Chapter 14

The Pouakani B9B Boundary Dispute

14.1 Introduction

In this chapter we address the specific problems of survey, or lack of it, which were inherited by the trustees of the Pouakani B9B and C1B1 and C1B2 blocks. The two trusts, with separate trust orders created by the Maori Land Court under s438 of the Maori Affairs Act 1953 are named Pouakani B9B Trust and Titiraupenga Trust respectively. These blocks are parts of the original Pouakani B9 and C1 blocks which together comprise the eleventh piece in the jigsaw puzzle described in chapter 9 (map 9.3).

14.2 The Trusts and their Lands

The Titiraupenga Trust administers the land which is part of the original Pouakani C1 or Kaiwha block. Pouakani C1B1 and C1B2 blocks were a division in 1926 of the Pouakani C1B block which remained in Maori ownership following the sale of interests to the Crown which were partitioned out as the Pouakani C1A block in 1899. Pouakani C1B1 block was created by a partition order made at Rotorua on 11 March 1926 which vested the land in 12 owners. The partition order states that the land contains 1196 acres as shown on the diagram attached to the order. The diagram was drawn from a survey plan prepared in 1972 held by the Department of Survey and Land Information at Hamilton under number ML20635. The order was signed and sealed on 26 May 1972. Pouakani C1B2 was also created by partition order made at Rotorua on 11 March 1926. The order vested the land in 36 owners. The signed sealed partition order states that the land contains 2672 acres 1 rood as shown on the diagram attached to the order. This diagram too was prepared from ML20635 surveyed in 1972. This order was also signed and sealed on 26 May 1972.

Pouakani C1B1 and Pouakani C1B2 came into existence in 1926. But between 1926 and 1972 anyone searching in the Maori Land Court records for the titles to these lands would have found only draft partition orders. These draft orders would not have been signed or sealed. No diagrams would have been attached. A person wanting to find out the boundaries of the land would have had to go back to the diagram attached to the signed order of 26 July 1899 creating the parent title which was Pouakani C1B, then find the minute book in which the court had recorded the minutes of 11 March 1926 in which the court described in words the way in which the land had been divided.

On 18 March 1982 the Maori Land Court sitting at Taupo made trust orders under s438 of the Maori Affairs Act 1953 vesting each of Pouakani C1B1 and Pouakani C1B2 in seven trustees, including John Hanita Paki, on the Titiraupenga Trust, to manage the lands.[1] One of the trustees resigned and the number of trustees was reduced to six on 3 November 1983. By an order under

s434A of the Maori Affairs Act 1953 the ownership of Pouakani C1B1 and Pouakani C1B2 was aggregated on 18 March 1985.[2] In July 1985 Mr Paki was elected chairman of the Titiraupenga Trust. The Titiraupenga Trust lands comprised 1565.4 hectares, of which 723 hectares were in pasture and 842.4 hectares in hush. The hlock had been developed hy the Department of Lands and Survey as part of the Huiarau Development Scbeme, one of many large "land development schemes" in the Taupo district wbere Crown and Maori lands were converted from scruh and forest into pasture. In these development schemes the Maori-owned blocks were administered and financed under the provisions of part XXIV of the Maori Affairs Act 1953. The Pouakani C1B1 and C1B2 blocks were placed under these provisions in March 1955. The evidence of Mr Were, farm management consultant to the Titiraupenga Trust, outlined the subsequent negotiations in the 1980s:

> In 1981 Lands and Survey Department and Maori Affairs Department had decided that the Maori land should be returned to the Maori owners so that the Crown Land [in the Huiarau scheme] could be prepared for subdivision and settlement.
>
> In April 1983 the Trustees met with Lands and Survey Department to discuss the apportionment of equity between the Crown and Maori owners. The equity calculations presented hy tbe Crown which had been approved by the Maori Affairs Department clearly favoured the Crown and were not accepted by the Trustees. The Crown refused to recognize the effect of the higher quality of the Manri Land portion in making apportionments of the total block. The Trustees were also concerned that all the buildings on the hlock had been constructed on the Crown land, had been paid for by the total hlock and were now being retained by the Crown at depreciated values.
>
> Following protracted negotiations the Trustees reluctantly agreed to accept revised equity calculations which had increased the value of the Trustees equity by approximately 25%. On 5 May 1983 the Trustees assumed control of the land and commenced farming on their own account.
>
> The property was returned with pastures in satisfactory condition, adequate subdivision though some of the fences required maintenance, and with a barely adequate water supply. There were no bouses or woolshed ....
>
> The development of an attractive farm property was completed by mid 1984 and the Trustees have continued to farm the property to date. (A38:2-3)

On 28 February 1985 the Titiraupenga Trust lands were released from the provisions of part XXIV of the Maori Affairs Act 1953.

The Pouakani B9B Trust administers the land known as Pouakani B9B block whicb was created by an order of the Maori Land Court made at Kihikihi on 24 July 1899. The land was vested in 32 owners and contains 2660 acres as shown on the diagram annexed to the order. The order has been signed and sealed. It is the uncertainty of the boundaries of this land that is the central issue in the boundary problems to be described in this section of our report.

On 4 November 1983 tbe Maori Land Court sitting at Taupo made an order under s438 vesting Pouakani B9B in five trustees upon the following trusts, as set out in the trust order:

1. To investigate the future use and application of the land and to that intent arrange any feasibility studies required but with no power to alienate the land by way of lease or mortgage or charge.

2. To direct the Registrar within 12 months [of the date of the order] or as soon as the investigations are complete, to convene a meeting of owners to receive the report and resolve on the future of the lands.[3]

On 4 June 1986 the court sitting at Taupo made an order vesting the land in new trustees. These trustees were the same people as five of the trustees in whom Pouakani C1B1 and Pouakani C1B2 were vested on 18 March 1982. The court also made an order creating a new trust, which was named the Pouakani B9B Trust.[4]

The objects of both the Pouakani B9B and the Titiraupenga Trusts are identical and set out in the respective trust orders as follows:

(a) The object of the trust shall be to provide for the use management and alienation of the land and any other property or assets of the trust to the best advantage of the beneficial owners, or the better habitation or user of land by beneficial owners and to carry on any one or more businesses, undertakings, or enterprises either upon the land or part or parts thereof, or in connection with some user of the land, which will directly or indirectly assist in the better utilization of the resources of the land or any other trust property or the commercial realisation thereof for the beneficial owners.

(b) To ensure the retention of the land for the present Maori beneficial owners their successors and assigns.

(c) To represent the beneficial owners on all matters relating to the land and to the use and enjoyment of the facilities associated therewith.[5]

Although the same people are trustees of both trusts, there are two separate lists of beneficial owners and two separate trust orders, so that the Titiraupenga Trust and the Pouakani B9B Trust are two separate trusts. The boundaries of the Titiraupenga Trust lands were defined by survey in 1972 and there is no dispute over those boundaries. There is a dispute over the boundaries of Pouakani B9B, and the Pouakani B9B Trust has been involved in litigation over this dispute. Evidence was given to us by Mr Were, the farm management consultant to the Titiraupenga Trust that:

During 1983 the Trustees agreed to pursue grievances of the Maori people relating to the original subdivision and acquisition by the Crown of the Pouakani Block.

Stace Hammond Grace & Partners were instructed to assist as solicitors in endeavouring to resolve these grievances ....

During the period since 1983 the Trustees have pursued all available sources of income:

— they continue to farm their land

— they have logged part of B9B

— they have extracted and sold metal.

The overall financial position of the Trustees has nevertheless continued to deteriorate as the costs of researching and pursuing the various land claims have resulted in expenditure significantly greater than income. (A38:3-4)

Initially it caused the tribunal some concern that one trust was apparently financing the other trust's litigation. However, Pouakani B9B was formerly

part of a much larger block in the same ownership, as were Pouakani C1B1 and C1B2 Blocks. Investigations into the history of their land suggested to the trustees that their remaining lands were both much smaller than they should have been. The litigation arose over one aspect of what they saw as their wider claim, including the location of the boundary between the Maraeroa and Pouakani blocks.

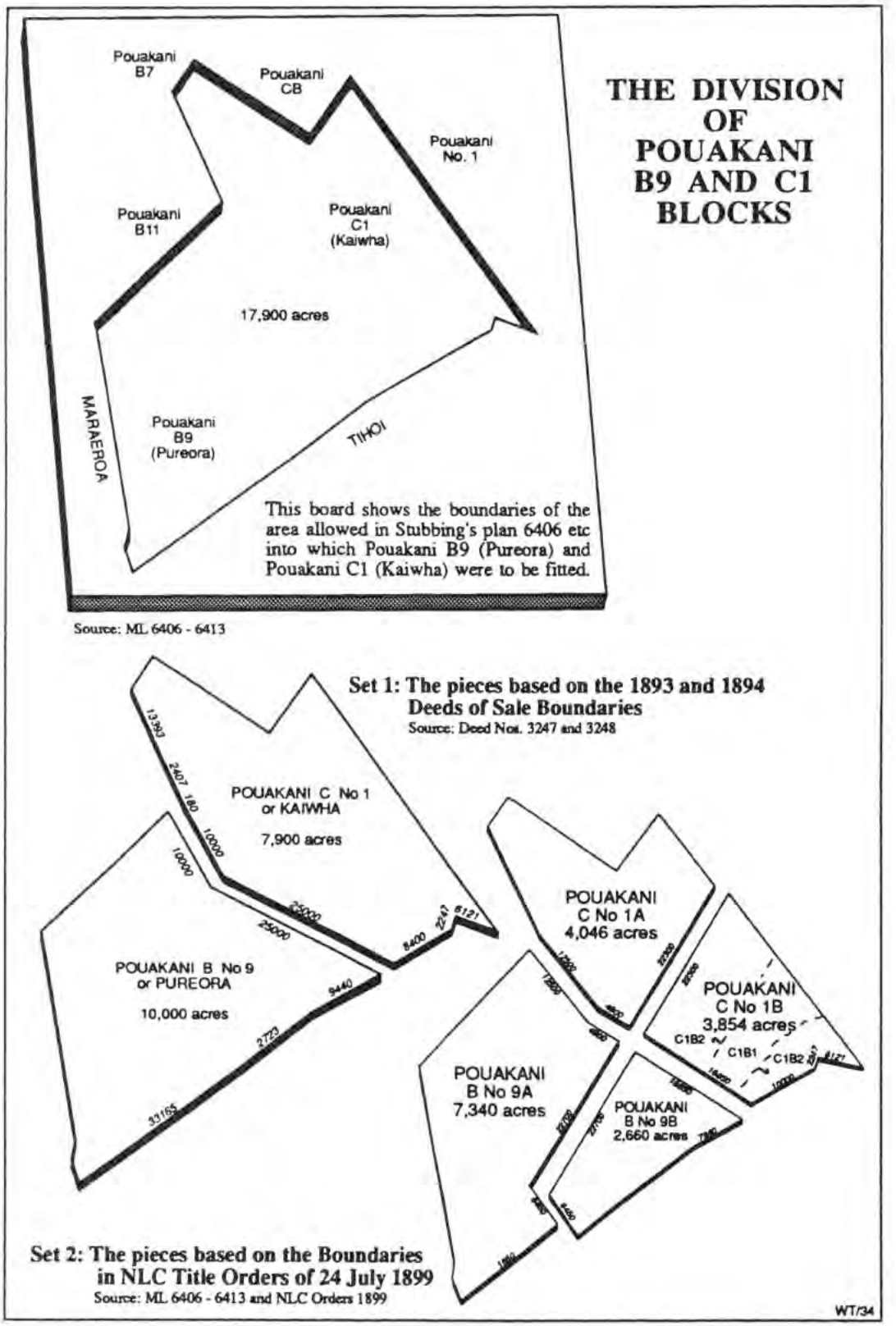
We assume that the owners, the trustees, the professional advisers to the trusts, and the auditors of their accounts, have considered whether the money of one trust has been properly expended in litigation in which the other trust was involved, and whether the orders setting up the Titiraupenga Trust and the Pouakani B9B Trust authorised the expenditure of money "to pursue grievances of the Maori people relating to the original subdivision and acquisition by the Crown of the Pouakani block". These are matters within the jurisdiction of the Maori Land Court and if there are any questions raised these should be dealt with by the Maori Land Court.

14.3 The Survey Problem

In February 1893 Mr W C Kensington of the Department of Lands and Survey wrote to Mr P Sheridan of the land purchase office enclosing a tracing showing the Pouakani blocks. This tracing is referred to in this report as Stubbing's sketch plan and is reproduced in appendix 13, figure 1A. Stubbing's sketch plan of the "Pouakani subdivisions" showed "Pouakani C No 1 Kaiwha Blk." and "Pouakani B No 9 Pureora Blk.", a total area of 17,900 acres, but with no boundary line between the two blocks (B7:267).[6] We assume, for reasons explained below and in appendix 13, that Stubbing's survey plan ML6406 etc did not include that line either when it was submitted to the chief surveyor in November 1892. A boundary between them was drawn in at a later date, when parts of B9 and C1 blocks were sold to the Crown. It is clear that this happened because the boundaries on plans drawn on the 1893 deeds of sales are not the same as those boundaries shown in the diagrams on the partition orders of the Native Land Court in 1899 when the Crown partitioned out the interests it had purchased as the Pouakani B9A and C1A blocks.

The survey problem is shown in map 14.1 which shows the subdivisions of the "eleventh piece" in the jigsaw puzzle set out in chapter 9. On the board there is an empty space of 17,900 acres in which to fit the pieces described on Stubbing's plan as Pouakani B9 and C1. On map 14.1, set 1 shows the shapes of the two pieces as they appeared on the plans drawn in 1893 on deeds which were signed by individuals selling their interests in these blocks. The first signature on these deeds is dated 8 August 1893, and sales of individual interests continued over several years. In 1899 the Crown applied to the Native Land Court to have the interests purchased since 1893 partitioned out. The result was the four pieces in map 14.1, set 2, which give different dimensions to the boundary between the original Pouakani B9 and C1 blocks. In 1926, Pouakani C1B block was partitioned into C1B1 and C1B2, but this was not defined by survey at the time.

It was not until 1947 that any attempt was made to survey the boundaries between these lands. There is in the Hamilton Department of Survey and Land Information office a plan numbered ML16550 which was prepared by Arthur Sandel and is dated 5 May 1947. It was prepared for the purpose of completing


THE DIVISION OF POUAKANI B9 AND C1 BLOCKS
Pouakani B7
Pouakani CB
Pouakani No. 1
Pouakani B11
Pouakani C1 (Kaiwha)
17,900 acres
MARAEROA
Pouakani B9 (Pureora)
TIHOI
This board shows the boundaries of the area allowed in Stubbing's plan 6406 etc into which Pouakani B9 (Pureora) and Pouakani C1 (Kaiwha) were to be fitted.
Source: ML 6406 - 6413
Set 1: The pieces based on the 1893 and 1894 Deeds of Sale Boundaries
Source: Deed Nos. 3247 and 3248
POUAKANI C No 1 or KAIWHA
7,900 acres
POUAKANI B No 9 or PUREORA
10,000 acres
POUAKANI C No 1A
4,046 acres
POUAKANI C No 1B
3,854 acres
POUAKANI B No 9A
7,340 acres
POUAKANI B No 9B
2,660 acres
Set 2: The pieces based on the Boundaries in NLC Title Orders of 24 July 1899
Source: ML 6406 - 6413 and NLC Orders 1899
WT/34

Map 14.1

the partition orders of 11 March 1926 hy survey. The Department of Lands and Survey file 20/451 reveals how inadequately the line between Pouakani B9 and C1 drawn on Stuhhing's plan ML6406 etc had fixed this houndary. On 3 February 1947 the registrar of the Maori Land Court at Rotorua wrote to the chief surveyor at Auckland under the heading "Pouakani C1B1":

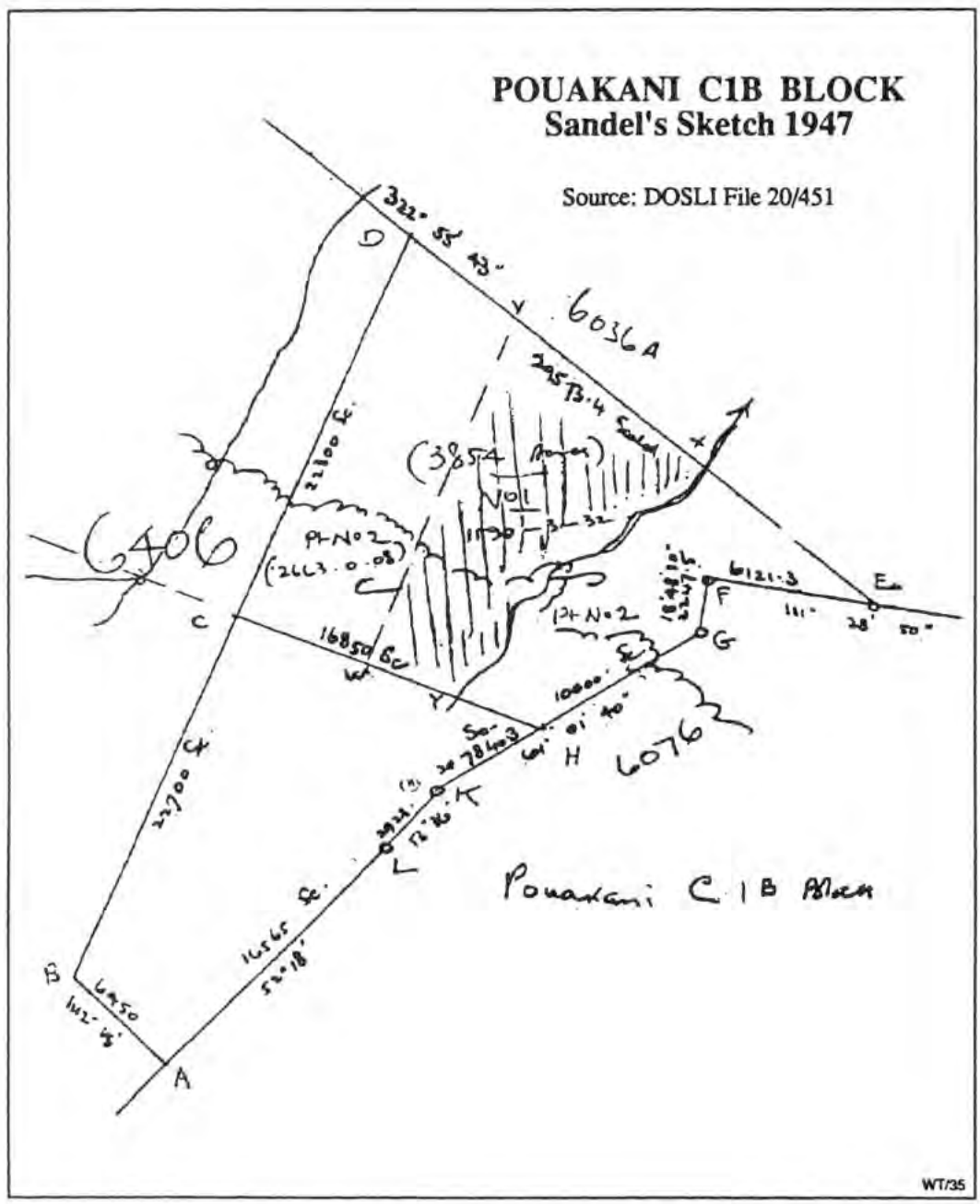
> The Rotoiti Timber Coy. Ltd has requested that a survey of the ahove block be requisitioned and has nominated Mr Sandel of Taumarunui to do the work. Mr Sandel, I understand, is already carrying on with the survey.
>
> The Judge would like to know something of the reliahility of the existing survey which appears to bave been made about 1899 (plan 6412B). He considers that there is some possibility that the peripbery will need to be checked in order to ensure that there is sufficient area remaining for C1B2. 1 enclose copy of minutes on partition for your information.
>
> I am informed by Mr Sandel that the N.W. boundary of C1B (22300) has never been cut or pegged and 1 sbould be obliged if you could inform me how this came about.[7]

The chief surveyor replied on 25 February 1947:

> In reply to your memorandum of the 3rd instant, 1 have to advise that the surveys adjoining the above block are all very old being dated 1885 and 1886, and it is unlikely tbat many of the old pegs will be found. The surveyor will therefore be required to redefine the north eastern houndaries of C1A and C1B and the southeastern boundary of C1B tying in the latter boundary to trig. 1774 Titiraupenga. I would suggest that the distance of 10,000 [links] along the south eastern boundary of CIB be laid off and the southwestern boundary swung from that point to the south eastern corner of Pouakani blk shown on plan 14984/2. The definition of the Mihiangi [sic] stream shown on Survey Office plan 20946/2 could then be adopted. The corners of the boundary between C1A and C1B should be pegged allowing the distances 16850 and 29573.4 shown on plan 6406 hut unless you require it this boundary could be left undefined on the ground, and the Crown land area of C1A left undetermined. This procedure allows for sufficient survey work to be done to calculate the area of C1B and any surplus or deficit could then be apportioned between C1B1 and C1B2.
>
> With regard to the last paragraph of your memorandum, it appears that the boundary lines on plan 6406 were merely calculated in order to save the natives the cost of survey, a method whicb present survey regulations will not permit.[8]

Next on the file is a sketch (which is reproduced in map 14.2) and a hand written letter from Arthur Sandel. It is addressed to Mr W Traill, care of chief surveyor, Auckland, and appears to have been received on 3 March 1947:

> I bave a lovely survey bere and a bit of a proposition too. I enclose a sketcb. These lovely boundaries are shown on ML6406 by D Stubbing 1893.
>
> All tbe boundaries except a small part E.F.G. are *scaled* and both the western and the southern bdys have *no bearing*! and yet a title has been given to the land. And 1 come along to clean up the mess!
>
> The N.E.bdy. was surveyed by W. Cussen in 1890, and the S.E. bdy by W Cussen in 1886 and I bave found 4 of those pegs in good condition, 2' 6" long & 5" x 5" about. I bope the angels are kind to old Bill Cussen![9]


POUAKANI C1B BLOCK
Sandel's Sketch 1947
Source: DOSLI File 20/451
322° 55' 43"
6036A
6406
6076
Pouakani C 1B Block
WT/35

Map 14.2

Cussen's boundary survey had bearings and distances between the pegs that he put in. But H, A, B, C and D on map 14.2 were not pegged hy Cussen and it was the distances between G, H, A, B, C, D, and E that were scaled. Sandel expressed, in a colourful way, his gratitude to Cussen for using pegs of such soundness that they lasted from 1886 to 1947.

In the same letter Sandel then said that he was working for the Rotoiti Timber Company which had purchased the timber on Pouakani C1B1 and only wanted a survey of Pouakani C1B1. He had made a special trip to Auckland to see Mr Traill, hut he was away:

> I saw Mr Enting, and he agreed with me that all they should ask us to do is the survey of No. 1 block. Mr Enting said he would place the matter before you on my behalf when you return.
>
> We went into the matter and decided on these lines: —
>
> The position of 'D' can be fixed, & the position of 'B' can be likewise. Then calculate BD for *Bearing* (missing on plan) and distance. Then take 22300 on this bearing from D to get C and calculate CH for bearing (also missing on plan) and distance — and this distance for sure will differ from 16850 — hut that doesn't matter, as it is only *scaled.* And this is the only way you can get anything definite from the figures on plan 6406. That will give a definite fixing of the hlock and a definite area, and if it is a few acres different from 3854 acres, this can be fixed pro rata in Nos 1 & 2. So there should be no worry whatsoever about the No 2 hlock being left lamenting at all.
>
> As a matter of fact, I think it would be quite reasonahle to come off the north bdy and traverse the stream XY & calculate myself into the back line HC at Y, and then run my own hack line to V & turn WV parallel to CD (Court ordered) to get my area. But I'm doing better than that. I am running out 100 chains from G to H and then running hack line H to W.
>
> We were told the Judge was going to consult you. I do hope you will be ahle to tell him that be can issue an authority for No. 1 only & that the interests of No 2 will in no one be jeopardised hy his action.[10]

Judge Harvey of the Maori Land Court issued a minute which was telephoned through to the Department of Lands and Survey on 10 March 1947:

> The first thing the Court requires to know is that the boundaries of C1B as shown on the [diagram in the Court] order enclose an area of 3854 acres. If it does so enclose the area then the survey and partitions of C1B can proceed. This survey should include pegging the C1A C1B boundary and the Lands Department should pay half the cost of this joh. The plans eventually submitted to the Court for approval should be sufficient to complete the C1B1 1B2 and Orders. On this hasis the requisition for survey can issue.[11]

There is another sketch and note from Mr Sandel to Mr Traill on the file. It appears that he called at the Auckland office of the Lands and Survey Department on or just before 14 March 1947. The letter references in this note are changed to correspond with those shown on map 14.2:

> [BD] is the *only* line you can calculate from data on old plan. I then go title distance 22300 on this hearing to get [C] & calculate [CH]. I think this is the only way to fix up a nasty plan. There is a surplus distance of 304.6 in line [BD]; and a surplus of *92.2* in line [CH]. Your computer Mr Harris & also Mr Enting gave it as their opinion that this was the proper

> way to fix the matter up. Unfortunately you were away when I called at Auckland.[12]

The chief surveyor wrote to the registrar of the Maori Land Court on 25 March 1947:

> In reply to your memorandum of the 10th March, Mr A Sandel, Registered Surveyor, of Taumarunui, who has been nominated to survey Pouakani C1B1 Block now advises me that from his preliminary work it can be assured that there is a surplus area of approximately 16 acres in C1B making the total 3870 acres as against the Court Order for 3854 acres. Sufficient area to satisfy B9B block adjoining is also assured.
>
> The matter of this department paying half the cost of the dividing line between C1A and C1B is being referred to my Head Office, and I will advise you further regarding this matter on receipt of a reply.
>
> I trust that the requisition for survey of Pouakani C1B1 and C1B2 may now issue.[13]

In a memorandum dated 25 March 1947, the chief surveyor, Auckland, submitted to the surveyor general in Wellington the proposal that the Department of Lands and Survey should pay half the cost of defining the boundary between Pouakani C1A and Pouakani C1B by survey. The chief surveyor replied:

> I enclose herewith a litho showing the locality of the land. The major portion of Pouakani block has been purchased by the Crown, and the Crown's title has been obtained by scaling boundaries on the original plan which was made in 1893 from surveys dating as far back as 1886. The portions left in Maori ownership are Pouakani C1B of 3854 acres and Pouakani B9B of 2660 acres. The native titles are in the form of Partition Orders of the Native Land Court on which diagrams have been endorsed with the boundaries defined by scaled distances used to obtain the Crown's title. No bearings are given on the plan in respect of these lines.[14]

The Crown agreed to pay half the cost of survey. It was estimated that the Crown's share would be £40. On 15 April 1947 the chief surveyor wrote to Mr Sandel sending him an authority to survey the Pouakani C1B1 and Pouakani C1B2 blocks. The last two sentences of the letter read:

> The southwest boundary of the block would appear to be best fixed by allowing the distance 22300 links between C1B and C1A blocks.
>
> These instructions supersede my telephone conversation with you on the 10 March.[15]

Mr Sandel's survey plan was delivered to the Department of Lands and Survey on 24 April 1947. On 20 May 1947 the chief surveyor issued a number of requisitions. On 1 December 1947 Mr Sandel wrote to the chief surveyor:

> With regard to the above survey. The position is that the Rotoiti Timber Co. are constructing a bridge over the Mangakino and when that is completed they have to make another two miles of road to reach the bush. Even from this point it is a 3 hours' walk to the Mihianga cliffs and gorge, where I have to try to find more old pegs. So I'm waiting till this access is formed to help me a bit on the way.
>
> It's a very tough place, and I knocked myself up properly last year there, so I want to have conditions a bit easier when I go back.[16]

In response to another letter from the chief surveyor, Mr Sandel replied on 31 May 1948 that the position was the same:

> As I said before, it is 3 hours' walk from our previous camp to the end of the survey where more work has to be done, and that means a good deal of cliff climbing in the Mihianga stream and had rocks and water over the knees for a good distance in that stream. So you can't wonder that I don't want any more walking than is necessary, and this road can save us a great deal of really hard work.[17]

Mr Sandel wrote again on 9 May 1950 saying that he was still waiting for the road to be formed:

> Even from our old camp it is three hours hard slogging each way & that doesn't leave mucb for the rest of a day. A cbap really needs to doss down for tbe night on the job & that means mid summer hut it's difficult to get men to do that — they jib at any walking at all & I'm baving great trouhle in getting anyone to help at any survey work, especially busb work.[18]

A note dated 2 June 1950 on the file recorded:

> Mr Sandel called and the matter of the survey work involved to prove the peg found at tbe southern end of the stream sbown on SO20946 was discussed with tbe Chief Surveyor, who asked Mr Sandel to attend to the other requisitions and return the plan.[19]

In 1954 resolutions to sell the timber on their lands were passed hy the owners of Pouakani C1B2 on 4 February and by the owners of Pouakani B9B on 20 May. Both meetings were called by the Maori Land Court under the provisions of part XXIII of the Maori Affairs Act 1953 (B13). No further work appears to have been done on the survey.

On 24 April 1968 the chief surveyor, Department of Lands and Survey, Hamilton, wrote to Messrs Sandel and Withers, registered surveyors, Taumarunui, explaining the position and commented, "It would be appreciated if you could look into this matter because even if the plan is not to be completed for title purposes it sbould be available as survey data". Mr Withers replied on 3 May 1968. His name is the only name that appears on the Sandel and Withers letterbead on whicb his letter was written:

> Herewith the plan and documents for the above survey as asked for. Quite a bunt through old records that I inberited from Mr Sandel was required before I found the plan.
>
> As I joined Mr Sandel in 1951, I know little of this survey, although I was involved in the milling operations of the Rotoiti Timber Co. in Pouakani B9B to the south of this survey.[20]

On 19 June 1968 the chief surveyor approved Sandel's plan ML16550 as to survey data only. In 1972, using this data, another surveyor, K R Locke, prepared plan ML20635 which completed by survey the partition orders of 11 March 1926 creating Pouakani C1B1 and Pouakani C1B2. The earlier statutes provided that only the chief judge could sign an order made by a retired or deceased judge. By 1972 this requirement had been relaxed for some time and any judge could sign an order made by any otber judge, whether or not that other judge was still in office. On 26 May 1972 Judge (later Chief Judge) K Gillanders Scott signed an approval of Locke's plan ML20635 and signed and sealed the partition orders for Pouakani C1B1 and Pouakani C1B2.

Locke's plan ML20635 was prepared in order to give effect to tbe court's intention in 1926. An exhibit note on Stubbing's plan ML6406 etc shows that it was before the court when the court partitioned Pouakani C1B. In 1926 the court was partitioning an area of 3854 acres being the land comprised in the

signed order of the Native Land Court made on 26 July 1899 creating Pouakani C1B. The diagram forming part of this order showed a south-west boundary of 16,850 links, hut the combined area of Pouakani C1B1 and C1B2 on Locke's plan ML20635 was not 3854 acres, hut 3858 acres 1 rood. And on Locke's plan ML20635 the south-west boundaries added up to not 16,850 links but 16,934 links. If anyone in 1972 had started to investigate the reason for the differences, he or sbe would bave been led into the morass that Mr J M Harris, of Te Kuiti, the registered surveyor acting for the claimants, found. By approving the plan and by signing and sealing the partition orders, Judge Scott enabled them to be registered in the Land Transfer Office and fixed the boundaries between the Pouakani C1B subdivisions on the one side and Pouakani C1A owned by the Crown and Pouakani B9B still in Maori ownership on the other side, until such time as the Maori Land Court might make an order within its jurisdiction and vary these boundaries.

It seems that at this point there were two issues. One was to locate on the ground the boundaries shown on Stubbing's plan ML6406 etc. The other was whether or not the area and houndaries of Pouakani B9B that had been drawn on Stuhhing's plan ML6406 etc were correct or wbether the owners of Pouakani B9B were entitled to a larger area of land. A surveyor in the 1980s, unfamiliar with the land, would have found that a partition order creating Pouakani B9B was signed and sealed and that a diagram formed part of the order. A plan number, ML6408B, was shown on the diagram. This should bave meant that the partition order had been completed by survey and that all a surveyor bad to do was to go to the Department of Survey and Land Information and find plan ML6408B and tbat on that plan the surveyor would find all the survey data that be or sbe needed in order to go out onto the land and find all the old survey pegs, or replace any that had rotted away.

But a surveyor in the 1980s would bave found, as Mr Sandel found 40 years earlier, that there was no plan ML6408B. There was Stubbing's plan ML6406 etc but three boundaries of Pouakani B9B shown on that plan were scaled, and two of the bearings were missing (map 14.3). A surveyor could not just go out and peg the boundaries of Pouakani B9B. Mr Sandel had to explain the position to the chief surveyor and get a ruling on how he should resolve the prohlem. Mr Sandel was really asking the chief surveyor to tell him which way to do it in order to produce a plan that the chief surveyor could approve. There might bave been some discussion as to how the problem might best be resolved. The final sentence in the cbief surveyor's letter of 15 April 1947 to Mr Sandel quoted above, "These instructions supersede my telephone conversation with you on the 10 March" suggests this. But even wben Mr Sandel had pegged the Pouakani C1B1 and Pouakani C1B2 boundaries after consultation with the Department of Lands and Survey, this did not fix the boundaries. When, 23 years later, Mr Locke did define the boundaries of Pouakani C1B1 and Pouakani C1B2 by survey, the then chief surveyor and his staff might have had different ideas on the best way to solve the survey problems.

The earliest date on which anyone could have put up a fence on a boundary of Pouakani C1B1 or Pouakani C1B2 and be confident that it really was on the boundary, was on 26 May 1972 when Chief Judge Scott approved Locke's plan ML20635 and signed the partition orders. Tbe boundaries were not fixed when Mr Locke pegged them (or adopted Mr Sandel's pegs). They were not fixed

when the chief surveyor approved plan ML20635 on 11 May 1972. They were not fixed until Chief Judge Scott approved the houndaries shown on Locke's plan ML20635, and signed and sealed the partition orders.

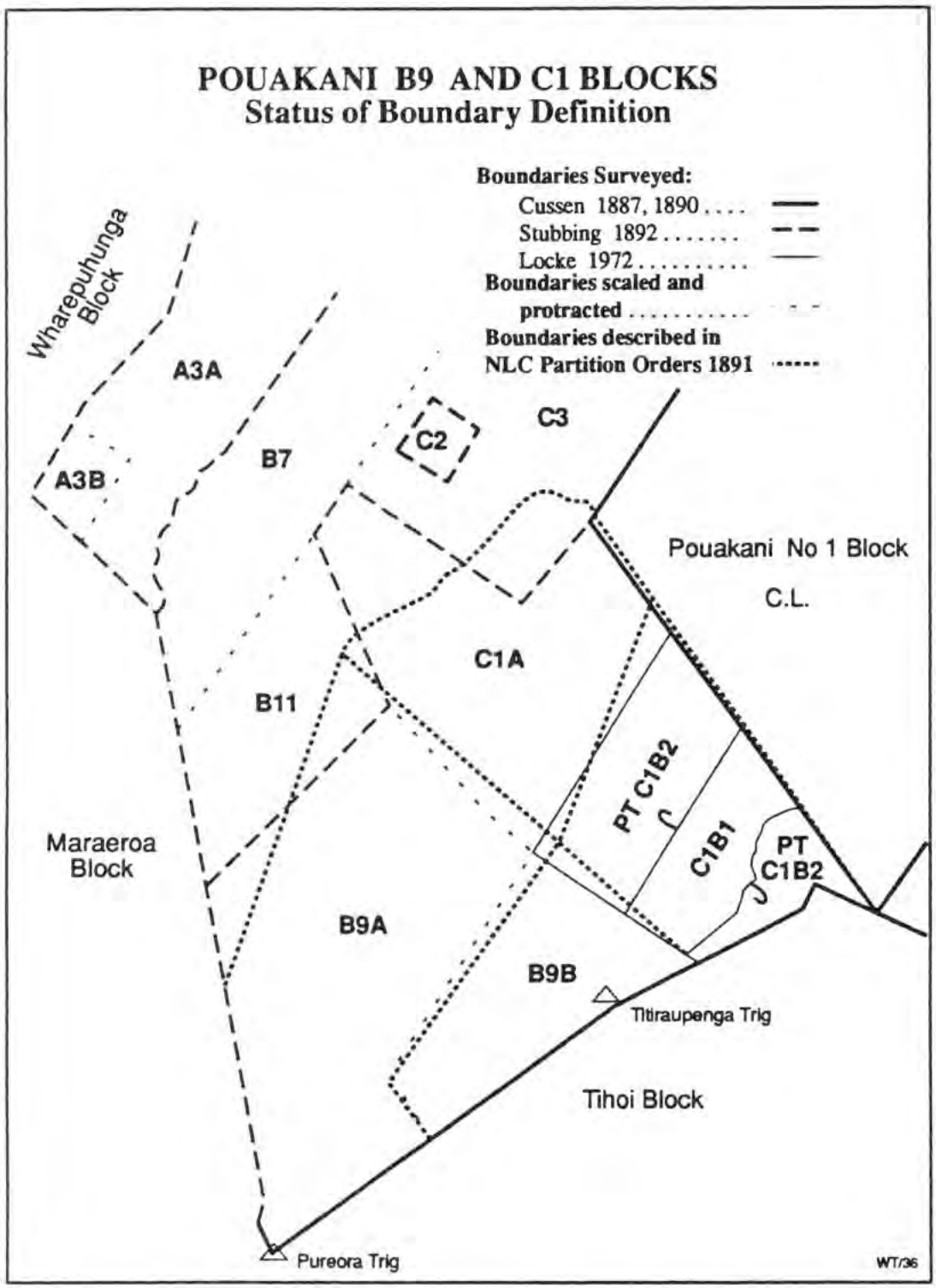
In the same way Mr Harris could not go out and place the houndary pegs of Pouakani B9B in 1986; nor could he do it today. Mr Harris cotild go out and put pegs in, but these pegs will not become the boundary pegs for Pouakani B9B until a survey plan has been prepared and approved hy the chief surveyor and a judge of the Maori Land Court. Further, the partition order of 24 July 1899 creating Pouakani B9B would still have to be amended by an order of the Maori Land Court, substituting for the diagram that now forms part of that order a diagram prepared from the new survey plan. Only then will any pegs Mr Harris puts in become the boundary pegs for Pouakani B9B block.

But the boundary between Pouakani B9B and Pouakani C1B1 and C1B2 and the boundary between Pouakani B9B and the Tihoi hlock had been surveyed. If the pegs could not be found, a surveyor could repeg the houndaries of either or both these adjoining lands, prepare a plan and suhmit it to the chief surveyor for approval. If there was no difference between the original title diagram and a title diagram prepared from the redefinition of the survey plan, there would be no need for an order from the Maori Land Court. Nor would an amending order be necessary if there were only minor differences in the plans.

14.4 The Pouakani B9B Boundary Dispute

In November 1986 the Pouakani B9B trustees commenced logging the southern portion of Pouakani B9B and proceeded towards the south-east boundary of the hlock. The resolution passed by the owners of Pouakani B9B on 20 May 1954 to sell the timber on Pouakani B9B had been confirmed by the Maori Land Court on 27 August 1956. It seems from the Maori Land Court records that the timber was appraised by the New Zealand Forest Service. If this was the case then the purchaser of the timber in 1956 would have been only entitled to take those trees that the forest service had marked as having heen measured. We were not told whether the purchaser of the timber had left trees standing that the forest service had marked or whether there were trees that the forest service had not appraised and which were now considered to be millahle. In other words, we do not know how much millahle timber there was in 1986 that was clearly within the boundaries of Pouakani B9B, as distinct from trees which might or might not be within the boundaries of Pouakani B9B when those boundaries are finally determined on the ground. It should be made clear that by 1986 the boundary between Pouakani B9B and the former Pouakani C1B had been defined in 1972 hy Locke's survey plan ML20635, and that Cussen had surveyed and pegged the boundary between Pouakani B9B and the Tihoi hlock in 1886.

The New Zealand Forest Service thought that the trustees' logging operations had extended into the Pureora Forest Park. There were discussions. The trustees agreed to stop logging near the south-east boundary, and on 18 December 1986 Mr Harris was instructed to locate points on the boundary and the forest service was to cut the lines. At the end of 1986 or at the beginning of 1987 Mr Harris, like Mr Sandel in 1947, went back to the chief surveyor. By now the Land Transfer Office and the Department of Lands and Survey in Auckland had been split up and there was a new South Auckland land district


POUAKANI B9 AND C1 BLOCKS
Status of Boundary Definition
Boundaries Surveyed:
Cussen 1887, 1890 ....
Stubbing 1892 .....
Locke 1972 .....
Boundaries scaled and protracted .....
Boundaries described in NLC Partition Orders 1891 .....
Wharepuhunga Block
A3A
A3B
B7
C2
C3
Pouakani No 1 Block
C.L.
C1A
B11
PT C1B2
C1B1
PT C1B2
Maraeroa Block
B9A
B9B
Titiraupenga Trig
Tihoi Block
Pureora Trig
WT/36

Map 14.3

with a chief surveyor in Hamilton. The result of Mr Harris' approach to the chief surveyor was the following letter that Mr Don Prentice, Maori land investigating officer, wrote to the judge of the Maori Land Court at Rotorua on 10 Fehruary 1987. We quote this letter in full, as a record of the prohlems Mr Harris found. The surveyor referred to in the letter was Mr Harris who was acting for the trustees and not for the New Zealand Forest Service, as the letter might seem to suggest:

> I seek your guidance and assistance in resolving a matter relative to the above land [Pouakani B9B].
>
> ML 6406-13 purports to create B9A and B9B and the plan was approved as to survey on 21/3/1893 by Chief Surveyor Kensington.
>
> The plan was also approved hy the Chief Judge on 25/3/1893 and more specifically hy Judge H.F.Edger on 1/2/1899. Judge Edger signed and sealed the two Partition Orders.
>
> Pouakani B9A was an award in favour of the Crown for interests acquired in the parent title B9 and is now part of the Pureora State Forest Park and bas to all intents and purposes lost its identity as B9A. Pouakani B9B is still Maori Freehold land and the Partition Order has been sent to the D.L.R. for registration.
>
> At the same time as this registration is being contemplated a privately practising Surveyor bas been asked by the N.Z.F.S. to define the boundary common to B9A and B9B because of a feared timber trespass.
>
> This surveyor has done some work preparatory to boundary definition on the ground and then sought help from the Chief Surveyor because:
>
> (1) The areas in question do not mathematically close with the boundary distances shown on the plan and the diagrams.
>
> (2) The areas shown on the plan and the diagrams are incorrect.
>
> The area of B9A now calculates at 7254 acres whicb is about 86 acres less than on the Order and ML6406-13. The area of B9B calculates at 2702 acres — about 42 acres more than on the order and ML6406-13.
>
> This sbows that there was an overall deficiency of about 44 acres through the whole B9 and a pro rata was not effected.
>
> The Court minute says that the area should be 7340 acres and 2660 acres and these are the areas shown on the plan and diagrams albeit incorrectly. When one looks at the plan it can be seen that the internal boundaries are not surveyed but simply drawn on and distances scaled, producing a picture tbat would not be tolerated today. However, the problem exists and a solution is being sought.
>
> If the Partition Order for B9B is emhodied in the Provisional Register and a new title prepared there will be contained therein gross errors in area and boundary distances which will make a mockery of the question of a "Guaranteed Title".
>
> What 1 ask is that the Court consider the following proposed action:
>
> (1) A new survey be carried out to define B9B — the block remaining in Maori ownership.
>
> (2) The Court make an Order under Section 34 (9B) 1953 Maori Affairs Act to cover the substitution of a new plan to amend the mistake found to be evident in ML 6406-13.
>
> (3) The block when resurveyed should be defined to contain the Court Ordered area of 2660 acres and this can readily be done hy keeping the NE and SE houndaries as currently defined hy adjoining lands and

> moving the boundary common with B9A. Alternatively you may consider that the area be reduced on the pro rata basis but I would recommend that the area be held because of the difficulty of now being able to accurately ascertain the original area of B9.
>
> I would most appreciate it if you would consider this problem and my proposal and let me know as soon as is convenient of your decision in the matter. (A4)

The judge agreed to assist in resolving the problem if the parties were able to agree on where the boundaries should go. By this stage the Crown lands adjacent to the Pouakani B9B block in Pureora Forest Park were being administered by the Department of Conservation. The parties were not able to agree and in March 1987 Mr Paki filed the claim now before the Waitangi Tribunal. By the end of 1987 the Crown and the trustees were involved in litigation. On 5 November 1987 the deputy chief surveyor at Hamilton swore an affidavit which was filed in the Maori Land Court. We quote it to show what the people involved in 1987 saw to be the problems:

> 2. THAT I have been informed there is a dispute about the correct definition of boundaries of Pouakani B9B and C1B Blocks.
>
> 3. THAT I have been asked to look at the evidence contained in the affidavit of James Maxwell Harris filed herein as it relates to interpretation of Court Minutes and subsequent plans defining partitions of Pouakani Block.
>
> 4. THAT I am able to confirm in general the statements put forward by Mr Harris in support of his contention of inadequate records and survey plans.
>
> 5. THAT it is obvious that in trying to arrive at the correct boundaries for Pouakani B9B and C1B Blocks, the definition of Pouakani Block as a whole and the adjoining Maraeroa Block must first be investigated and resolved.
>
> 6. THAT Mr Harris has gone to considerable effort to point out the problems associated with the acceptance of various boundaries partitioned by the Courts and their subsequent definition by survey.
>
> 7. THAT by 1886 a definition of both Pouakani and Maraeroa Blocks had been carried out by Cussen. The common boundary was accepted as between Pureora and Rangikarapiripia's [sic] Taporaroa.
>
> [There is no clause 8 in the affidavit. The next clause after clause 7 is numbered as clause 9]
>
> 9. THAT partitions of Pouakani Block were ordered based apparently on Cussens survey. In particular Kaiwha block in 1887. The south eastern and south western boundaries are mathematically capable of definition from Cussens plan with the north western boundary following the Mangatahae Stream to a point which when joined to the starting point on the eastern boundary gave a specified area.
>
> 10. THAT before Kaiwha Block could be defined by survey, a survey of Pouakani 1 was carried out which in fact fixed the position of the previously swinging boundary given to the north eastern side of Kaiwha Block.
>
> 11. THAT subsequent partitions of Pouakani Blocks adjoining Kaiwha Block have then had to be adjusted with little regard to original description of boundaries. Endeavours were made to retain areas with varying degrees of success.

12. THAT by 1891 and after a Royal Commission report on the correct location of the Pouakani-Maraeroa boundary, the new boundaries of Pouakani Block were defined on ML6406 and subsequently partitions carried out by the Court.

13. THAT the new common boundary of Pouakani-Maraeroa, as defined on ML6406, leaves a triangular portion of land of approximately 4831 acres which cannot be satisfactorily accounted for.

Mr Harris has prepared and annexed as an exhibit to his affidavit sworn on the 29 September, 1987, a document marked "B" [A7(d)] showing his calculations from which he summarises at paragraphs 16 and 17 of the affidavit calculations which support the 4831 discrepancy.

These calculations are supported by me as being a reasonable estimate of where major errors are to be found.

14. THAT the figures used in the calculations are derived from those shown on ML6406 or referred to in the partitions based on the peripheral definition of Pouakani Block as defined on ML6406. No attempt was made apparently to check whether the partitions of Pouakani Block, particularly those of the A Blocks could be accommodated within the new definition of the western boundary of the Block.

15. THAT it is my opinion that it is now impossible to repartition the two Blocks as originally intended for the following reasons.

a. Original Court Minutes appear to be lost which may have explained some of the variations between partition orders and survey definition.

b. Ownership of many of the areas has been changed.

16. THAT one has to accept that because of inadequacies in the old Court records as well as in surveys purporting to support various partitions, there is now a need for all parties to the present application to reach a compromise decision on ownership of the disputed lands. (A9(h))

The parties did not reach agreement. The logging went on and litigation in the High Court ensued. On 16 July 1987 the Attorney General, on behalf of the Department of Conservation, applied to the High Court for an injunction restraining the trustees of Pouakani B9B from trespassing onto the Pureora Forest Park. In an affidavit sworn on 7 July 1987 the district conservator of the Department of Conservation stated, among other things:

14. THAT recent activity in constructing a track indicates that it is the intention of the Trust to continue logging operations and not to await resolution of the claim by the Trust to areas of the Pureora State Forest Park before the Waitangi Tribunal. Legal survey is currently in progress by the Department and has identified the fact that a major trespass has occurred involving at least 51 rimu trees which have been felled and removed together with a small number of logs still on site and another 15 to 20 logs lying on the skid. It is anticipated that further survey work will identify additional trees removed in the vicinity of the first and second points where it is considered that a trespass occurred. I have calculated that approximately 527.9 cubic metres of rimu logs have been removed from the major site. At current market values the total amount involved is approximately $16,529.00.

15. THAT the Pureora State Forest Park is a protected area held for conservation purposes pursuant to S.61 Conservation Act 1987.

The Department of Conservation obtained an injunction in the High Court preventing the trustees from logging in Pouakani B9A block. This "Preservation Order" remains in force (A39:2).

Mr Paki, in an affidavit sworn on 20 July 1987, said that on behalf of the trustees of the Pouakani B9B hlock he had been responsihle for the supervision of the logging operations on Pouakani B9B:

> The Pouakani B9B Block is indigenous forest, containing some pine and regenerated bush. Logging is the only source of income available for the Trust. Logging commenced during Novemher 1986 in the southern portion of the B9B Block. The logging operations proceeded towards the south eastern boundary of the Block ....
>
> On or about 17 December 1986 Mr Gaukrodger of the Department of Conservation defined a boundary line which purported to be the south eastern boundary of tbe B9B Block in so far as it relates to the Pureora State Forest ....

Mr Paki's affidavit referred bere to Pouakani B9B but we are not clear wbether the houndary in question was the southeast boundary of Pouakani B9B, whicb is the boundary between Horaaruhe Pouakani and Tthoi which Cussen had surveyed in 1886, or the southwest and northwest boundaries of Pouakani B9B, whicb is the boundary between Pouakani B9B and Pouakani B9A.

Mr Paki's affidavit told of the claim to the Waitangi Tribunal and the employment of Mr Harris to investigate the matter:

> Mr Harris bas subsequently reported to us. Mr Harris advised us tbat he had come to the conclusion that the boundaries of the Block — in so far as they relate to the boundaries presently in existence and shown on the plans annexed to the affidavit of David John Gaukrodger — do not appear to be in accordance with the boundaries as minuted in the Native Land Court records as at the date of partition.

Mr Paki went on to state in his affidavit:

> In addition to the report obtained from Mr Harris I have carried out detailed research into the history of the Blocks and their houndaries. The research which I have completed bas produced evidence that the south east boundary line was incorrectly defined by survey in 1886 with the survey line being disputed by the Maori owners at that time.

In his affidavit Mr Paki mentioned the prohlems of the boundary between Pouakani B9A and Pouakani B9B and the Maraeroa boundary prohlem. He set out some of the conflicting boundary descriptions in the old records. One of the exhihits to Mr Paki's affidavit was a copy of the letter of 10 Februaary 1987 written by Mr Prentice to the judge of the Maori Land Court at Rotorua that we quoted in full above. In his affidavit Mr Paki also stated:

> 11. MR Harris has advised me that B9A and B9B Blocks bave been defined but that the surveying records do not reconcile. The surveying records which are availahle are incomplete and do not agree with the 1891 Court Minutes that define the Block. There is no legal survey of the B9A/B9B boundary line in existence to my knowledge.
>
> 12. I advised Mr Gaukrodger on 20 December 1986 that the Trustees of B9B believed that B9A bad not been purcbased by the Crown and that no payment was made to the owners and that the Trustees believed that B9A is still Maori land. I advised Mr Gaukrodger that it was the intention of the Trustees to log to tbe Mihianga Stream. The claim to the Waitangi Trihunal relates to the partitioning of the Pouakani Block. The Trustees bave taken further legal advice with regard to the position in so far as it relates to Pouakani B9A and B9B. I annex hereto and mark with the letter "Q" a copy of an Application which I will be filing tomorrow with the Registrar of tbe Maori Land Court at Rotorua which seeks

> Orders from the Chief Judge of the Maori Land Court amending the Order of 24 July 1899.
>
> 13. THERE are delays in obtaining bearings before the Waitangi Tribunal and in any event the Waitangi Tribunal can only recommend wbat action ought to be taken. I do not believe that the Crown can prove that it owns the area in whicb logging is presently taking place. The ownership of that land hy the Crown is in issue ....
>
> 14. ANY Interim Injunction would hring our logging operation to a standstill which would result in financial loss to the B9B Trust. There is little logging which can be carried out on land accepted hy the Department to be B9B land and hence any Interim Injunction would result in loss of employment and financial loss.
>
> 15. THE Trustees of the B9B Block are prepared voluntarily to cease logging in the area under dispute immediately if it can be proved that the Crown owns that land and the boundary between B9A and B9B can be conclusively proved.

The logging of indigenous timber was an emotional issue when tbe Crown ceased the selective logging of the Pureora State Forest in 1978. The background to changing attitudes to logging of West Taupo forests is outlined in cbapter 15. The timber on Pouakani B9B bad been purchased hy the Rotoiti Timber Co Ltd, following the meeting of the owners on 20 May 1954. The trustees of Pouakani B9B in 1986 bad tried to salvage what saleable timber remained on their land. But in order to cut that timber it was essential that the precise houndaries of the land be marked out on the ground. Near enougb might be good enough when land is being fenced for pastoral farming. If sucb a fence is not quite on the true houndary this can be corrected wben the fence is next renewed. No barm will bave been done. But if the logging gang thought that the boundary was as little as one metre further inside the Pureora State Forest than it actually was, trees that bave taken bundreds of years to grow would be lost forever. And if tbe logging gang thought that the boundary was a metre further inside Pouakani B9B than it actually was, trees would be left standing which it might be completely uneconomic to go hack again and get out at a later date. And if the trustees did send a gang back again, the cost of opening up tbe tracks to get hack in and get tbe logs out, wbicb might be considerable, would be an unnecessary cost for the trust.

If the boundary that was in dispute in 1986 was in fact the old boundary between Horaaruhe-Pouakani and the Tihoi block, that was tbe only boundary that had actually been measured and pegged hy Cussen in 1886. In 1947 Sandel had found some of Cussen's pegs further along the boundary. But whether or not any trace of the pegs remained in 1986, the distances and bearings between them were known and they could have been replaced. But like Sandel in 1947, Mr Harris had found a mess. On the information availahle to him, it was impossihle for him to define all of the Pouakani B9B boundaries on the ground. And this opened the door to the whole confused history of the Horaruhe-Pouakani, Maraeroa and Tihoi boundaries, where every statement between 1886 and 1899 as to the position of a boundary appeared to those researching the records to have no more or less validity than any otber statement. Mr Paki in his affidavit said that tbe Pouakani B9A and Pouakani B9B houndaries sbown on the survey plan did not agree with the definition of the houndaries in the 1891 minutes. He was referring to the Pouakani B9 (Pureora) boundary set out in the court minutes of 11 August 1891 which said tbat the boundary

was to commence at the Pureora trig station thence along the south-east boundary to the Kaiwha hlock, along that boundary to the Maungatahoe [sic] stream and thence hy a swinging line to the Maraeroa houndary and along that boundary to the Pureora trig station.[21]

We would have said that the minutes contained only a tentative description of the houndaries. Once the houndaries were defined hy survey and the title order of the Native Land Court had been signed and sealed on the basis of that survey, then the signed sealed order fixed the boundary and the earlier description in the court minutes could not be used to question the surveyed boundaries. That would have been the position if Pouakani B9B, or even Pouakani B9 (Pureora), had in fact been defined hy survey. If Pouakani B9 (Pureora) bad been defined by survey, then those boundaries of Pouakani B9B that were also boundaries of Pouakani B9 (Pureora) would bave been settled, and the only boundary that could be questioned would be the boundary between B9A and Pouakani B9B.

But while tbe title orders of 11 August 1891 creating Pouakani B9 (Pureora) and of 24 July 1899 creating Pouakani B9B are both signed and sealed, and diagrams form part of both orders, a part of the boundary of each has not in fact been defined by survey. As the orders are in fact signed and sealed, this means that someone has to go back to the Maori Land Court for an order under s34(9B) of the Maori Affairs Act 1953, substituting a new survey plan. The court would have jurisdiction to cbange all or any of the boundaries. All the boundaries of Pouakani B9B would have to be resurveyed and repegged in order to produce the new survey plan that the court would substitute for the earlier plan.

14.5 Findings and Recommendations

The Treaty guaranteed to Maori the rights to land that they possessed in 1840. The justification for the nineteenth century legislation, as set out in the preamhle to the Native Lands Act 1862, was that those rights would be converted into titles recognised by British law. But the owners of Pouakani B9 (Pureora) and Pouakani C1 (Kaiwba) ordered by the Native Land Court in 1891 did not get such titles. If, after 1893 when Stubbing's plan ML6406 etc was approved, the title orders for those lands had been presented for registration, the district land registrar would have refused to issue a certificate of title under the Land Transfer Act. In 1899, the Maori owners of Pouakani B9B and Pouakani C1B did not get a title recognised by British law because not all boundaries bad been defined by survey. They paid in land for tbe partial survey on Stuhhing's plan ML6406 etc as they bad earlier contributed towards payment in land for Cussen's 1886 survey work. But, because the surveys were incomplete, with the passage of time they became almost valueless. The boundaries of Pouakani C1B surveyed by Cussen and Stubbing bad to be resurveyed in 1972. The district land registrar, Hamilton, has rightly refused to register a title to Pouakani B9B and this block will bave to be resurveyed.

The application to partition out the interests in Pouakani B9 and C1 hlocks purchased hy the Crown was made to the Native Land Court in 1899 by the Crown. The ohligation was on the Crown as a purchaser wanting a separate title to ensure that houndaries were adequately surveyed. The diagrams attached to the court orders of 1899 were prepared from what had been drawn

hy the Survey Office on Stuhhing's 1892 plan ML6406 etc, subsequent to the preparation, submission and approval hy the chief surveyor of the survey plan. The Survey Regulations 1897 are clear that this was not an acceptahle practice:

> 48 Original plans of hlocks which have been approved hy the Chief Surveyor must not bave further survey work or detail of a permanent character added to them. Subdivisions of such original blocks as ordered by the Native Land Court, or made at the instance of the owners of the land, must be on separate maps.[22]

In criticising the Auckland Survey Office practices of the 1890s we do not criticise its successor, the Department of Survey and Land Information. We wish to place on record tbe full cooperation and considerable assistance given to the tribunal by the chief surveyor, Mr Kevin Walsb (now retired), and Mr Don Prentice of the Maori land section, in the Hamilton office of the Department of Survey and Land Information. There is no dispute over the nature of the survey prohlems on Pouakani B9B block between the claimants and tbeir surveyor Mr Harris and DOSL1 surveyors. The problems were acknowledged in 1986 when raised hy Mr Harris, and Mr Prentice sought the advice of the Maori Land Court on how to resolve them.

In exonerating tbe present Department of Survey and Land Information we do consider however, that the Crown in general has an obligation to compensate for the deficiencies of the Auckland Survey Office in the 1890s.

Accordingly, we recommend:

1. Tbat tbe Crown refund the reasonable legal, survey and other expenses incurred by the trusts in researching the question of the boundaries of Pouakani B9B block, the boundaries of the former Maraeroa and Horaaruhe-Pouakani blocks, and the various subdivisions of those blocks, and in litigation over the boundaries, and tbe interest paid on the money borrowed for such purposes. The refund is to be made to the trust or trusts that made the payments.

2. That an area of 140 acres of Crown land taken in payment of survey charges be returned to the beneficial owners of Pouakani B9B hlock. This recommendation is to be considered in relation to further recommendations set out in cbapter 15.

3. Tbat the Crown return to the beneficial owners of Pouakani C1B1 and C1B2 blocks an area of 203 acres of Crown land taken in payment of survey charges. The location of this land is to be determined in negotiation with the Titiraupenga Trust or sucb other representatives of the beneficial owners as may be determined by the Manri Land Court.

References

1 Taupo minute book 62 p 180

2 Taupo minute book 64 p 13

3 Taupo minute book 63 p 98

4 Taupo minute book 64 pp 71-74

5 ibid

6 National Archives (Wellington) MA/MLP1 1904/42

7 Department of Lands and Survey file 20/451

8 ibid

9 ibid
10 ibid
11 ibid
12 ibid
13 ibid
14 ibid
15 ibid
16 ibid
17 ibid
18 ibid
19 ibid
20 ibid
21 Waikato minute book 28 p 11
22 *New Zealand Gazette* 1897 p 229

Chapter 15

The Claim Relating to Forests

15.1 Introduction

Because of the considerable public interest in the Pureora Forest Park and the conservation of indigenous forest resources generally, we have investigated matters relating to past exploitation of the forests and, in particular, Maori traditional uses of forest resources. We had the benefit of submissions on forest ecology and wildlife habitats presented by the Department of Conservation, and several published reports. We noted the paucity of information on Maori perspectives while acknowledging the important ecological issues that the scientists were able to demonstrate to us. In this chapter we address traditional Maori uses of the forest and give a brief outline of past logging and the controversy in the 1970s over protection of west Taupo forests from further exploitation which led to the establishment of Pureora State Forest Park by the New Zealand Forest Service in 1978. In our findings and recommendations we address the issue of conservation of indigenous forest resources and the future management of Pureora Forest Park.

15.2 Te Ngahere

Forests were regarded as an integral part of the Maori living environment. Uses of forest resources were included in evidence of occupation presented to the Native Land Court when titles were investigated. Important places were separately named and described, and the nature of various rights set out in detail. Hitiri Te Paerata, for example, described his claims to Tuaropaki bush, at the south eastern corner of the Pouakani block:

> A large portion of the bush at Tuaropaki is called Paengawhakarau ... a very ancient name ... I say the totara timber belongs to me only, because they grow on the land which I know belongs to me, and because they grow in the vicinity of my kaingas. I occupied the land and snared the birds of the bush ....
>
> With regard to the totara timber at Tuaropaki it was our privilege to split up the fallen timber for fencing or posts for whares, and also to use the outer bark of the standing trees for roofing of the houses etc.[1]

Nineteenth century Pakeha travellers were impressed by the bush but saw it rather differently. Bidwill travelled north from Taupo toward Oruanui — "our course ceased to be over the barren moor" — and then entered a belt of bush:

> At the part where we now crossed, there was the finest forest I had seen in New Zealand; the trees were chiefly Totara of gigantic size, and grew close together. The land also was very rich and level. Here I saw some of the largest Fuchsia (Pohutukataka) trees I had met with in the country; they were at least a foot in diameter ....[2]

Ensign Best's attitude to Maori tracks in the forest was less charitable. He described a patch of bush north of Mangakino in 1841 as:

> the most infernal wood I ever saw. I was driven nearly mad first a supplejack would pull off my cap then pull my gun next tumble me over altogether .... Not an inch did this infernal road go in a straight line it appeared to me that we kept incessantly running round and round the same tree.[3]

Meade traversed the Oruanui bush in January 1865, and provided a fine description of Taupo forests before the impact of large-scale timber milling:

> The woods we traversed were not nearly so grand or gloomy as in many other parts which we had visited, but there is a silence peculiar to the New Zealand forest which must he felt to be understood. I cannot call to mind any tropical forests which excel those of New Zealand in beauty, for here there is magnificent timber, without the jungle of undergrowth which obstructs the view in more torrid climes.
>
> Brilliant parasites and creepers hang from the uppermost boughs of the loftiest trees, straight as bell-ropes, or, winding from stem to stem with fantastic curves, interlace distant trees, in the very extravagance of their luxurious beauty. The lofty totara, and the rimu with its delicate and gently weeping foliage, and the shade loving tree fern, the most graceful of all forest trees. Wild flowers are few and rare, hut the ferns are more numerous and varied than in any other country.
>
> It is the absence of living things that renders the silence and solitude of the woods so oppressive. Occasionally a pair of Kaka parrots may he seen wheeling high above the hill tops with harsh discordant cries, or the melancholy note of the great New Zealand pigeon comes booming through the woods; hut except at early morning, the traveller may often wander for hours, I had almost said days together, through the gloom of these woods where the sun's rays can scarcely penetrate, and the breeze passing over the tree-tops through the uppermost whispering boughs may be seen and heard, but cannot be felt. Not a sparrow — not a mouse to be seen; it seems the silence of death, or more properly the stillness of the yet unborn ....[4]

Birds were a significant resource and rights to hird catching places were guarded jealously. Hitiri Te Paerata described the bird snaring places in the northern part of Tuaropaki bush within the Pouakani block. Each person named would have been regarded as the kaitiaki, guardian of that place, who controlled access and therefore conservation of hird resources:

> The hapus to which I belonged hunted and caught birds in the forests. Paiakapuru, a Rimu tree at Hapotea, was one of snaring trees, it belonged to Ngakao. I have seen this tree. Te Punapuna was a hird trough (waitahere manu) belonging to Te Paerata. Another hird trough was near Mokaiteure, it belonged to Makawaiatemomo. At Paengawhakarau were other hird troughs elevated on trees belonging to Wereta Te Hikapai. A great snaring place (waitahere manu) was at Otanepai, this belonged to Te Arawaere and Ngahiku and Hoani Karapehi. At Moanui was a tutu manu, this belonged also to Te Atawaere and Hoani Karapehi. Te Tarata on a ridge was also a tutu (bird snaring) owned by Te Arawaere. Te Matai snaring place belonged to Rota, and Taurakumekume to Te Oneroa. Te Aramahoe (a tutu manu) belonged to Te Paerata. Te Puwharawhara tutu belonged to Ngakan. The last four were all on Te Tarata ridge. I know of another tutu at Waitutu called Te Whakapahi, this belonged to Rota. A bird snaring water (waitahere manu) below Moanui was called Kopuatahi, was the property of Te Awaiti, Te Haeana, Te Arawaere and Hoani Karapehi. At Matatu was another waitahere manu, this was owned by

> Ngahiku, Te Awaiti and Rota, it is just over the boundary [of Pouakani block].
>
> I now speak of bird snaring places in Otaimare [Horaaruhe] bush; they are situated on a ridge called Poroatemarama, the first of wbich bears the same name as the ridge; it is a totara tree and was owned hy Te Paerata; another tutu was called Te Rimu, this was the property of Te Poutunoa. Te Ruakaka belonged to Ngakao. Te Kohiwi was owned hy Natana Pipito .... At Waiwbarangi was a wai tahere manu owned by Te Paerata and Hoani Karapehi .... a great meeting [was beld] at Pukawa Taupo [Hinana 1856], and birds caught at the snaring places I have named were sent as food for that gathering. Since then birds bave become scarce and in consequence tbe troughs etc. bave fallen into disuse. Formerly tbere were no disputes as to the ownership of this land, trouhle has arisen only recently.
>
> I now refer to bird snaring places at Titiraupenga (south west of that place) first of whicb [is] Papauma tree (snaring tree) called Te Rakaupiko owned by Te Tokoroa. Near Pureora hill on the Eastern side is a tree called Te Tarapa [whicb] was the property of Te Paerata and Te Momo Irawaru. On the westem side of Pureora hill was a wai tahere manu called Te Waipobatu [which] belonged to Tuhuriwai, Te Mete Puru and Te Paerata. These are all I know of at Titiraupenga.[5]

Eru Te Rangietu described a wahi tapu associated with bird snaring at Tuaropaki busb. It was a mauri located in a special tree:

> The owners or custodians of it were Te Arawaere and Te Maruao, my father. The magic tree is at Te Tarata (the mauri was a piece of wood tied up in a peculiar fashion with tbongs and supposed to possess some magic influence on hirds causing them to flock in great numbers to any desired locality). I know the spot where the mauri was kept in a bollow rimu tree ....[6]
>
> The mauri I mentioned was a stick two or three feet long. I never approacbed very near it, as it was tapu. I bave seen it in my father's hands, and have beard him repeat incantations to it. It was very ancient. I don't know which of the ancestors made it. This is the prayer, Takina mai i Hawaiki nui te manu. Tioro Tioro. Takina mai te urungatapu te manu. Tioro Tioro. Takina mai i Raukawa i Tuhua i Hurakia i te Rongoroa etc. etc. Tioro Tioro.[7]

A free translation of this chant is: Entice hither the hirds from Hawaiki nui, Call, Screecb (ie imitate bird calls). Entice the hirds hither to the sacred resting place, Call, Screecb. Entice them from Raukawa, Tuhua, Hurakia, Rongoroa and other places, Call, Screecb.

Werohia Te Hiko described the importance of birds for ceremonial gatherings, including tangihanga:

> I remember the funeral gathering of Te Tanati son of Tini Wata. These birds [were] got from Tuaropaki by my brother for the occasion. Tatana, Paora, Te Roba and Kaiawba bad also preserved hirds. These were required by N'Te Kobera to do bonour to Rewi. My husband Te Rangikataua hore one of the papas himself, the hirds were taken to Waipapa for the feast. They bad been preserved for the bouse warming of Wairangi wbare, when the old house of that name was intended to be rehuilt.[8]

The term "papa" as used here was a vessel made of totara bark which contained preserved birds (huahua).

A variety of birds were snared both in the swamps and forests. The most important forest species were kereru (pigeons) and kaka (red parrots). The main methods of catching birds included use of a bird spear from a perch in a tree, fixed snares, or a running noose at the end of a long rod held in the hand. Certain species of tree were known to be favourites for birds in the fruit season, including tii (cabbage tree), miro, kahikatea, tawa. The miro was a particular favourite of pigeons and had the added quality of making them very thirsty. One technique was to provide a bird trough, waka manu or waka kereru, a wooden vessel up to 1.5 metres long and sometimes carved. Either snares were set over it or the snarer would conceal himself nearby with his tahere, noose, on a rod. The term waitahere was used to describe either a patch of water or a bird trough above which this method of snaring was used. A waituhi was a pool of water or bird trough with fixed snares over it. Because both techniques were often used in the same place both terms were used. Miro trees were scattered in the bush and did not grow in single stands, but were sometimes located at intervals along a ridge. A series of bird troughs would be set up, known as ara waka, path or route of bird snaring troughs, or ara waituhi. The process of preserving birds was known as huahua manu, and preserved birds were often described simply as huahua.

Elsdon Best collected a great deal of information, from mainly Te Urewera sources, but he also included two descriptions of bird snaring techniques in the Taupo-King Country region before 1880:

> Pigeons are snared in this way: An open dish, canoe-shaped, is placed in the boughs of a tree and filled with water, while its sides are set with snares. The pigeons stand on the side to drink, and get their heads or legs into the snare, in which they are suspended ....
>
> Spots with pigeon-snares were passed; they consisted of a hole, square or round, cut into some broad surface root of a large tree, filled with water and surrounded by snares attached to an adjoining little upright frame.[9]

Ensign Best recorded another bird catching technique in 1841 while in the Waikato valley south of Maungatautari: "An old man made us a present of a dozen Kakas which he had caught with a decoy". He also noted, "our people collected great quantities of 'Koroi' the berry of the Kahikatea a very paletable [sic] fruit it is very sweet and has a strong flavour of the Juniper".[10]

The evidence given to the Native Land Court in 1891 during the investigation of the Pouakani block also included information about bird snaring techniques. Takiwa Te Momo noted waituhi in the Paengawhakarau section of Tuaropaki bush: "I pointed out the one at the edge of the bush which was the one for drinking purpose .... Then we went a distance into the bush to where a waituhi was suspended on poles, lodged in the forks [of the tree]".[11] Werohia Te Hiko described a place called Mahanateahi as a whenua rata, a place or land where rata grow: "Mahanateahi is not a tutu, it is a rata tree on which kaka were speared".[12] Wereta Hoani corroborated this in his evidence which also illustrates the migratory nature of Maori occupation of the land and forests:

> Kopa and others lived at Otama, just outside of the block, also at Mahanateahi. The last named where they snared birds. Other residences Hapotea, Waitutu, Tahataharoa and Matatu. Some of the kaingas of

> which are within this [Pouakani] block. They also lived at Moanui. These people all lived together with N'Ha and were known as N'Wairangi.
>
> Bird snares, Mahanateahi (rakau wero) Otanepai (wai tahere) Te Rangihoapu (miro tree). There were bird snares also at Te Tarata, some of which are Te Maikara (matai) (a tutu). There are many other bird snaring places I cannot remember, at Poroatemarama ....
>
> Mahanateahi is a rata (wero, takiri) [place where birds were attacked by spear, as in battle]. I have seen it, also the remains of the ladder (pikinga) up into the tree.[13]

Hitiri Te Paerata described a waitahere called Kopuatahi, which was located on a small stream:

> The water comes out of the ground and flows along for about the length of this building ... and then goes underground again. There is very little water there in the summer. There used to be sometimes ten sets of snares across the stream, some years there would be more if the birds were plentiful. There were some plantations close to the hollow where the water comes. This water is below Moanui and the same stream supplies Moanui. This waitahere belonged to Te Arawaere, Te Awaiti, Ngahiku, Hoani Karapehi and others of their party.[14]

Hitiri Te Paerata also noted that Kopuatahi had been used as a waitahere in the 1840s: "Urewera were visiting us and we went and snared birds at Kopuatahi". [15] It was important in order to retain local mana to be able to provide quantities of birds at feasts for visitors.

The great hui known as Hinana, called by Te Heuheu at Pukawa in 1856, put considerable strain on the bird resources of Titiraupenga, Tuaropaki and other bush areas. The numbers of birds to be snared seem to have been related to production of berries from certain trees, and such trees did not always produce fruit every season. Various interpretations were also made about the effectiveness of the karakia, rituals, used in bird snaring. The following extracts from the minute books of the investigation of the Pouakani block provide some indication of factors affecting bird snaring. The context and significance of Te Wharepapa's "curse" is not explained, but for some reason, birds did not return to Tirohanga bush as quickly as they did to other bush areas:

> Oriwia Ngakao: My elders ceased to catch birds [after] the Hinana, but latterly game has become more plentiful and snaring has resumed.[16]
>
> Takiwa Te Momo: After the Hinana meeting birds were scarce at Tuaropaki and Tirohanga. And it was only in 1886 when Te Piwa came, birds became more plentiful at Tuaropaki, brought there by Te Piwa's works of magic. He was a great tohunga. The famine still continues at Tirohanga. I heard that Te Wharepapa cursed those places and the trees not bearing fruit caused the places to be deserted by game.[17]
>
> Karangi Tamaki: Te Roera lived at Hapotea before Hinana and was still there at the time of that feast and after. He helped prepare the huahua to purchase gunpowder with. He lived in Pita's whare and Te Wharau's. I am unaware he had a house of his own. He helped prepare the birds for Hinana, his tutu was Te Tarata; he used this tutu when snaring birds to purchase powder also.
>
> Hapeta and Te Roera were the first to occupy Waitutu, this was before Hinana. There were no tutus there then, they whakamoed the birds (i.e. caught them at night).

> Te Roera married Te Ngiha when the huahua were taken to Te Awa o te Atua [Matata, Bay of Plenty] to huy [gun]powder.
>
> Te Roera went to Kapiti at the time of the feast at Tongariro awa and came hack at the Hinana meeting, for which he assisted to prepare food.[18]
>
> Te Ahitahu Taiawhio: I only know of one hird snaring, when the hirds were taken to pay for gun powder, since Hinana. I don't know how long after Hinana this bird snaring was, hut it was before the war [1863-64]. There has been no hird snaring, food preserving, on a large scale since, as the hirds are much less numerous. It was Hitau who destroyed the birds. Wharepapa also did so on his own portion. I am not sure that the compelling force of his incantation would have any effect beyond his boundary.[19]

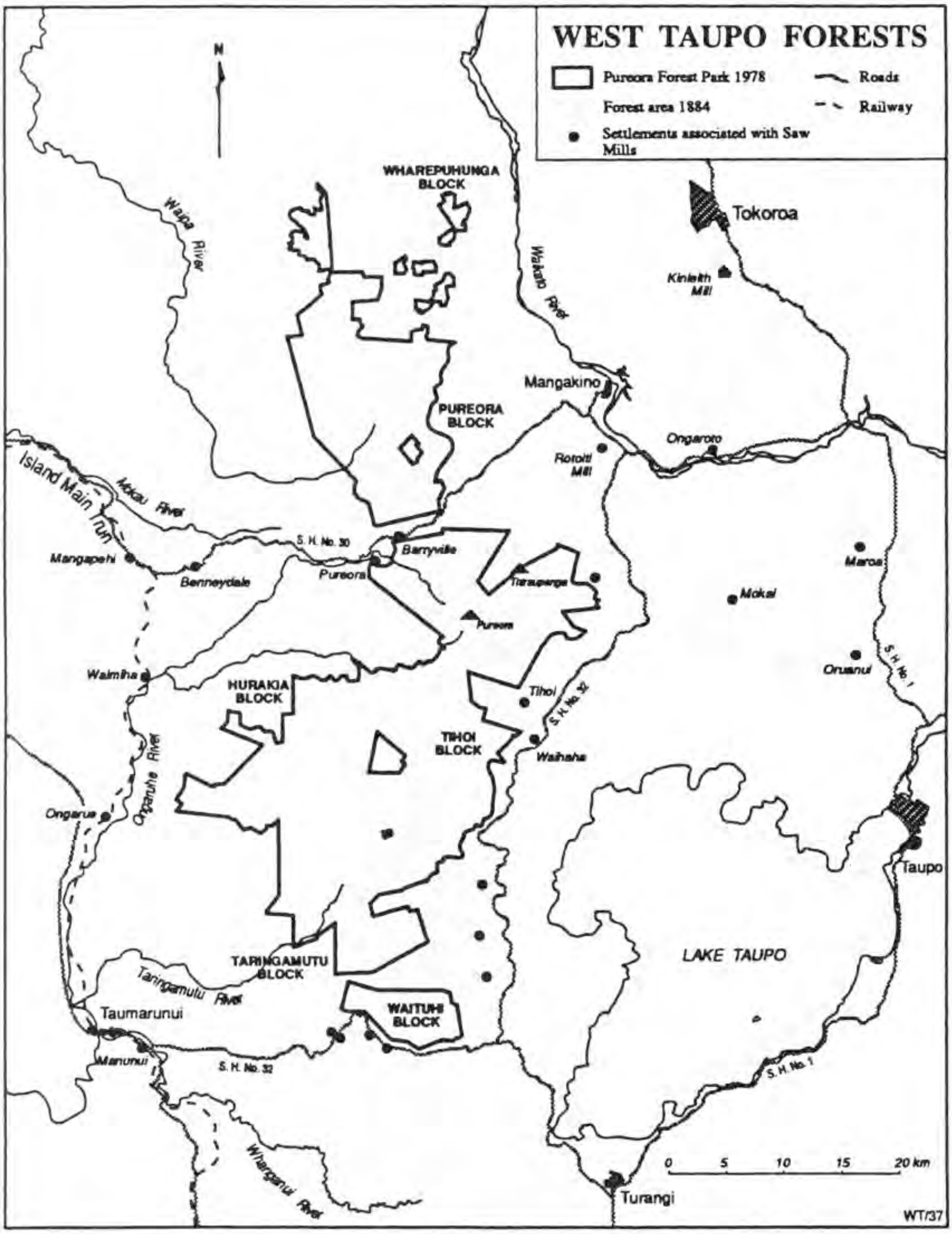
Whatever the reason for the decline in hird numbers, traditional hird snaring practices were also being used less frequently hy the end of the nineteenth century. Timber milling and the suhsequent clearing of much of the hush makes it almost impossihle to identify places where hird snaring activities were carried out in the Tuaropaki and Tirohanga hush. However, there are still traces of birding places in the forests of Pureora and Titiraupenga.

