

## CHAPTER 6

### THE TOWN BELT AND OTHER PUBLIC RESERVES

#### 6.1 INTRODUCTION

Before continuing with our discussion of Spain's inquiry, we examine another important event that occurred under Hobson's governorship: the taking by the Crown of land for the town belt and other public reserves. The establishment of a green belt of land around the town of Wellington which was to be kept free of buildings and used for public recreation was part of the original New Zealand Company plan for the town. In 1841, Governor Hobson proclaimed the town belt a Crown reserve, and this was its status until 1861, when the town belt was granted to the provincial superintendent of Wellington. The superintendent then granted the town belt to the city of Wellington in 1873, and it has remained in Wellington City Council ownership ever since. From the earliest years of the Port Nicholson settlement, the colonists felt strongly about the town belt and tried to ensure that it retained its status as a reserve for public recreation. Few have considered how this land was acquired from Maori in the first place. In fact, Maori never sold the town belt, nor did they receive compensation for the loss of much of this land.

A number of other public reserves were also claimed for the Crown by Governor Hobson's 1841 proclamation, and at least some of these reserves subsequently remained in Crown ownership. The Crown likewise assumed ownership of Matiu and Makoro (Somes and Ward Islands) in the early 1840s. This chapter discusses all these early takings of Maori land for public reserves and considers whether, in assuming ownership of this land, the Crown breached the Treaty. Later takings of Maori reserve land for public purposes are discussed in chapter 17.

#### 6.2 HISTORY OF THE TOWN BELT AND PUBLIC RESERVES

In August 1839, New Zealand Company secretary John Ward instructed the company's surveyor, William Mein Smith, 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'.<sup>1</sup> Smith duly

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1. Ward to Smith, August 1839, NZC102/1-2, NA Wellington (quoted in doc κ3, p 6)

laid out a town belt surrounding the 1100 town acres in his August 1840 plan of the town of Wellington. His plan showed a clear exterior boundary to the belt, and this exterior boundary also marked the start of the country district. Duncan Moore has calculated the area of this original town belt, before any land was taken from it for other purposes, as 1562 acres 36 perches.<sup>2</sup> Smith's plan also marked out a number of other areas within the town which were to be used for public purposes.<sup>3</sup>

On 10 September 1841, Governor Hobson proclaimed the boundaries of the town of Wellington (which were also the interior boundaries of the town belt). On the same day, the Governor directed that a notice be placed in the *New Zealand Gazette* requiring all persons occupying public or native reserves to vacate those sites, and declaring that 'all persons are warned not to clear, fence, cultivate, or build in or upon any portion of the belt of reserved land surrounding the town'.<sup>4</sup>

### 6.2.1 Governor Hobson proclaims public reserves

Under sections 6 and 7 of the Land Claims Ordinance 1841, the land claims commissioners were not to recommend the granting to private claimants of 'any headland, promontory, bay, or island, that may hereafter be required for any purpose of defence, or for the site of any town or village reserve, or for any other purpose of public utility'.<sup>5</sup> It seems that this ordinance provided the basis for the Crown's early acquisition of public reserves in Wellington.<sup>6</sup>

The Government's Surveyor-General, Felton Mathew, accompanied Governor Hobson on his August 1841 visit to Wellington, and Mathew's main task during this visit was to identify land in the town to be reserved by the Crown for public purposes.<sup>7</sup> He also made some general observations on the layout of the town, which he considered 'a magnificent site completely destroyed . . . [by] the absurdity of laying out a plan on a sheet of paper, and restricting the size of the allotments to an acre'. He considered that the one-acre sections were too large for their intended purpose, and that it would have been better to have had sections 'varying in extent from an eighth of an acre upwards'. Although he found the public reserves made by the New Zealand Company insufficient and inadequate, Mathew made 'arrangement for their appropriation' by the Crown and marked them on the map of the city of Wellington which he prepared. Commenting on these public reserves, he noted that the sites proposed for a marketplace and a custom house were occupied by Pipitea and Te Aro Pa, which the Maori inhabitants had no wish to alienate.<sup>8</sup> Mathew's map, which was largely the

2. Document K3, pp10, 13

3. Document I3(c)

4. Document K3, p 14; *New Zealand Gazette* notice in Turton, *Epitome* (doc A26), s D, p 1

5. BPP, vol 3, p 278

6. Cathy Marr, *Public Works Takings of Maori Land, 1840-1981*, Waitangi Tribunal Rangahaua Whanui series, May 1997, p 32

7. Document E3, p 110

8. Surveyor-General's report, 20 October 1841, BPP, vol 3, pp 534-535

same as Smith's map of 1840, was forwarded by Hobson to London and was subsequently published, along with Mathew's report, in the *British Parliamentary Papers*.<sup>9</sup> It is reproduced in the present report as map 4.

