

OFFICIAL

Wai 145

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The Wellington Town Belt
1839-1861

A report commissioned by
the Waitangi Tribunal

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THE WELLINGTON TOWN BELT 1839-1861

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I. Executive Summary

In 1839, the Company's Directors instructed their surveyor, Mein Smith, to surround whatever town they created with a Town Belt. The notion of such a belt was so fundamental to the Wakefieldian approach to colonisation that, as soon as Mein Smith had completed his plan of Wellington, the colonists here treated the proposed Town Belt as certitude.

Governor Hobson first visited Port Nicholson about a year after Mein-Smith's survey. Hobson both promised Wellington rangatira that their cultivations would not be disturbed, while he also proclaimed Mein Smith's Town Belt a Public Reserve. Mein Smith's proposed Belt, though, contained some of the main cultivation areas of Pipitea, Kumutoto, and Te Aro *kaingas*.

Consequently, Hobson's proclaimed "Public Reserve" effectively encroached upon (or even engulfed) cultivation areas he had pledged to protect. Because there was no legal authority at the time for such a "taking," Hobson's proclamation was probably of no effect viz. the cultivation areas.

This dilemma between the Governor's pledges and proclamation is not just something we notice now in hindsight. It immediately became "a subject of very great importance" to the Wellington public. Basically, Hobson's proclamation gave confidence and grounds to Wellington colonists opposed to Maori using their "Town Belt" cultivation areas. Local leaders campaigned for the Crown to stop Maori clearing and cutting in the Town Belt.

To the Crown's credit with Maori, though, it appears it consistently refused to interfere with Maori use of Town Belt lands until its title to those lands was equitably completed and vested. That is, until there had been some official determination, such as a Land Claims award, that the Maori interests to which the Crown's title was subject were extinguished

Hence, the Police Magistrate in 1842 refused to block Maori use of the Town Belt until the wider Port Nicholson purchase was completed. The first Town Council tried for several months in 1843 to control Town Belt use, but ultimately failed.

In mid-1844, after Governor FitzRoy thought he had settled the land question by the arbitration awards, he appears to have considered the Town Belt to be "waste lands" under the Land Sales Act 1842. McCleverty in 1847 appears to have viewed things similarly. Both felt authorised therefore in making appropriations out of the Town Belt. Both, though, regarded the clearings and cultivations in the Town Belt as "excepted" from the Company's extinguishment, and so, from the Crown's "waste."

After the 1848 Port Nicholson Crown grant, Town Belt administration rarely overlapped with the fates of the Maori cultivations. When it did, though, it tended to impact deeply on the reserves. For example: Governor Grey's 1852 purchase of Kumutoto's McCleverty reserve to endow an Industrial School; Native Reserves Commissioner Heaphy's 1873 approval of the sale of Omaroro to its lessee Mr. Wright; the war department's taking of much of Polhill Gully in 1894 for a rifle range; and the taking of most of the Tinakori reserve in 1911, 1912, and 1935 for a telegraph station.

The Crown provided in 1854 for the granting of Public Reserves to the Provincial Superintendents. In 1861 Governor Thomas Gore Browne granted the Town Belt to the Provincial Council (1234 acres 2 roods and 18 perches). The Council promptly leased out the lands for about £600 pa, and tried to pass their management to a Town Board of Commissioners created largely for this very purpose. Doubts persisted, though, as to whether the Town Board had adequate authority over its leases, since it did not have the freehold to the Belt. Squatting continued, right up until the Belt was finally granted to Wellington City Council in 1873.

The 1873 grant only included 1061 acres 1 rood 2 perches -- 173 acres less than the 1234 acres 2 roods 18 perches granted to the Province in 1861. The area thereby lost

apparently mostly went to Wellington Hospital and the Governor General's residence.

Finally, in looking again at the "McCleverty Reserves" in the Belt, two points have emerged:

- First, that the perception that these reserves were "appropriations" from the Town Belt (rather than vice versa) has seriously prejudiced Maori at least twice in Wellington's history.
- Second, that McCleverty's 1847 assignments were subsequently treated as "owner lists," when in fact they contained only about twenty percent of the adults McCleverty intended the reserves to support. We have not been able to ascertain what happened to the interests of the other four-out-of-five Maori.

II. How the Crown Acquired Title

A. 1840-41: Company and Crown Creation of the Town Belt

1. Ward's Instruction to Lay out a Town Belt

In August 1839, Company Director John Ward instructed the Company Surveyor, William Mein-Smith,

"It is indeed desirable that the whole outside of the Town, inland, should be separated from the Country Sections by a broad belt of land which you will declare that the Company intends to be public property on condition that no buildings be ever erected on it."¹

Ward instructed more generally that Mein-Smith's survey was to provide for "public convenience" and the "beautiful appearance of the future city."

2. The Maori Already Here

In March 1840 the Company's first community of settlers moved in a body from Petone to Lambton Harbour. Here Mein-Smith found a hilly ensemble of watersheds around the inner harbour -- at the north end of Tinakori Ridge, a steep-sided valley drained by Kaiwharawhara Stream. At the foot of the same ridge, a relatively flat shoulder of land (Thorndon) edged on the north by a rocky cliff, emptied by Tiakiwai and Pipitea Streams. Just southeast was a wide tidal mud flat stretching from about Pipitea point almost to present-day Taranaki Street. Hills rose immediately up behind, drained from the middle by Wai Pirau and Kumutoto Streams, and from the southwest by Waimapihi. Around to the Southeast lay the unforested, swampy Te Aro flat, through which flowed Waimapihi from the west and Waitangi from the south.²

¹ Ward/Mein-Smith, August 1839, in NZC 102/1-2 (National Archives, Wellington). See also John Miller, *Early Victorian New Zealand: A Study in Racial Tension and Social Attitudes, 1839-1852*, London: Oxford, 1958, pp 43-44.

² See Maps III/3, V, and IV/2 in G. L. Adkin, *The Great Harbour of Tara: Traditional Place Names*

The low lands were a semi-coastal forest dominated by kohekohe, mostly already cleared by Maori. On the ridges and slopes of the surrounding hills, the native growth was mostly temperate podocarp/broadleaf rainforest with rimu, northern rata, and tawa.³

Like most watersheds, the hills and ridgelines around Wellington -- i.e., the lands of the Town Belt -- form a rough "U-" or a horseshoe-shape. The hills of the Western arm of this horseshoe generally face Southeast and tend to catch wet Southerlies. The hills forming the Eastern arm generally face Northwest and tend to catch drying Northerlies. These slope aspects determine the basic pattern of the Town Belt's natural vegetation.⁴

It has been submitted to the Tribunal that this ensemble of watersheds was probably one of the least favoured spots for Maori settlement around Cook Strait.⁵

Nonetheless, there were roughly three- to five hundred Maori, living in *kainga* situated at most of the stream mouths: a fairly big group of Ngati Tama at Kaiwharawhara, three little *kainga* at Tiakiwai (Pakuao, Tiakiwai, and Raurimu), a fairly large Te Atiawa and Taranaki group at Pipitea, a smaller Te Atiawa group at Kumutoto, and a large Taranaki and Ngati Ruanui *kainga* near Waimapihi.

Evidently, Maori "invariably" chose to clear and cultivate on "hilly situations having an eastern aspect."⁶ This suggests that Maori in Wellington mostly cultivated the wetter, Southeast-facing arm of the Town Belt, and that there were probably few, if

and Sites of Wellington Harbour and Environs, A Revision, Wellington: Whitcombe and Tombs, 1959.

³ Wellington City Council, *Draft Management Plan*, General Policy, Vol 1, pp 14-15.

⁴ The Wellington City Council's *Draft Management Plan*, Background Papers, Vol 1 pp 6-9, and at the start of each section in Vol 4, contain good summaries of the Town Belt's native vegetation.

⁵ Boast, 'Ngati Toa in the Wellington Region', Wai 145 Doc H8, p 119. Boast p 120 stresses that because it was so uninviting, "Ngati Toa had no reason to live around Wellington harbour and did not live there."

⁶ McCleverty's 'Report on Port Nicholson Cultivations', April 1847, enclosed in Grey/Earl Grey, 21 April 1847, *British Parliamentary Papers relating to New Zealand, 1847-50*, p 40, reproduced in Wai 145 A10(a) Doc 9 p 5.

any, cultivation areas on the drier, Northwest-facing arm. The rough sources we have from the early 1840's show that the cultivation areas "in" the Town Belt -- Orangikaupapa, Tinakori, the Botanical Gardens, Polhill Gully, and Omaroro -- were almost certainly the main cultivation areas supporting the *kainga* at Pipitea, Kumutoto, and Te Aro. Charles Heaphy's 1841 sketches of Wellington graphically illustrate the point. Heaphy sketched both ends of the settlement from Clay Point, roughly the lower left of our 'horseshoe.' His sketch of the western, southeast-facing arm shows extensive cultivations on Tinakori, around Harriet St. (probably), and all over the Kaiwarawara hills -- all southeast facing. By contrast the matching sketch of the southeastern end of town -- the northwest facing slopes -- shows no cultivations at all.⁷ Other sources suggest that at least some cultivating went on around Basin Reserve, but these same sources also support our main point: that most cultivations were on the Aro-Karori-Tinakori-Kaiwarawara hills.⁸

It is probably impossible to be much more specific than this regarding customary interests in Wellington's Town Belt. Spain's Commission in 1842 heard testimony on *rohe* boundaries around Wellington from Wi Tako Ngatata, Taringa Kuri, Ropiha Moturoa, Te Puni, and Mahau.⁹ In addition, it heard quite a number of assertions of interest in particular spots, especially in the vicinity of Pipitea *kainga*.¹⁰

However, because the Crown formally converted Spain's Commission of inquiry into a purchase arbitration, no inquiry into customary interests was ever completed.

⁷ See Charles Heaphy, *Thorndon Flat and part of the City of Wellington, April 1841* (C-025-010); *Key to the View of the Town of Wellington*, (C-026-001) and *View of a part of the town of Wellington, comprising about one-third of the waterfront and looking towards the south-east* (C-025-009), all held in the Drawings and Print Collection at ATL. See also reproductions of the first two in Wai 145 E5(a).

⁸ The Wellington City Council's Town Belt Management Plan states that "At the time of European settlement the forest on the Eastern arm of the Town Belt had largely disappeared through the fires used by Maori for land clearance." Wellington City Council, *Draft Management Plan*, Policy Papers, Vol 1: General Policy, p 15. The relevant background papers, however, did not appear to support this statement.

⁹ I have gathered all of the boundary evidence in a table in Appendix 1, at the back of Duncan Moore, 'The Origins of the Crown's Demesne at Port Nicholson', Vol 2, Wai 145 Doc E4.

¹⁰ See my summary of Spain's main inquiry, *ibid* pp 245-275, especially Wairarapa's evidence, pp 260-66.