15.3 The Logging of West Taupo Forests

The exploitation of the west Taupo forests began in the 1890s. By 1900 mills were estahlished near patches of hush at Mokai and Oruanui. The Taupo Totara Timber Company constructed a light railway from Putaruru to Mokai which became the centre of timber milling on the eastern part of the Pouakani hlock. To the west of the ranges, the completion of the North Island main trunk line in 1908 provided access to extensive areas of hush. By the late 1920s, logs were being taken from the Hurakia area and processed in Ongarue and Waimiha. In 1939 logging began in the Pureora and Tihoi area with mills estahlished at Barryville, Pureora Forest, Tihoi and Waihaha. In the late 1940s logging began in the Taringamutu and Waituhi State Forests, as timber resources closer to Taumarunui were cut out (map 15.1).

Until the 1930s, extraction of timber from indigenous forests proceeded on Maori and general lands as well as Crown hlocks. Already, there were some who perceived that the resource was limited and some experimental planting of exotic species was begun in Hurakia State Forest in 1937. Much of the lowland forest was clear felled and developed into farm land on the western side of the ranges near the main trunk line. There was little farm development on the pumice lands on the Taupo side at this stage. The sawmills were a principal provider of employment in the region for several decades.

During the 1940s, in the state forests of the west Taupo ranges, the New Zealand Forest Service developed a policy of planting exotic species on logged-over areas of indigenous forests. Planting of a variety of species began at Pureora in 1949, with Douglas fir becoming the preferred tree for a time. By the 1970s, exotic plantings were predominently radiata pine. By this stage New Zealand Forest Products had estahlished large areas of exotic plantations to the east and west of Pureora State Forest. During the 1950s the timber ptulp and paper mill at Kinleith was estahlished and the town of Tokoroa grew nearhy. At the same time, Mangakino was estahlished to service the hydro-electric power schemes.


WEST TAUPO FORESTS
Pureora Forest Park 1978
Roads
Forest area 1884
Railway
Settlements associated with Saw Mills
WHAREPUHUNGA BLOCK
Tokoroa
Waipa River
Waikato River
Kinleith Mill
Mangakino
PUREORA BLOCK
Ongaroto
Rotoiti Mill
Island Main Trunk
Mokau River
S. H. No. 30
Mangapehi
Benneydale
Barryville
Pureora
Maroa
Mokai
Oruanui
S. H. No. 1
Waimiha
HURAKIA BLOCK
Tihoi
S. H. No. 32
TIHOI BLOCK
Waihaha
Ongarue
Ongarue River
Taupo
LAKE TAUPO
TARINGAMUTU BLOCK
Taringamutu River
WAITUHI BLOCK
Taumarunui
Manunui
S. H. No. 32
Whanganui River
0
5
10
15
20 km
Turangi
WT/37

Map 15.1

The 1950s saw the beginning of large-scale land development schemes promoted hy the Departments of Lands and Survey and Maori Affairs in the Taupo district. Farm development on pumice land, especially on soils derived from Kaharoa ash, had heen restricted hy the problem of "bush sickness". In the 1930s, scientists in the Department of Scientific and Industrial Research identified tbe cause in a deficiency of the trace element cobalt in pumice soils. Until the 1940s, pumice soils of the Volcanic Plateau were regarded as only good for planting pine trees. Land development was delayed hy the Second World War and it was not until the late 1950s that development schemes were begun in the west Taupo region. Cut-over busb in areas sucb as Mokai and the bush margins around Titiraupenga and Pureora and southward were transformed into farm land. During the 1960s there was a good deal of debate on the relative merits of farming or exotic forestry on Taupo pumice lands.[20]

The "National Forest Survey" conducted hy tbe New Zealand Forest Service in the early 1950s bad indicated that the cutting of indigenous forest could not continue at previous rates. One measure taken in the west Taupo forests was to set aside the state forest in the Tihoi and Waihaha area as a long-term timber reserve, while logging was continued in the Pureora State Forest. In 1970 the forest service commissioned the Wildlife Service to carry out ecological studies of bird life in the west Taupo forests. In the early 1960s the forest service had also begun trials of "selection logging" in the Waipapa section of the Pureora State Forest, as a further measure to ensure long-term protection of forest cover for soil and water conservation purposes as well as future timber supply. In 1972 the Wildlife Service expressed concern about the viability of kokako, which had become an endangered species, as well as other native birds whose survival depended on a busb habitat. The concept of "ecological areas" was proposed and accepted hy the forest service but there was some debate over the extent of sucb areas in the Pureora forest in relation to demands for indigenous timber and existing New Zealand Forest Service logging contracts.

In 1975 tbe forest service introduced a policy of selective logging followed by replanting native species as part of a general policy for management of indigenous forests. This was in marked contrast to the 1960s when cut-over forests were either planted in exotics or transformed into farm land in the climate of development that prevailed then. The 1970s saw a change in puhlic attitudes towards the forest. There was increasing concern about conservation generally, protection of forests, and the survival of indigenous hirds, the kokako in particular. There was a well publicised tree-sitting campaign in the giant totara stands in the Pikiariki area of Pureora forest. In 1977 conservation groups presented a case to the Minister of Forests to halt logging in Pureora forest. In January 1978 all logging of indigenous timber was suspended in the west Taupo forests.

In March 1978 the forest service convened a seminar at Taupo, titled *Management Proposals for State Forests of the Rangitoto and Hauhangaroa Ranges, Central North Island*.[21] A management regime was proposed which included no logging in areas to be set aside as eeological reserves, or in protected forest which was to be preserved for soil and water conservation purposes. Outside these areas it was proposed that selective logging should continue in order to meet demands for higb quality timber such as rimu for furniture making and totara for Maori carvers, and to meet ohligations under existing logging

contracts with timber companies in Barryville, Pureora, Tihoi and Te Kuiti. Replanting with native species was part of this policy which was intended to maintain long-term sustainability of the indigenous timber resource. Public debate continued on the issue of logging and conservation, loss of employment, the future of Barryville, Pureora, and indigenous logging generally. A total of 1735 submissions were made to the Minister of Forests following the March seminar.[22] The Native Forests Action Council and the Royal Forest and Bird Society also organised a number of public meetings which focussed on the future of West Taupo and other indigenous forests. The central issue was whether there should be some selective logging or no logging at all. A strong body of opinion expressed the view that logging should be stopped, that what little was left of the original forest cover should be preserved.

In August 1978 the Minister of Forests announced a halt to all logging of indigenous forests. In 1975 the forest service had indicated its intention, reiterated in the 1978 seminar, to create a Pureora State Forest Park by proclamation under s63A of the Forests Act 1949. The forest service was developing a policy for multiple uses of state forests, which would allow recreational and other public uses of the forest along with some selective logging and replanting. The minister's announcement stated that the Wharepuhunga, Pureora, Tihoi, Hurakia, Taringamutu and Waituhi State Forests, a total of 71,870 hectares, would be immediately incorporated into Pureora State Forest Park.

The minister also stated that logging would stop by the end of the year in the Pureora and Tihoi forests. The supply of timber to Pureora Sawmills Ltd would cease in December 1978, and to Waihaha and Tutukau mills by March 1979, while the contract with Ellis and Burnand through Tregoweth's mill in Te Kuiti would be renegotiated by offering a supply of exotic timber from Bay of Plenty forests to replace native timber. In a study of social and economic impacts, produced in May 1978 it was suggested that the number of people directly dependent on indigenous forestry, that is workers and their families, was:

Barryville	137	(134)
Pureora	131	(216)
Benneydale	10	(400)
Te Kuiti	209	(4862)

The 1976 census figures for total population are given in brackets.[23] This decision to stop logging meant the end for Pureora and Barryville communities as people moved away in search of jobs in the timber industry elsewhere.

15.4 Pureora Forest Park

During 1979 a draft King Country Regional Management Plan was prepared by the Auckland conservancy of the New Zealand Forest Service. In May 1982, following public response to the draft and further study of forest bird life, the Minister of Forests confirmed that the ban on logging in Pureora State Forest Park would remain. The King Country Regional Management Plan was finally approved in 1984.[24] Meanwhile, the forest service also prepared a management plan for Pureora State Forest Park. The objectives of management were set out as follows:

A. Soil and water conservation shall be the primary objective of land use.

B. To preserve areas of scientific interest, particularly examples of indigenous flora and fauna.

C. To preserve and enhance scenic and historical values.

D. To provide for educational and recreational use of the park in a manner compatible with other park values.

E. to acquire suitable areas of forest for addition to the park.

F. To manage the indigenous forest zoned for production in accordance with the principles laid down in the indigenous forest policy. Management will include artificial establishment and tending where appropriate.

G. To continue exotic afforestation by the acquisition of suitable land to provide employment opportunities in forests, and later in industry, for the purpose of fostering social and economic development of the region.

H. To produce high quality exotic clearwood where possible.

I. To encourage research into all aspects of the park's resources, planning and management by qualified persons and/or organisations.[25]

Within the Pureora State Forest Park three predominant uses were identified by a system of zones. Protection zones included areas where forest cover had to be retained for soil and water conservation, to preserve areas of ecological and scientific importance, for "historical interest" areas (including tramway or sawmill remains), for "cultural interest such as Maori pa sites", and for areas to be used primarily for educational purposes. Recreation zones included both "natural environment" where hut and track facilities can be developed, and "remote experience" areas which would be left in "a natural state" free of any development. A third zone provided for various types of production forest, both indigenous timber reserves and exotic forests.[26]

The Pureora State Forest Park Management Plan and King Country Regional Management Plan were prepared by the New Zealand Forest Service under s26 of the Forests Act 1949, s63(c) of the Forests Amendment Act 1965 and the Forests Amendment Act 1976. In 1986, in a restructuring of environmental administration, some relevant functions of the Department of Lands and Survey, the New Zealand Historic Places Trust, the Wildlife Service of the Department of Internal Affairs, and the New Zealand Forest Service were allocated variously to the new Department of Conservation, Ministry of Forestry and the Department of Survey and Land Information. The commercial activities of these former government departments were allocated to the new state-owned enterprises, Land Corporation and Forestry Corporation. The effect on Pureora State Forest Park was to take out the areas of exotic forest destined for commercial production and transfer these to the Forestry Corporation (map 15.2). The remaining area, now called Pureora Forest Park, is administered from the Hamilton office of the Department of Conservation under the provisions of s61 of the Conservation Act 1987. In 1989 the Department of Conservation, Hamilton, published the Maniapoto District Wild Animal Management Plan 1989-1999. A new management plan for Pureora Forest Park has yet to be produced by the department, although the ten year planning period of the previous plan expired in 1990.

The evidence presented to the tribunal by officers of the Department of Conservation emphasised the national significance of "Ecological Areas" in the Pureora Forest Park. Dr Edmonds stated:

> The primary function of Ecological Areas was, and remains, even more emphatically under the Department of Conservation, to protect scientific and ecological values. In the selection and setting up of Ecological Areas one or more of the following objectives were to be met:
>
> (a) to protect representative portions of natural ecosystems.
>
> (b) To protect rare or unique features including native plants and animals.
>
> (c) To provide areas for study aimed at understanding and explaining natural processes.
>
> (d) To provide benchmarks for assessing changes associated with various forms of development within the region.
>
> (e) To retain gene pools of native plants and animals. (B15:2-3)

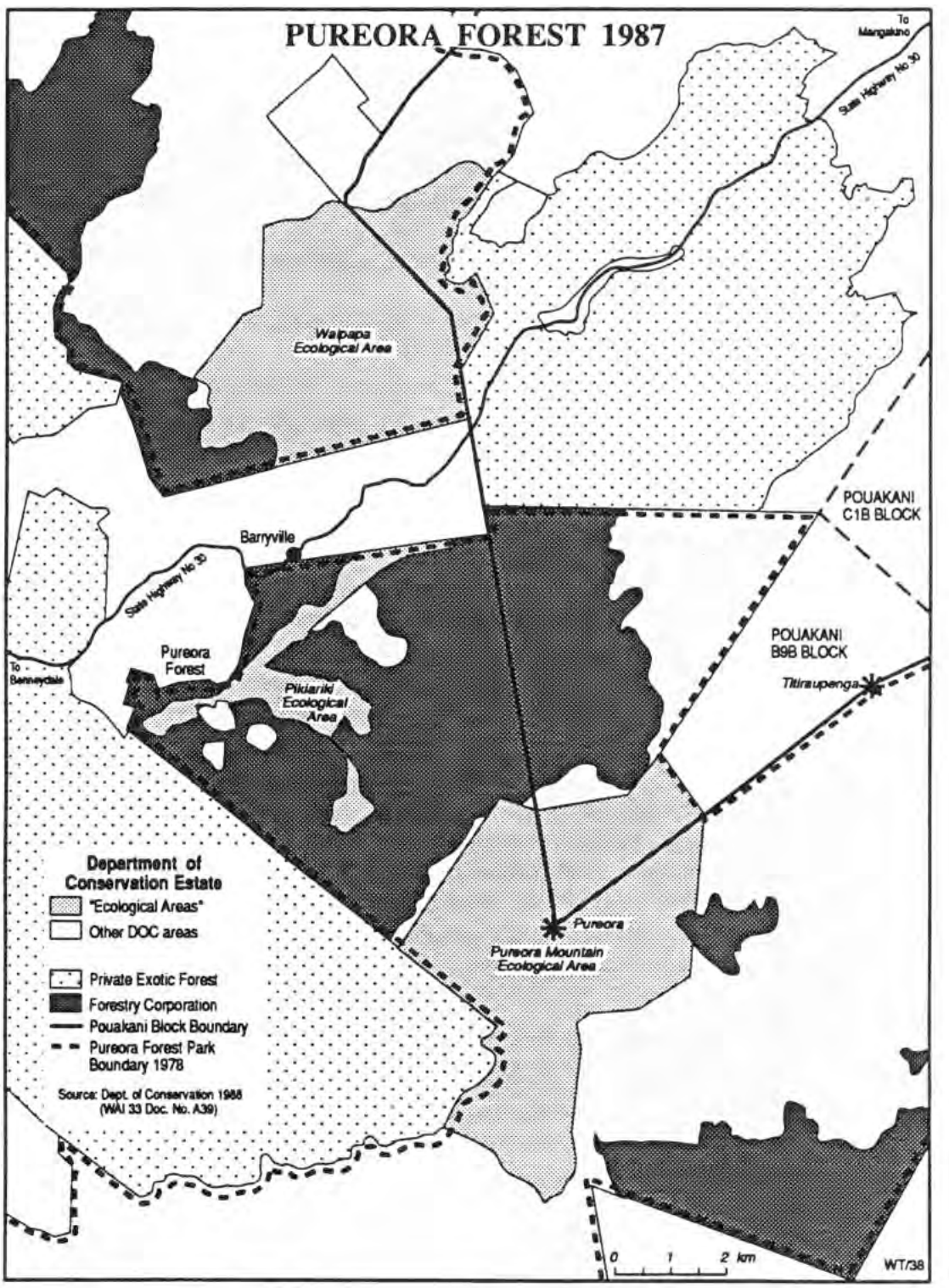
Within the Maraeroa block three ecological areas have been established under the provisions of s15 of the Forests Act 1949 and the amendments of 1973 and 1976.

Waipapa	1695 hectares	(*New Zealand Gazette* 1979, p 2096)
	134 hectares.	(*Gazette* 1981, p 19)
	2170 hectares	(not yet gazetted)
	4999 hectares	**in total**
Pikiariki	457 hectares.	(*Gazette* 1979, p 2096)
Pureora Mountain	2257 hectares.	(*Gazette* 1986, p 317)

According to the Pureora Forest Park management plan, a "multidisciplinary scientific panel" advises on the management of ecological reserves. Unless there are special circumstances public access is not prevented: "It will be desirable to channel visitors, with a carefully planned system of walking tracks, to the less valuable areas of the reserves and also to limit the types of activity".[27]

Evidence on the botanical values of the three ecological areas was given to the tribunal by Mr J Leathwick of the Ministry of Forestry, beginning with Waipapa:

> The reserve occupies an extensive plain formed from volcanic ignimbrites erupted 300,000 and more years ago. Forest forms the dominant cover, occupying approximately 70% of the reserve. Extensive scrub and shrublands occur in the centre and west of the reserve, and smaller areas of mire support a range of shrubs, tussocks, sedges, and ferns.
>
> The broad forest pattern is as follows. In the north and west of the reserve the large podocarps, rimu, matai, miro, totara, and kahikatea, are emergent generally over dense canopies of tawa; broadleaved shrubs are locally abundant. In the centre and southeast of the reserve there are large areas over which the podocarps are much more abundant. The more extensive stands of this type ... have the highest conservation value. Both locally, and throughout the North Island, this type has been largely eliminated by logging and subsequent conversion to exotic forest and pasture.


PUREORA FOREST 1987
To Mangakino
State Highway No 30
Waipapa Ecological Area
POUAKANI C1B BLOCK
Barryville
State Highway No 30
Pureora Forest
To Benneydale
Pikiariki Ecological Area
POUAKANI B9B BLOCK
Titirau penga
Department of Conservation Estate
"Ecological Areas"
Other DOC areas
Private Exotic Forest
Forestry Corporation
Pouakani Block Boundary
Pureora Forest Park Boundary 1978
Source: Dept. of Conservation 1988 (WAI 33 Doc. No. A39)
Pureora
Pureora Mountain Ecological Area
0 1 2 km
WT/38

Map 15.2

> Areas of scrub and sbrubland in the reserve are also of outstanding conservation value, containing sequences from open monoao sbrublands througb taller scrub, to dense stands of young podocarps. These communities were once extensive in the central North Island, replacing forest after burning by both Maori and Europeans ....
>
> Although the mires of the reserve are small in extent, they contain both communities and species of high conservation value. Probably the most important feature of the mires is tbeir lack of modification either by drainage, or invasion by introduced species sucb as willows. The mires contain one of only two substantial North Island populations of the large tussock *Gahnia rigida*. Otber rare plants include a large swamp orchid *Prasophyllum patens*, the rare millfoil *Myriophyllum robustum*, *Sparganium subglobosum* or burr-reed, and the shrub *Epacris pauciflora*, whicb is at its southern limit in the North Island ....
>
> The reserve contains not just a single, high value community, but a range of vegetation along both environmental and successional gradients. Reserves sucb as this are of critical importance if we are to preserve the original essence of these central North Island landscapes, and the vegetation and wildlife they once supported.
>
> 2. The **Pikiariki Ecological Area** contains all that remains of the dense podocarp forests whicb once stretcbed from the foot of Pureora north to the fire-induced forest margin behind the Pureora Village. This forest is similar to that in the southeast of the Waipapa Ecological Area, with dense high canopies of podocarps over an understorey of tawa, and broadleaved shrubs and small trees ....
>
> 3. The **Pureora Mountain Ecological Area** was establisbed to protect the most outstanding altitudinal sequence of vegetation in the West Taupo forests. This ranges from podocarp-broadleaved forest at 750-850 m above sea level, through broadleaved forest from 850 m to 1100, and scrub from 1100 m to the summit at 1165 m. A small area of shrub-mossfield occurs on the summit, and is one of the northern most areas of subalpine vegetation occurring on the western side of the North Island. A series of mires on the mountain are valuable for their range of species and lack of modification .... One of the outstanding values of this reserve is its accessibility to scbool groups for science studies on an uncomplicated but extended altitudinal sequence of vegetation. (B11:1-3)

The wildlife babitat values of these three ecological areas were reviewed in the evidence of Mr A J Saunders, Department of Conservation:

> they are significant wildlife habitats because they encompass intact forest communities of types whicb are particularly important to a wide range of wildlife. Surveys undertaken by tbe Wildlife Service during tbe 1970s and early 1980s sbowed that large, relatively unmodified tracts of lowland forest, especially those with a high podocarp component provide babitat for a diverse assemblage of forest dwelling animals including rare, threatened and endangered species. (B12:1)

All three ecological areas were given the highest ranking of "outstanding value" for wildlife habitat. A list of 36 different birds, including 24 native species, whicb can be found in tbe Pureora Forest Park was provided (see table 15.1):

> Of these the kokako is a recognised endangered species ... whilst the falcon, kaka, parakeet, fernbird and blue duck are threatened.
>
> Given the declining distribution and abundance of tbese endangered and threatened endemic species in particular, and of populations of forest birds generally, significant habitat resources such as forests within the

Table 15.1

Recorded Presence of Birds in the Pureora Mountain, Pikiariki and Waipapa Ecological Areas

(N.B. No record does not necessarily imply absence)

	Native	Endemic	Rare Threatened or Endangered	Pureora Mountain E.A.	Pikiariki E.A.	Waipapa E.A.
kokako	x	x	x	x	x	x
kaka	x	x	x	x	x	x
parakeet	x	x	x	x	x	x
falcon	x	x	x	x		x
blue duck	x	x	x	x	x	
fernbird	x	x			x	x
robin	x	x			x	x
morepork	x	x		x	x	x
NZ pigeon	x			x	x	x
rifleman	x	x		x	x	x
tui	x	x		x	x	x
bellbird	x	x		x	x	x
grey warbler	x	x		x	x	x
pied tit	x	x		x	x	x
whitehead	x	x		x	x	x
fantail	x	x		x	x	x
silvereye	x			x	x	x
longtailed cuckoo	x	x		x	x	x
shining cuckoo	x	x		x	x	x
kingfisher	x	x		x		x
harrier	x			x		x
paradise shelduck	x					x
grey duck	x				x	
welcome swallow	x					x
eastern rosella					x	
yellow-hammer				x	x	x
thrush				x	x	x
blackbird				x	x	x
chaffinch				x	x	x
redpoll				x	x	x
goldfinch						x
greenfinch				x	x	x
dunrock				x	x	x
starling					x	x
magpie					x	x
California quail				x		

Source: Department of Conservation

> three ecological areas are very important for the long term conservation of wildlife. (B12:2)

The protection of the flora and fauna of the Waipapa, Pikiariki and Pureora Mountain Ecological Areas is seen hy the Department of Conservation and many other environmental groups as a matter of national rather than local or regional importance. In his evidence, Dr Edmonds summed up the values put upon these forest resources hy the Department of Conservation:

> The Ecological Areas within the Maraeroa Block require protection from disturhance and development. From a national perspective they contain some of the last forest and wildlife populations representative of New Zealand prior to human colonisation. In particular, the wildlife values represented hy kokako, kaka and kakariki are without equal. No other forest habitats in New Zealand would in my opinion be more valuahle than those contained within the Pureora Ecological Areas.
>
> Preservation in perpetuity of the values of these areas is paramount, and must remain so, whatever the outcome as to disputes over land ownership.
>
> The national, and indeed international, importance of preserving as far as possihle the remnant natural values afforded hy these ecological areas is such as it transcend[s] such title disputes. (B15:7)

15.5 Findings and Recommendations

The 1980 management plan for Pureora State Forest Park, in a section titled "Physical, Biological and Historical Data", noted that the forests "have long been recognised for their timber soil and water values and have provided sustenance to Maori and European". It is also suggested vaguely that "Maori occupation favoured the watershed of Lake Taupo whereas Europeans made their earliest impressions on forests to the west". Presumahly, this refers to the greater extent of logging in the forests accessihle to the main trunk line and trihutary logging tramways. No other documentation of past Manri settlement patterns is provided. The following paragraph is headed "Pre-European History":

> The Tainui people of the King Country traversed the forest park en route to Lake Taupo. Several well known routes, were used, originating from either Te Kuiti or Taumarunui. Evidence of the track in Hurakia Forest, from Mt Ketemaringi to Taupo still exits today. Pigeon troughs have been found and other signs of occupation such as old hurnt-off scruh land in indigenous forest can be attrihuted to these itinerant travellers. As the region has a Maori heritage, a glossary listing Maori names and meanings of prominent features within the park is appended.[28]

This list is short, inadequate, and for some terms inaccurate.

The Maori dimension in this management plan is confined to statements about archaeological sites and ohligations under the Historic Places Act:

> Sites of archaeological and historical importance are known to exist throughout the Park. Pre-European features include Pa's [sic], artefacts, trails, forest clearings and boundary stones, the precise location of which in some instances, are not known.
>
> Archaeological investigations and surveys will be undertaken to identify features of puhlic interest.[29]

Similar statements appear in the 1984 King Country Regional Management Plan:

> Sites of archaeological and historical importance occur throughout the region .... Sites have also been located in Tawarau and Pureora Forest Park. The early Maori people were, however, active throughout the region and steps will be taken to locate and describe all existing sites.[30]

In the rest of this section are set out the provisions for classification of sites under the Historic Places Act. The management policy statements in this section are:

> Investigations to locate and describe archaeological and historic sites on State Forest will continue.
>
> In accordance with the Historic Places Amendment Act 1976, identified sites will not be modified without authority from the New Zealand Historic Places Trust. Class A sites will be demarcated and maintained to ensure the preservation of the site and its artefacts as far as is practical. Some sites may be dedicated under Section 15 of the Forests Act 1949. Class B sites will be subject to further investigation by the N.Z. Historic Places Trust archaeological staff before reclassification as either Class A' or Class C' sites. Class C sites will not be excluded from development proposals if an authority to modify has been issued by the N.Z. Historic Places Trust.[31]

The Department of Conservation which now administers the Pureora Forest Park has not yet prepared a new management plan. We were told in response to a question from the tribunal that archaeological surveys had not yet been carried out. The Department of Conservation is governed by the Conservation Act 1987 which in s4 states, "This Act shall so be interpreted and administered to give effect to the principles of the Treaty of Waitangi". Under this provision we expect that the Department of Conservation, in preparing a new management plan for Pureora Forest Park, will take a much more active role in encouraging and ensuring Maori participation in management. It is not sufficient to rely on archaeological surveys by the New Zealand Historic Places Trust or Department of Conservation staff.

We accept the concept that the Pureora Forest Park is an ecological area of national significance. However, in the process of conserving forest and wildlife, it must be remembered that this forest is also the taonga of local tribes. It follows that Maori should actively participate in managing this taonga in the national interest. The mountains Pureora and Titiraupenga are trihal landmarks, maunga tapu, for the substantial number of Maori identifying with Tainui and Te Arawa. We see an obligation on the Crown through its agent the Department of Conservation to acknowledge this mana.

We make the following recommendations:

1. We have outlined in chapter 2 some exploration traditions of Tainui and Te Arawa, and specifically the associations of the ancestors Kahu with Pureora and Tia with Titiraupenga. The mana of the tribes of Tainui and Te Arawa in the sacred mountains, Pureora and Titiraupenga respectively, should be recognised by the Crown by revesting the title in these ancestors on terms set out in recommendations below.

2. The Pouakani B9B block, which includes part of Titiraupenga and is covered in forest, should become whenua rahui, protected land. The preservation order imposed by the High Court should be maintained until appropriate protection measures are put in place. In the national interest, the

Crown should take over responsibility for rates and any other liabilities on this block.

3. In exchange for tbe preservation of tbe forests of Pouakani B9B block in the national interest, the Crown sbould investigate the transfer of equivalent land in exotic forest (from Forestry Corporation) or other Crown lands to the owners of Pouakani B9B block. Funding of researcb and expert legal, financial and scientific advice sbould be provided to the owners by the Crown. The area of 140 acres acquired for survey costs on Pouakani B9 and recommended in cbapter 14 for return to Maori owners may be added to any land offered in excbange.

4. Tbe provisions of s439 of tbe Maori Affairs Act 1953 and other appropriate legislation sbould be explored to enable the following objectives to be acbieved:

- the title to the mountain Pureora to be vested in Kahu; and to Titiraupenga in Tia; and trustees over these mountains to be appointed by tbe Maori Land Court;
- Pouakani B9B block to be added to the area surrounding Pureora and Titiraupenga already within Pureora Forest Park and tbe wbole block to be made a Maori Reservation under s439 of the Maori Affairs Act or other appropriate legislative provision; the block to be managed as part of Pureora Forest Park;
- trustees under s439 Maori Affairs Act 1953 to be nominated by the Maniapoto Maori Trust Board, Tuwbaretoa Maori Trust Board and Ngati Raukawa Trust Board for the above lands;
- public access to the Pureora Forest Park and day-to-day management to continue under the provisions of the Conservation Act 1987 and Conservation Law Reform Act 1990;
- the Department of Conservation should initiate consultation with Maori interests for the purposes of producing a management plan for Pureora Forest Park that does give effect to the principles of the Treaty of Waitangi.

5. In its administration of Pureora Forest Park tbe Department of Conservation sbould be guided by a trust made up of nominees from the Maniapoto Maori Trust Board, Tuwbaretoa Maori Trust Board and Ngati Raukawa Trust Board. The trustees' role sbould include participation in preparation of a management plan for the Pureora Forest Park, as well as on-going advice on Manri cultural, spiritual and other relevant matters. These may include use of Pureora Forest Park for Manri purposes sucb as the felling of totara or other timber for use in carvings for meeting bouses or other appropriate structures, and the taking of fibre plants sucb as kiekie for weaving, or other plant material required for Maori purposes. The taking of such forest resources is to be allowed by the Department of Conservation only with the permission and at the discretion of tbe trustees, guided by any relevant scientific information available.

6. Until tbese negotiations are completed, neither tbe Crown nor any state-owned enterprise sbould seek to alienate lands or forests in or adjacent to Pureora Forest Park. We also note that there are other claims lodged with the Waitangi Tribunal whicb may affect blocks within or adjacent to

Pureora Forest Park and in this recommendation we seek to protect those interests also.

7. In the preservation of indigenous forest resources and wildlife habitats, a valued taonga, the Crown has an obligation not only to preserve the remaining forest but also actively to seek to replant suitable adjacent lands in indigenous species and incorporate these in Pureora Forest Park in due course.

References

1 Waikato minute book 27 pp 134, 135-136

2 J C Bidwill *Rambles in New Zealand* (London 1841, reprint Christchurch 1974) p 63

3 N M Taylor (ed) *The Journal of Ensign Best* (Wellington 1966) p 302

4 H Meade *A Ride Through the Disturbed Districts of New Zealand* (London 1870, reprint Christchurch 1984) pp 116-117

5 Waikato minute book 26 pp 41-42

6 ibid p 90

7 ibid p 96

8 ibid p 257

9 E Best *Forest Lore of the Maori* (Wellington 1977) p 246

10 Taylor 1966 p 302

11 Waikato minute book 26 p 239

12 ibid p 235

13 ibid pp 248-249

14 ibid pp 259-260

15 ibid p 262

16 ibid p 233

17 ibid p 239

18 Waikato minute book 27 pp 52-53

19 Waikato minute book 26 p 255

20 J T Ward and E D Parkes *An Economic Analysis of Large-Scale Land Development for Agriculture and Forestry* (Lincoln Collage 1966)

21 New Zealand Forest Service 1978a

22 ibid 1978b

23 J W S Higham and P Menzies *Social and Economic Impact of Indigenous Forestry in the Pureora Area* (Dunedin 1978) p 1

24 New Zealand Forest Service 1984

25 ibid 1980

26 ibid 1980 pp E1-6

27 New Zealand Forest Service 1980 app 6

28 ibid

29 ibid p F4

30 New Zealand Forest Service 1984 p 32

31 ibid p 33

Chapter 16

Waikato River

16.1 Introduction

In closing submissions, counsel for the claimants stated their concerns in respect of the Waikato river as follows:

> The taking of land and the interests of the claimants in the bed and foreshore of the Waikato River for the purposes of hydro electric power development was, in the absence of consultation with the Maori people, a breach of the principles of the Treaty of Waitangi. It is claimed that the river area is a taonga of the Pouakani people for the purposes of the Treaty of Waitangi. (C7(b):5-6)

A further issue addressed in evidence and opening submissions was the ownership of the bed of the Waikato and the status of the bed of the river in respect of its navigability under s261 of the Coal Mines Act 1979 (A1(c):1-2). It was also suggested that there had been a lack of consultation with Maori and a failure by the Crown to take into account Maori attitudes and concerns at the time of construction of the hydro-electric power schemes on the Waikato river and land takings under the Public Works Act.

Several sets of issues are involved which we shall address in turn:

- the status of the Waikato as a taonga;
- the impact of hydro-electric power schemes; and
- the ownership of the bed of the Waikato.

16.2 Ko Waikato te Awa

The Waikato provides the northern boundary of the Pouakani block. In places the river was deeply entrenched in rocky gorges. In other places there were river bank flats which provided easy access to the water. The river was not navigable over the whole section from Karapiro in the Maungatautari area, upstream to Huka Falls. At intervals the flow was broken by rocky outcrops which created dangerous rapids. In between, there were sections of the river which could be navigated by canoe. The main crossing places upstream of Whakamaru gorge were at Waimahana, Ongaroto and Atiamuri. Kainga were established there and occupied periodically.

The river banks and swamps were a rich source of bird life, and expeditions to snare birds were made periodically, as outlined in chapter 3. The river was just as much part of the living space and traditional resources as the land. The river was also the source of fish, especially kokopu (native trout), tuna (eels), and koura (freshwater crayfish). The river was therefore a mahinga kai, a food gathering place. In local Maori terms it was, and still is, regarded as a taonga, a highly-prized resource, by the hapu who occupied the area.

The Waitangi Tribunal has already found in the case of the Kaituna river in the Bay of Plenty that there was no distinction between river, estuary, sea and land. The trihunal found that:

> traditional rights of ownership carry with them the free and uninterrupted right to fish the river, the estuary and the sea, together with the use and enjoyment of the flora adjacent to it.

The trihunal also concluded that: "these traditional rights continued uninterrupted to this day".[1]

Such traditional rights to fisheries, mahinga kai and other taonga are guaranteed in the Treaty of Waitangi. There is no reason to consider the Waikato river, where it flows along the margins of the Pouakani block, any differently. Indeed, kaumatua present at the Pouakani hearings were adamant that the Waikato is regarded as a taonga. Any pollution or ohstruction of the river was considered likely to detract from the spiritual as well as physical quality of this taonga.

In the *Report of the Waitangi Tribunal on the Manukau Claim* (Wai 8) reference was made to the river's significance to the tribes of the lower Waikato:

> The Waikato River offered much more than a network for inter-trihal travel and communication. The river, its swamps and trihutaries, provided food — eel, freshwater crayfish, whitebait, mullet, flounder, shellfish, waterfowl and wild vegetables. It provided irrigation for kumara, taro and hue. Whitebait has particular importance. The river supports what is generally considered to be the North Island's most important whitebait fishery ....[2]

Just as Tia gazed on the muddied Waikato water at Atiamuri, disturbed by human interference upstream, so too do the Tainui tribes downstream of the Pouakani block have an interest in their river in its upper reaches. The *Manukau Report* went on to state:

> It is difficult to over-estimate the importance of the Waikato River to the Tainui tribes. It is a symbol of the tribes' existence. The river is deeply embedded in tribal and individual consciousness. Like Manukau it has its taniwha or guardians, but unlike Manukau, there is a taniwha at each bend. The river has its own spirit. It is addressed in prayer and oratory as having a life force of its own. The spirits of ancestors are said to mingle and move with its currents.
>
> When Waikato people are sick, uncertain or ahout to undertake a journey or new venture they seek the hlessing of the water and the protection of their ancestors by immersion or sprinkling. Its curative and healing powers were claimed hy several witnesses from personal experiences.[3]

The role of water in ritual and the spiritual qualities of rivers and other water bodies can vary in expression from tribe to tribe and place to place. However, there is among all tribes a continuing and all emhracing theme of acknowledging traditional holistic concepts of water in both physical and spiritual, tangible and intangible senses. An overview of these issues can be found in a paper by Tipene O'Regan:

> Traditionally, we have a whole range of statuses for water. All of which derive from the environmental and social realities that the old people found themselves in. It is my view that Maori beliefs (their religion) were a product of their relationship with the physical environment. Our atua,

> whom I don't call gods because I think that is a misconception, are the atua who provided earlier Maori with a science that was fashionable before science. These atua provided them with a rational and orderly way of living and of perceiving their world. It was through these atua that our old people related to the physical world. The physical world was those atua. Tane was a tree, also Tane was a person, likewise, water was Tangaroa. They were not silly, they knew water was wet and all that, but they also knew it as Tangaroa. There was a unity in their perceptions .... Up until the present when our old people look at a river or a mountain they see it in very real terms as being a whole range of things. Its atua is personified, it is rock, it is a resource to be exploited and used, it may be cold, it may have all sorts of different qualities with the light shining on it or in shade, and it is all those things at once. That is not a very difficult or mystical perception of existence. As I understand it, what most natural sciences are involved in today is interdisciplinary studies. Instead of chopping up the world into segments modern scientists are trying to tie it all together again and call it environmentalism ....
>
> I am not saying that because my mountain is an atua, or because my river too represents an atua, that they should not be touched or used. One of the more endearing characteristics of Maori is their capacity to tie the practical together with their theological beliefs ....
>
> Difficulties arise when we come to water used for rituals. It is unacceptable to us to go to those places where the waters of ritual are important for our old people, and they are polluted; whether that water is to bless our children, or to lead us in karakia and in other important ritual. The most important places must be free of pollution.[4]

Pei Te Hurinui Jones wrote of the significance of the Waikato river to Tainui people, but acknowledged the variations in tribal perceptions of the river:

> In song and story the Waikato River has exercised its influence upon the land through which it flows and upon the people who live along its banks. The river has played an important part in the history of Tainui people....
>
> A Waikato tribal version of the naming of the river itself states that the name is descriptive, and that the river Tongariro ... which is snow-fed from the mountains Tongariro and Ruapehu and flows into Lake Taupo at its southern end, is also part of the Waikato River. But the Taupo Lake people do not agree with this claim. The Waikato tribal account describes how the waters *(wai)* of the mountain river were captured or *kato* by the inland sea of Taupo. Thus we have *Waikato* (the captive waters) ....
>
> In ancient times the lakes, leisurely streams and the Waikato River never failed as sources of food and fish for the numerous tribes in the area ....[5]

Sir Apirana Ngata described the significance of the Waikato river in his account of a visit to the Waikato district in 1900:

> There the Waikato river wends its way often splitting the very sources of the earth to be disgorged into the West Coast. Te Heuheu at Tongariro has the source, where legend has it a taniwha smote the rock and out of it gushed forth the river Waikato to make for itself a path through the lake of Taupo. Eschewing the Arawa domain, it wends its way, gathering strength from its many tributaries until at Ngaruawahia it is joined by the Waipa which in its turn has gathered in all the Maniapoto tributaries, and thus reinforced, it flows by Taupiri and makes for the Tamaki River — Tamaki Makaurau. Alas it is diverted by the land formation and disgorges through the sandy wastes of the West Coast into the ocean ....[6]

There are many versions of a story about how the Waikato river was formed. Some Waikato versions tell of the journey in search of fresh pure water for the ailing daughter of a chief living at Taupiri. Among Ngati Tahu and Ngati Manawa of the Kaingaroa plains is a story of the rivalry between the two rivers, Waikato and Rangitaiki, both searching for an outlet in the Bay of Plenty. Several versions of the story have Waikato flowing past Maungatautari into the Hinuera valley in search of a route to the Bay of Plenty. Blocked by the hills of Kaimai and Mamaku the river turned north through what is now called the Thames valley to the sea at Hauraki. Geologists have demonstrated that indeed the river has changed its course periodically and did at times flow into Hauraki lands. However, the river heard the pounding surf of the western seas, Tainui Awhiro, and was diverted again, flowing north from Piarere and Karapiro to Taupiri; into the swamplands south of the Bomhay hills, and west to the sea.

In 1975 the Tainui Maori Trust Board lodged an application for investigation of title to the bed of the Waikato river in the Maori Land Court. The bed of Lake Taupo and the Waikato river downstream to and including Huka Falls had already been acknowledged as "Taupo waters" of Ngati Tuwharetoa in the Native Land Amendment and Native Land Claims Adjustment Act 1924. Similar proceedings in respect of other lake beds had acknowledged traditional ownership and use.[7] The Tainui application to the Maori Land Court was adjourned sine die. Since then the Waikato river has been included in claims lodged by the Tainui Maori Trust Board with the Waitangi Tribunal.

16.3 The Impact of Hydro-Electric Power Schemes

The Waikato river has been greatly modified between Lake Taupo and Karapiro by the construction of a series of hydro-electric power schemes. The first of these was Horahora, built in 1913 for the Waihi Gold Mining Company and later purchased by the Crown. In 1929 Arapuni was completed. Through the 1930s geologists surveyed the gorges of the Waikato and had identified up to ten potential dam sites by 1939. Work on control gates where the Waikato flows from Lake Taupo was carried out in 1940 to 1941. Further development was delayed by World War Two and it was not until 1947 that Karapiro was commissioned. During the late 1940s and 1950s several dams were constructed on the section of river which borders Pouakani block. These were:

- Maraetai I: built during the late 1940s and commissioned in 1952.
- Whakamaru: built during the early 1950s and commissioned in 1956.
- Waipapa: built in the late 1950s and commissioned in 1961.
- Maraetai II: commenced in 1959 and completed, after a break in construction, in 1970.

The township of Mangakino was constructed in the late 1940s as a living place and headquarters for these construction projects, a "hydro town" with its own distinctive character. In 1952 the population exceeded 5,000. The town also serviced the construction of Atiamuri and Ohakuri schemes further upstream which were commissioned in 1959 and 1961 respectively. In the 1940s the Mangakino site was covered in scrub and there was no road. The town owed its existence to the hydro schemes and the roads constructed gave access which

allowed development of the land for farming in the 1960s. The land required for the township (about 273 hectares) was leased from the Maori owners for 20 years, expiring in 1969.[8]

The land required for dams, power stations, switchyards and other works as well as land flooded by hydro lakes, was taken under the Public Works Act in a series of proclamations over the period 1949-1982. The Department of Survey and Land Information prepared a series of plans to illustrate the riparian lands of the Pouakani block taken by the Crown for hydro-electric power purposes. These were presented to the tribunal and are reproduced in appendix 16. Much of the land involved was already sold to the Crown. The Ngati Kahungunu owners of Pouakani No 2 block (the "Wairarapa Exchange" land) lost 479 hectares or 3.88 percent, of their land holdings between 1949 and 1963.

Counsel for claimants commented that there was no "process set up which involved the local tangata whenua in the series of decisions which turned this stretch of the river into a succession of three artificial lakes". The Electricity Corporation presented a submission to the tribunal, noting that the construction was carried out in the national interest at a time when there was considerable public demand for expanding electricity generation facilities:

> The national electricity supply system was under considerable stress. For example, if one refers to the Minister in Charge of State Hydro's, Statements in the Annual Reports of the years immediately following the Second World War, the picture is one of power shortages, emergencies and restricted supply. Mention is also made in the reports of the post war difficulties in obtaining supplies of equipment for new stations. (B19:5)

The 1950s was also a time of less environmental awareness, nearly two decades before the passing of the Water and Soil Conservation Act 1967 with its provisions for public participation in water rights applications. There was a much greater level of public acceptance of the hydro-electric power schemes in the 1950s than might be so today. There was no legislative requirement to consult with local people. Counsel for the Electricity Corporation stated:

> The right of Tangata Whenua to special consultation and consideration under the law is a developing area ....
>
> One can only speculate on the outcome of any consultations which might have taken place in the late 1940's. The last 40 years have seen major social changes so it is difficult to treat the attitudes of that time from the present perspective ....
>
> At the local level as with the Tangata Whenua there can be conflict between the aspirations of the wider community and local people. However in this particular situation, the country's need for electricity was seen as particularly dominant, and one can argue that power cuts and restrictions would have positively affected local perceptions of the proposals. (B19:6)

The claimants produced little evidence of specific adverse impacts of the hydro schemes. The Electricity Corporation, in noting some positive benefits of recreational use of hydro lakes and fisheries, also acknowledged negative impacts such as dams acting as a barrier to eels. No evidence was presented to us on the impact of dams on fisheries. The Electricity Corporation referred to advances in design of "eel passes" and a willingness to discuss this and related issues with local people.

One of the obvious visual impacts of the power schemes is the flooding of land by hydro lakes. There was no survey of archaeological sites and many wahi tapu along the river banks were flooded. The claimants did refer specifically to the loss of the "Waipapa rock paintings" at the confluence of the Waipapa and Waikato rivers.[9] Other rock paintings had been submerged by Lake Arapuni.[10] Hot springs at various places, such as Waimahana on the Pouakani block have also been submerged. Two thirds of the active geothermal area including geysers and the papakainga at Orakei Korako, and hot springs and wahi tapu at Te Ohaaki, were submerged by the Ohakuri hydro lake.

We acknowledge it is difficult sometimes to achieve a balance between development of energy resources in the national interest and the concerns of local people. In the case of the Waikato hydro-electric power schemes of the 1950s, local Maori concerns were not considered important and many places significant to Maori were "lost". Such losses are not compensated for by money paid out for land taken under the Public Works Act. The failure to acknowledge the significance of wahi tapu in Maori terms has contributed to a sense of powerlessness and grievance among Maori people in all the areas affected by Waikato hydro-electric power schemes.

The Electricity Corporation is a state-owned enterprise which has taken over the operation of the Waikato power schemes established by Crown agencies, the Electricity Department and latterly the Electricity Division of the Ministry of Energy. As part of the asset sale and purchase agreement with the Crown, the corporation has undertaken to apply for renewal of water rights for all of its power stations within 15 years. We note that the provisions of the Resource Management Act 1991 require that the principles of the Treaty of Waitangi be taken into account. The corporation stated that it considers consultation with tangata whenua "essential in the spirit of the Treaty of Waitangi", and has already initiated meetings at Mangakino and Arapuni and sponsored a local canoe project. We suggest that this sort of informal local consultation be encouraged. At such time as new water rights are being sought, there is also provision for Maori concerns to be heard.

As a state-owned enterprise the Electricity Corporation is also bound by the Treaty of Waitangi (State Enterprises) Act 1988. The land transferred to the corporation does not include all that was taken under the Public Works Act, only that "reasonably required for commercial purposes", such as areas covered by a dam, power station, switch yards and related structures. The corporation does not own any beds of lakes or rivers which are expressly excluded from transfer in the asset sale and purchase agreement. The margins of much of the hydro lakes remain Crown land under the stewardship of the Department of Survey and Land Information or the Department of Conservation. The Waikato Regional Council has a mandate to manage the resources of the Waikato river but we did not have the benefit of any submissions on this from the council.

There are many public issues in relation to the management of the Waikato, such as public recreation and water quality for supply of towns downstream. These are issues affecting the whole river system, beyond the scope of this claim and not canvassed in evidence presented to the tribunal. We make no specific recommendations at this stage. The active participation by Maori in the wise use and management of the resources of the Waikato river is an issue that needs

to be addressed in a framework embracing the whole river system and all the tribes involved. We commend the initiatives of the Electricity Corporation in attempting to establish better communication with local Maori.

We make a general recommendation that the issue of Manri participation in the control and management of the resources of the Waikato river, including fisheries, be actively pursued hy the relevant Crown agencies and the Waikato Regional Council. The Resource Management Act at s8 makes provision for taking into account tbe principles of the Treaty of Waitangi. It is not spelled out precisely bow this is to be implemented. The Act at s6(e) also includes as a matter of national importance, "The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga". Active Manri involvement in resource management requires Maori participation in policy and management decisions, not passive consultation as and when officials may see fit. The wise use and management of the resources of the Waikato is a matter of concern to all the tribes of the Waikato catchment, as well as to the public in general.

16.4 The "Ownership" of the Bed of The Waikato River

It has often been assumed that the beds of rivers and lakes are vested in the Crown, but this issue is far from clear. In 1950 a royal commission inquiring into Maori claims on the Whanganui reviewed earlier proceedings in the Maori Land Court which had concluded that the bed of the river was owned according to Maori custom.[11] The issue was wbether ripanan owners had an exclusive right as wbanau or hapu, or wbether a larger tribal group controlled local use of the river, as distinct from a general "right of passage". There were other proceedings, in particular the decisions in respect of Rotorua, Taupo and Horowhenua lakes, whicb confirmed customary Maori ownership of land covered by water.[12] In these instances, the Crown reacbed separate agreements with the tribes concerned. More recently, a separate agreement was reached in respect of Waikaremoana, set out in the Lake Waikaremoana Act 1971.

Ownership of land covered by water also raises questions of fishing rights, and there is a suggestion that sucb rights survive when the adjacent land is sold. These agreements for lakes suggest Crown acknowledgement of a separate identity for the land covered by water by negotiating its acquisition, but maintaining separate arrangements with respect to fishing. Section 14(1) of the Native Land Amendment and Native Land Claims Adjustment Act 1926 provide that:

> The bed of the lake known as Lake Taupo, and the bed of the Waikato River extending from Lake Taupo to and inclusive of the Huka Falls, together with the right to use tbe respective waters, are hereby declared to be the property of the Crown, freed and discbarged from the Native customary title (if any) or any otber native freehold title there to ....

This legislation followed negotiation over fisheries, the destruction of kokopu (native trout) and koura (freshwater crayfisb) by introduced trout species, and a sbare of fishing licences as compensation. The Tuwbaretoa Maori Trust Board was set up to administer funds received as a result of this agreement. The beneficiaries of the board were later determined hy the Maori Land Court to be the owners who had been determined in the blocks of land adjacent to the lake, the tributary streams, and the Waikato river to Huka Falls.

In the case of the Whanganui river and in the determination of beneficiaries of the Taupo agreement, British common law principles applied. In the case of rivers, the *ad medium filum aquae* rule is used, that is, riparian owners own the land to the middle line of the river. The issue is whether a portion of a river adjacent to land sold, with or without relevant fishing rights, is also sold. Most interpretations suggest that sale of Maori freehold land on a river bank also included any rights to the river bed and fisheries.[13] Related to that is the issue of whether a Crown taking of riparian land by proclamation under the Public Works Act includes the adjacent portion of the river bed and fisheries. The land described in such proclamations and relevant plans is that on the banks above water line and there is no reference to the bed of the river.[14] If such land is subsequently covered by the water of a bydro lake and a fisbery, then does the Crown acquire rights to the fishery?

All the foregoing discussion was academic if the river could be described as "navigable". In the Coal Mines Act Amendment Act 1903 the principle of *ad medium filum aquae* was replaced by a declaration of Crown ownership of the beds of navigable rivers. In a decision of the Court of Appeal it was argued that the Waikato in the Huntly area was used for public navigation.[15] The 1903 legislation survived in s261 of the Coal Mines Act 1979, which was repealed by s120 of the Crown Minerals Act 1991. However s354(1) of the Resource Management Act 1991 provides that this repeal sball not affect any title to land already acquired by tbe Crown under s261. This tben raised the issue of 'confiscation' by the Crown of the beds of rivers and their fisheries in the sections of river that were navigable.

The issue of whether riparian owners or tbe Crown "owned" or had rights in a river turned on the definition of 'navigable'. Section 261 of the Coal Mines Act 1979 provided:

> (1) For the purpose of this section —
> "Bed" means the space of land which the waters of the river cover at its fullest flow without overflowing its banks:
> "Navigable river" means a river of sufficient width and depth (whether at all times so or not) to be used for the purpose of navigation by boats, barges, punts or rafts.
>
> (2) Save wbere the bed of a navigahle river is or bas been granted hy the Crown, the bed of such river sball remain and shall he deemed to have always been vested in the Crown; and, without limiting in any way the rights of the Crown thereto, all minerals (including coal) within such bed shall be the absolute property of the Crown.
>
> (3) Nothing in this section shall prejudice or affect the rights of riparian owners in respect of the bed of non-navigable rivers.

The Waikato above Camhridge was not navigahle all the way to Taupo. There were sections of river whicb could be navigated by canoe but the course of the river was broken by a succession of rapids and waterfalls. There was no definition in terms of s261 of whicb sections of the river were "navigahle". If rapids could be negotiated by a modern jet boat, did this make them navigable? In the case of the Whanganui and other rivers, sections of river were made navigable hy blasting out obstructions in the bed.[16] Since the construction of the bydro-electric power scbemes on the Waikato, it could have been argued that the sections of river impounded behind dams bave been made navigable. However, in the case of the Whanganui, it was determined that riparian owners

had rights *ad medium filum aquae*. We found the law on rivers in this respect to be confused and confusing.

We had the benefit of a legal submission by Mr Austin on s261 of the Coal Mines Act 1979 which sets out in more detail and full legal citation the issues summarised here. We have included Mr Austin's paper in full as appendix 15. He made the point that s261 could best be seen as an extension of the prerogative rights of the Crown to the seas, foreshores and tidal waters, rather than as proprietary rights. Once again, the tribunal was reminded of the fundamental issue of the imposition of British common law over customary uses and tenure of land and resources of Maori tribes. This is a constitutional issue which transcends argument about a particular section of the Waikato. Similar issues are being argued in other claims before the Waitangi Tribunal.

16.5 Findings and Recommendations

The Waikato is a taonga of the tribes of Tainui waka and Ngati Tuwharetoa. By various actions of the Crown, or worse by the Crown's failure to acknowledge Maori concerns about wahi tapu, fisheries, taha wairua (spiritual qualities), mahinga kai and other rights, the mana of these tribes has been devalued. An agreement was reached with Ngati Tuwharetoa which acknowledged Maori interests in respect of Lake Taupo and the Waikato river to Huka Falls. Maori claims to the river downstream and its fisheries remain unresolved.

It would seem that the taking of river margin lands for hydro-electric power purposes by the Crown under the Public Works Act did not include rights in the river *ad medium filum aquae*. The plans referred to in proclamations under the Public Works Act, (summarised in appendix 16) show boundaries which exclude the river bed. That the Crown may have assumed at the time of proclamation that it already owned the river bed does not affect the central issue, which is that ownership of the river bed and rights to the resources of the river remain unresolved. The specific impacts of the hydro-electric power takings on Pouakani block are the subject of a separate claim to the tribunal (Wai 85), lodged on behalf of Ngati Kahungunu ki Pouakani who are the owners of Pouakani No 2 block given by the Crown in exchange for the Wairarapa lakes. We did not receive any evidence on the status of lands taken under the Public Works Act for hydro-electric power purposes but not transferred to the Electricity Corporation. We do not know which of these lands remain under the stewardship of the Department of Conservation. We simply remind the Crown of the provisions of s4 of the Conservation Act 1987: "This Act shall so be interpreted and administered to give effect to the principles of the Treaty of Waitangi".

The repeal of s261 of the Coal Mines Act 1979 has not resolved the issue of ownership of river beds. Furthermore, we consider the conflict between Maori rights, the Crown and the public interest in general, over the ownership and use of rivers has implications far beyond the scope of the claims before this tribunal. We therefore recommend that the Crown give urgent attention to adressing these matters in the national interest.

References

1 *Report of the Waitangi Tribunal on the Kaituna River Claim* (Wai 4), (Waitangi Tribunal, Department of Justice, Wellington 1984), p 31

2 *Report of the Waitangi Tribunal on the Manukau Claim* (Wai 8) (Waitangi Tribunal, Department of Justice, Wellington July 1985) p 51

3 ibid p 72

4 S T O'Regan "Maori Perceptions of Water in the Enviroment, An Overview" in E M K Douglas (ed) *Waiora, Waimaori, Waikino, Waimate, Waitai, Maori Perspectives of Water and the Enviroment* (Hamilton 1984) pp 9-10

5 P Te H Jones *Potatau An Account of the Life of Potatau Te Wherowhero, the First Maori King* (Wellington 1959) pp 234 and 242

6 quoted in Tainui Trust Board submission to Maori Land Court, Mahuta 1975

7 Law Commission 1989 pp 74-79

8 *New Zealand Gazette* 1949 pp 2491-2492

9 The Waipapa rock paintings were reported by F Davies and W Ambrose in the "Report of the National Historic Places Trust for the Year ended 31 March 1957" in AJHR 1957 H-27

10 M Trotter and B McCulloch *Prehistoric Rock Art of New Zealand* (Auckland 1981) p 40

11 AJHR 1950 G-2

12 Law Commission 1989 pp 76-79

13 ibid p 167

14 see plans in appendix 16

15 *Mueller* v *Taupiri Coal Mines Ltd* (1902), 20/NZLR 89

16 Law Commission 1989 pp 164-165

Chapter 17

Ngati Kahungunu Ki Pouakani: The "Wairarapa Exchange"

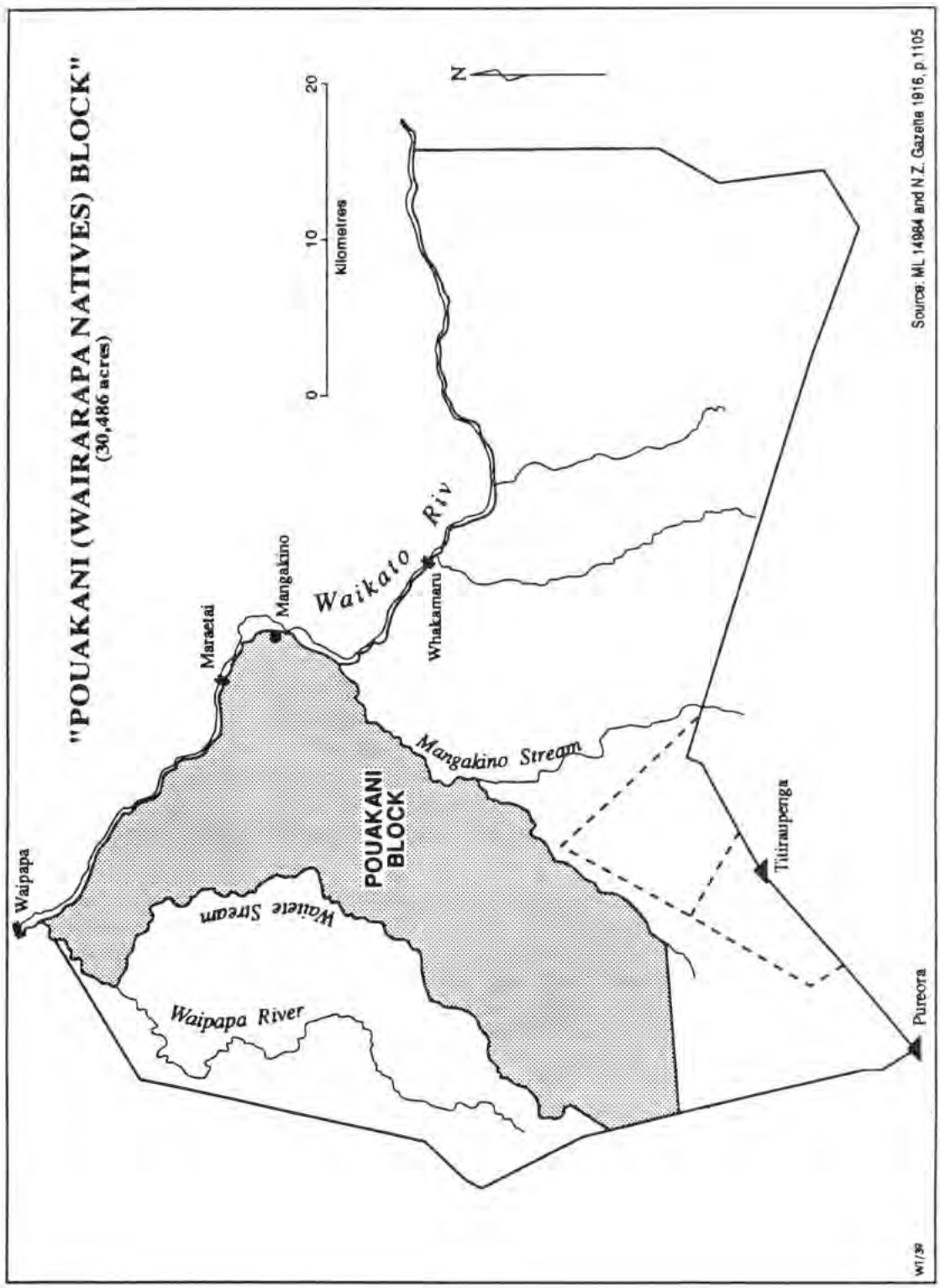
In 1915, a large portion of the Pouakani hlock which had become Crown land, an area of 30,486 acres (map 17.1), was granted to people of Ngati Kahungunu in exchange for the bed of the Wairarapa lakes.[1] The hackground to this transaction was that the fluctuating level of Wairarapa Moana, (which had been an important source of eels for Ngati Kahungunu) was causing prohlems for runholders who had acquired land around the margins:

> At the time of the 1853 land purchases, McLean promised Ngatikahungunu that the lake would never be opened without Maori authority and, it was later claimed, said that anyone who took a spade to clear the channel without that permission would be liahle to a heavy fine. During the first two decades of occupation the regular flooding of the lake margins did not greatly worry runholders as there was still plenty of availahle grazing. However once the level lands were freeholded and surveyed the situation changed.[2]

From the 1860s on there were various proposals to keep the lake entrance open and provide a small shipping service to the runholders. More significant were proposals to drain part, if not all, of the shallow lake and reclaim the bed for farmland. Under the pressure of runholders' interests, government officials began negotiating with Maori owners but with only very limited success. In 1880, a severe flood exacerbated the situation and the matter was referred to the courts:

> However the Crown application to the [Native] Land Court in that year [1881] gave miniscule results in the form of a Court order for the issue of a title to the 17 separate interests which the Crown had purchased. In good legal opinion these were nothing more than fishing rights. Mr Justice Richmond's ruling that the [Native] Land Court was entitled to issue the necessary certificates of title did not take anyone very far while his most significant judgment that the Supreme Court could not interfere with the [Native] Land Court seemed to close that path in the immediate future. A deed was drafted hut never executed although its accompanying plan supported the Maori contention that the acres between the normal lake level and the flood-line belonged to them. A further attempt at purchase in 1882 failed and a [Native] Land Court sitting in Greytown in November 1883 made orders registering the interests of the 134 or more dissentients as owners of the upper and lower lakes.[3]

There were further representations to government hy runholders. A decision hy the Ruamahanga Drainage Board to declare the Ruamahanga river, Wairarapa Moana (Lake Wairarapa) and its estuary in Lake Onoke "a public drain", and attempts to open the entrance, led to confrontation between Maori and settlers. In 1891 a commission of inquiry considered the issue, acknow-


"POUAKANI (WAIRARAPA NATIVES) BLOCK"
(30,486 acres)
N
0
10
20
Kilometres
Source: ML 14984 and N.Z. Gazette 1916, p.1105
Waikato Riv
Whakamaru
Mangakino
Maraetai
Waipapa
POUAKANI BLOCK
Mangakino Stream
Waiotie Stream
Waipapa River
Titiraupenga
Pureora
WI/39

Map 17.1

ledged Maori ownership of the lake bed, and recommended, among other things:

> That an arrangement be made with the Native proprietors to obtain their consent to the outer lake being opened at any time after it had been closed for two months, or when it commences to inundate the land owned by the European settlers.[4]

There was another confrontation in May 1892, described as the "Battle of Lake Wairarapa". There were more legal moves. In 1893 the Court of Appeal held that the Ruamahanga River Board had the power to open the entrance and keep it open.[5] A notice of appeal to the Privy Council was lodged on behalf of the Maori owners. The owners had also petitioned parliament that they had no representation on the river board. Another petition in 1895 was reported on by the Native Affairs Committee, supporting the conclusions of the commission: "It is clear that the Natives have been wronged and the only question is whether the Local Bodies interested or the Government should compensate them".[6]

There were further negotiations with representatives of the owners with the object of Crown acquisition of the bed of Wairarapa Moana:

> An agreement was signed at Papawai on 13 January 1896 whereby the lakes were 'surrendered and assured to Her Majesty the Queen' in consideration for which the Crown was to pay £2000 'and shall out of any lands which shall come into the possession of the Government ... make ample reserves for the benefit of the Native owners'! The compensation was therefore twofold, a fixed sum and additional land.[7]

There were further delays in implementing this agreement. In 1908, the sum of £5000 was agreed, to be used for purchase of some Wairarapa lands, but high prices made this option impracticable, from the Crown viewpoint anyway.

> The Pouakani block in the northern King Country was then suggested although the hapus at first demurred — 'the distance was too far to please us'. However with a change of Government it became expedient to accept and the Native Land Court put 130 names of Ngatikabungunu into the Pouakani title as 'an "aroha" from the Government to us'. On 22 January 1915 Judge Gilfedder made an order vesting Arete Tamahau and 229 others in 30,486 acres of the Pouakani block. There were no restrictions on alienation. In the years since a number of Wairarapa Maoris did move north to their new lands ....[8]

In 1915 the Pouakani land was undeveloped Crown land, covered in scrub, with a little bush on the southern margins and in the river valleys. Pinus radiata was later planted on parts of the block. In the 1960s, a substantial area of scrub was included in a development scheme and converted into farmland. It is ironic that years after this exchange, some 439 hectares of the riverbank margins of the land granted to "Wairarapa Natives" was taken under the Public Works Act and much of it flooded for hydro-electric power purposes (appendix 16). The land on which the construction town of Mangakino stood was leased in 1949.[9] Instead of removal at the end of construction, the town survived, after the land was taken back by the proprietors of the Mangakino Incorporation in 1969.

The tribunal heard submissions from representatives of Ngati Kahungunu ki Pouakani who gave notice of a separate claim lodged on their behalf. This claim has since been registered as Wai 85 Mangakino Pouakani Lands. Another

claim has heen made covering a number of issues in the Wairarapa district and registered as Wai 97 Wairarapa Lands and Fisheries. While this report does not deal with these claims, it is relevant to comment that government "settled" Ngati Kahungunu grievances in Wairarapa by granting Crown land in territory well outside their traditional trihal lands. Ngati Kahungunu ki Pouakani do not hold any ancestral rights on Pouakani lands. They do have a right of occupation and a title granted hy the Crown. They have huilt a marae at Mangakino and given to their wharenui the ancestral name, Tamateapokaiwbenua, a noted traveller of Takitimu traditions.

The nature of their occupation of Pouakani lands has put Ngati Kahungunu ki Pouakani in an uneasy relationship with local tangata whenua. We were told that there were some who would like to be repatriated to Kahungunu territory, but that if this were to occur then equivalent land and resources sbould be made available in the Wairarapa. We bave no means of determining how widespread this feeling is among Ngati Kahungunu ki Pouakani. We were also given to understand that the claimants in the Pouakani claim felt that if Ngati Kahungunu were to be repatriated, then these lands should return to the tangata wbenua. We make no recommendation on this issue. The Ngati Kahungunu ki Pouakani claims lodged with the tribunal will be investigated separately and in the context of Ngati Kahungunu interests. The relevant issue for this report is that the government of the time, after several decades of negotiations and inaction, saw fit in 1916 to grant Pouakani lands to a section of a tribe who do not traditionally belong there. The "Wairarapa Exchange" as it is sometimes called, was a Crown transaction which has added a further complicating factor to a complex series of Crown transactions on the Pouakani hlock.

References

1 *New Zealand Gazette* 1916 p 1105; ML 14984

2 A G Bagnall *Wairarapa, An Historical Excursion* (Hedley's Bookshop for the Masterton Trust Lands Trust, Masterton, 1976) p 377

3 ihid p 379

4 AJHR 1891, Session II, G-4

5 Law Commission 1989 p 168

6 Quoted by Bagnall 1976 p 383

7 ihid

8 ihid p 384

9 *New Zealand Gazette* 1949 pp 2491-2492

Chapter 18

Summary of Findings and Recommendations

18.1 The Claim and the Proceedings (Chapter 1)

The Pouakani claim was lodged hy John Hanita Paki on behalf of himself, the trustees and beneficial owners of the Pouakani B9B Trust and Titiraupenga Trust, which administer the Pouakani B9B block and Pouakani C1B1 and C1B2 blocks respectively. In the mid 1980s a dispute arose between the owners of Pouakani B9B block and the Crown over the boundaries with the adjacent Pureora State Forest Park. The dispute over logging on the boundaries led to proceedings in the High Court and the Maori Land Court and the lodging of this claim with the Waitangi Tribunal. During these proceedings, claims were made that boundaries had been shifted, surveys not done, that there were discrepancies in the areas of several Pouakani blocks, and an alleged loss of a large area of land to the adjacent Maraeroa hlock. These lands straddle the "border" between tribes descended from Tainui and Te Arawa in the region extending from the Waikato river in the Mangakino district to Titiraupenga and Pureora mountains, north west of Lake Taupo.

18.2 Historical Overview (Chapters 2-6)

The trihunal has considered this boundary dispute and a number of other matters raised in the amended statements of claim (appendix 2) which need to be set in historical context. This section of the report is divided into several chapters, covering traditional Manri relationships with the region (chapter 2), historical review of the period 1840 to 1886, covering Maori and Pakeha perceptions of the land (chapter 3), the impact of the wars of the 1860s (chapter 4), operation of the Native Land Court and Crown land purchases in the Taupo district 1867-1883 (chapter 5) and proposed routes for the North Island main trunk line (chapter 6). In these chapters the scene is set for a narrative of events that affected land transactions in the central North Island in the 1880s and 1890s.

18.3 The Rohe Potae and the Native Land Court (Chapters 7-8)

Following various government attempts to negotiate with the tribes, to "open-up" the King Country for construction of a railway line and Pakeha settlement, an agreement for survey of the Rohe Potae was reached on 19 December 1883, described by the claimants as the "Aotea Agreement". In response to a petition by the tribes of Ngati Maniapoto, Ngati Raukawa, Ngati Tuwharetoa and Whanganui in 1883, parliament passed the Native Land Alienation Restriction Act 1884 which reimposed the Crown right of pre-emption on lands described in a schedule to the Act and known as the Rohe Potae. There were various interpretations among the tribes of the nature of this "Aotea Agreement", but

the effect of it was to instigate, under the direction of the Auckland office of the Survey Department, a survey of the boundary of Ngati Maniapoto lands known as the Aotea (Rohepotae) block (see maps 7.1 and 7.2). In 1885 Te Heuheu and others lodged an application to the Native Land Court for investigation of title of Ngati Tuwharetoa lands known as the Tauponuiatia block, to the east of the Aotea block. This application was disputed by Ngati Maniapoto as a breach of the "Aotea Agreement". During 1886 the Native Land Court proceeded to hear applications for investigation of title of the Tauponuiatia block, in Taupo, and the Aotea (Rohepotae) block in Kihikihi and then Otorohanga.

The dispute focused on the boundary between Aotea and Tauponuiatia, in particular the boundary line between the Pouakani and Maraeroa blocks from Taporaroa (two different locations were given) to Pureora mountain, and south to the Hurakia range, and whether the Maraeroa block, claimed by Ngati Maniapoto, should be heard by the Taupo court (see map 9.4). The adjudication on the Pouakani and Maraeroa blocks by the Native Land Court at Taupo was not accepted by all. There was an application to the Native Land Court for rehearing (which was dismissed), litigation in the Supreme Court, and petitions to parliament, and in 1889 the Tauponuiatia Royal Commission was appointed to investigate.

As a result of the report of the Tauponuiatia Royal Commission, the Native Land Court orders in respect of the Pouakani blocks (except Pouakani No 1 which had been conveyed to the Crown in payment of survey and other costs) and all of the Maraeroa block, were cancelled in s29 of the Native Land Court Acts Amendment Act 1889. The investigation of title for these blocks was heard anew by the Native Land Court in 1890 and 1891. There were significant differences in the boundaries and areas of the various blocks as ordered in 1891, which has caused confusion for descendants of owners. We emphasise at this stage that, with the exception of Pouakani No 1 block surveyed in 1890, none of the earlier surveyed boundaries or Native Land Court title orders issued in respect of Maraeroa and Pouakani blocks has any legal standing.

18.4 The Maraeroa and Pouakani Blocks (Chapters 9-12)

In these chapters we set out in detail the various transactions on these blocks, and illustrate with maps, the various boundary changes which were made in the new title orders issued by the Native Land Court in 1891, and subsequent partitions as a result of Crown purchases. In chapter 10 we focus on a narrative of the survey of the boundary recommended by the Tauponuiatia Royal Commission. We found that the boundary along the watershed of the Hurakia range was surveyed as far as Pureora mountain, with consequent changes to the boundaries of the Waihaha and Tihoi blocks, the creation of the Hurakia and Ketemaringi blocks, and a revised Maraeroa block. A triangle of land named Tahorakarewarewa, or Punakerikeri block, was also surveyed but subsequently included in the Maraeroa A block by the Native Land Court in 1891 with no apparent dispute at the time (see map 10.1). There have been subsequent petitions to parliament and a report by Judge MacCormick of the Native Land Court in 1935 which we reproduce in appendix 8. We make no finding on this aspect of the claim, referring it, like the 20,000 acres of Pouakani No 1 block that went in payment of survey and other costs in 1887, to the Wai 48 etc group of claims in the Rohe Potae.

We studied in detail tbe boundary between tbe Maraeroa and Pouakani blocks, wbicb the claimants allege had been shifted. We reviewed the order of 24 September 1887 that determined tbe ownership of a Maraeroa block of 41,245 acres, the legislation and Native Land Court Rules under wbich it was made, the evidence given to the Tauponuiatia Royal Commission and the report of that commission. The claimants believed that the boundaries of a Maraeroa block surveyed by Cussen in 1886 were the boundaries of the Maraeroa block in the 1887 order. Consequently, they believed that the north-eastern boundary of the block surveyed by Cussen in 1886 was the boundary determined by the Tauponuiatia Royal Commission which was declared by s29 of the Native Land Courts Act Amendment Act 1889 to be the boundary of the Tauponuiatia block. In 1891 the Native Land Court fixed the boundary between tbe Maraeroa and Pouakani blocks in a position to the east of a line surveyed by Cussen. The claimants believed that in doing so the court shifted a boundary fixed by statute and that as a consequence 4831 acres were lost from Pouakani block.

But we found that in 1889 the boundaries of the 1887 Maraeroa block bad not been fixed by the Native Land Court because the requirements of the Native Land Court Act 1880, under which the order bad been made, had not been complied with. The Act provided that notice was to be given that a plan was available for inspection. People bad the right to object to the boundaries shown on the plan and the court was required to consider any sucb objections. The boundary surveyed by Cussen in 1886, and shown on plans ML6036 and ML6036 etc approved by the cbief surveyor in 1887, had not been approved by the Native Land Court and bad, therefore, no legal standing.

The western boundary of the Tauponuiatia block was found by the Tauoponuiatia Royal Commission to run along the watersbed of the Hurakia range and then along the north-eastern boundary of the Maraeroa block. In 1889 there was a Hurakia range whicb would bave a watershed, and there was a Maraeroa block created by the Native Land Court order of 24 September 1887 whicb would have a boundary. But the boundary of the 1887 Maraeroa block had not been fixed by the Native Land Court, just as the watersbed of the Hurakia range had still to be fixed by survey.

The boundary between the Maraeroa and Pouakani blocks surveyed by Cussen in 1886 and shown on the plans approved by the chief surveyor in 1887 was a straight line from the western Taporaroa to Pureroa. We analysed carefully Cussen's instructions, the boundary descriptions in Native Land Court orders and in Maori evidence given to the court in both the 1886-1887 and 1890-1891 bearings of Maraeroa and Pouakani blocks, and in evidence given to the Tauponuiatia Royal Commission. We conclude that all tbe descriptions of this boundary, including place names on the plan GM180, were consistent in placing the boundary line through a point at tbe junction of the Obahau and Waipapa rivers. This point was not located by survey on the ground until 1892, by Stubbing, and it is at this point that the angle in the line occurs. It is not mathematically possible to maintain a straight line between Pureora and either Taporaroa, and be consistent with a boundary description that includes the junction of Ohahau and Waipapa rivers (see map 10.2). We conclude therefore that the boundary between Maraeroa and Pouakani blocks, as surveyed by Stubbing in 1892, drawn on ML 6406 etc and on subsequent plans, is correct.

We also note that the Ohahau stream is named Omahau on some current DOSLI maps (for example NZMS 260 sheet T17) and recommend that this be corrected when the maps are reprinted.

A detailed narrative of Crown purchases and suhdivisions of Pouakani and Maraeroa hlocks is provided in chapter 11. We note some discrepancies between plans shown on deeds of sale and Native Land Court title orders. We analyse in detail Stuhhing's 1892 plan ML 6406 etc and deed plans in appendix 13. We also describe the process of ohtaining individual signatures on deeds by government land purchase officers.

In cbapter 12 we focus on surveys and the matter of survey and other charges against the land incurred as a result of the process of investigation of title by the Native Land Court. We note the various recalculations of amounts of money to be charged against the land in the form of survey liens, and the practice of calculating houndaries in the Survey Office — "scaling and protracting" — rather than survey on the ground in areas where the Crown was actively purchasing individual interests. In mitigation, the intention was to prevent unnecessary and costly surveys wbicb would be a further charge on Maori owners. We conclude that significant areas of land were acquired by the Crown in payment of survey costs, in addition to the purchase of individual interests, but Maori did not always receive in return a properly surveyed title.

18.5 The Native Land Court and Crown Land Acquisition in the Late Nineteenth Century (Chapter 13)

In our review of the large amount of archival material that bas survived covering the Native Land Court operations, surveys and Crown land purchase on Maraeroa and Pouakani blocks in the 1880s and 1890s, we began to understand wby Manri people are frustrated in finding out how the Crown obtained title to their land. We also reviewed the massive amount of legislation (see appendix 10), survey regulations (appendix 11), numerous DOSLI plans (appendix 12), and searcbed otber contemporary sources to understand the practices and procedures of the Native Land Court, surveyors and land purchase officers in the 1880s and 1890s. We identified what could be described as sloppy procedures in the Survey Office in Auckland in not preparing separate plans for each block as required by the survey regulations, allowing the addition of survey data to existing plans, and relying on "scaling and protracting" of boundaries in the preparation of some title plans.

We reviewed the report and evidence given to the 1891 Commission on Native Land Laws, which set out very clearly Maori grievances created hy the operation of the Native Land Court, the requirements for survey and the high costs involved. The only way for Maori to establish title to their lands was to embark on this costly process, or be caught up in it by other kin who had lodged an application for investigation of title. Tribal leaders who signed the 1883 petition to parliament tried to keep the Native Land Court out of the Robe Potae, and to establish "Native Committees" whicb would undertake the task of identifying lands to be made available for Pakeha settlement. The Native Committees Act 1883 gave Maori no effective power to administer their lands. Under the Native Land Alienation Restriction Act 1884 a Crown right of pre-emption was reimposed in the Robe Potae. Maniapoto and Tuwharetoa leaders argued that this depressed prices paid by tbe Crown for their lands.

Government land purchase officers reached agreements with Maori and various arrangements were made outside the Native Land Court and confirmed hy the court in the absence of any ohjection. We investigated the Crown purchase deeds and sought other information about land purchase practices. We found no evidence to suggest that the land purchase officers or surveyors acted illegally, fraudulently or used methods that were not accepted practice for the times. The Native Land Court likewise acted within the legislative provisions of the time.

In reaching the conclusion that we find nothing illegal or unacceptahle in contemporary practice in the transactions on the Maraeroa and Pouakani hlocks in the 1880s and 1890s, we are still left with a strong sense of Maori grievance and frustration. The 1891 Commission on Native Land Laws identified the prohlems of confusion in law and practice in the Native Land Court, the high costs in fees and other expenses to attend court sittings in distant towns, the excessive costs of surveys, and costs of litigation in the Supreme Court or rehearing in the Native Land Court. All these factors contrihuted to mounting dehts. A system of administration of Maori lands was imposed hy parliament and the machinery of the Native Land Court rolled inexorably across the land. There is plenty of evidence that trihal leaders wanted to avoid the worst prohlems created hy land dealing hy keeping the Native Land Court out of the Rohe Potae and administering their own lands. There is also plenty of evidence that the government intentions were that Crown sovereignty would be imposed, government institutions extended into the region and the lands of the Rohe Potae "opened up" for Pakeha settlement. Parliament also sought to protect its investment in the construction of the North Island main trunk line hy imposing a Crown right of pre-emption in the hope of paying off its suhstantial dehts hy profits from the sale of land.

