

The Pouakani Report 1993

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](#)).

Waitangi Tribunal, Department of Justice, Wellington.

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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. {FNREF:0-86472-117-XA:14:1} 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. {FNREF:0-86472-117-XA:14:2} 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 bush. The block had been developed by the Department of Lands and Survey as part of the Huiarau Development Scheme, one of many large "land development schemes" in the Taupo district where Crown and Maori lands were converted from scrub 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 by the 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 Maori Land portion in making apportionments of the total block. The Trustees were also concerned that all the buildings on the block had been constructed on the Crown land, had been paid for by the total block 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 houses 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 which 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 the 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. {FNREF:0-86472-117-XA:14:3}

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. {FNREF:0-86472-117-XA:14:4}

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. {FNREF:0-86472-117-XA:14:5}

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.

Waitangi Tribunal, Department of Justice, Wellington.

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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). {FNREF:0-86472-117-XA:14:6} 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 partition orders of 11 March 1926 by survey. The Department of Lands and Survey file 20/451 reveals how inadequately the line between Pouakani B9 and C1 drawn on Stubbing's plan ML6406 etc had fixed this boundary. 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 above 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 reliability of the existing survey which appears to have been made about 1899 (plan 6412B). He considers that there is some possibility that the periphery will need to be checked in order to ensure that there is sufficient area remaining for C1 B2. I 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 I should be obliged if you could inform me how this came about. {FNREF:0-86472-117-XA:14:7}

The chief surveyor replied on 25 February 1947:

In reply to your memorandum of the 3rd instant, I have to advise that the surveys adjoining the above block are all very old being dated 1885 and 1886, and it is unlikely that many of the old pegs will be found. The surveyor will therefore be required to redefine the north eastern boundaries 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 C1B 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 but 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 which present survey regulations will not permit. {FNREF:0-86472-117-XA:14:8}

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 have a lovely survey here and a bit of a proposition too. I enclose a sketch. These lovely boundaries are shown on ML6406 by D Stubbing 1893.

All the 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 I 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 have found 4 of those pegs in good condition! 2' 6" long & 5" x 5" about. I hope the angels are kind to old Bill Cussen! {FNREF:0-86472-117-XA:14:9}

Cussen's boundary survey had beatings and distances between the pegs that he put in. But H, A, B, C and D on [map 14.2](#) were not pegged by 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, but 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 - but 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 block 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 block being left lamenting at all.

As a matter of fact, I think it would be quite reasonable 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 back 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 back line H to W.

We were told the Judge was going to consult you. I do hope you will be able to tell him that he can issue an authority for No. 1 only & that the interests of No 2 will in no one be jeopardised by his action. {FNREF:0-86472-117-XA:14:10}

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 job. The plans eventually submitted to the Court for approval should be sufficient to complete the C1B1 1B2 and Orders. On this basis the requisition for survey can issue. {FNREF:0-86472-117-XA:14:11}

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 beating 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 92.2in 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. {FNREF:0-86472-117-XA:14:12}

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. {FNREF:0-86472-117-XA:14:13}

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. {FNREF:0-86472-117-XA:14:14}

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. {FNREF:0-86472-117-XA:14:15}

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. {FNREF:0-86472-117-XA:14:16}

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 bad 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. {FNREF:0-86472-117-XA:14:17}

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 much for the rest of a day. A chap really needs to doss down for the night on the job & that means mid summer but it's difficult to get men to do that - they jib at any walking at all & I'm having great trouble in getting anyone to help at any survey work, especially bush work. {FNREF:0-86472-117-XA:14:18}

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 the southern end of the stream shown on S020946 was discussed with the Chief Surveyor, who asked Mr Sandel to attend to the other requisitions and return the plan. {FNREF:0-86472-117-XA:14:19}

In 1954 resolutions to sell the timber on their lands were passed by 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 should be available as survey dam". Mr Withers replied on 3 May 1968. His name is the only name that appears on the Sandel and Withers letterhead on which his letter was written:

Herewith the plan and documents for the above survey as asked for. Quite a hunt through old records that I inherited 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. {FNREF:0-86472-117-XA:14:20}

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 other 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 the 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, but the combined area of Pouakani C1B1 and C1B2 on Locke's plan ML20635 was not 3854 acres, but 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 she would have 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 boundaries of Pouakani B9B that had been drawn on Stubbing's plan ML6406 etc were correct or whether 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 have meant that the partition order had been completed by survey and that all a surveyor had to do was to go to the Department of Survey and Land Information and find plan ML6408B and that on that plan the surveyor would find all the survey data that he or she 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 have 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 problem. 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 have been some discussion as to how the problem might best be resolved. The final sentence in the chief 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 when 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 C 1 B2 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. The 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 boundaries 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 boundary pegs of Pouakani B9B in 1986; nor could he do it today. Mr Harris could 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 by 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 block had been surveyed. If the pegs could not be found, a surveyor could repeg the boundaries of either or both these adjoining lands, prepare a plan and submit 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.

Waitangi Tribunal, Department of Justice, Wellington.

