

BUILDING A VOICE FOR NGATI PAHAUWERA

**NGATI PAHAUWERA – GOVERNANCE ENTITY
DISCUSSION BOOKLET 2007**

INTRODUCTION

1. Ngati Pahauwera has recently been engaged in a number of projects including:
 - 1.1 Treaty settlements;
 - 1.2 River management issues;
 - 1.3 Customary rights orders; and
 - 1.4 The proposal for a hydro dam.
2. Since 1994 Ngati Pahauwera has, by order of the Maori Land Court, been represented by the Section 30 Representatives.¹ Although the Section 30 Representatives are legally required to represent Ngati Pahauwera, there is a need for a governance entity, fully accountable to Ngati Pahauwera which can receive settlement assets, enter into joint ventures, joint management arrangements (or other commercial ventures) and/or ensure continuity if the Section 30 representatives desire to undertake other activities.
3. As discussed, the Section 30 Representatives have started on a process to work with Ngati Pahauwera to develop a governance entity to fulfil these functions and ensure appropriate succession for Ngati Pahauwera leadership.

PURPOSE OF THIS BOOKLET

4. This booklet outlines the necessary considerations for developing an appropriate governance entity, sets out a possible governance entity structure for discussion and the process for consultation with Ngati Pahauwera on this proposed structure.

¹ Tom Gemmell, Ruku Wainohu, Kuki Green, Reay Paku, Toro Waaka and Guy Taylor being the surviving representatives appointed under s30 Te Ture Whenua Maori Act 1993 on 13 June 1994. Charlie Hirini and George Hawkins were also section 30 representatives, but they are now deceased.

PROCESS

5. As outlined at hui-a-iwi at Mohaka on 16 June 2007 and 21 July 2007, the following process is proposed in order to build a governance entity with the full support of Ngati Pahauwera:

5.1 Release of this booklet at hui-a-iwi at Mohaka Marae on Saturday 8 September 2007 and rollout of process.

5.2 Hui to discuss the issues raised by this booklet in the following cities/towns. Exact details will be published in local and national media and on the Ngati Pahauwera website www.ngatipahauwera.co.nz prior to each hui:

City / Town
Wellington
Christchurch
Hamilton
Auckland
Palmerston North
Taupo
Napier
Mohaka
Gisborne

5.3 As well as the opportunity for feedback and comments at hui, written submissions on the proposed governance entity for a short period after the hui. .

5.4 Incorporation of feedback and development of a final proposed structure. (Dates to be advised)

5.5 Information Hui on final proposed structure. (Dates to be advised)

5.6 Postal ballot to ratify proposed structure. (Dates to be advised)

5.7 Implementation of the structure is likely to commence in mid 2008.

GOVERNANCE ENTITY CRITERIA

6. Key roles of a Ngati Pahauwera governance entity include:
 - 6.1 The ongoing governance of Ngati Pahauwera post settlement;
 - 6.2 Receipt and management of assets received on settlement;
 - 6.3 Distribution of benefits received by Ngati Pahauwera as a result of the Ngati Pahauwera Treaty claims;
 - 6.4 Oversight of Treaty negotiations in respect of both the river and land claims;
 - 6.5 Commercial negotiations (for example in relation to any future proposal for a hydro dam);
 - 6.6 Representing Ngati Pahauwera in discussions or negotiations with Government departments and/or local authorities as necessary;
 - 6.7 Representing Ngati Pahauwera in discussions with other iwi and hapu; and
 - 6.8 Representing Ngati Pahauwera in discussions over any oil exploration within the Ngati Pahauwera rohe.

7. Current Crown criteria for governance entities - the governance entity must:
 - 7.1 Adequately represent and be fully accountable to all members of the claimant group (i.e. all those who are part of the Ngati Pahauwera confederation);
 - 7.2 Have transparent decision-making and dispute resolution procedures;
 - 7.3 Ensure the beneficiaries of the settlement and the beneficiaries of the governance entity are identical when the settlement assets are transferred from the Crown to the claimant group; and

- 7.4 Be ratified by the claimant community.
8. In addition it is recommended that claimant groups choose a governance entity which can achieve all the desired functions in the best and most efficient way possible.

