NELSON TENTHS AND MOTUEKA OCCUPATION RESERVES

1840s-1970s

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All arguments and any errors remain my own.

INTRODUCTION:

The period covered by this report is a long one. It begins with the early plans of the New Zealand Company in the 1830s, and follows the history of the reserves through until the 1970s. This report offers an analysis of the Crown's administration of the Nelson 'Tenths', which also came to include lands occupied by Maori at Motueka. The emphasis of this report is on the historical context in which decisions were made about the working of the trust administration, and the principles involved for the Crown. It discusses how Crown policy evolved and the ways in which it was carried out. The ideas and actions of both politicians and officials have been examined. Much of the material has been drawn from official records.

The idea of setting apart a tenth of all land purchased to be reserved for Maori was developed by the New Zealand Company in the course of promoting its colonising ventures in the late 1830s in Britain. According to the Company's spokesmen, very considerable and lasting benefits would be achieved for Maori by reserving land for them in this way. The Company intended that this land would become trust reserves, the ownership of which would be vested in the Company, who would administer it for the benefit of Maori. This was what made the Company's concept distinct from the more generally understood concept of reserves which was to develop later, that land reserved by Maori in the process of sales to the Crown, would continue to be owned by Maori.

As set out by the Company, the idea of 'Tenths' was a clear and persuasive one, which had a great deal to commend it. In practice, however, complications began almost from the moment that the New Zealand Company's agent arrived in New Zealand. The problems in Wellington are well known. In Nelson, also, although the historical experience differed, the Company succeeded in bequeathing to local iwi and the Crown a legacy of lasting confusion over tenths reserves.

The first chapter begins with a discussion of the New Zealand Company policy on reserves and the attempts to implement it in Nelson. However, the role that the Company played in the Tenths administration was relatively limited. In 1840 the Crown took over the administration of some aspects of the Company's project, including the provision of land for Maori. The first chapter discusses the first years of the Crown's administration of the Nelson lands, and the various adjustments made to the scheme in the 1840s and 1850s. In 1844, as a result of the report by the Land

Commissioner, William Spain, the Crown required the Company to exempt Maori kainga, cultivations, burial places and wahi rongoa from the Nelson block, in addition to reserving a tenth of all the land in the Nelson block as trust reserves. Though new reserves for occupation and use were made in separate agreements with Maori in the other districts in Nelson, the sections for the occupation and use of the Maori population in Motueka were to come largely from the suburban Tenths. In 1849 further sections from these Tenths were added to Maori occupation lands at Motueka. Modifications to the original plan meant that trust reserves amounted to far less than a tenth of the total Nelson block. The Tenths estate nevertheless remained a considerable one for the Crown to administer.

The 1850s and early 1860s saw the emergence of a trust administration and the evolution of official trusteeship in Nelson, which is covered in chapter two of this report. Early local administrators such as Major Mathew Richmond, Resident Magistrate at Nelson from 1848 to 1853, and James Mackay, appointed Assistant Native Secretary in 1858 and then Native Reserve Commissioner, 1863 to 1864, developed ideas about how the fund, gained from leasing land to European settlers, should be used to benefit local Maori. Steps were taken to allocate more land from the Tenths to families and individuals at Motueka. It was this land, in addition to the sections designated in the 1840s for occupation and use, which comprised the Motueka Occupation Reserves.

The third chapter describes the changes in the legislation covering the tenths and the administration of them from the early 1860s to the early 1880s. At the beginning of this period, the reserves were still in a relatively fluid state. The Native Reserve Act 1873, provided a transition. Sections listed in a schedule to that Act became the Nelson 'Tenths'. After the passage of the Native Reserve Act 1882, they were subject to wider political pressures. How the estate was managed, including the ways in which the land was leased and the funds spent, was largely laid down by parliament. Arising from this is the question of how far Maori were consulted over the administration of the reserved land. Governments claimed to act in the interests of the beneficial owners. The terms on which reserves were leased, and the benefit disbursed, reflected the changing political context. In the 1880s this led to the introduction of leases with the right of perpetual renewal. The third chapter also discusses in some detail the work and the opinions of Alexander Mackay, who was Commissioner of Native Reserves from 1864 until 1882.

From 1882 to 1920 the land reserved for Maori in the Nelson region was vested in the Public Trustee. The years of this administration are discussed in the fourth chapter. The chapter outlines the legislation that the Trustee worked under in some detail, and also discusses the way in which the Trust administered the land in the Nelson region. The administration and use of the benefit fund is discussed in detail at the end of the chapter.

The Native Land Court under Judge Alexander Mackay awarded beneficial ownership of the Tenths in 1892, restricting this to the members of four iwi. Instead of receiving a title to land, individuals were allocated shares of a total of 151,000 shares, a figure based on the new Zealand Company's Nelson block as defined by William Spain in 1844. The Motueka Occupation Reserves were exempted from this process. When the Motueka reserves passed through the Court in 1901, individuals were awarded the beneficial ownership of specific pieces of land. This is discussed in greater detail in chapter Four.

Following complaints about the way in which the Trustee administered the fund, and the 1913 Commission of Inquiry into the affairs of the Public Trust Office, the land was transferred to the Native Trustee in 1920. The final chapter examines the work of the Native Trustee, and the administration of both the land and the benefit fund. In the aftermath of the recommendations of the 1974 Commission of Inquiry into Maori Reserved Land, the Nelson tenths passed from the administration of the Crown to the Wakatu Incorporation.

This report was commissioned by the Waitangi Tribunal, and it was originally envisaged that it would be based on the material submitted for the claimants by Hilary and John Mitchell. The authors of these reports have examined the administration of the trust in detail and assembled a very considerable body of supporting documents. It was the function of the Mitchell reports to bring attention to the concerns of the claimants. It is not a criticism of the Mitchells' work to say that further research was required for an independent report.

It is not the intention of this report to discuss in detail the fate of particular reserves. The series of the Mitchell reports have followed through the history of each of the reserves in a comprehensive manner, and the authors of this report refer readers to the Mitchell reports if they are looking for such information. Of particular interest would be the tables contained in the Mitchell's Report 'Nelson Native Reserves: A

Summary of Deficits, Thefts and Land Losses 1841-1977', which refer the reader back to information and analysis contained in earlier reports.[1]

The report has drawn on a number of collections of primary source material compiled by the Crown Forestry Rental Trust for the Northern South Island district inquiry. Particularly valuable for the later section of the report was the collection of documents held at National Archives which touch on Maori social and economic issues in the top of the South Island. This work, which was expertly compiled and annotated by Jennifer Halder, runs to ten volumes and has been vital, in particular, to the section on the benefit fund work of the Public and Native Trustee.

As noted above, much of this report has been written from official sources. The reports of three major inquiries into the administration of trust reserves threw light on the work of the Trust: the 1913 Commission set up to investigate the Public Trust Office, the 1934 Commission of Inquiry into the workings of the Department of Native Affairs and the 1974 Commission of Inquiry into Maori Reserved Land. Manuscript collections in the Alexander Turnbull Library were also drawn on.

Jenny Murray was originally commissioned in March 1999 to conduct a further historical analysis of the alienation and the administration of the Nelson Tenths and Motueka Occupation Reserves, based on material submitted to the Tribunal by the Mitchells, together with any other available material. Ill health in September and October 1999 prevented her from completing this work. Clementine Fraser was commissioned in October to finish the report. Jenny Murray drafted the first three chapters and the first two sections of chapter four. These chapters were revised by Ms Fraser, who also drafted the rest of the report. Ms Fraser has primary responsibility for the report, and questions should be directed to her. Jenny Murray's initial contribution of research material and draft chapters is gratefully acknowledged by the Tribunal administration.

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[1] Hilary and John Mitchell, 'Nelson Native Reserves: A Summary of Deficits, Thefts and Land Losses 1841-1977', revised 1999, Wai 785 A67

Massey University (1994, and 1996-1997). Her first commission from the Waitangi Tribunal was to research and present two sections in Alan Ward, et al., 'Report on the Historical Evidence [in the Ngai Tahu Claims]' (1988). Her most recent commission was *Crown Policy on Maori Reserved Lands, 1840 to 1865, and Lands Restricted from Alienation, 1865 to 1900* (1997) for the Rangahaua Whanui project.

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CHAPTER 1: DEFINING THE TRUST ESTATE

1.1 THE 'TENTHS', THE COMPANY AND THE CROWN

The New Zealand Company's first steps towards acquiring the site for the Nelson settlement were with its large-scale purchases in the Cook Strait area. The deeds by which the Company claimed to have bought land for its Nelson settlement were the second and third deeds, signed at Kapiti Island and Cloudy Bay respectively in 1839. The instructions sent by the Company to its agent, Colonel William Wakefield, were very clear on policy regarding both payment for land and also the importance of reservations. He was instructed to:

> be especially careful that all the owners of any tract of land which you may purchase shall be approving parties to the bargain, and that each of them receives his due share of the purchase-money…
> Wilderness land, it is true, is worth nothing to its Native owners, or worth nothing more than the trifle they can obtain for it. We are not, therefore, to make much account of the inadequacy of the purchase-money according to English notions of the value of the land…[The land] can become valuable only by means of a great outlay of capital on immigration and settlement. But at the same time it may be doubtful whether the Native owners have ever been entirely aware of the consequences that would result from such cessions as have already been made to a great extent of the whole of the lands of a tribe. Justice demands not merely that these consequences should be as far as possible explained to them, but that the superior intelligence of the buyers should also be exerted to guard them against the evils which, after all, they may not be capable of anticipating.[2]

It is clear that the Company believed that these evils would result not so much from the physical loss of the land, but from the inferior social position Maori would find themselves in when they were landless in the face of 'the race who had settled amongst them and given value to their now worthless territory'.[3]

The solution to this was believed to be the establishing of reserves. Not, however, reserves based on the American model. This was deemed a failure because of the resulting isolation of the Native Americans from the white settlers, and thus isolation from a "civilised" state, which preserved the Native Americans in 'a state of

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[2] New Zealand Company's instructions to Colonel Wakefield, May 1839, cited in R.L. Jellicoe, *The New Zealand Company Reserves*, Government Printer, 1930, p. 10.
[3] Ibid., p. 10.

barbarism'.[4] The reservations made by the Company for Maori were to be interspersed with the sections sold to settlers, so that Maori would benefit from the civilised European community.[5] Colonel Wakefield was instructed to make clear to Maori in negotiations, and to mention in every contract for land, 'that a proportion of the territory ceded, equal to one-tenth of the whole, will be reserved by the Company and held in trust by them for the future benefit of the chief families of the tribe'. The Company further stated that 'the intended reserves of land are regarded as far more important to the Natives than anything which you will have to pay in the shape of purchase money'.[6] Following in this vein they instructed Wakefield to explain to Maori that 'after English immigration and settlement a tenth of the land will be far more valuable than the whole was before'.[7]

The deeds relating to the Nelson area were vague about the quantity of land to be reserved, and a greater number of people were included in the trust and subsequent benefits than had been in previous statements. The deeds stated that:

> a portion of the land ceded by them, suitable and sufficient for the residence and proper maintenance of the said chiefs, *their tribes*, and families will be reserved by the said Governors and Directors and Shareholders of the New Zealand Land Company, of London, and held in trust by them for the benefit of the said chiefs, their families, tribes, and successors, for ever.[8]

The Nelson prospectus, issued in London in 1841 by the Company, outlined a plan to sell 1,000 allotments, each consisting of three sections: 1 town acre, 50 suburban acres and 150 rural acres (a total of 201,000 acres). It was precise on the proportion of land to be reserved for Maori. The proposal was that:

> in respect of the one thousand allotments, there shall be *added* a quantity of land equal to one tenth of the whole, or 100 allotments of three sections each, as reserves for the benefit of the principal native families in the settlement, according to the plan of native reserves adopted in the first colony.[9]

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[4] Evidence of Edward Gibbon Wakefield before the Select Committee on New Zealand, 1844, cited in Jellicoe, p. 9.
[5] New Zealand Company's instructions to Colonel Wakefield, May 1839, cited in Jellicoe, p. 10.
[6] ibid., p. 11.
[7] ibid., p. 11.
[8] 'Copy of the New Zealand Company's Second Deed of Purchase, including the Nelson District' 25 October 1839 [emphasis added]; the third deed has the same phrasing. Alexander Mackay, *A Compendium of Official Documents, relative to Native Affairs in the South Island*, Wellington, 1873, vol. 1, pp 64–67. For a description of the 'sale' process, see Ruth Allan, *Nelson: A History of the Early Settlement*, A H and A W Reed, Wellington, 1965, pp 40–44.
[9] 'Correspondence between the Members of the Second Colony of New Zealand and the New Zealand Company', B E Duppa to J Ward, 3 February 1841, BPP, vol. 3, p 256. Emphasis added.

There were a number of significant problems with this scheme. Firstly, as discussed above, the New Zealand Company had clearly stated their intention that land equivalent to a tenth, a 'tenth of the whole' be reserved for chief families. Instead, the new instructions meant that the land reserved for Maori would be equivalent to a *tenth of the land offered for sale to the settlers*, which was in fact an eleventh, bringing the total of land involved in the Nelson settlement to 221,100 acres. With the amount of land for sale – 201,000 acres – even one eleventh looked substantial at 20,100 acres. Nonetheless, it was a tenuous commitment. The location for this second colony had not been fixed, nor did the Company have legal title to any of the land it was offering for sale. Indeed, when the site was chosen, there was not sufficient land for the large-scale project of Nelson.

Secondly, the 1841 prospectus provided only 'reserves for the benefit of the principal native families.' The 'benefit' was to be derived from leasing the reserves to settlers, with ownership vested in a trustee who would act in the interests of the beneficiaries. There would be nowhere for Maori to live. This was a significant change from the 1839 deeds written up by the Company which referred to the reserves as a portion 'suitable and sufficient for the *residence* and proper maintenance of the said chiefs, their *tribes*, and families'.[10] Although the legal ownership of these lands was to be vested in the New Zealand Company, according to the deed at least part of the land was still intended for residence. Thirdly, there was no recognition that Maori occupation sites might not fit in with the Company's method of allocating sections by a lottery drawn in London.

Grant Phillipson points out that the plan to place the reserves for Maori amongst the other sections 'suggested that Maori were supposed to live on the reserves'.[11] Indeed, unless they were living on sections surrounded by European settlers, they would not be able to benefit from their 'civilising' influence – which was the purported purpose of having scattered reserves rather than one or two large blocks. However, as Phillipson also points out, 'some Company and government officials preferred the idea of leasing the Tenths for a rental income, to provide for the maintenance of Maori or for measures of social "improvement", such as schools, hospitals, and churches'.[12]

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[10] 'Copy of the New Zealand Company's Second Deed of Purchase, including the Nelson District' 25 October 1839. *Compendium*, vol. , PP. 64-7. Emphasis added

[11] Grant Phillipson, *The Northern South Island*, Waitangi Tribunal Rangahaua Whanui Series, (working paper, first release), June 1995, p. 112.

[12] Phillipson, p. 112.

There was nothing further for Maori in the prospectus. The promise of funds from trust reserves, seen as more or less self-supporting, particularly suited a business organisation that claimed to have a vast amount of land at its disposal. What else could it offer? Beyond the initial payment for land and the gifts required to smooth the way to the occupation of land by its colonists, the Company did not propose to spend cash on any on-going provision for Maori. The difference between the very small price the Company paid to Maori and the price at which the land was sold to purchasers in London provided the land fund. This fund was intended to cover costs of emigration, the Company's expenses, provide public works and, as well, return a profit. Strictly speaking, as Maori had not paid into the land fund, they were not entitled to benefit from schools and churches, or from public works. At a later stage, this thought occasionally occurred to provincial governments that depended on the land fund for revenue.

On the question of putting residential reserves among settler lands, there is evidence that Maori themselves intended to continue choosing where they lived. They were not prepared to shift from their kainga, mara and wahi tapu on to sections pepper-potted among Europeans for the sake of 'civilisation'. The Crown did not in principle require them to do so. A situation developed in Wellington where officials lent their weight to persuading Maori to give up land in the centre of the Company settlement. Historically, Nelson was different: fewer people meant that urban land was not a source of conflict in the early years.

The Company's notions of social class were also developed without reference to all Maori. Social rank depended on whakapapa and not on landed estates. The Company's idea of giving chiefly families landed estates was meant to preserve their rank when from now on rank would (as the Company saw it) flow from landed estates. It hardly matters who it was that the Company intended the trust reserves to be for, since Maori had their own patterns of land ownership. The New Zealand Company showed little understanding of Maori society. Their views were promoted largely with reference to the British public, to counter criticism from the humanitarian movement and Colonial Office distrust.

The New Zealand Company's scheme depended on acquiring very large amounts of land at very little expense, which fitted in with the Company's view of land rights. The New Zealand Company Directors, it should be noted, were opposed in principle to the Treaty of Waitangi. They supported the opinion that Maori did not own

land on any significant scale, only the small amount that was cultivated. The rest was wasteland, to be appropriated for settlement. These views were widely shared. This is of relevance to the question of reserved land in Nelson because, under the settler government in the 1870s, there were habitual appeals to the New Zealand Company model and the Treaty was not invoked in connection with the trust reserves. Although by 1841 the Treaty of Waitangi had set the terms of the relationship between Maori and the Crown, the Company had gained the right to continue operations in the districts that it had claimed to have purchased.

The Company had their own policy for Maori, which was based on the ideas of Edward Gibbon Wakefield, and presented as the most enlightened one that had ever been devised. His ideas are worth outlining briefly here because of their influence on the way people have thought about the historic provision of reserves. Providing for indigenous people was not an integral part of Wakefield's grand design. He believed he had discovered the mechanism that would achieve a balance of land, capital and labour and prevent the dispersal of settlement, by setting a 'sufficient price' for land. A 'sufficient price' would also preserve social ranks. Maori society was expected to conform to the social gradations of the settlers' world, based on the redistribution of land.

The reserves, represented as the real 'consideration' for Maori ceded lands, would provide inexperienced Maori with a safeguard against complete land loss, by providing an inalienable estate controlled by the Company. This scheme was impractical, based on no experience or understanding of Maori society, and entailed neither consultation with Maori nor their consent.

The Directors of the New Zealand Company observed, 'If the advantage of the Natives alone were consulted, it would be better, perhaps, that they should remain for ever the savages they are.'[13] Nevertheless, Wakefield himself was an idealist, shaped by the humanitarian principles of the times.[14] Wakefield's reputation as a theorist has been

[13] 'New Zealand Company Court of Directors: Instructions to Colonel Wakefield, Principal Agent of the Company, May 1839', *Compendium*, vol. 1, p 51

[14] Erik Olssen, 'Mr Wakefield and New Zealand as an Experiment in Post-Enlightenment Experimental Practice', *New Zealand Journal of History*, vol. 31, no 2, 1997, p 213. As Olssen observes, historians have been very critical of Wakefield since the 1950s. He lists some of the extensive literature on Wakefield and the New Zealand Company and provides a revised interpretation of this complex thinker. ibid., pp 197–218. Miles Fairburn, Wakefield's biographer in the *DNZB*, while praising him as an innovative political economist, indicates that his neglect of the rights and welfare of indigenous peoples was one of his deficiencies. *Dictionary of New Zealand Biography, Volume One*, Wellington, Bridget Williams Books/Department of Internal Affairs, 1990, pp 572–575. For an entirely hostile recent account,

somewhat rehabilitated in recent work. His ideas about the preservation of 'native races' appear humane and farsighted, but only at some distance from reality. The words of an earlier historian, Michael Turnbull, in relation to Wakefield-inspired colonising ventures equally apply to his plans for Maori: 'Wakefield had some merit as a thinker and he was a publicist of genius. As a practical colonist he was a menace.'[15]

It is therefore difficult to ascertain exactly what was communicated to Maori in regard to the purpose and extent of the reserves. Grant Phillipson has discussed in some detail the confusion surrounding the New Zealand Company Purchases. Phillipson argues that there is a large degree of doubt as to 'whether the actual contents of the deed were properly explained to the vendors', and cites Te Hiko and others who claimed that they 'never realised that the list of districts read out to them was supposed to be the places that they were selling'.[16] Phillipson further argues that if Maori in Nelson refuted the 1839 sale between Te Rauparaha and Wakefield, and accepted the assertion of Wakefield that he was not purchasing land in 1841 but 'giving presents "upon settling", it is hard to see how they could have understood the 1841 transactions as a permanent alienation of blocks of land'.[17]

It was not only the actual sale that was disputed, but also the whole concept of the tenths. The Old Land Claims Commission was told that the Nelson Tenths were 'explained [to Maori] as a vague system under which settlers and Maori would share the land'.[18] Phillipson argues that:

> the renewed promise of tenths as part of the purchase payment was not clearly understood by either Company officials or the Motueka chiefs. One of the Company's surveyors, for example, assured Te Poa Karoro that the tenths would be surveyed in the district as extra land for Maori, over and above their places of occupation and cultivation, but this promise was not upheld by his superiors.[19]

1.2 THE CROWN AND THE NELSON TRUST RESERVES

After the annexation of New Zealand, the Company's freedom of action was more restricted. The Crown's guarantees to Maori in the Treaty of Waitangi showed up

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see Ngatata Love, 'Edward Gibbon Wakefield: A Maori Perspective', in *Edward Gibbon Wakefield and the Colonial Dream: A Reconsideration,* Wellington, Friends of the Turnbull Library, 1997, pp 3–10

[15] Michael Turnbull, *The New Zealand Bubble: The Wakefield Theory in Practice,* Price Milburn and Company Ltd, Wellington, 1959, p 36

[16] Phillipson, p. 50.

[17] ibid., p. 58.

[18] ibid., p. 59.

the inadequacy of the Company's ideas about reserves. The British government was firm on the point that 'any territory...essential or highly conducive, to their own comfort, safety or subsistence' must be retained by Maori.[20] The basic guarantee of the right to land for occupation and use was put in place.

In February 1841, about the same time as the Nelson settlement was launched, the directors in London received a royal charter of incorporation, which granted the right to colonise New Zealand for a period of 40 years. This was based on the terms of an agreement that had previously been negotiated.[21] But the situation of the trust reserves, instead of becoming clearer, became more complicated. On the question of responsibility for reserves, the agreement read:

> It being also understood that the company have entered into engagements for the reservation of certain lands for the benefit of the natives, it is agreed that, in respect of all the lands so to be granted to the company as aforesaid, reservations of such lands shall be made for the benefit of the natives by Her Majesty's Government, in fulfilment of and according to the tenor of such stipulations; the Government reserving to themselves, in respect of all other lands, to make such arrangements as to them shall seem just and expedient for the benefit of the natives.[22]

This is the key agreement between the Crown and the Company on the future of the trust reserves. Yet it is not exactly clear what was meant. Ralph Johnson considers that the agreement and subsequent charter 'established the role of the company as an agent of the Crown, in so far as it had been granted official responsibility for the administration of Maori reserves inside those lands comprising New Zealand Company settlements.'[23] He sees the Company as continuing to be involved, though he also writes that the Crown intended to manage reserve lands on behalf of Maori. Duncan Moore, having noted the initial premise, the Company's engagements, then follows through the provisions: that in the Company's area, it was the Crown that would fulfil the Company's stipulations, and in the Crown's area, it would make its own arrangements.[24]

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[19] ibid., pp. 59-60.
[20] Lord Normanby to William Hobson, 14 August 1839, BPP, vol. 3, p 87
[21] W P Morrell, *British Colonial Policy in the Age of Peel and Russell,* Frank Cass and Co., London, 1966, p 6
[22] Arrangements proposed by Lord John Russell, enclosed in R Vernon Smith to J Somes, 18 November 1840, BPP, vol. 3, p 209.
[23] Ralph Johnson, *The Trust Administration of Maori Reserves, 1840–1913*, Waitangi Tribunal Rangahaua Whanui Series, August 1997, p 3
[24] Duncan Moore, 'The Origins of the Crown's Demesne at Port Nicholson, 1839–46,' Part One (Wai 145 ROD, doc E3) p 135

In Nelson it seems to have been assumed initially, by both the Crown and the Company, that one hundred allotments of three sections each would be selected as reserves for the benefit of Maori once the land had been surveyed by the Company, coming to a total of 20,100 acres. The Crown was responsible for administration of the plan for Maori reserves from the beginning. That there were serious shortcomings in establishing an agency capable of bringing stability to this administration is a question to be discussed later. Despite the 1840 agreement, nothing to do with the Company turned out to be straightforward. Its agents in New Zealand knew that the purchase of the Nelson district was incomplete. The Crown would find that there were further arrangements to be made regarding reserves before granting any land at all. The agreement to grant land at Nelson to the Company took until 1848 to work out, and by then almost every aspect of the original Nelson settlement plan had been modified.

A further point that was clearly stated was that the Government would, in land outside the Company districts, 'make such arrangements as to them shall seem just and expedient *for the benefit of* the natives'.[25] The Crown's initial readiness to follow the approach of the New Zealand Company and employ trust lands as a source of revenue for Maori purposes has been discussed by Alan Ward, who pointed out that the Crown had its own uses for the fund.[26] The Crown expected the fund would be available for Maori purposes generally, after meeting the expenses of the Protectorate Department. The Company's intention was to benefit leading Maori families, with the object of 'binding them into the settlement process'. The intentions of both the Crown and the Company 'were miles apart from Maori concern to retain direct control of their most valued lands, either for traditional usages or their own commercial arrangements.'[27]

The governor was also directed to put 15–20 per cent of the profit from land sales into a fund for Maori purposes. This amounted to very little in the early 1840s. Land sales virtually ceased in 1842, and the fund was swallowed up in general government expenses. Occasionally there were queries about the existence of this fund, which no-one could answer. Nevertheless, as late as 1852, Grey claimed to be able to finance Maori schools from 15 per cent of the land fund.[28]

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[25] Arrangements proposed by Lord John Russell, enclosed in R Vernon Smith to J Somes, 18 November 1840, BPP, vol. 3, p 209. Emphasis added.
[26] Alan Ward, 'A Report on the Historical Evidence: The Ngai Tahu Claim', 1989 (Wai 27 ROD, doc T 1) pp 76-81; Appendix B: 'Crown Policy on Endowments for Maori', pp 401–405.
[27] Alan Ward, 'Draft Report on the Legal and Administrative Regimes Affecting the Porirua and Petone Reserves', research report for the CCJWP, (Wai 145, A44), pt B, p 3
[28] Grey to Sir John Pakington, 8 October 1852, BPP , vol. 9, p 161

The plan to use reserves more widely as revenue for Maori development did not work well. In the Zealand Company's other settlements, tenths either disappeared in the course of renegotiating the original transactions (as with Wanganui and New Plymouth) or were never put in place (Otago and Canterbury).

The system of trust reserves for the benefit of Maori was not widely adopted outside the Company's lands. Though FitzRoy had 'tenths' reserved from pre-emption waiver purchases in Auckland, this land was later sold by Grey. The basic issues were the reservation of sufficient land for Maori, and the provision of assistance for Maori development. The latter, in particular, was where it had been anticipated by the Crown that 'tenths' would have a role to play. But trust reserves were not the only way of fulfilling the Crown's wider responsibilities derived from the Treaty. A commitment to future provision for Maori was frequently repeated and developed in promises made when Maori were induced to sell land. The immediate purpose for having the trust reserves appears to have been lost sight of.

Nelson and Wellington were to emerge from this early indecisive period as the only districts where there were trust reserves with a benefit to administer. Not surprisingly, the whole question of the function of these reserves and accordingly of their proper administration was often neglected, in the context of the inconsistency and disorganisation which were inseparable from the early years of government.

1.3 THE EARLIEST YEARS OF THE NELSON TRUST RESERVES, 1842 to 1844

A government official whose duties included the 'protection of the aborigines' arrived in Nelson by March 1842, soon after the first settlers. The governor appointed trustees for all trust lands in the course of the same year. These measures did not guarantee that the administration of the reserves would proceed in an orderly and straightforward manner. There was a series of arrangements – boards of trustees, boards of management, commissioners – none of them very long-lived, and interspersed with years when there was no administration at all. A lack of legislative authority hampered early arrangements. As late as 1848 the Colonial Secretary of New Munster, Arthur Domett, pointed out that legally there were no trustees with the power to take control over the reserves, and never had been.[29] In that year, Grey appointed a local board of management, but that arrangement did not last. In 1856, the settler government passed

'An Act for the management of Lands set apart for the benefit of the Aboriginal inhabitants of New Zealand.' This Act was superseded in 1862. With the Native Reserves Act 1862, and the appointment of a Commissioner who remained in that office for nearly 20 years, a degree of stability was achieved at last.

In 1842, the trust estate began to take shape. One hundred town sections of one acre each were selected in Nelson by the Police Magistrate H A Thompson, in his capacity as the local Protector of the Aborigines. Priority in selecting the land sections had already been established by lottery in London, where lots had been drawn by the company on behalf of the trust. Though the New Zealand Company had taken no account of Maori wishes, Thompson, acting on the spot in Nelson, evidently did. The historians for the claimants give a list of places associated with occupation by groups from different iwi which were included in the sections chosen by Thompson, the largest being five contiguous sections at a site in use by the various tribes, Matangi Awhea.[30]

There is further evidence that Thompson took care, as far as possible, to reserve land which was in Maori use. Later in 1842 Thompson selected most of the suburban sections. He selected 19 sections in Moutere and 81 in the Motueka/Riwaka area. Grant Phillipson notes that 'some suburban tenths were selected with a view to including existing pa and cultivations, but others were distant from areas of Maori occupation (and from each other)'.[31] The historian of the early settlement of Nelson, Ruth Allan, commented that Thompson chose well, selecting land at Motueka and Moutere to enable Maori 'to retain their principal cultivations, which they had no wish to sell.'[32]

It does not appear from the evidence currently available that Thompson had been given instructions to make a clear distinction between trust reserves and Maori land. It was sensible to take every step possible to avoid the friction over land that had marked the early months of the Port Nicholson settlement. In any case, he had no mandate to select reserves above the number allocated by the company.

The process of selection of sections went ahead according to the programme of the New Zealand Company. Because the order of selection had been prescribed in London, it was not possible for Thompson to include all the sections occupied by Maori in the reserves. As Phillipson has pointed out, 'if settlers chose a Maori-occupied section before Thompson could get to it, then the Company could do nothing but

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[29] Allan, p 301
[30] H and J Mitchell, 'The Scope of Claims Wai 102', Wai 785 A7, p 47
[31] Phillipson, p. 116.

validate that selection'. This meant that many areas important to local Maori were 'left out of the tenths and became available for selection by settlers'.[33] For instance, in the Big Wood, Te Maatu, 'less than a third of the relevant sections had been reserved for [Maori] use'.[34]

As it turned out, the company had sold barely half of its land orders, many of which had gone to absentee speculators. The selection of sections, which was not followed by settlement, created a misleading situation for Maori. The empty land was believed to constitute part of the reserves set aside for Maori occupation.

When the area for the Motueka reserves was surveyed in 1842, Maori were almost certainly given the impression that all the reserves belonged to them. They were given a copy of the plans signed by Frederick Tuckett, the chief surveyor in the early 1840s. A note on it stated that 'the hundred sections coloured pink are for the Maoris of Motueka.'[35] They regarded the land as their own and began to lease parts to settlers.[36] The situation in Motueka was further complicated later by Commissioner Spain's change to the Company Tenths, whereby he determined that the Motueka sections would become occupation reserves separate from the Company Tenths reserves.[37]

Tony Walzl, historian for Ngati Rarua, has discussed the tension between occupation land and reserves to be retained as endowment lands, saying that:

> a distinction was not made between endowment Tenths land and reserve land for Maori occupation. The [Motueka] land in occupation at the time was merely surveyed up into 50-acre lots as part of the mapping process. Thompson, to preserve some land in Ngati Rarua ownership, had to then include the occupied land among his Tenths selection. Hence, from an administrative viewpoint, an immediate anomaly occurred as endowment land, which was intended to be leased for Europeans with the proceed expended for Maori benefit, immediately became tangled up with lands on which Ngati Rarua were located and were constantly exercising direct actions of ownership.[38]

Other iwi such as Ngati Koata and Ngati Tama may also have resided on these lands. On the other hand, the tenths reserves were also now 'the property' of all Maori involved in the Nelson transactions with the Company. Phillipson points out that the iwi of Golden Bay and Wakapuaka

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[32] Dommet, Memorandum on Native Reserves, 17 March 1848, cited in Allan, p 301.
[33] Phillipson, p. 116.
[34] ibid., p. 116.
[35] James Mackay (Assistant Native Sec., Collingwood) to D McLean, 2 January 1863, MA Collingwood, 2/1 Outwards Letterbook 1858–1863, NA, extract in Mitchell and Mitchell, Wai 785, A32(a), p 86
[36] M Richmond (Nelson) to the Colonial Secretary, 18 February 1848, *Compendium*, vol. 2, p 274
[37] This will be discussed in more detail below.
[38] T Walzl, 'Ngati Rarua Land Issues 1839-1860', Wai 785 A50 Vol. 1, June 1999, p. 101.

> would receive no income from those Motueka tenths which were intended for occupation rather than lease. The unsettled nature of the Trust, however, and the impetus to move the Tenths into beneficial ownership, meant on the other hand that the Motueka Maori might lose the direct use of their reserves in order to provide just such an income. Either way, the selection of all the suburban tenths from the land of only one community meant that somebody was going to miss out.[39]

Although Thompson as Protector of Aborigines could select the reserves, he did not have authority to lease even the ones on valuable commercial town sites. It was decided that, in order to have the most efficient administration of the property, all the reserves made for the benefit of Maori, and the money remaining after defraying expenses, would be vested in one set of trustees.[40] In July 1842, Governor Hobson vested authority for the administration in a trust made up of three individuals, the Chief Justice (Sir William Martin), the Protector of Aborigines (George Clarke) and the head of the Anglican Church (Bishop George Selwyn).

Selwyn, visiting Nelson soon after his appointment as a trustee, authorised Thompson to lease the sections. Selwyn arranged to have £200 advanced to the Tenths Trust by the New Zealand Company. He added another £200 from Church funds, planning to build a school, hospital, church, and hostelries on trust reserve town acres, for the benefit of Maori. The best sections were let to settlers, and the rents were paid into the account opened for the 'Native Trust Fund' in the Union Bank. Two small brick hostelries were built but many of Selwyn's projects had to be abandoned through lack of funds. After the death of Thompson at the Wairau, the reserves were neglected, and 'rents were collected only intermittently, if at all'.[41]

An attempt was made to place the trustees on a more permanent basis in 1844. Governor FitzRoy's Native Trust Ordinance set up a board of five to manage the property set aside for the 'Education and Advancement of the Native Race'. But his successor, Governor Grey, chose not to gazette it, and so the ordinance never became operative. Although the administration of the fund was taken over by Alexander McDonald of the Union Bank from September 1843 until his departure in 1845, legally there was no trustee and little sense of direction locally.

There was also no clear direction from the Government about the status of the reserves. FitzRoy had major crises to deal with elsewhere, including the outbreak of war

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[39] Phillipson, pp. 116-7.
[40] Johnson, p 8
[41] Allan, pp 171, 302

in the north. His government, facing bankruptcy, was more-or-less paralysed. Not surprisingly, in Johnson's report on the administration of trust reserves, this period is described as one of confusion.[42] As Selwyn was to complain:

> The general decline of the settlements 'made it difficult to let lands upon lease' and there was an original ambiguity in the whole plan, by which it was left uncertain whether the reserves were for the actual occupation of the natives, or intended to be let to English settlers, and the proceeds applied to the maintenance of Native institutions.[43]

Selwyn pointed to the basic problem of the dual purpose of reserves, which was unresolved. It was not possible to deal with it effectively in the initial period. In the long term this caused difficulties. In the meantime, although there were disputes over sections in Motueka, there was no conflict on a sufficiently serious scale to require a full investigation of the reserves, and ambiguity continued.

1.4 THE SPAIN COMMISSION AND THE NELSON TRUST RESERVES, 1844

William Spain was appointed to investigate the New Zealand Company's pre-Treaty purchases of Maori land in December 1840.[44] He travelled to Nelson in 1844 to further his investigation of the New Zealand Company purchases in that region. Spain had already heard some evidence about the sale of South Island land when questioning Te Atiawa and Ngati Toa chiefs about the Kapiti and other deeds a year earlier. These chiefs were not asked for any further information and did not attend the Nelson sessions. Spain instead heard from several Company witnesses and local Motueka chief Te Iti. Spain's interpreter Meurant had also previously visited some areas and discussed the Wakefields' purchases with local Maori.

In his evidence, Te Iti stated that although he had given consent for Europeans to settle in the Nelson district he had not given them consent to 'take all the land'. When he was asked whether it had been adequately explained that there would be reserves for Maori, Te Iti replied:

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[42] Johnson, p 10

[43] Cited in Ward, 'Draft Report on the Legal and Administrative Regimes Affecting the Porirua and Petone Reserves', p 3

[44] The Spain Report and related documents are compiled in *Compendium*, vol. 1, pp. 49-75. For further information about the Spain Commission see Grant Phillipson, *The Northern South Island*, Waitangi Tribunal Rangahaua Whanui Series, (working paper, first release), June 1995, Chapters 4 and 6. The Commission's hearings in Nelson are also discussed in some detail in Tony Walzl, 'Ngati Rarua Land Issues 1839-1860', Wai 785, Doc 60 Vol. 1, pp 125ff

> I did not understand it from Capt Wakefield there was to be one part reserved for us. I said I would point out to Capt Wakefield what part I would let them have. ...I showed him from Kaiteretere outwards to the ocean – and when I had showed him it was done. Afterwards he encroached and came on this side.[45]

Te Iti was questioned further on the Company's explanation of the reserves, and was asked if he remembered what Brooks said in regard to reserving certain parts of the land. His answer was that 'Brooks told the natives to keep from the Stream Moturoa to Kuriwaka'.[46]

After only two days of evidence, Spain suspended the hearings in response to Wakefield's offer to pay compensation to Maori. Spain's report concluded that the Company's purchase of the top of the South Island from both the Kapiti and local chiefs had been legitimate. He said that any further payments from the Company to the chiefs would be a good will offering only. Spain awarded 151,000 acres to the New Zealand Company in the top of the South Island: 11,000 acres at Whakatu, 38,000 acres at Waimea, 15,000 acres at Moutere, 42,000 acres at Motueka and 45,000 acres at Golden Bay. Out of his award Spain exempted a true tenth, 15,100 acres, to be reserved for Maori.

The Spain Commission carried out its investigations in Nelson in one of the periods when there was no official trustee or local administrator for the trust reserves. George Clarke Jnr accompanied the commission as a member of the Protectorate Department. From his experiences in Wellington, he was predisposed to regard lands for occupation as the critical issue. The New Zealand Company's approach to reserves had lost much of its credibility, and Spain's award recognised that there were two distinct categories of reserve. Indeed, Phillipson too has pointed out that one of Spain's first tasks was to 'solve the problem of dual functions by separating reserves for use and occupation from reserves for lease and beneficial ownership'.[47] In addition to the tenths, Spain ruled that occupation reserves - pas, cultivations and urupa - were to be exempted from the company's block. However, he did not specify the acreage for these reserves, or where they were to be. He also noted in his report that 'the Natives ... had stipulated for the retention of a certain portion of a large wood at Motueka' and that 'the allotment into Native reserves of a considerable portion of the Big Wood' had satisfied

[45] c.20 Aug 1844, The Evidence of Te Iti, OLC 1/907, cited in T. Walzl, p. 57.
[46] ibid., p. 57
[47] Phillipson, p. 117.

their conditions. He referred in the same report to 'one or two exchanges of the reserves for their use and benefit' which had been made by George Clarke.[48]

Spain's award was not only too short on detail to untangle the complexities of the situation that had developed, but also added to the problems. The contradictions that had already developed before 1844 remained unresolved throughout the remaining life of the Crown's administration of the trust.

A number of problems developed in the period following the Spain Award. Firstly, the government failed to thoroughly investigate the areas where Maori were living, and therefore sites of occupation were left unreserved. Secondly, as discussed below, land was taken from the already established tenths reserve to become occupation reserves but then not replaced, decreasing the amount of land in the tenths estate.[49]

Though Spain's award was influential in the long term, its immediate fate was to be largely bypassed. The Company refused to accept a grant on the terms offered by FitzRoy, objecting to the scale of reserves which they claimed exceeded their original design. Their Secretary pointed to the undefined nature of the reserves for pas, burial places and cultivations. There was an objection to having to provide occupation reserves at all. He observed that 'the extent of the Native reserves was fixed by the Company in a belief that the whole of the remainder was the Company's property.'[50]

The history of the reserves at Motueka demonstrates the confusion caused by the administration of the Spain Award.[51] The Big Wood was an important occupation site that the local Maori argued had never been sold to the Company. Maori had been assured that they would be able to keep their cultivations there, and that they would also have a tenth of the rest of the land reserved for them. As quoted above, Spain added a mention of the Wood in his report, saying that much of it was to be reserved. Although some of this land was eventually made into reserves, it did not include all the land under cultivation, or even the entire pa. A total of 16 sections of 50 acres were eventually reserved by Spain for Maori occupation at Motueka, coming to a total of 800 acres. Eight sections were obtained through exchanging sections in trust reserves in other areas for settlers' sections in Motueka, and redesignating them occupation reserves. A further eight sections were taken out of the trust reserves at Motueka. The reserves taken from

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[48] Commissioner Spain's Report to Governor Fitzroy, 31 March 1845, *Compendium*, I, p 57
[49] Phillipson, p.119
[50] T C Harrington to Sec. of State for the Colonies, 28 February 1846, *Compendium*, I, pp 69–70
[51] For Phillipson's discussion of the Big Wood see p.119. See also Walzl, 'Ngati Rarua Land Issues 1839-1860', Wai 785, Doc 60 Vol. 1, pp 134-5

the Tenths estate for occupation reserves in Motueka were not replaced.[52] The new arrangement was clearly set out in the 'Plan of the Native Reserves chosen in the Great Wood of the Motueka District', signed by Spain.[53] A copy of this map was given to the Maori parties to the agreement. At a later point, Maori had a copy of this map though local administrators and officials did not.[54]

A further major problem with the lands chosen for the occupation reserves, and a problem that was not confronted, was that all the suburban trust reserves were made from the lands of the iwi resident at Motueka.[55] Further occupation reserves were negotiated with other groups in other districts in the 1840s and 1850s, but there was no further allocation of trust reserves throughout the area of the Nelson settlement to compensate for the change in status of reserves at Motueka.

1.5 CROWN ADJUSTMENTS: THE LATE 1840s AND EARLY 1850s

At the policy-level, the Crown's commitment to the notion of trust estates continued to weaken in the course of the 1840s. This is exemplified by the Government's agreement with settlers to restructure the Nelson township, which resulted in the loss of a large number of tenths sections. In 1847 the Nelson settlers presented the Government with proposed revisions of the Nelson township. According to Phillipson the settlers proposed:

> the surrender of town and suburban sections for reselection; the removal of unsold allotments from the lottery of selection; the reclassification of poor-quality suburban land as rural sections to enable the selection of suburban land in the Wairau; and the cancellation of unsold sections to make them available for direct sale to settlers. These and other measures gave allotment-holders the opportunity to concentrate and rationalise their land holding, and to obtain better quality land. To widen the choice of available land for re-selection or purchase, the [settlers'] Committee suggested that the tenths should be reduced to one-tenth of land actually sold to settlers, rather than one-tenth of land purchased from Maori. This would involve the surrender of almost half of the existing tenths [in the Nelson township].[56]

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[52] Mitchells, *Report 9E – Motueka Occupation Reserves*, Wai 785 A38, pp. 23-5.
[53] The original is probably AAFV 997, NR 22, National Archives
[54] James Mackay to D McLean, 2 January 1863, Wai 785, A32(a), p 86
[55] In 1892, the Native Land Court awarded succession rights to the reserves at Motueka to Ngati Rarua and Ngati Awa (NLC Nelson Minute Book 2, p. 8). The other group who claimed rights in this area in the land court hearing were Ngati Koata, who claimed that they gifted Motueka to Ngati Rarua.
[56] Phillipson, p. 124.

The government accepted the arguments for this case presented by the Committee, namely that as the unsold sections of the Nelson township would be put on the market and not made into the intended allotments, the Native Reserves should only consist of 'one-eleventh of the only allotments that would ever actually exist'. Although the Government stipulated that Maori and European sections should be 'subject to the "same conditions"', the Company reserves were not reduced, and only Maori sections were affected, 'as though they had no owners or occupiers to be considered'. In the end, 47 allotments (47 acres) were taken from the tenths estate. [57]

The Resident Magistrate was nominally responsible for the Nelson reserves in the 1840s. By 1848, the administration was so minimal that Mathew Richmond, the Superintendent of Nelson, complained:

> On looking into the affairs of the Native Reserve Trust of this settlement, I regret to say that I find them in a very unsatisfactory state, nothing appears to have been done or any one authorised to act since Mr McDonald gave up the charge in January, 1845. The result is that there are rents and moneys due, sums to pay, the Native hostelries fast crumbling to ruins, and land both in the town and country, from which a revenue might be derived, lying waste.[58]

Richmond suggested that three officials familiar with local circumstances be appointed to a Board of Management in Nelson, similar to administrative arrangements being made in Wellington. Subsequently, Poynter, Carkeek, and Tinline were appointed to a Board of Management of Reserves in 1848, under the superintendence of Major Richmond.[59] A letter of directions was sent to the newly constituted Board, on behalf of Lieutenant-Governor Eyre, enclosing a further memorandum on reserves. Neither document showed signs of having been written with Nelson in mind. While the letter offered a few general suggestions for guidance, it required regular reporting to government officials in Wellington. The memorandum was even more confusing, drawing on points which related very specifically to events in Wellington. Much was inapplicable to the Nelson situation. It clearly puzzled the Superintendent of Nelson, who wrote for clarification on the issue of local decision making.[60]

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[57] Phillipson, p. 124.
[58] M Richmond (Nelson) to the Colonial Secretary, 18 February 1848, *Compendium*, vol. 2, pp 271–272
[59] AJHR 1870 A-3 p. 36, Memo from Alexander Mackay 3 January 1870.
[60] Alfred Domett to Board of Management of Native Reserves, Nelson, 5 July 1848, and E Eyre, 'Memorandum relative to the Native Reserves…', 22 June 1848; M Richmond, Superintendent of Nelson to Colonial Secretary, 25 July 1848; Domett to Richmond, 5 August 1848, *Compendium*, vol. 2, pp 278–280

Further directions were given about the conditions on which the reserved lands could be leased or sold. If Maori themselves wished to lease or sell the lands, the Government was ready for them to do so, with supervision from the board. All money from the sales would have to be paid to the Government, to be reinvested in land for Maori. Leases were to be for short periods only, with security given for the payment of rents, which were to be received by the owners.[61]

No sales took place in the Nelson district but the Board succeeded in taking over two leases (with the rents apparently going into the fund rather than directly to Maori) and terminating others on section 157 at Motueka, which had been allocated as an occupation section by Spain.[62] In 1849, the Board made further exchanges of sections. The Board acquired six sections in Motueka for occupation reserves 'as the result of an exchange of 6 Tenths Reserves sections for 6 New Zealand Company sections in order to preserve Maori cultivations and a pah site'. These sections were all 50 acres each. This involved negotiations with the agent for the New Zealand Company.[63] Spain's report that all the allocations of land required had been made in 1844 had evidently been premature.

