

CHAPTER 2

COMMISSIONERS OF NATIVE RESERVES, 1856–70

2.1 Introduction

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

Surviving source material on administration from this period is scattered. While some attempt has been made to address all areas, selected examples have been highlighted from each region to illustrate some general trends. It must be reiterated that such local reflections are not exhaustive. Again, for the present study to bear any relevance to Tribunal inquiries, further close studies of primary sources must be undertaken on a local level. For this purpose, some useful primary sources include the Maori Affairs Maori Trustee files 1/1a, Maori Affairs series 2, and the Legislative Department series, which contains some select committee findings on Maori petitions.

2.2 Origins of the Native Reserves Act 1856

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

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

2.2 Trust Administration of Maori Reserves, 1840–1913

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

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

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

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

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

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

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

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

3. Ibid, vol 2, pp 251–252

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

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

2.3 Native Reserves Act 1856

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

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

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

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

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

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

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

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

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

2.3 Trust Administration of Maori Reserves, 1840–1913

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

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

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

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

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

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

5. Refer for example to ss 8, 13

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

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

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

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

Reserves themselves carried the weight of administration.

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

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

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

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

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

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

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

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

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

7. W D McIntyre, ‘Henry Sewell’, pp 391–392

2.4 Trust Administration of Maori Reserves, 1840–1913

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

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

2.4 Local Administration, 1856–62

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

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

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

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

10. Chairman, *ibid*, p 251

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

12. Butterworth, p 11

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

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

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

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

2.4.1 Nelson

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

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

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

2.4.1 Trust Administration of Maori Reserves, 1840–1913

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

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

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

The management of the suburban sections, at Motueka and Moutere involves a different principle from that of the Town sections. In these districts Natives have always been permanently resident; consequently it may be presumed that many of these sections must have been chosen with the idea¹⁵ of providing land for the future occupation and cultivation of the resident Natives.

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

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

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

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

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

15. Ibid

16. Ibid, p 3

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

Most of these [town] sections have been let for a term of 14 years; and a few for 21 years; and some for seven years. Several of them having been let some years back, when the settlement was in a comparatively depressed state, and rents of land accordingly very low, are still subject to leases which have some years to run, at rents almost nominal. As they have however risen greatly in value, we propose with the sanction of Government, to sell these as opportunity offers, because the sums they would realize, if put out at Interest on good security, would yield a considerable¹⁷ annual revenue to the trust, to which the present rates would bear no comparison.

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

Where, by selling, they might be made more productive of Revenue, it might be as well to sell the —, as in our opinion, the Natives, with the lands we have already put them in possession of, are not likely to require any more than they will be well able to purchase in the manner above alluded to, or from other funds. And it is more desirable that after some years, when able to retain such position, they should be placed in all respects on the same footing with respect to Public Lands¹⁸ as Europeans, than that they should remain a distinct class, with distinct holdings.

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

It would be highly for the benefit of the Public, the Natives, and the Trust Fund, if the change that has been proposed could be effected with respect to those sections on New Haven Road on which the Native Hostelries stand. Many complaints are made of the nuisances caused by the Natives in these houses to residents in the neighbourhood. Their nasty mode of living, the various stenches about their habitations; occasional though perhaps slight indecencies from exposure of their persons; their cooking fires close to adjoining fences, are the subject of these complaints . . . but of course it is obvious that a much greater rent¹⁹ could at present be obtained from the Haven sections than from those by the mill.

17. Ibid, p 2

18. Ibid, p 3

19. Ibid, p 2

2.4.1 Trust Administration of Maori Reserves, 1840–1913

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

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

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

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

20. Ibid

21. Ibid, p 4

22. Ibid, p 5

23. Ibid, p 7

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

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

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

2.4.2 Taranaki

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

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

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

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

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

2.4.3 Trust Administration of Maori Reserves, 1840–1913

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

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

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

2.4.3 Otago

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

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

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

26. Ibid, p 12

27. See, for example, ‘Select Committee Report on Otago Reserves’, AJHR, 1865, f-2, p 1

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

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

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

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

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

29. *Ibid*, p 13

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

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

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

2.5 Trust Administration of Maori Reserves, 1840–1913

2.5 Individualisation and Other Provinces

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

as regards Reserves over which the Native title has not been extinguished. His Excellency is desirous of ascertaining whether in the judgement of your board any and what steps should be taken for obtaining³¹ the assent of the Natives, in order to bring the same under the operation of the Act.

It continued:

His Excellency further suggests that your attention may be directed to the advantages which would result from a Subdivision of the Native Reserves or what would still be better if practicable³² the *individualisation* of certain portions of them. [Emphasis in original.]