Afterward, Lt Col McCleverty only sought to assign individual interests in particular cultivations and *kainga*, and so did not look into *hapu* interests or *rohe* boundaries. Hence, early on the "Native Title" to Wellington, including the Town Belt, was effectively reduced to a combination of

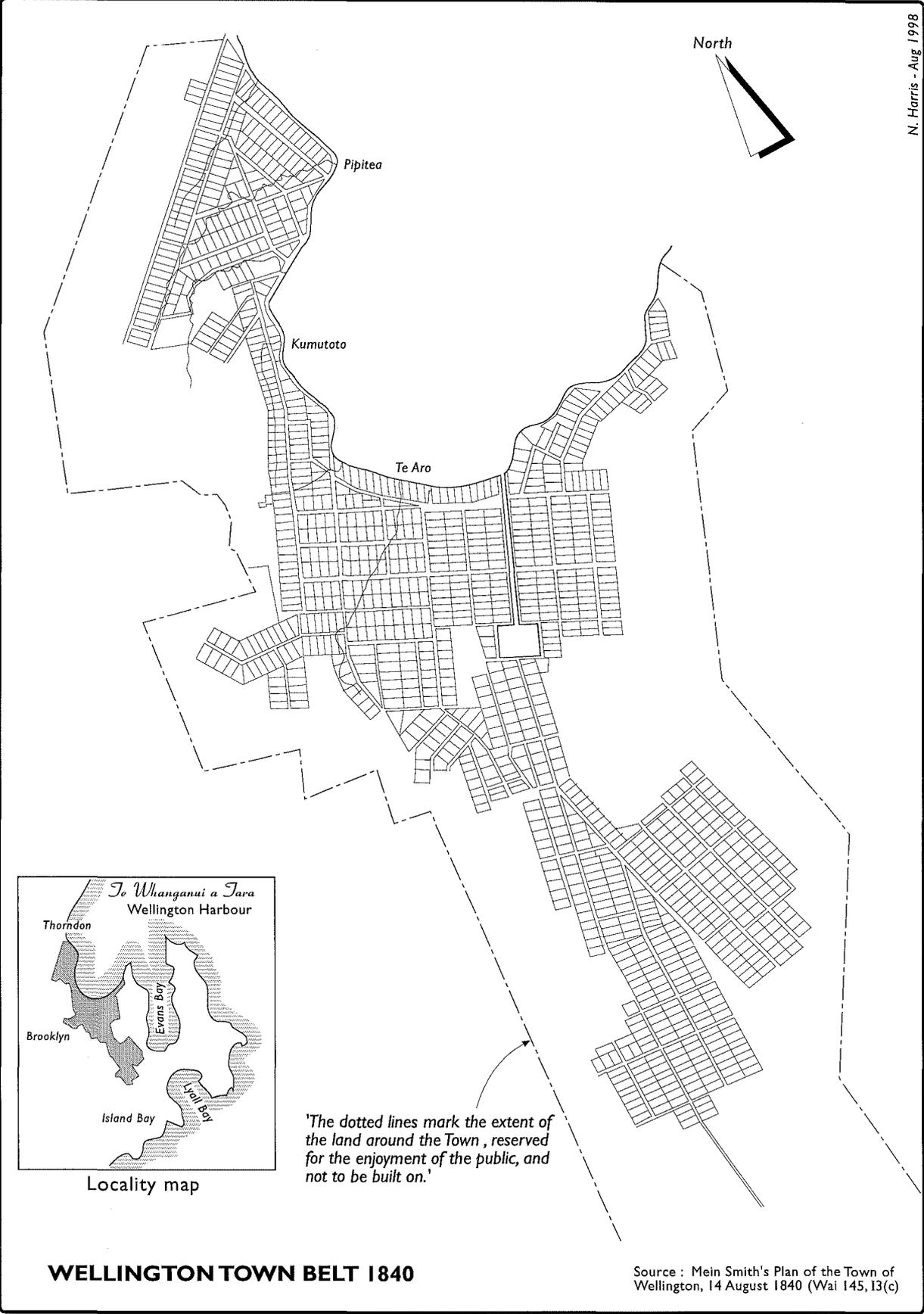
- a) a fairly ill-defined set of tribal interests over the lands the Company wanted (extinguished by a combination of the Company's initial payments, the creation of various reserves & trusts, and by compensation awarded in the purchase arbitration), coupled with
- b) discrete individual interests in particular *ngakinga* and *kainga* (many "reserved" by the Company, then "excepted" and surveyed by Spain and FitzRoy, and then adjusted, assigned, and registered by McCleverty and Grey).

We will discuss these latter customary interests in the Town Belt -- that is, in the *ngakinga* at Tinakori, Polhill Gully, the Botanical Gardens, and Omaroro -- in the second part of this submission.

3. Mein-Smith's Town Belt Plan

I believe that all sources and interpreters agree that the Company's initial survey and settlement had much the character of an invasion or, at best, a squat; an organised band of colonisers forcibly seized the hilled-in lowlands as the site for their town. On these lowlands, "on top of" the Maori *kainga* and clearings, Captain Smith laid out 1100 Town Acres. And as instructed, enclosing these lowlands and reaching up to the first line of ridges around the harbour, he laid out a belt of green. He marked a clear exterior boundary to the belt on his 1840 plan and in its key -- the end of the town and the start of its hinterlands.

This plan was immediately widely publicised, enabling people to start planning their selections of Town Acres in the upcoming lottery. The entire settlement at this stage was little more than a large squat, yet the local paper published a warning, trying to protect the proposed Town Belt:



Many persons are squatting on the public lands, and are under the impression that they will be allowed to remain unmolested for several years.¹¹

The writer warned that there were certain

"conditions upon which the lands about the town have been presented by the New Zealand Company to the community. The most prominent condition is that these lands are at no time to be built upon. Were the public to disregard this injunction, it appears to us that the land would thereby again be vested in the Company.

He explained both the future need for open space, and the current need to limit the size of the town to hold property values up, distinct from the rural values. The article concluded:

We have no doubt the conditions of the grant [from the Company to the community] will be strictly enforced, and as soon as the Government arrangements are made, we expect to hear that all squatters are ordered to leave these reserves.

At the time of this public warning, 19 June 1840, the colonists were holding Port Nicholson subject to Governor Hobson's initial proclamations voiding all titles to land until they were confirmed as "equitable" under the NSW Land Claims Ordinance. The Treaty had just been signed here about two months prior. The Acting Colonial Secretary Willoughby Shortland, had just disbanded the Company's "treasonous" first local government. Clearly, at the time of the notice, the Company had no *legal* right to the Town Belt lands. Nevertheless, according to Shortland's report the day after the notice, "both the European and native population [were] in a very satisfactory state."¹²

The newspaperman's notion of "public lands" on which anyone could "squat" or not was merely a bold fiction, sustained by some combination of surveyors' arms and Maori acquiescence. We can reconstruct the area of this "original Town Belt" from the acreages shown on the 1848 Port Nicholson Crown grant:¹³

¹¹ *NZ Gazette and Spectator*, 19 June 1841, 2 No 62:2 (ATL).

¹² Shortland/Hobson, 20/6/40, 'Twelfth Report of the New Zealand Company', reproduced in Wai 145 Doc A29 p 206. Generally for this period, see Moore, 'The Origins of the Crown's Demesne...', Wai 145 Doc E3 pp 57-69.

¹³ Areas as shown on the 1848 Crown grant plan, except the 1844 clergy, etc allotments, which are

	Acres	Roods	Perches
Town Belt excepted from 1848 grant	1308	1	15
+ original Botanical Garden	12	1	19
+ the cultivations assigned to Maori	223	2	2
+ the 1844 clergy, cemetery, & Gardens	~18	0	0
Total "Original Town Belt"	1562	0	36

4. Hobson's Proclamation of a Town Belt Reserve

The newspapermen's expectations were soon fulfilled, both for "Government arrangements" to be made and for the law to get tough with squatters. On his first visit to Port Nicholson, September 1841, Governor Hobson brought along nearly his entire Colonial administration, including his Protector of Aborigines, George Clarke Sr., and his Surveyor General, Felton Mathew. Just weeks before, Hobson's first Legislative Council had enacted the Land Claims Ordinance 1841, charging the Protector and Surveyor-General with categorizing lands for the Land Claims Commissions -- in particular identifying lands which were to be excluded from awards to private claimants, i.e., public reserves, native reserves, or waste lands. They came to Port Nicholson, no doubt, specifically to effect this categorization of the Port Nicholson lands.¹⁴

They arrived recently apprised of special instructions from the Colonial Office regarding surveys in the New Zealand Company settlements: the Company was to survey everything inside their settlements, and the Government was only to survey the external boundaries.¹⁵ As a result, during this 1841 visit, the Surveyor General signed-off Smith's plan essentially unaltered, and Hobson in turn forwarded it to the Home Government. There, on 12 August 1842, the plan was duly published in the

estimated here, as I have been unable to find an acreage for the Roman Catholic cemetery.

¹⁴ For this crucial visit generally see Moore, 'The Origins of the Crown's Demesne...', Wai 145 Doc E3 pp 76-121.

¹⁵ Moore, 'The Origins of the Crown's Demesne...', Wai 145 Doc E3 pp 70-75.

British Parliamentary Papers, with Town Belt intact.¹⁶

During this same first visit, by a series of public notices, Governor Hobson claimed for the Crown all the lands which Mein-Smith had surveyed as Public Reserves.¹⁷

First, on the 9 September 1841, Hobson proclaimed that the NSW Police Magistrates' Ordinance was extended to the Town of Wellington, and appointed Michael Murphy as Police Magistrate under it.¹⁸

Next, on 10 September 1841, Governor Hobson had boundaries of the Town of Wellington declared.¹⁹

Also on the 10th, Hobson directed it "to be notified" through the Gazette:

... that all persons who have built houses upon, or occupy any Public Reserve, or any Reserve for the benefit of the Natives, are required to leave and yield up possession of the same, within one month from the date hereof, unless licensed to remain for a longer period by the Police Magistrate; and that in the event of their neglecting or refusing to do so, the Police Magistrate has instructions to eject them from the ground they so occupy.

And all persons are warned not to clear, fence, or cultivate, or build in or upon any portion of the belt of reserved land surrounding the town.²⁰

On the same day, also, George Clarke jun. (still only his father's Clerk but apparently deputised to act as Protector in this district), wrote a letter to Wairarapa, a rangatira at Pipitea:

¹⁶ Armstrong, 'GBPP Excerpts 1840-43,' Wai 145 Doc A30 p 109.

¹⁷ Moore, 'The Origins of the Crown's Demesne...', Wai 145 Doc E3 pp 113-117.

¹⁸ Notices dated 9 September 1841, in *NZ Gazette*, 13 September 1841, pp 79-80.

¹⁹ Notice dated 10 September 1841, in *NZ Gazette*, 13 September 1841, p 80, and repeated in *NZ Gazette* 20 October 1841, p 86. See also *NZ Gazette and Spectator*, 11 September 1841, 2 No 74: 2 (ATL). These boundaries were declared primarily to clarify another, further-reaching proclamation: on this same day Hobson proclaimed the districts within which the Company could complete the purchase of, and then survey and select, the lands for it to be granted under its arrangement with the Home Government. See Moore, 'The Origins of the Crown's Demesne...', Wai 145 Doc E3 pp 94-102. One of the districts referred to a "Town of Wellington," therefore requiring him to also proclaim this "Town's" boundaries.

