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# Summary of *Northern Land and Politics: 1860-1910. An Overview Report Prepared for the Crown Forestry Rental Trust,* June, 2007 *(Wai 1040, A #12).*

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## *Introduction*

Our main report (Wai 1040, A#12) is a broad overview of the key social, political and economic developments in Northland (including the five Waitangi Tribunal hearing Districts - Mahurangi, Whangarei, the Bay of Islands, Hokianga and Whangaroa) between 1860-1910. Although some case studies are included, our report introduces and addresses general themes. The following summary reflects this 'overview' approach, commencing with a discussion of the 1860 Kohimarama Conference, and ending with a summary of aspects of Maori land administration in the first decade of the twentieth century and the 1898 Hokianga dog tax 'war'.

## *Executive Summary*

Even though Northland was the first area in New Zealand to experience widespread and sustained contact with Europeans, and the iwi who resided there were the first to sign the Treaty/Te Tiriti, it took the Crown a considerable time to achieve substantial and lasting authority. Unfettered Crown sovereignty ultimately prevailed not through overt military or other coercion, but through a no less destructive long-term process of land loss and the erosion of tribal cohesion and rangatiratanga. At almost every turn, especially after 1870, the Crown sacrificed Maori interests in pursuit of its own policy objectives. These objectives were large-scale land acquisition for the purposes of settlement and the assimilation of northern Maori.

From the outset Northland Maori had sought to engage with the new European economic and political order from a position of equality and partnership. They initially saw controlled land alienation as a means of achieving their economic

[1] Author details can be found at page 1 of our 2007 report. Mr Armstrong prepared chapters 1-5. Mr Subasic prepared chapters 6-8.

objectives, and engaged with the Native Land Court on that basis. But when confronted with extensive and sustained Crown land purchase from the early-1870s, and the form of title introduced by the Native Land Court after the passage of the Native Land Act 1873, northern Maori found that they could no longer control the process, or harness it in pursuit of their own economic and other objectives. By the late-1870s it had become clear to Maori that the Land Court and Crown purchasing were the dual agents of their pending destruction. The increasingly desperate efforts of northern Maori to halt or slow their rapid descent into social, political and economic decline were stymied by the Crown at almost every turn.

*1. Kohimarama*

1. Northern Maori attending the 1860 Kohimarama Conference were told that the time had come for them to assume a role in their own governance. This was to be achieved by their participation in annual conferences (of which the Kohimarama Conference was to be but the first) during which they would debate and settle a range of important issues. Among the key issues to be considered were a form of 'self-rule' in Maori districts and the establishment of a means of ascertaining tribal boundaries and land titles. These proposals appeared to assign to Maori themselves a significant degree of agency and control over their own affairs, including the land title adjudication process.[2]

2. For northern Maori the 1860 Kohimarama Conference (sometimes referred to as the 'Treaty' or 'Covenant' of Kohimarama) represented an important reaffirmation of their Treaty/Te Tiriti relationship and a renewed Crown commitment to political partnership.[3] As far as northern Maori were concerned this partnership did not signal - or require - the subordination of their own customs, values and aspirations. A key objective for the northern iwi remained - as in earlier decades - beneficial participation in the new settler economy. The introduction of measures

[2] Wai 1040 #A12, pp113-116. 118-121. 123-124. 126-130. 134-137.
[3] Wai 1040 #A12, p133. 1082.

which might encourage this were therefore welcome, so long as they served desired Maori goals and provided an avenue for meaningful Maori participation.

3. Northern Maori did not address proposals involving land title determinations in any detail when they were introduced by Browne and McLean at Kohimarama. Their immediate focus seems to have been on further developing a more robust political relationship with the Crown. There is, however, nothing to suggest that the northern chiefs were opposed in principle to the concept of determining tribal boundaries and individual titles at this time, especially if this served to further their economic and other ambitions. Nothing was said at Kohimarama by either Governor Browne and Donald McLean which suggested that proposals concerning land titles envisaged anything less than a large element of Maori control over the process of title determination and European settlement.

4. In the wake of the Kohimarama Conference Governor Browne attempted to give effect to policies broadly approximating the proposals laid before the chiefs at Kohimarama. But despite a good deal of debate within Government circles about the efficacy of these ideas, by the end of Brown's governorship in late-1861 nothing had been achieved.[4] It would be left to his successor, Governor George Grey, to develop or implement such of these plans as he saw fit.

*2. Grey's Runanga*

5. Governor Grey did not support the idea of an annual Conference or a council of chiefs. He saw in this the seeds of a parallel Maori Parliament, which he rejected out of hand as an unacceptable challenge to the Queen's sovereignty.[5] Instead he proposed setting up a series of District Runanga ('new institutions') which would be charged with superintending aspects of local administration, the framing and enforcement of local laws, land title adjudications, the resolution of boundary disputes and land alienation.[6] Grey favoured trialling his new Runanga among the 'loyal' northern iwi. If his system worked in the north it would, he thought, form

[4] Wai 1040 #A12, pp148-159.
[5] Wai 1040 #A12, p164-165.
[6] Wai 1040 #A12, pp166-168.

an influential alternative to the Kingitanga. According to the Governor his new institutions would oversee a period of rapid Maori economic expansion and prosperity. A significant feature of Grey's proposals was that the Runanga would exercise a substantial amount of control over settlement. They would not only oversee title determinations and alienation, but also be involved in the selection of *bona fide* settlers who would be required to reside on the land as a condition of purchase.[7] This was likely to have been especially significant to northern Maori, who had already sold large areas to the Crown in the expectation of settlement and economic development. These expectations had hitherto been largely disappointed.

6. Grey duly visited the north in 1861 to promote his 'new institutions' at a series of well-attended hui. As well as taking a substantial role in local administration and the framing and enforcement of laws, northern Maori were told that they would identify the wants of the district, and assist the Governor in giving effect to policies which would result in widespread economic prosperity. Grey assured the people that the Crown would assume an active role in the development of much sought-after towns and settlement, and would provide schools and medical care. Moreover, the Runanga would be a permanent institution not subject to the whim of future Governors. Northern Maori understood that in this sense the Runanga were a precursor to full Maori participation in the 'Pakeha Runanga' (Parliament).[8]

7. Grey also emphasised that a new form of secure land tenure was an essential prerequisite to the desired settlement and town-formation. This provided further encouragement for Maori to seriously consider the question of land titles. Although Grey provided few details of how land interests - individual or otherwise - were to be determined it is clear that he envisaged that Runanga would play a key role in the land title adjudication process, as well as subsequent sales and the selection of settlers.

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[7] Wai 1040 #A12, p167-168.
[8] Wai 1040 #A12, pp172-179.

8. Despite these undertakings the northern Runanga were short-lived. Once the military crisis in the Waikato had passed the Crown quickly moved to reduce or disestablish any manifestation of Maori political autonomy or 'special treatment'. This was exemplified by the polices of Weld's 'self-reliant' Ministry between 1864-1865. Runanga were seen as a prime example of unwelcome 'special' treatment. Consequently the northern Runanga were starved of funds through a process of retrenchment, and were finally terminated in 1865.[9]

9. Northern Maori were massively disappointed. For them participation in the Runanga was not a mere matter of colonial finances but the manifestation of a political compact held out by Grey in 1861. Grey had told the people that the Runanga would be a permanent institution - 'a shelter and refuge for all times'. He may have been sincere when he said this in 1861, but his promise was ultimately a barren one. Local European officials counselled against terminating the Runanga. Not only was it a serious breach of faith which would alienate northern Maori, but Runanga had also formed a valuable mechanism through which they could exercise a form of indirect authority and control. Several officials also pointed out that Maori were significant contributors to the colonial revenue, largely through customs duties, and deserved better.[10] These warnings were unavailing. Despite Grey's undertakings settlement, public works, schools and medical care remained a promise rather than a reality for much of the north.

*3. The Native Lands Act 1862*

10. As it transpired land title adjudications were not conducted directly by the Runanga, as Grey had originally envisaged. A new Native Land Court was established by the Native Lands Act 1862. Enacted partly in response to events in Taranaki, the 1862 Act removed the Crown's pre-emptive monopoly on Maori land purchase and set out a process for title determinations. The Court nevertheless remained a predominantly Maori body, comprising a panel of leading chiefs of the district ('judges') supervised by a European Magistrate or

[9] Wai 1040 #A12, pp236-259.
[10] Wai 1040 #A12, pp243-245. 252-256.

'President'.[11] The Maori judges could outvote the President. If titles were found to be tribal or community titles they remained in that state until such time as the tribe or community subsequently applied to subdivide the lands. Those who framed the Act hoped and expected that this would subsequently take place, but it remained a matter for Maori communities to decide.

11. Broadly speaking, the 1862 Act did not represent a radical departure from a general acceptance in Crown circles that Maori would continue to play a key or even dominant role in the land title adjudication process. It is axiomatic that if Maori controlled the title adjudication process they would also control subsequent alienation of the land. Under the Act it was therefore possible for Maori to embark on a series of strategic land sales to bona fide settlers, conforming at least partly with the process set out by Grey in 1861. Problems associated with large Crown purchases lying unoccupied and unprofitable might thus be avoided in the future, while at the same time Maori might obtain titles to whanau or individual farms.