CURRENT ENTITIES

9. There are a number of Ngati Pahauwera entities currently established:
- 9.1 Ngati Pahauwera Section 30 Representative Co-operative Society Limited (an Industrial and Provident Society);
- 9.2 Ngati Pahauwera Incorporated (an Incorporated Society);
- 9.3 Charitable Trusts established for other whanau, marae or individual hapu purposes; and
- 9.4 Other bodies constituted under Te Ture Whenua Maori Act 1993 for specific statutory purposes.
10. None of these entities meet the current Crown criteria for governance entities in terms of the Treaty settlement process and they are unable to fulfill the necessary functions of a governance entity, in particular:
- 10.1 The membership requirements of an Industrial and Provident Society and an Incorporated Society limit the membership of those societies and may restrict eligible beneficiaries of the settlement. For example, the statutory provisions relating to the holding of shares by members in an Industrial and Provident Society are particularly problematic;
- 10.2 The requirement that an Industrial and Provident Society be bona fide co-operative is potentially an issue, given the primary role of the governance entity which is to represent all Ngati Pahauwera whether they choose to take an active role or not in Ngati Pahauwera affairs; and

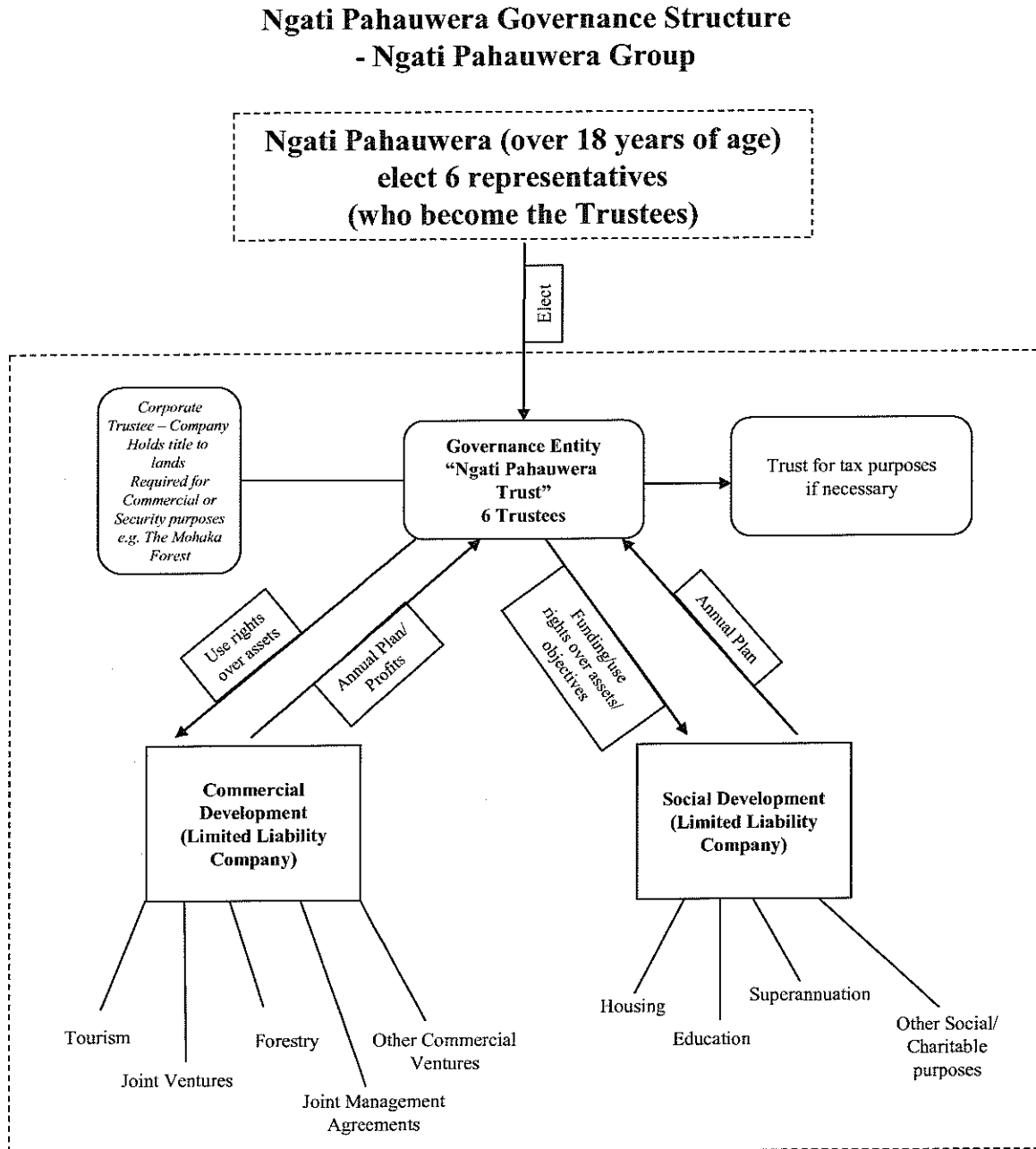
- 10.3 The fact that either form of society would require the combination of governance and trading activities increases risk.
- 10.4 Charitable Trusts do not meet the Crown criteria for governance entities.
11. A new entity is therefore required for the governance entity.
12. Consideration has been given to whether the Incorporated Society could be used as the structure for the social development arm of the Ngati Pahauwera Group, but the membership and rule requirements would appear to be too restrictive to achieve its intended purposes. Substantial work would also be required to adapt the current structure for this purpose.

