Wai 145 #I7

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Waitangi Tribunal
Research Commission
Claim #Wai 145

Questions Regarding the Port Nicholson Purchase:
Surplus Lands, Purchase Consideration, and Title to Maori Reserves

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Introduction

This paper is a collection of answers to nine questions put by the Waitangi Tribunal. The questions and answers all relate to the Port Nicholson, Porirua, and Manawatu purchases by the New Zealand Company — especially regarding the surplus lands in those purchases, the compensation paid for them, and the subsequent fate of those lands.

There is, however, no 'single topic' to the questions. Consequently, we will simply answer the questions in the order of their asking, and summarise our answers at the end of paper. This summary can be read separately from the rest of the paper as an "Executive Summary," starting at page 49.

Question (a): A Summary of the Grants, Surveys, Acreages, and Exterior Boundaries of the Lands Comprised in the 1839 Port Nicholson Purchase; 1839-1850

Introduction

Most of the exterior boundary of the Port Nicholson purchase area did not change from 1839 to 1850. Throughout, the Eastern boundary remained the ridge of the Rimutaka Range from the sea at Turakirae Point to where this ridge runs into the Tararua Mountains, just east of what is now known as Kaitoke Regional Park.

From this point, the Northwestern side ran along the western side of the Hutt River, about half-way to the harbour, to what is now the junction of Highways 58 and 2, the Hayward Hill intersection.

From here, the boundary turned to the southwest, and followed a straight line to Round Knob — the highest point in the Western Hutt hills, just north of what is now Belmont Regional Park.

That much of the boundary remained the same from 1839 to 1850.

From Round Knob southward, the boundary went through several versions between 1839 and 1850.

The Exterior Boundary of the 1839 Transaction, initially submitted in May 1842 Land Claims Commission Claim

The first version of the boundary defined the Southwestern part of the purchase area as the ridge of the hills running all the way to the sea at Rimurapa, a point now shown on most maps as Sinclair Head.

This version originated with Te Wharepouri in September 1839, and was written into both the Port Nicholson deed and Col Wakefield's journal. Charles Brees drew it on to the plan of the Company's land claims, submitted to the Land Claims Commission in May 1842. Col Wakefield read it into evidence in the early 1842 Land Claims hearings.

On the ground, this first version is quite distinct. It is therefore plausible that it was known to Maori, either as just a natural feature or perhaps as a customary boundary. The line followed the highest southwesterly spurs from Round Knob, and crossed the Maori track which became the Old Porirua Road/ Highway 1 at about what is now the bottom of Takapu Road.[1]

From Takapu the boundary ridge rose west of what are now Newlands and Johnsonville, to the top of Mount Kau Kau. Then it ran along what is now 'the back' of Wilton Reserve, to Johnston Hill, and on to the sharp ridge separating Karori West and Makara. There it veered southward and ran fairly straight to the sea at Sinclair Head/ Rimurapa.

It should be stressed that, in a sense, later Port Nicholson purchase boundaries did not adjust, but actually *replaced* this first "version." By January 1843, the Company was no longer pressing any claim to this originally submitted area, and the Commissioner was no longer inquiring into the nature or status of titles to it.

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1. H.M. Christie, *Dominion*, 4 June 1929, cited in G. L. Adkin, *The Great Harbour of Tara*, pp 84 & 103. Note, Takapu ("belly") was a cultivation area claimed in the 1820's by a Ngati Mutunga rangatira, Patukawenga.

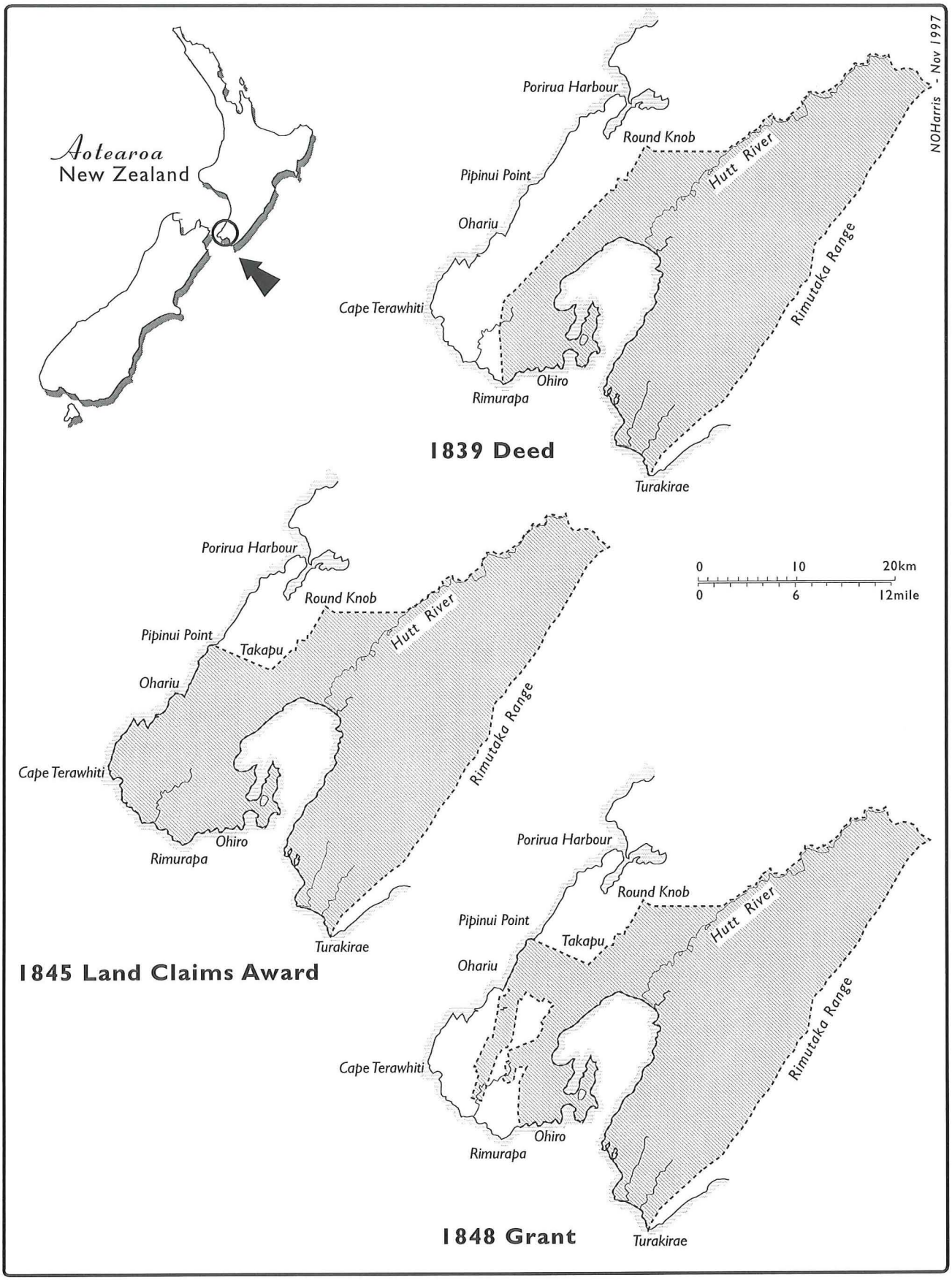

Figure 1 : The Exterior Boundaries of the Port Nicholson Purchase, 1839-48

Instead, both claimant and Commissioner agreed to focus solely on the more urgent task: arbitrating to quiet Maori interests *within the areas which the Company had selected under its 1841 Royal Charter.* The boundaries of the original transactions were no longer referred to as the limits of the Company's claim, the Commission's inquiry or awards, or the Crown's grant for the Port Nicholson settlement. All claims, inquiries, awards, and grants dealt solely with the lands selected by the Company for actual settlement.

The Exterior Boundary of the 1845 Land Claims Award

The second version of this Southwestern boundary dropped in a southwesterly zig-zag from Round Knob to Takapu, then cut straight west to the sea coast at a place called Kia Kia (the broad bay on the north side of Pipinui Point).

This version first emerged in rough form in January 1844, was better defined in April 1844, and was actually cut on the ground in June 1844.

The 'rough idea' of this line originated in discussions between the Maoris' and Company's referees in the arbitration to compensate the lands the Company had selected for sale at Port Nicholson. In the last of these discussions, held in January 1844, the referees agreed to extend the Port Nicholson compensation award to include the ninety-five Country District sections Brees had sketched at Ohariu in 1842, plus another twenty sections apparently added by Clarke.[2]

Soon after, in April 1844, the Land Claims Commissioner, William Spain, ordered the survey of an "exterior boundary" for his Port Nicholson Land Claims award. He ordered that it should follow the easiest route of natural features *around* the arbitrated and compensated lands. In June 1844, to enclose the Ohariu sections

[2]See Wai 145 Doc E5 pages 469-474, especially pages 472-473.

which had been brought into the arbitration in January, the surveyors simply cut the line due west from Takapu to Kia Kia.[3]

This line appeared as part of the exterior boundary of the October 1845 plan enclosed in the Land Claims award to the Company. It later appeared on the plan attached to the January 1848 Crown Grant of Port Nicholson to the New Zealand Company.

The Exterior Boundary of the 1848 Crown Grant

The third version of the southwestern boundary appeared in the 1848 Port Nicholson Crown grant. This grant had scant text, but was accompanied by two plans, one for the Town and one for the District. The grant only described its "exterior boundary"
at the bottom centre of its District plan. From Turakirae in the southeast to Kia Kia in the west, this boundary was the same as in the 1845 Land Claims award. It ended, though, with "...the following exceptions:

> 1st The Reserves and exceptions noted in the schedule attached to the Maps of the District and Town
> 2nd The Blocks of unsurveyed Land from Ohiro to Kia Kia enclosed between the Sea and the Ohiro, Upper Kaiwara, Karori, Makara and Ohariu surveyed Districts."

The first category of excepted lands need not concern us here. The second exception however — of the entire unsurveyed South Coast area — effectively (though only temporarily) moved the southern exterior boundary from the sea coast inland, to the southernmost sides of the Company surveyed Districts.

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[3]Brees/Wakefield Report, 24 June 1844, copy in Wai 145 Doc E6, p 130h, cit. in Wai 145 Doc E5, p 540. See also Wakefield/Directors, 8 September 1845, enclosing Brees/Fitzgerald, 6 December 1844, and Fitzgerald/Brees 9 December 1844, NZC 3/5/38, pp 256-58.

Elsewhere, the grant stated the reason for this shift. At the top of the District plan was the main table of reserves and exceptions. The introduction to this table stated that the table *did not* show

> "Native cultivations on unsurveyed Land extending along the Coast from Cape Terawite to Te Ki Ki."

A note at the lower left of the table, signed by Lt Col McCleverty, explained:

> "lands under cultivation by and for the future want of the Natives, to be reserved and hereafter noted on the Block of unsurveyed lands between Cape Terawite and Kia Kia."

Hence, the 1848 grant excepted the entire 20,500 acre South Coast area *pending* completion of the deed and plans excepting the "lands under cultivation" within that area.

The Exterior Boundary after the 1848 Reserves

In April 1848, a few months after the 1848 Crown Grant issued, Lt Col McCleverty fulfilled the pledge to reserve the "Native cultivations" in the South Coast area. Thus, the 20,500 acre South Coast area became demesne (see page 44 below), and the Crown grant's southern exterior boundary returned to the sea coast.

Question (b): The Area of the Would-Be 'Surplus Lands' at Port Nicholson

The Origin of the Would-Be 'Surplus' in the 1845 Port Nicholson Land Claims Commission Award

The 1845 Land Claims Commission recommended an award to the Company of 71,900 acres at Port Nicholson (including reserves). Neither the award nor the 1846 Crown Grant issued pursuant to it defined (or even mentioned) any surplus.

However, in April 1844, the Land Claims Commissioner, William Spain, ordered the survey of an "exterior boundary" of Port Nicholson following natural features *around* the 71,900 acres to be awarded to the Company.

When attached to the Land Claims Commission award, this exterior boundary created a "surplus" area between itself and the 71,900 acre Company award it surrounded.

From March 1847 at the latest, Governor Grey and Lt Col McCleverty treated this 'surplus' area as belonging to the Crown (see page 18).

The area of this surplus is shown in Table 1, below.

Table 1: Private Lands, Reserves, and Surplus at Port Nicholson

	Acres	Roods	Perches
District[4]	**209,247**	**2**	**20**
Private Claimants			
Company[5]	67,890	0	0
Individuals[6]	614	0	0
Total	**68,504**	**0**	**0**
Reserves			
Public & Church[7]	330	1	7
Maori[8]	4,649	1	31
Town Belt[9]	1,320	2	34
Total	**6,300**	**1**	**32**
Surplus			
North & East[10]	101,388	1	6
South Coast[11]	19,730	3	34
"Given up" to Maori[12]	13,323	3	28
Total	**134,443**	**0**	**28**

[4] **Port Nicholson Crown Grant Plan, Wgtn SO 10456.**

[5] Port Nicholson Land Claims Commission Report, March 1845, in Wai 145 Doc A31 p 408. Also in Wai 145 Doc C1(b), p 257.

[6] Port Nicholson Crown Grant Plan, Wgtn SO 10408.

