

CHAPTER 5

CASE STUDY: HOKIANGA SCRIP CLAIMS

The origin and nature of scrip lands has been covered in the main text of this report. This case study shall attempt to highlight some of the problems and contradictions of the scrip policy through an examination of its operation within a specific region, the Hokianga.

Before that, however, it would be beneficial to briefly reiterate some of the points outlined in the main text. Firstly, the practice of issuing scrip had no specific statutory authority. Rather, it was a policy established by Governor Hobson in 1841 when he wished to concentrate European settlement in a few main centres in order to be able to provide better protection for settlers and to vacate potential trouble spots. Scrip was normally offered to old land claimants who had had their claims validated by a Lands Claim Commissioner. They were able to use this scrip to purchase land nearer centres of Pakeha settlement. If claimants elected to take scrip, the Crown assumed that the title to the land which the commissioners had previously judged to have been equitably purchased from the Maori vendors passed to the Crown. Importantly, because surveys were very rarely carried out prior to the recommendations of the early commissioners, there was no way for the Crown to immediately determine the exact location or size of the land it had acquired through the exchange of scrip.

By the mid-1850s the situation created by this absence of surveys was becoming increasingly intolerable. As has been argued elsewhere, Francis Dillon Bell, the sole commissioner appointed under the 1856 Land Claims Settlement Act, was very keen to utilise the liberal survey allowance contained in that Act to facilitate the recovery of surplus lands, that is, the difference between the area granted to claimants, and the area judged by the commissioners to have been the subject of a valid purchase. This motivation would have been even stronger in regard to scrip lands, where the entire area validated by the commissioners had subsequently passed to Crown ownership. Besides increasing the Crown domain, the removal of uncertainty surrounding the exact extent and location of the Crown's scrip land holdings would have the further benefit of ending the situation where 'the existence of a claim to an undefined area is a bar to the settlement or survey of the surrounding land'. Once again then, the settlement of the outstanding consequences of old land claims was perceived in terms of furthering the process of colonisation through facilitating large-scale European settlement.

There are two main reasons why the Hokianga seems particularly appropriate as a case study. Firstly, Francis Dillon Bell, the sole Land Claims Commissioner appointed under the 1856 Act, used the Hokianga as an example when commenting upon the shortcomings of the scrip policy in his 1862 report to Parliament. Secondly, arguably no other region was as heavily transacted in terms of scrip exchange as the Hokianga.

Exactly why the Hokianga experienced such a high-rate of scrip exchange can be attributed to two factors. The first of these is the fact that it was the extensive stands of Kauri upon the land, rather than the land itself, which had been the primary motivation for the pre-Treaty purchases in the Hokianga region. Somewhat ironically, having purchased this land for the trees that stood upon it, the fact that Kauri ‘could only be extracted slowly, and with much labour’, meant that when presented with the opportunity of ‘getting [scrip] land at Auckland, the new capital, where more attractive business and employment opportunities were believed to be offering’, many Hokianga claimants were not hesitant in their acceptance of such an exchange. As Commissioner Bell mentioned in his 1862 report, the attractiveness of scrip exchange was heightened further by what he describes as ‘the great misconception that often existed as to the area of the claims’.⁴ Put most simply, because few surveys preceded the original investigations by Commissioners Godfrey and Richmond, when they found a purchase to be valid they were left with little⁵ choice but to recommend a Crown grant for the estimated area originally claimed.⁵ As the surveys conducted under the auspices of the 1856 Act would show, these claimant estimations were in most instances highly inflated. In those instances where the claimants had subsequently exchanged their granted acreage, as recommended by Godfrey or Richmond, for scrip, the Crown had⁶ no way of recovering this discrepancy between the estimated and actual acreage. This ‘lost acreage’ was all the more galling when it was considered that:

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1. Fannin to Land Claims Commissioner, 21 March 1873, olc 4/10, NA Wellington. While written in reference to old land claims left outstanding even after the investigations carried out under the authority of the 1856 Act, the sentiments expressed by Fannin were expressed by Bell on numerous earlier occasions.
 2. Land Claims Commission, ‘Report of the Land Claims Commissioner’, 8 July 1862, AJHR, 1862, d-10, p 7
 3. Jack Lee, *Hokianga*, Auckland, Hodder and Stoughton, 1987, p 281
 4. Land Claims Commission, p 7
 5. Sometimes the commissioners would not specify an exact amount but recommend a grant be issued ‘for the land described’ or the ‘land claimed’. Invariably, however, if a claimant had the opportunity to effect a scrip exchange then the amount of scrip issued was based on the acreage claimed by the claimant before the original commissioners.
 6. This contrasts with those old land claims which did not involve scrip. In these the Crown, by rights conferred in s 23 of the 1856 Act, was able to recall and invalidate the initial grant, even where it was no longer in the possession of the original claimant, and subsequently re-issue it when the actual area had been determined by a survey. There were a number of instances where the claimant did not make use of the scrip he or she gained in exchange, in which instance the Crown was able to recall the scrip and re-issue it for a value which was in accordance with the actual surveyed area of the claim.

