

CHAPTER 5

THE PRE-EMPTION WAIVER EXPERIMENT IN PRACTICE: THE FIRST WAIVER, 1844

5.1 Introduction

This chapter looks at FitzRoy's pre-emption waiver scheme in practice. There were around 250 pre-emption waiver claims under FitzRoy's March pre-emption waiver and his subsequent October pre-emption waiver proclamation (see below).¹ General information was collated on all these claims. Around a quarter of these claims were looked at in detail. Although it was originally envisaged that all pre-emption waiver claims would be studied in depth, and tables of the results provided, the data remains incomplete at present.

5.2 The March Pre-emption Waiver Certificates and Deeds

5.2.1 The procedure

On 4 April 1844, just over a week after his 10-shillings-an-acre pre-emption waiver proclamation, FitzRoy set out the 'routine' to be followed when an application for a pre-emption waiver certificate was received.² He based his scenario on an application by Charles Moitt, the first pre-emption waiver certificate holder:

Mr Moitt writes a letter to the Colonial Secretary, in whose Office the application is registered and from thence sent to the Governor.

Any remarks the Colonial Secretary may think proper to make will be noted on the letter.

The Governor refers the application, if it appears to be a correct one, to the Chief Protector of Aborigines, whose opinion will be noted on the letter. Any further reference thought necessary by the Governor, will then be made before his decision is given.

1. These comprise olc 1/1050–1/1299, NA Wellington.

2. FitzRoy later specified what a pre-emption waiver application was to contain, see *New Zealand Gazette*, 7 December 1844, notice in encl 1 in FitzRoy to Stanley, 14 October 1844, BPP, vol 4, p 403.

5.2.1 Right of Pre-emption and Fitzroy's Waiver

The Governor will write his answer on the original letter and send it to the Land Office for registry – whence it will [be] forwarded, accompanied by a Certificate, all ready for signature, to the Colonial Secretary.

The letter will be kept in his office – the Certificate sent – when signed – to the Colonial Treasurer – by whom it will be signed – and delivered to the proper applicant – as soon as he has duly paid the fees.

Any alteration can be made in this routine if found necessary after a trial, but I wish it to be put in practice at present. . . .

At the Land-office the letter of application must be copied – that is, the material parts of it – namely: date, – signature, – quantity – situation and description of land – using the words of the applicant.³

In practice, the routine followed by the colonial officials was close to FitzRoy's intended one. Applications for the waiver of the Crown's right of pre-emption over specific areas of land, defined both in terms of their acreage and physical description of boundaries, and indicating who the potential vendors were, were made to the Governor by settlers, via the Colonial Secretary, Andrew Sinclair. Sinclair would note receipt (usually only one day after the date of the application) and then forward the application to the Chief Protector for his comment. The application was then sent to the Governor for his consent.

Once the Governor's consent to waive pre-emption over a particular parcel of land was given, a certificate was forwarded to the Colonial Treasurer. A letter was sent (by Sinclair) to the applicant, advising him or her that the certificate could be picked up from the Colonial Treasurer after he or she had paid the four-shillings-an-acre fee (over nine-tenths of the land) due on receipt of the certificate.

Once a certificate was obtained, the applicant was free, in theory amongst other purchasers, to negotiate with the appropriate chiefs (whose names were indicated on the application) for purchase of the land for which a pre-emption waiver certificate had been obtained. FitzRoy envisaged that the issuing of the pre-emption waiver certificate for a particular area of land would open up the land in question for purchase, not only by the original applicant, but by anyone who chose to negotiate for the purchase of that land.⁴

The deed of purchase was to follow the acquisition of a pre-emption waiver certificate. Although this was implied in the March proclamation, it was not clearly specified. But this sequence of events was subsequently reiterated by FitzRoy as an essential part of the procedure.⁵

FitzRoy's 'routine' did not extend past the issuing of a pre-emption waiver certificate. But the overall scheme was outlined in his pre-emption waiver proclamation. Once the purchase was made, the deed was to be sent to the Surveyor-General, so that 'inquiries' could be made. Notice was then intended to be given in the Maori and English *Gazettes*. A Crown title would be issued 'unless

3. FitzRoy's instructions, 4 April 1844, m44/62, ia2, 44/167, na Wellington (see Wai 27 rod, doc r36(a), pp 190–193)

4. As noted above, this was made clear in December 1844 (see below, *New Zealand Gazette*, 7 December 1844, notice in encl 1 in FitzRoy to Stanley, 14 October 1844, BPP, vol 4, p 403).

5. Ibid

sufficient cause should be shown for its being withheld for a time, or altogether refused'. According to the proclamation, a year was to pass between the time of issuing of the certificate and the issuing of a Crown grant. This was to encourage long term relationships between purchasers and Maori. At some stage prior to the preparation of a Crown grant, a survey was to be completed and lodged at the Surveyor-General's office. But subsequent events, including FitzRoy's dismissal, and Governor George Grey's appointment, intervened. The procedure beyond FitzRoy's 'routine', at least, did not follow FitzRoy's original plan.⁶

5.2.2 The results

FitzRoy reported to Stanley around three weeks after the March waiver had been proclaimed. He stated that only 600 or so acres had been bought under the March waiver provisions. In fact, pre-emption waivers had been granted over only around 350 acres of land by that time under 13 certificates. This suggests that FitzRoy may have been aware of the body of purchases which had already been negotiated prior to the proclamation (see below). FitzRoy described the purchases as being 'in small quantities varying from three to 50 acres each' at 'about £1 an acre, in addition to the sum payable to Government, and all other expenses, making the total cost of these lands at least 35s an acre'. This appears reasonably accurate, although none of the certificates up to that date had been for as low as three acres but, of course, the acreages stated on the pre-emption waiver certificates were not always consistent with those found on later survey.⁷ FitzRoy assured Stanley that speculators in land (from which Normanby clearly intended to spare New Zealand) were excluded by these regulations. Only bona fide settlers, he claimed, were profiting by them.⁸

(1) Acreages purchased

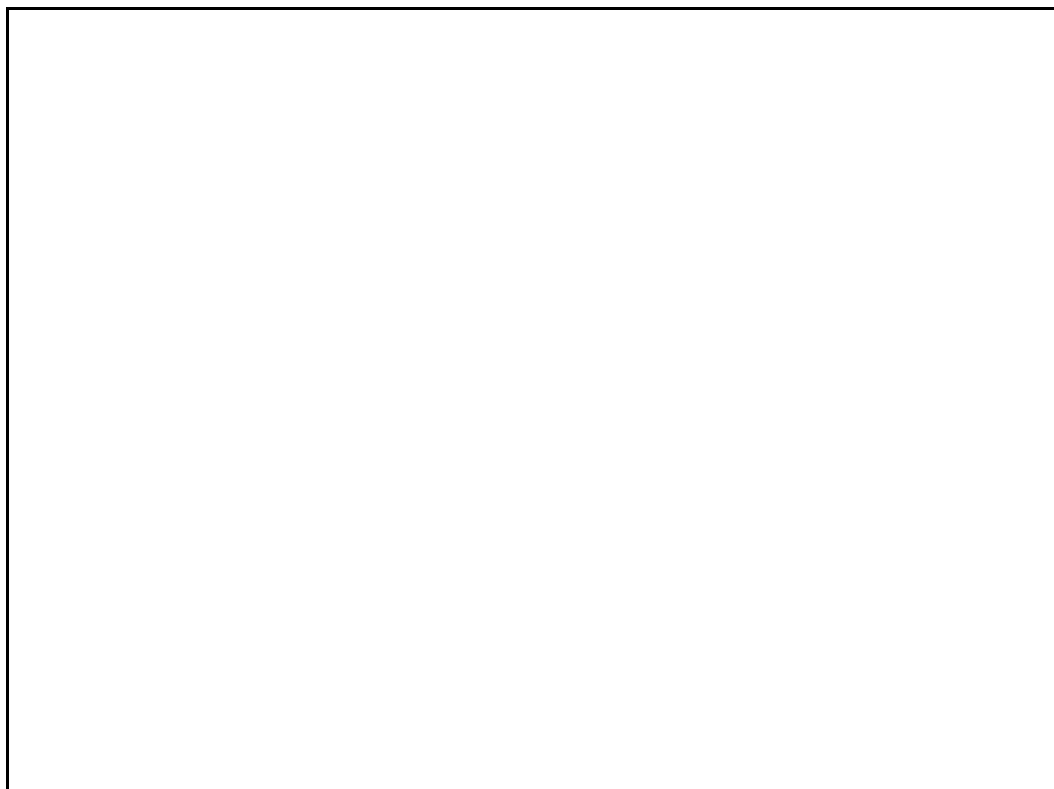
By the end of the 10-shillings-an-acre waiver period, 57 pre-emption waiver certificates had been issued for a total of around 2337 acres.⁹ The areas sought ranged from 9½ perches to 200 acres. Just over a half of these certificates were waivers for areas of 20 acres or less (a third were for areas of land 10 acres or less). Just over a quarter of the certificates were for areas of land between 21 and 50 acres.

6. See ch 7

7. The fact that FitzRoy states this begins at three acres suggests that perhaps he was aware of differences between the estimated and the surveyed area, or he was aware such a purchase had already been negotiated prior to a certificate being issued. While none of the certificates up to that date had been for as low as three acres, an area for which one acre certificate had been issued, when later surveyed, was required to be altered to three acres. Of course he may also merely have been giving a rough estimation.

8. FitzRoy to Stanley, 15 April 1844, BPP, vol 4, p 179

9. These were olc 1/1050–1072, 1/1074–1081, 1/1085–1090, 1/1094–1096, 1/1100–1101, 1/1104–1112, 1/1115–1116, 1/1118–1120 and 1/1122, NA Wellington. Although waiver certificates for olc 1/1073, 1/1126 and 1/1179, NA Wellington were given following the March waiver period, these claims were also dealt with under the March proclamation provisions. (Grey later incorrectly noted there to be 47 claims under the March proclamation, for about 1800 acres, and 101 claims under the October proclamation, bringing the acreage for which pre-emption waiver purchases up to 'something less than 100,000 acres' (see below), see Grey to Earl Grey, 11 November 1847, and encls, BPP, vol 6, pp 13–14).



Only six certificates (amounting to nearly 1011 acres) were for areas between 100 and 200 acres (see fig 2). But these figures should be viewed merely as an indication of the acreages involved. Although the certificates contained a description of the 'natural boundaries' over which the right of pre-emption was waived, the actual acreage on survey often varied from the original estimation. Also, some individuals were granted a number of waivers, others bought land from other Europeans to expand their lot, and some (belonging in some cases to the same family) combined to purchase large blocks of land on separate certificates. This will be discussed further below.

(2) Certificates issued

There was an initial rush of applications for waivers, with a third of the certificates being issued within the first month of their availability. Thereafter, the numbers steadily dwindled until October 1844, when a second, more lenient, general waiver was issued by FitzRoy. Three certificates issued after this date were still dealt with under the March proclamation. One was an extension of an existing claim made by a settler named Robert Austin for land around Mt St John, bought from Wiremu Wetere of Ngati Maho.¹⁰ Another was a claim by Taylor, Campbell, and Brown, for Pakihi and Karamuramu Islands, near Waiheke (estimated to total 100 acres). These islands had been bought from Ngati Paoa in August 1844.¹¹ The third, for

10. olc 1/1073 (for 2 acres 1 rood 19 perches), an extension of olc 1/1072, NA Wellington. An additional receipt had been received by Wetere and 'Abel' on 14 June 1844.

