

NGĀTI PAHAUWERA

and

THE CROWN

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**Agreement in Principle**  
**for the Settlement of the Historical Claims and**  
**Foreshore and Seabed Claims of**  
**Ngāti Pahauwera**

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**30 September 2008**

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## **Negotiations to Date**

1. In 1994 the Māori Land Court made an order appointing eight (8) people to represent Ngāti Pahauwera pursuant to section 30 of Te Ture Whenua Māori Act 1993 in the prosecution and settlement of the Ngāti Pahauwera Treaty claims against the Crown (“the section 30 representatives”). The Waitangi Tribunal in the Mohaka ki Ahuriri Report 2004 concluded that the section 30 representatives had the mandate to negotiate a settlement of Ngāti Pahauwera’s Treaty claims.
2. On 8 May 2008, the Crown and the Ngāti Pahauwera section 30 representatives entered into Terms of Negotiation (“the Terms of Negotiation”), which set out the scope, objectives and general procedure for negotiations.
3. Prior to signing the Terms of Negotiation, Ngāti Pahauwera had started developing a governance entity to take over responsibility from the section 30 representatives for negotiating a final settlement of Ngāti Pahauwera’s claims, and to hold the benefits of a settlement of these claims.
4. Ngāti Pahauwera has since established a governance entity structure comprising two Trusts, the Ngāti Pahauwera Development Trust (which is the commercial and operational arm) and the Ngāti Pahauwera Tiaki Trust (which will hold Wāhi tapu.) Ngāti Pahauwera ratified the governance entity structure and confirmed the appointment of three members of the section 30 representatives as Trustees, by postal ballot closing on 5 July 2008. The remaining four Trustees were elected by postal ballot, which was completed on 18 August 2008. The same seven Trustees sit on both trusts.
5. The Trustees of the Ngāti Pahauwera Development Trust are to perform the functions of the Governance Entity for the purposes of a future Deed of Settlement and Settlement Legislation. The Trustees executed a Deed of Covenant on 27 September 2008 agreeing that from that date the Trustees have taken over the responsibilities of the section 30 representatives, as representatives for Ngāti Pahauwera.
6. The Crown and the Trustees (the Parties) wish to enter this Agreement in Principle recording that they are willing to settle the Historical Claims and Foreshore and

Seabed Claims by entering into a Deed of Settlement on the basis set out in this Agreement in Principle.

## General

7. This Agreement in Principle contains the nature and scope of the Crown's offer to settle the Historical Claims and Foreshore and Seabed Claims.
8. The redress offered to Ngāti Pahauwera to settle the Historical Claims and Foreshore and Seabed Claims comprises four main components. These are:
  - 8.1 Historical Account, Crown Acknowledgements and Crown Apology;
  - 8.2 Cultural Redress;
  - 8.3 Financial and Commercial Redress; and
  - 8.4 Foreshore and Seabed Redress
9. The redress offered to Ngāti Pahauwera to settle the Historical Claims and Foreshore and Seabed Claims applies across the Ngāti Pahauwera Core Area of Interest with the exception of the financial redress and a single item of Cultural Redress detailed below (Cashes Bush), which apply across the Area of Interest.
10. Following the signing of this Agreement in Principle, the Parties will work together in good faith to develop, as soon as reasonably practicable, a Deed of Settlement. The Deed of Settlement will include the full details of the redress the Crown is to offer to settle the Historical Claims and Foreshore and Seabed Claims and all other necessary matters. The Deed of Settlement will be conditional on the matters set out in paragraphs 95 to 103 of this Agreement in Principle.
11. The Parties each reserve the right to withdraw from this Agreement in Principle by giving written notice to the other party in accordance with paragraph 106 below.
12. This Agreement in Principle is entered into on a without prejudice basis. It:
  - 12.1 Is non-binding and does not create legal relations; and
  - 12.2 Cannot be used as evidence in any proceedings before, or be presented to, the Courts, the Waitangi Tribunal and any other judicial body or tribunal.

13. The Terms of Negotiation continue to apply to the negotiations except to the extent affected by this Agreement in Principle.
14. Key Terms used in this document are defined in paragraph 107.

## **Historical Account, Crown Acknowledgements, and Crown Apology**

15. The Historical Account, Crown Acknowledgements and Apology are the cornerstone of the Crown's settlement offer.
16. The Historical Account will present an agreed understanding of the historical relationship between the Crown and Ngāti Pahauwera and will be included in the Deed of Settlement. On the basis of the Historical Account, the Crown will acknowledge in the Deed of Settlement that certain actions or omissions of the Crown were a breach of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.
17. The Crown will then offer an Apology to Ngāti Pahauwera in the Deed of Settlement for the acknowledged Crown breaches of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.
18. A draft Historical Account has been prepared by the parties on a without prejudice basis. That draft will form the starting point for discussions following the signing of this Agreement in Principle, in order to reach a final agreed Historical Account which will be included in the Deed of Settlement. The Crown Acknowledgments and Apology will be developed from the final agreed Historical Account.

## **Cultural Redress**

### **Cultural Redress Overview**

19. The Crown offers the following cultural redress based on factors such as the nature and extent of historical Treaty breaches, the redress sought by Ngāti Pahauwera and the redress instruments available to the Crown. The offer is intended to recognise the traditional, historical, cultural and spiritual associations of Ngāti Pahauwera with places primarily within the Ngāti Pahauwera Core Area of Interest, and to allow Ngāti Pahauwera and the Crown to protect and enhance the conservation values associated with these areas and sites.

20. The cultural redress agreed by the parties includes:
- 20.1 A co-management regime over the parts of the Mohaka, Waikari and Waihua Rivers within the Core Area of Interest (“the Rivers”);
  - 20.2 A transfer and gift back arrangement over Te Heru o Tureia and Limestone Ridge Conservation Areas;
  - 20.3 The return of cultural sites totalling approximately 281ha to the Trustees, with an undertaking to further discuss the transfer of up to a 1 ha portion of Pūtere Scenic Reserve;
  - 20.4 Developing a co-management regime over the Remaining Public Conservation Land in the Ngāti Pahauwera Core Area of Interest, as defined in paragraph 107.
21. An overview map showing the general location, by region, of all cultural redress sites referred to in this section is included in the list of maps in **Attachment 1** and as overview **Map A** in **Attachment 3**.

## **Rivers**

22. Ngāti Pahauwera and the Crown consider the Mohaka, Waikari and Waihua Rivers to be important and both have interests in the rivers. In particular:
- 22.1 Ngāti Pahauwera assert tino rangatiratanga over, and are the kaitiaki of, the Rivers; and
  - 22.2 The Crown, on behalf of the people of New Zealand, has by means of legislation and other measures asserted its interests over the Rivers.
23. The Deed of Settlement will include statements by both Ngāti Pahauwera and the Crown providing further details of their respective interests in the Rivers. The Parties will also agree on the extent of the Rivers that will be subject to the co-management regime, described below, prior to the finalisation of the Deed of Settlement.
24. Notwithstanding the positions of both Parties, in recognition of the mana of Ngāti Pahauwera, and to enhance their involvement in decision-making processes regarding the Rivers, the parties have agreed to develop a new co-management

regime over the Rivers and catchments within the Core Area of Interest in consultation with the Hawke's Bay Regional Council, other affected local authorities and other management agencies ("River Management Agencies") as required, that relates to the management of the natural resources of the Rivers including natural resource policy and planning.

25. The Parties agree that the operation of the co-management regime will be consistent with both the principles of the Treaty of Waitangi and the purpose and principles of existing legislative frameworks concerning the management of the natural resources of the Rivers.

26. The purpose, objectives, structure, and functions of the regime have yet to be agreed but would need to include the following:

26.1 A statutory body established through the Settlement Legislation to enable enhanced participation of Ngāti Pahauwera in resource management of the Rivers by enabling them to work alongside decision makers exercising functions, powers and duties under the Resource Management Act 1991. The statutory body will –

26.1.1 provide for:

- (a) equal numbers of representatives from Ngāti Pahauwera and River Management Agencies consistent with the agreed purpose, objectives, structure and functions of the regime.
- (b) decision-making by consensus with an agreed dispute resolution process.

26.1.2 have functions relating to the extraction of gravel and hāngī stones from the Rivers, discharges into the rivers, water quality and flow issues, the management of river margins, protection and enhancement of freshwater fisheries habitat and biodiversity (including but not limited to the whitebait fishery).



- 26.2 A Ngāti Pahauwera Rivers Management Plan developed by the Parties, with the detail to be agreed in the Deed of Settlement, to provide an avenue for Ngāti Pahauwera to:
- 26.2.1 set out their relationship with the Rivers;
  - 26.2.2 express their sustainable management interests in the context of the Resource Management Act; and
  - 26.2.3 have their resource management interests appropriately addressed in key areas of decision making under the Resource Management Act.
27. Following this Agreement in Principle, the Parties will:
- 27.1 In consultation with the Hawke's Bay Regional Council, investigate whether the policy and planning instruments of the Regional Council can appropriately address Ngāti Pahauwera use of river resources, including taking of hāngī stones;
  - 27.2 Further discuss issues regarding ownership of the gravel and hangī stones on the Rivers;
  - 27.3 Investigate options for delegating or transferring management functions relating to the Rivers to Ngāti Pahauwera in consultation with the River Management Agencies; and
  - 27.4 Investigate options for exercising Resource Management Act functions in respect of land-based activities that affect the Rivers.
28. The Deed of Settlement and Settlement Legislation will provide for the Trustees to be notified of all applications for resource consent within or directly affecting any part of the Rivers, so that the Trustees can elect to participate in resource consent processes concerning the Rivers under the Resource Management Act. Between this Agreement in Principle and the Deed of Settlement and Settlement Legislation, the Parties will determine, in consultation with River Management Agencies, what matters will directly affect any part of the Rivers.

## Te Heru o Tureia and Limestone Ridge

29. The Te Heru o Tureia and Limestone Ridge Conservation Areas:
- 29.1 To Ngāti Pahauwera, includes te maunga tapu o Ngāti Pahauwera, the burial place of Te Kahu o Te Rangī, the sole reserve from the 1851 Mohaka transaction and the subject of intense protest by Ngāti Pahauwera since it was acquired by the Crown in the 1850s.
- 29.2 To the Crown, comprise a relatively large indigenously forested area, with exceptional botanical value, particularly because of its size (1566 ha in total) and the presence of nationally endangered kakabeak.
30. The Deed of Settlement and Settlement Legislation will provide for the Minister of Conservation, within 2 years of the Settlement Date, to transfer the whole of Te Heru o Tureia and Limestone Ridge Conservation Areas (1566 hectares) to the Trustees on the condition that the Trustees gift those lands (except 203 hectares to be transferred in fee simple in the Trustees) back to the Crown after 7 business days.
31. The Parties agree that the following area from Te Heru o Tureia and Limestone Ridge Conservation Areas will be vested in fee simple estate in the Trustees:

**TABLE 1: TE HERU O TUREIA AND LIMESTONE RIDGE CONSERVATION AREAS**

Site	Description – Hawke's Bay Land District	Specific conditions or encumbrances (known at the time of Agreement in Principle)
Te Heru o Tureia and Limestone Ridge Conservation Areas	Approximately 203 hectares comprising: <ul style="list-style-type: none"> <li>• Area A – 52.91 hectares more or less, being Section 4 SO 9433 as shown on <b>Map 3 at Attachment 4</b>; and</li> <li>• Area B – 150 hectares, approximately, being Part Section 1 SO 9433, Part Section 2 Block X and Part Section 2 Block XII Waitara Survey District as shown on <b>Map 3 at Attachment 4</b>. Subject to survey.</li> </ul>	(a) Conservation covenant to provide for public access (subject to an ability to restrict public access to protect burial areas and to protect flora and fauna of high importance). Includes telecommunications concession. (b) Subject to a change to scenic reserve status.

32. The Parties agree to develop a co-management regime for inclusion in the Deed of Settlement and Settlement Legislation in relation to both the transferred area and the area gifted back to the Crown. The Parties agree that the Crown will meet the costs of protecting the conservation values of the land subject to this co-management regime.
33. In addition, the Deed of Settlement and Settlement Legislation will provide for a declaration that those parts of Te Heru o Tureia and Limestone Ridge Conservation Areas that are retained as public conservation lands are covered by a statutory overlay classification.

### **Statutory Overlay Classification**

34. The declaration of an area as having a statutory overlay classification provides for the Crown to acknowledge in the Settlement Legislation Ngāti Pahauwera values in relation to the area. It also provides, in relation to that area, for:
- 34.1 The Parties to agree on protection principles directed at assisting the Minister of Conservation to ensure Ngāti Pahauwera values are not harmed or diminished and for the Director-General of Conservation to take action in relation to the protection principles; and
- 34.2 The New Zealand Conservation Authority and conservation boards to have particular regard to Ngāti Pahauwera values and the protection principles.
35. The overlay classification will, in substance, be on at least the same terms as those provided in recent Treaty settlements.

### **Other public conservation land**

36. The Parties agree to develop a co-management regime for inclusion in the Deed of Settlement and Settlement Legislation between the Department of Conservation and Ngāti Pahauwera in relation to the Remaining Public Conservation Land. The regime has yet to be agreed.
37. The Deed of Settlement and Settlement Legislation will provide for the properties set out in Table 2 below (with the exception of Pūtere Scenic Reserve) to be vested in

fee simple estate for nil consideration in the Trustees of the Ngāti Pahauwera Development Trust, (or in the Trustees of the Ngāti Pahauwera Tiaki Trust) on Settlement Date. The transfers will be subject to the specific conditions and encumbrances noted in Table 2. Maps of these properties are included in **Attachment 4**. In relation to Pūtere Scenic Reserve, the Crown undertakes to further discuss the transfer of up to a 1 hectare portion of the Reserve subject to the conditions set out in Table 2 below.

**TABLE 2: SITES IN WHICH THE FEE SIMPLE ESTATE WILL BE VESTED IN THE TRUSTEES**

<b>Site</b>	<b>Description – Hawke’s Bay Land District</b>	<b>Specific conditions or encumbrances (known at the time of Agreement in Principle)</b>
Mangawharangi Scenic Reserve around recorded pa site	1.9 hectares approximately, being Part Mohaka B31B, as shown on <b>Map 4</b> in <b>Attachment 4</b> . Subject to survey.	Subject to retention of the existing Scenic Reserve status under the Reserves Act 1977.
Mohaka River Scenic Reserve	16 hectares, more or less, being Section 18 Block XII Mohaka Survey District, as shown on <b>Map 5</b> in <b>Attachment 4</b> . Subject to survey.	Subject to retention of the existing Scenic Reserve status under the Reserves Act 1977.
Pittars Conservation Area	17 hectares approximately, being Part Lot 1 DP 2612, as shown on <b>Map 6</b> in <b>Attachment 4</b> . Subject to survey.	Subject to a Conservation covenant to protect public access.
Maulders Conservation Area	1 hectare approximately, being Part Lot 1 DP 11245, as shown on <b>Map 7</b> in <b>Attachment 4</b> . Subject to survey.	Subject to grazing lease.
Mohaka River Conservation Area	0.5 hectares approximately, being Part Section 4 SO 10175, as shown on <b>Map 8</b> in <b>Attachment 4</b> . Subject to survey.	Subject to a Conservation covenant to protect public access to river.
Rāwhiti Scenic Reserve	9 hectares, more or less, being Mohaka B15, as shown on <b>Map 9</b> in <b>Attachment 4</b> . Subject to survey.	Subject to retention of the existing Scenic Reserve status under the Reserves Act 1977.
Kākāriki Scenic Reserve	1.5 hectares approximately, being Part Section 53 Block VII Mohaka Survey District, as shown on <b>Map 10</b> in <b>Attachment 4</b> . Subject to survey.	Subject to retention of the existing Scenic Reserve status under the Reserves Act 1977.
Raupunga Scenic Reserve	Approximately 10 hectares subject to further identification of wāhi tapu	Subject to retention of the existing Scenic Reserve status under the Reserves Act 1977.

