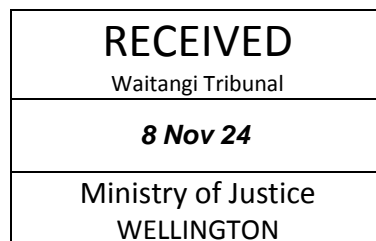


# Raupatu and Compensation in the North- Eastern Bay of Plenty 1865-1874

A Report Commissioned by the Waitangi Tribunal for the North-Eastern  
Bay of Plenty Inquiry District  
(Wai 1750 #A3)

Answers to questions of clarification from counsel



John McLellan

November 2024

## 1. Stone (counsel for Wai 1789)

### 1.1. Quote 1 (p.141)

“Almost the entire iwi was expected to sustain themselves upon lands known to be of poor quality and solely within an area previously occupied by just one hapū, Ngāti Rua.”

### 1.2. Question 1

Did you come across any evidence regarding how the forced relocation of other Whakatōhea hapū onto Ngāti Rua lands at the Ōpape Reserve impacted on intra-hapū relations. If yes, please expand.

### 1.3. Answer 1

The only substantial evidence of the impact on Ngāti Rua and on inter-hapū relations at Ōpape Reserve within my time period was included in a report from Wilson to the Native Minister in 1872. I have included an excerpt below which speaks to both questions 1 (impact on intra-hapū relations) and 2 (evidence of conflict).

**Source:** ‘Mr. J. A. Wilson to the Hon. the Native Minister’, 29th March 1872, AJHR, 1872, C-4, pp 4-7.

“... But that which delayed me in the district, and engaged my constant attention—giving, in fact, a good deal of trouble—was the unsatisfactory condition into which I found the land question generally had fallen, in so far as surrendered Natives were concerned with each other. Confiscated lands had been given to them formerly, for economical reasons, in an unsurveyed and undivided manner, and the complications that had arisen there from had become numerous, and were not to be easily settled. This observation applies to Ngaitai lands, to the lands at Opape and Whakatane, and to all the lands of that class in Rangitaiki, extending from Matata to Mount Edgecombe. These difficulties were more or less enhanced, especially among Ngatiawa tribes, by an indifference to Government action, or rather an avoidance of it.

This new feature, I am informed, is due to the promulgation of certain novel ideas regarding a restoration by Government of confiscated lands, tending to raise hopes and expectations in the minds of the Bay of Plenty Natives that

unsettle them, and indefinitely thwart and postpone the action of Government in its efforts to divide their lands among them. ...

On arriving in the district, I, in accordance with instructions, immediately conferred with Mr. Commissioner Clarke, and, among other things, learned from him that the hapus of the Whakatohea were quarrelling about the possession of their cultivations on the land given to them six years ago at Opape and Waiaua. Mr. Clarke urged the necessity of dividing the land by survey among the hapus; and I may say that I had recommended the same thing in 1866. I agree with Mr. Clarke, for the land given is now an apple of discord, and the quarrels have sometimes ended with sticks and blows.

The numerous Ngatirua hapu claim the whole of the land, in virtue of their ownership before it was confiscated. Te Awanui is the leader of these, and opposed me much at first. But it is settled now that the division shall be made, and Te Awanui has given me himself the names of trustees for the share that will fall to his hapu. This survey will cost £450, and is, I believe, indispensably necessary. ...”

## **2. Stone (counsel for Wai 1789)**

### **2.1. Quote 2 (p.97)**

“The Ōpape Reserve was a narrow strip of land running inland from the coast and located in the north-east portion of the Inquiry District at the eastern edge of Whakatōhea’s tribal boundary. The reserve was 20,290 acres in size. The land quality was later rated as ‘at best... second-class land’ by the Native Land Commission in 1908. The reserve was established on the traditional lands of Ngāti Rua but was intended to serve all ‘surrendered’ Whakatōhea.”

### **2.2. Question 2**

Did you find any evidence of recorded conflicts or instances of cooperation among hapū?

### **2.3. Answer 2**

Please refer to the answer provided above for Question 1.

### 3. Stone (counsel for Wai 1789)

#### 3.1. Quote 3 (p.97)

Please refer to Quote 2 above.

#### 3.2. Question 3

During your research, did you find any evidence of the relocation of Whakatōhea impacting the Ngāti Rua economy differently in comparison to other hapū?