8 acres 2 roods at Mt St John or Epsom, bought by Henry Hayr from Wiremu Wetere and Aperahama (Ngati Maho), was presumably included in the March waivers because the first two of three adjacent purchases had pre-dated the pre-emption waiver certificate, having occurred largely within the March waiver period.¹²

(3) Areas of purchase: central Auckland

Almost all the 10-shillings-an-acre waiver certificates were issued for Auckland land. By far the greatest number of these were for land in the much sought after area around Remuera and One Tree Hill (see § 3). The land in the north of this general location was sold largely by Wiremu Wetere, Epiha Putini, and Aperahama, described as being of Ngati Maho (or Ngati Te Ata). The land in the south of this area was sold largely by Ngati Whatua chiefs Kawau, Te Hira, Keene, and others.¹³ Kati (Te Wherowhero's brother), of Ngati Mahuta (Waikato), also sold land at Remuera (see below, the tripartite division).

The highly complex history of traditional occupation and rights in the Auckland area provides some indication of the myriad of tribal groups associated with the area over time.¹⁴ Determining rights held by Maori in the area at 1840, for the Tribunal's purposes, is equally complex. It cannot be adequately dealt with in this report. But some background, subject to clarification by the iwi themselves, is necessary to provide context to land sales made in the pre-emption waiver period. The following summary provides this background. It is limited by its dependence solely on secondary sources – some of which, such as Judge F D Fenton's Orakei judgment, are contested, and need to be treated with caution.

(a) Auckland iwi at 1840: Tamaki-makau-rau was the site of much warfare in the 1820s and early 1830s – primarily between Ngapuhi, Ngati Whatua, Ngati Paoa, Ngatitamaoho (or Ngati Maho), and Ngatiteata (or Ngati Te Ata) – with the result that the isthmus was largely deserted during this period. But by around 1835, this changed.

According to Judge Fenton's subsequent Native Land Court records, Te Wherowhero of Waikato conducted Manukau iwi, including Ngati Whatua, back to their former residences at this time; Waikato having held its own against Ngapuhi and made peace with them. Te Wherowhero and his people settled at Awhitu (on the southern tip of the Manukau heads) as a guarantee of protection to the rest; Ngatiteata returned to their land at Awhitu; Ngatitamaoho returned to Pehiakura (south of Awhitu); Te Akitai (also Ngatitamaoho) to Pukaki (on the isthmus, just

11. olc 1/1126, NA Wellington

12. olc 1/1179, NA Wellington. The purchases were made on 17 February 1844, 29 April 1844, and 14 July 1845. The three claims with certificates issued after the October proclamation have not been included in my discussion of the March waivers.

13. Te Akitai also sold around the Manukau-Onehunga area.

14. See, for example, R Daamen, 'Tai Tokerau and Tamaki-Makau-Rau Iwi: An Initial Outline', in *Rangahaua Whanui District 1: Auckland*, R Daamen, P Hamer, and B Rigby, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), July 1996.

5.2.2(3) Right of Pre-emption and Fitzroy's Waiver

south of Mangere); and Te Kawau of Ngati Whatua returned to Puponga, where Ngati Whatua built a pa called Karangahape.¹⁵

The Manukau Tribunal were also told of the agreement, said to be in 1834:

whereby the people returned to their homes after the invasions under the protection of the Waikato confederation, Te Taou of Ngati Whatua giving lands at Awhitu and Mangere to Ngati Mahuta of central Waikato to secure their presence and protection

...¹⁶

George Graham (who recorded many traditional Maori accounts earlier this century) also noted Ngati Whatua's return to the isthmus, settling at Okahu (Orakei Bay) and at Mangere, where Kati and Matere Toha (of Ngapuhi, the niece of Hongi Hika) lived, and other villages on the shores of the Waitemata and Manukau.¹⁷

According to Fenton's informants, Te Kawau and his people were living at Karangahape (at Puponga) in 1836, and they had begun cultivating at Mangere. Later that year they built a pa at Mangere and another at Ihumatao (south of Mangere). Te Taou (Ngati Whatua) came to the shores of the Waitemata, and began to cultivate the land about Horotiu (Queen Street). Mauinaina (a former Ngati Paoa pa along the Tamaki River) was still unoccupied. And Fenton noted that Captain Wing's chart of Manukau Harbour, produced in court, showed Potatau's (Te Wherowhero's) people had commenced planting at Onehunga, while Te Tinana, of Te Taou (Ngati Whatua), had cleared land for cultivation at Rangitoto, near Orakei.¹⁸

According to one witness in Fenton's court, Ngati Paoa gave permission for Te Kawau to have undisturbed possession of Ohaku (Orakei Bay), following a peacemaking visit made by Te Taou, to Kahukoti (of Ngati Paoa), for their involvement in an attack upon Ngati Paoa at Whakatiwai (on the western shores of the Firth of Thames). But Fenton thought the Whakatiwai attack was 'to balance an "utu" account and in no way concerned the land'. Kahukoti was then living at Orere, on the western shores of the Hauraki Gulf.

Fenton recorded that Te Taou built a pa at Okahu (Orakei Bay) in 1837. By 1838, Te Kawau's principal residence was at Mangere, but Te Taou also had permanent residences at Onehunga, 'Auckland' and Okahu. Te Wherowhero (Ngati Mahuta, Waikato) took up residence at Onehunga. In 1839, Okahu tribes cultivated the land at Oicial Bay (Waiariki, to the east of Point Britomart) and:

Ngatipaoa appear again in this district . . . Te Hemara saw two hundred of them at Maraetai, when he came up with Captain Clendon in the 'Columbine.' He also saw Apihai [Te Kawau], Te Tinana, Te Reweti, Paerimu, Uruamo, and Watarangi, and all

15. F D Fenton, *Important Judgments Delivered in the Compensation Court and Native Land Court*, Auckland, Native Land Court, 1879, pp 74–75

16. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Manukau Claim*, Wellington, Government Printer, 1985, p 11

17. J Barr and G Graham, *The City of Auckland, New Zealand, 1840–1920*, Christchurch, Capper Press, 1985, pp 31–32

18. Fenton, p 76

5.2.2(3) Right of Pre-emption and FitzRoy's Waiver

the chiefs of Te Taou, Ngaoho, and Uringutu completely settled there. 'The food of that place,' he says, 'had been cultivated long before; the fences were made and the houses built.' He then describes going in a boat with Taipau, a relation of Heteraka's, to mark out the boundaries of land proposed to be purchased by Captain Clendon from Heteraka's tribes, Ngatikahu and Ngatipoataniwha. The boundary commenced at Takapuna and went on by the Wade to Whangaparoa.¹⁹

Fenton regarded Te Taou, Ngaoho, and Te Uringutu alone as owners of Orakei lands.²⁰ But a number of subsequent events illustrate a far more complex arrangement. On 28 May 1841, Ngati Paoa 'sold' 9600 acres at Kohimarama to the Crown.²¹ In 1842, Ngatihura, a hapu of Ngati Paoa, went to live at Okahu. In March of that year, Clarke, 'Patene Puhata and William Hoete, and eight others of Ngati Paoa' went to Kohimarama in an attempt to 'run a line' around, that is survey, part of Orakei, but were opposed by Te Kawau's people. Ngati Paoa desisted and went away. In 1843, Ngatiteata commenced cultivating at Okahu. A second pa was built at Okahu by Te Kawau. Later that year, Remuera was gifted to Wetere, of Ngatitamaoho (or Ngati Maho). Ngatipare, a hapu of Ngati Paoa, came to Okahu and settled there.

In 1844, Ngatiteata and Ngatitamaoho (or Ngati Maho) came to live at Orakei and Remuera. Fenton recorded that Wetere and Te Kawau sold parts of their land under FitzRoy's pre-emption waiver proclamations.²² He also noted that both Ngatiteata and Ngatitamaoho were living on this land before Hobson's arrival, and that between 1840 and 1850, they came several times in parties, and sometimes settled at Okahu for a short period. But he placed no value on these acts of occupation.²³

The Tribunal accepted in its *Waiheke Report* that, away from mainland Auckland, both Ngati Paoa and Ngati Maru had rights to Waiheke, although it was not certain of the relative position of these related iwi at 1840.²⁴ A more recent account of the South Auckland area of Franklin by Nona Morris has noted that Ngatiteata, Ngatitamaoho (Ngati Maho), and Ngatipou were dominant in the Franklin area in 1840. Ngatiteata were situated mostly around Waiuku and Ngatitamaoho claimed the Patumahoe to Drury area (between Waiuku and Papakura).²⁵

19. Ibid, p 79

20. Ngaoho and Te Uringutu were earlier inhabitants of the Auckland area (see Fenton, pp 59, 65–66).

21. H H Turton, *Maori Deeds of Land Purchases in the North Island of New Zealand*, Wellington, Government Printer, 1877, vol 1, pp 269–270

22. Fenton, pp 80–81

23. Fenton, pp 81–82. Fenton stated it to be 'an ordinary custom for persons who have, or pretend to have, no claim whatever to the land itself, to come and reside upon estates of other tribes, when on terms of amity with the owners', especially when they are connected through intermarriage. He believed this to be the case here.

24. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Waiheke Island Claim*, Wellington, Department of Justice: Waitangi Tribunal, 1987, p 8

25. N Morris, *Early Days in Franklin*, Auckland, Franklin County Council and Pukekohe, Tuakau, and Waiuku Borough Councils, 1965, p 19

5.2.2(3) Right of Pre-emption and FitzRoy's Waiver

The purchases of land around the Auckland area, under the pre-emption waiver proclamations of 1844, need to be seen in this context. More particularly, the greater body of purchases made around the Remuera and One Tree Hill area, from Ngati Maho (and Ngatiteata), Ngati Whatua, and Ngati Mahuta (Waikato), following FitzRoy's March pre-emption waiver proclamation, must be seen in this more complex context.