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a large portion of the scrip was expended in the purchase of allotments within the City of Auckland, which allotments must now be worth at least ten times what they cost at [scrip] auction in 1844.⁷

Thus, the scrip policy had enabled many old land claimants to effectively ‘swindle’ the Government out of a large number of acres. Moreover, in all likelihood they would have been able to use the exaggerated scrip granted to them to turn a very tidy little profit. An insight into the significance of this short-coming in the scrip policy can be gained from Commissioner Bell’s noting in his 1862 report that:

In Hokianga claims alone the scrip issued was upwards of £32,000, while all the lands which I could recover there for the Crown fifteen years afterwards, including not merely the lands exchanged by the claimants but a considerable extent which had never been before a Commissioner at all, was 15,466 acres.⁸

Interestingly, it would seem that unlike the Government, at least some Maori vendors were aware of the above weakness in the operation of the scrip policy. John White, an interpreter from the Native Department, noted the following in relation to the survey of some of the claims of D B Cochrane:

These claims were not disputed when I was in Hokianga, but on a former occasion Mr Clarke was not allowed to survey these claims by the Natives, as they had heard that part of them had been exchanged for Scrip, hence they would not allow the whole to be surveyed lest the Government should require them to make up the deficiency in case the land⁹ did not contain the number of acres equal to the amount of scrip given in exchange.

Such fears were not unfounded. There was certainly potential for Maori vendors to suffer as a result of the exaggerated acreage estimates of old land claimants who, without ever having had their claims surveyed, were able to exchange their Crown grants for scrip. In such situations, the Crown, when it eventually attempted to assert its title to the land gained from this exchange, understandably sought to survey an area roughly equivalent to the amount of scrip issued. If the boundaries as described in the commissioners’ reports were still discernable after the considerable period of time that typically separated the original hearing from the eventual Government survey, then the Crown would have to accept that it would suffer a ‘short-fall’ in that claim. This seems to have been the case with the Hokianga surveys, as is evidenced by Bell’s highlighting of the Hokianga in his 1862 report. If, however, the boundary descriptions were not precise, there was potential for the Government to survey more than was actually transacted in the original purchase, thereby recovering some of the ‘short-fall’ resulting from its having issued scrip on the basis of the exaggerated acreage estimate of the original claimant.

7. Land Claims Commission, p 7

8. Ibid, p 7

9. Unfortunately, White does not provide a date for these earlier surveys. White, *Report of Proceedings at Hokianga*, 8 August 1859, olc 4/4, pp 9–10, NA Wellington

An example of this, discussed in considerable detail in the Rangahaua Whanui report for the Auckland District, is provided by the old land claims covering the Kapowai Peninsula.¹⁰ When, in the 1890s, the Government finally decided to assert its title to the land it had gained from the two Kapowai claimants who had opted for scrip, its survey of the Peninsula was actively resisted by local Maori who maintained that the claimants had never purchased as much land as they had estimated before the Land Claims Commission of the early 1840s. The Government, however, ignored these protests, taking advantage of the imprecise boundary descriptions reported by the commissioners to recover a great deal more than it had issued in scrip, although still less than the area as estimated by the claimants themselves. The injustice of this Crown action continued to be the subject of protest by local Maori with the result that the matter was eventually subjected to the scrutiny of the 1920 Native Lands Commission. As a result of the commission's recommendations, most of the Kapowai land taken by the Crown in satisfaction of its earlier scrip issue was returned to local Maori.

While the 1920 Native Lands Commission failed to identify the difficulties associated with scrip exchange when reporting on the Kapowai dispute, it is possible nonetheless to draw some tentative conclusions. Manifestly, the Government often ended up being 'short-changed' in regard to those claims in which scrip was issued. Equally clear, however, is the fact that the two parties responsible for this were the claimants, who typically exaggerated the size of their claims, and the Crown itself, for failing to require a survey of each claim prior to a grant being issued.¹¹ As was unwittingly demonstrated by the 1920 Native Lands Commission, any attempt by the Government to require the Maori vendors to 'make up' the short-fall resulting from scrip exchanges would have constituted a clear injustice. In fact, the Government realised this most of the time, as evidenced by the fact that it never attempted to enforce such a course of action when it eventually began a comprehensive survey of the Hokianga scrip claims in late 1858.

To carry out these surveys, the Government employed a private surveyor, William Clarke. William was a son of George Clarke, former Protector of Aborigines, missionary, and successful old land claimant to 4000 acres at Waimate; that is, until the validity of that grant was challenged by Governor Grey in 1849, and eventually overturned by the Privy Council in 1851.¹² As a private surveyor contracted by the Government, Clarke's work was to be overseen by Native Department interpreter, John White. White was familiar with the Hokianga area,

10. Barry Rigby, 'Old Land Claims', in Rose Daamen, Paul Hamer, and Barry Rigby, *Auckland*, Wellington, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), July 1996, pp 103–113

11. Section 6 of the Land Claims Ordinance 1841 stated that if the commissioners felt satisfied that a claimant was entitled to the lands they had claimed, then they were to make a recommendation which, among other things, 'shall set forth the situation measurement and boundaries by which the said lands shall and may be described in every grant or lease so far as it shall be possible to and they can conveniently ascertain the same'. While the phrase, 'situation measurement and boundaries', implies the necessity of a survey, it is not explicitly required. Indeed, the subsequent use of the phrase 'as far as it shall be possible and they conveniently can ascertain the same', should perhaps be seen as a recognition by the drafters that conditions in reality were far from ideal.

having grown up there after his father, Francis, chose to establish ‘a farm and timber trading enterprise’ there upon the family’s arrival in New Zealand in 1835.¹³ Like the man whose work he was supervising, John White was also related to a missionary land claimant, his uncle, William White. William, a Wesleyan missionary, was periodically based at Mangungu, Hokianga, from 1830 to 1836. During that time,¹⁴ White was ‘a figure of considerable consequence to . . . Maori at Hokianga’.¹⁵ This significance was a product of the fact that during the time of his residence at Mangungu:

