

TE AU MĀRO Ō NGĀTI PŪKENGĀ
CHARITABLE TRUST
and
THE CROWN

TERMS OF NEGOTIATION

25 JANUARY 2010

Terms of Negotiation between Te Au Māro o Ngāti Pūkenga Charitable Trust and the Crown

Parties to these Terms of Negotiation

1. The parties to this document, known as the Terms of Negotiation, are the Crown (as defined in clause 18) and Te Au Māro o Ngāti Pūkenga Charitable Trust on behalf of Ngāti Pūkenga (as defined in clauses 8-12).

Purpose of these Terms of Negotiation

2. This document, known as the Terms of Negotiation, sets out the scope, objectives, general procedures and “ground rules” for formal discussions between Te Au Māro o Ngāti Pūkenga Charitable Trust and the Crown (regarding the settlement of Ngāti Pūkenga Historical Claims (as defined in paragraph 14)).
3. In particular, these Terms of Negotiation record the intentions of Te Au Māro o Ngāti Pūkenga Charitable Trust and the Crown regarding the negotiations process, including the intention to negotiate in good faith, confidentially and without prejudice.
4. These Terms of Negotiation are not legally binding and do not create a legal relationship. However, Te Au Māro o Ngāti Pūkenga Charitable Trust and the Crown acknowledge that each expects the other to comply with the terms set out in this document during negotiations.

Objectives of the negotiations

5. Te Au Māro o Ngāti Pūkenga Charitable Trust and the Crown agree that the objectives of the negotiations will be to:
 - a. negotiate in good faith a comprehensive, final and durable settlement of all Ngāti Pūkenga Historical Claims;
 - b. achieve a settlement that will not:

- i. diminish or in any way affect any rights that Ngāti Pūkenga has arising from Te Tiriti o Waitangi/the Treaty of Waitangi and its principles, except to the extent that the claims arising from those rights are settled; or
 - ii. extinguish any aboriginal or customary rights that Ngāti Pūkenga may have;
- c. achieve a settlement that recognises the nature and extent of breaches of the Crown's obligations to Ngāti Pūkenga under te Tiriti o Waitangi/the Treaty of Waitangi and its principles;
 - d. provide a platform to assist Ngāti Pūkenga to redevelop their economic base.
 - e. achieve a settlement that will enhance the ongoing relationship between the parties (both in terms of te Tiriti o Waitangi/the Treaty of Waitangi and otherwise);
 - f. achieve a settlement that will restore the honour of the Crown; and
 - g. demonstrate and record that both parties have acted honourably and reasonably in negotiating the settlement.

Te Iwi o Ngāti Pūkenga

- 6. Ngāti Pūkenga people descend from the ancestors of the Mataatua waka including Toroa and Pūkenga. Ngāti Pūkenga have exercised tino rangatiratanga from time to time over their lands and resources.
- 7. Ngāti Pūkenga were renowned as warriors and priests. Due to these skills and the ability to move at short notice, Ngāti Pūkenga were called upon to assist other tribal groups with their disputes and were rewarded with gifts of land.
- 8. This history has resulted in Ngāti Pūkenga becoming established in four major kāinga in: Tauranga; Manaia (Coromandel); Pakikaikutu (Whangarei); and Maketu all of which are active communities. The locations of these kāinga are

shown in **Schedule 1, Map 1**. However, the spread has not precluded the iwi in the kāinga from actively seeking out and maintaining their whakapapa links and whanaungatanga. Indeed, the distance between the kāinga has strengthened the solidarity of Ngāti Pūkenga as an iwi, the net effect of which is that even though the kāinga are discrete and independent, Ngāti Pūkenga has nonetheless functioned as one.

Definition of Ngāti Pūkenga

9. In these Terms of Negotiation “Ngāti Pūkenga” includes any person who can affiliate to the groups of Ngāti Hā, Ngāti Hinemotu, Ngāti Kiorekino, Ngāti Pūkenga, Ngāti Te Rakau, Ngāti Te Matau, Ngai Towhare, and Ngāti Whakina; and:

(i) is descended from Pūkenga, Kumaramaoa, and Rongopopoia;

and/or

(ii) is descended from a tupuna who exercised customary rights as Ngāti Pūkenga.