(b) The tripartite division: The tripartite division of the 'ownership' of this most sought after land amongst Ngati Maho, Ngati Whatua, and Ngati Mahuta, was due to an 1844 boundary agreement between these three tribes (see § 4). The creation of this division is recorded by Edward Meurant, a settler and an interpreter for some time employed by the Protectorate.²⁶ His diaries are an important archival source providing an interesting insight into how the proclamation operated on the ground. His accounts begin with the obvious dissension between the tribes on the issue of who held the right to sell in this area, prior to FitzRoy's March proclamation.²⁷

On 5 February 1844, Meurant noted in his diary that 'the Natives still quarrel about thire [sic] claim to Remuera' and on 9 February 1844, that 'this Evening went to Remuera where I found the Ngatiwatua [sic] Tribe in strong Argument with Weterere about there [sic] claim to Remuera[;] they parted seeming on very bad termes [sic]'.²⁸ On 14 February, travelling to Waikato, Meurant 'met Kukutai Nini and thire [sic] tribe going to Waitemata to assist Weterere in [h]is quarrel with the Ngatiwatua's [sic]'. At Waikato, later that day, he heard 'that a messenger had ben [sic] sent to Wangaroa [Waingaroa or Raglan] to rase [sic] William Nailor [Wiremu Nera or Te Awa-i-taia, a principal chief of 'Te Ngate Mahanga Tribe'] and his Party to join (Weterere) against Ngatewatua's [sic]'. Meurant, thinking it prudent to prevent this happening if possible, set oã to convince Wiremu Nera against the proposal – but Nera told Meurant 'he would assist no one to quarrell [sic]'.²⁹

The death of Meurant's daughter, Corah, intervened in the crucial days leading up to, including, and immediately following the 26 March 1844 pre-emption waiver proclamation. But on 30 March 1844, Meurant noted that he 'went in company with the Ngatiwatus [sic] to treat [with] the Ngatiti Maho [sic] respecting the boundaries from Mount Hobson to Maungakiekie'. On 1 April, he went to Remuera and recorded that while there he 'decided some quarrels between the

26. Meurant had been appointed in October 1841 as an interpreter in the Protectorate. Henry Tacey Kemp (at the time a Protector) later described him as being '[b]elieved to be an Australian of the Early Type – & was first heard of sealing in Feauvaux Straits & finally came to the Waikato & married a – Maori – Woman the daughter of one of the inferior Chiefs' (Kemp to Hocken, 8 July 1896, Thomas Morland, personal letters and documents, ms-0451, folder 5, Hocken Library, Dunedin). Peter Gibbons noted that Meurant remained an interpreter, not being promoted to the position of Protector, '[s]ometimes assisting in the purchase of land, at others attached to the Protectorate, or acting with Commissioner Spain, or the Surveyor General; during the Northern War he was attached to the troops' – but he 'never rose above administrative routine' (Peter Gibbons, 'The Protectorate of Aborigines, 1840–1846', MA thesis, Victoria University of Wellington, 1963, fols 20–21).

27. The Internal Affairs register for 1844 recorded receipt of a 10 January 1844 letter from Clarke, concerning 'Paul and Kawau denying Weterere's right to dispose of Remuera'. The letter is unable to be found.

28. Edward Meurant, 5 and 9 February 1844, diary and letters, ms-1635, ATL Wellington

29. Edward Meurant, 14 and 17 February 1844, diary and letters, ms-1635, ATL Wellington

Ngatewatuas [sic] and Weterē'. Again on 2 April, he 'went to Remuera to settle the disputed [sic] boundarie [sic] of Ngatewatua [sic] and Tawerowhero [sic]'. On 8 April, he 'wrote to Mr. Clarke acquainting him how I succeeded in the boundaries between the Ngatiwatuas [sic] Ngati Timahi [sic] and the Ngatikerahaieta (Te Whero[where]?)'. But two days later, he recorded that he 'rode to Remuera hearing that there was to be a quarrel with the Ngatiwatuas [sic]'. Again on 21 April 1844, he recorded 'Natives still quarrelling about there [sic] land and boundaries'.³⁰

Clarke's account of tribal differences arising through the sale of lands under FitzRoy's March pre-emption waiver puts this account in more context. In July 1844, Clarke noted that:

Considerable jealousy exists among the different tribes residing about Auckland; those whose possessions lie somewhat remote, and who cannot, consequently, compete with their more fortunate countrymen, look with extreme jealousy upon those whose lands, being situated in the vicinity of the town, and ready purchasers for all they are disposed to sell. We have had many little disputes arising out of these jealousies to adjust between the Ngatiw[h]atua tribe and the Waikatos, who reside upon and cultivate land at some distance from Auckland.

The advantages possessed by the Ngatiw[h]atuas in consequence of the proximity of their lands to the capital, have raised them up many troublesome friends, who put in joint claims, thereby causing no little annoyance. Indeed the native tribes watch and guard against any encroachment upon their respective territories, either from friends or foes, with as much vigilance and anxiety as any independent civilized state; these feelings are carried to such a height, that they almost constantly distrust each other's movements, and can hardly give each other credit for pacific intentions when a meeting between two opposite parties takes place; and while each endeavours to engross to themselves the advantages to be derived from their own fortuitous position, either as it respects the quality or situation of their land, or their more immediate connexion [sic] with the seat of Government, they eagerly strive to defeat any undue attempts of the other to participate in the privileges they possess.³¹

How this problem was to be dealt with was a different matter. Although, as will be seen later, Clarke's 'investigations' of legitimate ownership were very limited, he stated, at this time, that:

Owing to these causes existing rumours are constantly afloat, and letters contradictory in their statements are frequently received by the Government, dictated as the clashing interests of the writers may suggest; and it requires no little prudence,

30. Edward Meurant, 30 March and 1, 2, 8, 10, and 21 April 1844, diary and letters, ms-1635, ATL Wellington. The boundary marking which Meurant describes (below) possibly took place in April 1844 (as is suggested by his diary entry of 8 April 1844). Evidence taken in Matson's inquiry (a commission set up in 1846 to settle the claims of Pakeha who had purchased Maori land under the pre-emption waiver proclamations) from Te Keene, of Ngati Whatua, revealed that the boundary had been marked out prior to Dilworth's purchase. Dilworth bought land in this vicinity on 18 September 1844 and 31 January 1845. Meurant was absent from Auckland from early June 1844 to 19 January 1845; so the marking would have to have been before or after these dates, probably the former.

31. Clarke to Colonial Secretary, 31 July 1844, encl 4 in FitzRoy to Stanley, 18 December 1844, BPP, vol 4, p 458

5.2.2(3) Right of Pre-emption and FitzRoy's Waiver

and a great deal of patience, to investigate and arrange these matters, which, however, is generally satisfactorily accomplished, as the Government are usually made arbiters in every dispute.³²

Perhaps Clarke meant that the Crown assisted in 'agreements' being made amongst Maori on boundaries specifying the areas within which a particular tribe may sell land, rather than the Crown's role as an 'arbiter'. The eventual agreement on boundaries regarding the area around Remuera and One Tree Hill, reached amongst Ngati Whatua, Ngati Maho, and Ngati Mahuta, specifically for the sale of land in 1844 under the March proclamation, was described by Meurant, years later, as having followed a suggestion from FitzRoy. Meurant had been asked by the Governor to assist Maori in marking boundaries between the tribes. He later explained his involvement in the division of this choice Auckland land as follows:

I was instructed by the late Governor [FitzRoy], in the presence of Mr George Clarke, sen, Chief Protector of Aborigines, to inspect the boundaries of the several claims of 'Te Whero-where,' 'Wetere,' and 'Kawan,' [sic] to obviate any dissensions which might arise hereafter.³³

Meurant's role in the division of this central Auckland land for the pre-emption waiver purchases, although official (at FitzRoy's request), was not clearly part of his duties as interpreter for the Protectorate. He was apparently on the Protectorate department payroll at this time. But Thomas Forsaith, a Protector, claimed Meurant's connection to the Protectorate (inasmuch as his name was on the 'pay abstracts of the department') was misleading:

Mr Meurant was Government interpreter, attached at one time to the Survey Department, at another to Mr Commissioner Spain's Court, and subsequently to the military force. At intervals he was employed on special services by the Government . . . but was never regarded as a member of the Protectorate.³⁴

This will be discussed below. For now, it is enough to state that although on the Protectorate payroll, his duties were limited. He appears to have acted as an interpreter, not a Protector.³⁵

In the 1844 division of Remuera and One Tree Hill land, Meurant had gone to Ngati Whatua and told them of FitzRoy's desire that they should lay the boundary line between the Ngati Maho, Ngati Mahuta and themselves. He stated that he had then attended the boundary marking. He was present the whole time, but claimed

32. Ibid

33. Statement of E Meurant, encl in Grey to Earl Grey, 15 November 1847, BPP, vol 6, [1002], p 18

34. Forsaith to Colonial Secretary, 3 April 1849, encl 1 in Grey to Earl Grey, 23 May 1849, BPP, vol 6, [1136], p 156. This is corroborated by a letter Clarke wrote in December 1843 noting the Meurant's services had been transferred to another department but was now required by the Governor to carry out a task for Clarke (see Clarke to [Ligar?], 13 December 1843, in Edward Meurant, diary and letters, ms-1635, ATL Wellington).

35. The Protectorate could be very informal about roles. H T Kemp was appointed a 'sub-protector' in the Bay of Islands and Kaipara in 1841. When he went up to Mangonui in 1843, he described himself as Godfrey's 'interpreter'.

not to have interfered further than to see the line marked out. According to Te Keene, of Ngati Whatua, around 20 to 30 Maori were present at the marking of the boundary. Pegs were placed in a direct line from Tamaki Road (this appears to be Remuera Road) as far as ‘Dilworth’s’ purchase went, and then continued on in a direct line leaving One Tree Hill on the left. West of the line belonged to Wetera of Ngati Maho. East of the line was allocated to Kati of Ngati Mahuta. South of Kati’s land, Ngati Whatua held rights.³⁶

(4) Areas of purchase: outside Auckland

But not all purchases under the March 1844 pre-emption waiver proclamation were for Auckland lands. A small number of certificates were awarded for land outside Auckland. Two waivers were for areas of islands in the Hauraki Gulf: Pakatoa (from Ngati Paoa for 70 acres) and Motukorea (from Ngati Tamatera for 150 acres).³⁷ Three March waiver certificates were recorded for land north of Auckland: two in the Bay of Islands (one of these at Kororareka beach from ‘Amoka’ for only 13 perches) and one along the Mahurangi to Waiwerawera coast (from Ngati Rango chiefs for 20 acres).³⁸

(5) Price paid to Maori

Payment for land purchased under a pre-emption waiver certificate was generally in the form of goods or money or, most commonly, both; some involved subsequent payments (see below). Based on the value the payment was calculated to be worth, the price range per acre over the March waiver period appears to have been wide – from around 3s 5d an acre to around £2 10s an acre (excluding the fee to be paid to the Government).³⁹ Initially prices paid were about £1 per acre. Toward the end of this period the price per acre tended toward the lower end of the scale. On average around 16 shillings (just under £1) an acre was paid.

There is need for caution in interpreting these figures. Some of the prices were calculated (in 1846) from goods, which the Colonial Secretary, Sinclair, later stated (no doubt under much pressure from Governor Grey) were ‘in some instances estimated at a preposterously high rate, and in other cases the statements are made in such vague terms that it is impossible to ascertain what were the articles given or the prices put on them’.⁴⁰

Alan Ward has noted that the ‘price paid to Maori under the waiver purchases were generally much better than the early Crown purchases, but not uniformly so’.⁴¹ At £1 per acre, the initial March proclamation purchases were generally

36. See olc 1/1056, NA Wellington

37. These were olc 1/1116 and 1/1122, NA Wellington. Note olc 1/1126, NA Wellington, which was also dealt with under the March proclamation (see above), is not listed here.