<b>Site</b>	<b>Description – Hawke’s Bay Land District</b>	<b>Specific conditions or encumbrances (known at the time of Agreement In Principle)</b>
Pūtere Scenic Reserve	Undertaking to explore the transfer of approximately 1 ha around an urupa site	Subject to retention of reserve status, verifying location and the resolution of overlapping claims.

<b>Site</b>	<b>Description – Gisborne Land District</b>	<b>Specific conditions or encumbrances (known at the time of Agreement in Principle)</b>
Lake Rotongaio and Lake Rotoroa Conservation Areas	21 hectares approximately, being the bed of Lake Rotongaio and part of the bed of Lake Rotoroa, as shown on <b>Map 11 in Attachment 4</b> . Subject to survey.	Transfer of stratum estate to lakebeds with Crown retaining marginal strips and water column. Mechanism to protect conservation values, including public access.

38. The Parties agree to explore the need to provide additional access to the sites to be transferred as appropriate.

### **Statutory Acknowledgement**

39. The Deed of Settlement and the Settlement Legislation will provide for a statutory acknowledgement over Cashes Bush Conservation Area.
40. Statutory acknowledgements provide for the Crown to acknowledge, in the Settlement Legislation, a statement made by Ngāti Pahauwera of their cultural, spiritual, historical and traditional association with a particular area. Statutory acknowledgements further provide for:
- 40.1 Relevant consent authorities, the New Zealand Historic Places Trust and the Environment Court to have regard to the statutory acknowledgements for certain purposes;
- 40.2 Relevant consent authorities to forward to the Trustees summaries of resource consent applications for activities within, adjacent to, or impacting directly on, the area in relation to which a statutory acknowledgement has been made; and

- 40.3 The Trustees and any member of Ngāti Pahauwera to cite to consent authorities, the New Zealand Historic Places Trust and the Environment Court the statutory acknowledgement as evidence of the association of Ngāti Pahauwera with the area in relation to which the statutory acknowledgement has been made.
41. The statutory acknowledgements provided to the Trustees will be on similar terms, in substance, to those provided in previous Treaty settlements. In particular, the statutory acknowledgements:
- 41.1 Will not affect the lawful rights or interests of a person who is not a party to the Deed of Settlement;
- 41.2 In relation to waterways, will not include:
- 41.2.1 a part of the bed of the waterway that is not owned by the Crown;
- 41.2.2 land that the waters of the waterway do not cover at its fullest flow without overlapping its banks;
- 41.2.3 an artificial watercourse; or
- 41.2.4 a tributary flowing into the waterway; and
- 41.3 Will not prevent the Crown from providing a statutory acknowledgement to persons other than Ngāti Pahauwera or the Trustees with respect to the same area.

#### **Audit of public conservation land in the Ngāti Pahauwera Core Area of Interest**

42. The Parties agree that the Department of Conservation, after the signing of the Agreement in Principle, will undertake an audit of Remaining Public Conservation Land within the Core Area of Interest to explore if any additional sites subject to grazing concessions may be appropriate to transfer to Ngāti Pahauwera.

### **Cultural Harvest Plan**

43. The Crown acknowledges that Ngāti Pahauwera have expressed a strong interest in managing the taking of plant material from the Rāwhiti Scenic Reserve for cultural purposes such as rongoa (traditional medicine). Conservation legislation generally requires authorisation by way of permits for any gathering and possession of materials derived from plants on public conservation land.
44. In order to address Ngāti Pahauwera interests in rongoa from the Rāwhiti Scenic Reserve, the Crown offers for inclusion in the Deed of Settlement and Settlement Legislation the ability for Ngāti Pahauwera to develop and approve, in consultation with the Department of Conservation, a Cultural Harvest Plan for the Rāwhiti Scenic Reserve. The Cultural Harvest Plan will identify sites within this area, methods and quantities of harvest of indigenous flora, including monitoring provisions relating to the Reserve. Instead of the Department of Conservation issuing collection permits to Ngāti Pahauwera, authority under the plan can only be granted for take by Ngāti Pahauwera that is consistent with the Cultural Harvest Plan. Conservation values associated with the protection of flora would be a paramount consideration.
45. Following the signing of the Agreement in Principle, the Crown undertakes to further discuss the inclusion of other identified sites within the Core Area of Interest in the Cultural Harvest Plan.

### **Protocols**

46. A protocol is a statement issued by a Minister of the Crown setting out how a particular government agency intends to:
  - 46.1 Exercise its functions, powers and duties in relation to specified matters within its control in the claimant group's protocol area; and
  - 46.2 Consult and interact with the claimant group on a continuing basis and enable that group to have input into its decision-making processes.
47. The Deed of Settlement and the Settlement Legislation will provide for the following Ministers to issue protocols to the Trustees:
  - 47.1 The Minister of Conservation;

47.2 The Minister for Arts, Culture and Heritage; and

47.3 The Minister of Energy (Crown Minerals).

48. The Crown proposes that the protocols will be in substance at least on the same terms as those provided in previous Treaty settlements. Following the signing of this Agreement in Principle, the content of the protocols will be negotiated and agreed between the Parties for inclusion in the Deed of Settlement. All protocols will be developed to comply with the applicable legislation. In each case, unless otherwise agreed between the Parties, the protocol areas will be the same as the Area of Interest (as shown in **Map 1, Attachment 2**), together with adjacent Coastal Marine Area, to the extent that the adjacent Coastal Marine Area is covered by the applicable legislation. If a particular protocol is to apply to an area different from the Area of Interest, that area will be specifically identified on a map to be included in the Deed of Settlement.

#### *Conservation Protocol*

49. The Conservation Protocol could cover matters such as:

49.1 Input into business planning (subject to consideration against other priorities) at the Area Office level;

49.2 Access to, and the use of, cultural materials gathered from public conservation land for traditional purposes;

49.3 The management of cultural and historic heritage sites, including wāhi tapu and wāhi taonga, and other places of historical and cultural significance to Ngāti Pahauwera on public conservation land;

49.4 Visitor and public information, in particular, opportunities for input into visitor appreciation;

49.5 Input by the Governance Entity into the Department's species management work;

49.6 Co-operation on freshwater fisheries;



- 49.7 Co-operation on advocacy under the Resource Management Act 1991, particularly in relation to the protection and restoration of wetlands;
- 49.8 Consultation with the Governance Entity on conditions for protection of wāhi tapu and taonga when considering concession applications;
- 49.9 Participation by the Governance Entity in any name changes instituted or recommended by the Department;
- 49.10 Identification of special projects by the Governance Entity for inclusion in the Department's business planning process;
- 49.11 Confidentiality mechanisms for the protection of culturally sensitive information; and
- 49.12 Maintaining and enhancing existing relationships between Ngāti Pahauwera and the Department of Conservation.

### **Fisheries Matters**

- 50. The Crown, through the Minister of Fisheries and Chief Executive of the Ministry of Fisheries, recognises that:
  - 50.1 Ngāti Pahauwera as tangata whenua are entitled to have input into, and participate in, fisheries management processes that affect fish stocks in their Area of Interest and that are managed by the Ministry under fisheries legislation; and
  - 50.2 Ngāti Pahauwera as tangata whenua, have a special relationship within their Area of Interest with all species of fish, aquatic life and seaweed and all such species being taonga of Ngāti Pahauwera, and an interest in the sustainable utilisation of all species of fish, aquatic life and seaweed.
- 51. The Deed of Settlement will record that the Minister of Fisheries will write to the Trustees outlining how the Ministry of Fisheries:
  - 51.1 Is working with hapu and iwi within the region extending from Mahia to Wairarapa, to develop fisheries management processes (including regional fora) to enable tangata whenua to have input into, and participate in:

51.1.1 processes to address sustainability measures;

51.1.2 fisheries regulations;

51.1.3 fisheries plans; and

51.1.4 the establishment of marine protected areas.

51.2 Will ensure that the Trustees have an opportunity to participate in any regional initiatives that provide for input and participation of hapu and iwi in the fisheries management processes.

52. The Deed of Settlement will provide for any other fisheries mechanisms as agreed between the Parties.

#### **Promotion of Relationship with Local Authorities**

53. The Deed of Settlement will record that the Minister in Charge of Treaty of Waitangi Negotiations has written to the Hawkes Bay Regional Council, the Wairoa District Council and the Hastings District Council, encouraging them to enter into a memorandum of understanding (or a similar document) with the Trustees in relation to the interaction between the council and Ngāti Pahauwera.

#### **Letters of Introduction to Government Agencies**

54. Following the signing of this Agreement in Principle, the Minister in Charge of Treaty of Waitangi Negotiations will write letters of introduction to Ministers responsible for relevant government agencies working within the Area of Interest. The purpose of the letters would be to introduce the Trustees to the particular agencies, and to outline the nature of Ngāti Pahauwera interests in the work that the agency undertakes.

#### **Place Names**

55. Following the signing of this Agreement in Principle, the Parties will discuss, for inclusion in the Deed of Settlement, the possibility of assigning Māori place names to places of particular significance to Ngāti Pahauwera, and assigning dual Māori

and English names where appropriate, in consultation with the New Zealand Geographic Board Ngā Pou Taunaha o Aotearoa, in accordance with the functions and practices of that Board.

### **Promotion of Relationships with Museums**

56. The Deed of Settlement will record that the Minister in Charge of Treaty of Waitangi Negotiations has written to an agreed list of museums encouraging them to enhance their relationship with the Trustees, particularly in relation to Ngāti Pahauwera taonga.

### **Monitoring the Implementation of the Resource Management Act 1991**

57. The Deed of Settlement will provide that:
- 57.1 The Trustees will have an opportunity to express to the Ministry for the Environment as soon as practicable after the Settlement Date the views of Ngāti Pahauwera on how the Treaty of Waitangi provisions, and other relevant provisions, of the Resource Management Act 1991 are being implemented in the Core Area of Interest; and
- 57.2 The Crown, through the Ministry for the Environment, will monitor (in accordance with the functions of that Ministry under section 24 of the Resource Management Act 1991) the performance of the relevant local authorities in the Core Area of Interest in implementing the Treaty of Waitangi provisions, and other relevant provisions, of the Resource Management Act.

### **Pouwhenua and Tuahu**

58. Following the signing of the Agreement in Principle, the Parties agree to explore, for inclusion in the Deed of Settlement and Settlement Legislation, the ability of the Trustees to erect pouwhenua and tuahu in the Core Area of Interest.

## **Financial and Commercial Redress**

### **Financial and Commercial Redress Overview**

59. The Financial and Commercial Redress Amount is \$20 million.

60. The Deed of Settlement and the Settlement Legislation will provide for the Crown to transfer to the Trustees on Settlement Date:
- 60.1 Selected commercial properties as set out in Table 3 for nil consideration;
  - 60.2 Selected commercial redress properties (with the total value of the selected properties not exceeding the amount the Financial and Commercial Redress Amount specified in paragraph 59 above); and
  - 60.3 The cash settlement amount, (being the total value of the Financial and Commercial Redress Amount less the transfer value of the commercial redress properties).
61. An overview map showing the general location of all Crown properties referred to in this section is included in **Overview Map B, Attachment 3**.

### Commercial Properties Transferred For Nil Consideration

**TABLE 3: COMMERCIAL PROPERTIES TO BE TRANSFERRED FOR NIL CONSIDERATION**

Site	Description – Hawke’s Bay Land District	Specific conditions or encumbrances (known at the time of Agreement in Principle)
Rawhiti Station Farm, Raupunga	671.1700 hectares, more or less, being Part Mohaka B4 Block Māori Land Plan 2571; Mohaka B7 Block Māori Land Plan 2574; Mohaka B9 Block Māori Land Plan 2572; Mohaka B11 Block Māori Land Plan 2594; Mohaka B12 Block Māori Land Plan 2589; Mohaka B19 Block Māori Land Plan 2589; Part Mohaka B21 Block Māori Land Plan 2552 and Section 5 Survey Office Plan 10105; Mohaka B22 Block Māori Land Plan 2552; Part Mohaka B24 Block Māori Land Plan 2552; Part Mohaka B25 Block Māori Land Plan 2553; Mohaka B26X Block Māori Land Plan 2553; Section 2 Survey Office Plan 10105; and Section 1 Block I Waihua Survey District, Section 2 Block IV Mohaka Survey District, Section 2 Block VIII Mohaka Survey District and Defined On Survey Office Plan 7737 as shown on <b>Overview Map B</b> in <b>Attachment 3</b>	
Vacant Section 3505 State Highway 2, Raupunga	0.1122 hectares, more or less, being Section 15 SO 8798 Hawkes Bay Registry, as shown on <b>Overview Map B</b> in <b>Attachment 3</b>	

<b>Site</b>	<b>Description – Hawke's Bay Land District</b>	<b>Specific conditions or encumbrances (known at the time of Agreement in Principle)</b>
Residential Section State Highway 2, Raupunga	0.1337 hectares, more or less, being Lot 2 DP 14638, as shown on <b>Overview Map B</b> in <b>Attachment 3</b>	
Bare section State Highway 2, Raupunga	0.3060 hectares, more or less, being Lot 1 DP 27011, as shown on <b>Overview Map B</b> in <b>Attachment 3</b>	
Residential section, State Highway 2, Waihua	1.3964 hectares, more or less, being Lot 1 DP 314480, as shown on <b>Overview Map B</b> in <b>Attachment 3</b>	

### Licensed Crown Forest Land

62. An overview map of the Mohaka Forest is attached as **Overview Map C, Attachment 3.**

**TABLE 4: CROWN FOREST LAND TO BE TRANSFERRED**

<b>Block</b>	<b>Description</b>	<b>Specific conditions or encumbrances (known at the time of Agreement in Principle)</b>
Anaura	9,649.64 hectares, more or less, being Lot 1 DP 21991 and Lot 1 DP 21899 Hawkes Bay Land District, as shown in <b>Overview Map C</b> at <b>Attachment 3.</b>	As formally disclosed.
Otara	1,435.93 hectares, more or less, being Lot 1 DP 7983, Lot 2 DP 7983, Lot 3 DP 7983 and Lot 4 DP 7983 Gisborne Land District, as shown in <b>Overview Map C</b> at <b>Attachment 3.</b>	As formally disclosed.
Pūtere	3,516.41 hectares, more or less, being Lot 1 DP 21992, Lot 2 DP 21992, Lot 1 DP 21996, Lot 2 DP 21996, Lot 3 DP 21996 and Lot 4 DP 21996 Hawkes Bay Land District and Lot 1 DP 6809, Lot 1 DP 7985 and Lot 2 DP 7985 Gisborne Land District, as shown in <b>Overview Map C</b> at <b>Attachment 3.</b>	As formally disclosed.
Waipapa	864.15 hectares, more or less, being Lot 1 DP 21817, Lot 2 DP 21817, Lot 3 DP 21817 and Lot 4 DP 21817 Hawkes Bay Land District, as shown in <b>Overview Map C</b> at <b>Attachment 3.</b>	As formally disclosed.
Headquarters	18.65 hectares, more or less, being Lot 1 DP 22028 Hawkes Bay Land District, as shown in <b>Overview Map C</b> at <b>Attachment 3.</b>	As formally disclosed. Public access post Crown Forest Licence to be agreed.