PROPOSED GOVERNANCE ENTITY STRUCTURE

13. The proposed governance entity is a private trust² with a number of subsidiaries.
14. This trust, which for the purpose of this document is called the Ngati Pahauwera Trust, will be responsible for administering any settlement and, through the subsidiaries, the commercial and social development of Ngati Pahauwera (which along with the Ngati Pahauwera Trust make up the Ngati Pahauwera Group). It should be noted that the names used are provisional and further consultation on appropriate names for the entity/entities that make up the governance entity will be undertaken prior to establishment.
15. Key considerations in developing this entity include:
- Simplicity
 - Accountability
 - Relative affordability
 - The need to generate income
 - Charitable Trust Board structure not permitted by Crown

² That is a Trust established privately and not under Te Ture Whenua Maori Act 1993

16. A diagram of the proposed governance entity structure is set out below. The respective components of the structure are described in detail in Appendix A.



17. A similar structure to that outlined above has been used by other iwi, such as Nga Rauru, Te Uri o Hau and Te Roroa. Other iwi such as Ngati Awa, Ngai Tahu and Ngati Tama also use a structure which has an overriding / umbrella organisation with a number of different subsidiaries below it.

NEXT STEPS

18. In order to ensure that you remain involved in the process for developing the governance entity, register your details with the Section 30 Representatives and attend the consultation hui nearest to you. If possible, please also check the Ngati Pahauwera website for further updates www.ngatipahauwera.co.nz

APPENDIX A

Additional Information regarding Proposed Ngati Pahauwera Governance Entity

Ngati Pahauwera Members and Beneficiaries

1. All of Ngati Pahauwera regardless of age will be beneficiaries of the Ngati Pahauwera settlement and can be listed on the Beneficiary Roll (“Ngati Pahauwera Beneficiaries”).
2. It is important that a definition for Ngati Pahauwera is developed to enable people to know whether they are Ngati Pahauwera Beneficiaries. The definition of who is a Ngati Pahauwera beneficiary is called the claimant definition.
3. The claimant definition, which beneficiaries are required to meet, is very important to any settlement and is also an important aspect of this consultation. The claimant definition for Ngati Pahauwera is quite complex given that Ngati Pahauwera is a confederation of hapu. A draft claimant definition is set out below for discussion purposes:

Ngati Pahauwera are those that descend from one or more of the hapu listed in [Appendix B] and who have exercised or descend from those who have exercised customary rights within Mohaka. Mohaka is defined as the area set out in the map in [Appendix C].

4. A person is a Ngati Pahauwera Beneficiary if they meet the claimant definition and are verified as such by a Whakapapa Committee appointed for that purpose. An applicant may seek a review of an unsuccessful application provided new evidence is submitted in support. This draft claimant definition will need plenty of discussion to ensure that all those who should be are recognised as Ngati Pahauwera.

Ngati Pahauwera Trust

5. *Operational Summary*

- 5.1 A private Trust (which is a Trust not established under Te Ture Whenua Maori Act 1993).
- 5.2 Elected Representatives to be Trustees (six) (except for the first term which will have three elected representatives and the three remaining active members of the Section 30).
- 5.3 All Ngati Pahauwera Beneficiaries who are over 18 years of age (“adult members”) will have the opportunity to vote for three representatives to be the trustees of the Ngati Pahauwera Trust for the first term and for six representatives for all subsequent terms.
- 5.4 It is proposed that the three remaining active Section 30 representatives³ be trustees of the governance entity for the first term of two years along with three elected representatives, so as to ensure that the institutional knowledge, which the representatives have gained in their representation of Ngati Pahauwera for the past 13 years, and the external relationships built are passed on.
- 5.5 It is proposed that at the conclusion of the initial period, the three elected Trustees remain for a further two year term and thereafter the term for elected representatives be two years, thereby having only half of the Trustees replaced at any time. If a trustee position becomes vacant mid-term, a by-election will be required.
- 5.6 Ngati Pahauwera beneficiaries therefore retain control of the settlement through their elected representatives (who in turn are responsible for the policies and operations of the proposed governance entity).