38. These were olc 1/1078, olc 1/1094 and olc 1/1108, na Wellington

39. This calculation is based on 32 claims for which both acreage and payment value were available. Where the land was surveyed, the acreage on survey has been used to calculate the price per acre.

40. Sinclair to Grey, 12 October 1847, encl in Grey to Earl Grey, 11 November 1847, BPP, vol 6, pp 13–14. Sinclair also claimed that in at least 46 cases a portion, or the whole, of the consideration given, was in muskets, gunpowder, and so on.

41. Ward, ‘Central Auckland Lands’, p 53

5.2.2(6) Right of Pre-emption and FitzRoy's Waiver

higher than the price the Crown paid for Auckland land in the early 1840s (although FitzRoy paid Epiha and Ngati Maho £50 for 50 acres on 27 March 1844). But any comparison of prices paid by the Crown with pre-emption waiver purchasers is difficult. Turton's lists of Crown deeds often lack either the full price, the acreage, or both. His figures are not always correct. And even in those instances where both are available, and correct, considerations such as the quality of the land prevent meaningful comparisons from being made. The wide range of prices obtained under the pre-emption waiver scheme also makes more generalised statements less useful.

(6) Deeds signed

Some of the deeds of transfer under the pre-emption waiver scheme were written in Maori; others were written in English. The simplest provided a brief description of the land, the acreage, the payment, and the parties involved, witnessed and dated. More complex deeds gave surveyed co-ordinates rather than a brief description, and they included details of what was being conveyed along with the land, such as mines, trees, waterways, and ash. As will be seen below, interpreters Edward Meurant and Charles Davis were involved in drawing up deeds, explaining them, and witnessing payments.⁴²

(a) Deeds signed prior to the proclamation: Some of the deeds relating to March pre-emption waiver certificates actually pre-dated the pre-emption waiver proclamation itself.⁴³ Purchasers probably did this to avoid paying the four-shillings-an-acre fee (imposed on receipt of the certificate) before the purchase (their agreement with Maori) was ensured. But it may also indicate that they understood only too well that the waiver certificates, as FitzRoy intended, merely opened the land up to competitive bargaining, and sought to avoid that.

Meurant had a tough job fobbing off those who sought his assistance in land transactions prior to the proclamation. On 5 February 1844, he 'received several applications for land at Remuera'. The next day he 'went to Remuera and treated with the Natives (Watere [sic] Wata & Epiha) for a piece of land for Mr Graham'. And on 8 February he:

rode to Epsom in company with Mr Hart – he purchased a piece of [sic] from Watere [sic] containing 50 Acres paid a deposit of five pound[s.] Watere [sic] signed a receipt he also sold another 50 acres at the same place to Mr [?] Wood for 50 pounds Watere gave a receipt for deposit of 5 pounds[.] I wrote [sic] an agreement for the Native chief Tara of a lease of Motu Tapu to Mr Williamson and Crummer for the term of 10 years.⁴⁴

42. See Turton's *Deeds*, part ii, pp 433–518

43. These are olc 1/1050, na Wellington (the deed for which is dated 26 February 1844), 1/1074, na Wellington (Turton's deeds records this as 3 June 1840 but the file records the deed as being dated 3 June 1844), 1/1122, na Wellington (the deed for which is dated 22 May 1840), and 1/1179, na Wellington (17 February 1844, 29 April 1844, and 14 July 1845).

44. Edward Meurant, 5, 6, and 8 February 1844, diary and letters, ms-1635, ATL Wellington

The negotiation of a lease, as well as purchases, at this time, is interesting. FitzRoy had stated at his levee, in response to Ngati Whatua and Waikato chiefs, that ‘permission would as soon as possible be given for the occupation of Natives lands by Europeans upon short leases, for which they would pay a yearly rent to the native owners’.⁴⁵ But this seems to have got lost in the rush to allow direct purchasing, which most settlers probably preferred. (Williamson and Crummer later bought land at Motutapu, in April 1845, and were leaseholders over the remainder of the island, despite the island being subject to a former (deceased) purchaser’s claim.⁴⁶)

Meurant appears to have had a change of heart about his involvement in the early land purchases by late February 1844. Having returned from his trip to Waikato and Waingaroa, on 26 February, he:

went to Remuera saw Epiha and others told them they where [sic] doing wrong in selling thire [sic] land till the Govr returned and gave them a Decisive answer. I found several [sic] Pakehas here treating with the Natives for land wich [sic] I put a stop to

...

At this time FitzRoy was in Wellington, but had intimated that he would waive pre-emption on his return. On 27 February, Meurant:

attended Government in company with Wata and Kati where the oïcer administring [sic] the Govt told the Natives the impropriety of there [sic] proceedings During the Governor’s absence in selling there [sic] land . . .⁴⁷

The pressure on Meurant continued. On 4 March he recorded ‘Several [sic] pakeha’s [sic] has [sic] applied to me about purchasing from the Natives. I told them I could not allow them to sell till [sic] they are allowed to do so’.⁴⁸ He followed this up with a letter to Clarke reporting that he had just returned from Remuera, where he had ‘found natives & Europeans sill [sic] persiting [sic] in there land traïc’. He suggested a letter from Clarke to Wetera would ‘have the desired eäect of putting a stop to it at one [sic]’.⁴⁹

Perhaps these settlers (and Maori) had taken their cue from the encouragement given in the *Southern Cross*. There were other cases of pre-proclamation land negotiations. Perhaps some purchases were negotiated but not formalised into deeds until FitzRoy’s proclamation.

FitzRoy returned to Auckland from Wellington on 6 March, and on 16 March, Meurant ‘received a letter from Epiha requesting me I would speak to His Excellency and till [sic] him the Desire of the natives to be allowed to sell there

45. ‘Levee’, *Southern Cross*, 30 December 1843, vol 1, no 37

46. For more details on this complicated claim see Paul Monin, ‘The Islands Lying Between Slipper Island in the South-East, Great Barrier Island in the North and Tiritiri-Matangi in the North-West’, report commissioned by the Waitangi Tribunal, December 1996 (Wai 406 rod, doc c7), pp 36–38

47. Edward Meurant, 26 and 27 February 1844, diary and letters, ms–1635, ATL Wellington

48. Edward Meurant, 4 March 1844, diary and letters, ms–1635, ATL Wellington

49. Meurant to Clarke, 4 March 1844, diary and letters, ms–1635, p 89, ATL Wellington

5.2.2(6) Right of Pre-emption and FitzRoy's Waiver

[sic] land'. Auckland Maori were, at this time, preparing for what Meurant describes as a 'native feast'. They had been alarmed at the delays in the Government's payment of land bought by it at 'Ramarama' and had frequently called upon Meurant to accompany them to make complaints about the delays. One of the delays had been prolonged because of FitzRoy's absence. Two days later, Meurant 'attended Government house in company with Wiremu Wetere and others' and on 19 March, he did the same 'in company with Epiha and other Native Chiefs'.⁵⁰ Perhaps he, or Epiha, passed on the crux of Epiha's letter at that time, because FitzRoy promised Maori, on 19 March, that he would make a public announcement on the matter.⁵¹

(b) Deeds signed prior to making application for a waiver certificate: Many applicants acknowledged that their purchases had taken place prior to applying for a pre-emption waiver certificate, despite the waiver provisions' requirement that the applicant acquire a certificate prior to purchase.⁵² In other cases, prior purchasing had obviously occurred. Later (following both proclamations, and presumably including them both), Sinclair claimed that in '50 cases' purchases were made prior to the issue of the pre-emption waiver certificates.⁵³

The pre-proclamation and pre-waiver certificate land transactions had the potential to negate competition amongst purchasers. FitzRoy had obviously intended Maori to benefit from competition based on his speech on Government House lawns. He made this even clearer in December 1844 (see below).⁵⁴

However, while public notice and auctioning of parcels of land would probably have been more advantageous to Maori, it is not clear that these 'non-complying' land transactors actually negated competition. Maori entering land deals still had options. Meurant recorded on 25 April 1844, that '[t]he Stone mason and Wetere disagreed [sic] about there [sic] agreement. Wetere returned him the Money £2 0s 0d he gave Wetere as a Deposit'. Two days later, Meurant 'went to Remuera in company with Mr Langford and Gardner to purchase some land. Could not agree.' On 30 April, Meurant noted 'Mr Henry requested I would assist him in agreeing [sic] with some of the Ngate Watua [sic] in paying them for some land this evening'.⁵⁵

On 20 May 1844, Meurant noted that he had:

appointed to meet the Native chief Te Kauwau [sic] and others at Mr Giddis respecting a Peice [sic] of land sold to that Person on the South side of Manukau a

50. Edward Meurant, 16, 18, and 19 March 1844, diary and letters, ms-1635, ATL Wellington

51. 'Copy of Minutes of a Meeting of Native Chiefs . . . at Government House . . . on 26 March 1844', encl o in FitzRoy to Stanley, 15 April 1844, BPP, vol 4, p 197

52. See, for example, olc 1/1055 and olc 1/1058, NA Wellington.

53. Sinclair to Grey, 12 October 1847, encl in Grey to Earl Grey, 11 November 1847, BPP, vol 6, [1002], pp 13-14

54. *New Zealand Gazette*, 7 December 1844, notice in encl in FitzRoy to Stanley, 14 October 1844, BPP, vol 4, p 402-403

55. Edward Meurant, 25, 27, and 30 April 1844, diary and letters, ms-1635, ATL Wellington

Mountain called Mangere. We could not agree about the price of the cow from Mr Giddis . . .

The next day he:

went to Tamaki to Mr Giddis in company with Himerly [sic] the Native requested me to interpret between Te Kauwau [sic] and Mr Giddis respecting the payment of Mangere. The Native (Te Kauwau [sic]) agreed to receive Two brood Mares and one entire horse . . .

Later that month, on 31 May 1844, Meurant:

went to Porewa [sic] Mr Giddis and Hemleys when I met with the Kauwau [sic] and other chiefs of the Ngatiwatus [sic] to chose [sic] the 3 Horses payment for Mangere. The chief Kauwau [sic] felt dissatisâed as saying Mr Hemley agreed to allow him to chose [sic] his Horses and would only take two of the three that was left for him. I drew out a receipt for Te Kauwau [sic] for the two Horses. It was agreed that Mr Geddis would deliver the third Horse on Monday next.⁵⁶

These extracts suggest that if Maori were not happy about a transaction, they could pull out and deal with another purchaser, or demand that their ‘price’ be met.

(c) Deeds signed after the proclamation: Most of the deeds relating to land for which March pre-emption waiver certiâcates were sought, like the certiâcates themselves, were signed in the ârst three months following the waiver proclamation. A fourth of these included subsequent payments. Most of these subsequent payments were made late in 1844. (One subsequent payment was made in March 1845 and another in September 1846.)

From July 1844 to March 1845, one to three deeds were signed per month, for land for which March proclamation waiver certiâcates had been given. The occasional deed, obtained under the March proclamation, was signed between the latter date and September 1846.