12. The manner in which Maori sought to control the process and achieve their objectives is perhaps exemplified by Arama Karaka Pi's 1863 Waima hui. At this hui tribal boundaries were defined and lands for individual whanau occupation were identified, after which it appears to have been expected that the Land Court (or the Governor) would 'rubber stamp' these arrangements. This hui, carried out in a very decorous atmosphere, identified boundaries and settled a number of land issues. Those that proved intractable were put off for later discussion.[12] This meeting provides evidence that tribal structures in the Hokianga remained robust and capable of adaptation to new circumstances.

13. We emphasise that the 1862 Act, in the sense that it assigned a large degree of agency to Maori themselves, did not represent a revolutionary change. Rather, it was the culmination of a series of discussions which had commenced at Kohimarama in 1860 and continued within the context of Grey's 'new institutions'. A common feature of all these discussions was that Maori agency

[11] Wai 2040 #A12, p284-285.
[12] Wai 1040 #A12, pp290-294.

would drive not only the title adjudication process, but subsequent land sales and settlement. All of this would be carried out on largely Maori terms through existing tribal structures.

14. Native Land Courts were set up under the 1862 Act in the Kaipara and Whangarei under Judge Rogan, and in the Hokianga and the Bay of Islands districts under George Clarke jr., although the latter did not appear to have become operative under the 1862 legislation. Kaipara Maori responded enthusiastically to Rogan's court. A number of blocks were submitted with the aim of establishing a town at Helensville and achieving other economic objectives through strategic sales to local settlers. Most cases were determined before the matter came before the court, and Rogan and his Maori judges confirmed decisions already arrived at by the iwi or hapu. All the evidence points to an informal process largely driven by Maori themselves in pursuit of their own rational economic objectives.[13]

*4. The Native Lands Act 1865*

15. We have already discussed Weld's 'self-reliant' policy, which required that there be no more 'separate treatment' or 'separate institutions' for Maori. This policy, which firmly took root at the end of 1864, also assigned no central role for iwi or hapu, acting collectively, in the land title adjudication process. Consequently the Native Land Court was reformed in late-1864. The autocratic Chief Judge F. D. Fenton reorganised the court as a formalistic tribunal based on English legal forms, and the Maori judges were demoted to the role of Assessors and could no longer outvote the European judge.[14]

16. The Native Lands Act 1865 embodied these and other significant changes. In a major departure from the 1862 Act, after 1865 the Court would immediately transform title into individual entitlements. In addition, any individual Maori was now free to make application to the Court, irrespective of tribal or collective preferences. The Native Lands Act 1865 Act permitted blocks of over 5,000 acres

[13] Wai 1040 #A12, pp299-304.
[14] Wai 1040 #A12, pp305-306.

to be awarded to hapu or iwi. The judges, however, saw their role as destroyers of 'tribalism' and in most cases refused to make such awards. It should be stressed that the various means of land title adjudication adopted prior to 1864 (including the Native Lands Act 1862) had to a considerable extent reflected Maori preferences, as discussed at Kohimarama and by Grey in 1861 - especially in the crucial matter of tribal agency and control. In contrast, the changes effected in late-1864, and the Native Lands Act 1865, were not discussed with Maori at all, even though they represented a radical departure from earlier arrangements.

17. Under the 1865 Act blocks were generally awarded to ten named individuals under the infamous 'ten-owner rule'. Grantees were expected to act as trustees for the wider community of owners, but there was no legal requirement for them to do so. The 'ten-owner' system soon became open to abuse in many districts, especially Hawke's Bay. An 1867 amendment attempted to make the trustee status of chiefs named under the ten-owner rule clear by providing for the names of all owners to be endorsed on a recital attached to the certificate of title. It appears that most Native Land Court judges ignored this provision.[15] It seems, however, that the ten-owner rule was not a significant issue in the north at this time, and as far as we can ascertain it was not the subject of northern Maori complaint. A brief analysis of the blocks passed through the Native Land Court under the 1865 Act reveals that a large number were relatively small areas awarded to ten or fewer owners.[16] It is possible that because many blocks passed through the Court were relatively small, ownership may have been reflected by a grant to ten or fewer people, and few difficulties of the sort experienced elsewhere in New Zealand were present. In other words, it was not a case of large estates in which many Maori were interested being vested in a small number of chiefs, as was the case, for example, in Hawke's Bay.

18. The passage of many smaller blocks through the Court after 1865 also confirms what a number of European observers, including Judge Maning, had noted; namely, that many northern Maori were attempting to obtain their own farms or

[15] Wai 1040 #A12, pp308-314.
[16] See Berghan, *Northland Block Research Narratives. Native Land Court Blocks 1865-2005*. February, 2006.

alienate land in a strategic manner.[17] In 1870 Maning observed in this regard that the high price of surveys was a bar to many who wished to have their blocks subdivided into farming lots. Maning feared that this would discourage Maori from bringing lands before the Court, which would in turn slow down the highly desired process of title individualisation and assimilation.[18]

19. The passage of many smaller blocks through the Court for sale or whanau farms also suggests that northern Maori were able to continue exercising some degree of control over the adjudication process in the years immediately after 1865. It must be emphasised, however, that they were able to do so only because they were not under great pressure to alienate land at this time. The Crown had ceased purchasing Maori land in 1865, and between 1865 and 1870 limited purchases were conducted by private parties and the Auckland Provincial Government. As we shall see this situation did not last long. The re-entry of the Crown into the land purchase market on a large scale after 1870, as a consequence of the Vogel public works and immigration scheme, was to have a profound impact on northern Maori. The 1865 Act, in tandem with a failure to recognise and assign a role to Runanga or other forms of tribal authority, can perhaps therefore be seen as a significant marker on the road to Maori marginalisation.

20. While a lack of pressure to alienate land in the years immediately after 1865 permitted the exercise of some Maori agency, competing hapu and iwi claims were nevertheless common and sometimes resulted in serious conflict.[19] This can be at least partly attributed to a failure to empower runanga or provide them with an officially sanctioned role in the adjudication process. Conflicts occurred at Waimate and Mangonui in 1867, and at Hokianga in 1868. A number of people were killed. In the aftermath of the 1868 Hokianga conflict a number of Maori, including Hone Mohi Tawhai (formerly a Judge under the 1862 Act), developed a series of well thought out proposals for the better administration of justice in the

[17] Wai 1040 #A12, pp369-370.
[18] Wai 1040 #A12, pp357-358. See also p356.
[19] Wai 1040 #A12, pp367-372.

north, including the reappointment of Assessors dismissed in 1865.[20] These proposals were not given effect.

*5. The Haultain Inquiry*

21. In 1870 Native Minister Donald McLean sought advice on how to improve existing Maori land legislation. He wished to remove some glaring abuses - in particular those associated with the 'ten-owner rule' in Hawke's Bay - and achieve a more efficient process, given that the Crown was about to embark on a massive programme of land purchase in connection with Vogel's public works and immigration scheme. McLean instructed Colonel Haultain to canvas Maori opinion and provide a report.

22. Haultain obtained information from a number of northern chiefs in 1871. With some reservations they expressed general approval of the Land Court as it provided a means of obtaining secure titles and had the potential to settle disputes. Their reservations were, however, important. Several chiefs sought an enhanced role for Maori Assessors, a reduction in costs (especially survey costs), and complained that individuals were permitted to instigate Land Court hearings without reference to the wider community.[21] There were no complaints about the 'ten-owner rule'.

23. It should be stressed, however, that any general approval of the Land Court in 1871 was sourced in the context of the late-1860s, when northern Maori had yet to be exposed to the full brunt of Crown land purchasing, and were therefore still able to exercise some degree of control over the adjudication process and alienation. It should therefore not be read forward as evidence that the chiefs approved of what later took place.

[20] Wai 1040 #A12, pp483-492.
[21] Wai 1040 #A12, pp789-800.

*6. The Native Land Act 1873*

24. The Native Land Act 1873, which came into force on January 1, 1874, attempted, among other things, to remedy abuses of the ten-owner rule, which as we have seen were not a feature in the north, but failed to address the specific complaints northern Maori chiefs had raised with Haultain. On the application of any Maori the Court could carry out a title investigation, after which all owners would be named in a memorial of ownership. This did not reflect principles of tribal control or rangatiratanga, as the Court did no more than declare that each owner possessed an interest in common with all the other named owners. This process has been termed 'pseudo individualisation'. It did not result in an allocation of land interests on the ground, in the form of individual or whanau farms, but rather created alienable 'paper' shares. The aim was land alienation, not Maori possession of farms or the exercise of Maori agency. The form of tenure delivered by the Native Land Court after 1873 was of little utility to Maori other than alienation.

