Possession, Planning and Control: Imperial and Early Australian Land Policies As a Cornerstone of New South Wales History, 1788-1855

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Statement of Originality

This thesis contains no material which has been accepted for the award of any other degree or diploma in any university or other tertiary institution and, to the best of my knowledge and belief, contains no material previously published or written by another person, except where due reference has been made to the text. I give consent to the final version of my thesis being made available worldwide when deposited in the University’s Digital Repository subject to the provisions of the Copyright Act 1968.

Paul Farnill
Acknowledgements and Dedications

I wish to dedicate this work to my late wife Robyne who encouraged me to embark on this research and to acknowledge the help and assistance of three supervisors, Dr Nancy Cushing, Professor John Toon and Dr Hilary Carey all whom have offered encouragement and guidance that I have found invaluable. I would however like to single out Dr Cushing, who has worked tirelessly in reviewing this work and assisting in its presentation and to whom I offer my sincere gratitude.

I wish to acknowledge Rosalie Spire of Historical Research and Data Services – London for her assistance and copying of original archival material from the National Archives of the United Kingdom – Kew.

Lastly I would like to thank my family, particularly my brother Doug Farnill who has proof-read and offered numerous suggestions on this work.

Paul Farnill
9 January 2015
Behold, I am the one who has laid as a foundation...a stone, a cornerstone, of a sure foundation.

Isaiah 28:16

There are few things more pleasing than the contemplation of order and useful arrangement arising gradually out of the tumult and confusion; and perhaps this satisfaction cannot anywhere be more fully enjoyed than where a settlement of civilized people is fixing itself upon a newly discovered or savage coast...wherever chance presents a spot tolerably free from obstacles, or more easily cleared than the rest, with the bustle of various hands busily employed in a number of the most incongruous works, increases rather than diminishes the order... But by degrees large spaces are opened, plans are formed, line marked, and a prospect at least of future regularity clearly discerned; and is made more striking by the recollection of the former confusion.

Arthur Phillip - 1790\(^1\)

Land [which has] been separated from the wilderness, purchased, paid for and become subject to private ownership, to transfer and sale...has thus become property to be bought and sold for money

American Senator, Daniel Webster 1838\(^2\)

There is nothing which so generally strikes the imagination, and engages the affections of mankind as the right of property, or that sole and despotic dominion which one man claims and exercises over the external thing of the world, in total exclusion of the right of any other individual in the universe.

Sir William Blackstone 1765\(^3\)

\(^1\) Arthur Phillip and John Stockdale, eds., *The Voyage of Governor Phillip to Botany Bay*, 3rd ed. (London: John Stockdale, 1790). pp144-145

\(^2\) Daniel. Webster, "Address to US Senate 12 March " Niles' National Register IV, no. 6 (1838).p92

Synopsis

The possession of land, its settlement and the means by which it was occupied, has been a vital determinant in the unfolding of NSW history and yet, in recent times, its importance has been neglected. Rather than a backdrop to a wider historical narrative, land policy in the years of the early governors was crucial to the way in which the colony grew and to the socio-economic and political structures that emerged. The possession of land and its regulation therefore formed a cornerstone on which the history of NSW was founded.

This thesis revisits the early history of NSW and presents land use and ownership as a major theme. Britain's imperial aspirations were instrumental in James Cook's taking possession, on behalf of the British Crown, of the land along the continent’s eastern coastline in 1770. Cook’s claim intrinsically carried with it the associated dispossession of the indigenous population from that date. Land and its possession was prominent among the objectives of Arthur Phillip’s 1787 expedition to Botany Bay and is regarded by many historians as the prime reason for the colony’s existence. The selection of the site at Sydney Cove, the colonisation of Norfolk Island, Tasmania, New Zealand and the expansion across the entire continent were processes that unfolded at the confluence of British policies and the exigencies of colonial government. It was land that seeded the power of the NSW Corps officers and enabled them to achieve a monopoly on trade. It was their fear of losing land that ignited a rebellion by the same officers against a sitting governor. Land policy explains the colony’s original slow expansion and, once the confining barriers and restraining policies were breached, the rapid expansion of pastoral pursuits. Finally, land policy was a major cause of tension between the governors and the governed. It was a source of disquiet that tainted colonial politics and led to demands for, and the eventual achievement of, representative government.

An examination of the land policies of both the British government and the early colonial governors Phillip to FitzRoy and the means by which different groups responded to those policies will shed fresh light on the physical, social and political growth of colonial New South Wales.
Preface

In 1989, while completing a Master's degree in Town and Country Planning at Sydney University, I became convinced that the possession of land was a driving force within the history of NSW, and that land policy and controls should figure highly in early colonial history. With some regret I noted an almost complete absence of published material on colonial land policy within the planning literature.\textsuperscript{4} This disappointment was amplified by a realisation that recent historians also seemed to have ignored the possession of land as a significant factor in their narratives of the colony’s formative years.

Town and country planning, land use planning or simply planning as it will be referred to in the remainder of the thesis, is the main tool by which land policy and regulation is set. It is therefore expected that works on the history of planning would include details of colonial land use regulation and land controls.\textsuperscript{5} Planning covers a far wider field than the laying out streets or townships and encompasses all forms of institutionalised land policies and controls. It includes planning at local, regional and even international levels. NSW land use policies were first implemented when a British government for strategic reasons and to empty Britain’s gaols, proposed a new settlement on the other side of the world. Land policy then continued to shape the colony’s growth into the modern times. Yet the examination of policies on the possession and use of land, together with the interrelationship between histories of land use and other histories have remained relatively neglected.

Once Britain’s colony was planted it was the townships and rural areas, planned (or unplanned) by the early Governors, that provided the physical

\textsuperscript{4} Since writing that statement I subsequently discovered a work by Helen Proudfoot, written six years later, but expressing identical sentiments. Proudfoot wrote that with respect to the history of planning, she was “amazed at the ignorance of planners,” see Helen Proudfoot, "Town Plans and their Impact on the Settlement Process in Australia" (Macquarie University PhD, 1995). Preface p iii

\textsuperscript{5} The Oxford Dictionary defines town or urban planning as “the planning and control of the construction, growth, and development of a town or other urban area.”
environment of the colony.\textsuperscript{6} When a colonial governor selected a site for a settlement, granted a portion of land, issued regulations that sought to encourage small-scale agriculture, or attempted to contain the colony’s outward expansion, the decisions had an impact on the way in which the future history of NSW would unfold. Since land policy and regulation were within the scope of both of planning and history I expected to see them reflected in both the planning texts and historical works of a more general nature.

Planning embraces a far wider field than the physical preparation of an urban plan, which presents a major difficulty when discussing any history associated with planning.\textsuperscript{7} The difficulty is the formulation of a definitive description of the practice and then confining the topic to that definition. Planner Susan Thompson, writing in \textit{Planning Australia}, reflected that this was “no easy matter.\textsuperscript{8} Planning has been described as “infinitely variable,” a profession that resists all attempts to define it, and “a tangled skein that is difficult to untangle.”\textsuperscript{9} Given the lack of an accepted definition Thompson suggested that perhaps planning is best described as being “what planners do.”\textsuperscript{10} In acknowledging the difficulty, Leonie Sandercock noted that the boundaries of planning are not fixed, they frequently shift and as a consequence its history is contained only by the definition and purpose of the historian.\textsuperscript{11}

Land use planning is a transformational practice that permeated through almost all aspects of colonial society; social, cultural, political, economic and spatial. Accordingly a wide definition of planning has been adopted for this thesis which will encompass all aspects of land policy, inclusive of the regulation, possession


\textsuperscript{8} Susan Thompson and Paul Maginn, eds., \textit{Planning Australia} (Melbourne: Cambridge University Press, 2012). p11


\textsuperscript{10} Thompson and Maginn, \textit{Planning Australia}. p11

\textsuperscript{11} Sandercock, \textit{Making the Invisible Visible: A multicultural planning history}. p6
and control of land. The definition will range from the level of an imperial
government seeking to take possession of an entire continent in order to protect
its trade routes, to an emancipist farmer hoping to profit from a 50 acre
allotment. It has been said that what we see is shaped by the questions we ask
and if as suggested by Richard Waterhouse, our reflections on the past are
critical to our understanding of the future, the question arises, can present day
Australia be holistically understood if the historical significance of land and its
possession is ignored? Can colonial history be complete if the topic of land
control of land is all but neglected? In responding to such questions, this thesis
will highlight the effects that some significant land and land policy decisions
have had on the shaping of NSW history. It will offer a new perspective on the
way components of NSW history can be perceived.

Note on Referencing

The referencing style used throughout this work is "Chicago 16A, Humanities." It is compiled within Endnote version X7, they include footnotes and a bibliography.

The format of the footnotes and bibliography is generated automatically within the Endnote software.

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<tr>
<td>Colonial NSW</td>
<td>The colony of NSW with boundaries as varied from time to time.</td>
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<tr>
<td>Colonial Secretary</td>
<td>The Whitehall based bureaucrat, usually a Cabinet Minister, responsible to the British government for the administration of the colony. i.e. The Secretary of State for War and the Colonies, or similar titles applicable from time to time.</td>
</tr>
<tr>
<td>Colonists</td>
<td>All people who settled in NSW convict, soldier, free settler, squatter or native born</td>
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<tr>
<td>Elites</td>
<td>The group of officers who became the colony’s large landowners and who by their position formed a virtual colonial aristocracy. They were joined from time to time by other wealthy land owners</td>
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<tr>
<td>Early Governors</td>
<td>Governors Arthur Phillip through to Charles FitzRoy</td>
</tr>
<tr>
<td>Early Colonial Period</td>
<td>The era between 1788 and responsible government in 1855</td>
</tr>
<tr>
<td>Emancipists</td>
<td>Convicts whose time of punishment has expired</td>
</tr>
<tr>
<td>Exclusives</td>
<td>Free settlers, including military and civil officers, generally with capital and able to obtain large land holdings.</td>
</tr>
<tr>
<td>Settlers</td>
<td>Free settlers, including emancipists, generally a farmer with small land holdings, or an immigrant labourer.</td>
</tr>
<tr>
<td>Squatter</td>
<td>Person that occupied land without a formal title, but later on the basis of a licence or lease.</td>
</tr>
<tr>
<td>Wealthy Squatter</td>
<td>A squatter with capital and influence (as against a squatter of small capital.)</td>
</tr>
<tr>
<td>Whitehall</td>
<td>A metonym used to refer to the civil service officers responsible for the colonies.</td>
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<tr>
<td>Abbreviations</td>
<td>Description</td>
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<tr>
<td>NSW</td>
<td>New South Wales</td>
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<td>NZ</td>
<td>New Zealand</td>
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<td>SA</td>
<td>South Australia</td>
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<td>VDL</td>
<td>Van Diemen’s Land</td>
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<td>CO</td>
<td>Colonial Office</td>
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<td>ML</td>
<td>Mitchell Library</td>
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<td>SLNSW</td>
<td>State Library of NSW</td>
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<tr>
<td>SLVIC</td>
<td>State Library of Victoria</td>
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<tr>
<td>NLA</td>
<td>National Library of Australia</td>
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<tr>
<td>HRNSW</td>
<td>Historical Records of NSW</td>
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<tr>
<td>HRA</td>
<td>Historical Records of Australia</td>
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CHAPTER 1. INTRODUCTION

The long view of history provides greater appreciation of planning aspirations, achievements, and limitations yet planning scarcely features in general accounts of Australian History, being at best a footnote within wider environmental; and urban narratives.

Robert Freestone - 2007

This chapter introduces an hypothesis that the possession and control of land in colonial NSW has been to a large extent overlooked in the historical literature. The chapter briefly places the colonisation of NSW within the context of Britain’s eighteenth and nineteenth-century imperial aspirations and discusses the different levels at which possession of land took place. The chapter indicates the important sources of secondary and primary material consulted and sets out the basic structure of the thesis.

1.1 Context: Imperial Aspirations and a Desire for a Pacific Possession.

During the second half of the eighteenth-century, life in Britain, especially for the rural and urban poor, was changing. The poorer classes were facing the adverse effects of both an upheaval in agricultural and the emerging industrial revolution. New methods of agriculture required less farm labour, and manufacturing was displacing traditional home industries. There was a movement of rural populations from their villages to the industrialising towns. There was overcrowding in the poorer urban areas and, amongst the upper-classes, a fear of increased crime and even working-class insurrection.

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2 Alan Frost, Botany Bay: The Real Story (Melbourne: Black Inc., 2011). p21
3 Hall, Cities of Tomorrow p7. Frost, Botany Bay: The Real Story. pp20-22
4 Hall, Cities of Tomorrow pp24-28
traditional society and class hierarchy that had evolved over hundreds of years was breaking down.\(^5\)

Overseas, unrest, based upon the notion of republicanism, was brewing in Britain’s North American colonies. These colonies, between the years 1718 and 1776, had received around 50,000 of Britain’s convicted criminals.\(^6\) America, however, was not a penal colony but an established society to which convicts could be transported and where they were required to serve their sentence and provide labour.\(^7\)

In 1770 at the time of James Cook’s first voyage of exploration, Britain was experiencing a short period of peace, having defeated its traditional enemies France, Spain and Holland. Frost notes that although at peace, Britain’s enemies were nonetheless building up their navies in preparation for their war.\(^8\) Although Britain was emerging as the foremost world power, its power was essential centred upon the “Atlantic world.”\(^9\) While Holland, Portugal, and Spain each had bases in the Pacific, Britain’s nearest outpost to India and China was the Island of St Helena, in the South Atlantic.\(^10\)

Spain, a traditional enemy of Britain, had in a fifteenth century Papal Bull been ceded all of the undiscovered lands west of a meridian that passed through what is now the eastern third of Brazil.\(^11\) With the treaty of Zaragoza, of 1529, Spain and Portugal agreed on a second Meridian to limit the extent of Spain’s western expansion. Although vaguely defined, the approximate boundaries of


\(^{7}\) Morgan and Rushton, *Eighteenth-Century Criminal Transportation*.

\(^{8}\) Frost, *Botany Bay: The Real Story*. p133


\(^{10}\) ———, *Botany Bay: The Real Story*. p135

this second meridian ran through the eastern portion of Australia. The treaties and Papal Bull were not recognised by Britain but, since that time, Spain regarded the Pacific region as its rightful sphere of influence.

Cook’s voyage through the Pacific was partly scientific and partly to increase British knowledge of the region, but also to claim possession of any land not already claimed by a foreign Prince. Cook’s public instructions had been to observe the transit of Venus, while his secret instructions were that he was to search the South Pacific looking for a great southern continent that the geographers of the day presumed would exist. The instructions included the statement:

...you are also with the consent of the natives to take possession of convenient situations in the country in the name of the King of Great Britain. Or: if you find the country uninhabited take possession for His Majesty...

The American War of Independence of 1776 to 1783 virtually ended the transportation of convicts to the Americas, but also brought to the attention of the British Government the difficult of fighting a war without suitable strategic naval bases, and local sources of supply. The colonisation of NSW can be seen to have solved a number of Britain’s concerns and, although there is a current debate as to the prime reason for the colony’s establishment, it would seem likely that there were several reasons all acting together. The taking possession of NSW was Britain’s means of protecting its trade routes to India and China, it served as a possible source of naval supplies, it prevented Britain’s foreign rivals from establishing bases, and it served as a destination to which Britain’s convicted felons could be transported.

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12 It would seem likely that an interpretation of this line was used to define the western boundary of NSW. Portugal at the time was an important ally of Britain in disputes with both Spain and France.


15 ———, "Secret Instructions to Lieutenant James Cook, 30 July 1768." p2

16 Frost, Botany Bay: The Real Story. p134, pp174-177
The use of convicts as colonists, a novel approach by Britain, can also be seen as part of Britain’s imperial policy. It allowed the colony to be established quickly, without the need to attract free settlers and private capital, and it provided a purpose for colonisation that, in its negotiations with other nations allowed Britain to conceal any strategic reasons that it might have held.\footnote{G.B. Barton, ed. History of NSW from the Records, vol I, Governor Phillip, vol. 1 (Sydney: Government Printer, 1889). p5 James Matra’s proposal, (23 August 1783). Michael Flynn, The Second Fleet: Britain's Grim Convict Amada of 1790 (Sydney: Library of Australian History, 2001).(Introduction). David. Hill, 1788 - The Brutal Truth of the First Fleet (Sydney: William Heinemann, 2008). p28}

That the colony was of strategic importance is reinforced by a report, found in 2012, in a Spanish naval archive. The document was discovered by researcher Chris Maxworthy and is reportedly of an expedition by Spanish naval captains Alejandro Malespina and Jose Bustamante, who in 1793, had anchored in Sydney Harbour for four weeks. Although it is unpublished material and therefore unscrutinised, it is nonetheless deserving of mention.

Maxworthy asserts that the Malespina report not only expressed surprise at how advanced the colony had become, but it also included a plan for an invasion of NSW that was to be undertaken from the Spanish colonies in South America. The plan’s aim was to take possession of the continent and thereby protect Spain’s other Pacific colonies. The invasion was reportedly approved by King Carlos II, who directed that a fleet, comprising 100 gunboats, be constructed at Montevideo. War broke out between Britain and Spain in 1796, before any substantial progress had been made, and after Spanish naval losses at Cape St. Vincent in 1797 the scheme was abandoned.\footnote{Chris Maxworthy, ”Spain's Bold Adventure to Attack N.S.W.” Lecture presented at the SLNSW (24 March 2015)}

Within the machinations of the imperial powers, taking possession of land, as a colony, a strategic base, or a means of protecting trade, was of concern. Land has been a source of wealth throughout the ages and whether on a national scale or that of an individual, its possession and control often defines a course of action. In Britain land ownership was tied to a feudal system of a landowning aristocracy with the Crown at its head. Based upon a concept of primogeniture,
land tended to be retained within the ranks of the aristocracy. In the eighteenth and nineteenth centuries, it has been estimated that 75% of all of the land in Great Britain was possessed by 5,000 landlords and of these 700 individuals owned one quarter of the entire land-mass.¹⁹ Land ownership in Britain was a mark of rank, status and prestige. It was almost impossible for lower-classes to obtain land even if they acquired the capital to do so.

British governments, both Whig and Tory, supported the interests of the property owner. Ownership of land was sacrosanct, with property rights upheld and shielded by the self-interest of parliamentarians. Land ownership was thus the domain of the wealthy, and with land as the determinant of voter franchise, parliament was very much biased towards the upper echelons of British society.²⁰ In Britain’s colonies the governors were subordinate to a Colonial Secretary, who was invariably drawn from the British aristocracy. Because of this, land policies always weighed heavily amongst the colony’s affairs.

A primary attraction of the colonies to the British populace was that land in quantities unheard of in Britain was available which, except for the conflict with and dispossession of indigenous people, was there for the taking. As was demonstrated by John Macarthur and many like him, in NSW men of “humble fortune” could obtain land and gain wealth that would have been unimaginable in Britain.²¹

1.2. Colonisation and The Primacy of Land within the British Empire.

The colonisation of NSW did not occur in a vacuum. Many decisions of the British government, particularly those relating to land, were informed by its experiences in its other colonies and on the British mainland itself. Trade and

the protection of trade routes was a major stimulus for British colonialism but it was the possession and control of land together with the formation of towns and villages that provided an instrument for Britain’s colonial expansion. 22 Dennis Jeans remarked that Phillip’s instructions for the founding of towns and villages “were almost verbatim the same” as those of the 1763 governor of East Florida. Further the instructions to the NSW governors remained virtually unchanged until the appointment of Darling in 1825. 23

It is by reviewing the varying plans and policies for the taking possession of and managing the crown lands of colonial NSW that many aspects of the changing British ambitions and imperial relationships can be revealed. 24 Between 1788 and 1855 these policies ranged from taking possession of the east coast to annexing the entire continent and from encouraging small scale agriculture by the emancipist farmer, to the support of vast squatting runs of the wealthy wool grower.

By 1788, Britain had emerged as a leading nation at the head of the world economy. It has been described as strong, aggressive, privileged and dynamic with an empire that was simultaneously admired and feared by other competing nations. 25 While early colonial expansion such at Jamestown in Virginia in 1607 and the British East India Company’s colonisation of India, had been essentially privately established and funded, from the mid-seventeenth century British colonies had increasingly became an initiative of the Crown. 26 Economics was the key driving force but it was the formation of towns and villages, together with the control and the ability to sell or grant crown lands, that facilitated the

22 Home, *Of Planting and Planning*. p65


By the late seventeenth century, under the influence of Lord Shaftesbury, Britain’s Lord Chancellor, it had been planned that all Britain’s colonies would be brought under “uniforme inspeccion (sic) and conduct”. Shaftsbury formulated a policy, based roughly on the earlier Spanish Law of the Indies, which then became the foundation of British colonial expansion into the nineteenth century. The planning model that evolved from those policies became known as the Empire Model and was typically that of nuclear villages, each laid out on a grid pattern, connected to a major town or port in a hierarchical manner. The villages or towns acted as centres of administration for the surrounding district. (Fig 1.1)

The demands of colonial management within the Whitehall-based British colonial service, saw the emergence of a new group of professional administrators. These men, usually from the upper or upper-middle class of British society, comprised a Colonial Secretary, who went by various other titles from time to time, a body of under-secretaries and clerks. It was this organisation, under the Colonial Secretary, to which an appointed governor reported and to which a governor was required to account for decisions made within their respective colonies.

The Shaftesbury policy strongly reflected the British interest in trade and required towns to be constructed on seaports and navigable rivers. Expansion into the interiors was to be contained within areas that could be administered

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27 ———, Of Planting and Planning. p2
30 Home, Of Planting and Planning. pp38-39
and controlled, the alternative being seen as a “descent into barbarism.” The Modell was used to various degrees in the initial colonisation of such places as Charleston, Philadelphia and Savannah on the east coast of North America as well as Freetown in West Africa. The principles of Shaftesbury are evident in the instructions to the NSW governors which typically stated:

*Whereas it has been found by experience that the settling of Planters in the townships hath been very much redounded to their advantage …the said town to be laid out upon, or as near as conveniently may be, to some Navigable River or the sea coast; and you are also to reserve to us the proper quantities of land in such Townships…For erecting fortifications and Barracks or for other Military or Naval Services, and more particularly for the Building of a Town Hall and other Public Edifices as you shall deem necessary.*

The expansion of the colony from Sydney, to Parramatta and Toongabbie with the later additions of the towns of Liverpool, Windsor, Richmond, Castlereagh Pitt Town, Wilberforce and Bathurst all followed the principles laid down in the Modell. (Fig 1.1)

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Fig 1.1 Schematic Representation of the Empire Model Town Hierarchy
This system was formalised in 1826 by Darling’s classification of towns.
Source: P Farnill.

Attempts by the British government to impose central control over the colonies however, were often resisted. The upper echelons amongst the colonists or planters were businessmen, such as Macarthur and Wentworth in NSW, holding what they regarded as private estates at Parramatta, Camden and on the Nepean River.\(^{34}\) They tended to be intolerant of state intervention and resisted attempts by colonial governors to impose controls.\(^{35}\) The possession of land

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has always been a major source of wealth, and in NSW it was the right of a colonist to the free use of land that became an ongoing source of tension between the colonists and the home government.\textsuperscript{36}

It has been observed conflicting ideologies emerged within Britain’s colonial practices.\textsuperscript{37} The ideologies were at times concomitantly present and competing. The first was a perceived need for the state to exert its control and manage expansion. The government was required to outlay expenditure in establishing and defending a colony of settlement and because it was not a colony founded on trade, the main asset from which a return on this investment could be expected was land. Control could be exerted and revenues gained by the government’s alienation by grant, sale or the renting of land. The second ideology was laissez-fair capitalism. It related to free-enterprise and the right of an individual to engage in unfettered profit making schemes and wealth accumulation. Such individuals desired public expenditure and state interference that did not directly advantage them be kept to a minimum. A third ideology was utopian. It regarded colonies as an opportunity to experiment with new forms of social organisation. The Pilgrim Fathers and the Quaker settlement at Pennsylvania are examples of the latter, but they would also include Arthur Phillip’s philosophy for NSW as a place where convicts could be redeemed and the 1836 settlement of South Australia on Wakefield’s principles. Robert Home noted that the eighteenth-century colonies of Georgia, Upper Canada and Sierra Leone, conformed to this latter case and were intended either as havens for debtors or for displaced American Loyalists.\textsuperscript{38}

Throughout the British Empire, the colonists took with them the British Common Law. These traditional laws, which dated from feudal times, gave an almost unassailable right to the enjoyment and use by a land owner of his or her property. Once land was alienated from the Crown, the individual received an inalienable right to use and dispose of the property as was seen fit. The rights of

\textsuperscript{36} Burroughs, Britain and Australia 1831-1855. pp1-3
\textsuperscript{37} Home, Of Planting and Planning. pp3-4
\textsuperscript{38} Ibid.p4.
property owners challenged the foundations of the colonial government and its ability to plan and control the colony’s growth. During the early growth of NSW it was often a case of laissez faire ideologies being pitted against government-led development, with the absolute right to property a significant source of conflict throughout the entire period covered by this study.

Initially NSW was a unique experiment within the Empire. Whatever Britain’s imperial motivation for settlement, whether for trade, to protect trade routes, as a source of naval supplies or other reasons, it was Britain’s unwanted felons who were chosen to be the colonists. As a penal colony, the governor exercised the autocratic powers of a gaoler, but with time, convicts served their sentences and became free. The emancipated convicts and other immigrants began to take up land and as they did the colony metamorphosed from a gaol to a free settlement. As the colony transformed the emancipists and poorer colonists, as well as the large landholders, demanded the traditional laws and rights of a British subject.

Planning takes place within the framework of policies of the day and changed circumstances can override the intent of an earlier strategy. Change is a hazard to any long term plan. British policies both imperial and domestic were not constant, particularly with respect to land policy. Such policies had to be adapted to suit external pressures and the realities encountered in the colony. The competing aims with respect to land policies have been instrumental in shaping NSW’s growth spatially, culturally, economically and politically.

1.3 The Importance and Neglect of Land Policy.
There has been a tendency for the authors of town planning texts to relegate colonial planning policies, together with the possession and control of land, to a ‘dark age’ that paradoxically has been described as ending ‘abruptly’ circa

[^40]: Frost, *Botany Bay: The Real Story*. Introduction
1900, when the modern planning profession emerged. Historians have tended to follow the lead of the planners and have failed to acknowledge the impact that policies about the allocation and use of land have had on the colony. As noted by Robert Freestone, land policy has been regarded as a footnote in the wider historical narrative.

In establishing the colony at such a great distance from the home government the British authorities were forced to grant the governors sweeping powers. Unlike the practice in other colonies, the governor was authorized to act without a Council and had control of both military and civil courts. Watkin Tench, on hearing Arthur Phillip’s commission read at Sydney Cove, noted with some surprise the extent of the powers that had been vested in the Governor. These powers particularly related to the alienation of crown land. Although technically wielding sovereign power, the governor’s authority could not always be exercised effectively. Their efforts were often frustrated because they were not provided with the human, financial, legal, survey or military resources required to support their decrees. Within the colony the governor’s ability to command depended upon cooperation, both from the military and from society in general. In the case of land policy, this cooperation was often found to be lacking.

The governors also faced some external controls. Above the governors was the British government with its extensive bureaucracies directing policy, at times on an imperial scale, within which the colony in NSW was a minor consideration. The early governors for both their continued employment, and to ensure their future pensions, were subject to the approbation of their superiors located in

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42 Freestone, "A History of Planning." p67

Whitehall London. These officers, senior bureaucrats and usually members of the British aristocracy, were responsible to the British government and ultimately the King. The Governor himself was an appointee of a particular Colonial Secretary and thus he could rely on some support from that individual. Each change of Colonial Secretary however could herald new ideas and a lack of appreciation of difficulties that had already been faced. Frequent changes to the Colonial Secretary further complicated matters. At times a change of office reflected a political change in Britain and there are instances of three successive appointments within a period of eighteen months. The differences in priorities were at times extreme and varied between encouraging a society based upon a small farm yeomanry to one of supporting aristocrat-like pastoralists squatting on vast acreages.

Return communication between Britain and NSW could take over year. Within the colony, local conditions and rapidly changing circumstances required a level of response that could not be achieved by first consulting London. As a consequence the policies of the British government and the governors often differed and decisions made by the governors were recurrently misunderstood and critically received. While misunderstandings and working at cross purposes affected many aspects of colonial governance, the possession and control of land can be tracked as a major point of conflict. It was a source of disagreement between the British bureaucracy and the governors and between the governors and the colonists.

The society and culture that evolved in NSW was unique, partly because of the penal nature of its initial establishment but also because of its unprecedented distance from the seat of British government. This was compounded within the colony because of the difficulty of travel and the remoteness of many outer settlements. The distance and length of time between communications, both from Britain to NSW and from the governor to the colonist, supported a belief that the colony was outside of Britain’s ability to impose administrative controls. As the colony transitioned from a prison without walls to a free settlement, it was perceived that land in vast quantities was available for the taking. In the minds of the colonist, this land could be occupied with or without government approval.

The significance of land to the colony can be traced throughout the early colonial history of NSW. It can be seen as a component in James Matra’s 1783 proposal to establish a settlement, and the control of land was at the fore of Britain’s granting NSW a fully representative government in 1855. This thesis will contribute to addressing this influential but largely neglected component in the shaping of NSW, socially, politically and spatially.

1.4. Structure of Thesis

One constant throughout the colonial period was the attitude of the governors to the Aboriginal people. While the governors themselves frequently looked on them with ostensible goodwill, they nonetheless denied them any claim to possession of the land. Chapter 2 describes the invisibility of the indigenous population with respect to European possession of land. From the original claim by James Cook in 1770, throughout the colonial period and beyond, the Aboriginal people were officially regarded as having no prior or coexisting right to land. Despite their maintenance of a sophisticated culture, with a complex relationship to the land, for tens of thousands of years the Aboriginal people were regarded as never having gained the right of ownership. The indigenous population was in effect simply moved beyond the fences and became

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trespassers on their traditional lands. 49 Although, at times the governors displayed a compassionate attitude to the Aboriginal people, the colonists rapidly moved beyond the reach of the governors’ authority and, in seeking land for their flocks and herds, displaced the indigenous population by force if necessary.50

The British motivation for establishing a colony is discussed in Chapter 3. Whatever the impetus, dumping ground for convicts and/or strategic outpost, it was established as penal colony under military rule. It was a colony controlled by a military governor with a “plenitude” or “awesome power.”51 The chapter describes a land policy based upon a traditional colonial model prescribed in the seventeenth century by the first Earl of Shaftesbury. This model envisaged a contained colony expanding gradually outwards from a central core through a series of nuclear villages. Each of the villages served as local administrative centres and supported adjacent small scale agricultural plots. A yeomanry of emancipated convicts and rank-and-file military were to work small agricultural allotments sufficient to supply their own food and not be dependent on the colonial commissariat. Within townships a grid pattern was preferred as the most convenient form of town plan providing straight roads and regularly shaped blocks.

The relationship between the governor and his surveyors is discussed and it is noted that while authors such as Terry Kass give most credit to the surveyors for the colony’s town plans, the governor as the senior officer was ultimately


responsible for policy and standards. In some cases this meant personal planning by the governor and in others decrees indicating how farms or townships should be laid out. Either way it was the governor who exercised ultimate authority within the system of land control.

The land policies of the individual governors are examined in detail in Chapters 4 to 9 with the first governor Arthur Phillip, described as “Setting the Cornerstone,” in Chapter 4. In this Phillip is depicted as having fixed the colony’s location and introduced policies on which all subsequent governors would be required to build. Chapter 5 describes the loss of Phillip’s vision and how, on the assumption of power by a landowning oligarchy, measures were put in place that thwarted Phillip’s plan of Sydney. It was a power grab that culminated in Governor William Bligh’s overthrow. The re-establishment of vice-regal control by Governor Macquarie, known as the “Father of Australia” and the “Roadmaker,” is described in Chapter 6. Under Macquarie’s rule the land began to be opened up, the barriers of containment were breached, outward expansion of the colony began and a new era in land policy dominated by squatting on unoccupied crown land evolved.

Chapter 7, the “Reaping of the Whirlwind,” reviews the tenures of governors Brisbane, Darling and Bourke, particularly in their attempts to maintain land controls during an upsurge of unregulated squatting. They attempted to impose order and control expansion by decree and regulation, but with vast tracts of land available for the taking, their efforts met with little success. Governor Bourke eventually capitulated and solved his dilemma by legitimising the practice of squatting.

The next two chapters 8 and 9, describe a time of political change. It was the period in which the colony moved towards representative government. Chapter 8 discusses the problems encountered by Governor Gipps as various Colonial Secretaries, unable to appreciate the problems the local administration faced, attempted to impose solutions to problems they perceived from afar. Chapter 9

details the changes under Governor FitzRoy. These effectively removed authority over crown land from the autocratic decisions of the governors. Chapter 10 concludes the work, offering a review and reflecting on a rich history of successful and unsuccessful land controls in NSW.

The structure of this work is partially chronological and partially thematic. Where possible, when describing individual governors, issues have been grouped together in a theme. Because of this some repetition is unavoidable but necessary to provide a better picture of the thoughts and actions of the various actors. A table is appended at the end of the discussion of a specific governor. The table is mainly sourced from the records of the Surveyor General’s Department, and indicates main localities settled, town plans registered, and the quantity of land alienated. The tables are incremental with the new settlements established under each particular governor shown in bold font.

1.5. Literature and Sources

Planning has not been considered a major theme of Australian history - most national planning texts say nothing about urban history and many urban history texts say little about planning.

Robert Freestone 2010

There is an apparent hiatus in much of the historical literature with respect to the analysis of planning and land policies during NSW’s colonial period. The hiatus raises a question of how town planners and historians interrelate and which profession is the custodian of the history of land. Leonie Sandercock held that the history of planning had become a subset of town planning rather than a subset of history. Planners, she wrote, tend to describe the history of their profession, a field of scholarly endeavour that came into being in the early twentieth century. The work of the non-professional planner (a colonial governor would fall into that category), she asserted, has been ignored.

In 1986, planner Jeremy Dawkins, suggested that town planners neglect colonial history because “as befits their job” they are mainly concerned with the

54 Sandercock, Making the Invisible Visible: A multicultural planning history. p39
future. With a few notable exceptions, little has changed. As recently as 2012, J. M. Drown wrote that the ownership of land featured less than expected in the history of Australian settlement. To him, the possession of land has tended to be “subsumed” or “submerged” into other historical narratives.

Town planner and historian Robert Freestone, who, since the mid-1980s, has made a significant contribution to addressing the neglect, echoed Dawkins and offered an explanation for an apparent lack of interest in colonial planning and land policy. Freestone blamed what he assessed as an apparent indifference to the planning profession’s general attitude towards its own history. He recently asserted that since the profession is by definition organizing the future, its members find it easy to sweep the past aside.

Town planning texts that review the history of land policy in NSW invariably commence their narratives in the early twentieth century or later, some even open their historical reviews with the preparation of the County of Cumberland Planning Scheme of the late 1940s. One account published in 2003, focused on the planning of Sydney but confined itself almost entirely to the post-1945 period and contained a chapter indicating that the 1940s was the “beginning of

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55 Dawkins Jerremy, "Town Planning Before Town Planning Schemes" (Sydney, 1986).
56 Proudfoot, "Town Plans and their Impact on the Settlement Process in Australia." p(iii)
57 Academics John Toon, Helen Proudfoot, Miles Lewis and Robert Freestone are among those acknowledged as exceptions.
58 J.M. Drown, "An Apparatus of Empire" (Sydney University, 2012). pp76-77
59 Freestone’s web page at the University of NSW at the time of writing (February 2015), lists 58 works and journal articles, the overwhelming majority dealing with some aspect of the history of planning.
60 Freestone, Urban Nation: Australia's Planning Heritage.
61———, "A History of Planning."
62 Auster, "Origins of the Australian Regional and Metropolitan Planning Movement." p27
planning for the metropolis.”  


64 Richard Waterhouse, Personal communication and email, 5 June 2013.

around eighty years ago. His major works, *A History of Australian Land Settlement* and *The Squatting Age in Australia*, were first published in 1924 and 1935 respectively. Although Roberts’ statistical data and tabulations are still sound, they will be extended in this thesis by the use of more readily available material particularly from the Trove newspaper archives.\(^6\) These archives can provide a human element which will augment the statistical data provided by Roberts and will provide an insight into the contemporary reactions within the colony. The inclusion of a contemporary perspective will allow many of the issues and changes discussed by Roberts to be seen in a wider context as will the use of a range of secondary sources written since the 1930s.

The works of D.N. Jeans, *Town Planning in NSW 1829-1842* and the *Official Town-founding Procedures in N.S.W. (1828-1842)*, like that of Roberts, are standard but now dated texts.\(^7\) Jeans described the structures under which the governors attempted to implement and enforce British land policies. He describes the hierarchical organisation of command whereby decision making flowed from the British cabinet to the governor and his subordinates and the information system that flowed in a reverse direction along the same chain. (Fig 1.2). Jeans noted that both decision making and information transferral was subject to selection and modification as it passed between participants. Jeans’ works, written between the 1960s to 1980s, have also been expanded by the use of newspaper sources accessed through the Trove database which provide an additional dimension to the research.

To form a full appreciation of the importance that land and land tenure played in the colonial history, works relating to survey or the history of the Surveyor General’s Department must be consulted, but they tend to ignore the social and political circumstances forming the background to land policies. Books such as *Sails to Satellites* by Terry Kass or journal articles such as those of Jillian


Oppenheimer, “Survey and Settlement in NSW”, or more recently Iain Stuart’s “The Surveyor’s Lot,” and a PhD thesis by J.M. Drown, An Apparatus of Empire, relate mainly to the physical aspects of the survey process, but not to the background or consequences of land policies and controls. Similarly a study by Alan Andrews, Major Mitchell’s Map provides a detailed account of Mitchell’s trigonometrical survey of the colony’s initial nineteen counties, but with the exception of the introductory chapters, which explain the necessity of the survey, it offers little beyond some background information for this study. The works on survey, generally, described the trials and hardships faced, and the procedures that were developed, as the surveyors traversed a web of settlement that rapidly expanded from Sydney Cove. These studies, having been written for an audience with survey interests, barely touch on such things as the over-arching policy of Britain, or the attempts by the governors to stamp their authority over the squatters.

Research relating to land use and settlement has not entirely disappeared. Multiple studies on the settlement of land have been written by Helen Proudfoot, with more specific studies of localities written by authors such as Paul-Alan Johnson, in The Phillip Towns and Albion; the early chapters of Brian Fletcher’s Grose, Paterson and the Settlements on the Hawkesbury; Miles Lewis’ Suburban Backlash which is concerned mainly with Melbourne; and Phillip Lisle’s, Rum Beginnings which also describes the Grose years. A detailed work, Macquarie’s Towns undertaken by Ian Jack was published in 2010 to commemorate the 200th anniversary of Governor Macquarie’s governorship.

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using a series of maps, Jack traces the growth of each of the Macquarie towns through time. With respect to this study, Jack’s work provides added insight into the Macquarie era.

Peter Burroughs, in *Britain and Australia 1831-1855* provides a comprehensive introductory chapter on the alienation of crown land by sale during the early stages of colonisation. Burroughs’ book then traces crown land issues throughout the administrations of Governors Bourke, Gipps and FitzRoy. This existing literature has supplied both a historical background and a perspective on the development of particular issues, but is generally limited in its wider outlook or period of analysis. By consulting these works, however, a more comprehensive perspective has been achieved.

For the history of planning in Australia, Robert Freestone has written numerous works, with his *Urban Nation* one of the more recent. Peter Hall, in his *Cities of Tomorrow*, provided an influential outline of international planning. Two documents published by the Planning Research Centre Sydney Planning or Politics and Dialogues in Planning along with Ashton’s *The Accidental City* and Aplin’s *A Difficult Infant* have provided both primary and secondary material on the growth of Sydney. Other works such as Smith-Morris’ *British Town Planning and Urban Design* as well as Relph’s *The Modern Urban Landscape* have been used as additional sources on international planning. Such books provide a history of planning, but more importantly, their limited numbers reinforce the argument that NSW colonial planning policies of the eighteenth and nineteenth centuries, have become neglected topics.

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71 Burroughs, *Britain and Australia 1831-1855*.
An influential work by Robert Home, *Of Planting and Planning*, has been relied upon to provide a history of British methods of colonisation and Lord Shaftesbury's seventeenth century, *Grand Modell*. The *Grand Modell* together with Granville Sharp’s revisions in *A General Plan for Laying out a Towns and Townships on the New-Acquired Lands in the East Indies, America or Elsewhere*, formed the philosophies and the pool of knowledge with which Britain formulated its colonial land policy and strategies.

*The Colony* and other works by Grace Karskens and Beverly Kingston’s *History of New South Wales* provide recently published histories of NSW. These coupled with the numerous works of Geoffrey Blainey, Alan Frost and the earlier historians A.G.L. Shaw, George Mackaness and Brian Fletcher have provided the background for the colonial governors’ rule over NSW. They have been utilized as a source of understanding for the social and political events that took place. Authors such as Thomas Keneally, in *Origins to Eureka*, Robert Hughes, *The Fatal Shore* and David Hill’s *1788, The Brutal Truth of the First Fleet*, while written in a popular style, have also proven valuable in setting the

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75 Home, *Of Planting and Planning*.


stage. All of these historians examined different aspects of colonial life and events that took place during the colonial period but it is notable that in all, little emphasis is directed towards land, its control, use and possession, as a significant force driving the growth of the colony.

For other secondary sources, extensive reference has been made to the many papers appearing in the *Journal of the Royal Australian Historical Society* and the *Journal of Australian Colonial History* as well as the journals of a number of other professional societies. These documents, while usually not specifically describing land policy, contain elements that can be extracted and re-interpreted when examined from the perspective of land.

For biographies, reliance has been placed upon the *Australian Dictionary of Biography* and the works of individual biographers such as Malcolm Ellis and Michael Duffy for John Macarthur; Alan Frost, Derek Parker and Michael Pembroke for Arthur Phillip; George Mackaness, A.G.L. Shaw and Scott Brown for William Bligh and Brian Fletcher for Governor Darling. Biographies of other governors have been found in David Clune and Ted Turner's *The Governors of New South Wales* and Frederick Watson’s introductions to *the Historic Records of Australia.*

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Where possible, archival and other similar collections have been consulted as a resource from which to extract land policies from the contemporary accounts of events. Original historical documents, or their reprints, have been sourced with a major reliance on the newspapers of the day published on the National Library of Australia’s Trove site. The Cultural Collections in the Auchmuty Library at the University of Newcastle holds a number of published journals of major actors such as Phillip, Collins, Southwell and Tench which provided an insight into the events of the time, the interaction between the major players, and their individual thoughts.

Copies of some original documents, plans, ships journals and private letters, unavailable in published works, have been obtained directly from the UK National Archives at Kew, with others sourced from the State Library of NSW and the NSW State Records Office at Kingswood. A major archive of correspondence, to and from Britain is found in the seven volumes of the Historic Records of New South Wales (HRNSW) and the twenty-six volumes of the Historical Records of Australia (HRA). At the turn of the twentieth century, when these collections were being compiled, land was considered an important issue and while the documents are perhaps less rich for more contemporary issues such as gender, sexuality and intercultural relations, they provide extensive material relevant to this thesis. It is from these primary sources that land policies and their consequences have been extracted from the web of NSW history.

Fig 1.2 Land: Decision and Information Systems in Colonial NSW \(^{86}\)

Source P. Farnill.

\(^{86}\) See also, Jeans, "The impress of central authority upon the landscape: south eastern Australia 1788-1850." p3
1.6. Land and its Possession

For millennia, it has been the control or possession of land that has provided a major source of wealth and been the cause of much human conflict. The demonstration of a state's power is usually contingent upon its ability to exercise control and influence over land. Wars have had at their root the expansion of a state or the control of territory, and it can be argued that most exploration was aimed at the discovery and possession of new lands.⁸⁷ Colonial NSW was no exception. As described in 1957 by historian C.J. King:

_The one continuous link which binds any one period of New South Wales history to the next has to do with land...it was the land which was the primary source of wealth and thus the most prized and sought after of possessions._⁸⁸

At least four levels of land possession can be discerned in this analysis. The first is at an international and strategic level with the other three being more local: the appropriation of land from the Aboriginal people; the governors' regional attempts to contain the colony; and then at the grass-roots, the occupation of land by the individual colonist. The mix of these levels will vary from chapter to chapter according to the particular stage of development.

At an international level, British policies in colonising NSW can be envisaged as an interplay between the demands of imperial ambitions and colonial conditions.⁸⁹ Britain had sought to establish itself on the continent of New Holland. It did this to the exclusion of any of its eighteenth and nineteenth century foreign rivals. France, Spain and to a lesser extent Holland were the main concern but also the presence of American whalers, and the possibility of their settlement on the coastline, raised disquiet. Authors such as Alan Frost

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⁸⁸ King, _An Outline of Closer Settlement in New South Wales_. p9

⁸⁹ Burroughs, _Britain and Australia 1831-1855_.p1
maintain such strategic considerations were a prime reason for the colony’s existence."90

On a second level, possession involved the taking of the territory from an indigenous population. This was accomplished not by conquest, treaty, or persuasion, but by the use of a convenient (for the British) legal fiction that accorded the right of first possession to the British Crown. Cook had been instructed to take possession only if the continent was uninhabited. If inhabited he was to take possession, only of suitable locations, after receiving consent from the “natives.”91 After a few fleeting encounters Cook concluded that the Aboriginal people lived in a state of nature and therefore could exercise no claim to the land.

Enlightened Governors such as Sir Richard Bourke, seemingly harboured misgivings with respect to the rights of the Aboriginal people and he expressed some unease in that respect. To Bourke, the acknowledgement of prior ownership, implicit in John Batman’s abortive treaty with the indigenous people of Port Phillip, became a source of alarm.92

Thirdly, and within the colony itself, a perceived need to maintain order by the containment of spatial expansion defined British land policies. Initially the governors used edicts and limiting location of land grants in an attempt to restrict the colony’s expansion. This control was lost in the 1820s when colonists began illegally occupying crown land. In seeking to contain spatial expansion the governors promoted a myth of impenetrable mountain barriers to the west, and unknown dangerous lands to the north and south. Once the barriers were broken, containment was no longer feasible. An area known as the Nineteen Counties was established, to set a boundary limit, beyond which no land would be alienated and no services or government protection would be

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90 Frost, Botany Bay: The Real Story, pp130-156
91 Stephens, "Secret Instructions to Lieutenant James Cook, 30 July 1768."p2
offered. The governors, however, lacked the resources to physically enforce the
prescribed limits.  

Lastly at a local level, the colonists viewed the attempts by the governors to
control the possession of land as an attack on their ability to gain wealth.
Government land policy, and the governors’ attempts to enforce that policy,
dominated the land issue. This, together with lack of survey, conditions of
ownership and the right of a colonist to occupy land, became an unresolved
source of tension within the colony. The means by which land was obtained,
and the quantity occupied, resulted in social conflict. It formed schisms between
the wealthy landowners, the free settlers or emancipists on small holdings and
the squatters who simply occupied as much land as they desired. The last
group was often beyond the Limits of Location and usually beyond the influence
of the law.

By examining the land use decisions of the governors, during early colonial
period, this thesis describes the governors’ efforts in reconciling the demands of
the Colonial Office with the resources they had available. It was a difficult task,
particularly with the Colonial Secretary’s demand for containment and the
enforcement of land regulations that were often beyond the governor’s capacity
to control.  

Throughout the discussions on individual governors (Chapters 3 to
9), it will be demonstrated that a knowledge of the governors attempts to control
land usage, and the colonists’ reactions to those attempts, is vital to the
understanding of the unfolding of Australian history.

1.7. Summation

In any plan or policy decision, there is often a gap between the ideal and reality.
This gap was apparent in the colonial land policies, originating in Britain and,
the internal policies of the respective governors. By tracing the actions of the
governors, from Phillip to FitzRoy, it will be shown that this gap was a feature of
almost all NSW land policies. As will be demonstrated, there is a distinction

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93 ———, ed., vol. 21, HRA (Sydney: Library Committee of the Commonwealth Parliament,

94 Oppenheimer, "Surveys and Settlement : N.S.W. 1825-1836." pp25-26
between a failure to plan and a plan that failed. Colonial NSW offers examples of both but a failed plan is not evidence of a lack of policy or planning. As is typical of planning of today, no matter how well a plan is conceived, there is often a difference between the plan’s intent and its consequences.

The history of NSW unfolded within an urban and rural geography determined by the European utilisation of land. It was based upon the philosophy of possession and control, with land as a commodity to be bought or sold. Land and its possession were regarded as both a source and a mark of wealth. As a consequence of the claim by the British Crown to the possession of the Australian continent, the Crown exercised its sovereignty and assumed the accompanying right to grant, lease or licence the land’s occupation.95 As will be described in the next chapter, any prior claim of ownership by the indigenous population was not entertained or was outside the bounds of European comprehension.

The particular conditions of the colony introduced local variations and responses to land usage and government plans. Such influences introduced a unique colonial element to the way in which land was utilised. Predominantly, in the early years, land policy was determined by decisions made by a London-based Colonial Secretary with little appreciation of colonial conditions. Some decisions however, were made by the colonial governors and some aspects of land utilisation occurred as a result of unforeseen consequences. At times the governor did not comply (or was incapable of complying) with instructions from London, on other occasions the colonists deliberately flouted a government decree.

It will be demonstrated that land policy and the possession of land had a defining role in almost all aspects of NSW history and it is a field that should not be neglected in the historical narrative. Although crucial to a complete understanding colonial history, the consequences of the colonial governors’ land use controls, failures of control and the ignoring of regulations by the

95 Prior to c1810 Australia was known as New Holland.
settlers, have been often overlooked or neglected by both planners and historians alike. This thesis highlights their impact and brings such matters back into the discussion.
<table>
<thead>
<tr>
<th>Administration</th>
<th>Event</th>
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<tbody>
<tr>
<td><strong>Arthur Phillip</strong></td>
<td>1788 - Selected Sydney Cove – Town Plan Sydney</td>
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<tr>
<td>Jan 1788 to Dec 1792</td>
<td>1790 - Town Plan Parramatta</td>
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<td>1792 - Town Plan Toongabbie</td>
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<tr>
<td><strong>Francis Grose</strong></td>
<td>1792-94 - Land Granted to NSW Corps Officers Officers formed oligarchy and dominated colony’s finances. They gained wealth and became the colony’s major land owners 1794 - Permitted settlement along the Hawkesbury.</td>
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<tr>
<td>Dec 1792 to Dec 1794</td>
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<tr>
<td><strong>William Paterson</strong></td>
<td>1794-1795 – Continued Policies of Grose</td>
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<tr>
<td>Dec 1794 to Sep 1795</td>
<td>Large areas alienated to the officer corps</td>
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<tr>
<td></td>
<td>In one year alienated more land than Arthur Phillip</td>
</tr>
<tr>
<td><strong>John Hunter</strong></td>
<td>1795-1800 – Administration dominated by futile attempts to control the officers</td>
</tr>
<tr>
<td>Sep 1795 to Sep 1800</td>
<td>1796 – Commenced a central register of land ownership</td>
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<td></td>
<td>1797- Improved road access to Parramatta and the Hawkesbury</td>
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<tr>
<td></td>
<td>1800 –recalled in disgrace</td>
</tr>
<tr>
<td><strong>Phillip Gidley King</strong></td>
<td>1800-1806- Administration also dominated by futile attempts to control the officers</td>
</tr>
<tr>
<td>Sep 1800 to Aug 1806</td>
<td>1801 – Established settlement on the Hunter River</td>
</tr>
<tr>
<td></td>
<td>1802 – Built barracks at Castle Hill</td>
</tr>
<tr>
<td></td>
<td>1802 – Hunter settlement abandoned</td>
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<tr>
<td></td>
<td>1803- Ordered VDL be colonised</td>
</tr>
<tr>
<td></td>
<td>1803 – Collins attempts settlement at Port Phillip later moved to Hobart</td>
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<tr>
<td></td>
<td>1804 - Re-established Hunter River settlement; Newcastle</td>
</tr>
<tr>
<td></td>
<td>1804 – Norfolk Island abandoned in favour of Port Dalrymple and New Norfolk</td>
</tr>
<tr>
<td><strong>William Bligh</strong></td>
<td>1806-1807 – Power of Officer Corps challenged</td>
</tr>
<tr>
<td>Period</td>
<td>Events Description</td>
</tr>
<tr>
<td>-------------</td>
<td>--------------------</td>
</tr>
</tbody>
</table>
| Aug 1806 to Jan 1808 | 1807 – Refused to make 5000 acre grants promised to Macarthur  
1807 – Attempted to reinstate Phillip’s plan of Sydney by resuming town lots and demolishing improvements  
Jan 1808 – Mutiny and arrest |
| George Johnston | 1808 – Responsible for Bligh’s arrest  
Appointed Macarthur Secretary to the colony.  
Granted 2000 acres to his son |
| Joseph Foveaux | 1808 - Was not party to the mutiny, but nonetheless did not reinstate Bligh. Disagreed with Bligh’s attempts at resuming land. Made few land grants |
| William Paterson | 1809 - Maintained the position of both Johnson and Foveaux. Was very generous in granting of land. In less than one year he granted more land than any one of his predecessors |
| Lachlan Macquarie | 1810 - NSW Corps disbanded  
1810 - Grants made during interregnum nullified  
1810- Sydney street system re-designed  
1810 - Liverpool founded  
1810 - Selected the sites of the five Macquarie towns, Windsor Richmond Castlereagh, Wilberforce and Pitt Town  
1813 - Blue Mountains officially crossed  
1815 - Road across the mountains constructed  
1815 - Bathurst founded  
1819 - Bigge commissioned to report on the colony.  
1820 – Port Macquarie settlement founded |
| Thomas Brisbane | 1821 - Land granted in proportion to capital introduced into the colony. One acre per £1  
1823 – Attempted unsuccessfully to survey the colony into one mile squares  
1823- Legislative Council appointed to advise the governor. |
<table>
<thead>
<tr>
<th>Year</th>
<th>Event Description</th>
</tr>
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<tbody>
<tr>
<td>1824</td>
<td>Issued Tickets of Occupation allowing settlers to occupy unsurveyed land</td>
</tr>
<tr>
<td>1825</td>
<td>Land to be made available by purchase as well as free grant.</td>
</tr>
<tr>
<td>1825</td>
<td>System introduced to assist immigrant labour</td>
</tr>
<tr>
<td>1826</td>
<td>Townships systematically classified in a hierarchical system based on importance for quit rent purposes.</td>
</tr>
<tr>
<td>1826</td>
<td>Initial Limits of Location Proclaimed</td>
</tr>
<tr>
<td>1827</td>
<td>Land route between Sydney and Port Phillip</td>
</tr>
<tr>
<td>1828</td>
<td>Town Planning standards proclaimed</td>
</tr>
<tr>
<td>1828</td>
<td>The Great North, South and Western Roads under construction</td>
</tr>
<tr>
<td>1828</td>
<td>Mitchell’s trigonometrical survey commenced</td>
</tr>
<tr>
<td>1829</td>
<td>Nineteen Counties Proclaimed</td>
</tr>
<tr>
<td>1831</td>
<td>Sale of land by auction only, minimum price of land set and the practice of free grants abandoned.</td>
</tr>
<tr>
<td>1831</td>
<td>Land Fund using process of sales used to subsidise British immigration to NSW</td>
</tr>
<tr>
<td>1832</td>
<td>Proclaimed Hyde Park for public use</td>
</tr>
<tr>
<td>1834</td>
<td>Mitchell’s trigonometrical survey complete</td>
</tr>
<tr>
<td>1835</td>
<td>Batman’s treaty with the Aboriginal people of Port Phillip declared void.</td>
</tr>
<tr>
<td>1836</td>
<td>Legislation passed to avoid adverse possession.</td>
</tr>
<tr>
<td>1836</td>
<td>Licences issued to permit grazing on Crown wastelands</td>
</tr>
<tr>
<td>1837</td>
<td>Visits Port Phillip - Melbourne founded</td>
</tr>
<tr>
<td>1838</td>
<td>Captain Bremer established settlement at Port Essington</td>
</tr>
</tbody>
</table>

**Ralph Darling**  
Dec 1825 to Oct 1831

**Richard Bourke**  
Dec 1831 to Oct 1837

**Kenneth Snodgrass**  
Oct 1837 to Feb 1838

**George Gipps**  
Feb 1838 to Feb 1838
<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
</tr>
</thead>
</table>
| July 1846 | 1838 - Minimum price of crown land increased to 12/- per acre.  
1839 – Added fee placed on squatting licence based upon number of head carried by a run.  
1840 – Experiment all land in the colony to be sold at fixed price £1 per acre.  
1840 - NZ separated from NSW  
1841 – System of Special Survey introduced for parcels above 5120 acres  
1842 – System of Local Government established  
1843 – Legislative Council partially appointed and partially elected  
1845 – The granting of land to private companies for the financing of railways proposed. |
| Charles FitzRoy  
Aug 1846 to Jan 1855 | 1846 – Squatters granted permanency of occupation under a pastoral lease.  
1846 – Land Classified into three zones, settled, intermediate and unsettled. Different leases applied to each zone.  
1851 – The colony of Victoria declared  
1851 – FitzRoy Governor in Chief of NSW, Vic. VDL & SA  
1852 – Fails to ensure uniform rail gauge through the colonies  
1855 – Fully representative legislature elected. |
CHAPTER 2. THE TRADITIONAL OWNERS

2.1. Outside of the Fence - Dispossession

*They seem to fail to understand our method of stock raising and consider the animals are imported here for their own convenience, every effort is made to convince them their place is outside the fence*

William Hilton Hovel 1825

2.1.1. The Euro-centricity of Colonial Land Tenure

It is acknowledged that this dissertation is Euro-centric. It is exclusively about European settlement and other than within this chapter, makes little or no reference to the indigenous people who had held the land for 40,000 to 60,000 years before either Cook or Phillip and who continued to live in it throughout the period under consideration and up to the present time. In ignoring the land’s traditional owners the work could be seen as perpetuating the “Great Australian Silence,” but this is not the intention. The Euro-centricity is a deliberate action on the part of the writer to limit the scope covered. This is necessary because the interface of the Aboriginal people with the European based system of land ownership would make a major study in its own right.

2.1.2. A Non-people living in an unoccupied Land

The British need for regulation and control, coupled with European concepts of land use and land ownership, were the antithesis of the Aboriginal way of life. When Cook claimed possession of a land mass on behalf of an English King and designated the land New South Wales, under European laws and tradition the indigenous people were in effect dispossessed of their land. His

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1 Hovell, "Diary of my travels within the colony of N.S.W. .”
3 Australian anthropologist William Edward Hanley Stanner coined this phrase in a 1968 Boyer lecture to describe a cult of wilful forgetfulness when it came to the dispossession of Aboriginal people.
4 Order in the sense of surveyed boundaries planned roads and towns.
instructions had contained the requirement that if a land was inhabited he had first to obtain a treaty prior to possession. Thus in taking possession without a treaty and without bothering to offer them such “trifles as they may value” he had in effect declared the entire eastern coastline as being inhabited by an indigenous race that was incapable of possessing land.\(^6\)

Even before Arthur Phillip stepped ashore at Botany Bay, laws had been made on the other side of the world that would ultimately affect Aboriginal lives.\(^7\) With an arrogance which has been described as “breathtaking,”\(^8\) the British viewed the land as “a legal desert,” an un-owned land of which the British Crown had become the first ever proprietor.\(^9\) This followed a recognised practice applicable since Elizabethan times under which the British regarded any lands not already possessed by a Christian prince as theirs to possess or occupy.\(^10\) In this there was a complete ignorance and lack of understanding of Aboriginal land use traditions and customs.\(^11\) The modern debate seems to have descended into one of historiography\(^12\) but whether defined as *Terra Nullius* (now a controversial term), un-possessed, an empty land which was clearly peopled, or some other nomenclature, the lack of prior ownership was a European invention.\(^13\) It was a concept imposed on NSW which both justified the

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\(^6\) Stephens, "Secret Instructions to Lieutenant James Cook, 30 July 1768." p2

\(^7\) Karskens, *The Colony*. p1

\(^8\) Toon, "The Management and control of Land use Planning in N.S.W. since 1788." p145

\(^9\) Proudfoot, "Town Plans and their Impact on the Settlement Process in Australia." p28 ; Frost, *Botany Bay Mirages : Illusions of Australia's Convict Beginnings*. pp176-189 ; Karskens, *The Colony*. p33 & 34 ; Francis. Gordon. Clarke, *Australia; A Concise Political and Social History* (Sydney: Harcourt Brace Jovanovich Inc., 1992). p44 Note although the term Terra Nullius is now thought not to have been used, (Michael Conner claims that the term is a “modern legal contrivance”) but nonetheless, the British regarded the continent as un-owned territory and a land theirs to possess. Prior ownership was not even considered; the Aboriginal people were simply ignored and pushed aside.


\(^11\) Karskens, *The Colony*. p400

\(^12\) Keith Windschuttle and Henry Reynolds cited in - Deborah Gare and Ritter David, eds., *Making Australian History: Perspectives of the past since 1788* (Melbourne: Thompson Learning, 2008). p161; Waterhouse, "History as a Contested Territory." p10

possession and the colonisation of an ‘empty’ territory. McAllan explained that the colonists exercised a belief that the Aboriginal people were nomads who by their apparent inability to cultivate the land “demonstrated an incivility that justified European settlement”. To the newcomers, it was a land to be taken. It had primitive animals and as restated colourfully by Hughes, “hardly less primitive men”. In the European mind, ownership was displayed by boundaries, straight lines and fences, with communal areas separated from private. The Aboriginal concept of belonging to or being one with the land was incomprehensible and the land was settled with no concession to the Aboriginal presence.

The Aboriginal people, even to the more enlightened amongst the colonists, were initially little more than an entertainment. They were described by David Collins as children of ignorance, a race of people that had not matured. They were seen derogatorily as leading an animalistic existence and almost as a parasitic people simply taking from the land and moving on. Although later regarded as treacherous and dangerous, initially they offered the colonists little more than an insight into lives of a miserable and primitive people. They were simply pushed aside, regarded as still being “of nature” enclosing and tilling no ground, building no roads or houses and possessing no polity capable of owning land or administering a system of laws. Grace Karskens in describing their plight referred to them as “invisible”:

Fitzmaurice argued that Terra Nullius was a legal fiction and the Aboriginal people were not dispossessed by a court of law but by “A myriad of different processes and events in everyday life” To him the term began to be used in 1938 to describe the method by which the British took possession.

14 Karskens, *The Colony*. p34
17 McHugh, *Aboriginal Title; The Modern Jurisprudence of Tribal Land Rights*. p32
18 Collins, *An Account of the English Colony in New South Wales*, vol. 1. p381
19 Britton, *HRNSW Vol 2*. p1 (Matra’s Proposal); Clarke, *Australia; A Concise Political and Social History*. p7
...retreating or being forced to the fringe areas, seeking safety, refuge and sustenance under the cover of the remaining bushland, they literally disappeared from sight.  

Kay Anderson discussed the problems that the Europeans had in categorising the continent’s indigenous people. She described a “crisis in humanism” which led to a need to know how and where to rank the Aboriginal people on the scale of human development. The Europeans found the Aboriginal culture unintelligible on a number of fronts. All humans it was thought shared a common essence which would raise them above other life-forms, which it was assumed “merely lived.” Anderson reflected that from their first contact with Cook and Banks, the Aboriginal people were not perceived as fitting within the then “prevailing enlightened ontologies of the human as a nature transcending being.”

To philosophers such as John Locke the indigenous Australian would have been at the lowest state of human economic development, gathering only what the land offered. According to the prevailing thoughts of the day, “people could only own land if they exploited it.” There was a belief that only labour gave the right to property, but the Aboriginal people subsisted from the gifts of the land and thus, to the European mind, the Aboriginal peoples had no claim of possession.

This condescending attitude prevailed within both the colonial administration and early settlers and despite the continent obviously sustaining a race of

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21 ———, The Colony. p534
24 Andrew Fitzmaurice cited in ———, The Colony. p35
25 Ibid. pp34-36 ;Clarke, Australia; A Concise Political and Social History. p7
people, permitted them to envisage a land which was unclaimed.\footnote{Stephen Hamnett and Robert Freestone, eds., \textit{The Australian metropolis : a planning history} (St Leonards, N.S.W.: Allen & Unwin, 2000). p11; Hill, 1788 - \textit{The Brutal Truth of the First Fleet}. p218; Karskens, \textit{The Colony}. p35} It was a misreading, but one which would continue for over 200 years.\footnote{Clarke, \textit{Australia; A Concise Political and Social History}. p14} Even as late as the 1990s Geoffrey Blainey argued that Aboriginal land management was environmentally wasteful and that the overthrow of Aboriginal society was both inevitable and beneficial because “Europeans made better use of the land.”\footnote{Blainey, "Drawing up a Balance Sheet of Our History." p10}

Perversely, it has been long argued and as comprehensively put by Gammage, it was the unrecognised outcomes of Aboriginal land management that the Europeans enjoyed and so often remarked upon. There are numerous references, by Cook, members of the First Fleet and others, to the land displaying the appearance of a “gentleman’s park” and of cleared areas that allowed lawn-like grasses to flourish.\footnote{Bill. Gammage, \textit{The Biggest Estate on Earth; How Aboriginies Made Australia} (Sydney: Allen & Unwin, 2011). p 6 & 7; Karskens, \textit{The Colony}. p28} Gammage maintained that the Aboriginal peoples not only made use of their land but had extended their activities to land care, with methods of control, primarily fire, that could be practised today. He makes the point that the Aboriginal people were not passive nomads as assumed by Cook but were active in making all life abundant, sustainable, convenient and predictable in their own designated country. They had put the mark of humanity on the land but it was a mark that the new-comers did not link with human actions.\footnote{Gammage, \textit{The Biggest Estate on Earth; How Aboriginies Made Australia}. p323; Karskens, \textit{The Colony}. p36. Paul Memmott and Stephen Long, "Place Theory and Place Maintenance in Indigenous Australia," \textit{Urban Policy and Research} 20, no. 1 (2002).p40} The blindness of Phillip to the Aboriginal methods of land improvement is illustrated in a letter to Sir Phillip Stephens. In this letter Phillip expressed wonder that so many trees had been destroyed by fire. Rather than attributing the burning to human intervention, he assumed it must have a natural cause:
I have seldom gone a quarter of a mile without seeing trees that appear to have been destroyed by fire...I believe the gum trees strongly attract the lightning.\textsuperscript{31}

Even under the narrow European definition of ownership requiring the mixing of labour with the soil,\textsuperscript{32} it would appear that the Aboriginal people were entitled to be considered as having established possession. Karskens describes the Aboriginal use of fire as a tool for improving the land and also describes the construction of fish traps and waterways to farm eels.\textsuperscript{33} Trees were felled as a bridge to cross rivers and there are claims that other sophisticated farming and agricultural practices were carried out. These included the growing of crops such as yams, millet, fruits and grain and the husbandry of animals.\textsuperscript{34} The Aboriginal people were condemned to dispossession because the invaders were unable to comprehend their land management measures.\textsuperscript{35}

The Aboriginal People were thus dispossessed of their traditional lands, by a people with superior technology, who believed their lifestyle was by nature a higher level on the evolutionary scale. The colonists in taking possession of the country believed they had a right to do so. They were unable to comprehend the values and practices of a culture so far removed from their own.

\subsection*{2.2. Aboriginal Land Tenure}

\hspace{1em} …the land was familiar, crisscrossed by paths and marked by an intimate geography of sacred sites... the ancient lines were a network of fine interconnected veins with multiple destinations, the landscape crowded with meanings and stories...

\hspace{1em} Grace Karskens – 1998 \textsuperscript{36}

\begin{itemize}
  \item \textsuperscript{32} Fitzmaurice, "The Genealogy of Terra Nullius.", pp1-15
  \item \textsuperscript{33} Fitzmaurice, "The Genealogy of Terra Nullius."; Karskens, \textit{The Colony}. p46 & 36,
  \item \textsuperscript{34} Gammage, \textit{The Biggest Estate on Earth; How Aborigines Made Australia}. pp1-5 & p281
  \item \textsuperscript{35} Karskens, \textit{The Colony}. p36
  \item \textsuperscript{36} ———, "The Great North Road: Historical Perspective" (paper presented at the Exploring the Great North Road, Tobruk Station, Little Maroota Forest, 1988). p8
\end{itemize}
An invaded or occupied people, when colonised under the prevailing eighteenth century international laws and conventions, still held some rights. In the case of Britain, they became subjects of the British Crown and were ruled by British law. Their own laws were usually maintained, providing such laws were not repugnant to British law. Treaties were often signed, as would be the case of the Maori in NZ and although perhaps grossly unfair, the treaties were a recognition that the indigenous people had some right to land and should be provided with compensation for its loss.

In NZ, annexation involved a recognition of an indigenous community leader who could negotiate on behalf of their people about the future of the land. In a legal fiction described by Karskens as double-talk, the British concluded that Australia, lacking as it was in recognisable signs of private property, cultivation, trade or designated chiefs could be possessed by simply making a claim and following it up by colonisation.

In 1770 the native title rights of the Australian Aboriginal people were denied. James Cook simply took possession of the continent’s east coast. Unlike the North American Indians and NZ Maori, who were considered to be landholders, the Australian Aboriginal people were perceived as too primitive by European standards to own land. To the British the indigenous peoples were perceived as having no recognisable laws, no distinguishable social hierarchy, or political system, they built no significant dwellings and had no concept of land as a commodity that could be owned. By deeming that the land was unowned, the British had circumvented the legal necessity of negotiating, persuading, or otherwise cajoling the Aboriginal people to give up their land.

### 2.2.1. Aboriginal Boundaries

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39 Karskens, *The Colony*. p34

40 Ibid. p34
It was not only the Aboriginal culture and their forms of land husbandry that the Europeans failed to grasp. Aboriginal territorial boundaries were also misunderstood. The British had entered an alien land, unlike any encountered before and strange beyond their understanding.\(^{41}\) yet as Karskens has described, it was home to a well-established culture, within a land already richly named and divided amongst family, clan and language groups. It was however, held in a manner that the Europeans were unwilling to comprehend.\(^{42}\) To the Aboriginal people the boundaries were finite, but were not measured lines set out in a European or cadastral sense.\(^{43}\) The boundaries were defined by a different set of rules, by an intricate system of symbiotic religious and cultural beliefs which in turn, were totally incomprehensible to the newcomers.\(^{44}\) The territories were spiritual more than physical, defined by both Totem and Dreaming. Consequently providing the established indigenous etiquettes and customs were obeyed, such as asking permission to enter another territory, resources could be shared, areas of occupation could overlap or as meeting areas be conjointly occupied.\(^{45}\) Noted anthropologists Ronald and Catherine Berndt wrote:-

> ...contrary to popular belief tribal territories and boundaries are or were relatively flexible. Also people were not invariably afraid to move across the [adjacent] territory.\(^{46}\)

Karskens found that Sydney itself is a possible example of mutual occupation or meeting place. It was the valley of *Warrane* and on the boundary of at least two

\(^{41}\) Proudfoot, "Town Plans and their Impact on the Settlement Process in Australia." p96  
\(^{42}\) Karskens, *The Colony*. p33; Reynolds. p23  
\(^{43}\) Val Attenbrow, *Sydney's Aboriginal Past; Investigating the archaeological and cultural records.*, 2nd ed. (Sydney: University of NSW Press., 2010). p29  
\(^{44}\) Clarke, *Australia; A Concise Political and Social History*. p5; Proudfoot, "Town Plans and their Impact on the Settlement Process in Australia." p97  
groups, the Cadigal and the Wangal but it was possibly a meeting place where a number of other clan groups came together ceremonially for feasting.\(^{47}\)

Because of a spiritual attachment to the land set down in the Dreaming which defined both the Aboriginal way of life and territory, there was no enticement to enter into conflict over land with which they had no cultural relationship. The Aboriginal people were not pacifistic. Violent conflicts did at times take place, but they were to right a wrong, for revenge or similar such reason. The violence had rules and limits and “everybody observed them.”\(^{48}\) Unlike with the Europeans, wars for the specific occupation of adjoining territories were unknown.\(^{49}\)

Aboriginal people had no understanding of the European concept of individual land ownership. The European ideas of possession, exclusion and trafficking in land was alien to their beliefs.\(^{50}\) Europeans marked and measured precise physical boundaries and held land solely on an entitlement within an enforceable legal system.\(^{51}\) The native Australians had no system of measuring or holding land in a manner identifiable to the Europeans.\(^{52}\) The concept of land as a commodity that could change hands by agreement was totally incomprehensible to the Aboriginal people whose beliefs and existence had

\(^{47}\) Karskens, *The Colony*. p42
\(^{48}\) Ibid. p43
This raises a tantalizing question, and a topic for further research regarding the “History Wars” and the academic dispute between Henry Reynolds and Keith Windschuttle on Australian frontier wars. If the Aboriginal people had no concept of European land ownership how could they reconcile the idea that they were being dispossessed?

If the ‘ownership’ of land in a European sense was alien to their culture, the concept of the land being taken from them would surely have been incomprehensible. It would seem that the initial lack of Aboriginal resistance may have been a willingness to share the land with the new-comers, just as they may have shared it with an adjoining clan.

Exclusion from their land may have been the cause for armed Aboriginal resistance. As asserted by Henry Reynolds “if blacks often did not react to the initial invasion, it was because they did not realise that it had taken place…” (Henry Reynolds, *The Other Side of the Frontier; Aboriginal Resistance to the European Invasion of Australia* (Melbourne: Penguin, 1983). p65)

\(^{50}\) Clarke, *Australia; A Concise Political and Social History*. pp12-14
\(^{51}\) Ibid. p14
\(^{52}\) Proudfoot, "Town Plans and their Impact on the Settlement Process in Australia." p97
coalesced with the land. The colonists at times, especially after the decimation of Aboriginal people around Sydney by smallpox, found themselves unable to even determine and name which Aboriginal clan was associated with a particular area. They found no defined Aboriginal hierarchy and a complex system of family/clan relationship. Apart from the rare scientist or missionary, it would not be until in the twentieth century that general anthropology would begin to recognise and define the existence of the traditional and ancient boundaries of the continent’s indigenous people.

Since they were not recognised, Aboriginal boundaries had little effect on the shape of European expansion or settlement. One exception was the laying out and construction of roads. Karskens and Greg Blyton note that the first roads to the hinterland tended to follow the tracks made by the Aboriginal people and used by Aboriginal guides. These tracks at times traversed boundaries of adjoining groups and passed through neutral territory. Aboriginal guides would deliberately lead survey teams or explorers away from sites of spiritual significance.

Against the might of the newcomers and without any recognition of their prior occupation, the Aboriginal people were excluded from ‘European’ land ideologies. Although as noted by Karskens the Aboriginal people “became urban people” and occupied the towns alongside the colonists, they could exist only where they were tolerated by the white race. This existence was generally external to the European land system that was based upon British law and European cadastral grids. They could maintain their traditional lifestyle

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53 Karskens, The Colony. p36
54 Attenbrow, Sydney’s Aboriginal Past; Investigating the archaeological and cultural records. p27
55 Ibid. p22 & 27
56 Proudfoot, ”Town Plans and their Impact on the Settlement Process in Australia.” p97
58 ———, ”The Great North Road: Historical Perspective.” p8
59 ———, The Colony. p12
60 Karskens gives an example of at least one Aboriginal person who took up an early European land grant. See ibid. p517
only in areas where the land had not yet been taken and was “outside of the fence” land such as hilly areas or shifting river flats not yet wanted by the colonisers.  

In the carve-up of the landscape, the Aboriginal territorial boundaries were of no consequence. The concept of Crown possession was upheld by the strength of European might; the possession of all land had devolved to and remained with the Crown unless legally alienated under the provision of British law.

The goal of the governors was to create a regular society ordered along British lines. This demanded regulation both within society and outwardly by “taming” the natural environment. In physical appearance this manifested itself, not only in land clearing, but in a desire for regular defined and pegged boundaries that could be drawn on a map, one of the symbols of “order...arising gradually out of tumult and confusion”.

The desire for regular identifiable allotments, both rural and within townships, was achieved by surveyors measuring and creating a legal title over land. These were all processes that opened the way for the exclusion of the land’s original custodians, the Aboriginal people. The surveyors and the planners who drew straight lines and cadastral boundaries through Aboriginal territory were thus in the front line of the colonising process, as much an enemy of Aboriginal society as a settler who forcefully removed them from ‘his’ newly-acquired land.

Karskens noted that in building his road through the Blue Mountains William Cox and his men “slashed, burned, felled and hacked their way straight through Aboriginal ceremonial country.” They had not the slightest concept that they were cutting a swathe through homelands, “invested with industries, arts and

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64 In the first years anyway, almost always a “his”.
spiritual meanings of millennia. It was, she said, like a great wheel “rolling through a timeless land,” leaving a destroyed history in its wake.65

Since it was believed that they held no right to land, little consideration if any was given to Aboriginal territorial patterns, their hunting areas, or spiritually significant sites. When framing the colonial land policies, regulation or settlement patterns, the Aboriginal people were a deliberate exclusion. Other than by their suppression, Aboriginal boundaries had no part to play.66

2.2.2. Trespassers on their own Land

Britain’s claim to the continent was founded upon the premise of the Aboriginal people occupying land but having established no right of possession. In a legal fiction that favoured the British, the land was envisaged as empty of any persons capable of exercising ownership.67 On being decreed an un-owned land it was there for the taking by any first Christian Prince capable of claiming it and on this assumption it was claimed by Cook in the name of George III. Once a British possession the land was there to be subdivided and alienated at the discretion of the Crown.68 Indeed it was the responsibility of the new owners to make more productive use of the land than the previous inhabitants had. The indigenous peoples had no right of title and could be legally brushed aside. They were in effect trespassers on land they had occupied for aeons.

Although the Dutch, French and Spanish had sent irregular exploring parties which established their interest along the continent’s northern, southern and western coasts, no foreign power ultimately challenged the British claim.69 The only challenge was seemingly unintentional and came from within the British

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67 Powell and M, Australian Space Australian Time, p63
69 Note the earlier discussion on the Malespina plans to evict Britain from the continent.
ranks. This occurred in 1835 when a VDL colonist John Batman, looking for grazing land for his sheep, entered into a treaty for land directly with the indigenous peoples of Port Phillip.\(^{70}\) As will be discussed in following chapters, a treaty with the Aboriginal people to purchase land threatened the ideological foundation on which British possession had been based. The treaty was quickly declared null and void by Governor Bourke and even although the area was outside of the designated Limits of Location, Crown grants were made to the colonists.\(^{71}\)

To the Europeans the indigenous people had been regarded as wanderers with no recognisable territory or ownership. Any rights to the land they occupied were invisible before the law and were ignored, not even considered when framing colonial land-use regulations.\(^{72}\) Patronizingly, it was thought the indigenous inhabitants, in their contact with the ‘superior’ European ways, would see the wisdom and benefits being offered and shed their old ‘nomadic’ ways. The expectation was that within the Aboriginal territory that had been renamed New South Wales, Aboriginal people would be pleased to adopt European customs and respect British law.\(^{73}\)

It was an ignominious attitude even in its attempted benevolence. Well-behaved natives were to be rewarded. In an action which now could be at best considered ironic, Governor Macquarie, attempted to “reclaim them from their barbarous practices” by offering land grants to be used for farming. He made it known, by a written proclamation, published in a Sydney newspaper, that:


\(^{71}\) ———, “The Founding of Melbourne.” pp210-211

\(^{72}\) Karskens, *The Colony*. p534

\(^{73}\) Clarke, *Australia; A Concise Political and Social History*. p12 Karskens, *The Colony*. p386. 392 & 517- It was reported that in 1832 an Aboriginal man called Mahout, bridged the two cultures and was granted a 10 acre lease at Yarra Bay, La Perouse (gaining a European right of possession over portion of his own traditional lands.).
He shall always be willing and ready to grant small portions of land in suitable and convenient parts of the colony to such of them that are inclined to become regular settlers.\textsuperscript{74}

There was little improvement, over three decades later, when in 1848 the Governor Sir Charles FitzRoy was advised by the NSW Solicitor General that an Act of the British Parliament precluded the Aboriginal people from hunting or otherwise seeking their subsistence on unimproved crown lands if it was held under a pastoral lease.\textsuperscript{75} The outcome was that as leases spread the Aboriginal people would be left “with no place for the sole of their feet.”\textsuperscript{76} Further, at that time and under the prevailing British land regulations, it was not possible for the governor to insert a condition securing Aboriginal rights in any lease granted over such land.\textsuperscript{77}

While the government in England and local administrators paid lip-service to the plight of the indigenous people, some colonists simply did not care. A view of the Aboriginal people was expressed by Port Phillip pastoralist John Cotton. He was able to rationalise his dispossession of the land’s original inhabitants by regarding them as having no value and no rights. To him they were an unproductive race to be simply moved along.

…the worthless idle aborigine has been driven back from the land that they knew not how to make use of and valued not, to make room for a more noble race of beings, who are capable of estimating the value of this fine country. Is it not right that it should be so?\textsuperscript{78}

One of the fears of the nineteenth century governors was that squatters would claim land because of a prolonged occupation under the common law right of

\begin{itemize}
\item \textsuperscript{74} “Sydney Gazette and New South Wales Advertiser.” p1, Proclamation by His Excellency Governor Macquarie, (4 May 1816)
\item \textsuperscript{76} Ibid. p224, Grey to FitzRoy, (11 February 1848)
\item \textsuperscript{77} Ibid. p632, FitzRoy to Grey, (11 October 1848)
\item \textsuperscript{78} John Cotton, "1847-1849," in The Correspondence of John Cotton, ed. George Mackaness (Sydney: Privately Published, 1953). p9
\end{itemize}
adverse possession. The Aboriginal people were denied even that. Although ostensibly subjects of the British Crown and subject to the common law, the law was applied selectively. Their long occupation of land was irrelevant, they were debarred from any claim of prior possession.

Whether referred to as occupation, appropriation, dispossession or invasion, the establishment of a British colony alongside a small stream flowing through the territory then known as Warrane by the Eora people was to be catastrophic to the Aboriginal people of the entire continent. Unknown to them decisions had been made on the other side of the world that would forever change both their lifestyles and their relationship to the land.

Traditional laws, boundaries and priorities had little impact on the land ownership patterns within the new colony. The Aboriginal people’s interests however were extremely vulnerable to the land claims and the fences of the settlers. The Aboriginal people had evolved a fragile and close relationship with the environment. It was an environment and ecology finely attuned to their way of life and therefore easily disrupted.

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80 Karskens, *The Colony*. p36
CHAPTER 3. A UNIQUE SCHEME OF PLANNING AND PLANTING¹

Forming a colony, at so remote a distance from the mother country, appears one of the boldest and most singular experiments ever tried...for the project was never before attempted, to plant a settlement merely of men [and women] who were rendered unfortunate by the fact of their sujection to the penalty of the offended Laws of the Realm.

Sydney Gazette and the New South Wales Advertiser, 10 June 1825²

3.1 Purpose

This chapter provides a background to the main body of research and is common to all of NSW’s early governors. It discusses the basic philosophies behind colonisation and application of land policy and controls within those tenets. It will show that land controls were used in attempts to maintain order, to create a preferred social outcome and to restrict the colony’s spatial expansion to a manageable area.

The initial proposal of James Matra is examined, as is the motivation for founding a British colony on the other side of the world. It is noted that despite an ongoing debate over the reasons behind the colonisation of NSW, the colony was founded as part of a social experiment, whereby convicted felons became the colonists. Within this experiment land policies complied with the traditional methods of British colonisation. These were based on the Grand Modell of Lord Shaftesbury, a model that formed a basis of many British colonial settlements and by 1788 had evolved into the Empire Model (Fig 1.1).

A rectangular grid pattern with a hierarchy interconnected towns and villages stretching into the interior formed the typical town design within this model. The grid provided an efficient use of land, with uniform allotments. Further, it was a town design that was easily marked on the ground with the relatively primitive survey methods of the day.

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¹ In this respect planting is used in the context of founding a colony. See -Home, Of Planting and Planning.

² "Sydney Gazette and New South Wales Advertiser."p2, (10 June 1825)
The role of the surveyors is also reviewed. It is noted that while the surveyors physically laid out the townships and at times drew the town plan, they operated within an administrative hierarchy and the ultimate authority and approval rested with the governors. This is demonstrated in a dispute between Governor Darling and the colony’s most forceful Surveyor General Sir Thomas Mitchell. Despite Mitchell strongly favouring narrow street carriageways, Darling’s opposing views prevailed and wide streets became the basis of the Darling regulations for town design.3

Despite many examples of varying land policies and town planning during the colonial years, proponents of a fledgling twentieth century Australian planning movement alleged an absence of town planning in NSW.4 It was argued that the simple rectangular grid pattern utilised by the governors for town layouts did not represent true planning. Irrespective of this assertion, in utilising a rectangular grid the governors also applied a wide range of policies and standards which would now be recognised as planning instruments. These relate to a town’s location; its street orientation; street width; and allotment size as well as the location of its civic buildings or parks. The suggested design for Australian towns prepared by T.J. Maslin in 1830 (Fig3.2) shows a quite complex town plan based upon a rectangular grid.5 Nonetheless, the allegation that the rectangular grid did not constitute town planning has almost undoubtedly contributed to the historical neglect of the colonial era by planners.


4 Maher and Sullivan, Regionalism in Australia: Why we have a problem; Charles Reade, ”Forward to the Official Volume of Proceedings” (paper presented at the First Australian Town Planning Conference and Exhibition, Adelaide, 1917); John Sulman, ”The Laying out of Towns,” The Brisbane Courier 1890, ———, Town Planning in Australia (Sydney: National Trust of Australia, 1921 Facsimile Pub 2007).

5 Maslen, The Friend of Australia or, A plan for Exploring the Continent. pp425-427 & Plate 4
3.2. Colonisation and Social Planning

*Do you wish either by private prudence, or by civil policy to reclaim offenders?...Give them a few acres of ground as soon as they arrive in New South Wales, in absolute property...they have no temptation to theft and [that] they must work or starve...I may reasonably conclude that it highly probable they will be useful; that it is(sic) very possible they will be moral subjects of society*

James Matra - 1783⁶

A populist view during the mid-twentieth century was of NSW as a “dumping ground” for convicts.⁷ Although in more recent times, authors such as David Hill and Robert Hughes seemingly still held this belief, it was categorised by Alan Frost in 2011 as an outmoded traditionalist theory.⁸ It has been described as a cliche which is now largely rejected.⁹

It was argued as early as 1895 and revisited by Geoffrey Blainey in 1966, that there were strategic considerations behind the Botany Bay decision and that trade, access to naval supplies and the strategic location of NSW were the underlying reasons for colonisation.¹⁰ The argument was championed in 2011 by Alan Frost with the publication of *Botany Bay; The Real Story* and *The First Fleet: The Real Story*. The consensus now held is that the convicts were a convenient group of pioneers whose forced removal from Britain assisted with a secondary problem of overcrowded gaols. Strategic reasons are understood to have formed a major rationale for colonisation.¹¹ Whatever the case, taking possession of land was fundamental to the British plan.

⁸ Frost, *Botany Bay: The Real Story*.
The decision to colonise NSW was made in 1786 and was based upon two 1783 proposals submitted by James Matra, an American royalist and a close colleague of Sir Joseph Banks.\textsuperscript{12} Matra and Banks had met and become friends when both accompanied James Cook on his first voyage of exploration along the east coast of New Holland. Matra’s first proposal was to establish NSW as a free colony for the resettlement of the loyalists who had lost their land in the American War of Independence. In this proposal Matra alluded to several benefits that Britain would gain from the colony, including the production of flax, timber, sugar-cane, tea, coffee, silk, cotton, indigo, tobacco and spices. He also nominated the advantages of trade with Japan, China and Korea.\textsuperscript{13} After discussing his proposal with Lord Sydney, Matra added a suggestion that NSW would also be an appropriate place to send criminals. Matra remarked that in the revised proposal he believed “good policy and humanity were united.”\textsuperscript{14}

A plan was prepared by Sir George Young in 1785. It made provision for the American loyalists and envisaged a penal colony with transported felons and a military detachment under an appointed governor. The plan discussed the value of the colony as a centre of commerce and trade as well as a port of “shelter and refreshment” in the case of war. Significantly, when considering Arthur Phillip’s selection of a town site, although both Matra and Young referred generically to the area as Botany Bay, they proposed an exploratory expedition to choose the final place for settlement.\textsuperscript{15}

In 1786 Lord Sydney advised the Lords Commissioners of the Treasury that a proposal to transport convicts to NSW had been accepted. There was no mention of any purpose other than to relieve the overcrowded gaols of England and there was no provision for any prior exploration. With little consideration

\textsuperscript{12} Britton, \textit{HRNSW Vol 2}.
\textsuperscript{13} Ibid.p6, Comments, James Matra’s Proposal, (23 August 1783)
\textsuperscript{15} Britton, \textit{HRNSW Vol 2}. p11, Sir George Young’s Plan, (13 January 1785)
and no further exploration, the location for the colony’s first settlement had been chosen in England and it was to be Botany Bay.  

There was no longer any reference to the American loyalists and, despite the subsequent debate on the British motivation for establishing the colony, there can surely be no argument that NSW was established as a penal colony.  

Karskens held that the eventual “raison d’être” for the project was to permanently relocate England’s felons. To her, it was London’s single minded focus.  

Whether or not one accepts, Frost’s denunciation of the “traditionalist view”, that Australia was primarily “a dumping ground for undesirables,” or his belief that the more strategic considerations of Empire, defence, or trade motivated the British authorities, it was Britain’s undesirables, the dwellers of slums and the ‘hoi polloi’ that dominated the early settlement. Strategic issues would develop, but other than the settlement at Norfolk Island, they did not really appear until the nineteenth century with Britain’s founding of settlements at VDL, Port Phillip Bay, Shark Bay and Melville Island. Together these settlements were intended to form what Pamela Statham described as “a ring fence around Australia,” asserting Britain’s claim against possible interlopers (Fig 3.1). With these settlements the British expanded their claim of possession to the entire continent and, to further prevent any contemplated foreign incursion, annexed the islands of NZ.

In 1788 the strategy for the handling of the felons was to send them as far away as possible and hopefully to ensure that even after sentences were served they did not return. Part of the scheme was for term expired convicts to be granted small land holdings on which they could subsist. By 1826 it was reported that of 177,500 acres granted, most was to ex-convicts whose grants seldom

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16 Ibid. p14, Lord Sydney to Treasury, (18 August 1786)
18 Karskens, The Colony. pp. 199 & 255
19 Frost, Botany Bay: The Real Story. Hughes, The Fatal Shore. p57
20 Statham, The Origins of Australia's Capital Cities. p7 Fig 1
exceeded 100 acres. The peasant based economy of the yeoman farmer, a representative of Britain’s pre-industrial age, was seen by several authors as the intended template for NSW. A NSW yeomanry was to be formed from emancipated convicts and the rank and file military. In describing the British intent Barry Higman wrote:*

_The yeoman was not a landlord, capitalist or speculator...he was a man of little capital...restricted by his resource to farming on a small scale._

It was a policy intended to ensure that the emancipated convicts, with hard work and thrift, could live in moderate comfort. They would not be dependent upon supplies from the commissariat but would be unable to generate a sufficient surplus to allow for their return to Britain. Officers, on the other hand, could form the gentry or elite. When they were eventually granted land, they received larger holdings and a contingent of convict workers to cultivate it. On leaving the military they were expected to form a respected landowning elite, as employers of the landless and administrators of justice.

The use of land was to be planned and regulated by the governor under instructions from the Colonial Secretary as a means of moral reform and social engineering. Land policy and regulation was at the core of concept for NSW. It can be seen in James Matra’s “few acres of land” statement at the opening of this chapter and is inherent in the allocation of small allotments to emancipated convicts such as James Ruse, the colony’s first emancipist farmer who was granted 30 acres of land at Rose Hill in 1791.

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23 Higman, "Sugar Plantations and Yeoman Farming in N.S.W.." p700


The possession and use of land as a means of rehabilitation was a theory to which Arthur Phillip subscribed when describing the benefit of home gardens to convicts. He believed they would “become reconciled to a life of honesty...rising gradually by laudable efforts to situations of advantage and independence”. It was a concept that would continue to sway conservative reformers into the twentieth century.

Figure 3.1 The Various Settlements Forming Stratham’s “Fence Around Australia”

26 Phillip, The Voyage of Governor Phillip to Botany Bay. p2. Phillip’s views could also be based upon on a rumoured incident that occurred on a Portuguese vessel. During a time of need Phillip persuaded the convicts to act in place of the disabled crew.


28 Statham, The Origins of Australia’s Capital Cities. p7
3.3. Containment and the Empire Model

[There is], no concern of more consequence for the security and thriving of our Settlement, than that of planting in Townes (sic), in which if men be not overruled their (sic) Rashness and Folly will expose the plantation to Ruin.

Lord Ashley, (later 1st Earl of Shaftesbury) - 1671

Containment was regarded by the early governors as a means of spatially limiting the colony to an area that could be adequately administered. Initially it was achieved by instilling a fear amongst the convicts of the unknown lands to the north and south of Sydney and a so-called impassable barrier to the west. Once these barriers were breached and free settlers began to take up land, the only means available for control were land use regulations that could be considered NSW’s first regional planning instruments.

Although the colony in NSW was Britain’s first penal colony, many other British colonies had been planted throughout the world. Prior to NSW colonies had been established in Ireland, North America, the West Indies and Africa. Britain therefore had long established procedures and philosophies, with a “centrally devised scheme” for the establishment of colonies. Robert Home notes that one of the first British legislative measures for the planting of colonial towns was the Act for Building a Town (1662). Under the provisions of this Act, colonial governors were required to construct townships of thirty-two houses “regularly placed in a square” beside rivers. The Act was followed by a more prescriptive version, known as Lord Shaftesbury’s Grand Modell of 1670.

