A Report on the St Stephen's School Trusts

The history of the St Stephen's School spans more than 175 years. The trusts upon which the School was founded were changed in 2009, when the St Stephens and Queen Victoria Schools Trust Board [1] applied to the High Court, with the approval of the General Synod of the Anglican Church, to consolidate and vary the original trusts administered by the Board.

The 'Deed of Consolidation and Variation of Trusts' (2 April 2009), and also, the 'Deed of Appointment' (14 May 1962) are included in the Bundle of Documents ('BoD') which accompanies this report. [2] I have also included in the BoD a copy of the 'Scheme for Variation of Trusts' which refers to the original 'principal trusts' and the 'sundry trusts' that were varied under the scheme approved by the General Synod in May 2008. [3]

The current Trust administered by the Board, is set out in clause 4 of the 'Deed of Consolidation and Variation of Trusts' ('the Deed') as follows:

> " 4. CHARITABLE PURPOSES
>
> " 4.1 The Trust Board shall continue to hold the Trust Fund upon trust to pay or apply in New Zealand the capital and income of the Trust Fund in such amounts, at such times, and subject to such terms and conditions as the Trust Board, in accordance with the terms of this deed, shall decide, exclusively for all or any of the following Charitable Purposes:
>
> (a) The advancement and propagation of education for children of New Zealand, principally for girls and boys of New Zealand Maori descent but including peoples of all races and denominations, principally through the provision and management of schools and the provision of continuing development of an integrated curriculum which features foundation teaching, learning skills and excellence and blends elements of Maori concepts and Christian values with the New Zealand education curriculum.

1 In this report the 'St Stephen's and Queen Victoria Schools Trust Board' will be referred to as 'the Board' or the 'SSQVSTB'.
2 BoD – Docs 1 & 2.
3 BoD – Doc 3.

(b) All such purposes as are incidental or conducive to the attainment of the foregoing purposes"

" (Consolidation – Resolution of General Synod, section 16 ACTA) "

The 'Trust Fund' referred to in the declaration of trust, is defined in clause 1.1 of the Deed. However for the purposes of this Report it is sufficient to note that the 'Trust Fund' now consists almost entirely of the accumulated funds derived from the sale of the lands comprised in the original 'principal' trusts. With the exception of the highly irregular 'sale' of Resolution Point in 1886, most of the lands subject to the 'principal' trusts were sold by the General Trust Board of the Diocese of Auckland, between 1920 and 1962.

The very great majority of the lands in the original 'principal' trusts comprised 'whenua tuku iho' (ancestral lands) that had been entrusted to the Crown by the ancestral owners of such lands, for the support of schools on their lands to educate their children.

Without consulting the ancestral owners, the Crown constituted trusts for the support of schools, for their children and other children, (Maori, Pakeha and Pacific Island children), and made religious education, industrial training, and instruction in the English language mandatory.

The Church, also without consulting the ancestral owners, unilaterally 'reconstituted' the trusts constituted by the Crown, and made them subject to an over-arching trust for the benefit of the Church and its 'mission'.

Whatever the Crown and the Church may have done to enlarge and subvert the trusts, the lands comprised in the trusts were 'tuku whenua' and as such were subject to Maori custom and expectations.

The Maori view of '**tuku whenua**' (gifted land) can be summed up in the following saying '**Riro whenua atu, Hoki whenua mai**'. [4] It succinctly captures Maori expectations in relation to gifted land. In the event that such land is not, or is no longer used for the purpose it was given, it is customary for it to be returned to the ancestral owners of such land or their descendants.

The Church however, promulgated legislation [5] under which such lands were treated as charitable gifts, in respect of which the ancient English legal doctrine of ***Cy-près*** [6] applied.

The conversion of 'tuku whenua' to charitable property, paved the way for the sale of such lands and the diversion of the revenue, to other purposes, without the knowledge, and often against the explicit objections, of the ancestral owners.

The Crown was complicit in converting 'tuku whenua' to charitable property, by enacting the legislation promulgated by the Church.

The Church subverted and subordinated the original trusts. It did so, by reconstituting the original trusts, and then administering the same as if they were 'Church trusts', under a parallel and autonomous trust administration system created by the Church under its Constitution and Canons.

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4 Na, Takuta Ken Kennedy, no Ngati Pikiao me era atu Hapuu o Nga Pumanawa e Waru o Te Arawa.

5 The Religious Charitable and Educational Trusts Act 1856, now the Charitable Trusts Act 1957, under which the scheme varying the original trusts administered by the Board was approved by the High Court in 2009.

6 According to the *Cy-près* doctrine in English Law, if the purposes of a 'charitable trust' cannot be fulfilled for whatever reason, the corpus of the trust can be used for a 'similar' purpose. The difficulty with this doctrine, at least for Maori, is that their understanding of the 'original purposes' against which other purposes were determined to be similar (or not), was disregarded by the three "C's"; the Crown, the Church, and the Courts. In every case, the purposes of the trusts were determined according to the 'terms' set out in the Crown Grants or the Deeds which constituted the trusts, that were deemed to be 'charitable trusts'.

The *Simpkins Report* , [7] is one of several reports, which set out useful historical accounts of the subdivisional, leasing, and sales arrangements, from the 1850s to the 1930s. These reports set out in meticulous detail a transactional account of the trusts reconstituted and consolidated under Native School Trust No. 1 that were for the most part administered by the General Trust Board during that time.

However, the transactional account of the use and application of the lands comprised in such trusts, did not include a review of the same, according to the original objects of the trusts, or with any regard for the purposes Maori had entrusted their lands to the Crown, and the entirely legitimate expectations, customs and principles of Maori, that were then, and remain to this day, inherently and inextricably part of 'tuku whenua'.

7 BoD, Doc 4. See WJ Simpkin's report 'The Native Schools Trust' (31 March 1931) - John Kinder Theological Library, ANG 101/1.00/78*17.

The Original Trusts

The original trusts that were consolidated under Native School Trust No. 1 are summarised below. [8]

Church of England, Native School Trust No.1

Schedule A : St Stephen's Trusts, Auckland

Date	Trust, Location	Area (acres) A	R	P
St Stephen's Trusts, Auckland				
21/08/1848	Parnell (Allot 6)	5	3	20
23/09/1850	Parnell (Allots 15,16 & 17)	12	0	0
23/09/1850	Parnell (Allots 18, 19, 20 & 21)	23	0	21
23/09/1850	Parnell (Allot 23A)	4	2	30
23/09/1850	Parnell (Allot 23)	18	0	0
14/04/1851	Parnell (Allot 9)	9	2	5
06/07/1857	Parnell (Allot 8)	4	0	20
		77	**2**	**16**
14/04/1851	Maraetai, Auckland	**121**	**0**	**0**

Schedules B,C & D Waikato, Auckland & North Auckland Lands

Waikato				
29/12/1853	Kohanga, (Kohanga School, Port Waikato)	470	0	0
29/10/1853	Kohanga School (Port Waikato)	280	0	0
29/10/1853	Pepepe, (Taupiri School, Waikato)	133	3	0
15/12/1853	Hopuhopu, (Taupiri, Waikato)	1,385	0	0
29/10/1853	Punui (Otawhao School) *(909 acres)	870	0	0
		3,138	**3**	**0**
Auckland				
28/06/1859	Orakei (Auckland)	4	0	36
28/06/1860	Papakura (South Auckland)	5	0	0
		9	**0**	**36**
North Auckland				
18/09/1868	Old Russell - Okiato Point, Russell.	4	1	14
		4	**1**	**14**

8 See Church of England Native Schools Trust Deed (21st Feb 1861), and Deeds (BoD, Docs. 1 & 2). I refer to this Trust as the 'Native Schools Trust No. 1' because it was the first of 3 such trusts, created by the Church. The 'Native Schools Trust No. 1' (Diocese of Auckland including Waikato), was followed by the Native Schools Trust No.2 (Wellington Diocese), and the Native Schools Trust No. 3 (Diocese of Waiapu).

The consolidation of the original trusts

Three 'Native School Trusts' were created; in the Dioceses of Auckland, Wellington, and Waiapu. [9] The so called Native School Trusts, were in truth not so much trusts as they were administrative arrangements, under which the original trusts were consolidated according to Dioceses within which the lands comprised in the trusts same were situated, as shown below.

Native School Trust No. Dioceses of Auckland	**Grantee**	**Description of Trust**	**Area (acres)**
St Stephens, Auckland	Bishop of NZ	Religious education, Industrial training, Instruction in English	40
St Stephens, Auckland	Bishop of NZ	Religious education, Industrial training, Instruction in English	18
St Stephens, Auckland	Bishop of NZ	Religious education, Industrial training, Instruction in English	9
St Stephens, Auckland	Bishop of NZ	Religious education, Industrial training, Instruction in English	5
St Stephens, Auckland	Bishop of NZ	Religious education, Industrial training, Instruction in English	4
St Stephens, Auckland	Bishop of NZ	Religious education, Industrial training, Instruction in English	121
Puniu, Waikato	Bishop of NZ	Religious education, Industrial training, Instruction in English	870
Kohanga, Waikato	Bishop of NZ	Religious education, Industrial training, Instruction in English	280
Kohanga, Waikato	Bishop of NZ	Religious education, Industrial training, Instruction in English	470
Pepepe, Waikato	Bishop of NZ	Religious education, Industrial training, Instruction in English	133
Hopuhopu, Waikato	Bishop of NZ	Religious education, Industrial training, Instruction in English	1,385
Native School Trust No. 2 Dioceses of Wellington	**Grantee**	**Description of Trust**	**Area (acres)**
Whanganui Collegiate	Bishop of NZ	Religious education, Industrial training, Instruction in English	250
Kaikokirikiri, Wairarapa	Bishop of NZ	Religious education, Industrial training, Instruction in English	190
Papawai, Wairarapa	Bishop of NZ	Religious education, Industrial training, Instruction in English	400
Porirua	Bishop of NZ	Religious education, Industrial training, Instruction in English	500
Te Aute College	Bishop of NZ	Endowment for a School for Maori	1,745
Te Aute College	Bishop of NZ	Endowment for a School for Maori	1,408
Te Aute College	Bishop of NZ	Endowment for a School for Both Races	4,244
Native School Trust No. 3 Dioceses of Waiapu	**Grantee**	**Description of Trust**	**Area (acres)**
Te Waerenga a Hika	Bishop of Waiapu	Native school in connection with Church	583

9 See General Synod Report 1859, page 66 & General Synod Report 1862, pages 66 – 67. See also: Native School Trust (Dioceses of Auckland) Deeds of Appointment & Conveyance dated 21st February 1861; NSTD A III 2 & 3 (21.02.1861) Diocesan Trust Board records, Anglican Diocese of Auckland archives; Native School Trust (Dioceses of Wellington) Deeds of Appointment & Conveyance dated 13th May 1862; John Kinder Theological Library: 6014 ANG*1*5*2 4/10 **...** B.X.1 Native School Trust 13/5/1862; and Native School Trust (Dioceses of Waiapu) Deeds of Appointment & Conveyance dated 28th April 1862 (Deeds E1, E2, E3) ANG 1-5-3, John Kinder Theological Library Archives.