Then, in a proclamation published in the *New Zealand Gazette* on 20 October 1841, Governor Hobson claimed the reserves marked out by Mathew for the Crown. This proclamation stated that the public reserves shown on the company's town plan, including the town belt, together with a number of promontories around the harbour (Points Jerningham, Halswell, and Waddell, and Pencarrow and Baring Heads), were 'reserved by the Crown for public purposes'.<sup>10</sup> In forwarding Mathew's report to the Colonial Secretary, Hobson criticised the company's lack of attention to the selection of reserves for public purposes, remarking that, apart from the barracks, none of the places selected for public reserves in the town 'are in situations I would have selected if I had had a more extended choice'.<sup>11</sup>

### 6.2.2 The town belt in the 1840s

It appears that, despite Hobson's prohibition on clearing and cultivating the town belt, Maori continued to do both largely unhindered. There were a number of areas of Maori cultivation within the town belt – Te Aro's at Polhill Gully and Omaroro, Pipitea's at Orangikaupapa/Tinakori, and Kumutoto's in part of what is now the Wellington Botanical Gardens<sup>12</sup> – and Maori cleared trees in the belt by burning them, and collected firewood there. Such activities attracted the ire of the pro-company *Gazette and Spectator*, which complained that, unless they were prevented from doing so, Maori would convert 'the chief beauty of our town into a mass of cheerless, stunted, naked barrenness'. The newspaper continued that, by clearing the town belt by fire and replacing forest with cultivations, Maori were creating a fire hazard and detracting from the value of property in Wellington, which depended heavily on the attractiveness of the town belt.<sup>13</sup> Notwithstanding such concerns, Maori seem to have been allowed to continue clearing, cultivating, and collecting firewood in the town belt in the 1840s.

In 1847, Colonel McCleverty, who had been given the task of persuading Maori to 'exchange' their cultivation land claimed by settlers for other land (see ch 10), reported that Pipitea, Kumutoto, and Te Aro Maori were cultivating 62 acres in the town belt. He recommended that additional land in the town belt should be assigned to Maori as part of his 'exchanges', 'in the belief that the Town Belt is to be considered as waste land and belonging to the Crown'. McCleverty seemingly concluded that the town belt was waste land simply on the basis that it had not been included in Governor FitzRoy's 1845 Crown grant to the New

9. Document K3, pp 13–14

10. Proclamation, 16 October 1841, *New Zealand Gazette*, 20 October 1841 (reprinted in Turton, *Epitome* (doc A26), s A3, p 166)

11. Hobson to Secretary of State for the Colonies, 13 December 1841, BPP, vol 3, p 534

12. Document K3, pp 8, 36, 39, 40

13. *Gazette and Spectator*, 19 January 1842 (quoted in doc K3, pp 17–18)

Zealand Company. The company rejected this grant, and McCleverty recognised that one of its objections was to the continued presence of Maori cultivations on town belt land. Nevertheless, he thought it advisable to provide Maori with more town belt land owing to the great difficulty of obtaining land in good situations.<sup>14</sup> In his letter to Earl Grey enclosing McCleverty's preliminary report, Governor Grey noted that necessity compelled him to approve McCleverty's recommendation that town belt land should be assigned to Maori, regardless of Pakeha opposition to any such proposal.<sup>15</sup> McCleverty assigned some 219 acres of town belt land to Te Aro, Pipitea, and Kumutoto Maori.<sup>16</sup> The company was not happy about the fact that some town belt land had been assigned to Maori and tried unsuccessfully to have this land restored to the town belt.<sup>17</sup>