The Grand Modell introduced deliberate urbanisation into the colonisation process. Within it, towns were the centre of trade and defence. They provided a

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31 Home, Of Planting and Planning. p11
32 Ibid. p11
33 Ibid. p9
civilising influence and were the means of implementing centralised control. The ideal of the Grand Model was for a series of closely connected villages each supporting adjacent agricultural communities. It became the model for settlements throughout the British Empire and is therefore referred to as the Empire Model. It was reformed slightly by Granville Sharp in the 1780s and codified into a set of regulations and guidelines.34

The antithesis of Shaftesbury’s Empire Plan was dispersed settlement. This, Shaftesbury asserted, would “expose [settlers] to the inconvenience and barbarism of scattered dwellings in unknown countreyes” (sic).35 It was the fear of widely dispersed settlements that ruled many of the land policies of the NSW governors and the terms “barbarism” and “beyond the law” were used by at least two of the governors in their despatches to England.36 More pragmatically, containment was also a means of reducing the demands on government services. The governors lacked the resources to police or administer the distant regions of the colony and restricting the areas of settlement was a means of matching capacity with requirements.37

3.4. The Colonial Grid

A typical Australian town is made up...of a number of co-equal squares or possibly rectangles. It is a great pity that a work of such importance

34 Ibid. p9  
35 Brown, The First Earl of Shaftesbury. p323  
37 Fredk Watson, ed., vol. 16, HRA (Sydney: Library Committee of the Commonwealth Parliament, 1923); ibid. p115, Goderich to Darling, (23 March 1831)
It has been said that Australia is a nation of planned towns. Despite this the street patterns of towns that were founded during the colonial era almost invariably show an ostensibly simple rectangular grid, a design strongly criticised in 1890 by John Sulman. To Sulman, the grid was the epitome of an unplanned town. It was an “exercise in surveying” and merely a “checkerboard” imposed upon the landscape with little pre-thought or consideration of the inhabitants.

It will be shown however, that the grid (Fig 3.1) is an efficient means of land use which met the needs of the time and has been used for millennia. John Sulman himself while denigrating the rectangular grid, proposed as an alternative a similar but diagonally based grid. (Fig.3.2) The rectilinear grid pattern was a legitimate and traditionally applied form of town planning. It was economic in its land use, produced uniform lot sizes and was both an efficient and practically feasible layout. Further it was a pattern that was ideally suited to survey and building techniques available at the time. John Reps noted that most European colonial planning throughout the world relied on a form of grid. Spanish colonial towns consistently followed this pattern, as did those of France and Britain. Reps related the early Spanish grid to Laws of the Indies proclaimed by Phillip II in 1573 and credits the English grid as having generally flowed from the Spanish town plans. Colonial towns not constructed to a rectangular grid and showing “irregularities in street pattern and lot sizes “ are described by Reps as generally “exhibiting a laxity in planning.”

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38 John Sulman, "On the Laying Out of Towns,” in Australian Association for the Advancement of Science (Melbourne: Brisbane Courier, 1890). p1
40 Sulman, "On the Laying Out of Towns."p1
41 The inefficiency arose from blocks not being of regular shape, resulting in awkwardly shaped and un-uniform allotments.
43 Ibid. p33
Fig 3.2. A Large Colonial Grid, as Suggested by Maslen (1836)\(^{44}\)

The Maslen plan is a hypothetical design of a large town, which uses an expanded rectangular or colonial grid to produce a complex plan. It has rectangular, uniformly shaped block and a hierarchy of roads. It contradicts Sulman’s ascertainment that a grid is not a planned town. It provides more regularly shaped blocks than Sulman’s suggested alternative (fig 3.3)

\(^{44}\) Maslen, The Friend of Australia or, A plan for Exploring the Continent.
Plan for Soldier Settlement

Fig 3.3. John Sulman’s Alternative to the Rectangular Grid. An expanded town design based upon a Spider Web or Diagonal Pattern of Town Design⁴⁶

The Sulman road pattern, with its diagonal boulevards focussing on a central node such as a major civic building, lends itself to the City Beautiful style of planning. It provides irregularly shaped building allotments and compared to the

colonial grid could be regarded as less efficient in land use. A traditional grid, even though outwardly a simple plan, does not necessarily support Sulman’s argument that colonial towns were imposed on the landscape with little thought. Within its rectangular street pattern the colonial model offered significant flexibility. The grid’s street widths could be changed, allotment sizes varied, the position of significant features such as churches, civic buildings and squares could be varied, and the entire orientation of the township could be changed to suit a particular locality. Street widths and grid sizes were varied and where possible, buildings such as churches had been placed on high ground.\(^{46}\)

It was not until 1829 that regulations proclaimed by Governor Darling, specifying standard street widths and allotment sizes that uniformity in design was imposed and some regularity was placed on town design.\(^{47}\) None the less, even within the Darling regulations there remained some flexibility and the choice of appropriate street widths remained a matter of dispute between various Governors and Surveyor General Thomas Mitchell.\(^{48}\)

Although Sulman declared that the grid did not represent an exercise in planning, in recent times its benefits have been recognised and it has undergone a revival and has become a subdivision design of choice of many town planners throughout NSW. The grid with its efficient land use and simple street pattern, provides a pedestrian friendly environment with easy access to features such as parks, public transport and shops.\(^{49}\) The grid revival commenced in the United States where it became known as New Urbanism and as a strategy it is now eulogized as “reverting to the traditional urban values of the past.” It is a street pattern being adopted for urban development throughout the western world.\(^{50}\)

\(^{46}\) Toon, “The Planning of Australian Towns.” p4

\(^{47}\) “The Australian ”. p2, Government Order No28, (30 May 1829)


\(^{49}\) Robert C Ellikson, ”The Law and Economics of Street Layouts: How a Grid Benefits a Downtown,” in Faculty Scholarship Series, ed. Yale Law School (New Haven: Yale University, 2013).

3.5. The Surveyors: Planners or Technicians?

...in terms of physically shaping these colonies it was the government surveyors who usually determined the routes for future roads and laid out town plans...Various governors...had stamped their own impressions on settlement by adopting individual positions on such issues as Government farming and the balance between small and large land-holders.

J.M Drown 2012

The bureaucrats at Whitehall had little appreciation of the survey difficulties that would be encountered in the colony. Their initial appointment of surveyors is typical of many other uninformed decisions. The first surveyor Augustus Alt has been described by Kass as having little surveying skill, The reason for his appointment was not his surveying, but his "brilliant military career." Alt was old and in poor health at the time of his appointment. Drown described Alt as an “odd choice,” and his appointment as perverse. In the first weeks of settlement, William Dawes was required to carry out the surveying because of Surveyor Alt’s “inability to do his job.”

The position of Surveyor General was a senior colonial appointment and irrespective of military rank, it was ranked third in the colonial hierarchy. It attracted the colony’s third highest salary which was only exceeded by that of the colonial secretary and the governor himself. As a consequence, the appointment tended to be on the basis of a reward for past services rather than proficiency in surveying.

Alt was not Whitehall’s only unsuitable survey appointment, Alt’s replacement Charles Grimes had been initially appointed as assistant

51 Drown, "An Apparatus of Empire." p1 & p31
52 Kass, Sails to Satellites. p51
53 Drown, "An Apparatus of Empire." p51
Surveyor General at the age of eighteen and although he had some natural ability, was not an experienced surveyor. Grime’s assistant James Meehan although he had access to a theodolite, was reported as saying that the survey department was too busy to “worry about newfangled ideas.” Similarly, John Oxley the next Surveyor General, again a Whitehall appointment, was a naval officer, who while undoubtedly familiar with navigation had no experience with land survey. He has been described by Oppenheimer as “inadequate” and preferred simple surveying tools such as circumferentor, chain and compass rather than the more accurate theodolite (Fig 3.1).

The low regard that the Colonial Office held of surveying can be observed in the response to a letter from Governor Darling in which he spoke of the lack of surveyors. Under-Secretary Hay replied, saying that surveying was a simple operation and one that any person of reasonable education could practice. It was not until Thomas Mitchell was appointed Assistant Surveyor General in 1827 that the colony gained a person with knowledge of advanced survey techniques.

There is a minor controversy regarding who should be credited with having planned the towns of the colonial era: the governor, the surveyor, or another officer. In the case of Sydney for instance there were four possible claimants; Governor Arthur Phillip, David Collins, Lieutenant William Dawes and Surveyor Augustus Alt. Paul-Alan Johnson, who has reviewed the planning of the

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eighteenth century NSW towns, eliminated both Collins and Dawes as the planners. He did this on the basis of a demonstrated a lack of skill. To Johnson the only true candidates were Phillip or Alt. Proudfoot on the other hand, using a similar analysis, credited Dawes under Phillip’s instruction.61 Kass took another view, arguing that, “Alt laid out the settlement, and Dawes was acting under his [Alt’s] orders.” It would seem likely that Phillip prepared the initial plan, Dawes physically marked out the layout and Alt both assisted with the survey and signed the final drawing. All three could then claim to have been responsible for the township, but the Governor was the person who held the ultimate responsibility, held the vision and the authority to set the standards that would be applied.

Looking beyond the towns laid out during Phillip’s governorship, both Kass and Drown assert that in later years the surveyors were the colony’s main town planners.62 It is claimed that it was the surveyors who selected and laid out the townships as well as the areas to be alienated for agriculture. While it is correct that the surveyors conducted the work on the ground, they were subordinate to a higher authority. The governors were always the senior ranked and the surveyors were thus working under the governors’ direction. It is certainly the case that after Macquarie, the surveyors were tasked with selecting and marking town reserves, but even then they did so under regulations that had been formulated and prescribed by the governors.

There can be little doubt that the surveyors drew the plans and at times selected the sites for towns. The Surveyor General from time to time gave quite specific instructions regarding the survey to be carried out. An accurate survey did not mean the surveyor became the planner. Indeed it allowed the preparation of a town design in Sydney which could then be laid out in accordance with the requirements of the governor, with the surveyor acting as a

In these cases, the field surveyors were asked to advise on specific details such as nominating the best place for buildings, significant features and the suggested directions for streets. Governor Darling’s survey instructions, Reed noted, removed most opportunities for a creative design and was not a system distinguished by imaginative planning.

The governors dominated the process of creating new townships. They regulated the allocation of land, instructed their surveyors, and determined the applicable standards. Further there is evidence that some early governors (Philip, Macquarie and Brisbane), selected the location of townships themselves and, with their surveyor, paced out the town layouts on the ground. Other governors gave the surveyors more flexibility of choice. All town designs, whether prepared by the surveyor or not, had to be approved by the governor and it was not unknown, as in the case of Melbourne and Goulburn, for a governor to reject a proposed design.

Given this central role, the governors from Phillip to Gipps and to lesser extent FitzRoy, were planners in the sense that they issued the regulations by which land would be released, they decided which townships would be established and they formulated the regulations by which the colony would be settled. The governors and the surveyors each had a role in the process with the governors the overarching policy makers, setting priorities and standards while the surveyors provided the practical and technical element.

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64 Ibid. p193 & p197; "Sydney Gazette and New South Wales Advertiser." p1, Government Order, (28 May 1829)
Fig 3.4. Circumferentor – essentially a sophisticated compass

Image: The Science Museum, London.\(^65\)

\(^65\) www.sciencemuseum.org.uk/images/1017/10280187.aspx
Fig 3.5. A Typical Theodolite as Introduced to General Surveying in NSW by Mitchell (1828)
Image: National Library of Australia.66

3.6. Summation
As will be demonstrated in the following chapters, the colonisation of NSW whether a strategic decision or a means of relocating Britain’s unwanted felons, was the method by which Britain took and held possession of a continent. The colonisation when it took place was physically in accordance with Britain’s

established procedures as laid down in its Empire Model of a contained settlement spreading outwards from an administrative base through a number of planned and connected villages.

The design of villages and towns was in accordance with a traditional rectilinear grid. It was a layout characterised by early twentieth century planner John Sulman as being too simple to be a proper town plan. The rectangular grid none the less has numerous advantages and is a model that has been revisited by planners in modern times.

The rectangular grid allowed simple survey methods to be used and this suited the relatively primitive survey techniques employed by the colony’s early surveyors. While there are conflicting claims with respect to persons responsible for the town plans, as will be described, it was the governors, assisted after 1825 by an executive Council, that exercised ultimate authority, set the standards and approved all town layouts.
CHAPTER 4. SETTING THE CORNERSTONE: PHILLIP

4.1. Arthur Phillip, - Governor January 1788 to December 1792

Phillip’s enthusiasm is all the more remarkable in view of the fact that during his five year term of office the colony assumed a shape that was not in accord with his wishes. Instead of the migrants that he sought to encourage...only convicts arrived.

B.H. Fletcher, 1967

Arthur Phillip, as the first governor of NSW, was possibly the most influential, including on matters related to the occupation and use of land. It was for him to choose the site for settlement and put in place a land use strategy on which others would be required to build. It was Phillip who set the colony’s cornerstone and his influence lingers to the present time.

This chapter discusses NSW’s first governor’s role in relation to land and land use planning. It describes four major planning decisions that Phillip made: the selection of the site of the first settlement; his plan for the town of Albion, or Sydney as it became known; and his town plans for both Parramatta and Toongabbie. The chapter also describes Phillip' overriding philosophy for the colony noting that, even though he returned to England, there was no certainty that he would not remain governor and return to NSW.

It will be shown that Phillip initiated land use measures that would define the spatial shape of the colony. His encouragement of small scale agriculture illustrates the British government’s initial views on how the colony should be established and how it was expected to expand. His liberal views on the establishment of an egalitarian society, of detached housing with a garden and his promotion of the emacapist farmer possibly took him beyond the accepted norms of the day, but nonetheless, they laid the foundations of the modern Australian culture.

Philip was born in October 1738 in London’s working class area of All Hallows. He was the son of Jacob Phillip, a German born language teacher through his mother Elizabeth’s second marriage. Although described as “not the poorest of the poor,” it is reported that the family were not financially secure and on the death of Jacob, they fell onto hard times. 

Phillip’s mother’s first marriage had been to a British seaman and possibly because of this Phillip, when aged thirteen, obtained a place at the Greenwich charity school for seamen.

At about age fifteen Phillip was apprenticed to the master of a whaling vessel remaining with it until 1755 when he joined the Royal Navy. By 1763 after participating in several engagements against the French, Phillip achieved the rank of Lieutenant. In 1775 he was granted temporary leave and took a commission as a Captain with the Portuguese navy. He served with the Portuguese with some distinction against the Spanish for a period of two years.

On returning to England, he became land-based on half pay. There is some speculation that he then served on the *HMS Victory* as a volunteer. There he would have made the acquaintance of Evan Nepean, the vessel’s then purser. The existing records are obscure and little is known of this portion of Phillip’s career, but he received two payments, one of £170 and the other £160, both from the Admiralty’s secret fund. It was these payments that give substance to the possibility that he was engaged in espionage. Little further is known until he rose to prominence as a candidate (not unopposed) for the governorship of NSW in 1786. He is considered by some authors as a virtually unknown yet he was to prove “the man for his time.”

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2 Parker, *Arthur Phillip: Australia’s first Governor*. p3
3 Ibid. p3
5 Parker, *Arthur Phillip: Australia’s first Governor*. p33
6 Pembroke, *Arthur Phillip: Sailor Mercenary Governor Spy*. p54
8 Parker, *Arthur Phillip: Australia's first Governor*. Intro. p x
Derek Parker noted that speculation regarding Phillip’s appointment has “filled many pages of many books.”\(^9\) A traditional view was that Phillip was a relatively unknown figure who had been given an unwanted and unattractive position.\(^10\) Recently historians established that he was probably offered the position as a reward for services rendered. The current generally accepted hypothesis is that through his service on the *Victory*, Phillip had become known to Evan Nepean, who in 1782 had been appointed the Secretary of State for the Home Office and the officer responsible for gathering political intelligence. It has been claimed that while working undercover for Nepean, Phillip had operated as a spy in France, Spain and Portugal.\(^11\)

Phillip’s words and actions convey a sense of optimism and a positive insight into the colony’s future. Even before his departure from England, he envisaged more than a penal colony.\(^12\) He frequently referred to the convicts as settlers and believed in an egalitarian society based upon small scale farming. Rather than seeing his charges merely as unwanted felons exiled from Britain, Phillip regarded convicts as a tool with which he was to establish a colony. In his idealistic vision, transportation to NSW would be of benefit to both the convict and Britain:

> ...It is required by no moral obligation that convicts should be conveyed to a place of perfect convenience and security...yet to have resisted difficulties is often finally an advantage rather than an evil; and yet there are few persons so circumstanced that they will repine at moderate hardship, when they reflect that by undergoing them they are rendering an essential and honourable service to their country.\(^13\)

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\(^9\) Ibid.p61


\(^12\) Barton, *History of NSW from the Records, vol 1, Governor Phillip*. p53, Phillip’s suggestions of 1787; Modern scholars have suggested that the British Government, had a more strategic and commercial purpose behind colonisation. In subscribing to this hypothesis historian Robert King suggested that Phillip would have been party to the secret motives of the Government and that knowledge of the larger picture were partially behind Phillip’s selection for the post. See, Robert.T. King, "The Territorial Boundaries of NSW in 1788," *The Great Circle - Journal of the Australian Association for Maritime History* 3, no. 2 (1981). p83 & 84

\(^13\) Phillip, *The Voyage of Governor Phillip to Botany Bay*. p12
As will be discussed, Phillip’s views were not necessarily subscribed to by his superiors in London, nor for that matter by many of his officers.

4.2. A Want of Knowledge and a Shaky Foundation

Before we plow an unfamiliar patch...before our iron ploughshare slices the untried levels, let us first know the winds and the varying moods of the sky and note our native fields and the qualities of the place and what each region grows and what it rejects.

**Virgil - The Georgics**  

The 1787 expedition to NSW commanded by Arthur Phillip was under instructions to create a settlement at Botany Bay. At the time NSW was almost an unknown land and the governor had scant knowledge of the continent to which he was being sent. With an arrogance that would be later repeated at both Van Diemen’s Land (VDL) and Port Phillip, the British bureaucrats believed they had the ability to specify the precise location of a settlement on the far side of the world.  

The decision is surprising as other potential locations for the penal colony had been explored but rejected. In 1785, prior to the Botany Bay decision, a vessel had been sent to investigate a possible site at Das Voltas Bay along the better known South-West African coastline. This location was rejected because of reported infertile soils and lack of water. Inexplicably, on the rejection of Das Voltas Bay, the selection of Botany Bay was made without its further investigation.

The sum total of British knowledge of Botany Bay and the east coast of New Holland was from the journal of James Cook and the recollections and journals of the officers, including Sir Joseph Banks, who had accompanied Cook’s expedition in 1770.  

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15 See Phillip’s instructions to settle Botany Bay, Collins’ instructions at Port Phillip and Paterson’s instructions for Port Dalrymple.


17 Perry, Australia's First Frontier: The spread of settlement in N.S.W. 1788-1829. p5 Cook had been killed some years earlier and it appears that the only person consulted was Sir Joseph Banks. James
seven-day visit, during a voyage of three years. Not all of those seven days had been spent exploring the land.\(^\text{18}\) Yet, despite a lack of information, Phillip was expected to establish a self-sustaining colony and preside over a community of reluctant settlers of whom the majority were agriculturally ignorant, city based felons and “the more worthless elements in [British] society.”\(^\text{19}\)

At the time of the Botany Bay decision Cook was dead having been killed in Hawaii. Banks, however had risen to prominence and influence. He was wealthy, well connected and had been elected as the president of the Royal Society. He was a strong advocate for establishing the colony, but the testimony he provided about the conditions at Botany Bay, has been described as plainly wrong and woefully inadequate.\(^\text{20}\) One point he made was that NSW was well watered. It may have been so in 1770, but climate should not have misled a specialist botanist like Banks, who collected many specimens of flora, which were adapted to hot dry conditions such as the eponymous Banksia.\(^\text{21}\) While at Botany Bay, Banks had accumulated an “immensely large” collection which he said demanded “extraordinary care.” Some boyish enthusiasm can be detected in a diary entry of the 4\(^\text{th}\) March: “Myself in the woods botanising as usual”\(^\text{22}\)

It may be that Banks sought to further the aggrandisement of the expedition which had brought him such fame and accolades.\(^\text{23}\) The incongruence between the descriptions based on observations in 1770 and those of 1788, is evident in

Matra another person who might have had valuable input had already suggested the need for exploration prior to choosing a site for settlement.


\(^\text{19}\) Fletcher, "Arthur Phillip.”


\(^\text{21}\) The Australian Botanic Gardens web site reported that the Banksia requires hot dry condition and even fire to ensure the propagation of its seeds. It advises that” in many species, the fruits will not open until they have been burnt or completely dried out.” See https://www.anbg.gov.au/banksia/


a statement by First Fleet marine officer Watkin Tench. After revisiting Botany Bay during an exploratory expedition in September, he wrote: “There would exist the utmost reason to believe, that those who described the contiguous country, had never seen it.”

Whatever Banks’ reason for supporting Botany Bay as the site of NSW’s first settlement, Phillip was aware of the shortcomings in his own knowledge. His views, with respect to the information derived from Cook’s journal and from Banks, are clearly expressed in an extract from his papers of 1788, published in 1790:

*A transient visit to the coast of a great continent cannot, in the nature of things, produce a complete information respecting its inhabitants, productions, soil, or climate...Errors, sometimes inseparable from hasty observation will then [need to be] be corrected.*

It would seem that, not only were the decision makers in London aware that there was a dearth of accurate information about the designated site for the settlement, but some did not care. They opposed any additional expense and even after finding South-West Africa unsatisfactory, resented any further cost or loss of time that an exploratory voyage would have entailed. With an implication that no further care was necessary, it was claimed that convicts had “forfeited their lives and liberties to justice.” The convicts it was said, formed a “forlorn hope,” with the whole project of settling in NSW regarded as a hazardous experiment in colonisation, offering no more comfort or security than a convicted felon had a right to expect.

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24 Cook had described the soils as sandy and the land both as lawn and as barren heath but noted that the trees were so widely apart that the land “might be cultivated without being obliged to cut down a single tree.” Botany Bay he described as well sheltered from all winds, capacious, safe, and commodious. James Cook, Captain Cook’s Journal during his first voyage around the world made in H.M. Bark “Endeavour, (London: (Transcribed in full, 2012 University of Adelaide), 1768-71), ebooks.adelaide.edu.au/cook/james/c77j/.(28th May to 6th April 1770). Watkin Tench, *Sydney's First Four Years: being a reprint of a narrative of the expedition to Botany Bay and a complete account of the settlement at Port Jackson*, ed. L.F. Fitzhardinge (Sydney: Royal Australian Historical Society, 1961). p 155

25 Phillip, *The Voyage of Governor Phillip to Botany Bay*. p2. - Note, as will be later described, this statement is interesting since Phillip spent less time selecting Port Jackson than Banks and Cook had spent at Botany Bay.

26 William Eden, First Baron of Auckland (Discourse on Banishment 1787) cited in, Parker, *Arthur Phillip; Australia’s first Governor*. pp 60-61. In this sense the original use of forlorn hope is being used. It relates to the forsaken ones or an advance party storming a breach in a castle wall with little
Phillip evidently did not share such views. In an attempt to gain better knowledge of NSW, he unsuccessfully sought permission to leave England well ahead of the fleet.\(^{27}\) A second request, which was granted, was to separate from the fleet after Cape Town and sail on ahead. This he said was: “In the hope of gaining sufficient time to...fix on the most eligible situation for the colony.”\(^{28}\) Accordingly, after leaving Cape Town, Phillip transferred to the armed tender \textit{Supply} and with the three fastest transports (\textit{Alexander, Friendship and Scarborough}), sailed ahead, but did not gain much time.\(^{29}\) The rest of the fleet arrived within two days of Phillip reaching Botany Bay.

Phillip could be regarded as an historical enigma. With no apparent previous experience he guided the fledgling colony through the starvation years, he permanently established a settlement at Sydney Cove and prepared the initial plans for three of the colony's townships: Sydney, Parramatta and Toongabbie.\(^{30}\) As will be described, his planning decisions while perhaps made in haste and at times not carried to fruition have had a major impact on the nation as a whole. By his actions he irrevocably shaped both Australian history and urban settlement into the present time.\(^{31}\)

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\(^{27}\) Britton, \textit{HRNSW Vol 2}. p50  Phillip’s handwritten notes, (presumably communicated to Lord Sydney or Evan Nepean)

\(^{28}\) Ibid. p 93, Lord Sydney to the Lords of the Admiralty. 5 May 1787


\(^{30}\) Hughes, \textit{The Fatal Shore}. p84

\(^{31}\) Parker, \textit{Arthur Phillip; Australia's first Governor}. into p xv
4.2.3. Phillip’s First Planning Decision: Selecting a Site for a Town

Something more essential than beauty of appearance and more necessary than philosophical riches, must be sought in a place where the permanent residence of multitudes is to be established.

Arthur Phillip - 1789

There can be little more fundamental to urban planning than the initial selection of a site. In the case of the new colony this choice, at face value at least, was the prerogative of Arthur Philip, but his options were severely restricted. NSW was certainly one of Virgil’s “unfamiliar patches.” Except for the “hasty observations” of Cook and Banks and a partially delineated coastline, it remained terra incognita. Not only had Phillip recommended some prior exploration, it had been a feature of the initial proposals by both Matra and Young, yet none was carried out. Without exploration, Phillip had little knowledge of the land the settlers would be required to “plow.” As noted by Phillip, the colonists would inevitably be presented with obstacles which had escaped notice, or could not be anticipated.

Even after two years of settlement a lack of exploration was still evident. The limited knowledge of the region and its consequences was mentioned in a letter by Captain William Hill of the NSW Corps. Hill, who arrived in June 1790 as part of the Second Fleet and wrote after only a few days:

*I look upon it as unpardonable, not having a greater knowledge of the country...[the land] that surrounds our settlement...is little better than a sandy desert.*

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32 Phillip, *The Voyage of Governor Phillip to Botany Bay.* p61
33 Virgil, "The Georgics; Book 1 - Agriculture and Weather."
34 Phillip, *The Voyage of Governor Phillip to Botany Bay.* p2
36 Virgil, "The Georgics; Book 1 - Agriculture and Weather." (see opening paragraph of this chapter)
37 Phillip, *The Voyage of Governor Phillip to Botany Bay.* p2
Phillip’s hands however had been tied. Despite the unknown nature of the land and the conditions that would be encountered, Phillip had firm instructions from Lord Sydney that severely limited his ability to choose an alternative location.\(^{39}\) The British administration had decided on a site and they held higher priorities than the choice of a township in which to house convicts.

Most Australian histories accept Phillip’s selection of Sydney Cove without question. With a great deal of hindsight and a lack of critical analysis, it is generally taken as given, or put down to Phillip’s sound judgment and foresight. It is usually accepted as a serendipitous choice based upon a face value acceptance of Phillip’s description of the harbour. Once engrained into popular culture, the wisdom of Phillip’s decision became incontestable.

The belief in Phillip’s inspired choice for the site of Sydney has early origins. Edward Jenks in his nineteenth century history of Australia glorified Phillip’s choice of Port Jackson. Without any apparent historical backing, Jenks claimed that the location was so superb that once in the harbour Phillip had difficulty selecting the very best site from so many suitable locations. He also claimed that his landing at Sydney Cove and its selection followed the inspection of various other locations.\(^{40}\)

Descriptions spanning the next 100 years are remarkably similar. Barton in 1889 wrote glowingly of “a single triumph for Phillip and a rich reward for his labours.”\(^{41}\) Sixty years later AGL Shaw noted that “Phillip found that this [Botany Bay] was an unsuitable place, so he moved on to Port Jackson.”\(^{42}\) In 1988 Aplin wrote, “Sydney Cove offered perfect security to ships”\(^{43}\) and Fletcher wrote of the discovery of “a noble and capacious harbour” equal to any known to the


\(^{40}\)Jenks, *A History of the Australian Colonies.* p29

\(^{41}\)G.B. Barton, *History of N.S.W. from the Records ; Governor Phillip,* vol. 1 (Sydney: Government Printer, 1889). p136

\(^{42}\)Shaw and Nicholson, *An Introduction to Australian History.* p 10

\(^{43}\)Aplin, *A Difficult Infant; Sydney Before Maquarie.* p56
world. Manning Clark related that after rejecting Botany Bay and entering Port Jackson, Phillip “examined the coves in the harbour and fixed on the one with the best spring water.” Grace Karskens wrote of Phillip discovering a deep sheltered harbour with many freshwater streams and she referred to the “famous lines” with which Phillip had labelled Port Jackson as the finest harbour in the world. These “lines” she asserted were made all the more powerful because of the disappointment of Botany Bay. Many historians, see the present scenic harbour city and reflect on Phillip’s wonderful vision. Alan Frost described Phillip’s investigation of the “splendid Port Jackson” Brian Fletcher, wrote of Phillip’s practicality, his quick and perceptive mind and of his choosing a location for his capital after having uncovered the inadequacies of Botany Bay. Frank Welsh wrote of Phillip discovering “the finest and most extensive harbour in the universe.”

Historians such as Frost and Francis Clarke also embraced a strategic or commercial reasoning for the choice of Port Jackson. Clarke referred to the discovery of “a harbour to delight an imperial strategist’s heart.” Others have emphasised the urgency of taking quick possession to deny the French expedition under LaPerouse, which arrived in Botany Bay just a few days after the First Fleet, the opportunity of making their own similar claim.

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46 Phillip wrote of the finest harbour in the world “where a thousand sail of the line can ride in the most perfect security” see Britton, HRNSW Vol 2, p122, Phillip to Sydney, (15 May 1788). N.B. Phillip’s lavish description of harbours is discussed in some detail later in this section.
47 Karskens, The Colony. p62
48 Frost, The First Fleet; The real story. p177
49 Fletcher, “Sydney a Southern Emporium.” p52
50 Frank Welsh, Great Southern Land; A New History of Australia (London: Allen Lane, 2004). p37
51 Clarke, Australia; A Concise Political and Social History. p46
Despite the current opinions of Sydney’s wonderful harbour location, the discovery of the fine harbour cannot in itself be counted as the prime reason for Phillip’s decision. Caution should be exercised when reflecting on Phillip’s letter to Lord Sydney in which the following “famous lines” were uttered: “…one of the finest harbours in the world in which a thousand sail of the line might ride in perfect security.”

When describing waterways, Phillip was lavish in his language and generous in his use of the word “finest.” As well as for Port Jackson he used very similar terms to describe at least two other harbours that he had encountered since departing England in May 1787. On leaving Rio de Janeiro, Phillip wrote:

_The port is one of the finest in the world, narrow at the entrance and within, capacious enough to contain more ships than ever were assembled at one station._

Writing to Evan Nepean on the same day as he had earlier praised Port Jackson, Phillip described Broken Bay, just to the north at the mouth of the Hawkesbury River, also as being ‘the finest’ and in equally glowing terms:

_... I think [Broken Bay] the finest piece of water I ever saw...It, as well as the south-west branch are of sufficient extent to contain all of the Navy of Great Britain._

Sydney Harbour was only one of many fine bodies of water. Indeed if the words are to be taken literally as only “one of” the finest harbours, Sydney was inferior to Broken Bay which was “the finest.” This language can be compared with that of a Captain James Bremer who in an observation made thirty five years later wrote that he had seen:

_...one of the most noble and beautiful pieces of water that can be imagined...having a capability of containing a whole navy in perfect security._

Bremer, was referring to Port Essington on Australia’s northern coastline.

53 Britton, _HRNSW Vol 2._ p122, Phillip to Lord Sydney, (15 May 1788)
54 Phillip, _The Voyage of Governor Phillip to Botany Bay._ p27
55 ———, "Letter to Phillip Stephens 10 July ".Kew National Archives, ADM 1/2308, Sheet 8
56 Watson, _HRA Vol 13._ p858, Note 78. (20 September 1824)
There appears to be some hyperbole practiced by these naval officers when describing harbours, but the language was not reserved to naval officers alone. Speaking in the House of Commons, in August 1834, William Wolryche-Whitmore, the member for Wolverhampton and the proposer of the South Australia Constitution Act, described S.A. as also possessing “two of the finest harbours in the world.”

Care should therefore be exercised in relying on the lavish descriptions of a harbour alone as the reason for Phillip’s choice of Sydney Cove. The repeated references to the finest waterways suggest that it was not entirely Phillip’s elation at the discovery of Port Jackson’s magnificent harbour that had dissuaded an investigation into what might have been a better location. Phillip himself was later to admit that had he been given time he might have looked elsewhere. Time appears to have been a major factor, especially as he did not continue his journey northward to investigate Broken Bay.

Despite his earlier description of the harbour being suitable for “ships of the line,” as the larger naval vessels were known, Phillip made no mention in his journal of his choosing a strategic base for an imperial navy, nor did he mention the ships of La Perouse as the reason for his decision. He referred only to his time restrictions and the need for a hasty choice. With respect to Sydney Cove, he explained that he felt “not at liberty to remove” even if he found a better situation. In a letter to Evan Nepean regarding implied criticism by Lord Granville, Phillip acknowledged that he had not made an entirely satisfactory choice.

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58 Britton, HRNSW Vol 2. p349, Phillip to Under-Secretary Nepean, (17 June 1790)

59 The existence of Broken Bay was known to Phillip, it had been observed, and suggested as a harbour, by Cook in 1770.

60 LaPerouse had been instructed, to report on the English settlement and stay a short time only – see Robert.T. King, "What brought La Perouse to Botany Bay," Journal of the Royal Australian Historical Society 85, no. 2 (1999). p144

61 Britton, HRNSW Vol 2. p302, Phillip to Nepean, (12 February 1790)
choice. He argued that had he been able to freely exercise his own judgement, or consider his decision at greater length, he would have chosen elsewhere.62

One key feature identified by historians as having made Sydney Cove the right choice, was its stream of fresh water (later to be named the Tank Stream).63 Pamela Statham and Brian Fletcher are among those who perpetuated this premise with statements such as: “One of the coves possessed what Botany Bay did not, namely a stream of water for drinking.”64 This assertion over-emphasises the value of the stream. Elementary exploration would have indicated that the stream at Sydney Cove was no more than a drain from a small swamp (the current Hyde Park). It had a catchment of only about 180 acres and was soon perceived to be inadequate.65 As an example of water supplies, Botany Bay, although rejected for other reasons, contained the outlet of the Waterloo Lagoons, Lachlan Swamps and the Botany Swamps, each in turn sufficient to provide a source of Sydney’s water supplies from 1826 and 1859 respectively. They remained in use until the Nepean System was constructed in 1888.66

In their analysis of Phillip's choice of Sydney Cove and Port Jackson, few historians have taken into account, or given weight to, the restrictions under which Phillip was required to operate. Similarly they ignore Phillip's own subsequent justification of his choice following both a dispute with Major Ross

62 Ibid. p252, Grenville to Phillip, (10 June 1789), p302, Phillip to Under Secretary Nepean – (12 Feb 1790), p348 Phillip to Under Secretary Nepean of 17 June 1790

63 It was not called the Tank Stream until some years later when Phillip had tanks cut into the rock in an attempt to augment the water supply.


and the later criticism by Grenville. They have ignored the explicit instruction from Lord Sydney in which he refused Phillip any time for exploration.

The time restriction on Phillip has not been completely discarded by historians, but its consequences seem relatively unrecognised. As early as 1895 Jenks noted that Phillip had been forbidden to delay disembarkation of the convicts from the transports, but he did not pursue the issue further. David Hill acknowledged that Sydney Cove, with its limited water and infertile soils, was a poor option and a choice foisted on Phillip by time constraints. Apart from recognising the existence of the restrictions, Hill neither amplified that statement nor did he explore the consequences. Others after agreeing that the conditions of Sydney Cove were not appreciably better than those at Botany Bay, speculated on “strategic considerations” and the urgency brought about by the French. It has been bluntly described as “a dud site” with sandy soils and an unreliable water supply. Harbour views, it was said, may lift the spirit but they fail to supply nourishment to the body.

Paul-Alan Johnson is among the few writers to have identified the anxiety Phillip experienced in making the choice of a site and described Phillip’s “relief” at finding somewhere more suitable than Botany Bay. Port Jackson was a fine harbour and Sydney Cove satisfied Phillip’s immediate needs but it was hardly satisfactory for a colony that was expected to achieve self-sufficiency within two years. It had some fresh water and was a place where ships could anchor close

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67 Lord Sydney’s replacement, Lord Grenville, criticised Phillip’s choice of Sydney Cove, “the soil of Port Jackson…does not appear to have been as fertile as could have been wished” forcing Phillip to respond that he was bound by his instructions. “I had little time to look around me when I first arrived…my instructions pointed out I was not to delay…” see Britton, HRNSW Vol 2. p252 & p253, Grenville to Phillip, (10 June 1789). p 348 and Phillip to Nepean, (17 June 1790).
68 Ibid.p83, Lord Sydney to Phillip, (30 April 1787)
69 Jenks, A History of the Australian Colonies.p28
70 Hill, 1788 - The Brutal Truth of the First Fleet. pp 183-184
71 Proudfoot, "Town Plans and their Impact on the Settlement Process in Australia." pp 43-44 – Note Phillip had made his decision without any knowledge of any imminent French arrival. The French ships arrived as the fleet was moving to Port Jackson.
72 Ian Stephenson, "Parramatta : A National Treasure," National Trust Quarterly 74(Feb 1995). p19
73 Johnson, “The Phillip Towns of N.S.W. 1788-1810; Formative Influences in the Early Settlement.” p8
to shore so that the transports could be quickly and easily unloaded. Its main feature however was that within in a very short time, Phillip had found a location that he thought was superior to Botany Bay. In doing this he made no mention of the suitability of the land to support a colony and said only of his decision:

[It] was necessitated to find a place wherein ships of very considerable burthen might approach the shore with ease and lie at all times in perfect security.

And

The different coves of this harbour were examined with all possible expedition and the preference was given to one which had the finest spring of water and in which ships can anchor so close to the shore, that at a very small expense quays may be constructed at which the largest vessels may unload. 74

None of the historians who praise Phillip’s choice of Port Jackson or Sydney Cove give weight to Phillip’s own misgivings, either in his correspondence to Evan Nepean or to Lord Grenville. 75 Nor do they place any reliance on the recorded apprehensions of a number of Phillip’s compatriots. The choice was criticised in both official and personal correspondence from Sydney, with several letters suggesting the location was unsuitable and the colony should be abandoned.

Phillip’s second in command, Major Ross, known to be petulant and disagreeably hostile to the governor, 76 expressed grave concerns about the chosen location. On several occasions he prophesied the demise of the settlement and suggested the abandonment of the colony or at least its relocation:-.

Might I presume to intrude an opinion on their Lordships with respect to the utility of a settlement upon this coast, at least this part of it, it should be that it can never be made to answer the intended purpose or wish of the Government 77


76 Ibid. p 177 Major Ross to Under Secretary Nepean, (10 July 1788) – “I cannot see how I could write without informing him [ Secretary of State] of the manner in which the Governor treats me as lieutenant Governor…This you will see cannot be done without my letter coming in the manner of a complaint.”

Lieutenant Ralph Clark, also an unhappy member of the contingent, wrote:

I shall only tell you that this is the poorest country in the world, which its inhabitants are the most miserable set of wretches under the sun...it is the opinion of everybody here that the government will remove the settlement to some other place.\(^78\)

Similarly, an anonymous letter from a Marine Officer, dated 14\(^{th}\) April 1790 related:

The risk of death by famine stares us in the face...the country is past all dispute a wretched one...there is no likelihood that the colony will be able to support itself in grain or animal food for many years to come.\(^79\)

It was not only malcontents who offered reservations about Phillip’s choice of the site of the settlement. Future governor John Hunter (then Captain of the *Sirius*) described most of the land around Sydney Cove as sterile and stony. He wrote: “There are many spots of tolerably good land, but they are in general of but small extent; exclusive of those particular spots, it is rather a poor sterile soil, full of stones.”\(^80\)

Hunter then related that in his opinion the water supply was insufficient and would prove unreliable at times of drought.\(^81\) Watkin Tench wrote that even in the good spots where the officers had chosen to plant crops, the exercise proved futile and that attempts at agriculture in the vicinity of the cove were virtually forsaken:

> In the country contiguous to Sydney Almost the whole of the officers likewise accepted of small tracts of ground, for the purpose of raising grain and vegetables: but experience proved to us, that the soil would produce neither without manure; and as this was not to be procured, our vigour soon slackened; and most of the farms (among which was the one belonging to government) were successively abandoned.\(^82\)


\(^79\) F.M. Bladen, ed., vol. 2, *HRNSW* (Sydney: Government Printer, 1893). p762, Letter from an “Officer,” (14th April 1790). Note; although the sentiments of this letter are similar to those of Major Ross, Ross was at Norfolk Island, not Sydney, when this letter was written.

\(^80\) Hunter, *A Historical Journal Of the Transactions at Port Jackson and Norfolk Island*. p138

\(^81\) Ibid. p138

And

Cultivation, on a public scale, has for some time past been given up here, (Sydney) the crop of last year being so miserable, as to deter from farther experiment.  

Tench described the area from Sydney Cove to South Head as “exceedingly rocky, sandy and barren”; to the south he described it as “sandy, barren swampy country”.  

Daniel Southwell the mate on the _Sirius_ wrote of the indigenous vegetation “we meet with no thing that is deserving of the name fruit and its quad’s [quadrupeds] are scarcely above vermin.”

It was hardly the prime site on which to found a sustainable colony intended to reach self-sufficiency within two years. The suitability of the location, if self-sufficiency was to be the lynch-pin, can be judged by Phillip’s recognition that this goal could not be achieved at Sydney Cove. After almost a year of settlement he advised: “The necessity of a regular supply of provisions has been likewise pointed out in my former letters, as the resources this country affords at present, are very trifling.”

It appears that despite what is now seen as an idyllic location, in 1788 the cove Phillip had found within Port Jackson was not a good choice. True, it had a sheltered and commodious harbour but Phillip’s world was apparently populated with the “finest” harbours. Rather, as Phillip was to relate in a letter of June 1790, the major attribute of Sydney Cove was that it was a better location than Botany Bay:-

_I had little time to look around me when I first arrived, for my instructions particularly pointed out that I was not to delay the disembarking of the people with a view of searching for a better situation than what Botany Bay offered._

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83 Ibid. Chapter 10 - 1790
84 Ibid. Swampy to the Europeans was a synonym for unhealthy. See Michael Carthcart, _The Water Dreamers_ (Melbourne: Text Publishing, 2010). p 36
85 Daniel Southwell Diary AJCP. National Library of Australia
87 Britton, _HRNSW Vol 2_, p349, Phillip to Under-Secretary Nepean (17 June 1790)
It is apparent that Port Jackson and Sydney Cove were chosen hurriedly and selected not because of their excellent attributes, but because they filled Phillip’s most pressing need, that of finding a better situation than was offered by Botany Bay. The haste and lack of exploration, even within Port Jackson, is mentioned in the journal of David Collins who described Phillip as having been very much pressed and unable to thoroughly examine the harbour.  

The words of Collins were later confirmed by Phillip:

\[ \text{I was obliged to look further but I did not think myself at liberty to continue my research...Had I seen the country near the head of the harbour I might have been induced to have made settlement there.} \]

There is no mention whatsoever in Phillip’s journal of soils, land forms or suitability of pasture. If Botany Bay was to be rejected, an alternative site had to be chosen without delay and Sydney Cove met Phillip’s minimum requirements of sheltered harbour, fresh water and easy disembarkation. Thus the first significant urban planning decision of NSW, a decision which was to have a monumental impact on the future colony, was made hurriedly and without proper investigation. Phillip himself, without counting several explorations by his officers, spent more time exploring Botany Bay than the whole time he had initially spent in Port Jackson and at Sydney Cove itself he spent only hours.

The consequences of the selected location on the colony’s inability to achieve sustainability lasted several years. Even after Phillip’s departure in 1793, the acting governor Francis Grose reported his inability to properly resupply a visiting naval vessel the *Daedalus*, a vessel detached from George Vancouver’s expedition and sent to Sydney for replenishment of stores. Further, Angus McGillivery noted that in 1793 four whalers were also operating in NSW waters.

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89 Britton, *HRNSW Vol 2*. p348, Phillip to Under-Secretary Nepean, (17 June 1790)


and remarked that, the outfitting of the whalers, “was no small task” for the newly established colony.92

Whether the purpose of the colony was strategic and resulted from the maritime imperatives a British empire in the Pacific, imperial rivalries, or was a mere exercise in convict dumping,93 the determining factor underlying Phillip’s decision of a site was one of time. Phillip’s acknowledgement of his time constraint features highly in his correspondence, in which he labours the point, mentioning his haste four times in his first letter sent from the colony:

…but that no time be lost...the ground near Point Sutherland was to be cleared;

As the time in which I might have be absent if I went in the Supply must have been very uncertain, I went around [to Port Jackson] in three boats;

...that by examining different parts of the Port at the same time, [with three boats] less time might be lost;

And,

The different coves were examined with all possible expedition...94

Having taken over eight months to travel with several stops, from Portsmouth to Botany Bay, the sense of urgency in the selection of a site must be explained. At the heart of the haste was a requirement to disembark the convicts so that the transports could depart for China, there to obtain a back-load of tea. The avoidance of any delay had been given a high priority in Phillip’s instructions. Two formal instructions had been issued to this effect, one under the hand of the King and a second by Lord Sydney. The urgency was linked to the timing of the China tea harvest which was expected from January 1788 onwards.95

And whereas it is intended that several of the transport ships and victuallers which are to accompany you to New South Wales should be employed in bringing home cargoes of tea and other merchandise(sic)

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93 Ibid. p263 and p271


95 Britton, HRNSW Vol 2.p47, Under-Secretary Stephens to Under-secretary Nepean, (18 January 1787). The original deadline for the vessels to arrive in Canton was set at 1st January 1788. This deadline was removed and Phillip’s instructions only prohibited any delay in the transports’ release. See p83 & p87
from China, for the use of the East India Company, provided they arrive at Canton in due time, whereby considerable saving would arise to the public in freight...It is our royal will and pleasure...you do cause every possible exertion be made for disembarking...having done so you are to discharge all of the said transports or victuallers, in order that such of them...may proceed to China.  

Lest there be any doubt, the King’s words were clarified in a further supplementary instruction by Lord Sydney. In this Phillip was specifically forbidden to undertake any exploration that would delay the transports’ departure. This supplementary instruction while purporting to allow a choice of location was so restrictive, that in practice it left Phillip little discretion:

...at the same time you must understand that you are not allowed to delay the disembarkation of the establishment upon your arrival on the coast on the pretence of searching after a more eligible place than Botany Bay

The available records are incomplete and there were undoubtedly informal and unrecorded meetings and discussions with Governor Phillip as the expedition was being arranged. It may be that Lord Sydney’s supplementary instruction was responding to additional but unrecorded queries by the governor.

The requirement for the immediate release of the transports had its origins in an offer placed before the British Admiralty by merchant and entrepreneur, William Richards Jnr. Richards suggested reducing the freight costs of three of the larger First Fleet vessels by back-loading for their return to England with a cargo of tea. Richards advised that if the transports were able to reach China in time for the tea harvest, the freight costs would be halved. The offer was

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96 Ibid. p87 Phillip’s Instructions G.R. (Geo III)
97 Ibid.p83, Lord Sydney to Phillip, (30 April 1787)
98 Lord Sydney’s instructions purport to be in response to written questions by Phillip of 1 March 1787. Although these questions include a query regarding other locations for settlement. It would seem that the King’s Commission adequately answers Phillip’s question, namely, “According to the best information...Botany Bay appears to offer the most eligible situation”. Lord Sydney took the matter further and forbade any exploration that would delay disembarkation, See, ibid. p83 & 87
accepted but, as will be discussed, it achieved a relatively insignificant saving.\(^{100}\)

The decision to have the transports released early was made by bureaucrats with imperfect knowledge of the new continent and with no experience or understanding of the difficulties that would be encountered. It took no consideration of the planning and establishment of a new settlement and placed severe limitations on Governor Phillip. With hindsight the decision, which jeopardised the project, might be considered quite petty and foolhardy. It was a decision that had a far reaching impact on the future settlement in NSW and almost led to the colony's abandonment.

Research by Alan Frost indicates that the early dispatch of the transports saved between £8,000 and £10,000, with the actual amount seemingly at the lower end of that scale.\(^{101}\) While there is no complete or definitive cost for the transportation of the convicts, Frost estimated an amount to the end of 1789 as being in excess of £250,000. This he said could be possibly fifty percent more if the loss of the Guardian, a vessel carrying supplies to the colony in 1789 but wrecked near Cape Town, were factored in.\(^{102}\) An October 1791 letter to the editor of the London publication The Bee suggested a similar amount. In that letter a figure of £374,000 plus additional unknown contingencies is nominated as the costs for the twelve months leading to February 1791.\(^{103}\)

The relatively minor saving achieved by committing the transports to a return cargo should be weighed against the risk of failure and cost of the colony’s lack

\(^{100}\) To put this into perspective, at the time of the first fleet, Britain maintained by far the largest navy in the world, it was a navy comprising 230 ships of the line, two deckers of 74 gun and above, (all vastly larger than the merchantmen) and countless smaller frigates, together with uncounted single deck warships and supply vessels. Compared to the budget of the British Admiralty, the maximum savings achieved related to a return passage of only three unladed transports. The remainder of Phillip’s fleet was not involved in the China enterprise. For details of the British navy see - David Lyon, The Sailing Navy List, All ships of the Royal Navy - Built purchased and captured (London: Conway Maritime Press, 1993).

\(^{101}\) Frost, The First Fleet; The real story. p189 (Middleton Estimate £10,000), p192. In More detail Frost estimates the actual cost of ships $40,993 this being for six vessels two-way and three vessels one way. This equates to a total saving of £8,198 for the one way voyages.

\(^{102}\) Ibid.p 206

\(^{103}\) Bladen, HRNSW Vol 2 p785, Tumbledown to the Editor (October 1791)
of self-sufficiency. Again, costs are not readily available, but value of the supplies carried by the ill-fated *Guardian* are known. The one year’s supplies, within the hold of this single ship alone and comprising mainly foodstuffs, are said to have been valued at £70,000.\(^{104}\) Karskens argued that the entire expedition’s “linchpin”\(^{105}\) was the achievement of self-sustainability within the shortest possible time.\(^{106}\) Yet for a relatively small financial gain, Phillip had been denied the opportunity to seek suitable agricultural land on which to settle. If the initial plan was for an agrarian colony that would be independent of British supplies after two years the hasty decision to settle at Sydney Cove was to become a major obstacle. The decision, even at the maximum estimate of £10,000 saving, was to prove false economy.

Almost immediately on landing it was evident to Phillip that the area around Sydney Cove was unable to sustain the colony. After only five and a half months Phillip advised: “…no supplies [that] we shall be able to procure in this Country for several years will maintain the colony and regular supplies of provisions must be sent from Europe.”\(^{107}\) Even after two years, the time allowed to achieve self-sufficiency, the locality was still inadequate for the provision of sustenance. A letter to a British newspaper of 1790, from an unnamed officer, stationed in NSW, wrote of abandonment and his fear of starvation: “The dread of perishing by famine stares us in the face, on the day I write we have but eight weeks provisions in public stores.”\(^{108}\) Things had not improved after five years, as a similar letter in 1793 reported:

> ...is there any prospect that this colony will be able to maintain itself? I shall say No! (sic)...the present settlement at Sydney Cove cannot ever become equal to support any number of inhabitants and the more you increase the number the more you will increase the difficulty.\(^{109}\)

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105 A pin on the axle of a cart that secures the wheel. The Macquarie Dictionary describes its modern usage as “the key point of a plan or argument.”

106 Karskens, *The Colony*. p66

107 Phillip, "Letter to Phillip Stephens 10 July ". ADM 1/2308, Kew National Archives, 1788 Sheet 18

108 Bladen, *HRNSW Vol 2* p759 & p760 Extract from a letter from an officer (14 April 1790) Reprinted from the Oracle 25 April 1791

109 Ibid. p808, Letter from Sydney Cove, Reprint from The Western Country Magazine (1792)
And in the 1794 correspondence of free settler Thomas Daveney continued:

_On the 8<sup>th</sup> March, at eleven o’clock in the morning the last ounce of animal food then in the stores was issued, to all ranks and descriptions of people alike and nothing but absolute famine stared us in the face._

It would appear that it was not issues of urban planning, sustainability, or a strategic harbour that featured highest on Phillip’s decision on location. In selecting Sydney Cove it was the time related economies imposed by London based bureaucrats that orchestrated the real decision. Phillip was obliged to make the best choice he had available within the shackles of his instructions.

Phillip placed considerable importance on his operational instructions and that he allowed them to influence him is a matter of record. As related by Daniel Southwell, he discussed his restrictions with his officers over dinner.

Southwell, was a junior First Fleet officer (then midshipman), who claimed a close familiarity with Phillip. Writing to his mother, Southwell described his being asked to dine at Phillip’s table several times. Southwell, although possibly exaggerating his own status, related Phillip’s conversations, including Phillip’s need to release the transports. Southwell professed an intimate knowledge of the financial need to urgently disembark the vessels: “because any long detention of them here must create great expense to government.”

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110 Ibid. p814, Daveney to a Friend at Wycombe, I July 1794 reprint from the Saunders’ Newsletter (August 1795) The two letters of 1793 and 1794 appear to be in complete conflict with the official correspondence of Francis Grose who almost at the same time wrote “the colony is in general healthy, we seem daily to improve…there is little doubt of us reaping much corn…and the colony will supply us the coming year…” See ibid p3, Grose to Dundas (9<sup>th</sup> January 1793); p69 Grose to Dundas (12 October 1793)

111 Jenks, _A History of the Australian Colonies_. p28

112 Midshipman and later Mate on the Sirius.

113 _Historical Records of N.S.W. - Grose and Paterson_. vol. 2 (Sydney: Government Printer, 1893). p682 - Daniel Southwell to Mrs. Southwell; 5<sup>th</sup> May 1788. This is similarly inferred in a letter from Arthur Phillip to Evan Nepean of 12 February 1790 - Arthur Phillip, "Letter to Evan Nepean, 12 February," in National Archives (Kew: CO, 1790). 14/201

114 _Historical Records of N.S.W. - Grose and Paterson_. p 683

115 Ibid. p690
Therefore, in 1788, Phillip had been faced with a major dilemma. He had been prohibited by his instructions from undertaking any exploration that would delay disembarkation and was required to choose a site for settlement with minimal investigation. Once the convicts and supplies were disembarked and the transports released, he then lacked the resources to move his settlement elsewhere. Consequently he knew that his initial selection had to be his final one. Forced to make a decision in haste, Sydney Cove offered better prospects than Botany Bay and the selection was made.

In accordance with his instructions the Charlotte, Scarborough and Lady Penrhyn were cleared of all stores within three months. They were “discharged from Government employ” and “left at liberty to proceed to China.” Although the transport’s captains then showed little haste, Phillip had fulfilled one of his prime instructions.

The time restriction could be seen as a purely penny-pinching measure imposed by a disinterested and unnamed British Treasury official. It was a tunnel-like decision made in the interests of fitting out a fleet. The selection of the site for a township on the other hand was a decision that should have been made unfettered by such irrelevant external considerations.

Urban planning concepts, which would have included investigating the longer-term suitability of the location, the quality of the soil, the adequacy of the water supply and the ability of the locale to support a self-sustaining township can be seen to have played a subservient role. At the time, the choice of Sydney Cove for the first settlement was a poor decision. It was a decision made for the

116 Even though the convicts were disembarked Phillip still required on-land storage facilities for the stores before he could release the three transports. The remainder of the chartered vessels, except one he advised would be released in July. The last remained until August. See Britton, *HRNSW Vol 2*, p150, Phillip to Sydney, (9 July 1788)
117 Phillip, "Letter to Phillip Stephens 10 July ". (Kew, National Archives, 1/2308,1788), Sheet 10
118 The Scarborough, Charlotte, and Lady Penrhyn sailed for China on 5th, 6th and 8th May. See - Britton, *HRNSW Vol 2*, p136  Phillip to Lord Sydney, (15 May 1788)
wrong reason and brought the colony close to starvation. It became a factor
with which all later governors would have to contend.

4.2.4. Phillip’s Second Town Planning Decision. Planning the Town

_There shall broad streets their stately walls extend_
The circuses widen and the crescents bend...
_There shall tall spires and dome-capped towers ascend,_
And piers and quays their massy structures blend;

Erasmus Darwin -1789 120

Despite a hurried choice for the settlement’s location, Phillip’s vision for the
township of Sydney was unmistakably an exercise in town planning.121 It was
an expression of optimism that has been described as “masterful”.122 Phillip’s
ethos is expressed in the verse by Erasmus Darwin. It envisaged the site as
one for an expanding and thriving centre of population and trade. There can be
little doubt that Phillip held high and grandiose aspirations for his townships. In
comparison it has been said that the townships of Lachlan Macquarie, criticised
by Bigge as too expensive and too grand for a penal colony, were mundane and
militaristically simple.123

The source of Phillip’s planning skills is subject to some debate.124 There is no
evidence of Phillip having contributed to any town plan prior to his arrival at
Sydney Cove, yet Proudfoot wrote of Phillip’s planning having: “been applauded
as far-sighted.”125 The body of historians and planners believe Phillip’s
experience came from his observation of cities in Britain and those visited

120 Erasmus Darwin, Visit of Hope to Sydney Cove Near Botany Bay (1789) -Erasmus Darwin, "The
121 Spigelman, "Bicentenary of the Coup of 1808." p4
122 Johnson, "The Phillip Towns of N.S.W. 1788-1810; Formative Influences in the Early
Settlement." p3
123 Ibid. p1
124 Proudfoot, "Fixing a Settlement upon a Savage Shore." p56, Johnson, "The Phillip Towns of
N.S.W. 1788-1810; Formative Influences in the Early Settlement." p3
125 Proudfoot, "Fixing a Settlement upon a Savage Shore." p54
during his naval service. The plan of Sydney is described as being of an Italian Baroque tradition, a rich classical form of street-scape and architecture with wide avenues focusing on public squares. It was a style that reflected the sensibility and fashions of the age and Phillip’s status as an educated man. Bernard Smith held a similar view of the town design and referred to the design of Sydney as having a distinctively baroque influence. Smith noted similarities in the plan to that of the design of Greenwich and various old-world cities that Phillip had visited during his career. Alan Frost wrote of Phillip’s “wide experience” of overseas cities including Greenwich, Portsmouth, Toulon, Lisbon and Cape Town.

Other historians linked Sydney’s design with a need to demonstrate Britain’s imperial power. It was essential, they claim, to develop a town plan that displayed a majesty in design, consistent with the expectations of a great empire. The argument for Sydney as an outpost of a naval empire is supported by McGillivery, who compared Phillip’s Sydney to the great seaports of Rio de Janeiro, or Lisbon. Sydney, according to McGillivery, was planned in terms of a naval base and as an expression of Britain’s imperial aspirations against foreign rivals.

In addition, it would seem likely that Phillip was also aware of the Shaftesbury colonial township design. Karskens argued that Phillip was inherently interested in town planning, as were “many [officials] of his rank and

126 Johnson, "The Phillip Towns of N.S.W. 1788-1810; Formative Influences in the Early Settlement." p3
127 Lewis, Suburban Backlash. p25
130 Frost, Arthur Phillip 1738-1814, His Voyaging.p 200
131 Johnson, "Albion: Phillip's Town on Sydney Cove."7 & p8 ; Karskens, The Colony. p 72,
132 McGillivery, "Convict Settlers, Seamens Greens and Imperial Designs at Port Jackson."p266
133 The Shaftesbury Grand Model or Granville Sharp’s Empire Model as discussed earlier.
education.” As noted by Freestone the Shaftesbury’s model related not only to planning for a grandiose township, but also control of rural populations. These traditional Shaftesbury principles are inherent in Phillip’s philosophy of agricultural settlements contained within a tight administrative region of planned villages and his rejection of remote (at that time) settlements along the Hawkesbury. In recognising the influence of earlier colonial practices, Johnson in referring to the *Law of the Indies*, noted that Phillip’s design conformed to other long-established principles and guidelines for founding a colony.

Irrespective of the type of colony envisaged by Phillip, there can be little doubt that his plan for Sydney, if implemented, would have been grand. Robert Freestone maintained that the frequent portrayal (among planners) of Sydney as a planning failure, arose only because Phillip’s plan was ignored. The town design followed classical lines and was designed to give an impact when viewed from the harbour. The foreshores of the Cove were set aside for a large plaza and government buildings and what was to become a government domain.

The town itself was of high priority for the governor. The design is shown on a plan drafted by William Dawes and Augustus Alt dated July 1788. (Map Fig. 4.1). It shows Phillip’s proposed street pattern and the outlines of planned

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134 Karskens, *The Colony*. p72
136 Perry, *Australia’s First Frontier: The spread of settlement in N.S.W. 1788-1829*. p20. Phillip was aware of the good soils along the Hawkesbury and said it would be settled in the future. In rejecting its occupation he expressed no doubts regarding it as a desirable situation with great advantages. See Britton, *HRNSW Vol 2*. p350, Phillip to Under-Secretary Nepean, (17 June 1790)
137 The Law of the Indies was a Spanish Colonial plan, with similar strategies as the British Shaftesbury Model. - Nuttall, "Royal Ordinances Concerning the Laying Out of New towns." pp743-753; Johnson, "The Phillip Towns of N.S.W. 1788-1810; Formative Influences in the Early Settlement." p5
138 Freestone, *Urban Nation: Australia’s Planning Heritage*. p70
139 Proudfoot, "Fixing a Settlement upon a Savage Shore." p56
141 See Chapter 2.4 discussion on the Surveyor’s General.
permanent buildings, the darker dots referring to existing temporary buildings. The layout also indicates an intention for future expansion to the south-east.  

It was intended that all of the town’s principal streets would be constructed 200 feet wide. Allotments were to be 60 feet wide and 150 feet deep and in possible recognition of the deteriorating conditions in the overcrowded slums of British cities, all housing allotments were to be subject to a condition that would “ever prevent more than one house per allotment.” Measures to protect low densities were not officially introduced into Britain for another one-hundred years.

The arrangement of the ‘parade’ or plaza as a principal foreshore element, overlooked by the governor’s house with an emphasis on a wide carriageway stretching inland, reinforces suggestions of the Baroque influence. It is a configuration found in many older European cities. The orientation of the streets at 45 degrees from north is regarded by Johnson as being a Spanish influence. Given Phillip’s correspondence on the free movement of air, it would seem more likely that the prevailing winds and sea breezes from the north-east, would have been the determining factor. The issue of fresh air and health were important considerations. Medical science of the day held that the transmission of disease occurred through air-born miasmas identified by their foul smells. This was a theory which prevailed in some medical quarters even into the early twentieth century.

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142 Johnson, "Albion: Phillip's Town on Sydney Cove." p7
143 Britton, *HRNSW Vol 2.* p147; Phillip to Lord Sydney, 9 July 1788
144 Johnson, "The Phillip Towns of N.S.W. 1788-1810; Formative Influences in the Early Settlement." p4
145 Ibid. p5
146 Watson, *HRA Vol I.* Introduction pxxi & p48, Phillip to Lord Sydney, (9 July 1788)
147 Britton, *HRNSW Vol 2.* p147, Phillip to Lord Sydney, 9 July 1788
148 This theory was the dominant until the 1860’s, when the water bound nature of diseases such as cholera became accepted. John Snow in 1848 published his work “On the mode of Communication of Cholera” arguing that cholera was spread through polluted drinking-water. Snow’s theory was rejected by a Scientific Committee of Inquiry in 1854.
Fig 4.1. Phillip’s Plan for Sydney
Source: SL NSW M1 811.16/1788/1
Phillip appeared to have considered the living conditions and comfort of his charges as well as their health. In the permanent town, small groups of convicts were to be housed in separate huts rather than a single barrack and each was to have its own garden. The governor envisaged an occupation density of no more than ten occupants per hut, a relatively generous allocation compared to conditions in European working class areas where two or three families were known to share a single room and at times beds were shared on a shift basis. Although the temporary structures at Sydney were undoubtedly leaky and uncomfortable they were intended to be replaced with more substantial housing. Phillip’s intent was later demonstrated at Parramatta where detached dwellings were constructed according to his design. Each dwelling had its own garden and was from 60 to 100 feet from its neighbour. They were described as good huts within which ten convicts could live comfortably.

While the definition of 'comfort' is relative and has to be taken in the context of its time, the convicts had all been prisoners in Britain’s overcrowded gaols and hulks. They had been transported in ships where the British sailors were allowed only fourteen inches (35.6cm) width of hammock space; a senior officer might have a cabin area six-foot by six-foot, (1.8m x 1.8m) with insufficient head room to stand erect. To the prisoners, their own hut with attached garden would have offered a degree of comparative comfort. Even with ten convicts per hut, once inside the walls a degree of privacy was available; a luxury non-existent in the slums of London or within the supervised confines of a gaol or convict barrack.

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The perceived advantage to the occupant of a detached hut over a barrack is perhaps illustrated by the colony’s marines who at times preferred to occupy the hut with the convicts. It was said that the soldiers, who were permitted to share convict dwellings, were influenced by the “infamous characters living there.” Both soldier and convict by living away from strict control and supervision developed an attitude of an independent citizen, discipline deteriorated and both believed they should be free to choose when and where they would work.152

In his philosophy on housing Phillip was well ahead of his time. The late nineteenth century writings of Owen, Colquhoun, Mearns and Booth on the slums of London, from where many convicts originated, gives an insight into the prevailing housing conditions of the poor.153 Phillip’s idea of providing a detached house with its own garden, other than in isolated cases such as New Lanark (1786), Bournville (1893) and some dedicated factory towns such as New Earswick (1902) was a standard not introduced in Britain until 1909.154

Karskens however has argued that the convict huts were solely for shelter, not intended to offer comfort, domesticity, or ownership. This was no doubt a true appraisal of the temporary accommodation at Sydney on any objective scale of comfort, but it would seem that Phillip, driven by his philosophy of rehabilitation was encouraged by the benefits of the rough huts with gardens over those of an even more primitive barracks. His remarks that the prescribed living densities should “prevent...many inconveniences” which would otherwise occur and his remarks that: “having their own garden is a spur to industry, which they would


154 Bournville in Worcestershire was constructed by the Cadbury Brothers, while New Earswick, Yorkshire by Joseph Rowntree. The British legislation, Improved worker housing and was introduced in Britain by the Housing, Town Planning Act 1909. 9 Edw. 7 c44.
not have if employed in a publick garden,” would seem to support the more benevolent view.155

Despite Phillip’s numerous other considerations, the design and laying out of the township commenced almost immediately on disembarkation with the survey underway within a fortnight of Phillip’s landing at Sydney Cove.156 Judge Advocate David Collins, indicated that by the 18th February 1788, the basic structure of the future township had already been marked on the ground.

The principal street of the intended town was marked out at the head of the cove and its dimensions were extensive. The government-house was to be constructed on the summit of a hill commanding a capital view of Long Cove and other parts of the harbour; but this was to be a work of after-consideration; for the present, as the ground was not cleared, it was sufficient to point out the situation and define the limits of the future buildings.157

The survey and setting out of the township obviously continued through February and was still being marked out in May 1788, as noted in a letter by Daniel Southwell: “The plan of the town is laying out, in which I believe the ingenious Mr Dawes, is particularly engaged.”158

Phillip not only envisaged a well ordered town with well housed occupants, but he also implemented NSW’s first environmental controls. He was aware of the pressure of urban settlement and farming on the town’s water supply and only two months after arrival, he issued an edict not unlike a modern planning control. He ordered that to protect the stream from which fresh water was sourced the adjacent vegetation was to be left untouched and the “the cutting down of any trees within fifty feet of the run” was prohibited159

156 As will be discussed later this short period suggests that town plan had been prepared prior to Sydney Cove being selected for its site. See -Johnson, “The Phillip Towns of N.S.W. 1788-1810; Formative Influences in the Early Settlement.”
157 Collins, An Account of the English Colony in New South Wales, vol. 1. 18 February 1888
158 Historical Records of N.S.W. - Grose and Paterson. p692, Daniel Southwell to Mrs. Southwell 5th May.1788
159 Arthur Phillip, "Order Of The Day,” in CO 201/14 (Kew: National Archives, 30 March 1788); Collins, An Account of the English Colony in New South Wales, vol. 1. p25 March 1788
In 1791, the vegetation and the stream were given further protection when a ditch was dug and, to keep out animals, a fence was erected on both banks parallel to the stream.\textsuperscript{160} Unlike what was occurring in many of the streams of Britain, the attempted protection of the water supply is yet another indication of Phillip’s enlightened outlook.\textsuperscript{161} Whether by knowledge, common sense or instinct, the decision to protect the stream from erosion and pollution was made sixty years before Dr. John Snow’s 1854 hypothesis that linked contaminated water with the spread of disease.\textsuperscript{162}

Phillip demonstrated advanced planning skills and his town plan has been described as a design worthy of “considerable attention by historians and planners”.\textsuperscript{163} But, it is not only modern planners who appreciated Phillip’s planning skills. Watkin Tench, who like Daniel Southwell was at times taken into the confidence of Phillip,\textsuperscript{164} described a deliberate intent towards a grand design, one that would be fitting to the status of an important outpost of the British Empire:

\begin{quote}
\textit{To proceed on a narrow, confined scale, in a country of the extensive limits we possess, would be unpardonable: extent of empire demands grandeur of design.}\textsuperscript{165}
\end{quote}

There has been some conjecture by people who have analysed the town layout that Phillip had an even bolder plan in mind. It has been argued that the plan is incomplete and shows roads that should continue being curtailed, suggesting that the plan delivered to Lord Sydney may have been, but a fragment of the

\textsuperscript{160} Aplin, "People in an Alien Landscape." p32; Karskens, The Colony. p239
\textsuperscript{161} B. W Clap, An Environmental History of Britain Since the Industrial Revoloution (Abingdon: Routledge, 2013).
\textsuperscript{163} Proudfoot, "Fixing a Settlement upon a Savage Shore." p56. See also Barnard Smith, Alan Frost, and Paul Ashton.
\textsuperscript{164} Tench, Sydney's First Four Years: being a reprint of a narrative of the expedition to Botany Bay and a complete account of the settlement at Port Jackson. p164 & p209
\textsuperscript{165} Captain Watkin Tench, A Narrative of the Expedition to Botany Bay and A Complete Account of The Settlement at Port Jackson, ed. L.F. Fitzharding, vol. reprint in, Sydney's First Four Years (Sydney: The Royal Australian Historical Society & Angus and Robertson, 1962). p57
whole.  This hypothesis is supported by the words of Phillip himself. His despatches to London referred to further expansion and confirm that at least some thought had been given to the direction of the town’s future growth.

…the settlement at Sydney Cove had now at length arrived…Lines are there traced out which distinguish the principal street of an intended town, to be terminated by the governor’s house, the main guard and the criminal court. In some parts of this space temporary barracks at present stand, but no permanent buildings will be suffered to be placed, except in conformity to the plan laid down. Should the town be still further extended in future, the form of other streets is also traced in such a manner as to ensure a free circulation of air.

The denial of any freehold property within the town limits also demonstrated Phillip’s intention of planned future growth. By refusing to alienate land within the town precinct, he could ensure overall control and protect his vision for the future city.

Unfortunately for Phillip, the plan he prepared for Sydney was too ambitious and was doomed from its inception. Even without the distractions of a lack of food, his workforce problems and dearth of skilled artisans, Phillip was faced with the near impossibility of building permanent dwellings with the materials at hand. The local timber proved hard to cut, was generally rotten inside and it warped and twisted in the heat. Lack of limestone or a source of lime prevented suitable mortar being prepared as a bed for brick or stone:

At present we are obliged to lay the bricks and stones in clay and of course to make walls of an extraordinary thickness and even then they are not to be depended upon.

David Collins also referred to the difficulties of proceeding immediately with the town design and even the normally optimistic Watkin Tench lost faith. In

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Freestone, Urban Nation: Australia’s Planning Heritage. p78

167 Phillip, The Voyage of Governor Phillip To Botany Bay, vol. 3rd Edition. p123

168 Britton, HRNSW Vol 2,p147 Phillip to Lord Sydney 9 July 1788

169 Collins, An Account of the English Colony in New South Wales, vol. 1. p29

170 Britton, HRNSW Vol 2. p128 Phillip to Nepean, 15 May 1788, p189, Phillip to Lord Sydney, 28 September 1788; Hill, 1788 - The Brutal Truth of the First Fleet. p168

171 Britton, HRNSW Vol 2. p190, Phillip to Lord Sydney, (28 February1788)
describing the construction of the main streets of the future township, Tench warned of the difficulty that had been encountered and forecast the failure of Phillip’s plan:

How far this [the street construction] will be accompanied with adequate dispatch, is another question, as the incredulous among us are hardy enough to declare, that ten times our strength would not be able to accomplish it in as many years.\(^{172}\)

Phillip also had other significant concerns. A dispute with Major Ross over the role of the marines\(^{173}\) and the need to address the colony’s immediate difficulties no doubt distracted him, but the task would have proven impossible anyway. With the tools and labour force available, the land was found to be extremely difficult to clear and it was necessary to take advantage of any less vegetated areas available.\(^{174}\) Temporary structures in temporary locations had to be permitted in order to satisfy the settlement’s urgent need for shelter. By necessity the immediate accommodation could answer only the “exigency of the moment.”\(^{175}\) In acknowledgement the plan sent to London indicated temporary residences in black and the location of proposed or existing public buildings in red.\(^{176}\)

The need to look towards the colony’s immediate survival had compelled Phillip to accept a two stage town establishment. There was to be a temporary phase, to meet the colonists’ initial needs and a final phase in which his permanent design would be implemented. The occupation of land by individuals was to be on a temporary or semi-permanent basis as a permitted occupancy offering neither leasehold nor freehold rights. Phillip had the authority to implement such


\(^{173}\) Ross had refused to allow his marines to supervise convicts. This left Phillip with no overseers. See - Britton, HRNSW Vol 2. p153, Phillip to Sydney, (9 July 1788)

\(^{174}\) Historical Records of N.S.W. - Grose and Paterson. p690 “the clearing of the ground was a work of vast labour and to shape timber for building an object of immediate concern.”

\(^{175}\) Tench, A Narative of the Expedition to Botany Bay and A Complete Account of The Settlement at Port Jackson, vol. reprint in; ibid. p 57 (p.103 in Tench’s original version)

measures because the Government (British) had armed the governor with “a plenitude of power,” that had been described as almost tyrannical. It was his intent that the occupier of temporary land would be required to forfeit such occupancy if the land was required for a public purpose. In the Stockdale account published in 1790, Phillip is quoted as stating: “no permanent buildings will be suffered to be placed, except in conformity to the plan laid down.”

As earlier predicted by Tench, the construction of even the temporary settlement proceeded slowly and Phillip himself appeared to have lost some of his initial optimism. As early as July 1788 Phillip admitted that his planned township was, at that time, beyond the colony’s capacity:

...without some additional workmen the progress must be so very slow that I will lay the design aside and the only building I will attempt is the store house.

Why such an ambitious plan was attempted has been explored by several historians. Johnson suggested that the town-design may have been prepared by Phillip prior to his arrival in NSW and intended for Botany Bay. The plan applied to Sydney Cove was an “obvious hybrid,” adapted after a design prepared for “Cook’s meadows at Botany Bay.” Noting the interface of roads with the shoreline, Johnson suggested that the town layout fitted awkwardly on the topography and that it might have been the impracticality of constructing the transplanted township that defeated Phillip’s design.

Others have suggested more conventional theories. Helen Proudfoot held that some responsibility for the failure of the original town plan rested on Phillip himself, noting that by laying the foundations for Government House on the eastern side of the cove Phillip had circumvented his own plan. To Proudfoot the location of the new building indicated that Phillip’s underlying principles had

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177 Tench, Sydney’s First Four Years: being a reprint of a narrative of the expedition to Botany Bay and a complete account of the settlement at Port Jackson; Toon, “The Managment and control of Land use Planning in N.S.W. since 1788.” p146

178 Atkinson, "Taking Possession- Sydney's first householders." p79


180 Bladen, HRNSW Vol 1. p 148

181 Johnson, "Albion: Phillip's Town on Sydney Cove." p7
“faded almost immediately” and proved that the plan’s major features had been abandoned.\textsuperscript{182} Alan Atkinson offered an opinion that Phillip simply ‘turned his back on his original vision,’\textsuperscript{183} while Grace Karskens held that Phillip did not take the plan seriously. These interpretations discount the recorded evidence of Phillip’s intentions, all of which support a conclusion that he envisaged the eventual implementation of his town plan.

David Collins, the Judge Advocate and Colonial Secretary accepted that the plan remained valid in May 1788. He wrote that although the new stone house for the governor was being erected to replace a canvas building, the newer building was intended for use by the governor only until the planned permanent structure was constructed.\textsuperscript{184}

That Phillip believed his town plan would be eventually realised should be beyond dispute. Correspondence written by Phillip shortly before his departure, confirms this belief. In October 1792 Phillip described the situation, perhaps somewhat naively, to Henry Dundas:

\begin{quote}
\textit{The officers… have land which they cultivate; but as the grounds which they have chosen are mostly within the limits of what is marked out for building hereafter, or on land which is to remain common land for the township, no lease or grant has been given…and the officers understand that they are to give them up when wanted for public service.}\textsuperscript{185}
\end{quote}

Then, in a note in Phillip’s own hand, signed immediately before his 1792 departure, he directed that no land was to be permanently alienated within the town limits. (Fig 4.2). To reinforce how seriously he regarded this he also noted that he expected his lieutenant governor to abide by his decree.\textsuperscript{186} A boundary line was marked on the map of settlement within which no land was to be alienated by grant or lease and all buildings within the town limits were to

\begin{footnotes}
\item Proudfoot, "Fixing a Settlement upon a Savage Shore." p57
\item Atkinson, "Taking Possession- Sydney's first householders." p77
\item Collins, An Account of the English Colony in New South Wales, vol. 1. Chapter II. p29
\item Barton, History of NSW from the Records, vol 1, Governor Phillip.- p654 & p655 Phillip to Henry Dundas, (4 October 1792)
\item Charles Grimes, "The Settlement in New South Wales, New Holland," in SZ430 (Sydney: Archives Office of NSW, 1792).
\end{footnotes}
remain the property of the crown. Phillip's notation that Lieutenant Governor Grose had been informed suggests others may have preferred that this was not the case. Phillip however set a poor example, when contrary to his own instruction and just prior to his departure, he inexplicably granted four leases within the town limit.

That Phillip left instructions prior to his departure hints at his intention to return and finish the work he had begun. In 1790 Phillip had asked for leave to travel to England and stated that he would have no objection to his returning to the colony. On his actual departure, he left on health grounds, but without resigning his commission. His wrote “every day tells me that my return to England, for a time at least, is more and more necessary,” thus leaving open the possibility of further service in NSW.

As it was, Phillip did not return and under two successive acting governors, a powerful cadre of officers seized control of the colony’s administration. One of many founding principles they overturned was the ban on alienating land within the town limits leading to an abandonment of Phillip’s town plan. Rather than a pre-conceived urban design, it was the location of existing buildings, the walking tracks and the patterns of occupation that would dominate the future shape of Sydney. As a result, a question, raised by Robert Freestone can again be posed. If Phillip’s vision for Sydney was a planning failure, was it because of a plan that failed in its implementation or was it because of a plan that failed to be implemented?

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188 Britton, HRNSW Vol 2. p330, Phillip To Under-Secretary Nepean, (15 April 1790)
189 Ibid. p669, Phillip to Nepean, (16 October 1792)
190 Karskens, The Colony. p 71
191 Freestone, Urban Nation: Australia's Planning Heritage. p70
Transcript:

This line which is the boundary line intended to run from the head of the Cove which is to the westward of Sydney Cove to the head of Garden Cove the second Cove to the Eastward of Sydney Cove; Farm Cove being between the two. Of this the Lieutenant Governor was informed before I left the Country and the Boundary line was traced by the Surveyors when the Map was made.

Sydney 2nd December 1782 A Phillip

Fig 4.2. Phillip's Hand Written Note to Francis Grose with Transcript.192

Source: SLNSW, M M3 811.17/1792/1

4.2.5. Sydney: A Failed Town Plan?

*Sydney is blessed by its natural setting, especially the interface between land and water. The harbour, the heart of the metropolis, confers on Sydney a charisma that must be the envy of most other cities around the world.*

John Toon and Jonathan Falk - 2003

The initial period of land settlement, fell under the guidance of four naval governors and two acting governors who, other than Philip, showed little ability. This period of time could be divided into years during which Arthur Phillip’s plan for Sydney materialised and those during which it withered and failed.

If it is agreed that Phillip’s plan for Sydney failed, the governor himself could be regarded as bearing at least part of the responsibility; the hardship that the colony encountered in the first few years had diverted his attention from town building. Because of the contingencies encountered, he was forced to permit the construction of buildings in locations other than those stipulated by his overall design. The plan’s main undoing however, was that his immediate successors either did not understand, or did not share, Phillip’s image of Sydney as Britain’s thriving Pacific outpost and a visible projection of its ‘superior’ culture.

There can be little valid criticism of Phillip’s plan of Sydney. It reflected the planning thoughts of its day and addressed many of the shortcomings of the

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193 Toon and Falk, *Sydney Planning or Politics*. p3
194 Jeans, "The impress of central authority upon the landscape: southern Australia 1788-1850." p3
195a The convicts… are distributed in huts, which are built only for immediate shelter” and “The Temporary buildings are marked in black; those intended to remain, in red” - Britton, *HRNSW Vol 2*. p147. Phillip to Lord Sydney, 9 July 1788
eighteenth century British city. The design reflected the need to establish order and regularity over a confused landscape, the need to create a healthy, sustainable township and a capacity for further growth. In keeping with a modern ideal, Phillip had taken a wide and a holistic view. He had looked to the purpose and present and future needs of the town, as well as welfare of present and future residents. It was to be a township of wide streets and free air movement, comprising detached housing with gardens, that would avoid the squalor and the deteriorating social conditions associated with the overcrowding then plaguing the old world areas of Phillip’s youth.

Phillip’s vision of Sydney failed not because of poor or unsuitable design, but because Phillip failed to comprehend the difficulties that would be encountered during its implementation. In allowing temporary developments to occur, Phillip sowed the seeds that would frustrate his plan. Once colonists had invested in a particular site they were reluctant to give up or pull down their buildings, just to comply with Phillip’s design. His successors, particularly Grose and Paterson, not sharing Phillip’s grand vision, were recalcitrant in curbing improvements or new buildings and did not enforce any relocation. There are even suggestions that during the Interregnum, the two successive administrators took advantage of the situation to ‘feather the nests’ of their brother officers. Phillip’s plan may have failed, but the failure did not result from the nature or details of the plan. Because Phillip’s plan was not implemented, an opportunity was lost.

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197 Phillip, *The Voyage of Governor Phillip To Botany Bay*, vol. 3rd Edition. p144 & p146
4.2.6. Phillip’s Second Town Design: Parramatta

The month of November commenced with the establishment of a settlement at the head of the harbour. On the 2nd his Excellency the Governor went up to the Crescent with the surveyor-general, two officers and a small party of marines to choose the spot and mark out the grounds…which his Excellency named Rose Hill in compliment to G Rose Esq. The soil at the spot was of a stiff clayey nature, free from that rock which everywhere covered the surface of Sydney Cove.

David Collins November 1788

Phillip’s next urban venture took place in 1790 at Parramatta, an area initially known as Rose Hill, it was approximately nine miles (14.5km) west of Sydney and accessible by both land and water. Good soils had earlier been discovered at Rose Hill and the area was already being farmed. There, Phillip’s town planning skills again came to the fore, but this time his plan was successfully implemented.

David Collins described the principles on which Phillip’s second town was to be laid out. His words confirmed the use of similar town planning strategies as had been applied to the design of Sydney. Phillip again envisaged a grand township with a wide carriageway and single allotment housing, each house with its own garden. As with Sydney, Parramatta was designed with the amenity of the residents in mind:

There also the Governor…by beginning on so wide a scale the inhabitants of the town at some future day would possess their own accommodations and comforts more readily, each upon his own allotment, than if crowded into a small space.

The plan of Parramatta offered some similar aesthetic qualities as Phillip had envisaged for Sydney, with the parade at the waterfront and a wide avenue offering a vista to a dominating Government House at the other end of the town. It was again a rectangular grid, but this time the side streets were tilted to the

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201 Collins, An Account of the English Colony in New South Wales, vol. 1. p45
203 Collins, An Account of the English Colony in New South Wales, vol. 1. p104 (July 1790)
north-east and the main parade, now George Street, to the north-west. The scale of Parramatta with its mile long, wide main boulevard, was more grand than that of Sydney, leading to a comparison by Tench, to Pall Mall in London and an inference that Parramatta was designed as the seat of government, which it soon became.204

In his journal Collins described the governor’s direct involvement in the town’s “on-ground” design, including the location of a “capacious garden.” Collins also confirmed Phillip’s direct supervision of the town’s construction.205 The town plan is described as unarguably Phillip’s own without outside input and as noted by Paul-Allan Johnson, Parramatta again showed ample evidence of Phillip’s overseas experiences.206

The town design reflects its calmly contemplated origin, in contrast to the rush of the choice of Sydney’s site and its possibly transferred, plan.207 Phillip made it clear that a key aim of the new town’s physical form was to provide the convicts with benefits associated with cultivating gardens. He wrote:

[The] power to exchange vegetables for little necessaries which the stores do not furnish makes them begin to feel the benefits they may draw from their industry.208

Convicts were given time for cultivation “during those hours which were not dedicated to public labour.”209 The wide avenue leading uphill to government house similarly served not only to impress the casual visitor, but also to make visible the social order, with the intention of leading the convicts to reform.210

204 Tench, A Complete account of the Settlement at Port Jackson, vol. Digital. (n.p), (16 November 1790)
206 Johnson, "The Phillip Towns of N.S.W. 1788-1810; Formative Influences in the Early Settlement." p10
207 Ibid. p10
208 Britton, HRNSW Vol 2. p362, Phillip to Grenville, (17 July 1890)
It was easier to bring such a plan into fruition at the new site than it had been in Sydney. The convicts were without the urgent need for safe accommodation and the construction was less constrained by the topography and vegetation. At Parramatta, Phillip ensured that the settlement was built in conformity with his plan. A letter reportedly from an anonymous “person of eminence” reported:-

*His Excellency has ordered a town to be erected as fast as possible at Rosehill.... On the whole the plan seems to be made the most regular of any yet laid down in this place.*

In 1791 the settlement was described by John Hunter as a considerable town in a pretty situation. Some 213 acres of farming land had been cleared for cultivation, roads were laid out, and many good buildings had been constructed. However, although the town design had many similarities to that of Sydney, Parramatta had some irregular and odd dimensions.

The dimensions have been described as seemingly ad hoc and yet the distance to the town hall as “tantalising in its exactness”. The road widths do not appear to have any common rationale and are not known to be used elsewhere in the colonial world. This Paul-Allan Johnson speculated, indicated some unrecorded esoteric meaning behind the plan.

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211 Historical Records of N.S.W. - Grose and Paterson. p774 - A letter from Sydney


213 Johnson, "The Phillip Towns of N.S.W. 1788-1810; Formative Influences in the Early Settlement." pp10-14

214 Ibid. p12

215 Ibid. p12
Front of the Town Hall [Government House]

- 528 feet 8 inches from High Street

High Streets  
205 feet wide

Church Street  
145 feet wide

South Street \}

Bridge Street  \} 118 feet wide

Hospital Lane  
79 feet wide

Back Lane  
60 feet wide

Urban land units  
660 feet square (10 square chains)

Building allotments  
66 feet by 330 foot deep (Main street lots)

165 feet by 132 foot deep (Secondary and Tertiary)

Fig 4.3. Summary - Phillip’s Specifications for Parramatta

Table: P. Farnill

Johnson undertook extensive geometric analysis on Parramatta’s dimensions and has claimed a significant mathematical correlation, suggesting that allotments fit exactly to a twenty-five acre square. Johnson points to other possible reasons and referred to a suggestion by George Mackaness that the dimensions reflected Masonic symbolism. Although such symbolism would seem unlikely, Freemasonry would have been common among the officers of the First Fleet including Surveyor General Augustus Alt.

It would seem likely that the patterns are illusionary and the road widths were retrospectively determined to fit within an available area. Because of the poor soils around Sydney Cove, the area was being used to augment the colony’s wheat crops, with the first convicts stationed there late in 1788 when Phillip


\[217\] ———, “The Phillip Towns of N.S.W. 1788-1810; Formative Influences in the Early Settlement.” pp13-14 and Fig 6

\[218\] Ibid. pp 19-20
chose a site for a redoubt and store.\textsuperscript{219} When John Hunter visited the area shortly after his return from Cape Town in May 1789, he was impressed with the work done, in preparing the ground for grain, the appearance of the convict gardens and the number of huts that had been erected.\textsuperscript{220} In July of that year David Collins described the very good huts in which the convicts were living.\textsuperscript{221} By 1790 when the town was being laid out, the surrounding land was being prepared for agriculture, possibly even planted and some substantial buildings had been erected.\textsuperscript{222}

As Phillip’s 1790 plan was being imposed upon this agricultural landscape a compromise may have been required between the street widths and loss of agriculture. It has been remarked that crops of wheat stood there while “Phillip’s broad avenue approached from the east” and that roads were built over cultivated ground.\textsuperscript{223} This was seemingly a waste in a colony starving for grain and desperately short of cleared ground for agriculture. In an action that could demonstrate a commitment to a planned town while preserving the colony’s resources, the road widths may have been varied to suit the location of existing structures and gardens.\textsuperscript{224} If this was the case, the Johnson ratios are merely a coincidence, a consequence of the governor’s desire to create large uniform allotments within a planted area.

After the departure of Governor Phillip, Parramatta as foreseen by Tench, did at times become the seat of Government. Governors Bourke, Gipps and FitzRoy all appear to have preferred Parramatta to Sydney as their place of residence. The next town planned by Phillip however, remained a rural settlement, existing only to support nearby small agricultural holdings and government farms.

\begin{itemize}
\item \textsuperscript{219} Collins, \textit{An Account of the English Colony in New South Wales}, vol. 1. p45
\item \textsuperscript{220} Hunter, \textit{An Historical Journal Of Events at Sydney and at Sea 1787-1792}. p120 – Hunter described the 1789 dwellings as tent huts.
\item \textsuperscript{221} Collins, \textit{An Account of the English Colony in New South Wales}, vol. 1. p71
\item \textsuperscript{222} Ibid. p45
\item \textsuperscript{223} Karskens, \textit{The Colony}. p84
\item \textsuperscript{224} Tench, \textit{A Narrative of the Expedition to Botany Bay and A Complete Account of The Settlement at Port Jackson}, vol. reprint in. Postscript, p148; Collins, \textit{An Account of the English Colony in New South Wales}, vol. 1. Chapter X, p130 – Tench reported on 1\textsuperscript{st} October 1788, A detachment of one hundred men three officers and twenty marines was about to depart for Rose Hill
\end{itemize}
4.2.7. Phillips Last Township Design – Toongabbie.

A new settlement [has been] formed about three miles to the westward of Parramatta and which I have given the name Toon-gab-be...The soil is good and in the neighbourhood of this place there are several thousand acres of exceedingly good ground.

Arthur Phillip – 2nd October 1792

Formerly known as “The New Grounds” the hamlet of Toongabbie was the last of the townships laid out by Governor Phillip. It was originally a farm controlled by Thomas Daveney, and was given its present name in 1792; a name which like Parramatta was of Aboriginal origin. Comprising a very simple main street layout, the township was no more than a hamlet: an outlier to the larger settlement at Parramatta three miles to the east and was consistent with the Shaftesbury concept of colonisation. As with Phillip’s previous designs, the town design contained similar features with detached dwellings, on large individual garden allotments. The main street was tilted towards the north east.

The use of the area for agriculture is first mentioned by David Collins who in January 1792 recounted an incident of a convict being robbed “not far from the New Grounds”. In June of that year Collins reported that much labour had been performed there and a quantity of wheat and maize planted. There is no reference of a township until Phillip’s letter to Henry Dundas of October 1792. Collins however in July 1792 referred to a settlement beyond Parramatta “which had [been] lately obtained” and “which were (sic) to be distinguished by the name Toon-gab-be.”

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225 Britton, HRNSW Vol 2. p645, Phillip to Dundas, (2 October 1792)
227 Johnson, "The Phillip Towns of N.S.W. 1788-1810; Formative Influences in the Early Settlement." p 15
228 Collins, An Account of the English Colony in New South Wales, vol. 1.p159
229 Ibid. p171
230 Britton, HRNSW Vol 2. p645
231 Collins, An Account of the English Colony in New South Wales, vol. 1.p176
The township, it has been claimed, was never intended to be more than a rural farm settlement. Phillip decreed that roads were to be approximately 118 feet wide with building allotments of three quarters of an acre based upon a 100 foot frontage and a 330 foot depth. Phillip, however, increased the size of huts to sleep twenty men, a less comfortable arrangement suggesting both short term accommodation and its possible use as a place of secondary punishment. Toongabbie was not popular with either the garrison or the convicts. The initial work of clearing the land was hard and the settlement lacked the comforts of the more established communities of Sydney and Parramatta.

The road layout was essentially a single street with huts along either side. Both Karskens and Johnson have alluded to the layout being reminiscent of an English village. It could be inferred from this simple street pattern that Toongabbie was not an urban design within the definition of a pre-planned township but that would mean that any single street development was unplanned. Karskens however took it a step further. Although it lacked the grand avenue leading to a government building, she described the Toongabbie design as being a “clone of Parramatta”. The plan however lacks the dominant government house, an important feature of the other two settlements.

Johnson again seeking hidden symbolism within the township design, argued that there was a similar geometrical pattern in Toongabbie as he had found in Parramatta. This suggested to Johnson that Toongabbie was clearly a preconceived township. Unlike Parramatta however, the Toongabbie ratios appear to be a ‘hard fit.’ The idea of the roads laid out in accordance with symbolic geometry seems to be an overly complex solution offering little benefit to the townships. It would seem from the evidence that there is no geometric rationale associated with Toongabbie. However, if Johnson’s hypothesis of a

232 Johnson, "The Phillip Towns of N.S.W. 1788-1810; Formative Influences in the Early Settlement." p 14
235 ———, The Colony. p85
236 Johnsons Trigonometric ratio for Toongabbie
geometrically patterned Parramatta is accepted, it would be reasonable to expect that Toongabbie had been similarly planned.