³ Toro Waaka, Tom Gemmell and Kuki Green

5.7 Decisions to be made by Trustees except where special resolutions are required (where vote is by adult members of Ngati Pahauwera). Special resolutions require 85 percent support of Ngati Pahauwera adult members at an Annual or Special General Meeting. Special resolutions will be required for:

5.7.1 Major transactions (acquisition or disposition of more than half the value of the Trust); or

5.7.2 Amendments to Trust Deed; or

5.7.3 Proposal to terminate Trust.

5.8 Annual report, financial statements and annual plan to be presented, and Trustee's remuneration (if any) to be approved, at Annual General Meetings.

5.9 Copies of annual reports, financial statements, annual plans, five-year plans, Statements of Intent and Trust Deeds to be available for inspection at Trust office.

5.10 In addition to Annual General Meeting, Special General Meetings can be called by the Trustees or 10 percent of Ngati Pahauwera adult members.

5.11 30 days notice required for Annual General Meeting or Special General Meeting and quorum of 30 Ngati Pahauwera adult members required.

5.12 Accounts must be audited annually. No Trustee or employee of the Trust may be appointed as the auditor.

6. *Purpose and Functions*

6.1 The purposes for which the Ngati Pahauwera Trust is established are to utilise resources available to Ngati Pahauwera, including settlement assets, for the commercial and social development of Ngati

Pahauwera, on behalf of and for the benefit of the present and future beneficiaries of Ngati Pahauwera in accordance with the Trust Deed, including without limitation:

- 6.1.1 the promotion amongst Ngati Pahauwera of the educational, spiritual, economic, social and cultural advancement or well-being of Ngati Pahauwera;
- 6.1.2 the promotion amongst Ngati Pahauwera of mental health and well-being of the aged, or those suffering from mental or physical sickness or disability;
- 6.1.3 to recover remaining Ngati Pahauwera wahi tapu;
- 6.1.4 to administer subsidiaries (Ngati Pahauwera Commercial Development Company and Ngati Pahauwera Social Development Company and other subsidiaries that may be required from time to time);
- 6.1.5 to offer security for loans made to Ngati Pahauwera Commercial Development Company;
- 6.1.6 to administer all forest licences;
- 6.1.7 to develop policies to control the distribution of profits from the Ngati Pahauwera Group;
- 6.1.8 to receive, protect, manage and administer those properties not required for commercial and/or security purposes (including named wahi tapu) on behalf of and for the benefit of the present and future beneficiaries of Ngati Pahauwera;
- 6.1.9 to administer the relationship redress from the settlement, and protocols on behalf of Ngati Pahauwera;
- 6.1.10 to develop and implement a process for identifying wahi tapu;
- 6.1.11 to vest all Trust Assets in a Custodian Trustee;

6.1.12 where culturally appropriate to do so and in accordance with Ngati Pahauwera tikanga grant access/use rights over the Trust properties, to a Ngati Pahauwera Group entity;

6.1.13 where appropriate appoint kaitiaki to the wahi tapu and such other properties held by the Ngati Pahauwera Trust as identified from time to time by the Trustees, to ensure that such properties are protected and administered or otherwise dealt with in accordance with Ngati Pahauwera tikanga;

6.1.14 the promotion amongst Ngati Pahauwera of the educational, spiritual, economic, social and cultural advancement or well-being of Ngati Pahauwera; and

6.1.15 any other purpose that is considered by the Trustees from time to time to be beneficial to Ngati Pahauwera.

7. *Analysis*

7.1 Subject to review by the Crown but consistent with Crown policy.

7.2 Flexible.

7.3 Requires beneficiary roll to be kept up-to-date.

7.4 Is able to perform commercial activities.

7.5 Further commercial advice will be required to ensure subsidiary structures are tax efficient.

Ngati Pahauwera Commercial Development Company

8. *Operational Summary*

8.1 Limited Liability Company under the Companies Act 1993.

8.2 To operate in accordance with annual plan approved in advance by Ngati Pahauwera Trust.

- 8.3 Part of Ngati Pahauwera Group.
- 8.4 Ability to be reconstructed if necessary.
- 8.5 Ngati Pahauwera Trust appoints the directors, who may also be the trustees on the Ngati Pahauwera Trust.
- 8.6 Name to be determined.