Hokianga had become the main centre for the exploitation of kauri timber. The Europeans involved, considered unworthy individuals by the missionaries, competed strenuously for land and timber. White involved himself in this competition by yielding to the pleas for help from young Maori tribal leaders fearful of losing all their land. He forestalled Europeans by purchasing land, which he then returned to the Maori by an arrangement that allowed them to saw the timber on the mission land and sell it through his agency; the money thus raised was used to refund White’s purchase price.¹⁵

White also purchased land for the ‘settle[ment of] well-disposed Europeans who would provide a buffer between the [Mangungu mission] station and less well-disposed Europeans’.¹⁶ John White’s father, Francis, was a beneficiary of one such purchase.¹⁶ William White’s extensive involvement in land dealings at Hokianga was a major factor in both his recall to England in 1836, and in the decision of the ‘Wesleyan authorities . . . in March 1838 to dismiss White from both the ministry and the mission, on the grounds of excessive commercial activity and misapplication of mission property’.¹⁷ After his dismissal, William returned to Hokianga, taking up residence next to the Wesleyan mission at Mangungu, and continuing to preach.¹⁷ His dismissal had important consequences for his involvement in land transactions. As M Gittos has noted:

[White’s] purchases prior to his dismissal were almost certainly made to provide others with land or as trustees for Native chiefs. It was his severance from the mission, or his anticipation of it, that caused¹⁸ him to alter his attitude and assert that some of the purchases had been for himself.

William White subsequently lodged seven claims¹⁹ involving Hokianga land for consideration by the Land Claims Commission. Three of these were joint-claims

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12. *Queen v Clark* 1849, 1851, vii, Moore, *Crown Demesne*, pp 77–84; Privy Council order 25 June 1851, olc 1/634, NA Wellington. For more detail on the events surrounding this case, see Rigby’s chapter 2 of this report, *The Land Claims Commission Process*, pp 19–21.
 13. M P Reilly, ‘White, John 1826–1891’, DNZB, W H Oliver (ed) Wellington, Allen and Unwin, 1990, vol 1, p 587
 14. M Gittos, ‘White, William, 1794–1875’, DNZB, vol 1, p 589
 15. *Ibid*, p 589
 16. M Gittos, *Mana at Mangungu: A Biography of William White, 1794–1875, Wesleyan Missionary at Whangaroa and Hokianga*, Auckland, 1982, p 78
 17. Gittos, ‘White, William’, p 589
 18. Gittos, *Mana at Mangungu*, p 102

Figure 8: Hokianga Harbour and its main tributaries

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with George F Russell, a man who was heavily involved²⁰ with the timber trade and whose residence at Hokianga pre-dated that of White.²⁰ Details of all seven claims, the commissioners' findings, and the resultant Government action, are contained in table 1 below.

Claim Number	Claimant	Year	Acreage (Claimed)	Result
512	White	1835	1	Bona fide. No action.*
513	White	1833	150	Bona fide. No action.
514	White	1833	2	Disallowed
515	White	1835	1000	Scrip £1000
517	White and Russell	1832	250	Scrip (Russell) £250
518	White and Russell	1839	470	Bona fide. No action.
519	White and Russell	1839	10,000	Scrip (W White) £6099

* In the context of this table, the term 'No Action' means that, having concluded that the purchase was a bona fide one, the commissioners *recommended* a grant be issued, but this never occurred. This can be explained by the fact that, overall, White received scrip significantly in excess of the maximum grantable acreage prescribed by the 1841 Ordinance.

Table 1: Status of William White's Hokianga old land claims prior to John White's arrival at Hokianga

As the table shows, William White was a significant old land claimant, personally accounting for at least one-fifth of the £32,000 of scrip that the Colonial Government had issued in relation to Hokianga old land claims.²¹ Manifestly, this represented a clear conflict of interest for John White, William's nephew, which should have prevented him from being charged with the responsibility of overseeing the surveying of the Hokianga claims. This conflict of interest becomes even clearer when it is considered that William White's claim to Motiti Island, claim 512, was subsequently succeeded to by Francis White, William's brother and John's father.²² As will soon be shown, however, this conflict of interest was but one of several major issues arising from John White's oversight of the surveying of the Hokianga scrip claims.

19. The Land Claims Commission considered eight White claims in all. The eighth claim covered 15 acres at Whaingaroa. Gittos points out that White originally drew up a schedule of 14 pre-Treaty purchases he wished to have considered by the commissioners but that he subsequently chose not to pursue six of these. *Ibid*, pp 128-130.

20. G H Scholefield, *A Dictionary of New Zealand Biography*, vol 2, Wellington, Department of Internal Affairs, 1940, p 263

21. Land Claims Commission, p 7

White was working under instructions provided to him by Commissioner Bell. Unfortunately, I have not been able to locate a copy of the original instructions but a memorandum which seems to have been written prior to White's employment by Bell gives some indication of what they were to contain. After setting out the survey rates to be paid to the surveyor involved, William Clarke, the memorandum noted that Bell would be responsible for setting the 'mode of proceedings'. The role of John White in these proceedings was alluded to in Bell's comment that 'Mr Clarke [is] to be accompanied by an officer of the Col. Government, to ensure that no disputes occur or disturbance of Boundaries already agreed upon'.²³ The tone and date of the memorandum would indicate that it was written for the approval or information of a higher authority, most probably the Governor, so that if Bell had intended White to exercise a greater role than that outlined above, this memorandum would have been the likely place for it to have been mentioned. There was certainly provision for White to be invested with greater authority under the 1856 Act. Upon the recommendation of Commissioner Bell, the Governor could have made White a judicial officer by appointing him an assistant commissioner. The Act then provided that:

The Commissioners may direct any Assistant Commissioner to examine into and report as to the circumstances relating to any claim to be investigated under this Act, or as to the practicability of giving possession of any land to be given in right of any grant, and as to any other matter or thing to be inquired of under this Act, and every such Assistant Commissioner may examine and report accordingly . . .