It has been observed that contemporary landscape paintings can depict the colony’s progress, authority and control in seemingly benign ways. Although the paintings generally celebrate prosperity and progress and were often a form of propaganda, they were nonetheless generally painted from life. In the case of an inanimate subject such as a streetscape, a painting can offer insights into the streets and buildings at a particular point in time. Thus a print of an engraving by Lowry of Toongabbie in 1798 illustrates aspects of the village as it then stood.

The print shows the town within the conventions of the picturesque. Observed through a window of seemingly wild and untamed bushland, the ordered rows of housing with regularly constructed gardens offer a contrast against a wild foreground. The effect is of a cleared oasis in a disordered landscape. The engraving hints of further farmland stretching eastward into the distance towards Rose Hill. With respect to the village itself, the engraving suggests that by 1798 there was a well-established and clearly planned permanent settlement, with two rows of housing dominating a hilltop with fenced and planted gardens descending along a straight road (Fig 4.4). Although according to Johnson it lacked the boldness and aesthetic quality of Parramatta, it was not merely another grid plan.

As noted by Karskens the township is an example of Phillip’s plan for spatial growth, with Toongabbie the colony’s first village. It was consistent with the reigning British philosophies on a colony’s physical expansion and it could be expected that, had Phillip either remained in, or returned to the colony, there would have been more of such villages across the country.

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237 Karskens, *The Colony*. p296
238 Wilson Lowry, *A Western View Of Toongabbie*, 1798. State Library of NSW - an7566574, 12.5 x 16.5 cm. Cadell & Davies. SL.NSW an7566574
239 Paul-Alan Johnson cited in, McClymont and Kass, "Old Toongabbie and Toongabbie." (np)
240 Karskens, *The Colony*. p86
4.2.8. Norfolk Island

Saw land to the S.W... The island appears of a moderate height and extremely beautiful being everywhere loaded with herbage of an exceedingly fine nature... Various trees and plants were observed that are common in New Zealand; and in particular the flax plant, which is rather more luxuriant here than in any part of that country. The chief produce here is a kind of spruce pine, exceedingly straight and tall, which grows in great abundance. Such is the size of these trees that, breast high, they are as thick as two men can fathom.

Norfolk Island – William Wales - 1774

241 William Wales, "Log Entries for 1774," in Log Book of 'HMS Resolution' (London: Royal Observatory and Board of Longitude Collection - Cambridge University, 1774). RGO 14/58: 78-145v – Entry for 10 October 1774. N.B. Wales was an astronomer on during Cook’s second voyage. (HMS Resolution).
Norfolk Island was discovered by Cook in 1774 during his second exploratory voyage and became integrated with Britain’s imperial and strategic objectives in the South Pacific. It was settled early in NSW’s colonial history, both to protect the island from foreign incursion and also as a possible source of mast timber and flax for the navy’s sails. The island was within the zone of control included in Phillip’s commission and was thereby part of the colony.

The occupation of the island formed part of Phillip’s initial instructions from George III who also commented that the island’s flax plants may prove the basis of a valuable export. In compliance with his instructions, Phillip directed Lieutenant Phillip Gidley King to establish a settlement on the island almost immediately after the disembarkation at Sydney Cove. King sailed from Sydney Cove on board the *Supply* three weeks after the First Fleet’s arrival at Sydney Cove. He was accompanied by a contingent of one petty officer, a surgeon’s mate, two marines, eleven male and six female convicts.

Under the direction of King, the island appears to have been laid out in an ad hoc manner. Without the benefit of a plan, King’s journal initially described only the clearing of land for the erection of tents and their later replacement with huts. As with Sydney, clearing was difficult. Overall there appears to have been little overall forethought with buildings and gardens placed where clear ground could be found.

Every person on the island was excused from duties each Saturday, to clear land and cultivate gardens for themselves. Eventually areas of one or two acres were farmed by individual convicts who, subject to good behaviour, were to be granted the land they worked. The land to be cultivated was simply selected by the individual. When emancipated convict Richard Phillimore informed King that he had chosen a suitable spot on which to settle, King simply

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242 Britton, *HRNSW Vol 2*, p13, Geo III instructions to Phillip, (25 April 1787)

243 Ibid. p20, Phillip to Sydney (15 May 1788)


245 Ibid. p283

246 Ibid. p254 & p255
sent some labourers to assist him in clearing the ground and building a house.\textsuperscript{247}

On arrival it was discovered that the soils of the island were so luxuriant compared to those of Sydney that consideration was given by Lord Grenville, to making the island the colony’s “principal settlement.”\textsuperscript{248} However, it did not prove as productive as initially envisaged, in part because the vegetation was thick and, difficult to clear. King’s initial report described a land occupied entirely by woods, with “trees so bound together...that penetrating the interior of the island was very difficult.”\textsuperscript{249} Referring to the labour involved in clearing the land for agricultural purposes, Lord Grenville’s replacement Henry Dundas suggested the expediency of limiting individual land grants to 15 acres.

The difficulty in clearing and selecting allotments presented other problems. By 1790 it became clear that land grants had been made without proper survey or measurement and number overlapped.\textsuperscript{250} Surveyor Charles Grimes was sent to Norfolk in 1791 and required to regularise the grants.\textsuperscript{251} In this King was criticised by Dundas, who noted that if as per instructions, a Crown lot been reserved between each lot alienated, such boundary problems would not have occurred.\textsuperscript{252}

Norfolk Island never became the thriving colony that was expected. Although undoubtedly beautiful, the flax exports were never achieved and the timber proved unsuitable for masts. Further the lack of a natural harbour made landing supplies both difficult and treacherous. The island became an expensive adjunct to Sydney and a feared place of secondary punishment, frequently considered for abandonment and was abandoned from 1814 to 1825.

\textsuperscript{247} Ibid. p275
\textsuperscript{248} Britton, \textit{HRNSW Vol 2}. p121, Grenville to Phillip, (19 June 1789)
\textsuperscript{249} Ibid. p21, Phillip to Sydney, (15 May 1788)
\textsuperscript{250} Collins, \textit{An Account of the English Colony in New South Wales}, vol. 1. p180
\textsuperscript{251} Kass, \textit{Sails to Satellites}. p3 & p61
\textsuperscript{252} Britton, \textit{HRNSW Vol 2}. p457, Dundas to Grose, (15 November 1793)
4.3. Land Grants

Under Phillip’s instructions of 1787 he had been authorised to grant to every male emancipated convict 30 acres of land, with a further 20 acres if married and then 10 acres for every child. It was necessary for the emancipist to live on and cultivate the land and for this he was to be furnished with supplies for twelve months and given seed and livestock in amounts, “as may be proper and can be spared.” 253 The land was to be surveyed prior to the grant being made. There was no provision made for an unmarried female emancipist. 254

In 1789 on the recall of the Marine Corps, Phillip was authorised to offer non-commissioned officers and men who wished to remain in NSW a grant, over and above that of the emancipists, of 100 acres and 50 acres respectively. These grants to be doubled if the marine agreed to serve a further five years in the NSW Corps. As with the emancipists they were to receive one year’s supplies and be free of taxes and rents for ten years. 255

Any free settler arriving in the colony was also to be eligible for a grant at the governor’s discretion, but such grants were not to exceed that of a non-commissioned officer. 256 For a free settler the moratorium on quit rents and taxes was to be five years.

4.4. The Governor Departs

On Phillip’s departure for England in December 1792, it was unclear if he would return or be replaced. He had repeatedly asked that he be relieved of his post,

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253 Ibid. pp90-91, Phillip’s Instructions, (25 April 1787)
254 The “Returns of Lands Granted” of 1794 shows a “term expired” Eleanor Frazer being granted 20 acres at concord by Grose on 20 February. She was the first female to be granted land. - Watson, HRA Vol1. p473, Return of Lands granted (30 April 1794).”February,” Today in History 2014.. (n.p.) (accessed 21/1/14)
255 Britton, HNSW Vol 2., p257, Phillip’s Additional Instructions, (20 August 1780)
256 Ibid.pp257-258, Phillip’s Additional Instructions, (20 August 1780)
but his requests had been either ignored or had received an ambiguous response.\textsuperscript{257}

It was after Phillip’s departure and during an interregnum of nearly three years that his plan for Sydney was finally overturned. The period was one in which a cabal based within the NSW Corps achieved enormous wealth, power and influence by securing for themselves free land, the labour of convicts and the bulk of the colony’s trade. Had Phillip returned, it could be speculated that he might have attempted to re-introduce his plan for Sydney but in so doing would likely have felt the wrath of the NSW Corps, just as did one of his successors, William Bligh.

Despite the failure of Phillip’s plan for Sydney, he made many planning decisions that formed the base on which most, if not all, of NSW’s subsequent local and regional plans would build. His selection of Sydney Cove for the site of the first settlement and Parramatta as the second, set in place the pattern of settlement that shaped NSW history to the present time. His use of wide roads and low density detached housing with individual gardens became the standard to which each of the colony’s early governors would endorse.

The next period of the colony’s history would contribute little to planning, but nonetheless land and its possession became a major factor in a struggle for economic wealth. It was a struggle that caused conflict between the officer cadre and the governors. During the absence of an appointed governor, officers of the NSW Corps, gained sufficient wealth and power to successfully challenge each of the naval governors from King to Bligh. Although it was a trading monopoly that created most of the officer’s wealth, it was the possession of land that allowed them to achieve that monopoly.

4.5 Settled Areas and Spatial Growth at end of Phillip’s Tenure

The extent of the settlement and land alienated at the end of Phillip’s governorship is tabulated in Table 4.4.

\textsuperscript{256}Ibid.; ibid. pp 559, 613, 666, 669 - Phillip to Grenville (Nov 1791); Phillip to Dundas (March 1792); Phillip to Dundas (October 1792); Phillip to Nepean (October 1792); p 625 & p666 Dundas to Phillip (May 1792); p666 Phillip to Dundas (October 1792).
Table 4.4. Main Localities Settled at the end of the Phillip’s Governorship\textsuperscript{258}

<table>
<thead>
<tr>
<th>Locality</th>
<th>Locality</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sydney and Immediate Surrounds</td>
<td>Northern Boundary</td>
</tr>
<tr>
<td>Toongabbie</td>
<td>Eastern Farms</td>
</tr>
<tr>
<td>Parramatta</td>
<td>Kissing Point</td>
</tr>
<tr>
<td>Field of Mars</td>
<td>External</td>
</tr>
<tr>
<td>The Ponds</td>
<td>Norfolk Island</td>
</tr>
</tbody>
</table>

### Total Acreage Alienated\textsuperscript{259}

| Arthur Phillip 1788 - 1792 | 3389 Acres |


\textsuperscript{259} F.M. Bladen, ed., vol. 6, HRNSW (Sydney: Government Printer, 1898.), p808, Footnote
CHAPTER 5. THE VISION IS LOST: GROSE TO BLIGH

In infant colonies frequent differences of the mode of governing, arise naturally from a change of the governor, but the very great difference between the present state of this and its former one, is beyond all conception: the meanness practiced by Officers of the NSW corps exceeds all I could possibly suppose...

Robert Murray, the Britannia, June 1793

This chapter initially describes a period of interregnum during which the colony was administered by Francis Grose and William Paterson. It examines Grose’s disregard of Phillip’s departing instructions and plans for Sydney. It relates how, by an indiscriminate granting of land within the town limits, Grose impeded any opportunity for the plan’s reinstatement. It also describes the rise of the NSW Corps as a powerful force that was able to manipulate the colony’s administration and economy for its own benefit.

The administrations of three subsequent governors, Hunter, King and Bligh are discussed. John Hunter was expecting the governorship of the colony to be a sinecure but found himself in serious conflict with the officers of the NSW Corps. It was a conflict that saw Hunter removed from Office and replaced by Phillip Gidley King, who although critical of his immediate predecessor, eventually suffered a similar fate. Finally, the chapter discusses the downfall of the fourth NSW Governor, William Bligh, who by attempts to overturn leases, resume land within the township and curb the power of the NSW Corps, met with the ire of an entrenched colonial oligarchy and was overthrown by his own officers.

The chapter demonstrates how the greed for and the possession of land became a driving force that shaped the colony’s history. It was land that allowed the officers of the NSW Corps to gain sufficient economic and political power that they became in effect an oligarchy. Using the possession of land and the

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wealth derived from it as their power base, the officers were able to control the colony’s economy, orchestrate the dismissal of two governors and instigate a mutiny against the third. It was a period during which the settlers realised that after an initial grant had been made, despite decrees and regulations, the governors had little power over land and lacked the ability to enforce their regulations. The defiance of government land regulations would continue to develop during this period and, in the 1820s and 1830s, reach a culmination with the pastoralists unbridled, unauthorised squatting on crown land.

5.1. The Aftermath of Phillip’s Departure
Following the departure of Arthur Phillip, the colony experienced seventeen years of administrative turmoil. A cadre of NSW Corps officers was able to gain sufficient wealth and influence that an oligarchy was formed and the authority of the governors was challenged. At the time the Corps comprised only seventeen commissioned officers, four of whom were stationed at Norfolk Island. The officers gained power and wealth during the period of interregnum and the land grants made suggest a form of nepotism that served both the military officers and senior officials.

Lisle, while not commenting on the extent that individual officers participated in the oligarchy, particularly mentioned as key players Paterson, Foveaux, Johnston, Rowley, Macarthur, Laycock and Palmer. Of these, John Macarthur is considered to have been the ring-leader and was named as such by John Hunter. Macarthur was a particular beneficiary of Grose’s largesse. After only one year and ten months under Grose’s administration, he graphically described his changing fortunes:

2 Watson, *HRA Vol1*. p436, (Enclosure, State of the Settlements), Grose to Dundas, (30 May 1793)
4 Lisle, "Rum Beginnings." p22
6 Clarke, *Australia: A Concise Political and Social History*. p47
As for myself I have a farm containing 250 acres of which upwards of 100 acres are under cultivation and the greater part of the remainder is cleared of the timber that grows on it. Of this year’s produce I have sold £400 worth and have now remaining in my granaries upwards of 1800 bushels of corn...

During the interregnum, land and convict labour were granted freely to the officers who planted grain and from the proceeds of its sale they were able to dominate and monopolise the colony’s trade. The officer clique became a de facto oligarchy whose influence and machinations thwarted the efforts of governors Hunter and King and culminated in the overthrow of William Bligh.

It is noted that during King’s tenure in 1803, the officers’ monopoly on trade had ceased. It collapsed once wealthy merchants, many of them former convicts, had accumulated currency and with it, the ability to compete in purchasing goods from visiting ships. Land however remained the officers’ continuing source of wealth and it was a source they were determined to protect.

The extent of the officer’s willingness to protect the status quo, in respect to their access and holding of land, is demonstrated by their rebellion against William Bligh. The officers were willing to commit mutiny and they were fortunate that capital punishment was not applied. Bligh had attacked the clique’s power-base by refusing to grant land and revoking existing leases in Sydney town. It was thus both fear and avarice relating to land that precipitated Bligh’s overthrow and not any specific action he took against spirits. As will be illustrated, the so called Rum Rebellion is but a popular misnomer.

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7 Sibella Macarthur-Onslow, *Some Early Records of the Macarths of Camden* (Sydney: Angus and Robertson, 1914). pp45-46 Note at 5/- per bushel the corn would have had an estimated value of £900.

8 Bladen, *HRNSW Vol 4*.p178, King to Portland, (28 September 1800)


5.2. Greed, Power and the First Interregnum (December 1782 to September 1795)

[Interregnum]: Any period during which a state has no ruler or only a temporary executive: A pause or interruption in continuity.  
Macquarie Dictionary

At the time of his departure Phillip still retained the governorship, but the administration of the colony rested with Francis Grose, a marine major and Phillip’s lieutenant governor. This interregnum not only defined the period between Phillip’s departure and the arrival of his successor, but it was the period during which the colonial model envisaged by Phillip was overturned.

Grose’s administration was interim. He held office only during the absence of an appointed governor, and Phillip’s intentions regarding a possible return were unclear. Phillip did not officially resign until mid-1793 and was still described as being the governor by Lord Howe in October 1793. The resignation was not accepted until December 1793 and did not become effective until John Hunter was commissioned in January 1794. Because of this uncertainty of tenure, Grose could have been expected to follow Phillip’s precedents and obey his instructions, yet he chose to implement major reform with respect to land, the courts and even colonial society.

Grose has been described as a weak leader who thought his prime responsibility was to his colleagues in the NSW Corps. As noted by Lisle, Grose presided over a “change of course”, taking the colony in a direction that Phillip would not have approved. Grose’s successor, William Paterson, during

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13 ———, *HRNSW Vol 2* p110. Lisle, "Rum Beginnings."p24

14 ———, "Rum Beginnings." p24

15 Ibid.p24

The administration during the interregnum left a long-lasting legacy. The officers, having enjoyed two and a half years during which any planning and land use regulation was overtly for the benefit of those in power, were loath to accept displacement by the successive governors, Hunter, King and Bligh. The attitude of the officers made orderly development difficult, as the very body that the governors required to enforce their authority was attempting to thwart change and maintain the status quo.\footnote{Bladen, HRNSW Vol 4. p179 King to Portland (28 September 1800). Ibid. p594, Hunter to Under-Secretary King, (14 October 1801).}

5.2.1. Acting Governor Francis Grose – Governor December 1792 to December 1794

Grose...indolent by nature he displayed no desire to follow Phillip’s practice of maintaining a close personal watch over every aspect of the settlement. The inhabitants were not slow to take advantage of his laxity.

B. H Fletcher (1966)\footnote{B Fletcher, H,, "Grose, Francis (1758-1814)," in Australian Dictionary Of Biography, ed. National Centre of Biography (Melbourne: Australian National University, 1966).}

Francis Grose was born in about 1758. Prior to his embarking for NSW he was a thirty-one year old war-wounded major of the 96\textsuperscript{th} Regiment.\footnote{There is some uncertainty about the exact date.} He had joined the army as an ensign at the age of seventeen and served approximately four years in the American War of Independence. He returned to England because of wounds and served for two and a half years as a military recruitment officer. Immediately prior to his appointment as commander of the newly formed NSW Corps Grose had been stood down on half pay.\footnote{Fletcher, "Grose, Francis (1758-1814)." The practice of standing down on half pay was the custom for surplus officers during times of peace.}

On being given command Grose offered to recruit the Corps contingent at his own cost providing he was raised to the rank of Lt. Colonel; alternatively he suggested that he be paid a
levy for each officer or man recruited. The second arrangement was the one adopted.\textsuperscript{21}

Whether promises had been made by Grose to encourage enlistment and whether he felt under some obligation to recompense his officers for the hardship of colonial service is unknown.\textsuperscript{22} It is known that when Grose assumed the acting governorship he was exceedingly munificent to members of the officer corps who were favoured with large landholdings.\textsuperscript{23}

Phillip found Grose to be unassertive, affable and easy-going and he gave little cause for complaint.\textsuperscript{24} One could speculate, however, that for Phillip having a more malleable deputy was a relief after the uncooperative, irascible and fractious Major Ross, who had left the colony on the recall of the Marines in 1791.\textsuperscript{25}

Grose does not appear to have been a completely loyal deputy, or to have given Phillip unqualified support. Unlike Phillip, Grose believed that officers formed an elite and deserved preferential treatment, particularly with respect to status, rations and land grants. His support of the officers' hiring of the trading vessel \textit{Britannia} in 1792, against Phillip's wishes, indicated that Grose had no objections to military officers indulging in commerce.\textsuperscript{26} In addition in a letter to London of October 1792, he expressed other points of contention between himself and Phillip:

\begin{itemize}
\item \textsuperscript{21} Britton, \textit{HRNSW Vol 2}. pp249, 250 & 266 George Young to Major Grose, (8th June 1789); Major Grose's proposal to the Government. (June 1789); Sir George Young to General Tonyn, (22 September 1789). Note; this procedure was a common practice at the time.
\item \textsuperscript{22} Ibid. p250, Grose's Proposal, possibly to Sir George Young (June 1789). Lisle, "Rum Beginnings." p24
\item \textsuperscript{24} Fletcher, P.H. "Grose, Francis (1758-1814) "
\item \textsuperscript{25} Fletcher, "Grose, Francis (1758-1814)."
\end{itemize}
The captain of a company and a convict divide and share alike whatever is served out... and what makes our situation more unpleasant is that the governor does not feel himself authorised to indulge with grants such as we would wish...  

Many historians regard Grose as unsuited for the role of governor. He was either reluctant or unable to exert vice-regal power and is considered to have been a poor leader. Manning Clark described Grose as having a distaste for the burdens of command, asserting that Grose preferred the obscurity of second place in the hierarchy. Anne-Marie Whitaker portrays Grose as being influenced by the business acumen of the relatively junior officer Joseph Foveaux, while others have described him as inept and lacking in ability. Moorehouse asserted that, “Grose wanted a quiet life above everything and so he gave his officers virtually anything they sought.” Under Grose’s lax administration the colony’s internal affairs fell under the domination of a clique of NSW Corps officers and it was Lieutenant John Macarthur, soon to become the colony’s major landowner, who wielded the true power.

Other historians have found redeeming features in Grose’s administration. They point to the colony’s rapid fiscal growth together with an increased agricultural production and, attributing some credit to Grose, have questioned...
the traditionally critical view. They note that many sources of criticism of that time came from the pens of Richard Johnson, Samuel Marsden and Thomas Arndell, each of whom had reason to dislike the lieutenant governor. Manning Clark suggested that Grose’s villifiers, “succeeded more with historians than with their contemporaries” and that other observers of the day commented on improvements made while he was in office.

One of the benefactors of the interregnum, Elizabeth Macarthur, after describing her husband’s land holdings wrote glowingly of the Grose years, stating:

> From a state of desponding poverty and threatened famine, that this settlement should be raised to its present aspect in so short a time is barely credible.

Similar sentiments were echoed by David Collins:

> The permission given to officers to hold lands had operated powerfully in favour of the colony which was, in the opinion of most people, now making great strides forward.

In the above statements, both Macarthur and Collins were referring not to trade, but to the prosperity and improvements brought about by Grose’s policy on offering land grants to officers.

From an economic perspective, the Grose years were a period of stabilisation. The colony emerged from being an insecure and faltering outpost to a securely established settlement. While the wisdom of allowing the officers a monopoly on trade might be questioned, it has been argued that it was facilitated by the

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36 Clark, *From the Earliest Times to the Age of Macquarie*, vol. 1. p133

37 Macarthur-Onslow, *Some Early Records of the Macarthurs of Camden*. p45, Elizabeth Macarthur to Miss Kingdon (23 August 1794)

38 Collins, *An Account of the English Colony in New South Wales*, vol. 1.p262 (April 1794)


“inaction, ineptitude and even incompetency” of the London administration.\textsuperscript{41} Since no provision had been made for a colonial treasury or a monetary system it has been claimed that the NSW Corps officers, in providing a means of trade, had filled the void and performed an essential service. \textsuperscript{42}

On assuming power, Grose’s values quickly became apparent. Philip’s departing vessel was no sooner over the horizon than a number of policies were reversed. Rations were immediately increased for the military, the civil court was replaced by a military tribunal, and within the first few days, land was granted to a serving officer.\textsuperscript{43}

Grose justified the granting of land to officers because Phillip’s instructions, while detailed in the case of emancipists, settlers and non-commissioned officers, were silent in all other cases and did not specifically prohibit other grants. The normally circumspect David Collins endorsed Grose’s view stating that the granting of land was “the greatest possible gift” and if such a gift was to be made to ex-felons, it was more than appropriate for officers.\textsuperscript{44} Instructions from England that arrived two months after Phillip’s departure authorised the practice and under Grose, the officers emerged as colony’s major landowners.\textsuperscript{45}

Because of Grose’s perceived laxity, a belief developed amongst landowners that they were beyond the control of the governor and by default beyond the reach of Britain. This belief permeated all levels of society; it was evident in a disregard of government decrees exhibited by settlers, particularly along the Hawkesbury, and it contributed to a general disrespect for the authority of the

\textsuperscript{41} Clarke, \textit{Australia; A Concise Political and Social History}. p36
\textsuperscript{42} Ibid. p36
\textsuperscript{45} Watson, \textit{HRA Vol.} p365, Dundas to Phillip, (14 July 1792) Lisle, “Rum Beginnings.” p24
future governors.\textsuperscript{46} Free settlers and emancipists with small holdings on the Hawkesbury openly claimed to be freemen who “wou’d (sic) do as they pleased” and “did not care for the orders of the colony.”\textsuperscript{47} At the other end of the scale the monopolistic powers, wealth and influence of an emerging colonial gentry allowed them to form an oligarchy which could hinder or simply ignore any decree that was not conducive to their material gain.\textsuperscript{48} The net effect was a sense that Grose had lost control of the colony.\textsuperscript{49}

None of the officers had arrived in the colony wealthy and they were described as “marginal men, on the make.” Serving in a distant outpost was a means of gaining prestige on their return.\textsuperscript{50} Towards the end of interregnum John Macarthur had become the colony’s wealthiest and most influential settler, yet Macarthur in 1790 had arrived as a relatively impoverished only recently promoted lieutenant with a £500 debt, “middling birth” and great ambition.\textsuperscript{51} Despite this, in 1793, after only two years in the colony and with little opportunity to turn his fortune around under Phillip, he became one of a small cartel able to purchase ships’ cargoes in their entirety.\textsuperscript{52}

The officers, by their grip on the supply and control of bulk spirits, became in effect the keepers of the colony’s monetary system, but only their possession of land can adequately explain their initial rise to prosperity. The basis of most wealth within the colony was land and its productive capacity. The economic power and the financing of the officer’s trading monopoly was founded on their

\textsuperscript{46} Watson, \textit{HRA Vol1}. p603, Hunter to Portland, (26 August 1796); Collins, \textit{An Account of the English Colony in New South Wales}, vol. 1.p321 (March 1796); Karskens, \textit{The Colony}. p101, p120, & p128

\textsuperscript{47} Watson, \textit{HRA Vol1}. p23 Hunter to Portland (20 June 1797; also Karskens, \textit{The Colony}. p128

\textsuperscript{48} Bladen, \textit{HRNSW Vol 3}. p168, Hunter to the Duke of Portland (12 November 1796)

\textsuperscript{49} Lisle, "Rum Beginnings." p24

\textsuperscript{50} Karskens, \textit{The Colony}. p138

\textsuperscript{51} Bladen, \textit{HRNSW Vol 4}. p611, King to Under-Secretary King, (8 November 1801), King remarked that from a debt of £500 Macarthur was now worth £20,000; Duffy, \textit{Man of Honour - John Macarthur, Duelist, Rebel, Founding Father}.p13; Steven, "Macarthur, John (1767-1834)," in \textit{William Bligh} (Australia: ABC/State Library of NSW, 2011). See also Bladen, \textit{HRNSW Vol 3}. p126, Atkins to Macarthur (August 1796)

\textsuperscript{52} ———, \textit{HRNSW Vol 4}. p27, Settler’s Appeal to Home Government, (9 January 1800)
landholdings. It rested on agricultural produce and the officers’ ability to sell that produce to the government store.

The salaries of Macarthur (£64 p.a.) and those of his brother offices were insufficient to explain their domination of the colony’s finances. It was the possession of land and the labour to work it, both items provided freely by Grose that allowed the officer clique to amass sufficient capital and the means to access foreign exchange to finance their monopoly on trade.

The officers as a block quickly became the largest suppliers of wheat for the government stores. It was not only that the officers produced the largest quantity of grain but, by using their positions to shut others out, they made it difficult for other settlers to sell produce to the government. Grose had appointed John Macarthur the Inspector of Public Works, a position that gave him authority over the government store. It was reported that:

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53 Ibid. p611, King to Under-Secretary King, (8 November 1801) - (“His fortune [Macarthur] thro’ (sic) accumulating gains in this colony by the great quantity of stock and land he possesses”). Lynne. McLoughlin, "Landed peasantry or landed gentry; A geography of land grants.,” in A Difficult Infant, ed. Graeme Aplin (Sydney: NSW University Press, 1988). p127

54 Lieutenant salary 3s 6d per day, see Watson, HRA Vol1. p446, Sir George Young to Grose, (15 July 1793), Note: Both Michael Duffy and Malcolm Ellis stipulate £79 p.a.(Duffy p26), £79 19s 4p (Ellis p10)

55Duffy, Man of Honour - John Macarthur, Duelist, Rebel, Founding Father. p106 ; Parsons, The Commercialism of Honour; Early Australian Capitalism 1788-1809. p109 (rum however was a source of large profits. p113); Clarke, Australia; A Concise Political and Social History. p46.; ibid. p 26; See also, Karskens, The Colony. p172. - Francis Clark held that it was the officers’ salary that gave them access to sterling, this may be true in part, but the salaries pale to insignificance compared to the Treasury Bills. John Macarthur’s salary as a Lieutenant of 3s 6d per day or £64 pa (HRA 1 1788-1796 p446) was substantially less than the maximum officers salary of £250 p.a. paid to the Commandant. (HRNSW, Phillip p 19). In contrast in a letter to James Macarthur of August 1794, John Macarthur boasted of having already sold £400 worth of wheat while still holding 1800 bushels of maize in his granary. At 7s per bushel (Collins, An Account of the English Colony in New South Wales, vol. 1.p240) this grain was valued at a further £600. One year’s harvest from Macarthur alone therefore valued at $1000 or nearly sixteen times his salary. Note. Frost puts the total wages of three entire marine companies (including officers) at £3676 see Frost, The First Fleet; The real story. p186. Whereas in July 1800, Macarthur offered to sell his farm at Parramatta (granted at no cost by Grose), with livestock, back to the government for £4,000. – see Bladen, HRNSW Vol 4. p114 Macarthur to King, (30 September 1800).

He [Macarthur] open’d the public store for the reception of grain from such persons as he was disposed to serve and shut it against those not in his favour.  

The domination of the government store by the officer cartel continued through the entire interregnum and well into the administration of the appointed governors. John Hunter provided specific evidence and expressed his disquiet with it:

*The monopoly is so contrary to the orders which have so often been given that I can’t pass over...the disobedience of them longer... I find that...the granary at the Hawkesbury has now received fifteen hundred bushels of wheat and that it has been put in by four persons only.*

Small farmers with surplus grain who were unable sell to the government had no alternative but to sell to the officers at whatever price was offered. Rather than being paid in hard currency, the farmers often received spirits, a practice some farmers preferred.

It was not only in grain that the officers were able to operate a cartel. Their control of land also helped them to dominate the holding of livestock. Barnes notes that in 1798, ownership of cattle, hogs, horses, goats and sheep was dominated by the officers. Despite the number of smaller farmers far exceeding the number of officers, only in hogs did the farmers have any significant quantity and in those they had 921, compared to 889 held by officers. In the case of horses, cattle and oxen, the settlers had none, while the officers owned 43 horses, 71 head of cattle and 6 oxen. Of sheep and goats, the settlers had 30 sheep and 140 goats, compared to the 1310 and 1176 respectively held by the officers. As a comparison the government herds comprised 14 horses, 104

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58 Bladen, *HRNSW Vol 4*. p11, Hunter to Portland, (5 January 1800)
cattle, 46 oxen, 191 sheep, 111 goats and 59 hogs. Barnes hypothesised, that the unequal distribution of livestock between officers and farmers, related not only to the farmer lacking capital to purchase animals but also to their landholdings being too small for grazing. The relative numbers of hogs, an animal which required less land for foraging, would seem to support such a theory.

The British government had given little thought to the welfare of emancipated convicts, or to the colony developing as a free society. While they made provision for land grants to emancipists, the soils were poorer than those of England and the small sized farms of NSW tended to be unproductive and unprofitable. Further, the government had made no provision for a treasury, it had provided little negotiable currency for the exchange of goods and the colony had no exportable product that could be exchanged for overseas commodities.

Within the colony, a barter system could be used, but goods from visiting ships could only be purchased with hard currency. Without a monetary system, the colony suffered from a lack of foreign exchange. Ways to manage this situation developed. Visiting trading ships required payment for their cargo, but initially only the governor had the ability to make significant purchases. Rather than paying in cash, the government issued transferable bills guaranteed by the British Treasury. Such bills were convertible to Sterling and were an accepted means of exchange being utilised throughout the empire and by British naval vessels around the world.

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63 ———, *An Unlikely Leader : The Life and Times of Captain John Hunter*. p191

64 Duffy, *Man of Honour - John Macarthur, Duelist, Rebel, Founding Father*. p57

Because treasury bills were only issued for large amounts, a different system operated within the colony. As described by Butlin, the Commissariat on purchasing farm produce issued store receipts. These receipts, for a fixed amount and low denomination, became part of the means of exchange amongst the colonists but were often bartered for more negotiable spirits. The dominance of agriculture by the officers and the sale of spirits allowed the officers to accumulate large quantities of colony’s store receipts. A sufficient number of the receipts could be converted to treasury bills which in turn were accepted by visiting vessels.

Although it is often said that it was a monopoly on the importation of spirits which gave the officers wealth and power, foreign exchange in the form of treasury bills provided the foundation of the monopoly and it was the possession of land and its produce that seeded their access to the treasury bills. Acting as a bloc, the officers used their possession of the bills to monopolise both wholesale purchase of cargoes and the retail sale of the goods. Their collusion made it difficult for masters of ships to demand inflated prices and allowed the officers to on-sell goods at whatever price the market would bear.

The officers' original purchase of spirits from the Hope in December 1792, was for the sum of only £405 and was thus within the reach of officers' combined salaries. The purchase was organized by John Macarthur against IOUs on the officer’s wages. As the result of the landholdings granted them by Grose,
their purchasing power grew significantly. In 1795, nearly 3000 acres of land were planted and yielded an average of 13 bushels of grain per acre. At the agreed price of 5/- per bushel this amounted to grain worth nearly £9,000, most of which was sold to the store by the officers. By 1798 the treasury bills provided in exchange for grain and livestock, again mainly to the officers, amounted to around £18,000. Returns from the sale of grain thus by far exceeded income from salaries and it was initially the sale of grain that enabled the officers to monopolise entire cargoes.

Manning Clark described prices prior to the monopoly as “high but not exorbitant”, but during the Grose administration, “exorbitance degenerated into a mixture of iniquity and extortion.” Francis Clark in discussing the monopoly, described the quick but enormous wealth established by the officers who enjoyed profit margins of up to 400% on the goods arriving in the port. Lisle puts the profits even higher and calculated that in 1799 profits of 2,000% were being made by the officers on the importation of rum. After the purchase and resale of the initial cargoes, the huge profits achieved by the officers would have undoubtedly made the process self-financing and therefore less reliant on the produce of their land. Once the cartel on imports had become ingrained, the economic power of the officers made them resolute and their economic position almost impregnable.

Little attention was paid to urban planning during the interregnum. It was nevertheless a period which had a profound impact on the future shape of the colony. With no significant increase in the colony’s free population and, because of the machinations of the officers, a reduction in the absolute number of persons holding farms, almost five times as much land was granted as had been during Phillip’s governorship. Under Phillip, in five years, 3,389 acres of

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71 Watson, HRA Vol 2, p389, Duke of Portland to Hunter, (5 November 1799)
73 Bladen, HRNSW Vol 3, p169, Hunter to Duke of Portland (12 November 1796); Clarke, Australia: A Concise Political and Social History. p36
74 Lisle, "Rum Beginnings." p21
land had been alienated, but during administrations that totalled just over two and a half years, Grose and Paterson alienated 15,369 acres.\footnote{Collins, An Account of the English Colony in New South Wales, vol. 1. p539 (Statement of Ground Granted); Watson, HRA Vol10, pp 436-437 & 472 & 473, Land Grants since last return, (30 April 1794) Roberts, History of Australian Land Settlement 1788-1920. p7}

Phillip had adopted policies aimed at both ensuring small farming and the containment of the colony, his largest single grant being sixty acres. He had restricted the location of land grants to areas where administrative control could be maintained and personally inspected all areas prior to their alienation.\footnote{Watson, HRA Vol1, p391, Phillip to Dundas (4 October 1792)} Despite the desperate need to grow produce, Phillip had resisted all attempts to allow farming in outer areas where control would be difficult.\footnote{Britton, HRNSW Vol 2, p350, Phillip to Nepean (17 June 1790); Fletcher, "Grose, Patterson and the Settlement on the Hawkesbury." p341; Peter Turbet, The First Frontier (Sydney: Rosenberg Publishing, 2011). p77}

Grose, not sharing the same concerns, permitted a settlement at Green Hills on the banks of the Hawkesbury River. It was a settlement initially without overland access and access by water could take several days. Although isolated and difficult to administer, the land grants were endorsed without inspection or apparent overall strategy. Fletcher suggested that the land was granted simply because Grose had received a petition requesting it.\footnote{Fletcher, "Grose, Patterson and the Settlement on the Hawkesbury." p341 & p342: Collins, An Account of the English Colony in New South Wales, vol. 1.p246 (January 1794)}

The Hawkesbury settlers, both free and emancipists, behaved as Phillip had feared. Their settlement was described by Collins as isolated, wild, prone to drunkenness and difficult to either police or administer.\footnote{Fletcher, "Grose, Patterson and the Settlement on the Hawkesbury." p341 & p342: Collins, An Account of the English Colony in New South Wales, vol. 1. p.p277 (October 1794); 80 ibid.p277 (October 1794); 81 David Collins cited in Karakens, The Colony. p125 & p128} Collins reported that orders were no longer reaching the outlying farms and that convicts assigned to the settlers were becoming defiant.\footnote{Ibid.p277 (October 1794); 80 ibid.p277 (October 1794); 81 David Collins cited in Karakens, The Colony. p125 & p128} Characteristically, frontier isolation resulted in a weakening of central control. The convicts claimed to be “freed from bondage” and averred a right to do as they pleased.\footnote{Ibid.p277 (October 1794); 80 ibid.p277 (October 1794); 81 David Collins cited in Karakens, The Colony. p125 & p128} The early
Hawkesbury residents have been compared to escapees in that they regarded their isolated surroundings as beyond the pale of administration and law. They came to regard the Hawkesbury almost as a separate colony, one in which they were free from scrutiny.\(^8\)

Although on Grose’s instruction, the initial twenty-two allotments were identified and set out by survey, there is no indication of any prior planning. The farm locations were chosen by the settlers themselves.\(^3\) Similar indiscriminate selection by prospective settlers was also reported closer to Sydney at Petersham where, prior to survey or inspection, land was granted for nine huts and a timber yard. A further ten grants were made at Concord, to six non-commissioned officers who chose “an eligible situation.” There is again no mention of any strategy, planned layout, any inspection or involvement by Grose.\(^4\) Many grants in both town and country were made without proper identification or title, but with a note signed by the lieutenant governor or a magistrate.\(^5\) These notes, which did not specify any terms or conditions, were regarded by the recipient as awarding permanent occupation.\(^6\)

The interregnum was also an interlude during which Phillip's vision of Sydney, as a rationally planned city, was irretrievably lost. In Scott’s words:

\[\text{[Grose] made no attempt to keep the lines laid down by Phillip...Grose permitted narrow winding streets to straggle along the contours of the ridges of rock, as nature laid down.}\]

During Phillip’s tenure, he issued only four leases within Sydney’s township zone. These were fourteen year leases on allotments of 100 feet by 200 feet on

\[^8\text{Ibid. p128; David Andrew Roberts, "A Change of Place: illegal movement on the Bathurst frontier.," Journal of Australian Colonial History 7 (2005), pp106-107}\]
\[^3\text{Bladen, HRNSW Vol 2 p210 Grose to Duke of Portland, (23 April 1794); Collins, An Account of the English Colony in New South Wales, vol. 1. p246 (January 1794)}\]
\[^4\text{———. An Account of the English Colony in New South Wales, vol. 1. p229 (October 1793), p 238 (December 1793)}\]
\[^5\text{Kass, Sails to Satellites. p6}\]
\[^7\text{Scott, "British Settlement in Australia." p71}\]
"High Street," one of the grantees being John Macarthur.  

Although conforming to Phillip's urban design, these grants are perplexing and given Phillip's departing instructions to Grose prohibiting such alienation, demonstrate a degree of inconsistency. Perhaps taking his lead from Phillip's precedent rather than his words, Grose liberally authorised leases within the township. By the time of his departure in 1794, the leases totalled twenty seven acres, all alienated with no apparent consideration of Phillip's design and many of them in direct conflict with the plan.

The indiscriminate granting of leases had a dire impact on the town. A drawing by James Meehan showing Sydney as it existed in 1800, depicts the township as a heterogeneous mixture of streets traversing between thirty-two town leases. Several of these leases can be seen to impinge on Phillip's environmental exclusion zone and up to the banks of the Tank Stream (Fig 5.1). Any land occupied without formal title or lease is not shown on the Meehan drawing, but a plan drawn by Lesueur in 1802 indicates a town comprising over 120 separate allotments, each allotment with an individual building (Fig 5.2).

If it were not for Grose's poor administrative ability, a more sympathetic approach to his land grants in both Sydney and country could be entertained. His granting of large parcels to an officer elite was consistent with the traditional Empire Model philosophy of an independent yeomanry working under the governance and authority of a wealthier class. It created a form of landed gentry not unlike those that operated in the agricultural era of Britain and in colonies

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88 Duffy, Man of Honour - John Macarthur, Duelist, Rebel, Founding Father. p90 – One could surmise this resulted from both the needs and charms of Elizabeth Macarthur.

89 Surprising in that, they went against Phillip’s own policy and the instructions he was to leave on his departure

90 Collins, An Account of the English Colony in New South Wales, vol. 1. p540, “Statement of the ground granted and leased to individuals by persons who were there to authorized.”

91 Dawson, James Meehan: a most excellent surveyor. p43

92 Map by Meehan, "Sydney 1800, From Grimes' Plan." Phillip was responsible for four leases, and Grose fourteen, but with the integrity of Phillip’s plan destroyed, the rest were Hunter and King.

such as North America and Ireland.\textsuperscript{94} Grose's leases and grants have, however, been described as "haphazard," consistent only in that they appear arbitrary and his administration has been described anarchical. \textsuperscript{95} Unlike the earlier practice of Phillip, grants by Grose were made on request regardless of location.\textsuperscript{96}

In summation, most current debate seemingly ignores land as the initial source of wealth, the argument resting on whether the officer’s wealth and power arose from a monopoly on spirits or a monopoly on trade.\textsuperscript{97} The land grants and indulgences of Grose enabled the officers to secure a hold over the colony’s economic growth. It was a hold that, on Grose’s departure, they continued to exploit and rigorously defended against any attempt to moderate their power.\textsuperscript{98} In his acceptance of the excesses of what became in effect a colonial junta, Grose had created a problem that none of his immediate successors were able to surmount.\textsuperscript{99}

By giving the officers large areas on the colony’s fringe, Grose introduced an authoritative presence to the previously isolated outer areas. This was a presence that the Hawkesbury experience had shown to be needed. Although not Phillip’s model, it could be regarded as a valid means of colonisation. Grose had presided over a regime that, through its benevolence towards a developing elitist clique, irretrievably determined the shape of urban settlement in the colony.\textsuperscript{100} He left a colony the success of which was no longer in doubt and one where Phillip’s dream of attracting free settlers was being realised.\textsuperscript{101}

\begin{thebibliography}{99}
\bibitem{94} Home, \textit{Of Planting and Planning}. p2
\bibitem{95} Roberts, \textit{History of Australian Land Settlement 1788-1920}.
\bibitem{96} Atkinson, "Taking Possession- Sydney's first householders." p80
\bibitem{97} Collins, \textit{An Account of the English Colony in New South Wales}, vol. 1.p409 March 1797), p 414 & p 419 ( June 1798)  Karskens, \textit{The Colony}. p121
\bibitem{98} See summary by Lisle, "Rum Beginnings." p15.
\bibitem{99} Clark, \textit{From the Earliest Times to the Age of Macquarie}, vol. 1. p135
\bibitem{100} Fletcher, "Grose, Francis (1758-1814)."
\bibitem{101} Ibid. p132 ; Keneally, \textit{Australians Origins to Eureka}. p215
\end{thebibliography}
Grose suffered from ill-health and in 1794, on being advised that John Hunter had been appointed governor, decided to return to England.\textsuperscript{102} In his despatches he reported that he was leaving the colony in "a flourishing state." In this however Grose was not being entirely candid.\textsuperscript{103} Roberts related that by the time that Hunter assumed control less than a year later, "the outlook was bad" and the colony was at such a low ebb that ensuring sufficient bread had once again become of vital concern.\textsuperscript{104}

\textsuperscript{102} Collins, \textit{An Account of the English Colony in New South Wales}, vol. 1. p275, (September 1794); Bladen, \textit{HRNSW Vol 2} p274 Grose to Governor Hunter; (8 December 1794); p276, Grose to Dundas (10 December 1794)

\textsuperscript{103} Collins, \textit{An Account of the English Colony in New South Wales}, vol. 1. p331; Bladen, \textit{HRNSW Vol 2} p275 - Grose to John Hunter (8 December 1794.); Barnes, \textit{An Unlikely Leader: The Life and Times of Captain John Hunter}. p206

\textsuperscript{104} Roberts, \textit{History of Australian Land Settlement 1788-1920}.p7; also, Watson, \textit{HRA Vol1}. p558, Hunter to Duke of Portland, (28 April 1796)
Fig 5.1. Sydney as in 1800 by James Meehan

Source: NLA 912/94/4
Fig 5.2. Sydney in 1802 by Lesueur
Source: NLA Map raa2-s32
5.2.2. Settled Areas and Spatial Growth at end of Grose’s Tenure

The extent of the settlement and land alienated at the end of Grose’s governorship is tabulated in Table 5.1.

Table 5.1. Main Localities Settled and Surveyor’s Plans Registered at the end of the Grose’s Governorship

<table>
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<td>Norfolk Island</td>
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**Total Acreage Alienated**

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<tr>
<td>Francis Grose 1792- 1794</td>
<td>10,674 Acres</td>
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106 Bladen, *HRNSW Vol 6.*, p808, Footnote
5.2.3. The Caretaker: William Paterson - Acting Governor, December 1794 to September 1795

No regular system of government has ever been adopted, the whim and caprice of the moment have been the basis of all acts: the only uniform plan adopted has that of raising the military upon the ruins of civil power.

It appears the determined resolution of the military to support the despotism of the Lt. Govr. It is now carried on in a higher degree than in his time.

Free Settler - Richard Atkins. 1794

William Paterson, as colony’s next most senior officer, assumed the administration of the colony on the departure of Grose. A thirty-nine year old captain in the NSW Corps, Paterson was a relatively junior officer to be left in command. Although Grose had described him as capable of accepting the responsibility, reflection on his time in office suggests that he was an inexperienced and weak administrator.

Paterson was born in Scotland and was a keen explorer and botanist. He frequently communicated with Sir Joseph Banks, to whom he sent botanical specimens. Prior to his embarking for NSW he had undertaken four journeys of exploration in Africa and described them in a book dedicated to Banks and entitled *Narrative of Four Journeys into the Country of the Hottentots and Caffraria.* Possibly because of the patronage of Banks, Paterson obtained a commission as Captain in the NSW Corps.

On assuming role of acting governor, Paterson believed his stewardship was to be very short term and that his replacement, John Hunter, was already in

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108 Watson, *HRA Vol1*. p505 Paterson to Master of Britannia (15 June 1795)
109 Ibid. p474, Grose to Dundas (3 May 1794); Brian. Fletcher, *Colonial Australia Before 1850* (Melbourne: Thomas Nelson, 1986). p27
transit. Paterson thus regarded his role as that of caretaker awaiting the arrival of relief. As he wrote to Dundas:

...having reason to expect the arrival of Governor Hunter daily I have made no alteration in the mode of carrying on the service which I found adopted at the Lieut-Governor's departure. 111

Hunter however was detained in England and it was to be nine months before Paterson was relieved.

Despite Paterson occupying a temporary position, his role in the colony's history was not benign. Like Grose, he was generous in making land grants. Four governorships later, Lachlan Macquarie, commenting on Paterson presumably from third person accounts, described him as a good natured but thoughtless man who was willing to grant lands to “almost any person who asked.” 112 Similarly when giving testimony at the 1811 Court Martial of Lieut. Col Johnston, Major Abbott recalled of Paterson that in 1794, he had given “every soldier a grant of a piece of ground” some of whom immediately sold it. 113

During his nine month administration, a total of 4965 acres of land was alienated by Paterson, more than in Phillip’s entire five-year term. 114 He continued to support the officers in their commercial activities and acquiesced in the diversion of convict labour from the public works to private agriculture. It has been said that under Paterson, the convicts became nothing more than a work force to be utilised for the benefit of officers. 115 Like Grose, Paterson seems to have made little attempt to participate in the officers' commercial enterprises. 116

111 Historical Records of N.S.W. - Grose and Paterson. p 285, Paterson to Henry Dundas (21 March 1795)
112 Cited in Macmillan, "Paterson, William (1755–1810)." (n.p)
114 Macmillan, "Paterson, William (1755–1810)."
115 Ibid., Hughes, The Fatal Shore. p111 Note – Hughes, in his popularist style, described them as slaves.
116 Macmillan, "Paterson, William (1755–1810)." see also King-Bladen, HRNSW Vol 4. p202, King to Under-Secretary King, (18 September 1800)
Paterson maintained his interest in exploration and endeavoured to expand his knowledge of lands on the colony's fringes. In 1793 he led an unsuccessful expedition attempting to cross the Blue Mountains and in 1795 instructed Surveyor Grimes to visit and report on the Port Stephens area. His knowledge of botany proved useful and in 1795 Collins pronounced him the only botanist in the country. He appears to have had some knowledge of farming and at least a basic understanding of soil fertility. On finding that the farms at Toongabbie were producing a very low yield and had become overworked, he ordered that they remain fallow for a season. As a replacement, he substituted a new nearby area called *The Ninety Acres* which he directed be opened up and planted.

Described by Keneally as malleable, Paterson, despite a laxness towards the officer cadre, nonetheless exerted some central authority over the colony’s affairs including the unruly settlements along the Hawkesbury. As recounted in the journal of David Collins, Paterson could not accept the lawlessness and anarchy that was developing in that remote settlement and directed a military guard to “introduce some regulations among the settlers and to prevent...the commission of those enormities which disgraced that settlement.” The ongoing problems encountered by his successors indicate that his attempts had met with little success.

There is no evidence of Paterson exercising any foresight in his pattern of land grants, or of his laying out any new townships. The grants appear to have been opportunistic, but set a pattern that would be adopted by many future...

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119 ———, *An Account of the English Colony in New South Wales*, vol. 1. p286 (March 1795)

120 Ibid. p287 (March 1795). The exact location of the Ninety Acres has not been ascertained but it is assumed to be in the Toongabbie district.

121 Keneally, *Australians Origins to Eureka*. p216 & p225

122 Collins, *An Account of the English Colony in New South Wales*, vol. 1. p282 (January 1795)
governors. Grants were made at the request of the recipient, there was no consistency in their size, land was occupied without prior survey and without the governor’s input into its location.

Paterson’s role as governor had been much as he had envisaged. He contributed little to the colony and acted as a short term caretaker. Other than in his generous granting of land, he made little contribution to land policies or the shaping of NSW either physically or politically. Some public works continued under Paterson. The road linking Sydney to Parramatta and a second road from Parramatta to the Hawkesbury continued as government projects through Paterson’s tenure. The latter was not completed until 1797 under the administration of Governor Hunter.123

Paterson received a promotion to rank of major in 1795 and returned to England one year after John Hunter’s arrival. Somewhat perversely he returned to the colony in 1799 as a Lieutenant Colonel, with specific instructions to investigate the officers’ trading of spirits and to “restore the sullied credit of the British officer.”124 He would become embroiled in the mutiny against Bligh and in 1809 once again take the role of governor.

5.2.4 Settled Areas and Spatial Growth at end of Paterson’s Tenure

The extent of the settlement and land alienated at the end of Paterson’s governorship is tabulated in Table 5.2.

Table 5.2. Main Localities Settled and Surveyor’s Plans Registered at the end of the Paterson’s Governorship125

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123 Kass, *Sails to Satellites*, p54
124 Macmillan, "Paterson, William (1755–1810)."
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<sup>126</sup> Macmillan, "Paterson, William (1755–1810)."
5.3. In Search of a Sinecure - John Hunter: Governor from 1795-1800

...it is certainly within your power, as well as it is your duty, to prohibit...all officers of Government, civil or military, from selling any spirituous liquor.

Duke of Portland - 1798.127

John Hunter...features in most general Australian history books as a bit player rather than occupying any pivotal role and is generally dismissed as a kindly old man, much out of his depth...a pedestrian person who oversaw a somewhat disreputable and less exciting period in Australia’s history.

Robert Winstanley Barnes 2009128

5.3.1. A Courteous Governor

When John Hunter returned to NSW as governor in late 1795, at fifty-eight years of age, in his own words, he was seeking a comfortable life.129 What he encountered was far from an easy posting. The extended period of the Interregnum’s military rule had changed the face of politics within the colony and greatly complicated the problems that Hunter faced.130 The unanticipated difficulties, in a colony that had almost degenerated to anarchy, are recounted in his letter to Samuel Bentham in 1799 in which he judiciously described his commission as “a most irksome command”131

Hunter was born in Leith Scotland, one of nine children born to a shipbuilder. William. His mother Helen was the niece of the Lord Provost of Scotland. In 1754 he joined the navy as captain’s servant and in 1756 became a midshipman on the HMS Neptune, the flagship of Vice-admiral Charles Knowles. He was promoted to lieutenant in 1780. In 1786 Hunter was appointed

127 Watson, HRA Vol 2. p227, Duke of Portland to Hunter, (18 September 1798)
128 Barnes, An Unlikely Leader : The Life and Times of Captain John Hunter. p3 & p10
131 Bladen, HRNSW Vol 3. p674 Hunter to Samuel Bentham (20 May 1799)
second captain of the *Sirius* under Governor Phillip and was given a dormant commission as the colony’s governor in the event of Phillip’s death. Following the loss of the *Sirius* at Norfolk Island, Hunter in 1791, returned to England to face the customary Court Martial for the loss of his ship. He was exonerated of blame but, because of a lack of available vessels, was placed on half pay. While on half pay, he served on Lord Howe’s flagship the *Queen Charlotte* as a volunteer officer. It was Howe’s patronage in 1793 which secured Hunter the governorship; his earlier time in the colony had been spent as captain of the *Sirius* and other than his technical competence, and long-time naval experience, there was little to recommend him as a governor.

Hunter probably misunderstood the difficulties that he would face. When he left the colony in 1791, NSW had been under the strong and stable administration of Arthur Phillip and the colony’s problems related mainly to a shortage of supplies. Grose’s reports to his superiors down-played the excesses of his two year military rule and suggested that had left a thriving colony. Hunter, however, rather than an expected quiet life, found that he had inherited administrative chaos, with a near mutinous military.

He described himself as a “very plain man and was accustomed to and expected, the strict military discipline that was evident on a Royal Navy quarterdeck.” On assuming command, Hunter was immediately awakened from any such self-indulgent dreams. A recent biography of Hunter by Robert Barnes stated that, not only was Hunter unable to assert authority, his “innate courtesy, trustfulness and kindness was exploited by his enemies.”

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132 Auchmuty, "Hunter John (1737-1821)." (n.p).
134 ———, *An Unlikely Leader: The Life and Times of Captain John Hunter*. p175 & p177
135 McLoughlin, "Landed peasentry or landed gentry; A geography of land grants.." p143;
138 ———, *An Unlikely Leader: The Life and Times of Captain John Hunter*. Introduction. p ix
Hunter’s tomb at St John’s Church, Hackney, claims some distinction for his achievements, but although it is a eulogy, there is a hint of the kind self-effacing character described in the later biographies:

In conjunction with Governor Phillip he formed the first settlement of New South Wales and for many years had the chief command of that distant colony, where his mild benevolent disposition endeared him to all classes of society...He will be classed by impartial posterity with those generous benefactors of mankind who diffuse among savage tribes the blessings of civilisation.

Ellis remarked that Hunter had shown no qualities to fit him for the position and asserted that in appointing Hunter, the London administration had not realised that a strong administrator was required. Rather they had assumed that the “spade work had already been done.” They believed they were offering Hunter a sinecure capable of endowing the recipient for life, as a fitting reward to a “deserving but influential pensioner.”

Geoffrey Blainey maintained that the problems Hunter faced would have “vexed, frustrated or totally thwarted” any of the governors, no matter how competent. Blainey also noted that Hunter was acting alone in any dispute with the officers. He had little power and could expect no “early or useful support” from a Britain that was again preoccupied by a war with France.

Governor Arthur Phillip did not support the appointment of Hunter, preferring instead to be succeeded by Phillip Gidley King. Despite Phillip’s disapproval, Hunter, with the patronage of Lord Howe was appointed governor in February 1794. This was over a year after Phillip had quit the colony and it was a further eighteen months before he stepped ashore in NSW.

139 John Hunter, inscription, on Kent Family Vault, churchyard St. John’s, Hackney, England.
140 Bladen, HRNSW Vol 4. p (xxviv) Introduction. Ellis, John Macarthur. p72
141 Blainey, "Forward." p.vi
142 Bladen, HRNSW Vol 2 p75 Arthur Phillip to Henry Dundas, ( 26 October 1793).; Ellis, John Macarthur. p71
The instructions that Hunter received with respect to land and the setting up of villages were more specific and detailed than those given to Phillip. This in itself hints that the London bureaucrats had accepted that the colony was more than a place to dump Britain’s unwanted felons. Under the instructions, he was empowered to grant land to any person or persons, with any terms or conditions legally appropriate and with each allotment surveyed and “properly registered.” Full records, describing the extent of the grant and the recipients, were then required to be lodged with the Colonial Office in London.  

To encourage small subsistence farms, emancipated convicts were to be granted the same acreage as under Phillip: 30 acres for a single man, 20 additional acres if married and then a further 10 acres for each child. These areas were considered large enough to feed a family but not enough to generate such a profit that the farmer could finance a return to England. Not under the same restriction, free settlers could be granted an additional 100 acres above an emancipist’s allowance. There was also an overriding condition that Hunter could grant “such further number of acres...[you] in your discretion should judge proper.” A schedule of administrative fees was included in Hunter’s instructions covering grants up to 20,000 acres.

It is noted that the land policy intended to prevent emancipated convicts from returning to England was easily circumvented. Despite any conditions that the governors placed on land to restrict its sale, it was nonetheless sold. Land and stock freely given to an emancipated convict was readily purchased by the officers of the NSW Corps. The emancipist could then use the proceeds of the sale to finance a return to England. The public notices of *Sydney Gazette and NSW Advertiser* contains numerous examples of ex-convicts announcing

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144 ———, *HRNSW Vol 2* p 115 Hunter’s Commission (6 February 1794)
146 Watson, *HRA Vol1*. p525 Hunter’s instructions, p527, List of Fees upon Grants of Land (23 June 1794)
their intention to legally leave the colony. There would undoubtedly have been many that left unannounced.\textsuperscript{148}

There were some policy restrictions on the shape and location of grants. They were to have a breadth equal to one third of the length and each tract granted was prohibited from having its entire length bounded by a river or foreshore but was required to extend lengthwise inland.\textsuperscript{149} Between every 1,000 acres of land, a reserve of 500 acres was to be set aside for the Crown. These latter areas could be leased for fourteen years but were not to be granted without a specific dispensation and licence from the Colonial Secretary in Whitehall.\textsuperscript{150}

For Hunter as for Phillip, but not Grose who had eventually received authorisation, there was no specific instruction regarding the granting of land to serving officers. The previously mentioned table specifying the fees to be charged, contained an exemption for emancipated convicts as well as the non-commissioned officers and men of “our marine corps.”\textsuperscript{151} At the time there were no marine corps in the colony and the wording suggests that Hunter’s instructions regarding land, were mistakenly copied from Phillip’s. Under Hunter’s instructions, land could be granted to officers only if they changed their status and were “desirous of becoming settlers” rather than returning to England.\textsuperscript{152} Contrary to this however, Henry Dundas, when Secretary for State in 1794, instructed Hunter that if John Macarthur, then a captain in the NSW Corps, was retained as Inspector of Public Works, he should be compensated either by additional grants of land or by the assignment of additional convicts.\textsuperscript{153}

\textsuperscript{148} “Sydney Gazette and New South Wales Advertiser.” Public Notices (1803- )
\textsuperscript{149} Watson, \textit{HRA Vol 1}. p525, Governor Hunter’s Instructions (23 June 1794)
\textsuperscript{150} Ibid. p526, Governor Hunter’s Instructions (23 June 1794)
\textsuperscript{151} Ibid. p527, Governor Hunter’s Instructions (23 June 1794). Note; The instructions refer to “Our Marine Corps,” yet at the time the marines had returned to England and had been replaced by the NSW Corps. This perhaps suggest that the omission of Officers was not deliberate and the Commission was simply a partial copy of Arthur Phillip’s. Phillip had been accompanied by marines.
\textsuperscript{152} Ibid.p525, Hunter’s Instructions (23 June 1794)
\textsuperscript{153} Bladen, \textit{HRNSW Vol 2} p 226 &231, Dundas to Hunter, (1 July 1794).
The instructions specifically required that land was to be surveyed prior to alienation with grants then formally registered. This would seem to indicate some insight by the British administration into the colony’s earlier lax methods of land control. With respect to townships, Hunter’s instructions were prescriptive and harkened back to the Empire Model of Shaftesbury. 154 The instructions referred to the advantages of settlers being congregated in towns and required that any grants be a combination of town and pasture land. Towns were to be founded at a port or on a navigable river with regularly shaped allotments defined by survey. Within the town limits, suitable land was to be reserved for civic buildings such as court houses. A church site was to be chosen, with 400 acres set aside for the maintenance of a minister and a school site with 200 acres for a schoolmaster. 155

With no more than a note from Grose, settlers, some still convicts and under sentence, had been permitted to set up farms without either survey or any form of title. Many farms had already been on-sold, mainly to the officers. 156 Transactions were based upon written notes or receipts with some ownership remaining unregistered and having passed through several hands. 157 As was the case in Britain, the lack of a comprehensive central register of titles had allowed the accumulation of land holdings quietly by “sly and wealthy individuals.” 158 In the same manner, as Hunter attempted to rein in the chaos, the colonial elites resisted any move towards the enforcement of a centrally kept register of title. 159

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154 Reminiscent to Lord Shaftesbury’s Grand Model see Home, *Of Planting and Planning.*

155 Watson, *HRA VolI.* p 526 Hunter’s Instructions (23 June 1794)- Note, the 400 acres and 200 acres respectively for the maintenance of minister and schoolmaster, contrasts significantly with the 30 acres for an emancipist, and confirms the idea of subsistence farming only for a discharged convict.

156 Karskens, *The Colony.* p 121


158 Kass, *Sails to Satellites.* pp3-4, - Barnes notes that in 1800, many of the settlers farms were by then heavily mortgaged to the “landed officers” see Barnes, *An Unlikely Leader : The Life and Times of Captain John Hunter.* p211

5.3.2. The Oligarchy Fights for Control

Hunter as a naval captain, was accustomed to both receiving instructions and having his orders obeyed. Unfortunately he lacked the capacity to control difficult people especially those outside of naval discipline.\(^{160}\) After only one month in office, he recognised that he would have difficulty complying with London’s land policies. It was an acceptance of difficulties that would extend past Hunter’s tenure and portend fifteen-years of conflict with the NSW Corps.\(^{161}\)

At first Hunter appears to have looked favourably upon his officers, but correspondence during his first year in NSW indicates a gradual change of opinion as Hunter grasped the true implications of the administration he had inherited. The accommodating government during the Interregnum had allowed a colonial oligarchy to develop and the military-based elite was by then accustomed to manipulating the affairs of the colony to best suit their individual needs. Hunter’s relationship with the military soured and battlelines were drawn. In a letter of 6 August 1796 Hunter wrote:\(^{162}\)

\[
I \text{ strongly suspect there are some persons in this colony (whose situations are probably respectable) extremely inimical to the necessary influence and authority of civil power.}^{163}
\]

John Macarthur had been appointed inspector of works by Francis Grose. Hunter initially described Macarthur as being “extremely well qualified” for the position, but it took only six months for the relationship to sour. Macarthur is most likely one of the persons to whom Hunter as being “inimical” to government authority.\(^{164}\) Hunter by then had clashed seriously with Macarthur,

\(^{160}\) Barnes, *An Unlikely Leader: The Life and Times of Captain John Hunter*. p197

\(^{161}\) It was not until Governor Macquarie’s arrival, with his own regiment in 1810, and the disbandment of the Corps, that the Governors were able to regain control.

\(^{162}\) Barnes, *An Unlikely Leader: The Life and Times of Captain John Hunter*. p194

\(^{163}\) Bladen, *HRNSW Vol 3*. p87, Hunter to Duke of Portland (26 August 1796)

\(^{164}\) Ibid, p87, Hunter to Duke of Portland (26 August 1796)
who motivated by the governor’s interference in the allocation of convict labour, had resigned his position.\[^{165}\]

At the time, land and land policies were intrinsically related to the labour required for the clearing of land and then the planting and harvesting of crops. At this point in the colony’s history agriculture was labour intensive. Land was plentiful, but labour was in short supply. It was the use of convict labour on privately owned land that became the first of the disputes to blight Hunter’s relationship with the officer corps.

As inspector of public works, Macarthur had been responsible for the assignment of convict labour. These convicts, he had liberally allocated to work on the officers’ farms. His resignation as inspector of works in January 1796 had as its basis, Hunter’s attempts to curtail the excesses.\[^{166}\] Macarthur claimed that the governor had lost confidence in him and Hunter had made a powerful enemy.\[^{167}\] As was his predilection, Macarthur worked at undermining the governor’s standing with the authorities in London.\[^{168}\]

Hunter’s version of the events leading to Macarthur’s resignation could be hardly more damning:-

*His [Macarthur’s] great object was clearly to render the Government’s authority subservient to his own views and interests to the gratification of his caprice and malice and to the benefit of a few sycophants...*\[^{169}\]

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\[^{167}\] ———, *Man of Honour - John Macarthur, Duelist, Rebel, Founding Father.* p145

\[^{168}\] Watson, *HRA Vol 1*. p672 & 673, Hunter to Duke of Portland (12 November 1796); Bladen, *HRNSW Vol 3*. Intro p(xxxxvi).- Ellis describes Governor Hunter, Dr Balmain and Surveyor Atkins as the source of the turbulence, pointing out that while Macarthur’s mode of expression was consolatory, Hunter and Atkins were slanderous and destructive. Ellis, *John Macarthur*. p100. Ellis’ work is very favourable to Macarthur and is coloured with subjective phrases such as Hunter’s “best quarter deck manner” (p87), “Balmain’s spleen” (p93) and a civilian coterie who seemed to act in cabal against Macarthur (p93). In view of the subsequent events with both Governor’s King and Bligh however, it seems reasonable to contend that Macarthur was a leading source of the discontent and the leader of an anti, vice-regal faction contesting supremacy of the colony.

With Macarthur as inspector of public works, a process had been introduced that was highly favourable to the officers. It was a system whereby the government granted land at no cost and then met almost the entire cost of the officers’ farm production, including the provision of seed, as well as feeding and clothing the convict workers. The government store was then expected to purchase the grain so produced at market prices in order to supply the colony and feed the convicts. Hunter also noted that “the officers that occupied ground” had an allocation of convict labour well beyond the number prescribed by the “home” government and decreed that the arrangement must eventually stop. The current allocation, he decided, would be allowed temporarily, but only because of the importance of the approaching wheat harvest.

Hunter’s principal obstacle in trying to bring order to the distribution of land and the labour to work it was the officer-based oligarchy that had become accustomed to exercising authority within the colony. They resisted all attempts to make them subservient to the governor’s authority. Hunter believed that his efforts at introducing order and reducing the labour allocated to officers’ farms was being sabotaged by “those who feel their concerns affected by such regulations”. He accused such people of deliberately fomenting discontent among the less influential settlers who, he said, “had become turbulent and refractory.” In the same despatch Hunter referred to the “jealously of all who have extensive farms” claiming that such people owed their success to the “assistance received from the public” and were now opposing attempts to reduce public costs. As would the next two governors, Hunter had discovered that his authority rested with his officers and that any attempts to implement a revised land policy was thus dependent on the cooperation of the very persons whose excesses he was trying to curtail.

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170 Ibid. p107, Duke of Portland to Hunter (31 August 1797)
172 Collins, An Account of the English Colony in New South Wales, vol. 1. p306 (October 1795)
173 Bladen, HRNSW Vol 3. p218, Hunter to Duke of Portland, (10 June 1797)
174 Ibid. p218, Hunter to Duke of Portland, (10 June 1797)
The problem as seen by Hunter’s biographer Robert Barnes was that while Hunter complained to the Duke of Portland about the difficulties he was facing, he never put in place a plan to overcome them.\textsuperscript{175} Even the hints and the diplomatically worded advice from Portland appear to have been ineffective. To Portland, sitting in an office 16,000 miles distant by sea, it seemed that Hunter had ample power to control the excesses.\textsuperscript{176} Hunter was offered little sympathy. Portland questioned Hunter’s inaction with land and labour and stated: “It is certainly within your power as well as your duty to prohibit [the excesses].” Then, in trying to provoke Hunter, Portland noted:

\begin{quote}
Every convict you cloath (sic) and subsist for the sole use and benefit of the officers...costs the government £20 per annum and consequently the allowance of thirteen convicts to each officer is an expense of £260 per annum...hence the expense becomes as enormous as it is unreasonable and the public (sic) gets nothing in return for it...\textsuperscript{177}
\end{quote}

Despite Portland’s harassment, the governor was unable to prevail over the officers. Hunter believed he could implement control by issuing orders, but without the backing of his officers he was unable enforce his will no matter how many times or how strongly it was expressed.\textsuperscript{178}

Macarthur responded to Hunter’s efforts by writing directly to the Duke of Portland saying that he felt obligated to point out, “errors in the present management,” that if not corrected, would “create more difficulty than it has even yet felt.”\textsuperscript{179} In reciprocation, rather than the decisive action of a person wielding vice-regal authority, Hunter sent an even lengthier letter to the Duke. In this, he made a personal attack on Macarthur.

\begin{quote}
I will reply to all of his scandalous insinuations and opinions and demonstrate...he has been artfully striving to mislead your Grace’s judgement...His restless, arrogant and overbearing turns of disposition occasion’d (sic) me much vexation in complaints from others; the power
\end{quote}

\textsuperscript{175} Barnes, \textit{An Unlikely Leader : The Life and Times of Captain John Hunter}. p199
\textsuperscript{176} Bladen, \textit{HRNSW Vol 3}. p218, Hunter to Duke of Portland, (10 June 1797)
\textsuperscript{177} Watson, \textit{HRA Vol 2}. p107, Duke of Portland to Hunter (31 August 1797)
\textsuperscript{178} Barnes, \textit{An Unlikely Leader : The Life and Times of Captain John Hunter}. p206
\textsuperscript{179} Watson, \textit{HRA Vol 2}. pp89-93 Macarthur to Duke of Portland, (15 September 1797).
Hunter does not appear to have grasped, that to the government in Britain, he was the colony’s highest authority. The British government had equipped him, they thought, with sovereign powers and they were willing to offer no further support. Hunter was required to assume a responsibility and take command, a task that, without the military support to back his authority, he was unable to accomplish.

The conflict between the colonial oligarchy and the governor dominated Hunter’s tenure and regardless of the detailed instructions he had received on the founding of townships, he undertook no such task. He oversaw the establishment a settlement on the banks of the Georges River (Bankstown) and the short-lived community of Portland Place just to the south-west of Toongabbie, both comprising a small group of adjacent farms granted to officers.\(^\text{181}\) The records show no evidence of his creating a new township.

Unfortunately for Hunter, the situation he found in the colony was not as he had imagined. Although notionally holding the power, Hunter was neither able to rein in the excesses of the colonial elites or to make inroads into oligarchy’s power. His ability to implement land policy or reform the allocation of labour depended on the cooperation of the people who had seized power and without their support little could be accomplished.

5.3.3. The Governor’s Achievements

Despite his administrative difficulties, Hunter had a number of buildings built or repaired and he implemented a major rehabilitation of the road between Sydney and Parramatta and on to the Hawkesbury. Both sections of this road had been initially constructed or improved under Grose but had become almost unusable because of neglect. Hunter’s rehabilitation had been effected by calling on all settlers and officers to provide the labour force, either in person or by sending

\(^{180}\) Ibid. pp160-171, Hunter to the Duke of Portland, (25 July 1798)

\(^{181}\) Karskens, The Colony, p121
their assigned convicts. The works included widening the roads to twenty feet and were under the direction of the Surveyor General Augustus Alt who also surveyed and laid out the route.

In 1797 Hunter was also responsible for construction of a bridge over Duck River, a tributary on the south side of the Parramatta River in the vicinity of what is now Silverwater. It was a crossing that until then had been a major obstacle on the Sydney to Parramatta road. The bridge itself was substantial, described as “framed” and as “capable of sustaining any weight it might have occasion to bear” even “taking several heavily laden carriages at one time.” The location of this bridge permanently ‘fixed’ the path between Sydney and Parramatta.

Hunter also introduced some important bureaucratic controls. He re-established a system initiated by Phillip whereby land was inspected and approved personally by the governor before being granted and as per his instructions commenced a register of alienated land. Appropriate returns detailing alienations were dispatched to the Colonial Secretary and the statistics provided became the seed for the later Blue Books which provided a compilation of the colony’s yearly statistics.

Hunter’s attempts to wrest the power from, or even rein in, the elitist oligarchy, both dominated his tenure and failed. As Hunter’s successor Phillip Gidley King

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182 Watson, *HRA Vol 1*. p483 Grose to Dundas (32 August 1794)
184 Watson, *HRA Vol 2*. p561, Hunter to Under-Secretary King, (25 September 1800)
186 ———, *Roadmakers :A History of Main roads in N.S.W*. p5
187 Bladen, *HRNSW Vol 4*. p159, Hunter to Duke of Portland (26 September 1800); Watson, *HRA Vol 1*. p307, Phillip to Nepean (18 November 1791), p756, Note 121; ———, *HRA Vol 2*. pp153-164, Return of lands Granted, (6 February 1800). (The Blue Books, *NRS 1286*, were the colloquial name for a compilation of the *Yearly Statistical Returns of the Colony*. They became known as the Blue Books from 1822 to 1827 and were a summary information required by the Colonial Office – see State Records of NSW Short Guide No3, Returns of the colony.)
was to note, land was still transferred privately on the basis of a simple receipt and land grants were made without the land’s proper identification or survey.

5.3.4. A Reputation Shattered

Hunter’s time in office was extremely adversarial and the problems of his administration became unacceptable to his superiors in London. His difficulty in exerting control culminated in November 1799 with a critical letter from the Duke of Portland, expressing severe disapproval and recalling Hunter to London.

*I am obliged by the sense of duty which I owe to the situation in which I have the honour to be placed, to express my disapprobation of the manner in which the government of the settlement has been administered by you-in so many respects-that I am commanded to signify to you the Kings pleasure [that you] return to this kingdom by the first safe conveyance that offers...*  

Hunter had been caught between the demands of a remote British government and the realities of the colonial situation. His recall was not entirely undeserved. He had exhibited neither the ability nor the power to rectify the situation encountered. It was subsequently discovered that even his general administrative procedures had been lax. Shortly after his departure some of his officials through the “knavery of the governor’s clerks,” were exposed as having corruptly profited by falsifying and erasing convict records. It has been estimated that two hundred persons still under sentence had been permitted to leave the colony during Hunter’s governorship.

Hunter left the colony on 28 September 1800 after five years in office with his reputation in disarray. He was recalled in disgrace, but in the words of

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188 ———, *HRA Vol 2*, pp 387-392, Portland To Hunter, (5 November 1799)
190 Ibid p192; Keneally, *Australians Origins to Eureka*. p255
192 Barnes, *An Unlikely Leader : The Life and Times of Captain John Hunter*. p266
Frederick Watson had been condemned both unreasonably and unheard. During his term in office Hunter made 364 land grants totalling 28,279 acres. The colony on his departure had a population of 4,955 persons of whom 3,545 were dependant for food on the government store. Hunter’s land grants were twice that of all of his predecessors and despite the conflict of views, the grants had favoured the officers and were the harbinger of an unofficial land based colonial gentry.

He was replaced by Governor Phillip’s earlier choice, Phillip Gidley King who took office immediately on Hunter’s departure. Unfortunately for King he was to encounter the same entrenched colonial gentry that had led to Hunter’s downfall.

5.3.5 Settled Areas and Spatial Growth at end of Hunter's Tenure

The extent of the settlement and land alienated at the end of Hunter’s governorship is tabulated in Table 5.3.

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197 McMahon, "Not a rum rebellion but a military isurrection." p128
Table 5.3. Main Localities Settled and Surveyor’s Plans Registered at the end of the Hunter’s Governorship

<table>
<thead>
<tr>
<th>Locality</th>
<th>Locality</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bankstown</td>
<td>Northern Boundary</td>
</tr>
<tr>
<td>Bulanaming</td>
<td>Parramatta</td>
</tr>
<tr>
<td>Camperdown</td>
<td>Petersham</td>
</tr>
<tr>
<td>Concord</td>
<td>Ponds</td>
</tr>
<tr>
<td>Eastern Boundary</td>
<td>Prospect Hill</td>
</tr>
<tr>
<td>Field of Mars</td>
<td>Sydney</td>
</tr>
<tr>
<td>Hawkesbury</td>
<td>Toongabbie</td>
</tr>
<tr>
<td>Hunters Hill</td>
<td>York Place</td>
</tr>
<tr>
<td>Liberty Plains</td>
<td><strong>External</strong></td>
</tr>
<tr>
<td>Mulgrave Place</td>
<td>Norfolk Island</td>
</tr>
</tbody>
</table>

**Total Acreage Alienated**

<table>
<thead>
<tr>
<th>Governor</th>
<th>Years</th>
<th>Acreage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arthur Phillip</td>
<td>1788-1792</td>
<td>3389 Acres</td>
</tr>
<tr>
<td>Francis Grose</td>
<td>1792-1794</td>
<td>10,674 Acres</td>
</tr>
<tr>
<td>William Paterson</td>
<td>1794-1795</td>
<td>4,965 Acres</td>
</tr>
<tr>
<td>John Hunter</td>
<td>1795-1800</td>
<td>28,650 Acres</td>
</tr>
</tbody>
</table>

5.4. The Oligarchy’s Next Victim – Phillip Gidley King

*Of Governor King I am unwilling to speak in any other terms than those of respect: but there is abundant proof that, in many instances respecting grants, he did greatly exceed his power.*

Sir George Gipps, 1839

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Hunter’s replacement Phillip Gidley King, like Hunter, also seemingly underestimated the power and influence of the entrenched colonial oligarchy. He entered into the governorship highly optimistic and was critical of his predecessor for being a weak leader. He was however confronted with the same tensions that had led to Hunter’s recall and faced with insurmountable difficulties it was beyond King’s ability to impose vice-regal authority. Like Hunter, King was eventually recalled in some disgrace and land was again to be found at the root of the difficulties.

5.4.1. Phillip Gidley King – Governor September 1800 to August 1806

Phillip Gidley King was born in April 1758, the son of a draper. He joined the Royal Navy in 1770 at the age of twelve and in 1780, as a Lieutenant, served on both *Ariadne* and the *Europe* under the command of Arthur Phillip. When the First Fleet was being assembled King was sponsored by Phillip and commissioned as Second Lieutenant to the *Sirius*. During the journey to NSW, Phillip, in an effort to gain time, transferred over to the faster *Supply*, taking King with him.

Throughout their association, Phillip had maintained a high opinion of King. He had selected King to take the advance party to Norfolk Island where, as commandant, he established a settlement. He was formally appointed Lieutenant Governor to the island in December 1789. King returned to England as a special envoy for Phillip, but after an absence of nearly two years, returned to Norfolk Island, then under command of Major Ross.

In 1796, due to ill heath, King was granted leave of absence by John Hunter and once again returned to England. While there he was promoted to the rank of captain and in 1798 given a dormant commission as governor of NSW, to be

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202 Ibid. p136, King’s appointment” (12 February 1788)
activated on Hunter’s death or absence.\textsuperscript{203} He returned to NSW in November 1799 carrying with him a despatch for the recall of Hunter and on Hunter’s departure, assumed the role of governor.\textsuperscript{204}

5.4.2 An Optimistic Beginning

Governor King was a man of much ability and was both active and industrious; yet so overwhelming at this time were the difficulties of governorship in NSW, that his term in office was little more than a distressing failure.

Alexander Sutherland, 1894 \textsuperscript{205}

Although opinions of King may have changed over time and his term in office no longer totally accepted as a “distressing failure,” historians still adopt a bifurcated view. Bladen wrote that King had proved to be an “able, fearless and upright administrator”, one who might have succeeded in thwarting the machinations of the NSW Corps had he been given better support from England.\textsuperscript{206} Helen Proudfoot awarded him some success and asserted that his appointment was a turning point in the management of land matters in NSW. She noted that King had gained relevant experience from managing the disputes on Norfolk Island where he had attempted to formalise land holdings and grapple with the lack of survey.\textsuperscript{207} The records however do not reflect favourably on King’s administration. He attempted land reforms, but in this, his success is questionable. It can be measured against his issuing of an almost continual stream of similar land reform edicts. The apparent need for King to repeat the same commands suggests that they were being ignored.

King’s tenure was one in which the NSW Corps’ monopoly on trade and particularly the trade in spirits, was reduced. Nonetheless, as will be illustrated, the extent to which the Governor himself can claim the credit is unclear.

\textsuperscript{203} Watson, \textit{HRA Vol 2}. p605, Commander King’s Commission, (1 May 1798)
\textsuperscript{204} Biographies of King are contained in - Shaw, "King, Phillip. Gidley. (1758-1808).” (n.p.)
\textsuperscript{205} Alexander Sutherland and George Sutherland, \textit{Australia and New Zealand: from 1606 to 1890} (London: Aberdeen University Press, 1894). p25
\textsuperscript{206} Bladen, \textit{HRNSW Vol 6}. p(xxxii), Introduction.
\textsuperscript{207} With respect to land, these related to the boundary disputes, on land granted without adequate survey. See: Kass, \textit{Sails to Satellites}. p61
Regardless of the reduction in the Corps’ trading activities, at the end of King’s governorship the landowning clique still dominated the colony’s affairs. From this position of power, they were able to control and exploit the smaller scale agricultural pursuits of the emancipist and subsistence farmers. On King’s departure, many of these farmers had mortgaged their land and crops and were so heavily in debt that the foreclosure of their holdings was inevitable.

5.4.3. Six Years of Turmoil and Conflict

King had always aimed at promoting the prospects of the colony and giving a permanent security to the interests of its inhabitants. He knew he could not satisfy all and had faced scurrility and abuse, clothed with darkness and assassination. This abuse has apparently harmed his reputation, which stands today lower than is deserved.


On assuming the governorship, King had been openly contemptuous of John Hunter’s ability. The correspondence between the two, just prior to Hunter’s departure, is both argumentative and uncomplimentary. It was described by Hunter as an “indelicate but oblique attack” on his character. By extension, King was declaring his confidence that he would prove to be a superior governor. In this King seemingly overestimated his own ability and underestimated the power of those set against him.

Stephen Roberts when commenting on King’s governorship of nearly six years, described him as having touched only on the fringe of the colony’s administrative and political problems. Thomas Keneally wrote “the acid of [the officer’s] contempt had eroded King’s soul.”

When King was eventually

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208 Clark, From the Earliest Times to the Age of Macquarie, vol. 1. p162


210 Shaw, "King, Phillip. Gidley. (1758-1808)."

211 Bladen, HRNSW Vol 4. p175, Hunter to King, (11 July 1800)

212 Roberts, History of Australian Land Settlement 1788-1920. p10

213 Keneally, Australians Origins to Eureka. p248
recalled, he was in ill-health, disheartened and possibly over reliant on alcohol. He died only two years later at the age of forty-nine.\textsuperscript{214} He was thus the second Governor to experience the wrath of the colonial elites, but like Hunter, his governorship had not been without some positive achievements.

King's strategy had been to rule by regulation, but again, as Hunter had found, enforcement was dependent upon a compliant military and again it was a military under the command of the very people he was attempting to regulate. He received little cooperation from the officers, most of whom were still deeply entrenched in the existing system and perceived no benefit in change.\textsuperscript{215} Indeed their powerbase founded on free convict labour, the possession of land and ownership of livestock increased under King's rule.

Although he had indicated some appreciation that his task would be both difficult and unpopular, King failed to appreciate the strength and influence of the forces that would rally against him.

\textit{...I must count for decided enemies those from whom I ought to have support...Do not suppose that I am at all intimidated from my task....I have no private concerns whatever to warp my intentions. I will persevere and trust you will consider when calculating my success the setts (sic) of villains I have to contend with. Discontent will be general when the present course begins to be changed. Where can I look to for support but myself, for it can hardly be expected that those will promote plans for industry when the success must prove the infamy of their own conduct.}\textsuperscript{216}

Time would prove that in most respects it was the “villains” that defeated King. It could be conjectured that as had been the case with Hunter, Governor King as a naval captain was accustomed to the rule of the quarter deck, a rule whereby every utterance of a captain was taken as law to be strictly obeyed. Such a concept was alien within the colony and not in accordance with the accepted

\textsuperscript{214}F.M. Bladen, ed., vol. 5, HRNSW (Sydney: Govt Printer, 1897). p737, Collins to King, (11 December 1805); \textit{———}, \textit{HRNSW Vol 6}. p200 King to Windham (5 November 1806); Clark, \textit{From the Earliest Times to the Age of Macquarie}, vol. 1. pp 160-161; Shaw, "King, Phillip. Gidley. (1758-1808)."; Keneally, \textit{Australians Origins to Eureka}. p248; Ellis, \textit{John Macarthur}, vol. 1978 Reprint. p165; Bladen, \textit{HRNSW Vol 6}. p(xxxii), Introduction


\textsuperscript{216} Bladen, \textit{HRNSW Vol 4}. p84, King to Under-Secretary King, (3 May 1800)
army practice in which senior officers would at times consult with subordinate officers. Further as noted by Enid Campbell, because of a lack of legal expertise, many of King’s land grants, decrees and orders “were very poorly drafted.” This made them subject to deliberate misinterpretation or to challenge.\(^{217}\)

On his taking office, under a “dormant” commission that contained no instructions other than those relating directly to his assuming office, King operated under his own volition.\(^{218}\) His only advice from Colonial Secretaries Portland and later Hobart, if received at all, were apparently verbal and thus unrecorded.\(^{219}\) The absence of any written instructions gave rise to speculation by John Hunter that some form of secret orders were held.

*Your secret or confidential instructions I have no desire to be acquainted with, alth’o (sic) I am of the opinion that there is a want of official correctness.*\(^{220}\)

King’s possession of a secret instruction has not been entirely dismissed by historians. It would seem probable, however, that while not particularly secret, King had received advice on how he was expected to act.\(^{221}\) The existence of secret instructions were not unequivocally denied by King. It possibly suited him to have others believe in them. The perception allowed King the pretence (or otherwise) of acting under a higher authority and thus served to give additional weight to the decisions made. Without a formal commission he was able to rule as he saw fit, claiming an authority that was difficult to challenge.\(^{222}\)

It was not until two years into his tenure that King received a formal commission. This, with its accompanying instructions, bestowed no unusual powers and was similar to those under which John Hunter had operated.\(^{223}\)

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\(^{218}\) Watson, *HRA Vol 2*. p605 Commander King’s Commission, (1 May 1798)

\(^{219}\) King often insinuated that he acted under Royal authority, but there is no evidence of this. His Commission in 1802 would suggest that no prior commission existed.

\(^{220}\) Watson, *HRA Vol 2*. p 662 Hunter to King, (11 July 1800)

\(^{221}\) Ibid. p633, King to Hunter, (12 July 1800); Ellis, *John Macarthur*, vol. 1978 Reprint. p165


\(^{223}\) Bladen, *HRNSW Vol 4*. pp697-703 & pp703-710, (28 February 1802)
With respect to land, his instructions again omitted to state or give direction as to the granting of land to commissioned officers. For emancipated convicts, the orders followed the established model for NSW. Grants were deliberately kept small thus again perpetuating the Empire Model and the yeoman farmer. 224

The instructions provided for grants to free settlers and King was specifically required to offer every encouragement to them. Although there was ambiguity as to whom large grants were to be made, the instructions appeared to envisage grants being made of up to 20,000 acres. 225 With respect to town planning, the instruction specifically directed King to establish townships on “natural boundaries” that extended into the country, on “navigable rivers” or along “the sea coast.” Areas were to be set aside for public buildings, schools and churches, and land was to be allocated to prospective settlers as a combination of town and country allotments. 226

The trading and import of spirits received a special mention and is important to land policy only in the context of the overthrow of King’s successor William Bligh. As will be demonstrated, the so called Rum Rebellion was more related to Bligh’s land policies than to his policies on rum. A diminution of the officers’ trading monopolies occurred during King’s tenure, but possibly not because of King’s policies. As the elite’s trading monopoly diminished, their power base shifted to one that was again founded on land-ownership and, in the case of John Macarthur, large pastoral holdings and wool.

King’s second commission included instructions on both the import and bartering of spirits, a point that draws attention to the London bureaucrats’ misperception of colonial conditions. 227 They failed to recognise the difference

225 Bladen, HRNSW Vol 4. p711, List of Fees, (28 February 1802) It would be presumed that the large grants were for free settlers with large amounts of capital.
226 Ibid. p709, Instructions, Geo III to King, (28 February 1802. Watson, HRA Vol 3. P397, Hobart to King, (28 February 1802)
227 ———, HRA Vol 3.p394 Governor King’s Instructions, (28 February 1802)
between the import of spirits, which could generate huge profits and the bartering of spirits which was a form of exchange caused by a lack of coinage. In the instructions the import and bartering were both viewed as “a great evil,” and King was directed to “take the most effectual measures,” to forestall the trade.228

King himself, seemingly failed to distinguish between import and the use of spirits as currency. He criticised Hunter for the “evils [that] arise from the quantity of spirits” circulating within the colony and believed that only a strong hand was needed to prevent the practice: 229

You have heard me publicly declare that I would send the first officer home who disobeyed my Orders respecting the infamous traffic that prevails here. This I will do and will not fail to draw forth the publick (sic) destroyer, be his work what it will.230

King’s degree of success can be judged by the fact that on his departure, the trading of spirits within the colony still flourished. His successor also faced an entrenched almost uncontrollable colony-wide trade.231

With respect to the attenuation of officers’ monopoly on the import of spirits, though King adopted a policy to attack it, he cannot be given total credit for its demise. Even before his gaining office, merchants and free settlers who had accumulated currency or who had access to overseas funds, were able to compete with the officers in the purchase of imports and the trading monopoly was collapsing.232 Without his grasping the implication that the officers were no longer monopolising entire cargoes, he reported, that at the time of his arrival,

228 Bladen, HRNSW Vol 4. pp706-707, Instructions, Geo III to King, (28 February 1802)
229 Ibid. p170, King to Hunter, (6 July 1800)
230 Ibid. p170, King to Hunter, (6 July 1800)
cargoes were no longer being immediately purchased. Even a cargo of spirits, he said, was “not more than half sold.”

As trade assumed less importance to the oligarchy, it was the possession of land, agriculture and livestock, coupled with free labour to work it, that once again anchored the officers’ power. By 1802, Macarthur alone had amassed estates totalling 3,950 acres, close to 10% of the entire amount of land then alienated in the colony.

*His immense fortune is vested here in numerous herds, flocks and vast domains...* [His wealth] *enables him to boast of his indifference of whatever change happens to him...His employment, making a large fortune, helping his brother officers make small ones (mostly at publik (sic) expense) and sewing (sic) discord and strife....*

A number of reforms were introduced into the land practices and some small inroads were made into the officer’s ability to accumulate wealth. King had sole control on the assignment of convict labour and the distribution of government stores. Decisive action was taken to address the number of convicts working at government expense while on an officer’s properties. A month after taking office the following announcement appeared in the General Orders.

*... No officer, civil or military, is to receive provisions or clothing from the public store for more than two convicts*

And

*The officers civil and military are to deliver a list to Lieut. McKellar on Saturday morning of the names of such convicts as they have...who are victualled from the stores, together with the two they wish to retain*

With this decree King had some success and he reported that by March 1802 there were no convicts being “victualled at the public expense,” cultivating the land owned by the officers. Despite the success, it was such actions that

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235 Bladen, *HRNSW Vol 4*. p(xxxi), Introduction, p934, List of Civil and Military Officer’s Land by grant or lease (31 December 1802)

236 Ibid. pp611-612, King to Under-Secretary King marked “private” (8 November 1801)

237 Ibid. p220, General Order, (1 October 1800)

238 Ibid. p222, General Order, (2 October 1800)

239 Ibid. p714, King to Duke of Portland, (1 March 1802)
possibly gave rise to a claim that King only touched on the periphery of the problems. Landowners still retained their assigned convicts but became responsible for feeding and clothing them, an expense that was trivial compared to the benefit of the labour obtained.

The practice of farmers mortgaging their future crops to the officers (and losing their farm if the crop failed), was also a matter of disquiet. But in this, King again resorted to issuing advice. In a General Order of 1801, settlers were warned “not to make away” thereby “enriching those who have made great prey of their necessities.”240 Nothing further was done and, since the practice continued, and as can be discerned from Bligh’s correspondence was still prevalent on King’s departure, the warning was to a large extent ineffectual.241 King took no further action to prevent the practice or to ensure that the government store would purchase a farmer’s crops. It became another example of King not addressing the crux of a problem.