### 6.2.3 Town belt vested in Wellington City Council

In June 1861, the Governor, under the authority of the Public Reserves Act 1854, granted the town belt to the superintendent of Wellington province 'for purposes of Public Utility to the Town of Wellington and its inhabitants'. This grant comprised 1234 acres 2 roods 18 perches, the area of the town belt having been reduced mainly by the award of town belt land to Maori, but also by some other takings for various purposes.<sup>18</sup> The superintendent tried almost immediately to have the town belt vested in a local body, but first such a body had to be created. Legislation establishing a Wellington town board passed through the Provincial Council in tandem with the Wellington City Reserves Act in mid-1862. The town board commissioners then set about surveying the town belt and dividing it into allotments, many of which were leased.<sup>19</sup> Title to the town belt remained with the superintendent of Wellington, however, until 17 March 1873, when the land was granted upon trust to the city of Wellington, 'to be forever hereafter used and appreciated as a public recreation ground for the inhabitants of the City of Wellington'. The area granted was 1061 acres 1 rood 2 perches, a further reduction of 173 acres from the 1861 grant. This reduction was apparently due mainly to the granting of town belt land to Wellington Hospital, and for the Governor-General's present residence.<sup>20</sup> The remaining town belt land has been held and managed by the Wellington City Council ever since.

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14. McCleverty, 'Report on Port Nicholson Cultivations', enclosed with dispatch from Governor Grey to Earl Grey, 21 April 1847, BPP, vol 6, [892], p 41

15. Governor Grey to Earl Grey, 21 April 1847, BPP, vol 6, [892], p 37

16. McCleverty to Eyre, 20 November 1847, in Turton, *Epitome* (doc A26), s D, p 13. See chapters 10 and 11 below.

17. Document K3, pp 26–27

18. Crown grant 1961b, *Crown Grants*, vol 2, fol 150, Land Information New Zealand, Wellington district (quoted in doc K3, p 29)

19. Document K3, pp 31–32

20. *Ibid*, p 33

#### 6.2.4 Other public reserves

It is not clear exactly how much of the town land marked as public reserves on Felton Mathew's 1841 map and claimed for the Crown by Hobson in 1841 actually became public reserve land in practice. However, almost 50 acres of public reserves in the town of Wellington, listed in a schedule of land excepted from the 1848 Crown grant to the New Zealand Company, were said to have been 'originally Reserved by the Company'. The same was true of some 280 acres of public reserves outside the town (not including the town belt), which were likewise excepted from the Crown grant. These reserves consisted of Points Jerningham, Halswell, and Waddell; Palmer Head; Somes and Ward Islands (see below); and a 100-acre 'Government Domain'.<sup>21</sup> (The Government domain, set aside as a country residence for the Governor, was converted by Grey and McCleverty into a reserve for Kaiwharawhara Maori in 1846–47 and thus ceased to be a public reserve (see s10.4.2).)

A return of public reserves published in 1870 showed that there were still a number of reserves within the town listed as having been reserved by the New Zealand Company. This return also listed Points Jerningham, Halswell, Waddell, and Dorset, and Palmer Head, as military reserves originally reserved by the New Zealand Company.<sup>22</sup> Points Waddell and Dorset were listed together, and, since Point Dorset is just south of Point Waddell, it was presumably deemed to have been taken by the Crown along with the latter in the October 1841 proclamation. It is not clear when Palmer Head was reserved, while Pencarrow and Baring Heads, which were claimed by the Crown in 1841, became part of the Parangarau block assigned by McCleverty to Petone Maori, and were not listed in the 1870 return.

### 6.3 CLAIMANT GRIEVANCES REGARDING HOBSON'S PROCLAMATION OF PUBLIC RESERVES

The Wai 145 claimants have made the following claims regarding Hobson's proclamation of public reserves (including the town belt):

- ▶ Hobson's proclamation was made 'despite knowing that Maori denied the sale of most of the lands so claimed, denied any desire to sell them in the future, and were living on and using many of the lands so claimed for the Crown'.<sup>23</sup>
- ▶ Hobson's proclamations of September and October 1841 included Te Aro, Kumutoto, and Pipitea kainga (thereby making Maori living in those places technically 'squatters on Crown land') and also included the promontories around the harbour.<sup>24</sup>

We start by discussing the first claim as it relates to the town belt.