9. *Purpose and Functions*

- 9.1 Commercial/trading arm of Ngati Pahauwera.
- 9.2 No land ownership.
- 9.3 To borrow money against assets held by Ngati Pahauwera Trust for the purpose of completing settlement.
- 9.4 To utilise assets provided by Ngati Pahauwera Trust.
- 9.5 To develop forestry/fishing/tourism/farming and other ventures, as appropriate, to generate income for Ngati Pahauwera.
- 9.6 To pay profits to Ngati Pahauwera Trust in accordance with Annual Plan.

10. *Analysis*

- 10.1 Flexible and multipurpose entity.
- 10.2 Flexible financing capabilities.

Ngati Pahauwera Social Development Company

11. *Operational Summary*

- 11.1 Limited Liability Company under the Companies Act 1993.
- 11.2 Not for profit entity.

- 11.3 Shares owned by Ngati Pahauwera Trust.
- 11.4 Part of Ngati Pahauwera Group.
- 11.5 Ability to be reconstructed if necessary.
- 11.6 Trustees on Ngati Pahauwera Trust may be appointed trustees.
- 11.7 Beneficiary of Ngati Pahauwera Trust.
- 11.8 Name to be determined.

Purpose and Functions

- 11.9 To manage and direct social needs requirements (including the contracting of social service delivery activities, for example, health/education/housing/superannuation).
- 11.10 To apply funds distributed by Ngati Pahauwera Trust toward the purpose set out above.
- 11.11 Receive distributions from Ngati Pahauwera Trust.
- 11.12 Possibly make arms-length loans to Ngati Pahauwera Commercial Development Company.
- 11.13 No land ownership.
- 11.14 No profit making function.

12. *Analysis*

- 12.1 Further commercial advice will be sought to ensure it is as tax efficient as possible.

APPENDIX B

Hapu of the Ngati Pahauwera Confederation

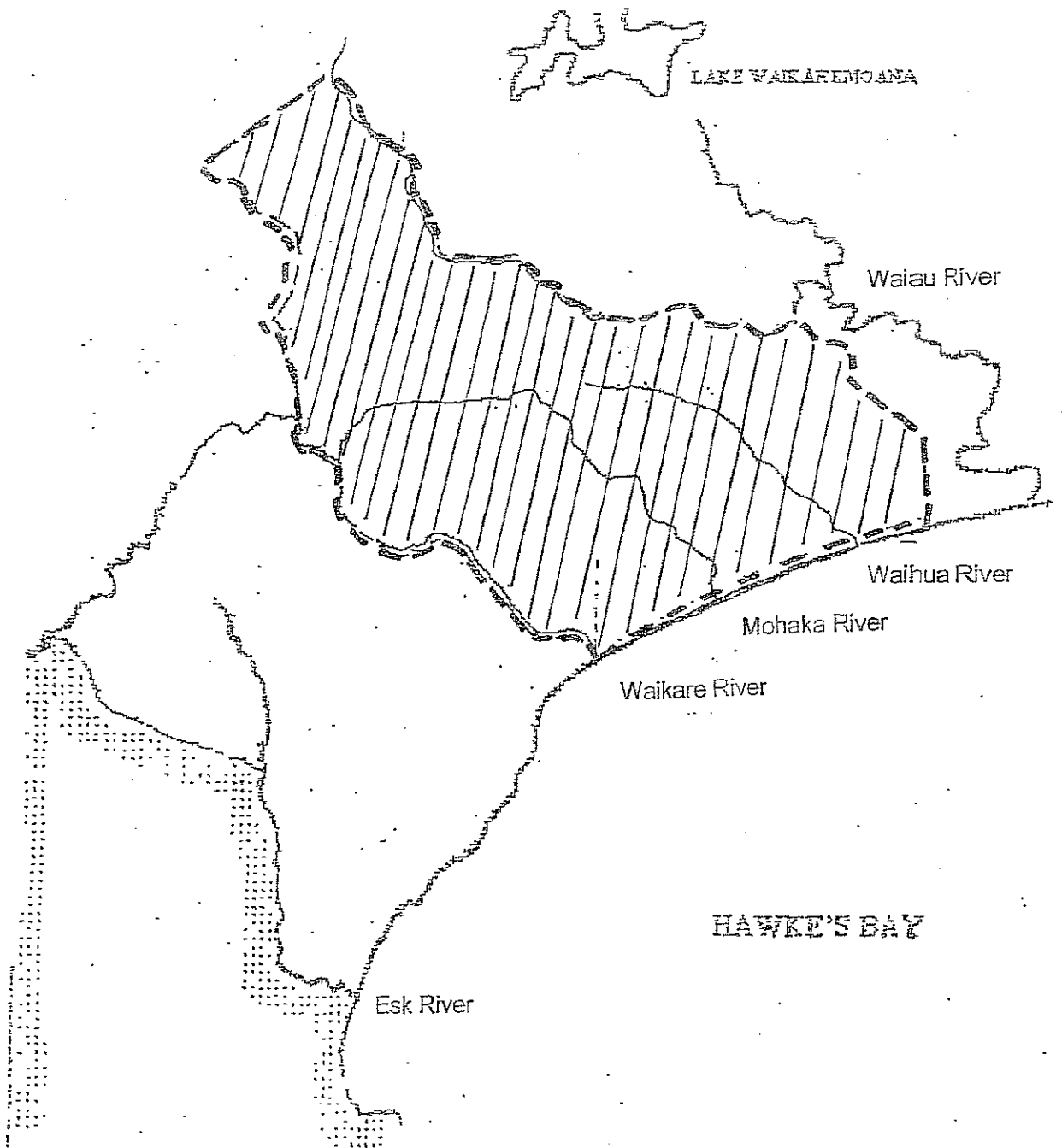
The section 30 representatives have compiled this list of hapu based on research undertaken to support the Ngati Pahauwera Waitangi Tribunal claims, however it is accepted that there may be some errors or omissions in this list and the section 30 representatives would appreciate your assistance in completing and amending this list, so that it includes all the hapu of the Ngati Pahauwera Confederation.