63. The Trustees will have the opportunity to select up to the full extent of the Mohaka Forest, (being the five (5) blocks set out in Table 4 above) for transfer to the Trustees on Settlement Date;

- 63.1 This opportunity will be confirmed, if within six months of the signing of this Agreement in Principle, Ngāti Pahauwera provide notice of evidence satisfactory to the Crown that all Māori with an interest in some or all of the Mohaka Forest blocks are represented by Ngāti Pahauwera.
- 63.2 If the above notice of evidence is not provided in the specified timeframe, the Crown will notify the Trustees of the blocks of forest land within the Mohaka Forest to be offered to Ngāti Pahauwera for selection by and transfer to the Trustees on Settlement Date, following a Crown assessment of interests of Māori groups in the Mohaka Forest.
64. The agreed transfer value for the whole of Mohaka Forest is \$12 million. The Trustees may pay the transfer value direct to the relevant Crown agency, in which case the transfer value will not be deducted from the cash settlement amount.
65. If the Trustees choose to take only some of the blocks of the Mohaka Forest, appropriate legal access and other rights required between those blocks and the balance of the Mohaka Forest remaining, will need to be further defined and agreed. In this regard, the transfer of Licensed Crown Forest Land will be subject to reciprocal easements in accordance with clause 17.4 of the relevant Crown forestry licences as are necessary to provide for ongoing legal access for forestry operations.
66. The Parties agree that the Deed of Settlement and Settlement Legislation will provide for the maintenance of current levels of public access to the Mohaka Forest in perpetuity after the expiry of the Crown forestry licence.
67. The Settlement Legislation will provide for the accumulated rentals (held by the Crown Forestry Rental Trust), associated with the blocks of the Mohaka Forest selected for transfer as a Commercial Redress Property, to be paid to the Trustees in accordance with the trust deed of the Crown Forestry Rental Trust dated 30 April 1990 (as if the Waitangi Tribunal had made a final recommendation for the return of that land to the Trustees). The accumulated rentals are in addition and separate to the Financial and Commercial Redress Amount.
68. Under the provisions of the Climate Change (Emissions Trading and Renewable Preference) Act 2008 relating to New Zealand Units being made available to

Licensed Crown Forest Land owners, the applicable Units will be allocated to Ngāti Pahauwera for nil consideration.

### **Other Commercial Redress Properties**

69. The Parties reserve the ability to negotiate in regard to any unallocated Crown lands identified after the signing of this Agreement in Principle but prior to Deed of Settlement that may be provided as redress under a Deed of Settlement.
70. The Parties reserve the ability to negotiate the transfer of further commercial redress properties outside the core area of interest with the consent of all other claimant groups who have an interest in those properties.
71. The transfer value for any other Commercial Redress Properties will be at a fair market value and determined in accordance with the valuation process to be agreed between the Parties. The Trustees may pay the transfer value of a Commercial Redress Property direct to the relevant Crown agency, in which case the transfer value will not be deducted from the cash settlement amount.

### **Right of First Refusal**

72. The Deed of Settlement will provide the Trustees with a right of first refusal over property within the Core Area of Interest that has been declared surplus by the relevant government department, and has been cleared of existing statutory processes. The right of first refusal will be effective for a term of 50 years from Settlement Date and will be on at least the same terms as those provided in previous Treaty of Waitangi settlements.

### **Foreshore and Seabed Redress**

#### **Foreshore and Seabed overview**

73. The Crown is aware of longstanding customary activities, uses and practices that have been undertaken by Ngāti Pahauwera in the Coastal Marine Area. In recognition of this the Parties agree to develop protected customary activities and wāhi tapu statutory instruments for inclusion in the Settlement Legislation to give

effect to the Deed of Settlement. In addition the Parties will continue to explore whether a Territorial Customary Rights application under section 96 of the Foreshore and Seabed Act 2004 will be made in relation to areas of the public foreshore and seabed within the Core Area of Interest, unless otherwise agreed between the Parties.

### **Protected Customary Activities**

74. In order to recognise the ongoing and enduring mana of Ngāti Pahauwera, the Protected Customary Activities instrument will provide legal protection to ensure Ngāti Pahauwera are able to continue their ongoing customary activities in te rohe moana o Ngāti Pahauwera, as defined in paragraph 107, without the need for a resource consent.
75. The Protected Customary Activities instrument will contribute to the legal expression, protection and recognition of the mana of Ngāti Pahauwera by supporting the continued exercise of customary activities that are integral to the tikanga of Ngāti Pahauwera and have been undertaken continuously since 1840 in te rohe moana o Ngāti Pahauwera. This instrument will support the Protected Customary Activities by providing legal protection to Ngāti Pahauwera to carry out such activities without the need for a resource consent and with the ability to restrict the use of resources by others. Ngāti Pahauwera will also have the ability to derive a commercial benefit from the exercise of the Protected Customary Activities.
76. The Parties agree that the framework for the Protected Customary Activities instrument, to include in the Deed of Settlement, will be the same as that provided in previous Foreshore and Seabed Agreements. Following the signing of this Agreement in Principle, the schedule of the Protected Customary Activities instrument will be drafted and agreed between the Parties for inclusion in the Deed of Settlement.

### **Wāhi tapu**

77. The Parties agree to explore whether there are wāhi tapu within te rohe moana o Ngāti Pahauwera requiring protection under a wāhi tapu instrument. If there are such wāhi tapu the Parties will develop a framework for the wāhi tapu instrument



that will be the same as that provided in previous Foreshore and Seabed Agreements, to include in the Deed of Settlement. Following the signing of this Agreement in Principle, any wāhi tapu identified will be listed in a schedule of wāhi tapu to be agreed between the Parties, and included in the Deed of Settlement.

### **Territorial Customary Rights**

78. The Parties agree to explore whether there are areas within te rohe moana o Ngāti Pahauwera where Territorial Customary Rights may be agreed under section 96 of the Foreshore and Seabed Act 2004.

### **Other Issues**

#### **Claimant Definition**

79. The Deed of Settlement will specify who is covered by the settlement, that is, whose claims are being settled and therefore who can benefit from the settlement.

80. The definition of Ngāti Pahauwera will be, or will be similar to, the following:

**Ngāti Pahauwera** means:

80.1 The members of one or more of the hapu listed in paragraph A of **Attachment 5** who have exercised or descend from those who have exercised customary rights within Maungaharuru ki Tangitu centred upon the Mohaka River; and

80.2 For the purposes of defining the beneficiaries of the Ngāti Pahauwera historical Treaty claims including being members of the Ngāti Pahauwera Development Trust and Ngāti Pahauwera Tiaki Trust:

80.2.1 the members of one or more of the hapu listed in paragraph B of **Attachment 5** who have exercised or descend from those who have exercised customary rights between (and including) the Waikari River to Poututu; and

80.2.2 the members of one or more of the hapu listed in paragraph C of, **Attachment 5** to the extent that those members exercised or descend from those who have exercised customary rights between (and including) the Waikari River to Poututu.

80.3 Every individual referred to in paragraph 80.1 and 80.2; and

80.4 Any whanau, hapu or group of individuals to the extent that that whanau, hapu or group of individuals is composed of individuals referred to in paragraph 80.1 and 80.2;

80.5 The categories, placement and final composition of hapu in Attachment 5 may be subject to further change as it remains subject to the Trustees' best endeavours to reach agreement with other tribal groups with interests in the Area of Interest between this Agreement in Principle and the Deed of Settlement and Settlement Legislation.

81. For the purpose of paragraph 80.1 and 80.2 **descend** means:

- 81.1 Direct descent by birth from a Member of Ngāti Pahauwera; or
- 81.2 Adoption by a Member of Ngāti Pahauwera
82. For the purpose of paragraph 80.1 and 80.2, **customary rights** means rights held according to tikanga Māori (Māori customary law, values and practices) including:
- 82.1 Rights to occupy land;
- 82.2 Rights relating to the use and stewardship of:
- 82.2.1 land; or
- 82.2.2 public Foreshore and Seabed;
- 82.2.3 other natural and physical resources;
- 82.3 Rights to affiliate to marae; and
- 82.4 Rights of burial.
83. For the purpose of paragraph 81.2, **adoption** means:
- 83.1 Legal adoption under the Adoption Act 1955; or
- 83.2 Customary adoption, including as whangai, consistent with Ngāti Pahauwera tikanga. The categories and criteria for customary adoption, including the rights that people adopted according to custom are able to exercise, will be further developed between this Agreement in Principle and the Deed of Settlement and Settlement Legislation.
84. **Member of Ngāti Pahauwera** means:
- 84.1 Every individual referred to in paragraph 80.1 and 80.2.
85. **Representative Entity** means:
- 85.1 A person (including any Trustee or Trustees) acting for or on behalf of:
- 85.1.1 the collective group referred to in paragraph 80.1 and 80.2.;
- 85.1.2 any one or more of the Members of Ngāti Pahauwera; or

85.1.3 any one or more of the whanau, hapu or group of individuals referred to in paragraph 80.4.

86. The detail of the definitions of Ngāti Pahauwera and related terms will be developed further over the course of negotiations for inclusion in any Deed of Settlement that the Parties may agree.

### **Scope of Settlement**

87. The Deed of Settlement will settle all of the Ngāti Pahauwera Historical Claims and Ngāti Pahauwera Foreshore and Seabed Claims.

88. **Historical Claims** means every claim (whether or not the claim has arisen or been considered, researched, registered or notified) that Ngāti Pahauwera (in accordance with the definition in paragraph 80 or any Representative Entity) has that:

88.1 Is, or is founded on, a right arising:

88.1.1 from Te Tiriti o Waitangi /the Treaty of Waitangi, or its principles;

88.1.2 under legislation;

88.1.3 at common law (including in relation to aboriginal title or customary law);

88.1.4 from a fiduciary duty; or

88.1.5 otherwise; and

88.2 Arises from, or relates to, acts or omissions before 21 September 1992:

88.2.1 by or on behalf of the Crown; or

88.2.2 by or under legislation; and

88.2.3 includes every claim to the Waitangi Tribunal to which paragraph 88 applies and that relates exclusively to Ngāti Pahauwera (or a Representative Entity) including Wai 119 (the Mohaka River and land claim); Wai 430 (the Rawhiti Station claim); and Wai 731 (the Kupa whanau claim); and

- 88.3 Includes every other claim to the Waitangi Tribunal to which paragraph 88 applies so far as it relates to Ngāti Pahauwera (or a Representative Entity); and
- 88.4 Includes such other claims to the Waitangi Tribunal made by Ngāti Pahauwera as are identified in negotiations.
89. **Foreshore and Seabed Claims** means every claim (whether or not the claim has arisen or been considered, researched, filed, notified or been heard) that Ngāti Pahauwera (or any Representative Entity) has under the Foreshore and Seabed Act 2004.

### **Proposed Terms of the Deed of Settlement**

#### *Acknowledgements concerning the settlement and the redress*

90. The Crown and Ngāti Pahauwera will acknowledge in the Deed of Settlement that:
- 90.1 The settlement represents the result of intensive negotiations conducted in good faith and in the spirit of co-operation and compromise;
- 90.2 Land in the public conservation estate is not generally available for use in Treaty settlements apart from individual sites of special cultural significance;
- 90.3 It is not possible to fully compensate Ngāti Pahauwera for all the loss and prejudice so suffered;
- 90.4 This forgoing of full compensation is intended by Ngāti Pahauwera to contribute to the development of New Zealand;
- 90.5 The decision of Ngāti Pahauwera in relation to this settlement is a decision that Ngāti Pahauwera take for themselves alone and it does not purport to affect the position of other tribes; and
- 90.6 Taking all matters into consideration (some of which are specified in this clause) the settlement is fair in the circumstances.

*Acknowledgements concerning the settlement and its finality*

91. The Parties will acknowledge (amongst other things) in the Deed of Settlement that the settlement of the Historical Claims and Foreshore and Seabed Claims:

91.1 Is intended to enhance the ongoing relationship between the Crown and Ngāti Pahauwera (both in terms of Te Tiriti o Waitangi/the Treaty of Waitangi and otherwise);

91.2 Will prevent any member of Ngāti Pahauwera (or any Representative Entity of Ngāti Pahauwera) from pursuing claims against the Crown (including claims based on Te Tiriti o Waitangi/the Treaty of Waitangi or the principles of Te Tiriti o Waitangi/the Treaty of Waitangi, or based on legislation, common law (including aboriginal title or customary law), a fiduciary duty or otherwise) if such claims come within the definition of Historical Claims or Foreshore and Seabed Claims;

91.3 Except as expressly provided in the Deed of Settlement, will not limit any rights or powers the Crown or Ngāti Pahauwera might have arising from Te Tiriti o Waitangi/the Treaty of Waitangi or the principles of Te Tiriti o Waitangi/the Treaty of Waitangi, legislation, common law (including aboriginal title and customary law), fiduciary duty or otherwise;

91.4 Does not extinguish any aboriginal title, or customary rights, that Ngāti Pahauwera may have;

91.5 Does not imply an acknowledgement by the Crown that aboriginal title, or any customary rights, exist; and

91.6 Is not intended to affect any actions or decisions under:

91.6.1 the Deed of Settlement between Māori and the Crown dated 23 September 1992 in relation to Māori fishing claims;

91.6.2 the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992;

91.6.3 the Māori Fisheries Act 2004;

91.6.4 the Māori Commercial Aquaculture Claims Settlement Act 2004;

- 91.6.5 the Fisheries Act 1983;
- 91.6.6 the Fisheries Act 1996;
- 91.6.7 the Resource Management Act 1991; or
- 91.6.8 the Marine Reserves Act 1971.