25. It was always possible for Crown and private purchasers to identify indebted or impecunious owners to whom advance payments formed an irresistible temptation, and once sufficient shares had been acquired a partition of the interests of sellers could take place. There was no provision in the Act requiring purchasers to deal with the community of owners as a community. Nor did the community have any effective veto against the sale of individual interests. Section 49 of the Act required the approval of all the named owners before a sale took place, but section 65 permitted the Court to partition the interests of non-sellers ('dissentients') and sellers provided a majority of either group agreed.[22]

26. This 'pseudo' individualisation of title, and its inevitable consequences, was widely acknowledged by settlers and Crown officials. Long-serving Native Secretary T. W. Lewis told the 1891 Rees Carroll Commission that the Court was designed to facilitate alienation and served no other useful purpose. Rees and Carroll themselves (on the basis of evidence collected in the north and elsewhere,

[22] Wai 1040 #A12, pp806-815.

as discussed below) described title individualisation under the 1873 Act as an imposition on a 'helpless' people 'suddenly possessed of a title to land which was a marketable commodity'. The right to occupy and cultivate became an alienable estate: 'The strength which lies in union was taken from them. The authority of their natural leaders was destroyed'.[23] The settler press was also aware of the impact of the 1873 Act on Maori. In May 1883 a *New Zealand Herald* editorial observed that the Native Land Court had not individualised title 'for the purpose of holding the land', but rather had effected 'a quasi-individualisation for purposes of alienation'.[24]

27. The 1873 Act, coupled with massive Crown purchase of Maori land in the north, required by Vogel's immigration and public works policies, virtually eliminated the possibility that northern Maori could continue to exercise any significant control over the land title determination process and land alienation, or indeed pursue any rational economic objectives. A number of almost insurmountable difficulties faced Maori who wished to obtain farms. Small individual interests may have been scattered over a number of blocks in any given district. The cost of surveys remained a major impediment, and the process of partitioning blocks with dozens or scores of owners down to individual shares was prohibitively expensive. Individual Maori also obtained little from the sale of lands, once heavy survey and other costs were deducted, and the balance was often insufficient to purchase stock, erect fences and otherwise improve the land.

28. An ongoing lack of communications infrastructure posed further difficulties for those who may have been able to obtain individual allotments.[25] In 1874 Mangonui Resident Magistrate W. B. White had observed that in the absence of roads and bridges settlers would be required to expend a 'superhuman' effort to develop viable farms.[26] The implication was, of course, that at least a similar effort was required of Maori who also resided in this isolated region. Moreover, within one or two generations the application of inappropriate succession laws also

[23] Wai 1040 #A12, p810.
[24] Wai 1040 #A12, p810-811.
[25] Wai 1040 #A12, pp1270-1271.
[26] Wai 1040 #A12, pp966-967.

meant that titles became hopelessly crowned and fragmented, rendering the land of even less utility for farming, or indeed any other purpose bar alienation.[27] In addition, once land had passed the Court it became liable for rates, presenting owners with a further burden.

29. Having largely stripped away any possibility of collective control and the ability of iwi and hapu to settle land ownership and boundary issues, resolve conflicts or otherwise manage the process in accordance with their own preferences, the Crown imposed its own protective mechanisms which proved almost totally ineffective. Reserves were not set apart, and restrictions on alienation were ultimately little more than illusory. In addition, little effort was made to regulate the activities of over-priced and less than competent private surveyors, and the northern surveys remained in a shambolic state well into the 1870s. Crown officials continued to characterise many surveyors active in the north as incompetent and corrupt charlatans intent on exploiting Maori, who were exposed to years of 'lamentable confusion and neglect'.[28]

30. The 1873 Act also set out a number of procedures for the identification of owners prior to Native Land Court adjudications. This was seen as a way of avoiding conflict and facilitating the work of the Court, but none of these mechanisms assigned a role to Maori communities. District Officers were supposed to carry out a prior investigation and identify right-holders. Serious doubts exist as to how effective these officers were, given the vast areas under negotiation and the number of blocks involved. Hokianga was a particular focus of Crown purchase activity in the mid-1870s, yet W. Webster was not appointed District Officer there until the end of 1874, almost twelve months after the Act came into force. Native Land Court judges were also required to carry out 'preliminary investigations' in order to identify owners and possible dissentients prior to Land Court hearings. But as with the District Officers, their ability to do so was severely hindered by the sheer scale of land alienation and the multiplicity of interests. Maning hated the idea of visiting Maori settlements to carry out preliminary investigations,

[27] The succession to intestate estates by all the descendants of a deceased owner.
[28] Wai 1040 #A12, pp399-404. 777-784.

preferring instead to maintain the formal procedures of his tightly-controlled court.[29]

31. Advance payments - often referred to as 'tamana' - were a common feature of Crown and private purchases in the north from around 1870. Indeed, Crown agents made advance payments in almost every case up until the 1890s. Payments were often not made on the basis of careful inquiries, but were rather handed out to the first group who claimed an interest in the land and were inclined to sell, even in cases where ownership was known to be disputed by other hapu. Such payments were made by Crown agents in an effort to bind Maori to the terms of an agreement prior to the passage of the land through the Court. This was necessary as the Crown was in competition with private purchasers whose activities threatened to derail the Crown's purchase programme. For Native Land Court purposes such payments were merely deemed 'void', and might be deducted from the purchase price once ownership had been determined and a sale proceeded.[30]

32. In most cases Crown agents and private purchasers would identify and make payments to groups or individual Maori, and the necessary surveys would proceed in preparation for a Land Court hearing. In the absence of rigorous preliminary inquiries by judges or District officers, Maori owners who had not been involved in preliminary negotiations and had not received advance payments, or who had no desire to pass the land through the Court or alienate it, would often object when surveyors entered the land or when they heard of tamana payments being made to others.

33. Such practices resulted in serious disturbances and loss of life right up until the late-1880s. Such conflicts were increasingly played out within a legal environment which encouraged conflict and denied an opportunity for traditional Maori dispute resolution processes to be applied. The adversarial 'winner-take-all' approach of the Court, and its often-crude interpretation of custom law (which

[29] Wai 1040 #A12, pp682-689.
[30] Wai 1040 #A12, pp676-701.

was the subject of increasing Maori complaint) served to exacerbate a tendency towards conflict. So long as the Court remained the only and final legally-sanctioned arbiter decisions of Maori Komiti and Runanga could easily be avoided and undermined by those dissatisfied with their treatment at the hands of 'unofficial' Maori bodies. Within the context of individualisation and competition for increasingly scarce land resources consensus was inevitably a rare commodity.

34. Native Minister Donald McLean was an avowed assimilationist, but unlike Maning's crude social Darwinism he favoured a more gradual process, and seems to have genuinely believed that northern Maori should at least be given an opportunity to participate to some extent in the economic development of the region. McLean, to his credit, was aware that Maori had been promised a role in the future development of the region, and feared that if further land sales took place the ability of Maori to engage with the new economy would be seriously diminished if not foreclosed. In 1876 he therefore urged a cessation of Crown land purchase in the north. In his view the Crown had achieved its primary policy objectives by this time: much land had been acquired (around 500,00 acres since 1870), and more was being passed through the Court. Full assimilation was inevitable, as was its corollary, the imposition of substantive Crown sovereignty.[31]

35. This was an important concession. By the Crown's own standards further land acquisition would result in prejudice to northern Maori and their inability to take advantage of the region's economic development. Nevertheless, land acquisition continued until the turn of the century and beyond. Between 1876-1885 a further 230,000 acres was acquired by the Crown in Northland.[32] Although it is difficult to calculate precise figures, land alienated to the Crown in the Mangonui, Whangaroa, Bay of Islands, Hokianga, Whangarei and Kaipara districts between 1870 and the mid-1880s amounted to around 700,000 acres, about 500,00 acres of which had been acquired by 1876. Land acquired by private purchasers during this period totalled a further 100,000 acres.[33] The Land Court continued to be a fixture of northern Maori life. In 1886 around 675,000 acres remained in Maori

[31] Wai 1040 #A12, pp666-668. 672.
[32] Wai 1040 #A12, pp671-672.
[33] Wai 1040 #A12. pp661-665. 1552-1554. 1556. 1561. Appendix VI. 1579.

customary ownership, but by 1907 this had reduced to a little over 116,000 acres.[34]

*7. Impact of the Native Land Court*

36. The major upsurge in Crown land purchase activity after 1870 resulted in a substantial increase in Native Land Court sittings and significant disruption to Maori social and economic life.[35] Courts were held in a range of locations from Auckland to Ahipara.[36] Because of whakapapa connections and overlapping customary interests many Maori were required to attend many of them. Sittings were frequent and were often scheduled in quick succession. All cases were gazetted together, and Maori claimants often had no idea when their blocks might come up for hearing and were forced to wait for days or weeks. Court sittings were often cancelled at short notice because plans were not available, or cases were postponed after the claimants had arrived at the court.[37]

37. Most claimants felt compelled to attend the Court, given that non-attendance could mean exclusion from land titles. It was not always feasible for the chiefs to attend court sittings as tribal representatives armed with lists of owners agreed beforehand. Maning, who encouraged wide attendance in order to ensure finality and protect the interests of Crown and private purchasers, purported not to trust the rangatira and utterly rejected any manifestation or exercise of their chiefly or representative role, and it was always possible he would reject previously arranged lists.[38] He was certainly not averse to crossing out the names of his own children on scores of applications in order to dissuade them from identifying with their Maori relations.[39] It is notable that although abuses of the ten-owner rule did not appear to have been a serious problem in the north before this practice was abolished by the Native Land Act 1873, which required all owners to be named on the memorial of ownership, chiefs or individuals who were later delegated to pass

[34] Wai 1040 #A12, p673.
[35] Wai 1040 #A12, pp818-824.
[36] Wai 1040 #A12, Appendix I.
[37] Wai 1040 #A12, pp820-824.
[38] Wai 1040 #A12, p666. 710. 713-714. 819.
[39] Wai 1040 #A12, pp333-334.

land through the Court and effect sales in order to save time and money sometimes failed to meet their obligations.[40]

38. Maori were increasingly forced to rely on credit or their uncertain gum revenues to fund attendance at the Court. The Government's retrenchment policies ensured that no free food was supplied to those attending the Court. Instead such assistance became a charge on the land. Maori who were required to attend lengthy hearings became increasingly indebted to storekeepers, and here too, the payment was usually land.