21. Schedule enclosed with Wakefield to secretary, New Zealand Company, 28 February 1848, CO208 (doc C1(c), pp 312–313, 316–317)

22. 'Return of Reserves Made in the Several Provinces of New Zealand', 1870, AJHR, 1870, C-2, pp 24–25

23. Claim 1.2(d), para 9.1; doc 01, pp 41–42, 96–97

24. Claim 1.2(d), paras 9.5, 9.9; doc 01, pp 96–97

**6.3.1 The Crown's acquisition of the town belt**

The town belt was originally set aside out of land included in the Port Nicholson deed of purchase, a deed which the Tribunal has found to be invalid. Thus, the land had not been validly purchased when the town belt was made a Crown reserve by Governor Hobson in 1841. The town belt was not included in the lands in the schedule to the 1844 deeds of release, nor was it included in FitzRoy's or Grey's Crown grants to the New Zealand Company (see chs 8, 10). Although McCleverty considered the town belt to be waste land belonging to the Crown, the Tribunal rejects this assertion (see s10.7.5). Following the McCleverty awards, Maori retained only 219 acres, or about 14 per cent, of the original 1562 acres of the town belt. The remainder was lost to them, even though this land had never been purchased either by the company or by the Crown, and Maori received no compensation for the taking of this land. Nor is there any evidence that Maori were consulted or that they consented to the taking of this valuable land, part of which they were cultivating.

**6.3.2 Tribunal finding of Treaty breach**

The Tribunal finds that the Crown, in taking most of the town belt land from Maori without their consent or any consultation, and without making any payment, acted in breach of article 2 of the Treaty and failed to respect the rangatiratanga of Maori in and over their land. As a consequence, Te Atiawa, Ngati Tama, Taranaki, and Ngati Ruanui were prejudiced thereby.

**6.3.3 The Crown's acquisition of other public reserves**

In relation to the claim that Hobson's proclamation claimed Te Aro, Kumutoto, and Pipitea kainga as public reserves, the Tribunal finds that the proclamation had no effect on those kainga. Although it is true that parts of Te Aro and Pipitea Pa were marked out on maps of the town as the location of a custom house and a marketplace, the land was never in fact used for those purposes, and Maori ownership of the pa was subsequently guaranteed in both the 1844 and the 1847 arrangements (see chs 8, 10). As for Kumutoto Pa, it was on a tenths reserve, so it was never proposed that it would become a public reserve, and it too was guaranteed to Maori in 1844 and 1847.

In relation to the more general claim about the Crown's acquisition of public reserves by the October 1841 proclamation, counsel for the tenths trust maintained that, at the time of Hobson's proclamation, 'the Crown had no legal authority to take land from Maori without their consent'. Counsel submitted that the Crown was obliged either to purchase land directly from Maori or compulsorily to reserve land already purchased from Maori by Pakeha settlers.<sup>25</sup> In reply, Crown counsel suggested that:

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25. Document 01, p 97

Hobson's proclamation of public reserves probably flowed from clause 6 of the [November] 1840 agreement. This provided that no tracts of land selected under the agreement 'shall be such as, regard being had to the general interests of the colonists at large, ought to be reserved and appropriated for any purposes of public utility, convenience, or recreation.' From the Crown's perspective, this agreement was conditional on there being a valid extinguishment of Maori claims. If Hobson believed he was acting in accordance with clause 6, he would have done so in the knowledge that any claim the Crown might make would depend upon the Company proving or making good its claim.<sup>26</sup>

The Tribunal has found that the company was not in fact able to prove or make good its claim, and that its purported purchase of the Port Nicholson block was invalid. The land which the Crown took as public reserves had not been validly purchased by the company, nor was it purchased by the Crown or included in the lands given up by Maori in the 1844 deeds of release. The Crown simply assumed ownership of this land in 1841, and continued to assume that it owned at least some of these public reserves thereafter. The public reserves proclaimed in 1841 were taken without the consent of Maori, and Maori received no payment for this land. It is unclear how much of this public reserve land (apart from the town belt) remained in Crown ownership after 1841, but it is clear that, at the very least, the Crown's ownership of Points Jerningham, Halswell, and Waddell (apparently including Point Dorset as well) dates from this time. These public reserves were within the surveyed areas around the harbour, where Te Atiawa, Taranaki, Ngati Ruanui, and Ngati Tama had ahi ka.