²⁰ *NZ Gazette*, 10 September 1841, p 80. Also in *NZ Gazette and Spectator*, 11 September 1841, 2 No 74: 2 (ATL). See copy in Wai 145 Doc A27 p D-1.

Friend Wairarapa, - You ask for a letter from the Governor, that the white man may not drive you from your *pas*, or seize your cultivations.

Listen to the word of the Governor: he says, that it is not according to our laws that you should be driven, if you do not agree to go.

This letter is from the Governor.²¹

About four weeks later, after the Governor and his officers had returned to Auckland, on 16 October 1841, another notice reiterated

... that any person cutting timber or firewood on the reserves, and especially on the belt which surrounds the town of Wellington, will be proceeded against according to law.²²

An on the same day, 16 October 1841, Governor Hobson *Gazetted*:

... that the undermentioned portions of Land in Port Nicholson are reserved by the Crown for Public Purposes viz.: --

Certain all's in Town of Wellington distinguished on the Co's Plan by the letters

A, B, C, &tc.

The belt of land which surrounds the Town of Well: extending from the external Boundaries of the said Town to the summits of the mountain Ranges, and which is coloured green in the said plan.

A portion of land at Point Jerningham

" " " " " " " " Halswell

" " " " " " " " Waddell

" " " " " " " " Pencarrow Head

" " " " " " " " Baring Head

By His Excellency's Command
(sd) Willoughby Shortland

²¹Clarke/Wairarapa, 10/9/41, in E. J. Wakefield, *Adventure in New Zealand*, Vol 2 p 61. There is a variant English translation of this same letter:

Friend Wairarapa, - You wanted a letter from the Governor to say that no one was to turn you out of your pah, nor the white man to send you away from your place.

You have heard what the Governor has said; that if you left your pahs, you would give over praying, therefore, do not tell the English people that you will give them up.

This letter is from the Governor.

"You would give over praying" was probably an awkward translation of a phrase meaning "you would be understood to have abandoned your claim." Clarke/Wairarapa, 10/9/41, 'Twelfth Report of the New Zealand Company, Vol 2' p 12E, reproduced in Wai 145 A29, p 310.

²² *NZ Gazette*, 16 October 1841, reproduced in Wai 145 Doc A27 p A166. See also *Gazette and Spectator*, 19 January 1841, 2 No 108: 2 (ATL).

The Notice duly appeared in the Gazette published four days later, 20 October 1841, which has served ever since as the official date of reservation of the Town Belt.²³

Governor Hobson's proclamations raise questions, of course, because nothing had fundamentally changed since the newspaperman's notice the year before: the Land Claims inquiry had not begun; Hobson had received clear reports -- and now discovered for himself -- that Maori objected to the settlers' occupation of much of the site of Wellington; and he himself had characterised the Company at this stage as enjoying only "forcible possession." Yet looking to the lands Maori cleared and cultivated in the Town Belt, Hobson had in the same visit both pledged that they would be reserved for Maori if they wished, and proclaimed them as Public Reserves under the exclusive control of the new Police Magistrate.²⁴

B. 1841-47: Colonial Administration of the Town Belt

1. 1841-42: Police Magistrate under the Governor

Hobson's proclamations notwithstanding, the Crown evidently did not enforce its Town Belt prohibitions against Maori, pending the Land Claims award and grant. There is good evidence that almost immediately after Governor Hobson and his cortege' left, Maori began availing themselves of their old cultivation lands, both on the Town Acres and the Town Belt. According to Colonel Wakefield, the whole movement arose because of George Clarke Jr's letter to Wairarapa.

First, on 12 October 1841, Wakefield reported that

"We have experienced considerable annoyance from the natives, who, from

²³ Notice dated 16 October 1841, in *Gazette*, 20 October 1841, p 86. Repeated on 27 October 1841, *ibid*, p 94. The handwritten draft Notice can be found as a loose sheet inserted in the Lands and Survey 'Old Reserves Index, Wellington,' vol 402.1 p 20, in the muniments collection of LINZ. This 'front door' to the old Lands and Survey Department is one example of the 1841 Notice serving as the "Date of Reservation" for the Town Belt.

²⁴ This dilemma also existed with regard to the Native Reserves, many of which were also "excepted" cultivation areas. See Moore, 'The Origins of the Crown's Demesne...', Wai 145 Doc E3 pp 148-157 for a basic description of the problem.

being perfectly satisfied and quiet, have become restless and discontented with the lands allotted to them. They have been advised by Mr. Clarke, the missionary protector of natives to withstand the occupation of the land by the white population. They have, in consequence, commenced *to fence in their old potato grounds in preference to cultivating the reserves made, which, however, are equally retained for them....* The *pahs* which the natives had agreed to vacate have been again settled in, and promise an abundant source of difference and inconvenience, as they are situated in some of the best water frontages of the town, and have been allotted to purchasers and public places."²⁵

The next month, Wakefield wrote similarly that:

"... In many places since the selection of sections by the purchasers from the Company, the natives have enclosed land with the purpose of retaining it according to Mr. Clarke's recommendation; consequently the owners are debarred from entering on possession."²⁶

A January 1842 article in the *Gazette and Spectator* referred similarly to events in October 1841, only to clearing of trees in the Town Belt rather than fencing of 'private' lands. The article is worth quoting at length:

... Now, it is a fact that the Maoris, in utter disregard of the published notice of the Governor, did some three months ago fell large quantities of trees, and are now employed in burning them off the ground. An immense number of trees not cut down have been blackened and blighted by the smoke; and unless a stop is put to their proceedings, the maoris will succeed in converting the chief beauty of our town into a mass of cheerless, stunted, naked barrenness.

There is but one feeling of sorrow and anger on this subject among the settlers; and unless secret instructions were issued to the Chief Police Magistrate and the Protector of Aborigines not to restrain the natives from their accustomed work of destruction, those two functionaries must share the blame between them; for there was no attempt at secrecy on the part of the maories, and information of the cutting down preparatory to burning was given to the police three months ago.

If any measures were taken to enforce the law, those measures were ineffectual; but we suspect that none were even thought of, till the fires were seen blazing in various directions on the public reserves, and interferences became useless. Have any proceedings been since taken against the violators of the law, in pursuance of the Governor's notice? We believe not, and we ask, why not?

This is a subject of very great importance; and not interesting only to

²⁵Wakefield/Directors, 12/10/41, 'Twelfth Report of the New Zealand Company, Vol 2' p 10E-11E, extract reproduced in Wai 145 A29, p 309.

²⁶Wakefield/Directors, 5/11/41, *ibid.*

lovers of beautiful scenery and connoisseurs in the picturesque. On the preservation of the belt much of the attractiveness of the place depends, and the value of property here depends much on the attractiveness of the place.... We must expect to find persons from the East Indies and others possessed of independent incomes, among our future immigrants. This mass of settlers are a good deal influenced by the scenery among which they intend to reside, and we may be assured that disgust rather than delight would be their sensation in seeing a line of deserted potatoe grounds, where a noble forest now covers the range of hills.

... Again, they who have erected cottages and cultivated gardens close upon the reserved belt, have no security from fire, if in their immediate neighbourhood Maori clearings are permitted; and we may expect to hear of loss of life as well as property unless they are stopped. At present no prudent Insurance Office would grant a policy to the owner of even a brick house situate near the Tinakori Range.

We are aware of the difficulties in enforcing the law against the natives; but they *must* be grappled with and overcome; and until the experiment has been fairly tried and failed, we will not believe that a strong police force could not prevent the Maories from meddling with the district set apart by the Government for public purposes. It is the duty of the Protector of Aborigines to explain the nature of the offence, the cause of the prohibition, and to point out those large tracts of land where they may continue to clear and grow potatoes according to their custom....²⁷

This dilemma of whether to control Maori use of proclaimed "public lands" continued through at least 1844. The Crown appears to have been unwilling to make arrests or order fines to prohibit either "Porirua and Kaiwharawhara Maori" from cutting wood in the Hutt or "Wellington Maori" doing the same in the Town and Town Belt.

In August 1842 for example, Col Wakefield reported regarding the Hutt²⁸ that Police Magistrate Murphy professed

"inability to interfere until the question of title has been set to rest by a grant from the Crown."²⁹

²⁷ *Gazette and Spectator*, 19 January 1842, 2 No 108: 2 (ATL).

²⁸ For the timber-felling/ clearing disputes in the Hutt, see for example Halswell/Colonial Secretary, 29/11/41, 'Twelfth Report of the New Zealand Company, Vol 2' p 88G-89G, reproduced in Wai 145 Doc A29 p 488, and Halswell/Wakefield, 28/8/42, Swainson/Halswell, 20/7/42; Swainson/Halswell, [n.d.], Swainson/Halswell, 24/8/42, and Wakefield/Shortland, 23/1/43, all in 'Twelfth Report of the New Zealand Company, Vol 2' p 13H-27H, and reproduced in Wai 145 Doc A29 pp 511-513, and 506. See also Meech/Murphy, 26/8/42, and Von Alsdorf/White, 22/8/42, in 'Twelfth Report of the New Zealand Company, Vol 2' p 26H-27H, reproduced in Wai 145 Doc A29 p 513.

²⁹ Halswell/Wakefield, 28/8/42, in 'Twelfth Report of the New Zealand Company, Vol 2' p 22H-24H, reproduced in Wai 145 Doc A29 p 512.

Now, rights to firewood, timber cutting, and forest clearing were serious matters in the 1840's. The 1842 timber-felling in the Hutt by Ngati Toa, Tama, and Rangatahi was a main cause for the 1843 shift to a binding arbitration for compensation,³⁰ which ended in the 1844 compensation awards -- the attempted enforcement of which in 1844-45 led to the war in the Hutt and up the Coast.

2. 1843: Police Magistrate/Town Clerk under the Town Council

Meanwhile, though, the 1841 and 1842 timber-felling in the Town Belt by "Te Aro Maori" appears to have continued unchecked right into 1843, and seems to have become something of an obsession for Wellington's first Town Council. In July 1842, Wellington was proclaimed a Borough, and in September 1842, its first Council was elected, under the 1842 Municipal Corporations Ordinance. Section 7 of this Ordinance vested all the lands within any Borough limits in the elected Municipal Councils -- specifically *excepting* any lands already appropriated *by* private persons or *for* Crown or Native Reserves.

On 22 February 1843, Wellington's first Mayor, George Hunter, complained to his fellow Town Councillors about the "continued depredation committed of timber on the public reserves." Now despite the Council's apparent lack of legal authority over such reserves, Mayor Hunter had arranged a "special constable ... for the purpose of protecting the same." The Constable, or Conservator, apparently was drawn from the regular Constables under the Chief Police Magistrate, George White -- who was also the Town Clerk -- but paid for by Mr Hunter himself.³¹

³⁰ Wakefield/Spain, 22/8/42, in 'Twelfth Report of the New Zealand Company, Vol 2' p 46E-49E, reproduced in Wai 145 Doc A29 pp 327-28.