- Ngarangiaitu
- Nga Uri-o-Mamangu
- Ngaitahuao / Ngaitahiao
- Ngaitaraparoa
- Ngai Kautata
- Ngai Taane
- Ngai Tahu
- Ngai Tapui
- Ngai Tatakū
- Ngai Tatara
- Ngai Tauhere
- Ngai Taumau
- Ngai Te Ao Kapiti
- Ngai Te Aonui
- Ngai Te Awha
- Ngai Te Huki
- Ngai Te Maaha
- Ngai Te Ngau Patea
- Ngai Te Paanga
- Ngai Te Rangi Takuao
- Ngai Te Rau
- Ngai Te Rauiri
- Ngai Te Rongo
- Ngai Te Ruatai
- Ngai Te Ruruku
- Ngati Ao Kino
- Ngati Heki
- Ngati Heouri
- Ngati Hikapi
- Ngati Hineiro
- Ngati Hine Kete
- Ngati Hinekino
- Ngati Hine Ku
- Ngati Hinemokai
- Ngati Hine Mura
- Ngati Hine Rakai
- Ngati Hine-te-Rangi / Hine Paia
- Ngati Hine Tunge
- Ngati Honomokai
- Ngati Huki
- Ngati Ira
- Ngati Irirangi
- 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
- Ngati Kurahikakawa
- Ngati Matengahuru
- Ngati Matewai
- Ngati Mawete
- Ngati Moe
- Ngati Mouru
- Ngati Paeahi
- Ngati Pahauwera
- Ngati Paikea
- Ngati Pari
- Ngati Paroa
- Ngati Patupaku
- Ngati Pehi
- Ngati Peke
-
- Ngati Poporo
- Ngati Pouanga
- Ngati Poupou
- Ngati Puraro
- Ngati Purua
- Ngati Rahui
- Ngati Rangi Haere Kau
- Ngati Rangitohumare
- Ngati Rauiri
- Ngati Ririwehi
- Ngati Ruakohatu
- Ngati Tahiroa
- Ngati Tahu
- Ngati Tangopu
- Ngati Taponga / Tapunga
- Ngati Taraparoa
- Ngati Tatua
- Ngati Taumau
- Ngati Tuhemata
- Ngati Wera
- Popoia

APPENDIX C

Map of Mohaka area for the purpose of the claimant definition



MOHAKA AREA FOR NGATI PAHAUWERA CLAIMANT DEFINITION

IMPORTANT NOTE: This is not a map of the Ngati Pahauwera claims area. It is to assist in the definition of the Ngati Pahauwera Confederation and is a draft for discussion purposes only