CHAPTER 3

DUAL COMMISSIONERSHIP, 1869–81

3.1 Introduction

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

3.2 Background

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

3.3 Fenton's Native Reserves Bill 1869

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

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

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

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

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

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

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

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

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

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

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

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1. F D Fenton 30 July 1869, reading of the 'Native Reserves Bill', NZPD, 1869, p 166
2. Ibid
3. Gisborne, 30 July 1869, second reading 'Native Reserves Bill', NZPD, 1869, p 167
4. Ibid, p 168
5. 'Interim Report of the Select Committee into Native Reserves Bill', 15 August 1870, AJLC, 1870, p 8

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

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

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

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

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

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

6. Ibid
7. Ibid, p 9
8. Refer Alan Ward, *Show of Justice*, revised edition, Auckland, Auckland University Press, 1995, pp 251–263; Graeme Butterworth, *Maori Trustee*, nd, pp 12-16

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

> The administration of native reserves held in trust by the Government, and other lands set apart for the benefit of the natives.
>
> Supervision of native hostelries.
>
> The supervision of the payment to the natives of the proportionate amount due to them on sale of certain blocks at Remuera, and elsewhere.
>
> The supervision of lands taken under 'The New Zealand Settlements Act, 1863' and 'The New Zealand Settlements Amendment Act'.
>
> The recommendation to the government of lands proper to be rendered unalienable by the native owners, through the operation of the Native Lands Court, and generally the duties devolving on the 'trustee' contemplated in the provisions of the Native Reserves Act, which passed the Legislative Council last Session.
>
> A general supervision over the laying off of the main lines of road through the North Island, and setting apart of districts of land suitable for immigration from Europe.[9]

McLean went on to urge:

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

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

> The principal object of your duties is to enable you to collect and arrange such information respecting Native reserves and the present administration of them, as will, in the case of the proposed Native Reserves Bill being passed next session, enable effect to be given to that Bill at once. It will be necessary to that end that you should be appointed a Commissioner of Native Reserves.
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> It is also important that you should so far as the law will allow you, perform the duties which were also contemplated under the proposed Native Settlements Bill, with a view in all cases of alienation of Native Lands by means of the Native Lands Court to proper provision being made, if such does not exist already, for inalienable reserves, for the support of the Native owners of the land going through the Court and of their descendents . . . Mr Fenton, also, who introduced the Native Reserves Bill and takes a great interest in its object will no doubt be kind enough to aid you with his suggestions on the other matters contemplated by the Bill. You will however, in no way interfere with the duties of the Inspector of Surveys under the Native Lands Acts.[11]

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

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

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

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

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

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

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

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

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11. W Gisborne to Heaphy, 6 November 1869, encl 2, AJHR, 1870, d-16, p 3
12. Butterworth, p 13
13. McLean to Heaphy, 13 October 1869, d-16, AJHR, 1870, p 3. Michael FitzGerald in the *Dictionary of New Zealand Biography* carries a good deal of other background. Although, it should be noted that the only mention of Heaphy's career as Commissioner of Native Reserves is poured into one solitary sentence in three pages of biography (vol 1, p 182): 'He was an efficient administrator of the paternalistic system of 'native reserves' and collector of income due to their beneficiaries.'
14. 'Commission of Inquiry into Charles Heaphy', ma 63, p 7, NA Wellington

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

Domett eventually concluded:

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

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

3.4 Native Lands Frauds Prevention Act 1870

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

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

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

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

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15. Ibid, p 10
16. 'Commission of Inquiry into Charles Heaphy', ma series 63, pp 76–77
17. Alan Ward, *Show of Justice*, p 252. 'It [the act] was not retrospective and when H R Russell, leader of a rival faction to that of McLean in Hawke's Bay politics, in order to strike at McLean's own dubious dealings, secured an amendment in the Legislative Council to make it retrospective, McLean had it deleted in the House of Representatives.'