10. Te Au Māro o Ngāti Pūkenga Charitable Trust reserves the right to amend the definition of “Ngāti Pūkenga” and records that the definition herein is not intended to be comprehensive and will be reviewed over the course of negotiations and for inclusion in any Deed of Settlement with the Crown.

11. As noted above, Ngāti Pūkenga iwi are concentrated in, and around, four kāinga:

- Maketu;
- Tauranga;
- Manaia (in Hauraki);
- Pakikaikutu (in Whangarei).

12. **Schedule 1, Map 1** to these terms of Negotiation identifies the locations of these Ngāti Pūkenga kāinga and **Schedule 1, Maps 2-4** show the broad Areas

of Interest of each kāinga. Ngāti Pūkenga acknowledges that other iwi may share customary interests in some of the lands shown in the **Schedule 1** maps.

13. The marae associated with Ngāti Pūkenga are:

Marae	Kāinga
Te Whetu o te Rangi	Tauranga, in Ngāpeke
Te Kou o Rehua	Manaia

Ngāti Pūkenga Historical Claims

14. The Ngāti Pūkenga Historical Treaty claims include raupatu, confiscation and other historical grievances arising from Crown breaches of the Treaty of Waitangi. Te Au Māro o Ngāti Pūkenga Charitable Trust will seek to settle all these historical Treaty of Waitangi breaches and grievances in negotiations with the Crown.
15. Te Au Māro o Ngāti Pūkenga Charitable Trust and the Crown intend to negotiate a comprehensive settlement of all Ngāti Pūkenga historical claims, including all registered and unregistered claims. In these Terms of Negotiation "*Ngāti Pūkenga historical claims*" means all claims made at any time by any Ngāti Pūkenga person known or unknown and founded on rights arising in or from the Treaty of Waitangi, the principles of the Treaty of Waitangi, legislation, common law (including Maori customary law and aboriginal title), fiduciary duty or otherwise, arising out of or in relation to acts or omissions before 21 September 1992 by or on behalf of the Crown or by or under legislation.
16. A successful negotiation will result in the settlement of all Ngāti Pūkenga historical claims. Ngāti Pūkenga historical claims and other claims which are currently registered Waitangi Tribunal claims are listed below and categorised by inquiry district:

Hauraki Inquiry District

Wai #	Claimant	Concerning
148	Ngaruna Mikaere	Manaia 1C School site
285	Shane Ashby and others	Manaia Kāinga lands

Tauranga Inquiry District

Wai #	Claimant	Concerning
162	Rahera Ohia and Te Keepa Smallman	Kopukairoa Maunga
210	Te Keepa Smallman	Otawa Blocks claim
637	Shane Ashby and others	Ngāti Pūkenga Raupatu and kāinga lands
751	Te Awanuiarangi Black and others	Ngāpeke Block claim

Central North Island (Rotorua) Inquiry District

Wai #	Claimant	Concerning
815	Te Keepa Smallman and others	Ngāti Pūkenga Maketu kāinga lands

Te Paparahi o Te Raki Inquiry District

Wai #	Claimant	Concerning
1441	Anthony Munroe and Muriel Sexton	Pakikaikutu Block

General Ngāti Pūkenga claim

Wai #	Claimant	Concerning
1703	Shane Ashby	Ngāti Pūkenga iwi claims

17. The Claimants named in those claims outlined in the tables above have provided their full support to Te Au Māro o Ngāti Pūkenga Charitable Trust in settling their registered claims by way of letters of support for the mandate of Te Au Māro o Ngāti Pūkenga Charitable Trust.
18. Subject to the parties agreeing otherwise, for the purpose of conducting the settlement negotiations, it is proposed that the Ngāti Pūkenga historical claims be divided into the following distinct work streams:
 - a. Maketu, Tauranga and Pakikaikutu related negotiations through Tauranga Moana regional negotiations; and
 - b. Manaia negotiations through Hauraki regional negotiations.