The main opposition to the governor’s rule came from John Macarthur, a man almost universally accepted as the leader of the colonial elites. Macarthur was at the time an officer in the NSW Corps and thus under King’s command. King seized the excuse of Macarthur’s participation in an illegal duel to arrest him and send him to England for trial. In his report, King described Macarthur as being ill behaved, profiteering to the detriment of the colony and occupying much of the administration’s time:

> It is necessary that I should inform your Grace that when Capt’n McArthur (sic) was leaving the colony he did his upmost to thwart my views for the public benefit...The great fortune that this officer has made in this colony and the possessions he now has in it, are so notorious that any further comment of mine are unnecessary.242

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240 Ibid. p598, General Order, (24 October 1801)
242 Bladen, HRNSW Vol 4. p717, King to Duke of Portland, (1 March 1802). King had ordered Macarthur back to England under arrest in November 1801 following a duel with Lieut, Col. Paterson (HRNSW p611)
King’s animosity against Macarthur was such that he advised Under-Secretary John King, (no relation) that should Macarthur return to NSW, it would be “absolutely necessary” for himself to be recalled.\footnote{Ibid. p780, King to Under Secretary King, (6 June 1802)}

It would seem Macarthur returned to England willingly. Evatt described the episode as being turned to Macarthur’s favour and to advance his interests.\footnote{Evatt, \textit{The Rum Rebellion}. p56.} During the journey the position of Macarthur was greatly strengthened. At some time during the voyage a despatch box containing King’s accusations was mysteriously burgled and any incriminating documents removed. Although Macarthur was obviously suspected of arranging the theft, no culprit was found.\footnote{Watson, \textit{HRA Vol 3}. pp776, note 90; Evatt, \textit{The Rum Rebellion}. p54} Because of the lack of any accusation or prosecution witnesses, Macarthur eventually returned to the colony not in disgrace, but after an honourable discharge and a promise of an additional 5000 acre land grant. Further a colleague of Macarthur was to receive a contiguous 2000 acres, over which Macarthur would exercise unofficial control.\footnote{Fredk Watson, ed., vol. 5, HRA (Sydney: Library Committee of the Commonwealth Parliament, 1915). p481 Earl Camden to King, (31 October 1804)}

Macarthur had out manoeuvred the governor, who despite his implied threat to resign, remained in the colony after Macarthur’s return. King had been critical of John Hunter’s inability to apply the land policies demanded by the Colonial Secretaries, but then found the task also beyond himself. The oligarchy still wielded power and although some minor policy changes were introduced, little in fact changed. King’s tenure nonetheless, whether by his efforts or not, witnessed the trading monopolies of the NSW Corps collapse and their wealth base revert to land and its products.

\subsection*{5.4.4. Not Without Achievement}
Although he essentially failed in the curbing power of what had developed as the colony’s gentry, King nonetheless instituted a number of positive reforms.\footnote{Since Macarthur was no longer an officer, the clique was no longer exclusively officer based, further other wealthy land owners and merchants were forming an elitist group or gentry within the colony.} He recognised that for NSW to develop, emancipated convicts and soldiers needed to be encouraged to stay and that land with a regular form of title exerted a powerful attraction.\footnote{This was not King’s doing, it had been a requirement of the British government since Phillip.}

The system of holding land when King took office was ad-hoc and open to abuse. Although a register had been commenced by the Judge Advocate in 1794, it was not complete. A paper receipt of purchase, a governor’s permission to occupy, or note from a magistrate were at times the only evidence of land ownership. Once land was alienated from the Crown, even if the original grant had conditions prohibiting sale, it was being sold without the government having any knowledge of the new owner.\footnote{Kercher, "Informal land Titles." p612} This was advantageous to the wealthy members of colonial society who could accumulate multiple tracts without revealing the quantity held.

In order to impose some formality, King decreed that land sales by private individuals were required to have properly drawn deeds and the transactions recorded in central registers. Under this system, he stated any person unable to produce a deed of entitlement was liable to forfeit the subject land.\footnote{Proudfoot, "Town Plans and their Impact on the Settlement Process in Australia." p83} By proclamation in February 1802, King formalised his new system and stated that:

\emph{This regulation has been made necessary, from the illiterate and irregular manner in which those instruments are drawn up...} \footnote{Bladen, \textit{HRNSW Vol 4} p 696 - Government and General Order ( 26 February,1802)}

The registration system was intended to apply to both future and past land sales. Every person claiming land ownership was required to attend the Judge Advocate’s office to have the transaction checked and formally registered. The registration system was further enhanced by a proclamation of April 1802...
whereby all land grants held in the colony were to be identified by survey and placed upon an official, centrally held, chart.252

Unfortunately the new system was dependent upon survey and the accurate identification of land. The land register and survey system was difficult to maintain and the surveyors had neither the experience nor the tools available to keep up with demands. Further, “men of talent and education” were in short supply and the surveyors were frequently called upon for additional duties.253 Survey by necessity lagged behind.254

The difficulties in obtaining survey may have been responsible for many of the settlers not complying with King’s proclamations. The governor thus found his orders impotent and remarked in 1804 that the registration had “only in a few instances been attended to.”255 The registration system failed and on King’s recall to England in 1806, land was still being occupied on the basis of “a slip of paper.” In addition, despite King’s decree on informally held land, even in 1814, in Sanders v Jones the civil court upheld the legality of an informal title.256

Better communication with the outlying settlements was one of King’s successful projects. In 1802, the road access between Parramatta and Hawkesbury was improved by the construction of a pontoon bridge over South Creek. This work was done at the instigation of a settler Andrew Thompson, who constructed the bridge on the basis of his being the recipient of a toll for a term of fourteen years.257 Along with the bridge some urban planning external to the township appears to have been undertaken, with a report advising that in conjunction with the works, “a more direct and commodious road” had been

252 Ibid. p738, General Order (9 April 1802)
253 Kass, Sails to Satellites. p3 & p4
254 Ibid. p4;
256 ———, "Informal land Titles." p612
257 Bladen, HRNSW Vol 4. p771, General Order, (25 May 1802); Unattributed, Roadmakers :A History of Main roads in N.S.W. p6
constructed from Sydney to Parramatta. Bridges by necessity are usually located in the most advantageous location with respect to engineering, but once located, they become a de facto form of planning, controlling other features such as roads, and even settlement patterns.

A positive and far reaching land measure implemented by King was the reservation of areas of common lands. When in command at Norfolk Island, King had set aside a large area of un-alienated land for public use. This land he had named Arthur’s Vale and with it he had two smaller parcels ploughed and planted as communal farms. As NSW governor, King was able to apply his Norfolk Island experience to the mainland, implementing measures that were contrary to the enclosure of common lands then in train in Britain. King perceived a benefit of commons to the colony. The commons were to be:

...held and used by the inhabitants of the respective districts as common lands are held and used in that part of Great Britain called England

King initially designated six areas of common lands: three adjacent to the Hawkesbury settlements, Richmond, Phillip and Nelson, and one each at the Field of Mars, Prospect and Baulkham Hills. The areas were held under a novel system in trust with the land alienated by leasehold to trusted farmers. The nominated farmers were selected by the land owners of the district and the land held for the “common good.” Some historians have argued that the creation of commons was a response to King’s ongoing disputes with the landowning clique who had been appropriating and accumulating strategically located parcels of land and excluding other settlers from access to both water

258 “Sydney Gazette and New South Wales Advertiser.” p2, (7 August 1803). N.B. This reference also possibly refers to an earlier mentioned bridge over Duck Creek.


260 “Sydney Gazette and New South Wales Advertiser.” p1 General Order. (12 August 1804)


262 Campbell, "Rights of Common in NSW: A History."p246

263 Proudfoot, "Town Plans and their Impact on the Settlement Process in Australia.” p154
and pasture.\textsuperscript{264} It was a system continued by many of the subsequent governors with Maddison noting that by 1890, in NSW, over 1,000,000 acres had been officially designated as temporary or permanent common land.\textsuperscript{265}

Powell argued that the commons acted as a “safety valve” that eased the antagonism between the small and large land owner.\textsuperscript{266} Others however, have claimed the sites remained a source of tension between large and small landowners and that trustees at times manipulated access for their own gain\textsuperscript{267} Rather than being reserved for the benefit of the small landowner, it has been claimed that the effect was to constrain the areas of public pasture and prohibit public grazing and timber cutting on other unoccupied crown land.\textsuperscript{268} Whatever the motivation, the reserves set aside by King and later by Macquarie had a lasting effect on the Sydney metropolis and numerous country townships. Although some were “cut-up” others were absorbed into a towns parkland.\textsuperscript{269} The creation of commons was terminated in 1823 under instruction from Lord Bathurst,\textsuperscript{270} but was revived in 1849 by the NSW Legislative Council.\textsuperscript{271}

While showing little interest in the micro or detailed planning of new settlements, King attempted some improvements with respect to Sydney. The improvements were based on aesthetic aspects of the existing township rather than an improved street pattern. King attempted to resume some buildings that had earlier fallen into private hands and encouraged the delineation of streets by a requirement that landowners define their boundaries. The latter was achieved

\textsuperscript{264} Karskens, \textit{The Colony}. p88
\textsuperscript{265} Maddison, "A kind of joy-bell: common land, wage work and the eight hour movement in nineteenth century Australia." p181
\textsuperscript{266} Powell, \textit{The Public Lands of Australia Felix}. pp 80-82
\textsuperscript{267} Maddison, "A kind of joy-bell: common land, wage work and the eight hour movement in nineteenth century Australia." p183 & p188
\textsuperscript{268} Ibid. p184
\textsuperscript{269} Ibid. p195. The Marsfield Wildlife Reserve is one such example.
by erecting fences at the street frontage along a five foot wide footpath alignment. In 1803, the governor issued a general order requesting that individuals with multiple holdings apply to the Surveyor General to have the holdings amalgamated. In the same order the governor advised that the bounds of streets within the township would be regulated, accurately defined, and shown on a town plan.272 Because of the continuing backlogs in survey, King was unable to implement the orders and they lapsed.

Street repairs and improvement were another of King's achievements. An 1803 Sydney Gazette reported on eighty men who had been employed improving Sydney's streets and removing stumps. One stump, described as being twenty-seven feet in circumference, gives an indication of the poor condition of colony's streets.273 With respect to Sydney’s landholders, King adopted an attitude similar to his three immediate predecessors. He reported that land at “Toongabbie and Parramatta...have very improperly been leased,” perverting Phillip’s intentions.274 While critical of these actions, King himself “perverted Phillip’s intensions” by granting seventy-four town leases in Sydney.275 The leases were within an undefined street layout which has been portrayed as representing a many sided-figure with which “mathematics are entirely unacquainted.”276 Further, King apparently accepted the informal occupation of building lots within the township. Of some 250 houses in Sydney by the end of his governorship, only 99 had formal leases. The majority of houses were occupied without any formalised right.277

It was King's town leases, together with those of his three predecessors, and the informal Sydney landholdings that became a major point of contention between the colonists and King’s immediate successor William Bligh. Bligh’s

272 “Sydney Gazette and New South Wales Advertiser."p1, (3 July 1803)
273 Ibid.p2, (7 August 1803)
276 “Sydney Gazette and New South Wales Advertiser."p2, (7 August 1803)
277 cited in Karskens, The Colony. p172
attempts to exert control and formalise land ownership within the township lit a fuse of discontent that culminated in his arrest and detention.

5.4.5. New Townships and Settlements

It was not only within the streets of Sydney that King behaved contrary to Phillip’s philosophies. He also questioned the advantages of housing convicts in detached cottages. At a new settlement he founded at Castle Hill, King ordered the construction of barracks to bring the unruly convicts under more rigorous surveillance.\(^{278}\) The impetus to increase convict surveillance was not without justification. The colony by then had a contingent of Irish political prisoners rather than just English poor. The governor feared that plots and schemes would develop in the privacy of the convicts’ ‘own’ huts and believed that a more rigorous regime of control was warranted.

Castle Hill was a site that had first been noted by Arthur Phillip as suitable for a future village. Phillip however had envisaged the area, as with the Hawkesbury, being occupied only as the fingers of settlement expanded gradually outwards. King’s settlement at Castle Hill was not in keeping with Phillip’s philosophy, or the control by containment set out in the Empire Model. He introduced a revised land policy and at Castle Hill (as with Newcastle) he authorised the formation of a satellite community.\(^{279}\)

In August 1801 it was reported that fifty men were employed clearing the land at Castle Hill. By March 1802 an area of 200 acres had been cleared and was ready for sowing.\(^{280}\) In June 1802 King informed Sir Joseph Banks of the new settlement which he described as being located “eight miles (12.8 km) to the north of Parramatta.”\(^{281}\) It has been noted that at the time, there was no road access between the two settlements. King’s aim was to keep any gullible

\(^{278}\) Ibid. p89

\(^{279}\) Bladen, *HRNSW Vol 4*. p197, King to Duke of Portland,(26 September 1800)

\(^{280}\) ——, *HRNSW Vol 5*. p194, King to Lord Hobart, (7 August 1803), p198, King to Lord Hobart, (2nd letter 7 August 1803)

\(^{281}\) Ibid. p784, King to Banks, (5 June 1802)
convicts separate from those that might be persuaded to lead them astray. Accordingly, the location was deliberately selected to help prevent troublesome and possibly rebellious convicts from communicating with other settlements.

King had decreed that the building was to be one-hundred feet long (30.5m) and twenty-four feet (7.3m). It became the first convict barracks built in the colony. There is no evidence to show that any formal town planning took place in the decision to locate or build the barracks. King noted only the necessity to construct other public buildings and that “the purpose of the settlement was not expansion of the colony but rather the isolation and employment of convicts.”

King’s policy for the Castle Hill settlement failed, as demonstrated by the short-lived convict uprising of 1804. The instigators were a group of Irish convicts stationed at Castle Hill and the rebellion occurred despite King’s efforts to impose additional controls. In plotting rebellion, there had been communication between Castle Hill and the settlements at Parramatta and Toongabbie. Further, although there was not a direct road connection, the rebels trekked to Parramatta before marching to Rouse Hill. Some convicts travelled as far as the Hawkesbury before being recaptured.

As the land at Castle Hill was being cleared, a settlement was also founded on the Hunter River. Interestingly King’s settlement was not the first in the area. A private sawmill had been earlier established on the northern side of the Hunter River by emancipist entrepreneur Hugh Meehan of the ship Anna Josepha, who as well as timber getting, had been authorised to ship coal from the Hunter River to Sydney. Meehan’s settlement was short lived and was abandoned in

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282 Watson, *HRA Vol 3*. p871, King to Hobart, (30 October 1802)
May 1801. The settlement, founded by King and erroneously first described as Port Stephens, was intended to exploit the coal deposits discovered in 1797 by John Shortland. Unlike John Hunter, who after acknowledging the value of the coal discovery had ignored it, King saw its potential as the colony’s first valuable export and the “first natural produce of the colony.”

King’s formal instructions when received in 1802 contained procedures for the establishing and laying out of townships. After almost quoting from Shaftesbury on the benefits of “settling planters in townships” and describing how settlements “hath very much redounded to their [the settlers] advantage,” the instructions required that allotments be reserved for public buildings and they prescribed certain areas to be attached to churches (400 acres) and schools (200 acres). Although, even prior to receipt of his formal instructions, it was clearly within King’s prerogative to establish new settlements, he had first sought permission from London before committing to the Hunter River venture. Initially he sent only a small group of convicts and soldiers under the command of a corporal, but in the proposal offered to his superiors in London, he suggested a settlement comprising 300 convicts and a proportional military establishment.

As with the settlement at Castle Hill, there is no mention, or evidence, of any pre-planned street layout for the initial settlement, then being described as Coal

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288 Bladen, HRNSW Vol 4. p197, King to Duke of Portland,(26 September 1800)

289 Clark, From the Earliest Times to the Age of Macquarie, vol. 1. p151; Watson, HRA Vol1, p118, Hunter to Duke of Portland (10 January 1798); p263, King to Duke of Portland, (30 November 1800), p604, King to Nepean, (31 October 1801), p610, King to Dundas (6 November 1801), p 891, King to Lord Hobart, 99 November 1802)

290 Bladen, HRNSW Vol 4. p477 King to the Duke of Portland (21 August 1801),

291 Watson, HRA Vol 3. p397, Hobart to King, (28 February 1802)

292 Bladen, HRNSW Vol 4. p197, King to Duke of Portland,(26 September 1800)

River. The outpost was seemingly regarded merely as a temporary camp. King seems to have maintained longer term aspirations for the area which extended beyond establishing a coalmine. Before the initial contingent was sent, he dispatched Lieut. Col. Paterson and Lieut. Grant in the Lady Nelson to investigate the river and “to examine where the most eligible place would be to form a settlement, both with respect to procuring coals and for agricultural purposes.” This 1801 investigation was unnecessary for the initial small contingent, but was important if a larger outpost was to be established, not only so that it might feed itself, but possibly serve as a source of supplies for the remainder of the colony.

In response to King’s orders, Lieutenant Grant undertook some inland exploration and reported the area as having good black soil covered with short grass and being suitable for cattle or sheep. The ground he described as being elevated and healthy but subject to bleak winds from the sea. He also reported stands of cedar, “in great abundance and of great magnitude”. On receiving an initial response from Paterson and Grant, King was so enthused that before the party had even returned, he had despatched the initial contingent of a corporal, five privates and twelve convicts, to set up a post there.

I am so anxious to hope for great advantage from that river that I have sent Corporal Wixtead and five Privates to take a post. And I have established a small post there, consisting of a trusty non-commissioned officer and eight privates and twelve prisoners.

294 ———, HRNSW Vol 4. p477, King to Duke of Portland, (21 August 1801) – In contrast, the design of the second attempt of settlement indicates a well-planned street layout surveyed and laid out by Surveyor Dangar. See also State Records NSW. Item 4375 -N.I.335. Lord Hobart referred to the settlement as a small post for gathering coals - ibid. p829, Hobart to King, (29 August 1802)

295 Ibid. p391, Memorandum by King, (9 June 1801)

296 Ibid. p405, Remarks of Lieut. Grant – (Hunter River, 14 June 1801)

297 Ibid. p328, King To Col, Paterson (July 1801)

298 Ibid., p477, King to The Duke of Portland, (21 August 1801) Note the slight discrepancy between the two letters, also the reference to “post” rather than settlement or township, suggesting King saw this perhaps as a trial or as being temporary in nature. Col. Paterson reported back saying “the point of land where I put the colliers to work,” This use of the plural “colliers” suggested more than one prisoner was part of the original contingent on the Lady Nelson, and possibly that the new contingent of soldiers were intended to oversee a continuation of mining on the Lady Nelson’s departure. (note p 390 of HRNSW suggest only one miner on the Lady Nelson and yet The Francis was to be fully “laden with the best coals”) If only one convicit present, who was to do this work?
In November of 1801, King reported on the success of Coal Harbour and advised that coal was being exported. There was still no mention of a planned township and although he recorded that the surveyor and engineer were there, these he described as only completing a survey of the harbour. 299 Sales of coal however were to prove disappointing. The poor price received in India and at the Cape of Good Hope did not encourage ships masters to take on coal as an outgoing cargo. 300 Irrespective of the initial enthusiasm, the settlement was short-lived and by June 1802 King reported that it had been abandoned. 301

King retained his desire to settle the area. He renamed the locality Newcastle and in 1804 establish a permanent settlement near the river mouth. This time rather than placing it under the command of a corporal, his intentions appear longer term and he placed Marine Lieutenant Charles Menzies in charge. 302 Menzies established his settlement in March 1804, referred to as King’s Town. Rather than just settling in an area convenient to the mines, Menzies chose an area described as “a most delightful valley, about a quarter mile from the heads.” 303

The Menzies’ settlement is shown in an 1804 painting by Ferdinando Bauer. It shows a flagstaff on the coastline with one dwelling already constructed and what appears to be a number of tents aligned along the valley floor. The dwelling shown by Bauer is recognisable in a later engraving by Walter Preston, which shows permanent housing along the alignment of the earlier tents and a well ordered seemingly pre-planned grid pattern of the township. 304

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299 Ibid. p621, King to the Duke of Portland, (14 November 1801)
301 Bladen, HNSW Vol 4, p782, King to Undersecretary King, (5 June 1802)
302 "Sydney Gazette and New South Wales Advertiser."p1, (25 March 1804)
303 ———, HNSW Vol 5. p367, Menzies to King, (19 April 1804)
304 Ferdinando Bauer, Settlement of Newcastle Near Sydney, 1804. SV1B/ Newc/1800-09/1, State Library of N.S.W.;Walter Preston, Newcastle in New South Wales with distant views to Point
township was developed almost as Phillip had envisaged Sydney and Parramatta with government house at the top of the main street and convict huts arrayed along the lower streets. Newcastle however was eccentric with the main street along the eastern edge of the town. Because there were initially no private residents, all the land was held by the government and all buildings were located and constructed under the direction of Menzies himself.

An indication that the new settlement was considered permanent is evidenced by a request from Menzies that the Sydney-based wives and families of the soldiers be embarked for the new settlement. This permanency was later reinforced by King’s encouragement of settlers removed from Norfolk Island to take up land in the Newcastle District. Coal exports however remained a disappointment. King remarked that while coal was easily procured there was nowhere “foreign” to take it other than the Cape of Good Hope and that only “in peaceable times.” The township also served as a place of secondary punishment and part of its founding population were convicts that had taken part in the Castle Hill uprising. The relocation of the Castle Hill rebels served to confirm that King retained the philosophy of preventing communication between troublesome convicts. King’s correspondence indicates that in establishing Newcastle, his main considerations were the export of coal and the remoteness of the location. Starbuck has noted that as governor, King’s future was dependent on both the colony’s prosperity and its expansion. But while Newcastle was essentially the first mainland settlement outside of the Sydney Basin, it was not a readily accessible port and although it did act as the gateway to the Hunter Valley, the valley was not opened for settlement for another twenty years. It would seem the colony’s expansion was not King’s prime purpose.


305 Bladen, *HRNSW Vol 5*, p368, Menzies to King, (19 April 1804)
306 “Sydney Gazette and New South Wales Advertiser.”p1 General Order, (22 July 1804)
307 Watson, *HRA Vol 5*, p205. King to Lord Hobart, (20 December 1804)
Newcastle was but one of the satellite colonies envisaged by King. In 1802, He had instructed Charles Robbins, accompanied by surveyor Grimes, to undertake the exploration of King Island in Bass Strait (discovered in 1798) and also Port Phillip. These instructions required both areas to be closely examined and observations made “as may guide my [King’s] judgement in the most proper places to establish settlements.”\(^{309}\) Whatever King’s motives may have been, the colonisation of Van Diemen’s Land (VDL), then part of NSW, which followed this exploration, together with the founding of Newcastle, could be ranked as the most significant land related achievements of Governor King’s tenure.

In the case of VDL, King not only desired colonial expansion, he perceived an external threat.\(^{310}\) Like Arthur Phillip in the case of LaPerouse, King as a naval officer would have been wary of any foreign naval intrusion into his area of control. Further while not specifically mentioning an incursion, King’s instructions stated that he was to prevent general communication with all foreign vessels.\(^{311}\) King feared the motives of a French exploratory expedition under Nicolas Baudin, which arrived in Sydney in 1802 after exploring the southern coastline. At the time England was at war with France, but Baudin held a special exemption that permitted scientific exploration. Nonetheless, Baudin’s presence posed a threat and King was anxious to establish an unambiguous claim to the continent’s southern coast and to VDL.\(^{312}\) Whether the French threat was imagined or real, is unknown. There are conflicting theories, with some recent researchers suggesting it as a probability, while others claim that Napoleon held no such territorial claims.\(^{313}\) In either case, the presence of the

\(^{309}\) Bladen, *HRNSW Vol 4*. p909, King to Robbins, (22 November 1802)


\(^{311}\) Watson, *HRA Vol 3*. p395, Hobart to King, (28 February 1802)


Baudin expedition and a third-party remark made one of Baudin’s officers, caused some consternation. 314

The records indicate both alarm and fury from King following an alleged statement by Françoise Peron one of Baudin’s junior officers. An alleged conversation indicating that the French intended to occupy part of VDL was revealed to King following Baudin’s departure from Sydney. 315 King’s anger is expressed in a series of letters to Lieutenant Colonel Paterson in November 1802. The allegations made by the officer were subsequently denied by Baudin. 316 Nonetheless King advised the Duke of Portland of his concerns:

*The French having it in contemplation to make a settlement on the NW coast [sic]...which I cannot help thinking is a principal object of their exploration.* 317

In the same letter King gave details of Matthew Flinders’ 1802 entry into Port Phillip Bay and suggested that a settlement be made “at that place.” 318 The location of the Bay at the eastern entrance to Bass Strait gave it a strategic importance to any nation that settled it and could control the strait. 319 Port Phillip’s European discovery had been in 1800 by Lieutenant James Grant of the *Lady Nelson.* Grant named it Governor King’s Bay but King renamed it Port Phillip in honour of his predecessor and benefactor Arthur Phillip. 320

The government in Britain acceded to King’s suggestion and in 1803 appointed David Collins to establish a settlement at Port Phillip Bay. Although this colony was to fall under the jurisdiction of Governor King and was founded on his

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316 Bladen, *HRNSW Vol 4.* pp1006-1010, King To Paterson, Paterson to King, Baudin to King
317 Ibid.p766 King to the Duke of Portland  (21 May 1802) see also p675 & p776, Lieutenant Bowen to Under Secretary Cooke, (22 July 1805)
318 ibid. p766, King to Duke of Portland, (21 May 1802) see also p1006 King to Lord Hobart, (23 November 1802).
319 Starbuck, *Baudin, Napoleon and The Exploration of Australia.* p126
recommendation, King had no part in its planning or organisation. The Port Phillip settlement was yet another example of lack of both forethought and proper planning. As had occurred with Botany Bay, the location was determined, sight unseen, by bureaucrats in London. David Collins who was then in England was directed to proceed to the bay and establish a settlement. Further, in a mirror of Phillip’s instructions, he was told not to delay disembarkation while he looked for a better locality. Collins was a man with no farming skills but even so, like Phillip, was expected to select an appropriate site in an unknown bay, while also being responsible for the immediate landing of supplies and the supervision of his 300 charges.

It appears that Collins neither shared Phillip’s optimism, nor did he demonstrate any ability to plan a town. As a consequence, he simply chose a sandy spot inside the heads of the Bay. The site has been described as being ill-advised and neither a careful nor fortunate choice. It lacked fresh water and with sterile soils offered little chance of success. Missionary William Pascoe Crook, who accompanied Collins, wrote that the site chosen was so inconvenient that ships could only anchor some way from the landing place and that the water was of such a shallow depth that to reach shore, even the ships’ boats had to be lifted over the shoals.

Modern historians have remarked that it is difficult to understand Collin’s choice of location. He reported that he was “at loss to know how to dispose of the

321 Bladen, HRNSW Vol 5. p833 Appendix B, Lord Hobart to King, (15 February 1893)
322 Ibid. Appendix B, Lord Hobart to King, (14 February 1803)
323 Ibid. p20 Instructions, Hobart to Phillip. (7 February 1803) - NB, The instruction relating to the instructions on the choice of site are so similar to the instructions given to Arthur Phillip in 1787, that it is likely that they were simply copied from those earlier instructions with the localities changed. The true reason behind the original instruction lost.
326 Bladen, HRNSW Vol 5. p254, Missionary Crook to Joseph Hardcastle, (8 November 1803)
327 Shaw, "The Founding of Melbourne."p204
settlers” because he anticipated little success in any agriculture.”^328 On receiving his very first dispatch from Collins, Governor King remarked that:

Port Phillip is totally unfit in every point of view...removing from thence will be the most advisable for the interests of His Majesty’s service.^329

The episode demonstrates poor judgement and condescension on the part of the British government. From London they selected a site for settlement at the other side of the world in a bay that had not been explored, then they prohibited any exploration that would delay disembarkation of the settlers. Rather than Collins being forced to abandon Port Phillip, basic investigation would have revealed that some parts were ideal for settlement.^330 Land at the north eastern side of the bay was colonised by settlers from VDL under John Batman in 1835 and it developed into one of the nation’s great cities, Melbourne. The south western side became the site of Geelong (Fig 5,3).

When making his recommendation for a colony in the “Basses Straights,” King had earlier stated that he would have done so on his own initiative but he had no officer available to place in charge of another establishment.^331 Nonetheless, King then on his own volition ordered Lieutenant John Bowen to form a settlement on the River Derwent in the southeast of VDL. Again there was to be no pre-planning. The settlement appears to have been intended for the immediate purpose of excluding the French from any right of possession.

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328 Bladen, *HRNSW Vol 5*, p260, King to Lord Hobart, (14 November 1803). Even at this time Collins expected to be ordered to relocate. See pp 260-26. After such a short time with no effective exploration, Collins suggested a relocation to Port Dalrymple, but surprisingly for a person founding a new settlement after a journey half way around the world, then remarked that further exploration of Port Phillip Bay would be required “if I am not to remove.”

329 Ibid. p265, King to Collins, (20 November 1803)

330 Shaw, "The Founding of Melbourne." pp204-205 Shaw puts Collin’s abandonment of the site to a naval background and the difficulty vessels would have in leaving the bay to pursue an enemy.

331 Bladen, *HRNSW Vol 4*, p766, King to Duke of Portland, (21 May 1802)
Fig 5.3 Port Phillip Showing Collin’s Landing, Melbourne and Geelong
Map Based on: Grimes. SLNSW Ca 80/3 (1803)
That the expedition might be challenged by a foreign power was considered. Bowen’s instructions were that hostility was to be avoided if possible, but at the same time, not specifically forbidden.

In case any French ships, or ships of any other nation, should attempt to form an establishment anywhere in the neighbourhood...you will inform the Commanding Officer of His Majesty’s right to the whole of Van Diemen’s Land. If they persevere after this, you will endeavour to prevent them carrying out their intentions into effect, but without hostility if it can be avoided... 332

Despite the original settlement being unplanned, some consideration for its possible future growth was made. It would appear that King held a belief that the original settlement was not to be the final one. Bowen’s instructions were to locate his settlement such that it would not interfere with any future arrangements and was to leave space for a future township:

You are to fix the settlers...in such situations that will not interfere with any future arrangements with respect to building a town... 333

An indication of a temporary nature of the settlement is given by the sparse provision for accommodation. Bowen was given only a spare mainsail as a tent for himself and canvas huts for the remainder of his charges. He was given no direction or advice on the construction of more permanent buildings. Areas for gardens could be allocated, but only on the understanding that there was no rights whatsoever to acquire land.

The main obligation placed upon Bowen related neither to establishing a permanent settlement nor to the erecting of dwellings, but to clear as much ground as possible to make it ready for the sowing of a wheat crop immediately after he was securely disembarked. 334 It would thus seem that to King, costs and not town planning considerations, were paramount. Bowen’s only instruction that could be remotely described as town planning was a requirement to group buildings close together and place his own dwelling and storeroom amongst them. He was directed that he was to exclude convicts from

332 ———, HRNSW Vol 5. p100, Confidential- King to Bowen, (1 May 1803)
333 Ibid. p77, Instructions, King to Bowen, (28 March 1803)
334 Ibid. p155, King to Bowen, (9 June 1903)
having general access to the stores and to have an enclosure built if possible.\textsuperscript{335} The thrust of the remainder of King’s memorandum related to caution and taking care of supplies.\textsuperscript{336}

A sketch of the settlement, then called Hobart (not the present site), drawn by John Bowen and sent to Governor King, shows twelve structures scattered in a random alignment (Fig 5.4).\textsuperscript{337} There is no indication of any regular street pattern or planning for future expansion.\textsuperscript{338} It appears that, while King might have entertained plans for a future township, his hurried dispatch of Bowen was an imperial consideration designed to thwart any attempt by the French to take possession of VDL.

\begin{itemize}
\item \textsuperscript{335} Ibid. p243, King To Bowen, (18 October 1803)
\item \textsuperscript{336} Ibid. p156, King to Bowen, (9 June 1903)
\item \textsuperscript{337} R.J Solomon, \textit{Urbanisation: The Evolution of an Australian Capital} (Sydney: Angus and Robertson, 1976).p17
\item \textsuperscript{338} John Bowen, "Sketch of the settlement round Hobart and the Derwent in Van Diemen’s Land," in \textit{State Library of N.S.W. ID. 44901158} (Sydney1803); Bladen, \textit{HRNSW Vol 5}. p226, Lieut. Bowen to King, (27 September 1803)
\end{itemize}
Fig 5.4 Bowen’s Sketch of Hobart on Risdon Cove
Source: State Library of Tasmania Exploration Maps 1800-1949 AF395
Collins, in the meantime, decided not to move his Port Phillip settlement to Port Dalrymple in the north of VDL as had been recommended by King and instead chose to settle his charges on the Derwent River, where Bowen had already established his fledgling colony. This decision was apparently made with little thought for the future of the colony, but because of discontent among the soldiers who were “dissatisfied at the daily drill.” Collins’ choice was based upon the advantages of moving to “a place already settled” and thereby combining his military command with the Hobart contingent.339

The new settlement at the Derwent was described as a “grotesque and rough looking village.”340 A lack of any overall plan or planning control by Collins is apparent in his dispute with a settler named Hartley. Hartley had sought compensation for losses he claimed to have incurred by his forced removal from Port Phillip when it was abandoned. Apparently in an attempt to mitigate the dispute, without any attempt at planning or control, Collins had permitted Hartley on arrival in VDL to select a location and settle anywhere he chose:

*I was rather surprised upon my arrival at Risdon Cove, [the settlement already founded by John Bowen] to find that Mr Hartley had taken upon himself to disembark from the Lady Nelson and fix his tent near the store house...[and] expressing a wish to be suffered to remain there, he remained so long as he chose, unmolested by me.*341

Meanwhile, Norfolk Island had failed to live up to its promises of flax and timber. The expenses of maintaining the settlement as a convict outpost without any strategic role, or exportable product became of concern to Lord Hobart.342 He referred to the outpost’s “great expenses and disadvantages” and directed that except for a “small establishment” the residents be removed and relocated in VDL; he suggested Port Dalrymple on the northern coast of VDL across Bass

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339 ________, *HRNSW* Vol 5, p312, Collins to King, (28 January 1804) As a point of interest and as an example of the patronage system and the need to seek favour, King advised Under-Secretary Sullivan that the Lieutenant Governor David Collins had named his settlement Hobart in honour of Lord Hobart the then Colonial Secretary. This was despite advice from the lower ranked Lieutenant Bowen, indicating that he had named the township Hobart before Collins’ arrival


341 Bladen, *HRNSW* Vol 5, p504, Collins to King, (8 December 1804)

342 The lack of strategic role related to its lack of harbour and thus inability to shelter shipping.
Strait from Port Phillip. With this in mind, on receiving information that Collins had relocated his settlement to the Derwent, King advised Hobart of his intention to retain a military post at either Port Phillip or at Western Port, a harbour just to the east of Port Phillip discovered by George Bass in 1797.

On the abandonment of Norfolk Island the settlers were to return their grants to the Crown and be compensated by an entitlement of four acres at Port Dalrymple for every cultivated acre surrendered. To encourage the occupation of King Island, Hobart advised that any person willing to settle there or at Port Phillip, would receive a similar entitlement. Hobart also suggested that if sufficient free people were disposed to move to Port Dalrymple, then two townships should be established in the area, rather than one.

Lieutenant Colonel Paterson, then commandant of Norfolk Island, was concerned that Port Dalrymple, where he was being asked to establish a settlement, was an unexplored area. He advised that little was known of the Port Dalrymple region, its soils or its “natural productions”. Paterson, perhaps a little churlishly, supported his argument for prior exploration by pointing to his knowledge and previous experience as an African explorer. He also claimed

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344 Ibid. p 377, enclosure, King to Lord Hobart, (15 May 1804), Frost, *Botany Bay Mirages: Illusions of Australia’s Convict Beginnings*. pp176-189; Karskens, *The Colony*. p400. Note earlier writers such as Stephen Roberts (1924) and C.J. King (1957) do not question the Crown’s right of possession. To them land ownership was a debated between the Crown and the settler.
345 Bladen, *HRNSW Vol 5*. p375, King to Under Secretary Sullivan, (15 May 1804); P383 King to Lieut. Col. Paterson, (1 June 1804)
346 Ibid. p158, Lord Hobart to King, (24 June 1803). In the letter, Hobart mistakenly refers to the future settlement as being on the southern coast, but near the eastern entrance to the Straight. The four acres was for cultivated land and was reduced to two acres for “waste lands.”
347 Ibid. p159, Lord Hobart to King, (24 June 1803).
that it was he who had first appreciated the prospects of the Newcastle region.348

Although he would prove to lack town planning skills,349 Paterson did have a better appreciation of the needs of a settlement than Collins. His procedure for establishing a new settlement can be contrasted to all of the previous attempts. At Port Dalrymple, Paterson proceeded methodically. His party arrived in November 1804. There he established a temporary camp on an island while he examined the area and carefully chose a suitable place to settle.350 Over a two month period, Paterson and others carried out extensive exploratory expeditions and it was not until January 1805 that he decided on what he thought as the best location for a settlement: “after much labour and attention…I have seen none so advantageously situated for a permanent settlement than this.”351 Nonetheless, despite his investigation and methodical proceedings, it proved a poor choice and the location was severely criticised during a tour of inspection by Governor Lachlan Macquarie seven years later.352

Before relinquishing his temporary base Paterson ordered three carpenters to assist the settlers in erecting permanent quarters.353 Paterson had no surveyor to prepare a detailed plan or lay out streets, but in erecting permanent buildings prior to occupation, it can be assumed that some overall plan was prepared.354

Hayes notes that the town was laid out in accordance with a traditional design, using the terrain to segregate and reinforce the social and rank based

348 Ibid. p445. Paterson to Under Secretary Sullivan, (14 August 1804) – Paterson complained that he was “allowed no merit” for his observations, and that Governor Hunter is now encouraging settlement on the spot he [Paterson] recommended.
349 Hayes, “Yorktown: the cultural landscape of the first European settlement in the North of Tasmania.” p6
350 Bladen, HRNSW Vol 5. p484, Paterson to King, (26 November 1804) NB Paterson addressed his letter from “camp at Outer Cove”
351 Patterson cited in, Hayes, “Yorktown: the cultural landscape of the first European settlement in the North of Tasmania.” p5
354 Ibid. p547, Paterson To King (18 January 1805)
hierarchical distinctions. The governor's house occupied the highest ground and overlooked the settlement. The officers’ cottages, still on high ground, were on the edge of the camp where they could be attached to the largest gardens. The soldiers were housed where they overlooked the convicts who in turn were housed in a lower area as a symbol of their lowly status.355 Eventually Paterson himself became disillusioned with the area’s the poor grazing and the settlement was abandoned in 1808 in favour of Launceston.356

King’s tenure was marked by the colony’s expansion from its centre of administration at Sydney to a number of separate, relatively remote communities. The expansion was partially to provide places for troublesome convicts and partially to access coal for export. In the case of VDL however, possession was taken solely to protect Britain’s imperial goals and prevent any foreign occupation.

5.4.6. Another I gnominous Departure

When Macarthur was ordered to England, Governor King advised that should Macarthur be permitted to return, he himself would need to be recalled.357 Yet, Macarthur not only avoided facing a Court Martial, but was allowed an honourable discharge from the army. He returned to NSW in June 1805 as a free settler promised additional land. Despite King’s earlier correspondence stating his incompatibility with Macarthur, King was retained as governor.

In May 1803, before Macarthur’s return, but following other disputes with the officers of the NSW Corps, King requested a leave of absence so that he could return to England and explain the situation in person. The NSW Corps, King claimed, had subjected him to “assassinating and dark attacks” and he had faced “insults and opposition” because of his arduous and honourable discharging the duties as governor.358 In a second letter to Under-Secretary

355 Hayes, "Yorktown: the cultural landscape of the first European settlement in the North of Tasmania." p12
356 Ibid.
357 Bladen, HRNSW Vol 4, p780, King to Under Secretary King, (6 June 1802)
Sullivan, King again referred to the “assassinating attacks” on his character and asked that any decisions regarding his future as governor be made impartially. 359

Lord Hobart ignored King’s request for temporary leave and for an impartial hearing. After complimenting King for growth in agriculture and livestock, Hobart advised King that, because of the disputes with the military, he was to be recalled. With an insinuation that Hobart was not confident of King’s ability, his replacement would be chosen in England and be:

...some person competent to exercise the duties thereof, free from the operation, of spirit of party, which has reached such an alarming height and which in its consequences be of material prejudice to His Majesty’s service. 360

Watson noted that the eagerness with which Hobart accepted King’s resignation (really a request for leave of absence) had a remarkable parallel to the recall of John Hunter. 361 The haste however was not followed in practice. A successor was not appointed until 1805 and it was not until August 1806 that King’s replacement arrived. The long delay, during which King’s opponents would have known that he was being recalled in some form of disgrace, must have made the intervening time difficult for the governor.

Joseph Banks, in April 1805, reported that he had been empowered to offer the governorship to Captain William Bligh. 362 Bligh accepted the offer and received a formal Commission as governor in May 1805. 363 The Commission as well as the clauses contained in previous governor’s commissions also had specific instruction on the “great evils” that had arisen from the “unrestrained importation of spirits”. 364 Bligh arrived in NSW on 7 August and took over from Governor

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359 Ibid. p247, King to Under-Secretary Sullivan, (9 May 1803)
360 Ibid. p428, Hobart to King, (30 November 1803). Note while the overall meaning of Lord Hobart’s statement is quite clear, the phrase “party of spirit” is not so.
361 Ibid. p686, Note 149.
362 Bladen, HRNSW Vol 5. p648, Banks to Flinders, (June 1805).
363 “Sydney Gazette and New South Wales Advertiser.” p1, Extract from letter, Viscount Castlereagh to King of 13 July 1805, (published 20 April 1806); ———, HRNSW Vol 5. p 628, Bligh’s Commission, (24 May 1805)
364 ———, HRNSW Vol 5. p633 and p637 Bligh’s Commission and Instructions, (24 May 1805)
King on 13 August 1806. The short intervening period was not without controversy.

The transfer of the governorship was marred by what could be regarded an act of impropriety in the making of land grants. It was an act in which each governor, in turn, made the other the beneficiary of a grant of land. King, without authorisation, made three separate grants to the incoming governor, one each at Camperdown, the Hawkesbury, and Parramatta.\(^{365}\) Bligh in return granted a property of 790 acres to the departing Mrs King.\(^{366}\) None of the grants were mentioned in the despatches.\(^{367}\) The matter came to light several years later, following Bligh’s death, in a claim by his heiresses for land at Parramatta. The land had been unwittingly resold by Governor Macquarie and was by then a valuable part of the town.\(^{368}\)

Surveyor John Oxley who investigated the Parramatta grant during Governor Brisbane’ tenure suggested that there had been an irregularity in timing of the grants and the use of the Seal of the Colony\(^{369}\). It was not resolved until several years later when George Gipps was governor.\(^{370}\) The matter was brought before the Supreme Court, where the Crown claimed the grants had been obtained fraudulently.\(^{371}\) As a compromise, the heiresses gave up any claim to the Parramatta grant but were able to retain the other two. The validity of the grant to Mrs King remained unchallenged.\(^{372}\)

King’s governorship had been one of significant growth. At the time of his departure the colony’s population was 8,539 this including 637 free settlers and

\(^{365}\) “Sydney Gazette and New South Wales Advertiser.”p1, (5 August 1819), Governor Macquarie resumed the Parramatta land.

\(^{366}\) This property was given the name “thanks.”

\(^{367}\) Shaw, ”Bligh William (1754-1817).” (n.p.)

\(^{368}\) Watson, \textit{HRA Vol 20.} pp277-279, Gipps to Normanby, (7 August 1839)

\(^{369}\) ———, \textit{HRA Vol 11.} p515, Oxley to Brisbane, (2 February 1825)

\(^{370}\) ———, \textit{HRA Vol 20.} p558, Gipps to Russell, (9 March 1840)

\(^{371}\) ibid. p559, Plunkett to Supreme Court, (9 March 1840)

\(^{372}\) ———, \textit{HRA Vol 21.} p338, Gipps to Russell, (27 April,1841)
37 officers. The total land alienated by that time was just under 150,000 acres, and the settlement extended from the Hawkesbury to Camden with most of the intervening country occupied. Major towns or villages were established at Parramatta, Toongabbie, Castle Hill and Green Hills and there were satellite colonies at Norfolk Island, Newcastle, Port Dalrymple and Hobart.

According to Bladen, King left the colony as a man broken in health, spirit and pocket. Ill health confined King to bed almost continually from the time he arrived in England until his death in September 1808. Bladen described King’s governorship as fearless and difficult, but claimed that he lacked “the countenance and support” that should have been forthcoming from the London administration. The possession of land had again become the major source of wealth within the colony and there can be little doubt that King was destabilised by the colony’s major landowners, with Macarthur at their head. King had seriously underestimated the extent of the power and influence of the Macarthur clique both within the colony and Britain. This had led to King’s downfall.

5.4.7 Settled Areas and Spatial Growth at end of King’s Tenure

The extent of the settlement and land alienated at the end of King’s governorship is tabulated (Table 5.4).

Table 5.4. Main Localities Settled and Surveyor’s Plans Registered at the end of King’s Governorship

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373 ———, *HRA Vol 5.* p648, King to Camden, (15 March 1806), p779, King to Wyndham, (12 August 1806). The SLNSW gives this as 6953 persons of whom 1380 were convicts, 66 were civil officers, and there were 685 members of the NSW Corps. see Brunton, "Politics and Power: Bligh's Sydney Rebellion 1808." In this it is possible that the SLNSW was not referring to the greater NSW which at that time included Van Diemen’s Land, Newcastle and Norfolk Island.

374 Bladen, *HRNSW Vol 5.* Observations on Muster, (23 march 1805)


<table>
<thead>
<tr>
<th>Locality</th>
<th>Locality</th>
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<tbody>
<tr>
<td>Banks Town</td>
<td>Nelson</td>
</tr>
<tr>
<td>Bringelly</td>
<td>Liberty Plains</td>
</tr>
<tr>
<td>Bulanaming</td>
<td>Northern Boundaries</td>
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<tr>
<td>Cabramatta</td>
<td>Parramatta</td>
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<td>Camperdown</td>
<td>Petersham</td>
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<td>Castlereagh</td>
<td>Phillip</td>
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<td>Ponds</td>
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<td>Prospect</td>
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<td>Eastern Farms</td>
<td>Sydney</td>
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<tr>
<td>Field of Mars</td>
<td>Toongabbie</td>
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<td></td>
</tr>
<tr>
<td>Norfolk Island</td>
<td>Hobart</td>
</tr>
<tr>
<td>Newcaste</td>
<td>Port Dalrymple (Launceston)</td>
</tr>
</tbody>
</table>

**Total Acreage Alienated**

<table>
<thead>
<tr>
<th>Governor</th>
<th>Years</th>
<th>Acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arthur Phillip</td>
<td>1788 - 1792</td>
<td>3,389 Acres</td>
</tr>
<tr>
<td>Francis Grose</td>
<td>1792-1794</td>
<td>10,674 Acres</td>
</tr>
<tr>
<td>William Paterson</td>
<td>1794-1795</td>
<td>4,965 Acres</td>
</tr>
<tr>
<td>John Hunter</td>
<td>1795-1800</td>
<td>28,650 Acres</td>
</tr>
<tr>
<td>Phillip Gidley King</td>
<td>1800-1806</td>
<td>60,411 Acres</td>
</tr>
</tbody>
</table>

5.5. Power and Confrontation, William Bligh

...there is no society where the clashing of duty and interest between the Governor and the governed is more violent than in New South Wales.

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5.5.1. William Bligh – Governor Aug 1806 to Jan 1808

To me, I confess, it appears a promising place for a man who has entered late in to the status of a post-captain

Sir Joseph Banks – 1805

The *Sydney Gazette* announced the arrival of Governor King’s successor, William Bligh in August 1806. The arrival immediately sparked controversy between the colonial oligarchy and the small settlers. The controversy, a symptom of an underlying dispute, rested on a simple letter of welcome which John Macarthur had presumed to sign as the representative of all free settlers. The Hawkesbury colonists did not regard Macarthur a fitting person to sign on their behalf. Although a minor incident, it foretold discontent that was to portend both the downfall of the governor and the disbanding of the NSW Corps.

William Bligh was a protégé of Sir Joseph Banks, who was instrumental in Bligh being appointed governor. Banks described Bligh as possessing “a mind capable of providing its own resources in difficulties without leaning on others for advice” As with others in England, Banks failed to appreciate the difficulties that lay ahead. In a comment that can be regarded as a slight against Bligh’s predecessors, Banks expressed confidence that Bligh would be able to exert control, without the need to “whimper and whine” whenever strong discipline was required.

Born in September 1754, the son of a boatman and customs officer, Bligh joined the navy as a boy aged eight but was paid off after one voyage. He re-enlisted as an able-seaman in 1770 at fifteen and was appointed midshipman in 1771. As master of the *Resolution*, Bligh had accompanied Cook on his third

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379 “———, *HRNSW Vol 6*, p656, King to Under-Secretary Cooke, (18 June 1808)

380 Ibid., p(xxxvi) Introduction, Banks to Bligh, (15 March 1805)

381 “Sydney Gazette and New South Wales Advertiser.” p1 (10 August 1806)

382 “———, *HRNSW Vol 6*, p(xxxvi) Introduction, Banks to Bligh, (15 March 1805)

383 Ibid, p(xxxv) Introduction, Banks to Bligh, (15 March 1805)
voyage. While commander of the *Bounty* in 1787, Bligh sailed to Tahiti to obtain samples of breadfruit which was seen as possible source of food for West Indian slaves. On leaving Tahiti, the crew mutinied and the *Bounty* was lost but a Court Martial absolved Bligh of any blame. After a successful return to Tahiti, this time in the *Providence* (on which Matthew Flinders was midshipman), Bligh returned to England. The two voyages to Tahiti brought Bligh to the attention of Sir Joseph Banks and, probably due to Banks’ patronage, Bligh was elected a member of the Royal Society. Bligh married Elizabeth Botham, the daughter of a custom’s officer, but Elizabeth did not accompany Bligh to NSW. Instead he travelled with his married daughter, Mary Putland.

On arrival Governor Bligh was presented with the disputed letter of welcome, signed by Major Johnson for the military, Richard Atkins for the civil officers and Macarthur on behalf of the free settlers. What followed is referred to by Evatt as a “curious incident” that demonstrated seething economic and class forces representing the undercurrents within colonial society. This was the delivery of a second letter of welcome, disputing the right of John Macarthur to speak on behalf of all the settlers.

The second welcoming address included seven grievances which the settlers hoped the new governor would help alleviate. The farmers complained of exploitation and circumvention of their rights by the elitist clique of officers and wealthy landowners. Bligh’s attempt to enforce civil power and curb the

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384 In the eighteenth century a ship’s master or sailing master was not a commissioned officer rather, the ship’s senior warrant officer and often the ship’s navigator.


386 "Sydney Gazette and New South Wales Advertiser."p 2 Address to His Excellency William Bligh Esquire, Captain General and Governor in Chief of the Territory of New South Wales, (17 August 1806)

387 Evatt, *The Rum Rebellion*. p84

388 Bladen, *HRNSW Vol 6*. p190, Hawkesbury Settlers’ Address, (22 September 1806)
excesses of the elite was to lead to his downfall. In January 1808 a contingent of fully armed soldiers under the command of Major Johnson marched to Government House where they arrested the governor.

5.5.2. Rum or not Rum, Rebellion

“Sir, you have got 5000 acres of land in the finest situation in the country; but by God, you shan’t keep it.” -

Governor Bligh to John Macarthur c1807

Although the mutiny against Bligh has been popularly termed the “Rum Rebellion,” it is now generally accepted by scholarly historians that it had little to do with rum. Ellis in 1955 claimed that by the time of Bligh’s arrival, the trading monopoly was a thing of the past. Ellis, although regarded as being an apologist for Macarthur, held views shared by many other historians. The underlying cause of the rebellion was a threat to property and power.

The factors leading to Bligh’s arrest had much less to do with the rum trade and much more to do with a battle for power.

With the rum trade or more generally the officers’ trading monopoly having diminished as a source of wealth and power, the strength and influence exerted

389 McMahon, "Not a rum rebellion but a military isurrection." p128
390 Bartrum, "Proceedings of a General Court-Martial, held at Chesea Hospital. For the trial of Lieut-Col. Geo. Johnston, Major of the 102d Regiment, late the New South Wales Corps, on a charge of Mutiny." p179 - see also Bligh’s testimony (denial) p54 & p56
394 Karskens and Waterhouse, "Too Sacred to Be Taken Away, Property Liberty and Tyranny and the Rum Rebellion." p 2
395 Unattributed, "From Terra Australis to Australia". Collection, State Library of NSW. Karskens and Waterhouse, "Too Sacred to Be Taken Away, Property Liberty and Tyranny and the Rum Rebellion." p 2
by the colony’s elitist officers again rested on land ownership and agriculture. Nonetheless, the sale of spirits was continually referenced as a “great evil” by the London bureaucrats. It was a misreading of the situation then existing in the colony and has often mistakenly been seen as a cause of the rebellion against Bligh. The diminishing importance of the rum trade was alluded to in evidence during the trial of Lieut. Col Johnston for mutiny. Robert Campbell, who was a supporter of Bligh, on being asked to comment on the effect of the restriction on the spirit trade, stated under cross-examination:

*I cannot call to my remembrance that I did ever hear any of them [the officers] complain after the proclamation was issued.*

Historians have offered a number of interpretations of the causation of the rebellion and to the weight given to land ownership. W.C. Wentworth, writing at the time, claimed that the mutiny resulted from Bligh’s denial of the citizens inherited rights and privileges. This, Wentworth claimed, resulted from a wide discontent with almost all of Bligh’s policies and the autocratic means by which he applied them. Bladen in his introduction to the *Historical Records* was critical of other aspects of Bligh’s administration but seemingly failed to appreciate the significance of land in the governor’s downfall. Writing in 1898, Bladen stated that Bligh had “rendered himself obnoxious,” and this “rendered his arrest imperative.” In commenting on the officer clique’s grievances against Bligh, Bladen wrote, “it can hardly be claimed they justified the use of

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396 Unattributed, “From Terra Australis to Australia”. Dando-Collins, *Captain Bligh’s Other Mutiny*. p5. Karskens and Waterhouse, "Too Sacred to Be Taken Away, Property Liberty and Tyranny and the Rum Rebellion."p9. Duffy, *Man of Honour - John Macarthur, Duelist, Rebel, Founding Father*. pp7-8. – Duffy asserted that the term Rum Rebellion was only coined some years in 1855 by a “Bligh-enthusiast, William Howitt.” Bladen, *HRNSW Vol 6*. p(LI) Introduction - Bladen maintained that the mutiny was against Bligh’s attempts to stop the batter of spirits. In this it should be noted that there is a substantial difference between the bartering of spirits and the earlier monopoly on their import. The former a moral consideration, the later used as a form of economic exploitation. Barter of spirits was a necessary evil. There was insufficient currency within the colony.

397 Campbell was arrested at Government House along with Governor Bligh, see Bartram, "Proceedings of a General Court-Martial, held at Chelsea Hospital. For the trial of Lieut-Col. Geo. Johnston, Major of the 102d Regiment, late the New South Wales Corps, on a charge of Mutiny." p84 & p90,

398 Ibid. p86, Robert Campbell, cross-examination

399 Karskens and Waterhouse, "Too Sacred to Be Taken Away, Property Liberty and Tyranny and the Rum Rebellion."

force”, but this is because having already dismissed land as one of the major grievances, Bladen was left with only the symptoms of the dispute.401

H.V. Evatt in a legalistic examination of the mutiny, described what he regarded as the “five leading cases which preceded Bligh’s overthrow” based on the evidentiary documentation compiled by Bladen and the transcript of the Johnston Court Martial. He believed that as a lawyer he could do a better job of ascertaining the facts from the evidence than could historians. In looking only at the evidence and offering an interpretation of events in the context of what he described as “well established ‘facts.” Evatt described the mutiny in terms of Bligh trying to defend the small farmers against the excesses of the officer clique. He overlooked the underlying cause of a threat to the clique’s possession of land.402

Rather than rum or class rivalry, a challenge by Bligh on the land holdings of the elites was the major factor that incited the mutiny and although it was the revocation of town leases that ignited the events of January 1808, it was Bligh’s reluctance to make additional land grants that fuelled the proceedings. Even Bladen, while seemingly not fully appreciating the significance of land to the rebellion, when describing the revoking of town leases likened it to “taking a bone from an angry dog.” 403 The withholding of grants and the revoking of leases challenged the power base of the elites, but nonetheless little weight was placed by some historians on its consequence.404

Their obscuring of the actual motive for the rebellion has led many historians to overlook the importance of the land issue. Both Ellis and McMahon placed the emphasis on Bligh’s threat to charge Macarthur and a number of officers with treason leaving Macarthur with no choice but to defend his property and

401 Ibid. p(xiviii), Introduction
402 Evatt, The Rum Rebellion. p96
403 cited in ibid. p131
404 Bladen, HRNSW Vol 6. p(xivi), Introduction – The reference to Wentworth is also a land related issue and refers to Wentworth’s illegal use of convict labour.
liberty.\textsuperscript{405} Dando-Collins described the overthrow as a power struggle between Bligh and Macarthur who “had circled each other like fighters.” The precipitation of the mutiny he then attributed to Bligh ordering Macarthur’s arrest.\textsuperscript{406}

More recently, there has been some recognition that the possession of land had played a role in the mutiny. Alan Atkinson, while suggesting that the cause of the mutiny, “were complex and difficult to unravel” suggested that Bligh’s revocation of town leases caused widespread angst amongst ordinary townfolk and the mutiny was partially to defend their rights.\textsuperscript{407} Others such as Peter Cochrane, described Bligh as the epitome of unfettered tyranny. It is apparent that while some property holders saw Bligh as conspiring to take their land, and the concerns of both rich and poor landowners contributed to the mutiny, his arrest resulted from a rising fear of an unchecked executive and it was stimulated by calls for political reform.\textsuperscript{408} To Cochrane, the mutiny occurred because Bligh “rattled the sanctity of private property.” \textsuperscript{409}

Brunton found that the rebellion was “a matter of real estate,” and not only within the township of Sydney. Macarthur, regarded as the perpetrator of the overthrow\textsuperscript{410} has been described as anxious over his 5000 acre estate at the Cow Pasture, “the jewel of his empire.”\textsuperscript{411} Bligh ignored and evaded the formalising of the grants promised in London and threatened to overturn leases already granted to Macarthur by Governor King.\textsuperscript{412} King later remarked on Bligh’s non-compliance with orders relating to the grants. While omitting his own


\textsuperscript{406} Dando-Collins, \textit{Captain Bligh's Other Mutiny}. p5


\textsuperscript{409} Cochraine, "Narrative for Wentworth and Bligh." p11

\textsuperscript{410} McMahon, "Not a rum rebellion but a military isurrection." p128 & p131

\textsuperscript{411} Brunton, "Politics and Power: Bligh's Sydney Rebellion 1808." pp7-8

\textsuperscript{412} Bartrum, "Proceedings of a General Court-Martial, held at Chesea Hospital. For the trial of Lieut-Col. Geo. Johnston, Major of the 102d Regiment, late the New South Wales Corps, on a charge of Mutiny." p179 - see also Bligh’s testimony (denial) p54 & p56
neglect of the issue, King remarked that this was an item that should be noticed. Some settlers he remarked “If I mistake not, are still without grants.”  

When Bligh threatened resumptions and the revocation of leases, it was the unstated fear of losing power, and their ability to generate wealth through their control of land, that threatened the wellbeing of the officer oligarchy. The participants in the mutiny could never admit that it had occurred because Bligh opposed their exploitation of the small farmers, resisted their greed for land and their use of free labour. Rather evidence of poor administration had to be presented as a defence.

Rebellion was an extremely serious event which could have led all involved to the scaffold. It was risky action for Johnston under military law, and for Macarthur under civil jurisdiction. The motivation behind the conspirators thus had to be extremely significant, yet the stated grounds for the action were so weak that the judges “struggled to discover why the insurrection had happened at all.” During the Court Martial, the significance of Bligh’s attack on the oligarchy’s land holdings as source of wealth and power although mentioned several times, was not fully appreciated and it was thus not recognised that the possible loss of land was a significant component in the mutiny.

Prior to Bligh, the elitist landowners had already successfully undermined the authority of two governors both of whom had been recalled to England. Although they had attempted to curb the excesses of the elite, Bligh’s predecessors had continued to grant land, and no threat had been made to any existing land holdings. Bligh’s reforms would have gone to the very source of

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413 Bladen, _HRNSW Vol 6_. p656, Ex-Governor King to Under Secretary Cooke, (18 June 1808)


415 Bladen, _HRNSW Vol 6_. p(ixia), Introduction

416 Spigelman, "Bicentenary of the Coup of 1808.” p2

417 Atkinson, _The Europeans in Australia_. p305

their wealth. As a consequence, action more urgent than a gradual undermining had been provoked.

5.5.3. Resurrection of Phillip’s Town Plan – The Match that Ignited a Conflagration

Not only did Bligh threaten Macarthur’s 5000 acres, his Sydney town lots were also menaced.\(^{419}\) It was Phillip’s town plan and the vision of a Baroque-like vista to the public buildings that was to ignite the insurrection leading Bligh’s arrest.\(^{420}\) In July 1807, Bligh had attempted to reassert control over the lands within the designated limits of Sydney.\(^{421}\) The town, Bligh declared, lacked focus and was badly arranged. Responsibility for this he placed with his predecessors who had ignored Phillip’s town plan.\(^{422}\)

In re-establishing Phillip’s vision, dwellings and allotments not in accordance with the original plan were regarded as temporary. Bligh assumed that they would be surrendered when required for a public purpose.\(^{423}\) In a letter to the Colonial Secretary, Bligh complained that King had ignored Phillip’s direction that leases not be issued within the town limits.\(^{424}\) Bligh indicated his intention to resolve the issue, with the obvious inference that the leases would be cancelled. In an act that further raised the concerns of the townsfolk, on the existing town survey, Bligh ordered surveyor Meehan to inscribe; “Ground absolutely necessary for use of Government House, but leases improperly granted on it” (Fig 5.6).\(^{425}\)

\(^{419}\) Evatt, *The Rum Rebellion*. p87

\(^{420}\) Ibid. p82

\(^{421}\) Bladen, *HRNSW Vol 6*. p 275, General Order, (23 July 1807); Kass, *Sails to Satellites*. p68 - Kass nominated this as a principal reason for Surveyor Grimes marching against Bligh,

\(^{422}\) Bladen, *HRNSW Vol 6*. pp359-360, Bligh to Windham, (31 October 1807)

\(^{423}\) Bartrum, ”Proceedings of a General Court-Martial, held at Chessea Hospital. For the trial of Lieut-Col. Geo. Johnston, Major of the 102d Regiment, late the New South Wales Corps, on a charge of Mutiny.” pp133-134, testimony of Mr. Divine

\(^{424}\) Watson, *HRA Ser 3 Vol 6*. p155, Bligh to Wyndham, (31 October 1807)

Thirteen days before Bligh’s overthrow, Macarthur had been informed of a decision regarding his town lease. Bligh had forbidden Macarthur from building on his lease while he awaited a final determination on its status from “His Majesty’s Ministers.” Macarthur agreed to “make the sacrifice required” on the condition that any one of three alternative lots nominated by him was substituted. Macarthur was advised that none of his nominated lots was

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426 Bladen, *HRNSW Vol 6*. p413, Grimes to Macarthur, (13 January 1808)
available. The restriction placed on Macarthur’s allotment, and the rejection of his alternative choices, were seen by Ellis as victimisation, with Macarthur singled out for harsh treatment. The records contradict such a claim, since it was not only the wealthy elites who were subject to the edict on town allotments.

Phillip had agreed to the temporary occupation as a means of satisfying the settlement’s initial needs. The temporary nature was a condition of occupation, but with only a verbally granted permissive occupancy. There were no written conditions and many allotments had changed hands since Phillip’s departure. In Phillip’s opinion ‘the officers [had] understood that they are to give them up [the lots] when wanted for public service. By 1807, this “understanding” had faded and the occupants claimed ownership because of their long term tenancy. Newcomer Bligh regarded the words of Phillip as binding. This was an assumption that Ellis described as “great shock” to the inhabitants, especially when Bligh began to call in leases and decreed that homes on allotments which were informally occupied would be demolished. According to Ellis:

...the generality of permissive occupiers regarded themselves as the possessors of the soil on which their often ramshackle dwellings stood.

To the townfolk, Bligh’s edicts were unacceptable and they were perturbed that a governor could simply order their buildings torn down. Once established on

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427 Ibid., p414, Macarthur to Grimes, & Grimes to Macarthur, (13 January 1808), p416 Grimes to Macarthur, (14 January 1808)
428 Ellis, John Macarthur. pp316-318
429 Atkinson, "The Little Revolution in N.S.W: 1808." p68
430 Barton, History of NSW from the Records, vol 1, Governor Phillip.- p654 & p655 Phillip to Henry Dundas, 4 October 1792.
431 Bartrum, "Proceedings of a General Court-Martial, held at Chesea Hospital. For the trial of Lieut-Col. Geo. Johnston, Major of the 102d Regiment, late the New South Wales Corps, on a charge of Mutiny." pp57-60
a property, the people rich and poor with or without formal title believed they held inalienable rights which could not be challenged with impunity, even by the governor. Johnston accused Bligh of destructive policies “which tended to destroy those rights so dear to every Englishman.” In expressing his impressions of the discontent caused by town-lot edict, settler Richard Atkins stated:

...as far as the buildings were concerned, they were under the apprehension that Gov. Bligh would order their building taken down...that, I presume was in consequence of the four or five houses which I stated before to have been pulled down...I have heard men say “my turn next”.

Macarthur, described by Frederick Watson as a wayward child who sat at home brooding, was a powerful opponent, one who knew “no medium between friendship and enmity.” Macarthur was able to use Bligh’s decree and the disquiet that it generated, to manipulate the other townfolk. The evidence presented at the Court Martial of Johnson, left little doubt that Macarthur had decided to force a crisis with Bligh. In direct defiance of a government directive Macarthur arranged for a team of soldiers to fence his Sydney allotment, which happened to also include a well used by the public. Bligh was

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437 Bartrum, "Proceedings of a General Court-Martial, held at Chesea Hospital. For the trial of Lieut-Col. Geo. Johnston, Major of the 102d Regiment, late the New South Wales Corps, on a charge of Mutiny." p175, Cross-examination Richard Atkins

438 Watson, HRA Vol 12. p523, Darling to Under-Secretary Hay, (2 September 1826)


440 Bartrum, "Proceedings of a General Court-Martial, held at Chesea Hospital. For the trial of Lieut-Col. Geo. Johnston, Major of the 102d Regiment, late the New South Wales Corps, on a charge of Mutiny." p56 Bligh’s testimony also, (Project Gutenberg) Part 11 Commentary by Watson and Bladen (Events leading to the insurrection), gutenberg.net.au /ebooks13/1300731h.html
left with little alternative but to order other soldiers to pull the fence down.\textsuperscript{441} The exercise served no purpose other than to align Macarthur with the poorer residents of Sydney showing that, like them, he too faced demolition of his property.\textsuperscript{442} As noted by Ellis, Bligh could have "filched land from Macarthur and others in his stratum" without raising the public ire. The spectacle of soldiers erecting and demolishing Macarthur’s fences was another matter.\textsuperscript{443}

5.5.4. The Court Martial

George Johnston, who had been the officer that initially arrested Bligh, was the only person charged as a result of the mutiny. He had returned to England accompanied by John Macarthur in 1809 and faced Court Martial for Mutiny in June 1811. He was found guilty but, possibly because of the sympathy of the judges, his punishment of a dishonourable discharge from the army was viewed by Lachlan Macquarie as exceedingly light.\textsuperscript{444}

It was land, the revocation of leases and the pulling down of dwellings that proved to be the underlying theme in the trial. A significant part of the trial was devoted to Bligh’s attitude towards both new and existing leases and his actions with regard to land were mentioned by almost all of the witnesses. The importance of land in the mutiny was largely ignored in the findings of the Court.\textsuperscript{445} Further, despite land issues being raised frequently throughout the Court’s proceedings, the role of land in the mutiny has seemingly been deemed

\begin{footnotesize}
\begin{enumerate}
\item Bladen, \textit{HRNSW Vol 6. p (Livin), Introduction}
\item Evatt, \textit{The Rum Rebellion}. p149; Bartrum, "Proceedings of a General Court-Martial, held at Chelsea Hospital. For the trial of Lieut-Col. Geo. Johnston, Major of the 102d Regiment, late the New South Wales Corps, on a charge of Mutiny." p184
\item Ellis, \textit{John Macarthur}, vol. 1978 Reprint. p 301
\item “Sydney Gazette and New South Wales Advertiser.” p1, Government and General Orders, (25 January 1812)
\end{enumerate}
\end{footnotesize}
a topic not worthy of further study. Historians of the latter half of the twentieth century have seemingly preferred more politically based explanations.

Johnston testified that he had not overthrown Bligh for small matters, but because of a constant interference in the colony’s administration. Since Bligh was governor, this could only imply interference with way in which the colony had functioned before Bligh took office. There can be little doubt that Major Johnston, was manipulated by John Macarthur, who prepared the petition imploring Johnston to take action.\textsuperscript{446} It read in part:

\begin{quote}
\textit{The present alarming state of the colony, in which every man’s property, liberty and life are endangered, induces us most earnestly to implore you to instantly place Governor Bligh under arrest.}\textsuperscript{447}
\end{quote}

In keeping with Macarthur’s petition, Johnston claimed an altruistic motivation behind his actions.\textsuperscript{448} Invasions of private property and “threats of privatisation” and the destruction of their property had increased the apprehension of the “lower-classes” and Johnston claimed he had both acted to protect them and to prevent a general uprising.\textsuperscript{449} To Johnston the culmination came when Bligh threatened to pull down houses. According to Johnston:

\begin{quote}
\textit{the lower class in New South Wales looked up to the few independent and respectable inhabitants, as their protectors against the violence with which they were threatened and the tyranny with which they were beset.}\textsuperscript{450}
\end{quote}

In an address to his trial, Johnston not only defended his actions, but also brought to the forefront the major defect in Governor Phillip’s perception of a two phased town plan for the township of Sydney:

\begin{quote}
\textit{So with regard to the houses that were pulled down, or ordered taken down. These, it is said, were within a given line marked by Governor}
\end{quote}

\textsuperscript{446} A.T Yarwood, "Johnston, George (1764 -1823)," in \textit{Australian dictionary of Biography}, ed. National Centre of Biography (Melbourne: Australian National University, 1967).

\textsuperscript{447} Bartrum, "Proceedings of a General Court-Martial, held at Chelsea Hospital. For the trial of Lieut-Col. Geo. Johnston, Major of the 102d Regiment, late the New South Wales Corps, on a charge of Mutiny." p152; facsimile in Bladen, \textit{HRNSW Vol 6}. p434

\textsuperscript{448} Kercher, "Informal land Titles." p607

\textsuperscript{449} Bartrum, "Proceedings of a General Court-Martial, held at Chelsea Hospital. For the trial of Lieut-Col. Geo. Johnston, Major of the 102d Regiment, late the New South Wales Corps, on a charge of Mutiny." p147, testimony Lieut.Col. Johnston

\textsuperscript{450} Ibid. p148, testimony Lieut. Col Johnston
As noted by Atkinson, the reasons for the mutiny were undoubtedly complex and difficult to unravel, but throughout the trial, reference was frequently made to Bligh’s land policies. The land issue however, as part of the elites struggle to retain the power they had enjoyed since the departure of Arthur Phillip was the main grievance against Bligh but it remained invisible. Bligh had clearly not exceeded his powers as governor and the threat to the land and wealth of the elitist group was not used as part of Johnston’s defence. It was deliberately downplayed and other issues had to be found. Land and the elites’ struggle for control was relegated to the background.

5.5.5. Bligh’s Legacy

Bligh, while still officially governor, ceased to act in that capacity on his arrest, on 26th January 1808, exactly twenty years after Governor Phillip had read his proclamation at Sydney Cove. On Bligh’s removal from office the colony entered its second period of Interregnum, this time under the consecutive administration of three military officers, Johnston, Foveaux and finally Paterson. During his time in office Bligh granted only 2,180 acres (790 of which he had granted to Governor King’s wife Anna), against King’s 73,337 acres. 452 Bligh personally purchased land on the Hawkesbury for a farm, in the area that Macquarie would later designate as PittTown.453 Despite this interest in an outlying area, the records of the Surveyor General’s Department show no town plans registered under Bligh’s governorship.454

451 Ibid. pp148-159, testimony Lieut. Col Johnston
452 Watson, HRA Ser 3 Vol 6. p(xiii), Introduction.
Bligh’s had been a turbulent governorship in which very little land was granted. He faced the wrath of the colonial elites as he attempted to curb their excesses and their exploitation of the small farmer. He refused a 5000 acre grant to John Macarthur that had been promised by the British government and his arrest was precipitated by his threats to revoke leases and pull down buildings in Sydney. Bligh’s overthrow however was to have a significant effect on the colony and further reinforces how the avarice for and the control of land shaped the colony’s history. The rebellion against Bligh, precipitated the disbanding of the NSW Corps, it has been argued that it incited colonial agitation for representative government and it was responsible for the appointment of the colony’s first non-naval governor, Lachlan Macquarie. It was an appointment that, as will be shown, had significant implications to land issues, planning and the spatial growth of the colony.

5.5.6 Settled Areas and Spatial Growth at end of Bligh’s Tenure

The extent of the settlement and land alienated at the end of Bligh’s governorship is tabulated in Table 5.5.
Table 5.5. Main Localities Settled and Surveyor's Plans Registered at the end of Bligh's Governorship

<table>
<thead>
<tr>
<th>Locality</th>
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<tbody>
<tr>
<td>Banks Town</td>
<td>Hunter's Hill</td>
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<tr>
<td>Baulkham Hills</td>
<td>Kissing Point</td>
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<tr>
<td>Bringelly</td>
<td>Liberty Plains</td>
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<tr>
<td>Bulanaming</td>
<td>Nelson</td>
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<tr>
<td>Cabramatta</td>
<td>Nepean</td>
</tr>
<tr>
<td>Camperdown</td>
<td>Northern Boundaries</td>
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<tr>
<td>Castlereagh</td>
<td>Parramatta</td>
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<tr>
<td>Castle Hill</td>
<td>Petersham</td>
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<tr>
<td>Concord</td>
<td>Phillip</td>
</tr>
<tr>
<td>Cow Pastures</td>
<td>Ponds</td>
</tr>
<tr>
<td>Dundas</td>
<td>Portland Head</td>
</tr>
<tr>
<td>Eastern Farms</td>
<td>Seven Hills</td>
</tr>
<tr>
<td>Field of Mars</td>
<td>Richmond Hill</td>
</tr>
<tr>
<td>Georges River</td>
<td>Sydney</td>
</tr>
<tr>
<td>Green Hills</td>
<td>Toongabbie</td>
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<tr>
<td>Hawkesbury</td>
<td></td>
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<tr>
<td><strong>Others Remote and External</strong></td>
<td></td>
</tr>
<tr>
<td>Norfolk Island</td>
<td>Hobart</td>
</tr>
<tr>
<td>Newcastle</td>
<td>Port Dalrymple (Launceston)</td>
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<table>
<thead>
<tr>
<th>Acreage Alienated</th>
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</thead>
<tbody>
<tr>
<td>Arthur Phillip 1788-1792</td>
<td>3,389 Acres</td>
</tr>
<tr>
<td>Francis Grose 1792-1794</td>
<td>10,674 Acres</td>
</tr>
<tr>
<td>William Paterson 1794-1795</td>
<td>4,965 Acres</td>
</tr>
<tr>
<td>John Hunter 1795-1800</td>
<td>28,650 Acres</td>
</tr>
<tr>
<td>Phillip Gidley King 1800-1806</td>
<td>60,411 Acres</td>
</tr>
<tr>
<td>William Bligh 1806-1808</td>
<td>2,180 Acres(^{456})</td>
</tr>
</tbody>
</table>

\(^{455}\)Sydney Gazette and New South Wales Advertiser." p1. (9 August 1807),


5.6. Second Interregnum: Johnston, Foveaux and Paterson

*Man proceeds in a fog. But when he looks back to judge people of the past he sees no fog on their path. From his present, which was their far away future, their path looks perfectly clear...Looking back he sees the path, he sees the people proceeding, he sees the mistakes but not the fog.*

Milan Kundera – 2005

The second period of interregnum occupied a period of just under two years, from Bligh’s arrest until the arrival of Lachlan Macquarie in 1810. During that time the colony fell under the control of three separate administrators, George Johnston, Joseph Foveaux and William Paterson. With regards to their historical impact, Stephen Roberts dismissed the three in a one paragraph summary. He described it as a period of retarded development in which each of the three pursued different policies:

*Johnson was a moderate, Foveaux had no real policy and Paterson a passive figurehead, merely revived the promiscuous grants of Grose.*

5.6.1. Major George Johnston: Acting Governor January 1808 to July 1808

George Johnston was born in Scotland in 1764. He was the son of an aide-de-camp to Lord Percy and joined the military at the age of twelve. He served in both North America, and the West Indies where he was severely wounded. After recuperating in England, he sailed to NSW as a marine officer with the First Fleet.

In 1804 he led a contingent of twenty-six soldiers who marched from Sydney to confront a larger group of rebelling Irish convicts at Vinegar Hill. He routed the rebels and arrested their ring-leaders. He was a forty-four year old Major of the NSW Corps when he marched through Sydney in 1808 with a body of soldiers on his way to confront Governor Bligh.

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As the then senior officer and the person responsible for Bligh's arrest, Major Johnston was the only person to face a Court Martial over the mutiny. He has been described as being well meaning, but "an easy tool" in the hands of the Macarthur faction who were able to "mould his views." Bligh was accused by Johnston of deliberately trying to ruin free settlers and "men of respectability" and of being unfit to govern. He acted as governor for six-months before being relieved by his superior, Major Joseph Foveaux, newly arrived from England.

There can be little doubt that Johnston believed there was substantial justification in his removing Bligh from office. As Yarwood noted, Johnston "consistently represented himself as an agent of the popular will." Nonetheless, the summation of the evidence given at Johnston's Court Martial indicates that the tribunal had difficulty understanding why he took any action at all. It was an opinion shared by Lachlan Macquarie:

I have not been able to discover any Act of his [Bligh] which could in any degree form an excuse for, or in any way warrant, the violent and Mutinous Proceedings pursued against him.

Johnston assumed the role of Lieutenant Governor after Bligh's arrest and almost immediately showed his alliances. He placed Macarthur in a position of power by creating an office of Secretary to the Colony. It was a position Johnston claimed would assist in the "arduous undertaking" of government. George Caley, writing at the time, described Macarthur's appointment as confirmation that Johnston was a pawn of the conspirators. To Caley, Macarthur

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460 Watson, *HRA Ser 3 Vol 6.*


462 Yarwood, "Johnston, George (1764 -1823)." (n.p).


464 Watson, *HRA Vol 7.*p331, Macquarie To Castlereagh, (10 May 1810)

had effectively assumed command of the colony.\textsuperscript{466} Similarly, John Ritchie saw Johnston as the “cat’s paw” of Macarthur who, was “the chief instigator of the mischief.”\textsuperscript{467} Johnston’s biographer, A.T.Yarwood, described Johnston as a “mislead man” who “represented himself as an agent of popular will”, but who soon fell out with his fellow officers.

The officers became disillusioned because of Johnston’s reluctance to grant them land.\textsuperscript{468} During his tenure Johnston awarded grants of only 5,660 acres including a single grant of 2000 acres to his own son.\textsuperscript{469} This grant raised considerable controversy and resulted in further dissent amongst the conspirators and increased the angst of Governor Bligh.\textsuperscript{470} In a letter to Viscount Castlereagh written while under arrest in Sydney, Bligh implied that the grants would be reversed and that when his authority was eventually restored, the question of the “illegal” land grants would be “readily settled.”\textsuperscript{471} To the colonial elites, this resolution further confirmed to them that his authority should not be restored.

In July 1808 Joseph Foveaux, who was Johnston’s senior officer, arrived in the colony and took over command. With the statement “with reluctance I assumed command of the colony - with joy I resigned”\textsuperscript{472} Johnston returned to England where he faced his Court Martial, he was found guilty but suffered the relatively minor penalty of being cashiered from his regiment.\textsuperscript{473} The penalty was

\textsuperscript{466} Bladen, \textit{HRNSW Vol 6}. p 688, Open Letter Caley to Johnston, (7 July 1808)

\textsuperscript{467} Ritchie, \textit{A Charge of Mutiny}. p104

\textsuperscript{468} Yarwood, "Johnston, George (1764 -1823)." (np). Clune and Turner, \textit{The Governors of N.S.W. 1788-2010}. p100

\textsuperscript{469} Bladen, \textit{HRNSW Vol 6}. p808, enclosure. Yarwood, "Johnston, George (1764 -1823)." (np)

\textsuperscript{470} ———, "Johnston, George (1764 -1823)." np, Bladen, \textit{HRNSW Vol 6.}, p807, Enclosure, Bligh to Castlereagh, (12 November 1808)

\textsuperscript{471} ———, \textit{HRNSW Vol 6}. p807, Bligh To Castlereagh, (12 November 1808)


\textsuperscript{473} Ibid. p 408, Finding of Court (2 July 1811)
described in the Government Gazette’s General Orders of January 1812 as being “inadequate for the enormity of the crime.”

5.6.2. Lieutenant Colonel Joseph Foveaux. Acting Governor July 1808 to January 1809

George Foveaux was a forty-two year old Lieutenant Colonel in the NSW Corps when he took over the administration of NSW. He was the sixth son of a steward to the Earl of Upper Ossary. His biographers, B. H. Fletcher and Anne-Maree Whitiker, suggested that his rapid rise through the ranks resulted from the Earl's high level patronage. The records provide little information on Foveaux’s early career, but he purchased a lieutenancy in the NSW Corps in 1789 and under Governor King was appointed commandant of Norfolk Island. He acquired a large quantity of land in the Sydney region. He is believed to have suffered from asthma and he sold his land and over 1000 sheep to John Macarthur, before returning to England in 1804. The mutiny occurred while he was returning to NSW from England.

Foveaux was surprised on his arrival, both at finding the governor arrested and that in the absence of William Paterson, he was the effective governor. On his arrival he immediately met with officers and the principal inhabitants to ascertain conditions within the colony and the circumstances under which Bligh had been deposed.

To Foveaux, it was an unwelcome problem. Anxious not to be held responsible for a situation not of his liking, he attempted to show an arm’s length attitude towards the rebellion. He decided in the absence of William Paterson and while awaiting instructions from Britain, he would maintain the situation as he had

476 Watson, HRA Ser 3 Vol 6. p(xxxvi) Introduction. Fletcher, "Foveaux, Joseph (1767-1846)." (n.p)
477 Bladen, HRNSW Vol 6. p730, Foveaux to Castlereagh, (4 September 1808)
found it. According to Watson it was a determination at which he quickly arrived
and before he had time to fully appraise himself of the situation. In justifying his
actions, Foveaux stated that before he came ashore he had made “every
possible inquiry” into the circumstances that had beset the colony.\footnote{478} The
delegation sent by Bligh had been refused permission to board his vessel and
the only people received were Major Johnston and John Macarthur. The
following day without further enquiry or discussion Foveaux presented the
governor with a note refusing him reinstatement.\footnote{479}

Having previously served in NSW and acquired a large acreage within the
colony, it is likely that Foveaux saw his own interests as lying with the original
officer cadre of which he was part during the first interregnum.\footnote{480} Further, both
Fletcher and Whittaker suggested, Foveaux arrived in NSW bearing a personal
grievance against Bligh.\footnote{481} Bladen similarly in his commentary within the
*Historical Records* suggested that Foveaux’s efforts and his claim to be not
interfering until he received further advice, were a sham.\footnote{482} According to
Bladen, Foveaux, in not immediately restoring Bligh, was lucky to avoid
complicity and a subsequent conviction along with Johnston.\footnote{483} It can be
speculated however that Foveaux was not complicit in the original overthrow
only because of his absence from the colony. As a member of the original
oligarchy, Lyle nominates him as one of its principals, and as a large land
owner, he had the same interests to protect as the other officers.\footnote{484}

To publicly establish his position, Foveaux had the following proclamation
published in the colony’s newspaper:

\footnote{478}{Ibid. p250 Foveaux to Chapman. (10 September 1808)}
\footnote{479}{Ibid. p710, Bligh to Castlereagh, (31 August 1808)}
\footnote{480}{Lisle, "Rum Beginnings." p22}
\footnote{481}{Fletcher, "Foveaux, Joseph (1767-1846)." (n.p). Clune and Turner, *The Governors of N.S.W. 1788-2010.* p99 – This in particular related to a dispute with a Captain Short on Bligh’s outward journey from England. In a dispute as to who was in command, Short had his vessel fire across Bligh’s bows. As a consequence on arrival, Bligh refused to honour a promised, land grant to Short.}
\footnote{482}{Bladen, *HRNSW Vol 6.* p698, Bladen Commentary}
\footnote{483}{Ibid. p698, Bladen Commentary.}
\footnote{484}{Lisle, "Rum Beginnings." p22}
As the government of the colony has been upwards of six months out of the hands of William Bligh, Esquire and as the circumstances attending his suspension have been fully submitted to his Majesty’s Ministers, who are alone competent to decide, Lieutenant-Governor Foveaux judges it beyond his competence to judge between Captain Bligh and the officer whom he found in the actual command. 485

Foveaux’s proclamation gave his ostensible reasons for continuing to detain Bligh, and claimed neutrality, but his actions showed his true allegiance. In keeping with attitudes displayed on Norfolk Island where he showed cruelty to convicts and low regard for emancipists, he undoubtedly supported the colony’s elite while showing disdain for the small emancipist farmer. He believed in punishment not rehabilitation and that an ex-felon deserved little consideration. 486

Foveaux’s prejudices can be further discerned from his correspondence. He expressed astonishment that Bligh had associated himself with emancipists and “had been chiefly guided by persons of that class”. 487 Foveaux on the other hand claimed to have received his advice from those he regarded “most capable of giving me correct information.” 488 These people undoubtedly included those he met with on his arrival and the major landholders except the few “malcontents “pointed out by Johnston as supporters of Bligh. 489 Foveaux’s true feelings and his holding Bligh as totally responsible for his plight, are illustrated in a private letter probably sent to a friend, Under-Secretary Chapman: 490

I...was naturally much astonished and concern’d at the situation in which I found the colony plunged by the extraordinary conduct of Captain Bligh. 491

486 F.M. Bladen, ed., vol. 7, HRNSW (Sydney: Government Printer, 1903). p.522, Martin Mason to Lord Ellenborough (Lord Chief Justice), (8 April 1811); Fletcher, “Foveaux, Joseph (1767-1846).”
487 Bladen, HRNSW Vol 6. p.729, Foveaux to Castlereagh, (4 September 1808)
488 Ibid. p.729, Foveaux to Castlereagh, (4 September 1808)
489 Ibid. p.730, Foveaux to Castlereagh, (4 September 1808)
490 Ibid. p.749, footnote.
491 Ibid. p.749 Foveaux to Chapman. (10 September 1808)
That land played a part in Foveaux’s briefing from his “most capable people” is emphasised by his further justification of the situation as found. There can be little doubt that he was expressing the views of Macarthur, one of only two persons with whom he had consulted on that first day.

_The Governor made no scruple on many occasions in direct violation of every right. To disposes people of their ground, destroy their improvements and pull down their houses._492

Foveaux elaborated by saying that under Bligh no person’s property was secure and improvement of the colony was totally obstructed. Evatt concluded that the overthrow of Bligh had reversed the issue, Government property was then endangered by peculation, generally in favour of “officials and supporters of the rebel administration.”493

Despite his obvious favouring of the elites Foveaux was nevertheless aware of the precarious position into which he had been thrust.494 Like Johnston, he disappointed his supporters with a reluctance to make indiscriminate grants of land. Macarthur with whom he eventually fell out of favour, was later to refer to him as an “unprincipled man” and “the cause of all mischief.”495

Foveaux alienated a total 8,325 acres, of which the only large grants made were to those who had earlier been promised land by the British authorities.496 His land policy is described as designed to raise no possible objection from his superiors in Britain. His entire administration was described, by Fletcher, as adopting policies palatable to the British government and a need to demonstrate his impartiality.497

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492 Ibid. p250 Foveaux to Chapman. (10 September 1808)
493 Evatt, _The Rum Rebellion_. pp245-246
494 In this regard Foveaux warned his superior Col Paterson that it was Bligh’s intention to have Paterson placed under arrest by the Captain Kent of HM Porpoise - Bladen, _HRNSW Vol 6_. p813, Foveaux to Paterson (22 December 1808)
495 ———, _HRNSW Vol 7_. p400, John Macarthur to Elizabeth Macarthur, (2 August 1810). p525, John Macarthur to Elizabeth Macarthur, (21 April 1811)
496 ———, _HRNSW Vol 6_. p808, Footnote; Clune and Turner, _The Governors of N.S.W. 1788-2010_. p99
497 Fletcher, "Foveaux, Joseph (1767-1846).” See also Clune and Turner, _The Governors of N.S.W. 1788-2010_. p100
During his administration, Foveaux issued few rural grants and after remarking on his disapproval of township grants being withheld he ignored both Phillip’s directive and Bligh’s attempts to restore control.\(^{498}\) Indeed he alienated further land within the town limits.\(^{499}\) Shortly after handing over the administration to William Paterson, Foveaux wrote to Viscount Castlereagh and advised that a number of town leases had been converted to freehold grants. Foveaux paid no regard to the existence of a town plan but looked solely at the rights of an individual owner or occupier. In subjugating the rights of the government to the rights of an individual, he acted on his belief that grants were preferable to the “precarious tenure of a lease”.\(^{500}\)

One year after the mutiny in January 1809, senior officer and the appointed Lieutenant Governor William Paterson arrived in Sydney from VDL. He seemingly had hoped the problem would be resolved before he needed to take action. During a twelve month period of procrastination he had excused himself by ill health, the unsuitability of a vessel, a need to stay in Port Dalrymple and his awaiting the decision of his Majesty’s ministers. Foveaux remained in the colony until 1810 and although eventually reaching the rank of Lieutenant General, his career remained clouded by his actions, or lack thereof, after the mutiny.\(^{501}\)

5.6.3. Lieutenant Colonel William Paterson. Acting Governor January 1809 to December 1809

Theoretically on Bligh’s arrest Lieut. Col Paterson, the commandant in Port Dalrymple and the commissioned Lieutenant Governor of NSW, which then still included VDL, became the colony’s senior officer. Paterson was not in Sydney

\(^{498}\) Bladen, *HRNSW Vol 6*. p252, Foveaux to Chapman. (10 September 1808)

\(^{499}\) Fletcher, "Foveaux, Joseph (1767-1846)." (n.p.)

\(^{500}\) Bladen, *HRNSW Vol 7*. p41, Foveaux to Castlereagh, (20 February 1809)

and had no immediate knowledge of the coup. Further, Paterson was in no hurry to become involved and chose to remain for a time in VDL.  

Paterson is the only person to have held two separate stints as governor of NSW. He had administered the colony, under more favourable circumstances, as captain and senior officer of the NSW Corps while awaiting the arrival of John Hunter. Paterson had taken the office reluctantly, preferring an easy path and avoiding controversy. When Bligh was deposed, Paterson had anticipated that he would not have to assume the governorship while Bligh remained in the colony unreconciled to what had happened. Paterson had hoped to hold the position in a perfunctory manner, simply awaiting instructions from England.

A more principled, or perhaps more foolhardy person would have immediately travelled to Sydney on hearing of Bligh’s arrest, to lead efforts to restore order. Rather than choosing to take action against the powerful officer clique of which he was also part, he decided to ignore what was a no win situation. In his actions he displayed personality and character which Governor Macquarie found made him “an easy, good natured, thoughtless loveable man.” As administrator, he is said to have demonstrated no ability; as an officer no determination and in both cases he allowed himself to be manipulated by designing persons.

Paterson’s arrival in Port Jackson in December 1808 in HM Porpoise, was not without some subterfuge. The Porpoise, a naval vessel under the command of a naval lieutenant was a warship that nominally remained under the command of Bligh who, despite being deposed as governor, still retained his rank as a naval captain. To avoid any possibility of Governor Bligh communicating with the commander of the vessel and possibly placing Paterson under arrest as a conspirator in the mutiny, Paterson was met at South Head and conveyed to

502 Bladen, HRNSW Vol 6. p639, Paterson to Johnston, (14 may 1805)
503 ———, HRNSW Vol 7. p xxx, Introduction
504 Watson, HRA Vol 7. p (v) Introduction.
505 McMahon, "Not a rum rebellion but a military isurrection." p139
Sydney by carriage. Paterson formally relieved Foveaux on 9 January 1809,

Following the precedent set by Foveaux, Paterson issued a proclamation stating that he chose not to interfere in the dispute between Major Johnston and the governor and that he would take over the colony’s administration until instructions were received from his “Majesty’s Ministers.” It would be premature, Paterson said, for him to pursue any other course of action.

On the other hand, unlike his two immediate predecessors and as with his earlier office of acting governor in 1795, Paterson was willing to grant land indiscriminately. In a period of less than a twelve months he alienated nearly 70,000 acres. This is more than King had granted in his six years of tenure and more than twice that of Hunter in his five years. Foveaux, although himself anxious to promote himself as responsible and independent, was happy to encourage Paterson and recommended many of the grants.

At Johnston’s trial, Bligh accused Paterson of attempting to influence his (Bligh’s) officers by generous land grants and demanded Paterson’s arrest as a mutineer. Paterson died on his return voyage but the government had already decided to take no further action. In his review of the events, Evatt agreed with Bligh and described the 1000 acres grant to each of Bligh’s naval captains as a deliberate attempt at corruption. Given the example of Paterson’s previous tenure, it would seem that the grants could be more attributable to Paterson’s

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507 "Sydney Gazette and New South Wales Advertiser."p1, Proclamation, (15 January 1809)
508 ———, _HRNSW Vol 7_. p8, Paterson to Bligh, (21 January 1809)
510 Evatt, _The Rum Rebellion_. p256
511 Bladen, _HRNSW Vol 7_. p176, Bligh to Castlereagh, (10 June 1809)
generous and carefree attitude towards land, rather than any attempt to curry favour.\textsuperscript{512}

All land grants made after the overthrow of Bligh were declared null and void by a proclamation of the next commissioned governor, Lachlan Macquarie. Paterson embarked for England on \textit{HM Dromedary} shortly after Macquarie arrived, and died while off the Cape of Good Hope in June 1810.\textsuperscript{513}

This period made little contribution to the land issues of the colony. It was a period in which the colony’s senior officers, Foveaux and Paterson, ostensibly attempted to remain neutral but by refusing to reinstate Bligh showed solidarity with Johnston’s actions, The pair. realising the possible consequences of the rebellion, were careful to attempt a middle road that would not raise the ire of their superiors in Britain and consequently made few land grants to their compatriots. When Johnston eventually faced a Court Martial, Bligh’s attack on the land holding of the colonial elites was played down, Without accepting land as a cause, the reasons for the rebellion were difficult to explain.