With the exception of the Te Aute College and Te Waerenga a Hika trusts, the trusts consolidated under the Native School Trusts that the Church created, were constituted under Governor George Grey's Education Ordinance of 1847. [10]

The St Stephen's trusts

The recitals and declarations of trust in the Crown Grants which constituted the original trusts for St Stephen's are set out below.

Wording of the original St Stephen's trusts

" Whereas **a School hath been established by the Government under the Superintendence of the Bishop of New Zealand** for the education of our children of both races and of children of other poor and destitute persons being inhabitants in the Pacific Ocean ... [HMQ and her heirs and successors] ... **hereby grant to the said Bishop of New Zealand and his successors** Bishops of New Zealand ... [the lands specified in the Grant/s] ... In Trust **... for the use or towards the support and maintenance of the said school** so long as Religious Education Industrial Training and Instruction in the English language shall be given to the Youth education therein or maintained thereat."

" Whereas **a School hath been established by the Government at Taurarua** ... **under the Superintendence of the Bishop of New Zealand** for the education of our children of both races and of children of other poor and destitute persons being inhabitants in the Pacific Ocean and Whereas the Government have given funds for the establishment and support of the said school and out of the said funds so given [GA Bishop of NZ] hath paid the sum of £226.0.1 ... [18.0.0 acres] ... [HMQ and her heirs and successors] ... **hereby grant to the said Bishop of New Zealand and his successors Bishops of New Zealand** ... [the lands specified in the Grant/s] ... In Trust ... **for the use or towards the support and maintenance of the said school** so long as Religious Education Industrial Training and Instruction in the English language shall be given to the Youth education therein or maintained thereat."

" Whereas **a School hath been established by the Government at Taurarua** ... under the Superintendence of the Bishop of New Zealand for the education of our children of both races and of children of other poor and destitute persons being inhabitants in the Pacific Ocean and Whereas the Government have given funds for the establishment and support of the said school and out of the said funds so given [GA Bishop of NZ] hath paid the sum of £114.7.5 ... [9.2.5 acres] ... [HMQ and her heirs and successors] **... hereby grant to the said Bishop of New Zealand and his successors Bishops of New Zealand** ... [the lands specified in the Grant/s] ... In Trust ... **for the use or towards the support and maintenance of the said school** so long as Religious Education Industrial Training and Instruction in the English language shall be given to the Youth education therein or maintained thereat."

10 The Crown had also vested ancestral lands situated at Motueka, near Nelson, in Bishop GA Selwyn upon trust, for religious education, industrial training and instruction in the English language. The Motueka lands (about 1,078 acres), were not included in any of the Native School Trusts, but were part of the 13,152 acres Selwyn erroneously claimed at the First General Synod in 1859, had been vested in him for the Church.

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In relation to the wording of the Crown Grants, we can say with complete certainty:

(a) St Stephen's school was established by the Government and endowed by the Government, not the Church;
(b) It was established under the 'superintendence' of the Bishop of New Zealand, not the Church;
(c) The lands comprised in the Crown Grants were granted to the 'Bishop of New Zealand' and his successors in office, not the Church, or the General Synod, or the trustees appointed by General Synod;
(d) The lands were granted to the 'Bishop of New Zealand' and his 'successors' in office, for the use support and maintenance of 'the said school' (St Stephen's), not the Church, and not any other school or schools.
(e) The lands were granted to the 'Bishop of New Zealand' and his 'successors' in office, subject to the 'so long as' proviso; under which proviso the grants lapsed, (and should have reverted to Crown), in the event that religious education, industrial training, and instruction in the English language ceased to be provided at the school.

The 'Native School Trust No. 1'

This so called trust was created by the Church. It was created by way of contemporaneous deeds, executed on the same day, the 21st February 1861. [11]

The St Stephen's trusts and the Waikato, Orakei, Papakura, and other trusts were consolidated under this Trust, and were administered by trustees appointed by the General Synod.

The recital of the original trusts for St Stephens in the Native School Trust No. 1 Deed is set out below as follows:

11 See Native School Trust (Dioceses of Auckland) Deeds of Appointment & Conveyance dated 21st February 1861; NSTD A III 2 & 3 (21.02.1861) Diocesan Trust Board records, Anglican Diocese of Auckland archives.

Wording of the trusts in the Native School Trust No. 1

St Stephen's trust

" … **Upon Trust** that they the said GEORGE AUGUSTUS, BISHOP OF NEW ZEALAND, GEORGE ADAM KISSLING, ROBER MAUNSELL, WILLIAM MARTIN, AND WILLIAM SWAINSON, **and their Heirs**, shall and do stand seised and possessed of … [all the several allotments and parcels of land comprised in the original trusts for St. Stephens] … for the use and towards the support of a School established at Taurarua … for the education of the Children of Her Majesty's subjects of both races and of Children of other poor and destitute persons being inhabitants in the Islands of the Pacific Ocean ... so long as Religious Education Industrial Training and Instruction in the English language shall be given to the Youth educated therein and maintained thereat." …

New over-arching trust added to the original St Stephen's trust

" … **Upon Trust** that the said Trustees shall and do stand seised and possessed of and interested in the said Allotments and Parcels of Land and the Rents Issues and Profits thereof for an on behalf of the … General Synod, or otherwise shall and do Convey Assure and Assign the same upon and for or according to such Trusts Intents and Objects and Purposes, and under and subject to such Powers Provisions Declarations and Agreements, and in such manner as the said General Synod shall from time to time direct or appoint in writing under the hand of any person authorised by the General Synod in that behalf: Provided always that all money arising from any Sale of the said Trust Property or any part thereof, or received by any Trustees or Trustee for equality of exchange of the said Trust Property or any part thereof … shall be expended in the absolute purchase of other freehold or hereditaments in New Zealand, as the General Synod shall direct, which lands or hereditaments so purchased, together with all lands or hereditaments received in exchange, shall thereupon be vested in Trustees for and on behalf of the General Synod and upon and for the same Trusts and Purposes as the lands so sold or exchanged were holden: **And this Deed further Witnesseth** that each of them the said Trustees doth hereby declare his submission to the authority of the said General Synod and his consent to be bound by all the provisions of the …Constitution and by all Regulations which may have been, or which may from time to time be issued by the authority of the said General Synod: and each of them the Trustees doth hereby undertake to resign his appointment as such Trustee … whenever he shall be called upon so to do by the General Synod or by any person or persons lawfully acting under the authority of the General Synod …" [12]

The Native School Trust No. 1 Deed reconstituted the original St Stephen's trusts, and the other trusts consolidated under it.

The Native School Trust No. 1 Deed has been treated as 'the' Trust Deed for St Stephen's to the exclusion of the original trusts. [13]

12 See Native School Trust (Dioceses of Auckland) Deeds of Appointment & Conveyance dated 21st February 1861; NSTD A III 2 & 3 (21.02.1861) Diocesan Trust Board records, Anglican Diocese of Auckland archives.

13 The Native School Trust No. 2 Deed, under which the Te Aute College trusts were also reconstituted and consolidated with other trusts, has likewise been treated as if it is 'the' Deed of Trust, which governs the Te Aute College trusts.

The first thing to note about the reconstituted version of the trusts as it appears in the Native School Trust No. 1 Deed, is that the recital omits the fact that St Stephens was established by the Government. This has contributed to the erroneous but long held belief that St Stephen's was established by the Church.

One of the numerous consequences of the omission of this important fact, is that the Ministry of Education wrongly assumed that St Stephens was established by the Church, and integrated St Stephen's under the Private Schools Conditional Integration Act 1975 ('PSCIA') based on that erroneous assumption.

As a result, the decision of the Minister of Education to integrate St Stephens under the Private Schools Conditional Integration Act 1975, was ultra vires the Minster's powers to integrate St Stephens under the Act.

It should also be noted that, St Stephens (and Queen Victoria), were State Schools under the Education Act 1964, at the time they were integrated under the PSCIA and could not by definition have been private schools. [14]

It was not the first time that the Church had 're-worded' the original trusts. The Church attempted to re-constitute the original trusts when it promulgated Bishop of New Zealand Trusts Bill (1858). The re-wording of the trusts in the Bill was strongly criticised in both the Legislative Council and the House of Representatives. [15]

Although the Church was not successful in having the trusts re-constituted in the Bill, it did so, under the Native School Trust No. 1 Deed.

The re-wording of the trusts in the Deed allowed the Church to avoid the scrutiny of the Legislative Council and the House of Representatives at that time; and since then the Crown has acquiesced in the distortion of the original trusts by the Church.

14 See BoD, Doc 5: 'Te Aute College: State School or Anglican Church School?, Part A. Did the Minster have the power to integrate Te Aute College under the Integration Act?', pages 3 – 11.

15 See BoD, Doc 5: 'Te Aute College: State School or Anglican Church School?, Part F2. The Bishop of New Zealand Trusts Act 1858', pages 68 – 71 & also pages 72 – 97.