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

3.5 Commissioner's Reports, 1871

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

Heaphy began his presentation of reports with the following explanation:

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

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

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

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18. F D Fenton, 'Native Reserves Bill', 30 July 1869, NZPD, 1869, p 165
19. ma 17/1
20. For example, Hawke's Bay Interim Reports, ma 17/1. These documents include fuller details and lithographic plans which do not appear in the final published version, AJHR, 1871, d-16, pp 11–17. Also, the returns of Taranaki reserves created out of raupatu lands, published as 'Heaphy to McLean' (17 June 1870, encl 8, d-16, AJHR, p 6) do not exist in the original documents.
21. Charles Heaphy, 'General Observations', ma 17/1, np
22. Charles Heaphy, 4 July 1870, ma 17/1

3.6 Heaphy's Categorisation of Reserves

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

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

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

Class b: reserved lands, not under enactment

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

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

1. Grants with limitations.
2. Lands that should be made inalienable.
3. Granted land, subsequently conveyed to trustees.[23]

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

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

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

3.6.1 Taranaki Reserves

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

23. 'Report on the Native Reserves in the Province of Hawke's Bay', encl 9, AJHR, 1870, d-16, p 14; see also ma 17/1
24. R Parris, 'Schedule of Native Reserves in the Province of Taranaki', AJHR, 1871, d-16, p 7

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

3.6.2 Hawke's Bay

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

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

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

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

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

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

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

25. Report on the Native Reserves in the Province of Hawke's Bay, encl 9, AJHR, 1870, d-16, p 13; see also ma 17/1
26. Ibid, p 12
27. Ibid

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

e	77a	Hua and Waiwakaiho	56a, 21 years from 1 January 1863	£25	
f1	50a	Hua and Waiwakaiho	21 years from 1 January 1862	£20	
g	75a	Hua and Waiwakaiho	21 years from 1 January 1862	£25	
h	53a 1r 34p	Hua and Waiwakaiho	21 years from 1 July 1865	£20	
i	54a	Hua and Waiwakaiho	21 years from 1 July 1865	as above	
k	50a	Hua and Waiwakaiho	Not let		
Upokotanaki	52a	Hua	Not let		
Hoehoe	53a	Hua	Not let		
Hawe Taone	20a	Bell	10 years from 1 July 1865	£15	

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

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

3.6.3 Canterbury

Heaphy began with a formal calculation to consider the sufficiency of reserves for the maintenance of a given number of persons.[28] The Maori population figure for Canterbury was listed at 406 (this was corrected in Maori Affairs series 17/1 to 607 persons).[29] The total area of Canterbury reserves was listed at 10,076 acres, then divided from the population figure which provided each Maori 16⅔ acres according to Heaphy's calculations. It is not discussed whether this was considered 'sufficient' for Maori existence, although a qualification was added in the case of Canterbury, that in:

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

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

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

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

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

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

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28. This was not applied in the case of Taranaki or Hawke's Bay.
29. The figure was printed as 406 persons in AJHR, 1870, d-16, p 17. However, in the original ma 17/1 the figure 406 was crossed out and replaced with 607 persons, dated 20 August 1870.
30. AJHR, 1870, d-16, p 17
31. Ibid, p 18

c1 Grants with Limitations, Return of Reserves made in pursuance of awards of the Native Lands Court in May 1868, in final extinguishment of all claims under the Ngai Tahu deed of 1848.

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

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

3.6.4 Otago

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

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

3.6.5 Southland

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

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32. Ibid
33. J W Stack to W Rolleston, 29 August 1871, Inwards Correspondence Provincial Superintendent/Secretary, Canterbury Museum, 1871/1549, cited in Ward (Wai 27 rod, T1), p 357
34. 'Report on the Native Reserves in the Province of Otago', 31 May 1870, encl 11, AJHR, 1870, d-16, p 24

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

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

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

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

Heaphy assessed the sufficiency of Southland reserves. He calculated that a population of 342 Maori (he included 'half-castes') had 11,069 acres of reserves, from which he derived a figure of 32⅓ acres per person.[37]

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

3.6.6 Westland

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

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

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

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35. Stewart Island was formally known as Stewart's Island and is referred to as such in the contemporary AJHR reports, including the report pertaining to the Southland reserves sourced for this chapter: AJHR, 1870, d-17, p 30.
36. Report on the Native Reserves in the Province of Southland', AJHR, 1870, d-16, p 30
37. Ibid, p 31

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

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

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

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

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

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

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

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38. 'Report on the Native Reserves in the County of Westland', AJHR, 1871, d-16, p 34
39. Ibid, p 34
40. 'It may be without the limits of a Report on Reserves to touch upon circumstances of this nature, but when it has been so often written in England that the Maori suffers materially and socially by contact with the settler, it is but proper , I think, to show that even in the midst of a gold digging community – proverbially rough . . . the Maori has improved in social condition, and is well cared for.' : ibid, p 35