³¹ This event is somewhat ambiguous as 'evidence' of Crown leniency with Maori timber-felling. The Council's notice in the *Gazette and Spectator* contains no clear indication whether the "depredations" were by Maori or pakeha. Moreover, the Council Motion sanctioning Hunter's action focused quite clearly on Town *roads*, not Town Belt:

That a constable be appointed as conservator of the public reserves, as well as all timber, whether trees or brush, growing or standing upon that portion of the town set out for public streets or roads, and that printed boards be placed in conspicuous parts of the same,

On 1 March 1843, a letter to the Editor of the *Gazette and Spectator* perhaps clarifies the cause of Council's concerns: the correspondent claimed that the preceding Saturday "two or three labouring men" had been fined for removing timber from the Town Belt, while "on that very day swarms of Maories were walking off with their backloads, to endeavor to sell it." According to the letter writer, despite being "the greatest depredators" the Maori were "allowed to go 'Scot free.'" The writer asserted:

If a law is made for the preservation of timber on the belt surrounding the Town, the Natives should be prevented equally as much as the whites, from meddling with the same....

Let any person visit the reserves at the back of Te Aro flat, at any hour he thinks fit, and he will find Maories diligently at work felling timber and carrying it off, and will also discover that a portion of the belt from behind Capt Daniell's to Mr Mr Strang[']s, is occupied by those gentry as a potatoe garden.³²

The writer claimed that the prohibition was forcing settlers to buy firewood rather than cut it themselves, and that the non-enforcement of the same prohibition meant these settlers often ended up buying timber which Maori had cut from the Town Belt.

Now, perhaps there was not so much difference as all that: the Editor replied a few days later that the men fined were brickmakers -- large users of firewood, who had cleared almost a whole acre, after being warned repeatedly to stop. These were the *only* firewood prosecutions, Maori or pakeha, of which the Editor could find record. And further, the Maori seen taking firewood the preceding Saturday had

"had the property taken from them and threatened with punishment if they persist in cutting."³³

There are indications that shortly after this the new Wellington Town Council tried to

cautioning all persons from trespassing on, or cutting the same.

See *Gazette and Spectator*, 25 February 1843, 3 No 223: 2 (ATL).

³² *Gazette and Spectator*, 1 March 1843, 3 No 225: 2 (ATL). Consider this wood-cutting incident alongside Wakefield's view of how titles to land stood, printed on the same page: "The titles to the greater portion of the Town and much of the Country Lands are undisputed by the Natives, and therefore might be perfected [through the upcoming arbitration.]"³²

³³ *Gazette and Spectator*, 4 March 1843, 3 No 226: 2 (ATL).

initiate a tougher stance toward Maori use of the Town Belt. It is also clear, however, that their attempts at control had failed by August 1843. At its 8 March 1843 meeting, the Council called upon its Town Clerk, Mr White, to license people to cut or carry away wood or brushwood from the road-lines, and from a one-chain wide strip along the inner edge of the Town Belt.³⁴ The Council aimed "to effect the clearing" of these areas. Two days later, Mr White notified the public accordingly that anyone "found cutting, carrying away, or otherwise damaging or destroying" wood without such license would "*without leave*... be prosecuted according to the law."

Col Wakefield published a complaint that, if the Crown's title was not good enough to enable it to grant to settlers, then it could not at the same time be good enough to secure such exclusive possession of the Public Reserves and Native Reserves.³⁵ It was a loose and mischievous argument, of course, since Wakefield obviously did not believe his own premise.

The Town Council repeated its notice through March and into April 1843.³⁶ On 2 May, though, it decided "to discontinue the employment of the Constable on the Public Reserve,"³⁷ and by the end of the month, had resolved

to survey the town belt, and lay it out in lots to be let on improving leases of fourteen years, the same to be offered to public competition.³⁸

Almost immediately, the Mayor himself queried whether the Council had the power to enter improving/building leases on the Town Belt, as these were contrary to the purpose "it was originally set apart for."³⁹ A few weeks later, though, the first lease

³⁴ *Gazette and Spectator*, 11 March 1843, Report of 10 March Meeting, and 10 March Public Notice, both in 3 No 227: 2 (ATL). Mr White had earlier that month evicted a squatter from the Government Reserve on Lambton Quay, and signed the notice as "C.P.M.," which I assume stood for "Chief Police Magistrate." See *Gazette and Spectator*, 22 March 1843 (ATL).

³⁵ *Gazette and Spectator*, 22 March 1843, (ATL).

³⁶ See for example *Gazette and Spectator*, 11, 15, 18, 25, and 29 March, and 1 and 5 April 1843 (ATL).

³⁷ Report of 2 May Meeting, *Gazette and Spectator*, 3 May 1843, 4 No 242: 2 (ATL).

³⁸ Report of 31 May Meeting, *Gazette and Spectator*, 3 June 1843, 4 No 251: 3 (ATL).

³⁹ Report of 3 June Meeting, *Gazette and Spectator*, 7 June 1843, 4 No 252: 2-3 (ATL). Others objected that the leasing, as proposed, would entail costly surveys. This was apparently overcome by requesting the Company's old surveys, Report of Meeting 14 June 1843, in *Gazette and Spectator*, 17

of Town Belt land steered clear of these objections -- 10 acres to the Horticultural Society, the original Botanical Gardens along the upper Tinakori/Karori Road.⁴⁰ Over the next few meetings, Council minuted at least eighteen more expressions of interest in leasing Town Belt lands -- sufficient to rouse Col Wakefield on 13 July to object strongly to the likelihood that sub-lessees would end up building on the Belt, and sufficient to cause alarmed Councillors on 19 July to vote unanimously that they would not lease any of the Eastern half of the Town Belt (i.e., the Mt Victoria side).

The Council also asked their solicitor, Mr Ross, whether or not the Municipal Corporation was entitled to lease the Town Belt. Mr Ross' opinion seems like an extraordinary 'reach': he argued that the Council had the right to do so, subject only to the condition that it not allow building to occur. He averred that the Municipal Corporations Act 1842 had vested all Wellington lands in the Council excepting any private lands and any "Crown Reserves" and "Native Reserves." In Governor Hobson's 10 October 1841 Proclamation, he had referred to the Town Belt as a "Crown" reserve, but in the proclamation bringing the 1842 Ordinance into effect, 20 July 1842, Hobson referred to the Town Belt as a "*Public Reserve*" -- and therefore (according to Ross) the 1842 Ordinance's exception of "Crown Reserves" did not touch it. The Town Belt vested in the City.⁴¹

Its feet a bit closer to Earth, the *Gazette and Spectator* observed that until the Town Council's title to the Reserves was settled, lessees would be taking big risks investing in improving any Town Belt land.

By early August, the Council backed off altogether, resolving to wait six months before taking any further steps toward completing any Town Belt leases.⁴² The next

June 1843, 4 No 255: 2 (ATL).

⁴⁰ Report of 17 June Meeting, in *Gazette and Spectator*, 21 June 1843, No 4 No 256: 2 (ATL).

⁴¹ Lease offers: see Reports of Meetings 17 June, 1, 8, 15, and 19 July, in *Gazette and Spectator*, 21 June, 5, 12, 19, 22 July respectively; all Vol 4, No's 256, 260, 262, 264, and 265, all in ATL. 19 July meeting (*Gazette and Spectator*, 22 July, 4 No 265: 3 (ATL), Col Wakefield's protest, and Mr Ross' legal opinion, all in *Gazette and Spectator*, 16 August 1843, 4 No 272: 3 (ATL). Hobson's proclamation of Municipal Corp Ordinance 1842, *NZ Gazette*, 23 and 27 July, pp 193 and 198.

⁴² Comment, eight more requests for leases, and the Council's 12 August unanimous resolution to keep

month, the Council's authorising legislation, the Municipal Corporations Ordinance, was disallowed.⁴³ The Council met for the last time in December 1843.

The Town Council's first claim to the Town Belt seems to have been untenable from the start. It tried, but probably did not substantially affect anyone's interests in the Town Belt at the time, Maori or pakeha.

3. 1844 - 1847: Resident Magistrate under the Governor

Almost immediately after the closing of the land claims arbitration in February 1844, the Superintendent of the Southern District, Major Richmond, instructed the new Chief Police Magistrate, MacDonogh, to post notices identifying two small spots in the Town Belt from which people could cut timber and gather firewood -- one the little triangle of Town Belt northwest of the junction of Tinakori/Karori Road and Old Karori Road, and the other a strip of land through the Town Belt from E Puni Street to Ohiro Country Section No 12.⁴⁴

Similarly, about three months later, Superintendent Richmond appropriated five small areas from the Town Belt. These appropriations were for residences for Wesleyan, Catholic, and Presbyterian clergy, a Catholic cemetery, and the initial 12 acres of the Botanical Gardens (still being planned by the Horticultural Society).⁴⁵

the Eastern (north-facing) side of the Town Belt "for a public common, and that no tenders received for leasing the same be entertained," in *Gazette and Spectator*, 16 August 1843, 4 No 272: 3 (ATL). At this same time the Council's own legal status was widely doubted; see for example *Gazette and Spectator*, 3 May 1843, 4 No 242: 2 (ATL).

⁴³ Moore, 'The Origins of the Crown's Demesne...', Wai 145 Doc E3 p 114 n 219. Also Carmen, A. H., *Birth of a City*, cited in W. Shepherd, and W. Cook, *The Botanical Garden, Wellington*. Wellington: Millwood, 1988, p 19.

⁴⁴ *Gazette and Spectator*, 9 March 1844, 4 No 331: 1 (ATL). This may or may not be related to FitzRoy's April 1844 report that Maori at Wellington complained much of a lack of firewood. See FitzRoy/Stanley, 15 April 1844, in Armstrong, "GBPP Excerpts 1845-46," Wai 145 Doc A32 p 10. FitzRoy described in particular the Company's surveys leaving no "common right" -- a notion and term often associated with the Town Belt.

⁴⁵ Appropriations all signed by Richmond, dated 30 May 1844, in NM 8/51/1403 (National Archives), cited in Shepherd and Cook, p 19. The latter cite Col Sec Domett's 1851 letter, also contained in this file, recalling these allotments originating with a Board comprising Land Commissioner Spain, Police

The Crown was directly controlling the Town Belt again, though this appears to have involved little effort. A search of the Wellington Resident Magistrate's correspondence and reports has not yielded any sign of arrests, fines, or licenses pertaining to the Wellington Town Belt from 1844-48.

An incident on the Nelson Town Belt in February 1845, however, confirms that the Company's Town Belts were the responsibility of the local Resident Magistrates, reporting to the Superintendent of the Southern District (the Governor's representative in the Company settlements), acting under the Imperial Land Sales Act 1842:⁴⁶ in the summer of 1844-45, a Nelson resident enclosed two acres of garden in the Nelson Town Belt adjacent to his Town Acre. Neighbours complained, as he thereby blocked a path they all shared through the belt. The gardener countered by applying to the Resident Magistrate, D. Sinclair, for a license for his garden. Sinclair initially approved, which occasioned protest from the Company's Nelson Agent, F. Dillon Bell. Both the Resident Magistrate and the Company's Agent wrote to the Superintendent of the Southern District, Major Richmond (in Wellington). Sinclair asked whether he should give the gardener license "to occupy a small piece of waste land" in the Nelson Town Belt.⁴⁷

Richmond responded with an extract from a letter to him from Governor FitzRoy, stating

"respecting the Town Belt, I am at present unable to sanction your granting leases of any portion of it. (vide Land Sales Act Cl 17)." [emphasis in original]

Richmond instructed Sinclair to withdraw his permission for the occupation of the Town Belt.