92. Ngāti Pahauwera will acknowledge and agree (amongst other things) in the Deed of Settlement, and the Settlement Legislation will provide that, with effect from the Settlement Date:

- 92.1 The Historical Claims and Foreshore and Seabed Claims are settled;
- 92.2 The settlement of the Historical Claims and Foreshore and Seabed Claims is final;
- 92.3 The Crown is released and discharged from any obligations, liabilities and duties in respect of the Historical Claims and Foreshore and Seabed Claims;
- 92.4 The Courts, the Waitangi Tribunal and any other judicial body or tribunal do not have jurisdiction (including the jurisdiction to inquire into or to make a finding or recommendation) in respect of:
  - 92.4.1 the Historical Claims and Foreshore and Seabed Claims;
  - 92.4.2 the Deed of Settlement;
  - 92.4.3 the redress provided to Ngāti Pahauwera and the Trustees in the settlement; and
  - 92.4.4 the Settlement Legislation (except for in respect of the interpretation and enforcement of the Deed of Settlement and the Settlement Legislation); and
- 92.5 Any proceedings in relation to the Historical Claims and Foreshore and Seabed Claims are discontinued.

93. The Deed of Settlement will provide for Ngāti Pahauwera acknowledging and agreeing the following:

93.1 The Crown has acted honourably and reasonably in respect of the settlement;

93.2 It is intended that the settlement is for the benefit of Ngāti Pahauwera and may be for the benefit of particular individuals or any particular iwi, hapū, or group of individuals as is determined appropriate between the Parties; and

93.3 The settlement is binding on Ngāti Pahauwera and the Trustees (and any Representative Entity of Ngāti Pahauwera).

*Removal of statutory protections and termination of landbanking arrangements*

94. The Deed of Settlement will provide for Ngāti Pahauwera acknowledging and agreeing the following:

94.1 That the Settlement Legislation will provide that the following legislation does not apply to land in a Specified Area (as defined in paragraph 107 including wāhi tapu), namely:

94.1.1 Sections 8A-8HJ of the Treaty of Waitangi Act 1975;

94.1.2 Sections 27A to 27C of the State Owned Enterprises Act 1986;

94.1.3 Sections 211 to 213 of the Education Act 1989;

94.1.4 Part III of the Crown Forests Assets Act 1989; and

94.1.5 Part III of the New Zealand Railways Corporation Restructuring Act 1990.

94.2 That the Settlement Legislation will provide for the removal of all resumptive memorials from land in the Specified Area;

94.3 That the landbank arrangements in relation to Ngāti Pahauwera will cease;

94.4 That neither Ngāti Pahauwera nor any Representative Entity of Ngāti Pahauwera have, from the Settlement Date, the benefit of the



legislation referred to in paragraph 94.1 in relation to land outside the Specified Area; and that,

94.5 Neither Ngāti Pahauwera nor any Representative Entity of Ngāti Pahauwera will object to the removal by legislation of the application of the legislation referred to in paragraph 94.1 in relation to any land outside the Specified Area, or to the removal of memorials with respect to such land.

### **Conditions**

95. The Crown will enter into the Deed of Settlement subject to the following conditions:

#### *Overlapping Interests*

95.1 The Crown confirming that overlapping interests from other tribal groups in relation to any part of the settlement redress have been addressed to the satisfaction of the Crown in respect of that item of redress;

#### *Cabinet agreement*

95.2 Cabinet agreeing to the settlement and the redress to be provided to Ngāti Pahauwera;

#### *Deed of Settlement*

95.3 Ratification of the finalised Deed of Settlement by Ngāti Pahauwera in accordance with a process agreed between the Parties;

#### *Settlement Legislation*

95.4 The passing of Settlement Legislation to give effect to parts of the settlement; and

95.5 Ngāti Pahauwera supporting the passage of Settlement Legislation.

96. The Crown will not introduce the Settlement Legislation into Parliament until the Trustees have advised the Crown in writing that they are satisfied the Settlement Legislation reflects the Deed of Settlement. Once such notice has been given, the Crown must introduce the Settlement Legislation within six months after that date.
97. The Crown will ensure that the Trustees have appropriate participation in the process of drafting the Settlement Legislation and such drafting will commence once the Deed of Settlement has been signed.

### **Conditions for Cultural Redress**

98. The agreed vesting of the Cultural Redress Properties is subject to:
- 98.1 Further identification and survey of sites where applicable;
  - 98.2 Confirmation that no prior offer back or third party rights or Crown obligations to third parties, such as those under the Public Works Act 1981, exist in relation to the property; and any other statutory provisions which must be complied with before property can be transferred are able to be complied with;
  - 98.3 Any rights or encumbrances (such as a tenancy, lease, licence, easement, covenant or other right or interest whether registered or unregistered) in respect of the property to be transferred, either existing at the date the Deed of Settlement is signed, or which are advised in the disclosure information to be provided to the Trustees as being required to be created;
  - 98.4 Part 4A of the Conservation Act 1987, except to the extent that the Crown and Ngāti Pahauwera agree that section 24 of that Act (the reservation of marginal strips) does not apply;
  - 98.5 Sections 10 and 11 of the Crown Minerals Act 1991; and
  - 98.6 Any other express provisions relating to the Cultural Redress Properties that are included in the Deed of Settlement.
99. The Parties will agree particular conditions relating to continued public access over the Cultural Redress Properties prior to the Deed of Settlement.

100. Unless otherwise agreed in the Deed of Settlement, the Trustees will be responsible for the maintenance of the Cultural Redress Properties, including any future pest control (including flora and fauna), fencing, interpretation material, required biosecurity responses, and removal of refuse if required, and the preparation of reserve management plans under section 41 of the Reserves Act 1977 on land transferred subject to reserve status.
101. The Trustees will also be responsible for the payment of any rates, where applicable, that become payable after transfer of the Cultural Redress Properties.
102. Following the signing of this Agreement in Principle, the Crown will prepare disclosure information in relation to the properties and will provide such information to the Trustees. If any sites are unavailable for transfer for any of the reasons given in paragraph 98 above, the Crown has no obligation to substitute such sites with other sites, but will nevertheless negotiate in good faith to see if other suitable sites are available.

#### **Conditions for Commercial Redress**

103. The transfer of the Commercial Redress Properties will be subject to (where relevant):
  - 103.1 The consent of the relevant Crown agency;
  - 103.2 Confirmation that no prior offer back or other third party rights and obligations, such as those under the Public Works Act 1981, exist in relation to the property or asset; and any other statutory provisions which must be complied with before the property or asset can be transferred are able to be complied with;
  - 103.3 Any express provisions relating to specified properties and assets that are included in the Deed of Settlement;
  - 103.4 Standard terms of transfer and specific terms of transfer applicable to the specified property or asset;
  - 103.5 Standard terms of leaseback and specific terms of leaseback applicable to the specified property or asset;

- 103.6 Any rights or encumbrances (such as a tenancy, lease, licence, easement, covenant or other right or interest whether registered or unregistered) in respect of the property or asset to be transferred, either existing at the date the Deed of Settlement is signed, or which are advised in the disclosure information provided to the Trustees as being required;
- 103.7 Part 4A of the Conservation Act 1987 and the creation of marginal strips except as expressly provided; and
- 103.8 Sections 10 and 11 of the Crown Minerals Act 1991.

## **Taxation**

- 104. The Deed of Settlement will provide for the following taxation matters:
  - 104.1 Subject to obtaining the consent of the Minister of Finance, the Trustees will be indemnified by the Crown against income tax and GST arising from the transferring, crediting or payment of Financial and Commercial Redress by the Crown to the Trustees;
  - 104.2 This indemnity does not extend to any tax liability arising in connection with the acquisition of property by the Trustees after Settlement Date, whether it uses its own funds or uses the Financial and Commercial Redress for such acquisition;
  - 104.3 Again, subject to obtaining the consent of the Minister of Finance, the Trustees will also be indemnified by the Crown against income tax, GST and gift duty arising from the transfer of other redress by the Crown to the Trustees;
  - 104.4 Neither the Trustees nor any other person shall claim a GST input credit or tax deduction in respect of any Cultural Redress or Financial and Commercial Redress provided by the Crown to the Trustees; and
  - 104.5 To avoid doubt, the indemnity does not extend to any tax liability arising in connection with the subsequent disposal of any of the properties transferred.

## **Interest**

105. The Deed of Settlement will provide for the Crown to pay to the Trustees the interest on the Financial and Commercial Redress Amount for the period from (and including) the date of the signing of this Agreement in Principle to (but excluding) Settlement Date. Interest will be calculated and provided on the same basis as in recent settlements, i.e. based, among other things, on the Official Cash Rate, will be non-compounding, and subject to normal taxation law.

## **Notices**

106. A notice under this Agreement in Principle must be signed by or on behalf of the person sending it, may be signed in the case of the Ngāti Pahauwera Development Trust by any two of the Trustees, and must be given in writing delivered by hand, by post or by facsimile to the other persons as set out below:

- 106.1 The address for service of notices on the Trustees is:

C/o Powell Webber Associates  
Level 11 Peace Tower  
2 St Martins Lane  
Auckland City  
PO Box 37661 Parnell Auckland  
DXCP27025 Auckland

Facsimile No: 09 307 4301.

- 106.2 The address for service of notices on the Crown is:

C/o The Solicitor-General  
Crown Law Office  
Level 10  
Unisys House  
56 The Terrace  
(PO Box 2858)  
Wellington 6140

Facsimile No: 04 473 3482

## Definitions

107. Key Terms used in this document are defined as follows:

**Area of Interest** means the area depicted generally in **Map 1**, at **Attachment 2** where Ngāti Pahauwera have customary interests.

**Coastal Marine Area** (as defined in the Resource Management Act 1991) means the foreshore, seabed, and coastal water, and the air space above the water—

- (a) of which the seaward boundary is the outer limits of the territorial sea;
- (b) of which the landward boundary is the line of mean high water springs, except that where that line crosses a river, the landward boundary at that point shall be whichever is the lesser of—
  - (i) one kilometre upstream from the mouth of the river; or
  - (ii) the point upstream that is calculated by multiplying the width of the river mouth by 5.

**Core Area of Interest** means the area depicted in **Map 2** at **Attachment 2** that is a subset of the Area of Interest and is where Ngāti Pahauwera has traditionally and most frequently held and exercised strongest customary interests.

**Crown** means:

- (a) The Sovereign in right of New Zealand; and
- (b) Includes all Ministers of the Crown and all Departments; but
- (c) Does not include:
  - (i) an Office of Parliament;
  - (ii) a Crown Entity; or
  - (iii) a State Enterprise named in the First Schedule to the State-Owned Enterprises Act 1986.

**Customary Rights Order Proceedings** means the proceedings of the Māori Land Court No. A20050006643, heard at Mohaka from 18 – 21 February 2008 relating to Ngāti Pahauwera's application for a Customary Rights Order under the Foreshore and Seabed Act 2004.

**Deed of Settlement** means the Deed of Settlement to be entered into between the Crown and Ngāti Pahauwera in accordance with paragraph 6.

**Foreshore and Seabed Claims** has the meaning set out in paragraph 89.

**Governance Entity** means the Trustees of the Ngāti Pahauwera Development Trust.

**Historical Claims** has the meaning set out in paragraph 88.

**Mohaka Forest** means the Anaura, Otara, Pūtere, Waipapa and Headquarter blocks set out in Table 4.

**Ngāti Pahauwera** means the groups and individuals to be defined in the Deed of Settlement in accordance with paragraph 80.

**Parties** means the Crown and the Trustees.

**Remaining Public Conservation Land** means land controlled by the Department of Conservation within the Core Area of Interest.

**River Management Agencies** includes the Hawke's Bay Regional Council and other affected local authorities and government agencies to be agreed between the Parties and included in the Deed of Settlement.

**Rivers** means the parts of the Mohaka, Waikari and Waihua Rivers within the Ngāti Pahauwera Core Area of Interest.

**Settlement Date** means the date that is 20 business days after the date the Settlement Legislation comes into force, being the date on which the settlement redress is to be transferred to the Trustees.

**Settlement Legislation** means the Bill or Act, if the Bill is passed, to give effect to the Deed of Settlement.

**Specified Area** means an area referred to in paragraph 94.1, which is yet to be agreed between the Crown and the Trustees, which may include other lands if the Crown is satisfied that Ngāti Pahauwera have exclusive customary interests in those lands.

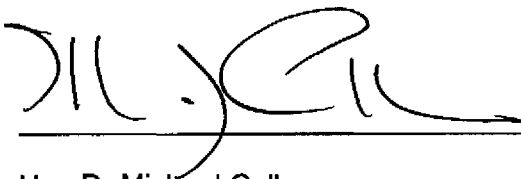
**Te rohe moana o Ngāti Pahauwera** means the Coastal Marine Area adjacent to the Core Area of Interest.

**Trustees** mean the Trustees appointed from time to time in accordance with the Ngāti Pahauwera Development Trust Deed to manage and administer the trust property on behalf of Ngāti Pahauwera.

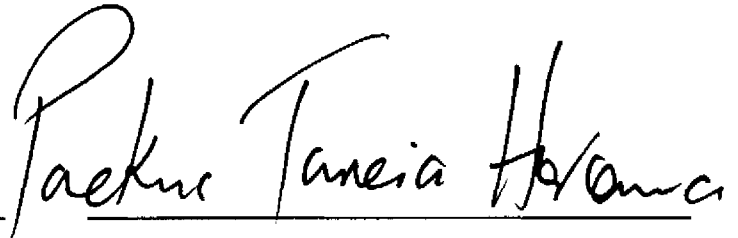


**SIGNED this 30th day of September 2008**

**For and on behalf of the Crown:**

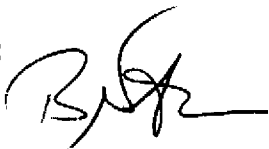


Hon Dr Michael Cullen  
**Attorney-General**  
**Minister in Charge of Treaty of Waitangi**  
**Negotiations**



Hon Parekura Horomia  
**Minister of Māori Affairs**

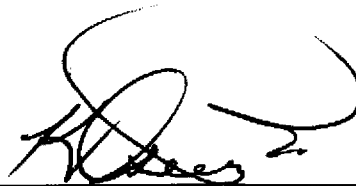
**WITNESSES:**



For and on behalf of Ngāti Pahauwera:



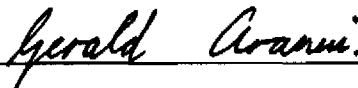
Tom Gemmell  
Tohu / Trustee



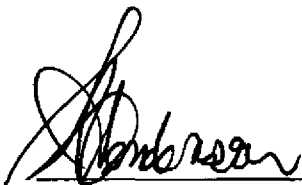
Kuki Green  
Tohu / Trustee



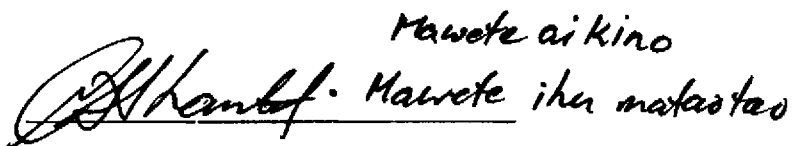
Toro Waaka  
Tohu / Trustee



Gerald Aranui  
Tohu / Trustee



Sissiel Henderson  
Tohu / Trustee



*Mawete ai kino  
Mawete ihu mataotao*

Charles Lambert  
Tohu / Trustee



Tureiti Moxon  
Tohu / Trustee

WITNESSES:

Charles Kohi II King  
Charles Kohi II King

Maraea Aranui  
Maraea Aranui

Winifred King.