*8. The Maori Response*

39. As the 1870s wore on Maori complaints about the Land Court and land alienation became frequent. They involved issues raised by the chiefs in connection with the 1871 Haultain inquiry, particularly the ability of individuals to make application to the Court without the approval of the wider community, the lowly status of Assessors, the heavy costs associated with the title adjudication process (especially surveys), a failure of the Court to reflect custom law and the length of time it took to hear claims. Tamana payments were also a particular cause of complaint.[41] By the mid-1870s it became clear to many northern Maori that the Land Court could not be used as a means of achieving their ambitions, but was rather a destroyer of Maori enterprise. There were increasing calls to do away with the Land Court entirely. One petition stated that 'death would be better than life if such torture is to continue'.[42]

40. Northern Maori also continued to seek long-promised schools, public works and other economic development, and at every opportunity urged the Crown to assist. In their view the Treaty/Te Tiriti and former undertakings by the Crown promised no less. The Vogel scheme had held out the promise of development, but instead had brought only land loss, disruption and increasing economic marginalisation. Many Maori pointed out that they had heavily subsidised the Vogel scheme

[40] Wai 1040 #A12, p864.
[41] Wai 1040 #A12, pp860-868.
[42] Wai 1040 #A12, p863.

through the provision of land at a discount, but had not participated in its promised benefits. They were told once again that further land sales would result in development and prosperity. Northern Maori had heard this before, and such comments were rapidly losing force by the mid-1870s. Large hui convened at Orakei and Waitangi in the late-1870s passed a series of resolutions objecting to the cost of surveys, court fees, tamana, increasing landlessness, the failure to provide Maori with a meaningful role in the title adjudication process and the destruction of tribal structures through individualisation.

41. A fundamental issue underpinning many Maori complaints during the 1870s was an increasing perception that their political relationship with the Crown was breaking down and land laws antithetical to their interests were being enacted by a Pakeha-dominated assembly. Northern Maori therefore renewed their efforts to achieve a form of political equality and a meaningful 'union' of the races. Many came to believe that true equality could only be achieved through the establishment of a Maori Parliament, working not in opposition to the European Parliament but in tandem with it. A re-convened Kohimarama Conference was seen by some as the best means of developing and giving effect to Maori political ambitions.[43]

42. During the 1880s northern Maori tired of hearing repeated platitudes about their famous 'loyalty' and the need to cede more and more land based on vague assurances of partnership and prosperity. They continued to assert that the Native Land Acts were antithetical to their aspirations. As the situation worsened, Maori began to demand more fundamental reform, including an end to the Land Court and separate Maori political institutions. Their own Maori 'Parliament' - based on the model of the annual Orakei and Waitangi hui - was increasingly seen as the only viable option.[44] As far as the Crown was concerned meetings at Orakei, Waitangi and elsewhere were no more than a useful 'safety valve' through which the last spasms of a dying race might be safely expressed.[45]

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[43] Wai 1040 #A12, pp993-1001.
[44] Wai 1040 #A12, pp993-1001.
[45] Wai 1040 #A12, pp1001-1011.

43. Another approach was attempted by Hone Mohi Tawhai. As we have seen he had tried to set up a more effective system of law and order in Hokianga in the late-1860s, incorporating a degree of Maori agency. He tried to apply a similar pragmatic approach to problems surrounding the Native Land Court. His idea was that state-sponsored Maori Committees should determine boundaries and land titles, and the Native Land Court would simply 'rubber stamp' Committee decisions. Tawhai also proposed that Native Committees would superintend land alienation and have a role in local administration. His hope was that the Committees would mitigate some of the more damaging aspects of the Native Land Court.[46]

44. The Government was not sympathetic, and the Native Committees Act which was finally passed in 1883 gave the Committees - two of which were set up in the North - no more power than the chiefs and their communities already possessed, which was virtually none. They were given no jurisdiction over land sales or local administration, and were limited to hearing cases only when the parties agreed to their involvement. The Native Land Court was not required to take judicial notice of their decisions, and almost invariably failed to do so. Nevertheless, Tawhai worked hard to try and make the Bay of Islands Committee with which he was involved a success. It adjudicated on a number of difficult cases at very little cost, and apparently in a manner which caused satisfaction to many of the claimants. But anyone who was dissatisfied with a Committee decision could simply relitigate the case in the Native Land Court, and many - including Crown agents - encouraged this by ridiculing and belittling Tawhai's efforts.[47]

45. A number of chiefs, including Maihi Paraone Kawiti, did not support Tawhai's Native Committees because they were creations of the Government and it was feared they might bolster or perpetuate the Native Land Court, an institution which Kawiti and others by now sought to abolish completely. Kawiti preferred separate Maori institutions, and supported existing independent Komiti operating outside government auspices, such as the Komiti of the Treaty of Waitangi and his

[46] Wai 1040 #A12, pp1012-1025.
[47] Wai 1040 #A12 p1019.

own 'Committee of Twelve'.[48] Faced with all of these manifold difficulties the 'official' Native Committees in the north petered out.

46. In mid-1882 Hirini Taiwhanga and other northern chiefs travelled to London to present a petition directly to the Queen. It complained of gross breaches of the Treaty/Te Tiriti in connection with land laws, the Waikato raupatu and the Government's treatment of Parihaka. The delegation was not permitted to meet the Queen. Their petition was referred back to the New Zealand government and went nowhere.[49] Increasing debt, land loss, the destruction of tribal rangatiratanga, tamana, survey liens and all the other negative features of the Court and land purchasing lay at the root not only of Taiwhanga's petition, but also more widespread northern Maori complaints, as set out in a further succession of large hui at Orakei, Waitangi and elsewhere. These hui continued to demand an end to the Native Land Court and land purchasing and the establishment of separate Maori political institutions as a means of halting or reversing prejudicial land and other legislation passed by the Pakeha-dominated Wellington Parliament.

47. These demands were not seen by Maori as being inconsistent with the Treaty/Te Tiriti. Rather, northern Maori took the view that their political equality had been guaranteed not only by the Treaty/Te Tiriti itself, but also by its 'child', the 'Treaty' of Kohimarama, which had promised but not delivered a voice for Maori in the Governing councils of the colony.[50] Many Maori also looked to the 1835 Declaration of Independence - which provided, among other things, for the chiefs to meet annually and enact laws - and section 71 of the 1852 Constitution Act, which held out the promise of self-governing Maori districts.[51] There were also strong calls for northern Maori to make common cause with the Kingitanga, and King Tawhiao himself was present at an 1885 Waitangi hui.[52] That an alliance with the King was even contemplated is remarkable, and speaks eloquently of the extent to which northern Maori had become alienated from the Crown by this time.

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[48] Wai 1040 #A12, pp1012-1022
[49] Wai 1040 #A12, pp1051-1072.
[50] Wai 1040 #A12, p1080.
[51] Wai 1040 #A12, pp1079-1095.
[52] Wai 1040 #A12, pp1090-1091.

48. Settlers began arriving in the north in increasing numbers in the 1880s, but this was not a fulfilment of oft-repeated Crown promises of settlement and economic advantage, but rather represented a further marker on the path of Maori decline. Maori could only benefit from settlement, enhanced communications infrastructure and other economic development if they retained adequate good land in a useable form of tenure. Northern Maori were unable to effect such an engagement within the context of the Native Land Court, further land loss, population 'swamping' and an increasingly pervasive Crown administration of their remaining lands.

49. Ameliorative measures proved ineffective. The Native Lands Administration Act 1886 was designed to overcome problems associated with multiple ownership and fragmented titles by permitting block committees to decide on the terms of sale or lease, and place their lands in the hands of a Government-appointed Commissioner for auction. This measure proved unpopular with Maori, who did not care to place their lands under the control of a Commissioner.[53]

50. Crown land acquisition in the north continued, even thought there were increasing signs of Maori landlessness.[54] Nothing was done, however, even though the Crown still possessed a large idle estate in the region - much of it comprising good land. The Maori response was to demand stronger restrictions on alienation. They were supported by Commissioner of Native Reserves Charles Heaphy, who had warned of Maori landlessness as early as 1871, particularly at Mahurangi and among Te Rarawa.[55] Meanwhile, the reserves that remained in Maori ownership increasingly came under the control of the Native and Public Trustee.

51. Serious land disputes continued to occur. They were often settled by senior chiefs, including Hone Mohi Tawhai, Maihi Paraone Kawiti and others. But this intervention was usually sought by European officials after trouble had occurred,

[53] Wai 1040 #A12, pp1073-1074.
[54] Wai 1040 #A12, p1032.
[55] Wai 1040 #A12, pp770-771.

and after people had been killed and injured.[56] This was at least partly a consequence of the Government's failure to recognise or sanction 'unofficial' Maori organisations, and a failure to provide any meaningful authority to Tawhai's 'official' Native Committees set up under the 1883 Act. We are not suggesting that the intervention of rangatira or some form of Maori-controlled arbitration would have been successful in every instance, and the evidence confirms that such intervention was not always effective. But the level of success achieved in the cases which have come to our attention suggests that the timely intervention of Komiti or Runanga would have been beneficial in many instances.