[7] Port Nicholson Crown Grant Plans, Wgtn SO 10408 & 10456. Represents 49a 3r 22p in Town plus 280a 1r 25p on the Country plan.

[8] Port Nicholson Crown Grant Plans, Wgtn SO 10408 & 10456. The figure does not distinguish between "Tenths" reserves and lands assigned to Maori in customary title in 1847. Represents 223a 2r 2p in Town Belt, 110 Town Acres, 2a 1r 11p Te Aro pa, 4200 acres of Country Sections, 113a 2r 18p on 'Settler Sections."

[9] Port Nicholson Crown Grant Plan, Wgtn SO 10408

[10] This figure for North and Southern surplus is the remaining acreage after all the other types of land shown here have been deducted from the total district acreage.

[11] Port Nicholson Crown Grant Plan, Wgtn SO 10456. Represents the scheduled "Excepted Block," minus the 770 acres excepted for Maori at Waiariki, Te Ika a Maru, and Oterongo about three months after the grant issued.

[12] Port Nicholson Crown Grant Plan, Wgtn SO 10456. Includes three fourths of the 6990 acre reserve at Orongorongo (ie we have estimated the land reserved outside the Port Nicholson purchase boundary, to the east of the summit of the Rimutaka Range, to be one-fourth of the total reserve, or 1748 acres). Figure also includes the 400 acre Waiariki reserve, 350 acres at Te Ika a Maru, and 20 acres at Oterongo, pledged on the 1848 grant plan, and reserved about three months after the grant issued.

Question (c): The Company's Purchase of Surplus Lands Under its Control, 1848-1851

In 1848, in fulfilment of Earl Grey's 1846 Royal Instructions and 1847 Loan Act, Governor Grey granted the entire Crown demesne in the Company's districts to the Company.[13] From 1848-1850, therefore, the Crown therefore did not possess 'surplus' for the Company to buy.

The point of Research Question (c), however, seems to be whether, between 1848 and mid-1850, any portion of the surplus was permanently removed into *private ownership*, beyond the nexus of Crown-Maori Treaty relations.

It was. From August 1849 to July 1850, the *demesne* in New Munster (including that acquired as Company 'surplus') was regulated by the "Terms of Purchase and Pasturage of Land in the Settlements of Wellington, New Plymouth, and Nelson," issued by the Company under the 1847 Loan Act/1846 Royal Instructions.[14]

The Company kept notoriously poor land records during its brief reign. However, prior to its dissolution on 5 June 1850, it evidently did give out some of the surplus lands. After resuming the surplus areas in 1850, Governor Grey complained to Earl Grey that:

> under the name of compensation, [the Company] had handed over to various persons ... a considerable quantity of land the demesne of the Crown.

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[13] The operation of these 1846-47 Imperial measures are described in Duncan Moore, "The Crown's Surplus in the Company's Districts", (Waitangi Tribunal Rangahaua Whanui series) Wai 145 Doc H6

[14] See Earl Grey/Grey, 8 August 1851, and Earl Grey/Grey, 19 March 1851, in *New Munster Gazette* 1852, pp 1, 15-16. The situation was different in the areas which had been awarded to the Company in fulfilment of its 1841 Charter — the lands the Company had selected, surveyed, and allotted to Land Order holders. On 2 October 1849, the New Munster Legislative Council passed the

> "Ordinance to provide a cheap and expeditious mode of procedure against persons occupying land or premises within the Province of New Munster without right, title or license."

Clause 4 of this ordinance provided that the Company's Land Orders would be "deemed and taken as a sufficient title." This effectively secured Land Order holders in their selected sections, until a system for Crown granting could be worked out.

Grey argued that the Crown's debt to the Company should have adjusted accordingly.[15]

Earl Grey agreed that under the 1846 Instructions/ 1847 Loan Act the Company did not have the power to dispose of Crown demesne for purposes of compensating unsatisfied Land Order holders. Nonetheless, he noted that under that same Act, Governor Grey now had not only the power but the *obligation* to dispose of demesne for the purpose of satisfying those same Land Order obligations. Earl Grey instructed Grey therefore to sanction any such existing Company allotments, and to continue the practice. The Crown's debt to the Company would be adjusted, if need be, in direct negotiations between the Colonial Office and the Company Directors in London.[16]

Presumably, then, some of the surplus areas later awarded under the New Zealand Land Claims Act 1851 were merely confirmations of technically illegitimate scrip-sales which the Company had made under its 1849 "Terms." (see page 27 below).[17]

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[15] Grey/Earl Grey, 22 May 1851, in GBPP 1852 [1476], pp 12-13.
[16] Earl Grey/Grey, 7 December 1851, in GBPP 1852 [1476], pp 76-77. See also summary in Patterson [1984], pp 241-42, notes 70-72
[17]See summary in Patterson [1984], pp 241-42, notes 70-72. Rangitikei purchase date, McLean/Col Secretary, 15 May 1849, *NZ Gazette* 1849, pp 82-84.

Question (d): How the Surplus Lands Passed to the Crown after the Mid-1850 Liquidation of the Company

The New Zealand Company's lands vested in the Crown by operation of Section 19 of the 1847 Loan Act.[18]

Section 19 of this Act provided that, anytime between 5 April and 5 July 1850, the Company Directors could notify any Principal Secretary of State that they wished to surrender the Company Charters. Upon doing so,

> all the Lands, Tenements, and Hereditaments of the said Company in the said Colony shall thereupon revert to and become vested in Her Majesty as Part of the Demesne Lands of the Crown in New Zealand.

The Crown would receive the lands

> subject nevertheless to any Contracts which shall be then subsisting in regard to any of the said Lands ...

The Act especially mentioned existing liabilities at Nelson.

Foremost amongst the Company's assets which were thereby scheduled to revert to the Crown in 1850, were the 24,491 acres the Company had purchased for itself in its own settlements, and the rights of selection to 1,073,483 acres it had received from the Crown.

The Company had received these rights of selection under its 1841 Charter, effectively *in exchange* for saving the Crown £268,000 of the cost of *producing* the rights (ie, colonising New Zealand, creating the land market in which such rights could operate).

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[18]Wai 145 Doc E5 Supporting Papers, pp 311-317, especially p 316.

In recognition of this, Section 20 of the 1847 Loan Act required the Crown to *reimburse* the Company the amount it had effectively cost the Company (instead of the Crown) to acquire/produce these assets/rights — five shillings per acre.

The Act required the Crown to secure this debt with land, and to repay the debt by selling land.[19]

[19] In correspondence subsequent to the 1847 Act, Lord Grey set the rate of payment at one-fourth of each year's gross land sales revenues. Lord Derby later wrote this rate of payment into the 1852 Constitution. See also Moore, "The Crown's Surplus in the Company's Districts," Wai 145 Doc H6 (W/Cl 6/0, A7). For the subsequent legislative history affecting the demesne in the Company's districts, see page 20ff.)

Research Question (e): Whether Compensation was Paid to Maori for the Loss of the Surplus Lands in the Port Nicholson Purchase Area

Introduction

The Tribunal has received opposing submissions on this question: the Crown has submitted that compensation was paid, and the Wellington Tenths Trust has submitted that compensation was not paid. We will summarize both submissions.

The 1839 Purchase

No submissions have concluded that the 1839 transaction provided adequate or even significant compensation for any of the Port Nicholson area. Armstrong and Stirling (for the Crown Law Office) depicted this initial transaction as a meaningless shambles. Both Gilmore and Moore (for the Wellington Tenths Trust) did not substantially differ on this point.[20]

Compensation Paid After the Initial Transaction

The 1844 arbitration awards consisted of deeds of release, referring out to an accompanying document, a schedule of which lands were being surrendered (and so, compensated by the award). Armstrong and Stirling submitted the copy of this schedule that was submitted by the Interpreter, Forsaith, and so, was most likely the copy seen by Maori at the deed-signings. This copy of the schedule listed the 'districts' of Port Nicholson without any acreage figures.[21] The 'districts' therefore

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20Wai 145 Doc E5 pp 126-27.

[21]Wai 145 Doc C1(i) "Encl in Forsaith's Report of Compo arrangements: Port Nicholson." Other copies of this schedule submitted so far: the Colonial Secretary's handwritten copy, in Wai 145 Doc C1(b), p 257; and two printed versions, from the Company's Reports and the British Parliamentary Papers — see

appear to signify general areas within a more definite whole, the Port Nicholson purchase area. This suggests that the deeds released Maori interests in that whole purchase area, and that the 1844 compensation therefore completed payment for that entire area — including its 'surplus.'

Moore reached the opposite conclusion, relying more on the copy of this schedule which was used by the referees to the arbitration, Clarke and Wakefield, in their final discussions setting the amount of compensation. This copy of the schedule was entitled:

> "the extent of land for which it is proposed to compensate the Native claimants."

Like the Interpreter's version, this schedule listed the districts, but for each district, it gave the number of acres of various kinds of lands - lands surveyed by the Company, reserved for survey, reserved for Maori, etc. Accordingly, the schedule tallied a total of 67,890 acres to be awarded to the Company, upon the Company paying £1500 compensation to the Mario vendors. That sum of money was subsequently paid to Maori, and that area of land was awarded (and later granted) to the Company.[22]

Moore presented the above referees' schedule as one of the last in a series of contemporary official statements of the geographical scope of the arbitration.[23] Two earlier statements in this series quite clearly indicated the same geographic scope as the referees' 1844 schedule: Governor Hobson's 1841 pre-emption waiver, and

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eg Wai 145 Doc A31 p 408.

[22]The schedule and its preparation are fully described in Wai 145 Doc E5, pp 469-474. Armstrong-Stirling's evidence does not differ: see Wai 145 Doc C1 pp 163-64.

[23] See the summary list of the compiled mentions at Wai 145 Doc E5 pp 475-76. Note, many of these page numbers refer to whole sections, not just single pages. Also note that the list excluded the compiled references in Moore's third volume (E5); so, in addition to the nine references listed, the list should have also included: #10) Spain up the West Coast, p 357; #11) Wakefield on the Manawatu transaction, p 369; #12) Spain's view of the early-1843 proposals for compensation, p 384; #13) Spain's September 1843 proposal for resuming arbitration, p 421; #14) the Colonial Office's conditional grant instructions, pp 431-32; #15) the Colonial Office's understanding of 'surplus lands' as a sort of public property, pp 435-45; #16) the final terms of arbitration and the Land Claims report, pp 468-69; #17) the schedules attached to the deeds of release, pp 469-474.

Commissioner Spain's 1843 statement of the terms of the arbitration. Hobson's waiver was expressly limited to the lands which the Company was to select under its award of four acres for every Pound spent on colonisation.[24] At the time of Hobson's initial pre-emption waiver, the Company had been awarded a right to select about 110,000 acres in the Port Nicholson "neighbourhood" (from the Manawatu River to Turakirae). About 60,000 of this was to be at Wellington and the Hutt Valley, and about 50,000 at Porirua and Manawatu (see Figure 2: The Limits of the Port Nicholson Arbitration).[25]

At the start of the arbitration in January 1843, the arbitrator, Mr Spain, fairly clearly re-iterated Hobson's view of the geographical scope of the arbitration. He said he would

> "of necessity, confine my present [Land Claims] inquiries to those parts of the land which the Company have already selected, or are about to select, under Mr Pennington's award [ie, under the Company's 1841 Charter]; and the native title to those lands only having been extinguished, it will be for the British Government to pursue a similar course of proceeding, in extinguishing the native title to any districts comprised within the limits of those immense tracts of country to which the Company originally claimed, under their deeds of conveyance from the natives, that it may be deemed expedient to vest in the British Crown."[26]

As we have seen, at the close of the arbitration the next year, the referees carefully tabulated the amount of land to be selected by the Company, and agreed to the amount of compensation based on that amount of land.

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[24] Wai 145 Doc E3, pp 99-100. Col Wakefield's request for the right to negotiate directly for outstanding Maori interests was, likewise, restricted solely to the lands to be selected under the 1841 Charter award. Ibid, pp 94-95.

[25] See full treatment of the pre-emption waiver in Moore, Wai 145 Doc E3, pages 94-102 (and on the issue of whether the waiver extended to 'habitations,' Ibid pp 103-110). Armstrong-Stirling do not differ on the geographical limits of the pre-emption waiver: Wai 145 Doc C1, pages 66-68.

[26] None of the other official mentions of the geographical scope of the arbitration and compensation compiled by Moore expressly disagreed with the three presented here, or unambiguously suggested that the arbitration affected interests in any 'surplus' around the 71,900 acres (including reserves) to be awarded to the Company.