Furthermore:

All reports by Assistant Commissioners shall be returned to the Commissioners, and in finally hearing and deciding upon claims the Commissioners may proceed upon such reports in like manner as if such examination had taken place before the Commissioners themselves.²⁴

Finally, Bell's rules of procedure, which he was required to publish under section 7 of the 1856 Act, stated that: 'Sittings of Assistant Commissioners will be held at such times and places as may be appointed by notice as aforesaid [that is, in the General or Provincial Government Gazettes]'.²⁵ A thorough search of the 'aforesaid' has failed to uncover any notice of either White's appointment as an assistant commissioner, or of his going to Hokianga in that capacity. Given the explicit nature of the above provisions it seems clear that Bell intended White to

22. 'Appendix to the Report of the Land Claims Commissioner', 8 July 1862, AJHR, 1863, d-14. Francis also seems to have succeeded to a partial interest in Willam White's claim 519, although it is not clear how this came about.

23. Bell, 'Memorandum relat[ing] to the Survey of Scrip Lands at Hokianga', 4 July 1858, olc 4/7, NA Wellington

24. Land Claims Settlement Act 1856, ss 10 and 11

25. 'Rules Framed and established by the undersigned Land Claims Commissioner, Francis Dillon Bell, Esquire, in pursuance of the powers vested in him in that behalf of the "Lands Claims Settlement Act, 1856"', 8 September 1857, *New Zealand Government Gazette*, 23, 19 August 1857, p 144

have a very limited authority, specifically, ‘to ensure that no disputes occur or disturbance of Boundaries already agreed upon’.²⁶

White arrived in Hokianga on 30 October 1858. His first action upon his arrival was to call a meeting²⁷ of all the local chiefs who had an interest in old land claims within that region. The meeting took place on 9 November at Mangungu, the site at which Hokianga Rangatira signed the Treaty of Waitangi on 12 February 1840, and White’s base of operations for his seven month stay. At the meeting, White read out to the assembled chiefs the boundaries of all the Hokianga old land claims as recorded in the Reports of the first Land Claims Commissioners, Godfrey and Richmond, having earlier translated them into Maori. His purpose in doing so was certainly not to revisit the original findings in any way, but rather, to get those chiefs involved with each transaction ‘to nominate from amongst themselves [sic] those chiefs who would accompany me round each claim.’²⁸ This was in accordance with his instructions from Bell which stated that ‘in order to remunerate the Natives appointed to direct the survey you are authorised²⁹ to pay, to not more than two in each claim, the sum of five shillings per chief’. But the meeting did not go entirely as White had planned. In eight of the claims, out of a total of 47 Hokianga scrip claims, the boundaries³⁰ as translated and read out by White were disputed by some of the chiefs present. White’s response to this dissent was to categorically state to the entire meeting that he ‘had³¹ no alternative but must insist on the boundaries as given by the Commissioners’. He then justified his refusal to allow for any such deviation on the following grounds. Firstly, that the original hearings of Commissioners Godfrey and Richmond had provided ample opportunity for any objections to be heard. If these objections were substantiated, White argued to the Mangungu meeting, then the commissioners had had no qualms about adjusting the boundaries accordingly. Secondly, White stated that he did not have any authority to hear objections to the boundaries as recorded in the Godfrey and Richmond reports. This repudiation by White of his possessing any authority beyond that prescribed by Bell, that is, the prevention of ‘disputes . . . or disturbance of Boundaries already agreed upon’, was to become a stock response for White whenever he encountered resistance to Clarke’s surveying of boundaries.

An excellent example of this is White’s treatment of olc 390, just one of the three disputed claims of T Poynton to lands allegedly purchased at Papakawau. White

26. Bell, ‘Memorandum relating’

27. In a letter to Commissioner Bell relating the details of the Mangungu meeting, White asserts that the meeting was attended by ‘all the chiefs of Waihou, Orira, Mangamuka, Waima, Omaina and Whirinaki Rivers . . . with the chiefs of the Heads of Hokianga’. White to Bell, 1 December 1858, letter no 3, olc 4/3, NA Wellington

28. John White, *Report of Proceedings*, p 2

29. Extract from Bell’s instructions to White quoted in White to Colonial Secretary, 8 October 1858, olc 4/11, NA Wellington

30. Using the Bell numbering system, these were the claims 1015 (Wing), 540 (William Young), 388–390 (Poynton), 242 (Hunt), 12 (Oakes), and 971 (Mariner). White, *Report of Proceedings*, p 2. White noted this resistance in pencil on his translated boundary descriptions, some of which are located in olc 4/11, NA Wellington

31. White to Bell, 1 December 1858, no 3, olc 4/3. Rest of this paragraph derived from the same.

reported that he met with the disputing chiefs, Mohi Tawhai, Were, and Honao, and their people on the disputed land. He first listened to all they had to say before reading to them Godfrey and Richmond's report. White then stated to those assembled that it was his intention to survey the boundaries as contained in the report on the grounds that there had been no objections during the original commissioners' hearing, and all of those now objecting were in some way related to the original vendors. He concluded his report of the day's events with the comments: 'I could not listen to this dispute. About three weeks after this meeting took place this dispute was given up'.³²

