

The Pouakani Report 1993

8 Ngati Tuwharetoa and the Rohe Potae

8.1 Introduction

Lawrence Grace, a member of the House of Representatives, wrote to the Native Minister, the Honourable John Ballance on 6 January 1886. This was in order to follow up conversations "in connection with the settlement of the Taupo Country". Grace listed several issues of public interest:

1st. The acquirement on behalf of the Crown of lands in the interior of the North Island, as near as possible to the Main Trunk Line of Railway now in the course of construction by the Government.

2nd. That the Ruapehu, Ngauruhoe and Tongariro mountains and the principal thermal springs in the Taupo Country be made inalienable reserves.

3rd. That every endeavour should be made to settle the Native tribes of Taupo permanently on portions of their tribal lands which can only be done by passing their lands through the Court and individualising their titles thereto as thoroughly as possible.

4th. That a Land Court be ordered to sit at Taupo to enable the Natives to give effect to these objects. (A28){FNREF:0-86472-117-XA:8:1}

Grace went on to report that he had discussed the matter with Tuwharetoa leaders, suggesting to them that in order to avoid long delays and heavy expenses they should submit their application for investigation of title by the Native Land Court as one large block:

during which, as the investigation progressed, the establishment of titles, the apportionment of reserves, and cessions of land to the Crown could all be satisfactorily decided and settled once and for all, and thus enabling them to turn their attention to the improvement of their own social welfare and condition.

Subsequently, with the object of following up the course above sketched out, the Natives of Taupo had meetings, and on the 31st of October last as you are aware, in the presence of one of your land purchase officers and in the presence of Major Scannell R.M. Taupo, they signed and sent in to the Native Land Court a claim for those of their lands which they claim under their great ancestor Tuwharetoa, containing about two and a half millions of acres, more or less, in the centre of the North Island called "Taupo-nui-a-Tia Block".{FNREF:0-86472-117-XA:8:2}

Grace also commented on the need to avoid the unnecessary delays and difficult negotiations which often result from competition between private agents and government land purchase officers, and to avoid land speculation:

I would suggest that the purchase of lands within the tribal boundary be entrusted to reliable and experienced persons or agents, who, under control of the Land Purchase Department, would undertake to acquire the land at a commission which would include any payments found necessary to meet the cases referred to. These agents would also - having the confidence of the Natives generally - be able to advise and guide them in the direction most beneficial to the tribal interests and that of the general public. {FNREF:0-86472-117-XA:8:3}

Waitangi Tribunal, Department of Justice, Wellington.

The Pouakani Report 1993

8 Ngati Tuwharetoa and the Rohe Potae

8.2 The Tauponuiatia Block

On 14 January 1886, the Native Land Court began sitting at Taupo for the investigation of title to lands in the Tauponuiatia block described in the application of Te Heuheu Tukino Horonuku and others, dated 31 October 1885. Major Scannell, Taupo resident magistrate, was the judge, and Colonel Brookfield was also present as judge for the first three weeks of hearing. The assessor was Nikorima Poutotara, the court clerk was A H H Lyon, and the court interpreter was John E Grace, the twin brother of Lawrence Grace. Before the court was a large plan titled "Map of Tauponui-a-Tia Block, Applicants Te Heuheu Tukino, Matuahu Te Wharerangi, Kingi Te Herekieke, Paurini Kamaro and others". This plan is ML5995D, a large roll plan (also carrying the roll plan number B53), which is held in the Department of Survey and Land Information, Hamilton. The plan has the signature of S Percy Smith assistant surveyor general "[?].1.86" which follows a note "Approved as a sketch map only." There is also an exhibit note, "Produced at a sitting of the Native Land Court held at Tapuaeharuru [Taupo] on fourteenth day of January 1886" and signed "FMP Brookfield Judge." A further note on the plan reads:

Red lines show the claim as gazetted for Court at Taupo on 14th Jan. 1886, lines in purple denote blocks passed the Court [illegible] surveyed but not passed Court. Yellow shows lands not adjudicated upon, [signed] H.M. Mitchell Auth. Surveyor.

One of the signatories of the letter of 19 December 1883 agreeing to survey of the Rohe Potae was Te Herekieke, but it has not been established with certainty whether this was the same person as Kingi Te Herekieke, one of the applicants listed on the plan ML5995D.

Proceedings began with an application for adjournment by Te Heuheu, supported by others, so that further discussion could occur among the different hapu. Discussions were still going on the next day and court was adjourned. On 16 January Te Heuheu began by outlining the boundary of his claim, listing places along it and referring to the plan:

Some parts of red boundary I am leaving out, the names go right round on this plan. I am claiming this portion but some parts have gone through the Court. I am claiming within the yellow line, the land lying to westward between yellow and red line, I don't now claim. I claim those parts belonging to Ngatituwharetoa. {FNREF:0-86472-117-XA:8:4}

The lines referred to are shown on [map 8.1](#), which has been compiled from ML5995D, the plan that was before the court, and ML5995B, another DOSLI plan,

undated but compiled later, which is a cadastral record of the blocks adjudicated on by the Taupo court 1886-1887.

The nature of the discussion during the adjournment was obviously not recorded in the Native Land Court minute book. However, William Henry Grace (a brother of John and Lawrence Grace), who was present at the meetings, provided an account in his evidence given in 1889 to the Tauponuiatia Royal Commission. Among Ngati Maniapoto present on 14 January 1886 were Rewi Maniapoto, Aporo Taratutu, Pineaha Tawhaki, Te Hihi, Te Rangianini, Tupu Kaheke, Hone Kutu and others. Whanganui representatives were Ihimaera Tuao and Te Pikikotuku, the latter being one of the signatories to the survey agreement of 19 December 1883:

A general talk took place. The Maniapoto urged Te Heuheu to withdraw the case so as to have a Rohepotae for the whole of the people and allow Wahanui to finish his negotiations.