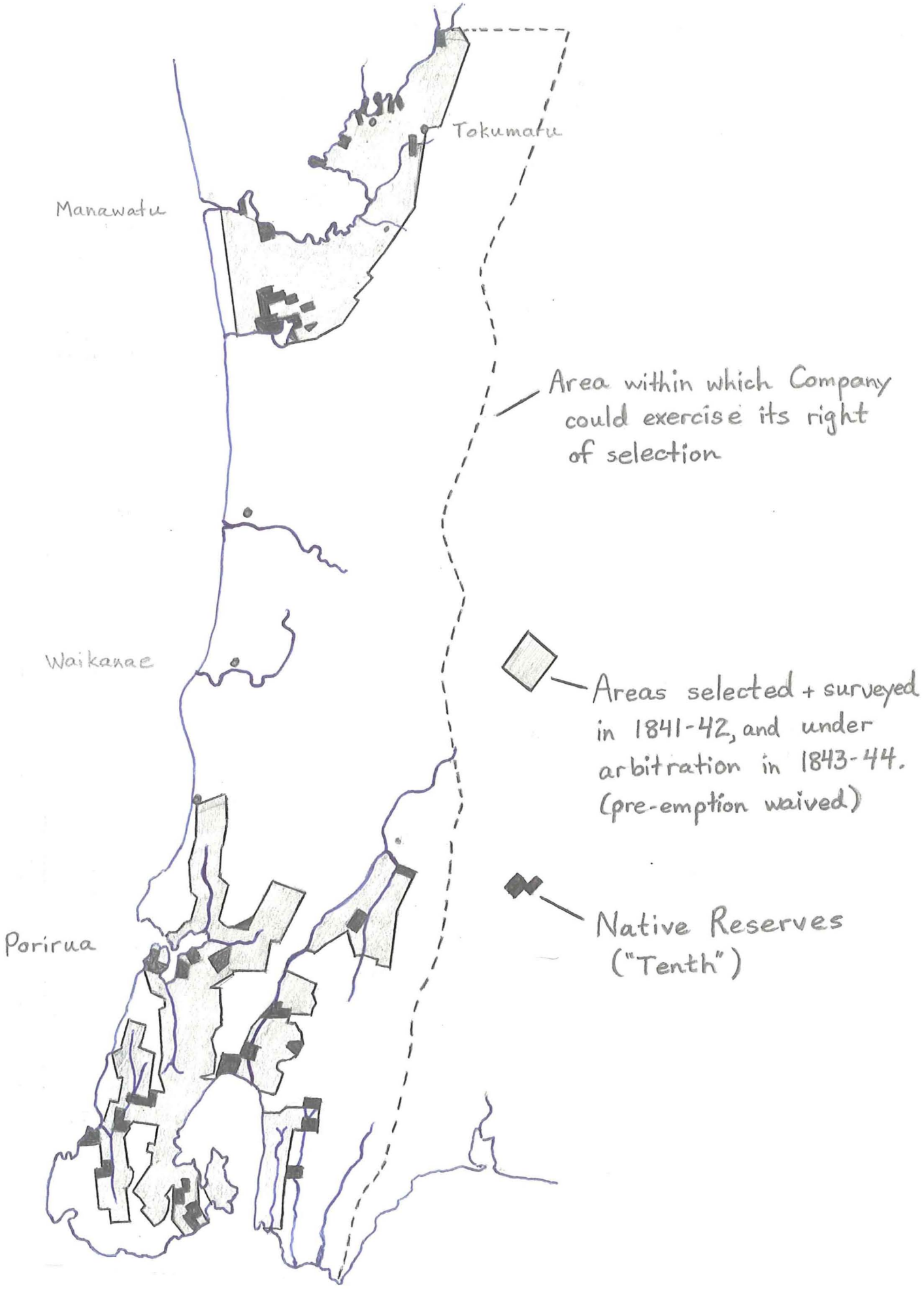

Figure 2: The Limits of the Port Nicholson Arbitration

1847 Assignments of Reserves

According to McCleverty's 1847 deeds, Maori agreed

> "to *give up* to Her Majesty's Government all the cultivations [they] have hitherto had on sections in [their] District belonging to European settlers, on [their] *receiving* from Lt Col McCleverty... portions or blocks of land... shewn and coloured red on the annexed plan...." [emphases mine][27]

This wording implies that, at the time of McCleverty's transactions, the Crown already owned the lands which Maori here "received" upon surrendering their cultivations on settlers' sections. As we have seen, though, the 1839 transaction hardly extinguished the Maori interest in the surplus, and the 1843-44 arbitrations and compensation dealt only with the lands selected for survey and on-sale by the Company. If the Crown was claiming these lands, it must have been without compensation.[28]

Beyond this, though, the Crown now obtained about 600 acres of the most arable lands in the region in return for these lands which Maori here "received." Most of these "received" lands contained large areas of *kainga* and *ngakinga*. As such, these lands had been *excepted* from purchase from the time of Governor Hobson's 1841 pledge right up to the start of McCleverty's inquiries.

The puzzling aspect of the 1847 transactions is that it is very unlikely that Lt Col McCleverty was unaware of these lands' 'excepted' status at the time he used them in 'exchanges' with Maori. The Assistant Government surveyor, T. H. Fitzgerald, had surveyed these *kainga* and *ngakinga* almost continuously from October 1844 to at least October 1846, expressly to effect their exception from the Company's 1844 deeds of release/arbitration award, 1845 Land Claims award, and 1846 Crown Grant.[29] Indeed, Fitzgerald reported directly to Lt Col McCleverty on the status of

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[27] Sample wording is from 1847 Ohariu deed, in Turton's Deeds, Wai 145 Doc A26.
[28] In the 1840's, it was apparently not an outlandish proposition to pay for only the agricultural lands, but to include the surrounding non-agricultural lands in the purchase. See eg. Shortland/Forsaith, 29 December 1842, IA 4/271 pp 94-95, cit. in Moore, Wai 145 Doc E4 pp 311-312.
[29] The story of Fitzgerald's surveys of these exceptions is in Moore, Wai 145 Doc E5, pp 537-39, 542-43, and especially 545-555.

the surveys in October 1846.[30] It is remarkable, then, that a few months later (from March to August 1847) McCleverty successfully effected 'exchanges' in which the Crown "gave up" these *ngakinga* in return for Maori "giving up" some others. They were all equally excepted from the purchase at the time.

At any rate, it seems unlikely that McCleverty's 1847 transactions redressed the earlier lack of compensation for the "surplus" lands.

[30]Fitzgerald/McCleverty, 19 October 1846, NM 8/5a 46/468 and NM 8/5a 46/490, both cit. in Patterson, page 482.

Question (f): The Vesting of the Port Nicholson Surplus Lands in the Wellington Provincial Council, and the Council's Subsequent Handling of those Lands

From August 1849 to July 1850, the demesne in New Munster (including that acquired as Company 'surplus') was regulated by the "Terms of Purchase and Pasturage of Land in the Settlements of Wellington, New Plymouth, and Nelson," issued by the Company under the 1847 Loan Act/1846 Royal Instructions.[31]

At the same time, in August 1849 the New Ulster Government passed the Crown Lands Ordinance, Sess 10 No 1, providing for the regulation of the demesne in New Ulster. Subsequently, Governor Grey appointed Commissioners of Crown Lands under clauses 1 and 2 of that Ordinance, and in early 1850, issued "Regulations for Management of Crown Lands" under clause 3.[32]

Upon the dissolution of the Company in July 1850, the Company's estate, including the Crown demesne it had held under the 1847 Loan Act, re-vested in the Crown. A few weeks later, on 13 August 1850, Earl Grey forwarded Governor Grey instructions regarding the disposal of this recently resumed demesne. These took the form of "Additional Instructions" under the 1846 Royal Instructions, which had revived upon the dissolution of the Company. Earl Grey insisted that both the 1846 Instructions and the Additional Instructions were valid *only* insofar as they were consistent with existing New Zealand Company contracts.[33]

Earl Grey's Instructions arrived in New Zealand about early March 1851.

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[31]See Earl Grey/Grey, 8 August 1851, and Earl Grey/Grey, 19 March 1851, in *New Munster Gazette* 1852, pp 1, 15-16.
[32]Abstract of the 1849 Ordinance in 1851 *New Munster Gazette,* 14 March 1851. Regulations published in *New Ulster Gazette*, 1850, pp 144-46.
[33]Earl Grey/Grey, 13 August 1850, in *New Munster Gazette* 1851, pp 53-54. The 1847 Loan Act had only suspended Ch 13 of the 1846 Instructions for a three-year period, ie. until the Company's dissolution in July 1850

Governor Grey responded by publishing the abstracts of two Bills he had been preparing: one for extending the New Ulster Crown Lands Ordinance (and accompanying regulations) to New Munster, and one for fulfilling Company Land Orders by either granting land or issuing scrip.[34]

Grey's Legislative Council thoroughly debated both Bills, and passed them in August 1851.[35] On 19 August 1851, Francis Dillon Bell was *both* Commissioner of Crown Lands for Wellington District under the Crown Lands Amendment and Extension Ordinance, *and* Wellington District Commissioner under the New Zealand Land Claims Ordinance.[36] From the outset, Bell's two Commissions operated practically as one: eg, forms for New Zealand Company Land Claims were available from the Commissioner of Crown Lands.[37]

The New Zealand Company Land Claimants' forms had to be submitted to the Commissioner's office by 1 January 1852.[38]

Meanwhile, in England, Earl Grey had submitted the Company's 1849 "Terms of

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[34] *New Munster Gazette* 1851, 4 April and 29 March 1851, respectively. Earl Grey's instructions regarding the revival of the 1846 Royal Instructions is embodied in Paragraph 8 of the abstract of the New Zealand Company Land Claimants' Bill.

[35]The "Crown Lands Amendment and Extension Ordinance" debates at eg, 26 June 1851, in *New Munster Gazette* 1851, pp 94-95; read a third time and passed 29 July 1851, Ibid. ca. p 120. See also Grey/Earl Grey, 21 August 1851, forwarding the Ordinance, Session XI No 10," in *GBPP* 1852 [1476] pp 17-20. Ordinance itself is in Wai 145 Doc E5 Supporting Documents, pp 322-330. Debates on the "NZ Company Land Claims Bill," in the *New Munster Gazette* 1851, pp 85, 88, 90-93, 97-98, 105, 106, 120; read a third time and passed 2 August 1851, Ibid p 129. The Council set up a sub-committee on this Land Claims Bill, and the sub-committee heard several days' testimony on the nature and scope of the task of honouring the Company's contracts. See LS-W 66/2 "New Munster Legislative Council Examination of Witnesses," [ca 100 pages]. Grey/Earl Grey forwarding NZ Company Land Claimants' Ordinance, GBPP 1852 [1476] pp 28-32. Generally, see Patterson [1984], p 242.

[36] Appointment under the NZ Company Land Claims Ordinance, in *New Munster Gazette* 1851 p 112. Bell was certainly Commissioner of Crown Lands; he signed himself as such in his 19 August 1851 notice of the "Rules and Regulations for the Issue of Pasture and Timber Licenses for the Occupation of Waste Lands Outside Hundreds," Ibid, p 113-116. However, I have been unable to find any announcement of Bell's appointment as Commissioner of Crown Lands in either *Gazettes*, IA, NM, and CS registers at National Archives previous to this date. I have not yet checked the Blue Books, though.

[37]Ibid, p 111.

[38]Ibid, p 111.

Purchase and Pasturage" to the British Solicitor General. The Solicitor General had advised that these terms constituted a "contract" binding upon the Crown under the 1847 Loan Act. Earl Grey therefore obtained and forwarded to Governor Grey an Imperial Act which recited and sanctioned the Company's 1849 "Terms" *en toto*. At the same time, he instructed Governor Grey to define the Company's "settlements" to establish the geographical scope of these "Terms."

On 13 January 1852 (twelve days after the deadline for filing claims under the Company Land Claims Ordinance), the Colonial Secretary at Wellington published Earl Grey's Imperial Act in the *New Munster Gazette*. The Governor was apparently unsure whether the old "Terms" provided scope for the operation of his new Company Land Claims Ordinance and Crown Lands regulations; he suspended all proceedings under the latter two.[39]

It appears further that Governor Grey's inquiries revealed no inconsistency between the Company's "Terms" and the Company's own Land Orders and scrip (which had to be honoured under Governor Grey's Land Claimants' Ordinance). So, on 3 April 1852, Governor Grey Gazetted the resumption of Commissioner Bell's investigations under the Company Land Claims Ordinance.[40]

Starting about nineteen days later, 24 April 1852, Commissioner Bell published regular returns of his awards. The first fifty awards were mainly for Land Orders in Wellington Town, with a few exchanges of scrip for land at Rangitikei. Many awards, however, included areas acquired by the Crown as 'surplus' to the Company's Port Nicholson purchase/arbitration: Award No 43, for example, included 37.5 acres of "unsurveyed land adjoining the Upper Gorge of the Hutt

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[39]Earl Grey's Act was 14-15 Vict. c 86 "An Act to Regulate the Affairs of Certain Settlements established by the New Zealand Company in New Zealand." See Earl Grey/Grey, 8 August 1851, and Earl Grey/Grey, 19 March 1851, in *New Munster Gazette* 1852, pp 1, 15-16, published in the *New Munster Gazette* 13 January 1852. Explained in Grey/Earl Grey, 6 January 1852, GBPP 1852 [1476] pp 61-62. Instructions to define "settlements" Earl Grey/Grey, 31 May 1851, published with the above in the *New Munster Gazette*, 13 January 1852, p 16.

[40] *New Munster Gazette*, 3 April 1852, p 53.