5.3 The Protector’s Role

5.3.1 Clarke’s assessment of the legitimate owners

(1) The norm

Once the pre-emption waiver applications were received by the Colonial Secretary, Sinclair, they were referred to Clarke. In most instances, Clarke noted that he ‘knew of no objection to’, or ‘knew of nothing to prevent’, the purchase.⁵⁷ His comment

56. Edward Meurant, 20, 21, and 31 May 1844, diary and letters, ms-1635, ATL Wellington. However, one claimant, Chisholm, is said to have threatened chiefs William Jowett and Ruinga for not consenting to sell Putiki (on Waiheke), the former incident in front of Davis. The sale (by chiefs of another tribe) still went through (see below).

57. See, for example, olc 1/1052, 1/1054, 1/1059, 1/1063, 1/1074, 1/1079, NA Wellington.

5.3.1(1) Right of Pre-emption and FitzRoy's Waiver

was usually given either the day or a few days after the application's receipt by Sinclair. The timing, and the wording Clarke used, suggests (initially, at least) that he did not necessarily investigate the claims, but relied instead on his own personal knowledge (including contemporary boundary agreements, such as that in central Auckland).⁵⁸ No investigations of customary rightholding appear to have occurred.

(a) Clarke's background: Clarke's personal knowledge was considered by Governor Hobson to be relatively substantial. As a senior Church Missionary Society catechist, Clarke had worked in the Bay of Islands since 1824.⁵⁹ Hobson chose him to be the official Protector of Aborigines in April 1840 because he believed the Protector's duties bore a 'close affinity' to Clarke's existing work on behalf of the Church Missionary Society. Clarke's long residence in New Zealand (in comparison to other non-Maori), his respectability as part of the missionary clique, and what Hobson also saw as Clarke's 'intimate acquaintance with the Customs and Language of the natives', made him, in Hobson's view, 'eminently qualified' for the position.⁶⁰

Clarke himself saw his new position as an extension of his mission work 'upon a more extensive and public scale'.⁶¹ He believed mutual good feeling between Maori and Pakeha, and regaining 'confidence', was the key to the prosperity of the colony.⁶² In 1845, Clarke advised one of his protectors, Donald McLean, not to get mixed up in land purchases, but to assist Maori by giving them good advice.⁶³ McLean was to show Maori 'how much they injure themselves by becoming unreasonable' in making 'exorbitant' demands in the price they sought for their lands, and to 'only assist them in their just and equitable affairs'.⁶⁴

Few have subsequently agreed with Hobson's inflated view of Clarke.⁶⁵ But FitzRoy, whose political and religious philosophies were akin to Clarke's, rated him particularly highly. In a private letter, FitzRoy enthused:

A more discreet – judicious – and right minded person I have not met with in New Zealand. . . . No man understands the Natives – their conduct – their character and their country better than Mr Clarke – the Chief Protector – a man of extreme sagacity – prudence and discretion –⁶⁶

FitzRoy's opinion did not go unnoticed by Clarke. He noted to Coates that he had:

58. Clarke may also, like Meurant, have been in constant contact with these key chiefs. Auckland was a small settlement and Meurant's diaries show just how much daily contact could occur.

59. Gibbons, fol 7

60. Hobson to Clarke, 4 April 1840, g36/1, p 61, NA Wellington; Hobson to Gipps, 6 April 1840, g36/1, pp 60–61, NA Wellington

61. Clarke to Mary Clarke, 7 August 1840, George Clarke, papers, ms-papers-0250, folder 12, item 38, ATL Wellington

62. Clarke to McLean, 4 December 1844, Sir Donald McLean papers, ms-copy-micro-535, reel 045, folder 215, ATL Wellington

63. Clarke to McLean, 11 March 1845, Sir Donald McLean papers, ms-copy-micro-535, reel 045, folder 215, ATL Wellington

64. Ibid; Clarke to McLean, 6 January 1845, Sir Donald McLean papers, ms-copy-micro-535, reel 045, folder 215, ATL Wellington

65. Gibbons, fol 9

a substantial friend in our Governor Who if he had not unbounded confidence in me would have been as prejudiced and abstracted by unprincipled men that I could scarcely have kept my appointment.⁶⁷

The *New Zealand Spectator and Cook's Straits Guardian* even claimed FitzRoy to have professed, in April 1845, that if he were to select whether he would 'lose the services of five of the most efficient officers under the Government, or dispense with the advice and assistance of the Chief Protector', he would prefer losing the former!⁶⁸

(b) *FitzRoy's reliance on Clarke*: It is not surprising then that FitzRoy's proclamation specified that he would consult Clarke before waiving the right of pre-emption 'in any case'. As Gibbons notes, the success of the proclamations – in practice – was in large part dependent on the quality of Clarke's advice on the waiver applications, and the extent to which he succeeded in affording a real protection to Maori interests.⁶⁹ Yet FitzRoy's consent, according to the proclamation, was to be given as he judged best for the public welfare, fully considering the 'nature of the locality; the state of the neighbouring and resident natives; their abundance or deficiency of land; [and] their disposition towards Europeans, and towards Her Majesty's Government'.⁷⁰ And according to his routine, any further reference he thought necessary was to be made before his decision. Despite the implication in these provisions that FitzRoy may conduct an independent assessment, he appears instead to have relied heavily on Clarke's recommendations. The considerations FitzRoy set out in his March proclamation were not ones which could readily be determined by someone who had (bar a brief visit in 1835) set foot in the country only three months earlier. So where Clarke noted that he 'knew of no objection to', or 'knew of nothing to prevent', a purchase, FitzRoy's consent to the waiver quickly followed.

The Muriwhenua Tribunal has interpreted the instructions of the British Government to indicate that it had in mind protection for Maori by an audit of the Government's policies and practices through the appointment of an independent Protector of Aborigines.⁷¹ The necessity of the Protector's independence in carrying out his role was recognized by Clarke when he pointed out the incompatibility of his initial two roles as Crown land purchase agent and Protector

66. FitzRoy to Coates, 29 March 1845, Willoughby Shortland, Government letters, ms-0052, item 43, Hocken Library, Dunedin. FitzRoy repeated these views in 1846, stating that 'there is no man in New Zealand whose opinion – with reference to questions affecting the natives, or our countrymen in their relations with the natives of that country – is sounder than Mr Clarke's' (FitzRoy to Venn, 4 November 1846, Robert FitzRoy, papers, qms-0794, ATL Wellington).

67. Clarke to Coates, 23 May 1845, George Clarke, letters and journals, qms-0464, ATL Wellington

68. *New Zealand Spectator and Cook's Straits Guardian*, 19 April 1845, in Gibbons, fol 9

69. Gibbons, fols 45–46

70. There is no indication as to what either FitzRoy or Clarke considered an 'abundance' or a 'deficiency' of land, although, in late 1843, Clarke suggested to Sinclair that 10,000 acres for each hapu of Ngapuhi would leave only a small block of desirable land eligible for disposal to the Government (Clarke to Colonial Secretary, 1 November 1843, encl in Shortland to Stanley, 30 October 1843, in Report from the Select Committee on New Zealand, 29 July 1844, BPP, vol 2, app 9, no 4, p 360).

71. Waitangi Tribunal, *The Muriwhenua Land Report 1997*, Wellington, GP Publications, 1997, pp 389–390

5.3.1(1) Right of Pre-emption and FitzRoy's Waiver

of Aborigines. Yet, in the pre-emption waiver experiment, although without the same clear conflict of interest (but still assisting the process of colonisation), Clarke's role was again confused. FitzRoy's complete reliance on Clarke meant that the Protector was not an independent assessor of Government actions, but an integral part of that Government action. The Tribunal's prior query of 'who would supervise the State?', although made in light of the clear conflict of interest between augmenting State revenues and protecting Maori interests, may still be at issue.⁷²

There is some indication in FitzRoy's 'routine' that he did not necessarily expect Clarke would conduct and record an investigation into customary rights either, but would instead rely on his own personal knowledge. The 'routine' stipulated that Clarke's opinion was to be noted on the letter of application for a pre-emption waiver certificate. This implies that FitzRoy intended Clarke's comment to be no more than the brief note or phrase it generally was. He does not appear to have intended separate reports of Clarke's enquiries to be filed.

Clarke did not concern himself with ensuring that the boundaries of the area to be sold were clearly established, or that the Maori vendors 'knew with reasonable certainty' the area they were being asked to sell (as the Ngai Tahu Tribunal thought necessary in ensuring Maori wished to sell).⁷³ Again, FitzRoy appears not to have required this of Clarke. In January 1844, before leaving for Wellington, FitzRoy told his Executive Council that surveys should be replaced with written boundary descriptions and 'eye sketches' so as to curtail 'the long protracted subject of land claims'.⁷⁴ And, in line with this decision, in his March proclamation, he required applicants to provide only boundary descriptions, for 'a certain number of acres of land at or immediately adjoining a place distinctly specified', to be done 'as accurately as may be practicable'. As noted above, his proclamation did not require surveys until the Crown grant was to be prepared.

As a result, the land descriptions which appear in the applications, and are repeated in the waiver certificates 'using the words of the applicant', were descriptive and often 'personal', in the sense that they identified land not only by key roads and geographical features, but by whose land it was bounded. For example, one of George Hart's claims at Remuera was described as nine acres at Epsom, bounded on the north by Hart's land, south by Hart, west by Wood, and east by Robinson.⁷⁵ And an area sought by Edward Other was described as 50 acres south of, and adjacent to, a swamp; lying directly between Mt Hobson and One Tree Hill; and about half a mile to the east of Epsom Road.⁷⁶ Some purchases were surveyed, and some may have been confined enough to be reasonably accurately identified, but most descriptions did not lead to anything other than a general indication of the boundaries of a purchase.

72. *Muriwhenua Land Report*, pp 117-118

73. Waitangi Tribunal, *The Ngai Tahu Report 1991* (the *Ngai Tahu Report*), 3 vols, Wellington, Brooker and Friend Ltd, 1991, pp 240-241

74. Minutes of Executive Council, 8 January 1844, BPP, vol 4, p 312; Minutes of Legislative Council, 9 January 1844, BPP, vol 4, p 246

75. olc 1/1065, NA Wellington

76. olc 1/1074, NA Wellington

But again Meurant's diaries are helpful in providing further information. They suggest that at least some Maori vendors may have walked the boundaries of the land areas concerned. Meurant recorded that he was at times called to point out boundaries to surveyors, or to get Maori to point out the boundaries for the purchaser, or to go over the boundaries with both parties.⁷⁷ On 8 April 1844, Meurant recorded:

This morning went to Remuera and met a Native (Epera [Epiha?]) who requested me to assist him to point out the Pakeha's boundaries as they had assembled on the Ground for that purpose. I did so, I was abused by some low character of woman saying I had stolen her land . . .⁷⁸

Obviously not everyone agreed with his boundary interpretations.