We conclude that Maori paid a disproportionate cost for Pakeha settlement, hut little provision was made for Maori participation in the suggested benefits of the introduction of capital and settlers. Indeed, the system of Native Land Court investigation of title and individualisation of interests in land, which could be sold piecemeal, contrihuted largely to social disruption, dissension over issues of mana and territory, massive dehts, costly mistakes in survey boundaries in some cases, and failure to survey in others, and costly litigation.

We have a particular concern about the way large areas of land were acquired hy the Crown in payment of survey costs. We accept the need for survey to identify boundaries for title purposes. We question why Manri were required to pay so suhstantially for the whole cost of surveys, including minor triangulation, in the Rohe Potae. If the Crown had accepted Maori proposals to work out the areas to be sold or leased for Pakeha settlement, and administer their lands themselves, there would not have been the need for so many surveys of subdivisions of hlocks. Perhaps there would have been fewer disputes and certainly less expense in prolonged litigation. The Crown also charged interest on unpaid survey liens, even when the Crown was sole purchaser and it had been agreed that survey costs would be paid in land.

There is nothing in the Treaty of Waitangi which required the transmuting of traditional Maori forms of land tenure into titles cognisahle in British law. By imposing requirements for survey and associated costs, fees for investigation of title in the Native Land Court, and other costs such as food and accom-

modation while attending lengthy court sittings, many Maori were forced into debt. That there had to be a fair system of establishing ownership when a sale was contemplated is accepted. The legislation under which the Native Land Court operated went much further than that and required that all Maori land be passed through the court with all the attendant costs of that process. When the debts were called in, Maori paid in land.

We consider that a prima facie case has been presented that the Crown acquired excessive amounts of land in payment of survey costs and other charges in the Robe Potae. We also acknowledge that further investigation is required. We are aware that the Waitangi Tribunal has begun proceedings to hear 12 other claims on similar matters in the Rohe Potae (Wai 48 etc). The Pouakani claimants have raised issues that are of concern to all the tribes of the Rohe Potae and the tribunal will need to hear from them before reaching specific conclusions on matters of appropriate redress. We also consider that such matters should be addressed on an iwi or hapu basis, and that the Crown should begin considering appropriate ways of doing this.

Accordingly, we make a general recommendation that no Crown land, or land transferred to state-owned enterprises such as Land Corporation or Forestry Corporation, in the Robe Potae be transferred to a third party without either investigation by the Waitangi Tribunal or agreement with the tribal authorities within whose territories such lands may lie. We do not consider that in the case of the Rohe Potae lands, the memorial on title provided for in the amendments to the State-Owned Enterprises Act 1986 made by the Treaty of Waitangi (State Enterprises) Act 1988 is adequate protection. We are mindful of the considerable cost to the taxpayer that may be incurred if such lands are alienated, but on subsequent investigation the Waitangi Tribunal sees fit to recommend Crown resumption of title.

18.6 The Boundary Problems of the Titiraupenga and Pouakani B9B Trusts (Chapter 14)

It is common ground that during the 1890s the Crown purchased a large number of individual interests of Maori owners in the Pouakani B9 (Pureora) and C1 (Kaiwba) blocks. In 1899 the Crown applications to partition out those interests were heard by the Native Land Court. The lands acquired by the Crown included 140 acres on Pouakani B9 block and 203 acres on Pouakani C1 block transferred by Maori owners in payment of survey charges. Title orders were issued by the Native Land Court but surveys were not completed by the Auckland Survey Office in a manner which complied with the 1897 survey regulations. Some boundaries remain unsurveyed on Pouakani B9B block. Surveys of Pouakani C1B block in 1947 revealed a problem in that a survey based on boundary descriptions in the Native Land Court title orders of 1899 and subsequent partitions could not be made to close and remain faithful to those descriptions.

The matter remained unresolved and a dispute over the boundary of Pouakani B9B block developed in the 1980s between the Maori owners and the New Zealand Forest Service, and after 1986 the Department of Conservation, which administered the Pureora Forest Park. There is no dispute over the nature of the survey problem which was acknowledged in 1947 by the Department of Lands and Survey and later by its successor the Department of Survey and

Land Information. The survey problems arose over the failure of the Survey Office in Auckland in the 1890s to meet the requirements of the survey regulations. The consequence of that failure was that the 1891 Native Land Court orders, that were supposed to have converted land rights collectively possessed by Maori into titles recognised by British law, failed to do so. Those collective land rights were guaranteed by the Treaty. The justification for the nineteenth century native land legislation, as set out in the preamble to the Native Lands Act 1862, was that such collective rights would be converted into titles recognised by British law.

Because not all the boundaries of the lands in the 1891 title orders creating Pouakani B9 (Pureora) and Pouakani C1 (Kaiwha) had been surveyed, those orders would not have been registrable in the Land Transfer Office and registered titles could not have been issued for them. The Native Land Court created fresh boundaries in 1899 when, on the application of the Crown, the court divided the lands between the Crown and the Maori owners who had not sold. Because not all the boundaries were surveyed, with the passage of time the survey work, for which the owners had paid 343 acres of their land in 1899, became almost valueless. Some of those boundaries had to be resurveyed in 1972. The rest will have to be resurveyed before the present owners of Pouakani B9B can get a title to their land under the Land Transfer Act. The Crown had an obligation to ensure that the boundary between the Crown and the non-sellers was adequately surveyed.

Almost a century after the Crown purchases there was litigation in the High Court, but the Maori Land Court and the chief judge of that court have jurisdiction in boundary matters concerning Maori land so the dispute was referred there. Because of other issues raised, the Maori Land Court proceedings were adjourned while the present claim was made to the Waitangi Tribunal. In due course, when negotiations suggested in our recommendations are complete, the matter of boundary survey will return to the Maori Land Court for final confirmation of boundaries and any adjustment of title orders required.

We find that the Department of Survey and Land Information is not a party to the dispute but has endeavoured to cooperate and facilitate resolution. The Crown in general does have an obligation to ensure the completion of survey of agreed boundaries, and to compensate Maori owners for the deficiencies of the Auckland Survey Office in the 1890s which has led the Maori owners of Pouakani B9B block into costly litigation.

Accordingly, we recommend:

1. That the Crown refund the reasonable legal, survey and other expenses incurred by the trusts in researching the question of the boundaries of Pouakani B9B block, the boundaries of the former Maraeroa and Horaaruhe Pouakani blocks, and the various subdivisions of those blocks, and in litigation over the boundaries, and the interest paid on the money borrowed for such purposes. The refund is to be made to the trust or trusts that made the payments.

2. That an area of 140 acres of Crown land taken in payment of survey charges be returned to the beneficial owners of Pouakani B9B block. This recommendation is to be considered in relation to further recommendations set out in chapter 15.

3. That the Crown return to tbe beneficial owners of Pouakani C1B1 and C1B2 blocks an area of 203 acres of Crown land taken in payment of survey charges. The location of this land is to be determined in negotiation with the Titiraupenga Trust or sucb other representatives of the beneficial owners as may be determined by the Manri Land Court.

18.7 The Claim Relating to Forests (Chapter 15)

The disputed lands in the Pouakani and Maraeroa blocks include a part of the Pureora Forest Park. We acknowledge that this is an ecological area of national significance and that there is a good deal of general public interest in the future management of the park. However, in past Crown administration of this forest there bas been inadequate concern for Maori perspectives in the management of a forest which is regarded as a taonga by local tribes. The mountains Pureora and Titiraupenga are tribal landmarks, maunga tapu, sacred mountains, for the substantial number of Maori people identifying with Tainui and Te Arawa. We consider that the Crown, through the Department of Conservation and other agencies, has an obligation to acknowledge this mana in the administration of Pureora Forest Park.

We make the following recommendations:

1. We bave outlined in chapter 2 some exploration traditions of Tainui and Te Arawa, and specifically the associations of the ancestors Kahu with Pureora and Tia with Titiraupenga. The mana of the tribes of Tainui and Te Arawa in the sacred mountains, Pureora and Titiraupenga respectively, should be recognised by the Crown by revesting the title in these ancestors on terms set out in recommendations below.

2. The Pouakani B9B block, whicb includes part of Titiraupenga and is covered in forest, should become wbenua rahui, protected land. The preservation order imposed by the High Court sbould be maintained until appropriate protection measures are put in place. In the national interest, the Crown should take over responsibility for rates and any other liabilities on this block.

3. In exchange for the preservation of the forests of Pouakani B9B block in the national interest, the Crown should investigate the transfer of equivalent land in exotic forest (Forestry Corporation) or other Crown lands to the owners of Pouakani B9B block. Funding of research and expert legal, financial and scientific advice should be provided to the owners by the Crown. The area of 140 acres acquired for survey costs on Pouakani B9 and recommended in chapter 14 for return to Maori owners may be added to any lands offered in excbange.

4. The provisions of s439 of the Maori Affairs Act 1953 and other appropriate legislation sbould be explored to enable the following objectives to be achieved:

- the title to the mountain Pureora to be vested in Kahu; and to Titiraupenga in Tia; and trustees over these mountains to be appointed by the Maori Land Court;
- Pouakani B9B block to be added to the area surrounding Pureora and Titiraupenga already within Pureora Forest Park and the whole block to be made a Maori Reservation under s439 of the Maori Affairs Act 1953 or

other appropriate legislative provision; the block to be managed as part of the Pureora Forest Park;

- trustees under s439 Maori Affairs Act 1953 to be nominated hy the Maniapoto and Tuwharetoa Maori Trust Boards and Ngati Raukawa Trust Board for the above lands;
- public access to the Pureora Forest Park and day-to-day management to continue under the provisions of the Conservation Act 1987 and Conservation Law Reform Act 1990;
- the Department of Conservation should initiate consultation with Maori interests for the purposes of producing a management plan for Pureora Forest Park that does give effect to the principles of the Treaty of Waitangi.

5. In its administration of Pureora Forest Park the Department of Conservation should be guided by the trust made up of nominees from Maniapoto and Tuwharetoa Maori Trust Boards, and Ngati Raukawa Trust Board. The trustees' role should include participation in preparation of a management plan for the Pureora Forest Park, and on-going advice on Manri cultural, spiritual and other relevant matters. These may include use of Pureora Forest Park for Maori purposes sucb as felling of totara or other timber for use in carvings for a meeting bouse or other appropriate structure, taking of fibre plants sucb as kiekie for weaving, or other plant material required for Maori purposes. The taking of sucb forest resources is to be allowed by the Department of Conservation only with the permission and at the discretion of tbe trustees, guided by any relevant scientific information availahle.

6. Until these negotiations are completed, neither the Crown nor any state-owned enterprise should seek to alienate lands or forests in or adjacent to Pureora Forest Park. We also note that there are other claims lodged with the Waitangi Tribunal which may affect blocks within or adjacent to Pureora Forest Park and in this recommendation we seek to protect those interests also.

7. In the preservation of indigenous forest resources and wildlife hahitats, a valued taonga, the Crown has an obligation not only to preserve the remaining forest but also actively to seek to replant suitable adjacent lands in indigenous species and incorporate these in Pureora Forest Park in due course.

18.8 The Claim Relating to the Waikato River (Chapter 16)

This claim related only to that portion of the Waikato river adjacent to the Pouakani hlock on its northern boundary. We do not make any specific recommendations on the grounds that issues relating to rivers and the Waikato river in particular should be investigated as a whole, as there are other claims relating to rivers before the Waitangi Trihunal. However, we do make some comments on the evidence that was put before us which has general relevance on the matter of the status of tbe river as taonga, the impact of bydro-electric power schemes and the "ownership" of the bed of the river and its fisheries.

The Waikato river is regarded as a taonga of the tribes of Tainui and Ngati Tuwharetoa. By various actions of the Crown, or worse, the failure of the Crown to acknowledge and protect Maori interests and concerns for wahi tapu, taha wairua (spiritual qualities), mahinga kai, fisberies, and other traditional uses of the river, the mana of these tribes has been devalued. An

agreement was reached with Ngati Tuwharetoa which acknowledged Maori interests in respect of Lake Taupo and the Waikato river to Huka Falls. Maori claims to the river downstream and its fisheries remain unresolved.

Under s261 of the Coal Mines Act 1979, the Crown claimed ownership of the beds of "navigahle" rivers. The Waikato river was not navigable in the section bounding the Pouakani block, being hroken by rapids at several places. When a river was not navigable, and formed a boundary between hlocks of land, then the *ad medium filum aquae* rule applied, that is the houndary is the middle line of the river. It was not clear whetber a river hecame navigable, as understood in s261 of the Coal Mines Act, wben the river was dammed and a navigable hydro lake was formed. In 1991 s261 was repealed by s120 of the Crown Minerals Act. However, s354 of the Resource Management Act 1991 provides that this repeal shall not affect any title to land already acquired hy the Crown under s261.

It would seem that the taking of river margin lands for hydro-electric power purposes hy the Crown under the Public Works Act did not include rights in the river *ad medium filum aquae*. The plans referred to in proclamations under the Public Works Act (summarised in appendix 16) for the Waipapa, Maraetai and Whakamaru hydro-electric power scbemes show boundaries that exclude the river bed. That the Crown may bave assumed at the time of proclamation that it already owned the river bed, does not affect the central issue that ownership of the river bed and rights to the resources of the Waikato river remain unresolved. We note that the impact of these public works takings is the subject of a separate claim to the Waitangi Tribunal (Wai 85) lodged on behalf of Ngati Kahungunu ki Pouakani owners of Pouakani No 2 block granted to them hy the Crown in exchange for the Wairarapa lakes (see chapter 17). We also note that not all lands taken under the Public Works Act for hydro-electric power purposes have been transferred to the Electricity Corporation, and the future administration of some of these lands remains unclear.

The repeal of s261 of the Coal Mines Act 1979 bas not resolved the issue of ownership of riverbeds. Furthermore, we consider the conflict between Maori rights, the Crown and the public interest in general, over the ownership and use of rivers, bas implications far beyond the scope of claims before this tribunal.

We therefore recommend that the Crown give urgent attention to addressing these matters in the national interest.

18.9 Ngati Kahungunu ki Pouakani (Chapter 17)

We have briefly reviewed events which led to an arrangement made in 1915 between the Crown and Ngati Kahungunu in which they were granted an area of 30,486 acres on Pouakani block, including the present site of the town of Mangakino, in exchange for the bed of the Wairarapa lakes. Although the matter of "repatriation" of Ngati Kahungunu was raised, we make no specific recommendation as this is an issue that will be before the tribunal hearing the Wairarapa Lands and Fisheries (Wai 97) and Mangakino Pouakani Lands (Wai 85) claims. We simply note that the "Wairarapa Excbange", hy introducing people from another tribal area, added another dimension to an already complex history of transactions on the Pouakani block.

18.10 Conclusion

A large quantity of detailed archival material has been reviewed in preparation of this report. There is much that has been set out in laborious detail in the report itself in order to document the complexity of transactions on Pouakani and adjacent blocks. We have also endeavoured to provide a broader historical context for these transactions. We hope now that this report may provide the understanding of past transactions which creates the context for negotiation and settlement in a spirit of good will between claimants and the Crown.

In accordance with s6(5) of the Treaty of Waitangi Act 1975 the director of the Waitangi Tribunal is requested to serve a sealed copy of this report on the:

(a) claimants, John Hanita Paki and the Pouakani B9B and Titiraupenga Trusts.

(b) Minister of Maori Affairs
Minister of Justice
Minister of Conservation
Minister of Forests
Minister for the Environment
Minister for Surveys and Land Information
Minister for State Owned Enterprises

(c) Solicitor General

(d) Electricity Corporation of New Zealand
New Zealand Forestry Corporation
Land Corporation of New Zealand

(e) Tuwbaretoa Maori Trust Board
Maniapoto Maori Trust Board
Ngati Raukawa Trust Board

(f) Waikato Regional Council

Dated at Wellington this 26th day of February 1993

Judge Ross Maitland Russell, presiding officer

Emarina Manuel, member

Evelyn Stokes, member

W M Wilson, member

Bibliography

The following is a list of mainly published sources which have been consulted in preparation of this report. References to official publications, such as *Appendices to the House of Representatives* (AJHR), *New Zealand Gazette*, various government files and records of the Maori Land Court have been cited in the text and are not listed separately here.

Andersen, J C & Petersen, G C *The Mair Family* Wellington, Reed 1965

Bagnall, A G *Wairarapa, an Historical Excursion* Masterton, Hedley's Bookshop for the Masterton Trust Lands Trust 1976

Ballara, A The Pursuit of Mana? A Re-evaluation of the Process of Land Alienation by Maori, 1840-1890 *Journal of the Polynesian Society* 1982 vol 91 (4), pp 519-541,

Beer, E and Gascoigne A *Plough of the Pakeha, A Cambridge Regional History* Cambridge Historical Society 1975

Best, E *Forest Lore of the Maori* Wellington, Government Printer 1977

Bidwill, J C *Rambles in New Zealand* London, Orr 1841, reprint Christchurch, Capper Press, 1974

Bogle, A H *Links in the Chain, Field Surveying in New Zealand* Wellington, New Zealand Institute of Surveyors 1975

Clark, J H *The Taupo Totara Timber Company and its Share in the Development of the Pumice Lands 1900-1950* M A Thesis, Auckland, University of New Zealand 1951

Connell, J S "On New Zealand Surveys" *Transactions and Proceedings of the New Zealand Institute* 1875, 8

Cooper, B *The Remotest Interior, A History of Taupo* Tauranga, Moana Press 1989

Cowan, J *Sir Donald Maclean*, Dunedin, Reed 1940

Cowan, J *The New Zealand Wars* Wellington, Government Printer, 2 vols 1983

Craig, D *The King Country (Rohe Potae)* Te Kuiti, Waitomo News 1990

Davis, F & Ambrose, W "Report on the Maori Rock Paintings at Waipapa" Appendix II of Annual Report of New Zealand Historic Places Trust, AJHR 1957 H-27, pp 13-20

Davis, T, O'Regan, T & Whiting, C *He Korero Purakau mo nga Taunahanahatanga a nga Tupuna, Place Names of the Ancestors* Wellington, New Zealand Geographic Board 1990

Department of Conservation *Maniapoto District Wild Animal Management Plan* Hamilton, DOC 1989

Dieffenbach, E *Travels in New Zealand* London, John Murray 1843, 2 Vols reprint Christchurch, Capper Press 1974

Douglas, E M K (ed) *Waiora, Waimaori, Waikino, Waimate, Waitai, Maori Perceptions of Water and the Environment* Hamilton, University of Waikato, Centre for Maori Studies and Research Occasional Paper No 27 1984

Easedale, N *Kairuri, The Measurers of Land* Wellington, New Zealand Instiute of Surveyors 1988

Fletcher, H M *Tales of Early Taupo* Hamilton, Times Commercial Printers 1980

Fletcher, R S *Single Track, The Construction of the North Island Main Trunk Railway* Auckland, Collins 1978

Frome, Lieut-Gen and Warren, C *Outline of the Method of Conducting a Trigonometrical Survey* London, Lockwood 1873

Grace, J *Tuwharetoa, A History of the Maori People of the Taupo District* Wellington, Reed 1959

Grace, T S *A Pioneer Missionary Among the Maoris 1850-1879* Edited hy S J Brittan *et al* , Palmerston North, G H Bennett and Co 1928

Grange, L I *The Geology of the Rotorua Taupo Subdivision* New Zealand Geological Survey Bulletin No 37, Wellington, Government Printer 1937

Grey, Sir G *Polynesian Mythology* London, John Murray 1855

Gudgeon, W E "The Tangata Whenua or Aboriginal People of the Central Districts of the North Island of New Zealand" *Journal of the Polynesian Society* 1893 2, pp 203-210

Hasman, C Y *Mangakino In Perspective* Waikato Hydro Welfare Association 1975

Higham, J W S and Menzies, P *Social and Economic Impact of Indigenous Forestry in the Pureora Area* Dunedin, Business Development Centre, University of Otago 1978

Hochstetter, F von *New Zealand, Its Physical Geography Geology and Natural History* Stuttgart, Cotta 1867

Hyde, B, Niven, K & Mills, J *Development of the Timber Industry in the Taupo Region* Taupo, Regional Museum and Art Centre 1987

Jones, P Te H *Potatau An Account of the Life of Potatau Te Wherowhero, the First Maori King* Wellington, Polynesian Society 1959

Jones P Te H Tainui Area 1800, Showing Main Trihal Areas MS map Alexander Turnhull Lihrary c1940

Jourdain, W R *Land Legislation and Settlement in New Zealand* Wellington, Government Printer 1925

Kawharu, I H *Maori Land Tenure* Oxford, Clarendon Press 1977

Kelly, E M *A Summary of the Law Relating to Surveying in New Zealand* Wellington, New Zealand Institute of Surveyors 1971

Kelly, L G *Tainui, The Story of Hoturoa and his Descendants* Wellington, Polynesian Society, reprint Christchurch, Capper Press 1980

Kerry-Nicholls, J H *The King Country* London, Sampson, Low, Marston, Searle and Rivington 1884, reprint Christchurch, Capper Press, 1974

Law Commission *The Treaty of Waitangi and Maori Fisheries* Wellington, NZLC Preliminary Paper No 9 1989

Lawn, C A *The Pioneer Land Surveyors of New Zealand* Auckland, New Zealand Institute of Surveyors 1977

Leitch, D B *Railways of New Zealand* Newton Abbot, David and Charles 1972

McDonnell, T "Maori Titles to Land and Native Land Courts" *Monthly Review* 1889 pp 489-492

Mackay, J *Our Dealings with Maori Lands or Comments on European Dealings for the Purchase and Lease of Native Lands and the Legislation Thereon* Auckland, Kidd and Wildman 1887

McLintock, A H "Liquor and the King Country" AJHR 1953 H-25

McNab, R *Historical Records of New Zealand* Wellington, Government Printer, 2 vols 1908

McRae, J A (ed) *The Surveyor and the Law* Wellington, New Zealand Institute of Surveyors 1984

Mahuta, R T "Submissions to Support Tainui Maori Trust Board Application to Maori Land Court to Investigate Title to the Waikato River" (unpublished) 1975

Mair, G (translated and edited) *Description of the Battle of Orakau as Given by the Native Chief Hitiri Te Paerata of the Ngati Raukawa Tribe* Wellington, Government Printer 1888

Meade, H *A Ride Through the Disturbed Districts of New Zealand* London, John Murray 1870, reprint Christchurch, Capper Press, 1984

New Zealand Forest Service *Management Proposals for State Forests of the Rangitoto and Hauhangaroa Ranges, Central North Island* Wellington NZFS 1978

New Zealand Forest Service *Submissions on the West Taupo Forests* Wellington NZFS 1978

New Zealand Forest Service *Pureora State Forest Park Management Plan* Auckland, NZFS 1980

New Zealand Forest Service *King Country Regional Management Plan*; 1983-1993 Auckland, NZFS 1984

New Zealand Survey Department *Regulations and Instructions of the Survey Department of New Zealand* Wellington, Government Printer 1879

O'Regan, S T "Maori Perceptions of Water in the Environment, An Overview" in Douglas 1984, pp 8-17

Parsonson, A R "Te Mana o te Kingitanga Maori: A Study of Waikato-Maniapoto Relations During the Struggle for the King Country 1878-84" M A thesis, Christchurch, University of Canterbury 1972

Parsonson, A R Te "Whenua Te Utu" PhD thesis, Christchurch, University of Canterbury 1978

Parsonson, A "The Pursuit of Mana" in W H Oliver and B R Williams, (eds), *Oxford History of New Zealand* Wellington, Oxford University Press 1981, pp 140-167

Pierre, B *North Island Main Trunk, An Illustrated History* Wellington, Reed 1981

Roche M *History of New Zealand Forestry* Wellington, New Zealand Forestry Corporation and GP Books 1990

Ross, W H *Te Kooti Rikirangi* Auckland, Collins 1966

Rutherford, J *Sir George Grey* London, Cassell 1962

Simmons, D R *The Great New Zealand Myth, A Study of the Discovery and Origin Traditions of the Maori* Wellington, Reed 1976

Skinner, W H *Reminiscences of a Taranaki Surveyor* New Plymouth, Thomas Avery and Sons 1946

Smith, N *Native Custom and Law Affecting Maori Land* Wellington, Maori Purposes Fund Board 1942

Smith, N *The Maori People and Us* Wellington, Maori Purposes Fund Board 1948

Sorrenson, M P K "The Purchase of Maori Lands, 1865-1892" M A thesis, Auckland, University of New Zealand 1955

Sorrenson, M P K "Land Purchase Methods and their Effect on the Maori Population, 1865-1901" *Journal of the Polynesian Society* 1956 65, pp 183-199

Sorrenson, M P K "The Maori King Movement 1858-1885" in R N Chapman and K Sinclair (eds) *Studies of a Small Democracy, Essays in Honour of Willis Airey* University of Auckland 1963

Sorrenson, M P K "Maori and Pakeha" in W H Oliver and B R Williams (eds), *Oxford History of New Zealand* Wellington, Oxford University Press 1981, pp 168-193

Stafford, D M *Te Arawa, A History of the Arawa People* Wellington, Reed 1967

Stone, R C J *Makers of Fortune, A Colonial Business Community and Its Fall* Auckland, Auckland and Oxford University Press 1973

Tarakawa, T "Ko te Hoenga Mai o Te Arawa, raua ko Tainui i Hawaiki: The Coming of Te Arawa and Tainui Canoes to New Zealand" *Journal of the Polynesian Society* 1893 2, pp 220-252

Taylor, N M (ed)*The Journal of Ensign Best 1837-1842* Wellington, Government Printer 1966

Town and Country Planning Branch, Ministry of Works 1962 *Bay of Plenty Region* National Resources Survey Part II, Wellington, Government Printer

Trotter, M & McCulloch, B *Prehistoric Rock Art of New Zealand* Auckland, Longman Paul 1981

Turton, H H *Maori Deeds and Plans of Land Purchase in the North Island* Wellington, Government Printer, 2 vols 1877-78

Waitangi Trihunal *Finding of the Waitangi Tribunal on the Kaituna Claim* (Wai 4) Wellington, Department of Justice 1984

Waitangi Trihunal *Finding of the Waitangi Tribunal on the Manukau Claim* (Wai 8) Wellington, Government Printer 1985

Walton, A "The Population of the Lake Taupo Region, New Zealand, 1839-1859" *New Zealand Journal of Archaeology* 8, pp 73-88

Ward, A *A Show of Justice* Auckland, Auckland and Oxford University Press 1973

Ward, J T and Parkes, E D *An Economic Analysis of Large-Scale Land Development for Agriculture and Forestry* Lincoln College Agricultural Economics Research Unit Publication No 27 1966

Ward, R G "Maori Settlement in the Taupo Country 1830-1880" *Journal of the Polynesian Society* 1956 65, pp 41-44

Appendix 1

The Treaty of Waitangi

1.1. The Text in Maori

KO WIKITORIA, te Kuini o Ingarani, i tana mahara atawai ki nga Rangatira me nga Hapu o Nu Tirani i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga, me to ratou wenua, a kia mau tonu hoki te Rongo ki a ratou me te Atanoho hoki kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira hei kai wakarite ki nga Tangata maori o Nu Tirani kia wakaaetia e nga Rangatira maori te Kawanatanga o te Kuini ki nga wahikatoa o te Wenua nei me nga Motu na te mea hoki he tokomaha ke nga tangata o tona Iwi Kua noho ki tenei wenua, a e haere mai nei.

Na ko te Kuini e hiahia ana kia wakaritea te Kawanatanga kia kaua ai nga kino e puta mai ki te tangata Maori ki te Pakeha e noho ture kore ana.

Na, kua pai te Kuini kia tukua a hau a Wiremu Hopihona he Kapitana i te Roiara nawi hei Kawana mo nga wahi katoa o Nu Tirani e tukua aianei, amua atu ki te Kuini e mea atu ana ia ki nga Rangatira o te wakaminenga o nga hapu o Nu Tirani me era Rangatira atu enei ture ka korerotia nei

Ko te Tuatahi

Ko nga Rangatira o te Wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu te Kawanatanga katoa o o ratou wenua.

Ko te Tuarua

Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira ki nga hapu ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te Wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te Wenua ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

Ko te Tuatoru

Hei wakaritenga mai hoki tenei mo te wakaaetanga ki te Kawanatanga o te Kuini Ka tiakina e te Kuini o Ingarani nga tangata maori katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.

(signed) WILLIAM HOBSON,

Consul and Lieutenant-Governor

Na ko matou ko nga Rangatira o te Wakaminenga o nga hapu o Nu Tirani ka huihui nei ki Waitangi ko matou hoki ko nga Rangatira o Nu Tirani ka kite nei i te ritenga o enei kupu, ka tangohia ka wakaaetia katoatia e matou, koia ka tohungia ai o matou ingoa o matou tohu.

Ka meatia tenei ki Waitangi i te ono o nga ra o Pepueri i te tau kotahi mano, e waru rau e wa te kau o to tatou Ariki

Ko nga Rangatira o te wakaminenga.

(Treaty of Waitangi 1975, First Scbedule, as amended hy Treaty of Waitangi Amendment Act 1985)

1.2. The Text in English

HER MAJESTY VICTORIA Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rigbts and Property and to secure to them the enjoyment of Peace and Good Order bas deemed it necessary in consequence of the great number of Her Majesty's Suhjects who bave already settled in New Zealand and the rapid extension of Emigration hoth from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorised to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those islands — Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences whicb must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects bas been graciously pleased to empower and to authorize me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

Article the First

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs wbo have not become members of the Confederation cede to Her Majesty the Queen of England ahsolutely and without reservation all the rights and powers of Sovereignty whicb the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.

Article the Second

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess as long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

Article the Third

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Suhjects.

W HOBSON Lieutenant Governor

Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand heing assemhled in Congress at Victoria in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof: in witness of which we have attached our signatures or marks at the places and the dates respectively specified.

Done at Waitangi this Sixth day of Fehruary in the year of Our Lord One thousand eight hundred and forty.

[Here follow signatures, dates, etc.]

(Treaty of Waitangi Act 1975, First Schedule)

Appendix 2

The Claims

Submitted as documents A1(a), (b), and (c)

2.1 The Claims of 27 March 1987

THE CLAIMANT on behalf of himself and on behalf of the beneficial owners of the Titiraupenga Trusts claims that he is prejudicially affected by the following acts, policies and omissions of the Crown:

A. Western Boundary Pouakani Tihoi [sic = Maraeroa]

1. By which the disputed boundary between the Tuwharetoa and Maniapoto tribes, described and surveyed through Trig Pureora to Taparoroa [sic] and confirmed by Royal Commission report and legislative enactment was surveyed to an alternative Taparoroa as described by Te Paebu [sic] (ex Maniapoto) to the disadvantage of the Pouakani owners, the ancestors of the Claimants.

B. Southern Boundary Pouakani Tihoi

2. By which the Pouakani owners were deprived of land on the establishment of the southern boundary of the Pouakani/Tihoi Block, the current boundary never having been formally established by Manri Land Court Order and no boundary description being made.

C. Pouakani C1, Kaiwha Block

3. By which the descendants of the Claimants were awarded by Order of the Maori Land Court on the 4th of August 1891 7,200 acres at Kaiwha and 13,000 acres beside it adjoining the Government Block on the west towards Whatipo, the land known as C3 and comprising 12,000 acres apparently in the same position being awarded on the 11th of August 1891 to one owner contrary to previous awards. The land known as C3 subsequently being taken by the Crown.

4. By which the surveyed area following a Manri Land Court Partition Order of August 1891 shows large discrepancies in shape and area not corresponding to the Partition Order.

D. Pouakani B9

5. By which the starting point of tbe Block described by Manri Land Court Order no longer corresponds to the current point.

6. By whicb all boundaries are affected by the uncertainty over the southern boundary Pouakani/Tihoi, having been described and measured from that boundary.

7. By which the Block known as B9A was acquired by the Crown with no known Proclamation and from minors without any known authority.

E. Pouakani C1A/C1B

8. By which C1A Block was acquired hy the Crown without the authority of all the beneficial owners and despite the requirement that all beneficial owners agree to any sale, the taking subsequently being confirmed hy Proclamation.

9. By the partition of C1A/C1B being dependent upon the correct houndaries for Block B9B which are not in accordance with Maori Land Court descriptions.

F. Crown Management of C1B Block

10. By whicb timber was taken from C1B2 (vicinity Kopaki) while under Crown management without proper accounting to the beneficial owners.

G. Reservation

11. This claim is made with express reservation in respect of further and additional elements, particulars of which will be supplied.

2.2 Relief Sought By the Claimant

1. Confirmation of the western boundary Pouakani/Tihoi as that sbown on Plan ML6036 as confirmed by Royal Commission.

2. That the lands owned by the Crown within the houndaries of the established Pouakani Block and the boundary estahlished hy Royal Commission report to be returned to the descendants of the Pouakani beneficial owners and that reparation be made for any lands within those boundaries held otherwise than hy the Crown.

3. That the southern boundary Pouakani/Tihoi be established in terms of the original partition of Pouakani and Tihoi.

4. That tbe award of the Block known as Pouakani C3 in favour of Karawhira Kapu contrary to previous Court Orders be revoked and that land suhsequently taken by the Crown be returned to tbe descendants of the Kaiwha owners in terms of the Court Order of 4 August 1891.

5. That the C1 and B9 Blocks be re-adjusted to their original shapes as described in the Partition Orders of August 1891 establishing the Blocks.

6. That Pouakani B9 be declared to start at Trig Pureora.

7. That on establishing the southern boundary Pouakani/Tihoi the partition of B9 Block be redefined in terms of the Court Order.

8. That the partition of C1 Block be redefined in terms of the partition of B9 Block.

9. That C1A Block be returned to the descendants of the Kaiwha owners.

10. That B9A Block be returned to the descendants of the original owners.

11. That the Crown account to and compensate the beneficial owners of the C1B2 for all timber taken from the Block while under Crown management.

12. That compensation for the wrongful withholding of those lands be made by the Crown to the descendants of the original owners.

13. In so far as exclusive rights bave been interfered with and cannot be restored sufficient compensation in conformity with Maori custom and tradition.

14. Compensation in respect of the disruption to and in particular the social dislocation whicb has occurred as a consequence of the acts, omission and policies of the Crown set out above.

15. Compensation for the cost of preparing and submitting tbe present claims.

DATED at Hamilton this 27 day of Marcb 1987.

[signed] *J H Paki*

THIS STATEMENT OF CLAIM is filed by *PATRICK WILLIAM FRANK WILSON* wbose address for service is at the offices of Messrs Stace Hammond Grace & Partners, Solicitors, Cecil House, Garden Place, (PO Box 101), Hamilton.

2.3 Amended Statement of Claim [of 23 October 1987]

THE CLAIMANT on bebalf of bimself and on bebalf of the beneficial owners of tbe Tititaupenga Trusts and the Pouakani B9B Trust claims that be is prejudicially affected by the following acts, policies and omissions of the Crown:

A. Western Boundary—Pouakani/Tihoi [sic = Maraeroa]

1. By whicb the disputed boundary between the the Tuwbaretoa and Maniapoto Tribes, described and surveyed through trig Pureora to Taparora [sic = Taporaroa] and confirmed by Royal Commission Report and legislative enactment was surveyed to an alternative [Taporaroa] as described by Te Paebu [sic] (ex-Maniapoto) to the disadvantage of the Pouakani owners, the ancestors of the claimant.

The wbole of the western boundary Pouakani/Tihoi requires to be resurveyed to ascertain the true lines and areas to whicb the claimant and the Pouakani owners as ancestors of the claimant are entitled. The Tribunal is asked to inquire into tbe western boundary from [Taporaroa] to Tahorakarewarewa to Weraroa and thence to the Pungapunga Stream including the lands investigated by the Royal Commission of 1889.

B. Southern Boundary—Pouakani/Tihoi

2. By whicb the Pouakani owners were deprived of land on the establishment of the southern boundary of tbe Pouakani Block wbere it meets the northern boundary of the Tihoi Block, tbe current boundary never baving been formally establisbed by Maori Land Court order and no boundary description baving been made by the Court.

The boundary line was surveyed by W. Cussen Esq. in 1886. The survey was interrupted by hostile owners numbering some 200 as given by evidence by Mr Cussen in evidence to the Court in 1891. The Tribunal is asked to inquire into the proper boundary of tbe Pouakani/Tihoi Blocks as between Pureora and Kopaki and tbence east to Te Tarata.

C. Pouakani C1—Kaiwha Block

3. By whicb the ancestors of the claimant were awarded by order of the Maori Land Court on 4 August 1891 7,200 acres at Kaiwha and 13,000 acres beside it adjoining the Government Block on the west towards Whatipo. The land known as C3 and comprising 12,000 acres apparently in the same position being awarded on 11 August 1891 to one owner contrary to previous awards. The land known as C3 was subsequently acquired by the Crown. The Tribunal

is asked to inquire into the circumstances surrounding the acquisition and into the consideration (if any) which passed as between the Crown and the owners of the Blocks. The Tribunal is also asked to inquire into the numbers of persons who were entitled to the Blocks at various times.

4. By which the surveyed area following a Maori Land Court partition order of August 1891 shows discrepancies in shape and area which do not correspond with the original partition order. The Trihunal is asked to inquire into the reasons for such discrepancies.

D. Pouakani B9B

5. By which the starting point of the Block (i.e. Pureora Trig Station) as described by the Maori Land Court order no longer corresponds to the current point at which the boundary commences (which is four chain north of the trig station).

6. By which all boundaries are affected by the uncertainty over the southern boundary of the Pouakani Block with the boundaries of Pouakani B9B having been described and measured from that boundary.

7. By which the Block known as B9A was acquired hy the Crown with no known proclamation. Further, there is no evidence to establish that consideration passed from the Crown for the said land. Further, the acquisition of the said land hy the Crown was in part from minors without any known authority having been ohtained.

E. Pouakani C1A/C1B

8. By which C1A Block was acquired by the Crown without the authority of all of the beneficial owners thereof despite the requirement that all beneficial owners agree to any sale. In addition, there is a difference in the translation in the minutes of the Court as between the English text and the Maori text. The English text refers to "inalienable except by lease for 21 years" whereas the Maori text when translated means "not to sell or mortgage the abovesaid land." The Tribunal is also asked to inquire into the question as to whether any consideration passed between the Crown and the beneficial owners with regard to the acquisition of C1A by the Crown.

9. By the partition order with regard to C1A/C1B being dependant upon the correct northwest boundary as between B9A and B9B which are presently not in accordance with Maori Land Court descriptions.

F. Crown Management of C1B Block

10. By which timber was taken from C1B2 (in the vicinity of Kopaki) while under Crown management without proper accounting to the beneficial owners. It is alleged that the timber was wrongfully taken in the 1950's and 1960's.

G. Whole Section Pouakani 1

11. In September [1887] the Manri land Court described Pouakani 1 as 20,000 acres which was to be awarded to the Crown for survey and other costs. Pouakani 1 is accurately surveyed. Although there is an accurate survey of the periphery of the total Pouakani Block its veracity cannot be confirmed because there are no Maori Land Court orders describing the boundaries. There are no accurate surveys undertaken by the Crown as at September 1887 in respect of the other Blocks which were created by orders made in September 1887. Nor

have subsequent partitions relating to purported purchases hy the Crown been properly surveyed.

H. Pouakani C2 Block

12. C2 is a square hlock half-hush half-open land consisting of 250 acres. It is an historic urupa.

I. Pouakani B7, B8 & B11 Blocks

13. The boundaries of these Blocks as at the present time do not accord with the orders and minutes of the Maori Land Court which created them. The Trihunal is also asked to inquire into the consideration (if any) which passed as between the Crown and the owners of the Pouakani B7, B8 and B11 Blocks with regard to their purported acquisition hy the Crown.

14. With regard to the B7 Block the Trihunal is asked to inquire into the circumstances in which Makereti Hinewai (who was the wife of the then Government purchasing agent and licenced interpreter, Mr W.H. Grace) came to own one half share of the B7 Block; i.e. 5,000 acres.

15. The Trihunal is asked to inquire into the circumstances in the which Manawa Hinewai (the hrother-in-law of W.H. Grace) came to own the remaining 5,000 acres of the B7 Block.

J. Pouakani A1, A2 & A3 Blocks

16. The Pouakani A1, A2 & A3 Blocks are not presently surveyed in accordance with the orders and minutes of the Maori Land Court which created them. The Trihunal is asked to inquire into the correct boundaries of the land and as to the consideration (if any) which passed as between the Crown and the then owners in respect of the acquisition of those Blocks hy the Crown.

K. Tauponuiatia West Block

17. If the Trihunal finds that there is merit in the allegations made hy the claimant as to the impropriety of W.H. Grace acting both as land purchase agent on behalf of the Crown and as a licenced interpreter relative to the acquisition of certain lands within the Pouakani Block as alleged herein due to impropriety on his part as specifted in the report of the Royal Commission of 1889 then the Trihunal is asked to inquire into the wider issue as to the appropriate boundaries and ownership of lands to be attrihuted to the Tauponuiatia West Block which was the predecessor of the Pouakani Block.

L. Reservation

18. This claim is made with express reservation in respect of further and additional claims particulars of which may be supplied at a later date. Evidence in support of the claim will be produced hy affidavit or hy report as the Trihunal may require.

RELIEF SOUGHT BY CLAIMANT

1. The Trihunal recommend to the Crown as to what the correct boundaries of the various Blocks to which reference have been made herein ought to be.

2. That the Trihunal recommend to the Crown that land which has been wrongfully acquired hy the Crown be returned to the Defendants [sic, descendants?] of the owners of the appropriate Blocks through the creation of a new Trust or Trusts to be set up under Section 438 of the Maori Affairs Act 1953 for such purpose.

3. That the Trihunal makes such further or other recommendations as it may consider appropriate to deal with such injustices which have been shown to exist as are specified in this amended statement of claim.

4. That the Tribunal recommend that compensation be paid for the cost of preparing and submitting the present claims.

DATED at Hamilton this 23rd day of October 1987.

[signed] *J.H. Paki*

This Amended Statement of Claim is filed by Paul Robert Heath wbose address for service is at the offices of Messrs Stace Hammond Grace & Partners, Solicitors, Cecil House, Garden Place, (PO Box 101), Hamilton.

2.4 **3. ADDENDUM TO AMENDED STATEMENT OF CLAIM [27 April 1989]**

THE Claimants repeat all paragraphs of the Amended Statement of Claim and say further:

1. THE act of Crown in taking lands for survey costs was a breach of the principles of the Treaty and is prejudicial to the Claimants.

2. THE Pouakani Block as originally defined contained land adjacent to the Waikato River. This land was taken hy Proclamation hy the Crown pursuant to the Public Works Act 1928. Tribal lands of the Claimant bave been flooded by tbe Crown as a consequence of the Waipapa, Maraetai and Whakamaru hydroelectric power projects. The loss of this land is prejudicial to the Claimants in that their valued taonga, the riverbank lands, has been taken and destroyed, and has further caused the Claimants to lose possible rights to the bed of the river as riparian landowners.

3. THE Waikato River is itself a valued taonga of the Claimants, and this taonga has been adversely modified by actions of the Crown in flooding the river and causing severe environmental effects to the prejudice of the Claimants.

4. SECTION 261 of the Coal Mines Act 1979 vests the bed of any navigahle river in the Crown. This section and its antecedents are a breach of the principles of the Treaty of Waitangi, and, to the extent that it deprives the Claimants of their rightful interests in the bed of the Waikato River, is prejudicial to the Claimants.

5. THE Water and Soil Conservation Act 1967 fails to take due account of Maori spiritual interests and is therefore a breach of the principles of the Treaty. Electricorp will be required to ohtain water rights from the Waikato Catchment Board for its power stations, and in such a situation the present Claimants will be prejudiced in asserting their concerns and ohjections.

THE CLAIMANTS SEEK:

(a) Compensation for damage to their ancestral lands alongside the river and to tbe river itself.

(b) Recognition of the Claimants' interests in ownership and management of the river.

(c) Compensation for the Crowns' acquisition of the bed of the river.

(d) Repeal of Section 261 of the Coal Mines Act 1979.

(e) Amendments to the Water and Soil Conservation Act 1967.

(f) Recognition of the mana of the Claimants over the Waikato River and their flooded riverine lands.

DATED at Hamilton this 27th day of April 1989.

[signed] *J.H. Paki*

THIS ADDENDUM TO THE AMENDED STATEMENT OF CLAIM is filed by *PAUL ROBERT HEATH* whose address for services is at the offices of Messrs Stace Hammond Grace & Partners, Barristers & Solicitors, Cecil House, Garden Place, (PO Box 101), Hamilton.

Appeodix 3

Memorandum from Waitangi Tribunal Concerning Claimants' Costs

TO The Hon K T Wetere, Minister of Maori Affairs

AND The Hon W P Jeffries, Minister of Justice, Chairpersoo of tbe Cabinet Committee on Treaty of Waitaogi Issues.

This claim is made by Jobo Hanita Paki oo bebalf of bimself and tbe Titiraupenga Trusts. The Titiraupenga Trusts are separate trusts created by orders of the Maori Land Court made under Sectioo 438 of the Maori Affairs Act 1953. The order creating the Titiraupenga Trust vested Pouakani C No. 1B Sec. 1 and Pouakani C No. 1B Sec. 2 in Trustees. The order creating the Pouakani B9B trust vested Pou-a-Kani B No 9B in trustees.

Mr Paki's claim was received by the Tribunal on 27 March 1987. On 16 May 1989 the Tribunal appointed Counsel, wbose fees are being paid by the Tribunal, to assist Mr Paki. On 14 June 1990 the Tribunal determined that $10,000 be paid for the Claimants' research expenses and reserved leave for the Claimant to apply for a further paymeot following the release of the Tribunal's findings and recommeodations or earlier following the release of any interim report that the Tribunal might issue.

The Claimants bad incurred research and legal expenses prior to the lodging of their claim with the Tribunal. Following the receipt of their claim by the Tribunal the Claimants became involved in proceedings in the High Court, the Maori Land Court and in an applicatioo to the Chief Judge of the Maori Land Court for the exercise of his jurisdictioo under Sectioo 452 of the Maori Affairs Act 1953. This litigation arose because it was not in fact possible to define on the ground boundaries that official records sbowed as having been defined by survey.

Legal and researcb expenses incurred by the Claimants both before the lodging of their claim and between the lodging of the claim and the appointment of Counsel to assist them, as well as the costs of the other proceedings, have put the Claimants deeply in debt. We are informed that creditors of the Trusts are in the process of selling up the lands of the Trusts.

The Tribunal does not bave jurisdiction to award costs against the Crown. If it bad sucb jurisdiction we would bave been able to make such an award and give our reasons later. But the Tribunal bas only power to make a recommendation. Sucb a recommendatioo must be supported by a full explanatioo of the reasons for the recommendatioo.

The complexities of this claim are the reason wby the Claimants are oow so deeply in debt. These complexities are also the reasoo wby it is not possible for the Tribunal to issue a brief report. While a great deal of material was placed before the Tribunal our own investigations into this material and examination

of the plans, field books and other old records of the Department of Survey and Land Information bave produced more relevant information.

Past reports of the Trihunal have been the product of careful consideration of the claim before the Tribunal. We do not think that in the case of the Pouakani claim the Claimants' creditors should dictate how much time the Trihunal should give to the consideration of the claim.

We have therefore decided to submit this memorandum to you and to ask that as an interim measure the Crown take over the Claimants' indehtedness in order to protect the Claimants from having their lands sold up for money borrowed for legal and researcb expenses incurred in making the present claim to the Tribunal and in associated proceedings in the High Court, the Manri Land Court and on the application to the Chief Judge of the Maori Land Court.

The facts are known to the Crown Counsel wbo appeared in these various proceedings and the Crown now bas other units outside the Tribunal itself to advise it on such matters.

Put in its simplest form, the Crown took land for survey costs from the owners in wbom Pou-a-Kani B No 9B was vested by an order of the Maori Land Court made on 24 July 1899 but those owners did not in fact receive a surveyed title to their land.

The reason is clear from an exchange of correspondence in 1947 on Lands & Survey Department file 20/451. This correspondence deals with adjoining land. The final paragrapb of a memorandum dated 3 February 1947 from the Registrar of the Maori Land Court to the Chief Surveyor reads:

> "I am informed ... that the ... boundary ... has never been cut or pegged and I should he obliged if you could inform me how this came about".

The Chief Surveyor replied on 25 February 1947.

> "With regard to the last paragrapb of your memorandum, it appears that the boundary lines on Plan 6406 were merely calculated in order to save the natives the cost of survey, a method which present survey regulations will not permit".

Had all the boundary lines of Pou-a-Kani B No 9B been cut and pegged last century the descendants of the original owners would not bave been involved this century in ruinous litigation in the Supreme Court and the Maori Land Court.

DATED the 19 day of July 1990.

Judge R M Russell, Presiding Officer

Copy to Mr P Heath, Counsel for Claimants

Mr C.T. Young, Crown Law Office

Appendix 4

Te Haerenga Mai o Tia ki Titiraupenga

The Journey of Tia to Titiraupenga

Transcript of evidence of Tamati Wharehuia Roberts before the Waitangi Tribunal, Te Papa o te Aroha Marae, Tokoroa, 9 May 1989.

E ngā hapū e ngā taumata e aku hoa, e haere mai ana e tautoko ana i te take, e āwhina ana i te take. I āwhina ai, he mōhio nōku ko tō koutou koroua, i haere mai ai i runga i a Te Arawa ō koutou tupuna a Tia me Mākā e takoto mai nā kei runga i te ihi kei runga i te wehi.

Me kōrero ake au i te wā i tae mai ai ahau me taku whānau i kōrero ai ahau ki a rātou. Nā, te haerenga mai ō Tia i te takutai moana, ka kōrero haerehia mai e ia te whenua, ana ka kōrero ia i taua wā. Nā, te taenga mai ki Horohoro, nā ka kōrerotia e ia tēna wāhi. E mihina ana e poroporoakina ana e Te Arawa tangata e Te Arawa waka, ka mahue atu i a ia te takutai moana ko te ekenga mai ōna ki Ātiamuri.

Ka whakamārama au i konā i te take i ingoatia ai ko Ātiamuri. I reira ratou ka whakatā nā ka pā tetahi ki a Mākā. Ka karanga ki a Tia, "E Tia he tangata kei te haere mai". Nā i konā, ka karakia a Tia ka huri ki a rātou. Te putanga mai o te tangata nei e haere mai ana, ā, ka hopukia e rātou. Nā i te maunga i a rātou kātahi ka titiro a Mākā, ka karanga atu, "Kāore i rite ki a tātou tēnei tangata, he tangata kē noa atu". Te tangata nei he wherowhero tonu ngā makawe o te māhunga me te tinana. Ana kātahi ka mea a Mākā ki a Tia, "Me patu".

Kātahi ka karanga atu a Tia, "Kāo. Titiro ki te poroporoaki a tō tatou pāpā, ā Atuamatua". Nā ko te poroporoaki tēnei. "E Tia, e Oro, Mākā, nau mai haere ki uta. Kaua hei mau kī tai kī tū, kaua e haere ki te kimi pakanga, ēngari e mau kī uta kī tū kī noho he huhu, he popo, he hanehane."

Tērā kōrero ki a houhoua te tangata e te huhu me pēnei me te rākau nei, he huhu, he popo, he hanehane. "Me mate tarāwhare koutou, me mate. Me matemate kaua e haere ki te kimi pakanga kia mihia ai kia tangihia ai kia poroporoakitia ai." Koinei te kōrero nei. Nō rāwahi kē tēnei kōrero mai ā tō tātou rātou matua ā Atuamatua. Nā, ka maunu mai te waka ka rere mai ko tā Houmaitawhiti ia nā ā kātahi a Houmaitawhiti ka poroporoaki mai ki tana tamaiti. Te take, he kore nōna e whakaae kia haere mai tana tamaiti a Tamatekapua, katahi ka poroporoaki mai.

Nā tēnei poroporoaki kotahi tonu nāna. Ka oti te whakaaro a tō koutou tupuna kia kaua e patua a Hatupatu. Kei te haere mai rātou ka haria mai ko tā rātou tamaiti. Te haerenga atu o tana iwi ka riro kāore i hoki, ka whai haere tonu i rātou. Ana ka tae mai, ana kitea ana i a te maunga rā anō i a Tia. Kōrero

haeretia mai e ia te whenua nei ki te Tia e kōrerotia nei e koutou. Nā i konā ka tūtaki rāua.

Ko tētahi kōrero o te waka nā i nanakia tō koutou tupuna a Tia i nanakia ki a Ngātoroirangi. Ngātoroirangi kē i tae mai ki konei. Ko ngā kōrero ēnei a ērā o ō koutou koroua. I karanga atu nei a Ngātoroirangi, "E ko au kē i tae mai ki konei i te tuatahi, anā taku tūahu kei konā". Inā rā kua oti kē i a Tia te huhuti i ngā rārauwhe, kua maroke noa atu, hei tūahu māna. Ana kua mahia kē e ia hei mahi māna ki a Ngātoroirangi. "E haere mai kia kite i tāku." Nā, te haeretanga atu nei kia kite kua maroke noa atu ngā rārauwhe o te tūahu a Tia. Ko taku Tia.

Nā i konā ka hūtia nei e tō koutou tupuna e Ngātoroirangi te tōtara ka perea mai ki tēnei taha o tō koutou moana e tipu ana.

Nā e te hunga koinei rā tāku e mohio ana.

Appendix 5

Chronology of Events Relating to Pouakani Block

1882	
September 15	The North Island Main Trunk Railway Loan Act 1882 enacted authorising borrowing of up to £1,000,000 for the purpose of constructing the main trunk railway.
1883	
June 26	Petition of Maniapoto, Raukawa, Tuwharetoa and Whanganui tribes presented to the House of Representatives (AJHR 1883, J-1).
December 19	"Aotea Agreement": Letter from Wahanui and others sent to Chief Surveyor S Percy Smith, agreeing to "an accurate survey of the external boundary of our hlock" (AJHR 1885, G-9).
1884	
November 10	The Railways Authorisation Act 1884 enacted, authorising the construction of "North Island Main Trunk Railway, from a point at or near Marton to Te Awamutu via Murimotu, Taumarunui, and the Ongaruhe River Valley". The Native Land Alienation Restriction Act 1884 enacted, prohibiting sale of land in the Rohe Potae other than to the Crown.
1885	
October 31	Te Heuheu on behalf of Ngati Tuwharetoa filed claim to Tauponuiatia Block in Native Land Court.
1886	
January 14	Native Land Court commenced hearing of Tauponuiatia claims at Tapuaeharuru (Taupo).
June 29	Native Land Court commenced hearing of Aotea (Rohepotae) hlock claims at Kihikihi; hearing moved to Otorohanga on 28 July.
August 17	The North Island Main Trunk Railway Loan Application Act 1886 enacted, authorising the expenditure of money borrowed for the construction of the North Island main trunk railway in the purchase of Maori and other land for the use and occupation of the railway, and allocating £100,000 for the purpose of acquiring land within area subject to the Native Land Alienation Restriction Act 1884.
September 29	W Cussen sent plan of Hora-aruhe Pou-a-kani block (ML 6036) to the Chief Surveyor at Auckland. This was the first to be sent in of a series of plans that Cussen and Mitchell had prepared.

December 29	Cussen sent the composite plan ML 6036, 6076, 6078, 6079 showing subdivisions of Tauponuiatia West block to the Chief Surveyor at Auckland (ML 6036 etc).

1887

February 22	Native Land Court gave judgment on investigation of title of Pouakani block (Taupo MB7/86).
March 24	Native Land Court made interlocutory order determining boundaries of 1887 Kaiwha block (Taupo MB7/284)
April 30	Native Land Court made interlocutory order in respect of Tihoi block (Taupo MB7/182).
June 3	Native Land court made interlocutory order in respect of Hapotea block (Taupo MB 8/345).
June 10	Native Land Court made interlocutory order in respect of Pouakani block (Taupo MB 8/395).
September 19	Native Land Court made order determining boundaries of 20,000 acres of Pouakani No 1 block and that this be awarded to Crown for payment of survey and other costs; Court made interlocutory order in respect of Pouakani No 2 Block (Taupo MB 9/262-263).
September 24	Native Land Court gave decision on investigation of title to Tauponuiatia block. (Two slightly different versions of the judgment are at Taupo minute book 9/274-281 and 302-308).

1888

February 13	Chief Judge of the Native Land Court dismissed all of the applications for rehearing of investigation of title to Tauponuiatia relating to Tauponuiatia West block.
August 9	Native Affairs Committee heard petition to parliament for rehearing of Tauponuiatia.
August 17	Native Affairs Committee decided "That as the matter is now under investigation hy the Supreme Court, the committee has no recommendation to make".

1889

July 9	Royal commission appointed to inquire into matters relating to the Tauponuiatia block.
August 17	The Royal Commission on the Tauponuiatia Block reported (AJHR 1889, G-7).
August 22	Decision of Supreme Court issued dismissing applications by Taonui and others.
September 16	Section 29 of the Native Land Court Acts Amendment Act 1889 enacted, altering houndary of Tauponuiatia hlock, converting Pouakani, Pouakani No 2, Kaiwha, Hapotea and Maraeroa blocks hack to Maori customary land, so that title can be reinvestigated, and authorising Native Land Court to charge costs of survey of old and new boundaries to the owners of Maraeroa block. The North Island Main Trunk Railway Loan Application Act Amendment Act 1889 enacted, increasing the £100,000 authorised in the 1886 Act for purchase of land to £220,285.

1890

August 15	Chief Surveyor, Auckland, issued instructions for survey of Pouakani No 1 block (ML 6036A).
December 9	Rehearing of investigation of title of Pouakani block hy Native Land Court began.

1891

January 27	W Cussen sent plan of Pouakani No 1 (ML 6036A) to Chief Surveyor, Auckland.
May 7	Court altered western boundary of Horaaruhe Pouakani with Maraeroa to include in tbe Maraeroa block an area of the former Horaaruhe Pouakani block which, on 4 August 1891, the Court thought contained about 2250 acres.
August 11	Orders on investigation of title made for a number of subdivisions of Pouakani block, including Pouakani B9 and C1.
August 24	Rebearing of investigation of title of Maraeroa block by Native Land Court began.
December 12	Orders on investigation of title made for a number of subdivisions of Maraeroa block, Ketemaringi block, and Hurakia hlock.

1892

January 22	Chief Surveyor approved plan of Pouakani No 1 block (ML 6036A).
January 26	Chief Surveyor, Auckland, authorised preparation of Stubbing's survey plan ML 6406 etc.
March 4	One of the two owners of Pouakani B7, all six owners of Pouakani B8 and all three owners of Pouakani B11 signed a deed of sale to the Crown of Pouakani B7, B8, B11, C3 and other blocks.
March 5	Other owner of Pouakani B7 signed deed of sale to Crown.
March 7	Sole owner of Pouakani C3 signed deed of sale to Crown.
June 3	Judge Scannell approved plan of Pouakani No 1 hlock (ML 6036A).
July 7	Notice published in *New Zealand Gazette* that plan of survey of Pouakani No 1 block awarded to Crown on 24 September 1889 will be deposited for inspection at the post office, Taupo, from 29 July 1892 to 3 August 1892, and that anyone wishing to object to the boundaries shown on the plan sbould give notice to the registrar of the court on or before 10 August 1892, and that ohjections would be beard at a sitting of the court.
September 22	Notice published in *New Zealand Gazette* that Pouakani No 1 block acquired by the Crown.
October 8	The Native Land Purcbases Act 1892 authorised the colonial treasurer to borrow up to £50,000 a year for purcbase of native land. Section 14 enabled governor to remove restrictions on alienations to enable land to be sold to Crown. Section 20 required annual statements of money spent and lands purchased to be presented to parliament.

November 2	Don Stubbing sent survey plan (ML 6406 etc) to Chief Surveyor, Auckland.

1893

March 21	Chief Surveyor approved Stubbing's survey plan (ML 6406 etc).
March 25	Chief Judge Davy approved Stubbing's survey plan (ML 6406 etc).
April 19	Diagrams prepared from Stubbing's survey plan (ML 6406 etc) for Pouakani B7, B8, B11 and C3.
August 8	First seller signed first deed of sale of Pouakani B9 (Pureora).
September 13	First seller signed deed of sale of land described as Pouakani A, containing 10577 acres.
September 13	District Land Registrar, Auckland issued CT 67/276 for Pouakani B7, B8, B10, B11, C3, D3, and D4 in name of Her Majesty Queen Victoria.
September 14	First seller signed first deed of sale of Pouakani C1 (Kaiwba)

1894

May 19	First seller signed second deed of sale of Pouakani C1 (Kaiwha).
July 19	First seller signed second deed of sale of Pouakani B9 (Pureora).
July 30	Gerhard Mueller, Chief Surveyor, Auckland, signed a certificate that £180 9s 3d owing to Surveyor General for survey plans ML 6490, 6408, 6412 and 6413, apportioned between:

Pouakani A1, A2 & A3 containing 10577 acres	£59 11s 1d
Pouakani B9 & C1 containing 17,900 acres	£112 3s 2d
Pouakani C2 containing 250 acres	£8 15s 0d
Total	£180 9s 3d

1895

April 24	Native Land Court made order charging 10,577 acres of Pouakani A1, A2 and A3 blocks with £59 11s 1d to the Surveyor General for cost of survey.

1897

December 6	Te Heuheu as trustee for 3 children signed deed of sale of Pouakani C2 block to Crown for price of £43 15s 0d.

1898

Marcb 12	Te Rerebau Kahotea signed same deed of sale of Pouakani C2 block to Crown.
June 27	Native Land Court made order determining that Crown bas acquired tbe wbole 250 acres of Pouakani C2 block.
August 22	Application by Chief Surveyor, dated 20 August 1898, for survey charging order over Pouakani B9 block filed in court with Chief Surveyor's certificate dated 20 August 1898.

1899

March 8	Court made orders charging Pouakani B9 hlock with £62 13s 2d and Pouakani C1 block with £49 10s 0d for costs of survey.
July 21	Native Land Court divided: Pouakani A1 hlock into Pouakani A1A of 3,643 acres which it vested in Crown, and Pouakani A1B of 394 acres which it vested in two adults and three children who had not sold their shares to the Crown. Pouakani A2 block into Pouakani A2A of 2,950 acres whicb it vested in Crown, and Pouakani A2B of 350 acres which it vested in seven adults and four children who had not sold their sbares to the Crown. Pouakani A3 hlock into Pouakani A3A of 2,830 acres which it vested in the Crown, and Pouakani A3B of 410 acres which it vested in five adults and three children who had not sold their shares to the Crown.
July 24	Native Land Court divided Pouakani B9 (Pureora) block into Pouakani B9A of 7,340 acres whicb it vested in the Crown, and Pouakani B9B of 2,660 acres whicb it vested in 24 adults and eight children who had not sold their shares to the Crown.
July 26	Native Land Court divided Pouakani C1 (Kaiwha) hlock into Pouakani C1A of 4,046 acres which it vested in the Crown, and Pouakani C1B of 3,854 acres which it vested in the 19 adults and 18 children who had not sold their shares to the Crown.
July	Judge Edger signed memoranda to Chief Surveyor, Auckland setting out descriptions of boundaries of Pouakani B9A, B9B, C1A and C1B.
November 10	Diagrams for title orders drawn from Stubbing's plan ML 6406 etc for Pouakani B9A, Pouakani C1A and also for Pouakani A1A, A2A, A3A and C2 blocks.
December 1	Judge Edger approved Stubbing's plan ML 6406 etc as to Pouakani B9A and C1A, and also as to Pouakani A1A, A2A and A3A hlocks.

1900

May 29	Diagrams for title orders drawn from Stubbing's plan ML 6406 etc for Pouakani B9, B9B, C1 and C1B and also for Pouakani A1, A1B, A2, A2B, A3, A3B and C2 blocks. The diagrams for B9 and C1 sbow the boundaries that appear on Stuhbing's plan (ML 6406 etc) but these boundaries are not the same as those shown on the diagrams on the deeds of sale prepared in 1893 and 1894.
June 22	Stubbing's plan ML 6406 etc approved as to Pouakani B9B and C1B and also as to Pouakani A1B, A2B and A3B blocks by W C Kensington for Chief Surveyor. There is no further approval on the plan hy a judge of the Maori Land Court. Presumahly Judge Edger approved Stuhbing's plan ML 6406 etc as to Pouakani B9B and C1B hlocks by implication

	when he approved it as to B9A and C1A and when he signed and sealed the title orders creating Pouakani B9B and C1B whicb bad annexed to those orders the diagrams prepared on 29 May 1900 from Stubbing's plan ML 6406 etc.
1919	
April 10	Proclamation published in *New Zealand Gazette* declared that Pouakani A2B hlock, approximate area 350 acres, had been purchased by the Crown.
1921	
August 18	Proclamation publisbed in *New Zealand Gazette* declared that Pouakani A3B block, approximate area 410 acres, had been purcbased by the Crown.
1926	
March 11	Judge Holland (Rotorua minute book 77 pp 71-73) partitioned Pouakani C1B Block into Pouakani C1B1, for the owners occupying the land, and Pouakani C1B2 for the other owners.
1933	
October 27	Pepene Eketone and others, having petitioned parliament, claimed that Tahorakarewarewa was an uninvestigated block of Maori customary land which was excluded from the Maraeroa hlock by tbe Tauponuiatia Royal Commission (and s29 of the Native Land Court Acts Amendment Act 1889). The Chief Surveyor, Auckland, wrote to the Under-Secretary for Lands, Wellington, requesting a certified copy of plan number 180 referred to in s29 of the 1889 Act. (The original of plan GM 180 was found in 1992.)
1935	
May 28	Native Land Court sat to enquire into claims in Pepene Eketone's petition (Otorobanga minute book 70 pp 177-180).
1947	
May 5	A Sandel prepared plan ML 16550 intended as survey plan of Pouakani C1B1 and C1B2 blocks. The Chief Surveyor did not approve it and issued requisitions which were not complied with.
1954	
Februaary 4	Meeting of owners of Pouakani C1B2 block called hy Maori Land Court passed resolution to sell timber on their land.
May 20	Meeting of owners of Pouakani B9B hlock called by Maori Land Court passed resolution to sell timber on their land to the Rotoiti Timber Company Ltd.
1955	
March 24	Pouakani C1B1 and Pouakani C1B2 hlocks became suhject to part XXIV of the Maori Affairs Act 1953 and part of the Huiarau Development Scheme.

1956

August 27 — Maori Land Court confirmed resolution of 20 May 1954 of owners of Pouakani B9B block to sell timber.

1968

June 19 — Chief Surveyor approved Sandel's plan ML 16550 as to survey data only.

1971

October 7 — Proclamation dated 25 September 1971 published in *New Zealand Gazette* declared that Pouakani A1B block of 394 acres, as delineated on plan ML 6406-13, is Crown land.

1972

May 11 — Chief Surveyor approved K R Locke's plan ML 20635 completing Pouakani C1B1 and Pouakani C1B2 blocks by survey (plan adopted survey work in Sandel's ML 16550).

May 26 — Judge (later Chief Judge) K Gillanders Scott approved Locke's plan ML20635 and signed and sealed partition orders for Pouakani C1B1 and Pouakani C1B2 blocks, and so defined by survey the boundary line between Pouakani B9 (Pureora) and Pouakani C1 (Kaiwba) blocks created by title orders of 11 November 1891.

1982

March 18 — Manri Land Court made order under s438 Maori Affairs Act 1953 vesting Pouakani C1B1 and C1B2 blocks in seven trustees, including claimant, Mr John Paki, on Titiraupenga Trust.

1983

November 3 — Maori Land Court reduced number of trustees of Titiraupenga Trust to six.

November 4 — Manri Land Court made order under s438 Maori Affairs Act 1953 vesting Pouakani B9B block in five trustees on an investigation and report trust.

During 1983 the trustees agreed to pursue grievances of the Maori people relating to tbe original subdivision and acquisition by the Crown of the Pouakani block. Solicitors were instructed to act to endeavour to resolve these grievances.

1984

November 16 — Trustees submitted a claim to the Minister of Maori Affairs that an area, subsequently found to be 4831 acres, of Horaaruhe-Pouakani was wrongly included in Maraeroa block.

1985

February 28 — Notice in *New Zealand Gazette* released Pouakani C1B1 and C1B2 blocks, from part XXIV of Maori Affairs Act 1953.

March 18	Maori Land Court made order aggregating ownership of Pouakani C1B1 and C1B2 blocks.
1986	
June 4	Maori Land Court made new s438 trust order vesting Pouakani B9B block in new trustees, including the claimant John Paki, on Pouakani B9B trust.
September 2	Mr J M Harris, Registered Surveyor of Te Kuiti, submitted a report to the trustees as instructed by them. (Mr Harris's affidavit of 29 September 1987 says, at paragraph two, that be was instructed in December 1986 to research boundaries of Pouakani because of allegations that timber was being taken from outside the Pouakani B9B boundaries. These instructions must have been separate from the instructions that led to his affidavit of 29 September 1987).
November	Pouakani B9B trustees commenced logging southern portion of Pouakani B9B block and proceeded towards the south east boundary of the block.
December 16	New Zealand Forest Service discovered that logging operations on Pouakani B9B block extended into what the forest service believed to be part of Pureora State Forest Park.
December 18	Meeting attended by claimant John Paki, New Zealand Forest Service representative Mr D J Gaukrodger and the trustees' surveyor, Mr Harris. Trustees agreed to cease logging near south east boundary. It was also agreed that Mr Harris locate points on the boundary, and that the forest service would cut lines.
December 20	At a meeting between the two, Mr Paki told Mr Gaukrodger that the trustees believed Pouakani B9A block to be still Maori land, and that the trustees proposed to log to the Mihianga stream.
1987	
February 10	Mr Prentice of the Department of Lands and Survey, Hamilton, wrote to Judge Hingston, Manri Land Court, Rotorua, that a private surveyor (Mr Harris acting for trustees, not for the forest service as stated in the letter—see paragraph eight of Mr Paki's affidavit of 20 July 1987) in trying to define the boundary between Pouakani B9A and B9B blocks had found: (a) that boundaries do not mathematically close and (b) that the areas on the diagrams are wrong. He suggested survey and order under s34(9B) of the Maori Affairs Act 1953, so that a new survey plan could be suhstituted as defining boundaries.
1987	
February 24	Mr Gaukrodger, concerned about the possihility that the trustees logging operations had crossed tbe boundary into Pureora State Forest Park, spoke to Mr Harris.
February 25	Mr Gaukrodger and Mr Paki talked.

February 27	Meeting of some trustees, Mr Gaukrodger and trustees' surveyor Mr Harris. Trustees were disappointed that senior departmental officers were not present.
March 19	Trustees' solicitor wrote to the director general of the forest service, following agreement by trustees not to log in the vicinity of Pouakani—Tihoi boundary. (This was not intended to apply to Pouakani B9A—B9B boundary).
March 27	Pouakani claim commenced with the receipt by the Waitangi Tribunal of Mr Paki's statement of claim.
May 18	New Zealand Forest Service discovered what staff believed to be logging taking place in Pureora State Forest Park.
May 28	Mr Gaukrodger talked with trustees' solicitors.
June 2	Meeting between Mr Gaukrodger and Mr Paki.
June 26	Mr Gaukrodger talked with Mr Paki.
June 27	Mr Gaukrodger talked to bulldozer operator on land.
July 7	Mr Gaukrodger, in an affidavit, stated that he believed 527.9 cubic metres of rimu trees worth $16,529 bad been removed from wbat he believed to be the major site of trespass into Pureora State Forest Park. The area of alleged trespass was south west of Titiraupenga mountain across the Pouakani—Tihoi boundary and south west Pouakani B9A boundary.
July 16	Attorney General (on behalf of the Department of Conservation) instituted proceedings in the High Court seeking an injunction against Pouakani B9B trustees.
July 20	Mr Paki, in an affidavit, stated tbat an interim injunction would bring the trust's logging operation to a standstill, and would result in financial loss to the Pouakani B9B trust. Mr Paki stated that there is little logging whicb could be carried out on land accepted by the department to be part of Pouakani B9B, and bence any interim injunction would result in loss of employment and financial loss, and that the Pouakani B9B trustees were prepared voluntarily to cease logging in the area under dispute immediately, if it would be proved that the Crown owned that land and the boundary between Pouakani B9A and B9B blocks could be conclusively proved.
July 21	Application (CJ 1987/42) to tbe Cbief Judge of the Maori Land Court filed by Mr Paki seeking amendment of the title orders of 24 July 1899 wbicb divided Pouakani B9 (Pureora) Block into Pouakani B9A (Crown) and Pouakani B9B (non sellers). Application to Maori Land Court filed by Mr Paki seeking orders under s30(1)(i) of the Manri Affairs Act 1953 determining that Pouakani B9A block is Maori freehold land, and under s30(1)(a) determining the ownersbip of Pouakani B9A.
July 24	Anderson J made an order for preservation of Pouakani B9A Block in its natural state until 28 August 1987.
August 28	Anderson J extended preservation order by consent.

November 5 — Deputy Chief Surveyor, Department of Survey and Land Information, Hamilton, generally confirmed in an affidavit the contents of the affidavit of trustees' surveyor, Mr Harris, filed in the Maori Land Court.

November 10 — Hearing of s30(1)(a) and (i) and s452 application hy Maori Land Court at Rotorua (Rotorua minute hook 220 pp 30-48).

1988

June 9 — Judge Hingston gave interim decision (Taupo minute book 65 p 1) on applications under s30(1)(i) and (a), accepting statement in affidavit of assistant District Surveyor, Department of Survey and Land Information, Hamilton, that in order to determine boundaries of Pouakani B9B and C1B the Pouakani-Maraeroa boundary must first be resolved. Judge Hingston held that the Native Land Court in 1891 had no jurisdiction to alter the Pouakani-Maraeroa boundary, and that this and the correct Kaiwha boundary must be re-surveyed (by implication, at Crown expense, since the Crown created the prohlem by surveying Pouakani No 1 out of turn and as the owners had already given 20,000 acres for survey). Alternatively the parties must reach agreement.

June 14 — Judge Hingston made an interim report to the chief judge on the s452 application.

June 22 — The cbief judge (CJMB 19881 77) adopted Judge Hingston's recommendation that the proper place for investigations into the questions raised in s452 application is the Waitangi Tribunal and adjourned the s452 application to allow the Waitangi Tribunal claim to proceed.

1989

May 15 — Hearing of the Pouakani claim hy the Waitangi Trihunal began at Te Papa o te Aroba marae, Tokoroa.

Appendix 6

Petition of the Maniapoto, Raukawa, Tuwharetoa and Whanganui Tribes 1883

Your petitioners pray that you will fully look into and carefully consider the matters which are the cause of much anxiety to us, and are raising a harrier in front of us, because these matters that are causing us anxiety have principally emanated from you, the Europeans, in the form of legislation.

We have carefully watched the tendency of the laws which you have enacted from the beginning up to the present day; they all tend to deprive us of the privileges secured to us hy the second and third articles of the Treaty of Waitangi, which confirmed to us the exclusive and undisturbed possession of our lands.

We do not see any good in any of the laws which you have enacted affecting our lands, when they are brought into operation, in adjudicating upon lands before the Native Land Court at Camhridge and other places; and the practices carried on at the Land Courts have become a source of anxiety to us and a hurden upon us.

Through our ignorance of those laws we have been induced hy speculators (land-swallowers) and their agents to allow some of our lands to be adjudicated upon so that our lands might be secured to us.

Sirs, having allowed some of our lands to be adjudicated upon, who was it that became possessed of them? It is true that after the investigations the Natives received a certificate of title showing their right to the lands, hut through the superior knowledge of the Europeans we accepted foolishly the lawyers recommended to us hy the speculators (land-swallowers), thinking that they were to act in our interests, hut in reality they were intended to prolong the investigations, therehy increasing the expenses to so great an extent that the Natives were unahle to defray them, so that they (the speculators) might seize the land, the result being that we secure the shadow and the speculators (land-swallowers) the suhstance.

We are beset on every side hy outrageous practices and the temptations we are exposed to by speculators and even Maoris and half-castes, whom the companies have secured to decoy us into the nets of the companies.

In our perplexity to devise some means hy which we could extricate our lands from the disasters pointed out, we ask, is there not a law hy which we could suppress these evils? and we are told that the only remedy is to go to the Court ourselves.

Now, while we are striving to keep our lands, we are aware that your Government is trying to open our country hy making roads, carrying on trig. surveys and railways, therehy clearing the way for all these evils to be practised in

connection with our lands before we have made satisfactory arrangements for the future.

Are we to allow the present system to be carried on without remonstrance?

We wish to state that, if the above-mentioned practices are to be carried on in future, we think that it would not be right that our land should he rendered liable to such an objectionable system.

What possible benefit would we derive from roads, railways, and Land Courts if they became tbe means of depriving us of our lands? We can live as we are situated at present, without roads, railways, or Courts, but we could not live without our lands.

We are not oblivious of the advantages to be derived from roads, railways, and other desirable works of the Europeans. We aie fully alive to these advantages, hut our lands are preferable to them all.

The matters set forth above are tbe cause of our anxiety.

During the present year certain persons were selected by the bapus to define the boundaries of our lands, and erect posts to mark out tbe lands still remaining to us, your petitioners, upon which the European, to the best of our knowledge, bas no legal claim.

We, therefore, pray that your Honourable House will give effect to the following:-

1. It is our wish that we may be relieved from tbe entanglements incidental to employing the Native Land Court to determine our titles to the land, also to prevent fraud, drunkenness, demoralization, and all other objectionable results attending sittings of the Land Court.

2. That Pailiament will pass a law to secure our lands to us and our descendants for ever, making them absolutely inalienable by sale.

3. That we may ourselves be allowed to fix the boundaries of the four tribes before mentioned, the bapu boundaries in each tribe, and the proportionate claim of eacb individual within tbe boundaries set forth in this petition, which are as follows:-

Commencing at Kawhia, from thence to Whitiura, thence over Pirongia to Pukeboua, thence to the mouth of the Mangauika, following up Waipa to the mouth of the Puniu, along the Puniu to the mouth of Wairaka, along Wairaka to Mangakaretu, from thence to Mangere, thence to the Waikato, following the Waikato to the mouth of Mangakino, thence still following the Waikato to Waipapa, thence to Parakiri, thence to Whangamata, thence to Taporaroa, thence to Lake Taupo, following the course of Waikato in the centre of Lake Taupo to Motu-o-Apa, tbence to Tokakopuru, tbence to Ngutunui, thence to Koptha, thence to Whakamoenga, thence to Riaka, thence to Matau, thence to Te Hirihiri, thence to Tauranga, following up Tauranga to its source, thence to the summit of Kaimanawa, thence to tbe source of Rangitikei, following down to Te Akeake, thence along the boundary of Ruamatua to the source of the Moeawhango, following the boundary of Rangipo to Waipahihi, from thence into Waikato, following Waikato to Nukubaupe, thence to Paretetaitonga, thence to Te Kohatu, thence to Mahuia, thence to Te Rerenga-o-Toakoru, thence to Takutai, thence to Piopiotea, thence to Te Ruharuha, thence to Te Hautawa, thence to Te Hunua, Manganui, Te Murumuru, Te

Iringa-o-te-Whiu, Te Makahiroi, Pukehou, and Huirau, thence into Whanganui, thence to Te Paparoa along Paparoa Stream to Maanga-a-whatihua, thence to Paparoa, thence to Makahikatoa, thence over Te Upoko-o-Purangi to Te Ruakerikeri, thence to Puta-o-Hapi, Te Arawaere, thence to the source of Pikopiko, thence to Te Tarua te Kaikoara, Te Patunga-o-Hikairo, Te Kiekie, Ohura, Te Whauwhau, Kokopu, Oheao, thence over the Motumaire Ridge into Taungarakau, along Taungarakau to the mouth of Waitanga, following Waitanga to Te Rerepahupahu, following Rerepahupahu to Opuhukoura to Te Hunua, thence to Te Rotowhara, Matai, Waitara, Waipingao, following Waipingao out to the coast, thence twenty miles out to sea, and then taking a northerly course twenty miles at sea to Kawhia, the starting-point.