Valley." Bell apparently made it through 500 claims before his statutory authority changed again.[41]

The next legislative change came both locally and from Home. First, Lord Pakington refused to confirm the New Zealand Company Land Claims Ordinance, because it technically required claimants to surrender their claims under their contracts with the Company — precisely the obligations which the Crown had undertaken to honour in its 1847 Loan Act. However, since the *practical* aim was the same — to fulfill the Company's contracts — Pakington allowed the Ordinance's continued operation.[42]

Shortly after, the 1852 Constitution was introduced, which provided for General Land Regulations, and devolved the functions of the old New Munster government to a mix of the General Government and the new Provincial Government.[43] The new General Land Regulations were proclaimed on 4 March 1853, and *Gazetted* on the 10th, along with the new Constitution.[44]

From March 1853 to the end of Provincial Government in 1876, then, the Crown Lands in New Munster were administered under these General Land Regulations and their amendments.[45] The era began with a series of proclamations: after the 10 March 1853 publication of the Constitution and Land Regulations, on 14 March Governor Grey proclaimed boundaries of the Crown Land Districts of Wellington, Wanganui, Rangitikei. On the same day, the Commissioner of Crown Lands, Francis Dillon Bell, published notice that his New Zealand Company Land Claims

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[41]See "Returns" in *New Munster Gazette* 1852: Awards #1-50 on 24 April 1852; #51-150 on 12 May 1852, #151-200 on 7 June 1852; #201-250 on 10 June 1852; #251-350 on 29 June 1852, #351-400 on 19 October 1852; #401-450 on 10 December 1852. #451-500 on 31 January 1853 are found in *New Munster Gazette* 1853. Most Returns included one or two awards of lands which would have been acquired by the Crown as 'surplus.'

[42] Pakington/Grey, 21 July 1852, in *New Munster Gazette* 1853, pages 24-26.

[43] For reallocation of functions, see Grey/Dommet, July 1853, in CS 1/7 53/924, cit in Patterson, ca p 501-502.

[44] Control of survey and Bell/Featherston animosity, see Patterson, pp 502-504.

[45]"General Land Regulations," published 10 March 1853, in *New Munster Gazette* 1853 pp 13-18. Generally, see Patterson [1984], p 243 note 79.

inquiries would resume (under the new regime) on 29 March.[46] On 28 and 29 March, Grey Proclaimed Regulations for selecting lands in the districts he had defined.[47]

As with the first round of hearings, Commissioner Bell again briefly suspended his proceedings shortly after starting them — this time in response to a Court injunction.[48] On 15 April, though, Bell asked the Governor-in-Council for permission to resume, apparently circumventing the injunction by issuing all awards subject to approval from the Home Government. Grey proclaimed the Commission re-opened on 17 May, and Bell resumed his proceedings the next day.[49]

In his Register, Bell detailed each application/claim in the order in which it was heard, and roughly quarterly thereafter in the *Provincial Gazette*, he published returns of his awards. Many of the applications and awards pertain to lands from Wellington's 'surplus' — eg, 5184 acres of 'surplus' awarded in just the first two months. Three examples give an idea:

Application #74 for "Upper Hutt district fronting on Main Road and Adjoining Section 128 (Section 217)" — 40 acres awarded 19 May 1853 in exchange for £20 cash. Crown Granted 4 January 1877 (CG #4655).

Application #91 for "Unsurveyed land in the Hutt District at the Gorge adjoining Waterson's claim" — 75 acres awarded in exchange for Supplementary Land Order issued 24 May 1850. Crown Granted 28 June 1875 (CG #4119).

Application #95 for a large bare flat Upper Hutt (sections 160-168) — 900 acres awarded on 1 June 1853. Crown granted 18 August 1876 (CG #4479).

Again, though, the largest areas of application and award were Rangitikei and

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[46] Note that "Wellington District" included Porirua — from Wainui (Paekakariki) due East to Pakuratahi, and down the Rimutaka's to Turakirae. New Munster Gazette 1853, p 20: Notice of Proclamation of Boundaries of Lands "open for purchase or selection under the Regulations..." Bell's notice, Ibid, p 20.

[47] LS-W 16/1, ca. p 1. Overall, these March 1853 Regulations shifted the focus from pastoral licensing to sale. Patterson, p 232, 243, and 252.

[48] Note in LS-W 16/1, at 30 March 1853.

[49] Bell/Colonial Secretary, 15 April 1853, in CS 1/9/53/1547. Executive Council Minute 8 November 1853, Ibid. Grey Proclamation, 17 May 1853 in *New Munster Gazette* 1853, p 43. Proclamation noted at Bell's 18 May entry in LS-W 16/1.

Ahuriri (12,025 and 5715 acres, respectively in this same initial two-month period).[50]

From 1853 to 1865, the Commissioner sold/awarded lands in one of two price categories: superior pastoral land (often with some agricultural potential) was sold by competitive application at 10/- per acre. Normal pastoral land (often called 'marginal land') was sold by auction with an upset price of 5/- per acre.[51] Note, "sale" included accepting "payment" by Company Land Orders or scrip, and/or these commuted to Government Scrip, as well as (and often combined with) cash. In short, the process of fulfilling Company contracts was thoroughly integrated into the sale of Crown lands generally.[52]

Throughout 1853 to1876, while these pastoral sales were the Commissioner's 'core' land business, pastoral *licensing* also continued on a large (albeit steadily declining) scale. Both license and lease usually served as a fore-runner to sale/purchase.[53]

For the first three years, all real authority in surveying, acquiring, on-selling, and/or awarding Crown lands lay with the General Government, through its Commissioner of Crown Lands. The Commissioner was ostensibly required to consult the Provincial Superintendent, but this amounted to little at Wellington,

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[50] Figures from "Return of Lands Sold by the Commissioner of Crown Lands at Wellington New Zealand from 29 May 1853 to 31 July 1853," following application #141 (30 June 1853) in the "Register of the New Zealand Company Land Claims Commissioner," National Archives LS-W 16/1. Note the conflation of the Commissioner of Crown Lands' "Return" (of lands "sold") and the New Zealand Company Land Claims Commissioner's "Register" (of awards of land fulfilling Land Orders and scrip). The published returns are in *Wellington Provincial Gazette 1853-57*, National Archives, pages 70, 79, 125, and 126.

[51] From 1865 to 1876, the marginal lands could also be sold *outside* of auction, by competitive application at the set price of 7/6.

[52] Government Scrip instructed at Dommett/Bell, etc., 28 January 1853, in *New Munster Gazette* 1853, citing Exec Council minutes of 18 January 1853. There were small exceptions: Company scrip was only good for Rural Land in Districts attached to Wellington settlements prior to 1850; Government scrip could not be used in areas which had been proclaimed "Hundreds" (eg much of Wanganui) under the General Land Regulations; no scrip could be used in certain Rangitikei and Wairarapa townships, eg Featherston, proclaimed by the Provincial Government under the Scrip Restriction Act, Session IV No 1, *Wellington Ordinances* 1853-57.

[53]Patterson [1984], p 246 notes 86-88. See pp 248-49 for the path-paving role of licenses. Scrip 'sales' and agricultural sales accounted for 9.3% and 14% of total land sales, respectively. See Patterson p 248.

given the general animosity between Commissioner Bell and Superintendent Featherston.

Then, in 1856, the Waste Lands Act dismantled most of the General Government's land administration, and made the "entire land administration... a Provincial preserve."[54] After this, for instance, land sales largely moved out of the office of the Commissioner for Crown Lands, and were instead announced by the Provincial Superintendent, and conducted by the Provincial Chief Land Commissioner.[55]

The Provincial Government was not completely *un*involved before 1856, either. In 1854 they passed

> "An Act to authorize the Superintendent to Issue a Commission to enquire into ... claims for compensation under ...contracts of the New Zealand Company and Native Disturbances."

This act appears intended more as a 'dig' against the Commissioner of Crown Lands than as a serious alternative to his operations. It made no provision for issuing scrip, and it expressly provided that if

> "any other Commission applicable to the same claims shall be issued by the Governor,... the Commission to be issued under this Act shall cease and determine." [56]

Despite what would appear a clear overlap with Bell's inquiries under the New Zealand Company Land Claimants' Ordinance, though, a Wellington Provincial Land Commission was established, with William Fox as Chief Commissioner. The Commission began inquiries in 1854.[57]

Shortly after, the Land Orders and Scrip Act 1856 closed the opportunity to have Company Land Orders or scrip commuted (by Commissioner Bell) for Government Scrip.[58] In response, in February 1857, the Provincial Council passed

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[54] Quote from Patterson, p 509.
[55] Eg., *Wellington Gazette 1858*, ca p 74.
[56] *Wellington Ordinances* 1853-64, at National Archives.
[57] Inquiries begun, see *Wellington Provincial Gazette* 1854, p 44.
[58] *Wellington Ordinances* 1853-64 in National Archives.

"an Act to extend the time for adjudication on certain claims to scrip,"

apparently to enable its Commissioner Fox to award *Provincial* scrip to Company Land Order- and scrip-holders who had missed the 1856 deadline for Government scrip. At the same time, also, the Council voted the Superintendent authority to issue 13,000 acres of compensation scrip, to be awarded on the recommendations of a Select Committee and of the Land Commissioners under the 1854 Act.[59] Shortly after, the Committee and Commissioners recommended awardees for 12,700 acres worth of scrip. In April 1857, Governor Gore-Brown disallowed these awards, but by the next year, the Provincial Chief Land Claims Commissioner, Fox, was receiving claims again under the 1854 Act,[60] and the Commissioner of Crown Lands, Bell, was accepting "Provincial Compensation Scrip" as payment for Crown lands in Wellington Province.[61] As late as 1863, the Provincial Council voted authorisation for the Superintendent to purchase land to be used to satisfy these Compensation scrip awards.[62]

Sales volumes under the General Land Regulations flowed and ebbed in three waves: in the first two years (1853-54), there was an initial surge of 21,100 acres sold, followed by a three year trough with very little land sold. Then from 1858 volume grew steadily to an 1864-65 peak when 278,500 acres were sold, after which sales fell off again until 1871. From 1872 to 1874 sales rose again for a last wave, and then tapered off again for the last two years of the Provincial period.[63]

In all, from 1853 to 1876, the Crown sold 1.28 million acres of land in Wellington Province. Of this, 1.11 million acres (86%) were in *Crown*-purchased districts —

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[59] *Wellington Province Votes and Proceedings*, Session IV (1857).
[60] Fox receiving claims, see March & June notices in *Wellington Provincial Gazette* 1858.
[61] List of awardees, 19 February 1857, and disallownace, 11 April 1857, both in *Wellington Provincial Gazette*, pp 191-94 and 78 respectively. Commissioner Bell accepting Provincial Compensation Scrip, see eg. LS-W 16/2, entry for 14 June 1858: "John Roy, [awarded] 50 acres, Crown grant #2140 issued 5 December 1862: "Lower Hutt District, on the West side of the survey line leading from the Hutt to Pauatahanui, between that line and the selection of D. Galvin. Provincial Compensation Scrip No 163 for 75 acres, and Cash £12.10/-."
[62] *Wellington Ordinances 1853-64*, in National Archives.
[63] Patterson pp 243-45, and Fig 4.1.

Wairarapa/East Coast (63.4%), Manawatu (12.1%) and Rangitikei (10.5%). Only about 170,000 acres (14%) came from the *Company's* old purchase districts — ie, 79,102 and 95,529 acres, respectively, came from the 'surplus lands' of Wanganui and Wellington.[64]

Focusing on the Crown's duties under its 1847 Loan Act, its awards of land for Company-derived scrip totalled almost 10% of its land sales in the Provincial period. Almost 90,000 acres were granted to compensation claimants by mid-1855 — mostly from the Rangitikei Lowlands. By 1876, the Crown had "sold" a total of 106,520 acres in Wellington Province in exchange for compensation scrip — "a high price for the Province for the Company's early frailties."[65]

Between compensation and cash, then, the Crown sold nearly all of the Port Nicholson/Porirua 'surplus' between 1853 and 1876. Both General and Provincial Government administered these sales from time to time. However, these sales of the Company 'surplus' areas were only ever incidental to the Crown's *main* land sales programme, which focused more closely on selling lands acquired through the Crown's *own* purchases, especially at Rangitikei and in the Wairarapa/ East Coast. In turn, though, much of the impetus for and 'design' of the Crown's own purchases and sales sprang from its need to fulfil the Company's contracts.

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[64]All figures from Patterson 1984 p 245, and Fig 4.1. The situation looks much the same when divided by type of land: Wellington district counted for only 8% of the 10/- and 5.2% of the 5/- lands sold. Ibid, p 247 and Fig 4.3. Note Table 1, at page 8 above, shows Wellington started out with about 121,000 acres of 'surplus' (other than the area "given up" to Maori).

[65] Patterson, pp 241-42. At Ibid, pp 247-48, Patterson says the scrip sales totalled 118,081 acres, but here he appears to include several thousand acres of mid-1860's Military Land Order awards.

Question (g): The Crown Granting of Pa, Cultivations, or Urupa at Port Nicholson to Maori, subsequent to their guarantee in the 1844 Deeds of Release

The Tribunal has received two summary maps for Wai 145: Doc I3(a) and I3(b) (see Figures 3 and 4: The Granting of Occupied Lands). These maps distinguish four types of lands:

a) lands which were selected by the Company as either "Public" or "Native Reserves," and were assigned to Maori in 1847, and which were subsequently held under customary Maori title (shown in yellow);

b) lands which were selected by the Company as either "Public" or "Native Reserves," and were *not* assigned to Maori in 1847, and which subsequently ended up as "trust" style reserves held and administered by the Crown (shown in yellow with orange outline);

c) lands which were settler-selections or unsurveyed/surplus — but *not* any kind of 'reserve' — and which were assigned to Maori in 1847 or 1848, and were subsequently held under customary Maori title (shown white with green outline, except Waiariki which is shown white with a yellow outline);

d) lands which the Assistant Government Surveyor and/or Lt Col McCleverty reported as containing "native cultivations" as defined by the 1844-46 arrangements, but which were not, even in part, subsequently assigned to Maori in customary title (shown white with a blue dot).