Although the Board arranged these exchanges with the Provincial Council, Board members were appointed to be managers, not trustees. In Nelson, the Board was under the authority of the Superintendent, Richmond. He had already made several suggestions about what should be done, including building a small hospital, setting up a model farm and repairing the hostelries.[64] A reminder from the Colonial Secretary that the debts of the fund had to be settled before embarking on new projects provides a brief survey of what had been so far attempted. First, there was the sum owed to the estate of H A Thompson, who had carried out the original selections. This was ultimately to be met, though the £85 paid to Thompson's widow in 1851 was whittled down from a claim the government had admitted for £200.[65] Reference was also made to 'an unascertained sum to liquidate the heavy charge made by Dr Wilson for attendance, medicine and clothing supplied to Maori in the first years of the settlement's existence.'

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[61] Domett to the Native Reserve Commissioners, 6 October 1848, in H. Turton, *An Epitome of Official Documents Relating to Native Affairs and Land Purchases in the North Island of New Zealand*, vol. 3, Wellington 1883, p. D14; Johnson, p 18

[62] Richmond to Domett, 23 April 1849, *Compendium*, vol. 2, p 281

[63] Poynter to Acting Resident Agent, N Z Company, 8 February 1849; Fell and Seymour to Poynter, 9 February 1849; Poynter to Acting Resident Agent, N Z Company, 23 April 1849, *Compendium*, vol. 2, pp 280-281

[64] Superintendent of Nelson to the Colonial Secretary, 18 February 1848, *Compendium*, vol. 2, pp 273-274

[65] Allan, p 301

A sum of £56 9s 3d was noted later as having been paid out of the fund to Wilson.[66] The sum of £300 owing to the Church of England for a house built by Selwyn as a Maori school is rather puzzling because it appears that this building was handed over to the Church in 1845, and the debt already cancelled.[67]

Strict economy took priority over any positive moves. Domett instructed Richmond that:

> With regard to any expenses connected with the administration of the Native Reserve Estate, His Excellency observes that it will be absolutely necessary that they be met in all cases by the receipts of the Trust, and not by the advances from the General Revenue. ... The one great point to bear in view being that until the debts and liabilities of the Trust are provided for no works of utility or improvement ought to be undertaken.[68]

The Board 'retained management of the property' until mid-1853. At that point sole management devolved onto Richmond (who by this stage was the Crown Lands Commissioner), until he was replaced in 1857 by John Poynter, Alfred Domett and Thomas Brunner, who had been appointed as Commissioners under the 1856 Act in December 1856.[69]

The fitfulness of the administration could have been remedied by enhancing the powers of the Native Protectorate. But Grey had abolished the Protectorate Department, and taken personal charge of Maori economic and social development. As Johnson points out:

> he jettisoned the approaches followed by FitzRoy in favour of his own more forcefully direct approaches. Grey's reserves policy leaned heavily towards incorporating Maori into the mechanics of the State. The earliest evidence of this approach was in his personal momentum for the establishment of schools and hospitals which would serve not only Maori but also Europeans, for example, the Education Ordinance 1847.[70]

Grey was convinced rapid amalgamation was taking place. It is reasonable to judge from what he wrote about Maori society that he saw no long-term need for special provisions for Maori. It seems from his actions that he saw little point in expanding, or even preserving, the trust estate.

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[66] Domett, 3 December 1849, in 'Papers relating to Commissions paid on Native Reserves' encl. Grey to Earl Grey, 26 January 1850, BPP, vol. 6, [No. XXXVII], p 124.
[67] Allan, p 302
[68] Colonial Secretary to Superintendent of Nelson, 12 December 1849, *Compendium*, vol. 2, pp 282–283
[69] Memo from A. Mackay 3 January 1870, AJHR 1870 A-3 p. 36.
[70] Johnson, p 15

There were several significant developments in the years of Grey's governorship. Grant Phillipson has also commented on the problematic creation of the rural tenths. The 1841 plan of the NZ Company provided for an eleventh of all lands in the rural area to be reserved for Maori. The total area originally intended as rural sections amounted to 165,000 acres – an eleventh of which is 15,000 acres. The Spain award limited the entire Nelson purchase and settlement to 151,000 acres. 1,500 acres had already been created as town and suburban sections, so this left Nelson iwi with 10,000 acres for their rural tenths. By Phillipson's calculations, this amounted to approximately 66 sections of 150 acres, instead of a promised 100 sections.[71] The Company held off from creating the rural sections 'until it was able to meet all its commitments to land purchasers'. This did not happen until Governor Grey purchased the Wairau and Kaikoura districts in 1847, and informed the Company agent, William Fox, that he could select the rural sections from within the area of the Wairau purchase.[72] The Company promptly created and allocated rural sections for settlers, but decided against creating rural tenths for Maori. The progression of the rationale behind this decision is outlined by Phillipson:

> In March 1847...Major Richmond informed the Company that the Government had made ample reserves in the Wairau and Porirua districts, and 'do not think it is necessary to request the New Zealand Company to make any further Reserves in either district'. Fox argued that this released him from the obligation to provide rural tenths, although he was not certain that the government's release extended to Golden Bay if the Company made rural sections in that district. He decided that 'in fairness the natives having got their full quantity in the Wairau [they] should have none elsewhere'. He comforted himself that Golden Bay Maori 'are I believe of the *same tribe* [Fox's emphasis] as those for whom the reserves are made in the Wairau'.[73]

Phillipson goes on to report a decision of the Company and the settlers that the reserves made by Grey for Maori at Wairau released the Company from the obligation to create the 100 rural sections they had originally promised Maori. Phillipson points out that Grey 'intended the Wairau Reserves as an equivalent to the Tenths and not as part of the Tenths. They were excepted from sale by the Ngati Toa chiefs who sold the Wairau, as reserves for the resident Ngati Toa, Ngati Rarua and Rangitane. There was

[71] Phillipson, p. 120.
[72] ibid., p. 120.
[73] ibid., p. 121.

no thought of bringing them into beneficial ownership under the Native Trust'.[74] As a result of all this, no rural tenths were ever established.

As will be discussed in the following section, the Nelson plan was radically remodelled at the local level, calling into question the original allocations of land to the native trust. Finally, in 1853, Grey included some 918 acres of land at Motueka from the reserve sections in a grant made to the Anglican Bishop of New Zealand for an industrial school, for children of both races, as well as for children from the Pacific Islands. The Nelson Provincial Council protested on the grounds that the Government's policy was a violation of the original terms of the Nelson settlement.

Negotiations for remodelling the Nelson scheme were protracted. By 1847 an agreement was reached which was acceptable to both the settlers and the company, the parties to the contract in 1841. Out of the original 201,000 acres that had been offered for sale, a mere 86,631 acres had attracted private purchasers, many of whom were absentees. Even with a diminished total of 151,000 acres made available for purchase following the awards of the Spain Commission, these purchases accounted for barely half of the sections surveyed. Many sections in town and country were empty, waiting for prospective tenants or buyers.

As the result of representations from the settlers, the company's scheme was closed. Sections were reorganised to form a more coherent settlement. The ability of the company to honour the trusts entered into for the provision of schools and churches and other amenities for the settlers had been undermined by its failure to sell land.[75] As part of the general process of reduction in scale, the Government agreed to the number of trust reserves for Maori shrinking proportionately in the town of Nelson, leaving 53 acres of the original 100.

The company assumed that the same thing would happen to the suburban reserves. Assent was officially given that 'the Native reserves of Nelson should be subject to the same conditions as the sections of the settlers, with reference to the arrangements contemplated for the reduction and concentration of that township.'[76] In theory, if the suburban sections were to be subject to the same reductions as the town ones, 2,650 acres would be kept from the original 5,000. Although the Resident Agent of the New Zealand Company in Nelson, William Fox, wrote that there was no reason

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[74] ibid., p. 121.
[75] Allan, pp 391–395
[76] Gisborne to Col Wakefield, 21 January 1848, *Compendium*, vol. 2, p.273

for exempting the suburban sections from reduction, he went on immediately to provide two: 'only the worst sections would be rejected'; and 'if it is likely to create any misunderstanding with the Natives, it had perhaps better not be done.' This latter is by far the more significant. Maori control of land within the reserve estate was better left undisputed.

Governor Grey had appeared to support the trust concept in 1846, when he wrote:

> I think it proper to observe generally, that the system of Native reserves as laid down by the New Zealand Company, although an admirable means of providing for the future wants of the aborigines, is in some respects insufficient for their present wants, and ill-adapted for their existing notions.
> It will be found necessary in all instances to secure to Natives, *in addition to any reserves made for them by the New Zealand Company,* their cultivations, as well as convenient blocks of land for the purpose of future cultivations, in such localities as they may select themselves.[77]

The paragraph above is ambivalent. On first reading, it seems to be committing the Crown to promises made by the Company. But Grey appears to have meant no more than that further reserves would be necessary for Maori as well as any Company ones already in place. Further reserves would not be made along the lines of the Company system. There were no rural 'tenths' awarded in 1848, when Grey granted 2 million acres to the New Zealand Company for the Nelson settlement.

Grey acted consistently with his own conviction that no special provisions were necessary for the Maori population in the vicinity of European settlements. In 1851, he wrote:

> both races already form one harmonious community, connected together by commercial and agricultural pursuits, professing the same faith, resorting to the same Courts of Justice, joining in the public sports, standing mutually and indifferently to each other in relation of landlord and tenant and thus insensibly forming one people.
>
> This process of the incorporation of the native population into European settlements has, accordingly, been taking place with a rapidity unexampled in history. Unless some sudden and unforeseen cause of interruption should occur, it will still proceed, and a very few years of continued peace and prosperity would suffice for the entire fusion of the two races into one nation.[78]

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[77] Memorandum of G. Grey, 14 September 1846 [misprint, 1856] *Compendium*, I, pp. 72-3. Emphasis added

[78] Grey to the Colonial Secretary (London), 30 August 1851, quoted in J Rutherford, *Sir George Grey: A Study in Colonial Government,* London, Cassell, 1961, pp 226–227

He had described at length in an earlier dispatch the success of the Government's support of industrial schools for Maori conducted by the three major church bodies.[79] These were boarding schools, with farms for agricultural instruction that made them largely self-supporting. The Education Ordinance of 1847 provided £6,300 to be paid to the Anglican Church (£3,500), the Wesleyan Church (£1,600) and the Roman Catholic Church (£1,200) for their schools, to which Maori children, or the children of inhabitants of islands in the Pacific, as well as orphans, or destitute children of European parents, were to be eligible for admission. The policy authorised by the Secretary of State for the Colonies also envisaged the purchase of Crown lands to support the schools. Grey went beyond this and persuaded Maori that lands for educational endowments should be provided by them.

In 1853, Grey granted land for an industrial school at Motueka. Two grants totalling 1,171 acres were made out to the Anglican Bishop of New Zealand for the school. Conformity with the terms of the Education Ordinance 1847 was required for the school to receive a government subsidy. These stated that the school would be for children of both races, as well as for children from the Pacific Islands. In spite of the wording of the ordinance, neither European nor Pacific Island children ever attended most of the schools. The one at Motueka was no exception.[80]

What made the situation exceptional was that the Governor's endowment for the Bishop's School at Wakarewa included some 918 acres from the reserves, including over four complete sections of occupation land and parts of others. While the sequence is not well documented, it was claimed that leading Maori in the Motueka district consented to this, namely Kohi, Metene and Nga Piko.[81] In December 1853 Tamihana Ngapiko and Te Iti Te Kepa wrote to Major Richmond stating:

> This is my word of love to you and the government. I approve of what the Governor said to the Bishop concerning the school. I also agree to give up my lands for the School of the Bishop for the Government is my refuge from the evils of the world. The school is to ship (or drive) all men into the one flock. The Bishop is the protector & God is the Sanctifier.[82]

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[79] Grey to Sir John Pakington, 8 October 1852, BPP, vol. 9, pp 159–162

[80] see evidence presented in 'Third Report of the Religious, Charitable, and Educational Trusts Commission', AJHR, 1870, A-3

[81] J Mackay, 'Memorandum relative to Native Reserves at Motueka', 21 February 1863, *Compendium*, vol. 2, p 308, also see Evidence of Dr. Greenwood, 13 December 1869, 'Third Report of the Religious, Charitable, and Educational Trusts Commission', AJHR, 1870, A-3, p. 26.

[82] Tamihana Ngapiko and Te Iti Te Kepu to Major Richmond, 16 December 1853, LE 1854 201/10, NA

Three days later a further letter was sent to the Governor and the Legislative Council from Ngapiko, Te Iti, and eight other men. This letter stated that the land at Wakarewa had been originally given up for the school by Ngapiko and Te Iti, and 'we now simply agree to it'.[83]

Not everyone approved of the amount of land taken for this purpose. The Nelson Provincial Council protested, there were petitions to Parliament later from Maori, and the school's history was investigated in the course of two Commissions of Inquiry into the use of endowments. Evidence about the reserves recorded in connection with these enquiries provides insight to Maori attitudes towards the grants and the school that was subsequently established.

The Master of the Wakarewa School, William Ronaldson, informed the Commission into Religious, Charitable, and Educational Trusts in December 1869 that:

> The portion of the tribe to which Wakarewa belonged, declare they were never paid for the land. They have frequently written and talked about this, and gave as a reason for not sending their children for education, that if they got any benefit in this way from the land, it would be a kind of acknowledgement that they had sold it, which they deny.[84]

William Andrews, an assistant Wesleyan preacher, was also aware of dissatisfaction among Maori as to the Wakarewa grant. According to Andrews, Maori at Motueka 'say the land is theirs. It was taken from them without their consent, and they do not know what is done with the money'.[85]

Ramari Tekauri appeared before the Commission and informed them that she was 'requested' to give up her land for the school, and she gave up land in Wakarewa and in Matakinokino for that purpose. She further stated that 'the only thing I received for that land was my maintenance during my illness. Nobody ever told me this was the payment for my land'.[86]

When Alexander Mackay appeared before this Commission, he too referred to Maori dissatisfaction with the Bishop's grant, saying in January 1870:

> I think the soreness on the fact of the land being taken for this purpose has subsided. I have explained to them on every occasion that they are not entitled to this land, but only have a beneficial interest in it. They complain that they had been defrauded of the land by its being granted to the bishop.

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[83] Tamihana Ngapiko and others to the Governor and the Legislative Council of New Zealand, 19 December 1853, LE 1854 201/10

[84] Evidence of William Ronaldson, 28 December 1869, 'Third Report of the Religious, Charitable, and Educational Trusts Commission', AJHR, 1870, A-3, p.27.

[85] Evidence of William Andrews, 29 December 1869, ibid., p. 29.

[86] Evidence of Ramari Tekauri/Herewine, 29 December 1869, ibid., p. 29.

He went on to say that he did not see 'how giving the land back again would benefit them in particular, as the proceeds would belong to all the Natives in the settlement'.[87] Mackay suggested that the reason complaints were heard from Motueka Maori and not from others was that those outside Motueka were 'ignorant of their right to any share in it'.[88] The Motueka occupation reserves were highly contestable.

Not only Maori protested against the grant of 918 acres of reserves land to the Bishop of New Zealand. Although it was Maori interests that were at stake, members of the Provincial Council appealed to the agreement entered into between the settlers and the New Zealand Company. The first reason for objecting to the grant was that it was 'for purposes other than those contemplated by the terms of purchase of the Nelson settlement.' Emphasis was focused on the contractual obligations of the company to those who invested in the Nelson settlement. The councillors credited Grey with philanthropic motives, but believed that in his anxiety to benefit Maori, he had lost sight of the single most important principle, the one which was essential to all future welfare and happiness in Nelson, 'that all religious bodies shall stand on perfect equality in the State.'[89] Nothing in the memorial comes any closer to raising issues of importance to Maori, although Maori were cultivating part of the land that was at issue at the time that the grant was made.

Apart from showing how the Provincial Councillors saw the issue of sectarianism, this sequence illustrates Grey's autocratic conduct where local feeling was involved. Outside the company's areas, Grey's approach had been to persuade Maori to give up land. The land at Motueka was already vested in the Crown. He had not considered that arrangements made by the New Zealand Company elsewhere had pre-empted any further arrangements by the Crown.

In the course of the first of the inquiries into the Bishop's School in 1869, Thomas Brunner described how he had been required in 1853 to select the lands that were to go into the grant. The point he wished to make was not primarily concerned with Grey. In his opinion, most of the land cultivated by Maori had been excluded from the grant for the school. But he wanted to make it plain that the New Zealand Company

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[87] Evidence of Alexander Mackay, 3 January 1870, ibid., p. 35.
[88] Evidence of Alexander Mackay, 3 January 1870, ibid., p. 36.
[89] 'Memorial from the Provincial Council of Nelson' [1854], reproduced in 'Te Tau Ihu Document Bank', 1999, Wai 785 doc A44 Part 2, pp 1632-1637

survey had infringed upon Maori rights, and had led to land being improperly included in the trust reserves in the first place. He stated:

> Mr Stephens, the surveyor of the New Zealand Company, when he first laid out the Motueka sections, found there was a long strip of Native cultivation along the border of the wood from Waipounamu to Wakarewa. Instead of leaving this in possession of the Maoris in accordance with the Treaty of Waitangi, he included these cultivations in his surveyed sections, so that they were afterwards chosen as Native Reserves, whereas they should have been altogether excluded, and the reserves chosen in addition for the benefit of the Natives. He did increase the particular sections which comprised the cultivations of the Natives, so as to make them include fifty acres besides the part cultivated. But the result was that Mr. Thompson, the Resident Magistrate, was obliged in order to keep the cultivations of the Natives, to select these sections as Native Reserves, under the New Zealand Company's arrangement, which created a confusion on administering the trust, because the Commissioners found themselves obliged to treat the New Zealand Company's reserves as land belonging to and always retained by the Natives themselves.[90]

Brunner's appeal to the Treaty of Waitangi appears to be almost unprecedented in the Nelson context. In spite of the unreliable record of the New Zealand Company, it was more natural for Nelson settlers to appeal to Company terms than to any other principles. Projections made by a colonising company were not a strong basis for protecting the trust reserves. It is true that the Land Commissioner, William Spain, had specified that tenths should be excepted from the Company's block for the benefit of Maori, in addition to all pa, burial grounds, and cultivations, the essential reserves everywhere. However, Spain's requirements seem not to have made a deep impression. The Nelson Crown grant was issued in 1848, and the New Zealand Company wound up in 1850, without satisfying Spain's award. The Crown proceeded from decision to decision, with no clear policy on trust reserves. At the end of Grey's governorship in 1853, the total area of land reserved for the benefit of Maori in Nelson bore little resemblance to the original plan.

Since the 1847 surrender of reserves, there had been 53 sections of an acre each in the town of Nelson. The sections were leased if possible, some from early in the 1840s. In almost all cases, the urban reserves took on the character that they would retain until the 1960s: leasehold land, held in trust for Maori. The Moutere and Motueka Native reserve lands were more complicated: some were leased, 918 acres had been granted to the Anglican Bishop of New Zealand for a school, while others remained in

Maori occupation. Rather fewer than the original 100 sections of 50 acres remained in the estate. The total was over 4,000 acres, with an undetermined amount occupied by Maori. Exchanges of sections were made as a concession to reality, but there is little sense of consultation with Maori otherwise. The reserve estate had been dealt with inconsistently by the Crown, and erratically administered since its inception. There were few grounds for supposing that the trust concept would survive, let alone be rehabilitated. Nevertheless this was the point when the trust lands stabilised.

[90] Evidence of Thomas Brunner, [January 1870], 'Third Report of the Religious, Charitable, and Educational Trusts Commission', AJHR, 1870, A-3, p.40

CHAPTER 2: A TRUST ADMINISTRATION EMERGES. THE LATER 1850S AND EARLY 1860S

2.1 INTRODUCTION:

The trust reserves administration was formalised and tightened in the 1850s and early 1860s. In 1853 the Nelson Reserves came under the authority of the Commissioner of Crown Lands, Major Richmond. This chapter looks in detail at Richmond's ideas about the Tenths and his policies towards their administration, as they set the stage for the early development of the Nelson Trust. In 1856 the Native Reserves Act was passed, and three Commissioners were appointed to administer the Nelson Reserves. The theories behind the Act, and the practices of the Commissioners as to the distribution of the reserves income, are examined in the last part of the chapter.

2.2 CONSTITUTIONAL CHANGES AND FINANCIAL ARRANGEMENTS:

After the 1852 Constitution Act was passed, the question of funding Maori expenses raised a number of new issues, adding a further layer to the confusion over the purpose of trust reserves. Initially, it was not clear how the constitution would work, particularly on the question of ministerial responsibility. Nor was it clear whether Maori would share in the franchise, although this had been expected by Grey. The property qualification was interpreted by settler politicians in a way that meant Maori were excluded from a parliamentary voice.[91] The new Governor, Thomas Gore Browne, decided that responsibility for Maori affairs should rest with him. As long as the Crown continued to be responsible for Maori affairs, settler governments were disinclined to vote more funding from the general revenue than they were obliged to under the Civil List of £7,000. This sum was supposed to cover the Native Department, Native Assessors and Police, hospitals, and 'such other purposes as may tend to promote the prosperity and happiness of the native race, and their advancement in Christianity and civilisation.'[92]

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[91]This view was upheld by the British Law Officers when the matter was referred to them by the House of Representatives in 1858, AJHR 1860, E-6. For background relating the question to the nature of the ownership of reserves see W David McIntyre, (ed.), *The Journal of Henry Sewell, 1853–7,* Christchurch, Whitcoulls, 1980, 4 April 1853, vol. I, p 229

[92]Grey to Earl Grey, 30 August 1851, BPP vol. 8, [1475] pp. 32-3, quoted in Alan Ward, 'A Report on the Historical Evidence: The Ngai Tahu Claim', p 403. Appendix B of this report, 'Crown Policy on

The question of who paid for what in this area was further confused by jockeying for revenue between the provincial councils and the general government. Provincial councils did not consider that they had any liability to spend money on Maori. On the contrary, local governments tried to get funds from the central government's Civil List for treating Maori in hospitals. The land fund was the most important source of revenue for the provincial governments. Despite their role in alienating land in the first place, Maori were not perceived as contributing significantly to the land fund. Nevertheless, the Nelson provincial government looked to the trust reserve fund for a contribution to public works.

After the Taranaki War, the General Assembly approved much larger sums for Maori affairs. But this was in response to a critical political situation. While some of the money was to go to increased medical services, a great deal more was spent on paying salaries and giving other rewards to leading men. In this context, Nelson was hardly regarded as a key area. When the settler government assumed responsibility for Maori affairs, in 1863, the unsettled districts of the North Island, with a numerous Maori population, took priority over the relatively untroublesome South Island. In the circumstances, though this was never clearly stated, the trust reserves offered a source of what might be seen as discretionary funding.

2.3 A REPORT AND SOME RECOMMENDATIONS: MAJOR RICHMOND, 1854

In July 1853, apparently by default, the Commissioner of Crown Lands, Major Mathew Richmond, was authorised to manage the Nelson reserves. Richmond has already been mentioned as having exercised a general oversight of the reserves since his arrival in Nelson in 1848, first as Resident Magistrate, and then as Superintendent. He had made some thoughtful and positive suggestions about what should be done with the lands and funds. Richmond had 23 years of active army service behind him, and had considerable administrative experience in Portugal, the Ionian Islands and Australia. Richmond had already shown that he was unlikely to succumb to settler pressure. In the

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Endowments for Maori', pp 401–405, has provided a valuable outline of general points for the brief survey above.

months following the incident at Wairau, Richmond had proved fully able to resist demands from the New Zealand Company settlers to take reprisals.[93]

The letters he wrote to the Government are a valuable source of relevant information. They show an experienced official proposing policies and principles for the Crown to follow. It was Richmond who suggested that Maori should become involved in the management of the trust. These letters give some details of his concerns and show how the fund was being spent. The correspondence was initiated by his forwarding a letter in Maori from Tamihana Ngapiko and Simeon Te Wehi, Motueka, to the 'General Assembly of the Queen in New Zealand'. The writers shared the uncertainty about the ownership of land in Motueka. The translation reads:

> We write a word to you respecting our land. Not one of us understands any thing about the land on which we reside here. We wish to know to whom the power over these lands belongs; whether to us or to the Government. It is good that the General Assembly inform us on the subject.[94]

As well as forwarding the letter to the House of Representatives, Richmond himself tabled a copy of the translation in the Legislative Council, which he was attending in Auckland. Richmond's own letter to the Colonial Secretary is evidence of a grasp of what Maori were entitled to, as well as recognition of the interests of an on-going trust :

> I take this opportunity of bringing under the notice of His Excellency that the quantity of land originally appropriated out of these Reserves to the Natives residing in that District [Motueka] for the purpose of cultivation has from various causes but chiefly owing to the increased number of Cattle they are now possessed of become much too limited for their wants. I would therefore suggest that the Commissioner of Crown Lands to whom the management of the Native Reserves was handed over by His Excellency Sir George Grey in July 1853, be authorized to assign a greater extent to every native or head of a family who stands in need of more land. I should propose that this should be done by leasing the necessary quantity, the rent being merely nominal. I suggest this mode in order that the land should not be supposed to be conveyed or given entirely by the Government to the Natives so that in the event of the death or removal from the District of any native to whom land has been assigned it shall revert to the Trust.[95]

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[93] Richard Hill, *Policing the Colonial Frontier*, part 1, Wellington, Dept of Internal Affairs, 1986, p 196; Ian Wards, *The Shadow of the Land: A Study of British Policy and Racial Conflict in New Zealand 1832–1852*, Wellington, Historical Publications Branch Dept of Internal Affairs, 1968, p 81; W David McIntyre (ed.), *The Journal of Henry Sewell, 1853–7*, Christchurch, Whitcoulls, 1980, p14, fn 4

[94] Ngapiko and Te Wehi, 17 March 1854, (contemporary translation), enclosed in Richmond to Colonial Secretary, 6 July 1854, IA 1/54/2118, NA reproduced in 'Te Tau Ihu Document Bank', p 2474.

[95] Richmond to Colonial Secretary, 6 July 1854, IA 1/54/2118, NA reproduced in 'Te Tau Ihu Document Bank', pp 2471–2472

This approach would effectively restrict families' succession rights to the new interests. They would hold the land as long as they lived in the district. It would revert to the trust if they left Nelson or died without apparent heirs.

Richmond also urged the Government to take the necessary steps to administer the trust properly:

> I would bring under the notice of His Excellency that some officer should be empowered to sign leases for the portions of the Reserves which have been let to European Settlers, a considerable quantity of the Native Trust property is occupied in this manner and as no one has been authorized to grant leases they hold the land merely under agreement a system alike unjust to the Tenant and detrimental to the property and which it is advisable to put an end to as soon as possible by the issue of proper leases.[96]

Later that year, Richmond pointed out that the administrative arrangements were still very unsatisfactory. He outlined the programme he had been following with the expenditure of the funds:

> With the proceeds arising from the Native Reserves I have endeavoured during the short period they have been in my charge to carry out the objects of the Trust viz improving the condition and furthering the civilization of the natives of the Province by bearing a part of the expense such as Chimneys, windows and etc of houses which were being erected of a class deserving these improvement in giving an industrious Tribe, bullocks, Horses, Carts, and etc and deserving families or Hapu's saws, barrows, spades and etc. A considerable portion of the fund has been expended in providing Instructors, Books, paper and etc and etc for a school and in purchasing school furniture – the balance is from time to time by instructions dated the 26th Decr 1853 paid over to the Provincial Government to be applied in liquidation of the expense of Medical attendance upon and of the supply of Medicines to the Natives and also in payment of the Salary of an Interpreter for the Resident Magistrates Court. The accounts are forwarded periodically to the Auditor General for audit.[97]

In providing details about the properties, he took the opportunity to repeat his previous opinion, that Maori needed more land:

> ... His Excellency will observe that there are Fifty three Town and one hundred suburban Sections - the former are all situated in the Town of Nelson and consist of one acre each the latter were all selected in the District of Motueka and comprise Fifty acres each – The Rent received from the Reserves let to Europeans amounts to Two hundred and Eighty pounds Three shillings annually but this will increase as the remainder of the unlet sections become occupied –

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[96] Richmond to Colonial Secretary, 6 July 1854, IA 1/54/2118, NA reproduced in 'Te Tau Ihu Document Bank', pp 2473

[97] Richmond to Colonial Secretary, 7 December 1854, IA 1/56/1149, NA reproduced in 'Te Tau Ihu Document Bank', pp. 2490-2492.

> The Return shews that there are ten town acres and three thousand two hundred and ninety four acres of the suburban sections still unlet - some portion of these Reserves are occupied by the Natives viz Three acres and a half in the Town and Six hundred and thirty four acres belonging to the Suburban sections. It will be in the recollection of His Excellency that I recommended where the Natives stood in need of more land that it should be assigned to them....Out of the original quantity set apart for Native purposes a Crown grant for Four hundred and Eighteen acres [sic. actually 918 acres] has been issued to the Lord Bishop of New Zealand for the maintenance of an Industrial school at Motueka [98]

Richmond argued that Maori should be involved in decisions about expenditure. He made a number of suggestions about the appropriate form of administration:

> Having been called upon by your letter to furnish any suggestions with reference to the subject of the Native Reserves I would observe that it is a deviation from the original intention to place this property under the Commissioner of Crown Lands. It was laid down by the New Zealand Company and subsequently by an ordinance of the Legislative Council that it should be under the management of Trustees. I would therefore suggest that a Board consisting of the following Members be legally appointed having a common seal viz The Superintendent, the Commissioner of Crown Lands and the Resident Magistrate for the time being, the Resident Clergyman or Clergymen at Motueka (at present there is only the Rev T L Tudor) and two of the most influential and intelligent Chiefs either selected by the Natives or to be named by the Government. There are many reasons which suggest themselves for the appointment of the two latter members and that they should have equal power and vote with the others but what chiefly weighs with me is that it will make them the medium by which the natives will become conversant with the affairs of the Trust. They will see how the funds are expended, will have a voice in that expenditure and will probably be able occasionally to point out the mode of outlay most conducive to the objects of the Trust as well as most satisfactory to the Natives. This Board should have the entire control of the Reserves, the power of leasing them for any term not exceeding twenty one years and of exchanging them for other lands. No deduction for Medical attendance or the Interpreter should be made but the whole of the proceeds applied for the benefit and advancement of the Native Race - The Board should be required to publish its proceedings the receipts and expenditure every half year. [99]

Richmond went on to make a final point:

> There is a general feeling among the Tenants that purchasing clauses should be included in the Leases. I do not consider any power rests either with the Governor or the Legislature to alienate any part of the property. Indeed it was a distinct stipulation of the New Zealand Company when they made the reserves that they should not be disposed of and even if such power did exist it would in my opinion be unwise to exercise it for taking the following wants of the Natives into

[98] ibid., pp 2486 –2488.
[99] ibid., pp 2492–2495

> consideration their lately acquired habits of industry the quantity of stock in their possession and which is rapidly increasing, it would be more provident for the Trust to acquire more land with any surplus funds that may from time to time accrue than to curtail the means of improving their condition and usefulness. [100]

This shows that pressure from the lessees to freehold the reserves has a long history. Richmond took a strong stand on that point, again focusing on the potential of the land for Maori use. His view was that the fund should be used to acquire more land, to avoid the prospect of restricting Maori development. Richmond was once again emphasising the need for adequate occupation reserves – it was clearly something he felt to be important, and which had been emphasised in the dormant Spain award. A question arises, however, as to why the trust funds should be used to buy more land to use as occupation reserves, when it has been argued that the Crown should have ensured such adequate reserves in the first place. These letters have been quoted at length because they are evidence of a positive and constructive attitude towards the administration of the trust lands. Richmond was concerned to give Maori a voice. It is true that in his proposed Board Maori members would not be a majority, but Richmond made it clear that Maori advice was required in decisions that were intended to benefit them. Although Richmond conferred with Maori, further research would be needed to establish whether any interactions took place as to the administration of the Tenths. The claimants or the Crown may be able to provide further evidence on this point.

2.4 THE NATIVE RESERVES ACT 1856: HENRY SEWELL AND THE CONCEPT OF TRUSTEESHIP

Richmond offered the advice of an official whose experience in issues of importance to Maori dated from the earliest years of the colony. That he disagreed with Sir George Grey's approach to the trust reserves is evident from the letters above. He did not think that sufficient care had been taken to organise their administration, and he believed that the Governor had no power to alienate reserves. Grey attracted much more outspoken criticism from settler politicians, one of whom, Henry Sewell, was particularly concerned with the state of trust lands. Sewell is considered to be the architect of the Native Reserve Act 1856.

While Grey was still in New Zealand, Sewell had been scathing about the lack of constructive measures for Maori:

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[100] ibid., pp 2495–2497

> Those Native Reserves, the first idea of which was originated by Wakefield and the New Zealand company, have been left in a state of utter neglect, only now and then Sir George Grey jobbed away the land, as sops to the different Religious orders, bribing them into alliance with him but exasperating the Colonists. But for the Natives themselves scarcely anything has been done...except for a few Schools here and there established by the Religious bodies, and a few Hospitals things too insignificant to be worth notice, as means of solid amelioration of the Native race, it has been almost a case of absolute *far niente* [idleness].[101]

He complained of 'the total absence of Systematic rights over Native Reserves'.[102] As a lawyer, he was particularly concerned to have a trust put in place to protect the estate from being eroded. Unlike Major Richmond, however, Sewell did not envisage that the land would be completely inalienable. Also unlike Richmond, Sewell had a fixed idea of Maori progress. Individual land ownership was seen as basic to the goal of rapid amalgamation:

> It enables the Government to place all reserved lands under the management of local commissions, with whom the Native chiefs themselves may be associated. These Commissioners to have full power of management (even of *sale*, with the Governor's written authority, for I will never consent to a law of Mortmain in the Colony). Out of Funds thus produced provision may be made for Schools, Clergy &c. in which the Natives themselves will have a voice through their Chiefs. But the most important of all is the power of giving their lands in severalty; so taking the first step to lift them out of their present merely animal state of communism, into the position of civilised communities, starting from the 'Family' as the social unit. If we had done nothing else this Session, that alone in my opinion would have been worth all the trouble and expense of it.[103]

The 1856 Native Reserves Act was not particularly long-lived, being replaced in 1862. As the 1856 Act has been analysed in detail recently by Johnson in his Rangahaua Whanui report, the reader is referred to that report for an account of its provisions.[104] The Nelson reserves from the New Zealand Company's scheme were not specifically named in the preamble to the 1856 Act, which read:

> Whereas in various parts of New Zealand lands have been and may hereafter be reserved and set apart for the benefit of the aboriginal inhabitants thereof, and it is expedient that the same should be placed under an effective system of management.

It seems to have been assumed that they were covered by this description.

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[101] W D McIntyre, (ed.), *The Journal of Henry Sewell 1853–7,* Christchurch, Whitcoulls, 1980, 29 June 1856, vol. 2, pp 251–252

[102] McIntyre, (ed.), vol. 1, 7 July 1853, p 342.

[103] McIntyre, (ed.), vol. 2, 29 June 1858, p 252. Emphasis in original

Section 16 of the 1856 Act made provision for including Maori in the management of reserves for special purposes, such as sites for churches and burial grounds, and schools and hospitals supported by specific funds.[105] This did not apply to the Nelson fund.

There was another serious objection to the Act. Once the owners had assented to placing their land into trust and the land had been 'conveyed to Her Majesty, her heirs and successors,' there was no mechanism for retrieving it. It is not surprising that Maori were not attracted to the idea of placing their land in trusts, although those in Nelson had had no real option. The paternalism associated with trusts was particularly objectionable. Sewell was against the Government's plan to include Maori voters in the electorate in the 1850s:

> I expressed my opinion that Natives could not qualify in respect of reserves, which in truth belonged to the Crown; and were vested in the Crown for the benefit of the Natives, just as if they were infants or lunatics, not having capacities...They have no equitable Estate, no interest in the land, at law or in equity, therefore no qualification.[106]

Later in the century, Maori speakers in Parliament were to echo Sewell's remark – that in trust arrangements Maori were classed with infants or lunatics – and they generally resisted government policies for putting their land under this type of trust control.

2.5 COMMISSIONERS OF NATIVE RESERVES, 1856 to 1863

The 1856 Act led to the appointment of yet another local Board in Nelson, with three Commissioners of Native Reserves, A Domett, J Poynter, and T Brunner. The Commissioners had full power of management and disposition, subject to the Act, over lands where the native title had been extinguished. The tenths sections in the town of Nelson and those at Moutere and Motueka were the only reserves in Nelson included in this class of land.[107] The reason for this was given by the commissioners in a report in 1858. They stated that

> the first class of Reserves, in Nelson, Motueka and Moutere, are the only ones at present under the management of the Trust; the remainder having apparently been excepted from the lands sold by the Native owners to the Government; either at the period of the original negotiations, or on the completion of the purchase of

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[104] Johnson, pp 25–29
[105] Native Reserves Act 1856, 19 & 20 Vict. No. 10, s. 16.
[106] McIntyre (ed.), vol. 1, 4 April 1853, p 229.
[107] Native Reserves Act 1856, 19 & 20 Vict. No. 10

> them; so that the Native Title to the Reserved Lands must, we presume, be considered as not yet extinguished.[108]

Yet the neat category envisaged by the Act was once again blurred. As the Commissioners reported:

> The management of the suburban sections, at Motueka and Moutere involves a different principle from that of the Town sections. In these districts Natives have always been permanently resident; consequently it may be presumed that many of these sections must have been chosen with the idea of providing land for the future occupation and cultivation of the resident Natives.[109]

The Commissioners suggested that arrangements could be made in the nature of long leases, a leasehold rather than outright ownership, which would allow Maori themselves to let the land to Europeans as they wished, while keeping some sort of authoritative government title. For Maori who wanted to acquire new land, the rents would be useful. The Commissioners suggested that Crown grants should be issued to those who wished to retain the lands they were on permanently:

> including in the Grants the *whole of the names* comprising the families to whom the lands have been awarded; because the difficulties in the way of transfer, arising from the number of names in the Grant, would practically render such lands inalienable as at present[110]

The Commissioners attempted to subdivide sections at Motueka and allocate them to individuals and families. This was later criticised by James Mackay for lack of fairness and for not having regard to the 'three or four different tribes or hapu' living at Motueka.[111]

Brunner, Domett and Poynter reported to the Government in June 1858, not long after their appointment as commissioners. They informed the Government that the town sections which had been leased out on terms up to 21 years when the settlement was depressed were returning nominal sums. They expressed their intention (dependent on the permission of the Government) to sell these sections as the land had 'risen greatly in value'. The money from the sales would be invested, yielding 'a considerable annual revenue to the Trust, to which the present rents would bear no comparison'.[112] The Commissioners also reported that applications had been made occasionally by European

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[108] Dommet, Brunner, and Poynter, 'Report of the Commissioners of Native Reserves', Nelson, 2 June 1858, AJHR, 1858, E–4, p. 2.
[109] ibid., p. 2.
[110] ibid., p. 3. Emphasis in original
[111] A letter from Mackay, the Assistant Native Secretary to Native Secretary, 2 January 1863, gives a detailed account of the situation at Motueka. Mitchell document bank, A32 (a) pp 84–89.

lessees to purchase the lands they were leasing. The Commissioners were not anxious about Maori not having access to sufficient land, looking forward to a time when they would be on the same footing as Europeans, rather than 'a distinct class, with distinct holdings.'[113]

Though they in fact sold no land, there was no legal barrier to the Commissioners disposing of the reserves in this way. The sections in Nelson were listed in 1856 as reserves under the 1856 Act. To make it more clear, when they were listed again in 1862, it was added that the 'Reserves within the New Zealand Company's Settlement of Nelson (except the lands at Wakapuaka) are Crown lands, set apart for Native purposes, and are vested in the Native Commissioners of that District'.[114] They were also at this stage categorised as 'General Reserves', that is, the land had not been set apart for any named tribe, or for endowing a special purpose, such as a school.

Though requiring the proper use of funds for special endowments, the Act gave wide powers of decision to the government otherwise. Section 9 of the 1856 Act read:

> All moneys which shall come in the hands of the Commissioners under the provisions of this Act, except in respect of special endowments, shall be applied by such Commissioners for the benefit of the aboriginal inhabitants for whose benefit such lands may have been set apart in such manner as the Governor of the said Colony may from time to time direct.[115]

As far as the expenditure of the trust fund went, the only direction given by the Act was that all moneys, except in respect of special endowments – for schools, hospitals and other charitable institutions – should be 'applied by such Commissioners for the benefit of the aboriginal inhabitants'. The Commissioners proposed to retain the payment to doctors for 'advice and medicines administered to the Natives'. They further suggested that three doctors should eventually be employed, providing one for each district. The Board also paid for 'occasional extra charges connected with the health of the Natives; such as one we are now incurring, for the safe custody of a dangerous female lunatic, whom the Provincial Authorities had no means of securely providing for'.[116] They were not so hopeful as regarded the 'physical improvement of the Natives', stating that 'they seem, generally speaking, at present inveterate in their adherence to their dirty Native habits, and to their residence in Pas.' A solution

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[112] 'Report of the Commissioners of Native Reserves', Nelson, 2 June 1858, AJHR, 1858, E-4, p. 2.
[113] ibid., p. 3.
[114] 'Return of Native Reserves', AJHR, 1862, E-10, pp. 13-17.
[115] Native Reserves Act 1856, 19 & 20 Vict. No. 10, s. 9.
[116] Report from Commissioners at Nelson, AJHR 1858, E-4, p. 4.

suggested by the Commissioners was to reward those individuals who adopted European habits, for instance 'general cleanliness in dress and invariable use of European clothing'.[117] Their concern led them to speak of 'anglicizing these semi-civilised beings'.[118]

The Commissioners regarded the provision of such items as bullocks, ploughs, and carts, made by previous commissioners, as 'occasional presents' rather than an appropriate use of the benefit fund. As they felt that presents created an obstacle to self-dependence, they advocated that such things only be provided as 'rewards for superior industry and skill'.[119]

Despite these beliefs, small items were paid for out of the benefit fund. An 1857 return itemised a five shilling payment for cod-liver oil for an individual, as well as a donation to Simon Peter 'for loss by fire'.[120] The year 1858 saw the benefit fund pay out £2 for clothes for Watene, and £33 to Watene's defence lawyer.[121] The returns were surprisingly detailed, enumerating amounts spent on pigs and trees for Maori at the West Coast, as well as blankets, maize, and clothing.[122] They not only listed the items, but often who they were for as well, for instance in 1861 money was listed as being spent on a 'House for Abraham'.[123] The next year a £1 gratuity was paid to Ezekial 'for loss by upset of canoe', a plough was bought for Ray, and Meri received ironmongery to the tune of £2.18s.[124] Small sums were frequently allowed for rations, either for visitors to Nelson or for the needy.

The Commissioners expressed their desire to pull down the Maori hostels on Haven Road in Nelson and rebuild them somewhere else. This was not only because of their 'delapidated' state, but because

> many complaints are made of the nuisances caused by the Natives in these houses to residents in the neighbourhood. Their nasty mode of living, the various stenches about their habitations; occasional through [sic] perhaps slight indecencies from exposure of their persons; their cooking fires close to adjoining fences, are the subject of these complaints.[125]

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[117] ibid., p. 4.
[118] ibid., p. 5.
[119] ibid., p. 4.
[120] Nelson Government Gazette, 1863, p. 93.
[121] ibid., p. 94.
[122] ibid., pp. 94-5.
[123] ibid., p. 96.
[124] ibid., p. 97.
[125] Report from Commissioners at Nelson, AJHR 1858, E-4, p. 2.

However, the Commissioners mentioned that 'some of the Natives themselves have expressed objections to this change', and furthermore that the proposed move 'might effect a considerable change in the relative value of the acres on Haven Road, and those by the Mill'. For these reasons they thought that 'it would perhaps be as well to leave the question of the alteration of the site of the Hostelries, an open one for the present'. To this they added 'of course it is obvious that a much greater rent could at present be obtained from the Haven sections than from those by the mill'.[126] In the end the hostelries were repaired, at the cost of £208.[127]

The provision of benefit funds for education was a more difficult question for the Commissioners. They stated that 'considering the number of objects which the fund should be applied to, the amount given to the Bishop should supply all the proportion of them that should be devoted to educational purposes'. The problem with this, as they saw it, was that it was highly probable that Wesleyan and Roman Catholic Maori would not send their children to an Anglican school. The Commissioners went on to state that if money was to be expended on other educational institutions, then only those where English was a primary subject should receive assistance out of the tenths fund. They also believed that the schools should impart knowledge of 'some simple abstract of English laws, and account of the Constitution under which they are to live'.[128]

Only Maori students attended the school established by the Bishop of New Zealand. The master of the school, William Ronaldson, gave his opinion to the Commission of Inquiry into Religious and Charitable Reserves in 1869 that 'the funds have never permitted any attempt to entice Europeans into the Maori school. They would have to be carried on in separate rooms, and therefore require two schoolmasters'.[129] Mr Charles Alley believed that if he had a son old enough to attend the school he would be refused as it was a Maori school.[130]

Maori who gave evidence before this Commission expressed their dissatisfaction with the Bishop's school. Takerei Paerota removed his son from the school because the teacher beat him. And Nopera expressed aversion to the industrial curriculum of the

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[126] ibid., p. 2.
[127] ibid., p 2. and see the additional note 'Since the above was written the Native Hostelries have been put in thorough repair; they have been reshingled and new floored, – the old sleeping places exchanged for separate bunks as on shipboard, – the fire place improved, – the windows shifted to more convenient positions, – and the whole building made light, clean and comfortable to the great satisfaction of the Natives.' What can it have been like before refurbishment?
[128] ibid., p. 5.
[129] ibid., p. 27.
[130] ibid., p. 28.

school, saying: 'they make one hour read; one hour school a week; all the rest time grow potato, grow wheat, grow cabbage. What the good of that? Maori no like that'.[131]

Mackay interpreted the reluctance of Maori to use the school quite differently. He stated that he had 'frequently requested them to send their children to the school, but they make so many excuses. Sometimes they have potatoes to plant, harvest to get in, and a variety of other frivolous excuses are given. They care, in fact, very little about it'.[132]

The benefit fund was used to pay for items not directly related to the wellbeing of Maori beneficiaries. In 1860, 'provisions for natives upon their declaration of allegiance' at £58 17s 1d were charged to the fund. The salaries of officials working for the Trust estate were supplemented out of the fund, for instance two-fifths of the Interpreter's salary was paid at £40 per annum, with the Provincial Council presumably meeting the rest. Subscriptions were also made to public works out of the fund, such as £30 towards the road at Motueka in 1859, but no payments were made for rates.[133] As rents improved, particularly in the town of Nelson, expenditure did not keep up with income. The surplus had built up to just over £832 by the end of December 1863.

The local Commissioners were initially hampered in their efforts to make the properties profitable. Most of the rents were considerably in arrears in 1856 and likely to remain so because there was no power to sue. Provision for the recovery of back-rents was made by the Native Reserves Amendment Act 1858. But complaints about the conduct of Commissioners of Native Reserves in the North Island, particularly in the politically sensitive province of Taranaki, led to an abrupt shift in the administration of reserves. All existing commissionerships were cancelled. By the Native Reserve Amendment Act 1862, all the powers and authorities exercised by the Commissioners under the 1856 Act were restored to the governor, in whom the reserves were again to be vested.[134]

On 9 November 1863, James Mackay jnr was appointed to replace the three Commissioners. This move indicates something of the developing structure of central government administration. Mackay was already an officer in the Native Department. He had begun his career in 1858 through family influence with the Native Secretary,

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[131] ibid., p. 29.
[132] ibid., p. 35.
[133] Mitchell Research Wai 785 Doc 39, vol. 3 (extracts from annual accounts, Nelson Province)
[134] See chapter three.

