 28

41. Ibid, pp 37-38

42. White to Bell, 26 March 1859, OLC 4/7, NA Wellington

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find that there were still those who sought to use the opportunity presented by the current survey to gain some material advantage. Certainly this would seem to be the case if we accept White's reporting of the events surrounding the survey of another of William White's claims, this one in the vicinity of the Wairere stream. On 24 December 1858 John White had taken those chiefs who had an interest in the transaction up the Wairere stream to the site of White's claim. Once there, he had read out the boundaries as contained in the Godfrey and Richmond report, whereon the assembled chiefs had physically marked them out before electing one of their number, Tipene, to accompany Clarke when the survey was actually conducted. This did not occur for just over a month. On 29 January 1859 White headed up the stream to check the progress of the survey:

Up Waiwera and went over the boundaries of W White's claim, Tipene has deviated from the lines which were marked on the trees by us on the 24 December and also . . . insists to cut off the [sole] landing place[.] I gave him a lecture on the sacredness of an agreement and for the present stopped the survey.<sup>43</sup>

As the above example illustrates, there were undeniably some individuals who were willing to use the considerable delay between the Godfrey and Richmond hearings and the eventual survey to misrepresent the original boundaries, in order that they might gain some material advantage. At the same time, there is ample evidence in John White's own journals to illustrate that many disputes which flared during the surveys were grounded in circumstances more complicated than the simple dishonest greed to which White attributed the vast majority of disputes.

Many disputes were motivated by a desire to achieve recognition of long-worked cultivations which fell within the boundaries recorded in the reports of Godfrey and Richmond. A typical example of this can be found in White's journal entry for 5 February 1858:

Went up Wairere with Mr Clarke when he began the survey of [yet another] W White claim. Hepere [?] the youngest son of the late Hone Kingi disputed part of it. [B]ut as his eldest brother Rihai [?] was one of the sellers I would not listen to his dispute he then asked for a piece which he is cultivating his request was granted pending the sanction of His Excellency[.]<sup>44</sup>

The extent of this phenomenon is reflected in the fact that John White eventually recommended that 15 separate parcels be reserved from within the boundaries surveyed, eleven of which were sites of current cultivation.<sup>45</sup> The existence of these

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43. White, 29 January 1859, *Daily Journal*, OLC 4/7, NA Wellington

44. White, 5 February 1859, *Daily Journal*, OLC 4/7, NA Wellington

45. Fannin to Lands Claims Commissioner, 21 March 1873, OLC 4/10, NA Wellington. The four exceptions were made up of a reserve each for Arama Karaka and Mohi Tawhai in reward for their invaluable assistance to John White, a site of a wahi tapu, and six acres in compensation for a like sized area which was deducted from an earlier survey. While Commissioner Bell approved all of these recommendations, only the last two were actually actioned by the time of Fannin's memorandum. Subsequent minutes written on the cover of Fannin's memorandum and John White's, *Report of Proceedings* suggest that they were subsequently re-approved and grants issued but I have not had time to check if this actually occurred.

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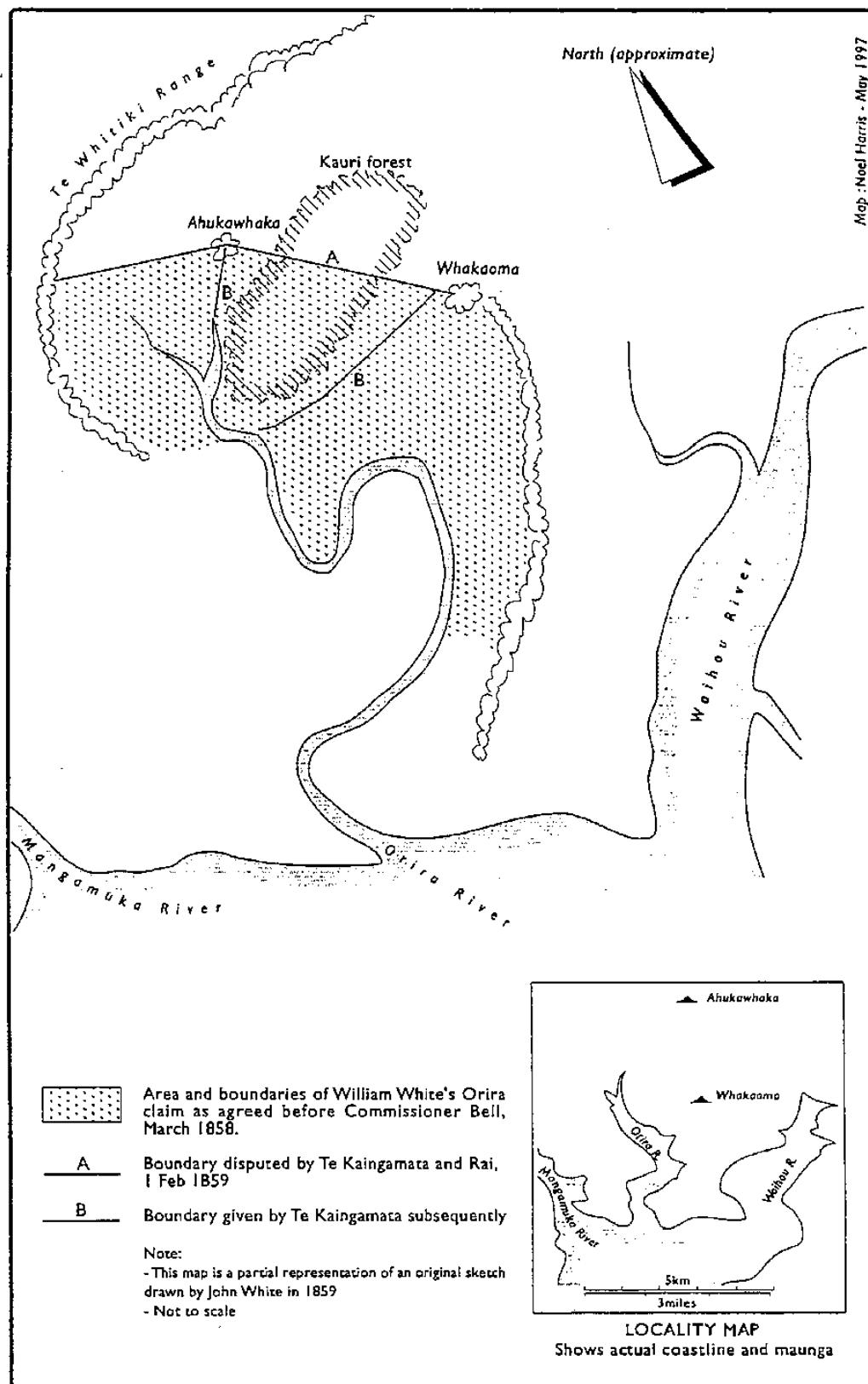


Figure 9: William White's Orira claim, OLC 519

cultivations within the boundaries recorded by the original commissioners should not, however, be attributed to a dishonest desire on the behalf of some of the vendors to subsequently repudiate a purchase which Godfrey and Richmond had concluded to be an equitable one. Instead, these cultivations should be seen as a direct consequence of two related factors, the fact that neither the grantees or the Crown (if scrip or surplus was involved) took possession of the land after the hearing had concluded, and the considerable delay between the original hearings and the eventual surveys. John White himself was certainly aware of the symbolic significance which was attached to the process of surveying a claim, even if he was unwilling to accept that the lack of such a survey for nearly two decades might constitute a valid ground for dispute. This can be seen in his writing to Bell that 'the Natives look upon the present act of surveying claims as final[,] that any claim not surveyed will be looked upon as common property and as belonging to any native who may be at the present time living on it'.<sup>46</sup>

An even more important factor underpinning many of the disputes which accompanied the survey of the Hokianga scrip claims was the issue of timber rights. This is perhaps not surprising since, as mentioned earlier, it was the extensive stands of Kauri upon the land, rather than the land itself, which was the primary motivation for pre-Treaty purchases in the Hokianga region. It has also been argued that this feature may help explain the region's high incidence of scrip exchange.

While many Hokianga old land claimants removed themselves from the region, opting to exchange their Crown grant for scrip, the issue of timber rights remained dormant. Nearly two decades passed, before the arrival of a Government surveyor had the effect of bringing the issue to the surface. This can be seen most clearly in the example of the Orira Valley, the site of nine distinct pre-Treaty purchases in which all but one of the claimants had opted for scrip. As such, the valley was of particular importance to a Government determined to recover as much land from old land claims as possible. Exactly how important, is demonstrated by the fact that Land Claims Commissioner Bell held a special court at Hokianga in March 1858 specifically to discuss the Orira Valley. At that meeting, Bell presented the assembled chiefs with a plan which showed all the boundaries of the various claims within the valley. This presentation was followed by a 'long discussion' which eventually resulted in general agreement that the land, and the timber upon it, had been alienated as a result of the original pre-Treaty transactions.<sup>47</sup> This consensus was still in place ten months later when the chiefs reassembled, this time at the

46. White to Bell, 1 December 1858, no two, o.l.c 4/3, NA Wellington. Interestingly, White had cause to make these comments in the process of his asking Bell whether he was permitted to survey claims where a grant was issued but the claimants were not in Hokianga at the present time. The fact that he was compelled to ask this would suggest that the original instructions he received from Bell in fact required their presence, most probably to counter-balance any desire on the behalf of the Maori vendors to reduce the length of the boundaries. It was exactly this rationale which underpinned s 44 of the 1856 Act whereby claimants could have one-sixth of all the total area surveyed in their claim added to their eventual grant. In practice, no more than one or two of the Hokianga scrip claims were surveyed in consultation with the original claimants.

47. Details of this meeting are taken from John White's backgrounding of the Orira dispute, White, *Report of Proceedings*, p 12

request of John White, in order that the boundaries of the Orira block as agreed to before Commissioner Bell could be physically pointed out to the surveyor, William Clarke. The Orira Valley was then surveyed over the next fortnight. Towards the end of that period, White received a letter from Clarke informing him that some of the Maori vendors were now disputing the boundaries which had been pointed out to Clarke and also agreed to before Commissioner Bell ten months earlier.<sup>48</sup> White's immediate response to this news was to make his way up to the Orira Valley to confront those disrupting the survey, Te Kaingamata and Rai. After reading to the two chiefs the relevant Godfrey and Richmond evidence, as well as showing them the plan presented to the Bell meeting, Te Kaingamata and Rai still refused to give the dispute up and White had little option but to halt the survey for the present.<sup>49</sup> He then wrote to Commissioner Bell informing him of the dispute and seeking further guidance.

Figure 9 above, based upon a John White sketch map, provides some insight into what motivated Te Kaingamata and Rai to deviate from the consensus which had apparently been forged before Commissioner Bell ten months earlier. As can be seen in the sketch, one of the boundaries disputed encompassed a Kauri forest. While Bell may have obtained agreement in March 1858 that the land *and the timber* had been alienated as a result of the pre-Treaty purchases, evidently the two chiefs concerned desired to retain rights to this particular stand of Kauri by having it excluded from the purchase boundaries.<sup>50</sup>

Bell's response, upon receiving White's letter informing him of the disruption of the Orira survey, was to write a letter, in Maori, for White to read to a third gathering of those chiefs whom he had personally met several months earlier. In his *Report of Proceedings*, White records that he read the letter to the assembled chiefs 'who at once gave up the dispute and allowed the survey to proceed'.<sup>51</sup> A sense of what was contained in Bell's letter can be gained from the following extracts from a John White letter relating to Bell the details of the meeting the day after it had occurred.

I am happy to inform you that your letter to the Orira Chiefs has brought them to their senses, and they will now allow the survey to go on . . . the fear of the timber being stopped made them give in.

I hope for the future I shall not have much trouble as your letter makes them see it is no use to dispute, they must not think to override the commissioners or try to upset that which has been decided by the law.<sup>52</sup>

White's use of the phrase, 'the fear of the timber being stopped made them give in', raises an important question. How was Bell able to successfully threaten to

48. Clarke to White, 1 February 1859, enclosed in White to Bell, 1 February 1859, OLC 4/6, NA Wellington

49. White to Bell, 1 February 1859, OLC 4/6, NA Wellington

50. Sketch map enclosed in *ibid.*

51. White, *Report of Proceedings*, p 14

52. White to Bell, 26 March 1859, OLC 4/7, NA Wellington

'stop the supply of timber' if he had already obtained from the Orira chiefs, at his special court sitting in March 1858, their agreement that the pre-Treaty transactions had alienated the land and the timber? Could it be that Bell was only able to obtain this agreement from the assembled chiefs, after he also promised that in return for their reaffirmation of the original Godfrey and Richmond recommendations, he would recommend to the Crown that it allow them to harvest the timber upon its scrip land in the Orira Valley? If such an agreement was in fact reached, the disruption of Clarke's survey by Te Kaingamata and Rai, which represented nothing less than a direct challenging of the boundaries as reported by the early commissioners, would certainly have been perceived by Bell to have breached that agreement, thereby freeing him from any obligation to keep his side of the deal. Unfortunately, the absence of any written record of the proceedings at Bell's special Hokianga sitting means we can never know for sure that such an agreement was reached. At the same time, subsequent correspondence by Bell, such as his following letter to the combined Orira chiefs, dated 14 September 1860, certainly seems to support the existence of the kind of agreement alluded to above. Bell, after informing the chiefs that he had instructed Clarke to survey the portion of the Orira block previously disrupted, then wrote that he would:

now fulfill his promise . . . the Kauri timber land shall not be all taken by [William] White [the one non-scrip claimant], but part shall be for White, and part for the Government . . . that your timber may be brought out through it.

I shall inform you of the portion of the Orira Block still in the hands of the Government in order that I may recommend the Government to grant you the privilege of getting the timber thereon[.]<sup>53</sup>

The existence of such an agreement is also supported by earlier correspondence travelling in the opposite direction, that is, from Hokianga Maori to Commissioner Bell. Take, for example, the following letter from Tamati Waka Nene relating to Umawera, located in the upper catchment of the Orira River:

My word is to you. Who does Umawera belong to does Umawera belong to you do you let me have this place, let me have the timber and you have the land, do you consent write and let me know . . . I wish to have the timber to work for the future years but the thought is with you[.]<sup>54</sup>

A similar outcome was sought by Arama Karaka five weeks later, when he wrote to Bell that Orira is 'surveyed and is all in the hands of the Governor, hence my request that you may allow myself and my relatives to cut timber on the portion called Whitirawa'.<sup>55</sup> Thus, while the extant record does not provide us with any written minutes of the proceedings at the special sitting of Bell's court at Hokianga in March 1858, subsequent correspondence between Bell and some of those who

53. Bell to Orira chiefs, 14 September 1860, OLC 4/11, NA Wellington

54. Tamati Waka Nene to Bell, 6 September 1859, translated by John White, OLC 4/11, NA Wellington

55. Arama Karaka to Bell, 17 October 1859, translated by John White, OLC 4/11, NA Wellington

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attended points strongly to an agreement being reached under which some of the vendors would have continued access to the timber of the Orira Valley in return for their reaffirming the boundaries as reported by Godfrey and Richmond a decade and a half earlier.

Any such agreement would have been a consequence of the operation of the scrip policy. The withdrawal of the original purchasers from the region once they had opted for scrip, the subsequent failure of the Crown to physically indicate its assumption of ownership for nearly two decades, and, as will be shown very shortly, the death of the original vendors in the interim, meant that those who attended the special sitting of Bell's court at Hokianga in March 1858 may well have considered the previous purchases to have lapsed, and the land to have once again reverted to their ownership. In the absence of a record of proceedings for that sitting, however, it is not possible to state with any degree of certainty whether any timber agreement which may have been reached at that meeting was offered by Bell, in recognition of the misperceptions resulting from the above factors and in order to secure the assistance of the assembled chiefs, or whether it was demanded by the chiefs themselves as the price of their co-operation in reaffirming the original boundaries as reported by Godfrey and Richmond.

The culminating act of this reaffirmation occurred in June 1859. In that month, John White, having earlier received a letter from Bell instructing him to halt any more surveys because of the impending winter weather, toured the entire region and got the respective chiefs to 'sign-off' on the various survey plans, 23 in total, resulting from Clarke's work.<sup>56</sup> By comparing the signatures obtained by White with those upon the original purchase deeds, it was possible to come up with the information contained in table 2 below.

OLC plan number	Survey signatories	Purchase deed signatories	Common signatories
254	9	7	1
264	8	4	1
267	7	8	1
270	2	1	1
275	2	3	1
277	4	2	1
278	8	8	2

Table 2: Comparison of the original vendors with signatories to Clarke's surveys

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56. White, *Daily Journal*, OLC 4/7, NA Wellington

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From table 2 it is clear that there was an extremely low level of overlap between the original vendors and those who John White got to reaffirm the boundaries as they were reported by the commissioners, and subsequently surveyed by William Clarke. Of the 23 survey plans, only seven had any signatories who had also signed the original purchase deed. And of these seven, only three (plans 270, 275, and 277) produced this commonality at a level that might reasonably be considered significant. Such a finding is not all that surprising, especially when it is remembered that in most instances there were more than two decades separating the original purchase from White's collection of signatures in 1859.

The low level of commonality evident from table 2 does raise the issue, however, of what measures were taken by the Crown to ensure that those 'signing-off' on the survey plans of William Clarke in June 1859, were in fact those most entitled to do so. With the exception of the Orira Valley, which was dealt with at Bell's special court in March 1858, any process of identifying those who were most appropriate to reaffirm transactions by the deceased vendors would have occurred at John White's meeting with all the Hokianga chiefs, on 9 November, at Mangungu.

At first glance, White would certainly seem to have been a good choice for such a process. He would have possessed considerable 'local knowledge' as a result of his having spent most of his youth in the region. But as was shown earlier in this case study, there also existed circumstances which should have disqualified John White from ever being entrusted with such an important function at Hokianga. This, of course, is a reference to the unavoidable conflict of interest created by the fact that his uncle, William White, was a significant land claimant in the region.

Another major problem evident in John White's activities at Hokianga was the fact that he was never invested with an authority appropriate to the tasks he chose to undertake upon his arrival. At a very minimum, he would have needed to be an assistant commissioner to collect evidence, investigate claims, and make conclusions about their bona fide nature. This exceeding of authority by John White, sometimes beyond anything allowed for even had he been empowered under the 1856 Act, was most frequent when he 'investigated' the claims of his uncle, William White.

Finally, the inconsistency which characterised John White's application of his assumed authority is also significant. When he encountered Maori disputes to his surveys, White rigidly adhered to the position that he was unable to deviate, in any way, from the reports of the original commissioners, Godfrey and Richmond. On a number of occasions, however, White showed himself to be only too willing to disregard the findings of the early commissioners where such action would benefit the Crown. Only once did he exercise this 'discretion' for the benefit of the Maori vendors.

Needless to say, the Crown could have avoided all of the above problems if it had acted more quickly in identifying, through survey, the land it acquired through its scrip policy. Instead, it waited for a decade and a half after the original purchases were validated by the earliest commissioners, before it decided to act. In doing so, it not only brought upon itself all the problems mentioned above, but it may also

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have forced one of its agents, Commissioner Bell, to allow for the harvesting of a valuable resource, the Kauri timber of the Orira Valley, in order to secure the cooperation of some of the local chiefs.

## CHAPTER 6

### CASE STUDY:

### THE McCASKILLS AT HIKUTAIA

This fourth and final case study has as its primary focus the presence of Maori agency in the old land claims process. This distinguishes it from its predecessors which have largely been concerned with examining the various ways in which the Crown dealt with old land claims. The McCaskill old land claims at Hikutaia are ideal for this purpose because they have generated a voluminous official record which documents a sustained and varied campaign by Hikutaia Maori to resist the implementation of the Crown grants which were issued in satisfaction of the McCaskills' old land claims. Through an examination of this official record in the course of this case study, it is hoped the reader will be left with an impression of the range and scope of resistance which could be carried out by those Maori affected by old land claims.

Before beginning, however, three qualifications are necessary. Firstly, it should be pointed out that the existence of this voluminous record makes the McCaskill old land claims rather exceptional. As a general rule, the official documentary record contains few references to Maori resistance which arose when efforts were eventually made to put the grants deriving from old land claims into effect. Even when such references can be found, they are often so fleeting or insubstantial as to give only the barest indication of the form or extent of the resistance concerned.

This scarcity should not, however, be automatically assumed to indicate that there was rarely any substantive resistance by local Maori to the alienation of land which had been Crown-granted as a result of an old land claim. Rather, the absence of such references could be seen as a product of what James Belich has labelled the 'problem of one-sided evidence'.<sup>1</sup> This is particularly true of old land claims where 'the documentary record is overwhelmingly created by only one of the two interested parties'.<sup>2</sup> As such, there is a potential for serious distortion in the recording of historical events. An additional factor contributing to the apparent absence of Maori resistance to old land claims was the fact that in many instances the claimants, or the Crown if surplus or scrip was involved, took a very long time to survey their respective holdings. Until such surveys actually took place, there

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1. James Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict*, Auckland, Penguin Books, 1988, p 330  
2. 'The Crown and Muriwhenua Lands: An Overview', submission of W H Oliver, (Wai 45 ROD, doc 17), p 20

was really no cause for Maori resistance because, as W H Oliver has argued before the Muriwhenua Tribunal: 'Rights, such as the Crown to the surplus, asserted in the abstract but not on the ground and incapable of identification are more likely to be ignored than contested, and perhaps to be forgotten'.<sup>3</sup> Once again, this case study will examine how this occurred in practice.

A second qualification arising from the deliberate focus on Maori resistance is that this case study does not purport to provide an answer as to the justice of the McCaskills' Hikutaia grants, nor as to the validity of the Maori objections to them. Such an answer would require a great deal more research than is provided for in the context of this case study.

Thirdly, it is important to acknowledge that resistance or opposition was certainly not the only manifestation of Maori agency in the old land claims process. Such agency also included acts of affirmation, for example, testifying before the Land Claims Commission or assisting in the identification and surveying of boundaries. The important point remains, however, that acts of affirmation were recorded much more frequently in the official documentary record than were acts of resistance or opposition by Maori. It is this fact which makes the McCaskill claims at Hikutaia notable, and worthy of a case study.

The McCaskill claims at Hikutaia derive from the alleged purchase by L A McCaskill and S M D Martin in December 1839 of four blocks of land: two at Hikutaia, one at Opukoko, and one at Ohinemuri. This case study will focus on the first two blocks, although occasionally it will be necessary to refer to the other two purchases. The location of the two Hikutaia blocks, on the north and south banks of the Hikutaia Creek, is shown in figure 10. Of the two, Hikutaia South was the first to come before the Land Claims Commissioners. Sitting at Kauaeranga in June 1843, Commissioner Mathew Richmond found that a bona fide purchase had been completed to an area south of the Hikutaia Creek, estimated at 8,000 acres. He came to this conclusion after hearing the testimony of one of the claimants, Lachlan McCaskill, a supporting Pakeha witness, William Webster, and three of the Maori vendors, most significantly Rangituia Hauhenua of Ngati Pu.<sup>4</sup> It is worth noting that this was one Maori witness more than was generally considered the minimum necessary by the commissioners to establish that a bona fide purchase had in fact been completed. Hikutaia North came before Commissioner Edward Godfrey just over a year later. Sitting at Coromandel Harbour he concluded that the area claimed by McCaskill and Martin north of the creek, estimated at 4000 acres, had also been the subject of a bona fide purchase. He came to this conclusion on the basis of the testimony of two Maori witnesses. One of these was Kawhero of Ngati Karaua, who would appear to have been the principal vendor in all four of the purchases transacted at the original meeting in December 1839. Godfrey's report also notes the testimony of two Maori witnesses who opposed the sale of part of the area claimed on the grounds that they were absent at the time the sale took place and consequently received none of the sale proceeds. The lack of an accompanying

3. *Ibid.*, p 7

4. The full reports of Commissioners Richmond and Godfrey are contained in OLC 1/287–291, vol 2.

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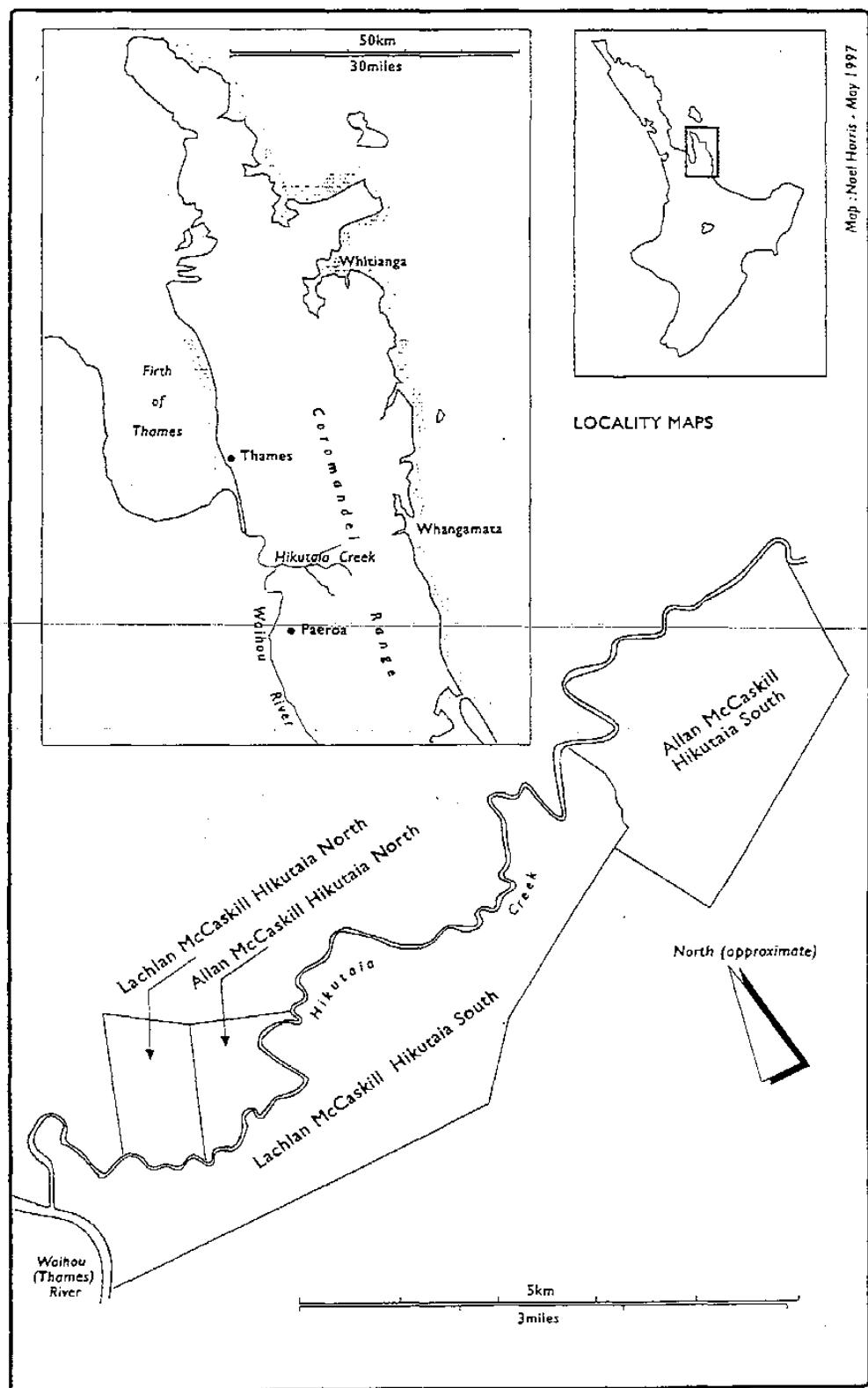


Figure 10: Boundaries of Lachlan McCaskill's Hikutaia claims with granted subdivisions

survey means that the extent and location of this smaller area, identified as Wharekupunga, is not immediately apparent from the commissioner's report. As a result of their investigations the commissioners made the following recommendations. With regard to Hikutaia South, Richmond recommended that a grant for 1379 acres should be issued. In the case of Hikutaia North, Godfrey did not recommend the issue of any grant. This was because, once the 1296 acres recommended as a result of their Opukoko claim was taken into account, McCaskill and Martin had already received more than the maximum of 2560 acres which was allowed under the provisions of the 1841 Land Claims Ordinance.<sup>5</sup> Before these recommendations could be actioned, however, Governor FitzRoy determined that the McCaskill claims were special cases which might justify an extension of the recommended grants beyond the maximum prescribed under the 1841 ordinance. In such an instance, the ordinance provided for the claims to be referred back to a Land Claims Commissioner so that he might re-consider the claims to see whether such an extension could be justified. This task of re-consideration fell to the recently appointed commissioner, Robert Fitzgerald, who subsequently recommended that grants totalling 4000 and 8000 acres should be issued for the claims on the north and south banks of the Hikutaia Creek.<sup>6</sup> Governor FitzRoy accepted these recommendations in principle, although he reduced the amounts slightly to a total of 3000 and 7000 acres respectively.<sup>7</sup>

The justification for these extensions was couched primarily in economic terms. Since he had purchased the property, Lachlan McCaskill had constructed a sawmill and other buildings for a total outlay of around £7000. The successful operation of this mill was of course dependent on continued access to a reasonable supply of timber. To this end, Fitzgerald observed, McCaskill and Martin had purchased in December 1839:

about 12,000 acres of forest land for which they [had] paid £1025.14. The payment was proved and the native testimony quite satisfactory.

Although the expenditure in buildings and improvements in ordinary cases would not be allowed to be taken into consideration where they are beneficial to the property, such an exclusion in the present case would probably entail a ruinous loss to the parties, as the machinery and buildings do not appear to have been erected for such an object, and, would be quite useless without a considerable tract of adjacent forest.<sup>8</sup>

In addition to the hardship that a non-extension may have imposed on the claimants, an important sub-text to Fitzgerald's memorandum was the fact that the colonial authorities were very keen to encourage economic investment in the new colony. Extractive industries, which provided employment and, in the case of timber, materials for housing, would always be a prime candidate for such encouragement.

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5. Summarised in Bell, 23 June 1862, OLC 1/287-291, vol 1
  6. Fitzgerald to Land Office, 6 May 1844, OLC 1/287-291, vol 2
  7. FitzRoy, 1 May 1844, OLC 1/287-291, vol 2
  8. Fitzgerald to Land Office, 6 May 1844, OLC 1/287-291, vol 2

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Grants for the McCaskill old land claims were finally issued in July 1844. The total acreage approved by FitzRoy was divided between Lachlan McCaskill and S M D Martin on a ratio of three to two. This meant that in Hikutaia North McCaskill received a personal grant for 1800 acres, while Martin was granted 1200 acres. Similarly, in Hikutaia South McCaskill received a grant for 4200 acres and Martin 2800 acres.<sup>9</sup> A feature of these grants was that they carried a description of the external boundaries of the entire claim, as reported by the investigating commissioner, even though the acreages they purported to convey related to internal sub-divisions within those external boundaries. All the Hikutaia South grants, for example, bore the following boundary description which was taken directly from the original purchase deed:

On the North by a Creek called Hikutaia – on the East by a range of hills called Kairua – on the South by a line drawn in a westerly direction from a place called Kurere to the Main River Thames at a place called Pirori.<sup>10</sup>

This phenomenon was typical of many Crown grants derived from old land claims, and was a result of the fact that no survey had accompanied the early commissioners' investigations.

At Hikutaia, the beneficiaries of Martin's will chose not to immediately occupy the land conveyed in Martin's grants. This meant that Lachlan McCaskill was free, in the absence of a survey establishing any internal boundary lines, to select his granted acreage from anywhere within the external boundaries noted on his grant. As can be seen in figure 10, Lachlan divided each of his grants in two, with the portion of each furthest from the Waihou, or Thames, River passing to his brother, Allan McCaskill. This process of selection became problematic, however, when, sometime after 1864, the holders of Martin's grants finally decided they wished to occupy the land those grants conveyed. When they attempted to do so, it was revealed that the actual acreage contained within the external boundaries as reported by the commissioners more than two decades earlier, was considerably less than the total acreage subsequently granted by FitzRoy in that claim. This in itself was not unusual, and did not present a problem if all, or conversely none, of the grantees had chosen to occupy the land. In such a situation, new grants would be issued reflecting the correct reduced acreage and internal boundaries as determined by survey. Where, however, as at Hikutaia, one of the grantees had abstained from taking up occupation, thereby leaving the other grantee to absorb most of the actual area of the claim in satisfaction of their own grant, the solution was more difficult. At Hikutaia, the only way the inheritors of Martin's grants could take possession of their forty percent share of the actual area of both claims, was by

9. Bell, 23 June 1862, OLC 1/287-291, vol 1

10. The original purchase deed is appended to the report of Commissioner Richmond, 18 August 1843, OLC 1/287-291, vol 2. This description differs only slightly from that included in Lachlan McCaskill's original notification of claim. In that letter, Lachlan McCaskill delineates the eastern boundary as composing the 'range of Mountains called Kaiaroa'. McCaskill to New South Wales Colonial Secretary, 3 February 1841, appended to the report of Commissioner Richmond, 18 August 1843, OLC 1/287-291, vol 2.

forcing the McCaskill brothers to reduce the area they claimed to occupy. Undoubtedly, a strong case could have been made for such a reduction. After all, the McCaskills only came into possession of that land after exaggerating the size of the original purchases. At the same time, however, the McCaskills could argue that any such reduction, after they had 'occupied' the land for more than two decades, would only serve to replace one injustice with another. This last argument seems to have held some merit for Judge Halse, who adjudicated on the matter after Land Claims Commissioner Charles Heaphy referred the issue of Martin's grants to the Native Land Court in 1879.<sup>11</sup> While stating that it was clear that Lachlan McCaskill had 'received more land than he was entitled to under the original purchase from the Natives in November 1839', the Judge was nonetheless unwilling to order a reduction of those grants after such a long time.<sup>12</sup> Instead, he recommended that Martin's heirs receive scrip, to the value of £1445, in compensation for the relinquishment of their Bell-issued Crown grants to 1254 acres at Hikutaia South and to 191 acres at Hikutaia North. The story of the old land claims at Hikutaia then, is really a story about the relationship between the two McCaskill brothers, Lachlan and Allan, and the Maori residents of the land they claimed.

In its early years, this relationship seems to have been an harmonious one. This can be seen in the following testimony, recorded by James Mackay junior in 1866, of Herewini Te Rangai of the Ngati Pu hapu of Ngati Maru:

McCaskill came to live on the land before it was surveyed. He put up part of a sawmill on the land on the North side of the Hikutaia on the piece granted to him . . . He intended to saw the white pine (Kahikatea) of the Korakorahi and Waihou forests.

The people of the tribe Ngatimaru agreed to construct a mill dam for McCaskill. We worked at it and dammed the Hikutaia Stream the water was backed up a long way . . . The water burst the first dam, We made a second. and it was carried away also. McCaskill then paid us for our work, He gave us ten (10) guns and a cask of (keg of) tobacco.<sup>13</sup>

Clearly, the dam building related above entailed a significant degree of co-operation between the McCaskills and the Maori vendors.

One factor that is certain to have contributed to the initially harmonious relationship with the McCaskills was the fact that the Maori vendors did not actually reside in the immediate vicinity of the McCaskill claims. Te Rangai testified, for example, that after being paid for the construction of the dams: 'We (Ngatimaru) then returned to Kauaeranga and Te Puriri[.] Ngatikaraua and

11. Halse refers to this referral in Halse to Heaphy, 14 May 1878, OLC 1/287-291, vol 1. Such referrals took place under the auspices of the 1873 Native Land Act. Section 9 of the Act provided for the Native Land Court to investigate, upon referral by a Land Claims Commissioner, 'sundry claims to land that have arisen in respect of dealings between Europeans and the Natives which have not as yet been satisfactorily determined and finally settled'. Section 11 of the Act limited the power of the Native Land Court Judge to making recommendations to the referring commissioner.

12. Henry Halse, 'Judgement in Hikutaia B. case', 26 August 1879, p 5, OLC 1/287-291, vol 1

13. Testimony of Herewini Te Rangai, 5 September 1866, translated and recorded by James Mackay, *Native Statements respecting lands at Hikutaia Thames granted to Messrs. McCaskill*, 5 September 1866, OLC 1/287-81, vol 1.

Ngatiwhanaunga were at Waiau and Whangamata, they did not reside at Hikutaia'.<sup>14</sup> This pattern of non-residence should be seen in terms of a preference to reside in localities which would provide much easier contact with the Pakeha. In Hauraki, these localities were invariably located on the coastline, for example, Whangamata, Kauaeranga, and Coromandel Harbour.

Having said that, the considerable co-operation involved in establishing the McCaskills at Hikutaia indicates that, even without the immediate presence of the Maori vendors, both parties to the transaction believed the relationship would be mutually beneficial. As will be shown in much greater detail later, local Maori clearly anticipated that the presence of the McCaskills would generate further revenue from the sale of timber access rights. This timber was a mixture of Kauri, located off the Waipaheke Stream at the very eastern extreme of the McCaskill grants, and Kahikatea, or white pine, located on the land granted to Allan McCaskill south of the Hikutaia Stream. For their part, the McCaskills probably believed that, in addition to providing themselves with a reasonable income, their presence would generate further revenue for the Maori vendors through employment in timber felling activities, and through the negotiation of access to the Kauri at Waipaheke. As such, it is clear that the initially peaceful relations between the McCaskills and those non-resident Maori who still maintained an interest in the land at Hikutaia were also a product of the ignorance of both parties as to their differing perceptions of the exact nature of the original purchase transaction, and of the subsequent determination by the Land Claims Commissioners.

This state of affairs can partly be explained by the absence of any survey of the land granted to the McCaskills. Although section 6 of the 1841 Land Claims Ordinance contained an implicit requirement for a survey to be conducted before a grant could be issued, lack of resources and, in particular, a lack of suitably qualified surveyors, resulted in this provision being ignored by the early commissioners and Governor FitzRoy.<sup>15</sup> As long as a survey was absent, the differing opinions of claimant and vendors with regards to the actual boundaries transacted in December 1839 could remain below the surface. An example of how this occurred in practice is provided by Te Rangai's testimony with regard to the McCaskills' actions immediately after the dam workers had returned to their coastal residence. Prior to their departure:

McCaskill had . . . erected the large wheel of the mill on his own piece of land on the north side of the Hikutaia . . . When we went home McCaskill took advantage of our absence to pull down that part of his mill, which had been put up, and carry it over and erect it on the other side of the river . . . On our return we found he had placed it on our land, and we objected to him trespassing on our property. He said that Ngatikaraua had sold him that land. We then watched that mill cutting white pine.<sup>16</sup>

14. *Ibid*

15. For a discussion of this problem see, 'The Land Claims Commission; Practice and Procedure: 1840-1845', submission of David Armstrong (Wai 45 ROD, doc 14), pp 60-64

16. Testimony of Herewini Te Rangai, 5 September 1866, translated and recorded by Mackay, *Native Statements*.

What is to be made of this situation? It might be argued that in allowing the McCaskills' mill to remain upon the land, Te Rangai was conceding that the land had in fact been included within the boundaries of the original sale. Subsequent protests, however, would indicate that manifestly Te Rangai was not willing to make such a concession. During all of these protests, the eastern boundary was consistently stated as being formed by the Paiakau Ridge, with the mill, as shown in figure 11, being located on the eastern side of the ridge. That the mill was permitted to remain on its new site can be explained by the fact that, at the time of the mill's shift, local Maori were still hopeful of deriving considerable benefits from the timber activities of the McCaskills. They may not have wished to jeopardise these benefits by insisting on the relocation of the mill back to the northern side of the Hikutaia. For without the mill, and the considerable capital investment made by the McCaskills to get it operational, local Maori could not fully exploit the resource represented by the timber. At the same time, as will be shown in considerable detail later, local Maori remained the more dominant of the two parties, controlling as they did access to the timber resource without which, the mill could not function. It was undoubtedly with an awareness of this dual dynamic of their relationship with the McCaskills, that local Maori were willing to allow the McCaskills to establish some claim to the new mill site. This can be seen in the following statement of Herewini Te Rangai:

[In 1851] Mr Drummond Hay came to survey the . . . land I saw him surveying above the Kopua [stream] towards Paiakarahi – I then thought if I did not interfere he (McCaskill) would take that land the same as he did the site of the mill, I therefore went and stopped Mr Hay[.]<sup>17</sup>

While the McCaskills might have believed themselves to have physically asserted their claim to all of the lands granted south of the Hikutaia through the relocation of their timber mill, it is equally clear from the above quotation that those Maori who asserted an interest in the wider area of land east of the Paiakau Ridge did not consider themselves to have relinquished that interest as a result of the mill's shift. Only a survey, the physical marking off and mapping out of the extent of the lands contained in the grants, could fully expose such mutual misunderstandings.

As it was, the first attempt to survey any of the McCaskill grants at Hikutaia did not take place until 1851. In that year, Lachlan McCaskill employed Drummond Hay to survey the block of land granted to him south of the Hikutaia Creek. Hay subsequently submitted the following account to Land Claims Commissioner Bell:

I met no opposition whatever until I had worked up about two-thirds of the distance between the mouth of the [Hikutaia] Creek and the Paiakarahi [Stream]. [T]he eastern boundary of the block. The survey was stopped by Te Rangai and my survey labourers being natives of inferior rank, refused to work. some few days after I resumed the

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17. Ibid

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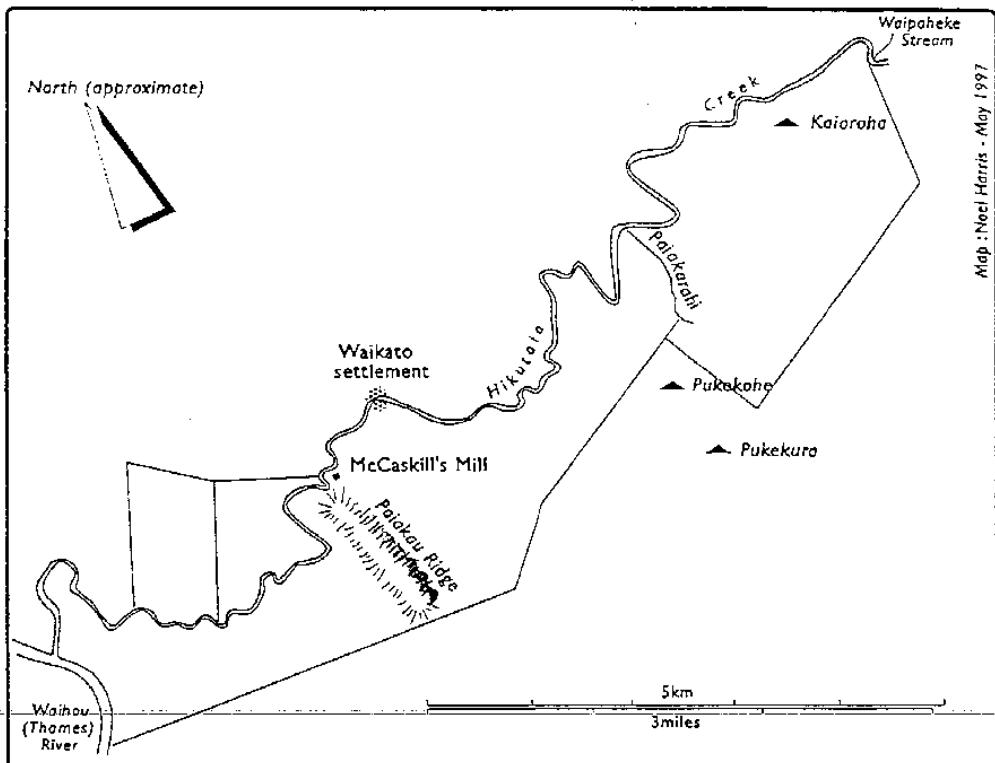


Figure 11: Physical and cultural features of the land

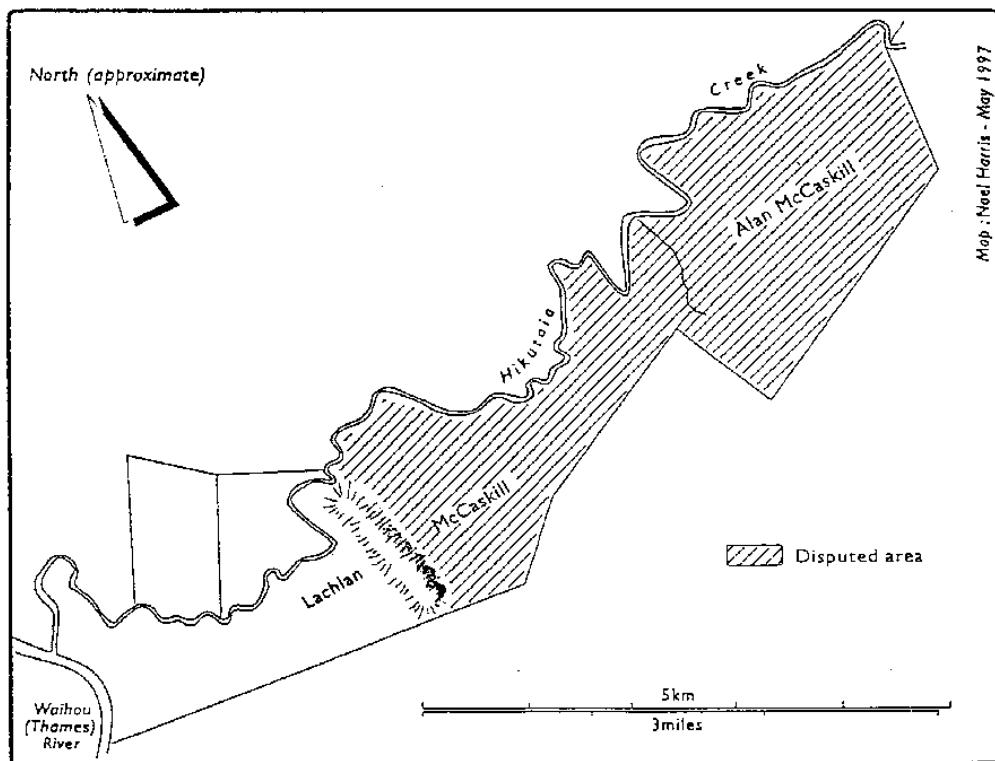


Figure 12 : Extent of granted area subsequently disputed by  
Herewini Te Rangai

survey and completed it with European labourers. Te Rangai . . . was aware that I had recommenced the survey.<sup>18</sup>

Although the survey was completed, the fact that it had been temporarily obstructed exposed for the first time the extent of the discrepancy between the boundaries of the purchase as decided by Commissioner Richmond and repeated in the two southern Crown grants, and the boundaries as understood by Maori. As shown in figure 12, these discrepancies were substantial. Herewini Te Rangai, acting on behalf of the Ngati Pu hapu of Ngati Maru, was disputing that any land to the east of the Paiakau Ridge had ever been alienated. This included not only the 'third' identified by Hay in Lachlan McCaskill's southern grant, that is, the land between the Paiakau Ridge and the Paiakarahi Stream, but also the entire southern grant of Allan McCaskill which was jointly claimed by Ngati Pu and Ngati Tamatera.

While it is not the purpose of this case study to form a judgement upon the boundary discrepancies exposed by the obstruction of Hay's 1851 survey, the documentary record does provide some insight as to how such discrepancies might have come about. The original purchase transaction was not conducted at Hikutaia, but in fact occurred on Arapaoa Beach on Whanganui Island in the Coromandel Harbour. As has already been indicated, this was a product of the desire of Coromandel Maori to base themselves in areas which allowed for maximum contact with Pakeha. Later, Kawhero of Ngati Karaua accompanied Lachlan McCaskill back to Hikutaia in order to point out the boundaries. These were not traversed in person, but rather were pointed out from the top of Paiakau Ridge. As to the inclusion within the purchase boundaries of the disputed areas east of the ridge, several Maori interviewed by James Mackay junior in 1866 provided testimony similar to that of Te Ruihana Kawhero, reproduced below:

I say it is untrue – Those names were mentioned but not as boundaries, There was a fog on the hills, and McCaskill as he stood with us on Paiakau saw the summit of Kaiaroha peeking through the fog and asked 'the name of that hill?' Kawhero replied 'Kaiaroha'? He then asked the name of another and was told 'Pukekura near Paiakarahi'; Those names were never mentioned at the Coromandel meeting.<sup>19</sup>

As suggested by H T Kemp when he was given the task of reviewing the Hikutaia grants in 1872, it was not that unbelievable that such a 'serious misconception' could have resulted from the 'imperfect interpretation afforded in those days by Europeans so employed'.<sup>20</sup>

It is difficult, however, to reconcile the above version of events with the fact that no opposition was raised against the sale of Hikutaia South at Commissioner Richmond's court in June 1843. While Kawhero, the principle seller and the person responsible for pointing out the boundaries of both Hikutaia sales, did not give testimony in the case of Hikutaia South, three others who were present at the

18. Hay to Bell, 14 May 1862, MA 13/36, pt 4.

19. Testimony of Te Ruihana Kawhero, 5 September 1866, translated and recorded by Mackay, *Native Statements*, vol 1

20. Kemp to Native Minister, 21 August 1872, MA 13/36, pt 1

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original sale did. One of these witnesses was Rangituia Hauwhenua, mother of Herewini Te Rangai, the leader of the later resistance against the extent of the McCaskill grants south of the Hikutaia. Herewini would testify before Commissioner Bell in 1859 that while his mother had been present at the 1839 sale of the Hikutaia blocks, she had remained 'silent' because 'she was vexed by Kawhero's proceedings'.<sup>21</sup> If this was indeed the case, she certainly seems to have recovered from her vexation by the time of Commissioner Richmond's investigation into the sale of Hikutaia South in July 1843. At that hearing, she gave the following testimony in support of the sale:

That is my signature to the deed before the Court I saw my late Husband and the rest of the Chiefs sign – it was read and explained to us before we affixed our names – we fully understood it and were satisfied – we sold the land described in the Deed to Mr McCaskill at the time we signed – we were aware that we were parting with the land forever . . . we received the Payment specified in the Deed – the Boundaries are correctly described and I can point them out whenever I am required to do so.<sup>22</sup>

The other two Maori witnesses, Huna and Moana, gave very similar testimony. All agreed that the boundaries, as given in the evidence of Lachlan McCaskill, were correctly described. The description given by McCaskill was taken directly from the purchase deed he produced before the court and has already been quoted above.<sup>23</sup> All three Maori witnesses ended their testimony with a variation of the statement that 'they were able to point out the boundaries whenever they were required to do so'. As it was, they were never called upon to do this. Not until the first survey in 1851 was any attempt made to define the boundaries in a manner more precise than the four line description taken from the original purchase deed. By then, however, as will be shown in more detail later, the relationship between the McCaskills and local Maori had already deteriorated significantly from the harmonious state that had characterised it at the time of the commissioner's hearing.

By comparison with his 1851 survey, Drummond Hay's survey of the two Hikutaia North grants in 1857 went relatively smoothly:

In or about 1857. I surveyed some 700 acres on [the] northbank of Hikutaia . . . no opposition whatever was offered and subsequently when Heta put in a claim of some trifling extent. in this block. I was authorised to settle the matter by making a small payment. I saw Heta was amazed that I should give him £10. and he was to accompany me to the land in question and renounce all claim to it. I had no money at the time . . . and when I called subsequently . . . to pay him he was absent[.]<sup>24</sup>

This second Hikutaia survey was prompted by the passage of the 1856 Land Claims Settlement Act. Under the terms of that Act, Land Claims Commissioner Bell had

21. Testimony of Herewini Te Rangai, 6 February 1859, recorded by Commissioner Bell, MA 13/36, pt 4

22. Testimony of Rangituia, 1 July 1843, translated and recorded by Henry Clarke, OLC 1/287–291, vol 2

23. See above, p 5

24. Hay to Bell, 14 May 1862, MA 13/36, pt 4.

recalled and cancelled all of the Crown grants covering land at Hikutaia. These grants would only be re-issued once they had been re-investigated by Bell. It has been argued in the main text of this report that Bell did not believe his re-investigations under the Act were meant to re-examine the original Godfrey and Richmond findings. Instead, in his investigations, Bell primarily sought to give old land claim-derived Crown grants full cartographic definition, a goal which, through the promotion of the Act's liberal survey allowance, he hoped would also increase the Crown demesne through the identification of surplus and scrip land. As such, a pre-condition of any investigation by Bell was that the land must be accurately surveyed.

This pre-condition also necessitated a re-survey of the McCaskills' southern grants. Drummond Hay's 1851 survey, obstructed by Herewini Te Rangai, was incomplete having stopped at the eastern boundary of Lachlan's grant, the Paiakarahi Stream. Accordingly, in early 1858 Hay was once again employed by the McCaskills to survey the external boundaries of both their southern grants. And once again, his survey was stopped by those who disputed the sale of any land east of Paiakau Ridge: 'Messrs McCaskill then caused a survey to be commenced, but this was objected to by several of the Ngatimaru, and Tukukino of Ngati Tamatera – many of the ranging rods and pegs were pulled up'.<sup>25</sup> As will be shown in much greater detail later, Lachlan McCaskill was not one to give up easily, especially when the economic viability of his family's staying at Hikutaia depended on his securing the re-issue of his southern grants:

Mr L. A. McCaskill waited for some time, until the whole of the resident Natives went to a meeting at Otau, Whangamata; he then took advantage of their absence and procured the services of a surveyor named Campbell, who completed the survey.<sup>26</sup>

Some 22 years later, W C Kensington, chief surveyor for the province of Auckland, would have the following observations to make upon the combined 1858 survey of Hay and Campbell: 'The government requires a re-Survey of the several grants issued to McCaskill at Hikutaia . . . the original surveys are believed to be very erroneous, and to be classed under those popularly known as "Moonlight" surveys'.<sup>27</sup>

The result of this moonlight survey was that by the end of 1858 both sides at Hikutaia were extremely keen for Commissioner Bell to hold court there as soon as possible. For the McCaskills, the primary motivation was the fact that their timber mill, the primary justification put forward by Fitzgerald for the considerable extension of the grants in 1844, had ground to a halt. This was because they had been denied free access to the timber located upon the southern grant of Allan McCaskill, it being disputed that the land had ever been alienated.<sup>28</sup> Until this could be resolved, Lachlan McCaskill attempted to negotiate access to a potentially more

25. Mackay, *Memorandum on Herewini Te Rangai's Letter*, 25 July 1866, o/c 1/287–291, vol 1

26. Ibid

27. W C Kensington to Hickson, 5 February 1880, MA 13/36, pt 2

28. Mackay, *Memorandum on Herewini*

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lucrative alternative. This was a stand of Kauri located at Waipaheke, just to the northeast of his brother's southern grant. Around 1850 Lachlan McCaskill paid Te Ruihana Kawhero an earnest of two casks of tobacco for the right to mill the timber at Waipaheke. This arrangement, however, soon ran into difficulty, as the following testimony of Herewini Te Rangai reveals:

He [McCaskill] went to fell the Kauri timber at Waipaheke. He cut some. We then went and objected. He would not hearken. That was all. I waited until he cut up the timber into boards. I then saw [two] rafts of timber which were to form Mr Lanfears (Revd Mr Lanfears) Church at Kauaeranga. I then detained those rafts. We then had a great quarrel. After this his side being the strongest, he retained possession of the wood, and it was placed on board a vessel named 'Te Hori Heke' – After this McCaskill arranged . . . to cut [some more] of the Kauri timber. I then became angry and on account of the strength of my opposition, they ceased. The kauri logs rotted; and the mill stood idle.

It was my mother (Rangituia) who showed the kauri timber of Waipaheke to McCaskill; but he would not pay sufficient for it – that is why it was objected to – Ruihana attempted to sell it, but I did not admit his right to do so; and prevented him from receiving the £100 and the house – he only got the gunpowder[.]<sup>29</sup>

Denied access to the Kauri at Waipaheke, and with their mill standing idle, the McCaskills were understandably keen for Commissioner Bell to visit Hikutaia and enforce Maori acquiesce to the Crown grants they had been issued, so that they might mill the timber which stood upon the lands conveyed in those grants.

Local Maori were also keen for Commissioner Bell to come to Hikutaia. They had obstructed the survey of the land they claimed had not been alienated, reinforcing their point with what effectively amounted to an economic stranglehold which directly challenged the economic viability of the McCaskills remaining at Hikutaia. The McCaskills, however, did not accept the legitimacy of the Maori case, as was amply demonstrated by the completion of the 1858 survey in their absence.

Even before the moonlight survey of 1858, local Maori had adopted a third mode of resistance, that is, they wrote to Commissioner Bell and asked him to intervene and provide a favourable settlement. This can be seen in Bell's comment that: 'In consequence of numerous Native letters having been at various times addressed to the Government containing objections to the claims, I considered it necessary to hold a court on the spot for the investigation of such objections'.<sup>30</sup> The fact that Bell felt it necessary for him to hold a special court at Hikutaia speaks volumes about the quantity of mail that must have reached him.

Bell eventually got to Hikutaia in February 1859. The first claim he investigated was the McCaskills' purchase at Opukeko. Like Hikutaia North, this had been surveyed in anticipation of Bell's investigation under the 1856 Act. Like Hikutaia south, the survey had been obstructed on the grounds that only part of the claim had

29. Testimony of Herewini Te Rangai, 5 September 1866, translated and recorded by Mackay, *Native Statements*, vol 1

30. Bell, 23 June 1862, OLC 1/287-291, vol 1

actually been alienated. At Opukoko, McCaskill had secured the continuance of the survey by repeatedly telling ‘them [the obstructors] that the survey was not final or decisive, as the whole decision was to be left to the decision of the Commissioner’. Armed with this assurance that the ‘survey was [therefore] a matter of no importance’, they allowed it to continue and saved their objections for Bell’s Hikutaia court.<sup>31</sup> The result of this chain of events was that when Bell began his investigation into the Opukoko claim the ‘natives seized the advantage thus given, and made wholesale objections, many of which appeared to me [Bell] to be quite unsustained’. Bell’s response to this opposition, as reported by him three years later, was to:

state distinctly to them, that it was impossible for me to entertain the claims of those who were mere children at the time of the sale ... or [who] had failed to bring forward their objections in a valid manner before the investigating Commissioners in 1843.<sup>32</sup>

This reprimand failed to have the desired effect. Indeed, such was the continued intensity of opposition expressed before the commissioner in regard to the Opukoko claim that McCaskill told Bell he would not proceed with any of his claims, including those at Hikutaia. He subsequently relented from this position, however, and consented to Bell investigating the grants north of the Hikutaia.<sup>33</sup> If McCaskill had expected this would give him some respite from the barrage of opposition, he was seriously mistaken. Asked for his opinion regarding the northern grants, Herewini Te Rangai immediately evaded the question and sought to provoke a discussion of the disputed boundaries south of Hikutaia Creek.<sup>34</sup> Faced with the certainty of prolonged opposition to his southern grants, McCaskill ‘at length made an application to me [Bell] to postpone the whole of the claims until he should be able to produce other evidence – I of course at once granted the adjournments, and informed the natives accordingly’.<sup>35</sup>

Further light is shed on the exact nature of this adjournment by a written summary of proceedings signed and dated by Bell three days after the court had first opened:

Mr McCaskill here made an application to the Court to postpone a decision on *any of the claims* until he should have an opportunity of assembling those natives who could give evidence in his favour.

The Court acquainted Mr McCaskill that this application appeared fair, and would be granted. At the same time the Court intimated that the course which Mr McCaskill had pursued appeared the most suicidal, because up to the present time a mass of hostile evidence had been tendered and not a single favourable testimony given; and

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31. Hay, *Sworn Testimony of Natives at Hikutaia Lands Claims Court*, 3 February 1859, MA 13/36, pt 4. Corroborated in Bell, 23 June 1862, OLC 1/287–291, vol 1.
32. Bell, 23 June 1862, OLC 1/287–291, vol 1
33. Ibid
34. Hay, *Sworn Testimony*
35. Bell, 23 June 1862, OLC 1/287–291, vol 1

### *Case Study: The McCaskills at Hikutaia*

that it did not appear that any steps whatever had been taken by him to meet this hostile evidence though he was aware it would be offered. That under the circumstances the Court would grant the postponement of the hearing. The Commissioner informed the natives accordingly, that the case would be postponed until Mr McCaskill [could] have an opportunity of producing more evidence. [Emphasis in original]<sup>36</sup>

It is difficult to reconcile Bell's subsequent actions with this earlier account of his reasons for the adjournment of the Hikutaia court. On the one hand, it is clear that given the sympathy of Hikutaia Maori for the objectives of the King Movement, Bell was reluctant to return immediately to Hikutaia.<sup>37</sup> But while it might be argued that the increasing tension between the Government and the Kingites justified a postponement of Bell's promised return, it certainly cannot be held to justify the course he subsequently pursued. For Commissioner Bell never returned to Hikutaia. On 15 May 1862, Drummond Hay appeared before Bell in Auckland and presented the court with a memorandum regarding the surveying of Hikutaia. After acknowledging the 1851 obstruction by Herewini Te Rangai, Hay's memorandum stated:

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This was the only opposition offered during the survey. Within the last three or four years other opposition has arisen.

I consider that the opposition could be disposed of by payment of a certain sum . . . I imagine that if they were informed that the matter was to be finally disposed of and no further reference to it permitted they would be willing to accept a sum of money in preference to persisting [with] their claims[.]<sup>38</sup>

Hay's evidence in 1862 was consistent with earlier testimony he had submitted to Bell shortly after the Hikutaia adjournment:

The disposition evinced by the natives to oppose Mr McCaskill's claim appears to increase every year . . .

There is some truth I think in the supposition that the natives have taken advantage of the confusion created by the numerous names that exist for the various portions of a block[.]<sup>39</sup>

By relegating the opposition of local Maori to the level of personal greed or financial opportunism, and by suggesting that it could be removed by a monetary payment, Hay was making a conscious decision to downplay the determination of that opposition. For not only had Hay been twice obstructed in attempting to survey the southern grants, he had also been employed by the McCaskills in their Kauri

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36. Bell, 6 February 1859, MA 13/36, pt 4.