The reconstitution of the original trusts by the addition of the over-arching trust not only distorted the original trusts, it allowed the Church to subsume and sub-ordinate the explicit terms of the original trusts, and the purposes for which Maori had gifted their ancestral lands. By reconstituting the trusts, the Church was able to interpose itself in the trusts. Be that as it may, reconstituting the trusts was not authorised by the Act that the Church relied on to do so.

The Waikato trusts (Hopuhopu, Pepepe, Kohanga and Puniu)

The recitals and declarations of trust in the Crown Grants which constituted the original trusts are set out below.

Hopuhopu, Kohanga & Puniu	**Trust / Location**
Whereas Schools have been established ... under the superintendence of the Bishop of NZ for the education of both races in NZ and children of other poor and destitute Inhabitants of the Pacific Islands, and Whereas it would promote the objects of the said institutions to set apart a piece of land for the use maintenance and support of the same, a piece of land is given In Trust to the Bishop of NZ and his successors for the use and maintenance of the School so long as Religious Education, Industrial Training, and Instruction in the English Language is given to the students educated or maintained thereat.	**Te Kohanga**, Onewhero (2 Grants). **Hopuhopu**, Taupiri near Ngaruawahia. **Puniu,** Te Awamutu.
Pepepe	**Trust / Location**
Whereas Schools have been established **by the Government** ... under the superintendence of the Bishop of NZ for the education of both races in NZ and children of other poor and destitute Inhabitants of the Pacific Islands, and Whereas it would promote the objects of the said institutions to set apart a piece of land for the use maintenance and support of the same, a piece of land is given In Trust to the Bishop of NZ and his successors for the use and maintenance of the School so long as Religious Education, Industrial Training, and Instruction in the English Language is given to the students educated or maintained thereat.	**Pepepe**, Taupiri near Ngaruawahia

Although the declarations of all the Waikato trusts are substantially the same as St Stephen's trusts, [16] the schools at Hopuhopu and Kohanga were established by CMS Missionaries, not the Government. Schools were established by the Government at Pepepe, but not at Puniu.

The Waikato trusts were endowed by Maori, who gifted their ancestral lands to the Crown, in return for schools on their lands for their children; not for schools located elsewhere, and not for other children. To that extent at least, the wording of the Crown Grants reflected their expectations.

However, the Church also reconstituted and consolidated the Waikato trusts under the Native School Trust No. 1 Deed. The same over-arching trust that was added to the original trusts for St Stephen's also applied to the Waikato trusts.

The comments and observations made about the over-arching trust in relation to St Stephen's apply equally to the Waikato trusts. [17]

The Orakei and Papakura trusts

These trusts which are set out below, were not included in the Native School Trust No. 1 Deed, but were administered as if the same were part of the Trust.

ORAKEI
Situate at Orakei, Parish of Waitemata, County of Eden Grant under NZ Native Reserves Act 1856 UPON TRUST as a site of a Church and Burial Ground and as an Endowment **for schools** for the benefit of the Aboriginal Inhabitants of the Colony of NZ
PAPAKURA
Situate at Papakura, Parish of Opaheke, Grant under NZ Native Reserves Act 1856 UPON TRUST as a site for a Church and Burial Ground and as an Endowment for **a school** for the benefit of the Aboriginal Inhabitants of the Colony of NZ

16 The wording of the St Stephen's trusts and the Waikato trusts followed the wording of a 'Model Deed' scribed by Grey for the schools established and endowed by the Government under the Education Ordinance 1847.

17 See Native School Trust (Dioceses of Auckland) Deeds of Appointment & Conveyance dated 21st February 1861; NSTD A III 2 & 3 (21.02.1861) Diocesan Trust Board records, Anglican Diocese of Auckland archives.

These trusts were constituted under the New Zealand Native Reserves Act 1856, and as such, the Crown had a continuing statutory obligation to protect the rights and interests of the ancestral owners of the lands comprised in these trusts.

Under the New Zealand Native Reserves Act 1856, the Governor (appointed by the Imperial Crown) and the Executive Council of the Colonial Government, were responsible for the administration of trusts constituted under the Act.

The Church had no rights under the New Zealand Native Reserves Act, to administer trusts constituted under the Act. It certainly had no power to appoint (or remove trustees). The Governor had the sole authority to appoint (and remove) trustees, but importantly, the Governor could only appoint trustees with the 'assent' of the ancestral owners. [18]

This did not stop the Church unilaterally interposing itself in the Orakei and Papakura trusts, and several others, including the Te Aute College trusts, that had also been constituted under the New Zealand Native Reserves Act. [19]

The Church used the Religious Charitable and Educational Trusts Act 1856 and the Bishop of New Zealand Trusts Act 1858, to interpose itself in these trusts, even though these 'Church Acts' [20] did not repeal or replace the New Zealand Native Reserves Act 1856.

The 'Church Acts', extinguished the rights of the ancestral owners of the lands comprised in the Orakei and Papakura trusts under the New Zealand Natives Reserves Act 1856. [21]

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18 See sections 16 & 17 of the New Zealand Native Reserves Act 1856.

19 For a fuller account of this, see my report '*Te Aute College: State School or Anglican Church School?*.

20 These Acts were promulgated by the Church, and as such the Bills should have been enacted as Private Acts. However, both 'Private' Bills, but were passed through the Legislative Council and the House of representatives as if the same were 'Public' Bills, and enacted as Public Acts. Ironically, the Church maintained (form time to time) in relation to the Native School Trusts that the trusts were of a private and not public character; thereby reiterating its position that these trusts were 'Church trusts'.

21 Dr Bryan Gilling described the Hukarere Native Girls School Act 1892, as a 'legal side wind' because the Act authorised the trustees of the Te Aute College trust to use trust income for Hukarere, without explicitly varying the terms of the Te Aute College trusts. In my view, the Religious Charitable and Educational Trusts Act 1856, and the Bishop of New Zealand Trusts Act 1858, by a 'legal side wind' allowed the Church to interpose itself in the Native School Trusts.

The Maraetai Trust

From the available historical information on this trust, it appears that some years before this trust was constituted in1857, Governor Grey had directed that the sum of £50 should be invested in the purchase of land and that the income derived from the land should be used for the girls of St Stephen's school. [22]

Aside from outdated and somewhat disturbing terms of this ancient trust, it suffered the same fate as the other trusts reconstituted by the Church. It was included in the Native School Trust No. 1. The trust was for the most part completely overlooked. The Maraetai lands were sold by the current Board in 2017.

The terms of these trusts are set out in the Table below.

MARAETAI (Income Trust for St Stephen's Girls)
Situate in the Parish of Maraetai, UPON TRUST for the use and benefit of such one or more of the Girl's of St Stephen's school near Auckland, as the Bishop for the time being shall deem most deserving of the same for Piety and Good Conduct, in such amounts and in such proportions as the said Bishop shall think fit, and in case there shall be no Girls at St Stephen's School, then to any one or more of the Girls at any Native School in the Province of Auckland which shall be in connexion with the Church of England, the same to be applied for the use of any such Girl as aforesaid, to be paid to her upon attaining the age of twenty-one years, or as a marriage portion in case she shall marry before attaining that age.

The Okiato, and other Sundry trusts

These history of these trusts is set out in the *Simpkins Report* . I have reviewed these trusts, but they are not especially significant for the purposes of this report.

22 See *Simpkins Report* pages 7-8.

The subversion of the trusts and subordination of the trustees

The Native School Trusts [23] were part of other legislative and administrative arrangements made by the Church to gain control of the trusts.

As already noted above, these trusts were not so much trusts as they were administrative arrangements, that subverted the original trusts, by adding an over-arching trust to the original trusts. Dr Bryan Gilling has concluded that the over-arching trust created a 'sham trust situation'. [24]

By 1859, the Anglican Church had already created its own trust administration system, under the Constitution and Canons of the Church. [25] This allowed the Church to administer trusts largely without any oversight by the Crown.

Trustees appointed by the General Synod, had to declare their allegiance and submission to the authority of the General Synod as a condition of their appointment. This compromised the trustees duty of complete and undivided loyalty to their trusts.

The independence of the trustees was further compromised by the power of the General Synod to remove trustees. [26] The removal of trustees is usually the responsibility of an independent and impartial Judiciary.

These 'arrangements' were made with the deliberate intention of subverting the trusts and rendering trustees subordinates of the General Synod.

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23 See General Synod Report 1859, page 66 & General Synod Report 1862, pages 66 – 67. See also: Native School Trust (Dioceses of Auckland) Deeds of Appointment & Conveyance dated 21st February 1861; NSTD A III 2 & 3 (21.02.1861) Diocesan Trust Board records, Anglican Diocese of Auckland archives; Native School Trust (Dioceses of Wellington) Deeds of Appointment & Conveyance dated 13th May 1862; John Kinder Theological Library: 6014 ANG*1*5*2 4/10 **...** B.X.1 Native School Trust 13/5/1862; and Native School Trust (Dioceses of Waiapu) Deeds of Appointment & Conveyance dated 28th April 1862 (Deeds E1, E2, E3) ANG 1-5-3, John Kinder Theological Library Archives.

24 Legal Opinion of Dr Bryan Gilling (Rainey Collins Lawyers) 9 November 2010.

25 For a fuller review of this aspect of the Anglican Church's administration of the Native education endowments, see my report '*Te Aute College: State School or Anglican Church School?*.

26 See section 20 of the Anglican Church Trusts Act 1981.

The ‘putake’ (root) of the legislative and administrative arrangements set in place by the Church between 1856 and 1862, can be traced back to George Augustus Selwyn’s vision for the ‘establishment’ of the Church in New Zealand. His vision was laid bare at the First General Synod of the Church in 1859.

Selwyn’s Proclamation at the First General Synod 1859

The long held misconception that the original trusts, consolidated under the Native School Trusts, were Church trusts, and that the lands comprised in the trusts, were Church lands, can be traced back to statements made by Selwyn during his address to the First General Synod held in 1859.