#### 3.3. Answer 3

No, my research did not identify any points of difference in the economic impacts of the relocation on the different hapū.

### 4. Stone (counsel for Wai 1789)

#### 4.1. Quote 4 (p.63)

“It is thought that this resistance was either offered by Ngāti Rua or Ngāti Ira before they withdrew to pā at the entrance to Waioeka Gorge.”

#### 4.2. Question 4

Can you provide the references regarding the resistance of Ngāti Rua or Ngāti Ira?

#### 4.3. Answer 4

Walker argues this resistance was offered by Ngāti Rua, while Crosby argues it was Ngāti Ira.

**Sources:** Ranginui Walker, *Ōpōtiki-Mai-Tawhiti: Capital of Whakatōhea* (Auckland: Penguin, 2007), pp 98 & 103; Ron rosbey, *Kūpapa: The Bitter Legacy of Māori Alliances With the Crown* (Auckland: Penguin, 2015), p 270.

## **5. Stone (counsel for Wai 1789)**

### **5.1. Quote 5 (p.63)**

Please refer to Quote 4 above.

### **5.2. Question 5**

Did your research determine whether or not this resistance by Ngāti Rua or Ngāti Ira lead to harsher treatment during the invasion or as part of the raupatu?

### **5.3. Answer 5**

No, my research did not identify any points of difference in the treatment of these hapū due to the resistance they may or may not have offered.

## **6. Stone (counsel for Wai 1789)**

### **6.1. Quote 6 (p.15)**

“Whakatōhea acquired a fleet of thirteen ships which they used to transport goods to Auckland markets, and tools and equipment to improve their farming practices. Hira Te Popo of Ngāti Ira built a flour mill in 1858 to grind his hapū’s wheat until the mill was destroyed during the invasion of colonial forces in 1865.”

### **6.2. Question 6**

Were all of Whakatōhea ships destroyed or confiscated during the invasion or in the aftermath of the raupatu?

### **6.3. Answer 6**

My assumption is that Whakatōhea will have lost all of their ships when they withdrew inland and away from the harbour following the arrival of colonial forces.

However, my research did not provide any specific insight into the outcome of these thirteen ships.

## **7. Stone (counsel for Wai 1789)**

### **7.1. Quote 7 (p.15)**

Please refer to Quote 6 above.

### **7.2. Question 7**

Did Ngāti Rua or other Whakatōhea hapū manage to retain or rebuild transport networks after the invasion?

### **7.3. Answer 7**

My research did not provide any insight as to what transport network Ngāti Rua or other Whakatōhea hapū retained following the invasion, or if/when they were able to rebuild this network.

## **8. Stone (counsel for Wai 1789)**

### **8.1. Quote 8 (p.136)**

“No obvious attempts were made to identify suspects, individual guilt, or to communicate or negotiate for the murder suspects to be turned over. There was an assumption under martial law that all of Whakatōhea (including Ūpokorehe by government definition) were guilty of Völkner’s murder – with few exceptions Ūpokorehe and the hapū and individuals of Whakatōhea were treated as mutually culpable ‘rebels’.”

### **8.2. Question 8**

Were colonial officials aware of the opposition within Whakatōhea to Völkner’s execution?

### **8.3. Answer 8**

Yes or at least they will have been aware of claims that there was opposition voiced or enacted by some members of Whakatōhea. Several months separate the execution of Völkner (2 March 1865) and the arrival of colonial forces in Ōpōtiki (8 September 1865). In the interim colonial officials will have received an array of information regarding the events.

It is inevitable that some of this information included evidence of opposition

from within Whakatōhea to the execution.

Joseph Jeans' statement includes such evidence. Although the date Joseph Jeans made his statement to Commissioner Smith at Maketu is unclear, I believe it was presented to the House of Assembly in August of 1865.

**Source:** J Mackay, 'Statement of Joseph Jeans(?) Jennings, Portuguese, Resident at Opotiki', June, AJHR, 1865, E-5, pp 16-18.

## 9. Crown Law (29 October 2024)

### 9.1. Quote 9 (p.7)

“It is also acknowledged here that a number of smaller hapū existed at the time, some of which continue to exist.”

### 9.2. Question 9

Can the author clarify the hapū referred to here?