Definition of the Crown

19. The Crown:

- a. means Her Majesty the Queen in right of New Zealand; and
- b. includes all Ministers of the Crown and all government departments; but
- c. does not include:
 - i. an Office of Parliament; or
 - ii. a Crown entity; or
 - iii. a State Enterprise named in the First Schedule to the State-Owned Enterprises Act 1986.

Mandate to negotiate

20. The Crown received the Te Au Māro ō Ngāti Pūkenga Charitable Trust Deed of Mandate and attached is the Crown's letter which recognises the mandate of Te Au Māro ō Ngāti Pūkenga Charitable Trust for the purpose of the settlement of Ngāti Pūkenga Historical Claims with the Crown.

Subject matter for negotiation

21. The parties will together agree upon subject matters to be negotiated. Any party may raise for discussion subject matters in addition to those agreed upon.
22. The list of subject matters to be discussed will include the following categories of redress:
- a. the Crown's apology and acknowledgements;
 - b. cultural redress; and
 - c. financial and commercial redress.

Negotiations milestones

23. Te Au Māro ō Ngāti Pūkenga Charitable Trust and the Crown agree that the general process of negotiations will include, but not necessarily be limited to, and potentially may be replicated through both Tauranga Moana and Hauraki regional negotiations as agreed by the parties:

a. Agreement in Principle

The Agreement in Principle outlines the scope and nature in principle of the settlement of Ngāti Pūkenga Historical Claims, which will be recorded in the Deed of Settlement.

b. Initialled Deed of Settlement

Ngāti Pūkenga and Crown negotiators initial the Deed of Settlement, which will set out the terms and conditions of settlement of the Ngāti Pūkenga Historical Claims.

c. Ratification

The initialled Deed of Settlement will be presented by Te Au Māro ō Ngāti Pūkenga Charitable Trust to Ngāti Pūkenga for ratification. An approved governance entity structure will also be presented to Ngāti Pūkenga for ratification before the settlement legislation can be introduced.

d. Deed of Settlement signed if ratified

If Ngāti Pūkenga ratifies the Deed of Settlement (in a manner to be agreed by the parties), the Deed of Settlement will be signed on behalf of Ngāti Pūkenga and by a representative of the Crown.

e. Governance entity and settlement legislation

The settlement of Ngāti Pūkenga Historical Claims is effective once a suitable governance entity is formed to hold the settlement assets and the required settlement legislation receives the Royal Assent.

What the settlement of Ngāti Pūkenga Historical Claims will enable

24. Te Au Māro o Ngāti Pūkenga Charitable Trust and the Crown agree that the settlement of Ngāti Pūkenga Historical Claims will enable:

- a. final settlement of all Ngāti Pūkenga Historical Claims, and the release and discharge of all of the Crown's obligations and liabilities in respect of them;
- b. discontinuance of the Office of Treaty Settlements' landbank for the protection of potential settlement properties for the benefit of Ngāti Pūkenga;
- c. removal of any resumptive memorials from the titles of land subject to the State-Owned Enterprises Act 1986, the New Zealand Railways Corporation Restructuring Act 1990, the Crown Forest Assets Act 1989 and the Education Act 1989 and for statutory protection of claims against the Crown to be removed for the benefit of Ngāti Pūkenga;
- d. removal of the jurisdiction of the courts, the Waitangi Tribunal, and any other judicial body or tribunal in respect of Ngāti Pūkenga Historical Claims, the Deed of Settlement, the redress provided or settlement legislation (but not for the removal of such jurisdiction in respect of the implementation or interpretation of terms in any Deed of Settlement or any settlement legislation); and
- e. discontinuance of legal proceedings or proceedings before the Waitangi Tribunal in relation to Ngāti Pūkenga Historical Claims.

Communication

25. Te Au Māro o Ngāti Pūkenga Charitable Trust and the Crown will each undertake regular and appropriate internal consultation procedures throughout the negotiations, taking into account the need to keep the claimant community informed, but also the need for confidentiality regarding third parties.