4. When these arrangements relating to land claims are completed, let the Government appoint some persons vested with power to confirm our arrangements and decisions in accordance with law.

5. If, after any individual shall have had the extent of his claim ascertained, he should desire to lease, it should not he legal for him to do so privately, hut an advertisement should be duly inserted in any newspaper that has been authorized for the purpose, notifying time and place where the sale of the lease of such land will be held, in order that the puhlic may attend the sale of such lease.

There is no desire on our part to keep the lands within the boundaries described in this petition locked up from Europeans, or to prevent leasing, or roads from being made therein, or other puhlic works being constructed, hut it is our desire that the present practices that are being carried on at the Land Courts should be aholished.

We wish you to understand that, if our petition is granted, we will strenuously endeavour to follow such a course as will conduce to the welfare of this Island.

And your petitioners will ever pray, &c.

Wahanui,

Taonui,

Rewi Maniapoto,

And 412 others.

Ki te Kawana o te Koronui o Niu Tireni ki nga Mema o nga Whare e rua

He Pitihana tenei na matou na nga Iwi o Maniapoto, o Raukawa, o Tuwharetoa, o Whanganui, ki te Paremete: Tena Koutou

E inoi atu ana matou kia tino tirohia e koutou, kia tino whakaarohia ano hoki nga mea e whakapouri nei ia matou e arai mai nei i mua i o matou aroaro; na te mea, ko aua tikanga e whakapouri nei ia matou, i ahu mai ia koutou i te pakeha te nuinga, ko te take, na runga i nga ture e hanga ana e koutou.

Kua tino tirohia hoki e matou te aronga o te mahinga a nga ture i hanga nei e koutou, i te tuatahi tae mai ana ki o tenei ra, e ahu katoa ana te aronga o aua ture ki te tango i nga painga i whakatuturutia kia matou e nga wahi tuarua tuatoru o te Tiriti o Waitangi, i tino whakapumautia ai te tino rangatiratanga,

me te kore ano hoki e whakararurarua ta matou matou noho i runga i o matou whenua.

Ko nga ture katoa i hanga nei e koutou mo te taha ki o matou whenua, kaore rawa matou i kite painga i roto o aua ture, ana whakamahia ki te whakarite whakawa ki runga ki nga whenua Maori i roto i nga Kooti Whenua Maori ki Kemureti me era atu wahi; a, kua waiho aua tikanga e mahia nei ki nga Kooti Whenua hei tikanga whakapouri hei pikaunga taimaha ano hoki ki runga kia matou. Na runga i to matou kuare ki te whatu o roto o aua ture, riro ana matou te whakawai e nga Horo Whenua me a ratou tangata, kia tukua etehi o matou whenua kia Kootitia kia tuturu ai o matou whenua kia matou; E Pa ma, i runga i te tukunga atu o etehi o matou whenua kia Kootita [sic], no wai te mana i tuturu ki runga ki aua whenua? He pono, i puta mai ano ki nga Maori he Tiwhikete hei whakaatu i tona tika ki runga ki te whenua i te mutunga iho o aua whakawa, otiia, ua runga i te matau o te pakeha, wairangi noa te Maori ki te whakaae ki nga Roia e whakaturia mai ana e nga Horo Whenua, tohu noa matou, e no matou aua Roia; kaore, he kumekume i nga whakawhakanga kia roa, kia nui ai nga moni e pau, kia kore ai nga Maori e kaha ki te utu, kia hopu ai o ratou ringa ki te whenua, tona tukunga iho, mau ana ko te wairua i nga Maori, ko te whatu, riro ke ana i nga Horo Whenua.

Kua oti hoki matou te karapoti e nga mahi nanakia katoa, e nga mahi whakawai a nga Horo Whenua tae mai ana ano ki etehi o nga Maori, me nga awhekaihe kua oti nei te here e nga Kamupene kia ratou, hei taki atu ia matou ki roto ki nga kupenga a nga Kamupene.

I runga i te nui rawa o to matou raruraru ki te kimi i etehi tikanga hei wawao i o matou whenua, i nga mate kua oti nei te whakatakoto, ka ui matou mehemea kaore he ture hei peehi mo enei mahi kino, ka utua mai kahore, heoiano tona tikanga me haere tahi ki te Kooti.

Na ia matou e kaha ana ki te pupuru i o matou whenua, e mohio ana matou kei te tahuri to koutou kawanatanga ki te whakatuhera i to matou takiwa, ia koutou e mea nei ki te hanga i nga Rori, i nga Ruuri teihana, me nga Rerewe, koia ka whakawatea i te ara hei mahinga mo enei mahi kino ki runga ki o matou whenua i te mea kaore ano i hanga paitia nga tikanga mo nga ra e takoto mai nei.

Me whakaae atu koia matou ki enei tikanga e mahia nei i runga i te kupu kore?

Ko ta matou kupu tenei, ki te waiho ko enei tikanga kua whakahuatia ake nei hei tikanga mo nga ra e takoto mai nei, e mahara ana matou kaore e tika kia whakatuheratia to matou takiwa ki enei tikanga whakarihariha.

He aha te pai kia matou o nga Rori, o nga Rerewe o nga Kooti Whenua, mehemea ka waiho enei hei ara rironga mo o matou whenua, ka ora noa atu hoki matou ki te noho penei, kaua he Rori, kaua he Rerewe kaua he Kooti, otiia, e kore matou e ora mehemea ki te kahore atu o matou whenua ia matou.

E hara i te mea e kuare ana matou ki nga painga a puta mai ana i roto i te oti o nga Rori o nga Rerewe, me era atu mahi pai a te Pakeha, kei te tino mohio matou, e ngari, ko o matou whenua te mea pai ake i enei katoa.

Ko nga mea tenei e whakapouri nei i a matou ko nga mea kua oti nei te whakamarama iho.

I roto ano i te tau nei, i whiriwhiria ai e nga hapu etehi tangata hei whakahaere i te rohe o to matou whenua, ki te whakaaraara pou hei tohu mo nga whenua e toe mai ana kia matou e ttuku atu nei i tenei Petihana,kaore nei te Pakeha ki ta matou mohio iho e whai paanga ana ki te whenua i runga i te ritenga o te ture.

Ka tono atu tenei matou kia whakamana mai e to koutou tino Whare enei tikanga ka tonoa atu nei.

1. E hiahia ana matou kia kore matou e mate i te nui rawa o nga rorerore o te whakamahinga o te Kooti Whenua Maori te whakamahinga i o matou take whenua; kia wehe atu ano koki nga tikanga tahae, nga mahi haurangi, nga mahi whakatutua tangata, me nga mahi whakarihariha katoa e aru nei i muri i nga nohoanga o nga Kooti.

2. Me hanga mai ano hoki e te Paremete tetehi ture hei whakapumau, i o matou whenua kia matou, me o matou uri, mo ake tonu atu, kia kore rawa e taea te hoko.

3. Kia waiho ma matou ano e whiriwhiri nga rohe o nga Iwi e wha kua whakahuaina ake nei, me nga rohe o nga hapu o roto o aua Iwi, me te aronga o te nui o te paanga o ia tangata ki nga whenua o roto o te whakahaerenga rohe ka tuhia iho nei ki tenei Petihana.

Koia tenei te rohe?—

Timata i Kawhia, ka rere mai ki Whitiura, tapahi tonu mai i runga o Pirongia, ka heke iho ki runga o Pukehoua, ki te puau o Mangauika, haere i roto o Waipa, te puau o Puniu, haere i roto o Puniu, te puau o Wairaka haere tonu, Mangakaretu, haere i uta, Mangere, ka makere ki roto o Waikato, haere tonu, te puau o Mangakino, haere tonu i roto o Waikato, te puau o Waipapa, haere i uta, te Parakiri, rere tonu Whangamata, Taporaroa, ka makere ki roto o Taupo, te au o Waikato, i waenganui o Taupo, ki Motuopa, te Tokakopuru, Ngutunui, te Kopiha, te Whakamoenga, te Riaka, te Matau, rere tonu Hirihiri, Tauranga, rere tonu i roto o Tauranga te matapuna, ka tapahi i runga o Kaimanawa, te matapuna o Rangitikei, haere i roto o Rangitikei, te Akeake, haere i te rohe o Ruamatua, te matapuna o Moeawhango haere i te rohe o Rangipo, Waipahihi, ka makere ki Waikato ka haere i te au o Waikato, Nukuhaupe, ka kati ki Paretetaitonga, ka huri ki tua o Paretetaitonga, te Kohatu, Mahuia, te Rerenga o Toakoru, te Takutai, Piopiotea, te Ruharuha, Hautawa, te Hunua, Manganui, te Murumuru, te Iringa o te Whiu, te Makahiroi, Pukehou, Huirau, ka makere ki roto o Whanganui, Paparoa, haere i roto o te awa o Paparoa, te Maanga a Whatihua, rere tonu i roto o Paparoa, Makahikatoa rere tonu, ka piki i te Upoko o Purangi, te Ruakerikeri, te Puta o te Hapi, rere tonu te Arawaere, te matapuna o Pikopiko te Tarua te Kaikoara, te Patunga o Hikairo, te Kiekie, ka makere ki Ohura rere tonu te Whauwhau, Kokopu, Oheao, haere i roto i Oheao, te Motumaire, piki tonu i te hiwi o te Motumaire, ka heke ki Taungarakau, rere tonu te puau o te Waitanga, haere tonu, te Rerepahupahu, haere, Opuhukoura, te Hunua, te Rotowhara, te Matai, Waitara te Matawai o Waipingao, ka puta ki te puaha, e ruatekau maero ki te Moana nui, rere atu i waenga moana, ki te taha hauraro, ka huri mai ano ki Kawhia ki te timatanga.

4. A te wa e rite ai enei whakaritenga mo te aronga ki te whenua, me whakatu mai e te Kawanatanga etehi tangata whaimana, hei whakapumau i a matou whiriwhiringa me a matou whakaaetanga ki runga i te ritenga o te ture.

5. A te wa e oti ai te whakatau o te nui o te paanga o ia tangata o ia tangata ki te whenua, ka hiahia te tangata ki te reti, e kore e mana te reti e whakaritea e tona kotahi, e ngari me panui marire ki roto ki nga nupepa kua oti te whakarite mo taua mahi, hei whakaatu i te takiwa e hokona ai te riihi o aua whenua e hiahiatia ana kia retia, kia ahei ai te katoa te haere mai ki te hokonga o aua riihi.

E hara i te mea he hiahia no matou ki te pupuru i nga whenua o roto i te whakahaerenga rohe kua tuhia iho nei ki tenei Pitihana kia puru ki te Pakeha, ki nga mahi reti, ki nga Rori ranei kia kaua e mahia ki roto; i nga mahi ranei a te iwi nui kia kaua e mahia; e ngari he hiahia kia kore atu nga mahinga a nga Kooti Whenua ia ratou e mahi nei.

Kia mohio ano hoki koutou, ki te whakaaetia mai ta matou Pitihana ka tino awhina matou ki nga ritenga e nui haere ai nga ara, e puta mai ai nga painga ki tenei motu; a ka tino inoi tonu atu matou kia tino manakohia e koutou tenei Pitihana.

Ko nga kia awhina enei i tenei Pitihana ka whakapirihia mai nei ki tua.

Wahanui,

Taonui,

Rewi Maniapoto,

Me ona hoa e 412.

Source: AJHR 1883, J-1.

Appendix 7

Report of the Royal Commission into the Tauponuiatia Block 1889

To His Excellency the Governor of New Zealand, &c.

We, the undersigned, appointed hy a Commission, dated the 9th day of July, 1889, under the hand of the Governor, and sealed with the puhlic Seal of the Colony, to inquire into certain matters connected with the hearing hy the Native Land Court of the hlock of Native land called Tauponuiatia, respectfully submit for your Excellency's consideration the following report of our proceedings:—

We held our sittings at Kihikihi, as being the most convenient place for all parties concerned, and the meeting was attended hy a large number of the Ngatimaniapoto Tribe, and hy several of the principal chiefs of the Ngatituwharetoa, from Taupo.

We sat on seventeen days, and examined in all, twenty-six witnesses, whose evidence is recorded on two hundred and twenty-four pages of foolscap, which, with various exhibits, are transmitted with this report.

Much of the Native evidence given on hoth sides has been very conflicting, and often at variance with what had been previously sworn before the Native Land Court; and we have found it very difficult to determine which is the most reliahle. We had the records of the Native Land Court before us, to which access was also given to all interested parties, who freely made use of them, and we permitted the utmost latitude in the examination and cross-examination of witnesses, and refused no evidence that was tendered to us. We decided not to allow Europeans to conduct the cases, making an exception, however, in Karawhira Kapu's case, which was conducted hy her hushand, Mr Moon, and defended hy Mr W.H.Grace, he being the person chiefly interested on the other side. We believe that this decision gave general satisfaction to the Natives.

In summing up the evidence taken on the different issues remitted to us for consideration, we have referred to such points only as, in our opinion, are material to the issue, or to such as would lead to a clear apprehension of the case.

Issue No. 1.

The first question referred to us hy the Commission is as follows: "Whether the boundary of the said hlock of land called Tauponuiatia, as delineated on the said plan, and thereon coloured red, is the correct boundary thereof, or whether the said boundary is correctly delineated hy the line coloured yellow on the said plan, or whether the correct boundary would be properly defined hy an intermediate line between the said lines coloured red and yellow."

This is a question respecting the proper position of the houndary dividing the lands of the Ngatimaniapoto and Ngatituwharetoa (Taupo) Tribes.

In 1882 and 1883 many meetings of representatives of these two and of the Whanganui, Ngatihikairo, and Ngatiraukawa Tribes were held, at which it was ultimately resolved to fix the outside boundary, or Rohepotae, of the King-country to include all the lands of four of the tribes, and a large part of those of the fifth, Ngatituwharetoa; and we were informed that Mr Bryce, then Native Minister, after this had been settled, agreed that, if they wished it, the block should be surveyed and investigated as a whole.

On the 31st October, 1885, the Ngatituwharetoa sent in a claim to the Native Land Court for the investigation of title to the land included within their Rohepotae, comprising a portion of the original block, and all their other lands, and setting forth their boundaries; and it was duly notified that a Court would sit for the hearing of this claim.

The Court accordingly commenced its sittings on the 14th January 1886, at Taupo, and, in consequence of objections made out of Court hy some of the Ngatimaniapoto, Te Heuheu, on the part of Ngatituwharetoa, agreed to withdraw their western boundary further eastward; and on the 16th January he announced in Court the altered boundary, as claimed by the Ngatituwharetoa, and gave the names of places along the line, part of which ran along the western slopes of the Hurakia Range, and which names were marked and the line drawn on the map before the Court by one of the surveyors.

Eleven counter-claims were set up on that day — four of them hy members of the Ngatimaniapoto, who said that they had been elected to represent the trihe, hut who appear to have made their claims on personal grounds only.

On explanations and concessions being made hy Te Heuheu all these counter-claims were withdrawn.

Taonui, who asserts that he alone was the chosen representative of the whole tribe, had been detained at Camhridge by suhpoena from the Resident Magistrate's Court, and did not arrive at Taupo unul the evening of the 18th January, when he was informed by the other members of his tribe that the boundary-line had been settled. He had a meeting with Te Heuheu before the opening of the Court on the 19th, and endeavoured to induce him to stop the hearing of the case, but Te Heuheu refused to consent to this, and Taonui, whose principal object was to prevent the sitting of the Court at all, appears to have taken but little interest at this time in the boundary-line. Imagining that the boundary question had been settled, he made no objection as he might have done, to its adoption before the 22nd January, when, there being no opposition, the Court gave judgment for the red line, as delineated on the map referred to in the Commission and attached to this report, which line was subsequently surveyed by Mr. Cussen.

A further ohjection was made by Taonui to the sitting of the Court a few days afterwards, and again on the 27 March, 1886, when the Court was proceeding to hear the Maraeroa Block, which is in the disputed territory; and he urged the Court's adjournment, stating that the hearing of Tauponuiatia was a violation of the promise made by Mr Bryce.

Major Scannell, one of the Judges at the hearing of Tauponuiatia, who was examined by the Commission, states that the presiding Judge, Mr Brookfield, explained the altered line to Taonui on the 19th January; and that the latter

then only objected to Petania, which place proved to be on his own side of the boundary, and that he made no further opposition to the line, but protested against the sitting of the Court at all.

Taonui and other witnesses on his side assert that they were told by the Court that the red line, or altered boundary, ran along the summit of the Hurakia Range. Major Scannell said that the range was not mentioned till the hearing of Maraeroa; but he himself was mistaken as to the position of that range, which was very faintly delineated on the Court map, and imagined that a part of it formed the northern portion of the western boundary of Maraeroa; and it was only when he saw Mr Cussen's surveyed map, which was before the Commission, that he became aware of its true direction.

Taonui asserted that the yellow line was laid down as the Ngatimaniapoto boundary by Rereahu and three others of his ancestors eleven generations ago, and gave the names of the hills and places along it. On the other hand, Papanui, on the part of Ngatituwharetoa, swore that the red line was laid down by their ancestors, Tia and Tuwharetoa, fifteen generations ago, but could not specify any of their names.

This last statement is the least worthy of credence for their boundary, as given in their first application was in a different position, further west. They endeavoured to show, by tracing No. 2, that Taonui had also varied his boundary since he applied for a rehearing; but he was then including lands claimed through Raukawa. And in the tracing the divergences are somewhat exaggerated.

There was a great deal of evidence given on both sides to prove that Maoris living between the Pungapunga and Taringamotu Streams (the southern portion of the territory in dispute) belonged to their respective tribes. A great many genealogies were recited, but these mainly proved that those residing there belonged to both sections — in fact, were a mixed race, who could give no exclusive rights to either party.

The red line, in the absence of any objection, was necessarily adopted by the Court; but if Taonui had at any time between the 19th and the 22nd January, 1886, when judgment was given, brought forward his objections to it, as he might have done, he would probably have obtained at least a partial adoption of his boundary, for there can be no doubt that a mountain-ridge is a proper and natural division between two tribes. He lost this opportunity for he was stubborn, and chiefly anxious to stop the sitting of the Court; but, taking into consideration that he understood no partial hearing of the original Rohepotae Block would be allowed, and that the map on which the altered boundary was shown to him was indistinct as to the position of the range, also that this was his first appearance at a Native Land Court, and that he was ignorant of its rules and customs:—

We find that the portion of the boundary-line between the Ngatimaniapoto and Ngatituwharetoa Tribes which is in dispute should be the red line from its junction with the Pungapunga Stream to Pakihi, which is the commencement of the range, and from thence along the Hurakia Range or water-shed to Pureora, and from thence to Tapororoa [sic], along the north-eastern boundary of the Maraeroa Block.

This line would not include the settlement of Tahorakarewarewa, which Taonui claims, but which is on the eastern slope, about two miles from the ridge and about ten miles from Lake Taupo.

Issue No. 2

The second question remitted for the finding of the Commission, was "Whether the Native chief Hitiri te Paerata had suffered any injustice in consequence of his claim to a hlock of land known as Pouakani having, in consequence of some misapprehension, been unsatisfactorily dealt with, and whether he or his people have any just cause of complaint in relation thereto."

Hitiri te Paerata's complaint may be stated under the following heads:-

2A. That he was prevented hy his absence in Camhridge, at the opening of the Native Land Court at Taupo, from setting up Raukawa as one of the ancestors through whom he claimed interests within Tauponuiatia, in addition to Tia and Tuwharetoa.

2B. That the Native Land Court had declared that the Ngatiwairangi, named as one of the eighteen hapus owning the Tauponuiatia West Block, was Ngatiwairangi-Parewhete, and that the Ngatiwairangi, to whom the Pouakani Block — a part of the said Tauponuiatia West Block — was awarded by the Court, did not belong to that section of the hapu.

2C. That the hapus Ngati te Kohera and Ngatiparekawa, whom he had set up in his counterclaim as having an interest in Pouakani, as well as the Ngatiwairangi, Ngatimoe, and Ngatikorotuohu, set up by the claimants, were wrongfully rejected by the Native Land Court from the main portions of that block.

2D. That his personal claim to be included as an owner in Pouakani was also wrongfully rejected by the Court.

2E. That Mr W.H.Grace, the Government Land Purchase Agent improperly interfered in the Court, and actively and openly supported the parties opposing him and his people in the above mentioned claims.

2A. With regard to No. 2A, Hitiri showed that, owing to his ahsence at Cambridge attending the Resident Magistrate's Court, he had not been in time to hring forward the Raukawa claim before the Native Land Court had decided that Tia and Tuwharetoa only could be ancestors giving title to the Tauponuiatia Block; but it was proved that during his absence he and his hapu were represented by their leading chief Te Takiwa, and that he had had the opportunity afterwards of bringing forward his claim through Raukawa when the question of "hapus" was before the Court, and that he and Tini Waata did set up that ancestor; further, that Tini Waata withdrew his case, admitting that Raukawa gave no title, and that he (Hitiri) also abandoned his claim, saying that Raukawa had never set foot on the land, and the Court gave judgment for Tia and Tuwharetoa only, not having been called upon to decide for or against Raukawa.

2B. To explain No. 2B it should be premised that at the fixing of hapus in the Pouakani Block hy the Native Land Court the claimant Te Rangikaripiripia, set up three hapus — viz, Ngati Wairangi, Ngati Moe, and Ngati Korotuohu, and Hitiri in setting up a counter claim named the same three hapus, adding Ngati Te Kohera and Ngati Parekawa, without specifying any separate Ngati

Wairangi, and afterwards admitted that the first three hapus had a claim. He himself never referred to the distinction either in his evidence sworn before the Court or in that given before the Commission, nor did he mention it in his application for rehearing, nor in his petition to Parliament. But the point was taken up hy another witoess, and was forcibly pressed by Pepene, the very clever conductor of Hitiri's case, who had seen it recorded in the books of the Native Land Court that the Judge had declared that Ngati Wairangi-Parewhete was *the* Ngati Wairangi to be included amongst the owners of Tauponuiatia West. It was stated in evidence, and not contradicted, that the affix "Parewhete" was used for the first time at the Taupo Court; and even assuming that Ngati Wairangi-Parewhete only could claim, we are of opinion that Te Rangikaripiripia, after a variety of complex statements concerning ancestry, conquest, &c., including numerous genealogies, proved descent from Parewhete by the intermarriage of one of his ancestors with a descendant of hers, and we find that his claims were not invalidated hy this objection of Hitiri's.

2C. With regard to No. 2C judgment was given hy the Native Land Court in favour of Ngati Wairangi, Ngati Moe and Ngati Korotuohu, and the claim set up by Hitiri and others for Ngati Te Kohera and Ngati Parekawa was dismissed, as they could not prove occupation, and the Court had decided that occupation as well as descent was necessary, as all the hapus were descended from the same ancestor, Wairangi. Hitiri's evidence before the Commission was shifty and, in some parts, contradictory, and when challenged in cross-examination with having given contrary evidence, and with having set up two different sets of hapus for the same Pouakani Block before the Native Land Court, he admitted that what he had there stated was false, that he had deliberately made such wrong statements because he was suffering wrong and because his opponents also had been swearing falsely, and he only followed suit. On the other side contradictions were also proved, but these were of a comparatively minor character, and we consider their statements to be the more reliahle; and we are of opinion that the Ngati Te Kohera and Ngati Parekawa hapus were rightly excluded by the Native Land Court from any interest in Pouakani except by intermarriage.

2D. Hitiri's personal claim to be inserted in the list of owners for Pouakani rests, in our opinion, upon his having resided at Waipapa, within the block, at different times since the year 1874. He claimed to have resided in several other places within Pouakani, but this was sufficiently and distinctly contradicted by the other side, who also showed that he had been but a visitor at Waipapa, living there for a time with his sister and brother-in-law, his own settlement, Te Papa, in the Tihoi Block, having been destroyed by Te Kooti. Judgment was given against his personal claim by the Native Land Court; but the Judge, Major Scannell, in his evidence before the Commission, stated that had he heard in time all the evidence given in a subsequent and similar claim by Te Takiwa, who was admitted as an owner in Hapotea, a subdivision of Pouakani, he would have decided in his (Hitiri's) favour also, as his claim was as good as that of the other. The Judge told Hitiri that he would support his application for a rehearing of this particular claim if he chose to make one, but he failed to do so; and we are of opinion that, though he has lost a chance of proving a right, it is not from any unjust treatment hy the Court.

2E. There is no douht that Mr. W. H. Grace, the Government Land Purchase Officer employed to negotiate with the Natives for the purchase of portions of the Tauponuiatia Block, did assist in Court the party opposed to Hitiri hy suggesting questions and giving them advice; and being himself interested in the Pouakani Block, through his wife (a Native or half-caste), and hy reason of his having made large advances to the claimants, amounting to over £600, on his own responsibility, and, further, by his desire to facilitate the sale to Government, it is more than probable that when out of Court he also aided and guided them in the course they should pursue; but the charges made against him by Hitiri and other witnesses of improper conduct were not corroborated hy evidence, and we consider that they were mere suspicions, which have not been in any way substantiated. They accuse him of having interfered with the Interpreter in Court, of having tampered with witnesses, and of having made Te Heuheu drunk to prevent his giving evidence; and Hitiri even suggested, and that very plainly, that it was through Grace's influence that Judge Brookfield was removed from the Bench, because he was not sufficiently subservient to his wishes. Mr Grace positively denied these charges, and showed that Hitiri and his party had been assisted throughout by Mr. F.A. Whitaker as counsel, and by Mr Moon and Captain Blake as their advisers, the latter said to be the ablest conductor of Native Land Court cases in the colony. Whether Mr Grace, a Government officer, should have mixed himself up in any way with matters in dispute between the Natives themselves may be a question for the Government to determine.

Issue No. 3

The following is the third matter referred to us by the Commission: "Whether Karawhira Kapu was induced by a Land Purchase Commissioner in the employ of the Government to forego large claims to land of her own and of her relations in consequence of promises made to her hy the said Commissioner, which have not been fulfilled or carried out?"

We find that Karawhira Kapu was induced to withdraw certain large claims in the Pouakani Block, which had been made by Waraki Kapu on behalf of himself and other members of his hapu, the Ngati Ha, including Karawhira Kapu, by promises made to her by Mr. W.H.Grace, a Government Land Purchase officer, in an agreement (copy attached) drawn up and signed hy the said W.H.Grace and Karawhira Kapu on the 24 March, 1887, whereby it was arranged hy her, on behalf of herself and her section of the hapu, that all their claims in the said block should be withdrawn on condition that 7,200 acres should be awarded to the said Karawhira Kapu and eight others of her immediate relatives, she undertaking that the claimants Waraki Kapu (her hrother) and Kapu te Kohika (her father), with their section of Natives, should cease and withdraw from all opposition to the settlement of the halance of the hlock.

In accordance with this agreement, to which there was no opposition when it was announced in Court, the Court awarded the 7,200 acres at Kaiwha to nine persons — namely, Karawhira Kapu, her brother, her two sisters, her half-brother, her sister-in-law, her two children, and her niece, and they were at liberty to add the names of other members of the hapu if they thought proper, but the award was made to these nine only.

It was further provided hy the said agreement that when a portion of the Pouakani Block, containing 65,000 acres, which was then under negotiation, had been sold to the Crown, Karawhira Kapu should receive a seventh part of whatever sum might be availahle for bonuses to chiefs for services rendered in connection with the sale thereof, and when the amount of individual shares, deducting the cost of survey, had been fixed and known, she was to receive a further sum of money equal to nine such shares.

We find that these further promises have not been, and indeed, could not have been, fulfilled, under the circumstances explained in the following summary of the case:—

On the 3rd January, 1887, Hitiri te Paerata claimed to be included among the list of owners, and Karawhira Kapu would have come in with him had his claim been successful; hut it was dismissed.

On the 11th March Waraki Kapu, brother of Karawhira, and Areta te Miri, her sister, and others of the hapu, applied to be admitted as individuals to the list of owners.

On the 15th March Waraki Kapu handed in a list of six names saying that if he were admitted the other five would come in also. These and other similar claims were causing much delay and obstruction in respect of the purchase, for Mr Grace had already commenced his negotiations, and, to expedite matters, he proposed a compromise with Karawhira, and on the 23rd March announced in Court that an agreement had been come to and that Waraki Kapu and the others withdrew their claims and an interlocutory order was made in favour of Karawhira Kapu and eight others for the 7,200 acres at Kaiwha, which was confirmed and made final on the following day.

Notwithstanding the conditions of the agreement Kapu te Kohika, father of Karawhira, stated in Court on or about the 12th April that they intended to set up a case, and that Tini Waata, his hrother, was going to give evidence, and on the 7th June Tini Waata and Te Rehina, the grandmother of Karawhira, neither of whom was among the nine owners of Kaiwha, brought forward a claim for admission to the main part of Pouakani, and on hearing of this Mr Grace at once notified to Mr Moon, the hushand of Karawhira, that the agreement was being hroken. Mr Moon came into Court and tried to prevent the claim from being proceeded with, hut the Judge would not permit him to interfere, ruling that the Court could not suppress any evidence that was offered to it. The claim was therefore heard on its merits and was dismissed, the Court deciding that Kapu te Kohika, Tini Waata, and Te Rehina had no interest in the land. This decision, Karawhira says, would not have applied to herself, whose claims were derived through her mother.

When Mr Grace found on the 7th June, that the Court was going into the case, he wrote a letter to Mr. Moon (Exhihit D, attached), stating that, as the conditions of the agreement had been violated, it now became null and void.

Karawhira Kapu admits that she knew she was then at liberty to have hrought her claims in Pouakani before the Court, or to apply for a rehearing; hut she thought it better not to follow either of these courses, hut to appeal to the Government for the fulfillment of the latter part of the agreement; and now she wishes the Court could hear her case over again, so that the Kaiwha award

may be set aside, and that she may be ahle to renew her claims and those of ber section of the Ngati Ha in the whole hlock.

None of the promised payments bave been made to Karawhira Kapu, nor are they likely to be, for the negotiations for the purcbase of tbe 65,000 acres have been suspended by the Government in consequence of these disputes, and, if the block is purchased, the violation of the agreement hy some of her hapu will prohahly be held by the owners as sufficient reason for refusing to give her the nine shares, and the payment of bonuses for services rendered by chiefs has been repudiated by tbe Government.

With regard to the promise made by Mr. Grace of the payment of a bonus for services to Karawhira, be explains that, in the exercise of bis discretionary powers as a Land Purcbase officer, he has always considered himself empowered to make such payments under the head of "Contingencies," provided he does not exceed the price per acre authorised by the Government to be paid for the land; that he has on several occasions exercised this power; and that these payments, appearing in his accounts under the head of "Contingencies," bave never been questioned hy the department.

All which we respectfully submit for your Excellency's consideration.

Given under our bands and seals, at Auckland, this 17th day of August 1889.

T.M.Haultain.

Hanita Te Aweawe.

Source: AJHR 1889, G-7.

Appendix 8

Report of Native Land Court on Petition No. 109/1931 of Pepene Eketone and others re Tahorakarewarewa Block

There was a long delay in hringing on this inquiry due mainly to the death of Pepene Eketone the only person amongst the natives who claimed to have any knowledge of the suhject.

Inquiry was eventually held at Te Kuiti on 28th May last [1935].

Mr Taite te Tomo M.P. stated he represented the natives generally. He made a statement as to happenings before the Native Affairs Committee which I did not consider came within the scope of my inquiry.

Mr Phillips solicitor appeared for claimants of N'Matakore hapu and Mr Elliott native agent for N'Rereahu hapu, both hapus being of N'Maniapoto tribe. Mr Darhy for the Lands Department.

No evidence was called for the natives and Mr Phillips in his opening address stated frankly that they relied on the plans and other records produced hy the Crown.

A short adjournment was taken to enahle inspection of plans &c. hy the parties.

On resuming Mr Phillips stated that he referred to report of Tauponuiatia Commission in 1889. To plan 6498D approved 7th Fehruary 1899. This plan Mr Phillips stated shows the land claimed hy the petitioners as the uninvestigated native land referred to in the Petition. The area is 1538 acres and is described as "Punakerikeri Block". This plan however shows on its face that it was not prepared till 1899 and it is stated on it that "it is portion of Maraeroa A Block already adjudicated upon and orders made".

Plan marked A attached hereto shows Punakerikeri Block on reduced scale. Plan 6077 shows the same area and boundaries hut marked on this plan as "C".

Plans 6076 of Tihoi Block and 6078 of Waihaha Block were referred to as showing that the area was not included in either of those hlocks which adjoin it in the east and south east respectively. On north west it is of course hounded hy portion of Maraeroa A.

Mr Phillips suhmitted that the records showed that the area was part of Maraeroa and if so the natives denied having sold it to the Crown.

Mr Elliott did not address stating that if the land were found to be native land he would then claim for his section.

Mr Darhy for Lands Department produced the plans referred to and directed the Courts attention to proceedings before the Tauponuiatia Commission and in the Native Land Court on investigation of title of Maraeroa in 1891.

The history of the matter as I gather it from the records may be said to have begun with the report of the Tauponuiatia Royal Commission in 1889 fixing a boundary between Ngatimaniapoto and Ngatituwharetoa tribes (Parliamen-

tary paper G.7/1889). This report was given statutory effect hy Section 29 of The Native Land Courts Amendment Act 1889 (No. 32). This section enacts that "the western boundary of the land known as Tauponuiatia is herehy declared to be and sball be deemed to have been the line defined as such western houndary in tbe said report (of the Commission) and shown in the map numbered 180 deposited in the office of the Surveyor General at Wellington".

The Commission's finding was:

> We find that the portion of the boundary line between the N'Maniapoto and N'Tuwharetoa tribes which is in dispute should be the red line from its junction with the Pungapunga Stream to Pakihi which is the commencement of the range and from thence along the Hurakia Range or watershed to Pureora and from thence to Tapororoa along the nortb-eastern boundary of the Maraeroa Block.
>
> This line would not include the settlement of Tahorakarewarewa which Tannui claims but which is on the eastern slope about two miles from the ridge and about ten miles from Lake Taupo.
>
> I have inspected a certified copy of Plan 180 supplied to me by Survey Office, I attach a sun print of it.

The boundary given in the report and especially the reference to Tahorakarewarewa appear somewbat ambiguous. It was however admitted by Mr Darby that the area now in question is situated on the eastern slope of the Hurakia Range.

I now come to the investigation of title of Maraeroa in 1891. The minutes are in Waikato Minute Book 28. The plan before the Court was No. 6077 already referred to. The boundary claimed by Te Paebua Matekau on behalf of N'Maniapoto included the area of 1538 acres marked "C" on the plan as already mentioned.

Pepene Eketone himself was the conductor for N'Maniapoto. On p. 29 of Minute Book 28 the Court stated, in answer to Pepene that "the part of Maraeroa Block marked "C" 1538 acres would be included in the present investigation."

It does not appear that any question arose as to the boundary from Weraroa to Tahorakarewarewa or as to the 1538 acres marked "C". Te Heuheu was present but did not set up that this area belonged to Tuwharetoa. The claimants however admitted Te Heuheu and his sisters into their list.

Papanui Tamahiki set up a claim under Tuwharetoa and Tia but it referred to the southern part i.e. the boundary from Weraroa to Pakihi.

Hence it may be fairly said tbat N'Tuwharetoa as such did not claim this area marked C.

Evidence of Robert Cashel surveyor on p. 103 Minute Book 35 [sic, sbould be Waikato MB 28] states that he cut the line from Pureora along the ridge to Weraroa. That is along the east [sic] and south east [sic] boundaries of the area "C".

He "then proceeded to cut a line towards Ketemaringi hut found tbat was not the watershed because it was intersected hy a stream. Maoris said it was Maramataha, it runs parallel with the ridge. I went hack to Weraroa and started again on the proper ridge which is not intersected hy a stream I continued the survey to Pakihi. *I followed the instructions in the Gazette in*

pursuance of the decision of the Commissioners which was that the line should follow the watershed."

This evidence does not appear to have been challenged except by Te Papanui as to the part I have already referred to.

The Court in its judgment (Minute Book 35 [sic = 28] pp. 113/116 rejected the claim hy Te Papanui and held that the true boundary was the line surveyed hy Mr Casbel. The Court awarded the land "to the several bapus named in the prima facie case" (claimants case).

On pp. 164/5 of Minute Book 35 [sic = 28] are the Court orders for:

Maraeroa A

in favour of Te Paehua Matekau and others to include portion marked "C" 1538 acres, also part of portion (sic) of Maraeroa included in Pouakani shown in pencil on plan.

Maraeroa B

in favour of Hoani Takerei and others.

Maraeroa C or Pukemako

in favour of Waretini Ringitanga and others.

The allegation in the Petition that this area was not investigated at the investigation of title of Maraeroa Block is therefore incorrect. It bas been investigated and awarded to N'Maniapoto people. These orders were not cancelled hy the Tauponuiatia Commission as they were made some two years after that Commission had made its report.

The diagram originally attacbed to the Court order and the order itself showed the area of Maraeroa A as 18938 acres. The Chief Judge subsequently on the 16th October 1911 purporting to act under Section 27 of The Native Land Act 1909 amended the order by reducing the area of Maraeroa A to 16687 acres with a fresh diagram. The difference went into Maraeroa C. It does not affect the present inquiry, the alteration being entirely on the western boundary of Maraeroa A. I attach copies of these two diagrams marked B and C. I do not enter upon the question of the jurisdiction of the Chief Judge.

I now come to the allegation that the 1538 acres bave not been sold to the Crown.

On 13th March 1901 (Otorobanga Minute Book 40 p.2) application was made to the Court (Judge Mair) to define the interest of the Crown in Maraeroa A. The area acquired by the Crown was stated as 176* shares representing 12199 acs.0 rds. 18ps. plus 865 as. 2rds. 06ps. for Survey liens—Total 13064 acs. 2 rds. 26ps. Te Paehua on behalf of the non-sellers agreed to give up to the Crown the southern end of the block "by a line from East to West parallel to tbe north boundary leaving 13065 acres on the South of the line". This of course included the 1538 acres in the Crown award. Mr G.T.Wilkinson represented the Crown on these proceedings. I have inspected the Deed of Sale to the Crown wbich sbows that the purcbase was effected in 1896.

The diagram or plan on the Deed of Sale is a copy of the original diagram showing 18938 acres attached to tbe Court order for Maraeroa A.

The Crown award was named Maraeroa A Section 2 containing 13065 acres and it was proclaimed Crown Land on 29th August 1901. When the alteration

was made in the western boundary hy the Chief Judge in 1911 as already referred to, the order for Maraeroa A Section 2 was amended hy reducing the area to 11603 acres and a fresh diagram attached showing that area. Copy of this diagram attached marked D.

This area of 11603 acres which includes the 1538 acres claimed hy the natives has heyond all douht become Crown Land.

I report accordingly.

A statement was made to me at the close of the inquiry that if it was found that the land was Crown land a claim would be made on behalf of N'Tuwharetoa that the true owners had not sold to the Crown. I declined to enter into any such question as it was entirely outside the scope of the inquiry I was directed to make but I have dealt with the boundary at greater length than I considered necessary to report as to the claims and allegations of the Petition into which I had to inquire.

Dated this 5th day of July 1935.

[Judge MacCormick]

Source: National Archives Le1/1962/12 (No. 8).

Appendix 9

Report of Native Land Court on Petition No. 73/1940 of Pouaka Wehi and others re Maraeroa C Block.

The subject of this petition came before the Court for inquiry at Te Kuiti on the 10th and 11th July, when Mr Elliott appeared for the Native owners and Mr Meredith and Mr Darby appeared for the Crown. On the second day, at the conclusion of the hearing, I inspected the two points of interest, Ngahuinga and Ngaherenga, in company with Mr Elliott and several of the Native owners, but without any representative of the Crown. As a result of the hearing and the inspection, I have reached a definite conclusion that the petitioners are not entitled to the relief they claim.

A brief history of this matter is that in 1891 the title to the Maraeroa Block was investigated by Judge Puckey. Three subdivisions of the block were claimed, Maraeroa C being one of them. This was ultimately awarded to the Ngati Rereahu Tribe. At the conclusion of the hearing as to the C subdivision, Pepene Eketone, who acted for the claimants, furnished a written statement in his own handwriting, of the description of the C subdivision. This appears on the file, and the translation is as follows:—

> "Starting at Ngahuinga (at Te Taumata) and running southwards to the source of the Paruho River and then following the river until it reaches the Ongarue and thence by this river until it strikes the west line of the block and then northerly by that line to the starting point."

This description was prepared by Eketone, after a conference with his constituents, and it bears a marginal note by the Judge, in these words:—

> "These boundaries to be entered in minute-book to ensure correctness hereafter."

I have not been able to find in the minute-book a transcription in the precise words given by Eketone, but in Waikato minute-book 28/118, the following description, apparently in the handwriting of the Court Clerk, appears:—

> "As to a small division of Maraeroa proper, Pepene gave boundaries, viz Ngaherenga, a hilltop on the road on the west boundary, thence south to the source of the Paruho Stream, thence by that stream to the Ongarue Stream, thence by that stream to the west of the boundary, thence north to the commencement."

If this is intended to be a description of the boundaries given by Eketone, it apparently contains a mistake in that Ngaherenga is named as a point in the minute-book and Ngahuinga as the point in Eketone's written description. Eketone, during the course of the proceedings, admitted that he did not know the land and that the boundary points were given to him by the owners.

For the Judge's assistance, Eketone indicated as well as he was able, and with no pretension of accuracy, on the plan of the block where the points of the boundary were, and these were indicated in pencil and were subsequently used

by the Survey Department to produce an office plan showing Maraeroa C. This office plan, which was apparently produced by the aid of a protractor, was handed to the Surveyor, Mr Ward, with instructions to survey. When he went on to the land with this sketch and indicated where he proposed to survey, the Native owners immediately objected, and as a result, the question of the accuracy of the sketch and the position of the boundary points came before Judge Gilfedder in 1907, whose record of the matter is contained in minute-book Ot.47 page 178 et seq. Mr Earl was acting for the Native owners, and he called as a witness, Pepene Eketone. Mr Ward, the Surveyor also gave evidence. Judge Gilfedder found that tbe sketcb did not show the proper boundaries, and be recommended that the Surveyor should survey strictly in accordance with the boundaries accepted by the Court in 1891. Mr Ward thereupon proceeded to survey, the Native owners acting as guides, the principal one being Tutaki Ringitanga. He completed the survey and produced Plan 7478 upon which a title has been issued. This plan gives an area of 13,727 acres, whereas it was anticipated that the area of the C subdivision might be 3,000 acres or 4,000 acres, altbough no attempt had been made to define the area.

On the completion of this survey, the Crown objected, apparently for the reason that it contained too large an area. The real reason appears to have been that the Crown had acquired, by purchase, adjoining portions of the Maraeroa Block and found that they were substantially sbort of the purchased area if the C suhdivision was properly shown as containing 13,727 acres. The inquiry into the correctness of the plan came before Judge Browne in 1910 and he reported on the 17th March 1910, recommending that the plan be accepted as correct.

At this hearing, Mr Earl again represented the owners and Pepene Eketone again gave evidence. The main question in dispute at this bearing was as to the position of the source of the Paruho Stream. The boundary-line commenced from Ngahuinga and ran in a straight line to the source of the Paruho Stream. No question was raised by the Native owners as to Ngahuinga being tbe correct starting-point.

No further question was raised as to the true boundary of the land until 1932, so that over twenty years elapsed from the adoption of Mr. Ward's plan to the first petition.

There is no douht in my mind that there has been confusion between the two points, Ngahuinga and Ngaherenga, and that confusion appears to me to have existed in the minds of the Native owners themselves. There can be no doubt that when Pepene Eketone banded in bis list and the written description of the boundaries starting at Ngahuinga, he was relying on information furnisbed by the Native owners as to Ngahuinga being the correct starting-point. Further than that, at the hearing before Judge Gilfedder in 1907, Wehi and Tutaki Ringitanga both gave evidence.

Wehi's description was this:—

> I know Ngaherenga, a hillock in a clear place. The road goes over it. Waimiha Stream runs close to it.

Tutaki, who acted as Mr Ward's guide on the subsequent survey says:—

> I met Mr Ward on the land. I pointed out the boundaries of the land. I showed him Ngaherenga, a low hill, over which the road goes. There is a totara post erected there hy our elders as an old landmark or boundary.

That is why the boundary of Maraeroa starts there. The post was put in by our elders. It is on Ngaherenga, over which the Taupo Road runs. There is no other road between this road and Pukemako."

Now, it will be noticed that hoth Wehi and the Tutaki say that the road to Taupo goes over this hill. Mr Ward's field book, which was produced to me, shows that the old track went over Ngahuinga. From my inspection of the point, Ngaherenga, it is perfectly clear that the old Taupo Track did not go over Ngaherenga, hut ran round the foot of it to the south, on the level. The only point fitting the description given by Wehi and Tutaki is Ngahuinga, and I judge the reason why the track went over Ngahuinga was that from the top of Ngahuinga there was a direct slope to the Waimiha Stream, which runs past Ngahuinga on the north side at its foot. The same stream runs also on the north side of Ngaherenga at its foot. The only point in Wehi's evidence which might indicate Ngaherenga, is the description. "a hillock in a clear place." On the top of Ngaherenga I found that an old totara limh had at some time been erected, but in the process of time bad been broken off and was lying on the ground. It could not, bowever, be described as a post. On the top of Ngahuinga I found what is truly described as an old totara post. This is about 6 ft. high and about 9 in. to 12 in. through, and rounded, I should think, with an adze. This bears to this day certain compass markings giving the points of the compass, and Tutaki's description of Ngaherenga fits this point, Ngahuinga, exactly, both because of the totara post and because of the statement that the Taupo Track ran over it. There is no doubt in my mind that when Tutaki referred to Ngaherenga, be had in mind the point Ngahuinga, and this is borne out by tbe fact that wben be acted as guide for Mr Ward the theodolite was set up on the top of Ngahuinga and directed by Tutaki himself to the source of the Paruho Stream. At the hearing before Judge Browne, Mr Ward recited in detail exactly wbat was done to get the Ngahuinga-Paruho line, which was fixed hy Tutaki himself. I remark again that at the hearing before Judge Browne no question was raised by the Native owners as to the correctness of Ngahuinga as the starting-point and the whole argument, as mentioned by Judge Browne, centered upon the question of tbe place of the source of the Paruho Stream. For the foregoing reasons, my conclusion is that tbere was confusion in the mind of the Native owners as to the two points mentioned, and it is noticeable that it was not until after the death of Tutaki and the other elders that the matter was raised by petition. Evidence was given before me at Te Kuiti as to the two points, hut in all these cases I think the original record of the hearing is a far better record of the truth of these matters than evidence offered many years after, wben the elders wbo gave the evidence originally bave passed away.

Another matter that struck me at the bearing was that the plan produced by the Native owners showing their claim was prepared hy a surveyor, Mr Carroll, of Te Kuiti showing the two points, Ngaherenga and Ngahuinga. In this plan a further point is introduced, called Pikiariki. By adopting this point, a further substantial area is included in the claim, so that the claim is not now limited to an area of land included within lines drawn from Ngahuinga to Ngaherenga and thence to the source of the Paruho Stream. I enclose a sketch [not printed] showing the land claimed before me, whicb also serves to sbow what would have been claimed bad Ngaherenga been taken as the starting-point and the line run direct to the Paruho Stream. I can find nothing that justifies in any way the introduction of the new point. Pikiariki, and the introduction of tbat point does not in any way correspond with the boundaries laid down by Tutaki

or the written description furnisbed by Pepene Eketone. To my mind, the introduction of this new point discredits the petitioners' claim.

I may say, in conclusion I am satisfied that at no stage did the elders of the Native owners, who gave the boundaries, consider that the point they now describe as Ngaherenga was the true starting-point of the boundary-line, but that all available evidence indicated Ngahuinga as the true starting-point, and that Mr Ward's Plan 7478 followed the boundaries laid down by the owners themselves.

For the foregoing reasons, I am clearly of opinion that the claim made by the petitioners bas not been substantiated and that it has no real foundation. For that reason, I recommend that no alterations be made to the boundary of Maraeroa C.

E.M.BEECHEY, JUDGE

Source: AJHR 1942, G-6c

Appendix 10

The Native Land Court and Land Legislation

(a) List of Acts 1862-1899

1862	The Native Lands Act
1863	The New Zealand Settlements Act
1864	The New Zealand Settlements Amendment Act The Public Works Lands Act The Native Lands Act Amendment Act
1865	The New Zealand Settlements Amendment and Continuance Act The Native Lands Act The Native Rights Act
1866	The East Coast Land Titles Investigation Act The Native Lands Act
1867	The Native Lands Act The Maori Real Estate Management Act
1868	The Native Lands Act Amendment Act The East Coast Act
1869	The Native Lands Act
1870	The Native Lands Frauds Prevention Act The Native Lands Acts Amendment Act
1873	The Native Lands Frauds Prevention Act Amendment Act The Native Land Act
1874	The Native Land Act Amendment Act
1877	The Native Land Act Amendment Act The Maori Real Estate Management Act Amendment Act The Government Native Land Purchases Act
1878	The Native Land Act 1873 Amendment Act The Government Native Land Purchases Act Amendment Act The Native Land Act Amendment Act (No. 2)
1880	The Native Land Court Act
1881	The Native Lands Frauds Prevention Act The Native Land Acts Amendment Act
1882	The Native Land Acts Amendment Act The Native Land Division Act
1883	The Native Land Laws Amendment Act The Native Committees Act
1884	The Native Land Alienation Restriction Act

1886	The Native Land Administration Act The Native Equitable Owners Act The Native Land Court Act
1888	The Native Land Act The Native Land Court Act 1886 Amendment Act The Maori Real Estate Management Act The Native Lands Frauds Prevention Act, 1881 Amendment Act
1889	The Native Lands Frauds Prevention Acts Amendment Act The Native Land Court Acts Amendment Act
1890	The Native Land Laws Amendment Act
1891	The Native Land Court Acts Amendment Act
1892	The Native Land Purchases Act The Native Land (Validation of Titles) Act
1893	The Maori Real Estate Management Act 1888 Amendment Act The Native Land Purchase and Acquisition Act The Native Land (Validation of Titles) Act
1894	The Native Land Court Act The Native Land (Validation nf Titles) Act Amendment Act
1895	The Native Land Laws Amendment Act The Native Townships Act
1896	The Native Land Laws Amendment Act
1897	The Native Land Laws Amendment Act
1898	The Native Land Laws Amendment Act The Native Townships Act Amendment Act
1899	The Native Land Laws Amendment Act The Native Township Acts Amendment Act

Note: This list is not comprehensive but includes the principal legislation affecting the Native Land Court and alienation of Maori land.

(b) Thomas Mackay's "Synopsis of Legislation Affecting the Alienation and Disposition of Interests in Native Lands from 1862 to 1890 Inclusive"

(AJHR 1891, G-1A)

"The Native Land Act, 1862."

This Act was the first to provide a Court for the investigation into, and the determination of, Native-land titles. It also waived in favour of the Natives so much of the Treaty of Waitangi as reserved to the Crown the right of pre-emption of their lands, except in those cases where agreements were pending between the Crown and the Native owners for the cession of territory, or the acquisition of land hy purchase and cession. By this ahrogation of the treaty Europeans were enabled to deal directly with the Natives for their lands so soon as a certificate of title thereto was issued. This was the first step towards complicating the titles of European to Native lands. The certificates referred to were merely deductions of ownership, with hut limited rights of transfer. A purchaser could only acquire a good title, such as might be exchanged for a Crown grant, when all the Natives named in the certificate, if that instrument was in favour of individuals, and not of tribes or communities, joined in the transfer. Should, however, only a proportion of these Natives execute a transfer, the purchaser had to trust to their applying to the Court to partition their interests, which application the Court could, in its discretion, either approve of and effectuate, or refuse to do so. The Act did not, however, provide for the purchaser himself applying to the Court to ascertain, and allot to him, the interests which he had acquired.

The Act was seldom, if ever, hrought into operation. Perhaps this was owing to so many of the Native tribes in the northern and western divisions of the North Island being in rebellion. There was also an Amendment Act passed in 1864, which merely gave the Governor power to increase the number of members forming a Court.

"The New Zealand Settlements Act, 1863."

This Act was passed in consequences of the many outrages upon life and spoliations of property which had been perpetrated hy rebel Natives. Its ohject was to provide for the defence of the European settlers and loyal Natives in disturbed districts, hy promoting further settlement of Europeans. Eligihle sites for such settlements were to be taken hy Proclamation, and compensation therefore determined hy Compensation Courts, except that no compensation was to be granted to any person engaged since January, 1863, in making war against Her Majesty, or who had aided any such persons, or been concerned in any outrage against persons or property, or who had refused or neglected to deliver up his or their arms on being required to do so after a certain day to be proclaimed. A return was made to the House of Representatives in August, 1866, of all lands proclaimed or taken from rebel Native tribes under this Act. The total was 3,255,787 acres, which included the confiscated lands in Auckland, Taranaki, and Wanganui. Of these confiscated lands, however, over 1,000,000 acres have since been restored, as reserves for friendly Natives and returned rebels. An Amendment Act was passed in 1864 giving extended powers to the governor in Council in awarding compensation. The duration of both Acts was limited to the 3rd December, 1865.

"The Native Lands Act Amendment Act, 1864", contained only one clause, which gave the Governor power to increase the number of members forming a Court.

"The Public Works Lands Act, 1864."

This provided for Native lands required for public purposes being dealt with in the same manner as prescribed in "The New Zealand Settlements Act, 1863".

"The New Zealand Settlements Amendment and Continuance Act, 1865."

This made perpetual the Act of 1863, as amended by the Act of 1861, but provided that no proclamation of districts and reservation of land for settlement should be exercised after the 3rd December, 1868; otherwise it only provided more enlarged machinery for the Compensation Courts in dealing with claims for land taken but not confiscated. This Act was repealed in 1878.

"The Native Lands Act, 1865."

This amended and consolidated the laws relating to Native lands in the colony. It constituted a Court, the Judges of which held their office during good behaviour, and the Assessors their office during pleasure; for the ascertainment of the persons who according to Native custom were the owners of such lands; for the extinction of proprietary customs, and the conversion of such modes of ownership into titles derived from the Crown. The discretion was reserved to the Court of recommending that the Crown grant should contain such restrictions on alienability, limitations, or conditions as it deemed desirable. The Act also provided for the regulation of the descent of lands when the title thereto was converted as aforesaid, and made further provision in reference to the aforesaid matters. The most important of these are contained in Part III., "Jurisdiction and Duties of the Courts", sections 21 to 29, and particularly as affecting subsequent alienation of any lands which had passed the Court; in the provisoes [sic] to section 23, "that no certificate of title shall be ordered to more than ten persons, and, further, that if the piece of land adjudicated upon shall not exceed five thousand acres, such certificate may not be made in favour of a tribe by name;" and also in the provisions of section 24, "that two or more certificates may be ordered under one claim, if on investigation there is more than one owner or set of owners who desire that their respective estates or interests shall be divided, or that the land shall be apportioned".

Section 42 prescribed that any Native claiming to be interested in a piece of Native land may give notice to the Court, specifying such piece of land by its name, and giving the names of the persons whom he admitted to be interested with him, and that he desired that his claim should be investigated by the Court.

Section 43 prescribed that, if, upon the publication by the Court of such claim, the claimant and his opponents (if any) should agree to submit to the decision of the Court, it might proceed to determine the same, provided that the certificate or certificates to be issued should be delivered to the person named therein as entitled. It also enacted that if the Court recommended that any conditions or limitations should be attached to such certificate it should not issue it until the Governor should have approved or disapproved of such conditions or limitations, and should have caused as much as he should think fit to be indorsed thereon.

Section 44 provided that such certificates should, in all Courts of law in the colony, be conclusive as to the persons who owned the land described therein, and that they might be registered in the proper registry of deeds.

Section 45 enacted that any Native having a claim hy right of Native custom to succeed to the ownership of any land whereof a Native may die possessed, might apply to the Court to have his right in the premises decided, and the Court might bear and determine such claim, and issue a certificate setting forth the decision of the Court, and sucb decisions should be final in all Courts of law.

Section 46 prescribed that on receipt by the Governor of the certificate it should be lawful for him to cause a Crown grant to be issued in favour of the person or persons named in such certificate, and, if recommended by the Court, it should also be lawful for him to insert in the grant any restrictions on alienahility, limitations, or conditions, as might be expressed in such recommendation.

Section 47 prescribed that if the purchaser of part of a piece of land comprised in a certificate applied for a Crown grant for the same, it should be lawful for the Governor to issue one, provided the certificate contained no restrictions, limitations or conditions; but it also enacted that the deed should be surrendered as hereinafter provided with respect to Crown grants on subdivision of bereditaments.

Section 48 prescribed that sucb grants sbould be valid and effectual as grants made by the Governor of waste lands of the Crown, and as if the lands comprised had been ceded by the Native proprietors to Her Majesty, and should bar all estates, rights, titles, or interests of all persons except the grantees named therein. It should be conclusive as to the limits and extent of such land, and in all other respects bave the legal effect and consequence of an ordinary grant from the Crown.

Section 74 prescribed that every conveyance or other disposition of heredita-ments of Native land granted under this Act made hy a Native to a person of European race or to another Native should be interpreted to the conveyor or other disposer, and should be executed by him in the presence of and be attested hy a Judge or a Justice of the Peace, and should have written tbereon or annexed thereto a statutory declaration by the person so interpreting that his translation was correct, and was understood by such Native; and such declaration should be made before the said Judge or Justice of the Peace, and should bave the legal effect of a declaration made under the Imperial statute 5 and 6 Will. IV., cap. 62.

By the 75th section, however, "every conveyance, transfer, gift, contract, or promise affecting or relating to any Native land in respect of whicb a certificate of title shall not have been issued by the Court sball be ahsolutely void."

This Act was so successful that in a return of the proceedings of the Court, embodied in a Report on the working of "The Native Lands Act, 1865", by Chief Judge Fenton (Parliamentary Paper A No. 10, 1867) it is stated that from the 1st November, 1865, to the 30th June, 1867, a period of twenty months, there were 1,220,477 acres, of which 957,774 acres were in Auckland Province, to which title was ordered by the Court. The late Judge Maning, the quaint and humorous author of "Old New Zealand," in a letter to Chief Judge Fenton,

dated Hokianga, 24th June, 1867, on tbe working of the Court, states "that 'The Native Lands Act, 1865,' satisfies a great want and vital necessity of the Maori people, by offering them a means of extricating themselves from the Maori tenure, and obtaining individual and exclusive titles of land;" and Chief Judge Fenton winds up bis report with tbe following words: "Nothing that has yet been tried bas so largely tended to produce in the minds of the Maoris peaceful desires and a grateful confidence in the Legislature as 'The Native Lands Act, 1865.'"

An Amendment Act, to be read and construed as part of the Act of 1865, was passed in 1866. Its principal features in respect of the alienation of Native lands were as follows: Section 5 provided that in every Crown grant of any Native reserves the land therein comprised sball be inalienable by sale or mortgage, or by lease for a longer period than twenty-one years from the making of such lease, except with the consent of tbe Governor in Council: provided that, if any grant of Native land sball bave been made to a Native under limitations or restrictions on the alienation of sucb land greater or other than above provided, the Governor in Council may release the land from sucb limitations or restrictions, or any of them, so that sucb land sball be thenceforward subject only to the restrictions in this section contained, and to the otber provisions of this Act relating to Native reserves. Section 6 gave the Govenor in Council power to indorse any proposed conveyance, lease, or other disposition of such land, and thereby make it alienable to the extent expressed in the instrument. Section 11 removed the discretionary power of tbe Court, conferred on it by section 28 of the Act of 1865, as to wbether or not in every case of investigation of title the Court wben issuing tbe certificate should prescribe in that document any restrictions or limitations, and made it imperative that tbe Court sbould do so.

"The Native Rights Act, 1865."

This Act declared that the Maoris sbould be deemed to be natural-born subjects of the Queen, and tbat the jurisdiction of the Queen's Courts of law extended over the persons and properties of all Her Majesty's subjects within the colony.

Section 4 provided that the Native title to land be determined according to the ancient custom and usage of the Maori people.

Section 5 enacted that in any action in whicb the title to any interest in such land is involved, the Judge sbould order that any issues of fact or of Maori usage should be tried in the Native Land Court, and the Judge of that Court should return the judgement into the Supreme Court; and sucb judgement sbould be taken as conclusive, and should have the effect as the verdict of a jury in the Supreme Court.

"The East Coast Investigation Act, 1866."

This was passed to enable the Native Land Court to inquire into and determine titles to land in the East Coast (Poverty Bay) District.

By section 3 it conferred upon the Native Land Court the following power and jurisdiction: (a) To inquire into and determine the title to all and any land or lands, wbether claimed by or belonging to aboriginal natives or other Britisb subjects, and wbether or not sucb investigation shall be required on the part of any person or persons claiming title thereto; (b) to award, by certificate issued under the direction of the Court, that grants of land may be made to

such Natives, or other persons respectively who shall be found to be entitled thereto, as shall not have been engaged in the rebellion; (c) in those cases in which it shall be found that Natives who have been engaged in the rebellion are, or hut for such participation in rebellion, would have been entitled to land jointly with other Natives who shall not have been so engaged, to make an equitable partition of such land, to assign to the Natives so entitled, wbo shall not have been so engaged, their just portion of such land; (d) and to ascertain and certify what lands are, or, hut for participation in the rebellion would have been, the property of persons wbo bave been engaged in the rebellion.

Section 4 enacted that lands whicb the Court certified to be the property of persons who bad been engaged in the rebellion should be declared to be land of the Crown.

Section 6 prescribed that provision might be made for persons who had been engaged in the rebellion by setting apart lands for them, suhject to conditions as to how such lands sbould be held or disposed of for the benefit of such persons.

"The Native Lands Act, 1866."

This Act was to be read and construed with "The Native Lands Act, 1865".

Sections 4 to 10 principally affected alienations of Native reserves. Section 11 provided that the Court sbould append a report on every certificate, whether it was proper or not to place any restrictions on tbe alienability of the land comprised in such certificate.

Section 12: If report adopted in the affirmative, restriction to be endorsed on certificate.

"The Native Lands Act, 1867."

This repealed the Act of 1866, except in so far as was necessary to the support of any act, matter, or thing done or completed thereunder, and except also as to any penalty or forfeiture incurred under the Act of 1866: provided that any investigation of title commenced under the repealed Act, and pending at the time of the passing of this Act of 1867, should be continued and conducted under this Act as if originally commenced thereunder.

The principal ohject, bowever, in introducing the Act was to insure tbe ascertainment of the whole of the owners so as to cure the defect in the Act of 1865 wbicb enabled the land to be vested in ten persons, thereby ignoring the interests of the majority. No sale of land under this form of title could be effectuated until after subdivision. Although the Act was passed with the object of protecting the whole of the owners, the fact of its being only requisite that no more than ten should be inserted in the body of the certificate perpetuated the evil effects of the Act of 1865, as these ten individuals could lease the land and appropriate the proceeds.

Section 17, whicb was enacted for the above object, was but a clumsy attempt to amend section 28 of the Act of 1865. The verbiage of the former is so infelicitous and obscure that it can hardly be "understanded of any man." Nevertheless titles have been determined by it, but wbether satisfactory is doubtful.

Section 32 weakened section 74 of the Act of 1865, in regard to the interpretation and execution of deeds of Native lands, so that, instead of such instruments being interpreted to the conveyor or disposer of the land, and executed by him in the presence of, and attested by, a Judge or Justice of the Peace, *it should be sufficient if the execution of such deeds were made in the presence of, and attested by, the interpreter and any other person being a male adult.* The removal of a safeguard to the *bona fides* of such transactions, by the substitution of the latter mode, enabled many illegal and doubtful titles to land to be obtained by Europeans from Natives.

"The Maori Real Estate Management Act, 1867," and "The Maori Real Estate Management Act Amendment Act, 1877."

These Acts provided for the management of land owned by Native minors and others under disability, otherwise than under their customs and usages, and for the appointment of trustees, and defining their powers.

They were repealed by "The Native Land Court Act, 1886".

"The Native Lands Act Amendment Act, 1868

This was simply a machinery Act dealing with a few questions outside of investigation of titles, or the alienation and disposition of interests in Native lands.

"The East Coast Act, 1868."

This Act repealed "The East Coast Land Titles Investigation Act, 1866," and the Amendment Act of 1867, but this repeal was not to affect the past operations of these Acts, or the validity of anything done, or of any right, title, or interest which had accrued thereunder.

Section 3 directed the Native Land Court to refuse to order certificate of title to issue in favour of persons guilty of offences mentioned in the 5th section of "The New Zealand Settlements Act, 1863."

Section 4 gave to the Court a discretionary power either (1) to order a certificate of title in respect of the whole of such claim to issue in favour of the owners who had not committed any of the offences mentioned in the 5th section of the said Act; or (2) to order that such claim should be divided in a manner to be specified by the Court, and that in respect of each of the several divisions either a certificate of title should issue a favour of owners who had not committed any of the offences so mentioned in the said 5th section of the said Act, or a certificate stating that the land comprised therein belonged according to Native custom to persons who had committed some of the offences mentioned in the said 5th section of the said Act; or (3) to order that a certificate in respect of the whole of the claim should issue stating that the land comprised therein belonged according to Native custom to persons who had committed some of the offences mentioned in the said 5th section of the said Act.

Section 5 directed that any land comprised within any such certificate which stated it to belong to persons guilty of such acts aforesaid, should be deemed Crown lands.

Section 6 empowered the Government to make reserves for the use and maintenance of specified aboriginal Natives.

"The Native Lands Act, 1869."

Section 2 directed that every certificate of title should be dated on the day of signature, and that such day should be the date of issue.

Section 3 empowered the Court to fix in such certificate a day on which the legal estate in the lands described therein should be vested under any Crown grant of the same to be thereafter issued.

Section 4 provided that no deeds, transfers, gifts, contracts, or promises affecting the land of which such certificate was granted, made or entered into after the day fixed on therein should be void under or affected hy section 75 of "The Native Lands Act, 1865."

Section 12 declared that in any grant theretofore or thereafter to he made under the Native Lands Acts of 1865 and 1867, when there was more than one grantee, such grantees should be deemed to be tenants in common, and not joint tenants. This provision, however, was not to apply to cases in which grantees or their survivors should have previously alienated the lands comprised in their grant or any part thereof hy absolute conveyance in fee- simple.

Section 14 directed that undefined shares of tenants in common should not be deemed to be equal unless it was so stated in their grant. This provision was not, however, to apply to shares, estates, or interests already purchased from any sueh grantees, which for the purpose of such transactions were to be considered equal.

Section 15 declared it should not be lawful for less than a majority in value of the grantees of any land under the said Acts (1865 and 1867) to alienate or dispose of their shares in such land, or any part thereof; hut, if any dispute should arise as to such value, either or any of the parties could apply to the Court to have such value ascertained, and order made accordingly, as provided in section 50 of the Act of 1865. The Court, however, might, if it thought fit, refuse to make any order.

Section 20 limited the time for ordering a rehearing under section 81 of the Act of 1865 to three months, instead of six months. This was repealed hy a short Act for the purpose, "The Native Lands Act Amendment Act, 1870," section 3, in which the original limit of six months was reinstated.

"The Native Lands Frauds Prevention Act, 1870," and Amendment Act of 1873.

The ohject of these Acts was to prevent the maladministration of lands vested in trustees for the Natives in cases where trusts had been created in the names of individual proprietors, hut really for the benefit of Native communities; to take care that these trusts were fulfilled, and that the lands were not alienated so as to defeat the true ohjects of the trust. The same precautions were also to be exercised in respect of the alienation of lands that were not the subject of any trust. The machinery employed under them to secure these ends was as follows: Districts were to be constituted, and Commissioners appointed to each district. The Commissioner was to examine directly into all land-transactions between Europeans and Natives. He would have to satisfy himself that the transaction was fair and equitahle; that it was in accordance with the trusts affecting the land; that no part of the consideration, either directly or indirectly, was payahle in liquor or arms; and, lastly, that the parties understood the

nature of the transaction. If he was satisfied that all these conditions had been fulfilled he would grant a certificate to that effect, and no instrument without this certificate indorsed would be allowed to be registered, or admitted as evidence in any Court of law. For the purpose of enahling the Commissioner to discharge his duty all the powers under the Commissioners' Powers Act were vested in him. Persons feeling themselves aggrieved hy the decision of the Commissioner could appeal direct to the Supreme Court in a simple and inexpensive manner, and the Court had the power to confirm or annul the transaction, as seemed fit. But, lest the Court might chance to be overhurdened hy this work, power was taken in the Act, with the approval of a Judge of the Supreme Court, to appoint a harrister to exercise the function of the Court. Power was also given to the Governor in Council to regulate the manner in which the Commissioners should discharge their duties.

"The Native Land Act, 1873."

This Act was originated hy the late Sir Donald McLean to amend and consolidate the laws relating to the Native Land Court and to Native land. It's intention was to estahlish a system hy which the Natives should be enabled, at a reduced cost, to have their surplus land surveyed, their titles thereto ascertained and recorded, and the transfer and dealings relating thereto facilitated; to have a roll or "Domesday Book" prepared of the Native land throughout the colony, with a view of assuring to the Natives, without any douht whether, a sufficiency of land for their support and maintenance, besides estahlishing endowments for their permanent general benefit out of such lands.

This Act repealed the Native Lands Acts, 1865, 1867, 1868, 1869, and 1870, and section 73 of "The Constitution Act, 1852," which latter enactment had confirmed the Crown's right of pre-emption over Native lands. In addition to amended powers for the investigation and determination of titles to Native lands, it gave power to set apart land out of Native hlocks as reserves for the benefit of Natives; and the land so reserved was to be equal to an aggregate amount of not less than 50 acres per head for every Native—man, woman, or child—resident in any district. It likewise reconstituted the Native Land Court on lines somewhat different from those laid down in earlier Acts, and it introduced certain changes in the procedure of the Court. For instance, in settling the titles of Native reserves and other Native lands it suhstituted for a certificate of title a memorial of ownership, in which the names of all the individual owners of the lands reserved for the benefit of Natives, or lands otherwise adjudicated upon, should be enrolled. Moreover, Native reserves lands were to be inalienahle hy sale, lease, or mortgage, except with the consent of the Governor in Council.

In the case of other lands, the amount of the proportionate share of each owner was to be declared in the memorial when the majority of owners so required; and to every memorial there was the condition "that the owners of the land referred to therein had not power to sell or otherwise dispose of the said land, except that they might lease the same for any time not exceeding twenty-one years, without covenant for renewal or for purchase at a future time." In spite of this condition, however, nothing was to preclude any sale of the land comprised in such memorial when all the owners agreed to the sale, nor was it to prevent any partition of such land.

Sales under Memorial of Ownership.

By section 59 any sole owner, or any numher of collective owners, could sell their land held under memorial, subject to inquiry hy the Court into the particulars of the transaction, and to its being satisfied of the justice and fairness thereof, of the assent of all the owners to such sale, and the payment of all costs and charges whatsoever, and advances as earnest-money to the Native owners. When so satisfied, the Court was to indorse the memorial to the effect that the transaction appeared to be *bona fide*, and that no difficulty existed to the alienation of the land comprised in the memorial.

By section 62 no lease of any land beld under memorial was to be valid unless all the owners of the land comprised in such lease should assent thereto; and the Court was required to satisfy itself in every case of the fairness of the transaction, of the rent to be paid, and of the assent of all the owners to the lease. All such leases were to be signed hy all the owners in the manner provided in section 85.

By section 63 receivers of rent might be appointed by the Judge, with the consent of all the owners; and on their application be might appoint any persons selected by them, not being fewer than four persons, either out of their number or not, Europeans or Natives, to be receivers on behalf of all the lessors of the rents under such lease. Moreover, the lessee was not bound to see to the proper application thereof, nor in any way be accountable for any loss or misapplication thereof.

Section 79 declared that, in any grant made under any of the Acts repealed hy this Act, where there was more than one grantee, such grantees should be deemed to be tenants in common and not joint tenants, but the estate or interest of each of sucb several grantees should not be deemed to be of an equal value unless it had been so stated in the grant: Provided that nothing contained in this section sbould be deemed to apply to any former grantee who had already alienated the land comprised in any sucb grant.

Section 85. This imposed a fresh provision for the signing and attestation of instruments of alienation or disposition even more stringent than tbe similar clanse (section 74) of the Act of 1865. In addition to the terms of the latter it required that before the execution of any sucb instrument it should be properly explained to eacb Native before the execution thereof, hy a duly-appointed interpreter, and a clear statement of the contents thereof, written in Manri and certified hy the signature of such interpreter, sbould be indorsed on the instrument, and it further required that its execution sbould be attested by a Judge of the Court or a Resident Magistrate, and at least one otber male adult credible witness.

Section 87 declared that every instrument of disposition affecting any Native land before it should become vested in freebold tenure by order of the Court sbould be absolutely void, except that contracts by *parole*, might be made affecting flax, timber, or actual productions growing on such land, extending over a period of not more than two years.

Section 89. This affected past transactions. It permitted a grantee under any of the repealed Acts wbo was desirous that subdivision sbould be made of the land included in the grant, or any part thereof, for the purpose of having his sbare in severalty allotted to him, or affecting a partition among the owners

thereof, and should no disposition of the said land or any part thereof have been made before the passing of this Act, such person might apply to the Court to make such subdivision, and the Court might order a Crown grant for a defined portion of the land to the applicant; and on surrender of the original grant to the Crown, the Court might, in its discretion, order such subdivision as it should deem just, and might order Crown grants to be issued according to the award in partition.

Section 92 provided that, where lands had been in part alienated, undivided shares of former grantees might be ascertained.

Section 97 provided that after the passing of this Act no land comprised in any certificate of title heretofore issued under section 17 of the Act of 1867 should, until it was subdivided and awarded, be alienated in any way except in accordance with provisions of this Act: Provided that owners under former certificates might apply for subdivision, and such subdivision might be ordered, notwithstanding that any lease of such land might have theretofore been made; but no award of partition in any such case should take effect during the subsistence of any lease of the land comprised in such award.

Section 98 declared that all lands comprised in any certificate as aforesaid not alienated in any way might be dealt with same as land held under memorial of ownership under this Act: Provided that such land respecting which any dealings may have theretofore been had might be dealt with same as land held under memorial of ownership under this Act; but that in every dealing with such land the parties interested should satisfy the Court that they had the assent of all the persons whose names were indorsed on the certificate, as well as those on the face thereof, to any such transaction.

This Act was intended to simplify and methodise the Native-land laws, and although prepared with great care to give effect to such intention, yet it turned out a failure. It was found to be unworkable through being hampered with too many conditions relative to the investigation and determination of title to Native lands on the one hand, and the alienation or disposition of them on the other.

"The Native Land Act Amendment Act, 1874."

This Act was to be construed and read with "The Native Land Act, 1873."

Section 3 repealed the proviso to section 4 of the Act of 1873, and in lieu thereof it provided that the repealed Acts recited in the Act of 1873 should, notwithstanding the repeal thereof, thereby continue and be in force for the purpose of continuing and perfecting under any of the said repealed Acts any proceedings commenced or in progress thereunder, and under the said repealed Acts all such proceedings should be continued and perfected.

"The Native Land Act Amendment Act, 1877," and "The Native Land Act 1873 Amendment Act, 1878."

These Acts did not contain any special provisions affecting disposition of Native lands.

"The Government Native Land-purchase Act, 1877."

It was deemed expedient to pass this Act in order to make better provision for the protection of the interests of the Crown in the acquisition of Native lands.

Agents had been employed to purchase such lands on commission, and there were a number of such purchases under negotiation; and it was also deemed expedient that that mode of purchasing Native lands should be forthwith discontinued and other arrangements made for the completion of any such purchase than under negotiation.

Section 2 provided for the protection of the interests and rights of the Crown in all cases of incomplete purchases or negotiations whether the same land passed through the Native Land Court or not.

"The Government Native Land-purchase Act Amendment Act, 1878."

Section 2 gave the Crown the right to expel intruders on lands under negotiation.

Section 3 provided that the relinquishment of any rights of the Crown should not operate for two months after the intention of such relinquishment had been notified in the Gazette.

Section 4 authorised the Governor to issue Crown grants for any lands agreed to be reserved for Natives out of any blocks to which the title of the Crown had been determined by the Court, vesting such reserves in the persons interested with such restrictions as the Governor should deem fit.

"The Native Land Act Amendment Act, 1878 (No. 2)."

Section 10 fixed three months as the time for making application for rehearing.

Section 11 prescribed that, notwithstanding anything to the contrary thereto in "The Native Land Act, 1873," or any amendments thereof, if should be lawful for the Court in its discretion, on the application of any Native owner or other person interested therein, to hear and determine the value or extent of any estate or interest, in any land held by such applicant under memorial of ownership, or Crown grant, or award, or conveyance; and, if it should deem fit, to make an order vesting any part or portion of such land in such applicant.

Section 12 made a fresh rule, relative to the execution of instruments of disposition, as follows: That any instrument might be signed by any Native interested in the same before any Justice of the Peace, Clerk of any Resident Magistrate's Court, or any Inspector of Armed Constabulary, or a Solicitor of the Supreme Court, not professionally concerned or engaged for any of the parties to such transfer, lease, or other instrument, who should have the same powers as are conferred on Judges of the Native Land Court, or Resident Magistrates, under the provisions of section 86 of "The Native Land Act, 1873." Provided that any such officer holding a license as an interpreter under "The Native Land Act, 1873," should not attest the execution of any deed which had been interpreted by himself: Provided, further, that the attestation by an adult witness, as required by the said Act, should still in all cases be necessary.

"The Native Land Court Act, 1880."

Section 70 repealed the Act of 1873, in so far as was repuguant to this Act, and provided that a certificate of title issued under this Act should have the same force and effect and might be dealt with as a memorial of ownership under the Act of 1873. The rest of the Act principally related to the procedure of the

Native Land Court, hut contained no provisions respecting the alienation or disposition of lands.

"The Native Lands Frauds Prevention Act, 1881."

This repealed and consolidated the Acts of 1870 and 1873 and provided additional machinery for effecting the purposes for whicb such legislation was necessary.

"The Native Land Acts Amendment Act, 1882."

Section 7 enacted that, wbereas claims to land had been heard and decided, or partly decided, and proceedings had been taken by the Native Land Court under "The Native Land Act, 1873," and its amendments, in which sundry provisions of the said Act had not been technically complied with, it should be lawful, on the application of any person interested either originally or derivatively in any such land, for the Court to inquire into the matter, and make such order respecting the same as should appear to the Court justly to remedy any mistake or error in the proceedings; an indorsement made hy the Court in pursuance of any such order, on any instrument of disposition, sbould be valid and effectual for effecting the objects specified in such order, and an entry sbould be made in tbe Registry of the Land Transfer and Registry of Deeds offices to the effect that such order had been made.