The (a) and (c) lands were the *pa* and *ngakinga* that were guaranteed in 1844, and which were assigned to Maori in 1847 and 1848. The "Maori freehold" to these lands was determined later by the Maori Land Court.

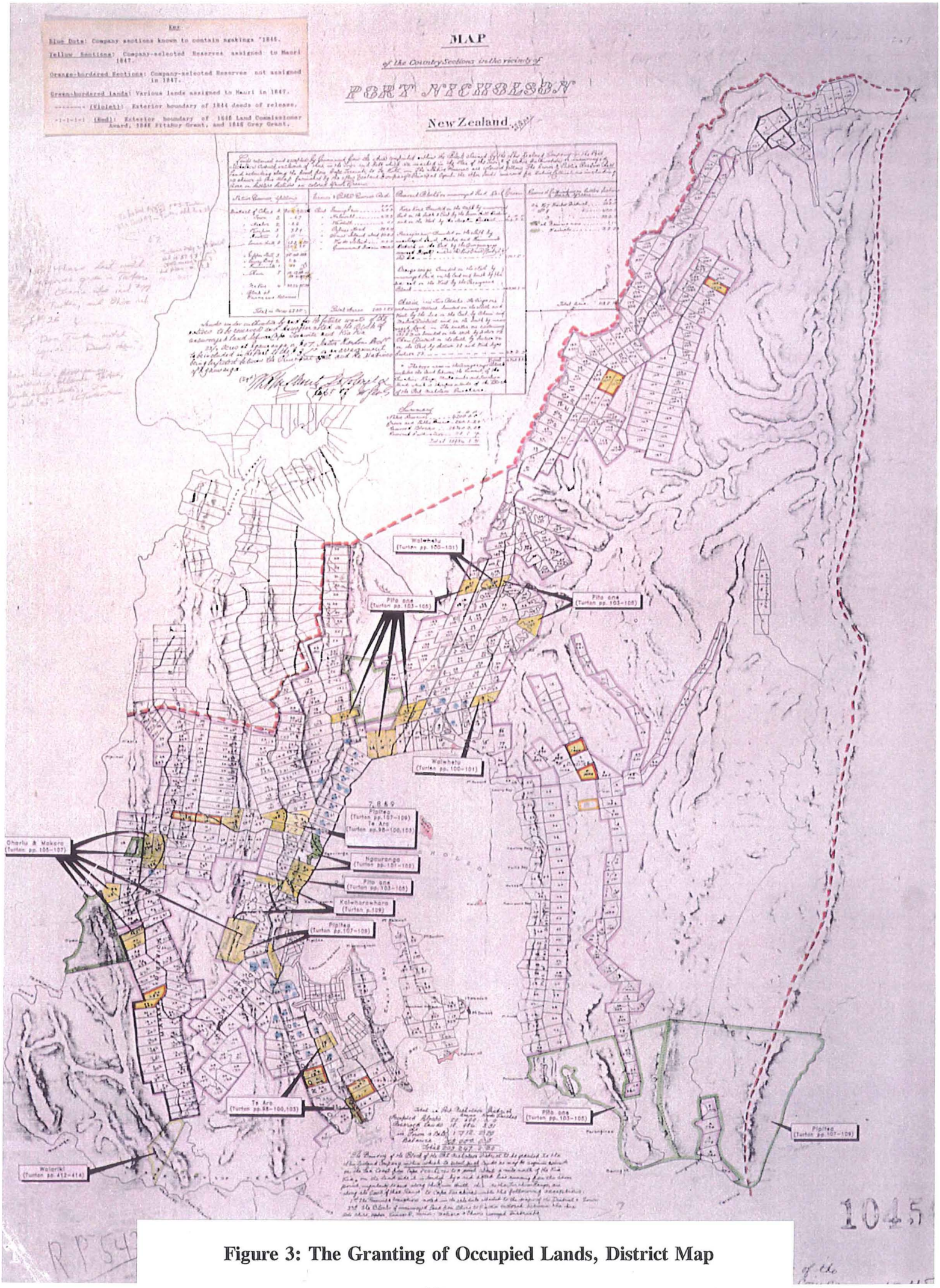

Figure 3: The Granting of Occupied Lands, District Map

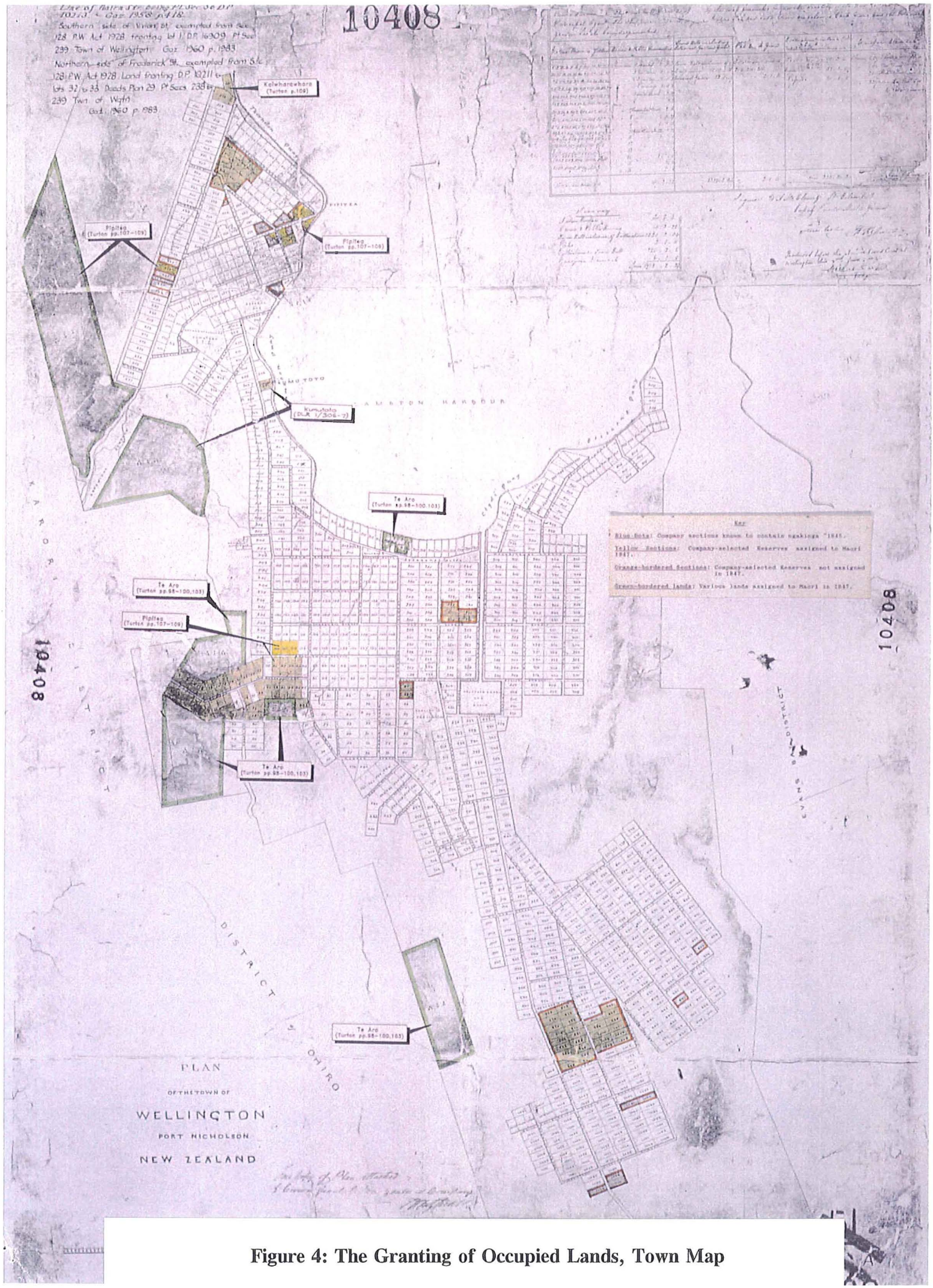

Figure 4: The Granting of Occupied Lands, Town Map

Figure 4: The Granting of Occupied Lands, Town Map

The Category (d) lands are the known 'occupied lands' that were guaranteed in 1844, but which Maori "gave up in the 1847 transactions.

Most of the trust-style reserve lands (b), although not assigned to Maori in customary tenure in 1847, were assigned to their Maori beneficiaries in the late nineteenth century through 'normal' operation of the Land Court.[66]

The maps show that at least 16 kainga were granted to Maori subsequent to their 1844 guarantee: Waiwhetu, Petone, Ngauranga, Kaiwharawhara, Raurimu, Tiakiwai, Pipitea, Kumutoto, Te Aro, Ohariu, Ohiro (probably there), Waiariki, Te Ika a Maru, Oterongo, Orongorongo, and Muka Muka.

I am not aware of any kainga, occupied in 1840-44, that were not granted to Maori.

The Tribunal has received two submissions attempting precise hapu-by-hapu breakdowns of the granted cultivations (based mostly on the figures submitted by McCleverty in 1847).[67] It is unnecessary here to repeat those efforts.

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[66] See the chapter "Trouble at Te Aro" in Moore, *The Crown Could Not Grant What the Crown Did Not Possess*, Wai 145 Doc I4.

[67] See J Pyatt, "The McCleverty Commission, 1846-1847" Research Essay (Victoria University, Wellington) Wai 145 Doc A18, passim; and Armstrong and Stirling, "Summary History...," Wai 145 Doc C1, pages 230-297. The dotted line boundaries of the assigned cultivations are shown in most of Turton's copies of the original deeds: see Turton's deeds for Te Aro, Pipitea, Waiwhetu, etc. in Wai 145 Doc A26.

Question (h): Reserves and Exceptions Made Outside the 1845 Port Nicholson Land Claims Commission Award, including a summary of the early efforts to survey Native Reserves at Porirua, and details as to why they were not finally awarded

Introduction

There are four types of problematic Native Reserves and exceptions made outside the 1845 Port Nicholson Land Claims Award.[68] We will deal with each type separately, as each has its own story and associated issues.

1. The Outlying Blocks Excepted from the Surplus Area

The 1848 Port Nicholson Crown grant excepted four large blocks of land *outside* the area dealt with in the *text* of the 1845 Port Nicholson Land Claims award. These blocks were at Korokoro (1214 acres), Parangarau (4704 acres), Orongorongo (6990 acres), and Ohariu (1431 acres). In 1848, it set aside three more fairly large areas, 350 acres at Te Ika a Maru, 400 acres at Waiariki, and 20 acres at Oterongo.

While lying outside the 1845 award *text*, the blocks lay *inside* the exterior boundary shown on that same award's *plan.*[69] In short, these reserved blocks lay in the 'surplus' portions of the 1845 Port Nicholson Land Claims award.

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[68] There is also an apparently non-problematic instance of "reserves made outside the 1845 award," which we won't deal with here. The 6990 acre block which McCleverty assigned to Maori at Orongorongo included land to the east of the summit of the Turakirae Range, and was therefore outside the boundary of the 1845 award.

[69] Moore, "The Crown's Surplus in the Company's Districts," Wai 145 Doc H6 (W/Cl 6/0, A7), identifies these lands which lay *outside* the exterior boundary of the 1845 Land Claims award's *text* and *inside* the exterior boundary of the award's *plan* as the Port Nicholson 'surplus lands.'

As described above (page 14), Crown and claimant historical submissions so far differ over whether any of the pre-1847 dealings reached or affected the 'surplus' portions of the Port Nicholson Land Claims award.

One thing is quite certain, though: from 1844 to late 1846 the Crown surveyed Maori *ngakinga* in the Port Nicholson district with the intention of excepting them from the purchase. But equally certainly, large areas of these *ngakinga* lay in the large blocks and/or Native and Public Reserves which McCleverty claimed he "gave up" in 1847. This casts quite a shadow over McCleverty's claim to have given them up, and has far-reaching implications for many aspects of the Port Nicholson purchase. Roughly: *if* the Crown was not already entitled by 1847 to the *pa* and *ngakinga* in the 'surplus' lands and the Native and Public Reserve sections, then it did not "give up" these lands and sections in 1847. If it did not give them up in 1847, then it did not compensate Maori for the *ngakinga* on settlers' sections which they certainly *did* give up in 1847. And further, if the Crown did not "give up" these large blocks in 1847, then its stated justification for granting away some of the "Tenths" Reserves for military, religious, health, and educational reasons appears quite thin. And if these endowment grants were unjustified, then the 1871 Court of Appeal decision upholding them was probably in error, and the Crown's consequent refusal to return or to fully compensate the lost lands was probably wrong.[70]

2. Manawatu

The second instance of "reserves outside the boundaries of the 1845 award" arose at Manawatu. These reserves originated with Governor Hobson's 1841 "pre-emption waiver."

