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INTRODUCTION

This is a national theme report for the Rangahaua Whanui programme.¹ It forms one part of two studies commissioned as National Theme 1 (trust administrations in the nineteenth century). The report attempts a historical overview of the legislation and general practice of the trust administration of native reserves from 1840 to 1913.² It was initially envisaged that the report would focus exclusively on the nineteenth century. However, this has been extended to 1913 in order to link up with Crown Forestry Rental Trust research into the Maori Trustee.³

Trust Administration of Maori Reserves

We might begin with a brief acknowledgement that Maori reserves are themselves remarkably difficult to categorise or classify with any finality or assurance. This is largely because of the regionalised and particular patterns of land acquisition, as well as an absence of consistency among the colonial administration's approaches to the allocation and administration of reserves.⁴ Certainly, there is no easily discernible template for trust reserves administration. Administration was meant to be guided by legislation, but, as will be shown, this was often not the case. Instead, the confusing and sometimes contradictory nature of administration owed a great deal to the initial inconsistencies surrounding the allocation and conception of 'reserves' in New Zealand.

Not all reserves were administered in trust. Trust administration extended only to reserves that were in Crown-granted title and that came to be vested in the Crown or controlled by it through various means. For example, while other reserves were automatically included under the aegis of trust administration, legislation from 1856 allowed Maori to place reserves still in customary title into the hands of administrators through whom they would receive Crown title.

A 'trust' has recently been defined as:

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1. For further information concerning the Rangahaua Whanui Series, refer to the appendix for the practice note; refer also to the research commission, 6 November 1995.
 2. Jenny Murray has been commissioned to complete the partner report examining Crown policies on Maori reserve lands from 1840 to 1907. The Murray report focuses on a conceptual study of reserves and also the removal of restrictions on alienation. The present report seeks to avoid duplication, and refers to Murray's partner study on these issues: J E Murray, *Crown Policy on Maori Reserved Lands, 1840 to 1865, and Land Restricted from Alienation, 1865 to 1900*, Waitangi Tribunal Rangahaua Whanui Series (first release), February 1997.
 3. Kieran Schmidt and Fiona Small, 'The Maori Trustee, 1913–53', report commissioned by the Crown Forestry Rental Trust, 1996
 4. For a detailed study of reserves 'policy', refer to Murray.

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an equitable obligation under which a person having control of property is bound to deal with that property either:

- (a) For the benefit of definite persons (of whom he himself may be one) and any one of whom may enforce the obligation; or
- (b) For some object or purpose permitted by the law.⁵

From the onset of colonial administration, it was envisaged that the formation of an independent trust represented the most beneficial form of official administration of reserves. Indeed, it was this object which, in part, led to the formation of the first Public Trust Office in 1873 (although the Public Trust Office did not formally adopt the administration of Maori reserves until 1882). Between 1840 and 1882, various methods were adopted purportedly for the trust administration of Maori reserves (outlined below) – some were trust administrations, for example, the 1856 Commissioners of Reserves, others, such as the boards of management from 1848 to 1856, were not.

Implicit in a trust relationship is a fiduciary duty, an obligation on the part of the trustees to assist the beneficiaries. Fiduciary duty is ‘founded on a trust relationship’.⁶ This report explores whether the trust administration of reserves adhered to such a duty-bound relationship. Maori who chose to vest their lands in the trust administration did so in return for an assurance they would retain their lands and benefit from the administration. However, in many cases Maori were not in a position to choose. Reserves, such as tenths reserves, were often deemed to be under the trust administration, without Maori consent. Or, alternatively, Maori found themselves in a position where there were few other viable alternatives for retaining lands. The fiduciary duty was to realise the best possible return for the wards and beneficiaries, without endangering their land. In this context, we might consider the fiduciary duty in trust as commensurable with the sense of fiduciary duty expressed in the English text of the Treaty of Waitangi.