37. John Hutton, 'Troublesome Specimens: A study of the relationship between the Crown and the Tangata Whenua of Hauraki 1863–1869', MA Thesis, University of Auckland, 1995, p 66

38. Hay to Bell, 14 May 1862, MA 13/36, pt 4

39. Hay to Bell, 16 June 1859, MA 13/36, pt 3

removal operations.<sup>40</sup> He would have been only too aware then, of the seriousness of the economic stranglehold currently exercised over the McCaskills' property.

The importance of Hay's evidence was highlighted when on 16 May 1862, the day after Hay had appeared, Lachlan McCaskill appeared before Commissioner Bell. Lachlan requested that all four Hikutaia grants should be re-issued immediately. In support of this request he produced no evidence other than citing the memorandum presented by Hay the day before.

Five weeks later, Bell recommended that grants should be re-issued for the land north of Hikutaia, and for Lachlan's block south of Hikutaia. The issue of a grant for the other southern block, that of Allan McCaskill, was delayed until March 1864.<sup>41</sup> It is clear from Bell's report containing these recommendations that he placed considerable stock in the testimony of Drummond Hay. Explaining his reissuing of the grants covering Hikutaia North, Bell commented: 'I have a certificate from the District Land Purchase Commissioner [Hay] that there is no risk [of Maori disturbance] in issuing the grants immediately'. As for Lachlan's southern grant, Bell noted that:

the District Land Purchase Commissioner has stated in evidence that when he made the survey ... there was no opposition excepting that of Herewini, son of the chieftainess Rangituia, she was a party to the sale to McCaskill and admitted such before the investigating Commissioners in 1843 ... I cannot admit that Herewini shall now be entitled to dispute his mother's sale. Moreover Mr Drummond Hay states that there would be no risk of Herewini seriously disturbing Mr McCaskill's possession, and that if any opposition was made it would be made by natives who gave no notice of their claims prior to the survey[.]<sup>42</sup>

Several points might be made about Bell's report. Firstly, Bell was clearly misled in assuming that any subsequent disturbance of the McCaskills' possession would be groundless because there had been no indication of its existence during the survey of the southern grants. While James Campbell could truthfully write to McCaskill in 1858 'that no obstruction whatsoever was offered by the Natives to the survey of any of the lines', this was because the survey had been carried out in the absence of the local residents who, at the time, were on the other side of the Coromandel Peninsula.<sup>43</sup> While Bell may have been unaware of this, he no doubt would have been informed of it had he kept his promise to return to Hikutaia to hear further evidence upon the McCaskill claims. Secondly, it has already been argued that Hay consciously downplayed the determination and nature of the opposition of local

40. Testimony of Herewini Te Rangai, 5 September 1866, translated and recorded by Mackay, *Native Statements*, vol 1

41. There were several reasons for this delay. The primary one was that the derivative holders of S M D Martin's Hikutaia grants had the first right to select land at south Hikutaia as a result of a much earlier arrangement. As has already been shown, this was problematic in that the McCaskills claimed to already occupy all the available land at Hikutaia. Other problems causing delay were the issue of outstanding fees, Lachlan McCaskill's right to represent his brother's interests, and attempts to gain scrip in exchange. For the large collection of relative correspondence see MA 13/36, pt 5.

42. Bell, 23 June 1862, OLC 1/287-291, vol 1

43. Campbell to L A McCaskill, 1 November 1858, OLC 1/287-291, vol 2

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Maori to the boundaries as conveyed in the Crown grants. Bell himself must have been aware that this was the case because of the 'mass of hostile evidence', to quote his own minutes, advanced at the 1859 Hikutaia hearing.<sup>44</sup> Which leads on to the perhaps the most important point surrounding Bell's 1862 report, that is, the massive discrepancy in tone between it and his minutes taken immediately after the adjournment of the Hikutaia court. Bell's 1862 report makes no mention of Lachlan McCaskill's failure to subsequently bring forward any supporting witnesses, nor of his own promise to return to Hikutaia to allow for a full investigation of the Hikutaia grants. These omissions, reliance upon the testimony of Hay, and the inclusion of statements such as: 'after much verbal communication with the parties interested, I have arrived ... [at] the present position', seem to amount to a deliberate ignoring of the evidence.

Certainly this is how the report would have been perceived by those Maori who still maintained an interest in the land granted at Hikutaia. This can be seen in statements recorded by H T Kemp in 1866 which clearly show the impression and expectations local Maori took away from the 1859 hearing:

McCaskill was not satisfied, he asked for an adjournment until he could procure evidence in support of his claim from the NgatiKaraua ... We understood Bell was to come back to finish Kakaramea [North Hikutaia] – There was nothing further said about the land on the south side of the Hikutaia Stream ... I, and every one else supposed it was to be investigated when McCaskill produced the evidence from Ngatikaraua; and Mr Bell returned to hold the Court – McCaskill has never found the witnesses – and we have been waiting for Mr Bell to come back to complete his work and fulfill his promise[.]<sup>45</sup>

The feeling of local Maori that a wrong had been committed against them as a result of Bell's non-fulfilment of his 1859 promises was strong and enduring. This can be seen in the following memorandum from E Puckey, written after he had personally visited Hikutaia in 1872:

Some dispute having arisen the Court was adjourned ... they [local Maori] had no notice of any subsequent sitting of the Court at which the cases were further gone into and a decision given and it has been difficult to convince them that Crown Grants had actually been issued in favour of the McCaskills upon these grounds, therefore the Natives complain that an injustice has been done them[.]<sup>46</sup>

Denied the chance to present their grievances before the commissioner's court, those who claimed an interest in the disputed land at Hikutaia continued to maintain their previous forms of resistance. They continued to deny the McCaskills free access to the timber located upon the disputed lands and maintained a steady correspondence with various Government agents.<sup>47</sup>

44. Bell, 6 February 1859, MA 13/36, pt 4

45. Testimony of Herewini Te Rangai, 5 September 1866, translated and recorded by Mackay, *Native Statements*, vol 1

46. Puckey to Kemp, 5 July 1872, OLC 1/287-291, vol 1

Significantly, they also adopted new forms of resistance. In 1866, Te Rangai and four others petitioned Parliament on behalf of the runanga of Ngati Pu. The petitioners asked that Parliament annul the grants to the disputed lands and appoint a fresh tribunal to look into the case:

The reason is a grievance of ours – and our living in affliction. Because our land is taken by the hand of (Mr) McCaskill and the Crown grant. According to our idea the Crown Grant is wrongfully taken by this European . . . because Mr Bell's investigation was not quite completed . . . We do not know what person gave that land to him – And the final survey we never saw.<sup>48</sup>

A second form of active resistance commenced by those Maori who maintained an interest in the lands granted to the McCaskills was, from 1868, to take up continuous residence at Hikutaia.<sup>49</sup> The precise location of this settlement is not clear. An 1872 memorandum from E Puckey locates it adjoining the creek on the block granted to Lachlan McCaskill north of the Hikutaia. If this was in fact the location, it would be highly significant because this was the area whose alienation was least disputed by local Maori. Other correspondence, however, seems to locate the settlement somewhere on the two southern grants, or on Allan McCaskill's northern and southern grants.<sup>50</sup>

While the exact location of this settlement may not be clear, there can be little doubt as to its impact which was to decrease even further the economic viability of the McCaskills' continued residence at Hikutaia. This is reflected in the following extract from a letter written on behalf of David Nathan. Nathan held the mortgage over the McCaskill lands. The letter sought to draw the attention of the Defence Minister, Donald McLean, to:

certain encroachments and annoyances, which Allan McCaskill . . . has been subjected to by aboriginal natives having encroached on his lands, for which he holds a Crown grant, and on which, notwithstanding his repeated notices for them to leave, they continue to reside, to his great injury and loss; he only being able to beneficially

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47. See for example, Herewini Te Rangai to James Mackay, 4 June 1866, in which Te Rangai asks Mackay to come to Hikutaia and settle the continuing dispute. OLC 1/287-291, vol 1.
  48. Herewini Te Rangai and others, 7 August 1866, OLC 1/287-291, vol 1. I can find no reference in the AJHR to this petition having been reported upon by a select committee.
  49. As shown in figure 11, previous to this there was already a significant site of Maori settlement bordering the McCaskill grants. This earlier site was inhabited by refugees from the Waikato tribes, principally Ngati Haua, who had kinship ties with those at Hikutaia. The settlement was a product of 'the expulsion of the Maori living near Auckland into the Waikato and the subsequent confiscation of the Waikato lands . . . While Ngati Haua retained territory outside of the confiscation boundaries . . . , their post-war resources were not large enough to support such large numbers of refugees'. Hutton, p 73. It is highly interesting that a James Mackay sketch map, dated 25 July 1866, has the Waikato settlement located on both banks of the Hikutaia, the southern portion being approximately one-quarter of the total area taken up by the settlement. On his sketch, Mackay has annotated the southern portion of the settlement with the comment: 'Waikato refuge settlement, abandoned by my orders, to prevent dispute'. Mackay, 'Rough Sketch of lands granted to Messrs McCaskill at Hikutaia – Thames', 25 July 1866, OLC 1/287-291, vol 1.
  50. Fannin, 13 May 1878, OLC 1/287-291, vol 1 refers to a July 1870 letter in which Allan McCaskill 'informed the Government that the natives had within the past twelve months taken possession of the whole of one section of land and part of another owned by him'.

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occupy about 300 Acres; out of about 4,000 Acres [the approximate area of both the southern grants]. The houses and pigs belonging to the natives are doing great damage to his land, and his fences are continually destroyed. On one occasion the Natives burnt a fence which divided the farm.<sup>51</sup>

The last sentence gives an indication of the consequence of this new form of resistance. While the issue of the ownership of the land remained at all times the fundamental one, from the late 1860s the conflict at Hikutaia intensified to a very personal level as a result of the close proximity of the two parties and of the increasingly desperate economic situation of the McCaskills.

It is clear that the McCaskill brothers were both very determined individuals. Given the situation they increasingly found themselves in, it is perhaps understandable that they did not draw back from inflicting inconvenience upon those who, through the effective imposition of an economic stranglehold, were attempting to force them and their families off the land.

In its mildest form, this inconvenience took the form of the McCaskills closing down two Maori roads which traversed their southern grants. As Herewini Te Rangai testified to James Mackay in 1866:

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McCaskill has stopped two main roads, running through the land. One is the great road leading up the eastern side of the Thames, and the other is the road leading from Hikutaia to Whangamata. These roads have been used by our ancestors from the earliest times, and they are now closed for the first time by this European.<sup>52</sup>

Not even the intervention of Mackay himself, in his capacity as Civil Commissioner, could dissuade them from this course of action:

On the 1st May 1865 I called on Mr Allan McCaskill and requested him not to stop the roads – He refused to accede to my wishes – I then denied his right to do so as they had been used as public roads for many generations. The tracks have been partially closed since that time . . .

The blocking up of these paths has been productive of much mischief and ill-feeling[.]<sup>53</sup>

Other examples of activities which contributed to this heightened ‘mischief and ill-feeling’ are highlighted in the following extract from a memorandum which dealt with the shooting of three of the McCaskills’ cattle:

With regard to the cattle shooting. The natives do not deny that they did wrong but they excuse themselves for having done so on the plea that it was a ‘safer utu’ for Lachlan . . . McCaskill having killed a number of their pigs, and also for his having tied up by the legs one of their horses which had strayed into one of Allan McCaskill’s paddocks[.]<sup>54</sup>

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51. Nathan's Attorney to McLean, 28 June 1872, OLC 1/287-291, vol 1

52. Testimony of Herewini Te Rangai, 5 September 1866, translated and recorded by Mackay, *Native Statements*, vol 1

53. Mackay, *Memorandum on Herewini*

The response of the McCaskills to the cattle shooting was to have a summons issued against Herewini Te Rangai. Although it is doubtful this summons was actually delivered in the correct manner, the point is a moot one because Te Rangai failed to appear in court.<sup>55</sup> While the Pakeha jury found against Te Rangai, the judge refused to issue a warrant for his arrest unless Puckey consented. This Puckey refused to do, prompting an exchange with Allan McCaskill which provides an excellent insight into the latter's frame of mind by 1870:

I [Puckey] told him I thought the most prudent course to adopt would be not to take out a warrant as the attempt to carry it into execution would I was convinced be attended with a serious breach of the peace. He then told me he had thirty years of native experience and would yield to no one in his opinion. [H]e knew how best to secure peaceable possession of the land . . . all that was required was that a warrant should issue for the apprehension of Herewini te Rangai [sic] which should be held out as a threat hanging over his head in case any further molestation should be attempted[.]<sup>56</sup>

The dispute between the McCaskills and local Maori continued to escalate until it reached the level of acts of violence against individuals. These acts were perpetrated by both sides in the dispute. In August 1872 Lachlan McCaskill wrote a letter to draw to the 'attention of government' the details of one such attack. After declaring that he and his brother had been forced by the attack to withdraw their cattle and pigs so that they were no longer able to make a living off their lands at Hikutaia, Lachlan went on to write:

I will only add that the the [sic] personal attack lately made on me by the natives was the third attack made upon me within three years. On the first occasion I was enabled to master the aggressor though armed with a knife. On the second occasion I attained possession of the assailants axe and with this kept him at bay until I found I must either use it against him to his destruction or let him close with me which event I have no doubt he would have used it against me to my destruction he being much the stronger person as a last alternative I flung it over a fence and by this means escaped but not until he had severely maltreated and assaulted me. I refer to this simply as a reason for the conviction that it is too dangerous to attempt to protect the . . . crops until these natives have been reprimanded[.]<sup>57</sup>

According to Puckey, Lachlan McCaskill was 'a most cantankerous person . . . who according to statements made to me by disinterested parties of both races misses no opportunity of committing petty acts of spite to irritate and vex his Maori neighbours'.<sup>58</sup> Lachlan may have been committing such a 'petty act of spite' on 1 June 1872 when he was accosted by a group of local Maori, one of whom he shot

54. Puckey, 23 November 1870, MA 13/36, pt 3

55. It would seem that the summons was not delivered personally to Te Rangai but thrown at the door of a house which did not even contain him. *Ibid.*

56. *Ibid*

57. A McCaskill, 7 August 1871, MA 13/36, pt 1

58. Puckey, 23 November 1870, MA 13/36, pt 3

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and seriously wounded. The Maori had been drawn to the site of the shooting by hearing the sounds of their pigs being disturbed by dogs. Their arrival coincided with that of Lachlan McCaskill, who was carrying a gun and holding one of his dogs on a flax leash. Upon sighting McCaskill, one of the group, Hoani Pahau, approached Lachlan who shot him before they came together. As might be imagined in light of the ongoing dispute at Hikutaia, each side gave considerably differing testimony with regards to the manner of Hoani's approach and the degree of warning shouted by Lachlan before he opened fire. The case came before the Supreme Court in Auckland in early July 1872. Maori testimony, taken previously before the Resident Magistrate at Hikutaia, was presented to the court and then Allan McCaskill, who had arrived at the scene prior to Lachlan, gave evidence as the only defence witness. The all-Pakeha jury acquitted him of the charge of discharging a firearm with intent to injure on the grounds that he had acted in self-defence. To quote J W Lewis, a Native Department official:

It is clear that the jury gave the preference to the evidence of the European – tho' according to the dispositions [before the Resident Magistrate] the consistency of the evidence of the Natives appear to stamp it as truth and if so the case of Hone Pahau is a very hard one.<sup>59</sup>

It is impossible to reconstruct so long after the event exactly what happened on the day of the shooting. This is especially so in this instance where there is no independent third party to corroborate the evidence of two sides polarised by a prolonged and bitter dispute. There can be no doubting, however, that the shooting and its subsequent repercussions represent the climax of the dispute over the McCaskill old land claims at Hikutaia. These repercussions began almost immediately upon the verdict being announced. On the day the trial ended, Puckey wrote to McLean that the acquittal of McCaskill had 'caused so much sensation and disappointment amongst the Natives' that he did not think it wise or safe for Lachlan McCaskill to return to Hikutaia in the near future.<sup>60</sup> On the recommendation of Native Lands Commissioner Daniel Pollen, McCaskill was cautioned accordingly and decided to stay in Auckland for the meantime.<sup>61</sup> The wisdom of that decision was borne out by a meeting of local Maori at Hikutaia on 11 July. The results of that meeting, called specifically to discuss the McCaskill verdict, were subsequently conveyed by the participants in a letter to McLean:

the law has made a mistake in allowing McCaskill to get off unpunished.

Do not let him return to his land at Hikutaia but leave it as payment for Hoani Pahau's blood, he must not return, his brother and the children must be expelled from Hikutaia, Leave his land as payment for the blood of Hoani.

These words are lasting.<sup>62</sup>

59. Lewis to McLean, 10 August 1872, OLC 1/287–291, vol 1

60. Kemp to McLean, 6 July 1872, MA 13/36, pt 1

61. Pollen minute, 8 July 1872, on Kemp to McLean, 6 July 1872, MA 13/36, pt 1

62. Eru Te Ngahue and twenty others to McLean, 12 July 1872, MA 13/36, pt 2

Significantly, the same letter makes it clear that the repercussions from the acquittal of Lachlan McCaskill extended beyond the immediate issue of the old land claims at Hikutaia. Specifically, Lachlan's acquittal had incensed Maori throughout the Upper Thames region and they had begun to question the justice of the European legal system itself. After outlining several instances where Hauraki Maori had previously turned over individuals to, or allowed certain incidents to be dealt with under, the Pakeha system of law, the letter asked that the testimony and proceedings of the case be translated and published in Waka Maori. They asked that this be done so that they might be able to come to some understanding of why McCaskill was acquitted and Haoni Pahau found to be in the wrong.<sup>63</sup> As Puckey wrote to the Under-secretary of Native Affairs, G S Cooper, the:

Natives [are] extremely dissatisfied and say they will not allow any similar case for the future to go before the Supreme Court – But will take the law into their own hands [for] they feel that no jury composed of white men will convict one of their own colour of an offence against a native.<sup>64</sup>

These sentiments were just as strong two weeks later, when another meeting took place amongst local Maori. 'The object of the meeting was to consider the course pursued by the Jury in discharging McCaskill . . . and also to consider the propriety of admitting Maoris to form part of the Jury in such cases'.<sup>65</sup>

Even amongst such fundamental questioning of the possibility of the European legal system delivering justice to Maori, the participants at this second meeting still found time to reiterate their earlier demand that 'Makahiki', McCaskill, should not return to the Thames district. This was a clear indication that they were not in any way placated by McCaskill's decision, five days earlier, to allow the reopening and marking off of the two Maori roads previously blocked on his property.<sup>66</sup> It was not until October 1872, almost exactly four months after his acquittal, that Lachlan McCaskill returned to Hikutaia. His motivation in doing so seems to have been to place pressure upon the Government to buy out his family's interests at Hikutaia, having recently had the land valued by a private valuer.<sup>67</sup> His presence certainly had the potential to provoke a further incident in the long running dispute. As much can be seen in the following letter, written on behalf of all Ngati Pu, on the very day McCaskill arrived back at Hikutaia:

Salutations to you. This is a word to you respecting Mr McCaskill, who has been seen back here.

Friend. Come and bring him back from this. If he is left here, we will do as we have said if he again begins any evil influence, he will be killed by us.<sup>68</sup>

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63. *Ibid*

64. Puckey to Cooper, 9 July 1872, MA 13/36, pt 2

65. Taipari to McLean, 25 July 1872, MA 13/36, pt 2

66. Pollen to Native Minister, 20 July 1872, MA 13/36, pt 2

67. Pollen minute, 10 October 1872, on Pokai to Puckey, 8 October 1872, MA 13/36, pt 2

68. Pokai to Puckey, 8 October 1872, MA 13/36, pt 2

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The Colonial Government, however, would not be pressured. Throughout the dispute it had consistently refused to attempt a resolution by buying out the McCaskills' interests. Instead, the McCaskills, financially ruined by the prolonged dispute, sold their interests to Henry Alley, a settler from the Hawkes Bay.

While the removal of the McCaskill brothers from Hikutaia ensured that the dispute was much less intense, it was certainly not given up by local Maori, who continued to reside upon the property and thereby limit its economic viability. Writing in April 1873 to Dr Pollen, recently recalled to the Legislative Council, Henry Alley stated that the resident Maori refused to allow him to lay drains so as to increase the cultivable acreage of the property. They also opposed the erection of fences and burnt down a whare which housed one of his workers.<sup>69</sup> When this failed to provoke a satisfactory response he wrote to other governmental officials, for example, Julius Vogel, at that time Premier, to whom he complained that:

the natives are preparing to plant their crops on the land so disputed.

I therefore have to submit to the Government the advisability of their at once having this matter settled, as owing to my cattle and men being on the land there may be disputes and ill-feeling in the event of their crops being damaged[.]<sup>70</sup>

Local Maori also continued their long-established practice of corresponding with Government officials in an endeavour to gain recognition of their rights to ownership of a substantial portion of the lands which had been Crown granted as a result of the McCaskills' old land claims at Hikutaia. One such effort was the 1876 petition of Tamati Paetai and thirteen others, on behalf of all Ngati Pu. While the relevant Parliamentary select committee reported that it was 'entirely unable to investigate the merits of the petition', it also suggested that the Executive branch might wish to investigate the matter further by referring it to the Native Land Court.<sup>71</sup>

This was in fact what occurred, although, as has already been seen, the eventual referral was in response to the claims for compensation by the derivative holders of S M D Martin's Hikutaia grants, rather than the 1876 petition. The investigating Judge was Henry Halse, sitting at Shortland township, in August 1879. Significantly, the eventual written judgement by Halse gives extensive and highly sympathetic coverage to the various grievances raised by local Maori in relation to the McCaskill old land claims at Hikutaia. That Halse was willing to go to such lengths is especially interesting when it is considered that he would eventually rule that, because the lands at Hikutaia had been Crown granted, the court only had jurisdiction to recommend compensation for Martin's derivatives and could make no recommendations relating to the validity of the grants themselves.<sup>72</sup> It seems probable that it was because of the highly sympathetic coverage given by Halse that

69. Alley to Pollen, 14 April 1873, MA 13/36, pt 1

70. Alley to Vogel, 29 August 1873, MA 13/36, pt 1

71. John Bryce, 'Report on Petition of Tamati Paetai and Thirteen Others', 6 October 1876, AJHR, 1876, 1-4, p 18

72. Halse, 26 August 1879, OLC 1/287-291, vol 1

### *Old Land Claims*

in 1880 the Government finally moved to negotiate a form of settlement with local Maori at Hikutaia. The exact nature of this, and subsequent settlements, is not at all clear and will need to be more fully researched before definitive statements can be made.

Certainly, as this case study has shown, any settlement was a long time coming. Since the very first survey in 1851 had exposed the differing conceptions of the area purchased in December 1839, those Maori who had traditionally asserted an interest in the disputed lands had resisted the subsequent Crown grants being made effectual. This resistance had initially taken three main forms, resistance to survey, correspondence to colonial officials, and most important in the long run, denial of effective economic use of the property. While Commissioner Bell in his 1862 Report to Parliament, and Drummond Hay in his surveyor's memorandum before the Auckland sitting of the commissioner's court, deliberately sought to downplay the scope and depth of this resistance, they were in this instance unsuccessful. This was because local Maori reacted to the above attempts to deny them an opportunity to present their case with the continuation of old, and the adoption of new, modes of resistance. In addition to petitioning Parliament directly, Ngati Pu took up residence upon the disputed lands. As well as tightening their economic stranglehold, this also placed the two sides in close proximity. The combined effect of these two factors was an intensification of resistance which climaxed in personal acts of violence by both sides.

## CHAPTER 7

# CONCLUSION

The preceding four case studies have focused on specific aspects of the old land claims' process. The Fairburn case study highlighted the Colonial Office policy towards 'surplus land', as well as the failure of the Crown to use that 'surplus' in a manner which safeguarded the interests of the Maori vendors.

Closer examination of the several claims of William Webster illustrated the inadequate nature of the investigations carried out by the early old land claim commissioners, Godfrey and Richmond. Indefinite or exaggerated boundaries, failure to pay the rightful owners, and incomplete or exaggerated payments were some of the faults which escaped the commissioners' notice when they examined the Webster claims. Less easy to determine is whether subsequent Crown purchases adequately compensated Maori for these earlier 'oversights'.

Scrutiny of the Hokianga scrip claims, in particular the failure of the Crown to physically indicate its assumption of ownership for nearly two decades, revealed a different set of problems. Accurate identification of boundaries was hampered by the fact that many of the original vendors had passed away in the interim. The considerable lapse of time also witnessed the establishment of 'encroaching' cultivations. These problems were further compounded by the behaviour of John White who was never invested with an authority appropriate to the tasks he chose to undertake. Furthermore, he applied this assumed authority in a highly inconsistent manner; exceeding it when to do so would benefit the Crown, but denying any 'discretionary' power if the exercise of such a power would benefit the Maori vendors.

Finally, the McCaskill old land claims at Hikutaia were used to highlight the range and scope of resistance which could be carried out by those Maori affected by old land claims. At Hikutaia, resistance to survey, correspondence with colonial officials, and denial of effective economic use of the property were all utilised by the Maori vendors to secure an audience with Commissioner Bell in 1859. Bell's refusal to reconsider the purchase, however, led to a continuation of resistance eventually climaxing in personal acts of violence by both sides.

All the above case studies raise important questions about the old land claims' process. Whether the four case studies can be considered to be representative of the majority of old land claims is a matter which will have to await more in-depth research on those claims. Such research has yet to commence in many regions. The notable exception to this is the Waitangi Tribunal's recent *Muriwhenua Land Report* which examines old land claims in the Far North in considerable depth.



## PART III

### THE CROWN'S SURPLUS IN THE NEW ZEALAND COMPANY'S PURCHASES

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## CHAPTER 8

# THE CROWN'S SURPLUS IN THE NEW ZEALAND COMPANY'S PURCHASES

### 8.1 INTRODUCTION

It is perhaps a bit odd to be studying ‘surplus lands in the Company’s cases’, as there was never a formal Crown claim to a ‘surplus’ arising from any of the New Zealand Company’s purchases – or if there was, it has never been recognised as such.

Because of this, we should try to be particularly clear in this study what it is we are looking at or for when we refer to ‘surplus’ lands’. We will take ‘surplus’ lands’ to refer to lands:

- which lay *within* the bounds of any of the company’s claimed purchases;
- and which were *not* granted to the company by virtue of the claimed purchases;
- but which *were* claimed by the Crown by virtue of those claimed purchases.

On the first point, we should note at the outset that the company based its purchase claims on various combinations of:

- pre-Treaty transactions, mostly for ‘overlord’ Maori interests and some initial ‘resident’ interests (1839 to early 1840 at Port Nicholson, Kapiti, Queen Charlotte Sound, Manawatu, Wanganui, New Plymouth);
- Crown-supervised transactions under Hobson’s pre-emption waiver, mostly for ‘resident’ Maori interests within the areas of the previous ‘overlord’ transactions (1841 to 1846, at Porirua, Port Nicholson/Hutt/Ohariu, Manawatu, Nelson/Golden Bay, Wairau, Wanganui, New Plymouth);
- Crown-supervised transactions under FitzRoy’s pre-emption waiver for all interests within two entirely *new* purchase areas – namely Wairarapa and Otakou;
- Crown-supervised adjustments under Grey’s pre-emption waiver, of purchases already successfully begun (that is, Port Nicholson–Hutt–Ohariu, Manawatu, Wanganui, New Plymouth, Nelson–Golden Bay);
- Crown-negotiated transactions under Grey’s pre-emption waiver, for lands previously *unsuccessfully* transacted for (namely, Porirua and Wairau);
- Crown-negotiated transactions under Grey’s pre-emption waiver, for lands not previously transacted for by the company (for example, Rangitikei, parts of Taranaki, the Kemp purchase).

## 8.2 THE LAND CLAIMS INQUIRY IN THE NEW ZEALAND COMPANY DISTRICTS

We can speak with relative confidence of which lands were included in the company's original claims, and hence, would have gone to the Crown as 'surplus' had those original claims succeeded.

In his initial May 1842 submission before the Land Claims Commission at Port Nicholson, Colonel William Wakefield submitted a plan entitled 'Plan of the Lands claimed in the cases of William Wakefield and John Dorset on behalf of the New Zealand Company claimants.'<sup>1</sup> It showed a large yellow area covering the southwest corner of the North Island, enclosed by a straight dotted line running from the Mokau River on the northwest to just south of Castlepoint on the southeast. It also showed the northern end of the South Island, similarly coloured yellow and enclosed by the 43 degree south line of latitude.

Within this large yellow area, the plan showed three separate districts, each enclosed by a solid line and marked with a number corresponding to numbers in the key of the plan. The key read:

1st Deed	Port Nicholson purchase
2nd do	[Raupero's] and [Te Hiko]'s title to all their lands within the bounds coloured Yellow
3rd Deed	The same as regards the Ngatiawa tribe.
4th do	Wanganui
5th do	Taranaki
6th do	do

The boundaries of the first, second and third purchase areas on this plan matched the boundaries on the purchase deeds which Wakefield read out to the commission (below). The boundaries of the fourth, fifth, and sixth purchases areas – at Wanganui and Taranaki – did not, however, match the boundaries described on the Wanganui and Taranaki purchase deeds and read out to the Land Claims Commission. The boundary shown at Wanganui did match that shown in an 1842 company survey of Wanganui lands for sale, selection, and settlement (below). But the boundaries shown at Taranaki did not match either those of the Taranaki deeds or of the 1842 New Plymouth survey of lands for sale, selection, and settlement (below).

In sum, this 1842 plan was a hodge-podge even at the time the company submitted it to the Land Claims Commission. It did not subsequently feature in any of the company's claim presentations or the commission's reports or awards. A

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1. Wai 145 ROD, doc E4, p 178

proper picture of the company's original claims requires a reconstruction of the boundaries described in their *deeds* and read out to the Land Claims Court in 1842 to 1844.

### 8.3 THE INITIAL TRANSACTIONS: PORT NICHOLSON

A brief sketch of the company's pre-Treaty land transactions illustrates why these transactions did not end up generating any 'surplus' outside of the lands awarded to the claimants themselves – company, Church, and private. Since the Land Claims Commission was the sole vehicle for identifying lands to be claimed as 'surplus', we need not try to see the transactions *themselves* as much as the *images* of those transactions as they appeared in evidence to the Land Claims Commission.

Colonel Wakefield opened the company's cases before the commission by submitting the above plan (which he had forwarded to the commissioner before the hearings opened), as well as the six deeds to which it referred. He read from his Journal how, from his arrival at Port Nicholson on 20 September 1839, to the day of signing the first deed, 27 September, he and his interpreters visited every kainga around the harbour, toured up the Hutt river, and participated in frank and open discussions of whether to sell the land to the company.<sup>2</sup> Having ascertained that Maori wanted to sell, on the 27 September Wakefield gathered the local chiefs on the deck of the *Tory*. There the Port Nicholson deed was read out, translated, explained, and signed.

The deed contained a boundary description previously pointed out to Wakefield by Te Wharepouri,<sup>3</sup> and later read out in full by Wakefield before the Land Claims Commission. On the eastern side, the boundary ran along 'the summit of the range of mountains known by the name of Turakirai from the . . . sea . . . until the foot of the high range of mountains called Tararua.' The boundary then ran along the foot of the Tararuas until it ran into the 'Rimurap' range – roughly, the western Hutt hills. From there, the western boundary ran down 'along the summit of the . . . Rimarap range of mountains, at a distance of about twelve English miles . . . from the . . . Western shore of the . . . Harbour,' all the way to Cook Strait at Rimurapa, or Sinclair Head.<sup>4</sup>

Richard Barrett told the Land Claims Commission in February 1843 that he had translated Wakefield's deed and its boundary for the assembled vendors:

Listen natives, all the people of Port Nicholson. This is a paper respecting the purchasing of land of yours. This paper has the names of the places of Port Nicholson. Understand this is a good book. Listen, the whole of you natives, write your names in this book; and the names of the places are Tararua, continuing on to the other side of Port Nicholson, to the name of Parangarahu. This is a book of the names of the

2. Wai 145 ROD, doc C1, pp 28–35

3. Wai 145 ROD, doc E4, vol 2, p 203

4. Wai 145 ROD, doc A10(a):1, pp 1–2. I have not ascertained how the deed came to state that the foot of the Tararua Range would form a northeastern versus a northwestern boundary.

channels and the woods, and the whole of them to write in this book, people and children, the land to Wideawake [Wakefield]. When people arrive from England they will show you your part, the whole of you.<sup>5</sup>

Both Wakefield's deed and Barrett's notoriously poor translation centred on their full descriptions of the boundaries – and those boundaries had been initially given to Wakefield by one of the leading vendors, Te Wharepouri. Also in the company's favour, the 1842 plan (above) showed a Port Nicholson purchase boundary that appears to follow the boundary described in the 1839 deed. For example, the western boundaries named in both the deed and the plan run through 'Rimurap' range, all the way from the Tararuas to the South Coast point of the same name (now also known as Sinclair Head). This Rimurapa 'ridgeline' is difficult to see from points around the harbour, but on-the-spot it is so distinct as to form virtual ramparts for much of the way from about Mount Kaukau to Rimurapa on the South Coast.<sup>6</sup> This is noteworthy, as by the *end* of the Land Claims Commission, the Port Nicholson 'purchase area' had come to include the large area to the west of this line, and by the end of the decade, the 'purchase area' had come to *exclude* a large area around the southern end of this line.

The evidence presented to Land Claims Commission regarding the eastern boundary was not as consistent. The southeastern-most point named in the 1839 deed, 'Turakirai,' is several miles farther east than Barrett's comparable point (above), 'Parangarahu.' Both are many miles farther west than the southeastern-most point in the 1848 'purchase area' – 'Muka Muka.'<sup>7</sup>

Immediately after it received Wakefield's evidence, the Land Claims Commission heard corroborating evidence from Wakefield's witnesses, George Evans, John Dorsett, E J Wakefield, Te Puni, and John Brook. Wakefield would have been content with closing at this point, but the commissioner insisted on hearing more evidence, especially on the point of boundaries.<sup>8</sup> For the next few days, then, the commission alternated between hearing Wi Tako Ngatata and William Wakefield. Then, after a few days examining Robert Tod's purchase at Pipitea, the commission interrogated Taringa Kuri, Ropiha Moturoa, and Mohi Ngaponga regarding Wakefield's Port Nicholson claim.<sup>9</sup>

In this initial round of hearings, the commission did not hear much directly supporting or refuting Wakefield's boundaries, or particularly pertinent to the 'surplus' area of Wakefield's claim.<sup>10</sup> Instead, the court's examination of Wi Tako focused on his (mis)understanding of what was being sold, on the sources of his

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5. Wai 145 ROD, doc c1, p 36
  6. The author walked this western 'Rimurap ridge' from Mount Kaukau to just south of Wilton Bush in 1994, in order to see whether it formed either a physical barrier or legible boundary. It definitely does both.
  7. All of these southern boundary end-points are shown on all of the maps of traditional place names, submitted in Wai 145 ROD, doc c1, facing p 36, and in Wai 145 ROD, doc E3, preceding p 1.
  8. Wai 145 ROD, doc E4, pp 190–191
  9. Table summarizing all of the land claims hearings into the company's purchases (as well as all of the private claims in the Port Nicholson area) in Wai 145 ROD, doc E4, vol 2, following p 340. The evidence is summarised and discussed in Wai 145 ROD, doc E4, vol 2, pp 185–218.
  10. Wai 145, ROD, doc E4, p 192

customary rights, which individuals he acknowledged as 'chiefs' at the various kainga around the harbour, and the rough extent of lands he claimed personally.<sup>11</sup> The court took a similar approach the next week with Ropiha Moturoa, from Pipitea, and then with Mohi Ngaponga, from Te Aro – though Ngaponga's description of tribal boundaries did extend to a mention of Rimurapa on the south coast.<sup>12</sup> Likewise, when Taringa Kuri recited tribal boundaries that week for the court, he appears to have gone right around the harbour, describing a sliced-pie pattern, with most of the pieces divided into a harbour-part and an 'interior' part.<sup>13</sup>

At neither of these points, though, did the land commission ask whether Ngaponga or Kuri's interests in the outlying or 'interior' areas had been included in the 1839 sale. Such a question would seem necessary for the commission to ascertain the equity of any Crown-claim to those areas as 'surplus' generated by that sale. However, such a question probably would have seemed silly at the time, since neither Ngaponga nor Kuri regarded the *harbour*-part sale as satisfactory and complete. Indeed, even Te Puni, when recalled to testify on 7 July, bluntly stated: 'Barrett said "come and hold the pen["]]. The Natives did not know what was in the deed'.<sup>14</sup> How could this otherwise unsatisfactory transaction have been *more* effective farther out towards its margins?

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These large discrepancies in the colonists' own claims to the boundary lands, combined with the commission's early inattention to those boundary areas, begin to suggest why we now face a rather obscure and tortuous path from the company's 1839 Port Nicholson purchase to the Crown's 1848 (and later) claim of title to that purchase's 'surplus'.

#### **8.4 THE INITIAL TRANSACTIONS: WANGANUI**

The Land Claims Commission did not examine the company's purchases in their chronological order. So for instance, on 2 June 1842, between hearing Moturoa's and Ngaponga's versions of the Port Nicholson transaction, the commission skipped past the Kapiti and Queen Charlotte transactions, and began hearing Colonel Wakefield's Wanganui claim. Wakefield introduced the claim by producing the Wanganui deed, dated May 1840, and telling what he knew of the preliminary transaction on the Tory at Kapiti.<sup>15</sup> The deed described the area allegedly purchased:

Along the sea shore on the North of the said Cook's Straits from Manawatu to Patea and inland from either of the said points to the volcano or Mountain of Tonga Ridi.<sup>16</sup>

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11. Wai 145 ROD, doc E4, vol 2, pp 190–202

12. Ibid, pp 209–215, and 217–219. The Rimurapa reference at p 219.

13. Ibid, pp 207–208

14. Ibid, p 252

15. Ibid, pp 215–217

16. Deed no 421 in H H Turton, *Maori Deeds of the Old Private Land Purchases*, 1887, p 395

The boundaries claimed in this deed appear extraordinary, but recall that just as the Port Nicholson boundaries had originated with Wharepouri, a Wanganui chief, Kurakau, had pointed from the deck of the *Tory* to the corners of the above ‘purchase area’ – the Patea River, the Manawatu River, and Mount Tongariro. Furthermore, the Wanganui transaction itself followed several times as long a period of negotiations as at Port Nicholson, and involved direct talks with several times as many Maori vendors. Proportionately, therefore, the Wanganui boundaries were perhaps no more (or less) far-fetched than those at Port Nicholson.<sup>17</sup>

After submitting his basic documents, Colonel Wakefield called his nephew, E J Wakefield, whom he had commissioned to complete the Wanganui purchase. Mr Wakefield explained how Te Kurakau had come to Port Nicholson to see the purchase goods for Wanganui loaded on to the schooner, and had returned to Wanganui, where he fetched about 500 or 600 Maori from up the river to sign the deed. There were a couple of weeks continuous meetings to discuss the sale, with John Brooks translating throughout.

According to Mr Wakefield, Maori initially understood that ‘they should retire higher up River, and leave the seaboard to the white men,’ but through the 17 days purchase negotiations, they learned that ‘the whole of the district bought would be divided up into small portions.’ In other words, according to Mr Wakefield, the Wanganui vendors distinctly understood that the ‘district bought’ included the upper river. Under Sub-Protector Clarke’s cross-examination, John Brook specified that for nine-to-ten days of these negotiations, Kurukau had sent messengers to the far reaches of the purchase area, enlisting support for the transaction. When all were agreed (again according to Mr Wakefield), the payment goods were handed off the schooner to Maori in canoes, taken ashore, and distributed. By Wakefield’s own admission, the distribution was chaotic.<sup>18</sup>

## 8.5 THE INITIAL TRANSACTIONS: KAPITI

The Land Claims Commission heard the company’s evidence regarding the Kapiti transaction on the 9 to 11, 13 and 14 June 1842. Again Colonel Wakefield introduced the claim with the deed, dated 25 October 1839. The boundaries on this deed read:

The whole of the lands [on the South Island] . . . bounded on the South by the . . . [43rd] parallel . . . , and on the West, North and East by the Sea, including [a long list of particular places] . . . and also [lands on the North Island] . . . bounded on the North East by a direct line drawn from the Southern head of the River or Harbour of Mokau situate on the West Coast in the latitude of about 38 degrees South, to Cape Tekakore situate on the East Coast in the latitude of about 41 degrees South, and on the East, South, and West by the Sea.

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17. Wai 145 ROD, doc E4, vol 2, pp 220–221

18. Ibid, pp 215–216, 220–221

*The Crown's Surplus in the NZC Purchases*

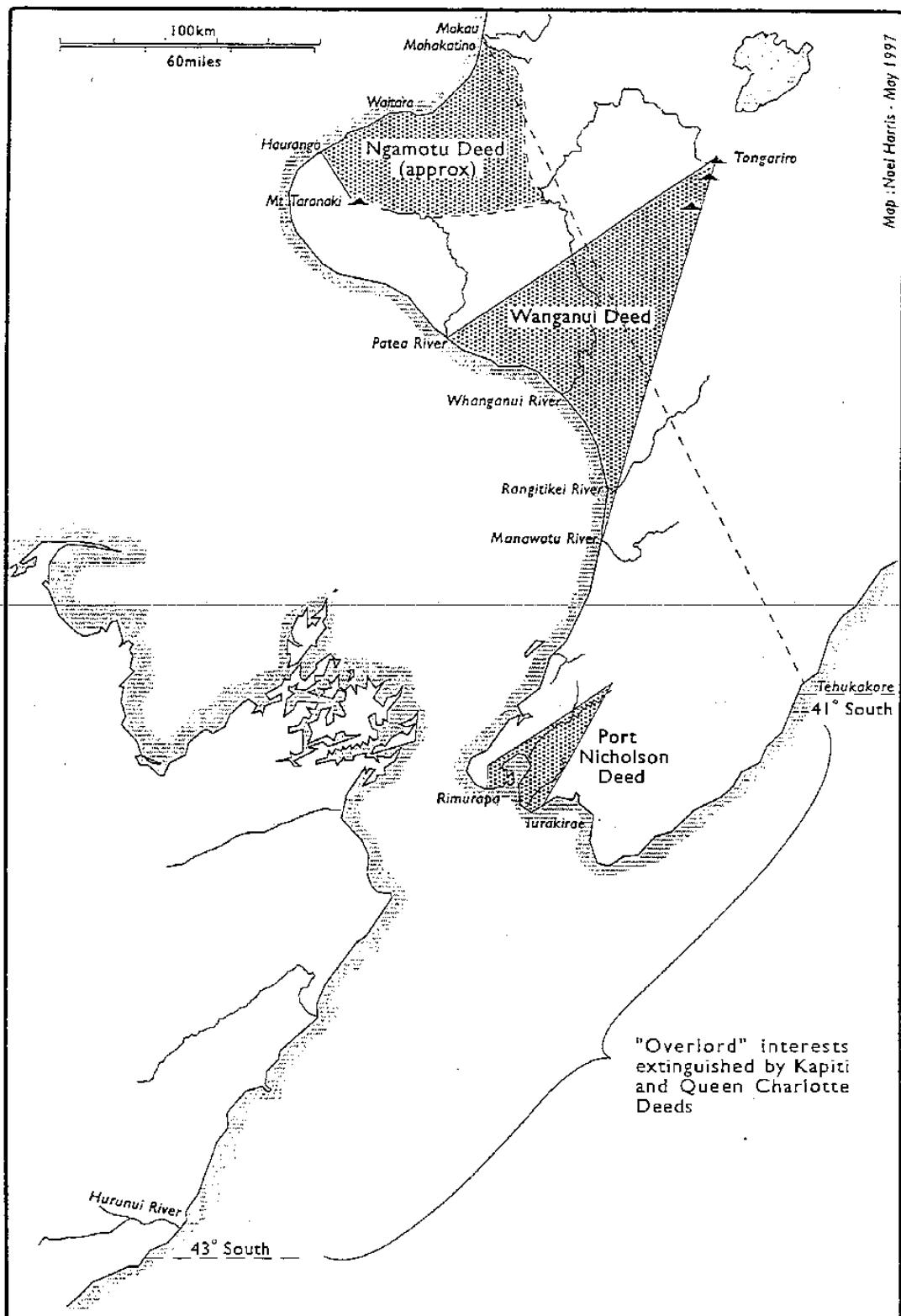


Figure 13: 1842 claims based on 1839 transactions

Wakefield testified that the Kapiti discussions had been accompanied by a map, on which Te Rauparaha had pointed out the above as being the boundaries of his *rohe*. Wakefield also testified that John Brook and a visitor whom they had met at Kapiti, Captain Lewis, had translated to Te Rauparaha and Te Hiko. Their translation emphasized ‘that they were parting with all their land, that they would never get it back again . . .’

A few days later John Brook translated in the dealings with Te Rangihaiata, along with the help of two of the Port Nicholson deed signatories, Tuarau and Henare Ware. Again, according to Wakefield’s sworn testimony, the translators explained to Rangihaiata ‘the nature of the transaction, the deed, and the Map.’<sup>19</sup>

A few days later, Brook corroborated this version of the origins of the exterior boundaries of the Kapiti deed.<sup>20</sup> So, similarly to his Port Nicholson and Wanganui claims, Wakefield’s initial presentation of the Kapiti transaction stressed how, after originating with the vendors themselves, and then being clearly translated and explained to the vendors, the exterior boundaries of the transaction must have been understood by those vendors.

## **8.6 THE INITIAL TRANSACTIONS: QUEEN CHARLOTTE**

The commission interspersed its initial hearing of Wakefield’s Queen Charlotte transaction with its hearing of the Kapiti transaction – on the 10, 14 and 16 June 1842.<sup>21</sup> Here again, Wakefield began by producing the deed, signed 8 November 1839 at Queen Charlotte Sound. The exterior boundary of this deed was the same as that for the preceding Kapiti deed (see above).

Wakefield presented a transaction quite similar to the Kapiti signing – chiefs visiting aboard the *Tory* for several days, looking at nautical charts on board and identifying on them their lands and the lands which Wakefield proposed for purchase. These discussions (and so presumably, the exterior boundaries) were translated by Barrett, Brook, two Maori missionaries named Duncan and Awite, and ‘several white men who had lived in Queen Charlotte’s Sound for many years.’<sup>22</sup>

The commission gave little attention to the outside boundary or the outlying lands of the Queen Charlotte and Kapiti claims in these June 1842 hearings. By this time, Protector Clarke, Commissioner Spain and Crown Prosecutor Hanson were all focusing their questions more on the relationship between ‘overlord’ and ‘resident’ interests – the distinction on which Wakefield built his Kapiti and Queen Charlotte claim-presentations. Indeed, when the commission returned to the Kapiti transaction after Wakefield’s Queen Charlotte presentation (June 14 and after), its examination focused quite closely on this relationship between ‘overlord’ and

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19. *Ibid*, pp 221–223

20. *Ibid*, p 227

21. *Ibid*, table 1, following p 340

22. *Ibid*, pp 223–224

'residents' interests.<sup>23</sup> To an extent, of course, this line of inquiry did amount to a look at the border-areas of those deeds – areas where 'residents' were whole other peoples who had neither signed any deeds nor had any apparent allegiance to anyone who had. This was the point in the hearings where Spain, Clarke, and Hanson all seem to have adopted Wakefield's general principle that 'residents interests' must be extinguished separately from 'overlord' interests. The commission turned the company's own principle against it.

### **8.7 THE INITIAL TRANSACTIONS: TARANAKI**

The commission began hearing the company's Taranaki claim on 16 June 1842. John Dorset, the company surgeon, had acted as the company's main agent in these transactions. He opened the company's case by producing the deed of 15 February 1840. The particulars of this transaction are relatively unimportant, though, as the Land Claims Commissioner ultimately decided that the company did not pursue a claim based upon it, or present evidence in support of it.<sup>24</sup>

Dorset appeared again the next day and presented the second Taranaki deed, dated the same day, 15 February 1840. Many of the boundary points named in this deed are difficult to locate – especially along the inland north and eastern sides. It is plain, though, that the northwestern side was the sea shore at low water mark, from the mouth of the 'Wakatino River' to 'Auronga'. The former almost certainly refers to the 'Mohakatino River,' and the latter to 'Hauranga,' an old name for 'Oakara' just south of the present site of New Plymouth. The southern boundary was a crooked line from 'Auronga' to the summit of Mount Taranaki. Then for its eastern and northern sides, the line crossed over to a point 'Wanga to Kowai' on the 'Wakatino River,' and followed that river back out to sea.<sup>25</sup> This was the deed that Umpire/Commissioner Spain later took to have partly extinguished the Maori 'residents' interests in the company's 60,000 acre award area, and beyond.<sup>26</sup>

Colonel Wakefield told the commission that these Taranaki transactions originated in November 1839 when, while he was negotiating the Queen Charlotte deed:

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- 23. Wai 145 ROD, doc E4, vol 2, pp 224–226. The commission returned to the Kapiti transaction on 14 June; see *ibid*, pp 227–231. See, for example, commission's myriad lists of 'principal chiefs' in Wai 145 ROD, doc E4, vol 2, table 4 (following p 340). See also its 'consent of residents' question, discussed at *ibid*, pp 228–229, 247–248, which are primary instances.
  - 24. Spain's Taranaki report, BPP, vol 5 [203], p 50. This is another of Spain's decisions that makes no sense at all to me. The OLC minutes of the company's 1842 evidence read throughout as a presentation of claim based on both deeds.
  - 25. Deed 420 in H H Turton, *Maori Deeds of the Old Private Land Purchases*, 1887, pp 392–393. I have adopted the interpretation of the place names used in the Waitangi Tribunal's *The Taranaki Report: Kaupapa Tuatahi*, Wellington, GP Publications, 1996, with no attempt to decypher them myself.
  - 26. Spain's Taranaki report, p 50

Ngatiawa Chiefs [of both Queen Charlotte and Waikanae] talked a great deal to [him] about Taranake, and some of the Chiefs of Port Nicholson asked [him] to get white men to go and live there.<sup>27</sup>

He said Tuarau and Henare Ware ‘were sent . . . with messages to the same effect to the Native residents at Taranaki.’ Wakefield also claimed that the boundaries of the deeds originated with two chiefs who came aboard the *Tory* when it first anchored off Sugar Loaf.<sup>28</sup> He explained that he had used two deeds ‘in consequence of the jealousies existing between the Taranake and Nga Motu tribes.’

Once again, the company’s presentation emphasised the great time and care devoted to ensuring the vendors understood the nature, extent, and consequences of their eager agreement to sell. They spent over two months discussing the transaction with all forty or so vendors. And once again, the ‘overlord/resident’ distinction featured prominently in their presentation. Indeed, Wakefield expressly characterised both of the Taranaki transactions as ‘resident’ complements of his Kapiti and Queen Charlotte ‘overlord’ transactions.<sup>29</sup>

After hearing the Taranaki presentation, over another twenty-two days between late-June and early-September 1842, the Land Claims Commission heard evidence on various Port Nicholson-area claims. It devoted twelve of these days primarily to hearing Maori views on the company’s transaction.<sup>30</sup> In these hearings Spain, Clarke and Hanson repeatedly asked their Maori witnesses whether they agreed with Wakefield’s view of their customary interests: that is, whether or not they thought that the assent of the ‘overlords’ was sufficient for extinguishing customary interests, or was the assent of the ‘residents’ also required? Interestingly, the witnesses gave conflicting responses on this point – they did not agree on whose consent was necessary to effect valid extra-tribal alienations of land.<sup>31</sup>

The Maori witnesses in these twelve hearings *were* quite consistent on a more fundamental point, though: nearly all (even Te Puni) denied having any real understanding of the company’s Port Nicholson deed.<sup>32</sup> It was this denial, coinciding as it did with increasingly hostile Maori resistance to yielding possession of the Hutt Valley, that convinced the land court to change into an arbitration for compensation. Of course, questions regarding any ‘surplus’ that might arise from such an ineffectual original transaction became for the moment irrelevant.

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27. Wai 145 ROD, doc E4, vol 2, pp 231–232

28. Ibid. Recall that Wakefield said Tuarau and E Ware also helped translate at the Kapiti transaction (above).

29. Ibid, p 232

30. See Wai 145 ROD, doc E4, vol 2, table 1 (following p 340)

31. The entire inquiry is summarized at Wai 145 ROD, doc E4, vol 2, pp 245–275. Mangatuku (pp 247–248) testified to the effect that Maori custom did require ‘resident’ consent; Te Puni (pp 258–259) testified that there was no such specific custom. Henare Ware did not testify on the point, and Wairarapa (pp 266–267), Taringa Kuri (pp 268–269), and Mahau (pp 273–275) all testified ‘both ways’ on the point – suggesting that the distinction itself did not fit the Maori reality very well. Similarly, Wairarapa, at *ibid* pp 261–263, appears to have placed much more weight than the land court did on his fine distinctions between ‘selling’ and ‘tapuing’ land.

32. These hearings are summarized in Wai 145 ROD, doc E4, vol 2, pp 245–275

### 8.8 THE CROWN'S PLEDGES BOUGHT PEACEFUL POSSESSION FOR THE COMPANY

Clearly, there was not a great deal of difference in the company's six original transactions, especially as first presented to the Land Claims Commission in May–September 1842. All followed a similar format:

- (a) start with a 'reference' or introduction to the tribe by a member or close relative,
- (b) boundaries proposed (and sketched on a map) in initial conversation with (usually two) leading rangatira, following (as much as possible) easily recognisable features like rivers and mountains and coasts,
- (c) a period (ranging from one week to over two months) of open discussion and meetings with as many 'residents' as possible,
- (d) a great gathering on board the *Tory* where deeds are signed and consideration paid (in most cases, immediately followed by the vendors scramble to divide up that consideration amongst themselves),
- (e) a celebration (understood by the company to signify the occasion of the transfer, or in other words, to mark the transfer of possession),
- (f) followed by several months where one or a few company settlers held possession of the purchase area for the company,
- (g) followed by attempts at survey and organised settlement (especially, by building).

All of the transactions reflected Wakefield's belief that one first extinguished 'overlords' interests and then 'residents'. By the end of these initial hearings, May to September 1842, the Land Claims Commission had adopted a similar view: namely, that Wakefield's initial 'overlord' transactions might well have been necessary, but they were certainly not sufficient for effecting a complete purchase (more on this below). The commissioner and protector apparently believed that the real test of the transactions arose *after* the initial transaction (around step 7 above) in the Maori 'residents' reactions to the settlers attempts to take physical possession.<sup>33</sup>

By mid-1842, though, when the Land Claims Commission began examining the company's claims, there had developed a steady stream of Maori-settler disputes at all of the company's settlements. These disputes continued well past the hearings – and everywhere they arose mainly in response to the company surveying, or settlers moving onto or building on, or their livestock trampling – lands which the 'resident' Maori denied having 'sold'.<sup>34</sup> Indeed, well before the start of the hearings (by mid-1840), Colonel Wakefield was openly expecting and readily compensating such 'resident' resistance to yielding physical possession to colonists.<sup>35</sup>

Again, the general approach adopted by the Crown from mid-1841 on was extremely similar to Wakefield's – only whereas Wakefield tried to buy 'residents' surrender of possession with direct payments, the Crown sought peaceful possession with promises. Starting with Shortland in August 1840, then Hobson in August 1841, and then in mid-1842 Clarke jnr, Bishop Selwyn, and the police magistrates

in the Port Nicholson, Wanganui, Taranaki and Nelson settlements, the Crown repeatedly stopped Maori from retaliating against colonist encroachments by promising a mix of reserves, funds, services, and protection.<sup>36</sup> Throughout, and in every settlement, the Crown promised (in its policies and direct pledges):

- a native reserves trust fulfilling the company's promises in its original transactions;
- another trust fund made up of 15–20 percent of all proceeds of eventual Crown land-sales (together, enabling provision of schools, hospitals, and income); plus
- that any lands Maori did not want to sell would be excepted from sale (especially their pa, ngakinga, and wahi tapu).<sup>37</sup>

The company and Crown's 'overlord/resident' distinction – and their staged-payments and pledges approach which it spawned – do not seem necessarily contrary to the Treaty of Waitangi. It seems quite clear, though: if the Crown took the Maori 'residents' surrender of peaceful possession as the real sign of their consent to land sales, then the particular Crown assurances which *won* that sign of surrender must have formed the 'real consideration' due to those vendors. The company's title – and therefore, the *Crown's* title to any company 'surplus' – appears highly dependent on how well the Crown honoured its early, possession-getting pledges.

There is another reason the Crown's title to the company's 'surplus' must depend on these early pledges versus any tacit Maori assent: basically, 'tacit assent' must have been more difficult to 'read' for lesser-used areas like the 'surplus' lands. Indeed, when applied to the outlying 'surplus' lands, the very 'overlord/resident' distinction itself would have begged some near-imponderables: for example, what physical acts in the *outlying areas* would have constituted 'residence'? Would not enjoyment of this 'residence' in these areas depend more heavily upon an 'overlord's' protective warrant (and hence, disappear more readily when that 'overlord' released his interests – regardless of whether his 'resident' fellows consented)? Clearly, the further out toward the *boundary areas* the commission

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33. This model of gauging residents assent to sale by their responses to actual intrusion or settlement could be said to begin with the 1840 colonial charter's definition of Maoris customary property right as 'actual occupation' of lands. See Wai 145 ROD, doc E3, vol 1, p 46. That focus on physical possession carried forward, then, in Colonial Secretary Shortland's 1840 agreement at Te Aro pa, *ibid*, pp 64–69; the company's 1841 charter, *ibid.*, p 70, note 142; Hobson's 1841 Land Claims Ordinance, *ibid*, pp 82–84; Chief Protector Clarke's analysis of the Port Nicholson situation in 1841, in *ibid*, p 90; Hobson's similar view in 1841, *ibid*, p 96; Hobson's authorisation 'to induce . . . natives who *reside* within [the company's districts] to yield up *possession*', *ibid*, pp 98–99 (emphasis added); Crown Prosecutor R D Hanson's view of the company's purchases, at *ibid*, p 156. Commissioner Spain expressly gauged the difference between the company's claims at Taitapu and Wakatu versus those at Porirua and Wairau on this principle. He said he allowed the former and disallowed the latter primarily on the basis of the 'residents' responses to the company's attempts at survey. See Spain's Nelson report, BPP, vol 5 [203], p 43. This focus on physical possession was wedded to Clarke, Hanson and Spain's adoption of, and focus upon, Wakefield's 'overlord/resident' distinction – see Clarke's questions at *ibid*, vol 2, pp 200, 253–255; Wakefield testifying, pp 222–225, 230–231; Hanson questioning Brook, pp 228–229, and Hanson writing home, pp 234–235; Spain questioning Mangatuku, *ibid* pp 247–248; Spain and Hanson questioning Te Puni, *ibid*, pp 258–259; Spain questioning Wairarapa, at *ibid*, pp 265–266; ditto Taringa Kuri, pp 268–269; and (with Evans) questioning Mahau, at pp 269–275.

looked, the more difficulty it would have had in discerning any supposed interplay of 'overlord/resident' consent (again, see the Hutt conflicts). Here even more than in the closely-settled areas, therefore, the Crown had a duty not to rely on surmises, and to stake its own claims only upon straightforward, open negotiations and prior, written evidences of the equity of its title.

In sum, the company's six initial transactions must have sounded to the Land Claims Commission like good beginnings – especially if one accepted the company's own model of how to conduct customary transfers of land:<sup>38</sup> namely, first compensate a handful of the 'highest' chiefs for the over-arching or tribal interests, and then *afterward*, when seeking actual possession, compensate the 'resident' Maori who formerly held actual possession.

However, when the commission went on to examine Maori views of the Port Nicholson transaction, it found them to be at variance with the company's views. The evidence did not, however, shake the commission's faith in the company's 'overlord/resident' model of effecting customary land transfers. Indeed, asking Maori whether 'higher' chiefs could sell the lands of 'lower' chiefs (and vice versa) became one of the commission's main lines of inquiry at all the company's claim areas.

Regardless of how well this 'overlord/resident' model of transfer matched the real situation at hand, we have seen it would have been an intrinsically difficult model to apply to relatively sparsely used areas, such as the company's 'surplus'. Applying the model to such areas would require special care, extra inquiry. We will see below that the commission did not pursue any such particular line of inquiry.

## **8.9 THE NEW ZEALAND COMPANY'S FEBRUARY 1841 ROYAL CHARTER**

There was an entirely different reason why the company's original land claims did not of themselves generate any 'surplus': in mid-1840 the New Zealand Company

34. Disputes at time of survey of Port Nicholson, see Wai 145 ROD, doc E3, vol 1, p 61; at selection, see *ibid* p 63; at settlement following selection, *ibid*, pp 64–69, 76 (esp note 155); Hobson's 1841 awareness of these disputes, *ibid*, pp 85–86; Clarke snr's 1841 report, *ibid*, pp 89–90; Hobson apparently 'playing' the disputes to the Crown's advantage, *ibid*, pp 104–105; disputes at settlement and selection of Wanganui lands, *ibid*, pp 108–109; at Taranaki in 1842, *ibid*, p 152; at Porirua, *ibid*, p 156; at the Hutt, *ibid*, pp 140, 158–161. Much Land Claims testimony focused on disputes: see *ibid*, vol 2, p 174 regarding the Hutt disputes, Moturoa at pp 204–206, 210, John Brook at pp 209–210, 217 regarding Wanganui, p 223 regarding the Hutt, Taringa Kuri disputing the entire Port Nicholson sale, at pp 250, 267, and similarly Wairarapa at pp 264–265. Regarding inter-tribal disputes at the Hutt (which would have precluded secure transfer of interests to pakeha) see pp 226–228, at Waikanae see pp 233, 250, 264–265, and 267.
35. Moturoa mentioned to the Land Claims Commission how Wakefield had bargained for compensation in return for yielding physical possession of lands. See Wai 145 ROD, doc E3, vol 2, pp 203–204, 209, 213–214, and 215; See also Wi Tako's testimony, *ibid*, pp 201–202. Wakefield's translators, John Brook and Captain Lewis, testified similarly – *ibid*, pp 210, 222. For views of the Kapiti and Queen Charlotte Maori signatories as 'overlords', see *ibid*, pp 222–223, 232. This purchase strategy naturally yielded Wakefield's 1841 proposal to Hobson, that the Crown allow survey and settlement of the 1840 company charter lands, on condition that the company pay further compensation (to resident chiefs), to be set by the protector, himself, and an umpire. See Wai 145 ROD, doc E3, vol 1, pp 94–95, and vol 2, p 237.

learned that the New South Wales Land Claims Act 1840 voided whatever titles to land they had acquired by their large transactions with Maori. In October 1840 the company directors in London asked the Colonial Office to clarify how the Ordinance was to apply to the company's claims. The Colonial Office's reply, a few weeks later, was an offer of a royal charter. The company accepted the offer immediately.