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

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

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

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

32. Ibid, p 97

33. ‘Report of Commissioners of Native Reserves’, 6 July 1858, AJHR, 1858, e-4, p 1

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

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

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

2.6 The Native Reserves Amendment Act 1858

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

2.6.1 Misappropriation of the Otumaikuku reserve

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

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

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

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

2.6.1 Trust Administration of Maori Reserves, 1840–1913

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

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

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

In seeking to understand the Otumaikuku appropriation, we might also examine the discretion of the individual commissioner, Robert Parris. Prior to his appointment as a Commissioner of Native Reserves in 1859, Parris occupied a range of official positions in Taranaki, including Provincial Treasurer. Like many other commissioners (and indeed unpaid provincial politicians at this time) he maintained other paid occupations. We might consider the attendant difficulties of balancing numerous responsibilities. Parris himself was a key figure in the complex picture of Maori–Pakeha interaction in Taranaki. At the outbreak of tensions over the purchase of the Waitara block in 1859 and 1860, Parris operated as an Acting Native Secretary and attempted to secure the purchase. Once the dispute over Waitara escalated into conflict, Parris immediately joined the militia as an officer, attaining the rank of captain. Somewhat surprisingly, Parris retained the commissionership of Maori reserves during his service in the conflict and afterwards. Under the Native Reserves Amendment Act 1862, he was appointed as sole Reserves Commissioner. An understanding of the individual's involvement, such as Robert³⁹ Parris in Taranaki, is crucial to attain a faithful sense of administration.

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

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

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

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

2.7 The Native Reserves Amendment Act 1862

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

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

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

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

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

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

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

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

2.8 Trust Administration of Maori Reserves, 1840–1913

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

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

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

2.8 Centralised Administration, 1862–70

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

After delays by the Native Minister and attempts to iron out the legal implications of the Act for the existing commissioners, the new amendment finally came into operation on 1 September 1863. In Nelson, this heralded swift change, as the former commissioners were replaced, not⁴³ by the Governor, but by Alexander Mackay to act on behalf of the Governor. Mackay, former Assistant Native Secretary in Nelson, was crucial in convincing the Government that a system of administration of Maori reserves was workable, given the allocation of appropriate individuals to act as regional agents of administration.⁴⁴

The administrative transition under the 1862 Act appears uneven. There was no uniform dismissal of existing commissioners and adoption of gubernatorial authority. Some, such as the Wellington commissioners, remained as administrators until ultimately replaced by George Swainson who acted as Commissioner of Reserves from 9 June 1865.⁴⁵ In the absence of formal appointments for

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

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

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

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

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

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

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

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

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

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

2.9 Local Administration, 1862–70

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

2.9.1 Wellington

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

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

46. Edward Shortland (Native Secretary) to Commissioner of Native Reserves (Whanganui), 17 November 1865, ma 4/6, p 191. No evidence could be found to substantiate this arrangement, refer G S Cooper, 'Report on Native Lands in the Province of Hawke's Bay', AJHR, 1867, a-15.

47. Some returns of reserves were received and can be located in the general letter books of Maori Affairs Department series 4, but these carry little information that can be used to analyse the efficacy of administration; Edward Shortland to Commissioners of Native Reserves, 12 August 1863, ma 4/6, p 97

48. We have limited ourselves to the published records from the commissioners themselves.

2.9.1 Trust Administration of Maori Reserves, 1840–1913

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

The importance of protecting Maori interests was emphasised:

You shall give your whole attention towards forwarding the views and interests respecting the lands of those natives who are the avowed friends of the Government and loyal subjects of the Queen. You will not, of course, manifest any inimical feeling⁵⁰ towards disaffected natives; but you will simply decline to assist them in any way.

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

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

Has the Board [of commissioners] full power of management and disposition over reserves of this class under the provisions of the 'Native Reserves Act, 1856', or does the law vest that power in⁵² the Natives, in whose names and whose benefit such reserves have been made?

The 1862 Act, as already mentioned, allowed the Governor scope to include assigned reserves under administration. This point has been overlooked by a claimant researcher for the Wellington tenths claim. Quinn argues that administration in the 1860s was characterised by confusion. He substantiates this point with evidence that Swainson dealt⁵³ with assigned (McCleverty) and unassigned tenths reserves in a similar way. Yet, in pursuing this line of argument Quinn does not account for the provision under the 1862 Act which permitted the Governor to include any reserve lands under administration, without assent.⁵⁴ The practice of administration, then, appears to adhere to legislation, though in response