Overlapping claims

26. Te Au Māro ō Ngāti Pūkenga Charitable Trust and the Crown agree that overlapping claims issues over redress assets will need to be addressed to the satisfaction of the Crown before a Deed of Settlement can be concluded. The parties also agree that certain items of redress provided to Ngāti Pūkenga as part of the Deed of Settlement may need to reflect the importance of an area or feature to other claimant groups
27. Te Au Māro ō Ngāti Pūkenga Charitable Trust will discuss the Ngāti Pūkenga interests with overlapping claimants at an early stage in the negotiation process and establish a process by which they can reach agreement on how such interests can be addressed.
28. The Crown may assist Ngāti Pūkenga as it considers appropriate and will carry out its own consultation with overlapping claimants.
29. The Crown may be in Treaty settlement negotiations with overlapping claimants. Issues arising in those negotiations, including issues concerning licensed Crown forest land, may be relevant to these negotiations, and vice versa. The Office of Treaty Settlements will ensure that Ngāti Pūkenga is kept informed of these issues (subject only to the confidentiality of matters specific to the other negotiations).

Not bound until Deed of Settlement

30. Te Au Māro ō Ngāti Pūkenga Charitable Trust and the Crown acknowledge that this document does not bind either party to reach a settlement and that any agreement reached in negotiation discussions is confidential, without prejudice and will not be binding until embodied in a Deed of Settlement.

Governance structure/s for settlement assets

31. Te Au Māro ō Ngāti Pūkenga Charitable Trust and the Crown agree that an appropriate legal entity (or entities) ratified by Ngāti Pūkenga (in a manner to be agreed between the parties) that both agree adequately represents Ngāti Pūkenga, has transparent decision-making processes, and is accountable to

Ngāti Pūkenga, will need to be in place prior to the introduction of settlement legislation.

Claimant funding

32. Te Au Māro ō Ngāti Pūkenga Charitable Trust and the Crown note that the Crown will make a contribution to the negotiation costs of Ngāti Pūkenga, which is paid in instalments for the achievement of specified milestones in the negotiation process.
33. Te Au Māro ō Ngāti Pūkenga Charitable Trust will adhere to the Crown's claimant funding policy guidelines. In particular, Te Au Māro ō Ngāti Pūkenga Charitable Trust will provide the Crown with independently audited accounts annually for the claimant funding that it receives from the Crown, certifying that the funding has been spent on the negotiation.

Waiver of other avenues of redress

34. Te Au Māro ō Ngāti Pūkenga Charitable Trust and the Crown agree that during these negotiations Te Au Māro ō Ngāti Pūkenga Charitable Trust will not pursue or initiate, before any court or tribunal, in relation to any of the claims that are within the scope of the negotiations, any proceedings for redress covering all or part of the same subject matter as these negotiations.

Procedural matters

35. Te Au Māro ō Ngāti Pūkenga Charitable Trust and the Crown agree that:
 - a. negotiations will be on a "without prejudice" basis and will be conducted in good faith and in a spirit of co-operation;
 - b. negotiations will be conducted in private and will remain confidential unless agreed otherwise (such as when consultation with third parties is necessary) or when the Crown is required to release information under the Official Information Act 1982;

- c. settlement of the Ngāti Pūkenga historical Claims may be conducted through more than one regional negotiation;
- d. media statements concerning the negotiations will only be made when mutually agreed by both parties;
- e. the location of meetings will be suitable and convenient to both parties; and
- f. the Crown may be in Treaty settlement negotiations with overlapping claimant groups. Issues arising from those negotiations, including issues concerning licensed Crown forest land, may be relevant to these negotiations, and vice versa.

Amendments

- 36. Te Au Māro o Ngāti Pūkenga Charitable Trust and the Crown acknowledge that it may be necessary to amend these Terms of Negotiation from time to time and agree that all amendments must be approved by both parties and recorded in writing.