3.6.7 Nelson

Heaphy and Mackay, Commissioner of Nelson Reserves, conjointly produced a detailed report on Nelson reserves. The total area of all reserves in the province was stated at 58,365 acres 2 roods 7 perches, spread among a population of 483 individuals (120⅚ acres per person). Such arithmetic exercises, as earlier discussed, served only to obscure the existing circumstances and the requirements of Maori occupants, while issues of the quality of land and the proximity of reserve to administrative services, such as medical care, were left unmentioned.[42]

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

Nelson trust reserves, 1871

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

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

41. Heaphy continued:

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

('Report on the Native Reserves in the County of Westland', AJHR, 1871, d-16, p 35)

42. Heaphy noted: 'The true proportion is, however, less for the local Natives, as Maoris from both sides of the Straits hold interests in the large – 44,000 acre – reserve at West Whanganui': 'Report on the Native Reserves of the Province of Nelson', AJHR, 1871, d-16, p 37.
43. Ibid, p 39

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

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

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

3.6.8 Marlborough

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

Marlborough trust-administered reserves

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

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

44. A MacKay, 'Report on the Native Reserves of the Province of Nelson', AJHR, 1871, d-16, encl 14, p 38
45. Ibid
46. Heaphy, 'Report on the Native Reserves of the Province of Nelson', AJHR, 1871, D-16, encl 14, p 37; see also, ma 17/1

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

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

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

3.7 Dual Commissionership, 1871–79

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

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

47. Heaphy, 'Report on Native Reserves in the Province of Marlborough', AJHR, 1870, d-16, encl 15, p 43
48. No report was received from the Auckland region. Heaphy mentioned difficulties in obtaining information from the acting Auckland commissioners, see ma 17/1. It is therefore presumed that the required information simply never arrived in time for Heaphy to include in his report, but there was no explanation of the absence of Auckland reserves in the published account. The other glaring omission from the report was Wellington. Although these reserves were picked up in the 1873 AJHR reports, again there was no explanation from Heaphy in 1871 as to why there had been no report for Wellington.

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

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

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

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49. Heaphy, 'Report of the Comissioner of Native Reserves', AJHR, 1873, g-2, p 1
50. Heaphy, 'Report of Commissioner of Native Reserves', AJHR, 1874, g-5, p 3
51. McLean to Heaphy, 19 February 1870, ma-mt 1/1a, file 109, NA Wellington
52. Fenton to McLean, 22 January 1870; see also Rihi to Fenton, 18 December 1969, ma-mt 1/1a, file 110
53. Heaphy, 'Report of the Commissioners of Native Reserves', AJHR, 1876, g-3, pp 1-2

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

3.8 Commissioner of (Middle) South Island Reserves

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

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

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

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

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

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

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

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

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

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

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

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

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

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

56. Ibid, p 3
57. McLean, 18 August 1873, NZPD, vol 14, p 506
58. A Mackay, 'Report on Native Reserves in the Middle Island', 30 July 1873, AJHR, 1873, g-2a, p 3

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

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

3.9 *Regina v Fitzherbert* (1873)

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

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

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

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

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

59. Ibid, p 4
60. 'Letter from Honourable W Mantell Forwarding Copy of Judgment of Court of Appeal in the case of *Regina v FitzHerbert*', AJHR, 1873, g-2c, p 3
61. Ibid

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

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

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

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

3.10 The Native Reserves Act 1873

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

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

McLean described the Bill as:

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

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

62. 'Report of Commissioner of Native Reserves', AJHR, 1873, g-2, p 2
63. Ibid
64. McLean's explanation of the 1873 Bill, NZPD, 8 August 1873, vol 14, p 353
65. NZPD, 8 August 1873, vol 14, pp 327–328

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

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

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

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

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

These served as sharp acknowledgements of continuing problems in administration.