(2) Exceptions to the norm

There were few exceptions to Clarke's brief approvals. Most of the known exceptions to his approvals were not outright refusals to approve a waiver as such. The files compiled on the pre-emption waiver purchases are based on those applications which received a certificate, so refusals to approve a waiver outright would not appear in these records.⁷⁹ In most cases, the exceptions were requirements to obtain a further consent (or consents) from certain chiefs before approval would be given. In other cases, clarifications of existing settler rights were required. For example, McIntosh's claim to Pakatoa Island was problematic because partial payments for Pakatoa and Pakihi had been made by Captain Herd in 1825; and it was thought that a pre-emption waiver for this island, and neighbouring islands, may already have been granted to Brown and Campbell.⁸⁰ These two types of exceptions are consistent with Clarke's philosophy, outlined above, that prosperity could only result through mutual good feeling and 'confidence'.⁸¹ It is also consistent with his later claim that his main concern with the March waiver proclamation was that the waiver provisions, despite preventing extensive purchases, did not adequately deal with disputed land (see below).⁸²

Clarke's purpose in requiring applicants to obtain further consents appears to have been to ensure that the key chiefs he knew of with rights to a particular area of land were consulted. He also seems to have accepted that legitimate sales could be

77. See, for example, Edward Meurant, 14, 20, 24, and 30 May 1844, diary and letters, ms-1635, ATL Wellington

78. Edward Meurant, 8 April 1844, diary and letters, 1842-47, ms-1635, ATL Wellington

79. One instance I know of to date, which suggests that waiver certificates were refused in some cases – Meurant, who purchased land at the foot of Mt Hobson from Epiha on 9 April 1844, applied to FitzRoy for a waiver certificate on 28 May 1844, but was not issued with one. It may be that Meurant's case was a singular one, perhaps because of his position as an interpreter. Meurant refers also to making an after-payment for land he purchased in 1838 (see his diary entry for 21 May 1844), and again this purchase does not appear on the old land claims records.

80. olc 1/1116, na Wellington; see also olc 1/1082, 1/1117, 1/1126, na Wellington

81. Clarke to McLean, 11 March 1845, Sir Donald McLean papers, ms-copy-micro-535, reel 045, folder 215, ATL Wellington

82. Clarke to Colonial Secretary, 31 July 1844, encl 4 in FitzRoy to Stanley, 18 December 1844, BPP, vol 4, p 458

5.3.1(2) Right of Pre-emption and FitzRoy's Waiver

made by individual chiefs, without any need for wider consultation with the iwi as a whole.⁸³ In his rare comments, he referred applicants specifically to the particular chiefs whom he believed should be consulted. For example, in James Dilworth's application for a waiver over some Remuera land (east of Mt Hobson), intended to be purchased from Kati, Clarke required Dilworth to obtain Kawau's 'consent' as well before he would approve the application for a waiver certificate. FitzRoy's reaction to Clarke's minute on Dilworth's application, was: '[i]nform Mr Dilworth that he should procure the consent of Kawau (or Tawa)'. The next day there was a letter from Dilworth informing the Governor that Kawau had consented to the purchase.⁸⁴

Clarke also initiated contemporary tribal 'agreements' as to ownership, such as the three-way division of central Auckland land assisted by Meurant. In April 1844, he sent McLean to Waiheke (before applications for certificates were sought, or pre-emption waiver purchases were made, on the island) to visit Te Ruinga and the chiefs of the Ngati Paoa 'to assist in adjusting their claims on Waiheke'. McLean had first called on the relatives of 'William Jowett' (the chief being absent), and informed them of his instructions. They told him that 'they had no other claim' than that which came through Te Ruinga, and that 'any time he (Te Ruinga) thought it to waive his claims on the Island they would relinquish theirs'. McLean then proceeded to Te Ruinga's residence at Waiheke, and reported:

while there he [Te Ruinga] decided on meeting the Ngatimaru and Patukirikiri Tribes at his Station on the Thames Where they held their consultation and it was there decided and unanimously agreed that a portion of the Island of Waiheke remain in the possession of the Ngatipaoas another portion to revert to the [N]gatimaru's and a third portion of the Island be considered the property of the Patukirikiris.⁸⁵

McLean enclosed 'the agreements entered into by the chiefs of each tribe with a definition of their respective boundaries'.⁸⁶ But by November 1844, Clarke believed there were too many disputes about Waiheke to allow a sale by one tribe only, at least initially (see below).⁸⁷ Such boundary divisions appear to have been made between those on the ground at the time, and initiated informally by Protectorate employees. No wider notice, or actual, or thorough, investigation of customary rightholding appears to have occurred.

Clarke may have thought that the preliminary nature of his involvement (prior to the transactions occurring, and prior to the waiver certificate holder being given a Crown grant) did not warrant more than this cursory type of assessment by him. But even if Clarke ignored the pre-application land transactions going on around him, or had faith that the land they involved may not later be granted, and saw his role merely as a preliminary step, his approach was still very limited for someone who

83. Matson also took this approach (see ch 7).

84. olc 1/1056, NA Wellington

85. McLean to Clarke, 11 May 1844, Sir Donald McLean papers, ms-copy-micro-535, reel 2, folders 1-3a, ATL Wellington

86. Ibid

87. See ch 6

– as he did – professed to be concerned that the waiver purchases did not adequately deal with the issue of disputed lands. The considerations FitzRoy was to have taken into account, according to the proclamation, and according to FitzRoy’s explanation of the proclamation to the chiefs on Government House lawns – particularly any assessment of the ‘state of the neighbouring and resident natives’, the ‘abundance or deãciency’ of land, or any assessment of land that Maori could ‘really spare’ – could not have been properly assessed within this approach.

But again, contemporary circumstances need to be taken into account. Maori and Pakeha alike had been aãected by the lack of the colonial administration’s funds to support the establishment of the colony. The economy had ground to a halt. Both Maori and settlers felt frustrated by the inertia Crown pre-emption created in the land market. Clarke and FitzRoy probably saw the broad-brush but quick assessment as necessary in these circumstances. They both shared a perception, alongside Shortland (and perhaps Clarke is the central ågure in this view), that unless they acted immediately, rebellion may soon result. Clarke later wrote that FitzRoy’s immediate measures ‘succeeded by one act of justice in silencing in some measure the clamours of the disaãected’. He continued:

By restoring to the Chiefs the unfettered right of disposing of their own Lands as they pleased, the Late Governor rendered nugatory many of the attempts which were made to augment the number and strengthen the hands of those who were too deeply imbued with the feelings of revolt to be reassured by any concessions; and Who were determined to rebel; and by thus demonstrating to the wavering Chiefs the disinterested intentions of HM Government he secured not only the Allegiance but the assistance of those Who if they had taken part with the malcontents, would have rendered the insurrection still more formidable but whose aid has saved the Colony.⁸⁸

Also, because FitzRoy’s administration, including Clarke’s department, was inadequately ånanced, Clarke was restricted in his ability to ensure that (time and personnel intensive) investigations into customary title took place. These two factors may well have aãected the depth of Clarke’s and FitzRoy’s consideration of each case.

Clarke did not deal personally with every March pre-emption waiver application. Where he was unable to assess an application himself, or hand it on to a District Protector, he sought a local person from the area concerned to assess it on his behalf. He asked Major Bridge to inquire whether the land purchased at the Bay of Islands under the March waiver proclamation was ‘fairly and fully purchased from the natives’.⁸⁹ This appears to be rather removed from the issue of determining that the purchasers had received the consent of the key chiefs of the area concerned. It appears to focus on the ‘fair and equal’ requirement of Crown purchases in Normanby’s instructions. It also indicates that the purchase had already taken

88. Clarke to the Colonial Secretary, 30 March 1846, George Clarke, letters and journals, qms-0468, item 26, ATL Wellington

89. olc 1/1078, NA Wellington

5.3.2 Right of Pre-emption and Fitzroy's Waiver

place, and that he knew it. This was not in accordance with the proclamation conditions either.

5.3.2 Reserves

Ensuring that there would be enough land left over for Maori to live on, both at the time and in the future, appears to have been FitzRoy's key concern. He repeatedly stressed that his role was to assess whether Maori could 'really spare' the land – at least in theory.

Clarke's approach to 'reserves' (see above) under the pre-emption waiver scheme appears to have been broad-brush also. He sought to exempt key blocks of land from purchase prior to his consideration of individual waiver applications. The reservation from purchase, in FitzRoy's March proclamation, of an area of land between Tamaki Road (Remuera Road) and 'the sea to the northward', was evidently made on Clarke's suggestion, prior to the Executive Council meeting discussing the proclamation and, of course, prior to his consideration of each individual waiver application. No doubt he did so in expectation that the majority of applications under the March proclamation would be for land situated in Auckland. There is some indication that Clarke took this type of approach in other areas too (see below).⁹⁰

FitzRoy had also made provisions in the proclamation reserving from purchase or granting any pa, urupa, or the land about them, or any land required by Maori for their present use. Yet despite these provisions, there appears to have been no actual inquiry into whether the land sought contained pa or urupa, or was required by Maori for their present use. There is no indication that Clarke considered these factors in his assessments of the individual March pre-emption waiver applications. He appears to have left the question of reserves as a separate and former inquiry (such as the above Auckland 'reserved' area between Tamaki Road and the sea, and the divisions of land ownership were), independent from his day-to-day role in approving pre-emption waiver certificates. The proclamation provisions regarding pa, urupa, and land for the present use of Maori, may have been intended more as a warning to Europeans that these areas were exempt, and that purchases of them would be at the buyer's own risk. It was apparently also left to the chiefs to ensure these areas were untouched, as Clarke's later instructions to Edward Shortland regarding Thames 'reserves', and his later dealings regarding land required for the present use of Maori, implies (see below).⁹¹

FitzRoy's provision to reserve a 'tenth' of the land 'of fair average value, as to position and quality', to be conveyed to the Queen 'for public purposes, especially the future benefit of the aborigines', has been discussed above. Discussion of what happened to the tenths will continue below. Clarke did not ascertain which areas might be suitable for establishing the tenths 'of fair average value, as to position and quality'. Identification of suitable tenths would only have been required later,

90. See ch 6

91. Ibid

once the purchase was complete and surveyed and nine-tenths of the land was to be granted.

Clarke's two key areas of focus appear to have been the identification of key ownership (in prior agreements or in his day to day application assessments) and the setting aside of areas to be reserved from purchase (in prior arrangements). These two key considerations may have been a reflection of the duties he inherited after December 1842 (in which he was to report on whether Maori were disposed to sell any land recommended by the Surveyor General for purchase, and what reserves he considered it necessary to be made for their benefit). Clarke's approach in the pre-emption waiver purchases appears to have been a progression from his role in Crown purchases.

5.3.3 Price paid to Maori

There was no inquiry by Clarke into the price to be paid to Maori vendors for their lands. He was not required by FitzRoy's proclamation to assess this. FitzRoy had made this point clear in his speech on Government House lawns (telling Maori that they should sell for the best price, not simply the first offer). The Governor's subsequent proposed form for waiver applicants (see below), also omitted any reference to stipulating what price would be paid.⁹² This omission did away with Normanby's (Crown purchase) requirement that the Crown ensure purchases be 'fair and equal' – a requirement which the colonial land and emigration commissioners believed would continue, should pre-emption be waived.⁹³ It was also contrary to the Treaty negotiators' promises of a 'fair equivalent' or 'juster valuation' in land purchasing.