The following part of Selwyn’s address, lays out in plain and unequivocal terms, how he viewed the trusts that had been vested in him:

> “ *I come now to the subject of the tenure of the landed property of the Church.* ***It is well known to all present here that I have been hitherto the sole trustee of all Church lands*** *… in New Zealand, with the exception of Canterbury and Otago.* ***I undertook this heavy responsibility****, and have borne the increasing burden for sixteen years,* ***with the single object of excluding all vested rights and private interests, which would have stood in the way of the free action of the General Synod of the Church****. I now lay upon the table the terrier of more than 14,000 acres of land, secured to the Church by about 100 Crown Grants, and devoted forever to the support of religion and Christian education; and under the powers vested in me, by an Act of the last General Assembly, I say to this Synod, - Take these properties, and use them as you please, within the limits of the trusts, and may God guide you to a right use of His bounty.*
>
> “ ***The reconstitution of the trusts*** *which I now surrender will require considerable care, and on this point I feel it my duty to offer some practical suggestions.*
>
> “ *The Transfer of Trusts –* ***The first business of Synod will be to elect persons to act as trustees … The trustees on accepting the trusts, must sign a deed of submission to the authority of the General Synod. All trusts will thus be brought within the provisions of the Religious and Charitable Trusts Act*** *of 1856 …”* [27]

Included in the 14,000 acres of land Selwyn claimed had been ‘secured to the Church’ was 13,000 acres of Native School land, as shown in the table below. [28]

27 See ‘*Report on First General Synod 1859*’, @ pages 12-13.

28 See ‘*Report on First General Synod 1859*’, page 65.

Summary of lands Bishop Selwyn proclaimed were Church Property in 1859		
Class of property held	Area (acres)	No. Deeds
Cathedral Property	33	8
College Property (St Johns)	1,353	25
Native School Property *	13,152	22
Sites for Churches, Glebes, & Parsonages	187	41
Burial Grounds	20	6
Melanesian Mission	188	4
	14,936	106
* This included the Te Aute Endowment said at that time to contain 7,397 acres		

Selwyn had earlier tried, but failed, to secure 800,000 acres of Native reserves lands, to 'establish' the Anglican Church in New Zealand. [29]

The reconstitution of the trusts

The Church Constitution (1857) [30] and 'Resolutions Relating to Trust Properties' passed by the General Synod in 1862, [31] laid down rules, which not unexpectedly reflected Selwyn's views that the lands vested in him (albeit upon trust) were the property of the Church.

Selwyn and his cohorts [32] had already begun working on the reconstitution of the original trusts in 1856, by promulgating the Bill enacted by the Colonial Legislature as the Religious Charitable and Education Trusts Act 1856. [33] This Act provided the legislative framework for the conversion of 'tuku whenua' to charitable property.

29 GA Phillipson's PHD Thesis, '*The Thirteenth Apostle' Bishop Selwyn and the Transplantation of Anglicanism to New Zealand, 1841 - 1868'* University of Otago, Dunedin, NZ 1992. See pages 71-95.

30 General Synod Report 1862: Constitution (13/06/1857) clauses 26 & 28, and clauses 1-7 of the Schedule.

31 General Synod Report 1862: Res 2 Resolutions Relating to Trust properties (pages 56 - 57; Res 3 Instructions To Trustees Appointed By General Synod (pages 58-64); Appointment of Trustees Native School Estates (pages 66-67).

32 Swainson, Whittaker and others.

33 This Act should have been enacted as a Private Act, but it was enacted as a Public.

The Church then promulgated the Bill enacted by the Colonial Legislature as the Bishop of New Zealand Trusts Act 1858. [34] This Act was enacted to facilitate the conveyance of lands that had been vested in Selwyn to trustees appointed by General Synod. [35]

Unknown to the Colonial Legislature, when the Bishop of New Zealand Trusts Bill was enacted in 1858, Selwyn had resigned his appointment as the Bishop of New Zealand during a visit to England in 1857. His resignation left the Bishops See of New Zealand vacant until November 1858, when the Diocese of New Zealand was replaced by 5 new Dioceses. [36]

When Selwyn completed the conveyances to the trustees of the Native School Trust No. 1 in 1861, [37] ostensibly under the authority of the Bishop of New Zealand Trusts Act 1858, he did so as the Bishop of Auckland and New Plymouth, not as the Bishop of New Zealand. [38]

A consequence of Selwyn's resignation, largely overlooked, was that there were no successors in office. He was not 're-appointed' and since there were no successors, the legality of his actions in executing the deed of conveyance, should have been queried by the Crown.

34 Although this Act was also promulgated by Laity of the Church as a Private Act, as had been the case with the RC&E Act 1856, it was enacted as a Public Act.

35 14,000 acres had been vested in Selwyn (and his successors) as the Bishop of New Zealand under the Letters Patent of 1841, between 1841 and 1857.

36 See BoD, Doc 5: 'Te Aute College: State School or Anglican Church School?'; Part E. A Vacant See: Selwyn's resignation as Bishop of New Zealand, pages 56 – 63.

37 See Native School Trust (Dioceses of Auckland) Deeds of Appointment & Conveyance dated 21st February 1861; NSTD A III 2 & 3 (21.02.1861) Diocesan Trust Board records, Anglican Diocese of Auckland.

38 See BoD, Doc 5; 'State School or Anglican Church School?'; Part E1. The Bishop of New Zealand in name only, pages 56 – 58.

The failure to examine the validity of Selwyn's actions, is difficult to fathom, given that he and his fellow Bishops later resigned their appointments under the Letters Patent of 1858. They tendered their resignation because they considered their appointments, were '**null and void**' for all intents and purposes. It was big news at the time. [39]

The only query about the validity of such conveyances was raised by Alexander Mackay, in a memorandum dated the 1st November 1887, regarding the Bishop of Nelson and the Motueka Grants. [40]

39 Their resignations were supported by the Government in New Zealand, and followed the publication the Privy Council judgments in *Long* v *The Bishop of Cape Town* (1863) *Colenso* v *The Bishop of Cape Town* (1865). See '*Report on the Third General Synod 1865*' : pages XVIX to XXXVIII. See page XXII paras 10 & 11 '*Petition of the Bishops of the Anglican Church in New Zealand 1865*'.

See also BoD, Doc 5: 'Te Aute College: State School or Anglican Church School?'; Part E. A Vacant See: Selwyn's resignation as Bishop of New Zealand, pages 56 – 63.

The doubtful validity of the conveyances could have been remedied under the Bishop of New Zealand Trusts Act 1868, which 'extended the operation' of the previous Act.

40 'Report Of Mr Commissioner Mackay Upon The Whakarewarewa School Reserve, Motueka' 1888 AJHR 1_G_1B at page 5. The legality of the conveyances is doubtful because the Grantee under the Crown Grants was the Selwyn Bishop of New Zealand and his successors (under the Letters Patent of 1841). Since had resigned his appointment, and he was not replaced or re-appointed as such, there were no successors. The BNZ Trusts 1858 did nothing to remedy this defect. The BNZ Trusts Act 1868, likewise did not do so.

The administration of the Native School Trust No. 1, 1862 – 2023

The Native School Trust No. 1 was administered by several different entities, as summarised below.

Date	Appointing Authority and Trustees
1861 - 1878	Appointing Authority - General Synod Individual trustees … Last trustee appointment 1873.
1878 - 1944	Appointing Authority - Diocesan Synod Trustee - General Trust Board of the Diocese of Auckland
1944 - 1962	The Native School Trust properties in Auckland and Waikato separately administered until 1962.
	Auckland properties Appointing Authority - Diocesan Synod Trustee - General Trust Board of the Diocese of Auckland
	Waikato properties Appointing Authority - Diocesan Synod Trustee - Waikato Diocesan Trust Board
1962 - 2023	The administration of the Native School Properties transferred to Trust Board (below) under the auspices of the General Synod
	Appointing Authority - General Synod Trustee - The St Stephen's & Queen Victoria Schools Trust Board (formerly known as the Board of Governors of St Stephen's & Queen Victoria Schools)

In 1868 the appointment of trustees was delegated to Diocesan Synods, who in turn delegated this function to Diocesan Boards and Committees.

In 1868 General Synod authorised the trustees of the Native School Trust to administer the Native Pastorate Fund.

On the 28th January 1878, the Native School Trust (itself a consolidation of several trusts) and several other Church trusts were placed under the administration of the General Trust Board of the Diocese of Auckland (the GTB). [41]

41 The Trusts were consolidated on 28/01/1878 pursuant to a Resolution of the Select Committee on Trusts adopted by General Synod on 41/02/1877 – refer General Synod Report 1877, at page 217.

The trusts consolidated under the GTB at that time are listed below:

- Auckland Bishoprick Endowment Trust
- Auckland Trust.
- Cathedral Trust
- Diocesan Trust
- Native School Trust
- Native Pastorate Trust
- Tamaki Trust
- Onehunga Trust.

It is very surprising that the 'consolidation' of these diverse trusts under the administration of one Trust Board, was not viewed as inherently risky by the General Synod.

One more trust, the General Church Trust was added to the consolidated trusts administered by the GTB in 1925. [42]

The GTB was the sole trustee of no less than 9 separate and distinct trusts, but it was not in any sense, an independent corporate trustee, answerable only to the law; it was for all intents and purposes answerable only to the General Synod.

As we know:

(a) The original Native School trusts were 'reconstituted' by the Church so that all such trusts were held for and on behalf of the General Synod and the trustees were made subordinate to the General Synod;
(b) The Church considered that the original Native School trusts, regardless of the intent and terms of such trusts, were 'Church trusts' and that the lands comprised in such trusts were 'Church lands';
(c) That the Church deemed such lands to be 'charitable' property, under the Religious Charitable and Educational Trusts Act 1856, which was promulgated by the Church.

42 The General Church Trust was added to the trusts consolidated under the GTB on 1 April 1925. Refer Auckland Diocese Year Book 1924-25, at page 64.

The GTB treated all the trusts it administered as 'Church trusts' and this blurred the lines of separation between the purposes of the several trusts it administered.

The membership of the General Trust Board comprised the Bishop of the Diocese of Auckland, Clergy, and Laity of the Church. They were also members of the General Synod, the governing body that they were answerable to as trustees of the Native School Trust.