The Tuwharetoa would not agree. The Maniapoto then asked for the boundary to be moved so as to include only the Tuwharetoa lands. They said they would consider this request.

Then the Tuwharetoa met by themselves and appointed a Committee to arrange matters. Te Heuheu, Patena Kerehi, Keepa Puataata, Waka Tamaira, Te Roera Matenga, Papanui, Te Takiwa (until Hitiri should arrive), Hira Matini, Aperahama te Kume were members.

On the 15th Tuwharetoa asked for a further adjournment which was granted.

The Committee were busy discussing the alteration of the Western boundary and the result was the yellow boundary which was colored [sic] on the boundary by Mr Mitchell or Mr Pollen. I am not quite sure who did it. Names were also at that time written in along the boundary. I was present at that meeting. (A5)

W H Grace then described how all this was reported to the Native Land Court. Te Heuheu gave evidence that "the yellow line was now his boundary but he did not abandon his claims outside the line". The map was displayed in court and place names on the boundary discussed. The Maniapoto and Whanganui representatives withdrew their objections, "But Te Rangianini still objected on behalf of N'Matakore" to the boundary north of Pureora. Te Heuheu had included Ngati Matakore in his list of hapu. There were also Maniapoto objections to the boundary south of Waimiha and Ketemaringi:

The same day [18th January] Taonui arrived and on the 19th before the Court opened a meeting was held by the natives on the open ground in front of the hotel, to greet Taonui who asked Te Heuheu to stop the Court. "Let us all be one people." That Maniapoto were trying to get laws passed to save the people and the land. Te Heuheu refused saying Taonui had not consulted him when he made his Rohepotae and as to laws to save the land and the people - "Your boundary splits me in two." Te Heuheu spoke with feeling. "What about the half of me that is

left outside? Who is to save that part. No, I prefer my people to die together as a whole. If you object to my Court going on, state your objection to the Court. We will meet there". (A5){FNREF:0-86472-117-XA:8:5}

Te Heuheu was referring to an image he had used that his body represented the lands of Tuwharetoa and their other tribal relationships, with his head at Kawerau, and the trunk of his body centred on Taupo and limbs stretched toward Whakatane, Rangitoto and the upper Whanganui and Rangitikei areas. The line of the Rohe Potae drawn up by Ngati Maniapoto was literally cutting the rohe, the tribal district, of Ngati Tuwharetoa in two parts. Te Heuheu was asserting his right to have all his territory heard in the Native Land Court as a whole block - Tauponuiatia. It was a matter of mana, the mana of Te Heuheu and Ngati Tuwharetoa.

W H Grace, recently appointed a government land purchase officer, reported on 9 April 1886 to the Native Minister on the attitude of Tuwharetoa leaders during the Taupo court hearings in 1886:

I think it my duty to draw to your attention the very great assistance rendered by some of the Taupo chiefs, to whose support the success of the Court's operations has been largely due. This is especially the case regarding Te Heuheu Tukino, who throughout, gave his firm support and countenance to the proceedings, notwithstanding, that the utmost pressure was brought to bear on him from Tawhiao, and the King party generally, including Te Kere and some Ngati Maniapoto chiefs, who urged that the Court should be closed, and postponement of operations to some distant period.

The Taupo-nui-atia block from its extensive area, and its geographical position in the centre of the Island, surrounded on all sides by tribes encroaching on its boundaries, was naturally one which would present the greatest difficulty, in the adjudication of the title. Had it not been for the presence and great influence of Te Heuheu Tukino exerted continually in favour of the Court, Tawhiao and other chiefs would in all probability have succeeded in the object of obstructing the operations of the Court. In addition to Te Heuheu's acknowledged rank and influence amongst the chiefs of the North Island, his claims as an extensive land owner are recognised throughout the Maniapoto country extending to Kawhia, and therefore his action regarding the Tuwharetoa boundary is of the greatest political significance, throughout the whole of the King Country and deserves a corresponding recognition by the Government. (A28){FNREF:0-86472-117-XA:8:6}

Henry Mitchell, reporting to the Native Minister from Taupo on 15 May 1886, also commented on efforts to ensure "the amicable settlement of the external boundary claimed by Tuwharetoa". He and J E Grace had been commissioned to assist the Land Purchase Department in land acquisition within Tauponuiatia block:

This boundary as gazetted had we found caused considerable surprise and consternation in what is known as the "King Country" - and to the great Tribes whose land claims adjoin or were included therein. Letters and communications of a very urgent character came from Tawhiao and other chiefs of the old King party appealing to Te Heuheu to "close the doors of the coming Court" and prevent such a disastrous blow to their aims as the bringing [of] the Tuwharetoa country, hitherto regarded as their territory under the jurisdiction and operation of their law. To all these communications Te Heuheu gave one reply - that the Court must open and proceed with the adjudication of the lands on the date fixed.