Donald McLean. By 1861, he held the position of Assistant Native Secretary, Nelson, with an annual salary of £350, of which £200 came 'from other sources'.[135]

James Mackay reported dissatisfaction with the conveyance of land for the Bishop's school at Wakarewa. His investigation established that Ngapiko and Te Iti had given their consent to the school endowment. He proposed to inquire whether other owners had refused Grey's request, and, if so, to resolve the question by compensating them with land elsewhere. He was critical of the Commissioners, singling out their dealings with Motueka subdivisions as complicating the question. Mackay himself, however, recommended that a number of sections for the use of the resident Maori should be set aside and properly divided as soon as possible and Crown grants issued to the occupants.[136]

James Mackay had a straightforward view of priorities. Maori needs for land should be satisfied. He believed that Maori themselves should have sufficient land to be able to let or lease some to Europeans and receive the rents. He proposed that if extra land was required, it should come from the reserve sections already available. Even before taking over from his predecessors, he had negotiated an agreement for the allocation of further trust sections for Maori occupation and use at Motueka.[137] In 1862, Mackay (at that point the Assistant Native Secretary) set aside four 50 acre sections from the Tenths Reserves for the occupation of Ngati Tama; four 50 acre sections from the Tenths Reserves for Ngati Rarua and Ngati Awa (the sections were then subdivided); and four 50 acre allotments from the Tenths estate at Sandy Bay for Ngati Awa.[138] There was a general delay in issuing Crown grants to Maori, and none had been issued for these lands at Motueka by the time James Mackay left Nelson in the course of the following years.

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[135] 'Return of the Native Secretary's Department', AJHR, 1861, E–5, p 2. The other sources of his income were not specified; the accounts of the Native Reserve Fund do not suggest that it was the fund. Statement of Receipts and Expenditure, for the six months ending June 1864, *Gazette*, Province of Nelson, 1864, p 78

[136] James Mackay, 'Memorandum relative to Native Reserves at Motueka', 21 February 1863, *Compendium*, vol. 2, p 308

[137] James Mackay, 'Copy of an agreement , made on behalf of certain members of the Ngatitama tribe, for the occupation of Native reserve Sections Nos. 144, 145, 146, and 147 at Motueka', 17 December 1862; also undated Memorandum noting subdivision of sections 126, 127, 129 and 132 among members of Ngatirarua and Ngatiawa, and 111, 113, 117 and 118 to individuals and families. *Compendium,* vol. 2. pp 309–310.

[138] Mitchells, *Report 9E – Motueka Occupation Reserves*, Wai 785 A38, p. 24.

Though he did not hold the office for long enough to make an impression as an administrator, James Mackay's approach was realistic and flexible. In 1863, he set down the three categories of reserve:

> 1st. Lands reserved from sale by the natives themselves.
> 2nd. Lands reserved by the Government for Native occupation and cultivation.
> 3rd. Lands reserved by the New Zealand Company, and by the Government, for raising funds for various native purposes.[139]

Mackay proposed subdivision and the issuing of individual Crown grants for lands in the first two classes. This would mean that Maori had control over land and could make an individual decision to sell. The reserves were not to be inalienable. In the case of the Company reserves, they were to be held in trust for the benefit of Maori, so the legal owner was in fact the Trustee. He went on to add:

> With reference to reserves of the third class, I would not propose to hand these over to the Natives, except a few sections at Motueka, required in compensation for lands at Wakarewa, conveyed to the Church.
> Many of these reserves are very valuable, and at Nelson yield a considerable annual income in the form of rents. There has not been, up to the present time, any fixed scheme for allotting or apportioning these funds. I would now suggest that all moneys accruing from this source in any Province of the Middle Island should be treated as one fund and should be divided into four heads for the following purposes within the Island, viz: -
> 1st. For the payment of Medical Officers, and expenses incurred in the treatment and relief of sick Natives.
> 2nd. General purposes for the advancement of Natives – procuring improved agricultural implements, encouraging schools, obtaining useful and instructive books.
> 3rd. Rewards to Natives for improvements in house building, or for industry in cultivating land.
> 4th. Relief of indigent and infirm Natives, provisions to Natives attending meetings called by the Government, travelling expenses of Native Assessors.[140]

This approach was consistent with that of the previous commissioners. The emphasis was on medical and charitable aid and on positive 'advancement' and 'improvement'. This had been stretched to include contributions to the development of Maori districts – roads and other public works.

Who was to benefit from a fund established from the third category of reserve? This had never been clearly defined. In 1863, James Mackay suggested that the whole of the South Island should form a single district. This would include the Nelson reserves, along with every other reserve which Maori could be induced to place in trust,

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[139] James Mackay to the Native Secretary (Donald McLean), 3 October 1863, *Compendium*, vol. 2, p 139
[140] ibid., pp 139–140

or which might be placed in trust by the Crown without Maori assent, according to the 1862 Native Reserve Amendment Act.

James Mackay was transferred to the North Island before he had developed any of these proposals. Nor had progress been made in issuing Crown grants to individuals and families to lands at Motueka. All, or part, of some 29 sections – one thousand acres – which had been included in the original trust estate were informally occupied by Maori.[141] This had never been denied by successive trustees and commissioners. On the contrary, there had been a series of adjustments, recognising that certain sections were occupied by identifiable owners. Yet the status of such sections had not been legally resolved. Consequently all Motueka sections, regardless of function, continued with the same description that they had been given in 1862, 'Crown Lands, set apart for Native purposes'. In the absence of Crown grants, ownership of all sections remained vested alike in the Crown.

The changes made to the administration of reserves in the 1850s and early 1860s resulted in a more established and organised management of the Nelson Tenths. Apart from the grant to the Bishop in 1853, the Commissioners in charge of the Nelson reserves during this period succeeding in retaining the reserved land. Their disbursement of benefit funds was wide-ranging and appears to be generous (without any record of how many applications for assistance were denied this cannot be regarded as certain). This was a pattern that was largely continued in the 1860s and 1870s, when control of the reserves shifted from a board of Commissioners to being invested in an individual. The next chapter looks at these changes to reserves administration from the disestablishment of the Board of Commissioners to the eventual move to the Public Trust Office.

[141] 'Report on the Native Reserves of the Province of Nelson', Enclosure in Heaphy to Native Minister, 26 July 1870, AJHR, 1870, D-16, pp 38, 41–42

CHAPTER 3: LEGISLATION AND ADMINISTRATION FROM THE EARLY 1860s TO EARLY 1880s

3.1 INTRODUCTION

The 1860s and 1870s were years of great change in the administration and even definition of reserved Tenths in Nelson. Several pieces of legislation were passed which had important effects on the tenths, especially the 1873 Native Reserved Lands Act which redefined the Nelson Tenths. Legislation put into place the structure and limits of leasing, as well as defining the purpose of the benefit fund. This chapter looks initially at the legislation affecting and dictating the shape of the Tenths administration from the 1860s to 1880s, and then at the role played by Alexander Mackay. His background and ideas are examined to provide a context for his administration of the Tenths. This is followed by a discussion of his actual practice in leasing and the utilisation of the income from the reserves through the disbursement of the benefit fund.

3.2 FURTHER DEVELOPMENTS: REDEFINING THE NELSON 'TENTHS'

The ending of Crown pre-emption and the establishment of the Native Land Court in the 1860s did not directly affect the trust estate in Nelson. However the whole issue of reserved lands was caught up in repercussions from the Court's impact in other regions of New Zealand. The Native Lands Act 1865 had made possible the holding of land by a few grantees in implied or constructive trusts. Even after this Act was amended in 1867, some Land Court judges routinely awarded communally-owned land to only a few of its customary owners. It was easy for the few to sell land. It began to appear that there was no way to protect Maori communal property once it had entered the Court. Within this context, the Crown responded to the prospect of Maori being left without any resources by taking a new interest in protecting Maori lands by trusts.

The Native Reserves Amendment Act 1862 vested all powers and duties of the Land Commissioners (as set out in the 1856 Native Reserves Act) in the Governor, without changing the majority of these powers and duties.[142] The Governor was given

[142] Native Reserves Amendment Act 1862, 26 Vict. No. 14, s. 2.

the power to lease or dispose of land vested in him.[143] More importantly, the Act also gave the Governor the ability to:

> delegate all or any of the powers competent to the Commissioners under the said Act unto any person or persons for any period and subject to such regulations and restrictions or stipulations as may be specified in such Order and every such Delegation may from time to time in like manner be altered or revoked.[144]

This section was used to authorise first James Mackay and then Alexander Mackay to act as Reserves Commissioner in the Nelson district. In 1870, Charles Heaphy was appointed to the position of Native Reserves Commissioner, while Alexander Mackay continued in the office of Commissioner of Native Reserves in the South Island. Among his duties, Heaphy was directed to encourage Maori to place their lands in trusts, which were vested in the Crown. As Heaphy was to discover, Maori did not want to hand over the control of their lands. Moreover, there was no guarantee that these reserves would be retained in a trust estate since the Trustee [the Commissioner] had the power not only to lease, but also to sell lands. The trust estate was modified by a series of exchanges of sections and re-designations of reserves in Motueka. There were also a number of small transactions between 1864 and 1871, both private and public, in which a total of some four and three quarter acres of trust land was alienated in Nelson, and thirteen and a half acres in Motueka.[145] These sales remained exceptional. In the early 1870s, when new laws were under consideration, it was also argued that putting lands into trust would be a more attractive option if Maori themselves took part in the administration.

The Native Reserves Act, 1873, 'An Act to make provision for the better Administration of Native Reserves throughout the Colony', was a major piece of legislation, which aimed to strengthen the role of trust reserves, to clarify their status and to provide a more efficient system of management.[146] Its preamble acknowledged that there had been weaknesses in this area. It read:

> Whereas from time to time heretofore certain pieces or parcels of land in the Colony of New Zealand have been set apart and reserved or excepted from sale for the benefit of the Aboriginal Natives of the said Colony, and difficulties have arisen in respect of the management and administration of these reserves, owing to the fact that in some cases the trusts intended to be created under these reserves

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[143] ibid., s.5.
[144] ibid., s. 8.
[145] H and J Mitchell, 'Extinctions of Native Reserve Land Titles', August 1997 (Doc A30) Table 9C 3.3.5, pp. 24-29.
[146] Native Reserves Act 1873, 37 Vict. No 60

have not been sufficiently defined, and in other cases the heirs of the original beneficiaries cannot readily be ascertained.[147]

In the early 1870s, there were new proposals for dealing with trust lands. These included involving Maori in the administration of the properties. The Native Reserve Act 1873 contained this provision. While it was not implemented, the idea was kept alive by the Maori members and their supporters in Parliament. But 'a period of stasis in administration' followed.[148] The 1862 Act remained in place, more or less by default, for the next twenty years. Numerous attempts to bring in new laws in this period were frustrated by a lack of consensus and a failure of political will.[149] In the absence of clear policy directives from the government, the influence of local administrators was of considerable significance. During the debates of those years, a new pattern was building up in the way politicians and officials saw Maori trust lands. These were to culminate in the Native Reserve Act 1882, which placed trust reserves in the hands of the Public Trustee, and in the issuing of perpetually renewable leases for very low rentals in 1887.

Although the Native Reserve Act 1873 was largely inoperative,[150] it was instrumental in giving legal definition to the Nelson trust reserves, listing them under the title of 'tenths'.[151] 'Tenths' had come to the attention of the government as the result of a decision of the Court of Appeal in *Regina v Fitzherbert* (1873), regarding the former New Zealand Company reserves in Wellington. According to the Court, the relevant transactions had been between the Company and Maori. It was found that the Queen had never expressly declared in writing any trust constituting the disputed lands as Native Reserves.[152] As Heaphy reported, the Court had declared, 'that the lands known as the "Tenths Native Reserves" are legally demesne lands of the Crown, unencumbered with any trust.'[153] This decision affected the status of the trust estate in Nelson, as well as that in Wellington.

The government responded by legally defining the 'tenths' as trust reserves. In the Native Reserve Act, 1873, section 53, these lands were described as:

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[147] ibid.
[148] Johnson, p 84
[149] Bills proposed in 1869, 1876, 1877, 1880, and 1881 failed to pass through Parliament. For further discussion, see Keith Pickens, 'The Wellington Tenths 1873-1896', Wai 145 ROD, doc I11, p 9
[150] The debates over this Act, and its subsequent fate – most of it was never brought into operation – have been discussed elsewhere. See Johnson, pp 74–84; Pickens, pp 3–13.
[151] Native Reserves Act 1873, 37 Vict. No. 60, s. 53.
[152] Enclosure [Judgement of Court of Appeal in the Case of Regina v. Fitzherbert] in Mantell to Native Minister, 20 August 1873, AJHR, 1873, G–2c, p 3
[153] 'Report of Commissioner of Native Reserves', AJHR, 1873, G-2, p 2

> All the lands enumerated in the Schedule D hereto, whether they be lands originally set apart by the New Zealand Company as reserves as above described, and generally known as the New Zealand Company's reserved 'tenths', or whether they be lands that have been obtained in exchange for or purchased in lieu of such reserved 'tenths', or any of them, or whether they be lands set apart as reserves in pursuance of any special agreement made in that behalf between the Government and the Principal Agent of the aforesaid Company, shall be deemed to have been from the date of the marking out of such land on the plans as aforesaid, and to be, lands set apart for the benefit of the Aboriginal Natives . . .

This description was detailed and comprehensive. It covered all lands reserved in connection with the New Zealand Company's original settlement in Nelson except those absolutely granted away. This was deliberate. It justified the inclusion of part-sections of land, notably where the other part of the section had been appropriated and included in the grant to the Bishop of New Zealand in 1853. Though most of the remaining sections conformed to the original 1 acre (town) or 50 acres (suburban), there were other disparities. The list contained a section of 150 acres in Takaka acquired by the estate in an exchange with a settler for 3 sections at Motueka and a Picton suburban section of around 46 acres, which had been purchased with the proceeds of selling part of a Nelson town section. Most contentiously, as it was to prove, Schedule D listed a substantial area of land in Motueka that was occupied by Maori.

The list of 'tenths' reserves was similar to a series of lists compiled by previous administrators. The most recent had been furnished by Alexander Mackay for a major report on reserves in a number of districts, presented by Heaphy in 1870.[154] But there is a significant difference between the 1870 list and the one which appeared in Schedule D of the 1873 Act. In the 1870 report, the Motueka sections were described as being 'set apart by the New Zealand Company for Charitable and Educational purposes'.[155] However, a note was added to indicate where the land was in Maori occupation and use. There was no such similar information given in qualification of the schedule to the 1873 Native Reserves Act.

The sections in question had not been granted to their occupants, in the strict sense. Their owners had not acquired Crown grants. But that is splitting hairs. The occasions when the original 'tenths' had been exchanged for lands lived on and

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[154] Schedule A attached to the 'Report on the Native Reserves of the Province of Nelson', Enclosure in Heaphy to Native Minister, AJHR, 1870, D-16, pp 39, 41-42. The same list was printed in *Compendium*, vol. 2, pp 333–335

[155] ibid., pp 39.

cultivated by Maori were well known to Mackay. Thompson had chosen to select reserves in Motueka in 1842 where there was a significant Maori population to accommodate. Spain had reported adding further sections and exchanging others for occupation reserves. There were more exchanges under Commissioners in the 1850s, to recognise Maori use, with the latest arranged by James Mackay in 1863. These details were recorded by Alexander Mackay in several reports or lists in the *Compendium* and subsequently.

The decision to allow Schedule D to go ahead without any emendations was apparently the decision of Mackay himself. When he was consulted by John Curnin, the legal draftsman working with the Native Minister, Mackay took the opportunity to add to the list and express his opinions generally. His response tells us what he thought mattered, and even more, tells us by its omissions what he thought did not matter. He wrote:

> I have the honour to return herewith the Schedule of New Zealand Company's "tenths" forwarded to me for revision.
> I concur with you that the term "tenths" should be adhered to in preference to describing them as "elevenths".
> In the Schedule – Town of Nelson – No. 946 has been allowed to stand in place of Nos. 266 & 269, as you suggested. The former section contains only an acre, but an equivalent in cash was paid to the Trust for the difference in value. Sections 521 & 522 only contain an area of 1a 1r 30p, hence the correction.
> Motueka - Nos. 142 &143 =100 acres. Ninety acres of the block were exchanged for 90 acres of Section 165 (formerly numbered 165 & 180 respectively). The ten acres remaining from part of 143...will be reduced proportionately, and the necessary correction has been made in the schedule.
> Section 9 Takaka containing 150 acres has been received in exchange for Sections 139, 140 & 141 Motueka. The latter have therefore been erased.
> One acre has been granted out of Sec 161 to the Central Board of Education, the area therefore has been reduced to 49 acres.
> I have added in pencil the surplus acreage remaining in the possession of the Trust, out of the Sections appropriated to the Bishop of New Zealand in 1853 as it appears to me that these lands ought to be invested with the others. I enclose a schedule of the sections alluded to for your information.
> It would be as well that Section No 58 Picton Suburban 46a 0r 2p acquired by the proceeds received from the sale of part 344 Nelson should be added to the List as the Trust has no title to the land.[156]

Curnin had listed the other Nelson trust reserves, which had come under the Native Reserve Act 1856, in Schedule D as 'Aggregate Allotments'. Mackay suggested that the term 'New Zealand Company's Reserves' should be substituted, adding that they were

[156] A Mackay, Native Reserve Office, Nelson, to John Curnin, Colonial Secretary's Office, 8 July 1873. MA 13/51, NA reproduced in 'Te Tau Ihu Document Bank', pp 2856–2858

'entirely distinct from the "tenths" being simply occupation reserves set apart on conformity with certain resolutions agreed to at a Conference held in 1844, between the local Government and the Company's Principal Agent.' The distinction is a fine one between those reserves and the Motueka sections that were denoted occupation reserves by Spain at the same time.

Mackay was concerned to retrieve what he saw as trust property, arguing that it seemed 'only just that a saving clause should be inserted with reference to former appropriations so as not to preclude the possibility of recovering any portions of these lands that may have been appropriated wrongly to other uses'.[157] He himself wrote a memorandum on the history of the 'tenths', which was printed in the Parliamentary Papers.[158] In a letter to W B D Mantell, a Member of the Legislative Council, Mackay outlined the efforts he was making to strengthen his argument for such a clause to be included, by writing to other politicians.[159] But in his determination to champion the 'tenths', he ignored the more complex situation at Motueka. The acceptance that all Motueka reserves appear in Schedule D, without raising the obvious question about their functions, had many ramifications on the administration of these lands for the next hundred years.

The 1873 Act also provided for the division of the country into districts, with three elected Maori Assistant Commissioners and an appointed Commissioner to form a 'Board of Direction' in each district.[160] More importantly for the Tenths estate, the Act introduced the 60 year lease for building purposes,[161] and direction was given about how the proceeds from reserves should be used.[162]

Although Mackay supported some aspects of the 1873 Bill, he was opposed to bringing it into operation. His major sticking point was the new structure of control. The 1873 Bill provided for the establishment of districts, each with a 'District Board' made up of an appointed Commissioner and three elected Maori Assistant Commissioners. Decisions were to depend on the majority, and no sale, lease or exchange of any Maori reserve could be made without the decision of the Board. Ralph Johnson describes the inclusion of Maori in the administration as 'the key innovation' of the Bill.[163]

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[157] ibid.
[158] Alexander Mackay, 'Native Reserves, Middle Island', 30 July 1873, AJHR, 1873, G–2A
[159] 12 August 1873, Mantell Papers, MS-Papers-0083-332, Alexander Turnbull Library.
[160] Native Reserves Act, 1873, 37 Vict. No 60, ss. 5-7.
[161] ibid., s. 19.
[162] ibid., s. 34.
[163] Johnson, p 79

Mackay objected to a number of its features, including the controls it placed over local commissioners. He wrote that the 1873 Native Reserve Bill was 'too cumbrous' for 'practical or satisfactory administration'. The Act required not only the agreement of the board, but also the assent of the governor, for any dealing with native reserves. As the governor acted on the advice of the government of the day, the system could be open to favouritism and political caprice. The constitution of the board was even more objectionable, and he based his attack on two major points. First, he argued that the Maori members of the Board might not represent those Maori whose interests were involved. But he put more weight into his second reason, which was that the degree of Maori influence proposed in the Bill was unjust to the tenants.[164]

His views were expressed particularly in relation to Greymouth, but in the long run they were to apply equally to the Nelson lands. After repeating his position on the implied right of renewal, already in place, he wrote that it would be a breach of faith with the tenants to bring the 1873 Act into operation, arguing that:

> after having been led to suppose from the first that the estate would always be administered by the Government, that the Act permitted the handing over of large and important interests to the mercy of two or three inexperienced Natives who had no knowledge of the laws of property, and who were unable to appreciate equity.[165]

Mackay also complained that the 1873 Bill failed to make the necessary distinctions between the classes of reserves. While he was prepared for Maori owners to have a voice in lands they had themselves brought into trusts, he believed that Maori should have no control over lands vested in the governor for Maori purposes. First in this list were those lands 'reserved by the New Zealand Company in accordance with their original scheme of colonisation', that is, the 'tenths'.

Others found fault with the proposed Native Reserves Act, 1873. No doubt there were areas that required more attention if they were to work satisfactorily. There were Maori objections to the paternalism that was inherent in the very concept of trusts. But to give an idea of what it was hoped might be achieved, it is worth quoting the following passage, which was written by the former Chief Judge, Sir William Martin, on a draft of the Act:

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[164] Alexander Mackay to Under Secretary of the Native Department, 16 August 1876, AJHR, 1876, G-3A, p 1

[165] ibid., p 4

> I regret that this Bill, which contains many valuable elements, does not contain one more. I mean some provision through which the Natives may become directly cognizant of its working and interested in it. We are setting ourselves to fulfil promises, and we hope to secure to the Natives out of this fulfilment real and permanent benefits. Now it is to irritation about promises not kept and professions, which have ended in disappointment, that much of the ill feeling that exists in various parts is to be traced. Let the Natives see that in this case we are faithfully administering the property committed to our Stewardship and rendering fully the benefits we promised, not only protecting their interests but even consulting their wishes. No harm can be done and good feeling may be produced.[166]

These were the words of an old official. His views had been formed in the early years of the colony and related to the promises of the Treaty of Waitangi. By the 1870s, Martin represented an old order of things. Maori participation, as urged by Martin and supported by the Native Minister, Sir Donald McLean, had some parliamentary defenders in the 1870s, but they were the minority.[167] Despite these objections the 1873 Act was passed, and with few changes. But most of it was never brought into operation.[168]

In 1876 and then in 1877 an Amendment Bill was introduced.[169] Mackay was asked by the Secretary of the Native Department to 'indicate inadequacies in, and improvements to, the Native Reserves Act 1873, in order to draft a new Native Reserves Bill'.[170] Mackay made many suggestions, including abolishing the Board of Management and appointing a Commissioner with the power to 'issue leases for any terms not exceeding twenty-one years for agricultural purposes, with the assent of the persons beneficially interested, and, with the same assent, to execute leases for building purposes for sixty years'.[171] Mackay was of the opinion that the Board of Management (which included three Maori) would in fact be prejudicial to the interests of the beneficiaries, placing them 'at the mercy of designing persons, having in view their own aggrandizement'.[172]

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[166] Notes on the Native Reserve Bill, 1873, McLean Papers, Micro Ms 535, reel 14, ATL

[167] Whatever criticism McLean deserves for the role he played as a Land Purchase Commissioner and as adviser to Governor T Gore Browne in the events which led to war in Taranaki in 1860, he was nevertheless very familiar with Maori society and his correspondence with Maori was extremely extensive. It would be hard to say the same of his successors. McLean's death in 1876 removed from the political scene another of those who had begun their official careers in the early 1840s.

[168] Johnson, p. 83.

[169] ibid., pp. 74, 83.

[170] ibid., p. 84.

[171] 'Letter from Mr Alexander Mackay, Forwarding Draft of the New Native Reserves Bill', 16 August 1876, AJHR, 1876, G-3A, p.1, cited in Johnson, p. 85.

[172] ibid.

According to Johnson, Mackay's 'primary concern in the matter was to maximise the return of rents to beneficiaries; it was not to alter the relationship of trust and beneficiary'.[173] In Mackay's opinion:

> the most satisfactory and beneficial mode of dealing with the class of Native Reserves that will be affected by the Act is to place them under the absolute management of individual trustees, whom without the power of alienation, might make such arrangements for letting them ... as would secure the largest pecuniary benefit for the beneficiaries, to whom they should be required to account.[174]

The Native Reserves Amendment Bill was introduced in October 1876. Johnson stated that 'during the debates in the House of Representatives, it became apparent that, behind the momentum to amend the Act lay the imperative of renewing European leases'.[175] The MP for Southern Maori, Hori Kerei Taiaroa, objected to the proposed repeal of the provision appointing Maori assistant commissioners as he felt that 'as the native reserves belonged to Maori, it was only right that there should be Maori whose special duty it would be to watch the proceedings of the Europeans in respect to such lands'.[176]

The Amendment Bill was reintroduced in 1877 with no changes. The Debate in the House 'was prompted by further Maori petitions against the current form of management on the West Coast as well as against the proposed amendment ot the native reserves legislation'.[177] The matter was referred to a select committee, and following the report of this committee and further debate centred on the 'high cost of European administration of reserves in Greymouth and Nelson', the Amendment Bill was withdrawn from the house.[178]

As discussed in the next chapter, with the passage of the next major piece of legislation, in 1882, the administration of the trust reserves was placed firmly in the hands of the bureaucracy. The prospect of Maori having a role in the administration of these reserves was not to reappear for another hundred years.

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[173] Johnson, p. 85.
[174] 'Letter from Mr Alexander Mackay, Forwarding Draft of the New Native Reserves Bill', 16 August 1876, AJHR, 1876, G-3A, p.1, cited in Johnson, p. 85.
[175] Johnson, p. 86.
[176] ibid., p. 86.
[177] ibid., p. 87.
[178] ibid., pp. 86-7.

3.3 ALEXANDER MACKAY AND THE NELSON TENTHS ESTATE

In September 1864, Alexander Mackay was appointed as Commissioner to replace his cousin. There was no change in the law relating to the Nelson lands but there was a shift in perception of the proper function of the reserves. Alexander Mackay's ideas were representative of a point of view held by a number of politicians and officials in the 1860s and 1870s. While Mackay has been seen as exceptionally concerned to preserve Maori reserves, his opinions about the relations between Pakeha and Maori were characteristic of the period. These were less flexible and perhaps more paternalistic than those expressed by leading officials in earlier years.

At this point, it is appropriate to look at the career of Alexander Mackay. When he arrived in Nelson as an 11-year-old in 1845, his formal education was apparently over.[179] He spent the next 19 years as a farmer on his uncle's property at Wakapuaka. In 1864 he was appointed Resident Magistrate and Commissioner of Native Lands in the South Island. Though he left for Wellington when he became Native Reserves Commissioner for New Zealand in 1882, this move did not end his role in the history of Nelson reserved lands. In 1884, Mackay became a judge of the Native Land Court. It was in this capacity that he awarded beneficial ownership of the Nelson trust reserves in 1892. He was also responsible for awarding a restricted form of ownership to a special category of Motueka sections in 1901, with occupation rights which fell far short of an individual Crown grant.

Mackay was an influential figure at a point when the government made key decisions that had a major impact on the trust reserves. Mackay's views were representative of those who strongly disapproved of the close connections between politicians and speculators in Maori land. He shared the fear, expressed by opponents of land speculators, that Maori would lose the land that kept them from becoming paupers.

Historians have seen Mackay as protective of Maori interests and, in a qualified sense, this is so. He argued that trust land was inalienable. The sections listed in the schedule to the 1873 Act were listed also in the schedule to the Native Reserves Act Amendment Act in 1896, indicating that Mackay had kept the land base of the reserves intact. However, he shared an assumption, very generally held among officials and politicians, that 'surplus land' should be occupied by Europeans. By the early 1870s, his

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[179] David A Armstrong, *DNZB*, Vol. 2, Wellington, Bridget Williams Books/Department of Internal Affairs, 1993, pp 289–290

position had already been made clear: although Maori endowment land would not be sold, profit was secondary to other objectives. Both Heaphy and Mackay saw long-term leases as important for improving the values of the properties. Where European tenants were concerned, Mackay resisted any attempt – including the requirements of the 1873 Native Reserve Act – to involve the Maori beneficial owners in the management of the land. Although the turning point with perpetually renewable leases is seen in law with the Westland and Nelson Native Reserves Act 1887,[180] the practice was already established. Mackay's administration reflected a hardening of European attitudes towards the Maori owners that characterised the later decades of the nineteenth century.

Another assumption very generally held among Europeans in the New Zealand of the 1870s and 1880s was that no-one in a new country should look to public funds for assistance. This attitude explains in part the determination not to permit the situation to develop where Maori could no longer support themselves; become landless, pauperised, and a charge on the State. Mackay's views are worth exploring because they help us to understand the wider political context in which a series of Acts were passed in the 1880s and 1890s. In a number of important respects, these legislative measures set the course for the Nelson reserves for the next hundred years. Mackay wrote in the 1870s that Maori must have an endowment in land. He neither trusted politicians to behave with restraint towards Maori land nor Maori to hold on to sufficient land to support themselves if faced with temptation. The concept of endowment lands as a means of ensuring that Maori would be self-supporting at a low level – avoid becoming paupers – was grafted on to the historic 'tenths'.

Alexander Mackay returned to the New Zealand Company's earlier interpretations of the reserves. Commissioner Spain had required that habitations, cultivations and urupa be excepted from the block awarded to the company, as well as reserving a full quota of trust 'tenths'. The company had made no provision for occupation reserves, having purchased land initially in advance of the Treaty of Waitangi. In 1870, Alexander Mackay appealed to the New Zealand Company model: 'tenths' took precedence over Maori occupation rights. Every commissioner since the inception of the settlement had realised that the New Zealand Company's plans were unworkable. Quite apart from the recognition of land rights, local circumstances had dictated that reserves should be made in the first place to accommodate Maori living

[180] Westland and Nelson Native Reserves Act, 1887, 51 Vict, No. 29, s. 14.

there, although theoretically all reserves were supposed to be vested in trustees for the purposes of providing a benefit fund for a wider community of right holders.

It was noted earlier in this report that, over the years, a series of adjustments had been made by trustees and commissioners in recognition of the need to reserve sufficient land for Maori themselves. It was also seen that Maori should be able to make some income by leasing surplus lands themselves to Europeans. It is true that this was at the expense of the trust estate. Although it was never stated explicitly, on the national level the purpose for which trust reserves were intended had been replaced by other policies and by other funding arrangements. This was unavoidable since most districts of significant Maori population were outside the New Zealand Company's settlements, and had no trust estate on which to draw. Policy on the preservation and the purpose of trust reserves had not been clearly developed.

Mackay began to invoke his ideal of the New Zealand Company – not the reality – from his earliest reports. In 1870, he stated that 'there are one hundred New Zealand Company's sections of fifty acres each belonging to the reserves made for the benefit of Maori generally.'[181] He used the present tense to describe a situation that had never existed, except on paper.

Mackay appeared before the Commission of Inquiry into Religious and Charitable Reserves in 1870. At that hearing he acknowledged that 'one cause of the dissatisfaction continually expressed by the Natives of Motueka, is owing to four of these sections [selected as occupation reserves by Spain], Nos. 219, 220, 241, and 242, containing 200 acres in all, having been included in the grant made by Sir George Grey to the Bishop of New Zealand'.[182] He also pointed out that the 'Ngatitama, or Motueka Natives, prior to the grant to the Bishop of New Zealand, resided on a portion of the block, and considerable dissatisfaction was manifested by them at being compelled to remove in consequence'.[183] For a number of reasons, the school was not fulfilling the terms for which it had received a grant. But this was not the basis on which Mackay advanced his case for retrieving the land. Nor did he intend to return any land to its original occupants. He stated that provision had been made 'by allotting them land in

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[181] 'Report on the Native Reserves of the Province of Nelson', Enclosure in Heaphy to Native Minister, 26 July 1870, AJHR, D-16, p 38

[182] Memorandum by Alexander Mackay, 3 January 1870, in 'Third Report of the Commission of Inquiry into the Conditions and Nature of Trust Estates for Religious, Charitable, and Educational Purposes', AJHR, 1870, A–3 p 38.

[183] ibid.

another part of the Estate.'[184] Instead, Mackay was concerned with retrieving land taken from the Trust, claiming that the land awarded to the Bishop was some of the best land in the district, amounting to a great loss to the Trust estate.

He was well aware that these lands involved sections that had been designated for Maori occupation as far back as 1844. But this was dismissed, with the explanation that:

> Notwithstanding the award made by Mr Commissioner Spain of certain sections of the Trust Estate to the Natives, it has never been considered that the Natives had more than a life interest in the land, and it is thought Mr Spain exceeded his authority in making this award, and his action is looked on as a contravention of the original scheme.[185]

The last passage is remarkably vague about who held these opinions. It was not an interpretation shared by Maori at Motueka who no doubt hoped to regain ownership of the disputed land at Wakarewa. Many of Mackay's predecessors as trustees and administrators had accepted that land in Maori possession 'ever since Nelson became a settlement' ought properly to have been re-categorised as belonging to those who lived on it, and had recommended that Crown grants be issued to them. Richmond had spoken out of this trend in 1854 when he recommended that the land should not be conveyed absolutely to Maori. In his opinion Maori in Nelson should have only a life interest in the reserves, and in the event of death or migration from the area the land would revert to the Trust. Mackay further reversed the trend to issue Crown grants to Maori in the Nelson area, and appealed to the terms of the New Zealand Company's prospectus. History was used to justify an increasingly rigid paternalism.

It is important to understand that when Mackay wrote about the New Zealand Company's policies on trust reserves, he was writing about the past. His accounts in the introductory section of his *Compendium* and in other memoranda were based on his own interpretation of records. The material on which he drew included the New Zealand Company's own accounts of itself. He used this material selectively and uncritically. His 'history' was, like ours, a product of the times.

This 'history' was intended to influence current policy. He was not recording current Crown policy, nor even explaining it in terms of the past. It is true that most of the sections in Nelson and Motueka had been initially selected while the New Zealand

[184] ibid.; The provision of other land was taken seriously. Mackay made it clear that land would be found for Ramari Herewini, who had been absent when 'replacement' land was being allocated.

Company was still in operation. A significant number of trust reserves remained in Nelson, but adjustments had reduced their number so that it no longer conformed to a tenth of any historic total. Though the original vision was never realised, by invoking the New Zealand Company, Mackay set up a model against which to measure the policies of settler governments.

His attitude can be compared with the approach of former government officials. Two of these are mentioned elsewhere in this report. Mathew Richmond, as Superintendent and then Commissioner of Crown Lands in Nelson, had taken an interest in the reserves and argued for the inclusion of Maori in their management in the 1850s. The former Chief Justice, William Martin, was behind the legislation that would have seen a Maori majority on boards of management in the 1870s. These men had been associated with the Crown in the early 1840s, when the Treaty of Waitangi had been regarded as the guideline for what New Zealand would become.

Mackay did not share this background. He had little experience of the conditions that had shaped Richmond and Martin in the North Island. The best claim he could make was to the prospectus of a British company with a reputation for not being entirely honest. The Company had also been implacably hostile to the Treaty of Waitangi because of the effect it was assumed it would have on their profits.

Mackay presented a new piece of 'history' in a memorandum of 1883, when he wrote:

> One of the principal features in the formation of the New Zealand Company's settlements was the Scheme of Native Reserves, and in all the early land transactions with the Natives, the Deeds contained the express covenant that a portion of the land ceded equal to one tenth should be reserved by the Company and held in trust for the future benefit of the Vendors. [186]

Mackay is not alone in invoking an idealised past to correct the present, but it was only possible to represent all land transactions of the New Zealand Company as 'containing an express covenant' – a solemn undertaking made with Maori – at the expense of accuracy.

3.4 THE UTILISATION OF RESERVE LAND AND THE BENEFIT FUND

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[185] ibid.

[186] A. Mackay, Memorandum re Petition of Tapata Harepeka and others for the restoration of certain lands at Motueka, Granted to the Bishop of New Zealand…' 9 July 1883, reproduced in 'Te Tau Ihu Document Bank', pp 1793–1794.

The income from leases of the reserved land was used to provide material benefits for Maori interested in the Tenths estate. This section looks firstly at leasing practices under Mackay, and then at how he used the income from those leases to benefit Maori.

The term for leasing Maori trust lands under the Native Reserve Act 1856 was limited to 21 years. The 1873 Act contained a significant innovation: the extension to 60 years of leases for building purposes. Longer leases were thought by the government to encourage greater improvement of the land. In the event, the introduction of the 60-year leases depended on other parts of the Act, which were not put in place.

Johnson observes that 'there was still no hint in the legislation of leases in perpetuity.'[187] Indeed, the wording of the Act clearly stated: 'And provided also that in no case shall there be in any lease under this Act any covenant or engagement for renewal'.[188] But by the early 1870s, Mackay was informally making arrangements that foreshadowed later Crown policy as to perpetual renewal.

In 1873, in course of giving a report on the trust reserves in Westland, Mackay wrote:

> With regard to the renewal of the leases, no practical difficulty exists, and that fact must be generally known, as assurance has been given over and over again that, although a right of renewal cannot be inserted in the leases, the intention is to let the land in perpetuity for the benefit of the Natives, and that whoever is in possession at the expiration of any of the terms of lease, provided the occupant would agree to pay an equitable rent for the premises in proportion to the increased value of the property, that an extension of lease would be granted him.
>
> This principle is based on an old established practice in England, where it is considered that those who are in possession of leases for lives or years, particularly from the Crown, have an interest beyond the subsisting term, which is usually denominated "the tenant's right of renewal." This interest, although it is not a certain or contingent estate, there being no means to compel a renewal, yet influences the price in sales and conduces to the security of tenure beyond the fixed term.[189]

According to the 1975 Commission of Inquiry into Maori Reserved Land, Mackay was incorrect on this point. They wrote: 'To state the matter precisely the words "tenant-right" not "tenant rights" are used as a technical term in connection with agricultural holdings,' and refer to 'the right which any lessee of land enjoys to receive

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[187] Johnson, p 80
[188] Native Reserves Act 1873, s. 19.
[189] Alexander Mackay, 'Native Reserves, Middle Island', 30 July 1873, AJHR, 1873, G–2A, p 3

compensation for improvements when the lease ends.'[190] Although this practice may not seem entirely fair by today's standards, it seems likely that Mackay was referring to an accepted expectation of practice rather than strict law.

Mackay may well have believed that he was acting in the best interests of the trust by encouraging investment in the properties. But he also evidently saw the trust reserves as a perpetual endowment, to be managed like Crown land, rather than land which Maori themselves would ever occupy and use, or even control its occupation and use by 'their' tenants.

That Maori lacked control over their leased lands is shown clearly by evidence given before the Commission of Inquiry into Religious, Charitable, and Educational Trusts in December 1869. At this hearing, Ramari Herewine stated that her land had been leased by Thomas Brunner, one of the Reserves Commissioners at the time, and she had '£2 a month from Taylor, the policeman at Takapa, by Mr Brunner's authority. I don't know how much I received [in total]. I don't know how to count'. Brunner had leased Herewine's land when she was living away from the land at Nelson.[191]

Mackay referred to leasing practices when he appeared before the same Commission. In regard to the virtual owners who held occupation reserves at Motueka, always a special category, Mackay explained that as at January 1870 they let 140 acres 'out of what has been appropriated for their own use'. The rent from the lands was collected by Alexander Legrand Campbell, and did not go through the Trust account but was paid directly to Maori. Mackay claimed that if he had not allowed them to rent in this manner, 'they would have done it illegally and surreptitiously'. He further stated that:

> If the land had been let in the usual way, and the proceeds not paid to them, they would have had a cause of complaint, as they had been recognized as the legal occupants of the land, which they would construe as legal owners of the land. They have, however, always been allowed to take the whole of the rents accruing from rents of appropriated lands; and I would say the rents were as necessary for their maintenance as the land itself was appropriated.[192]

Motueka lands were leased to settlers if they were not being occupied or otherwise used by Maori. This was largely because of the desire of those Maori with

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[190] *Hotel Kingston Ltd.* v. *Federal Commission of Taxation* [1944] cited in *Report of Commission of Inquiry into Maori Reserved Land*, Wellington, Government Printer, 1975, p 58.
[191] Evidence of Ramari Herewini, 29 December 1869, 'Third Report of the Religious, Charitable, and Educational Trusts Commission', AJHR, A-3, p. 29.
[192] Evidence of Alexander Mackay, 3 January 1870, ibid., p. 36.

lands exceeding the amount that they 'absolutely required for cultivation' to lease the surplus to settlers. Mackay stated that it was decided that:

> as it had always been considered that they were entitled to receive any pecuniary benefit derivable from the land allotted to them – to allow them to do so, through the commissioners, as it enabled them to do regularly and legally that which it was found difficult to prevent them doing in an irregular and objectionable manner. One hundred and forty acres have been let in this way, from which they derive an income of £180.

Mackay gave a more detailed account of the leased lands in a memo enclosed in the 1870 Report of the Commissioner of Native Reserves:

> In the town of Nelson there are 54 sections, comprising 53a. 1r. 30p., of which 45 sections are occupied by tenants; of the remaining nine (9) one is reserved for the use of the Natives, one has been sold to the Provincial Government, for £400, and forms part of the site on which the Government Buildings now stand; two (2) have been exchanged with Messrs. Curtis Brothers for Section 946 in the Town of Nelson; and five (5) are unlet; of these three (3) are situated on the mud flat, and are subject to be covered by the tide which renders them untenable; the fourth is situated on the Fifeshire Island at the mouth of the harbor [sic], and the fifth is on the side of the hills overlooking the Waimea Road. The latter is the only one likely to become occupied, but the others from their characters and position will probably never be of benefit to the trust. The gross rental producible from the property in the City of Nelson at the present time is about £600 per annum, this amount will be slightly augmented in course of time as the rent of many of the leases (most of which are for terms of twenty-one years) increase after the first seven years of the term.[193]

The Motueka sections had been reduced severely through the 918-acre grant to the Bishop. Of the remainder of the reserved lands in Motueka, 300 acres were not let, 150 acres had been exchanged with Charles Thorpe for Section 9 Takaka, 1000 were occupied by Maori, and the rest (about 2500) were occupied by tenants. The annual rent on the Motueka and Moutere lands was up to £370 in 1870. As with the Nelson city leases, many of the rents for these lands would increase at the expiration of the first term of seven years. The gross rental of the entire Tenths estate was estimated by Mackay to be £970 a year.[194]

The 1862 Amendment Act had provided for all moneys that came to the Commissioners to be applied 'for the benefit of the aboriginal inhabitants', but did not

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[193] Memo by A. Mackay, enclosed in Report of the Commissioner of Native Reserves, AJHR, 1870, D-16, p. 38.
[194] ibid.

give detailed directions about what areas the benefit covered.[195] The 1873 Native Reserve Act described in greater detail than previous acts what the benefit fund was to be used for. It shows that the Crown intended that a wide range of local costs should be met by the fund. Section 32 made it clear that any costs of management and administration were to be recouped. After meeting all costs, directions for the expenditure were set down by Section 34:

> the income and yearly proceeds of every Native reserve of which the purposes have not been already defined and are not otherwise defined by this Act, after deducting thereout all such expenses as may be necessary for maintaining the trust property in good condition and repair, shall be applied by the Native Reserves Commissioner for the benefit of the persons for whom such reserve was made, and their successors, in manner following, that is to say, for or towards all or any one or more of the purposes hereinafter enumerated, in such proportions and in such manner as shall be approved by the Governor in Council:–
> (1.) The payment of the cost incident to the survey of such reserve, and the charges (if any) incurred in the Native Land Court in respect thereof.
> (2.) The erection and maintenance of any schoolhouse or other building for general use.
> (3.) The purchases and repair of implements of husbandry.
> (4.) The fencing improvement and drainage of the land.
> (5.) The erection maintenance and repair of houses and property.
> (6.) The supply of food and medical assistance.
> (7.) Salaries of Schoolmasters.
> (8.) The purchase of books and writing materials.
> (9.) Other educational purposes.
> (10.) Contributions to local rates.[196]

The list appears to cover almost the full range of costs relating to Maori and Maori land. This leads to a number of questions. What were the responsibilities of the Crown? What provision was available for Maori in districts without trust funding? Some of the charges listed above can be explained by contemporary development: some costs, notably for surveying and rates, could fall heavily on Maori. It also should be borne in mind that the State did not make wide provisions for welfare and development at this point. However, there were to be changes over the next few years. The Government was already subsidising medical costs for Maori in other districts. It would be making provision for Maori and European education from the General Revenue in the later 1870s. Should these policy changes have relieved the charges on the local resources derived from trust lands, and allowed Maori to receive other benefits from them?

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[195] 1862 Native Reserves Amendment Act, 26 Vict No. 14
[196] Native Reserves Act 1873, 37 Vict. No. 60, s. 34.

The early to mid 1870s represent the high point of the activities funded by the Trust in Nelson. After the passage of the 1873 Act, the accounts were no longer Provincial Council business, but went to the Native Department in Wellington. Thereafter they were published in the parliamentary papers, so the executive was aware of how the fund was being spent.

As the income from rents was only distributed to those who leased out their occupation reserves, this left a reasonably large amount to be disbursed in other ways through the benefit fund. Mackay outlined in a memo to Charles Heaphy how the benefit fund had been spent in the year 1869 to 1870:

> Concerning the disposition of the amount expended for the Natives, as the proportion of the Estate appropriated to the Bishop of New Zealand is considered amply sufficient to supply all the proportion of the fund that should be devoted to educational purposes; the revenue accruing from the portion of the estate in the occupation of tenants is spent in various ways for improving the general condition of the Natives by assisting them in their industrial pursuits, such as providing them with bullocks, carts, ploughs, harrows, harness, &c., and agricultural implements; also in aiding them from time to time to erect a better class of houses in place of the dirty hovels in which they usually reside; by providing them with bricks for chimneys, windows and doors, and the necessary ironmongery. Small sums are also lent, without interest, to the most deserving from time to time, to aid them in procuring anything conducive to their welfare, on the understanding that the several amounts are to be repaid as speedily as circumstances will permit. Medical attendance is also provided for them out of the fund, and rations allowed to the sick and indigent. There is also a charge of £140 annually on the fund for salaries, and 10 per cent. for the collection of rents in Motueka and Moutere.[197]

The farming and housing equipment mentioned by Mackay in the above excerpt were common uses of the benefit fund throughout Mackay's tenure as Commissioner. From 1864 to 1866 the returns provided by Mackay show each item, including, for example, ironmongery, cart, drays, bullocks, hay and ploughs, a saw and furniture in 1864.[198] The next year saw the reserves fund provide bricks and window sashes, while money for a house was listed as a disbursement in 1866.[199] From 1869 onwards these specific items were not listed, appearing instead as 'building materials' and 'agricultural implements'. The expenditure on these items remained consistent until 1873, staying around the £90 a year mark for building materials and £20 for agricultural implements. In the 1870s the amount expended on agricultural implements increased to an average

[197] Memo by A. Mackay, in Reports from the Commissioner of Native Reserves, AJHR, 1870, D-16, p.38.
[198] Nelson Government Gazette 1864, p. 78, and Nelson Government Gazette 1865, p. 52.
[199] Nelson Government Gazette 1866, p. 21, and Nelson Government Gazette, 1867, p. 37.

of £70 a year, while that spent on building materials reduced. Exceptions always occurred, as in 1874-5, when £550 was spent on building materials for a school, and in 1878-9 when £247 was spent on agricultural implements and £205 on buildings and repairs, a massive increase from the £21 and £77 spent on those items respectively the previous year.