\textbf{5.6.4. Settled Areas and Spatial Growth at end of the 2\textsuperscript{nd} Interregnum}

The extent of the settlement and land alienated at the end of the second interregnum is tabulated in Table 5.6.

\textbf{Table 5.6. Main Localities Settled and Surveyor’s Plans Registered at the end of the 2nd Interregnum\textsuperscript{514}}

<table>
<thead>
<tr>
<th>Locality</th>
<th>Locality</th>
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<tbody>
<tr>
<td>Banks Town</td>
<td>Hunter’s Hill</td>
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<tr>
<td>Baulkham Hills</td>
<td>Kissing Point</td>
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<tr>
<td>Bringelly</td>
<td>Liberty Plains</td>
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<tr>
<td>Bulanaming</td>
<td>Nelson</td>
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<tr>
<td>Cabramatta</td>
<td>Nepean</td>
</tr>
<tr>
<td>Camperdown</td>
<td>Northern Boundaries</td>
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</tbody>
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\textsuperscript{512} Evatt, \textit{The Rum Rebellion}. p253; Bladen, \textit{HRNSW Vol 7}. p549

\textsuperscript{513} ———, \textit{HRNSW Vol 7}. p400. Bligh to Joseph Banks, (11 August 1810)

\textsuperscript{514} Various, "Catalogue of Town Maps and Plans ". Collins, \textit{An Account of the English Colony in New South Wales}, vol. 1. p249; Karskens, \textit{The Colony}. p167
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<tbody>
<tr>
<td>Castlereagh</td>
<td>Parramatta</td>
</tr>
<tr>
<td>Castle Hill</td>
<td>Petersham</td>
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<tr>
<td>Concord</td>
<td>Phillip</td>
</tr>
<tr>
<td>Cow Pastures</td>
<td>Ponds</td>
</tr>
<tr>
<td>Dundas</td>
<td>Portland Head</td>
</tr>
<tr>
<td>Eastern Farms</td>
<td>Seven Hills</td>
</tr>
<tr>
<td>Field of Mars</td>
<td>Richmond Hill</td>
</tr>
<tr>
<td>Georges River</td>
<td>Sydney</td>
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<tr>
<td>Green Hills</td>
<td>Toongabbie</td>
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<tr>
<td>Hawkesbury</td>
<td></td>
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</tbody>
</table>

**Others Remote and External**

- Norfolk Island
- Hobart
- Newcastle
- Port Dalrymple (Launceston)

### Acreage Alienated

<table>
<thead>
<tr>
<th>Name</th>
<th>Acreage</th>
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<tbody>
<tr>
<td>Arthur Phillip 1788-1792</td>
<td>3,389 Acres</td>
</tr>
<tr>
<td>Francis Grose 1792-1794</td>
<td>10,674 Acres</td>
</tr>
<tr>
<td>William Paterson 1794-1795</td>
<td>4,965 Acres</td>
</tr>
<tr>
<td>John Hunter 1795-1800</td>
<td>28,650 Acres</td>
</tr>
<tr>
<td>Phillip Gidley King 1800-1806</td>
<td>60,411 Acres</td>
</tr>
<tr>
<td>William Bligh 1806-1808</td>
<td>2,180 Acres</td>
</tr>
<tr>
<td>George Johnston 1808</td>
<td>5,660 Acres (later revoked)</td>
</tr>
<tr>
<td>Joseph Foveaux 1800-1809</td>
<td>8,325 Acres (later revoked)</td>
</tr>
<tr>
<td>William Paterson 1809</td>
<td>68,101 Acres (later revoked)</td>
</tr>
</tbody>
</table>

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CHAPTER 6. STABILISING THE FOUNDATION: MACQUARIE

He was the first to see above the limits of the convict settlement or the opportunities for self-enrichment which had characterised the early colony. His vision by 1821...had established a solid foundation for the colony.

In choosing Lachlan Macquarie as the next NSW governor, the British government had selected a man with a vision equal to that of Phillip. He was capable of re-establishing vice-regal authority and bringing stability over the seething undercurrent of unrest that had permeated many aspects of NSW society. Macquarie was a strong and energetic leader who was described by Watson as vigorous in his administration but marred by an ill-regulated judgement. As will be illustrated, Watson’s assessment does have some truth with regard to planning. His selection of at least four of the five Hawkesbury towns could be seen as a reflection of poor judgement and an inability to understand the mechanisms of town growth.

This chapter discusses Macquarie’s governorship, the disbanding of the NSW Corps and the spread of the colony beyond the confines of Cumberland plains. It describes the colony’s transition from agriculture to grazing and a number of towns founded by the governor. It then briefly discusses the discontent of the NSW elite, followed by the Commissioning of John Thomas Bigge to investigate the administration of the colony. It was a period of relative stability but with the opening up of the country beyond the areas of settlement and Macquarie’s inability to control spatial expansion, it sowed the seeds of the land problems that would transform the colony’s economic base and adversely beset his successors for the next four decades.

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6.1. Lachlan Macquarie: Governor January 1810 to December 1821

I found the colony barely emerging from infantile imbecility and suffering from various privations and disabilities: the country impenetrable beyond 40 miles from Sydney

Lachlan Macquarie - 1822

Macquarie was a forty-eight year old Lieutenant Colonel when he was appointed governor. Although he had the support of Sir Joseph Banks and the future Duke of Wellington, he was not the first choice of the Colonial Secretary. He had initially been appointed Lieutenant Governor to his commanding officer Major-General Miles Nightingale. Nightingale decided not to accept the governorship and Macquarie was elevated to the position. Prior to the appointment, Macquarie had been a long-term soldier having already served in the army for thirty-two years. He was widely travelled and had served in North America, the West Indies, India and Egypt. At the time he was moderately wealthy and the owner of a large but neglected estate in Lochbuy Scotland. His wife Elizabeth, who accompanied him to NSW, was Macquarie’s second wife. Macquarie’s first wife Jane, had died in 1796.

Macquarie, unlike his predecessors was provided with the capacity to enforce his commands. He came as the commander of his own regiment, the 73rd all were new arrivals with no private interest in the colony. He had the power and although at times he was benevolent, he was a man of strong will and would allow “nobody to gainsay him.” The colonial elites nonetheless did not give up their privileges and position of power lightly. Their influence in Britain allowed them to gradually undermine the new governor. It culminated in the adverse findings of the Bigge Report and Macquarie’s eventual recall to London. Criticism of him related mainly to his expenditure on grandiose buildings that today are regarded as a testimony to his foresight. Describing the grand architecture, Bigge claimed Macquarie had “the misfortune to mistake improvement and embellishment of towns

3 ———, HRA Vol 10. p671, Macquarie to Bathurst, (27 July 1822)

4 Macquarie was the second governor to bring his wife. Phillip came alone, Hunter was unmarried, King’s wife accompanied him, and Bligh arrived with his daughter.

5 Jeans, "The impress of central authority upon the landscape: south eastern Australia 1788-1850." p3
Ritchie, A Charge of Mutiny. p123
as proofs of prosperity." Despite Bigge’s adverse findings and comments, the governor left a stable colony whose prosperity and value as a British outpost of Empire were no longer in doubt. Spatially however, the colony was expanding without government control and beyond any governor’s power to restrain. From Macquarie’s tenure onwards the absolute control of land and the containment of the colony were unachievable.

6.1.1. Either a Broadside or a Ceremony

The arrival of Lachlan Macquarie was a turning point in the control of land. When Macquarie entered Port Jackson in December 1809, he was uncertain of the political situation and came literally ready for battle. He commanded two warships the 38 gun Dromedary and the 50 gun Hindostan, as well as the men of the 73rd regiment. Rather than proceeding directly to Sydney Cove the two vessels anchored at Watsons Bay, “prepared for a broadside or ceremonial landing.” The ceremonial prevailed and Joseph Foveaux then the colony’s second in command was rowed to the Dromedary. Foveaux then arranged for the governor to be received in due ceremony onshore.

On 1 January 1810, the day after his landing, the governor’s commission was read to the assembled troops and settlers. His attitude to the colonists whether emancipist or free settler was one of friend and protector. This was a stance that raised the ire of the land-owning colonial elite who regarded themselves as being of superior stock and a quasi-aristocracy free of the convict taint. They had hoped that Macquarie would share their views and to continue the marginalisation of the emancipist farmers.

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7 Roberts, History of Australian Land Settlement 1788-1920. p15
8 Watson, HRA Vol 7. p218, Macquarie to Castlereagh, (8 March 1910)
Before leaving England Macquarie had consulted widely with lawyers and Lord Castlereagh on the situation he was likely to find in NSW and how the various matters of concern should be handled. That Macquarie was successful and that actions in the first half of his governorship were well received by the Colonial Office in London can be observed in his series of rapid promotions. He was made full Colonel in 1810, a Brigadier-General in 1811 and a Major-General in 1813. In Britain however, the influence of the colony’s land-owning elites continued to gain momentum. The second half of Macquarie’s reign did not meet with similar approbation.

6.1.2. Nullification of Unauthorised Grants

The decisive action taken by Macquarie immediately on his arrival is testimony to his having a preconceived course of action.10 Three days after stepping ashore the governor made his first major edict. He proclaimed among other things all trials, pardons and emancipations, as well as grants of land and leases, ordered or granted since the rebellion were revoked.11 Macquarie’s edict was stern and brooked no argument:

\[
\text{All persons in possession of any lands, tenements, stock or leases [issued since Bligh’s arrest] ... will be called upon, at their peril to give up and surrender all such lands, tenements, stock, or leases.} \tag{12}
\]

The edict, made after such a short time, could not reflect an intimate or firsthand appreciation of the colonial situation. Rather, it would appear to have been part of a pre-conceived action. The haste with which the revocation of leases and grants was made underscores the importance of land to the governor’s superiors.

Advice on the revoking of land grants featured heavily in Viscount Castlereagh’s instruction to Macquarie and was sufficiently important to be included in a letter

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12 "Sydney Gazette and New South Wales Advertiser."p1, (7 January 1810)
of 14 May 1809, congratulating Macquarie on his appointment. Castlereagh’s concerns reflected the opinions that were strongly expressed in Bligh’s correspondence to London. To Bligh, land was being used as a blatant means of corruption:

...among other cunning arts which they have devised to lead the unwary into their snares and shew (sic) their authority, is their bold and determined way of giving grants of land to certain persons who they believe can be secured in their interests.

Whether land was awarded to corrupt the unwary or in a genuine attempt to expand the colony, to Foveaux, the ratification of grants made during his and Paterson’s tenures was of considerable concern. In his first correspondence to the new governor Foveaux made no attempt to justify his action with respect to Bligh, but rather, argued for the reinstatement of land he had granted to others. His actions in making the grants, Foveaux claimed, had been impartial and justified:

I trust your Excellency will not deem me presumptuous in soliciting your ratification of several acts of this nature which occurred during my command.

It was not only his own land grants that concerned him. He made a similar plea for the land grants made by Colonel Paterson. The pleas served to reinforce the importance of land. The appeals had been made on behalf of others, by a man who at that stage had an uncertain future. Both Foveaux and Paterson had been named by Bligh as mutineers and Bligh believed both should face charges. Each was facing the sword of Damocles and were liable to shipped

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13 Watson, _HRA Vol 7_. pp183-197 Macquarie’s Commission and Instruction, (9 May 1809). p81, Viscount Castlereagh to Macquarie, (14 May 1809). - Note the letter also called for the arrest of Major Johnston and John Macarthur, but they had already departed for England,
14 Bladen, _HRNSW Vol 6_. p807, Bligh to Castlereagh, (12 November 1808)
16 The grants made by Major Johnston are notable in their omission. They were not mentioned by Foveaux.
back to England in disgrace. Yet, despite being in such a tenuous situation, grants which benefited others were paramount on Foveaux’s list of concerns.

Macquarie ignored Foveaux’s requests asserting instead that many grants were given to persons “very undeserving.” Some he declared, had been made “without the slightest possible pretentions to claim such favour.” He nullified all of the insurgents’ grants, possibly to be re-granted subject to his personal consideration and only to “industrious and deserving persons.” He said:

*I will have great pleasure in renewing, [grants] in my own name, in due time, when I am more acquainted with the claims and merits of individuals.*

Despite Macquarie refusing to confirm the grants made by Foveaux or Paterson no further action was taken against either. Paterson died on his way back to England. Foveaux it has been claimed, would have been found guilty but he was never charged. His application for the Lieutenant-governorship of VDL however, was tersely refused.

6.1.3. Conditional Grants

Macquarie’s official instructions were almost identical to those of his predecessors, except that none of his officers were permitted to indulge in commerce. With respect to land, they were little different from those given to Phillip twenty years earlier. Emancipists were to receive 30 acres with an additional 20 acres if married and then 10 acres for each child. Free settlers

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17 Bladen, *HRNSW Vol 7.* p(xxiv), Introduction. p310 Bligh to Castlereagh, (9 March 1810), p459, Bligh to Sutton (Judge Advocate General), (16 November 1810)


19 Bladen, *HRNSW Vol 7.* p350, Macquarie to Castlereagh, (30 April 1810)

20 Watson, *HRA Vol 7.* p551, Macquarie to Liverpool, (18 November 2012)

21 “Sydney Gazette and New South Wales Advertiser.” p1, Government and General Order, (27 April, 1811); Bladen, *HRNSW Vol 7.* p336, Macquarie to Castlereagh (30 April 1810); ibid. Government Public Notice, (20 April 1811); Watson, *HRA Vol 7.* p551, Macquarie to Liverpool, (13 November 1812)

22 Bladen, *HRNSW Vol 7.* p257, Proclamation, (4 January 1810)

23 Ibid. p504, Judge-Advocate General to Earl of Liverpool, (11 March 1811)

24 Ibid. p555, Earl Liverpool to Foveaux, (11 July 1811)

25 Ibid. p471, Macquarie to Lieut.Col. O’Connell, (15 December 1810)
were to be given an additional 100 acres, but larger grants could be made to any party at the governor's discretion.\textsuperscript{26} The governor was to take into consideration the quality of the land granted and award bad land with the good. He was to ensure that grants were surveyed and formally registered and 500 acres was reserved for the Crown for every 1000 acres alienated.

Despite this continuity, a new ideology had accompanied Macquarie to the colony.\textsuperscript{27} At his own instigation he attempted to prevent the profiteering in land, particularly the practice of obtaining a free grant and then selling it on the open market. This action can possibly be traced to unofficial suggestions Macquarie had received in England from Thomas Plummer, a partner in the mercantile firm of \textit{Lord, Plummer and Baham}, which traded with NSW.\textsuperscript{28} In 1804 John Macarthur had appointed Plummer his London agent.\textsuperscript{29} It would seem therefore likely that his suggestions reflected Macarthur’s thoughts.

Plummer noted many defects in the system then operating in NSW. He recommended freehold tenures within the township and expressed puzzlement that previously only leases had been issued.\textsuperscript{30} Rural lots he suggested, should be conditional on the grantee clearing and stocking the land within an agreed period of time.\textsuperscript{31} While Macquarie at face value rejected much of Plummer’s argument, it has been said that it did have some influence Macquarie’s land policy.\textsuperscript{32}

In accordance with Plummer’s advice Macquarie decided that land was to be granted conditionally and the consummation of future grants would be

\begin{itemize}
\item \textsuperscript{26} Watson, \textit{HRA Vol 7}. p193, Macquarie’s Commission, p 193 & pp194-197.
\item \textsuperscript{27} Roberts, \textit{History of Australian Land Settlement 1788-1920}. p28
\item \textsuperscript{28} Ritchie, \textit{Lachlan Maquarie: A Biography}, vol. Paperback. p111
\item \textsuperscript{30} Watson, \textit{HRA Vol 7}. p 209, Plummer to Macquarie, (4 May 1809)
\item \textsuperscript{31} Ibid. p209, Plummer to Macquarie, (4 May 1809)
\item \textsuperscript{32} Ritchie, \textit{A Charge of Mutiny}. p111
\end{itemize}
dependent upon the land being cultivated or stocked. In accepting the recommendation Macquarie went a step further. Not only had the land to be worked but for the first five years its sale was prohibited. Any land not meeting the requirement for clearing or cultivation would revert back to the Crown and any sale or disposal of land within the prescribed period would be "null and void". Town lots were made conditional on their having a building erected. Freehold town allotments would be made available but only within a pre-planned and ordered township. As Macquarie stated:

*It will be my particular study to have edifices of all descriptions within the town built on a regular plan, so as to combine convenience with ornamentation and preserve the regularity of the streets and houses.*

In Macquarie’s view a well ordered and aesthetically pleasing township was a sign of a prosperous and successful colony. It was a perspective that became a trait of his administration. It can be seen in his realignment and widening of Sydney’s streets and in the architecture of buildings in the colony’s major towns. It was a philosophy that would be later condemned by Commissioner Bigge.

The issuing of conditional grants did not meet with a 100 percent acclaim. When Robert Townson, a settler who had earlier been refused a 2000 acre grant at Emu Plains by Major Johnston, finally received a grant from Macquarie, he protested bitterly over the imposed conditions. The complaints however increased Macquarie’s resolve. Persons such as Townson, Macquarie claimed,

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34 “Sydney Gazette and New South Wales Advertiser.”p1, Government and General Order, (8 June 1811)
35 Bladen, *HRNSW* Vol 7, pp351-352, Macquarie to Castlereagh, (30 April 1810); Schedule of conditions to be applied, see Watson, *HRA* Vol 7, pp 626-627, Enclosure, Macquarie to Liverpool, (17 November 1812)
36 Bladen, *HRNSW* Vol 7, p352, Macquarie to Castlereagh, (30 April 1810)
“obtain large grants of land for the purpose of making money.” In response, Townson complained of “finding the government here unfriendly” and declared a desire to return to England. Under Macquarie’s rules however, unless the land was held for five years and worked, Townson’s grant would be forfeited.

As with previous governors, Macquarie found that the promising of a land grant and the ability to measure, mark and issue titles were different issues. Roberts noted that at the end of the Macquarie era there were “thousands of blocks in the country and nearly four-fifths of the houses in Sydney and Parramatta being held without title. At that time according to Roberts, the surveyors were able to measure only 145 land grants per annum.

Because of the delay in the survey, land continued to be exchanged informally but there was now an incentive to occupy land without title. Without formal title Macquarie’s conditions were irrelevant. There was flagrant abuse, particularly beyond the established fringe of settlement where pastoralists invariably preceded the surveyor and took possession of land on the basis of physical occupation alone. The seeds of future squatting were sown.

Roberts in his analysis of Macquarie offered a controversial view of the acclaim that many popular histories have bestowed on the governor. Roberts suggested that he was “a war-trained governor” and while suited to a convict settlement, he was not an ideal choice for a rapidly expanding free colony. Macquarie’s legacy of numerous town allotments and large quantities of land occupied without any formal title would seem to confirm Robert’s assessment.

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39 Bladen, *HRNSW Vol 7*. p590, Robert Townson to Earl Liverpool, (22 September 1811)
40 Kercher, “Informal land Titles.” p613
44 ———, *History of Australian Land Settlement 1788-1920*. p25
6.1.4. Western Barricade Breached

The way is won! The way is won!
And straight away from the barren coast
There came a westward marching host
That aye and ever onward pressed
With eager faces to the west,
Along the pathway to the sun.

Banjo Paterson - 1889 45

Macquarie is associated with the 1813 crossing of the Blue Mountains almost as much as the expedition’s adventurous explorers. It was not, however, the triumph of discovery that many early historians and some popular histories would portray.46 It had served all of the early governors to promote a myth of the mountains as an impassable barrier. Prior to the official crossing of the mountains, the containment of the colony as a “penal settlement without walls,” had been feasible. After the crossing it was not.47 A formal recognition of a track across the mountains and knowledge of vast pasture land beyond broke the mountain barrier myth. With the subsequent construction of Cox’s Road the notion of a contained penal colony was forever overturned.48

It was a government policy of containing the colony and confining the convicts within administrative reach that had held back expansion to the west not the ‘impassable’ mountains.49 The Aboriginal people always knew of pathways across.50 To them the mountains had been a significant religious/ceremonial site for over 40,000 years.51 The first crossing by a European is now thought to

46 Fredrick Bladen, Thomas Perry, Dennis Jeans and Robert Hughes are all historians that subscribed to this theory.
47 Roberts, "A Change of Place: illegal movement on the Bathurst frontier." p120
48 David Andrew. Roberts, "Beyond the Crossing: The restless frontier at Bathurst in the 1820," ibid. 16, no. 1 (2014). p244
49 Ibid. p245
51 ———, "Shifting the Colonial Compass." pp 10 -12
have been a convict named John Wilson who crossed the mountains in 1798. He travelled a southern route following the corridor of the Cox’s River. Wilson had made the journey under the sponsorship of Governor Hunter. It has however been claimed that in 1795 even before Wilson, another convict Mathew Everingham, reached within a one day march of the western plains (about as far as the Blaxland trio). There is even some speculation that the first “non-native” to cross the mountains was not human at all, but a cow that had escaped the government herd.

As early as 1835 popular writings told of a colony short of land and pressing outwards against insurmountable rock walls. As with Paterson’s verse written half a century later, historians initially tended to perpetuate that belief. Typical examples are the 1924 and 1959 statements:

The task seemed insuperable, for towering peaks hemmed the settlement on three sides...the three young men...forced a way from Jameson’s farm on the Nepean through healthy (sic) country and then chaotic country to a fine grazing country facing west.

And

The desire to find new lands...[led] to the discovery in 1813, to the great delight of Governor Macquarie, of the way across the Blue Mountains into the interior of NSW.

Some historians, underpinned by the early narratives have in more recent times continued the myth. Thomas Perry in 1962 and Dennis Jeans in 1972 subscribed to this, as did Robert Hughes in his 1982 populist history the Fatal Shore. They each described the hostility and impenetrable nature of a mountain

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54 “Sydney Gazette and New South Wales Advertiser.” p1, (22 October 1835)
55 Perry, Australia's First Frontier: The spread of settlement in N.S.W. 1788-1829. pp26-27
56 Roberts, History of Australian Land Settlement 1788-1920. p30
57 Shaw and Nicholson, An Introduction to Australian History. p24
range that forced the colonists to cling to the coastal rim of the continent. Hughes wrote:

Nobody had got across them – not in twenty-five years. Even the Aborigines said they were impassable

And

Macquarie determined to have a good practical cart road made with the least practical delay.

Helen Proudfoot, in 1995 when discussing the growth of NSW, failed to appreciate the interests of the early governors in promoting the mountains as a barrier. She described a need for land and the journey by Blaxland, Wentworth and Lawson pioneering its discovery. She then described Macquarie as having eagerly crossed the mountains “shortly thereafter” and of his founding the town of Bathurst on the first major river he encountered, erecting a flagstaff to commemorate the occasion.

The early historians’ claim that the mountains were “impassable” and that Macquarie was keen to have a “good, practicable” road constructed, are not without some justification. The official records of the day and Blaxland’s own claims contain statements supporting the argument. It is a story so embedded in Australian folk-lore that in 2013 even the State Library of NSW contributed to its acceptance:

With supplies running low, their clothes and shoes in tatters and several men now ill...they headed for home...a trail had been blazed. With the way to the west now open...

The popular depictions by the State Library, Proudfoot, Hughes and others are not in accord with current research which is that the mountains were not an

60 ———, The Fatal Shore. p299
61 Proudfoot, “Town Plans and their Impact on the Settlement Process in Australia.”pp46 & p117. Proudfoot saw the erection of a flagpole as reminiscent of pre-historic culture. The pole represented a “gnomon” an ancient symbol marking the “omphalos” or centre of the world. Macquarie waited nearly two years and flagpole was needed as a point of reference which surveyors could use as a datum.
62 Gregory Blaxland, A Journal of a tour of Discovery across the Blue Mountains in 1813, 2 ed. (Sydney: Gibbs Shallard and Company - ( Digital Sydney University 2001), 1870).np (entry for 31 May 1813);
63 State Library of NSW – Crossing the Blue Mountains-
impenetrable barrier. It is now accepted that the Blaxland trio were not the first
to cross the mountains, nor did they complete the journey. Proudfoot herself
acknowledged a failure to cross the mountains to the interior plains, noting that
Macquarie sent surveyor Evans to complete the trip.64

Even in 1813 the finding of a path over the mountains was not reported as a
significant discovery. It received only nine lines on the third page of the Sydney
Gazette and was reported in the same article that discussed the price of wheat,
eggs and potatoes as well as a cock fight that had taken place at Parramatta.65
The start of the journey fared slightly better with a sixteen line article on the
paper’s second page.66 Governor Macquarie however, did not make any official
report to Whitehall on the successful crossing.67

It is now accepted by many historians that there was no need for Macquarie to
seek additional land. The colony was already expanding. At the time of the
crossing settlements ranged to the south as far as Yass and a movement into
the lower Hunter Valley and Liverpool plains had already commenced.68
Waterhouse noted:

[This]...contradicts the often repeated suggestion of the Blue
Mountains...as the only gateway to the rich pastures that guaranteed
Australia’s future prosperity.69

Blaxland, Wentworth and Lawson it is now claimed simply followed existing
Aboriginal tracks and “sauntered along a fairly easy path...where it was almost

64 “Sydney Gazette and New South Wales Advertiser."p1, Government Order, (19 February 1814)
65 Ibid.p2, (12 June 1813); Broadbent and Hughes, The Age of Macquarie. p67; Richard Waterhouse,
“Recreating The Past; Commemoration, Mythmaking and Australian History,” in The Crossing
Seminar (Katoomba: Unpublished, 2013). p5 Thomas Martin, "Myths of Discovery and Settler
Identity: Probing the “first” crossing of the Blue Mountains after 200 years," Journal of Australian
Colonial History 16(2014). p233
66 “Sydney Gazette and New South Wales Advertiser."p2, Sydney, (22 May 1813) – This article
competed for second page space with a ten line report of Norfolk Meggy, a black mare that had
strayed from Parramatta
67 Watson, HRA Vol 8. p569 - Note 131; p67
68 Perry, Australia’s First Frontier: The spread of settlement in N.S.W. 1788-1829. p34
69 Waterhouse, "Recreating The Past; Commemoration, Mythmaking and Australian History." p8
impossible to go astray.” Further Macquarie was in no rush to reach the new lands. He waited fourteen months before commissioning William Cox to construct a track along the route. It was completed in January 1815 but it was another three months before Macquarie used it. Rather than visiting the area “shortly after,” as suggested by Proudfoot, almost two years had elapsed before the governor made his tour; hardly an indication of urgency. The myth of the impenetrable mountain barrier had been deliberately promoted and Macquarie had no immediate plan for opening the land to the west. Rather he required that the way across the mountains remain virtually impassable.

Karskens, who has undertaken archaeological studies on the remains of the road, noted that although Macquarie ordered its construction his specifications were for a ‘Cart Road’. She held that Macquarie “cunningly” required that the road be made with minimum effort and that passage be difficult:

...Cox’s road was deliberately rough, steep and difficult. Governor Macquarie was in a tricky position. He wanted to demonstrate to his superiors that he had advanced the colony...But of course it [the road] also had to remain inaccessible...This is the real lesson of Cox’s road.

The track was completed by thirty men in “the shortest possible period” and took only six months. It was not done quickly out of a sense of urgency. It was a time frame that allowed for no major engineering works. Karskens’ assessment of the primitive nature of the construction is supported by the fact that Macquarie’s first journey from Emu Plains to Bathurst, a journey of only 100

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72 ———, "Myths of Discovery and Settler Identity: Probing the “first” crossing of the Blue Mountains after 200 years.” p229
73 Karskens, "Shifting the Colonial Compass."); ———, "An Historical and Archaeological study of Cox’s Road and Early Crossings of the Blue Mountains."); ibid.p1 & p10
75 ———, "Shifting the Colonial Compass."pp 4 & 5
miles (160km), took a full week. Records show that Macquarie’s carriage was unable to travel the route without cutting away rock, an occasional widening and some reconstruction of the carriageway. Macquarie described it as “hazardous to drive down in the carriage.” At times it was so steep that his carriage and the accompanying carts had to be unloaded, unhitched from the horses, and manoeuvred by hand.

The low standard of engineering and construction together with restriction that no stock would be permitted west of the river without a permit, clearly indicate that Macquarie thought any expansion to the west should be constrained. As Judge Barron Field reflected:

*In Governor Macquarie’s time although cattle and sheep, to the eastward of the mountains were dying from drought and there were grass and water in abundance across the mountains, no settler was permitted to take his cattle over the Nepean, or even cross himself for a visit...*

To Macquarie’s superiors in London, the road served to demonstrate an expanding colony, while in reality he was still attempting to restrict its outward growth. Macquarie may nonetheless have had too much faith in his own ability to do so by fiat. Once news of a route over the mountains and “extensive tract of champaign country” beyond became known, any attempted containment of the colony was futile. Despite restrictions on travel over the mountains the genie had been released and flocks began to be moved onto the pastures of the Bathurst Plains.


81 “Sydney Gazette and New South Wales Advertiser.” p1, General Orders, (10 June 1815); State Records of NSW, NRS 1046,( SZ759, p 100, Reel 6038)
6.1.5. The Shift to Grazing.

Macquarie contributed to the opening of the land and to setting forces in motion that would push the penal colonies into a direction which sharpened his misgivings: the discovery of greener pastures was to impel graziers to turn restive against his brakes.

John Ritchie 1988

Although the Colonial Office held to policies of the yeoman farmer and satellite townships surrounded by numerous smallholdings, Macquarie’s tenure saw changes to the colony’s land use. The initial plan for NSW was no longer achievable and the policies that had served the “modest requirements of a penal colony” were unsuited to the times. In an activity that Macquarie described as “lazy” grazing, large pastoral areas were being opened and were replacing agriculture as the predominant land usage.

From the first days of his tenure Macquarie demonstrated some ambivalence to the ideas of containment. A despatch from the Colonial Secretary dated July 1811 advised Macquarie of the impolicy of distant establishments. Nonetheless, his visit to Port Stephens in January 1812 was reportedly aimed at gathering information for the establishment of a settlement to the north of Newcastle. He promoted dispersed settlements in Tasmania and in 1815, selected the site for a township at Bathurst.

Despite Macquarie’s attitude to grazing, in November 1820 he opened up the areas south of the Nepean River to stock. This he had intended to be a temporary measure because of a drought which had affected the lands then

Burroughs, Britain and Australia 1831-1855. p2
84 Watson, HRA Vol 7.p359, Macquarie to Liverpool, (17 November 1812); Roberts, History of Australian Land Settlement 1788-1920. p24
85 Bladen, HRNSW Vol 7. p 563, Earl Liverpool to Macquarie, (26 July 1811)
87 Roberts, History of Australian Land Settlement 1788-1920. pp30-31
occupied within the County of Cumberland but, as described by Perry, the announcement triggered the great outward spread of pastoralists. 88

The colony’s spatial expansion was uncheckable. Even had the governor seriously attempted to constrain the growth, he would have had little success. A way to the west had been officially opened. A northern land route had been found that unlocked a passage into the Hunter Valley (the Bulga Road) and to the south, exploration had opened up the country beyond Yass. 89 Knowledge of the greener pastures outside the confines of the existing settlement put forces in motion that would plague Macquarie and future administrations. The availability of seemingly unlimited land for pasture whetted the appetite of the grazier and transformed the colony. 90 (Fig 6.1).

Table 6.1. Changes in Land use During Macquarie’s Tenure91

<table>
<thead>
<tr>
<th></th>
<th>1810 (total)</th>
<th>1821 (total)</th>
</tr>
</thead>
<tbody>
<tr>
<td>European Population</td>
<td>11,950</td>
<td>38,778</td>
</tr>
<tr>
<td>Cultivation (acres)</td>
<td>7,615</td>
<td>32,267</td>
</tr>
<tr>
<td>Land alienated (acres)</td>
<td>95,637</td>
<td>570,000</td>
</tr>
<tr>
<td>Number of sheep</td>
<td>25,888</td>
<td>290,158</td>
</tr>
<tr>
<td>Number of cattle</td>
<td>12,422</td>
<td>102,938</td>
</tr>
</tbody>
</table>

P Farnill: Adapted from several sources (see Note 91)

The expansion was unwittingly assisted by land grants promised in England without consultation with the governor. Settlers such as John Blaxland arrived with carte blanche from the Colonial Secretary to select any unoccupied or unreserved land anywhere in the colony.\textsuperscript{92} It was a practice not to Macquarie’s liking and he specifically requested that the Colonial Office refrain. He suggested instead that they limit their promises to the quantities of land while leaving the selection of location to the governor.\textsuperscript{93} Although no formal reply was received, in the case of small grants his request appears to have been heeded. Large grants to influential people in Britain continued to be made.

In the past the size of land grants issued or promised by both the Colonial Office and the governor had been ad hoc and rested solely with the grantor. By 1810 with the arrival of more free settlers into the colony, a more transparent system of allocating land was required. The new system based the acreage granted on the amount of capital a settler had to invest. Under the system free grants to a maximum of 2,000 acres were available. The grants were to be made on a sliding scale, with £100 of imported capital gaining a grant of 100 acres, and £3000 gaining 2000 acres.\textsuperscript{94} Further, Macquarie suggested sale of additional land to the grantees at between seven and ten shillings per acre.\textsuperscript{95} Land sales as a method of alienation however, were not approved until Macquarie’s departure.\textsuperscript{96}

6.1.6. Planned Townships

Governor Macquarie has been popularly described as “the Father of NSW,” “the Road Maker” and “the Prime-Mover” in establishing a system of planned towns.\textsuperscript{97} He was instrumental in planning or founding eight towns: Liverpool,

\begin{itemize}
\item \textsuperscript{92} Watson, \textit{HRA Vol 7}, p561, Secretary Campbell to John Blaxland, (23 May 1812)
\item \textsuperscript{93} ibid.p 269, Macquarie to Castlereagh, (30 April 1810). p366, Liverpool to Macquarie, (26 July 1811)
\item \textsuperscript{94} ibid.p 269, Macquarie to Castlereagh, (30 April 1810). p366, Liverpool to Macquarie, (26 July 1811)
\item \textsuperscript{95} ibid. p568, Macquarie to Bathurst, (28 November 1821)
\item \textsuperscript{96} Ibid. p231 Thomas Harrington to Bathurst, (22 February 1824,
\end{itemize}
Windsor, Richmond, Wilberforce, Pitt Town, Castlereagh, Campbelltown and Bathurst and significantly re-planning Sydney and Parramatta. He has also been credited with making, “ill-regulated judgements,” “distinct errors,” and seizing instant solutions to immediate problems. Of his solutions it has been said that once imposed, he obstinately remained wedded to them. Further, he apparently believed that his superficial nomination of a town’s location without a full analysis was sufficient to ensure its success. Townships such as Castlereagh and Pitt Town, which Macquarie located on high ground to avoid floods and were positioned on poor soil too far from the settlers’ existing farms to be functioning centres, are conspicuous examples of his flawed planning.

Macquarie’s town designs and street layouts remained founded on the long established regular grid patterns. Macquarie however introduced an additional element. He viewed architecture as an integral part of a town plan. Three-dimensional concepts that combined street layouts with structures were a feature of most of Macquarie’s planning. It has been claimed that his designs were modelled on the contemporaneous extensions of Edinburgh’s New Town and were also reminiscent of the buildings he had seen while serving in India. Architecture was regarded by Macquarie as a means of elevating colonial society to a higher level of social and economic status. It was a philosophy that attracted severe criticism from Commissioner Bigge who, in 1819, was sent

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98 Gabrielle Kibble (Chair Heritage Council) in ———, Macquarie's Towns. pvii
100 ———, The Colony. p129; Jack, Macquarie's Towns. – As will be discussed later, Wilberforce, Castlereagh and Pitt Town are examples.
104 Spigelman, "The Imperial Constraint on Lachlan Macquarie." p59

While Macquarie’s title as Father of NSW possibly overestimates his influence and undervalues the legacy of other governors, the title of Roadmaker is richly deserved.\footnote{Peter Spooner, "On Squatters, Settlers and Early Surveyors," Australian Geographer 36, no. 1 (2005). p61. Karskens notes however that Macquarie’s directions on roads “were relatively vague” see Karskens, "An Historical and Archaeological study of Cox's Road and Early Crossings of the Blue Mountains." p26.} In accordance with his philosophy of observable prosperity, Macquarie’s construction of roads and bridges was part of “the first steps in improving a new country.”\footnote{Bladen, HRNSW Vol 7. p356, Macquarie to Castlereagh, (30 April 1810)} As well as the route across the mountains Macquarie pioneered a new system of turnpike or toll roads, connecting the outer villages and settlements to Sydney.\footnote{"Sydney Gazette and New South Wales Advertiser."p2, Public Notice, (24 March 1810), p1, Government and general Orders, (31 March 1810)– The tolls were for both the construction of new and maintenance of existing roads; ———, HRNSW Vol 7. p 514, Proclamation, (30 March 1811)} He improved the road from Parramatta to the Hawkesbury and also the one from Parramatta to Sydney and placed a toll on them both. He also created a new road financed by public subscription, from Pitt Street to the South Head of Sydney Harbour.\footnote{"Sydney Gazette and New South Wales Advertiser."p1, Government and General Order (5 October 1811) – Note this road was much criticised as unnecessary by Commissioner Bigge. A discriminatory toll was subsequently imposed on this road for carts and wagons, other vehicles and horses passed through free of charge. (See gazette (13 March 1813)} In October 1812 he announced the construction of a new road to connect the Sydney to Parramatta road with the settlements at George’s River and Liverpool.\footnote{Ibid.p1, Government and Public Notice, (10 October 1812): p1, Government and General Order Civil Department, (26 June 1813)} In Sydney he constructed a substantial stone arch bridge across the Tank Stream.\footnote{HRA Vol 18., p1, Government and General order, ( 31 March 1810), p1, Government and General Order, (23 March 1811), p2, Proclamation, (30 March 1811), ———, HRNSW Vol 7. p438, Macquarie to Earl Liverpool, (17 October 1810)} Then, in March 1813, he announced that a further publicly subscribed road was to be constructed from Sydney to the heads of Botany
These roads, now called Old Windsor Road, Parramatta Road, Oxford Street/Old South Head Road, the Great Western Highway and Botany Road, formed the backbone of Sydney’s early transport system.\(^{113}\)

Under Macquarie’s governorship Phillip’s original town plan for Sydney was finally shelved. Instead of attempting to implement the plan as Bligh had done, Macquarie worked within the reality of the settlement as he had found it. This did not mean that nothing of merit could be done. The relationship of the Macquarie Street to Hyde Park elements of his plan, including the Sydney Hospital, Hyde Park Barracks and St James’ Church, have been suggested as an outstanding example of Australian urban design.\(^{114}\)

In a proclamation issued in October 1810, Macquarie renamed, and where possible straightened, Sydney’s existing streets. He directed that all houses be numbered and all future roads be a regular fifty feet (15.3m) wide.\(^{115}\) Fences were to be erected four feet (1.2m) high along both sides of the streets and in an edict reminiscent of Bligh, he directed that any buildings encroaching on the streets be pulled down.\(^{116}\) Unlike his predecessor Macquarie had the power to enforce his directives, but in a conciliatory gesture he decreed that such structures could be re-built elsewhere at “public expense.”\(^{117}\)

To ensure new buildings complied with his new street pattern and that the buildings were within their designated allotments, the construction of new buildings in Sydney was prohibited without the approval of the Surveyor

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\(^{112}\) “Sydney Gazette and New South Wales Advertiser.” p1, Public Notice, (27 March 1813); ———, HRNSW Vol 7. pp608-609, Macquarie to Liverpool, (18 October 1811); Watson, HRA Vol 7. pp604-605, Macquarie to Liverpool, (17 November 1812)

\(^{113}\) See Maps, Ashton and Waterson, Sydney Takes Shape. pp18-72

\(^{114}\) John Toon, Personal Communication, 5 March 2015. personal communication


\(^{116}\) ———, HRNSW Vol 7. p400, Municipal Regulations, (11 August 1810)

\(^{117}\) “Sydney Gazette and New South Wales Advertiser.”p1, Government and General Order, (11 August 1810)
General. The governor then naively stated that he expected residents to accept his decrees without complaint:

[The governor]...trusts the inhabitants, whose interests may at first view appear to be affected by these regulations will yield a ready and cheerful obedience to the orders...

Not all of the inhabitants were cheerful and although they had no alternative but to comply, complaints were made directly to Lord Bathurst in London.119

In April 1811, Macquarie extended similar regulations to the townships of Parramatta and Windsor and adopted a deliberate policy of encouraging the take up of both rural and flood-free town allotments.120 In May 1811, he introduced a form of development control whereby before being constructed, plans for dwellings had to be submitted to the local magistrate who would brief the governor on the dwelling’s suitability.121

Despite his efforts, the Sydney of Macquarie’s time was portrayed by Kirsten Orr as having narrow crooked streets, uncoordinated building designs and as lacking the marks of a civilised society.122 Orr’s opinion is possibly unfair, as like the earlier finding of Bigge, it failed to take into account the state of the town before Macquarie arrived and did not recognise the improvements that he had made.123

Some of Macquarie’s edicts anticipated the functions of present day local government. In September 1810 he issued what could be regarded as the colony’s first land zoning proclamation. To protect the waters of the Tank

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118 HRA Vol 18; Kass, Sails to Satellites. pp5 & 22 – This order was still in place in the 1820s.
119 John Blaxland, was not “cheerful” through his brother Samuel he complained directly to Lord Bathurst and demanded compensation for his loss (even though the land was vacant when resumed) see Watson, HRA Vol 12.p 29 Samuel Blaxland to Bathurst, (19 July 1825)
120 “Sydney Gazette and New South Wales Advertiser.”p1, Government and general Order, (11 May 1811). Watson, HRA Vol 7. p527, Macquarie to Liverpool, (9 November 1812)
121 Bladen, HRNSW Vol 7. p531, Government and General Order, (11May 1811)
Stream he decreed that no “Necessaries, Slaughter-houses, Tanneries, Dying-houses, breweries or distilleries” were to be erected on the stream or its tributaries and any such premises already erected would be pulled down.\textsuperscript{124} The protection of the harbour also came into his consideration and in October 1810, he ordered that no ballast was to be thrown overboard within the harbour.\textsuperscript{125} In February 1813, he foreshadowed the imposition of an annual rate levied on householders for street maintenance. Rather than introducing the tax, Macquarie required residents to maintain the streets adjacent to their properties.\textsuperscript{126}

Macquarie’s rule transformed the shape of the colony. In 1810, accompanied by his surveyors he inspected and designed a township at Liverpool and opened up the settlement of Airds further to the south.\textsuperscript{127} Airds was not designated a township, but was a rural area that he had observed during an early tour of inspection of the outer districts. He described the area as having excellent pasturage and good soil for cultivation. In December 1810, free persons were invited to apply for small grants in the area. Selected settlers were advised to meet with Surveyor Meehan to have their land marked and measured.\textsuperscript{128}

Also in 1810, Macquarie selected sites and planned five other townships on the outer fringes of settlement.\textsuperscript{129} These, known as the Macquarie towns, were Richmond (partly laid out earlier by Phillip Gidley King), Windsor (then already a fledgling township named “Green Hills”), Castlereagh, Wilberforce and Pitttown.\textsuperscript{129}

\textsuperscript{124} “Sydney Gazette and New South Wales Advertiser.” p1, Government and General Order, (22 September 1810);
\textsuperscript{125} Bladen, \textit{HRNSW Vol 7}. p400, Port Regulations, (1 October 1810)
\textsuperscript{126} “Sydney Gazette and New South Wales Advertiser.” p1, Government Notice and Order, (27 February 1813)
\textsuperscript{127} Dawson, \textit{James Meehan: a most excellent surveyor}. p59
\textsuperscript{128} “Sydney Gazette and New South Wales Advertiser.” p1, Government and General Order, (15 December 1810)
Town. In each case Macquarie based his town layouts on the nucleus of a prominent building such as a church positioned within a standard and efficient grid pattern. This ensured aesthetic vistas, straight roads and regularly shaped town lots. The main consideration in the town designs however, was that they were flood free. Excluding the existing Green Hills or Windsor, Macquarie said:

I have fixed on Ground for four different townships for the accommodation of the Settlers who have suffered so severely by the floods...I hope on my return to this part of the colony to find the new habitations built to an improved and enlarged plan to those hitherto erected.

The Hawkesbury farmers had settled on the rich river flats but their land was low lying and had earlier been devastated by floods, their crops had been washed away and huts destroyed. Nonetheless, because of the richness of the soil and the ease of farming, the settlers continued to live and farm there.

Macquarie failed to appreciate the difference between planning a township and its physical establishment. He naively believed a town plan and his proclaiming of a township was sufficient for settlers to uproot and move in. At a dinner “with a large party of friends,” held to celebrate the founding of the townships, the governor said:

I recommend to the Gentlemen present to exert their influence with Settlers in stimulating them to loose no time in removing their Habitations, Flocks and Herds, to these Places of safety and security and thereby fulfil my intentions and plans in establishing them.

130 “Sydney Gazette and New South Wales Advertiser.” p1, Government and general Order, (15 December 1810); Macquarie, "Journal of a Tour of Governor Macquarie's first Inspection of the Interior of the Colony." p60
132 Sydney Gazette and New South Wales Advertiser," p1, Macquarie’s letter to the Hawkesbury settlers, (8 December 1810)
133 Watson, HRA Vol 6.
134 They also expected government assistance to recover see- ibid. P26, Bligh to Windham, (5 November 1806). Ibid. p167, Paterson to Castlereagh, (9 July 1809)
135 Broadbent and Hughes, The Age of Maquarie. p12
136 Macquarie, "Journal of a Tour of Governor Macquarie's first Inspection of the Interior of the Colony." p61. Of the “Gentlemen “the governor mentioned only the presence of 21 people, including “our own family.”
He did not recognise that towns are more than just a place where people lived. They required an economic basis and a structural meaning within the countryside. He did not sufficiently realise that in a farming economy, the place of residence had to be in convenient proximity to the farmers’ fields and pastures. If they lived too distant from their gardens they feared theft of their crops and tools. Moreover, any extended travel-time between the two locations was wasteful. Most farmers preferred to take a risk and remained on the river flats while leaving the flood-free town lots relatively unoccupied.

When the township allotments were not taken up the governor “admonish[ed] the settlers in the most earnest manner.” He offered them “every reasonable assistance” and warned them that by not moving they were facing destruction.\(^{137}\) The admonishment appears to have had little consequence. Four months later Macquarie again appealed to the settlers, this time “with an earnest and ardent wish.” Persons that did not comply he said, would forfeit any claim for assistance and be excluded from the indulgencies previously extended to them.\(^{138}\) The exercise provides an early example of the difficulties often experienced by modern planners who like Macquarie, can prepare a sound plan but then are required to rely on others for its implementation.

Only two of Macquarie’s five Hawkesbury towns, Richmond and Windsor, developed as expected. Both were nascent settlements before Macquarie and neither really flourished until several years after his departure. He discovered that his nominating and designing a town was one thing, developing it was another.\(^{139}\) Although Windsor and Richmond eventually grew into substantial towns, Commissioner Bigge reported that their growth was slower than expected.\(^{140}\) Of the others, Castlereagh never achieved town status and until recent times

\(^{137}\)“Sydney Gazette and New South Wales Advertiser.” pp 2-3, Government and general Order, (8 April 1811)

\(^{138}\) ibid.p1, Government and General Order, (3 August 1811)


Wilberforce and Pitt Town failed to materialise beyond small hamlets or villages. Whether the towns were initially successful or not, they provide a demonstration of colonial town planning and with one exception are examples of rectangular grids. The exception, Pitt Town, was confined to a small spur of high ground and in order to be flood free was a grid of unusual triangular shape.

The establishment of Castlereagh suffered additional difficulties and reflected Macquarie’s tendency to implement an instant solution to a problem. The locality was chosen because it was flood free but it did not have adequate access to fresh water. Structurally, as a service centre to surrounding farms it faced competition from a nearby ‘unplanned’ town at Emu Island.

A major obstacle for transport and stock heading west over the mountains was the need to cross the Nepean River. A ford in the vicinity of Emu Island became a major choke point and although it was initially illegal to travel west without a permit, the ford became an established crossing place. Without a bridge, there was a need to await favourable conditions, with weather and river depths determining the time of a crossing. It became place of natural congregation, cattle holding yards were constructed, followed by bark humpies, an inn, shops and other businesses. An ‘accidental’ township grew at the spot (now Penrith), and any chance of nearby Castlereagh developing as a substantial town faded. Karskens notes that even Macquarie accepted the inevitable and in 1819 established a farm nearby at Emu Island, or Emu Plains as it had by then become more correctly designated.

Note Emu Island had been incorrectly named. It was not an island but a large bend in the Nepean River immediately west of the present town of Penrith,

142 This later became known as Emu Plains and eventually as Penrith.

143 Karskens, “Shifting the Colonial Compass.” p6

144 An Historical and Archaeological study of Cox's Road and Early Crossings of the Blue Mountains.” p10

145 Karskens, “Shifting the Colonial Compass.” p6

146 The Colony, p91
Macquarie, whether by planning or fortune, had been more successful with his siting of Bathurst. The locality had favourable natural attributes, it was located on a river crossing and was at the end of an arduous journey across the mountains.\footnote{Kass, \textit{Sails to Satellites}. p15} The establishment of Bathurst was possibly one of the more significant events of Macquarie’s tenure and although described as an example of his town planning, under Macquarie it consisted of little more than a name.\footnote{Roberts, "Beyond the Crossing: The restless frontier at Bathurst in the 1820." p245. Proudfoot, "Town Plans and their Impact on the Settlement Process in Australia." p117} The official urban design was not completed until 1833, by Surveyor Rodgers under the authority of Governor Bourke.\footnote{Broadbent and Hughes, \textit{The Age of Maquarie}. p16; Misc., "Catalogue of Town Maps and Plans," in 9/5004 (Kingswood: State Records of N.S.W. unpublished, 1792-1887). Plan No.31} Even then it comprised only ten allotments. At the time of Macquarie’s departure from the colony, the town comprised little more than a military barrack and stores.\footnote{Proudfoot, "Town Plans and their Impact on the Settlement Process in Australia." p117} (Fig 6.1).
Fig 6.1. Bathurst 1823. Two Years After Macquarie’s Departure
Source: NSW State Archives 9/5004 - Map 1029
In 1819, Macquarie reported to Lord Bathurst that Newcastle was unsuitable as a place of banishment for secondary offenders. This he said was because it was close enough for escaped “criminals” to easily make their way back to Sydney. He recommended a new settlement at Port Macquarie, 130 miles (210km) further north. It was a locality discovered and named by John Oxley in 1818.\footnote{Watson, \textit{HRA Vol 10}, p178, Macquarie to Bathurst, (19 July 1819); p366, Macquarie to Bathurst, (1 September 1820)} Bathurst approved the Port Macquarie settlement in May 1820.\footnote{Ibid. p306, Bathurst to Macquarie, (18 May 1820)}

Macquarie, unlike his predecessors, did not simply dispatch settlers to form a township at Port Macquarie, rather he sent Surveyor Oxley for a second time to reconnoitre the area and report on its suitability. On receiving a very detailed and favourable report, Macquarie then sent a team of forty troops and sixty convict artificers and labourers to construct the required buildings.\footnote{Ibid. p479, Macquarie to Bathurst, (21 March 1821), pp 487-492, Oxley to Macquarie, (27 December 1820)} The commandant appointed to oversee the new settlement, Captain Allman, was given very detailed instructions regarding the settlement site and the buildings to be erected.\footnote{Ibid. pp480-487, Macquarie to Allman, (21 March 1821)} Macquarie visited the location once, when he spent four days examining the locality, shortly before his departing for England.\footnote{Ibid. p832, Macquarie to Bathurst, (30 November 1821)} There are no details of any planned township and the records of the Surveyor General’s Department show no registered township plan until 1834, under Governor Bourke.\footnote{Various, ”Catalogue of Town Maps and Plans ”, plan 933}

It was not only on the mainland that Macquarie’s town planning influence extended. Unlike other governors he took a personal interest in the satellite settlements in VDL. On first arrival Macquarie lost little time in both inspecting the southern settlements and revitalizing the township of Hobart. At the time of Macquarie’s visit in 1811 Hobart had approximately 600 inhabitants. A further 400 persons who had been transferred from Norfolk Island were occupying land two miles to the north at a location they called New Norfolk.
Hobart itself was described as a ramshackle settlement that still resembled a temporary military like encampment.\textsuperscript{157} With surveyor Meehan, Macquarie paced out and designed a street layout and ordered the removal of any buildings that interfered with his new alignments.\textsuperscript{158} In planning the township the governor directed that his plan be introduced without “destroying many of those buildings already erected.”\textsuperscript{159} But he also decreed that any person disadvantaged by his town-plan was to be adequately compensated either by alternative allotments or by monetary compensation.\textsuperscript{160}

Under Macquarie’s design Hobart was to be on a grid pattern with imposing streets 60 foot (18.3m) wide with 8 foot (2.4m) footpaths.\textsuperscript{161} To create a wide vista all buildings were to be set back 20 (6m) feet from the street frontage. In keeping with his three-dimensioned vision, near the waterfront there was a grand square to be ringed with churches, a court house and public buildings. To encourage construction and to avoid encroachment on the new streets Macquarie had street corners marked with signposts.\textsuperscript{162} The plan revitalised what had been a flagging outpost which under Macquarie’s direction was connected by a 120 mile (193km) road to Launceston and George Town.\textsuperscript{163} Hobart’s status however would not be assured until an announcement in 1813 that it was to become the administrative centre of VDL; the settlement at Port Dalrymple then became its dependency.\textsuperscript{164}

\textsuperscript{158} Watson, \textit{HRA Vol 7}, p618, Government and General Order, (11 July 1812)
\textsuperscript{159} “Sydney Gazette and New South Wales Advertiser.”p1. Report, (11 January 1812)
\textsuperscript{160} Proudfoot, “Town Plans and their Impact on the Settlement Process in Australia.” p116
After Macquarie’s inspection of Hobart he founded a new nearby township to be called Elizabeth Town, in the district of New Norfolk or Norfolk Plains.165 Macquarie then visited Launceston by an overland route from Hobart. He determined that the route should be provided with three new military outposts for the protection of travellers.166

Launceston had been Paterson’s third attempt at locating a township on the Tamar River, yet despite the methodical approach taken in selecting its location, Macquarie pronounced it an “injudicious choice.”167 The governor spent several days exploring the reaches of Port Dalrymple before deciding that a new settlement should be at a location previously abandoned by Paterson. This settlement he named George Town.168 Prior to his return to Sydney Macquarie expressed dismay at the “squalid dwellings” he had observed in VDL and ordered that from thenceforth buildings within all towns were to be brick or weatherboard with shingle or tile roofs.169

Macquarie’s planning left a mark on NSW and VDL that exists to the present time. His town designs for Sydney, Liverpool and Hobart are still recognisable in those cities’ modern street patterns and road networks. His creation of satellite townships, although some were ill-advised, nonetheless helped shape the colony and still exist as townships today. Whether considered the “Father of Australia “or the “Roadmaker,” Macquarie is undoubtedly most popularly associated with the 1813 crossing of the Blue Mountains. His nomination of the site of Bathurst was an indication that the “champaign lands” to the west were open. Despite Macquarie’s attempts to restrict western expansion, from then onwards, there was no means to hold it back.170

6.1.7. Commissioner Bigge

A vigorous and often rancorous society had emerged in which...the gentlemen chafed while the outcasts enjoyed the governor’s favour. Then with the arrival of Commissioner Bigge, the Empire struck back.

Stuart Macintyre - 1999

Throughout Macquarie’s governorship colonists with grievances against him, such as John Macarthur and Rev. Samuel Marsden, did their best to influence the administration in Britain. They did not take direct action as Johnston had in the mutiny of 1808, but worked through correspondence to men of influence in Great Britain. They portrayed Macquarie as an extravagant and “hopelessly corrupt tyrant” and a man who favoured the interests of ex-felons over gentlemen. Further it was claimed that under Macquarie, NSW had become not a deterrent to crime or a place of punishment but a desirable place to be sent. Eventually the complaints reached the British Parliament and an enquiry was commissioned. It was entrusted to the “earnest and industrious” John Thomas Bigge.

Bigge was a lawyer in his late thirties when in 1819 he was commissioned to inquire into the administration of the colony. He was required to look into the efficiency of the transportation system, the effectiveness of punishment and to recommend other places on the coast for penal colonies. He was also to report on the colony’s officials, its agriculture and its commerce, and the success of the emancipated convicts’ participation in colonial society.

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172 Macquarie had described Marsden as “the head of a seditious low cabal, and consequently unworthy of mixing in private society or intercourse with me.” – A.T Yarwood, "Marsden, Samuel (1765-1838),” in Australian Dictionary of Biography, ed. National Centre of Biography (Melbourne: Australian National University, 1967).(np)
174 ———, Great Southern Land; A New History of Australia. p81
175 Clark, From the Earliest Times to the Age of Macquarie, vol. 1. voll. p335. ———, A short history of Australia. p49,
Although he had been the Chief Justice of Trinidad, Bigge had little experience to equip him for his task. Manning Clark noted that the position of Trinidad’s Chief Justice had provided Bigge with a preconceived notion of the role of slaves, which he applied to the NSW convicts. He is reported to have been “unattractively condescending” and did not believe that felons could be reformed or that emancipated convicts should have the same rights as a free settler. His differentiation between the emancipist and the “free class” is observable in his reports:

"Governor Macquarie has not only continued his support to the emancipated convicts...but he has manifested on public occasions towards them a larger share of attention than he has manifested towards those of the free class."

The philosophies of Bigge and Macquarie clashed. Bigge has been described as being unable to appreciate the improvements Macquarie had achieved. He was capable of judging circumstances only from standards applicable to Britain and the West Indies. He did not support Macquarie’s practice of having convict gangs working for the government on town and road improvement, rather he believed that convicts should be working for the pastoralists on their large landholdings. Convicts isolated on remote country properties, he believed, would better reflect on the consequences of their actions. He recommended increased punishments with less emphasis on rehabilitation and rather than encouraging emancipist farmers, he favoured an aristocracy of “respectable settlers.” Like the West Indian planter model, he envisaged “men of capital,” with estates in NSW of at least 10,000 acres being provided with convict labour.

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176 ———, A short history of Australia. p49 see also Bennett, "Bigge, John. Thomas." pp99-100
177 Welsh, Great Southern Land; A New History of Australia. p82
179 ———, Great Southern Land; A New History of Australia. p82. Spigelman, "The Imperial Constraint on Lachlan Macquarie." p59
180 Bigge, "Report of the Commissioner of Inquiry into the State of the Colony of N.S.W." p50-
181 Clark, From the Earliest Times to the Age of Macquarie, vol. 1. p340 & p 345
Eventually the adverse reports on Macquarie exhausted the Colonial Office’s patience and with the predicted criticisms by Commissioner Bigge, Macquarie’s resignation was accepted the third time it was offered.\textsuperscript{183} Macquarie left the colony on February 1822 three months after he had been succeeded by Sir Thomas Brisbane.\textsuperscript{184}

Despite Bigge’s adverse reports, Macquarie was responsible for many positive achievements. In his own words he had lifted the colony from “infantile imbecility” to maturity. He reasserted control over the turmoil that had characterised all of the administrations since the 1792 interregnum. He opened the colony to expansion, founded several new townships, reintroduced the concept of town planning, reshaped the streets of Sydney and Hobart and left many aesthetically pleasing buildings that still remain today. The most notable in Sydney are the hospital buildings known as the Mint and the state parliament house, Hyde Park Barracks and St James Church. Although according to Commissioner Bigge, many of Macquarie’s buildings and projects were too grand for a penal settlement, today Macquarie is seen as a visionary who set the foundation for modern NSW.\textsuperscript{185}

There can be little doubt that the colony was changed under Macquarie’s leadership. He restored order after the tumultuous years since Phillip had departed. As can be seen from the redesign of Sydney and Hobart, as well as the several townships he founded, his planning concepts were more akin to modern planning than those of any of his predecessors. A Macquarie town plan was more than a two-dimensional drawing, it included an architectural component that served as a measure of wellbeing, prosperity and stability. The opening up of the lands beyond the fringes of settlement, transformed the

\textsuperscript{183} McLachlan, "Macquarie, Lachlan (1762-1824)." (n.p). Welsh, Great Southern Land; A New History of Australia. pp 80-82 Macquarie’s first resignation made in December 1817 was declined, his second ignored but his third accepted.

\textsuperscript{184} "Sydney Gazette and New South Wales Advertiser."p1, Government and General Orders, (December 8 1821), p2, Embarkation of Governor Macquarie, (15 February 1822)

colony’s economic base from agriculture to grazing and set in train the practice of squatting that would be a source of conflict between the administration and the settlers for many years. After Macquarie any possibility of an agriculturally based colony of yeoman farmers was irretrievably lost.

The change from the colony’s agricultural base to one of pasture and grazing, changed the colony’s spatial footprint which rapidly expanded. Despite Macquarie’s restoration of order, the seeds of defiance by the pastoralists had been sown. As large outlying areas were occupied, it challenged the governor’s ability to successfully manage the allocation of land. Macquarie therefore can be seen as governing during a period in which the ability for a governor to exercise absolute control over crown land became seriously contested. Although Macquarie had little control of the transformations that were taking place, it was during his administration that land issues such as unauthorized squatting arose. They were issues that would confront his successors for the next thirty years.

6.1.8. Settled Areas and Spatial Growth at end of Macquarie’s Tenure

The extent of the settlement and land alienated at the end of Macquarie’s governorship is tabulated in Table 6.2.

<table>
<thead>
<tr>
<th>Locality</th>
<th>Locality</th>
</tr>
</thead>
<tbody>
<tr>
<td>Airds</td>
<td>Lane Cove</td>
</tr>
</tbody>
</table>

Table 6.2. Main Localities Settled and Surveyor’s Plans Registered at the end of Macquarie’s Governorship

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### Appin
- Liberty Plains
- Banks Town
- Liverpool
- Bathurst
- Mulgoa
- Baulkham Hills
- Minto
- Bong Bong
- Nelson
- Bringelly
- Nepean
- Bulanaming
- Northern Boundaries
- Cabramatta
- Parramatta
- Campbelltown
- Petersham
- Camperdown
- Pitt Town
- Castle Hill
- Phillip
- Colo
- Ponds
- Concord
- Portland Head
- Cooke
- Seven Hills
- Cow Pastures
- South Creek
- Dobroyde (sic)
- Springwood
- Dundas
- Surry Hills
- Eastern Farms
- Richmond
- Emu Plains
- Richmond Hill
- Field of Mars
- Sydney
- Georges River
- Toongabbie
- Glenbrook Lagoon
- Upper Nelson
- Green Hills
- Wallerawang
- Hawkesbury
- Wellington Valley
- Hunter’s Hill
- Windsor (Green Hills)
- Kissing Point
- Wilberforce
- Kurryjong (sic)

### Others Remote and External
- Elizabeth Town (New Norfolk)
- Kingston
- Norfolk Island
- Port Macquarie
- Newcastle
- Port Dalrymple (Launceston)
- Hobart

### Acreage Alienated

<table>
<thead>
<tr>
<th>Period</th>
<th>Acreage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arthur Phillip 1788 - 1792</td>
<td>3,389 Acres</td>
</tr>
<tr>
<td>Francis Grose 1792- 1794</td>
<td>10,674 Acres</td>
</tr>
<tr>
<td>William Paterson 1794- 1795</td>
<td>4,965 Acres</td>
</tr>
<tr>
<td>Name</td>
<td>Period</td>
</tr>
<tr>
<td>---------------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>John Hunter</td>
<td>1795 - 1800</td>
</tr>
<tr>
<td>Phillip Gidley King</td>
<td>1800 - 1806</td>
</tr>
<tr>
<td>William Bligh</td>
<td>1806 - 1808</td>
</tr>
<tr>
<td>George Johnston</td>
<td>1808</td>
</tr>
<tr>
<td>Joseph Foveaux</td>
<td>1800 - 1809</td>
</tr>
<tr>
<td>William Paterson</td>
<td>1809 - 1810</td>
</tr>
<tr>
<td>Lachlan Macquarie</td>
<td>1810 - 1821</td>
</tr>
</tbody>
</table>

Note: By the end of the Macquarie era, most of the suitable areas within the County of Cumberland had been allocated and occupied. 188 Future tabulation will refer to these settled localities collectively as the County of Cumberland.

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CHAPTER 7. REAPING THE WHIRLWIND: BRISBANE TO BOURKE

The frequent violation that has taken place of the rule prescribed by His Majesty’s instructions, of not selling, transferring, or alienating the land, until after a term of five years and the facility with this violation has been practiced, has certainly has some effect in producing indifference on the part of the grantees...

Thomas Bigge – 1823

Those persons who first reclaimed the land from a state of barrenness, the persons who first turned forest land to their own use, have surely better title to the soil than the Queen of England

John Cotton, settler. c1846

This chapter discusses the evolution of the colony from its planned agricultural base with the yeoman farmer as its preferred model, to one of pastoral pursuits and uncontrolled squatting. It is a period during which the British administration still called for the colony’s containment but the colonial reality of large scale grazing on relatively poor soils made such containment impossible. The chapter describes the inability of three governors, Brisbane, Darling and Bourke to implement the Colonial Office’s requirements or to enforce their own decrees.

It was a period in which survey emerged as a major constraint on land policy. The surveyors were unable to meet the unrealistic demands of both the governors and the settlers and found it impossible to survey land prior to its formal alienation. The survey problem was further magnified by instructions demanding that the entire colony be surveyed, charted and valued.

Land became available for purchase late in Brisbane’s administration and a dual system of free grant and purchase operated side by side. It was a system that some colonist regarded as unfair. This system was modified during the administration of Darling and alienation by sale became the principal means of crown land disposal.

1 Bigge, "Agriculture and Trade." p37
3 Burroughs, Britain and Australia 1831-1855.p133
To restrict the colony’s growth to a manageable size and allow the surveyors to measure land prior to its sale, Darling introduced a limit of location, which became known as the Nineteen Counties. Under Darling’s decree land was only available for alienation within these prescribed limits. Darling also introduced a system of town planning standards for the guidance of surveyors in setting out towns and he commenced a system of Great Roads, intended to provide access to the outlying areas to the north, west and east.

Governor Bourke on taking office found that Darling’s limits of location were being ignored by pastoralists. They became squatters who simply moved their herds beyond the prescribed limits and grazed their herds irrespective of the legalities of their actions. It was these squatters that eventually supplied the majority of wool for the British mills and produced the colony’s major export. A dilemma emerged in which the widely scattered squatter’s wool exports were officially encouraged, but the Colonial Office still envisaged a contained colony.

Bourke, who frequently sought to compromise, capitulated to the squatting interests and for a nominal fee licenced the squatters and gave permission for them to occupy the Crown wastelands beyond Darling’s limits. Bourke’s inclination to compromise is similarly displayed in his relationship with John Batman at Port Phillip. Batman purported to have entered into a treaty with the local indigenous inhabitants, an arrangement that would have threatened the basis of Britain’s claim of Terra Nullius. Bourke repudiated the treaty but granted crown land to Batman at favourable terms.

It was an era during which the long held theories of containment and control were overturned and the Colonial Office came to accept that traditional settlement theories could no longer be applied to NSW. This local discontent with Whitehall’s attempts to impose land policy and controls without a full

4 Ibid. pp133-138
5 Ibid. p8
understanding of the circumstances in the colony that contributed to demands for local control and self-government.

7.1. Macquarie’s Legacy To Brisbane
The governorship of Lachlan Macquarie had irrevocably changed the spatial fabric of NSW. His opening of the territories outside of the Cumberland Plains and a developing premise amongst the colonists that land could be occupied with or without government approval, were to blight the tenure of the next three governors. With respect to land policy and squatting their administrations were overshadowed by attempts to control the uncontrollable.

By the 1820s, the colony extended well beyond the Cumberland Plains. The building of the Great Western Road over the mountains coupled with the explorations of Hamilton Hume to the south and surveyor John Oxley to the north, had opened up the vast pasture lands of the interior. NSW was a colony expanding well beyond the colonial administration’s ability to police. Further, it was no longer functioning on a yeoman agricultural basis and any pretense of a colony made up of small agriculturally based farms was gone. Sheep and cattle, well suited to large areas of uncleared plains, were becoming the colony’s dominant source of wealth. The governors resisted the uncontrolled expansion. They issued proclamations, prescribed official limits of settlement, changed the rules and passed laws, but pastoralists simply ignored these measures. They squatted and grazed their livestock on unoccupied lands wherever they chose.

Despite firm instructions from faraway London, the governors found themselves no longer the instigators of the colony’s expansion. Successive governors were forced to react to the squatters by retrospectively imposing a form of control over lands that had been illegally occupied. They were reaping a whirlwind in which land was free to be taken and wealth was there to be earned by those with sufficient foresight, courage and the audacity to attain it.
7.2. Thomas Brisbane - Governor 1821-1825

On my arrival in the colony I discovered that Major General Macquarie had been exceedingly liberal in his promises of land...I can assure you I was astonished, not a little, to perceive the general feeling in the colony that the smallest scrap of paper containing such a promise was equivalent, if not superior, to the best title from the crown.

Sir Thomas Brisbane, 1822

Macquarie was succeeded by Sir Thomas Brisbane, an aristocrat of ancient Scottish heritage and the first governor from within the upper ranks of British society. In his mother's lineage he could trace his ancestry directly to Robert the Bruce with connections to the Royal families of England, Scotland, France and Castile. As a member of the British establishment, he was the first governor to be of similar status to his immediate superiors. Further, as a man of independent means, he did not depend for his livelihood and future on the benevolence of senior bureaucrats in the British Colonial Office.

Unlike his predecessors who regarded the governorship as an attractive alternative to that of semi-retirement on half-pay, Brisbane did not seek the position on the basis of financial gain. Nonetheless, possibly because of his interest in astronomy and the stars of the southern hemisphere, he actively sought the position. Brisbane first applied for the governorship in 1815 but because the Colonial Office at that time had no desire to recall Lachlan Macquarie, he was unsuccessful. Five years later, on it becoming evident that the governorship would become available, Brisbane again lobbied for the position. This time, he benefitted from the intercession of a powerful life-long friend the Duke of Wellington and was successful. Despite some small opposition from Lord Bathurst, it was the unimpeachable recommendation of

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7 Watson, HRA Vol 10. p680, Brisbane to Bathurst, (10 April 1822)
8 Ibid. p (viii), Introduction ; J.D. Heydon, "Brisbane, Sir Thomas Makdougall (1773-1860)," in Australian Dictionary of Biography (National Centre for Biography, Australian National University, 1966).
Brisbane initially approached the land question with a belief that any problems had resulted from the ineffectual administration of his predecessors. He failed to grasp that the difficulties related both to a lack of cooperation by the colonists and because of the difficulties of the NSW terrain, an inability by his surveyors to adequately survey parcels of land. The solutions attempted by Brisbane were bureaucratic in nature and at times unworkable. They were often ignored by the colonists. On his departure, Brisbane had achieved little in land control and had contributed little towards the spatial planning of the colony.

### 7.2.1 Land Policies

On taking office Brisbane soon found that land issues consumed much of his time and resources. The new governor like his predecessors had received instructions on the reservation of land for the crown. Brisbane’s instructions however contained an additional category. In a measure that both reflected a more enlightened attitude and the colony’s emergence from a penal colony to a free settlement, land was to be set aside for public recreation as well as for expansion. The additional lands were:

> ...either for the future extension of Towns or Villages, or for the purpose of health and recreation... every object of public convenience, health or gratification for the furtherance of which specific appropriations of Lands will probably be necessary should as far as possible be anticipated.

This was a novel concept in NSW. Earlier lands had been set aside by Phillip for government gardens and King had set aside several areas of common pasture land around established settlements. Unlike those of Brisbane however, these earlier reserves related to agriculture and animal husbandry.

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10 Jeans, "The impress of central authority upon the landscape: south eastern Australia 1788-1850." p3


12 Watson, *HRA Vol 10*.p 437, Bathurst to Brisbane (1 January 1821), see also p888, Brisbane to Bathurst, (11 October 1825)

None had the specific purpose of allowing for growth, recreation or aesthetics.\(^{14}\)

Under Brisbane, free grants were made to immigrants on the basis of capital brought into the colony.\(^{15}\) Generally they were made on the basis of one acre per £1 of capital held. Brisbane advised of his concern that the amount of capital imported was being exaggerated by prospective settlers with the intention of increasing the size of their grant. He also reported that grants were being sought for speculative purposes rather than for agriculture. Brisbane suggested a counter to both of these practices by requiring an individual to purchase an area of land equal to the size of the requested free grant. The grant was then not formalised until the purchase was completed. This practice Brisbane claimed would not only frustrate the trafficking in land, but would produce an income for the government which he estimated at $100,000 (not pounds) per year.\(^{16}\)

To combat any speculation and to ensure that land granted other than by purchase was improved and utilised by the grantee, Brisbane continued to apply Macquarie’s system of conditional grants requiring that a settler improve a land holding and not transfer ownership for five years. Brisbane also required all grantees to maintain at least one convict for every 100 acres granted.\(^{17}\) When implemented, these decisions were the cause of several complaints.\(^{18}\) In response, Brisbane wrote:

*I attempt a defence of this measure…*[it is] a check by which persons are stopped from asking for land, who do not intend to make proper use of it.\(^{19}\)

As an adjunct to the imposition of conditional grants, Brisbane also addressed

\(^{14}\) Watson, *HRA Vol 10*. p 437, Bathurst to Brisbane (1 January 1821)

\(^{15}\) Free grants is used to distinguish this type of grant from a grant by purchase. Both terms are used throughout the official correspondence between the governors and the Colonial Office.

\(^{16}\) Watson, *HRA Vol 10*. p303, Brisbane to Under-Secretary Horton, (1 July 1824) Note, although not mentioned it is assumed that the dollars referred to by Brisbane are Spanish dollars so at 5/- per dollar, the sum would be approximately £25,000 pound. (see p518)

\(^{17}\) Historical records Vol 10, p630, Brisbane to Bathurst, (10 April 1822), "Sydney Gazette and New South Wales Advertiser,"p1, (12 July 1822), p1, (11 November 1824)

\(^{18}\) ———, *HRA Vol 11*. p183, Brisbane to Bathurst, (29 November 1823)

\(^{19}\) Ibid. p181, Brisbane to Bathurst, (29 November 1823)
two problems that needed a solution. One was the settlers' inability, or unwillingness, to improve their land by clearing and rendering it suitable for planting or pasture. The second was to find suitable employment for convicts “of the worst kind,” who when allocated to a farmer, could be uncontrollable, shirking labour and draining the farmer’s resources. To overcome these problems, Brisbane introduced a system whereby recalcitrant convicts, rather than being allocated to a settler, were retained in a government land clearing gang.  

Land clearing was “a task much more irksome and fatiguing” than those generally allocated to assigned convicts.  

Almost immediately on taking office Brisbane had criticised Macquarie’s land policies. He drew particular attention to an estimated 340,000 acres of land that had been occupied under a promise, or with only the flimsiest of makeshift documentation. Brisbane believed that this had stemmed from a laxness of control that his own superior ability would be able to arrest. He introduced a bureaucratic system for the issuing of grants and rather than Macquarie’s promise on a scrap of paper, Brisbane prepared a pro-forma deed to be issued
Fresh from England, Brisbane had failed to appreciate the real problem. It was not administrative ability that was lacking in his predecessor, but an inability to obtain surveys. His new system was idealistic and failed to recognise the difficulties that his predecessors had faced. Despite good intentions, Brisbane soon realised that the demand for land far exceeded his government’s ability to execute grants and issue formal deeds. As a consequence rather than the promise of land on a “scrap of paper,” of which he had accused Macquarie, he was forced to issue Tickets of Occupation. The Tickets, which were received on application to the Colonial Secretary, were in many ways a nothing more than a slightly formalized version of the Macquarie system.

Brisbane initially thought the matter of survey was easily resolved. He decided to divide NSW into numbered squares of one square mile (640 acres) moving concentrically outwards from the existing settlements. A settler could then select and make application for an agreed number of squares. It was an attempt to emulate a system that had proven successful on the plains of North America:

An individual, proposing to settle...rides over the country; reads marked on trees the number of each square, returns to head-quarters and gets located immediately on the square he has chosen.

The system was simple in concept but impractical. The terrain was not like the homogenous and relatively flat prairies of America, but was the variable and rugged bushland of NSW. Further, colonists did not move systematically outwards from adjoining farmlands, instead they cherry-picked, selecting the better lands and leaving numerous tracts of poor country in-between.

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25 Ibid. p630 & 631, Brisbane to Bathurst (10 April 1822). Kercher, "Informal land Titles." pp612-613


27 Spooner, "On Squatters, Settlers and Early Surveyors." p59

28 Watson, *HRA Vol 11.* p122, Brisbane to Bathurst, (3 September 1823)

29 Drown, "An Apparatus of Empire." p85

30 Spooner, "On Squatters, Settlers and Early Surveyors."
the surveyors had neither the resources nor the skills to pre-survey the colony into square mile allotments. The terrain made a mockery of the attempt and the scheme was almost immediately abandoned.31

Land survey, which by the 1820s was “in a perilous state,” plagued Brisbane just as it had plagued his predecessors.32 Land could not be alienated without prior survey and as noted by Thomas Perry, until land was surveyed it was impossible to even assess the quantity of land suitable for occupation.33 The surveyors, only three when Brisbane took office but later with two assistants, were unable to service the backlog of grants already made.34 Requests for new grants were made faster than surveys could be completed.35

7.2.2. The Survey Dilemma

Brisbane was in a dilemma. On one hand he needed additional experienced surveyors, but on the other hand an appeal to London for assistance could possibly make matters worse. The bureaucrats in Whitehall did not appreciate the difficulties of survey in NSW and the three Surveyors General appointed up until that time had all been Whitehall appointees. They had been selected mostly by patronage rather than ability.36 Of the three, Alt had been a near blind old man; Grimes was an inexperienced young man; while Oxley has been described as being better suited to a nautical survey than one on land.37

In 1824 Lord Bathurst acknowledged that the appointed surveyors had been

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32 Kass, *Sails to Satellites*. p86
33 Perry, *Australia’s First Frontier: The spread of settlement in N.S.W. 1788-1829*. p44
34 Drown, “An Apparatus of Empire.” p24  Kass, *Sails to Satellites*. p87 – Kass notes that even by 1837 there were only five surveyors and thirteen assistant surveyors.
35 ———, *Sails to Satellites*. p 6 & p81
qualified only for the “minor and more laborious parts of the business.” He then appointed two assistant surveyors whose education and rank in life he said, would add to “the respectability of the department.” Despite Bathurst’s acknowledgement, these appointments were hardly ideal: although educated neither had experience in surveying.

It was to alleviate the survey situation and allow grazing that Brisbane instructed the Colonial Secretary to issue the Tickets of Occupation. These tickets permitted stock to be run in unoccupied crown land. In conceding this Brisbane was in a sense admitting failure, He was implementing a similar solution to that of the predecessors he had earlier criticised.

7.2.3. The Official ‘Scrap of Paper’

The Tickets of Occupation had one important failing: the ticket allowed the settlers to select their own land. In allowing a free selection, Brisbane had relinquished his prerogative to plan, select or even approve the location of the alienated land. On his giving permission for a settler to choose a location, Brisbane exercised no further control. He gave little direction to the settler. The tickets were just a note specifying the quantity of land: “viz, 3000 acres from any unallocated part of the colony.” The practice of Governors Phillip and Macquarie, of inspecting and nominating areas to be granted, had been abandoned. The direction and extent of expansion was determined only by the settler’s own desire and their ability to locate a suitable parcel.

Without a master plan isolated parcels were difficult to link to any existing survey and were beyond the means of the government to accurately define. Survey itself was usually delayed and the identification of land was often based

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39 Kass, *Sails to Satellites*. p84
40 Fletcher, *Ralph Darling, A Governor Maligned*.
41 Perry, *Australia’s First Frontier: The spread of settlement in N.S.W. 1788-1829*. p35
42 Watson, *HRA Vol 10*. p313, P.P. King to Brisbane, (22 July 1824)
43 Kass, *Sails to Satellites*. p24
upon the settlers own lay opinion of survey practices and vague description of
the location of the land. 44 This placed some settlers in an advantageous
position. While the land remained unsurveyed the settlers occupied it under
vague ill-defined boundaries, they paid no rent and did not need to outlay
capital for its purchase. Further, although the Tickets of Occupation officially
created no permanent interest in the land, the colonists perceived them as
conferring a transferable ownership right.45 It was indeed a concept of
ownership that had been recognised by the courts in 1814, and was further
reinforced when the English statutes and property laws were officially received
into the colony in 1828.46

The governor's apparent lack of interest in the location of rural land is evident in
correspondence between Governor Brisbane and a Mr Jacob, an intending
settler. Jacob, a recent arrival, requested that a surveyor advise him of land
available for selection. In response Brisbane displayed indignation at the
suggestion of a government officer assisting an immigrant in the selection of a
parcel of rural land. The selection, according to Brisbane, was the sole
responsibility of the settler:

_I am to understand Mr Jacob to mean that the surveyor ought to advise
officially as to the spot upon which he should settle and save him thereby
the trouble and expense of seeing the colony with his own eyes._ 47

It was an attitude of Brisbane's that encouraged unplanned and dispersed
settlement and overturned the traditional Shaftesbury principles. Until then it
had been regarded as paramount that the location of settlement be controlled.
Under the Shaftesbury philosophy, the free selection permitted by Brisbane
would have been viewed as a relinquishment of order and control48 Brisbane
however apparently had little fear of distant, widely separated settlements. He

44 Watson, _HRA Vol 11_. p123, Brisbane to Bathurst, (2 September 1823). Heydon, "Brisbane, Sir
Thomas Makdougall (1773-1860)." (n.p)
45 Campbell, "Rights of Common in NSW: A History." p248
History." p243
47 Watson, _HRA Vol 11_. p121, Brisbane to Bathurst, (3 September 1823)
48 Home, _Of Planting and Planning_. p11 & p22
apparently discounted arguments on “the dreadful effect to be anticipated from
dispersion throughout the interior.”

7.2.4 Acres by the Thousands

The findings of Commissioner Bigge formed the background to many of
Brisbane’s decisions. The report indicated a revised philosophy that questioned
the founding principles of the colony, including those of Shaftesbury. Wool from
large pastoral estates was rapidly becoming the staple of the colony’s economy
and Bigge sought to introduce a system based upon what he had observed in
the West Indies. There, wealthy capitalists on large plantations prospered from
the benefits of cheap or slave labour. In NSW rather than convicts working on
government projects Bigge recommended that they be employed by private
enterprise and assigned to pastoralists. Only the worst convicts would be
retained in government service, working in infrastructure gangs.

Land policy had shifted from meeting the concerns of the small emancipist
farmer to the encouragement of investors and wealthy landowners such as the
Macarthur family, who with large land-holdings would be able to employ a great
number of convicts and relieve the government of their care. As part of the
policy, allotments were to be offered by sale and constrained in size only by the
capital available for investment. Under this policy Brisbane presided over an
administration that alienated land parcels of a size that far exceeded any of
those given until that time.

Bigge’s influence and the assumption that larger grants were expected to be
made is evident in Brisbane’s instructions from London. Unlike earlier governors
who had been expected to make relatively small grants of a few hundred acres
maximum, Brisbane was instructed to retain 500 acres between every 1,000

49 Watson, HRA Vol 11. p122, Brisbane to Bathurst, (3 September1823)
50 R. R Madden, Letter to C Holland: January 30, 1834, A Twelve Month Residence in the West
52 Proudfoot, "Town Plans and their Impact on the Settlement Process in Australia." p158
acres granted. Accordingly, Brisbane regularly alienated land in multiples of thousands of acres. Sometimes, however, very large grants were made by Whitehall without any prior consultation with Brisbane.

Many of the larger grants, although formally activated by Brisbane, were not entirely in his control. Macquarie had earlier taken exception to any grants being made in London without his knowledge and had requested that the practice stop. Lord Bathurst had generally respected Macquarie’s request, especially with smaller grants. However Bathurst still chose to exert his authority over Brisbane in some larger grants, generally made to people of influence. The land promised to the Australian Agricultural Company is one such example. Bathurst promised the company one million acres and determined the terms and conditions under which Brisbane was to make the land available.

It became the practice for any person of influence seeking a land grant in NSW to petition Lord Bathurst directly without first consulting the governor. The grantee did not need to be a resident. Bathurst was willing to grant land to absentee owners who simply claimed that they wanted to invest in the colony. The size of the grant was determined according to the amount of capital a purchaser professed to hold. This led some people residing in Britain and with no intention of settling in the colony to speculate in land and obtain a grant for the express purpose of selling it at a profit.

53 Watson, HRA Vol 10., p601 Brisbane’s Instructions, (5 February 1821)
54 See example - ibid. p93 Bathurst to Brisbane, (31 July 1823), p185, Macarthur to Brisbane, (29 November 1823)
55 Ibid. p59, Bathurst to Brisbane, (18 May 1825)
56 Bladen, HNSW Vol 7. p601, Macquarie to Earl Liverpool, (18 October 1811); Watson, HRA Vol 7. p726, Macquarie to Bathurst, (28 June 1813.);
57 See example - ———, HRA Vol 11. pp181-182 & Note 1, Orders for Land Gants, (No Dates)
58 Ibid. p141, Under-Secretary Horton to Brisbane, (20 October 1823)
59 Ibid. p59, Bathurst to Brisbane, (18 May 1825) see also, Damaris Bairstow, A Million Pounds, a Million Acres (Cremorne N.S.W.: Bairstow - Gary Alan, 2003). Introduction.
60 Ibid. p141, Under-Secretary Horton to Brisbane, (20 October 1823)
The policy change from small scale agriculture to that of encouraging capital and the take–up of large tracts of pastoral land, was a move away from the traditional concept of containment. It was also a move away from growth in accordance with any centralized and pre-conceived planning ideals. Brisbane’s original attempt at control by dividing the land into one mile squares, had failed. In its place, land selection devolved into uncontrolled cherry-picking whereby poor lands were bypassed and isolated pockets of better land were occupied. In allowing settlers to select land with no government input, Brisbane in effect had relinquished any planning control over rural land.

7.2.5 Land by Purchase or Free grant

Prior to 1825, the only means by which land could be acquired in NSW was by lease or free grant. In recommending that land also be sold, Bigge suggested it would be a means of gaining revenue and encouraging “men of capital” rather than adventurers. The recommendation resulted in a dual system whereby land was available to settlers by free grant and/or purchase.

The decision to sell land placed an additional demand on survey. Before land could be sold it had to be both accurately measured and identified. On the advice of Surveyor John Oxley, new rules were framed under which land was to be surveyed and then offered at 5/- per acre. In making this recommendation

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61 Roberts, "A Change of Place: illegal movement on the Bathurst frontier.." p101
63 The documents of the day refer to grants being made at no cost and grants being made by purchase. The term free grant is used to distinguish between the two. The 1825 Instructions to Governor Darling includes mention of grants of land made at no cost, and grants of land made by purchase. The older usage appears to reflect the concept of alienating land from the Crown, not in ownership but as a grant of the right enjoy the land “in free and common socage” See Watson, HRA Vol 12. p120 Darling’s Instructions, (3 February 1825)
64 Bigge, "Report of the Commissioner of Inquiry into the State of the Colony of N.S.W." pp163-164. Welsh, Great Southern Land: A New History of Australia. p82. Sales, were also suggested by Macquarie, in 1821. See Watson, HRA Vol 10.. p658, Macquarie to Bathurst, (28 November 1828
Oxley appears to have overestimated his ability to meet the demands that would be placed upon him and his surveyors. Nonetheless in July 1824, Oxley's recommendation was partially accepted, but with a further complication. Rather than a standard price of 5/- per acre, land commissioners were to be appointed to value all of the land.

The already overworked surveyors equipped merely with chains, circumferentor and sight-tables, were unable to respond adequately to the tasks required. Their instruments were only adequate with clear lines of sight and relatively level ground. Their equipment, experience and techniques were grossly inadequate for mapping the colony's rugged terrain. Complaints had already been made on the irregularity of existing lot boundaries and the inability of the survey department to rectify the situation. Measuring the existing grants was described as impossible; additional survey prior to sale was therefore impractical.

In a measure that ignored the plight of the surveyors, Brisbane decreed that all sales had to be preceded by a survey. Since he also required the colonists to first select and identify the land to be purchased, a complicated procedure was introduced. The prospective purchaser first had to apply and obtain a warrant from the governor to seek a suitable site. The warrant allowed the purchaser to select any unallocated land of an agreed size generally up to 9,600 acres anywhere in the colony. After a site was chosen, the Surveyor General, at the purchaser's request, was to measure and identify the land. The land being thus identified, a 10% deposit was required before a certificate of possession was issued. After a period of three years, the full amount became due, otherwise the land could be resumed and the deposit forfeited. After a purchase persons still

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67 Watson, *HRA Vol 11.* p443, Bathurst to Brisbane, (1 January 1825)
68 Ibid. pp435-436, Bathurst to Brisbane, (1 January 1825)
70 Drown, "An Apparatus of Empire." p92
71 Watson, *HRA Vol 11.* p54, Mr. V Jacob to Bathurst, 7 September 1822, p1821, Brisbane to Macquarie, (3 September 1823)
holding sufficient capital could apply for an additional free grant of land equal in
value to twice the capital held. Under this provision, free grants of between 320
and 2,500 acres could be obtained.\textsuperscript{72} The system was overly bureaucratic,
payments could not be made before the survey had been completed and again
the tasks were well beyond the capacity of the survey department.

Because of a lack of survey, prospective purchasers selected and occupied
their land in its anticipation. Since no deposit was required until the land was
surveyed, there was a disincentive in pursuing survey and completing the
transaction.\textsuperscript{73} John Oxley noted with concern that some settlers had paid 5/- per
acre for land while others, without charge, grazed over immense tracts. This he
said had the effect of reducing the value of all land. Further, in the absence of a
secure title there was little incentive to manage the land or make
improvements\textsuperscript{74}

Land that had been previously granted had often not been accurately surveyed
or identified. Under a sales regime, because money was to be exchanged, a
higher burden of accuracy in the identification of land was required. However,
because Brisbane had allowed settlers an almost unfettered choice of location,
a much higher volume of survey and mapping was involved. As a consequence
lengthy delays occurred between selection and survey. Brisbane had thus
relinquished any opportunity to plan and control the expansion of the colony and
amongst the settlers, with respect to land, a virtual free-for-all developed.

\textbf{7.2.6. Bathurst's Solution}

In January 1825, seemingly still failing to recognise the limited capacity of the
colony's surveyors, Lord Bathurst decided to impose his solution to the problem.
In accordance with the Bigge recommendations, Bathurst decreed that the

\textsuperscript{72} Ibid.p332, (Enc. 1) Brisbane to Bathurst (24 July 1824)"Sydney Gazette and New South Wales
Advertiser." p1, (19 May 1825)

\textsuperscript{73} Roberts, \textit{History of Australian Land Settlement 1788-1920}, p 133 & p178;S. H Roberts, "The
Scott (Cambridge: Cambridge Univeristy Press, 1933). p191

\textsuperscript{74} Watson, \textit{HRA Vol 11}. p693, Oxley to Major Owens, (23 May 1825)
entire colony was to be subdivided, planned, charted and valued prior to sale.

A general division of the whole territory of NSW and Van Diemen’s land, in Counties, Hundreds and Parishes is a measure of the highest importance and which must precede every other plan...Mr. Commissioner Bigge has indeed recommended such distribution of territory...The next object of attainment is that of making a general valuation of the land throughout the colony. 75

The solution was similar to Brisbane’s already failed proposal; but it added extra requirements. As well as surveying and valuing the entire colony, Bathurst required that major planning be undertaken. He decreed that starting in settled regions, areas were to be set aside for public roads, villages, health and recreation, as well as reserving any waterfront land that might be required for quays and landing places. It was also proposed that in each county an estate equal to one seventh of the total area was to be identified and invested in a corporation that would manage the land for the church and education. He further instructed that a Commissioner of Survey and Valuation be appointed to oversee the process. 76 Charts of each Parish were to be prepared and the whole divided into numbered, one square mile lots. 77 All sales would be made with reference to the charts that were to be made publicly available. No person was to be allowed to purchase or hold more than 9,600 acres of land. But, within that restriction land would still be available by free grant to any person with capital and capable of spending at least one-quarter of the land’s value on improvements within seven years. 78

Without any understanding that the colony was becoming pastorally based, Bathurst declared that “the great obstacle to the extension of agriculture” was land speculation and persons holding large areas of land in an uncleared state. 79 He asserted that it was these large areas of speculative land that were causing the dispersion of “more enterprising colonists.” It was essential therefore, in his view, that the possession or command of capital be a

75 Ibid. pp434-439, Bathurst to Brisbane, (1 January 1825)
76 Ibid. pp434-439, Bathurst to Brisbane, (1 January 1825)
77 Kass, Sails to Satellites. p15
78 Watson, HRA Vol 11. pp442, Bathurst to Brisbane, (1 January 1825
79 Ibid. p439, Bathurst to Brisbane, (1 January 1825)
necessary qualification for persons acquiring land. He then decreed that once land had been valued, the valuation would be the upset price (the reserve price) and land in quantities from three square miles upwards (1920 acres) would be sold by auction to the highest bidder. To ensure only men of capital purchased land, smaller rural lots were not to be offered for sale.

The instructions of Bathurst were described by Oppenheimer as impractical but, for NSW, “probably the most important document concerning land policy” until then received.\textsuperscript{80} It was the first comprehensive policy on the sale of land issued from London, but on the other hand it demonstrated Bathurst’s failure to fully comprehend the colony’s needs and resources.\textsuperscript{81} The vastness of the areas to be surveyed should have indicated the impossibility of the task he was demanding. The Surveyor General with three surveyors was being asked to map the entire colony from Cape York to VDL inclusive and to divide it into one mile squares, irrespective of the terrain. It was an absurd demand.