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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 block. 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 been 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 millable. In other words, we do not know how much millable 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 decreed in 1972 by Locke's survey plan ML20635, and that Cussen had surveyed and pegged the boundary between Pouakani B9B and the Tihoi block 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 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 February 1987. We quote this letter in full, as a record of the problems 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 by the Chief Judge on 25/3/1893 and more specifically by 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 has 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 has 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 which 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 shows 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 that would not be tolerated today. However, the problem exists and a solution is being sought.

If the Partition Order for B9B is embodied 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 I 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 by keeping the NE and SE boundaries as currently defined by 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 C1 B 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 Cussen's survey. In particular Kaiwha block in 1887. The south eastern and south western boundaries are mathematically capable of definition from Cussen's 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(b))

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 block he had been responsible 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 November 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 the B9B Block in so far as it relates to the Pureora State Forest

Mr Paki's affidavit referred here to Pouakani B9B but we are not clear whether the boundary in question was the southeast boundary of Pouakani B9B, which is the boundary between Horaaruhe Pouakani and Tihoi which Cussen had surveyed in 1886, or the southwest and northwest boundaries of Pouakani B9B, which 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 has subsequently reported to us. Mr Harris advised us that 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 boundaries. The research which I have completed has 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 problems of the boundary between Pouakani B9A and Pouakani B9B and the Maraeroa boundary problem. He set out some of the conflicting boundary descriptions in the old records. One of the exhibits to Mr Paki's affidavit was a copy of the letter of 10 February 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 have been defined but that the surveying records do not reconcile. The surveying records which are available 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 had not been purchased 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 the Mihianga Stream. The claim to the Waitangi Tribunal relates to the partitioning of the Pouakani Block. The Trustees have 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 the 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 hearings before the Waitangi Tribunal and in any event the Waitangi Tribunal can only recommend what action ought to be taken. I do not believe that the Crown can prove that it owns the area in which logging is presently taking place. The ownership of that land by the Crown is in issue

14. ANY Interim Injunction would bring 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 by 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 the 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 chapter 15. The timber on Pouakani B9B had been purchased by the Rotoiti Timber Co Ltd, following the meeting of the owners on 20 May 1954. The trustees of Pouakani B9B in 1986 had tried to salvage what saleable timber remained on their land. But in order to cut that timber it was essential that the precise boundaries of the land be marked out on the ground. Near enough might be good enough when land is being fenced for pastoral farming. If such a fence is not quite on the true boundary this can be corrected when the fence is next renewed. No harm will have 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 have taken hundreds of years to grow would be lost forever. And if the 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 back again and get out at a later date. And if the trustees did send a gang back again, the cost of opening up the tracks to get back in and get the logs out, which 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 the only boundary that had actually been measured and pegged by 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 available to him, it was impossible 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 other statement. Mr Paki in his affidavit said that the Pouakani B9A and Pouakani B9B boundaries shown on the survey plan did not agree with the definition of the boundaries 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 that the boundary was to commence at the Pureora trig station thence along the south-east boundary to the Kaiwha block, along that boundary to the Maungatahoe [sic] stream and thence by a swinging line to the Maraeroa boundary and along that boundary to the Pureora trig station. {FNREF:0-86472-117-XA:14:21}

We would have said that the minutes contained only a tentative description of the boundaries. Once the boundaries were defined by 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 by survey. If Pouakani B9 (Pureora) had been defined by survey, then those boundaries of Pouakani B9B that were also boundaries of Pouakani B9 (Pureora) would have been settled, and the only boundary that could be questioned would be the boundary between B9A and Pouakani B9B.

But while the 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 change 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.

Waitangi Tribunal, Department of Justice, Wellington.

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14 The Pouakani B9B Boundary Dispute

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 preamble 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 (Kaiwha) 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 had been defined by survey. They paid in land for the partial survey on Stubbing's plan ML6406 etc as they had 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 had to be resurveyed in 1972. The district land registrar, Hamilton, has rightly refused to register a title to Pouakani B9B and this block will have to be resurveyed.

The application to partition out the interests in Pouakani B9 and C1 blocks purchased by the Crown was made to the Native Land Court in 1899 by the Crown. The obligation was on the Crown as a purchaser wanting a separate title to ensure that boundaries were adequately surveyed. The diagrams attached to the court orders of 1899 were prepared from what had been drawn by the Survey Office on Stubbing's 1892 plan ML6406 etc, subsequent to the preparation, submission and approval by the chief surveyor of the survey plan. The Survey Regulations 1897 are clear that this was not an acceptable practice:

48 Original plans of blocks which have been approved by the Chief Surveyor must not have 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. {FNREF:0-86472-117-XA:14:22}

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 the full cooperation and considerable assistance given to the tribunal by the chief surveyor, Mr Kevin Walsh (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 problems on Pouakani B9B block between the claimants and their surveyor Mr Harris and DOSLI surveyors. The

problems were acknowledged in 1986 when raised by Mr Harris, and Mr Prentice sought the advice of the Maori Land Court on how to resolve them.

In exonerating the 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. 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 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 such other representatives of the beneficial owners as may be determined by the Maori Land Court.

References

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2. Taupo minute book 64 p 13
3. Taupo minute book 63 p 98
4. Taupo minute book 64 pp 71-74
5. *ibid*
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8. *ibid*
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