### 9.3. Answer 9

The reference was an attempt to acknowledge those who identify with hapū which have been subsumed into or excluded from (willingly or otherwise) the definition of Whakatōhea and Te Ūpokorehe by others (including the Crown).

Both Turangapikitoi (Wai 1794), and Rongopopoia (Wai 1787) would be examples.

## 10. Crown Law (29 October 2024)

### 10.1. Quote 10 (pp.14-15)

“... the conflicts with northern tribes left Whakatōhea on shaky ground. Their numbers were diminished ...”

### 10.2. Question 10

Did the author locate any primary or secondary sources which address Whakatōhea population figures at this time?

### 10.3. Answer 10

No figures were sighted for the Whakatōhea population earlier than those mentioned further down page 15 of my report.

The first Anglican missionary in Ōpōtiki, John Alexander Wilson, estimated the population in the Ōpōtiki district to be about 1200 in 1841.

By 1850, this had increased to an estimated 2,550.



Source: Walker, *Ōpōtiki-Mai-Tawhiti*, pp. 50 & 65.

## 11. Crown Law (29 October 2024)

### 11.1. Quote 11 (p.29)

“Völkner’s accusations of treason against Father Garavel in December 1863 also incited Whakatōhea against Völkner.”

### 11.2. Question 11

Can the author clarify the primary or secondary sources this statement is based on? Is “incited Whakatōhea against” intended to refer to all of Whakatōhea?

### 11.3. Answer 11

No, the reference is not intended to refer to all members of Whakatōhea. I would suggest it is rare to get absolute consensus on any issue among any group, and no sources that I saw implied this was the case or identified specific groups or individuals who were turned against Völkner specifically by this accusation.

Rather, the inference is that Völkner acting against Father Garavel contributed in part to encourage (or ‘incite’) the ill or unpleasant feeling towards Völkner that many sources have noted was germinating at the time.

These sources include but are certainly not limited to:

Paul Clark, ‘Hauhau’: The Pai Marire Search for Maori Identity (Auckland: AUP, 1975), p. 34; Bryan Gilling, ‘Te Raupatu O Te Whakatohea: The Confiscation of Whakatohea Land 1865-866’ (commissioned research report: Wellington, Treaty of Waitangi Policy Unit, Department of Justice, 1994), p. 39; Walker, *Ōpōtiki-Mai-Tawhiti*, p. 87.

## 12. Crown Law (29 October 2024)

### 12.1. Quote 12 (p.36)

“The warrant was therefore issued under civil law.”

### 12.2. Question 12

Is the author’s intended meaning that the warrant was not “issued under criminal law”?

### 12.3. Answer 12

Yes.

## 13. Crown Law (29 October 2024)

### 13.1. Quote 13 (p.39)

“There is no evidence that Whakatōhea or other Māori at Ōpōtiki were formally notified of the forces’ impending occupation or the reason for their occupation.”

### 13.2. Question 13

Is the source for this statement the page of Gilling’s report cited in footnote 215 at the end of paragraph containing this sentence?

### 13.3. Answer 13

Gilling’s report will have informed this statement, but is not the sole source for this conclusion.

During my own research I also saw no evidence that the forces had sought to notify the Ōpōtiki community of the reason for their arrival, or to attempt any form of negotiation with them, prior to taking offensive action.

#### **14. Crown Law (29 October 2024)**

14.1. **Quote 14** (p.44)

No quote provided.

14.2. **Question 14**

The text in footnote 241 is repeated in footnote 243. Should footnote 243 contain different text?

14.3. **Answer 14**

Footnote 243 should simply read:

Gilling, 'Te Raupatu O Te Whakatohea', p 72

#### **15. Crown Law (29 October 2024)**

15.1. **Quote 15** (p.44)

"Walker suggests Ngāti Ira were the most visible hapū in resisting the colonial forces, having 'no option but to defend their territory', and subsequently suffered the highest casualties before they withdrew in to the Waioeka Gorge."

15.2. **Question 15**

In addition to Walker's text, did the author consult any primary or secondary sources in relation to this statement?

15.3. **Answer 15**

The sources my report draws on are all contained within the bibliography, and I am not aware of any of those sources contradicting Walker on this issue.

#### **16. Crown Law (29 October 2024)**

16.1. **Quote 16** (p.50)

"The colonial forces had only been supplied with limited rations due to the limited space in the transport vessels."