"The Native Land Division Act, 1882."

The ohject of this Act was principally to remedy defects in the division of shares of Native lands purcbased by Europeans, and particularly with the view of clearing away the complications of the general Native Land Acts with "The Poverty Bay Grants Act, 1869."

The latter Act was passed to enable the Governor to carry out certain engagements for grants of land in the Poverty Bay district, as follows: Whereas by deed dated the 18th of December, 1868, certain lands therein described at Poverty Bay were ceded to the Governor, on behalf of the Crown, by the Native owners thereof, upon the terms that certain engagements to grant land to members of the Colonial Defence Force, and to certain friendly Natives, theretofore made should be performed by granting part of the said lands so ceded, and the residue should be granted to those loyal persons wbose claims sbould be ascertained as in the deed mentioned.

Power was therefore given for grants to be issued of any part of the said lands to sucb persons as were entitled thereto under the said deed, or under any engagement by the Government witb respect to the said lands or any part thereof, wbether there was evidence in writing or not of sucb engagement, on the Governor in Council being satisfied with the evidence produced in proof thereof.

"The Native Land Laws Amendment Act, 1883."

Section 7 debarred private persons from negotiating for the purchase or occupation of any Native land until forty days after the title thereto should have been ascertained. Any person so doing was, by section 8, subject to a summary penalty not exceeding £500, and the transaction, except thereinafter provided (section 11), was declared null and void.

Section 9 required the Trust Commissioner, in addition to the other inquiries directed by "The Native Lands Frauds Prevention Act, 1881," to ascertain if any such negotiation was commenced or carried on after tbe passing of this Act, and before the day fixed hy the *Gazette* notice, under section 7, that dealings with such land would cease to be prohibited under the provisions of this Act.

Section 10 directed the Trust Commissioner to indorse invalid instruments to that effect, and no instrument so indorsed sbould be registered in any Registry of Deeds of Land Transfer unless the decision of the the Commissioner should be removed or altered on appeal to the Supreme Court, and the indorsement ordered to be expunged by the Court.

Section 11 rendered such instruments valid after registration, hut did not abate the liability of any person to any pecuniary penalty.

"The Native Committees Act, 1883."

This Act, whicb was passed to enable the constitution of Native Committees, or Courts of Arbitration, in case of dispute between Natives wbere the cause of same did not exceed £20, by section 14 enacted that, in respect of questions of the Native title to land, a Committee might make inquiries and report their decision thereon to the Native Land Court in the following cases: (1) Where it is desired to ascertain the names of the owners of any block of land being or to be passed through the Native Land Court; or (2) wbere it is desired to ascertain the successors of any deceased Native owner; or (3) where disputes have arisen as to the location of the boundaries between lands claimed by Natives.

There is no record of any operations having been initiated under this section, but if it was acted on properly the time of the Court would be much saved.

"The Native Land Alienation Restriction Act, 1884."

This Act probibited dealings by Europeans in certain Native lands in the Provincial Districts of Auckland, Taranaki, and Wellington, known as "the King-country," to prevent complications which might arise through negotiations for such purchases within the boundaries of that territory, it being desirahle to lock it up for a time until necessary land through which the northern main trunk line of railway was to be constructed was definitely arranged for.

Section 7 saved the right of the Crown to acquire any of the land within the territory aforesaid which the Native owners thereof might wish to dispose of.

In connection with this Act it may be stated that "The Government Native Land Purchases Act, 1877," and the relative Amendment Act of 1878, which were passed to protect the interests of the Crown in the purchase of Native lands, are unrepealed.

"The Native Equitable Owners Act, 1886."

This Act was passed to confirm to Natives certain equitable rights. Under "The Native Lands Act, 1865," certificates of title to and Crown grants of certain lands were made to Natives nominally as absolute owners, whereas in many cases sucb Natives were only entitled and were only intended to be clothed with titles as trustees for themselves and others, members of their tribe, or hapu, or

otherwise. It was therefore enacted hy sections 2 and 3 that, upon the application of any Native claiming to be beneficially interested in any such lands, the Native Land Court might inquire into the nature of the title to such land, and into the existence of any intended trust affecting the title thereto. And, according to the result of the inquiry, the Court might declare that no such trust exists, or, if it found that any such did or was intended to exist, who were the persons beneficially entitled. Section 4 empowered the Court, therefore, to order that the persons entitled to beneficial ownership should be owners as tenants in common of the land in question, and should be deemed to be such owners as if their names had been inserted in the certificate grant affecting such land.

Section 5 protected prior conveyances, also leases.

Section 8 restricted alienation, except hy lease for no longer period than twenty-one years, unless with the permission of the Governor.

"The Native Land Administration Act, 1886."

This Act was enacted to control dealings hy Europeans in Native lands. In fact, it was a resumption by the Crown of the pre-emptive right; hut no transactions were effected under it, and it was repealed hy the 3rd section of "The Native Land Act, 1888."

"The Native Land Court Act, 1886."

This Act was passed to amend and consolidate the laws relating to the Native Land Court. It repealed the following Acts: "The Maori Funds Investment Act, 1865," "The Maori Real Estate Management Act, 1867," "The Maori Real Estate Management Act Amendment Act, 1877," "The Native Land Act, 1873," "The Native Grantees Act, 1873," "The Native Land Act Amendment Act, 1874," "The Native Land Act Amendment Act, 1877," "The Native Land Act 1873 Amendment Act, 1878," "The Native Land Act Amendment Act, 1878 (No. 2)," "The Native Land Court Act, 1880," "The Taonui-Ahuaturanga Land Act, 1880," "The Native Land Act Amendment Act, 1881," (except the last three clauses,) "The Native Succession Act, 1881," "The Native Land Acts Amendment Act, 1882," "The Native Land Division Act, 1882," "The Native Land Laws Amendment Act, 1883," and was simply a machinery Act for the future administration of the Native Land Court.

"The Native Land Act, 1888."

Section 3 repealed "The Native Land Administration Act, 1886;" hut it, and also section 7, saved the rights of renewal of leases under the repealed Act.

By section 4, suhject to the provisions of the Native Lands Frauds Prevention Acts of 1881 and 1888, Natives were permitted to alienate or dispose of their land as they thought fit.

Section 5 enacted that existing restrictions on alienation might be removed hy the Governor in Council on the application of a majority in number of the Native owners.

"The Native Land Court Act 1886 Amendment Act, 1888" (to be read and construed as part of "The Native Lands Court Act, 1886").

Section 6 permitted restrictions on alienation which might thereafter be ordered under section 13 to he annulled or varied hy order of the Court on

application hy a majority in number of owners of the land the suhject of such restriction; hut such restriction should only be annulled or varied on puhlic inquiry by the said Court after notice had been given in the *Gazette* and *Kahiti*: Provided that the Court had to be satisfted that the owners of such lands had other land under a Court title in their own right, and sufficient for their maintenance and occupation, and that the owner of the land the suhject of the application for removal of restrictions concurred in such removal.

Section 16 enacted that land or sbares in land owned hy Natives deemed to be transferable, but not to apply to land wbere alienation was restricted, or to be thereafter restricted.

Section 17 prescribed that in the removal of restrictions on alienation under the provisions of section 5 of "The Native Land Act, 1888," the assent of one or more Judges and one Assessor were necessary.

"The Maori Real Estate Management Act, 1888."

The Acts under this head of 1867 and 1877 having been repealed by "The Native Land Court Act, 1886," without any incorporation of their provisions, it was found necessary to re-enact a fresb measure, on similar lines to those repealed Acts, for tbe management of the real estate of infants and others of the Maori race under disahility, otherwise than under their customs and usages, and for appointing trustees and defining their powers.

"The Native Lands Frauds Prevention Act 1887 Amendment Act, 1888" (to be read and construed with the Act of 1881).

Section 5 prohibited dealings with Native land unless such land was owned under Crown grant or Native Land Court title issued to not more than twenty Natives, or unless sucb land should thereafter become and bave been so owned for forty days.

Section 7 prescribed a penalty not exceeding £500, to be recovered in a summary way, against any person entering upon sucb prohibited dealings, and every such dealing was to be declared illegal and void.

"The Native Lands Frauds Prevention Acts Amendment Act, 1889."

Section 3 enacted that in section 5 of the Act of 1888 the words "to not more than twenty Natives" should not apply to Native land held under a Native Land Court or Land Transfer Act title before the passing of that Act: (1) If sucb land did not exceed 5,000 acres in area; or (2) if a contract in writing for the alienation of such lands as thougb the said words "to not more than twenty Natives" had been omitted therefrom: Provided that nothing in the said 5th section sbould be deemed to prevent a lease of land so owned or the suhject of such order aforesaid not exceeding 10,000 acres.

"The Native Land Court Acts Amendment Act, 1889" (to be read and construed together with the Native Land Court Acts of 1886 and 1888).

Sections 2 to 19 inclusive were additions and amendments to the macbinery clauses of these Acts.

Section 20 empowered the Governor in Council to appoint two or more Commissioners, of whom one should be a Native, to inquire into all the

circumstances attending any alleged alienation or acquisition of land or of any interest therein before the 1st of July, 1887, which might be harred or invalidated hy any law then or at that time in force, and report on each case that might be brought before them, and generally on all matters connected therewith, and make sucb recommendations as might appear proper.

Sections 21 to 26 inclusive were machinery clauses for carrying out the ahove objects.

Section 27 declared that the Commissioners if they sbould find any intended alienation of land could not be registered, or was liable to impeachment, because sucb alienation being of land under memorial of ownership or Native Land Court certificate did not include tbe whole of the signatures of the Natives owning under sucb title, or that completion was prevented by alteration of the law; that where the transaction was entered into in good faith and was not contrary to equity, and that the purcbase-money had been paid, tbey might sign a certificate, and such alienation should be valid from the date of the instrument, or from sucb date as the Commissioners might determine, and such instrument might be registered under "The Land Transfer Act, 1885." This attempt to settle defective titles in certain dispositions of Native lands to Europeans proved abortive, as the powers which were conferred by section 20 on the Commissioners who were appointed thereunder were insufficient to deal practically and absolutely with the cases which were submitted to them, and in consequence thereof the Commission came to an end on the 31st March, 1891.

"The Native Land Laws Amendment Act, 1890."

Section 4 declared that a voluntary arrangement by the Natives or hy the Natives and Europeans concerned in any proceeding before the Native Land Court sbould be reduced to writing and signed *by all* the parties thereto; and the Court should be satisfted of the autbenticity of the signatures and the *bona fides* of sucb arrangement before giving effect thereto.

The condition that the agreement should be signed by all the parties thereto rendered the section inoperative, as it is alleged that it bad been found impossible to procure all the signatures in such cases.

Appendix 11

Survey Regulations

(a) Introductory Note

Following the abolition of the provincial governments in 1876, the Department of Lands and Survey was established under the Land Act 1877, with the dual role of administering Crown lands and responsibility for surveys which had previously been carried out under separate provincial administrations. The permanent head of the new department was both Secretary for Crown Lands and Surveyor General. The Surveyor General required the chief surveyor of each district to examine all surveyors who were employed either in the Department of Lands and Survey or in private practice to ensure a minimum standard of knowledge and practical experience before a certificate of competency was granted.

Since the Native Land Act 1862, there had been legislative provisions requiring that all surveys for the Native Land Court be carried out by government certified surveyors. The Native Land Court issued a new set of rules in 1880 which at rule 42 stated:

> All surveys undertaken for the purposes of the Court, when not done by the official survey staff, must be made by authorised surveyors of the colony, holding a diploma signed by the Surveyor-General.

During the late 1870s, survey regulations which applied to all surveyors were notified in the *New Zealand Gazette* and consolidated in a separate publication in 1879 by the Surveyor General, titled *Regulations and Instructions of the Survey Department of New Zealand.* In 1886, revised regulations under the Land Act 1885 were issued and are reproduced below. The surveys of Tauponuiatea and Aotea blocks were carried out under these regulations which were revised again in 1897.

(b) Some Definitions

Field book: The note book taken into the field by the surveyor in which are recorded, as work progresses, the actual observations of vertical and horizontal angles between survey marks along a line of survey, and the measured (slope) length between them. Adjustments of minor angular errors and correction of chainages to horizontal length are shown. Any other relevant topographical information and place names are also noted.

Plan: A record of the corrected and adjusted measurements of direction and length made by a surveyor. These are reduced to horizontal length in order to plot boundaries over hilly country on a flat sheet of paper and determine area. A sketch plan is based on surveyed trigonometrical stations and perhaps some fixed landmarks with boundaries only sketched in.

Maps: These are derived from surveyors' plans and sketches and do not usually show bearings and distances. Cadastral maps show areas and boundary lines

of title surveys. Topographical maps show contours, hush, rivers, lakes and other physical landmarks, roads, settlements etc.

Triangulation or Trigonometric surveys: These surveys provided a network of accurately located points (trig stations) which served as a hase from which a surveyor could locate and check a boundary survey. Major triangulation involved selecting plainly visihle places ahout 20 miles (32 kilometres) apart and making a series of ohservations of angles between signals erected over pipe markers in the ground at each point, to all other similar selected visihle points. By calculation, the distances and directions between each was estahlished in the form of large connected triangles. Each mark or trig station became a point of fixed position which gave fixed directions or bearings to all visihle points or trig stations.

Minor triangulation used the fixed positions of major trig stations, and huilt further triangles with trig stations averaging about six miles (9.6 kilometres apart). The same observation of angles and calculation of distances then gave fixed positions to all thses additional points. In rugged country a surveyor may need to add further unofficial trig stations and produce triangles with sides down to one mile (1.6 kilometres) in length, to provide a convenient framework and isolate any errors which may occur as survey progresses. Normally, surveyors doing boundary surveys were never more than three miles from points of known position so that they could check the accuracy of their work. All other surveys could also be correctly plotted in relation to each other.

Surveyor General: The principal government officer in charge of surveys, a role comhined with that of Secretary for Crown Lands, as the permanent head of the Department of Lands and Survey.

Chief surveyor: The principal officer of the Department of Lands and Survey in each district, a role comhined with that of Commissioner of Crown Lands throughout the late nineteenth and early twentieth centuries.

Authorised surveyor: A surveyor whose competence and qualifications have been recognised hy the Surveyor General. At times the term licensed surveyor has been used, although the term registered surveyor is now used.

(c) Extract from Survey Regulations under the Land Act 1885 (New Zealand Gazette 1886 pp 634-642)

Minor Triangulation

1. The Surveyor should be provided with a 5in. theodolite, standard steel hand, thermometer, prismatic compass, aneroid, and straining apparatus. Survey districts shall each comprise an area of 12 $^{1}/_{2}$ miles square or thereabout, which are apportioned on the maps of the standard survey of the colony.

2. In triangulating a survey district or a portion thereof, a level piece of ground should be chosen — centrical, or most convenient — for the measurement of a hase. The line should be chipped or otherwise prepared, and should be of about 2 miles in length. Before commencing the measurement of the base, a chain's length should be laid down on the ground hy standard steel hand — adjusted to 62° Fah — for reference. The hand should he tried on this at the commencement and ending at actual measurements. During measurements temperatures are to be ohserved (the co-efficient to be used may be .000006 for each degree) for correction of expansions and contractions of hand, which have

to be applied in calculations. The steel hand when in use is to be held with a tension of 14lh., and the ends marked on flat-boards spiked into the ground. These flat-hoards should have a hollow filled with lead, for receiving the end marks made hy a sharp instrument. Three boards are used, the last being always carried forward. Measure the base thus: forward and hack again, and take the mean. Angles of inclination should be ohserved, so that a vertical section of the line can be made for reduction to true level. Bases of verification are to be measured in the same way. When for any reason it is inconvenient to prepare the ground, a base line may be measured 2ft. or 3ft. above the surface, the steel hand being supported on adjustahle stands.

3. Should a major triangulation cover the area to be surveyed, no measured base will be necessary, for the distances of minor trigonometrical stations will be ohtained hy hreaking down the larger triangles.

4. Trigonometrical stations should be, as near as practicahle, about $2^1/_2$ miles apart. To extend the true meridian from the geographical into the settlement survey, one of the geodesical or major trigonometrical stations is to be chosen as origin, the instrument being set on the bearing given in the standard maps. This done, if a theodolite, with three verniers, is being used, three sets of observations are to be taken to each minor trigonometrical station in view: the vernier A of instrument being placed at zero, 40° and 80° of the horizontal limb respectively — thus nine readings will be observed; but if a plain theodolite is being used four sets of observations are to be made, the vernier A of instrument being placed at zero, 40°, 90°, and 135° respectively — thus eight readings will be ohserved on different parts of the limh. In each set the instrument should be turned in one direction until the back station is again hisected with the initial reading of the vernier. This done, the next minor trigonometrical station is to be observed in like manner, so as to complete the three angles of each triangle. Points are to be selected so as to have well-conditioned triangles — no angle being less than 30° nor greater than 120°, unless under very exceptional circumstances. As far as practicable, crossing triangles are to be avoided, or one bearing over another bearing; each triangle should appear on the maps distinct from others. When the series of triangles of a minor triangulation extend a greater distance than 20 miles from the base, the first favourable opportunity of measuring a base of verification should be taken. Vertical angles are to be observed between stations with similar care, the datum heing taken from the standard maps.

5. The differences of the means of bearings will give the value of the angles of each triangle; these are to be summed up, and the correction noted, one third of which + or – for calculation is to be applied to each angle. The logarithms should be taken out to seven places, and all angles to seconds. This being completed, and so all the sides and angles known, all stations are to be calculated on the meridian and perpendicular of the initial station of the survey district with the same accuracy, and a table prepared. From this table the skeleton maps are constructed by standard scale and beam compass. The difference of height between two trigonometrical stations is to be obtained from the vertical angles taken at both stations.

6. In executing the survey of an isolated section or of a block, if a base has to be measured, minor triangluation is to be carried from it to the land to be surveyed; hut, if the work is to be hased on major triangulation already

executed, triangles are to be carried thence in the most direct course to such survey, and no more work is to be executed than is necessary for checking the chain measurements.

7. With average care the degree of error in minor triangulation need not exceed 2 links to the mile, so the extreme error allowable, but only in very special cases, is 4 links to the mile; the error in the summation of angles of a triangle need not exceed 30°, and the extreme error allowed in special cases is 60°. All work having error in excess of this will require revisal.

8. Combined with trigonometrical operations, a topographical survey is to be made showing the disposition of natural features and their names, also tracks, ridges, rocks, streams, forests, pas, remarkable objects, natural and artificial, etc, ; and a map of the same is to be constructed. For altitudes vertical angles are to be observed to prominent objects, such as peaks, passes, valleys, and confluence of streams. A surveyor with a good eye can make a serviceable sketch map from his trigonometrical stations, and by theodolite alone, by taking the bearings, cross-bearings, and tangents, with estimated distances of objects; but, if the country be intricate, bearings from intervening positions can be taken where necessary. Prismatic compass and aneroid may be used when the theodolite cannot be had recourse to.

9. Minor trigonometrical stations should be constructed in the following manner: Gas-pipes, 2in. internal diameter, are cut to $2^1/_2$ ft. lengths; these are inserted into cast metal plates with sockets, secured hy an iron pin. The alphabetical letter of the station is to be cut on the upper end of the pipe with a cold-chisel. The pipe thus constructed is sunk in the hole prepared for it to a depth of 2ft. 3in., with the metal plate downwards. The hole is then refilled, and its loose soil firmly beaten down. Round this a circular ditch, 20ft. diameter, 1ft. deep, and 18in. wide, should be dug. On high rocky peaks where a ditch cannot be dug a circle of stones should be made. When in use, the trigonometrical tube should have a pole carrying a black-and-white flag inserted into it and properly stayed; or a light wooden pyramid may be erected over it, with calico tightly tacked or battened to the sides all round for about 3ft. from the top. It is not desirable to build trigonometrical mounds, hut in low positions these may be necessary, and of which the surveyor will exercise his own judgement. If mounds be built the exterior rim had better be of stone with earth in the centre. In positions where the nature of the soil may require modifications special directions will be given.

10. The trigonometrical work only is to be mapped on one sheet, which should show trigonometrical stations (two concentric pink circles) with their alphabetical letters and local name, the base line in red, other lines in black, bearings observed from each station (in blue), calculated mean distances (black), the observed angles (in the middle of each triangle) summed up (black). A few of the streams should be shown, so as to localize the trigonometrical stations readily. There should also be a note giving the results of the different measurements of the base line. Scale 40 chains to an inch.

11. The topographical map is to show the trigonometrical stations lettered, heights in feet (in red), harometrical heights marked "Bar.," streams (in blue), hills shaded (in Indian ink); the Native or local names of places, streams, hills, etc.; roads in use (in firm burnt-sienna lines), tracks (dotted sienna), hush

(green), suggested main lines of future roads (in firm red line). Shade the houndary of the district in colour. Scale, 40 cbains to an inch.

Block and Section Surveys

12. The surveyor is to be provided with a 5in. theodolite, steel hand, 5-cbain wire, Abney level, aneroid, prismatic compass, beam compass, protractor, mathematical drawing instruments, scales and planimeter.

13. No magnetic bearings are admissihle, unless under very special circumstances, in minor detail work, and this very sparingly. Flat or undulating country should be laid off in rectangular sections, but in rugged and hilly country the lay of the ridges and valleys must modify the disposal and form of these. It is desirable to bave all the boundaries on the meridian and perpendicular: but when the general features of the country run obliquely to these, especially in rough districts, the boundaries must be arranged accordingly, so as to form lines which could be easily fenced. The less diversity of bearings the better for the avoidance of errors and multiplication of office work. When necessary, road lines may cross sections diagonally, and the area should be shown in gross and net also. The boundaries of the block in forest sbould be cut 4ft. wide, and in open country pared 2ft. wide, and no survey block sball exceed a length or breadth tbe distance of 250 cbains ($3^1/_2$ miles) unless under special circumstances, however mucb less, or of whatever form they may be. In ranging long sectional lines crossing ridges, lockspits are to be cut so as to enable fencers to keep the right line. If the houndaries of the area to be sectionized exceed $3^1/_2$ miles, it will be necessary to divide it into two or more survey hlocks, whicb separate blocks can be reduced into one plan for exhibition to the public.

14. In traversing, the surveyor is to proceed to the nearest trigonometrical station and base his work on it, setting the zero of the theodolite to true meridian by means of the given bearing to an adjacent trigonometrical station. He is then to unclamp the upper plate and turn it from left to right unil the signal of the forward station is bisected, or nearly so taking care not to overshoot the point; then clamp, complete the bisection and record reading of vernier in field-book. Then unclamp, and keep turning upper plate in same direction, or towards the right, unil the back station is again bisected. A reference to the vernier will show wbether the lower plate has remained unmoved. If so, proceed to the next station, and so forth, until a close with another trigonometrical station. Observe angles of elevation and depression, and reduce to borizontal value. After being located and graded, the road lines sbould be thus traversed, the surveyor when on a trigonometrical station having taken careful readings to many of the traverse or subsidiary points, so as to cbeck his position as be proceeds; then boundaries of sections, if necessary, to be measured, in the second place. Offsets to irregular boundaries, rivers, or streams must not exceed 4 chains in length, and mnst be taken at intervals in the traverse not greater than 3 cbains, but they must be taken at closer distances if necessary to correctly decline the irregularities to be mapped.

15. In the evenings the surveyor should reduce bis traverses on the meridian and perpendicular of a central trigonometrical station, so that no daily actual measurements get in advance of this mode of check to his operations. In rural and suhurhan surveys all actually cbained lines (excepting to range pegs), all corners of blocks and of isolated sections, whether cbained or not, and the intersections with the traverses of all boundary lines of sections, are to be

calculated. Should two traverses — say, of a road and of a river — run nearly parallel and not more than ahout 10 chains distant, it will not be necessary to calculate both. Enter reductions into the form given in Regulation No. 104, to be forwarded with the map.

16. Unless where otherwise specially ordered, main-road lines should be pegged generally to a breadth of 1 chain, occupation or by-roads to $^1/_2$ chain, main roads 3 to 4 miles apart, by roads $^3/_4$ to $1^1/_2$ miles apart, and all necessary through-roads to give access to hack or adjoining country 1 chain wide. In level country the opposite angles sbould be pegged by setting off half the included angle and calculated distance; but in hilly and mountainous districts, where the land is of little value, the roads tortuous, and the traverses short and intricate, this may be dispensed with and the roads shown curved. At the boundary of a section or block, bowever, pegs must be placed on both sides of the road. Main roads should not have a steeper grade than 1 in 15; district roads, 1 in 10; and where these grades cannot be readily ohtained, the case should be reported for advice; and in all cases roads should be graded on the best lines to be found, and the gradient written on the plan.

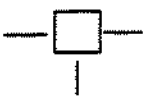
17. Having designed and laid off the skeleton of the work hy survey and calculation of road traverses, the exterior boundaries of the hlock are to be laid out in a similar manner, and at this time all adjacent and included prior claims and their boundaries are to be investigated, for which object copies of the original plans will be furnished from the chief district offices. These claims are to be surveyed as held hy estahlished or indicated marks on the ground, showing the same hy firm lines if the houndaries disagree with your own measurements based on original plans. Boundaries as by descriptions in original plans will be marked by dotted lines. If owners of prior claims cannot be found, and if all the marks of the claims are obliterated, then it will be competent for the surveyor to re-establish the boundaries by his own actual survey, recording tbem in firm lines. A general rule is not to interfere with original boundaries, and with respect to the survey of land already disposed of, it is, that land sold and not granted should have the exact area marked off; land granted, but which had not previously been surveyed, or of which the survey marks are lost, should bave the distances according to the grant, in preference to any attempt to lay out upon the ground the exact area granted.

18. All pegs should be sawn or dressed heart of totara, kowhai (goay), hluegum, kauri, matai (black-pine), puriri, or hinau, 3in. hy 2in. and 2ft. long, put 18in. into tbe ground, the hole having first been driven by an iron jumper. The front pegs of sections must have the numbers of the sections and the letter R branded on tbem; in hush back pegs to be branded with the numbers as well; road traverse pegs will have the letter R and the broad-arrow, ranging pegs the broad-arrow only. In forest country, at convenient distances, trees on the traverse lines should be blazed, having the linkage marked on the face. Conspicuous trees sbould also be branded, and their distances and bearings from section corners noted in field-book. Sections must be pegged front and back as well as at every corner, and have ranging pegs placed 3 chains distant from the front ones, with the lines pared 2ft. wide, or cut 4ft. wide up to them; should the 3-chain distance come in an impracticable place, then the peg is to be placed wherever convenient beyond, and the distance from tbe frontage peg given on the map. Pegs must be inserted and lockspits made at the intersection of every

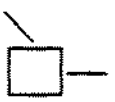
road, large stream, or path likely to be seen hy the puhlic. In forest where the timber has not been burned off, iron pins 6in. long 1in. square should be inserted alongside every boundary peg.

19. All pegs in open country sbould have trenches dug in the following manner: 6ft. long, 9in. wide, and 9in. deep.

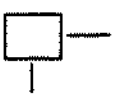
At adjacent section frontages, thus:



At traverse boundaries thus:



At corners isolated (spotting) sections thus:



in all cases commencing 2ft. from the peg.

20. The positions of the section pegs in the traverse lines already surveyed are to be measured on tbe ground and noted in tbe map, and sbould the section peg be of the traverse line the point of intersection should be given as well as the distance of the section peg from that point. the calculated distances sbould, wbere the roads are pegged on both sides, be given from adjacent pegs on same side also.

21. All crossings of creeks and tracks in puhlic use are to be noted; also sucb notes are to be made as will give a sketcb of the topographical features to be delineated on the working plan.

22. In mapping, meridian and perpendicular lines are to be drawn through the initial station of the survey, which initial station must be a trigonometrical station; from these, blue faint lines may be drawn so as to describe squares 5in. apart; then set off all the skeleton boundaries and traverses by scale and parallel ruler from the distances in the calculated traverse table. Ordnance protractor may be used in detail plotting.

23. Having drawn road lines and boundaries on the map, disposition of sections is to be designed, adhering as much as possihle to the cardinal points for sake of simplicity and the avoidance of error. Sections should, as nearly as practicable, bave a depth equal to twice the width or frontage to a road, stream, lake, or coast.

24. Measured lines are to be drawn in pink, calculated lines in black, with figures in pink and black respectively. Observed bearings are to be written in blue, and calculated bearings in black. New pegs sbould be marked by a small pink circle, old pegs by a small hlack circle. Water is to be coloured Prussian hlue, roads burnt sienna, busb green. Hills to be sbaded in light Indian ink.

25. A black marginal line is to be draw round the map. road line and boundary ends of adjacent survey sections and blocks are to be shown. A scale 12in. in length is to be drawn; also an inscription in upright letters denoting block and district, or parish, name of surveyor, date of survey, and number of field-book. The interior detail writing should be clear and distinct. A short description of each section is to be drawn up in the form given in Regulation No. 110.

26. The error attacbed to traverse survey necessarily varies with the nature of the ground, and as it is essential for the security of settlers in rural blocks that it should not accumulate above 20 links, it will be advisable to bave recourse to triangulation subsidiary to minor, wbere the country is so rough as to prevent correct cbaining. On an average, surveyors can cbain a mile within an error of 2 or 4 links; thus, a limit of error in traverse has to be assigned, and bere it is so at 8 links to the mile. Sbould tbe error in closing exceed this limit the work must be revised. So also, governed by minor triangulation, traverses sbould close by bearing with an error not exceeding 2 or 3 minutes of arc.

27. Suitable sites for schools are to be reserved, about 10 acres in rural districts and 5 acres in suburban districts. Also at least 100 links frontage to all navigable rivers and coasts, making the traverse lines if possible the boundary of such reservation. Busbes in sparsely-timbered country are to be reserved, and in busb country all clumps of valuable timber; also stone quarries, gravel and sand pits for road-making where conveniently situated, for trunk and district lines.

28. In surveying a spotting or isolated claim, the surveyor must proceed to the nearest geodesical or trigonometrical station and connect his section work by minor triangulation, and he will prepare a plan of tbe section and its connections on special sbeets provided for that purpose. But if the claim be near to a trigonometrical station be may connect by traverse.

29. If no geodesical or trigonometrical station be available for connection, it will be the duty of the surveyor to report the circumstances to the head of his district before executing the survey; and in cases wbere a broken country is covered with forest, preventing minor triangulation or approved traverse circuit, special direction will be given for the survey and sectioning of the locality under sucb conditions.

Town Surveys

30. The main streets in all towns shall be laid out of a breadth not less than 150 links; side streets not less than 100 links wide. In open country the sides of the main-street lines shall be pared; in bush, cut. In addition to pegs at the corner of every section, not fewer than four stone blocks or iron trigonometrical stations shall be placed 25 links from the building lines, so that three of them shall be reciprocally visible from each other, and on these the angular measurements of the town will be based. The block or trigonometrical tubes to be flush with the surface of the ground. The point of intersection is to be defined by a tack driven into the top of the peg.

31. Open spaces shall be set apart and reserved for recreation-grounds, tbe number of sucb reserves being regulated by the superficial area of the town, being not less than one-tenth of sucb area, the separate size of sucb reserves in no case being less than $12^1/_2$ square cbains.

32. No reserve shall be made for cemetery purposes within any town.

33. Municipal reserves shall be made at the rate of 1 acre to every 10 acres of the total area of the town; also one or two scbool sites of not less than 2 acres each. There sbould also be laid out sufficient land, either outside or inside such towns, for sites for depositing nightsoil, dirt, and rubbisb, and sucb sites shall be selected on sucb side of the said towns as sball be opposite to the quarter from which the prevailing summer wind blows; also sufficient land, either

outside or inside such towns, for sites for gravel-pits and stone quarries, and for depositing gravel, stone, or other materials required for making and repairing roads within sucb towns; provided that gravel, stone, or other road materials can be obtained in the locality. On the plans these areas to have their specific purpose written on eacb, either in full or in abbreviated form.

34. The streets of all towns sball, as nearly as a due regard to the natural features of the country and drainage of the land will permit, be laid off in straigbt lines and at right angles to each otber; and allotments are to be laid off at right angles to the streets which tbey front when possihle.

35. The name and plan of every town or village sball be approved hy the Governor prior to any sale.

Survey of Native Lands

36. The foregoing regulations apply equally to the survey of Native lands for any purpose wbatsoever, and in addition thereto the following rules are to be observed:-

37. Boundary surveys of areas over 3,000 acres in extent for interlocutory orders may be made by the system of converging angles observed between fixed and known points, the intervening and adjacent features being delineated by cross-bearings, or theodolite or compass cbain traverses.

38. Surveys under 3,000 acres in extent must be triangulated and traversed, or traversed only if triangulation be inapplicable hy reason of the denseness of the forest.

39. Where not otherwise agreed upon, the following are the rates to be paid for the survey of Native lands for the purposes of the Native Land Court:-

(1) For the survey of any area —

				£.	s.	d.
Under 30 acres,		£6.				
30 to 50	"	3s.6d.	p.a., hut not less than	6	0	0
50 to 100	"	3s.0d.	"	8	17	0
100 to 200	"	2s.6d.	"	15	0	0
200 to 300	"	2s.0d.	"	25	0	0
300 to 500	"	1s.6d.	"	30	0	0
500 to 1,000	"	1s.3d.	"	37	10	0
1,000 to 5,000	"	10d.	"	62	10	0
5,000 to 10,000	"	7d.	"	208	6	8
10,000 to 25,000	"	5d.	"	291	13	4

(2) Any greater area hy special arrangement.

(3) Where the surveys of two or more hlocks adjoin, a deduction will be made at the rate of £5 per mile for forest and £2 per mile for open, on the length of their common boundaries.

(4) When more than balf the length of the boundary lines runs through vegetation less than 4ft. high, one-third the rates will be deducted.

(5) Travelling expenses will be allowed at the rate of 4s. per mile, one way, to be measured in a straight line from the nearest survey office or residence of surveyor, at the discretion of the Surveyor-General. Where more than one block is surveyed at the same time, such allowance is to be divided amongst them in proportion to the number of the blocks. Should the block under survey lie outside triangulation, the necessary connection thereto will be arranged for specially.

40. Whenever a surveyor or the Native owner shall bring before the Court any question under section 40 of "The Native Land Court Act, 1880", the party intending to apply to the Court shall give to the other party at least seven days' notice of his intention so to apply, except in cases where both parties are present. The Chief Surveyor of the district shall give the Native owners notice of the cost proposed to be charged for a survey as soon as it is completed.

41. All surveys undertaken for the purposes of the Court, when not done by the official survey staff, must be made by authorized surveyors employed by the Surveyor-General, who shall issue a specific authority in writing in each case. Assistants employed by surveyors must be approved by the Chief Surveyor.

42. When triangulation is available for ascertaining distances it will not be necessary to chain long lines if the crossings of streams, ridges, or other natural features are fixed by intersections. Where a boundary line ahuts on to a steam, lake, or coast line, the length of such line, as well as the traverse length, must be supplied. Swamp or terrace boundaries are inadmissible; they must be shown by right [ie straight] lines.

43. The positions of all remarkable hills, ridges, pas, eel-weirs, Native cultivations, tracks, battle-fields, villages etc, within or near the hlock under survey must be fixed by intersections; and the courses of all rivers, forest margins, swamps, lakes, coast lines, or other natural or artificial features must be sketched in for delineation in their proper position on the map.

44. The Native names of all boundaries or natural features within or pertaining to the block must be ascertained, together with the names and position of adjacent lands, and shown on the maps.

45. All plans are to be drawn upon mounted paper, to the scales given in clause 71 of these regulations, but they must not be on a less scale than 20 chains to the inch, unless by special permission. It is advisahle when possihle, hut not absolutely necessary, to keep the maps of the uniform sizes of 30in. x 30in., or 18in. x 16in., but in no case must a less space than 100 square inches be left clear of any survey detail. Maps should he neatly drawn, in accordance with specimens to be seen in any of the survey offices. The whole boundary of the land forming the subject of the claim is to be conspicuously indicated by a tint of pink carried all round within it, and, when islands lying adjacent to the mainland are intended to be included in the claim, they must be coloured of the same tint. The map should have a plain title stating the Native name of the block, the survey district, and the provincial district in which the land lies, with the name or names of one or more of the applicants, and the names of those who pointed out the boundaries. The scale to which it is drawn, the meridian of the circuit in which the hlock is situated, and the area must be plainly stated. In the lower left-hand corner must be quoted the number and date of letter of

instructions to the surveyor, with the number and page of the field-hook. The map must bear a certificate signed hy the surveyor making the survey, in the form or to the effect given in Regulation No. 111.

Surveys To Be Certified Under The Public Works Acts.

46. The traverse should be connected at intervals not greater than two and a half miles to the trigonometrical stations of the district, as well as to the corners of the sections or properties through which it passes.

47. Where no triangulation exists the traverse should be chained and observed twice, and, if possihle, connected at, say, three-mile intervals, to some permanent topographical feature outside the line of formation, at which place a peg should be placed and lockspitted.

48. The lengths of the sides of the area proposed to be taken for the work should be given to each property, as well as its true position in the property.

49. The distances on the meridian and perpendicular of each traverse peg must be tahulated. The surveyor, if he connect with a trigonometrical station, must use it as the initial point or zero of his traverse; failing a trigonometrical station, then a corner of a property should be used; and, failing a property-corner, some of the permanent topographical points hereinbefore referred to should be used as zero.

50. The error in closing on the triangulation should not exceed 8 links to the mile, and the total error in any traverse should not exceed 20 links, except in very rough ground.

51. The traverse should commence at the same end, and the pegs should be numbered in the same direction, as that of the original engineering traverse, if any, and each sheet should not contain more than one mile, and should be plotted upon half a sheet of antiquarian drawing-paper, to a scale of 3 chains to 1in.

52. The names of the present owners of properties, the number of sections or subdivisions, blocks, etc., should be written on each, wherever they can be ascertained; also the area of land taken for the work from each property or separate holding.

53. The ground-marking, pegging, etc., should be done generally as directed in a previous part of these instructions.

54. Maps should be drawn in the colours hereinbefore prescribed for working plans. Boundaries of road districts should be edged in light colour, and the name printed in same colour, every district having different shades or colours. Lands to be taken to be coloured in different shades or colours for each adjoining property; road to be closed to be coloured green.

The plan is to be certified as correct hy the surveyor who made the survey, and also hy the Chief Surveyor holding a certificate under "The Puhlic Works Act, 1882."

55. An accurate schedule of the land proposed to be taken from each property must be furnished with the plan in the form given in Regulation No., 100, certified as in Regulation No. 54.

Contract Survey

56. No surveyor can be considered qualified to he a contractor unless he is an authorized surveyor, and has had five years' experience in an approved system — that is, in any system whose field operations are subject to mathematical check.

Authorized Private Surveyors

57. A surveyor in private practice, whose plans bave to be approved hy the department before ohtaining a diploma, must apply to the Chief Surveyor of the district in which he proposes to practise, who will require exhibition of certificates. These must testify —

(1) To personal good character;

(2) To professional proficiency;

(3) To at least three years' service in the field in a system of surveying similar to that of New Zealand, or to six months' service with an authorized surveyor in New Zealand, in addition tn foreign cadet service.

58. If certificates be satisfactory in regard to character and attainments, then surveying and mapping instruments complete will bave to be sbown. Candidates for authorization may also have to pass an examination in mathematics, including geometry, mensuration, trigonometry, and algehra; and in the use of surveying instruments.

59. The applicant must also produce plans of land actually surveyed in the district and drawn by himself completely and in a workmanlike manner, in accordance with these rules and regulations,—

(1) Of a base line at least one mile in length;

(2) Of at least three triangles as observed in minor triangulation, with topography, bearings, distances, summation, reductions on meridian and perpendicular etc.;

(3) Of a property of at least 100 acres, connecred tn a trigonometrical point, with bounding and intersecting roads traversed reduced on true meridian, drawn to proper scale, with tahles, title, etc., in a form recordable in the office, as executed by the staff;

(4) Of a city or town property of one or more acres, with existing buildings, etc., to represent a plan under the Land Transfer Act.

60. The Chief Surveyor will, upon compliance with these conditions to his satisfaction, sign and forward a dipinma for the approval of the Surveyor-General, and if so approved the applicant will be placed on the list of authnrised surveyors.

Qualifications For Entry Into And Promotion In The Survey Department

61. The candidate for apprenticesbip must exhibit a satisfactory certificate from his schoolmaster, also a certificate of his having passed the junior examination under "The Civil Service Act, 1866." He must be over sixteen and under twenty-five years of age.

62. Besides the above, a satisfactory departmental inquiry as to good eyesight for observing, a bealtby constitution, a knowledge of geometry, trigonometry, and algebra, a legible hand, and taste for drawing, are necessary to qualify.

63. The Government will pay a salary of £50 for the first year, £60 for second, £70 the tbird, and £80 the fourth, together with an allowance at the rate of 2s. a day, or 14s. per week, while in tent.

64. The teaching surveyor will receive a sum of £50 wben the apprentice passes his survey examination satisfactorily at the end of the three years.

65. No surveyor will be required or allowed to receive more than one apprentice.

66. Every facility sball be give to the cadet by the surveyor under whom be may be placed to enable him to acquire a thorough knowledge of the public survey system.

67. During apprenticesbip (wbicb extends over four years — one in office, and the remainder in the field) tbe senior examination of tbe Civil Service Regulations above quoted must be passed. If this is passed, it will also be necessary, previous to receiving a diploma, or promotion, to undergo a departmental inquiry as to knowledge of practical geometry and the first six books of Euclid, plane trigonometry and algebra as far as quadratic equations, surveying and levelling, the use and adjustment of the tbeodolite, and map-drawing. A certificate of good conduct and competence from the teaching surveyor must also be sbown. These requirements being compiled witb qualify for promotion into tbe grade of section or assistant surveyor. A knowledge of elementary geology, mineralogy, and botany will be considered of value in giving promotion to the grade of assistant surveyor.

68. In order to obtain employment in the geographical or standard brancb, the candidate must bave further a knowledge of spberical trigonometry; of the use and adjustment of sextant, alt-azimuth, and transit instruments; also of practical astronomy, particularly in reference to latitude, longitude, and true meridian.

Office Record

69. Field-books, working plans, record maps, and documents relating tbereto and to to tiile, are to be kept in a fire-proof safe.

70. Working plans, wbether of meridional circuits, major triangulations, minor triangulations, or block surveys, should be drawn on antiquarian paper, cut to 30in. square. These are to be laid flat, in folios 33in. square, which again slide in to level shelves 34in. square, constructed in a closed press, set up in the fire-proof safes attacbed to the Survey Offices. Where tbere is not room for laying flat, folios may be placed upright. The working plans of isolated sections are also kept in folios 18in. by 16in. All these plans should remain unmounted, except under special circumstances. The compiled or index plans, bowever, being unavoidably of large size (56in. square), are mounted and kept in rolls; but these if destroyed are replaceable, containing as they do no original work. The tops and bottoms of these maps sbould bave thin laths glued to them, and extra-fastened with copper tacks. This prevents the paper breaking and creasing.

71. The following are the scales to be used in surveys;-

Working Plans.

Town sections, or sections under half an acre	2	chains or	$^1/_{10}$ mile to an inch
Suburban sections	5	"	$^1/_{16}$ " "
Rural sections	10	"	$^1/_4$ " "
Minor triangulations	40	"	$^1/_2$ " "
Topographical	40	"	$^1/_2$ " "
Meridional circuit	320	"	4 " "
Reconnaissance and major triangulation	160	"	2 " "
Index maps	80	"	1 " "

Copied or Compiled Plans.

Town or village selection maps .. 5 or 10 chains to an inch.

Town or village Crown-grant record maps	2	"	"
Rural selection maps (after survey)	10	"	"
(before survey)	40	"	"
Crown grant record maps (rural)	20	"	"
Territorial maps	4	or 8 miles	"

Extreme Areas contained in Plans

Working plans of town sections	$^7/_{10}$ mile	square
rural sections	$3^1/_8$ miles	"
minor triangulations	$12^1/_2$ "	"
topographical	$12^1/_2$ "	"
reconnaissance and major triangulations	112 "	"
meridional circuit	112 "	"

The above are suitable for keeping in the fire-proof safes. Wall maps may be of any size and scale.

72. With a view to the systematic record of all transactions of the Land Transfer Branch, and of surveys executed under the Public Works or other Acts, record maps on the same scales as for original surveys — namely, 20 chains to an inch for rural lands, and 1 or 2 chains to an inch for town lands — will be prepared, on which all road lines, sub-divisions, and other details surveyed since the issue of the Crown grant under the Land Transfer Act, Public Works Acts, the Land Act, Native Land Acts, or any other proper authority, should be recorded.

73. Computation books should be of one size, so as to fit the sbelves in the safe. The size should be a little above the ordinary foolscap, and the books should be numbered, paged and the contents indexed, for easy reference.

74. Working plans are open to the inspection of professional men only. Selection maps are open to the public.

Puhlications

75. Towns may be reduced to any convenient scale. Rural and suburban block or section surveys will be reduced to a scale of 20 cbains or 40 chains to an inch, as the area of tbe sections is small or great. Districts compiled 80 chains to an inch.

76. The paper on which the drawing is made sbould be perfectly white and smooth, and free from dirt, creases, or wrinkles. tracing cloth may be used, hut tracing paper, unless perfectly white and carefully drawn on, seldom does well.

77. The drawing sbould be executed with good Indian ink, freshly rubbed down, quite black, and fee from grit or glaze.

78. The lines should be firm and clean, not too fine or too close together. They must all be perfectly black, and pale ink must on no account be used. Thick lines in the printing and borders should be well filled in.

79. Washes of any colour are inadmissible.

80. If cross-hatching or shading is required, the lines composing it must be kept as open and distinct as possihle, and they should not be too fine, but firm enough to reproduce well. Generally it is better to have fine hatching done by transfer from steel, and in such case the drawing should give only tbe outline. Intensity of sbade should be shown hy an increase in the thickness of the lines rather than hy their being placed close together, as it must be borne in mind that througbout the process there is a tendency for the lines to thicken, so that if they are too close tbey are liable to block up in the printing, and the work will appear heavy and unsightly. This rule also applies to hill-shading, the darker portions of whicb sbould be drawn in thick distinct lines, but not crossed and recrossed with fine lines.

81. As the process produces a perfect facsimile of the original, it is essential that the latter should be complete in every respect, and the drawing, printing, and writing should all be done in as neat a style as possihle, so that the result may be fit for immediate publication, and not require to be altered or touched up after transfer to stone, by wbicb the work is always damaged more or less. The hair strokes of the printing must not be too fine. Border lines, which could not be conveniently shown on a large scale plan, can be drawn on the stone.

82. When plans are intended for reduction, tbe lines sbould be of the proper thickness relatively to the scale of reduction. The printing and detail must also be relatively large in proportion. This rule is often neglected, and the result is the loss of all the finer lines, words, and figures. When drawing for reduction care must be taken to leave sufficient space between the line of the hill-shading, water-lines, or cross-batching, so that they may be well separated wben reduced, and may not hlock up in the printing.

83. When possible, it will be better to draw the original on a larger scale than is required for the copy, as a photographic reduction is always much sharper and much clearer than a reproduction.

84. In all cases a scale should be drawn on the plan and not stated as a scale of so many chains, feet, or miles, etc., to an inch.

General

85. All plans deposited with any Chief Surveyor or with any inspecting officer for examination become the property of the Government, and their return for correction or addition shall not give to the person to whom they are returned any right or claim to their possession. It shall be competent for any Survey Inspector to require in special cases, of which due notice shall be given, that the rules numbered from 128 to 133, of even date herewith, made under "The Land Transfer Act, 1885," shall also apply to surveys made under this Act.

86. Upon the receipt of plan of a block for settlement, and as soon as possible after it has been checked, a tracing on cloth, without bearings and distances or traverse lines, and mounted on stiff paper, is to be sent to the Land Office; also a reduction to a suitable scale is to be prepared for lithographing either in the district or at the head office as the case may require.

87. When any report or survey is required by the Chairman of the Land Board, he shall forward a requisition in writing to the Chief Surveyor of the district setting forth the nature of the service he requires, and on receipt of such requisition the Chief Surveyor shall with all convenient speed furnish such report or survey as the case may be; provided that, when a requisition for a survey is made, the Chief Surveyor shall specially note the same in his monthly report to the Surveyor-General, and shall, as soon as practicable, direct that such survey shall be executed, unless disapproved of.

88. One officer in the Survey Department should be entirely responsible for the preparation of the draft plans for certificates of title and Crown grants, and the same officer should compare the fair copies, and certify to the correctoess of the plans thereon; the duty of writing the fair copies being that of the District Land Registrar.

89. The Chief Surveyor shall, about the first of each month, send to the Chairman of the Board a report stating the progress of surveys of Crown lands proposed to be opened up for settlement, and transmit a copy thereof to the head office with his monthly report.

90. Whenever a topographical survey or a block for settlement has been completed, the Board is to be at once furnished with a tracing on cloth (mounted) giving such information as is necessary for land selection, without written bearings and distances, and lithographs should be prepared in due course for sale to the public.

91. Surveyors in the employment of Government, or executing any surveys which are to be approved by the Surveyor-General or an inspecting officer, are to report to the the Chief Surveyor of the district monthly, in the form given in Regulation No. 105. Government officers shall also furnish, on the 30th June in each year, a report and summary of work done, cost, etc., for the past twelve months, in the form given in Regulation No. 106. Chief Surveyors will report to the Surveyor-General as soon as possible after the termination of each

month, hut not later than the 15th of the following month, giving a summary of work executed hy the surveyors acting under their supervision, the arrears, or work on hand, and proposed course of duty for the following month (form given in Regulation No. 107). They shall also, on the 30th June in each year, furnish a statement of the work executed during the past year, and the expenditure in the district, in the form given in Regulation No. 108.

92. Along with the monthly report Chief Surveyors will send diagrams of field inspections that have been made in the actual surveys then going on.

93. In provincial districts having not more than ten parties at work, field check is to be done hy the Chief Surveyor; hut, if there be more than ten parties, an officer will he employed as a field inspector — in conjunction with his ordinary duties, if the number to he inspected be few — to be stationed in such district and over such parties as the Chief Surveyor himself cannot overlook.

94. The Chief Draughtsman will, in the ahsence of the Chief Surveyor, have general charge and authority in the office of the provincial district, open and attend to correspondence, and sign for him all papers or plans not having a statutory authority.

95. Field-books are to be kept in ink, and when filled up to be returned to the district office. It is to be understood that all field-hooks and maps, whether of the official or the contract surveyor, are the property of Government. Field-books should be dated for each survey, their contents indexed, and their number given on the finished plan. the whole of the contents of the field-book should be plotted before it is returned to be filed for reference.

96. Report if not ahle to repair all trigonometrical stations that are seen to be dilapidated. Renewed stations to have same letter as the old station.

[Regulations 97-110 have not been reproduced]

111. Form of Certificate, Native Survey

I herehy certify that this survey has been made under my own inspection, that it is correct, and that all the rules and regulations with respect in the survey of Native lands have been strictly complied with.

Forwarded to the Chief Surveyor of , on the day of , 18 .

Authorised Surveyor

[Regulations dated 19 May 1886]

(d) Extract from Survey Regulations under the Land Act 1892 (New Zealand Gazette 1897 pp 223-235)

[The 1897 Regulations 1-37 in respect of triangulation, topographical, rural and town surveys are not markedly different from the Regulations of 1886 and have not been reproduced].

Survey of Native Lands

38. The foregoing regulations apply equally to the survey of Native lands for any purposes whatsoever, and, in addition thereto, the following rules are to be ohserved:-

39. All boundary-lines of original hlocks must be distinctly marked on the ground hy lines cut through all vegetation above 2ft. in height, hut subsequent

subdivision may, in the discretion of the Chief Surveyor, be marked in the same manner as sections of Crown lands.

40. Where not otherwise agreed upon between the Chief Surveyor and the surveyors, the following are the rates to be paid for the survey of Native lands for the purposes of the Native Land Court:-

Schedule Rates per Acre.

Area			Bush						Open					
			Rate per Acre			But not less than			Rate per Acre			But not less than		
Acres			£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
10	to	15	0	5	0	3	0	0	0	3	4	2	0	0
15	to	20	0	4	6	3	15	0	0	3	0	2	10	0
20	to	30	0	4	0	4	10	0	0	2	8	3	0	0
30	to	50	0	3	6	6	0	0	0	2	4	4	0	0
50	to	100	0	3	0	8	15	0	0	2	0	5	16	8
100	to	200	0	2	6	15	0	0	0	1	8	10	0	0
200	to	300	0	2	0	22	10	0	0	1	4	16	13	4
300	to	500	0	1	7	30	0	0	0	1	0	20	0	0
500	to	1,000	0	1	3	39	11	8	0	0	10	25	0	0
1,000	to	2,000	0	1	0	62	10	0	0	0	8	41	13	4
2,000	to	5,000	0	0	8	100	0	0	0	0	5	66	13	4
5,000	to	10,000	0	0	4	166	13	4	0	0	3	104	13	4

(a) Where two or more surveys adjoin a deduction from the sum total arrived at by the above rates is to be made as follows:-

Where two sides adjoin, deduct 25 per cent of total, or

" three " " $37^1/_2$"

(b) If the surveyors' camp is situated over 10 miles from the nearest store, in the discretion of the Chief Surveyor, there may be added to the above rates 5 per cent; if 20 miles, 10 per cent; if 30 miles, 15 per cent; if 40 miles, 20 per cent; and above that by special arrangement.

(c) Subdivisional surveys will be allowed at mileage rates, except in very exceptional cases, when tbe Chief Surveyor may allow the above acreage rates or a modification of them.

(d) *Schedule Rates per Mile*

		£	s.	d.
Rough Bush Country				
Road surveys	... per mile	20	0	0
Traverse-or boundary-line	"	14	0	0
Ordinary bush-country, with scrub -				
Road surveys	"	16	0	0
Traverse-or boundary-line	"	13	0	0
Hilly, open country, with scrub-				
Road survey	"	10	0	0
Traverse-or boundary-line	"	8	0	0
Open country-				

Road surveys	"	8	0	0
Traverse-or boundary-line	"	6	0	0

(e) Wherever deductions are made for contiguity, an allowance of £1 per mile will be given for plotting and calculating adopted work; the same will apply when mileage rates only are allowed. For topographical and other internal work, where acreage rates are not used, a payment of 10s. per square mile will be allowed if, in the opinion of the Chief Surveyor, the work is worth it.

(f) In travelling to the work, hy railway or coach, the surveyor will be allowed £2 a day, and four men at 7s. 6d. a mile will be allowed up to 40 miles, which includes surveyor and men's pay.

(g) It shall be competent for the Chief Surveyor of any district to make special arrangements with respect to any hlock, and to fix rates hy the mile, or hy a daily rate or other equitahle rate, for surveys which do not come strictly under any of the above descriptions.

41. All the claims to be made for charging orders under section 65 of "The Native Land Court Act, 1894," must be made in accordance with the Rules and Regulations of the Native Land Court. No Chief Surveyor, is bound to certify to costs which exceed, in his opinion, what is a fair charge, even in cases where arrangements have been previously made as to such costs.

42. Charges acquired hy the Crown for the survey of Native lands under section 37 of "The Native Land Laws Amendment Act, 1896," are to be drawn in the Form I. given in Schedule.

43. All surveys undertaken for the purpose of the Court, when not done hy the official survey staff, must be made hy authorized surveyors, specially authorised hy the Surveyor-General, who shall issue a specific authority in writing in each case. Men employed hy surveyors to take charge of survey parties must be approved hy the Chief Surveyor of the district in which the land lies; and not more than two parties shall be employed hy any authorised surveyor, unless they are under the charge of authorised surveyors.

44. When triangulation is availahle for ascertaining distances it will not be necessary to chain long lines if the crossings of streams, ridges, or other natural features are fixed hy intersections; hut the crossings over ridges must be cut and cleared, and direction-pegs there placed. Where a boundary-line ahuts on to a stream, lake, or coast-line, the length of such line, as well as the traverse length, must be supplied. Swamp or terrace boundaries are inadmissible; they must be shown hy right lines.

45. The positions of all remarkable hills, ridges, pas, eel-weirs, Native cultivations, tracks, hattle-fields, villages, rahuis, boundary-stones, etc., within or near the block under survey must be fixed hy intersections; and the courses of all rivers, forest margins, swamps, lakes, coast-lines, or other natural or artificial features must be sketched in for delineation in their proper position on the map. All legal roads traversing a block must be properly shown on map, and in cases where unsurveyed formed roads intersect such a hlock they must also be shown.

46. The Native names of all houndaries or natural features within or pertaining to the hlock must be ascertained, together with the names and position of adjacent lands, and be shown on the map.

47. All plans to be drawn upon mounted paper, to the scales given in clause 62 of these regulations, hut they must not be on a less scale than 20 chains to the incb, unless hy special permission. It is advisable when possible, but not absolutely necessary, to keep the maps of the uniforn sizes of 30in. x 30in., or 18in. x 16in., hut in no case must a less space than 100 square inches be left clear of any survey detail. Maps should be neatly drawn, in accordance with specimens to be seen in any of the survey offices. The whole boundary of the land forming the subject of the claim is to be conspicuously indicated by a tint of pink carried all round within it, and when islands lying adjacent to the mainland are intended to be included in tbe claim, they must be coloured of the same tint. The map should bave a plain title stating tbe Native name of the block, the survey district, and the land district in which the land lies, with the name or names of one or more of the applicants, and the names of those who pointed out the boundaries. The scale of the map, the meridian of the circuit in which the hlock is situated, and the area must be plainly drawn. In the lower left-band corner must be quoted the number and date of letter of instructions to tbe surveyor, with the number and page of the field-book. The map must bear a certificate signed by the surveyor making the survey, in the form or to the effect marked H in the schedule hereto. After examination, the map, if in order, is to be approved by the Chief Surveyor of the district hy writing the word "Approved" above his signature, and it is to be sent to the Native Land Court wben the case is advertised.

48. Original plans of blocks whicb bave been approved by the Chief Surveyor must not have further survey work or detail of a permanent cbaracter added to them. Subdivisions of such original blocks as ordered hy the Native Land Court, or made at the instance of the owners of the land, must be on separate maps.

[Regulations 49-91 and Schedule bave not been reproduced]

[Regulations dated 21 December 1896]

Appendix 12

Reference List of Plans in the Department of Survey and Land Information

(a) The DOSLI plan numbering system

As plans came into the Survey Office (or possibly wben instructions were issued to survey) they were given a number. As a general rule, the lower the plan number the earlier the plan was submitted to the Survey Office. But the plans came in various sizes. The ones that were 30 inches by 30 inches or less were originally stored horizontally. Since the 1950s they have been stored vertically in racks. Bigger plans were either rolled up or folded like a blanket. The blanket plans were stored horizontally with the standard plans. Standard plans and blanket plans were therefore all stored in numerical sequence. The roll plans were stored in a sort of elongated wine rack system, each compartment of which was given a consecutive number. Each roll plan was given, in addition to its original number, a roll plan number which was the same as the number of the compartment in whicb it was stored in the rack. Sometimes the roll plan number was given to more than one plan. To avoid confusion, roll plan numbers are given in brackets after the plan number in the list that follows, but have not been used in references to plans in this report. All the plans listed here have the prefix ML (Maori Land) because they were plans prepared for Maori Land Court title purposes.

When a plan sbowed more than one block held in separate title, those individual blocks were each given a separate plan number. For example, ML 6406 etc. is the plan that Stubbing sent to the Chief Surveyor on 2 November 1892. It appears to have been a blanket plan and the numbering in the hottom right hand corner is

6406
—7
8
—10
— 1
— 2
— 3

Stuhhing's plan was prepared for the purpose of completing by survey a number of orders on investigation of title made by the Native Land Court sitting at Cambridge on 11 August 1891. The numbers in the bottom right hand corner of Stubbing's plan and the lands to whicb they were allocated are as follows:-

Plan No. 6406	Pou-a-Kani B No 7 or Weraroa
Plan No. 6407	Pou-a-Kani B No 8 or Hikurangi

Plan No. 6408	Pou-a-Kani B No 9 or Pureora
Plan No. 6410	Pou-a-Kani C No 3
Plan No. 6411	Pou-a-Kani B No 11 or Kumara
Plan No. 6412	Pou-a-Kani C No 1 or Kaiwha
Plan No. 6413	Pou-a-Kani C No 2 or Whatapo

Later, roll and blanket plans were cut up and put onto 30 inch by 30 inch backings to enable them to be filed with the standard plans. Each part of the roll and blanket plans that were now on a separate sheet had to be given another number so that when Stubbing's plan was cut into 6 sheets the 6 parts were each numbered 6406-6413/1, 6406-6413/2, 6406-6413/3, 6406-6413/4, 6406-6413/5 and 6406-6413/6. Even more numbers were added when plans were microfilmed. Five photographs were taken, one of the whole plan and one of each quarter.

(b) The Lands

A number of different names were given to tracts of land, sometimes described as blocks, which were never comprised in a title order of the Native Land Court. Some of these names also appear on the plans, but may have no legal existence in terms of title order or survey approval.

Rohe Potae

This term is used in this report to refer to the large area described in the 1883 petition of the tribes of Ngati Maniapoto, Ngati Raukawa, Ngati Tuwharetoa and Whanganui (AJHR 1883, J1) and in the schedule of the Native Land Alienation Restriction Act 1884.

Aotea (Rohepotae) Block

This area was defined by the Native Land Court sitting in Otorohanga in 1886 as the lands of Ngati Maniapoto, shown on the plan ML 5851/1-4. To avoid confusion we have used the term Aotea block in this report, although the court minutes refer to "Rohepotae Block".

Tauponuiatia Block

This term includes the lands described in the application by Te Heuheu and others for investigation of title by the Native Land Court to the lands claimed by Ngati Tuwharetoa, and is shown on the plan ML 5995D. There was some dispute over precise location of boundaries between Aotea and Tauponuiatia blocks. The boundary of the Rohe Potae of 1883-1884 included only the western portion of Tauponuiatia block.

Tauponuiatia West Block

This was a subdivision of Tauponuiatia block and although Tauponuiatia West was heard as one block by the Native Land Court in 1886-1887, and described in survey instructions given to W. Cussen by Judge Scannell on 21 May 1886, it was never given legal recognition by an order of the Native Land Court. The subdivisions of Tauponuiatia West block shown in 1887 on Cussen's composite plan ML 6036 etc were:

Horaaruhe Pouakani (ML 6036)
Maraeroa (ML 6077)
Tihoi (ML 6076)

Tuhua Hurakia Waihaha (ML 6078)
Hauhungaroa Karangahape Waituhi (ML 6079)

Of these suhdivisions only Maraeroa and Tihoi were given legal recognition in title orders of the Native Land Court in 1887 and the Maraeroa order was cancelled hy statute in 1889. Many of the boundaries on the plan were altered. The lands in Tuhua Hurakia Waihaha and Hauhungaroa Karangahape Waituhi hlocks have not been investigated in this report. Tihoi hlock has only been considered to the extent that it is relevant to transactions on Maraeroa and Pouakani hlocks which are the suhject of this claim.

In 1889 the lands included in Horaaruhe Pouakani (with the exception of Pouakani No. 1 hlock) and Maraeroa hlocks reverted to the status of uninvestigated "Native Land". A new investigation of title hy the Native Land Court in 1891 treated the Pouakani hlock as one area of land hut no court order issued for it, only for a number of suhdivisions of areas called Pouakani A, B, C and D hlocks. The boundary between Maraeroa and Pouakani hlocks was altered. The Maraeroa hlock of 1887 became in 1891: Maraeroa hlock (with suhdivisions of areas called A B and C); Ketemaringi hlock and Hurakia hlock. These latter two hlocks have not been investigated in detail.

(c) The Plans

The plans consulted in preparation of this report are listed in chronological order hy plan numbers, hut this does not necessarily mean all plans with the same number were drawn at the same time. Compiled plans of similar number hut of a later date, are listed with the earlier plans at the first dated plan of that number. Information is provided in the following categories; plan number, title, scale, survey information (including name(s) of surveyor(s), date of instructions, survey approvals and any other relevant information) and exhihit notes (where and when the plan was produced in the Native Land Court etc). Roll plan numbers, where relevant, are shown in hrackets after the plan number. Note that additional material was often shown on plans after they had been prepared and first approved.

Plans of Aotea (Rohepotae) Block:

ML 5851/1-4

Plan of the Aotea Block (King Country) situated in the counties of Kawhia Clifton and West Taupo, Claimed by Rewi Maniapoto, Hitiri Paerata, Taonui, Wahanui, Hopa Te Rangianini and others. ["Aotea" has been crossed out of the title and "Rohepotae" suhstituted]

Scale: 2 miles to 1 inch
Surveyed hy W. C. Spencer and F. Edgecumbe 1884.
Approved as a sketch plan hy S. Percy Smith, Assistant Surveyor, 19 July 1886.

"This map was produced before the Native Land Court at Otorohanga 28th July 1886, W.G. Mair, Presiding Judge".

The plan includes all of the Rohe Potae area described in the schedule to the Native Land Alienation Restriction Act 1884, hut distinguishes the Ngati Maniapoto area hy a pink wash on the boundary. This became known as the Rohepotae hlock when the Native Land Court began hearing claims in this area in 1886. East of this the land is labelled "Taupo Nui Atia Adjudicated

upon hy N.L. Court held at Taupo recently." Presumahly this large roll plan, now cut up and mounted on 4 sheets, was prepared for the purposes of the Native Land Court hearing, hy Judge Mair, at Otorohanga in 1886. Whether this is the original plan, with later annotations, or a compiled plan of 1886, is not certain.

ML 5851/5

Portion of Southern Boundary of Aotea Block.

Scale: 80 chains to 1 inch
Date of instructions: December 1883
Surveyed hy F. H. Edgecumhe Jan-June 1884, Field Book No. 588
Plan covers area from Whanganui River—Waimarino—Okahukura Blocks
No approvals or notes on plan

ML 5851/6-7

Aotea Block Plan of Portion of Southern Boundary of the King Country from Whanganui River to Taranaki Confiscation Line.

Scale: 20 chains to 1 inch
Date of instructions: December 1883,
Surveyed hy W. Charles Spencer, plan suhmitted 4 April 1884, Field Book No. 619
No approvals or notes on plan

ML 5851/8-9

Aotea Block Plan of Portion of Northern Boundary of the King Country from Sea Coast to junction with Confiscation Boundary Line at Tahuanui.

Scale: 20 chains to 1 inch
Date of instructions: 16 April 1884
Surveyed hy W. Charles Spencer August 1884, Field Book No. 619
No approvals or notes on plan.

ML 6039

Rangitoto Block; Pungapunga Block [two separate plans]

Scale: 2 miles to 1 inch
Sketch maps only, no dates or approvals; shows lands along the western boundary of Tauponuiatia West Block in Aotea Block.

ML 6039/1-8

Plan of Rangitoto—Tuhua Block .. Claimed hy Tannui, Hauauru and others. Boundaries pointed out hy Taonui, Hinerangi and others

Scale: 40 chains to 1 inch
Date of instructions: 1 October 1889
Surveyed hy W. Cussen, plans suhmitted 8 July 1890, Field Book No. 831
No approvals or other notes on plan.

Plans of Tauponuiatia Block:

ML 5995 A (Roll Plan B53)

Part of Rohepotae of Taupo Nui Atia From Whanganui River to Oruaiwi

Scale: 20 chains to 1 inch
Surveyed hy W. Cussen, plan suhmitted 6 April 1888
"Entered on Blks. XV and XVI ... Tuhua S.D. 5/2/90"

ML 5995 B (Roll Plan B53)

Plan of Tauponuiatia showing the Subdivisions as adjudicated upon hy D. Scannell and F.M.P. Brookfield, Judges N.L. Court.

Scale: 2 miles to 1 inch

This is a compiled plan, a cadastral record, of later date than 1887. An illegihle signature, [Humphries ?] in the top right corner carries the date 2.3.91 The western boundary of Tauponuiatia Block is that fixed hy the Tauponuiatia Royal Commission in 1889 on plan GM 180. Other hlock boundaries are subdivisions of Tauponuiatia ordered hy the Native Land Court in 1887. Plan numbers 6036 A on Pouakani No. 1 hlock and 6076 on Tihoi Block and some others are shown. In the southern part of Tauponuiatia West and on some other hlocks there are undated notes, "Survey of Subdivisions not yet authorised"

ML 5995 C

[no title or date]

Scale: no scale given
[Sketch plan of Rotoaira Pukawa area]

ML 5995 D (Roll Plan B53)

Map of the Tauponuiatia Block, Applicants Te Heuheu Tukino, Matuahu Te Whareraugi, Kingi Te Herekiekie, Paurini Karama and others.

Scale: 2 miles to 1 inch
Surveyed hy Henry Mitchell n.d.
"Approved as a sketch map only S Percy Smith 11 April 1885"

"Note: Red line shows the claim as gazetted for Court at Taupo on 14th Jany. 1886, lines in purple denote Blocks passed Court, [?] surveyed hut not passed Court, yellow shows land not yet adjudicated upon. Henry Mitchell, Auth. Surveyor"

Annotations in Maraeroa Plain area:
"Boundaries from Paratetaitonga to Waipapa north junction with the Waikato River sketched in only and are tinted red. H Mitchell Auth[orised] Surveyor. The yellow line denotes the boundary adopted hy the claimants or adjudicated upon at present Court. H. Mitchell."

"Produced at a sitting of the Native Land Court held at Tapuaeharuru on fourteenth day of January 1886, F.M.P. Brookfield, Judge."

ML 5995 E (Roll Plan B53)

Maraeroa Pureora Block Horaaruhe Pou-a-kani Block

Scale: sketcb plan, no scale given

This is a "mystery plan" with no dates or other notes to indicate when, by whom or why this plan was prepared. The boundaries of blocks differ from other plans. There are also numerous pencil annotations, mainly place names, along the bush line and between Taporaroa and Pureora.

ML 5995 F

[Sketcb plan of area from Rotoaira, Tokaanu, Tongariro river, Pukawa to Whanganui river].

Scale: no scale given

"Produced at a sitting of the Native Land Court at Taupo on April 3rd 1886 for the bearing of the following blocks viz. Puketi-Taurewa-Pukepoto-Waione-Obuanga-Waimanu-Oraukura" signed by Judge Brookfield

"Produced at a sitting of the Native Land Court beld at Tapuaebaruru 24tb Marcb 1887" signed by Judge Scannell.

"List of blocks adjudicated upon this plan by Court sitting at Tapuaeharuru 1887. 1. Mangahouhou 2. Ruamata 3. Hobotaka 4. Whangaipeke".

"Produced at a sitting of the Native Land court at Kakahi on 18th of May to the 26th May 1921 for the repartitioning of Puketapu No. 3, Hobotaka Nos. 2 and 1B, Whangaipeke" signed by Judge Acbeson.

Plans of Tauponuiatia West and Maraeroa Blocks:

ML 6036 (Roll Plan B44, now mounted on 3 separate sheets)

Plan of Hora-aruhe Pou-a-kani Block Taupo Nui Atia West Claimed by Te Rangikaripiripia and Hapeta Te Paku. Boundaries pointed out by Hapeta te Paku.

Scale: 40 chains to 1 incb
Surveyed by Henry Mitcbell, plan submitted 29 September 1886
Field Book No. 722
Approved by W.C. Kensington for Chief Surveyor, n.d.

"Produced at N.L. Court Kihikihi upon def[inition] of Crown interest in B No. 9 and D No. 2, H.F. Edger, Judge, 24.7.99"

ML 6036 A

Plan of Pou-a-kani No. 1 (3 sbeets)

Scale: 20 cbains to 1 inch
Date of instructions: 15 August 1890
Surveyed by W. Cussen, plan submitted 27 January 1891
Approved by Chief Surveyor, Gerbard Mueller, 22 January 1892.

Attacbed to the plan are remnants of a notice published in *Te Kahiti* o *Niu Tireni* giving details of times and places that this and other plans would be available for inspection

"No objections received."

"Approved Scannell Judge N.L.C., June 3rd 1892"

ML 6036, 6076, 6078, 6079 [ML 6036 etc.]

Plan of Taupo Nui Atia West ... Shewing Subdivisions Hora Aruhe Pou a Kani, Tihoi, Tuhua Hurakia Waihaha, Hauhungaroa Karangahape Waituhi, Maraeroa, Total Area 416235a 0r 00p.

Scale: 1 mile to 1 inch
Date of instructions: 17 December 1885
Surveyed by H.M. Mitcbell and W. Cussen, plan submitted 29 December 1886

Plan received hy Chief Surveyor 10.1.1887 and examined 14.1.1887

Approved by S. Percy Smith Assistant Surveyor General, 15 January 1887.

"Produced at a sitting of the Native Land Court held at Tapuaeharuru on the 2nd Fehruary 1887. Order made D. Scannell, Judge N.L. Court. Maraeroa, Pouakani, Hapotea, Kaiwba, Tihoi, Waituhi Kuratau, Waituhi Kuratau No. 1, Waihaha, Waihaha No. 1, Waihaha No. 2, Pouakani No. 1, Pouakani No. 2, Hauhungaroa, Te Awaiti Waihaha,"

"Approved as to Waihaha No. 1 D. Scannell, Judge of N.C. 30 [?] 1892"

"Approved under Sec. 31 N.L. Court Act 1880 for Tihoi, Waihaha and Haubangaroa[sic] Blocks D. Scannell, Judge of N.L.C. Tokaanu February 6th 1892"

"Produced in the Native Land Court Taupo upon definition of Crown Interest in Waihaha No. 3A block on 9th March 1899 and whole block awarded to Crown, D. Scannell, Judge".

ML 6076/1-4 (Roll Plan B44, now mounted on 4 sheets)

Plan of Tihoi Block Taupo Nui Atia West ... claimed hy Hitiri Paerata, te Heuheu and others. Boundaries pointed out by Hapeta te Paku

Scale: 40 chains to 1 inch
Date of instructions: 17 December 1885
Surveyed by W. Cussen, plan submitted 29 December 1886, Field Book No. 729.
Approved hy W.C. Kensington for Chief Surveyor, date illegible.

"Produced before the Appellate Court Kihikihi this 10th day of May 1898 in the matter of the appeal of Te Papanui Tamahiki and of Te Rehina te Hinu and others [signature illegihle] Presiding Judge".

ML 6076/1-4 (Roll plan B44, now mounted on 4 sheets)

Plan of the Subdivision of the Tihoi Block, Tauponuiatia West

Scale: 40 chains to 1 inch
"Compiled from Official data", signed hy A.W. Donahoo, "Authorised Sur-

veyor 9.7.01"
Approved by W.C. Kensington for Chief Surveyor 9 July 1901

"Produced before Native Land Court, Taupo this ninth day of March 1903 on definition of Crown interests in Tihoi No. 2, 3 and 4", signed by Judge Browne.

Produced in Native Land Court on various occasions between 1902 and 1915 for purposes of partitions, not listed in detail. This is a compiled plan with the same plan number as the 1886 survey plan of W. Cussen above.

ML 6076/5

Plan of Tihoi

Scale: 80 chains to 1 inch
Surveyed by H. Mitchell and W. Cussen, 8 January 1887
Approved by W.C. Kensington, for Chief Surveyor 10 August 1892
[whole block] "Placed on title forms 17.8.92 WCK"

"For approval by Judge see Plan of Tauponuiatia West 6036 etc. H.F. Edger, Registrar 24.8.92"

ML 6077/1-2

Plan of Maraeroa Block Taupo Nui Atia West claimed by Te Paihua [sic] and Te Heuheu, Boundaries pointed out by Te Paihua.

Scale: 40 chains to 1 inch
Date of instructions: 17 December 1885
Surveyed by W. Cussen, plan submitted 29 December 1886
Field Book No. 724

"See amended plan 7728"

No approvals or other notes on plan

ML 6077/3

Maraeroa Block Surveyed by W. Cussen

Scale: 80 chains to 1 inch
Compiled plan 19 June 1891
Approved by Gerhard Mueller, date illegible

"Produced before the Court this 12th day of December 1891 in the matter of investigation of title", signed by Judge Puckey

"Produced before the Native Land Court at Otorohanga this 9th day of December 1907 upon application to have the boundaries of Maraeroa C defined. M. Gilfedder, Judge"

"For amended plan see 7728"

The plan shows Cashel's survey of Hurakia Range watershed boundary 1890, and pencil lines added to amend Pouakani—Maraeroa boundary following lines on Plan GM 180 which was before the Tauponuiatia Royal Commission in 1889.

ML 6078/1-4 (Roll Plan B44, now mounted on 4 sheets)

Plan of Tuhua Hurakia Waihaha Block, Taupo Nui Atia West.. Claimed hy Te Papanui and others, Boundaries pointed out hy Paora Pene and Hohepa

Scale: 40 chains to 1 inch
Date of instructions: 17 December 1885
Surveyed by W. Cussen, date plan submitted hlank hut signed hy W. Cussen
Field Book No. 729
Approved by W.C. Kensington for Chief Surveyor, 10 August 1892

"For approval by Judge see plan of Tauponuiatia West No. 6036 etc. H.F. Edger, Registrar, 24.8.92"

"Approved as for Waihaha No. 3" by W.C. Kensington for Chief Surveyor, 6 July 1901 and hy Judge Scannell, 7 July 1901

"Placed on certificate of title forms, W.C. Kensington, Chief Draughtsman, 17.8.92"

"Placed on Crown order forms as for Waihaha No. 1, C.R.P. 27.11.94"

Produced in Native Land Court 1902, 1911 and 1913 for various partitions.

ML 6078/B (Roll Plan B44)

Tracing showing the amended boundary of Taupo-nui-a-Tia

Scale: 1 mile to 1 incb
Signed hy W. Cussen "Authorized Surveyor"
"Ent'd on Block II Puketotapu, XI, XV Hurakia, VIII Hurakia ... C.R.P. 22/12/90"

This plan is mounted separately beside sheet one of ML 6078/1-4 above.

ML 6079/1-3

Plan of Hauhungaroa Karangahape Waituhi Block, Taupo Nui Atia West claimed by Te Heuheu, Taringa, Hori Manunui and others.

Boundaries pointed out by Hori Manunui
Scale: 40 chains to 1 inch
Date of instructions: 17 December 1885
Surveyed by W. Cussen, plan submitted 29 December 1886
Field Book No. 728
Approved by W.C. Kensington for Chief Surveyor, date illegible
Approved hy Judge Scannell, NLC 25 August 1895

"Entered on N.L.Ct.Cert. 15.8.95, A.H."

ML 6406-6413 [ML 6406 etc]

Pouakani Subdivisions Plan of B11, B7, B8, B9, C2 and C3

Scale: 20 cbains to 1 incb
Date of instructions: 26 January 1892
Surveyed by D. Stuhhing, plan suhmitted 2 November 1892
Approved by W.C. Kensington for Chief Surveyor 21 March 1893
Approved hy Chief Judge Davy, NLC, 25 March 1893

The following plan numbers were allocated to subdivisions of Pouakani Block, and drawn on Stuhhing's plan ML 6406 etc hut separate plans bearing these numbers were not drawn for each hlock.

Pouakani	A1	ML	6490
	A2	"	6491
	A3	"	6492
	B7	"	6406
	B8	"	6407
	B9	"	6408
	B11	"	6411
	C1	"	6412
	C2	"	6413
	C3	"	6410

This numbering sequence suggests that the plan numbers for Pouakani A Blocks were allocated some time later than those allocated to Pouakani B and C Blocks. For a detailed analysis of Stuhbing's plan ML 6406 etc. see Appendix 13.