SIGNED this day 25 January 2010

SIGNED by the Minister for Treaty of Waitangi Negotiations and the Minister of Māori Affairs in the presence of:

Christopher Finlayson
Honourable Christopher Finlayson
Pita R Sharples
Honourable Dr Pita R Sharples

WITNESS

Simon Bridges
Name: Simon Bridges
Occupation: MP
Address: Tauranga.

SIGNED by the trustees of Te Au Māro o Ngāti Pūkenga Charitable Trust on behalf of Te Au Māro o Ngāti Pūkenga, and for and on behalf of Ngāti Pūkenga in the presence of:

Shane Ashby
Shane Ashby (Chairperson)

Te Awanuiārangi Black
Te Awanuiārangi Black (Deputy Chairperson)

Stephen Asher
Stephen Asher

Rehua Smallman
Rehua Smallman

Hori Parata
Hori Parata

Bellamaree Williams-Wilson
Bellamaree Williams-Wilson

Pierre Hawea
Pierre Hawea Hawira

Verna Ohia-Gate
Verna Ohia-Gate

Harry Mikaere
Harry Mikaere

Rehina Berghan
Rehina Berghan

Rahera Ohia
Rahera Ohia
(Chief Negotiator for Ngāti Pūkenga)

WITNESS

Rahera Ohia
Name: Te Rereamomo Ohia
Occupation: Kaumātua
Address: Ngāti Pūkenga

WITNESS

Tirikawa Ohia
Name: Tirikawa Ohia
Occupation: Kūia
Address: Ngāti Pūkenga

WITNESS



Name: ~~Jim Wilson~~
Occupation: ~~MANAGER~~
Address: ~~HAMILTON~~

Witnesses

SCHEDULE 1

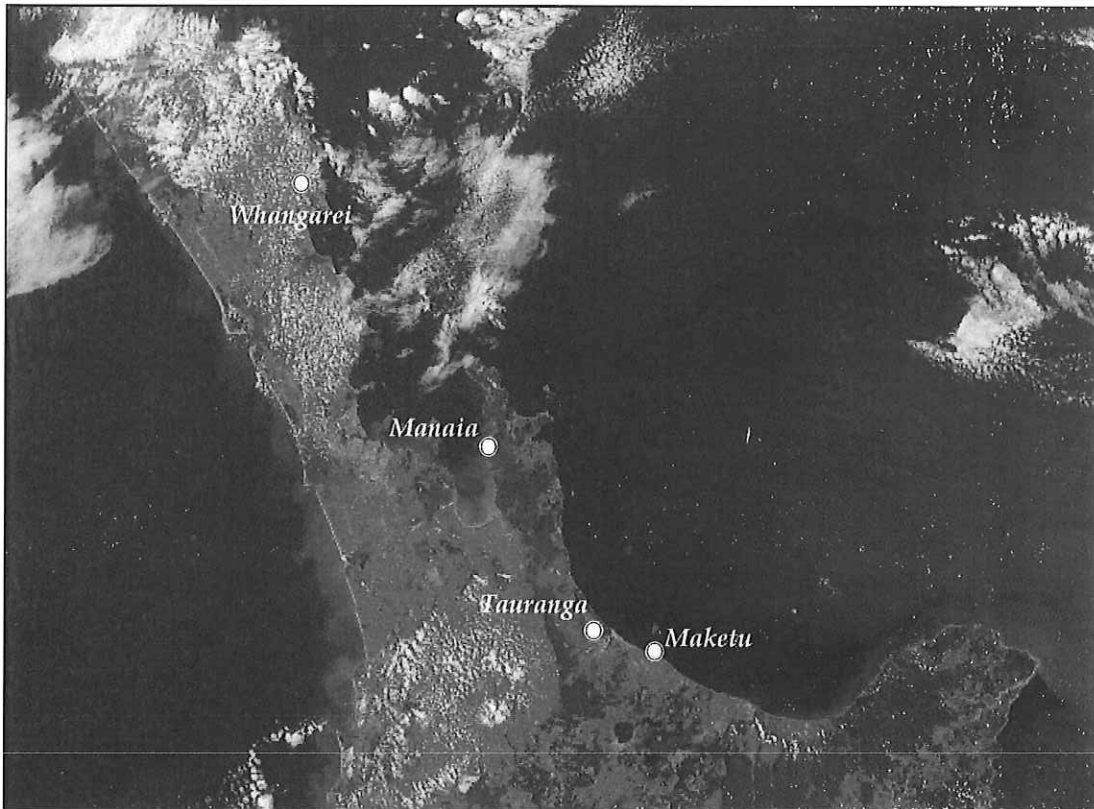
NGĀTI PŪKENGA MAPS – GENERAL AREAS OF INTEREST