201 parafara Hawkins Aranui

Mc Dermott.

Mrs W Mc Dermott.

Sophie R. Keefe

Betty Gemmill

Ann Keefe.

B. Whina Waaka

Edward Keremaita Waaka

Mere Wai Pao Pao anaera Poha Tio Harkin

Janet Heata 232 Putere RD Rangungete

Lady Anita J. Rose-Booth-Hodgson-Windward

Orlando Riös - Varas (Mrs).

(Duchess of Rothsay)

Nepha Wainoa Rangiora George Wainoa.

Heneriata Wikitoria TeKahu Puhia

3 Thomson Grove

Koroumii Matae

Stokes Valley

Catherine Williams 395 SH2 WAIHUA

DARREN ARANUI RAUPUNGA

Hami Oka

Sivipi Le Naku Te Hapuku Le Naku

Berely Rameta Raupunga

Marama Te Aho.

WITNESSES:

(11) Jaquille Aranui Raupunga Kodes Green  
Rangy Ernest Hancy 16 The Drive  
17/18 Cornwell St Tawa  
Napier Wgtn  
Sage Aranui Raupunga (10).

Edina Hiltorn: 20 Cobbell Street Napier.  
Ph. 06- 8438488.

Wivema Hedges 23 Livingstone Rd Palmerston  
Rukunonoana Virohū

Okiam Rarua Green,  
ELLEN MATOE 2/3 Futtler Cr. Taita  
MEZE SHELSDOR. 13 PRIBROATH AVE SLAMERE

Nikitoria Williams (nee Puna)  
Jane Sibbett (Huata)

Ereti King 3590330  
Hirilanga Langi Hehepa.

Matewa Hapeta-Arcami. Mohaka  
Miri Eschall Albert Mohaka.  
Parekura Hodges Edwards. mahaka

Ben Lambert (10) J Jopana-Manunga.

Te araha simeon (12)  
Aga Rancho (Keeffe)  
Lena Joe

Tessa Robin  
Heke Huata  
ZARELDA PUIHIA

Tangiwai Newton Te Kahu  
Keenan Te Yaha Kupu

Hinaboa Niaboa  
Rihua

Kari Aramii 9y

Darren Gilbert 14y  
Michelle Aramii Raupunga/Mohaka  
Ed Gilbert  
Maree Gilbert & Edward Gilbert } Putere  
Jeff Culshaw-Kaisa-Raupunga 14  
Jordan Biddle 12  
Raupunga

Toharapia 12  
Mohaka

Rod Jeen (Hawkins)

years 13 Mohaka.

Marlin Joe 12 Years Mohaka.

Robyn Culshaw Raupunga.

Carlos Harris

Heidi Harris Mohaka.

ARETA MOSES Ant Prou

EDWARD MOSES Prou

Thomas Eppes Heds Heds

Angelina Culshaw-Kaisa Rhu Raupunga

Brooklyn Huata 232 Putere RD Raupunga

Stanham Lambert 56 Mohaka Township

WITNESSES:

CERGIE TEOTINGA NICHOLSON

Jane Hawkins  
Mr. L. Proa 622 Gordon Rd Hastings.

MAKI TIPOKI 158 QUEEN ST, WAIRUA

30.9.08 Peter Reo & Noelleen Mary Hawkins Mohaka ~~15~~ 15/10/08

JP VICKLIN JAPANS PLACE PALMERSTON NORTH ~~JK~~

Munderson  
a Horwigo

Cruz RDG

Valerie P. McQueen.

Patricia Gemmell

Pohora Taimana Rose Ryder Gemmell (15)

Gemmell

Miriam  
Gemmell.

Frank Gemmell

Johnny Keefe.

Rangi A. Keefe  
"Beautiful"

Douglas Keefe Keefe

Weki Soper Keefe

Rupeka Karpura.

Anika Moses

Marie Moses

Andrea IS

Sheam  
Baran.

Hemi Hapeta-Heta & Jamie Hapeta-Heta - Mohaka.  
Megan Hapeta-Heta - Mohaka

Nathan Hapeta-Heta - Mohaka  
Tutamure mei T.ville.

Daniel Blakborough Palmery  
St. Kameka Taupe

Rosalie Biddle-Pevett Raupunga.

Adrienne Shelford - Raupunga Wellington.

Kandandy Huata

Lynne Mathias & Robert & Ahauwera.

Geoffrey Muir Mohaka/Raupunga.

Huriana Henderson Wellington.

Huriana Sissiel Hokianga.

Asami Sekura & Heira KAHURANAKI

Angela Jenny Lutshaw-Kaia Mohaka

Cheyenne Maraea Arani Gilbert Raupunga/Putere

Jacqueline Sindi Huata Raupunga.

Chelsea Teremoana Spooner - Raupunga

Michelle Thompson - Tuhiti.

Deborah Tuhiti Mohaka.

George Beraman Wellington.

VIVIANNE CARTER - MOHAKA.

Tepaea Huare - Mohaka

KYLE HAWKINS - WAIHUA

Pat Kapua - Raupunga

Bhannie Kapua Raupunga



## **Attachment 1**

### **List of Maps**

#### **Areas of Interest**

- Map 1            Area of Interest
- Map 2            Core Area of Interest

#### **Overview Maps**

- Map A            Overview Map of Cultural Redress Sites
- Map B            Overview Map of Commercial Redress Sites
- Map C            Overview Map of Mohaka Forest

#### **Maps of Cultural Redress Sites**

- Map 3            Te Heru O Tureia Conservation and Limestone Ridge Conservation
- Map 4            Mangawharangi Scenic Reserve
- Map 5            Mohaka River Scenic Reserve
- Map 6            Pittars Conservation Area
- Map 7            Maulders Conservation Area
- Map 8            Mohaka River Conservation
- Map 9            Rāwhiti Scenic Reserve
- Map 10           Kākāriki Scenic Reserve
- Map 11           Lakes Rotongaio & Rotoroa Conservation Areas

## **Attachment 2**

### **Area of Interest Maps**

**Ngāti Pahauwera  
Area of Interest**

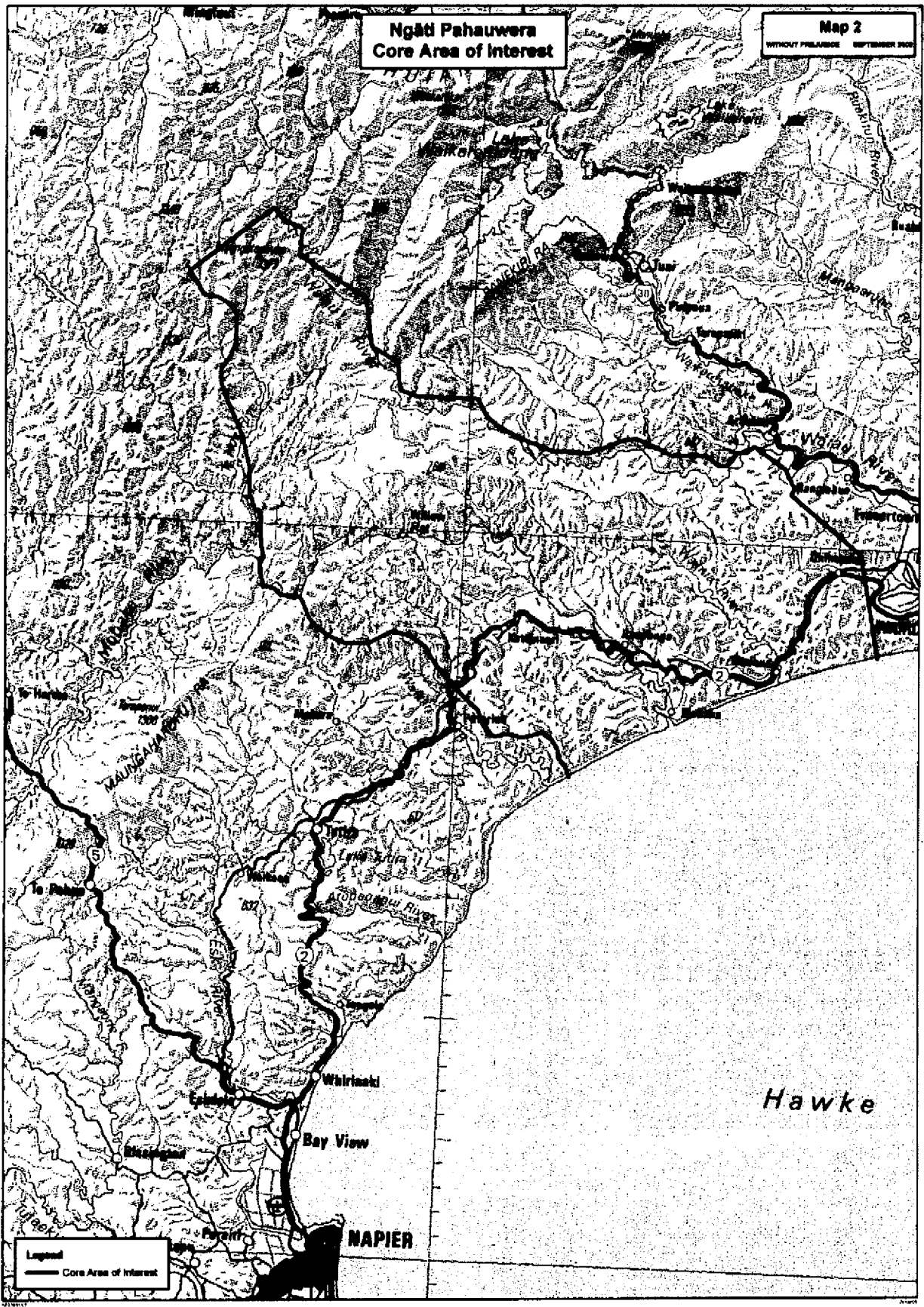
**Map 1**  
WITHOUT PRELIMINARIES SEPTEMBER 1988