52. In one notable case - that of the 1888 Poroti dispute - an apparently successful arbitration was overturned by the unwise actions of Resident Magistrate Clendon. In this case arbitrators had reached a decision which was accepted by the parties, but at the same time the Magistrate encouraged one side to take legal action for the recovery of gum royalties. He then made an award against the other party with costs. This was sufficiently provocative to defeat the arbitrators decision and fighting broke out, during which a number of Maori were killed and wounded. The matter was finally resolved by the intervention of Maihi Kawiti Paraone and his 'Committee of Twelve'.[57]

*9. Law and Order*

53. Law and order issues were an integral aspect of the wider political engagement between the Crown and northern iwi during the nineteenth century. As we have seen, a role for Maori in framing and enforcing laws in their own districts had been proposed at Kohimarama, and by Grey in 1861 in connection with his new institutions. There proposals were not followed up or were short-lived.

54. During the 1860s and 1870s northern Maori appear to have mostly accepted the decisions of Magistrates in civil actions or cases involving Europeans. While this no doubt reflected a growing appreciation among Maori communities of the need

[56] Wai 1040 #A12, pp1036-1046.
[57] Wai 1040 #A12, pp1039-1046.

for an effective system of law which would regulate trading and commercial relationships between the races, there was, at least initially, less than a thorough acceptance of laws relating to criminal matters or those involving only Maori, especially where a custodial sentence (or worse) was imposed. In these cases Maori expected their own tikanga to prevail.[58]

55. Consequently Crown officials and Magistrates were often required to work with the chiefs and exercise a good deal of flexibility. At times significant concessions were made, and the chiefs were often relied upon to apprehend and deliver suspects. Towards the end of the century, however, as the population balance and power relationships began to change, there was less involvement by Maori and a decreasing willingness of officials and magistrates to compromise or allow the expression of tikanga. It could be said that the effective imposition of English law, and the projection of substantive Crown sovereignty, paralleled and reflected the breakdown of tribal structures and economic marginalisation encouraged by the Native Land Court and land alienation.

*10. Land Purchasing in the 1890s*

56. The advent of the Liberal Government at the beginning of the 1890s ushered in a period of extensive land purchase in the north. 'Idle' Maori land was anathema to the Liberals. This attitude was shared by many local settlers. Some went so far as to describe Maori as an 'alien' presence which hindered the future economic development of the region.[59] There is no evidence within the prevailing Liberal ethos of any real concern for future Maori prospects or whether they retained sufficient land. Maori were simply expected to give way to the inevitable advance of European settlement. For Maori landowners it was a simple case of 'use it or lose it'. But Maori were unable to obtain development finance, and the land tenure system imposed by the Land Court, which had now been operating without halt in the region for almost three decades, rendered profitable utilisation of Maori land extremely difficult if not impossible.

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[58] Wai 1040 #A12, pp449-496.. 910-922. 1104-1108.
[59] Wai 1040 #A12, pp1144-1157.

57. The Crown's land acquisition objectives were aided by the Native Land Court Act 1894. This measure greatly eroded restrictions on alienation and re-introduced the Crown's pre-emptive right.[60] One advantage for Maori was that advance payments were no longer necessary. But this was hardly a cause for celebration, as pre-emption provided the Crown with the opportunity of acquiring Maori land at far less than its 'real' or market value. Crown purchase agents were quick to take advantage of Maori indebtedness, mounting rates liabilities and interest-generating survey liens to beat down opposition.[61] The 1894 Act provoked bitter opposition from many northern Maori who saw it as little more than an opportunity for the Crown to acquire land at bargain-basement prices. The Northern Maori MHR Hone Heke Ngapua described the 1894 Act as 'legalised robbery'.[62]

58. The 1894 Act also gave the Land Court power to declare the owners of any block a 'body corporate', provided the Crown had not acquired any interests in the land. A committee (comprising 3-7 members) could then be appointed to administer the land, with full powers of alienation. Proceeds of sales (minus commission) were to be distributed to owners by the Public Trustee. Some might argue that this introduced a form of communal control. We would argue that this part of the Act was primarily designed not to achieve this outcome, but rather to expedite land acquisition by overcoming difficulties associated with multiple ownership. In short, it was much easier for Crown purchase agents to deal with a small committee rather than a multitude of owners.

59. By the beginning of the 1890s Northland Maori opposition to the Native Land Court and a desire for autonomy was expressed on a national level through the Kotahitanga movement (see below). On a local level the work of various Maori organisations forming a Maori-based alternative to the Native Land Court continued. Their success was limited however, so long as the Native Land Court remained the only legally-sanctioned mechanism for land title adjudication. By

[60] Wai 1040 #A12, p1146.
[61] Wai 1040 #A12, pp1147-1157.
[62] Wai 1040 #A12, p1146.

this time legislation permitted the Native Minister to apply to the Court for title adjudications. This measure had been introduced to avoid the possibility that Maori would decline making applications to the Court in order to escape rates. These powers also had the potential to render attempted politically-motivated Maori boycotts of the court far less effective.

60. In 1891 the Government set up the Rees-Carroll Commission to inquire into the working of the Native Land Acts. This inquiry was not designed to address Maori concerns, but rather to find ways of speeding up the existing Court process. The Commissioners took extensive evidence from northern Maori and European witnesses. Maori witnesses were almost unanimous in their condemnation of almost every aspect of the Native Land Court - in particular the exclusion of Runanga and Maori organisations from the title adjudication process. Northern Maori complaints included:

- the existence of a baffling plethora of constantly changing land laws
- the heavy expense of surveys
- the heavy expense of lawyers and agents and onerous court fees
- the great length of time it took to hear cases, and frequent adjournments and delays
- the great expense involved in attending the court and the need to travel long distances
- the destruction of tribal structures and rangatiratanga through individualisation of title, and the ability of individuals to make application to the court irrespective of the wishes of the wider community
- the failure to provide a role for tribal committees or runanga in the title adjudication process, and the inability of tribal committees or runanga to enforce community decisions in the matter of title applications and alienation
- The presence of deception, fraud, division and conflict
- inappropriate choice of Assessors

- the Court's failure to understand or properly apply custom law[63]

61. Decades of Native Land Court activity, which had shattered tribal structures and opened the door to significant land loss, were roundly condemned by Rees and Carroll. They recommended, *inter alia*, that Maori be given a key role in managing both the title adjudication process and land alienation. There was little willingness on the part of the Government to accept these recommendations. A number of changes were made - including the re-introduction of pre-emption - but the proposals concerning committees and Runanga were ignored. Instead the Government embarked on an aggressive land purchase policy within the same broad legislative framework which had existed since 1873, armed with the additional advantages of a monopoly purchaser. Pre-emption was not utilised as a protective measure, as envisaged by Rees, who had recommended it, but as a means of acquiring Maori land on more favourable terms.[64]

62. National or pan-tribal movements (including Kotahitanga) increasingly became the main focus of northern Maori opposition to Government policies. The Native Land Court, Crown land purchase and land administration, rates and a host of other matters remained serious grievances, as did more fundamental issues involving the meaning of the Treaty/Te Tiriti and effective Maori exclusion from the European-dominated Parliament. Premier Seddon's response was to continually insist that Maori land must be utilised, and their current 'idle life', if permitted to continue, would lead to their inevitable destruction. Hence their remaining land must be rapidly passed through the Native Land Court and made available for alienation to the Crown for settlement.[65] Despite the recommendations of the Rees-Carroll Commission, this process would continue to be based on individual dealings. At the same time Maori were provided with little or no assistance in developing their remaining lands for their own benefit.

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[63] Wai 1040 #A12, pp1177-1187.
[64] Wai 1040 #A12, pp1188-1193.
[65] Wai 1040 #A12, p1145.

*11. Rates and Taxes*

63. By the 1880s the various Northland local bodies, established after the abolition of the provinces in 1876, had assumed responsibility for, among other things, developing communications infrastructure. The local bodies relied on rates. In a region which still contained an extensive area of unoccupied Crown land, and substantial areas of non-rateable Maori customary land, this presented serious difficulties.[66] The Crown's response was to suggest that rates might be paid on customary lands. Maori were extremely troubled by such a suggestion. If Maori land which was not generating an income was to be rated further land loss would inevitably result. Many Maori remained deeply dissatisfied that such a burden might be imposed in addition to their already very considerable contribution in the form of land and customs duties. An upsurge in Maori 'obstructionism' can be at least partly attributed to this.

64. Northern Maori complaint about the burdens imposed by taxes and rates became more strident as they were confronted with an increasingly wide range of charges, including even a tax on kauri gum. This was a particularly sore point given that gum digging remained the principal occupation of most northern Maori. Opposition to rates was not evidence of a lack of public spirit or a desire on the part of Maori to shirk their legitimate obligations. On the contrary. Maori complaints continued to refer to previous and existing Maori contributions (including land sales and customs revenue) and the unfairness of imposing new obligations when the people had already contributed so much and had received so little in return.[67] The rate burden placed on lands which had passed through the Court was onerous to many Maori, especially as bringing land into commercial production remained very difficult. Another problem was that rate demands were sent not to the owners with a requirement that they pay their proportionate share, but to the 'leading man' who was required to pay the whole amount.[68]

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[66] Wai 1040 #A12, p1120.
[67] Wai 1040 #A12, p978-984. 1116-1122.
[68] Wai 1040 #A12, p980.

