

# The Pouakani Report 1993

## Appendices

### 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 have 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 tribunal 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 Stubbing'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 substituting a reference to a new survey plan.

Before the Maori Land Court can make such an order the boundaries will have to be defined by survey. And before the boundaries can be defined by 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 choose the other alternative. To give an example, the records show 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 the plan approved by the judge, it should be adopted. A judge of the 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 the 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 boundaries of Pouakani B9B as shown on Stubbing'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, when the 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 block. Bounded on the North-East and South-East by a line starting from a point on the South-East boundary of the block, 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  $155^{\circ} 10'$  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 boundaries 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 boundary 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 Stubbing'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, should 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 have 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 the 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 by actual survey.

The diagram which forms part of the signed sealed order creating Pouakani B9A shows a distance of 16,600 links along the Tihoi boundary from Stubbing's corner peg to the start of the Pouakani B9B boundary. And the diagrams attached to the signed sealed orders creating Pouakani B9A and Pouakani B9B both show the boundary between them that is at right angles to the Tihoi boundary as 6450 links.

Presumably the draughtsman had 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 shown 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 whatever 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) had 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 Stubbing'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 blocks with different distances and starting from a different point on the southern boundary of Horaaruhe Pouakani surveyed by Cussen.

Again, a surveyor would go back to the 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 thence along the South West boundary of Kaiwha 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. {FNREF:0-86472-117-XA:Appdx14:1}

The minutes of Pouakani C1 (Kaiwha) are very brief: "Pouakani C No 1 (or Kaiwha) 7950 acres". {FNREF:0-86472-117-XA:Appdx14:2} Stubbing's plan ML6406 etc shows a settlement called Kaiwha situated in what 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 the 1899 Pouakani B9A, who 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 March 1887 describe the boundaries of the 1887 Kaiwha:

Pouakani Names "Kaiwha 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  $310^\circ$  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. {FNREF:0-86472-117-XA:Appdx14:3}

The first difficulty with 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 has 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 which Cussen labelled "8" and 9840 links from the next angle peg to the east which 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 Kaiwha, 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  $310^\circ$  till it struck the

Mangatahae stream. The boundary would then run east along the Mangatahae stream, which 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 boundary of the 1887 Kaiwha then ran by a straight line from a point on the Mangatahae stream back 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 boundary between Kaiwha and the 1887 Pouakani No 1. The 1887 order creating the Kaiwha block was cancelled by legislation in 1889, but 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 by survey on 3 June 1892 when Judge Scannell approved Cussen's plan ML6036A defining Pouakani No 1 by 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. Stubbing records Cussen's peg near the Mangatahae stream as an old peg at page 46 of field book 722.

Stubbing 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, but Stubbing's plan ML6406 etc showed an area of only 17,900 acres. But this area of 17,900 acres shown on Stubbing's plan ML6406 etc is probably not accurate to within 50 acres anyway.

Stubbing 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 oblong shape for Pouakani C3. On the southwest boundary of C3 he extended the 17,900 acre area beyond the Mangatahae stream. Possibly 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 by a swinging line to enclose the required area of 10,000 acres. Stubbing ran the northwest boundary of Pouakani B9 (Pureora) from a point south of the Mangatahae stream.

Stubbing would be trying to fit all the court's subdivisions in, and to give them all reasonable shapes, so that he was obviously entitled to make some adjustments. We have not tried to repeat the exercise that he must have carried out, but 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 unreasonable. This shape was approved by Chief Judge Davy on 25 March 1893 when he approved Stubbing's plan ML6406 etc.

For reasons set out in appendix 13 we do not think that Stubbing 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 November 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 boundary between Pouakani B9 (Pureora) and Pouakani C1 (Kaiwha) on Stubbing'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 by the court and Pouakani C1 (Kaiwha) 7,900 acres instead of the 7,950 acres allocated by 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 Links East to peg 8A

8 nearest Titiraupenga

1887 Kaiwha 8000 9840

Deeds of sale 9440 8400

Boundary later

drawn on Stubbing's

plan ML6406 etc 7840 10,000

The draughtsmen both used two lines, instead of the one straight line at  $310^\circ$  in the 1887 minutes describing Kaiwha, and both drew these lines at different lengths:

Northern part of Southern part of

boundary between boundary between

Pouakani B9 (Pureora) Pouakani B9 (Pureora)

and Pouakani C1 and Pouakani C1

(Kaiwha) (Kaiwha)

1893 Deeds 10,000 25,000

Boundary later drawn

on Stubbing'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  $303^\circ 4' 40''$  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 book 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 block. Bounded on the South-East by a line from the end of the South-East boundary 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 block. To contain 3854 acres.

The complication created by 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 by 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 Tihoi block 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 boundary with Pouakani C1B1 and Pouakani C1B2 shown on that plan, then follow the boundary with the Tihoi block to the starting point? It is a simple way of resolving the problem, but we think it unlikely that Mr Locke fixed the starting point of the boundary between Pouakani C1A and Pouakani C1B shown on his plan ML20635 by first carefully working out where the Pouakani B9A, Pouakani B9B boundary 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 "acceptable" in these circumstances. The southwest boundary of Pouakani C1B drawn on Stubbing'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 Stubbings plan ML6406 etc as 3854 acres, but the combined 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 Stubbing left on plan ML6406 etc for Pouakani C1 (Kaiwha) and Pouakani B9 (Pureora), by 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 decreed 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;

(b) the boundary with the Pouakani C1 B1 and Pouakani C1B2 shown 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 boundaries 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 has 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 has 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 had 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 have 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 where the boundaries of Pouakani B9B should run. Only parliament by 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 the judge of the Maori Land Court does not have to make an arbitrary decision.

## References

1. Waikato minute book 28 p 11
2. *ibid* p 17
3. Taupo minute book 7 p 284