**Legend**  
- - - - - Ngāti Pahauwera  
Area of Interest

**Ngāti Pahauwera  
Core Area of Interest**

**Map 2**  
WITHOUT PARLANCE SEPTEMBER 2002



**Legend**  
Core Area of Interest

Hawke

**NAPIER**

Bay View

Whirinaki

MAUNAKAI

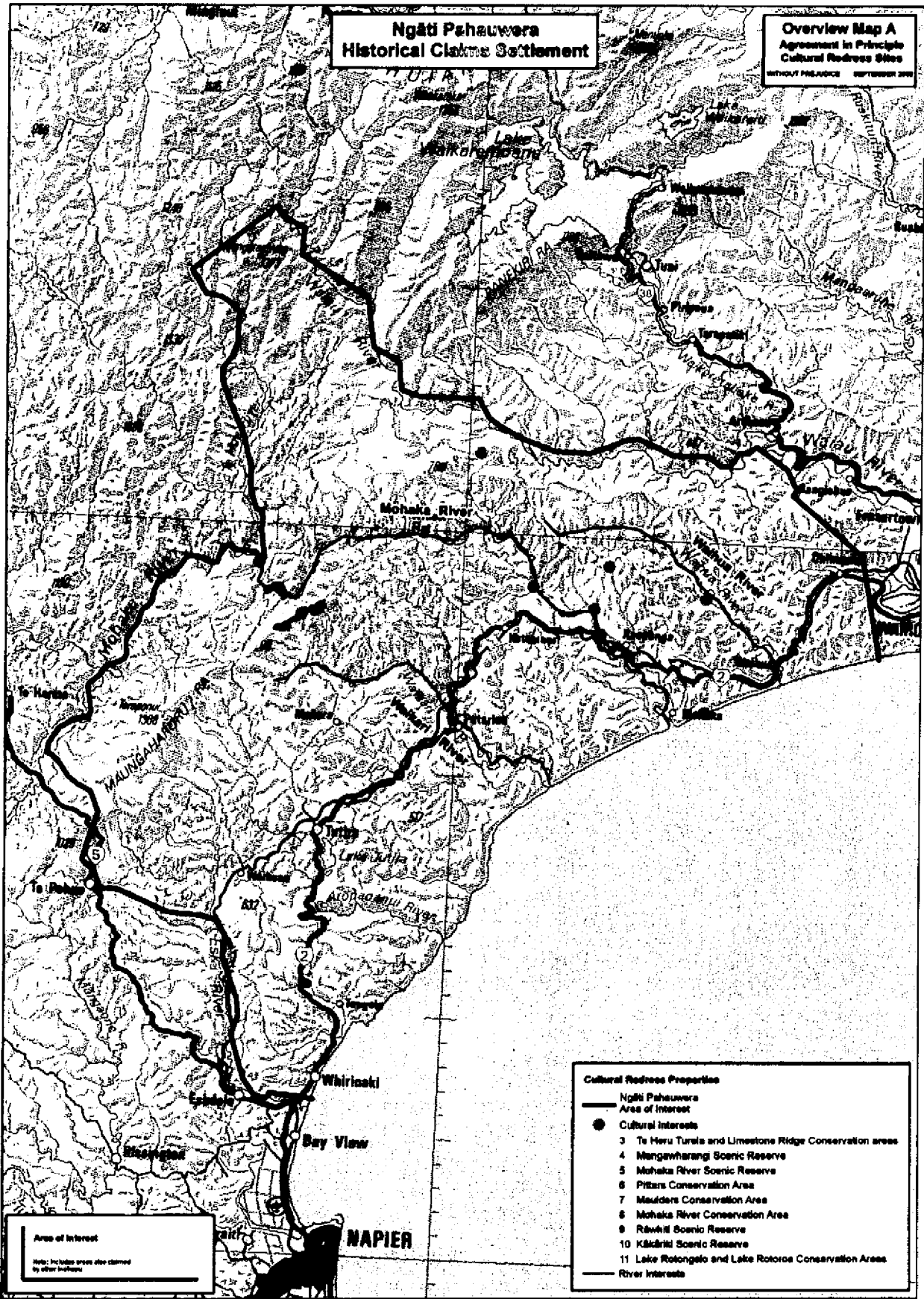
Te Pahau

## **Attachment 3**

### **Overview Maps**

**Ngāti Pahauwera  
Historical Claims Settlement**

**Overview Map A**  
Agreement in Principle  
Cultural Redress Sites  
WITHOUT PRELUDICE SEPTEMBER 2002

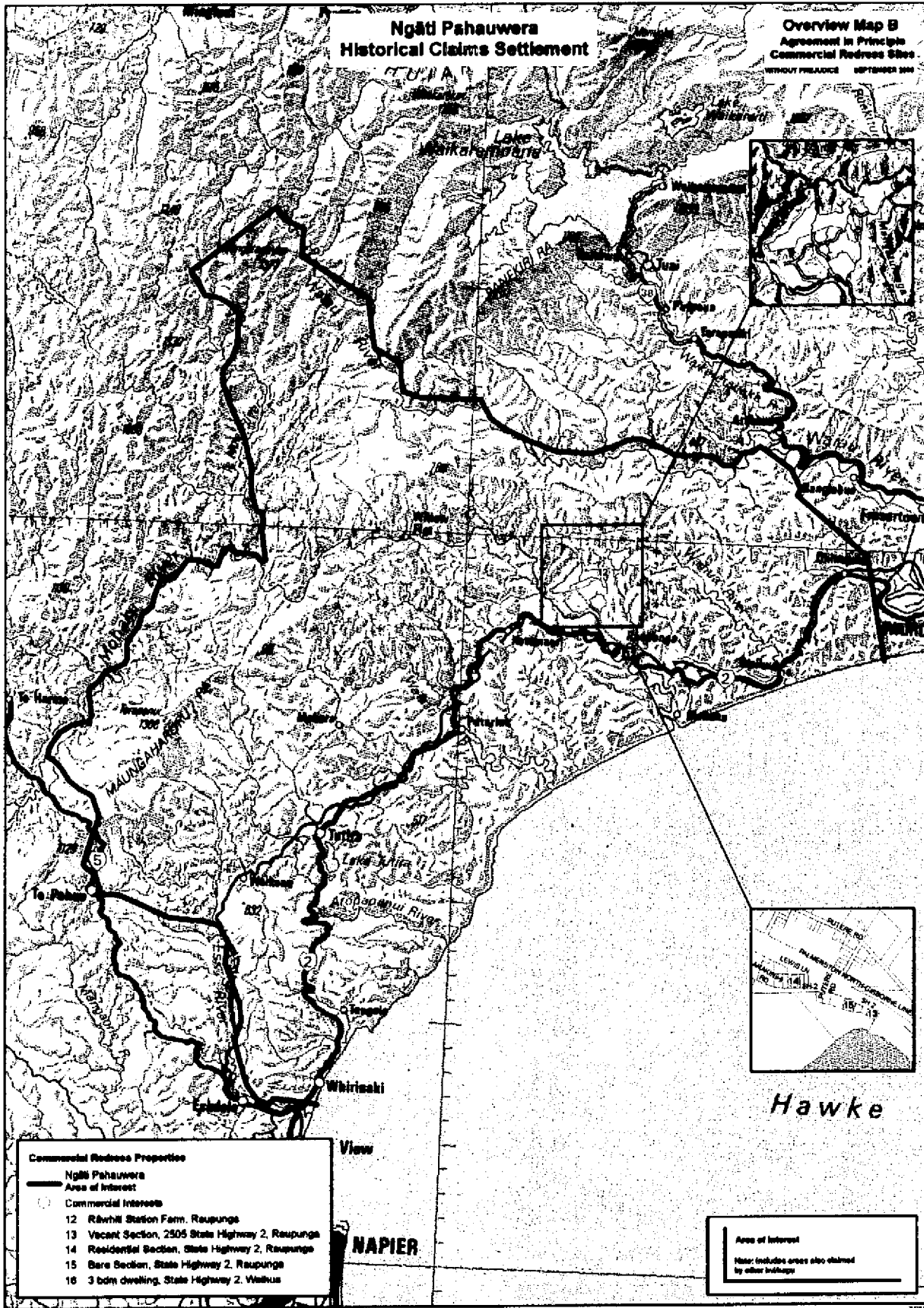


**Area of Interest**  
Note: Includes areas also claimed by other iwi/hapū

- Cultural Redress Properties**
- Ngāti Pahauwera Area of Interest
  - Cultural Interests
  - 3 Te Heru Tūnaki and Limestone Ridge Conservation areas
  - 4 Mangawharangi Scenic Reserve
  - 5 Mōhaka River Scenic Reserve
  - 6 Pihara Conservation Area
  - 7 Mauders Conservation Area
  - 8 Mōhaka River Conservation Area
  - 9 Rāwhiti Scenic Reserve
  - 10 Kāikōriki Scenic Reserve
  - 11 Lake Rotongō and Lake Rotorua Conservation Areas
  - River Interests

**Ngāi Tahu  
Historical Claims Settlement**

**Overview Map B**  
Agreement in Principle  
Commercial Redress Sites  
WITHOUT PREJUDICE SEPTEMBER 2004

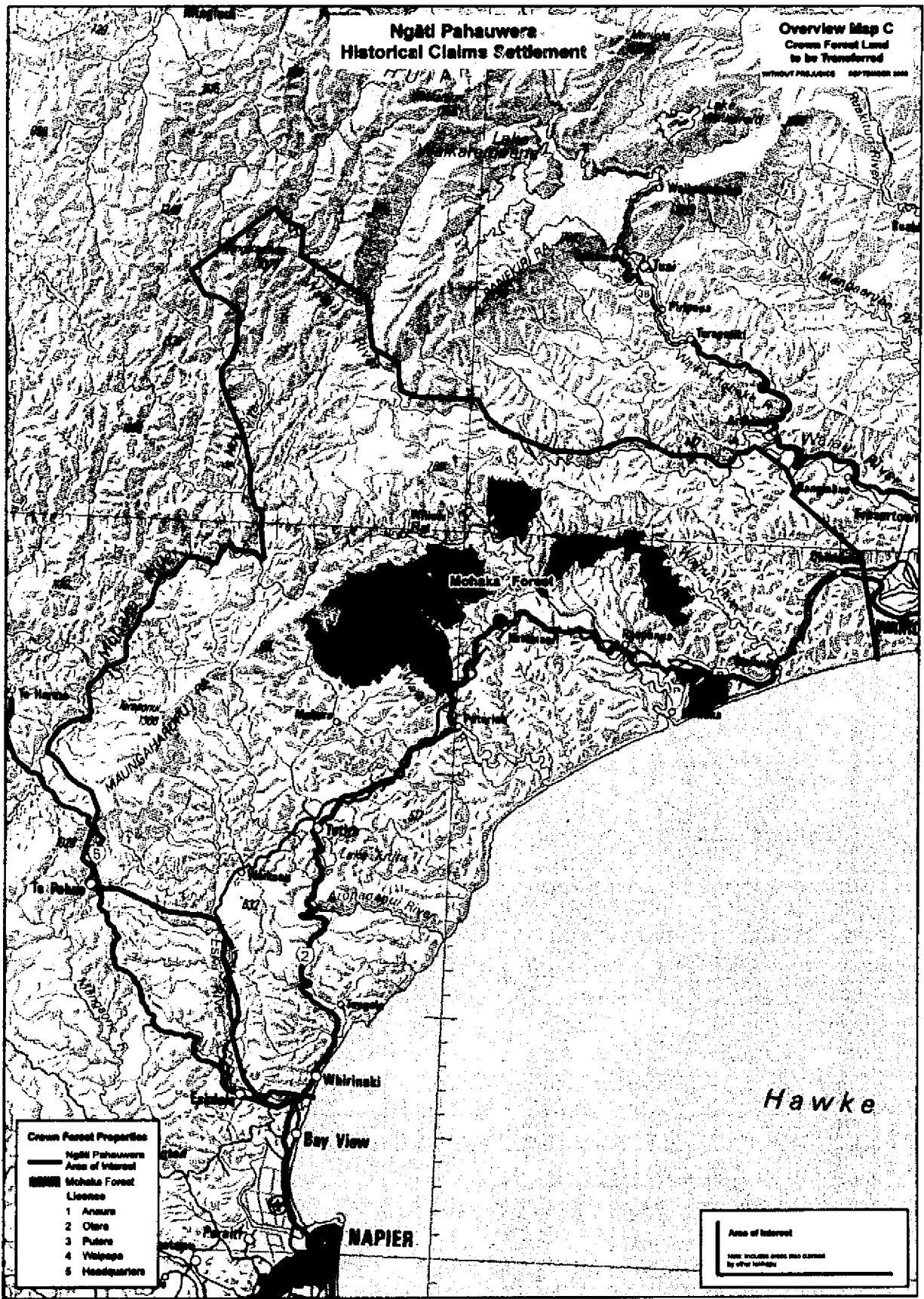


- Commercial Redress Properties**
- Ngāi Tahu Area of Interest
  - Commercial Interests
  - 12 Rāwhiti Station Farm, Raupunga
  - 13 Vacant Section, 2505 State Highway 2, Raupunga
  - 14 Residential Section, State Highway 2, Raupunga
  - 15 Bare Section, State Highway 2, Raupunga
  - 16 3 bdm dwelling, State Highway 2, Waikau

**Area of Interest**  
Note: includes areas also claimed by other iwi

**NAPIER**

*Hawke*



**Ngāti Pahauwera  
Historical Claims Settlement**

**Overview Map C  
Crown Forest Land  
to be Transferred**

WITHOUT PREJUDICE SEPTEMBER 2004

- Crown Forest Properties**
- Ngāti Pahauwera Area of Interest
  - Mōhaka Forest
  - Licence
  - 1 Anarua
  - 2 Otara
  - 3 Putara
  - 4 Waipapa
  - 5 Headquarters

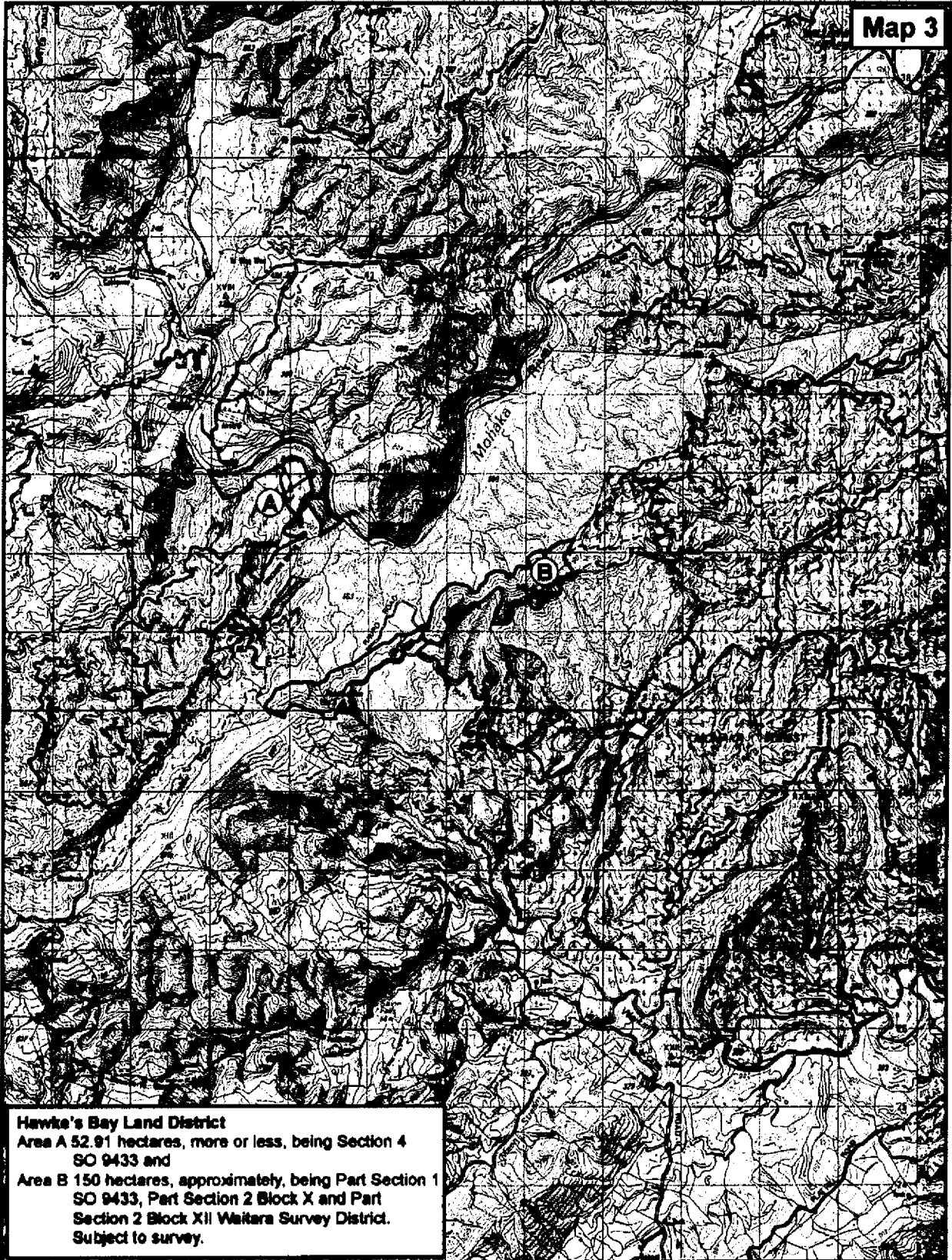
**Area of Interest**  
Note: Includes areas also claimed by other iwi/hāhihi