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[70] Moore explained the centrality of the disagreement over McCleverty "gave up" in E3 pages 9-12. Moore presented the downward adjustment of compensation resulting from the negative 1871 Court judgment in the chapters entitled "Regina v Fitzherbert," "The Initial Aftermath," and "Settling Accounts," in *The Crown Could Not Grant What the Crown Did Not Possess*, Wai 145 Doc I4.

Governor Hobson's "pre-emption waiver" gave the Company a right to bargain directly with Maori for the lands which it chose in exercise of its rights of selection awarded under its 1841 Charter. A schedule which Hobson attached to his pre-emption waiver (and soon after *Gazetted*) specified the areas within which the Company could select lands.[71]

Within the *Gazetted* Port Nicholson area (from the Manawatu River to Turakirae Head), Hobson authorised the Company to select up to 110,000 acres for which they could bargain directly with Maori: 31,200 acres already surveyed and 78,800 acres "to be surveyed and allotted by the said Company" (see above, page 15).

By mid-1842, the Company had bargained for, and then surveyed and allotted, lands at Manawatu. This Manawatu survey and allotment ultimately covered 74,600 acres, including 4900 acres of Country District Native Reserves.

With these 4900 acres of reserves at Manawatu, plus 1500 acres of Country District reserves selected at Porirua, plus the 3900 acres of Country District reserves at Port Nicholson, and the 110 Town Acres reserved at Port Nicholson proper, the Company had almost allotted the full "tenth" of Native Reserves for its 110,000 acre acquisition within the "Port Nicholson neighbourhood." Just prior to the Crown grants of Port Nicholson and Porirua to the Company, on 31 December 1847, the Port Nicholson Native Reserve estate was just seven Country District selections short of a full tenth.[72]

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[71]Wai 145 Doc E5 pp 99-102, 368-370, and pp 534-536.. Moore, "The Crown's Surplus in the Company's Districts," Wai 145 Doc H6, pp 44-45.

[72]Figures from St Hill's 31 December 1847 "Account of Native Reserve Lands in the New Zealand Company's First and Principal Settlement," in Wai 145 Doc A40 pp 301-304. **Seven sections short**: in Ibid, the NR Commissioner especially identified the seven Port Nicholson Town Acre Reserves which lacked their matching Country District selections — Town Acres 985, 986, 987, 999, 1001, 1003, 1005. **Porirua 1500 acres**: see also 1867 NR Commissioner's Report, in front of Commissioner's Minute Book, MA-MT 6/14, pp 22-27 (= Wai 145 Doc A36), and printed copy in *AJLC* 1867, in Wai 145 Doc A25 p 9. **Manawatu 4900 acres**: see also Archives LS-W 65/29 Statement of Sections in the Company's Block at Manawatu — apparently compiled by Commissioner of Company Land Claims, David Lewis, in about 1865. Note, Swainson's 1867 Commissioner's Report says there were only 4800 acres at Manawatu.

Almost half of this Port Nicholson "tenth," though, was at Manawatu. By the end of the 1843-44 purchase arbitration, just one Manawatu *rangatira* continued to dispute the Company's 1842 Manawatu purchase. Therefore, in 1844-45, Land Commissioner Spain awarded the Company a conditional title — an exclusive and indefinite right to complete the purchase of their selected lands at Manawatu.[73]

As a result, as long as the Company retained its 'option' to complete the purchase of its Manawatu survey/ allotment, the Manawatu Native Reserves technically formed part of the Company's tithe for Maori out of its selection of land in its "Port Nicholson neighbourhood." As soon as the Company completed the purchase, the Crown could fulfill the Company's 'tenth' covenant by taking possession of the Native Reserves already surveyed and selected there.

However, in 1846 the Hutt conflict spread; Te Rangihaeata 'holed up' at Porowhetaua. His Ngati Huia relations continued to live there until at least 1871. As they (and perhaps other residents) opposed pakeha settlement, the Company remained unable to complete the purchase, or take possession of, its surveyed Manawatu block.[74]

In 1852, though, Rangihaeata and the assembled Ngati Raukawa rangatira at Porowhetaua agreed to surrender to three pakeha settlers a total of 600 acres within the Company's Manawatu purchase area, expressly in consideration of the goods they had received from the Company in 1842. They also received a "distinct and public assurance" from Donald McLean that the Government would thereafter abandon the Company's old Manawatu claim.[75]

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[73] Manawatu transaction, arbitration and compensation, and Land Claims award all covered in Wai 145 Doc E4 p and E5 pp 360-370, 518-521, and 534-536.
[74] 1871 residence at Porowhenaua, see *AJHR* 1871 F-8 p 24, item #92. See also Moore, "The Crown's Surplus in the Company's Districts," Wai 145 Doc H6 (W/Cl 6/0, A7).
[75] See copy of McLean/Colonial Secretary, 27 January 1852 in National Archives LS-W 65/30 "Miscellaneous Manawatu Papers" of the Commissioner of Company Land Claims. The transaction completed the titles of F. Robinson, 300 acres, J & J Kebble 200 acres, and A. Burr 100 acres.

Nonetheless, six years later, section 6 of the 1858 Land Orders and Scrip Act revived the Company's old pre-emptive right, by devolving that pre-emptive right onto the individual holders of Company Land Orders for Manawatu sections.[76] Later still, section 41 of the 1867 Native Lands Act re-iterated this right of holders of Company Land Orders at Manawatu to take possession of their old selections as soon as the Native title was extinguished.

Under these Acts, Maori continued to hold customary title to the lands in the old Manawatu block, but they could only receive a Native Land Court Certificate of Title "subject to" the right of the original Land Order holder "to retain the particular section whenever the Native Title [was] extinguished."[77] Thus, they could only sell their lands to the Company Land Order holders — who therefore enjoyed a monopolistic buying position.

It was a bad situation for the Land Order holders as well, though. Maori disputed the Company's title to the lands, and Chief Judge Fenton could not (or would not) decide how to amend the existing Native Lands Court certificates to accommodate the 1867 Act.[78]

Apparently, the main effect of these Acts was just to partially tie-up the lands in Maori hands. Few old Land Order holders persisted into the late 1860's. Most had thrown up their Manawatu selections in exchange for other Company lands or

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[76] Preface to the 1877 Manawatu Land Orders Act. Note: in 1876 William Hutt and a group of 'Holders of Land Orders in the Manawatu District' petitioned parliament to finally give them the benefit of their Land Orders. The Commissioner of Company Land Claims, David Lewis, testified on the matter to the 1876 Public Petitions Committee. Mr Lewis said that he believed that Commissioner Spain had ruled *against* the Company's claim, and that the Petitioners' right of possession arose from the 1858 Act alone. See LS-W 65/30, "Miscellaneous Manawatu Papers."

[77] Section 41 Native Lands Act 1867. Note, the Governor in Council notified the date of effect for this section on 30 November 1867: *Gazette* 1867 p 456.

[78] Maori dispute: Lewis/Pierce, 21 June 1869, Item #69/18 in National Archives LS-W 61/4 "Outwards Letterbook of the New Zealand Land Claims Commissioner, 1863-74." Fenton: I have not overlaid the Company's plan with a plan of the Maori blocks in the area. However, a search of the MA Head Office inwards correspondence register shows a series of letters which started with MA 69/1368, forwarding a Certificate of title to a block of land affected by s41 of the 1867 Native Lands Act. The correspondence ends at NO 87/613 — apparently a lost file. The series included mentions of the Oturoa, Aratangata, Porokaiaia, and Manawatu-Kukutauaki blocks.

scrip.[79] Presumably, upon being thrown up by the individual Land Order holders, the Land Order holders' interests did not 'disappear,' but reverted to the Company — or after mid-1850, to the Crown. Hence, the Crown probably held most of the pre-emptive rights created by the 1858 and 1867 Acts. There is no sign of it "pressing" its monopolistic position, though.

The Land Order holders' private pre-emptive rights — or "caveat" as one contemporary called them — over the old Manawatu block persisted until 1877. Apparently in response to an 1876 petition of many of the Land Order holders, the 1877 Manawatu Land Orders Act finally empowered the Commissioner of Company Land Claims to satisfy the Manawatu Land Order holders with Government-issued scrip. In 1878 the Land Order holders applied, Commissioner Lewis reported, and the scrip issued.[80]

Through all of this, there appears to have been no attempt on the part of either the Crown or of Maori at Manawatu and/or Wellington to press for their interests in the Native Reserve selections at Manawatu. The Native Reserves Commissioners' Reports between 1867 and 1880 only mention the Manawatu reserves once: in 1867

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[79]26 'retained' in the Company's "Manawatu" District register and 18 'retained' in its "Horowhenua" District register; in National Archives LS-W 65/30 & 28. See the Map of Oturoa and Aratangata blocks, ca 1870, in LS-W 70/4, with nine Land Order holders and their Company sections shown as still "Not Thrown Up." Two of the New Zealand Company Native Reserve selections are also still shown, one of which lay partly inside the Oturoa block. Many Land Orders were thrown up at once in an arrangement made 1 December 1847, in District Land Registry, Deeds Vol 1 Fol 391. As this commission was to focus on the surplus and reserves at Port Nicholson, I have not checked whether the Crown exploited its monopolistic position in its purchases of the Oturoa, Aratangata, the Ahuaturanga, and Manawatu-Kukutauaki purchases (all conducted while the pre-emptive 1858 and 1867 acts continued in force). The deeds for the latter two blocks, at least, do not appear to acknowledge or involve any Land Order-based interests. See eg Turton Deeds, Wai 145 Doc A26, pp 138, 141, 146, 147, 148, 157, 177, 185, 189, 192-98, and 200.

[80]"Caveat" see LS-W 70/1: "Sketch Showing the Sections in the NZ Co's map of the District of Manawatu which are included in the Ahuaturanga Block, purchased from the Native owners." National Archives. LS-W 14/11 is the "Manawatu Scrip Index." It lists 74 holders of original Land Orders — some multiple and some not submitted. For each, the index gives a full history: Land Order #X issued in 1839; miscellaneous transfers and transmissions from 1839 to 1846, ending with the current scrip applicant for scrip under the 1877 Manawatu Land Orders Act; each Land Order #X corresponded with a selected section #Y in the "NZ Company's surveyed block at Manawatu." Applications for Government scrip were submitted in early 1878. Reports of entitlement were made March-November 1878, and Gazetted awards of scrip issued April-November 1878. Each Land Order (100 acres) received £200 Government scrip.

Commissioner Swainson noted that the "original selectors" at Manawatu had a right of pre-emption over their old selections, but observed that the 4900 acres of Native Reserves selected at Manawatu had been "ignored by the Crown."[81]

3. Porirua

The third instance of "reserves outside the boundaries of the 1845 Port Nicholson award" arose at Porirua. These reserves originated in the same series of 1841-42 Company surveys and 1842-43 Land Order lotteries as at Port Nicholson and Manawatu, conducted to enable the Company to select their 110,000 acre "Port Nicholson neighbourhood" under their 1841 Charter.[82] The Porirua Native Reserves, however, ended quite differently from those at either Port Nicholson or Manawatu.

It is vital to stress again the *unity* of the Port Nicholson, Porirua, and Manawatu land transactions in the eyes of the Company and Crown. To an extent, the "first and principal settlement," Port Nicholson, relied on Nelson, Wanganui, and New Plymouth to take up surpluses and make up deficits of labour, land, and capital. But fundamentally, these were independent settlements, able to stand or fall separately from each other and from Port Nicholson.

Not so Manawatu and Porirua. Administratively, in the 1840's these were essentially *parts* of the Company's "Port Nicholson settlement" — a term referring to a field of activity stretching from Turakirae to the Manawatu River. Geographical conditions and resources in this area were such that no one part of it

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[81]Swainson Report, *AJLC* 1867, in Wai 145 Doc A25 pp 9-10. The reference to "original selectors" is in the same report found in the front of MA-MT 6/14, Wai 145 Doc A36. I have checked all of the other Commissioner reports, and found no further mentions of Manawatu reserves (except as referring to the reserves at Palmerston North). See also Moore, *Rangahaua Whanui Report*, pp 52-53 and 80.

[82]Burns, *Fatal Success*, page 219, and Carkeek, *The Kapiti Coast*, page 66, cited in McClean, pages 84 and 91.

could be colonised successfully without the others.

Equally, it is vital to stress the unity of the *purchase process* for the Port Nicholson, Wanganui, New Plymouth, and Nelson settlements in the eyes of the Company and Crown. For each settlement, there was one or more local transactions with 'resident' chiefs, two over-arching transactions with 'overlord' chiefs (one at Kapiti and one at Queen Charlotte), *ad hoc* payments to 'resident' landholders and chiefs as the settlers surveyed and/or physically occupied their allotments, and then a single Crown-administered binding inquiry/arbitration to quieten any remaining Maori interests in these surveyed and allotted lands.

On the basis of its original 'over-arching' transactions at Queen Charlotte and especially at Kapiti, the Company roughly surveyed the Porirua area well enough to have allotted settlers sections and Native Reserves there in mid-1842 and January 1843. Throughout 1841-42, though, the *ad hoc* payments offered to 'resident' landholders and chiefs there failed to quiet their opposition to full survey and/or physical occupation. The 1843-44 Crown inquiry found the 'over-arching' transactions had not affected interests 'on the ground' at Porirua, and then, like the Company's *ad hoc* offers, the formal 'compensation awards' proffered through the Crown's 1843-44 binding arbitration failed to quiet the Maori interest in the allotted lands at Porirua.