This charter, formally issued in February 1841, effectively exempted the company from the normal operation of the Land Claims Act and its successor Ordinances, and 'guaranteed' the company a certain amount of land in New Zealand in return for a certain amount spent by the company (on behalf of the British public) in colonising New Zealand (an acre per five shillings).<sup>39</sup> In exchange for this 'guaranteed' area, the company expressly disclaimed any interest in all other areas in its original claims.<sup>40</sup> The Colonial Office completed its first tallies of the extent of the company's claim in mid-May and early April 1840, and forwarded them to Governor Hobson on 20 May. In his covering letter, Lord Russell instructed Governor Hobson to 'make the necessary assignments of land to the company in pursuance of the terms of the Agreement'.<sup>41</sup>

By August 1841, when Governor Hobson first visited the company's districts – starting at Port Nicholson – the mode of dealing with the company's claims had become a pressing issue. Hobson doubtless knew of the company's delegation to Governor Gipps, and Gipps proposal to 'confirm them in possession' of Port Nicholson regardless of land claims inquiry.<sup>42</sup> Hobson had received instructions to the Home Government's instructions over-riding Gipps proposal: the February 1841 charter. Hobson even knew that the company interpreted that charter as exempting them from inquiry under the Land Claims Ordinance.<sup>43</sup> Accordingly, when Hobson first arrived at the company's principal settlement, he immediately

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36. Specific statements that the Crown's pledges averted violence: by Shortland in 1840, Wai 145 ROD, doc E3, vol 1, pp 64–69; by Clarke in 1841, ibid, pp 89–90; by Hobson in 1841, ibid, p 106; in Hobson's instructions to Clarke jnr in 1842, ibid, pp 173–174; by Brook and Barrett, ibid, p 210; by the missionary, Reihana Reweti, ibid, p 217; by Taringa Kuri, ibid, p 250. In 1842 Bishop Selwyn, as Native Reserves Trustee, averted violence by advancing £100 for a medical dispensary, ibid, p 305. When the Home Government demanded reports apportioning blame for the Wairau violence in 1843, most officials sought to absolve themselves with this view that, but for the pledges and actions of the Crown officials, Maori/company violence would have occurred even earlier and more often; see Wai 145 ROD, doc E3, vol 3, pp 416–421. Clarke snr was especially clear on this point in his initial briefing for Governor FitzRoy; ibid, p 452.
  37. The pledges that bought peaceful possession: 1841 negotiation terms at Wai 145 ROD, doc E3, vol 1, pp 95–96; Hobson in 1841 pledging pa and cultivations, ibid, p 106; Hobson promising a trust, ibid, p 135; Hobson in 1842 promising to except pa and cultivations specifically in addition to native reserves, ibid, p 140; R D Hanson in 1842 aware of the importance of excepting clearings (versus just cultivations), ibid, p 159; Lord Russell instructing Hobson to effect the company's native reserves scheme in 1840, ibid, p 134; the 1840 select committee recommending Lord Russell adopt the company's reserves scheme, ibid, p 45; the company directors list of aims for the reserves scheme, ibid, p 125; Gipps instructs further exceptions and reserves to be made in the 'surplus' areas, ibid, p 133; Lord Russell instructing likewise, ibid, p 134; Lord Russell instructing a 15–20 percent land-sales fund for Maori, ibid, pp 134–135 and Hobson initially following this, ibid, pp 144–145; early plan to provide education and health care from the proceeds of this land sales and native reserves trust, ibid, pp 142–143, 145–146.

asked Wakefield to submit a written proposal for dealing with the company's claims. Hobson's request was his initial response to the company's 1841 charter.

Wakefield responded with a proposal expressly 'to carry out the arrangement entered into in November last by [Lord Russell] and the Company' – that is, the charter – and referring specifically to the Colonial Office's authorisation to select 110,000 acres at Port Nicholson and 50,000 acres at New Plymouth.<sup>44</sup> Hobson countered with a Proclamation, waiving any Crown claims in the areas specified in an attached schedule, but otherwise promising little. When Wakefield objected to the Proclamation, Hobson replaced it with a more informal (and directly-worded) letter authorising Wakefield to try to satisfy outstanding Maori claims against the company – again only in the areas specified in the attached schedule.<sup>45</sup>

In both cases, the schedule referred to was one completed 1 September 1841 by the Surveyor General and published in the *Gazette* 9 September. Like Wakefield's initial proposal (expressly embodying the 1841 charter's four-acres per pound formula), this schedule authorised the company's selection, survey, and completion of purchase of 110,000 acres at Port Nicholson–Porirua–Manawatu, 50,000 acres at Wanganui, and 50,000 acres at New Plymouth. The schedule defined the latter two areas as eight-by-ten mile blocks (80 square miles equals 51,200 acres), situated at the mouth of the Wanganui River and on the coast opposite the Sugarloafs, respectively.<sup>46</sup>

Likewise a few months later, Hobson's 1842 update of the Land Claims Ordinance focused on the 1841 charter, in the sense that it extended the company's special acreage/award rate to all claimants.<sup>47</sup> Further, Hobson's instructions to Commissioner Spain under this Ordinance directed his attention to the company's 'blocks of land under their Charter from the Crown.' And finally, in his letter conveying the Ordinance and instructions to Commissioner Spain, Hobson deferred

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38. It is clear that 'customary transfer' was what both company and commission sought to effect. See Wai 145 ROD, doc E36, Colonial Secretary's 1 July 1841 answers to land commissioners questions, especially 'Proof of conveyance according to the customs of the country and in a manner deemed valid by the inhabitants, is all that is required'. This was simply the common law: see Wai 145 ROD, doc E3, pp 18–19, regarding colonial law 'doctrine of continuity' – that upon a change in sovereignty, local customs amounting to laws (especially regarding property) must be respected until changed by treaty or statute.
  39. 'Exempted' see Russell/Hobson, 16 April 1840, cited in Wai 145 ROD, doc E3, vol 1, p 74. 'Guarantee' see ibid, pp 70–75.
  40. Wai 145 ROD, doc E3, vol 1, p 72. The 600,000 acre estimate was Colonel Wakefield's at the time he and Governor Hobson arranged the mode of implementing the 1841 charter, in September 1841. See ibid, p 94. By the time the Land Claims Commission began hearings, the first Pennington estimates had arrived, guaranteeing 531,929 acres so far, and signalling that another 400,000–500,000 acres might be added later. Ibid, p 179.
  41. Wai 145 ROD, doc E3, vol 1, p 75, and especially note 154
  42. Ibid, p 70, note 142
  43. In June 1841, for instance, one of the 'Company' members of the first Legislative Council, Edmund Halswell, had sought to exempt from the 1841 Land Claims Ordinance all claimants who were corporations with 'powers derived direct from Her Majesty' – namely, the New Zealand Company under its 1841 royal charter. Wai 145 ROD, doc E3, vol 1, p 84.
  44. Wai 145 ROD, doc E3, vol 1, p 94. I have not discovered when or why, but shortly after this the New Plymouth allocation expanded from 50,000 to 60,000 acres.

again to ‘Mr Pennington’s award’ – the Colonial Office’s calculations of the extent of lands the company was to select and acquire under its 1841 charter.<sup>48</sup>

By this time, Mr Pennington’s award had reached 531,929 acres, with an estimate of another 400,000 to 500,000 more to come (based on the Colonial Office’s ongoing tally of the company’s expenditures). Wakefield (if not also Hobson) informed Commissioner Spain of this by enclosing the Colonial Office’s letter of 28 May 1841, in his initial May 1842 submission to Spain’s Land Claims Court.

As noted above, this submission also included a plan of all the lands comprised in the company’s original six transactions, as requested by the surveyor attached to the land commission.<sup>49</sup> Clearly, Wakefield’s submission of this plan does not support our hypothesis that Spain’s inquiry was, from the start, restricted to the company’s 1841 charter lands. As Spain himself noted later, though, making any submission at all was inconsistent with Wakefield’s understanding at the time – namely, that Spain’s inquiry was to be a mere formality preceding the granting of those 1841 charter lands. It would be a mistake to read Wakefield’s submission of the original transaction boundaries as evidence that the either the company’s claim or the Crown’s inquiry therefore extended out to those boundaries.

Rather, as we saw above, the subsequent land claims inquiry quickly turned its attention away from Wakefield’s deeds alleged terms and boundaries, to a consideration of the relationship between the original deed *signatories* interests and those of the ‘*residents*’ in the areas to be selected and acquired under the 1841 charter. This focus on ‘*residents*’ interests doubtless reflected the common law’s focus on ‘possession’ as the essence of ‘title’. Both apparently sat quite easily with Governor Hobson’s 1841 authorisation for the company to satisfy outstanding claims of ‘Natives residing’ in their 1841 charter areas.<sup>50</sup>

In short, from the start, the Land Claims Commission’s inquiry sought only to deal with the 1841 charter ‘guaranteed’ areas, and *avoided* attempting a full inquiry into the entire 20,000,000 acre ‘Company district’. Without inquiry into them, it is

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45. Wai 145, ROD, doc E3, vol 1, pp 95–98. Note: this is frequently referred to as Hobson’s ‘pre-emption waiver’, but it was only ever a waiver of the Crown’s right to complete the partial sale that had been effected (generally, to treat for the ‘resident’ interests where the ‘overlord’ ones had already been surrendered). Hobson’s waiver on behalf of the company, unlike FitzRoy’s for Wairarapa and Otago, and then Grey’s for the entire company districts (below), did *not* authorise the company to undertake new transactions. See Wai 145 ROD, doc E3, vol 1, pp 94–99.
46. Wai 145 ROD, doc E3, vol 1, pp 99–100. The mile/acreage conversion: 10 miles = 17600 yards; 8 miles = 14080 yards; 80 sq miles = 247,808,000 sq yards. Divide this by 4840 sq yards per acre, equals 51,200 acres per 80 sq miles. I have not yet determined whether these 50,000 acre blocks represented a common British administrative unit, such as a parish.
47. Wai 145 ROD, doc E4, vol 2, pp 168
48. Ibid, pp 172–73, 177
49. Ibid, p 179
50. There is some suggestion that the commission’s focus was in direct pursuance of Hobson’s arrangements, eg in Wakefield’s report that Spain arrived ‘disposed to take some steps to remedy’ the 1842 Ordinance’s lack of provisions for negotiating for ‘resident interests’. See Wai 145 ROD, doc E4, vol 2, p 170. Phillipson also points out that Spain’s predisposition to arbitrating may have stemmed partially from his Colonial Office instruction that he was not so much to redress past wrongs as prevent any in the future. See Dr G Phillipson, *The Northern South Island*, Wellington, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), pt 1, June 1995, pp 70–73.

difficult to see any basis for a Crown claim to these areas that were 'surplus' in relation to these 'guaranteed' ones.

## 8.10 THE SURPLUS LANDS IN THE 1842–44 NEW ZEALAND COMPANY ARBITRATIONS

There is a third reason that one would not expect the company's claims to have generated any 'surplus': in late 1842 Acting-Governor Shortland delegated authority to the Land Claims Commission officials in the company districts to conduct and umpire a binding Arbitration. There was no suggestion that the authority to arbitrate extended to Maori claims in the 'surplus' areas of the company's claim (that is, the areas *outside* the lands to be granted to the claimant, but *within* the claimant's alleged purchase boundaries). Rather, the express aim of the arbitrations was to compensate outstanding claims/interests of the Maori 'residents' *within* the 'neighbourhoods' scheduled and, by this time, already mostly surveyed for grant to the company.

The land claims inquiry was changed into a binding arbitration by a relatively straightforward sequence of events. First, by the time of Hobson's 1841 visit to Port Nicholson, it was clear that 'resident' Maori were opposing the company's claims. Maori had disrupted the survey and fought settlers taking up their selected Town Acres at Port Nicholson, 'up-river' Maori had disrupted the survey of Wanganui, and 'resident' Maori had stopped the Porirua survey.<sup>51</sup>

In late-1841, therefore, as we saw above, Governor Hobson authorised the company to compensate any outstanding Maori claims to the lands the company sought to select and acquire in pursuance of its 1841 charter 'guarantee'. Expressly upon this authority, in early 1842 the company transacted for the Maori 'resident' interests at Manawatu and at Nelson. At Manawatu, the company surveyor, William Mein-Smith, oversaw the purchase, survey, and selection of lands which, officially, formed part of the charter's 110,000 acre right of selection at Port Nicholson.<sup>52</sup> On 5 July 1842 Charles Brees completed a plan of these Manawatu lands, showing 185 country sections of 100 acres each.<sup>53</sup> Soon after, on 4 January 1843, the company published a lithograph of Manawatu Country District sections, showing 554 of these 100 acre country sections for selection by individual purchasers in England. The company's claim formed a block from the mouth of the Manawatu River south to the Horowenua River, and inland to just past Lake Horowhenua to about the current location of Levin. From there, the planned settlement swept northward, a

51. Port Nicholson at Wai 145 ROD, doc E3, vol 1, pp 60–66, 85–86, and 89–91. Porirua, see George Clarke snr's late-1841 report in Wai 145 ROD, doc A29, pp 352–354. Wanganui, see S Cross and B Bargh, *The Wanganui District*, Wellington, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), April 1996, pp 11–12.

52. Wai 145 ROD, doc E3, vol 1, pp 99–102

53. Brees, C, 'Map of the Country Sections in the Districts of Manawatu and Horowenua', 5 July 1842 (AAFV 997 series originals at National Archives, Wellington), LINZ [nee DOSLI] microfiche misc plan series w 105.

strip running along the south side of the Manawatu River, past the present site of Tokomaru, to the confluence of the Manawatu and the Tureti Rivers.<sup>54</sup>

In like manner, the Colonial Office accountant, Mr Pennington, had by this time awarded the company another 221,000 acres to be selected and acquired for its Nelson settlement. At the same time as it was transacting at Manawatu, then, the company transacted for the 'resident' Maori interests in its 221,000 acres of 'guaranteed' lands at Nelson. By April 1842 the company's agent, Captain Wakefield, and its surveyors, Frederick Tucket and Charles Heaphy, had purchased, surveyed, and overseen the selection of 1100 Town Acres at Nelson/Wakatu. By August, they had similarly acquired an additional 50,000 acres of 'suburban' land – described by Alf Saunders in *History of New Zealand* as 'every nook and corner of accessible land within forty miles of the port'.<sup>55</sup> By the end of 1842 the company was still having difficulty finding – let alone 'selecting or purchasing – land nearby for its 1100 Country District sections of 150 acres each. By the end of 1843, though, the company had laid out and almost completed survey of its remaining 170,000 acres at Motueka, Waimea, Moutere, and Wairau.<sup>56</sup> Its 1841 charter lands were selected and surveyed, ready for arbitration to complete their purchase.

As in the special cases of Manawatu and Nelson, in 1842 the company was also well along in its surveys of its lands for selection at Wanganui, New Plymouth, and Port Nicholson–Porirua. A lithograph of the Country Districts at Port Nicholson/Porirua was published in England on the same date as the Manawatu lithograph, 4 January 1843.<sup>57</sup> The plan of New Plymouth was well-begun by the end of 1842, with its entire 60,000 acre selection area blocked-out, and about 20,000 acres of sections laid out.<sup>58</sup> Likewise, the 1842 Wanganui plan showed an exterior boundary setting out its eight-by-ten mile 50,000 acre block, enclosing the hydra-shaped configuration of 100-acre sections for on-sale.<sup>59</sup>

A remarkable summary plan was also completed in August 1842, entitled 'Map of the First Settlement of the New Zealand Company shewing Port Nicholson, Manawatu and Wanganui, with the Adjacent Country and Coast, As laid down by

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- 54. Unsigned lithograph, originally published as 'Plan of the Country Sections in the Districts of Manawatu and Horowenua', Smith, Elder and Co, 4 January 1843. Two copies at LINZ, Lambton House, microfiche misc plan series nos w118 and 119.
  - 55. Roland Jellicoe, *The New Zealand Company's Native Reserves*, Wellington, Government Print, 1930, pp 36–37. See also Phillipson, pp 55–61.
  - 56. Nelson Roll Plan 1 [locker 2] 'Sections in the Settlement of Nelson, New Zealand', dated February 1844, by Frederick Tucket, Chief Surveyor, New Zealand Company. On microfiche at LINZ. This very large plan shows sections for selection in the suburban area, Motueka, Waimea, Moutere, Takaka and Motupipi, Aorere, and Wairau. I have not searched the surveyors' records to trace the progress of these surveys.
  - 57. The best copies of this January 1843 lithograph are in the Alexander Turnbull Library, Wellington, cartographic collection.
  - 58. See F A Carrington, 'Plan of the Settlement of New Plymouth, as Surveyed up to the End of the Year 1842', lithograph by Smith and Elder, 6 December 1843, t12 in misc plan series at LINZ.
  - 59. Wanganui selection at Cross and Barge, p 12. Wanganui survey, see Brees' 'Map of the Country Sections in the District of Wanganui', 6 June 1842 in L J B Chapple and H C Veitch, *Wanganui, Hawera, Hawera Star Publishing Co*, 1939, p 32. The copy held at LINZ, microfiche misc plan series w6 is signed by Brees, but dated 16 May 1842 (the day it was produced for the Land Claims Commission). Another company surveyor, Fred K Sheppard, later signed this copy, 'Additions in red ink made April 21 1843'.

the Company's Surveying Staff from their Surveys and Reconnaissances'. On this plan, only the Wanganui area on this summary plan showed an exterior boundary of the lands for selection and acquisition by the company.<sup>60</sup>

Meanwhile, though, inter-racial disputes had worsened at Port Nicholson, Porirua, Wanganui, and New Plymouth – caused primarily by these very processes of survey and selection of land.<sup>61</sup> At the same time, the Land Claims Commission heard Wakefield's presentations of his initial Port Nicholson, Wanganui, New Plymouth, and Nelson transactions. Also, at each of these places Wakefield pursued a policy of paying 'resident' Maori who opposed settlers taking physical possession of their selected lands.

By August 1842, Wakefield and the Land Claims Commissioner found (so they believed) that these negotiations and payments (and possibly the hearings), by their very nature invited Maori to assert claims against the company's. It appeared to both Wakefield and Spain that the very act of recognising each 'new claim had a snowball effect of extending Wakefield's 'challenge on to the *next* most-plausible layer of Maori claims.

Hence, they concluded that Hobson's original approach to the 1841 charter's guarantee – his pre-emption waiver – needed an element of finality. In September, Wakefield and Spain sailed to Auckland to propose the arrangement to Acting-Governor Shortland. In effect, Wakefield and Spain combined the pre-emption waiver's directness with the Land Claims Commission's scrutiny and authority, and proposed a binding arbitration. Shortland received the proposal enthusiastically, and soon sent to England for approval. In January 1843 Shortland wrote instructions to Wakefield and Spain and Clarke jun, setting the terms for conducting a binding arbitration for satisfying Maori claims against the company, and delegating the necessary powers to Spain to umpire, Wakefield to referee for the company, and Clarke jnr to referee for Maori.<sup>62</sup>

It seems clear, in hindsight, that switching to an arbitration effectively deprived Maori in the company's settlement areas of many of the protections afforded by the strict provisions of the 1841 Land Claims Ordinance. Foremost amongst these was the right of any sub-groups or individuals to entirely *refuse* to sell the bulk of their interests within the company's 1841 charter areas. This is certain: at several points in their final reports, the land commission officials remarked that, *because* the company had acquired a *part-interest* through their initial transactions and subsequent possession, Maori no longer had a right of refusing the arbitrated award of compensation.<sup>63</sup> By mid-1842 at the latest, there was neither a chance that the bulk of the charter areas would return to Maori, nor that Maori would receive current market value for their lands, nor that Maori would be left with an adequate written record of the basis for the Crown's assertion of title to the lands.<sup>64</sup> However,

60. Unsigned, W113T, microfiche misc plan series, at LINZ.

61. The 1842 reports of disputes – mostly from the police magistrates (Murphy, Dawson and King at Port Nicholson, Wanganui, and New Plymouth, respectively) – are summarised in Wai 145 ROD, doc E4, pp 284–289.

62. The entire switch story: Wai 145 ROD, doc E4, vol 2, pp 276–321.

Spain's later reports suggest that the company and commission thought the 'long gray of arbitration was better-suited to the Maori network of 'overlord/resident' interests, than was the black-and-white of a single judicial decision.

Whatever their own motivations, according to Spain and Shortland, Maori at Port Nicholson and Porirua *consented* to be bound by whatever decision the Crown-appointed Umpire reached under these original terms.<sup>65</sup> Early on, the terms of arbitration were pretty clear regarding which lands the arbitration was to cover, and hence, whether the arbitration might generate any 'surplus':<sup>66</sup>

- Wakefield's proposal to Spain aimed only to 'carry out' the company's 1841 charter by compensating 'disputed possession' – not by completing the original transactions *per se*.<sup>67</sup>
- Spain's proposal to Hobson/Shortland was framed as a request for the 'necessary powers,' and the proposed authority reached only to situations where the sale was disputed by 'natives who held lands for cultivation within the boundaries conveyed'.<sup>68</sup>
- Shortland's initial approval to Wakefield and request for Colonial Office approval were both vague as to whether the arbitration would cover potential 'surplus' areas;
- Sub-Protector Clarke jnr did not know about or agree with the proposal to negotiate compensation;<sup>69</sup>
- Shortland's instructions to Spain as umpire likewise only covered 'cases of disputed possession', and strongly emphasized trying to 'carry out the arrangements already made by the company,' (that is, the 1841 charter) even if that involved making tentative agreements or conditional grants;<sup>70</sup>
- Shortland's instruction to Clarke mentioned the 'tribes and families within the Company's *claims*,' but instructed Clarke to deal only with lands referred by Spain – and recall that Spain was only to deal with 'disputed lands'.<sup>71</sup>

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63. At Port Nicholson, see FitzRoy to Te Aro Maori, 24 February 1844, in Wai 145 ROD, doc E5, p 495. Forsaith's final report, 8 April 1844, in ibid, p 513. Spain on partial purchases, ibid, pp 530–533. At Wanganui, Clarke told Maori at Putiki, 'If this was a new purchase, or an attempt to make a new purchase, you perhaps might object, but it is only making straight a former purchase'. BPP, vol 5, pp 90–91, cited in Cross and Barge, p 15. Note Gipps instruction to Hobson to regard native title as extinguished where Maori generally 'admit the sale'. Wai 145 ROD, doc E3, pp 67–68.
64. Phillipson, pp 57–60, citing Tonks, complains of the injustice of this lack of record undergirding the Crown's title. My Port Nicholson report, Wai 145 ROD, doc E3, vol 1, pp 23–25, citing McNeil, summarises the common law rule supporting Phillipson and Tonks common sense response: namely, that 'unless possession is cast upon it by law, for the Crown to be in possession of land its title *must appear as a matter of record*'.
65. The evidence is actually contradictory on whether Maori ever consented to the arbitrations: Clarke jnr reported that they did not; Spain and Shortland reported that they did. See Wai 145 ROD, doc E5, vol 3, pp 381–384.
66. It is beyond the scope of this paper to examine the other terms of arbitration, especially what reserves and exceptions were pledged at the time Maori consented to arbitrate. See Wai 145 ROD, doc E4, vol 2, pp 302–304 for a 'snapshot' of reserves policy at the time the arbitrations began.
67. Wai 145 ROD, doc E4, vol 2, pp 277–278
68. Ibid, p 280
69. Ibid, pp 292–298
70. Ibid, pp 298–300
71. Ibid, pp 301–302

- Wakefield's letter to Spain at the commencement of arbitration, requesting certain exceptions to the 1841 charter, clearly referred to Spain's land claims inquiry as reaching only the 'lands thus designated' – that is, in that 1841 charter.<sup>72</sup>
- Spain's rapid reply to Wakefield's proposals set out his view of the terms of arbitration. Spain clearly stated that the arbitration and the inquiry accompanying it would deal only with the lands to be selected under the 1841 charter. Further, he clearly stated that the arbitrations would not extinguish the 'native title' to the remainder of the company's original claims.<sup>73</sup>
- Shortland told Spain at the outset of the arbitration that he did not expect any lands to 'lapse' to the Crown from the company's arbitrations. That is, the authority to arbitrate, as understood by the person who issued that authority, did not extend beyond the 1841 charter lands.<sup>74</sup>

In sum, when the land commission officials converted the Land Claims Court into an arbitration, they believed that Maori at Port Nicholson and Porirua *agreed* to be bound by the arbitrations. They also understood (rightly or wrongly) that the company's 'partial purchases' and subsequent 'peaceful possession' had extinguished the Maori vendors right of possession. Hence, in *all* the company's settlements, Maori entered the arbitrations with only a right to *compensation* for any lands already surveyed and selected by the company, and a right to *retain* only the lands that already remained in their physical possession. Yet, for various reasons these same officials did not see the arbitrations as affecting interests in any possible 'surplus' areas. Hence, Maori did not initially consent to be bound by an arbitration for the purchase of the 'surplus' areas.

### **8.11 THE LAND CLAIMS INQUIRY DURING THE ARBITRATION**

Immediately after the arbitration was approved and its terms established, Commissioner Spain re-opened the land claims hearings at Port Nicholson. He hoped to run the inquiry concurrent with the arbitration. He continued to hear evidence on the company's cases from early February to late June 1843.<sup>75</sup> Probably from the beginning – but certainly by April at the latest – the commission had specifically restricted this second phase of inquiry to the lands under arbitration. The only lands under arbitration were the lands the company was to select under their 1841 charter.

The inquiry resumed with the whaler-translator, Dicky Barrett, recently returned to Port Nicholson from Taranaki. Barrett started with the Port Nicholson transaction, followed by his versions of Nelson and Wanganui. Again, besides

72. Ibid, pp 315–316

73. Ibid, p 319

74. Ibid, p 320

75. See the table of hearings in Wai 145 ROD, doc E4, vol 2, following p 340.

*Old Land Claims*

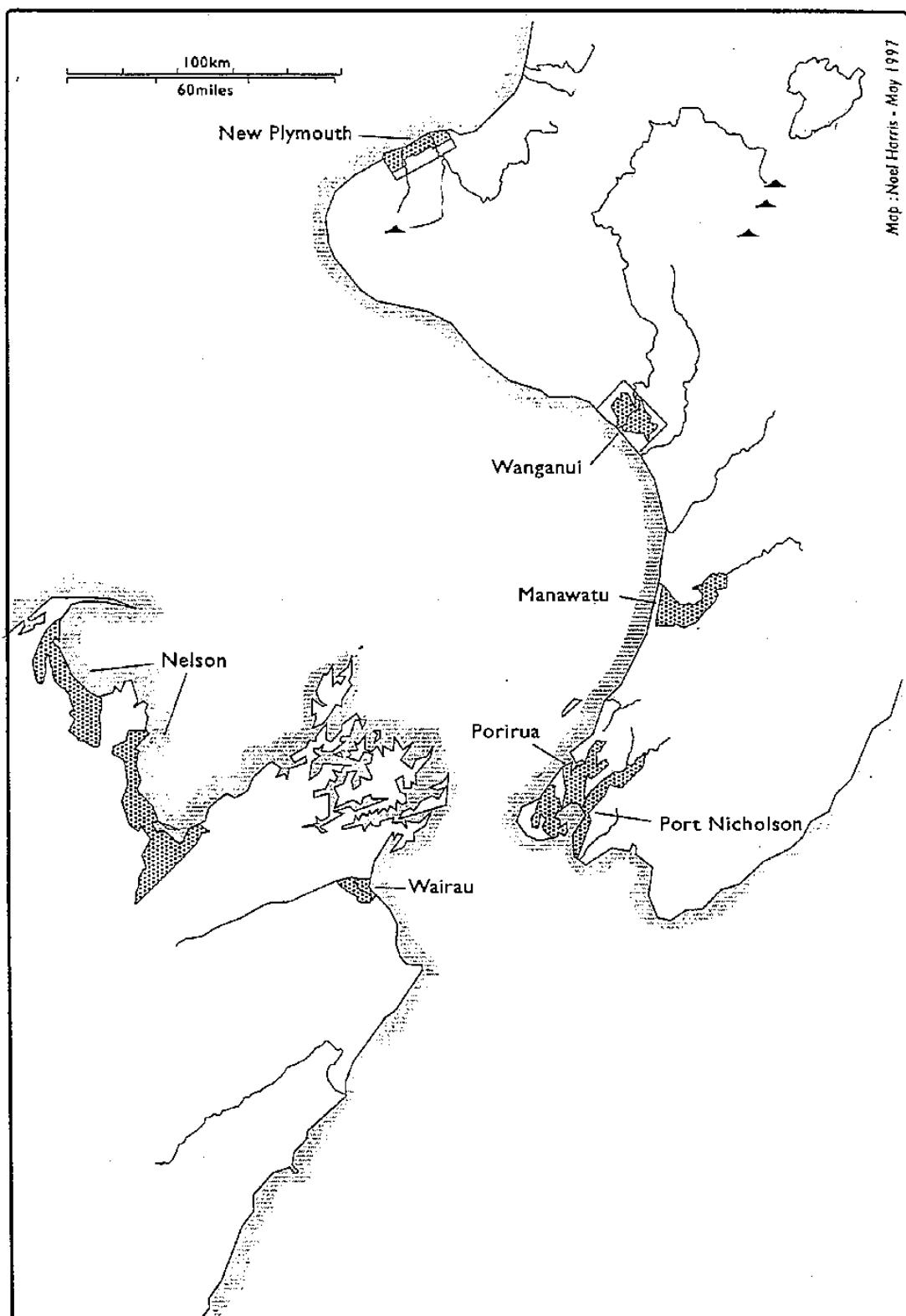


Figure 14: 1842–44 lands for selection or under arbitration

testing Colonel Wakefield's basic version of events, much of the commission's Port Nicholson questioning focused on the 'overlord/resident' relationship.<sup>76</sup> In particular, Clarke asked whether anyone had ever negotiated with any of the residents of Ohariu. Barrett said they had not.<sup>77</sup> There was some attention still to the original transaction boundaries: Barrett testified that Warepouri recited the boundaries of the sale there at the signing ceremony, on the deck of the *Tory* for all to hear.<sup>78</sup> Clarke specifically asked whether there had been any dissent over these boundaries; Barrett said there had not.<sup>79</sup>

Interspersed in these February hearings, Barrett testified about the Queen Charlotte transaction. He gave a very detailed account, which corroborated all of the main points in Wakefield's initial presentation. Barrett confirmed that the boundaries were read out at the deed signing, but he did not know how those boundaries (especially the forty-third parallel) had originated.<sup>80</sup> The commission followed its 'overlord/resident' line of inquiry quite closely here – confirming generally that there were many 'residents' outside Queen Charlotte Sound and Nelson who had not participated in the transaction (and certainly had not sold their lands).<sup>81</sup>

Similarly for the Wanganui transaction, Barrett corroborated most of Wakefield's version of the deed signing, but denied that the boundaries were pointed out, or even visible from, the deck of the *Tory*.<sup>82</sup> The commission accepted that the transaction *had* extinguished Maori interests but only *partially*: the transaction suffered from bad explanation of its nature and extent, bad distribution of the consideration, and it excluded and/or overlooked some of the rightful vendors and it remained opposed by some others.<sup>83</sup>

By mid-April 1843, when the commission heard the Maori evidence at Wanganui, the inquiry was thoroughly subsumed under the arbitration. To some extent, this was a result of Wakefield's actions: the commission arrived in Wanganui (straight from Port Nicholson) shortly after Wakefield had already been and gone. They found that Wakefield had left Wanganui Maori and settlers alike expecting the commission to set an amount of compensation, which Wakefield would pay on his way back down from Taranaki.

This expectation apparently met the commission's own aims, though. At the end of the Wanganui hearings, Commissioner Spain ordered Colonel Wakefield to provide survey plans for the remainder of hearings between Wanganui and Port Nicholson. He specifically ordered plans of the lands to be claimed under the 1841 charter. Therefore, from this point forward (at the latest) even in the case of

76. Wai 145 rod, doc E5, vol 3, pp 344–346, re multiple payments to actual occupants upon taking possession, and pp 347–348 re the need for consent of 'residents'.

77. Ibid, p 349

78. Ibid, p 343

79. Ibid, p 349

80. Ibid, pp 350–352

81. Ibid, pp 351–353

82. Ibid, p 353

83. Spain concluded that the Maori signatories 'were utterly regardless of what land they proposed to sell'. See Spain's Wanganui report, BPP, vol 5 [203], pp 81–82.

Wanganui, where the company had drawn a prospective 'surplus', the land claims inquiry would look exclusively at the 1841 charter lands, not the original transactions.<sup>84</sup>

The Maori evidence heard in April–May 1843 at Porirua to Otaki indicated a lack of any sale at Porirua, deep confusion and disagreement over the Manawatu transaction – for example, with Watanui now denying the sale – and a clear repudiation of the Kapiti transaction by 'resident' rangatira at Waikanae, Wainui (near Paekakariki), and Pukerua.<sup>85</sup>

In hearings at the end of May at Manawatu, the commission at last heard the company's presentation of its 2 February 1842 Manawatu transaction. The company submitted its deed, signed by 20 to 30 rangatira including Watanui and Taratoa, Ahu (from Ohau), and Upa (from Otaki Ngati Raukawa). The deed's north and south boundaries were, respectively, the Manawatu River and the Horowhenua River inland as far as Lake Horowhenua, then due east from the southern tip of that lake. Its western boundary was the sea, and its eastern (inland) boundary was simply 'the hills'.<sup>86</sup>

The company claimed that the Protector of Aborigines, E Halswell, and the company surveyor, W Mein-Smith, had arranged these boundaries in discussions with resident Maori (including Taikaporua) in December 1841. The missionary Maori, Reihana Davis, had interpreted. After receiving the vendors requests for specifically which goods they wanted in consideration for the land, the company's agents returned in late January 1842 with about £1000 worth of goods. The distribution a few days later, unfortunately, soon turned riotous, and excluded Taikaporua.<sup>87</sup>

None the less, the 1843 Manawatu hearings focused solely on the 1841 charter lands – if for no other reason than that Wakefield presented the Manawatu transaction *itself* as being conducted in pursuance of that charter (that is, as only extinguishing outstanding 'resident' Maori claims within the 110,000 acre Port Nicholson 'neighbourhood' lands to be selected by the company).

Throughout these hearings from Wanganui south, the commission gave little attention to the vast outlying reaches of the company's original claims – and what evidence it did hear regarding these areas convinced it that there was little Maori support for its 'millions of acres' claims.<sup>88</sup> The question of any 'surplus' for the Crown simply did not arise.

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84. Wai 145 ROD, doc E5, vol 3, p 357

85. Ibid, pp 360–368

86. Deed encl in Spain's Manawatu report, BPP, vol 5 [203], p 105

87. Ibid, pp 98–99

88. Wai 145 ROD, doc E5, vol 3, p 356

### 8.12 THE ARBITRATION UNDER SHORTLAND: FEBRUARY–MAY 1843

The arbitrations began at the end of Barrett's land claims testimony. The umpire of the arbitration, William Spain, understood Clarke jun's first February 1843 proposal of £1050 compensation for Port Nicholson as only affecting the lands 'which the company had sold' (to settlers).<sup>89</sup>

The first indication that a 'surplus' might be at stake in these arbitrations came a few months later, in Clarke jun's wording of his second compensation proposal. In May 1843, he proposed £1500 compensation for 'all claims of the natives resident within the limits described in the Company's Port Nicholson deed.'<sup>90</sup> Colonel Wakefield picked up this phrasing in his response (in which he also broke off the arbitrations altogether).<sup>91</sup> Wakefield then used the phrase again in August 1843 in his letter to William Spain consenting to resume negotiations.<sup>92</sup>

Otherwise, though, there was no suggestion that any other than the 'lands in dispute' were under negotiation at Port Nicholson. In July 1843, for instance, the Governor in Council instructed Commissioner Spain to report 'to what extent the lands in dispute can be obtained by the Government.' They hoped to prevent any repeats of Wairau.<sup>93</sup> The resulting interim Land Claims Commissioner's report, completed September 1843, declared that 'the greater portion' of the land from Port Nicholson to Wanganui had 'not been alienated by the Natives.' With regard to the potential 'surplus' areas, Spain concluded that the translations at *all* of the company's original transactions had conveyed hardly 'any idea to the [Maori] of the extent of territory' involved.<sup>94</sup>

Based on these conclusions, Spain recommended that the Crown should complete the arbitrations and advance the compensation to the 'resident' Maori in the company's surveyed and settled lands. The company would only receive its grants, then, when it reimbursed the Crown the amount of compensation. Again, though, Spain emphasized that this arrangement would only resolve titles to the company's 1841 charter lands which had already been surveyed, and for which title could therefore be determined. That is, Spain expressly forswore recommending a means of generating any 'surplus' via the arbitrations for the 1841 charter lands.<sup>95</sup>

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89. *Ibid.*, p 384

90. *Ibid.*, p 392

91. *Ibid.*, p 394

92. *Ibid.*, p 410

93. *Ibid.*, p 412

94. *Ibid.*, pp 419–420. Note below, Spain's final reports for the Port Nicholson, Ngamotu, and Manawatu claims variously gave somewhat more credence to the original deeds boundaries.

95. *Wai 145 ROD*, doc E5, vol 3, p 421

### 8.13 THE ARBITRATIONS AND SETTLEMENTS UNDER FITZROY

The reports of the same disputes which led Wakefield and Spain to set up a binding arbitration caused a similar response in England in October 1842.<sup>96</sup> First the company directors tried to convince the Colonial Office that the Crown could fulfill its ‘guarantee’ to the company, if only their office would concede that the Crown demesne included all the lands in New Zealand except those in the ‘actual occupation’ of Maori – as literally stated in the colony’s 1841 royal charter.

The Colonial Office would not concede the point, insisting that only the commission on the spot could practically define ‘actual occupation.’ As a result, in February 1843 the company suspended its colonising operations and began liquidation procedures. The directors claimed they could only resume operations with a closer working relationship with the Crown.

In response, on 12 May 1843 Lord Stanley agreed to immediately issue a conditional Crown Grant to the company of the lands it selected under its 1841 charter. The condition was that the lands have no prior titles (leaving ‘prior titles’ to be defined by the Land Claims Commissioner). Stanley undertook that for any of the selected-and-granted lands found to be subject to prior titles, the Crown would *either*:

- (a) give the company the same number of acres in lieu, *or* (as at Otago, for lands not available at Port Nicholson, Manawatu, and Nelson),
- (b) at the company’s direction, *either*:
  - i) authorise the company to continue to negotiate for the unavailable lands (with Government assistance); *or*
  - ii) compensate the company the ‘original’ value of the unavailable lands.

Just days later, on 15 May 1843, prior to departing for New Zealand to take up his governorship, Captain FitzRoy requested clarification of the Colonial Office’s arrangements ‘respecting the confirmation of the New Zealand Company’s titles to land.’ In reply, on 26 June, Lord Stanley instructed FitzRoy only to issue the conditional grant after he was satisfied as to the ‘prior validity’ of the company’s titles.<sup>97</sup>

Unsurprisingly, given the climate of enmity and suspicion prevailing at the time of his arrival, FitzRoy did not issue any conditional grants to the company.

Notably though, FitzRoy’s actions did conform with what the Crown would have been obliged to do, had the conditional grants been issued as promised. First, he supervised the completion of the arbitration at Port Nicholson, designed to give the company’s claims the validity Stanley required him to ascertain prior to granting. FitzRoy personally emphasized that the arbitrated awards were ‘no new purchase,’ but merely the completion of the company’s purchase of its lands for selection

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96. I discuss this 1843 correspondence and conditional grant agreement more fully in Wai 145 ROD, doc E4, vol 2, pp 321–336.

97. *Ibid*, p 336, especially note 556

under its 1841 charter. The umpire and interpreter subsequently emphasised the same point at Manawatu, Wanganui, Taranaki, and Nelson.

This 'partial' purchase point had three major implications: first, the compensation awarded was not a Crown purchase, but merely an adjustment of the company's original transactions. Second, in each of the above settlements, the compensation was calculated to satisfy Maori claims only in the *lands for selection* under the 1841 charter – not in the surrounding 'surplus' lands comprised in the company's districts. Third, FitzRoy, Spain, Clarke, and Forsaith each reported at various times that, *because* these were completions of partial purchases, Maori at the above settlements only had rights of compensation and of retaining such lands as they could show they had *not* sold. Their Treaty right of refusing to sell had already been extinguished.

In addition, in February 1844, FitzRoy waived pre-emption in favour of the company, authorising the company to transact for lands at Otago and Wairarapa, with Crown supervision. He appointed William Spain to supervise and assist the company's transactions at Wairarapa, and J J Symonds to do so at Otago.<sup>98</sup> Wakefield apparently understood this pre-emption waiver as being *in lieu* of his conditional grant (which was held up, along with Spain's Wairarapa purchasing, by the company's 1844 suspension of operations).<sup>99</sup>

FitzRoy possibly intended his Otakou/Wairarapa waiver as fulfilling the lands-in-lieu provision of the conditional grant. He understood that it was the company's plan to allow holders of land orders for unavailable lands at Nelson and Port Nicholson to exchange their orders in those places for holders in Otago and Wairarapa.

Neither FitzRoy's May 1843 questions nor the Colonial Office's responses directly mentioned any 'surplus'. FitzRoy did, however, understand the Colonial Office's current arrangements as requiring the company to prove 'the validity of their *purchase*'.<sup>100</sup> This might be taken as a loose reference to the full extent of the original transactions, that is, 20 million acres.

However the next day FitzRoy wrote to the Colonial Office requesting instructions on whether to claim the 'surplus' in *any* case – not just the company's. This would suggest that FitzRoy's reference the day before to the company's 'purchase' did not imply any expectation of a 'surplus' arising from that purchase.

Indeed, in this second letter FitzRoy offered his own conviction:

that the land in question ought to return to those aborigines first from whom it was purchased, unless they or their descendants should not now prefer any claim, in which latter case . . . it would lapse to the Crown.

98. See *The Ngai Tahu Report 1991*, 3 vols, Wellington, Brooker and Friend Ltd, 1991, vol 1, pp 30–31, and vol 2, p 269. The two main submissions on the Otakou purchase were Parsonson, Wai 27 ROD, doc C1, and Loveridge, Wai 27 ROD, doc P2.

99. Wakefield/directors, 30 March 1846, in CO 209/48 [micro-z 427], pp 484–485

100. Wai 145 ROD, doc E5, vol 3, p 431

FitzRoy opposed claiming the 'surplus' on the grounds that such a claim (and especially the subsequent on-selling of the 'surplus') would disrupt Maori habits and customs, and raise the social costs of colonisation.<sup>101</sup> The Colonial Office and the Secretary of State for the Colonies argued that the Crown could claim the surplus. The 1840 and 1841 Land Claims Ordinances left the claimed lands void of either Maori or settler interests, and so the land would rightfully vest in the Crown. The office acknowledged, though, that for reasons similar to those envisioned by FitzRoy, in many cases it would be prudent to allow the land to revert to Maori. Lord Stanley therefore gave FitzRoy a wide discretion in deciding whether to press the Crown's claim in each case.<sup>102</sup>

Upon his arrival to New Zealand, FitzRoy made several public announcements that, consistent with his own conviction, he intended to allow the 'surplus' to revert to Maori.<sup>103</sup> Yet in January 1844, when he arranged to resume the arbitration for the company's 1841 charter lands, FitzRoy gave no direct instructions as to whether the arbitration would generate any 'surplus', and his *indirect* references to the 'surplus' appear contradictory. First, he definitely understood that at the time of resuming arbitrations, at Port Nicholson at least, Maori understood the company's original native reserves provisions as being 'one-half of the land was for the settlers and one-half for themselves'.<sup>104</sup> This possibly reflected a Maori understanding of the relationship between the extent of the company's original transactions and the extent of lands apparently now at stake in the arbitrations, their surveyed and selected 1841 charter lands.

Furthermore, FitzRoy continued speaking of the extent of lands involved in the same terms that Shortland, Spain, Wakefield, and Clarke had in their initial terms of arbitration (above). He instructed the vendor and purchaser referees and the arbitration Umpire that, when estimating compensation, they were only to consider:

all that had been surveyed or given out for selection in the Port Nicholson district, independent of pahs, cultivations, and reserves.<sup>105</sup>

Immediately afterward, the vendors' referee, Sub-Protector Clarke jnr, asked the purchasers' referee, Colonel Wakefield, for information to enable him to estimate the amount of compensation. Clarke specifically requested a plan showing exactly

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101. Wai 145 ROD, doc E5, vol 3, pp 435–436. Boast and Armstrong also interpreted FitzRoy's remarks as opposing any general claim to 'surplus'.

102. Stephen and Hope at the Colonial Office tried to agree on legal grounds for claiming the surplus, which they could provide to Lord Stanley. In as much as they succeeded, their grounds were that Maori sold *only* their interests as 'Sovereigns' to settlers, and so when the Land Claims Ordinance *voided* the settlers' title to those interests, the title reverted to the Sovereign – which had changed by then from Maori to the British Crown. In short, their argument denied the existence of private or individually held Maori customary property, and so, could have equally served to ground a Crown claim to all of New Zealand by virtue of sovereignty alone. See Wai 145 ROD, doc E5, vol 3, pp 438–443.

103. Wai 145 ROD, doc E5, vol 3, pp 444–445

104. Ibid, pp 458 and 460

105. Ibid, p 468. See FitzRoy's reference to the 1841 charter lands also in his instruction to Clarke jnr, ibid, p 469.

what FitzRoy had ordered – the lands either ‘surveyed or given out for selection’ at Port Nicholson.<sup>106</sup>

Wakefield responded with a report, plan, and schedule of lands prepared by his Principal Surveyor, Charles Brees. Brees’ plan and schedule showed the ‘lands surveyed or under survey’ (versus only ‘all that had been surveyed’). He listed 51,650 acres to be included in Clarke’s compensation estimate, including between 2200 and 2700 acres in his ‘under survey’ category. His report blamed the need to include these ‘under survey’ lands on ‘the state of the Native question.’ Apparently, Maori had obstructed even his surveys of the 51,650 acres of 1841 charter lands.

Furthermore, on Brees’ plan and schedule, even these 51,650 prospective acres included many parcels that fell outside the boundaries of the original Port Nicholson deed. In particular, many parcels were shown around Porirua and Ohariu, to the west of the original Port Nicholson claim area, and around Parangarau and Muka-Muka, to the east of the original claim area. Brees’ report argued that these areas:

having been included in some other purchases of the New Zealand Company, rendered it unnecessary to adhere to any particular boundaries in surveying the land for the holders of Preliminary Land Orders.<sup>107</sup>

Clarke acknowledged the ‘uncertainty’ over the west and east boundaries, and expressed the hope ‘not to embarrass the negotiation by including within those limits any land to which the natives of Porirua lay claim.’<sup>108</sup> Besides the obvious denial of sale at Porirua proper, Clarke might have been referring loosely here to problems with Ngati Tama: both Ohariu and Muka-Muka were areas claimed by Taringa Kuri in his land court testimony (above). Since mid-1842 Taringa Kuri had been leading a group of Ngati Tama, settling in the Hutt and repudiating Wakefield’s 1839 transaction on the grounds that the company was trying to settle areas not included in that original deed. It seems likely that Taringa Kuri’s actions were related to the company’s survey and sale of lands at Ohariu.<sup>109</sup>

Despite Clarke’s concerns over the boundaries, though, he gave Brees and Wakefield his estimate of compensation. Clarke based his estimate on his own enclosed schedule, entitled ‘the extent of Land for which it is proposed to compensate Native Claimants.’ He had expanded Brees’ schedule to include a total of 67,890 acres to be awarded to the company, including many parcels to be surveyed and sold in Ohariu. Clarke judiciously *excluded* the Porirua sections that Brees had requested, and pursuant to FitzRoy’s instructions, excluded the native reserve sections.

Clarke estimated that the Maori claims against the company within these 67,890 acres would require £1500 compensation. Soon after, Colonel Wakefield reported that the £1500 he paid at Port Nicholson was to compensate about 60,000 acres.<sup>110</sup>

<sup>106</sup>. *Ibid.*, p 470

<sup>107</sup>. *Ibid.*, pp 471–472

<sup>108</sup>. *Ibid.*, p 472

<sup>109</sup>. Note, though, Clarke only reported that Kuri objected to settlers at Kaiwharawhara, not Ohariu.

Similarly, in Lord Stanley's instructions to Lieutenant-Governor Grey, 6 July 1846, 'relative to the claims of the New Zealand Company,' Stanley stated that he understood the arrangements at Port Nicholson were 'intended to secure to the Company . . . something less than 60,000 acres.' Stanley did not mention (and does not appear to presume) any claim to surrounding 'surplus' lands.<sup>111</sup>

There is little doubt, therefore, that compensation was neither awarded nor paid for the 'surplus' areas at Port Nicholson (beyond what was paid in 1839). Probably, though, the Crown at this time would not have thought it necessary to pay any compensation for the 'surplus' lands. As of early 1843, it had been Acting-Governor Shortland's policy to purchase only large blocks, to pay threepence per acre for agricultural lands, and to pay nothing for all non-agricultural lands comprised in the block.<sup>112</sup>

#### **8.14 PAYING COMPENSATION AND SIGNING DEEDS OF RELEASE: PORT NICHOLSON**

From February to June 1844, the umpire and referees of the arbitration presented their arbitration results to Maori at Port Nicholson, Kapiti, Manawatu, Wanganui, Taranaki, and the Nelson area. Wherever they had decided an amount of compensation, they required Maori to sign deeds of release in order to get their share. These deeds (which have sometimes been mistaken as mere receipts) were of a fairly uniform construction and wording, stating that the signatories surrendered all their claims against the New Zealand Company within certain districts named in attached schedules. The attached schedules listed the company's 1841 charter areas – lands surveyed, sold, and/or selected by the company. We will see that in no case did the deeds or the attached schedules refer to interests outside the company's 1841 charter lands, that is, to any 'surplus'.<sup>113</sup>

The interpreter attached to the Land Claims Commission at the time, Thomas Forsaith, took very close minutes of these meetings. The meetings and signings began at Te Aro in Port Nicholson in late February, and by April had proceeded around the inner harbour and out to the kainga on the south-west coast. For various reasons, the Maori at most of the kainga at Port Nicholson rejected the umpire's award, but were told by Mr Spain that his decision was final and binding, and that their land would go to the colonists regardless.<sup>114</sup> The company's title, therefore,

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110. Ibid, p 479

111. Wai 145 ROD, doc A10(a) no 8, pp 1–4. Note, these instructions enclosed a very helpful overview of the current status of the company's transactions – what compensation had been awarded and paid (or remained unpaid) for how much land in each settlement.

112. Wai 145 ROD, doc E5, vol 3, p 312

113. The Port Nicholson deeds are at Wai 145 ROD, doc A10(a) no 2, pp 2ff

114. All except the three small kainga of Pakuao, Waiariki, and Te Ika a Maru objected to the award and strongly resisted accepting the compensation. See Wai 145 ROD, doc E5, vol 3, pp 510–511. For the rejections of the award, see *ibid*: Te Aro, Kumutoto and Pipitea – pp 488–496, 498; Upper Hutt (Ngati Toa) – pp 500–501, 503; Petone and Waiwhetu – pp 504–505, 510 (note: both rejected the award as an affront to their 1839 attempt to sell); Upper Hutt (Ngati Tama) – p 507; Oterongo and Ohaua – p 511.

rested firmly on the Crown officials belief that their arbitration was binding – a belief based on their view that the company already held ‘peaceful possession’ and that Maori had *consented* to be bound by these arbitrations.<sup>115</sup>

The week after finishing his job of interpreting at these Port Nicholson signing-meetings, Forsaith summarised the releases as securing:

the Company's title to their Town lands and the adjacent sections which have been given out for selection, excepting only the Hutt.<sup>116</sup>

That same week, the umpire/commissioner, Mr Spain, reported in almost identical terms:

the whole site of the town, upon which thousands of pounds have been expended by the settlers, and to which the Company's title was most defective, has been forever secured to the Europeans, together with a considerable country district; and the only part of the land contained in the before-mentioned Schedule now disputed . . . being the upper part of the Hutt.<sup>117</sup>

Notably, like the minutes of the release-signing meetings, both of these *reports* of those signings lacked any reference to any lands *surrounding* those scheduled to be granted to the company – lands which might go to the Crown as ‘surplus’.

### **8.15 PAYING COMPENSATION AND SIGNING DEEDS OF RELEASE: MANAWATU**

The week after writing these reports, 18 April 1844, the umpire, interpreter, and protector/referee all set off up the Kapiti Coast to complete the arbitrations at the other company settlements. At Otaki and Ohau, the umpire showed Ngati Raukawa a plan of the proposed Manawatu block and invited either dissent or participation in the coming award. All the Raukawa rangatira refused to even consider participating, including Watanui from Horowhenua. The umpire blamed this negative response on Te Rauparaha’s presence at the hearings.<sup>118</sup>

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<sup>115</sup>. For warnings that the decision was final and/or that it would be enforced regardless, see *ibid*: Te Aro, Kumutoto and Pipitea – pp 485–488, 491, 494, 496, 498; Upper Hutt (Ngati Toa) – pp 501–502; Ngauranga, Petone and Waiwhetu – pp 505–506 (Binding regarding payment, but note that the reserves provisions were open to further adjustment); Upper Hutt (Ngati Tama) – pp 507–508; Oterongo and Ohaua – p 511. Kaiwharawhara was only loosely minuted, so we cannot tell how strongly they objected or how strongly the umpire insisted on his award. Pakuao, Waiaiki, and Te Ika a Maru did not object, and so were not threatened with the umpire’s power to bind. The interpreter, Forsaith, understood that this power to bind only applied in cases where the company had already acquired a part-interest in the lands. In other cases, Maori ‘would be at liberty to consult their own inclinations exclusively.’ Wai 145 ROD, doc E5, p 513. The commissioner/umpire similarly emphasized the binding nature of the awards in his report, written the week following the interpreter’s report. Wai 145 ROD, doc E5, pp 515–517.

<sup>116</sup>. Wai 145 ROD, doc E5, p 512.

<sup>117</sup>. *Ibid*, p 514

<sup>118</sup>. Spain’s Manawatu report, p 102

In contrast, at Manawatu on 25 April nearly all the rangatira affirmed the old sale – including several who had previously denied the sale at Otaki and Ohau. Only Taikaporua remained adamantly opposed, saying that he had been absent from the initial transaction, and had subsequently told the company's agents that he would only sell if he was paid goods piled as high as the Tararuas.<sup>119</sup> The umpire 'distinctly' told Taikaporua that regardless of his refusal, the land would go to the company, and his share of the compensation would be invested for his (and his tribe's) benefit.<sup>120</sup>

Here, as at Port Nicholson, the signals regarding any 'surplus' were crassly self-contradictory. The 1842 deed had transacted for lands to 'the hills' – a sizeable 'surplus' beyond the lands surveyed for selection over the following year. Here in 1844, the umpire displayed 'a plan' during the final discussions with the vendors. This was probably one of the three pre-1845 Manawatu surveys still held by the Department of Lands and Survey – all of which show *only* the lands surveyed and selected for settlement under the 1841 charter, at most about 75,000 acres running along the Manawatu River, with no sign of the 1842 deed's 'surplus' stretching inland to 'the hills'.<sup>121</sup>

Yet, in his 1845 land claims report, the umpire/commissioner mentioned that the almost-completed arbitration had affected 'hundreds of thousands of acres' of land – and he awarded the company a 'right of pre-emption' to the entire purchase area named in the original deed, all the way to the inland hills.<sup>122</sup>

#### **8.16 PAYING COMPENSATION AND SIGNING DEEDS OF RELEASE: WANGANUI**

A few days after the final meeting at Manawatu, the arbitration closed very similarly at Wanganui. Most rangatira accepted the arbitration award of £1000 compensation, but after about two weeks wrangling, one surprise 'holdout', Te Mawai (who had previously sent word to the commission that he wanted to sell), now refused to accept the award-payment. Again, the umpire 'made known his intention to the natives, to recommend a similar award as in the case of Manawatu' – that is, to award the land to the company and to invest the compensation in trust for the vendors.<sup>123</sup> Spain told Maori at Wanganui that their refusal would not prevent the Europeans from 'having the land.' He explained: 'I have awarded the land to them, and I cannot alter it.'<sup>124</sup>

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119. Wai 145 ROD, doc E5, vol 3, pp 369–370, working direct from OLC minutes. See also Spain's Manawatu report, pp 98–100.

120. Wai 145 ROD, doc E5, p 519

121. See especially the untitled map of the Manawatu sections, signed by (or possibly only later ascribed to) John Campbell (the land commission's surveyor in 1844), dated 'about 1844', at LINZ, microfiche misc plans series, w9.

122. Spain's Manawatu report, p 104

123. Wai 145 ROD, doc E5, pp 519–520

124. Report 4, encl 8, 16 May 1844, BPP, vol 5, p 97, cited in Cross and Barge, p 15

And again, the deeds, plans, and award contradicted each other regarding the presence of any 'surplus' part of the award. As we have seen, the company's 1842 and 1843 plans consistently threw a nice, square 'Boundary Line' around the approximately 40,000 acres of land shown for selection at Wanganui. Unsurprisingly, then, the plan signed by Spain, Clarke jun, and Wakefield as 'The Plan of the Wanganui District as agreed upon this 16th day of May 1844' likewise showed the same square boundary line enclosing a 'surplus' surrounding the lands to go to the company.<sup>125</sup>

Yet at Putikiwaranui on 9 May 1844, just a few days before signing the above plan, Clarke jnr announced to the assembled Maori vendors that the arbitrated £1000 compensation was:

not for the whole district, but the surveyed lands, exclusive of the cultivations, pahs, and reserves.<sup>126</sup>

Similarly, when formally awarding the compensation on the same day that he signed the above plan, 16 May 1844, Spain declared that the payment was:

only for the 40,000 acres of land surveyed by the Company ... All the rest of the district remains your own property.<sup>127</sup>

In short, the *written* 'Boundary Line' of the Wanganui award contradicted the *oral* boundary of the Wanganui award.

### **8.17 PAYING COMPENSATION AND SIGNING DEEDS OF RELEASE: NEW PLYMOUTH**

About three weeks after the close of arbitrations at Wanganui, 8 June 1844, the arbitrations ended similarly in New Plymouth. After hearing Maori witnesses called by George Clarke jun, the umpire decided that the original Ngamotu transaction was good: all four European witnesses had agreed that Te Puni had invited this purchase; Richard Barrett had taken two to three months to negotiate the deal with the mere forty 'residents' (and testified that he was certain they understood the boundaries); Dorsett had managed the deed signing and goods distribution well; and now – though pressured by the 300-or-so returnees to deny the sale – all the Maori signatories admitted signing the 1840 deed, receiving payment, and selling their interests.<sup>128</sup>

By the time of the arbitration award, however, Octavius Carrington had still only surveyed 25,000 of the 60,000 acres of sections which were for sale here and in

125. Plan w7 at LINZ, microfiche misc plan series. The plan was marked 'Enclosure 10, Final Report'. Note 'G.F' in 1871 re-labelled this plan as 'Plan of the District and the Block of Land awarded to the company.'

126. Spain's Wanganui report, p 88

127. Ibid, p 90. Spain also suggested that Te Mawai accompany the surveyor up river to see the boundaries for himself, but Te Mawai refused.

128. Spain, Taranaki report, pp 54–55

England. As a result, the plan attached to the 60,000 acre award showed the 'extra 35,000 acres simply as a single boundary line laid out another couple of miles inland from the perimeter of the 100-acre country sections.'<sup>129</sup> Spain displayed this 60,000 acre plan on the table at the 8 June 1844 announcement of the arbitration result.<sup>130</sup>

Upon Spain announcing his 60,000 acre award, Katatore (Puketapu) led a party of about 50 Maori to destroy outsettlers homes at Mangaoraka. Once again, Clarke stopped the violence by pledging that the Governor would hear their claims and protect their interests. He sent to FitzRoy for urgent assistance. FitzRoy came from Auckland in August with Bishop Selwyn, and told Maori that he would re-investigate their claims soon, after he had attended to the revolts in the north. Later that month, at Nelson at the Governor's behest, Colonel Wakefield told Spain that FitzRoy intended to overturn his award. Once again, the company's agent, Wicksteed, and the new protector, Donald McLean, began paying New Plymouth Maori to allow the settlers peaceful possession until FitzRoy returned.<sup>131</sup>

Throughout, despite the umpire's high regard for the original 1840 Ngamotu transaction, there was no suggestion that the arbitrated 'completion' of that transaction had affected the vendors interests in all of the lands named in that original transaction – especially those lying *inland* from the 60,000 acres of 'on-sold' lands, reaching to the summit of Mount Taranaki.