Mitchell also reported that representatives of Whanganui, Ngati Maniapoto, Ngati Raukawa, Te Arawa and Ngati Kahungunu tribes arrived at the opening of the court hearing of Tauponuiatia. Te Heuheu applied for an adjournment so that discussions could take place among all the tribes concerned:

A committee of 35 of the leading men of Tuwharetoa, including Te Heuheu, was formed and many conferences with the representatives of the tribes mentioned ensued - resulting in the Boundary as gazetted being altered so as to exclude considerable areas of land on the southern and western sides of the Block to which Te Heuheu himself was the principal claimant but who agreed to defer the adjudication thereof to some future Court. (A28){FNREF:0-86472-117-XA:8:7}

Waitangi Tribunal, Department of Justice, Wellington.

The Pouakani Report 1993

8 Ngati Tuwharetoa and the Rohe Potae

8.3 The Tauponuiatia West Block

Henry Mitchell remarked on the smooth operation of the court hearings as a result of the consultations and discussions outside the court:

numerous subdivisions which were made under voluntary arrangements amongst the owners themselves - thereby relieving the Court of an immense amount of trouble and tedious work and removing all anxiety as to possible applications for Rehearings in respect of the cases so arranged.

The western boundary, however, in Mitchell's view, was a more complicated issue that was not so amenable to voluntary arrangements:

Much time was occupied and many conferences held with the various sections claiming the large subdivision called Tauponuiatia West, on the western side of Lake Taupo, with a view of arriving at an amicable adjustment of hapu claims, but no common agreement could be arrived at, and the case was taken into Court - resulting in Hitiri te Paerata's party, after lengthened evidence was given by them, in agreeing to the 18 Hapus admitted by Te Heuheu (who is the claimant in this case) in his "prima facie" statement. The lists of names were then called for by the Court, but the 18 hapus now declared to be the owners would not agree to one certificate for the whole, and some asked that the Court would subdivide further - others continued to look for a common understanding being arrived at amongst themselves, as to the boundaries of the hapus, who had now merged into five groups and who applied for five subdivisions of the Block to be made.

(A28){FNREF:0-86472-117-XA:8:8}

At the time of writing (May 1886) Mitchell and W Cussen had begun a survey of the Tauponuiatia West block and the five subdivisions at the request of a group of owners. The Maraeroa block, which had been awarded separately to Te Paehua and Ngati Karewa, was also to be surveyed at the same time. The hearing continued and Ngati Maniapoto continued to dispute the line claimed by Te Heuheu as the boundary between Tauponuiatia and the rest of the Rohe Potae. We address the specific issues relating to the location of this boundary in chapter 10. Two surveyors who were in partnership, William Cussen and H M Mitchell, surveyed the boundaries and the subdivisions of Tauponuiatia West ([map 8.2](#)), and prepared various plans which they sent to the Chief Surveyor at Auckland in September and December 1886.

On 24 September 1887 the Native Land Court made orders determining the ownership of various subdivisions of the Tauponuiatia block and for the issue of Native Land

Court titles to these subdivisions when the blocks had been defined by survey. In 1886 and 1887 the court had made 138 interlocutory orders determining ownership of lands in Taupouuiatia block. The first of these interlocutory orders was made on 2 February 1886 and the last on 24 September 1887. The court also made 25 orders vesting lands in the Crown. Finally on 24 September 1887 it issued its judgment on the Taupouuiatia block. {FNREF:0-86472-117-XA:8:9} This judgment was written in the minute book twice. This century the minutes of the Maori Land Court are written by the judge. There are remarks in the law reports that show that last century the minutes were written by a clerk while the judge kept his own personal notes which did not form part of the record. {FNREF:0-86472-117-XA:8:10} We can only make guesses as to why the clerk wrote the Taupouuiatia judgment into the minute book twice. The judgment in Taupo minute book 9 at pages 302-308 reads:

The investigation into the title to this large area of land comprising upwards of a million acres was opened on the 14 day of January 1886 and adjourned from time to time until the present occasion when the Court is prepared to give expression to the decision arrived at.

The large area now being dealt with is made up of numerous lesser areas, each known to the Natives interested and to the Court by distinctive names, a circumstance greatly facilitating the expression of the Court's conclusions in the present judgment.

In the first place as to those pieces of Taupouuiatia known by the names of ... the Court declines in the present case to decide who are the owners, leaving those lands to be dealt with hereafter when any Natives claiming ownership may make the requisite applications.

As to the residue of Taupouuiatia, the Court has arrived at a conclusion as to who are entitled to the land but instead of ordering one Certificate for the whole area, the Court has in exercise of its authority thought it well to make numerous divisions of the block and to deal with each of the parts into which the gross area is divided as the subject of a separate certificate or Order.

The parts of Taupouuiatia which the Court is about to deal with being so much of the block as it has not excluded from its present decision are one hundred and sixty three in number and this decision will now deal seriatim with each of such parts.

First as to the area known as Mangatainoko the persons entitled to be placed on the Register as owners are those so found in an interlocutory announcement made by the Court on the 2nd day of February 1886 in which are recorded in the list now before us marked No. 1 and so as to the other areas into which Taupouuiatia has been divided, each of those areas the Court will now make mention of and in conjunction with each name will set out the date of the interlocutory announcement enumerating the names of the owners, and the number by which such announcement is distinguished.

The judgment then lists the names of 138 blocks, the date of the interlocutory order in respect of each block and the number allocated to it, starting with "Mangatainoko 2nd February 1886 No. 1", and including:

Maraeroa	17th February 1887	No. 60
Kaiwha	23rd March 1887	No. 64
Tihoi	30th April 1887	No. 75
Hapotea	3rd June 1887	No. 110
Pouakani	14th June 1887	No. 118
Pouakani No. 2	19th September 1887	No. 132

The judgment goes on:

During the course of the investigation, the Court has been moved on behalf of the Native Minister to enquire into claims on the part of Her Majesty to several parcels of land set out as Nos. 139 to 163 in the Schedule A to the present Judgment, and more particularly set out in the various Orders in favour of Her Majesty.