The benefit fund was also used to clean up and maintain the reserves land and the Maori hostel. For instance, in 1865, funds were expended on draining the reserves, putting up fencing, and removing thistles.[200] Money was spent on surveying and making plans of the reserves between 1864 and 1875. The amount spent varied from £74 in 1864 to just under £10 in 1865, and then from £40 in 1866 to £108 in 1870.

Assistance was provided out of the fund for 'sick and indigent natives' through the provision of rations. This was a staple in the returns from this period. In the later years the amount spent on clothing for poor Maori was incorporated with the amount spent on rations. The amount expended on these items varied from year to year, but from 1871 onwards settled at around £250 per annum.[201] Unfortunately, as Mackay does not appear to have left a record of the applications made for assistance, it is impossible to know how many people were turned down and for what reasons. It is also impossible to tell what was considered 'indigent' and who was therefore eligible for assistance from the fund.

The 18 months from January 1872 to June 1873 provide a reasonably representative range of expenses, as well as incorporating extra costs that made it an expensive period for the Trust.[202] Salaries and commissions for the officials involved in running the trust, and various other items, such as the cost of surveys, were charged against the Fund, absorbing £560 of the total expenditure of £2511. Rents from the wider district, from Westport to Queen Charlotte Sound, were paid into a common fund, along with fees from miners' rights on Maori land and one or two minor items. Nelson, with £817–12–2 in rents, and Motueka, with £647–2–9, contributed the most. But £335 was paid out in rent to owners of the Motueka occupation reserves, leaving £1363 to be spent on, as Mackay wrote, 'improving the general conditions of the natives, by assisting them in their industrial pursuits and aiding them from time to time to erect a

[200] Nelson Government Gazette, 1866, p. 21.
[201] See returns of Commissioner in Nelson Government Gazette and (from 1873 onwards) the AJHRs for the relevant years.

better class of house. Medical attendance is also provided for them out of the fund, and rations and clothing supplied to the sick and indigent.'[203]

It had been an expensive year and a half, because floods and droughts had destroyed the crops in several places. The fund had maintained most of the people at Motueka, about 80 in number, for over 6 months. More than half of the sum of £527 had been spent on food and provisions for those at Motueka, and the remainder had gone to a variety of groups, including the sick, the aged and decrepit, and those visiting Nelson on business with the office. Seed potatoes for the Motueka people had cost £100 12s 10d, and a further £33 4s was spent on building materials for them. Among other sums were £128 9s 10d on ploughs and harrows, tools and ironmongery, paint for boat building and £40 for harness. Minor sums had been spent on tangi. Among the more important of the remaining expenses was fencing and repairing the hostels, at £66 13s 4d, and the provision of supplies there.

One curious item was the provision of £26 11s 1d worth of rations for the widow of the Ngai Tahu rangatira, Wakatau Kaikoura. It was noted that this payment was 'authorised by the Native Minister', which suggests that the government saw the fund as a source for 'relief' payments in a wide district. The beneficial owners of the tenths had not yet been legally defined.[204]

Another, much more substantial expense reinforces the impression that the government was drawing on the fund for any Maori-related expenses. Following instructions, Mackay was authorised to spend £400 out of the Nelson Reserve Fund to build a road through Maori land at Wakapuaka.[205] Local Maori worked on the road and received provisions. Although Mackay wrote that the road would be a great boon to Wakapuaka, this was the sort of item which the general Government made a point of funding out of its own revenues in this period in districts where the Maori population needed to be won over politically.

Medical expenses were high. The fund had paid £231 6s 6d for medical assistance between July 1872 and June 1873.[206] But evidently medical services were a grey area. In 1879, the General Government refunded £2,000 to the Nelson Native

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[202] Alexander Mackay, 'Native Reserves, Middle Island', 30 July 1873, AJHR, 1873, G–2A, p 1–6
[203] ibid., p. 1.
[204] This was later completed in 1892 when the Native Land Court (under instructions from the Public Trust Office) heard claimants to Motueka and Nelson and determined who held beneficial interests in the land. This is covered later in the report.
[205] Alexander Mackay, 'Native Reserves, Middle Island', 30 July 1873, AJHR, 1873, G–2A, p. 2.
[206] ibid.

Reserve Fund, in part repayment of medical officers' salaries, which the local fund had been paying since 1864.[207]

Later in the 1870s, Mackay argued that building roads and schools was outside its intended purpose. In 1877, he complained about paying £230 annually for medical officers. The central authorities relied on advice from resident magistrates and native agents as to who were suitable candidates for medical aid.[208] James Mackay had pointed out in 1864 that the government was liable for part of any medical subsidy. It was 1877 before the issue was raised again by Alexander Mackay. He also drew attention to the cost of building schools, and the annual levy of £160 for the schools at Wakapuaka and the Wairau as improper charges. The Crown had taken over responsibility for financing these activities elsewhere. But it can only be surmised how Mackay justified the payments that he made in the absence of a clear legal directive.

This brings us back to an earlier point: what were the proper functions of the trust fund? In the early 1870s, when the Native Reserve Bills were being formulated, the expansion of the State's funding activities had not been foreseen. In 1871 Sir William Martin expressed a view widely held among Europeans when he wrote in reference to the trust reserves created from the New Zealand Company purchases that:

> there is at present a considerable property available, which, if administered on a good system, would greatly advance the education and civilisation of the Natives, and relieve the General Revenue of the Colony.[209]

The attitude towards the 'General Revenue of the Colony' is explained in part by a recognition that colonial politicians were not likely to be generous with funds for Maori development. But nor was the Tenths fund big enough to finance meaningful land development either, even if it had not been used for piecemeal assistance and welfare relief. Other reasons included the weak controls over the buying and selling of Maori land, and what Mackay saw as the vital role of the endowment lands in ensuring Maori would always be self-supporting to a certain degree. In the economically depressed 1870s, tenths filled the place of charitable aid.

In a letter to Mantell in 1877, Mackay expressed concern about the opportunity the current Native Reserve Bill offered to 'land sharks', by allowing the sale of

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[207] Enclosure No. 1 in Mackay 'Native Reserves, Nelson and Greymouth', AJHR, Sess II, 1879, G–3, p 2
[208] D Dow, ' "Specially suitable men?" Subsidised Medical Services for Maori , 1840–1940', *NZJH*, vol. 32, no 2, 1998, p 165
[209] 'Explanatory Notes on "The Native Reserves Act, 1871" ', AJHR, 1871, A–2, p 20

inalienable reserves to be dependent on the pleasure of the Ministry of the day. He wrote:

> With such facilities the Bill proposed to give, the Maoris corrupted already by the price of the bulk of their land, would be willing and anxious enough to rid themselves of the remainder, and on their being denuded of the remnant, the Colony would have to encounter the danger of thousands of paupers, incapable of work and determined not to want, a state of affairs fraught with serious difficulties.
>
> I wrote a memorandum last year on the importance of setting apart landed endowments to provide an independent fund for the maintenance of the natives in future times of need. Copies have been placed in the hands of several of the Ministers, to have the fate evidently of other papers as I have not heard that the principle laid down has found favour with the Government.[210]

In 1883, in a survey of reserves throughout New Zealand, he wrote approvingly about how the endowment lands in Nelson had saved the general revenue from expenses:

> The Natives in the original Nelson settlement, in consequence of the foresight of the New Zealand Company in setting apart these lands for their benefit, have reaped a considerable advantage through being placed in a position of independence in the way of monetary aid for purposes that the Natives in the other parts of the colony have had to depend on the assistance received from the Government.
>
> The company look [sic] on these permanent reserves as the real worth of the land purchased from the Natives, as this was a price that could not be squandered away at the moment, but of which, as time glided on, the inalienable value would continually and largely increase for the benefit of the persons interested and their descendants. Where these lands have been preserved for the purposes for which they were intended the expectations of the company have been fully realised. Had the same system been observed throughout the colony the Natives in other localities would have been in receipt of a permanent income, and the general revenue relieved of a heavy annual expenditure.[211]

It is not clear what he meant by writing that had 'the same system been observed throughout the colony the Natives in other localities would have been in receipt of a permanent income, and the general revenue relieved of a heavy annual expenditure'. Insofar as there was 'a permanent income' it was an income for the general trust fund, which was administered paternalistically. The claimants' historians believe the trust

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[210] Mackay to Mantell, 27 August 1877, Inward Correspondence, Mantell Family Papers, MS Papers 83-332, ATL

[211] 'Report on the State and Condition of Native Reserves in the Colony', AJHR, 1883, G-7, p 2

should have provided Nelson Maori with cash income from the first.[212] Rents were received as cash by those with a stake in the Motueka occupation reserves. These had been paid directly to Maori in the early days, with the Commissioner beginning to intervene in the collection of these rents from the early 1860s. The only other payments in cash that were made in this period were at a low level, as relief for the indigent.

As for relieving the charge that would otherwise fall on the State, in reviewing the situation Mackay himself recognised that the situation for Nelson Maori was exceptional. A local fund existed to contribute to, or cover, a range of items. But many of the benefits paid by the trust would be less readily available or not available at all elsewhere. The charitable aid system depended on a mixture of voluntary and public support. There was no policy in place to 'support' Maori or anyone else throughout the colony, until the passage of the Hospitals and Charitable Institutions Act, in 1885.[213] True, the cost of medical officers for Maori was being met by the Crown elsewhere, but if this had been rationed according to population, most of the South Island would have missed out.[214] There was no guarantee that roads would be built in Maori districts, or assistance provided when crops failed or rivers flooded. The wider situation was still ill-defined and fluid. It does seem, however, that when the benefit fund paid for education in the 1870s when other Maori and Pakeha from other parts of the country were not having to pay for it, that Nelson Maori were being disadvantaged.

In the process of sorting out the financial situation for the Public Trustee to take over, it became clear how far the Government had regarded the Nelson tenths fund as a supplementary fund available for South Island Maori purposes. Mackay, using the analogy of a person owning a large property of which only a small proportion was remunerative made explanations for the high charges to the reserve fund. The small portion paid all his income, with the whole expenses in connection with the management of the remainder of the property and other duties charged on it. He wrote that it would be a mistake to calculate that the management of the productive part of the estate had cost 15 to 20 per cent because there had been no alternative but to charge the whole of the expenditure on it. Further, he added that:

> the amount charged for the Commissioner's salary against these funds is merely a matter of financial management determined by the Government, and in regulating

[212] Mitchells, 'Overview of the Series 9 Reports, Relating to the Management of the Nelsons and Motueka Native Tenths and Occupation Reserves', Wai 785 A34, p. 64.
[213] Jeanine Graham, 'Settler Society', in G W Rice (ed.), *The Oxford History of New Zealand*, 2nd edition, Auckland, Oxford University Press, p 137
[214] In 1874-5, the ratio of Maori to Native Medical Officers was 2630:1. see Dow, Table 2, p 174

> the proportion of salary to be charged against the respective Funds, it will have to be borne in mind that the Commissioner besides having the management of these has to attend to all matters pertaining to Native affairs in the Middle Island as well, and if his Salary was fairly adjusted a proportionate part should be borne by General revenue, but this is a matter for the decision of the Government.[215]

It is difficult to tell from the printed accounts exactly what the financial situation was, and how some transactions had occurred and were justified. It transpired that Mackay had been drawing on the Greymouth funds for Nelson spending.[216] It had been difficult to collect arrears in the Nelson rents in depressed years, but the sum was found to pay the debt back the following year. According to Mackay, the £230 that the fund had had to defray in Medical Officers' salaries was 'a charge defrayed in other parts of the colony out of general revenue. Permanent charges of this nature seriously cripple a small fund'.[217] It is perhaps not surprising then that the benefit fund was in some financial difficulty. Mackay's accounting methods were to come under criticism later, but the Nelson trust does not seem to have suffered. This may have been averted by a refund of £2000 'by General Government in part repayment of medical officer's salaries defrayed by the Native Reserve Fund since 1864'.[218]

As discussed above, Mackay had written an official memorandum opposing the 1873 Native Reserves Act's provision for Maori Assistant Commissioners to have a significant administrative role. Nevertheless, in the early 1880s a return giving the names and salaries of the officers chargeable on the Native Reserves Account included two Maori Assistant Commissioners. Hemi Matenga, Nelson, was listed as receiving £100 per annum, while T P Mutu was paid half that amount for Greymouth, from a much larger fund which was paid out mostly to the land owners.[219] Nevertheless, the printed accounts for the Nelson General fund in 1886 has a mysterious item, 'Hemi Matenga, 9 ¼ years salary at £100 per annum, less on account £175–6–1 .. .. £749–13–11'.[220] This sudden back payment is very odd, and the author of this report has been unable to locate further documentation of it. There was a close personal relationship between Mackay and Matenga's family. The extent to which Matenga played a role in

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[215] 'Memorandum re cost of Management of Native Reserves', 20 August 1881, MA–MT 1, 1B, Letterbook 1869–83, NA
[216] A Mackay, 'Native Reserves, Nelson and Greymouth', AJHR, 1877, G-3A, p 1.
[217] ibid., p 2.
[218] AJHR, 1879, G-3, p. 2.
[219] Return signed T W Lewis, 15 September 1882, MA–MT 1, 1 B, Letterbook 1869–83, NA

reserves administration, or acted in any way representatively of other Maori, must remain unknown unless further information is uncovered.

The use of the benefit funds was not entirely satisfactory as far as the beneficiaries were concerned. Complaints were made in a petition to Parliament in 1877 over how much of the fund went into administration costs. In Nelson, the charges were a commission for the collecting of rents, £80 11s; proportion of Commissioner's salary, £222 18s 4d; proportion of Secretary's salary, £50; proportion of Interpreter's salary, £40. This was a total of £393 against an estate that brought in £1,706. George Buckley, Member of the Legislative Council for Canterbury, judging by the standards of the day, believed there were grounds for complaint.[221]

The decision to classify land which was occupied by Maori as 'tenths' had created a situation which proved to be troublesome for administrators and confusing and frustrating for owners. At a critical point, when decisions were about to be made about renewable leases, Maori were denied an opportunity to participate in the administration of the trust. The trust reserves in general were set on a course in this period which took the land itself further and further away from the people whom the reserves were intended to benefit.

A change to the whole structure of trust administration, in which the regulations for the benefit were tightened up, came about for political reasons. The alienation of reserves under the current legislation depended on the Governor's assent. As the Governor was required to act on the advice of the Ministry of the day, assent was exercised at the whim of politicians. This is the background to the decision to remove trust reserves from the political arena. In order to do this the management of the reserves was changed yet again, in 1882, when they were placed in the hands of the Public Trustee. These developments will be discussed in the next chapter.

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[220] Native Reserve Accounts, AJHR, 1887, G–2, p 17
[221] 3 August 1877, NZPD, 1877, vol. 25, p 289

CHAPTER 4: ADMINISTRATION UNDER THE PUBLIC TRUSTEE 1882-1920

4.1 INTRODUCTION:

A radical change to the administration of the reserves occurred in 1882 when legislation was passed taking the control of reserved Maori land out of the hands of Native Reserves Commissioners and placing it under the authority of a centralised public institution – the Public Trustee. The changes to the whole structure of trust administration, in which the regulations for the benefit were tightened up (among other things), arose from political reasons. The alienation of reserves under the current legislation depended on the Governor's assent. As the Governor was required to act on the advice of the Ministry of the day, assent was exercised at the whim of politicians. This is the background to the decision to remove trust reserves from the political arena by placing the land under the Public Trustee. The removal of the Trust reserves administration from the control of the commissioners to the Public Trustee can be seen as 'part of the larger impetus, spearheaded by Bryce as Native Minister, to centralise Maori within a single governmental structure without "exceptional laws"'.[222] When John Bryce became Native Minister in 1879 he stated his intention to put a stop to the 'system of personal government' which he believed characterised the Native Department.[223] Bryce was determined to break up the Native Department.

This chapter looks firstly at the legislation which effected and consolidated the major changes in reserves administration in this period. As the Trustee was constrained to a large extent by legislation, it is useful to give an overview of those statutes that directed what could and could not be done with Maori reserves vested in the Trustee.

This summary of relevant legislation is followed by an examination of the practical implications for the Nelson Tenths of the statutes pertaining to reserves administration under the Public Trustee. This section looks at leasing policy and practice, and then at the use of the benefit fund. Finally, the chapter looks at the investigation and recommendations of the 1913 Commission of Inquiry into the workings of the Public Trust Office.

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[222] Johnson, pp. 110-11.
[223] NZPD, 1879, PP. 350-360, cited in Johnson, p. 110.

4.2 LEGISLATION AND POLICY – DEFINING THE ROLE OF THE PUBLIC TRUSTEE:

In the years from 1882 to 1896 a number of pieces of legislation were passed which set down the way in which trust land was to be managed, and most notably the processes to be followed in the granting of leases. Under this legislation administration of the reserves became increasingly centralised.

Bryce introduced the Native Reserves Bill in 1882. Johnson notes that 'this was the first piece of legislation relating to the general administration of native reserves to have survived passage through the house in the previous 20 years'.[224] Perhaps the intactness of the bill is accounted for by the conservatism of its features, the majority of which 'derived from either former trust reserves or public trust legislation'.[225]

This Bill did not pass without some resistance from Maori members of Parliament as well as petitions from Maori affected by the proposed bill. Five petitions were received in 1882 from a total of 642 Maori, asking that 'the Native Reserves Bill, 1882, may not be passed'.[226] Although Nelson Maori do not appear to have placed a formal protest to this Bill via a petition, three of these petitions were sent in by Northern South Island Maori, mainly Ngai Tahu around Kaiapoi and Arahura.

The Native Reserves Act 1882 vested the Nelson and Motueka Company tenths in the Public Trustee.[227] According to Keith Pickens this marked the beginning of 'a new reserve management regime'.[228] Under the new Act, the Public Trustee could exercise significant power over Maori reserves, notably the power to lease portions of those reserves. Section 14 defined the 'benefit' aspect of the Company Reserves, stating that it meant 'physical, social, moral or pecuniary benefit' as well as medical assistance.[229]

Under the 1882 Act, general supervisory powers, including the authority to alienate land, went to the board constituted under the 1872 Public Trust Office Act. This board was made up of the Colonial Treasurer, the Government Annuities Commissioner, the Attorney-General, the Commissioner of Audits and the Public Trustee, as well as two Maori representatives appointed by the Governor. Keith Pickens has commented that:

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[224] Johnson, p. 111.
[225] ibid., p. 111.
[226] See AJHR (1882) I-2, pp. 12, 16, 20, 26.
[227] Native Reserves Act, 1882, 46V. No 52.
[228] Pickens, p. 14. Pickens gives a very clear outline of the framework of the legislation , pp. 5-20.

> The bill originally introduced into the House contained no provision of any kind for Maori participation in the management of the reserves. Several members, including all of the Maori members, pointed this out and asked that it be remedied during the committee stage. John Bryce, then Minister of Native Affairs, was happy to accommodate these sentiments if it meant support for his bill. But Bryce did not envisage the Maori members doing more than venturing opinions on the matters that might come before the Board; they could not 'very well do official work'.[230]

While in theory there was room for Maori input into the administration and leasing of reserved land, there is little or no evidence to suggest that the two appointed Maori board members played a significant role. Hemi Matenga of Wakapuaka seems to have been one of the Maori appointees, but there is no evidence in the general correspondence of his playing a major role.[231] In 1894, the Public Trust Consolidation Act re-constituted the Public Trust Board without the Maori representatives.[232]

Section 27 of the 1882 Act provided for the appointment of a Native Reserves Commissioner. It was intended that this commissioner would conduct the routine business of administering the reserves, under the direction of the Public Trustee. Alexander Mackay was the first appointee to this position, and he served from 1882 until he became a Judge of the Native Land Court in May 1884. Though the position of Native Reserves Commissioner was not reassigned after his departure, Mackay continued to be involved in the history of the Nelson reserves. As well as being the Native Land Court Judge presiding over the tenths claims, Mackay was consulted by the Public Trustee on a number of occasions, and in particular about arrangements for the Motueka occupation reserves, until his retirement in 1902.

Administration was centralised in Wellington from 1882. This was a significant change from the control exercised over the district by the local Commissioner, who had reported to the Native Department. The long-serving clerk of the Native Reserves Department in Nelson, J. Catley, became the first local agent for the Public Trustee for the Nelson and Motueka trust reserves, providing continuity until 1896.[233]

In 1896 Ronaldson, a visiting official, reported that he believed Catley was 'past his work'. Ronaldson 'discussed with him the advisability of relieving him of the work

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[229] Native Reserves Act, 1882, s. 14, 46V. No 52.
[230] Pickens, p. 14.
[231] In response to an inquiry from the Public Trustee about whether assistance should be given in a particular case at Motueka, wrote, 'Perhaps Hemi Matenga when he attends the Board could furnish the requisite information.' 11 May 1888 XYZ
[232] Section 9, which passed into law without any comment. Pickens, p17.

of this Office [Public Trust Office], as I was afraid he was more in sympathy with the lessees than with the Office, and did not keep them up to time with the payments of their rent'.[234] As Catley expressed his determination to retire in several months, he was permitted to remain acting for the Office until he did retire at which time A. Scaife took over the position.[235] When Scaife took up office in March 1897, he was furnished with instructions on his duties. His 'principal duties' were the regular collection of rents in advance and the clearance of noxious weeds from all reserves. He was told that 'all other matters such as expiring leases, Renewals, Tendering, Indigent Natives allowances &c. which may crop up from time to time you will be instructed on when occasion arises'.[236] All applications for transfers, mortgages or sub-leases of the Reserves were to be submitted to the Public Trustee for his consent which 'will not in any case be given until all Rent is fully paid up'. Scaife was also forwarded the relevant Reserves legislation and told to 'peruse them all very carefully, and especially "The Westland & Nelson Reserves Act 1887'.[237]

Section 9 of the 1882 Act allowed for management costs to be deducted from the proceeds of the reserves on a fixed scale. Initially, the local agent was paid 5 per cent out of the 10 per cent commission that the Public Trust Office took out of the rents. The salaries of officials were to come from funds appropriated by Parliament. The cost to the reserve fund was less than the 15 to 20 per cent that it had contributed towards supporting the wider role of the Commissioner of Native Reserves for the South Island in earlier years. However, excessive charges were one of the areas for which the Public Trust Office was criticised by a commission of inquiry in 1890. Following this commission, the charge for administering Maori reserves became fixed at 7½ per cent.

The application of the proceeds of the reserves was still open to interpretation but it was no longer directly at the disposal of the Government. The word 'benefit' was interpreted in section 14 'to mean the physical, social, moral, or pecuniary benefit' of those for whom the reserves were held in trust. It was explicitly extended to include 'the providing of medical assistance and medicines.' Under section 16, the Public Trustee could apply to the Native Land Court to determine who was beneficially interested in

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[233] J T Catley's 26 years of service caused Mackay to recommend him, memo to Public Trustee, 26 December 1882, MA–MT 1/1 B.

[234] File note listed as 'Extract from Mr Ronaldson's Report on his Visit to the Nelson District – 96/665', 10 October 1896, MA MT 1/1B 136 27/2 Native Reserves 1882-1918.

[235] ibid.

[236] Public Trustee to A. Scaife Agent of the Public Trustee in Nelson, 19 March 1897, MA MT 1/1B 136 27/2 Native Reserves 1882-1918.

the reserves. Section 6 stated that the Court would have the same jurisdiction over reserves as it did over customary land.

The critical area for the tenths, given the pressure which was building up from leaseholders, was the terms offered for leasing trust reserves. The 1882 Act set these down in some detail. There would be longer leases, with a 30 year limit for agricultural or mining purposes, and 63 year leases for building purposes in renewable terms of twenty-one years. Leases were to be sold by public auction or by public tender, in a move intended to get the maximum rental rates from land under administration.

These moves caused considerable agitation among the lessees in the Nelson district as well as in Greymouth. The South Island Native Reserves Act in 1883 made provision for the purchaser of a lease to pay the previous owner for the improvements. By the same Act, the Greymouth leases were shortened to 21 years. Leaseholders protested their interests had been jeopardised by the new laws. A Commission of Inquiry into the South Island West Coast Reserves in 1885 (the Kenrick Commission) took evidence at Nelson and Motueka as well as the West Coast.[238]

Protest also came from three residents of the Motueka occupation reserves – Pamariki Paaka (Te Atiawa), Tapata, and Kerei (both Ngati Rarua).[239] They asked that certain pieces of land be given back when leases came to the end of their term. It is difficult to sum up the situation there concisely, or to get a clear idea of patterns of ownership. About 150 acres of land, including numerous small pieces of parts of sections, had been leased to Europeans through Mackay, leaving something over 1,000 acres for the 50 Maori residents. It had been arranged with Mackay that if land was wanted for cultivation it would be returned when the leases expired, with payment for improvements to lessees.[240] The Commissioners, taking evidence from Maori and Europeans at Motueka, and also from Mackay, concluded that the owners were intending to re-let the land, rather than cultivate it themselves. The Commissioners recommended that the land remained under the control of the Trust, out of regard for the interests of the lessees.[241] The argument that the Trust should retain control to protect

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[237] ibid.

[238] 'Report of Commission of Inquiry into Native Reserves at Arahura, Greymouth, Nelson, and Motueka', AJHR, 1886, G4

[239] The names appear in this form in the Report. ibid., p 2; iwi affiliation added, Mitchell and Mitchell, 'Motueka Occupation Reserves' (doc A32) p 75

[240] 'Report of Commission of Inquiry into Native Reserves at Arahura, Greymouth, Nelson, and Motueka', AJHR, 1886, G4, pp 2–3.

[241] ibid., pp 2–3. This was consistent with the view taken by Mackay as Commissioner of Native Reserves that when the value of an estate was enhanced by the tenant's capital and labour, 'it would be inequitable

Maori who would let the land rather than cultivate it does not hold up when the Trust itself would put the land up for lease if it was not required for cultivation.

It would be appropriate here to explain the nature of the Motueka Occupation Reserves under the Public Trustee. The occupation reserves, although listed as tenths, had always remained the property of those to whom they had been allocated and their successors. In 1883, the total area was reported as 1,295 acres. (This may have included 4 sections at Sandy Bay which were later dealt with separately.) According to the figures supplied to the Kenrick Commission in 1886, a population of 50 retained some 1,000 acres for their own use, while another 150 acres had been leased to Europeans through the Native Reserve Commissioner.[242]

When the administration passed to the Public Trustee, there were a number of changes for this category of reserve. Payments now went through the Wellington office instead of directly to the owners as they had previously done. The various payments to those who were entitled to rents from leases of parts of sections in Motueka began to appear as separate accounts under the headings of the section numbers. Some very small pieces of land had been let, as little as a quarter of an acre. It proved extremely difficult for the Public Trustee to keep up to date with numerous leases and a complicated pattern of ownership. One person could well have different interests in separate parts of sections, with leases falling due at different times.

The Public Trust officers made several appeals for clarification to the previous administrator, Alexander Mackay, whose records of owners, subdivisions and leases they were working from. A letter written by him in 1889, some six years after the Public Trustee had taken over, indicates the confused state of the payments of rent from these reserves:

> Touching the portions of the Motueka Sections recently let, I assume that these lands were formerly let and on the leases falling in that the Natives entitled to the land have relet these parcels under informal agreements to European Tenants and at the same time have possibly been receiving a proportionate share of rent accruing under existing Leases on other parts of the same Sections owing to the original list of beneficiaries not having been revised and the names of the recipients struck out at the termination of the special leases under which they demand a right to the share of the rent.

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to apply the results of all such outlay to the aggrandizement of the persons beneficially interested'. 18 May 1883, 'Report on the State and Condition of Native Reserves in the Colony,' AJHR, 1883, G–7, p 3

[242] 'Report of Commission of Inquiry into Native Reserves at Arahura, Greymouth, Nelson, and Motueka', AJHR, 1886, G4, p 2; iwi affiliation added, Mitchell and Mitchell, 'Motueka Occupation Reserves' (doc A32) p 75

> If this has happened some of the recipients whose rents were still accruing under existing Leases have been deprived of part of their income.[243]

The system followed by the Public Trust Office was to pay all the rents accruing from a particular section into the separate account for that section, and then distribute the money in proportionate shares to all the people on the original list of recipients. Mackay was concerned that payments had been made to everyone on the list, regardless of whether the lease that entitled them to payments still existed. He went on to point out that:

> The 'tenths' in the Motueka district occupied by the Natives are in a peculiar position, as these lands are practically the property of the Natives to whom they were allotted, although vested in the Public Trustee under the Act of 1882, and amending Acts.[244]

In response to the general recommendations of the Kenrick report, the Westland and Nelson Native Reserve Act 1887 laid down in some detail the steps for the leasing of the reserves. All leases were now to be for 21 years. The steps for valuation of existing leases were also carefully outlined. The lessee's improvements were to be subject to valuation by two valuers, with an umpire if they could not agree. Leases were to be set by public competition in order that rental values would reflect market values. The upset rental would be the value of land without improvements, and the purchaser would have to pay for the improvements. The Public Trustee could accept the surrender of any lease, and also had the power to reduce rents. Lessees were now given the use of reserved land indefinitely, by section 14, which stated:

> In all leases to be hereinafter granted there shall be a condition for a new ascertainment of the rent at the expiry or surrender of every such lease, and that the then holder shall have the right of renewal for a like term upon the same conditions and covenants (including the right of renewal), subject only to the difference that the rent shall be the rent hereinbefore provided.[245]

Maori members objected in Parliament both to the control of the Public Trustee over Maori reserves and the extension of perpetually renewable leases to all trust lands. In Nelson, the tenths themselves had been vested in trustees or officials from the beginning. Most administrators had believed that long leases were very much to the

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[243] A Mackay to Public Trustee, 22 September 1889, AAMK 869/156e, Native Reserves Motueka, 1891–1917

[244] ibid.

[245] Westland and Nelson Native Reserve Act, 1887, 51 Vict. No. 29, s.14.

advantage of the property. The approach that was now being provided for in legislation was not new.

It was quite different with the Motueka occupation reserves, however, where Maori occupied the land, received rents directly and, in spite of the restrictive policies, carried on short-term, informal leasing.

The Westland and Nelson Native Reserves Act, 1887, standardised the length of leases of Native Reserves in Nelson to 21 years, with a provision for perpetual renewal upon readjustment of rent. As the Public Trustee held the authority to execute all leases Maori continued to have no control over the Nelson Tenths, especially with the provisions for perpetual lease which meant that the land could remain out of Maori hands for ever. This Act also brought those reserves in mining districts under the provisions of the 1886 Mining Act, making them subject to Publics Works takings in accordance with the 1882 Public Works Act. The Public Trustee was to be treated with in such takings and was entitled to claim public works compensation. That compensation was then held by the Public Trustee for the Maori owners and invested in Government securities or mortgages.

The 1895 Native Reserves Amendment Act consolidated the powers of the Public Trustee and suborned the powers of the Native Land Court to those of the Trustee. Section three of the 1895 Native Reserves Amendment Act restricted the Native Land Court's jurisdiction to simply establishing who were the beneficial owners of trust reserves, and determining their respective rights and interests. No order made by the Court could give any owner the power to dispose of their rights or interests, nor divest the Public Trustee of any land. All Land Court orders regarding vested lands had to have the consent of the Public Trustee. Maori themselves were prevented from dealing in the land. No land vested in the Public Trustee could be disposed of by the beneficial owner and the Public Trustee could grant new leases of lands currently under lease – without the consent of the beneficial owners. The 1895 Amendment Act ensured that leases would contain the right of perpetual renewal. This was to have particular bearing on the Motueka occupation reserves.

The Public Trustee's powers were further consolidated in the 1896 Amendment Act which sought to clarify the role and powers of the Trustee as confusion had arisen in regard to these issues. According to the preamble, doubts had arisen 'as to the position of certain Native reserves, generally known as the New Zealand Company's reserved "tenths"'. It was confirmed that they were under the Public Trustee and the

Nelson and Motueka sections were listed in the first schedule. The most important aspect of this Act is found in the provisions made under sections 3 and 4 for the disbursement of the accumulated funds and for future funds. Hammerton, the Public Trustee at this point, believed that the law prohibited him from paying out the accrued rents as the benefit from the Tenths were to go to the generations hereafter. As a result 'the Public Trustee held them in trust, and would not disburse them for the benefit of the present generation'. According to Seddon, this created a situation where 'unfortunate persons who had been entitled to have the benefit of [the moneys] had been absolutely starving. ...These Natives had been petitioning Parliament session after session, and could get no relief'.[246] This view was supported by James Carroll who stated that in Nelson and Motueka there were 'large numbers found every year to be in indigent circumstances, and continually applying to the Government for assistance – not being able to get any consideration from the Public Trustee'.[247]

The 1896 Amendment Act made a major change in how the Trust funds were spent. Up until this point, none of the rents from the tenths had been distributed to the beneficial owners. Section 3 of the Act now gave the Public Trustee the authority to distribute three-quarters of the accumulated rents of the reserved lands held by the Public Trustee (as of March 1896) to the beneficial owners according to the shares awarded by the Native Land Court. The remaining quarter was to be held by the Public Trustee as a relief fund for the poor.[248] Section four of the Act provided for fifty percent of all proceeds received after 31 March 1896 to be distributed to the beneficiaries with the remaining half to be applied at the Public Trustee's discretion 'towards the physical, social, moral, and pecuniary benefit of the natives individually or collectively interested therein, and the relief of such of them as are poor and distressed'.[249] Although this change reduced some of the Trust's paternalism by making payments of half the rents to owners, it relied on the Native Land Court having determined those owners correctly, and may have reduced some people's access to the Trust's benefits. Claimants should comment further on this point.

The Public Trustee administered the Nelson and Motueka reserves for 38 years. As stated earlier, the accumulated rents from the first half of this period were not paid out to the beneficiaries until 1896 when the situation was cleared up through legislation.

[246] NZPD, 1896, p, 438.
[247] ibid., p, 439.
[248] Native Reserves Act Amendment Act, 1896, s. 3, 60 V. No. 41

The question then arose as to whom that money should be paid. In 1883, Judge Alexander Mackay had been required by the Public Trustee to forward returns of Maori beneficially interested in reserves. He noted, for Nelson, that more information was needed.[250] The proceeds from the tenths continued to go into a general fund. The next section of this chapter deals with the formal resolution of who was legally entitled to receive the benefits of the fund.

4.3 THE NATIVE LAND COURT: DETERMINING OWNER'S INTERESTS:

Until 1882, the tenths had been considered to be Crown land and they were therefore not subject to the Native Land Court. After the enactment of the Native Reserves Act of that year, it became possible to have beneficial interests in trust reserves investigated by the Native Land Court at the request of the Native Reserves Commissioner acting under the Public Trustee.

In May 1892, the Public Trust Office applied to Judge Mackay for assistance in determining 'in what Reserve the N.Z. Company's tenths are to be found and other particulars that will lead to the identification of the land'.[251] They were aware that the Tenths existed, but they were unsure of their status as Native Reserves and exactly where they were located.[252] At this stage the Nelson reserves had been under the administration of the Public Trustee for ten years. Mackay was requested to inform the Trust Office as to 'whether any lands in the Nelson District have at any time been set apart as Tenths'.[253] They were also unsure as to the difference between the occupation reserves at Motueka and the Tenths reserves proper. Even the Deputy Trustee in Nelson, J. Catley, was unclear. He asked whether 'the Natives who were allowed to occupy portions of the New Zealand Company's tenths have a right to consider them vested interests or, are they not at the death of the occupier subject to the redistribution of the Public Trustee'.[254]

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[249] ibid., s. 4, 60 V. No. 41.
[250] Mackay memo to Public Trustee, 22 February 1883. MA–MT 1/1B
[251] Public Trust Office Memo, 4 May 1892, MA 1 Box 147 6/79 Pt6 South Island Tenths Gen. 1887-1917.
[252] Public Trust Office Memo, 4 May 1892, MA 1 Box 147 6/79 Pt6 South Island Tenths Gen. 1887-1917.
[253] Public Trustee to Judge Mackay, 13 May 1892, MA 1 Box 147 6/79 Pt6 South Island Tenths Gen. 1887-1917.
[254] Deputy Public Trustee to Public Trust Office, MA 1 Box 147 6/79 Pt 6 South Island Tenths General 1887-1917.

In that same year the Public Trustee applied to the Native Land Court to determine the beneficiaries of the Nelson Tenths. Judge Mackay began the Native Land Court hearing on 7 November 1892.[255] Evidence given by Maori at the Land Court hearings makes it clear that Maori themselves continued to misunderstand the nature of these reserves. Most of the evidence given focused on customary rights, that is, the basis of each tribe's claim to the land comprising the Nelson and Motueka Tenths. However, occasional comments made in regards to the sale of the land to the Company and the promises of reserves serve to illustrate the level of confusion amongst Maori as to reserves in their region. For example, Hohaia Rangiauru of Ngati Awa stated that he had 'heard the Reserves were made for peoples who were found at Motueka by the Company'.[256] He later identified these people as Ngati Rarua and Ngati Awa. Rangiauru went on to say '[I] don't know whether the people understand the nature of the pukapukas we signed. They did not understand that the land was sold to the Europeans but they did not attempt to repudiate the disposal of it afterwards in the arrival of the early settlers...don't know whether Rangitoto and Wakapuaka on to Nelson and Motueka belong to the same category.' He was, however, certain that 'the people of Motueka viz. the Ngatirarua and Ngatiawa knew at the outset that the Reserves at Nelson and Motueka were for them'.[257]

Mackay stated in his Judgement that the purpose of the Court hearing had been to investigate 'the beneficial interests of the persons entitled to the usufruct of these lands'.[258] To do this he had seen it as necessary to carry the inquiry back to the date the land was sold to the Company.[259] Mackay decided in favour of Ngati Rarua, Ngati Koata, Ngati Tama, and Ngati Awa. In his opinion they were entitled to this land because they had 'retained their right after the Conquest through residing on and cultivating the land', and they were in occupation at the time the land was sold to the New Zealand Company.[260] Mackay dismissed the claims of Ngati Toa, Ngati Kuia, and Rangitane, arguing that they did not possess rights to the land sold to the Company.

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[255] This report will limit its discussion to the judgement of the Court as to the relative interests of those who were awarded beneficial ownership. It will not deal with issues of ownership.
[256] Maori Land Court (MLC) Native Minute Book (NMB) 2, p. 295.
[257] ibid., p. 296.
[258] MLC NMB 3, p. 1.
[259] ibid., p. 2.
[260] MLC NMB 2, p. 7.

The successful claimant groups were requested to 'furnish lists of the persons being the Survivors of the vendors, including also those who are deceased'.[261] The lists compiled by each group were submitted and read out in front of the Land Court. The list from Ngati Koata was read out and affirmed. The lists of Ngati Rarua and Ngati Tama were read out and both lists were 'confirmed and fresh names added. Returned to Applicants to have additional names added if any and certain alterations made'. A similar requirement was made for Ngati Awa, except no fresh names were added at the Court. Three other groups also put forward lists. These were Ngati Huiaiu, Ngati Rahiri, and Kaitangata. The former were decided by Mackay to have no claim to the New Zealand Company's purchase and their list was rejected. Ngati Rahiri had rights to 'a small parcel of land allotted to them for cultivation', but no rights to the Tenths. Five of the 12 Kaitangata claimants on the list were 'admitted to be entitled'.[262]

The number of interested parties named on each of the lists varied considerably. Ngati Koata and Ngati Rarua submitted the largest number of listed claimants, with 122 and 121 respectively. The numbers on the other lists were much smaller. Ngati Tama put forward a list of 37 individuals, and Ngati Awa had 23 on theirs. As mentioned, Kaitangata had five of their 12 named claimants awarded interests.

Once the final lists were submitted, successors were declared where necessary and a Court order was issued to 309 persons 'beneficially interested in the aforesaid lands'.[263] The differences in the relative interests were considerable. Several beneficial owners held shares in the thousands, but even at the outset there were owners whose shares amounted to fewer than 20 out of a total of 151,000 shares. Although the schedule of addresses was incompletely filled in, there is enough information to show that the owners were scattered, with the total of those in the North Island almost equal to those living in Nelson and Marlborough.[264]

Mackay included in his judgement a list of the total area of land in the Nelson Settlement under Spain's award, and broke that down into acreage by district as follows: Nelson 11,000 acres, Waimea 38,000 acres, Moutere 15,000 acres, Motueka 42,000

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[261] ibid., p. 8.
[262] ibid., pp. 37-8.
[263] Native Land Court Order, 14 March 1893, with schedule marked A, MA 1 6/79; J Halder, pp-1881–1891
[264] 'Schedule showing the addresses of persons enumerated . . . attached to the Order of the Court, 14 March 1893', ibid., pp 1893–1897

acres, Massacre Bay, 45,000 acres. Mackay did not state how much land was involved in the reserves; the land to which he was determining beneficial ownership.[265]

Mackay based his allocation of shares on the Spain award of 151,000 acres (which included 15,100 acres of reserves, 10,000 of which had never been physically created). The successful claimants were allotted areas in a schedule of columns under heading of acres, roods and perches to an estate of 151,000 acres, which had never existed except on paper. The 'acres' were then turned into proportional shares of the fund for each group recognised by Mackay to be party to the historic sales.[266] Ngati Koata received 20,000 shares, Ngati Tama were awarded 40,000 shares, Ngati Rarua received 69,000 shares, and Ngati Awa received 22,000 shares.[267] It is not clear how Mackay arrived at these precise figures as the hearing had dealt with districts and not boundaries. It is important to note that in the judgement no attempt was made to associate names on the list of beneficial owners with any specific portion of the land that comprised the tenths. Shares, not land, were awarded by this process.

In 1901, on the application of the Public Trustee, the Native Land Court under Judge Alexander Mackay also awarded beneficial ownership to the Motueka occupation reserves. Five people were 'selected as Kaiwhakahaere's [sic] for the persons concerned'. They were Tuiti Makitonore, Wi Neera te Kanae, Kerei Roera, Rewi Maaka, and Pamariki Paaka. In a marked departure from the form taken in the Tenths Land Court hearing, an adjournment was granted to 'enable the several parties concerned to arrange the mode of procedure'.[268]

During the hearing, lists of interested parties were produced for each section in Motueka. They were then either accepted or objections were made and evidence heard as to the ineligibility of certain persons. The claims (and accompanying lists) were based on the allocations made by Commissioners in the late 1850s and by James Mackay in the early 1860s. Maori witnesses frequently stated that the take of a particular individual to land at Motueka was that they were 'found there by the Commissioner and the Surveyor in 1858'.[269] The plans produced by the surveyor and then by James Mackay in 1863 were also produced as evidence of take; Kerei Pukekohatu claimed that 'If Tapata's name is on the plan it will be right, if it is not it

[265] MLC NMB 3, p. 2.
[266] MLC NMB 2, p 154
[267] ibid., p 154
[268] MLC NMB 5, p. 42
[269] Hohaia Rangiuru, MLC NMB 5, p. 65, also see pp. 44, 45, 52

will be wrong',[270] and another witness later stated that 'The allotment of the Commissioner is the correct adjustment'.[271] Judge Alexander Mackay also followed this line of reasoning. His judgement for section 157 at Motueka was that:

> as Tamati Parana had been recognised as the person beneficially entitled to the part on which his name was written on the plan that it was evidence of some right which would require coercive proof that no such right did or could have existed before the name could be otherwise disposed of.[272]

When Rewi Maaka challenged the inclusion of Mio in sections 187 and 188, Hemi Matenga objected that 'this form of proceeding [was] a waste of time. Mio's name [was] on the original map and occupation [had] never been objected to'. This view was supported by Pamariki Paaka, Tuiti Makitonore, and Wi Neera as well as Judge Mackay. The Judge pointed out to Maaka that:

> there did not appear to be any necessity to raise a question about Mio's right to the area allotted him as his right to the land had been investigated in 1865 at the time the last subdivision was adjusted. No one objected at that time and it must be assumed that the matter was then settled.[273]

It was stipulated in the Land Court order that 'owners' were required to occupy or cultivate the land themselves. If they ceased to do so, the land came under the administration of the Public Trustee. The Trustee was in turn required to offer the land for lease in accordance with current law. The same practices were followed for valuation as with other trust lands and the leases became perpetually renewable. Rent continued to be paid to those beneficial owners who had been recognised by the Native Land Court and their successors, as determined by the Court. Altogether, this represented a major change in practice for the Motueka occupation reserves, with a significant reduction of their owners' control of leases and rents.

4.4 LEASING OF TENTHS RESERVED LAND:

The process for leasing land through the Public Trustee was clearly established. When the District Agent of the Public Trustee received the authority, he placed copies of a tracing of the area to be leased with the Postmaster of that district, together with sets of the Conditions of Lease and Tender forms. Advertisements were placed in both

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[270] MLC NMB 5, p. 63
[271] ibid., p. 45
[272] ibid., p. 49
[273] ibid., p. 59

Nelson newspapers 'three times a week for two weeks'.[274] Tenders for the lease were to be sent in to the Trust Office on the form supplied, attached to a 'marked cheque (good for two weeks) Bank Draft or Post Office Order', for an amount equal to half a year's rent at the rate tendered. The tender accepted was the highest offer made over the upset rental. As well as this, if any person other than the occupier at the time purchased the lease, they were liable for the payment of the value of improvements on the land to the Public Trustee.[275]

Conditions for leasing under the legislation changed very little, with the major difference being the length and renewability of the lease. In 1901, the conditions outlined by the Trust Office for the lease of tenths reserve land located within Nelson township were as follows:

a. That the lessee named therein will not assign or under-let or part with the possession of the premises or any part thereof without the consent of the lessor first had and obtained.
b. That the rent thereof will be payable half yearly always in advance.
c. That the lessee named therein will not carry on any noxious, noisome or offensive art, trade or business.
d. And shall and will erect and put on the boundaries of the said land where no sufficient fence exists a good and sufficient fence within the meaning of "the Fencing Act 1895" and any amendments thereof, and shall and will at all time during the said term keep the fences erected in proper repair and condition and deliver up the premises well and sufficiently fenced.
e. All rates, taxes and assessments (other than Land Tax) imposed on the respective land or premises leased are to be paid by the lessee and no charge upon or deduction from the rent shall be made on account of the same.[276]

Under the Public Trustee Act 1882, expired leases were renewed under 63 year tenancies, that is three terms of 21 years. After the Westland and Nelson Native Reserves Act 1887, expired leases could be converted to leases with rights of perpetual renewal. This meant that a lease that expired in 1886 was subject to renewal at two 21 year periods, while one that expired the following year was protected by perpetual renewal. Things became further complicated by the 1895 Act under which no public competition was required to select a tenant when a lease expired. Sections 6 & 7 of the

[274] See for example, Public Trustee to District Agent Nelson, 7 August 1899, AAMK 869/157b MA 6/23a Motueka 1899, in Wai 785 A39 Doc 4.
[275] See 'Conditions for Leasing Parts Native Reserves in the City Nelson By Tender', enclosure in Watkis, District Agent Wellington, to District Agent in Nelson, 26 June 1901, in Wai 785 A39 Doc 4.