There was, however, a single occasion where John White was willing to deviate from his stance of rigid adherence to the commissioners' reports in order to benefit the Maori vendors. This was in relation to the claim of Kelly, Nicholson, and others, to have purchased a parcel of land called Pakahikatoa on the Waima River. Two chiefs, Arama Karaka and Mohi Tawhai, disputed the Waima Creek as a boundary as contained in the commissioners' report. In instructing William Clarke to allow for this dispute when conducting his survey, White reported to Bell that to have taken the Creek as a boundary:

would have caused much ill feeling amongst the Natives of Waima, as from my own knowledge of the land in this River I am certain that those chiefs who sold the claim . . . could not have sold up to the Waima Creek . . . without selling that over which they had no right.³³

In addition to forcing acceptance of disputed boundaries, White's use of his 'limited' authority is also significant for the fact that it was not a position he maintained consistently. While White demanded strict adherence to the findings of Godfrey and Richmond when boundaries were disputed during their survey, he was willing to assume a much less rigid stance if it would substantially benefit the Crown. This occurred in two ways. Most importantly, White sometimes chose to completely disregard the findings of the original commissioners. This occurred in relation to the survey of claim 275, S M and S B La Court, to land up the Waihou River Valley. The claimants failed to appear before Godfrey and Richmond. After hearing Maori testimony, the commissioners had concluded that only an earnest had been received in payment and therefore declined to recommend that a grant be issued. John White, however, did not feel bound to abide by the commissioners' report in this instance. His report to Bell reads:

It would appear from the statement made to me by the Chief Te Tai, Wi Tana and Kahika, that they did not dispute the sale to La Court Brothers . . . hence this claim was surveyed. Survey contents 37 acres.³⁴

The collection of evidence and subsequent determination that a valid purchase had been completed is in marked contrast to White's protestation elsewhere that he was

32. White, *Report of Proceedings*, pp 43–44

33. *Ibid*, pp 21–22

34. *Ibid*, p 50

without authority to do anything but adhere firmly to the commissioners' findings. Nor was this an isolated incident. In April 1843, John's uncle, William White, had appeared before Commissioner Richmond claiming to have completed a purchase five years earlier of Ruapapaku Island. The claimant, however, 'declined to bring forward [any Maori testimony or] evidence to substantiate the claim' and Richmond was accordingly³⁵ obliged, as shown in table 1, to decline any recommendation of a grant. This makes the subsequent actions of John White in instructing Clarke to conduct a survey of his uncle's claim all the more astonishing:

No evidence brought forward no Grant recommended Survey contents 87 acres. This survey was disputed by Rapana Wi Tarau and Te Ruanui [?], to whom I read the evidence of³⁶ W. White before the Commissioners[;] when the [current] dispute was withdrawn.

It is difficult to comprehend the above actions. Even if White *had been* empowered to re-investigate the original findings of the commissioners, it would surely have required more than the sole testimony of the Pakeha claimant in order to judge the purchase transaction to have been an equitable one.

The second way in which John White was inconsistent in his contention that he had no authority to deviate in any way from the findings of the early commissioners, was in regard to his 'discovering' of claims which had previously been unknown and which, as such, had never come before a commissioner. There were six of these in all.³⁷ One was a claim by William White to a parcel of land at Waima. After noting in his report to Commissioner Bell that this claim had never been notified to the Government, White none the less goes on to state that:

As the chiefs Te Otene [?] and Mohi Whitingama state they sold it to White and that with the exception of two double barrel guns and two great Coats they have no further claim on it³⁸, I included it in the Herd's Point Survey [Herd's Point is today known as Rawene].

White enclosed with this report a signed statement from Mohi, duly translated and witnessed by himself, in support of his surveying of the land. There are two important issues here. Firstly, as he himself frequently maintained, John White was empowered only to ensure adherence to the boundaries as established by Commissioners Godfrey and Richmond. This certainly did not include the taking of evidence to establish that a valid purchase had in fact taken place. Secondly, even if White had been given the authority to make such a determination, that is, had he been appointed an assistant commissioner under the 1856 Act, that very same Act

35. Commissioner Richmond, 17 April 1843, olc 1/514, NA Wellington

36. White, *Report of Proceedings*, p 18. Other examples include claims 464, Thurlow and McDonnell, and 177, Eggart.

37. White, *Schedule Report of all the Hokianga Claims, Scrip or Otherwise: Showing what state private Claims are in as well as the Governments*, 21 May 1859, olc 4/2, NA Wellington

38. White, *Report of Proceedings*, p 34

forbade the investigation of any claims³⁹ which were not lodged with the Government before the Act came into effect.

Manifestly then, there are major difficulties inherent in John White's inconsistent application of his authority. When he encountered Maori disputes to his surveys, White rigidly adhered to his position that 'I did not come to Hokianga to act in any way, but according to the Reports of the Commissioners'⁴⁰. On numerous other occasions, however, White can be seen to have wrongfully assumed the powers of an assistant commissioner, collecting evidence and surveying on the basis of his determination that the original transaction had been an equitable one. Furthermore, his actions in regard to the alleged purchase by William White at Waima saw him acting outside even the terms of the 1856 Act. The fact that the claimant in this previously unregistered 'purchase' was his uncle, is symptomatic of a conflict of interest which was clearly evident before John White's arrival at Hokianga and which should have eliminated him from being charged with the oversight of the Hokianga surveys.

Despite the above problems, it is worthwhile examining what John White believed to be the causes of the Maori disputes over the boundaries as established by Commissioners Godfrey and Richmond. White's letters, reports, and daily journal indicate three main causes of disputes.

The most important of these, at least as far as John White was concerned, was that some Maori vendors saw the considerable time gap between the original hearing and the current survey as presenting an opportunity in which they might gain some financial advantage. Perhaps the best example of this is provided by the survey of William White's claim at Papakawau, claim 515, which led John White to record:

This claim was disputed by Tamati Waka Nene who insisted that he had not been paid in full by White for this claim, having read to him his own evidence before the Commissioners after some time he recollected⁴¹ that he had been paid in full for the Land and allowed the claim to be surveyed.