### **8.18 A NEW PURCHASE UNDER FITZROY'S WAIVER OF PRE-EMPTION FOR THE COMPANY: OTAKOU**

As we mentioned above, in early 1844 Governor FitzRoy had waived pre-emption on behalf of the company in Wairarapa and Otakou. In the midst of the Te Aro arbitration, 27 February 1844, he had instructed one of the police magistrates, JJ Symonds, to 'supervise and assist the agent of the New Zealand Company in effecting the purchases' of 150,000 acres of land for selection as its New Edinburgh settlement. He instructed Spain similarly the same day, for 150,000 acres at Wairarapa. Their jobs were not so much to negotiate directly on behalf of the company as to superintend surveys and keep the peace and watch that the company, in its negotiating, respected Maori interests.<sup>132</sup>

On 2 April 1844, Wakefield appointed a surveyor, Frederick Tuckett, to act as the company's agent at Otakou. For months, Tuckett and Symonds crossed swords, unable to agree on an appropriate balance of power between them – for example,

129. Carrington surveys in LINZ, microfiche misc plan series (AAVF 997 at National Archives, Wellington), microfiche copies T8. A printed version of Carrington's survey is enclosed in Spain's Taranaki report, facing p 132, but only shows the surveyed sections, not the 60,000 acre block claimed and awarded.

130. Spain, Taranaki report, pp 59 and 67

131. Wai 145 ROD, doc E5, pp 520–521 and Wai 145 ROD, doc A10(a) no 8, pp 4–5. FitzRoy/Wakefield, August 1844, in National Archives, Wellington, CO 209/43, pp 284–285. E Wilson, *The Land Problems of the New Zealand Settlers of the 'Forties*, Wellington, Reed, pp 182–186. Wai 143 ROD, doc A1, pp 53–55.

132. FitzRoy/Symonds and FitzRoy/Spain, 27 February 1844, in BPP, vol 4 [369], pp 57–58

whether Symond's permission was required for coastal surveys of harbours. Eventually, Symonds abandoned the negotiations and returned to Wellington in protest of Tuckett's insubordinate attitude and actions. On 1 July 1844, Wakefield decided to accompany Symonds south, to conduct the negotiations himself. Symonds insisted on using Natural boundaries, though this entailed sanctioning an 'extension of the limits' of Wakefield's purchase well beyond the 150,000 acres originally authorised.<sup>133</sup>

In a memorandum dated 29 July 1844, and attached to the 31 July 1844 deed of sale, Colonel Wakefield agreed that the company would only take its selected 150,000 acres, and leave the 'unappropriated residue' for the Crown. It appears that one of the main results of the Crown's supervision of the company's transaction was to expand and secure its 'surplus' share of that transaction.

### **8.19 PAYING COMPENSATION AND SIGNING DEEDS OF RELEASE: NELSON-WAIRAU**

In August 1844, after the arbitrations closed at New Plymouth, and the umpire and referee had a few weeks break in Auckland, the arbitrations moved to Nelson. Wakefield arrived, no doubt buoyed by his recent Otakou purchase.

The company's surveyors here had by this time managed to find the 1100 sections of 150 acres each, and so submitted two plans for arbitration, each entitled 'Proposed Blocks from which it is intended to select the amount stated in the schedule.' Plan 1 and its schedule showed the blocks for selection at Wakatu (11,000 acres), Waimea (38,000 acres) and Moutere (15,000 acres), and the 45,000 acres partially laid out at Motueka/Golden Bay. Plan 2 and its schedule showed a block in the Wairau Valley.<sup>134</sup>

Spain, Clarke, and Wakefield all agreed to the former schedule and plan, and signed the plan 'as agreed upon this 20 August 1844.' They failed to agree on the Wairau schedule and plan, and signed the plan as merely 'exhibited in Court this 20 August 1844.'<sup>135</sup> Neither plan showed any enveloping boundary that would have indicated a 'surplus' to go to the Crown.

On 24 August 1844, Clarke jnr displayed the deeds of release, laid the signed plans out on the table, and indicated to Maori which lands had been selected as reserves. Maori at Wakatu, Waimea, and Moutere put their marks and signatures to the deeds fairly readily, and were paid their various awards then and there.<sup>136</sup> In September, though, Maori at Motupipi/Motueka refused the award. The umpire insisted (once again) that his decision must stand, and their compensation was deposited for them on trust. The deeds of release were similar to those at Port

133. *Ibid*, pp 71–72

134. Ruth Allan, *Nelson: A History of Early Settlement*, Wellington, Reed, 1965, pp 297–298

135. Plan 1 is N7; plan 2 is T28, both at LINZ, microfiche misc series

136. The respective awards were Wakatu £200, Motueka £200, and Ngatiawa £100. Schedule and compensation amounts, in Spain, Nelson report, pp 49, 46.

Nicholson – quit claim deeds within certain areas – and did not refer to claims outside the company's 1841 charter lands.<sup>137</sup>

After meetings with Te Rauparaha at Kapiti, Spain decided not to award the company any of its 80,000 acre claim at Wairau.<sup>138</sup> For his part, Governor FitzRoy told William Fox around this time that the company should let the purchase of Wairau stand over for a year or two, at which time he thought Maori would be ready to discuss selling again.<sup>139</sup> There the Wairau transaction stood until March 1846 when a new Governor, Grey, reportedly adopted 'a different view of the question than his predecessor.'<sup>140</sup>

## 8.20 THE 1845 INTERREGNUM

For the rest of 1844, it remained to in effect 'come back in' under the Land Claims Ordinances, and to complete the requisite surveys, reports, and awards, so that grants could issue. The centre of Crown activity changed from inquiry to implementation – from umpire/commissioner to surveyors, police magistrates, and sub-protectors. At the same time, despite Spain's calls for his awards to be vigorously enforced, several of them quickly fell apart.

In a preliminary land claims report in April 1844, and again in his final land claims report in 1845, Spain described how he had arranged with Wakefield to 'obtain as quickly as possible, a correct plan of the lands in the Port Nicholson district, contained in the Schedule agreed upon.' In both reports, Spain defined the 'external boundary' of this 'correct plan' as being the fastest and easiest path around the approximately 60,000 acres of 1841 charter lands already scheduled and awarded to the company.<sup>141</sup> Spain did not discuss the discrepancy between this new 'external boundary' and his recent deeds and schedules (which stated that only the 1841 charter lands were under arbitration). Nor did he explain how this new 'external boundary' fit with his (and Shortland's) clear 1843 views that the arbitrations would not generate any 'surplus'.

Apparently the surveyors first sketched the instructed boundary on to a copy of the company's 1843 'Sketch' in September 1844, and then incorporated it into their own plan, entitled:

Plan of the Port Nicholson Purchase . . . as laid down by Mr Thomas Fitzgerald,  
Assistant Surveyor Attached to the Land Claims Commissioner and by the Officers of  
the New Zealand Company's Surveying Staff.

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137. Ibid, p 45. See the deeds in MacKay's *Compendium*, vol 1, pp 67–68; cited in ibid, p 296. Cf Jellicoe, *The New Zealand Company's Native Reserves*, Government Print, Wellington, 1930, p 43. Phillipson also queries whether this 'binding' aspect of the arbitration was fair. See Phillipson, pp 74–75 and 80–81.

138. Wai 145 ROD, doc A10(a) no 8, p 5. See Phillipson, pp 81–82.

139. Allan, p 290

140. Wakefield/directors, 25 March 1847, NZC 3/7, cited in Phillipson, p 86

141. Spain/FitzRoy, in Wai 145 ROD, doc A32, p 113

The latter was completed 7 October 1844, and signed off by William Spain as '[Enclosure] No 12 Case 374 Plan of the Port Nicholson District Referred to in my final Report.'<sup>142</sup>

Almost in spite of itself, the Crown thereby suddenly obtained a substantial Port Nicholson 'surplus'. The Crown's claim would appear a complete novelty, except that the actual job of surveying this 'exterior boundary' overlapped with the job of surveying the pa, ngakinga, and wahi tapu excepted from the 1844 award – both begun at the same time, all overseen by the same people: Land Claims Commission surveyor T H Fitzgerald, Sub-Protector G Clarke jnr, and company surveyor Charles Brees.

The survey of the excepted lands apparently involved Fitzgerald and Clarke in difficult discussions with Maori over the location and exact extent of their ngakinga outside the company's 1841 charter lands, that is, within the 'surplus' area. These discussions and surveys continued from mid-1844, through the disputes and skirmishes around the Hutt and Ohariu, for about twenty months past the October 1844 completion of the 'exterior boundary' – well into Governor Grey's time. In July 1846, Fitzgerald wrote his final report on the excepted ngakinga in the 'surplus' areas; he was still expecting to complete their survey once the district had been 'tranquilized'.<sup>143</sup>

The implication throughout must have been clear for Port Nicholson Maori: for the ngakinga to be 'excepted, the rest must be 'sold'. Certainly one must wonder, though, whether such a claim to the 'surplus' was fair, considering that the Crown neither paid, nor Maori received, any further consideration for it. We will discuss such matters after an overview of the 'surplus' situation in the other company settlements.

In Wanganui, immediately after Clarke and Spain announced the arbitrated award Te Mawai and three others appealed to Governor FitzRoy. FitzRoy assured them that no land would be taken without their consent, and soon sent J J Symonds to complete the company's transaction. Symonds first efforts were interrupted by Maori unrest (probably unrelated to the transaction). Symonds returned at Grey's instruction in early 1846, but was again stopped, this time by Maori disputing his placement of the southern boundary at Whangaehu (see below).<sup>144</sup> The Wanganui transaction, in short, dangled still open for two years following the 'closing' of the arbitration.

Shortly after the arbitrations closed at Manawatu, in June 1844, a Presbyterian missionary, James Duncan, arrived and was welcomed warmly by Taikaporua and his Raukawa relation Ihakara Tukumaru. Evidently Duncan at first followed Ihakara to Kapahaka, but then by late 1844 had established a mission at

<sup>142</sup>. The sketch-copy is dated 20 February 1844, by Thomas Fitzgerald, w5 in LINZ microfiche misc plan series. The final, award copy, is dated 7 October 1844, by T H Fitzgerald and Samuel C Brees, w4 in LINZ, microfiche misc plan series. Note, plan w117 in the same series appears to be a later copy of plan w4 (in Charles Heaphy's handwriting).

<sup>143</sup>. A close account of these two surveys is in Wai 145 ROD, doc E5, vol 3, pp 536–555

<sup>144</sup>. Grey/Gladstone, 24 June 1846, in CO 209/44(2) [micro-z 425], pp 384–385. Also in BPP, vol 5 [837], pp 49–61.

Taikaporua's kainga, Te Maire.<sup>145</sup> This could well have been Taikaporua's attempt to get 'his pakeha' to play off of Watanui's (Wakefield). Taikaporua and Wakefield, therefore, were apparently both distracted from completing the arbitrations. The transaction remained uncompleted when the wars of 1846–1847 moved everyone at Manawatu further from agreement or peaceful settlement.

Governor FitzRoy returned to New Plymouth in November 1844, and arranged, through Wicksteed and McLean, to pay the Te Ati Awa absentees an additional £350 compensation, reduce the company's award to 3500 acres, and to concentrate the outlying colonists in this small block, including the town belt lands. As he had at Port Nicholson earlier that year, FitzRoy expressly described his transaction as '*completing*' a small part of the *company's* purchase. He authorised the company's agent, Wicksteed, to transact for its further completion – that is, to compensate outstanding Maori interests within the company's 60,000 acre 1841 charter/arbitration/award area.<sup>146</sup>

Like Clarke, Brees, and Fitzgerald previously at the Hutt, and Symonds and White later at Wanganui, the negotiators at New Plymouth (Wicksteed and McLean) were to value the settlers lands disputed by Maori and try to exchange them for undisputed, unoccupied lands within the area to be taken by the company.<sup>147</sup> Only a few colonists actually exchanged their lands and moved in to FitzRoy's 3500 acre block.

FitzRoy's November 1844 deed was very similar to the deeds of release used earlier in the year at the other company settlements.<sup>148</sup> Like the company's other 1844 arbitration results, FitzRoy's arrangements at New Plymouth did not address the status of the remainder of the lands in the original Ngamotu deed. The issue was hardly pressing at the time: Wicksteed foresaw a 'surplus' of land even within FitzRoy's 3500 acre settlement.<sup>149</sup>

Wakefield received private news of the 1844 select committee's pro-company recommendations in December 1844, doubtless making him more confident in rejecting FitzRoy's 3500-acre Crown grant on 5 February 1845. FitzRoy received news of his recall in March 1845. New Plymouth was left in limbo.<sup>150</sup>

Nelson was in anything but an expansive mode for the latter part of FitzRoy's governorship, the settlers there rising to sue the company for non-delivery of the

145. 'Duncan, James' in DNZB, W H Oliver (ed), Wellington, Allen and Unwin, 1990, vol 1, pp 114–115

146. '*Completing*' is at FitzRoy/Wicksteed, 22 November 1844, in BPP, vol 5 [203], pp 136–137. See also FitzRoy/Wicksteed, 25 November 1844, in *ibid*, and at Wai 143 ROD, doc A1 pp 61, 64–65. Note that FitzRoy provided for the Crown to advance the money, the company to lead the negotiations, and then to reimburse the Crown's advances. This was remarkably similar to the approach adopted by the company, Colonial Office, and Governor Grey about two years later (see below). The plan of FitzRoy's '*completion*', dated 28 November 1844, is t-7 in LINZ, microfiche misc plan series.

147. Wai 143 ROD, doc A1, pp 59–60 and 64–65

148. *Ibid*, pp 59–60

149. *Ibid*, p 65

150. Wilson, pp 187–188. Also, from summary by Land and Emigration Board, 26 June 1846, in CO 209/47 [micro-Z 426], pp 198–204. Again, in Wai 143 ROD, doc A1, p 66, Parsonson seemed surprised that the wording of FitzRoy's grant indicated that it 'derived from the New Zealand Company transaction of 6 February 1840 – the Ngamotu deed.' Grey (below) was probably right: FitzRoy intended that Spain's award was *good* as far as it went, but had left outstanding 'absentees' interests.

lands they had ordered and paid for. None the less, some steps were taken toward completing the arbitrated and awarded 1841 charter block. At Golden Bay, those Maori who had refused to accept their arbitrated compensation award in 1844 finally agreed to accept the money and release their interests in October 1845, and others were presented releases for the first time, and signed, in May 1846.<sup>151</sup>

FitzRoy could make no progress at Wairau, Porirua, or Manawatu, as Ngati Toa continued to violently refuse the company possession of the lands it had selected for settlement in those areas.

FitzRoy only despatched the reports of the arbitration efforts and results in September 1845, the month he received his recall. His cover was painfully brief:

The only settled claims are at Port Nicholson and Nelson. Excepting New Plymouth, all the other claims of the Company . . . are disputed by the natives and cannot be fully occupied by the settlers . . . until very large additional payments have been made.<sup>152</sup>

Even this was an exaggeration. FitzRoy's 3500 acres at Taranaki was barely a rump of the company's 'guaranteed' settlement, and just about a fortnight before the above despatch, FitzRoy had forwarded Stanley the company's refusals of his proffered Port Nicholson and Nelson grants.<sup>153</sup>

Clearly, by the end of FitzRoy's governorship, there remained only partial agreement over the disposition of the 1841 charter lands at *all* the settlements. Contradictions between the awards, schedules, plans, and oral assurances had forged a deep and genuine ambiguity over whether any 'surplus' was included at Port Nicholson, Wanganui, Manawatu, and Taranaki. FitzRoy reported that he had not issued conditional grants for any of the above settlements because he still lacked 'certain data' from William Spain which he considered prerequisite. In fact, though, no conditional grant could have been effected in compliance with Stanley's May 1843 instruction: the arrangements at *all* the settlements still required further adjustment to remove 'prior titles.'

## 8.21 STANLEY AND GLADSTONE'S INSTRUCTIONS TO GREY

Near the time it was cajoling its conditional grant out of Stanley in 1843, the company also obtained a supplemental charter empowering it to raise up to £500,000 for colonising. Given the recent string of bad news (including Wairau), and their own recent suspension of trading, the directors discovered that they could not get the needed funds on the money market. In February 1844, they applied for a loan from Government, but were refused.<sup>154</sup>

<sup>151</sup> Phillipson, pp 101–102

<sup>152</sup> FitzRoy/Stanley, BPP, vol 5 [203], p 3. Recall MacKay's *Compendium*, vol 1, p 17

<sup>153</sup> Wakefield's refusals encl in FitzRoy/Stanley, 26 August 1845, ibid, pp 115–117

<sup>154</sup> MacKay, *Compendium*, vol 1, p 14

To add insult to injury, the company learned this same month that Stanley had instructed FitzRoy to only issue their conditional grant *after* he had ascertained that the condition was fulfilled. The directors retaliated; they suspended operations again, and petitioned for, and received, an inquiry by a select committee of the House of Commons. This second suspension of operations caused great hardship in the company's settlements, bringing many settlers near to starvation.<sup>155</sup>

The 1844 select committee acknowledged that the company had a binding claim upon the Crown to the number of acres awarded under its 1841 charter, and in order to deliver on this claim, they recommended that the Governor be directed 'to establish the title of the Crown to all unoccupied land as soon as this can be safely accomplished.'<sup>156</sup>

Again Stanley resisted. On 30 June 1844 he forwarded the committee's report and recommendations to Governor FitzRoy. On the 13 August, he forwarded a fraught discussion of the report, followed by comments on its recommendations.<sup>157</sup> His discussion concluded that the report did not require him to 'in any way modify the instructions' he had already issued regarding FitzRoy's and the company's respective duties under the company's 1841 charter.<sup>158</sup> His comments concluded that his conditional grant, as instructed, remained the best means of fulfilling the committee's own recommendations regarding the charter's land guarantee.<sup>159</sup>

Stanley also conveyed cautious approval of the committee's seventh to ninth recommendations, proposing a 2d/acre tax on all lands, excepting company lands, Maori trust reserves, and Maori cultivation/occupation reserves. Stanley saw this as 'an easy mode of obtaining a large amount of disposable land in commutation or redemption of the tax upon the remainder.'<sup>160</sup> The rest of the committee's recommendations, and Stanley's comments on them, had little direct bearing on the issue of surplus lands in the company's districts.

When it became known, Stanley's non-response to the select committee deeply frustrated the company, E G Wakefield, and its great ally in Parliament, Charles Buller. Wakefield considered an appeal to the Prime Minister. In March 1845 and again more belligerently in June 1845, Buller raised 'the New Zealand problem' in the House of Commons. He charged the Government with continuing to violate its agreements with the company through needless delay.<sup>161</sup>

Little could be done, though. As of May 1845, the Home Government's latest information from FitzRoy was dated 28 September 1844 – and regarding the company's titles, this had merely said that FitzRoy was about to travel to the company settlements to finally arrange them.<sup>162</sup> In two despatches, 30 April and

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155. Wai 145 ROD, doc E4, vol 2, p 336, note 556. Hardship, see MacKay, p 14.

156. Stanley/Grey 13 August 1844, BPP, vol 4 [1], pp 3, 5

157. Ibid, pp 3–9

158. Ibid, pp 5–6

159. Ibid, p 6

160. Ibid, pp 6–7

161. Bloomfield, Paul, *Edward Gibbon Wakefield: Builder of the British Commonwealth*, London, Longman's, 1961, p 280

162. Hope/Stanley, 19/5/1845, in CO 209/41(2), p 278

14 May 1845, Stanley recalled FitzRoy, particularly for this failure to report home, and repeatedly acting against his instructions.<sup>163</sup>

That still left the Colonial Office seeking information elsewhere, especially in published company sources and in consultations with individuals recently returned from New Zealand. Willoughby Shortland was one such source. After returning to England and reading the 1844 select committee's recommendations, Shortland wrote a strongly-worded letter to Lord Stanley protesting against the committee's recommendation not to recognise any customary Maori title to the 'wild' lands. Shortland conceded (like Grey later) that Maori would probably sell their interests in these lands very cheaply. The committee were dangerously wrong, though, in thinking that the Crown could claim the 'wild' lands without prior recognition of the Maori interests.<sup>164</sup>

In May 1845, the Colonial Office also sought information from a Rev MacFarland, recently returned to England from Wellington, who claimed to have had considerable dealings with Maori at Wellington. The Office particularly asked how Maori there had responded to the arbitration-award payments. Rev MacFarland said that after Spain's award had been made he was not aware of any 'positive refusal' (excluding the Hutt) to give up lands to colonists.

On 13 June 1845, Lord Stanley forwarded George Grey his commission as Governor of New Zealand. In his first instructions to Grey, this same day, regarding his 'relations . . . to the settlers and agents of the New Zealand Company,' Stanley had 'little to observe in addition' to his 13 August 1844 despatch to Governor FizRoy (above), discussing and commenting upon the select committee report and recommendations.<sup>165</sup> Regarding lands in general, Stanley emphasized the long-standing instructions to *register* all interests, presenting this again as the key to solving the colony's land problems. He urged Grey to try to effect this as soon as practicable or safe.<sup>166</sup>

The next week, publications and reports of Charles Buller's 17 and 19 June 1845 speeches in the House of Commons roused the British public behind the company. On 27 June 1845, therefore, Stanley received a delegation of the company's. His discussions with this delegation (which received Prime Minister Peel's blessing) set the outline subsequently filled-in by a brief flurry of company-Colonial Office correspondence, which effectively formed the second, third and fourth parts of Stanley's initial instructions to Governor Grey.<sup>167</sup>

The second part of Stanley's instructions to Grey, 27 June 1845 (which he showed to the company's delegation on 4 July), strongly emphasized compulsory land registration (again), and re-iterated his instruction to have Wakefield promptly

163. MacKay's *Compendium*, vol 1, p 17

164. Shortland/Stanley, 18 January 1845, in CO 209/41(2), pp 548–550

165. Stanley/Grey 13 June 1845, BPP, vol 5 [337], pp 68–72, especially p 72

166. *Ibid.*, p 72

167. See Peel/Ingestre, 9 July 1845, BPP, vol 4 [517-i], p 4, and 'Minutes of Communications between Lord Stanley and a Deputation from the Directors of the New Zealand Company . . .', first two interviews 27 June and 1 July 1845, *ibid.*, pp 4–6. Last interview 4 July 1845, *ibid.*, pp 7–8.

identify all the lands he wanted to select under the 1841 charter, and then to issue him conditional grants of those lands 'at once.'<sup>168</sup>

The day after this instruction and delegation, Stanley secretly forwarded £10,000 to Grey for 'buying lands required for the use of the settlers of the New Zealand Company.' Grey was to use the funds, of course, only as a last resource.<sup>169</sup>

Stanley's third instruction, 6 July 1845, contained a tentative update of the number of acres which the company had a right to select under its 1841 charter, and a breakdown of how many of these acres the company had selected in each of its settlements – 60,000 acres at Port Nicholson, 75,000 acres at Manawatu, 40,000 acres at Wanganui, 60,000 acres at New Plymouth, 160,000 acres at Nelson, and 150,000 acres at Otago. It also hazarded a summary of the Colonial Office's best information on what arrangements had been made with Maori at each of the settlements, and what remained to be done before Grey could grant to the company.<sup>170</sup>

Still, on 24 July, the company complained that Stanley's instructions to Grey were not yet 'sufficiently full and precise.'<sup>171</sup> They set out the main points of a 'practical solution' which, if agreed to, would enable them to resume colonising operations – given that the Government would also advance a loan (to be discussed in other correspondence).

Stanley's response, 7 August 1845, went 'as far as . . . duty [would] permit' on each of the company's points.<sup>172</sup> Stanley sanctioned 'compulsory proceedings against the natives' in securing the company's possession of the lands already arbitrated and/or awarded by Spain.<sup>173</sup> According to the Colonial Office summaries forwarded to Grey two weeks earlier (above), Stanley had thereby pledged to grant the company 395,000 acres (60,000 at Port Nicholson, 75,000 at Manawatu, etc).<sup>174</sup> 'Whatever is beyond that . . . must be effected by their consent and acquiescence.'<sup>175</sup> So, for the settlements planned but not yet arbitrated/awarded – Porirua, Wairau, Otago, and Wairarapa – Stanley pledged to help the company gain Maori consent and acquiescence. His main means of helping was by continuing Governor FitzRoy's waiver of pre-emption in Otago and Wairarapa, and expanding the waiver to cover the company's entire 'districts' defined in its 1841 charter.<sup>176</sup> This 'Company's district' was roughly the company's old 20,000,000 acre claim area, all the land south of the line from the Mokau to the Ahuriri Rivers, with the addition of the remainder of the South Island south of the forty-third parallel.<sup>177</sup>

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168. Stanley/Grey, 27 June 1845, BPP, vol 5 [337], pp 72–75. Registration at p 73, conditional grants of selected lands at p 74. Shown to the delegation, see BPP, vol 4 [517-i], pp 7–8.

169. Stanley's secret advance is described in Grey's secret report of his Porirua, Wairau, and Taranaki arrangements, 8 April 1847, in CO 209/52 [?] [micro-z 429], pp 57ff.

170. Stanley/Grey, 6 July 1845, BPP, vol 4 [517-i], pp 8–13

171. Ingestre/Stanley, 24 July 1845, BPP, vol 4 [661], pp 1–2

172. Hope/Ingestre, 7 August 1845, BPP, vol 4 [661], pp 3–5, especially p 3

173. Ibid, p 3

174. Stanley/Grey, 6 July 1845, BPP, vol 4 [517-i], pp 9–12

175. Hope/Ingestre, 7 August 1845, BPP, vol 4 [661], p 3

176. Ibid, pp 3–4

To help the company exercise its right of selection and acquisition within this 40,000,000 acre 'negotiable zone', and to 'judge the reasonableness' of the company's transactions for the lands so selected, Stanley promised to send 'forthwith . . . a properly qualified person.'<sup>178</sup>

Having heard of Symond's successful (expanded) transaction there, Stanley undertook 'at once' to instruct Grey to grant the company 400,000 acres at Otago, of which the company was to select 150,000 and 'reconvey the remainder' to the Crown.<sup>179</sup> He also sanctioned FitzRoy's authorisation for the company to select and buy 150,000 acres at Wairarapa – and expanded that right/waiver to cover 300,000 acres, provided it was in 20,000-plus block(s) and there was some oversight to prevent an injurious exercise of that right of selection.<sup>180</sup>

The directors responded the next day, 8 August 1845, with cordial thanks for each promised instruction 'as tending to obviate delay in the resumption of our colonising operations.' They closed, however, still non-committal on resuming operations, as 'the pressure of financial difficulties' left the other concessions 'nugatory'.<sup>181</sup> On 15 August, Stanley forwarded the last two instructions (24 July and 7 August) and the directors replies to Governor Grey.<sup>182</sup>

While the above line of discussion developed the political and legal terms under which the company was to resume colonising, a parallel line (starting from the same 24 July proposals, above) developed the accompanying financial arrangements.

On 5 August the directors confidentially submitted to the Colonial Office 'the particulars of the loan which [they] desire[d].'<sup>183</sup> They argued that insecure titles to land had inhibited land sales and local investment in their first settlements, which had required the company to subsidize employment there. As the insecure titles arose from lax Government and the expenditure on employment went chiefly toward public works, the directors argued they had 'a valid claim against Her Majesty's Government'.<sup>184</sup> Based on a rough initial breakdown of their expected future expenses, they requested a £150,000 credit-line loan, guaranteed available for seven years, secured by their lands, and paid back by the uncommitted half of the proceeds of the company's land sales.<sup>185</sup>

177. I have not located the part of the 1840 agreement-to-1841-charter communications that defined this district. I take it on authority of the 1854 New Zealand House of Representatives Select Committee to inquire into the New Zealand Company's debt, chaired by E G Wakefield – who cite Earl Grey/Grey 28 February 1848, as clarifying this boundary as it had been defined in the company's charter. *Votes and Proceedings of the House of Representatives*, 1854, sess 1, 'Report of Select Committee', 20 July 1854, p 10. Grey evidently settled the boundary at Mokau River mouth to Rangitoto Mountain to Tongariro Mountain, along the crest of the central mountains, then east to the Ahuriri River mouth.

178. Hope/Ingestre, 7 August 1845, BPP, vol 4 [661], p 5

179. Ibid, p 3. Note: Symond's deal included the proviso that Wakefield would 'leave the unappropriated residue' to the Crown. See Wakefield annexure to Otago deed, 29 July 1844, in BPP, vol 4 [369], p 56.

180. Hope/Ingestre, 7 August 1845, BPP, vol 4 [661], p 3

181. Young/Stanley, 8 August 1845, BPP, vol 4 [661], pp 8–11.

182. Stanley/Grey, 15 August 1845, BPP, vol 5 [337], pp 92–94

183. Young/Stanley, 5 August 1845, BPP, vol 5 [271], pp 3–5, especially p 3

184. Ibid, p 4

185. Ibid, p 5

On the 8 August, alongside their thanks for Stanley's political and legal arrangements (above), the directors estimated that their expenditure claimable against the Crown under their 1841 charter now amounted to £422,233, giving them a right of selection to 1,145.543 acres. Adding native reserves and expenditure not yet reported from the colony, they claimed a right to select 1.2 million acres.<sup>186</sup>

Stanley replied on 30 August. He unequivocally denied that the company had any strict right or claim against the Crown.<sup>187</sup> However, as a matter of general policy, he would recommend to Parliament to advance the company £100,000, subject to a mortgage of the lands selected under the 1841 charter. The funds were to be used only for outstanding claims against the company (for example, back-pay), compensating Maori, surveying, and for the Otago and Wairarapa settlements. The funds were not to be used to compensate Nelson settlers. The mortgage was to be repaid (in seven years) from the proceeds of the company's land sales.<sup>188</sup>

The company accepted the loan offer on 22 September.<sup>189</sup> The main remaining tasks, therefore, were first, to quantify the *security* for the mortgage – that is, determine the extent of the company's right of selection and acquisition under its charter – second, get the loan approved by Parliament, and third, find the person to oversee and aid the company's selection and acquisition of the remainder of its 1.3 million acres.

On 28 October 1845, knowing that both the company's and Mr Pennington's estimates were hovering around 1.2 million acres, Lord Stanley proposed that the first of these tasks be expedited by simply taking 1.3 million acres 'as that which the company should be empowered to acquire, either by grant . . . or by purchase' with the help of the Crown.<sup>190</sup> This power of acquiring 1,300,000 acres was to satisfy any and all Crown obligations under the 1841 charter for the company's expenditures, past and future, excepting future payments to Maori for land (which would be dealt with from time to time as they arose).

Two days later, expressly deferring the question of whether their 1.3 million acre estate was claimable as of *right* against the Crown, the company accepted the loan arrangement.<sup>191</sup> Stanley forwarded the loan correspondence to Governor Grey on 27 November 1845.<sup>192</sup> About three weeks later, on 18 December 1845, he despatched the news to Governor Grey that Major William Anson McCleverty had been appointed the 'properly qualified person' to oversee and aid the company's selection, survey, and acquisition of lands.<sup>193</sup>

The 1845 loan arrangements concluded with a quick little twist. At the turn of 1845–1846, Stanley was replaced in office by Gladstone, and the New Zealand Company directors learned that the grants offered them at Port Nicholson and

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186. Young/Stanley, 8 August 1845, BPP, vol 5 [337], pp 94–97

187. Hope/Young, 30 August 1845, BPP, vol 5 [271], pp 6–8

188. Ibid, pp 7–8

189. Young/Stanley, 22 September 1845, BPP, vol 5 [271], pp 8–9

190. Hope/Young, 28 October 1845, BPP, vol 5 [337], pp 97–98

191. Young/Stanley, 30 October 1845, BPP, vol 5 [337], pp 98–99

192. Stanley/Grey, 27 November 1845, BPP, vol 5 [337], p 94

193. Stanley/Grey, 18 December 1845, BPP, vol 5 [337], p 99

Nelson excluded pa and cultivations – possibly one-sixth to one-fourth of the town of Wellington. The directors refused these grants, which in effect forced the little twist: Grey would have to widen the duties of the ‘properly qualified person’ from overseeing and aiding ‘new’ selections and acquisitions (for example, Porirua and Wairau) to also now adjusting the arrangements already ‘concluded’ at some of the old selections and acquisitions (especially Port Nicholson).

## 8.22 GREY'S INITIAL STEPS IN THE COMPANY'S SETTLEMENTS

Right from the start of Grey's governorship, then, the company enjoyed priority over the Crown in transacting for any and all Maori interests south of the line from the Mokau to Ahuriri River mouths. This is one of the crucial points which, in effect, establishes the existence of surplus lands in the company's districts: we will see below that most of Grey's ‘Crown purchases’ prior to the company's demise in July 1850 were in fact *company* purchases, merely undertaken or completed with Crown assistance and supervision. Further, Grey was instructed to purchase lands for the Crown in the company's districts only as a last resource for helping the company acquire its lands. He appears, therefore, only to have made bold to undertake ‘Crown purchases’ where highly profitable *surpluses* (that is, lands beyond the company's 1841 charter claims or requirements) presented themselves.

Grey arrived in New Zealand on 14 November 1845, and was installed as Governor three days later.<sup>194</sup> He received Stanley's June–August 1845 instructions (and £10,000 advance) at the start of 1846, about the time he first visited the company settlements.<sup>195</sup>

He acted immediately to fulfill his instructions and begin implementing the arrangements with the company: on 21 February 1846, he waived pre-emption in favour of the company in the entire ‘Company's districts’ as defined in their 1841 charter.<sup>196</sup>

On 13 April 1846, Grey executed the 400,000 acre Otago grant, as he had been instructed by Stanley, who had authorised the increase in the company's lands here as a display of support to encourage the company to resume operations (above).<sup>197</sup> The company, in turn, was to select 150,000 acres, and ‘reconvey’ the surplus to the Crown. The Otago Association settlers finally left England only in November 1847, by which time the company had only sold 10,240 acres, but by which time also there was no need to reconvey anything to the Crown, as the demesne had been vested in the company anyway (see below).<sup>198</sup>

194. MacKay's *Compendium*, vol 1, p 18

195. Wakefield/directors, 12 March 1846, co 209/48 [micro-z 427], p 484, reports Grey's arrival as 12 February. Wilson, p 189, says March 1846.

196. Proclamation, BPP, vol 5 [837], p 1. Note: Earl Grey sanctioned this waiver 18 December 1846. *Ibid*, p 3.

197. Grey/Stanley, 14 April 1846, BPP, vol 5 [837], p 1. Copy of Crown Grant in McKay, *Compendium*, vol 2, pp 373–374.

198. Memorandum [nd] encl in Harrington/Earl Grey, 7 April 1848, BPP, vol 8 [570], p 150

### *Old Land Claims*

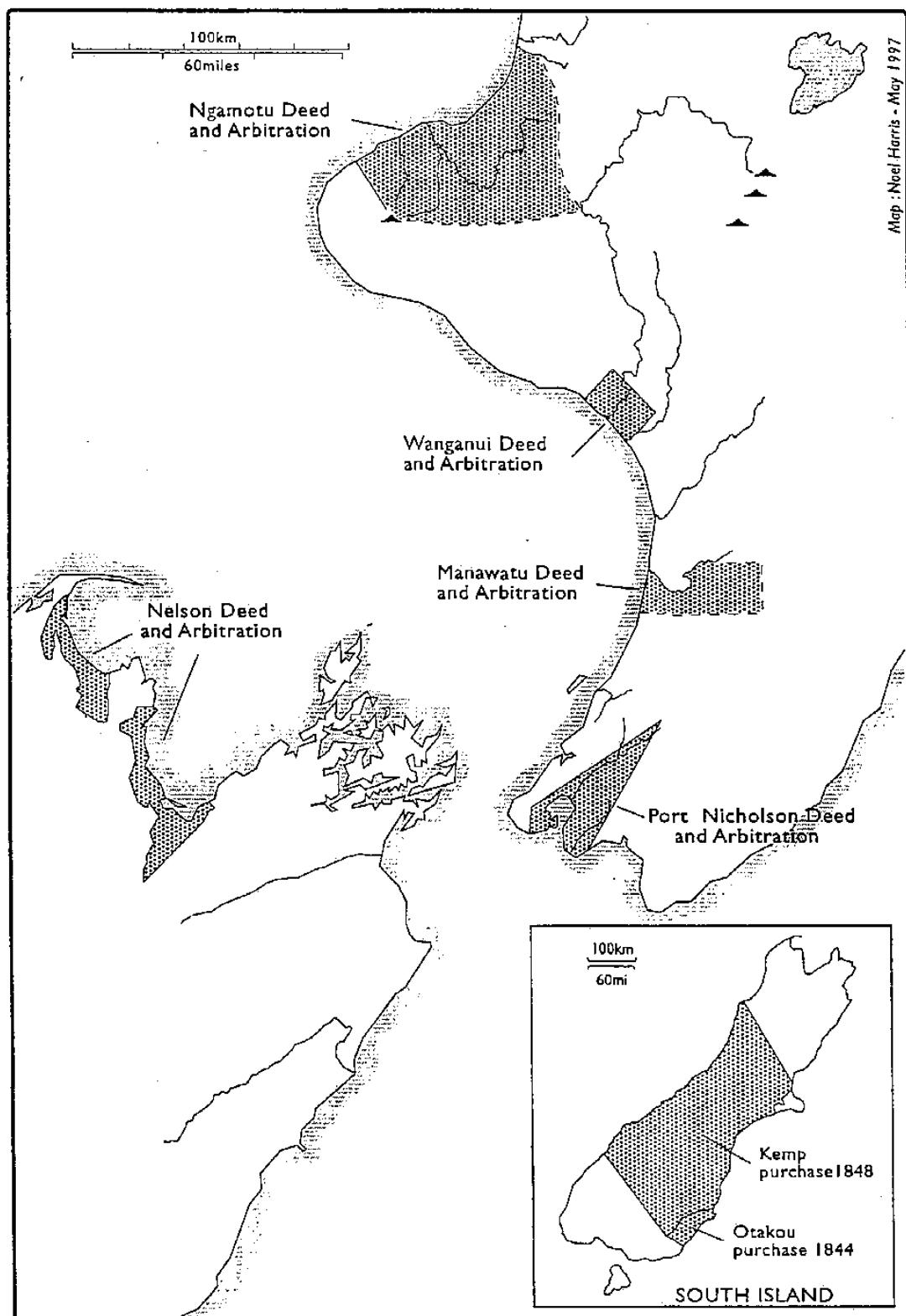


Figure 15: 1845 Crown sanctioned partial purchases

And similarly, on 17 April 1846 Grey despatched J J Symonds, T H Fitzgerald (assistant government surveyor at Port Nicholson), and a company surveyor to Wanganui 'to complete the purchase of the block of 40,000 acres of land' required by the company, as arbitrated and awarded by Spain.<sup>199</sup> Grey's directions to Symonds expressly referred to Stanley's instruction 'to afford the company every facility in acquiring the quantity of land to which they are entitled.' He told Symonds to ensure Wanganui Maori 'clearly understand and recognise the extreme boundaries of the block,' and to ascertain 'which are the pahs and cultivations which are to be reserved to the natives in the terms of Mr Spain's award.'<sup>200</sup> He directed T H Fitzgerald to stop his surveys of excepted pa and cultivations at Port Nicholson in order to help survey those at Wanganui.<sup>201</sup>

It is important to note that, as he had at Otago, Symonds sought to effect a purchase 'by the Company,' not the Crown. The £1000 compensation was to be paid 'by the Company.'<sup>202</sup> As did his own instructions, report, and the various letters covering and forwarding that report, Symonds initial address to the Wanganui Maori emphasized that he was not attempting any *new* purchase, but merely 'completing' the transaction begun in 1839.<sup>203</sup>

Similarly, in reporting Symonds failed negotiations, the Colonial Secretary referred first to 'the purchase of a block of land at Wanganui for the New Zealand Company, and then to 'the block to be purchased by the company.'<sup>204</sup> When Symonds broke off negotiations due to disputes over cutting the eastern boundary at Whangaehu, Wakefield pointed out to Grey that the surveyor had subsequently *resolved* those disputes. According to Wakefield, at that point the decision was his (not Grey's) as to whether or not to resume negotiations.<sup>205</sup> The will to buy was the company's; the power to sanction was the Crown's.

Throughout, Symonds was fulfilling Stanley's 1845 instruction and agreement to implement Spain's 1844 and 1845 awards. In April 1846, though, Wakefield reported that Grey had been too busy battling Maori and their protectors – most recently in the Hutt – to get around to reading the land commission reports and awards on the company's claims.<sup>206</sup> However, now that he had read them, Grey apparently told Wakefield that he not only had to enforce Spain's awards *in favour* of the company, but that he *also* was:

199. Grey/Stanley, 19 April 1846, BPP, vol 5 [837], p 2

200. Grey/Symonds, 17 April 1846, BPP, vol 5, pp 550–551, cited in Cross and Barge, p 16

201. Grey/Stanley, 19 April 1846, in co 209/43 [np] micro-z 379 counter at 1128.

202. Grey/Symonds, 17 April 1846, in BPP, vol 5 [837], pp 2–3

203. Symonds to the Chiefs of Wanganui District, May 1846, encl in Grey/Gladstone, 24 June 1846, BPP vol 5 [837], pp 51–52

204. Sinclair/Wakefield, 24 June 1846, BPP, vol 5 [837], p 58

205. Wakefield/directors, 18 July 1846, BPP, vol 5 [837], pp 57–58

206. Wakefield/directors, 23 April 1846, in co 209/48 [micro-z 427], pp 502–503. Ian Wards, *Shadow of the Land*, pp 230–260, remains the classic treatment of the 'Hutt war' of March 1846. Dr Robyn Anderson and Keith Pickens *Wellington District: Port Nicholson, Hutt Valley, Porirua, Rangitikei, and Manawatu, Wellington, Waitangi Tribunal Rangahaua Whanui Series* (working paper: first release), pp 41–44, give a good quick summary.

bound by Mr Spain's awards in all the instances which are unfavourable to the Company, and as regards New Plymouth, which was fully awarded by Mr Spain...<sup>207</sup>

Grey had also evidently discussed Stanley's 'properly qualified person' with Wakefield, coming to oversee and aid the company's selection and acquisition of its 1841 charter lands. Wakefield reported that he looked forward to the help of the 'special commissioner' with both the Wairarapa and Port Nicholson.<sup>208</sup>

At the same time also, Grey's early-1846 tour of Port Nicholson, Wanganui, and Nelson convinced him that Port Nicholson must be made the central military position for the southern settlements. He argued to both Wakefield and the Colonial Office that, while there was no possible alternative site, the awkward position of Port Nicholson's harbour mouth meant that, to serve as an adequate southern stronghold, the settlement required good, secure overland access to the West Coast and better protection of its own hinterlands. He immediately set about building the necessary roads and outposts.<sup>209</sup>

In April 1846, despite his initial skirmishes with Maori in the Hutt, Gov Grey was confident in these plans for Port Nicholson. His reports of Te Atiawa's response to road-building do not suggest any resentment against Crown claims to a 'surplus' area at Port Nicholson. Grey reported that:

having learned from other sources an outline of the directions I had given for the adjustment of the land question in the neighbourhood of Port Nicholson, as well as my intention of opening up the country by the construction of roads, and the establishment of a Police Force, they [the Te Atiawa chiefs] manifested as great a degree of confidence in the Government... as I have seen in any other portion of the island.<sup>210</sup>

Grey even reported that the Te Atiawa chiefs appreciated the military *motives* behind his road-building – first among which was securing physical possession of the 'waste' (or 'surplus') areas around the lands selected by the company. Perhaps at the time, it appeared preferable to Te Atiawa that the inland hills and streams be subject to Crown ownership rather than customary dispute.

Grey was sanguine, too, about his prospects of appeasing those Maori not so ready to concede his claims to the Port Nicholson 'surplus', Ngati Tama and Ngati Rangatahi. On 20 June 1846, Governor Grey reported his exchanges and purchases of lands to fulfill Commissioner Spain's old promise to Waiwhetu to exchange their

207. Wakefield/directors, 23 April 1846, co 209/48 [micro-z 427], pp 502–503. Wai 143 ROD, doc A1, p 67 quotes this same remark, citing Wakefield to secretary of the company, 23 April 1846, NZC 3/6, no 24, pp 156–157. Again, though, Parsonson elided Wakefield's statement that Grey felt bound by Spain's award in the case of New Plymouth, and she emphasized that 'FitzRoy had disallowed the award.' The important point is that Grey believed that FitzRoy had not so much 'disallowed' the award as 'held it open' pending further adjustments, *still* focused on completing enough of the original transaction to enlarge the demesne sufficiently for the company to fulfill its 1841 charter.

208. Wairarapa in Wakefield/directors, 30 March 1846 in co 209/48 [micro-z 427], pp 484–485. Port Nicholson in Wakefield/directors, 23 April 1846, co 209/48 [micro-z 427], pp 502–503.

209. Argued to Wakefield, *ibid*, p 505

210. Grey/Stanley, 11 April 1846, in co 209/43 [micro-z 379], pp 71–72

unsuitable reserves for better, and his first purchases of 'extra' reserves to get Ngati Tama and Ngati Rangatahi to remove from the Hutt – mostly done in March–April that year.

As Grey wrote his report from his office in Auckland, he had just authorised and arranged construction of his hospital, Fitzgerald's surveys of pa and cultivation exceptions at Port Nicholson and the Hutt were all-but complete, those same areas were secure under a quasi-military local government, his roads were under construction, and the paperwork securing new reserves for Ngati Tama was well underway.<sup>211</sup>

There was not yet room for complacency, though. On 20 June 1846, Grey reported the attack at Boulcott's farm in the Hutt. This attack, he claimed, merely confirmed his opinion of what was needed: a good road up the coast and into the Hutt, with forts to make the territory thus opened secure for commerce.<sup>212</sup> On 26 June, he reported Symonds failure to complete the purchase at Wanganui.<sup>213</sup> In the same month also, the Audit Office reported that the colony's accounts were in gross disarray, and Major Arney reported that the troops at Porirua had mutinied.<sup>214</sup>

On the Nelson leg of this first tour, in March 1846, Grey's reappointment of the officials involved in the 1843 affray at Wairau suggested that he held Ngati Toa more responsible for the conflict than FitzRoy and Spain had. This invited mid-1846 complaints from Wakefield and Fox that Spain's 1845 award had failed to acknowledge the partial interest they had acquired there. They proposed that Grey should send an official to help the company complete its Wairau purchase (like Symonds at Otakou and Wanganui).<sup>215</sup>

Through the first half of 1846, though, Grey was becoming increasingly sure that the owners of Wairau, Ngati Toa – and especially Te Rauparaha – were playing a double game, openly supporting a Hutt settlement and development of the road past Porirua, while secretly also supporting those who were obstructing both. In July 1846, Grey raided Taupo pa and seized Te Rauparaha and four other Ngati Toa leaders whom he regarded as potentially troublesome. By the end of the year, leadership of Ngati Toa rested with its Christian chiefs with Europeanising tendencies.<sup>216</sup>

## **8.23 GREY'S RETURN TO THE COMPANY DISTRICTS: FEBRUARY–APRIL 1847**

Grey returned to Wellington the next summer, December 1846. Upon his arrival, he reported a settled and cooperative spirit amongst all the Maori tribes around Port Nicholson. He took this as signifying the continued success of his earlier military

<sup>211</sup> Waiwhetu, see Wai 145 ROD, doc E5, pp 505–506. Ngati Tama, see Wai 145 ROD, doc C1, pp 240–244

<sup>212</sup> Grey/Gladstone, 20 June 1846, in CO 209/44 [micro-z 424], pp 178ff

<sup>213</sup> Grey/Gladstone, 24 June 1846, in CO 209/44(2) [micro-z 425], pp 384ff

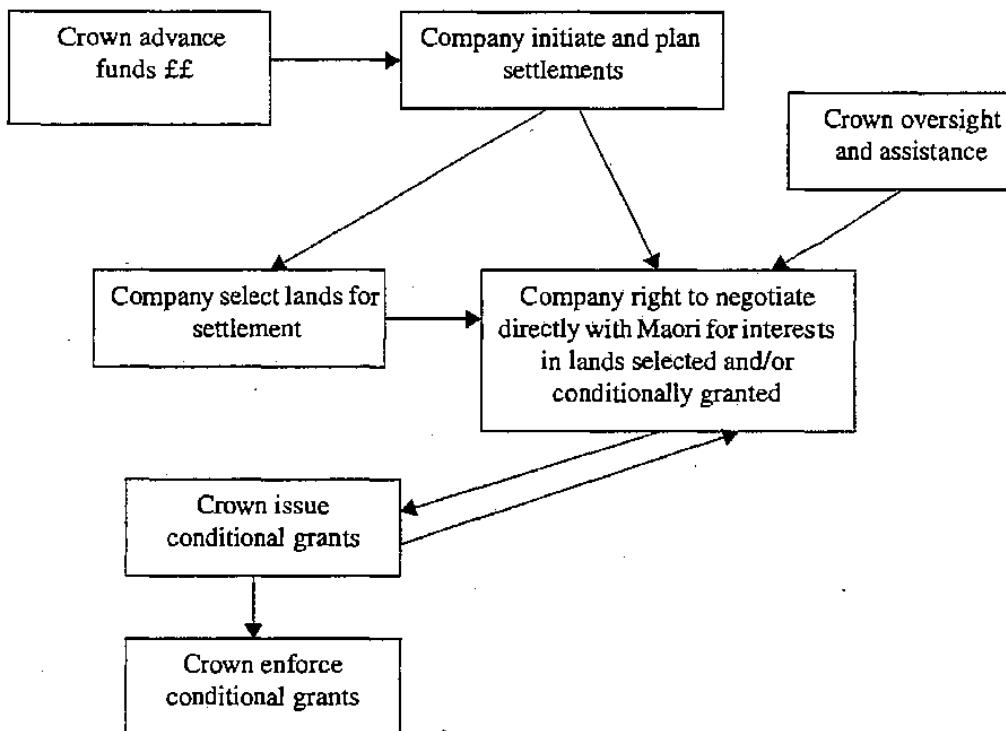
<sup>214</sup> Grey/Gladstone, 16 October 1846, in CO 209/45 [micro-z 425]

<sup>215</sup> Phillipson, p 86

<sup>216</sup> Ibid, pp 87–88

campaigns, and his June–September adjustments of the lands of Maori in the Hutt, Ohariu, and Waiwhetu.<sup>217</sup>

We can venture a diagram of the broad company–Crown operational relationship at the end of 1846, established by Stanley's 1845–1846 loan arrangements and instructions:



On 27 December 1846, though, Colonel Wakefield told Governor Grey that 'large powers of Government were to be conferred immediately upon the company by the Crown.' Wakefield was referring, of course, to the proposals for introducing representative government by dividing the colony into two districts and establishing municipal governments with large powers – changes the company directors had been lobbying for since 1844, and which Grey had recently recommended to Gladstone (for the company's districts only).<sup>218</sup>

Initially in response, Grey reported that he should delay his planned 'arrangements for the complete adjustment of the land question' until he received confirmation or denial of Wakefield's prediction. He chafed at making any commitments on the part of the Crown which he might subsequently have to rely upon the company to honor.<sup>219</sup>

Grey was probably still unsure whether the company could be relied upon to honour agreements he might complete, but he was frustrated with fifteen months

<sup>217</sup> Grey/Earl Grey, 19 December 1846, in CO 209/46(2) [micro-Z 426], pp 484ff

<sup>218</sup> Grey/Gladstone, 7 October 1846, BPP, vol 6 [892], pp 1–2

<sup>219</sup> Grey/Earl Grey, 28 December 1846, in CO 209/46(2) [micro-Z 426], pp 532ff

waiting for the company to make steps 'towards securing their lands,' and now the military command had distracted the commissioner who was supposed to help with the company's land arrangements. Ironically, inasmuch as this was preventing the acquisition of a clear line of road from Port Nicholson to Porirua-and-beyond, it was delaying Grey's own most vital military measure.

In addition, as in late 1843, Maori were refusing to transact anymore with 'Wideawake' Wakefield. Grey himself thought Wakefield's refusal to recognise Maori rights to the 'waste' lands was unrealistic, and combined with his intransigence, made him unlikely candidate for successfully completing land purchases.<sup>220</sup>

On 17 February he met with Wakefield and undertook to make arrangements for the company to meet its obligations to its settlers. Grey promised 'to facilitate by every means, short of direct dictation to the natives, the accomplishment of the company's views,' but he and Wakefield disputed whether the Crown or the company ought to provide the funds for the transactions.<sup>221</sup>

By the end of February 1847, Grey was in New Plymouth. He had received extra instruction in this case, beyond Stanley's 1845–1846 loan arrangement instructions. On 2 July Gladstone told Grey he thought it improbable that FitzRoy's reversal of Spain's 60,000 acre award had been 'a wise and just measure.' He instructed Grey 'to do [his] utmost to procure for the company' the land Spain had awarded at Taranaki.<sup>222</sup>

Starting 1 March 1847, Grey and Wakefield had several days of talks with Maori at New Plymouth. Apparently by the second of March Grey was already resorting to threatening to place Wi Kingi 'under guard' if he dared try to settle at Waitara. By the fifth, Grey, Wakefield and McLean were discussing 'how military operations should be conducted in this settlement.'<sup>223</sup> Grey seems to have been doing his utmost.

Grey firmly believed that, in setting aside Spain's award, FitzRoy did not intend 'that the original *purchase* should be set aside' for the forty-or so resident Maori who had 'originally sold their land' and 'received payment' in the Ngamotu transaction.<sup>224</sup> And if this was a partial purchase, then presumably as in Spain's arbitrations, the company had a partial estate, and Maori had no remaining general

220. Frustrated, Grey/Earl Grey, 8 April 1847, in CO 209/52 [micro-z 429], pp 57ff. Absent commissioner, see Wai 145 ROD, doc C-1, pp 253–257. Military dimension and Maori refusal to deal with Wakefield, Grey/Earl Grey, 26 March 1847, BPP vol 6 [892], p 7. Wakefield's unrealistic views on 'waste', Grey/Earl Grey, 7 April 1847, BPP vol 6 [892], pp 16–17. Wakefield's intransigence: Grey/Earl Grey, 9 April 1847, BPP, vol 6 [892], pp 19–20.

221. Phillipson, p 88

222. Parsonson, p 68, and Grey/Earl Grey, 5 April 1847, BPP, vol 6 [892], p 12

223. Turton journal entry of 2 March 1847, in H H Turton to the editor, *Taranaki Herald*, 5 September 1855, and McLean, private letters and native correspondence, 1846–1847 (58), 'Taranaki Land Claims,' both cited in Parsonson, pp 69–70.

224. Grey/Earl Grey, 2 March 1847, BPP, vol 6 [892], pp 2–3. Parsonson acknowledged this same point, Wai 143 ROD, doc A1, p 72, but seemed to think Grey only 'affected to believe' it. I think he was in earnest. Failure to acknowledge the integrity of Grey's interpretation might cause one to miss seeing whether McLean subsequently only compensated 'absentee' interests, which would cause one not to ask whether McLean was effecting new purchases or only 'completing' the company's. See for example ibid, p 75.

right to refuse to sell. Maori had only a right to compensation for any unsatisfied claims against the company's possession.

On 5 March, Grey announced a five-step plan, and instructed McLean to implement it:

- (a) mark off reserves for both residents and likely returnees;
- (b) resume the remaining portion of the district for the Crown;<sup>225</sup>
- (c) assess the value of the resumed portion;
- (d) register the Maori interests in the resumed portion;
- (e) compensate the registered interest-holders, in annual instalments.<sup>226</sup>

Grey instructed McLean to be sure Maori dissenters understood 'that the Government do not admit that they are the true owners of the land.' Also, as soon as the land was resumed, Grey intended to grant it to the company.<sup>227</sup>

Grey clearly sought to enforce Spain's award as far as it went – namely in awarding the company the 'resident' vendors interests. To this extent, Grey was again following Stanley's (and Gladstone's) instruction to implement Spain's awards. He also had in mind his instructions to register Maori interests as a means of effecting their general extinguishment. His discussions show he had clearly embraced Stanley's authorisation to use force if necessary.

McLean set to work and Grey returned to Auckland. Interestingly, despite obviously seeking every advantage of Spain's award, it did not apparently interest Grey that Spain had sanctioned the entire Ngamotu transaction. The boundaries of this deed, albeit inscrutable, would almost certainly have given Grey an enormous 'surplus' up to the summit of Mount Taranaki. Instead, though, Grey foresaw 'for a comparatively small sum' *buying* a vast tract at Taranaki, of which the New Zealand Company would only ever require (or select under its charter) a small portion. Hence, Grey cooed to the Home Government, 'no difficulty will hereafter be found in re-paying these amounts from the Land fund.'<sup>228</sup>

Once returned to Auckland, Grey requested guidance from the Colonial Office for this unique case: suppose he enforced Spain's award by resuming 60,000 acres and granting it to the company. According to Spain's award, the company had no obligation to pay for these lands. However, since FitzRoy had promised Maori that the lands would be 're-purchased,' some such payment would probably be both

225. Note 'resumption' in both lay and legal terms, implies *prior* possession. Grey's constant use of the term is perhaps the surest sign that he conceived of New Plymouth as 'having *once* been the Crown's' (by virtue of having the Maori interests extinguished). The Oxford English Dictionary gives the legal definition as 'The action of the part of the Crown, or other authority, of re-assuming possession of land, rights, etc, which have been bestowed on others . . .'. Its examples suggest a context of enclosures (A Young, 1792 *Trav Franc* 46, and Burton, 1873, *Hist Scot* vi 78). See also John Burke, ed, *Jowitt's Dictionary of English Law*, [2 ed], vol 2, London, Sweet and Maxwell, 1977, p 1570: 'the taking again into the King's hands of lands which, upon false suggestion or other error, he had made livery of to anyone or granted by letters patent.' As Grey used it here, 'resumption' would have correctly applied only to the rights FitzRoy had bestowed upon the Taranaki absentee/returnees.

226. Grey/Earl Grey, 2 March 1847, BPP, vol 6 [892], pp 2, 4. Also Grey/McLean, 5 March 1847, BPP, vol 6 [892], pp 13–14, especially point 4. Also summed in Wilson, pp 190–191.

227. Grey/McLean, 5 March 1847, BPP, vol 6 [892], p 14, especially points 6 and 12.

228. Grey/Earl Grey, 5 April 1847, BPP, vol 6 [892], p 13, and Grey/Earl Grey, 8 April 1847, in co 209/52 [micro-z 429], pp 57ff

practically and morally necessary. But if so, then Grey asked, should the company or the Crown pay it?<sup>229</sup>

We have not examined the primary sources for McLean's negotiations yet. Although Parsonson concluded that McLean did not particularly follow Grey's five-point plan (reserves/resumption/registration, etc, above), her own description of McLean's transactions sounds like a good effort at it:

In general, ... a survey of the external boundaries of the block would be undertaken, for the purposes both of estimating the amount of land involved, and of testing the reaction of other groups who might have claims. If there were [sic] no opposition, McLean considered the claim of the sellers as 'fully admitted'. Finally the deed would be signed and payment made.<sup>230</sup>

In this way, McLean acquired the Tataraimaka block on 11 May 1847, the Omata block on 30 August 1847, and the Grey block on 11 October 1847.<sup>231</sup> Of these, both the Tataraimaka and the Grey blocks had substantial portions within the company's old Ngarnotu transaction/Spain award area. The plan that McLean prepared for the transactions prominently showed 'Spain's Boundary' from 1844, and the key stated that the block purchased from the Ngarnotu Maori was 'principally within the limits of Mr Commissioner Spain's award in favour of the New Zealand Company, and is estimated to contain including waste land and roads 9770 acres.'<sup>232</sup>

As we would expect (given Grey's and McLean's instructions and views), Parsonson observed a particular concern in this transaction to extinguish the 'absentee' interests.<sup>233</sup>

In sum, much suggests that McLean's 1847 transactions at New Plymouth were consistent with transactions at other company settlements where the land commissioner acknowledged a partial purchase: a partial purchase extinguished 'Native title', leaving only 'adjustments' and 'compensation' of outstanding claims against the Crown's demesne, which had been 'guaranteed' to the company.

Shortly after McLean's Grey block transaction, news of the company's 1847 Loan agreement arrived, fundamentally changing the relationship between company and Crown, and their roles in purchasing Maori land.

## **8.24 GREY AT PORIRUA AND WAIRAU UNDER STANLEY'S ARRANGEMENTS**

In his April queries home about who would pay for the New Plymouth 'repurchasing,' perhaps Governor Grey was relaying something of his discussions

<sup>229</sup>. Grey/Earl Grey, 5 April 1847, BPP, vol 6 [892], p 13. I am not sure that FitzRoy referred to his transaction as 're-purchasing'. Grey thought so, though, at Grey/Earl Grey, 2 March 1847 and 5 April 1847, BPP, vol 6 [892], pp 4 and 13 respectively.

<sup>230</sup>. Not followed: Parsonson, p 72. Description: *ibid*, p 74.

<sup>231</sup>. Parsonson, pp 73–74

<sup>232</sup>. Plans T5 and T6, LINZ, microfiche misc plan series

<sup>233</sup>. Parsonson, p 74

with Wakefield at Wellington immediately before they had ventured to New Plymouth.

As we saw above, Stanley had secretly advanced Grey £10,000 – but he had done so just the day *after* instructing Grey to waive pre-emption so that the company could do its own purchasing. Stanley specifically told Grey to purchase land himself only as a last resource, and in any case to ‘conduct [his] operations so as not to interfere with the new [loan] arrangements [with the company].’<sup>234</sup> Grey, however, now saw both the need and the opportunity to spur the company along. He determined that he would advance the money, and:

purchase on behalf of the Government . . . as much of the land which had been previously disposed [by sale] by the New Zealand Company as [he] could . . . and in addition . . . to include within the limits of the purchased land a very extensive block of country to meet the probable prospective requirements of the Government and the settlers.<sup>235</sup>

After the transaction, Wakefield was to select whatever portion of the purchased lands he needed for settlers, and then:

repay to the Government for the lands they might select, such proportion of the purchase money as Her Majesty’s Government might . . . direct to be refunded.<sup>236</sup>

If the company wanted to (or could) expand upon or improve the transaction, they were welcome. Grey’s transaction was not to interfere with their arrangements, central to which was their right of pre-emption.<sup>237</sup>

Difficulties with the purchase, of course, centre upon the fact that the purchaser, Grey, was holding the vendors beloved and feared chief captive at the time they ‘agreed’ to sell. On the other hand, though, Grey’s purchase consideration (£2000 for about 70,000 acres) and reserves (about 10,000 out of 70,000 acres) were sanctioned at the time by Commissioner McCleverty, and have recently been said to appear generous by the standards of the day.<sup>238</sup>

Days after the Porirua transaction, Grey negotiated at Wellington with the Ngati Toa chiefs for their interests from Wairau down to Kaiapoi.<sup>239</sup> Phillipson’s recent study concluded that, like Porirua, there were many irregularities and deficiencies with the Wairau transaction, and in contrast to Porirua, the £3000 payment for these approximately 2,000,000 acres of land was ‘tiny’ (though compensated for somewhat by the large areas excluded from the transaction).<sup>240</sup>

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234. Grey/Earl Grey, 8 April 1847, in CO 209/52 [micro-z 429], pp 57ff

235. Grey/Earl Grey, 26 March 1847, BPP, vol 6 [892], pp 7–8

236. Ibid, p 8. Note, this same pattern of purchase/payment/selection/‘refund’ is reiterated in Grey’s other report of the deal, Grey/Earl Grey, 7 April 1847, BPP, vol 6 [892], pp 15–17.