In as much as there has not during the present proceedings been placed before the Court any sufficient plan of Tauponuiatia the Court has now to require a survey to be made and a sufficient plan and description to be deposited in Court. Such surveys and plans will of course comprise each of the several parts into which in our decision Tauponuiatia has been separately dealt with. Those surveys having been effected and the resulting plans considered and approved certificates giving effect to the present Judgment will issue in due course.

Then follow the names and numbers of 25 blocks (Nos 139 to 163) awarded to the Crown including Pouakani No 1 (No 156).

One of William Cussen's plans is numbered ML6036, 6076, 6078, 6079. We refer to it as Cussen's composite plan ML6036 etc. It was entitled "Plan of Taupo Nui Atia West". Shown on the plan were Horaaruhe Pouakani, Maraeroa, Tihoi and other subdivisions of Tauponuiatia West. This composite plan, which also has H M Mitchell's signature, was sent to the chief surveyor on 29 December 1886. On the same date Cussen sent to the chief surveyor plan ML6076 showing the Tihoi subdivision of Tauponuiatia West and plan ML6077 showing the Maraeroa subdivision of Tauponuiatia West. Cussen's plan ML6036 showing the Horaaruhe Pouakani subdivision of Tauponuiatia West was signed by Henry Mitchell and was sent to the chief surveyor on 29 September 1886. An explanation of the plan numbering system and a list of plans is included in appendix 12.

Cussen's composite plan ML6036 etc has on it an exhibit note, "Produced at a sitting of the Native Land Court held at Tapuaeharuru on the 2nd February 1887, D. Scannell Judge N.L.Court". There are no exhibit notes on the other plans to show that they were before the court in 1887 but the plans have deteriorated and parts are now missing. Although the court had these plans before it, it did not approve any of the Cussen and Mitchell survey plans. Instead, it said in its judgment quoted above that it did not have a sufficient plan and that it required a survey to be made before certificates of title could be issued.

The court thus did not approve any of the survey plans for subdivision of Tauponuiatia West block then in existence. Cussen's plans do not therefore define any of the boundaries of the lands in respect of which the court made its orders of 24 September 1887. But neither Cussen nor the court were at fault. The court sitting had started on 14 January 1886. Cussen sent his plans to the chief surveyor at the end of 1886. The court made interlocutory orders in February, March and April 1886 and January, February, March, April, May, June and September 1887. At least one of Cussen's field books has survived, but some were destroyed. {FNREF:0-86472-117-XA:8:11} Cussen's field book No 722 is held in the Hamilton Department of Survey and Land Information office and it shows that the field work, from which the western and southern boundaries of Horaaruhe Pouakani shown on his plan ML6036 were prepared, was carried out from May to August 1886. Cussen's plans were a starting point. During the course of the hearing the court found that the land should be divided in ways that differed in some respects from the divisions shown on Cussen's plans.

The exhibit note on Cussen's composite plan ML6306 etc mentioned above shows that this plan was produced before the Native Land Court at Tapuaeharuru on 2 February 1887. This plan shows Horaaruhe Pouakani with the same areas of 122,350 acres and the same boundaries as shown on Cussen's plan ML6036 which shows only Horaaruhe Pouakani. Cussen's composite plan ML6306 etc has on it a note, "Approved under Sec. 31 of the NL Court Act 1884 for Tihoi Waihaha and Hauhungaroa Blocks February 6th 1892 D Scannell Judge NLC", and "Approved as to Waihaha No. 1 D. Scannell Judge NLC 30 [?] 1892". The boundaries of Horaaruhe Pouakani as shown on Cussen's composite plan ML6036 etc were not approved by a judge of the Native Land Court except to the extent where, as in the case of the Tihoi block, another block has a common boundary with the Horaaruhe Pouakani shown on Cussen's composite plan ML6306 etc. The plan showing the Pouakani- Tihoi boundary was approved in 1892 by the Native Land Court, thus fixing only that part of the Pouakani block's southern boundary. The eastern boundary was already fixed when the boundary of Tatua West block was approved by a judge of the Native Land Court.

Even if one of Cussen's plans had defined the precise boundaries for some of the 138 blocks in respect of which the court made orders on 24 September 1887, it is unlikely that the court would have made separate and different orders in respect of those blocks. For example, the signed sealed order of 24 September 1887 for Maraeroa gives the estimated area as 41,245 acres. This is the area shown on Cussen's plan ML6077/1-2 but this plan was not approved by the court. The court was dealing with "upwards of a million acres", and was proceeding in stages. It started by determining the hapu entitled to each of the various lands, then made interlocutory orders determining the name of each block and the names of the owners of each of the blocks. The next step was to determine the areas and boundaries. Even if an adequate plan was already in existence for some blocks it would have been more convenient to leave that plan until the next stage in the proceedings.