These "allotted lands" at Porirua included 1500 acres of the "Tenth" of Native Reserves selected for the Port Nicholson settlement. According to McClean's recent work on these reserves, there is no evidence of whether these original Native Reserves lands were of special importance to Maori at the time.

The Company's Reserves scheme itself was largely in abeyance from late 1842 until mid-1848 except for a few leases to settlers in and near Wellington and Petone proper.[83]

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[83]For formation of reserves scheme and the initial reserves trust, see Moore, "Origins of the Crown's Demesne," Wai 145 Doc E3 pp 123-161. The first Commissioner Halswell tried in 1842 to get Porirua Maori who were obstructing settlement of the Hutt to cultivate on "their own reserves." The

The 1500 acres at Porirua probably afforded little or no cause for interest amongst Maori in this period.

Given this "double invalidity" of the Porirua reserves — the failure of *both* the underlying purchase and the wider Reserves scheme — Governor Grey simply ignored them in his 1847 Porirua purchase. Five of the old Reserves (No's 71, 72, 73, 74, 75) fell within the areas which Grey excepted for Maori from the 1847 purchase. [84] Similarly, *after* Grey's 1847 purchase, Lt Col McCleverty "threw up" the other ten Native Reserve sections, which were interspersed amongst settlers' sections at Porirua and Pauatahanui.[85]

On 2 June 1848, Col Wakefield placed five of these "thrown up" sections (No's 95, 96, 98, 99, 100) at the disposal of colonists whose original Porirua allotments had fallen within the areas Grey had excepted for Maori. These colonists chose two of the five sections (No's 95 and 98). Two months later, on 1 August 1848, the remaining three vacated Reserves were selected by colonists holding normal, un-redeemed Land Orders. The last five Reserves (No's 34, 3, 4, 5, 6 at Pauatahanui) were reselected later still. [86]

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sources go no further than this, though, in clarifying whether Porirua Maori held any special attachments to any particular reserves. See Ibid., pp 140-41 and 160. The Company's reports of the disputes over its Porirua surveys (including the Reserves) are noted at Ibid, p 158.
Reserves policies 1842-43, in Ibid, pp 302-309. On the 'fatal ambiguity' of whether excepted "habitations" were also to count as "Native Reserves," see Ibid Doc E5 pp 445-457 & 513. On FitzRoy's suspension of the Crown's Claim to the Reserves, see Ibid Doc E5 pp 480-482. On the use of Native Reserves for Public Purposes, see Armstrong and Stirling, Wai 145 Doc C1, pp 306-7. On the Reserves scheme 1844-46, see Ibid, Doc E5, pp 556-563.

[84]The Native Reserves which fell within the excepted area around Titahi Bay are shown both in Brees' 1843 "Sketch of the Country Districts in the Vicinity of Port Nicholson," Wai 145 Doc I3(e), and in NR Commissioner St Hill's 31 December 1847 "Account of Native Reserve Lands in the New Zealand Company's First and Principal Settlement," in Wai 145 Doc A40 pp 301-304. Note, on the 'pakeha side of this coin, McCleverty threw up the *settlers'* sections which fell within the excepted areas. McCleverty's original list of affected sections was attached to his report recommending the Porirua grant: a copy in Wai 145 Doc C1(c) pp 311 and 320-323. David Lewis, Clerk of New Zealand Company Land Office soon after produced a "Register of Sections Chosen in lieu of those excepted in the Crown Grant of the Porirua District," showing 23 such sections: No's 38, 55, 72, 79, 87, 90, 92, 103, 108, 110, 113, 119, 128, 140, 148, 182, 191, 204, 205, 211, 287, 779, 845. LS-W 65/27 National Archives Wellington.

[85] See the "Remarks" regarding sections #78 and 95, in "Register of Country Districts at Kinapora and Porirua," ca. August 1851, LS-W 65/24 National Archives, Wellington.

[86] Ibid, but also at sections 96 and 98-100.

Given the "double invalidity" of the original Reserves at Porirua, and their apparent irrelevance to either Ngati Toa or the Crown in the 1847 transaction, no concerns appear to have arisen later regarding their reversion to the Company after the 1848 grant.

However, given that these Reserves formed a part of the "Tenth" quantum which featured so prominently in the proceedings and policies which bought initial peaceful possession of the Port Nicholson harbour, the loss of the Porirua reserves perhaps raises similar issues as those at Manawatu.

5. The Terawite Reserves

The last instance of "reserves outside the boundaries of the 1845 award" were those made at Terawite about six months after the 1848 Crown Grant issued.

The 1844 arbitration ended with the arbitrator, Mr Spain, and the Maoris' referee, Mr Clarke jun, travelling from kainga to kainga to announce the arrangement they had decided upon, namely that all pa and ngakinga would be excepted, and that the Company would pay Maori £1500 compensation for all their remaining interests in its selection area.

Accordingly, Clarke and Spain paid £20 to the people at Waiariki, £20 at Ohau, and £10 at Te Ika a Maru. A few people at each place signed the releases (see Figure 5: The South Coast Kainga).[87]

[87]Te Ika a Maru: Wellington District Land Registry, Deeds Vol 1 Fol 451. Ohaua: Ibid, Vol 1 Fol 452-3. Waiariki: Ibid, Vol 1 Fol 455.

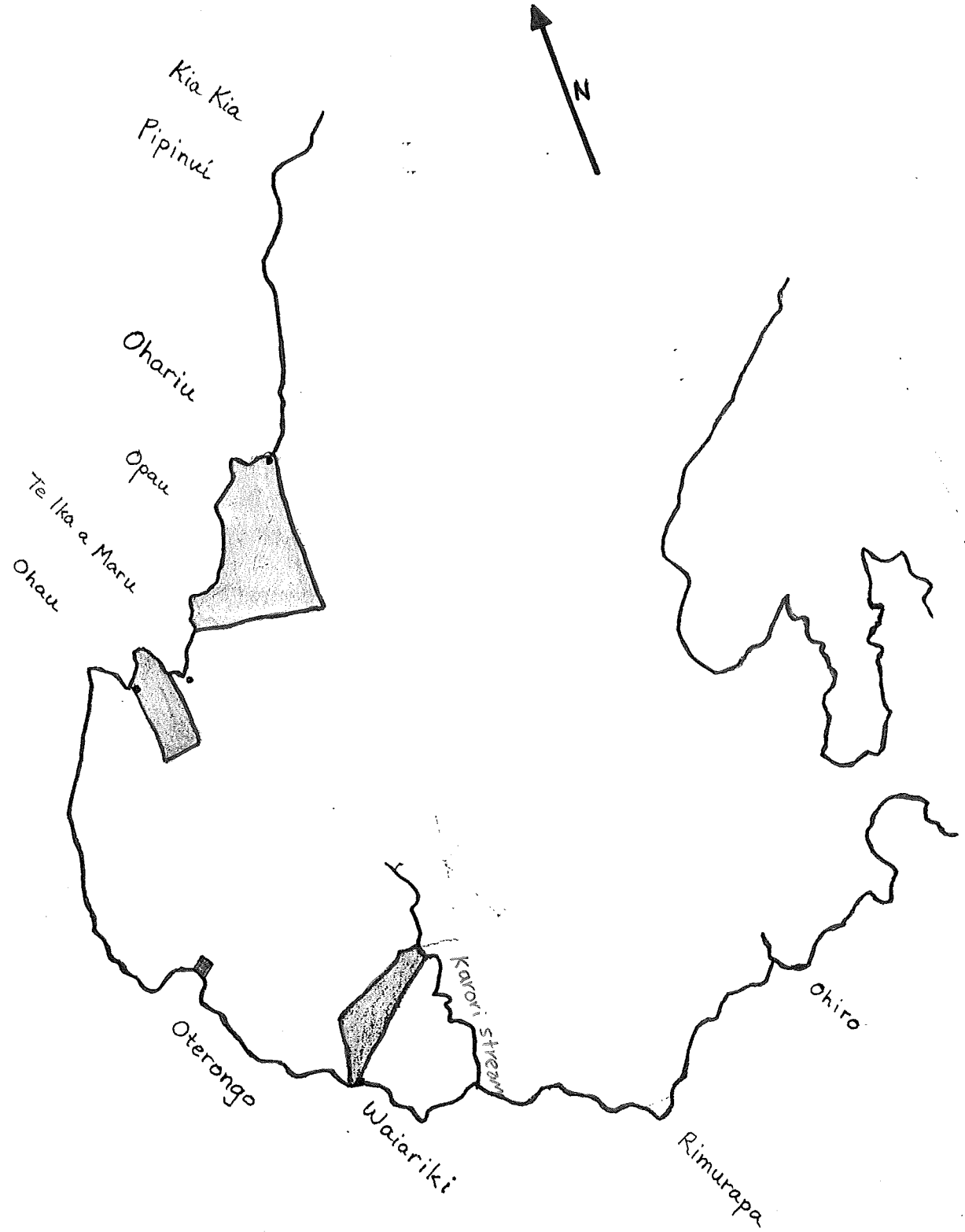

Figure 5: The South Coast Kainga Reserves

In late 1847, in recommending a grant of the Port Nicholson district to the New Zealand Company, Lt Col McCleverty noted that

> There are several smaller settlements on the coast between Cape Terawite and Ohariu, and from thence up to Te Aratawa, such as Waiariki, Oterangi, Ohao, Te Kamineno [sic: Te Ika a Maru], Opau, and Pipi-nui. With the exception of Ohariu, none of these Pahs small in population have cultivations on settlers' sections, they are wholly on unsurveyed land, and Iwould suggest, as the large Block unsurveyed which comprises the lands has not been allotted to settlers, as noted in the heading of Form B [accompanying this report], that the New Zealand Company should appoint a surveyor, in cooperation with one on the part of the Government, to survey and define the present cultivations as well as convenient blocks of land for the purpose of future cultivations in such localities as the Natives may select themselves.[88]

Accordingly, the January 1848 Crown grant of Port Nicholson to the Company excluded Terawite, pending reservation of the pa and cultivations at Waiariki, Oterongo, and Ohau/ Te Ikamaru (see page 5 above).About six months later, on 7 June and 27 July 1848, McCleverty returned to the Terawite settlements, and surveyed and assigned Maori reserves of 400 acres at Waiariki, about 20 acres at Oterango, and 350 acres at Ohau /Te Ika a Maru. This effectively claimed the rest of Terawite for the Crown (ie., for the Company under the 1847 Loan Act).[89]

On 18 July 1853 the Crown Land Purchaser Donald McLean purchased the reserves at Waiariki, Oterongo, and Ohau /Te Ika a Maru.[90] This freed-up the lands for

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[88]McCleverty/Eyre, 20 November 1847, in National Archives NZC 3/7/68, pp 430-47, quote from pp 437-38. Also in Wai 145 Doc C1(c), pp 270-71.

[89]Waiariki deed and plan: Wellington District Land Registry, Deeds Vol 1 Fol 456. Oterongo deed and plan: unable to locate McCleverty's arrangement. See below for the deduction that it must have occurred. Ohau/ Te Ika a Maru deed and plan: Wgtn DLR, Deeds Vol 1 Fol 454. McCleverty noted that all of the signatories of the 1844 release at Ohaua had gone to Taranaki. There appears to have been only two assignees for the reserve at Waiariki. Native Secretary Kemp found plenty of people living here, though, about eighteen months later. (Eg, 44 people at Waiariki in the summer of 1850.) See Kemp Report, 31 December 1850, in GBPP 1851 [1420] p 231. Perhaps Maori preferred winters in Taranaki over these South Coast settlements.

[90]McLean paid £12/10s for Waiariki. Wellington District Land Registry, Deeds Vol 2 Fol 191 (no plan). He paid £75 for the excepted lands at Oterongo, Ohau/ Te Ika a Maru — and apparently for some interests in Karori (no plan, no previous mention of Karori lands in McCleverty's dealings). Ibid, Deeds Vol 2 Fol 193. The same 13 Maori signed both deeds, and both deeds were witnessed by Te Puni, McCleverty, Piri Kawau, and H. T. Kemp, both listed as "Native Secretary."

McLean's reports preceding and following this purchase are both marked as missing in the Civil

selection by applicants under the New Zealand Company Land Claimants Act 1851.[91]

Note, much later the Crown made two additional Maori reserves in this coastal area. First, in 1873 Commissioner Heaphy arranged to grant Tupara te Maru ten acres at "Opuawe kainga" near the top of Karori Stream. And second, in 1899 a Te Atiawa/ Ngati Waipongo group successfully claimed title to Rimurapa, though this does not appear to have been reserved from McCleverty's Terawite purchase in 1848. In 1909 the Maori Land Court awarded them a parcel of 25 acres 3 roods 20 perches. In 1936, the Crown took the land back for Defense Purposes. [92]

Secretary Inwards Correspondence Register (National Archives CS 2/1, Items 53/836: "Reporting that a portion of the Ngatiawa tribe wish to dispose of land at Terawite," and 53/945: "Reporting Payment to Natives for Reserves at Oterongo, Terawite, and Ohau. Deeds of sale.").

