

CHAPTER 5

CONCLUSIONS

The present report attempts a balanced appraisal of the nature and intent of the trust administration of Maori reserves between 1840 and 1913. A trust relationship assumes a fiduciary duty between the trustee and its wards; in this case, the Maori owners of reserve lands. It also implies a relationship of dependence; that is, the implementation of trust administration was based firmly on the assumption that Maori were incapable of managing their own future reserves in the face of the pressures of colonisation. Moreover, fiduciary duty as implicit in trust administration acted as a doubled-edge sword. It served to deny Maori rights under article 2 of the Treaty of Waitangi, and in the absence of authority over their own reserve lands, Maori reserve owners came to rely upon European administration. At the same time, trust administration embodied a solemn duty to protect Maori reserves where Maori could not.

The concept of trust administration of Maori reserves originated from New Zealand Company plans. As the New Zealand Company administration was gradually overlaid by Colonial Government intervention, the Government adopted the company's model of administration. The company's plan of allocating leasable reserves to provide a revenue for Maori beneficiaries formed the basis for all subsequent trust administration of reserves.

During the earliest period of administration between 1840 and 1856, only New Zealand Company tenths reserves were administered. Tenths reserves were applied in company settlement areas at New Plymouth, Wellington, and Nelson. Yet, from the outset, local factors intervened and New Plymouth tenths reserves were omitted from administration. This was one of the earliest examples of inconsistencies in administration.

Throughout the nineteenth century, there was a degree² of inconsistency in the application of trust administration across different areas. Variations are in part explainable by the particular nature of land acquisition and the creation of 'reserves' in each area. As noted elsewhere³, it is somewhat difficult to accurately define what constitutes a reserve. In the absence of stable categories of reserve,

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1. Perhaps it might be commented that administrators were (paradoxically) provided with the authority to alienated trust reserves in particular situations. However, a study of the removal of restrictions on alienation is part of the Murray report, and therefore, readers are referred to that report for a fuller account.
 2. See, for example, the apparent absence of trust administration of Auckland reserves prior to 1865.
 3. Refer, Jenny Murray, *Crown Policy on Maori Reserved Lands, 1840 to 1865, and Lands Restricted from Alienation, 1865 to 1900*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), February 1996

any study of reserves administration must logically proceed on an individual reserve-by-reserve basis.

Confusion surrounded early attempts to distinguish between reserves for administrative purposes. The company's plans were ambiguous about which reserves they thought might remain with Maori as sites of occupation and which might be leased. The Government's plans, in theory, forged a clearer distinction between reserved lands for Maori occupation, reserved outside land sales, and lands for lease reserved within the sales (the company tenths). The latter category of leasable reserves were also known as endowment reserves because revenue derived from leases was intended for the establishment of institutions such as schools. However, the overlay of two systems of allocation and administration generated difficulties and confusion in practice.

Maori (or native) reserves were always administered separately from ostensibly 'public reserves.' In 1847, as a forerunner to later public works legislation, the Government made allowance for the compulsory acquisition of Maori tenths reserves for public purposes. Once transferred, the reserves ceased to be administered as Maori reserves.

Overall, the earliest period of administration suffered for want of legislation. Despite a number of attempts at improvement, trust reserves administration in Wellington and Nelson can be characterised as loose and haphazard. In 1844, Governor Grey's refusal to implement the Native Trust Ordinance 1844 signalled a predisposition on the Government's part to intervene, rather than allow independent trust administration. Again, in 1873, when legislation purported to allow Maori limited involvement in administration, the Governor refused to implement the Act, despite the conferral of royal assent in both cases.

The Native Reserves Act 1856 was the first piece of legislation affecting the administration of reserves. It was intended to bring all Maori reserve lands under administration. While administration could extend only to reserves where Maori customary title was extinguished, the Act permitted Maori themselves to include any and all reserve lands under Government administration. All trust reserves were vested in the Governor.

In many respects, the passing of the 1856 Act formalised trust administration. Lands were theoretically protected from alienation although provision was made for the alienation of reserve lands with the assent of Maori owners. Panels of reserves commissioners were appointed in each province to administer reserves. In some areas, Maori continued to lease their own reserve lands to European settlers. Examples of Maori self-administration were seen in Wellington, Nelson, and Taranaki up until the wars of the 1860s.