**NAPIER**

*Hawke*



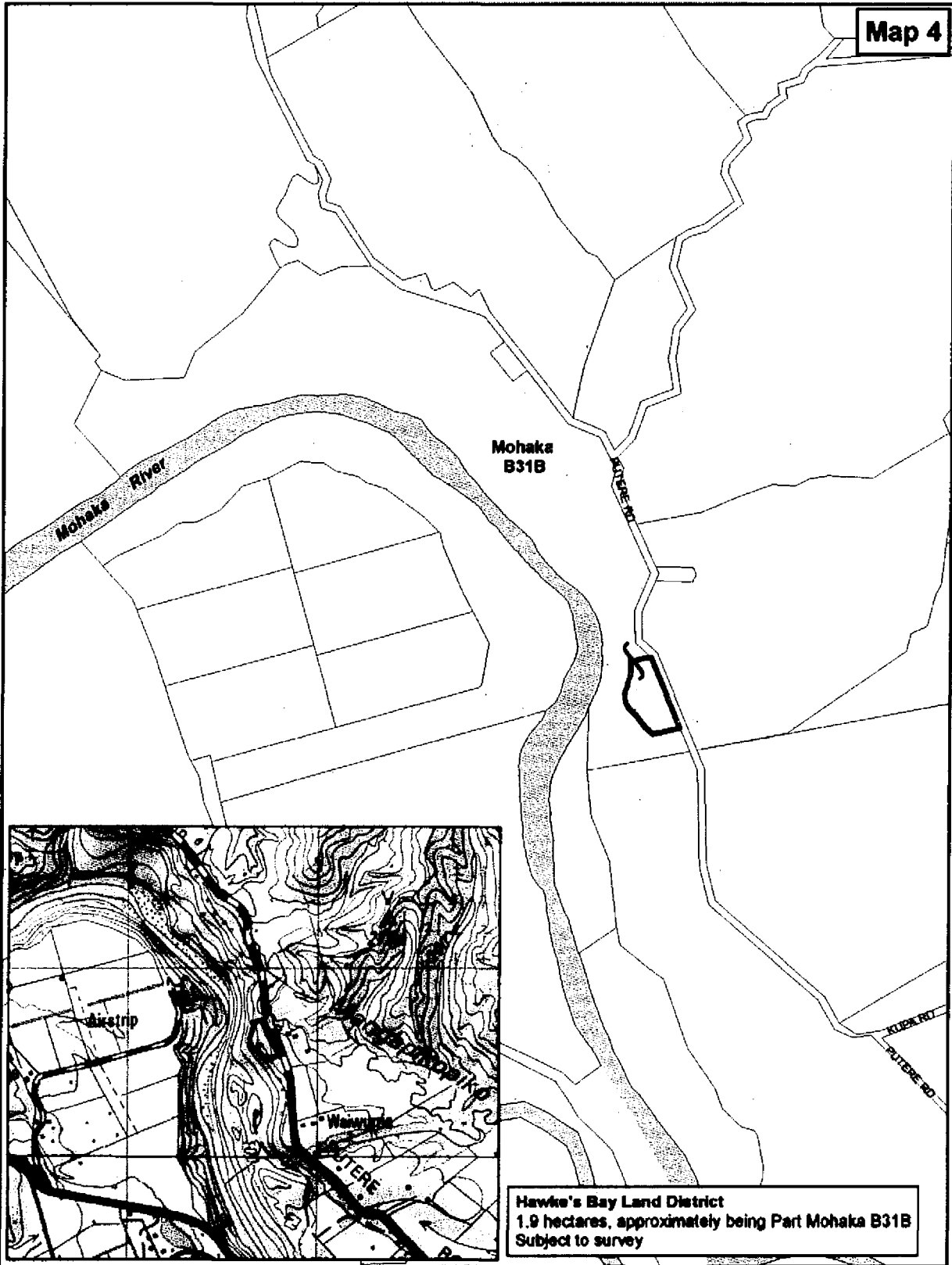
**Attachment 4**  
**Cultural Redress Maps**



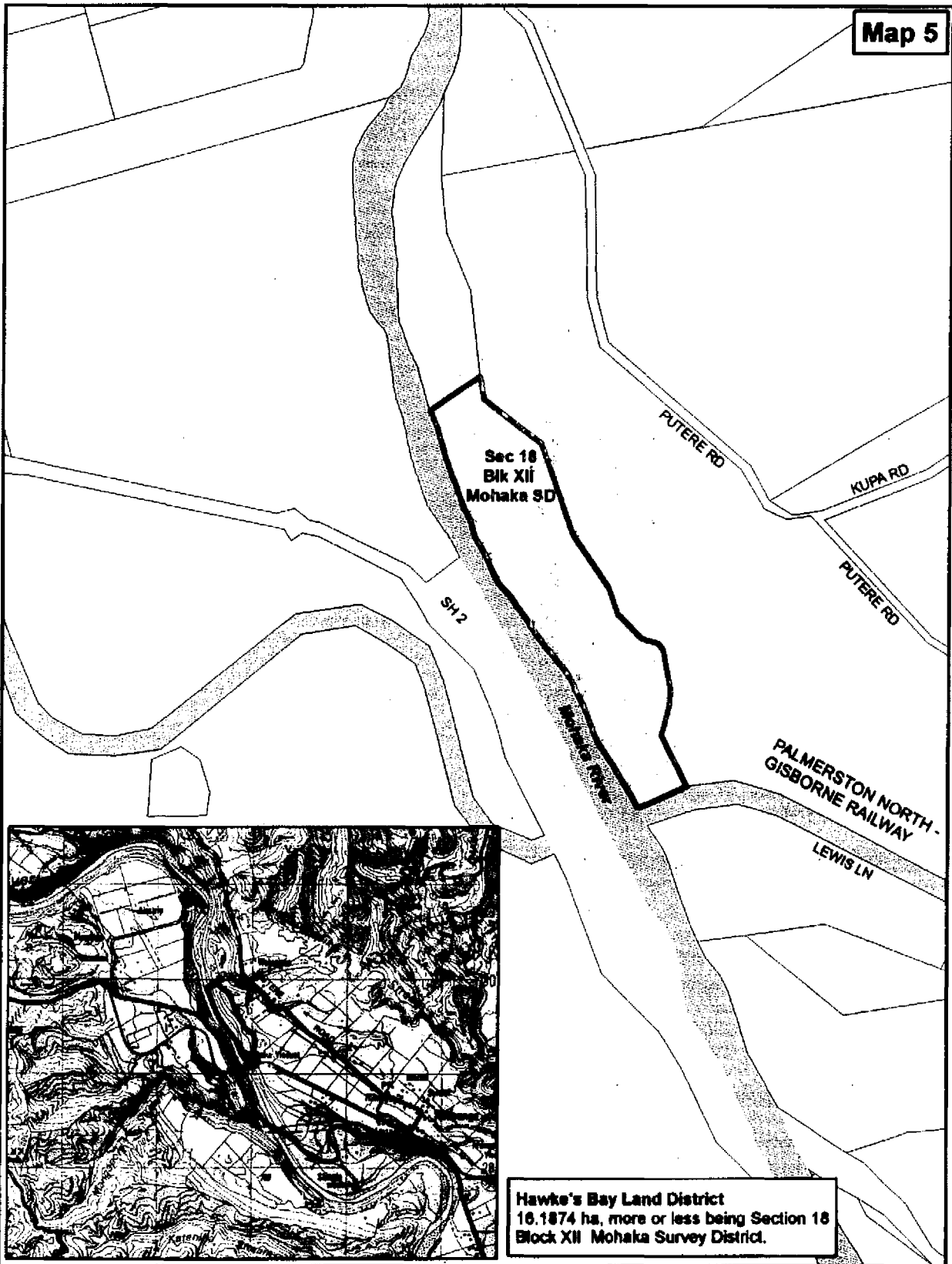
**Hawke's Bay Land District**  
Area A 52.91 hectares, more or less, being Section 4  
SO 9433 and  
Area B 150 hectares, approximately, being Part Section 1  
SO 9433, Part Section 2 Block X and Part  
Section 2 Block XII Waitara Survey District.  
Subject to survey.

## Te Heru O Tureia Conservation and Limestone Ridge Conservation

Map 4

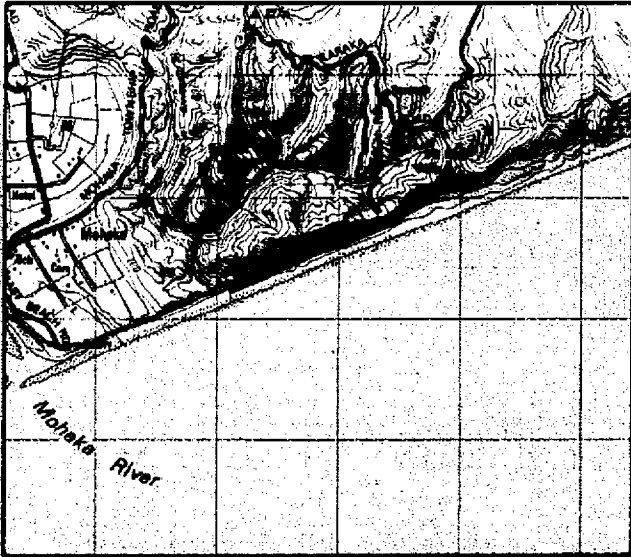
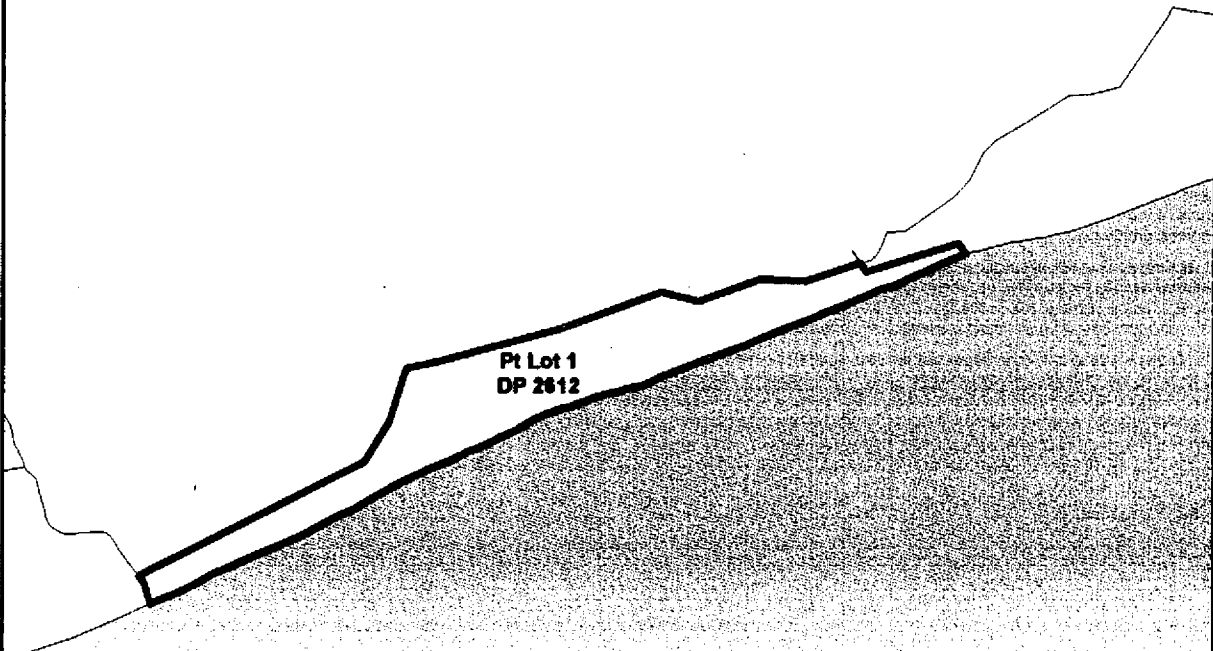


# Mangawharangi Scenic Reserve



Hawke's Bay Land District  
16,1874 ha, more or less being Section 18  
Block XII Mohaka Survey District.