Structure

The report follows a broadly chronological structure. There are five chapters, and each chapter attempts to draw out key themes and issues from the larger narrative. The origins of trust administration lie in the implementation of New Zealand Company theories of colonisation. Indeed, the only reserves to be administered in trust prior to 1856 were tenths reserves in the company settlements of Nelson and Port Nicholson. Chapter 1 discusses the origins of the trust administration of Maori

5. Peter Spiller, *Butterworths New Zealand Law Dictionary*, 4th ed, Wellington, Butterworths, 1995, p 302

6. ‘A fiduciary duty concerns disclosure of material facts in a situation where the fiduciary has either a personal interest in the matter to which the facts are material or acts for another party who has such an interest . . . The classic case where the duty arises is where a solicitor acts for a client in a matter in which he has a personal interest. In such a case there is an obligation on the solicitor to disclose his interest and, if he fails to do so, the transaction, however favourable it may be to the client be set aside at his instance’: Lord Jauncey, *Clark Boyce v Mouat* [1993] 3 NZLR 641, 648 (cited in Spiller, p 116).

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reserves, the company theories, and the Crown's adoption and implementation of administration up to 1856. Chapter 2 develops a close analysis of the first piece of reserves legislation to be implemented, the Native Reserves Act 1856, then traces its application in administrative practice through to 1870.

In 1869, Charles Heaphy and Alexander Mackay became dual commissioners responsible for the administration of reserves. Chapter 3 explores the administration of this 'dual commissionership' and their relationship to the Government between 1870 and 1882. Reserve Commissioners, though never formally abolished, were gradually replaced by the Public Trust Office after 1882. The Public Trustee's administration of reserves is the subject of chapter 4, the final and largest of the four periods examined. Indeed, the trustee's involvement was meant to represent a move towards more independent administration. We appraise whether the Public Trust Office, in actuality, provided the form of quintessentially impartial administration intended.

Method

It is useful here to include a brief note on the research method used in this report. The nature and scope of this report have been based on the goals of the Rangahaua Whanui project; the aim has been to produce a broad historical survey, rather than detailed local analyses. Based on a national theme level, it should be considered as complementary to other more detailed Crown and claimant research reports prepared for specific claims.

General reports often rely on case studies in order to span broad areas or periods. However, owing to the subject of the present report, an approach based on case studies has proved unsuitable. Administration between regions varied hugely. And case studies of localised areas tell us little about general trends. Instead, we have attempted a blanket coverage of all regions. This fulfils two purposes: first, it permits us to examine inconsistencies between administrations and, secondly, it highlights the extent to which local administrators influenced the particular direction of administration, sometimes in spite of the legislation.

Time constraints have severely restricted the scope of investigation. One of the weaknesses in a report of this nature lies in its inability to provide a detailed examination of primary source material. As a result, readers must remain cognisant of what has been omitted. The report endeavours, where possible, to highlight relevant sources of further research. Another weakness is the sole reliance on written source material produced in English. Maori written sources have not been consulted owing to the author's insufficient expertise in te reo Maori.

The majority of source material used in this report is from published primary or secondary sources. These source materials, while detailed in some periods, such as the 1870s, are relatively thin in others. This has led to a variation in the depth of

7. These include the record of documents for Wai 145, the Wellington tenths claim. Other relevant records include those for Wai 143 (Taranaki) and Wai 27 (Ngai Tahu).

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some chapters, compared to others. There is further scope for useful intertextual comparisons between published and unpublished forms of the same document. Such comparisons have not been attempted in the present study owing to time constraints.

LIST OF ABBREVIATIONS

a, r, p	acres, roods, perches
AJHR	<i>Appendices to the Journals of the House of Representatives</i>
AJLC	<i>Appendices to the Journals of the Legislative Council</i>
app	appendix
GBPP	<i>Great Britian Parliamentary Papers</i>
CCJWP	Crown Congress Joint Working Party
ch	chapter
doc	document
ed	edition, editor
encl	enclosure
AJLC	<i>Appendices to the Journals of the Legislative Council</i>
ma	Maori Affairs series
ma mt	Maori Affairs Maori Trustee series
NA	National Archives
no	number
NZPD	<i>New Zealand Parliamentary Debates</i>
p, pp	page, pages
para	paragraph
pt	part
rod	record of documents
rop	record of proceedings
s, ss	section, sections (of an Act)
sec	section (of this report, or of an article, book, etc)
sess	session
vol	volume
Wai	Waitangi Tribunal claim

Figure 1: Locations of trust administration of reserves, 1840–1913