The diversion of the income derived from Waikato trusts to the St Stephen's trusts

The Waikato trusts [43] constituted under Crown Grants issued by Governor Grey for the Native schools that had been established at Te Kohanga, Hopuhopu, Pepepe, and Puniu, were for all intents and purposes the same. [44]

Although the Waikato trusts closely resembled the St Stephens trusts, they were not the same, and the differences between the trusts was brought out during the 'Royal Commission on the Porirua, Otaki, Waikato, Kaikokirikiri and Motueka School Trusts' in 1905. [45]

The Commission of Inquiry examined the use and application of revenue derived from the Waikato trusts for St Stephens.

The Commissioners found that, in each of the Waikato trusts:

> " the intention was that the trust should be for the maintenance and support of schools in the locality of the granted lands or at least in the district of Waikato." [46]

That was certainly the view expressed by the ancestral owners of lands comprised in the Waikato trusts.

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43 These Crown Grants were issued under Governor Grey's Education Ordinance 1847. Grey issued 5 Crown Grants; 2 for the KOHANGA blocks situated near the mouth of the Waikato River, 1 each for the HOPUHOPU and PEPEPE blocks situated near Ngaruawahia, and 1 for the PUNIU block situated near Te Awamutu.

44 The words '*together with the rents, issues and proceeds thereof*' were left out of the HOPUHOPU Grant.

45 The Royal Commission on the PORIRUA, OTAKI, WAIKATO, KAIKOKIRIKIRI AND MOTUEKA SCHOOL TRUSTS', (the 'Commission of Inquiry 1905') – See AJHR 1905_1_G-05.

46 See 'Report & Evidence of the Royal Commission on the PORIRUA, OTAKI, WAIKATO, KAIKOKIRIKIRI AND MOTUEKA SCHOOL TRUSTS', ('Commission of Inquiry Report 1905') - AJHR 1905_1_G-05, pages ix-x.

There was also a great deal of dissatisfaction among Maori, that the income from their lands had been applied to the support of St Stephens. Their consistent refrain was that their lands should be returned to them because schools had either not been established on their lands, or had long since closed. [47]

The following excerpts from the testimony of Maori at the Commission of Inquiry provide a good account of the Maori view of things:

> HOPUHOPU & PEPEPE
>
> Na Roka Hopere
>
> " I am the daughter of the Rev. Heta Tarawhiti, the incumbent of Taupiri during Mr Ashwell's time … These lands were handed over by my parents and ancestors for a place on which to erect schools. After the lands were ceded schools were put on the land, and we were educated there. But they did not continue many years and then ceased. … The schools ceased in 1876 … From 1876 to the present time [1905] there has been no school whatever on these lands. They are entirely covered with blackberry, and for many years we asked the Bishop (Cowie) to return the land to us. In reply to our request we were told that these lands were to supply funds for the maintenance of St Stephen's and he asked us to send our children there. But our minds were not satisfied with that, because we wish our girl children also educated with the boys, which could not be done at St Stephen's; therefore we wanted the school on the land. Now we think if they cannot establish the schools on the land let the land be returned to us … Our earnest wish is that a school should be established on the very land we handed over, and if they will not grant us that concession we ask that the land be returned to us. maintenance of schools in the locality of the granted lands or at least in the district of Waikato." [48]
>
> TE KOHANGA
>
> Na Wiremu Karaka Te Aho Kukutai
>
> " I live at Tauwhare near Kohanga. Whata Kukutai was my grand-uncle. He was the head of the tribe, and gave Kohanga to the Church; I remember him doing so. … My father was alive at the time, and took a prominent part in the gift. He was a catechist. The land was given for the purpose of educating us near our kaingas. Ngatitipa gave the larger piece and Ngatipo the smaller.
>
> " I want the land returned to us. …

47 See Commission of Inquiry Report 1905. The overwhelming evidence of Maori at the Commission of Inquiry was that they had expected that schools would be located on their lands (not elsewhere). See for example Roka Hopere (Hopuhopu / Pepepe) at pages 45/46; Wiremu Karaka Te Aho Kukutai (Kohanga) at pages 49/50, and Hura Teremi Te Aho Kukutai (Kohanga) at page 54; Hamuera Te Mokorau and Tu Potahi (Puniu) at page 70.

48 Commission of Inquiry Report 1905, at pages 45 – 46.

" I want it given back to Ngatitipa, the hapu who gave it. When the land is returned to me, I would like to put a school on it.

" [Question] Will you be satisfied if the land is vested in trustees for that purpose?

" What I want is the land given back.

" [Question] Supposing the Government will not give the land back to you?

" All I say is, the school has ceased, and let the Government give us back the land." [49]

Na Hura Teremi Te Aho Kukutai

" I come from Kohanga. When Archdeacon Maunsell left Kohanga the word the Governor spoke to Kukutai was that he would be protected under the mana of the Queen and of the Government – he and all his descendants. That is why these men [the other Maori witnesses] say 'Return us the land' in order to give effect to the word of the Government.". [50]

Na Pana Tirua

" I say return Kohanga to us and we will get a school put there. … When the land is returned we will approach the Government, and they will put a school there. We do not approve of the lease to Muir.". [51]

PUNIU

Na Tu Potahi

" I live at Puniu. … There was no school placed on Puniu. I am a descendant of Tu Korehu, the principal donor of the land. …

" [Question] What is the wish of the Natives in regard to the land now?

" I would like it returned to the people who gave it – to the descendants of the donors." [52]

Na Maria Epiha

" I live at Mangakopara on the Maungatautara Block. I am a descendant of Epiha, who has been mentioned as one of the donors of Puniu. …

" [Question] Do you want a school placed on the land and the trust carried out, or what do you want?

" I would like the land returned to us, the descendants of the original donors, and after that we will consider the matter of a school." [53]

Na Hamuera Te Mokorou

" I live at Parawera. …

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49 Commission of Inquiry Report 1905, at pages 49 – 50.
50 Commission of Inquiry Report 1905, at page 54.
51 Commission of Inquiry Report 1905, at page 54.
52 Commission of Inquiry Report 1905, at pages 70 - 71.
53 Commission of Inquiry Report 1905, at page 71.

> " [Question] Do you object to the money from the land going to support boys at St. Stephen's School?
>
> " Yes, I object.
>
> " [Question] Why do you object?
>
> " I have just heard for the first time that the moneys are diverted to St Stephen's. Our children are at the school in our village, and I should like the money applied to the purposes of that school … to the descendants of the donors." [54]

The response of Bishop Neligan

Bishop Neligan, [55] who appeared before the Commission as the Chair of the General Trust Board of the Diocese of Auckland, denied any mismanagement of the Waikato trusts, and he dismissed out of hand the grievances of the ancestral owners of the lands comprised in the Waikato trusts. He was belligerent and sanctimonious, in largely equal measure. The allegation that the ancestral owners were somehow at fault, and should not be taken seriously because they hadn't followed up on earlier (repeated) complaints about the administration of the trusts, was utterly puerile.

While the Bishop was content to heap scorn on the ancestral owners, their testimony was remarkably restrained, straightforward and consistent; there were no schools on the lands they had given for that purpose, and they wanted their lands returned.

Whichever way you look at it, what the ancestral owners were asking for, was entirely fair and reasonable. Through no fault of theirs, the schools they were promised had either failed (several decades earlier) or had not been established at all.

However, if the ancestral owners harboured any hope of having their lands returned to them, they were very badly mistaken.

The following parts of Bishop Neligan's testimony illustrate the massive divide between the Church and Maori in relation to the trusts, and his complete ignorance of the situation of Maori at that time: [56]

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54 Commission of Inquiry Report 1905, at pages 70 - 71.

55 Bishop Neligan, Bishop of Auckland 1903 - 1910 succeeded Bishop Cowie who had served as the Bishop of Auckland from 1869 until his death in 1902.

56 There is so much more than can be said on this specific subject, not least the overwhelming deprivation of Maori caused by the loss of their lands.

Bishop Neligan

" The Commission has informed me, when I appeared before it on the 20th June, that the date of the petition to the Crown from the Waikato Natives, in respect of these particular reserves, is some time in 1898. I venture to point out … (1) The Crown allows some seven years to elapse before inquiring into an alleged breach of trust on the part of the General Trust Board of this diocese. The interval does not indicate any serious anxiety on the part of the Crown as to the sufferings of the Natives at the hands of my Board. (2) For two years I have been Chairman of the Board. During that period, so far as I know, the Natives have never made any representation to my Board on the matter in hand. This fact suggests the conclusion that the alleged grievance is more apparent than real. I venture to impress these two deductions upon the attention of the Commissioners. … They are important in relation to the policy my Trust Board has been pursuing for some time. Even were the Board blameworthy, which to my certain knowledge of two years they are not, the Crown by allowing such an interval as seven years to elapse is also blameworthy. The Natives likewise, by neglect of representations to the Board … have acquiesced in a policy which they now assert amounts to a breach of trust….

" Turning to the scheme submitted by Mr St Clair, I take the paragraphs seriatim: (1) I deny the truth of the allegation of the failure on the part of the General Trust Board of this diocese 'to carry out the purposes for which the reserves … were given'. Further 'the original intentions of the donors' has been faithfully carried out as far as possible. Mr St. Clair's clients have never, so far as I am aware, acquainted my Board with any facts whereby 'the original intention of the donors. Could have been more accurately ascertained or more faithfully discharged. The present proposal of the Natives, as submitted by Mr St. Clair does not throw any further light on the original intention of the donors. …

" … I have already expressed the readiness of my Board to extend its operations on sound educational lines, had it the money, and so no need to touch further on the first paragraph of this section beyond reminding the Commissioners that in the two schools, St Stephen's and Queen Vitoria, 'the Maori of both sexes are being educated 'to become respectable settlers and citizens'. The pakeha, moreover, has discharged by far the larger share of the cost of the erection of the Queen Victoria School. Thus he has shown not inaction 'in a deed of mercy' for his Maori brethren. … I assert that the Waikato Maoris are receiving in St Stephen's and Queen Victoria Schools, the benefit beyond those likely to accrue under 'the proposed scheme'. Further there is no 'widespread ruin to adjacent lands' through the growth of noxious weeds on the Board's property. … The present tenants of the Boards property are taking such steps that in time 'the noxious weeds will be eradicated'. …

" I submit to the Commissioners these facts; (1) A considerable amount of the Waikato property is now let to improving tenants. (2) Any interference with those tenants would be a hardship on them. (3) The 'scheme' of the Natives is impracticable . (4) The 'scheme' provides no evidence of any breach of the trust on the part of the General Trust Board.". [57]

57 See Bishop's testimony, Commission of Inquiry Report 1905, at pages 54 -56.

From the evidence presented at the Inquiry and having regard to the intent, purposes, and express terms of the Waikato trusts, it was obvious that despite the Bishop's protests to the contrary, the GTB had breached trusts.