237. Grey/Earl Grey, 26 March 1847, BPP, vol 6 [892], p 8

238. See Anderson and Pickens, pp 45, 47. Plan w48, signed a true copy by T H Fitzgerald, 28 February 1848, in LINZ, microfiche misc plan series. The Crown grant is New Munster miscellaneous 6.

239. Phillipson, p 90. See deed of cession, 18 March 1847, in MacKay, *Compendium*, vol 1, pp 204–205

240. Phillipson, pp 91–92

### *The Crown's Surplus in the NZC Purchases*

It is clear that Grey only very reluctantly 'pre-empted' the company's right of pre-emption at Porirua and Wairau. Even then, Grey did not speak of the Crown 're-selling' the land to the company, but rather of the company taking its portion and 'refunding' the Crown the purchase moneys advanced. Despite being Grey's instructed course of last resort, these purchases clearly met the wider aims of his instructions – and at any rate, Grey knew that:

even after the New Zealand Company ha[d] selected the land they require[d] for their settlers, many thousand pounds will be realized by the Government from the sale of the remaining portions of the waste lands.<sup>241</sup>

Upon his return to Auckland at the end of March 1847, Grey reported most satisfactory progress, with revenues rapidly increasing and a 'most gratifying contentment' restored throughout the islands. This spirit had enabled him to complete all the arrangements he had contemplated in the company's settlements, and to arrange 'the great mass of the land claims in the Southern districts.' He noted, though, that if Maori:

had not met me in a spirit of fullest confidence, I should have found it most difficult to adjust satisfactorily.<sup>242</sup>

At the Colonial Office, James Stephens noted how this 25 March despatch, like many of Grey's, opened with insurmountable problems and closed with happy endings. He grizzled that Grey was 'an alarmist and a croaker.'<sup>243</sup> Perhaps Stephens appreciated better how fine a line Grey was walking, though, after reading of the next month's violent disputes in most of the company's settlements.

Grey did little at Port Nicholson on this early 1847 trip. McCleverty was at work, though, and Grey received his main report on the troublesome pa and cultivation exceptions on 8 April.<sup>244</sup> Grey appears very confused in his April 1847 discussion of which lands were at his disposal for resolving the company's objections to the 1846 Port Nicholson grant. McCleverty reported to Grey on 8 April 1847 that the area of FitzRoy's Port Nicholson grant was:

209,372 acres within the boundaries, part of which only, viz., 71,900 acres, are surveyed by, and granted to, the Company . . . as part of 1,300,000 acres granted by Lord Stanley in liquidation of expenditure, etc. [that is, in pursuance of the company's 1841 charter].

McCleverty believed:

the balance, . . . 137,472 [acres] includes the Town Belt and other unsurveyed lands as waste and pertaining to the Crown.<sup>245</sup>

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241. Grey/Earl Grey, 8 April 1847, in CO 209/52 [micro-z 429], pp 57ff

242. Grey/Earl Grey, 25 March 1847, despatch 25 in CO 209/51 [micro-z 429]. Also BPP, vol 6 [892], p 6.

243. Marginalia on despatch 25, Grey/Earl Grey, 25 March 1847, CO 209/51 [micro-z 429]

244. McCleverty report, encl in Grey/Earl Grey, 21 April 1847, in Wai 145 ROD, doc A10(a) no 9, p 1

245. Ibid, p 6

### *Old Land Claims*

On 21 April 1847 Governor Grey forwarded this report to Earl Grey. For some reason, Governor Grey reported that McCleverty:

remarks, that the Port Nicholson district not belonging to the Government, they have no land there applicable to the contemplated purpose . . .<sup>246</sup>

Grey's report seems bizarre, considering that McCleverty's report clearly discussed lands that were 'waste and pertaining to the Crown' (above). Grey specifically discussed McCleverty's plan of applying the town belt lands in exchanges for some Maori cultivations. Grey thought that settlers objected to this plan on the grounds:

that they bought their town land on the understanding that the town-belt was to be reserved for the use of the inhabitants of the town, . . . and . . . that any division of the town belt from the purposes originally contemplated will be a breach of contract.

Grey felt:

the answer to the above objections appears to be, that the Commissioner appointed to inquire into the land claims *disallowed* the original Port Nicholson purchase . . .<sup>247</sup>

In short, Grey argued that the settlers, through the company, could no longer claim a title to the town belt based on its original transaction, because that transaction had been disallowed and renegotiated by Commissioner Spain, who had given 'the natives certain rights which must be respected' – the right to retain their pah and ngakinga. The original claim having been disallowed, the settlers based their claim to the *town belt* on the same arbitrated award on which the Maori based their *counter-claim* to ngakinga *within* that town belt area. Grey felt compelled by 'the necessity of the case' to favour the Maori claim over the settlers.

Grey's argument for the Maori claim to the town belt helps put into sharper focus his understanding of the Crown's claim to the 'surplus': Grey understood that the commissioner had disallowed the original 1839 transaction, and that everyone's interests depended mostly on the 1844 arbitrated agreement (sanctioned as a land claims award). Therefore, he did not claim title to the Port Nicholson 'surplus' on the basis of the 'disallowed' 1839 transaction. But as we have seen, there was precious little evidence that any 'surplus' legitimately arose from the 1844 arbitrations and award. Indeed, it would seem its primary existence was as a path along the ridges, an east-west line cut from Horokiwi to Kiakia, and a red dotted line drawn on the land claims award plan – all originating in Spain's instruction to mark out the shortest and easiest path around the lands which had been arbitrated and awarded.

Finally, early 1847 is the period when the company's claim at Manawatu started going dangerously cold. Recall that Spain had awarded the company its surveyed Manawatu settlement, conditional upon eventually winning over Taikaporua. Then,

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246. Ibid, p 1

247. Ibid, p 2

### *The Crown's Surplus in the NZC Purchases*

in late 1846, Rangihaeata had retreated to the south side of the Manawatu. As of February 1847, according to William Wakefield, Governor Grey:

had declared his opinion that it would be advisable to wait until the presence of a portion of the armed police intended to be placed there [at Manawatu] guaranteed the perfect tranquility of [Manawatu] at that moment inhabited by Rangihaeata and his supporters.<sup>248</sup>

In this same memo, Wakefield understood from Rangihaeata's sister that he was not intending any further resistance to colonisation. The next month, though, on 18 April 1847, Rangihaeata's taua ransacked Andrew Brown's residence at Kapiti, apparently especially to obtain Brown's supplies of gunpowder.

Grey thought this was 'an ordinary New Zealand outrage' which indicated 'neither disaffection nor malice on the part of the natives.'<sup>249</sup> That same month, Grey reported Maori from Horowhenua returning to Taranaki, some of whom may have been worried along by Rangihaeata.<sup>250</sup> Regardless, in May 1847, probably more as a result of the Gilfillan murders, the Government advised all settlers to leave Manawatu, even those at Taikaporua's missionized village at Te Maire.<sup>251</sup> The company's lands at Manawatu sat unavailable.

In sum, we have seen that in 1846 and the first part of 1847, Symonds at Wanganui, McCleverty at Port Nicholson, and McLean at Taranaki sought primarily to complete the company's purchases, not effect purchases for the Crown. Taranaki was a unique case, in that Grey sought to uphold Spain's award as far as it went (which he regarded as far enough to extinguish all legitimate Maori interests within the awarded area), while he also acknowledged that FitzRoy had promised Maori that 'absentee' interests would be recognised and compensated. Therefore, from the outset, the lands included in these three (sets of) transactions, beyond those intended to go to the company, were fairly normal 'surplus' lands. We will want to examine how the Crown pressed its claim to these lands, and why they appear to have been largely overlooked as surplus lands.

At the same time, Grey's transactions for the Porirua and Wairau districts, and probably McLean's first two transactions at New Plymouth, were Crown purchases, albeit entered into *primarily* to satisfy the company's needs, not the Crown's. Nevertheless, each was conducted with a clear understanding that, after the company had been granted its portion, the purchase would generate a profitable 'remainder for the Crown. In a sense, the surplus was the centre.

248. Memo from Wakefield/directors, 23 February 1847, encl in Harrington/Earl Grey, 7 April 1848, in BPP, vol 8 [570], pp 147–148

249. Wai 145 ROD, doc C-1, pp 265, 267–268

250. Ibid, p 266

251. 'Duncan, James' in DNZB, vol 1, pp 114–115. Utu was apparently in the air: the Gilfillans may have been killed in retaliation for the accidental shooting of a Wanganui Maori by a midshipman of the HMS *Calliope*. MacKay, *Compendium*, vol 1, p 22.

### 8.25 A COMPANY-CROWN JOINT VENTURE: 1847-50

The most important determinants of Grey's approach to the company's 'land questions' after mid-1847 were two Imperial acts of 1846 and 1847: the August 1846 Act mandating a new charter for New Zealand – the fruit of the company's lobbying for increased representative government through municipal corporations, and the July 1847 Act 'to Promote Colonization in New Zealand and to authorize a Loan to the New Zealand Company' – the fruit of their lobbying for increased Crown responsibility for their lack of lands and their unwieldy debts.

In June 1846 important changes occurred in the Home Government. Peel resigned, and the following month John Russell (Bertrand's grandfather) became Prime Minister. Russell shifted the Colonial Office from Gladstone to Earl Grey – the new title of Lord Howick who had chaired the 1844 select committee. Howick/Grey evidently remained close to the company, as within days he met E G Wakefield and Charles Buller at Buller's London house. The meeting, however, produced no clear result.<sup>252</sup>

In August 1846, Wakefield had a stroke, leaving Buller the ideological reins of the company. Buller carried on meeting with Earl Grey, and arranging a further loan to continue operations. Eventually Buller obtained Grey's support for enacting 'a Parliamentary obligation upon New Zealand to recompense the company for its losses.'<sup>253</sup> The company's 'losses' included the as-yet unexercised portion of the 'right of selection' it had acquired under its 1841 charter and quantified under its 1845–1846 loan arrangement with Lord Stanley. Basically, Buller's great success was in getting Grey to concede that it was the Crown's fault that the company had been unable to exercise or redeem its valuable right.<sup>254</sup>

At the same time, in August 1846 several of the other main strands of the company's discussions with Stanley came together into an Imperial Act for a new charter. Since at least 1844, the company had lobbied for representative government, and we have seen that in 1845 both Colonial Office and company were already impatient for Lord Russell's instructions to effect a general land registration (including confiscation of Maori land for non-payment of land taxes), expressly as a means of obtaining a large demesne as easily and quickly as possible.

This desire for registration clearly animated the crucial thirteenth chapter of the 1846 charter's royal instructions, 'relating to the settlement of the Waste Lands of the Crown.' Foden summarized this thirteenth chapter:

Charts of the whole Islands were to be prepared, especially of those parts over which either Maoris or Europeans had established titles, whether of property or of occupancy, but which were valid. Land Registries were to be kept in the district and province, while, by reference to the charts, the settled lands were to be distinguished

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252. Bloomfield, pp 283–285

253. *Ibid*, p 289

254. Buller's genius was perhaps in seeing how badly the Crown needed the company. He apparently argued that if the New Zealand Company were to fail, then its 'ghost' would 'scare every capitalist in the country from venturing on any similar enterprise.' Bloomfield, pp 289–291.

from the unsettled lands. The obligation was then cast upon the owner of lands to send to the Registrar of his district a statement of the extent, situation, and boundaries of lands claimed, and of the title upon which the claim rested. All of these statements were to be provisionally registered.

Maori claims were likewise required to be registered within a certain time period, or else forfeited:

In this way it was thought to ascertain the unclaimed lands which could then be regarded as the waste lands of the Crown . . . All areas which had not been claimed or provisionally registered within a time limited became the demesne lands of the Crown . . . No Native claims were to be admitted unless (a) the right of the Native to the land had been acknowledged and ascertained . . . by . . . some court . . . or (b) the claimant and his progenitors or predecessors in title had actually had the occupation of the land claimed.

As the company had demanded in 1845, Crown pre-emption was to be restored and strictly enforced against all individual settlers, except that Maori were to be free to deal in any lands they held individually. And finally, the charter called for concentrating political powers in geographically proscribed municipalities (as Lord Normanby had anticipated – before Governor Hobson declared the Port Nicholson municipality ‘treasonous’ and suddenly proclaimed sovereignty over the entire islands). The complements of the Act’s geographically proscribed *colonial* political entities, of course, were ‘Aboriginal Districts’ within which Maori law and custom (if not repugnant to universal principles) was to be enforced by Crown-appointed Maori.<sup>255</sup>

The 1846 Charter Act also matched Governor Grey’s own recommendations, especially for the company’s districts. In November 1846, Grey argued that Maori themselves were pleading for firm regulation of their commercial and land interests – to collect commercial debts, to ‘register the claims of the various owners,’ and to ‘prevent a powerful chief from taking the lands of his weaker neighbours.’ The Colonial Office’s response to these reports was electric: they saw Grey’s reports as uncanny, virtually a *request* for their new charter’s requirements to register Maori property interests. Earl Grey sent his ‘entire approbation.’<sup>256</sup>

Grey argued similarly in February 1847 in his report of steps he had taken to be seen to be benefitting Maori. According to Grey, Maori were using their road-building wages to participate in the colony’s commercial life generally and in the new savings banks in particular. Maori were corresponding prolifically with him through their new Native Secretary, and using the new hospitals, Crown prosecutors, standing counsel, Magistrates Courts, and the more frequent Supreme

<sup>255</sup> N Foden, *The Constitutional Development of New Zealand in the First Decade (1839–1849)*, Wellington, Watkins, 1938, pp 146–148. Note, this was also an idea advocated by Wakefield to Gladstone, shortly before his stroke. Bloomfield, pp 283–284.

<sup>256</sup> Grey/Earl Grey, 28 November 1846, in CO 209/46(2), pp 367–368. Grey was here again arguing the ill-effects of his predecessors waivers of pre-emption. Colonial Office response, 30 April 1847, ibid pp 375–376.

Court sittings he had provided. Again, Earl Grey crowed loud approval and forwarded Grey's despatch to Queen Victoria.<sup>257</sup>

Governor Grey received a draft version of the 1846 Act, charter and instructions, shortly before 3 May 1847.<sup>258</sup> He received the final version at the end of June 1847.<sup>259</sup> However, much as the Act's registration approach to extinguishing Maori interests closely matched Governor Grey's current instructions, expectations, and recommendations for the company's districts, Grey saw that such registration could not be quickly instituted and enforced in the northern parts of the colony. He immediately pleaded patience and began postponing implementation.<sup>260</sup>

Earl Grey sent his acknowledgement and approval of Grey's non-implementation in November 1847. It arrived here about March 1848.<sup>261</sup> Shortly after, he suspended the 1846 charter and instructions in the northern province of New Ulster by means of the 1848 Suspension Act (and subsequent proclamations).<sup>262</sup>

Meanwhile, and in contrast, the company and Colonial Office worked out plans for *implementing* the 1846 charter and instruction in the company's districts – the Province of New Munster. On 23 April 1847, the company directors notified Earl Grey that, as their mostly-unspent 1843 advance of £50,000 to establish a settlement at Auckland was about to expire, and since Stanley's 1845–46 advance of £100,000 had so far failed to secure them any grants or actually restart their colonising operations, it was time for the company to decide 'as to the continuance of its proceedings and existence'.<sup>263</sup>

The directors preferred a claim for compensation, based on 'the injury which has been done to the company by the acts of Government.' They asked that Grey:

admit the general justice of their claim, and . . . that the Government relieve them of the enterprise which it has marred, and take to itself both their liabilities and their assets.<sup>264</sup>

The company's only assets were its 1,049,000 acres of un-exercised right of selection, and its 24,000 acres of land. Its liabilities totalled £394,000, including £235,000 of paid-up shareholder capital. Note Earl Grey's position. Lords

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257. Grey/Earl Grey, 4 February 1847, CO 209/51 [micro-z 429], pp 196–211. Earl Grey's response minuted 18 June 1847.

258. Foden, pp 164–165

259. Wilson, p 210

260. See Wilson, pp 211–215 re: Martin, Selwyn, Maunsell, and Te Wherowhero's protests against the charter in late 1847. Grey's famous plea to delay implementing the Act, 3 May 1847, extracts in BPP, vol 6 [892], pp 42–43, specifically restricted itself to New Ulster. Grey expressly stated that he *would* implement the Act in the Southern Province of New Munster, the company's districts. The whole despatch is in CO 209/53 [micro-z 430], pp 258–259.

261. Earl Grey/Grey, 20 November 1847, in BPP December 1847 (confidential), p 46, cited in Wilson, pp 214–215.

262. Foden, pp 174–175

263. Harrington/Grey, 23 April 1847, BPP, vol 5 [837], pp 104–106. The reference to the Auckland loan is obscure in the directors letter. F D Bell explained the link to the select committee in New Zealand in 1854 re Auckland's liability for the company's debt. See *Votes and Proceedings of the House of Representatives*, sess 1, 1854, select committee minutes, pp 3–4.

264. Harrington/Grey, 23 April 1847, BPP, vol 5 [837], pp 104, 106

Russell and Stanley had earlier accepted the company's claim of a right to select 1.3 million acres of Crown land. As soon as the Crown *had* that land to grant, under then-current 1845–1846 loan arrangements and within minimal guidelines as to shape and position, the company could have *exercised* its right. 'It would therefore clearly have been in the power of the company to have selected some of the most valuable portions' of any of the areas so far acquired in their districts, and to have sold the lands for the most profitable terms obtainable.<sup>265</sup> Within a few months of the 1847 agreement, without the 1847 agreement, the company might have crippled Otago, Porirua, Wairau, and Port Nicholson.

Instead, Earl Grey replied that he was 'ready at once to admit that the company has established a claim against Her Majesty's Government.'<sup>266</sup> He agreed that, rather than assigning a monetary value to the claim, it would be better:

to make the Government a party to the fair trial of the experiment whether the Company can be placed in a position that will enable it to continue its operations without further assistance.<sup>267</sup>

Grey offered 'exclusive use of the Crown lands' in New Munster, an advance to meet existing liabilities and future outlays, with a commissioner to oversee the expenditure of the advance. While he did not point it out as clearly to the company directors as much as to Treasury, Grey expected the commissioner to 'give [the Crown] the most *complete control* over the expenditure of the company.'<sup>268</sup>

Grey assured the directors that the 1846 charter's prohibition against pre-emption waivers *outside* the company's districts would stand. He did not want 'Her Majesty's Government and the company' to be exposed to competition from small land traders in 'their combined operations, under the proposed arrangements.'<sup>269</sup>

Grey proposed the specific provisions for these 'combined operations' in an attached memorandum. In it, he surrendered 'entire and exclusive disposal of all Crown lands, and the exercise of the Crown's right of pre-emption' in the company's districts. He undertook 'to execute any grants . . . for which the Court of Directors and Commissioner shall engage.' He promised to advance £136,000 – £28,000 the first year, £72,000 the second year, and £36,000 the third.

If the company wished to continue colonizing after mid-1850, they would retain the commissioner, and they would obtain permanent possession of the demesne and the right of pre-emption. They would, however, have to abandon all claim against the Crown, and start repaying both the old £100,000 loan and the current £136,000 loan.

If instead the company wished to fold, then (as proposed by the directors on 23 April) the Crown would 'take the company's assets, together with the liabilities.'

265. Stephen/Trevelyan, 6 May 1847, in *ibid*, p 102. This argument was recalled as the reasoning behind the 1847 Loan Act by the Provincial Council of Nelson in 1858. AJHR, 1858, G-5, pp 2–4.

266. Hawes/Harrington, [nd] April 1847, BPP, vol 5 [837], p 108. Also in Stephen/Trevelyan, 6 May 1847, in *ibid*, p 100.

267. Hawes/Harrington, [nd] April 1847, *ibid*, p 109

268. Stephens/Trevelyan, 6 May 1847, *ibid*, p 101 (emphasis added)

269. Hawes/Harrington, [nd] April 1847, *ibid*, p 111

Remarkably, Grey undertook to wipe the company's £236,000 advance/debt (or however much of it had been used by mid-1850) 'in consideration of the company's admitted claims on the Government.' And more, Grey promised to buy back the company's entire unexercised rights of selection, 1,049,991 acres – 'so much land scrip' – at the same rate at which they had been awarded to the company in its 1841 charter – 5 shillings per acre. He also promised to buy, at the same rate, the 24,491 acres which the company had purchased for itself out of its settlements.<sup>270</sup>

After the collapse of the company on 5 July 1850, these undertakings amounted to a £268,000 debt, secured against the Crown lands of the colony, and requiring the young colonial Government to pay to the defunct company in England one-fourth of the proceeds of all Government land sales.<sup>271</sup>

The agreement was approved all around, Mr Cowell was appointed commissioner, and the whole immediately forwarded to Governor Grey on 19 July 1847 – four days before the authorising Act passed Parliament [Imperial Act 10 and 11 Victoria, c 112].<sup>272</sup> The news reached Governor Grey about October 1847.

The immediate, practical impact of the 1847 Loan Act was to establish a particular procedure for extinguishing Maori claims and interests in the company's districts. It is important to grasp the internal logic of this procedure: the sixth chapter of the 1847 Loan Act empowered the company to handle the demesne lands as if it were the Crown, including on-selling the land and using the proceeds 'for the Purchase or Satisfaction of [Maori] Claims, Rights, or Interests in the said Demesne Lands.'<sup>273</sup> On the face of it, this fulfilled the memorandum of agreement of May 1847 (above), which promised the Crown would surrender to the company 'the exercise of the Crown's right of pre-emption in the Southern Province.'

The second chapter of the 1847 Loan Act, though, suspended the provisions of the thirteenth chapter of the 1846 royal instructions *except*:

such as relate to the registration of titles to land, the means of ascertaining the demesne lands of the Crown, the claims of the aboriginal inhabitants to land, *and the restrictions on the conveyance of lands belonging to the aboriginal Natives, unless to Her Majesty.* [Emphasis added]

Clearly, there was either confusion or else a fine line being drawn: pre-emption remained with the Crown, but the company could use its land fund to buy Maori land.

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270. Memorandum encl in *ibid*, pp 111–112. 'So much scrip' is what the Provincial Council of Nelson called it in their 1858 petition, p 2. Total acreage = 1,072,000.

271. The 1847 Loan Act made the £268,000 a charge against the colony's lands, but did not actually specify the rate at which the Crown had to pay this charge. In correspondence with the company subsequent to its passage, Lord Grey set the rate of payment at one-quarter of each year's land fund. Lord Derby later wrote this rate of payment in to the 1852 Constitution [15 and 16 Victoria, c 72]. Pakington/Earl Grey, 16 July 1852, in BPP vol 5 [1779], p 303.

272. Stephen/Trevelyan (Treasury), 6 May 1847, *ibid* pp 100–103; Trevelyan/Stephen, 10 May 1847, *ibid*, p 113; Harrington/Grey, 12 May 1847, *ibid*, p 113, Grey/Harrington, 22 May 1847, *ibid*, p 115; and Harrington/Grey, 25 May 1847, *ibid*, p 115. The Act is in Wai 145 ROD, doc E4, pt 2, p 313.

273. Chapters 2–6, in Wai 145 ROD, doc E4, pt 2, p 313

*The Crown's Surplus in the NZC Purchases*

Earl Grey addressed this apparent conflict in his instructions to Governor Grey 19 July 1847. He directed Grey specifically:

You will continue to retain in your hands the exclusive management of all negotiations with the natives for the sale of their lands; but when any transactions of this sort are concluded in the southern province, the New Zealand Company will provide the means of payment from funds placed at their disposal, and have the disposal of the lands so acquired.<sup>274</sup>

The basic procedure was set: the company was to select, the Crown was to negotiate, and the company was to pay, acquire, and dispose of. Several months later, Earl Grey explained how he understood the arrangement:

If the language of the second and following sections . . . alone were looked at, it would seem . . . that the Company's agents alone could effect purchases from the natives. But the first section . . . restricts the conveyance of lands belonging to the aboriginal natives, unless to Her Majesty . . .

The Governor should continue to be, as he was before the Act, the sole authorised agent to effect such purchases . . . Lord Grey is anxious to adhere [to his 19 July 1847 instructions to Governor Grey], and will be ready to authorize Governor Grey to conclude the necessary negotiations, when the Company point out any tract in which they are willing to have such purchases effected out of the funds at their disposal:

At the same time, . . . Lord Grey thinks it desirable in any such case, that the Company should expressly authorize the Governor to take the steps of which they are desirous, in order that he may be invested with the character of their agent, possessing as they do, the right of pre-emption, as well as the agent of the Government.

In short, only the agent of the company had the right to purchase or acquire, but only the agent of the Crown had the right to negotiate or transact. Governor Grey was to be double agent in these 'combined operations.'

None of this should obscure the other often-ignored aspect of this 1847 Act: from 5 July 1847 to 5 July 1850, while they were suspended in the north, the 1846 charter's compulsory land registration provision, and confiscatory land tax provision, remained intact in the company's districts. As Earl Grey wrote in hindsight in 1851:

My great object in proposing to get rid of [the New Zealand Company's] claims was to facilitate the adoption of measures for extinguishing the Native title to lands not yet acquired by the Crown.<sup>275</sup>

In combination, the company's 1841 charter, the 1846 charter, and the 1847 Loan Act effected a strange reversal: the imperial Government was using a land company to do most of its colonising work, and the land company was using the Government to do most of its land-purchasing work.

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274. Earl Grey/Grey, BPP, vol 5 [837], p 117

275. Earl Grey/Grey (private), 7 August 1851, Grey MSS 35

Unsurprisingly, the Loan Act's implementation varied in detail from settlement to settlement; the 'land question' at Port Nicholson differed from that at New Plymouth, which differed from that at Wanganui, and so forth. We will examine these various local applications of the Loan Act in the next section.

### **8.26 FIRST REACTIONS TO THE LOAN ACT: LATE 1847 NEGOTIATIONS AND GRANTS**

The first three of McLean's four transactions at Taranaki reflected Grey's March 1847 'resumption' approach to his 1845 instructions (above). By the end of 1847, the company had 31,000 acres at New Plymouth, which they regarded as ample for the time being.<sup>276</sup> Colonising operations remained slow, although finances in the colony and public confidence in Britain were improving.<sup>277</sup>

When news arrived of the 'combined operation' established by the 1847 Loan Act, Grey instructed the resident magistrate at New Plymouth that Crown purchasing must stop, and all land negotiations must be suspended.<sup>278</sup> Under Grey's 19 July instruction he was to retain exclusive management of negotiations, but only the company was to actually purchase. As we might expect, therefore, Grey came to New Plymouth in February 1848 and had long discussions with F. D. Bell, the company's Resident Agent. These resulted in additional instructions, March 1848, authorising Bell to negotiate with the Maori with every assistance the Crown could offer.<sup>279</sup>

According to Parsonson the instructions detailed how Bell was to:

only 'conduct the negotiation to the final point', before reporting to the Resident Magistrate 'the nature of the contracts the natives are prepared to enter into' ... Captain King was then to ascertain from McLean that 'the intended native sellers are the true owners' ... and King was then to conclude the transaction on behalf of the Government, and place the land at the disposal of the Company's Agent.<sup>280</sup>

Negotiations were long and difficult, but McLean did finally preside over the deed-signing on 29 November 1848. Even while doing so, McLean anticipated further adjustments with more 'outstanding claimants'.<sup>281</sup>

The whole appears a first draft at pursuing the 1847 Loan Act's basic procedure: the company select, the Crown negotiate, and the company then pay, acquire, and dispose of.

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276. Wilson, p 193

277. MacKay, *Compendium*, vol 1, p 23

278. H King to F D Bell, 6 December 1847, NZC 308/1, no 47/118, cited in Parsonson, p 78

279. Parsonson, p 78

280. Ibid, pp 78–79

281. McLean/resident magistrate, 28 November 1848, MA/MLP/NP 1, cited in Parsonson, p 82. Here Bell and McLean's 1848 purchase process resembled the open-ended deeds used in the 1880s and 1890s. These invited individuals named on a land court owners list to sell their interests one-by-one, and to each receive payment one-by-one, until one day – whenever the Crown chose – the Crown closed the deed and sought partition of its 'share' of the tribe's land.

### 8.27 GREY'S GRANTS AT PORT NICHOLSON AND PORIRUA: JANUARY 1848

The second draft, as it were, was being written at Port Nicholson and Porirua. At Port Nicholson, Spain had only awarded the company 71,900 acres minus reserves. As we have seen, though, he had also instructed an 'exterior boundary' be surveyed along the easiest route around these 71,900 acres. In April 1847, Grey had received McCleverty's detailed proposals of how to rid the company's selected lands of the Maori cultivations which had been excepted in the 1844–1845 arbitrations, award, and grant. As we have seen, McCleverty proposed that the excess surrounding the company's selection but enclosed within the 'exterior boundary' was 'waste and pertaining to the Crown.' Throughout 1847, therefore, McCleverty had 'exchanged' large areas of this outlying surplus for the Maori cultivations in the company's selection.

Prior to the 1847 Loan Act, we would expect the arrangement to be secured by a Crown grant to the company of its selected lands, some kind of record of the remaining Maori exceptions and reserves, and a proclamation of the Crown's title to the remainder or 'surplus'.

Instead, Grey's Port Nicholson Crown grant (special grant I), 27 January 1848, simply granted the company the entire area inside Spain's 'exterior boundary' (minus Maori reserves and exceptions). Lieutenant Governor Eyre stated the reason. In December 1847, he directed that the company's grant was to:

embrace the whole area comprised within the limits of the purchase (excepting the lands reserved) without reference to any specific quantity to which the New Zealand Company laid claim or which had been awarded them [by Commissioner Spain] in that particular district.

Eyre carefully explained that this was:

*in consequence of the recent arrangements entered into between Her Majesty's Government and the New Zealand Company by which the demesne lands of the Crown are for three years to be placed entirely in the hands of the Company.<sup>282</sup>*

In short, the land was to be vested in the company anyway, and including it in their grant was the easiest way to do this. He explained in the same despatch that he would follow this same approach for the grant of Porirua.

As a result, although the Crown acquired a large 'surplus' by virtue of the company's transacting at Port Nicholson, and a similar 'surplus' at Porirua by virtue of transacting on behalf of the company, neither appeared as such, due to the 1847 Loan Act.

The effect was much the same at Nelson. There again, rather than separate out any proportionate parts or fiddle with internal surveys, in August 1848 Grey simply granted the entire 2 million acre purchase area to the company. The grant referred

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<sup>282</sup>. Eyre/Grey, 24 December 1847, NM 4/1/47/96 pp 122–124, in Wai 145 ROD, doc E4, vol 2, p 271E

to seven annexed plans – one of the entire 2 million acre block, and six others of native reserves.<sup>283</sup>

The first plan ‘showing the Gross Block,’ was not signed-off by the assistant government surveyor, T H Fitzgerald, until 28 February 1850 (shortly before the expiry of the company’s 1847 arrangements).<sup>284</sup> The Nelson ‘grant’ was apparently left open to enable further adjustments, extinguishing outstanding interests immediately adjacent to and/or enveloped by the company’s existing estate.

In particular, at the end of 1848, the company needed the Waitohi Valley, just at the mouth of the Wairau Valley, as land to exchange with its disgruntled Nelson settlers. In December, Grey visited there at the request of F D Bell, resident agent of the company. On 30 December 1848, Grey and Bell both signed a Memorandum of Agreement with the Maori there, that when ‘he and Mr Bell’ had surveyed a native village and ploughed lands at Waikawa, built a church, and paid £100, the Maori would leave Waitohi to the settlers.<sup>285</sup>

Bell and Major Richmond returned the month after the Nelson grant had issued, to effect the details of the purchase. As we would expect under the 1847 Loan Act, Richmond inspected lands to be excepted from the transaction, assessed the Maori needs and resources, negotiated price and selected reserves direct with the Maori vendors. Throughout, Richmond sought (and obtained) the ‘cordial concurrence’ of the company’s agent, Bell.<sup>286</sup>

Note, a later deed, 4 March 1850, was expressly between the ‘Natives and Queen Victoria.’<sup>287</sup> This deed recited the December 1847 deed with both the Governor and the agent of the New Zealand Company as a condition precedent, and then converted the purchase consideration in the earlier deed to a cash amount. The deed was signed by Richmond, Maori, and Bell. This apparent ‘exception of a deed between the Crown and Maori under the 1847 Loan Act, therefore probably only proves our rule: as McLean did a few months later at Rangitikei, Richmond and Bell were probably anticipating the company’s dissolution and the vesting of its lands in the Crown under the 1847 Act.<sup>288</sup>

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283. Copy of Grant in MacKay, *Compendium*, vol 2, pp 374–375. Official copy is New Munster Grants, vol R6, fol 36. The five latter plans may be the series produced by Heaphy [nd], and held as N(R)9–N(R)18, in LINZ, microfiche misc plan series

284. Plan is N(R)11, LINZ, microfiche misc plan series

285. MacKay’s *Compendium*, p 264. Phillipson, pp 96–97.

286. ‘Memorandum of Agreement between the Governor, Mr Bell, and the Natives, respecting the land at Waitohi’, 30 December 1848, encl in Grey/Earl Grey, 1 February 1849, MacKay’s *Compendium*, vol 1, pp 263–265. Richmond/Grey, 27 March 1849, ibid, p 264, and Richmond/Grey, 26 June 1849, ibid, pp 265–266.

287. Deed, 4 March 1850, ibid, p 266

288. McLean/Colonial Secretary, 9 November 1850, AJHR, 1861, c-1, p 83

## 8.28 NEW INSTRUCTIONS AND NEGOTIATIONS: MARCH–NOVEMBER 1848

By March 1848, the Te Maire mission station had re-established itself at Te Awahou (Foxton), leaving the company's purchase area south of the Manawatu still unsettled.<sup>289</sup> By this time, Colonel Wakefield fully presumed a set of procedures under the 1847 Loan Act. He was to indicate to Government the lands he wished to acquire, a 'Crown Commissioner' would conduct all required negotiations with Maori, make arrangements amenable to him, and Wakefield was to have the funds immediately available to implement whatever agreements had been struck. He fully endorsed the yearly instalments approach used the previous year, as well.<sup>290</sup>

In April 1848, therefore, Wakefield wrote to Lieutenant Governor Eyre, noting Governor Grey's 'exclusive management of all negotiations with the natives' under the 1847 Act, and indicating which lands he wanted to acquire. Far and away, Wakefield's top priority was the 74,600 acres already surveyed by and conditionally awarded to the company by Spain at Manawatu–Horowhenua. Wakefield worried by this time that squatters were starting to make regular payments to the resident Maori to run cattle there, creating a clear incentive for the old vendors to repudiate their first sale. Realistically, though, Wakefield told Eyre that he understood that Rangihaeata and 'his followers' were still there, making purchase negotiations untimely.<sup>291</sup>

Wakefield noted that Taranaki and Wanganui were ready for payment of compensation. It remained for him only 'to solicit, by your Excellency's directions, the acquisition of the district of Wairarapa and the land . . . from Port Cooper to Otakou.'<sup>292</sup>

The effect of the 1847 Loan Act in Wanganui was similar in ways to both New Plymouth and Port Nicholson. Like at Taranaki, McLean's 26 to 29 May 1847 Wanganui deed and September 1848 report both characterised McLean's 1848 transaction as a mere continuation of the 1841 charter arbitrations – previously started and stopped in 1844 and 1846.

McLean's 1848 deed represented itself as between Maori signatories and himself, acting 'for the Governor or for such Europeans as he the Governor agrees to give the said lands to.' It represented the extent of the transaction as 'the land which he [Mr Spain] . . . declared should be for the . . . Company.' It represented the £1000 paid as 'the last or concluding payment which was decided upon by Mr Spain in the year . . . 1844' – almost as if this was just another yearly instalment.<sup>293</sup>

The deed referred throughout to numerous surveys of pa and cultivation reserves done in 1846 by Mr Wills – the Wanganui equivalent of the surveys at the same time

289. 'Duncan, James' in DNZB, vol 1, pp 114–115

290. Wakefield/Eyre, 15 April 1848, encl in Wakefield/directors, 25 April 1848, encl in Harrington/Earl Grey, 23 August 1848, in BPP vol 8 [507], pp 226–229

291. Wakefield/Eyre, 15 April 1848, ibid, p 227. Rangihaeata appears to have continued to prevent the settlement of the Manawatu award right up to the dissolution of the company in 1850. See Kemp report no 3, 10 March 1850, in BPP, vol 7 [1420], pp 236–237.

292. Wakefield/Eyre, 15 April 1848, ibid, p 227

293. Wanganui deed, in Turton, pp 242–244

at Port Nicholson and Nelson, all done in pursuance of the arbitration award, in pursuance of the 1841 charter.

McLean clearly understood himself as merely continuing the adjustment of the company's single purchase. Throughout, his report spoke in terms of settling boundaries of reserves already set aside and surveyed, of paying 'compensation' for outstanding Maori 'claims' against a purchase and award already made; of his 'adjustment of the Whanganui Land Question,' and of having 'finally adjusted' the Whanganui purchase.<sup>294</sup>

Note that 'adjustment' was the term used by McLean at both the company's Manawatu settlement and when acting 'on behalf of the company' at Rangitikei, and also by McCleverty at Port Nicholson.<sup>295</sup> And just as McCleverty 'exchanged' reserves in the company's selected area for reserves in the surrounding 'surplus', so McLean (after Symonds) 'exchanged' reserves that 'interfere[d] with the pursuits and prosperity of the settlers' for reserves in the lands outside the company's selection but inside their rectangular exterior boundary.<sup>296</sup> In other words, Maori at Wanganui (like those at Port Nicholson) 'paid' to exclude their pa and ngakinga from the prospective surplus.

McLean's 1848–50 reports likewise presented him as the official who 'finally adjusted' the 'inland boundaries' of the 1844 award.<sup>297</sup> McLean recalled that Symonds had negotiated with Whangaehu Maori for their interests near the southeast boundary. McLean understood this boundary as one side of a rectangle which he understood to be the same rectangle shown on the company's pre-1844 plans, and which had been recently found to enclose approximately 86,000 acres. McLean speculated that Spain had meant to award this rectangle, but had *mistaken* the square boundary line on his plan of the 1841 charter lands for a 'marginal line of the map.'<sup>298</sup>

McLean was wrong, though. Recall that Spain and Clarke displayed the company's Wanganui plans at the 1844 arbitration award signing, and that those plans did show this rectangle. Spain and Clarke expressly told Wanganui Maori that their deeds of release and compensation only affected the lands surveyed and

294. 'Compensation' (vs consideration) and 'claims' and 'claimants' (versus vendors), and 'adjustment' (versus purchase) are McLean's vocabulary throughout: *ibid*, pp 248–250 and pp 255–256. Cross and Barge, p 21: 'No additional payments were made for the increased acreage'.

295. Rangitikei purchase and Manawatu, in McLean/Colonial Secretary, 25 April 1849 at Rangitikei, pp 252–253, and 10 July 1849 at Manawatu, p 254.

296. Quöte from Grey/Symonds, 17 April 1846, in BPP, vol 5, pp 550–551, cited in Cross and Barge, p 16. Wanganui deed, in *Turton*, p 244: the reserves chosen 'with Mr Symond's sanction' – mostly in the surplus area – were exchanged for 'the places which were made sacred for us by Colonel Wakefield and Mr Spain'. Wai 145 ROD, doc E3, vol 1, pp 10–12 explains how, even afterward, this exchange was argued as 'generous' on the part of the Crown, and given as justifying Grey's use of most of the 'Tenth' native reserves in Wellington proper to endow Wellington Hospital and Wellington College. The situation may differ for Wanganui, as Spain's '40,000 acres' may have referred to the entire rectangular block shown company's plan at the deed signing. In this case the 'surplus' used in exchange was included in the £1000 compensation, and the company was evidently expected to take the 'waste' along with their saleable surveyed sections.

297. Commissioner McLean/Colonial Secretary Domett, September 1848, in AJHR, 1861, c-1, pp 248–250, and 4 November 1850, *ibid*, pp 255–256

298. McLean/Colonial Secretary, September 1848, *ibid*, p 250

selected by the company, not the 'entire district.' They might have meant that Maori were surrendering the rectangular block shown on the company's plan (like at New Plymouth), or they might have meant they were surrendering the hydra-shaped area of surveyed sections, shown on the same plans (like at Port Nicholson).

Regardless, Spain specifically told Maori the number of acres which his award of £1000 was to compensate – 40,000. The number of acres was more essential to the award than the shape or boundaries of the section. McLean's payment of the £1000 award in 1848 could not have extinguished Maori interests in any more acres, unless Maori understood and agreed to an increase in the amount of land they wished to surrender for this same amount of consideration.

The Crown's 'surplus' claim at Wanganui consisted, then, of the lands acquired beyond the 40,000 acres Spain awarded to the company. This claim was inadvertently disguised by the 1847 Loan Act, in that McLean conducted his Wanganui transactions expecting that, as at Port Nicholson, Porirua, and Nelson, everything that had been alienated would simply be granted to the company. There was no need to distinguish, therefore, between the lands to go to the company and any 'surplus' in the 'adjusted' external boundary, which would have previously to the 1847 Loan Act gone to the Crown.

The Wanganui 'surplus' was also disguised by yet another 'adjustment': in November 1850, after the company had folded, McLean returned to complete the survey of the inland boundary of the Wanganui purchase. The surveyor, however did not show up, and:

not having a surveyor at [his] disposal, . . . the Natives . . . sanctioned the running of the line along the most prominent natural features of the country, conceding without further remuneration a considerable enlargement of the [1844] purchases . . .<sup>299</sup>

McLean again treated the 1850 transaction as only an adjustment, a point of clarification, of the *existing* agreement. So again he paid no additional consideration for an increase in the acreage. Under the 1847 Loan Act, this new boundary would have been shown on a grant to the company. But now under that same Act, the Crown did not only resume its 'surplus' demesne from the company's 40,000 acres out to the Whangaehu River. It also acquired the company's 40,000 acres. The Loan Act once again obscured the fact that the whole affair was a *company* purchase, which generated a substantial surplus for the Crown.

The Wanganui surplus paled, of course, in comparison to that obtained by Kemp in the South Island. Judging by the terminology used in the reports and deed, the Kemp purchase appears also to have been a company purchase, negotiated by the Crown under the 1847 Loan Act. We saw above that in April 1848 Wakefield included the area from Port Cooper to Otago in his list of places he wanted the Crown to transact for under the Act. It is not surprising, then, that Kemp's 12 June 1848 deed stated that the sale was to Wakefield and the directors of the New Zealand Company.<sup>300</sup> Grey reported the whole as a 'procurement' transacted

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299. McLean/Colonial Secretary, 4 November 1850, *ibid*, p 255

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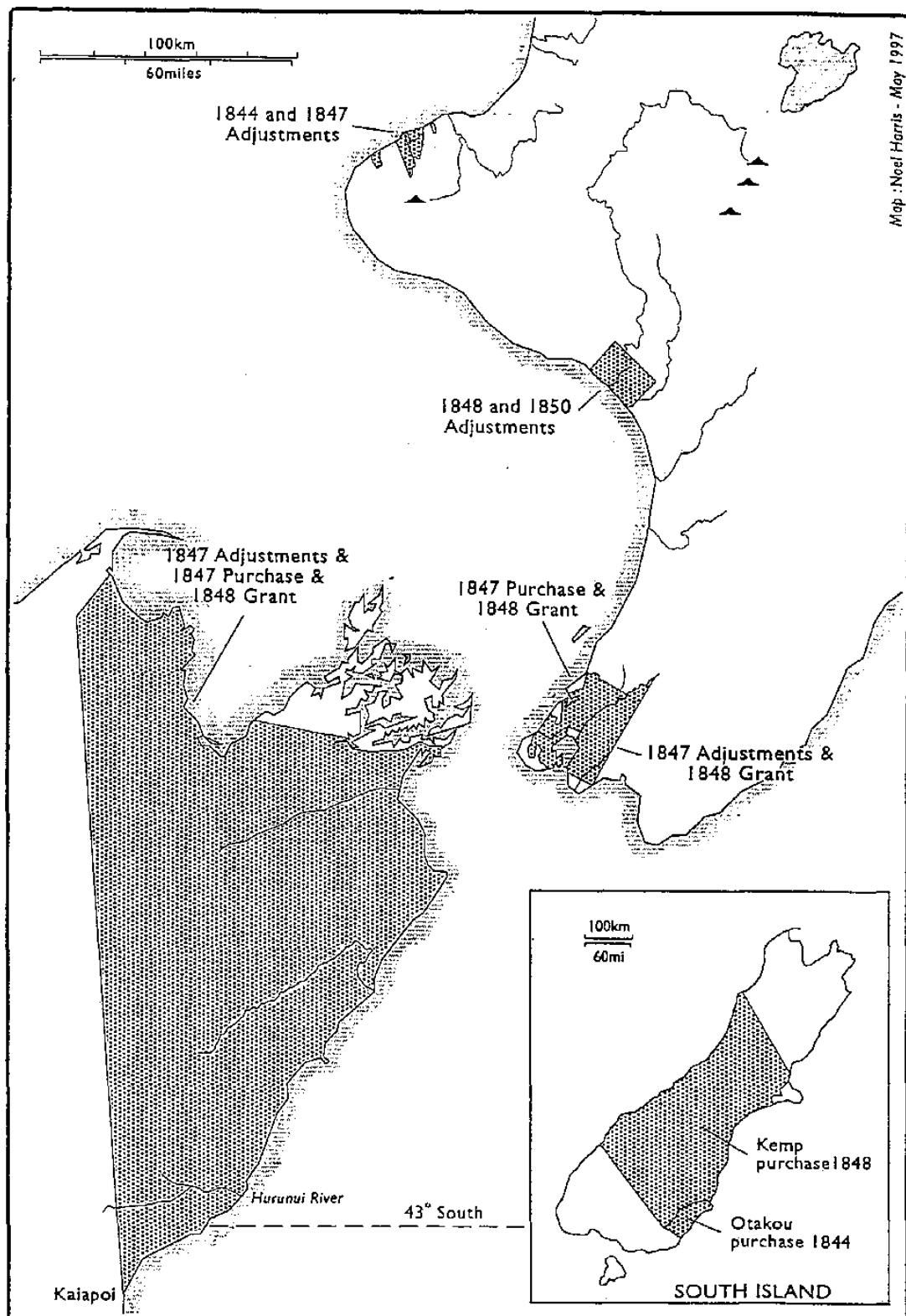


Figure 16: 1846–50 Crown sanctioned purchase completions

'with the concurrence and at the desire of the late Principal Agent of the New Zealand Company.'<sup>301</sup> Governor Grey's self-perception of acting 'at the desire of' the company seems much the same as Earl Grey's view that under the Loan Act, he was to act 'in the character of the company's agent' (above).

Goldsmith's recent summary of Kemp's November 1848 Wairarapa negotiations states that Kemp acted again 'on behalf of the New Zealand Company' with 'the aid of Bell,' and refers to Kemp and Bell as 'the New Zealand Company negotiators.'<sup>302</sup> Likewise, according to Goldsmith, on 24 September 1849, Donald McLean went to the Wairarapa 'to negotiate on behalf of the New Zealand Company.'<sup>303</sup> All of these attempts failed, though, to effect even a partial purchase. When the company folded in 1850, therefore, it passed no 'surplus' to the Crown at Wairarapa.

### 8.29 THE CROWN BUYS THE COMPANY'S ESTATE AND RESUMES ITS OWN SURPLUS: 1850

Prior to the 1847 Loan Act, the portion of the company's purchases that was not selected (or selectable) by the company under its 1841 charter, was to have gone to the Crown. In the purchases that were completed as company purchases, this portion would have gone to the Crown as 'surplus'. Hence, we may not reasonably treat the residue at Porirua and Wairau as 'surplus', as we have seen that these transactions were probably more in the nature of Crown purchases, with the company only expected to pay for the portion it received. All of the *other* purchases by and on behalf of the company, though, can be fairly said to have generated surpluses for the Crown.

Estimating the area of this surplus is perhaps less daunting than one would expect. Under the 1847 Loan Act, upon the dissolution of the company in July 1850, the Crown *bought* back the company's 1.3 million acre right of selection or acquisition – the company's portion of each of its purchases – and the Crown merely *resumed* the remainder, which the company only held as demesne waived to it under the 1847 Act.

Excluding Porirua and Wairau, these 1.3 million acres therefore went to the Crown as the company's would-be selection or award. And everything *beyond* them went to the Crown as the 'surplus' of the company's purchases.

At the time it surrendered its charter, the company had already exercised 828,000 acres out of its 1.3 million acre 'right of selection.' These lands were locatable, and those that the Crown obtained, it did so by paying the company 5s per acre, as agreed under the Act. Of these 828,000 'realised acres, though, the company had already on-sold 199,000 to private purchasers. The company having already

300. MacKay, *Compendium*, vol 1, p 210. Note, the Waitangi Tribunal thought this was an error in the deed, evidencing carelessness. *The Ngai Tahu Report*, vol 1, 1991, p 56.

301. Grey/Earl Grey, 26 March 1849, McKay, *Compendium*, vol 1, p 212

302. Paul Goldsmith, *Wairarapa*, Wellington, Waitangi Tribunal Rangahau Whanui Series (working paper: first release), July 1996, pp 12 and 14

303. Ibid, p 19

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recovered its costs on these lands, the Crown did not need to 'buy them back. Or alternatively, these lands being owned by third parties, the Crown *could* not 'buy' them back.

That left a company estate of 628,000 acres of selected lands, plus 472,000 acres of unexercised 'right of selection.' These lands and rights were valued under the 1847 Act at five shillings per acre, or £275,000. The company handed these lands and rights over to the Crown, and the Crown was required to pay over their value to the company.<sup>304</sup>

In a sense, the Crown also paid for the rest of the company's lands, since under that same 1847 Act (above), the company was not required to repay the funds advanced by the Crown and used by the company.

Excluding Porirua and Wairau, the company's lands totalled roughly those shown in table 1 below<sup>305</sup>. This total estate, minus the 1.1 million acres that the

FitzRoy Block	3500
Grey Block	9770
Omata	12,000
Tataraima	4000
Nelson	1,500,000
Port Nicholson	210,000
Kemp purchase	20,000,000
Wanganui	110,000
Otago	400,000
Total	22,250,000

Crown 'bought' from the company, leaves a company 'surplus' of (roundly) 21.2 million acres.

It took years for the company and Crown to apportion their acreages and debts, of course. Considering that the company did not repay the Crown's advanced funds,

304. Under constraint of time, I have simply adopted the Petition of the Provincial Council of Nelson, AJHR, 1858, G-5, pp 2-3.

305. These are rough approximations, more to set out how we are defining the company's surplus than to count the acres involved. Wanganui, for instance, is a rough guess of how much more acres were added by extending boundaries to the Whangaehu than the original 40,000 acre block. The Kemp purchase estimate comes from *The Ngai Tahu Report 1991*, vol 1, p 51. The Nelson amount is the generally used 2,000,000 acre estimate, minus say 500,000 acres of 'pure Wairau purchase' acres. The Taranaki, Port Nicholson, and Otago acreages are from the original grants (cited above).

it is difficult to see any importance, though, in their long accounts and pitched battles – for example, over whether the company or the Crown should pay for the Porirua, Wairau and Taranaki purchases. The company did ‘repay’ these outlays, but it presumably did so out of the funds that the Crown had advanced to it (or at least from the £275,000 which the Crown paid for its scrip).<sup>306</sup> The whole is quite a hall of mirrors, full of ugly accusations that the company defrauded the Crown (which it probably did), and that the Crown obstructed the company after July 1847 (which it probably did not).<sup>307</sup>

There would seem to be only one relevant outfall of the post-dissolution period. In 1856 the company commuted its £275,000 lien against the colony’s lands for a single payment from the British Parliament of £200,000. This latter amount became simply a national debt to England, though still apportioned between each of the provinces according to how much they had ‘benefitted’ from the company’s activities, and still primarily re-paid out of the proceeds of each province’s land sales.<sup>308</sup> It would be difficult to guess the extent to which the need to repay this debt may have driven the Crown to purchase Maori land ahead of what it needed for its actual use and occupation.

Otherwise, we have tried to point out any troublesome aspects of this company surplus as and when they arose in our study. These have included how:

- the Crown expanded its surplus at Wanganui without expanding its payment;
- the Crown acquired the surplus at Port Nicholson with no apparent consideration being paid beyond the company’s 1839 payment;
- the Crown made Maori at Port Nicholson ‘pay’ their best cultivation lands in exchange for the lands it excluded for them from its surplus claim;
- the prices offered and paid at Taranaki may have reflected the belief that the ‘resident’ interests had already been extinguished within ‘Spain’s boundary;’
- where the Crown perceived partial purchases, Maori lost any further right of general refusal of sale.

Finally, our view of ‘all the company’s purchases together’ has perhaps brought into sharper relief how the Crown doggedly reified the company’s incomplete purchases into unities. When confronted with partial and fragmented transactions, officials consistently projected ‘estates-to-be’. In contrast, they equally persistently refused to cast Maori tribal interests in so favourable a light, constantly seeing individual and conflicting interests when whole peoples were standing before them.

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306. The repayments debate began before dissolution. See eg Fox/Harrington, 27 April 1849, BPP [1398], pp 60–63.

307. For example, Hawes/Drane et al, [nd] reply to the company review of events leading to dissolution, 9 July 1850, BPP, vol 7 [1398], pp 45–46

308. The process leading to the liquidation of the debt, *Votes and Proceedings of the Legislative Council 1854* pp 5–6, 33, 79. Also ibid for 1855 pp 33–34, 40. Also *Votes and Proceedings of the House of Representatives, 1854*, sess 1, ‘Report of the Select Committee on . . .’; ibid, 1854, sess 2, ‘Report of the Select Committee on . . .’ pp 2–9, with 23 pp of minuted proceedings and inquiry, many allegations of fraud and abusive accounting. For final re-apportionment, see AJHR, 1861, D-7.

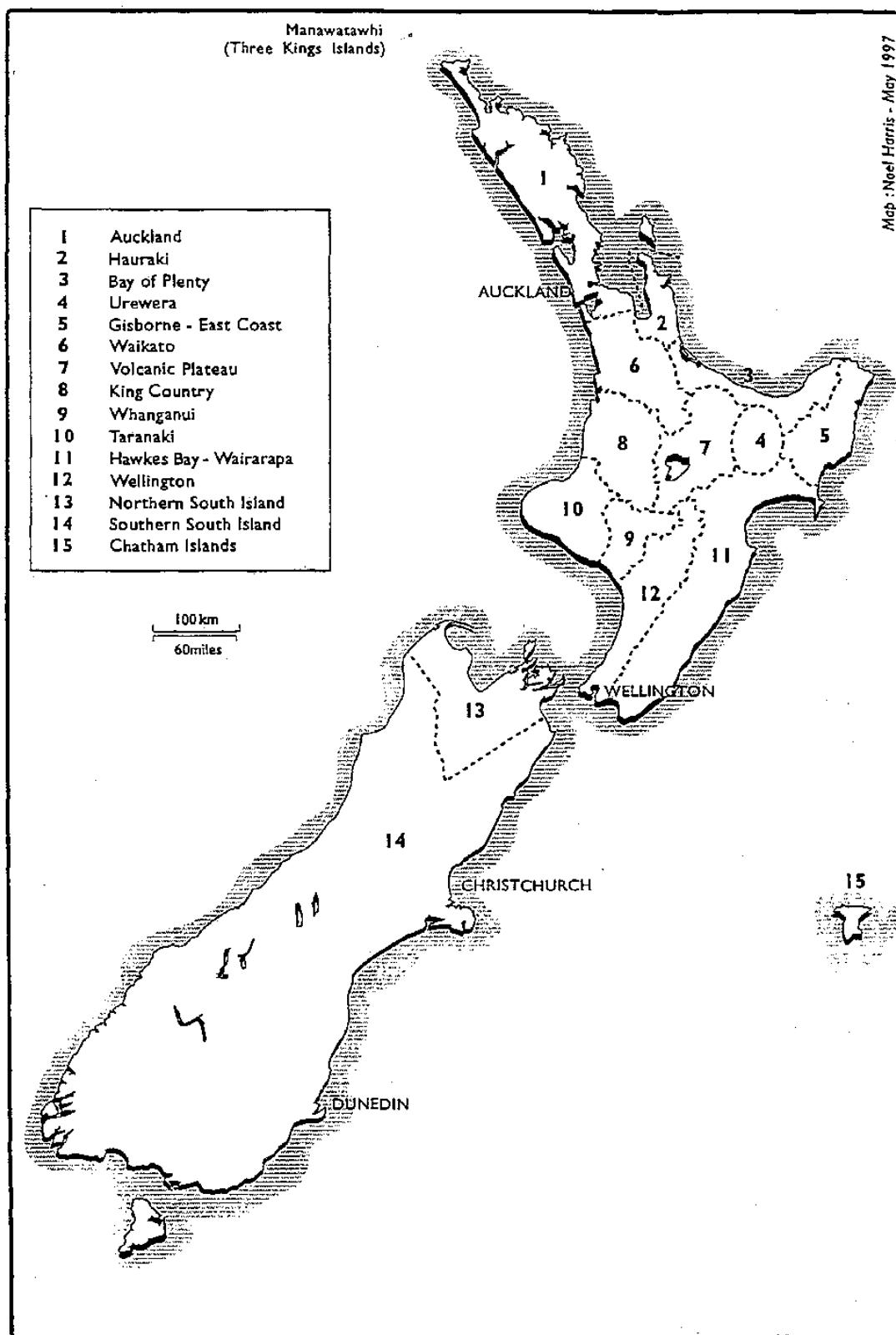


Figure 17: Rangahaua Whanui districts

## APPENDIX I

# METHODOLOGY AND TABULAR SUMMARIES OF OLD LAND CLAIMS

The following discussion is divided into four sections: introduction, methodology, organisation, and results. At the end of the results section, there is collection of tables presenting information on 'old land claims'; that is, pre-Treaty land transactions which, under the terms of the 1841 New Zealand Land Claims Ordinance and 1856 Land Claims Settlement Act, had to be investigated by a Land Claims Commission before a Crown grant could be issued. The information presented in these tables was collated by Waitangi Tribunal researchers, Dr Barry Rigby and Michael Harman, over a four month period.

The introduction provides an outline of the two main objectives which guided Rigby and Harman in the construction of these tables. It also highlights some of the drawbacks associated with the objectives pursued. The methodology section details the range of sources consulted in the construction of these tables. The respective strengths and weaknesses of each source are also examined. In the third section, the organisation of the tables is explained. In particular, definitions for the various column headings are provided. This is especially important with respect to the fourth, and final, section which presents a quantitative analysis of the material contained within the tables.

### I.1 INTRODUCTION

The tables have been constructed with two objectives in mind. Firstly, to provide a quantitative measure of the significance, or otherwise, of old land claims, both nationally, and comparatively between regions. At this point it is important to note that these tables exclude those pre-Treaty 'purchases' made by the New Zealand Company at Wellington, Nelson, Porirua/Manawatu, Wanganui, and two at Taranaki.<sup>1</sup> This exclusion has occurred because the various New Zealand Company claims, while initially investigated under the provisions of the 1842 Land Claims Amendment Ordinance, were eventually settled in accordance with political imperatives rather than in accordance with statutory requirements. While political influences were certainly not completely absent from the settlement of the rest of the old land claims, for example, Governor FitzRoy's extensions and the

<sup>1</sup>. Under Bell's numbering system they are OLC 906-911.

subsequent attack upon them by his successor Governor Grey, their intervention at least bore the appearance of being in accordance with the governing legislation. The tables also exclude information on purchases conducted under FitzRoy's pre-emption waiver proclamations, a category of land transaction that came to be closely associated with old land claims in subsequent investigations. Finally, claims after 1865 are excluded.<sup>2</sup>

We acknowledge that there are disadvantages associated with a primarily quantitative measurement as represented by these tables. This is particularly true of old land claims which, because they were based on the first 'purchases' conducted, often involved land of very good quality and location. Such characteristics do not come through in the statistical outcomes produced by these tables.

The second objective of these tables is to provide, in a single source, the most accurate information currently available with regards to the end result of each individual old land claim. For reasons which will be discussed in detail in the 'Organisation' section below, there are significant inaccuracies in the previous main repositories of collated old land claim information, that is, Bell's 1863 appendix to his 1862 report and the records of the 1948 Surplus Land Commission.<sup>3</sup> By consulting a wide range of sources, many of these inaccuracies have been corrected, with the result that these tables present as accurate a picture of the end result of the old land claims process as currently exists in a collated form. We acknowledge that the tables which follow are not completely accurate, that is, that as a result of more in-depth research into specific claims some of the figures will be subject to modification.

Finally, as will hopefully become clear in later sections, we acknowledge that a not insignificant portion of the information relating to old land claims will always remain uncertain. In particular, the absence of a compulsory survey requirement until the passage of the 1856 Act has created a situation where it is often extremely difficult to establish definitive data on many aspects of the old land claims process.