ML 6409, 6414, 6415

Plan of Pouakani Subdivisions B10, D3 and D4

Scale: 20 chains to 1 inch
Date of instructions: 26 January 1892
Surveyed by D. Stuhbing, plan submitted 2 November 1892
Field Book No. 722
Approved by W.C. Kensington for Chief Surveyor, 21 March 1893
Approved by Chief Judge Davy, NLC, 25 March 1893

"Placed on orders of the Court as for No. [B]10, No. D3 and D4" n.d.

Plan on one sheet, plan numbers allocated as follows: 6409 Pouakani B10; 6414 Pouakani D3; 6415 Pouakani D4, but no separate plans of these blocks were drawn.

ML 6494

Maraeroa A Sec. 1

Scale: 20 chains to 1 inch
Compiled plan 14 December 1895
Approved by W.C. Kensington for Chief Surveyor n.d.
Approved hy Judge Wilson, NLC 9 January 1896

"Placed on NLC order forms WCK Chf. Dftsmn" n.d.

ML 6495

Plan of Maraeroa A Block

Scale: 80 chains to 1 inch
Compiled plan, 22 September 1898

Approved by W.C. Kensington for Chief Surveyor 27 September 1898
Approved by Chief Judge Davy, NLC, n.d.
"Entered on Court order forms WCK Chief Draughtsman 27/9/98"

Approved by C.R. Pollen for Chief Surveyor in respect of Maraeroa A Sec. 2, 4 September 1907.
Approved as for A Sec. 2 by Judge W. Mair, NLC, 1 October 1907

"For amended boundys [sic] and areas see plan 7728"

ML 6496 B/C

Compiled Plan of Maraeroa B and C

Scale: 80 chains to 1 inch
Approved by W. Kensington for Chief Surveyor, 30 October 1895
Approved by Chief Judge Davy, NLC n.d.

"For original see 6077 small plan"

"For amended plan see 7728"

"Entered on Court order form as for B and C, WCK, Chief Draughtsman 27/9/98"

ML 6497/9

Plan of Ketemaringi and Maraeroa B Sec. 1 Subdivisions of the Maraeroa Block

Scale: 20 chains to 1 inch
Date of instructions: 31 October 1894 ... 27 February 1895
Surveyed by D. Stubbing, plan submitted 6 May 1895
Field Book 1058
Approved by W.C. Kensington for Chief Surveyor, 16 December 1895
Approved for Ketemaringi No. 1, C.R. Pollen for Chief Surveyor, 4 September 1907
Approved for Ketemaringi No. 1 by Judge Edger, NLC, 19 September 1907

"Placed on NLC order forms as for Maraeroa B Sec. 1 WCK" n.d.

"Endorsed on Court Order forms as for Ketemaringi No. 1, CRP Chief Draugbtsman 4/9/07"

Note on plan on Ketemaringi Block: "There is a sbortage of area in this block and No. 2 has not had a pro rata deduction baving 1390 acres instead of 1380 but in view of No. 2 having paid for survey of mutual bdy. this bas been allowed to pass"

ML 6498 D

Punakerikeri Block Being Portion of the Maraeroa "A" Block Already adjudicated upon (Orders made)

Scale: 20 cbains to 1 incb
Compiled plan
Approved by W.C. Kensington for Chief Surveyor, 7 February 1899

No notes on plan

ML 7478

Plan of Maraeroa 'C' Block, surveyed for Makawe Kaka and ors.

Scale: 10 chains to 1 inch
Surveyed by Percy Ward, plan suhmitted 20 June 1908
Field Book 1573
Approved hy Judge Browne, NLC 25 February 1911

"Produced in the Native Land Court at Te Kuiti this 4th day of February 1924 upon partition of Maraeroa C Block", signed by Judge MacCormick.

ML 7728 (Roll Plan B61)

Maraeroa Subdivisions (A1, A2, A3A, A3B, B1, B2, B3A, B3B, C)

Scale: 40 chains to 1 inch
Compiled plan 25 June 1910
Approved by E.C. Gold Smith, Chief Surveyor, 18 July 1910
Approved by Judge Browne, NLC 25 Fehruary 1911

Produced in the Native Land Court, Te Kuiti on partition of A3B and B3B, Judge Holland, 17 July 1915, and partition B3B2, Chief Judge Palmer, 17 April 1916.

"Endorsed on Court order forms as for Maraeroa A, B, C, B Sec. 1, B Sec. 2, B Sec. 3A, 3B, A Sec. 2 and A Secs. 3A and 3B, CRP, Chief Draughtsman 8.7.1910"

ML 14984/1-2

Plan of Pouakani Block (Wairarapa Natives)

Scale: 20 chains to 1 inch
Surveyed by H.G. Shannon, 1920
"Boundaries amended in Survey Office August 1930"
Approved by L Poff for Chief Surveyor 27 August 1930

ML 16550

Plan of Traverses through and around Pouakani C1B Blk.

Scale: 10 chains to 1 inch
Surveyed by A. Sandel, 5 May 1947

"Requisition not attended to by surveyor. See file 20/451 folios 924 and 928"

"Approved as to survey data, D.B. Hopcroft, Chief Surveyor, 19/6/68."

ML 20635

Plan of Pouakani C1B1 and 2 Blks. See also ML plans 20633-4, 20636-7.

Scale: 20 chains to 1 inch
Surveyed by K.R. Locke, 4 April 1972
Approved hy C.M. Rainsford Chief Surveyor, 11 May 1972
Approved by Judge Gillanders Scott, 26 May 1972

"Endorsed on Court order forms", J.E. Greedy, 22 May 1972

The other ML plans referred to in the title were for proposed excbanges with the Crown whicb were not proceeded with, but were surveyed at the same time.

(d) Field Book 722

Survey involves two stages. The first step is for the surveyor and his assistants to go out onto the land, put pegs into the ground and measure the distances and bearings between the pegs. The surveyor also takes tbe bearings and the distances from some of his pegs to at least two permanent survey marks. All these measurements are recorded by the surveyor in a field book. The second stage is for the surveyor to go back to an office and draw a survey plan. In drawing later plans of the same area surveyors are able to locate or replace some of the earlier pegs and make use of the data about these and other pegs that are recorded in the earlier field book.

Field Book 722, is titled "Field Book of Hora-aruhe Te Pou a Kani Block Surveyed by W Cussen May-Augt. 1886". The first 25 pages of the field book record the survey of the outer boundary of the Horaaruhe Pouakani block from Hikurangi on the Waikato river to Pobuebue where tbe line reacbed the boundary between Horaaruhe Pouakani and the Tatua West block. The boundary recorded in the first 25 pages of Field Book 722 is sbown on plan ML 6036 and also on the composite plan ML 6036, 6076, 6078, 6079 (ML 6036 etc). Pages 13-25 record the survey from Pureora to Pobuebue. Pages 26, 27 and 28 apparently record some repegging of the Horaaruhe Pouakani and Tatua West boundary. Page 29 is blank.

At page 30 another survey starts with the note: "Subdivisions of Pouakani Block 1892 — April, May, June, July Augst. and Sept. D Stubbing Surveyor Commencing at peg No 1 Tapararoa [sic]". Pages 30 to 34 record the survey of the outer boundary of the Pouakani A blocks shown on Stubbing's plan ML 6406 etc, starting at "Te Pahua's [sic] Taporaroa." Pages 35 to 38 include some calulations and a note on page 35, "Unable to take round of angles weatber very bad — Reading glass lost on one of tbe Verniers. D.S." Pages 38 to 45 record surveys in tbe eastern part of Horaaruhe Pouakani. Pages 46 to 53 record the survey of the boundary line between the 17,900 acre area for Pouakani C1 (Kaiwha) and Pouakani B9 (Pureora) and the area occupied by Pouakani C3, Pouakani B7 and Pouakani B11. Pouakani C2 is surveyed at pages 47 and 48. Pages 54 to 60 record the survey of tbe rest of the boundary between Maraeroa and Pouakani blocks from the Waipapa stream to Pureora. The survey of the boundary of the Pouakani A blocks, starting at page 30, follows the Maraeroa-Pouakani boundary to the point wbere the Waipapa stream crosses tbat boundary.

The boundary between Maraeroa and Pouakani blocks, from "Te Pahua's Taporaroa" to Pureora, surveyed by D Stubbing, is a different boundary from the boundary in the same field book between Maraeroa and Horaaruhe Pouakani blocks from Taporaroa to Pureora surveyed by William Cussen.

(e) Plan GM 180

Throughout the bearings and in subsequent investigation, the tribunal relied on a 1933 copy of this plan, beld in the Hamilton office of the Department of

Survey and Land Information. Late in 1992 the original plan was located in the National Archives. The details of title etc for hoth plans are:

GM 180 (original plan 1889)

Tracing showing that part of the Rohe Potae of Taupo-Nui-A-Tia awarded hy the Court to Ngatituwharetoa, and that claimed hy Ngatimaniapoto

Scale: 2 miles to 1 inch
General Survey Office, Wellington.

"Tauponuiatia Commission. Plan annexed to the Commissioners and referred to in the Report of the Commissioners as Map No. 1"

"Rohe Potae of Tuwharetoa colored [sic] red

do. Maniapoto do yellow"

"G. Thomas del. 20[or 30?]/4/89"

The plan is annotated GM 180 in red hut also Gaz 180 in hlack on four sides. National Archives AAFV 997 gaz 180

GM 180 (copy 1933)

Tauponuiatia Commission

Tracing showing that part of the Rohe Potae of Taupo-Nui-A-Tia awarded hy the Court to Ngati Tuwharetoa and that claimed hy Ngati Maniapoto

Scale: 2 miles to 1 inch

"Copy from the plan No. 180 referred to in Suh. Sec. 3 of Sec. 29 of the NLC Act Amendment 1889. A.J. Wicks, Chief Draughtsman 8/11/33"

The two plans are identical in respect of boundary location and place names. The 1889 plan has, in addition, hush areas shaded green, and very clear dark grey, almost hlack, shading of mountain ranges. The Hurakia range is clearly labelled. The inscription in the bottom left hand corner indicating it was drawn in April 1889 confirms the assumption that plan GM 180 was compiled before the Tauponuiatia Commission began hearings, indeed, before it was appointed.

Plan GM 180 appears to be a compiled plan sent in support of the Ngati Maniapoto claims. In his evidence before the Tauponuiatia Royal Commission, the surveyor W C Cussen stated:

> I know this tracing. It was made in my office at Otorohanga. It contains something not in the original map [ie ML 5995D]. I put in the name Hurakia range at the request of the natives, Taonui and others. I have other names not on the original. They were put in hy direction of the natives ....
>
> The watershed would be the natural boundary between the two tribes. The Maniapoto directed me to make a tracing showing the dividing line on the watershed.
>
> No one else told me that the watershed was the dividing line ....
>
> The tracing I made for Taonui and others was made from a tracing taken from an actual survey. The houndary line was sketched in.[1]

References

1 National Archives MA 71/1

Appendix 13

An Analysis of Stubbing's 1892 Plan and Subsequent Additions.

Today, once a survey plan is approved, it cannot be altered unless it is made very clear both that an alteration has been made and that the alteration has been approved hy the chief surveyor. But Survey Office staff took a very different view last century. A survey plan was often used to record new survey information in much the same way as a DOSLI "Record Sheet" is now used. In 1891 the Native Land Court made title orders for various Pouakani blocks. Stubbing sent in his survey plan ML6406 etc of some of the blocks to the chief surveyor on 2 November 1892. The chief surveyor approved it on 21 March 1893 and Chief Judge Davy approved it on 25 March 1893. Since then a great deal has been added to it.

By 1899 the Crown had purchased the shares of many of the owners of five of these 1891 blocks: Pouakani A1, Pouakani A2, Pouakani A3, Pouakani B9 (Pureora) and Pouakani C1 (Kaiwha) blocks. In 1899 the court partitioned these blocks between the non sellers and the Crown. The court added up the shareholdings in each block of the owners who had sold, apportioned the area between the Crown and the non sellers on this basis and gave the Crown an additional area as payment of the non sellers' share of survey costs. The court made orders creating the new titles, Pouakani A1A, A2A, A3A, B9A and C1A blocks, which it vested in the Crown. The court also created as new titles the Pouakani A1B, A2B, A3B, B9B and C1B blocks, each of which it vested in the owners in the parent block who had not sold to the Crown. The hlocks created hy the 1899 orders now appear on Stubhing's plan ML6406 etc with separate approvals hy the chief surveyor and Native Land Court judge.

Stubbing's plan ML6406 etc purports to be a plan prepared in 1892 for the purpose of completing by survey the parent titles created in 1891. Ohviously, blocks created by the 1899 title orders did not appear on it when it was approved by the chief surveyor and the chief judge in 1893, because no one in 1892 could have known which owners were going to sell their shares to the Crown between 1893 and 1899.

The more difficult question is which boundaries of the 1891 title orders were shown on Stubbing's plan ML6406 etc, when it was sent to the chief surveyor in 1892, and when the chief surveyor and chief judge approved the plan in 1893. On 28 Fehruary 1893 W C Kensington of the Auckland Survey Office sent a tracing showing some of the 1891 blocks to the Native Land Purchase Office in Wellington. A copy of this tracing was produced in evidence (B7:267) but this copy did not show the initials "H.W." (or "H.M.") and the date "28/2/93" of the original in the National Archives. We think that Stubbing's sketch plan (figure 1) is a reduced copy of the survey plan that Stuhhing sent to the chief surveyor in 1892 and that the chief surveyor and chief judge approved in 1893.

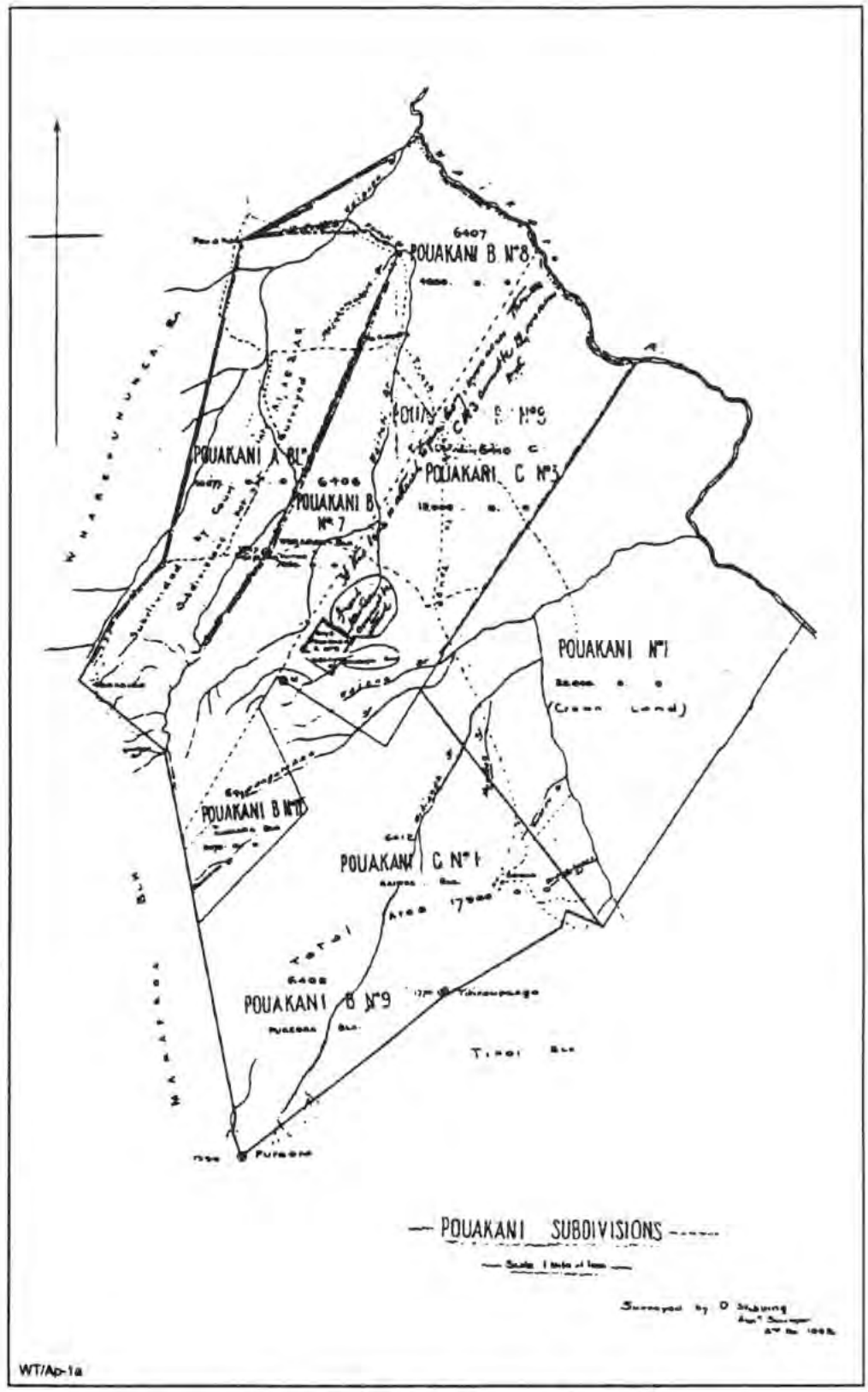


Figure 1A. Stubbing's Sketch Plan 1893

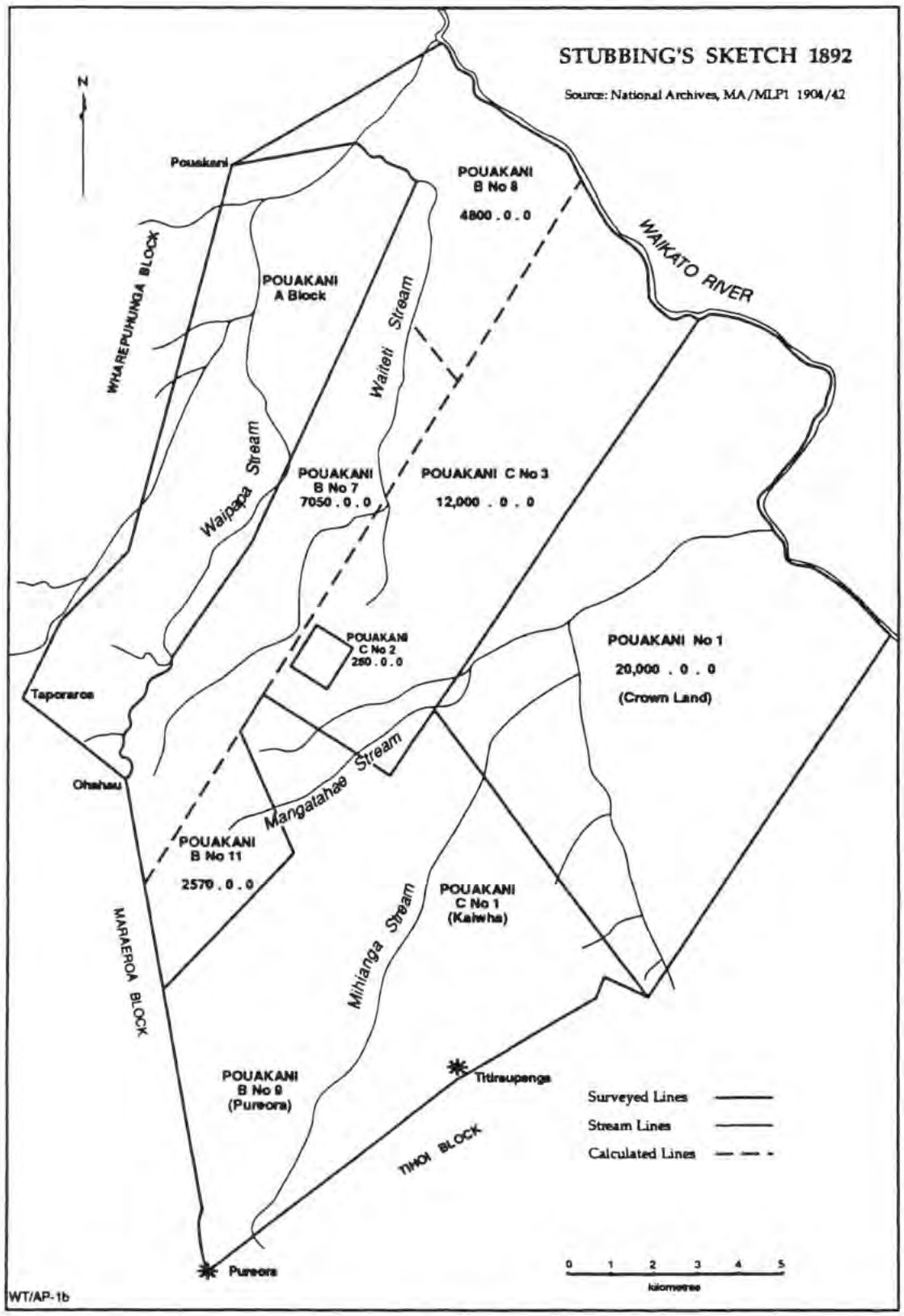

STUBBING'S SKETCH 1892
Source: National Archives, MA/MLP1 1904/42
N
Pouakani
POUAKANI B No 8
4800 . 0 . 0
WAIKATO RIVER
WHAREPUHUNGA BLOCK
POUAKANI A Block
Waiteti Stream
Waipapa Stream
POUAKANI B No 7
7050 . 0 . 0
POUAKANI C No 3
12,000 . 0 . 0
POUAKANI C No 2
250 . 0 . 0
POUAKANI No 1
20,000 . 0 . 0
(Crown Land)
Taporarora
Ohahau
Mangatahae Stream
POUAKANI B No 11
2570 . 0 . 0
MARAEROA BLOCK
Mihianga Stream
POUAKANI C No 1
(Kaiwhs)
POUAKANI B No 9
(Pureora)
Titirauponga
TIHOI BLOCK
Pureora
Surveyed Lines
Stream Lines
Calculated Lines
0 1 2 3 4 5
kilometres
WT/AP-1b

Figure 1B.

They are now two very different plans. The differences on ML6406 etc are what we think were added later.

Stubbing's Plan ML6406 etc — Pouakani A Blocks:

On 11 August 1891 the court made orders on investigation of title creating title to the Pouakani A blocks. These blocks, with the plan numbers allocated to them, were:

Pou-a-kani A No 1 or Waiwherowhero	Plan No. ML6490
Pou-a-kani A No 2 or Te Whanawhana	Plan No. ML6491
Pou-a-kani A No 3 or Tomotomoariki	Plan No. ML6492

Stubbing's 1892 sketcb does not sbow the boundaries between these three lands. It shows their outer houndaries and it labels the whole area "Pouakani A Blk 10577.0.0" and bas a note "Subdivided by Court into A1, A2 & A3 subdivisions not yet surveyed".

Stubbing's survey plan ML6406 etc now sbows the boundaries of Pouakani A1A, A1B, A2A, A2B, A3A and A3B blocks that were created in 1899. The question is whether in 1893 it showed the boundaries between Pouakani A1, Pouakani A2 and Pouakani A3 which were created in 1891. Stubbing's survey plan ML6406 etc has "10577 acres Pouakani A Block" inscribed along the length of the area occupied by these blocks. Stubbing's survey plan ML6406 etc now shows the boundaries between Pouakani A1 (Waiwherowhero), Pouakani A2 (Te Whanawbana) and Pouakani A3 (Tomotomoariki). If it had sbown these houndaries in 1893:

(a) It would have shown the blocks labelled as A No 1, A No 2 and A No 3. It now shows A No 1A, A No 2A and A No 3A. The final "A"s do not appear to have been added at a later date. However the position and appearance of these labels is such that we cannot be absolutely certain that they were not written on the plan until 1899.

(b) It would have shown the areas 4037 acres, 3300 acres and 3240 acres of Pouakani A1, A2 and A3. These areas had been worked out hy 13 September 1893 because that is the date of the first signature to a deed of sale of the Pouakani A blocks whicb bas endorsed on it a diagram showing these separate areas for Pouakani A1, A2 and A3. Instead, Stubbing's survey plan ML6406 etc, shows a figure of 10577 acres whicb is the total of the areas of all three hlocks.

(c) It would bave sbown the boundary between Pouakani A1 and Pouakani A2 with the distance of 17025 links that now appears on the diagrams tbat form part of the title orders for these blocks. Instead, only the figures 4925 and 12100 appear; 4925 links is the length of that part of the boundary that now forms the boundary between Pouakani A1B and Pouakani A2B; and 12100 is the length of that part of the boundary that now forms the boundary between Pouakani A1A and Pouakani A2A. (The figure of 4925 is followed by an abbreviation for "calculated" and the figure 12100 by an ahhreviation for "scaled". The boundary between Pouakani A2A and Pouakani A3A which is the same boundary as the boundary between Pouakani A2 and Pouakani A3 has a distance also followed hy an abbreviation for "scaled". Clearly, someone has worked out the approximate positions of boundaries to give the required

areas for Pouakani A1, A2 and A3, drawn the lines and then measured them with a ruler to get tbe approximate distances of the houndaries. Pouakani A1B, A2B and A3B are simple four sided figures and the length of the boundaries required to enclose the areas that the court said that these hlocks were to contain, has heen calculated mathematically and the houndaries then drawn on the plan.

(d) It would bave shown "A1", "A2" and "A3" in the title of the plan, and plan numbers close to the figure 6406 would have been allotted to them, and these numbers included in the composite number of the plan. But A1, A2 and A3 do not appear in the title to the plan. The plan numbers in the bottom right hand corner of tbe plan, which we assume to have been there since 1892, are:

6406
- 7
8
-10
- 1
- 2
- 3

The ML plan numbers allocated to Pouakani A1A, A1B, A2A, A2B, A3A and A3B are 6490A, 6490B, 6491A, 6491B, 6492A and 6492B. Not only are these much later numbers, but they are printed within each of these blocks in a very different way from the way in which the other plan numbers are printed within the other blocks.

What is on the plan itself is sufficient evidence for us to conclude that, hoth when Stubbing's survey plan ML6406 etc reacbed the chief surveyor in 1892 and wben it was approved in 1893, it simply sbowed, as Stubbing's sketcb plan does, a single area for the Pouakani A blocks and a note "10577 acres Pouakani A Block".

Stubbing's plan ML6406 etc — Pouakani B7, B8, B11 and C3 boundaries:

Stubbing's sketch shows the following boundaries as dotted lines with no figures showing their lengths:

(a) the boundary between Pouakani C3 and Pouakani B8;
(h) the boundary between Pouakani C3 and Pouakani B7;
(c) part of the boundary between Pouakani B7 and Pouakani B8 (the other part of the boundary is a part of the Waiteti stream that was not surveyed in field book 722);
(d) the boundary between Pouakani B7 and Pouakani B11.

Stubbing's survey plan ML6406 etc also shows these boundaries as dotted lines. Whereas on Stubbing's sketch plan the lines seem to have been intended as tentative boundaries, on Stubbing's survey plan ML6406 etc they bave been taken as being final boundaries, and the following bas been written onto Stubbing's survey plan ML6406 etc:

on boundary (a) above	26800 NLCT
on boundary (b) above	67400 NLC
on boundary (c) above	8400 NLCt
on boundary (d) above	20160 NLCt order

The figure of 67400 is the total length of the boundary between Pouakani C3 and both Pouakani B7 and B8.

NLC, NLCT and NLCt were abbreviations for Native Land Court. So someone bas taken a ruler, measured the houndaries on Stubbing's plan ML 6406 etc, drawn the diagrams for the Native Land Court orders and then treated these diagrams that form part of the signed sealed orders of the Native Land Court creating title to the hlocks as authority for inserting the distances in Stubbing's plan ML6406 etc.

Stubbing's Plan ML6406 etc — Pouakani B9 (Pureora) and Pouakani C1 (Kaiwha):

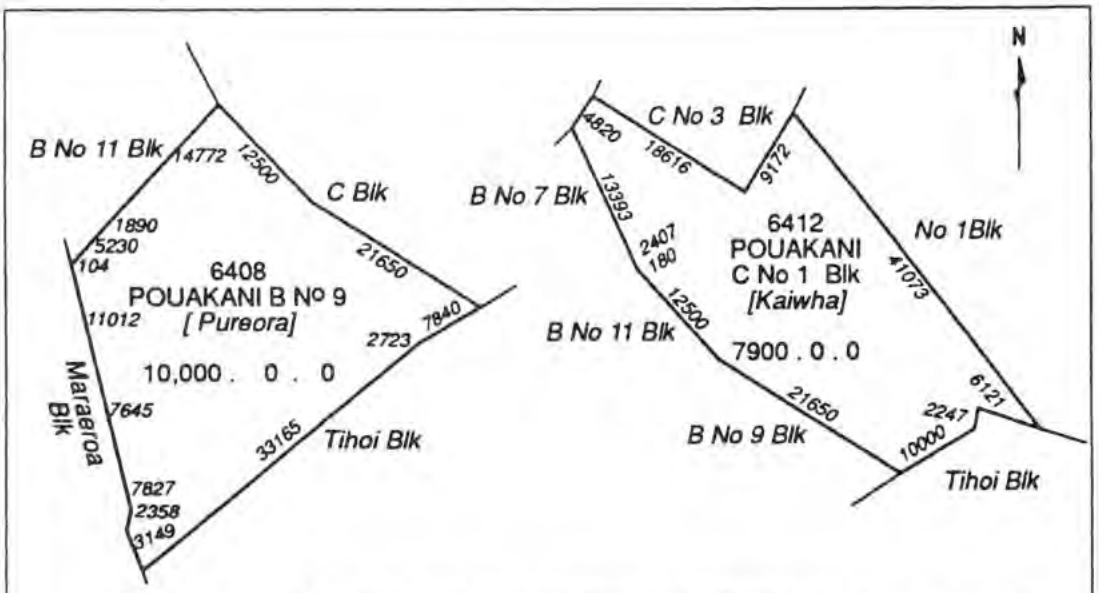
Stubhing's sketch shows "Pouakani C No 1 Kaiwha Blk" and "Pouakani B No 9 Pureora Blk" and shows the outer boundaries of their comhined areas hut does not show the boundary between them. Instead there is written across their comhined area "total area 17900.0.0". Stuhbing's survey plan ML6406 etc has "Pouakani C No 1 Kaiwha Block" and "Pouakani B No 9 Pureora Block" hut it does not show the areas of 7,900 acres and 10,000 acres respectively that appear in the orders on investigation of title.

Instead it has figures "17900.0.0". The words "total area" now appear before these figures but in a style of printing that does not appear anywhere else on the plan and which suggests that these words may have been added later.

Figure 2 shows the boundaries of Pouakani B9 (Pureora) and Pouakani C1 (Kaiwha) as they appear on the diagrams attached to the signed sealed orders on investigation of title made on 11 August 1891. The order on investigation of title for Pouakani B9 (Pureora) shows botb in the body of the order and on the diagram annexed to the order that Pouakani B9 (Pureora) contained an area of 10,000 acres and was "delineated in the certified map numbered 6408". The order on investigation of title for Pou-a-kani C1 (Kaiwha) shows both in the body of the order and on the diagram annexed to the order that Pouakani C1 (Kaiwba) contained an area of 7,900 acres and was "delineated in the certified map numbered 6412". Both diagrams show the boundary between them as two lines of 12,500 links and 21,650 links. Stuhhing's survey plan ML6406 etc now shows Pouakani B9 (Pureora) divided into Pouakani B9A and Pouakani B9B. It also now shows Pouakani C1 (Kaiwha) divided into Pouakani C1A and Pouakani C1B.

If in 1893 Stubbing's survey plan ML6406 etc bad sbown the boundary between Pouakani C1 (Kaiwha) and Pouakani B9 (Pureora):

(a) It would have sbown the distances of the two parts of the boundary between them as 12500 and 21650. "12500 scld" does appear on Stuhhing's survey plan ML6406 etc because the wbole length of this boundary is now part of the boundary between Pouakani C1A and Pouakani B9A. But the northern end of the 21650 link line now forms part of the Pouakani C1A and Pouakani B9A boundary and the rest of the 21650 link line is the boundary between Pouakani C1B and Pouakani B9B. The figure 21650 does not appear on this line, as it would have if the boundary between Pouakani C1 (Kaiwha) and Pouakani B9 (Pureora) had been drawn on the plan first. Instead "4800 scld" and "16850 scld" are shown. If the boundary between Pouakani C1 (Kaiwha) and Pouakani B9 (Pureora) had already been drawn on the plan wben the divisions



The Boundaries of Pouakani B9 (Pureora) and Pouakani C1 (Kaiwha) shown on the diagrams that form part of the signed sealed Orders on Investigation of Title of the Native Land Court made on 11 August 1891. The common boundary has distances of 12500 links and 21650 links and meets the boundary with the Tihoi block at a point that divides that length of boundary into distances of 7840 links and 10,000 links. Figures 4, 5, & 7 show a different boundary.

Figure 2. 1891 Title Order Diagrams

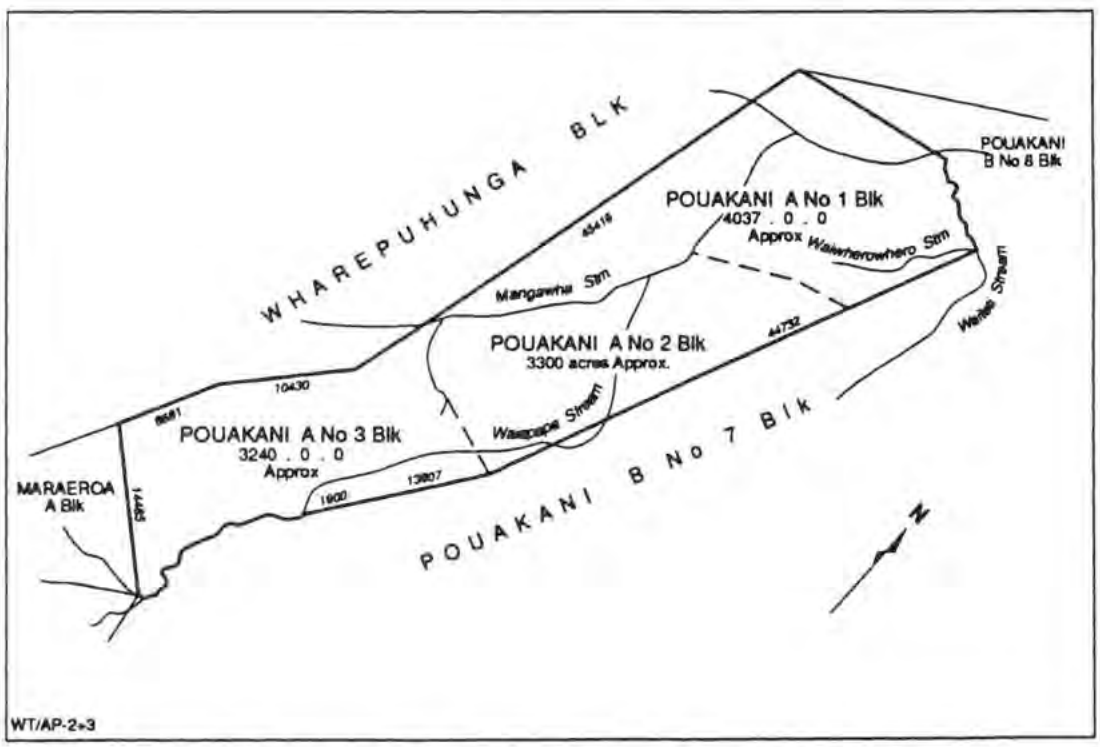


Figure 3. 1893 Deeds of Sale Diagram Pouakani A Blocks

into Pouakani C1A, C1B, B9A and B9B were drawn on, then the figure 21650 could have been rubbed out. But it would bave been much easier to have simply put brackets around it to show that it was a total distance.

(h) "Total area 17900" would not have appeared on the plan.
(c) It would bave sbown "C1" in the heading.
(d) It would have shown separate areas of 7,900 acres and 10,000 acres for Pouakani C1 (Kaiwha) and Pouakani B9 (Pureora).

Some of the matters listed are not inconsistent with the boundaries having been drawn in at some time between the forwarding of tbe plan to the chief surveyor and its approval by the chief surveyor and the chief judge. But the fact that Stubbing's survey plan ML6406 etc does not show separate areas for Pouakani A1, Pouakani A2, Pouakani A3, Pouakani C1 (Kaiwha) and Pouakani B9 (Pureora) would seem to be conclusive proof that these were not sbown as separate blocks when the plan was suhmitted and that the boundaries between them were not drawn in until the Pouakani A1A, A1B, A2A, A2B, A3A, A3B, C1A, C1B, B9A and B9B subdivisions were drawn on Stubbing's survey plan ML6406 etc after 1899.

The evidence of the deeds of sale of the Pouakani A blocks, Pouakani B9 (Pureora), Pouakani C1 (Kaiwba):

The diagrams drawn on the deeds of sale of interests in the Pouakani A blocks (both given the same number as deed no 3245), Pouakani C1 (Kaiwha) and Pouakani B9 (Pureora) provide further evidence that not all the boundaries of Pouakani A1, A2, A3, Pouakani C1 (Kaiwba) and Pouakani B9 (Pureora) were sbown on Stubbing's survey plan ML6406 etc when it was approved by the chief surveyor on 21 March 1893 and hy Chief Judge Davy on 25 March 1893. The dates of the first signatures on these deeds are:

Pouakani A blocks	13 September 1893
Pouakani B9 (Pureora)	8 August 1893
Pouakani C1 (Kaiwba)	14 September 1893

Figure 3 sbows the diagram on the deeds of sale of the Pouakani A blocks. The boundaries between Pouakani A1, A2 and A3 shown on the diagram on the deed of sale are quite different from the boundaries shown on Stubbing's plan ML6406 etc whicb are straight lines. Figure 3 shows that the boundaries on the diagram on the deeds of sale were mostly streams, and two lines.

The boundaries of Pouakani A1 and A2 are described in the Native Land Court minutes of 11 August 1891 at 27 Waikato Minute Book 177, 178 and 180. The minutes are difficult to follow because they refer to place names some of which do not appear on any of the maps available to the tribunal. What is clear is that hy 11 August 1891 it had already been decided that N'Rakau and N'Hinekahu were entitled to a block of land. The minutes at page 180 refer to "Pouakani A as originally laid off". On 11 August 1891 the court was told that N'Rakau and N'Hinekahu bad decided to divide their block into three pieces. The court then made orders creating Pouakani A1 and Pouakani A2 and described the boundaries. No areas were given. It is clear from the minutes that wbat N'Rakau and N'Hinekahu had decided was, not how many acres should go into each division, but wbere the boundaries between tbe divisions should run. And they used streams as their boundaries. The diagram on the deeds (figure 3) seems to show the houndaries set out in the minute book on 11 August

1891. It shows areas for eacb of Pouakani A1, A2 and A3 followed by the word "Approx". The diagram shows the exterior boundaries of Pouakani A1, A2, and A3 as surveyed by Stubbing in 1892.

Why were the boundaries shown on the diagram on the deeds of sale of the Pouakani A blocks not drawn on Stubbing's plan ML6406 etc? The answer seems clear. They were not drawn because the position of the streams had not been located by survey. And it never became necessary to fix the positions of the streams by survey. By 1899 the Crown bad purchased the sbares of most of the owners. The court partitioned out areas for the non sellers calculated on the basis of the areas sbown on the diagram on the deeds of sale. Pouakani A1B and Pouakani A3B, awarded to non sellers, are eacb clearly within the boundaries of the former Pouakani A1 and Pouakani A3. But Pouakani A2B is clearly within the boundary of the former Pouakani A1. It is unfortunate that the 1899 minutes are no longer available. Once the court had created Pouakani A1B, A2B and A3B and vested these in the non sellers and vested Pouakani A1A, A2A and A3A in the Crown, it did not matter where the boundaries between these three Crown lands went, so someone simply drew two straight lines on Stubbing's survey plan ML6406 etc to enclose the areas shown on the diagrams on the deeds of sale.

Figures 4, and 5 show the boundaries of the diagrams on the deeds of sale of Pouakani B9 (Pureora) deed no 3247, and Pouakani C1 (Kaiwba), deed no 3248. Figure 2 sbows the diagrams prepared from Stubbing's survey plan ML6406 etc that form part of the orders of the Native Land Court that created the titles to Pouakani B9 (Pureora) and Pouakani C1 (Kaiwha). On both diagrams the boundary between them is in two parts. The northern part is shown as 10,000 links on the 1893 deeds of sale, but is shown as 12500 links on Stubbing's survey plan ML6406 etc and on the title diagrams. The southern part of the boundary between Pouakani B9 (Pureora) and Pouakani C1 (Kaiwha) sbown on tbe diagram on the 1893 deeds of sale is shown as 25,000 links, but as 21,650 links on the diagrams prepared from Stubbing's survey plan ML6406 etc and which form part of orders of the Native Land Court creating the titles to these lands.

The boundary between Pouakani C1 (Kaiwha) and Pouakani B9 (Pureora) runs north from a point on the boundary between Horaaruhe Pouakani and Tthoi blocks. This boundary with the Tihoi block was surveyed by W Cussen in 1886. Page 16 of field book 722 records the survey of a line from peg 8 east to peg 8A. This line is 17840.6 links long and is at a bearing of 61°02'36". The boundary between Pouakani C1 (Kaiwha) and Pouakani B9 (Pureora) starts at a point on this line. The diagram on the deeds of sale and the diagrams in the title orders give different starting points for this boundary. The diagrams on the deeds of sale give it as 9440 links to the east of peg 8, leaving the remaining 8400 links to form part of the southern boundary of Pouakani C1 (Kaiwha). But the boundaries on the diagrams in the 1891 title orders of the Native Land Court start the boundary between Pouakani C1 (Kaiwba) and Pouakani B9 (Pureora) at a point 7840 links east of Cussen's peg 8, leaving the remaining 10,000 links to form part of the southern boundary of Pouakani C1 (Kaiwha).

Stubbing's plan ML6406 etc was approved on behalf of the chief surveyor and by Chief Judge Davy in March 1893. The first sellers signed the first deed of

sale of interests in Pouakani B9 (Pureora) on a 8 August 1893 and the first deed of sale of interests in Pouakani C1 (Kaiwba) on 14 September 1893. It might be argued that the boundary between Pouakani B9 (Pureora) and Pouakani C1 (Kaiwba) could have been drawn on Stubbing's plan ML6406 etc before it was approved in Marcb 1893, and that the deeds sbow different diagrams because they were prepared prior to the boundary being drawn on Stubbing's plan ML6406. The dates of the first signatures, 8 August 1893 and 14 September 1893 are not evidence as to the dates of preparation of tbe deeds.

In the case of the two deeds of sale of interests in the Pouakani A blocks (both comprising deed no 3245), the two deeds were clearly prepared at the same time. The first signature on one is dated 13 September 1893 and the first signature on the other is dated 16 September 1893. The diagrams on both are identical and the description of boundaries on both is written by the same person. On the deed first signed on 13 September 1893, George T Wilkinson, J P, and W H Grace, licensed interpreter, witnessed the first 19 signatures between 13 September 1893 and 19 October 1893. George Kelly, licensed interpreter, witnessed the first four signatures on the otber deed, two on 16 September 1893 and two on 5 October 1893. The next 16 signatures on that deed are witnessed by Gilbert Mair, licensed interpreter, between 13 October 1893 and 12 February 1894 (in the last date he bas actually written 1893 but this is clearly a slip of the pen). There are 86 signatures on one deed and 73 on the other. It is clear therefore that the two deeds were prepared at the same time and given to different people to obtain signatures.

The first signatures on the second deeds for the sale of interests in Pouakani B9 (Pureora) and Pouakani C1 (Kaiwba) are 19 July 1894 and 19 May 1894 respectively and the 1894 deeds seem to have been prepared some time after the first deeds were prepared. There are differences between the diagrams and hand writing on the four deeds. The diagrams on the 1894 deeds of sales were clearly prepared by the same person. There are stylistic differences between the diagrams on the first (1893) deeds and the diagrams on the second (1894) deeds. They clearly seem to have been drawn by a different draughtsman. The measurements on the boundaries in the diagrams are the same in the first and second deeds for eacb block.

The written descriptions of the boundaries in the two 1893 Deeds seem to bave been written by the same person, but there are sufficient differences to suggest that this might have been done at different times. The description of boundaries in the two 1894 deeds are clearly written by two different people, neither of whom is the same person as the person who wrote the descriptions in the 1893 deeds. The wording of the descriptions of Pouakani B9 (Pureora) in 1893 and 1894 deeds is identical. The wording of the descriptions of the boundaries of Pouakani C1 (Kaiwha) in the 1893 and 1894 deeds is also identical. But there are differences in the wording of the description of boundaries of tbe two different blocks. The description of the boundaries of Pouakani B9 (Pureora) in both the 1893 and 1894 deeds ends with tbe words "Be all the above linkages more or less". The description of the boundaries of Pouakani C1 (Kaiwba) in botb the 1893 and 1894 deeds ends with the words "Be the aforesaid linkages either more or less". Obviously, in the case of each block, the people who wrote the descriptions in the second deed had the first deed, or a copy, in front of them when they did so.

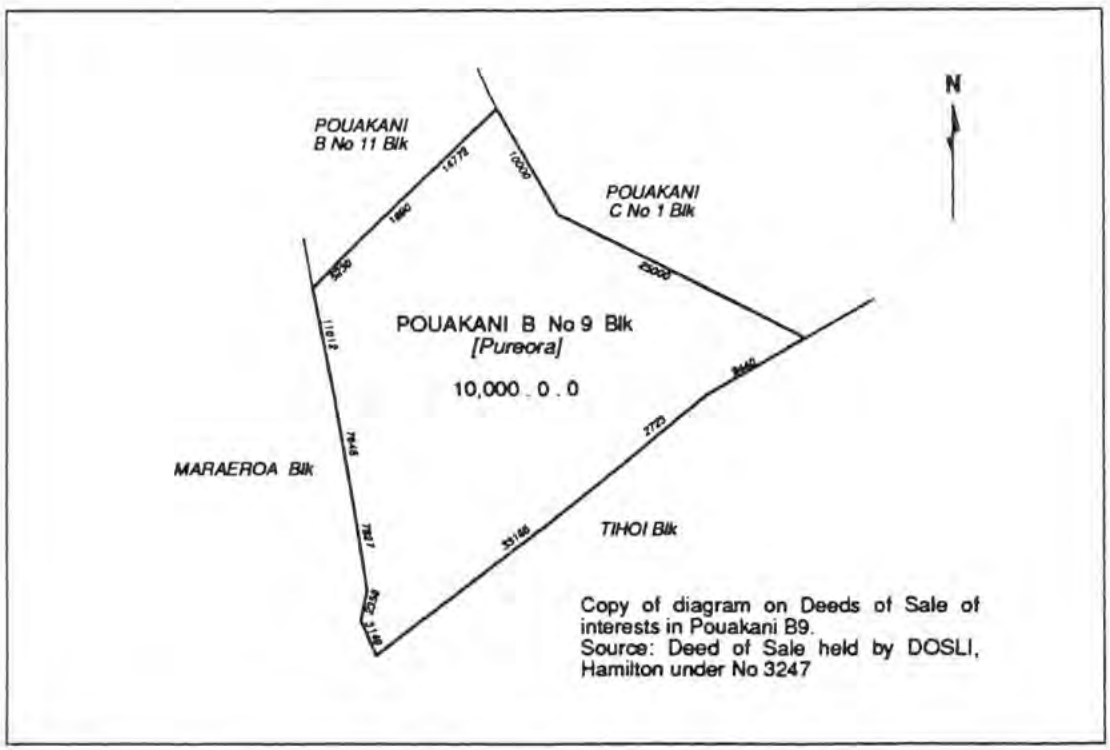


Figure 4. Diagram on Deeds of Sale of interests in Pouakani B9 (Pureora)

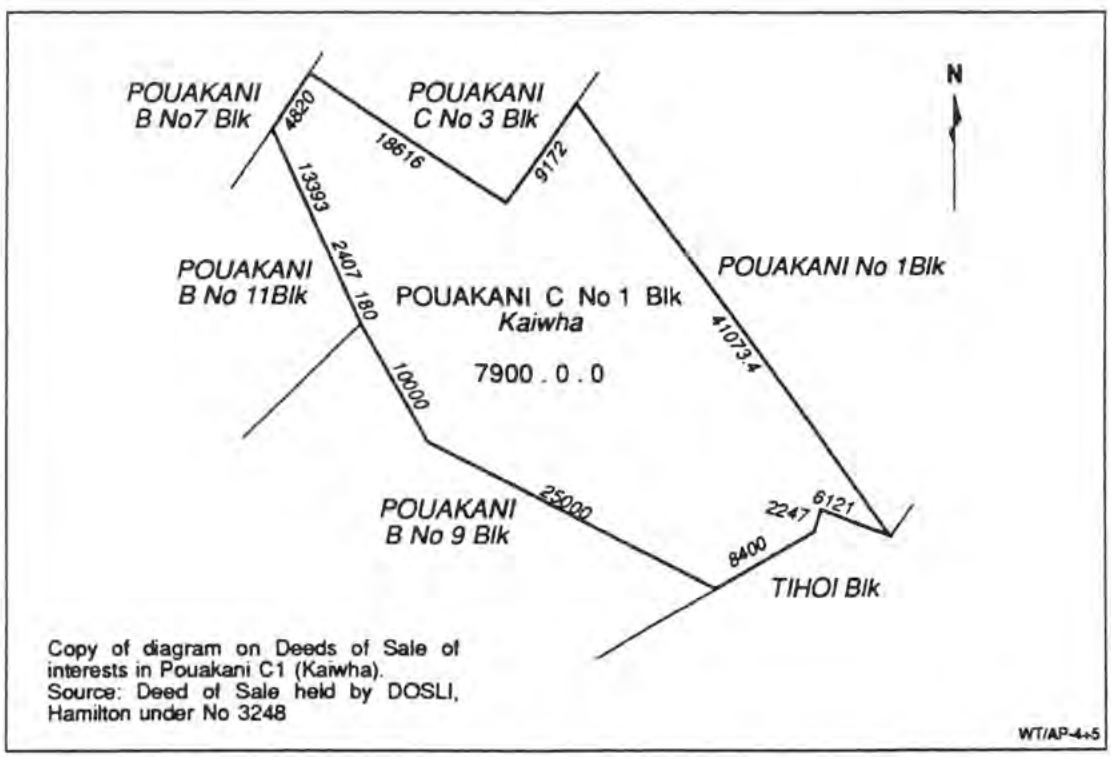


Figure 5. Diagram on Deeds of Sale of interests in Pouakani C1 (Kaiwha)

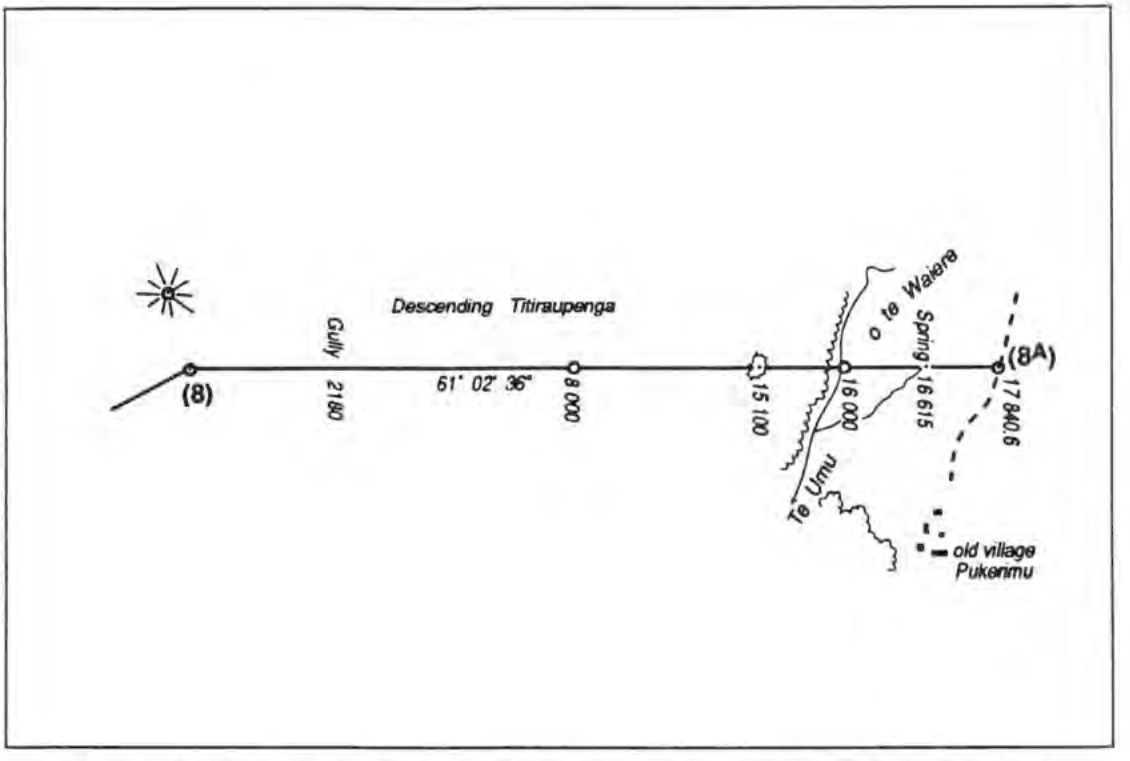


Figure 6. The survey line between Pegs 8 and 8A on Titiraupenga in Field Book No. 722.

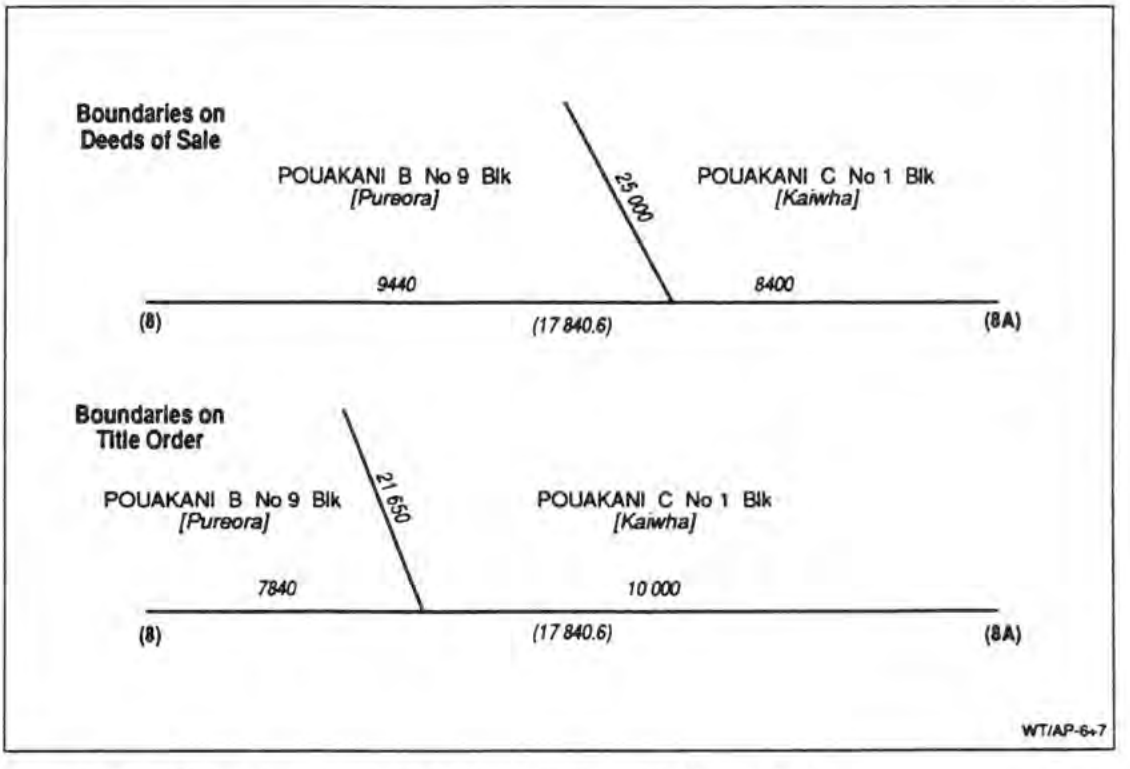


Figure 7. The different locations of Pouakani B9B and C1 boundaries.

The most likely explanation for the second copies of the two deeds is that in 1894 it was decided to prepare another copy of each deed so tbat one could be held in a central place for any owner who came in and wanted to sign and another could be taken around to get signatures. What is clear is that the 1893 and 1894 deeds were not prepared at the same time, that the 1894 deeds were prepared after the 1893 deeds, and that the diagrams on the 1894 deeds were almost certainly prepared in the office of the chief surveyor at Auckland. If the boundary between Pouakani B9 (Pureora) and Pouakani C1 (Kaiwha) that now appears on Stubbing's plan ML6406 etc bad been on the plan in Marcb 1893 when it was approved on bebalf of tbe chief surveyor and by the chief judge, it is most unlikely that a different diagram would bave been drawn on the 1894 deeds of sale of interests on Pouakani B9 (Pureora) and Pouakani C1 (Kaiwha).

The evidence of the dates of approvals and preparation of court order diagrams on Stubbing's plan ML6406 etc.

After Stubhing's plan ML6406 etc was approved on behalf of the chief surveyor and by Chief Judge Davy in March 1893 many notes were written on it. Three categories of notes record the history of the alterations made to the plan after Marcb 1893. These three categories are:

(a) approvals on behalf of the chief surveyor;

(h) approvals hy a judge of the Native Land Court; and

(c) memoranda hy draughtsmen that title diagrams bad been prepared for the Native Land Court orders.

These notes are scattered all around Stuhbing's plan ML6406 etc. Most are signed by W C Kensington. Wben he signed on bebalf of the cbief surveyor he signed his full name. When be signed in his capacity as chief draughtsman he often used only his initials. It seems clear however that "W C K" and "W C Kensington" are the same person.

19 April 1893 — Diagrams prepared to complete Crown's title to Pouakani B7, B8, B11 & C3:

Court order diagrams were very quickly drawn for Pouakani B7, B8, B11 and C3 in order to complete the Crown's title to these lands. The last signature on the deed of sale of these blocks and Pouakani B10 and D4 to the Crown is dated 12 March 1892. In 1893 Stubbing's plan ML6406 etc was approved on behalf of the chief surveyor on 21 March and by Chief Judge Davy on 25 Marcb. By 19 April 1893 diagrams had been drawn on the orders of the Native Land Court creating title to Pouakani B7, B8, B11 and C3. On that date W C Kensington, the Chief Draughtsman, signed a certificate that read "Placed on Orders of the Court as for B7, B8, B11 and C3". Figures 8, 9, 10 and 11 are copies of the diagrams that form part of the title orders creating Pouakani B7, B8, B11 and C3. Endorsed on the diagrams was a box enclosed in douhle lines with provision for the scale of the diagram, and the names of the chief surveyor, surveyor and draughtsman to be entered. The box seems to have been put on hy a rubber stamp and the right hand end of the hottom lines is slightly distorted. In the case of Pouakani B7, B8, B11 and C3 the scale is 160 chains

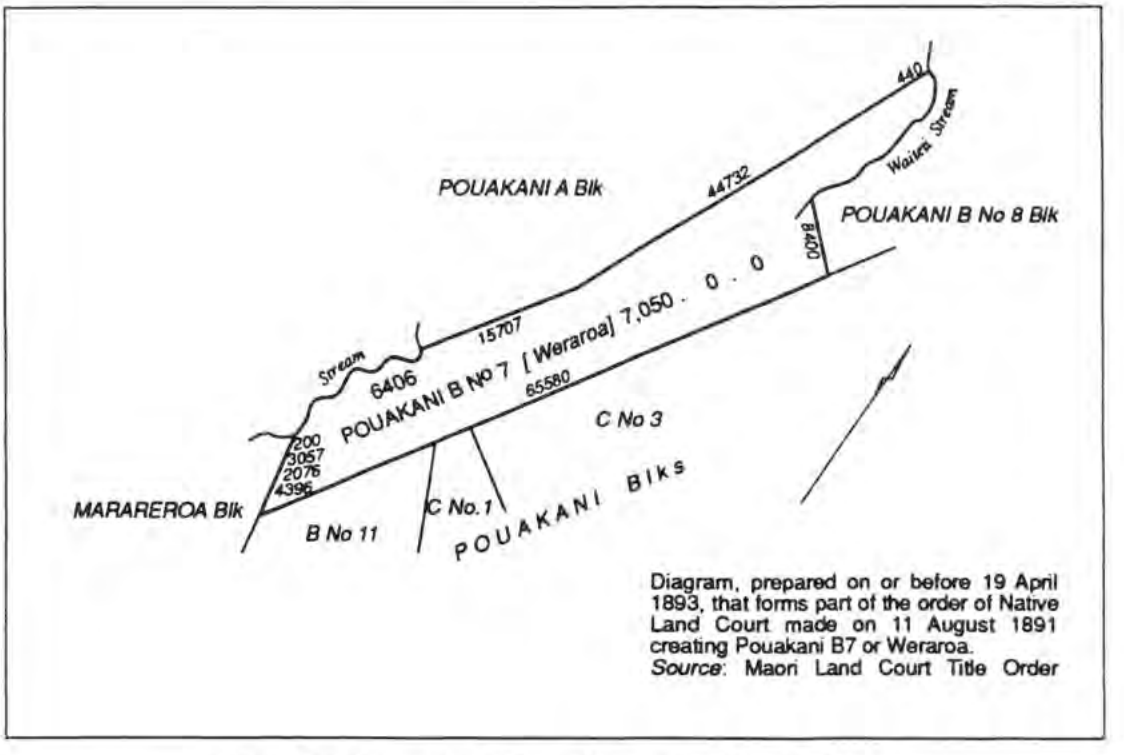


Figure 8. Diagram on Title Order creating Pouakani B7.

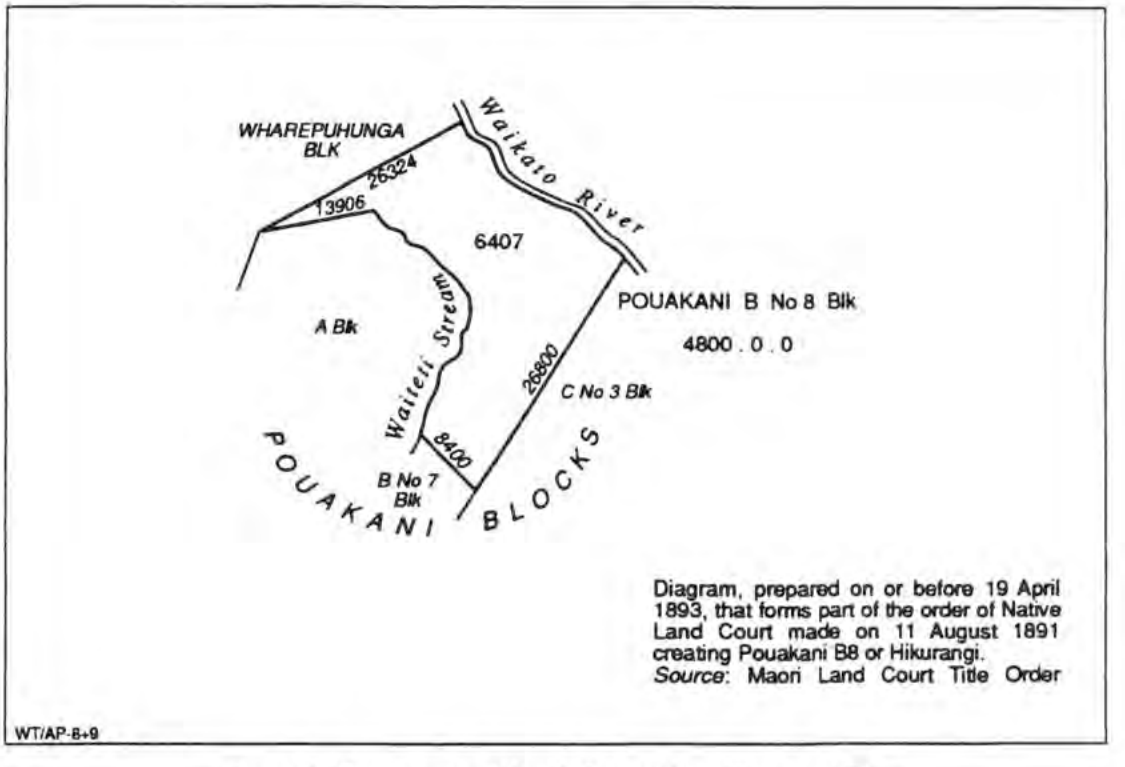


Figure 9. Diagram on Title Order creating Pouakani B7.

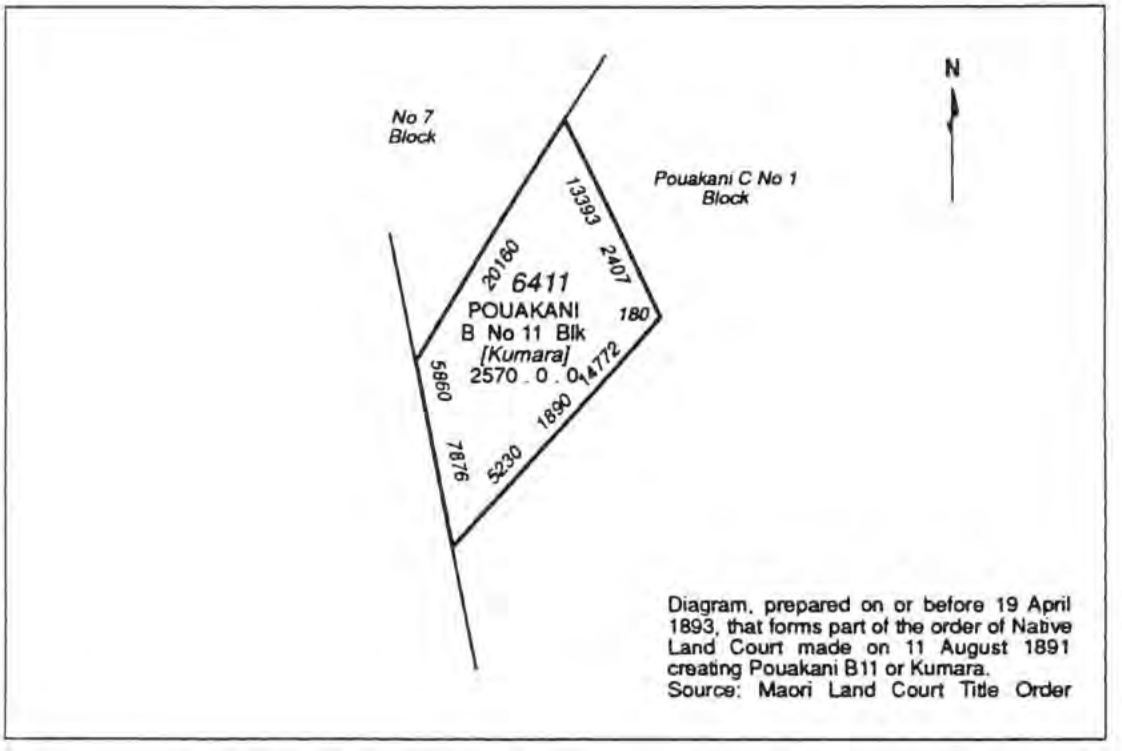


Figure 10. Diagram on title Order creating Pouakani B11

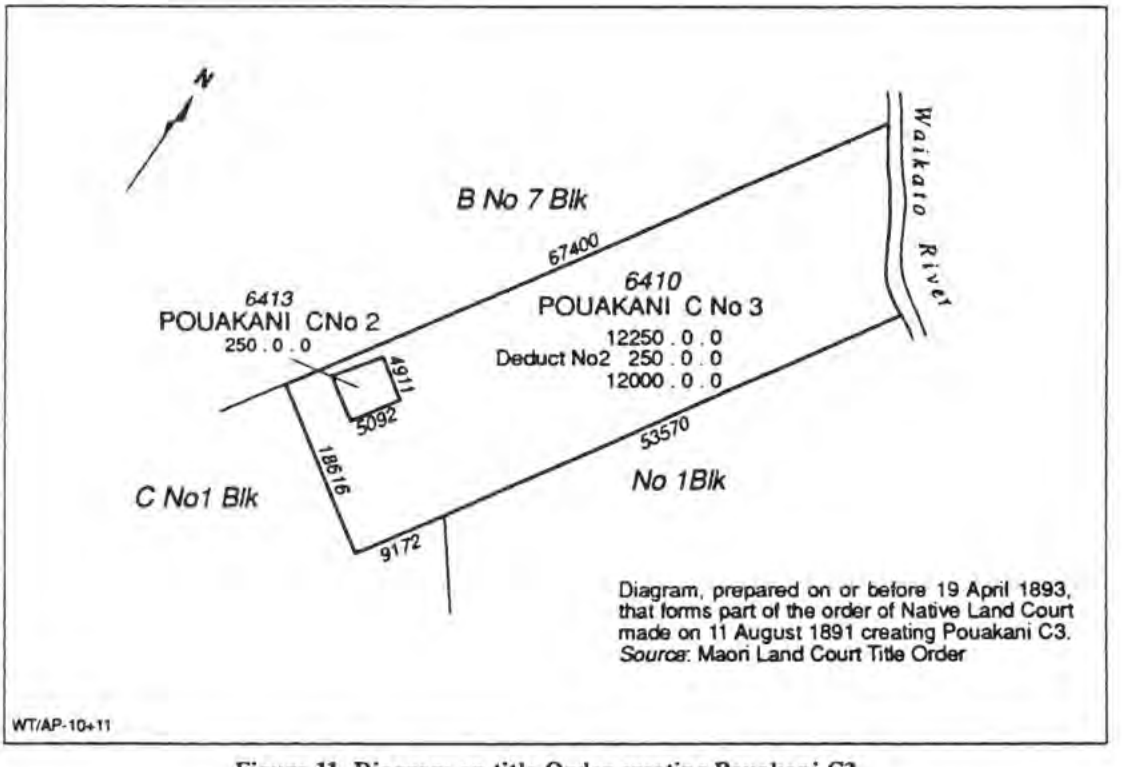


Figure 11. Diagram on title Order creating Pouakani C3

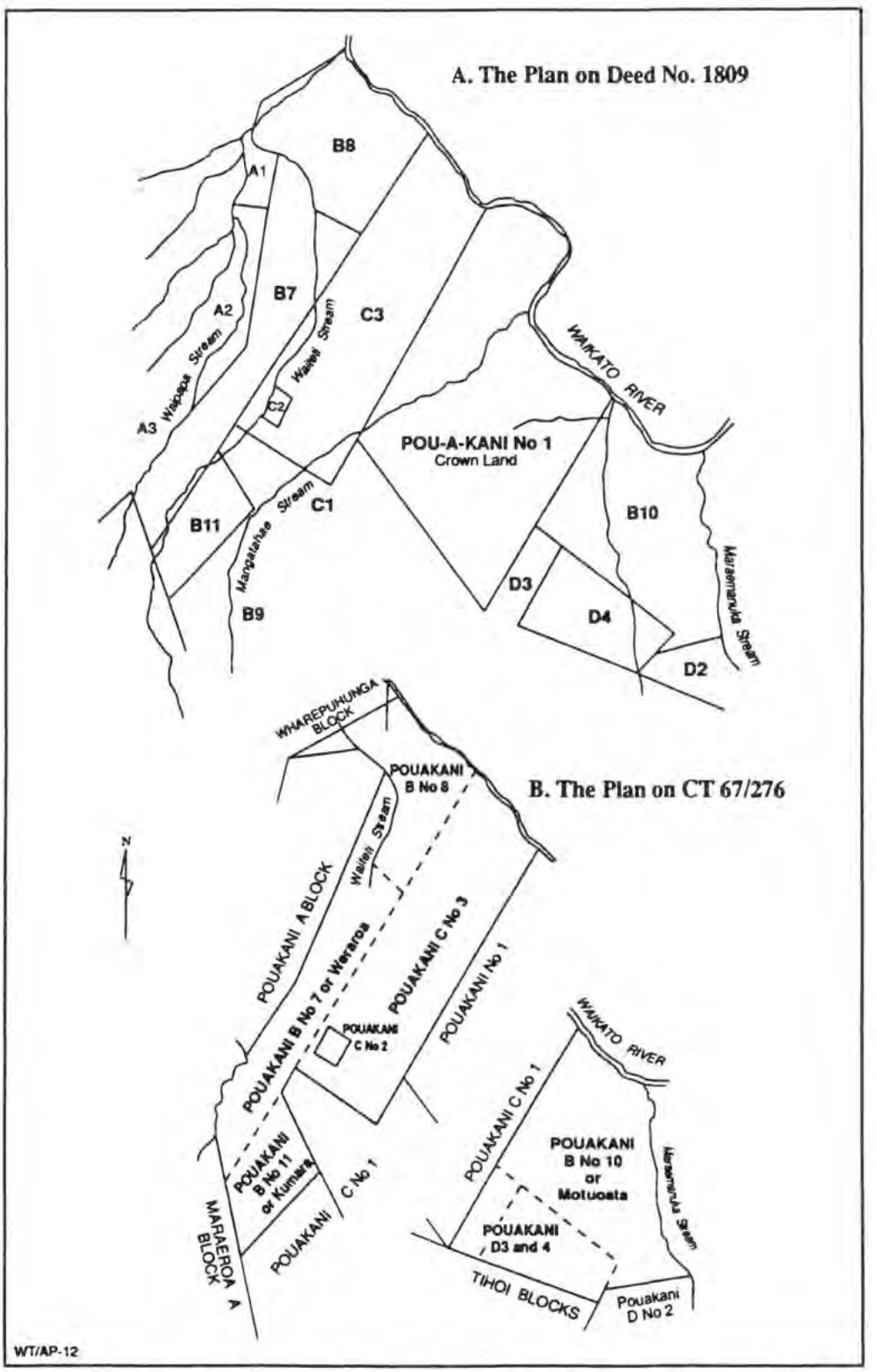


Figure 12. Crown Purchase of Pouakani B7, B8, B10, B11, C3 and D4 Blocks, 1892. Pouakani D3 was purchased by the Crown and included in CT 67/276

to an incb, the cbief surveyor is G Mueller, the surveyor is D Stubbing and the draughtsman is E Morrow.

Stubbing's plan ML6406 etc also surveyed Pouakani C2. In fact, of all the blocks sbown on Stubbing's plan ML6406 etc, Pouakani C2 is the only block with boundaries shown on the plan as having been completely defined by survey when Stubbing sent it to the chief surveyor on 2 November 1892. But the deed of sale of Pouakani C2 to the Crown was not signed until 6 December 1897 and 12 Marcb 1898. A diagram for the title order (on investigation of title made on 11 August 1891) for Pouakani C2, was not prepared until 29 May 1900, seven years after the diagrams were prepared for the title orders for Pouakani B7, B8, B11 and C3 sold to the Crown in 1892 (figure 12).

21 July 1899 — Stubbing's plan ML6406 etc produced in the Native Land Court at Kihikihi:

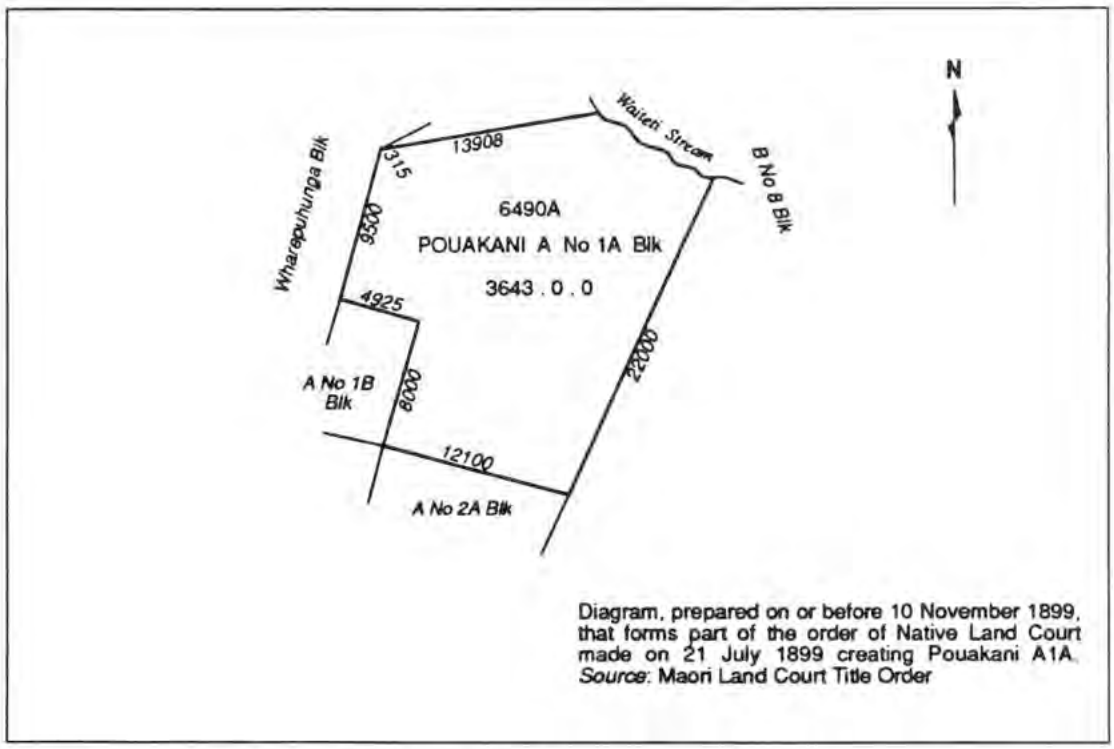
Nothing was added to Stubbing's plan between 19 April 1893 and 21 July 1899. An exhibit note signed by Judge Edger shows that on 21 July 1899 Stubbing's plan ML6406 etc was produced at the Native Land Court at Kihikihi on the definition of the interests of the Crown in Pouakani B9 (Pureora), Pouakani C1 (Kaiwba) and tbe Pouakani A1, A2 and A3 blocks. The deed of sale of Pouakani C2 to the Crown was signed on 6 December 1897 and 12 Marcb 1898. On 27 June 1898 the court made an order vesting Pouakani C2 in the Crown. On 21 July 1899 the court made orders creating Pouakani A1A, A2A and A3A and vesting these blocks in the Crown. On 24 July 1899 the court made an order creating Pouakani B9A and vesting this block in the Crown. On 26 July 1899 the court made an order creating Pouakani CIA and vesting this block in the Crown.

10 November 1899 — diagrams drawn to complete Crown title to Pouakani A1A, A2A, A3A, B9A, C1A and C2:

On 10 November 1899 the cbief draughtsman, W C Kensington initialled a note on Stubbing's plan ML6406 etc that read "entd on Court Order Forms as for A No la, A No 2a, A No 3a, B No 9a and C No la & C No 2". Figures 13, 14, 15, 16, 17 and 18 are copies of the diagrams prepared on or just before 10 November 1899. In the case of Pouakani C2 the diagram was not attacbed to tbe order on investigation of title made on 11 August 1891 that created the title to Pouakani C2, but to the order of 27 June 1898 vesting Pouakani C2 in the Crown. The box on these diagrams shows that the scale is 80 chains to an incb, except for Pouakani C2 wbere it is 20 chains to an incb, the chief surveyor is G Mueller, the surveyor is D Stubbing and the draughtsman is P S Sberratt. The same rubber stamp bas been used as appears on the diagrams prepared on or before 19 April 1893.