False, or merely incomplete statements of account?

The Commissioners noted that:

> " Accounts for the … [Kohanga, Hopuhopu, Pepepe, Puniu] …estates, so far as we have been able to obtain them, will be found in Appendix Q. We have found considerable difficulty in obtaining these statements of account, incomplete as they are, from the fact that regular and systematic accounts were not kept during the early years of the trusts, or if they were kept are not available. The absence of these accounts is much to be regretted, as in their absence, much of the history of the trusts up to a comparatively recent period is lost to your Commissioners …". [58]

The statements of account that the GTB produced for the Inquiry were indeed incomplete, and the Commissioners were perfectly entitled to say so.

The Commissioners were evidently not convinced that 'regular and systematic accounts' had not been kept, but they stopped short of actually saying so. They left open the possibility that regular accounts had been kept, but had not been made available to them, and in this respect, their suspicions were entirely justified.

The GTB had produced and published annual accounts for the Native School Trust No.1, every year from 1877 to 1905. [59] The annual (audited) accounts for the Native School Trust No.1, included the Waikato trusts (Kohanga, Hopuhopu, Pepepe, and Puniu) and St Stephen's.

It would have been a simple matter for the GTB to provide the Commissioners with copies of the same. Instead, the GTB produced separate (unaudited) statements of account for the Waikato trusts. [60]

58 Commission of Inquiry Report 1905, at page IX.
59 BoD, Doc 6; Native School Trust annual accounts (1877 to 1904); See also Church Gazettes (Auckland Dioceses) 1877 – 1905, now available online at the John Kinder Theological Library.
60 BoD, Doc 7; GTB statements of accounts presented to the Commission of Inquiry 1905, and appended to the Commission of Inquiry Report in Appendix Q.

The unaudited statements of account that the GTB produced for the Inquiry, that the Commissioners noted somewhat euphemistically, were 'incomplete', did not include St Stephen's.

The Commission of Inquiry had been convened to ascertain whether the trusts had been carried out, and the diversion of the income derived from the Waikato trusts for St Stephens, was directly relevant to the Inquiry.

The audited accounts for the Native School Trust No. 1 would have shown not that the income of the Waikato trusts had been diverted to St Stephen's but also crucially, for the purposes of the Inquiry, what the income diverted to St Stephen's had been used for.

According to the 'statements' produced by the GTB for the Inquiry:

(a) The income of the Kohanga, Hopuhopu and Pepepe trusts had been accumulated from 1883 until 1904;
(b) Three lump sum disbursements of £34.13 (Kohanga trust), £119.15 (Hopuhopu trust), and £76.20 (Pepepe trust), were specifically 'devoted to the maintenance of Maori boys from the Waikato at St. Stephen's school' were made in 1904; [61]
(c) The income of the Puniu trust had not been accumulated; yearly disbursements, were specifically 'devoted to the maintenance of Maori boys from the Waikato at St. Stephen's school', from 1879 to 1904.
(d) All of the net income [62] of the Waikato trusts (Kohanga, Hopuhopu, Pepepe, and Puniu) was 'devoted to the maintenance of Maori boys from the Waikato at St. Stephen's school', and had not been used for any other purpose.

61 BoD, Doc 7; GTB 'statements' presented to the Commission of Inquiry 1905, and appended to the Commission of Inquiry Report in Appendix Q.
62 The 'net income' in this context means net of the expenses of the trusts, such as rates, legal and survey fees, keeping the lands free of gorse etc.

The GTB's annual (audited) accounts for the trusts (not seen by the Commissioners) presented a very different picture. These accounts showed that:

(a) The annual income of the Kohanga, Hopuhopu, and Pepepe trusts, had not been accumulated and applied to the maintenance of Maori boys from the Waikato at St Stephen's;
(b) Only one amount of £53.00, had been used for the 'maintenance of Maori boys from the Waikato at St. Stephen's school'; [63]
(c) The income of the Waikato trusts had been intermingled with other income and used for St Stephen's, not specifically or even for the 'maintenance of Maori boys from the Waikato at St. Stephen's school';

The 'statements' produced by the GTB for the Inquiry, were not merely incomplete, they were at the very least misleading. The failure to produce the audited annual accounts of the Native School Trust No. 1, concealed the true extent of the use and application of the income diverted from Waikato trusts.

The GTB also produced a list of Waikato scholars who were purportedly maintained at St Stephen's out of the income from the Waikato trusts. [64] The list did not assist the GTB's claim that the income of the Waikato trusts had been 'devoted to the maintenance of Maori boys from the Waikato at St. Stephen's'. Put simply, the figures didn't add up, there was no credible correlation between the number of Waikato scholars at St Stephen's and the amounts purportedly disbursed to maintain them.

For example, the GTB's statements of account showed that there was one payment of £50 made in 1896 for the 'maintenance of Maori boys from the Waikato at St. Stephen's school'.

There were no such payments made for the 'maintenance of Maori boys from the Waikato at St. Stephen's school' in 1897, 1898, and 1899. However, the 'list' showed that there were 24 Maori boys from the Waikato at St. Stephen's during that period.

63 This amount of £53.00 came from the Puniu trust in 1879; See BoD, Doc 8; Native School Trust annual accounts (1877 to 1904).
64 See Commission of Inquiry Report 1905, Appendix R; 'LIST of Maori Boys (not including Government scholars) from the Waikato maintained at St. Stephen's School, Parnell, from 1892 to 1905' at pages 195 & 196.

The table below sets out the position as it was according to the GTB's List and its statements of account for the years 1896 to 1900.

Waikato Scholars already at St Stephens Jan 1897	11	£ 50.00
Waikato Scholars who enrolled 1897	7	£ -
Waikato Scholars who enrolled 1898	2	£ -
Waikato Scholars who enrolled 1899	6	£ -
Waikato Scholars who left during 1897-1899	2	
Waikato Scholars at St Stephen's 1897-1900	**24**	

At that time, the yearly cost to maintain one student at the school was about £19. [65] The cost to maintain 24 students for one year, was therefore about £465; 9 times the amount received from the Waikato trusts.

In 1892 the reverse happened; only one Waikato scholar enrolled but the amount paid in that year was £100, 5 times the cost to maintain a scholar at St Stephens'.

I suspect that the Commissioners were not convinced that the income from the Waikato trusts had been used exclusively to maintain Maori boys from the Waikato at St Stephens, but in the absence of any evidence to categorically refute the evidence it had been presented with by the GTB, the Commissioners could not conclude with certainty, that the GTB had not only failed to carry out the Waikato trusts, but had also breach both the terms and the spirit of the trusts.

The GTB deliberately concealed evidence that would have rendered the GTB's claim that the income of the Waikato trusts had been used exclusively to maintain Waikato scholars at St Stephen's, implausible and untenable.

It should be noted that the ancestral owners of the lands comprised in the Waikato trusts, disputed the GTB claims that their children had been schooled and maintained at St Stephen's.

65 See Commission of Inquiry Report: WS Cochrane's testimony at page 61; He was the Diocesan Secretary and he provided the Commissioners with reports that showed that the average yearly cost to maintain 1 student at St Stephan's was a little over £19. He confirmed that the Government paid £18 per year, for Government scholars at St Stephen's.

It was not sufficient that 'Maori boys from the Waikato' had been maintained and schooled at St Stephens. This characterisation of the beneficiaries of the trusts, may have fitted with Pakeha norms and notions about 'charitable trusts' but they did not correspond at all with Maori customs and expectations connected to 'tuku whenua'.

From the perspective of Maori, the lands comprised in the trusts were not 'Maori lands' they were 'tupuna whenua' (ancestral lands) and as such belonged in each case, to ancestral owners and their descendants, not to anyone with a brown face. As far as the ancestral owners of the lands comprised in each of the trusts were concerned, their lands had been entrusted to the Crown for their benefit, and the benefit of their descendants.

Looked at from the Maori point of view, it was no answer to the complaints of the descendants of the ancestral owners who had entrusted their lands to the Crown for their benefit, that the GTB had used their lands and the income from their lands to maintain students at St Stephen's who were not descendants of the ancestral owners.

The objections of the ancestral owners, should not have been ignored and dismissed out of hand, as they were by the GTB. As the table below highlights it was not simply a clash of cultures, the GTB's 'Maori boys from Waikato' policy, was inherently flawed.

Income diverted to St Stephen's	
Puniu Trust	£ 1,897.00
Kohanga trust	£ 34.13
Hopuhopu trust	£ 119.15
Pepepe trust	£ 76.20

The GTB did not provide the Commissioners, or Maori, with any information about the boys who had been maintained and schooled at St Stephen's. On the face of it, the very great majority should have come from Puniu.

The GTB's 'Maori boys from Waikato' policy had very real practical and material consequences for Waikato Maori, who had been stripped of their ancestral lands and resources. It was perfectly reasonable for the ancestral owners of the lands comprised in each of the Waikato trusts shown in the table above, to expect that the income from their lands, would be used for their benefit.

The ancestral owners of the lands comprised in the Waikato trusts, and their descendants, should have been consulted about all leasing and sales arrangements, and should have received regular reports and accounts, from the GTB.

As far as the GTB was concerned it was accountable only to the General Synod.

Bishop Neligan allegation that both the Crown and the ancestral owners had not followed up on complaints made about the GTB's administration of the Waikato trusts in 1898, and that their failure to do so amounted to an acknowledgement on their part that the GTB had not breached the trusts, was utterly puerile.

It was a useless allegation, and he was quite wrong to make the allegation.