## I.2 METHODOLOGY

It is a feature of old land claims generally that the data relating to specific claims often changed considerably over time. This occurred both in terms of the range of data available, as well as to the accuracy of the data itself. The most important factor contributing to this sometimes dramatic evolution of data was the passage of the 1856 Act with its compulsory survey requirement. This increased the range of data available, allowing for the calculation of the exact area of each claim and of the presence and location of any surplus. The 1856 Act, and the surveys it prompted,

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2. The Wellington National Archives list 122 additional, that is, post-1865, claimants in its Preliminary Inventory No 9, 'Archives of the Old Land Claims Commission', OLC 9
  3. Land Claims Commission, 'Appendix to the Report of the Land Claims Commissioner', 8 July 1862, AJHR, 1863, D-14; *Report of the Royal Commission to Enquire into and Report on Claims Preferred by Members of the Maori Race Touching Certain Lands Known as Surplus Lands of the Crown*, AJHR, 1948, G-8

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also resulted in significant changes to the granted acreage figures as existing grants were called in and re-issued with more accurate acreages. The granted acreage figures had already been subject to much variation as a result of the fact that, during the 1840s, some claims experienced considerable fluctuation as the original recommendations of the commissioners were first extended as a result of Governor FitzRoy's intervention, and then sometimes reduced as a result of his successor's actions. Further complicating matters was the fact that the original commissioners' recommendations were themselves subject to considerable revision as a result of the failure of the 1842 Land Claims Amendment Ordinance to gain royal assent. While Bell's 1863 appendix managed to incorporate most, but not all, of the changes resulting from the two processes outlined above, the status of many claims continued to evolve after his appendix was published. In some instances, the opposition of local Maori caused alteration to previously surveyed boundaries. In a significant number of other claims, grants were eventually called in and the claim was declared to have lapsed. The result of this pattern of evolving data has been that it was necessary, in order to obtain the most accurate information possible, to draw from a wide range of sources.

The basic source of information for these tables has been Commissioner Bell's 1863 appendix to his 1862 report. This is for the simple reason that Bell's appendix provides the only easily accessible and complete listing of all old land claims. Thus, if no other source consulted during the collation of these tables contained any information upon a particular claim, Bell's appendix has been used. Within this category are all claims which never came before a commissioner, or which did not result in a recommendation being issued. Wherever a claim resulted in a grant or surplus, it has been attempted to verify Bell's information with another source. Where such verification has revealed a difference, the information from the second more recent source has often been preferred over Bell's. The reasons for this will be discussed in more detail throughout the 'Organisation' section below. For now, it is enough to mention that the major disadvantage of Bell's appendix is that it was published in 1863 and is therefore not inclusive of subsequent changes. Although such changes did not affect a large number of claims, the ones that were affected are none the less very significant as a percentage of those claims that did result in grants or surplus.

After Bell's 1863 appendix, the most important source used in the compilation of these tables were the records of the 1948 Surplus Land Commission. Also known as the Myers Commission, it was instituted to investigate whether any surplus land deriving from old land claims and pre-emption waiver purchases should, 'in equity and good conscience', have returned to the Maori vendors rather than becoming Crown land. The commission was assisted by staff from the Department of Lands and Survey and produced two types of relevant records.

Firstly, the assisting staff went through a large number of old land claim files and produced brief type-written summaries of their contents. Often less than five pages in length, these summaries, while certainly not providing a full indicator of the contents of each file, were nonetheless extremely useful with respect to providing

easy access to the type of data presented in the tables that follow. Unfortunately, the series is not a full one, that is, summaries were not prepared for all the old land claims.<sup>4</sup> Use of the summaries is indicated in the remarks column with their National Archives (Wellington) reference, MA 91/18–23.

The second relevant record created by the commission was a series of tabular summaries which presented a similar range of basic statistics to that contained in the tables that follow. In addition to this basic data, the commission's series also provide an impression of the chronological evolution of the specific statistics. Such a perspective is missing from the tables contained in this appendix which, instead, focus on the final outcomes of the old land claims process. As such, the commission's tabular summaries constitute a resource that may prove very helpful to researchers of specific individual old land claims who are unable to match the final figures contained in these tables with those produced by an earlier award. Once again, however, the tabular summaries do not constitute a complete listing of all old land claims, principally because of the commission's focus on the question of surplus lands. Information drawn from the tabular summaries is indicated by the reference, MA 91/9.

Another important source consulted in the collation of the tables in this report was an old land claim plan list prepared by Department of Lands and Survey staff apparently in the 1890s. The list is formatted as a numerical listing of old land claim plans held by the organisation now known as Land Information New Zealand, or LINZ. From these plans, the list provides acreage figures for surveyed, granted and surplus lands. Most importantly, the list provides a tool which facilitates much easier access to the plans themselves. As such, it can be used to access either the original plans themselves, which are located at the regional offices in Hamilton and Auckland, or alternatively, microfiche copies which are located at Heaphy House, Wellington. The plans have proved extremely useful in providing more accurate locational information for specific claims and for identifying features, such as reserves, which are neglected in other sources. Where information taken from the plans is reproduced in the remarks column, this is indicated by the reference, 'LS List'.

Two post-1865 reports contained in the Appendices to the Journal of the House of Representatives (AJHR) have proved particularly useful in identifying claims in which the grants, issued by Bell himself, were subsequently cancelled and the claim declared to have lapsed. Many of these claims are not covered by the records composed by the Surplus Lands Commission. This is particularly surprising since such land, having been found to have been the subject of a valid 'purchase' by the original 1840s Land Claims Commissioners, would seem at first glance to have been a prime candidate for the Crown to take possession of the land itself, as it attempted to do with 'surplus' land. Where individual entries in our tables have been altered on the basis of these reports, the remarks column will contain one of the following references: AJHR 1881 C-1; or AJHR 1878 H-26.

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4. There are 242 summaries covering about 350 claims, OLC 9

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Finally, in a small number of instances the original old land claim files have been consulted. Generally, however, this has been avoided because the files are often bulky and as such do not yield basic statistics easily.

### **I.3 ORGANISATION**

The tables in this appendix are organised to correlate with the 15 Rangahaua Whanui districts, the geographical boundaries of which are illustrated in figure 1. There are, however, no tables for the Chatham Islands or the Urewera district, both of which had no pre-1865 old land claims within their area. There is also no table for the Whanganui district because the single old land claim within that district was a New Zealand Company one. Following the 12 district tables, there is a summary table which, in addition to providing national totals, allows for easier comparison between the various districts.

Within each table itself, there are 11 distinct columns and these are discussed individually below.

#### **I.3.1 Claim Number**

This column adopts the numbering system established by Commissioner Bell in 1856 and which has been followed ever since. This system, which is listed in its entirety in his 1863 appendix, is different from that used when old land claims were first registered and investigated in the 1840s. Under the earlier system, the first claim of each claimant received a number, then any additional claims submitted by that claimant were assigned a letter. While maintaining the order of claims as they were originally numbered, Bell departed from the original system by discarding the use of letters and instead, each individual claim was assigned a number from a single consecutive numerical sequence; for example, whereas originally the three claims of J S Odeland were numbered 183, 183A, and 183B, under the Bell system they were numbered 356, 357, and 358. Bell's 1863 appendix provides for easy cross-referencing between the two numbering systems.

With the exception of the Auckland district table, each individual claim has its own line. In the Auckland table, just over one-fifth of the claims have aggregated entries, for example, W William's five Bay of Islands' old land claims, OLC 529-534, all appear under a single entry. This aggregation has occurred because it has not been possible from the sources consulted to separate out the individual details of each claim. Predominantly, this has occurred as a result of claimants accepting a settlement, usually in the form of a Crown grant, in satisfaction of all their claims. While it may be possible for researchers concerned with a specific claim to obtain disaggregated figures by consulting the original Godfrey and Richmond reports, the time-consuming nature of this exercise has meant that it was not feasible to do this for all of the aggregated entries contained in these tables. Even if such a search is undertaken, there is no guarantee that it will reveal figures any more reliable or

specific than those aggregated ones provided here. An excellent example of this is James Busby's nine Bay of Islands' claims (OLC 14-22), which have been the target of a considerable research effort by Dr Rigby but which have proved impossible to disaggregate.

#### **I.3.2 Claimant**

These names are taken straight from Bell's 1863 appendix. In most instances, the claimants listed are those who participated in the original transaction. Some of these names are followed by others in brackets, the bracketed name being that of a derivative, that is, someone who subsequently purchased the claim from the original transactor, but this identification of derivatives has not been applied consistently. In a small number of instances, derivative claimants filed their own new claim, for example, Arthur Devlin's claim 961 is derived from a share of the land allegedly purchased by William Webster and covered by his claim 726. Generally, such derivative claims were automatically disallowed by the early commissioners in accordance with their March 1841 instructions that any decision regarding the validity of a purchase should not take into consideration any dealings subsequent to the original purchase. Where such derivative relationships exist, we have attempted to incorporate them into the remarks column.

#### **I.3.3 Locality**

These are taken from Bell's 1863 appendix. While Bell required a survey of each claim before he issued a Crown grant, his locational information is often quite general. Where possible, Bell's location has been supplemented with something more specific. If, however, a claim lapsed, was disallowed, or resulted in a recommendation of 'No Grant', it is unlikely to have been surveyed with the result that it is often impossible to assign any more than a very general location to the claim.

#### **I.3.4 Date**

Year or years stated by Bell as the date in which the original transaction occurred.

#### **I.3.5 Area claimed**

The figures in this column are largely based on those given by Bell in his 1863 appendix. In the few instances where our figure is different from that given by Bell, our figure is taken from the records of the Surplus Land Commission. Where there is no figure given, that is because none was provided in the original statement of claim. Thus, the total figure of acreage claimed is actually less than it would have been if all claimants had provided an estimate for the size of their claim.

### I.3.6 Surveyed

This figure represents the actual area of the claim as it was eventually surveyed. This information has largely been obtained from Bell's 1863 appendix, but wherever possible we have checked it against the information provided by the original survey plans. The Lands and Survey plan list, and the records of the Surplus Land Commission, have also been used to disaggregate some of Bell's aggregated survey figures.

As already stated, Commissioner Bell required that a claim be surveyed before he issued a grant under the Land Claims Settlement Act 1856. Because so few claims were surveyed prior to that Act, the often considerable time lapse between the original 'purchase' and the eventual survey meant that the final boundaries may well have been different from those originally transacted. Whether this resulted in enlargement or 'shrinkage' of the transacted area depended on the individual situation. A clear example of the former would be Whytlaw's claim, OLC 520, on the Kapowai peninsula in the Bay of Islands, although it is a bit unusual in that it was not surveyed until the 1890s.<sup>5</sup> In contrast, Te Kaingamata and Rai's attempt to exclude an area of kauri forest during the 1859 survey of the several old land claims located within the Orira Valley, Hokianga, provides an example of an attempt to shrink the area originally transacted.<sup>6</sup>

### I.3.7 Granted

The figures in this column represent the area of a claim that was eventually granted to a claimant. It is important to note that these figures evolved considerably over time. Grants initially issued on the recommendations of the commissioners in the 1840s were often called in and cancelled under the 1856 Act and subsequently issued for a more accurate area, as revealed by survey. These actions under the 1856 Act were reported in Bell's 1863 appendix. In a number of instances, however, these new grants were themselves eventually cancelled. An example of such a course of events is provided by S D Martin's grants deriving from the McCaskill claims at Hikutaia, OLC 288-289. Martin's heirs were never able to take actual possession of the land conveyed in those grants and eventually received an equivalent in scrip as compensation in 1879.<sup>7</sup>

As a result of such changes, preference has been given to the figures provided by the Surplus Lands Commission, the Lands and Survey plan list, and, in particular, the 1878 and 1881 AJHR reports mentioned earlier. Where such post-Bell changes have been noted, it has been attempted to provide both a date, and a National Archives reference, in the remarks column. Occasionally, references for the actual crown grants held at Heaphy House, Wellington, have also been provided.

5. Barry Rigby, 'Old Land Claims', in Rose Daamen, Paul Hamer, and Barry Rigby, *Auckland District Report*, Wellington, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), July 1996, pp 103-113

6. See the Hokianga scrip claims case study in this report.

7. See the McCaskill case study in this report, p 78

### I.3.8 Scrip

All the figures in the scrip column relate to payments in pounds. These payments were received by claimants who could use the scrip to buy Crown land elsewhere. The rate of exchange varied considerably, a product of the fact that when the 'face value' of scrip was inscribed in pounds, the scrip could be used at 'land auctions' run by the Crown. This was not always the case, as sometimes the 'face value' of scrip was expressed in acres. When this occurred, the holder of the scrip was limited to exchanging the certificate for the area inscribed thereon. As will be discussed in detail in the 'results' section that follows, the amount of land that the Crown received in exchange for these scrip payments depended on the individual circumstances of each claim.

For the same chronological reasons cited in the 'granted' discussion above, wherever possible the figures in this column have been taken from the records of the Surplus Land Commission in preference to Bell's 1863 appendix.

### I.3.9 Surplus

The figures in this column are largely taken from the records of the 1948 Surplus Lands Commission. They differ, however, in one important respect. The commission adopted an unduly narrow definition of what constitutes 'surplus'. In short, it chose to exclude from its calculations any surplus land that was included within the boundaries of any subsequent Crown purchase. In this way, it refused to classify as 'surplus' the balance remaining from Fairburn's 1836 Tamaki purchase, OLC 590, after Fairburn himself was Crown-granted 8055 acres. This was a very considerable area, estimated to be in the vicinity of 75,000 acres by the commission itself, a figure which includes the one-third of the original purchase that Godfrey and Richmond recommended be returned to Maori. Such an exclusion was clearly at odds with how the land was viewed by the Colonial administration of the 1840s, as evidenced by their unsuccessful attempt, in 1842, to grant Charles Terry 20,000 acres from the balance of the Fairburn purchase.<sup>8</sup>

The definition of surplus adopted for these tables is wider than that adopted by the commission. Two general criteria have been adopted for defining what constitutes surplus land. Firstly, surplus was any land that remained within a claim found to have been the subject of a valid 'purchase', after any land to be granted to the claimant had been taken out. Secondly, the area of surplus had to be surveyed and identified as such, for it to be included within our figures. The only exception to this second criteria was where the Crown claimed the surplus without first conducting a survey. The Fairburn purchase is a rare but significant example of this. Because of this, we have included it within our surplus figures, although, without a comprehensive survey, the 21,500 acre figure taken from the Surplus Land Commission's summary is clearly inaccurate.

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8. See the Fairburn case study in this report, p 14

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While wider than that of the Surplus Land Commission, the definition of surplus adopted for these tables is not as broad as that applied by Commissioner Bell. The result of this is that Bell's surplus figure is almost certainly over-inflated. Bell was willing to estimate how much surplus would be recovered by the Crown once a survey was completed. This approach had two fundamental flaws. Firstly, because claimants in a majority of cases exaggerated the total area of their claims, any estimate of the surplus based on the claimants estimation was likely to fall considerably short, that is, it was not unlikely that the granted acreage would absorb all of the claim, leaving no surplus, or one significantly reduced. A second major flaw with Bell's approach to surplus identification was that until a claim was actually surveyed, there was no way of knowing if the surplus would actually revert to the Crown. It may, for example, have had difficulty physically asserting its claim to the surplus due to the opposition of local Maori, particularly if the survey was delayed beyond 1857. James Kemp's claim at Waipapa, OLC 595, graphically illustrates the problems that could arise when the Crown delayed enforcing its claims to the surplus.<sup>9</sup>

Because in these tables we have attempted to represent the end result of the old land claims process, these tables have adopted a definition of surplus different from that put forward by Bell and the Surplus Land Commission. The single most important reason for doing this was that cartographic definition, that is, identification through survey, was essential for effective recovery of surplus by the Crown. The one notable exception to this was the Fairburn surplus, which the Crown claimed without prior survey, and thus has been included within our figures.

Lastly, in his 1863 appendix Bell included as surplus, land gained as a result of scrip exchange. Such land has not been included within the definition of surplus used for these tables because the two categories of land, scrip and surplus, were products of distinct policies and therefore quite separate. Unfortunately, it has proved extremely difficult to quantify the amount of land gained through the scrip policy.

### I.3.10 Plans

There are three types of plans referenced in this column. Overwhelmingly, the plans are OLC plans, that is, survey plans dedicated specifically to illustrating the acreage, boundaries, and location of the area covered by an old land claim. In a majority of instances, these plans were prompted by the compulsory survey requirement of the 1856 Act. As such, almost all old land claim plans show the *entire* area originally claimed. There are a few exceptions to this, such as OLC plan 60, relating to the fore-mentioned Waipapa claim of James Kemp, which showed only the granted area, thereby excluding a considerable area of surplus land. Generally, however, OLC plans show the location and extent of all component elements of the old land claim area, that is, the granted portion, any surplus remaining, as well as any other

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9. See Rigby, pp 91–99

features which are not always mentioned in other sources, such as Native reserves or Maori cultivations. As such, the OLC plans constitute an extremely valuable resource. This is particularly so in relation to these last mentioned features, Native reserves and cultivations. Because plans often, but not always, represented the way the land was subsequently assigned to various parties, be they the claimants, Maori, or the Crown, they provide a very helpful reference of the extent to which Native reserves were in fact established, or cultivations excluded from the granted area. Specifically, they provide a handy means of checking whether any such provisions that may have been attached to the original Godfrey or Richmond recommendations were in fact observed. Conversely, the presence of Maori settlements or cultivations marked on a plan can indicate developments since the original hearing.

Like all sources, however, the OLC plans must be consulted in conjunction with others. Some surveys were conducted without the consent of local Maori, raising questions about whether the boundaries, as surveyed, accurately reflected those originally transacted. This is particularly true if it is accepted, as argued in the main text of this report, that the original commissioners only made their recommendations in the expectation that such a consultative survey process would take place before grants were issued. Such surveys become colloquially known as 'moonlight surveys', an example being OLC plan 114, which surveyed the claim of Lachlan McCaskill south of the Hikutaia Creek.<sup>10</sup> Some OLC plans bear little relation to the actual reality upon the ground. Old land claim plan 249, for example, which purports to indicate the location of William Webster's 1219 acre grant west of the Piako River, was not actually occupied at the time and was subsequently the subject of considerable conflict with local Maori who disputed that the area had ever been alienated.

As noted earlier, the original OLC plans themselves are located at the LINZ regional offices in Hamilton and Auckland, while microfiche copies are held at Heaphy House, Wellington.

The other two types of plans referenced in this column are ML plans, which show blocks that have been through the Maori Land Court, and SO plans, which are Survey office plans usually surveyed for Crown purchases.

### I.3.11 Remarks

This column has several functions. The single most important of these is to highlight where sources have indicated developments subsequent to the publishing of Bell's 1863 appendix. The most common occurrence of this is where the Bell-issued grant has been cancelled, and the claim declared to have lapsed. In some instances, it has also been possible to state what then happened to the land, for example, that it then reverted to the Crown, or alternatively, to Maori. Another type of post-Bell development highlighted is where claims have been settled as a result

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<sup>10</sup>. See the McCaskill case study in this report, p 85

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of the passage of special legislation, for example, the Green Land Claims Settlement Act 1870 by which Green was allowed to select 5000 acres in satisfaction of his nine South Island claims.

A second function of the remarks column is to provide a space for any non-statistical information which is important to an understanding of the final outcome of the claim. Examples of such information are where a claim has been included within the boundaries of a subsequent Crown purchase, where there are important linkages with other claims, or where the granted acreage is actually larger than the acreage of the claim, as determined by survey, because of the inclusion of a survey allowance.

The remarks column has also been used to record where there has been evidence of a Native reserve being established, an occurrence so infrequent that it did not justify its own column. Also indicated in the remarks column are those instances in which the surveyed area of a claim has reverted to the Crown, particularly as a result of a scrip exchange. As noted in the 'scrip' section above, however, this is not a complete listing of all the land which accrued to the Crown as a result of its scrip policy.

Finally, it needs to be noted that many of the terms used in the remarks column, for example, 'disallowed' and 'Reverted to Crown', are taken directly from the sources themselves even though, in some instances, the terms are misleading. Commissioner Bell, for example, uses 'disallowed' to describe all claims for which the 1840s commissioners recommended 'No Grant'. The grounds for such a recommendation may have been that the claimant concerned had already been recommended to receive more than the maximum prescribed under the 1841 Ordinance. An example of such a claim is OLC 725, Webster's Great Mercury Island claim. While Webster's Mercury Island claim was eventually absorbed by later Crown purchases, often such claims were subsequently on-sold by the claimant, as a means of their gaining some benefit from the transaction, with the derivative subsequently being issued a grant upon meeting the survey requirements of the 1856 Act. The Surplus Land Commission's use of the term 'reverted to Maori' in the instance of OLC 614, Rich's Bay of Islands claim, could also be construed as misleading. If commissioners found the claim to have been invalid, as implied by the term 'disallowed', then the land could not have 'reverted' to Maori because it was never validly claimed in the first place. Users of the tables need to be aware then, that the language used in the remarks column should not always be taken at face value.

### **I.4 RESULTS**

Before beginning to discuss the statistical outcomes of the tables, and the issues arising from them, it is important to reiterate that the tables exclude any data relating to the pre-Treaty transactions of the New Zealand Company. This seems necessary because, as will be seen shortly, the tables tend to portray old land claims

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as principally a phenomenon limited to the top third of the North Island and, in particular, to the area of the Auckland Rangahaua Whanui district. This is especially true in terms of the 'end result' of the old land claims process. While such an impression is a valid one, it is important to remember that in those southern districts where the New Zealand Company alleged to have completed purchases, the settlements made in satisfaction of those claims also had a significant effect.

**I.4.1      Claimed Acreage**

The claimed acreage figures for each district are located in the second column of table 1 below. In an attempt to give the reader a better idea of the size of the area

District	Claimed (acres)	% of actual area	End result (granted and surplus)	% of claimed acreage	Claimed less 'monster'	No of claims
Auckland	1,659,682	42	382,627	23	1,079,682	722
Hauraki	105,075	13	17,375	17	105,075	54
Bay of Plenty	18,226	2	14,510	80	18,226	12
Gisborne	111,076	5	1,382	1	11,076	28
Waikato	424,498	18	20,564	5	424,498	68
Volcanic Plateau	600	0	319	53	600	2
King Country (Rohe Potae)	82,214	3	500	1	82,214	25
Taranaki	21,823	1	0	0	21,823	4
Hawkes Bay/ Wairarapa	1,228,005	20	0	0	5	6
Wellington	31,514	12	3,727	12	31,514	43
Northern South Island	1,323,580	39	2,663	0	43,580	32
Southern South Island	4,298,613	13	24,478	0	418,613	123
Totals	9,304,906	15*	468,145	5	2,236,906	1119

\* As a percentage of the total area of the twelve Rangahaua Whanui districts which had old land claims.

Table 1: Claimed acreage comparisons. These areas have been digitally calculated by the Tribunal's mapping officer, Noel Harris, and are an estimation only.

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represented by these figures, column 3 shows the claimed acreage as a percentage of the total area of each district.

Before discussing these figures it must be stated that, of all the categories of data collated in these tables, the total claimed acreage figures are arguably the least significant. Such a conclusion is supported by two factors.

Firstly, it is manifest that the total claimed acreage, based upon the individual estimates provided by the claimants themselves, bears little relation to the actual area of land covered by old land claims. As a quick survey of the individual entries in any of the district tables will reveal, for those claims for which we have survey figures, the acreage as estimated by the claimant in their original statement of claim clearly tended towards exaggeration of the actual area about three-quarters of the time. The effect of this trend upon the total claimed acreage figures would have been only slightly lessened by the fact that claimed acreage figures were not provided for approximately 28 percent of the claims.

What prompted this high level of inaccuracy and exaggeration? Manifestly, the complete absence of pre-1840 surveys made it difficult to come up with accurate figures. At the same time, however, there was undoubtedly a certain degree of deliberate inflation by claimants themselves, especially in a number of the smaller claims which, by virtue of their size, it might have been assumed were less likely to be prone to exaggeration of the actual size of the area being transacted. As the Hokianga scrip case study earlier in this report has shown, there was certainly personal gain to be had from such exaggeration if, upon recommendation by the investigating Land Claims Commissioner, a scrip exchange could be effected.

A second factor contributing to the insignificance of the total claimed acreage figures is the fact that they are not closely related to the eventual outcome of the old land claims process. In table 1 this 'end result' has been indicated in the fourth column which is a combination of the total area which eventually accrued either to claimants, through a Crown grant, or to the Crown as surplus. While, for reasons which will be discussed in the surveyed acreage section that follows, the actual 'end result' of the old land claims process is likely to have been larger than the areas given in column 4, it is still valid as a general indicator of the lack of correlation between the total claimed acreage, as estimated by claimants, and the eventual outcome of the old land claims process. As can be seen in column 5, at the district level only Auckland, Bay of Plenty, and the Volcanic Plateau experienced 'end results' which were larger than 20 percent of the total claimed acreage for their district. The extremely low level of correlation between claimed acreage and the end result in the remaining ten districts is evidenced by the fact that while nationally over nine million acres were estimated to be covered by old land claims, in the end only five percent of that area was eventually Crown-granted to claimants or recovered by the Crown itself as surplus.

The extent of the discrepancy between the area claimed, and that eventually granted to claimants or taken by the Crown as surplus, can largely be attributed to the 'monster' claims of a few individuals. For the purpose of this discussion, a 'monster' claim is defined as one whose claimed acreage exceeded 100,000 acres.

There were fourteen such claims registered under the terms of the 1841 Ordinance, with a combined total claimed acreage of just over seven million acres and an alleged total combined payment of £1885. As discussed in the Fairburn case study earlier in this report, these claims had an important effect upon the formulation of the Colonial Office's policy with respect to pre-Treaty purchases. The Colonial Office feared that if large areas of the prospective colony had already been alienated to a few individuals by Maori, this would have a highly detrimental impact upon the future prosperity of the colony. To avoid this, 2,560 acres was established as the maximum that could be granted to a single individual, with the balance of any claim found to be have been the subject of a valid purchase reverting to the Crown as surplus. Thus, in addition to protecting the future interests of the colony, the Colonial Office was hopeful that the establishment of a 2560 acre maximum would also create a considerable surplus which could be used to fund the future administration of the colony. In this, the Colonial Office was to be deeply disappointed. In nine of the monster claims the claimant failed to appear, in yet another commissioners recommended 'No Grant', while the remaining four were settled for a total payment of £3,060 scrip and a single 695 acre grant. The Crown recovered no surplus from any of these 'monster' claims.

Clearly, the 'monster' claims were never going to stand up to close scrutiny. As such, their inclusion within the total claimed acreage figures has a serious distorting effect. To allow a more 'realistic' comparison between the total claimed acreage and the end result of the old land claims process, column 6 in table 1 shows the total claimed area for each district minus the area of the 'monster' claims. Of course, such an adjustment is not to deny that there were many smaller claims that would prove to be equally spurious, but that they did not have the hugely distorting effect upon the results which inclusion of the 'monster' claims does.

Several conclusions can be drawn from the adjusted figures in column 6. Firstly, even minus the 'monster' claims there is still a low level of correlation between the area claimed and the area eventually granted or claimed as surplus. Only Auckland, the Volcanic Plateau, and the Bay of Plenty, experienced an 'end result' equivalent to more than a third of the area originally claimed. This is reflected at the national level where the 'end result' was only 21 percent of the area claimed, a ratio which is significantly boosted by the figures for the Auckland district which account for just over 48 percent of the total national claimed acreage. If Auckland is omitted from the national totals, the ratio between the area eventually granted or claimed as surplus and that originally claimed falls to 7 percent, a third of the Auckland-inclusive figure.

A second conclusion which can be drawn from the adjusted figures in column 6 is that those districts facing the largest potential alienation from old land claims – depending, of course, on whether all those claims were upheld by Godfrey and Richmond – were Auckland, Waikato, and the Southern South Island. This excludes Hawkes Bay/Wairarapa and the Northern South Island, two districts which had previously figured prominently in the unadjusted claimed acreage figures as shown in column 2.

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This ranking is confirmed by column 7, which shows the number of individual claims within each district. Here again, only Auckland, Waikato, and the Southern South Island register more than 60 individual claims. Given that of the 1119 individual claims, only 174, or sixteen percent, claimed areas larger than the 2560 acre maximum set by the 1841 Ordinance, counting the number of individual claims seems a particularly good measure of the extent to which a specific area was potentially affected by old land claims. This is doubly so since of the 174 claims larger than 2560 acres, all but 25 were in the Auckland, Waikato, and Southern South Island districts.

But arguably the most striking finding which can be drawn from the adjusted figures in column 4 and those in column 7 is the dominance of the Auckland district. As mentioned earlier, on its own the Auckland district accounts for just under 48 percent of the total adjusted claimed acreage,<sup>11</sup> and sixty-seven percent of individual claims. When this area is enlarged to include the adjoining districts of Hauraki and Waikato, the percentage increases to 72 percent of the total adjusted claimed acreage and 75 percent of the individual claims.

The Auckland district's dominance of the old land claims statistics is a trend that intensifies in the other categories collated in these tables. That this is the case is not all that surprising given that the region north of the Waikato River mouth was the area that experienced the most intensive level of European contact prior to annexation. Furthermore, this would seem to have had a 'flow-on' effect which helps account for the high level of claims in the adjoining Waikato and Hauraki districts.

### I.4.2 Surveyed acreage

As has already been mentioned in the previous section, at the level of specific claims, the surveyed acreage figures are important for their exposure of the degree to which claimants were prone to exaggerate the size of their claims. In a clear majority of those claims which were eventually subject to survey, claimants significantly over-estimated the size of their claims. The degree and frequency of that exaggeration exceeds a level which might be reasonably explained by the total absence of any surveys at that time.

Before beginning to discuss the surveyed acreage totals at a district level, it is necessary to establish exactly what those totals include. The first point that should be made about the surveyed acreage totals is that they do not represent a figure for the actual, as opposed to claimed area, of *all* old land claims. Such a figure is simply not obtainable because of the fact that not all old land claims were surveyed. Claims for which the early commissioners recommended 'No Grant', or which were never fully investigated, for example, if the claimant failed to appear, were generally never surveyed. This was a result of the fact that most surveys were

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<sup>11</sup>. That is, the total claimed acreage adjusted to exclude the 'monster' claims.

prompted by the survey requirements of the 1856 Act which was primarily targeted towards giving 'defective' 1840s grants full legal effect.

Nor does the total surveyed acreage figure represent the total area found by the commissioners to have been the subject of valid pre-Treaty 'purchases'. There are several reasons for this. Firstly, not all areas found by the commissioners to have been the subject of a valid 'purchase' were actually surveyed. An example of this is William Webster's claim to Great Mercury Island, OLC 725. Although Webster claimed to have purchased the entire island, Commissioner Godfrey reported in August 1844 that Webster had in fact purchased only two much smaller areas upon the island. As Webster had already received the maximum acreage in other recommendations, Godfrey declined to recommend that he should also receive grants for these two smaller areas. Because the 1856 Act which prompted most surveys targeted existing grants, these two areas escaped its focus and do not seem to have ever been identified distinctly by survey.

An even more significant example of a validated 'purchase' escaping survey is William Fairburn's Tamaki claim, OLC 590. Originally estimated at 40,000 acres in Fairburn's statement of claim, Surplus Land Commission staff subsequently estimated the area affected as 83,000 acres. The only survey that was ever undertaken, however, related to but a small portion of this area, specifically, the 8055 acres eventually Crown granted to Fairburn himself. The remaining 74,892 acres, approximately 27,700 acres of which were meant to be returned to the Maori vendors, were claimed by the Crown as surplus land but never actually surveyed as such. Thus, the larger area of the claim is not included within the survey totals of the Auckland district.

It is extremely difficult to quantify the extent of subsequent Crown purchases in old land claim areas from the sources consulted during the compilation of these tables. The major barrier to such a calculation is the already mentioned problem of the language used by Commissioner Bell in his 1863 appendix. Specifically, Bell's use of the term 'disallowed' fails to distinguish between those claims which failed to produce grants for reasons of, say, Maori opposition, and those which failed because the claimant had already exceeded the 2560 acre maximum. Because Bell's use of this particular term was copied in subsequent sources, the only way to determine the extent of the problem would be to check each individual claim classified by Bell as disqualified against the original Godfrey and Richmond report. While this would provide an indication of the extent of the problem, it would not yield an accurate figure for the total area found to have been alienated by the commissioners because, as already stated, not all the areas so found were subsequently surveyed.

Despite the points highlighted above, the surveyed acreage figure is nonetheless a highly significant one. The principle reason for this is that it was the act of surveying that gave actual effect to the investigations of the original commissioners. Until an area was surveyed, it could not be stated with certainty that it would actually be alienated, even if it had been the subject of an earlier commissioner's

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grant recommendation. But once surveyed, it was rare for a claim to subsequently avoid effective alienation and revert to the original Maori owners.

The significance of the survey to the end result of the old land claims process is most apparent in the instance of surplus lands. While the Crown maintained that any land remaining within an investigated claim, after the claimant had received a grant, was Crown land, it was generally unable to give physical effect to this assertion until the land was surveyed. This was because it remained unaware of the existence of such 'surplus', or more typically, because it was unable to locate the surplus within the exterior boundaries of a claim. Until such a survey was carried out, any surplus present remained available for both resident claimants and Maori to utilise, perhaps without even an awareness of the existence of the Crown's claim.

If a claim was never surveyed, then the land typically reverted back to Maori with the exact owners eventually being determined by referral to the Native Land Court. Any such determination by the court also served to give legal recognition to the fact that the Crown's claim to the surplus had lapsed. Although not frequent, this did occur often enough to be listed alongside surplus land areas on Auckland roll plan 33.<sup>12</sup> Drawn after 1882, and covering the region north of Whangarei, the plan shows the location of six blocks that had passed through the Native Land Court in this manner. Unfortunately, it is not possible from the plan to match up the blocks to a specific old land claim number. One such example, however, would seem to be the Tutukaka claim of Black and Green, OLC 925, which the Surplus Land Commission summary files show as resulting in a 1560 acre grant to the claimant, with a further 2370 acres reverting to Maori.

But once a claim was surveyed, and the location and extent of any surplus it contained positively identified, then it was unusual for the Crown's ownership of that surplus to be successfully challenged. This was because once the Crown was able to cartographically define the extent of its surplus holdings, it could use the resultant OLC plan to issue Crown Grants over a precisely-defined area, grants which carried with them the full force of European law.

Surveying was equally as important to the final outcome of scrip exchanges as it was for surplus. When the Crown issued scrip in exchange for title over land 'sight unseen', there was a risk that the actual area upon survey would prove to be considerably less than the area as estimated by the claimant. Arguably even more significant was the fact that if it failed to survey the land soon enough, it might not acquire any land from the exchange. An example of this is Hannekin's Coromandel claim, OLC 226. Investigated by the early commissioners who recommended a grant for 406 acres, Hannekin exchanged his grant for £406 scrip in 1844. The Crown, however, failed to survey the claim with the result that, as the 1948 Surplus Land Commission summary file notes, it must be assumed that it 'reverted to Maori'.<sup>13</sup>

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12. Roll plan 33, Auckland Roll Plan series, Land Information New Zealand (LINZ), Auckland. I am indebted to Barry Rigby for this reference.

13. MA 91/10, series 6

The surveying of a claim was also often indicative of the extent to which the Crown would be able to ensure compliance or acceptance of its own grants. If there was going to be serious opposition from local Maori to the issuing of a grant upon the basis of a commissioner's recommendation, then this opposition often emerged at the time of a survey. This was because surveys were sometimes the first tangible indication of the extent, or sometimes even the presence, of a competing claim to title over the land concerned. The non-completion of a survey because of such opposition, as in the case of C Baker's Mangakahia claim, OLC 547, was usually an excellent indication that the Crown was not going to be able to enforce the grant and that it would be forced into compensating the claimant by other means. There were some instances, however, where the Crown, having managed to complete its survey despite interruption by local Maori, was subsequently forced into abandoning the full extent of its grants. William Webster's Point Rodney claim, OLC 722, and Lachlan McCaskill's Ohinemuri claim, OLC 287, are both examples of claims in which this occurred. But in the overwhelming majority of cases, completion of a survey served to confirm, and make unassailable, alienation of the land in question.

It should be clear then, that while the surveyed acreage figures represent neither the actual area of all claims, nor the actual area found by the commissioners to have been the subject of a valid purchase, they are nonetheless very important because they provide perhaps the best measure of the extent of effective alienation likely to have occurred as a result of the old land claims process. This is not immediately apparent from an examination of table 2 below. Column 3 of that table brings together the surveyed acreage figures from the various districts tables, while in column 5 are the combined totals, by district, for the area alienated from Maori through Crown grants or as surplus land. Of the five districts with surveyed acreages of greater than 10,000 acres, only one, the Bay of Plenty, has a comparable 'end result' acreage. The apparent discrepancy between the table and the argument advanced for the importance of the surveyed acreage figures can be explained by examining the granted and surplus categories as well as the distorting effect of certain atypical claims.

Most noticeably, there is a considerable difference between the Auckland district's surveyed acreage and that eventually granted to claimants or taken by the Crown as surplus. This gap is misleading, however, in that 120,000 of the 152,000 acre difference can be attributed to a *single* claim, OLC 23, James Busby's Waipu claim. At Waipu, Busby deliberately surveyed an area several times larger than that which he had originally claimed. By doing so, he hoped to pressure the Colonial authorities into recognising the full extent of his 25,000 acre 'purchase'. While Busby eventually received £22,600 scrip in settlement of this particular claim, the Crown felt unable to assert title over the land at Waipu because the commissioners had recommended 'No Grant' when Busby produced only a single Maori witness to support his Waipu claim.<sup>14</sup> The land was later obtained through three Crown purchases.

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14. On the same basis they recommended 'No Grant' for his 15,000 acre Whangarei claim. Godfrey and Richmond reports, 27 May 1842, OLC 1/14-24.

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District	Claimed (adjusted for 'monster' claims)	Surveyed (acres)	% of actual area	End result (granted and surplus)
Auckland	1,079,682	535,185	13	382,627
Hauraki	105,075	24,459	3	17,375
Bay of Plenty	18,226	15,579	1	14,510
Gisborne	11,076	1356	0	1382
Waikato	424,498	39,044	2	20,564
Volcanic Plateau	600	318	0	319
King Country (Rohe Potae)	82,214	501	0	500
Taranaki	21,823	0	0	0
Hawkes Bay/Wairarapa	5	0	0	0
Wellington	31,514	3138	0	3727
Northern South Isd	43,580	2513	0	2663
Southern South Isd	418,613	12,587	0	24,478
Totals	2,236,906	634,680	1	468,145

Table 2: Surveyed acreage correlations

The remaining 32,000 acre difference between what was surveyed, and that which was eventually granted or claimed as surplus, can be attributed to two 'end results' other than grants or surplus. The first of these is scrip exchanges which, with the exception of some of the Hokianga scrip surveys which have proved difficult to disaggregate, have been included within the surveyed totals. As highlighted earlier, once surveyed, it was highly unusual for scrip land to revert back to Maori. There is, however, no distinct 'land accruing to the Crown from scrip' column within the tables, with the result that such land is missing from the 'end result' category. instead, we have added 'scrip land' acreage to the remarks column. Consequently, the absence of a scrip acreage column contributes to the difference between the two sets of figures.

The second 'end result' which contributes to the difference between surveyed acreage and that eventually granted or claimed as surplus is where a claim has been declared lapsed and the Bell-issued grant called in. In such instances, the surveyed acreage sometimes reverted to the Crown, for example, Johnson's Paroa Bay claim,

OLC 249, and it sometimes reverted back to Maori, for example, Wood's Waikare claim, OLC 536. In most instances of lapsed claims, however, it is simply unclear exactly what happened to the land which was surveyed. An example of this is Spicer's four acre claim at Kororareka, OLC 436. Summarising the current state of knowledge about the claim in 1948, the Surplus Land Commission summary merely noted that Bell annulled the grant and that the claim was subsequently declared abandoned by Commissioner Heaphy on the 1 March 1880. Overall then, with the single exception of Busby's Waipu claim, the effect of which is partially counterbalanced by the combined exclusion of the surplus from William Fairburn's Tamaki purchase, OLC 590, and the non-disaggregated Hokianga scrip surveys, the surveyed acreage would seem to give a reasonably close figure to the area likely to have been alienated as a result of the old land claims process.

A very similar pattern to that of Auckland is repeated in the Hauraki district, that is, a single claim accounts for a significant portion of the difference between the surveyed acreage and that eventually covered by grants or surplus. This was the claim of the McCaskill brothers at Ohinemuri, OLC 287, in which local Maori had initially interrupted the survey before allowing it to proceed on the grounds that it would not prevent them from airing their grievances at a later hearing with Commissioner Bell. Such was the strength of their opposition at that later hearing, that Bell did not feel able to issue grants for the entire area surveyed, hence the discrepancy.

At the other extreme, the Southern South Island district shows an 'end result' which significantly exceeds that of its surveyed area. This is largely a result of a number of 'settlements' under which claimants received a payment in scrip and granted acreage in satisfaction for all their claims within the island. An example of this is the 1868 John Jones Land Claims Settlement Act, under which Jones was granted 17,028 acres and received £8050 scrip in final settlement of his six claims, OLC 251-256.

This leaves Waikato as the only district from amongst the top five, in terms of surveyed acreage, which defies explanation as to the causes of the difference between its total surveyed acreage and that eventually granted to claimants (it produced no surplus). Indeed, it truly does present something of an anomaly as evidenced by the fact that most of its surveyed and granted acreage is contained within the claims of three individuals, each of which seem to defy the existence of any relationship between the surveyed and granted figures. Old land claim 143, Cormack's 16,000 acre Piako claim, is another of those unusual cases where the large area surveyed did not result in an equivalent in grants because of the resistance of local Maori. Conversely, William Webster's 80,000 acre Piako claim, OLC 726, suffered the same type of opposition but produced an opposite effect, that is, a small surveyed area greatly exceeded by the area conveyed in Crown grants. Finally, the six claims of Marshall, OLC 320-325, resulted in several grants totalling 1986 acres which required no survey because his claims lay within the Waikato confiscation boundaries.

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The vexing case of Waikato aside, table 2 can be seen to support the argument that the surveyed acreage figures are significant because they represent the best available measure of the probable extent of effective alienation as a result of the old land claims process. They certainly provide a much more meaningful measure of the probable result of the old land claims process than the primarily mathematical calculations which characterised the figures of either the Surplus Land Commission or Bell's 1863 appendix. Both these sources include within their calculations areas which, until they were surveyed, could not have gone to either the Crown or to claimants. With this in mind, what other conclusions can be drawn from the information presented in table 2?

The low level of correlation between the acreage as claimed, even when adjusted to exclude the 'monster' claims, and that eventually surveyed, confirms the trend previously highlighted in table 1 which compared the claimed acreages with the 'end result' as measured by the combined total of the granted and surplus acreages. While the surveyed acreage figures are, in some instances, larger than those used to represent the end result in table 1, the only resulting change to the conclusions drawn earlier is that the Hauraki district joins Auckland, Bay of Plenty, and the Volcanic Plateau as areas where the area likely to have been effectively alienated was greater than 20 percent of that originally claimed. One must be careful, however, when extrapolating the exaggeration clearly evident at the level of specific claims, to the district level because, as discussed at the very beginning of this section, the surveyed acreage figures do not represent the actual area of all claims, or even of those which Commissioner Bell found to have been the subject of a valid 'purchase'.

Easily the most striking aspect of table 2 though, is the perspective provided by column 4 which shows the surveyed acreage as a percentage of the total area of each district. With the exception of Auckland (and the New Zealand Company districts), no district experienced a probable rate of alienation from old land claims greater than three percent. This was reflected in an overall national percentage of almost exactly one percent. On the grounds of this purely quantitative analysis, it would not seem unreasonable to state that outside of Auckland, the probable alienation from old land claims did not have a huge impact. Such a conclusion is supported by the degree to which the Auckland district dominates the surveyed figures when measured purely in terms of total acreage surveyed. At 535,185 acres, more than ten times its closest rival, Auckland accounts for 84 percent of the national total. This represented 13 percent of its own actual area, a significant figure to have been alienated before the signing of the Treaty of Waitangi.

Of course, at this point it must be recognised that such a purely quantitative measurement of the impact of probable alienation as a result of old land claims gives no indication of the importance of non-quantitative factors such as the location and quality of the land alienated. Such factors were particularly important, for example, in the old land claims of the Hauraki district which were in most instances located on land which was either adjoining a natural harbour, or which was flat and cultivatable. Given the predominantly hilly nature of the Coromandel

Peninsula, old land claims within the Hauraki district almost certainly had an effect disproportionate to their total area. An even better illustration of the need for consideration of qualitative factors when considering the impact of old land claims is provided by the Auckland district. While experiencing an overall probable alienation rate of 13 percent, this alienation was not evenly spread across the entire district. Rather, old land claims were often concentrated within a specific area, for example, the Bay of Islands, with the result that the impact of old land claims within those specific regions was considerably greater than might otherwise be implied from the regional average.

A purely quantitative analysis such as the one undertaken earlier also ignores potential issues of natural justice, for example, when the land granted as a result of an old land claim was in fact never validly purchased in the first instance. An excellent example of this is the 1354 acres granted as a result of old land claims in the Gisborne district. Amounting to less than half a percent of both the national granted acreage, and the total area of the district, they nonetheless represent a considerable injustice given that many of the grants were issued after a manifestly inadequate investigation and under highly questionable statutory authority.<sup>15</sup> More typically, as the Webster case study earlier in this report highlighted, the original commissioners, Edward Godfrey and Mathew Richmond, were far from infallible with regard to their recommendations and findings. This was particularly true with regard to the extent of the area purchased as the result of an old land claim. We have argued in the main text of this report that, to their credit, they were well aware of the shortfalls of their investigations when unaccompanied by survey. The commissioners made their recommendations in the expectation that the written boundary descriptions contained in their reports, and usually taken verbatim from the deed, would receive precise measurement by survey before a grant was issued. This was because, to quote once again the commissioners themselves: 'owing to the inaccuracies of the description of the boundaries in the deeds exhibited to us, we have seldom been able to point out, exactly, the actual situation and extent of the land claimed. The Native Sellers can alone shew the boundaries to the Surveyors'.<sup>16</sup> This expectation on the behalf of the commissioners is further evident in the fact that they usually concluded their recommendations with a statement of who, among the Maori witnesses, could participate in such an exercise of boundary identification. With Governor FitzRoy's waiving, in January 1844, of the survey requirement implied in section 9 of the 1841 Ordinance, this expectation went unfulfilled. It remained that way in the large majority of cases until the passage of the 1856 Act with its compulsory survey requirement and considerable incentives in the form of 'survey allowances'.

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15. For example, many of those claims which resulted in grants being issued by the Poverty Bay commissioners in 1871, would have been automatically disallowed under any of the preceding old land claims legislation because they had occurred after the signing of the Treaty of Waitangi. For more details of these occurrences, see chapter 2 of Sian Daly, *Poverty Bay*, Wellington, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), February 1997.

16. Commissioners to Colonial Secretary, March 1843, OLC 8/1, pp 61–62

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Of course, it has been argued in this section that until a claim was surveyed there was no certainty that it would actually be alienated, but that once it was, it was very unusual for that alienation to be successfully challenged. Such a contention makes the question of whether Maori participated in the survey process, as clearly envisaged by the original Land Claims Commissioners, an extremely important one. As we have argued in the main text of this report, there is very little documentary evidence to show that Maori did participate in the survey process. Even where such consultation was attempted, serious questions arise about the manner in which it was undertaken. The Hokianga scrip surveys, subject of a case study earlier in this report, are an excellent example of this.

### **I.4.3 Granted**

The granted acreage figures, shown in column 2 of table 3 below, continue the trend evident in the previous section, that is, the Auckland district's dominance of the outcomes of the old land claims process. At 241,824 acres, the Auckland district accounts for 75 percent of the national granted acreage. Waikato and the Southern South Island are the only other districts to have a granted acreage in excess of 20,000 acres, with Hauraki and the Bay of Plenty being the only remaining districts with a granted acreage greater than 10,000 acres. The Auckland district's dominance is confirmed when measured in terms of the number of individual claims resulting in a grant being issued, indicated in column 3. Indeed, it actually increases slightly with Auckland's 372 grant-recipient claims representing 81 percent of the national total.

A much more interesting series of results, however, is obtained when the number of claims resulting in grants is compared with the number of claims originally registered in each district. These original claims are tallied in column 7 of table 1, with the percentage of those claims resulting in grants shown in column 3 above. Such a comparison provides an imperfect measure of the degree to which old land claims were validated as a result of the investigations of the original Land Claims Commissioners. If commissioners recommended or ordered a grant, then this generally indicated that they investigated the claim and found it have been the subject of a valid 'purchase'. There were few exceptions to this rule, although the 1871 Poverty Bay commissioners' grants illustrate that this was not always the case. Another imperfection in such a measure is that not all investigated claims resulted in a grant as indicated in these tables. There were two main ways in which this occurred. Firstly, as a result of the 2560 acre maximum imposed by the 1841 Ordinance, commissioners sometimes declined to recommend that a grant be issued despite accepting evidence of an original alienation. Secondly, sometimes they recommended a grant but later Bell cancelled it and declared the claim to have lapsed. Such a grant would not have been included within the granted acreage figures because these tables attempt to record the end result of the old land claims process.

### *Old Land Claims*

The result of these exceptions is that the figures in column 4 of table 3 actually under-estimate the number of claims found by the commissioners to have been the subject of a valid 'purchase'. Bearing this in mind, the figures nonetheless provide an indication of an interesting trend. While at a national level 41 percent of the original claims resulted in a grant being issued, this rate hides a clear geographical division. Specifically, with the exception of the Waikato and Rohe Potae districts, those districts located north of Lake Taupo register a ratio much higher than those districts located south of Lake Taupo. In particular, in the Southern South Island district only 22, out of the 123 claims originally filed, resulted in grants. This amounts to a rate of 18 percent.

What conclusions can be drawn from this dichotomy? Can it be stated that the low ratio of grant-recipient claims to that originally lodged is indicative of a high level of 'unrealistic' claims, that is, claims that were never likely to receive validation under the terms of the 1841 Ordinance? An examination of the district tables of Wellington and the Southern South Island, being those southern districts with the largest number of filed claims, would suggest that the answer to this last question was a definite 'yes'. In those districts, most of the claims which did not result in a grant did so on the basis that a commissioner never investigated them, mainly because the claimant failed to appear.

Such a conclusion is slightly more problematic for the Northern South Island. Commissioners Godfrey and Richmond never visited the Northern South Island. It is possible therefore, that the prospect of having to travel a considerable distance to appear before a commissioner discouraged legitimate old land claimants prosecuting their claims. The ratio of grant-recipient claims to those originally lodged in the Northern South Island may be further distorted by the fact that the provincial legislature operated a scheme under which old land claimants were able to repurchase their claims at a set price.

Caution is also required before drawing a definite conclusion on the level of 'unrealistic claims' in the Waikato district, the one northern district with a large number of claims filed from which few grants resulted. This uncertainty is largely a result of the fact that approximately half the entries for that district carry a Bell-authored 'disallowed'. As indicated earlier in the remarks section, it is impossible to know, without consulting the original old land claim file, whether this means it was actually disallowed or whether the commissioners declined to recommend a grant for some other reason.

As already mentioned, recommendation of 'No Grant', despite evidence supporting an original alienation, sometimes resulted from the statutory grant acreage limit. In a number of instances, FitzRoy subsequently reversed such recommendations and issued grants. Indeed, three such claims are the subject of case studies in this report. As shown in those case studies, the effect of this process was that the Crown granted claimants a total acreage well above the statutory limit. Column 5 of table 3 documents exactly how frequently this occurred.

*Appendix*

District	Granted (acres)	No of claims*	% of all claims	> 2560 (claimants) <sup>†</sup>	Scrip (£)	No of claims
Auckland	241,824	372	51	30	129,946	99
Hauraki	17,327	22	41	3	4003	6
Bay of Plenty	7725	3	25	1	853	1
Gisborne	1382	13	46	0	0	0
Waikato	20,564	10	15	0	2049	2
Volcanic Plateau	319	1	50	0	0	0
King Country (Rohe Potae)	500	4	16	0	0	0
Taranaki	0	0	0	0	0	0
Hawkes Bay/ Wairarapa	37	1	17	0	2560	1
Wellington	3727	10	23	0	4972	3
Northern South Isd	2663	3	9	0	70	1
Southern South Isd	24,478	22	18	3	8500	1
Total	320,546	461	41	37	152,953	114

\* It is necessary to point out that these figures are unlikely to be completely accurate because of the aggregation of some of the claims into a single entry. Where an entry has been aggregated, and that entry includes a granted acreage, it has been assumed that *all* the claims covered by that entry resulted in grants and they have been counted as such. For many of the larger aggregated entries, however, it seems unlikely that they all resulted in grants although some are likely to have come pretty close. The same approach has been adopted when counting the number of individual claims involving scrip.

† These figures treat the claims of the Church Missionary Society, and Church Missionary Society families, as a single individual claimant.

Table 3: Claims resulting in grants or scrip being issued

In interpreting this data, it is important to remember that there were a variety of ways in which the Crown could 'extend' grants. Some claims, for example, that of Abercrombie, Nagle, and Webster to Great Barrier island, OLC 36, were large enough to produce three grants in excess of the 1841 maximum. At the other extreme, the Crown sometimes issued a single extended grant in satisfaction of a number of claims, for example, Henry Williams' five Bay of Islands claims, OLC 521–524. The beneficiaries of most of these extended grants, however, derived them from a single claim. Overall, extended grants represented quite a small proportion of those claims which resulted in grants, just over 7.5 percent, and less

than one percent of all claims. On the other hand, claimed acreage exceeded the statutory maximum in 16 percent of the total number of claims. All but seven of the 37 claims resulting in extended grants were situated within the Auckland district. Auckland also accounted for seven of the eight claimants who received grants with a combined area of greater than 10,000 acres.

#### I.4.4 Scrip

Scrip played an important role in the old land claims process. Originally established by Governor Hobson in 1841 as a means of concentrating European settlement in order to be able to provide better protection for settlers and to vacate potential trouble spots, it subsequently grew to produce a range of different outcomes.

A feature of these later outcomes was that the Crown anticipated that it would gain land in exchange for its issuance of scrip. An example of this is the fore-mentioned Hikutaia grants of S D Martin. These grants eventually resulted in the issuance of scrip in compensation because the Crown, as a result of opposition by local Maori, was not able to make effective its own grants. Scrip issued in this manner provided an alternative to the other approach often adopted in such situations, that is, the Crown purchasing of areas already covered by grant recommendations. William Webster's Piako claim, OLC 725, is an example of this.<sup>17</sup> The Crown also did not anticipate that it would gain much land when it issued scrip as part of a general 'settlement' of a particular individual's claims. The Waipu claim of James Busby, also mentioned earlier, is a graphic example of this. The Crown had already conducted three separate Crown purchases for the 120,000 acres covered by that claim when it paid out £22,600 scrip to Busby in settlement of his interest.

Predominantly, however, the Crown believed that it would recover land in return for its issuance of scrip. The Crown usually issued scrip at the rate of £1 for every acre recommended by Godfrey or Richmond, and it fully expected to recover an equivalent acreage. Of course, the Crown's policy was seriously flawed in this respect, as the lands exchanged for scrip were not surveyed for a considerable period. This resulted in the Crown recovering less land than anticipated for two reasons. Firstly, the surveys often revealed that the claimants had exaggerated the actual area of their claim with the result that the amount accruing to the Crown was considerably less than anticipated. The Hokianga scrip claims, subject of a case study in this report, are the best example of this. Secondly, in some instances, the gap between the original investigation and the eventual survey was too long so that the area concerned actually reverted to Maori, either because its boundaries could no longer be identified, or Maori now disputed the original transaction. Peter Monro's claim at Hokianga, OLC 339, is possibly an example of this last result. An 1878 AJHR return notes that when Monro's claim was eventually surveyed in 1870, local Maori 'permitted [the] survey of only 95 acres'.<sup>18</sup> Such a comment implies

17. See the Webster Case study in this report, p 46

18. 'Land Claims Finally Settled', AJHR, 1878, H-26, p 4

## Appendix

that the actual area was in fact larger than this, rather than it just being a case of Monro exaggerating the area of his claim in his original estimation. The Atherton, Kelly, and Whitaker's Tutukaka claim, OLC 543 is an example of a scrip claim in which the land did not accrue to the Crown because it failed to survey the area soon enough. Atherton and his fellow claimants received £1005 scrip in 1844. Bell's 1863 appendix contains the comment that in light of this payment the 'land [is] ordered to be taken possession of'.<sup>19</sup> The records of the 1948 Surplus Land Commission, however, record that the land went 'unsurveyed. Reverted to Maoris'.<sup>20</sup>

The scrip totals for each district are summarised in column 6 of table 3 above. The totals represent payment in pounds. What is missing is a distinct column showing exactly how much land the Crown was able to physically recover, through its positive identification as a result of survey, as a result of its issuance of scrip. While the acreage eventually surveyed by the Crown has been indicated in the remarks column for some of the claims, it has not been done consistently. Several factors contributed to this omission, with the most significant being that, like many of the 'lapsed' claims, it is not always clear exactly what happened to the land involved in scrip exchanges.

Bearing this rather unfortunate omission in mind, the principal observation which can be made about the scrip figures deriving from the district tables is that the issuance of scrip was largely an Auckland district phenomenon. The Auckland district accounted for 85 percent of the scrip issued nationally. Its closest rival was the Southern South Island which, with a scrip total of £8500, accounted for six percent of the national total. Auckland is equally as dominant when the level of scrip is measured in terms of the number of individual claims in which scrip was issued. Under this same measure, Hauraki, rather than the Southern South Island, comes a very distant second.

The Auckland district's dominance of the scrip statistics, while reflecting Auckland's dominance of old land claims generally, can also be attributed to the policy goal for which scrip was first established, that is, concentration of European settlement around Auckland with title over the land originally purchased elsewhere transferring to the Crown. This is reflected in the fact that in most of the instances where scrip was issued outside of the Auckland district, it was done so for purposes other than exchange of title, that is, as a form of compensation or in satisfaction of a number of claims belonging to one individual. In those few instances outside of the Auckland district in which scrip was issued as part of an intended exchange, the Crown failed in every case to later survey the land and, as such, its claim to it probably lapsed.

Of course, some scrip exchange claims 'lapsed' within the Auckland district also. Adding to the 'unprofitability' of such exchanges was the fact that the exaggeration common to many claims meant that when a claim was eventually surveyed, in all probability it would not return an area equivalent to the standard

19. Land Claims Commission, p 42

20. MA 91/20, OLC 543

one acre for each £1 scrip issued. Unfortunately, since these tables do not include the full scrip land acreage eventually surveyed by the Crown, these points can only be highlighted. Some idea of the extent of the problem, however, can be gained from Commissioner Bell's lamenting in his 1862 report to Parliament that: 'in Hokianga claims alone the scrip issued was upwards of £32,000, while all the land which I could recover [through surveys] . . . for the Crown fifteen years afterwards, including not only the lands exchanged by the claimants but a considerable extent which had never been before a commissioner at all, was 15,446 acres'.<sup>21</sup>

#### I.4.5 Surplus

Before beginning to discuss the surplus figures, two points should be reiterated. Firstly, the surplus totals contained in table 5 below include only 21,500 acres of the approximately 75,000 acres of surplus which eventually accrued to the Crown as a result of the Fairburn claim, OLC 590. Secondly, as mentioned in the organisation section, the definition of surplus adopted for these tables is quite specific. Essentially, these tables consider as surplus any land that remained within a claim after land to be granted to the claimant had been taken out. Furthermore, the area of surplus had to be defined by survey for it to be included.

All surplus recovered by the Crown came from claims which had been partially granted to a claimant, as opposed to purchases which were considered valid but which were not followed by a grant. There are two related reasons for this. Firstly, as argued earlier, until a claim was surveyed and the presence and extent of any surplus precisely defined, it remained highly uncertain whether or not that surplus would actually accrue to the Crown.<sup>22</sup> Secondly, as has been highlighted in the main text of this report, one of the main objectives of the 1856 Land Claims Settlement Act was to provide sufficient incentive for claimants to survey the entire area of their claims. Since it was the 1856 Act which actually prompted most surveys, it was rare for surplus to be surveyed, and therefore recovered by the Crown, without a claimant's self-interest in achieving a grant also being present.

Given the crucial relationship between grants and surplus, and remembering that the Auckland district accounted for 81 percent of all claims which resulted in a grant, it is perhaps not surprising that surplus was, with two exceptions, exclusively an Auckland occurrence. As can be seen from table 4 below, four out of every ten Auckland district claims which resulted in grants also contained surplus which subsequently accrued to the Crown. The average area of surplus per surplus-accruing claim was 1082 acres, considerably greater than the 650 acres which constituted the average size of those claims which resulted in grants.

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21. Land Claims Commission, 'Report of the Land Claims Commissioner', 8 July 1862, AJHR, 1862, D-10, p 7. As an aside, the issues raised by Bell's implying that the Crown had a right to recover areas covered by previously uninvestigated claims are covered in the Hokianga scrip case study.

22. See above, p 19

## Appendix

District	Surplus (acres)	No of claims producing surplus	No of claims resulting in grants	Granted (acres)
Auckland	134,994	128	327	247,634
Hauraki	48	1	21	13,880
Bay of Plenty	6785	1	4	11,172

Table 4: Districts in which surplus accrued to the Crown

### I.4.6 Reserves

As evidenced by the absence of any distinct reserve column in the district tables, reserves were not a prominent outcome of old land claims. That this was the case may not seem that unusual, particularly when it is considered that, prior to the signing of the Treaty of Waitangi, there was no obligation upon purchasers of Maori land to reserve for the future use of the vendors, any portion of a sale. This fact is reflected in the absence of reserve provisions or explicit exceptions in most old land claim purchase deeds.