65. In 1882 legislation was passed which made all Maori land (customary or otherwise) within 5 miles of a road rateable, and a range of further taxes on livestock and dogs were proposed or introduced.[69] Maori once again pointed to their significant contribution and questioned the justice of these further demands. Their opposition was often based on an appreciation that charging rates or taxes on unutilized or unoccupied land - whether it be held by a number of owners under Crown grant, or under customary title - would necessarily have a confiscatory effect.

66. The increasing tax burden ultimately gave further impetus to Maori calls for autonomy and greater control over their own affairs, as exemplified by resolutions passed at a succession of Orakei and Waitangi hui.[70] Indeed, the rates and tax issue came to be assigned almost equal importance to other pressing matters, such as the Native Land Court and land sales. In addition, many Maori felt that restrictions on leasing and other aspects of Crown control prevented them from raising the necessary funds. On one hand the Government required them to take full responsibility for rates, but on the other it did not allow them to exercise full control over their lands.

67. Although Maori were ultimately required to pay only 'half rates' (which still formed a substantial burden for many) the Government response was to gradually extend the class of Maori land subject to rates liabilities and remove laws which had hitherto prevented land alienation in lieu of rates. After 1893 any Maori land within 5 miles of a highway could be sold to repay rates arrears. The Native Land Rating Act 1904 further extended the categories of rateable Maori land. Uninvestigated customary land remained largely exempt, but with the important proviso that if the Minister was of the opinion that the owners were delaying an application to the Native land Court in order to avoid a rates liability, he (the Minister) was empowered to make an application to the Court to ascertain titles.[71]

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[69] Wai 1040 #A12, p1118.
[70] Wai 1040 #A12, p1120-1122.
[71] Wai 1040 #A12, pp1193-1210.

*12. Social and Economic Conditions*

68. For much of the 1860s and 1870s Maori produced little more agricultural produce than was required for their own immediate consumption. An ongoing lack of access to markets remained a serious difficulty. This problem was exacerbated by the form of tenure imposed by the Land Court and a host of related difficulties. Benefits associated with an influx of settlers and the growth of towns, held out to northern Maori for many years by the Crown as an inevitable result of land sales, had failed to eventuate, as had the direct promises of Crown assistance made by Grey in 1861.[72]

69. Northland Maori continued to heavily rely on extractive and finite industries such as gum and timber. This dependence left them vulnerable to frequent and sharp fluctuations in price, and conditions faced by many Maori on the gumfields were extremely harsh. Settlers and officials frequently blamed Maori themselves for their increasingly parlous position. They were said to be lazy and indolent, and their 'primitive' mode of living would inevitably result in their disappearance unless rapid assimilation took place. The efforts of chiefs who attempted to achieve better living conditions and more efficient farming practices were not supported, and any improvements were attributed to the 'benevolent' influence of local settlers.[73] Instead of addressing the underlying issues, including the impact of tenurial changes brought about by Native Land Acts, large scale land alienation, disruption caused by the Court, a lack of communications infrastructure and the steady erosion of tribal structures and a breakdown of social cohesion, Crown officials simply saw no solution other than the extirpation of Maori culture. As the 1870s wore on the Maori population began to decline - by as much as 8% during the decade.[74]

70. In the 1880s and 1890s there was an almost complete reliance on finite extractive industries - principally timber and gum. Key characteristics of the period were epidemic disease, poverty and heavy mortality. What had now become a close to

[72] Wai 1040 #A12, pp615-627.
[73] Wai 1040 #A12, pp924-937.
[74] Wai 1040 #A12, p930. 933.

total reliance on gum continued to expose the people to price fluctuations, and the exhaustion of the gum-fields, a prospect which had loomed for some time, now became a reality in several districts. The Crown, fearing that remaining timber might be destroyed by fire, also prohibited the collection of gum on Crown land.[75] Life on the gum-fields continued to contribute to high levels of Maori mortality. This transient lifestyle also disrupted attendance at Native Schools. European observers continued to insist that more rapid (or even forced) assimilation was the only hope for northern Maori, and the rapid individualisation of land remaining in customary ownership was identified as the key to achieving this. There were also claims that Maori spent too much time at political meetings.[76]

71. Medical care remained ad hoc or non-existent for much of the period under consideration. Government subsidies to medical officers proved insufficient to attract good doctors to remote Northland districts or ensure that they remained. Repeated Maori requests for better health services were almost always met with a negative Government response.[77] For many officials cost-saving and fiscal retrenchment remained the most important considerations, even though it was stressed by a number of local settlers and doctors that the provision of even modest hospitals near the major Maori settlements would save lives.[78] It was not enough for politicians and Crown officials to simply assert that the settlers also lacked doctors, and everyone was in the same boat and should do the best they could. Unlike Maori, the settlers had not ceded vast areas of land at a discount on the understanding that, among other things, doctors and hospitals would be provided for them.

72. During the period 1900-1910 Northland Maori numbers began to increase after a long period of decline. Much of this improvement can be attributed to the Maori Councils, one of the few manifestations of Maori agency in the north which received even a small level of Government support, as we shall see below. The physical extinction of northern Maori, predicted by some Government officials

[75] Wai 1040 #A12, pp1226-1229.
[76] Wai 1040 #A12, pp1123-1134.
[77] Wai 1040 #A12, pp637-645. 985-990. 1135-1143. 1229-1245.
[78] Wai 1040 #A12, pp1235-1237.

towards the end of the nineteenth century, had not come to pass. But as the Maori population increased more pressure was placed on scarce land and other resources, and land titles became even more fragmented. There were renewed calls for a halt to land purchasing lest more Maori became entirely landless.

73. Despite an encouraging demographic outlook, the economic position of Northland Maori remained extremely precarious. This was illustrated when they were afflicted with natural disasters or other calamitous events - such as the 1906 potato blight.[79] Most lacked the resources to withstand these setbacks, and recourse to gum or seasonal employment in the 'bush', or as labourers on settler farms, was for the majority the only alternative. Despite some progress later in the decade, evidenced by a growth in stock numbers, many Maori appear to have been unable to break their reliance on increasingly scarce gum resources. A lack of farming skills was no doubt also a contributing factor, and as far as the present writers can ascertain little or no assistance was offered by the Government in this regard. Maori were also effectively excluded from the Advances to Settlers Act 1894, which provided funds to struggling European small-holders.[80]

74. The *most positive* reports from this period placed Maori on the bottom rung of the social and economic ladder. This is far short of Maori expectations in the 1860s, when assurances of prosperity were frequently held out as the ultimate reward for 'loyalty' and making vast areas of land available for settlement. The present writers are not suggesting that the Crown was under an obligation to guarantee Maori economic success. Rather, it is suggested that the Crown was under an obligation to at least ensure that the preconditions for this existed. In virtually every respect it failed to do so.

*13. Kotahitanga*

75. As noted, by the end of the 1880s Northland Maori, faced with political, social and economic marginalisation, felt that a more effective response lay in the

[79] Wai 1040 #A12, pp1259-1261.
[80] Wai 1040 #A12, pp1207-1209.

creation of a pan-Maori political body. This took shape in the Kotahitanga movement. Employing the principle 'united we stand, divided we fall', Kotahitanga aimed to establish a Maori Parliament and present a strong and unified Maori front to the Government which would be difficult to dismiss. The Northland Maori contribution to the establishment of Kotahitanga and its associated Maori Parliament was immense. It was they who provided the spark at meetings at Waitangi in 1888, 1889 and 1892, and it was they who carried the document embodying the spirit of Kotahitanga for the assent of Maori in other districts.[81]

76. The Kotahitanga movement and the Maori Parliament sourced its authority to the Declaration of Independence, the Treaty/Te Tiriti of Waitangi and the 1852 Constitution Act. The Maori Parliament hoped to eventually take over legislative power in matters affecting Maori, thereby establishing a system of dual authority in New Zealand. The immediate aim, however, was abolition of the Native Land Court. Initially encouraged by the Crown to believe that their proposals might be listened to, Kotahitanga introduced a number of bills through the Northern Maori MHR Hone Heke Ngapua seeking the colonial Parliament's sanction of its authority.

77. Northern Maori continued to stand at the forefront of the movement. From the extent of Northland Maori involvement in Kotahitanga there can be no doubt that they embraced it as the primary vehicle both for the airing of their grievances and as a means of realising of their long-standing political and economic aspirations. Although the colonial Parliament ultimately refused to ratify the measures passed by the Maori Parliament, Northland Maori commitment to Kotahitanga throughout the last decade of the nineteenth century remained very strong.[82] Despite their commitment to Kotahitanga, Northland Maori never lost their independent voice within the movement. Less willing than others to compromise with the Crown over recognition of the Maori Parliament's authority, they continually introduced measures that reflected this stance. Hone Heke Ngapua's bill, providing for a recognition of the Maori Parliament's authority, was strongly

[81] Wai 1040, #A12, p1275.
[82] Wai 1040, #A12, pp1278-1304.

supported in the north and eventually gathered enough support from other tribes to become the centrepiece of Kotahitanga political strategy in the mid-1890s.[83]

78. The failure of Kotahitanga's legislative initiatives largely reflected the attitude of the Liberal government. Officials did not initially discourage the idea of a pan-tribal movement. Their rationale was twofold. Firstly, Kotahitanga's repeated professions of loyalty and desire to benefit both races convinced the Crown, at least initially, that the movement was not politically dangerous. Secondly, the Crown hoped that through consultation with the movement it would be able to settle the 'native land question' speedily and thus open up further Maori land for settlement. Indeed, the Crown's understanding of 'benefit for both races' largely hinged on the provision of Maori land for European settlement.[84]