Magistrate Murphy, and Mayor Hunter. The actual appropriation, though, was done by Richmond at FitzRoy's behest, and later completed by grants from Governor Grey.

⁴⁶ Entire incident is in F.D. Bell/Richmond, 22 February 1845, NM 8/45/117, (National Archives, Wellington). Note the Resident Magistrate involved, Sinclair, states that this was the only instance of a request for license to occupy in that settlement's belt. I suspect there were none in Wellington.

⁴⁷ Sinclair/Richmond (45/62), 6 March 1845, in *ibid*.

Despite the fact that Richmond's reply had to do with leases, not the license requested, this incident clearly shows that everyone concerned, from residents to Magistrates to Company Agents right up to the Governor, all regarded the Town Belt in Nelson as "waste land." Given the Governor's recent appropriations of lands from Wellington's Town Belt, it seems likely that the same view pertained here.

This seems a fairly safe assumption as two years later Lt Col McCleverty clearly stated again, like FitzRoy and Richmond, that

... the Town Belt [at Wellington] is to be considered as waste and pertaining to the Crown.⁴⁸

There does appear to have been some confusion about authorities, though. Since the Town Belt in Wellington had been proclaimed "Reserved" in 1841, it fairly clearly fell outside the definition of "waste land" in section 23 of the Land Sales Act 1842:

"...lands... which now are or shall hereafter be vested in Her Majesty,... and which have not been already granted... *and which have not been dedicated and set apart for some public Use.*" [emphasis mine]

It is difficult to explain FitzRoy and Richmond's reasons for treating it as "waste" under this Act.

McCleverty's reasoning in 1847 is no clearer. McCleverty's view of the Belt as "waste" contradicted the Land Sales Act in the same way as FitzRoy and Richmond's. Moreover, under the 1847 Loan Act, any waste lands at Wellington vested in the Company.⁴⁹ Specifically in pursuance of this provision of this Act, Lt Governor Eyre granted all of the supposed waste lands at Port Nicholson to the Company in his January 1848 grant.⁵⁰ If the Town Belt was "waste and pertaining to the Crown" in

⁴⁸ McCleverty, 'Report on the Port Nicholson Cultivations,' April 1847, enclosed in Grey/Earl Grey, 21 April 1847, *British Parliamentary Papers relating to New Zealand, 1847-50*, pp 38-42, reproduced in Wai 145 A10(a) Doc 9.

⁴⁹ 1847 Loan Act in Wai 145 Doc E7 pp 312-317. The Company's districts covered the south half of the North Island and all of the South Island.

⁵⁰ Eyre/Grey, 24 December 1847, in NM 4/1/47/96 pp 122-24 (National Archives, Wellington). Typescript in Wai 145 Doc E7 p 271e.

April 1847, then surely like all these other "waste lands" of Port Nicholson, it should have vested in the Company in January 1848.

But the schedules of both of the plans accompanying the 1848 Port Nicholson Crown grant were clear: the Town Belt was "reserved and excepted by the Government" from the grant to the Company.⁵¹ I can only think of one plausible explanation: the whole aim of the 1847 Loan Act was to fulfill the Crown's obligations to the Company under the old November 1840 arrangement with Lord Russell. Clause 6 of this agreement provided that the Company's right of selection did not extend to any lands which "ought to be reserved and appropriated for any purpose of public utility, convenience, or recreation."⁵² This is perhaps why the Town Belt escaped vesting in the Company in January 1848.

4. 1848-50: No One In Charge?

Lacking direct control of the Belt, the Company's main aim for it was to try to restore the lands which McCleverty had assigned from it to Maori. In February 1848 (just a month after the Port Nicholson grant issued here), the Company Directors in England tried to arrange the 'return' of these portions. They urged Earl Grey,

that the whole of the reserve in question will be preserved inviolate for the public purposes to which it was originally destined.⁵³

⁵¹ Schedule on Town & Belt Plan attached to January 1848 grant (SO 10408): "Lands reserved and excepted by Government from the Area comprised within the Block claimed by the New Zealand Company in the Port Nicholson District within the Boundaries of the Town Belt. Native Reserves are coloured Yellow. Crown and Public Reserves Red. The *Town Belt Green* as shewn by the Map furnished under the direction of the New Zealand Company's Principal Agent. *The other Reserved Lands*, viz. one Native Pah and Cultivations are coloured Dark Green, and the Botanical Garden has its boundary marked." Emphases mine: note grouping of Town Belt with "*other Reserved Lands*" excepted from the grant to the Company.

⁵² Agreement 18 November 1840, reproduced in Wai 145 A10(a) Doc 7 p 2.

⁵³ Harrington/Earl Grey, 29 February 1848, NZC 102/18, cited in Joan Quinn, 'The Origin and Development of the Wellington Town Belt', MA Thesis, Victoria University of Wellington, 1966, p 28. See also typescript excerpt of this letter in Wai 145 Doc E8, p 366a, citing pamphlet: "Adjustment of Land Questions of the New Zealand Company, 1848," London: Stewart & Murray Old Bailey, 1848, pp 67-68 (copy held at Wellington Public Library). This pamphlet contains an extended but unfruitful correspondence between the Company and Earl Grey regarding this proposed trade-back of Town Belt lands.

They suggested that the 212 acres assigned to Maori could come from the Company's 1738 acre estate at Wellington.⁵⁴ Nothing came of their suggestions, though.

Since the Town Belt did not go to the Company in 1847 as "waste," it must have been withheld by the Crown as some sort of "reserve." Now, under the 1846 Constitution, the colony was divided into New Ulster and New Munster. Since the demesne in New Munster was vested in the Company, the Crown passed land legislation and regulations in August 1849 for New Ulster, but left it to the Company to issue comparable regulations for New Munster. That same month, the Company issued general regulations for New Munster. Shortly after, the Crown issued supplementary regulations that covered Reserves in New Ulster, but it does not appear that these extended to New Munster yet, or that the Company issued anything comparable.⁵⁵

In short, there was probably a lack of clear authority in Wellington for Town Belt management from 1848 to 1850. We would probably learn more from "on the ground" events in this period than from any written authority. Unfortunately I have been unable to find any telltale Town Belt events for 1848-49.⁵⁶

However, at the first opportunity, in May 1850 -- several months after the New Ulster waste land/reserves regulations were Gazetted, and shortly after the Company had announced it was about to dissolve -- a Gazette notice once again prohibited the cutting of timber on Wellington's Town Belt.⁵⁷ In April 1851 -- several months after

⁵⁴ *ibid.*

⁵⁵ See the New Ulster Regulations for "the Guidance of the Commissioners of Crown Lands" issued in November 1849, pursuant to Cl 3 of the 1849 Crown Lands Ordinance, in *NZ Gazette* 1849 pp 144-51 -- especially Regulation Section 20 prohibiting the licensing of any cutting or removal of timber from Reserves.

⁵⁶ Walter Cook recently wrote that the North end of Tinakori hill was probably cleared of timber around the late 1840's, perhaps as part of defence measures against hostile Maori. Wellington City Council, *Town Belt Draft Management Plan*, Volume 3: European History, p 38. This "event" is a bit too general to be helpful, though, and unfortunately, Cook cannot recall his source.

⁵⁷ See *Gazette and Spectator*, 15 May 1850, (ATL). Later in 1850 the Colonial Secretary similarly included the Town Belt as part of the District within which he could, upon application, license Slaughterhouses (though no such applications or licenses appear to have ensued. Notice by Colonial Secretary, 21 November 1850, in *New Munster Gazette 1850*, p 111 (National Archives, Wellington).

the Company dissolved -- the New Ulster waste land/reserves regulations were extended to New Munster.⁵⁸

C. 1853-1873: From Crown to Province to City Council

1. The 1854 Public Reserves Act and 1861 Grant to the Superintendent of Wellington Province

The General Government owned and controlled the Wellington Town Belt right from 1853 to 1861 when it granted it to the Provincial Government. The general legal regime for the Town Belt in this period was fairly straightforward: the first General Land Regulations under the 1852 Constitution were issued in March 1853, followed by several amendments.⁵⁹ In 1854, the General Assembly passed the Waste Lands Act, which confirmed and brought forward all regulations in force at the time of the 1852 Constitution. That same year, the Public Reserves Act 1854, sections 1 and 2, authorised the Governor in Council to grant Public Reserves and reclamations to Provincial Superintendents. Section 5 directed that any such grant would be made upon trust for the public service of the grantee Province. Subsequent sections placed various restrictions on the alienability and purposes to which such grants could be made.

The following few years, Wellington devoted a great deal of effort and attention to its reclamations and wharves, but (other than Grey's endowment of an Industrial School where the Botanical Gardens are now), no trace of interest in the Town Belt.⁶⁰ Indeed, when the Wellington Town Board took over administration of the Town Belt nine years later, they complained to the Superintendent that they were "not in

⁵⁸ 4 April 1851, in *New Munster Gazette 1851*, cited in Duncan Moore, 'Questions Regarding the Port Nicholson Purchase: Surplus Lands, Purchase considerations, and Title to Maori Reserves', Wai 145 Doc I7 pp 20-21.

⁵⁹ *ibid*, p 23.

⁶⁰ The first few reclamations were underway in Wellington, and were granted to the Superintendent under this Act the next year, 1855. See the preamble to the Harbour Reserves Amendment 1861.

possession of a single paper or record" regarding the Reserve. When the Superintendent handed over the records in his possession, they amounted to only very scant minutes and counterparts of recently begun leases (see below, p 31).⁶¹

Sometime around 1860-61, either the Provincial Government asked, or the General Government offered, to transfer the Town Belt to the Provincial Government.⁶² On 8 April 1861 the Government Surveyor for Wellington District, George Swainson, forwarded to Superintendent Featherston tracings of the Town Belts of both Wellington and Wanganui.⁶³

On 3 June 1861, Governor Thomas Gore-Brown granted the Town Belt to the Superintendent of Wellington Province, Isaac Featherston, "for purposes of Public Utility to the Town of Wellington and its inhabitants." He did so with the advice and consent of his Executive Council, and under authority of the Public Reserves Act 1854.⁶⁴ The grant comprised 1234 acres 2 roods and 18 perches.