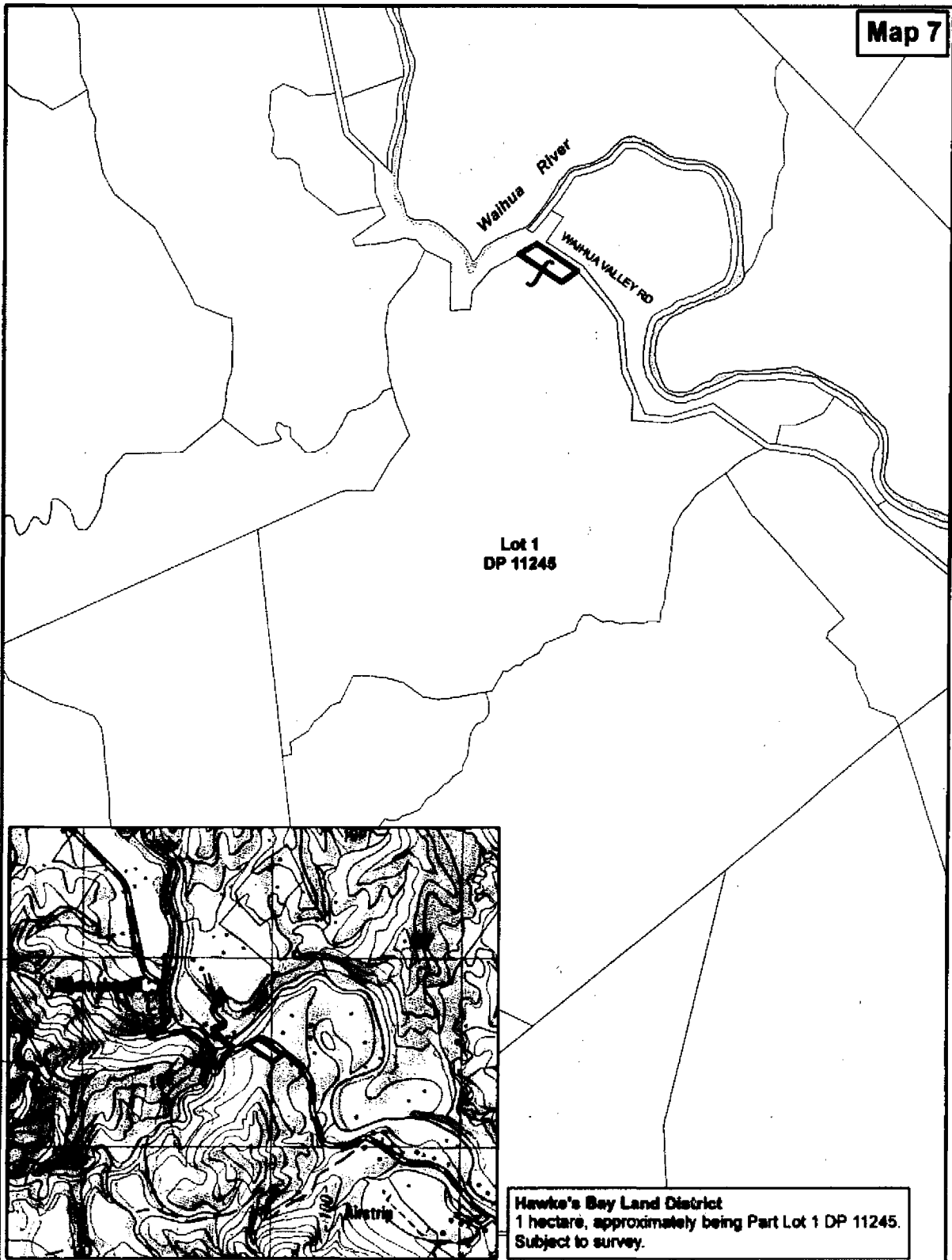
# Mohaka River Scenic Reserve



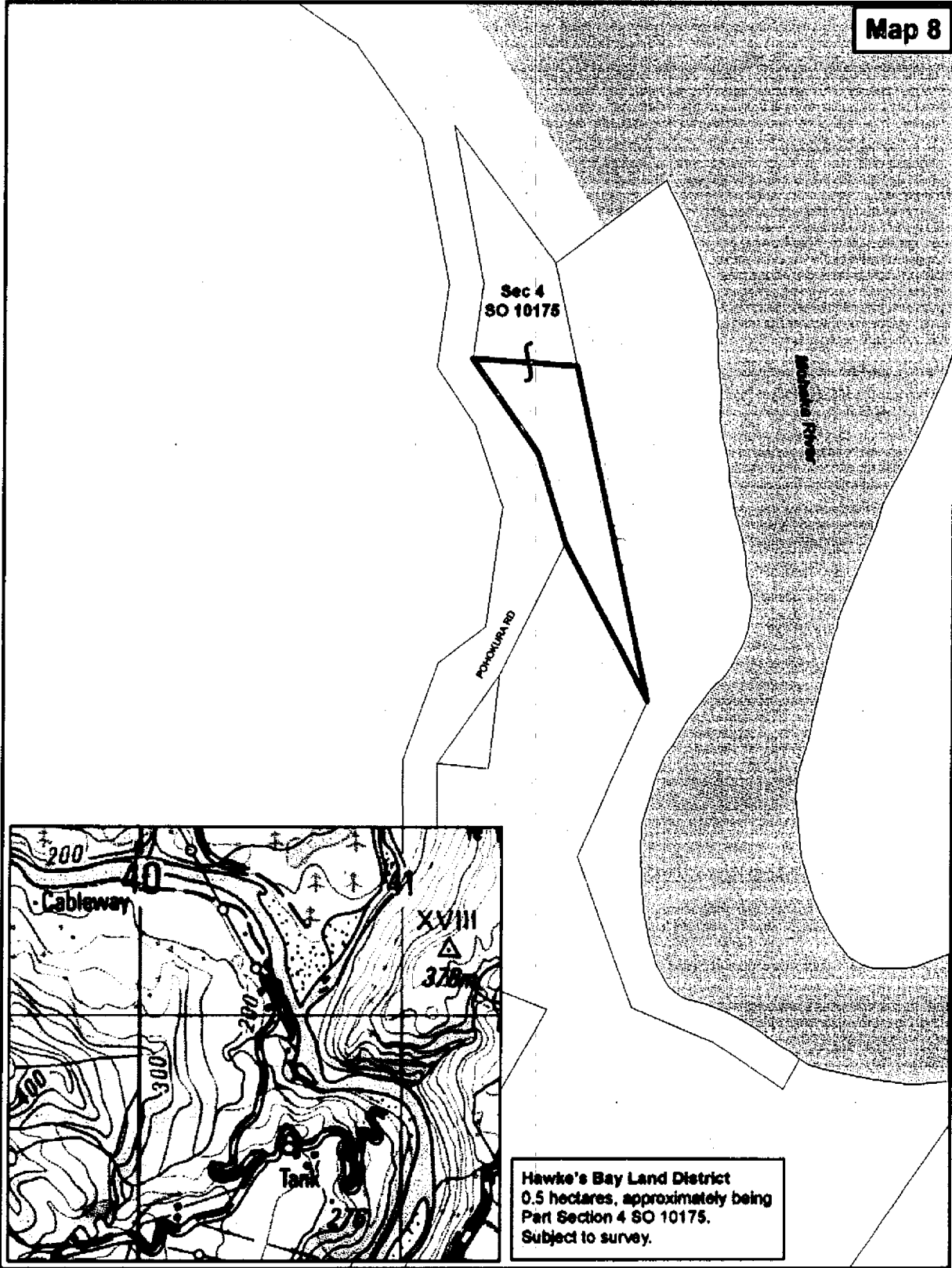
**Hawke's Bay Land District**  
17 hectares, approximately being  
Part Lot 1 DP 2812.  
Subject to survey.

# Pittars Conservation Area

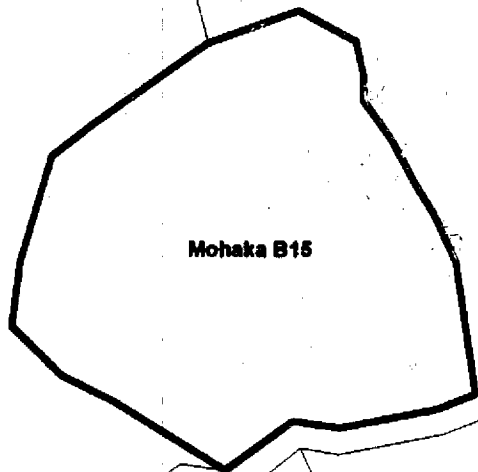
**Map 7**



# Maulders Conservation Area



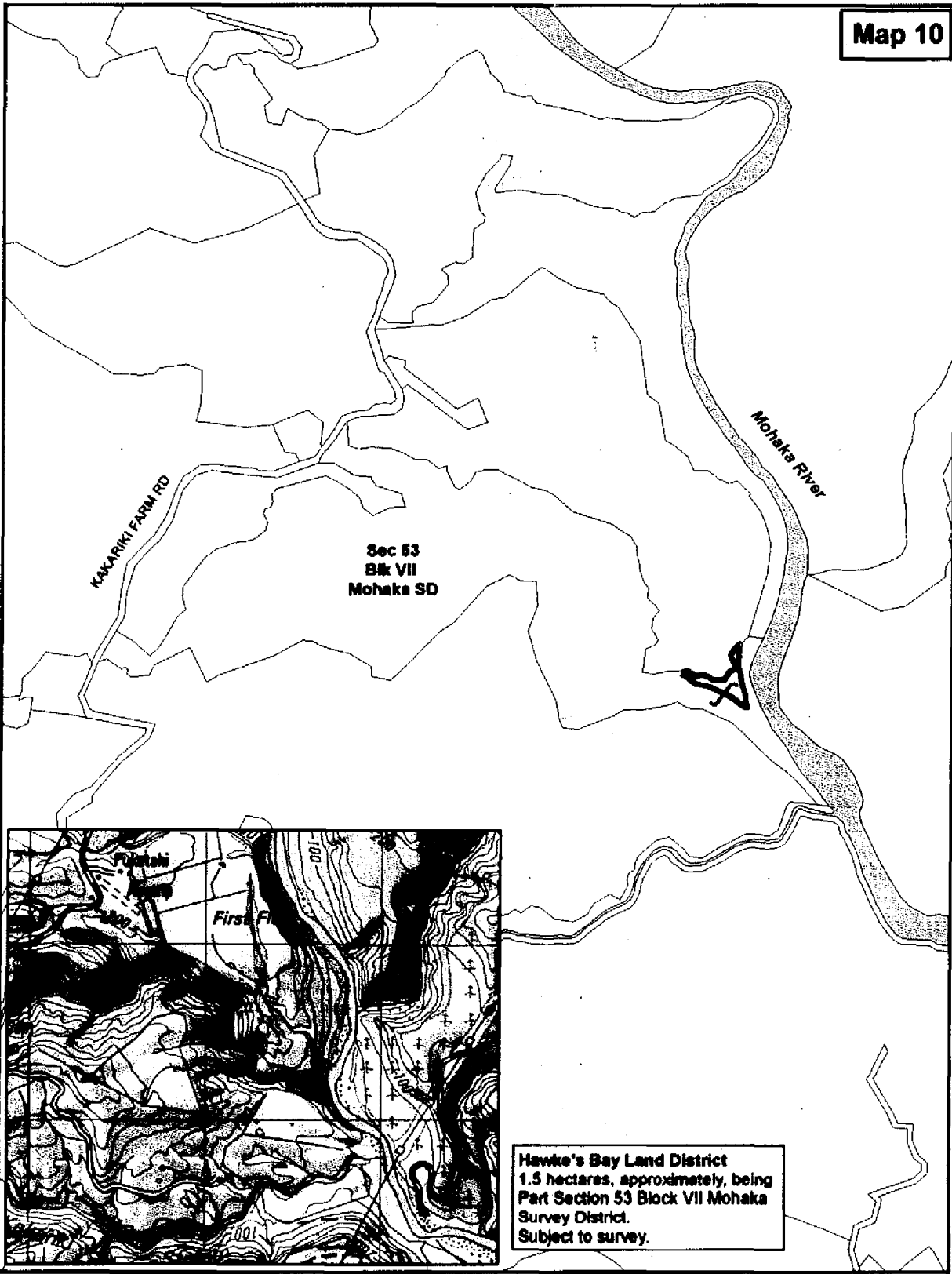
# Mohaka River Conservation Area



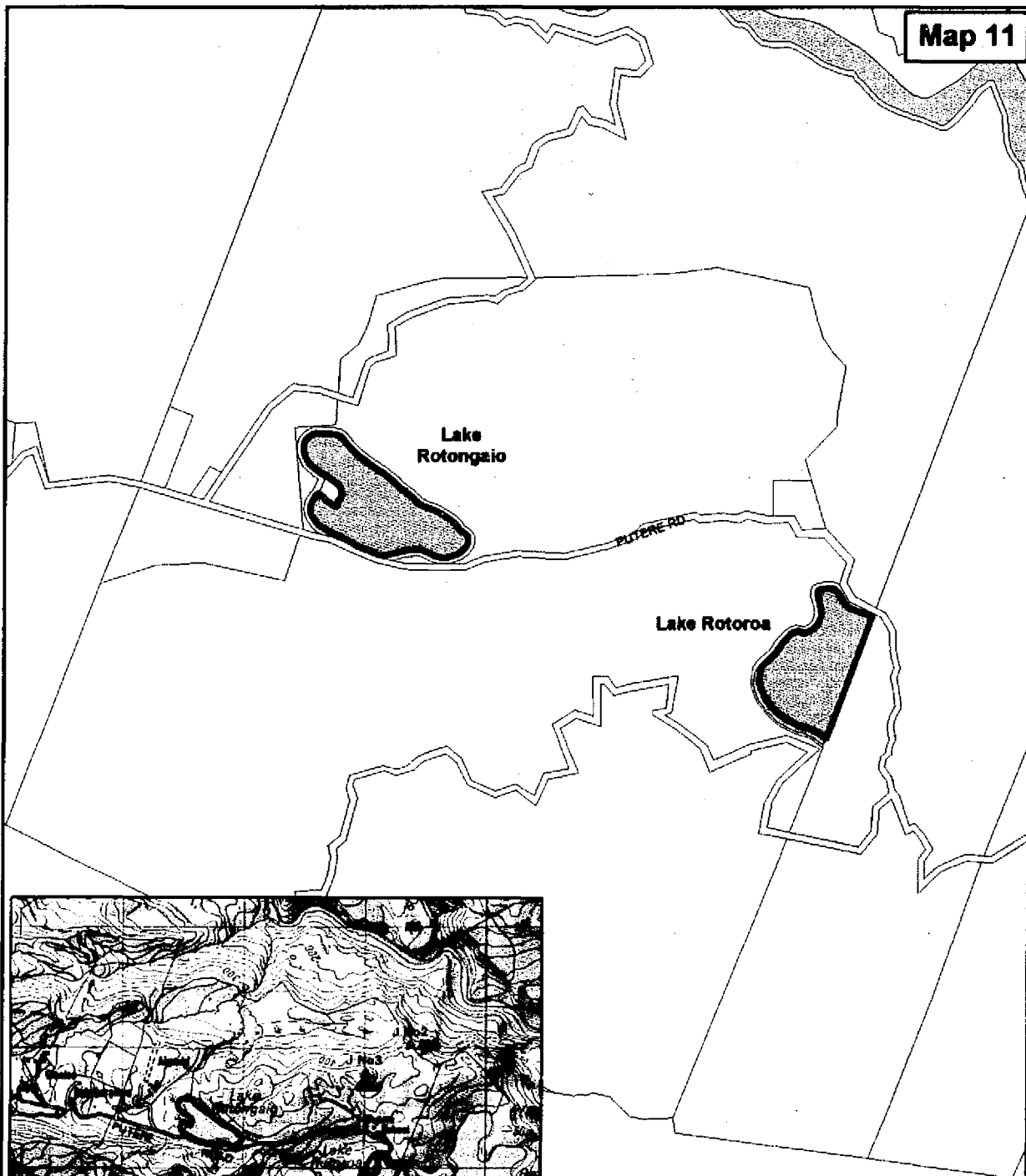
Hawke's Bay Land District  
8.9720 hectares, more or less,  
being Mohaka B15

# Rāwhiti Scenic Reserve





# Kākāriki Scenic Reserve



Gisborne Land District  
21 hectares, approximately being the bed of Lake  
Rotongaio and part of the bed of Lake Rotoroa.  
Subject to survey.

# Lakes Rotongaio & Rotoroa Conservation Areas

## Attachment 5

### Hapū of the Confederation of Ngāti Pahauwera

#### A. Hapu of the Ngāti Pahauwera Confederation

Ngarangiaitu, Nga Uri-o-Mamangu, Ngaitahuao / Ngaitahiao, Ngaitaraparoa, Ngai Taane, Ngai Taumau, Ngai Te Awha, Ngai Te Huki, Ngai Te Ngau Patea, Ngai Te Rau, Ngai Te Rongo, Ngai Te Ruatai, Ngati Ao Kino, Ngati Heki, Ngati Heouri, Ngati Hine Kete, Ngati Hinekino, Ngati Hine Ku, Ngati Hinemokai, Ngati Hine Mura, Ngati Hine Tunge, Ngati Honomokai, Ngati Iirangi, Ngati Iriwhata, Ngati Kahu-o-te Rangi, Ngati Kaihaere, Ngati Katihe, Ngati Kapekape, Ngati Kapua Matotoru, Ngati Kapukapu, Ngati Kawe, Ngati Kotihe, Ngati Kukura, Ngati Kura/Kurahikakawa, Ngati Matengahuru, Ngati Matewai, Ngati Mawete, Ngati Mouru, Ngāti Pahauwera, Ngati Paikea, Ngati Pari, Ngati Paroa, Ngati Patupaku, Ngati Pehi, Ngati Peke, Ngati Poporo, Ngati Pouanga, Ngati Poupou, Ngati Puraro, Ngati Purua/Popoia, Ngati Rahui, Ngati Rangi Haere Kau, Ngati Ririwehi, Ngati Ruakohatu, Ngati Tahiroa, Ngati Tangopu, Ngati Taponga / Tapunga, Ngati Tatua, Ngati Taumau, Ngati Tuhemata, Ngati Wera, Ngati Huatu

#### B. Related Hapu with rights north of between (and including) the Waikari River and Poututu

Ngati Hikapii, Ngati Hineiro, Ngati Kautata, Ngati Hinekaraka, Ngati Moe, Ngati Peke, Ngai Te Rongo, Ngai Te Ruatai, Ngai Tahu, Ngati Tatakū, Ngati Tauhere, Ngati Te Maaha, Ngati Te Paanga, Ngati Te Rangitakuao, and Ngai Te Rauiri

#### C. Other Hapu to the extent that they hold rights between (and including) the Waikari River and Poututu

Ngati Hineterangi/Ngati Hine Paia, Ngati Ira, Ngati Moe, Ngai Te Ao Kapiti/Aukapiti, Ngai Te Aonui, Ngati Rangitohumare, Ngai Te Ruruku, Ngati Hine Rakai, Ngai Tapui, Ngati Paeahi.