1895 Act, gave the Public Trustee the power to renew leases without the consent of the owners so that no competition for the lease was required when the term expired. However, if a 63 year term lease expired after 1895 it was still subject to public competition for the resumption of the lease.[277] In all cases, the amount of rent payable under an expired lease came up for re-evaluation at the renewal or onsale of the lease.

Under the 1913 Native Land Claims Adjustment Act, the Public Trustee became a leasing authority as defined under the Public Bodies Leases Act 1908. This had two major impacts on Nelson Tenths leases. Firstly, existing fixed term leases could be converted to perpetual leases at any time, subject to public competition. A lessee could thus apply for his or her lease to be converted to a perpetual one, but faced the risk of being outbid and losing the lease altogether.[278] The second effect was that rents became annually adjustable, regardless of perpetuity or otherwise.[279] This was a clause more suited to beneficial owners than lessees, as the period between rent reviews was shortened considerably, thus bringing in more income.

When a lease expired the land underwent valuation to establish the upset rental and the value of all if any improvements on the land. This was generally carried out by a contracted valuer and if the lessee disagreed with the amount another valuer could be asked to provide a valuation for them. If the two valuers could not agree on the base value or the value of the improvements, then arbitration was necessary. In 1917 the Public Trustee expressed concern over a lessee acting as a valuator in the assessment of his new rental, saying that although it was not prohibited under the Westland and Nelson Native Reserves Act 1887, it was 'undesirable'. The Trustee wanted the Government Valuer to act for any of the lessees as, having no interest in the land, he was 'to be preferred to a person who as a lessee is so much interested'.[280]

The Public Trustee expressed himself concerned about the extent of valuers' fees in mid-1917. He pointed out that a fee of 10/6 was stated for a 2 rood section and the new rental fixed at 7/6 per annum. For another lease of the same size in the same area the valuer's fees were given at £1:11:6 and the rent at 12/6 per annum. The Trustee stated: 'I cannot see why the charge in the latter case should be three times the former as

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[276] 'Conditions for Leasing Parts Native Reserves in the City of Nelson by Tender', enclosed in Public Trustee to District Agent Nelson, 26 June 1901, Wai 785 A39 Doc. 4.
[277] Mitchell, '*Leasing Issues Relating to the Nelson and Motueka Tenths and Occupation Reserves*', Wai 785 A29, pp. 34-5.
[278] ibid., p. 35.
[279] ibid., p. 58.
[280] Public Trustee to District Manager Nelson, 15 March 1917, Wai 785 A39 Doc. 4.

the two leaseholds are in the same area and there is very little difference between the rentals'. He gave several other examples of valuation fees much higher than the annual rent. He then stated that 'it is quite unreasonable that in the second case above mentioned that the Native owners should not receive rent for nearly three years so as to liquidate the valuator's fee in the assessment of the new rental of this property'.[281]

The Trustee reserved the right not to accept any tender, and in 1899 the District Agent for the Trustee in Nelson, E.P. Watkis, wrote that 'we considered it just not to accept any tenders from the Natives for two reasons viz. That it would be increasing the risk of having the trouble to take back the land as their tenders were too high to enable them to make the rent and their tendering were not desirable as tenants being of the "loafing" fraternity'.[282] It should be noted that in the schedule attached to this letter, it is shown that Wi Katene and Karani Wi Katene both offered tenders for land in Motueka, and according to the marks in the margins of this schedule, their tenders were accepted for consideration.[283]

Watkis pointed out to Poynton, the Trustee, in 1903 that of all tenders for land in Motueka, that of Mr Bartlett should 'under ordinary circumstances' be the one accepted as it was the highest. However, Watkis had several reservations about Bartlett, namely that he already had several holdings and this may have been stretching his limits as he had 'difficulty in getting him to keep up the rents on the other land'. In contrast, Mr Gardner (whose tender was at a lower rate) had 'really improved the land in question and enhanced its letting value' in the assumption that he would get the renewed lease. Watkis further stated 'I think he would make the better tenant'. However, as Gardner's tender was 10% lower than Bartlett's, it was felt that accepting his tender might call into question 'the principles of tendering' and engender 'mistrust in the minds of the public'. For these reasons Watkis informed Poynton that he did 'not know how you can avoid accepting [Bartlett's tender]'.[284] Consequently, Bartlett's tender was accepted.[285] It is reasonable to question whether the Trustee's acceptance of the tender of a man who had

[281] Public Trustee to District Manager Nelson, 5 July 1917, Wai 785 A39 Doc. 4
[282] Watkis to Public Trustee, 5 September 1899, AAMK 869/156e MA 6/23a: Native Reserves, Motueka 1891-1917, in Wai 785 A39 Doc 4.
[283] Enclosure in Watkis to Public Trustee, 5 September 1899, AAMK 869/156e MA 6/23a: Native Reserves, Motueka 1891-1917, in Wai 785 A39 Doc 4.
[284] Watkis to Poynton, 7 January 1903, AAMK 869/158c MA 6/23a Native Reserves, Motueka 1902-1903, Wai 785 A39 Doc. 4. Also covered in Mitchell 9b *'Leasing Issues Relating to the Nelson and Motueka Tenths and Occupation Reserves'*, Wai 785 A29, pp. 44-5.
[285] Poynton to Watkis, 12 January 1903, AAMK 869/158c MA 6/23a Native Reserves, Motueka 1902-1903, Wai 785 A39 Doc. 4.

a proven record of reneging on rent payments was in the best interests of his beneficiaries. There was, of course, no consultation with the interested owners as to which tenant they preferred. The Trustee had complete autonomy in the selection of lessees. He also had discretion which is demonstrated in his decision the year previously to extend Gardner's lease so as to allow him to harvest his market gardens on the land before it was valued.[286]

Owners of the Motueka Occupation Reserves were consulted about the extension or subletting of leases as little as they were consulted about the selection of tenants. Evidence, in fact, shows that lessees were consulted instead of the owners. Correspondence occurred between the Public Trust office and the lessee of section 129 in Motueka (Robert Staples) regarding the subletting of three-quarters of an acre of the section to the Waimea County Council in 1908. Staples was asked if he objected to the Council having the land and replied that as it was of no use to him 'I am quite happy that the Public Trustee should let it to the Waimea County Council'.[287]

In another similar occurrence in 1910, the District Agent approached the lessees of three Tenths sections in Nelson in regards to Council requests over a street to get their consent to a proposed change in the street. The consent of the Public Trustee was also required, but it was not necessary to consult the Maori owners of the leased land.[288]

In early 1901 Poynton, the Public Trustee, wrote to Watkis, the Nelson District Agent, in regards to three part sections at Motueka. Poynton informed Watkis that the land was leased to a Mr. Chant on a yearly basis on the proviso that he could renew the lease annually 'until such time as the Public Trustee requires the land'. Given this situation, Poynton wished to give a six month notice to Chant and offer the land to Pamariki Paaka, who had recently sold his interest in land he occupied at Motueka and was 'anxious to get possession of these part sections, in order that he may build a house and reside thereon'.[289]

Watkis replied that such action would leave the Trust office open to a grievance claim from Chant, who had been informed that the reason for the one-year renewable lease was that the Public Trustee was waiting on successors to the land being

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[286] Public Trustee to District Agent Nelson, 5 August 1902, AAMK 869/158c MA 6/23a Native Reserves, Motueka 1902-1903, Wai 785 A39 Doc. 4.
[287] Watkis to Staples, 3 February 1908, and copied reply from Staples 13 February 1908, AAMK 869/159a MA 6/23a Motueka Reserves, 1907-1908, Wai 785 A39 Doc. 4.
[288] James Allen, District Manager, to Public Trustee, 20 September 1910, Maori Trustee's office, 6/78/, Wai 785 A39 Doc. 4.

determined by the Native Land Court, and offering it to Paaka, who was not a successor, would contradict this statement. Watkis recommended the land be put up for tender.[290] The Trustee's response to this was to state his intention of submitting the question of leasing the two sections to the Native Reserves Board at its next meeting in May of 1902. He was recommending that the lease be offered by public auction rather than tender, 'and this will enable whoever may desire to procure a lease of the land to have an equal chance of bidding for it'. He added that the Agent should 'inform Mr Paaka of the position'.[291]

The lack of Maori control over reserved land in the Nelson area is further demonstrated in a letter written to a lessee in Motueka, Joseph Boyes. Boyes had taken up a lease direct from Motueka occupation reserve beneficiaries. The Deputy Public Trustee informed Boyes that

> these reserves are vested absolutely in The Public Trustee and he alone has the right to lease and otherwise deal with them. The Natives have only a life interest in the rents and have no more right to let the lands than you have.
> As the result of a recent inspection of the reserves at Motueka by a responsible Officer of my Department I learn that some of the Natives have, instead of utilizing for themselves the unleased portions of such Reserves, been letting them to Europeans, receiving the rents direct. Your own case is an instance and as you are not in lawful occupation I regret having to treat you as a trespasser.
> I am now having a survey made of these Reserves and when this is completed I expect to have a number of Sections, which are at present either illegally let, badly looked after by the Natives or lying idle, ready for offering for lease by public competition.[292]

Maori dissatisfaction with the administration of the Trust also comes through in some examples. The Public Trust Office had to deal with a situation where land beneficially owned by Pamariki Paaka at Motueka (occupation reserve land) had been informally exchanged by Paaka with his neighbours, Michael Simpson and Warena Tiwini, for their neighbouring sections. As the Trustee outlined in 1913:

> a considerable number of years ago, by arrangement between the parties, Simpson vacated No. 1 property and resided on No. 3, Pamariki Paaka being beneficial owner of both properties. At the same time Paaka and Warena made an exchange

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[289] Poynton to Watkis, 29 March 1901, AAMK 869/158a MA 6/23a Motueka Reserve 1901, Wai 785 A39 Doc. 4.
[290] Watkis to Poynton, 2 April 1901, AAMK 869/158a MA 6/23a Motueka Reserve 1901, Wai 785 A39 Doc. 4.
[291] Poynton to District Agent Nelson, 10 April 1901, AAMK 869/158a MA 6/23a Motueka Reserve 1901, Wai 785 A39 Doc. 4.
[292] Deputy Public Trustee to Joseph Boyes, 17 June 1899, AAMK 869/156e MA 6/23a, Native Reserves, Motueka 1891-1917, in *Report 9E – Refs: Archival Reference Material, to Accompany Report 9E: Motueka Occupation Reserves*, Wai 785 A38(a) p. 185.

> of properties 1 and 2. It appears that the arrangement is a desirable one from the point of view of all parties. The exchange took place before property 2 was leased to Hogan.[293]

A later account notes that this exchange meant that the individuals involved ended up with lands closer to their other holdings, making all sections more productive. It was also noted that these informal exchanges had been in place for 19 years.[294] Hammerton's view of the matter was strictly by the book. He said:

> as to Simpson's position, it seems impossible to give him any assistance in securing his tenancy over property No. 3 in lieu of No. 1. The most the Public Trustee could do would be to accept a surrender of the existing lease of property No. 1 (with the consent of the Native Reserves Board)...and offer property No. 3 for lease by public auction or public tender subject to the conditions imposed by Section 15 of the Native Reserves Act 1882. Simpson would then be obliged to take his chance of securing the new lease. Moreover, if he has improved the property, he will undoubtedly pay a much higher rent than at present, as the best improved rent must be obtained.

In regards to the exchange of sections made between Tiwini and Paaka, the Trustee pointed out that 'section 2 of the Native Reserves Act Amendment Act 1895 prohibits any dealings by the beneficial owners, and in view of this statutory provision I do not see how the exchange can possibly be given effect to'.[295] Simpson argued that 'there are cases where a little discretion according to circumstances may be used with benefit to all concerned'. Not only was the exchange and the switch in Simpson's leases agreed to by all parties, but Simpson and his father had been tenants of these lands for fifty years and 'paid a large sum of money by way of rent and never been behind in our payments once during the whole of that time'.[296] In the end, as the only way to give validity to these transactions was through new legislation, the question of whether such legislation should be sought was put before the Native Reserves Board in July 1915. The Board resolved that they could see 'no objection provided all parties agree in writing'.[297] The final result was that it had to go to Parliament, with a special mention in the Native Land Amendment and Native Land Claims Adjustment Act, 1915, authorising the

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[293] Public Trust Office file note, 4 June 1913, AAMK 869 160d 6/23a Motueka 1913-1916, in Wai 785 A39 doc. 19.
[294] Memo to Native Reserves Board, 12 July 1915, AAMK 869 160d 6/23a Motueka 1913-1916, in Wai 785 A39 doc. 19.
[295] Public Trust Office file note, 4 June 1913, AAMK 869 160d 6/23a Motueka 1913-1916, in Wai 785 A39 doc. 19.
[296] Michael Simpson to James Allen (Nelson District Manager for public Trust Office), 15 December 1913, AAMK 869 160d 6/23a Motueka 1913-1916, in Wai 785 A39 doc. 19.
[297] Memo to Native Reserves Board, 12 July 1915, AAMK 869 160d 6/23a Motueka 1913-1916, in Wai 785 A39 doc. 19.

Public Trustee to validate the new lease to Simpson without recourse to public auction, and authorising the Native Land Court to give effect to the exchange in interests done by Tiwini and Paaka.[298]

The Trustee was also required to lease land, where possible, on the request of the beneficial owners. Hohaia Rangiauru contacted the District Agent of the Public Trustee in Nelson, and informed them that he was 'no longer able to cultivate all his lands, [and so] he wished [the Trustee] to take over the undermentioned pieces and deal with them as you did with Paaka's', meaning to lease them.[299] The reasons for this were given by Rangiauru's solicitor in a letter to the Public Trustee. Rangiauru was being pressured for the repayment of a debt to Messer Buxton & Co. Ltd of £210. He initially wanted the Public Trustee to assist him in liquidating the debt and the advance for this was to come from the 'rents accruing due to him'. Failing this, he asked for the Trust Office to yield up or sell some of the lands held in his name.[300] The Trustee replied that although he was not able to advance money out of the rents accruing, he was looking into leasing the land and having the improvements made to the land valued. He said that the cash compensation for those improvements would be given directly to Rangiauru and he 'should then be in a position to satisfy his creditors'.[301]

This case was taken further by Rangiauru following a valuation of the land which left him with less than he was expecting. He wrote to Taare Parata, MP for Southern Maori, asking him to enquire about the land, as he believed that he had been cheated out of a higher valuation of improvements. He ended the letter by saying that 'I think it is a gross injustice to be treated in this way by the Trustee or his subordinates, and consider it is a matter that should be looked into not only for my case but the general shuffling way of how things are done by the Trustee in general when such business takes place'.[302] The official response to Parata was that all due care had been taken with the valuation at the time, and 'no exception was raised to the value by Hohaia, and the land was accordingly leased'. The Minister for the Public Trust Office

[298] Native Land Amendment and Native land Claims Adjustment Act, 1915, 6 Geo. V, No 63, sections 21-22.
[299] District Agent of Public Trustee Nelson to Public Trustee, 9 March 1909, AAMK 869/159b MA 6/23a: Motueka Reserve 1908-1909, in Wai 785 A39 doc. 19.
[300] Messrs Maginnity & Son to Public Trustee, 15 March 1909. AAMK 869/159b MA 6/23a: Motueka Reserve 1908-1909, in Wai 785 A39 doc. 19.
[301] Public Trustee to Messrs Maginnity & Son, 19 March 1909, AAMK 869/159b MA 6/23a: Motueka Reserve 1908-1909, in Wai 785 A39 doc. 19.
[302] Hohaia Rangiauru to C. Parata, 4 August 1913, File of Wakatu Incorporation, in Wai 785 A39 Doc. 19.

went on to assert that 'In all cases of leasing the Public Trustee assures me every care is taken to adequately protect the interests of the beneficial owners'.[303]

The leasing of the occupation reserves at Motueka was not as straightforward as leasing Tenths reserved land. The 'surplus' land in the occupation reserves was to be leased, as it was believed to be of no use to its owner (as in the above example). The nature of the lease was questioned by some as it took the land out of the control of the virtual owner of the occupation land forever. In 1905, Pamariki Paaka of Motueka wrote to James Mackay asking him whether

> in the case of the lands [Mackay] set aside for [Maori] cultivation is not right that those should be given back to us at the expiration of the leases which have been granted by the Public Trustee, because we desire to work them for farms – because we have not any large area of land[304]

Mackay's notes on the translated copy of Paaka's letter, and dated 1 June 1905, state that in his opinion

> Neither my cousin Mr Alexander Mackay who succeeded me as Commissioner of Native Reserves, or the Public Trustee when he took charge of the Trust Reserves, had any right to deal with the lands which I by direction of the Government had specially set apart for Native use and occupation. If these reserves have been so dealt with, it is reverting to the very trouble from which I extricated the Maoris and the European setters in 1861-62-63 & 64[305]

As is evident from previous chapters, this was not the first time there had been confusion over the different nature of the Motueka occupation reserves. In 1897 Alexander Mackay wrote to the Public Trustee stating that the rents accruing from the Moutere and Motueka districts that had previously been paid to individual Maori (that is, the occupation reserves), should be kept out of the new South Island Tenths general fund and the money arising from these lands should continue to be paid to the individuals to whom the land was allotted.[306] The Public Trustee had noticed that part sections of land on account of which the office had paid rent to individual Maori, were now included in the Schedule to the Native Reserves Amendment Act, 1896, as part of the whole section.[307]

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[303] A.L. Herdman to Taare Parata, August 1913, File of Wakatu Incorporation, in Wai 785 A39 Doc. 19.
[304] Pamariki Paaka to James Mackay, 19 May 1905, MA 1 Box 147 6/79 Pt 6 South Island Tenths Gen. 1887-1917.
[305] James Mackay's notes, 1 June 1905, MA 1 Box 147 6/79 Pt6 South Island Tenths Gen. 1887-1917.
[306] A. Mackay to Public Trustee, 5 January 1897, MA 1 Box 147 6/79 Pt 6 South Island Tenths General 1887-1917.
[307] Public Trustee to A. Mackay, 24 December 1896, MA 1 Box 147 6/79 Pt 6 South Island Tenths General 1887-1917.

Although administered separately for the majority of their existence, both the occupation and the Tenths reserves were safeguarded from sale through legislative restrictions on alienation which allowed the Trustee to lease reserved land in Nelson, but not to freehold it and sell it outright. Although reserves in Taranaki were able to be sold on to the Crown under section 23 of the West Coast Settlement Reserves Amendment Act 1913,[308] the situation in Nelson was quite different, where not only was the freeholding of leases not allowed under legislation but was resisted by the Public Trustee on behalf of the reserves' beneficial owners. In 1909 Poynton, the Public Trustee, stated that:

> to give the tenants the right to convert their lease into the freehold would be a violation of the promise to the Native Owners that this reserve would be for them and their descendants forever.... With reserves the Native owners are the third party...no alteration should be made without the consent of the majority of them. At present they are unanimously opposed to giving the freehold.[309]

The land in the Nelson Tenths and Motueka reserves therefore remained inalienable under the Public Trustee and for most of the Maori Trustee's administration. Land could still be taken for public works, but was not able to be sold.

In the early twentieth century, pressure to change the restrictions placed on the alienation of reserved Maori land mounted up from lessees who wanted to buy the freehold of their leases. But requests for the sale of land did not come only from the lessees. Pera Morehu wrote to the Public Trustee in July 1911 stating: 'I am instructed to inform you wether [sic] you should allow my wish of sale of Nelson (10) native reserve being my own share due to me. Hoping you will grant my wish an early reply will oblige'.[310] The response was that as Morehu's 'interest in a share of the rents accruing from the South Island "Tenths" is inalienable', the Public Trustee was unable to sell it.[311] The Trustee was limited in his authority over the lands by the reserves legislation. This meant that he was obliged to reject requests from owners to either freehold, sell, or stop leasing their shares in the land.

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[308] West Coast Settlement Reserves Amendment Act 1913, 4 Geo. V., No. 59, s. 23. This section brought the reserves in Taranaki under the provisions of section 109 of the Native Land Amendment Act 1913, 5 Geo. V., No. 58, which allowed land to be sold to the Government with the consent of the beneficial owners.

[309] Poynton to Ngata, 14 October 1909, MA 1 6/10/4, cited in K. Schmidt and F. Small, *The Maori Trustee 1913-1953*, CFRT report, May 1996 (revised February 1998), p. 92.

[310] Pera Morehu to Public Trustee, 31 July 1911, MA 1 Box 147 6/79 Pt 6 South Island Tenths General 1887-1917.

[311] Deputy Public Trustee to Pera Morehu, 3 August 1911, MA 1 Box 147 6/79 Pt 6 South Island Tenths General 1887-1917.

The administration of the land was only one-part of the Trustee's job. The distribution of the income from those lands was another major function of the Public Trust Office. The amount of rents received by the Trustee from the lease of reserved lands varied from year to year, as did the distribution and utilisation of that income. In 1884, the first full year of the Trust Office's administration of the reserves in Nelson, only £872.19.5 was received in rents (in comparison to the £1,418.18.5 collected in the Nelson reserves, excluding Motueka and Moutere, between April and December 1883). With the pre-existing balance and interest added, the total balance for 1884 came to £931.3.11. After payments for salaries, advertising and valuation costs, and commissions, there was £562.87 left to pay for repairs to the Hostelry and rations for indigent beneficiaries. The only rent paid out was a sum of £258.4 to Ihaia Tainui.[312] No rents were paid out in a general way until after the passage of the 1896 act referred to above. However, there were often payments for 'goods supplied to indigent Natives', and to the maintenance of the Native Hostel in Nelson.[313]

After the passage of the 1896 Act made clear that accrued rents were to be distributed to the beneficiaries, a rent payment was finally made in 1897. This payment was to the sum of £8083.8, which constituted the accumulated income over expenditure of nearly 14 years' worth of rents. This sudden income was much needed by some for immediate wants and the promise of it used to obtain credit. In 1898 the Public Trust Office received an enquiry from A. Scaife, the Trustee's Agent in Nelson, in regards to Taare Inia of Takaka who 'obtained a considerable amount of credit from a local storekeeper on the strength of a large sum that was coming to him in 1896/7'.[314] The money turned out to be his father's and Inia was found to possess no interest in the Tenths at all.[315] Presumably, therefore, development capital was not even a consideration for people unable to make ends meet at the subsistence level.

Following the lump sum payment of rent in 1897 and the beginnings of regular rental distribution, it had to be decided at what periods the rental income from the leased reserves would be handed out. Mrs. H. Rore wrote to the Trustee in March 1897 asking whether the rental on the reserves would be paid 'every quarter or yearly, if so please let

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[312] AJHR, 1885, G-5, p. 11.
[313] See for example AJHR 1887, G-2, pp. 17-18, AJHR 1894, G-5, pp. 3 and 9, and AJHR 1896, G-4, pp. 3 and 10.
[314] A. Scaife to Public Trust Office, 11 July 1898, MA 1 Box 147 6/79 Pt6 South Island Tenths Gen. 1887-1917.

me know because their [sic] is a dispute about [it] among the native [sic]'.[316] An office memo from the Public Trustee noted that 'the periods between the distribution of the Tenths in future has not yet been decided. N. R. [Native Reserve] Rents are distributed quarterly, but I would suggest that as there are so many beneficiaries in these Tenths, and to pay out every quarter the amounts would be so small, that half yearly distributions be made'.[317] This was followed by a letter to Mrs Rore informing her of the half yearly distribution in the future.[318] This fitted in with the six-monthly collection of rents from lessees.[319] The Trustee's comments did not bode well in terms of a significant augmentation of people's incomes from this source.

4.5 THE USE OF THE BENEFIT FUND:

Under every piece of legislation regarding the administration of the income accruing from the Nelson and Motueka reserves during this period, the availability of a benefit fund for the relief of poverty and assistance with medical treatment and education was provided for.

In 1883 J. Catley, the former Secretary to the Commissioners and now the Nelson District Agent of the Public Trustee, requested particulars as to his 'discretionary power re distribution of Sick Rations, attendance of Doctors, Passages, etc'. The Trustee requested Alexander Mackay's comment on the matter, and subsequently sent Catley a memo based on Mackay's recommendations. Mackay explained that 'It has been the practice hitherto to grant Rations to invalid Natives on the doctors order'. He believed that this practice 'ought to be continued as the expense is a legitimate charge on the income accruing from the Reserves in Nelson and Motueka originally set apart under the New Zealand Company's scheme for the benefit of the original vendors and their descendants'. He further recommended that Catley be authorised to grant orders for rations not exceeding £12.10. Anything more than that required the discretionary authority of the Public Trustee.

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[315] ibid.
[316] Mrs. H. Rore to Public Trustee, 5 March 1897, MA 1 Box 147 6/79 Pt 6 South Island Tenths General 1887-1917.
[317] Public Trust Office Memo, 10 March 1897, MA 1 Box 147 6/79 Pt 6 South Island Tenths General 1887-1917.
[318] Deputy Public Trustee to Mrs. H. Rore, 16 March 1897, MA 1 Box 147 6/79 Pt 6 South Island Tenths General 1887-1917.
[319] See following section.

The funds were also used to pay salaries of certain officials involved in operating the Trust, including commissions to the Public Trust Office. However, the Public Trustee was not prepared to pay the salaries of the Assistant Commissioners at £100 per annum for Nelson and £50 per annum for Greymouth, and even queried that of the Interpreter, who had been receiving £40 per annum from the Native Reserve fund. While Mackay defended the position of the European Interpreter as necessary for Maori visiting Nelson for medical reasons or on business, he readily agreed to dispense with the two Maori Assistant Commissioners, 'their services never having been needed'. He indicated that their appointment had been only because the prevailing opinion had been that Maori should have a voice in their own affairs, 'but the practical value of the office has been nil'. As he had been the one making the decisions, he was no doubt in a position to know.

Following the passage of the 1896 Act which ordered the distribution of rental income to beneficiaries, the Public Trustee noted in an office memo that 'it will be seen that we can still carry on the payments for medical attendance, allowances to indigent natives, Education &c that we have been making'.[320]

The Public Trustee wrote to the Nelson District Agent in October 1900, informing him that:

> it is only in cases where Natives are interested in the Tenths and are really in indigent circumstances that the fund as provided by Subsection 3 of Section 4 of The Native Reserves Amendment Act, 1896, is to be applied. You have a list of the Natives interested in these Tenths and it is left to you in cases of this description and where the Natives name appears on the list to find out whether the case is a deserving one or not.[321]

The ability of the beneficiary to pay was one of the deciding factors in the provision of financial assistance. The Public Trustee directed in 1902 that Dr Adams, the medical practitioner in Nelson, was to 'discriminate between natives who are able to pay and those that are not', as the Trustee could not 'guarantee to pay all accounts for such supplies [medical] in future'.[322] Tamati Mokena was held responsible for the Lunatic Asylum fees of Reupene, as Mokena was using Reupene's land while the latter

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[320] File Note of Public Trustee, 4 December 1896, MA 1 Box 147 6/79 Pt 6 South Island Tenths General 1887-1917.
[321] Public Trustee to Nelson District Agent, 19 October 1900, MA 1 box 146 6/79 Native Reserves 1898-1901.
[322] Public Trustee to Nelson District Agent, 23 June 1902, MA 1 box 147 6/79 South Island Tenths 1901-1907.

was in the asylum. The fees came out of Reupene's rents from the Motueka Occupation Reserves, due to the Trust Office from Mokena.[323]

When the District Agent received applications for aid, he passed the names of the applicants on to the local Constable to provide information as to their situation and consequent suitability for aid. To be suitable for assistance, an applicant had to be in indigent circumstances. In October 1898 Constable MacKay reported on several Maori who had presented applications. His verdict was that 'they are all in possession of good land, youth, health, & everything tending to make life enjoyable if not for their idle & lazy habits'.[324] He went on to explain that only one of the applicants was entitled to the Tenths fund and he (Mason) did not 'wish his name or family mentioned in the applications'. Mason had bought a section of land from his brother-in-law (another of the applicants) for £200 in cash. Another of the applicants had left his employment as his employer would not advance him money to buy a bicycle. Yet another applicant was deemed unsuitable as he would 'do very well if [he] worked and did not frequent public houses'.[325] This was the type of advice provided by the local non-Maori law enforcement authority; different advice might well have come from the Maori community itself. Instead, Maori were placed in the position of begging Pakeha authorities for assistance from the benefit fund.

There was some room for the District Agent to act on his own initiative in cases he thought were urgent and deserving. In 1905 the District Agent was faced with paying for food and medical bills for Mrs Akitini and her children (one of whom had typhoid fever). He said that he 'refused at first to give anything, but after seeing the Doctor on the subject, I felt sure you would sanction reasonable supplies...there was no time to write for your sanction and explain matters'.[326]

It is clear that everyday needs continued to be met from the fund, although the returns for this period are not as detailed as those provided in the 1850s and 1860s. In 1882, £170 was expended on 'provisions and clothing for Natives'.[327] Clothing was provided for a 'Native boy committed to Burnham' in 1893.[328] A tomb railing and

[323] Nelson District Agent to public Trustee, 2 May 1906, AAMK 869/158e MA 6/23a: Motueka Reserve 1906, in Wai 785 A38(a), p. 234.
[324] Constable Jos MacKay to Agent for the Public Trustee Nelson, 25 October 1898, MA 1 Box 146 6/79 Native Reserves-Native Hostelry and Indigent Natives 1898-1901.
[325] ibid.
[326] Nelson District Agent to Public Trustee, 13 February 1905, MA 1 box 147 6/79 South Island Tenths 1901-1907
[327] AJHR 1883
[328] AJHR 1894.

stone were also paid for,[329] as was a 'truss for Roreraka'.[330] The cost of transport was often paid for with passages on the Union Shipping Company accounting for £7.15 in 1885, and a 'steamer fare for Waipiti and his wife' and 'return fares for Okaha Natives visiting Blenheim (Jubilee)' in 1910.[331] Transport was not always across the strait. A three shilling cab fare was paid for Pirihira Matui in 1911.[332] Monetary allowances were made to people in particular situations such as the 'husband of Tehaukokaki, for taking care of her for two weeks', in 1895-6.[333]

The most common form of assistance was to provide an allowance for rations. Once an application for assistance from the Benefit Fund had been received and the applicant vetted for suitability, the approved order for a rations allowance was made known to the applicant and the storeowner. This was not always so straightforward. In February 1905, the Nelson district agent wrote to the Trustee informing him that 'the system of supplying the Natives at the Croixelles is very unsatisfactory, there being no check on the merchant. Many of the Natives live inland, and cannot give receipts for the goods'. Notes on this letter made by the Public Trustee state that the unsatisfactory situation was 'unavoidable there being no store at Croiselles', and that 'the natives will no doubt see that they get goods to the value authorised by you. They will complain soon enough if they have cause'.[334]

Rations orders could be broken down into more specific groups. In 1911, milk was provided by W. Andrews to eight beneficiaries of the Tenths.[335] From about 1914 to 1920 the returns of the Benefit Fund show money spent for the provision of rations, milk, and meat. In 1915 there was even an entry for bread.[336]

During August and September 1898, correspondence passed between Maori at Whangarae and the Agent for the Public Trust in Nelson in regards to the provision of potatoes to Maori in Whangarae. Not all the recipients of the potatoes were beneficiaries of the Tenths trust – 22 of a listed 47 people were marked as being Trust beneficiaries.[337] Eating potatoes were sent for immediate consumption and seed

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[329] AJHR 1885.
[330] AJHR 1889
[331] AJHR, 1886 and 1911.
[332] AJHR 1912.
[333] AJHR 1896.
[334] District Agent to Public Trustee, 25 February 1905, MA 1 Box 145 6/79 South Island Tenths 1887-1906.
[335] AJHR 1912.
[336] AJHR 1916. See also AJHR returns 1914-1920.
[337] C. Hippolite to A. Scaife (Agent for Public Trustee Nelson), 23 August 1898, MA 1 Box 146 6/79 Native Reserves-Native Hostelry and Indigent Natives 1898-1901.

potatoes were also sent for preparation for planting. The eating potatoes were not always enough and the District Agent received a request to send them flour instead of potatoes.[338] As a result, the Public Trustee authorised further supply of potatoes to Maori at Croixelles if the Agent deemed it necessary.[339] This shows that aid was not always restricted to Maori who were beneficiaries of the Nelson Tenths Trust.

The benefit fund also provided for medical assistance, as discussed above. Mackay advised the Trust Office in 1883 that a permanent medical officer should be hired rather than 'obtaining medical aid from time to time' as this could bring 'an opening for many charges on the funds'.[340] From 1882, medical officers were paid salaries from £12 up to £75 per annum to attend to Maori beneficially interested in the Tenths.[341] As well as these doctors on retainer, various small sums were expended 'from time to time', such as 'medical comforts supplied to Natives for nine months to 30th September, 1887, by A. Manoy'. People other than doctors were also reimbursed for their care of the sick. E. Parker received £1.10s reimbursement for 'nursing two natives', and M.H. Rumbold was paid £6.6s for nursing Jennie Rewai in 1898. The Wairau Hospital Board was reimbursed £5.7s for 'attendance on Natives' in 1899. The Hospital was paid another £19 in 1904 for 'maintenance in Hospital of T. Hippolite'. In 1912, three women were paid up to £5 each for their nursing of different Maori beneficiaries. Cab rides to hospital were also paid for,[342] as was special medical attendance like that given by Doctor Hudson to Hare Hohapata in 1899.

The Public Trustees seemed to swing between generosity and reluctance to pay out money to even the most desperate beneficiary. These changes in attitude were often not linked to changes in leadership, but to the amount of money available. J. C. Martin, for example, did not start out as an ungenerous Public Trustee. In October 1898 he sent authorisation to the District Agent to provide a ration of 'stores and necessaries to the amount of 10/- a week each' to Hoani Te Rama and Riria Pakeke, both of whom possessed interests in the Tenths. In regards to another person to whom the Agent had

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[338] See C. Hippolite to A. Scaife (agent for Public Trustee Nelson), 18 August 1898, and Hohapata to Public Trustee Agent Nelson, 23 August 1898, MA 1 Box 146 6/79 Native Reserves-Native Hostelry and Indigent Natives 1898-1901.

[339] Public Trustee to Agent of the Public Trustee Nelson, 31 August 1898, MA 1 Box 146 6/79 Native Reserves-Native Hostelry and Indigent Natives 1898-1901.

[340] Mackay's notes on letter from Nelson District Agent, 19 February 1883, MA MT 1/1b 136 27/2 Native Reserves 1882-1918. In Wai 785 A35(a) Vol. 1. *Report 9D – Refs, Vol. 1. Archival Reference Material, Tables, Graphs and Maps to Accompany Report 9D: "Benefits to Owners and the South Island Benefit Fund"*, p. 126.

[341] See AJHR returns.

[342] See AJHR 1913.

recommended assistance be provided, Rahira Te Ruruku, the Trustee did not authorise an allowance, as she was not a Trust beneficiary. However, he stated that he would ask 'the Under-Secretary for Justice to contribute to her wants'. Although I could not find any reference as to whether Ruruku received an allowance from this alternative institution, a letter in early 1899 from the Magistrates' Office in Nelson to the District Agent announced that the Under-Secretary for Justice had authorised a monthly allowance of £1 to be paid to Makena Hairoa.[343] Martin also stated in this letter that 'there is no reason why these people should not have everything reasonable, and if you think the sum mentioned is not sufficient, I will increase it on hearing from you'.[344]

This state of fiscal generosity could not be maintained for long. In early December Martin wrote agreeing to rations of 7/- to be paid to Taimona Pakake and 5/- to Pirimona Te Kahupuku. His explanation for the reduced amount was that it was all he could allow 'in view of the already large annual demand on the fund set aside for this purpose'.[345] At the end of December, Martin announced his decision that 'in the future 7/- per week shall be the maximum allowance to any Native for food. Will you inform those Natives who are drawing more than that sum that on and after the 1st January they will only receive 7/-? Also inform the storekeepers of the reduction'.[346] This decision appears to have been reached after the number of applications for aid became 'numerous', and an analysis of the available funds was carried out. Of an annual rental income of £1100 (the amount left after payment of office commission and other charges), £550 was to be distributed in rent, and the remaining £550 constituted the money available for 'social etc benefit of natives'. As at December 1898, £195 had been expended on doctors, £180 in allowances for indigent Maori, £50 for the Native School, and £12 in subsidies for students attending Croiselles School. This left a balance of £113. The Office acknowledged a remainder of £1422 from the 1896 '1st distribution', but did not want to cut into this as 'a portion of this will probably be wanted for maintenance &c of Hostelry'. The Old Age Pensions Act proposed an allowance of 7/- and that was adopted as the maximum allowance to be provided.[347] In late May 1899 a

[343] Magistrate's Office Nelson to Agent of the Public Trustee Nelson, 21 February 1899, MA 1 Box 146 6/79 Native Reserves-Native Hostelry and Indigent Natives 1898-1901.
[344] Public Trustee to Agent of the Public Trustee Nelson, 1 October 1898, MA 1 Box 146 6/79 Native Reserves-Native Hostelry and Indigent Natives 1898-1901.
[345] Public Trustee to Agent of the Public Trustee Nelson, 5 December 1898, ibid.
[346] Public Trustee to Agent of the Public Trustee Nelson, 30 December 1898, ibid.
[347] File Note, Public Trustee Office, 2 December 1898, MA 1 Box 145 6/79 South Island Tenths 1887-1906.

request for rations from Taimona Pakake was not able to be actioned as the current quarter had expired and there were no funds to pay for the food order.[348]

In other cases, the Trustee refused to help beneficiaries for fear of setting an expensive precedent. Taimona Pakake wrote to the Trustee office in 1905 to inform them that Doctor Pomare had visited him in Croiselles and found that his whare was 'not fit to remain standing and that it was to be burnt at once'. Not long after Pomare's visit, a representative from the Maori Council also visited and made the same direction. Pakake wrote that if this was carried out he would 'have no home at all'. He requested help in erecting another residence, noting that even a one room house would be 'satisfactory'.[349] A file note from an unidentified official in the Public Trust Office stated that 'if a whare such as [Pakake] requires could be erected for a few pounds the money would be well expended', and noted that not only was Pakake an elderly man but an asthmatic as well. However, the Trustee replied 'we cannot do this. It would mean that all the Natives interested in the tenths would expect us to build houses for them'[350] If all the houses were in as poor condition as Pakake's nikau whare, then that would appear to be a significant issue for the Crown to have considered.

Pakake received no assistance in rebuilding a house. In December 1905 he wrote to the Public Trustee again, asking if he could 'please send me a tent to live in as I have no house at all now, and I am sure I don't know what I am to do, as all the houses here are full and nobody can give me room to sleep in'.[351] This request was turned down on the same grounds as his request for a house, the District Agent saying that if Pakake's request was granted 'it would mean that others equally interested in the Tenths would expect similar treatment. A whare would cost very little, and surely Applicant could get assistance from the other Natives to build one without help from the Tenths. I am sufficiently acquainted with Native customs to know that he can get at least temporary shelter while making his hut'.[352] It is worth noting that less than a year later the District Agent noted that Maori in this region were living in very unhealthy conditions and that

[348] File note on letter from Taimona Pakake to Public Trustee, 20 May 1899, MA 1 Box 146 6/79 Native Reserves-Native Hostelry and Indigent Natives 1898-1901.
[349] Taimona Pakake to District Agent Nelson, 6 November 1905, MA 1 Box 145 6/79 South Island Tenths 1887-1906.
[350] File Note on District Agent Letter, 16 November 1905, MA 1 Box 145 6/79 South Island Tenths 1887-1906.
[351] Taimona Pakake to Public Trustee 11 December 1905, MA 1 Box 147 6/79 [pt 5] South Island Tenths Benefit 1901-1907.
[352] District Agent to Miss H.L. Howard, 13 December 1905, MA 1 Box 147 6/79 [pt 5] South Island Tenths Benefit 1901-1907.

a 'proper Medical Enquiry [sic] into the sanitary conditions prevailing among the natives' should be carried out as over 1904-6 the hostel was 'scarcely free from cases of typhoid and tuberculosis, most if not all the cases coming from Croixelles'.[353] Eventually an inquiry into the poor medical and sanitary conditions prevailing in this district was carried out.

The Public Trustee provided funds for children of tenths beneficiaries to attend school, but did not contribute to the establishment of any schools, as he had 'no power to devote any portion of the fund under my charge to benefiting Natives who are not interested in the fund, and it is necessary before I could do anything that the great majority of the Natives there should be interested'. He added that the presence of non-benefit Maori at the school 'would not debar me from helping, but I should not be justified in establishing or assisting the school if the greater number of the Natives attending the school were not interested in the fund'.[354] Support was given to the Church of England schools at Okoha and Croisilles on a strict capitation basis, the Trust fund paying part of the costs only of those children whose parents were entitled to tenths.[355] The Wairau Native School, though within the government school system, had been built and supported by the fund in the 1870s. The benefit fund continued to supply money to the schools. There were beneficial owners of the tenths in the Wairau Pa but the capitation policy was not applied. The number of children in attendance sometimes fell so low that the Education Department would not have felt justified in keeping the school open without the contribution from the tenths. An examination of the annual statements of the Native Schools in the *Appendices to the Journals of the House of Representatives* shows that the Public Trustee made payments towards salaries and minor costs out of the tenths fund,[356] and eventually in 1912 fund monies were used to pay half of the teacher's salary.[357] As late as 1915, the School accounts recorded that a large sum, £57, was paid to the Marlborough Education Board as a contribution to the cost of completing this school.[358] It is probable that this school was seen as a special

[353] District agent to Public Trustee, 4 September 1906, MA 1 Box 145 6/79 South Island Tenths 1887-1906.
[354] Public Trustee to Agent of Public Trustee in Nelson, 16 February 1898, MA 1 Box 146 6/79 Native Reserves – Native Hostelry and Indigent Natives 1898-1901, in Halder, Wai 785 Doc A37 Vol. 4, p. 1606.
[355] Deputy Public Trustee to Archbishop of Nelson, 26 January 1914, Halder, (doc A37, vol. 8) p 3684
[356] See for instance AJHR, 1888, G-2, p. 3, and AJHR
[357] AJHR 1912 G-4, p. 26.
[358] AJHR, 1915, G–3, p 28.

case, worth supporting for the sake of the community, at a time when other small Native Schools closed.

It is not clear whether the introduction of the Old Age Pension in 1898 affected the amount of money paid out by the benefit fund.[359] There is some evidence that it was easier for elderly Maori to get money from the benefit fund than from the Pension Department. The pension was means tested, and to receive a pension the applicant had to be assessed by a 'Stipendiary magistrate'. Furthermore, Maori applicants had to submit a certificate from a judge of the Native Land Court which stated the amount of land they owned or had an interest in.[360] In 1905 the District Agent wrote requesting assistance for Apiata Te Putu and went on to state that in his opinion 'many of these Natives should be in receipt of the O.A. Pension, but they all complain of the difficulties in obtaining it, as they are unable to state their cases properly to the S.M., and cannot give the required information and particulars'.[361]

It would also be interesting to know whether beneficial ownership of land in the Nelson Tenths or Motueka Occupation Reserves was taken into account when means-testing assessments for the pension was made. Under the original act, the Old-age Pensions Act 1898, the applicant was ineligible for a pension if they were receiving more than £52 a year in income, or if they owned property to the value of more than £270. Although it was unlikely that the benefit fund ever paid anyone out to a level of more than £52 a year, it may have been the case that the Native Land Court named the beneficial ownership of the lands in these certificates. If this was ever done, can it be considered just that the Maori beneficial owners had this land 'held against them' in a means-test assessment, since they did not have the ability to have an impact on the management of that land, or the amount of money they received from it, in any way.

The Trustee appeared to cover welfare payments that should have been made by other bodies. A further example of this is the case of Tahana Luke, a deaf child of poor parents, in which the Education Department tried to get funds from the Picton Hosptial

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[359] For information about the issue of pensions given to Maori throughout the country see SS W1844 Box 16 190/N4 Maori pensions 1989-1906; SS W2756 9/9/1 Pt 2 Maoris-General 1904-1937 and SS W2756 9/9/8 Maori Land Court-General 1899-1962, NA. Copies of the contents of these files are in Halder, Volume Six, pp2651-2737

[360] See the 'Instructions to Claimants' on the Pension Claim forms contained in SS W2756 9/9/8 Maori Land Court-General 1899-1962, NA, reproduced in Halder, p 2722. For how this system continued until the 1930s see Memo by the Commissioner of Pension to the Under-secretary of the Native Department, 16 March 1938, in the same file, and reproduced in Halder p 2736

[361] The District Agent to the Public Trustee 26 August 1905, MA 1 Box 145 6/79 South Island Tenths 1887-1906, reproduced in Halder, p. 1851.

and Charitable Aid Board to pay for Luke's attendance at the Sumner School for the Deaf.[362] The Board replied that surely this was 'a matter for Native Charitable Aid, which I understand is administrated by the Public Trustee'.[363] Upon application to the Trustee by the Education Department, the Public Trustee consented to pay 'from the South Island Tenths Benefit Fund an allowance for the maintenance of Tahana Luke or Tahana Wirihana Ruka, aged 9½ years at the School for the Deaf, Sumner, at the rate of eight shillings a week'.[364] The Education Department asked the Trustee if that rate could be extended to 10/ a week, and the Trust Office replied that as under the Education Amendment Act of 1910 the Hospital and Charitable Aid Board was in fact liable for the maintenance of the boy up to 8/, the Trustee could not pay more than that.[365] It is unclear exactly why the Trustee was paying for Luke's schooling when the Charitable Board was legally required to pay for his upkeep, and if the Board did not pay it, the Secretary for Education was authorised to collect the fee from the Board as 'a debt due to the Crown'.[366] The Nelson tenths continued to provide from its scarce resources for the Crown's shortfall in providing the state assistance to which all citizens were at the time entitled.

Providing assistance on the basis of the lists of beneficiaries meant that interested persons outside of the Nelson and Motueka districts were eligible for assistance. In 1899 the office of the Public Trustee approved the payment of medical bills and rations up to 5/ per week for Makiri Hone, a 70 year old woman in Te Kuiti who possessed an interest in the Tenths.[367]

Although statements had been made as to the inaccessibility of reserves trust funds to non-beneficiaries, in 1898 J.C. Martin, the Public Trustee, gave approval for a Motueka man called Hori Parana to be provided rations at 7/- a week from the Tenths fund. Although no detail is given, it appears that Mr Parana was living in very poor

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[362] Secretary for Education to Secretary Picton Hospital and Charitable Aid Board, 22 July 1913, MA 1 Box 147 6/79 [Pt 6] South Island Tenths General 1887-1917, in Halder, Wai 785 Doc A37 Vol. 4, p. 1907.

[363] Secretary Picton Hospital and Charitable Aid Board to Secretary for Education, 16 August 1913, MA 1 Box 147 6/79 [Pt 6] South Island Tenths General 1887-1917, in Halder, Wai 785 Doc A37 Vol. 4, p. 1908.

[364] Public Trustee to Secretary for Education, 30 September 1913, MA 1 Box 147 6/79 [Pt 6] South Island Tenths General 1887-1917, in Halder, Wai 785 Doc A37 Vol. 4, p. 1908.

[365] Deputy Public Trustee to Secretary for Education, 7 October 1913, MA 1 Box 147 6/79 [Pt 6] South Island Tenths General 1887-1917, in Halder, Wai 785 Doc A37 Vol. 4, p. 1911.