The grant appears to have sparked rumours that "the Government ha[d] given liberty to different persons to occupy and fence any quantity of Town Belt," and encouraged some squatter near the present Show Buildings to enclose "a great quantity of land." Acting Provincial Superintendent, P. W. Schultze, issued notice prohibiting such occupation.⁶⁵ Apparently little else was done, though, as the squatter who sparked the notice -- plus at least nine others -- remained resident in the Town Belt right up

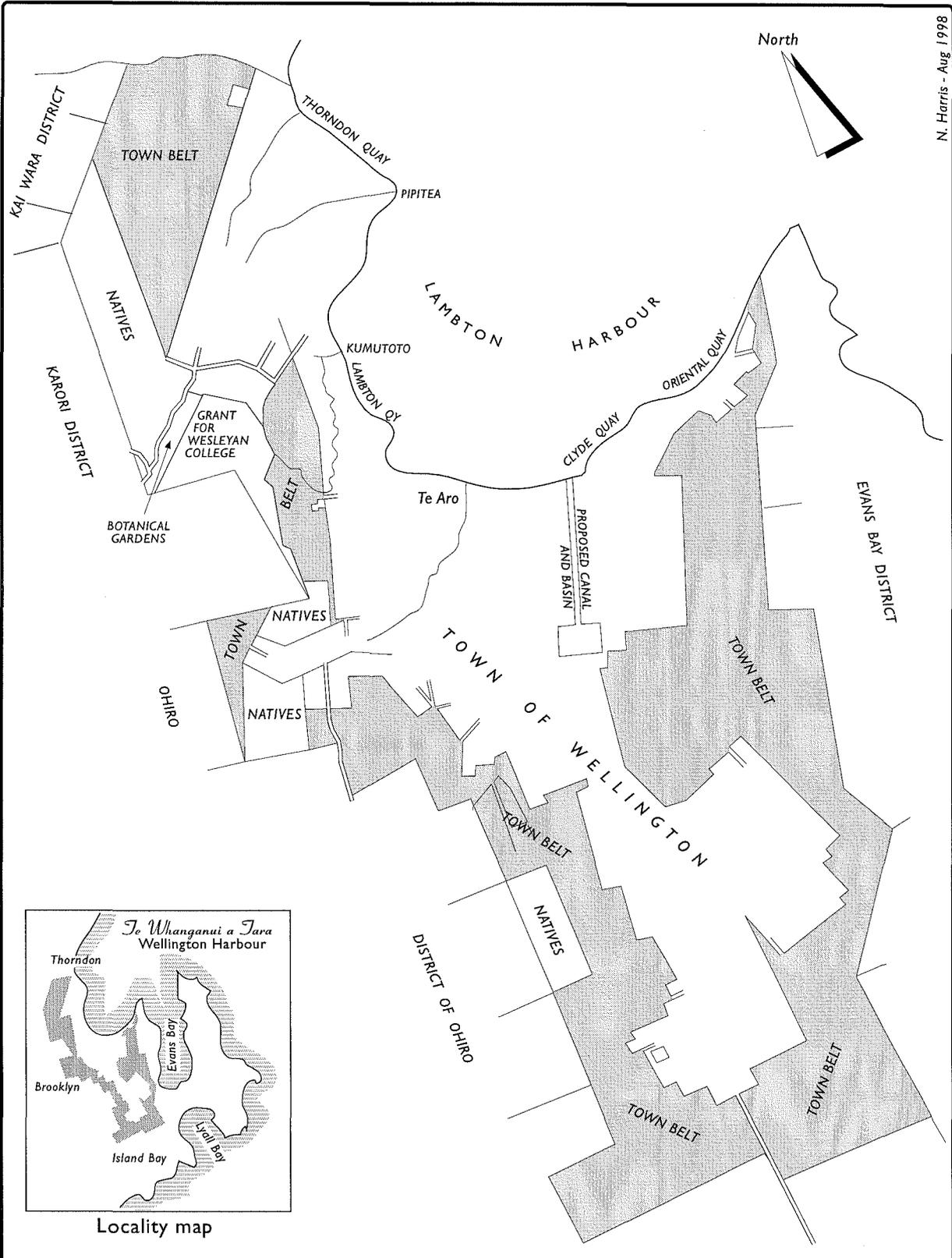
⁶¹ Bannister/Featherston, 15 February 1864, p 3 of 'Correspondence between the Government and the Town Board Commissioners,' Council Paper, Tabled 21 June 1864, in *Wellington Province Acts and Proceedings 1863-65*. The paucity of papers is stated in Featherston/Bannister, 4 May 1864, *ibid* p 5. This period from the 1854 Act to 1861 grant also appears as a 'gap' in Joan Quinn's very thorough and informative thesis on the Town Belt, 'The Origin and Development of the Wellington Town Belt', p 31.

⁶² Shepherd and Cook, p 22, say the transfer originated in "a call for land close to the city, both for town milk supply and for grazing horses used in transport." They do not give their reference for this theory, though.

⁶³ Swainson/Superintendent, 8 April 1861, in WP 3/61/148 (National Archives, Wellington).

⁶⁴ Crown Grant No 1961b, *Crown Grants* Vol 2 Fol 150, at Land Information NZ, Wellington District.

⁶⁵ Francis Bradey, Tamworth Cottage Adelaide Road, to Acting Superintendent P. W. Schultze, 29 July 1861, WP 3/61/423 (National Archives, Wellington), and Schultze' (?) reply overleaf, 2 August 1861. Notice in *NZ Gazette* Vol 8 No 26, 12 August 1861.



WELLINGTON TOWN BELT 1861

Source : Map attached to Crown Grant 1861

until 1866.⁶⁶

2. 1862-73: Aiming at Local Management of the Town Belt

This 1862-73 period has quite definite features: first, the Provincial Government granted the new Town Council full responsibility over- and rights to- the Town Belt. Hence, in this period Town Belt administration assumed its basic modern guise -- Municipal-level administration, subdivision, leasing. What sets this period apart from the present, though, is that ownership of the Town Belt remained with the Provincial Council. The period ended with the 1873 Crown grant to the Mayor and Councilors of Wellington, which serves to this day as the City's "principal governing authority" for the Town Belt.⁶⁷

Just over a year after the Town Belt was granted to the Provincial Superintendent, the Superintendent began efforts to vest it in a local body. Before the Superintendent could hand over the Town Belt to a local body, though, there had to be a local body which could receive it. So in May and June 1862, the Town Board Act and the Wellington City Reserves Act passed through the Provincial Council hand-in-hand, as it were, each waiting upon the other, each debated in terms of its affect upon the other.⁶⁸

Unlike in the 1840's, it appears that Wellingtonians were not eager to take charge of the Town Belt. Indeed, the prospect of "rents of the Town Belt" -- to be handed over

⁶⁶ Wellington Almanac 1866, cit in Louis Ward, *Early Wellington*, pp 236 and 312. Note the same squatter, a Mr Bird, is both subject of Bradey's 1861 complaint, and resident in the 1866 Almanac list.

⁶⁷ Wellington City Council *Draft Management Plan*, Background Papers, Vol 7: Administration, p 9 para 4.1. Para 4.2 adds: "To do anything with the Town Belt that is inconsistent with the 1873 Deed ... would require special legislation."

⁶⁸ See following entries in the Journal of Proceedings of Session IX, in *Votes and Proceedings Wellington Provincial Council, Sessions 8-9, 1861-62* (National Archives, Wellington): J. H. Wallace's introduction of motion to form a Municipal Corporation for Wellington 1 May 1862, p 16; Provincial Solicitor's motion of City Reserves bill 9 May 1862, p 15; first reading of City Reserves Bill, p 16; initial defeat of Municipal Corporation Bill 14 May; re-introduction by Stokes as the Wellington Town Board Bill for streetworks and "for the management of the City Reserves," p 31; management of City Reserves Bill delayed until the end of May pending discussion of the Town Board Bill, pp 32 and 50; both bills passed third readings same day, 10 June 1862, pp 57-58.

to the Town Board under the Wellington City Reserves Act 1862 -- were intended to act as "powerful inducements" to the six Commissioners under the Town Board Act 1862.⁶⁹

The Commissioners set to work; by September 1863 they had completed the survey of the Town Belt and divided the Reserve into sixty-five allotments.⁷⁰ In the same period, Superintendent Featherston negotiated thirty-one fourteen-year leases covering most of the Town Belt, ranging from £3 to £91 per annum each.⁷¹

In both 1865 and 1866, the Superintendent told the Commissioners that he would convey the Town Belt to them. However, he still held title in 1867, raising doubts whether the Commissioners could issue further leases.⁷²

⁶⁹ 'Speech of His Honor the Superintendent on Proroguing the 2nd Session of the 3rd Provincial Council of Wellington,' 19 June 1862, a Council Paper in *Votes and Proceedings Wellington Provincial Council, Sessions 8-9, 1861-62*.

⁷⁰ Commissioners to Superintendent, 5 September 1863, WP 3/18 (National Archives), cited in J Quinn, 'The Origin and Development of the Wellington Town Belt', p 33. This file is now marked "missing" in the WP series list. Note the *sixty five* allotments here conflict with the *sixty* allotments shown in Charles O'Neill, 'Plan of the City of Wellington, Showing the Town Belt Leases and Reserves,' 1877, ATL 832 4799a A/1877/ACC 6059 (reproduced in Wai 145 Doc E8, pp 525-528).

Note, on the motion of J. H. Wallace, on 28 April 1863, the Provincial Council appointed a Wellington Town Board Bill Committee. The Committee recommended two weeks later that the fresh Wellington Town Board should be given all Public Lands in the Town of Wellington, and that all prisoners' labor in Wellington should be at their disposal. 'Report of the Wellington Town Board Bill Committee,' 14 May 1863, in *Wellington Provincial Acts and Proceedings 1863-65*. In May 1863, the Wellington Town Board Amendment Act passed, mandating that the public lands and prison labours of Wellington be vested in the Town Board. Journal of Proceedings, in *Wellington Provincial Acts and Proceedings 1863-65*, p 34, and Acts of Provincial Council No 10 in *ibid*. The preamble of the 1863 Amendment Act noted that the Superintendent had not proclaimed the first Town Board Act into operation. This seems perhaps a bit mischievous on Featherston's part, considering his hectoring that Wellingtonians were reluctant to take responsibility for their own reserves and works.

⁷¹ 'Correspondence Between the Government and the Town Board Commissioners,' Council Paper tabled 21 June 1864, with correspondence between Secretary of the Wellington Town Board, Bannister, and Superintendent Featherston, in *Wellington Province Acts and Proceedings 1863-65*. Note Quinn, who apparently saw the 1862 Commissioners' report (WP 3/18) before it was lost, says the *Commissioners* completed the leases, not Featherston. This probably makes more sense, but like the 65/60 conflict above, jars with the fact that throughout the period, the Commissioners struggled to obtain copies of the leases from the Superintendent.

⁷² Wellington Town Board Minute Book 2, 28 March 1866 p 75; 8 February 1867 p 141, 31 January 1868 p 263.

3. 1873: The Crown grant to the Mayor and Councilors of Wellington

On 17 March 1873, Wellington Superintendent William Fitzherbert granted the Town Belt to the City of Wellington upon trust "to be forever hereafter used and appreciated as a public recreation ground for the inhabitants of the City of Wellington." The grant comprised only 1061 acres 1 rood 2 perches -- 173 acres less than the 1234 acres 2 roods 18 perches granted to the Province in 1861. The area thereby lost apparently mostly went to Wellington Hospital and the Governor General's residence.⁷³

There are several informative and decorative maps of the Town Belt in this period showing the various allotments and to whom they are leased, e.g. in 1872, 1877, and 1890.⁷⁴ The Council's later management of the Town Belt does not seem generally relevant to the issues before the Tribunal.⁷⁵

III. Customary Interests, Grants and appropriations

A. Introduction

1. Were Town Belt Lands "Lost" to Maori?

From Lord Normanby's 1839 Instructions forward, cultivation areas at Wellington (including those 'in' the Town Belt) were to be excepted from the Company's purchase, as being "essential to the health and convenience" of the customary owners. Hence, Government officials had been preparing to exclude from the Company's

⁷³ See J Quinn, 'The Origin and Development of the Wellington Town Belt', pp 35ff for the story of these hospital and asylum lands.