The Parliamentary Petitions

The ancestral owners had indeed complained about the administration of the trusts by way of petitions to Parliament in 1898. The hearing of their petitions was postponed until 1900. The Native Affairs Committee, reported as follows:

> " Nos. 130 (1898), 131 (1898), 300 (1898), and 475 (1899) – Petitions of PERA KATI and 151 Others; Te Area and 129 Others; NGATETE KARAKA and Another; and HENI KUTI and Another'
>
> " PETITIONERS pray for the return of certain lands which were given to the Church of England on the strength of promises made by the representatives of that body to establish school, &c., for the benefit of the Maoris, which promises have never been fulfilled.
>
> " I am directed to report that, in the opinion of this Committee, **the petitioners have a just grievance, for it appears that the conditions under which the land was given have never been carried into effect**. The Committee recommend that **the Government should introduce legislation for the purpose of setting aside the Crown Grants** issued in favour of the Lord Bishop of New Zealand, **and of declaring the land 'papatupu' or Native land, and restoring the same to the Native donors, or their successors, along with all the rents accrued, thereon**. 8th August 1900." [66]

Bishop Neligan apparently didn't get the memo. As for the Commissioners, by virtue of their appointment, they had no excuse for not knowing about the recommendations of the Native Affairs Committee, or for overlooking the same.

66 See AJHRs 1900 I – 3; Report of the New Zealand Native Affairs Committee, at 9.

The Native Affairs Committee had previously determined other petitions concerning the failure of the Church to carry out the Porirua, Kaikokirikiri and Parawai trusts in 1896. These trusts were for all intents and purposes identical to the Waikato trusts. The Committee Chairman reported as follows:

> " I am directed to report that, in the opinion of this Committee, the petitioners have a just grievance, for it appears that the conditions under which the land was given to the Church of England by the Natives have never been carried into effect. The Committee therefore recommends that the Government introduce legislation for the purpose of setting aside the Crown Grants issued in favour of the Lord Bishop of New Zealand, and of declaring the land 'papatupu' or Native land, and restoring the same to the Native donors, or their successors, along with all the rents accrued, thereon. … 31st July 1896." [67]

It was in my view, at the very least, disingenuous of the Bishop to allege that the Crown and Maori had failed to pursue their complaints against the Church. For a starter, he clearly knew about the petitions, because he made mention of them. [68] He would have also known about the litigation the Church had been embroiled in, concerning the Porirua, Kaikokirikiri and Parawai trusts for many years, between 1895 and 1905.

Professor Richard Boast wrote about the legal actions brought against the Church by Maori, and the Crown, in an article entitled, "SO LONG LYING IDLE WITHOUT A SCHOOL" : *WI PARATA, WALLIS* AND WHITIREIA, 1848-2008'. [69]

In the end, despite the obvious failings of the GTB over a very long period, the Commissioners found that although the GTB had not carried out the Waikato trusts, 'to the letter' of the trusts, they had carried out 'the spirit of the trusts' in applying the income from the Waikato trusts for St Stephen's.

If that were not bad enough, the Commissioners crushed the spirits of ancestral owners in concluding that their plan for the future use and administration of their lands was: " … too visionary … to be seriously entertained." [70]

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67 See AJHRs 1896 I – 3 page 7.

68 See Bishop's testimony, Commission of Inquiry Report 1905, at pages 54 -56.

69 See Professor Boast's article ' "SO LONG LYING IDLE WITHOUT A SCHOOL" : *WI PARATA, WALLIS* AND WHITIREIA, 1848-2008' – 7 NZ JPIL 237 (2009).

70 Commission of Inquiry Report 1905, at page X.

Their plan proposed that Parliament be called upon to vest the lands comprised in the Waikato trusts in new trustees for the purpose of enabling the original intention of the ancestral owners to be carried out, and that combined technical and agricultural schools be established at Kohanga, Hopuhopu and Puniu. The initiative was to be funded by a public subscriptions, subsidised £ for £ by the Government.

It is difficult to conceive what elements of the plan were 'too visionary … to be seriously entertained'.

The recommendation that the Church should secure representation of the Waikato tribes on the trusts, hardly seems 'visionary'. The proposal for technical and agricultural schools was wholly consistent with Department of Education's push for Maori schools (notably Te Aute College) to adopt the Department's agricultural curriculum because it was considered more suitable for Maori. Bishop Neligan had waxed lyrical about the success of the Church in securing public subscriptions for Queen Victoria Maori Girls School. I would have thought that it would have been more difficult, at that time, to raise money for a Maori girls school, than it would have been to raise money for an agricultural school for Maori boys.

The extraordinary lenience of the Crown, and the Courts

The earlier findings and recommendations of the Native Affairs Committee could not have been more different to the limp and lenient findings of the Commissioners.

On the few occasions that the Crown did enquire into the management of the Native School Trusts, the Crown invariably treated failures to carry out the purposes of the trusts with extraordinary leniency. [71]

The Church was repeatedly 'excused' for failing to adhere to the strict terms of the trusts consolidated under the Native School Trusts; instead using the trusts for their own purposes, without consulting Maori, and often against their objections.

71 See 'Report & Evidence of the Royal Commission on the PORIRUA, OTAKI, WAIKATO, KAIKOKIRIKIRI AND MOTUEKA SCHOOL TRUSTS' – AJHR 1905_1_G-05.

Ngati Toa, for example, had gifted 500 acres of very valuable coastal land near Porirua, (the 'Whitireia Block'), as a site and endowment for a school that was never established by the Church. Despite repeated calls by Ngati Toa, and the Crown, for the return of the Whitireia Block, the Church in the pursuit of its own interests refused to return their land, and it used the ancient legal doctrine of *Cy-près* [72] to retain its grip on the land.

The Courts were also extraordinarily lenient towards the Church. The Courts ignored Maori aspirations and expectations in relation to 'tuku whenua', and the Courts invariably sided with the Church. [73]

The Courts did not hesitate to overlook plainly obvious failures to carry out the terms of trusts, and indeed breaches of trust, and to favour the Church with rulings based on the doctrine of *Cy-près* .

In relation to the competing Maori doctrine '*Riro whenua atu, Hoki whenua mai* ' and the Pakeha doctrine of *Cy-près*, the Courts did not see in the wording of the original trusts, support for the Maori view.

The '*so long as*' proviso in the Whitireia trust, also found in the original trusts for St Stephens, Whanganui Collegiate, Papawai and Kaikokirikiri, was not considered to be an equivalent expression of the '*Riro whenua atu, Hoki whenua mai* ' doctrine.

If it had been viewed in that way, then the lands comprised in such trusts would have reverted to Maori, and in the case of the St Stephen's trusts, the Crown.

72 According to the *Cy-près* doctrine in English Law, where the purposes of a 'charitable trust' cannot be fulfilled, for whatever reason, the trustee can use the property of the trust for a 'similar' purpose.

73 See Professor Richard Boast's article ' "SO LONG LYING IDLE WITHOUT A SCHOOL" : *WI PARATA, WALLIS* AND WHITIREIA, 1848-2008' – 7 NZ JPIL 237 (2009). As he noted in the foreword of his article, the outcome of the *Wallis* case was a major disappointment to Ngati Toa as was *Hohepa Wi Neera v Bishop of Wellington* case (and others). See *Wallis* v *Solicitor General* [1902] AC 173 (PC)See also John William Tate "*Hohepa Wi Neera: Native Title and the Privy Council Challenge*" (2004) 35 VUWLR 73.

Instead, the Privy Council decision in *Wallis* v *Solicitor General* (1902) [74] gave the Church a free pass to divert income from the Waikato trusts to other trusts, to sell the lands comprised in the trusts, and to use the proceeds of sale for other trusts and other purposes, [75] and that is precisely what has happened.

Over the next 100 years, the original trusts comprised in the Native School Trust No.1 would be systematically de-constructed and replaced by the Church without consulting Maori or the Crown, as the settlors of these trusts.

The General Synod's 'strangle-hold' over the trusts and trustees

By 1913, the Church had, secured for itself, almost entirely unfettered control over the original trusts comprised in the Native School Trusts [76] including specifically the St Stephen's trusts, the Waikato trusts, and also the Orakei and Papakura trusts.

In 1909, a Standing Commission appointed by General Synod concluded that as a matter of law the trustees of Whanganui Collegiate trust, (one of the trusts consolidated under the Native School Trust No. 2), were not under the control of the General Synod but were bound by the terms of their trusts. [77]

74 *Wallis* v *Solicitor General* [1902] AC 173 (PC).

75 See BoD, Doc 8. Doc 8 comprises several detailed summaries of the Waikato lands sold, mostly under the administration of the General Trust Board of the Auckland Diocese, but also the current Board.

76 Not just the Native School Trust No. 1 (which consolidated the trusts in the Auckland & Waikato provinces), but also the Native School Trust No. 2 (which likewise consolidated the trusts in the Wellington & Hawkes Bay provinces) and the Native School Trust No. 3 (Waiapu province).

77 See the Legal opinion of Standing Commission of the Church of England 22/10/1909 contained in the '*Report of Eighteenth General Synod 1910*, @ pages 198-207. While the Church Constitution did empower the General Synod to appoint, control and remove trustees of *Church Trusts*, the Standing Commission determined that such powers did not apply to lands conveyed to trustees under the Bishop of New Zealand Trusts Act 1858, which included the Native education lands.

Rather than accept the finding of its own Commission, the Church responded by promulgating the Church of England Trusts Act 1913. The Act entrenched the General Synods control over trustees and its authority to remove trustees, and that is how it has remained to this day. [78] The Act also paved the way for the application of Glasgow leases, to the lands comprised in all of the Native School Trusts.

Prior to the Glasgow leases, the Church promulgated the Church of England Building Leases Act 1871, which paved the way for the equally disastrous 'Parnell leases'.

The 60 Year Building Leases at Parnell

After doing almost nothing to develop the St Stephen's lands for 20 years, the trustees embarked on a seriously flawed leasing regime, that was carried out over several decades, under the Church of England Building Leases Act 1871. This Act was promulgated by the Church to give its trustees the power to grant long term, 60 year building leases.