79. By 1893 the Crown had to revise this attitude as its initial assessment proved misguided. It soon became apparent that Maori had no desire for further land sales, as exemplified by Kotahitanga's dual policy of boycotting the Native Land Court while at the same time attempting to abolish it. Moreover, Kotahitanga's political agenda, as embodied in Hone Heke Ngapua's bill, proved much more subversive than originally thought. Even though Kotahitanga proposals were always soundly defeated in the colonial Parliament, the Crown could not afford to treat the movement's political ambitions lightly. After all, Kotahitanga had the support of over 35,000 Maori by 1895. For the Crown, the Kotahitanga Parliament ceased to be harmless gatherings and began to present a potent political movement which required harnessing.[85]

80. The Crown made its move in 1898, when it introduced a bill relating to Maori Councils and Maori land administration which appeared to address some of the most pressing concerns of the Kotahitanga. The bill caused a major split within the ranks of the movement, with Northland Maori refusing to accept it since it did not fully address their political aspirations.[86] This split once again demonstrated

[83] Wai 1040, #A12, pp1293-1303.
[84] Wai 1040, #A12, p1305.
[85] Wai 1040, #A12, p1305.
[86] Wai 1040, #A12, pp1308-1321.

that although Northland Maori remained fully committed to Kotahitanga, they nevertheless continued to retain their independent voice within the movement, and it was only in 1899, after realising that division was proving counter-productive, that they accepted the Government's bill as a basis for negotiation.[87]

*14. Maori Councils and Maori Land Administration*

81. As noted, concerted Kotahitanga pressure for Maori self-government, combined with the Crown's awareness of the genuine threat of Maori becoming landless following the large-scale land purchasing projects of the 1890s, necessitated a change in Crown policy. This change was embodied in the twin legislation passed in 1900; namely, the Maori Councils Act, outwardly intended to provide a degree of local self-government to Maori, and the Maori Land Administration Act, which set up a mechanism designed to implement the 'taihoa' policy of halting further land sales and providing Maori with a certain level of agency and control over their lands.[88]

82. When the 1900 legislation eventually arrived Northland Maori, although far from completely satisfied with its provisions, nevertheless expended a tremendous amount of energy in an effort to make the measures work to their advantage.[89] As the decade wore on, however, it became apparent that there was a significant divergence between Northland Maori and Crown expectations. The central issue remained Maori land. While the Crown recognised that some Maori were in danger of becoming landless, it balanced this realisation, spurred on by the settler press, with a continued desire to facilitate and expand the general settlement at the expense of so-called 'idle' and 'surplus' Maori land. This balancing act forced the Crown to reshape Maori land laws throughout the decade, with major legislation passed in 1905 and 1907, in the form of Maori and Native Land Settlement Acts, and to develop a plan for the more effective use of Maori land, which it entrusted to the Stout-Ngata Commission. This process culminated in 1909 with the passage

[87] Wai 1040, #A12, pp1308-1321.
[88] Wai 1040, #A12, p1404.
[89] Wai 1040, #A12, pp. 1315-1321.

of the Native Land Act, a consolidating law which marked a complete departure from the intention of the 1900 legislation.[90]

83. The Maori Councils Act 1900 was ostensibly designed to devolve some local autonomy to Maori. The Act provided for the establishment of self-governing bodies in the mainly rural districts where most Maori still lived. The legislation eventually set up twenty-six Maori Councils across New Zealand, six of which were situated in Northland (Hokianga, Whangarei, Tokerau, Mangonui, Ngati Whatua and Wairoa). Tokerau's name was later changed to Pewhairangi, and it encompassed the Bay of Islands and Whangaroa. Part of Whangaroa also seemingly came under the jurisdiction of the Mangonui Council, while the Ngati Whatua Council included Mahurangi and Kaipara.[91]

84. Northern Maori hoped the Act would help them achieve their aspirations for self-government. The efficacy with which the Northland Councils approved their by-laws and set up village committees confirms an initial burst of enthusiasm. From an early stage, however, Maori realised that the legislation did not provide the Councils with a sufficiently wide jurisdiction to fully satisfy their political goals. Northland Maori repeatedly sought to have the powers of the Councils extended, especially in criminal cases involving only Maori.[92]

85. Such a jurisdictional extension would have amounted to the Crown handing over substantive authority. This was far from the Crown's thinking. The Crown's motivation was to prevent more radical political ambitions from gathering momentum by providing a harmless mechanism which it might control and direct. One of the major selling points of the Act in the colonial Parliament was that it would give Maori 'something to occupy their attention, something for them to take an interest in'.[93]

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[90] Wai 1040, #A12, pp. 1404-1405.
[91] Wai 1040, #A12, pp. 1405-1406.
[92] Wai 1040, #A12, pp. 1406-1410.
[93] Wai 1040, #A12, p. 1410.

86. Although the Councils in Northland took up the challenge of regulating health and sanitation energetically, and with some success, they were not a viable pathway for political self-determination. Maori Councils continued to operate in one guise or another well into the twentieth century, but the hope engendered in 1900 had largely evaporated by 1915. Funding also presented a considerable problem for the Councils, with the promised Crown contributions drying up within a few years of their establishment.[94]

87. Related legislation, the Maori Land Administration Act, was also passed in 1900. The Act appeared to address widely held concerns in the north, and within Maoridom as a whole, over the rapid rate of alienation of tribal lands and a desire to halt this process. Indeed, these were some of the most important aims enunciated by the Kotahitanga movement which the 1900 legislation was designed to supplant. The Act set up Maori Land Councils. The Councils were composed of Maori and European members, but with a Maori majority. The Councils were able to assume some of the powers of the Native Land Court in specific circumstances, and were designed to ensure that a 'sufficient area' was left for Maori 'maintenance and support and to grow food'. Furthermore, the preamble of the Act stated that Maori should not be left landless, and provisions for inalienable reserves for papakainga, urupa, and other areas were duly included.[95]

88. One of the most important features of the Act was that it encouraged leasing, and when speaking about the measure both Seddon and Carroll stressed that it would open up more land for European settlement.[96] Leasing suited both northern Maori and the Crown at this point, albeit for different reasons. Kotahitanga and Northland Maori leaders striving for reform of the land laws in the 1890s saw leasing as a means of retaining what was left of the dwindling tribal estate, and with the passage of the Act they appeared to have achieved a considerable victory. Initially the Crown also saw leasing as the most expedient policy as officials were becoming concerned that landless Maori would be a burden on the state. This signalled a significant shift in the Crown's policy - European settlement did not

[94] Wai 1040, #A12, pp. 1414-1416.
[95] Wai 1040, #A12, pp. 1416-1417.
[96] Wai 1040, #A12, pp. 1418-1419.

necessarily need to hinge on permanent alienation of Maori land. This shift was connected with what became known as the 'taihoa policy', a pause in land sales urged by Native Minister James Carroll. The aim was to provide Maori with 'breathing space' to recover while receiving rentals from leasing their remaining lands. 'Taihoa' was not, however, intended to be more than a temporary measure.[97]

89. The leasing process envisaged by the Act empowered Maori owners to vest their lands voluntarily in the Maori Land Councils, who would in turn lease the lands to Europeans. Such a system would ostensibly ensure the further progress of European settlement, as well as continued Maori management of the leased lands in the form of the Maori majority on the Land Councils. Although in theory the system met both Maori and Crown ambitions it proved less effective in practice. Initial Northland Maori attitudes to the Councils were lukewarm at best. They had not been fully informed of the provisions of the Act and were weary at yet another change in legislation. Many Northland Maori preferred to retain control of their lands, and survey costs which could form a lien on rentals were a further disincentive. Many European settlers deeply resented the prospect of being tenants of Maori landlords, and consequently showed little interest in leasing lands vested in the Council.[98] However, once Northland Maori had a fuller appreciation of the provisions of the Act, especially in relation to the Papatupu Block Committees, they reacted with greater enthusiasm.[99]

90. Even though the great bulk of Maori land had already passed through the Land Court by 1900, the provision allowing for the setting up of Papatupu Block Committees was an important feature of the Maori Land Administration Act as far as Northland Maori were concerned. Block committees conducted investigations into remaining customary land, and this was the first time that a legal process to determine Maori land titles had been put in place without alienation following directly as a result. The main strength of the Committees' work was their insistence on resolving competing land claims through the application of tikanga and encouraging cooperation between contending parties, and such arrangements

[97] Wai 1040, #A12, pp. 1417-1418.
[98] Wai 1040, #A12, pp. 1424-1426.
[99] Wai 1040, #A12, pp. 1419-1420.

were usually confirmed by the Council. Titles to land could thus be ascertained on Maori terms and in a Maori forum. The importance of such a process must not be underestimated. It avoided the worst excesses of the Native Land Court and the need for lawyers, interpreters and other unsavoury characters. Fears that delegating the determination of land titles to Maori would lead to uncertainty and inter-hapu strife, as often claimed by Europeans throughout the nineteenth century, proved largely unfounded.[100] Nevertheless, the Papatupu Block Committees were not universally embraced by Northland Maori, the most obvious example being an incident at Tautoro in 1902 when a leading rangatira of the area, Iraia Kuao, threatened violence against Papatupu Block Committee members who were seeking to adjudicate the ownership of his hapu's lands. This eventually ended with Kuao's arrest.[101]

91. In 1905 the Crown caved in to opposition pressure and the settler press, which had declared the 1900 legislation a spectacular failure, and new legislation was introduced which replaced the Land Councils with Maori Land Boards. The Maori majority which had characterised the Maori Land Councils was abandoned, and the Boards were given coercive powers, including the compulsory vesting of Maori land in Northland. Like the 1900 Act, the new legislation attempted to both satisfy a European desire for Maori land and address Maori concerns and possible landlessness. Unlike the 1900 Act, however, the 1905 legislation leaned far more heavily on the European side and employed compulsion. An example of the working of this coercive mechanism in Northland was the provision allowing for compulsory vesting of perceived 'surplus' lands in the newly constituted Tokerau Maori Land Board. Although Northern Maori MHR Hone Heke Ngapua agreed to this measure (which cost him much support at the next election) in return for the Crown not resuming purchase activities in Northland, it effectively deprived Northland Maori of over 160,000 acres by 1911, contrary to the owners' wishes expressed on a number of occasions.[102]

[100] Wai 1040, #A12, pp. 1426-1433.
[101] Wai 1040, #A12, pp. 1434-1440.
[102] Wai 1040, #A12, pp. 1441-1446, 1457.