[366] See Education Amendment Act 1910, Subsection 9 of Section 11.

[367] Deputy Public Trustee to Hamilton District Agent, 6 April 1899, MA 1 6/79 South Island Tenths Benefits No.2 Native Hostelry 1887-1906.

circumstances.[368] Much was dependent on the extent to which an individual was deemed capable of fending for themselves. Medical care was denied Paul Rewai in 1898 (although no reason is given) and the Trustee stated that all he could do in the matter was 'to let the Hospital authorities know when amounts due to Rewai Senr. are payable in order that they may take what steps they consider necessary to recover the amount of their account from him'.[369]

Applications for assistance did not only come from those persons directly involved. J. Hippolite and two others wrote to the District Agent in November 1898 stating that they wished to 'thank your department for aiding those persons for which we made aplications [sic]'. They went on to draw attention to others 'who are aged and invalids amongst us'.[370] The earlier applications referred to were for Hoani Te Rama and Riria Pakeke, and Rahira Te Ruruku.[371] A caveat to this is presented by the case of Rewi Maaka who was said to attempt to 'increase his influence by getting Croixelles Natives put on the rations list, and for this reason could not be relied upon'.[372]

Some letters referred to people who owned land but could not let it. Paramena Haereti and his wife were in possession of 'a considerable area of bush land' which they could not let. A note in the margin made by the Trustee stated 'they can hardly be called destitute owning this land'.[373] Haromai Kiharoa owned land at Croiselles which she could not let and from which she derived no income. She had an interest in land at Nelson from which she received £2:11:9 per annum.[374] The Trustee authorised a rations allowance of 5/- per week.[375] It was not uncommon for Maori in this area to be in occupation of low-yielding land. Ngatangi Renata of Nelson possessed about 200 acres but they produced 'nothing'.[376]

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[368] Public Trustee to Agent of the Public Trustee Nelson, 22 March 1898, MA 1 Box 146 6/79 Native Reserves-Native Hostelry and Indigent Natives 1898-1901.
[369] Public Trustee to Agent of the Public Trustee Nelson, 20 Jun 1898, MA 1 Box 146 6/79 Native Reserves-Native Hostelry and Indigent Natives 1898-1901.
[370] J Hippolite et al to Agent for Public Trustee Nelson, 14 November 1898, MA 1 Box 146 6/79 Native Reserves-Native Hostelry and Indigent Natives 1898-1901.
[371] See above, and C. Hippolite to Agent in Nelson, 12 September 1898, MA 1 Box 146 6/79 Native Reserves-Native Hostelry and Indigent Natives 1898-1901.
[372] District Agent to Public Trustee, 8 August 1905, MA 1 Box 145 6/79 South Island Tenths 1887-1906.
[373] District Agent for Public Trustee Nelson to Public Trustee, 4 October 1899, MA 1 Box 145 6/79 South Island Tenths 1887-1906.
[374] Letter from J. Allen S.M. to (unstated), 22 March 1900, MA 1 Box 145 6/79 South Island Tenths 1887-1906.
[375] Public Trustee to Under Secretary, 26 March 1900, MA 1 Box 145 6/79 South Island Tenths 1887-1906.
[376] Rewi Maaka to Public Trustee, 6 May 1905, MA 1 Box 145 6/79 South Island Tenths 1887-1906.

The Trustee did not actively investigate the welfare and health of all beneficiaries. This was certainly an unwieldy task, especially when beneficiaries moved away from the Nelson area, and so away from the observation of the Nelson Public Trustee Agent. R.R. Auty, the Postmaster at Porirua, advanced food and supplies to Wera Kawharu who was unable to work due to chronic illness. Kawharu possessed an interest in the Tenths and had promised Auty that he would be paid from the Tenths Trust fund. After Kawharu's death, Auty wrote to the Public Trustee asking for payment and stating that 'Wera was destitute at the time I let him have these goods and very bad for the last three years requiring nourishing food and warm clothing and not able to earn them. The small amounts received from your office went for the same purposes but was not near enough to keep him'.[377] In his reply, the Trustee agreed to pay the account, but stressed that when those Maori interested in the Tenths were 'in such indigent circumstances as this person was, application for an allowance for rations should be made during their lifetime'.[378]

The Maori hostels in Nelson were another important aspect of the fund, providing temporary free accommodation for Maori visiting the town. The maintenance of the Hostels was recognised by the Trust Office as an important part of their expenditure from the rental income of the reserves trust, although, as is shown later in this section, the amount thought suitable to expend on maintenance varied throughout the Trust's existence.

In 1888, Catley wrote to the Public Trustee informing him of the 'very dilapidated condition' of the houses, and recommending that they be 'at once pulled down'. Hemi Matenga was acting as caretaker, and requested that he be allowed to remain in that position as 'his work has always given them satisfaction'.[379] Catley later forwarded a list of items he felt were necessary to provide the hostel including tables and chairs, bedsteads and mattresses, couches and the like. He confidently asserted that he believed 'there is nothing in the above list that you will consider unnecessary if the

[377] R.R. Auty to Public Trustee, 31 January 1902, MA 1 Box 145 6/79 South Island Tenths 1887-1906.
[378] Public Trustee to R. Auty, 7 March 1902, MA 1 Box 145 6/79 South Island Tenths 1887-1906.
[379] District Agent to Public Trustee 20 June 1888, MA 6/79/6 Former Papers Nelson Sections 63-66 1882-1912. In Mitchell and Mitchell, 'Benefits to Owners and the South Island Benefit Fund: Supporting Reference Material', Wai 785 A35(a) v.1, p. 137.

original idea of a Cottage to house temporary Maori Residents either sick or travelling is to be carried out'.[380]

In a letter to Catley, the Public Trustee asked who had custody of the key to the hostel and if many Maori in the Nelson area were in the habit of using the hostel when they visited the town. He went on to say 'You recently wrote of their being at great expense attending the sitting of the Native Land Court; but as a number of them would be able to lodge free of charge at the Native Hostelry, their costs at least should have been respectively small.'[381] Despite the fact that only a small number of people attending the Land Court Hearings could have stayed at the hostel, this letter points out the importance of having a free place of residence when government-sponsored activities such as the land court hearings meant that many Maori had to leave their homes for a protracted period to safeguard their rights.

A letter from Motueka Maori in 1892 perhaps explains why few Maori were visiting the Nelson Hostelry. Signed by four people on behalf of 'all the Natives residing at Motueka', the letter asked whether the hostelry was 'intended for all the Natives or for one Native only. Please kindly let us know, because Matenga is behaving very badly. He does not allow Natives to occupy (to stay in) that house, and says that it belongs to him – on the strength of that he takes possession of the keys belonging to it'.[382] The Public Trustee set enquiries afoot and replied to Rangiaruru et al that he had discovered this was not the case, Matenga held the keys as caretaker (on a salary of 10/ a week) and did not refuse others entry or staying rights.[383] The response to this from Rangiauru et al requested that another person be set up as custodian as Matenga's house in Wakapuaka was too far to travel to obtain the keys. They also stated that they had been under the impression that 'this is like the old houses which did not require a paid custodian which were also open to all'. They also requested that 'if you write please do so in the Maori language'.[384] The Trustee seems to have taken their points on board

[380] District Agent to Public Trustee 20 October 1888, MA 6/79/6 Former Papers Nelson Sections 63-66 1882-1912. In Mitchell and Mitchell, 'Benefits to Owners and the South Island Benefit Fund: Supporting Reference Material', Wai 785 A35(a) v.1, p. 138.
[381] Public Trustee to Agent for the Public Trustee Nelson, 15 January 1891, MA 6/79/6 Former Papers Nelson Sections 63-66 1882-1912. In Wai 785 A35(a) v.1, p. 140.
[382] Hohaia Rangiauru et al to public Trustee, 18 March 1892, MA 6/79/6 Former Papers Nelson Sections 63-66 1882-1912. In Wai 785 A35(a) v.1, p. 143.
[383] Public Trustee to Hohaia Rangiauru et al, 13 April 1892, MA 6/79/6 Former Papers Nelson Sections 63-66 1882-1912. In Wai 785 A35(a) v.1, p. 145.
[384] Hohaia Rangiauru et al to Public Trustee, 23 April 1892, MA 6/79/6 Former Papers Nelson Sections 63-66 1882-1912. In Wai 785 A35(a) v.1, p. 146.

(although it is not known if he replied in Maori) and appointed Eruiha Rauhia as caretaker at the same wage.[385]

The concerns about Matenga were well founded. The new District Agent, Scaife, wrote to the Trustee that upon visiting the hostel in October 1898, he found Matenga in sole residence, with his family, and that Matenga was taking it upon himself to select who could and could not stay. Scaife seemed to agree with Matenga's sentiments, saying 'the building is a very good 5-roomed house with stable &c attached and is really far too good for the use of the lower class natives'. Although he did not approve of Matenga's appropriation of authority, he did agree that 'the only way out of the matter so far as I can see is to build a rough 4-roomed house with a lean-to attached on the unused portion of Sect 62 Nelson...for the use of the rougher class of Natives and keep the present house for the use of the better class'. He was of the opinion that as the present hostel was of such good quality 'it must be made in some way more useful'. Scaife also stated that other Maori had 'strong feelings' on the matter as 'they decidedly object to have to ask for what really is theirs as a right'.[386]

The Public Trustee was of a different opinion, stating that:

> the hostelry is for the use of all the Natives, and if the Matengas and other rich Natives do not care to live in the same house or associate with the poorer class of Natives, they can afford to and had better go somewhere else. The assumption of ownership by Matenga has been going on for years and must be put a stop to. The sooner, therefore, he is made to understand that he and his relatives are not going to have the exclusive use of the hostelry, or any say as to who is or who is not to be admitted to it, the better.[387]

He later changed his mind, agreeing with Scaife's recommendations that the house really was too good for the 'natives who require shelter, owning to their being unable to pay for lodgings, as it will rapidly become spoiled as regards fittings and surroundings, and I am sure it would readily let to European tenants for £35 to £40 per annum which would form an appreciable addition to the funds of the Trust'. Scaife went on to warn that if his plan to rent the house and buy another smaller plainer house for the hostel was not adopted, 'there will be no alternative but to throw the present house open to all who choose to make use of it, and I fear that the habits and bodily condition

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[385] Public Trustee to Agent for the Public Trustee Nelson, 28 May 1892, MA 6/79/6 Former Papers Nelson Sections 63-66 1882-1912. In Wai 785 A35(a) v.1, p. 148.
[386] District Agent to Public Trustee 28 October 1898, MA 6/79/6 Former Papers Nelson Sections 63-66 1882-1912. In Wai 785 A35(a) v.1, pp. 151-2.
[387] Public Trustee to Agent for the Public Trustee Nelson, 3 November 1898, MA 1 Box 146 6/79 Native Reserves-Native Hostelry and Indigent Natives 1898-1901.

of some of the probable occupants, notably many of the Whangarae natives, will soon have a marked effect upon the place'. Buying a plainer smaller house was not quite adequate for Scaife, he also requested that the furniture be changed as at present 'much of it is far too good for the actual requirements of the place, especially the goods in the front room.'[388]

Needless to say, this was not a course approved of by the majority of Maori in the area. The Motueka Committee wrote to Martin (Public Trustee) asking about the leasing of the hostel to a Pakeha and stating that they would 'not agree to it being let but let it remain as a kainga for us, that is for all the Maoris'.[389] Regardless of this obvious dissatisfaction with his plans, the Public Trustee reassured the Committee that he had found the present hostel 'not properly suited for a hostelry for the Natives [so] I am going to let it at the best rental I can obtain and have another one built which will be more comfortable'.[390]

This comfortable house was the subject of a letter from James Hudson, the Medical Officer to Natives, to the Native Minister in 1906. He informed the minister that 'at present there is a family in every room of the cottage, with one or more members sick in it – And the healthy are mixed up with the sick in a most unhealthy manner'. He recommended that two cottages be built, one as a hostel for healthy Maori visiting the town and the other exclusively for the sick, in charge of a Matron to act as 'a Nursing Care Taker' under Hudson's directions. It was his opinion that 'at present they are much too over-crowded – and insanitation results. No one is in authority and the house is not kept at all clean'.[391] The response of the Public Trustee was that a second hostel at Havelock had just been established 'at considerable expense'. He also commented that since most of the sick attending Nelson were from Croiselles, a number of them would now attend the Havelock hostelry and attendant doctor.[392]

The Nelson Tenths benefit fund provided substantial assistance to beneficiaries under the Public Trustee. But this assistance was subject to change in both quality and

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[388] District Agent to Public Trustee, 15 December 1898, MA 6/79/6 Former Papers Nelson Sections 63-66 1882-1912. In Wai 785 A35(a) v.1, p. 155-8.
[389] Hori Karaka Poutini and others to public Trustee, 29 December 1898, MA 6/79/6 Former Papers Nelson Sections 63-66 1882-1912. In Wai 785 A35(a) v.1, p. 161.
[390] Public Trustee to Hori Karaka Poutini and ors, 11 January 1898, MA 6/79/6 Former Papers Nelson Sections 63-66 1882-1912. In Wai 785 A35(a) v.1, p. 162.
[391] James Hudson to The Native Minister, 24 September 1906, MA 6/79/6 Former Papers Nelson Sections 63-66 1882-1912. In Wai 785 A35(a) v.1, p. 163.
[392] Public Trustee to Under Secretary of Affairs, 23 October 1906, MA 6/79/6 Former Papers Nelson Sections 63-66 1882-1912. In Wai 785 A35(a) v.1, p. 164.

quantity as the finances of the fund changed. Beneficiaries were dependent on lessees paying their rents not only for their rental income, but also for the proper maintenance of the benefit fund. The attitudes of different Trustees and Trust Office officials also affected the way in which the fund was distributed, swinging from generosity to great reluctance to assist in some matters. These variations contributed to a feeling of dissatisfaction amongst some beneficiaries, which finally found voice in a Commission of Inquiry appointed in 1913.

4.6 THE 1913 COMMISSION AND SUBSEQUENT CHANGE IN TENTHS ADMINISTRATION:

The Public Trustee's administration of the Tenths reserves had not been popular with the Maori beneficiaries around the country. Petitions expressing dissatisfaction with the Trustee's actions were put forward nearly every year from 1900 to 1912.[393] It appears that most complaints arose from the Trustee's administration of the West Coast Settlement Reserves in Taranaki, primarily the opportunity given to the lessees of that district to purchase the freehold of reserved land.[394]

As discussed earlier, the situation in Nelson was different. The Trustee was unable to allow the sale of land in either the Motueka Occupation reserves, or the Tenths reserves. Many lessees in the Nelson district were frustrated with these restrictions, and there were several petitions to Government from Nelson lessees to allow the freeholding and sale of Maori reserved land in Nelson along the same lines as had been done in the Taranaki reserves. Although J. W. Poynton, Public Trustee 1900-09, had 'resisted pressure from Greymouth lessees to gain the right to purchase the freehold of the perpetual leases', it had taken 'strenuous effort' on the part of Poynton, Carroll (the Native Minister), and the Maori MPs to prevent the success of a 1909 petition to Government from the same lessees.[395] When Poynton was replaced by Dr. F. Fitchett, the last Public Trustee to administer the Maori Reserves, the situation for Maori beneficiaries became more insecure. According to the historians of the Trustee, Fitchett was 'less generally receptive to Maori views' than Poynton,[396] and stated to the

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[393] Johnson, p. 140. As he points out, many of these petitions were never reported on by the Native Affairs Committee, and the only record of them is in the Schedules of Petitions in the *Journals of the House of Representatives* (JHR)

[394] Refer to 'Schedules of Petitions', JHR, 1900-12.

[395] Butterworth, p. 23.

[396] ibid., p. 23.

1912 McArthur Commission that 'the Native as a rule is not qualified to be a successful occupant of a highly improved farm, and therefore, in the interests of settlement [he] supported the idea of the tenants as against the Natives'.[397]

The 1912 McArthur Commission was followed by another commission in 1913, which Butterworth calls an attempt by Cabinet to 'defuse the Taranaki leases issue'.[398] Alexander Macintosh and John Henry Hosking were commissioned to 'inquire into and report upon the working of the Public Trust Office'.[399] Part Six of their report dealt with whether the affairs of the Maori reserved land under the Public Trustee had been 'carefully and satisfactorily managed', and whether the Maori business conducted by the Public Trustee should be separated from the Public Trust Office and administered under a specially appointed Board or Trustee.[400] In regard to the basic administration of the Nelson and Westland reserves (consisting mainly of collecting and distributing rents and maintaining records), the Commissioners stated that 'there has been no suggestion that this work is not well and carefully done, and we found no evidence to the contrary'.[401] However, they were critical of the way the benefit fund had been set up and maintained, arguing that the inefficiency of the distribution of benefit funds was largely a result of the 'indefinite' nature of the trust which served 'to create irritation'.[402] Benefit funds were handed out through local agents, and, according to the commissioners,

> no general or settled scheme or plan has been devised with regard to the application of these funds; and for similar reasons to those given in the case of the West Coast Reserves, we think these reserves and funds should be brought more in touch with the Native Department.[403]

The Commission also criticised a Board constituted under the Native Reserves Act consisting of the Public Trustee, the Public Trustee Board, and two appointed Maori members, calling it 'a mere farce'.[404] This Board had met infrequently and was poorly attended. The two Maori members of the Board only attended two of the 11 meetings held over seven years. The Native Minister never attended, leading the Commissioners

[397] Cited in Butterworth, pp. 24-5.
[398] ibid., p. 25.
[399] AJHR, 1913, B-9a, p.1.
[400] ibid., p. 13.
[401] ibid., p. 16.
[402] ibid., p. 17.
[403] ibid., p. 17.
[404] ibid., p. 17.

to conclude that 'the Public Trustee [was] altogether out of touch with the Departments that [were] most interested in his administration'.[405]

This lack of interplay between the Public Trustee and the Native Department was one of the reasons the Commission recommended that administration of Native Reserves be removed from the Public Trustee's jurisdiction. Staff members at the Public Trust Office agreed with this opinion, and pointed out that in Maori districts the voluntary business going to the Public Trustee office was small because of the Trustee's position as landlord and debt collector.[406]

The Commissioners expressed the view that:

> in the administration of these reserves the Native point of view should be adequately represented, and that it would be in the interests of the Natives if by means of the revenues from these reserves – their own property – they could be assisted to better themselves as agriculturists and otherwise.[407]

As in their opinion the 'interests of the Natives should be paramount', the Commissioners recommended that the administration and revenue of the Native Reserves be vested in an independent body called the Native Trustee. This was done in 1920. The years of the administration by the Native and then Maori Trustee will be discussed in the next chapter.

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[405] ibid., p. 17.
[406] ibid., pp. 17-18.
[407] ibid., p. 18.

CHAPTER 5: ADMINISTRATION UNDER THE NATIVE AND MAORI TRUSTEES

5.1 INTRODUCTION:

In 1920 the Native Trustee Act established the Native Trust Office, under the authority of a Native Trustee and a Native Trust Office Board. All Native reserves that had previously been vested in the Public Trustee were transferred to the Native Trustee along with the accrued funds from those lands. Fiona Small and Kieran Schmidt call the creation of the new administrative system a 'compromise', following the 1913 Commission of Inquiry.[408] Under this Act, greater concessions were made to owners of reserved land, who had protested, often vociferously, against the administration of reserves by the Public Trustee. However, the lessee's right to purchase the freehold of reserved land on the West Coast remained in force and Maori still had not been given any significant control over their reserved land.[409] The change in administration did mean that control over the reserves shifted from an office concerned with upholding the interests of the public to one concerned with developing the best interests of the Maori beneficiaries. Although the Native Trustee faced similar legislative restrictions as had the Public Trustee, the first Native Trustee, W.E. Rawson, took on a more consultative role and generally attempted to get the best results for his clients.

This chapter looks firstly at the role of the Native Trustee, which from 1934 was known as the Maori Trustee, as set out by legislation. The period of the early 1920s was marked by petitions from lessees and from Maori over the right to alienate the freehold of the land, and this chapter covers this in some detail before moving on to general leasing issues. The use of the benefit fund from the first years of the Native Trustee to the 1930s is then examined. In 1934 the first of two major Commissions of Inquiry in this period was held, and its investigation and recommendations are examined to give a context for the changes which occurred in the 1950s. These changes are looked at in two parts, firstly the changes to the operation of the benefit fund, and secondly the changes made to leasing practices. The final part of the chapter looks at the investigation and report of the 1975 Commission of Inquiry into Maori Reserved Land, and the transfer of the Tenths estate from the Maori Trustee to the Wakatu Incorporation.

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[408] K. Schmidt and F. Small, *The Maori Trustee 1913-1953*, CFRT report, May 1996 (revised February 1998), p. 18.

5.2 THE ROLE OF THE NATIVE TRUSTEE:

The basic administrative role of the Native Trustee over the Native Reserves was essentially the same as that of the Public Trustee. Native Trust Office activities regarding tenths land consisted largely of the collection and distribution of rents, the selection of lessees, maintenance of the leases and renewing or re-tendering leases that had expired. The Native Trustee, like the Public Trustee before him, had 'sole control over the granting and renewal of leases for the Nelson and Motueka Reserves'.[410]

Section two of the Native Reserves Act Amendment Act 1895 had stated that 'No land vested in the Public Trustee may be disposed of by the owner'.[411] The Trustee had been bound by legislation that decreed that all leases of reserves were to be put up for public tender or auction. The Native Reserves Act 1882 had stated that every lease was to be 'disposed of by public auction or public tender...the rent to be reserved shall be the best improved rent obtainable at the time'.[412] Five years later the Westland and Nelson Native Reserves Act (1887) had stated that in the case of these districts the Public Trustee was to lay the valuation of the land to be leased before the Public Trust Board, who were then to 'direct the time and mode of sale [of the lease], and upon what terms and conditions (if any), besides those imposed by "the Native Reserves Act, 1882," the new leases shall be offered for competition'.[413] All these sections were amended to read 'Native Trustee' and in all other respects they remained the same in the new legislation.

A significant change was the authority given to the Native Trustee to lend money from the Trust funds to Maori to improve their land – so long as the land was held on individual title (which excluded most of the Nelson reserves).[414] The Public Trustee was given powers of leasing without consultation of beneficial owners, and this power passed on to the Native Trustee, as did the discretion as to who received payments from the benefit fund.

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[409] ibid., p. 18.
[410] ibid., p. 111.
[411] Native Reserves Act Amendment Act 1895, 59 Vict. No. 53, s. 2.
[412] See Native Reserves Act 1882, 46 Vict. No. 52, s. 15. The reference in this act to the Public Trustee was to read as the Native Trustee, following the 1920 Native Trustee Act.
[413] Westland and Nelson Native Reserves Act 1887, 51 Vict. No 29, s. 8. The reference in this act to the Public Trustee was to read as the Native Trustee, following the 1920 Native Trustee Act.
[414] Native Trustee Act, 1920, 11 Geo. V, No 21.

According to Schmidt and Small, a sum of £262,300 was passed on to the Native Trust Office from the Public Trust. This sum was largely tied up in investments and consisted of 'unclaimed' funds accruing from undistributed rents. Absence or death of owners was the reason given by the Trust Office for the lack of claims made on these funds and consequent non-distribution,[415] but administrative inadequacy or confusion would have accounted for the principal of these unclaimed funds. Schmidt and Small claim that not only did the Public Trust Office do 'very little' to track down those owners who had not claimed their rent monies, but that its successor, the Native Trust Office, 'was also slack in finding owners to whom rent was owing'.[416] Schmidt and Small indicate that the 'principal problems appear to have been inadequate staffing, lack of consultation and communication with owners, and finally the ever-increasing list of successors as the beneficial owners'.[417] The remainder of the funds was invested and used when deemed necessary by the Trustee.

The Native Reserves Board was abolished in 1922 by an amendment to the Native Trustee Act 1920.[418] The powers and duties of this body were henceforth vested in the Native Trustee. Two years later the Native Trustee was given the authority (dependent on the consent of the Native Minister) to dispose of any Native Reserve for the benefit of the beneficial owners if he determined that the reserve in question could not be leased or used in any way to the advantage of the owners.[419]

Also under the 1922 Amendment Act, the percentage of rents distributed to the owners was changed from 50 per cent to 75 per cent, leaving the percentage available for the benefit fund at 25 per cent.[420] This was altered again in the Native Trustee Act of 1930, which consolidated the legislation relating to the Native Trustee and the administration of Native reserves. Section 36 of this Act provided that an amount 'not exceeding three-fourths' of the rents and proceeds of the reserved lands was to be distributed 'from time to time' amongst those entitled. The residue (at least 25 per cent) was to be 'applied by the Native Trustee at such times, and in such manner as in his discretion he thinks fit towards the physical, social, moral, and pecuniary benefit of the Natives individually or collectively interested therein'.[421] As Schmidt and Small point

[415] Schmidt and Small, p. 88.
[416] ibid., p. 89.
[417] ibid., p. 89.
[418] Native Trustee Amendment Act, 1922, 13 Geo. V, No. 54, s. 2.
[419] Native Trustee Amendment Act, 1924, 15 Geo. V, No. 43, s. 4.
[420] Native Trustee Amendment Act, 1924, 15 Geo. V, No. 43, s. 6.
[421] Native Trustee Act 1930, 21 Geo. V, No. 33, s. 36.

out, this change gave the Native Trustee great flexibility in how much rent would be disbursed and how much retained in the benefit fund each year.[422] Even the interval at which rent was to be distributed was left vague, with the sole direction being merely 'from time to time'.[423]

Under this new legislation the leases themselves were to be for no more than 21 years, and the rent was to be assessed at 'not more than five per centum per annum of the unimproved or capital value' of the land at the point of renewal. All leases were to be put up for public tender unless the lease was to a beneficial owner in which case it could be made through private contract.[424] Schmidt and Small argue that this provision allowed the Native Trustee to 'lease the land of absentee owners to other beneficial owners for up to 21 years. This meant that the leases were not put up for competition, but also that they could not be perpetually renewed, and there was no compensation for improvements'.[425] This was, however, solely at the discretion of the Native Trustee. The legislation provided that a lease could be arranged 'with or without compensation for improvements, and subject to such terms and conditions as [the Trustee] may in his discretion deem reasonable'.[426]

5.3 THE 1920S AND CALLS FOR FREEHOLDING:

Requests from both lessees and owners for the right to freehold the land in the Nelson Tenths reserves increased in the 1920s. The new administration of the Native Trustee had been established as a result of concerns about the interests of Maori beneficiaries being adequately protected by the Public Trustee. The Native Trust Office certainly started out with a large degree of consultation with owners. In 1924 Rawson (Native Trustee from 1921 to 1933) wrote to the Native Minister's secretary stating his intention to visit 'the Nelson and Wairau Districts to discuss with the Natives the question of selling or holding on' to the reserved lands. At the time there was pressure on the Trust Office from local lessees to enable them to buy the land, as well as pressure from Maori wishing to sell. Rawson's personal belief was that, at this point, it would be unwise to sell. He made the point that if the beneficiaries decided to sell, they would get

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[422] Schmidt and Small, p. 119.
[423] Native Trustee Act 1930, 21 Geo. V, No. 33, s. 36.
[424] ibid., ss. 31-32. But first seen in Native Trustee Amendment Act 1929 20 Geo. V, No. 21, s. 6.
[425] Schmidt and Small, p. 116.
[426] Native Trustee Amendment Act 1929, 20 Geo. V, No. 21, s. 6.

a better price through him than if they went through the Native Land Purchase Officer.[427] He expressed in notes from a meeting that 'he wanted to obtain Natives views before expressing any opinion on matter of sale'.[428] In 1928, W. O'Meara Pakaka informed Rawson that he would not be able to attend another proposed meeting between the Trustee and the beneficial owners, but felt 'quite shure [sic] the business will be quite safe passing through your hands. If you will kindly act on behalf on my interest therein'.[429] Rawson responded to Pakaka on 12 March, asking him to let him know whether he wished to sell the reserves or to continue with the leasehold tenure. He stated that 'I am anxious to obtain an expression of opinion from each individual owner and while I appreciate your willingness to leave the matter to me, I would prefer that you gave me a "yes" or "no" answer'.[430]

Several petitions were submitted by tenants and lessors in the early 1920s asking for the right to freehold reserved land. They were sparked to a large extent by the activities of a Waitara lawyer, C R Stead, who emerged as the most persistent advocate for converting reserved land into freehold property. He was familiar with what could be achieved along these lines from his experience in Taranaki. Acting initially on instructions from a Taranaki-based client, who wanted to realise her beneficial shares in the South Island reserves, Stead was also able to work in with local lessee ambitions as well as the growing dissatisfaction among beneficial owners at low returns from the reserves.

Stead alerted the lessees in Motueka and Nelson to the law under which conversions of West Coast Settlement Reserve leases were proceeding in Taranaki. He subsequently told Parliament's Native Affairs Committee what he believed Sections 107 to 113 of the Native Land Amendment Act of 1913 had achieved, saying:

> As the result of the freehold being obtained in Taranaki hundreds of former lessees now own the freehold and are putting heavy improvements into their land which would not have been done had they remained leaseholders. They are now able to subdivide their farms without difficulty and generally assist in the progress of the Country.

[427] Native Trustee to Private Secretary Native Minister, 4 March 1924, MA 1 6/0/17.
[428] Notes from Meeting Motueka 5 March 1924, MA 1 6/0/17.
[429] W. O'Meara Pakaka to native Trustee, 29 February 1924, MA 1 6/0/17.
[430] Native Trustee to W. O'Meara Pakaka, 12 March 1928

Figures provided by Alan Ward show that between 1911 and 1930, the Crown bought about 1.5 million acres of Maori land, including 26,000 acres of West Coast Settlement Reserves through the Public Trustee and, after 1920, the Native Trustee.[431]

Stead's next step was to organise petitions to Parliament. He went to Motueka and called a meeting of the European tenants, which was presided over by the Mayor. The meeting resolved that:

> It is desirable in the interests of the town and district that all Native leaseholds be converted into freehold provided this can be done at a reasonable price and that Parliament be petitioned to allow of this being done.[432]

The local MP, Harry Atmore, took the matter up with Native Minister Apirana Ngata in 1922. Atmore then received a letter from Ngata, which was quoted as giving his approval to the proposal. The letter was read out to a meeting between the Native Trustee and the lessees:

> The beneficiaries of these tenths are now widely scattered and are most of them two generations removed from the inception of the trust. The Native Trustee has agreed as to the Greymouth Reserve that he be given absolute power of disposal on terms most advantageous to his beneficiaries, whose position is now such that they are receiving barely one and a half per cent on the value of their estate. The position in regard to the tenths is not as bad, but bad enough, and I think that the Native trustee should be similarly empowered. The beneficial interests can be safeguarded by requiring that the proceeds of sales be invested. They would then be sure of, say, three and a half to four per cent. The Native Trustee may be trusted to make the best terms. [433]

Ngata added that the assets did not seem to improve so far as the Maori were concerned, but rather to depreciate in value because of taxation. In the next few years, the Native Trustee succeeded in getting the land tax halved, but this did little to resolve the declining return per share, which was linked to the problems of fragmentation and low rents. The increasing individualisation and fragmentation of titles largely came through the Native Land Court-controlled succession procedures. Measures were also needed to protect the 'welfare' aspect of the tenths fund.

Pakeha from Motueka gave the petition the backing of a solid line-up of 137 lessees, including the Mayor of Motueka on behalf of the Motueka Borough Council, the Motueka Bowling Club, the Motueka Farmers Co-operative, Trustees of the Motueka Presbyterian Church, and the Church of Christ. Several businesses, the local

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[431] Ward, *An Unsettled History*, p 157.
[432] Stead, Statement before the Native Affairs Committee, MA 1 6/0/17
[433] Wai 785 doc A30 (a) p 69

branch of the Farmers' Co-operative and the Congregational Church were among the 66 signatories to the petition from the lessees in Nelson.

The petitions forwarded to the House of Representatives in 1922 had, for the most part, identical wording. After providing yet another history of the New Zealand Company and the reserves, the text launched into a review of legislation, noting that perpetually renewable leases made it unlikely that the occupation of any of the lands would ever revert to the beneficial owners. The key points read as follows:

> 9. That by Sections 107 to 113 of "The Native Land Amendment Act 1913" it was enacted that notwithstanding anything contained in any other Statute to the contrary -
> (a) The Crown may purchase any Native Reserve or lands held in trust for any Native whether the same was previously inalienable or not
> (b) On purchase of any such lands subject to a valid lease the tenant thereof (unless a "disqualified person") shall have the right to purchase the freehold in fee simple of such land upon the conditions therein set out.
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> 10. That in pursuance of such of the provisions of the said sections the freehold of large sections of Native Reserves in the North Island has already been purchased by the Native Land Purchase Board in exercise of its functions under the said Act and the same has been subsequently purchased from the Crown by the tenants thereof and the sale and purchase of the said land is still proceeding.
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> 11. That all the said lands hereinbefore referred to in Nelson are subject to the provisions of Sections 107 to 113 of 'The Native Land Act 1913'. . . .
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> 13 That in consequence of all the titles in respect of the said Native Reserves in the said Provincial District of Nelson being unregistered it has been impossible to have the said leases registered under the provisions of 'The Land Transfer Act 1915' or 'The Deeds Registration Act 1908' and that the present system of having the said leases together with all assignments, transfers, subleases and other like transactions affecting the said leases simply recorded in the books of the Public Trustee or the Native Trustee without any further system of registration is highly unsatisfactory, and your petitioners contend shd be remedied at once.
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> 14. That several of your petitioners have repeatedly applied to the Crown through the Native Department in terms of sections 107 to 113 of 'The Native Land Amendment Act 1913' aforesaid to purchase from the Native beneficial owners thereof the freehold estate of the lands leased by them but that on every occasion the Native Land Purchase Board has refused to purchase any of the said interests, or to exercise its functions under the said Act.
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> Wherefore your petitioners pray:-
> (1) That legislation be introduced whereby the provisions of Subsection (1) of Section 15 of 'The West Coast Settlement Act 1913' (exclusive of all reference to the 'New leases' referred to in the said Act - which do not apply in the present instance - and reserving the right of the Native Trustee to manage and administer

the said lands so long as the freehold remains vested in the said Native beneficial owners thereof) shall be extended and made to apply to all Native Reserves whether situate in the Provincial Districts of Tarañaki, Nelson or any other part of the Dominion enabling the said beneficial owners to sell the fee simple of the said reserves direct to the tenants thereof or:

(2) That in the alternative directions be given to the said Native Land Purchase Board to forthwith, on proper application being made, proceed to purchase from the said beneficial owners such freehold interests as shall be necessary to enable the said tenants to acquire the fee simple of the said lands in terms of the said Acts.

Interviews with Maori beneficial owners in Nelson and Marlborough, as well as in the North Island, convinced Stead that the administration of the tenths was viewed by almost every owner with 'extreme dissatisfaction'. It was claimed that as the rents had fallen in many cases to the point where they were scarcely worth collecting, almost everyone was strongly in favour of securing the right to sell their interests.[434] As a consequence of Stead's activity, a third petition came from the Maori owners of the trust reserves. Its wording was on much the same lines as those of the lessees, except for the paragraphs numbered 12 to 15, which read:

12. That very few of the Native beneficial owners of the said Native Reserves situate in the Provincial District of Nelson are now resident in the South Island, and that the individual rents that such beneficial owners receive in respect of their shares therein are now too small to be of any material benefit.
[A note in parenthesis stated that some of the individual shares of rent were as low as a penny. It should be pointed out that although some beneficial owners received a very few shillings from the tenths, the very lowest sums came from Motueka sections, which may have had resident owners.]

13. That by reason of the said Reserves being vested in the Native Trustee and not in the beneficial owners thereof a very large proportion of the rents derived therefrom is absorbed in Land Tax in terms of the "Land and Income Tax Act 1916" and its amendments and that this is manifestly unfair to your petitioners.

14. That your petitioners represent a large majority of the said beneficial owners and that the said owners are and have been for some years desirous of selling their freehold interests in the said lands to the tenants thereof.

15. That many of your petitioners have offered to sell to the Crown their said interests and that several of the said tenants thereof in the Town and District of Motueka have applied to the Native land Purchase board on behalf of the Crown to purchase from the beneficial owners thereof in terms of Sections 107 to 113 of

[434] "South Island Tenths Petitions, Statement of Charles Rupert Stead, 1924, MA 6/0/17 South Island Tenths, in Wai 785 Wai 35(a) vol. 1, p. 181.

> the said Act the freehold in fee simple of the said lands but that the said Board has refused to purchase any of the said interests.[435]

There were 51 signatures and 17 marks attached to this petition. The signatures and marks were witnessed by Stead, who also certified that the petition 'had been read and explained to the said petitioners AND that all the said petitioners did thoroughly understand the meaning and purport thereof prior to signing the same'. Several later said, however, that they had in fact understood that the petition was asking for the land to be returned to them. The idea of mounting a counter petition was raised by some of these Maori signatories in the South Island, who felt they had been misled, although this does not appear to have been carried out.[436] The petitions were presented in 1922 but the non-recommendatory report on them was delayed until the Native Trustee could go out into the field to consult the beneficial owners.

According to the picture Stead painted, Maori as well as lessees would be better off if the lands were sold. Instead of 'a small and very uncertain amount of rent', many of those in Taranaki who had sold their land had received a payment substantial enough to be able 'to purchase substantial homes and farms and otherwise improve themselves.' The other side of the story was that those who spent the purchase money immediately, and who no longer had income from rents, had to find other ways to supplement often meagre incomes. Stead argued that a great degree of progress would take place as a result of converting the leases in Nelson. The capital value would be useful to beneficiaries who were receiving minute amounts annually. Stead added:

> In the case of the larger interests the position is in many cases much stronger as a number of these owners quite able to look after their business interests are forced to live a life of indigence by reason of the fact they are unable to realise their reversion whilst their rents have so diminished as to be valueless.[437]

As a result of these petitions and the issues raised in them, Rawson visited Marlborough and Nelson with Trust Office staff in March 1924. At meetings held on 5 and 6 March, the beneficial owners had an opportunity to weigh up the advantages and disadvantages of keeping their land under the administration of the Native Trustee. They were told that special legislation would be required to enable alienation of the land, but that its passage should be a straightforward process. The decision, in the first instance, was in the hands of the beneficial owners. Rawson's notes from the meeting

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[435] Wai 785 A39 doc 18, no page number.
[436] J C G, memo for the Under Secretary for Native Affairs, 21 May 1923. MA 1 6/0/17.
[437] MA 1 6/0/17

are useful in ascertaining the degree of his consultation, his views on the matter, and the views of the Maori owners.

Having stated that he and his staff had 'endeavoured to do our best for the Maori people', Rawson went on to give an outline of the work of the Trustee elsewhere in New Zealand. This was intended to encourage confidence that the Native Trustee was there to serve the interests of the Maori beneficiaries. Rawson told them that on the East Coast, the Trustee had played an active role in assisting local Trusts to buy out Pakeha leases for Maori farms. In Taranaki, the commissions on the collection of rents and lease administration had been reduced from seven and a half per cent to five per cent, and travel costs were now being met by the Trustee rather than coming out of the rents. The Trustee had appeared before the Native Affairs Committee and resisted Pakeha attempts in Taranaki to secure their hold on leases where no renewal clause had been given. The Trustee had also been behind an Act passed in the House 'returning their lands to Native owners.' In Greymouth, Rawson noted that the Trust had prevented the land being purchased by Pakeha on their own terms. Where possible, the Trustee had increased rents for new leases and reduced the cost of collecting. Rawson also noted that all throughout the country they had lent money on mortgage of unleased Maori lands to Maori farmers.[438]

Rawson went on to argue that closer to home, in the Wairau, the Trustee had assisted those beneficiaries whose properties and stock had suffered flood damage. Finally, in the Nelson and Motueka districts, the Trustee had contributed to repairing the Church property and the hostelry (out of the Tenths benefit fund). The Trustee also claimed credit for a reduction in the land tax.[439] This latter had been made when the Native Trustee took over the administration from the Public Trustee, as 'it was quickly seen that the incidence of Land Tax was a heavy burden on some of them'.[440] In 1922 a reduction was made so that the tax was no more than one quarter of the rent received. Later in 1926, the tax was further reduced to a rate no more than a tenth of the rent received. Only leased Maori land was taxed at half the European rate. These reductions 'naturally mean that a greater proportion of the rents is payable each year to the Maori beneficiaries than formerly'.[441]

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[438] W E Rawson, hand-written notes for meetings 5 and 6 March 1924, MA 1 6/0/17.
[439] ibid.
[440] Deputy Native Trustee to P.H. McDonald, 1 May 1934, AAMK 869 187a, South Island Tenths 1928-1940.
[441] ibid.

Rawson told the meeting that he did not believe that the beneficial owners would gain from selling the reserves. He was aware that some of them had been told that the land would sell for 'a very great price'. He argued that this was not supported by the Government valuation. The figures for the unimproved value were £54,922 plus £23,340 from the special Motueka sections not in the Tenths. He pointed out that the tenants having perpetual leases would claim as their lessees' interest at least half of that.[442] Rawson concluded that the great majority of owners would receive very little money. Furthermore, as the benefit fund created by the tenths trust and maintained by the income from the leased land would no longer be available to them, they themselves would have to pay doctors' bills and hospital fees. The hostelries would have to go, and 'the poor would have to shift for themselves. And in times of stress you would have to shift for yourself.'[443] He believed that the hostels and payment of medical bills (among the other benefits paid out by the fund) were advantages it would be unwise to give up.[444]

The cost of bringing titles under the Land Transfer Act was another consideration. Rawson explained that the Public Trust had kept a reasonably large amount in hand in the Benefit fund in order to get proper titles for the land. The Trustee had commenced this work, and it was expected to cost about £2,000. Added costs would be incurred if sales of the land were attempted before this process was completed. He further argued that it was not a good time to sell.[445]

With reference to claims that had been made by lawyers about a large sum of money in the Benefit Fund, Rawson stated that there was some £2,458 in hand. He listed the out-goings of 1922-23, which had involved not only maintenance costs on buildings, but miscellaneous smaller items, relief from hardship, funeral expenses and so on. Among the other major expenses were flood relief, £320, and the usual medical subsidies which, with hospital fees, came to £450.[446]

The first meeting, held at Motueka on 5 March, was not numerously attended. There were only 11 beneficial owners present. Absentee owners informed Rawson of their decision by letter. Reta Turanga wrote to ask Rawson to 'treat this letter as a formal objection in the event of such proposal of sale being carried at any of the above

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[442] W E Rawson, hand-written notes for meetings 5 and 6 March 1924, MA 1 6/0/17.
[443] ibid.
[444] Native Trustee to Native Minister's Private Secretary, 4 March 1924, MA 1 6/0/17.
[445] W E Rawson, hand-written notes for meetings 5 and 6 March 1924, MA 1 6/0/17.
[446] ibid.

meetings'.[447] Again, the question was complicated by the special terms for occupying Motueka sections. Individuals had land for their own occupation and use, but they were not entitled to lease out unused land on their own account. An impression had been created that the purpose of the petition was to get the land back. Wiremu Tiriwini's statement represented the opinion of most of those present: 'I want the land back – I do not wish to sell.' In the end, the majority of owners in attendance were in favour of letting the matter stand over for two years.[448] Speakers at the meeting at Wairau Pa, Spring Creek, on the following day, also agreed to support the Native Trustee's suggestion that the question of sale should be deferred for two years, until the titles were cleared up.[449]

Later in 1924, a report appeared in the *Marlborough Express* of a further meeting at the Wairau Pa, under the heading 'NATIVE LANDS. "A TANGLED SKEIN." LARGE AMOUNT OF MONEY INVOLVED'.[450] The conference was attended by a number of those with interests, including some from the North Island. The earlier meetings with Judge Rawson had built up confidence that the Native Trustee would act in their interests and according to their decisions. Although he was not prepared to express an opinion about any previous systems of management, the chairman, Mr A. Rore, felt that he would have the support of the meeting in stating that 'since Mr Rawson's appointment in 1920 as Native Trustee, the Natives had been treated most fairly.'[451] There is some evidence that the Maori beneficiaries in the reserve areas trusted Rawson, who had been a Maori Land Court Judge. Tirirau Piripi, the secretary for the Association of Beneficial Owners, wrote to Rawson in June 1924 to

> convey my people's thanks for the kind manner in which you were good enough to receive our recent deputation, in respect of the Nelson and Motueka Reserves, also to express our renewed confidence in the able manner in which you are controlling our affairs. May I also express the desire that these remarks to apply to your worthy Deputy Mr King.[452]

The main issue raised at this meeting was whether the time had come to have the land treated more along European lines, with land transfer titles rather than beneficiary ones. The argument was that the titles were so complicated that nothing could be done until they were altered. In Rore's view, a special up-to-date valuation was required,

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[447] Reta Turanga to Native Trustee, 29 February 1924, MA 1 6/0/17.
[448] W E Rawson, hand-written notes for meetings 5 and 6 March 1924, MA 1 6/0/17.
[449] ibid.
[450] *The Marlborough Express,* 16 May 1924. MA 1 6/0/17
[451] ibid.

taking into consideration any improvements made before the land was let. He estimated the total value, including the tenants' interests, to be in the vicinity of £400,000 to £500,000 at least (the GV of the unimproved sections, given by Rawson in the May meeting, was only £77,262). Rore suggested that they invest the purchase money in the Native Trustee Office to create a fund from which beneficiary owners could borrow at the lowest workable rate of interest.[453]

After the issues had been fully discussed for three days, it was resolved to form an Association of Beneficiary Owners of the Nelson Tenths and Motueka Reserves. It was also resolved to send a deputation to Wellington. The primary objectives of this deputation to the Native Trustee were:

> to urge the government to issue land transfer titles; to obtain a statement setting out the total area from which Maori were receiving benefits, also the allocation; and to ascertain whether the valuations of the Native reservations at the present time were commensurate with those of adjourning European lands.[454]

The petitions had alluded to the disorganised state of the titles, pointing out that the closest they had to a title deed was the original Deed of Grant to the New Zealand Company, dated 1 August 1848. The administrative record of the tenths lands held by the Native Trustee was on a card system and no other registered records were held. Schmidt and Small argue that 'this situation was the catalyst for the Native Trustee arranging for a complete re-survey of the Nelson and Motueka Reserves between 1925 and 1927'.[455] However, Rawson had agreed with Maori to get the titles clarified before any steps were taken towards sale, if that was the decision of the majority.