There is some indication that the price paid to Maori for their lands was a far less important consideration to Clarke than ensuring, to the best of his knowledge, that settlers negotiated with the 'correct' individuals and that adequate 'reserves' had been made. Clarke believed Maori 'injured' themselves by making exorbitant demands for payment for their land.⁹⁴ He had also previously stated, in 1841, that the 'sudden absence' to which Maori had been raised had had 'an unfriendly influence on their moral improvement'.⁹⁵ At the heart of these views was the belief he shared with other missionaries, the early governors and Colonial Office bureaucrats, that the most important thing Maori gained through land sales was a position amongst British settlers in a new 'civilized' and Christian community.

92. *New Zealand Gazette*, 7 December 1844, notice in encl 1 in FitzRoy to Stanley, 14 October 1844, BPP, vol 4, p 403

93. See ch 4

94. Clarke to McLean, 11 March 1845, Sir Donald McLean papers, ms-copy-micro-535, reel 045, folder 215, ATL Wellington

95. Report from the Select Committee on New Zealand, 29 July 1844, BPP, vol 2, p 8

5.3.4 Other influences

(1) The tripartite division, and other Maori 'agreements'

While a sense of urgency and a lack of funds may have generally influenced Clarke's broad-brush approach to determining ownership and ensuring sufficient land was 'reserved' for Maori, other considerations would have played a part in his approach regarding Auckland land. The agreement between Ngati Whatua, Ngati Mahuta, and Ngati Maho concerning the land around Remuera and One Tree Hill, made with FitzRoy's obvious encouragement, and at FitzRoy's or Clarke's initiation, was one. There was a great deal of cooperation between Auckland Maori on these sale matters generally. I have not yet come across a record of disputed ownership amongst Maori in the areas I have surveyed of Major Matson's inquiry (set up by Governor George Grey in 1846 to resolve settler claims to land purchased under FitzRoy's proclamations, discussed below). Yet, even the limited description of land use and rights in Auckland provided above indicates that the situation, based on customary rights, was far more complex than this.

Of course, Meurant's diaries present a different picture, with disputes both before and after the tripartite agreement (see above), which is worth exploring further. Other instances of rights and boundary issues within and between iwi are also evident in his accounts. For example, on 18 May 1844, Meurant recorded:

[t]he Native chief Te Tawa of Ngati Watua's [sic] and others requested me to call on them on Monday next to assist them in a dispute about a piece of land sold to a Pakeha named Thomas Henery [sic] by te [sic] Mahia [Mania?] and Wiremu Hopihona [Ngati Whatua] close to Maungakiekie . . .⁹⁶

And on 29 May 1844, Meurant recorded that 'Te Awarahi, Wetere[,] [Ngati Maho] Te Reweti [Ngati Whatua] and others requested that [the] Governor would interfere [sic] in a dispute about claim on land'.⁹⁷

But to balance that, there are instances where Maori affiliating with a differing tribe from the vendor or vendors acted as a witness (in Matson's inquiry) in support of the transaction. For example Te Keene of Ngati Whatua was a witness in support of Dilworth's purchase of Remuera land from Kati (of Ngati Mahuta).⁹⁸ And Meurant's diary entries also show that agreements, concessions, or support within and between iwi were not uncommon. On 20 May 1844, Meurant:

went to Orake [sic] saw the Kauwau [sic] spoke to him respecting the disputed [sic] land at Maungakiekie sold to Mr Henry[.] Te Kauwau [sic] said he would allow te [sic] Maku to sell it and so agreed [sic] to return the deposit or give land in exchange . . .

96. This looks like olc 1/1081, NA Wellington

97. Edward Meurant, 18, 23, and 29 May 1844, diary and letters, ms-1635, ATL Wellington

98. olc 1/1056, NA Wellington

On 21 May, Meurant ‘spoke to Te Kauwau [sic] about his claim on the peice [sic] of land claimed by Wetere oposit [sic] Bevereges [sic] gate. He said he would give it up to Wetere’.⁹⁹

Could Clarke rightly rely on this contemporary divisional agreement rather than customary rights? If he could, perhaps his approach was more appropriate than it first seemed. The relatively recent history of warfare and desertion on the isthmus, for example, may have influenced the chiefs’ attitude toward land rights in the area. But even if this were so, the manner in which the agreement was carried out by the colonial administration – its relatively informal initiation, with no apparent public notice, made between those who happened to be on the ground at the time – makes it difficult to consider it an adequate basis for a reliable agreement.

(2) The interpreters’ role

Clarke may also have relied in some part on the interpreters who assisted Maori and Pakeha in the pre-emption waiver land transactions. As noted above, at least two of these interpreters, Edward Meurant and Charles Davis, appear to have been on the Protectorate payroll at the time. They were not protectors. But even if they did not act in any way to protect Maori interests, they may have still have kept Clarke informed about what was happening; although there is no indication of this in Meurant’s diaries. Clarke may still have gained some sense of security or comfort (whether warranted or not), or made assumptions about the fairness of transactions, as a result of an interpreter’s presence. Davis indicated that Clarke had asked him to watch out for Maori interests. But it appears doubtful from their comments (and lack of comment) that they had instructions from Clarke on how they should protect Maori interests.

Meurant later explained his involvement in the pre-emption waiver purchases:

When the sales took place under the ten-shilling and penny-an-acre proclamations, I acted as agent and interpreter for several Europeans who purchased land from the natives. I have made out deeds for several parties while in the employment of Her Majesty’s Government. I received presents from the several parties for the services I rendered them. I made no regular charge, but £1 was generally given for drawing up a deed. Messrs Duncan, Forsaith, and Davis, Government interpreters, were employed in the like manner. All the officers employed in the Chief Protector’s Department had permission to assist in negotiating these purchases, as an instance of which, Mr Clarke, senior, and myself assisted Messrs Williamson and Crummer in the purchase of the island of ‘Motutafur.’ I was employed in the manner I have alluded to during the year 1844, and nearly all the year 1845.¹⁰⁰

Meurant’s involvement in the purchases was not in fact, as he stated, limited to acting as an agent and interpreter for Pakeha. Maori too sought his services. Meurant had been acting as a go-between for Maori and Pakeha, and for Maori and the colonial administration, for some time. Throughout April and May 1844, his

99. Edward Meurant, 20 and 21 May 1844, diary and letters, ms-1635, ATL Wellington

100. Statement of E Meurant, encl in Grey to Earl Grey, 15 November 1847, BPP, vol 6, [1002], p 18

5.3.4(2) Right of Pre-emption and FitzRoy's Waiver

diaries contain constant references to being asked by Maori to assist them in pre-emption waiver land sales and to assisting those who asked.¹⁰¹ On 9 April 1844, Te Hira asked him to assist in selling some of his land to a Pakeha. On 17 April, Te Hira again 'requested I would interpret for him with some Pakehas', and 'The Ngati Paowas [sic] wished me to interpret for them'. On 30 April, Meurant 'went to Town to assist the Native Chief Tautari [Kawau's nephew] in arangeing [sic] with the sale of a piece of land. He sold to Thomas Henery [sic]'. On 2 May, he interpreted for Wetere and then for Te Reweti and others twice that day and twice again the following day. On 8 May, he assisted Katipa of Ngatiteata to pay land in lieu of a debt. On 16 May, he interpreted for Kati and on 22 May, he assisted Totara in selling land to Henry.¹⁰² As is evident from the above extracts, Meurant did not limit his assistance to one tribal group.

Meurant also made deposits on behalf of purchasers and witnessed the receipt of payments in cash or kind. On 1 May, he '[p]aid Wetire [sic] £10 0s 0d as deposit for a Peice [sic] of land sold to Mr Dilworth and got his Receipt [sic]' and 'delivered to Epiha 20 Pairs Blankets in part Payment of som [sic] land sold to Mr Graham at Remuera at one Pound Per Acer [sic]'. On 22 May, Meurant assisted Wetere 'in receiveing [sic] the Ballance due to him by Mr Hay for the land sold to him on the South side of Mount Sant [sic] Jhon [sic]'. 'The chief Davis and others' requested that he 'assist them in receiveing [sic] payment from Mr Ring' on 25 May. He witnessed Wetere signing a deed of sale to J Gamble, the shoemaker, and translated a deed of sale from Te Katipa of Ngatiteata to Edward Foley on 27 May.¹⁰³

The records of Matson's inquiry also show that Meurant acted on behalf of Maori as well as Pakeha.¹⁰⁴ While Meurant acted as an interpreter for Maori witnesses conârming land sales at the inquiry (as did Charles Davis, see below), he also appeared as a witness himself, to conârmed that he had previously witnessed the purchases (often describing having been called upon by Maori to do so), that the Maori vendors had understood his translations of the transaction, and that the transaction was proper and complete.

For example, Meurant recalled that for Hart's purchase of land at Epsom (near Manukau Road), he was called upon by Wetere to act as an interpreter around the beginning of June 1844 (from his diaries it appears this should be early May). Meurant conârmed that the deed then before the court had Wetere's signature on it and that he (Meurant) had fully explained the agreement to Wetere and had seen a gown and a sovereign handed to Wetere who appeared 'perfectly satisâed'. Meurant noted that the reason Wetere sold to Hart was because Wood did not have

101. Meurant left Auckland to assist Commissioner Spain in Wellington in early June. He was involved in land transactions up until the day before he left. He resumed his involvement immediately on returning to Auckland in January 1845.

102. Edward Meurant, 9, 17, and 30 April and 2, 3, 8, 16, and 22 May 1844, diary and letters, ms-1635, ATL Wellington

103. Edward Meurant, 1, 22, 25, and 27 May 1844, diary and letters, ms-1635, ATL Wellington. In only one instance seen to date does Meurant appear to record payment from Maori for his services. See diary entry for 13 March 1845, in which he records that Wetere received payment from two individual Pakeha and Meurant then notes: 'Wetere paid me £1 0s 0d'. References to payment by Pakeha are equally as rare.