Map 1: Ngāti Pūkenga Kainga

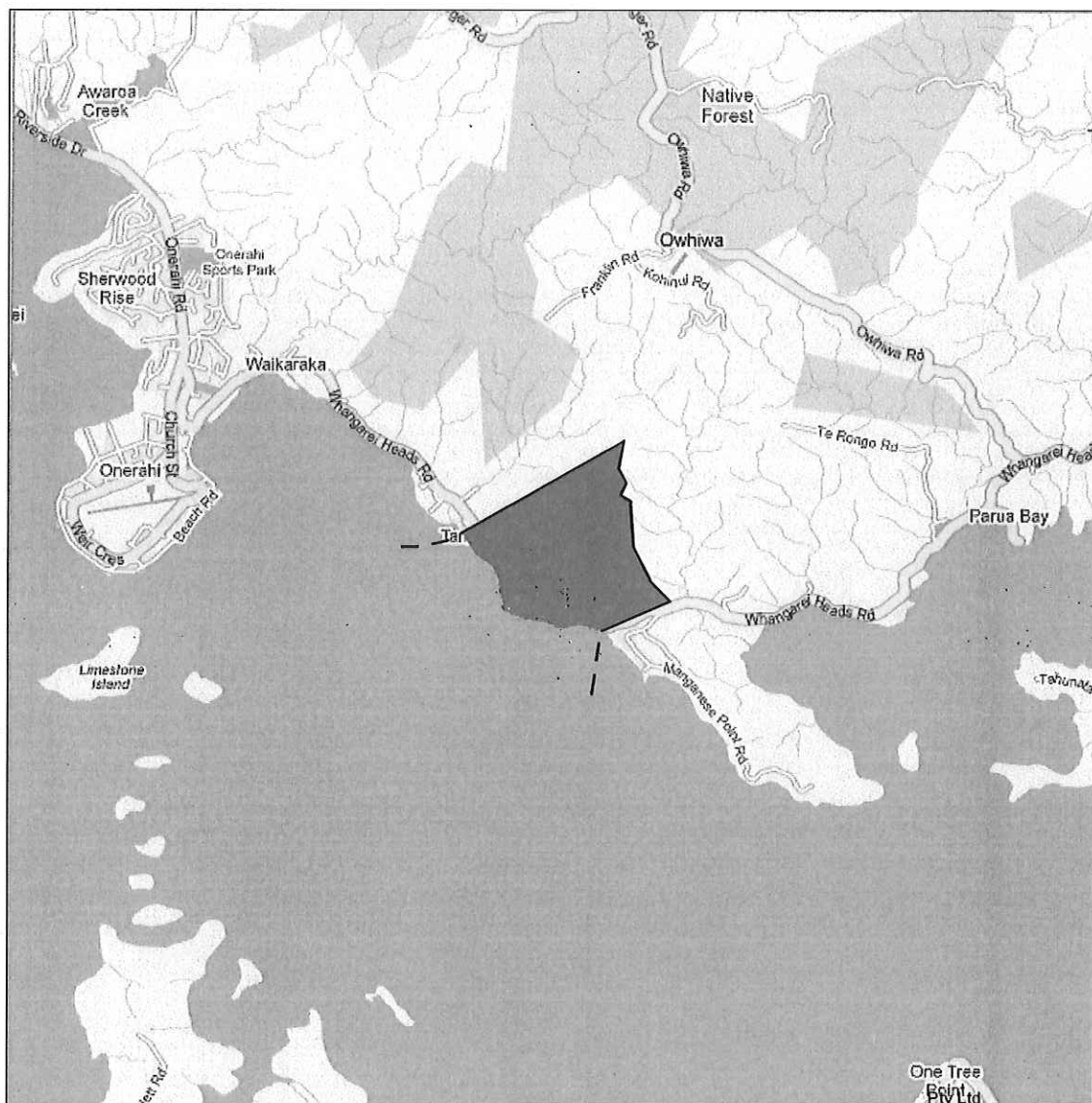
Map 2: Pakikaikutu Kainga General Area of Interest