Following the completion of the re-survey in 1927, another round of meetings was held with Tenths beneficiaries. The valuations of the lands were again a major issue for the owners, who asked the Trustee to explain 'why the current valuation of the Reserves was less than the 1870 valuation, and why the valuations for lands adjacent to the Reserves were higher'.[456] The valuation of the Reserves had fallen from £60,000 in 1870 to £54,000 in 1924.[457] The owners at the 1927 meetings 'argued that previous management of the reserves had been unsatisfactory', as shown by the poor valuations. They stated that they were 'not agreeable to the sale of any lands until they received

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[452] Tirirau Piripi to Native Trustee, 2 June 1924, MA 1 6/0/17.
[453] *The Marlborough Express*, 16 May 1924. MA 1 6/0/17
[454] ibid.
[455] Schmidt and Small, p. 127.
[456] ibid., p. 130.
[457] ibid., p. 129.

valuations commensurate with European sections'. Not surprisingly, a majority of the beneficial owners at these meetings voted against selling the land.[458] Rawson said to Ngata that he doubted 'if any good would arise if any opportunity were given by which any of the small area remaining might pass out of the Native's hands'.[459] But, as Schmidt and Small point out, the issue of valuations, 'which had clearly not been updated at each renewal', remained unaddressed by Rawson.[460]

5.4 THE NATIVE TRUSTEE – LAND POLICY AND PRACTICE:

Under the Native Trustee Amendment Act 1929, absentee owners of the Motueka occupation reserve sections forfeited their rights to live on them, and if the Trustee so desired he could lease the land for them instead. Nukumaru Pullen was the only one of five siblings living on their deceased stepfather's land at Motueka. She argued that although her brothers and sister did reside a lot of the time at Taranaki, they came back often 'and in fact Motueka was really their headquarters'. The Trust Office disagreed. They felt it was more likely that Pullen's siblings were based largely in Taranaki as they all lived and worked in either Patea or Hawera. The Trust Office therefore asserted that 'under the circumstances we think that Nukumaru should pay an occupation rent for the area in excess of her own share. The excess area is 8 acres 1 rood 32.2 perches and we recommend that the rent be £2.0.0 per acre'. The reason for this high rent was that 'there is a good living on the place especially if tobacco is grown although Nukumaru appears to have gone in for crops chiefly'.[461]

This was not an isolated case. An investigation carried out in 1928 showed 'that of the original 222 acres set aside in 1901 [in the Native Land Court hearing for Motueka], 84 acres had been leased by the Native Trustee, and of the 138 acres remaining only 80 acres were occupied by beneficial owners'. The 58 acres that were no longer occupied were then placed on the market for lease.[462]

The 1929 Amendment Act also made it possible for the Native Trustee to lease this land to other beneficial owners without having to go through the process of public

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[458] ibid., p. 130.
[459] Native Trustee to Native Minister, 22 February 1929, MA 1 6/0/17, cited in Schmidt and Small, p. 131.
[460] Schmidt and Small, p. 131.
[461] Memo from R. Jellicoe and E. Nicholls to W. Rawson, Native Trustee, 1 June 1928, AAMK 869/161c MA 6/23a Motueka Native Reserves, 1920-1930, in Wai 785 A39, Doc. 19.
[462] Schmidt and Small, p. 116.

competition. These leases were restricted to terms of up to 21 years with no rights of perpetual renewal, and without the right to compensation for improvements.[463] The Native Trustee decided to limit these private leases to a term of seven years, with a right of renewal after the first term. According to Schmidt and Small, this limitation 'was at the request of absentee beneficial owners, who wanted to ensure that they could resume occupation of the privately leased reserves in the future'.[464] H. D. Bennett, a beneficial owner, claimed that the 1929 Amendment Act 'amounted to confiscation of the Papakainga Reserves in Motueka'.[465]

In 1930 Rawson disposed of all vacant leases in Motueka to Maori beneficiaries, so none remained for public tender.[466] Rawson had had to turn down Pene Mokena's request for a lease as he was only the son of a beneficiary and not an actual listed beneficiary himself. He did, however, grant Mokena a season's tenancy in the hope that a bill he was submitting to Parliament would be passed and amend the relevant clause so that dependants of beneficiaries had entitlements similar to those of beneficiaries.[467]

The situation in Motueka continued to be confusing. Jellicoe and Nicholls, the district officers of the Native Trustee, reported that:

> The present owners are widely scattered and in some cases only one or two are now residing on the lands, the others being located in different parts of the Dominion. Where this is the position the resident owners are occupying more than their share and the absentees are not deriving any benefit from the lands. In a few cases the resident owners finding that they do not require all the land have let a portion upon yearly tenancies to Europeans and are living on the rents. The lands thus rented are not being farmed to the best advantage, the tenant knowing that his neighbour may outbid him in rent the following year naturally tries to get the most off the property during the season he is in occupation without putting anything back, with the result that the ground is becoming impoverished.
> It is perhaps unfair to blame the present owners for this state of affairs as no actual licenses have ever been issued setting out the conditions of occupation and the owners to-day have come to look upon these lands as their own.[468]

In 1940 a petition was submitted from seven lessees protesting against increasing valuation and subsequent large rent increase on land in the Nelson Tenths. The Native Trustee, O. N. Campbell (1935-44), informed the Native Minister that the rents had increased in accordance with the provisions of the lease, and further that the

[463] ibid., p. 116.
[464] ibid., p. 117.
[465] ibid., p. 117.
[466] Rawson to G. Manifold, 28 May 1930, AAMK 869 161c Motueka Native Reserves 1920-30.
[467] Native Trustee to Pene Mokena 28 May 1930, AAMK 869 161c Motueka Native Reserves 1920-30.

lands are 'valuable building sites and are worth the rents which have now been fixed for them'. More importantly perhaps, Campbell added that 'to interfere with the rents which have now been fixed herein would involve inflicting an injustice on the Native beneficial owners'. He also pointed out that if the leasehold had been overvalued at the time of purchase and the present leaseholders made a 'bad bargain' then it was the 'previous lessees and not the owners who received the profit from that bargain', as they would have received the compensation for improvements. If the lessees refused to sign the new leases then they would be offered for public auction, 'loaded with the value of the improvements'. Campbell also noted that one of the lessees who signed the petition had changed his mind and signed the new lease.[469]

Chief Judge G. P. Shepherd, Trustee from 1944 to 1948, objected to the taking of a 20 acre area in Motueka by the Education Department in 1947. He said that as the land was part of the occupation reserves 'set aside for the exclusive use and occupation by Maoris' he believed he had 'no right to agree to any alienation of the freehold even in favour of a State Department'. He went on to say that

> consideration must be given to the small area available for the future settlement of a rapidly increasing Maori population and I would be failing in my duty to those people if I did not resist all action which would reduce the area. May I suggest that you endeavour to find an equally suitable site outside of the Native Reserve.[470]

Likewise, he told the Motueka Borough Council that if it was necessary to take land for roads it would have to be taken through Public Works legislation as 'the Native Trustee has no power himself to dedicate the land in question'.[471]

The Native Trustee also acquired land for the tenths. Two sections in Motueka, previously riverbed land, became Crown land in 1940 and the Native Trustee asked if the Trust could buy the sections as they adjoined two Maori reserves and would provide greater access to those reserves. The Department of Lands and Survey recommended to the Native Department that the land be transferred to the Native Trustee.[472] The policy and practice relating to the reserved tenths changed in the 1950s. This will be discussed later in this chapter.

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[468] Jellicoe and Nicholls (District Managers) to Native Trustee, 31 May 1928, AAMK 869 161c Motueka Native Reserves 1920-30.
[469] Memo from Native Trustee to Native Minister 21 October 1940, AAMK 869 187a 6/78 pt 1 South Island Tenths General 1928-40.
[470] Native Trustee to the Secretary Education Board 15 September 1947, AAMK 869 161d.
[471] Native Trustee to Town Clerk Motueka Borough Council 24 October 1945, AAMK 869 161d.

5.5 THE USE OF THE BENEFIT FUND:

Rawson had made his case for retaining the endowment lands on the strength of the advantages of the benefit fund. He acknowledged that some of the beneficial owners received very little indeed from the reserves, but put the best possible light on it: 'Some get only a few pence in rent some only 1d. [It is the] most valuable penny in world as it gives them Drs attention hostelry & other assistance.' His argument was that entitlement to the Tenths benefit outweighed any dissatisfaction with low rents and declining land values. It was unfortunate for the Native Trustee that the economy was deteriorating in the 1920s; the Depression caused the rents on reserve land to fall dramatically. Surviving lists for the years 1931–1934/5 show that the Native Trustee turned down many applicants for various forms of assistance.[473] As comparable data from the earlier period is not as detailed, it cannot be established with complete certainty whether the early 1930s were exceptionally heavy years for appeals for assistance, but the likelihood is strong.

Rawson made a list of the benefits paid out in the years 1921-22 and 1922-23, to show how much the Trust Office spent for the benefit of Maori. In 1921-22 medical expenses accounted for £180 of benefit fund expenditure, and £40 was spent on supplies to Maori. The list for the following year was more detailed, and medical expenses were still the largest item at £450. Goods supplied to Maori and some seed potatoes cost £24, repairs to the two hostels accounted for £169, repairs to the Maori church at Motueka constituted £7. The 'present year' of 1923-24 involved 'Relief to the extent of £320 to sufferers from loss by flood', as well as 'assisting beneficiaries by monetary grants to tide over pressing necessitous situations'.[474]

In 1934, the Native Trustee explained to the Commission on Native Affairs that:

> For the purpose of deciding whether applicants for assistance from the South Island benefit Fund were entitled to any assistance unemployment relief was adopted as the basis upon which to judge all cases. If the applicant was on unemployed relief or was in receipt of any income which was equivalent to unemployment relief then it was considered that no relief assistance should be given. In the case of funeral expenses the amount allowed from the Benefit Funds is always limited to £10.[475]

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[472] Under Secretary Lands and Survey Department, to Under Secretary Native Department, 2 October 1940, AAMK 869 161d.
[473] South Island Tenths Benefit 1/4/31 to 31/3/34, MS-Papers-3776-4/2/19C.
[474] South Island Benefit, attached to meeting notes, MA 1 6/0/17.
[475] Native Trustee to Secretary Commission on Native Affairs, 2 October 1934, MS-Papers-3776-4/2/19a.

A list of applications for aid between 1931 and 1934, the nature of the assistance requested, and whether or not it was approved and paid, is useful for seeing what sorts of assistance and what types of people were deemed suitable for financial layout from the tenths fund, although unfortunately the list is not broken down into individual years.[476] Most applications for payments for funerals were granted, although Alec Gage's application was not as it was deemed 'not warranted in circumstances', and neither was Hinga Carringtons's as it was decided it was 'payable by successors'. Overall, tangi requests accounted for £196.13.2 of a total £3481.19.3 expended from the benefit fund between April 1929 and April 1934. Food was another large request, accounting for £567.19.4, and maintenance allowances constituted £277.10 of the whole. The largest amount was spent on medical subsidies and hospital fees, which combined came to around £1977.

Medical expenses had always been a significant part of the trust's disbursements. In March 1920, the final return of the Public Trust Office shows a payment of £634 to the Health Department for payment of the medical officer's salary from 1917-1919. The salary of the medical officer from the beginning of 1919 to September of that year accounted for £158.[477] The following year it had risen to £482.[478] Another return completed in 1928 showed that medical assistance accounted for £2925 of a total £8165 expended from the benefit fund between 1921 and 1928. In those years the amount spent varied from £334 in 1927/8 to £566 in 1926/7. Unfortunately, detailed returns were not offered throughout the Native Trustee's tenure, so it is difficult to establish how much was spent each year on what.

Rawson noted in 1928 that the provision of medical services to beneficiaries of the trust should be reviewed. At that point, a beneficiary who was unwell was 'entitled to go to any of the subsidised Doctors for medical advice'. Problems were arising where some Maori who were unwell could not afford the transport to see the doctor, and 'on account of this a minor complaint may easily develop into a serious case through the inability of a Native to obtain early treatment'. As a result, Rawson thought that:

> the attendance on the Natives should compass some arrangement by which the Natives are approached in their own home surroundings and by such attendance a certain amount of preventative work could be established.

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[476] South Island Tenths Benefit 1/4/31 to 31/3/34, MS-Papers-3776-4/2/19C. The following examples (unless stated otherwise) are drawn from here.
[477] AJHR 1920, G-4, p. 9.
[478] AJHR 1921-22, G-4, p. 10.

> As this Department provides an annual sum of £355 for attendance it is only natural to want such an outlay to prove of benefit to those entitled to the attendance and the Native Trustee thinks that it would be preferable to have a medical survey made as suggested to see if a better scheme of attending to the medical requirements of the Natives could not be decided upon in view of the fact that it would probably be more advantageous to have a nurse in the District of the Maoris under supervision.
> If such an arrangement was brought into being the Natives would it is considered feel that their moneys were being expended more in keeping with their own wishes than appears to be the case at present.[479]

This arrangement would no doubt have been of great benefit. It is unclear if this system was put into practice, but the problems with the provision of medical services continued. In 1937 R Keenan wrote to the Native Trustee (Campbell) enquiring about the medical system. He stated that:

> the natives in Waikawa and Picton held a meeting and met the Health Doctor in Picton and the maoris that are owners in the Nelson Tenths decided to get a district nurse or another Maori doctor in place of doctor Smyth at a meeting a while back, and we have waited and are waiting for the answer whether we are getting a doctor or not thanking you for an early answer by the next mail.[480]

A note on the letter dated 25 February 1938 explains that the original letter had been misfiled. The Office noted that as 'a year has elapsed & [it] is a matter for health Dept & possibly has been dealt with by that Dept No action to be taken'.[481]

In 1937 the Secretary of the New Zealand Maori Labour Party, R. Kingi, wrote to the Native Minister enquiring about several uses of the benefit fund. The first expense he questioned was the payment of funeral expenses. The standard payment for these from the Native Trustee was £10, but Kingi explained that 'we find this amount is very small'.[482] The Native Minister replied that the sum was in fact 'quite reasonable and it would not be equitable to expect the Benefit Funds to pay any more as to meet in full the various accounts for funeral expenses which are submitted for payment would place too heavy a burden on the Benefit Fund'. He added that, 'in other Districts the beneficiaries are satisfied with the present payment'.[483]

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[479] Native Trustee to Director General of Health, 18 July 1928, MA 1 6/0/14, in Mitchells, Wai 785 A35(a) Vol. 1, p. 131.
[480] R. Keenan to Native Trustee, 19 February 1937, MA 16/0/14, in Mitchells, Wai 785 A35(a) Vol. 1, p. 38.
[481] Note on R. Keenan to Native Trustee, 19 February 1937, MA 16/0/14, in Mitchells, Wai 785 A35(a) vol. 1, p. 3.
[482] R. Kingi to Native Minister, 7 March 1937, AAMK 869/1123c [37/11] Havelock Hostelry 1919-1939, in Halder, p. 2575.
[483] Native Minister to R. Kingi, 20 April 1937, ibid., p. 2578.

Kingi's other concerns were the deplorable state of the Havelock hostel, and the lack of decent housing for Maori. He described the hostel as 'not worth living in' and overrun with gorse. Housing was a greater problem, as 'many of our people are living in tents & small shacks & will do so, until something comes to light'.[484] The response from the Native Department was that 'the condition of the hostelry would be much better if the younger generation would not misuse it by breaking into it and using the conveniences without any drum or can....Applications for assistance for the erection of homes under the Maori Housing Act should be referred to the registrar of the Native Land Court'.[485]

Regardless of the poor condition of the Maori hostels, they continued to be a commonly used aspect of the benefit fund. In September of 1933 Mrs Ricketts (the caretaker of the Nelson Hostelry) received a letter from the Deputy Native Trustee explaining that the hostelry was:

> provided from the benefit funds for the purpose of accommodating visiting maoris. It is not intended that the local natives should make use of same, nor that visitors should stay for any length of time. It is not right that some natives should remain constantly so that visiting maoris cannot obtain accommodation.[486]

In fact, in 1921 the Native Trustee had served notice on Te Hahi Kawharu, threatening to get the police to remove him and his mother and child if he did not leave in a fortnight.[487] Mrs Ricketts was informed in 1936 that the Native Trust Office was 'prepared to allow some latitude during the fruit season as to the length of stay', although they still discouraged long visits.[488]

The fund provided for a certain amount of the hostels' upkeep, but it did not stretch to the supply of beds and bedding to the hostels, even though these furnishings were referred to by Mrs Ricketts as being of 'urgent necessity'.[489] It certainly appears that the upkeep of the hostels was never very good. A 1935 letter from the Inspector of Health to the Native Trustee Office referred to the 'very bad condition' in which he found the hostel. He recommended that it be thoroughly cleansed and painted, 'particularly as several cases of scabies have been in evidence of late'. He went on to

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[484] R. Kingi to Native Minister, 7 March 1937, ibid., p. 2576.
[485] Native Minister to R. Kingi, 20 April 1937, ibid., pp. 2578-9.
[486] Deputy Native Trustee to Mrs Ricketts, 8 September 1933, MA W1369 23a.
[487] Local Deputy Public Trustee to Te Hahi Kawharu, 20 July 1921, MA W1369 6/79/6 Maori House-Nelson Hostelry 1918-1923, in Halder, p.2069.
[488] Deputy Native Trustee to Mrs Ricketts, 13 January 1936, MA W1369 23a.
[489] See Jones Native Trustee to Buxton & Co Ltd, 27 July 1933, and E. Buxton to Secretary Native Trust Department 25 July 1933, MA W1369 23a box 4.

explain that 'as many as thirty have occupied this hostel at one time...my concern is, should any outbreak occur here, it would not place any credit to this Department'. He told the Deputy Native Trustee that the hostel had been 'left in a very bad condition and the present occupiers are incapable of cleaning the place up'.[490] Considering the number of people staying at the hostel it is perhaps not too surprising that equipment and facilities wore out, but it seems extraordinary that the bath in the Nelson hostel could have been left so long without maintenance that not only was it broken but the bottom was eaten through with rust.[491]

In 1948 it was noted that even though a magistrate had made an order in 1940 closing the Nelson hostel due to the appalling state of the building, this order had yet to be carried out as 'it was not possible to provide alternative accommodation'. The Maori Trustee noted that:

> The buildings are beyond the stage when they can be repaired or altered, but even if reconditioning work was considered, it would be inadvisable to entertain such a proposal from a health point of view as it is evident that nothing will eradicate the offensive odours that at present exist. I might add that the Hostel has already been sprayed out with D.D.T. insecticide, repairs carried out to defective sanitary plumbing work, rubbish receptacles provided, and the premises cleaned up generally and inspected each week by the Sanitary inspector.[492]

The Butterworths argue that the Maori hostels assumed greater importance after the Second World War and into the 1950s. After 1943 the Native Minister, H. G. R. Mason, saw 'an opportunity to socialise country Maori into urban Pakeha customs of behaviour' through the hostels. He directed the Native Trustee to 'ensure that all the hostels were brought up to a more modern standard and that visitors were to be expected to use the facilities'.[493] As part of this, a 'small charge' would be made for everyone using the facilities, although 'ways would have to be found to meet cases of genuine hardship "but in these days of Social Security there should not be many"'.[494]

The 1950s saw more young Maori entering the towns in 'ever-increasing numbers'. The Butterworths argue that 'without the hostels, many of the young people would have had difficulty finding any sort of accommodation at all'.[495] And after 1946,

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[490] Inspector of Health to Medical Officer of Health, 5 August 1935, MA W1369 23a.
[491] Inspector of Health to the Native Trustee, 29 May 1935, MA W1369 23a box 4.
[492] Memo from Maori Trustee to Minister of Maori Affairs, 2 June 1948, MA 6/79/6, in Mitchells, Wai 785 A35(a) Vol. 1, p. 3
[493] Butterworth, pp. 49-50.
[494] Cited in Butterworth, p. 50.
[495] ibid., p. 70.

the Maori Trustee was able to provide hostels for all Maori, not only Trust beneficiaries. Section 7 of the Native Purposes Amendment Act 1946 allowed the Maori Trustee to 'apply any funds for the benefit of Maori in general'.[496] The history of the benefit fund in the 1950s will be discussed later in this chapter.

5.6 THE 1934 COMMISSION OF INQUIRY:

Unfortunately, in the late 1920s and 1930s, the Native Trustee took on more duties than his office could reasonably be expected to control. In particular, he became closely involved with Sir Apirana Ngata's policy of encouraging Maori farming. Difficulties over mortgages were made worse by the onset of the Depression. The government, as part of its measures to reduce costs, abolished the separate Trust Department in 1932, and the Native Trust Office and the Native Department were amalgamated under one head. But the financial situation continued to deteriorate. The refusal of the Auditor-General to pass the 1933 Accounts of the Native Land Development Schemes led to the appointment of a Commission of Inquiry into the Native Department and the Native Trustee. The Native Minister, Sir Apirana Ngata, resigned as a consequence of the report of the commission.[497]

In February 1934 David Stanley Smith (Supreme Court Judge), John Alexander (lawyer), Donald Gordon Johnston (public accountant), and Lawrence William Nelson (farmer) were commissioned to inquire into and report upon the various Government departments administering Maori affairs.[498] They were required particularly to look into the development schemes set up under the Native Land Act of 1931 and 'the probability of their achieving the results intended, or of their being justified by the benefits they confer on the Maori people'. They were also asked to investigate the nature of the funds available to Maori – what purposes they were used for and whether they were being used as effectively as they could be.[499] The Native Trustee Department was covered in two sections of the Commission's final report (there were 15 sections in total). The commissioners reported on the schemes of the Native Trustee for Native land development and assistance with farming (Part IV), and the administration of the Native

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[496] ibid., pp. 71-2.
[497] ibid., pp 32–38.
[498] The report of the Commission was published in AJHR 1934 G-11.
[499] Report of the Commission of Inquiry into Departments of Government Concerned with Native Affairs, AJHR 1934, G-11, p. 1.

Trustee (Part XIII). The development schemes and farms of the Native Trustee were not run in the northern South Island, and consequently little in Part IV of the Commissioners' report is relevant to this report. The matter of most importance in this section is the fact that the money for the schemes and loans to Maori farmers came out of the Common Fund of the Trustee, and the rents received from all reserves vested in the Native Trustee were deposited in the Common Fund.[500] So, effectively, money from the northern South Island Tenths could have been used to fund development schemes in Taranaki.

Although criticising the administrative skills and efficiency of the Trustee as regards the development schemes, the Commissioners stated that the accounts of the office were in order and they believed that the Trustee had 'shown himself to be capable of acting as an investment Trustee'. They supported the recommendation that the positions of Native Trustee and Under-Secretary of the Native Department be amalgamated. They asserted that this would provide better service to the beneficiaries 'by decentralizing, where possible, the accounts of beneficiaries'. They also believed that Maori would be happier in their dealings with the Trustee if 'they can obtain information by a personal visit to his representative at a District Office rather than by correspondence with Head Office'.[501] The Commissioners went on to note the various concessions made by the Native Trustee to his beneficiaries. These included increased interest rates, lower administration expenses, the increase of rent paid out to beneficiaries in the Tenths from 50 per cent to 75 per cent, and the reduction of the commission charged on the collection of rents.[502]

The Commissioners ended their section on the administration of the Native Trustee by stating that 'we trust that the analysis of the Native Trustee's administration which we have made may ensure the proper meeting of his obligations to beneficiaries and a closer and happier contact between the Native Trustee and his beneficiaries'.[503] Clearly, the commissioners did not anticipate any problems in amalgamating a supposedly independent trustee with a government department under the direct control of the government of the day. Similar issues, of course, applied to the Maori Land Court. It should be noted, however, that the commission recommended an advisory council play a role in the administration of funds (covered below).

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[500] ibid., p. 27.
[501] ibid., p. 147.
[502] ibid., pp. 147-8.

The final section of the Commission's report concerned itself with 'Special Complaints by Private Persons'. Under this heading came 'General Complaints by Mr. R. C. Sim, Representing Certain Beneficiaries of the Native Trustee'. The first three of these complaints asserted that the administration of the Native Trustee, including financial administration, had been 'a failure', and that the 'lack of officers in the Native Trust Department [meant that] there have not been proper inspection and proper supervision of Native reserves'.[504] The report stated that these complaints had been dealt with sufficiently under Part XIII. The fourth and fifth complaints put forward by Sim dealt with Greymouth and Westport respectively. The final complaint regarded the 'unfair allocation of the Wellington and Nelson "tenths"',[505] meaning by this the distribution of monies accruing from the lands. In response, the Commissioners explained how the Native Trust had been established, and how the income from the reserves was distributed. They argued that, in contrast to the Wellington Tenths, the South Island Tenths fund appeared to be adequately run.[506]

A comparison of the expenditure of the Native Trustee in the North Island Tenths with that in the South Island Tenths shows this policy clearly. In April 1925, for instance, the North Island Tenths fund had a balance of £11,197 17s 11d. The income for the benefit fund from leased lands was limited to 25 per cent of the total rental income. This amounted to £537 and 19s. The expenditure of that year amounted to £380 11s 10d. In the South Island Tenths, the balance of the benefit fund was £3980 19s 1d. Income for the benefit fund for that year included 25 per cent of the total rents at £555 10s 2d. The expenditure came to nearly £2,300. Of that, just under £1100 had been spent on surveys and titles, and £1,175 18s was spent on relief.[507]

The Commission expressed their surprise

> at the extent of this accumulation, particularly when the origin and the history of the grant are considered. In our view the benefit funds exist to relieve the temporal necessities of the Natives and for definitely benefiting them. If the moneys are hoarded many Natives may die without receiving the assistance and benefit which they rightly should have had.[508]

Although they were discussing the Wellington Tenths, this attitude towards the Tenths benefit is equally applicable to the Nelson Tenths fund. While recognising the need for

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[503] ibid., p. 148.
[504] ibid., p. 152.
[505] ibid., p. 152.
[506] ibid., p. 154.
[507] ibid., Appendices IX-XII, pp. 186-191.

a reserve sum to be retained in the benefit funds in case of 'an epidemic or some disaster', the Commission failed to see that an accumulation of nearly £15,000 in the Wellington tenths fund was 'desirable'. In fact, they commented that it seemed to demonstrate 'that the administration of the benefit fund has not been in accordance with the spirit of its establishment'.[509]

The comments of the Commission on the South Island tenths highlighted the 'considerable amount' spent on surveys and titles, as Rawson had agreed to do, and the fact that the accumulations in the tenths funds were held 'without earning interest'. They stated that 'as the Native Trustee is no doubt earning interest on the money, he should pay interest on it'.[510]

The Commission recommended that an Advisory Committee be attached to the Native Trustee 'for the purpose of administering the benefit funds', as 'it is not satisfactory that any one individual should have the sole administration of this fund'.[511] This committee was to consist of the two Maori MPs for the Nelson and Wellington district, and the Director-General of Health. The Commissioners believed that the Native Trustee should be 'required' to consult with the Advisory Committee by February each year to settle the policy for 'the administration of relief'. They further stated that the Trustee 'should have no discretion in this matter of consultation', and should be required to report to the committee at least once during the winter on the state of the administration.[512] The Commission stated that as at 1934, no records were kept of personal applications to the Native Trustee for relief if they were refused.[513] This was not entirely accurate – some records were kept and can be found in MS Smith (although they are heavily restricted). The Commission recommended that records be kept of refused applications, and also of the reasons for refusal. It was also recommended that a summarised return of the numbers receiving relief from the fund be published annually in the *Kahiti* and *Gazette*.[514]

The Commission's recommendation that an Advisory Committee be established was never followed up. Small and Schmidt state that 'the recommendation in itself was

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[508] ibid., p. 154.
[509] ibid., p. 155.
[510] ibid., p. 155.
[511] ibid., p. 155.
[512] ibid., p. 155.
[513] ibid., p. 154.
[514] ibid., p. 155.

an indictment on the Native Trustee's administration of the Benefit Fund'.[515] In what seems to be a compromise, the 1934 Board of Native Affairs Act established a board chaired by the Native Minister and consisting of the Under-Secretary of the Native Department, the Financial Adviser to the Government, the Under-Secretary for Lands, the Valuer General, the Director-General of Agriculture, and three other people appointed by the Governor-General.[516] This Board was to have control over the Native Trustee investments and expenditure, and supervision of farming schemes.[517]

Certain issues raised by the Commission remained unresolved. Two years later, in 1936, Mrs Bennett and two other Motueka beneficiaries had an interview with Joseph Savage, who was both Prime Minister and Minister of Native Affairs at the time. Mrs Bennett began by asserting that 'papakainga lands' (the Motueka occupation reserves) were never meant to be merged into the general tenths funds and administration.[518]

Bennett claimed that they had never sold papakainga land to the Company, but somehow this land had ended up in the tenths, and the Nelson tenths benefit fund was depleted also. The minutes of the meeting noted:

> These were the things which rankled. They wanted their land. They wanted to do things themselves. At the present they could not let the land unless it went through the Native Trustee. If her mother died the land would be put up and they would have to tender, and pay rent for their own land.[519]

The Deputy Native Trustee later explained that in the event of Bennett's mother's death she and her sibling would succeed to the interests, and would not have to tender for the land.[520]

King, the Deputy Native Trustee, also commented on Bennett's criticisms of the merging of the Motueka occupation reserves with the tenths, and her assertion that they had never sold those lands to the Company. King argued that:

> The statement that the lands had been taken out of their hands and they had never sold those lands to the New Zealand Company is difficult to understand in view of the fact that the transactions which led up to the creation of the Tenths took place very nearly a century ago and it was a part of such purchase by the New Zealand Company that for every 10 sections of land allotted for sale to Europeans one section would be set aside as a permanent reserve for Maoris.[521]

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[515] Schmidt and Small, p. 126.
[516] Board of Native Affairs Act, 1934, 25 Geo. V, No 44, s. 3.
[517] ibid., s. 7.
[518] Interview with the Prime Minister and Minister of Native Affairs 24 September 1936, AAMK 869 161d.
[519] ibid.
[520] Deputy Native Trustee to Native Trustee, 5 October 1936, AAMK 869 161d.
[521] ibid.

King was clearly not aware of the complicated history of the Spain Commission, and its finding in various cases that Maori had not intended to sell their pa, cultivations, and occupation lands, and his award of these to Maori at Nelson in addition to the Company's Tenths. Later, in 1938, a deputation of Taranaki Maori with interests in the Company tenths was made to Prime Minister Savage. Their claim was that not all the land promised to them in the tenths had been reserved, although they had been surveyed, and the Maori owners did not know what had happened to most of it.[522] Clearly there was still a great deal of confusion and misunderstanding about the nature of the reserves.

5.7 THE 1950S AND CHANGE:

There were few major administrative changes between the 1934 Commission and the 1950s. The most significant was the increasing association between the Maori Trustee and the Maori Affairs Department, which resulted in what Butterworth calls 'the loss of administrative autonomy', which came about with the 'formal absorption of the staff of the Native Trust Office into the Native Department' after 1934.[523] This was also a period in which the core of expertise in the Native Trust Office gradually disappeared as the personnel of the office changed, a process which the Butterworths argue was hastened through decentralisation policies.[524] These decentralisation policies 'held crucial implications for the Native Trustee's staff', the most significant of which was the resulting downgrading of Native Trust Office staff as their functions were delegated to district officers.[525]

A Board of Native Affairs was established as a direct result of the 1934 Commission. This Board had control over the Native Trustee's investment decisions and farming development. No Maori served on these boards between 1934 and 1948. As Butterworth points out, 'the Native Trust Office's status and independence had been trimmed back sharply' since its origin as a semi-independent institution. Consequently,

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[522] Deputation to the Prime Minister, 25 January 1938, AAMK 869 187a 6/78 pt 1 South Island Tenths General 1928-40.
[523] Butterworth, p. 39.
[524] ibid., p. 39.
[525] ibid., pp. 39-40.

the Native Trustee became just another arm of the Native Department rather than an agent for the Trust's beneficiaries.[526]

Other changes occurred in the years after the Second World War, when 'the entire administration of Maori affairs was profoundly reshaped'.[527] The 1950s saw a spate of legislation that substantially altered the control and nature of Maori vested reserve lands. The Maori Land Amendment Act of 1952 dissolved the Maori Land Boards and abolished Maori land districts, and transferred all the powers and duties of the Maori Land Boards to the Maori Trustee.[528]

Changes to the Benefit Fund:

As New Zealand became a more established welfare state, many of the expenditures of the benefit funds were taken over by the Government. For instance, the medical subsidies that had been paid from the benefit fund were phased out by 1942, as most doctors involved went under the State Social Security Scheme, which subsidised medical service for all New Zealanders.[529] This scheme also provided maternity benefits.[530] As this had been a substantial expense for the trust, there was presumably a significant benefit for its beneficiaries when the Crown took over responsibility in this area.

An examination of the account sheets of the Benefit Fund in the 1940s to 1950s show that the largest number of entries on the disbursement side were for 'goods supplied'. Funeral expenses continued to be paid (at an average of £10), and some contributions were made to pa lighting and similar items. Clothing and baby supplies were also granted in 1953, but no medical expenses were listed.[531]

In 1953 the District Officer of the Maori Trustee suggested changes to the way money was granted from the benefit fund. At that time grants were made for four purposes: maternity grants, which were not means tested, and did not exceed £6; economic grants, which varied 'according to circumstances and recommendation by Tribal Executive or Welfare Officers'; funeral grants limited to £15 at most; and grants for tangi purposes which varied 'according to the standing in the tribe of deceased

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[526] ibid., p. 41
[527] ibid., p. 55.
[528] Maori Land Amendment Act 1952, No. 9, ss. 3-4.
[529] Schmidt and Small, p. 126.
[530] District Officer to Head Office Maori Trustee, 9 January 1956, AAMK 869/190c [6/79] South Island Tenths Benefit Fund-General 1953-1959, in Halder, pp. 2443-4.

person'. The District Officer recommended that grants for maternity purposes be cancelled. The recommendation was not taken up at this time. It is interesting to note that the Officer suggested that 'possibly the best solution would be to have a preliminary discussion on these matters with the people themselves. No doubt they would be agreeable to a revision of the policy in order that the funds might be conserved to be used for some more lasting purpose then being frittered away in small individual grants'.[532] This consultation does not seem to have taken place.

Three years later, the list of what the fund was to be used for had been expanded.[533] The first three items were similar: maternity benefits (to pay for a clothes order, not means tested, and limited to £6); funeral expenses of £15 (not means tested) and tangi expenses of up to £20, depending on the persons importance in the community. The other categories are perhaps expansions of the pervious definition of 'economic grants'. They were for 'sickness and poverty', which were made on the production of a sickness certificate or a report made by a Welfare Officer, and once the financial situation of the family had been taken into account. The fifth item was for 'education', both for primary and secondary schooling, although the District Officer noted that it was rarely made for secondary school pupils, 'except in exceptional circumstances such as indigency, brilliance of the pupil etc'. (This seems to be at odds with the note at the bottom of a 1955 application from Mrs Thomas Wilson for assistance to pay for her children to go to school, which says that 'Education grants not made from Tenths').[534] The sixth category was grants to 'community institutions'. Along with the funds provided for local projects such as a Motueka church, it is interesting to note that the fund also provided street lighting, roading and drainage for the marae at Porirua. The Officer notes that a large amount of money had been spent on the marae in the previous five or six years, but that now the proportion of beneficiaries of the South Island Tenths living there was decreasing.[535]

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[531] Maori Trustee Account Book extracts 1941 and 1950s, from Maori Trustee Office, in Mitchell Document Bank, Wai 785 A39 Doc 3.
[532] District Officer to Head Office Maori Trustee, 31 July 1953, AAMK 869/190c [6/79] South Island Tenths Benefit Fund-General 1953-1959, in Halder, p. 2438.
[533] District Officer, Wellington to Head Office, Maori Trustee, 9 January 1956, AAMK 869/190c [6/79] South Island Tenths Benefit Fund – General 1953-1959 in Halder, pp 2443-4
[534] Mrs Thomas Wilson to Minister of Maori Affairs, 29 March 1955, AAMK 869/190c [6/79] South Island Tenths Benefit Fund-General 1953-1959, in Halder, p. 2439.
[535] District Officer, Wellington to Head Office, Maori Trustee, 9 January 1956, AAMK 869/190c [6/79] South Island Tenths Benefit Fund – General 1953-1959 in Halder, pp 2443-4

This letter also records the amounts given out from the benefit fund in 1954 and 1955. Although the amount spent was roughly the same, the distribution amongst the expenses had changed. In the first year the expenditure was: maternity grants of £694, funeral expenses of £603, £77 was spent on the Porirua pa and £257 on other expenses; a year later the amounts were £968 on maternity expenses (a significant increase), funeral expenses had decreased to £258, £104 was spent on the Porirua pa and £447 on other expenses.[536]

The 1955 Maori Reserved Land Act authorised the Maori Trustee to retain an amount not exceeding a quarter of the rents of the Nelson Tenths for the purposes of a benefit fund. The same description of 'benefit' was given, with the added reference to children of beneficiaries. In a new departure, the Act stated that

> Nothing in this section shall be so construed as to oblige the Maori Trustee to retain any part of the rents and profits from the reserve aforesaid as a benefit fund, and, if in the opinion of the Maori Trustee, the benefit fund is no longer required to be maintained, he may distribute any amount held in the fund to the persons beneficially entitled thereto.[537]

This policy seems to be in line with the policy that had previously been carried out in respect to the North Island (Wellington) Tenths. In 1949 the amount of the benefit fund from those tenths had been pegged at £2,500 by the 1949 Maori Purposes Act, and no further contributions were credited to it. By 1953 the fund had decreased to £400.[538]

In January 1956, the District Officer outlined the policy relating to the provision of assistance out of the Tenths benefit funds. He noted that 'the beneficiaries of the Tenths are increasing from year to year and administration of the fund becomes increasingly onerous'. He continued, 'it seems that the policy as to the application of the Benefit Trust requires overhaul particularly in respect of the individual grants'. Notes on this memo from the Maori Trustee point out that 'the needs of the Maori people have changed in the interim and a change is now overdue in regard to the purposes for which assistance shall be granted to beneficiaries. Whether maternity benefits are wasteful; and educational benefits are beneficial is a matter of opinion which the beneficiaries alone can resolve. It can be put to them'.[539]

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[536] ibid., pp 2443-4

[537] Maori Reserved Land Act, 1955, No 38, s. 90 subsection 3.

[538] District Officer, Wellington to Head Office, Maori Trustee, 31 July 1953, AAMK 869/190c [6/79] South Island Tenths Benefit Fund – General 1953-1959 in Halder, pp 2443-4

[539] District Officer to Head Office Maori Trustee, 9 January 1956, AAMK 869/190c [6/79] South Island Tenths Benefit Fund-General 1953-1959, in Halder, p. 2444.

The provision to dissolve the benefit fund (under the 1955 Maori Reserved Land Act) was discussed between officials in the Maori Trust Office. It was pointed out that 'beneficiaries are already quarrelling amongst themselves because of the unequal benefits that they receive from the Benefit Fund'.[540] It was believed that the administration of the fund was becoming increasingly difficult, especially as the number of beneficiaries had increased from 254 in 1893 to approximately 1500 in 1956.[541] It was also pointed out that beneficiaries of the Tenths received grants for maternity and community purposes that were 'something extra' to what others in New Zealand received.[542] One could argue, of course, that the benefit fund was not intended to operate instead of alternative funds; but as well as, for the benefit of those interested in the lands. Officials at the time did not necessarily see it that way.

Another point in favour of the dissolution of the benefit fund, according to the Maori Trust Office, was that this would 'cut out complications in the Conversion and the Consolidation of the list of beneficiaries which we hope to tackle shortly',[543] and which would be used for the eventual alienation of beneficial interests.

The Maori Trustee agreed to the recommendations to dissolve the fund in July 1956. The fund would be closed and the whole of the rents paid to beneficiaries 'subject to the retention of a sufficient sum to meet any guarantees or other definite commitments already made'.[544]

From the evidence available it does not seem that the beneficiaries of the fund were consulted before this decision was made. Once it had been made, the question of advertising the fact was brought up. The reason given for the need to advertise was not that beneficiaries had a right to know, but that it would stop the submission of 'useless inquiries' about benefits. Members of the Trust Office staff were reluctant to advertise the closure of the benefit fund as this might 'give rise to a flood of complaints and inquiries', and possibly some protests on a Ministerial level. It was advocated that a cyclostyled statement announcing the closure of the fund be sent out in reply to any

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[540] Memo to Maori Trustee, 1 February 1956, AAMK 869/190c [6/79] South Island Tenths Benefit Fund-General 1953-1959, in Halder, p. 2445.
[541] Assistant District Officer to Head Office, 12 June 1956, AAMK 869/190c [6/79] South Island Tenths Benefit Fund-General 1953-1959, in Halder, p. 2448.
[542] ibid., p. 2448.
[543] ibid., p. 2448.
[544] Maori Trustee to District Office, 13 July 1956, AAMK 869/190c [6/79] South Island Tenths Benefit Fund-General 1953-1959, in Halder, p. 2449.

inquiries about the benefit fund.[545] As I could find no formal announcement that the benefit fund had closed, it is fair to assume that this latter practice was adopted when the fund was dissolved in mid-1956.

Changes to Control of Lands:

In 1953, the Governor General assented to three statutes that sought to reorganise the way Maori Affairs and lands were dealt with. They were the Maori Affairs Act, the Maori Trustee Act, and the Maori Purposes Act.[546] The most significant of these for the Nelson Tenths was in fact the Maori Affairs Act, and not the new Maori Trustee Act.

The District Solicitor wrote to the District Officer of the Maori Affairs Department/Maori Trustee, in 1954, regarding reserves in the Wellington and Northern South Island district. He had several ideas for the future administration of the reserves. Nearly all of the reserves in this area were leased with perpetual rights of renewal for the lessees. This meant that:

> the beneficial owners therefore have practically no prospect at all of getting any personal occupation of these lands in the future and the only benefit they get is their share in the revenue collected by the Maori Trustee and in the case of the South Island and North Island tenths the rights to qualify for special assistance from the Benefit Funds which were established.[547]

The original purpose of the reserves was explained, as was the solicitor's belief that they were not serving that purpose any more:

> The original idea of the Maori Reserves was that they would be a perpetual endowment for the beneficiaries. At the time they were made reserves this was a sound policy and was of considerable benefit to the Maoris concerned. Although many of the present beneficiaries are interested in more than one Reserve...it seems obvious that when less than 2% of the beneficiaries get more than 8/- per week from any one Reserve, the Reserve rents are no longer a significant contribution to the income and financial support of the great majority of the beneficiaries. Section 144 of the Maori Affairs Act, 1953, does not permit the elimination of small interests at the succession point and in another generation the position will be almost hopeless if no changes are made.[548]

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[545] File Note, 3 August 1956, AAMK 869/190c [6/79] South Island Tenths Benefit Fund-General 1953-1959, in Halder, p. 2450.
[546] Maori Affairs Act, 1953, No. 94, Maori Trustee Act, 1953, No. 95, and Maori Purposes Act, 1953, No. 112.
[547] District Solicitor to District Officer, Maori Affairs, 3 September 1954, AAMK 869/137c Pt 1 Maori Reserves General 1954-1956.
[548] ibid.

He went on to deplore a situation where many staff members spent long hours on costly work which conferred little benefit on the Maori beneficiaries. At this point the Maori Trustee had no power to dispose of the freehold of reserved land. The District Solicitor commented that 'a number of substantial owners in some of the reserves' had commented that they would like to sell the freehold to the lessees or the local authorities, and the lessees also wanted to freehold their leasehold sections.

The suggestions made by the District Solicitor were for the lessees of 'sufficient portions of each reserve affected' to freehold those sections to enable the buying out of those owners receiving less than 10/- biannually. These smallest shareholders did not receive the rent due them anyway as it was deemed too small. Instead, it was 'paid to the Maori Education Foundation in terms of section 46D of the Maori Trustee Act 1953'.[549] Other owners could also give written consent for their shares to be bought out. His alternative plan was:

> That legislation be obtained to create one reserve Block account for all the reserves areas which are leased on perpetually renewable leases. The shares in this new title to be computed by taking the unimproved value of each reserve and computing each owner's share of such value and then adding up each owner's total shares in all the reserves.[550]

This suggestion is similar to the incorporations that could be established under the Maori Affairs Act 1953.

Section 152 of the Maori Affairs Act 1953 enabled the Maori Trustee to sell any interest in any Maori land that was vested in the Trust Office. Restrictions were placed onto whom the land could be sold to under this section, namely other Maori, incorporations of Maori (set up under Part XXII of the Act), and the Crown for purposes of Maori land development.[551] The Maori Vested Lands Administration Act, 1954, provided for the Maori Trustee to sell land with the consent of owners.[552]

District Officer I W Apperly, suggested in 1958 that the Maori Trustee amalgamate the Motueka Reserves. At this point less than 50 acres of the Motueka Occupation reserves were actually in occupation by Maori owners. The rest were being leased. The letter explained that:

> the Maori Trustee feels that in view of the very large reduction in the area still in occupation by Maori residents of Motueka the main purpose in setting the lands

[549] Report of the Commission of Inquiry into Maori Reserved Lands 1975, p. 348.
[550] District Solicitor to District Officer, Maori Affairs, 3 September 1954, AAMK 869/137c Pt 1 Maori Reserves General 1954-1956.
[551] Maori Affairs Act 1953, No. 94, section 152.
[552] Maori Vested Lands Administration Act, 1954, No. 60, s. 61.

> aside as occupational reserves has largely disappeared, he has, therefore, been investigating the possibilities of incorporating these reserves once more in the lands usually referred to as the South Island or Nelson Tenths. This would be done subject to proper arrangements being made for securing the occupation of those few owners who are still occupying parts of the reserves. The amalgamation would simplify the work of distribution of the rents received from the blocks and would be a very effective guarantee that the rents accruing from individual sections were being paid to the right people.[553]

The 1967 Maori Affairs Amendment Act extended the alienation powers of the Maori Trustee by allowing lessees to buy reserved and vested land.[554] Under this Act a total of nearly 18,000 acres was sold nationally by 1973.