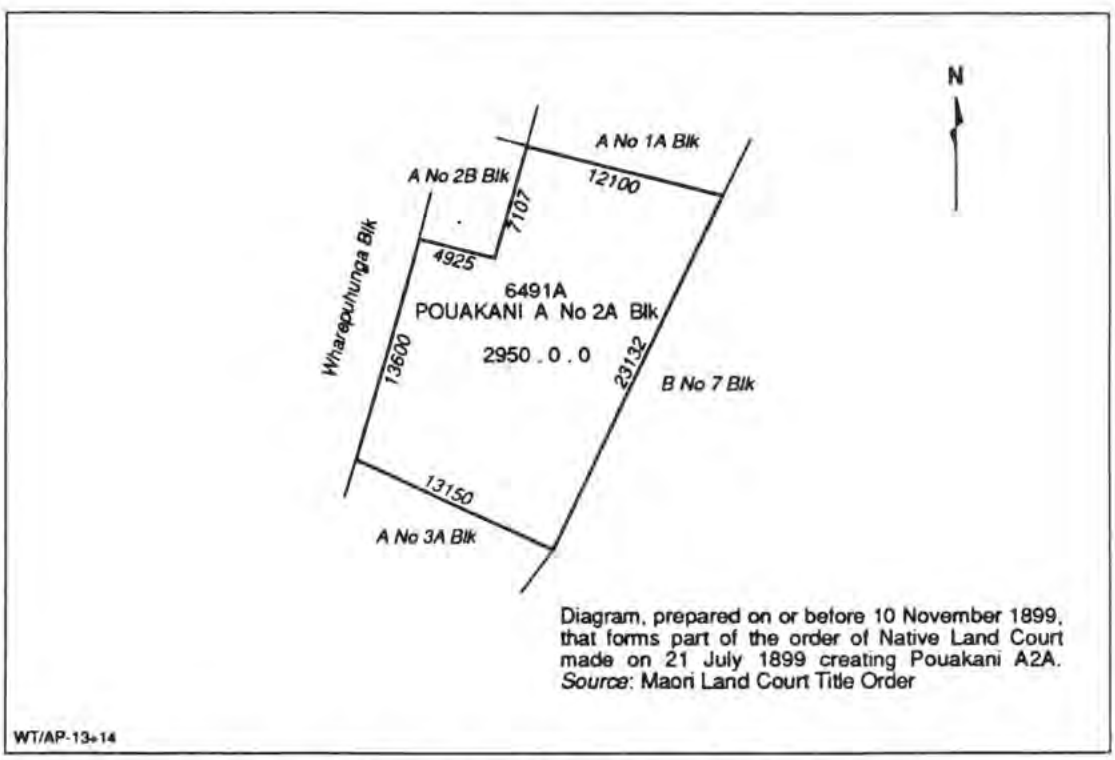
1 December 1899 — judge approves plan in respect of "A" blocks vested in Crown:

On 10 November 1899, the same date as the date on whicb, as chief draughtsman, W C Kensington initialled the note that diagrams had been prepared for Pouakani A1A, A2A, A3A, B9A, C1A and C2, W C Kensington, on bebalf of the chief surveyor, approved Stubbing's plan ML6406 etc as to the Pouakani A1A, A2A, A3A, Pouakani B9A and Pouakani C1A blocks now



Diagram, prepared on or before 10 November 1899, that forms part of the order of Native Land Court made on 21 July 1899 creating Pouakani A1A. *Source*: Maori Land Court Title Order

Figure 13. Diagram on title Order creating Pouakani A1A



Diagram, prepared on or before 10 November 1899, that forms part of the order of Native Land Court made on 21 July 1899 creating Pouakani A2A. *Source*: Maori Land Court Title Order

Figure 14. Diagram on title Order creating Pouakani A2A

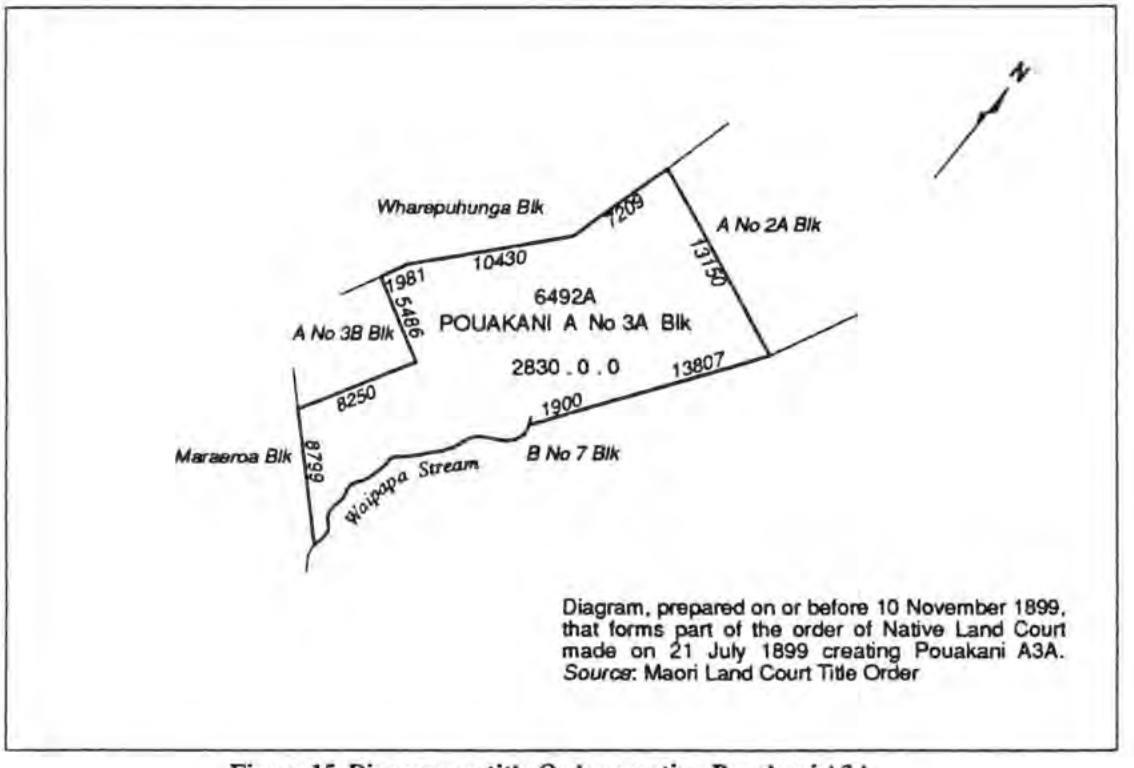


Figure 15. Diagram on title Order creating Pouakani A3A

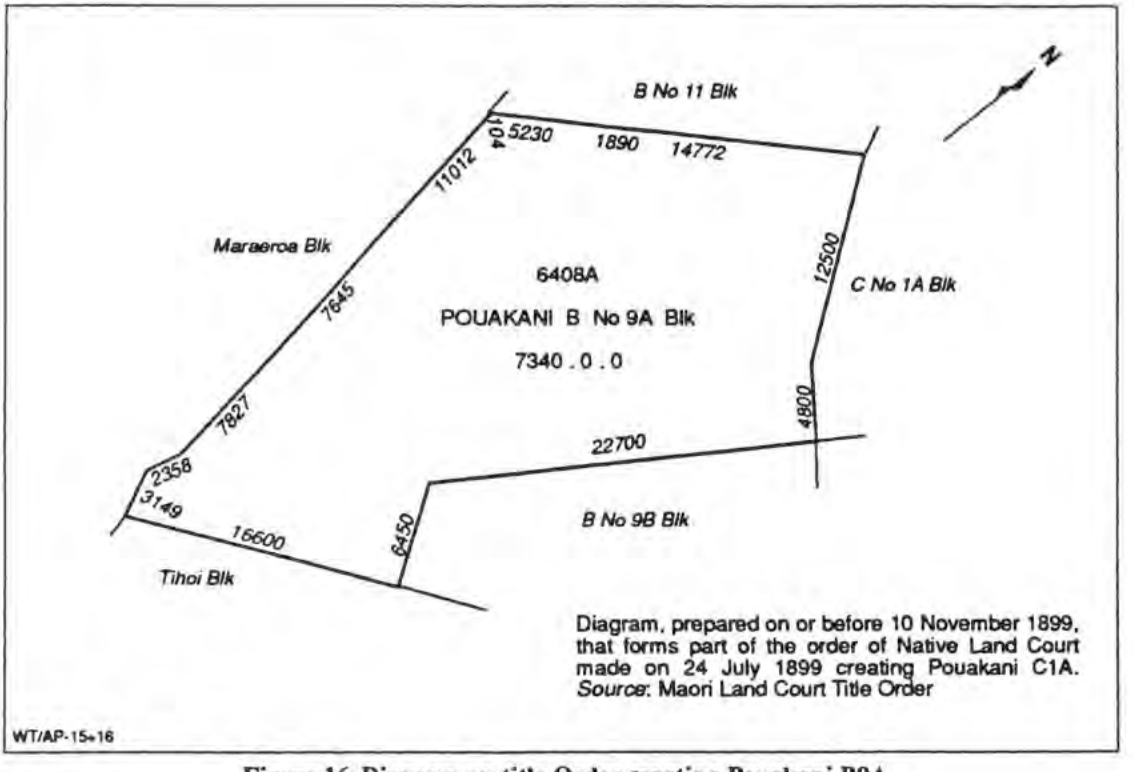


Figure 16. Diagram on title Order creating Pouakani B9A

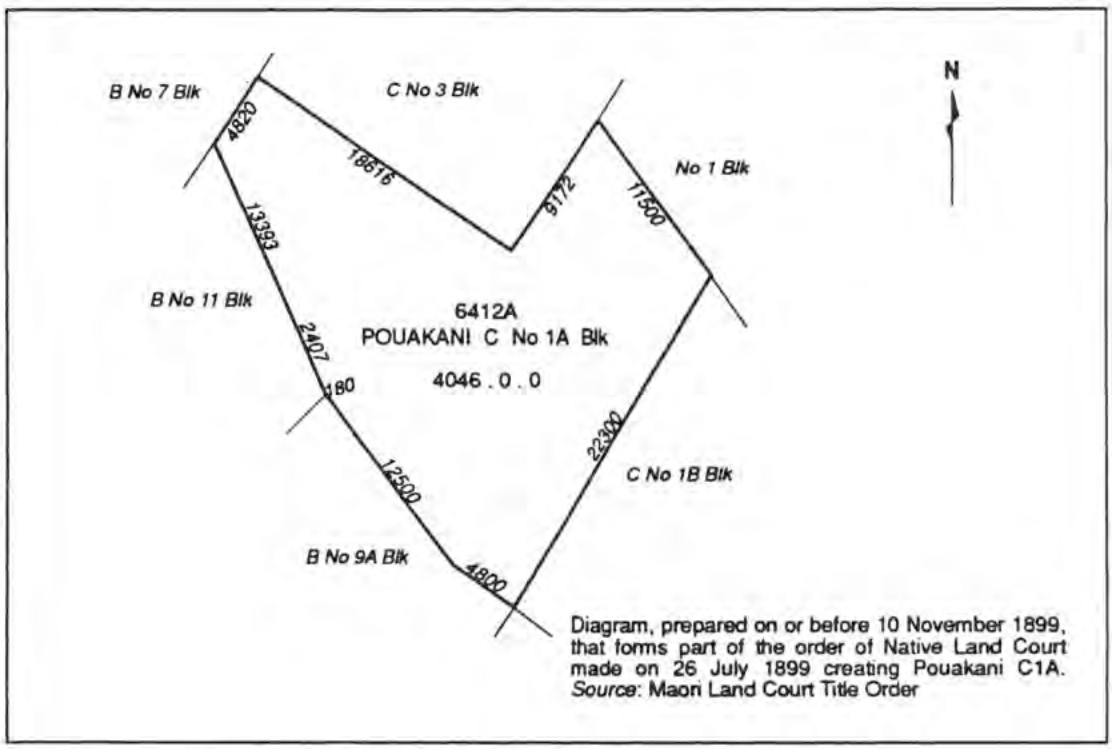


Figure 17. Diagram on title Order creating Pouakani C1A

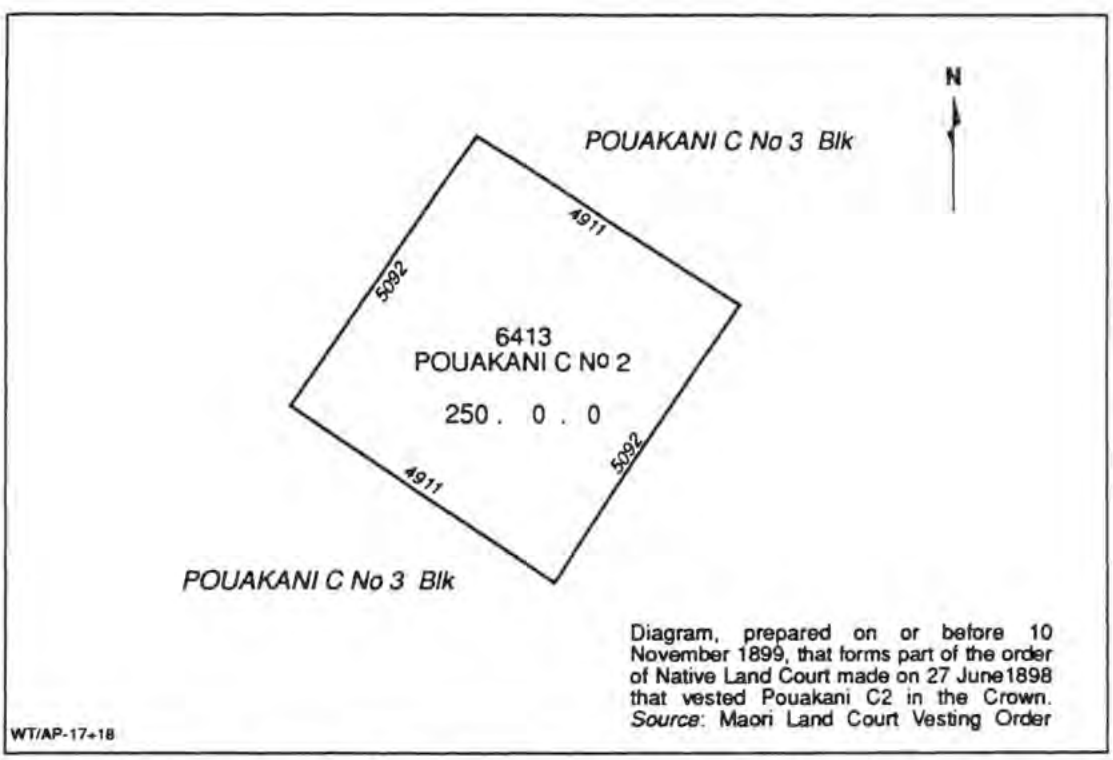


Figure 18. Diagram on Order vesting Pouakani C2 in Crown

shown on it. Judge Edger approved the plan in respect of the same blocks on 1 December 1899.

29 May 1900 — diagrams drawn for "B" blocks vested in non-sellers and for 1891 orders creating Pouakani A1, A2 and A3, Pouakani B9 (Pureora), Pouakani C1 (Kaiwha) and Pouakani C2:

There was a delay of some six months before the diagrams were drawn on or shortly before 29 May 1900 for the "B" blocks, Pouakani A1B, A2B, A3B, B9B and C1B blocks, that were vested in the non selling Manri owners. The note also records the drawing of diagrams for the parent titles Pouakani A1, Pouakani A2, Pouakani A3, Pouakani B9 (Pureora) and Pouakani C1 (Kaiwha) created by orders on investigation of title made on 11 August 1891. The note also records the preparation of a diagram for the order on investigation of title in respect of Pouakani C2 made on the same date. Figures 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29 are copies of these diagrams. These diagrams show that the chief surveyor now has a new rubber stamp showing a box enclosed by only a single line instead of a double line. The scales this time are 20, 80 and 160 chains to an inch, the chief surveyor is Gerhard Mueller, a line has been drawn through the place where the name of the surveyor who prepared the plan would have been written and the draughtsman is Edgar J Clarke. It is clear from the diagrams themselves, and from the notes on Stubbing's plan ML6406 etc, that the diagrams required to complete the orders on investigation of title made on 11 August 1891, creating Pouakani A1, Pouakani A2, Pouakani A3, Pouakani B9 (Pureora), Pouakani C1 (Kaiwha) and Pouakani C2, were not prepared until the diagrams for the title orders made in July 1899, creating Pouakani A1B, A2B, A3B, B9B and C1B were prepared, on or shortly before 29 May 1900, and over six months after diagrams were prepared on 10 November 1899 for the lands that the Crown had acquired.

On 26 June 1900, W C Kensington on behalf of the chief surveyor approved Stubbing's plan ML6406 etc as to Pouakani A1B, A2B, A3B, B9B and C1B. Judge Edger, on 29 June 1900, approved the plan as to these divisions. Since Pouakani B9A and Pouakani B9B comprise the whole of the parent Pouakani B9 (Pureora), and Pouakani C1A and Pouakani C1B comprise the whole of the parent Pouakani C1 (Kaiwha), Judge Edger's approvals on 1 December 1899 and 29 June 1900 also approved, by implication, the boundary between Pouakani B9 (Pureora) and Pouakani C1 (Kaiwha) that had been drawn on Stubbing's plan ML6406 etc.

When was the boundary between Pouakani B9 (Pureora) and Pouakani C1 (Kaiwha) drawn on Stubbing's plan ML 6406 etc?

It seems to us to be clear from the records that the boundary line between Pouakani B9 (Pureora) and Pouakani C1 (Kaiwha) that now appears on Stubbing's plan ML6406 etc had not been drawn on that plan in March 1893 when it was approved on behalf of the chief surveyor and by Chief Judge Davy. This conclusion is based on:

(a) the evidence on the plan itself that the divisions between the Pouakani A blocks were not on the plan then;

(b) the evidence on the plan itself that the dimensions of the internal boundaries of the Pouakani B7, B8, B11 and C3 area were added later;

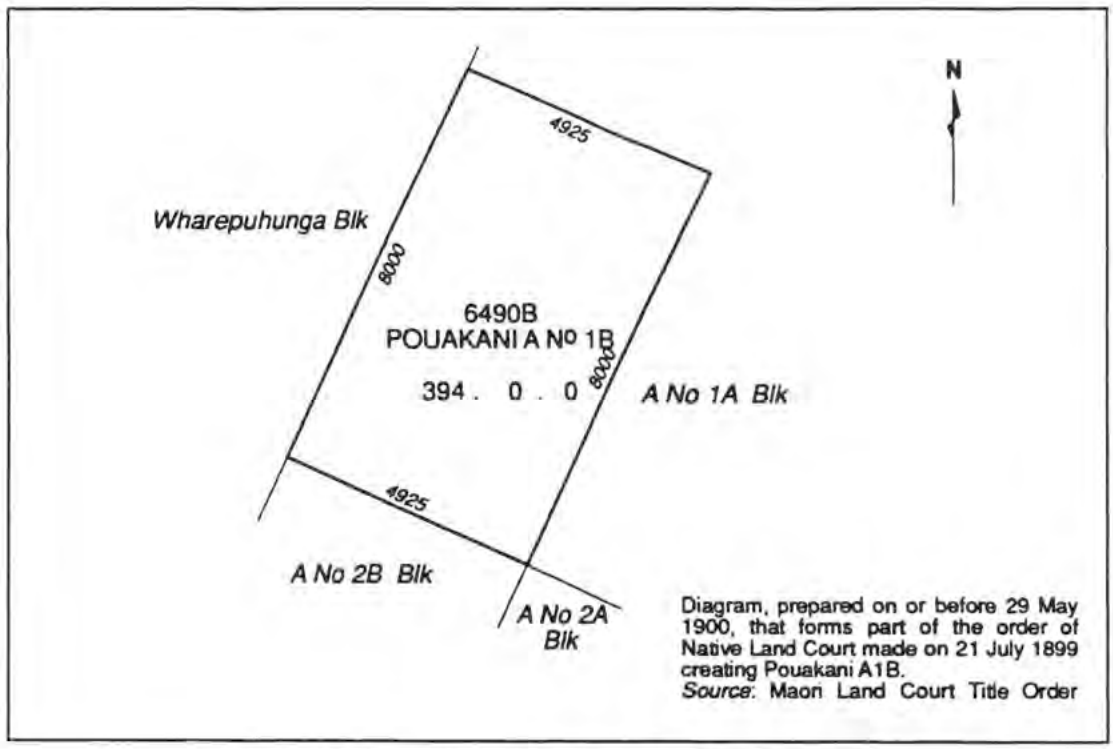


Figure 19. Diagram on title Order creating Pouakani A1B

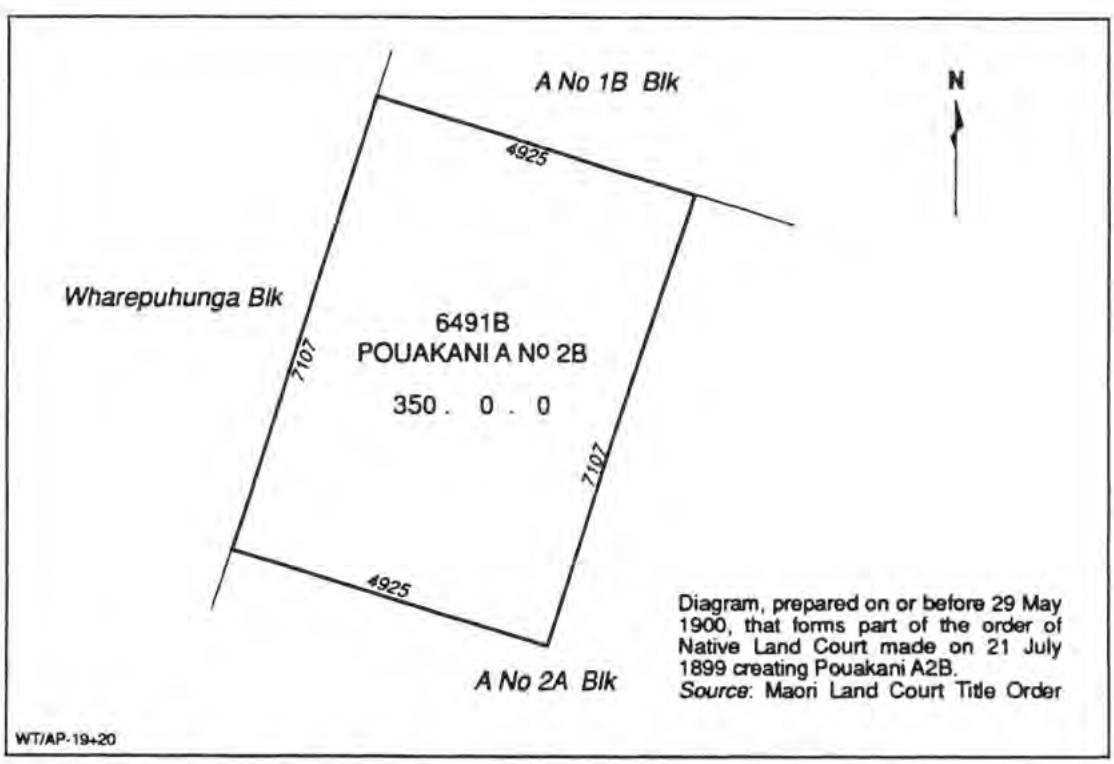


Figure 20. Diagram on title Order creating Pouakani A2B

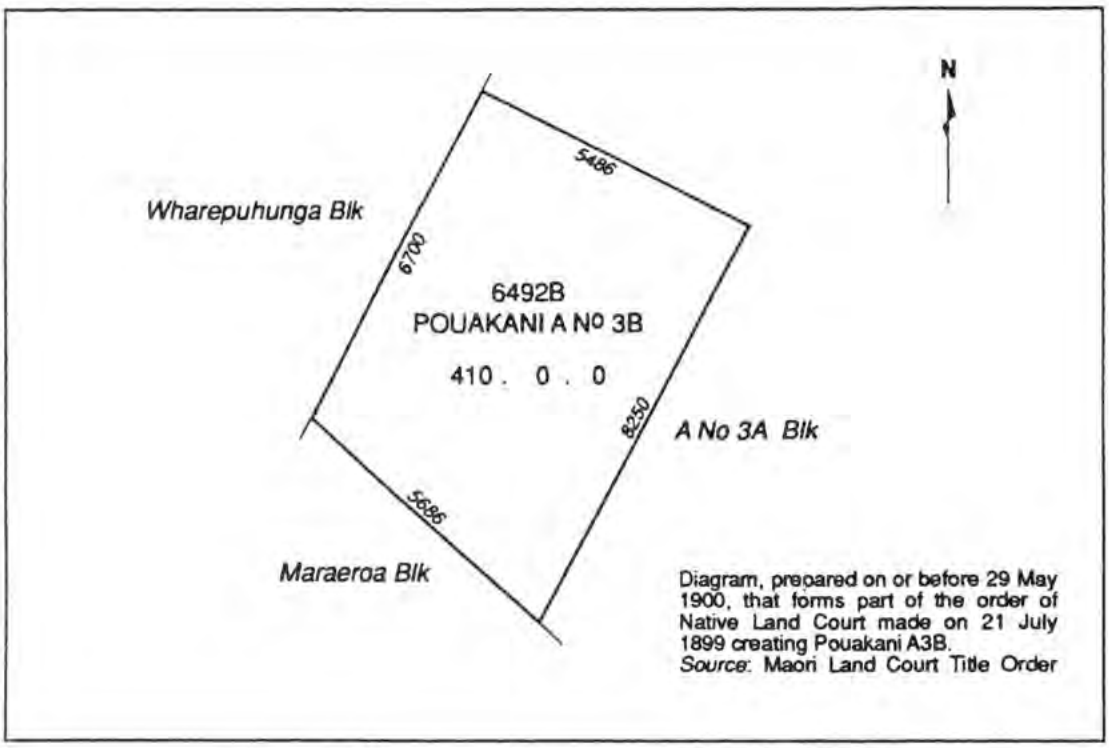


Figure 21. Diagram on title Order creating Pouakani A3B

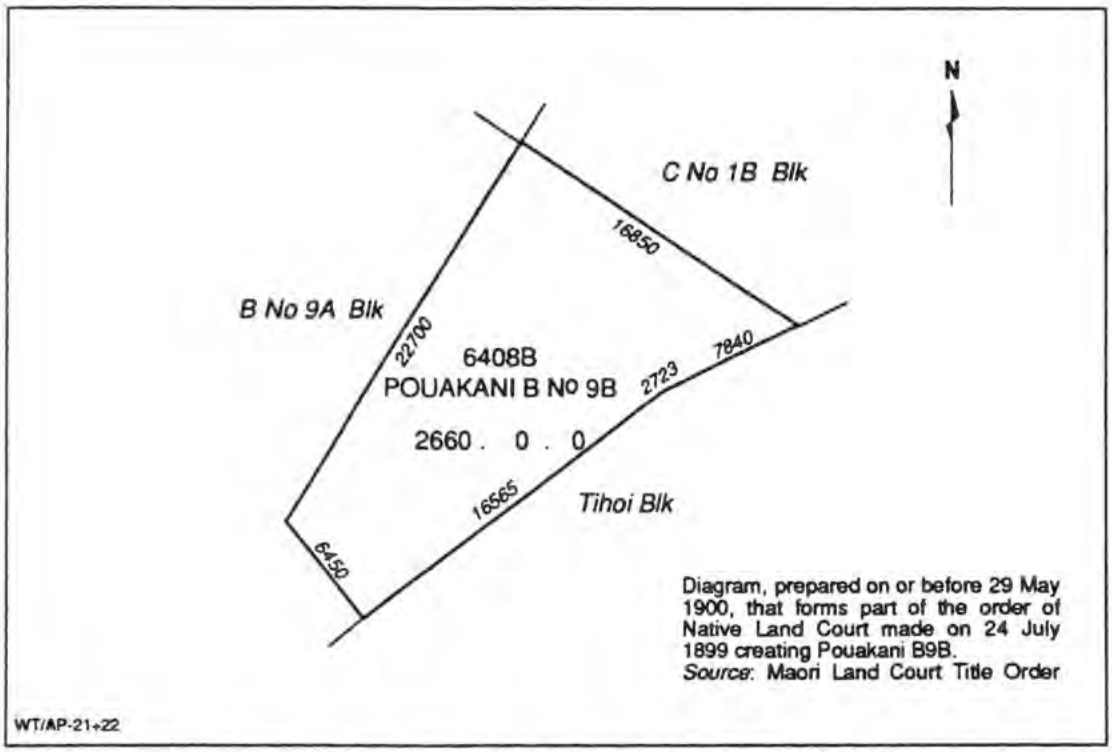


Figure 22. Diagram on title Order creating Pouakani B9B

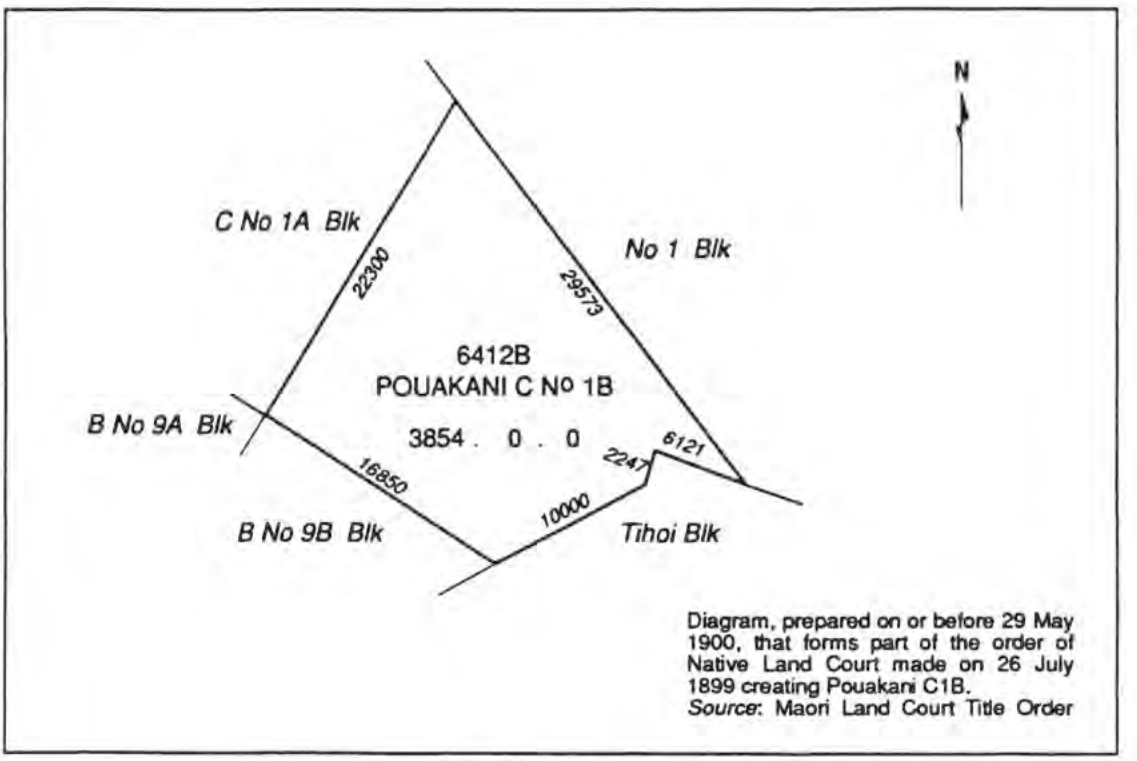


Figure 23. Diagram on title Order creating Pouakani C1B

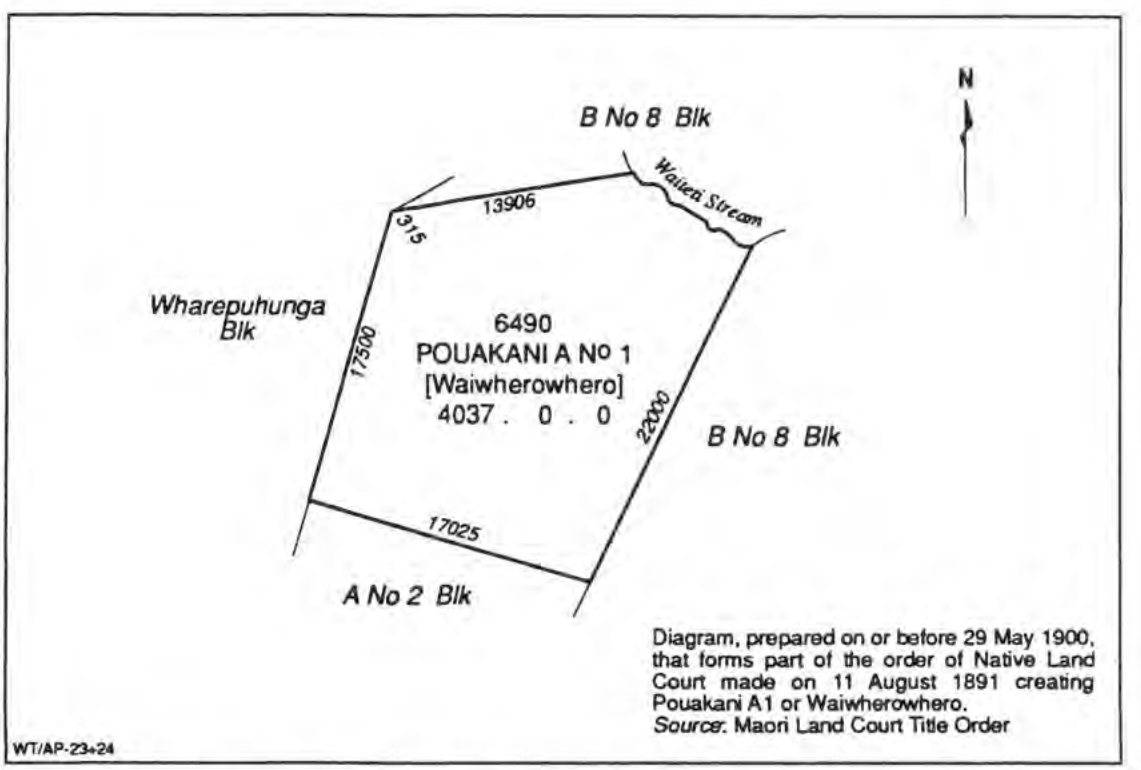


Figure 24. Diagram on title Order creating Pouakani A1

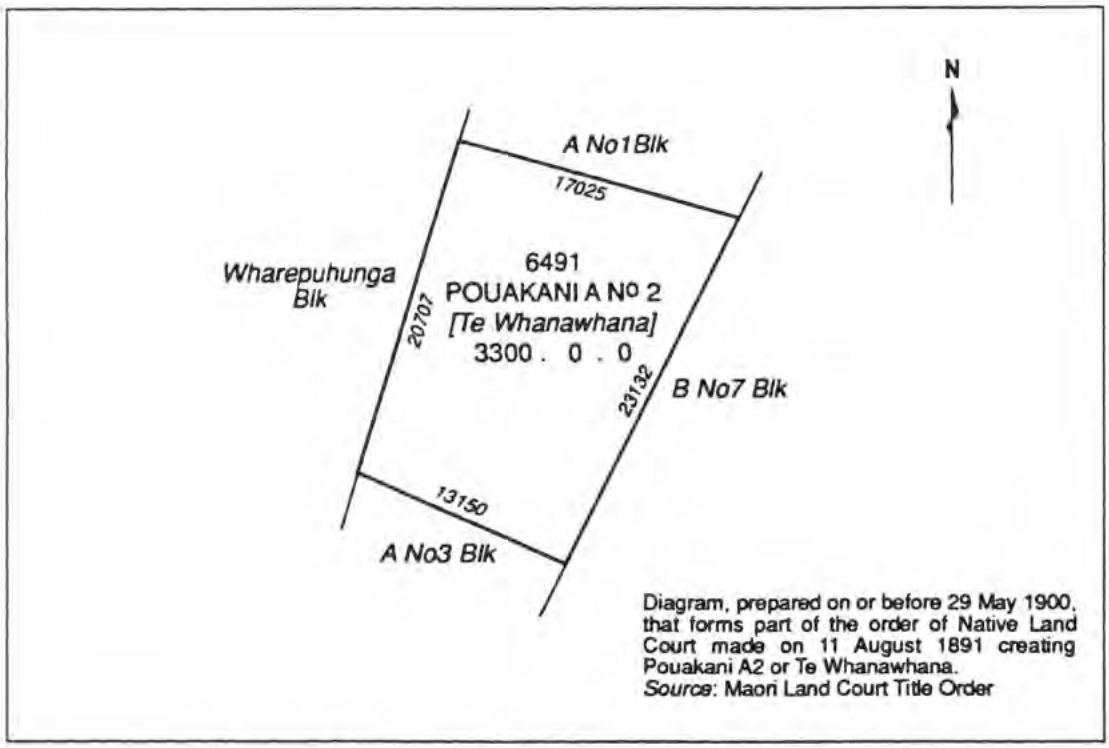


Figure 25. Diagram on title Order creating Pouakani A2

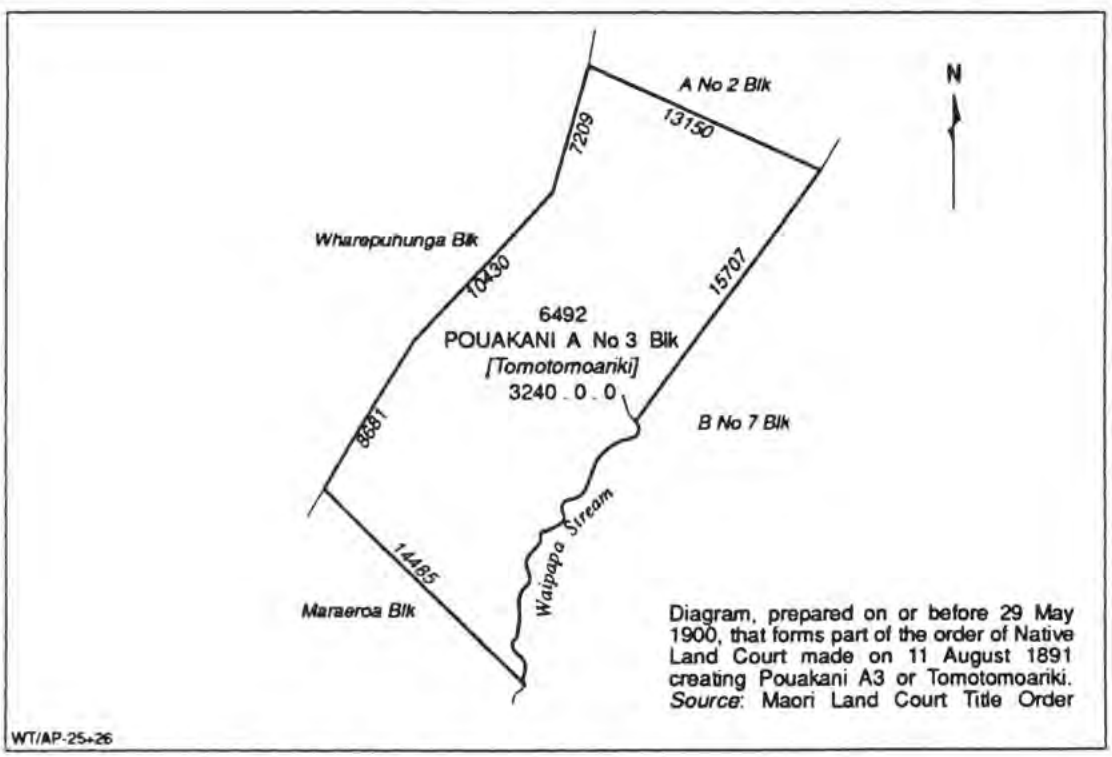


Figure 26. Diagram on title Order creating Pouakani A3

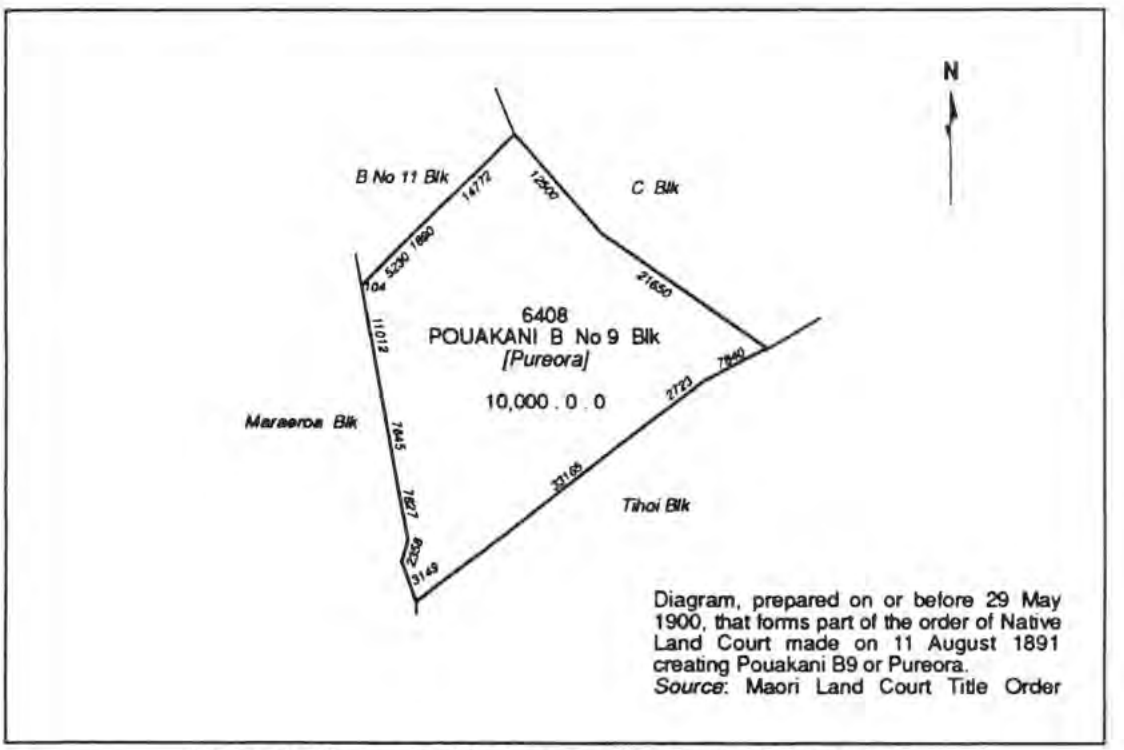


Figure 27. Diagram on title Order creating Pouakani B9 (Pureora)

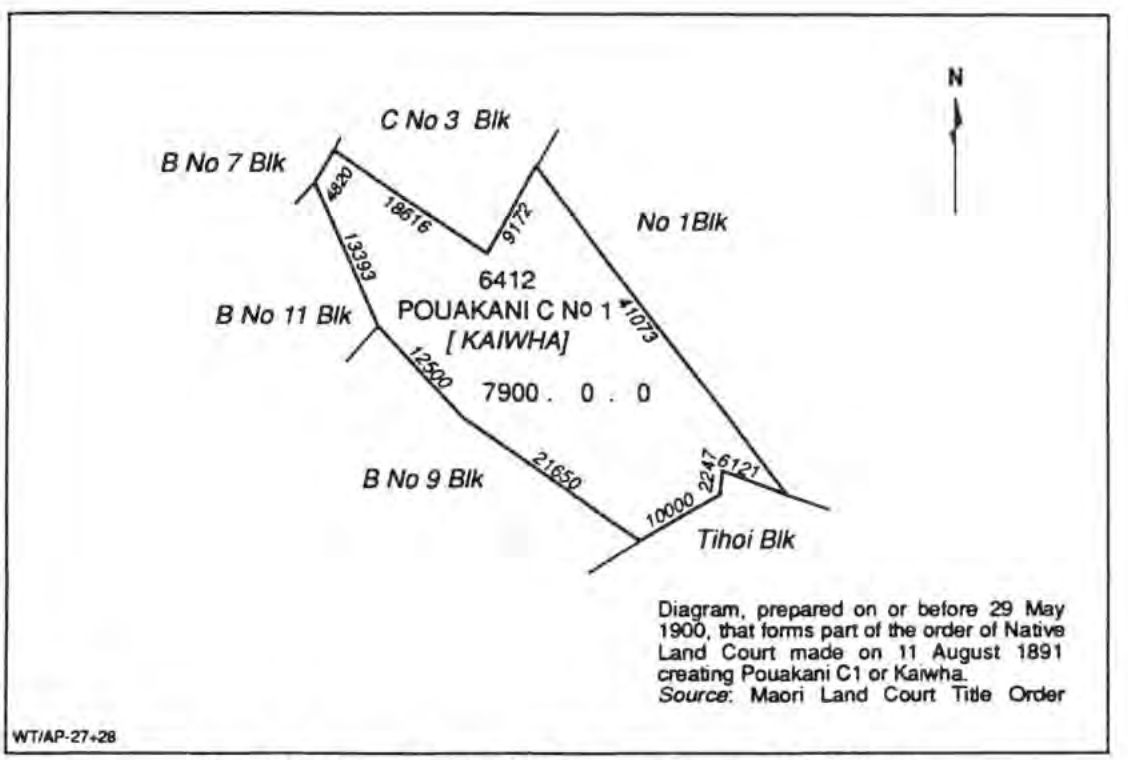


Figure 28. Diagram on title Order creating Pouakani C1 (Kaiwha)

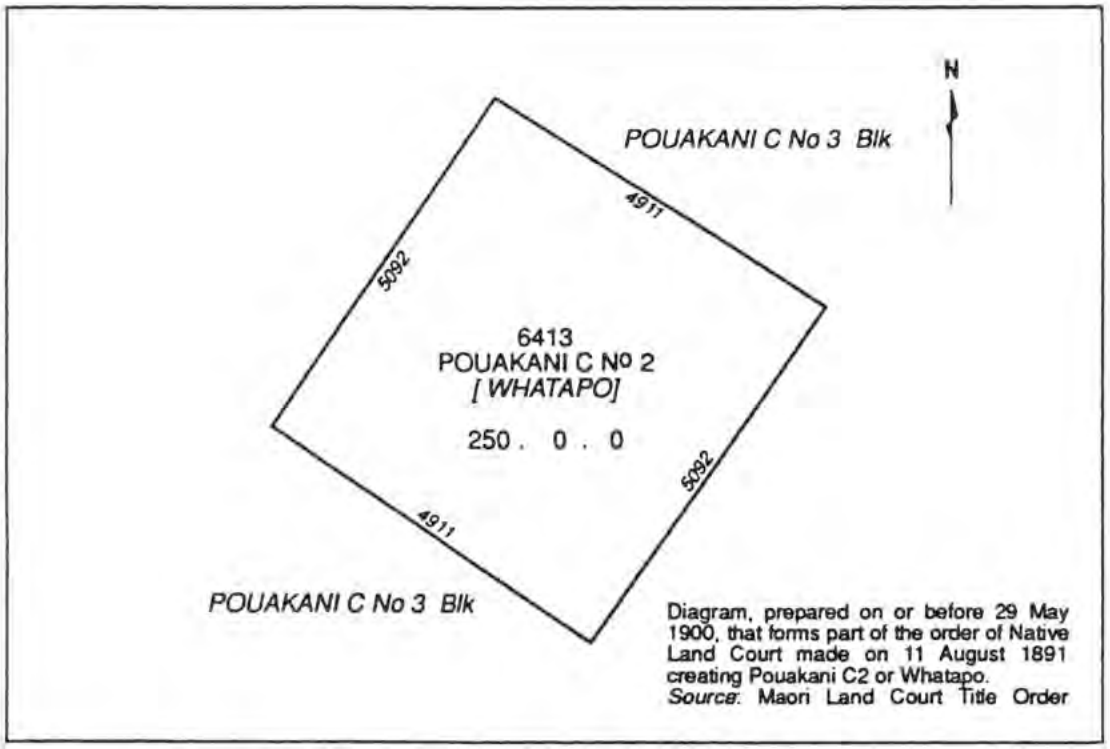


Figure 29. Diagram on title Order creating Pouakani C2 (Whatapo)

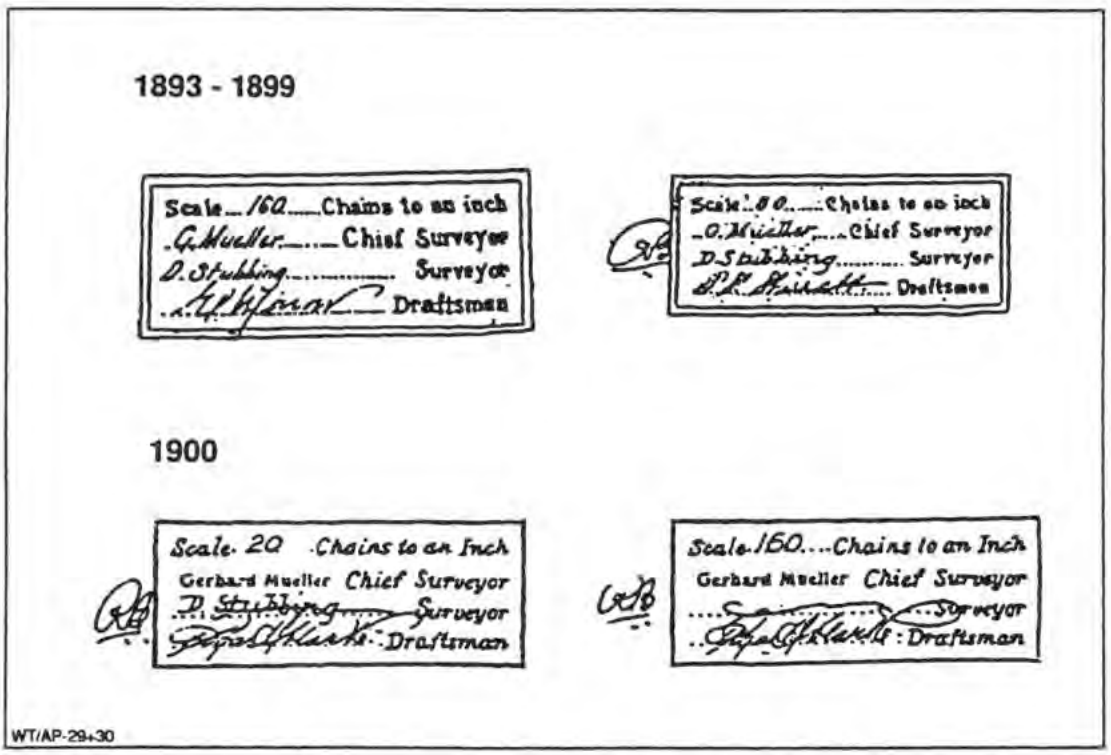


Figure 30. Examples of stamps used in the Auckland Survey Office.

(c) the evidence on the plan itself that the division between Pouakani B9 (Pureora) and Pouakani C1 (Kaiwha) was not on the plan then;

(d) the evidence of the diagram on the deeds of sale of the Pouakani A hlocks which shows that the divisions between Pouakani A1, A2 and A3 were not drawn on Stuhhing's plan ML 6406 etc until after Pouakani A1, A2 and A3 had been suhdivided into Pouakani A1A, A1B, A2A, A2B, A3A and A3B in 1899;

(e) the evidence of the diagrams on the deeds of sale of Pouakani B9 (Pureora) and Pouakani C1 (Kaiwha) which show a different boundary between these two hlocks from that shown on Stuhhing's plan ML6406 etc, and which also show that, in contrast to the two deeds of sale of interests in the Pouakani A hlocks, the two deeds in respect of each hlock were prepared on different dates and that the later deed for each hlock must have been prepared well after Stuhbing's plan ML6406 etc had been approved on behalf of the chief surveyor and hy Chief Judge Davy.

If the boundary between Pouakani B9 (Pureora) and Pouakani C1 (Kaiwha) did not appear on Stuhhing's plan ML6406 etc in March 1893 when that plan was approved by the chief surveyor and Chief Judge Davey, when was this boundary drawn on the plan?

The orders creating the titles to Pouakani B9A and Pouakani B9B were made on 24 July 1899 and the orders creating title to Pouakani C1A and Pouakani C1B were made on 26 July 1899. We think that the boundary between Pouakani B9 (Pureora) and Pouakani C1 (Kaiwha) was drawn on Stuhhing's plan ML6406 etc at the same time as the houndary between Pouakani B9A and Pouakani B9B, and the boundary between Pouakani C1A and Pouakani C1B. Judge Edger's instructions to the chief surveyor said that the western end of the boundary between Pouakani C1A and Pouakani C1B starts from the boundary between Pouakani B9B (Pureora) and Pouakani C1 (Kaiwha) (figure 2) at the point where the boundary between Pouakani B9A and Pouakani B9B struck the boundary between Pouakani B9 (Pureora) and Pouakani C1 (Kaiwha). On Stuhhing's plan ML6406 etc for 16850 links of its length the southern leg of the boundary between Pouakani B9 (Pureora) and Pouakani C1 (Kaiwha) is also the boundary between Pouakani B9B and Pouakani C1B. On Stuhhing's plan ML6406 etc the remaining 4800 links of the southern leg of the boundary between Pouakani B9 (Pureora) and Pouakani C1 (Kaiwha) forms part of the boundary between Pouakani B9A and Pouakani C1A. The total length of the southern leg of the boundary between Pouakani B9 (Pureora) and Pouakani C1 (Kaiwha) is therefore 21650 links. If the Pouakani B9 (Pureora) and Pouakani C1 (Kaiwha) that appear on the diagrams now forming part of the orders of 11 August 1891 creating these titles (figure 2) had ever appeared on Stuhhing's plan ML6406 etc in that form "21650" would have been written on Stuhhing's plan ML6406 etc on the 21650 link leg of the boundary between them. The figures "21650" do not appear on that boundary on Stuhhing's plan ML6406 etc. It could have been ruhhed out when the suhdivisions into Pouakani B9A and Pouakani B9B and Pouakani C1A and Pouakani C1B were drawn on the plan, hut we have no evidence that it was ever written there.

If Pouakani B9 (Pureora) and Pouakani C1 (Kaiwha), that appear on the diagrams now forming part of the orders of 11 August 1891 creating these titles,

bad ever appeared on Stubbing's plan ML 6406 etc in that form, their respective areas of 10,000 acres and 7,900 acres would bave been written on Stubbing's plan ML6406 etc. These areas of 10,000 and 7,900 acres do not appear on Stubbing's plan ML6406 etc. Again, tbese areas could bave been rubbed out. But the inscriptions "Total Area 17900.0.0", "Pouakani B No 9 Pureora Block" and "Pouakani C No 1 Kaiwba Block" remain on the plan. If anything was going to be rubbed out as being obsolete, it would have been "Total area 17900.0.0".

The title orders creating Pouakani B9A, Pouakani B9B, Pouakani C1A and Pouakani C1B were made on 24 and 26 July 1899 respectively. An exhibit note on Stubbing's plan ML6406 etc signed by Judge Edger and dated 21 July 1899 sbows that it was "Produced at N.L.Court, Kihikihi upon def.[inition] of Crown interest in C No 1, B No 9 and A Nos 1, 2 & 3". The description of tbe boundaries of Pouakani B9A and B9B signed by Judge Edger was written before the description of the boundaries of Pouakani C1A and Pouakani C1B was written because the definition of a boundary of Pouakani C1A and Pouakani C1B says tbat the boundary between Pouakani C1A and Pouakani C1B is to start "from the end of the South East boundary of B No 9A". It is probable tbat the boundary between Pouakani B9 (Pureora) and Pouakani C1 (Kaiwha) had been drawn on the plan in pencil. The date of the next note on Stubbing's plan ML6406 etc is 10 November 1899. This is tbe date of a note by the Chief Draughtsman W C Kensington that read "entd on Court Order Forms as for A No 1a, A No 2a, A No 3a, B No 9a and C No 1a & C No 2". The boundary between Pouakani B9 (Pureora) and Pouakani C1 (Kaiwba) must therefore bave been drawn in on Stubbing's plan ML6406 etc between 24 July 1899 and 10 November 1899.

Appendix 14

How to Find the Boundaries of Pouakani B9B Block

We have prepared this appendix in order to set out the survey data in greater detail and illustrate the many and complex factors that bave contributed to the uncertainty over the "surveyed" boundaries of Pouakani B9B block. We do this, firstly, to indicate that such an investigation by a surveyor would occupy a large amount of a surveyor's time, and therefore cost the surveyor's clients a great deal of money; and secondly, to record the results of our own researches for the benefit of the Maori Land Court and the parties concerned.

The trihunal can only make recommendations. The Maori Land Court has the jurisdiction, under s34 (9B) of the Maori Affairs Act 1953, to resolve the boundary problem. The existing title order of 24 July 1899 creating Pouakani B9B shows the land as being delineated on Stubhing's plan ML6406 etc. Section 34 (9B) enables the Maori Land Court to make an order amending the order of 24 July 1899 by deleting the reference to Stubbing's plan ML6406 etc and suhstituting a reference to a new survey plan.

Before the Maori Land Court can make such an order tbe boundaries will have to be defined by survey. And before the boundaries can be defined hy survey, either the parties will have to agree where the boundaries should run or the Maori Land Court will have to hear and determine the matter. We have tried in this part to do no more than record what we have found, and, where we have found uncertainties, tentatively to suggest which of two alternatives the Maori Land Court might choose to follow. But there may be other matters, either in the old records or on the land itself, that would make the Maori Land Court cboose the other alternative. To give an example, the records sbow that the judge said that one boundary was to be 6000 links. The draughtsman drew the line at 6450 links. The judge approved the plan. We suggest that as 6450 is the later figure and was on tbe plan approved by the judge, it sbould be adopted. A judge of tbe Maori Land Court, who in the past had had to approve plans that contained minor variations from the court's minutes, only because the cost of amending the plan far exceeded tbe value of the land involved, might take the opposite view, and say that the court said 6000 links and that is what the boundary should be.

A surveyor who was unfamiliar with the land and who was asked to investigate the boundaries of Pouakani B9B would have found scaled measurements and only two bearings for the houndaries of Pouakani B9B as shown on Stuhhing's plan ML6406 etc. The next step would be for the surveyor to go back to the minutes of the court sitting at Kihikihi on 24 July 1899, wben tbe Pouakani B9A and Pouakani B9B titles were created, expecting to find a description of the boundaries recorded in the minute book. He would not. The minute book that contained the minutes of that sitting is missing. But the instructions to the Chief Surveyor signed by Judge Edger have survived. These instructions were:

For Chief Surveyor, Auckland

Pou-a-Kani B. No 9 Boundaries of partitions

B.No. 9A The North-West part of the hlock. Bounded on the North-East and South-East by a line starting from a point on the South-East boundary of the hlock, 165 chains from Pureora trig station, extending at right angles thereto a distance of 60 chains, thence swinging to the boundary between B. No 9 & C. No 1.

To contain 7340 acres.

Awarded to Crown.

B. No 9B The remainder of B. No 9.

To contain 2660 acres.

H.F.Edger

Judge

Native Land Court

Kihikihi July 1899

This seems a clear description of how Pouakani B9 (Pureora) was to be divided into Pouakani B9A and Pouakani B9B. But the surveyor would find many problems. The first was that the Pureora trig station is not on the boundary of Pouakani B9 (Pureora). Page 12 of field book 722 shows that Cussen put in the corner peg at a position on a bearing of 155° 10' and 446.4 links distant from the trig on the top of Pureora mountain. Should the starting point of the boundary between Pouakani B9A and Pouakani B9B be 165 chains from Cussen's corner peg or should the surveyor swing an arc 165 chains from the Pureora trig and start the boundary at the point where that arc cut the southeast boundary of Pouakani B9 (Pureora)? The obvious answer seems to be to measure from Cussen's corner peg, not the top of the mountain, but someone has to make that decision.

It would seem to have been easier for Cussen to run his houndaries from existing trigs. But he did the same thing at Titiraupenga, where the boundary peg is 567.2 links from the trig. It was suggested to us that Cussen did this because of the special significance of the mountains to Maori people, who might have been offended if Cussen's boundary lines had split the mountains in two.

Having found that the starting point of the houndary between Pouakani B9A and Pouakani B9B was to be 165 chains from Cussen's corner peg, the surveyor would find the next problems. These are that on Stubbing's plan ML6406 etc the boundary started not 165 chains from the corner peg but 166 chains or 16,600 links from that peg. And instead of running for 60 chains, or 6000 links, at right angles to the southeast boundary of Pouakani B9 (Pureora), in accordance with Judge Edger's instructions, on Stubbing's plan ML6406 etc this boundary ran for 6450 links. But it did run at right angles to the southeast boundary as the court had directed.

The difficulty for the surveyor is that on 1 December 1899 Judge Edger approved the subdivision of Pouakani B9 (Pureora) into Pouakani B9A and Pouakani B9B as shown on Stuhbing's plan ML6406 etc. Did the draughtsman have a reason for departing from Judge Edger's instructions? We do not know. And if the boundaries are to be pegged someone has to make a decision whether

the distances given in Judge Edger's July 1899 instructions should be used or whether the distances approved by Judge Edger later, on 1 December 1899, sbould be used

The present legislation, under s34(8) of the Maori Affairs Act 1953, provides:

> No order shall be questioned or invalidated on the ground of any variance between the order as so drawn up, sealed, and signed and the minute thereof; and in the case of any such variance the order shall prevail over and supersede the minute thereof.

Section 34(8) would seem to only state what the courts now and in the nineteenth century would bave decided anyway. A signed sealed order is the best evidence of what the court actually decided, and must be accepted, until it is amended by another order of the Maori Land Court itself, or a superior court. In the case of *re Horowhenua Subdivision No. 14* (1897) 16 NZLR 532 at page 537, the then Chief Justice of New Zealand said:

> ... I incline to tbe view that any order on subdivision, though made prior to another, is so far provisional that it may have to be rectified as to location, and even as to area, when the orders come to be completed hy actual survey.

The diagram wbicb forms part of the signed sealed order creating Pouakani B9A shows a distance of 16,600 links along the Tihoi boundary from Stuhhing's corner peg to the start of the Pouakani B9B boundary. And the diagrams attached to tbe signed sealed orders creating Pouakani B9A and Pouakani B9B both sbow the boundary between them that is at right angles to the Tihoi boundary as 6450 links.

Presumahly the draughtsman bad a reason, and possibly it was a very good one, for departing from Judge Edger's instructions. Judge Edger accepted the alteration. As mentioned earlier, where there is a conflict between the distances sbown on the judge's instructions to the chief surveyor and the distances shown on the signed sealed order we would suggest that the solution is to accept the distances in the signed sealed order.

The next step is to swing the line to divide Pouakani B9 (Pureora) in the ratio of 7340 acres to 2660 acres. At least it is clear from the records that the court intended to divide wbatever area Pouakani B9 (Pureora) contained between the Crown and the non sellers in this ratio. But only the outer boundaries of an area of 17900 acres for both Pouakani C1 (Kaiwha) and Pouakani B9 (Pureora) bad been defined by survey. In order to divide the area of Pouakani B9 (Pureora) into Pouakani B9A and Pouakani B9B it is necessary to find the boundary between Pouakani B9 (Pureora) and Pouakani C1 (Kaiwha). And on Stuhbing's plan ML6406 etc that boundary is two scaled lines with no bearings and with the southern end starting from a point on the southern boundary of the Horaaruhe Pouakani (surveyed by Cussen in 1887) at a scaled distance from one of Cussen's pegs. And the deeds of sale of interests in Pouakani B9 (Pureora) and Pouakani C1 (Kaiwha) show a boundary between those two hlocks with different distances and starting from a different point on the southern boundary of Horaaruhe Pouakani surveyed hy Cussen.

Again, a surveyor would go back to tbe Maori Land Court minute books to find the minutes of the orders of 11 August 1891 creating Pouakani B9 (Pureora) and Pouakani C1 (Kaiwha).

The boundaries of Pouakani B9 (Pureora) are described as:

> Pouakani B No 9 (or Pureora)
> Area 10,000 acres. No restrictions.
> Boundary commencing at Pureora trig station thence along the South East boundary to the Kaiwha block tbence along the South West boundary of Kaiwba block to the Maungatahoe [sic] stream and thence by a swinging line to the Maraeroa boundary thence south by that boundary to the point of commencement.[1]

The minutes of Pouakani C1 (Kaiwha) are very brief: "Pouakani C No 1 (or Kaiwba) 7950 acres".[2] Stubbing's plan ML6406 etc sbows a settlement called Kaiwba situated in wbat is now Pouakani C1B1. Presumably the court intended a block with roughly the same boundaries as the Kaiwha created by the order of the court made on 24 September 1887, and cancelled by s29 of the Native Land Court Acts Amendment Act 1889. It could not be precisely the same boundaries because the 1887 Kaiwha was to contain 7200 acres while the Pouakani C1 (Kaiwha) created in 1891 was to contain 7950 acres. A surveyor trying in the 1980s to find the boundary of tbe 1899 Pouakani B9A, wbo had already had to go back to the 1891 title, would now find that it was necessary to go back to the 1887 title. Minutes of 24 Marcb 1887 describe the boundaries of the 1887 Kaiwha:

> Pouakani Names "Kaiwba Block"
> Interlocutory Order in this case made on the 23rd Inst to be final, the piece cut off for the nine persons mentioned to be as follows — commencing at peg marked 6900 on the Boundary near the Kopaki Stream, thence along that Boundary to survey peg marked 8000, thence by a straight line bearing true 310° till it strikes the Mangatahae Stream thence along that stream to a point on it from whence a swinging line to include 7200 acres will strike the starting point at survey peg No 6900 — Block to be called Kaiwha.[3]

The first difficulty witb this description is that there is not a peg marked "6900" on Cussen's plan ML6036. But at page 18 of field book 722 Cussen bas a peg marked 5900 near the Kopaki stream. This peg appears on Cussen's plan ML6036, and is obviously the peg to which the court referred. Peg 8000 appears at page 16 of field book 722 and on Cussen's plan ML6036 on a boundary line that runs for 17840.6 links from the angle peg near Titiraupenga to the next angle peg. This places the start of the 1887 Kaiwha boundary at a point 8000 links from the angle peg nearest Titiraupenga whicb Cussen labelled "8" and 9840 links from the next angle peg to the east whicb Cussen labelled "8A". Plans ML16550 and ML20635 show that peg 8A was one of Cussen's four pegs that Sandel found in 1947.

If the 1891 Pouakani C1 (Kaiwha) was to have the same boundary as the 1887 Kaiwba, its southern boundary would be the southern boundary of Horaaruhe Pouakani on Cussen's plan ML6036, starting at peg 5900 and running west to peg 8000. The boundary between the 1891 Pouakani B9 (Pureora) and the 1891 Pouakani C1 (Kaiwha) would then run in a straight line being true 310° till it struck the Mangatahae stream. The boundary would then run east along the Mangatahae stream, whicb is shown on Stubbing's plan ML6406 etc and on Stubbing's sketch plan, and more clearly on the plan on the deed of sale of Pouakani B7, B8, B11, C3, B10 and D4.

The houndary of the 1887 Kaiwha then ran hy a straight line from a point on the Mangatahae stream hack to peg 5900 on the southern boundary of Horaaruhe Pouakani. This straight line was to swing from peg 5900 to the Mangatahae stream in such a position as to enclose an area of 7200 acres. In 1887 this swinging line that formed the eastern boundary of Kaiwha was the houndary between Kaiwha and the 1887 Pouakani No 1. The 1887 order creating the Kaiwha hlock was cancelled hy legislation in 1889, hut the order creating the 1887 Pouakani No 1 was not. So if the 1891 Pouakani C1 (Kaiwha) was to follow approximately the same boundaries as the 1887 Kaiwha, then the only one of those boundaries that might be adjusted to enclose the increased area of the 1891 Pouakani C1 (Kaiwha) was already fixed because it was the boundary of the still existing 1887 Pouakani No 1.

This boundary between Pouakani C1 (Kaiwha) and Pouakani No 1 was fixed hy survey on 3 June 1892 when Judge Scannell approved Cussen's plan ML6036A defining Pouakani No 1 hy survey. On this plan the boundary between Pouakani C1 (Kaiwha) and Pouakani No 1 runs from what appears to be peg 5900 on the southern boundary of Horaaruhe Pouakani to a peg near the Mangatahae stream. We are not completely sure about it starting at peg 5900 because Cussen's plan ML6036A is worn and we have not seen the field book that Cussen used for this survey. Stuhhing records Cussen's peg near the Mangatahae stream as an old peg at page 46 of field hook 722.

Stuhhing surveyed the external boundaries of an area that he showed as containing 17,900 acres to enclose both Pouakani B9 (Pureora) and Pouakani C1 (Kaiwha). The areas in the 1891 minutes were 10,000 acres for Pouakani B9 (Pureora) and 7,950 acres for Pouakani C1 (Kaiwha). These two figures add up to 17,950 acres, hut Stuhbing's plan ML6406 etc showed an area of only 17,900 acres. But this area of 17,900 acres shown on Stuhbing's plan ML6406 etc is prohahly not accurate to within 50 acres anyway.

Stuhbing was trying to get in all the court subdivisions of the western severance of Horaaruhe Pouakani so he would have had to make some adjustments to boundaries. He projected a corner of Pouakani C3 to the south of the Mangatahae stream, in order to maintain an ohlong shape for Pouakani C3. On the southwest boundary of C3 he extended the 17,900 acre area beyond the Mangatahae stream. Possihly this was to give Pouakani C1 (Kaiwha) the increase in area from the 7,200 acres of the 1887 Kaiwha to the 7,950 acres of the 1891 Pouakani C1 (Kaiwha), as well as to compensate for the area of the earlier Kaiwha to the south of the Mangatahae stream that he had included in Pouakani C3.

The 1891 minutes state that the northwest boundary of Pouakani B9 (Pureora) started from the point where its north eastern boundary with Pouakani C1 (Kaiwha) struck the Mangatahae stream. From that point it ran to the Maraeroa boundary hy a swinging line to enclose the required area of 10,000 acres. Stuhhing ran the northwest boundary of Pouakani B9 (Pureora) from a point south of the Mangatahae stream. Stuhhing would be trying to fit all the court's subdivisions in, and to give them all reasonahle shapes, so that he was ohviously entitled to make some adjustments. We have not tried to repeat the exercise that he must have carried out, hut in all the circumstances we think that the shape of the area that he left for Pouakani B9 (Pureora) and Pouakani C1 (Kaiwha) does not seem to be particularly unreasonahle. This shape was

approved hy Chief Judge Davy on 25 March 1893 when he approved Stuhhing's plan ML6406 etc.

For reasons set out in appendix 13 we do not think that Stuhhing showed the boundary between Pouakani B9 (Pureora) and Pouakani C1 (Kaiwha) on his plan ML6406 etc when he finished it and sent it in to the Chief Surveyor in Novemher 1892. Two different draughtsmen (or the same draughtsmen at different times) drew the diagrams on the 1893 deeds of sale of interests in Pouakani B9 (Pureora) and Pouakani C1 (Kaiwha) and later, we think in 1899, put in the houndary between Pouakani B9 (Pureora) and Pouakani C1 (Kaiwha) on Stuhhing's plan ML6406 etc. Both took the eastern corner of Pouakani B11 as the northern end of the boundary between Pouakani B9 (Pureora) and Pouakani C1 (Kaiwha). Both gave Pouakani B9 (Pureora) the 10,000 acres allocated hy the court and Pouakani C1 (Kaiwha) 7,900 acres instead of the 7,950 acres allocated hy the court.

The other end of their boundary between Pouakani B9 (Pureora) and Pouakani C1 (Kaiwha) ended at a different point on the southern boundary of Horaaruhe Pouakani and both differed from the point that the court fixed for the southern end of the western boundary of the 1887 Kaiwha. These three positions are:

	Links West to peg 8 nearest Titiraupenga	Links East to peg 8A
1887 Kaiwha	8000	9840
Deeds of sale	9440	8400
Boundary later drawn on Stuhhing's plan ML6406 etc	7840	10,000

The draughtsmen both used two lines, instead of the one straight line at 310° in the 1887 minutes describing Kaiwha, and both drew these lines at different lengths:

	Northern part of boundary between Pouakani B9 (Pureora) and Pouakani C1 (Kaiwha)	Southern part of boundary between Pouakani B9 (Pureora) and Pouakani C1 (Kaiwha)
1893 Deeds	10,000	25,000
Boundary later drawn on Stuhhing's plan ML6406 etc	12,500	21,650

None of these boundary lines showed bearings.

A further complication was created on 26 May 1972 when Judge K Gillanders Scott approved plan ML20635 and signed the Partition Orders of 11 March 1926 creating Pouakani C1B1 and Pouakani C1B2. This fixed the position of the southern part of the boundary between Pouakani C1 (Kaiwha) and Pouakani B9 (Pureora) on a bearing of 303° 4' 40" for a distance of 16,934 links north from a point 10,000 links west of peg 8A. The rest of the boundary between Pouakani C1 (Kaiwha) and Pouakani B9 (Pureora) remains unsurveyed.

The minutes of the sitting on 26 July 1899 when orders were made vesting Pouakani C1A and Pouakani C1B were in the same missing minute hook as the minutes of 24 July 1899 of the orders creating Pouakani B9A and Pouakani B9B. Fortunately, as in the case of Pouakani B9A and Pouakani B9B, Judge Edger's instructions to the Chief Surveyor, setting out the boundaries of Pouakani C1A and Pouakani C1B, have survived. These boundaries are:

C No 1A The North-West part of the hlock. Bounded on the South-East hy a line from the end of the South-East houndary of B No 9A, swinging to the North-East boundary of the Block. To contain 4046 acres. Awarded to Crown.

C No 1B The remainder of the hlock. To contain 3854 acres.

The complication created hy plan ML20635 is that it fixes the boundary between Pouakani C1A and Pouakani C1B, which was to start at the point at which the swinging line between Pouakani B9A and Pouakani B9B was to hit the Pouakani C1 (Kaiwha) — Pouakani B9 (Pureora) boundary to enclose 2660 acres for Pureora B9B. Should the surveyor simply define Pouakani B9B hy starting at the corner peg nearest Pureora, on the southeast boundary between Horaaruhe Pouakani and Tihoi, go east for 16,600 links along that boundary, then draw a line into Pouakani B9 (Pureora) at right angles to the boundary with the Tthoi hlock for a distance of 6450 links, then draw a line from that point to the western end of the boundary between Pouakani C1A and Pouakani C1B that had been surveyed on plan ML20635 (accepting whatever area that enclosed), to follow the houndary with Pouakani C1B1 and Pouakani C1B2 shown on that plan, then follow the boundary with the Tihoi hlock to the starting point? It is a simple way of resolving the problem, hut we think it unlikely that Mr Locke fixed the starting point of the houndary between Pouakani C1A and Pouakani C1B shown on his plan ML20635 hy first carefully working out where the Pouakani B9A, Pouakani B9B houndary should run. Nor did we think that Judge K Gillanders Scott would have taken that into consideration when he approved the plan ML20635 and signed the title orders for Pouakani C1B1 and Pouakani C1B2.

It would be obvious to the surveyor that wide variations in areas and distances are "acceptahle" in these circumstances. The southwest boundary of Pouakani C1B drawn on Stuhhing's plan ML6406 etc is shown as being 16,850 links long. The same boundary is shown on plan ML20635 as being 16,934 links long. The area of Pouakani C1B is shown in Judge Edger's instructions and on Stuhbings plan ML6406 etc as 3854 acres, hut the comhined area of Pouakani C1B1 and Pouakani C1B2, into which Pouakani C1B was divided in 1926, adds up to 3868 acres 1 rood. It will be recalled that we said that a surveyor would need to find the area of Pouakani B9 (Pureora) in order to apportion it between Pouakani B9A and Pouakani B9B in the ratio of 7340 acres to 2660 acres. We think that there is a simpler alternative to investigating the boundaries of the area that Stuhhing left on plan ML6406 etc for Pouakani C1 (Kaiwha) and Pouakani B9 (Pureora), hy recalculating the area and then surveying the rest of the boundary between Pouakani C1 (Kaiwha) and Pouakani B9 (Pureora) in order to arrive at the area to be apportioned between Pouakani B9A and Pouakani B9B.

The Crown acquired the whole of Pouakani B9A and Pouakani C1A, and the owners of Pouakani B9B got from the Crown a "title" to an area of land which, although purporting to be defined by survey, could not in fact be pegged on the ground. The answer we suggest is to accept that the area of 10,000 acres for Pouakani B9 (Pureora) shown on both the maps and on the signed sealed title order is in fact correct and consequently that the area of 2660 acres for Pouakani B9B is correct. If it is accepted that:

(a) the boundary between Pouakani and Tihoi blocks that Cussen surveyed is correct;

(h) the boundary witb the Pouakani C1B1 and Pouakani C1B2 sbown on plan ML20635 is correct;

(c) the line at right angles to the Tihoi boundary should start 16,600 links from the corner peg nearest Pureora and run for 6450 links;

then all that a surveyor has to do is to repeg these houndaries and run a line from the northwest end of the right angle line to the boundary with Pouakani C1B1 and Pouakani C1B2 shown on plan ML20635, or an extension of that boundary in a straight line, to enclose 2660 acres.

It seems quite simple. But getting there bas been time-consuming and tortuous. It has involved an investigation of old and illegible records in the Department of Survey and Land Information and registries of the Maori Land Court in two different cities. It bas involved "reconstruction" of missing records from other contemporary records. There are many survey plans of adjacent lands. All these, and a vast quantity of other material, would have had to be examined, before being rejected as irrelevant. As further material was found old material would have bad to be looked at again and compared with the new material.

Nor are we completely confident that we have found all the answers. There may be something in the vast quantity of paper that was placed before us that we bave overlooked. None of the members of the tribunal are professional surveyors and there may be survey matters that we have misinterpreted. This may not matter because we do not make the decision as to wbere the boundaries of Pouakani B9B should run. Only parliament hy legislation or a judge of the Maori Land Court by an order under s34(9B) of the Maori Affairs Act 1953 can fix the boundaries of Pouakani B9B. Preferably, the parties involved, the Department of Conservation and the Titiraupenga and Pouakani B9B Trusts, can negotiate an agreement, so that tbe judge of the Maori Land Court does not bave to make an arbitrary decision.

References

1 Waikato minute book 28 p 11

2 ibid p 17

3 Taupo minute book 7 p 284

Appendix 15

Legal Submissions on the Beds of Navigable Rivers, Section 261 of the Coal Mines Act 1979, Presented to the Waitangi Tribunal by Graeme Austin (A41:1989).

By section 261 of the Coal Mines Act 1979, the beds of "navigable rivers" in New Zealand are deemed to be vested in the Crown. The following note discusses the prerogative rights of the Crown to rivers at common law. In part 2 the history of the provision is outlined with reference to New Zealand case law which has impacted on the interpretation of the section. Part 3 provides a summary of the main points of the paper.

1. Navigable Rivers at Common Law

The common law rights of the Crown to river beds are less extensive than the rights accorded the Crown by s261 of the Coal Mines Act 1979. That section provides:

> (1) For the purpose of this section—
> "Bed" means the space of land which the waters of the river cover at the fullest flow without overflowing its banks:
> "Navigable river" means a river of sufficient width and depth (whether at all times or not) to be used for the purpose of navigation by boats, barges, punts, or rafts.
> (2) Save where the bed of a navigable river is or has been granted by the Crown, the bed of such river shall remain and shall be deemed to have always been vested in the Crown; and, without limiting the rights of the Crown thereto, all minerals (including coal) within such bed shall be the absolute property of the Crown.