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

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

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

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

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

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

Maori involvement was outlined in section 7 of the Act:

> In every district created under this Act there shall be elected by the Natives resident in the district from amongst themselves, in manner to be regulated by the Governor in Council, three persons as Assistant Commissioners, who, together with the Native Reserves Commissioner appointed as hereinbefore mentioned, shall form a Board of Direction for the administration of the Native reserves in such district. Of every such Board the Native Reserves Commissioner appointed as aforesaid shall be the chairman.
>
> The Native Reserves Commissioner shall from time to time, as he may deem desirable, call a meeting of the Board, who shall by a majority of its members decide on all matters connected with Native reserves in the district for which they are constituted; and no sale lease or exchange of any Native reserve shall be effected without such decision being first obtained and recorded upon the minutes of the meetings of the Board.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

68. NZPD, 1873, vol 14, p 353
69. Ibid, p 494
70. NZPD, 1873, vol 14, p 495

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

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

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

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

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

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

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

71. Ibid, p 496
72. Ibid, p 497
73. Ibid, p 500
74. Butterworth, *Maori Trustee*, p 16

shifted away from the Governor's direct control in particular, the existence of Maori administrators.

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

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

3.11 The Native Reserves Amendment Bill 1876

'Kahore te Ture o te tau 1873 i whakaatu i te rerenga ketanga o nga tikanga Whenua Rahui Maori'.[75]

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

> It is generally admitted that by those who have made themselves acquainted with the provisions of the 'Native Reserves Act 1873' that it is altogether too cumberous in its operation for the practical and satisfactory administration of the Native Reserves property throughout the Colony.[76]

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

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

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75. 'He Pukapuka Na Mr Alexander Mackay, Tuku mai i tetahi Pire Hou mo Nga Whenua Rahui Maori': AJHR, 1876, g-3a, p 1. It is notable that Mackay's amendments were translated and published in Maori. In this context, the translation chosen for native reserves, Nga Whenua Rahui Maori, is particularly significant, as it implies lands were protected by rahui (made untouchable). It is worth questioning whether Maori, in choosing to 'vest' reserves in the commissioner, understood it to mean a 'Government rahui', or customary rahui, allowed for by nga ture Pakeha.
76. 'Letter from Mr Alexander Mackay, Forwarding Draft of a New Native Reserves Bill', 16 August 1876, AJHR, 1876, g-3a, p 1

The Assembly in passing the Act of 1873, having declared its belief that it was advisable that the Natives should have a voice in the management of their lands, this right has been extended to them in the case of Reserves of the fourth and fifth class; but, in place of effecting this by a Board of Management composed of three Natives and a European Commissioner, it is proposed to abolish the Board and give the Commissioner to be appointed power to issue leases for any term not exceeding twenty-one years for agricultural purposes, with the assent of the persons beneficially interested, and, with the same assent, to execute leases for building purposes for sixty years, subject to regulations to be made by the Governor.

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

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

Maori were deemed subjects incapable of self-management:

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

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

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

77. Ibid, p 2
78. Ibid
79. Ibid

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

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

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

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

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

80. See F Whitaker's introduction to the second reading of 'Native Reserves Bill', 28 October 1876, NZPD, 1876, p 709
81. Three petitions were reported as received during 1876 concerning reserves legislation. These petitions were not published, but listed in the AJLC 'Schedules of Petitions'. Refer, for example, Petition of Ihaia Tainui and Inia Tuhuru, 11 August 1876, AJLC, 1876, sess 1876, p v; Taiaroa, 'Native Reserves Bill', 28 October 1876, NZPD, 1876, p 710
82. Ibid

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

> It will be easily understood, therefore, that the Act of 1873 caused considerable uneasiness to the tenants at Greymouth as to how the Board of Management would deal with the question of extended leases, as it was well known that the Natives to be elected for the position must be chosen from the persons who had openly stated their intention to take possession of the property at the termination of the existing leases . . .
>
> . . . . .
>
> With regard to the Act of 1873, which had not been called into operation, he might say that the principal reason why it was not brought into operation was that the Native proprietors in Greymouth saw that if it was brought into operation their interests would be materially prejudiced, and they petitioned that the Act should be allowed to remain in abeyance. The principal reason for that was that, if the tenants had to rely upon a Native Board for the renewal of their leases, their position would be materially altered.[83]

3.12 The Native Reserves Amendment Bill 1877

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

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

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

83. Kennedy, ‘Native Reserves Bill’, 28 October 1876, NZPD, 1876, pp 711–712
84. ‘Schedule of Petitions Presented to the Legislative Council, Session 1877’, AJLC, 1877, pp x–xiv; in particular, petitions 36 and 39, presented by Te Hapuku and Ihaia Tainui.
85. Buckley, ‘Native Reserves Amendment Bill’, 6 September 1877, NZPD, 1877, p 289