#### **6.3.4 Tribunal finding of Treaty breach**

The Tribunal finds that the Crown, in taking various reserves in and about Wellington from Maori in 1841 without their consent or any consultation, and without making any payment, acted in breach of article 2 of the Treaty and failed to respect the rangatiratanga of Maori in and over their land. As a consequence, Te Atiawa, Ngati Tama, Taranaki, and Ngati Ruanui were prejudiced thereby.

### **6.4 MATIU AND MAKORO**

#### **6.4.1 Ownership of Matiu and Makoro**

Another area of land which the Crown simply assumed ownership of, and which is the subject of a claim,<sup>27</sup> is Matiu (Somes Island). As will be apparent from chapter 2, many Maori

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26. Document P1, p 33

27. Claim 1.2(d), para 9.8; doc 01, pp 98–99; doc Q1, pp 9–10

groups have had associations with Matiu over the centuries, from the time when it was named by Kupe. The island has played an important role in the history of Te Whanganui a Tara as a place of refuge and residence. It was from Matiu that Ngati Mutunga departed for the Chatham Islands, and it was there that the meeting at which Ngati Mutunga transferred their rights to land around the harbour took place. On the evidence before us, we cannot say that any one group living around the harbour in 1840 owned Matiu, and we therefore consider that it belonged equally to Te Atiawa, Ngati Tama, Taranaki, and Ngati Ruanui.

Matiu and the smaller Makoro (Ward Island) were specifically mentioned in the Port Nicholson deed as having been purchased by the New Zealand Company, and Matiu was originally intended to be used for military purposes.<sup>28</sup> In 1841, Wakefield gave Matiu on lease to William Swainson, and Hobson later gave Swainson permission to occupy it for an indefinite period at a nominal rental.<sup>29</sup> The island was subsequently listed as one of the public reserves excepted from the 1848 Crown grant to the company. It apparently remained in Crown ownership thereafter, and was later used for many decades as a quarantine station. Makoro also became a public reserve, presumably at the same time.

The Crown's claim to these islands was probably based on sections 6 and 7 of the Land Claims Ordinance 1841, which provided for the exclusion of islands from the land which could be awarded to private claimants. Once again, however, the Crown assumed ownership before any inquiry had been made into the validity of the New Zealand Company's alleged purchase of Port Nicholson. There is no evidence that Maori were ever consulted about, or compensated for, the Crown's assumption of ownership of Matiu and Makoro. The claimants made no claim in respect of Makoro, and accordingly we confine our finding to Matiu.

#### **6.4.2 Tribunal finding of Treaty breach**

The Tribunal finds that the Crown, in assuming ownership of Matiu in 1841 or thereabouts without the consent of or any consultation with Maori, and without making any payment, acted in breach of article 2 of the Treaty and failed to respect the rangatiratanga of Maori in and over their land. As a consequence, Te Atiawa, Ngati Tama, Taranaki, and Ngati Ruanui were prejudiced thereby.

#### **6.5 OTHER CLAIMS REGARDING LEGISLATION, PROCLAMATIONS, AND ROADS, 1840–42**

In part B of their fourth amended statement of claim, the Wai 145 claimants allege that in various respects the Crown passed legislation, made proclamations, gazetted lands, and laid out

<sup>28</sup>. Port Nicholson deed (doc A10(a)(1)); Ian Wards, *The Shadow of the Land: A Study of British Policy and Racial Conflict in New Zealand, 1832–1852* (Wellington: Department of Internal Affairs, 1968), p 50

<sup>29</sup>. Document E3, p 117

public roads in breach of the Treaty.<sup>30</sup> We have not found it necessary to discuss these claims because, having regard to the Crown responses, we are not satisfied that they justify findings of Treaty breaches.<sup>31</sup>

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30. See claim 1.2(d), paras 9.2, 9.3, 9.4, 9.6, 9.7, 9.10, and the submissions made by Wai 145 claimant counsel and Crown counsel in respect of these allegations.

31. Document Q1, pp 7–10