The signing of the Treaty, however, created a clear obligation on the behalf of the Crown to ensure that Maori retained a sufficient endowment for their future needs. Such an obligation was foreshadowed in Normanby's August 1839 instructions to Hobson, in which he warned the soon-to-be Governor that Maori 'must not be permitted to enter into any contracts in which they might be the ignorant and unintentional author of injury to themselves. You will not, for example, purchase from them any territory, the retention of which would be essential, or highly conducive, to their own comfort, safety or subsistence'.<sup>23</sup> Similar sentiments were expressed by Normanby's successor, Lord Russell, in his additional instructions with regard to the protection of the aborigines of New Zealand, which he sent to Hobson in January 1841. In those instructions, Russell instructed Hobson that: 'The surveyor-general should also be required, from time to time, to report what particular tract of land it would be desirable that the natives retain for their own use and occupation'.<sup>24</sup> While both these comments were made with direct reference to the operation of the Crown's pre-emptive right, it is nonetheless surprising that no explicit provision was made in any of the Ordinances governing old land claims for the investigating commissioners to apply a similar standard of care to the post-Treaty validation of pre-Treaty transactions. Clearly, the commissioners themselves seemed to think that the obligation that accompanied the operation of the Crown's pre-emptive right was equally applicable to their investigation of pre-Treaty 'purchases'. This can be seen in their writing in May 1842 that Maori:

23. Normanby to Hobson, 14 August 1839, BPP, vol 3, p 87

24. Russell to Hobson, 28 January 1841, BPP, vol 3, p 174

cultivation[s], and fishing and sacred grounds, ought . . . to be in every case reserved to them, unless they have, to a certainty, been voluntarily and totally abandoned. If some express condition of this nature be not inserted in the grants from the Crown, we fear the displacement . . . of the natives, who, certainly, never calculated the consequences of so entire an alienation of their territory.<sup>25</sup>

The extent to which the commissioners put these sentiments into practice through the explicit exclusion of such areas in their grant recommendations can only be assessed by a systematic search of each individual old land claim file. As stated in the methodology section, such a search was not feasible within the context of this report.

Furthermore, such a search would in fact conflict with one of the primary objectives of this database which is to focus on the end result of the old land claims process. For even if the early commissioners did in fact systematically exclude such areas as part of their grant recommendations, this by no means guaranteed that such areas remained in Maori hands. As previously indicated, until an old land claim was surveyed, it was uncertain that the area would actually be alienated, either to the claimant or to the Crown. Conversely, once an area was surveyed it was highly unusual for the alienation of that area to be successfully challenged by Maori. This is equally applicable to any reservations or exceptions which were part of those same recommendations. Of course, the classic example of this is the third of Fairburn's 1836 Tamaki claim, approximately 27,000 acres, which the commissioners recommended be returned to the Maori vendors but which, through the lack of a comprehensive survey of the entire claim, was first treated as surplus and then purchased by the Crown.

The best indication of whether or not a commissioner-recommended exception was in fact observed, is provided by the presence of that exception or reservation upon the OLC plan that was eventually produced after the claim was surveyed. Old land claim 289, Lachlan McCaskill's Hikutaia North claim, subject of a case study in this report, provides an example of a Godfrey-recommended exception missing from the 1857 survey which subsequently formed the basis of the Bell-issued grant. Conversely, the OLC plan 1 for George Clarke's Whakanekeneke claim at Waimate, OLC 634, includes both the original exception provided for in the commissioner's report, as well as an additional 411 acre Native reserve, the origins of which are uncertain. A similar case to this is William Webster's Piako claim, OLC 726. Old land claim plan 162, surveyed in 1860, has also been marked with the words 'Native Reserve'. That reserve, which is shown on a 1911 sketch map as having been established, must be a different one from that originally excepted as a result of the commissioner's investigation in 1843 because the latter was purchased by the Crown in 1853.<sup>26</sup>

Overwhelmingly, however, few reserves or other exceptions were marked upon the survey plans consulted in the collation of these lists. Neither do the other

25. Commissioners to Hobson, 2 May 1842, IA 1/1842/721

26. The location of both these reserves is shown on the 1911 sketch map which forms the basis of figure 7 in the Webster case study.

## *Appendix*

sources consulted provide much indication of reserves being established. In total, only 17 claims, 15 in Auckland and one each in Wellington and Waikato, incorporated some form of reserve. But even this figure is slightly misleading as a measure of the extent to which the commissioner's original exceptions were observed. Of the 17 claims which incorporated some form of reserve, at least four had their reserves established as part of the Hokianga scrip surveys of the late 1850s.<sup>27</sup> As was highlighted in the Hokianga case study earlier in this report, these reserves predominantly recognised cultivations existing at that time, rather than finally establishing reserves provided for in the reports of the early commissioners. Ignoring this for the moment, the combined total acreage of the reserves in those 12 claims for which we have acreages was 1844 acres. This represents 0.3 percent of the national surveyed acreage, argued in an earlier section to be the best measure of the probable extent of land alienation as a result of the old land claims process.

This raises the rather significant question of whether the Crown should have returned some of the 145,581 acres it accrued as surplus from old land claims to compensate Maori for the extremely small area of reserves established as a result of old land claims. Such an allocation would not have been at odds with the sentiments outlined earlier by Normanby and Russell. Against this, it might be argued that at the time of the commissioners' investigations, Maori were still in possession of the majority of their lands. This argument has some merit although in some instances where a particular old land claim was especially large, for example, Fairburn's Tamaki claim, or where old land claims were particularly concentrated, for example, the Bay of Islands, any such assumption might reasonably be challenged. Furthermore, the argument as a whole loses some merit when it is considered that in most instances the Crown did not take actual possession of its surplus until the surveys prompted by the passage of the 1856 Act. By then, it was becoming increasingly obvious in the region most heavily effected by old land claims, the Auckland district, that certain iwi had alienated so much land to the Crown that they had failed to retain, in the words of Lord Normanby, an amount 'which would be essential, or highly conducive, to their own comfort, safety or subsistence'.

### **1.5 CONCLUSION**

With all the qualifications which have attended this written summary of the district tables that follow, it might be asked what value can be placed upon the results. Such a question seems particularly appropriate given the need to consider non-quantitative factors, such as the quality and location of the land alienated, and the real uncertainty that surrounds important aspects of the old land claims process, in particular, the fate of 'lapsed' claims and the amount of scrip exchange land successfully 'recovered' by the Crown.

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27. See the Hokianga case study in this report, p 65

### *Old Land Claims*

The answer to such a question is that while we have not established definitive quantification of the outcomes of the old land claims, nonetheless, clear trends do emerge from the data assembled. The most important of these is the clear and pronounced dominance of the Auckland district with regard to the outcome we have referred to as 'effective alienation'. Whether measured in terms of grants issued, scrip and surplus acreage recovered, or most meaningful of all, acreage surveyed, this dominance stands out very clearly.

The second main conclusion which might be taken from this written summary is that, outside of the Auckland and New Zealand Company districts, old land claims did not exert this impact if measured only in terms of the probable extent of land alienated. None the less a significant rate of alienation occurred in other districts when measured qualitatively. For example, in the Southern South Island, pre-Treaty transactions may have set up a pattern of alienation continued with the subsequent Crown purchases.

As regards the qualitative and other qualifications which attend these conclusions, they can only be overcome by more in-depth research of specific examples. Given that the great extent of the Auckland Rangahaua Whanui district claims have yet to come before the Waitangi Tribunal, much of this research remains to be undertaken.

*Tabular Summaries: Totals by District*

District	Claimed	Surveyed	Granted	Scrip £	Surplus
Auckland	1,659,682	535,185	247,634	129,946	134,993
Hauraki	105,075	24,459	17,327	4003	48
Bay of Plenty	18,226	15,579	7725	853	6785
Urewera	0	0	0	0	0
Gisborne	111,076	1356	1382	0	0
Waikato	424,498	39,044	20,564	2049	0
Volcanic Plateau	600	318	319	0	0
King Country (Rohe Potae)	82,214	501	500	0	0
Whanganui	0	0	0	0	0
Taranaki	21,823	0	0	0	0
Hawkes Bay/ Wairarapa	1,228,005	0	37	2560	0
Wellington	31,514	3138	3727	4972	0
Northern South Island	1,323,580	2513	2663	70	0
Southern South Island	4,298,613	12,587	24,478	8500	0
Chathams	0	0	0	0	0
Totals	9,304,906	634,680	326,356	152,953	141,826

Summary table: old land claim totals from all districts



Claim no	Claimant(s)	Locality	Date	Claimed	Surveyed	Grant(s)	Scrip	Surplus	Plan no(s)	Remarks
9	Wright and Graham	Kaipara	1840	40,000	11,800	6744		5345	OLC 10, 11	All except 636 acres of surplus lands 'covered by the Crown's Piroa and Pukekaroro purchases' (MA 91/9)
11	Macnee (W S Grahame)	Kaipara	1839	4000	1818	2116			OLC 169	Grant included 298 acres of survey allowance (MA 91/23)
12	Oakes	Pakanae, Hoktianga	1836	300	69		300		OLC 270	'Natives wished to purchase land.' Reverted to Crown as scrip.
13	Montefiore	Bay of Islands	1836	343	47	47	218		LT 12400	Scrip land probably claimed (MA 91/23)
14-22	Busby	Waitangi, Bay of Islands	1834	9545	10,315	3264		4800	OLC 281	SLC gives Bell's surplus figure as 4000 acres. Plan NO 281 gives the 'surveyed', 'granted' and 'surplus' figures as 10,420; 9374; and 1046 acres respectively (LS list). 'Actual area recovered by Crown.' (MA 91/29).
15	Busby	Waitangi, Bay of Islands	1834							Settled under 1867 Land Claims Arbitration Act (MA 91/18, precis p 1)
16	Busby	Waitangi, Bay of Islands	1835							
17	Busby	Waitangi, Bay of Islands	1835							
18	Busby	Waitangi, Bay of Islands	1838							

Summary table for district 1: Auckland

Claim no	Claimant(s)	Locality	Date	Claimed	Surveyed	Grant(s)	Scrip	Surplus	Plan no(s)	Remarks
19	Busby	Waitangi, Bay of Islands	1839							
20	Busby	Waitangi, Bay of Islands	1839							
21	Busby	Waitangi, Bay of Islands	1839							
22	Busby	Waitangi, Bay of Islands	1839							
23	Busby	Waipu	1839	25,000	120,000		22,600	1010	OLC 282	Plan not found
24	Busby	Ngunguru	1839	15,000			14,200		OLC 282	Plan not found
25	Hawkes	Kaipara	1839	12,000						Withdrawn. Included in later Crown purchase (Alemann, p 31).
26	Christmas	Kaipara	1840	1000	250	250			OLC 146	Granted 19 January 1864
27	Deliotte and Stewart	Horeke, Hokianga	1826	2000						Grant called in but not produced. Grant void for uncertainty (Bell).
36	Abercrombie, Nagle and Webster	Great Barrier Is	1838	20,000	56,387	30,732		15,382		
40	Anderson	Waihou, Hokianga	1834	1000			1000		OLC 254	Plan included eight other claims
41	Angus	Hokianga	1839	1000			50			Surveyed with six other claims – total area 2572 acres
42	Appleby and Chapman	Bay of Islands	1839							Disallowed. Claim not allowed to be brought forward (Bell).

47	Atherton	Bay of Islands	1839	320	268			268		'Partly granted -- partly reverted to Maoris' (MA 91/9 and 10).
48-	Baker	Hokianga	1839	3200			722			
50										
51	Barber (Hill)	Bay of Islands		100	158	158	210		OLC 44 and 175	Granted for Parua nos 51, 52 and 54 (10 February 1862). R15 fol 171 Paroa Bay. R15a fol 233, 234.
52	Barber (Hill)	Parua, Bay of Islands	1836	100	54	54			OLC 44	
53	Barber (Hill)	Totaranui, Bay of Islands	1837	30	20	20			OLC 175	Granted 8 August 1860 (MA 91/23)
54	Barber (Hill)	Parua, Bay of Islands	1839	100					OLC 44	
55	Barber (Hill)	Te Puna, Bay of Islands	1838	40	32	32			ML 3233 and ML 3401	Reverted to Maori (MA 91/23)
56	Bateman	Bay of Islands Paroa Bay	1837	22	29	28			OLC 33	R15 fol 196 (Clendon)
57	Bateman	Waikare	1837	200						Claim withdrawn (Bell)
58	Bateman	Bay of Islands Motukiekie	1837	100	67	67			OLC 353	
59	Bateman (W S Grahame)	Bay of Islands Kerikeri Nth	1839	1500	1827	1157	948	128	OLC 16 and 171	'Within Boundaries of Bay of Islands Settlement Act' (Sum 2). Wi Hau protest (MA 91/18, precis p 2). R15a fol 285.
62	Bateman	Kororareka	1839	18.5						no 62 withdrawn (Bell)
63	Bateman	Kororareka	1837							no 63 disallowed (Bell)

Claim no	Claimant(s)	Locality	Date	Claimed	Surveyed	Grant(s)	Scrip	Surplus	Plan no(s)	Remarks
65	Bedggood	Waimate	1838	250	185	185			OLC 42	R15 fol 128
67	Black and Green	Bay of Islands	1838	300	310	310			OLC 53	Grant issued 17 March 1856 (MA 91/23)
75	Brown	Kororareka	1838							Disallowed. Derived from Turner (Bell).
81	Byron	Bay of Islands	1835	90	53		54		OLC 106	R15 fol 200 Paroa Bay
82	Cassidy	Kaipara	1835	1500	105		1053			
83	Cassidy	Kaipara	1837	1000			1000		OLC 271	Surveyed with NO 369
87	Nicholas and Chadwick	Hokianga	1839	700	393		467		OLC 255	32 acre reserve. 361 acre scrip land recovered. Surveyed area includes NO 208.
88	Chalk	Kororareka	1839	0.25						Disallowed (Bell)
89-90	Chambers (Montefiore)	Hokianga		1300	416	416			OLC 436	
91	Chambers	Kaipara	1839	720						
92	Chambers	Kaipara	1839	6250						
93	Chambers	Whangaroa	1839	600						
94	Chapman	Waima, Hokianga	1839	300	340		54		OLC 276	27 acre reserve (LS List). Reverted to Crown as scrip.
95	Chapman	Mangamuka, Hokianga	1838	900	173		136		OLC 258	Survey area includes NO 447. Reverted to Crown as scrip.
96	Christie and Duffus	Tutukaka	1839	15,000			2000			Reverted to Maori. Subsequent Crown purchase shown on ML plan 133/17. 862 acres native reserve within Crown purchase (MA 91/18).

97	Church	Bay of Islands	1839	63						Came within Kawakawa Crown purchases
98	Church	Bay of Islands	1839							
100-103	Clayton	Kororareka	1829-1838	13.5	1	1.5		3.25		Declared abandoned, reverted to Crown (MA 91/20, ser 2)
106	Clayton	Auckland	1839	100			1440			
107	Clayton	Auckland	1839	1200			2560			
108	Clayton	Kororareka, Bay of Islands	1837	2	2.5	2		0.25		Lapsed derivative portion. Reverted to Crown.
109	Clayton	Kororareka	1837	9						Partially reverted to Crown – assumed 5 acres
110	Clayton	Kororareka	1835							
111	Clayton	Kororareka	1837	8	8					Reverted to Crown
112	Clayton	Kororareka	1838	5						Reverted to Crown
113	Clayton	Bay of Islands	1837	2						
114	Clendon	Okiato-Waikare	1832	220	229	229		320	OLC 132	Exchanged for 10,000 acres Papakura land
115	Clendon	kahikatearoa, Waikare	1837	80	280	280			OLC 133	See Auckland deed 53 for deed of private purchase. Exchanged for Papakura land.
116	Clendon	Manawaora	1838	1810	3365	2708		657	OLC 12, OLC 13	'Affected by Manawaora Petition' (MA 91/10, ser 2). R15 fol 193 (116). White's 1323 acres, R15a fol 267, fol 299 (Matawhi 117) and R15 fol 196.
117	Clendon	Manawaora	1836	10	23	23			OLC 140	
118	Clendon	Kororareka	1833	4	8.5	8.5			OLC 139	R15 fol 147
119	Clendon	Bay of Islands	1839	25			25			

Claim no	Claimant(s)	Locality	Date	Claimed	Surveyed	Grant(s)	Scrip	Surplus	Plan no(s)	Remarks
120	Clendon	Bay of Islands	1839	60	222.5	222			OLC 131	R15 fol 195
121	Clendon	Manawaora	1839	400	544		544		SO 949D	Protectors and surveyors reports
122	Cochrane	Hokianga	1831	1000	200	200	800		OLC 142	Surveyed area includes NO 124
123	Cochrane	Hokianga	1833	500			828			
124	Cochrane	Hokianga	1832	500						
126	Cook and Day	Waikare, Bay of Islands	1835	200	215	215			OLC 136	Grant issued 19 January 1864 (MA 91/23). R15a fol 292.
127	Cook and Day	Bay of Islands	1839	40						
135	Couper, Holt and Rhodes	Bay of Islands	1839			0.25				
136	Couper, Holt and Rhodes	Bay of Islands	1839							
137	Couper, Holt and Rhodes	Bay of Islands	1839							
138	Couper, Holt and Rhodes	Bay of Islands	1839							
139	Couper, Holt and Rhodes	Bay of Islands	1839							
140	Cooper	Hokianga	1839	1000		301.5	301.5			Reverted to Maori (MA 91/18). 'Sold by natives who did not own land' (MA 91/18).
155	Dacre	Mangonui	1831	5000						

157- 158	Dalziel	Awaroa (Manukau)	1839	1800	1717		514				
159	Dalziel	Tamaki	1839	1000			2560			Claim within boundaries of land reserved for City of Auckland	
160	Davis	Kaitaia	1837	1000	4880	466		4414	OLC 31	'Affected by Pukewhau Petition.' (MA 91/10, ser 2).	
161	Davis	Waimate	1840	15	4613	4251		362	OLC 4 and 152	15 acre Davis grant also dealt with in no 773 (MA 91/23).	
162	Donovan	Whangaroa	1836	20	8	8.5			OLC 156	'No plan see Grant Book Page 129' (LS list)	
163	Donovan and Powell	Kaipara	1836	1500							
165	Drake	Kororareka	1835 and 1839							Derived from Baker no 546	
166	Drake	Kororareka	1835 and 1839							Derived from Kororareka Land Company nos 819-828	
167	Drake	Kororareka	1835 and 1839							Derived from Turner nos 469, 473	
172	Edmonds	Kerikeri	1838	2112	3962	620.25	1160	921	OLC 211- 213 and 423	'Within boundaries of the Bay of Islands Settlement Act 1858' (MA 91/9, ser 2). 548 acres granted at Omapere (MA 91/18, precis p 2). R15a fol 379, 381-388.	
173- 174	Hemmings and Edney	Bay of Islands	1838- 1839	50	4.75	4.75	20		OLC 183	R15a fol 223	
175	Elmsley, Walton and Walton	Kaipara	1840	6000	44,171	11,708		5825	OLC 239	26,508 acres of surplus included in Waikiekie cr (MA 91/18)	
176- 177	Egert	Hokianga	1836	950			107.25			Surveyed with nos 176, 204, 24, 836. Total area 350 acres.	

Claim no	Claimant(s)	Locality	Date	Claimed	Surveyed	Grant(s)	Scrip	Surplus	Plan no(s)	Remarks
178–180	Evans	Kororareka	1833–1838		1	0.28125			OLC 192	'Claim unsettled' (LS list). Reverted to Crown (MA 91/18).
181–183	Evans	Bay of Islands	1838–1839	30	20			20		
184	Evans	Kaipara	1839	400						
190	Fishwick	Waimu, Hokianga	1831	1200			1200			Surveyed with nos 191, 467, 1044: total area 959 acres.
191	Fishwick	Waimu, Hokianga	1834	80			80			
192	Fishwick	Waimu, Hokianga	1837	1		0.5				
193	Fishwick	Waimu, Hokianga	1840	1		0.5				
194	Fishwick	Hokianga	1835							
196	Girdwood	Waiheke	1838	600						
199	Greenhill	Whangarei, Awarua	1839	2500	1053		2500			Reverted to Crown as scrip land (MA 91/18)
200–201	Greenway	Bay of Islands	1832 and 1839	353	89.6313	89.6313			OLC 172–173	
202	Greenway	Bay of Islands	1840		117.2813	117			OLC 72	R15a fol 222
203	Greenway	Bay of Islands	1838							
208	Gundry	Hokianga	1840	1000			463		OLC 255	Surveyed with no 87

*Tabular Summaries: Auckland District*

209	Gundry	Mangamuka, Hokianga	1839	500			500				
212	Hamilton	Bay of Islands	1838	11						Disallowed, claimant not appearing. No claim preferred (Bell).	
224	Hemmings	Bay of Islands	1838	0,1,0							
225	Henderson	Bay of Islands	1839							Disallowed. 'In the pa' (Bell).	
227	Hingston	Okaukau or Wairoa, Bay of Islands	1835	2664	1595	1276		319	OLC 22 and 27	'Claim conflicted with claims of James Busby', 319 acres surveyed as surplus, within Busby's OLC plan 281 (MA 91/23). 'Partly included in Busby surplus of 1010 acre and the balance [of surplus] is included in the grant.' (MA 91/9, R15a fol 240).	
228	Hingston	Kerikeri South	1836	500	215	215					
229	Hingston	Motupapa Is, Kerikeri River	1836	4		4					
230	Hingston	Kerikeri	1836	500	58	58			OLC 211	'Came within Edmond's Claim 172' (MA 91/23)	
231	Hipkins and Pearse	Waikare	1840	400		305				Land Court Commissioner's decision, 1 March 1880, claim abandoned (ML 7290). Passed Native Land Court 11 October 1909 (MA 91/18, p 1).	
233	Holman	Whangaruru	1839							Disallowed (Bell)	
242	Hunt	Mangamuka, Hokianga	1830	3000	533		2560	533	OLC 267		
243	Hunt	Bay of Islands	1821	3						Disallowed (Bell)	
247- 248	Jellicoe	Hokianga, Te Toke, Ngaio	1835 and 1836	1600	937	837		31	OLC 96	'Difference caused by overlap of surveys' (AAI)	

Claim no	Claimant(s)	Locality	Date	Claimed	Surveyed	Grant(s)	Scrip	Surplus	Plan no(s)	Remarks
249	Johnson	Paroa Bay	1835	100	60				OLC 286	Reverted to Crown (MA 91/18). 'Claim unsettled' (LS list).
250	Johnson	Bay of Islands	1839	10					so 6006 and 6308	Claim abandoned, reverted to Crown (MA 91/18, p 1)
270	Joyce	Kaitohe/ Whangaroa	1839	3000	1500	508		992	OLC 5	
271	Joyce	Waimate	1839	4						No appearance before Bell. Land Court Commissioner decision 1 March 1880, claim abandoned (MA 91/18, p 1)
272	Kelly, Nicholson et al	Pakahikatoa	1839	2000	616		1958		OLC 266 and 273	Crown recovered 616 acres as scrip
274-275	Lacourt	Motuti Creek, Hokianga	1839	25,000	37					Both claims disallowed. NO 274 preferred but not presented (Bell)
277	Leef	Hokianga	1839	200	58	58.5			OLC 186	
278	Leitch	Bay of Islands	1835	550	131	151.5			OLC 30	R15a fol 268
283	Lillico	Whangaroa	1837	35	25	25.9375			OLC 187	'Claim unsettled' (LS list)
284	Lord	Kaipara, Okoe	1840	5000	539		2000		so 1653A, so 6870	Reverted to Crown as scrip land
285	Lucett	Kororareka	1839							Disallowed. Derived from Turner NO 473 (Bell).
302-304	McLiver	Whangaroa	1837	3600			785			800 scrip acres (estimated) reverted to Crown
305	McLiver	Kororareka	1839		0.21875	0.21875				

306	Mair	Bay of Islands	1831	350	394	294.75			Includes Polack grant of 47 acres 3 rods 8 perches (survey J W Harrison, 17 March 1857)
307	Mair	Whangarei	1839	5000	1798	1798			
308	Makepeace	Upper Waiwa	1840	25,010	84		213		Claims identical with nos 646 and 647. Reverted to Maori, passing through Native Land Court.
309	Makepeace	Upper Waiwa	1840						
310	Makepeace	Upper Waiwa	1840		768				
311	Maning	Whirinaki, Hokianga	1839	200	99	99.75		OLC 122	
312- 317	Marmon	Hokianga		1400	523	523	650	OLC 123	
318	Mariner and Bowyer	Hokianga	1837	1500	324		1500	OLC 269	Surveyed area includes nos 312 and 313
319	Marshall	Paroa Bay	1837	300	93		160		Surveyed area 93 acres reverted to Maori (MA 91/9). See also MA 91/18, p 1.
326- 327	Martin	Hokianga		95		60.25		OLC 127	
328	J Mathews	Kaitaia	1835	1400	3134	2449		685 OLC 7, 193	Affected by Tangonge petition (MA 91/10/52).
329	J Mathews	Kaitaia	1839	800	7317	1748		5229 OLC 9, 193	Affected by Aurere petition (MA 91/10/2). 340 acre reserve.
330	R Mathews	Kaitaia	1839	3000	1750	1183		567 OLC 119	Bell gives a surplus figure of 685 acres for this claim (AJHR, 1862, D-10, p 22)
331	Maxwell	Waihcke	1838		1392			OLC 291	

Claim no	Claimant(s)	Locality	Date	Claimed	Surveyed	Grant(s)	Scrip	Surplus	Plan no(s)	Remarks
332	Maxwell	Waiheke	1840	2560	2280	2200		80	OLC 164, 164A, 212	80 acre public reserve
333	Maxwell and Moncur	Manukau	1840	2000	1973	960		1013		(MA 91/10, ser 2)
334	Palmer and others	Bay of Islands	1840	20		20				SLC could not locate 334 (MA 91/19). Palmer no 344 'apparently absorbed in Native blocks' (MA 91/19, p 1)
337	Mellon and Skelton	Matakana	1839	5000	2560	2560				Lies within Mahurangi purchase. No evidence of survey (MA 91/23). Bell gives the 'granted' acreage for this claim as 1966 acres (Bell)
339	Monro	Mata, Hokianga	1835	600		600				
341	Moores	Kororareka	1836	0.25		0.275				Bell repealed 1844 grant of 195 acres in 1862. R15 fol 125.
343	Moores	Manukau	1840	400						
346	Mulholland	Whangarei	1839	500						Disallowed (Bell)
348– 349	Murray	Mangamuka, Hokianga	1830 and 1835	1500		504				Reverted to Maori (MA 91/19)
352	Nimmo	Motukauri, Hokianga	1831	200	181		181		OLC 262	
353	Nesbit	Otuwere, Waimate	1840	500	355	230		125	OLC 18 SO 1159	See also so 1159 (MA 91/19, p 1). R15 fols 71, 72 and 73.
354	Norman and Cook	Kororareka	1839			0.10625				R15 fol 99

355	O'Brien	Kaipara, Whakaikara	1839	60,000	3734		289.75			Additional payments in 1854 Crown purchase (Alemann, p 32)
356- 358	Odeland	Hokianga	1834, 1835 and 1836	1100		1100				Claimant drowned, claim lapsed, 200 acres reverted to Crown
363	Palmer	Whangaruru	1840	250						Reverted to Maori (MA 91/19, p 1)
369	J Pearson	Tukituki	1838	1000	380	63		OLC 271		Surveyed area includes no 83. Both reverted to Crown.
377	Honan	Hokianga	1839	30		30		SO 939		Reverted to Crown (MA 91/19)
378	H Pearson	Mangamuka, Hokianga	1835	80	10		80	OLC 264		Native reserve (LS list). 378 acres reverted to Maori (MA 91/19). Inconsistent with surveyed acreage.
379	H Pearson	Mangamuka, Hokianga	1835	2000	77		1594	OLC 256		
380	T Potter	Bay of Islands	1839	80	50			OLC 243		Reverted to Crown (MA 91/19). 'Disallowed' (LS list).
381	W Potter	Bay of Islands	1835	0.2.0						Disallowed
382	W Potter	Kaitaia	1839	1200	60		130	225	OLC 352	Included in the Wharemarau[sic] purchase (MA 91/9)
383- 385	Powditch	Whangaroa/ Waureka	1835 and 1839	4220	1002	907	1500	878	OLC 14, 134 and 240	783 acre 'block recovered later for the Crown by Bell ... not included in 1862 return' (MA 91/9)
386	Poynton	Mangamuka, Hokianga	1831	100	328		100			
387	Poynton	Papakawau, Hokianga	1835	200			2060		SO 939 and 274	

Claim no	Claimant(s)	Locality	Date	Claimed	Surveyed	Grant(s)	Scrip	Surplus	Plan no(s)	Remarks
388	Poynton	Papakawau, Hokianga	1836	1500						
389	Poynton	Papakawau, Hokianga	1837	200						
390	Poynton	Papakawau, Hokianga	1837	2000						
391	Poynton	Papakawau, Hokianga	1835	800			400			
393	Reed	Waikare	1839	500	224	224			OLC 218	See so 2050. Halse Native Land Court in 1880 granted 110 acres to a descendant of a derivative claim. Another 110 acres reverted to the Crown. (MA 91/19, p 1).
394	Reid	Owhora/ Kowhora	1837	30	6	30			ML 293	
395	Reid	Mangonui, Te Tii	1839	40	13					Reverted to Maori as Te Karaka Block (MA 91/25)
396	Richards	Mangonui	1838							No claim preferred (Bell)
397	Robinson	Haurakina Island	1840	500	360	360				
399– 401	Russell	Hokianga	1836 and 1837	750	53	170	310		OLC 65	
402	Russell	Taketahi, Hokianga	1839	400	335		251		OLC 277	25 acre reserve (LS list)
403– 407	Ryan	Mangonui	1836– 1838	2280	3	3	3042	7		'770[?] supposed area reverted to Crown' (MA 91/9). Claims 403–405 effected by Whakaangi petition.

408	Salmon	Whananaki	1834	7000	2398	2398.3		103	SO 1154	2398 acres granted elsewhere. Also granted additional 103 acres at Kerikeri, excluding 4 acres Wahi tapu: OLC plan 26.
409	Salmon	Moturoa	1834		363	363.23125				No evidence that grantee ever filed survey, or Bell cancelled
416	Scott and Russell	Bay of Islands	1836							Disallowed (Bell)
422	Small	Kerikeri	1839	3000						Grant recommended, but none issued. No claim preferred. Not located. Possibly within Kemp's claim 595.
423-424	Sparke	Waitematc/Mahurangi	1840	62,500			500			
425	Sparke	Thames [?]	1840	100,000						
429	Spicer	Kororareka	1833	1160	24	24.725	547	435	OLC 419	'46 acres Govt purchase, 60 acres [scrip]' (LS list). Granted acreage refers to NOS 432-434 and 441, R15a fol 275.
430	Spicer	Kororareka	1836	8						Claimed by Grahame NO 432
431	Spicer	Uruti, Bay of Islands	1838	100	46	100	100		OLC 198	MA 91/19, p 1. Maori later believed only 8-10 acres had been sold. Surveyed area includes NO 437.
432	Spicer	Bay of Islands	1838	1	24	24				Surveyed and granted areas also include NO 441
433	Spicer	Kororareka	1839	0						
434	Spicer	Kororareka	1839	1						
435	Spicer	Raparapa, Bay of Islands	1839	400	435.8		175		OLC 419	MA 91/19, p 1. Reverted to Crown as scrip.
436	Spicer	Kororareka	1839	4	4					Bell annulled grant, Heaphy declared claim abandoned 1 March 1880 (MA 91/19, p 1).

Claim no	Claimant(s)	Locality	Date	Claimed	Surveyed	Grant(s)	Scrip	Surplus	Plan no(s)	Remarks
437	Spicer	Bay of Islands	1839	150			75			Surveyed with NO 431
438	Spicer	Kororareka	1838	1	0.5					Bell annulled grant, Heaphy declared claim abandoned 1 March 1880 (MA 91/19, p 1).
439	Spicer	Kororareka	1838							
440	Spicer	Kororareka	1839	500						See NO 768. Not located. No claim preferred.
441	Spicer	Kororareka	1840	2						
442	Spicer	Kororareka	1838							
443	Spicer	Mangonui	1840	200						Withdrawn (Bell)
444– 445	S Stephenson	Bay of Islands	1836	30	25	25.75			OLC 229	
446	Stillard	Whangaroa	1839	60			60			Reverted to Maori (MA 91/19)
447	Strout and Harrison	Waima, Hokianga	1839	600			340		OLC 258	Surveyed in conjunction with NO 95
448	Stuart	Matawai, Bay of Islands	1839	100	115				ML 844	Area reverts to Maori. Received 344 acres at Patawa in satisfaction of this and NO 450.
449	Stuart	Tutukaka	1839	5000	1560	1560			OLC 250	
450	Stuart	Kawakawa	1837	10						
451	Sturley	Bay of Islands	1835	100	83	100			OLC 231	'Grant lapsed. Reverts to Crown.' (MA 91/19, p 1). so 6006 and 6306.

452	Swain	Bay of Islands	1839	300	100	300			Bell annulled this claim. No survey made. Reverted to Crown (MA 91/19, p 1). Shown on so 5712A (October 1890).
453	H Taylor and Sparke (Campbell)	Weiti	1839	20,000	5569	5569		OLC 138	Plan NO 138 (LS list) gives both the 'surveyed' and 'granted' acreages of NO 453 as 1166
454	H Taylor and Sparke	North Head	1839 and 1840	1000			500		
455	H Taylor and Sparke (McLeod)	Waiheke	1839 and 1840	300	1400	1037		563 OLC 235	MA 91/9. Full explanation (MA 91/10, ser 2).
456	Taylor and Fairburn	Waiheke	1840	20,000					Disallowed (Bell)
457	Taylor and Fairburn	Motu (The Islet)	1839	300	430	430			
458	R Taylor	North Cape	1839	50,000	1704	1704		OLC 157 and 234	Half was granted at Kapowairua, the other half near Monganui
461	Thomas	Waihou, Hokianga	1834	1800			1825		
464	Thurlow and McDonald	Waihou, Hokianga	1834				50		
467	Trusted	Waima, Hokianga	1839	500			68		Grant cancelled 1860
468	Tuite (Kelly and others)	Waima, Hokianga	1839	500	475		174	475 OLC 273	See NO 272 above
469	Turner	Kororareka/Bay of Islands	1838	164	94	96.10625		OLC 236	Plan NO 236 (LS list) gives the 'surveyed' and 'granted' acreages of nos 469–473 as 7 acres 21 perches and 5 acres respectively, with the balance taken for streets.

Claim no	Claimant(s)	Locality	Date	Claimed	Surveyed	Grant(s)	Scrip	Surplus	Plan no(s)	Remarks
470-472	Turner	Bay of Islands	1839	135	90	90			No plan	
473	Turner	Bay of Islands	1839	7	5.5					R15 fol 92
479	Walsh	Pukohu, Hokianga	1839	350	70	70	280			70 acres granted at Tamaki
495	G Weller	Auckland/Motutapu	1839	480,000						Disallowed, the claimant not appearing (Bell)
496	G Weller	Whangarei	1839	200						Never investigated. No claim preferred (Bell).
512	W White	Motiti Island	1835	8	8	8.75			OLC 87	
513-515	W White	Hokianga	1833 and 1835	1152	462	462	1000	236	OLC 64, 85, 265 and 272	NO 514 disallowed by land court according to LS list. 27 acre native reserve (LS list).
517-519	White and Russell	Otira	1832 and 1839	10,720	3871	1280	6259	2372	OLC 254	Native reserve
520	Whytlaw	Waikare	1839	300			2560			Disputed. Two Royal Commissions 1907 and 1921 (MA 91/19, p 1).
521	H Williams	Bay of Islands	1833	1000	8043	8074			OLC 45, 46, 54	Plan NO 54 (521-525) shows 4 reserves totalling 241 acres
522	H Williams	Pouerua, Bay of Islands	1835	3000					OLC 54	
523	H Williams	Hihi, Bay of Islands	1836	500					OLC 54	

525	H Williams	Pakaraka, Bay of Islands	1838	500				OLC 54	
526	H Williams	Puketona, Bay of Islands	1836	2000				OLC 59 OLC 245	
524	H Williams	Bay of Islands (Pukeawa?)	1839	4000	5043	2000	3043	OLC 245	On disposal of surplus in 1856 see SO 1218 (MA 91/19, p 1).
527	J Williams	Mangakahia	1839						Disallowed (Bell)
529–534	W Williams	Bay of Islands/ Kororareka	1835, 1836, 1837 and 1838	890	1488	1488		OLC 43, 47, 54, 58 and 59	3 acre 2 rood native reserve (LS list). R15 fol 22.
535	Wing	Kororareka	1839	123					Reverted to Crown – 'cannot locate accurately' (MA 91/20)
536	Wood	Waikare	1839	100	18				Grant called in but not produced; repealed accordingly. Part reverted to Maori as Kohekohe block (MA 91/20).
537	Wright	Bay of Islands/ Kororareka	1831	600		262.5		OLC 73	
539	Kent (Nimmo)	Hokianga	1828	640	2275	2		OLC 312	
540–542	Young	Hokianga	1833, 1835 and 1839	1140	41	41	640	OLC 67	
543	Atherton, Kelly and Whitaker	Tutukaka	1839	6000			1005		Unsurveyed. Reverted to Maori (MA 91/20). Part re-purchased by Crown in Matapouri purchase.
544	Atherton, Kelly and Whitaker	Kororareka	1837	2	2	2		OLC 238	Plan NO 236 (LS list) gives the 'granted' acreage of NO 544 as 5 acres 2 roods 37 perches, but notes that 'same external boundaries granted as two acres'.

Claim no	Claimant(s)	Locality	Date	Claimed	Surveyed	Grant(s)	Scrip	Surplus	Plan no(s)	Remarks
545	C Baker	Waikare	1836 and 1837	1212	1260	1260			OLC 135	Includes two natives reserves on plan (no acreage). R15 fol 16.
546	C Baker	Kororareka	1835	30	18	18			OLC 109	Also OLC plan 300
547	C Baker	Mangakahia	1836	5000			2560			
548	W Baker	Kororareka	1838	0.10		0.175				
549–550	W Baker	Whangaroa	1839 and 1838	10,015	4178	1289		2889	OLC 35 and 428	'270 acres of this surplus come within the Crown's Whakapaku purchase' (MA 91/9).
551	W Baker	Waikoura	1839	15						Withdrawn (Bell)
554	Brind	Kororareka	1834	440	504	398.5		50	OLC 140 and 128	'Difference on survey and on overlap on NO 117 [Clendon]' (MA 91/9). R15a fol 212.
555	Brind	Bay of Islands, Kororareka and Auckland	1839	184	12	12.25			OLC 91	Disallowed (Bell). Incomplete purchase, see ML 7133 (MA 91/25).
556	Brind	Bay of Islands	1838	30	12	12.3125				
557	Brind	Kororareka	1836	4						
558–566	Berghan	Mangonui	1836 and 1837	4605	1862	1862.925		1206	OLC 104, 105 and 129	'Balance of original claim of 3069 [sic, 3069 – 1862 = 1207]' (AA2)
567	Brodie	Kororareka	1835	0.75		0.3125				
568	Brodie	Bay of Islands	1839	120						Disallowed (Bell)
569	Brodie	Matauri Bay	1839	1580	1326	947.5		378.5	OLC 101	Surplus calculated as difference on survey (MA 91/9)

570	Brodie	Mangonui	1840	1200							
571	Brodie	Matauri Bay	1839	3000							Disallowed (Bell)
573	Brown	Kororareka	1840					ML 2576	Incomplete purchase reverted to Maori (MA 91/25)		
574	Brown	Kororareka	1839	10							Disallowed (Bell)
575	Brown	Kororareka	1839	7							No claim preferred (Bell)
576	Brown	Kororareka	1839	8							No claim preferred (Bell)
577- 578	Brown	Kororareka	1839	30							No claim preferred (Bell)
579	Brown	Kororareka	1839	4							Disallowed (Bell)
580	Byrne and Beers	Bay of Islands	1838	300							Disallowed, no appearance by claimant (MA 91/25). Not located.
586	Eales	Bay of Islands, Kororareka	1835 and 1839	1	0.5			OLC 300	Disallowed. Derived from Baker NO 546 (Bell). Reverted to Crown. Lots 33 and 34 on OLC plan 300.		
587	Eales	Kororareka	1835 and 1839	4							
588	Eales	Kororareka	1835 and 1839					OLC 300	Included within grant to Wood NO 473		
589	W Fairburn	Bay of Islands		400							Disallowed, no appearance by claimant (MA 91/25). Cannot locate.
590	W Fairburn	Auckland		40,000	8055	8054.25		21,500			'Nominal surplus only' (MA 19/23, (590) p 1). Myers Commission estimated total area at 82,947 acres. Under terms of original deed one third of purchase meant to be reserved to Maori.

Claim no	Claimant(s)	Locality	Date	Claimed	Surveyed	Grant(s)	Scrip	Surplus	Plan no(s)	Remarks
592	Jackson and Peterson	Kaipara	1840							Disallowed (Bell)
594	J Kemp	Te Hare, Waimate	1834	50	356	50			OLC 52	Surveyed area includes nos 596, 897, 898
595	J Kemp	Kerikeri	1835	5000	18,426	6598		2448	OLC 60	Includes Pungaere and Puketotara. No 595 (Kerikeri): 1552 acres reverted to Maori under section 80 of 1920 Act no 75. R15.
596	J Kemp	Kioreroa, Waimate	1836	150		150			OLC 52	Acreage applies to nos 594 and 596. Including Hamlin's claims nos 897-898 acquired by Kemp (MA 91/23).
597	J Kemp	Kororipo, Bay of Islands	1838		13	13			OLC 34	Including Hongi's pa site
598	J Kemp	Kerikeri	1839			14			OLC 24	
599-602	J Kemp	Whangaroa	1833 and 1836	4000	4464	2722	68	1742	OLC 24 and 38	
603-606	J King	Bay of Islands	1834, 1835 and 1836	5150	20,516	11,770		8746	OLC 19 OLC 21	Otaha (plan 19) 20,576 acres, Oihi (plan 21) 710 acres. Bell combined Otaha with Oihi claims (MA 91/20, p 1). R15 fol 42-57 and R15a fol 270.
607-609	P King	Te Puna, Bay of Islands	1834	5	6	6.25			OLC 126	Including Motuapo Island (3 acres) on plan. R15a fol 239 (including Motuapo).
610-611	P King	Waiaua (Bay of Islands)	1836	2300	3276	3276			OLC 228	
614	Rich	Bay of Islands	1836	150	52					No settlement recorded. Reverted to Maori (MA 91/25). Within Otamarua block.

615	Robertson	Kororareka	1835	20						Grants called in but not produced, repealed accordingly. Combined with Pom pallier NO 954 (MA 91/23).
616	Robertson	Kororareka	1839	400	400					Grant called in and cancelled. Survey DP 8078 (1912).
617- 623	Thomas and Philips	Mangonui	1834- 1839	3750	1404	1294			OLC 95, 111-112, and 287-90	'Affected by Whakaangi and Oruru Petitions.' (MA 91/10, ser 2). Supposed surplus of 110 acres, being estimated area of NO 622.
624	J Wright	Hokianga	1831	1000	389		1500		OLC 263	Crown recovered as scrip
625	J Wright	Hokianga	1833	100	18		100		OLC 278	Crown recovered as scrip
626	T Forsaith	Wairoa River, Kaipara	1840	400	251	251			OLC 88	Reverted to Crown as scrip, then reverted to Maoris (SLC, series 6)
627	T Forsaith	Te Kopuru, Kaipara	1840	678			3390			
628	T Forsaith	Kaipara	1839	2000	823					
629	Manukau Company	Manukau	1836		1927	1927			OLC 357	Plan indicates Maori object to 300 acres in North East.
631	Halls	Waiheke	1838			885				(MA 91/23)
633	G Clarke	Waimate	1838- 1839		1426	1426			OLC 55	R15 fols 67, 68, 69 and 15a, fol 229
634	G Clarke	Whakanekeneke/ Waimate	1836		8957	6732		1603	OLC 1	R15 fol 70, 411 acre native reserve.
637	Polack	Orongo, Bay of Islands	1833	100	43	43			OLC 209	Grant issued 18 January 1861 (MA 91/23).

Claim no	Claimant(s)	Locality	Date	Claimed	Surveyed	Grant(s)	Scrip	Surplus	Plan no(s)	Remarks
638	Polack	Kororareka	1833					4.5	OLC 351 OLC 352	NO 638, exchanged for 5 acres of suburban land. (LS list).
639-640	Polack	Waitangi		152	15.5	15.5			SO 930A	Total area of NOS 639-640 upon survey, 15 acres 2 roods 0 perches (MA 91/23). (Haruru Falls) R15a fol 396.
641	Polack	Bay of Islands	1836	300			300		No plan	Islands in Waitangi River
642	Polack	Kororareka	1835							
643	Scott	Kororareka	1838	1						Grant called in but not produced, repealed accordingly. No claim preferred.
644	Jeffrey and Whylaw	Te Puna	1834	22					ML 427	Grant called in and cancelled. No survey made, nor claim preferred.
645	Powell and McLeod	Kororareka	1839	400						See NO 815. Not reported under this no.
646-647	E Powell	Kaipara	1840	1470			106.5			
648	Falconer	Bay of Islands	1835	0.2.0						Disallowed, no appearance by claimant (MA 91/25)
649	Field	Bay of Islands	1830	250						Disallowed, no appearance by claimant (MA 91/25). Not located.
650	Day	South Head, Kerikeri Inlet, Bay of Islands		1912	70	70		275	OLC 41	(MA 91/23), R15 fol 123.
651	Day	Te Puna, Bay of Islands		12						Disallowed, no appearance by claimant (MA 91/25). An island. Not located.
652	Day	Bay of Islands		1600						

653	Clapham	Bay of Islands	1838	7					Disallowed, no appearance by claimant (MA 91/25). An island in Kerikeri River. Not located.
654	Clapham	Pupuke River	1836						Location unclear (MA 91/25). Possibly Whangaroa. Not located.
655	Clapham	Okura, Kerikeri, Bay of Islands	1838						Disallowed, no appearance by claimant (MA 91/25). Not located.
656	Styles	Bay of Islands	1839						Disallowed, no appearance by claimant (MA 91/25). Not located specifically.
657	H Johnson	Bay of Islands	1839	200					Disallowed, no appearance by claimant (MA 91/25). Not located.
658-659	Church Missionary Society (CMS)	Kororareka	1834 and 1835	4.25	4	4		OLC 57	Grant issued 26 November 1850 (MA 91/23)
660	CMS	Pahia, Bay of Islands	1823	2226	1078	1078		1283 OLC 251	'Affected by Opua Petitions' (MA 91/10). Bell estimated the surplus land at 1750 acres, but this included 661 acres which 'reverted to' Maori (MA 91/9).
661	CMS	Pahia, Bay of Islands	1823						
662	CMS	Pahia, Bay of Islands	1823						
663	CMS	Pahia, Bay of Islands	1825						
664	CMS	Pahia, Bay of Islands	1827						
665	CMS	Pahia, Bay of Islands	1828						10 acres reverted to Crown. Motumaire Island.

Claim no	Claimant(s)	Locality	Date	Claimed	Surveyed	Grant(s)	Scrip	Surplus	Plan no(s)	Remarks
666	CMS	Pahia, Bay of Islands	1830							
667	CMS	Pahia, Bay of Islands	1831							
668	CMS	Pahia, Bay of Islands	1831							
669	CMS	Pahia, Bay of Islands	1831							
670	CMS	Pahia, Bay of Islands	1835							Reverted to Maori. Within Otuhi block.
671	CMS	Kerikeri, Bay of Islands		10						Withdrawn and returned to Maori (MA 91/25). Not located.
672-673	CMS	Kerikeri, Bay of Islands	1819 and 1831	640	345	345		OLC 139	ML 6821	Acreage applies to nos 672-673. Included in Bay of Islands settlement area, granted 1 November 1859. R15 fol 133.
674	CMS	Mangonui, Te Tii, Bay of Islands	1823	600	930				ML 6821	Disputed by Maori. Returned. See ML 6821 (MA 91/25).
675	CMS	Kaitaia	1834	2000	1727	1470		257	OLC 242	Bell grouped this surplus land with other CMS claims (MA 91/10).
676	CMS	Bay of Islands	1830-1839	800	978	978			OLC 48	
677	CMS	Bay of Islands	1830-1839	53	53	53				

678	CMS	Bay of Islands	1830–1839	100	200	200				
679	CMS	Bay of Islands								
680–684	CMS	Manukau	1837 and 1838	800	744	323		795.5	OLC 210	LS list. 'Surplus included within Waiuku No.1 Crown Purchase' (MA 91/10).
691–693	CMS	Manukau								Withdrawn
697	CMS	Te Puna, Bay of Islands	1815	80	62	62			OLC 56	R15 fols 134 and 135
698	CMS	Te Puna, Bay of Islands	1828	12	21	21			OLC 57	
699	CMS	Te Puna, Bay of Islands	1832	150	141	141			OLC 40	
700	S H Ford	Waikare, Bay of Islands	1838	200	461.25	461			OLC 125	R15a fol 213
701	S H Ford	Waikare, Bay of Islands	1839	100					OLC 125	
702	S H Ford	Waikare, Bay of Islands	1839	50					OLC 125	
703	S H Ford	Waikare, Bay of Islands	1839	50	461	461			OLC 125	
704–705	S H Ford	Mangonui/Kaitaia	1839	8000	8280	2627	1725	5653	OLC 159 and 160	
706	Honey and Parker	Whangamanu, Hokianga	1837	200	25		200		OLC 257	Reverted to Crown as scrip land

Claim no	Claimant(s)	Locality	Date	Claimed	Surveyed	Grant(s)	Scrip	Surplus	Plan no(s)	Remarks
707	Honey and Parker	Kaukapakapa, Kaipatu	1839	2000	1600	1600			OLC 257	Reverted to Maori then purchased by Crown (MA 91/20)
711– 712	Twaits	Ngunguru		10,248	291	291			OLC 74	Disallowed as an OLC, resurveyed after payment of £8 as pre-emptive claim (Bell)
713	T Cooper	Whangaroa	1836	40						Disallowed (Bell)
719	Webster	Great Barrier	1838	20,000						
722	W Webster (Dacre)	Point Rodney	1839	10,000	1994		1599		OLC 154 and 154A	Included in Mahurangi Crown purchase
724	W Webster	Waiheke	1838	3000	835	885			OLC 68	
727	W Webster	Waiheke	1839	3500						Compensation recommended but not issued
728	R and W Carruth	Whangarei		1500	938	938				
729	B Ashwell	Waimate	1836	20		20			SO 4914A	
730– 733	Moodie	Kaipara/ Whangaroa	1839							Disallowed (Bell)
734	CMS Families	Kerikeri	1835	3000	4783	4450		333		
735	CMS Families	Kerikeri	1835	100					OLC 3	
736	CMS Families	Waimate	1831	500	1997	947		1050	OLC 2	
737	John Busby	Bay of Islands		4000						Disallowed. Not located (Bell).
738	T Florance	Whangaroa	1834– 1840	2500	2650		1488			

739- 743	Battersby and Moores	Kororareka	1831	50		0.275		OLC 300	
744	Salter and others	Kaipara	1839	18,000					Disallowed (Bell)
745	Foreman	Bay of Islands	1837	40					Disallowed. Reverted to Maori. Included in Kawakawa North Crown purchase.
746	Bonnifin	Kororareka	1836	5					Grant recommended but not issued. No claim preferred. With nos 430, 432-434, 441, 778, Robert Graham.
748	Bernard	Hokianga	1836- 1839						Disallowed. Not located (Bell)
749	Bernard	Kororareka	1836- 1839						Derived from Clendon. No 118. Disallowed (Bell).
753	Bernard	Bay of Islands	1836- 1839						Derived from Clendon. No 121. Disallowed (Bell).
754	Bernard	Kororareka	1836- 1839						Derived from Johnson. Nos 867-870. Disallowed (Bell).
755	Bernard	Bay of Islands	1836- 1839						Derived from Turner. Not located. Disallowed (Bell).
756	Bernard	Kaipara	1836- 1839						
757	Bernard	Kororareka	1836- 1839						Derived from Spicer. Not located. Disallowed (Bell).
758	Bernard	Kororareka	1836- 1839						Derived from Turner. Nos 469 and 473. Disallowed (Bell).
759	Bernard	Kororareka	1836- 1839						Derived from Kororareka Land Company. Nos 819-828. Not allocated (Bell).

Claim no	Claimant(s)	Locality	Date	Claimed	Surveyed	Grant(s)	Scrip	Surplus	Plan no(s)	Remarks
760	Blackett	Auckland	1836	300						Disallowed (Bell)
761	Stewart and Delvitte	Hokianga	1826							See NO 27
764	Gray and Cooper	Kororareka	1826	1.25		0.5				
765	de Sentes	Kororareka	1836	6						
766	de Sentes	Kororareka	1835	10						
767	de Sentes	Bay of Islands	1837	6						
768	de Sentes	Waikare		76			30			See NO 440. Reverted to Maori. Not located.
769	de Sentes	Kororareka		18		11		5.3	OLC 151	
771	de Sentes	Kororareka		1						
772	de Sentes	Kororareka	1837	1						Plan NO 377 (LS list) gives the 'surveyed' and 'granted' acreage of NO 772 as 3 acres 8 perches and 3 acres respectively.
773	de Sentes (R Davis)	Waimate	1839	3000		4308		362		R15 fols 29-35
774-776	Puckey	Kaitaia	1835 and 1839	2400	4036	3346		450	OLC 8 and 214	Native reserve 240 acres
777	P Wood	Waimate	1839	100						Disallowed. Deed of gift cancelled by Maori. Not located.
778	Duvanchelle	Kororareka	1839	3						With nos 430, 432-434, 441 and 746, Robert Graham
779	Duvanchelle	Kororareka		0.25						Derived from Johnson's nos 867-870. Disallowed.

780	Duvanchelle	Kororareka	1839	0.5		0.2438				Grant to Nicolson as assignee
782	Duvanchelle	Bay of Islands								Derived from McLeod. Disallowed. Not located.
783	Duvanchelle	Kororareka								Derived from Kororareka Land Company. nos 819-828. Disallowed. Not located (Bell).
784	Duvanchelle	Kororareka		6						
785	Duvanchelle	Kororareka		15	7	7				Grant to Cafler
786	Blanchard	Bay of Islands								Disallowed. Not located (Bell)
787	Blanchard	Whangaroa								
788	Joubert	Kororareka	1839							'As land was included in Grant to Kororareka Company, could not be granted now.' (Bell, p 60). See no 825.
789	Joubert and Murphy	Waikare		200	114	114		OLC 358	R15 fol 104. Also so 920B (August 1840).	
791-797	Cafler	Kororareka	1827, 1837, 1838 and 1839	490	0.5		490	ML 3668		
798	Hodgkinson	Kororareka	1835			0.70625				
799	Hodgkinson	Kororareka	1835							Derived from Baker no 546. Reverted to Crown.
800	Hodgkinson	Ngunguru								
801	Hodgkinson and Murrin	Waiheke	1839	400	187	187				
802	Sheperd	Whangawa	1836	2000	5250	3553		1697 OLC 14	Reduced Bell's surplus land figure for nos 802-806 from 11,208 acres to 8098 acres (MA 91/9). See also (MA 91/10, ser 2), 101 acre Maori reserve in no 806.	

Claim no	Claimant(s)	Locality	Date	Claimed	Surveyed	Grant(s)	Scrip	Surplus	Plan no(s)	Remarks
803	Sheperd	Kaeo	1837	6000	3863	1528		2335	OLC 28	
804	Sheperd		1836		6300	4195		2105	OLC 25	
805	Sheperd	Kerikeri	1837	400	1187	809		378	OLC 226	
806	Sheperd	Kerikeri	1837	400	1940	360		1580	OLC 17	
807	Sheperd		1838							
808	Sheperd		1838							
809	J Orsmond	Puketi	1836	3000	11,741	5014		4926	SO 1259 and 15	Reduced Bell's surplus land figure to include Mokau (480 acres) and Waitoroto (1316 acres) Crown purchases (MA 91/9).
810-811	Anwul	Rawene	1836	3500						NO 811: Land taken possession of for the Crown and included in Herd's Point Survey. No claim preferred (Bell).
812	Neilson	Kororareka								Disallowed. Falls within land in NO 114 (Clendon).
814	McLeod	Bay of Islands								
815-816	McLeod	Bay of Islands	1839	300	216.75	217			OLC 117	Grant applies to NO 815. R15a fol 248.
817	Jones	Whangaroa	1836	40	45	45			OLC 184	
818	Harvey	Waikare	1839	400		450			OLC 194	R15a fol 343
819	Kororareka Land Company	Bay of Islands	1839	160				I		Crown grant 12 September 1844. Bell cancelled 9 June 1862.