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

After the select committee findings, the amendment Bill was once more withdrawn from the House.[87]

3.13 Native Reserves Trust Accounts, 1870–71

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

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

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

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

86. Colonel Whitmore, 'Native Reserves Amendment Bill', 22 November 1877, AJHR, 1877, p 323
87. After the allegations of unduly high salaries, it was an interesting coincidence of timing that Heaphy recommended the dramatic reduction of his own salary from £500 to £100: 'Report of the Commissioner of Native Reserves', AJHR, 1877, g-3, p 2.
88. Robert Parris was replaced by Charles Brown as Acting Commissioner of Native Reserves in 1876.
89. It is important to regard the different monetary scales applied to the y-axis of the graph.
90. Alexander Mackay, 'Native Reserves Amendment Bill', 28 October 1876, NZPD, 1876, p 712

3.14 Administration, 1876–80

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

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

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

3.14.1 The West Coast commission, 1878–79

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

3.14.2 General administration

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

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

expenses were defrayed out of general revenue.[92] The point was pursued the following year when Alexander Mackay referred to his cousin James's earlier report of 11 July 1864 which had recommended the parliamentary subsidy of medical expenses, and which had been approved by the Native Minister of the time, William Fox. Mackay was critical:

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

Heaphy, moreover, recommended the reduction of his own salary as Commissioner of Native Reserves from £500 to £100.[94]

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

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

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

> All moneys payable to the Government in trust for private persons, and which are not liable to be appropriated for the public service of the colony, shall, except as

92. 'Native Reserves, Nelson and Greymouth', 6 August 1877, AJHR, 1877, g-3a, p 2
93. 'Native Reserves, Nelson and Greymouth', AJHR, 1878, g-6, p 1
94. 'Report of the Commissioner of Native Reserves', AJHR, 1879, g-3, p 2
95. 'Report of the Commissioner of Native Reserves', AJHR, 1875, g-5, p 2
96. 'Report of the Commissioner of Native Reserves', AJHR, 1876, g-3, p 3. Note, it was not stated what 'other reasons' might have implied.
97. 'Native Reserves, Nelson and Greymouth', AJHR, 1877, G-3A, p.1.

herein otherwise specially provided by this Act, be paid into the Public Trust Office, and shall be dealt with and accounted for as provided by the Acts for the time being in force relating to such office.

This can be understood as the first stage of a shift of administrative responsibility from an independent commissionership to the Public Trustee. Movements towards this transition can be seen earlier in Mackay's and other proposed amendments to the Native Reserves Bill. The transition to the Public Trustee is detailed in the next chapter.

In his 1878 and final report on North Island reserves, Heaphy outlined the rearranged format for the reserves accounts:

> In the North Island, all monies derived from reserves in which any particular native is interested, are payable into the 'Wellington,' 'Taranaki, or 'Auckland' account, respectively, and the account can be operated on for the payment to the Natives interested.
>
> All monies derived from reserves of a more general character, such as Hostelry maintenance Reserves and Reserves not appropriated to any particular person or Hapu, are paid over the whole Island into a 'General purposes Account', which can be operated on for expenses of Hostelries, surveys of reserves, commissioner's salary and other similar expenses.[98]

From 1877, published reports ceased to be collated regionally, instead being listed under the above categories in the accounts of the Public Trust Office. The involvement of the Public Trust Office forms the focus for the following chapter. Despite the involvement of the office in matters of financial management, the independent commissioners continued to administer trust reserves until Heaphy's death in 1881.

In 1879, Grey as Premier attempted to introduce a Maori Reserves Vesting Bill. In his background to the Bill, Grey indicated that the objective of his Government had been to 'assimilate the business of the Native Department, and by degrees to abolish it altogether'.[99] The Maori Reserves Vesting Bill was designed to achieve these ends as he saw it:

> Secondly a Bill similar to the present was prepared, and leave obtained to introduce it last session, placing all Native reserves in the hand of the Public Trustee, and thus taking that duty also from the Native Department. Another result of that measure would be of very great importance . . . namely, that individuals anxious to obtain possession of Native Reserves would not have to apply to the Government.[100]

The significance of these views should not be overlooked. For, although Grey's Bill was withdrawn, like the earlier 1877 and 1878 amendment Bills, these Bills formed the backbone of the Native Reserves Act 1882. Grey proposed: 'The Native