Although the survey department’s complement was increased marginally, the charting of the counties remained a task well beyond its survey capacity. By the time of Brisbane’s departure in 1825 the survey department had increased to only four surveyors and seven assistant surveyors, with four additional surveyors stationed in VDL.\textsuperscript{82} As a result, Surveyor Oxley could hardly succeed in the huge task.\textsuperscript{83} Oxley’s biographer reported that in an attempt to implement the scheme, Oxley was “handicapped by the lack of sufficiently numerous trained staff.”\textsuperscript{84} Even the settled inner counties were not properly mapped until 1834 and this was undertaken using the advanced survey and mapping techniques introduced by a new Surveyor General, Thomas Mitchell.\textsuperscript{85}

\textsuperscript{80} Ibid. pp454-456, Bathurst to Brisbane, (1 January 1825). Oppenheimer, "Surveys and Settlement : N.S.W. 1825-1836." p25
\textsuperscript{81} ———, "Surveys and Settlement : N.S.W. 1825-1836." pp29-30
\textsuperscript{83} Spooner, "On Squatters, Settlers and Early Surveyors." p59
\textsuperscript{84} Dunlop, \textit{John Joseph Molesworth William Oxley}, vol. 2.
The vastness of the colony's area was apparently incomprehensible to the London based bureaucrats. The difficulty of the terrain and lack of overall survey control made it impossible for proper charts or plans to be prepared. As a consequence the governor was unable to impose effective control or direct the colony's expansion. Neither Brisbane nor Bathurst's solutions were practical and the ensuing uncontrolled occupation of large widely spaced tracts placed a strain, not only on the surveyors but, on all other government services.

7.2.7. A Failure to Plan

Despite the demands placed upon him by the rapid expansion of the colony, Brisbane was credited by Proudfoot as “laying the groundwork for a subsequent burst of town planning.”86 This appears to be an overstated claim and there is little evidence of Brisbane as a town planner; any planning he did related mainly to rural land. Nonetheless he attempted to more clearly define the street alignments of Parramatta and Newcastle and in 1824, he issued a proclamation that all future public roads were to be 80 feet (24.4m) wide with an 8 foot (2.4m) wide footpath on either side.87 Because of the frequent encroachment of buildings into streets, residents were instructed to take these measurements into account when erecting fences.88

In the case of Newcastle, an undated town plan, believed to have been prepared by Henry Dangar in 1823, shows a township based upon a regular east west-oriented grid, consisting of 232 regularly shaped building allotments, with a reserve for a church. The plan, prepared for Newcastle when it was no longer a penal colony but a place for “emigrants, mechanics and settlers,” is believed to be Dangar’s second attempt. His first was rejected as unsuitable by Governor Brisbane. The town at the time was reported to have 200 residents and the design was based as far as practicable on the existing street pattern.89 (Fig 7.1).

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87 Watson, HRA Vol 11. p121, Brisbane to Bathurst, (3 September 1823)
88 "Sydney Gazette and New South Wales Advertiser."p1, Public Notice, (5 November 1824)
89 Henry Dangar, "N.1. 1.335 - Survey Record No.31," in AO Map 4375 (Newcastle) (Kingswood: NSW State Archives, Unknown date). E.C Rowland, "The Life and Times of Henry Dangar,"
Fig 7.1. The Design of Newcastle Prepared by Henry Dangar.
Source: NSW State Archives S.R. 4375 S SG N1 - 3.335

Governor Brisbane established new places of secondary punishment in more remote or satellite locations. He founded two additional settlements and re-established a third. The first, at Moreton Bay (to become Brisbane), had been examined by surveyor John Oxley in November and December 1823.90 The governor on receiving Oxley’s recommendation advised Lord Bathurst of his intention to found a “colony” there.91 The second settlement was at Macquarie Harbour on the west coast of VDL.92 This port had earlier been described by a

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90 Watson, HRA Vol 11. p219, Brisbane to Bathurst, (3 February 1824)
91 Ibid. p409, Brisbane to Bathurst, (8 November 1824)
92 Ibid. p480. Bathurst to Brisbane . (22 January 1825)
Captain James Kelly, as “a bar harbour only for vessels of light depth.”\(^{93}\) It proved a poor location for penal purposes and was eventually abandoned. The third settlement, the re-establishment of Norfolk Island, was related to the closure of the gaol at Port Macquarie.\(^{94}\) Although Brisbane is credited with creating the two new settlements, only the one at Moreton Bay was a success and his poor choice of Macquarie Harbour does not testify to any specific town planning skills.

Under Lord Bathurst’s direction in 1824, an attempt was made to form a colony on the continent’s northern coast at Melville Island. This attempt was planned and organized from Britain and was ill-fated. Like other choices of sites made from Britain, the location had been selected from a map, without deeming it necessary to undertake physical exploration.\(^{95}\) Lord Bathurst’s principal knowledge of the area was a coastline survey made during Phillip Gidley King’s return voyage to England in 1806. The Melville Island location was chosen only on a strategic basis, namely to secure the colony’s northern coast and the trade route to Java, but that region was also seen as a location for future settlements. In describing Melville Island and others in the vicinity, Bathurst claimed: “They appear...to be well adapted to planting settlements on some of their shores.” He also held that merchants may: “be desirous of following the expedition from Sydney.”\(^{96}\) Bathurst’s optimism was unfounded and the settlement failed. It was reduced to a small post only two years later and by 1829 had been completely abandoned.\(^{97}\)

7.2.8. Administrative Reform

Administrative reforms introduced at the end of Brisbane’s tenure reduced the autocratic power of the governors and would ultimately have an impact on land


\(^{95}\) Ibid. p338, Brisbane to Bathurst, (12 August 1824)

\(^{96}\) Ibid. pp227-228, Bathurst to Brisbane, (17 February 1824)

issues. The reforms commenced a process of self-government, which eventually resulted in land policy being taken from the jurisdiction of the governors. Perusal of the available records indicates that throughout the entire colonial period, a major source of tension between the governors and the colonists was land and land related disputes. 98 The tensions gave rise to a demand for governmental reforms, essentially a reduction of a governor’s power. Land reforms became a dominant feature of colonial correspondence and were championed by the colony’s newspapers. 99

Objections to the autocratic power that rested with the governor had been frequently raised in Britain, mainly on behalf of the wealthy NSW landowners. Such power it was argued, might have been acceptable when NSW was largely a penal colony, but they impinged on the rights of the growing numbers of free immigrants and native born colonists. It was claimed in a speech in the House of Commons in 1819, that the absolute power of the governor was placing the prosperity of the colony and its inhabitants at risk. In the speech the governor’s absolute authority was described as “ignominious.” The question was asked:

[Why] Lord Bathurst should put 20,000 people and their property under the unlimited control of one individual without any council to guide him? 100

It was claimed that, under the laws of Britain, the governors were not legally entitled to regulate the actions of free men. 101 Free settlers in NSW it was argued had the same rights as if residing in England and many of the governor’s decrees, should only be initiated by Parliament. Britons it was asserted, did not lose their inherent rights by travelling to a colony.

*When Englishmen discovered a country either uninhabited or inhabited only by a handful of people, like New South Wales, these Englishmen*
carried out with them the law of England. The common law was the birthright of every Englishman.\textsuperscript{102}

The Parliamentary debates eventually produced major changes to the colony’s governance.\textsuperscript{103} The first was the establishment of a Legislative Council to advise the governor. A second was a planned division of NSW into separate colonies. In the first initiative, a Legislative Council was authorised by Parliament under a Royal Warrant.\textsuperscript{104} Under the warrant’s provisions the governor was empowered to act with the advice of the Council and make laws “for the peace, welfare and good government of the colony.”\textsuperscript{105} The warrant pro tempore nominated five of the colony’s principal officials to sit as Council members until the governor could nominate ten merchants or landholders for the positions.\textsuperscript{106} Brisbane put forward his ten names for the Council in November 1824.\textsuperscript{107} A second body, an Executive Council would also be put in place, but as with Brisbane’s nominees, this did not occur until after Brisbane had returned to England.\textsuperscript{108}

The second administrative initiative, although again not implemented during Brisbane’s tenure, was a move towards forming two separate colonies. NSW and VDL.\textsuperscript{109} An Act allowing this division was passed by the British Parliament in August 1823 but, as a temporary measure, a form of transition was implemented. During this period, laws specifically for VDL were drafted by its Lieutenant-Governor and forwarded to the NSW governor who, providing the laws were “not repugnant to English law,” would be obliged “to promote their enactment.”\textsuperscript{110}

\begin{footnotesize}
\begin{itemize}
\item[\textsuperscript{102}] Hansard, "Parliamentary Debates (UK).” p1138, Mr Brougham MP, (23 March 1819)
\item[\textsuperscript{103}] Tim Castle, "Time To Reflect: Earl Bathurst and the origins of the NSW Executive Council.,” Australian Colonial History 16(2014). p73
\item[\textsuperscript{104}] NSW Act 1823- 4, Geo. IV. c96 – This Act also created a Supreme Court and the Office of Chief Justice.
\item[\textsuperscript{105}] NSW Act 1823- 4, Geo. IV. c96
\item[\textsuperscript{106}] Watson, HRA Vol 11. p195,Bathurst to Brisbane, (18 January 1824)
\item[\textsuperscript{107}] Ibid.p406, Brisbane to Bathurst, (1 November 1824)
\item[\textsuperscript{108}] Castle, "Time To Reflect: Earl Bathurst and the origins of the NSW Executive Council..” p73
\item[\textsuperscript{109}] p109, Bathurst To Brisbane, (28 August 1823)
\item[\textsuperscript{110}] Watson, HRA Vol 11. p110, Bathurst to Brisbane, (28 August 1823)
\end{itemize}
\end{footnotesize}
While the separation did not solve any problems for mainland NSW, it at least reduced the governor’s area of concern and provided the VDL settlers with a form of local administration. During the period of transition, the Lieutenant-Governor exercised an exclusive prerogative in deciding land claims. He was empowered to immediately authorise the occupation of crown land before forwarding his decision to the governor. The governor was then expected to promulgate the grant with the Seal of the Colony. If the governor had reason to believe the grant “improvident,” he was authorised to suspend its formalisation and refer the matter to London for adjudication.\textsuperscript{111} As part of the arrangement, the NSW Surveyor General was relieved of any responsibility for surveys in VDL. Survey for the territory from then rested solely with a VDL-based deputy surveyor.\textsuperscript{112}

Receipt of the advice from Lord Bathurst with regard to the separation of the territories was not acknowledged by Brisbane until 1 November 1824. This was almost the same time as Bathurst was writing Brisbane’s letter of recall. Governor Brisbane chose to remain in the colony until after the expected time of arrival of Ralph Darling in November 1825.\textsuperscript{113} This he stated was from considerations of “public expediency tho’ at some expense to private convenience.”\textsuperscript{114} He departed the colony on 1 December 1825, just days before Darling’s arrival in Sydney. Darling arrived on 18 December after delaying his arrival by a visit to VDL. Correspondence indicates that Brisbane on his departure was unaware of Darling’s presence in the colony.\textsuperscript{115}

Although it was claimed that Brisbane’s tenure heralded a “burst of town planning,” the records indicate he made little contribution. His official land title procedures evolved into ones very similar to the maligned informal one of

\begin{itemize}
  \item \textsuperscript{111} Ibid. pp110-111, Bathurst to Brisbane, (28 August 1823)
  \item \textsuperscript{112} Ibid. p111, Bathurst to Brisbane, (28 August 1823)
  \item \textsuperscript{113} Ibid. p589, Brisbane to Bathurst (15 May 1825)
  \item \textsuperscript{114} Ibid. p429, Bathurst to Brisbane, (28 December 1824), p618, Brisbane to Bathurst, (22 June 1825)
  \item \textsuperscript{115} Ibid.p902, Brisbane to Bathurst, (18 November 1825)
\end{itemize}
Macquarie and although his tenure saw the introduction of land sales, this was a reform that had been decreed by Whitehall and the sales were not widely introduced until he had departed the colony. Survey, always a problem for his predecessors, became a major bottleneck to the sale of land and thwarted Brisbane’s attempts upgrade the system of land alienation.

7.2.9. Settled Areas and Spatial Growth at end of Brisbane’s Tenure

The extent of the settlement and land alienated at the end of Brisbane’s governorship is tabulated in Table 7.1.

Table 7.1. Main Localities Settled and Surveyor’s Plans Registered at the end of Brisbane’s governorship

<table>
<thead>
<tr>
<th>Locality</th>
<th>Locality</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argyle (Southern Tablelands)</td>
<td>Kurrajong</td>
</tr>
<tr>
<td>Bathurst</td>
<td>Lake Bathurst (Southern T’lands)</td>
</tr>
<tr>
<td>Bong Bong</td>
<td>Lake George</td>
</tr>
<tr>
<td>Colo</td>
<td>Port Stephens</td>
</tr>
<tr>
<td>County of Cumberland</td>
<td>Springwood</td>
</tr>
<tr>
<td>Five Islands (Illawarra)</td>
<td>Wallerawang</td>
</tr>
<tr>
<td>Jervis Bay</td>
<td></td>
</tr>
<tr>
<td>Others Remote and External</td>
<td></td>
</tr>
<tr>
<td>Norfolk Island</td>
<td>George Town</td>
</tr>
<tr>
<td>Newcastle</td>
<td>New Town (nr. Hobart)</td>
</tr>
<tr>
<td>Launceston</td>
<td>Port Macquarie</td>
</tr>
<tr>
<td>New Norfolk</td>
<td>Macquarie Harbour</td>
</tr>
<tr>
<td>Hobart</td>
<td>Brisbane</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Melville Island (Fort Dundas)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Acreage Alienated</strong></td>
</tr>
<tr>
<td>Arthur Phillip 1788 - 1792</td>
</tr>
<tr>
<td>Francis Grose 1792- 1794</td>
</tr>
<tr>
<td>William Paterson 1794- 1795</td>
</tr>
<tr>
<td>John Hunter 1795 -1800</td>
</tr>
<tr>
<td>Phillip Gidley King 1800-1806</td>
</tr>
<tr>
<td>William Bligh 1806 -1808</td>
</tr>
<tr>
<td>George Johnston 1808</td>
</tr>
<tr>
<td>Joseph Foveaux 1800-1809</td>
</tr>
<tr>
<td>William Paterson 1809 -1810</td>
</tr>
<tr>
<td>Lachlan Macquarie 1810-1821</td>
</tr>
<tr>
<td>Thomas Brisbane 1821-1825</td>
</tr>
</tbody>
</table>
7.3. Of Strict Militaristic Simplicity: Ralph Darling

Nothing is more destructive of respect for the government and the law of the land than the passing of laws that cannot be enforced.

Albert Einstein - 1921

7.3.1. Ralph Darling (Governor 1825-1831)

Brisbane’s replacement Ralph Darling, at the age of fifty-three; arrived in Sydney on 18\textsuperscript{th} December 1825. He held a dual appointment as governor of NSW and of VDL. The latter had recently been excised from NSW and formed a separate jurisdiction.\textsuperscript{118}

Darling, who held the rank of Lieutenant General, had previously occupied the combined post of senior military officer and governor of Mauritius. Unlike Brisbane, Darling was not from an aristocratic family. He was nonetheless well regarded within the upper echelons of the military and had achieved high military rank.\textsuperscript{119} He has been described as a strict disciplinarian whose progression from the lower commissioned ranks imbued him not only with implicit obedience to orders but with an expectation that his own commands would similarly be obeyed. He believed in a strict adherence to regulations and expected unquestioning allegiance from his subordinates.\textsuperscript{120}

Darling’s instructions introduced a change in the colony’s administrative and legal processes. As well as having an appointed Legislative Council, Darling was required to establish an Executive Council comprising senior civil and military officers to advise him on governing the colony.\textsuperscript{121} With the advice of the Executive and Legislative Councils laws could be promulgated locally with

\textsuperscript{117} Albert Einstein, \textit{Ideas and Opinions} (1921), vol. Reprint (New York: Three Rivers Press, 1982).

\textsuperscript{118} “The Hobart Town Courier.”, \textit{Proclamation}, (17 December 1825); Watson, \textit{HRA Vol 12}. p(viii).

\textsuperscript{119} Fletcher, \textit{Ralph Darling, A Governor Malignied}. p23

\textsuperscript{120} Douglas Pike, ”Darling, Sir Ralph (1771-1858),” in \textit{Australian Dictionary of Biography}, ed. National Centre for Biography (Melbourne: Australian National University, 1966). pp 282-286

\textsuperscript{121} The officers were, the senior military officer, the Chief Justice, The Archdeacon and the Colonial Secretary. Watson, \textit{HRA Vol 12.}, pp108-110, Darling’s Instructions, (17 July 1825)
only those of “an unusual or extraordinary nature” to be sent for “Royal Approval.” Laws sent to London would be allowed or disallowed in entirety with no provision for their amendment. Tim Castle held that with the new legislative bodies Bathurst intended a “degree of power sharing, which formed a turning point in the colony’s administration.” It was a positive step towards local control. It gave the colony greater autonomy and reduced the autocratic power of the governor. Under the instructions Darling was required to consult the Executive “in all things” and act with their concurrence and advice. Nonetheless to some colonists, the measure fell far short of their demands. The governor had the right of veto and also nominated both levels of council members.

The solutions imposed from Britain did not always meet the colony’s needs. The Colonial Secretary responded to problems assessed from correspondence received from a number of sources, including those critical of the governor. At times conflicting and inaccurate information was received from the governors themselves. Darling in common with other newly arrived governors, reported on the faults of his predecessor and believed that it was a lack of ability, not local conditions, that had been responsible for any difficulties. King had complained about the state of the colony left by Hunter. Bligh had been critical of King, and Macquarie understandably was unhappy with the colony as he found it after Bligh’s overthrow. Brisbane in turn had been critical of the unexecuted land grants left by Macquarie, and Darling, in an early dispatch, advised Lord Bathurst of the poor state of government he had inherited from Brisbane:

_I should state to your Lordship... the total disorganisation of the Departments and indeed every branch of Government, when I assumed_
Darling found that, as with his predecessors, rural land was invariably at the forefront of the issues that had to be faced and occupied much of his time. Fletcher saw the amount of attention Darling devoted to land as “an index of the growing importance” of the rural sector to NSW’s growth. While Darling initially believed he held the answers, his leadership was one of controversy. When he was eventually replaced the reason given was “misunderstandings and dissentions [sic]” that had occurred during his time in office. In the Historical Records of Australia, Watson equated Darling’s efforts to the failed attempts of Bligh to impose controls and described Darling as fundamentally unsuited for the position of governor. He found that Darling’s tenure had formed “a stormy epoch in the history of the colony.” Darling himself later lamented his lack of success, particularly in the control of land, but remarked:

No one can form a correct judgement of this country, (I will add without fear of contradiction, or the difficulties of its government), who is not on the spot.

And

The situation of a governor, actuated by conscientious motives is perilous indeed...I had persuad[ed] myself that the faithful discharge of my duties would have afforded me sufficient protection.

The importance of land alienation to the Colonial Office can be judged in the context of the weight placed upon land in Darling’s instructions. As Stephen Roberts noted, over two thirds of the written document related to land issues. Even with the ability to instigate local laws and with the assistance of an Executive Council, Darling found he was unable to comply with many of his instructions. He came to realize that it was not a lack of advice, nor the inability

127 Watson, HRA Vol 12. p267, Darling to Bathurst, (5 May 1826)
128 Fletcher, Ralph Darling, A Governor Maligned. p158
129 Watson, HRA Vol 12. p(ix), Introduction
131 ———, HRA Vol 16.
to make laws that had thwarted the previous governors, but the lack of power to enforce their decrees and regulations.\textsuperscript{133} This weakness was particularly pronounced in relation to land and here Darling found himself in an impossible situation. Faced with “the unlimited extent of un-granted land,” he was required to adjudicate between the conflicting demands of the colonists for large scale grazing and those of Lord Bathurst who still envisaged an agricultural base for the colony.\textsuperscript{134} As a consequence Darling’s governorship has been characterised as one of anomalies and compromise, with difficult choices made between opposite evils.\textsuperscript{135}

The powers of the governor to rule by decree, were further reduced by an 1828 Act of the British Parliament. Under the Act the colony was formally endowed with all laws and statutes then in force within the “Realm of England.” The laws received included those of real property and while there had been little doubt that the laws of England had already applied, the new Act removed any uncertainty. It subjected the decrees of the governor to the possibility of legal challenge.\textsuperscript{136} The adoption of British property law strengthened the rights of the freehold property owner and introduced the long standing British common law traditions of the landlord and tenant. It also introduced the right of adverse possession whereby ownership could be claimed by long term occupation; a matter that was to trouble Darling’s successor Richard Bourke.\textsuperscript{137}

\subsection*{7.3.2. Establishing a Strategic Presence}

Although after the defeat of Napoleon in 1815, Europe was experiencing a period of relative peace, Britain continued to fear that a foreign power would attempt to claim an unoccupied portion the Australian coastline.\textsuperscript{138} Any such occupation, it was thought, had the potential to threaten trade routes and as

\begin{itemize}
\item \textsuperscript{133} Kercher, "Informal land Titles." p607
\item \textsuperscript{134} Fletcher, \textit{Ralph Darling, A Governor Maligned}. p159
\item \textsuperscript{135} Jones, "Colonial Republicanism: Re-examining the Impact of Civic Republican Ideology in Pre-constitution NSW." p137
\item \textsuperscript{136} Campbell, "Rights of Common in NSW: A History." p243
\item \textsuperscript{137} Burns, "Adverse Possession and Title by Registration Systems in Australia and England." p775
\end{itemize}
expressed by Colonial Secretary, Viscount Goderich, become an “inconvenience at time of war.” Thus there was a perceived need within the Colonial Office to establish a British presence on hitherto unsettled parts of the coastline. This policy increased the pressure to extend the territory occupied by the NSW colonists.

To further circumvent any foreign threat, a strategic decision was made by the Colonial Office to clearly identify the entire continent as a British possession. This was to be accomplished by a series of small settlements as outposts located at points around the coastline of the continent. In determining the sites for the settlements, the British authorities appear to have viewed Australia as though it were a cognate of the English countryside with reasonably homogenous topography, consistent soils and stable climatic conditions. After more than two decades of exploration and colonization, officials still had little knowledge of the unique Australian conditions. The British bureaucrats failed to appreciate the need for ‘on-ground’ investigation and planning. Rather they assumed almost anywhere would be equally suitable for these strategic settlements. Accordingly they used little more than a name on a naval chart to inform their decisions.

Darling suggested an alternative to the new settlements. He noted that under his commission he held authority only over the eastern part of the continent. He claimed that this limitation would create difficulties in defending Britain’s indisputable right to the entire landmass. This applied particularly along on the western coastline over which he exercised no authority. Darling sought an amended Commission, “describing the whole territory as within this [his]

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140 Ibid. p550, Darling to Goderich, (11 October 1827), p870, note 127.
141 Fletcher, Ralph Darling, A Governor Maligned. pp131-132
142 Ibid. p33
143 Watson, HRA Vol 13. p550, Darling to Goderich, (13 October 1827)
144 Ibid.p587, Darling to Goderich, (1 November 1827)
145 Fletcher, Ralph Darling, A Governor Maligned. pp132-137
Government."\(^{146}\) If his jurisdiction were then made widely known, he believed it would act as a deterrent to a foreign power, and “might set the matter at rest.”\(^{147}\) The British Government however decided to establish outposts as a more prominent and material sign of their claim. Three strategically located establishments along the unsettled areas of coastline were deemed to be sufficient.\(^{148}\) The sites eventually nominated were Port Phillip on the south east coast of the continent, Shark Bay on the south west and another outpost at Melville Island on the northern coastline.

The folly of attempting to establish self-sustaining settlements at sites chosen for purely strategic reasons soon became clear. It might have been hoped that having learned from the past this could have been avoided. Although the London administration may have been swayed by strategic motives, the lack of proper planning and the nomination of three unexplored locations, demonstrated the arrogance that had plagued a number of the earlier governors. It was a phenomenon that had been first demonstrated in the 1787 decision of Lord Sydney to direct Arthur Phillip to settle at Botany Bay without allowing time to explore other locations. As with Botany Bay, the remote designation of the sites and lack of any local planning resulted in their initial failure.

The selection of Melville Island and Shark Bay went against a report prepared by Captain James Stirling who, with knowledge of both sites recommended an alternative settlement on the Swan River.\(^{149}\) The lack of credence put on Stirling’s report highlights the disdain that was placed on advice from the colony, but also indicates that there were some voices such as Stirling’s counselling of rational and empirically grounded decision making.

\(^{146}\) Watson, *HRA Vol 12*, p700, Darling to Bathurst, (24 November 1826)
\(^{147}\) Ibid. p700, Darling to Bathurst, (24 November 1826)
It was not until 1829 with the colonisation of Western Australia that Stirling’s assessment would be proven correct. At that time possession of the whole of the western coast of New Holland was claimed during a ceremony establishing the Swan River colony. While not an immediate success, Swan River ultimately became the thriving city of Perth.

Also ignoring David Collins’ earlier rejection of Port Phillip, Lord Bathurst decreed that another attempt should be made to resettle either there, or at the equally unexplored Western Port. Further, there was ambiguity in his instructions. Under an initial instruction the governor was given the option of either sending the Surveyor General to make a survey, or immediately embarking a contingent of convicts and guards to the location. In a second instruction of the same date, Bathurst referred to his first letter as being a direction to “immediately prepare for a settlement at Western Port.” At the same time Darling was ordered to send an expedition to “Shark’s Bay on the western side of New Holland,” so “that possession may be gained of the port.”

Darling’s instructions were further modified to also include a survey of the country around King George’s Sound and in an order that further demonstrated a lack of appreciation of the colony’s problems and disregarded its problems with survey, the surveyor general was required to accompany the expedition.

Unfortunately for the administration in London, Shark Bay was simply a point on a map on a relatively unknown portion of the coast. It had been visited by Dirk Hartog in 1616 and named by William Dampier in 1699. Its significance to Britain may have arisen from an expedition of 1772 by Frenchman de St. Alouarn who had landed in the vicinity of Shark Bay and claimed the entire

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152 Ibid. p194, Bathurst to Darling, (1 March 1826), p218, Bathurst to Darling, (11 March 1826)
continent of New Holland in the name of the King of France. A French interest in the area had been further demonstrated by a French visit as part of the Nicolas Baudin expedition of 1818.153

A small colony was eventually established on King George’s Sound. As earlier predicted by Stirling it struggled to survive, but was not abandoned. Following the establishment by Stirling of a settlement on the Swan River in 1829 and his appointment as governor of an independent Colony of Western Australia, the King George’s Sound outpost was removed from the jurisdiction of NSW.154

It became apparent after only one year that Melville Island was an unsuitable choice. The soil was poor and climate was unhealthy for Europeans who were plagued by mosquitoes and other insects. A constant vigil was required against attack by natives and the expected trade did not eventuate as most trading ships avoided the area.155 The site was referred to by the settlers as ill-chosen and “not likely to answer the object for which it was formed.”156 Even in the very early stages it was being viewed as an unsuccessful venture.157 However, as an indication that the lessons on a need for prior investigation and planning had still not been learnt, Bathurst’s response was to dictate that a new settlement should be trialled on the mainland to the east of the current settlement.158

7.3.3. Land Policy

Planning did not only apply to the laying out of towns but also the regional

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156 Watson, HRA Vol 12. p226, John Begbie to Under-Secretary Hay, (18 May 1826) N.B. Begbie signed as Secretary to the East India Trade Committee.

157 Ibid. p224, Bathurst to Darling, (7 April 1826)

158 Ibid. p224, Bathurst to Darling, (7 April 1826)
growth of a colony. The rapid spatial expansion of the colony that had occurred under Macquarie and Brisbane had been observed with some concern at Whitehall and it was thought that it should be curbed. The British administration, operating under the assumption that they were still establishing a contained agriculturally based colony, instructed Darling to prohibit the occupation of lands “that lie beyond the range of any actual settlements.” The instructions foresaw an extension into unsettled counties, but only as cultivation “may progressively advance.” To Darling, without the resources to police the outer regions, the issue was a matter of regulation and control. He issued a series of proclamations which were unenforceable and in the main ignored.

Governor Brisbane had introduced a system whereby land was alienated as a free grant or by purchase. This measure was initially continued under Darling who had the discretion to alienate land by either means. There was a requirement however, that rural land only be available as a free grant if it remained unsold after first being offered for sale. This system meant that farmers with small amounts of capital were entitled to a grant, but could obtain land only after it had been rejected by others. Moreover, the uncertainty introduced by the policy acted to discourage a desired objective, the encouragement of migration from Britain and was deemed as not serving the colony’s interests. On Darling’s representation, the requirement to first offer land for sale was removed.

Free grants were offered to settlers with limited amounts of capital, enough to improve the land but insufficient for an initial purchase. The decision as to whether land had to be purchased or was to be a free grant rested solely with the governor. The intention was that in rural areas free grants be of a minimum

159 Ibid. p116, Darling’s Instructions, (17 July 1825)
160 Ibid. p116, Darling’s Instructions, (17 July 1825)
161 Ibid. p120 Darling’s Instructions, (17 July 1825). - The Reference to “free grants” is used to distinguishes the grant from a purchase, Darling’s instructions refer to “grants by purchase”
162 Ibid. p122, Darling’s Instructions, (17 July 1825)
163 Ibid. p416, Land Board to Darling, (22 July 1826)
164 Ibid. p386, Darling to Bathurst, (22 July 1826)
of 320 acres and up to 2560 acres or four square miles.\footnote{Ibid. p121 & p123, Darling’s Instructions, (17 July 1825)} The minimum purchase was to be 1,920 acres or three square miles.\footnote{Ibid. p121 & p123, Darling’s Instructions, (17 July 1825) - This appears to be inconsistent, and no explanation is given except that it is at the discretion of the governor. Further persons applying for purchase appear to also have been the beneficiary of a free grant.}

An insight into the society of the day is presented by a special class of grantee, the bride. Darling instigated a policy of granting of land as a marriage portion or dowry to “daughters of men of respectability,” as a means of promoting matrimony. Women on their marriage, could request up to two square miles of land as a free grant. According to Darling, there were a number of large families in the colony with “highly respectable daughters” but no property. Young settlers, he said, will be induced to marry because they would gain land along with a wife.\footnote{Fredk Watson, ed., vol. 14ibid. (Library Committee of the Commonwealth Parliament, 1922). p385, Darling to Huskisson, (4 September 1825)}

\textit{...there are also many young settlers, who declare their inability to maintain a wife who has no means of her own...I should further propose confining these grants to such young ladies as marry settlers permanently resident in the colony and not extend it to those who unite themselves to other individuals.}\footnote{Ibid. p385, Darling to Huskisson, (4 September 1825)}

The marriage portion was unique to Darling’s tenure and suggested some magnanimity on the part of the governor. The practice ended with the introduction of the Ripon regulations of 1831.\footnote{———, \textit{HRA Vol 16}. p22, Goderich to Darling, (9 January 1831)}

For a general immigrant seeking a free grant, the quantity of land was based upon the capital held and the ability to expend one half of the land’s value on improvements. Under Darling’s administration, the responsibility for advising and assessing an application for a free grant rested with an Advisory Board comprising three of Darling’s senior officials.\footnote{“Sydney Gazette and New South Wales Advertiser.”p1 Government Order No 5, (12 January 1826)} The Board in advising on land matters recognized the delays in survey and sought to permit temporary occupation, as well as transferring of some of the responsibility for land

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\footnote{Ibid. p121 & p123, Darling’s Instructions, (17 July 1825)}
identification onto the purchaser.

The Board suggested that a prospective settler be first required to apply for approval to select an agreed quantity of land. On a desired parcel being selected, a second application, which was to include an accurate description of the land and its locality, was to be made. On success of the latter the purchaser was to be given permission to occupy the land while awaiting survey.\footnote{Watson, *HRA Vol 12*, p415, Land Board to Darling, (22 July 1826)} Darling incorporated the Board’s recommendations in regulations issued in September 1826, but in doing so introduced an overly bureaucratic system that was far from practicable.\footnote{Ibid. p536 & p537, Darling to Bathurst, (5 September 1826); ”Sydney Gazette and New South Wales Advertiser.” p1, Government Order, (6 September 1826); ”The Australian.”, p1, (13 September 1826). Fletcher, *Ralph Darling, A Governor Maligned*. p148}

Under Darling’s new regulations, a person seeking land had to first make an application to the governor. On the governor satisfying himself to the suitability of the purchaser’s character, a letter was to be provided by the Colonial Secretary to the Land Board. The Board was then tasked to investigate the amount of capital the purchaser had available and report to the governor on an appropriate quantity of land. The Colonial Secretary was then required to furnish the Surveyor General with a letter advising of the agreed acreage. The Surveyor General was then to issue an *Authority to Search* and on the payment of a fee of 2/6d the purchaser was permitted to select a parcel of land. Following the selection, the purchaser was required to “apprise the Surveyor General” who was to report to the governor twice monthly on all selections made. If approved by the governor, the purchaser would then be permitted to occupy the land while waiting survey and valuation. To meet a requirement that all land be offered on the open market, once the land was surveyed and valued, a sealed tender was required using the valuation as the minimum price. Other settlers were allowed to compete for the same parcel of land but a regulation prohibited the purchase of additional land if an individual already held more than
9,600 acres.\textsuperscript{173}

After only two months of operation Darling accepted that his system was unworkable and it was suspended.\textsuperscript{174} Darling’s next solution was equally unsatisfactory. He declared that for the time being, no further land was to be alienated.\textsuperscript{175} Colonists already in occupation and those in transit with a British authority to select land, would be permitted to occupy their selections. For those within the colony the suspension was almost meaningless. Pastoralists and squatters were already occupying vast areas of land without legal entitlement. To them, the “feeble proclamations” of the governor seemed very remote.\textsuperscript{176}

Despite Darling’s intentions, little had in fact changed.\textsuperscript{177} As with many of his predecessors he found that the government’s inability to plan for and control the colony’s expansion did not prevent it happening. Unworkable or unenforceable proclamations were ignored and expansion occurred, but it was uncoordinated and in the hands of squatters and pastoralists who, with or without official sanction, moved out from the fringes and occupied any crown land that suited their needs.\textsuperscript{178}

It was not only on the outer fringes that Darling had found he lacked control. Even in the closer regions he had no knowledge of who owned what land, or the size of the parcels held. Despite a number of attempts dating as far back as Governor Hunter in 1795, the colony still had no adequate or workable register of land ownership. Without information on land holdings Darling’s attempts at land control and establishing the extent of land held and by whom, were

\textsuperscript{173}Sydney Gazette and New South Wales Advertiser.” p1 Regulations for the Granting or sale of Land, (6 September 1826). Jeans, “The impress of central authority upon the landscape: south eastern Australia 1788-1850.” p8

\textsuperscript{174}Sydney Gazette and New South Wales Advertiser.” p1 General Order No 41, (11 November 1826) Watson, \textit{HRA Vol 13}. p220 Bathurst to Darling, (2 April 1827)

\textsuperscript{175} “Sydney Gazette and New South Wales Advertiser.” p1 Government Order No.41, (11 November 1826)

\textsuperscript{176} Roberts, \textit{The Squatting Age in Australia}. pp187-199

\textsuperscript{177} Watson, \textit{HRA Vol 13}. p5, Darling to Bathurst, (3 January 1827) – a rate of £1 per for every one-hundred acres was charge for occupation without a grant.

\textsuperscript{178} Jeans, ”The impress of central authority upon the landscape: south eastern Australia 1788-1850.”p13
continually frustrated.

There were vast quantities of land possessed by an informal or semi-formal title and Darling noted that in the case of land held on the basis of a chit, ticket, or promise, the occupier had paid no money and was paying no rent but had a virtually unconditional occupation. Because of those advantages there was a disincentive to seek formalization of free grant or a purchase. As noted by the governor, "No person who can occupy undisturbed lands for nothing will ever purchase or hold [land] on rent." 179

In a futile effort to implement control, Darling in June 1826 ordered that all holders of Tickets of Occupation should provide a return of the area of the land and the district in which their land was located. Without giving sufficient time for a comprehensive return to be prepared, he decreed in August that all Tickets of Occupation would cease in March 1827. 180 Persons then wishing to occupy their land could do so on the payment of an annual rent of £1 per hundred acres, with a six months' notice to quit. 181 The Ticket of Occupation proclamation was met with anger from a number of colonists. 182 There were appeals for public meetings and in using violent language W.C. Wentworth called for "a declaration of war against this and every other creeping extortion." 183 He wrote that "obstructions such as this to the industry and weal of the colony, merit every opposition and every censure." 184 The complainants worried needlessly, for although Darling could as a legal measure declare the Tickets of Occupation void, the pastoralists continued to occupy the land regardless. 185 It was another unenforceable regulation that widened the separation between the governor's

179 Watson, HRA Vol 12.
180 "Sydney Gazette and New South Wales Advertiser."p1, Government Notice, (24 June 1826) Fletcher, Ralph Darling, A Governor Maligned, p153
181 "Sydney Gazette and New South Wales Advertiser."p1, Government Notice, (30 August 1826); Watson, HRA Vol 13, p128, Darling to Bathurst (24 February 1827)
182 Fletcher, Ralph Darling, A Governor Maligned,p157
183 "The Monitor."p3, letter to the Editor, (8 September 1826);"The Australian ",p2, (13 September 1826)
184 "The Australian ",p3, (13 September 1826)
185 ———, Ralph Darling, A Governor Maligned,p56
decrees and the reality within the colony.

The dual system of sales and free grants had become another source of tension, it raised questions of impartiality and fairness. There was an equity issue with some settlers required to purchase but others receiving their land free. The inequity was resolved when Colonial Secretary Viscount Goderich, later Lord Ripon, decreed that the practice of awarding free grants would cease and land be alienated only by auction sale.  

Some historians have claimed that the selling of land was a Wakefieldian policy of systematic colonisation, concentrating poorer workers in towns, or in rural areas as farm labourers, by government action to inflate land prices. Others have argued that the decision to sell land by auction in NSW pre-dated Edward Gibbon Wakefield’s proposals. The latter group see the origin of sales in the perceived unsatisfactory state of NSW land administration and a lack of constancy in the awarding of land grants, rather than an element of the systematic colonisation proposed by Wakefield. The regulations which colloquially became known as the King’s Regulation or Ripon Regulations were made public in July 1831.

The withdrawal of free grants was not well received and further exacerbated

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190 "Sydney Gazette and New South Wales Advertiser."p1, Government Notice, (2 July 1831)
tensions. Petitions and objections from individuals pleading special circumstances, continued to be received many years after the announcement. They stretched into the tenure of Sir George Gipps who, when governor in 1837, noted that in most cases the claims had been “uniformly refused” but nonetheless the claims continued.

7.3.4. Local Land issues

The disposal of land by sale, introduced by Governor Brisbane, had been formalised in Darling’s letter of appointment. As with Brisbane, Darling was first required to arrange survey of the entire colony into Counties, Parishes and Hundreds. Rural land was then to be subdivided into one mile square parcels and while small grants could be made at the governor’s discretion, land was offered for sale, only as a cluster of three of the parcels. It was a system that specifically favoured the wealthy pastoralist but, as before, because of the demands on survey, it was task that could not be accomplished. Nonetheless while awaiting the survey, Darling was directed to suspend the alienation of land. By preventing legal access to land however, illegal squatting was inadvertently encouraged.

With no concept that the bottleneck was the survey department, Lord Bathurst’s solution to the perceived problem was the establishment of land commissioners to assist the governor on land matters. The Board of Commissioners (Land Board) it was said would assist the governor by receiving and investigating land claims and in the issuing of grants with “regularity and method.”


The implication the establishment of such a Board suggested that Bathurst believed that the governor was part of the bottleneck and that the commissioners would relieve the governor of some of the workload. The Board was constituted in May 1826, five months after Darling took office.196

Darling found that the demand for purchasing crown land was high and alienation by sale required a high level of identification. For land to be sold it had to be a commodity, accurately measured and clearly identified. The instructions from London continually made unachievable demands on a few relatively inexperienced surveyors, who were still equipped with crude survey instruments inadequate for the task.197 Surveys when made were often inaccurate; plans at times failed to indicate bearings as true or magnetic north, or failed to indicate an applicable magnetic variation. Without such information bearings were meaningless, surveys were not readily reproducible and land could not be accurately marked on the ground. When a combined plan of a locality was prepared it was found impossible to join the maps of adjacent properties.198 Even early linear measurements were subject to discrepancy.199 A standard measurement for the chain was not adopted until 1828 and it was not until 1832 that a standard yard measure was received and officially adopted in NSW.200

The tendency of the British administration to impose decrees on the far away colony without consulting the colonists became a long-running source of tension. It is illustrated by a scathing 1826 editorial by W.C. Wentworth, the proprietor of the *Australian*. In a section referring particularly to the alienation of property...
land, he wrote:

If we were not fully sensible to the stone blind ignorance which prevails in England... we might ever have our wonder excited, whenever any new regulation makes its appearance...they have on nearly every occasion...had the misfortune to blunder most prodigiously. They have usually listened to interested or ignorant representations and their acts have consequently partaken of the absurdity of one or the mischiefs of the other.201

The English perception of the colony and the instructions received added to Darling’s administrative problems. Not only were directives at times impractical and lacking in understanding, they also varied depending on the perspective of the person in charge. This phenomenon can be observed by an 1831 pronouncement of Viscount Goderich. Despite the colony’s transformation to a pastoral economy, Goderich rejected his predecessor’s emphasis on large scale holdings and reverted back an earlier concept of encouraging small scale farming. Goderich held that the rules framed by Bathurst, Brisbane and Darling that encouraged the importation of capital into the colony, did not reflect the “interests of the Mother Country.” These interests Goderich proclaimed, were not to encourage men of capital to emigrate, but to develop a class of yeoman farmer and provide an outlet for Britain’s unemployed labourers.202 His philosophy indicated a change of policy within the British Colonial Office and appeared to contradict specific instructions included within Darling’s Commission regarding the sale of only large parcels of rural land.203

It was a situation that both typified and complicated the efforts of the governor to properly institute land controls. The colony was being administered at two levels, locally by the governor, and remotely by the Colonial Secretary.204 It was a problem that appears to have increased as the wealth of the colony increased and as the colony evolved from a penal colony to one of free settlement. The Colonial Secretary on the other side of the world was informed only by the correspondence received and this did not always originate from an official

201 “The Australian ”.p2, (13 September 1826). Fletcher, Ralph Darling, A Governor Maligned.p151
202 Watson, HRA Vol 16. p20, Goderich to Darling, (9 January 1831)
204 Shown diagrammatically in Fig 1.2
source. Disgruntled colonists unhappy with a governor’s decision wrote directly to the Colonial Office or to a person of influence, who then represented the disgruntled view. In most cases it was land that became a major issue and a significant source of complaint.

7.3.5. The Survey Predicament

As with all previous governors, Darling quickly established that delays in survey were the bottleneck on the controlled take up of land.\textsuperscript{205} He stated that at the present rate, it would take at least twenty years to carry out a complete survey.\textsuperscript{206} Darling may have had the assistance of his land commissioners, but their advice could only be that the colony had inadequate survey resources. The solution to these deep and ongoing problems in retrospect seems straightforward. Greatly expand the survey office, bring out surveyors skilled in the latest methods, provide them with a clear set of guidelines and the best equipment available and the bottleneck would be relieved. The reasons why this remedy was not applied were complex.

Decision makers in London did not comprehend the complexity of surveying and did not regard it as a specialized or even difficult occupation. Despite repeated statements and advice from the governors, the Colonial Office seemingly would not accept that survey was an issue.\textsuperscript{207} Survey in the new colony was far different from England and for that matter in other British colonies. In Britain and elsewhere boundaries tended to be based upon ordered expansion, moving outwards from uniquely identifiable features and earlier established fence lines. Property limits could be described in “metes and bounds” a system that located a property by its relationship to other fixed features, such as a crossroad, a building or farm boundary. In the rugged bush land of NSW the method was almost useless, particularly when a large and isolated pocket of land was being identified.

\textsuperscript{206} Watson, \textit{HRA Vol 14}. p178, (Enclosure No.1) Darling to Huskisson, (13 May 1928)
A problem that plagued most governors was that surveyors were commissioned from England and inexperienced officers with little familiarity in complex survey techniques were often appointed. Survey was at the time regarded as a relatively simple task and within the grasp of any reasonably well educated person. Typical of this attitude is the appointment of assistant surveyor Hallen in 1827. He had no surveying skills and was appointed only on patronage of an acquaintance of Lord Bathurst. In advising Darling of Hallen’s appointment Bathurst wrote:

*Surveying to an intelligent person acquainted with general principles I consider a very simple operation. Mr Hallen, who seems an energetic man, might perform what you require.*

It was not until the appointment of Surveyor General Mitchell in 1828 that theodolites and modern trigonometric survey techniques were properly introduced and a start could be made to accurately charting the colony. It was a task was so extensive that it continued long after Mitchell’s death in 1855.

In the meantime, the difficulties of the surveyors became more pronounced as selections became more isolated and the size of individual allotments increased. In contrast to the initial grants of 50 acres to 100 acres offered by Phillip, in the 1820s land was alienated by the thousands of acres and frequently in terms of square miles (640 acres). The greater allotment size had reflected a change in emphasis in the colonial economy from the small agriculturally based largely self-sufficient farmers to the pastoralist with large flocks or herds bred for the commercial supply of meat and wool.

In describing his survey difficulties, Darling admitted in a private letter that “I am, quite puzzled what to do in the present insufficient state of the survey

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209 Kass, Sails to Satellites, pp7-8, p29 & p33 Andrews, *Major Mitchell's Map 1834: The Saga of the Survey of the Nineteen Counties*. p8. Drown, "An Apparatus of Empire."p90 & p92 Drown noted that Governor Bligh owned a theodolite which he took with him when he returned to England and surveyor Evans mentions the use of a theodolite in 1803, This contradicts Kass’ notation that theodolites arrived in the colony in 1825. It would seem however that they were too complicated for the early surveyors and not in general use.
Unfortunately, the attitude of London to the difficulties was to ignore them. On being advised that the colony’s surveyors were unable to meet the demand for their services, Viscount Goderich, rather than offering assistance, simply instructed Darling to prioritize a survey for those settlers whose land remained unsurveyed.211

In July 1826 Surveyor General Oxley had asked Darling for more surveyors and warned, “Until then, it will, I fear, be impossible that anything of importance can be done.”212 Similarly the Land Board also warned of the potential for interminable disputes, disappointment and litigation, if the “weighty arrears of survey” was not addressed.

It will be impractical either to locate or survey properly, the un-granted lands...and the uncertainty as to the boundary lines of each grant if allowed to continue for any considerable length of time, must inevitably give rise to troublesome applications on the part of settlers who are occupying land to which they may not be entitled.213

In September 1826, Darling attempted to alleviate the situation by prescribing a limit to the expansion of settlement. It was a nascent regional plan that would later evolve into the Nineteen Counties. The proclamation restricted the areas to be charted and to some extent eased the burden of survey. Crown land beyond the prescribed limit was to remain unsettled. It was officially regarded as waste land and not available for settlement.214

The limits, by necessity, encompassed all areas that had been already settled. They stretched from Cape Hawke in the north, the Wellington Valley in the west and Bateman’s Bay in the south and were still vast.215 A year later the Sydney Monitor reported that the situation remained critical:

The dreadful situation of grants of land owing to the state of the surveyor’s

210 Watson, *HRA Vol 12*. p645, Darling to Under-Secretary Hay, (10 October 1826)
213 Ibid. p407& p408, Land Board to Darling, (22 July 1826)
214 "Sydney Gazette and New South Wales Advertiser."p1, Government Regulation No.35, (13 September 1826)
215 Ibid.p1, Government Regulation No.35, (13 September 1826)
office [and] for want of assistance from England, the charting and measuring of the colony being seven years in arrears, the farms granted by Macquarie not yet being measured.\textsuperscript{216}

### 7.3.6. The Light at the End of the Survey Tunnel.

Thomas Mitchell on taking office in 1828 was possibly the first surveyor general with the skills adequate for the office.\textsuperscript{217} Darling’s relief however, was tempered by his relationship with Mitchell whom he found to be opinionated and obstinate.\textsuperscript{218} Mitchell immediately criticized his predecessors. He complained of defects and inaccuracies in the work that had been completed and required that persons deemed (by him) as unfit be removed from their positions.\textsuperscript{219} Later when Sir George Murray, then Colonial Secretary, directly appointed two new but inexperienced surveyors, their appointment was not accepted.\textsuperscript{220} Mitchell, in a demonstration of a new efficiency sweeping through the survey department, refused to accept their services and instead he relegated them to roles as junior draughtsmen.\textsuperscript{221}

Mitchell became an outspoken critic of the inadequacies of earlier surveys and a need for resurvey.\textsuperscript{222} In defending his department against charges of undue delays, Mitchell laid the blame partially at the feet of an overly bureaucratic system and the settlers themselves:

> I beg to state that I have endeavoured unsuccessfully, to prevent the delay...It may be easily conceived that with every facility that could possibly be afforded by the survey department, sometime must be necessary to enable a stranger to make up his mind as to the situation and select the land.\textsuperscript{223}

\textsuperscript{216} “The Monitor.” p4 (16 March 1827)
\textsuperscript{217} Kass, *Sails to Satellites.* p84
\textsuperscript{218} Fletcher, *Ralph Darling, A Governor Maligned.* pp142-143
\textsuperscript{219} Kass, *Sails to Satellites.* p84
\textsuperscript{220} Watson, *HRA Vol 16.* p284, Mitchell to Macleay, (9 March 1830)
\textsuperscript{221} Ibid. p32, Darling to Sir George Murray, (21 January 1831)
\textsuperscript{222} Fletcher, *Ralph Darling, A Governor Maligned.* p145
\textsuperscript{223} Watson, *HRA Vol 16.* pp148-149, Mitchell to Murray, (28 January 1831)
Although far from a detailed survey, Mitchell completed his mapping of the nineteen counties in 1831 and had the map published in 1834. The map has been described as a reconnaissance survey rather than true topographical survey and was of limited use in developing a cadastral system for the colony. Nonetheless, survey issues were being resolved and the situation was undoubtedly improving. The difficulties and backlog continued until Darling’s successor Richard Bourke threw the entire wastelands of the colony open to squatting. Through this action, Bourke virtually relinquished any opportunity for a planned expansion of the colony and the demands for survey lessened.

7.3.7. Limits of Location

The “regular settlement of the country” was described by the Land Board as the “great object” to which all other instructions were subordinated. It was the theme that had dominated Darling’s original instructions. With this in mind, Darling embraced the concept of confining the colony to within a manageable area. Settlement was to be confined within certain limits and land alienated only after a sufficient portion of the unoccupied lands within the limits had been accurately identified and marked. This planned containment within existing settled areas appeared to be the only means available by which control could be exerted over the colony’s expansion. It would not only ease the plight of the surveyors, by restricting the number of areas to be surveyed, but also ease the demand for other government services such as road construction, maintenance and policing. To put this policy into effect, Darling, in 1826, proclaimed approximate boundaries beyond which land would remain un-alienated.

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226 Watson, *HRA Vol 12*, pp107-125, Darling’s Instructions, (16 July 1825), p414, Land Board to Darling, (22 July 1826)
227 Ibid. p388, Darling to Bathurst, (22 July 1826)
228 Perry, *Australia’s First Frontier: The spread of settlement in N.S.W. 1788-1829*; ibid. p43 & p45
229 Burroughs, *Britain and Australia 1831-1855*. p142
Three years later these boundaries were refined in order to divide the land stretching out from Sydney into Nineteen Counties, (Fig 7.2 & 7.3) which became known as the *Limits of Location*.231

Despite Darlings proclamation and his attempts to control the colony’s spatial expansion, the policy of containment had already been defeated. The sheep-farming activities of the major land owners and squatters had already “made a mockery” of a planned colony based upon yeoman farmers and contained agricultural settlements.232

Before Darling took office, tracks had already started to finger out from the existing townships and by the time of his arrival adventurous pioneers were exploring the far hinterlands. By then, outside of the towns and villages, the colony had a total 256 miles of constructed roadway that extended from Sydney to the lands south west and north.233 With the encouragement of Governor Macquarie, John Oxley had explored the inland areas and travelled by land to Port Macquarie on the north coast.234 Gregory Blaxland had pioneered and partially cleared a road from Bathurst to Newcastle and there was a track down the escarpment from Campbelltown southwest of Sydney to the Illawarra. By 1827 an overland route to Port Phillip Bay had been traversed by Hume and Hovell, a feat that opened much of the lands in between Sydney and Port Phillip.235 Rough though some of the tracks were, travel at least as far as the colony’s settled fringes, was no longer an arduous trek into the unknown.

As settlements spread concentrically outwards from Sydney, many concerns developed, particularly with regard to the policing and defence of the frontier.

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232 Burroughs, *Britain and Australia 1831-1855*. p8
234 Ibid.p21
settlements. By 1828 Darling had been forced to admit he was unable to defend the outer settlements of the Hunter Valley and informed settlers that they should band together against any aggression by the native populations. Some of the Hunter settlements fell within the prescribed limits, suggesting that even within the prescribed bounds, the area was too large for the available resources.

The attempt to limit expansion of the colony was futile. Darling had issued a proclamation that he had no means of enforcing. Even while he was determining his outer limits of settlement, he was forced to admit they were being breached by settlers who grazed their cattle beyond the limits. Darling could exercise some authority in that the selling of land was nominally within his discretionary prerogative and he could prohibit all sales beyond his limit, leaving those outside the bounds without the benefit of freehold title. Even this power was challenged however. In 1824, under the authority of the British Monarch, the Australian Agricultural Company was granted the right to occupy 1,000,000 acres of land of their own choosing. The land they selected was partially outside of Darling’s boundary.

The prescribed limits are recognisably a planning measure introduced by Darling to both contain the colony’s spatial expansion and to limit the demand on government resources. Eventually Darling was forced to accept that while ever “individuals are not restrained from settling unauthorised...beyond the settled limits,” the colony’s physical expansion was beyond his control. His lack of capacity to enforce the limits reinforced a view amongst the public that the government could be ignored and there was nothing to prevent illegal

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236 Watson, HRA Vol 12. p576, Darling to Landholders, Hunter River, (5 September 1826)
237 Paul Babie, "Sovereignty as Governance Organising Theme for Australian Property Law," *University of NSW Law Journal* 36, no. 3 (December 2013). p1098
238 Watson, HRA Vol 16. p88, Darling to Under-Secretary Hay, (17 February 1831)
239 At the time, Darling’s prescribed northern limit was Cape Hawke. The land selected by the AAC extended to the Manning River outside of the limit and approximately 30 km further north. Fletcher, *Ralph Darling, A Governor Maligned.* pp160-163
grazing on remote land.\textsuperscript{241} Darling’s only weapon, an unenforceable proclamation, could do nothing to change the settler’s perception.

\textbf{Fig 7.2. South Eastern Australia and the Nineteen Counties, John Arrowsmith, Published 1842}

Source: NSW State Archives SR 4624 N.1.1654

7.3.8. Town Planning Standards

Darling introduced town planning standards that shaped most future townships throughout the remainder of the colonial period. Although the Limits of Location failed in their prime role as a curtailment to the dispersion of settlement, they achieved a secondary purpose. In limiting the area required to be administered,
the boundaries eased the demands on other government bodies and communicated clearly to those who went beyond the limits that they could not expect any government services or protection. Under the governor’s instruction the surveyors were able to map and set aside reserves for towns and villages within the Limits. It was during this period, not that of Governor Brisbane, that what both Jeans and Proudfoot termed a real “burst of town planning activity” broke out.

To further assist the governor, in 1826 a Board of General Purposes was established. Two civil engineers, William Dumaresq and John Busby, were commissioned as Board members together with the Land Commissioner William Cordeaux. They were tasked with examining appropriate ways to plan newly developing townships. They recommended the classification of all towns with respect to their potential importance by a hierarchical classification determined by access to transport and location. Sydney and the ports of Newcastle and Port Macquarie had the highest classification, as had Brisbane. The second level comprised towns on the heads of navigable rivers, including Parramatta, Liverpool and Maitland. Other interior towns such as Campbelltown and Bathurst fell into the third classification.

The main purpose in the town classification was to establish a yearly quit rent. Land was to be made available in the towns of the first category at a rate of 6d per square rod or one-sixtieth of an acre (approx, 25.3 sq.m) for Sydney and 5d per square rod for other Seaport towns. The rate was to be 4d per square rod on riverside towns and 2d for inland towns. In an example of the

242 Fletcher, Ralph Darling, A Governor Maligned. p172
244 Watson, HRA Vol 12. P267, Darling to Bathurst, (5 May 1826
245 Ibid. p267, Darling to Bathurst, (5 May 1826)
246 Quit rent is a form of annual land tax payable to the government. It relates to a medieval practice of tenure, whereby landholding rather than being on the basis of service, was commuted to an annual payment. Land held in fee-simple or freehold was essentially held by the owner as a tenant of the Crown and quit rent was payable in lieu of all other tenurial services. See Enid Campbell, "The Quit Rent System in Colonial N.S.W," Monash University Law Review 35, no. 1 (2009).p32
autocratic power wielded by the governor, town land was to be purchased in fee-simple but grantees were required to construct a building within three years of sale, otherwise the land would revert to the crown.247

Before Darling's governorship, townships had suffered a similar malady as rural allotments. There was lack of survey and despite some townships being pre-planned, a lack of compliance with the town plan. Even in Sydney, despite Macquarie's attempts at defining and realigning streets, uncertainties of title, street encroachments and boundary disputes remained. 248 The colony's second settlement Parramatta, planned in detail from inception, also had problems. Surveyor General John Oxley reported in July 1826 that out of Parramatta's 390 town lots, only 10 had a formal lease and only 6 were held under a freehold title.249 The remainder of the lots were held under a form of permissive occupancy: the occupants paid no rent and were legally unable to transfer their land.250 To overcome the unsatisfactory situation, Oxley recommended that steps be taken to ensure every holder of an allotment in Sydney, Parramatta, Liverpool, Richmond and Windsor as well as other towns be required to enter into a formal lease. In the case of Sydney, Darling remedied the situation by allowing any person in “bona fide possession” by lease or permissive occupancy, to apply for a freehold grant. The grant was to be made subject to payment by instalments of an amount equal to two-thirds of any accumulated quit rent accrued since June 1823. Any remaining arrears in quit rent was to be pardoned.251

In requiring the formalisation of leases, Darling was attempting to bring the land question into some form of order. Land title was being exchanged, at times illegally, by promissory note or receipt and Darling had no knowledge of in

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216 “Sydney Gazette and New South Wales Advertiser.”p1, Government Order No29, (30 May 1829)
249 Watson, HRA Vol 12. p398, (Sub-Enclosure E) Darling to Bathurst, (22 July 1826)
250 The legal situation did not completely deter sales, Oxley reported that a Sam Larkin had accumulated twenty lots, “purchased from people that had no right to sell” see, ibid. p399, (Sub-Enclosure E) Darling to Bathurst, (22 July 1826)
251 “Sydney Gazette and New South Wales Advertiser.”p1, Notice to the Holders of Allotments, (29 August 1827)
whose hands land was being held. Because of the uncertainty with respect to ownership, quit rents could not be gathered and after a parcel had changed hands several times, any condition imposed on an original grantee was lost.

In 1829 the governor issued a series of town planning regulations to guide the surveyors in the drawing of layouts for all future townships. These regulations had a profound impact on the shape of almost all future townships in NSW. The standards were first implemented as part of the division of the settled areas into counties and parishes. In this division, village reserves had been designated and the surveyors were required to measure, identify and map all proposed sites and to prepare topographical plans. The topographical plans became the base survey plan for villages designed in accordance with the new regulations. Kass found that although the field surveyors input was consulted, the villages were designed in Sydney, usually by Surveyor General Mitchell himself or his deputy. The town of East Maitland is said to be typical of the planning process. It utilised the field surveyor's site plan but the village was designed by Mitchell with the final plan approved by the governor.

The regulations had been formulated by a board of inquiry comprising Governor Darling, Surveyor Mitchell and Darling’s friend, William Dumaresq. During the inquiry there was strong disagreement between Darling and his surveyor. Mitchell was a proponent of narrow streets to provide shade, while Darling preferred wide streets to admit air and cooling breezes. As discussed, earlier (in Section 3.5), Darling held the ultimate authority and was able to override his surveyor's objections. As a consequence, Darling’s plan prevailed.

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252 Ibid. p1, Government Order, (28 May 1829)
253 Cantrill and Thalis, "Beyond planning and architecture: the urban project in Sydney." p151
254 Kass, Sails to Satellites. p 24
255 Ibid. p24 and p 25
The town planning regulations were detailed and prescriptive. Towns were to be based on a square with street patterns in a rectangular grid. Main streets were 100 feet (30.5m) wide with secondary streets 84 feet (35.6m) wide and tertiary streets 60 feet (18.3m) wide. The enclosed unit of land measured 660 feet by 660 feet (182.9m) and was divided into six blocks of one chain frontage (20.1m) and five chains deep. Four blocks at either end of the basic land unit would each have a two chain frontage and be two and a half chains deep. Streets were to have nine-foot (2.7m) footpaths and houses were set back from the street to allow for verandas and shade trees.258

Together with the new planning standards, regulations were also proclaimed indicating how town allotments should be marked and identified. Each lot was to be marked with a strong board showing lot number and the cadastral details. Land owners, accustomed to pleasing only themselves, found the regulations and surveys restrictive. It was reported that the boards were often stolen for firewood or moved by unscrupulous land owners attempting to cheat on their parcel’s dimensions.259

The Darling grid served its purpose. It was efficient in its land use, easy to survey and easy to plan. It provided wide streets and regular housing blocks, of half an acre each. The design provided for single dwellings with gardens and stables. Corner blocks were designed to give better street aspects than the internal longer allotments.

Between the years 1829 and 1832 the town planning system implemented by Darling resulted in fifty-three town plans being designed and registered within the Nineteen Counties.260 The Darling grid in fact became a standard pattern in


eastern Australia.\textsuperscript{261} It was adopted and modified by other governors to suit a particular purpose, but became the backbone of design throughout the colonial period.

**Table 7.2. The Darling Regulations\textsuperscript{262}**

<table>
<thead>
<tr>
<th>Towns to be on a rectangular grid</th>
<th>Urban land units (Major Blocks)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building allotments main street</td>
<td>660 feet square or 10 square chains</td>
</tr>
<tr>
<td>frontage 66 feet by 330 feet deep</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Building allotments secondary frontage</th>
<th>Building allotments secondary frontage</th>
</tr>
</thead>
<tbody>
<tr>
<td>165 feet by 132 feet deep</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Main Streets 100 feet wide</th>
<th>Secondary streets 84 feet wide</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inc Footpaths 10 feet wide</td>
<td>Inc Footpaths 9 feet wide</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Tertiary Streets 60 feet wide</th>
<th>All building to be built</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inc Footpaths of 9 feet wide</td>
<td>14 feet from the footpath</td>
</tr>
</tbody>
</table>

Drawn: P. Farnill.

\textsuperscript{261} Proudfoot, "Town Plans and their Impact on the Settlement Process in Australia." p158

\textsuperscript{262} “Sydney Gazette and New South Wales Advertiser.” p1, Government Order, (28 May 1829)
Fig 7.4. The Darling Rectangular Grid

Drawn: P. Farnill.

Although the grid met the needs of the day by providing equitably sized parcels with good amenity for the residents while at the same time making the best use of the available survey and planning resources, its has not been uniformly acclaimed. Towards the end of the century, the grid was criticised somewhat unfairly by the proponents of a planning movement that had reason to deride its achievements. In a form of propaganda promoting a particular cause, the colonial towns founded under the Darling regulations were described as unplanned, too regular and too uniform, with “no aesthetic quality whatsoever.”

263 Adapted from -Toon, "The Planning of Australian Towns." – The Darling Planning Rules p5
264 John Sulman cited in, Proudfoot, "Town Plans and their Impact on the Settlement Process in Australia." pp 161-162 &167. This will be discussed in some detail in a later chapter.
Other historians and town planners have conclude that the Darling grid could be, and was, applied with both flair and imagination.\textsuperscript{265} The regulations did not prevent surveyors introducing individual interpretations into the designs. Distinctive features such as approach roads which were deliberately skewed on an off-grid alignment thus creating a point of arrival at the town limits. While a prominently located civic building such as the individually located court houses of Wagga, Bathurst and Goulburn provide a degree of individuality. In other towns, sites pre-allocated to post offices, halls and schools all testify to the flair of an individual surveyor.\textsuperscript{266} According to Toon, the planners incorporated individual features within the confines of the standard design. It has been further asserted that towns designed under the Darling regulations offered elements that bestowed an identifiable character to each individual town. This was achieved not only by buildings but also by the alignment of its streets. Rather than streets orientated to the cardinal compass points in a rigid cardo-decumanus grid of ancient times, Darling towns were carefully aligned to relate to their topographical settings.\textsuperscript{267}

The Darling regulations can be seen as the evolutionary result of town planning dating back to the early Spanish colonial period and have been described by Proudfoot as the “distillation of the seventeenth-century Grand Model.”\textsuperscript{268} Uniformity between townships in road widths and lot sizes appears to be the focus of the Darling plans.\textsuperscript{269} The regulations were intended to create a degree of standardisation and an acceptable level of amenity amongst future town designs. They ensured that all future townships complied with Darling’s own concept of what comprised an ideal colonial town.

\begin{thebibliography}{99}
\bibitem{266} Toon, "The Planning of Australian Towns." pp8-9
\bibitem{268} Proudfoot, "Fixing a Settlement upon a Savage Shore." p78
\bibitem{269} Jeans, "Town Planning in NSW 1829-1842." p193
\end{thebibliography}
The grid pattern was simple but adaptable. It fulfilled the needs of the time and provided both repetition and variety by its allocations of public buildings and particular alignment with the topography.270 Darling was undeniably a pioneer of town planning regulation throughout the colony. His town designs became standard throughout NSW and he had a lasting influence on town design until the twentieth century. Subsequent governors in issuing their own planning standards tended not to abandon the Darling regulations but rather adopted and modified them.271

7.3.9. The System of Great Roads

Together with defining the Nineteen Counties, Darling also undertook other forms of regional planning. To join the new townships and improve access to their hinterlands, better roads were required.272 Under Darling’s overall plan for NSW, three ‘Great Roads’ were constructed: the Great North Road to Maitland, the Great South Road to Goulburn and the Great Western Road to Bathurst. Each originated in Sydney ensuring that it remained the focus of the Nineteen Counties.273 With the exception of the road to the west, commenced by Macquarie, the roads were ordered by Darling but predominantly completed under Bourke’s governorship.274 It was these routes, although frequently upgraded, modified or realigned, that determined the shape of NSW’s major road system.

The routes of the three Great Roads were essentially determined by the topography. The northern road after crossing the Hawkesbury River crossed what were known locally as mountains as did the Great Western Road. Both

270 Toon, "The Planning of Australian Towns." p9
271 Governor Bourke’s use of a Darling grid in the design of Melbourne is typical. Bourke adopted Darling’s grid but incorporates Melbourne’s now famous laneways to provide rear access to the blocks.
272 Jeans, An Historical Geography of NSW to 1901. p143. ———, "The impress of central authority upon the landscape: south eastern Australia 1788-1850." p13
273 Fletcher, Ralph Darling. A Governor Maligned.pp171-173
274 The western route had originally been constructed under Macquarie, but during Darling’s term a new route was constructed that provided easier access.
routes were essentially devoid of arable land and gave the best available passage.\textsuperscript{275}

The Great Western Road had been constructed by William Cox in 1814. The original road was almost impassable and constantly being diverted along slightly different routes. It was described by Karskens as a spaghetti of roads from Emu Plains weaving their way west across the mountains.\textsuperscript{276} The state of the road was such that in 1827 Darling offered a “grant of land, cattle or other reasonable indulgence” to any free person finding a better route.\textsuperscript{277} Despite the offer, it was not until Surveyor General Mitchell marked a line in 1829 that the route across the Mountains became fixed. Darling had directed him to construct a road along the original route pioneered by Evans and Cox, but Mitchell ignored Darling’s instructions and located a better route via the Victoria Pass, then down the western side of the mountains via Mount Victoria.\textsuperscript{278}

The route of the Great North Road was surveyed in 1825 and its construction completed in 1836. It was intended to connect Sydney to the Hunter Valley via Wiseman’s Ferry but the road was long and arduous. After crossing the Hawkesbury the route was almost devoid of cultivable land and by-passed almost all existing townships. It had little water and feed for stock and the road was abandoned as a major route almost before it was completed. Steam ships capable of towing river barges had become available making transport by ship a cheaper, faster and more reliable option. The Hunter Valley thus became serviced by water transport through inland-port towns such as Morpeth and then by river through Newcastle to Sydney.\textsuperscript{279}

It was the Great South Road alone that was constructed through land suitable for cultivation and pasture. This road was laid out to connect Sydney with Picton

\textsuperscript{275} Karskens, "The Great North Road: Historical Perspective."
\textsuperscript{276} ———, "An Historical and Archaeological study of Cox’s Road and Early Crossings of the Blue Mountains."
\textsuperscript{277} "The Australian ", p2, The road to Bathurst, (22 August 1827)
\textsuperscript{278} Kass, \textit{Sails to Satellites}. p20
\textsuperscript{279} Karskens, "The Great North Road: Historical Perspective." p22
and Goulburn via Campbelltown and Appin. The townships of Bowral and Mittagong were developed at a later stage to support both travellers and the farms of the surrounding areas. The original track to the lands of the south-west had been pioneered by surveyor James Meehan in 1818 and a rough track had been constructed from Picton to the Goulburn Plains in 1821. In 1829, four years after the return of Hamilton Hume and William Hovell, who journeyed overland to Port Phillip, Darling instructed Sir Thomas Mitchell to survey a new route from Appin to Goulburn.

The Great Roads were a fundamental component of the growth of NSW. It was planning on a large scale with the roads tending to shape the colony’s growth for the remainder of the century. They maintained Sydney as the focal point of the state, created origins and destinations. By predetermining the arterial routes of the major road systems, Darling had essentially also predetermined the secondary road system that would criss-cross the land. His planning is still written on a map as a historical vestige of his road system.

7.3.10 A Popular Departure

Despite his several achievements including the arterial road system, a greater knowledge of the interior, town planning regulations and an improvement to the land title system, Watson noted that Darling was possibly the most unpopular governor the colony had experienced. Although at the time a number of Darling’s supporters were appalled by his treatment, in 1985 Oppenheimer held that it was Darling’s administrative style that had led to his undoubted unpopularity. It was an unpopularity supported by reports of the day, which described many citizens celebrating over his departure.

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282 Spooner, "On Squatters, Settlers and Early Surveyors." p71
284 “Sydney Gazette and New South Wales Advertiser.”p2, (11 October 1831) The Gazette, a supporter of Darling described, the hostility against him as “truly pitiable.”. See also, "The Sydney
Few if any persons regret General Darling’s Departure: on the contrary everyone appears to rejoice in it. Whatever may have been his intentions he was certainly a weak and indifferent ruler…  

The Sydney Monitor asked that many of Darling’s edicts be remembered as a “memento of terror” and an example of “what a despotic ruler...may in the nineteenth century accomplish towards the destruction of public rights.” His implementation of measures which would direct spatial expansion into the modern era were not then appreciated, perhaps because he pushed through measures which had defeated his predecessors. Despite his unpopularity, his town planning concepts were widely adopted and with the exception of some late examples almost all NSW towns bear some of the characteristics of a Darling town.

Darling was relieved by Governor Bourke on 2nd December 1831. After the unpopularity of Darling, Bourke’s arrival was greeted by the colonists with both favour and enthusiasm.

7.3.11. Settled Areas and Spatial Growth at end of Darling’s Tenure

The extent of the settlement and land alienated at the end of Darling’s governorship is tabulated in Table 7.3.

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286 "The Monitor." p3, (22 October 1831). See also, Jones, "Colonial Republicanism: Re-examining the Impact of Civic Republican Ideology in Pre-constitution NSW." p137
Table 7.3. Main Localities Settled and Surveyor’s Plans Registered at the end of Darling’s Governorship.\textsuperscript{289}

<table>
<thead>
<tr>
<th>Locality</th>
<th>Locality</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appin</td>
<td>Lake George</td>
</tr>
<tr>
<td>Argyle (Southern Tablelands)</td>
<td>Liverpool Plains</td>
</tr>
<tr>
<td>Bathurst</td>
<td>Maitland</td>
</tr>
<tr>
<td>Bong Bong</td>
<td>Mittagong</td>
</tr>
<tr>
<td>Booral</td>
<td>Mudgee</td>
</tr>
<tr>
<td>Brisbane Waters</td>
<td>Newcastle</td>
</tr>
<tr>
<td>Bulli</td>
<td>Port Stephens (Tahlee)</td>
</tr>
<tr>
<td>Colo</td>
<td>St Hilliers</td>
</tr>
<tr>
<td>County of Cumberland</td>
<td>St Vincent</td>
</tr>
<tr>
<td>Eden Forrest</td>
<td>Southern Tablelands</td>
</tr>
<tr>
<td>Gerringong</td>
<td>Springwood</td>
</tr>
<tr>
<td>Goulburn</td>
<td>Tarlo</td>
</tr>
<tr>
<td>Illawarra</td>
<td>Ulladulla</td>
</tr>
<tr>
<td>Jerry’s Plains</td>
<td>Upper Hunter</td>
</tr>
<tr>
<td>Jervis Bay</td>
<td>Wallerawand</td>
</tr>
<tr>
<td>Five Islands (Illawarra)</td>
<td>Wallerawang</td>
</tr>
<tr>
<td>Jervis Bay</td>
<td>Wollongong</td>
</tr>
<tr>
<td>Kiama</td>
<td>Wollombi</td>
</tr>
<tr>
<td>Kurrajong</td>
<td></td>
</tr>
<tr>
<td>Lake Bathurst</td>
<td></td>
</tr>
</tbody>
</table>

### Others Remote and External

<table>
<thead>
<tr>
<th>Location</th>
<th>Town</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elizabeth Town (new Norfolk)</td>
<td>Kingston</td>
</tr>
<tr>
<td>Norfolk Island</td>
<td>Port Macquarie</td>
</tr>
<tr>
<td>Hobart</td>
<td>Port Dalrymple (Launceston)</td>
</tr>
</tbody>
</table>

### Acreage Alienated

<table>
<thead>
<tr>
<th>Name</th>
<th>Years</th>
<th>Acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arthur Phillip</td>
<td>1788-1792</td>
<td>3,389 Acres</td>
</tr>
<tr>
<td>Francis Grose</td>
<td>1792-1794</td>
<td>10,674 Acres</td>
</tr>
<tr>
<td>William Paterson</td>
<td>1794-1795</td>
<td>4,965 Acres</td>
</tr>
<tr>
<td>John Hunter</td>
<td>1795-1800</td>
<td>28,650 Acres</td>
</tr>
<tr>
<td>Phillip Gidley King</td>
<td>1800-1806</td>
<td>60,411 Acres</td>
</tr>
<tr>
<td>William Bligh</td>
<td>1806-1808</td>
<td>2,180 Acres</td>
</tr>
<tr>
<td>George Johnston</td>
<td>1808</td>
<td>5,660 Acres (later revoked)</td>
</tr>
<tr>
<td>Joseph Foveaux</td>
<td>1800-1809</td>
<td>8,325 Acres (later revoked)</td>
</tr>
<tr>
<td>William Paterson</td>
<td>1809-1810</td>
<td>68,101 Acres (later revoked)</td>
</tr>
<tr>
<td>Lachlan Macquarie</td>
<td>1810-1821</td>
<td>570,045 Acres</td>
</tr>
<tr>
<td>Thomas Brisbane</td>
<td>1821-1825</td>
<td>865,000 Acres plus 200,000 Acres of Crown reserves</td>
</tr>
<tr>
<td>Ralph Darling</td>
<td>1825-1831</td>
<td>79,262 Acres (^{290})</td>
</tr>
</tbody>
</table>

\(^{290}\) Vamplew, *Returns of the Colony of N.S.W.* , p106, EC 32-33, (Years 1826-1831)
7.4. Bourke and The Confining Wall Tumbles: Legal Squatting

The first principle of squatting is that the squatter shall have full power to settle without restriction wherever he can find unoccupied pasture and to take possession of as much land as his stock can occupy.

Gideon Scott Lang – 1845

7.4.1.--Sir Richard Bourke - Governor 1831-1837

His equal it may yet be our fortune to obtain – his superior we need not expect

Unnamed Correspondent, *The Australian* - 1837

When commissioned as the eighth governor of NSW, Major General Richard Bourke was aged forty-eight. He was a man of moderate wealth, a qualified barrister, a magistrate and held estates in County Limerick, Ireland. Bourke arrived in the colony with prior experience as a governor. In 1826 he had assumed the role at Cape Town, following the recall of Lord Charles Somerset who had returned to England to face charges of maladministration. Bourke’s governorship of the Cape Colony had lasted for nearly three years, concluding a period described as a tumultuous episode in that colony's history. On his return to England in 1829 Bourke rejected an offer of governorship of the Bahamas, but in March 1831 he accepted an appointment as governor of NSW.293

Bourke disembarked in Sydney in December 1831 and found an established colony with three Great Roads being constructed to provide a trunk road system connecting Darling’s Nineteen Counties to the centre of administration in Sydney. Much of the interior was known in general if not in detail and further exploration by Thomas Mitchell and Charles Sturt would fill in most of the gaps. The Great Roads also provided access to the “waste lands” beyond the Nineteen Counties. These consisted of vast areas of unallocated pastoral lands

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beyond the capacity of government to police or administer. In these areas extensive and uncontrolled squatting was dominating land usage, with herds and flocks being pastured wherever favourable grassland could be found.\textsuperscript{294}

Because of Bourke's legal training, it was natural that his main preoccupation was with the courts and legal processes. He established a universal system of trial by jury and promoted the introduction of an elected government. But his work in land management was also significant. He insisted on formal title as the proof for land ownership and in this was supported by his then Chief Justice Francis Forbes.\textsuperscript{295} This caused uncertainty because large and numerous parcels of land were still held informally without any official title. To resolve this Bourke introduced the \textit{Court of Claims Act (1833)}. Under the Act a tribunal could take into account the circumstances of an unofficial land title and if appropriate, recommend the issuing of a formal title.\textsuperscript{296}

He accepted that he was powerless to prevent squatting and introduced measures aimed at controlling and gaining income from the unauthorised occupation of crown land.\textsuperscript{297} The squatting licences issued under his governorship negated any pretence of a colony confined to the Nineteen Counties. In terms of urban planning, his influence had a major and lasting, impact on two of the nation's capital cities.\textsuperscript{298}

\textsuperscript{294} B Fletcher, H., "Governor Bourke and Squatting in N.S.W," \textit{Journal of the Royal Australian Historical Society} 74, no. 4 (1989), p267

\textsuperscript{295} Forbes was required to decide between customary title and English Law and found that the customs of the colony could not be recognised as part of the common law. See Kercher, "Informal land Titles." p614

\textsuperscript{296} Ibid. p615

\textsuperscript{297} King, "Bourke, Sir Richard (1777-1855)." (n.p)

\textsuperscript{298} As will be discussed, both Sydney and Melbourne owe their present shape to the decisions of Bourke.
7.4.2. Recurrent Survey Problems

Even within the prescribed Limits of Location, the land situation was not fully under government control. As late as 1832 Surveyor General Thomas Mitchell argued that even within the limits of the Nineteen Counties “the colony was already too extended.”\(^{299}\) The demand for survey continued to exceed the surveyors’ ability to provide their services and within the limits, land was permissively occupied awaiting survey and subsequent purchase. The Surveyor General had expanded his staff and commenced a trigonometrical survey of the colony. It was a survey that when completed, would allow proper mapping and accurate location of individual allotments. Between 1828 and 1834, the survey department, under Mitchell, had measured more land than in the previous forty years, but rather than being supported in his efforts Mitchell remained the object of severe criticism.\(^{300}\)

As with all previous governors, the remote London administration failed to understand the difficulties of survey within NSW. In 1833 shortly after his informing the governor that he had taken office as the new Colonial Secretary, E.G. Stanley chose also to criticise the lack of progress in surveying the colony. Stanley, only in office for a few days, expressed his “surprise and disappointment” at the survey’s lack progress in dividing NSW into counties. Stanley noted that since Mitchell had assumed the post of Surveyor General the survey office had increased from five surveyors, to Mitchell, one deputy Surveyor General, four surveyors and thirteen assistant surveyors.\(^{301}\) He wrote, “I have to convey to you His Majesty’s commands that you lose no time in calling upon Major Mitchell to explain the causes of the delay.”\(^{302}\)

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\(^{302}\) ———*, *HRA Vol 17*, p145, Stanley to Bourke, (15 June 1823)
As before, Stanley showed little understanding of the vast size and complexity of the task that was being required, nor could he comprehend the terrain over which the survey had to be accomplished. Although the survey was intended to work outwards from Sydney, the entire colony from Cape York to Wilson’s Promontory and to its western boundary at 129° east longitude was expected to be surveyed, subdivided into parishes and then into parcels of one square mile. 303

In his reply Mitchell attempted to educate the administrators about the realities of the task. He noted that to take regard of natural divisions and to use them as boundaries for the counties and parishes, accurate mapping of the whole colony first had to be carried out: “I have never been able, any more than my predecessors... to devise any other mode by which the whole could be divided by natural limits.”304 Mitchell then noted that the country was of “a formidable nature” but it had to be mapped before detailed survey because it was the natural features that governed the places where roads, towns and villages could be positioned. The process was drawn out further by the then current bureaucratic procedures. Once sites for settlements or townships were identified, reasons for the selection had to be provided to the governor for his approval.305 Noting the difficulty of survey and the fact that purchasers tended to pick isolated areas of good land, he somewhat arrogantly remarked:

His Excellency the governor who is so well acquainted with the peculiar character of the whole country, will be pleased to represent how great a proportion of barren and utterly useless land is included in each of these division.306

It was a statement typical of the irascible but harassed surveyor; he was busy, but he knew the problem and was working to resolve it. The personal criticism from a remote officer that had no understanding of the situation was not worth his response. Any complaints should be directed to the governor not to his surveyor.

303 Ibid. p 837, Bourke’s Commission, (13 December 1830) – Note Longitude 129° E is the WA/SA and NT Border; Parishes p841
304 Ibid. pp421-422, Mitchell to Secretary Macleay, (25 February 1834)
305 Ibid.p 423 Mitchell to Secretary Macleay, (25 February 1834)
306 Ibid. p 429, Mitchell to Secretary Macleay, (4 April 1834); Kass, Sails to Satellites. p89
7.4.3. Port Phillip and Batman's Treaty.

Bourke was a man of compromise. He had to face several situations beyond his control and on those occasions he sought to achieve a solution that he was willing to accept. As will be shown, the rampant illegal squatting was one such issue. Another was the settlement at Port Phillip Bay and John Batman’s attempts to purchase land from the area’s indigenous inhabitants. This action was in direct conflict with the British claims of the Crown’s holding a radical title over all Australian land.307

Bourke’s dealings with a privately financed settlement at Port Phillip Bay and a second proposed settlement at Twofold Bay, illustrate both the pragmatism and the realism that was a strong characteristic of his governorship.308 Bourke opposed, but politically could not prevent the Port Phillip Bay settlement and if he had, constitutional issues and questions of British possession may have been raised. Rather than opposing it, he chose to legitimise it but under his rules. On the other hand he opposed the Twofold Bay settlement and had the ability to prevent it, so he did.

Three reasons were given for Bourke’s opposition to the settlement at Twofold Bay. It was remote, it was outside of the Limits of Location and any condoning of such a settlement would set a precedent that other pastoralists would seek to emulate. In agreeing with Bourke’s recommendation, the successor to Lord Stanley as Colonial Secretary, Earl Aberdeen, responded that compliance would “lead to much inconvenience.” Aberdeen remarked:

_His Majesty’s Government are not prepared to authorise a measure, the consequences of which would be to spread over a still further extent of territory a population, which it was the object of the late land regulations to concentrate._309

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308 Alston, Harris, and Mueller, "The Development of Property Rights on Frontiers." p750 (Note 16)
309 Powell and M, _Australian Space Australian Time._ pp160-168
309 Watson, _HRA Vol 17._ p616, Aberdeen to Bourke, (10 December 1836)
The settlement at Port Phillip could (and probably should) have been opposed on exactly the same grounds as Twofold Bay, but it was already a fait accompli when it came to the governor’s attention.\textsuperscript{310} He advised that although he had weighty objections to Batman’s settlement, it seemed impossible to restrain it and the question to Bourke became not one of prohibition, but how to turn what could not be prevented to advantage.\textsuperscript{311} In concurring with Bourke’s thoughts, Aberdeen’s successor Lord Glenelg wrote:

\begin{quote}
All that remains for the Government in such circumstances is to assume guidance and directions of enterprises which, tho’ it cannot not prevent or retard, it may conduct to happy results. \textsuperscript{312}
\end{quote}

It appears that the ideas of containment had been subordinated to expediency, an aspect then discussed and justified in some depth by Aberdeen.\textsuperscript{313}

To deal with the problem of the unauthorised settlement at Port Phillip, prohibition or relocation would have seemed viable options.\textsuperscript{314} In August 1835 when the settlement first came to Bourke’s attention, the village reportedly comprised only three weatherboard houses, two slab huts, thirteen turf huts and a “growing colony of tents”.\textsuperscript{315} Physically, it was not beyond the governor’s power to enforce a compulsory removal. The settlement was possibly smaller than the original settlement at Port Phillip, established by David Collins in 1803 before he decided to relocated it to Hobart.\textsuperscript{316}

There is however a second unstated reason why the settlement at Port Phillip may have been treated differently from the one at Twofold Bay. The Port Phillip

\begin{itemize}
\item \textsuperscript{310} Shaw, "The Founding of Melbourne." p210
\item \textsuperscript{311} Watson, \textit{HRA Vol 18}, p156, Bourke to Glenelg, (10 October 1835)
\item \textsuperscript{312} Ibid. p380, Glenelg to Bourke, (13 April 1836)
\item \textsuperscript{313} Ibid. p379, Glenelg to Bourke, (13 April 1836)
\item \textsuperscript{314} James Boyce, \textit{1835 The Founding of Melbourne & The Conquest of Australia} (Melbourne: Black Inc., 2011). pp114-115. It is noted that for his own reasons (hoping that he would retain governorship) Lieutenant Governor Arthur or VDL, directly advised the British Government of the settlement a month before he advised Bourke.
\item \textsuperscript{315} Granville Wilson and Peter Sands, \textit{Building a City: 100 years of Melbourne architecture} (Melbourne: Oxford University Press, 1981). pp1-17
\item \textsuperscript{316} Bladen, \textit{HRNSW Vol 5}, p504, Collins to King, (8 December 1804)
\end{itemize}
settlement was a concern at two levels. It was a settlement that defied the colony’s rules of containment, but at a higher level it challenged the concept under which Britain had assumed possession of the entire continent.\footnote{Roberts, \textit{History of Australian Land Settlement 1788-1920}. p206} Reading between the lines in the correspondence between Governor Bourke and Lord Glenelg, one can sense some uneasiness with regard to the British claim.\footnote{Watson, \textit{HRA Vol 18}. pp153-158} The uneasiness was somewhat confirmed by the speed with which Bourke reacted.\footnote{Bourke, “Proclamation”, 26 August 1835, State Library of NSW, ML D356-1, No 7}

The legality of British possession rested on the premise that the indigenous population occupied, but did not own, the land and there could thus be no prior Aboriginal title. Moreover to the British, there were no recognisable territorial boundaries and no Aboriginal leader with authority to transfer land. John Batman, however, purported to have befriended the local inhabitants of Port Phillip and negotiated a treaty by which he “purchased” 600,000 acres of land, on behalf of the Port Phillip Association. Implicit in this transaction was the concept that the indigenous people held a right over the land which they occupied. This had the potential to overturn Britain’s original claim if it were legally challenged and would open opportunities for purchase by other private entrepreneurs; possibly even foreign governments.

Lord Glenelg rightly noted that such a purchase if recognised would threaten the British claim to be the first owners of the land. In correspondence to Bourke, Glenelg offered the view:

\begin{quote}
...we should consult very ill for that unfortunate race by recognising in them any right to alienate to private adventurers the land of the colony...\textit{such a concession would subvert the foundation on which all property rights in New South Wales presently rest.}\footnote{Watson, \textit{HRA Vol 18}. p379, Glenelg to Bourke, (13 April 1836)}
\end{quote}
The threat to British sovereignty and possession was real and could not be ignored.\textsuperscript{321} It was amplified by George Mercer, a London based shareholder in Batman’s Association. Mercer protested that in purchasing the land his Association had maintained a belief that the Port Phillip region was outside the jurisdiction of NSW and thereby open to purchase from the original inhabitants. Mercer included a legal opinion to support his claim.\textsuperscript{322} The opinion argued that there was validity to the treaty. It described the Aboriginal people as intelligent men, the treaty as equitable and claimed strong evidence to indicate that they fully comprehended the implication of the deed. Of major concern was the further opinion: “I do not think that the right to this territory is at present vested in the crown.” The opinion did however state that as British subjects, the settlers held an overriding loyalty to the Monarch and for that reason alone, the Crown was competent to prevent the settlement.\textsuperscript{323}

In August 1835, Bourke aware of the implications of Batman’s treaty, acted almost immediately to protect the Crown interest.\textsuperscript{324} Without waiting for instructions from London he proclaimed the Batman treaty void.\textsuperscript{325} Bourke declared that no matter where it was made, any treaty, bargain, or contract for the purchase of land, made between a colonist and the Aboriginal people, was void and of “no effect against the rights of the Crown.”\textsuperscript{326} In the case of Port Phillip however, Bourke had no wish to see his proclamation challenged.\textsuperscript{327} He obtained the authority of Colonial Secretary Glenelg to both found a new


\textsuperscript{322} Watson, \textit{HRA Vol 18}. p386, Mercer to Glenelg, (6 April 1836)
\textsuperscript{323} Ibid. p389, (sub-enclosure 1&2) Dr. Lushington to George Mercer, (18 January 1836)
\textsuperscript{324} Ibid. p154, Bourke to Glenelg, (10 October 1835)
\textsuperscript{325} Bourke, “Proclamation”, 26 August 1835, State Library of NSW, ML D356-1, No 7
\textsuperscript{326} Bourke, “Proclamation”, 26 August 1835, State Library of NSW, ML D356-1, No 7
\textsuperscript{327} Watson, \textit{HRA Vol 18}. p155, Bourke to Glenelg, (10 October 1826). p391, Sir George Grey to George Mercer, (13 April 1836). p685, Under-Secretary Stephen to Colonisation Commissioners, (27 October 1837). N.B the set upset price of 3/6d per acre was criticized by newly formed South Australian Company that complained of unfair competition when they had set a price of 12/- per acre for similar land, See ibid. p682, Col. Torrens to Glenelg, (12 October 1836)
settlement and to offer the region’s land for purchase on the same terms as applied to areas within the prescribed Nineteen County limit.\textsuperscript{328}

During a visit to Port Phillip in March 1837 Bourke praised the settlers’ pastoral objectives and again diffused the issue by promising them the “fostering care” and good will of the Monarch who, he said, would be never waverin in protecting and promoting the objectives of the settlers. He then appointed Henry Batman (John Batman's brother) a Commissioner of Lands and also charged him with overseeing the region’s squatters.\textsuperscript{329}

Thus Bourke’s pragmatism and willingness to bend had defused a potentially difficult situation. The issue of Aboriginal ownership, which if accepted would have “applied with equal force over all of the wastelands of NSW,” was not pursued but was deflected by assertion that only the state could enter into treaties.\textsuperscript{330} Both Bourke’s proclamation that the Aboriginal people could not sell land by treaty and his associated claim of authority over Port Phillip remained unchallenged.

\textbf{7.5.4. Squatting: If it can’t be Prevented, Issue a Licence.}

Bourke found that outside of the Limits of Location, pastoralists illegally occupied any land they chose at no cost, having wilfully ignored Governor Darling’s edict restricting grazing to a designated area.\textsuperscript{331} The situation was beyond the Governor’s control. Graziers simply drove their livestock to wherever they could find good grass.\textsuperscript{332} By squatting, although they paid no money, they had no security of tenure. They undertook little improvements to the land and their herds simply spread further and further afield.\textsuperscript{333} The attempts to confine the colony thus remained futile.\textsuperscript{334} Despite Governor

\begin{itemize}
\item \textsuperscript{328} Ibid. pp379-380, Glenelg to Bourke, (13 April 1836)
\item \textsuperscript{329} Boyce, 1835 The Founding of Melbourne & The Conquest of Australia. p149
\item \textsuperscript{330} Watson, HRA Vol 18. p390, Sir George Grey to George Mercer, (14 April 1836)
\item \textsuperscript{331} French, "Squatters and Separation: A Synoptic Overview." p805
\item \textsuperscript{332} Drown, "An Apparatus of Empire." p220
\item \textsuperscript{333} Babie, "Sovereignty as Governance Organising Theme for Australian Property Law." p1009
\item \textsuperscript{334} Roberts, History of Australian Land Settlement 1788-1920.
\end{itemize}
Bourke’s attempted compromises and appeasement, it was a situation that would continue to cause tension between the pastoralists and the governor throughout Bourke’s term in office.\textsuperscript{335}

French found that by the mid-1830s, two pincer movements of squatters had moved out from the Limits of Location, one to the north-west through New England and the Darling Downs and one south-west through Australia Felix.\textsuperscript{336} It was a massive land grab that violated both indigenous and crown rights.\textsuperscript{337} In an endeavour to legalise what he apparently regarded as a misdemeanour, Bourke on a number of occasions had recommended that the Limits of Location be widened to extend into the lands occupied by the transgressors.\textsuperscript{338} It was an appeal that was refused by both Aberdeen and Glenelg.\textsuperscript{339} Having failed to gain approval to extend the boundaries, Bourke looked for another means through which he could regulate the pastoralists.\textsuperscript{340} In seeking a solution he admitted the difficulty of satisfying all parties, "To state this problem in general terms is far easier than to grapple with the difficulties that beset the subject."\textsuperscript{341} Bourke was powerless to prevent squatting but ever the pragmatist, he thought its “worst evils” might be mitigated by imposing guidance and authority.\textsuperscript{342}

Prior to the upsurge in squatting, a self-styled landed gentry had been evolving within the confines of the Limits of Location, but it had become evident that by the 1830s the illegal squatters were increasingly generating the larger part of the colony’s revenue.\textsuperscript{343} Bourke’s decision to legitimise squatting rather than

\textsuperscript{335}Fletcher, "Governor Bourke and Squatting in N.S.W." pp268-270. Kass, \textit{Sails to Satellites}. p19
\textsuperscript{336} A fertile area of what is now western Victoria discovered by Surveyor General Thomas Mitchell.
\textsuperscript{337} French, "Squatters and Separation: A Synoptic Overview." p804
\textsuperscript{338} Watson, \textit{HRA Vol 17}. p469, Bourke to Stanley, (4 July 1834); ibid. p155, Bourke to Glenelg, (10 October 1835); Fletcher, "Governor Bourke and Squatting in N.S.W." p279
\textsuperscript{339} Watson, \textit{HRA Vol 17}. p616 Aberdeen to Bourke, (26 December 1834); ibid. pp379-380, Glenelg to Bourke, (13 April 1836).
\textsuperscript{340} Burroughs, \textit{Britain and Australia 1831-1855}.p147
\textsuperscript{341} Watson, \textit{HRA Vol 17}. p230, Bourke to Glenelg, (18 December 1835)
\textsuperscript{343} ———, "Governor Bourke and Squatting in N.S.W." p267
attempting to prevent it reduced the power of the ersatz aristocrats in favour of a new class of "gentleman-squatter." It was this new class that would become the colony’s dominant powerbrokers.