That Waka Nene was unable to immediately recall testimony given more than a decade earlier is perhaps understandable, especially since there had been no occupation of the concerned land, by either claimant or Government, in the interim period. Nonetheless, it was incidents such as the one above which primarily account for the low esteem in which John White came to hold most Hokianga Maori who he encountered in the survey process. This can be seen very clearly in his reply to Bell upon his being informed that the Land Office was unable to locate the Godfrey and Richmond reports for the three claims of John Baker:

I do not know how I shall be able to find the proper boundaries, in fact I would not take upon myself to survey the boundaries as pointed out by the Natives in the

39. Section 15 of the Land Claims Settlement Act 1856

40. White, *Report of Proceedings*, p 28

41. *Ibid*, pp 37–38

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absence of the papers unless instructed to do so as I have lost all confidence in most of the Hokianga chiefs.⁴²

But even when he was in possession of the necessary papers, and had obtained the vendors' re-affirmation of the boundaries reported therein, John White was to find that there were still those who sought to use the opportunity presented by the current survey to gain some material advantage. Certainly this would seem to be the case if we accept White's reporting of the events surrounding the survey of another of William White's claims, this one in the vicinity of the Wairere stream. On 24 December 1858 John White had taken those chiefs who had an interest in the transaction up the Wairere stream to the site of White's claim. Once there, he had read out the boundaries as contained in the Godfrey and Richmond report, whereon the assembled chiefs had physically marked them out before electing one of their number, Tipene, to accompany Clarke when the survey was actually conducted. This did not occur for just over a month. On 29 January 1859 White headed up the stream to check the progress of the survey:

Up Waiwera and went over the boundaries of W White's claim, Tipene has deviated from the lines which were marked on the trees by us on the 24 December and also . . . insists to cut off the [sole] landing place[.] I gave him⁴³ a lecture on the sacredness of an agreement and for the present stopped the survey.

As the above example illustrates, there were undeniably some individuals who were willing to use the considerable delay between the Godfrey and Richmond hearings and the eventual survey to misrepresent the original boundaries, in order that they might gain some material advantage. At the same time, there is ample evidence in John White's own journals to illustrate that many disputes which flared during the surveys were grounded in circumstances more complicated than the simple dishonest greed to which White attributed the vast majority of disputes.

Many disputes were motivated by a desire to achieve recognition of long-worked cultivations which fell within the boundaries recorded in the reports of Godfrey and Richmond. A typical example of this can be found in White's journal entry for 5 February 1858:

Went up Wairere with Mr Clarke when he began the survey of [yet another] W White claim. Hepere [?] the youngest son of the late Hone Kingi disputed part of it. [B]ut as his eldest brother Rihai [?] was one of the sellers I would not listen to his dispute he then asked for a piece which he is cultivating his request was granted pending the sanction of His Excellency[.]⁴⁴

The extent of this phenomenon is reflected in the fact that John White eventually recommended that 15 separate parcels be reserved from⁴⁵ within the boundaries surveyed, eleven of which were sites of current cultivation. The existence of these

42. White to Bell, 26 March 1859, olc 4/7, NA Wellington

43. White, 29 January 1859, *Daily Journal*, olc 4/7, NA Wellington

44. White, 5 February 1859, *Daily Journal*, olc 4/7, NA Wellington

Figure 9: William White's Orira claim, olc 519

cultivations within the boundaries recorded by the original commissioners should not, however, be attributed to a dishonest desire on the behalf of some of the vendors to subsequently repudiate a purchase which Godfrey and Richmond had concluded to be an equitable one. Instead, these cultivations should be seen as a direct consequence of two related factors, the fact that neither the grantees or the Crown (if scrip or surplus was involved) took possession of the land after the hearing had concluded, and the considerable delay between the original hearings and the eventual surveys. John White himself was certainly aware of the symbolic significance which was attached to the process of surveying a claim, even if he was unwilling to accept that the lack of such a survey for nearly two decades might constitute a valid ground for dispute. This can be seen in his writing to Bell that ‘the Natives look upon the present act of surveying claims as final[,] that any claim not surveyed will be looked upon as common property and as belonging to any native who may be at the present time living on it’⁴⁶.

An even more important factor underpinning many of the disputes which accompanied the survey of the Hokianga scrip claims was the issue of timber rights. This is perhaps not surprising since, as mentioned earlier, it was the extensive stands of Kauri upon the land, rather than the land itself, which was the primary motivation for pre-Treaty purchases in the Hokianga region. It has also been argued that this feature may help explain the region’s high incidence of scrip exchange.

While many Hokianga old land claimants removed themselves from the region, opting to exchange their Crown grant for scrip, the issue of timber rights remained dormant. Nearly two decades passed, before the arrival of a Government surveyor had the effect of bringing the issue to the surface. This can be seen most clearly in the example of the Orira Valley, the site of nine distinct pre-Treaty purchases in which all but one of the claimants had opted for scrip. As such, the valley was of particular importance to a Government determined to recover as much land from old land claims as possible. Exactly how important, is demonstrated by the fact that Land Claims Commissioner Bell held a special court at Hokianga in March 1858 specifically to discuss the Orira Valley. At that meeting, Bell presented the assembled chiefs with a plan which showed all the boundaries of the various claims

45. Fannin to Lands Claims Commissioner, 21 March 1873, olc 4/10, NA Wellington. The four exceptions were made up of a reserve each for Arama Karaka and Mohi Tawhai in reward for their invaluable assistance to John White, a site of a wahi tapu, and six acres in compensation for a like sized area which was deducted from an earlier survey. While Commissioner Bell approved all of these recommendations, only the last two were actually actioned by the time of Fannin’s memorandum. Subsequent minutes written on the cover of Fannin’s memorandum and John White’s, *Report of Proceedings* suggest that they were subsequently re-approved and grants issued but I have not had time to check if this actually occurred.