⁷⁴ I have previously submitted the 1877 map, Charles O'Neill, Wai 145 Doc E8 pp 525-528. The 1872 map is by R. Burrett, 'Subdivisions of the Town Belt Reserves, Wellington,' cited in Louis Ward, *Early Wellington*, p 484. The 1890 map is unsigned, 'Jubilee map of the City of Wellington and Surrounding District,' SO 13140.

⁷⁵ According to Kay Corbere, WCC Information Management, very few of City Council's records pertaining to the Town Belt come from before 1878. Their "Deeds Packet" for the Town Belt definitely does not contain correspondence preliminary to the deed.

purchase the cultivations areas at Tinakori/Orangikaupapa, at the Botanical Gardens, and at Polhill Gully right from 1841 through 1846.

This presents an important change of perspective towards the Town Belt: since the exception of the cultivation areas predated the creation of the Wellington Town Belt, little or no "Town Belt" was ever "lost" or "given" to Maori. These areas were never technically "Town Belt" to lose.

Crown and local Government and Wellingtonians generally have long ascribed to the alternative perspective, namely that McCleverty's 1847 deal was exceptionally "generous" to Maori.⁷⁶ I have shown in other submissions that this view has prejudiced Port Nicholson Maori at least twice: once by serving as Lt Gov Eyre's justification for 'taking' their reserves at Thorndon to endow Wellington Hospital, and once again, by serving as one of Col Heaphy's main reasons for reducing the compensation paid to Maori in lieu of the return of these same lands in the 1870's.

2. Were Customary Interests "Lost" by Maori?

In considering the 1847 transactions and deeds for the *ngakinga* in the Town Belt, we have struck a potentially important point: McCleverty's lists of "owners" of these *ngakinga* are remarkably short compared to the number of people he recorded as living at the *kainga* these *ngakinga* ostensibly "fed." At Te Aro, for example,

⁷⁶ A small problem has long vexed me: McCleverty characterised his assignments of existing *ngakinga* as "exchanges" for the *ngakinga* Maori gave up on settlers' sections. In earlier submission, I have emphasised that all of the assigned blocks contained *ngakinga* anyway – meaning the Crown did not really "give up" much in these "exchanges." I have, however, always hesitated to think of McCleverty and/or Grey as intentionally lying or cheating. There is a plausible sense in which McCleverty and Grey genuinely regarded these assignments as "exchanges:" prior to the assignments, McCleverty reported that all of the Town Belt *except* the 62 acres of *ngakinga* it contained were "waste land." For obvious reasons, in excepting the *ngakinga* around Port Nicholson, it was sensible to square them off into parcels that "fit" the surrounding Company plans. In the case of the Town Belt, this 'squaring off' entailed what McCleverty initially termed an approximately 150 acre "extension" of the existing *ngakinga*. Grey/Earl Grey, 21 April 1847, in Wai 145 Doc A10(a) doc 9. This common-sense "extension" of the existing exceptions entailed the "loss" of lands which otherwise would have gone to the Crown as "waste" – and so "extension" took on the guise of "exchange" for the excepted lands which Maori were giving up.

McCleverty assigned a quantity of lands intended to provide for 172 people -- 88 men, 51 women, and their children.⁷⁷ Yet, McCleverty included on his *deed* only twenty-five individuals, seventeen signing "under" Pakuahi and seven claiming as Ngati Kura.⁷⁸ Similarly at Pipitea, the adult population was 55 men and 35 women -- 116 residents in all -- but McCleverty assigned Pipitea's lands to only 21 people: that left the interests of 69 adults and their children *not* registered.⁷⁹ For Kumutoto, the comparable numbers are 19 adult residents and 4 children, but only five assignees: at least 14 unlisted adults and their children.⁸⁰

These figures beg what I believe is a new question in the Tribunal's Wellington Tenth's inquiry: what ultimately happened to the customary interests of the majority of Port Nicholson Maori, those left off of McCleverty's lists of legal "owners"?

Our examination of the Town Belt *ngakinga* will show quite clearly that later Land Court certifications, Crown grants, and Commissioners' distributions of rents and/or sale proceeds, went first to McCleverty assignees, then to their descendants, and third (and only apparently incidentally) to anyone these people "let in."

By the same token, we will see that the lucky McCleverty assignees (and their descendants) openly acknowledged to the Land Court that McCleverty's allotments were intended to support their wider community. However, in the brief time available for this report, I have been unable to ascertain what mechanisms (if any) existed to ensure that this happened. Without some such mechanisms, it seems unlikely that adequate benefits accrued to anywhere near the 147 "lost" *tipuna* of Te Aro, the 88 at Pipitea, and the 14 from Kumutoto.

⁷⁷ See Table A in McCleverty's 'Report on Port Nicholson Cultivations', April 1847, enclosed in Grey/Earl Grey, 21 April 1847, *British Parliamentary Papers relating to New Zealand, 1847-50*, p 40, reproduced in Wai 145 A10(a) Doc 9 p 5.

⁷⁸ Turton's copy of deed in H H Turton, *Maori Deeds of Land Purchases in the North Island*, p 99, reproduced in Wai 145 A10(a) Doc 3 p 5.

⁷⁹ Turton's copy of deed in H H Turton, *Maori Deeds of Land Purchases in the North Island*, p 108, reproduced in Wai 145 A10(a) Doc 3 p 22; Table A in McCleverty's 'Report...'. .

⁸⁰ Turton's copy of deed in H H Turton, *Maori Deeds of Land Purchases in the North Island*, reproduced in Wai 145 A10(a) Doc 3 p 28; Table A in McCleverty's 'Report...'. .

B. The Fate of Customary Interests in the Town Belt Cultivation Areas

McCleverty's deeds have already been submitted to the Tribunal in many forms, along with a wealth of background information and some sketching of their subsequent histories. We will recap as *little* of these earlier materials, and examine as few new materials as necessary to

- A) Fill any gaps in the Tribunal's information regarding the *ngakinga* which were assigned in 1847 "out of" the Town Belt, and
- B) bring into focus our concern regarding Wellington's original Maori majority, and
- C) convey a rudimentary "story-line" for the sake of any newcomers.

2. Polhill Gully and Omaroro

Lt Col McCleverty clearly outlined Te Aro's cultivation grounds at Polhill Gully on the plan attached to their 1847 deed. As shown on this plan, the cultivations constituted about two-thirds of the area assigned (about 39 acres). The Omaroro cultivation was about 15 acres out of a 146 acre 2 rood 6 perch block. About 91 acres of the Polhill Gully allotment and about 32 acres of the Omaroro block came from proposed Town Belt land.⁸¹

There were three main events worth recounting at Polhill Gully: the assignment of the lands by Native Reserves Commissioner Heaphy to the descendants of the McCleverty deed signatories in 1872, the sanctioning of this list and the Company's survey by the Land Court in 1888, and then a brief summary of how the land has been subsequently disposed of.

We have previously submitted the story of Polhill Gully under Native Reserves

⁸¹ Wellington District Registry, Deeds Vol 1 fol 311-12, reproduced in Wai 145 Doc E7 p 266e & f. Note, ignoring the Native Reserve part of the Omaroro assignment (which was never part of the Town Belt), out of the approximately 94 acres of Town Belt assigned to Te Aro, over half (about 54 acres) had never been Crown land to "give up" or Town Belt to "lose."

Commissioner Heaphy as the section entitled "Trouble at Te Aro" in "The Crown Could Not Grant What the Crown Did Not Possess." There, we took the story as illuminating the general power relations between the Commissioner and the beneficial owners of the reserves, and more particularly, as evidence that through the 1870's the Crown actively sought to suppress the beneficial owners' demands for greater control over their reserves. A later submission linked this event at Te Aro/ Newtown with similar demands at Greymouth at the time, and showed that the Crown's express reason for introducing perpetual leases in 1882 was to block these Greymouth and Te Aro beneficial owners' demands for self-management.⁸²

Here, it is only necessary to point out that when in 1873 Commissioner Heaphy arranged with a group of Te Aro Maori to manage their blocks of McCleverty-assigned lands, he followed Wi Tako Ngatata's recommendation that he should deal with the "descendants of those to whom Col McCleverty awarded the land."⁸³ Accordingly, the rents from all of Te Aro's "McCleverty Reserves" (including those from the Town Belt at Polhill Gully), plus the sales proceeds from Omaroro (including the portion from the Town Belt) were paid by Heaphy directly to seventeen McCleverty assignees/ descendants in even shares.

I have not yet found evidence describing how these seventeen distributed the proceeds to Te Aro's 122 non-assignees and their descendants.

About six years after the 1882 Native Reserves Act ended all hope of direct involvement with their Reserves, the 1870's owners and their descendants took Polhill

⁸² Duncan Moore, 'The Crown Could Not Grant what the Crown Did Not Possess', Wai 145 Doc I4. The section entitled 'The Sinister Origins of Perpetual Leasing' in the 'Claimants' Closing Submission' is Wai 145 Doc D1, pp 9-23. The main sources for the story are Heaphy's 1870's Minute Book, reproduced in Wai 145 Doc A36, pp 36, 37-38, 41-42, 46, 48-49 & 52; and the 'Petition of Tamati Te Wera and others,' Le 1/1882/6, reproduced in Wai 145 Doc A38; and its accompanying file, 'Papers re Wellington Native Reserves, 1873-1895,' reproduced in Wai 145 Doc A39. The main source for 'Sinister Origins' was simply the Parliamentary Debates on the several Native Reserves Bills introduced between the 1873 and 1882 Native Reserves Acts, most found in 'Parliamentary History', Wai 145 Doc A20.

⁸³ *ibid*, p 36.

Gully through the Land Court. The Court minutes are quite short and a bit garbled,⁸⁴ but it appears that sometime before February 1888 a meeting of owners had devised an apportionment amongst themselves of the Town Acre reserves and the three Town Belt blocks (XV, XV^A, and XV^B). On 29 February 1888, they submitted their apportionment to the Land Court. The next day, two of the group objected, Mrs Agnes Simeon (Himiona) and T. Tamati, the former wanting s 41 which was proposed for Wi Tako, Ihaka Te Rou, Kuraheke Punipi and Riria te Muru -- apparently as heirs of Mohi Ngaponga.⁸⁵ The Court adjourned to consider this.⁸⁶ On 6 March 1888 the Court decided against Ms Simeon's alternative subdivision, and ordered the initial proposal.⁸⁷

After this, the Court appears to have launched immediately into adjusting the award and owners' list. The details are obscure, but it appears that one person was allowed into the list by virtue of his deceased mother's relationship to another of the owners; another person made allegations that two of the owners had enriched their shares by posing as heirs of one of the deceased McCleverty assignees when they were in fact only executors;⁸⁸ and finally, another person asked that someone's half-brother in Taranaki should be included.⁸⁹

These adjustments and allegations illustrate fairly clearly the relationship between the McCleverty deeds, the later Land Court awards, and the freehold interests that ultimately emerged. Basically, the 1847 McCleverty assignees were taken as the customary owners of the lands, and the 1888 Land Court sought merely to devolve these original owners' estates as fully and faithfully as possible. After the Land Court award, in early 1889, first Polhill Gully XV was subdivided, laying down Ohiro Road

⁸⁴ Maori Land Court, Wellington Minute Book No 1, pp 288-89, 290, 306-308, 310, 311, 324-30, 359, 379-82. (National Archives, Wellington).