Most of the 1967 Amendment Act's provisions were not brought into operation until 1 April 1968. The day after the Act commenced, an official in the Maori Trust Office wrote to Mr Williams (the Deputy Maori Trustee from 1975-78 but acting within the Trust from 1968) in regards to the amalgamation and possible sale of reserved land in the Nelson Tenths and Motueka. He wrote that the suggestion that the South Island Tenths and Motueka reserves be amalgamated had:

> been on the slate for some years and assumes more urgency now that legislation has been passed enabling the lessees to freehold. From a practical viewpoint it would obviously be better to amalgamate before approaching the owners of the various Motueka Reserves to see if they wish to sell in the event of the lessees wanting to freehold.[555]

The Christchurch District Officer also thought that amalgamation would bring many benefits, and in March 1968 he too mentioned the purchase of leased land.[556]

Section 152 of the Maori Affairs Amendment Act 1967 allowed the Maori Trustee to sell to the lessee any land vested in the Trustee which was subject to a new lease. The process outlined was for the lessee to inform the Maori Trustee that he or she wished to 'acquire the freehold of the land comprised in [the] lease at a price to be stated in the notice, being a sum not less than the amount of the capital value of the land as determined by a special valuation'.[557] The Trustee then followed up this request by purchasing the appropriate number of shares from 'one or more' of the owners of the

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[553] Draft letter to Motueka owners from Maori Trustee, 7 February 1958, AAMK 869 163a Motueka Native Reserves.
[554] Maori Affairs Amendment Act, 1967, No. 124, sections 152 and 154.
[555] Unknown official to Mr Williams, 2 April 1968, AAMK 869 163a Motueka Native Reserves.
[556] J. E. Lewin, District Officer, to Mr Williams, 22 March 1968, AAMK 869 163a Motueka Native Reserves, NA
[557] Maori Affairs Amendment Act, 1967, No. 124, section 152 subsections 2 and 4.

land in question, reserving a commission of up to 5 per cent for the Trust out of the purchase price.[558]

It was under Section 155 of the 1967 Amendment Act that Nelson lands were later alienated. This section provided for the Maori Trustee to sell reserved land to the lessee. The process for these sales followed the same lines as those of vested land under section 152.[559] Both section 152 and 155 contained a proviso that should the Maori Trustee, in his 'absolute discretion', decide that the sale of any land would be 'impractical or inexpedient', he could inform the lessee that no offer for the land could be entertained.[560]

The process of freeholding leases under the 1967 Amendment Act is shown clearly through the following excerpts from Maori Trust Office correspondence files. In July 1968 the District Officer of the Maori Trustee wrote to MP William Rowling in regard to an 'enquiry on behalf of Mr F. Ewers of Rosedale who wishes to freehold his Maori Reserved leasehold land'. Lewin (the District Officer) went on to explain that:

> Before this can be agreed to, there must be owners with sufficient shares in the reserve wishing to sell their interests. The Maori Trustee is in the course of sounding out the owners but this may take some time. There are just on 100 separate trusts of reserved land in this district.
> Mr Ewers' property is part of the South Island Tenths and this trust has some 1700 owners. We are working on the issue of a circular letter to these people to get their wishes but this means gathering their addresses etc. There is a considerable amount of administration work involved in this matter.
> Furthermore the Act places on the Maori Trustee an absolute discretion as to whether he will permit sales of Maori Reserved Lands and a number of factors must be taken into account.[561]

The process is made even clearer by a letter to Messrs Fell and Harley in November 1968 where it was stated that under the 1967 Amendment Act it was 'possible for a lessee to make an offer to the Maori Trustee for the freehold of his lease and the Maori Trustee may then offer to the owners to buy their interests on the basis of the lessee's offer'.[562]

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[558] ibid., section 152 subsections 6 and 9.
[559] See ibid., sections 153 and 155.
[560] ibid., section 152 subsection 3, and section 155 subsection 3.
[561] District Officer to W.E. Rowling, MP, 29 July 1968, WIA MA 21/220, in Mitchells, Wai 785 A31(a), Report 9c Refs, p. 141
[562] Maori Trustee to Fell and Harley, 1 November 1968, WIA 31/416, reproduced in Mitchells, Wai 785 A31(a), Report 9c Refs, p. 142

The letter sent to owners in the South Island Tenths followed a standard form. This is copied below, as it is illustrates how the process was explained to Tenths beneficial owners:

> You are an owner in the above land and receive rent from it.
> The Maori Affairs Amendment Act 1967 which came into force on 1 April 1968, made it possible for a lessee of lands like this to make an offer to the Maori Trustee for the freehold of his lease. The Maori Trustee may then offer to individual owners to buy their interests on the basis of the lessee's offer. If the Maori Trustee can buy enough interests he then sells the freehold to the lessee.
> So that the Maori Trustee will have some idea of how many owners would be interested in considering an offer to buy their interests in this way, will you please if you are interested, complete the attached slip and return it to this office in the attached stamped addressed envelope.
> Please note that no owner is under any obligation to sell his interest and that the signing of the slip does not mean he has bound himself to sell. The Maori Trustee is not aware whether any lessees will want to buy. However if the scheme goes ahead and an offer is made by a lessee the Maori Trustee will make written offers to the owners in the order in which these slips have been returned.
> An owner of shares in this land can deal with them in ways other than by selling them to the Maori Trustee. The ways is which he can deal with he interests are set out in Section 153 of the Maori Affairs Amendment Act 19967. Briefly:
> (a) He can give or sell the shares by a Vesting Order of the Maori Land Court to any other owner or to his wife (or husband), children, grandchildren, brother, sister, parent, aunt, uncle, nephew, niece, cousin and such relations.
> (b) He can mortgage the interests as security for a loan.
> (c) He can leave his interests by will.[563]

There were numerous responses from beneficial owners in the Nelson and Motueka Tenths to requests to purchase the freehold. In a response to an enquiry from K. T. Wetere, MP, in November 1970, it was stated that over the previous 18 months (from June 1969 to end of November 1970) the Maori Trust Office had purchased shares from about 100 owners, and many more were on a waiting list.[564] Wetere had written the question on behalf of Harry Rore, a beneficial owner in the Nelson Tenths. Rore had written to the Maori Trust Office informing them that 'he would be interested in selling his shares'. The Minister for Maori Affairs informed Wetere that:

> it may be some time before this can be arranged. Offers to purchase shares from Maori owners are made in the order in which these owners elect to sell and there are about 400 or so owners ahead of Mr Rore, while the rate at which shares are

[563] Proforma to beneficial owners of Tenths Reserve lands, 1968, reproduced in Mitchells, Wai 785 A31(a), Report 9c Refs, p. 143
[564] Memo re Ministerial Correspondence from the District Officer, 30 November 1970, AAMK 869 189b, NA

> purchased from the Maori owners is dependent upon the number of lessees who want to buy.[565]

It is important to remember that the Maori Trustee could only alienate the freehold of the leased land if the owners were willing to sell their shares. The Trustee also had the discretionary power to refuse to sell a particular area or lease. For instance, in July 1969, M G McKellar, the District Officer of the Maori Trustee wrote to head office in regard to the freeholding of Lot 3 Part section 416 in Nelson. He stated that 'We have had another look at this and I don't think we should go ahead on the present basis'. His prime reason for this was that the valuation of the land, plus 10 per cent, totalled $550. As the present rental was $24 annually for a period of 21 years starting from 1 January 1964, 'it would not be to the owners advantage therefore to entertain any sale which will produce to them less than $600.00'. The other reason was that Lot 3 was only accessible through Lot 5 (which was leased to the same man) and it was seen that the sale of Lot 3 would only lead to a 'depreciation of value' in that back section. The District Officer's suggestion was that the two lots be treated as one property and the Maori Trustee only agree to sell them together.[566]

The valuation and working out of the proportion of shares to be sold was a very complicated process, and a significant amount of confusion and many mistakes were made in the process.[567] In late 1971 it became apparent that as a result of these mistakes substantial mispayments had occurred. As the District Officer for Christchurch (J. Trevenan) explained:

> In the initial stages of the scheme the district dealt with each application to freehold individually and, as a result, there could have been a disparity in the valuations depending on the area in which the section to be freeholded was situated... .Investigations disclose that the master list which we used for calculating the number of shares required to be purchased was based on roll values of differing years ranging from 31 October 1959 to 31 March 1969. This means that from the outset there was no common date on which sections were valued... .[Furthermore] because the incorrect aggregate valuation was used for the purchase of shares for which offers were sent out on 21 April 1970, the owners involved in the purchase were underpaid $10,983.83.[568]

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[565] Minister of Maori Affairs to K.T. Wetere, enclosed in Memo re Ministerial Correspondence from the District Officer, 30 November 1970, AAMK 869 189b, NA

[566] Letter from District Officer to Maori Trustee, 23 July 1969, WIA: MA 31/416 and 31/2095, in Mitchells, Wai 785 A31(a), Report 9c Refs, pp. 154-8

[567] see Maori Affairs Amendment Act 1967, No. 124, section 152 subsections 7-8, and section 155 subsections 7-8.

[568] Trevenan, District Officer, to Head Office Maori Trustee, 10 January 1972, AAMK 869 189b, NA

The Assistant Chief Accountant of the Maori Trust Office outlined his view of the situation in February 1972:

> As I see it, what it boils down to is that, overall, the M.T. has purchased too few shares for the money available so, in addition to the 58 owners who have received $10,983.83 less than they should have got, future sellers must also suffer to the extent that future purchase moneys will have to spread over some 2,300 shares more than they should be... .The question is, what to do about the large over and under payments affecting 104 owners...the highest of which is an overpayment of $7,440.15 to Wera Stafford.[569]

Trevenan informed Head Office that until an agreed formula for establishing shares to be sold was adopted, he was putting a hold on all freeholding in the South Island tenths.[570]

There had been other problems as well, including the overzealous purchase of shares. The Maori Trustee wrote to Christchurch Head Office in January 1971, advising that:

> you may proceed with freeholding action in this reserve but only to the extent necessary to enable the lessee, who has made the formal offer, to freehold his area. ... If, and when other lessees later make formal offers to freehold, further shares can then be purchased to enable this to be done. The Maori Trustee does not want to find himself landed with all the shares with only one or two lessees purchasing.[571]

This was followed two years later by another letter from the Maori Trustee to Christchurch Head office, saying:

1. We think, with respect, that you maybe [sic] somewhat off the track here. There is no reason for the Maori Trustee to contemplate any purchase of all the freehold. The sole question is whether the owner concerned is ready to sell the one lease in question for the amount offered. If he wants to sell then one merely completes the transaction and pays the nett proceeds to the owner. If he does not wish to sell then there is no problem.
2. Although it is entirely for the owner to decide we think he would be well advised, having regard to all the circumstances, to retain his land.[572]

Between 1970 and 1974, a total of 1,307a 3r 5.8p of Northern South Island reserves were alienated by the Maori Trustee through freeholding to lessees under this

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[569] Notes of Assistant Chief Accountant, 2 February 1972, AAMK 869 189b, NA
[570] Trevenan, District Officer, to Head Office Maori Trustee, 10 January 1972, AAMK 869 189b, NA
[571] Maori Trustee to Head Office Christchurch, 12 January 1971, NA AAMK 869/162b MA 6/23a Maori Reserves, Motueka 1963-1974, reproduced in Mitchells, Wai 785 A31(a), Report 9c Refs, p. 204b
[572] Maori Trustee to Head Office Christchurch, 27 July 1973, ibid., p. 204e

Act.[573] The Mitchells have broken this total down into areas, showing that just over 179 acres in the Motueka Occupation Reserves were alienated through the purchase of the freehold, 14 acres were lost from the Nelson Town Sections, 638 acres in the Motueka Suburban sections, and about 544 acres were alienated from the Moutere Suburban Sections.[574] This constituted 46 per cent of the remaining Tenths estate.

Although much of the protest regarding the working of the 1967 Amendment Act focused on the freeholding and subsequent alienation, there were other sections of this act which caused dissatisfaction. Although those instances of protest discussed below were not from Nelson-based Maori, they were significant in the establishment of the Commission of Inquiry into Maori Reserved Land in 1975. Maori at Nelson presented their complaints about the working of the Act at the Commission hearings, and this is discussed later in this chapter.

In 1973 Parliament received several petitions relating to the interval between rent renewal, and the different impacts that had on the lessee and the lessor. Hoani Iharaira Meihana and another petitioned saying that 21 years was far too long a period between rent reviews. A petition from a Mr. Bell was also sent in from a different perspective. Bell, a lessee, argued that rentals payable on a 21-year lease 'become on review at the end of a term entirely too high and present some lessees with great difficulties'. Bell's own rent rose from $16.80 to $98 as the result of a rent review. As Matiu Rata pointed out (in his office as Minister of Maori Affairs) 'it can be said by the lessors that the lessee has over the greater part of each term had a remarkably cheap rent in terms of land values'. His recommendation was that Bell's petition, like Meihana's, be presented to the Commission on Maori reserved land as agreed to by Cabinet on 23 July 1973.[575]

5.8 THE COMMISSION OF INQUIRY INTO MAORI RESERVED LAND 1975:

As a result of concern over the extent of reserved land being freeholded (among other issues), a commission of inquiry was established in 1974 to look into the administration of Maori reserved lands. The commission was made up of Georgina Te

[573] Mitchell Research, Report 99-6 *Nelson Native Reserves: A Summary of Deficits, Thefts and Land Losses, 1840s-1977*, 1992, Wai 785 A10, p. 39.
[574] Mitchell Research, *Summary of Deficits, Thefts and Land Losses*, p. 39. Acreages have been rounded.
[575] Report of Minister of Maori Affairs on Parliamentary Petition No 73/32: Adjustments of Rents for Long Term Renewable Leases, November 1973, AAMK 869/189c MA 6/78 S.I. Tenths Gen. 1972-1975.

Heu Heu, a barrister, the former Land Court Judge Bartholomew Sheehan, and Dr Rolland O'Regan. They travelled around the country to hear submissions from interested parties. They heard many submissions from people in Motueka and Nelson.

Testimony was made as to dissatisfaction on the part of beneficiaries about their ability to control their interests. The major points of concern were the perpetual leases (which not only kept the land out of Maori hands but also made it difficult to reassess rent), the low rate of rent, and the process of succession whereby interests became so small they were barely worth retaining.[576] An example of this is seen in a 1956 analysis which shows that only 10 people in Motueka received over £10 in half-yearly rent, the vast majority receiving under 10/ (1417 individuals in Nelson alone).[577] An analysis compiled in 1972 showed that of a net (distributed) rental income of $22,705.88, the five largest shareholders were entitled to between $405.96 for 1916.666 shares and $698.13 for 3296.072 shares. The smallest shareholder (at .354 shares) was entitled to only $0.07.[578]

The Commission found that the majority of owners who appeared before them 'favoured a change in the administration of the reserved lands which would either vest control completely in the owners or their representative bodies, or at least allow them a voice in the control and administration of their lands'.[579] This desire for change was indicative of a general feeling of dissatisfaction at 'the fact that owners knew little about the lands in which they held an interest, that those who had attempted to gain information and knowledge had experienced difficulty in their efforts, and that owners had never been consulted on any matters pertaining to the leasing of lands'.[580] When asked about her lands at Motueka, Mrs L. Chandler stated to the Commission that 'I think they have been re-leased. We were not consulted about the lease or anything and we don't get very much rent'.[581]

Many owners viewed the Trustee administration as 'too remote and impersonal'.[582] The Commission stated that as a result, 'owners were inclined to level complaints at the Maori Trustee which were more appropriately complaints regarding

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[576] See for instance submission no. 45, AAMK 869, 143a 6/0/30/7, 1974 Commission NR Land Nelson.
[577] Appendix to Notes on Maori Reserved Lands Bill, AAMK 869 137c 6/0 Maori Reserves Policy 1954-1956.
[578] Report of the Commission of Inquiry into Maori Reserved Lands 1975, p. 348.
[579] ibid., p. 23.
[580] ibid., p. 23.
[581] Submission No. 45 to the Commission of Inquiry into Maori Reserved Lands, Mrs L. Chandler giving evidence, p. 1R2.
[582] Report of the Commission of Inquiry into Maori Reserved Lands 1975, p. 23.

the legislation'.[583] Sheehan warned Mrs Chandler that she would find 'that there is no magic in the change of ownership...because a body corporate won't be able to do anything more than the Maori Trustee unless they see fit to amend the Act in connection with the breaks in the land'.[584] However competent or incompetent the Maori or Public Trustees were, they were constrained to a large extent by the legislation conferring their duties on them. However, the Commission also pointed out that the Maori Trustee was also the Secretary of the Department of Maori Affairs 'who prepares the legislation which tells the Maori Trustee what he must do'. The Commission called this situation 'untenable'.[585]

Despite the confusion of legislative with administrative obstacles, the Commission stated that they considered there to be 'a solid basis of fact underlying and supporting those opinions and the proposals made by those appearing for a localised or regional administration structure must be favourably considered'.[586] They went on to state that as

> certain present unsatisfactory conditions in the terms of the Maori reserved land lease have been created by the action of the Legislature and in assisting any long-term policy aimed at correcting these disadvantageous provisions, the Government has some responsibility to offer financial assistance.[587]

It was suggested that such monetary assistance could include loans to beneficial owners who wished to purchase the shares of other owners.[588]

The Commission frequently asked those appearing before them if they would be happier having their shares placed into an incorporation instead of either remaining under the administration of the Maori Trustee or individually receiving the rights to alienate the land. The answer was largely yes, although some were determined to sell their interests regardless. When it was pointed out to them that they could sell their shares to the corporation of other owners (if such existed) rather than to a lessee, they expressed their preference for that approach.[589]

The Commission expressed the opinion that 'considerable advantage is to be gained in the establishment of local administration [of the reserved lands] in the hands

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[583] ibid., p. 23.
[584] Submission No. 45 to the Commission of Inquiry into Maori Reserved Lands, Mrs L. Chandler giving evidence, p. 1R4.
[585] Report of the Commission of Inquiry into Maori Reserved Lands 1975, p. 31.
[586] ibid., p. 23.
[587] ibid., p. 32.
[588] ibid., p. 32.

of the beneficial owners'. The Commission also recognised that an approach that may work very well in one district and a certain type of reserve would not be at all suitable in another district with a very different reserve structure.[590] As a result, the Commission made 'specific recommendations as to the form of control thought appropriate for each of the different areas...[as] every endeavour must be made to reach conclusions and decisions which have a personal application to each separate geographical and tribal area'.[591]

The recommendations of the Commission with regard to the Nelson and Motueka Tenths and the Motueka Occupational Reserves centred on the formation of a Trust under section 438 of the Maori Affairs Act 1953. This section provided that the Maori Land Court could make an order 'vesting any customary land or Maori freehold land or land owned by Maoris in any trustee or trustees, to be held upon and subject to such trusts as the Court may declare for the benefit of Maoris or the descendants of Maoris or for any specified class or group of Maori or their descendants'.[592] This allowed for someone other than the Maori Trustee to act as trustee over vested Maori land. No order from the Maori Land Court was valid without the approval of the Minister for Maori Affairs, but neither was it valid if any beneficial owner involved had a 'meritorious objection to the making of the order'.[593]

When such an order was made, it was held to 'confer on the trustees such powers as the Court deems necessary for the proper administration of the Trust property'.[594] It also gave the trustee the power to alienate the land (or any part thereof) as if the land were 'Maori freehold land not subject to a trust' and the trustees the beneficial owners.[595] These alienations required confirmation by the Maori Land Court.[596] Part 13 of section 438 provided that on the dissolution by the Maori Land Court of any trust formed under this section, or the withdrawal from the trust of any land included in the trust, the Maori Land Court was to vest the land in the individual/s beneficially entitled to it.[597]

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[589] See for instance Submission no. 41, AAMK 869, 143a 6/0/30/7, 1974 Commission NR Land Nelson.
[590] ibid., p. 33.
[591] ibid., pp. 34.
[592] Maori Affairs Act, 1953, No. 94, section 439, pt 1.
[593] ibid., section 439, pts 3 and 4.
[594] ibid., section 439, pt 7.
[595] ibid., section 439, pt 9.
[596] ibid., section 439, pt 10.
[597] ibid., section 439, pt 13.

The reason for recommending the establishment of a trust rather than an incorporation was that 'the shareholders live mainly in the North Island and it will be some years before sufficient preliminary work can be accomplished to provide sound grounds for a Maori incorporation'.[598] The Commission also stated that they had had regard to 'what appeared to be a marked divergence of opinion' among the owners. They felt that the establishment of a trust was 'a step toward achieving full owner control if this is ultimately desired'.[599]

The Commission laid out their recommended constitution and purpose of such a trust. They said that the trust would

> accept from the Maori Trustee his title to and right to administer the said land and all rights, powers, duties, liabilities, and contracts, exercisable by, vested in or binding on the Maori Trustee in respect of the said lands whether under the Maori Reserved Land Act 1955 or otherwise howsoever. The contracts include therein some 175 leases in the South Island Tenths and some 389 leases in the Motueka occupational reserves, presently yielding in all, yearly rentals of some $62, 453.[600]

The authority of the trust included the subdivision of vacant land, borrowing of funds for the furtherance of the trust, aggregation of ownership of titles, the purchase of shares of beneficial owners wishing to sell (in which case the shares were acquired on behalf of all the remaining owners and distributed proportionately), and to deal with the revenue of the land.[601]

The other major issue reported on was the freeholding of land under the 1967 Maori Affairs Amendment Act. Under this act it was possible for the lessee of reserved land to make an offer to the Maori Trustee for the freehold of the land.[602] It was still not possible for the owner to initiate sale with whomever they wanted. Although an owner could indicate his or her desire to sell their shares/land, they then had to wait until a lessee wanted to buy it. This was the same situation as under the 1955 Maori Reserved Land Act where the Maori Trustee had the power to sell a section/s to the lessee provided there were sufficient owners willing to sell.[603] And, as the president of the Maori Council was reported as saying in 1967, while the individual owner was given

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[598] Report of the Commission of Inquiry into Maori Reserved Lands 1975, p. 40.
[599] ibid., p. 39.
[600] ibid., p. 40.
[601] Maori Affairs Amendment Act 1967, No. 124, s. 155.
[602] Maori Affairs Amendment Act 1967, No. 124, s. 155.
[603] Report of the Commission of Inquiry into Maori Reserved Lands 1975, p. 50-1.

assistance and opportunity to sell his or her land, the greater group of owners who favoured land conservation received no help.[604]

The Commission had heard a variety of opinions on this matter. Many lessees appeared before the Commission and urged that the opportunity to buy the freehold be retained, indeed some urged 'that the opportunity to freehold should be elevated into a right to freehold'.[605] The reasons for this focussed largely on security of tenure which in turn affected the 'development and progress of the community' in the long term. The Commission noted that 'for many lessees the freeholding of the land is as important to them as is the retention of land to the beneficial owner'.[606]

Lessee interests had been perhaps represented most notably by Messrs Wilson and Lewis of the Motueka Borough Council. Mr Lewis put forward the view that to change the nature of the contract between the lessee and the Trustee would disadvantage the lessee and as such was an unconscionable breach of trust. When Te Heu Heu pointed out to him that the change in the contracts to a perpetual renewal was neither desired nor wanted by the lessors when it was instituted in 1886, and that this was an 'interference of contract that suited one side', he replied 'maybe. I don't think it is very important'.[607] When Lewis reported back to the council, he stated that 'the important points made by the council were largely ignored. It was more obvious that any rights lessees have were unimportant.' He added that: 'The approach of the commission to all the submissions we heard was that of a body which was interested only in the rights, whatever they may be, of the beneficial owners, and it unremittingly set out to destroy, if possible, all submissions contrary to these rights'.[608]

Few owners appeared before the Commission. Some of those gave evidence that they viewed 'with alarm' the freeholding of leased lands. The Commissioners recognised the complexity of the issue and the attitudes of those involved towards it. They stated that nation-wide:

> The Maori attitude to selling land is divided and contradictory in some respects. Most of the beneficial owners felt that they should have a right to sell their interest in land for what appeared to them to be good reasons but

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[604] The *Dominion*, Wednesday, 8 November 1967, cited in Report of the Commission of Inquiry into Maori Reserved Lands 1975, p.54.
[605] Report of the Commission of Inquiry into Maori Reserved Lands 1975, p. 53.
[606] ibid., p. 53.
[607] AAMK 869, 143a 6/0/30/7, 1974 Commission NR Land Nelson.
[608] Reported in Nelson Evening Mail, 10 July 1974.

> many of those felt that any sales should be within the group so as to preserve the corpus.
> At the same time the majority realised that every sale of land to non-Maori lessens the area of Maori-owned land, weakens the economic position of the race as a whole, diminishes Maori mana, and tends to multiply the ranks of the landless Maori.[609]

The commissioners felt that this issue could be resolved by the empowering of the future trust to buy up shares of those owners wishing to sell. They therefore recommended that 'the legislative provisions allowing the sale to lessees of the freehold of Maori reserved land be repealed', to prevent further erosion of the corpus of Maori land.[610]

The Commissioners were looking further than the economic importance of the lands to the beneficial owners. They believed that these lands 'have a much wider significance to the Maori people and to the country as a whole'. It was suggested that through control of these lands Maori could learn administrative skills and the exercise of social responsibility. They could also follow the example of the Maori Reserved Lands in Auckland by 'providing funds to sustain Maori culture and community life and to provide initial aid and support to those in need'.[611] But more importantly, the Commission believed, these lands

> are a means of preserving racial identity, of sustaining Maori mana and self respect, contributing towards a sense of community by uniting large numbers of Maori people in a continuing common enterprise, and enabling them to identify as an integral part of the New Zealand society and economy.[612]

Because of the importance the Commissioners attached to the retention of Maori land in Maori hands, they recommended that 'there should be a requirement that all monies received from the sales or other disposition of land must be used for the purchase of land and land alone', and this requirement should be written into the rules of any trust or incorporation subsequently established to administer Maori land.[613] This was perhaps the first Commission to look into the Reserves administration that had actively pursued the Maori viewpoint, and certainly the first to recognise that the issues

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[609] Report of the Commission of Inquiry into Maori Reserved Lands 1975, p. 53.
[610] ibid., p. 54-5.
[611] ibid., p. 54.
[612] ibid., p. 54.
[613] ibid., p. 55.

and concerns raised by the Maori beneficiaries/owners were not only economic ones, but also involved matters of mana and identity.

Other issues that were raised by those owners appearing before the Commission included the valuation and review of rent. The Commission reported that one owner told them that 'because the rents were so low most of the members of the family felt the land was not worth keeping'.[614] Standard leases were for 21 years, which meant that there was no review on the rent undertaken for that whole period. Gloria Amoata Georgeson stated that she and 21 other owners who she was acting for were concerned with the way the Maori Trustee 'fixes the rents at 21-year perpetual lease; that is no change for 21 years. Instead, a review of rents every three or seven years because of escalating land values should be made'.[615] Yet other owners expressed their view that 'realistic rents be assessed from 1946 to the expiry of the present leases and that the Government should meet the discrepancy',[616] or in other words, should pay compensation for past, artificially low rents.

In his submission to the Commission, Ohau Ward Holmes referred to the original New Zealand Company deed that established the Tenths. According to Holmes this deed stated that the land would be 'held in trust by [the company] for the future benefit of the said chiefs, their families, tribes and successors for ever'. He went on to say, "We cannot see this happening when the lessees have right of renewal and the Maori Trustee never consults us when a lease expires... .We are not consulted re this or asked if we want the land back. If we had the land we too could have improved it, used it, and lived on it.'[617]

This was essentially the problem with the reserves, and one that the 1975 Commission recognised. The rent and the benefit fund may have constituted 'the most valuable penny in the world', but did not compensate for the loss of land and control over that land.

As a result of this Commission of Inquiry, the Nelson and Motueka reserves were removed from the control of the Maori Trustee and vested in the Wakatu Incorporation, an entity which is still in existence today.

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[614] ibid., p. 168.
[615] Submission No. 42 to the Commission of Inquiry into Maori Reserved Lands, Gloria Amoata Georgeson giving evidence, p. 1R6.
[616] Report of the Commission of Inquiry into Maori Reserved Lands 1975, p. 168.
[617] Submission no. 41, AAMK 869, 143a 6/0/30/7, 1974 Commission NR Land Nelson.

5.9 THE WAKATU INCORPORATION

As discussed above, the Commission recommended that the Nelson Tenths and the Motueka Occupation Reserves be put into a trust under section 438 of the Maori Affairs Act 1953. They suggested that a trust might be a stepping stone towards 'achieving full owner control if this is ultimately desired'. However, discussing the issue, the owners of the reserves decided to place their land directly into an incorporation under section 15a of the Maori Reserve Land Act 1955. According to the historians for the incorporation, the owners believed that an incorporation would allow them to have a more direct input into the management of their land.[618]

In accordance with these wishes, in 1977 the land was placed into an incorporation called the Wakatu Incorporation. This included both the Nelson Tenths and the Motueka Occupation land, as listed in a schedule attached to the Order of Council that set up the Incorporation.[619] The total amount of land transferred to the incorporation came to 1,393 hectares of land, involving a total of 752 leases. The large majority of these properties were subject to 21-year perpetual leases.[620]

The people who had previously had an interest in the reserves became shareholders of the incorporation, which now officially owned the land. The total number of shares in the incorporation was 11,064,710: these were divided amongst the previous owners of the reserves so that their proportion of the shares was the same as the proportion of the total amount of land that they had previously owned. Shareholders were then able to sell their shares to the incorporation if they wished. At the time of the hand-over, over 1,700 people appeared on the shareholders register, all with different individual interest in the incorporation.[621] The land was managed by a Committee of Management elected by the shareholders. The first committee was elected at a meeting of owners held in Porirua in 1977, and the first chair was Mr Kahu Kotua.[622]

Once the land had been put into the incorporation it ceased to be reserved land under the meaning of the Maori Reserved Land Act 1955, and instead became Maori

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[618] Mitchell and Mitchell, 'Wakatu Incorporation: Adjusting the Terms of the Glasgow leases', Wai 785, A16, pp 6-7

[619] See Wakatu Incorporation Order, 1977, S.R. 1977/197

[620] Harris to Kotua, 27 October 1977 and Harris to the Secretary of the Wakatu Incorporation, 15 December 1977, reproduced in Wai 785, A16a, pp 2.1.2a and 2.1.2b

[621] Mitchell and Mitchell, 'Wakatu Incorporation: Adjusting the Terms of the Glasgow leases', Wai 785, A16, p 6

[622] A N F Harris, the District Officer for the Maori Trustee, set out some of the issues that would face the new committee of management in two lengthy letters: Harris to Kotua, 27 October 1977 and Harris to the

freehold land. Although the incorporation was not bound by section 9 of the 1955 Act, which had effectively meant that the Maori Trustee had not been able to sell land, it *was* bound by the conditions of the existing leases and the provisions of the Act that had affected them.[623] The 1975 Commission of Inquiry had been highly critical of the perpetual leases and of their unfairness to Maori owners, but had fallen short of recommending that they be revoked. Under section 15a of the Maori Reserve Land Act 1955, all the land transferred to the incorporation remained 'subject to all leases, licences, charges and other encumbrances' that had been previously in effect. The district manager of the Maori Trustee told the new incorporation that 'The government has given an assurance that the terms of the leases, and, hence, the rights of the lessees, will not be tampered with legislatively without full prior consultation with the parties involved'.[624]

The historians for the incorporation write that while the establishment of the Wakatu Incorporation meant that the owners could 'retrieve some autonomy and control (and mana) over their taonga tuku ihu', further major grievances were not addressed.[625] They write that the new incorporation 'was saddled from the outset with the stultifying effects of perpetual leases'. The historians for the incorporation argue that the resultant low rents caused by the conditions of these leases and the rules under which rents could be reassessed at the end of the 21 years meant that:

> for the first several years of its administration the Committee of Management [of the Wakatu Incorporation] was constantly tried by the limitations of its restricted income; it was possibly the second-largest land-owner in Nelson Province (after the Crown) in both acreage and land value, yet its income had been reduced to a pittance, in percentage terms, by a succession of legislative procedures and the approach which had been taken by Government agents in the incorporation and implementation of those statutes.

The shareholders of the Mawhera Incorporation in Greymouth, which was set up at a similar time under similar restrictions, have also argued that the legacy of perpetual leases has held back the development of their land and has meant that the owners

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Secretary of the Wakatu Incorporation, 15 December 1977, reproduced in Wai 785, A16a, pp 2.1.2a and 2.1.2b

[623] Harris to Kotua, 27 October 1977, paragraph 7, reproduced in Wai 785, A16a, pp 2.1.2a and 2.1.2b; see also Maori Reserved Land Act 1955, section 15A, subsection 9

[624] Harris to Kotua, 15 December 1977, reproduced in Wai 785, A16(a), p. 2.1.2b.

[625] Mitchell and Mitchell, 'Wakatu Incorporation: Adjusting the Terms of the Glasgow leases', Wai 785, A16, pp 7-8

remained 'entirely separated from its control or management'.[626] The report by the historians for the Incorporation provides more information about the 'legacy' that the incorporation had inherited, and the strategies that the incorporation developed to deal with it.[627]

The Native Trustee began as an administration that sought to consult and involve Maori in the running of their reserves. The increasing association between the Native Trustee Department and the Native Department led not only to a diminished autonomy for the Trustee, but to increasing burdens on the Native Trust Office. This in turn led to a decrease in communication and consultation with the beneficial owners of the reserves. The 1934 Commission of Inquiry recommended a further consolidation of the role of what became the Maori Trustee with the Department of Maori Affairs. Advances in social welfare meant that the benefit fund did not have to provide assistance for so many cases as it had formerly. This led to the eventual closure of the fund in 1953. The largest change to the Tenths estate came with the 1967 Amendment Act which allowed for the purchase of the freehold of the land to an individual other than a family member or other beneficial owner. Under this provision, a substantial portion of the Trust estate was alienated. The 1975 Commission of Inquiry into Maori Reserved Land recommended that the remaining reserved land in the Nelson area be removed from the control of the Maori Trustee, if the beneficial owners so desired, and placed in an incorporation under Maori control.

[626] See the Waitangi Tribunal's *Ngai Tahu Report 1991*, Volume 3, Chapter 14, pp 731-796, for a detailed discussion of the Mawhera Incorporation. The quotation is from Tipene O'Reagan, who presented this argument to the Ngai Tahu Tribunal in 1987, Wai 27, D18, as quoted in Waitangi Tribunal's *Ngai Tahu Report 1991*, Volume 3, Chapter 14, p 756

[627] Mitchell and Mitchell, 'Wakatu Incorporation: Adjusting the Terms of the Glasgow leases', Wai 785, A16

CONCLUSION:

The 135 years encompassed by this report witnessed great changes in the control of lands included in the New Zealand Company Tenths. The original alienation of the land from Maori and the establishment of the reserves estate were followed by long periods of confusion and uncertainty.

There are two ways of looking at the historical Tenths. One is to regard the initial promise of reserves for Maori, held in trust by the Company, as an end in itself. If this view is taken, then the precise quantity of land set aside and retained in the trust estate is an important issue, and every deviation from the original promise made by the New Zealand Company constitutes a potential grievance. In so far as the administration of the fund from the trust reserves fell short of achieving the Company's vision, the Crown as administrator is open to criticism. The key documents are the New Zealand Company Directors' Instructions to William Wakefield, the 1839 deeds, and the Nelson prospectus issued by the Company to its investors. In this account, these documents are not compromised by their historical context. Their promises remain valid regardless of changing historical circumstances. The claimants' historians, the Mitchells, interpret the history of the Tenths partly from this perspective.

Another approach is to see the Tenths as a means only. The end in this case is a more general one, that the Crown should exercise its responsibility towards its Maori subjects in utmost good faith. To this end, the Crown makes use of whatever means are appropriate in the historical context. What remained of the Tenths by the 1860s, in this scenario, were available as a means of promoting Maori welfare in Nelson throughout the period of this report. The key document for judging the Crown's performance is the Treaty of Waitangi. The wording of the Treaty may be interpreted and re-interpreted, with time and changing circumstances. The issue for the Tribunal is how far the Crown, in administering the Tenths and drawing on the special fund, fulfilled its role of protecting the interests and promoting the welfare of Maori.

This report, while taking account of the first approach and noting relevant points, has mainly followed the second approach. The view has been taken that the history of the administration of the Tenths should be assessed according to the principles relating to the Crown. While the New Zealand Company offered a blueprint for the provision of reserves, from which much was intended to follow, this model could

not be made to work in Nelson. The Tenths were promoted initially by the New Zealand Company as the basis of its native policy, but after 1840, the Company did not put pressure on the Crown to fulfil the promises contained in documents on which the Company's claim to Nelson was based. Nevertheless, the influence of the New Zealand Company's ideas, in which the Tenths had a pivotal role for Maori, continued to influence the history of trust reserves in Nelson. It is important to see the limits of the Company's power, and not to only assess the Crown's performance in terms of what the Company claimed it would achieve.

From the beginning there were awkward contradictions in practice between Company rhetoric and the conditions that were encountered in Nelson. Did trust reserves represent the real payment to Maori for their land, as the Directors of the New Zealand Company claimed? The justification for the reserves held by the Company in trust for Maori was that these would prove more valuable than any other form of payment which the Directors intended to give. The objection that Maori already owned the land that the Company was representing as the principal payment for millions of acres, was met by the argument that the form of ownership exercised by 'savages' was not recognised by law. None of this was clearly explained to the Maori who signed the early deeds. If this arrangement had been interpreted in such a way as to make it clearly understood, it is hard to conclude that Maori in Nelson would have accepted the Company's terms.

The practical application of the Company's plan involved the allocation of sections according to an order fixed by a lottery in London. Maori in Nelson were not ready to give up land on which they were living in exchange for sections selected for them by a European newcomer. According to the deeds signed in Kapiti and Queen Charlotte Sound in 1839, the Company had undertaken to reserve land 'suitable and sufficient for the residence and proper maintenance' of the chiefs, their tribes, and families and held in trust by them for the benefit of them and their successors, forever.[628] There was a promise of a suitable and sufficient quantity of land, but nothing about its location. The Company's deeds contained a provision for reserving land which differed significantly from later deeds between Maori and the Crown. The Nelson prospectus stated that trust reserves for Maori would be the equivalent of one-

[628] 'Copy of the New Zealand Company's Second Deed of Purchase, including the Nelson District' 25 October 1839; the third deed has the same phrasing. *Compendium*, I, pp 64-67; for a description of the

eleventh of the Company's Nelson colony and chosen along with those of the settlers. Judging from transactions negotiated with the Crown after 1840, Maori placed importance on the retention of specific pieces of land, and they did not necessarily accept the Company's scheme in all or any of its particular features.

In 1840 the British Crown took over all the functions of government, and the New Zealand Company's operations were limited to the promotion of colonisation in the lands it claimed to have purchased. The Crown had understood that the Company had made agreements to reserve land for the benefit of Maori. In 1840, well before Nelson was founded, the Crown had stated that in lands granted to the Company, the arrangements already entered into by the Company to make reserves for the benefit of Maori would be carried out by the government.[629] Though not undertaking to fulfil the New Zealand Company's 'vision' of transforming Maori society into a replica of the British social order, the Crown also meant to promote the civilisation, as it was perceived, of Maori. Though initially the government intended to support this policy with dedicated funds from trust lands and similar arrangements, in the event these were not to play a major role in financing the Crown's policy for Maori elsewhere in New Zealand.

In Nelson the Company's agreement was to some extent carried out by the Crown. Some Tenths were created as trust reserves (though never, as repeatedly noted by claimants, anywhere near the promised number), but the settlement itself got off to a shaky start, and the administration of the trust reserves was hardly in place until the late 1840s. Governor Grey, believing that the rapid amalgamation of Maori into European society meant that there was no long-term need for trust lands, did not require that rural Tenths be added to the urban and suburban ones. In 1847, the government agreed to an arrangement by which almost half of the urban tenths were alienated from the trust for no compensation. In 1852 Grey also granted 918 acres of Tenths land, some containing Maori cultivations, to the Bishop of New Zealand to endow a school. This was an enormous amount of land to be taken from reserves created for the benefit of Maori, especially when the contribution from the Government to this school estate consisted of a comparatively paltry 253 acres. Successive Trustees and Commissioners retained the remaining estate. Funds were spent locally for medical costs, agricultural items, hostels

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'sale' process, see Ruth Allan *Nelson: A History of the Early Settlement*, A H and A W Reed, Wellington, 1965, pp 40-44

in Nelson and other benefits. A number of benefits similar to the ones that Nelson Maori received from the trust fund were provided by the Crown in some districts of New Zealand but not in others. There was very considerable regional variation in government provision for Maori in these early decades.

The issue of land was complicated from the start. The model settlement promoted by the Company was undermined by a failure to allow for occupation reserves. Maori did not move off sections allocated to purchasers of the Company's land orders. In 1844, the Land Commissioner, William Spain, acting for the Crown, required the exemption of kainga, cultivations, urupa and wahi rongoa from the Company's grant, as well as a true tenth of 151,000 acres (15,000 acres) as trust reserves. This was followed by a stalemate. The Company refused to give up more suburban land than had been set down in their initial prospectus. The provision of trust reserves was scaled down in the final grant to the Company, and further reduced by Governor Grey's grant to the Bishop. At the same time, the Crown entered into agreements for occupation reserves with Maori communities. In Motueka, in the course of the following twenty years, local officials identified a number of sections as necessary for Maori occupation and use. This resulted in further reductions to the Tenths estate, as sections were taken from the Tenths to become occupation reserves and were not replaced. In the succeeding period these reserves, unlike other occupation reserves in the Nelson district, failed to be recognised as the outright property of the occupants, who were nevertheless the virtual owners.

On the advice of Alexander Mackay, the Native Trust Commissioner in Nelson, the Motueka Occupation Reserves were listed as Tenths in the schedule to the Native Reserve Act, 1873. While they retained their function as residential lands, in other respects the Motueka Occupation Reserves were locked into the legislation governing the Tenths. While this development distorted the status of the Motueka Occupation Reserves, these lands were prevented from the absolute alienation which selling represented. The one exception, an occupation section of 150 acres at Takaka that had been acquired in exchange for land from the original Tenths, was vested in the owners and subsequently sold. Lands reserved for occupation in other Nelson districts passed through the Native Land Court, and their fate is the subject of a separate report.[630]

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[629] Arrangements proposed by Lord John Russell, in R Vernon Smith to J Somes, 18 November 1840, BPP, vol. 3, p 208

[630] David Alexander, 'Reserves of Te Tau Ihu (Northern South Island)', October 1999, Wai 785 A60

For the greater part of the nineteenth century, the trust fund which existed for 'Native purposes' was administered paternalistically. There was no legal provision for Maori to be included in or consulted about the administration of the fund, apart from the temporary provision for Maori Assistant Commissioners under the 1873 Act, which remained inoperative in Nelson apart from Mackay's occasional reliance on (and back payment to) Hemi Matenga. The land was vested in the Crown, represented by the Governor, which came to mean the Governor acted on advice from the government of the day.

Looking back at the history of the Nelson Tenths in the nineteenth century, it can be concluded that the influence of the New Zealand Company's initial involvement was considerable. But the administration of the tenths and the development of policy was the responsibility of the Crown. It was the Crown which had to deal with the problems caused when a system designed in London came up against the practical reality of Maori and their patterns of land ownership in Nelson. Because an initial effort was made by the Crown to provide trust reserves, which were vested in the Crown, a discretionary fund was available for the government's Maori purposes. This was administered paternalistically and had a more general function than that envisaged by the New Zealand Company. However, the allocation of shares in the Native Land Court owed more to the New Zealand Company's historic plan, modified by the Land Commissioner Spain, than it did to contemporary circumstances. The allocation of shares appears eccentric, as it bore no relation to the sections of land listed as trust reserves. By the end of the nineteenth century, in a changing social and political context, this fund became the beneficial property of individuals, though still vested in the Public Trustee, who was responsible for its administration from 1882.

The Public Trustee controlled the Nelson and Motueka reserves for 38 years. This was a period of increasing legislative and official rigidity as to regulations for leases and the disbursement of the benefit fund. Administration of the reserves became centralised in Wellington, and, unlike the previous local commissioners, only the Deputy Agent of the Trustee in Nelson had frequent direct contact with Trust beneficiaries. Although restricted in some matters by legislation, the Public Trustee had complete authority over the reserved lands in Nelson. These lands were leased, re-leased, the rent re-evaluated, and the income utilised, all without reference to or consultation with the beneficial owners. In 1887 the Westland and Nelson Native

Reserves Act introduced perpetual leases, a form of leasing which effectively prevented owners from ever using the land themselves.

The income from the leased lands was placed in a general benefit fund until the Native Reserves Amendment Act 1896, when three-quarters of the accumulated funds left after expenditure were directed to be distributed among the beneficial owners. Available evidence suggests that even the accumulation was too small for development purposes, and had to be used to supplement low incomes by purchasing the necessaries of life. The 1896 Amendment Act further directed that in future half of the income derived from the leases was to be distributed to owners, and the other half was to remain as a benefit fund. As well as these two main forms of expenditure, the income from the leased reserves was used to pay commissions to the Trust Office staff who were responsible for the reserves, and also to pay for general maintenance of the hostels and the salaries of medical practitioners.

One of the reasons given for the lack of distribution of rental income to beneficiaries before the 1896 Amendment Act, was the difficulty of identifying exactly who the owners were. In 1892 the Native Land Court, under the application of the Public Trust Office, determined the beneficial owners of the Nelson Tenths reserves. Judge Mackay awarded the interests in the land to Ngati Koata, Ngati Rarua, Ngati Tama, and Ngati Awa. In Mackay's opinion these iwi had retained their rights to the land (first obtained through conquest) through cultivation and, perhaps more important, they were there when the Company arrived and they had been involved in the sale of the Nelson district to the Company. Mackay's Court Order awarding interests in the reserved land was based on Spain's award of 151,000 acres to the Company. This total had never existed except on paper. The awarding of shares rather than actual land served to further the distance between beneficial owners and the land.

The benefit fund operated in a similar fashion to the years preceding the Public Trust administration. The 1880s and early twentieth century were characterised by the provision of rations allowances to those deemed indigent and deserving of aid by the Public Trustee and his District Agent. Medical assistance was also a heavy draw on the benefit funds until the appearance of more extensive social welfare later in the twentieth century. It is difficult to assess the quality of benefit fund management. It appears that the Public Trustee took the disbursement of the benefit fund seriously, but beliefs as to its purpose varied widely. The Public Trustee administration showed swings from

generosity to a tightening of the purse strings. This was often a result of the varying amount of income generated from the leases of reserved lands.

There were many petitions submitted by Maori dissatisfied with the Public Trustee, and in 1913 a Commission of Inquiry was set up to examine the workings of the Public Trust Office. The Commission was critical of the maintenance of the benefit fund, and of the lack of interplay between the Native Department and the Public Trust Office. They therefore recommended that the administration of all Native Reserves be removed from the Public Trust Office and placed in an independent body. The administration of the reserves was transferred to the Native Trustee in 1920.

The Native Trustee started out with an increased level of consultation with Maori over the administration of the reserves. The first Native Trustee, William Rawson, attended meetings in Nelson with beneficiaries to discuss the options of sale or retention in regard to the Tenths reserves. Unfortunately this level of interchange did not continue throughout the course of the Native Trustee (and later Maori Trustee) administration of the reserves, and from the 1930s many beneficiaries began feeling isolated from the running of their estate once more.

Dissatisfaction with the Native Trustee was examined in a 1934 Commission of Inquiry, which recommended a closer relationship between the Department of Maori Affairs and what became the Maori Trustee. This was not a good consolidation as far as the beneficial owners were concerned, as it further centralised and distanced the Trustee administration from those whom it was meant to benefit.

Under the Maori Trustee the benefit fund became increasingly less important, as the introduction of state welfare in the 1930s and 1940s reduced the pressure on the benefit fund to provide for those in need. In the 1950s the Trust Office decided to close the benefit fund, directing the income usually diverted into the fund into rental payments to beneficial owners. It seems that this closure of the fund was done without consultation and without notification of beneficiaries, whose opposition was openly anticipated.

For much of this period the amount of land in the Tenths estate remained stable. Rawson and the Native Minister effectively fought off early campaigns from lessees and beneficiaries to freehold the leased reserves and to sell the freehold to the lessees. The legislation regarding the alienation of the reserved lands remained restrictive until the Maori Affairs Amendment Act 1967, which introduced the right of the Trustee to sell the freehold of a leased reserve section to the lessee, as long as enough beneficiaries

were willing to sell their shares. Under this Act, just over 1,300 acres were alienated from the Nelson Tenths and Motueka reserves.

There were good intentions from a lot of people involved in the administration of the reserves, but the management of the Tenths estate was never ideal, or even adequate at some points. A large factor in this was the lack of Maori control, or even consultation with Maori owners, over the lands reserved for their benefit. This underlying problem was behind all the protests against the administration of the remote Public Trustee; the acceptance of the early Native Trustee and the disillusionment as the Maori Trustee became remote and centralised. The Commission of Inquiry in 1975 recognised this factor, and called for incorporations to be established so as to return control of their lands to Maori. This commission recognised the importance of having authority over the land, and the link this had with mana and identity. The Wakatu Incorporation was established as a result of this Commission in 1977, and was a large step forward into a future of Maori control over their reserved lands. Other problems and complaints had arisen because the trust estate was effectively too small to provide other than supplemental income to people already facing subsistence conditions, and the legal regime of successions made it even smaller in terms of the number of people it was supposed to benefit. When perpetual leases combined with low rents, a relatively small estate, and large numbers of "owners" with tiny, fragmented shares, a situation was created for which even the transfer of control to a Maori-owned incorporation could not provide an effective remedy.

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