49. Domett to Swainson, 11 October 1862, ma 4/5, p 213; Wai 145 rod, doc e8, p 448

50. Ibid

51. Halse (Acting Native Secretary) to Swainson, 17 October 1864, ma 4/6, p 441 (cited in Wai 145 rod, doc e8, p 449)

52. Commissioners of Native Reserves to Attorney-General, 23 June 1859, *Turton*, encl 63, p d33

53. Quinn, 'Report on Wellington Tenths Reserve Lands' (Wai 145 rod, doc e3), p 16

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

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

Reserve administration finances did not greatly benefit Maori in this period. Revenue generated by reserves was swallowed by the costs of administration. In each annual return, the revenue generated was always matched or surpassed by accrued expenditure. As the total amount of accrued revenue increased, so too did the disparity between income and expenditure. The first published return for Wellington was for the period of October 1863 to September 1864. The stated sources of revenue in this period included rent due on leased reserves (all European lessees), as well as Crown grant and purchase fees. The total figure stood at £988.⁵⁵ Commissioners were paid £6 5s on four separate occasions from 1863 to 1864. A comparison with the later 1864 to 1867 balance sheet reveals a steady increase in the number of reserves and total income. The total amount of funds generated was £3291.⁵⁶ Revenue was used to refund loans on equipment, pay labour and survey expenses, and maintain hostels, as well as pay salaries. There are some unexplained items of expenditure though, such as amounts listed as expended to Maori owners of reserves. These particular figures commonly matched the amount received from Pakeha lessees. However, it is difficult to deduce from the balance sheets whether the amounts were paid to the Maori owners, or spent on behalf of the Maori owners. The accounts were finally audited by Edward Hill who acted as ‘examiner’ of the⁵⁷ commissioners’ accounts for Swainson, under the Native Reserves Act 1856.

A schedule of all reserves administered by the Government, produced in 1865, included a comprehensive⁵⁸ list of all Maori reserves in the Wellington city and country districts. It is notable that, although the schedule ordered by the House of Representatives included reserves still in customary title, in the case of Wellington, there were no reserves remaining in Maori title by 1865. This shift indicated the impact of the 1862 legislation. From the total number of reserves, approximately half were leased by the Crown to European tenants. The remainder were unlet, with the exception of nine assigned reserves leased⁵⁹ by Maori to European tenants without any involvement of the commissioner.

In the early 1850s, two acres of reserve land, town sections 88 and 89, were leased to the military. There had been previous disagreement over whether the land could simply be granted to the military. The Attorney-General had opined that Maori reserved lands ‘cannot be⁶⁰ granted without the consent of the Natives beneficially interested in them’. In an attempt to circumvent the issue, Grey

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

56. *Ibid*, 1867, pp 142–144

57. *Ibid*, p 144

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

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

60. Attorney-General to Eyre, 6 July 1850 (Wai 145 rod, doc a34), p 91

2.9.2 Trust Administration of Maori Reserves, 1840–1913

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

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

2.9.2 Taranaki

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

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

61. ‘Return of All Lands Vested in the Governor’, AJHR, 1867, a-17, p 3

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

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

64. Ibid p 11

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

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

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

2.9.3 Hawke's Bay

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

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

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

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

68. Ibid, p 13

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

2.9.4 Trust Administration of Maori Reserves, 1840–1913

Maori reserves. The extent of pre-1865 land alienations in Hawke's Bay heightened the need for an effective administration of reserves. Yet, there were no active attempts to distinguish Maori reserves and administer them pursuant to the native reserves legislation. There were references in the *Hawke's Bay Provincial Gazette* for 1867 and 1868 which indicated that specific blocks of Maori land were leased by Europeans and that rents⁷⁰ were accrued and entered on the general revenue and expenditure balance sheets. Still there was no administrative facility for Maori reserve lands in the Hawke's Bay province. While this evidence is not overwhelming, it points to some vagaries in administration.

In the absence of a commissioner for Maori reserves, the resident magistrate for Hawke's Bay, G S Cooper, compiled a report for Parliament on native lands in Hawke's Bay on 20 August 1867.⁷¹ Cooper listed a series of reserves in the region and stated that: 'With regard to the reserves I have to report that they form but a small percentage of the area sold.'⁷² The majority of the information relates to the allocation, rather than the administration, of reserves. A notable exception was the Te Aute estate, 7397 acres in extent. Though considered an educational endowment, two of the three grants comprising the property were ceded by Maori under the provisions of the Native Reserves Act 1856. Therefore, it can be argued that the early administration of Te Aute fell within the realm of governmental administration. Despite this, evidence indicates Te Aute estate lacked administration: 'No steps have been taken as yet to fulfil either of the trusts under which this valuable estate is held.'⁷³ Cooper added:

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

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

2.9.4 Nelson

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

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

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

72. Ibid, p 1

73. Ibid, p 4

74. Ibid

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

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

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

- 1st Lands reserved from sale by the Natives themselves
- 2nd Lands reserved by the government for Native occupation and cultivation
- 3rd Lands reserved by the New Zealand⁷⁷ Company, and by the Government, for raising funds for various purposes.