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820	Kororareka Land Company	Bay of Islands	1839	180					Crown grant 12 September 1844. Bell cancelled 9 June 1862.
821	Kororareka Land Company	Kororareka	1839	2					
822	Kororareka Land Company	Kororareka	1839	2					
823	Kororareka Land Company	Kororareka	1839	20					
824	Kororareka Land Company	Kororareka	1839	0.7563					Cancelled
825	Kororareka Land Company	Kororareka	1839	1					See no 788. Cancelled.
826	Kororareka Land Company	Kororareka	1839	2					Cancelled
827	Kororareka Land Company	Kororareka	1839	.1					Cancelled
828	Kororareka Land Company	Kororareka	1839	2.25					Disallowed. Reverted to Maori.
829	Grenier	Kororareka	1839			0.8375			With no 473
830	Grenier	Kororareka	1839						
836	J Wright (Montefiore)	Hokianga	1831	25	10	110		OLC 437	
842	Scott, Russell and Anderson	Whangarei	1840	3000	656	635.775		OLC 180	
844	Jones	Whangaroa	1836						See no 817

Claim no	Claimant(s)	Locality	Date	Claimed	Surveyed	Grant(s)	Scrip	Surplus	Plan no(s)	Remarks
845-846	Lawson	Whangaroa	1836	200		43				NO 845 transferred to Shapparo (MA 91/23)
847-849	Murphy	Mangonui	1836, 1837 and 1839	702	259		215			
850	Olman	Mangonui	1839	60						No claim preferred
851-856	Wrathall	Mangonui	1836-1839	9000			640			
857	Aberline	Bay of Islands	1838	200	127		200			Derived from NO 655 which was disallowed, 200 acre grant never issued. This land included in Te Papa Crown purchase.
858	Aberline	Bay of Islands		50						Turner's claim. Location approximate only.
861	C Robertson	Kororareka								Disallowed. Derived from Kororareka Land Company NO 825.
862	Bolger	Bay of Islands	1835	150	157	157			OLC 20	Acreage originally claimed applies to nos 862-863. Grant issued 19 January 1864. R15a fol 286-287.
863	Bolger	Bay of Islands	1838	300	513	437		76	OLC 29	
864-865	T Graham (W F Porter)	Waiheke	1839	400	363	363			OLC 248	
867	J Johnson	Kororareka	1838	3	4.13125	2.71875			OLC 381	Plan NO 381 gives the 'granted' acreage for this claim as two acres, with the balance being taken for streets.
868	J Johnson	Kororareka	1838							

Tabular Summaries: Auckland District

869	J Johnson	Kororareka	1838								
870	J Johnson	Kororareka	1838	4	2.5	3					Surveyed area includes nos 792-793
871	J Johnson and Henderson	Wangaumumu	1839	1000	640	640			OLC 71		R15 fol 132
872	Waitford	Bay of Islands	1839	600			244.5				Apparently within surplus of nos 809 and 595. Not located specifically.
873	Perry	Bay of Islands	1833								Disallowed. Derived from Turner's nos 469-472. Not located (Bell).
874	Perry	Bay of Islands	1833	0							Disallowed (Bell)
875-877	Southee (Maxwell)	Kaitaia	1839	10,000	13,684	5310	3200	8174	OLC 6 and 294		Native reserve 200 acres. Bell's surplus land figure (of 8586 acres) included Fenton (26 acres) and Southee (186 acres) grants, and the 200 acre native reserve (AA1). Plan nos 6 and 294 (LS list) give the 'surveyed' acreage as 14,070 and 'surplus' as 8560 acres.
878-880	Spickman	Whangaroa	1831 and 1840	2000	1649	1896			OLC 69		Granted area includes 247 acre survey allowance taken out of Crown land adjoining claim (MA 91/10, ser 1).
881	Hayes	Whangaroa	1835	1000	534	534			OLC 181		
882-883	Boyce (Flavell)	Whangaroa	1837	120	400	308		92	OLC 241		(MA 91/9)
884-886	Ferrari	Whangaroa		17.2.0							Disallowed (Bell)
887-888	Smythe	Mangonui	1839	1100			500				Reverted to Crown as scrip land

Claim no	Claimant(s)	Locality	Date	Claimed	Surveyed	Grant(s)	Scrip	Surplus	Plan no(s)	Remarks
889-893	Partridge	Mangonui	1839	8000	184	184	2310			7252 acres 'supposed area' reverted to Crown as scrip land (MA 91/9)
894-895	W Wright	Mangonui	1839	20			71			
896	Shearing	Bay of Islands	1837	60						Disallowed, not located (Bell)
897-898	J Hamlin	Waimate	1834	87					OLC 52	Grants called in and cancelled. New grants in these two cases included in the grants for Kemp claim nos 594 and 596. Total acreage 356 acres issued for all 4 claims together (Bell).
899-905	J Hamlin	Manukau, Otahuahu	1837 and 1838	3350	5803	5213.8625		587	OLC 36-37 and 62	(Snm 2). 'Surplus in Claims 902 and 905 are situated within boundaries of Manukau Crown Purchase' (MA 91/10).
912	W Butler	Bay of Islands	1838	60						Disallowed, not located (Bell)
913	W Butler	Paewhenua, Mangonui	1839	640	286		1054			Reverted to Crown as scrip but subsequently Crown purchased. Effected by Taemaw and Whakaangai petitions.
914	W Butler	Pukakawa, Mangonui	1839	3000						
915	T Graham	Waiheke								Identical with no 865
916	Appleton	Bay of Islands	1839	100						Disallowed. Possibly now Putanui block. Derived from Leitch.
917	Maning	Bay of Islands	1839	200						Disallowed. Derived from Leitch. Possibly now Putanui block.
918	Ross and Wilson	Kaipara	1839	300	198	198			OLC 70	Granted Ross 22 October 1844, Wilson 9 May 1864

921-923	Black	Tutukaka and Bay of Islands	1836 and 1839	16,510						Disallowed (Bell)
925	Black and Green	Tutukaka		5000		1560	1563	ML 3795 ML 3808		2370 acres revert to Maori (MA 91/21)
926	Milne	Kawakawa	1836	5000						Withdrawn. Reverted to Maori.
930	Mayhew	Mangawhai		20,000						Reverted to Maori (MA 91/10, ser 9)
932	Pouchet	Kororareka								Disallowed (Bell)
933	Lett	Kororareka	1835	0.25						Grant called in but not produced. New grant claimed by J Salmon, though proof of title was not complete at the time of Bell's commission (Bell).
934	Roff	Bay of Islands	1835	80	160	160		OLC 215 and 216		
935	Roff	Kaipara, Ureroa	1837	80	80	80		OLC 215		Granted 10 February 1862
936	Roff	Kaipara, Otarawa	1837	80	80	80		OLC 216		Granted 10 February 1862
938	Wesleyan Mission Society	Whangarua	1823	53	103	103		OLC 81		
939	Wesleyan Mission Society	Waihou, Hokianga	1827	50	77	77				
940	Wesleyan Mission Society	Mangungu, Hokianga	1839	1000	483	483		OLC 78		Surveyed area includes NO 943
941	Wesleyan Mission Society	Hokianga	1836	200	124	124		OLC 77		
942	Wesleyan Mission Society	Kaipara	1836	400	134	134		OLC 124, 79		

Claim no	Claimant(s)	Locality	Date	Claimed	Surveyed	Grant(s)	Scrip	Surplus	Plan no(s)	Remarks
943	Wesleyan Mission Society	Wairere, Hokianga	1836	500					OLC 80	See NO 940
944	Wesleyan Mission Society	Waima River	1835	100	36.5	36.5				
945	Wesleyan Mission Society	Manukau	1839	40	40	35.25				This 40 acres was acquired by the Crown in return for scrip of 35 acres 1 rood in Waipa. Claim within the Waiuku Crown purchase (MA 91/10, ser 3).
949	Wesleyan Mission Society	Tamaki		90						Withdrawn, in consideration of a reserve being granted, which was done (Bell)
951	Roman Catholic Mission	Purakau, Hokianga	1839	150	104	104			OLC 217	197 acre native reserve. See OLC plan 261.
952	Roman Catholic Mission	Hokianga	1839	8						Grant not picked up
953	Roman Catholic Mission	Kororareka	1827		0.6063					
954	Roman Catholic Mission	Waihihi, Kororareka	1836	60	85	85			OLC 217	R15 fol 142 and R15a fol 209. Crown grant 11 February 1856 for 50 acres at Maiki Hill. Additional 85 acres waihihi Crown grant not located.
955-956	Holmes and Pettitt	Otamatea	1840	5000			2560			
960	Walmsley and others	Bay of Islands	1839	800						Disallowed. Apparently near Baker NO 545. Not mapped.
965	W Stewart	Hokianga		200						

966	Mitchell	Mangamuka, Hokianga	1833	1500	271			OLC 260	Reverted to Crown (MA 91/21)
967	Hardiman	Hokianga	1839	50	37	37			
968	Farden	Hokianga	1835						Settled in NO 190
969	Birch	Hokianga	1839	300	75	75		OLC 130	
970	Campbell	Hokianga	1839	300	30				Disallowed. Claim preferred by half-caste (Bell).
971	Mariner	Kohukohu, Hokianga	1833 and 1837	1000	3	3.4875	950	SO 3976	
972– 973A	Grant	Hokianga	1830 and 1836	650		50			NO 972: Grant recommended but not issued. No claim preferred. NO 973: Grant called in and cancelled. No claim preferred. NO 972A: Withdrawn (Bell).
973	Grant	Tarawawa		50				ML 6199	37 acres reverted to Maori (MA 91/21)
974– 975	Lander	Whangaroa	1840	162					Withdrawn (Bell)
976– 977	G Stevenson	Kaipara	1839	800					Disallowed (Bell)
978– 979	Browne	Mahurangi, Tamaki		8000			109.967		NO 978: Disallowed (Bell)
991	G Russell	Kororareka							Settled in the claim of J S Polack
992– 995	G Russell	Kororareka							Settled in the claim of the Kororareka Land Company and C Baker
997	Finlay	Kororareka	1839						Disallowed (Bell)
998	Riley	Whangaruru		1000					Disallowed (Bell)

Claim no	Claimant(s)	Locality	Date	Claimed	Surveyed	Grant(s)	Scrip	Surplus	Plan no(s)	Remarks
999	Dodds	Bay of Islands	1838							Disallowed. Derived from Duvanchelle NO 778 (Bell).
1000	Watson and Anderson	Kororareka	1835							Disallowed. Derived from Baker's no 546 (Bell).
1001	Prevott	Bay of Islands		10						Disallowed (Bell)
1002	Hector	Cavallos Isles	1839							Disallowed (Bell)
1003	Mackay	Kororareka, Bay of Islands	1838	40		0.15625				Crown grant 12 September 1844
1004	Mackay	Bay of Islands	1838	0.188	0.1563	0				Township, part of section 9, granted 19 January 1864 (MA 91/25)
1005	Hansen	Kororareka	1814		416	416			OLC 182	'Granted to Natives' (LS list)
1006	Forman	Kororareka								Identical with NO 745
1015	Wing	Hokianga	1839	200						Grant recommended, but not issued. Land had been 'given up' by Maori for Fanny Wing, a 'half-caste'. Bell declined to admit Captain Wing as present owner of the land, Fanny having been killed in the 1845 war (Bell).
1016	J Harris	Hokianga	1839	5000						Disallowed (Bell)
1020	Cousins	Hokianga	1835	500						Disallowed (Bell)
1024	McKay	Kororareka								Identical with NO 1004

1025	Ryder	Mangonui	1840	200	287	120		167	OLC 246	Survey acreage based on Bell's report on file (AA1). Plan NO 246 (LS list) gives the 'surveyed' and 'granted' acreages of NO 1025 as 124 and 120 acres respectively, with the balance taken for a road.
1029	Hargreaves	Waimate	1839	14	23,1875	11			OLC 176 and 177	NO 1029 is unsettled (LS list)
1030	Hargreaves	Waimate	1839			11			OLC 176	R15 fol 148
1031	E Baker	Hokianga		60						Withdrawn (Bell)
1032 - 1038	T McDonnell	Hokianga and Kaipara	1831 and 1836	91,300	3324	3321		616.5	OLC 89, 90, 102, and 268	A grant of 2560 acres was cancelled and 'New Grants ordered to be issued to the amount of 3324 acres' (Bell). For NO 1032 (Horke), 'Big survey plan 616 is correct.' (AA2). See also MA 91/10 re NOS 1032-1034.
1043 - 1045	de Thierry	Hokianga	1837	4540	923	109	1610	814	OLC 150 and 275	
1047	G Mair	Whangarei	1839		4800	910		3890	OLC 369 108	'It was assumed that Mair had extinguished title to a larger area ... The Crown purchased the [balance] ... as Manara [Manai] Block'.
1049	G Houston	Oahura Bay, Coromandel		30,000	251	251				Oakura? R15 fol 103.
1294	Stephenson	Mangonui (Houhora, Muriwhenua)		999	2482	1000		1482	so 948	This claim was settled not as a pre-emptive claim, rather, a Crown grant was issued to J Stephenson under section 50 of the Act of 1856 (Bell). See also MA 91/10 ser 2.
1301	Dwyer	Kaipara	1840							Not investigated. Claim brought before Bell but not prosecuted (Bell).

Claim no	Claimant(s)	Locality	Date	Claimed	Surveyed	Grant(s)	Scrip	Surplus	Plan no(s)	Remarks
I302	Moores and Coolahan	Kororareka				0.8				Not investigated. Grant issued to W B Moores for 32 perches. 'Granted' acreage applies to this claim and no I303. With nos 739-743.
I303	Moores and Coolahan	Kororareka								Not investigated. See no I302 above. With nos 739-743.
I304	Irving	Bay of Islands	1836	596	596	596			OLC 431	Not investigated. Grant issued to Irving for 596 acres, 4 October 1859. R15 fol 121.
I305	Simpson	Waiheke	1836				300			Investigated in 1869 by Domett. NLC awarded to Maori (MA 91/22).
I306	Sturley	Waikare	1836	83	83	83				Not investigated but grant issued to Sturley for 83 acres by Bell (MA 91/23)
I307	Butler	Bay of Islands Tapeka	1836	49	49	49				R15a fol 262
I308	Wade	Waiheke	1836							Not investigated. Claims brought forward, but afterwards withdrawn (Bell).
I309	Hansen	Te Puna	1836		25	24				
I312	Flavell	Matauri					800			Governor Fitzroy ordered scrip granted.
I313	Sullivan	Mangonui (Bay of Islands)					1400			Investigated by Governor Fitzroy, who ordered scrip granted.
I324	Busby and Levington	Ngungururu			2544	292		1220	OLC 280 and 280A	'The Crown got 1032 acres' (MA 91/9). Bell gives the Ngungururu and Tutukaka claims a 4000 acre 'surplus' figure (AJHR, 1862, D-10, p 22).
I327	White J	Hokianga		150	588	588			OLC 63	

1328	White J	Waima		2000	55	55			OLC 86 and 438	
1334	Trenor	Kororareka								Not referred to any commissioner. No claim preferred (Bell).
1336	Inches	Otowa (Otonga?)		1000						Not referred to any commissioner. No claim preferred (Bell).
1339	May	Tajamai		40						Not referred to any commissioner. No claim preferred (Bell).
1340	Lake	Bay of Islands								Not referred to any commissioner. No claim preferred (Bell).
1341	McGregor	Kaipara								Not referred to any commissioner. No claim preferred (Bell).
1342	Dudley	Hokianga		500						Not referred to any commissioner. No claim preferred (Bell).
1344	Mahin	Hokianga		14						Not referred to any commissioner. No claim preferred (Bell).
1345	Bellingham	Hokianga								Not referred to any commissioner. No claim preferred (Bell).
1347	Standinger	Kaukapakapa (Kaipara)		1200						Not referred to any commissioner. No claim preferred (Bell).
1351	Jackson	Kaipara		2000						Not referred to any commissioner. No claim preferred (Bell).
1357	Snowden (Children of)	Molme Lake		79	79				OLC 233	
1358	Sullivan	Mahurangi								

Claim no	Claimant(s)	Locality	Date	Claimed	Surveyed	Grant(s)	Scrip	Surplus	Plan no(s)	Remarks
1359	Cook H	Omapere Lake			20,125				OLC 143	
1360	Cook G	Kororareka, Waikare			690.74375				OLC 144 and 145	It appears to be a Kororareka town lot.
1361	Wumhall and W Smith	Hokianga			29				OLC 261	Surveyed in association with NO 970. Declared abandoned in 1880 'no evidence ever investigated' (MA 91/22).
1362	Berghem [Berghan?] (Children of)	Mangonui			2414	2414			OLC 103	
1363	Maxwell (Children of)	Waiheke								
1364	Marmon (Child of)	Hokianga								
1365	Caldecott (Children of)	Taumatarangi			74				OLC 420	
1366	Clark (Children of)	Hokianga								
1367	Bryers (Children of)	Hokianga		323	323				OLC 279	Plan NO 279 gives the 'surveyed' acreage for this claim as 316 acres; claim re-surveyed by S Campbell (LS list).
1368	Webster	Hokianga		67	67	63			OLC 311	Grant under Native Land Act (LS list)
1370	Gundry (Children of)	Hokianga		49	49				OLC 310	
1375	Smith J	Awanui			14	14			OLC 315	20 acres reverted to Crown (MA 91/23)

	Total			Claimed	Surveyed	Grant(s)	Scrip	Surplus		
				1,641,898.09	535,954.469	238,321	127,585.5	138,747.8		

Claim no	Claimant(s)	Locality	Date	Originally claimed	Surveyed	Grant(s)	Scrip £	Surplus	Plan no(s)	Remarks
29	Abercrombie	Coromandel	1836	125						Disallowed. Assume 'reverted to Maoris'. No file (MA 91\10, ser 6).
30	Abercrombie	Coromandel	1837	1000						Withdrawn. Assume 'reverted to Maoris'. No file (MA 91\10, ser 6).
31	Abercrombie	Coromandel	1837	300						Disallowed. Assume 'reverted to Maoris'. No file (MA 91\10, ser 6).
32	Abercrombie	Te Kopu	1835	150	42	42			OLC 354	Grant issued to Whitaker and Heale in 1866 (MA 91\10 ser 1). According to Bell, a grant was issued for 150 acres on 30 December 1844. Grant called in but not produced. Grant void. Claim preferred by Whitaker and Heale (Bell).
33	Abercrombie	Motutaupere Island	1839		40					Disallowed. 40 acres 'reverted to Maoris' (MA 91\10, ser 6).
44	Ashmore	Kopu	1831							Disallowed (Bell)
45	Ashmore	Te Motu	1831							Disallowed (Bell)
156	Daere	Mercury Bay	1831 (and 1837)	4000						Northwest of the Whitianga River, included in Kamarama, Whakau and Weiti Maori land (MA 91\10, ser 6)
213	Hansen and Fisher	Coromandel	1839	600						Disallowed. Assume 'reverted to Maoris' (MA 91\10, ser 6).
214	Hansen and Fisher	Coromandel	1839	50						Disallowed. Assume 'reverted to Maoris' (MA 91\10, ser 6).
215	Hansen and Fisher	Coromandel	1839	50						Disallowed. Assume 'reverted to Maoris' (MA 91\10, ser 6).
216	Hansen and Fisher	Coromandel	1839	800						Disallowed. Assume 'reverted to Maoris' (MA 91\10, ser 6).
226	Hannekin	Coromandel	1839	500			406			Assume 'reverted to Maoris' (MA 91\10, ser 7). Scrip granted by Governor Fitzroy in 1844.

Summary table for district 2: Hauraki

Claim no	Claimant(s)	Locality	Date	Originally claimed	Surveyed	Grant(s)	Scrip £	Surplus	Plan no(s)	Remarks
273	Kennedy	Kennedy's Bay	1839		242	242				Evidence of Maori protest, see NLC 397 (MA 91/23)
280	Lewington	Wairoa, Thames	1839	2000			373.5			Assume 'reverted to Maoris' (MA 91/10, ser 1)
287	L and A McCaskill and Martin	Thames (Hinemuri)	1839	4000	6317	1200	570		OLC 113, 114 and 120	902 acres reverted to Maori after a Native Land Court case in 1879 (MA 91/10, ser 7). Bell gives the 'granted' acreage for nos 287-291 as 2176.
288	L and A McCaskill and Martin	Thames (Hikutaia South)	1839	8000	3448	3448	1254		OLC 113, 114 and 121	NOS 288 and 289 are associated with NO 287 (MA 91/10, ser 3). See also Bell.
289	L and A McCaskill and Martin	Thames (Hikutaia North)	1839	4000		238				NOS 288 and 289 are associated with NO 287 (MA 91/10, ser 3). See also Bell.
290	L and A McCaskill and Martin	Thames	1839							See Bell
291	L and A McCaskill and Martin	Thames	1839							See Bell
301	McLennan and McLeod	Pohitoto	1839	400					OLC 94	Granted 54 acres in conjunction with OLC 583 (MA 91/23)
336	Moores	Coromandel	1836	300	1766				OLC 115	Grant issued for this claim in conjunction with NO 342
342	Moores	Coromandel	1837	400	287	287			OLC 115	
344	Moores	Coromandel	1836	2						
345	Moores	Pukuwhau	1839	20,000	564	564			OLC 116	
347	Munro	Thames	1839							Grant issued to claimant for 550 acres, 1 May 1844. Grant called in and cancelled. No survey made (Bell).
392	Prout	Coromandel	1839	100						Grant for 100 acres called in, declared to have lapsed (AJHR, 1881, C-1)

478	Walsh	Coromandel	1839	250			1016				
583	Wilson (Conway)	Coromandel	1839	1500	54	54	383			Conflicted with NO 301 (MA 91\10, ser 3)	
584	Conway	Coromandel	1837	1		383					
612	Preece	Coromandel	1839	50					OLC 196		
613	Preece	Coromandel	1839	1400	1273	1273			OLC 196		
636	Butler	Thames	1820	1280						Disallowed. Gift (Bell).	
686	Church Missionary Society	Puriri, Thames	1835	500	322	332					
687	Church Missionary Society	Matapara	1836	300	353	353			OLC 83		
688	Church Missionary Society	Thames	1836	30					OLC 83	Not re-opened. Grant recommended but not issued. No claim preferred (Bell).	
708	White	Coromandel	1839	200	47	47			OLC 137, 163 and 167	Initially Maori obstructed survey (MA 91\10, ser 1)	
709	White	Tairua		4687	3447	3447			OLC 167	Disallowed (Bell). Eventually granted to Willis and Graham in recognition of this purchase and satisfaction of nos 143-144. AJHR, 1878, H-26, p 3 and 5. See also (MA 91\10, ser 1).	
714	Webster	Coromandel	1837	250	115	115			OLC 92	No papers (MA 91\10, ser 1)	
715	Webster	Whanganui Island	1836	250	466	335		48	OLC 93 and 359	MA 91\10 ser 2. See NO 347. Bell gives the 'surveyed' acreage for this claim as 335 acres (Bell)	
716	Webster	Thames	1839	1500						See NO 347	
717	Webster	Coromandel	1837	800	1384	727			OLC 94, 155 and 434	No papers (MA 91\10, ser 1). Bell gives the 'surveyed' acreage for this claim as 727 acres, comprised of three separate grants (Bell).	
718	Webster	Coromandel	1836	1000						Disallowed (Bell)	

Claim no	Claimant(s)	Locality	Date	Originally claimed	Surveyed	Grant(s)	Scrip £	Surplus	Plan no(s)	Remarks
720	Webster	Coromandel	1836							Disallowed (Bell)
721	Webster	Thames	1839	3000						Disallowed (Bell)
725	Webster	Great Mercury Island	1836	6000						Disallowed. See AJHR, 1887, A-4, on Maori dispute (MA 91/10, ser 6).
831	Thorp	Thames and Coromandel	1839	100	93	49			OLC 188	Disallowed (Bell). Grant issued to A Miller for 49 acres, 19 January 1864, (AJHR, 1878, H-26). '44 acres disputed by Natives' (Ls list).
832	Thorp	Thames and Coromandel	1840	2000	368	360			OLC 188	Petition by Tukukino plus 113 others dated 1876. Adjoins McCaskill claim (MA 91/23). Granted acreage taken from AJHR, 1878, H-26.
958	Preece	Coromandel								Identical with NO 612
959	Preece	Coromandel								Identical with NO 612
980-981	Browne (Dacre)	Mercury Bay	1836 and 1837	3200	3580	3580				Grant issued 19 January 1864
1046	Houston	Coromandel								See NO 1049
1049	Houston	Coromandel		30,000	251	251			OLC 179	
	Total			105,075	24,459	17,327	4002.5	48		

Claim no	Claimant(s)	Locality	Date	Originally claimed	Surveyed	Grant(s)	Scrip £	Surplus	Plan no(s)	Remarks
511	Whitaker	Opotiki	1839	2						Disallowed. No claim preferred. Assume 'reverted to Maoris' (MA 91\25, ser 6).
689	Church Missionary Society (CMS)	Tauranga	1839	30	1333	1333			OLC 84	Grant issued in conjunction with claim no 690
690	Church Missionary Society	Tauranga	1838	1000						
696	Church Missionary Society	Opotiki	1840	2500						Land returned to Natives by CMS in 1851 (Bell). See also Turton's p 382 and MA 91\10 ser 6.
710	White	Bay of Plenty		2400						Disallowed. Grant to be issued to Willis and Graham (Bell). Prolonged Maori conflict; claim abandoned 1880 reverted to Maori (MA 91\10, ser 9).
723	Webster	Tairua	1839	3000						Disallowed. See AJHR, 1887, A-4.
843	Scott	Turanga		6						Alleged gift for 300 years (MA 91\10, ser 6). According to Bell this claim was disallowed (Bell).
866	Wilson, Stack and Brown	Opotiki	1840	3840	11,470	3832	853	6785	OLC 295-298	'Within the Opotiki Confiscation Boundary, NZG 18 January 1866' (MA 91\10, ser 2). Plan no 295 gives the 'surplus' figure for this claim as 7638 acres (LS list).
924	Black	Uretara Island, Ohiwa	1838	300	68					Disallowed. Claim brought forward, but not admitted for investigation (Bell). Investigated under New Zealand Settlements Act but no case proven. Declared to have lapsed. (AJHR, 1881, C-1). 68 acres 'reverted to Maoris' (MA 91\10, ser 6).
1356	Brien	Tauranga	(post 1840)	148	148				OLC 418	Native Land Court in 1880 determined this transaction to have been a gift, however, this was later disavowed (MA 91\10, ser 6).
1373	Bennett (children of)	Bay of Plenty								Declared lapsed after Native Land Court investigation (AJHR, 1881, C-1).
	Total			18,226	15,579	7725	853	6785		

Summary table for district 3: Bay of Plenty

Claim no	Claimant(s)	Locality	Date	Originally claimed	Surveyed	Grant(s)	Plan no(s)	Remarks
104	Clayton	Poverty Bay	1839	1200	1.25			Disallowed. Within area 'ceded to Crown by Maoris' (MA 91\10, ser 6).
105	Clayton	Poverty Bay	1839	1				Disallowed (Bell)
210	Halbert	Turanga	1839	4	10	19	OLC 302	Grant issued 1871 (MA 91/23)
211	Halbert	Turanga	1839	1000	482	482	OLC 302	Grant issued 1871 (MA 91/23)
510	Whitaker	East Cape	1839	2000				Disallowed. No claim preferred. Assume 'reverted to Maoris' (MA 91\10, ser 6).
593	Jones	Turanga	1830	100,000				Disallowed (Bell)
839	Harris	Poverty Bay		150	57	57	OLC 303	'Disallowed for non-appearance of Claimant. Claim preferred by J W Harris and in part heard at Tauranga' (Bell). Grant issued 8 February 1873 (AJHR, 1878, H-26). 'Originally claimed' acreage includes nos 840 and 841. 'Two plans' (LS list).
840	Harris	Poverty Bay				1		Disallowed, see NO 839 above. Granted 25 April 1871.
841	Harris	Poverty Bay				2		Disallowed, see NO 839 above. Granted 25 April 1871.
920	Palmer	Poverty Bay	1832	5000				Disallowed (Bell)
963	Stewart	Turanga	1825	500				Disallowed (Bell)
982-983	Espie	Turanga		130				Grant issued 9 January 1871 (AJHR, 1878, H-26)

Claim no	Claimant(s)	Locality	Date	Originally claimed	Surveyed	Grant(s)	Plan no(s)	Remarks
1355	Harris	Turanga		250	112	112		Domett awarded 112 acres to the claimant in 1871 (MA 91Mo, ser 1). According to Bell this claim was 'Partly investigated, but postponed' (Bell).
1371	Goldsmith (children of)	Turanga				17		Not investigated (Bell). Heard by Poverty Bay Commissioners and grant issued 9 January 1871 (AJHR, 1878, H-26).
1372	Christies	East Cape						Declared lapsed after Native Land Court investigation (AJHR, 1881, C-1)
	Total			111,075.5	1353.75	1381.5		

989	Brown R	Poverty Bay	1839	500				Disallowed. 'Known to be on Mahia Penin.' (MA 91\10, ser 6).
1019	Brown W	Turanga	1840					Disallowed. Claim preferred among the Poverty Bay claims, still unsettled (Bell).
1316	Wylie	Turanga		46	64	64		This and nos 1317–1322 were partly investigated by McLean. Further investigation proposed, see sessional paper 1862, E-1, p 1 (Bell, p 97). Settled by Poverty Bay Commissioners Munro and Rogan (MA 91\10, ser 1).
1317	Paulgrain	Turanga		50	51	51		See no 1316 above. Settled by Poverty Bay Commissioners Munro and Rogan (MA 91\10, ser 1).
1318	Uren	Turanga	1843 and 1845	170	215	215		See no 1316 above. 'Within area ceded to Govt. by Maoris of Poverty Bay' (MA 91\10, ser 1). Bell has this claim as belonging to Thomas Wren (Bell).
1319	Sloane	Turanga		2				See no 1316 above. Identical to Harris claim no 841 (MA 91\10, ser 1). Bell has this claim as belonging to Samuel Loane (Bell).
1320	Reid	Turanga		20	335	335		See no 1316 above. Awarded by the Poverty Bay Commissioners in 1869 (MA 91\10, ser 1).
1321	Tapsell	Turanga		1				See no 1316 above
1322	Dunlop (trustees of)	Turanga		50	25	25		See no 1316 above. 'Within area ceded to Govt' (MA 91\10, ser 1).
1330	Snow	Turanga (Cape Jackson)						Not referred to any commissioner. No claim preferred.
1337	Hart	East Coast						Not referred to any commissioner. No claim preferred.
1349	Couper, Holt and Rhodes	Poverty Bay		1.5	1.5	1.5		'Within area at Poverty Bay ceded to Govt by Maoris' (MA 91\10, ser 1). According to Bell this claim was: 'Not referred to any Commissioner. No claim preferred' (Bell).

Summary table for district 5: Gisborne

Claim no	Claimant(s)	Locality	Date	Originally claimed	Surveyed	Grant(s)	Scrip £	Plan no(s)	Remarks
28	C Abercrombie	Piako	1839	4000					Disallowed. Assume 'reverted to Maoris' (MA 91\10, ser 6).
34	R Abercrombie	Piako	1839	4000					Disallowed. Assume 'reverted to Maoris' (MA 91\10, ser 6).
35	W Abercrombie	Piako	1839	4000					Disallowed. Assume 'reverted to Maoris' (MA 91\10, ser 6).
37	Aitken	Piako	1839	7670					Withdrawn. Assume 'reverted to Maoris' (MA 91\10, ser 6).
64	Beadon	Piako	1839	15,360					Disallowed (Bell). Reopened but declared lapsed (AJHR, 1881, c-1). Assume 'reverted to Maoris' (MA 91\10, ser 6).
73	Brown and Campbell	Waikato and Taranaki		16,000					Claimants did not appear. This claim also appears on the schedule of Taranaki old land claims.
141	Cooper	Piako	1839	4000					Disallowed
143	Cormack	Piako	1839	16,000	30,350	2009		OLC 161	'Surveyed' and 'granted' acreages apply to this claim and no 144. Plan NO 161, states: 'Natives [were] in possession' (LS list). For these categories Bell gives the figures, 7195 and 3639. See also claim NO 144 below.
144	Cormack	Piako	1839	2300				OLC 162	For further explanation of this claim and claim no 143 see Bell and AJHR, 1878, II-26 which links it with NO 709. Plan NO 162 gives the 'surveyed' acreage for these claims as 12,100 though, it is regarded as a 'condemned Survey' (LS list).
145	Cormack	Waipa	1839	5500					Never investigated, declared lapsed (AJHR, 1881, c-1)

Summary table for district 6: Waikato

Claim no	Claimant(s)	Locality	Date	Originally claimed	Surveyed	Grant(s)	Scrip £	Plan no(s)	Remarks
146	Cormack	Waipa	1839	12,000					Never investigated, declared lapsed (AJHR, 1881, c-1)
147	Cormack	Waikato	1839	2					Never investigated, declared lapsed (AJHR, 1881, c-1).
164	Drake	Piako and Thames	1837	4000					Disallowed (Bell)
170	Dunlop	Piako and Thames	1839	4000					Disallowed (Bell)
195	Gibbs	Piako and Thames	1839	4000					Disallowed (Bell)
198	Gardon	Piako	1839	15,360					Withdrawn. Assume 'reverted to Maoris' (MA 91\10, ser 6).
245	Jeffrey	Piako	1839	4000					Disallowed (Bell)
257	Jones and Leathart	Waikato and Taranaki	1839	5333					Disallowed (Bell). No claim preferred. This claim also appears on the schedule of Taranaki old land claims.
261	Jones, Leathart, Browne and Campbell	Whaingaroa	1839	7680					Never investigated. No claim preferred.
262	Jones, Leathart, Browne and Campbell	Whaingaroa	1839	10,240					Never investigated. No claim preferred (Bell).
282	Liddle	Piako	1839	4000					Disallowed (Bell)
286	McLean	Piako	1839	16,000					Withdrawn. Assume 'reverted to Maoris' (MA 91\10, ser 6).
292	McDonnell	Piako	1839	12,800					Withdrawn. Assume 'reverted to Maoris' (MA 91\10, ser 6).
293	McGregor	Piako	1839	7680					Withdrawn. Assume 'reverted to Maoris' (MA 91\10, ser 6).
295	McInnes	Piako	1839	3200					Withdrawn. Assume 'reverted to Maoris' (MA 91\10, ser 6).

297	D McKay	Piako	1839	2000			OLC 161	Disallowed. Claim subsequently preferred by A Willis and others (Bell).
298	G McKay	Piako	1839	2000				Withdrawn. Assume 'reverted to Maoris' (MA 91\10, ser 6).
299	J McKay	Piako	1839	2000				Withdrawn. Derivative from Cormack's claims, nos 143 and 144 (MA 91\10, ser 6).
300	J McKay	Piako	1839	4000				Disallowed. Assume 'reverted to Maoris' (MA 91\10, ser 6).
320	Marshall	Waikato						This claim and nos 321-325 'were investigated by Commissioner Gisborne, and awards made by him, which were approved by the Governor, subject to survey' (Bell).
321	Marshall	Waikato						See no 320
322	Marshall	Waikato			1025		SO 247	Re claim nos 322-325, 'it is doubtful whether these areas granted are the actual claims, or land in exchange elsewhere. Note: These claims were within the boundaries of [the] Waikato Confiscation Area' (MA 91\10, ser 4). See also claim no 320.
323	Marshall	Waikato			219		SO 544	See nos 320 and 321
324	Marshall	Waikato			732		SO 570	See nos 320 and 321
325	Marshall	Waikato			10		SO 574	See nos 320 and 321
351	Newton	Piako	1839	12,800				Withdrawn. Assume 'reverted to Maoris' (MA 91\10, ser 6).
410	Sandeman	Waipa	1839	5500				This claim and nos 411-413 were never investigated. Claims preferred by A Willis and G Graham (Bell).
411	Sandeman	Waipa		1100				Never investigated. See no 410 above.
412	Sandeman	Waipa		1800				Never investigated. See no 410 above.
413	Sandeman	Waipa		12,000				Never investigated. See no 410 above.

Claim no	Claimant(s)	Locality	Date	Originally claimed	Surveyed	Grant(s)	Scrip £	Plan no(s)	Remarks
414	Sandeman	Piako		22,000					Disallowed. For a portion of Cormack's claims, nos 143 and 144 (MA 91\10, ser 6).
415	Sandeman	Piako		2500					Disallowed (Bell)
459	Thain	Piako	1839	7680					Withdrawn. Assume 'reverted to Maoris' (MA 91\10, ser 6).
474	Turner	Waipa		2000					Never investigated. No claim preferred (Bell).
500	Wentworth	Waipa		3525					Disallowed. Claimant not appearing. Excluded by the Act. See Bell.
504	Wentworth	Whaingaroa		1706					Disallowed. Claimant not appearing. Excluded by the Act. See Bell.
505	Wentworth	Whaingaroa		2275					Disallowed. Claimant not appearing. Excluded by the Act. See Bell.
516	White	Whaingaroa	1836	500					Disallowed (Bell)
585	Downing	Piako	1839	1280					Disallowed (but grant issued afterwards as a derivative of Webster, see no 726) (Bell). Presumably Downing's grant came within the 12,855 acres granted to Whitaker and Heale, assigns of Abercrombie, Downing, Johnson, Russell, Mathew and Webster.
630	Matthew and Cooper	Piako		10,000					Disallowed, but grant issued to Whitaker and Heale, see no 726 (Bell).
632	Johnson	Piako	1838-1839	5000					Disallowed, but grant issued to Whitaker and Heale, see no 726 (Bell).
685	Church Missionary Society	Waikato Heads		80	168	168		OLC 49	
688	Church Missionary Society	Matumatu	1836	30				OLC 693	Reverted to Maori (MA 91\20)

726	Webster	Piako	1838	80,000	7500	15,290		OLC 249 OLC 162	No file, see AJHR, 1887, A-4, p 25. Maori admitted sale of 7500 acres (MA 91\10, ser 3). See also Bell, pp 55-56. Bell gives the 'granted' acreage for this claim as 14,319 (Bell). These figures taken from AJHR, 1881, C-1. Plan NO 249 gives a 'surveyed' acreage of 1219 (LS list). OLC plan 162 shows a native reserve.
747	Wren	Piako		2560					Disallowed, see NO 726 (Bell)
762	Wanastrocht	Piako	1839						Disallowed, see NO 726 (Bell)
763	Nagle and Wren	Piako	1839	600					Disallowed, see NO 726. Abandoned 1880 (MA 91\10, ser 9).
837	Commons and McKenzie	Piako	1840	1000			1500		Land reverted to Maori. See ML 6237 (Putehapahapai) and 6257 (Toromiro) (MA 91\10, ser 7).
946	Wesleyan Mission	Whaingaroa	1839	90	76	76		OLC 75 and 253	Plan NO 75 gives both the 'surveyed' and 'granted' acreages for this claim as 76 acres (LS list). Plan NO 253 gives an 'originally claimed' acreage of 548, though, not specifically for NO 946 (LS list).
950	Wesleyan Mission	Waipa/Wellington		367	35	35.25		OLC 252 and 370	Grant for this claim situated at Waipa (Bell). This claim also appears on the schedule of Wellington old land claims.
961	Devlin	Piako		5320			549		Disallowed, see NO 726. Claim preferred by S Donaldson, assign of A Devlin. Reverted to Maori (MA 91\10, ser 7).
996	Russell	Piako		2560					Settled by a grant in NO 726. Claim preferred by Whitaker and Heale assigns of Russell.
1014	Cowell	Waipa	1839	40,000					
1018	Stark	Waikato	1837	300					Disallowed. Compensation for damage to dwelling (MA 91\10, ser 6).
1325	Graham	Waikato	1839 and 1845		915	1000			Not investigated. Within Waiuku NO 1 Crown Purchase. Grant at Waiheke, original area 'reverting to Crown' (MA 91\10, ser 4).

Claim no	Claimant(s)	Locality	Date	Originally claimed	Surveyed	Grant(s)	Scrip £	Plan no(s)	Remarks
1343	Cormack	Waikato		800					Not referred to any commissioner. No claim preferred.
1352	Wright	Waikato							Not referred to any commissioner. No claim preferred.
1356A	Brien	Matamata	post 1840						Gift that Maori repudiated before Native Land Court in 1880 (MA 91\10, ser 6).
	Total			424,498	39,044	20564.25	2049		

Claim no	Claimant(s)	Locality	Date	Originally claimed	Surveyed	Grant(s)	Remarks
694	Church Missionary Society	Rotorua	1839	600	318	318.5	Surveyed and 'granted' acreages apply to nos 694 and 695
695	Church Missionary Society	Rotorua	1839				See no 694 above
	Total			600	318	318.5	

Summary table for district 7: Volcanic Plateau

Claim no	Claimant(s)	Locality	Date	Originally claimed	Surveyed	Grant(s)	Plan No(s)	Remarks
244	Jackson	Kawhia	1821	30				Never investigated
258	Jones and Leathart	Kawhia	1839	1000				Never investigated. Reverted to Maori, part of Awaroa block (MA 91\10, ser 8).
259	Jones, Leathart, Brown and Campbell	Kawhia	1839	5000				Never investigated. Reverted to Maori, part Pirongia West NO 12 (MA 91\10, ser 8).
260	Jones, Leathart, Brown and Campbell	Kawhia and Aotea	1839	7680				Never investigated. Reverted to Maori, Aotea South, and other Maori land (MA 91\10, ser 8). Straddles boundary of the Rohe Potae/Waikato districts.
263	Jones, Leathart, Brown and Campbell	Kawhia	1839	20,000				Never investigated. Reverted to Maori, Rakanui and Te Kopua blocks (MA 91\10, ser 8).
264	Jones, Leathart, Brown and Campbell	Kawhia	1839	2000				Never investigated. Reverted to Maori, Waipa parish (MA 91\10, ser 8).
265	Jones, Leathart, Brown and Campbell	Kawhia	1839	5000				Never investigated. Reverted to Maori, Awaroa and Hauturu West (MA 91\10, ser 8).
266	Jones, Leathart, Brown and Campbell	Kawhia	1839	15,360				Never investigated. Reverted to Maori, Hauturu West NO 2 block (MA 91\10, ser 8).
501	Wentworth	Kawhia		600				Disallowed (Bell)
502	Wentworth	Kawhia		1111				Disallowed (Bell)
503	Wentworth	Kawhia		1706				Disallowed (Bell)
506	Wentworth	Kawhia		4444				Disallowed (Bell)
507	Wentworth	Kawhia		445				Disallowed (Bell)
508	Wentworth	Kawhia		1111				Disallowed (Bell)
509	Wentworth	Kawhia		3413				Disallowed (Bell)
572	Brown	Kawhia		3000				Never investigated. Derived from Jones and Leathart claims, nos 258-266 (MA 91\10, ser 8).
581	Campbell	Kawhia		600				Never investigated

582	Campbell	Kawhia	1839	3000				Derived from Jones and Leathart claims, nos 258-266 (MA 91\10, Ser 8). Bell lists claim no 582 as belonging to Chapman and Morgan (Bell).
947	Wesleyan Mission	Kawhia	1834	160	170	170	OLC 76 and 82	
948	Wesleyan Mission	Kawhia	1840	4	167	167		
1008	Montefiore	Kawhia	1830					Disallowed (Bell)
1026	Cowell and Lee	Kawhia	1832	5950				Disallowed. 'Reverted to the Maoris as part of the Awaroa block' (MA 91\10, ser 6).
1040	Johnson	Kawhia	1836 and 1839	600	118	118.5		
1314	Laurie and Joseph	Kawhia			2.25			Not investigated. Survey not accepted. Claim abandoned 1880 (MA 91\10, ser 6).
1353	Charlton	Kawhia	1840		44	44		'Not referred to any Commissioner. Claim preferred derived from J V Cowell under an alleged purchase from the Natives, 11th January, 1840' (Bell). See also MA 91\10, ser 1.
	Total			82,214	501.25	499.5		

Summary table for district 8: Rohe Potae

Claim no	Claimant(s)	Locality	Date	Originally claimed	Remarks
73	Brown and Campbell	Waikato and Taranaki		16,000	Claimants did not appear. This claim also appears on the schedule of Taranaki old land claims. No file (MA 91\10, ser 6).
257	Jones and Leathart	Waikato and Taranaki	1839	5333	Disallowed. No claim preferred. This claim also appears on the schedule of Taranaki old land claims.
949	Wesleyan Mission	Taranaki		90	Withdrawn in consideration of a reserve (MA 91\10, ser 6). Bell lists this claim under the locality of Tamaki (Bell).
955	Mackay	Taranaki		400	Never investigated. No claim preferred.
	Total			21,823	

Summary table for district 10:Taranaki

Claim no	Claimant(s)	Locality	Date	Originally claimed	Surveyed	Grant(s)	Scrip £	Remarks
61	Bateman	Hawkes Bay	1837	5				Withdrawn
132	Couper, Holt and Rhodes	Hawkes Bay					2560	£2560 scrip issued to Buckland and Rhodes, 14 September 1880, in full satisfaction of nos 129 - 134 (AJHR, 1881, C-1).
133	Couper, Holt and Rhodes	Hawkes Bay		345,000				See no 132
134	Couper, Holt and Rhodes	Cape Turnagain		883,000				See no 132
937	Ellis	Kaikokupu (Hawkes Bay)				37		Never investigated. Claim preferred by Captain Salmon (Bell). Granted to Ihaka Whaanga, derivative of Salmon, on 21 September 1867 (AJHR, 1878, H-26).
1338	Greening	Table Cape						Not referred to any commissioner. No claim preferred.
	Total			1,228,005		37	2560	

Summary table for district 11: Hawkes Bay and Wairarapa

Claim no	Claimant(s)	Locality	Date	Originally claimed	Surveyed	Grant(s)	Scrip £	Remarks
43	Ashmore	Cook Strait	1831					Claim never investigated. No claim preferred.
129	Couper, Holt and Rhodes	Kapiti Island	1839					£2560 scrip issued to Buckland and Rhodes, 14 September 1880, in full satisfaction of NOS 129–134 (AJHR, 1881, c-1).
130	Couper, Holt and Rhodes	Otaki and Waikanae	1839					£2560 scrip issued to Buckland and Rhodes, 14 September 1880, in full satisfaction of NOS 129–134 (AJHR, 1881, c-1)
142	Couper and Hay	Porirua	1839		37	37	897	'Area within . . . Native Reserves' (MA 91110, ser 4).
168	Dubois	Cook Strait		1000				Never investigated. No claim preferred.
185	Evans	Kapiti	1838					This claim, along with NOS 186 and 187, was awarded scrip credit by Commissioner Spain 'to the extent and according to the rules theretofore adopted towards other claimants' but scrip not issued. No claim preferred (Bell).
186	Evans	Kapiti	1838					See NO 185 above
187	Evans	Kapiti	1838					See NO 185 above
205	Guard	Cook Strait	1839	2				Never investigated. No claim preferred.
206	Guard	Port Nicholson	1839					Disallowed, claimant not appearing (Commissioner Spain).
218	Hay and Wright	Porirua	1838					Disallowed, claimant not appearing. 'These were the original purchasers of the land included in the Polynesian Company's claims, for which Commissioner Spain awarded Scrip, which, however, was never issued' (Bell). See also NO 234.
219	Hay and Wright	Porirua	1838					Disallowed, claimant not appearing. See also NO 218 above.
220	Hay and Wright	Otaki	1838					
237	Polynesian Company	Porirua	1839					Scrip awarded by Spain, but never issued. Claims put in by the company not yet investigated. See NO 368 (Bell).
239	Polynesian Company	Porirua	1839					Claim recommended, but nothing done. No claim preferred.

361	O'Ferrall	Cook Strait						Not investigated. Related to Polynesian Company claims, see NO 234.
362	O'Ferrall	Porirua						Compensation awarded in scrip, but never issued. See Polynesian Company claims, Nos 234-237.
368	Peacock	Porirua						'Claims preferred by J J Peacock for the Polynesian Company. Not yet investigated.' (Bell). Compensation in scrip awarded but not issued. See Nos 234-237 (Polynesian Company) and Nos 359-362 (R O'Ferrall) (Bell).
374	Peterson	Cook Strait		23,040				Disallowed, claimant not appearing before Commissioner Spain. Cannot locate within Wellington district (MA 91\10, ser 6).
420	Sheldon	Porirua						Compensation awarded by Commissioner Spain, but not issued. Claims put in by Polynesian Company (Bell).
465	Tod (A McDonald)	Wellington	1840		3	3.23125		The 'surveyed' and 'granted' acreages apply to both this claim and NO 466. Grant for 1 acre 0 roods 31 perches to A McDonald, 29 July 1845 (Bell, p.36). See claim NO 466 below.
466	Tod (A McDonald)	Wellington	1841					See NO 465 above. Grant for 2 acres 2 roods 31 perches to A McDonald 29 July 1845. 'This was one of the claims in the centre of the City of Wellington, conflicting with the title of the New Zealand Company' (Bell).
538	Wright	Porirua						'This was the original purchaser (with one W Hay) of the land included in the Polynesian Company's Claim for which Scrip was awarded but none issued . . . Assigned to Polynesian Company, who put in a claim.' See NO 234 (Bell).
552	Bell	Mana Island	1832					Disallowed (Bell)
553	Moreing	Mana Island	1832	2000	525	525		MA 91\10, ser 1. According to Bell 1872 acres, then the whole island was granted to Moreing
591	Fraser	Kapiti						Disallowed, claimant not appearing
635	Barker	Wellington	1840	2				Disallowed by Commissioner Spain

Summary table for district 12: Wellington

Claim no	Claimant(s)	Locality	Date	Originally claimed	Surveyed	Grant(s)	Scrip £	Remarks
859-860	Ellison	Cooks Strait		2560		388		'Partly heard by former Commissioners, who recommended further investigation. No Claim preferred.' (Bell). Grant issued 20 June 1863.
928	Mayhew (A Brown)	Kapiti	1839		617	617		Surveyed acreage applies to both this claim and NO 929. Grant to A Brown for 617 acres, 24 June 1861. Scrip credit awarded but never issued (Bell).
929	Mayhew	Kapiti Islet	1839					Reverted to Maori (MA 91\24)
931	Mayhew	Lewis Island		5				Reverted to Maori (MA 91\24)
950	Wesleyan Mission	Wellington/Waipa						Reserve granted at Te Aro. Grant called in and cancelled. New grant issued situated at Waipa (Bell). This claim also appears on the schedule of Waikato old land claims.
962	Bradshaw	Porirua	1839					'Grant recommended by Commissioner Spain for 3 acres, to Bradshaw, for the term of his life, but not issued. No claim preferred.' (Bell)
985	Jackson	Porirua		300				'Never investigated. Claim preferred by J Jackson. To be investigated.' (Bell) Lapsed (AJHR, 1878, H-26 ).
986	Thoms	Porirua	1839		244	247		(Bell)
987	Thoms	Kapiti	1839	3	4	5		(Bell)
1007	Wilson	Otaki		2000	1357	1357		Disallowed, claimant not appearing (Commissioner Spain)
1021	Perry	Otaki		600				Disallowed, claimant not appearing (Commissioner Spain)
1022	Scott	Wellington	1831	1.5			3675.8	'The land was in the centre of Wellington City, and valued at £5337 10 o. Debentures were issued in satisfaction of the claim. Scales Debentures for £3675 16 o.' (Bell).
1041	Heberley	Wellington						'Disallowed after investigation by Commissioner Spain, but a piece of land reserved for Heberley's wife and half-caste children.' (Bell).

1042	Young	Wellington	1834				400	'Grant to Claimant, for 3 roods, 29 July 1845. The value of this was fixed at £1000 in an award made for the New Zealand Company. Grant bought by Government for £400 in September, 1849' (Bell).
1374	Cook	Manawatu			351	548		Three component grants issued 11 September 1863 (AJHR, 1878, H-26)
	Total			31513.5	3138	3727.2313	4972.8	

Claim no	Claimant(s)	Locality	Date	Originally claimed	Surveyed	Grant(s)	Scrip £	Remarks
60	Bateman	Cloudy Bay		150				Claim never investigated. No claim preferred.
149-152	Crawford	Cape Farewell	1839					Never investigated, declared lapsed (AJHR, 1881, c-1)
153-154	Crawford	Blind Bay	1839					
197	Goodsir and Davidson	Blind Bay	1838					Never investigated, no claim preferred
204	Guard	Cloudy Bay	1839					Never investigated
207	Guard and Wynen	Cloudy Bay	1839					Never investigated, declared lapsed (AJHR, 1881, c-1)
221	Hobblewhite	Queen Charlotte Sound						No award made. No claim preferred.
234	Polynesian Company	Pelorus River	1839					Never advertised for hearing
238	Polynesian Company	Pelorus	1839					Never investigated or advertised
335	Johnstone and others	Pelorus	1840	1,280,000				Never investigated. No claim preferred.
367	Peacock	Pelorus						Never investigated
375	Peterson	Pelorus						Disallowed; claimant not appearing before Commissioner Spain. Cannot locate (MA 9110, ser 6).
398	Rogers	Cloudy Bay						Never investigated. No claim preferred.
419	Sheldon	Pelorus						Never investigated. Related to the claims of the Polynesian Company (Bell).
477	Unwin	Wairau	1838					Never investigated. No claim preferred.
984	Jackson	Queen Charlotte Sound		150		150		Never investigated (Bell). Final award by A Domett (MA 9110, ser 1).
988	Toms	Queen Charlotte Sound	1839	2000	1357	1357		(Bell)
990	Neil and Bateman	Port Underwood						Never investigated. No claim preferred.

1009	Rogers	Pelorus River		640				Never investigated. No claim preferred.
1010	McLean	Pelorus River		640				Never investigated. No claim preferred.
1012	Okeden	Cloudy Bay						Never investigated. No claim preferred.
1039	Coates and Coombes	Queen Charlotte Sound		40,000				Never investigated: Papers lost. No claim preferred.
1310	Elmslie	Queen Charlotte Sound						Not investigated. Claims preferred, but notification fee not paid. Lapsed (Bell).
1314	Fitzherbert and Heberly	Queen Charlotte Sound			1156	1156	70	Gift to Heberly's Maori wife. Awarded by A Domett 1866 (MA 9110 ser 3).
1315	McLean	Croisilles						Not investigated. Claim not yet prosecuted; could only be settled under last section of Act, 1858 (Bell, p 97).
1329	Freeman	Queen Charlotte Sound						Not referred to any commissioner. No claim preferred.
1330	Snow	Cape Jackson						Not referred to any commissioner. No claim preferred.
1374	T U Cook	Manawatu River	1863		548			
	Total			1,323,580	2513	2662.9	70	

Summary table for district 13: Northern South Island

Claim No	Claimant(s)	Locality	Date	Originally Claimed	Surveyed	Grant(s)	Scrip £	Remarks
1	Green	Bluff Harbour	1838	2000	71	71		In relation to all of his South Island claims Green was empowered to select two areas of 2500 acres (ie 5000 acres) by 1870 Green Land Claims Settlement Act (MA 91\10, ser 1).
2	Green	Stewart Island	1838	20,000				Not investigated as no evidence had been produced except a deed of sale by Tuawaiki (Bell). Granted 198 acres, 19 March 1880, but cancelled and claim declared lapsed, 31 May 1881, on non-production of survey (AJHR, 1881, c-1).
3	Green	Poveaux Strait	1838	20,000	71	71		
4	Green	Bluff Harbour	1838	109	52	52		Granted 9 September 1874 (AJHR, 1878, H-26)
5	Green	West Coast	1838	1,024,000		695		
6	Green	Catlins River	1840					Disallowed, along with nos 7 and 8, being for purchases made after 14 January 1840. See no 1.
7	Green	Otago Harbour	1840					
8	Green	Otago Harbour	1840	145	245			
10	Byrne	Banks Peninsula	1836	20,000				Withdrawn by claimant. Lapsed.
38	Aitken	Port Cooper	1839	2560				Disallowed (Bell)
39	Aitken	Jacob's River	1838	12,000				
46	Ashmore and Jones	Middle Island						
66	Black	Jacob's River	1838					Disallowed for non-appearance. No claim preferred (Bell).
68	Brady	Stewart Island	1838	700				Grant for 690 acres called in, declared lapsed (AJHR, 1881, c-1).

69	Carter and Brown	Stewart Island	1838					Disallowed for non-appearance. No claim preferred (Bell).
70	Brown and Campbell	Bluff	1838					Disallowed. Derived from J Bruce.
71	Brown and Campbell	Bluff	1838					Disallowed. Claimant's agent declining to pay fees (Bell).
72	Brown and Campbell	Molyneux Bay	1840					Disallowed (Bell)
74	Brown J	Middle Island	1838					Disallowed for non-appearance
76	Bruce	Foveaux Strait	1838					Withdrawn (Bell)
77	Bruce	Foveaux Strait	1838					
78-79	Bruce	Otago	1839	2				Two acre grant called in, declared to have lapsed (AJHR, 1881, c-1).
80	Bruce and Clarke	Otago	1838	550		550		'Grant issued for 550 acres, 30 December 1844. Grant called in, but not produced; probably lost in a wreck. New Grant ordered to be issued after survey.' (Bell)
84	Catlin	Catlin's Bay	1840			230.5		'Grant issued for 230 19 March 1860. New Grant ordered to be issued when land laid off by the Assistant Commissioner at Otago' (Bell)
85	Catlin	Middle Island	1840	7				Withdrawn (Bell)
86	Catlin and Smart	Banks Peninsula	1840					
99	Clarke	Ruapuke	1838					Disallowed (Bell)
125	Cole	Cloudy Bay		0.5				Never investigated; no claim preferred under the Act (Bell). Claim declared lapsed 1867 (MA 91/10, ser 8).
128	Couper, Holt and Rhodes	Cloudy Bay						Never advertised for hearing
131	Couper, Holt and Rhodes	Akaroa						2560 scrip issued to Buckland and Rhodes, 14 September 1880, in full satisfaction of Nos 129-134 (AJHR, 1881, c-1).

Summary table for district 14: Southern South Island

Claim No	Claimant(s)	Locality	Date	Originally Claimed	Surveyed	Grant(s)	Scrip £	Remarks
169	Duncan	Totowai	1838					Lapsed. No claim preferred.
171	Dyer	Jacob's River	1840	1600				Disallowed. No claim preferred (Bell).
188	Fisher	Otago	1838	12,800				
189	Fisher	Otago	1838	12,800				
217	Hart.	Jacob's River	1838					Disallowed (Bell)
222	Hobblewhite and Vickery	Jacob's River	1838					Disallowed. No claim preferred.
232	Hirst (H Teschemaker)	Moeraki	1839	20,000	789	789		'Grant for 263 acres, 30 December 1844, to the claimant. Grant called in and cancelled. New grant ordered to be issued for 789 acres to H Teschemaker, at Moeraki.' Part of land in grant was reserved for the site of a township (Bell).
235	Polynesian Company	Bluff	1839					Disallowed (Bell)
236	Polynesian Company	New River	1839					
240	Polynesian Company	New River						Disallowed. Claims put in by remaining members of the Polynesian Company.
241	Polynesian Company	Foveaux Strait						According to Bell, the payment of £1240 in October 1839, would entitle the claimants to 3382 acres, and £3382 in scrip, at 7s 4d per acre (Bell).
246	Jeffrey	Jacob's River	1838					Disallowed. No claim preferred (Bell).
251	Jones J	Waikouaiti	1839		8560	17,028	8500	'Surveyed', 'granted' and 'scrip' figures apply to nos 251-253. 1868 John Jones Land Claim Settlement Act awarded him scrip to the value of £8500 and 17,028 acres which he selected in three areas of Crown land (MA 91/10, ser 3). See also Bell.
252	Jones J	Middle Island	1839					See NO 251 above

253	Jones J	Middle Island	1839					See NO 251 above
254	Jones J	Middle Island	1838					Withdrawn, Jones sold 50% of this claim to C Wentworth and 17% to Brown and Campbell (Bell).
255	Jones J	Molyneux	1838					Withdrawn (Bell)
256	Jones J	Islet	1839					
267	Jones T	Molyneux	1839	256,000		105		Disallowed, claimant not appearing. Derivative claim of Thomas Russell admitted under section 15 of 1858 Land Claims Settlement Extension Act. Grant issued 19 June 1867 (AJHR, 1878, H-26).
268	Jones T	Toitoi's River	1839	25,600				Disallowed, claimant not appearing. See NO 267.
269	Jones T	Popomaina	1839	25,500				Disallowed, claimant not appearing. See NO 267.
276	Lamont	Molyneux	1840	1281				Disallowed (Bell)
279	Levien	Jacob's River						Disallowed. Claimant not appearing (Bell).
281	Liddle	Molyneux	1840	1218				Disallowed, no claim preferred (Bell).
294	McGregor (J McGibbon)	Bluff	1838		72	72.69375		'Grant for 72 acres issued 15 February 1845, to the Claimant. Grant called in and cancelled. New Grant ordered to be issued to J McGibbon for 72 acres' (Bell).
338	Mitchell	Jacob's River	1838					Disallowed (Bell)
340	Moore	Stewart Island	1838	240		252		Grant re-issued 16 February 1881 (AJHR, 1881, C-1).
350	Nash	Otago	1838	12,800				Disallowed (Bell)
359	O'Ferrall	Middle Island						Disallowed. Related to Polynesian Company claims, nos 234-241. See also Bell. Never investigated (AJHR, 1881, C-1).
360	O'Ferrall	Foveaux Strait						
364	Palmer	Bluff			280	280		

Claim No	Claimant(s)	Locality	Date	Originally Claimed	Surveyed	Grant(s)	Scrip £	Remarks
365	Peacock	New River						Disallowed (Bell)
366	Peacock	Foveaux Strait						
370	Peek R	New River		10,300				For nos 370–373 the claimant's agent refused to pay fees. Claim preferred but not admitted for investigation. Bell gives the date of these claims as 1838 and 1840 (Bell).
371	Peek R	Bluff and Jacob's River		16,000				See no 370
372	Peek S	New River		10,300				See no 370
373	Peek S	Jacob's River		16,000				See no 370
417	Sheldon	New River						Disallowed. Related to Polynesian Company claims, nos 234–241. See also Bell.
418	Sheldon	New River						Disallowed. Related to Polynesian Company claims, nos 234–241. See also Bell.
421	Simmonds	Foveaux Strait	1838					Disallowed (Bell)
426	Spencer	Bluff	1839	200	200	200		
427	Spencer	Bluff	1839	200	200	200		
428	Spencer	Bluff	1839			47		(AJHR, 1878, H-26)
460	Thomas	Toitoi (Otago)	1838					Disallowed. No claim preferred (Bell).
462	Thomson	Toitoi (Otago)	1838	12,800				
463	Thurlow and Clarke	Toitoi (Otago)	1839	1800				
475	Unwin	Toitoi (Otago)	1838					Disallowed (Bell)
476	Unwin	Molyneux	1838					

480	Webb	New River	1838	10,300				Disallowed; fees not being paid. No claim preferred (Bell).
481	Webb	Bluff	1840	16,000				Disallowed; fees not being paid. No claim preferred (Bell).
482	Weller E	Molyneux	1839	1,000,000				Disallowed. No claim preferred (Bell).
483	Weller E	Bluff	1839	28,800				
484	Weller E	Waikawa (Otago)	1839	1600				
485	Weller E	Bluff	1839	960				
486	Weller E	Banks Peninsula	1839	500,000				
487	Weller E	Taumutu (Otago)	1839	250,000				
488	Weller G	Molyneux	1839	100,000				Disallowed, the claimant not appearing. Claimant applied to Governor Grey to have the claim heard, but was refused. G Weller stated that he and E Weller had actually surveyed 63,600 acres at a cost of £800, and had sold 14,000 acres at 5s an acre (Bell).
489	Weller G	Bluff	1839	28,800				Disallowed, the claimant not appearing. See also NO 488.
490	Weller G	Waikawa	1839	1600				
491	Weller G	Stewart Island	1839	64,000				
492	Weller G	Bluff	1839	960				
493	Weller G	Banks Peninsula	1839	500,000				
494	Weller G	Taumutu (Otago)	1839	250,000				
497	Wentworth	Waikouaiti						Disallowed. Claimant not appearing. Excluded by the Act. See Bell.
498	Wentworth	Molyneux						
499	Wentworth	Bluff						

Claim No	Claimant(s)	Locality	Date	Originally Claimed	Surveyed	Grant(s)	Scrip £	Remarks
528	Williams	Preservation Bay	1832		1480	3000		Granted at Otepopo. Original claim reverted to Crown (MA 91\10 ser 4). See also Bell.
582	Chapman and Morgan	Jacob's River	1838	5000				Disallowed. No claim preferred (Bell).
790	Cafler	Banks Peninsula	1837					Disallowed (Bell)
813	Purvis	Banks Peninsula						
833	Joss (Schutze C W)	Bluff	1838		213	234		Grants of 117 acres each issued 8 February 1873 and 16 February 1881 (AJHR, 1881, c-1).
834-835	Joss	Stewart Island	1836	180		207		Stewart Island claims not yet investigated (Bell). Grant issued in satisfaction of both claims, 16 February 1881. Grant called in. Declared to have lapsed (AJHR 1881, c-1).
838	Rautau and Caflers	Banks Peninsula	1837					Disallowed
927	Mayhew	Banks Peninsula	1839					
964	Stewart	Akaroa		900				Disallowed, along with no 963 (Tauranga).
1011	Smith T	Foveaux Strait	1840					Disallowed (Bell)
1013	Campbell	Foveaux Strait						
1023	Stirling	Bluff	1839		104	111		Initial grant of 104 acres enlarged, 27 January 1868, in compensation for lighthouse taking (AJHR, 1878, H-26).
1028	Morphy and Ennis	Milford Haven	1839					612 acre grant called in. Declared to have lapsed (AJHR, 1881, c-1).
1048	Nanto Bordelaise Company	Akaroa						Settled with New Zealand Company claims
1300	Hempleman	Akaroa	1837		250	250		Granted out of New Zealand Company/Nanto Bordelaise claim (MA 91\10, ser 8). Original grant of 200 acres (15 March 1852) recommended by Colonel Campbell, decided by Governor Grey. Bell then ordered 250 acre grant to be issued 20 March 1857 (Bell).

1315A	Hattwood (Harrwood?)	Otago						Not investigated. No claim preferred.
1331	Sizemore	Bluff						Not referred to any commissioner. No claim preferred.
1332	Hinchcliff	Jacob's River						Not referred to any commissioner. No claim preferred. Derived from J Jones claims, nos 251-256 (MA 91\10, ser 8).
1333	Staple	Jacob's River						Not referred to any commissioner. No claim preferred. Derived from Jones claims, nos 251-256 (MA 91\10, ser 8).
1335	Blackett	Banks Peninsula						Not referred to any commissioner. No claim preferred. Derived from Weller claims, nos 486-493 (MA 91\10 ser 8).
1346	Oliver	Kaikoura Peninsula						Not referred to any commissioner. No claim preferred.
1348	Campbell and Brown	Moeraki						
1350	Hunt	Molyneux						Not referred to any commissioner. No claim preferred. Derived from T Jones no 267 (MA 91\10, ser 8).
1354	Darmandante	Akaroa						Partly heard by Commissioner Godfrey.
1369	Bates (Children of)	Jacob's River				33		Not investigated (Bell). Investigated by Assistant Commissioner Pearson and grant recommended. Issued 22 June 1878 (AJHR, 1878, II-26).
	Total			4,298,612.5	12,587	24,478.194	8500	