104. See ch 7

the money and could not pay him. He also claimed to be there when Wetere pointed out the boundaries, although Hart's witness noted that Meurant had pointed out the boundaries at the time of purchase.¹⁰⁵ In Graham's purchase of land on Tamaki Road near Mt Hobson, Meurant claimed to have been called, in 1844, by Jabez Bunting (Epiha) and Aperahama (whom Epiha claimed was merely 'a looker on' who signed only as a friend) to witness the sale and payment. He walked the boundaries with them and Graham, was present at several payments, and witnessed one deed.¹⁰⁶

Another key interpreter involved in the pre-emption waiver purchases was Charles Davis who, as noted above, was largely responsible for writing and editing copies of *Te Karere* in 1844.¹⁰⁷ Davis was appointed to the Protectorate as interpreter-clerk on 4 March 1844, three weeks before FitzRoy's March waiver proclamation. He was discharged on 30 June 1844 (probably because the colonial administration had insufficient funds to pay him), but was reappointed in March 1845 and served until the abolition of the department. Like Meurant, he 'never rose above administrative routine'.¹⁰⁸ Protector Thomas Forsaith,¹⁰⁹ who was appointed in January 1842, and stationed at Auckland, later referred to him as 'an extra clerk, not even upon the establishment'.¹¹⁰ Davis also made a statement regarding his involvement in the pre-emption waiver purchases:

I was not engaged by any parties relative to purchases of land under the ten-shilling-an-acre system. Shortly before the proclamation of the penny-an-acre system, I was discharged from the Government service. I then publicly engaged in the capacity of interpreter; my stated fee was 20s per diem, which fee included all writings, &c. Subsequently, I was taken on by Captain FitzRoy; I used then to negotiate between parties at my own residence, or elsewhere, after office hours. Compensation was then generally given in the way of presents. Some individuals gave a guinea, some half that sum; I cannot say whether any sum exceeded £3 I kept no dates, I write from memory; I received no authority to negotiate between parties purchasing lands, I acted in concert with other interpreters. I think I remember having been recommended by Mr Clarke to watch over the interests of the aborigines, as connected with these purchases. I drew my salary as Government interpreter part of the time that I was employed in making out the deeds for the several parties. I had no regular scale of charges. I acted as agent for several purchasers of land under the

105. o/c 1/1065, na Wellington

106. o/c 1/1067, na Wellington. Meurant's witnessing of the deed is difficult to marry with his diary entries. The deed was signed on 17 June 1844 according to Turton. But Meurant's entry of 29 April 1844 records 'Epiha decided in Mr G favour' (G for Graham) and later that day he 'went to Mr Grahams received £5 0s 0d for the purpose of paying Deposit to Epiha for piece of land at the foot of Remuera show [sic] to me some 4 or 5 weeks since'. On 6 February 1844, he 'went to Remuera and treated with the Natives (Watore [sic], Wata [?] & Epiha) for a piece of land for Mr Graham'.

107. See ch 4

108. Gibbons, fols 25–26

109. Thomas Forsaith was a Kaipara settler and land claimant. He had been involved in a muru (of his store at Mangwhare, present-day Dargaville) which resulted in the Crown's virtual confiscation of almost 3000 acres at Te Kopuru. He was an advocate of direct purchases.

110. Forsaith to Colonial Secretary, 3 April 1849, encl 1 in Grey to Earl Grey, 23 May 1849, BPP, vol 6 [1136], p 156; see ch 4

5.3.4(2) Right of Pre-emption and FitzRoy's Waiver

penny-an-acre proclamation. It was generally known that the Government interpreters were employed in the manner referred to. I know that Messrs Meurant and Duncan were employed in the same manner, and I think Mr Forsaith was also.¹¹¹

Governor Grey, who replaced FitzRoy in November 1845, later used Davis's and Meurant's statements to criticise the Protectorate; in particular the department's objection to reinstating pre-emption. Grey claimed, in November 1847, that:

at the time sales of land were permitted under the penny-an-acre proclamation, the officers employed by the Government in the Protectorate Department were permitted to assist in negotiating the purchases of lands from the natives, and that some of them were employed by the Europeans as agents in these transactions, not making fixed charges for their services, but receiving presents – generally, it appears, in the form of money payments. Their emoluments were thus, under this system, derived from two sources:–

1stly. From their regular and recognised salary and allowances as Government officers.

2ndly. From the amounts they received from Europeans for acting as agents in purchasing for them tracts of land from the natives.¹¹²

Grey pointed out the incongruity of interpreters being employed simultaneously 'to watch over and protect the interests of the natives' while 'acting privately as the paid agents of Europeans'. His Native Secretary, J Jermyn Symonds, added that reinstating pre-emption had thrown many of these land agents out of employment and ended 'the means of increasing the emoluments of the interpreters' resulting in 'much dissatisfaction among the parties interested'.¹¹³

There is some indication that Meurant's dual role may have caused some disturbance in the colonial administration at the time. This was despite his claim (above) that all Protectorate officers had permission to assist in negotiating the purchases, and Davis's claim (also above) that it was generally known that Government interpreters were so employed. On 22 April 1844, Meurant recorded: 'I received a letter from the C Seurety [Colonial Secretary?] requesting me to account for my acting as Native land Agent'.¹¹⁴ He then recorded, on 4 May 1844, that he 'went to Town spoke to . . . Mr Clarke the chief Protector of Aborigines [sic] respecting my name being omit[t]ed in his abstracts. He promised to ar[r]ange it for me'.¹¹⁵ It is difficult to tell whether this meant Meurant's name was omitted from the pay abstracts and he sought to have this put straight, or whether his name

111. Statement of C C [sic] Davis, encl in Grey to Earl Grey, 15 November 1847, BPP, vol 6, [1002], p 17

112. Grey to Earl Grey, 15 November 1847, BPP, vol 6, [1002], p 17. This is rather ironic, considering Clarke's former concern about his simultaneous roles as land purchasing agent and Protector.

113. J Jermyn Symon[d]s, 15 November 1847, encl in Grey to Earl Grey, 15 November 1847, BPP, vol 6, [1002], p 18

114. Edward Meurant, 22 April 1844, diary and letters, ms-1635, ATL Wellington. Two days earlier FitzRoy had asked him to prepare to travel south to join Commissioner Spain. Perhaps FitzRoy wanted to remove him from participating in the pre-emption waiver land transactions (Edward Meurant, 20 April 1844, diary and letters, ms-1635, ATL Wellington).

115. Edward Meurant, 4 May 1844, diary and letters, ms-1635, ATL Wellington

was still on the pay abstracts and he sought to have it omitted so that he could continue assisting in pre-emption waiver purchases as a private agent.

When Protector Forsaith discovered Grey's claims, he felt compelled to defend both his and the Protectorate's honour. He claimed Grey's 15 November despatch was 'misrepresenting the conduct of the officers of [the] Protectorate Department' and responded:

I never acted, either directly or indirectly, as agent for a private purchaser under those proclamations; nor did I ever receive fees or presents, in any shape or form whatsoever, from private individuals. The records of these claims are in [the] possession of his Excellency; and the claimants themselves, as well as the accusers, are on the spot. I challenge all or any of them to come forward and prove that I assisted as a private agent to negotiate a purchase, or received in any shape whatsoever a fee or reward for so doing; and I am bold to assert the same for my colleagues in office at the time. I am confident that none of the Protectors of Aborigines are open to censure on this account.

It is true that the Protectors were sometimes called upon to interfere between purchasers and natives, but it was invariably in pursuance of the orders of Government, on behalf of the natives, and in discharge of their legitimate duty. His Excellency has taken up the statements of Messrs. Davis and Meurant – doubtless true as far as they themselves are concerned – and has, inadvertently I hope, made it appear as though they were Protectors of Aborigines, which they were not, and consequently that their statements reflected upon, and were applicable to, the whole department.¹¹⁶

As noted above, Clarke's protectors were involved in assisting Maori to agree on tribal boundaries. Davis later stated that the protectors' help was given 'in disputed lands' and that in such cases they were merely performing their Government-appointed duties.¹¹⁷ Clarke had also instructed his protectors to assist in the settlement of payments. Pakihi and Karamuramu Islands, near Waiheke, were purchased by Taylor, Campbell, and Brown, from Ngati Paoa, in August 1844. FitzRoy had consented to waive pre-emption over these islands on 17 June 1844. On 21 June 1844, Clarke instructed McLean to go with Taylor to see Ngati Paoa and inform them that he was soon to commence mining on Pakihi. But as 'some of the Natives have complained that the purchase of that Island was not complete' (presumably because Maori claimed insufficient payment had been obtained) McLean was to assist them to settle the question, so that Taylor could get on with his mining in peace.¹¹⁸ Meurant's diaries indicate instances in Auckland where Clarke and FitzRoy had been sought by Maori to settle disputes arising from pre-emption waiver claims. On 23 May, he had noted that 'Wetere and Mr Langford disputed about there accounts left to Mr Clarke to decide it'. And as noted above,

116. Forsaith to Colonial Secretary, 3 April 1849, encl 1 in Grey to Earl Grey, 23 May 1849, BPP, vol 6, [1136], p 156

117. Davis to Forsaith, 31 March 1849, sub-encl 1 in encl 4 in Grey to Earl Grey, 23 May 1849, BPP, vol 6, [1136], pp 158–159

118. Clarke to McLean, 21 June 1844 and McLean to Clarke, 1 July 1844, Sir Donald McLean papers, ms-copy-micro-535, reel 2, folders 1–3a, ATL Wellington

5.3.5 Right of Pre-emption and Fitzroy's Waiver

on 29 May 1844, Meurant recorded certain chiefs of Ngati Maho and Ngati Whatua wanted FitzRoy to deal with a land dispute.¹¹⁹

Forsaith, in denying any unauthorized involvement in the pre-emption waiver purchases, added that he had never been absent from Auckland since he left Government service. He ventured to say that Governor Grey may easily have ascertained from him, if so disposed, whether the statements made were true or false. Knowing that Grey commonly used such tactics to further his ends, Forsaith's next statement was rather poignant. He surmised:

The fact of his Excellency having taken no step to test the veracity of statements affecting individual character, although it would have been most easy to do so, leads the mind irresistibly towards the conclusion that his Excellency did not wish to discover any error in these statements; and that in forwarding them to the Home Government he was prompted rather by a wish to achieve a certain purpose than by a desire to communicate nothing but the truth.¹²⁰

Forsaith claimed Davis and Meurant's statements were 'true only in a particular and limited sense'. Not only were they not protectors but, in Forsaith's view, they were not even members of the Protectorate Department, 'properly speaking'. He repeated that: 'the imputation, as far as I and the Protectors of Aborigines are concerned, is wholly unfounded and unjust'. He extracted statements from both Meurant and Davis stating that the protectors did not act in the capacity as private (fee-charging) agents in the pre-emption waiver purchases.¹²¹

5.3.5 Non-compliance with proclamation provisions

A number of the proclamation provisions were intended to be protective of Maori interests. Clarke and FitzRoy could have refused to waive pre-emption in instances where settlers failed to comply with those provisions. FitzRoy had great difficulty in getting purchasers to comply with the provision that purchasers were to have applied for a waiver certificate before they bought land from Maori. As noted above, had this procedure been followed, the land concerned may instead have been opened up to competitive bargaining. But both Clarke and FitzRoy turned a blind eye to this, in most cases, allowing waivers where this procedural point had been ignored. But FitzRoy later put his foot down, on paper at least, on this point (see below).

In each of the following cases, some blatantly stating the land had already been acquired, Clarke recorded 'no objection' to the purchases. Charles Moitt and James Dilworth had already bought land at Remuera from Wetere (Ngati Maho) before applying for waiver certificates, the latter indicating this on his application forms.¹²²

S A Wood bought land around Onehunga from Matiu two days before he applied

119. Edward Meurant, 23, 29, May 1844, diary and letters, ms-1635, ATL Wellington

120. Forsaith to Colonial Secretary, 3 April 1849, encl 1 in Grey to Earl Grey, 23 May 1849, BPP, vol 6, [1136], p 156

121. Davis to Forsaith, 31 March 1849, sub-encl 1 in encl 4 in Grey to Earl Grey, 23 May 1849, BPP, vol 6, [1136], pp 158-159; Meurant to Forsaith, 2 April 1849, sub-encl 2 in encl 4 in Grey to Earl Grey, 23 May 1849, BPP, vol 6, [1136], p 159