The 1862 amendment Act tightened administrative provisions. Enacted in the midst of the wars, Governor Grey assumed sole authority for all aspects of the administration of reserves. This extended to martial administration – the right to administer and alienate any Maori reserve without Maori assent. This legislation remained in force, administered by local commissioners, until replaced in 1882.

Conclusions

Administration under the commissioners provided Maori with financial returns for the lease of their lands. The practice of localised administration, without a centralised body, exposed itself to cases of misadministration. At the same time, it proves difficult to account for the consistency of administration across all areas based on the relatively small amount of surviving source material. There are numerous gaps in the administrative record.

The absence of a centralised authority was rectified in 1869, with McLean's appointment of Charles Heaphy as Commissioner of Native Reserves. Together with Alexander Mackay, Heaphy directed administration of Maori reserves across all areas until 1882. During this period, the process of administration was markedly improved. The existence of regular and detailed reports makes it possible to measure some aspects of administration, such as the provision of annuities to Maori beneficiaries. There is evidence that Maori directly benefited from the receipt of rental payments. Partly as a result, Maori in some areas chose to vest their reserves under the Government administration.

Six years after Maori were granted representation in the European Parliament, a conscientious attempt was made to introduce Maori participation to the Government administration of reserves. Significantly, it was on this point of Maori involvement as deputy commissioners that the Native Reserves Act 1873 was never implemented. The 1873 Act remains a striking indication of Government influence in the administration of Maori reserves in the 1870s. Numerous attempts were made to relegislate in the late 1870s, yet none succeeded in balancing both Maori and growing settler interests.

A strong push to amalgamate Maori administration inside existing Pakeha structures led to the decision to place trust administration in the Public Trust Office. The Native Reserves Act 1882 grew from the model of the West Coast settlement reserves, but also from the imperative to manage significant European, as well as Maori lessee interests. It marked the first effective piece of legislation governing administration for 20 years. By contrast, the following three decades witnessed a raft of new and amended legislation.

The 1882 legislation and the practice of Public Trust Office administration sought to maximise rental returns to Maori. During the 1880s and 1890s, increasing pressures on Parliament led to the enactment of legislation which increased the terms of lease available to European tenants and, at the same time, lowered the rents to less-than-market rates.

The implementation of leases in perpetuity was argued to benefit Maori by securing payment of an annuity. After 1862, trust administration concentrated on providing Maori beneficial owners with a financial return from reserve leases. It appears that, despite isolated occurrences of misadministration, Maori benefited from the payment of an annuity. Trustees were often required to balance the interests of what was, until the 1890s, a declining Maori population against a swelling majority of European settlers. Nowhere is the attempt to reconcile European interests more apparent than in the guarantee of 999-year leases in

perpetuity. Clearly then, an understanding of trust administration of reserves, particularly post-war, draws from two sources.

Other factors lowered the financial returns paid to Maori. In certain situations, rents charged to Europeans were kept below market rates through the intervention of Government legislation. Where rents were restrained, Maori were detrimentally affected by inflation. There is other evidence of rents being manipulated through deliberately low land valuations in order to provide cheap rents to European tenants. While there is evidence of this occurring, it is notoriously difficult to trace on a general level, and requires further substantive investigation on a local level. Without exception, each period of administration accrued large amounts of rent in arrears owing to Maori. Reserves commissioners, armed with the authority to sue, appeared to falter in their duty to reprimand European debtors.

Maori were divorced from direct involvement in reserves administration. Through the colonial imposition of a ‘trust relationship’, Maori were relegated to the position of beneficiaries and pushed into cycles of Government dependence. From the outset, Maori themselves were prohibited from leasing other Maori reserve lands in the same manner as Pakeha, despite guarantees under article 3 of both texts of the Treaty of Waitangi. While at times there was an element of choice offered to Maori to include their reserve lands under Government administration, the advent of war in the 1860s and the 1862 amendment Act transformed the relationship. Maori consistently protested their absence from involvement in the formal administration of reserves through petitions and parliamentary representation.

There remain unanswered questions, including How do we evaluate the benefit to Maori from administration? and How much land did Maori require for occupation, and how much could be leased in order to benefit Maori? Answers to these questions require further investigation on a local level not possible under the scope of this report. This report has attempted a broad historical survey of issues relating to the trust administration of native reserves. The preliminary conclusions presented here are intended as background to further discussion and research.