16.2. **Question 16**

Can the author please record the primary or secondary source this statement is based on (or if it is based on the page of Gilling's report cited in footnote 290 at the end of the paragraph containing this sentence)?

16.3. **Answer 16**

Gilling (p.67) paraphrases letters between Holt and Major Brassey in which it is revealed that although 60 days provisions were planned, only 20 days of provisions could be transported aboard the ships chosen.

**Source:** J. Holt to Major Brassey, 16 August 1865. AD 6/7, 1865/164.

**17. Crown Law (29 October 2024)**

17.1. **Quote 17** (p.50)

"Prior to the killing of Völkner, Whakatōhea, or at least some members of the iwi had been described as a wealthy group who had prospered through farming and providing the settler markets of the coast and Auckland.

17.2. **Question 17**

Is the source for this statement the page of Gilling's report cited in footnote 290 at the end of the paragraph containing this sentence? Or is it based on a contemporaneous source from the period "[p]rior to the killing of Völkner"?

17.3. **Answer 17**

The section in question draws on the discussion of the Whakatōhea economy presented earlier in this report (pp. 14-16).

The cited sources for which include:

Walker, *Ōpōtiki-Mai-Tawhiti*, pp. 59-60, 63-65, 67; Gilling, 'Te Raupatu O Te Whakatohea', pp. 13-16; H H Turton, 'Report by Mr Hanson Turton respecting the Runanga Maori', 20 November 1861, AJHR, 1862, E-5A, p 8.

## 18. Crown Law (29 October 2024)

### 18.1. Quote 18 (p.58)

“Before Grey could impose his decision the Attorney General, James Prendergast, having likely taken advice from the British Government ...”

### 18.2. Question 18

What primary or secondary source is the statement “having likely taken advice from the British Government” based on?

### 18.3. Answer 18

This is based on the same claim from Binney in *Encircled Lands* (p. 93).

## 19. Crown Law (29 October 2024)

### 19.1. Quote 19 (p.92)

“Negotiations between Wilson and different rangatira across the Bay of Plenty resulted in the ‘ceding’ of most of their land to the Government ...”

### 19.2. Question 19

Can the author clarify what is meant by “ceding” in this context?

### 19.3. Answer 19

In this instance ‘ceding’ refers to Wilson gaining agreement from rangatira to give up areas of their territory to the Government.

As I was privy to such little record of the negotiations from either Wilson or the rangatira involved it is difficult to ascertain how much agreement was achieved or from whom.

## 20. Crown Law (29 October 2024)

### 20.1. Quote 20 (p.98)

“The absence of most of the Māori claimants from the area during Wilson’s attempts at private negotiations would result in more claims being heard in

the Compensation Courts than Wilson desired.”

20.2. **Question 20**

Is this statement based on the letter from Wilson to F Whitaker, cited in footnote 491? If so, what is the statement made by Wilson in that letter that is referred to?

20.3. **Answer 20**

Yes. An excerpt from the letter is included below with areas of interest emphasised in bold.

“... Upon clarifying the claims I found, that for land at Opotiki and Ohiwa, there are 38 claimants, who make just 100 claims.

Shortly after my arrival William King [Wiremu Kīngi] came to see me with several Ngaitai men and by appointment met the W[h]akatohea chiefs, Rangimatanuku, Wi Tiria , and others. The result however of the discussion convinced me more than ever of the weakness of Ngaitai’s claim to Opape. ...

**It is not possible to compromise the claims at this place.** For there are only 4 claimants present here. They are Tiwai and his wife Te Aira, Mr[s?] Bennett White, and a native from the Bay of Islands. With the three former I can do nothing, as they are determined to go to the Court — and I prefer to allow the claims of the latter to take their chance there also, to giving him the land he asks for. **In this department of my duty difficulties have multiplied very much since I was here in May.**

Finding myself, therefore unable to settle claims privately in consequence of the absence of the bulk of the claimants, and the stubbornness of the few that are here I have set aside reserves in the military and commercial townships. ...”

**Source:** Wilson to F Whitaker, 14 November 1866 in RDB, vol 120, pp 46353-46357.

## 21. Crown Law (29 October 2024)

### 21.1. Quote 21 (p.100)

“... [Wilson] arranged for Major St John, Te Ranapia, Wīteria Tawhi Moka, and Rewiri Moka (who were all of Whakatōhea) to travel into the ‘Waioeka mountains’, near the source of the Waioeka River to meet expatriated Pai Mārire adherents of Whakatōhea in an effort to encourage their surrender and join their kin at the reserve established in Ōpape.”