Map 3: Manaia Kainga General Area of Interest

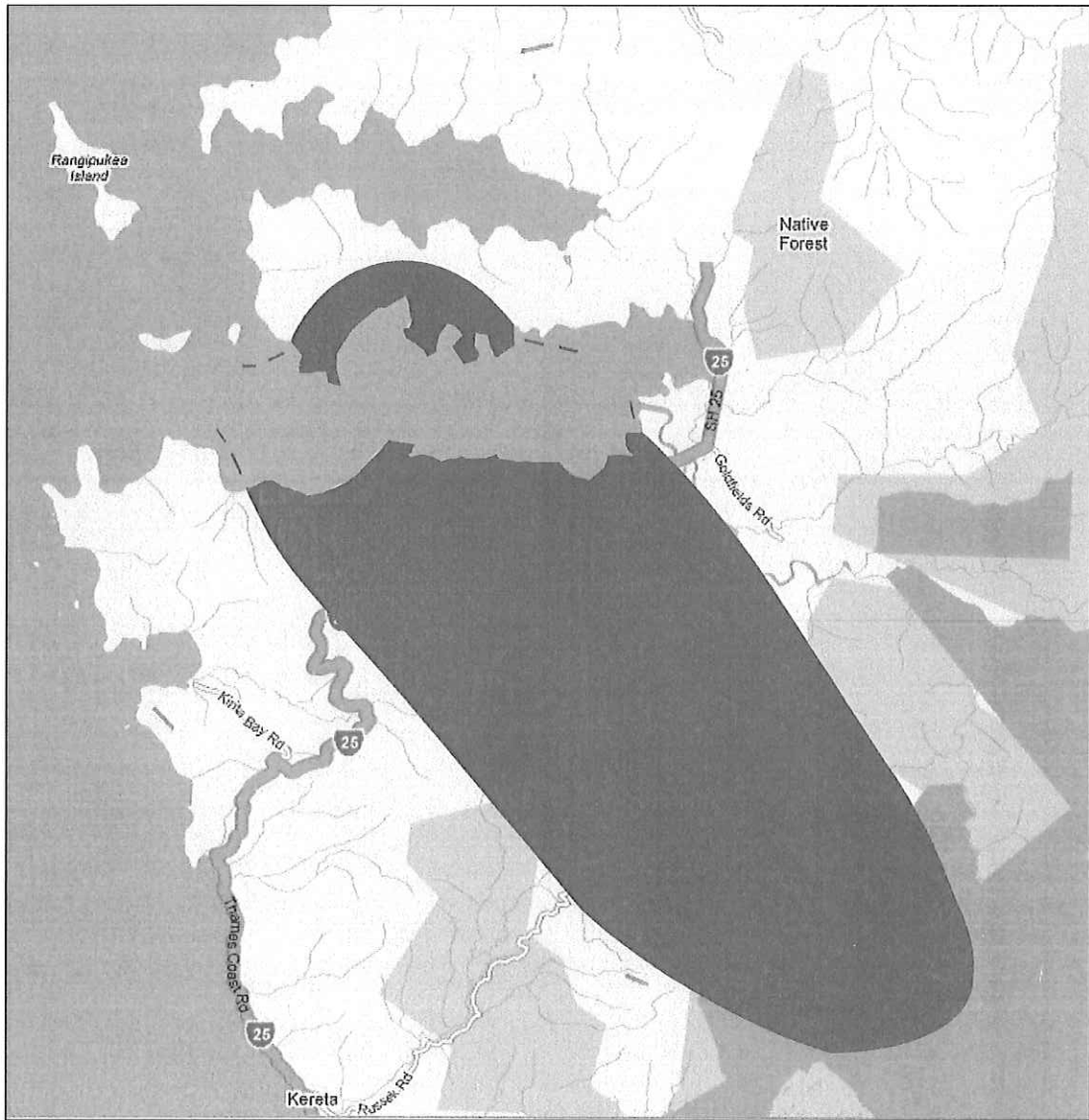
Map 4: Tauranga and Maketu Kainga General Area of Interest