The 60 year building leases failed because the leases did not provide for regular rent reviews. The rental derived from the leases, was fixed at the start of the leases, and remained fixed for the entire term of the leases. [79]

It has been suggested that 'inflation' was not a known thing at the time these long term leases were granted. In fact inflation was a known thing. It was known as 'the unearned increment'.

The hopelessly inadequate rentals derived from these leases, drove the costly exercise of buying out the lessees, to facilitate the sub-division and sale of the Parnell lands, very often at heavily discounted prices.

The 60 year leases granted by the trustees are listed in the table below.

78 The Church of England Act 1913 has been replaced by the Anglican Church Trusts Act 1981, which has further solidified the position of the Church. See report, 'Te Aute College: State School or Anglican Church School?' at pages 66 - 69.

79 See BoD, Doc 8. Copy of Deed of Lease (dated 17th March 1898).

Legal Description	AREA	LEASE TERM / RENTAL					Rental per acre
	Acres	Term (Yrs)	Start Year	Expiry Year	Yrly Rent		
Allot 1	0.7021	60	1873	1933	£	5.00	
Allot 2	0.8054	60	1873	1933	£	4.50	
Allot 3	0.8054	60	1873	1933	£	4.50	
Allot 4	0.8054	60	1873	1933	£	4.00	
Allot 5	0.8054	60	1873	1933	£	4.00	
Allot 6	0.8054	60	1873	1933	£	10.00	
Allots 11, Pt 12, 13, 14	0.4095	60	1873	1933	£	10.50	
Allots15 & 16	2.5644	60	1873	1933	£	13.50	
Allot 20	5.5250	60	1873	1933	£	6.00	
Allots 22, 23, 24, 25	2.7134	60	1873	1933	£	30.00	
	15.9414				**£**	**92.00**	**£ 5.77**
Allot 32	0.2323	60	1880	1940	£	5.00	
Allot 33	0.1216	60	1880	1940	£	7.50	
Allot 49 & 49A	1.1928	60	1880	1940	£	25.00	
Allot 50	0.3309	60	1881	1941	£	10.00	
Allot 51	0.2989	60	1881	1941	£	10.00	
Allot 51A	0.3094	60	1881	1941	£	10.00	
Allot 31	0.1216	60	1882	1942	£	5.00	
Allots 36, 37	0.4939	60	1882	1942	£	20.00	
Allot 55	0.4059	60	1882	1942	£	12.00	
Allot 56	0.5649	60	1882	1942	£	13.00	
Allot 57	0.9187	60	1882	1942	£	12.50	
Allot Pt 58	1.2500	60	1882	1942	£	10.00	
Allot 7	0.4620	60	1883	1943	£	14.00	
Allot 8	0.4095	60	1883	1943	£	10.00	
Allot 40	0.2469	60	1883	1943	£	10.00	
Allot 41	0.1951	60	1883	1943	£	12.00	
	7.5544				**£**	**186.00**	**£ 24.62**
Allot 30A	0.1142	60	1884	1944	£	10.00	
Allot 34	0.1215	60	1884	1944	£	15.00	
Allot 34A	0.1296	60	1884	1944	£	18.75	
Allot 35	0.1372	60	1884	1944	£	13.75	
Allot Pt 58	1.2500	58	1884	1942	£	3.00	
Allot 27	0.1235	60	1886	1946	£	12.00	
Allots 52, 53, 54	1.1779	60	1894	1954	£	31.50	
Allot 42	0.2880	60	1897	1957	£	8.00	
Allot 43A	0.1734	60	1897	1957	£	8.00	
Allot 43	0.2377	60	1897	1957	£	8.00	
Allot 44	0.3796	60	1897	1957	£	8.00	
Allot 45	0.3794	60	1897	1957	£	8.00	
Allot 30	0.1216	60	1898	1958	£	7.00	
Lots 1 & 2	0.4697	60	1898	1958	£	22.00	
Lot 3	0.2368	60	1898	1958	£	9.00	
Lot 4	0.2220	60	1898	1958	£	9.00	
Lot 5	0.1980	60	1898	1958	£	8.00	
Lot 6	0.1512	60	1898	1958	£	8.00	
Lot 7	0.1421	60	1898	1958	£	8.00	
Lot 8	0.1220	60	1898	1958	£	8.00	
Lot 9	0.2516	60	1898	1958	£	8.00	
Allots 46-48	1.2403	60	1901	1961	£	12.50	
	8.1488				**£**	**285.50**	**£ 35.04**
Allots 38, 39	0.4939	60	1908	1968	£	15.00	
Allot 28	0.1235	60	1908	1968	£	13.00	
	0.6174				**£**	**28.00**	**£ 45.35**

The above list shows that the leases granted in 1873 @ £5 per acre, were still earning £5 per acre, when the leases granted in 1898 were earning £25 per acre, and were still earning £5 per acre, when the leases granted in 1908 were earning £45 per acre.

Not all the 60 year leases were able to be bought back. Upon the expiry of the leases that had not been bought back and converted to freeholds, the General Trust Board granted 21 year, perpetually renewable leases, known as 'Glasgow leases'. Once again, the rental under these leases was fixed at the start of the leases, for the entire 21 year term of the leases. Not surprisingly these leases generated wholly inadequate returns.

The failure of the 60 year building leases and the 21 year perpetually renewable Glasgow leases, ultimately led to the wholesale liquidation of the Parnell lands.

The liquidation of the Native School Trust lands

Set out below in more or less chronological order, are some of the more egregious transactions:

(a)	1871	Diversion of St Stephen's school land and income to the St; Stephens Orphanage (the site of which Orphanage, became the site of Queen Victoria school in 1903).
(b)	1871	Church of England Building Leases Act 1871 – 60 year leases – rental fixed for 60 years. Massive losses caused by the failure of these leases.
(c)	1883 -1886	Loss of Resolution Point (part of what is now the Parnell Domain), taken under PWA for Defence purposes then sold to GA Kissling (Lessee);
(d)	1900 – 1948	Loss of 11 acres of the 'Parnell lands' for roading and public reserves;
(e)	1922	Pepepe Block sold to HMQ for Defence purposes;
(f)	1922	Part Hopuhopu Block (346 acres) taken under PWA for 'camping ground';
(g)	1922-1924	General Synod approves sale of Orakei, Kohanga, Pepepe & Hopuhopu, and Parnell blocks.
(h)	1923 – 1937	Private sales Hopuhopu sections.
(i)	1926	Sale of the Orakei block to HMQ for public housing purposes;
(j)	1929	Sale of the original St Stephens school site at the junction of St Stephen's Avenue and Gladstone Road, to the Crown;
(k)	1925 -1929	Sale of the Kohanga blocks to Muir (lessee);

(l)	1927	Diversion of £2,200 from the sale of Kohanga block, for roading related to transfer of St Stephen's Chapel & Reserve, to Auckland City Council (nothing to do with Kohanga trust);
(m)	1928 – 1962	48 acres at Parnell sub-divided and sold;
(n)	1944	Diversion of St Stephen's trust assets and income for Queen Victoria school;
(o)	1947 – 1948	Part Hopuhopu (2 blocks / 32 acres) taken under PWA for 'Defence purposes';
(p)	1963 -2005	Sale of residue of Parnell blocks (27 acres) excluding the QV school site & one other (4 acres);
(q)	1974 – 2010	Sale of Puniu blocks;
(r)	1976 – 2017	Sale of Papakura blocks;
(s)	1992	Sale of Okiato Block (Russell, Bay of Islands)
(t)	1999	'Integration' of St Stephen's and Queen Victoria schools under the Private School's Conditional Integration Act 1975.
(u)	2006 -2009	New trust replaces the original trusts for St Stephen's (Parnell), Kohanga, Hopuhopu & Pepepe, Puniu, Orakei, Okiato, Papakura, Maraetai.
(v)	2017	Sale of Maraetai block.

The transactions listed above can be traced back to the claim made by George Augustus Selwyn during his address at the First General Synod of the Church of England in Wellington on the 8th day of March 1859, that he was the sole trustee of 14,000 acres of land, and that he held the same for and on behalf of the Church:

> " … ***with the single object of excluding all vested rights and private interests, which would have stood in the way of the free action of the General Synod of the Church …***"

He set out his vision and plans for the establishment and organisation of the Church, and he spoke specifically about reconstituting the trusts that had been vested in him during his 16 year tenure as the Bishop of New Zealand, under the Letters Patent of 1841.

The Church set up its own trust administration system, promulgated legislation, and reconstituted trusts by adding an over-arching trust to the existing trusts, in the deeds that conveyed the 13,000 acres of land, that Maori had entrusted to the Crown, for the support of schools for their children, to trustees appointed by the General Synod.

The Church promulgated further legislation to further interpose itself in the original trusts constituted by the Crown, and to ensure that trustees were made subservient to the Church and its mission, under the General Synod.

The entrenchment of the Church in the trusts constituted for Maori, is directly attributable to the deliberate actions of the Church, in the pursuit of its interests and its mission.

The Church could not have done all it did, without the support of the Crown. The Crown facilitated the subversion and diversion of the original trusts, through the enactment of legislation.

At other times the Crown and the Courts overlooked plainly obvious failures to adhere to the terms of the original trusts, and favoured the Church with extraordinary leniency. At no time has the Church been held accountable for subverting the trusts, or for diverting the assets and income of the trusts for its own purposes.

It is noted that concerns were raised by the Solicitor General about allowing the Anglican Church to alter the purposes of trusts '*without the external supervision of the Court with the participation of the Law Officers of the Crown*'. [80] The Solicitor-General also warned against the danger of the original trusts being '*re-written*' or being '*lost sight of*'. [81]

Despite such concerns being raised by the Solicitor General, under the current provisions of the Anglican Church Trusts Act 1981, trusts under the control of the General Synod, can be varied by the High Court **or** by the General Synod. [82]

80 See NA – ABGX W3706 16127 Box 170. See para 3(i).

81 See NA – ABGX W3706 16127 Box 170. See para 6. It is arguable that the variation of the trusts by High Court on the application of the SSQVSTB in 2006, is an example of the original purposes of the Waikato trusts and the St Stephens trusts being re-written as a result of the original trusts being lost sight of.

82 Section 16A of the Act, added under the Anglican Church Trusts Amendment Act 1989.