The Pouakani Report 1993

8 Ngati Tuwharetoa and the Rohe Potae

8.4 The Taupouiatia Royal Commission 1889

There were several applications to the chief judge of the Native Land Court for rehearing claims to ownership of Taupouiatia block. This was the only form of appeal against a decision of the Native Land Court at this time. At a sitting of the Native Land Court in Otorohanga on 18 January 1888, Chief Judge Macdonald heard the applications, but proceedings were not recorded in detail in the minute book which stated only, "The remainder of time of the sitting was occupied in inquiring into the applications for rehearing of Taupouiatia". {FNREF:0-86472-117-XA:8:12} All the applications for a rehearing of Taupouiatia (except one related to Waihi No 1 block at the southern end of Lake Taupo) were dismissed, and notification was issued on 13 February 1888. {FNREF:0-86472-117-XA:8:13}

Several petitions were also sent to government and on 9 August 1888 the Native Affairs Committee of the House of Representatives considered the following:

- Petition No. 204: Taonui Hikaka and 128 others
- Petition No. 260: Te Papanui Tamahiki and 96 others
- Petition No. 416: Hitiri Te Paerata and 110 others

The minutes of the committee hearing indicate that the principal grievance was that Ngati Raukawa and Ngati Maniapoto interests had been left out of titles awarded in Taupouiatia block, and there was considerable suspicion about the role of the three Grace brothers in the Native Land Court hearings and subsequent land purchases. {FNREF:0-86472-117-XA:8:14} On 17 August 1888 the petitions committee reported "That, as the matter is now under investigation by the Supreme Court, the Committee has no recommendation to make". {FNREF:0-86472-117-XA:8:15} We understand that the records of these proceedings in the Supreme Court have since been destroyed. There is however a report in the *New Zealand Law Reports* of two motions for prohibition asking the court to restrain Chief Judge Macdonald and Judge Scannell from signing or issuing any orders or certificates of title to any person of any portion of the block of land called Taupouiatia. {FNREF:0-86472-117-XA:8:16} The judgment in *Hikaka v Macdonald* was given on 22 August 1889.

There were two legal points on which counsel for Taonui Hikaka and Hitiri Te Paerata argued in the Supreme Court for a restraint on the Native Land Court issuing any orders or certificates in Taupouiatia block. The first was that the court sitting lapsed because it had not been properly adjourned by Judge Scannell on 30 September 1886 in the absence of an assessor. This was dismissed. The second point concerned the procedure for division and subdivision of lands set out in the Native Land Court Act 1880, at the time of investigation of title and then later, once lists of names of owners had been ordered by the court. The Supreme Court ruled that there were "no

grounds whatsoever for saying the [Native Land] Court has no jurisdiction to divide an entire block at the time of investigation," and dismissed this argument too. The significance of this decision was that the Native Land Court could subdivide a block of land. The Supreme Court did not accept the argument that when a large area of land came before the Native Land Court as an application for investigation of title, the boundaries of the area had first to be fixed by survey before separate titles could be issued by the court for parts of the land. The Native Land Court Act 1880 at s24 stated:

On every such investigation [of title] it shall be lawful for the Court to decide that the title of the applicant or any other natives to the land or any part thereof, according to Native custom or usage, has been proved, or to dismiss the case, or to make any other order or give such a judgment as the court may think fit.

At s34 provision was made for subdivision of blocks:

The Court may, if it thinks fit, order one or more divisions to be made in such manner as the Court thinks fit, and in such cases shall place separately on the register the names of the owners of each division and issue certificates accordingly.

A similar provision was made in s21 of the Native Land Court Act 1886.

This was not the end of the matter. On 9 July 1889, the government appointed a royal commission to enquire into the boundary between Ngati Maniapoto and Tuwharetoa and into other matters relating to the Taupouuiatia block. A very large quantity of historical material has been presented to us but there is nothing in it to show what happened to change the government attitude after August 1888 when the petitions committee gave its "no recommendation". The Taupouuiatia Royal Commission reported on 17 August 1889, while the decision by the Supreme Court on *Hikaka v MacDonald* was given on 22 August 1889.

The matters to be inquired into by the Taupouuiatia Royal Commission were set out as follows:

1. Whether the boundary of the said block of land called Taupouuiatia, as delineated on the said plan [Plan GM 180], and thereon coloured red, is the correct boundary thereof or whether the said boundary is correctly delineated by the line coloured yellow on the said plan, or whether the correct boundary would be properly defined by an intermediate line between the said lines coloured red and yellow.
2. Whether the Native chief Hitiri Paerata has suffered any injustice in consequence of his claim to a block 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.
3. 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 by the said Commissioner, which have not been fulfilled or carried out.

Provided that the title of the Crown to the lands awarded to Her Majesty for the cost of survey of the said block of land called Tauponuiatia, or any part thereof, shall not be brought into question. {FNREF:0-86472-117-XA:8:17}

This last statement meant that the title to the 20,000 acres of Pouakani No 1 (being already vested in the Crown for survey costs) would still be valid. The titles in the balance of the Horaaruhe Pouakani block and the whole Maraeroa block would be subject to inquiry.

A paper titled "Re Maraeroa and Hurakia, Remarks re the case of the N'Maniapoto", comprising seven loose leaf pages, is with the minute books of evidence of the Tauponuiatia Royal Commission.(A5){FNREF:0-86472-117-XA:8:18} The following excerpts outline the Maniapoto version of the "opening up" of the King Country:

It is within the knowledge of the Commissioners and the people generally of this island

That the land in question for many years past has virtually been separate from and outside the control of the Government

And it is well known that several different Ministries in years gone past tried in many ways to bring this land and its people under the rule of the Government but tried in vain.

In the year 1882 the N'Maniapoto decided to introduce a rule for this land which was agreed to by the N'Raukawa, Whanganui and Tuwharetoa people and decided to draw a boundary round the block of land to be called the Rohe Potae of the aforesaid tribes.