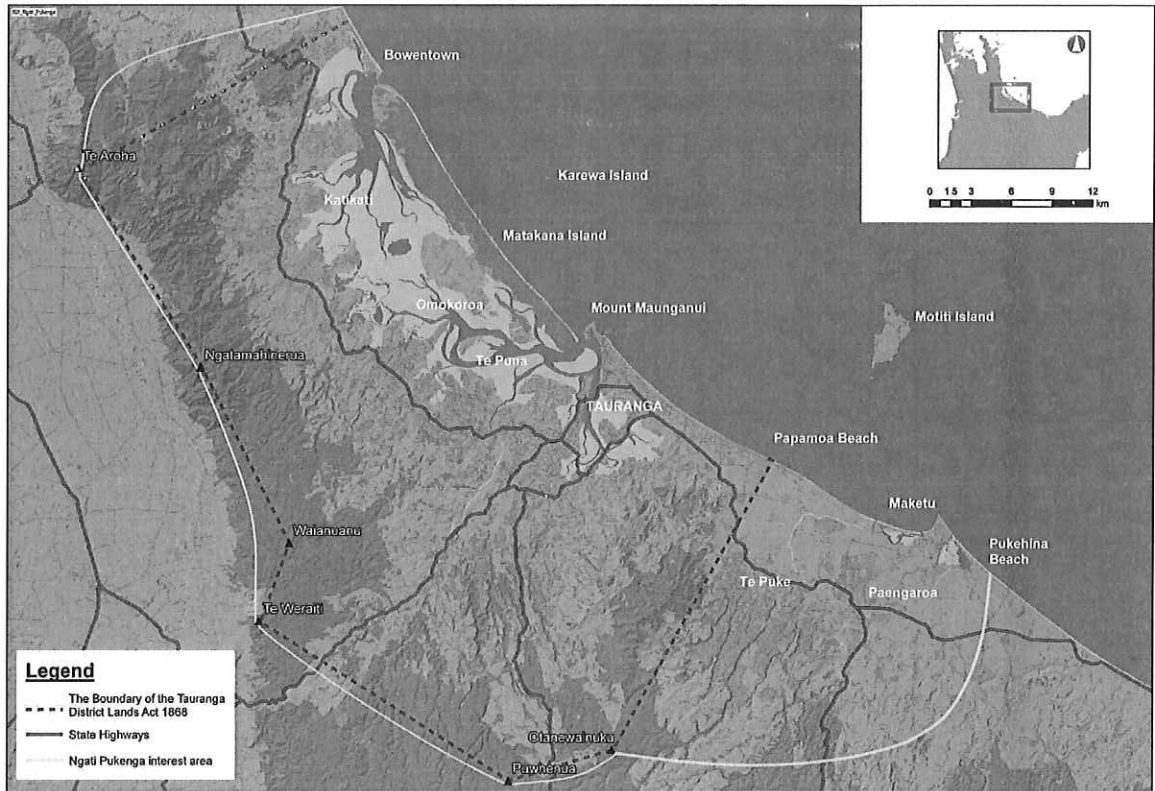
Map 1: Ngāti Pūkenga kainga



Map 2: Pakikaikutu kainga General Area of Interest (dry land areas shown in grey)



MAP 3: Manaia kainga General Area of Interest (dry land areas shown in grey)



Map 4: Tauranga and Maketu kainga General Area of Interest