92. Even more fundamentally the 1905 Act represented a substantial loss of Maori agency. The reconstitution of Land Councils into Land Boards entailed a change from partially elected bodies with Maori majorities into wholly nominated bodies with a European majority. This revealed the primary purpose of the Act. The Papatupu Block Committees, forming a vital link between Maori custom and European law, gradually lost influence in the early years of the Board's existence, and were abolished by 1909. These measures, coupled with a preference for compulsion over voluntarism, largely removed any effective northern Maori agency.[103]

*15. The Stout-Ngata Commission*

93. By 1907 a means of finding a way to 'effectively' utilise remaining Maori land was once more a Crown priority. Accordingly the Crown set up a Commission of Inquiry jointly chaired by Apirana Ngata and the veteran Liberal politician and Chief Justice Sir Robert Stout. The Commission's task was to identify Maori lands lying 'idle' and not 'profitably occupied', and make recommendations as to how these lands would be best 'utilised and settled in the interests of the Native owners'. Despite seemingly generous pronouncements about serving the interests of Maori, the Commission was, at its heart, intended to be a vehicle for the promotion of European settlement.[104]

94. Although Stout and Ngata's recommendations fell short of Northland Maori expectations they were not exactly disastrous. The Commissioners clearly disregarded the wishes of the owners in a number of cases in Hokianga and the Bay of Islands in the interests of settlement, but while they recommended further sales of land, they did not encourage any large-scale permanent alienation. The Commission was required to balance Crown imperatives requiring further settlement with ensuring that Maori did not become completely landless. In such circumstances the Commissioners perhaps showed as much sympathy as could be expected to Maori aspirations. They noted Maori wishes for land retention and

[103] Wai 1040, #A12, pp. 1447-1450.
[104] Wai 1040, #A12, p. 1458.

development, and stressed that they should be addressed 'so far as possible within the requirements of the national interest'. The Commissioners also criticised some aspects of Maori land acquisition, for example the provision enabling the Government to alienate by overriding interests of minorities of collective owners.[105]

95. While Stout and Ngata supported and encouraged Northland Maori farming efforts and initiatives, such support was largely guided by settler ideology. Although the Commissioners strongly believed that the profitable settlement of land was not only beneficial to Maori but to the country itself, their discourse reveals that assimilation continued to be the ultimate goal. In this regard it could be said that the individualising and assimilationist project commenced in 1865 had not yet been completed, and the Commission sought to advance it in its own way. They had serious reservations about the Maori 'communistic system', and argued that no single owner should have the use of more than one papakainga. By forcing owners to live and work on a single papakainga block, the Commission hoped to instil the 'settler spirit' in Maori.[106]

96. Perhaps the most lasting impact of the Commission was not necessarily in its recommendations respecting Maori land, but those concerning the need for a consolidation of Maori land legislation. The Commissioners noted that there were currently over sixty statutes dealing with Maori land, representing a befuddling plethora of conflicting provisions, interpretations and definitions. New legislation duly came in the form of the 1909 Native Land Act. The main purpose of the Act was to simplify the process of Maori land alienation and thus accelerate the settlement of 'idle' Maori lands.[107] The 1909 Act also terminated all existing restrictions on the alienation of freehold Maori land. Under the new legislative regime potential landlessness became the most important consideration. A landless Maori was defined as one whose 'total beneficial interests in Native freehold land… are insufficient for his adequate maintenance'. The concept of papakainga lands created under the 1900 Act, whereby specific pieces of land

[105] Wai 1040, #A12, pp. 1473-1474.
[106] Wai 1040, #A12, pp. 1473-1474.
[107] Wai 1040, #A12, pp. 1474-1475.

were set aside for individual Maori for their occupation and maintenance, were abandoned.[108]

97. The regressive nature of Maori land legislation - from the Northland Maori perspective at least - during the first decade of the twentieth century made a Maori response inevitable. From 1905, there were attempts to revive Kotahitanga, and there was also a large Kingitanga-sponsored hui at Waahi in 1907 which sought to form a unified Maori body, but political differences once more proved too difficult to bridge. Perhaps the most notable effort during this time was the petition sponsored by Tupu Taingakawa. This was signed by over 1,200 Maori - including over 100 from Northland. This petition was presented to Parliament in 1909. It sought Crown recognition of Maori rangatiratanga and the right of self-government, and catalogued the Crown failures to uphold the Treaty/Te Tiriti of Waitangi. Needless to say the petition fell on deaf ears. Despite the continued political efforts for recognition of their aspirations, as demonstrated by their contribution to the 1909 petition, by the end of the decade Northland Maori appeared to be completely politically marginalised.[109]

*16. The Dog Tax 'War'*

98. The most direct manifestation of the struggle for authority between northern Maori and the Crown at the end of the nineteenth century was played out through an unlikely avenue - the dog-tax. The passage of the Dog Registration Act in 1880 had ushered in a storm of protest from Maori all over New Zealand, including Northland. There can be little doubt that this opposition was partially driven by the added financial burden placed on Maori by the tax, but the driving force behind protest in Northland was often political in nature. Northland hapu deeply resented this further unwelcome intrusion upon their authority and autonomy, which they insisted had been guaranteed at Waitangi, reaffirmed at Kohimarama, and enshrined in s71 of the 1852 Constitution Act.[110]

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[108] Wai 1040, #A12, pp. 1475-1478.
[109] Wai 1040, #A12, pp. 1478-1480.
[110] Wai 1040, #A12, p. 1326. 1328-1344.

99. For the most part the dog-tax was not collected in Northland through most of the 1880s. Crown officials were aware of the extent to which Northland Maori opposed the tax and this, combined with their own inability to enforce payment, led to the Act not being rigorously applied. Following renewed attempts to collect the dog-tax from the mid-1880s, encouraged by local bodies, Northland Maori attempted to work with Crown officials and Ministers to have their districts exempted from the operation of the Dog Registration Act. Northern Maori thought they had won a victory in 1889 when it appeared that Northland may have been exempted, but this proved to be only a temporary respite.

100. From 1892 Crown officials targeted influential leaders who refused to pay the tax while dealing leniently with their followers, as long as their refusal to pay related to economic hardship and was not politically motivated. As soon as it became clear that non-payment was motivated by political considerations imposition of the full force of the law and implied threats were common.[111] This strategy proved reasonably effective, although opposition to the tax was taken up by the Kotahitanga movement, and sporadic Maori efforts directed against the tax continued in the Bay of Islands and Whangaroa after 1895.

101. The most serious resistance to the dog-tax in Northland unfolded in Hokianga in 1898.[112] In the centre of these events was a semi-religious group calling themselves Te Huihui, drawn largely from Te Mahurhure hapu who had chosen to separate themselves from European influence. Te Huihui refusal to pay the tax was a political statement. For the Crown this was a test of its authority and sovereignty in Northland, and it decided to impose its authority by any means necessary. This culminated in the somewhat misnamed ‘dog-tax war’ of 1898. Newall, the commander of the Crown forces, refused to enter into any negotiations and resolved to end the conflict in a manner that would uphold the Crown's 'prestige'. A peaceful resolution was eventually achieved through a combination of good fortune and the intervention of other Maori. Had Newall and his troops not been delayed on the morning of their advance, and but for the intervention of Pene Taui, Hapakuku Moetara, Te Tai, Heremia Te Wake, Hone

[111] Wai 1040, #A12, pp. 1345-1350.
[112] Wai 1040, #A12, pp. 1344-1356.

Heke and other chiefs, who worked hard to prevent a violent outcome, the 'dog-tax war' could easily have resulted in death and injury.[113] Te Huihui eventually submitted and surrendered the few rusty muskets they possessed, and their leaders, including Hone Toia, were taken into custody.

102. Thus, by 1898, fifty eight years after the signing of the Treaty of Waitangi, the Crown had finally achieved its last remaining aim: the extension of its effective sovereignty over all of Northland. As noted above, for the most part this had not been achieved by naked coercion, but rather by the gradual erosion of Maori authority and autonomy, principally through the destruction of tribal rangatiratanga and land loss, largely facilitated by the Native Land Court. By the end of the century northern Maori were politically, socially and economically marginalised.

[113] Wai 1040, #A12, pp. 1359-1394.