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

it would have a beneficial effect, as it would break up for ever, the system of several families living together in confined and unhealthy Pas. A family living on its own allotment of land would be likely to make greater⁷⁸ improvements and advancement than when massed with others as joint cultivators.

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

The early records reveal two features. Items of expenditure of the commissioners were recorded in assiduous detail. In addition, there was a gradual increase in income and a balance of the trust fund over the early period from 1858 to 1862.⁷⁹ Here was an effective balance of payments. The majority of expenditure appears to have been allocated to medical expenses for Maori as well as to the maintenance of the Maori hostel in Nelson. Yet, some questions remain. Nowhere on the early balance sheets were deductions for the costs of administration entered. Also, unlike

76. Ibid

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

78. Ibid, p 139

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

2.9.4 Trust Administration of Maori Reserves, 1840–1913

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

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

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

There appears to be some rental adjustment upwards between periods for some leases in Nelson, Motueka and Moutere, but adjustments⁸⁰ downwards between first and second periods in a number of the Greymouth leases.

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

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

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

80. Mitchell, 'Administration of the Nelson Native Reserves' (Wai 102 rod, a6b), p 39

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

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

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

Mackay's expenditure on reserves also demonstrated his concern for long-term Maori benefits. As hinted at, his practice of combining funds from different reserves to achieve a higher return from investment signalled a commitment to the effective administration of reserves for the benefit of Maori. During 1866, Mackay invested £600 of native trust money at 10 percent interest.⁸² Medical expenses always figured in trust expenditure, yet in⁸³ 1868, Mackay contributed £317 to the costs of medical attendance to Maori. These actions also help explain the relatively low balance figures. Finally, Mackay paid allowances directly to Maori from European rents. These rates varied yearly, but reached a figure as high as £1736, paid to Maori benefactors of Greymouth reserves for the 18 months between June 1867 and 31 December 1868.⁸⁴ Acting as South Island Commissioner of Reserves, Mackay used some of the revenue generated from the prosperous Greymouth reserves to loan money to the Otago Princes Street reserves in order to cover debts accrued.⁸⁵

2.9.5 Otago

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

81. Alexander Mackay to Native Minister, 6 December 1865, Mackay, *Compendium*, vol 2, no 36, p 310

82. 'Statement of the Receipts and Expenditure of the Native Reserve Fund', *Nelson Provincial Gazette*, 1867, vol 15, p 37

83. 'Receipts and Expenditure', *Nelson Provincial Gazette*, 1869, vol 17, p 57; Mackay noted earlier a request from Maori on reserves at Pelorus River between Nelson and Marlborough: 'the Natives resident there were petitioning the Government to appoint a medical man for their district . . .', Mackay to Native Minister, 6 December 1865, Mackay, *Compendium*, vol 2, p 312.

84. 'Receipts and Expenditure', *Nelson Provincial Gazette*, 1869, vol 17, p 74

85. Four hundred pounds was loaned to Prince Street reserve, Otago: 'Tabular statement of Receipts and Expenditure of the Native Reserves Fund, Greymouth from July 17th 1865 to December 31st 1869', Mackay, *Compendium*, vol 2, no 41, p 321.

2.10 Trust Administration of Maori Reserves, 1840–1913

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

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

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

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

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

2.10 The Native Lands Amendment Act 1866

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

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

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

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

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

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

91. *Ibid*, p 51

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

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

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

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

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

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

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

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

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

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

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

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

94. *Ibid*, p 3

2.11 Trust Administration of Maori Reserves, 1840–1913

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

2.11 The Domett Commission, 1869–70

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

2.11.1 Auckland

The commission’s report included evidence of the absence of administration of Auckland. As Commissioner of Native Reserves in Auckland, James Mackay stated: ‘The first instructions I received respecting Native reserves was October, 1867, at which time⁹⁵ I was instructed to take charge of the Auckland and Onehunga Hostelry Reserves’.

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

I found one man on Reserve No 4 [reserve 4, section 12, in the town of Auckland] who said he had been on it twenty-three⁹⁶ years, and I only succeeded in getting rid of him by threatening legal proceedings.

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

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

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

96. Ibid

97. Ibid

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

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

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

2.12 Conclusions

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

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

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

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

98. Ibid, p 49

2.12 Trust Administration of Maori Reserves, 1840–1913

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

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

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

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