The boundary was made public and carved posts put in many parts of the boundary. All the persons of these tribes were desirous of sharing in the new departure.

It was also desired that some official acts should be passed by Parliament for the Rohe Potae.

In the year 1883 they drew up a petition to Parliament setting forth what they wanted for the block, many of things specified in the petition were discussed (some of them being brought into force).

By reason of this petition the Government were induced to legislate specially for these tribes

A large meeting was held at Kihikihi between us and the Government [represented by the Honourable J. Bryce, Native Minister]. Resolutions were drawn up concerning the land and declaring it one block

After this another meeting was held at Kihikihi and resolutions re the land were made. Mr Bryce and Mr Percy Smith [assistant surveyor

general] were the representatives of the Government by whom these propositions were made and which were agreed to by the five tribes as follows.

1. A survey of the Rohe Potae to be made by the five tribes.
2. The survey to be carried out by Government surveyors, the title to be investigated and the Crown Grant to be awarded to the owners.
3. All minor subdivision surveys within the Block to be stopped, and the trig survey to be conducted in such manner as not to affect the title to the land.
4. That only one application for investigation of the title to the land be made, the said application to be heard in full at one Court.

This agreement was made by us and the Government in good faith and in weight and authority was equal to a treaty

N'Maniapoto placed full confidence in this agreement and had faith that it would not be broken by Government.

Had this agreement been carried out and not abandoned no trouble would have come to N'Maniapoto.

We say that this agreement has been broken by the Government from the fact of their having agreed that a Court should be held for the purpose of ascertaining the title to a part of the Rohe Potae, in that part called Tauponuiatia.

John Ormsby, Chairman of the Kawhia Native Committee, set out the claims for Ngati Maniapoto, stating that, "In 1882, Maniapoto decided to make arrangements for the Rohe Potae", the King Country, which included the territory of five tribes-Ngati Maniapoto, Ngati Tuwharetoa, Ngati Raukawa, Whanganui and Ngati Hikairo, the latter belonging to the Kawhia district. There were many meetings and people were sent to mark out the boundaries of the Rohe Potae. A petition was sent to parliament and the establishment of a Native Committee in 1883 was seen as a granting of their requests:

In Nov[ember] that year [1883], Mr Bryce came to Kihikihi The result of the meeting was that our requests were agreed to. He said what he had done in the Parliament. We expressed our pleasure. He then said we should apply for the title to be investigated by the N.L. Court, and for each tribe to send in a separate application, each application to be for the whole block. Unless each tribe did this, he could not stop the minor surveys. We discussed this and finally agreed to send in one application for the whole block

Another meeting was held at Kihikihi. Mr Bryce and Mr Percy Smith were present. It was decided that Rohepotae should be surveyed at a cost not exceeding £1600 and should then be heard by the Court, and

that the minor surveys should be stopped in the meantime, and no claims for these smaller parts were to be recognised. Mr Bryce agreed that the block should be investigated as a whole. That the trig surveys had nothing to do with the title to the land. These proposals were all agreed to and the survey proceeded. All the five tribes agreed to these proposals.

Maniapoto put great faith in this arrangement and did not think of things outside of the agreement.

I consider that the sitting of the Court at Taupo to deal with Tauponuiatia - a portion of the Rohepotae block - was a violation of this agreement

I attended the Taupo Court after the first judgement had been given. I was sent to say that trouble would accrue to the Maniapoto, because Taonui had been detained at Cambridge and the case was going on in his absence.

I asked the Court to give the Maniapoto an opportunity of setting forth their claims, but the Court refused as the case was closed and the matter settled.

A meeting was held at Taupo outside the Court and I was informed that Te Heuheu had altered his boundary to the top of the Hurakia range. I stated in Court that it had been agreed to outside the Court that the Hurakia range should be the boundary. (A5)

When cross-examined, Ormsby conceded that although some Taupo people had attended the meetings in November-December 1883, not all Tuwharetoa leaders had been there, and certainly not Te Heuheu.

Taonui followed with his evidence, corroborating Ormsby's statements about the arrangements made with government:

We placed great confidence in those arrangements made with the Gov[ernment].

The gazette for the Taupo Court reached me at Otorohanga. I called a meeting, which decided I should go to Taupo, but I was summoned to go to Cambridge. The Taupo Court was to sit on Jan 14 and I had to attend at Cambridge [Court] on Jan 11. I went to Cambridge with Hitiri, Teni Wata, Kapu, Ngakuru and Mr Moon. We sent a telegram to the Court at Taupo asking it to leave the Western part of the land till we could reach Taupo. The case at Cambridge was called on Jan 11 and adjourned to the 15th when it was adj[ourned] further to the Supreme Court in April.

We left for Taupo on Jan 16 but the Court there had opened on Jan 14. We reached Taupo on the 18th. Tawhaki told me that the Tauponuiatia

case had been closed. On Jan 19 we had a meeting with Te Heuheu and others outside the Court. I said let the whole of Rohepotae, including Taupouiatia, be investigated at the same time, but Te Heuheu would not consent, tho' I said a great deal to him at that meeting. On Jan 22 I appeared in Court and asked that Maraeroa, Tuhua and Hurakia might be excluded from the investigation. The Court said I was too late. (A5)

There is some discrepancy between the dates here and the date in the Taupo Minute Book which indicates that Taonui appeared on 24 January, but this does not detract from the account.