The actions eventually taken had two facets. Firstly, appreciating that particularly in NSW, possession was a strong indication of title, Bourke in 1836 enacted legislation that prevented claims being made on crown land on the basis of long-term occupation. Secondly, having accepted that it was impossible to control the pastoralists’ unauthorised occupations, he chose instead to bring their previously illegal occupation under the law by licensing grazing on any unoccupied crown land. This licence applied to land both within and without the Limits of Location. It was a political decision by which the de facto possession of the squatter could be brought within a de jure system of occupation.

The licences could be purchased for £10 per annum irrespective of the area grazed. They gave no permanent status to the occupier and were issued on the understanding that "the holders had no claim to any greater protection by the Civil or Military Force" than what they already enjoyed. Alston noted that in Bourke’s issuing of licences, he signalled that the squatters were responsible for themselves, but also that any conflict between them brought spectre of licence withdrawal and dispossession. As a means of maintaining control,

344 French, "Squatters and Separation: A Synoptic Overview." p805
345 Powell and M, Australian Space Australian Time, p654
348 Jeans, An Historical Geography of NSW to 1901. pp154-155. Fletcher, "Governor Bourke and Squatting in N.S.W." p 279 & p284
349 Powell and M, Australian Space Australian Time. p67
350 "Sydney Gazette and New South Wales Advertiser."p4, Government Gazette, (5 October 1836)
Bourke appointed land commissioners who recorded the boundaries of runs, adjudicated on boundary disputes and enforced the licencing system.\footnote{Alston, Harris, and Mueller, "The Development of Property Rights on Frontiers." p751 & p753}

Persons occupying land without a first obtaining a licence faced penalties of £10 for the first offence, £20 for the second and £50 for any subsequent offence.\footnote{Thomas Callaghan, ed. \textit{Acts and Ordinances of the Governor and Council of N.S.W} vol. 1 (Sydney: Govt, Printer, 1844). p366, 7 William IV. No 4 - An Act to Restrain the Unauthorized Occupation of Crown Land}

In advising of Royal assent for the legislation of the Licensing Act, Lord Glenelg expressed a view that the penalties for non-licensed occupation might not be a sufficient deterrent.\footnote{Ibid. p366, 7 William IV. No 4 - An Act to Restrain the Unauthorized Occupation of Crown Land}

Glenelg’s opinion would appear to be confirmed to some extent by a \textit{Sydney Gazette} article of 1837: “As regards its operation in remedying the evils...it has been a dead letter.”\footnote{"Sydney Gazette and New South Wales Advertiser."p2. The Squatting System, (25 November 1837)}

Rob Stevens offered a view that Bourke was not really concerned with enforcement, rather he had implemented a scheme whereby if the fee was paid squatters were within the law.\footnote{Rob Steven, "White Settler Origins of Australia," \textit{Australian Political Economy} 46 December(2000). p57}

In creating the grazing licenses Bourke again demonstrated his willingness to seek compromise. His concern was apparently not so much with the loss of containment, but with unenforceable regulations that had encouraged settlers to thwart Government authority. By licensing the usage of unoccupied land beyond the prescribed limits, Bourke had opened up the entire colony for legal settlement. There were advantages; in almost a reverse of the theories of Wakefield, squatting allowed farm labourers with little capital, to take up runs and a consequent shortage of workers increased the wages of those that remained.\footnote{Fletcher, "Governor Bourke and Squatting in N.S.W." p269 & 271. Burroughs, \textit{Britain and Australia 1831-1855}. pp114 Wakefield proposed selling land at a price that they labouring classes could not immediately afford, thus ensuring sufficient labour for a land owning class. See Pretty, "Wakefield, Edward Gibbon (1796 -1862." (n.p.)}

This encouraged immigration of workers, meeting a government objective of ridding Britain of its unemployed. Pastoral pursuits required less labour than agriculture and free access to the land made
the pursuit even more profitable. Wool created wealth and provided Britain with a valuable source of raw material.

7.5.5. Town Planning

Although mostly occupied by concerns surrounding rural land, Bourke made two significant incursions into the field of town planning. He took personal interest in the planning of Melbourne and directed the inclusion of the now well-known Melbourne laneways. In Sydney also, he left a lasting legacy. He was instrumental in preserving Hyde Park from subdivision as housing allotments. The measure could be seen as a significant planning control not unlike the modern concept of zoned open space.

In 1832 Bourke overturned a policy of earlier governors which would have broken up the area known as Hyde Park into housing blocks. Bourke noted shortly after his arrival and after being informed of the proposal he had determined “to give [it] no countenance.” This was despite claims that one of his predecessors, Thomas Brisbane, had already promised a number of individuals allotments within the area, as had Darling. Dismissing any prior claim and showing an appreciation of an advanced town planning premise that physical space can affect the quality of life within it, Bourke decreed: “The appropriation of the park for private houses would have deprived the inhabitants of Sydney of the benefit of fresh air and of space for needful exercise and recreation.” He then refuted any existing claims for allotments within the park. Again Bourke exercised a degree of pragmatism and diplomacy. As a compromise, he granted land at Rushcutters’s Bay in lieu of the land claimed. It

357 Burroughs, *Britain and Australia 1831-1855*, pp114-115
359 Watson, *HRA Vol 16*, p826, Bourke to Goderich, (24 December 1832)
360 Ibid. p328 (Enclosure 2), Darling to Goderich, (15 October 1831)
361 Ibid. p826, Bourke to Goderich, (24 December 1832)
was a position supported by his successor George Gipps and Hyde Park has remained their lasting tribute providing a green space within Sydney’s central district.362

Seven months after declaring Batman’s treaty void, in March 1837, Bourke visited the Port Phillip settlement and decreed that the town would be called Melbourne in honour of the British prime minister Lord Melbourne.363 Bourke directed a team of surveyors to mark out the street system with one hundred allotments to be sold as freehold. Bourke inspected the site personally and approved the selected location and a sketch of the town’s urban layout, which was in accordance with the standards prescribed by Governor Darling. At Bourke’s suggestion a modification was made to the standard design and laneways (now Melbourne’s “little streets”), were provided to give access to the rear of the town allotments364 (Fig 7.5). It was a town plan of which a pamphleteer, of 1849, observed “the only skill exhibited…is that involved in the use of a square and compass.”365

Unlike Collins’ attempt to settle the bay, the township thrived. As had occurred in Sydney, the settlement spread from its central core into the pasture land beyond and the population swelled from 1,000 in 1837 to 20,000 five years later. As early as September 1837, only months after his visit to Melbourne, Bourke wrote of a request from “a considerable number of persons” for a police magistrate to be located at Geelong near the western head of Port Phillip where there was good pasture.366 In the same letter Bourke requested a Lieutenant Governor be appointed for “the increasing exigencies of the Southern Districts.”367

362 ———, HRA Vol 20. pp441-446, Gipps to Russell, (22 December 1839)
365 Cited in, Boyce, 1835 The Founding of Melbourne & The Conquest of Australia. p 148
366 Ibid. p151
367 Watson, HRA Vol 19. pp 87-89, Bourke to Glenelg, (11 September 1837)
As indicated in the following table, the surveyor general’s records hold details of twenty-one towns surveyed during Bourke’s tenure. The number however, rather than a sign of Bourke’s interest, possibly reflects the rapid outwards expansion of settlements that were filling out the areas within the Nineteen Counties.
### Table 7.4. Towns Surveyed During Bourke’s Governorship

<table>
<thead>
<tr>
<th>Plan</th>
<th>Town</th>
<th>Year</th>
<th>Year</th>
<th>Plan</th>
<th>Town</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>741</td>
<td>Appin</td>
<td>1832</td>
<td></td>
<td>n/No.</td>
<td>Camden</td>
<td>1835</td>
</tr>
<tr>
<td>Not known</td>
<td>Mittagong</td>
<td>1832</td>
<td></td>
<td>892</td>
<td>Raymond Terrace</td>
<td>1835</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>(Design not approved)</td>
<td></td>
</tr>
<tr>
<td>Not known</td>
<td>Bowral</td>
<td>1832</td>
<td></td>
<td>892</td>
<td>Raymond Terrace</td>
<td>1837</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>(approved)</td>
<td></td>
</tr>
<tr>
<td>744</td>
<td>Emu*</td>
<td>1832</td>
<td></td>
<td>893</td>
<td>Maitland</td>
<td>1835</td>
</tr>
<tr>
<td>773</td>
<td>Bungonia</td>
<td>1834?</td>
<td></td>
<td>933</td>
<td>Port Macquarie</td>
<td>1834</td>
</tr>
<tr>
<td>824</td>
<td>Bathurst</td>
<td>1831</td>
<td></td>
<td>946</td>
<td>Boat Harbour (Port Macquarie)</td>
<td>1836</td>
</tr>
<tr>
<td>828</td>
<td>Wollongong</td>
<td>1833</td>
<td></td>
<td>954</td>
<td>Yass</td>
<td>n.d.</td>
</tr>
<tr>
<td>832</td>
<td>Mirrimbah</td>
<td>1836?</td>
<td></td>
<td>983</td>
<td>Ulladulla</td>
<td>1837</td>
</tr>
<tr>
<td>833</td>
<td>Marulan</td>
<td>1833</td>
<td></td>
<td>984</td>
<td>Bungendore</td>
<td>1837</td>
</tr>
<tr>
<td>834</td>
<td>Goulburn</td>
<td>n.d.</td>
<td></td>
<td>985</td>
<td>Broulee</td>
<td>1837</td>
</tr>
<tr>
<td>840</td>
<td>Wilberforce</td>
<td>1833</td>
<td></td>
<td></td>
<td>Melbourne</td>
<td>1837</td>
</tr>
<tr>
<td>856</td>
<td>Muscle Brook (sic)</td>
<td>1833</td>
<td></td>
<td></td>
<td>*This was a resurvey</td>
<td></td>
</tr>
</tbody>
</table>

#### 7.5.6. Resignation

Following a dispute with a Campbell Riddle who held an appointment from the Colonial Office as a member of Bourke’s Executive Council, Bourke dismissed Riddle from the Executive Council. He then referred the matter to Lord Glenelg for approval. In the accompanying correspondence, Bourke threatened to resign from office if his actions did not receive London’s full support. The support that had been expected was not received, instead Lord Glenelg attempted to

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reconcile the two. The response was unsatisfactory to Bourke who formally resigned on January 1837. 369 His resignation was accepted in July and he was replaced by Sir George Gipps early the following year. 370

On his recall Bourke was the second governor to return to England with his reputation intact. Only Arthur Phillip had done so before him. Glenelg’s note accepting the resignation stated:

[I cannot let this occasion pass without expressing the high sense which Her Majesty’s Government entertain the zeal, energy and enlightened views, which have distinguished your administration; and it is a matter of sincere regret that the growing interests of the important colony of New South Wales will be deprived of the benefits of your talents and experience.] 371

When Richard Bourke departed the colony in December 1837, he reportedly left as the most popular governor up until that time. 372 His popularity however was not unanimous. While the liberal and politically unaligned Sydney Monitor paid him glowing compliments, the editor of the also liberal Sydney Gazette and NSW Advertiser belatedly offered some compliments while the more conservative Sydney Herald was quite scathing in its opinion. 373

Bourke had accepted that squatting beyond the limits of location was inevitable and therefore should be brought within the bounds of the law. His giving a formality to squatting was not without controversy. Land owners who had outlaid capital saw the squatter as having an unfair economic advantage. 374 The squatters resented the power of the land commissioners who had almost unfettered power to withhold licences. It was a system favoured by those with little capital to outlay, and the ability of otherwise landless labourers to take up land reduced the availability of cheap labour causing angst among both the

369 Watson, *HRA Vol 18*, p616, Bourke to Glenelg, (30 January 1837)
370 ———, *HRA Vol 19*, p4, Glenelg to Bourke, (3 July 1837)
371 Ibid. p4, Glenelg to Bourke, (3 July 1837)
373“Sydney Gazette and New South Wales Advertiser.” p2, The ex-Governor, (12 December 1837);
374 Fletcher, “Governor Bourke and Squatting in N.S.W.” p271
landowner and established squatter. By the time of Bourke’s departure, he had opened up the entire colony to pastoralists, although the limits within which land could be purchased were confined to the Nineteen Counties and Port Phillip.

The discontent of both the wealthy land owner and established squatter manifested itself in a cry for greater representation in government and a reduction of the governor’s autocratic power. They were cries that would be heeded and partially implemented during the tenure of the next governor. The issues of rural land were dominant during Bourke’s administration and in the design of towns, Bourke generally adopted standards set by his predecessor. Nonetheless he made a significant contribution to the layout and underlying character of the country’s two largest cities, Melbourne and Sydney. Melbourne was designed under Bourke’s direction and owes its little streets or laneways to his intervention. Sydney gained the central green space of Hyde Park by Bourke’s foresight, when he refused to allow the area to be subdivided for housing.

On Bourke’s departure in December the colony was left for seven weeks under the administration of Lieut-Col Snodgrass who officially handed the administration over to George Gipps in February 1838. Bourke’s departure ended an era that had started with Governor Brisbane and which had seen the colony transform both spatially and politically. The era had seen a whirlwind of expansion, which following the opening of the barriers by Macquarie had been beyond the governor’s ability to check. Of Macquarie’s successors, Brisbane introduced the alienation of land by purchase; Darling had attempted to maintain control and contain the colony’s expansion by proclamation; Bourke saw the futility of attempting to restrict growth and retrospectively brought squatting within the bounds of the law.

\[375\] Ibid. p269
7.5.7 Settled Areas and Spatial Growth at end of Bourke’s Tenure

The extent of the settlement and land alienated at the end of Bourke’s governorship is tabulated in Table 7.5.

Table 7.5. Settled Localities/Squatting District and Surveyor’s Plans Registered and Land Sales at the end of Bourke’s Governorship

<table>
<thead>
<tr>
<th>Locality</th>
<th>Locality</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nineteen Counties</td>
<td>Murrumbidgee</td>
</tr>
<tr>
<td>Bligh</td>
<td>New England</td>
</tr>
<tr>
<td>Lachlan</td>
<td>Port Macquarie</td>
</tr>
<tr>
<td>Liverpool Plains</td>
<td>Wellington</td>
</tr>
<tr>
<td>Macquarie</td>
<td></td>
</tr>
<tr>
<td>Maneroo</td>
<td></td>
</tr>
<tr>
<td>External and remote</td>
<td></td>
</tr>
<tr>
<td>Moreton Bay</td>
<td>Port Phillip</td>
</tr>
<tr>
<td>Norfolk Island</td>
<td></td>
</tr>
</tbody>
</table>

Acreage Alienated

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Arthur Phillip 1788-1792</td>
<td>3,389 Acres</td>
</tr>
<tr>
<td>Francis Grose 1792-1794</td>
<td>10,674 Acres</td>
</tr>
<tr>
<td>William Paterson 1794-1795</td>
<td>4,965 Acres</td>
</tr>
<tr>
<td>John Hunter 1795-1800</td>
<td>28,650 Acres</td>
</tr>
</tbody>
</table>

376Roberts, *The Squatting Age in Australia*. p139
<table>
<thead>
<tr>
<th>Name</th>
<th>Acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phillip Gidley King 1800-1806</td>
<td>60,411 Acres</td>
</tr>
<tr>
<td>William Bligh 1806 -1808</td>
<td>2,180 Acres</td>
</tr>
<tr>
<td>George Johnston 1808</td>
<td>5,660 Acres (later revoked)</td>
</tr>
<tr>
<td>Joseph Foveaux 1800-1809</td>
<td>8,325 Acres (later revoked)</td>
</tr>
<tr>
<td>William Paterson 1809 -1810</td>
<td>68,101 Acres (later revoked)</td>
</tr>
<tr>
<td>Lachlan Macquarie 1810-1821</td>
<td>570,045 Acres</td>
</tr>
<tr>
<td>Sir Thomas Brisbane</td>
<td>865,000 Acres plus 200,000 Crown reserves</td>
</tr>
<tr>
<td>Ralph Darling</td>
<td>79,262 Acres</td>
</tr>
<tr>
<td>Richard Bourke</td>
<td>562,628377</td>
</tr>
</tbody>
</table>

**Value of Sales**

<table>
<thead>
<tr>
<th>Name</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Richard Bourke</td>
<td>£1,173,151378</td>
</tr>
</tbody>
</table>


378 Ibid.p106, EC 34-35 NSW Land Sales and Mortgages, (1832-1850)
CHAPTER 8. REFORMS AT 16,000 MILES: GIPPS

How grievous and cruel a thing it is that a Secretary of State living 16,000 miles off, so entirely ignorant of a subject which he peremptorily meddles with, is yet about, by the instrumentality of the British Legislature...to afford one other proof that Britons as we are, we are virtually living under a perfect despotism.

The Australian - 1842

I shall always receive with respect any report emanating from the [NSW] Legislative Council...the superior knowledge which they can command of circumstances on the spot would lend double weight to their authority...It must be remembered however, that the present is not of purely local concern and still less of recent experience. It affects the manner of disposing of unoccupied lands throughout the British Colonies and contemplates virtually the recurrence of a system which has been tried on a larger scale and during a longer time than any other that can be brought under consideration.

Earl Grey, 11 August 1848

The administration of George Gipps was characterised by decrees from London that had a major impact on the internal affairs of NSW. It will be shown that as with Gipps’ predecessors, land issues tended to dominate policy at international, regional and local levels. It was a time when the imperial aspirations of Britain again became dominant. In an effort to maintain unambiguous British possession, a settlements was again attempted on the northern coastline at Port Essington and NZ was annexed as a separate British colony. At regional and local levels, Gipps found himself caught between the decrees of his London based superiors and the needs of the colony. He was faced with relatively inexperienced Colonial Secretaries who made naïve and impractical decisions while ignorant of the colonial situation. There is also a suspicion that the needs and success of NSW were being subordinated to the success of the privately financed colonisation of SA.

Throughout Gipps’ administration, there were continuing disputes with the squatters and the colonial elites, who by the 1820s had become major stock owners and wool exporters. These groups were steadily increasing their political and financial power both in NSW and Britain. Because of an open hostility between the governor and these now influential members of society, ever increasing demands were made for complete self government. The influence of the elites, through their contacts in Britain and their representation in the local Legislative Council, allowed them to undermine the governor and thwart land legislation that was not to their advantage.

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1 "The Australian ". p2, (17 May 1842)
2 Watson, HRA Vol 26. p541, Grey to FitzRoy, (11 August 1848)
This chapter describes how Gipps in striving to mediate between the conflicting demands of the Whitehall bureaucracy and the colonists satisfied neither. Although major land and political reforms were introduced during his governorship and the colony was set on the path to self-government, Gipps proved to be an unpopular leader. Like several others before his efforts were derided in many of the newspapers of the day.

8.1 Sir George Gipps – Governor 1838 to 1845

_It appears evident that the manner of dealing with lands beyond the Boundaries [of Location] is likely to become a topic that may require the most mature and deliberate consideration on behalf of the Government._

Land and Emigration Commissioners -1842

The successor to Richard Bourke was George Gipps. He was born in 1791, the son of a wealthy church minister and member of the Kentish gentry. He was educated at King's School and graduated from the Royal Military Academy at Woolwich as a Second Lieutenant in the Royal Engineers. When appointed governor in October 1837, he was forty-two, married to the daughter of a Major General, a veteran of the Peninsular War and held the rank of Major. He arrived in Sydney with his wife and son on 23 February 1838, two months after his predecessor Governor Bourke had departed the colony.

Gipps brought with him considerable experience of the machinations of the upper ranks of the British bureaucracy. He was a knighthed member of the Establishment and had been the private secretary to the First Lord of the Admiralty. Later under the leadership of the Earl of Gosford, he was one of three Royal Commissioners seeking a better unification of Canada. Gipps was the author of the Commission’s final report and was described by an opponent, the leading separatist Louis-Joseph Parizeau, as “the soul of the Commission.”

The findings of the Canadian Commission could almost have applied to NSW. It recommended land reforms, especially relating to the sale of unoccupied lands and a bicameral government comprising

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5 ________, _Every Inch a Governor_. p20
the governor with an appointed executive and a lower house of elected legislative councillor.⁶ Although the findings were not well received, the experience, together with his earlier responsibilities with the First Lord, advanced Gipps’ reputation and career. It brought him to the attention of the Prime Minister and the Colonial Office and furnished him with knowledge of the British administrative, political and colonial systems.⁷

He was a controversial governor who found himself caught between what he thought was the best interests of the colony and the demands of both the British government and the squatter. He was condemned from all sides and was described as a dictator under the direction of despotic superiors. He faced the anger and violent language of the squatting fraternity,⁸ while at the same time he received severe censure from Whitehall.⁹ His efforts however were eventually recognised by at least one of those critics when in a letter of January 1845 Lord Stanley issued the following statement:

*“I approve highly of the sense of public duty which has led to the odium brought on yourself by the regulations you have issued. I have felt no hesitation in submitting to Her Majesty, for Her approbation the course you have pursued and now have the honour to be the medium of signifying approbation on to you.”*¹⁰

Gipps did not introduce any major town planning reforms; his contribution tended to be at a regional scale. They were characterised by his efforts to impose order and control over the chaos that had developed from the indiscriminate squatting permitted by Bourke. He introduced elected local government, a body that would eventually become responsible for local planning controls, but the measure was opposed by the partially elected Legislative Council and his authority on the matter was severely challenged.

**8.1.1. Previous Land Decisions; irregular and illegal**

Regulation is an intrinsic part of land use planning and land control and its management was Gipps’ main line of attack. On taking office Gipps had described the colony as suffering from lax administration and legal informalities. As with his predecessors, he saw it as necessary to confront and put right an earlier perceived maladministration, as well as introducing reforms. In these, Gipps

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⁶ Ibid. p30
⁷ Ibid. p30
¹⁰ ———, *HRA Vol 24.* p218, Stanley to Gipps, (30 January 1845)
had moderate success, having the benefit of a local legislature, the authority to make laws and a Chief Judge to advise him.\textsuperscript{11} Among the colonists however, his attempts to overturn long established practices left Gipps generally ostracized.

Many of the pre-existing land regulations he regarded as flawed. The squatting licenses in particular he thought not to be in the best interests of the colony. He highlighted the problems he had inherited when reporting to the Marquess of Normanby and noted that many of his predecessors’ decrees “to use no harsher term” were “irregular.”\textsuperscript{12} Land he claimed had been set aside “by insufficient legal proceedings.”\textsuperscript{13}

In illustrating his point Gipps referred to a particular dispute between the government and the heirs of ex-Governor Bligh.\textsuperscript{14} He asserted that many of the proclamations by earlier governors had been similarly “deficient in legal form.” The colony he claimed had been administered as a penal establishment with even civil matters treated under military rule. As with the other governors, Gipps failed to recognise the problems that had been faced by the earlier administrations and criticised the ability of all earlier governors writing: “very few acts of the early governors of New South Wales were performed strictly according to law or legal forms.”\textsuperscript{15}

Because of the number of land claims under various earlier systems, Gipps found it necessary to repeatedly investigate, assess and report on persons claiming an existing right either as a free grant or under favourable terms of purchase. To assist in the assessment of claims, particularly those then being made on land in New Zealand, Gipps appointed Commissioners to examine and report on such claims. He noted that some claims were substantial and required the strictest investigation. Claims he said, ran into hundreds of thousands and even millions of acres.\textsuperscript{16}


\textsuperscript{12} Then the Secretary of State

\textsuperscript{13} Watson, \textit{HRA Vol 20}. p378, Gipps to Normanby, (7 August 1839)

\textsuperscript{14} This related to then disputed land grants made reciprocally to each other by a departing Governor King and an incoming Governor Bligh.

\textsuperscript{15} Watson, \textit{HRA Vol 20}. p279, Gipps to Normanby, (7 August 1839)

\textsuperscript{16} Ibid. p760, Gipps to Russell, (16 August 1840) Note W.C. Wentworth was claiming almost all of the South Island (then known as the Middle Island).
In 1838 at the start of Gipps’ tenure, the strategic claims of possession by Britain and its need to exclude foreign powers remained. Britain entertained a desire to dominate the China trade routes and to establish an incontestable claim of sovereignty. With such considerations in mind the Colonial Secretary once more favoured the colonisation of Australia’s northern coast. Again there was to be no pre-investigation, this was despite the previous lack of proper planning and several failed attempts to establish such settlements.

In January 1838 Captain James Bremer R.N. was despatched from Britain in HMS Alligator with a commission to establish a post on the northern coastline. Bremer, who was to be the commandant of the settlement under the authority of Gipps, held correspondence requiring the governor to both assist and supply the enterprise. In September of 1838 Gipps wrote of Bremer’s arrival in Sydney and that the expedition had been fitted out and was then proceeding north.

Captain Bremer returned to Sydney in July 1839 and reported that a settlement had been established at Port Essington, a mainland port on the Cobourg Peninsular east of the unsuccessful settlement at Melville Island. As with the previous attempt the settlement appears to have struggled and in 1841 Lord Russell asked for a report “with as little delay as possible so that Her Majesty’s Government may be guided whether the settlement should be abandoned.” It was abandoned in 1849 and has since been described as: “Britain’s most disastrous attempt at colonial settlement; a victim of gross stupidity, inflexible bureaucratic dictates and disease.”

Bremer’s instructions had been to establish a fortified outpost to maintain a British presence and to prevent hostile nations setting up trading posts in the region. A town of 1,280 acres was planned on

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17 ———, HRA Vol 19, p247, Glenelg to Gipps, (25 January 1838)
18 Ibid. p247 Glenelg to Gipps, (25 January 1838)
19 Ibid. p589, Gipps to Glenelg, (22 September 1838)
20 ———, HRA Vol 20, p264, Gipps to Normanby, (27 July 1839)
21 ———, HRA Vol 21, pp412-413, Russell to Gipps, (27 June 1841)
paper, but settlers could not be attracted and an attempted sale of land in 1841 failed dismally. The project was abandoned in 1841.  

Prior to Gipps leaving England the occupation of Cape York had been discussed with Lord Glenelg and the Admiralty. The matter was left undecided and further consideration of the Cape York settlement was possibly superseded by the decision to occupy Port Essington. The matter was raised again in 1845 when Gipps made the suggestion that, if Port Essington were to be abandoned, consideration again be given to the Cape. Cape York Gipps said, could be easily supplied from Sydney whereas Port Essington was “both difficult and expensive.”

A second strategic venture involved NZ, which from 1788 to 1840 had been administered essentially as a sub-colony of NSW. Gipps oversaw its annexation and separation from NSW. A formal interest had been maintained of the islands since they were circumnavigated and charted by Cook in 1770 and the North Island and part of the South are located between the latitudes 10°37’S and 43°39’S, as such they fell within the ambit of Phillip’s original commission. From about 1814 missionaries had settled in the islands and some trade was being conducted between the colonies. In 1832 Viscount Goderich appointed an official Resident, John Busby, to oversee British interests in the territory. NZ was eventually annexed and declared a British colony under Governor Hobson, on 24 November 1840.

8.1.3. A Decree from London: Increase the Price of Land

Local planning of land releases was often thwarted by remotely imposed directions from British bureaucrats, described by Burroughs as “the armchair theorists.” One example was an order to increase the minimum price of land. Lord Glenelg, Normanby’s predecessor as Colonial Secretary, decreed, whilst Gipps was still in transit in August 1838, that the upset price of land in NSW of 5/- per acre was too low. Glenelg suggested a minimum price of 12/- an acre. This was the price then being

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25 Watson, HRA Vol 24. p660, Gipps to Stanley, (15 December 1845)
26 State Library of New South Wales. Proclamation of Phillip’s Commission , (7 February 1788)
27 Watson, HRA Vol 16. p562, Goderich to Bourke, (18 March 1832)
28 The NSW and Van Diemen’s Land Act, 2 & 3 Vict. c62. ———, HRA Vol 21. p140, Russell to Gipps, (31 December 1840)
29 Burroughs, Britain and Australia 1831-1855.p216
applied to land in the colony of SA. 30 On receiving Glenelg’s instruction Gipps immediately proclaimed that, despite any earlier advertising, 12/- per acre would be the minimum price of all crown land. 31

The anger triggered by this steep rise in the price of land can be judged by its reception in the news-sheets of the day. The editor of the Sydney Gazette forecast likely ruinous consequences and offered the comment that “sheep-holders” would not pay the “advanced price” and instead simply become squatters. It advised that no stone should be left unturned “to avert the ruin which threatens to overwhelm us.” 32 An article in the Sydney Monitor quoted a prospective purchaser who, on being told of the increase, said: “The price does not suit my pocket I shall therefore squat.” 33 Similarly, the editor of the Australasian Chronicle said the measure “would terminate land sales” with squatters instead living “a gypsy life” in bark huts and making no improvements to the property occupied. 34 The Sydney Herald described the price increase as a breach of faith and simply an attempt at gathering revenue to pay for an outmoded British system of transportation. 35 A similar editorial in the Sydney Gazette, referred to the increase as a “most deadly inimicality to prosperity” claiming it burst like a thunderbolt on unsuspecting colonists. 36 The editor of the Colonist, while not directly opposing the increase, noted that the concept of a single minimum price was an error. That editor in a more reasonable tone, noted that there were different qualities of land and proposed a classification whereby first class land might be sold at a higher minimum with inferior land being sold for less. 37

The anger however was not universal. Those who were already squatting welcomed the higher price for land. The squatter had paid nothing for the land and a high purchase price made it less likely that the land would be purchased by a settler and its occupation therefore denied to the current user. 38

30 Watson, HRA Vol 19. p537, Glenelg to Gipps, (9 August 1838)
31 “N.S.W. Government Gazette.” p97, Minimum Price of Land, (23 January 1839). Glenelg’s successor the Marquess of Normanby suggested that the price should be raised even further. See, ———, HRA Vol 20. p234, Normanby to Gipps, (15 July 1839)
32 "Sydney Gazette and New South Wales Advertiser." p2, The Transportation Committee, (7 February 1839)
33 "The Monitor." p2, Yass, (23 January 1839)
34 "The Australasian Chronicle." p1, Australia She Is, (16 July 1840)
35 "The Sydney Herald." p2, (1 March 1839)
36 "Sydney Gazette and New South Wales Advertiser." p2, What will be the Result, (28 February 1839)
37 "The Colonist." p2, The Land Policy, (13 March 1839)
In correspondence to Lord Glenelg, Gipps advised that his immediate raising of the minimum price on all land would prove “very unpopular” but he had intended to resist any clamour and not relax the policy. On discovering, however, that the Lieut. Governor of VDL had applied the increased price only to land not already advertised, Gipps for consistency agreed to adopt a similar measure. He issued a correction stating that the increase would apply only to land not already on sale.39

Unhappily for Gipps, this meant that 300,000 acres was still available at the old price and in a mild criticism Lord Russell described the advertising of such a large quantity of land “an unfortunate error.”40 The matter had been badly handled. Gipps’ conflicting proclamations served only to add fuel to the growing discontent. As noted in the Sydney Gazette:

_We, confess, the apparent absence of all principle manifested in the previous attempt to include even lands advertised at the former minimum...induces us to look at the whole transaction with a suspicious eye._41

Lord Glenelg’s decision was strongly criticised within the colony and it would seem that most of the colonists perceived an ulterior motive. The suspicions rested on the semi-private land sales in the struggling colony of SA.42 The land price there was set at an artificially high level of 12/- per acre, regardless of quality or location.43 The increased prices in NSW served to reduce any competitive edge that the colony might have enjoyed in attracting new immigrants ready to invest in land.

**8.1.4. The South Australian Conspiracy**

_There [is] an overwhelming influence at home against the colony [NSW]...Anyone casting his eye over the Commissioners of South Australia comprising names of the highest and most influential in England...could appreciate the danger the colony was in by their machinations._

W.C. Wentworth, 1839.44

The possibility of a conspiracy within the British bureaucracy and parliament, that unfairly promoted SA and the South Australian Company over the interests of other colonies has attracted little attention from historians. While conspiracy may seem a harsh, it was a term used at the time within

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39 Watson, _HRA Vol 19_. p79, Gipps to Glenelg, (1 April 1839); "N.S.W. Government Gazette." No 388, P174, Crown Lands, (6 February 1839)

40 ———, _HRA Vol 20_. p375, Lord John Russell to Gipps, (28 October 1939)

41 “Sydney Gazette and New South Wales Advertiser."p2, _The New Minimum_, (9 February 1839)


43 Rowland Hill., "Rules and Regulations for the Disposal of Public lands in His Majesty's Province of South Australia," in _South Australian Documents_ (Canberra: Museum of Australian Democracy, 1835). Clause 2, s726d

44 “The Sydney Monitor and Commercial Advertiser." p2 (11 February 1839)
NSW.  Several newspapers of the day reported of apparent collusion between the members of parliament and upper ranks of British society, described by the *Herald* as “the compurgators.” The aim of the collusion was to artificially raise the price of land in NSW and VDL and by doing so, support the private interests that had invested in the colony of South Australia (SA). Although it could be argued that the concerns were no more than inter-colonial rivalry, Governor Gipps himself added to the conspiracy theory when he noted that there was little justification for an increase in the price of land in either NSW or VDL.

Allegedly established to encourage free immigrants, SA was also a profit making venture. The *Australian* of December 1843 noted that SA was a form of land speculation and “like all other speculation, profit to its originators” was an objective. It was designed, according to the newspaper, not for the emigrants, but for “the people at home [England].” It was also noted that there would be no inducement to purchase land in SA at twelve-shillings per acre if it could be bought in the other colonies for five-shillings. As later noted by Stephen Roberts, to have any chance of success, SA had to be on the same footing with respect to land as the other Australian colonies. The very existence of SA he asserted, was dependent upon such measures.

The suggestion that there was collusion reduce the competiveness of NSW was first raised in 1835 by NSW clergyman and later politician John Dunmore Lang who, in the circumspect language of the day, noted that some unnamed individuals “with ready access to the press” and an “extensive influence on the public mind,” were ready to “misrepresent, depreciate and vilify the existing Australian colonies.” This, he said, referring to SA, was with the view of the individuals advancing their own schemes. Lang noted that, under the proposed arrangement, NSW could not prosper and would be “assuredly sacrificed” in the interests of 'private convenience and profit.'

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45 “The Conspiracy Against NSW” “The Colonist.” p2, (22 February 1840)
46 “The Sydney Herald.” p2, (23 March 1835) see also Burroughs, *Britain and Australia 1831-1855*, pp204-206, Burroughs, while not mentioning conspiracy, is one historian that discusses this matter in detail.
47 Watson, *HRA Vol 20*. p80. Gipps to Glenelg, (1 April 1839)
48 “The Australian ” . p2, (19 December 1834)
50 John Dunmore Lang, "The Colonist."p339, (22 October 1835) Lang was a supporter of immigration and the ability of the British working class to emigrate to Australia and purchase their own land.
51 John Dunmore Lang, ibid.p339, (22 October 1835)
The fears expressed by Lang were given further substance in an article that had appeared in the *Times* and was reprinted in the *Sydney Herald* in 1839. The article accused the South Australian Commissioners of “fixing” the price of land within NSW. The way they might have achieved this had been suggested in the *Herald* some months earlier when it reported on a speech by W.C. Wentworth. Wentworth voiced his misgivings regarding the influence that the shareholders of the SA Company were able to exert within the British parliament. NSW, he said, was being governed by a “sinister” committee of the House of Commons whose sole purpose was to increase the profits of the SA venture at the expense of the other colonies. He then claimed:

...that the [NSW] colonists have the most powerful interests exerted against them is most certain. In the first place there are the South Australian Commissioners who are very influential men and among which are many leading members of both houses of Parliament.

The Imperial Government Wentworth claimed, was deliberately increasing both land and labour costs within NSW to reduce any advantage it might have over the new convict-free colony of SA. Wentworth was not alone in his assertions. There were at least some others that shared his views. The *Colonist*, a paper founded by Lang, directly accused the British Government and private investors of conspiring against NSW:

...the enemies of NSW [have] made the groundwork of an indefatigable and systematic conspiracy to prejudice this colony...Certain persons [in London] of considerable influence reacting together to alarm the public mind by all sorts of untruths.

And

...[The] devoted friends of South Australia are part of a selfish clique and they want to raise land in Australia to a uniform price... then they hope by the most outrageous puffing to get people to South Australia instead of NSW.

Even the *Australasian Chronicle*, neither a Wentworth nor a Lang supporter reported on public unrest, news of which it was hoped would be heard in England and would “divert the blow with which the colony was threatened.”

53 Ibid. p2, *Transportation and Assignment*, (11 February 1839)
54 South Australia had no such convict labour and thus had to pay wages for all tasks.
55 W.C. Wentworth speech reported in "The Sydney Herald." p2, (11 February 1839)
56 Ibid. p2, *Transportation and Assignment*, (11 February 1839)
57 D. W. A Baker, "Lang, John. Dunmore (1799-1878),” in *Australian Dictionary of Biography*, ed. National Centre of Biography (Melbourne: Australian National University, 1967). (n.p) At the time of this publication Lang was in America
59 “The Conspiracy Against NSW” ibid. p2, (22 February 1840)
The *Sydney Herald* argued that setting a uniform price on land in NSW and SA was designed to “injure the present colony of NSW” and had “delivered [NSW] into the hands of enemies.” The sole purpose of the price increase, the paper said, was to divert settlers from NSW to SA. It was also claimed that the imposition of such important regulations without local consultation was “presumptive proof of the fact.”  

The South Australian Commission had raised £2,000,000 to support the venture and it was perceived possibly correctly, that the members of the British Establishment had pecuniary interests in the success of SA.

While the decision to increase the price of land to match the SA price, could be seen as a rational decision intended to increase returns from the sale of all Australian crown land, increasing the price of land in NSW certainly served the SA interests. Burroughs held that the SA interests had been instrumental in having the higher price adopted elsewhere and the records indicate that Colonel Torrens one of the founders of SA was strongly in favour of an increased land price in NSW. With the interests of SA in mind Torrens had urged the Colonial Secretary to increase land prices in VDL and NSW. Whether such urging was a conspiracy, or an investor seeking to increase profits, is a matter of judgement.

The price decision was seen in NSW as an example of ignorance and lack of interest in NSW affairs by the British parliament. It added to a dissatisfaction that lasted throughout the remainder of Gipps’ administration. In a column that described a number of Lord Russell’s decisions the editor of the *Australian* asserted:

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\text{The absurdity of Lord John’s utter ignorance, would tempt one to laugh heartily, if the ignorance was not tempered with the great sorrow that the colonists must perceive, that those who guide and administer our affairs 16,000 miles off have not taken the trouble to understand our position.}^{64}
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60 “The Australasian Chronicle.” p2, *The Division of the Colony*, (9 January 1841) The *Australasian Chronicle* was a newspaper aimed specifically at the Catholic population of NSW.


62 The South Australian Loan, "The Hobart Town Courier." p4 (20 May 1836)


64 “The Australian ". p2, (22 December 1840)
The price increases were applied to NSW and it is impossible to know how SA would have fared if it had faced price competition from NSW or VDL. Without the increase, at least twice as much land could have been purchased in the other colonies for the same capital outlay. Even without the competition SA initially struggled to attract immigration; and it urgently needed immigrants to buy land and invest capital.65 As noted by Kerrie Round, in its early years SA failed to prosper, settlers did not arrive in the expected numbers and, for those that did, “wealth and comfort remained an illusionary goal.”66 Given that even with the price-fixing SA struggled to attract migrants it would seem that the impact of increasing the price per acre on NSW, particularly as squatting increased, was marginal, and that the complaints were a petty grumble by colonists whose real objection was to a government price increase.

8.1.5. Land at a Uniform Fixed Price

It was not only the set minimum price of land that caused the NSW colonists’ dismay. They were also concerned by the imposition of the South Australian model of a uniformly fixed price of land.67 In May 1840 Lord Russell announced that, other than in existing townships, £1 per acre was to be the fixed price for all land, making the former protests over a minimum price irrelevant. The purpose of the uniform price was apparently to allow investors in Britain to pre-purchase a quantity of land sight unseen, with the final selection made either by agents in Australia or after the purchaser arrived in the colony.68 Russell said a uniform price of £1 per acre for rural land would ensure the best land was taken first and thus prevent the premature cultivation of lesser lands.69 It should be noted that only the initial purchase of crown land was affected by the fixed price. Subsequent sales by private landholders would be at market prices and as Gipps later noted in the case of very valuable land, it could lead to both speculation and huge profits.70

As part of setting a uniform price Russell instructed that the Land Fund used to attract immigrants to NSW should be divided into three land districts: Northern, Middle and Southern. Only the former two were to be implemented immediately. The southern district covered what is now the state of Victoria.

69 Watson, *HRA Vol 20*. p643, Russell to Gipps, (31 May 1840)
70 Ibid. p431 Gipps to Normanby, (10 December 1839).
plus part of the current NSW south of Batemans Bay, which was the southern boundary of the Nineteen Counties. The future northern district was to cover all land to the north of the Counties.71

The direction on the uniform price went against an earlier comment by Governor Gipps. In December 1838 having heard that such a measure was being “much advocated in England.” Gipps had remarked on the imprudence of the policy.72 In the colony, Gipps said, land prices ranged between 5/- to £10,000 per acre and land was of such a variable nature that to set a single fixed price for both urban and rural lands could not be supported.73 This despatch however was in transit at the time the new rules were formulated.74 Nonetheless on receipt by Lord Russell of the governor’s objections, they were referred to the Commissioners for Land and Emigration,75 who after review, advised that they saw no reason to modify the system.76

Burroughs noted that in supporting the fixed price, the Commissioners were deliberately favouring individuals in England who possessed substantial capital and who under a fixed rate could purchase vast quantities of land without the need for a competitive auction.77 Furthermore the Commissioners noted their belief that, under a fixed price the most fertile land would be selected first thus giving a larger return than would be expected otherwise.78 The Commissioners appear to have subscribed to a belief that large homogenous areas of good land could be selected from a map, whereas conditions in NSW were extremely variable and land value was dependent mainly on rainfall and access to water.

Gipps continued to argue against the measure and described two other concerns. The first related to the opening to settlement of Moreton Bay (now Brisbane). This, Gipps held was premature and the lands he said were more valuable than £1. He remarked that unlike what had occurred in SA, the selling of good land at Moreton Bay for a fixed price was “altogether unnecessary” to attract settlers.

71 Ibid. p869 note 119. p642 Russell to Gipps, (31 May 1840)
72 Ibid. p431 Gipps to Normanby, (10 December 1839). NB Gipps makes no reference to the origins of the rumour and was possibly being discussed prior to his leaving England.
74 Ibid. p694, Russell to Gipps, (29 June 1840)
75 The Commission was a body established in 1840, it was based in London and known as the Colonial Land and Emigration Board. It was tasked with overseeing colonial land sales and using the proceeds to promote emigration. See Unattributed, ”The Colonial Land and Emigration Commissioners,” NSW State Records www.investigator.records.nsw.gov.au.
76 Watson, HRA Vol 20. p695, Commissioners for Land and Emigration to Russell, (25 June 1840)
78 Ibid. p393
The second concern related to the division of the land funds, used to encourage emigrants, to the districts from which the funds were raised. It was noted that the opening of a new district also attracted settlers from older districts, exacerbating those districts’ labour shortage without allocating funding to alleviate the problem. The divided Land Fund, Gipps claimed, should be re-amalgamated to ensure labour was encouraged where most needed. Both concerns were also rejected outright by the British Land Commissioners.

Gipps further protested that selling all land at a uniform rate would lead to a “scramble” in which every acre of good land would be purchased for speculation by the wealthy. This would leave genuine settlers with a choice of only secondary land, or be forced to buy good land privately at an inflated price. His term for this practice was “land sharking” which he described as an obnoxious practice. As an example Gipps described a colonist who had purchased seventy town allotments as an agent for English investors. Such a quantity he said: “They cannot want for their own use.” Gipps offered his appraisal that the allotments could only have been obtained for speculation and profit. He again reaffirmed “his firm conviction” that land speculation would be the major result of a fixed uniform price. Commissioners however, making a judgement at a distance of many thousands of miles, did not accept Gipps’ evaluation. There was a failure to comprehend that while land in the colony was abundant it was also extremely variable and the majority of it unsuitable for agriculture.

Under the new rules, the practice of selling by auction was to be continued only within established townships and only in places where land auctions had previously been held. In all other areas both rural and urban, the fixed price was to apply. Lord Russell again seemingly failed to appreciate the
variable nature and values within the colony’s townships. He stated that in his opinion, within all existing towns no matter where situated, a uniform fixed price of £100 per acre on any unsold crown land was appropriate. Sale by auction Russell stated, deterred “distant capitalists” from emigrating and every encouragement he said, should be given to the import of capital. 87

Prior to their departure, people with capital emigrating from the United Kingdom to the colony could purchase their land from the Commission and receive an order allowing them to take up an acreage within the colony. 88 The capital used for purchase remained in Britain and deprived the colonial government of revenue obtained from the sales. Within the colonies it also created an additional difficulty that once again brought the problems of survey to the fore. Although a distant purchaser could buy a specific amount of land there was no certainty that the exact acreage would be readily available for occupation. To accommodate the purchase of a non-standard area of land, it was then necessary to resurvey and subdivide an existing parcel. 89

No matter what his personal views, Governor Gipps followed his instructions and published Lord Russell’s instructions in December 1840. 90 Further, although he had objected to the fixed price, Gipps advised Glenelg that he had no objection to the pre-purchase of land or lodging of land money in London. Gipps’ only suggestion was that for convenience, the time allowed for the selection of any pre-purchased land be limited to three or five years. 91 This advice was taken and in a letter of March 1841 a time limit of five years was imposed. 92

Gipps was ultimately proven correct. The new measures were poorly formulated, lacked practicality and failed to recognise both the enormity of the areas to which the decree would apply and the huge variation in land quality. After less than a year, in August 1841, Lord Russell was forced to reverse his decision on a uniform fixed price. This added to the colonial conviction that the colony was ruled by a remote government with no appreciation of colonial conditions. Under revised rules, moneys

87 Watson, HRA Vol 20, p644, Russell to Gipps, (31 May 1840)
89 ———, HRA Vol 22. p494, Gipps to Stanley, (5 January 1843)
91 ———, HRA Vol 20. p823, Gipps to Russell, (21 September 1840)
92 ———, HRA Vol 21. p304, Russell to Gipps, (29 March 1841)
would still be lodged in England and certificates of credit would be issued but for use against land purchased by auction.

8.1.6. Appropriating the Land Fund

Squatting and grazing herds on crown land was an activity that required little capital. Transportation had slowed and there was a shortage of labour as some workers became squatters and those that were left demanded higher wages. Britain on the other hand had unemployed labourers who were unable to pay passage to the colony. It was thought subsidised emigration from land sales could solve both problems.

When the decision had been made to sell land within NSW in 1825, the proceeds of the sales were to be used to subsidise the emigration of workers from Britain and bounties were offered to persons willing to arrange passage for workers and their families. In 1831 a Land Fund had been set up for this specific purpose. This Land Fund assisted in reducing Britain’s unemployment and increased the colony’s labour force. It was a form of social engineering that allowed Britain’s surplus workers to travel to the colony and by increasing the colony’s workforce assisted in reducing the demand for higher wages by workers.

Immigration had other perceived advantages. Increased skills and personal attributes of non-felons it was thought, would improve the colony's moral standing and remove the “taint of convictism.” It was hoped that immigration would swamp the convicts and introduce a new and virtuous population. Free settlers it was thought would hasten the development of a free society and allow self-

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93 Transportation ended in 1840 in NSW (1854 VDL)
95 Burroughs, Britain and Australia 1831-1855. p59
97 Burroughs, Britain and Australia 1831-1855. p59. Powell and M, Australian Space Australian Time. p71
determination, while an introduction of unmarried female workers would help address the imbalance of the colony’s male to female ratio.99

A revealing aspect of Russell’s instructions on implementing a fixed price for land was the receipt of a portion of the land fund by the London based Land and Emigration Commission.100 The fund had previously been controlled by the governor who effectively chose the persons to be subsidised. Under the new scheme the Land and Emigration Commission would retain the proceeds from the NSW land sales remitted in Britain and the commission would choose the emigrants to be subsidised.101 It appears that Russell believed that the colony had no right to the proceeds of land sales. All of the un-aliencated waste lands of NSW were at the time regarded as the possession of the Crown. Proceeds of sales to Russell were therefore at the British Government’s disposal. Without issuing his issuing a specific order, he offered a personal opinion that the best interest of both the colony and the British Empire would be served if none of the Land Fund was held in the colony.102

Nonetheless, the proceeds of land sales were held in both Britain and NSW and two systems of subsidised immigration co-existed. In the one based in London, the Land Board chartered vessels to convey settlers to the colony. The colony had no input into the type of colonist and colonists complained that it was being used to relocate Britain’s poor and destitute.103 The older system that operated from the colony involved the payment of a bounty on the arrival of an eligible person to an agent who had advertised for and selected potential immigrants or a farmer who had arranged for immigrant labour. The governor had the right and at times did withhold the bounty if he deemed the immigrant unsuitable.104 Whether an immigrant deemed unsuitable remained in the colony was irrelevant.


101 ———, A Collection of Essays on the Colonial Economy of NSW. p220

102 Watson, HRA Vol 20. p674, Russell to Gipps, (20 June 1840)


104 Ibid.; McDonald and Richards, "Workers For Australia." pp2-3 and p25 – McDonald reported that 3% of the immigrants were denied the bounty. The cost being borne by the immigration agent or shipper.
It was the use of the Land Fund that brought Gipps censure from two successive Colonial Secretaries, they were possibly the strongest censures ever received by a NSW governor. On learning that Gipps had offered emigration bounties from the fund totalling £979,562, Lord Russell, in a letter dated July 1841 stated:

_On the part of Her Majesty’s Government I must disclaim any responsibility for this proceeding and any obligation to ratify your engagements to the enormous extent to which you have entered into them...I have never imparted to you an authority for such an outlay as this, but to the extent, to which you have now engaged in it, you have acted in entire disregard of those instructions...It is my duty to record my disapprobation of an unauthorized proceeding which may affect the revenue of this Country... I shall endeavour however to the best of my power to counteract the mischievous effects of your improvidence._

Lord Stanley then followed with a further censure stating that he was compelled to adopt to the full the language of Lord Russell, “arising out of the improvident course which you have allowed yourself to pursue.” The indiscretions he asserted, were so serious as to “supersede all other considerations.” Lord Stanley then advised that the agreements issued after July had been cancelled and that Gipps would be held personally responsible for any expenditure inadvertently made on the basis of a cancelled agreement.

The matter was somewhat worse than either of the Secretaries had believed. While Gipps had committed to almost £1,000,000 in expenditure, a letter still in transit from the colony advised that land sales had fallen off from £300,000 in 1840 to only £66,000 in the first six months of 1841 (See Fig 8.1). Gipps had concluded the letter with a statement that he possibly subsequently regretted. He advised that the colony’s expenditure is: “as your Lordship is aware, extremely heavy, especially in respect to the bounties on immigration.”

To the colonists, the ill-feeling regarding the perceived usurpation of a portion of the land fund was aggravated by a second announcement that part of the land fund moneys remitted within the colony would be diverted from subsidising immigration to pay for colonial police and gaols. It was a matter that added to a growing colonial discontent and a developing demand for self-rule. Whilst Gipps’ concerns were mainly based upon his censure and the economics and practicality of his instructions, the colonists had different trepidations. Their reception of the new rules highlighted the

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105 Watson, _HRA Vol 21_, pp430-432, Russell to Gipps, (16 July 1841)
106 Ibid. p549, Stanley to Gipps, (14 October 1841)
tensions within the colony and a developing mistrust of the British administration. The decisions were represented as illustrating the ignorance of the colonial situation by the British Parliament and an attitude that policies were being formed with the intention of inflating the profits of British capitalists. The measures were seen as being imposed by a tyrannical and oppressive government and they added to the calls for a more democratic form of government in NSW.  

Table 8.1. Land Sales and Immigration 1839 to 1845

<table>
<thead>
<tr>
<th>Year</th>
<th>Revenue</th>
<th>Acres Sold</th>
<th>Immigration</th>
</tr>
</thead>
<tbody>
<tr>
<td>1839</td>
<td>£153,000</td>
<td>283,130</td>
<td>10,549</td>
</tr>
<tr>
<td>1840</td>
<td>£314,600</td>
<td>183,944</td>
<td>8,486</td>
</tr>
<tr>
<td>1841*</td>
<td>£90,400</td>
<td>86,092</td>
<td>22,483</td>
</tr>
<tr>
<td>1842</td>
<td>£14,600</td>
<td>21,733</td>
<td>8,987</td>
</tr>
<tr>
<td>1843</td>
<td>£10,800</td>
<td>4,660</td>
<td>1,142</td>
</tr>
<tr>
<td>1844</td>
<td>£7,400</td>
<td>4,013</td>
<td>4,687</td>
</tr>
<tr>
<td>1845</td>
<td>£16,700</td>
<td>3,513</td>
<td>1,096</td>
</tr>
</tbody>
</table>

*Full Year shown here, First six months of 1841 = £66,000

Table Drawn: P. Farnill.

The situation had arisen partially from the colony falling under the influence of the larger land owners and squatters. But importantly, because of an unforeseen drought in NSW and an economic depression in both Britain and NSW. Because of the depression, capital was not available to purchase land and with land freely available at no cost by squatting, there was no need to purchase land for grazing. The number of immigrants in 1841 exhausted the Land Fund and despite the protests of merchants and shipowners, it led to the suspension of the bounty scheme.

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108 Mills, "George Robert Nichols: Forgotten Patriot and Lawmaker." p103
109 Dye and La Croix, "The Political Economy of Land Privatization in Argentina and Australia." p925. Vamplew, Returns of the Colony of N.S.W. p106 (EC32-35 & EC 34-45) - Note the figures of Dye are shown, (Vamblew indicates slightly different values but is of a similar order)
110 Dye and La Croix, "The Political Economy of Land Privatization in Argentina and Australia."
113 McDonald and Richards, "Workers For Australia." Holcomb, "George Bunn and Co: a study in British venture capital and company formation in early-colonial Australia." pp47-48
8.1.7. Survey Issues Again

Lord Russell, in an edict that again testified to his ignorance of colonial reality, had earlier decreed that all land was to be sold as a standard lot and recommended 80 or 160 acres acre allotments for which a set price would be paid. This would make it easier for a purchaser in England to select a portion on arrival in the colony. The edict was ill-conceived in two fundamental ways. Firstly, it assumed that the colony was agriculturally based, but it was now essentially pastoral with a carrying capacity as low as one sheep for every two acres. Secondly, it assumed that the surveyors had the capacity to measure land into 80 acre parcels.

Russell had unsympathetically admonished Gipps for the delays in surveys and stressed the need to keep them in advance of occupation. He also advised of his intention to send a strong surveying staff from England directly to Melbourne. To facilitate sales, he ordered charts to be prepared of each of the previously defined Land Districts “shewing (sic) all appropriations and reservations so as at once to exhibit the Surveyed Land still open to selection.” In another impractical pronouncement of August 1840, Lord Russell placed a further burden on survey:

...purchasers can only select their lands in districts which are already surveyed. But if a person should pay once for 5120 acres or eight square miles, we propose to allow him the privilege of demanding a survey of that quantity in one block, in any part of the colony he may choose.”

This decree, by allowing special surveys “in any part of the colony,” ignored the existing Limits of Location and opened up all land for sale. It resulted in petitions for survey and sale for anywhere within the colony. Prior to the announcement, sales had been limited to the surveyed areas of Port Phillip and within the Limits of Location. The opening of the entire colony raised concerns of speculators being able to “cherry-pick” large parcels of strategic land and threatened the future of squatters who occupied unsurveyed land on the basis of a licence.

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115 Watson, HRA Vol 20. p646, Russell to Gipps, (31 May 1840)
116 Ibid. p646, Russell to Gipps, (31 May 1840) - received by Gipps, 17 December 1840
Russell’s criticism of Gipps was in fact unfounded. The governor was attempting to address the survey problem. In appreciation of a need for reliable and accurate surveys, Gipps had advised Lord Glenelg of his insistence that all survey “from thenceforth...be conducted on scientific principles”. He demanded the use of theodolites and spoke of a regret that “all former surveys have been by the compass.” Gipps was not being accurate in this claim however. The change was already well underway and had commenced during Darling’s tenure.

Surveyor General Mitchell had commenced trigonometric mapping in 1828 to ensure that all earlier surveys could be tied in to a base plan. Further, to certify his surveyors were competent in the new procedures, in 1837 (while under the governorship of Bourke), Mitchell had instigated an examination procedure: “in the knowledge and practice of land surveying” for all prospective surveyors prior to their acceptance to the position. In the case of Moreton Bay, Gipps had dispatched three surveyors to measure and map the land well before any land was released for sale. Surveyor General Mitchell’s use of theodolites was already speeding up survey and increasing accuracy but Gipps also put in place a system of privately funded (by the land owner) surveyors to ease the backlog. This he said was to ensure that survey should be well advanced before any land is offered for sale. Towards the end of his tenure, survey was sufficiently advanced that Gipps was able to open up new counties beyond the earlier limits.

8.1.8. The Special Surveys

Gipps protested strongly, both on the issue of the Special Surveys and the uniform fixed price for land, but the attitude of the bureaucracy towards the governor’s opinions was both ungracious and gratuitous. Frustration at apparently being unheeded can be discerned in the frequency of communications and the language used to point out the many defects in the regulations. His fear was that under special survey a speculator could demand the choicest parcels of land and acquire

119 ———, HRA Vol 20. pp 210, Gipps to Glenelg, (1 July 1839)
120 Andrews, Major Mitchell’s Map 1834: The Saga of the Survey of the Nineteen Counties. p8
122 "N.S.W. Government Gazette." No293, p621, Colonial Secretary’s Office, (6 September 1837)
123 Watson, HRA Vol 20. pp 219-210, Gipps to Glenelg, (1 July 1839)
124 Kass, Sails to Satellites. Pp29-30
125 Watson, HRA Vol 20. p210, Gipps to Glenelg, (1 July 1839).
126 ———, HRA Vol 24. p716, Gipps to Stanley, (17 January 1846)
them far below its real value. Gipps gave factual examples to back his assertions and noted that if the regulations had been in force when Portland Bay was settled, 337 acres of land which had sold for £17,245, could have been purchased for only £5,240. He stated:

*I cannot but apprehend that people [from England] may already be on their way with orders for Special Surveys, at Moreton Bay. In which case they will of course demand to have their lands as close as possible to Brisbane Town.*

The fears were justified. The first colonist to arrive at Port Phillip with a certificate permitting a Special Survey was a Mr. Dendy. Under the regulations, for an outlay of £5,120 Dendy was entitled to claim any single parcel of 5120 acres from surveyed or unsurveyed land anywhere within the colony as long as it was more than five miles from Melbourne. Governor Gipps reported that Mr. Dendy had already refused an offer of £15,000 for his entitlement, stating that Dendy would not accept less £50,000. Governor Gipps speculated that on an open market the entitlement could be worth £100,000. Gipps believed that no incentive or encouragement was required to ensure the sale of good land and the uniform fixed price simply resulted in a loss of potential revenue.

Gipps also made the point that Special Surveys had taken the release of land and any possibility of planned town reserves out of his hands. It had, he said, opened the entire colony to purchase and the location of any future settlements would be devoid of government input. Therefore he noted, there would be a requirement for him to establish police and other government agencies in areas opened without his approval or concurrence.

In order to place some limits on Special Surveys and to maintain some control over the selection, on his own initiative, the governor issued local regulations for the availability of such land within the Port Phillip district. This limited the selection of land to a maximum of one mile of waterfront for every four square miles in area. It excluded land that had been already surveyed and was open to public selection and excluded land located within five miles of Melbourne, Geelong, Portland, or Williamstown. Further, if on examination it was decided that a reserve should be made for a major town or sea port, such reserve would be unavailable for a Special Survey.

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129 Watson, *HRA Vol 21.* p207, Gipps to Russell, (1 February 1841)


133 "N.S.W. Government Gazette." pp321-322, No 18, *Special Surveys, Port Phillip,* (5 March 1841)
There was increasing scepticism about Special Surveys even in SA where Governor Grey had condemned them as a scheme of “ruinous improvidence.” The Special Surveys he said, were causing the local survey department considerable but unnecessary labour and expense.  

Gipps was not to know until later that year, but at almost the same time he was pointing out the difficulties of Special Surveys, Lord Russell had already, in part, relented. In a letter dated 18 February 1841 (received by Gipps in September) Russell had abolished the requirement for Special Surveys in the Port Phillip district. Nonetheless, Special Surveys could still be demanded anywhere in NSW.

8.1.9. A ‘Monstrous’ Dismemberment

Prior to 1840, the Land Fund, had been treated as a colony wide fund and used to attract labour to the colony irrespective of the specific locality where the funds were generated. This was another matter that was changed by Lord Russell. Under his decree moneys generated from the Land Fund were to be separated into three district funds. Each to be collected and utilised by the North, South and Central land districts, with the Central district comprising only the original nineteen counties. The Sydney Herald of the day reported that in the case of the Southern district, to declare all land south of the County of St Vincent to be within Port Phillip was “monstrous” and to declare Port Macquarie part of the north “absurd.” Referring back to the South Australian conspiracy, the newspaper called it a dismemberment and blamed the decision on the dominance of a clique that has been striving to “injure the colony for the last five years.” A.J. Brown noted that the British government had been embarrassed by the loss of the American Colonies but despite that, they were looking with respect at the prosperity of the post-revolution American states. Accordingly they were keen to replicate a federal system and establish separate colonies as a branch linked to a national group. Evidence for this is in the eventual commissions of the administrators as new colonies were formed from parts of NSW. The commissions although establishing a separated colony’s direct relationship with London, nonetheless ensured that they were constitutionally junior to NSW.

135 ———, "The Fixed Price Experiment in New South Wales 1840-1841." p402
136 Watson, HRA Vol 21. p240, Russell to Gipps, (18 February 1841)
137 "The Sydney Herald." p2, Division of the Colony, (8 December 1840)
Within NSW, the only argument put forward in opposition to its “dismemberment” appears to be that it would be the forerunner of three separate governments “with separate constitutions and all the officials and supernumeraries usually attached to such establishments.” The Herald, somewhat illogically, reflected the rampant sectarianism of the period and tied the move to the power of the United Kingdom’s “Roman Catholic member for Ireland” and a plot aimed at the “utter destruction” of the colony.

That the scheme originated in a Roman Catholic quarter we are morally certain, from the out-and-out advocacy in support of it exhibited in the avowed organs of Roman Catholicism. In every other quarter it is condemned.

The *Herald* article, at the conclusion of quite a long discourse, finally mounted an argument that had some logic and perhaps defined a source of concern. This was, if NSW were to be confined to the Nineteen Counties there was little land remaining to be sold and thus little income to be generated to encourage immigration. The northern and southern districts on the other hand had large tracts of still vacant land and sales would generate substantial income. This issue was parochial and while opposed by the majority of the proposed central district colonists, the people of the Port Phillip district saw an advantage in a separate fund and supported a separation.

Those with interests in the Central Land District raised concerns that they would be unable to compete with the other two districts in subsidising the immigration of labour. This problem it said was amplified since the Central region based upon Sydney had been the recipient of the majority of convicts. Thus as Gipps reported to Lord Russell in December 1840, the Central District with the least revenue from sales, had the highest expenditure on gaols and police. The argument undoubtedly carried some weight, but took no account that it was in settling of the new tracts that the greatest need for labour was generated. Most labour would be destined for the southern and northern districts whether funded as a separate district or part of the whole. The Central District on

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140 Ibid. p2, *Job of Dismembering our Territory*, (6 January 1841)
141 Ibid. p2, *Job of Dismembering our Territory*, (6 January 1841)
142 Watson, *HRA Vol 21*. p528, Stanley to Gipps, (2 October 1841)
144 Transportation had ceased in 1840, but the central region had therefore enjoyed almost free labour and an annual addition of emancipists.
145 Watson, *HRA Vol 21*. p118, Gipps To Russell, (19 December 1840)
the other hand was largely developed and had in the past benefited from the use of most of the convict labour.

A public meeting was held in Sydney to petition the Queen to act against the “dismemberment.”\textsuperscript{146} The \textit{Australian} reported that the meeting was attended by the “principal merchants and gentlemen of Sydney” and was so numerous that only half could fit within the originally designated rooms. It reported an almost unanimous conviction within NSW, on both the “impolicy of dismembering the colony” and the selling of land at a fixed price.\textsuperscript{147} The \textit{Australian Chronicle} which opposed the position taken by the \textit{Herald} and \textit{Australian} admitted to the size of the meeting, but claimed it was orchestrated by the “great landholders and their hangers-on.” The petition it was claimed, was “in variance with the fact” and arguments against a fixed price for land, containment and small lots, were being dictated by personal interest and “deserve not a moment’s consideration.”\textsuperscript{148}

The basis of claims that the creation of separate land districts would be to the detriment of squatting and would lead to its abolition is unclear. It seems that much of the vexation relates not to the orders themselves, but because the orders originated in London without local consultation.

\textit{Till the not far distant period arrives, when we have Representative Government, it is of the upmost importance that we exercise our right of letting public opinion be freely expressed...This indeed is our counter-check against misrule- our safeguard against tyranny and oppression by our ruler; for no government, however absolute- no tyranny, however despotic, can stand for one hour against the universal voice of the people governed.}\textsuperscript{149}

The measures, seen within the colony as a remote and ill-informed interference in the colony, removed any possibility of the governor controlling land releases and went against local knowledge and advice. They were generally regarded as detrimental and ill advised.

\textbf{8.1.10. The Impact of British Politics.}

The pronounced changes in land policy that were occasioned by changes in the British government would seem to confirm that policies in NSW reflected the prevailing ideology of Britain rather than


\textsuperscript{147} “The Australian " p2, (9 January 1841)

\textsuperscript{148} “The Australasian Chronicle.” p2, \textit{The Landholder’s Petition}, (9 January 1841). Interestingly, in light of the Herald’s claim of Roman Catholic influence, The Chronicle was a Roman Catholic leaning paper, carrying a column “Roman Catholic Intelligence” and giving news of Roman Catholic activities within the colony. See also the "The Australian ", p2 (8 June 1841) in which the \textit{Chronicle} is portrayed as a Roman Catholic journal.

\textsuperscript{149} “The Sydney Herald.” p2, \textit{Public Meetings}, (January 1841)
local circumstances. It was a phenomenon earlier alluded to by Chief Justice Forbes when he noted: “the politics of England are and must be...the politics of New South Wales”\(^{151}\)

Russell’s successor Lord Stanley, appears to have been more liberal and open to the suggestions made by the governor. On taking office, Stanley announced that he was happy to leave the minimum or upset price of land in a particular locality to the governor except that in the Port Phillip District it was not to be set below 20/- per acre and elsewhere not less than 12/- per acre. Once set, the upset price was not to be reduced. Land occupied by a squatting licence was not to be sold until the expiration of the licence and then only by auction. Surveyed land was to be placed on the market for auction at a rate sufficient to allow proper competition between purchasers, but not in such a low quantity that exorbitant prices would be required. Land unsold at auction was to be available for purchase at the upset price.\(^{152}\)

The new regulations, although favourable to NSW and generally in accordance with the governor’s suggestions again illustrate a possible undue influence of the South Australian Company on the sale of land in NSW. In a confidential report supporting the proposed changes, the Land and Emigration Commissioners offered the following comment:

\[
\text{This view [on the auctioning of land in NSW] has now been confirmed by the high authority of the Committee of the House of Commons on the Affairs of South Australia. And we believe that... it would meet the main considerations urged with so much force by the Governor of NSW.}^{153}\]

The comment implies that the opinions of the South Australian Commission were seen as a high authority, more influential than the NSW governor. The comments appear to validate the *Sydney Morning Herald* claim that SA had “a numerous and powerful body of supporters in England” and that the difference between the colonies was that SA had influence within the British Parliament while NSW did not.\(^{154}\)

\(^{150}\) Burroughs, *Britain and Australia 1831-1855*, pp10-11


\(^{152}\) Watson, *HRA Vol 21*, pp559, Stanley to Gipps, (18 October 1841)

\(^{153}\) Ibid. pp560-561, Land and Emigration Commissioners to Under-Secretary Stephens, (17 July 1841)

\(^{154}\) “Sydney Morning Herald.” p2, *South Australia*, (4 January 1843)
A significant change in British policy occurred in June 1842, with the adoption by the Imperial Parliament of the Australian Colonies Waste Land Act\textsuperscript{155} Lord Stanley advised of the new Act in a despatch dated September 1842. It was proclaimed by Governor Gipps on January 1843 and was published in the \textit{Government Gazette}.

Under the Act, land with the exception of special allotments that exceeded 20,000 acres, was to be delineated by survey and placed upon the public charts of the colony before being sold.\textsuperscript{156} Lots were to be sold in parcels less than one square mile and all sales were to be initially by auction. Unsold country lots could then be purchased on request at an upset price set by the governor. Moneys could be lodged in England for the purchase for which a certificate would be issued as a credit note.\textsuperscript{157} Unsurveyed lots of over 20,000 acres could be sold by negotiation at not less than the lowest upset price for land elsewhere in the colony. Such land could be purchased without prior survey, other than that necessary to ascertain the external bounds of the land. The Act also provided for the issue of twelve-month licences for the occupation or felling of timber on any Crown wasteland and decreed that no land could be sold while such a licence was in operation.

Lots were to be designated as one of three categories; town, suburban or country. Town lots were those either within the prescribed limits of an existing town or within an area reserved for a town. Suburban lots were those within five miles of the nearest point of any town reserve. Country lots were those outside of the first two categories. The minimum upset price for any land of any class was set at £1 per acre.\textsuperscript{158}

The new Act received a mixed reception. Although the British Act had taken the matter outside of any local jurisdiction, debates particularly on the £1 minimum price of land continued for several years and were a source of ill-feeling in the colony. The \textit{Australasian Chronicle} stated that it rejoiced that the sale of land had been fixed by legislative enactments.\textsuperscript{159} On the other hand, a letter purported to be from “An Australian Colonist” published in the \textit{Sydney Morning Herald} described the Act as “calculated to work great injustice” and claimed that the “certain destruction” of the colony was sealed.

\begin{itemize}
\item \textsuperscript{155} An Act for regulating the sale of Waste Land belonging to the Crown in the Australian Colonies. 5 & 6 Vict. c36. see also "The Australian ". p4, \textit{Sale of Waste Lands}, (16 January 1843)
\item \textsuperscript{156} 5 & 6 Vict. c36. cl(iv)
\item \textsuperscript{157} 5 & 6 Vict. c36. cl(iv), (vi), (xii) & (xvi)
\item \textsuperscript{158} 5 & 6 Vict. c36. cl(vii) & (viii)
\item \textsuperscript{159} “The Australasian Chronicle.” p4, The Sale of Lands, (14 January 1843)
\end{itemize}
because of a perpetuation of ill-advised and injudicious measures.\footnote{160} It was noted that at the time of the Act’s promulgation, because of a depressed market, land by secondary sale had changed hands as low as 1s.3d per acre.\footnote{161} It was claimed that half the freehold land in the colony could be purchased for 2s.6d per acre.\footnote{162}

The passing of the Act by the British Parliament added to a perception that London remained the head office of the NSW Parliament and that the local legislature was expected do London’s bidding.\footnote{163} In its first session in 1843 a new partially-elected Legislative Council issued a parliamentary report that addressed the Council’s direct opposition to the Act. The Council made up from large landowners and wealthy merchants, wanted to exercise independence and control land and the funds it generated. Its report advised of the Council’s disapproval of the minimum fixed price on land and that of the land fund being both appropriated by Britain and used in the external subsidisation of emigration. This, it said, was taking capital out of the local economy. Emigration should be subsidised, but by funds raised in Britain. The underlying concern however, was that if the migrants were chosen by the colonists, they would meet the colony’s needs. If chosen from London they could be Britain’s unwanted poor.\footnote{164}

Gipps behaved diplomatically with respect to the Act. He objected to the price privately, but presented an ambivalent view to the colonists. The governor advised Lord Stanley that the minimum £1 per acre was excessive but although he objected he was obliged to comply.\footnote{165} To the colonists, Gipps offered a different interpretation. He echoed Lord Russell’s earlier statement and claimed the colonists had “fallen into a strange error.”\footnote{166} It was not, he said, that the British Government placed a minimum value of £1 per acre on all the land of Australia, but that they were unwilling to sell any land worth less. The high minimum price protected the occupation of the poorer wastelands by the squatter by ensuring that there was no demand by others to purchase their lands.\footnote{167}

\footnote{160} “Sydney Morning Herald.” p4, Emigration, Preservation and Starvation. (14 January 1843)
\footnote{161} Wright and Buck, "The Transformation of Colonial Property." p113
\footnote{163} Jones, "Colonial Republicanism: Re-examining the Impact of Civic Republican Ideology in Pre-constitution NSW." p138
\footnote{166} ———, \textit{HRA Vol 20}. p643, Russell to Gipps, (31 May 1840)
\footnote{167} ———, \textit{HRA Vol 23}. p337, Gipps to Stanley, (17 January 1844)
There was another vexatious matter raised in the Legislative Council’s report: the pre-emptive right to renew squatting licences. Gipps was against the concept and was anxious to retain rights over unalienated land. To him, the granting of a secure tenure while under a lease together with a pre-emptive right to renew the lease, effectively gave permanent occupation and would cause a land scramble that would again force the survey department into arrears. Lord Stanley in a reply of January 1845 acquiesced:

*My labour in discussing the subject is much lightened by my entire concurrence in the views most ably stated in your despatch.*

What was not known at the time by the colonists was that the Imperial Act had been introduced partially at Gipps’ request. It resulted from a requirement that before any legislation could be promulgated, it had to be passed by the new Legislative Council. Although Gipps retained an overall power of veto, he feared the Council would propose legislation that he could not accept. It was an example of the elected councillors beginning to exercise primacy over the governor and was a shift in political authority that portended a loss of the governor’s autocratic power over land. The changes can be seen as the commencement of a local land administration.

### 8.1.11. Squatting Reforms

Squatting also faced a major upheaval during Gipps’ administration. In early correspondence he remarked on the success of Bourke’s licensing system and reported that nearly half of the colony’s cattle and sheep were “being de-pastured beyond what is known as the limits of location.” The expansion was stretching the government’s resources but he offered an opinion that any attempt to reduce the number of grazing licences would be “fatal to the prosperity of the colony.”

Gipps’ opinion of squatting showed a marked change over time. His need to allocate soldiers to distant areas and his inability to plan and control spatial growth diminished his support. Without the protection of soldiers both graziers and livestock were subject to “predatory attacks” by Aboriginals.

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168 Dye and La Croix, "The Political Economy of Land Privatization in Argentina and Australia."
170 ———, *HRA Vol 24*. p205 Stanley to Gipps, (29 January 1845)
171 ———, *HRA Vol 19*. p397, Gipps to Glenelg, (25 April 1838)
people. He also noted that graziers themselves were at risk.\textsuperscript{172} Despite the risk Gipps reported that he was unable to constrain the expansion.

\begin{quote}
As well might it be attempted to contain the Arabs of the desert to a circle upon their sands, as to confine the graziers of New South Wales within any bounds that can possibly be assigned to them.\textsuperscript{173}
\end{quote}

As forecast by the original proponents of containment, the squatters had dispersed “beyond the influence of civilization and almost beyond the restraints of law.”\textsuperscript{174} Lord Russell was able to propose no solution to Gipps’ reports of the numerous claims and counter-claims, of attacks on and by Aboriginal people.\textsuperscript{175} Lord Russell advised that a force of sufficient size to impose order over such a vast area was impractical.\textsuperscript{176} There was no alternative but to allow the status-quo. If the government was unable to contain expansion and offer protection to the outlying areas, the squatters would have to protect themselves. This applied to both the physical protection of livestock and also of settling internal disputes among the squatters themselves.\textsuperscript{177} It encouraged them to commit violent acts against the Aboriginal people, with the 1838 Myall Creek massacre a case in point.\textsuperscript{178}

The extent of the expansion is illustrated in Fig 8.1 and growth can be judged from Table 8.2 which indicates that in six years the European population beyond the Limits of Location grew by 80\%, but the corresponding head of livestock grew by over 300\%. This suggests an increasingly remote and thinning density of the European population over increasing areas of land.

\begin{flushright}
\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{172} “N.S.W. Government Gazette.” No 305, p874, (22 November 1837)
\item \textsuperscript{173} Cotton, ”1847-1849.” p14, footnote; Watson, \textit{HRA Vol 21}. p127, (enclosure) Gipps to Russell. (19 December 1840)
\item \textsuperscript{174} \textit{———, HRA Vol 23}. p511, Gipps to Stanley, (3 April 1844). Alston, Harris, and Mueller, ”The Development of Property Rights on Frontiers.” pp750-751
\item \textsuperscript{175} For Aboriginal attacks see: Watson, \textit{HRA Vol 19}. p400, Gipps to Glenelg, (27 April 1838), p509, Gipps to Glenelg, (21 July 1838); \textit{———, HRA Vol 20}. p448, J.H.Wedge to Lord John Russell, (12 December 1839) - Attacks on Aboriginal People by Europeans see: \textit{———, HRA Vol 19}. p397, Gipps to Glenelg, (27 April 1838), p508, Gipps to Glenelg, (21 July 1838); \textit{———, HRA Vol 20}. p787, Charles Wedge to Lord John Russell, (13 November 1839)
\item \textsuperscript{176} \textit{———, HRA Vol 20}. p776, Russell to Gipps, (25 August 1840)
\item \textsuperscript{177} Alston, Harris, and Mueller, ”The Development of Property Rights on Frontiers.” p751
\end{enumerate}
\end{footnotesize}
\end{flushright}
Fig 8.1. Sketch of Squatting Districts in 1844

Source: NSW State Archives SR2524 SG D.1.1116) also NLA map rm1669.
Table 8.2. Growth beyond the Limits of Location 1839 to 1845

<table>
<thead>
<tr>
<th></th>
<th>1839</th>
<th>1845</th>
</tr>
</thead>
<tbody>
<tr>
<td>People</td>
<td>10,250</td>
<td>18,259</td>
</tr>
<tr>
<td>Horses</td>
<td>7,088</td>
<td>23,528</td>
</tr>
<tr>
<td>Sheep</td>
<td>1,334,594</td>
<td>4,478,196</td>
</tr>
<tr>
<td>Cattle</td>
<td>371,699</td>
<td>853,783</td>
</tr>
</tbody>
</table>

Drawn: P. Farnill.

Even though stock was increasing at a geometric rate, land was not being utilised effectively. Because land seemed unlimited and was available in any amount under a single £10 licence, squatters made little attempt at efficient use. In a practice that forced newcomers even further afield and stock was grazed over a much greater area than was necessary for the maintenance of the animals. As a consequence many large runs were held but under-occupied.

It was acknowledged that the Limits of Location had served only to delineate land that was available for sale. The limits had never succeeded in preventing dispersion of settlement. As with his predecessors, Gipps was forced to recognise that containment was not within his power. The question for Gipps was not one of containment versus dispersion, but whether to “abandon all control” or to make such efforts as were in his power to enforce:

> I would crave permission to remark that it is too late to calculate the evils of dispersion in New South Wales. All the power of the government aided even by a military force ten times greater than that which is maintained in the colony would not suffice...

As Gipps became more acquainted with the system of licences he realised that it was inequitable. The legalising of squatting by Bourke at token fee for unlimited acreage, favoured the larger squatters. They were restrained only by “their own moderation or pressures from other squatters.” Cotton noted that there was no natural restriction other than the land’s capability of

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179 Colonial Secretary to Legislative Council – p4, "Sydney Morning Herald.", Crown Lands, (4 June 1846)
180 Alston, Harris, and Mueller, "The Development of Property Rights on Frontiers." p752
181 Buckley, "Gipps and the Graziers of New South Wales, 1841-6." p178
182 Babie, "Sovereignty as Governance Organising Theme for Australian Property Law." p1099
183 Watson, HRA Vol 20. pp91-92, Gipps to Glenelg, (6 April 1839)
184 Ibid. p91, Gipps to Glenelg, (6 April 1839)
185 Burroughs, Britain and Australia 1831-1855.p297
186 Watson, HRA Vol 23.p509, Gipps to Stanley, (3 April 1844)
feeding stock and the only artificial limit the willingness of the squatter to bear the hardship. Squatting spread out he said, until they encountered neighbours and they were compelled to limit themselves to agreed boundaries.  

Gipps' first squatting reform, implemented in 1839, continued the £10 licence fee but introduced the Crown Land Occupation Act (2 Vict.27) which added a tax on livestock requiring 1d to be paid annually for every head of sheep and 1 1/2 d for cattle. The additional funds gained were used to defray the cost of establishing both the Commissioners of Lands and the border police. Both were intended to bring some order and civil control beyond the specified Limits of Location. The Act had created a new form of title, exclusive to NSW and unknown in British Law. The squatters had exclusive occupation provided the lands were used for pastoral purpose.

The newspapers of the day gave the new measures a varied, but generally unfavourable reception. Commenting on the Act, the editor of the Sydney Gazette wrote of its being needlessly drawn up and despotic in its powers, “but not so injurious as to lead to ruin.” The pro-squatter Sydney Herald was severely critical. It claimed the Act’s principle was arbitrary and there was not a provision that was not a “deprivation of an abstract right.” To the Herald the duty on the head of livestock was simply a tax and a tax without representation, similar it claimed to what lost Britain her American colonies. To the Australian the Act contained obnoxious and oppressive tendencies which if not purified will “render its good alloyed with an equal portion of evil.” The Sydney Monitor focused on an aspect of the Act that required quarterly musters of livestock pointing only to the impracticality of such a measure.

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190 NSW 2 Vict. 27. Watson, HRA Vol 20, p6, Gipps to Glenelg, (20 February 1839). Babie, "Sovereignty as Governance Organising Theme for Australian Property Law." p1099
191 ———, "Sovereignty as Governance Organising Theme for Australian Property Law." p1099
193 "The Sydney Herald." p2, (18 February 1839)
194 "The Australian ". p2 The Squatting Act, (19 February 1839)
195 "The Monitor." p3, (4 March 1839)
By 1844 Governor Gipps had revised his opinion. He described the problems he faced from squatting and summed up their influence as follows:

“It is most essential to bear in mind that the Squatters form by far the most powerful body in New South Wales: that in fact almost everybody who has any property at all is a squatter. This I submit, is the chief ground on which the interference of Parliament [U.K.] might be called for, should the squatter at any time seek to appropriate to themselves the lands of the Crown.”

The governor had reason for his concern; some of the squatter’s claims were extreme and usurped Crown rights. The *Sydney Herald* in an article written in 1839 had echoed the claims of squatters in asserting that obtaining a licence to squat gave the occupier virtual exclusive freehold rights to the land.

Squatter John Cotton in words similar to those of Gideon Lang, argued for the “full power” to squat where he pleased without being “checked by arb’tary (sic) interference” and not “be liable to have the fruits of his labour torn from him.” He also demanded an absolute and certain right, at his discretion, to take possession of the property he occupied and obtain “title to the fee simple of the land.”

To Cotton, any argument against his opinion was “superfluous.” He claimed it to be self-evident that unless his terms were accepted, “the colony will not be developed and the Home Country [would] fail to reap the advantages to which she is entitled.” In these statements Cotton apparently failed to see the self-serving hypocrisy he was espousing. The terms suggested were those that no governor could possibly accept.

Gipps described the “immense squatting interests” which by then covered most of the eastern areas. He described vast areas with no schools or churches, and the “social and moral evils” which such a wide the dispersion of population had caused. In a remark that echoed the seventeenth century philosophy of Lord Shaftesbury Gipps remarked, “a race of Englishmen must speedily be springing

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196 Watson, *HRA Vol 23*. p518, Gipps to Stanley, (3 April 1844)
197 Powell and M, *Australian Space Australian Time*. p69
198 “The Sydney Herald.” p2 (12 April 1839)
199 (Opening quote to this chapter)- Lang, *Land and labour in Australia; their Past Present and Future*. p14
200 Cotton, “1847-1849.” pp14-15
201 Ibid. p15
202 Watson, *HRA Vol 23*. p510, Gipps to Stanley, (3 April 1844)
up in a state that approached untutored barbarism.”  

The squatters he said, many of them absentee, had little interest in the land they occupied and made no attempt at improvement. Their homesteads were only outstations or bark shelters and huts. Anything worthy of the name of a garden he said, “is a mark of civilization rarely to be seen.”

They:

*...plant no breadth of land; form no enclosures, raise no buildings; make no outlay of capital...they have no fixed interest in the land and until fixity is granted to them, it is worse than childish to expect that under the uncertain yearly licence they will ever apply themselves to the arts of a settled industry.*

Under the continuation of the Bourke system in 1844, a squatter paid as much for the use of 10,000 acres as another paid for a 1,000. It led to severe abuses and a rapid expansion as graziers moved outwards well beyond the Limits of Location. Gipps reported around 306,000 acres were being occupied by the three largest squatters for an annual payment of only £10 each. The system was described as inequitable to smaller farmers and not achieving a return to the Crown commensurate with extent of lands being occupied.

Although regarded as reasonable by some modern writers, it was in the imposition of a more formalised and equitable licensing system that Gipps raised the ire of the squatter. The squatters with increasing wealth and influence, not only resisted any restriction on their practices within the colony, but used their influence in Britain to agitate for more political representation and security of land tenure.

The governor desired to both limit the squatter and impose better controls. To him, independent of considerations of revenue, reforms were urgently required. Gipps suggested that the squatter would only improve his situation if he was given an incentive to improve his run and suggested that this could be accomplished by allowing a squatter to purchase by public auction, a 320 acre homestead block within his run. It gave the squatter no permanent right and if the squatting licence was not
renewed homestead land could be auctioned. If this occurred the original licensee was credited with the value of the homestead and the improvements.\textsuperscript{210}

The most serious criticism of the proposal was that, at the minimum price of £1 per acre, a squatter at auction would be required to outlay £320, but since the purchase gave a contingent right to the occupation of 20 square miles, the value of the homestead was based upon the underlying value of the run. The purchaser was thus effectively not bidding for 320 acres but the right to occupy 20 square miles. To overcome this, squatters demanded the right to pre-emptive right purchase, a demand that Gipps had no power to grant.\textsuperscript{211}

In the case of the squatting licences he proposed an area based system whereby a separate licence was required for a designated station of twenty square miles in area.\textsuperscript{212} It included provisions that no more than 500 head of cattle or 4,000 sheep (approx. one sheep to every three acres) could be covered by a single licence and that any area more than seven miles from a licenced station would be regarded as a separate station requiring an additional licence.\textsuperscript{213}

As with previous changes, the proposed system was met with animosity and vigorously opposed.\textsuperscript{214} Gipps later commented that of all of the colony’s newspapers only one, the \textit{Weekly Register}, supported the government policy.\textsuperscript{215} Despite the opposition, approval to implement the new system, with minor modification on the size of stations (25 square miles rather than 20), was granted by Lord Stanley and the regulations were published in the \textit{NSW Government Gazette} of 28 June 1845.\textsuperscript{216}

The new system enraged the squatters who referred to it as an obnoxious and odious proclamation. At a public meeting held in April the participants “resolved with feelings of the deepest alarm...that

\textsuperscript{210} Watson, \textit{HRA Vol 23}.
\textsuperscript{211} Buckley, "Gipps and the Graziers of New South Wales, 1841-6." p184
\textsuperscript{212} Ibid. P179
\textsuperscript{213} Watson, \textit{HRA Vol 23}; "The Australian ", p4, Depasturing Licenses, (4 April 1844); "N.S.W. Government Gazette." No16, p61, Depasturing Licenses, (16 April 1844)
\textsuperscript{214} Buckley, "Gipps and the Graziers of New South Wales, 1841-6." p180. Weaver, "Beyond the Fatal Shore, Pastoral squatting and the occupation of Australia, 1826 to 1852." p1004
\textsuperscript{215} Watson, \textit{HRA Vol 25} p74, Gipps to Gladstone, (28 May 1845)
\textsuperscript{216} "N.S.W. Government Gazette." No 45. p1175, Crown \textit{Lands Occupation}, (28 June 1845). "Sydney Morning Herald." p1S. (30 June 1845)
the regulations [were] calculated to strike a blow at the future prosperity of the colony.” 217 The meeting reportedly attracted over 350 colonists and the resolution was carried unanimously. 218 Feelings at the public meeting had run high and the language used has been described as harsh and violent. 219

Not only were squatters alarmed at the additional cost burden, they used the occasion to air other grievances. They were joined by merchants and land-owners in opposition to Gipps’ entire policy on land. 220 A major issue became manifest as “fixity of tenure,” with a claim that unless granted, it was “vain to expect any outlay of capital on improvements.” 221 Despite measures earlier put in place by Bourke as a safeguard against claims of adverse possession, the squatters believed they had a right to ‘their’ land. 222 They agitated for either the right of permanent tenure or a lease, at worse they demanded a pre-emptive guarantee of licence renewal. 223

The squatters were not without influence in the United Kingdom. Deputations and petitions objecting to the measures were received by the British parliament from The Glasgow Association for the Promotion of Squatting and the General Interests of NSW and a group of “Gentlemen interested in and connected with Australia.” The latter group was represented by Lord Polworth, as chairman, and included among others a parliamentarian, three bank directors, various ship owners and merchants, all of whom had petitioned against the proposed changes. 224

Within the ranks of the squatters there were more moderate voices, but they apparently shared many of the same views. 225 In a letter to the Sydney Morning Herald, Edward Hamilton, who was also a Crown nominated member of the Legislative Council, denounced the language used against the

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217 W.C. Wentworth, reported in, ”The Morning Chronical.” p3, The Meeting of Tuesday, (13 April 1844)
218”Sydney Morning Herald.” p2, The meeting of Yesterday, (10 April 1844); ”The Australian ”. p2, Public meeting, (10 April 1844); ”The Morning Chronical.” p3, The Meeting of Tuesday, (13 April 1844). “The Colonial Observer”, p2, (11 April 1844)
219 “The Colonial Observer”, p2, (11 April 1844)
220 Buckley, ”Gipps and the Graziers of New South Wales, 1841-6.” p182
221 ”The Australian ”. p2, Public Meeting of the Stockholders, (10 April 1844). ———, ”Gipps and the Graziers of New South Wales, 1841-6.” p183
222 A claim on title based upon long term occupation or usage of land.
225 ———, ”Gipps and the Graziers of New South Wales, 1841-6.” p182
administration at the April public meeting, but nonetheless summed what he saw as the main aims of
the squatter:

*Give us security of tenure so that we may reap the fair harvest of our labours and sacrifice... we are willing to pay according to our profits, but our fortunes cannot be left to the mercy of capricious proclamations.*

In reporting on the public meeting the governor related that it had produced “much excitement” with squatters who had “accustomed themselves to look on [lands] as their own” raising much outcry. Gipps himself had been unmoved. One speaker he claimed, for a single annual fee of £10, held twenty-seven stations, while another for £10 occupied 381,000 acres and pastured 10,000 cattle and 20,000 sheep. The speaker Gipps said, claimed that as long as he continued to pay his £10 licence, he was entitled to freehold rights over the land occupied. Gipps remarked that it was such attitudes that convinced him of the necessity of his making a declaration to “check the growth of opinions such as these.” Some opinions held by the major squatters, he said, were so extreme that the more moderate men were deserting them.

The newspapers of the day indicate a growing rift between the wealthy colonists and the governor on policy matters, particularly those policies that related to land and squatting. Although Gipps apparently disagreed with many of the policies imposed on the colony by the Colonial Secretary, as governor he was obliged to introduce them. An increasing colonial outrage and the influence exerted in Britain by the powerful squatting faction, eventually brought about change. As will be shown, although during his administration Gipps sacrificed his popularity in an endeavoured to enforce British policy, on his departure the British government capitulated and granted the squatters most of their demands.

### 8.1.12. The Legislative Changes

One of the better received administrative changes proved a source of angst for Gipps. The change was a move in 1843 from a solely appointed Legislative Council to one which was partially representative. This reform had been the subject of discussion but not implemented during

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226 “Sydney Morning Herald.” p3, *Letter to the Editor,* (23 April 1844)

227 Watson, *HRA Vol 23.* p608, Gipps to Stanley, (17 May 1844)

228 Ibid. p545 & 546, Gipps to Stanley, (16 April 1844)

229 Ibid. p602, Gipps to Stanley, (17 May 1844). Buckley, *"Gipps and the Graziers of New South Wales, 1841-6."* p187

230 Mills, *"George Robert Nichols: Forgotten Patriot and Lawmaker."* p104
Bourke’s tenure. From the correspondence between Gipps and Lord Glenelg it would appear that Gipps had been briefed on the proposal before his departure from England and the new governor was surprised that the matter was not more discussed when he arrived. The Act when proclaimed reduced the regulatory powers of the governor and had a direct bearing on the administration of crown land.\(^{231}\) It gave the squatters both a voice and the ability to influence legislative outcomes.