98. 'Report of the Commissioner of Native Reserves North Island', AJHR, 1878, g-6a, p 1
99. Grey, 'Maori Reserves Vesting Bill', 24 October 1879, NZPD, 1879, p 514
100. Ibid, p 515

Reserves would be dealt with exactly as the reserves for orphans and other persons whose property was in the hands of the Public Trustee.'[101]

3.15 Conclusions

Two features strongly influenced the form of reserves administration during the 1870s. The first of these was the failure to implement new legislation outlining the terms of management. In the vacuum created after the non-implementation of the Native Reserves Act 1873, it is difficult to deduce a single clear direction behind the course of administration. We might criticise the absence of clear, structured policy and direction as detrimental to Maori interests. Yet, the relationships between the Government, Maori beneficial owners, and incoming settlers were more complicated than this allows. While continued attempts were made through the late 1870s to introduce legislative amendments, consensus proved unobtainable.

The reasons behind the non-implementation of the 1873 Act are themselves revealing. Significantly, European Ministers appeared almost unanimously opposed to the formal introduction of Maori administrators, as proposed under the Act. This rejection of Maori participation in administration appears to be the crucial point which stalled the passage of the Act. In the absence of new statutory guidelines through the 1870s, administration reverted to the 1862 amendment Act, and full gubernatorial intervention.

The second major characteristic appeared largely as a consequence of the first. After the appointment of dual Commissioners Heaphy and Mackay, administration deviated from strict adherence to the 1862 Act. It is argued that Mackay and Heaphy, through their instructions and practice, administered reserves as an independent commissionership. Their approach enabled a degree of administrative flexibility, shown by their attempts to obtain Maori assent, rather than relying on automatic assent. In particular, Mackay demonstrated a concern for effective management and benefit to Maori by quietly employing Maori assistant commissioners for Nelson, in spite of the parliamentary reaction to the 1873 Act.[102]

In the strictest sense, the dual commissionership was not 'independent', and reserves continued to be vested in commissioners on behalf of the Governor. Furthermore, Maori were denied participation as assistant commissioners in the trust administration.

The alienation of reserve lands continued. Mackay justified certain alienations on account of the higher capital gains for Maori, and disallowed others. There is little evidence to indicate whether Maori were consulted about the prospects of alienation. What is more intriguing, perhaps, was the increasing willingness among

101. Ibid
102. Hemi Matenga and T P Mutumutu were listed as Assistant Commissioners in a schedule of staff prepared by Mackay in 1882: Alexander Mackay to Public Trustee, 15 September 1882, ma-mt 1/1b (see the next chapter for further details)

certain Maori, in the early 1870s, to vest reserves in the commissioners as a form of protection. A notable example includes a leader of the repudiation movement in Hawke's Bay. Maori sought new means for securing their lands in a post-war context of confiscation. There are a host of reasons which help to explain local motivations, but these must be examined in closer detail than is possible for the purposes of this report.[103] On a more general level, Maori 'willingness' to vest reserves may have been influenced by differences in conceptual meanings of 'reserve', such as rahui and lands which were ultimately to be returned to Maori owners for the use of future generations.

Both Mackay and Heaphy sought to provide longer terms of lease. They perceived this to benefit both Maori and settler alike. Although discussed, the commissionership stopped short of advocating leases in perpetuity. Mackay displayed an awareness of the need to keep rent increases regular. However, despite this, some rents were lowered in favour of settlers, though not on a level comparable with the 1880s. And, in other cases, rents were left in arrears.

Again, it is difficult to assess the relative benefit bestowed upon Maori in the manner of trust administration. No doubt Mackay and Heaphy undertook to promote benefits to Maori as they saw them. In the context of low Maori population and rapidly expanding settler numbers, the commissioners acted to preserve certain benefits for Maori. Yet, these benefits did not include the occupation, use, or even lease of their own reserve lands. It became more evident during the 1870s that reserve lands administered by the Government were not to be returned to Maori owners. They were, it might be observed, already 'leased' in perpetuity to the Government.

103. See Wellington for another example, although it is significant that the number administered and leased by Maori themselves far outstripped those administered by the Commissioner of Native Reserves. See 'Report of the Commissioner of Native Reserves', AJHR, 1877, g-3, p 2.