Such rights as do exist at common law are best not characterised as proprietary rights to rivers at all but rather are an extension of the prerogative rights attaching to the seas. The common law position is best illustrated by the case of *Murphy* v *Ryan* where it was held that the Crown has no prima facie right to the bed of navigable rivers beyond the point where the tide ceases to ebb and flow:

> The Plaintiffs were riparian owners of land adjacent to the River Barrow. They brought an action in trespass against the Defendants for various torts including breaking and entering their close, being land covered by the River Barrow, and fishing there. The alleged trespass and fishing occurred on part of the river which afforded access by boat but which was not tidal. The Defendants denied trespass and pleaded that as the river was navigable its soil was vested in the King and that in such rivers the public had a right to fish. The Plaintiffs demurred that the public right to fish in an inland river did not extend beyond the point at which the tide ebbs and flows.[1]

The case was heard before O'Hagan J in the Irish Court of Common Pleas where the Plaintiff prevailed. His Honour concluded:

> [u]pon a full consideration of all the cases, it will, I think, appear that no river has ever been held navigable, so as to vest in the Crown its hed and soil, and in the public right of fishing, merely because it has been used as a general highway for the purpose of navigation; and that, beyond the point to which the sea ehhs and flows, even in a river so used for public purposes, the soil is prima facie in the riparian owners, and the right of fishing private.[2]

At common law a distinction is drawn between rivers which are capahle of navigation or which the public have used as a transport route and the legal meaning of "navigable river". It is only to those rivers which satisfy the legal definition of "navigable" which the Crown is afforded any prima facie common law rights. O'Hagan J expressed the point as follows:

> but it will be found that the word has a popular and also a legal and tecbnical meaning, and that, whilst the former would be satisfied hy the existence of a public right of transit on the surface of the stream, the latter involves the assumption of the "fluxum et refluxum maris" wherever the royal prerogative and the general right exist.[3]

The authorities relied on in *Murphy* v *Ryan* attest to the point that the rights of the Crown to navigable rivers are sourced from the prerogative rights to the sea bed. The requirement that the river be tidal is explained as an extension of those rights to the parts of rivers whicb may be described as the "arms of the sea". In Comyns *A Digest of the Laws of England* it is stated:

> the property of the soil in all rivers, which have the flux and reflux of the sea, belong to the king, and not to the lord of the manor adjoining, without grant or prescription ... [a]n arm of the sea is wbere the sea flows and reflows ... [a]nd every arm of the sea, or navigahle river, so high as the sea flows and reflows, belongs to the king, and he bas the same property therein as in altro maris.[4]

O'Hagan J also quoted the argument for the crown in *Le Case Del Royall Piscarie de le Banne* that:

> il y a 2 kinds de rivers; navigable, & nient navigahle. Chescun navigable river cy hault que le mer flow & reflow en ceo, est flumen regale, & e le piscarie de ceo est auxy piscarie Royall, & appent al Roy per son prerogative: mes en chesun auter auter river nient navigable, & en les piscarie de tiel river, les tertenants ex utraq; parte aquae ont interest de common droit. Le reason pur que le Roy ad interest en tiel navigable river, cy hault que le mer flow & reflow en ceo, est pur ceo que tiel river participate del nature del mer, & est dit bracbe del mer tant avaunt que el flow ... Et que le Roy ad mesme le prerogative & interest en les bracbes del mer, & navigable rivers, cy hault que le mer flow and reflow en eux, que il ad in altro mari, est manifest per plusors authorities & records.[5]

Passages from Lord Hale's *De Jure Maris* likewise illustrate the dependence of the Crown's rights to rivers on its prerogative over the sea.[6] Under the beading of "What shall be said an arm or creek of the sea", for instance, Hale wrote:

> that is called an arm of the sea where the sea flows and reflows, and so far only as the sea flows and reflows; so that the river of Thames above Kingston and the river of Severn above Tewekesbury, &c though they are publick rivers, yet are not arms of the sea. But it seems, that, although the water be fresh at high water, yet the denomination of an arm of the sea continues, if it flow and reflow as in the Thames above the bridge.[7]

In the case of *Carter* v *Murcott* the same linkage was made.[8]

While the case concerned proof of a prescriptive right to a fishery in a tidal river, the court noted:

> navigable rivers or arms of the sea belong to the Crown, and not (like private rivers) to the land owners on each side: and therefore the presumption lies contrary way in the one case, from what it doth in the other.[9]

The case of *Devonshire* v *Pattinson* provides an illustration of the converse point that the Crown lacks prerogative rights in non-tidal waters. In that case a conflict over a fisbery at a non-tidal point of the river Eden came before the English Court of Appeal:

> The riparian lands were the subject of a Crown grant in 1629 and the river bed and fishery passed to the grantees of the Crown. In the court below A J Smith J concluded that the grantees of the Crown were vested of their exclusive rights by virtue of the exercise of a prerogative. The Court of Appeal reconsidered the legal basis for the rights of the grantees.[10]

Kay CJ wbo delivered the judgment of the Court of Appeal doubted whether the King could bold an exclusive proprietary right by way of the prerogative in the fisbery of a (non-tidal) river whicb flowed over the land of a subject. The court preferred the view that the grantees of the Crown held exclusive rights to fish as successors to the Crown's original rights to tbe river. Those rights were viewed as not depending on any prerogative but were held to be derived from the King's ownership of the riparian lands.

Public rights to tidal rivers are not abrogated by virtue of the vesting of the beds of tidal rivers in the Crown. On the contrary, the rule has been cbaracterised in texts and in cases as affording protection of the interests of the public in such rivers regardless of any special claims of riparian owners and bas been viewed as an aspect of the parens patriae of the Crown. Public rigbts of navigation bad also been recognised by the Magna Carta's promise that public rivers remain free. In his text, *The Law of Rivers and Watercourses,* Wisdom stated "[t]he ownership of the Crown is for the benefit of the subjects who bave the public right of fishing and navigation ...."[11]

Other authorities for the proposition might again include Hale who stated in his *First Treatise*:

> in generall by tbe lawes of England in all things of publique interest which concern all, and not in any one particular person, the law hath transferred the care and provision for sucb publique matters to the Kinge, and hee doth sustinere personam vindicus et tutris jurim publicorum, as highways, navigable rivers and the like, although the particular interest of franchise or propriety may possibly belong to a private person; and therefor al suits and proceedings in such cases are pro domino Rege.[12]

In *De Jure Maris* it was further stated that "[t]he jus privatum that is acquired to the subject, either by patent or prescription must not prejudice the jus publicum wherewith public rivers and arms of the sea are affected for public use".[13] In his judicial capacity Hale made a similar point in *Lord Fitzwalter's Case* tbat:

> in the case of a river that flows and reflows, and is an arm of the sea, there prima facie is common to all: and if any will appropriate a privilege to himself, the proof lieth on his side, for in the case of an action brought for fishing there, it is, prima facie a good justification to say, that the

> locus in quo is brachium maris, in quo unusquisque subjectus dom Regis babet et habere debet liberam piscariam.[14]

While the common law can, in some cases, accommodate the vesting of rights to tidal rivers in private persons, public rights may still be recognised. In *Fitzhardinage* v *Purcell*, Parker J considered that the statement of Holroyd J in *Blundell* v *Catteral* that "[w]here the soil remains the King's, and where no mischief or injury is likely to arise from the enjoyment [... of bathing], it is not to be supposed that an unnecessary and injurious restraint upon the subjects would in that respect be enforced by tbe King, the parens patriae" as possibly extending to the taking of fowl on sucb a river even in the case of a river which had been granted to a subject.[15] In the latter case, Best J depicted the rights of owners of tbe soil of the shore of the sea and highways as holding subject to a "public trust" and, from the context, it is clear that His Honour intended the point also to apply to "arms of the sea".[16]

Chitty summarised the extent of tbe prerogative rights to rivers in his tract, *The Prerogatives of the Crown*, as follows:

> The King bas an undoubted sovereignty and jurisdiction, whicb be has immemorially exercised throughout the medium of the Admiralty Courts, over the British seas, that is, the seas whicb encompass the four sides of the British islands and other seas, arms of seas and navigahle (but not non navigable) rivers, within and immediately connected with the territories suhject to his sway ... By implication of law the property in the soil under these public waters is also in the King. But in this as in most other instances, the prerogative does not counteract or interfere with the natural right of the puhlic to fisb in the sea, in arms of the sea, and in creeks and navigable rivers, and to take fish found on the sea-shore between high and low water mark. This is tbe jura publica or communia whicb never was vested exclusively in the Crown, and of course is not to be considered as a royal franchise.[17]

The thrust of Chitty's analysis is that recognition of prerogative rights over tidal waters by the common law is not comparable with any exclusive proprietary rights.

2. Statutory Vesting of River Beds in the Crown in New Zealand

In the New Zealand Court of Appeal decision, *Mueller* v *The Taupiri Coal-Mines Ltd* the proposition that the vesting of lands in riparian owners *ad medium filum aquae* is rebuttable if the river be capable of navigation was considered. [18] In a non-tidal river whicb is capable of navigation public easement rights of passage have, in some circumstances, been recognised as existing independently of the ownership of the river bed.[19] The Mueller case concerned conflicts over the right to mine a non-tidal stretch of the Waikato river:

> The Applicant was the Commissioner of Crown Lands for the Auckland District who sought a declaration that certain lands below the Waikato River were vested in the Crown. The Defendants were riparian owners adjacent to the river of land originally granted by tbe Crown. The Defendants bad mined that bed of the Waikato River, justifying their activity by the ad medium filum rule. At issue was whether the circumstances surrounding the original crown grant rebutted the presumption.

In a vigorous dissenting judgment, Stout CJ supported the defendants. His Honour opined that, in law, the fact that a river is navigated does not detract

from tbe riparian owners' proprietary rights to the river bed. Of the majority judges, Williams J put the contrary view most forcefully, stating:

> [w]here, as in this country, the Crown is in effect a trustee for the public of lands vested in the Crown, comparatively slight evidence of circumstances from which an intention might be presumed on the part of the Crown, as representing the public, not to part with the land in question, ought in my opinion, to rebut the presumption ....[20]

The factors relied on to rehut the presumption included the historical circumstances of the original grant,[21] the impact of other legislative provisions[22] and an assertion that public rights of navigation in non-tidal rivers could not arise hy the mere act of navigation hut required prescriptive rights to have been established by user or there to have been an express or implied reservation of the land by the Crown for the benefit of all the public. It was doubted wbether, in New Zealand, general prescriptive rights could have arisen for the benefit of all the public in waters running over Maori lands. The ahsence of any de facto authority over sucb rivers, therefore, enhanced the proposition that, once vested of the adjoining lands, the Crown could not be presumed to have granted the river bed *ad medium filum* and therehy deny the public rights of navigation.

The *Mueller* decision is of further interest for its approach to the issue of navigation. It appears from the report that the Court was influenced by the commercial usage of the river. Williams J noted:

> [t]he evidence further shows that before the railway was opened all the goods traffic for the Waikato district was hy water carriage from the mouth of the river as far as Camhridge, and that sea-going vessels came within the bar and discharged into smaller vessels, which carried the cargoes up the river. The river, therefore, was of an entirely different character from the small navigable creek the bed of which was the subject of the litigation in the case of *Lord* v *Commissioners for the City of Sydney*.[23] When the railway was extended to Cambridge in 1886 the trade on the river was to a great extent destroyed, hut there are small steamers running to Cambridge up to the present time. The grants of the lands in question were made some years before the railway was constructed, and when the river was the only highway for the carriage of goods.[24]

It seems clear that the court would have been less ready to deny the rights of riparian owners had tbe river not been navigated by commercial vessels.[25] That is consistent with the reasoning of Stout CJ in the 1900 Supreme Court decision, *In Re Beare's Application*.[26] In that case the rights attaching to riparian lands prevailed against the Crown:

> Proceedings were brought to challenge the grant of mining lands in the bed of the Arahura within the houndaries of a Native Reserve vested in the Public Trustee. At issue was wbetber the bed of the Arahura was Crown land on which licenses to mine for gold, hy dredging or otherwise, could be granted.

Of the character of the river, Stout CJ said:

> [i]t is clear that the river is not either a public highway or such navigahle river as makes the bed of the river Crown lands. At places and at times a canoe or boat may be used on the river, but that is all. At the mouth of the river the tide hacks the flowing stream, but even near the mouth it is a shallow river, only fit to be used occasionally by boats or canoes.[27]

His Honour then concluded:

> [t]he bed of this stream or non-navigahle river is not therefore Crown land, and not being Crown land, the Warden cannot issue any licenses or leases to mine the bed of the river within the said reserve by dredging or otherwise.[28]

These decisions indicate that prior to the enactment of the predecessor to s261 of the Coal Mines Act 1979, the Crown in New Zealand lacked prima facie rights to the beds of non-tidal rivers. In Mueller's case, concerning a river used for commercial purposes, the Crown was able to rebut the *ad medium filum* due to circumstances surrounding the Crown grant and in Beare's case the Crown was denied any proprietary rights in the bed of a non-tidal and non-navigable river. Botb propositions are consistent with the common law limits on the Crown's prerogative. Further, earlier statutory provisions had been held to be inadequate to deny the rights of riparians to the beds of non-navigable rivers *ad medium filum aquae*. The case of *Taranaki County Council* v *Brough* concerned the Public Works Act 1894.[29] By that Act rivers could be hrought under the "control" of local bodies. It was held that such control did not extend to denying what was described as "that ownership which at common law extends to the centre of the river bed in non-navigahle rivers".[30] Conolly J, following the principle that "a man cannot be deprived of his rights at common law, except by express words or clear implication", decided that the Public Works Act 1894 could not be construed as effecting this.[31]

Against this background the predecessor of s261 of the Coal Mines Act 1979 was enacted. That provision was s14 of the Coal-mines Act Amendment Act 1903:

> Save where the bed of a navigable river is or bas been granted by the Crown, the bed of such river sball remain and shall be deemed to bave always been vested in the Crown, and, without limiting in any way the rights of the Crown thereto, all minerals, including coal, within sucb bed shall be the absolute property of the Crown.
> (2) For the purpose of this section—
> "Bed" means the space of land whicb waters of the river cover at its fullest flow without overflowing its banks:
> "Navigable river" means a river continuously or periodically of sufficient wid th and depth to be susceptihle of actual or future beneficial use to the residents, actual or future, on its hanks, or to the public for the purposes of navigation by boats, harges, punts, or rafts ....

Section 261 of the current legislation achieves the same purpose as this provision, albeit in simpler form. Section 14 of the Act of 1903 was an addition to a controversial enactment concerning miners' medical funding and bours to be worked in mines and received scant attention in the dehates in the House of Representatives and Legislative Council.[32]Most attention in parliament and during the committee stages of the Bill was given to the other, apparently more controversial, provisions.[33]

In 1954, in *Hutt River Board* v *Leighton*, the provision was considered, by then enacted as s206 of the Coal-mines Act 1925.[34] The case concerned a stretch of the Hutt river used for what Hutchinson J described in the Supreme Court as "casual and unorganised recreation".[35] In passing, the Supreme Court Judge noted the alteration effected by the section to the common law restrictions on the prerogative rights of the Crown:

> [t]he English authorities dealing with navigable rivers do not, in general assist in interpreting the phrase "for the purpose of navigation" in the

> section, because of the common-law definition of navigable rivers, whicb restricts those to tidal rivers.[36]

In determining the meaning of "navigable river" in the Coal-mines Act 1925, Hutchinson J was influenced by wbether the river was used for commercial purposes. His Honour determined tbat, as the stretcb of the river in question was mostly used for unorganised recreation, it could not be held to a navigable river within the meaning of the section.[37]

In the Court of Appeal in *Leighton's* case, Fair J described s206 as a "confiscatory provision" and considered that, as sucb, it ought to be construed no wider than was strictly necessary to achieve its object.[38] His Honour then concluded that the word "navigable" should not be interpreted as applicable to the river in question:

> it is, at the very least, doubtful wbether tbe word "navigable" in this context covers sucb slight, intermittent, and restricted use as that detailed in the evidence of the plaintiffs. Use for wider and different purposes, or more definite evidence of the river's susceptibility for use for sucb wider purposes, would, in my view, require to be proved to establish that tbe river was navigable within the meaning of this section.[39]

His Honour then suggested tbat the section only applied to rivers whicb were navigable at the time of the enactment of the original provision in 1903. Fair J noted the far-reaching consequences of a liberal construction of the section:

> [t]hat the word navigable should not be given its widest meaning seems clear from the extreme improbability that the Legislature intended that the beds of every one of the innumerable streams in New Zealand wbicb could be used for light pleasure craft, for a considerable distance, sbould be vested in the Crown.[40]

He continued:

> [a]n intention to effect so wide a confiscation of private rights, and so radical a departure from the common law governing sucb rights, without any necessity for it, or any appreciable advantage to the public, is so highly improbable and unreasonable that it is clearly, in my opinion, inadmissible.[41]

For a river to be considered "navigable" within the terms of tbe section, Fair J considered it insufficient that it be used merely for recreational purposes and required something of the character of usage for commercial purposes. Stanton J agreed that not all rivers capable of being traversed would come under the ambit of the section but he did not find the "economic purposes" test belpful. In His Honour's opinion, a river would be "navigable" if it was of:

> sucb a widtb and depth as would be sufficient to allow the boats or other craft mentioned to pass over a sufficiently continuous length of water as to justify one in saying that the stream or a substantial and continuous portion of it, was available for the passage of any of the craft mentioned.[42]

F B Adams J, while suggesting that Stanton J may bave isolated a relevant consideration preferred the view that navigable in the section ought to be given its "ordinary" meaning; in his view, the economic purposes test was unbelpful. In F B Adams J's view, if a river were capable of use for even rowing boats, its bed would be deemed vested in the Crown. Following Stanton J, be added the qualification that:

> it would not he enough that one could be rowed a few yards up or down the stream if the limits were such that no sensihle person would want to do so.[43]

In *Tait-Jamieson* v *Smith Metal Contractors* it appears that Savage J took a limited view of the concept of navigahility in the Act.[44] His Honour opined that the characteristics of the Waikato river which influenced the court in *Mueller* had no application to the stretch of the Manawatu river at issue. It was neither used as a puhlic highway nor had military significance. It appears from the report that the evidence of counsel who invoked the section was insufficient for the section to apply.

In *The King* v *Morison*, one of many cases concerning ownership of the bed of the Whanganui river, Hay J considered the wording of the section to he "plain and unamhiguous".[45] In His Honour's view, unless the section is to be construed as vesting the beds of navigahle rivers in the Crown it was difficult to determine any purpose for the section. Although the case was reheard in the Court of Appeal, Hay J's explanation of the law on this point was left unchallenged hy the second decision.[46] The upshot of the final decision of the Court of Appeal on this question is, for present purposes, simply that hut for s14 of the Coal-mines Act Amendment Act 1903, title to the length of the Whanganui river in question would vest in the riparian owners *ad medium filum aquae*.[47]

While many legislative provisions impact on rights to riverbeds, of most immediate interest is the Native Land Amendment and Native Land Claims Adjustment Act 1926.[48] By s14 of that Act, the bed of Lake Taupo and the bed of the Waikato river from the lake to the Huka Falls was declared to be the property of the Crown "freed and discharged from Native Customary title (if any)". Section 14(4)(a) empowered the governor general to proclaim any part of the bed of any river or stream flowing into the lake to be Crown land.[49] Section 14(4)(b) further empowered the governor general to grant a right of way to licence holders over adjacent lands to a distance of one chain's length from the river. The parliamentary debates indicate that the principal purpose of the provisions was to prevent the vesting of exclusive fishing licences in foreigners. Though the necessity for the provision with respect to the lake bed was questioned, no member seemed concerned that the bed below the river's navigahle stretches was already vested in the Crown.[50] As the point was not addressed, no conclusions impacting on the correct interpretation of s14 of the Coal-mines Amendment Act 1903 may be drawn from the enactment of the later provision.

3. Summary and Conclusions

At common law the Crown's prerogative rights to the beds of rivers extended only so far as the tide ehbed and flowed. Such rights as the Crown holds at common law are suhject to puhlic rights such as navigation and fishery. The Crown holds as trustee for the puhlic. When compared with the common law, s261 of the Coal Mines Act 1979 appears confiscatory.

In other rivers and other parts of rivers the *ad medium filum aquae* rule applies. A riparian owner is vested of the bed of the river to its mid point. That presumption may be rehutted in a number of instances including where the bed of the river is reserved expressly or impliedly in the original grant and where the circumstances preclude its application. It has been suggested that the *ad*

medium filum rule may be rebutted by "comparatively slight evidence".[51] Rights to navigate non-tidal waters may exist independently of the ownership of the soil of the river bed.

The original predecessor of s261 of the Coal Mines Act 1979 was enacted shortly after the Court of Appeal decision of *Mueller* v *Taupiri Coal-Mines Ltd*.[52] There, the *ad medium filum aquae* rule was rebutted in favour of the Crown, but the stretch of the river at issue had been used extensively for commercial navigation.

The extent of the Crown's rights to tbe beds of rivers in New Zealand is uncertain. Englisb authorities are unhelpful due to the specialised meaning of "navigable" at common law. In New Zealand the Crown's rights to river beds under s261 depend on the meaning of "navigable" within that section. Controversy surrounds whether the term imports a requirement that the river be used for economic purposes or whether casual use by even very small boats is sufficient for the provision to operate. One writer has preferred the latter approach and has suggested that with the modern development of jet boats, more rivers are today navigable than was contemplated wben the section was originally enacted.[53]

References

1 (1867) 2 IR Rep CL 143

2 ibid 152

3 ibid 153

4 Sir John Comyns (first published 1762-1767): *A Digest of the Laws of England* (Knapton, Longman and Horsfield, London, 1822) vol 5, pp 151-152

5 (1610) Davis 55; 80 ER 540, 541. The passage is translated in *Murphy* v *Ryan* to read "There are two kinds of navigable rivers — navigable and not navigable. Every navigable river so high as the sea ebbs and flows in it is a royal river, and the fishing of it is a royal fisbery, and belongs to the King by his prerogative; but in every otber river not navigable and in the fishery of such river, the ter-tenants on each tide have an interest of common right. The reason for which the King hath an interest in such navigable rivers so high as the sea ebbs and flows, is because such river partakes of the nature of the sea, and is said to be a branch of the sea so far as it flows ... And that the King bath the same prerogative and interest in the branches of the sea and navigable rivers, so high as the sea ebbs and flows in them which he hatb in altro mari, is manifest by several authorities and records". It should be noted that *Le Case del royall Piscarie de le Banne* is no strong authority even for the limited rights of the Crown to the beds of tidal rivers. Of this case S A Moore *History of the Foreshore and the Law Relating Thereto* (Stevens and Haynes, London, 1888 3rd ed) wrote "this case would seem at first sight to establish tbe proposition that a royal fishery and the soil of it belonged to the King by virtue of tbe prerogative as one of the flowers of the Crown; but the facts so far as we can ascertain from the report, indicate that the fishery of the Banne was an ancient several fishery in gross and an ancient and separate bereditament, distinct from tbe adjoining land, which bad been in charge of the Crown in ancient times until tbe possession bad been usurped by tbe intruding riparian owners; and the decision of the case does not support the proposition that it belonged to the Crown by reason of tbe prerogative, but only that it was an ancient fishery in gross, parcel of the Crown's possession beld in severalty by tbe Crown".

6 Sir Mathew Hale *De Jure Maris*. In Moore 1888.

7 ibid 378

8 (1768) 4 Burr 2162; 98 ER 127

9 ibid 128-129

10 (1887) 20 QBD 263

11 A S Wisdom *The Law of Rivers and Watercourses* (Shaw and Sons, London, 1970)

12 Sir Mathew Hale's *First Treatise*. In Moore 1888, 336

13 In Moore 1888, 389-340

14 (1672) 1 Mod 105; 86 ER 776

15 (1908) 2 Ch 139, 168; (1821) 5 B & A 268, 300; 108 ER 1190, 1202

16 ibid 1197; in *Orr Ewing* v *Colquhoun* (1887) 2 AC 839, 852 Lord Blackburn in the House of Lords cited Lord Deas' comment in the court below that "[t]he Crown holds the *solum* of the tidal part of the river as trustee for the whole public, but in the remaining portion of the river the proprietors of the banks are the proprietors of the solum of the whole river"

17 Chitty J 1820 *A Treatise on the Law of the Prerogatives of the Crown* (Butterworth, London, 142)

18 (1900) 20 NZLR 89; At common law riparians owned river beds adjoining their land to the mid point of the river. The Privy Council, on appeal from New South Wales, acknowledged the rule in *Lord* v *Commissioners for the City of Sydney* (1859) 12 Moo PCC; 14 ER 991; in *St Francis Hydro Electric Co Ltd* v *The King* [1937] 2 All ER 541, 543 it was said that the *ad medium filum* rule applies to a non-tidal river "whether the river were navigable or not".

19 above n18, 98 (per Stout CJ): Hale *De Jure Maris* in Moore 1888, 374 states "and as the highways by land are called altae viae regiae so these publick rivers are called fluvii regales, and haut streams le Roy not in reference to the proprietary of the river, but to the public use ... and (are) under the King's special care and protection, whether the soil be his or not".

20 ibid 106. Cases concerning the *ad medium filum* rule should not be viewed as necessarily in conflict with the line of decisions considered in part 1 of this paper. The latter group concerns the Crown's prerogative rights whereas the *ad medium filum* rule is more a rule of conveyancing; see *Hutt River Board* v *Leighton* (1955) NZLR 750, 783 (per FB Adams J)

21 The Crown became vested of the land and was empowered to grant it under the confiscatory provisions of the New Zealand Settlements Act 1863. Williams J questioned "[i]s it conceivable that the Legislature could have contemplated that, if in any such district there was a river which was the only practicable highway for military purposes and for every purpose, the Crown should by virtue of that Act grant away the bed, and so deprive itself of the right to interfere with the soil and improve the navigation?".

22 Analogies were drawn with the Crown's control of highways to support the proposition that the Crown could not be presumed to have divested itself of comparable rights to waterways used as highways.

23 above n18 107

24 above n18

25 R I Cross "Legal Interpretation of the Definition of River Boundaries" in A S D Evans, (ed) *The Law Relating to Watercourses*, Water and Soil — Miscellaneous Publication No 86, Wellington (National Water and Soil Conservation Authority, Wellington, 1985)

26 (1900) 2 GLR 242, 242-243

27 idem

28 ibid 243

29 (1901) 2 GLR 160

30 ibid 161

31 idem. A similar approach was taken in *Kingdom* v *Hutt River Board* (1905) 25 NZLR 145 to the River Boards Act 1884 where a river bed was vested in the appellant board but such rights were limited to "such property and right only as is necessary for the carrying-out by the Board of its duties and jurisdiction as a River Board" (at p165).

32 see, for instance, (1903) 127 NZPD 681

33 For committee discussion of the other provisions see AJHR 1902 I-4A and AJHR 1903, I-4A

34 (1955) NZLR 750

35 ibid 753

36 ibid 754

37 ibid 755

38 ibid 768

39 ibid 769-770

40 ibid 770

41 idem

42 ibid 778

43 ibid 789

44 (1984) 2 NZLR 513

45 (1950) NZLR 247, 267

46 *In Re Bed of the Wanganui River* (1955) NZLR 419

47 *In Re Bed of the Wanganui River* (1962) NZLR 600

48 above n31 and accompanying text

49 The writer has been unable to find instances of confiscations effected under this provision.

50 (1926) 211 NZPD 283-284

51 above n20

52 above n18

53 R I Gordon *Land Adjacent to Water: Public and Private Rights and Restrictions* unpublished LLM thesis, Otago University, 1973, but now cf *Tait-Jamieson* v *Smith Metal Contractors* above n44

Other general works referred to but not cited specifically are:

Coulson, H C and Forbes, U A *The Law Relating to Waters, Sea, Tidal and Inland* (Sweet, London, 1880)

New Zealand Property Law and Equity Reform Committee 1983 *The Law Relating to Water Courses: Interim Report* (Property Law and Equity Reform Committee, Wellington, 1983)

Appendix 16

Lands Taken For Hydro-electric Power Purposes

The plans on the following pages were prepared by the Department of Survey and Land Information to illustrate the riparian lands of the Pouakani block adjoining the Waikato river whicb have been taken for bydro-electric power purposes by the Crown, under the Public Works Act.

Plan 1 shows the cadastral pattern prior to any taking of land by the Crown. This plan shows that no part of the banks of the Waikato river remained in the ownership of the descendants of the original owners of the Pouakani hlock. Pouakani No 2 hlock was formed out of lands purchased by the Crown in the 1890s and granted by the Crown in 1915 to Ngati Kahungunu people in exchange for the Wairarapa lakes.

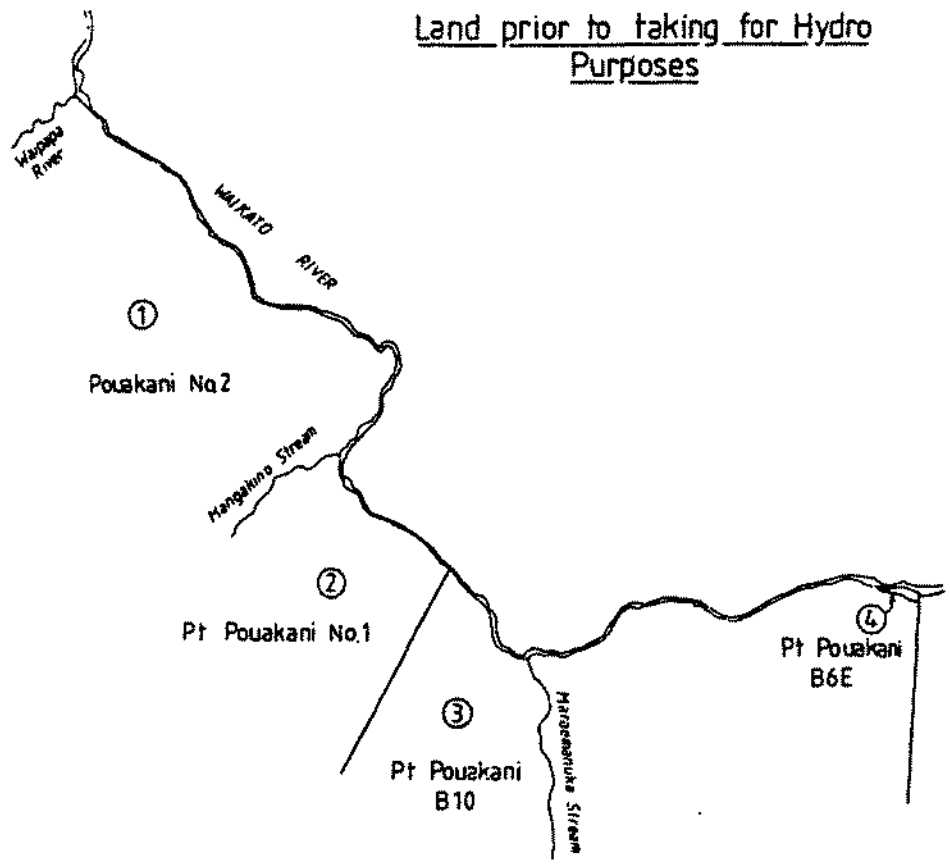
Plans 2A and 2B show that the Wairarapa Maori people lost 479 hectares (3.88% of their land holdings) as a result of takings by the Crown in 1949 and 1963 for the Maraetai and Waipapa HEP schemes respectively.

Plans 2C and 2D show that though land upstream of the Maraemanuka stream was flooded by HEP works, this land (apart from Pouakani B6E) bas never been taken for HEP purposes.

Plan 3 sbows land leased by the Wairarapa Maori people to the Crown for HEP purposes between 1949 and 1969. This is the site of the Mangakino township.

1

Land prior to taking for Hydro Purposes

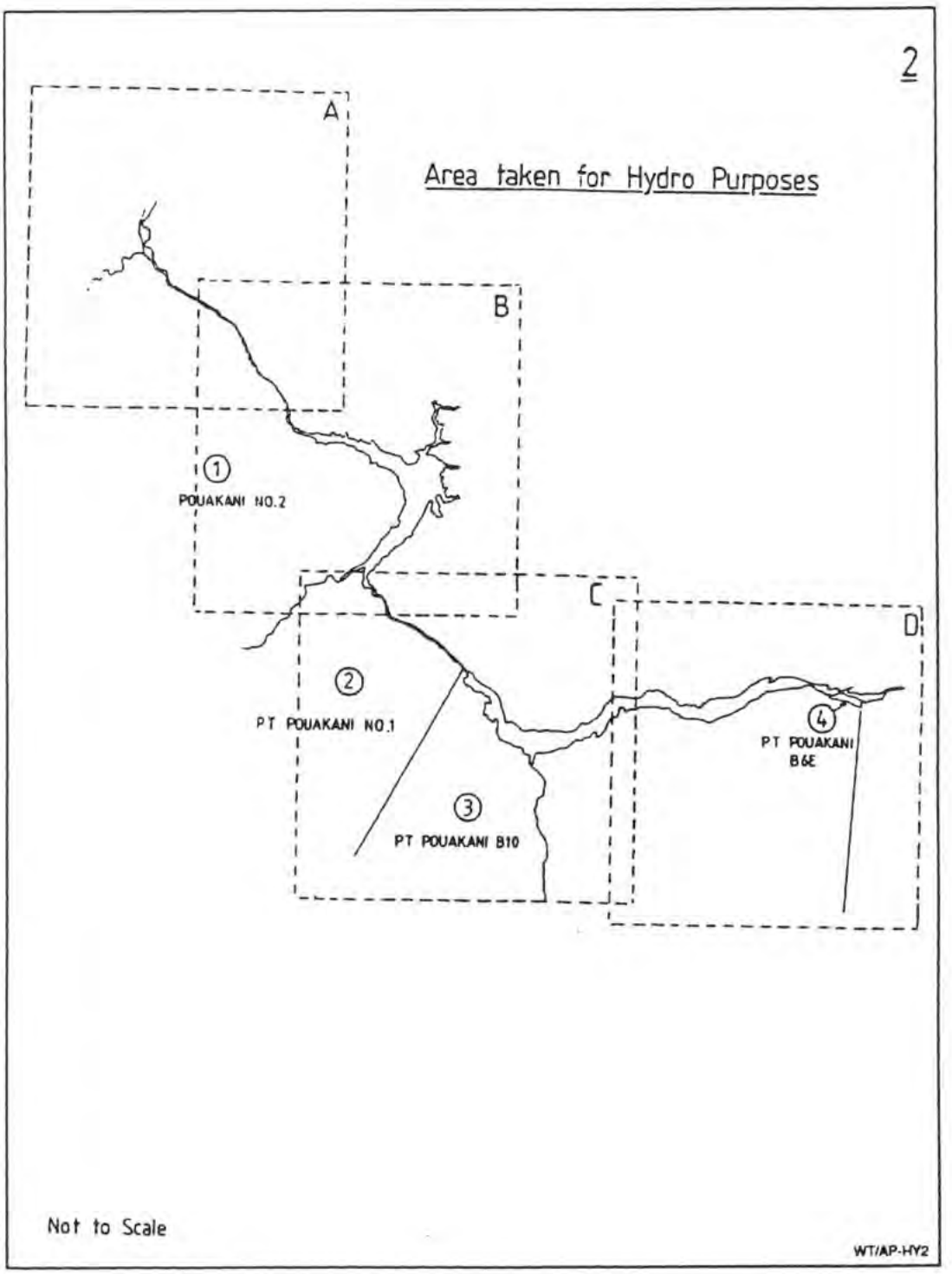


KEY

NUMBER	APPELLATION	STATUS	AREA
①	Pouakani No. 2	Maori Land PR 200/35	30,486-0-00 Acres (12,337.2465 ha)
②	Pt Pouakani No. 1	Crown Land Gaz 1892 p.1304	136-0-00 Acres Approx (55.0000 ha)
③	Pt Pouakani B10	Crown Land CT67/276	6465-0-00 Acres Approx (2614.0000 ha)
④	Pt Pouakani B6E	Crown Land Gaz 1969 p.1786	47-2-20 Acres Approx (19.2732 ha)

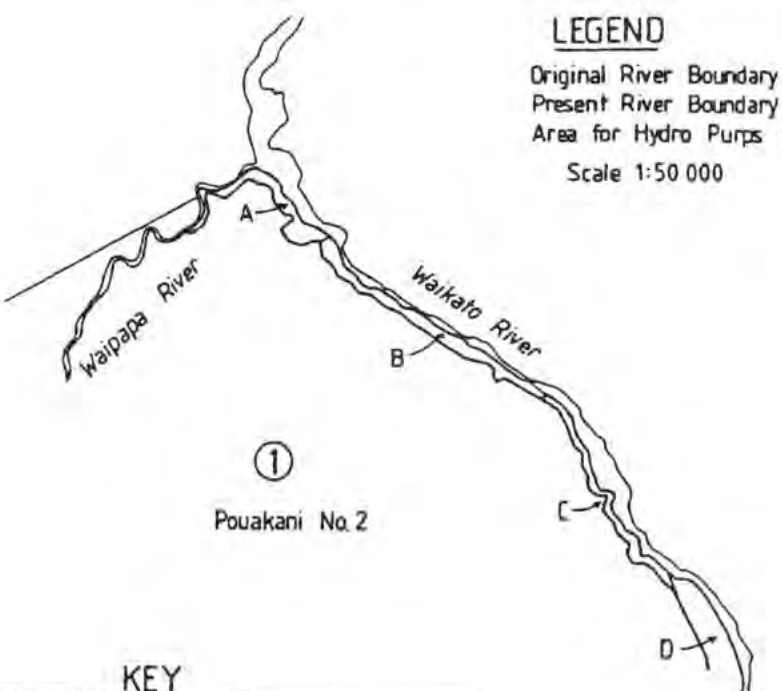
Not to scale

WT/AP-HY1


2
A
B
C
D
Area taken for Hydro Purposes
1
POUAKANI NO.2
2
PT POUAKANI NO.1
3
PT POUAKANI B10
4
PT POUAKANI B6E
Not to Scale
WT/AP-HY2

2A

Area taken for Hydro Purposes

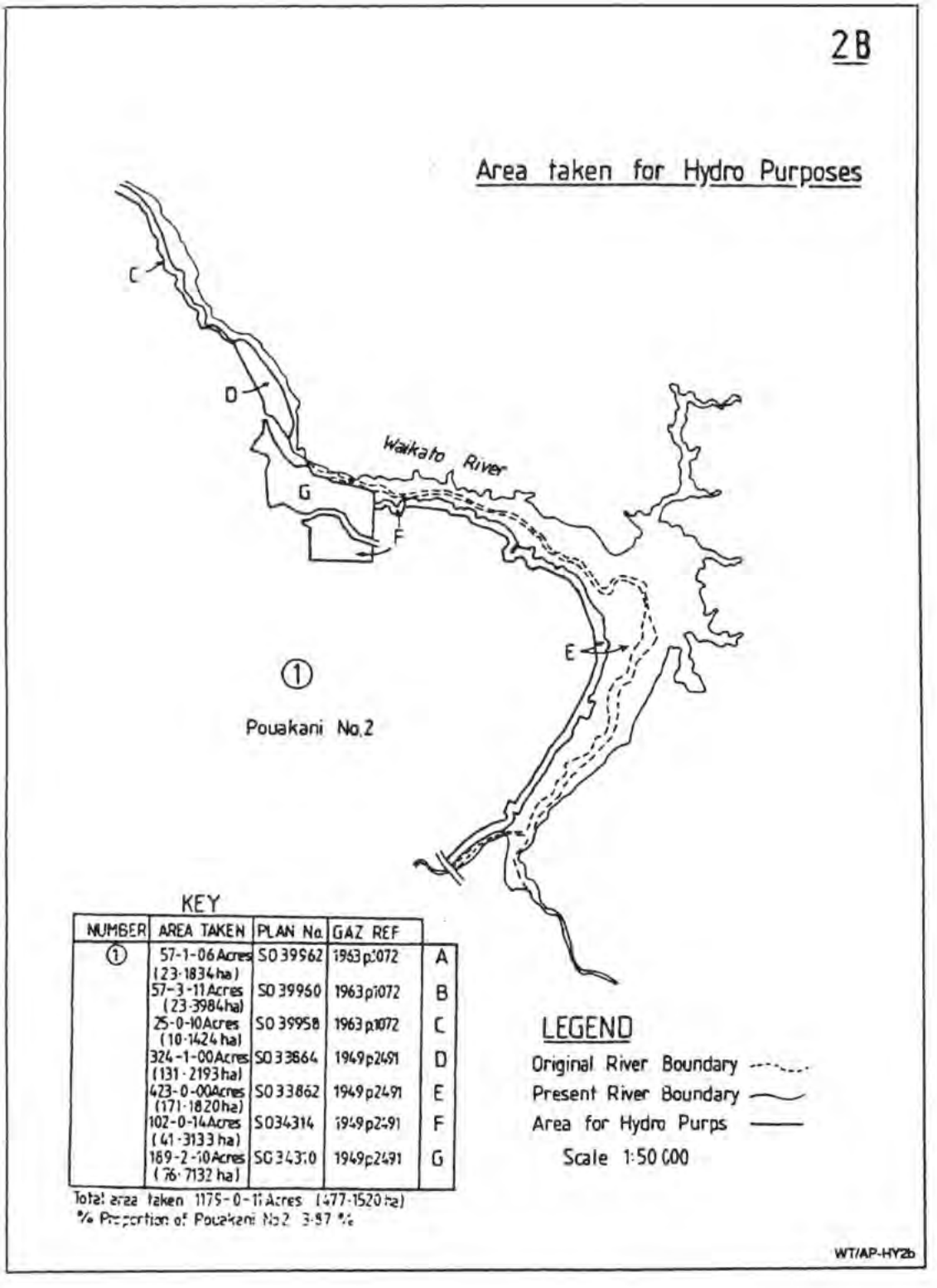


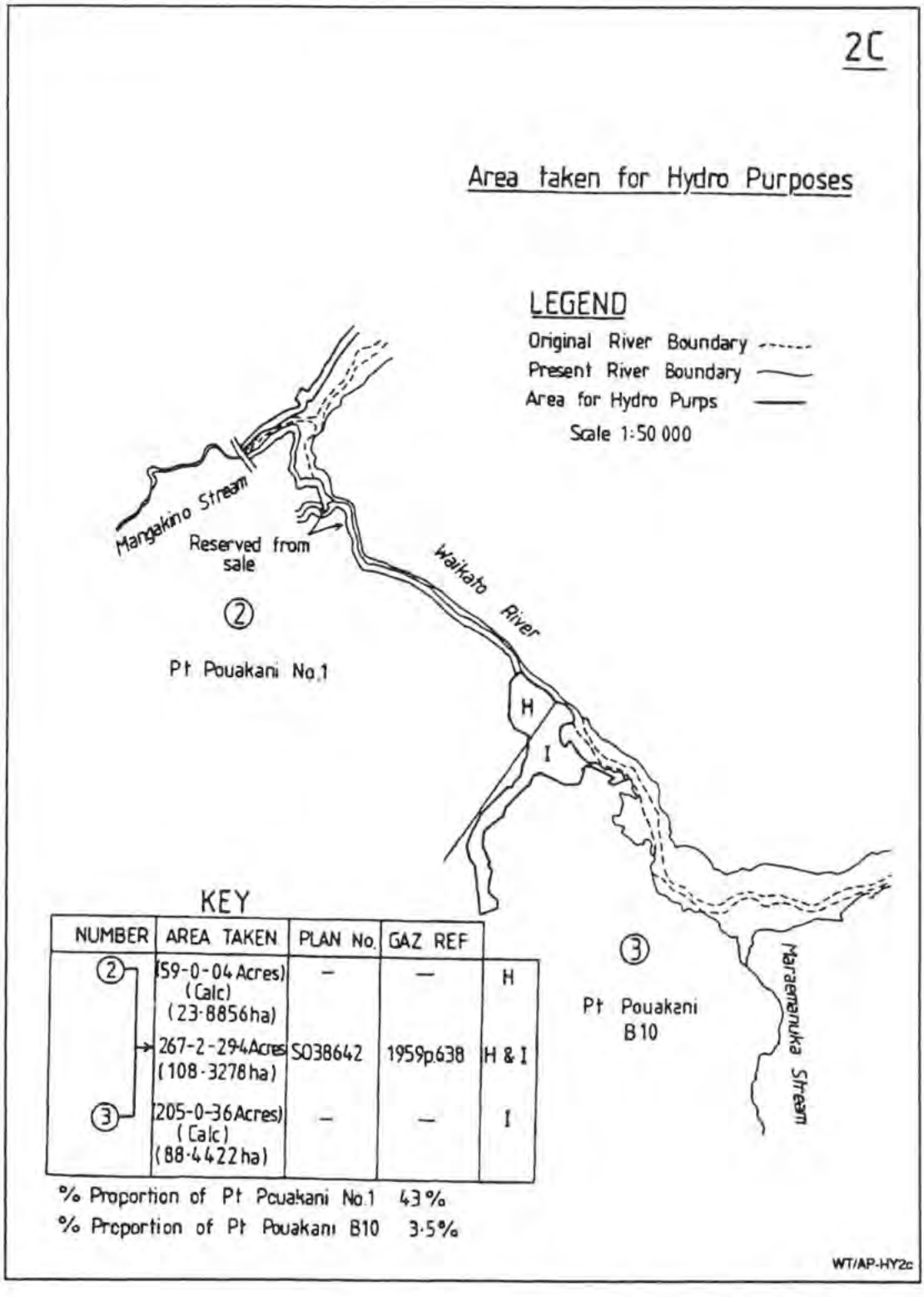
KEY

NUMBER	AREA TAKEN	PLAN No.	GAZ REF	
①	57-1-06 Acres (23·1834 ha)	SO 39962	1963 p1072	A
	57-3-11 Acres (23·3984 ha)	SO 39960	1963 p1072	B
	29-3-16 Acres (12·0799 ha)	SO 39958	1963 p1072	C
	324-1-00 Acres (131·2193 ha)	SO 33864	1949 p2491	D
	423-0-00 Acres (171·1820 ha)	SO 33862	1949 p2491	E
	102-0-14 Acres (41·3133 ha)	SO 34314	1949 p2491	F
	189-2-10 Acres (76·7132 ha)	SO 34310	1949 p2491	G

Total area taken 1183-3-17 Acres (479·0896 ha)
% Proportion of Pouakani No 2 3·88 %

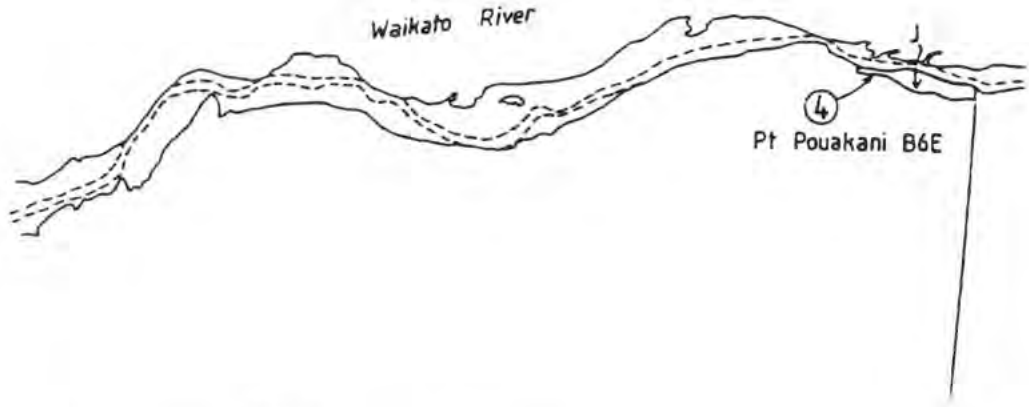
WT/AP-HY2a


2B
Area taken for Hydro Purposes
C
D
Waikato River
G
F
E
①
Pouakani No.2
KEY
NUMBER | AREA TAKEN | PLAN No. | GAZ REF
① | 57-1-06 Acres (23·1834 ha) | SO 39962 | 1963 p1072 | A
57-3-11 Acres (23·3984 ha) | SO 39960 | 1963 p1072 | B
25-0-10 Acres (10·1424 ha) | SO 39958 | 1963 p1072 | C
324-1-00 Acres (131·2193 ha) | SO 33864 | 1949 p2491 | D
423-0-00 Acres (171·1820 ha) | SO 33862 | 1949 p2491 | E
102-0-14 Acres (41·3133 ha) | SO 34314 | 1949 p2491 | F
189-2-10 Acres (76·7132 ha) | SO 34310 | 1949 p2491 | G
Total area taken 1175-0-11 Acres (477·1520 ha)
% Proportion of Pouakani No.2 3·87 %
LEGEND
Original River Boundary
Present River Boundary
Area for Hydro Purps
Scale 1:50 000
WT/AP-HY2b


2C
Area taken for Hydro Purposes
LEGEND
Original River Boundary
Present River Boundary
Area for Hydro Purps
Scale 1:50 000
Mangakino Stream
Reserved from sale
Waikato River
②
Pt Pouakani No.1
H
I
③
Pt Pouakani B10
Maraemanuka Stream
KEY
NUMBER
AREA TAKEN
PLAN No.
GAZ REF
② (59-0-04 Acres) (Calc) (23·8856 ha) — — H
→ 267-2-29·4 Acres (108·3278 ha) SO38642 1959p.638 H & I
③ (205-0-36 Acres) (Calc) (88·4422 ha) — — I
% Proportion of Pt Pouakani No.1 43%
% Proportion of Pt Pouakani B10 3·5%
WT/AP-HY2c

2D

Area taken for Hydro Purposes



KEY

NUMBER	AREA TAKEN	PLAN No	GAZ REF	
4	47-2-20Acres (19·2732 ha)	SO51742	1982 p.2704	J

% Proportion of Pt Pouakani B6E 100%

LEGEND

Original River Boundary -----

Present River Boundary ~~~

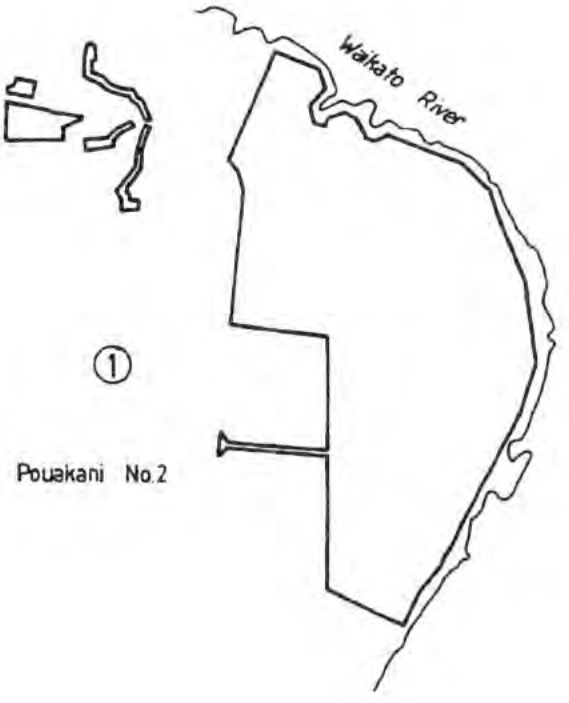
Area for Hydro Purps ——

Scale 1:50 000

WT/AP-HY2d

3

Leasehold Areas



KEY

NUMBER	APPELLATION	STATUS	AREA	GAZ REF
①	Pouakani No2	Maori Land PR200/35	674-0-09Acres (259·8310ha)	1949 p.2491&92

NOTE: Leasehold lapsed on 1.10.1969 See NZ Gazette 1949 p 2491

Not to Scale

WT/AP-HY3

Appendix 17

Record of Documents

The reference in brackets after each document refers to the person or party producing the document in evidence.

A: First hearing at Te Papa o te Aroha Marae, Tokoroa, 15-18 May 1989

Document:

A1 (a) Original statement of claim, received 27 March 1987
(b) Amended statement of claim, received 27 October 1987
(c) Addendum to amended statement of claim, received 1 May 1989
(registrar)

A2 Correspondence from counsel for claimants to the registrar, Waitangi Tribunal, confirming claimants' wish not to disturb the rights of third parties, dated 23 October 1987
(registrar)

A3 (i) Correspondence from John H Paki, chairperson, Titiraupenga Trust, to Minister of Maori Affairs, Hon K Wetere, on Pouakani block, Tauponuiatia West boundary, enclosing report of J M Harris, registered surveyor, Te Kuiti, dated 11 September 1986
(ii) Correspondence from Hon K Wetere in reply to John H Paki, dated 29 October 1986 (see A3(i))
(counsel for claimants)

A4 Correspondence from Waiariki District Manri Land Court to counsel for claimants on boundaries of Pouakani B9B, enclosing copy of suhmission of Department of Lands and Survey, dated 10 February 1987
(counsel for claimants)

A5 Report of the Royal Commission appointed to inquire into the Tauponuiatia hlock and memorandum of Under-Secretary, Native Department to the Native Minister on the Tauponuiatia commission, AJHR 1889 G-7, G-7A
(i) Extracts from Tauponuiatia Royal Commission minute hooks of evidence, 29 July-8 August 1889, "Re Maraeroa and Hurakia — Remarks re the case of the N'Maniapoto", and "Boundary Case", pp 35-104, 146-165, MA/71/1, National Archives
(ii) Extract from Tauponuiatia Royal Commission minute book of evidence, 9-13 August 1889, "Hitiri's Case", pp 1-48, MA/71/1, National Archives
(iii) Copy from one file of exhibits:
Exhihit C — whakapapa given by Hitiri Te Paerata
Memo that exhibits A & B were telegrams and should not have been treated as exhibits
Exhibit D — correspondence from W H Grace to Mr Moon, dated 7 June 1887
Exhibit F2 — correspondence from Wahanui Huatare, Taonui Hikaka, Rewi Maniapoto, Ngakuru Rangikaiwhiria, and Te Piki Kotuku to Tumuaki Kai Ruri, Te Mete, (S P Smith) dated 19 December 1883

Exhibit F3 — correspondence from Te Mete Tumuaki Kai Ruri to Wahanui, Taonui, and Rewi Maniapoto, dated 19 December 1883
Exhibit F4 — correspondence from John Bryce to Wahanui and Manga recommending that N'Maniapoto should apply to the Native Land Court to have their land's Crown title guaranteed, dated 16 March 1883
Exhibit G — instructions handed in hy Mr Cussen, being order on houndaries signed hy Judge Scannell for Tauponuiatia West and Maraeroa hlocks, dated 21 May 1886
Exhibit H — closing address of Mr Moon in Karawhira Kapu case
(iv) Native Land Court Acts Amendment Act 1889, s29, (53 Vict 1889, No 32) (registrar)

A6 Copy of Waiariki District Maori Land Court file 31382 on s452 application CJ 1987/42 of John H Paki, dated 27 June 1988
(a) Minute of deputy chief judge adjourning application CJ 1987/42 sine die, dated 22 June 1988, 1988 CJMB folio 77, with copy of court memoranda attached
(h) Interim report of Judge Hingston to chief judge on application of John H Paki to cancel the Pouakani B9 hlock partition order made on 11 August 1891, dated 14 June 1988, with copy of interim decision of Judge Hingston, 65 Taupo minute hook 1-12 attached, dated 9 June 1988
(c) Record of Manri Land Court proceedings on application of John H Paki on Pouakani B9A and B9B, dated 10 November 1987, 220 Rotorua minute book 30-48
(d) Memorandum of counsel for the applicant to Judge Hingston on evidence to be adduced at hearing on 10 November 1987, dated 11 September 1987
(e) Minute of deputy chief judge referring application of John H Paki on Pouakani B9 hlock to Judge Hingston for enquiry and report, dated 24 August 1987, 1987 CJMB folio 123
(f) Extract from 7 Taupo minute hook 284 affirming the interlocutory order determining the boundaries of the Kaiwha hlock, dated 24 March 1887
(g) Copy of order of the Native Land Court declaring Pouakani B9 hlock to be owned hy the 114 people named in the attached schedule, with plan and schedule attached, dated 11 August 1891
(h) Extract from 28 Waikato minute hook 11-15, recording the hearing of the ahove order, dated 11 August 1891
(i) Copy of order of the Native Land Court sitting at Kihikihi vesting Pouakani B9A in the Crown, with plan and schedule attached, dated 24 July 1899
(j) Copy of order of the Native Land Court vesting title of Pouakani B9B in 32 owners named in the schedule attached, with plan and schedule attached, dated 24 July 1899
(k) Copy of certificate of G Mueller, chief surveyor, under s65 Native Land Court Act 1894, declaring the cost of the survey of Pouakani B9 to be owing, dated 20 August 1898
(l) Copy of notice of release of lien over Pouakani B9 in regard to survey and plan costs, dated 14 September 1899
(m) Copy of orders of the Maori Land Court, 64 Taupo minute hook 71-74
(i) appointing advisory trustees for Pouakani B9B
(ii) vesting Pouakani B9B in tustees pursuant to s438 Maori Affairs Act
(iii) copy of new trust order made under s438(5) Maori Affairs Act 1953, outlining the terms of the trusts on which the trustees hold Pouakani B9B
(n) Copy of particulars of title to land of Pouakani B9B, dated 1 October 1980
(o) Copy of application to chief judge of John H Paki under s452 Maori Affairs Act 1953, dated 20 July 1987

A7 Copies of proceedings in the Waiariki Maori Land Court for Pouakani B9A and B9B
(a) Application of John H Paki under s452 Maori Affairs Act 1953 for amendment/cancelling of order made 24 July 1899 determining the owners and boundaries of Pouakani B9, dated 20 July 1987
(h) Application of John H Paki for orders under sections 30(1)(a) & 30(1)(i) Maori Affairs Act 1953 determining the ownership and status of Pouakani B9A and B9B, dated 21 July 1987
(c) Memorandum of counsel for the applicant to Judge Hingston on evidence to be adduced at hearing on 10 November 1987, dated 11 September 1987 (duplicate of A6(d))
(d) Affidavit of J M Harris, registered surveyor, in support of application of John H Paki
(e) Affidavit of John H Paki in support of application under ss30(1)(a) & (i) Maori Affairs Act 1953
(registrar)

A8 Copy of submissions of counsel for applicant in Maori Land Court proceedings under ss30(1)(a) & (i), and s452 Maori Affairs Act 1953
Extracts from case law referred to in A8:
(a) re Parapara A10, application of A O Ritete, 1984 CJMB 20-25
(b) *Higgins* v *Bird* 7 Waiariki AC minute book 24-56, judgment of Maori Appellate Court, 13 October 1986
(c) *Murray* v *Scott* [1976] 1 NZLR 643
(d) *Maori Affairs Board* v *Jeune and Others* [1971] NZLR 283
(e) *Waimanu Sawmilling Co Ltd* v *Prichard* [1963] NZLR 295
(f) *Hami Paihana* v *Tokerau District Maori Land Board* [1955] NZLR 314
(registrar)

A9 Further papers on Maori Land Court proceedings under ss30(1)(a) & (i), and s452 Maori Affairs Act 1953
(a) Memorandum of counsel for Department of Conservation to Judge Hingston on the jurisdiction of the Maori Land Court to hear the applications, dated 9 November 1987
(b) Affidavit of Robert G Read, deputy chief surveyor, Department of Survey & Land Information, on the affidavit of J M Harris (see A7(d)), dated 5 November 1987
(c) Further affidavit of J M Harris, dated 24 November 1987
(d) Further memorandum of counsel for Department of Conservation on further affidavit of J M Harris (see A9(c))
(e) Letter from counsel for applicant to the registrar, Maori Land Court, Rotorua, on the Treaty of Waitangi (State Enterprises) Bill and their clients' proceedings in the High Court/Maori Land Court, dated 31 March 1988. Encloses letter from Crown Law Office outlining the Crown's position, dated 30 March 1988
(f) Affidavit of John Hanita Paki of 20 July 1987 in the High Court proceedings *Attorney General* v *J H Paki and ors* (Hamilton CP 176/87)
(registrar)

A10 Extracts from 4 Taupo minute book on Tauponuiatia, dated 14-27 January 1886, pp 34-70; Tauponuiatia Horaaruhe Pouakani, dated 18-19 February 1886, pp 223-224; Tauponuiatia western portion, dated 24-25 Fehruary 1886, pp 247-255; Tauponuiatia West, dated 1-3 March 1886, pp 270-295; Tauponuiatia West, dated 8-12 March 1886, pp 315-354
(registrar)

A11 Extract from 5 Taupo minute book on Maraeroa block, dated 24-26 March 1886, pp 58-83
(registrar)

A12 Extracts from 6 Taupo minute book on Maraeroa block, dated 19 January 1887, p 288; and Pouakani block subdivision, dated 3-8 February 1887, pp 372-403
(registrar)

A13 Extracts from 7 Taupo minute book on Pouakani block subdivision, dated 8-9 February 1887, pp 1-9; and Pouakani names, dated 22 February-4 Marcb 1887, pp 85-143, 151-169, 7 Marcb 1887, pp 178-185, 9 Marcb 1887, pp 190-192, 15-23 Marcb 1887, pp 217-284
(registrar)

A14 Extracts from 8 Taupo minute book on Pouakani names, dated 5-26 April 1887, pp 1-77, 81-148, 23 May 1887, pp 287-288; Pouakani names, Hapotea block, 28 May 1887, pp 309-310; Hapotea names, 2-3 June 1887, pp 340-345; Pouakani names, 7-10 June 1887, pp 353-395
(registrar)

A15 Extracts from 9 Taupo minute book on Pouakani names, 10 June 1887, pp 26-27; Kaiwha names, p 86; Hapotea names, pp 144-158; scbedule of orders, p 192; Pouakani block, 19 September 1887, pp 262-263; Tauponuiatia West block, 24 September 1887, pp 274-281, 302-318; Waihaha, Tihoi, Maraeroa etc blocks, 6 February 1892, pp 329-331, 335-341
(registrar)

A16 Extracts from 26 Waikato minute book on Pouakani block, 19 November 1890, p 1, 2 December 1890-7 February 1891, pp 26-67, 18 February-4 June 1891, pp 97-288
(registrar)

A17 Extracts from 27 Waikato minute book on Pouakani block, 5 June-7 August 1891, pp 1-174
(registrar)

A18 Extracts from 28 Waikato minute book on Pouakani block orders, 11-25 August 1891, pp 1-39 (registrar)

A19 Extracts from 36 Otorobanga minute book on Pouakani partition orders for C1B, B9B, B6B, B6C, B6D, B6E, A1B, A2B, A3B, dated 11 August 1899, pp 280-298
(registrar)

A20 Copies of orders with scbedules attacbed, dated 11 August 1891
(i) (a) vesting Pouakani A1 in 59 named owners
(b) appointing trustees for Pouakani A1
(c) vesting Pouakani A2 in 88 named owners
(d) appointing trustees for Pouakani A2
(e) vesting Pouakani A3 in 60 named owners and order appointing trustees for block
(ii) (a) vesting Pouakani B1 in two named owners
(b) vesting Pouakani B2 in two named owners
(c) vesting Pouakani B3 in two named owners
(d) vesting Pouakani B4 in one named owner
(e) vesting Pouakani B5 in 36 named owners
(f) vesting Pouakani B6 in 237 named owners
(g) appointing trustees for Pouakani B6
(b) vesting Pouakani B6D in five named owners

(i) vesting Pouakani B6E in one named owner
(j) vesting Pouakani B7 in two named owners
(k) vesting Pouakani B8 in six named owners
(l) vesting Pouakani B9 in 114 named owners
(m) appointing trustees for Pouakani B9
(n) vesting Pouakani B10 in 20 named owners
(o) vesting Pouakani B11 in three named owners
(p) vesting Pouakani B9A in the Crown
(q) vesting Pouakani B9B in 32 named owners and application to summon meeting of owners regarding tbe sale of Pouakani B9B
(iii) (a) vesting Pouakani C1 in 66 named owners
(b) appointing trustees for Pouakani C1
(c) vesting Pouakani C2 in five named owners
(d) vesting Pouakani C3 in one named owner
(e) vesting Pouakani C4 in eigbt named owners
(f) vesting Pouakani C1B in 37 named owners
(iv) (a) vesting Pouakani D1 in one named owner
(b) vesting Pouakani D2 in 120 named owners
(c) appointing trustees for Pouakani D2
(d) vesting Pouakani D3 in one named owner
(e) vesting Pouakani D4 in one named owner
(registrar)

A21 Report of the Surveyor General to tbe Minister of Lands and Surveys of New Zealand, AJHR 1884 sess II C-1
(registrar)

A22 Report of the Chief Surveyor, Auckland, on survey of Maori land in the King Country, AJHR 1885 G-9
(registrar)

A23 Copies of plans for Pouakani block
(a) no 1 — plan ML 6036, 6076, 6078, 6079 (ML 6036 etc) of Tauponuiatia West, showing Hora Aruhe Pouakani, Tihoi, Tuhua, Hurakia, Waihaha, Haubungaroa, Karangahape, Waituhi, and Maraeroa subdivisions, approved 15 May 1887
(b) no 1A — larger scale version of A23(a)
(c) no 1B — plan ML 5995E [Tauponuiatia West]
(d) no 2 — map ML 6036 of Hora-Aruhe Pouakani block, Tauponuiatia West, claimed by Te Rangikarapiripia & Hapeta Te Paku with boundaries pointed out by Hapeta Te Paku, signed by W C Kensington
(e) no 3 — plan ML 6406-6413[2] (ML 6406 etc) of Pouakani sub-divisions, B11, B7, B8, B9, C2 and C3, signed W C Kensington 21 Marcb 1893
(f) no 4 — plan ML 6036A of Pouakani no 1, approved by Judge Scannell, 3 June 1892
(g) no 5 — plan ML 5995B of Tauponuiatia showing subdivisions as adjudicated upon by Judges D Scannell and FMP Brookfield, signed by T Humpbries, 2 Marcb 1891
(b) no 6 — plan G M 180 showing Robe Potae of Tauponuiatia referred to by the 1889 Tauponuiatia Royal Commission
(i) no 6A — plan A218 sbowing boundaries adjacent to Tahorakarewarewa
(j) no 7 — plan ML 6077 on Maraeroa C definition, produced before the Native Land Court, 9 December 1907
(k) no 8 — plan ML 6498 of Punakerikeri block, being part Maraeroa A block, signed W C Kensington, 7 February 1899

(l) no 9 — plan ML 7728 of subdivisions of the Maraeroa block, produced in the NLC, 17 April 1916
(m) no 10 — composite cadastral map, sbeets T16 & T17, NZMS 261, with Hora Aruhe, Pouakani block highlighted
(n) no 11 — plan drawn by DOSL1 sbowing boundaries as on ML 6406-6413[6] and minute book references
(registrar)

A24 Rules of the Native Land Court, extract from *New Zealand Gazette* no 114, 2 December 1880, pp 1704-1707
(registrar)

A25 Report on survey aspects by M Cox, commissioned by the tribunal
(registrar)

A26 Opinions of various authorities on native tenure, AJHR 1890 vol 2 G-1
(registrar)

A27 Supporting papers to A28
(registrar)

A28 Preliminary report, prepared for the tribunal by Paul T Harman, researcb officer, Waitangi Tribunal staff, May 1989
(registrar)

A29 Compilation of Tihoi and Maraeroa C papers showing history of grievance, petition, protest and complaint prepared by tribunal staff from material supplied by DOSLI
(registrar)

A30 McLintock, Dr A H "Liquor and the King Country. An examination by Dr A H McLintock, parliamentary historian, of the facts concerning a sacred or solemn pact, covenant, pledge, or treaty said to bave been made between the government of New Zealand and the Maori chiefs of the King Country" AJHR 1953 H-25
(registrar)

A31 Papers and correspondence on the granting of timber-cutting rigbts on Pouakani
(counsel for claimants)

A32 Copies of legislative provisions used by the Crown in pursuance of policy of taking lands for survey costs
(counsel for claimants)

A33 Copies of deeds of sale and Native Land Court orders transferring title of Pouakani lands to the Crown
(a) order vesting Pouakani no 1 in the Crown, dated 24 September 1887
(b) orders vesting Pouakani A1A, A2A, A3A in tbe Crown, dated 21 July 1899, and deed of sale of Pouakani A block to the Crown (undated)
(c) certificate of title and deed of sale to the Crown for Pouakani B7, B8, B11, C3, B10 and D4, dated 12 Marcb 1892
(d) order vesting Pouakani B9A in the Crown, dated 24 July 1899 and deed of sale of Pouakani B9 to tbe Crown (undated)
(e) order vesting Pouakani C1A in the Crown, dated 26 July 1899, and deed of sale of Pouakani C1 to tbe Crown (undated)
(f) order vesting Pouakani C2, dated 27 June 1898, and deed of sale of Pouakani C2 to the Crown, dated 12 Marcb 1898
(g) deed of sale of Pouakani D3 to the Crown, dated 10 Marcb 1892
(registrar)

A34 Suhmission of whakapapa of Matangi Hepi

A35 Booklet of A4 maps numbered 2-29, (maps 16 and 23 in A4 overlay form). Two large composite maps, one cadastral and one topographical, were accepted as maps 6 and 6A of the booklet. A series of large overlay maps relating to the booklet were also accepted as separate exhibits (A35 maps 2A-29A) containing differences as to information (see C6).
(counsel for claimants)

A36 Submissions of counsel for claimant, dated 15 May 1989, with appendices: (1) table of Pouakani lands acquired by Crown 1887-1899; (2) summary of actions taken by claimant to date; (3) summary of relevant court orders in chronological sequence
(counsel for claimants)

A37 Suhmissions of counsel for claimant on
(a) the government policy of taking land for survey costs
(b) treaty principles and issues of ownership and management of the Waikato river
(counsel for claimants)

A38 Evidence of Kevin Were, farm management consultant, on the Titiraupenga Trust
(a) Addendum to A38
(counsel for claimants)

A39 Extract from report on the claims of the Titiraupenga Trust over Pureora Forest Park and adjacent lands, by the Waikato Region, Department of Conservation, Hamilton, November 1988
(counsel for claimants)

A40 Evidence of J M Harris
(a) Addendum to A40
(b) Compilation of traverse sheet and extracts from surveyor's field notebook on survey of Pouakani boundary
(counsel for claimants)

A41 Submission of Graeme Austin, associate lecturer in law, Victoria University, on "navigable rivers" and s261 Coal Mines Act 1979
(counsel for claimants)

A42 Submission of wbakapapa of John H Paki
(counsel for claimants)

A43 Large topographical map of North Island, NZMS 242, sheet 2 (with A35 map 2A showing the 1883 Rohe Potae boundary overlaid)
(counsel for claimants)

A44 Two copies of minor triangulation survey maps
(a) plan no 4356A of minor triangulation, Mount Eden South Meridional Circuit, Survey Districts: Tuhingamata, Te Atiamuri, Marotiri, Whakamaru-Hurakia, Titiraupenga and Wharepapa; and connections by William Cussen, authorised surveyor. Scale 1 mile to an incb; area: 150,600 acres
(b) plan 2816 of minor triangulation, Patetere and Whakamaru districts, signed L Cussen, district surveyor, 3 November 1881
(counsel for claimants)

A45 Set of four sheet plans being parts of plan ML 5851 of the Aotea block, Rohe Potae (King Country)
(a) sheet no ML 5851(2), the north-eastern houndary, noted on this sheet as being claimed hy Rewi Maniapoto, (Hitiri Paerata, Taonui), Wahanui, Hopa (Te

Rangianini) and others. Note: the words "Append as a sketch plan Asst. Survey-General 19-7-86, At NLC 28 July 1886, Otorohanga" have been penned on hy J M Harris, copying what is on the original, signed C Spencer and F H Edgecumbe 1884
(b) sheet no ML 5851(3), the Aotea houndary with Mangapapa, Mokau river, Kirikau, and Waimarino
(c) sheet no ML 5851(4), the Aotea boundary with Maraeroa, Tuhua, Hurakia, Waihaha, and Puketapu Raumata
(d) sheet no ML 5851(4), reduced version of A45(c), from Tuhua Hurakia Waihaha to Murimotu
(counsel for claimants)

A46 Series of maps sbowing acquisition of lands for the bydro-electric scbemes, Maraetai, Waipapa, and Whakamaru
(a) SO 33862—land to be taken for road & for the Maraetai hydro-electric scheme being parts Pouakani hlock, hlocks I, II & VI Whakamaru Survey District, South Auckland land district—Taupo county
(b) SO 39962—plan of land to be taken for the development of water power (Waipapa scheme) being part Pouakani A No 1A block, part Pouakani block & pt Wharepuhunga No 19 Blk
(c) SO 33864 — land to be taken for road and for the Maraetai bydro-electric scheme, being part Pouakani block
(d) SO 34310 — land to be taken for development of water power (Maraetai scbeme) being part Pouakani hlock
(e) SO 34314 — land to be taken for road and for development of water power (Maraetai scheme), being parts Pouakani block
(f) SO 38672 — land to be set aside for hydro-electric pipeline easement and drainage, being part Pouakani No 1 & B No 10 blocks
(g) SO 39958 — land to be taken for the development of water power (Waipapa scbeme) part DP 19831, being part Maraetai block and part Pouakani block
(b) SO 39960 — land to be taken for the development of water power (Waipapa scbeme), part DP 19831, being part Maraetai block and part Pouakani block
(i) SO 39962 — plan of land to be taken for the development of water power (Waipapa scheme), being part Pouakani A No 1A hlock, part Pouakani block
(j) SO 42631 — plan of sections 67 to 87, town of Whakamaru, formerly part sec 7 block X Whakamaru Survey District
(k) SO 44917 — land for secondary use (recreational purposes etc)
(l) SO 47047 — land to be taken (Waipapa), dated approved hy chief surveyor, 19 June 1873
(m) SO 47839 — land to be declared Crown land being part Pouakani hlock, dated approved by chief surveyor, 9 October 1874
(n) SO 47839 — similar to A46(m) hut with diagram-distorted measurements not included
(counsel for claimants)

A47 Plan 20/1345 showing boundaries adjacent to Tahorakarewarewa, Auckland land district
(counsel for claimants)

A48 Submission of Pius Te W Hepi on the Crown's acquisition of shares in Waipapa no 4, part of the original Pouakani block
(counsel for Crown)

A49 Suhmission of whakapapa of Tame Rangitukia
(counsel for claimants)

A50 Memorandum of erratum filed for A28
(registrar)

B: Second hearing at Conference Room, Timberlands Hotel, Tokoroa, 21-23 August 1989
Document:

B1 Memorandum in reply to evidence of J M Harris on survey aspects, prepared hy M Cox for the trihunal (see A40 & A25)
(registrar)

B2 Second addendum to evidence of J M Harris (A40), dated 28 June 1989
(counsel for claimants)

B3 (a) correspondence from counsel for claimants to the registrar, Waitangi Tribunal, on Waikato river aspects of the claim, dated 23 June 1989
(b) correspondence from presiding officer, Judge R Russell to the registrar, Waitangi Tribunal, on proposed severance of Waikato aspects from the Pouakani claim
(registrar)

B4 Evidence of David J Alexander on the western & southern boundaries of the Pouakani block, including supporting papers
(counsel for Crown)

B5 Evidence of David J Alexander on the award of Pouakani 1 to the Crown, including supporting papers
(counsel for Crown)

B6 Evidence of Tony Walzl on the Pouakani purchases 1885-1899
(counsel for Crown)

B7 Supporting papers to B6
(counsel for Crown)

B8 Evidence of David J Alexander on the partitions of Pouakani B9 & C1
(a) Oral addendum to B8 given during hearing
(counsel for Crown)

B9 Plans of lands taken for hydro-electric purposes prepared hy DOSLI
(counsel for Crown)

B10 Copy of results of DOSLI research on Waipapa 5
(counsel for Crown)

B11 Evidence of John R Leathwick, Ministry of Forestry on Waipapa, Pikiariki and Pureora mountain ecological areas
(a) Series of maps showing location of above ecological areas
(counsel for DOC)

B12 Evidence of Alan J Saunders, Department of Conservation, on wildlife and wildlife habitat values of the Pureora Forest Park
(counsel for DOC)

B13 Submission of counsel for the Maori Trustee, on Pouakani B9B and C1B2
(a) Warrant to act to Michael V West, signed by Maori Trustee, Thompson Parore, dated 5 July 1989
(counsel for Manri Trustee)

B14 Supporting paper to submission of Tony Walzl (B6): set of 6 copies of ledger journal analysis (land purchase accounts) numbered I-VI and a deed comparison of Pouakani blocks A, B9, and C1 (numbered VII)
(counsel for Crown)

B15 Evidence of Alan S Edmonds, Department of Conservation, on ecological areas within the Maraeroa block from the national perspective
(counsel for DOC)

B16 Evidence of Josephine A Barnan on timber cutting rights in Pouakani C1B2
(a) Supporting papers to B16
(counsel for Crown)

B17 Warrant to act to Timi Wi Rutene, signed by Manri Trustee, Thompson Parore, dated 15 August 1989

B18 Correspondence from Maniapoto Maori Trust Board to counsel for claimant advising of Ngati Maniapoto involvement via Ngati Matakore in the Maraeroa and Pouakani blocks, dated 16 August 1989
(counsel for claimants)

B19 Submission by Dr Ian Johnstone, Electricity Corporation of New Zealand on the Pouakani claim
(counsel for Electricorp)

B20 Report of Department of Conservation, Waikato region, on the claims of the Titiraupenga Trust over Pureora Forest Park and adjacent lands, November 1988
(counsel for DOC)

C Third hearing at Te Papa n te Arnha Marae, Tnknrna, 9-12 Octnber 19g9

Document:

C1 Compilation of papers on Native Land Court investigation of title to Maraeroa block 1891:
(i) Comment on 28 Waikato minute book
(ii) Extracts from 28 Waikato minute book, dated 21 August-12 December 1891, pp 29, 35-165
(iii) Copies of Native Land Court orders vesting Maraeroa block, Maraeroa A, A1, B, B1, and C in named owners; relating to survey costs of Maraeroa block and Maraeroa A; and copies of applications for a rebearing for the Maraeroa block and charging of survey costs, dated 21 June 1893
(iv) Extract from New Zealand Gazette no 55, July 1895, proclaiming Maraeroa A1 and B1 to be Crown lands
(v) Maori Land Court order, dated 15 May 1895 and deed of purcbase, dated 23 April 1895, for Maraeroa A1
(registrar)

C2 List of plans produced at Pouakani Native Land Court investigations as to title and survey, compiled by DOSLI
(registrar)

C3 Copy of the Crown Forest Assets Bill 1989
(registrar)

C4 Copy of discussion paper produced by government on "A National Policy for Indigenous Forests", September 1989
(registrar)

C5 Copy of paper by Tom Parore, Director, Department of Maori Affairs, Whangarei, "A Maori View on Native and Exotic Forestry in Taitokerau", April 1985
(registrar)

C6 Addendum to evidence of J M Harris (A35)
(counsel for claimants)

C7 Final submissions of counsel for claimants
(a) part I — introduction
(b) part II — principles and alleged breaches of the Treaty
(c) part III — general principles
(d) part IV — remedies
(counsel for claimants)

C8 Paper issued by Ministry for tbe Environment, "Update on the Resource Management Law Reform", October 1989
(registrar)

C9 Closing address of counsel for the Crown

C10 Booklet of pbotos of the Waipapa bydro-development scheme by Electricity Corporation "Waipapa River-Tokaanu, 17/05/44"
(counsel for Electricity Corporation)

ISBN 1-86956-264-X