⁸⁵ *ibid*, p 306.

⁸⁶ *ibid*, pp 307-9.

⁸⁷ *ibid*, pp 324-26.

⁸⁸ *ibid*, pp 326-330.

⁸⁹ *ibid*, p 326.

and the residential sections along it. A month later, Polhill Gully block XV^A and XV^B were subdivided, forming Durham Street and the residential sections along it.⁹⁰ The Tribunal has received other evidence regarding the sale of block XV^A a few years later, to shysters posing as Government Land Purchase Officers.⁹¹

It is beyond the scope of this paper to assess the particular adjustments, successions, or disbursements that have resulted. On the face of it, though, it seems unlikely that they have included systematic protection of the customary interests of the Te Aro residents (and their descendants) whom McCleverty did not list in 1847.

2. Kumutoto Cultivation Area: Botanical Gardens

McCleverty clearly outlined Kumutoto's cultivation area on the plan he attached to their 1847 deed -- roughly 10 acres in the southeast corner of the total 52 acre 2 rood 37 perch parcel assigned.⁹²

On 11 October 1852, the five people who signed McCleverty's deed in 1847 reconveyed this entire parcel to Governor Grey for £160.⁹³ We have no information regarding the participation of the fourteen Kumutoto adults who had not signed McCleverty's deed.

Sixteen days later, Governor Grey gave the land to the Wesleyan Mission for an Industrial School.⁹⁴ The School was never formed, but in 1865 under the leadership of Dr Hector, the Province began buying the land for the Botanical Gardens. The

⁹⁰ See ML plans 901 and 910, Wellington District LINZ.

⁹¹ Stephen Quinn, 'The Wellington Tenths Reserves,' Wai 145 Doc E12, and Appendix 4.

⁹² Wellington District Registry, Deeds Vol 1 fol 307, in reproduced in Wai 145 Doc E7 p 266a.

⁹³ Wellington District Registry, Deeds Vol 2 fol 153, typescript in Stephen Quinn, Wai 145 'The Wellington Tenths Reserve Lands,' Doc E13 p 102.

⁹⁴ J Quinn, 'The Origin and Development of the Wellington Town Belt', p 29, cites *New Munster Gazette*, 1852, No 29 Grant 46, 26 November 1852 for this grant.

purchase was completed in 1871.⁹⁵

3. Pipitea Cultivation Area: Orangikaupapa & Tinakori

The Pipitea deed does not show the cultivations in the 80 acres assigned at Tinakori. Both Heaphy's 1841 sketch and the later Land Court testimony, however, confirm this was a heavily used cultivation area.⁹⁶

The Tribunal has already heard how, within months of forming the Wellington Town Council -- by February 1863 at the latest -- Superintendent Featherston and Native Secretary Mantell tried to buy the 80 acres remaining in Native Title on Tinakori Hill for a Public Park the 80 acre block on the Karori Road."⁹⁷ Their efforts were unsuccessful, and so did not generate any definite list of owners for us to compare to McClevery's lists.

At the time, however, the lands had already been leased for several years. The rents on these leases were collected first by Wi Pouawha (himself a McClevery assignee and successor to Wi Kingi Wairarapa), and then by his successor Hare Parata. Parata claimed in 1873 that he distributed the rents "to various people of Te Matehou," and he spoke of the land being for "all Te Matehou."⁹⁸

T. H. Smith's Native Land Court heard claims to the Orangikaupapa and Tinakori

⁹⁵ See Shepherd and Cook, pp 22-26.

⁹⁶ Wellington District Registry, Deeds Vol 1 fol 305 reproduced in Wai 145 Doc E7 p 265. Heaphy's 'Sketch' submitted as "1 black/white of the watercolour" in Wai 145 Doc E5(a).

⁹⁷ Mantell/Superintendent, 18 February 1863, WP 3/63/46 (National Archives, Wellington). Note that both Mantell and Featherston regarded this area as "given to them in exchange for cultivations" rather than excepted from the original purchase *as* cultivations. See Featherston's "given some years back" in Speech Opening the 3rd Session of the Srd Council (below). This story has already been submitted to the Tribunal in Armstrong and Stirling, 'Summary History of the Wellington Tenths,' Wai 145 Doc C, pp 338-339, and in Quinn, 'The Wellington Tenths Reserves,' Wai 145 Doc E13 pp 202-203.

⁹⁸ Ballara, 'Translation of Maori Verbatim Evidence, Wellington NLC, MB 1-H', pp 326-326, Wai 145 Doc J6. We have submitted the complementary text, photocopies of Wellington MB 1-H, pp 307-9, 322-28 & 334. (National Archives, Wellington).

blocks in February 1873. Ihaia Porutu (of Pipitea) served as NLC Assessor. William Buck (of Wyles and Buck) submitted plans of Orangikaupapa and Tinakori, and testified that "all the parties" were present for the survey of both the blocks, and that they all had directed him in pegging out the boundaries and partitions. He had encountered no opposition to the Tinakori part, but he had heard that someone had removed boundary pegs for the western side of the Orangikaupapa part.⁹⁹

Ropiha Moturoa and Wi Hapi Pakau, presented the claims for the Orangikaupapa and Tinakori blocks, respectively. In both cases the only objector were the Paratas -- Mere and her son Hare and daughter Ani.¹⁰⁰

There are many allusions in the testimony that elude me. It appears, however, that all of the claimants -- Moturoa, Pakau, and Porutu -- presented their interests as McCleverty assignees, or as descendants of them. There were also frequent references by both claimants and objectors to the fact that McCleverty had merely formalised their rights as prior cultivators of this or that part of the block in question. The Paratas' main objection seems to have been that they were not present for the subdivision of the Orangikaupapa part of the block (described by Buck, above), and consequently had lost some ground.

In the end, the Court decided that the Paratas' objection was not justified, and ordered that the lands be divided as applied for and surveyed, and that they be awarded to the applicants, as proposed by Ihaia Porutu, Wi Hapi Pakau, and the others.¹⁰¹

The following day, Saturday, February 8th 1873, Ihaia Porutu and the other three awardees asked the Court to include William Nukutaia Jones in the award of Tinakori North, again apparently based on his marriage to a descendant of a McCleverty

⁹⁹ *ibid*, pp 307-309.

¹⁰⁰ *ibid*, p 324, and questioned by Court and by applicants on pp 325-26. Note, though, on 7/2/73, the Court ordered that the evidence in the Orangikaupapa case also be deemed to be before the Court in the Tinakori case, and I did not note whether there were additional objectors in the Orangikaupapa case.

¹⁰¹ *ibid*, pp 326-327.

assignee.

Seven years later, the Crown grants issued as ordered: Tinakori North to Ihaia Porutu and four others,¹⁰² and Tinakori South to Wi Otaki, Wi Hapi Pakau, and two others.¹⁰³ If I have read the Land Court testimonies correctly, the grants preserved a "slice" of McCleverty's assignments of 1847, and left any further distribution of rents or later sales proceeds to the awardees.¹⁰⁴

It seems incredible that such a large majority of the Maori residents of Wellington's *kainga* could have been left with no justiciable interest in the lands which were left to sustain them. If this was the case, normal group dynamics surely would have doomed the equitable distribution of the benefits of the reserves. If the distributions failed, though, then equally surely wouldn't people have protested -- e.g. when the lands came into the Land Court. But the Minutes record no such broad protests or allegations.

The question seems fundamental to assessing the ultimate effect of the 1847 McCleverty transactions (and hence of the Port Nicholson purchase) on customary interests at Port Nicholson: what were the customary interests of the "unlisted" Maori majority, and how were these interests protected and secured to them?

Finally, the Tribunal has previously received only incomplete information regarding the subsequent alienation of Tinakori North and South, which were taken for public uses. The titles ran roughly as follows:

¹⁰² 21 April 1880 Crown grant of 28 acres 22 perches to Ihaia Ngamateputuputu Porutu, Henare Piti Porutu, Wiremu Rangiaohia, Ihaia Te Whiu, and William Nukutaia Jones. Crown grant (and CT) Vol 20 fol 123, Wellington District LINZ.

¹⁰³ 21 April 1880 Crown grant of 28 acres 23 perches to Te Wiremu Otaki, Wi Hapi Pakau, Paratene Te Mapo (?), and Makere Reihana. Crown grant (and CT) Vol 20 fol 124, Wellington District LINZ.

¹⁰⁴ The grant of Tinakori South appears to recognize the claims of Wi Hapi Pakau, Paratene Te Mapo, and Makere Reihana *through* Te Wiremu Otaki, who claimed as a McCleverty assignee ["Te Wiremu"]. Tinakori North appears to recognize the claims of three original assignees, plus two close relations.

Tinakori North:

- 12 May 1894 Caveat 880 (886?) by Eliz Reid, later withdrawn.
- 8 November 1894 transmissions of deceased grantees to various (minor) successors
- 8 November 1894 Court Order #357 vesting the te One children's shares (= William Nukutaia Jones' interest) in Hapi Puketapu.
- 8 November 1894 transfers from Ihaia te Whiu and Harena Pitt/ Porutu and Henare Piti Porutu and Hapi Puketapu to Elizabeth Reid (wife of John Reid, Karori)
- Mortgage and then death by 1904, and transmission of deceased husband's share, followed immediately by sale in 1904 to Reids, Lewis's and Livermores -- possibly associated with milkruns? Reid's widow Hayes remarries 1906.
- Sale of whole to Kirkcaldies and Langlands in March 1907, who immediately sell it to Tinakori Quarrying Company.
- Taken for workers' dwellings in 1919-20 (but then revoked).¹⁰⁵
- Finally taken in 1935 by Proclamation 2411 for telegraph station.

Tinakori South:

- 2 February 1909 Order in Council 462 conferring certain powers on the Aotea District Maori Land Board.
- 20 December 1911 taking part for wireless telegraph station.
- 12 September 1912 taking balance for wireless station.

¹⁰⁵ SO 17387 Tinakori North, listing Gazette Notices No 129: 6/11/1919, p 3423; No 25: 11/3/1920, p 730; No 32: 25/3/1920, p 943; No 77: 18/8/1921, p 213; No 58: 15/8/1935, p 2240.

IV. Biographical Note

My name is Duncan Moore. I have been an independent researcher for about nine years, writing mostly on topics of housing policy and Maori land.

I have a B.Sc. in Land Resources Planning from Stanford University, 1979, and a M.Div. from Union Theological Seminary, 1984. My M.Div. thesis was on 18th century British land law and enclosures.

I have written numerous reports for submission to the Tribunal, relating mostly to the Wellington Tenth claim and to claims in the Rotorua area. I have also written reports for Crown Forests Rental Trust, Electricorp, and the Rangahaua Whanui project. I co-authored Wellington City Council's inventory of Maori heritage sites, and have written numerous papers on housing policy and markets in Wellington.

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