The royal commission, having been appointed on 9 July 1889, completed its report on 17 August 1889. A full transcript of the report is in appendix 7. In the introduction the commission noted that all hearings had been held over 19 days at Kihikihi, "being the most convenient place for all parties concerned", and "attended by a large number of the Ngatimamapoto Tribe, and by several of the principal chiefs of the Ngatituwharetoa, from Taupo". Copies of the minutes of evidence and exhibits of the royal commission were available to this tribunal. (A5){FNREF:0-86472-117-XA:8:19} The commission also noted:

Much of the Native evidence given on both 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 reliable. We had the records of the Native Land Court before us, to which access was 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. {FNREF:0-86472-117-XA:8:20}

The principal matter at issue was the location of the western boundary of the Taupouiatia block where it was alleged to have encroached on Ngati Maniapoto lands, and this was described as "Issue No. 1" in the commission report. This matter is investigated in detail (including an analysis of plan GM 180 which was before the commission) in chapter 10. The second and third issues are interrelated, involving the claims of Hitiri Te Paerata about the role of the Grace brothers in the Native Land Court hearings and transactions involving alleged purchase agreements on the Pouakani block. These matters are addressed in chapter 11 of this report, titled "Crown Purchases". On one aspect of the second issue, Hitiri Te Paerata's claim that because he had arrived late for the Taupo court he had not been able to present a case for Raukawa interests in Taupouiatia, the commission concluded that Ngati Wairangi and other hapu who were in actual occupation on Pouakani block had been included; Hitiri Te Paerata had not therefore been disadvantaged.

The 1889 royal commission on the Taupouiatia block reported that meetings in 1882 and 1883 of Ngatimaniapoto, Ngati Tuwharetoa:

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 {FNREF:0-86472-117-XA:8:21}

The royal commission was told that after this had been settled Mr Bryce, then Native Minister, agreed that if they wished it, the block should be surveyed and investigated by the Native Land Court as a whole. But it seems that the tribes did not ever fully agree. A single claim to the Native Land Court by the five tribes for the investigation of title to the Rohe Potae as one block was never lodged. Ngati Tuwharetoa leaders were not all represented at these meetings. No evidence was presented to this tribunal, or to the Taupouiatia Royal Commission in 1889, that Ngati Tuwharetoa intended to join with Ngati Maniapoto. Instead, on 31 October 1885, Te Heuheu and other Ngati Tuwharetoa leaders sent an application to the Native Land Court for investigation of title to the whole Tuwharetoa tribal area, including the part of theft land within the Rohe Potae, as well as all their other lands outside the Rohe Potae. The whole area included in the claim was named the Taupouiatia block.

On 27 June 1886 the Native Land Court sitting at Kihikihi began the investigation of title of the "Rohepotae Block", that is the Ngati Maniapoto lands in Aotea block. On 28 July 1886 the plan of the Aotea block ML5851/1-4 (held in the Hamilton DOSLI office) approved as a sketch plan by assistant surveyor general S Percy Smith, on 17 July 1886, was produced in the Native Land Court at Otorohanga. On that day the court had resumed hearing the Rohepotae case, having adjourned from Kihikihi. This and other plans in the ML5851 series have dates of survey in 1884, and ML5851/5 gives the date of instructions for survey as December 1883 (see appendix 12 for details of these plans).

Although Wahanui was probably seen by government as the chief negotiator for the railway, he knew he could not speak for other tribes and made this clear on several occasions. During January and February 1885 the Native Minister, the Honourable John Ballance, held a series of meetings in the Waikato-King Country districts to discuss the railway line and related land matters, including putting land through the Native Land Court. On 5 February, the second day of a gathering at Kihikihi, Wahanui of Ngati Maniapoto spoke:

When I was in Wellington, Mr Ballance asked me to give up a road for the railway-line to be made. I replied to Mr Ballance and said, "I will not discuss the matter now; it is left for the whole of the people to settle and everything in connection with it is to be settled by the people themselves." I have come to the people who are on one side. I have not been able to see all the people; only the ones that I have seen are in the house at the present time - that is, Ngatimaniapoto and Ngatiraukawa. There are some from Whanganui here present. Those who are not present are Ngatitawharetoa [sic]. I do not wish you to consider that what I am now saying is in the light of keeping back the railway-line, but what I am anxious for is that I should be able to see those people who are absent, after I have seen you, after this meeting. After those people have been seen by me then the final settlement will take place. Although they may not pay any attention to what I say, still the fact of my having seen them will be sufficient, in accordance with the statement that I have already made, that the matter will be left for the

people to settle because the timber country through which the line passes, and other things in connection with the line, are all in the vicinity of the land owned by these people. I want to discuss with them the matters that were gone into yesterday. {FNREF:0-86472-117-XA:8:22}

Wahanui had a vision of maintaining in the Rohe Potae a region where Maori could retain control of their own lands and resources, allowing at the same time the railway construction and controlled European settlement. The government appears to have had a different agenda, which was to throw open the King Country for settlement, "progress", development and "civilization", and the break up of tribal organisation.

Waitangi Tribunal, Department of Justice, Wellington.