The evidence is therefore strong that, despite the absence of any "McCleverty deed" setting it apart in 1848, McCleverty probably did set aside a reserve at Oterongo. The 1853 deeds and the CS Register, both state the McLean's purchase included Oterongo. Further, Gilmore says that in 1911 the Maori Land Court awarded eighteen people title to twenty acres at Oterongo. Wellington City Council, "Maori Sites Inventory," [ca 1995], Site #M29. See also Wellington Office of Land Information New Zealand, Maori Land Court plan #2141.

Outside evidence also indicates that the CS Register's "Ohau" reserve was the 350 acre reserve at the point between Ohau and Te Ika a Maru Bays. In 1872, two Te Atiawa women complained that their parents had lived at Te Ika a Maru, but had participated in neither McCleverty's 1848 reservation nor McLean's 1853 purchase there. In 1873, after consulting Native Minister McLean, the Native Reserves Commissioner Heaphy allowed the claimants to resume 140 acres of the original Te Ika a Maru/ Ohau reserve (in three parcels of 40, 40 and 60 acres). Native Reserve Commissioners' Minute Book, National Archives MA-MT 6/14, pp 152-56 and 160-62, cited in Gilmore, Wellington City Council "Maori Sites Inventory," [ca 1994], Site #M21.

Likewise, in the early 1880's, a Ngati Mutunga woman, Pirihiria te Tia, successfully claimed a right (through her deceased father) to 40 acres at Te Ika a Maru. However, as there was no land available there, the Maori Land Court awarded her a 'reserve' of sixty acres at Waiariki. Gilmore, Wellington City Council "Maori Sites Inventory," Site #M35.

[91]E.g., on 1 March 1853 (about five months before McLean's Waiariki deed) the NZ Company Land Claims Commissioner reported on an application for the lands *adjoining* the Oterongo reserve — Company sections Oterongo 8 & 9. The Commissioner initially awarded James Lumsden £475 scrip, but later (after McLean's transaction?) crossed this out and awarded Lumsden his Oterongo sections, noting "The Country sections 8 & 9 Oterongo can now be granted, the Native Reserve having been re-purchased." The Commissioner also noted, "Claimant is not entitled to special assessment [of £475 scrip?] of country sections selected at Oterongo under [Land Orders] 784 and 917 because the Land has been acquired from the Natives." National Archives LS-W 68/9 Report #813 on Claim #749.

[92] George Swainson 1861 Roll Plan 380/ SO 10647, Land Information New Zealand, Wellington Office; cited in Gilmore, Wellington City Council "Maori Sites Inventory," [ca 1994], Site #M32. See also Ibid, Site #M43.

Question (i): How and When the Crown Received Title to the "Tenths" Reserves After They Had Passed out of Company Ownership

The Crown's First Assertion of Title to the Reserves, 1841

Governor Hobson *Gazetted* the Port Nicholson Native Reserves (along with the Public Reserves and Town Belt) as Crown lands in October 1841.

Just the previous month, Hobson had secured quiet possession of the district for the Company by publicly repudiating any claim to lands *occupied* by Maori. These lands would, so long as Maori wished, remain excepted from the sale. This pledge was repeatedly renewed later by the Land Claims Commissioner Mr Spain, and the Sub-Protector Mr Clarke, jun.

Since the Company had selected as Native Reserves mostly lands already *occupied* by Maori, Governor Hobson had therefore *both* proclaimed and repudiated title to most of the Native Reserves in the Port Nicholson neighbourhood.[93]

It appears that early 1840's officials were aware of this contradiction in the transition of the Reserves from a Company to a pure Crown scheme, and consequently treated their own title to the Native Reserves as defective. For instance, from 1842 to early 1844, the Crown granted a few settlers leases to a small number of the Native Reserves. While this would normally appear to be an

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[93]The story of Hobson's dilemma is in Wai 145 Doc E3 pp 103-116 and 148-151. The threat this dilemma posed to Maori is analysed at Ibid, pp 153-157, and Wai 145 Doc E5 pp 449-457. Governor FitzRoy's response to the dilemma is at Ibid, pp 556-557.

assertion of Crown title to those Reserves, Governor Hobson expressly acknowledged that the leases were by nature conditional upon the lands finally becoming vested in the Crown. In January 1844, Governor FitzRoy dissolved the trust in the Reserves, and ordered their agent not to try to collect rents on the leases.

In short, prior to 1847, the Crown both proclaimed its title to all of the Reserved lands, and publicly repudiated its claim to most of those same lands, while just 'ticking over' the handful of over-confident leases of the first Commissioner and active Trustee (both Company appointees).

The Crown's Second Assertions of Title to the Reserves, 1847-48

After 1847, the Crown made two distinct, but equally *final*, assertions of title to the Native Reserves.

First, in 1847 the Crown completed mapping the pa and cultivations on the Reserves — the "occupied lands" which it had disclaimed in 1841. The Crown no longer disclaimed title to these reserves, though. Lt Col McCleverty now *claimed* these Reserves as lands which were the Crown's to "give up" to Maori. Thus, he "gave up" these Reserves in exchange for other lands which Maori gave up in return.

McCleverty's claim to these occupied reserves could only have been based upon the 1843-44 arbitrations (ending in the 1844 deeds of release), the 1845 Land Claims awards, and the 1846 Crown grant issued pursuant to them. But all of these transactions *excepted* all *pa* and *ngakinga* from sale.

It would appear, then, that in 1847 the Crown wrongly asserted title to these Reserves.

In 1848 Lt Governor Eyre and the New Munster Executive Council created a Board of Management for the rest of the Native Reserves — those which it had *not* assigned to Maori as "occupied" lands.[94] This probably served as a full and final assertion of its legal title to those reserves (though the question of whether this title was burdened with any trust remains controversial to this day).

[94] Armstrong and Stirling, "Summary History," in Wai 145 Doc C1, pp 298-305.

Conclusions

As stated in our introduction, this document is a collection of answers to a series of miscellaneous questions. As such, it does not yield any unified set of conclusions — just a series of miscellaneous summary statements:

a) The east and northwest parts of the exterior boundary of the Port Nicholson purchase remained unchanged from the initial purchase transaction in 1839 to when the Crown grant issued in January 1848. The southwest part of the boundary shifted from its 1839 position in 1844. It shifted again in January 1848, but only temporarily, until certain large exceptions from the grant could be lifted. In mid-1848, the southwest boundary returned permanently to its 1844 position.

b) The Port Nicholson purchase included 134,443 acres and 28 perches of surplus lands.

c) The Company alienated some of the surplus lands in its control from 1848 to 1850. The exact acreage is difficult to ascertain, but probably was not substantial in the Port Nicholson purchase area. Almost certainly, the Company's alienations were later confirmed by the NZ Company Land Claims Commissioner.

d) The surplus lands were transmitted from the Company to the Crown by operation of section 19 of the 1847 Imperial Act to Authorise a Loan to the New Zealand Company.

e) In balance, the evidence indicates that

— the 1839 transaction did not significantly compensate the surplus portion of the Port Nicholson area;

— the 1844 arbitration award expressly excluded the surplus portion from its

compensation calculations, and

— the 1847 'exchanges' did not compensate Maori for the 'surplus.' Rather, in these exchanges, Maori paid the Crown to 'give them back' the most heavily 'occupied' parts of the surplus.

f) The Port Nicholson surplus lands came wholly under Provincial Government control by operation of the Waste Lands Act of 1856. From August 1849 to March 1853, the New Ulster Crown Lands Ordinance regulated Crown Lands outside the Company's districts. From early 1851 the Ordinance was extended to cover lands within the Company's districts. Also in early 1851, the New Zealand Land Claimants' Ordinance passed, enabling the issue of compensation scrip. The two Ordinances worked together: the compensation scrip was used as purchase consideration for lands sold under the extended Crown Land Ordinance.

In March 1853, the General Regulations were issued under the 1852 Constitution, continuing most of the provisions of the earlier Crown Lands Ordinance. Administration in the Company's districts moved in 1853 from the New Munster Commissioners of Crown Lands to the General Government's Commissioner of Crown Lands. Under the Waste Lands Act 1856, administration moved back again to a Provincial Commissioner of Crown Lands, and remained there until 1876. Mostly, business continued as usual. By 1876, the Commissioners had sold about 95,529 acres of the Port Nicholson 'surplus.'

g) Many pa and cultivations were granted to Maori at Port Nicholson. Maps of these are included in this report.

h) There were Maori reserves awarded outside the 1845 Port Nicholson Land Claims Award at Orongorongo, Porirua, Manawatu, and Terawite.

The Orongorongo reserves appear to be non-controversial.

Of the fifteen Company Native Reserves at Porirua, ten were thrown up for selection by settlers after Grey & McCLeverty excepted the three large blocks from their 1847 purchase (which engulfed about twenty sections previously selected by settlers). This was apparently done on two bases: first, the 1847 transaction presumed throughout that the Company's original transaction and arbitration had failed to extinguish Maori interests at Porirua. The 1847 transaction therefore did not recognise any Company or Crown interest in any "Native Reserves" selected under that original purchase and arbitration. Second, the 1847 transaction created three large reserves which were apparently intended to replace the earlier Company scheme altogether.

The forty-nine Company Native Reserves at Manawatu were effectively given up by the Crown twice — in 1852 and again in 1877. In 1852, Governor Grey pledged to the Ngati Huia leaders at Porowhetaua (including Te Rangihaeata), that he would surrender all claims at Manawatu based on the Company's purchase (including to Native Reserves), in exchange for Ngati Huia recognising the title of four early settlers to a total of 700 acres at Manawatu. Still, in 1858 and 1867, old claimants' interests were recognised in statutes giving them pre-emptive rights over their old sections; that is, when or if the Maori owners wished to sell those sections, they had to offer them first to the holders of the Company Land Orders for those sections. In theory, this would have included the Crown (as owner of the Company's Native Reserves, and as successor to the Company's estate, which included most of the Manawatu Land Orders). No lands were alienated in this way, though, and in 1877 the remaining old Land Orders were commuted for general Government scrip.

The reserves at Terawite were set aside by Lt Col McCleverty in 1847 and 1848, and then purchased by Donald McLean in 1853.

i) From 1840 to 1842, on behalf of Maori, the Company selected lands in its own

land allotments as Native Reserves. For a variety of reasons, the Company selected mostly lands which Maori already favoured, used, and occupied. When Governor Hobson first arrived at Port Nicholson in 1841, for a variety of reasons, he both proclaimed these Native Reserves as Crown land, and publicly pledged to Maori that their occupied lands would be *excepted* from purchase. This created a fundamental ambiguity of title to the majority of the reserves, which was only resolved in 1847 and 1848, when Governor Grey claimed some of the occupied reserves (by 'giving them up' in exchanges with Maori for other lands) and then in 1848, when Lt Governor Eyre claimed the remainder for the Crown to use either for public purposes or for Maori, as it saw fit.

In 20

RECEIVED
CLAIMS
26/8/97

WAI 145
#3.27

WAITANGI TRIBUNAL

CONCERNING the Treaty of Waitangi Act 1975

AND CONCERNING The Wellington Tenths claims

DIRECTION COMMISSIONING RESEARCH

1 Pursuant to clause 5A(1) of the second schedule of the Treaty of Waitangi Act 1975, and following consultation and agreement with the Wai 145 claimants, the Tribunal commissions Duncan Moore of Wellington to complete on behalf of the claimants a research report for this claim that provides the following information:

(a) a summary of the various Crown grants and surveys of the lands comprised in the 1839 Port Nicholson purchase—in particular the area's exterior boundary—in the period 1839–1850. Details of the acreage contained within the exterior boundary are to be provided.

(b) the area of the so-called 'surplus lands'.

(c) details as to whether subsequent to the 'surplus lands' being placed in the control of the New Zealand Company in 1848, the Company purchased any of these lands. If so, details are to be provided.

(d) a summary of how the 'surplus lands' passed from the New Zealand Company to the Crown upon the liquidation of the New Zealand Company.

(e) details as to whether any compensation was paid to Maori for the loss of the 'surplus lands'.

(f) details as to whether the 'surplus lands' were ever vested in the Province of Wellington. If so, details are required of this vesting, along with a general account of the lands' subsequent history.

(g) details as to whether subsequent to the 1844 releases, any pa, cultivations, or urupa guaranteed to Maori were ever Crown granted to them.

ctd. page 2. details of reserves.....

(h) details of reserves (rural tenths or otherwise) awarded outside the exterior boundary of the award specified in Commissioner Spain's report of 1845. This is to include a brief summary of the surveying of any such lands. If any such reserves were not finally awarded, details as to why are to be provided

(i) details of how and when the Crown received title to the Tenths reserves subsequent to them passing out of the ownership of the New Zealand Company.

2 This commission commences on receipt of written confirmation of the commissionee's acceptance of the terms and conditions of the commission.

3 The commission ends on 10 October 1997 at which time one copy of the report will be filed in unbound form together with an indexed document bank and a copy of the report on disk.

4 The report may be received as evidence and the author may be cross examined on it.

5 The Registrar is to send copies of this direction to:

Duncan Moore
Claimants
Counsel for Claimants
Solicitor General, Crown Law Office
Director, Office of Treaty Settlements
Secretary, Crown Forestry Rental Trust
Director, Te Puni Kokiri

Dated at Wellington this 20th day of August 1997.

G S Orr
Presiding Officer