46. White to Bell, 1 December 1858, no two, olc 4/3, NA Wellington. Interestingly, White had cause to make these comments in the process of his asking Bell whether he was permitted to survey claims where a grant was issued but the claimants were not in Hokianga at the present time. The fact that he was compelled to ask this would suggest that the original instructions he received from Bell in fact required their presence, most probably to counter-balance any desire on the behalf of the Maori vendors to reduce the length of the boundaries. It was exactly this rationale which underpinned s 44 of the 1856 Act whereby claimants could have one-sixth of all the total area surveyed in their claim added to their eventual grant. In practice, no more than one or two of the Hokianga scrip claims were surveyed in consultation with the original claimants.

within the valley. This presentation was followed by a ‘long discussion’ which eventually resulted in general agreement that the land, and the timber upon it, had been alienated as a result of the original pre-Treaty transactions.⁴⁷ This consensus was still in place ten months later when the chiefs reassembled, this time at the request of John White, in order that the boundaries of the Orira block as agreed to before Commissioner Bell could be physically pointed out to the surveyor, William Clarke. The Orira Valley was then surveyed over the next fortnight. Towards the end of that period, White received a letter from Clarke informing him that some of the Maori vendors were now disputing the boundaries which had been pointed out⁴⁸ to Clarke and also agreed to before Commissioner Bell ten months earlier. White’s immediate response to this news was to make his way up to the Orira Valley to confront those disrupting the survey, Te Kaingamata and Rai. After reading to the two chiefs the relevant Godfrey and Richmond evidence, as well as showing them the plan presented to the Bell meeting, Te Kaingamata and Rai still refused to give⁴⁹ the dispute up and White had little option but to halt the survey for the present. He then wrote to Commissioner Bell informing him of the dispute and seeking further guidance.

Figure 9 above, based upon a John White sketch map, provides some insight into what motivated Te Kaingamata and Rai to deviate from the consensus which had apparently been forged before Commissioner Bell ten months earlier. As can be seen in the sketch, one of the boundaries disputed encompassed a Kauri forest. While Bell may have obtained agreement in March 1858 that the land *and the timber* had been alienated as a result of the pre-Treaty purchases, evidently the two chiefs concerned desired to retain rights⁵⁰ to this particular stand of Kauri by having it excluded from the purchase boundaries.

Bell’s response, upon receiving White’s letter informing him of the disruption of the Orira survey, was to write a letter, in Maori, for White to read to a third gathering of those chiefs whom he had personally met several months earlier. In his *Report of Proceedings*, White records that he read the letter to the assembled chiefs⁵¹ ‘who at once gave up the dispute and allowed the survey to proceed’. A sense of what was contained in Bell’s letter can be gained from the following extracts from a John White letter relating to Bell the details of the meeting the day after it had occurred.

I am happy to inform you that your letter to the Orira Chiefs has brought them to their senses, and they will now allow the survey to go on . . . the fear of the timber being stopped made them give in.

.

47. Details of this meeting are taken from John White’s backgrounding of the Orira dispute, White, *Report of Proceedings*, p 12
48. Clarke to White, 1 February 1859, enclosed in White to Bell, 1 February 1859, olc 4/6, NA Wellington
49. White to Bell, 1 February 1859, olc 4/6, NA Wellington
50. Sketch map enclosed in *ibid*.
51. White, *Report of Proceedings*, p 14

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I hope for the future I shall not have much trouble as your letter makes them see it is no use to dispute, they must not think⁵² to override the commissioners or try to upset that which has been decided by the law.

White's use of the phrase, 'the fear of the timber being stopped made them give in', raises an important question. How was Bell able to successfully threaten to 'stop the supply of timber' if he had already obtained from the Orira chiefs, at his special court sitting in March 1858, their agreement that the pre-Treaty transactions had alienated the land and the timber? Could it be that Bell was only able to obtain this agreement from the assembled chiefs, after he also promised that in return for their reaffirmation of the original Godfrey and Richmond recommendations, he would recommend to the Crown that it allow them to harvest the timber upon its scrip land in the Orira Valley? If such an agreement was in fact reached, the disruption of Clarke's survey by Te Kaingamata and Rai, which represented nothing less than a direct challenging of the boundaries as reported by the early commissioners, would certainly have been perceived by Bell to have breached that agreement, thereby freeing him from any obligation to keep his side of the deal. Unfortunately, the absence of any written record of the proceedings at Bell's special Hokianga sitting means we can never know for sure that such an agreement was reached. At the same time, subsequent correspondence by Bell, such as his following letter to the combined Orira chiefs, dated 14 September 1860, certainly seems to support the existence of the kind of agreement alluded to above. Bell, after informing the chiefs that he had instructed Clarke to survey the portion of the Orira block previously disrupted, then wrote that he would:

now fulfill his promise . . . the Kauri timber land shall not be all taken by [William] White [the one non-scrip claimant], but part shall be for White, and part for the Government . . . that your timber may be brought out through it.