The formation of an elected Legislative Council was to have a significant impact on land dealings. John Hirst suggested that the campaign for democracy in NSW had been partially aimed at giving people access to land.\(^{232}\) The elected Council was dominated by land-owners and their supporters and land was an important issue from the first election in 1843.\(^{233}\) The election put in train events that would eventually lead to a change in the governor’s responsibility for the administration of crown land.

The experiment of the fixed price of land and the special surveys of 1840 to 1841 had demonstrated that the London bureaucrats lacked the imagination and knowledge to appreciate the variable environment vastly different from anything they had encountered. Burroughs noted that their difficulties had been aggravated by a readiness to disregard local knowledge in favour of “theoretical principles and abstract reasoning.”\(^{234}\) The movement towards representative government, promoted by both the urban liberals and the wealthy squatters, began to overcome the problems of remote governance based upon fallacious notions and it allowed the concerns of the residents of NSW to be given a greater priority. Benjamin Jones noted however, that the concession of a representative government was not as large as it might appear. The land holding requirement for franchise was high and the governor retained the power to override the council.\(^{235}\)

Earlier, when commenting on the proposed establishment of a council Gipps had recommended a Legislative Council of between twenty-four and thirty-six members, of whom one-half to two-thirds would be elected and the remainder appointed. He expressed a belief that a totally representative body would be “unsafe” and so suggested this transitional model. Members he said, should be from the ranks of landowners holding unencumbered property to the value of £3.000, while voters should

\(^{231}\) Campbell, "Rights of Common in NSW: A History." p249


\(^{233}\) Ibid. pp87-88

\(^{234}\) Burroughs, "The Fixed Price Experiment in New South Wales 1840-1841." p404

\(^{235}\) Jones, "Colonial Republicanism: Re-examining the Impact of Civic Republican Ideology in Pre-constitution NSW." p137
be male British subjects holding property to the value of £500 or occupying a dwelling with a minimum rental value of £10 per annum. Essentially he believed in a parliament of the very wealthy with only the rich eligible to vote. It was to be a British model in which a hereditary aristocracy might be formed to safeguard against popularism and republicanism.\textsuperscript{236} Emancipists he believed should be allowed to vote but not sit on the Council.\textsuperscript{237} In a further departure from the past, he recommended that both the governor and the Legislative Council have the right to instigate legislation. This was a power which had been the governor's sole prerogative with the fully appointed council.\textsuperscript{238}

The Act was passed by the British Parliament in July 1842\textsuperscript{239} and was proclaimed in the colony's Government Gazette in January 1843.\textsuperscript{240} Sydney and Melbourne were declared electoral districts and other districts representing rural areas added as the governor saw fit. The number on the Legislative Council was set at Gipps' maximum of thirty-six members of whom twenty-four were to be elected.

Although suffrage was based upon the principle of the possession of property and respect for rank,\textsuperscript{241} there was no prohibition to the election or voting rights of an emancipated convict. All landholders (non-Aboriginal, male and British) with estates valued at over £200 and householders paying rent on property valued at £20 per year were eligible to vote.\textsuperscript{242} Elected members were to be land owners with estates valued at £2000 or householders renting a property valued at £100 per year. Leaseholders were denied franchise and although many squatters also owned land the provision potentially left some squatters who grazed substantial flocks on crown land outside of the political process. Lord Stanley requested Gipps' comments on the propriety of that particular provision.\textsuperscript{243}

The twelve appointed members were to be nominated by the governor who also had the right to both direct the sittings and prorogue the Council. The Council was directed to sit at least once per year.

\textsuperscript{236} Hirst, The Strange Birth of Colonial Democracy: NSW 1848-1884. p32 & p34
\textsuperscript{237} Watson, HRA Vol 19. pp719 -721, Gipps to Glenelg, (1 January 1839)
\textsuperscript{238} Ibid. p721, Gipps to Glenelg, (1 January 1839). Mills, "Lawmakers, select committees and the birth of democracy in NSW." pp134-135
\textsuperscript{239} 5 & 6 Vict, 76 – (30 July 1842). See also Watson, HRA Vol 22. p238, Stanley to Gipps, (5 September 1842)
\textsuperscript{241}

\textsuperscript{242} Hirst, The Strange Birth of Colonial Democracy: NSW 1848-1884. p17
\textsuperscript{243} Watson, HRA Vol 22. p240, Stanley To Gipps, (5 September 1842)
The governor acting under the advice of the Legislative Council had the right to make laws, providing they were “not repugnant to the laws of England.”[^244] Further, the governor had the power to withhold his consent or amend and return any law that was proposed. Any Bill to which the governor had consented had to be delivered to the Colonial Secretary in London and could be overturned any time within a period of two years.[^245] With respect to land, there was a special provision that the Legislative Council was not authorised to “interfere in any manner with the sale or appropriation of lands belonging to the Crown.”[^246] One indication of the governor’s loss of power was that he was supplanted as the Council’s presiding officer by a speaker elected only by members.[^247]

Even before an election date was announced, the front page of the *Sydney Morning Herald* of 10 January 1843 was almost fully devoted to announcements by those intending to stand.[^248] Although at first the newspapers of the day appear to have been caught in the fervour of the election, among the colonists, there remained an underlying dissatisfaction with the Act as proclaimed. Critiques were based upon the expense, the denial of control over Crown Land, a fear of increased taxation and the fact that squatters without property were not enfranchised despite their being responsible for most of the colony’s income.[^249]

In January 1843, the governor published a list of a proposed eighteen electoral districts, which would provide the twenty-four elected members. Three districts, based upon population, were allocated more than one member (see Table 8.3). It was a distribution that heavily favoured the country and squating interests, with only six representatives from heavily settled urban areas.[^250] The appointed Legislative Council was disbanded on 24th February 1843 with its last act being to establish the Electoral Districts.[^251] (Fig 8.3)

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[^247]: Mills, "Lawmakers, select committees and the birth of democracy in NSW.” p137


[^251]: Watson, *HRA Vol 22*. pp572-572, Gipps to Stanley, (24 February 1843)
Table 8.3. NSW Electoral Districts and Members to be returned

<table>
<thead>
<tr>
<th>Counties</th>
<th>Members</th>
</tr>
</thead>
<tbody>
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<td>5</td>
</tr>
<tr>
<td>Cumberland</td>
<td>2</td>
</tr>
<tr>
<td>Northumberland</td>
<td>1</td>
</tr>
<tr>
<td>Camden</td>
<td>1</td>
</tr>
<tr>
<td>Argyle</td>
<td>1</td>
</tr>
<tr>
<td>Durham</td>
<td>1</td>
</tr>
<tr>
<td>Bathurst</td>
<td>1</td>
</tr>
<tr>
<td>St Vincent and Auckland</td>
<td>1</td>
</tr>
<tr>
<td>Murray, King and Georgina</td>
<td>1</td>
</tr>
<tr>
<td>Cook and Westmorland</td>
<td>1</td>
</tr>
<tr>
<td>Roxburgh, Phillip and Wellington</td>
<td>1</td>
</tr>
<tr>
<td>Gloucester, Macquarie and Stanley</td>
<td>1</td>
</tr>
<tr>
<td>Hunter, Brisbane and Bligh</td>
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</table>

<table>
<thead>
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<tr>
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<td>1</td>
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<tr>
<td>Parramatta</td>
<td>1</td>
</tr>
<tr>
<td>Windsor, Richmond Campbelltown and</td>
<td>1</td>
</tr>
<tr>
<td>Liverpool</td>
<td></td>
</tr>
<tr>
<td>Maitland and Newcastle</td>
<td>1</td>
</tr>
</tbody>
</table>

| Total                             | 24      |

Drawn: P. Farnill.

The election was held from the 15 June 1843 to 3 July 1843, with specific days nominated for each electoral district. The newly elected Legislative Council met for the first time on 1st August 1843.

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253 Ibid. p2, *The General Election*, (31 May 1843)
and immediately demonstrated its authority by attempting to both provoke the governor and control
the local bureaucracy. It was representative of the “elite, conservative and landed-class,” a class that
believed they had a right to rule and which opposed the extension of political power to “social
inferiors.254 It slashed the budget of the Surveyor General’s Department and refused it an allocation
of funds from general revenue, thus limiting the survey and sale of farms to new settlers.255 It then
passed a bill which attempted to reduce the salary of any future governor.256 Gipps refused to accept
the bill and recommended that it not be given Royal assent. He suggested it was merely an attempt
by the Legislative Council to reduce the influence of the sovereign’s representative.257 Lord Stanley
subsequently advised that, as recommended, the Queen had withheld her consent.258

In a despatch of October 1843, the governor advised Lord Stanley of an ill-feeling within the
Legislative Council towards the British Government. He noted that many Acts of Parliament
promulgated by the British Government over the last ten years had been received with disfavour by
the colonists. The ill-feeling culminated in a struggle for power between the legislature and the
governor. It was land that had sown the seeds of discontent and as will be discussed land was to
play a major role in a deadlock that was about to occur.

8.1.13. A Council in Revolt

From its first sitting, the tensions and conflict between Governor Gipps and the elected Legislative
Councillors became manifest. Two-thirds of the persons elected were members of the Pastoral
Association, an organisation made from and dedicated to, promoting the interests of squatters.259 It
was a factor that in October 1844 forced the house to adjourn so the members could attend to their
“sheep shearing.”260 The parochial manner in which the Council operated was of considerable

democracy in NSW." p132. Peter Cochrane, Colonial Ambition: Foundations of Colonial democracy (Melbourne: Melbourne
University Press, 2006). Pp(xii-xiv) & p29
256 Ibid. Vol 23. p670, Gipps to Stanley, (9 July 1844)
257 ———, HRA Vol 24. p375, Gipps to Stanley, (15 June 1845)
258 Ibid. p608, Stanley to Gipps, (3 November 1845)
259 ———, HRA Vol 23. p831, Lord Bishop of Australia to Legislative Council, (30 September 1844) The Squatters and the
concern to Gipps who was probably correct in his earlier comments regarding a fully elected Legislative Council being unsafe to British interests.  

The elected councillors were men of the colonial bourgeoises. They were described by Gipps as having had their fortunes suffer severely by a large diminution of property values in the then ongong economic depression. All except one had been elected, Gipps claimed, on a pledge to oppose the Government’s nominee members on all matters. This is apparent in the Legislative Council’s actions, on the behest of the Pastoral Association, in reducing the funds allocated for surveys. Their interest was in preserving cheap access to land and with the requirement that land could be offered for sale only after survey, they had an interest in disrupting the progress of the surveyors. Without survey there could be no sale and in the meantime they were able to occupy the land without fear of a competitor’s bid.

Tensions between the Legislative Council and governor became a watershed in the already deteriorating imperial/colonial relations. In a private letter to Lord Stanley, Gipps noted that the existing Waste Land Occupation Act expired in June 1846 and required renewal. He offered an assessment that the NSW legislature would demand terms so liberal that the governor would be unable to give his consent. Although under its constitution the Council was unable to “interfere” in the appropriation or sale of crown lands, Gipps feared an attempt to convert existing occupancies into fee simple. This he characterised as an attempt to seize crown land and he sought the advice of Lord Stanley as to whether the Legislative Council was the competent body to consider the renewal of the Act.

If the Act was not renewed he asserted, the raising of funds and the ability to prohibit the unauthorised occupation of Crown Lands would be lost, but if a Bill was passed to which the

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261 With the majority of Councillors pastoralists, and prepared to vote as a block, Gipps’ appointees were outnumbered two to one, full or part representation would have made little difference.
262 Jones, "Colonial Republicanism: Re-examining the Impact of Civic Republican Ideology in Pre-constitution NSW." p144
263 Watson, HRA Vol 23. p200, Gipps to Stanley, (28 October 1843)
264 Ibid. p199, Gipps to Stanley, (28 October 1843)
265 Kass, Sails to Satellites. p91
266 Burroughs, Britain and Australia 1831-1855.p11
268 Clause 29 of the NSW Act. 5th & 6th Vict. 76, specifically prohibited the Governor or Council interfering with crown land or the revenue arising from it.
governor could not consent it would have the same effect.\textsuperscript{269} Lord Stanley instructed the governor that for the time being the Waste Act should not be introduced to the Council.\textsuperscript{270} The inference from this instruction was that an overriding Act would be passed by the superior British parliament. As noted by John Weaver however, the British Act when passed had discounted Gipps’ fears and was largely favourable to the squatter.\textsuperscript{271}

Despite the instructions of Lord Stanley, the governor expressed concerns that the British Parliament might not be able to pass any regulations in time. The expiry of the Act without its replacement he advised would have dire consequences within the colony. Because of this, Gipps advised of his hope that the still hostile Legislative Council would at least extend the existing legislation for one year and for that period, if necessary, he was willing to allow the Council to strike out some of the clauses to which they objected.\textsuperscript{272} The optimism of the governor was unfounded and the crucial Act was allowed to lapse.\textsuperscript{273} It was a deadlock that, as will be described, left the government without a revenue source with which to fund services for the administration and protection of the outlying squatting communities.

\textbf{8.1.14. Another Dispute – Local Government}

Together with the land regulations, another source of irresolvable conflict was the establishment of municipal councils. The NSW Constitution Act had introduced the concept of local government to the colony. The Act included a provision for the governor to charter local councils in settled districts by decree, prior to the calling of elections. The councils would be fully elected by the enfranchised citizens of the district. For districts with a population of 7000 people or more a 9 member council was to be elected. For a district of over 20,000, the Council was to comprise 21 members. In October 1843, Governor Gipps issued charters for 28 district councils. This was increased in 1844 when the districts of Campbelltown and Appin were separated from Camden and the number of local councils was raised to 29.\textsuperscript{274}

\begin{itemize}
\item[\textsuperscript{269}] Watson, \textit{HRA Vol 23}. p517, Gipps to Stanley, (3 April 1844)
\item[\textsuperscript{270}] ———, \textit{HRA Vol 24}. p230, Stanley to Gipps, (30 January 1845)
\item[\textsuperscript{271}] ibid. p698, Gipps to Stanley, (12 January 1846). Weaver, "Beyond the Fatal Shore, Pastoral squatting and the occupation of Australia, 1826 to 1852." p1004
\item[\textsuperscript{272}] Watson, \textit{HRA Vol 24}. p698, Gipps to Stanley, (12 January 1846)
\item[\textsuperscript{273}] Weaver, "Beyond the Fatal Shore, Pastoral squatting and the occupation of Australia, 1826 to 1852." pp1004-1005
\item[\textsuperscript{274}] Watson, \textit{HRA Vol 23}. p288, Gipps to Stanley, (1 January 1844)
\end{itemize}
It was intended that the Local Government bodies take over and administer many local issues that at the time were the responsibility of the governor. Matters such as maintenance of roads and bridges, public buildings, the establishment of schools and controversially half the cost of police and gaols (the other already being met by the colonial land fund), were to be the responsibility of the district councils.\textsuperscript{275} In possibly the most contentious issue, the Act also provided for the raising of money by the councils through tolls, levies, or rates on both personal and real property:\textsuperscript{276}

To Gipps, a local government body would release the government of expenditure on local infrastructure and services but John Laverty also noted that for the governor, another important effect was that the new bodies would reduce "the pretensions" of the Legislative Council.\textsuperscript{277} Later the measure was described as a tactical blunder. It simultaneously set up two levels of government each designed to keep the other in check but inevitably set them up as rivals.\textsuperscript{278}

As early as 1841, the governor had attempted to introduce a concept of local administration by colonial legislation but the Act had been watered down to encompass only the maintenance of local roads by individual Parishes. The new Act contained a number of the defeated provisions that the governor had attempted to include within his earlier legislation.\textsuperscript{279} Gipps however, because of the depressed economy at the time of issuing the charters under the new act, foreshadowed a two year postponement of a requirement for councils to meet 50\% of the expenses of the police and gaols.\textsuperscript{280}

It was the imposition of rates that had incurred the ire of the Legislative Council. The rates were seen as a new tax and thus "invited opposition" from the colonists.\textsuperscript{281} Governor Gipps was aware of this problem and reported to Lord Stanley that it was the concept of land rates that rendered the local government institutions unpopular.\textsuperscript{282} The opposition was particularly pronounced from sparsely populated parishes where the Crown which was exempt from rates but occupied large portions of the

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{277} ———, "The Evolution of Local Government in Brisbane, 1838-1859."
\item \textsuperscript{278} Under-Secretary Stephens, "Minute to Lord Stanley," in \textit{CO 205 (23 November 1845)}, ed. Public Records Office (Kew).
\item \textsuperscript{279} NSW Parish Roads Act, 4, Vict. No12. Watson, \textit{HRA Vol 21}. p149, Gipps to Russell, (1 January 1841)
\item \textsuperscript{280} ———, \textit{HRA Vol 23}. V23. p191. Gipps to Stanley, (14 October 1843)
\item \textsuperscript{281} Laverty, "The Evolution of Local Government in Brisbane, 1838-1859."
\item \textsuperscript{282} Watson, \textit{HRA Vol 24}. p252, Gipps to Stanley, (13 February 1845)
\end{enumerate}
\end{footnotesize}
total area. To meet the required costs, it was said, the councils would have to impose a “crushing financial burden.”  

The Legislative Council refused to pass three supplementary bills necessary for the District Councils to operate. In commenting on the rejection Gipps noted that:

_The rejection...is only important as shewing the determination of the Council to entertain no measure bearing on District Councils._  

By rejecting the bills however, the Legislative Council stood against legislation passed in Britain. The district councils Gipps declared, were as much a part of the Constitution Act as the Legislative Council itself. In his view the legislature had ignored their constitutional duties. Under the circumstances the governor felt compelled to disclaim responsibility for any consequences.  

In advising Lord Stanley of the dead-lock on the District Councils Gipps stated that, because of its non-constitutional behaviour, he considered a dissolution of the Legislative Council and calling a second election but on reflection decided that it would gain him nothing. It was another indication of a shift in power from the governor to the colonists, it remained a contentious matter through the remainder of Gipps’ tenure and it was argued that the discretion to form a local council should rest not with the governor, but with the residents. Other than in Sydney and Melbourne where local government was established by a British Act, the concept of local government particularly in rural areas was shelved and with the exception of Parramatta not reintroduced until 1857, after the granting by Britain of colonial self-government.  

Again it can be seen that policies towards land ownership and the fear of land taxes was a source of conflict between Gipps and the colonists. They were issues that from the council’s first sitting had triggered the defiance of the Legislative Council and forced the Imperial government to initiate
reforms. Despite the initial opposition, subsequent governments would see local government incorporated throughout the colony. It became the body that was responsible for administering local land and planning matters. The state legislature however never relinquished its overriding authority to determine policy over land matters.

8.1.15. A Deadlock

The Legislative Council of 1843 has been described as overly representative of the land-owning bourgeoisies. As a consequence it was the interests of the pastoralist and colonial elite that was foremost in the council’s deliberations. In his disputes with Legislative Council Gipps accused its membership of deliberately rejecting bills for no purpose other than to thwart the executive government. The Council he said, was claiming absolute control: “subjugating to itself all things of the entire power of the executive.” In a warning to the Colonial Secretary, that suggested his reduced ability to govern, Gipps noted that he would need London’s support if he was to maintain the Crown’s rights. Gipps decided that while awaiting instructions he would mitigate potential conflict and with his “utmost endeavours” avoid an open rupture with the Council.

The apprehensions of the governor were justified but his intention of brokering an agreement proved too optimistic. Further, the discontent on the question of land came from all levels of society. The elites justified themselves as a landowning aristocracy, but feared that easy access to land could turn the poor into “propertied men.” The disputes over land continued and the Legislative Council became almost a constant impediment to Gipps’ administration. Amongst the colonists the Council’s resistance was received with approbation. It foretold even greater independence in the future. As claimed by member for Port Phillip James Dunmore Lang: “the degrading yoke under which we have so long groaned as a British colony governed by absolute Colonial Secretaries and tyrannical governors is broken.”

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290 Ibid.
291 Jones, "Colonial Republicanism: Re-examining the Impact of Civic Republican Ideology in Pre-constitution NSW," p144
293 Ibid. pp249-250, Gipps to Stanley, (13 February 1845)
294 ———, *HRA Vol 23*. p707, Gipps to Stanley (27 July 1844)
295 Melleuish and Buck, "Democracy, Political Rhetoric and the Conservative Response to Manhood Suffrage inColonial NSW."
296 John Dunmore Lang cited in Jones, "Colonial Republicanism: Re-examining the Impact of Civic Republican Ideology in Pre-constitution NSW."
In 1846, the Legislative Council recommended that Gipps’ squatting regulations be repealed. It was a recommendation that the governor rejected. Thereupon the Legislative Council, despite Gipps’ striking out any offending clauses, unanimously refused to support the one year renewal of the Crown Lands Occupations Act.\(^{297}\)

The pro-squatter *Sydney Morning Herald* described the conflict as a ‘tug of war between prerogative and liberty’ and placed the governor and the Colonial Secretary squarely as the villains. If legislation were to be enacted by the House of Commons the paper said, “we will submit, but we will not submit in silence.” Invoking an underlying squatter’s claim to common law rights and natural justice, the paper claimed that the autocratic determinations by the governor were contrary to British law and custom.\(^{298}\) Despite the paper encouraging the Council to oppose the governor on the Crown Lands Occupation Act, it nonetheless urged the council members to ensure that the border police were maintained.\(^{299}\) The border police were funded from licence fees under the Act, but it was claimed that there were sufficient funds elsewhere and the police were not dependent on the Act.\(^{300}\)

The governor eventually advised the Council that he did not intend to accommodate their grievances and the matter remained unresolved. In retaliation the Legislative Council declined to consider any further business while Gipps remained governor.\(^{301}\) Gipps then demonstrated his prime authority by proroguing the Council until 25 August 1846, six weeks after his intended departure from the colony.\(^{302}\)

The consequence of the Legislative Council not renewing the Act was a lack of funding for the border police which was disbanded. It also had the effect of decommissioning the Land Commissioners who then lacked official authority to intervene or settle disputes between landowners or squatters. The commissioners were still authorised to operate as magistrates and in an implied threat by Gipps were

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299 “*Sydney Morning Herald.*” p2, The Struggle of Tomorrow, (2 June 1846). (The funding of Boarder Police was an item in the Act). The border police was a body funded by the licences and charged amongst other things of protecting squatters from attack by Aboriginal People.


301 Ibid. p3, Adjournment, (13 June 1846)

required to notify the Colonial Secretary of any unauthorised use of crown lands. As a further means of coercion, the commissioners were tasked with advising squatters “in a way of friendly information” that any unlicensed use of any portion of crown land “for a time, however short,” would result in the forfeiture of any right to further licence or leasehold.  

It was also noted the Imperial Parliament would be required to consider a replacement Act and that any suspension of the commissioner’s power was likely to be temporary.

The dispute illustrates a struggle for power between a Legislative Council representative of the squatting interests and the governor. It resulted in the government under Gipps becoming to some extent unworkable and was a conflict in which land and land policies were at the fore. As noted by Weaver, the extent of squatting had continually challenged authority and made “nonsense” of official land policy. There was wide public discontent over land matters from all sides of the colony’s social spectrum. Land and its alienation were thus shaping the political outlook of the colony. Land was prominent amongst the factors influencing the colonists’ call for self-rule and in the opportunities for reform that self government could offer.

8.1.16. Townships

For a short period under Gipps, government town planning went into remission. Lord Russell seemingly saw no advantage in government intervention or pre-designed town reserves. Rather he advocated a laissez faire system of township formation. He recommended an end to government sponsored town planning in other than major centres or sea ports. The practice of reserving areas for townships and the laying out of towns Russell decreed was no longer a matter for the government surveyors. In a short-lived edict that anticipated a situation that would arise later in century when much of the colony’s land was alienated and the extension of townships was outside government control, Russel stated:

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303 ———, HRA Vol 25, pp127-128, Confidential Circular to Commissioners of Crown Lands, (20 June 1846)
304 Ibid. pp127-128, Confidential Circular to Commissioners of Crown Lands, (20 June 1846)
305 Anne Coote, "Imagining a Colonial Nation: the development of popular concepts of sovereignty and nation in NSW," Australian Colonial History 1, no. 1 (1999). p4
306 Weaver, "Beyond the Fatal Shore, Pastoral squatting and the occupation of Australia, 1826 to 1852." p991 & p1004.
307 Coote, "Imagining a Colonial Nation: the development of popular concepts of sovereignty and nation in NSW." p4 & p20
308 Ibid. p36
I believe that the establishment of Villages and their gradual extension into Towns, may be...best left to the enterprise and judgement of individuals.\textsuperscript{310}

It was a belief very much of its period. In an unregulated market an invisible hand would guide the clever entrepreneur to the most economically viable site and profit would be the result.\textsuperscript{311} It was an extreme free market philosophy in an era that has been described economically as the \textit{age of laissez-faire}. It demanded minimal government intervention into the economic and social realms.\textsuperscript{312} It made no allowance for the vastness of the land-mass, the climate, the sparseness of settlement or a consequent slow development of outlying townships.\textsuperscript{313} Further a township could not be built in isolation. If not on a navigable river it required a road but unlike Britain with an established network, roads were few and their construction a government responsibility.\textsuperscript{314}

Under instructions from London, towns were to be allowed to be located and develop organically to meet the need of surrounding areas. The explanation given for this decision is convoluted and difficult to follow, but it was based upon the removal of any initial price premium on land reserved for a township. Towns were apparently to be established by market forces alone. In a rationalisation to this reasoning, Lord Russell stated:

\begin{quote}
On the principle of giving the upmost (sic) encouragement to the introduction of capital and to investment in land...we conceive that, in the case of secondary towns, the value of land depends altogether upon the spontaneous influx of labour and capital; and this influx will be rapid or tardy in proportion as the capitalists expect a high or low return. If we charge the incoming capitalist a high price for town land we diminish his returns, we render investments in town land and building speculations less advantageous.\textsuperscript{315}
\end{quote}

Apparently without any overall planning an entrepreneur was to decide the location of a future town, purchase the land at rural values and then subdivide the allotments. The entrepreneur would be motivated to do this because he would then secure a large profit from the increased value of the lands. It was an unworkable and uncoordinated system. Although townships sites were no longer to be reserved, Russell nonetheless decreed that “all lands required or likely to be required for roads and other public purposes should be delineated on charts and

\begin{itemize}
\item \textsuperscript{310} Watson, \textit{HRA Vol 20.} p644, Russell to Gipps, (31 May 1840).
\item \textsuperscript{312} Ellen Frankel. Paul, "Laissez Faire in Nineteenth Century Britain: Fact or Myth ?," \textit{Literature of Liberty} III, no. 4 (1980). pp1-2
\item \textsuperscript{313} Collits, "Small Town Decline, Survival and Trends," in \textit{The Future of Australia's Country Towns} (La Trobe University Bendigo: The Regional Institute, 2000). Ch.5.2.2
\item \textsuperscript{314} Spooner, "On Squatters, Settlers and Early Surveyors." p55
\item \textsuperscript{315} Watson, \textit{HRA Vol 20.} p675, (sub Enclosure 2) Land and Emigration Commissions to Russell, (13 April 1840)
\end{itemize}
exempted from sale.” Commenting on the proposal, the *Sydney Herald’s* editor pronounced the measures “palpably absurd...and incomprehensible.” With hindsight, the comment would seem to have substance. The establishment of East Gosford is typical. Founded in 1841 by tea merchant Samuel Peek it struggled to survive and many buildings constructed by Peek decayed. It was eventually overtaken by the government and railway town of West Gosford, developed after the railway line was constructed in 1887.

The reasoning and advice issued by Lord Russell was an adjunct to his fixed price of land principle and originated from the London based Commissioners of Land and Emigration. It has been described as a halcyon vision, it lacked any appreciation of the need for a town to be part of a whole and located where it is economically and strategically viable. Without any overall plan it envisaged private townships being established on the basis of profit alone. The advice actively encouraged the speculation in townships, envisaging towns being established by judicious individuals who even if located in faraway Britain could purchase land at a fixed price and then create a town for profit alone.

The Surveyors General’s records held at the NSW State archives indicate that Gipps did not subscribe to Russell’s township theory. Although there is little to suggest that the governor participated in the planning of towns to any great extent, the plans of at least forty-three government designed townships were registered during Gipps’ tenure. One town design with which Gipps is known to have had significant involvement is the now virtually non-existent town of Newrea in the Wellington Valley.

In 1839 the Church Missionary Society operated a mission near the junction of the Macquarie and Bell Rivers in central NSW. The local settlers, who had occupied the area since 1823, petitioned the governor to establish a village in the vicinity of the mission. Revd. J. Gunther of the Missionary

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316 Ibid. p675 & p679, (sub Enclosure 2) Land and Emigration Commissions to Russell, (13 April 1840)
317 "The Sydney Herald." p2, The land Commissioners, (3 June 1841)
319 Gosford's History,” in *Newsletter* (Gosford: Gosford City Council, 2014). (n,p) Census figures of the entire Brisbane Waters Police District, which included Lake Macquarie, Gosford, Brisbane Water and Lower Portland Head was 1090 when Gosford was established in 1841. By 1846 the population had only increased to 1272. After the railway, in 1891 the population was 5154
320 Paul, “Laissez Faire in Nineteenth Century Britain: Fact or Myth ?.” p2
Society objected to the township citing “the impossibility of conducting a Mission to the Aborigines so close to a township.” In response to the objections Governor Gipps together with surveyor Davidson designed, the proposed town of Newrea, some distance from the mission, but the town itself never eventuated.

As Lachlan Macquarie had found with his Hawkesbury towns, townships could not just be created with the expectation that residents would come. Similarly Lord Russell’s theoretical laissez-faire and free-market philosophies were unsuitable for the general siting of townships in NSW. Further the number of government planned towns registered under Gipps indicated that the governor did not share his superior’s views.

### Table 8.4. Towns Surveyed and Registered During Gipps ’Governorship’

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<td>`1839</td>
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323 Kass, *Sails to Satellites*. p116

Drawn: P. Farnill.

8.1.17. The Railways

Almost as an aside, Gipps presided over an event which eventually overturned many of the colony’s existing town plans by causing a schism in the street layout. The event, insignificant in itself, was a precursor to establishment of a railway network. Just prior to his departure from the colony Gipps met with the directors of the Great Southern and Western Railway Company to discuss the establishment of a railway system in NSW.\textsuperscript{325} To promote and encourage the concept of railways, Gipps formulated a draft Railway Bill. The bill authorised the governor to sell the company 50 acres of land for every mile of track and 640 acres at every station. The land to be at a fixed price of £1 per acre or as otherwise agreed.\textsuperscript{326} It was anticipated that in settled regions the land could be valued up to £1,000 per acre.\textsuperscript{327}

Encouraged by Gipps’ support, the railway company placed an advertisements in the newspapers of the day seeking to raise one million pounds in shares at twenty pounds each. In anticipation of Gipps’ Railway Act, the advertisement also offered little doubt that the government would allow land to be purchased along the route and that it was the intention of the company to re-sell this land at “the advanced prices which their contiguity to the railway could not fail to command.”\textsuperscript{328}

\begin{tabular}{|c|c|c|c|c|}
\hline
1045 & Bookham & 1838 & 1219 & Rylstone & 1842 \\
1051 & Braidwood & 1839 & 1220 & Rydal & 1842 \\
1060 & Jugiong & 1839 & 1222 & Lyell & 1843 \\
1070 & Bunya & 1839 & 1232 & Blamey & 184*? \\
1073 & Carcoar & 1839 & 1245 & Balgowlah & 1844 \\
1081 & Murrurundi & 1839 & 1263 & Picton & 1845 \\
1084 & Mariaville & 1836? & 1276 & Mt Pleasant & 1846 \\
1089 & Merriwa & 1839 & 1282 & Orange & 1846 \\
1095 & Jerry’s Plains & 1840 & & & \\
\hline
\end{tabular}

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325 Watson, \textit{HRA Vol 25}, p59, Gipps to Gladstone, (19 May 1845)
326 Ibid. p61, Draft Act for Railways, (19 May 1846)
327 Ibid. p61, Gipps to Gladstone, (19 May 1846)
328 “Sydney Morning Herald.” p1, Advertisement, (2 June 1846).
\end{flushright}
\end{flushright}
The advertisement also named twenty provisional directors. With the exception of four whose status was not mentioned, each director held a position of rank within the colony. The list included nine Justices of the Peace, five members of the Legislative Council, the Post Master General, the Mayor of Sydney and the colony’s highest ranked military officer (who was also one of the Legislative Councillors).329

Other than proposing the Act, Gipps had no further part to play in the railway system. By a despatch of 15 June 1846 he advised that because of the imminent arrival of Sir Charles FitzRoy, he had arranged to depart the colony.330 The finalisation of the Railway Act was left to Gipps’ successor.

8.1.18. Another Popular Departure

Gipps departed the colony in July 1846 in anticipation of his successor Sir Charles FitzRoy’s arrival in August. One of Gipps last official acts was to recommend the partition of Port Phillip from NSW as a separately administered colony.

Gipps had occupied an unenviable position. He had seen a need to reform many existing systems and was required to implement many changes decreed by successive Colonial Secretaries. While land issues are the focus of the current study, there were numerous other unpopular incidents, such as his response to the Myall Creek massacre, in which Europeans were hanged for the killing of Aboriginal people, which had distanced him from the colonists.331 It resulted in a general unpopularity among many of the colonists some of whom regarded him as unable to stand against his superiors in London.

What has George Gipps done to promote the interests of the colonists? The answer is nothing...several measures have been proposed and some adopted which he ought to have resisted, not supported...the governor of the day is but a mere mouthpiece of the Secretary of State...332

Although unpopular, it is likely that Gipps would have been forgiven on anything but the land issues. In itemising the faults of Gipps’ tenure, the Herald noted that the governor had offended against almost every aspect of the colony’s economy. The minimum price of waste land had been raised; the

329 Ibid. p1, Advertisement, (2 June 1846).
330 ———, HRA Vol 25. p98, Gipps to Gladstone (15 June 1846)
331 Russ Blanch, Massacre: Myall Creek Revisited (Delungra NSW: Graham Books, 2000). pp66-67
332 “The Sydney Herald,” p1(s), Supplement; Our Local Government, (2 March 1840)
proceeds of the Land Fund had been appropriated for British purposes; colonial enterprise was being impedied because of loss of assigned convict labour; the pastures for sheep and cattle were not extended far enough; emigration from Britain was to be curtailed and with the British Commissioners for Land and Emigration in control of selecting the emigrants, the colony would receive the “coerced scum of England” rather than “a bold peasantry.”

The difficulties encountered by Gipps had been undoubtedly severe with many issues on which other governors would have faltered. In terms of land management, Gipps’ role as governor appeared to be more one of administration, equitable land release and problem solving, rather than hands-on town planning. With the systems and customs in place, Gipps’ role related more to reining back excesses rather than establishing procedures. Despite a large number of townships formed under his governorship he seems to have been content to allow his surveyors to select town reserves and to prepare the town layout as necessary. The dimensions and designs adopted remained dominated by planning formulated by Ralph Darling.

Gipps’ main concern with respect to towns was economic rather than physical. Town land was more valuable than country land and he insisted that town reserves be selected by his surveyors. The separation of allotments into the categories of town, suburban and country reflects his insistence on the Crown receiving a benefit from those higher property values. In this, he demonstrated a degree of independence by opposing Lord Russell’s uniform, fixed price, policies and the concept of entrepreneurs gaining the windfall profits from rises in property values rather than the state. Not all of Gipps’ measures had been divisive. He had finally confronted the problems of settlement prior to survey, an inadequacy that had dogged both the more established parts of the colony and the more recently opened districts. Even though the measures were already underway, his insistence on scientific surveys had undoubtedly provided welcome support to his Surveyor general.

On Gipps departure the Sydney Morning Herald described “a collision between Gipps and the legislature and condemned the governor as being responsible for actions that “a Christian ruler would shudder to contemplate.” The Herald’s views were not universal, The Morning Chronicle accused that paper of being unrepresentative of the majority of colonists whom it claimed, regarded the

333 Ibid. p1(s), Supplement; Our Local Government, (2 March 1840)
334 Toon, "The Managment and control of Land use Planning in N.S.W. since 1788." p152
335 “Sydney Morning Herald.” p2. The Final Collision, (16 June 1846)
governor as having presided over them with “scrupulous uprightness.” With “great ability” it claimed, he brought the colony substantial benefit and he would be remembered “respectfully and sympathetically.”\textsuperscript{336} The editor of the \textit{Australian}, not always a supporter of the governor, described Gipps’ term as being without parallel and full of incident but nonetheless gave a considerate account of Gipps’ attitude to his office:-

\textit{The political opponents of the governor...[were] always ready to disparage any attempt to do the governor injustice...Differing as we do with the views your Excellency as taken of your duty to the Queen’s government we never the less desire to do full justice to your Excellency’s uprightness of purpose, your unimpeachable justice and your great patience and forbearance under the persecutions of the Press.}\textsuperscript{337}

The initial popularity of Gipps and his general unpopularity at the end of his tenure was a phenomenon that applied to most governors and illustrates the political tensions within the colony. No governor was able to satisfy his own belief system, serve his masters in England and meet the demands of the colonists. Land was the basis of many of the disputes and it was land that would continue to dominate colonial politics.

Gipps’ health had suffered during his time in Australia, possibly as a result of the conflict and strains of office and this had made it difficult for him to behave in a conciliatory manner. He died in England just over six months after his leaving the colony. Despite the tumultuous nature of his administration and with time giving a favourable perspective to many of Gipps’ reforms, his biographer asserted “on Australia’s roll of governors his name must rank High.”\textsuperscript{338}

Although unpopular within the colony and in bad health on his arrival in England, Gipps was consulted by the Colonial Secretary on land and squatting reforms and seemingly recommended against many of the land policies that he had been required to implement. Reforms were introduced by the British parliament which granted the colony self-government and gave the squatters security of tenure by the introduction of pastoral leases. They were reforms that relieved some of the colonial tensions and should have eased the path for Gipps’ successor Charles FitzRoy.

\textsuperscript{336} “The Morning Chronical.” p2, \textit{Strange Doings of, and Concerning the Legislative Council}, (17 June 1846)
\textsuperscript{337} “The Australian “. pp2-3, \textit{Address to the Governor}, (2 July, 1846)
\textsuperscript{338} McCulloch, ”Gipps, Sir George (1791-1847).” (np)
After the governor's departure the colony was left in the hands of Sir Maurice O'Connell, an appointed member of the Legislative Council and the senior military officer in NSW at the time. There were no specific actions with respect to land or town planning during O'Connell's three week tenure.

8.1.19. Settled Areas and Spatial Growth at end of Gipps’ Tenure

The extent of the settlement and land alienated at the end of Gipps' governorship is tabulated in Table 8.5.

Table 8.5. Settled Localities and Squatting Districts and Surveyor's Plans Registered at end of Gipps’ Governorship

<table>
<thead>
<tr>
<th>Locality</th>
<th>Locality</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nineteen Counties</td>
<td>Murrumbidgee</td>
</tr>
<tr>
<td>Bligh</td>
<td>New England</td>
</tr>
<tr>
<td>Lachlan</td>
<td>Port Macquarie</td>
</tr>
<tr>
<td>Liverpool Plains</td>
<td>Wellington</td>
</tr>
<tr>
<td>Macquarie</td>
<td></td>
</tr>
<tr>
<td>Maneroo</td>
<td></td>
</tr>
<tr>
<td><strong>Others Remote and External</strong></td>
<td></td>
</tr>
<tr>
<td>Moreton Bay</td>
<td>Port Phillip</td>
</tr>
<tr>
<td>Norfolk Island</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Acreage Alienated</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Arthur Phillip 1788 - 1792</td>
<td>3,389 Acres</td>
</tr>
<tr>
<td>Francis Grose 1792- 1794</td>
<td>10,674 Acres</td>
</tr>
<tr>
<td>William Paterson 1794- 1795</td>
<td>4,965 Acres</td>
</tr>
<tr>
<td>John Hunter 1795 -1800</td>
<td>28,650 Acres</td>
</tr>
<tr>
<td>Phillip Gidley King 1800-1806</td>
<td>60,411 Acres</td>
</tr>
<tr>
<td>William Bligh 1806 -1808</td>
<td>2,180 Acres</td>
</tr>
<tr>
<td>George Johnston 1808</td>
<td>5,660 Acres (later revoked)</td>
</tr>
<tr>
<td>Joseph Foveaux 1800-1809</td>
<td>8,325 Acres (later revoked)</td>
</tr>
<tr>
<td>William Paterson 1809 -1810</td>
<td>68,101 Acres (later revoked)</td>
</tr>
</tbody>
</table>

339Roberts, *The Squatting Age in Australia*. p139
<table>
<thead>
<tr>
<th>Name</th>
<th>Acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lachlan Macquarie 1810-1821</td>
<td>570,045 Acres</td>
</tr>
<tr>
<td>Sir Thomas Brisbane</td>
<td>865,000 Acres plus 200,000 Crown reserves</td>
</tr>
<tr>
<td>Ralph Darling</td>
<td>79,262 Acres</td>
</tr>
<tr>
<td>Richard Bourke</td>
<td>562,628 Acres (mainly by sale)</td>
</tr>
<tr>
<td>George Gipps</td>
<td>834,520 Acres (mainly by sale)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Value of Sales</th>
</tr>
</thead>
<tbody>
<tr>
<td>Richard Bourke</td>
</tr>
<tr>
<td>George Gipps</td>
</tr>
</tbody>
</table>

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341 Ibid. ibid. p106, Land Sales and Mortgages EC 34-35 (years 1838 to 1846, adjusted to July 1846)
CHAPTER 9. SQUATTING PREVAILS: FITZROY

Squatters...must appear not as heroes of the Golden Fleece or happy spirits of the wilderness, but as men acting without grace or restraint or care for the public good.

Michael Roe - 1963

This chapter describes the administration of Charles FitzRoy who was not only the governor of NSW but in effect Australia’s first Governor General. Fitzroy’s administration saw the creation of the separate colony of Victoria and the commencement of the Australian railways system. It was also a period during which the partially appointed Legislative Council became a fully elected body, the squatters were given a form of secure tenure and, although the British parliament still retained the right to enact superior legislation, in 1855 the management of crown land passed from the governor to the local legislature.

9.1. Charles Augustus FitzRoy (Governor 1846-1855)

...a most incapable Governor of such an important colony

Henry George Grey - 1848

His record in office, when mentioned at all, is customarily dismissed with a few contemptuous word, implying that he is not responsible for even as much as a noteworthy mistake

John M Ward - 1953

Charles Augustus FitzRoy was born in 1796 the son of a general, Lord Charles FitzRoy. He was stepson to a daughter of the Marquis of Londonderry a grandson to the Duke of Grafton and the son-in-law of the Duke of Richmond. Thus, aristocratic by marriage and birth, he had connections to the British nobility through four separate families. Further, through an illegitimate line, he could trace his ancestry to the Stuart Kings. FitzRoy achieved the rank of Lieutenant Colonel in the Horse Guards and fought at the Battle of Waterloo. Between 1825 and 1831 he served at the Cape of Good Hope

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2 National Archives (UK), Kew, PRO CO 30/22/7B/26 ff67-68, Lord John Russell Papers, Grey To Russell, (9 March 1848)
4 Penny Russell, "Ornaments of Empire ?," in *Ornamentalism and the New Imperial History* (Sydney University, October 2003). p200
as Deputy Adjutant-General and in 1831 held the seat of Bury St. Edmonds in the House of Commons.\(^5\)

In 1833 Fitzroy retired from the army and was appointed Lieutenant Governor of Prince Edward Island and later Lieutenant governor of the Leeward Islands. In 1845 the Colonial Secretary Lord Stanley awarded him the dual governorships of NSW and a proposed new colony of Northern Australia.\(^6\) Accompanied by his wife and son, FitzRoy arrived in Sydney on 2nd August 1846 and took his oath of office on the following day.\(^7\)

Although described as ineffectual and desiring “above all a smooth administration”\(^8\) FitzRoy nonetheless presided over a time of great change in land policy. Under his governorship NSW was divided into three independent colonies, a fully representative government was implemented and the squatters were granted security of tenure over the land they occupied.\(^9\) Further by the passing in Britain, of the NSW Constitution Act of 1855,\(^10\) the administration and control of crown land passed from the direct authority of the governor, into the hands of the locally elected legislature.

After the passing of the Act, all crown lands were effectively vested in the NSW Parliament and a system instigated under which the planning of towns and local areas devolved to local government bodies. Under FitzRoy the governors had finally yielded their autocratic control over land matters and the change of responsibility for the control of Crown Land, that defines the chronological limit of this study.

9.1.1. An Unhappy Event in an Unhappy Colony

The new governor arrived in the colony with an aura of optimism but it was shaken by the political situation he encountered. Worse was to come. Tragedy visited FitzRoy and his family within sixteen


\(^6\) This second Commission was withdrawn on 18 November 1846, when it was decided to abandon the concept of the new colony. See, Watson, *HRA Vol 25*. p262, Earl Grey to FitzRoy, (18 November 1846) and p321, Grey To FitzRoy, (15 January 1847)

\(^7\) Ibid. p(xi), Introduction. Ward, "FitzRoy, Sir Charles Augustus (1796-1858)." np

\(^8\) Ibid p22

\(^9\) The colonies were, NSW, Victoria and Northern Australia (Note the North Australia Charter was revoked 15 January 1847) Watson, *HRA Vol 25*.Introduction ppix-x and p321

\(^10\) The New South Wales Constitution Act 1855 – 18 &19 Vict. c44
months of his taking office, undoubtedly colouring the remainder of his governorship and the way in which he was perceived within the colony.\textsuperscript{11}

In December 1847 Lady FitzRoy was killed in a carriage accident while being driven by the governor from Parramatta to Sydney. FitzRoy's adjutant also lost his life in the accident, while FitzRoy himself suffered a severe knee injury.\textsuperscript{12} The loss of his wife had a marked effect on FitzRoy and gave rise to several scandals that marred his administration.\textsuperscript{13} Hirst described the disgust of the colonial elite at the loose-living lifestyles subsequently adopted by FitzRoy and his two sons.\textsuperscript{14} The accident however, while ostensibly having little to do with land, affected Fitzroy's governorship and raised the sympathy of his superiors in London. As will be discussed, the sympathy possibly forestalled FitzRoy's early recall.\textsuperscript{15}

9.1.2. More Than One Master

Immediately on his arrival there could be little doubt that FitzRoy would have suffered uneasiness on discovering the political unrest within the colony. On his first day in office the \textit{Australian} greeted the new governor with the following passage:

\textit{We may venture to say that the more the governor shall study the interests of the masses and shall overlook those of the higher classes, when the latter clash with the real, permanent and constitutional welfare of the people of the colony, the more opposed and hated he will be...in spite of the church and a landed aristocracy... if at the end of his government he has left a satisfied, prosperous and loyal people, he may snap his fingers at the rest.}\textsuperscript{16}

Land again featured highly amongst the colonist's concerns. The \textit{Herald} expressed a hope that the new governor would break away from the land policies of Governor Gipps and Lord Stanley who, the newspaper declared, had imposed a "system of arbitrary domination" to which no free Britons could "tamely submit." Further the paper claimed, Gipps had maintained a sullen obstinacy that had ruptured the relationship between himself and the people's representatives beyond any hope of healing. The paramount question the paper said was that of squatting, an issue that still had not been


\textsuperscript{14} Hirst, \textit{The Strange Birth of Colonial Democracy: NSW 1848-1884}, p21.

\textsuperscript{15} Watson, \textit{HRA Vol 25}, p(xi), Introduction. Ward, "FitzRoy, Sir Charles Augustus (1796-1858)." p643, Grey To FitzRoy, (30 June 1847)

\textsuperscript{16} "The Australian ". p2, \textit{The New Governor}, (3 August 1846)
adequately addressed. Gipps’ treatment of the squatters it was said, had been an ongoing symbol of
tyrranny and oppression.17

In his first dispatch, written two weeks after taking office, FitzRoy related that the colonists were
“considerably agitated” and there was “much excitement” over questions that had remained
unresolved over the last few years.18 In response to the turbulent situation FitzRoy seemingly
decided on a non-confrontational strategy and in its pursuit, he leaned towards appeasement rather
than confrontation. Further, to avoid expressing any opinion and risking the displeasure of the locals
or the Colonial Secretary, FitzRoy generally forwarded the reports of the Legislative Council to
London with little or no personal comment. It meant that policies on land and other contentious
issues were made by a remote government without the input of their local representative. FitzRoy’s
attitude was noted by the Colonial Secretary who later informed him that as governor he was the one
expected to make difficult decisions.19

Unlike most of his predecessors, with the notable exception of Macquarie, FitzRoy thought it
important to see the extent of the colony first-hand. In April 1847 he commenced several inspections
of the squatting districts beyond the Limits of Location. During his visits he met with numerous
squatters and spoke of his favourable reception by them. On his return he advised of the surprising
prosperity of the colony but noted that a shortage of labour was the main constraint to its progress.20

Given FitzRoy’s aristocratic background and his lifestyle within the colony, it would be expected that
he would associate with the colonial version of a landed-gentry or the squattocracy. As noted by
Badger, FitzRoy found the interests of the pastoralists “with their large estates and complement of
attractive and attentive womenfolk” very much to his liking. He therefore took the opportunity to
inform himself, at first hand, of their affairs.21 As a consequence, the views he obtained on land
issues and which he later supported, were those of the wealthy squatter and great land-owners.22
Despite a conciliatory attitude towards the colony’s elite, FitzRoy was still responsible to the Colonial Office in Britain. Earl Grey in responding to a petition, requesting a reduction in the price of land, from the Legislative Council and supported by FitzRoy, stated that he could not agree.23 Grey told FitzRoy that the British Parliament intended to retain the policies of a minimum price of £1 per acre for land in NSW and to continue the Ripon practice of selling land by auction. Grey declared his belief that the high minimum price would oppose the “tendency to an undue dispersement.” It was this dispersal he asserted, that deprived the inhabitants of the advantages of civilised society. His attitude towards dispersement, indicates that Grey was out of touch with the realities of land occupation within NSW. It seems that he was reverting to the earlier Shaftesbury principles of containment, a policy that in NSW had been abandoned decades earlier and had little relevance in the rapidly expanding and pastorally based colony.

Within his first year of office the mollifying attitude of FitzRoy to the Legislative Council earned him in rapid succession three rebukes from the Colonial Secretary. Of the three, two were related to specifically to land issues. The delay in communications ensured that the third rebuke was sent before the first two were received. In censuring FitzRoy, Earl Grey suggested that the governor had abandoned all attempts to control the Legislative Council, a body that Grey believed was acting illegally.24

*I lay upon you the most precise injunction to adhere to [the law] whatever may be the difficulties in which the observance of that law may involve you.*25

The first censure related to the Legislative Council’s reducing the salary of Judges, a matter Earl Grey said was not their prerogative. The second related to a land matter and the weakening of District Councils to the extent that they became redundant. Although FitzRoy had refused his consent to the latter, he ignored legal advice that the Bill was outside of the power of the local legislature.26 Instead, in a use of assuaging language, FitzRoy reported that he had withheld consent not on principle but on technical grounds. The mild language used by FitzRoy raised the ire of Earl Grey who regarded the Council’s actions as a serious attempt to subvert the British Parliament. Grey demanded that the Legislature be brought into line:

*If any other attempt to pass a law declaratory of the true construction of any Act of Parliament [is made]...it will be your duty to refuse your assent and ground that refusal on*

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23 Watson, *HRA* Vol 25, p484, Grey to FitzRoy, (12 April 1847)  
24 Ibid. p526, Grey to FitzRoy, (30 April 1847)  
25 Ibid. p528, Grey to FitzRoy, (30 April 1847)  
26 ibid. p315, Messrs Plunkett and Manning to Colonial Secretary, (9 January 1847)
The two censures were followed shortly after with the third in much sterner terms. It threatened FitzRoy's recall for exceeding his instructions with respect to his remission of quit rents (a form of land tax) on landholdings, after ten years payment had been made. At the time approximately £66,000 rent was in arrears and the governor was told “in no uncertain terms” that by the remission of the rents, he had gone too far.

I exceedingly regret to perceive that the concessions, which you have made go so far beyond those sanctioned by my predecessor on behalf of the Crown...it becomes my duty to express Her Majesty’s displeasure at the unauthorized measure you have thus adopted.

The landowners, on the other hand, believed FitzRoy had not gone far enough and that owners were still at a disadvantage to squatters. In offering an explanation with respect to his remission of the quit rents, FitzRoy claimed he had acquiesced with the claims on behalf of the colony’s long term landholding gentlemen. These people he said, regarded themselves as being in fierce competition with the squatter who invested no capital and paid minimum rent. The measure he claimed, would relieve “many of the oldest and most respectable inhabitants from their distress.”

Following the rebukes, the tone of the FitzRoy's correspondence with the Legislative Council changed and he displayed a less compliant attitude. Although only partly elected, the Legislative Council nonetheless comprised mainly of squatters and their supporters, and FitzRoy still did little to oppose them. Rather than attempted intervention FitzRoy did nothing, leaving the hard decisions such as resolving the squatting problem to Whitehall.

9.1.3. The Squatters Prevail

Although the survey issues had improved under Gipps, the demand for land continued to increase and the need for survey still beleaguered attempts at imposing government controls. The matter was in no way assisted by Surveyor General Thomas Mitchell’s frequent exploratory expeditions and an

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27 ibid. p608, Grey to FitzRoy, (29 May 1847)
28 Campbell, "The Quit Rent System in Colonial N.S.W." p34
29 Ibid. p36 & p37
30 Watson, HR4 Vol 25. p643, Grey To FitzRoy, (30 June 1847)
31 Campbell, "The Quit Rent System in Colonial N.S.W." p37
32 Watson, HR4 Vol 26. p141, FitzRoy to Grey, (4 January 1848)
extended leave of absence from the colony. Further as noted by Kass, many of the Legislative Councillors continued to have little interest in having their land surveyed. Survey trigger the finalisation of purchase and the commenced accrual of quit rents. Any prospective purchaser who had not yet made any payments had thus a vested interest in having an inefficient survey department. As a consequence the Legislative Council reduced the survey department's budget. Their actions were understandable. Squatters occupied land for a negligible annual fee, while a purchaser was required to outlay capital. Security of tenure was the only real benefit a landowner had over the squatter and under future squatting reforms even this advantage became marginal.

The squatters, in their demand for de jure property rights had amassed a significant body of influence in London. The support was not only from relatives and those with a direct interest but also those with secondary interests such as Britain’s mill owners who were becoming dependent upon Australian wool. Security of tenure was at the time a squatter’s main concern and it was the influence and pressure exerted by such lobbyists that ensured that tenure was a feature of new British legislation.

While FitzRoy was defending himself against criticism from London, advice was already in transit indicating that some of the difficult decisions had been made for him. Aware of the colony’s problems and the intransience of the Legislative Council, his predecessor George Gipps had recommended reform. A few months before his death in February 1847, Gipps had met with Earl Grey who considered the former governor’s advice “important to obtain.” As a result of the advice from Gipps, a new Waste Lands Occupation Act was passed by the British parliament in December 1846.

With the enactment the new Waste Land Act pressure was taken from FitzRoy. The Act that had caused the earlier legislative deadlock between Gipps and the Legislative Council had been passed

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33 Kass, Sails to Satellites. pp89 -90
34 McMartin, Public Servants and Patronage; The foundation and rise of the N.S.W. Public Service 1786-1859. p23. Kass, Sails to Satellites. p91
38 Waste Lands Australia Act. 9 & 10 Vict. 104
by the superior British parliament.\textsuperscript{39} In his discussing the Act, Earl Grey noted that “great objection” had been made to some of its provisions by persons with connections to the colony and that for this reason some discretion had been taken from the governor. This, he asserted, was deliberate but to the governor’s benefit, as it was intended to prevent “a numerous and powerful class of inhabitants” from using their influence and possibly inducing the governor to make changes in their favour. Earl Grey stated: “The letters which I have received convince me that I should relieve you from a painful and invidious duty and from a very serious responsibility.”\textsuperscript{40} In his explanation it is apparent that Grey regarded FitzRoy as unable or unwilling, to stand up to the pressures that would be placed on him within the colony. It suggests that Grey had lost confidence in FitzRoy and that he feared that Fitzroy might accede to the local demands and act contrary to British land policy.

The new regulations were received in July 1847 and published in the Government Gazette of October 1847.\textsuperscript{41} In effect they gave longer term leases to squatters with the pre-emptive right to renew the lease or purchase the land on the expiry of the lease.\textsuperscript{42} The Act, although greeted with mistrust by many squatters, gave them what they had most desired; a lease with \textit{de jure} security of tenure.\textsuperscript{43} It was however viewed negatively by land owners, who argued that it gave an unfair advantage to the squatter.\textsuperscript{44}

James Macarthur, son of John and by then a large landowner in his own right, declared that the practical effect of the legislation was to give land permanently to the squatting fraternity.\textsuperscript{45} The effect of the guaranteed renewal of a lease he claimed, would quarantine land which would never be sold or improved. To him, it would be less evil if land was simply handed over as a free grant because at least then he argued, other people might gain access to it through subsequent sale. Under the

\textsuperscript{39} Campbell, "Rights of Common in NSW: A History.” p249
\textsuperscript{40} Watson, \textit{HRA Vol 25}. p428, Grey to FitzRoy, (30 March 1847)
\textsuperscript{41} “N.S.W. Government Gazette.” No 87, \textit{Supplement} pp1071-1077
\textsuperscript{44} Jeans, \textit{An Historical Geography of NSW to 1901}. p156
\textsuperscript{45} This was to become a matter of some controversy in the later years of the twentieth century, with respect to Native Title and the Mabo and Wik judgements and whether a pastoral lease extinguished Native Title. – See Brian Horrigan, "Australian Native Title Law, Policy and Practice: A Report Card," \textit{Economic Papers} 22, no. 4 (2003). p20
legislation he said, land “must be sheep walks for the next fourteen years and if these Orders are maintained they must be so for ever.”

The squatter was competing with the landowner but without the need to invest capital to buy land and if land could be obtained for nothing, it made existing freehold land worthless. “Let him buy land as the old colonists had done,” Macarthur argued. This view was in accordance with long-held beliefs of other major landowners. They believed all land should be sold at market price and not made available on long cheap leases. The British government the landowners claimed, had capitulated to the squatter and broken faith with the existing landowners. The practice of squatting allowed persons with less capital to occupy land and hold large herds or flocks. While there could be little doubt that if squatting was banned existing land would become more valuable, there is nonetheless a possible inconsistency in the landowners’ cry of foul. In 1845, Governor Gipps had reported that “with few exceptions” the largest land owners were also the colony’s largest squatters.

Under the new scheme survey again came to the forefront as an obstacle to land control and caused a minor hiatus in the application of the Land Act. Under the provisions of the earlier licences, the area of land occupied was irrelevant and boundaries could be imprecise, subject only to agreement between neighbours. For a legally defined pastoral lease, as with sales, boundaries had to be precise and accurately identified. As a consequence the widespread formalisation of leases was delayed until 1854, with guaranteed yearly licencing but no lease, until the completion of the required survey.

9.1.4. The Land Zones

Under the new Waste Lands Act, all land throughout the colony was categorised into three classes. These were termed the settled, intermediate and unsettled zones. Each category had different

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47 Burroughs, Britain and Australia 1831-1855. p280 & p288
48 Evidence James Macarthur, "Votes and Proceedings of The N.S.W Legislative Council 1847."
49 Evidence James Macarthur, ibid
50 Watson, HRA Vol 24. p250, Gipps to Stanley, (13 February 1845)
51 Alston, Harris, and Mueller, "The Development of Property Rights on Frontiers." p733; Weaver, "Beyond the Fatal Shore, Pastoral squatting and the occupation of Australia, 1826 to 1852." p1005
52 Alston, Harris, and Mueller, "The Development of Property Rights on Frontiers." p753
regulations for the land’s purchase, leasing or occupation. The settled districts comprised the original nineteen counties plus the counties of Macquarie and Stanley. They also include all lands within twenty miles of Melbourne, fifteen miles from Geelong and ten miles from a number of settled townships. Lands within three miles of the sea, or two miles from a designated river were also included. The intermediate zones comprised lands within counties generally fringing the settled lands, namely Bourke, Grant, Normanby and Auckland. The entire area of Gippsland (except for settled areas) was included, as was the land between the County of Auckland and the County of St. Vincent. There was a provision to include any other additional counties proclaimed by the governor, before 31st December 1848. Unsettled districts comprised all of the lands of NSW not included in the first two.

Within the settled districts the disposal of land remained unchanged. Land was to be sold by auction at a minimum of £1 per acre with the upset price determined by the governor. Land could be leased for a period of only one year, but any un-alienated land adjacent to a freehold property could be used for pasturage by the landowner free of any charges. Intermediate lands could be leased for up to eight years, after which the governor could offer the land for sale. The existing lessee was then permitted to purchase the land at terms set by the governor. In unsettled areas, land could be leased for up to fourteen years after which the land could be sold by tender. Before the sale the existing lessee had the option to purchase the land: “at a fair value for an unimproved state,” but not less than £1 per acre. If sold to another settler, any improvements to the land were to be valued and the value paid over to the lessee. The new rules were generally regarded as favourable to the squatter, They acceded to their main demand, that of a pre-emptive right to renew a lease over their runs, but politically they offered no concessions. A non-land owning squatter or lessee was still not franchised to vote.

In the case of a lease within intermediate and unsettled lands an annual fee was to be charged this was to be based upon an independent assessment of the number of sheep or cattle the land could carry and was irrespective of the number actually grazing. Rents were to be paid yearly and in

54 ibid. p430, Orders in Council, (30 March 1847).
56 Watson, HRA Vol 25. p437, Orders in Council, (30 March 1847)
advance. If not paid within sixty days of becoming due, a lease could be cancelled. Land would not be sold while under a lease and if not sold at the end of the term, the leaseholder was to have first option of a lease renewal. If not renewed, the lease, as was the case for any new run, would be disposed of by tender.\(^{58}\) There was a concession for tenderers for new runs. Because of the difficulty and effort required in locating a new run and the risk of unscrupulous purchasers unfairly taking advantage of the effort made, the discovery of new runs could be kept secret and were not subject to a public notification. Tenders were be received for such runs any time and opened by an appointed tender committee on the first day of each month.\(^{59}\)

The legislation thus introduced another form of conditional tenure, the pastoral lease. Under a pastoral lease the pastoralist had relatively secure tenure whilst the land was used for pastoral purposes. The lease could be sold or transferred, but unlike land granted or sold under fee-simple, the Crown retained the right to resume the lease, or portion thereof, at any time.\(^{60}\) Under the Act, persons who had occupied land under licence for more than one year were, within six months of the regulations promulgation, entitled to demand a pastoral lease.\(^{61}\) The Act and regulations made no provisions for any further squatting or licenced grazing, except for holders of lands within the settled regions.\(^{62}\)

There was no provision for squatters whose runs straddled two classes of land and no provision for squatters who occupied land without a license. Even though they had occupied unlicensed runs over many years, they had no right either to lease their property or to benefit from any improvements they had made.\(^{63}\) The changes were generally welcomed by the squatters but increased the discontent amongst of landowners.\(^{64}\)

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\(^{58}\) ———, \textit{HRA Vol 25.} p433, Orders in Council, (30 March 1847)

\(^{59}\) Ibid. p65, (No2) FitzRoy to Grey, (6 December 1847)

\(^{60}\) Babie, "Sovereignty as Governance Organising Theme for Australian Property Law." p1099 Note it was the fact that the land was not permanently alienated from the Crown that allowed Aboriginal land claims under the 20th century Mabo legislation. It was a matter eventually solved by the Wik legislation which confirmed native title but protected the interests of those holding a pastoral leases.

\(^{61}\) Watson, \textit{HRA Vol 26.} p121, FitzRoy to Grey, (26 December 1847)

\(^{62}\) Ibid. p438, Orders in Council, (30 March 1847)

\(^{63}\) Ibid. p689, FitzRoy to Grey, (16 November 1848)

The extent of squatting had challenged and defeated the official British land policy of confining the colony. It also undermined the concept of raising revenue from land sales to increase the colony’s labour force by assisted immigration.\(^{65}\) It was a victory for the squatter and gave them a tenure that was reasonably secure. The new regulations put them on almost an equal footing as the holder of freehold title. Like a freehold title, a lease was an asset that could be sold, it thus offered a squatter windfall profits on land that had been freely obtained.\(^{66}\) While the new laws were generally looked on favourably by the squatters, the reforms did not fully ease the tensions over land. The squatters, as lessees, still had no voting rights and as earlier predicted by James Macarthur a pre-emptive right to renew a pastoral lease locked others out of large areas of crown land.\(^{67}\) It created a problem that would become an issue in the 1860s when crown land was made available by free selection and conditional purchase.\(^{68}\)

### 9.1.5. Declaration of Additional Counties

The Land Act was not completely favourable to the squatter. The classification of the colony into three land zones each with different leasing arrangements worked to some extent against their interests. It was only over land declared unsettled and outside of any proclaimed County, that the squatter was able to take a fourteen year lease and gain a preferential option for eventual purchase.

The governor in correspondence to Lord Grey advised him that, since the Act allowed additional settled or intermediate districts to be declared before 31 December 1848, he had asked his Deputy Surveyor General and his legal officers to inform him of any additional counties that were sufficiently progressed to be proclaimed. He then advised Earl Grey that there were twenty eight such counties, thirteen at Port Phillip, and fifteen in the central region bordering the old Nineteen Counties. Again showing the weak leadership for which he had been earlier reprimanded, FitzRoy stated that, while he had the authority to proclaim such Counties, he sought Grey's guidance on the course to be taken.

\(^{65}\) Weaver, "Beyond the Fatal Shore, Pastoral squatting and the occupation of Australia, 1826 to 1852." pp991-992


\(^{67}\) Evidence James Macarthur, "Votes and Proceedings of The N.S.W Legislative Council 1847."

\(^{68}\) “The Empire.” p3, The Present Crisis- Squatterism or Reform, 12 January 1858); "Sydney Morning Herald." p5, An Intending Purchaser, (29 September 1865) & p5 New Pastoral Leases and Free selection, (2 October 1865); " Background to conditional purchase of Crown land.," in Archives in Brief No 93 (Sydney: State Records Authority of NSW), p2. This process opened much of the crown land of NSW, including that covered by a pastoral lease, to selection without survey and purchase as small holdings. It caused significant problems which are outside of the scope of this study.
pursued. FitzRoy’s actions nonetheless indicate that, although sympathetic to the wealthy, he was not a complete slave to the squattocracy. With Grey’s authority he was prepared to extend the settled and intermediate zones and limit the areas available to the squatters for their free and uncontested occupation of crown land.

9.1.6. The Colony is Divided

Despite a view of FitzRoy as an unimpressive governor, he presided over other events that forever changed the territory of NSW. The first was the separation of mainland NSW into two separate colonies. It was a controversial matter but as with the issue of squatting was resolved by an imperial act over which the colonists had little say. The desirability of separation had been a long held belief of Earl Grey. He had informed the governor of his thoughts several times with no document more plainly setting out his views than one written in July 1848. The despatch outlined both his proposal in detail and the factors that he though needed to be addressed.70

A major point of contention amongst colonists was land revenues and funding, specifically the origin of funds and where the revenues were to be spent. At the time, the people of the Port Phillip district believed revenue generated there was being used to attract settlers to other parts of the colony. FitzRoy confirmed their beliefs by declaring: “so long as Port Phillip forms an integral part of NSW, the revenue raised in either district should be expended for the joint benefit of the whole colony.”71

The majority of the members of the Legislative Council were aghast at the prospect of a new southern colony. Their views were expressed in a strong protest:

[The Council] cannot forbear from expressing its strong sense of indignity, with which the people of the colony are treated by the announcement that a measure so seriously influencing their destiny for good or evil will be introduced into Parliament without affording them an opportunity of previously expressing their sentiments upon it.72

In Port Phillip on the other hand a possible separation was greeted with delight and a diametrically opposite view, to that of the New South Welshmen, was expressed by their representatives:

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70 Ibid. p530, Grey to FitzRoy, 31 July 1848)

71 Ibid.  FitzRoy to Grey, (22 February 1850)

72 Ibid. p547, FitzRoy to Grey, (11 August 1848)
The inhabitants of Port Phillip have learnt with the liveliest emotion of joy and gratitude that it is the determination of the Minister...to take immediate measures to erect Port Phillip into a separate colony.  

The matter was brought to a head in a protest which, although serious at the time, could now be looked on with amusement. The electors of Melbourne refused to nominate any candidate to contest any of their allocated five seats in an upcoming election for the NSW Legislative Council, instead, in a move described by FitzRoy as being on “a sudden impulse,” nominated and elected Lord Grey himself (a nomination that the colonial legal officers described as valid).

The governor responded by not proclaiming the election and by issuing a new writ, this time with nominations taken at Geelong rather than Melbourne. On this second occasion the names of five colonists were eventually put forward. The election however was not without mischief, other names nominated (unsuccessfully) were the Duke of Wellington, Viscount Palmerstone, Lord Brougham, Lord Russell and Sir Robert Peel.

As with the Lands Act, the matter was resolved outside of the colony. In 1850 under the authority of the British Parliament, a new colony to be called Victoria was created from what had been the southern and Port Phillip district of NSW. The boundary between the new colony and NSW was generally set as the Murray River. The new colony had a Legislative Council operating under a governor with thirty councillors, ten of the councillors were appointed, the remainder to be elected. As with NSW the Council had no authority over crown lands.

9.1.7. A Governor General, Forgotten and Ineffectual

Although a colony in its own right, Victoria was still not completely independent of FitzRoy. The vice regal representative to Victoria was a Lieutenant Governor Charles La Trobe. As Lieutenant Governor, La Trobe was in theory a subordinate of FitzRoy, who had the power to both visit the colony and assume governorship. The requirement to provide for such intervention was deemed

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73 Ibid. pp539-532, Grey to FitzRoy, (31 July 1848).
74 Ibid. p296, Petition from the Inhabitants of Port Phillip. (27 March 1848). pp619-610, FitzRoy to Grey, (22 September 1848)
75 Ibid. p729 FitzRoy to Grey, (4 December 1848)
76 Ibid. p731, (Enclosure 3) Abstract of Poll, (4 December 1848)
necessary as a means of resolving inter-colonial disputes. As a consequence FitzRoy was made a "superior functionary."\textsuperscript{79} He retained the governorship of NSW and was appointed Governor General of all Australian colonies with the exception of Swan River.\textsuperscript{80} In 1851 FitzRoy was issued with four Commissions, governor-in-chief of NSW, VDL, SA and Victoria.\textsuperscript{81}

It was intended that the Governor General intervene only in inter-colonial matters. Within the following tenet, the general business of each colony was to be administered independently:

\textit{The lieutenant Governors will be directed to communicate with you on all points on which measures adopted in any one colony may appear calculated to affect the interests of the others.}\textsuperscript{82}

Ward noted that there was little mistaking the fact that other than in NSW, the appointment of a Governor General was received with trepidation and acrimony but FitzRoy did nothing to exert his authority.\textsuperscript{83} Further, the position had little support once Earl Grey left office.

On the replacement of Earl Grey in 1852, the position of Governor General seemingly was allowed to lapse. FitzRoy himself failed to intervene on three major issues, tariffs, gold field administrations and the decision that would plague the Australian economy into the twentieth century a standard gauge railway. The latter was a matter described as unimaginably absurd and a disastrous failure of FitzRoy’s administration.\textsuperscript{84}

\textbf{9.1.8. The Railway}

The main incentive to promote construction of a railway was a right to purchase cheap land and then benefit by any increased values that a railway would provide. A railway transformed any town through which it passed, not only because of the land obtained by the company but because tracks were laid to best suit the railway. They were a retro-fit and at times took no account of any town plan. The tracks often spilt a town with a difficult to cross barrier and at times moved the centre of the township from the planned main street to the railway station.

\begin{thebibliography}{9}
  \bibitem{79} Brown, "One Continent, Two Federalisms: Rediscovering the Original Meanings of Australian Federal Ideas." p487
  \bibitem{80} Ibid. p487
  \bibitem{81} "Sydney Morning Herald." p4, From London Correspondent, (31 May 1851). Ward, "FitzRoy, Sir Charles Augustus (1796-1858)." p8
  \bibitem{82} Earl Grey to Fitzroy cited in ———, "FitzRoy, Sir Charles Augustus (1796-1858)." p10
  \bibitem{83} Ibid. p11
  \bibitem{84} Ibid. p16
\end{thebibliography}
In England, the suggestion earlier forwarded by Governor Gipps, that land be sold to the railway company at a minimum price of £1 per acre was looked upon favourably. A commissioner’s report noted that the area of land to be allocated far exceeded that required for actual construction but noted that Gipps intended, the additional land to provide an incentive to the railway company. The recommendation of Gipps had been a railway station allowance of 640 acres for every 20 miles of track. The commissioners, recommended that the area be increased to 1000 acres. Earl Grey accepted the recommendation and advised FitzRoy to encourage the promoters of railways in their efforts, a project that he declared would offer a positive advantage to the public.

Although possibly of little importance with a fledgling railway system that did not reach the colonial borders, FitzRoy’s inaction in not enforcing a standard gauge throughout the colonies was to leave a costly legacy which the nation had difficulty rectifying. It is a legacy that, to this day, plays a significant part in inter-state economies. John Mills noted that when discussing railways in 1846, the Secretary of State William Gladstone wrote to all of the colonial governors but specifically refrained from specifying a gauge. Mills believed this left the choice of track width to the governors. In making his assertion however Mills downplayed an 1848 letter from Earl Grey to FitzRoy as governor–in-chief with the authority to implement a single gauge, Grey advised on an appropriate uniform width for railways throughout Australia and recommended the standard British system of four feet, eight and a half inches be adopted. Grey also advised that the standard gauge had already been adopted by SA. Unfortunately, because of FitzRoy’s inaction, a standard gauge was not uniformly adopted with Victoria adopting an Irish gauge and NSW the British one.

Initially FitzRoy, on the advice of a local railway engineer, received Earl Grey’s approval to use an Irish broad gauge of five foot three inches. Earl Grey approved the wider gauge because at the time no rails been laid in any of the other colonies. The company however, had a change of heart.

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85 Watson, *HRA* Vol 25, p370, Land And Emigration Commissioners to Under-Secretary Stephens, (3 February 1847)
86 Ibid. p370, Land And Emigration Commissioners to Under-Secretary Stephens, (20 February 1847)
88 Ibid.p51
89 Watson, *HRA* Vol 25, p468, Grey to FitzRoy, (30 June 1848). - Despite Grey’s recommendation for a uniform gauge, FitzRoy’s pragmatism, and lack of foresight, allowed individual gauges in each colony. A result that would cause significant difficulties when railways extended as far as state borders.
90 Jeans, *An Historical Geography of NSW to 1901*. p186
decided to revert back to the English gauge, a gauge then adopted by the NSW Legislative Council.91 Victoria, however, had already decided to adopt NSW’s first nomination of a wider gauge and refused to revert. The dispute clearly fell within the jurisdiction of the Governor General but FitzRoy failed to act. Eventually Victoria adopted the Irish gauge of 5 feet 3 inches while NSW adopted the British standard of 4 feet 8 ½ inches. Railways in the other Australian colonies adopted different gauges again.92 As described by Under-Secretary Merivale, with FitzRoy as the appointee, “the title of Governor General is an empty name.”93

Land can be seen to have played an important role in the railway system. It was the favourable sale of land to a private company that allowed both the construction and financing of the projects to proceed and it could be regarded as one of Australia’s first Private/Public Partnerships (PPP). Unfortunately the different gauges that were permitted throughout the colonies illustrate the consequences of a failure to plan. It was transport planning at its worst and FitzRoy’s inaction continues to haunt the nation’s transport system today.94 Irrespective of the interstate problems, the superimposition of railways over an existing township at times had a major impact on town plans, at times it obliterated the concepts of the original town layout.95 This was undoubtedly a factor that gave weight to the early twentieth century claims of unplanned colonial townships.96 Nonetheless, the use of land and the increased value of land to finance infrastructure illustrates planning concepts that are still being utilised.97

9.1.9. A Representative Legislative Council

A further event that transformed the colony was the move to a fully representative bicameral government. The partial representation implemented during Gipps’ tenure had not functioned as expected. The twelve appointees had not necessarily voted as the governor expected and many bills had been rejected or referred on to the British parliament. 98 Any Bill passed by the Council had to be

91 Ward, "FitzRoy, Sir Charles Augustus (1796-1858)." pp16-17
93 National Archives (UK), Kew, PRO CO 309/19, Under-Secretary Merivale to Lord Newcastle(18 November 1854)
94 Mills, "Australia's mixed gauge railway system: a reassessment of its origins."p52
95 Toon, "The Management and control of Land use Planning in N.S.W. since 1788." p7
96 See - Sulman, "On the Laying Out of Towns."
98 An Act for the Government of New South Wales and Van Diemen’s Land, 5 & 6 Vict, 76
either approved by the governor or referred to the British Parliament for a final decision. In the case of the Crown Land Bill, the Council had refused to accept even a watered-down version and the legislation had to be imposed on the colony by the Imperial parliament. Gipps when governor had advised his superiors in London that the Legislative Council was being deliberately obstructionist and that the colonists demanded a fully representative government. 99 Paul Pickering held that by 1851 the allocation of seats still heavily favoured the wealthy landowners and pastoralists. He noted that while the various urban areas with a total population of 75,000 had been allocated eleven seats the pastoral districts with a population of 110,000 had been allocated twenty-five. Therefore 50% of the colony’s population were represented by one sixth of the elected members. 100 The skewed representation resulted in the formation in 1852 of the Democratic League to support universal manhood suffrage and greater working-class representation. 101

In 1853 a draft Bill for a new constitution was prepared by a committee of the Legislative Council but as noted by Mills, W.C. Wentworth was likely the “principal if not sole drafter.” 102 Wentworth was a proponent of independent self-rule and it has been claimed frequently used committees and the Legislative Council as a tool with which to thwart the Imperial government. 103 Nonetheless the draft, on receiving FitzRoy’s assent, was placed before the British parliament. 104 The eventual passing in 1855 of this Imperial Act, albeit much modified, introduced a representative bicameral parliament to NSW. 105 The Act endowed the colonial legislature with powers over the disposition of crown lands which had been sought for so long. 106 Under the Act, the governor retained only a limited right of veto and the role of ensuring that any law did not contradict those of Britain. 107 That land had been a driving force behind the call for representative government there can be little doubt. As noted by

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101 Ibid. p7 & p11
102 Mills, "Lawmakers, select committees and the birth of democracy in NSW." p137
103 Ibid. p143
105 The system was an elected Legislative Assembly with manhood suffrage and an appointed Legislative Council. - See Melleuish, "Personal Politics and Being British: Political Rhetoric, Democracy and their Consequences in Colonial NSW." p5
106 Burroughs, Britain and Australia 1831-1855. p373
Melleuish the stakes were high and land issues continued to dominate the political sphere into the 1860s.\textsuperscript{108}

Burroughs noted that the imperial plan for systematic colonisation of NSW had been founded on the principle of the British government retaining control over crown land. It was a plan inherent in the Crown’s initial claim of possession.\textsuperscript{109} The granting of self-rule can be seen as a general move by Britain to reduce the cost of administering and protecting its Empire while still retaining colonies as markets and sources of raw materials. It was also in effect an admission that the colonists “not only knew their own interests best” but they possessed more knowledge and experience than the officials in London. Burroughs concluded that no matter what was planned in London, “colonial conditions were bound to triumph over imperial policy, however enlightened.”\textsuperscript{110}

The Imperial Act achieved Royal assent four months after FitzRoy’s departure and concluded NSW’s transition from a penal colony under vice-regal control to a free society with its own elected government.\textsuperscript{111} It was an era in which the possession of land had played a dominant role and constitutes a milestone that concludes the early colonial period of this study. FitzRoy contributed little to town planning and had relied mainly upon the work and regulations of his predecessors. Further with the new imperial legislation and a fully representative government, land policy was no longer his responsibility. The Governor’s major contribution to planning and growth was the disastrous lack of planning associated with the railway. Nonetheless under his governorship the Surveyors General’s records indicate that plans for forty-eight new townships were registered. The gold rushes that took place in the last two years of FitzRoy’s governorship are outside of the scope of this study, nonetheless it must be noted that they had major planning implications. They were in the main impossible to control and spawned numerous unregulated townships that mushroomed in the goldfields, initially as tent cities, with streets often unplanned and simply a passage between

\begin{footnotesize}
\begin{enumerate}
\item[108] Melleuish and Buck, "Democracy, Political Rhetoric and the Conservative Response to Manhood Suffrage in Colonial NSW." p145
\item[109] Burroughs, Britain and Australia 1831-1855.p375
\item[110] Ibid. p382
\item[111] Jones, "Colonial Republicanism: Re-examining the Impact of Civic Republican Ideology in Pre-constitution NSW." p134.
\end{enumerate}
\end{footnotesize}
Some villages such as Gulgong and Hill End achieved a permanent status, while others were short-lived. They blossomed but faded away.\textsuperscript{113}

The granting of self-rule is the milestone that concludes the period considered by this study. The fully elected Legislative Council was granted the right to make laws regarding the disposal and management of the remaining Crown wastelands and although the governor was still required to approve any law or had the right to submit a law to the British parliament, as described in the next chapter, the management of crown lands within NSW was no longer the governor’s responsibility.


\textsuperscript{113} Barry McGowan, "Aspects of gold mining and mining communities in the Shoalhaven area of New South Wales," \textit{Australian Historical Archaeology} 10(1992). p48 & p53
CHAPTER 10. SUMMATION AND CONCLUSION

This thesis has shown that the occupation and ownership of land were vital issues during the early colonial period in NSW. Land ownership, with the independence and potential wealth it offered, was an allure that attracted the colony's free immigrants and encouraged convicts to remain, but it also encouraged speculation.1 Under the administrations of various governors, the rights to own land or to squat and profit from its productivity, were conferred on individuals; though in the case of ownership there were sometimes conditions to be met. Conditions such as requirements to carry out capital improvements within set periods or to pay quit rents. Squatting was resisted by early governors but later limited rights were conceded, with reluctance. Conflicts and compromises between governors, owners and squatters over matters of title, ownership and occupation formed the dynamic contexts in which the economic and political institutions of NSW developed. Despite this, there appears to have been insufficient recognition in historical narratives of the ways in which land and its possession have shaped NSW. This lack of recognition is evident in texts on NSW colonial history and the more specialised works on urban planning.

The land policies of the British government and individual colonial governors can be seen to have been at the forefront of Australian history. The British government's resolution to establish a colony in NSW was for domestic, imperial and strategic ends. Its decision to use convicts as a means of colonisation was domestic. The decision gave substance to the 1770 claim by Cook that the continent was a possession of the British Crown and had the effect of dispossessing the entire continent's traditional owners. Arthur Phillip's assessment that Botany Bay was unsuitable for settlement and his judgement that Sydney Cove offered greater potential, although made in haste, was a similar land based decision that has a profound impact on NSW.

Different levels of land possession can be discerned throughout this thesis. There is the prime concern of an Imperial government whose interest was the taking possession of a continent to protect trade routes and to thwart any incursion by foreign rivals. British settlements were positioned around the coastline in what Pamela Statham has described as "a ring fence around Australia."2 This fence was solely to deter foreign nations from attempting their own claims on the continent and to

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1 Reynolds and Jamie, "Aboriginies and Pastoral Leases: Imperial and Colonial Policy." p316
2 Statham, The Origins of Australia's Capital Cities. p7 Fig1
allow British domination of trade routes. The settlements in VDL, Collins’ attempted settlement at Port Phillip. King Georges Sound, Shark Bay, Melville Island and Port Essington all had the initial purpose of enforcing possession and securing the continent.

The initial claim by James Cook in 1770 led to the second level of possession. At this level it encompassed the dispossessing an entire race of people. It established a legal fiction, that the continent was occupied by a people too primitive to be considered land owners. This was a myth in which Cook who, as discussed in Chapter 2, rather than offering the Indigenous inhabitants “some trifles” and seeking a treaty as outlined in his secret instructions, decided that the Aboriginal people were incapable of possessing land and ignored them. 3 This concept remained inforce until overturned by the Mabo legislation of 1992 but had earlier been challenged in 1836 by John Batman who purported to enter a treaty with the indigenous inhabitants of Port Phillip. This treaty was declared void by Governor Bourke.

Thirdly there was the Crown’s use of the possession of land in an attempt to contain the colony and limit access to the wastelands beyond the settled areas. Under philosophies that dated from the seventeenth-century, containment of the colony was seen as a pre-requisite for order and control its antithesis seen as a “descent into barbarism.” 4 This philosophy, together with the concept that the colony should be agriculturally based continued into the 1830s and was espoused by various British colonial secretaries. The persistence was despite the reality that large scale occupation of land for grazing and wool had become the colony’s main economic base and was necessary to support Britain’s woollen mills. It caused a paradox in policy that became a source of conflict between the British bureaucrats and the NSW governors. Within the colony the conflicting policies caused tension between the colonial government, the major landholders and the squatters.

On the individual level possession and control related to the rights of an individual to hold land. Once British law was received into the colony, it brought with it all of the traditional rights of land ownership. The owners of land sought to use the land as they saw fit. Squatters without legal title sought to use and control unallocated land free of government interference and despite attempts by governors such as Bourke, who sought to overrule the rights of adverse possession, squatters claimed both the right of possession and permanency of tenure. Any attempt by the governors to contain the colony’s

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3 Stephens, "Secret Instructions to Lieutenant James Cook, 30 July 1768."p2

4 Shaftesbury cited in Home, Of Planting and Planning. p11 & p22
spatial growth or limit the use of land was seen as a direct attack on the colonists’ ability to generate
wealth and was vigorously opposed by them.

Colonial Australian history developed within the framework determined by these four levels of
possession. The control of land was a major driving force in the social, cultural, economic and spatial
growth of colonial NSW. The possession of land can be seen to have shaped NSW from its genesis
in James Matra’s proposal of 1783 to the granting of self-government in 1855.

Town planning, which commenced in NSW with Arthur Phillip’s selection of a site and a design for
Sydney and later Parramatta was based upon the traditional colonial grid. It is a design that is now
regaining popularity although at the start of the twentieth century it was decried as not being a true
town plan. The grid provided an efficient design with uniform building allotments and was within the
capacity of the early surveying techniques. The grid was standardised in 1828 by Governor Darling
who issued a set of regulations on town design that was utilised throughout most of the colonial
period.

Survey was a problem for almost all governors. The Colonial Office in Britain failed to appreciate the
vastness or complexity of the terrain to be surveyed. They appointed inexperienced surveyors and
made demands for surveys that were far from practical. It was a lack of survey that thwarted almost
all the decrees for the control, disposal and allocation of crown land.

Within the colony, it was the greed for land by a clique of officers from the NSW Corps that
dominated its initial years. On Arthur Phillip’s departure, the largesse of the two acting governors, in
granting land to the clique, precipitated the officers’ hegemony over the colony’s commercial
activities. It empowered the officers to virtually rule the colony as their own fiefdom. The officers
gained sufficient wealth and power to challenge the authority of three governors, Hunter, King and
Bligh. Disputes with members of the officer clique over land grants and the threatened revocation of
leases within the Sydney township were instrumental in the overthrow and arrest of William Bligh. It
was this overthrow that led to the dismissal of the NSW Corps and Governor Macquarie’s arrival in
the colony at the head of the 73rd regiment.

In what had been established as a gaol without walls, the greed for land became endemic throughout
the early colonial period. As grazing replaced agriculture, colonists realised that vast acreages could
be occupied and stocked with the outlay of very little capital and that there were vast amounts of
wealth to be made. The arrival of free-settlers brought into question the governor’s autocratic powers. The settlers’ demands, and their appetite for land, thwarted the attempts of the early governors to contain the colony’s expansion and to control its land use. Tensions between the administration and the colonists, often over land issues, precipitated and fuelled calls for a representative government.

The system of land settlement was imperfect, and a continuing cause of frustration and conflict. Until the 1820s, the Colonial Secretaries in London appear to have envisaged a settlement model based upon a yeomanry working relatively small agricultural holdings. In reality, agriculture was rapidly being superseded by pastoral pursuits which, because of the soils and climate of NSW often required several acres to support a single sheep or head of cattle. The demand for land became a scramble by squatters who went well beyond the Limits of Location to occupy and feign ownership of large tracts. From the early 1820s, and the administration of Governor Macquarie, the governors in effect lost control of the colony’s land.

Throughout the early colonial period several ostensibly minor decisions had major unforeseen consequences. Among these were David Collins’ ill-fated attempt to settle at Port Phillip. This venture could have changed the entire pattern of Victorian development, including the location of what is now Melbourne. A chance and indiscreet remark by a junior French naval officer led to VDL’s initial settlement. David Collins’ misgivings over his military contingent’s objections to the drill and exercising once they had reached Port Phillip, was a factor in the location of Hobart. The attempts to settle Melville Island and FitzRoy’s failure to implement a uniform rail system. All ultimately impacted on the nation’s growth. Even with hindsight it is impossible to judge what present day Australia would be like if such decisions, all based upon taking possession of land, had been made rationally and with forethought.

Under Lachlan Macquarie, the policy of spatially containing the colony was overturned, the mountain barrier to the west was officially breached and the land to the south-west and over the Nepean River was opened for settlement. Macquarie established and planned a number of settlements including Liverpool, the Hawkesbury towns and Hobart and George Town in VDL. Macquarie saw architecture and civic building as a sign of the colony’s prosperity. His efforts in imposing order over the unruly colony and his revoking of the land grants made during Bligh’s detention were a source of conflict.

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5 See, Bladen, *HRNSW Vol 5*. Collins was apprehensive when his soldiers objected to training and military drill. He chose to join Bowen on the Derwent River to combine the two military contingents.
between the by then influential colonial elites. It was this conflict that in part led to the Bigge report and the Colonial Office deciding that Macquarie should be replaced.

Following the Bigge report, a system was introduced by which land could be purchased as well as being offered by free grant. This according to Bigge, was to encourage immigration by free-settlers holding capital, rather than by adventurers. The system was introduced under Governor Brisbane, but not implemented until after the arrival of Ralph Darling in 1826. The next major change in land policy was in 1831 with a proclamation which would provide the basis of land administration for the next twenty years. In this proclamation Darling announced what became to be known as the Ripon regulations and the practice of free grants was all but abolished.\(^6\)

The sale of land introduced a further complication. To be sold as a commodity, land had to be accurately identified and located. With the vastness of NSW this was a task beyond the resources of the colony’s surveyors. To address this problem Darling introduced the *Limits of Location* that formed a prescribed boundary outside of which no land would be alienated. Darling however, admitted that he had no power to prevent pastoralists simply taking their herds and flocks beyond his limits and squatting on unoccupied land.

Despite the prescribed limits, the outward expansion of the squatters was unchecked and far exceeded the government’s ability to survey, control or police the outer regions. As the colony’s economy rapidly became dominated by wool, provided mainly by the squatters who illegally occupied crown land. Governor Bourke who was unable to prevent the illegality, chose instead to bring the squatters within the bounds of the law. He issued £10 squatting licences which gave the squatter unlimited access to unoccupied (by Europeans) crown land. Bourke’s system of licencing was seen as inequitable by his successor George Gipps. Because wealthy squatters could for the same fee hold many thousands of acres as a poorer squatter with only a few hundred, he changed the system to better reflect the size of the holding and the quantity of stock grazed.

By making squatting legal, another problem arose: tension between settlers who had paid money to purchase land and the squatters who occupied it for virtually nothing. Darling’s attempts at controlling this issue, together with demands from a newly appointed Colonial Secretary for both a universal fixed price and an increased minimum price on all land, led to further friction within the colony. The

\(^6\) Burroughs, *Britain and Australia 1831-1855*, p3
dissatisfaction with respect to land policy reinforced a growing demand for independent and representative government.

A partially representative Legislative Council was introduced in 1843, but the land question continued to fester. In 1846 it culminated in the Council refusing to consider any further legislation while Gipps was governor. Gipps retaliated by proroguing the Council. The Council was reconvened by Gipps’ successor Charles FitzRoy, whose instructions from London accepted the reality of squatting and acceded to the squatters’ demand for some form of guaranteed tenure. Pastoral leases were offered with a provision for pre-emptive renewal or purchase.

The clamour for land and a view by colonists that if left to their own devices, fortunes could be made, had been at the forefront of conflict between the free settler and the authorities since Phillip’s departure. The governors had attempted to restrict the expansion, but generally lacked the resources and were forced to rely on proclamations, which were often ignored. By attempting to restrict a settler’s unfettered access to land, the governors were seen as standing between the settler and potential wealth.

The governors had initially exercised autocratic powers that were described as “awesome,” and during the first sixty years of settlement there was no institution able to check the executive power. In 1855, the Legislative Council was made fully representative and was based upon a land-owning male suffrage. This Council, when eventually constituted by Governor FitzRoy, became responsible for implementing legislation. Governors no longer wielded absolute power over the colony’s crown lands.

The possession of land, although seemingly neglected in historical narratives, can be seen to have been a major factor in shaping NSW history. At an imperial level, it was responsible for the colony’s existence, it drove Britain to establish settlements along the coastline that evolved into the state capitals. It was Cook’s taking possession of land that dispossessed the Aboriginal people, a dispossession that occupies much debate in the present time. Land policies and grant boundaries shaped the street patterns of many of Australia’s major cities, and determined the major road networks that have defined the location of almost all country towns. Finally it was tension over land that precipitated the demands for self-government and led to the introduction of a long lasting, effective and stable political system. It was the ability to occupy and generate wealth from land that became a driving force within the colony. Having put land back on the historical agenda by providing an overview of its central role in NSW in this thesis, it is hoped that the history of colonial land policy, land possession and its control will be further investigated by historians and town planners.
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