The Pouakani Report 1993

8 Ngati Tuwharetoa and the Rohe Potae

8.5 Section 29 Native Land Court Acts Amendment Act 1889

The outcome of the report of the Tauponuiatia Royal Commission was that enough evidence had been given, and in particular, doubt shown over the western boundary of Tauponuiatia West block, that the government considered a reinvestigation of Pouakani and Maraeroa blocks by the Native Land Court was required. The enabling legislation was s29 of the Native Land Court Acts Amendment Act 1889:

Whereas, at a sitting at Taupo, the Native Land Court, on the twenty-fourth day of September, one thousand eight hundred and eighty-seven, gave its decision on an investigation of the title to the block of land known as Tauponuiatia, in the Taupo District, in the Provincial District of Auckland, and a question arose as to the western boundary of the said block: And whereas the Honourable Theodore Minet Haultain and Hanita te Aweawe were, on the ninth day of July, one thousand eight hundred and eighty-nine, appointed to be a Royal Commission, to inquire, among other things, as to the correct boundary thereof: And whereas the said Commission, on the seventeenth day of August, one thousand eight hundred and eighty nine, reported thereon, which report has been presented to both Houses of the General Assembly during the present session, and marked G.-7:

And whereas it is expedient that effect should be given to such report in respect of the matters hereinbefore mentioned, and that further investigation should be made with regard to the blocks of land known as Maraeroa and Horaaruhe-Pouakani:

Be it enacted as follows: The western boundary of the land known as Tauponuiatia is hereby declared to be, and shall be deemed to have been, the line defined as such western boundary in the said report, and shown in the map numbered one hundred and eighty, and deposited in the office of the Surveyor-General in Wellington.

The lands excluded from the Tauponuiatia Block by the alteration of the boundary and the subdivisions of the Horaaruhe-Pouakani Block, known as Pouakani, containing by estimation sixty-three thousand acres, more or less; Pouakani number two, containing by estimation thirty thousand acres, more or less: Kaiwha, containing by estimation seven thousand two hundred acres, more or less; and Hapotea, containing by estimation two thousand five hundred acres, more or less, are hereby declared to be Native land within the meaning of "The Native Land Court Act, 1886", and its amendments.

The Court may, by order, direct that the cost of surveying the boundary adopted by the Court in its decision of the twenty-fourth day of September, one thousand eight hundred and eighty-seven, before mentioned, and also the boundary described in the said report, shall be a charge upon the estates and interests of the persons who may be declared to be the owners of the said Maraeroa Block, in manner provided in Part VII. of "The Native Land Act, 1886".

Nothing in this section shall affect any interest acquired by the Crown, or any order made in its favour.

Section 29 of the 1889 Act meant that the lands excluded from the Taupouuiatia block by the alteration of the boundary, and the subdivisions of the Horaaruhe Pouakani block known as Pouakani, Pouakani No 2, Kaiwha and Hapotea, were declared to be native land within the meaning of the Native Land Court Act 1886. This Act defined native land as "land in the colony owned by Natives under their customs or usages". Native land was therefore land the title to which had not been investigated by the Native Land Court. The effect of s29 of the 1889 Act was to cancel the orders made on the 1886-1887 investigation of title and return the Pouakani and Maraeroa blocks to the status of uninvestigated land. This enactment affected all of the western boundary of Taupouuiatia West block including the Maraeroa block, all but Pouakani No 1 of the Horaaruhe Pouakani block, and those parts of the Tihoi and Waihaha No 1 subdivisions of Taupouuiatia West that the new boundary fixed by the royal commission had excluded from Taupouuiatia West ([map 8.3](#)). A large area of Waihaha block had also been sold to defray survey costs in the same manner as Pouakani No 1 and shows up as a blank area on the map.

The one part of Horaaruhe Pouakani not put back to the status of uninvestigated Native land was Pouakani No 1 of 20,000 acres which the court had determined to be Crown land, by order on 24 September 1887. The minutes of the court on 19 September 1887 record, "this Block to be called Pouakani No. 1 and to be awarded to the Crown for payment of survey and other costs". {FNREF:0-86472-117-XA:8:23} Section 29 of the 1889 Act said that nothing in that section was to affect any interest acquired by the Crown or any order made in its favour. This meant that the order vesting Pouakani No 1 block in the Crown was unaffected when Maraeroa and the other subdivisions of Horaaruhe Pouakani were put back into the melting pot. Pouakani No 1 was surveyed by William Cussen in 1890 and shown on plan ML6036A (not to be confused with Cussen's plan ML6036, or Cussen's composite plan ML6036 etc) which he forwarded to the chief surveyor at Auckland on 27 January 1891. It was approved by the chief surveyor on 22 January 1892 and by Judge Scannell on 3 June 1892.

In 1891 the Native Land Court began a new investigation of title for Pouakani and Maraeroa blocks, and many of the same arguments were rehearsed again. In the next section of our report we focus specifically on these two blocks, the issue of the western boundary with the Aotea block, Crown purchase and survey charges.

References

1. National Archives MA-MLP 97/181

2. *ibid*
3. *ibid*
4. Taupo minute book 4 p 38
5. *ibid*
6. National Archives MA MLP 1877/211
7. National Archives MA MLP 86/190
8. *ibid*
9. Taupo minute book 9 pp 274-28 1
10. 12 NZLR 163, 14 NZLR 75 and 79
11. Lands and Survey file 2413
12. Otorohanga minute book 6 p 21
13. *New Zealand Gazette* 1888 p 292
14. AJHR 1888 I-3D
15. AJHR 1888 I-3
16. *Hikaka v Macdonald* (1889) 7 NZLR 642
17. AJHR 1889 G-7
18. National Archives MA 71/1
19. National Archives MA 71/1; AJHR 1889 G-7 and G-7A
20. AJHR 1889 G-7
21. *ibid*
22. AJHR 1885 G-I p 21
23. Taupo minute book 9 p 262

Waitangi Tribunal, Department of Justice, Wellington.