I shall inform you of the portion of the Orira Block still in the hands of the Government in order that I may recommend the Government to grant you the privilege of getting the timber thereon[.]⁵³

The existence of such an agreement is also supported by earlier correspondence travelling in the opposite direction, that is, from Hokianga Maori to Commissioner Bell. Take, for example, the following letter from Tamati Waka Nene relating to Umawera, located in the upper catchment of the Orira River:

My word is to you. Who does Umawera belong to does Umawera belong to you do you let me have this place, let me have the timber and you have the land, do you consent write and let me know . . . I wish to have the timber to work for the future years but the thought is with you[.]⁵⁴

52. White to Bell, 26 March 1859, olc 4/7, NA Wellington

53. Bell to Orira chiefs, 14 September 1860, olc 4/11, NA Wellington

54. Tamati Waka Nene to Bell, 6 September 1859, translated by John White, olc 4/11, NA Wellington

A similar outcome was sought by Arama Karaka five weeks later, when he wrote to Bell that Orira is ‘surveyed and is all in the hands of the Governor, hence my request that you may allow myself and my relatives to cut timber on the portion called Whitirawa’.⁵⁵ Thus, while the extant record does not provide us with any written minutes of the proceedings at the special sitting of Bell’s court at Hokianga in March 1858, subsequent correspondence between Bell and some of those who attended points strongly to an agreement being reached under which some of the vendors would have continued access to the timber of the Orira Valley in return for their reaffirming the boundaries as reported by Godfrey and Richmond a decade and a half earlier.

Any such agreement would have been a consequence of the operation of the scrip policy. The withdrawal of the original purchasers from the region once they had opted for scrip, the subsequent failure of the Crown to physically indicate its assumption of ownership for nearly two decades, and, as will be shown very shortly, the death of the original vendors in the interim, meant that those who attended the special sitting of Bell’s court at Hokianga in March 1858 may well have considered the previous purchases to have lapsed, and the land to have once again reverted to their ownership. In the absence of a record of proceedings for that sitting, however, it is not possible to state with any degree of certainty whether any timber agreement which may have been reached at that meeting was offered by Bell, in recognition of the misperceptions resulting from the above factors and in order to secure the assistance of the assembled chiefs, or whether it was demanded by the chiefs themselves as the price of their co-operation in reaffirming the original boundaries as reported by Godfrey and Richmond.

The culminating act of this reaffirmation occurred in June 1859. In that month, John White, having earlier received a letter from Bell instructing him to halt any more surveys because of the impending winter weather, toured the entire region and got the respective chiefs to ‘sign-off’ on the various survey plans, 23 in total, resulting from Clarke’s work.⁵⁶ By comparing the signatures obtained by White with those upon the original purchase deeds, it was possible to come up with the information contained in table 2 below.

From table 2 it is clear that there was an extremely low level of overlap between the original vendors and those who John White got to reaffirm the boundaries as they were reported by the commissioners, and subsequently surveyed by William Clarke. Of the 23 survey plans, only seven had any signatories who had also signed the original purchase deed. And of these seven, only three (plans 270, 275, and 277) produced this commonality at a level that might reasonably be considered significant. Such a finding is not all that surprising, especially when it is remembered that in most instances there were more than two decades separating the original purchase from White’s collection of signatures in 1859.

The low level of commonality evident from table 2 does raise the issue, however, of what measures were taken by the Crown to ensure that those ‘signing-off’ on the

55. Arama Karaka to Bell, 17 October 1859, translated by John White, olc 4/11, NA Wellington

56. White, *Daily Journal*, olc 4/7, NA Wellington

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olc plan number	Survey signatories	Purchase deed signatories	Common signatories
254	9	7	1
264	8	4	1
267	7	8	1
270	2	1	1
275	2	3	1
277	4	2	1
278	8	8	2

Table 2: Comparison of the original vendors with signatories to Clarke's surveys

survey plans of William Clarke in June 1859, were in fact those most entitled to do so. With the exception of the Orira Valley, which was dealt with at Bell's special court in March 1858, any process of identifying those who were most appropriate to reaffirm transactions by the deceased vendors would have occurred at John White's meeting with all the Hokianga chiefs, on 9 November, at Mangungu.

At first glance, White would certainly seem to have been a good choice for such a process. He would have possessed considerable 'local knowledge' as a result of his having spent most of his youth in the region. But as was shown earlier in this case study, there also existed circumstances which should have disqualified John White from ever being entrusted with such an important function at Hokianga. This, of course, is a reference to the unavoidable conflict of interest created by the fact that his uncle, William White, was a significant land claimant in the region.

Another major problem evident in John White's activities at Hokianga was the fact that he was never invested with an authority appropriate to the tasks he chose to undertake upon his arrival. At a very minimum, he would have needed to be an assistant commissioner to collect evidence, investigate claims, and make conclusions about their bona fide nature. This exceeding of authority by John White, sometimes beyond anything allowed for even had he been empowered under the 1856 Act, was most frequent when he 'investigated' the claims of his uncle, William White.

Finally, the inconsistency which characterised John White's application of his assumed authority is also significant. When he encountered Maori disputes to his surveys, White rigidly adhered to the position that he was unable to deviate, in any way, from the reports of the original commissioners, Godfrey and Richmond. On a number of occasions, however, White showed himself to be only too willing to disregard the findings of the early commissioners where such action would benefit

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the Crown. Only once did he exercise this 'discretion' for the benefit of the Maori vendors.

Needless to say, the Crown could have avoided all of the above problems if it had acted more quickly in identifying, through survey, the land it acquired through its scrip policy. Instead, it waited for a decade and a half after the original purchases were validated by the earliest commissioners, before it decided to act. In doing so, it not only brought upon itself all the problems mentioned above, but it may also have forced one of its agents, Commissioner Bell, to allow for the harvesting of a valuable resource, the Kauri timber of the Orira Valley, in order to secure the cooperation of some of the local chiefs.