### 21.2. Question 21

What was the outcome of this meeting?

### 21.3. Answer 21

The report from Wilson quoted in a letter from Pollen continues on to say that:

“Many fair promises to join their tribe in a short time at Opape were made by the rebels, but none were ever fulfilled.”

**Source:** Daniel Pollen, Government Agent, Auckland To: Colonial Secretary, Wellington Date: 26 April 1867 Subject: Original report dated 18th April from Mr J A Wilson Special Commissioner at Opotiki (R24202644) ACGO 8333 IA1 289 / [37] 1867/1321.

## 22. Crown Law (29 October 2024)

### 22.1. Quote 22 (para 3.25 of report summary)

“Those considered innocent were sent on to Ōpape or Tōrere.”

### 22.2. Question 22

Is the author able to clarify when this occurred and who he is referring to as being sent to Ōpape and Tōrere? Is the author referring to those considered innocent of Reverend Völkner’s and Fulloon’s murders?

### 22.3. Answer 22

My research was unable to clarify the details as to who actually went to the reserves of Ōpape and Tōrere or when they first arrived. Similarly, I did not

find any details of large scale organised migration of Māori onto allocated reserves.

Presumably where Māori held a connection to land and they could return safely they will have at the earliest opportunity following the arrival of colonial forces on 8 September 1865, regardless of the formalities of reserve status.

Those who came in to surrender and pledge their loyalty were subsequently released if they were not considered complicit in the murders of Reverend Völkner's and Fulloon's murders. Māori are known to have surrendered and pledged loyalty as early as 17 September 1865 and as late as June 1870.

## **23. Crown Law (29 October 2024)**

### **23.1. Quote 23** (para 4.9 of report summary)

"The confiscation of such a large amount of land suggests the Governor held Whakatōhea (Ngāti Awa and Tūhoe, among others) accountable for not surrendering Völkner's (and Fulloon and his crew's) suspected murderers."

### **23.2. Question 23**

Can the author clarify his understanding of why Ngāi Tai lands were also included in the confiscation?

### **23.3. Answer 23**

The confiscation of lands was justified by colonial authorities under the premise of supporting the military defence of the area, but was also driven by a wider desire to generally subdue resistance to colonial authority and increase access to lands for Pākehā settlement.

My research did not provide me with a definitive understanding of why Ngāi Tai lands were included within the lands confiscated and any conclusion would be speculative.

## **24. Crown Law (29 October 2024)**



24.1. **Quote 24** (para 4.12 of report summary)

Please refer to Quote 23 above.

24.2. **Question 24**

Can the author clarify whether there is a reason Ngāi Tai are not discussed in relation to the matters addressed in this paragraph?

24.3. **Answer 24**

At the time I was commissioned and then completed the report, it was not clear to what, if any, extent Ngāi Tai ki Tōrere would be participating in the inquiry. The primary focus was on Whakatōhea given that it was expected at that time that the inquiry would proceed expeditiously with the focus on the raupatu issues of Whakatōhea and Ūpokorehe.

## 25. **Crown Law (29 October 2024)**

25.1. **Quote 25** (para 5.15 of report summary)

“During the Ōpōtiki session the Judge questioned the legality of the Crown’s confiscation in the Bay of Plenty District.

25.2. **Question 25**

Can the author clarify whether this included Judge Mair raising concerns about Wilson including Ngāi Tai Lands which he had been instructed to leave to the Māori owners, and/or the inclusion of Ngāi Tai lands when Ngāi Tai should have been exempt from confiscation under the terms of the Proclamation of Peace?

25.3. **Answer 25**

This statement is based on Wilson’s understanding of events in the Ōpōtiki Compensation Court as reported back in a memorandum to Government Agent Dr Pollen on 25 July 1867.

In Wilson’s report of what was said Ngāi Tai are not specifically named, and the concerns are primarily those of Judge Smith rather than Judge Mair.

Although Judge Smith states the ‘surveying and allotting’ are illegal there is no specific mention of exemption from confiscation under the Proclamation of

Peace. Rather, the emphasis is that any compensation issued should be from the claimant's own lands.

I have included the full transcript of this report for context and highlighted the area of interest.

**Source:** Wilson, to Pollen, 25 July 1867 in (R24203194) ACGO 8333 IA1 293 / [43] 1867/2771, ANZ, Wellington.

Memorandum

Auckland

25th July 1867

In October last, when I was about to make a number of reserves for Compensation Claimants at Opotiki, I delivered to Mr Fenton a letter from Mr Whitaker, requesting him to be good enough to put me in possession of the principal points that guide the procedure of the Compensation Court – Mr Fenton in affording me some useful information, paid particular stress upon the necessity of reserving their own lands to Compensation Claimants.

I replied, 'such is by no means the Governments' view of the subject, for a large reserve has been set aside for the very purpose of meeting these claims'.

Mr Fenton's answer was to the following effect – I have nothing to do with the matter from the aspect you mention – Don't suppose that the Government is always right, or that it always acts in a legal manner – neither have I any thing to do with your instructions, or with private arrangements you may make; but until the Government goes to the Supreme Court and there obtains a judgement instructing the Compensation Court you cannot take the lands of Loyal persons, unless you pay them money.

It was lawful to do so under the first Act, but subsequent legislation, in our opinion, has altered the case – and on another occasion Mr Fenton remarked; that the Order to take lands within the confiscated district, for the 'purposes of settlements' does not shew that the lands are required for purposes of military

defence.

That Mr Fenton has forgotten these conversations is doubtless due to the fact that his attention is very much engrossed with the many duties he has to perform – I have however had to bear them in mind, and act in accordance with the course indicated. Hence I could not forget them; and besides I had mentioned our first conversation to Mr Whitaker.

The reserves were made and balance allotted to the military settlers and after this upwards of sixty new claims were forwarded to me from Auckland, many of them for land already allotted. Such was the position of affairs, when the first session of the Court was opened by **Judge Mair; who informed me he should not decide any questions of importance until assisted by an experienced judge, who was expected to arrive.**

In the meantime a European claimant appeared, who said that having consulted Mr Russell of the firm of Whitaker and Russell, he was well aware that the Govt could not touch the land of one Hohi Ngapuhi, who he represented – with this person I had a good deal of difficulty – and to bring the matter to an issue when Judge Smith arrived, I availed myself of the first opportunity (persons understanding English being absent) to ask in open Court for the rule of the Court on this question.

**Mr Smith said, 'It is a point the Government ought not to raise for its own sake'.**

I replied, 'The Government desires to be made aware of any difficulty in order to know how to act'.

**Mr Smith then said, 'The proceedings of the Government at Opotiki in surveying and allotting the country are quite illegal, and the Compensation Court which sits here simply to administer the law cannot regard them – under the circumstances the best thing the Crown Agent can do is to make arrangements with the claimants relative to the localities they shall have. The Court will now award their various amounts of land to them without specifying where those lands shall be taken, and will thus afford the Crown Agent an opportunity to settle this with them. But if any Claimant holds out, and after a lapse of six months from the time of his award, requests the Court to name his locality; the**

**Government may be sure the Court will give his own land to that Claimant even though it may be in the possession of a military settler; in which event the Government would of course be obliged to compensate the latter. But the Government can place military settlers on Loyal Claimants' land by granting them compensation money.**

**However I do not go so far as Mr Fenton, for I am of opinion that an Order in Council, specifying certain lands within the confiscated district, and setting them aside as necessary for settlements of military defence, would entitle the Government to take those lands under the Act, and to elect to give money or land in lieu.**

**But the present order cannot be accepted in such a light, as it would be impossible to bring evidence to convince the Court that the whole of the Bay of Plenty District is required for purposes of military settlement.[?]**

Some few days after this opinion was given Col Haultain, Mr Smith, and myself had an interview at Opotiki; when the whole question was amply discussed, and the result was that Colonel Haultain directed me to furnish the boundaries of a district to be proclaimed in the manner Mr Smith suggested. I accordingly forwarded my memo of the 30th April through to your office.

I should add, that since that memo was written another session has been held by Judge Mackay at Maketu; and there the same question arose in the cases of Te Warihi and Mihi Terina, when Mr Mackay ruled that lands allotted to military settlers could not be restored by the Court to the Claimants; and he awarded to them 35 acres each, to be selected elsewhere by the Crown Agent and Claimants.

J A Wilson

Crown Agent